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ANNUAL REPORT

2012/2013
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11TH APRIL, 2014

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KENYA.

Your Excellency,

RE: SUBMISSION OF THE 2012/2013 KNCHR ANNUAL REPORT

Pursuant to Article 254 (1) of the Constitution of Kenya 2010 and section 53 (1) of the Kenya National Commission on Human Rights Act 2011, I have the honor of submitting to you our report for the financial year 2012/2013.

Regards,

Kagwiria Mbogori
CHAIRPERSON.

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LIST OF ABBREVIATIONS

ACHPR	African Commission on Human and Peoples' Rights
BHC	British High Commission
CAJ	Commission on Administrative Justice
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations Convention against Torture
CBO	Community Based Organization
CIC	Commission on Implementation of the Constitution
CJPC	Catholic Justice and Peace Commission
CRPD	UN Convention on Rights of People with Disability
CuC	Court User Committee
CSOs	Civil Society Organizations
DCIC	Disability Caucus for the Implementation of the Constitution
DCIO	District Criminal Investigation Officer
DPP	Director of Public Prosecutions
FIDA	Federation of Women Lawyers Kenya
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)
GoK	Government of Kenya
HRBA	Human Rights Based Approach
ICC	International Coordinating Committee of National Human Rights Institutions
IEBC	Independent Electoral and Boundaries Commission
IHRB	Institute for Human Rights and Business
IPCRM	Integrated Public Complaints Referral Mechanism
IPOA	Independent Police Oversight Authority
KMJA	Kenya Magistrates and Judges Association
KNCHR	Kenya National Commission On Human Rights
KPRs	Kenya Police Reservists
LAPPSET	Lamu-Port-South Sudan Ethiopia Transport
M&E	Monitoring and Evaluation
MOL	Ministry of Land

MoSSP	Ministry of State for Special Programs
MOJNCCA	Ministry of Justice, National Cohesion, and Constitutional Affairs
NGEC	National, Gender and Equality Commission
NHRI	National Human Rights Institution
NPS	National Police Service
NPSC	National Police Service Commission
ODPP	Office of the Director of Public Prosecutions
OHCHR	Office of the High Commissioner for Human Rights
PCIO	Provincial Criminal Investigation Officer
PEV	Post-Election Violence
PLSWC	Parliamentary Labour and Social Welfare Committee
PWGID	Protection Working Group on Internal Displacement
RRM	Rapid Response Mission
TJRC	Truth, Justice and Reconciliation Commission
UNCRC	United Nations Convention on the Rights of the Child
UNDP	United Nations Development Fund
UPR	Universal Periodic Review
WGPR	Working Group on Police Reforms

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PREFACE

The Commission enjoys the distinct recognition in the Constitution as the protector of the Sovereignty of the people and is charged with the dual responsibility of ensuring that all state organs observe democratic values and principles as well as promote constitutionalism.

To enable it fulfill its mandate, the Kenya National Commission on Human Rights Act, 2011 requires that the Commission be constituted through the appointments of a Chairperson and four members and that it is adequately resourced. On both fronts the state has not honored its obligation to the Commission. Since November 2012 a single Commissioner has served in the commission and whose term came to an end in January 2014. The delay in appointing the five Commissioners has been occasioned by the multiplicity of cases filed to challenge the process and the delay by the President in forwarding names to Parliament as required by the Act.

On financing, against a request of Kshs 700M, the government allocated Kshs 251M to the Commission in the financial year 2012/2013, impacting negatively on the effectiveness of the Commission. It is hoped that in the current financial year 2013/14, the matter shall be resolved in favor of the Commission.

Whereas the Government has been very articulate in communicating and implementing its vision for the economic development of the Country, the same cannot be said of its commitment to upholding the rule of law, constitutionalism and safeguarding the rights of its Citizens. For this reason the transitional justice agenda of the Country is slowly grinding to a halt. The TJRC Report, as with other reports before it, is destined to take its place on the dusty shelves of state indifference. It is commendable that under these difficult circumstances, the Commission has strived to fulfill its mandate. This was achieved through the invaluable support of various donors who funded the programmatic work of the Commission. We acknowledge the contribution of our partners in the work that we have done and appreciate the technical and financial support extended to us by the Government and development partners.

KNCHR is particularly grateful to the Government of Kenya, UNDP, GIZ – Social Justice, GIZ – Good Governance, British High Commission, UNHCR and OHCHR.

This year marks the final year in the implementation of the 5-year strategic plan from 2008-2013. We are honored to have been given an opportunity to serve Kenya and make a contribution towards the furtherance of the Constitutional ideals. Our successes during this period will serve as a motivation as we march on into the next year with reformulated goals for the period 2013-2018. We are optimistic that notwithstanding the teething challenges in implementing the Constitution, ultimately the tide shall shift and resolute steps shall be taken to conform with Constitutional requirements.

We submit this report in accordance to our statutory mandate. The report is divided into 3 parts: (i) Chapter 1: Explains the mandate, vision, functions and objectives of the commission; (iii) Chapter 2: Reports on the activities of the commission as well as the recommendation on specific actions to be taken in furtherance of human rights; And (iii) Chapter 3: details the financial statements of the Commission.

In accordance with Section 51(1) of the commission's act, the KNCHR makes the following recommendations:

On Legislation

That parliament adopts the National Human Rights Policy and Action Plan approved by cabinet in 2012.

That parliament enacts the Evictions and Resettlement Procedures Bill, 2013

That parliament ensures that the government takes measures to fully operationalize the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012. That it constitutes without further delay the National Consultative Coordination Committee on Internally Displaced Persons established by Section 12 and the Humanitarian Fund established by Section 14.

Reversals be made on amendments to the Elections Act, 2011. Parliament should ensure that the IEBC makes rules and regulations that will govern elections, party nominations as well as nominations for special seats.

Reports on commissions of inquiry

That the commissions make public reports that have been submitted to Government, particularly the report on ethnic violence in Tana Delta District and also publicize steps taken to implement the recommendations by the respective Commissions. In this regard we consider it necessary that the President reassures the country of the government's commitment to implement the report of the TJRC.

Institutional reform

In order to facilitate institutional reforms as envisaged under the Constitution, we urge that the vetting of Police officers commence without further delay.

To ensure that the Constitution is broadly disseminated to all sections of the Kenyan public, we recommend that the Constitution be published in swahili, and in addition, have popular versions made available in Swahili and English.

Support to the commission

Finally, as it relates to the Commission, we call for the immediate appointment of Commissioners and allocation of sufficient resources in accordance with Article 249(3) of the Constitution (2010).

We look forward to working with Parliament and other stakeholders to actualize the implementation of the above recommendations.

CHAPTER 1: INTRODUCTION TO THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

1.1 Overview of the Kenya National Commission on Human Rights

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

The Commission implements two key broad mandates: first, it acts as a watchdog over the Government in the area of human rights (the protection mandate); secondly, it plays a key leadership role in advising and moving the country towards becoming a human rights state (the promotion mandate).

These mandates are implemented through various strategies including research, advocacy, lobbying, education and training, outreach, investigations and redress, issuing advisories and publications, and through partnerships building and networking.

The Commission has its head office in Nairobi with 3 regional offices in Wajir, Kitale and Mombasa. Currently the Commission has 108 staff.

The KNCHR Act provides that the membership of the Commission shall be a Chairperson and 4 members appointed in accordance with the provisions of the Constitution and the Act. At the end of the financial year, the Commission had a sole Commissioner who also doubled up as the Acting Chair of the Commission.

Table 1: List of commissioners who served in the reporting year.

Commissioner	Position	Appointment Date	Status
Ms. Fatuma Ibrahim Ali	Commissioner	Re appointed in November 2007	Resigned in September, 2012
Mr. Lawrence Mute	Commissioner	Re appointed in November 2007	Tenure ended in November 2012
Ms. Fatuma Adan Dullo	Commissioner	November 2007	Tenure ended in November 2012
Dr. Samuel Tororei	Ag chairman	November 2007	Tenure ended in November 2012
Anne Kyalo Munyiva-Ngugi	Commissioner	January 2009	Tenure ends in January 2014
Mohammed Konso Hallo	Secretary	May 2009	Resigned Sept, 2012
Dr. Bernard Mogesa	Ag. Secretary	September 2012	Dec. 2012
Ms. Patricia Nyaundi	Secretary	December 2012	Tenure ends in December 2017

1.2 Independence of the Commission

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

Independent Offices provides that:

The Commissions and holders of independent offices: -

a) Are subject only to this Constitution and the law; and

b) Are independent and not subject to direction or control by any person or authority

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

1.3 Functions and powers of the KNCHR

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

a) Promote respect for human rights and develop a culture of human rights in the Republic;

b) Promote the protection and observance of human rights in public and private institutions;

c) Monitor, investigate and report on the observance of human rights in all spheres of life in the republic;

d) Receive and investigate complaints about alleged abuses of human rights, except those relating to the principle of equality and freedom from discrimination under the Gender and Equality Commission, and take steps to secure appropriate redress where human rights have been violated;

e) On its own initiative or on the basis of complaints, investigate or research a matter in respect of human rights, and make recommendations to improve the functioning of State organs;

f) Act as the principal organ of the state in ensuring compliance with obligations under international and regional treaties and conventions relating to human rights except those that relate to the rights of special interest groups protected under the law relating to equality and non-discrimination;

g) Formulate, implement and oversee programmes intended to raise public awareness of the rights and obligations of a citizen under the Constitution;

h) Work with the National Gender and Equality Commission and the Commission on Administrative Justice to ensure efficiency, effectiveness and complementarity in their activities and to establish mechanisms for referral and collaboration;

i) Perform such other functions as the Commission may consider necessary for the promotion and protection of human rights; and

j) Perform such other functions as may be prescribed by the Constitution and any other written law.

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

a) May conduct investigation on its own initiative or on a complaint made by a member of the public;

b) Has the powers necessary for conciliation, mediation and negotiation;

c) Shall recruit its own staff; and

d) May perform any functions and exercise any powers prescribed by legislation, in addition to the functions and powers conferred by this Constitution.

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

Section 26 of KNCHR Act, 2011 provides for general powers of the KNCHR;

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

a) Issue summons, as it deems necessary for the fulfillment of its mandate;

b) Require that statements be given under oath or affirmation and to administer such oath or affirmation;

c) Adjudicate on matters relating to human rights;

d) Obtain, by any lawful means, any information it considers relevant, including requisition of reports, records, documents and any information from any person, including governmental authorities, and to compel the production of such information for the proper discharge of its duties;

e) By order of the Court, enter upon any establishment or premises, and to enter upon any land or premises for any purpose material to the fulfillment of the mandate of the Commission, in particular, for the purpose of obtaining information, inspecting any property or taking copies of any documents, and for safeguarding any such property or document;

f) Interview any person or group of persons

g) Subject to adequate provisions being made to meet his expenses for the purpose, call upon any person to meet with the Commission or its staff, or to attend a session or hearing of the Commission, and to compel a person who fails to respond to a request of The Commission to appear and to answer questions relevant to the subject matter of the Session or hearing;

h) Conduct audits of any public or private institution to establish the level of compliance with the Constitution with regards to integrating the principle of equality and equity in its operations; and

i) Require any public or private institution to provide any special report on matters relating to the institution's implementation of the principle of equality and equity including gender equity.

1.4 Affiliation to International and Regional Networks

The Commission is affiliated to the International – Coordinating Committee of National Human Rights Institutions (ICC) an international, independent body established to promote the establishment and strengthening of NHRIs in conformity with the Paris Principles and enjoys 'A' Status accreditation. The ICC's sub- committee on accreditation conducts periodic review (every five years) of existing NHRIs to assess their continued compliance with Paris Principles,[1] and strengthen NHRIs to ensure full compliance through technical assistance. Proposed and new NHRI are assessed against Paris Principles benchmarks before their accreditation as status A, B or C NHRI depending on their level of compliance. Accreditation regulates NHRIs' access to the UN Human Rights Council and the treaty body mechanisms, hence the key significance of this mechanism to the work of NHRIs.

1. Paris Principles assess the establishment and functioning of NHRI around six areas;
   - Mandate and competence: Broad mandate based on universal human rights standards
   - Autonomy from government;
   - Independence guaranteed by statute or constitution
   - Pluralism including through membership and/or effective cooperation
   - Adequate resources for operational independence and autonomy
   - Adequate powers of investigations

he ICC of NHRIs facilitates interaction and cooperation between NHRIs and the UN system, as ell as coordination and collaboration among NHRIs. In addition, it strengthens NHRIs to ensure ull compliance with Paris Principles. The ICC currently has 16 voting members representing four egions (Africa, America, Europe, and Asia/pacific region). The KNCHR is a member of the ICC Bureau epresenting Africa group and is also the secretary to the ICC, through which it continues to shape nd influence the human rights agenda at the international level. This is a representation of the ole that the Commission plays in leadership on human rights issues at the international level and is urther a demonstration of the competency of the KNCHR in working to promote and protect human ights in Kenya.

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

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

1.5 Strategic Direction for the Financial Year 2012/2013

The commission's strategic direction as outlined in the 2009-2013 strategic plan is structured as follows:

1.5.1 Vision

A nationally and globally respected public institution providing leadership in human rights

1.5.2 Mission

To enhance protection and promotion of human rights in Kenya through a strategic programming and partnerships

1.5.3 Goal

To increase respect for and enjoyment of fundamental human rights

1.5.4 Values

The Commission believes in and upholds the following core values:

- Independence
- Integrity
- Inclusiveness
- Tolerance
- Accessibility

1.5.5 Strategic Objectives

In the Strategic Plan, the priorities and work of the Commission are focused around four Key Result Areas (KRAs), namely:

1. Reduced systemic human rights violations.
2. Increased application of human rights principles and standards in the Implementation of the constitution.
3. Increased knowledge and practice of human rights principles and standards in public and private spheres.
4. Organizational growth and development.

CHAPTER 2: REPORT ON ACTIVITIES AND RECOMMENDATIONS

STRATEGIC PRIORITY 1: Reduced systemic violations of Human Rights

The Commission works to reduce systemic human rights violations by receiving and investigating complaints and taking steps to secure appropriate redress where human rights are found to be violated.

2.1 Complaints received in the reporting period

In the period under review, the Commission through its headquarters and regional offices received 1,658 complaints as follows:

Table 2: Schedule of complaints received at the offices of the commission.

Office	Number Received	Percentage
Nairobi Office	821	49.43
North Rift Regional Office	344	20.75
North Eastern Regional Office	173	10.43
Coast Regional Office	320	19.36
Total	**1,658**	**100%**

2.1.1 Gender analysis of complaints received

1,187 (71.6%) of the 1,658 complaints received at the Commission were by male petitioners while 471 were by female petitioners, representing 28.4 % of all complaints received at the Commission. The Head Office attended to 821 petitioners where women accounted for 179 (21.8%) while men comprised 642 (78.2%). The North Rift regional Office had a total of 344 petitioners, of whom 195 (56.7%) were male and 149 (43.3%) female. The North Eastern Regional office attended to 173 petitioners of whom 109 (63%) were male and 64 (37%) were female. At the Coast regional office, the male complainants were 241(75.3%) while the women were 79 (24.7%)

We note that on the whole the Commission received more petitions from males than it did from females. This is could be as a result of a lot of factors coming into play stemming from the social, cultural or economic background of the petitioner. The Commission is however brainstorming so as to facilitate an increased number of females reporting to the complaints.

2.1.2 Analysis by mode of lodging the complaint

Table 3: Mode of lodging complaints.

Mode of Lodging	Number Received	Percentage (100%)
Physical Visits	1,369	82.6
Postal Mail	79	4.8
Telephone	54	3.3
Email	86	5.1
Website	55	3.3
IPCRM	14	0.8
Fax	1	0.1
Total	**1,658**	**100%**

2.1.3 Analysis of Complaints by categories of human rights violations

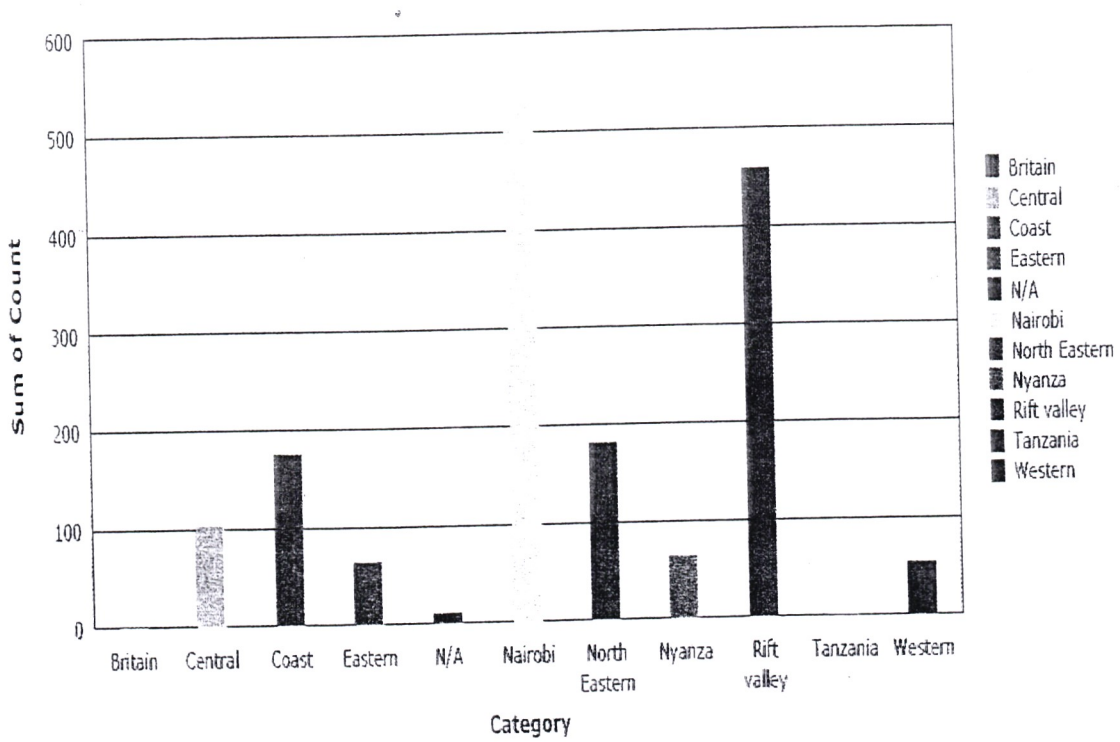
Economic Social and Cultural Rights violations continued to be the largest category of complaints that were received by the Commission during the reporting period accounting for 1,019 (61.5%) compared to Civil and Political Rights 420 (25.3%) and Group Rights which together constituted 218 (13.2%).

The Nairobi office reported a high number of labour related complaints followed by general complaints (legal advice and complaints against advocates). The bulk of the complaints in the North Rift were related to family disputes followed by land rights. Majority of the complaints from the North Eastern Regional Office were family disputes followed by labour complaints and children rights respectively. Most of the complaints at the Coast Regional Office were related to the right to fair administrative action followed by labour.

2.1.4 Analysis of complaints by geographical distribution

The bulk of complaints received during the reporting period were from Nairobi while the lowest number of complaints was received from the Western region. The variance in the distribution of the complaints can be partly attributed to proximity of the Commission's offices to the citizens and also the level of awareness on the part of the public of their rights.

Table 4: The geographical distribution of complaints



1	102	174	64	11	549	181	63	458	1	54	1,658
Britain	Central	Coast	Eastern	N/A	Nairobi	North Eastern	Nyanza	Rift valley	Tanzania	Western	**Total**

Note: Britain and Tanzania fall under other jurisdiction.

2.2 Processing of Complaints

Of the 1,658 reported violations, 274 were admitted, for preliminary and further investigations; 1221 were given legal advice and referred to partners within the referral network for alternative redress mechanisms; 163 are matters pending for various reasons such as verification and provision of supportive documents on the allegations.

2.2.1 Concluded matters/ closed Files

During the financial year 1st July 2012- 30 June 2013 KNCHR dispatched a total of 236 letters in relation to the received complaints. At the end of the reporting period, the Commission had opened a total of 111 files and closed 90 bringing the total of active files to 175. The files were closed either after the matters were investigated, adequate responses were made and/or it was impossible to pursue the matter further.

2.2.2 Summary of investigations undertaken

The Commission conducted field investigations and Rapid Response Missions (RRM) on complaints that merited such actions. Field investigations are informed by the findings of the preliminary investigations and are done as follow up to give effect to the recommendations made at the preliminary investigations report. Further investigations are therefore conducted to determine whether the violation actually occurred and thereby inform appropriate redress measures.

RRMs on the other hand, are investigations conducted in situations that warrant urgent intervention with a view to forestalling an on-going violation or to prevent the imminent violation from occurring. A RRM is usually conducted within 24 hours from the time of receipt of the alleged violation.

The total number of field investigations conducted by the Commission's three offices during the reporting period were 72 while RRMs were 21.

The table below shows the number of investigations and RRMS conducted by the various KNCHR offices.

Table 5: Number of investigations conducted in all KNCHR offices

	Office	Field investigations	Rapid response missions	Total
1.	Headquarters	42	12	54
2.	North Eastern Regional office	11	3	14
3.	North Rift Regional office	14	4	18
4	Coast Regional Office	5	2	7
Total		**72**	**21**	**93**

2.2.2.1 Sample of investigations and interventions undertaken during the period

Advocacy on justice for Internally Displaced Persons (IDPs)

The plight of the persons displaced during the post election violence of 2007-8 brought to the fore the lacuna in protection for displaced persons in Kenya. Since independence many persons have been displaced on account of violence, environment hazards and state–sponsored evictions.

Since 2009 KNCHR has led a joint project with the office of the United Nations High Commissioner for Refugees (UNHCR) and other actors on internal displacement. This included coordinating a multi-stakeholder Protection Working Group on Internal Displacement (PWGID) and continuous monitoring of the situation of IDPs in the country. The commission utilized the data generated by the monitoring project to launch a high-level lobbying and advocacy initiative on the issue of IDPs which has resulted into a number of positive outcomes. The KNCHR successfully lobbied the Ministry of State for Special Programmes to develop a national policy for the protection and assistance to Internally Displaced Persons (IDPs) that has since been submitted to cabinet for adoption.

The project contributed to the enactment of the Protection and Assistance to Internally Displaced Persons and Affected Communities Act in December 2012. The Act came into force on 18th January 2013. Through this Act, the state has an obligation to protect and prevent the citizens against displacement and to provide assistance to IDPs when displacement occurs until a durable solution is attained. The Act establishes the National Consultative Coordinating Committee (NCCC) that will coordinate prevention and preparedness efforts, protection and assistance to IDPs. The NCCC comprises of key government ministries and departments that deal with IDPs, KNCHR, IDP representatives, the Attorney General, the Director of Public Prosecution, National Land Commission, CSOs and donor community representatives.

The Commission's contribution to this successful outcome was acknowledged by the Chair of the Parliamentary Select Committee on Resettlement of IDPs, Hon. Ekwee Ethuro. While tabling the Committee's report before parliament, he thanked the Commission's PWGID in the recorded statement, "*....for their support and valuable input in understanding of the IDPs situation in the country and in developing the national policy for the prevention of internal displacements, protection and assistance of IDPs in Kenya and the draft IDPs Bill*[2]."

The achievements of the joint project have been acknowledged by the United Nations Special Rapporteur on Human Rights of Internally Displaced Persons, Prof Chaloka Beyani in his latest country mission to Kenya and in a recent publication by the Brookings-LSE Internal Displacement Project, '*From Responsibility to Response: Assessing National Approaches to Internal Displacement.*'

The project facilitated immediate interventions for victims of displacement in various regions. In Tana Delta for example, the profiling and provision of assistance to those displaced improved. There were also commendable efforts to ensure that the displaced children were able to sit for their national exams. Similar efforts were extended to close to 1,000 people that were displaced in Marakwet and West Pokot counties following landslides in the area.

The Commission's efforts also contributed towards the government's resettlement programme for the PEV IDPs. Funds were set aside to ensure that IDPs in places such as Nyamira were paid their dues were also resettled during the year

2. Parliament Hansard for August 2nd 2012

Photo: KNCHR Chair and members of PWGID during a press conference on the need to enact the IDP law

Peace interventions in Isiolo and Wajir.

Between 18th and 23rd July 2012, the KNCHR North Eastern office conducted a rapid response mission to Habaswein, Modogashe, Isiolo and Garbatulla following reports of rising tensions occasioned by the shooting of one Abdilahi Abdi Haji ostensibly after a pasture disagreement between members of the Borana (from Isiolo County) and the Ajuran Community (Wajir County).

During the mission, the team visited the victim at the Habaswein district hospital and held interviews with various interlocutors and elders from the warring communities with a view to understanding the problem. The team also engaged with concerned authorities including the police, area chiefs and the district commissioners in Habaswein, Garbatulla, Wajir West and Lagdera Districts. The mission facilitated various eyewitnesses to the recent shooting incident to record statements with the police to facilitate investigations.

To forestall imminent revenge attacks, the team held a series of peace meetings with elders in the hotspots and urged them to refrain from further belligerence and instead work towards a durable solution to the recurrent pasture/border conflicts in the region. The meetings were held in Ademasajida, Habaswein, Lolkuta and Sericho locations. The elders from the two sides (Ajuran/ Borana) agreed to maintain peace but urged the KNCHR to facilitate a quick resolution of the grievances to avert future conflicts.

Consequently KNCHR facilitated a larger peace meeting bringing together the main communities party to the conflict; Boranas (Garbatulla District) and Ajuran (Wajir West District). The meeting was held at Habaswein on 6th August 2012 and was attended by the elders from the warring communities, civil society organizations, religious leaders and District Commissioners (DCs) and heads of police from Merti, Garbatulla and Wajir West and Habaswein Districts.

During the meeting a number of agreements were made including compensation of the families of the deceased by the offending communities. The Borana community gave a down payment of Kshs 170,000 as down payment for the killing of Abdilahi Abdi Haji from the Ajuran Community and committed to pay the balance of Kshs 670,000 within six months.

The District Peace Committees (DPCs) from the affected districts and the Council of Elders committed themselves to the full implementation of the Madogashe/Kom/Garissa peace declarations. They resolved to jointly carry out aggressive community sensitization geared towards reducing mistrust among the communities in the region. The DPCs and the District security Intelligence Committees (DSICs) further agreed to consult regularly, monitor community relation and proactively support joint rapid response interventions to forestall the eruption of conflicts.

Alleged sexual abuse of minors in Kanyawegi children's home in Kisumu

The KNCHR conducted rapid response investigations from 13th to 15th December, 2012 on the alleged sexual exploitation of minors in a children's home in Kisumu and thereafter undertook various follow-up actions on the matter. The petitioner reported that a UK male citizen who was financially sponsoring the programmes in the home was sexually abusing minor boys at the home. It was further reported that the home's management team, the Children's department and the Police were aware of the alleged violations but had not taken any action to remedy the situation. The alleged perpetrator flew from Kenya to the UK in December 2012 upon realizing that he was being investigated. The findings from preliminary investigations' established that the alleged perpetrator used to frequent the home and had unfettered access and contact with the boys in private rooms. Subsequently, KNCHR held follow-up meetings with various agencies including the office of the Permanent Secretary, Ministry of Foreign Affairs on facilitation of the British authorities to further investigate the matter since it involved a British national. Further, meetings were held with National Police Service, Children's Office and some Non-Governmental Organizations dealing with Children matters.

Later, a joint investigation team comprising the KNCHR, Kenya National Police Service Officers, International Justice Mission (IJM), CRADLE and the relevant UK agencies led by Child Exploitation and Online Protection (CEOP) conducted a further investigation mission in the Children's home, Kisumu.

A joint report of the mission was compiled which recommended among other things the arrest and prosecution of the suspect in the UK and immediate inspection of the home by Kenya's Children department. The suspect was subsequently arrested and charged under the UK Sexual Offences Act.

The KNCHR also facilitated counseling of the victims by our partners.

Allegations on violation of the right to fair hearing of prisoners on death row

On 15th April 2013, KNCHR conducted a Rapid Response at Kamiti Main Prison following reports in the media that prisoners had staged a hunger strike to protest systemic delays in finalization of their appeals, especially for cases before the Nairobi High Court and Court of Appeal. The objective of the mission was to verify the allegations, pre-empt riots and disorder in prison and advise the relevant Government agencies appropriately.

Investigations revealed that there was indeed undue delay on the part of the Judiciary especially regarding appeals in and around Nairobi High Court and the Court of Appeal. Further, it was clear that the affected prisoners were not receiving the necessary support from the Prison department nor the Court to expedite their appeals. Appropriate recommendations were made to the Judiciary and the Ministry in charge of Prisons Services. Consequently, the Chief Justice constituted a team of judges to fast track progress of all pending appeals by prisoners.

ssault of a petitioner by a Cabinet Minister

ne petitioner was reportedly assaulted in August 2008 by Mr. Wycliffe Ambetsa Oparanya a former abinet Minister and the current Governor, Kakamega County. He stated that he reported the matter) Butere police station and there was a long delay in the conclusion of the police investigations nd taking action on the alleged perpetrator. KNCHR conducted further investigations on the above etition on 19th November 2012 with a view to establishing the position of the police investigations ı the case. Further investigations revealed that the delay in conclusion of the police investigations /as partly due to the non-availability of the petitioner's witnesses who were afraid of recording ıeir statements fearing for their lives. Further, the non-responsiveness by the alleged perpetrator ɔ police summons and the reluctance by the police to enforce summons on the alleged perpetrator ad contributed to the delay.

:NCHR facilitated recording of statements by five key witnesses with the area DCIO's office to xpedite conclusion of the criminal investigations and wrote to the DPP's office to fast track criminal ıvestigations and prosecution. The suspect has since been charged in court with assault.

\llegation on violation of Rights of Persons Living with Disability (PWD), illegal confinement and lenial of access to medical care

Dn 6th May 2013, the Commission received a complaint jointly reported by three petitioners on behalf ɔf a female living with disabilities who they rescued from her parent's home after twenty years of :onfinement due to her condition. The petitioners stated that they took her to Ngwata health center /here she was treated and surgery recommended but her parents refused to contribute money for ıer medication even after agreeing to do so before the area Chief. The petitioners alleged in-action ɔy the provincial administration.

The KNCHR contacted the PWD's father who indicated that he was not in a position to cater for his daughter's medication, a fact that was disputed by the petitioners. The petitioners also informed the KNCHR that the girl's mother had instructed her other children not to take their sister to hospital. KNCHR liaised with the area Chief and District Commissioner Nzaui District to intervene as a result of which the DC summoned the PWD's parents and arrested the mother for illegally confining her. She ultimately received medical treatment and was responding well as confirmed by the petitioners who visited the Commission on 18th June 2013 to appreciate its intervention. Matter was successfully resolved and closed.

Petition on harassment and intimidation by the Kenya Forest Service (KFS)

The KNCHR received a complaint from a farmer from Kapsabet in Nandi County. The petitioner alleged that the Kenya Forest Service owed him about Kshs. 1, 748,000.00 for construction work he was contracted to do in 2011. He had reported the matter to the Head of Conservancy in Eldoret and the Director of Kenya Forest Service Headquarters in Nairobi but no assistance was forthcoming. KNCHR initiated a mediation meeting between the petitioner and the Director of KFS where it was agreed that KFS would assess the work done by the petitioner and thereafter process payment. A month later, the petitioner called to thank the Commission informing that he had been paid his dues.

Petition against Ministry of Water and Irrigation for non-deployment (fair administrative action)

The KNCHR received a complaint from a petitioner alleging unfair administrative action by his employer (Kahuti Water and Sanitation Company). He informed the Commission that he successfully

applied for a transfer to the National Water Conservation and Pipeline Corporation through the Ministry of Water and Irrigation. When he reported to his new station, he was informed that the organization did not have space for him and therefore was unable to accommodate him. He then sought to be taken back to his previous station, but was informed that the organization had realigned and thus would not take him; they advised him to go back to the ministry for redeployment. He was then redeployed to Tana Water Services who were also unable to accommodate the petitioner in their organization. The KNCHR jointly with the Commission on Administrative Justice intervened in the matter as a result of which the petitioner was deployed to Olooleika Water Company.

Insecurity as a violation of citizen rights: Tana Delta Conflict

On 22nd August 2012, KNCHR received reports concerning the conflict in Tana Delta and surrounding areas which had occasioned egregious human rights violations. The Commission commenced an inquiry into the matter. This inquiry was framed in the context of section 8 (e) of the KNCHR Act, which mandates the Commission to on its own initiative or on the basis of complaints, conduct investigations or research matters in respect of human rights. The objectives of the inquiry were:

a) To determine the causes of the violence in the region
b) To determine the nature and extent of human rights violations and identify relevant perpetrators
c) To assess the humanitarian situation in order to inform appropriate interventions
d) To assess the adequacy of the interventions of the State to stop the violence
e) To make appropriate recommendations on accountability for the violations and redress for the victims

KNCHR deployed teams to the region twice to undertake fact-finding and conduct further investigations into the violations. The teams spoke to more than sixty witnesses out of whom twenty eight agreed to record statements, interviewed government officers and other stakeholders and visited the sites of the violations. A detailed report with recommendations on accountability measures to effectively redress the violations and to deter future violations was prepared and disseminated to various stakeholders. The Commission also presented its findings to the Judicial Commission of Inquiry into the ethnic violence, which adopted most of the report's findings. The report is available on the Commission's website. The Commission's intervention played a critical role in profiling the insecurity in Tana Delta as a national issue.

Photo: A public forum at Mtangani-Malindi District where community members gave a brief account of the ordeal and how the conflict has affected them on a socio-economic basis.

2.2.3 Actions taken by the commission to secure appropriate redress

The redress mechanisms adopted by the Commission include: Direct intervention with the offending institution or individual, alternative dispute resolution; Public Interest Litigation, and Coordination of the Commission's Public Inquiries on specific human rights themes.

2.2.3.1 Sample of direct interventions and alternative dispute resolution.

The Commission has found that this is the preferred mode of securing redress as it is cost effective and offers timely resolution of matters when successful. To some extent the interventions of the Commission were frustrated by the unresponsiveness of certain institutions.

2.2.3.2 Sample of unresponsiveness on the part of government institutions

Alleged police shooting of a Public Service Vehicle (P.S.V) driver:

On 23/8/12, the Commission received a complaint of an illegal shooting of a driver of a Public Service Vehicle on 30th June 2012 by a lady police officer known to him. The petitioner alleged that the said officer accosted him in the evening hours and demanded a bribe. His refusal to part with the bribe led to him being shot on the wrist. He reported the matter to Embakasi Police Station but was advised to first seek medical treatment. He was hospitalized for 47 days and upon discharge, came to learn that the said police officer was looking for him and had falsely informed the police that he was a gangster who had resisted arrest. She justified shooting him on that basis. Investigations conducted at Embakasi Police Station on 27/8/2012 by the Commission revealed that the matter

was being handled at Kayole Police Division. The KNCHR took the petitioner to the Nairobi PCIO's office and facilitated him to record a statement, which prompted the police to initiate investigations into the alleged violation. The petitioner has however subsequently called at KNCHR's office stating that there has not been progress in police investigations and he still felt unsafe, as the alleged perpetrator had not been charged for an offence. The Commission is still engaging the police on this matter. Owing to the reluctance of the Police to take action the Commission has since referred the matter to the Independent Police Oversight Authority.

2.2.3.3 Sample of collaborations that resulted in positive results

Investigation on alleged sequential killing of 4 village elders in Mwaluphamba location, Kwale County

In March 2013, the KNCHR regional Office received reports of horrific killings of village elders by suspected members of organized militia/vigilante groups within Kwale County, in Mwaluphamba Location. Reports from the locals revealed that three days before March 4th 2013 general elections, a large group of people was reported to have entered the Shimba Hills Forest (Mtsangatamu, Gandini and Pengo areas) and was planning to carry out attacks. The same was reported to the Kwale police who conducted a search in the said forest where they spotted a group of about seven people at a distance. In the process; the police managed to recover assorted paraphernalia believed to be used for administering oaths as well as a flag identified with the MRC militia.

The alleged militia adherents who were believed to be Mombasa Republican Council (MRC) members had reportedly been previously arrested by the police and released on bond. The petitioners were concerned that the alleged group continued to conduct raids within the villages, extorting money as well as food in broad daylight and no firm action was being taken to contain the situation.

The KNCHR's intervention with the County Commissioner and the Police resulted in deployment of daytime Police and the forest rangers patrols. Subsequently, security patrols were intensified at Mwaluphamba location, five alleged perpetrators were arrested and arraigned in Court and a temporary Police base was set up pending the establishment of a permanent police station in the region. The Commission shared the advisory with the inspector general of police on the establishment of a permanent Police station at Mwaluphamba to increase security in the region.

Fact finding mission on gang attacks in Busia and Bungoma Counties

In June 2013, the KNCHR suo moto conducted investigations into allegations of insecurity due to the violent attacks of locals in Busia and Bungoma Counties respectively by gangs. The mission followed a spate of attacks on families in different parts of these two Counties in April and May, which resulted in deaths and injuries to many. The Commission's intervention was prompted by media reports and information from the ground that the locals were reluctant to give information to the police for fear of revenge attacks. Further, the security forces and the administration authorities were alleged to be inconsistent in both handling the tip off information as well as the arrested suspects. The team succeeded in collecting substantive information on the attacks. The Commission shared its findings which enabled further investigations by the police and arrest of several suspected perpetrators.

2.2.3.4 Matters that have been referred to relevant authorities for further action

Allegations of police shooting

The KNCHR conducted investigations into allegations of shooting of demonstrators by the police in Kisumu city following the announcement of the Supreme Court's verdict on the presidential

election petition, on 30th March 2013. During the KNCHR's elections hotspots monitoring project, a preliminary report on the allegations of excessive force by the police had been compiled. The investigations team found that on the evening of 30th March, violent riots erupted in some parts of Kisumu city and the police in response resorted to shooting in the air to quell the riots while in other cases, they used live bullets and excessive force leading to the death of two young men. In addition to the two youths who sustained fatal gunshot injuries, five persons suffered non-fatal gunshot injuries, and sixteen persons were attacked by the mob while one was beaten up by a police officer. Substantial evidence was gathered during the investigation, which was then shared with IPOA for further intervention as KNCHR was informed that the latter had since commenced investigations in line with their mandate.

2.2.3.5 Intervention on violation by non state actors

Allegation of harassment and intimidation by husband and the Police

The Commission received a complaint from a petitioner who was allegedly mistreated by her estranged partner with whom they have a daughter. The Commission learned that the alleged perpetrator was a prominent lawyer who hired police officers to arrest the petitioner without lawful justification. She was denied legal counsel, incarcerated with men at Central Police Station without formal booking, incarcerated with her infant daughter in basement cells of Milimani Law Courts and with a foreigner suffering from Tuberculosis. Police whilst arresting her on two separate occasions also physically assaulted her.

The Commission intervened by securing legal representation for the petitioner in a criminal charge where she was maliciously prosecuted for committing a cyber crime. Further, Commission secured legal representation for the petitioner by referring the children's case to CRADLE for legal representation.

2.3 Public Interest Litigation.

KNCHR engages Public Interest Litigation to influence change in policy and legislation in appropriate cases. The following are concluded cases;

Petition No. 8 of 2012 C.K (a child) & others vs The Commissioner of Police/ Inspector General, DDP & Minister of Justice & Constitutional Affairs

Ripples International, a local NGO, filed this Petition on behalf of about 160 girls from Meru County. It sought to challenge inaction by the relevant authorities, namely the police and the DPP, to investigate and prosecute those responsible for sexually abusing the girls over a period of time. The main argument by the petitioners was that the respondents' failure/refusal to conduct prompt effective, proper and professional investigations into the petitioners' complaints of defilement violated the petitioners' fundamental rights and freedoms. The Commission was enjoined in the matter as *Amicus Curiae*.

The Commission pointed that Human rights were inalienable fundamental rights to which a person is inherently entitled to because he or she is a human being and thus entitled to enjoy without discrimination. KNCHR submitted that it was the obligation of the state to protect human rights and that human rights law imposes certain obligations on the state in order to ensure effective realization of these rights.

The Commission went further and laid out the general principles and cited various international instruments such as the Vienna Declaration and Programme of Action and ICCPR, UNDHR, ACHPR and UNCRC. It further pointed out that the Kenya police as a state agent was obligated to ensure safety of life and property, and protect human rights as provided in the constitution. Further the Commission made reference to the Report of the National Task Force on Police Reforms (Ransley Report) that had revealed that that institutionally the police had been faulted for inaction against the wave of crime nationally and in particular with regard to sexual violence.

In its judgment the court made reference to the submissions of the Commission and relevant sections of the law. The court ruled in favour of the petitioners and found that the police inaction had occasioned a violation of the rights of the children. This judgment lays a basis upon which to engage with the police in the ongoing police reform process. It sets the standard for required police action in the protection of the rights of the child.

Petition NO. 147 of 2013 National Gender and Equality Commission (NGEC) vs Independent Electoral and Boundaries Commission

This matter concerned the election or selection of party lists of political parties in accordance with Article 90 of the Constitution of Kenya. The petitioners herein filed the petition in which they sought among other things a declaration that the IEBC failed in its constitutional responsibility of supervising and conducting party elections for purposes of electing members whose names appear on the party lists and also sought to nullify the lists that the respondents had obtained from political parties. Their main argument was that the failure by IEBC to supervise the process of developing the party lists had resulted in political parties using the process to reward party loyalists without having due regard to the constitutional requirements on the representation of marginalised groups, persons with disabilities and the youth.

In the matter, KNCHR through its counsel applied to be enjoined in the petition as *amicus curiae*, and made the following argument in their submissions. KNCHR explained the right to political participation by the electorate is pursuant to Article 38 of the Constitution and also relied on other international instruments namely; UDHR, ICCPR, ACHPR which generally made provisions to the effect that every person had the right to participate freely in the government of his country directly or indirectly through representatives

The Commission also raised the argument of the sovereignty of the people and the supremacy of the Kenya constitution in accordance with article 1 of the Constitution, pointing out that the constitution formed the bare minimum principles which bind all state organs and are applicable to all persons. In its submissions, KNCHR also laid out an example of good practice by using South African example of party nominations as conducted in parties such as the ANC (African National Congress) to demonstrate to the court the process by party nominations ought to be conducted where there should be fair regional representation.

In its judgment, the court agreed with the submissions of the KNCHR lead counsel that the process of the development of party lists must at minimum, bear the hallmarks of a democratic, transparent and participatory process.

The judges averred that the issue for consideration was the conduct of the IEBC with regard to party list and not the conduct of the political parties. They decided that indeed regulation 54(8) that provided for the IEBC to publish the final lists in at least 2 papers with nationwide circulation was not complied with. In the foregoing the court made orders to the respondents to develop a program,

in conjunction with constitutional commissions (such as KNCHR) and political parties to develop policies and measures geared towards increasing the participation of women, youth, persons with disabilities, marginalised groups and other vulnerable persons to effectively participate in political processes.

In implementing this judgment, KNCHR through its work on political accountability, will seek to work with the IEBC and other institutions towards ensuring that the necessary framework is in place to avoid a repeat of the same in the next elections.

Petition No 93 of 2011. Paul Pkiach Anupa & others vs AG & Judicial Service Commission

This petition was filed by a former police officer who was retired from the force on grounds of being 'unfit for service', due to a disability that he had sustained while in the line of duty. He then moved to court to seek among others a declaration that his dismissal from the police service was in breach of his rights under article 27 of the constitution and that the courts 1, 2 and 3 on the third floor of the Milimani law courts were inaccessible to persons with disabilities. The commission sought, and was granted leave to appear in this matter as *amicus curiae.* KNCHR in its submissions cited various international instruments including the United Nations Convention on the Rights of people with Disabilities (UNCRPD), Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT), Universal Declaration on Human Rights (UDHR) and Discrimination (Employment and Occupation) Convention, 1958, which supported the petitioner's case.

Counsel also relied on constitutional provisions under Article 27, which prohibited the state from discriminating directly or indirectly on the basis of health status or disability. Counsel urged that the National Police Service had failed to make arrangements to accommodate the petitioner yet it had the ability to do so.

In his judgment, the learned judge relied on 3 cases that KNCHR had cited in its submissions, namely, *Foley vs Interactive Corporation, Chief Constable of South Yorkshire Police vs MR MD, Jelic and Peer vs Greece* all of which were authorities that portrayed a trend in the other jurisdiction where employers similar to the respondents herein had a duty to make reasonable adjustment to accommodate persons with disability.

The Judge also relied of the provision of Article 27 of the constitution as quoted by the KNCHR in its submissions and found that indeed his constitutional rights were violated by the Commissioner of Police by retiring the petitioner on medical grounds without the possibility of reasonable accommodation. He pointed that there is need for the Police Service Commission to review the Police Standing Orders to ensure that they are consistent with the provisions of the constitution.

The court averred that indeed the courts were inaccessible to persons with disability; however he saw no need to issue declaration against the government and the Judicial Service Commission as Section 22 of the Persons with Disabilities Act falls within the measures the state is obliged to take. The section provides for all state institutions to upgrade their facilities to realize the rights of Persons with disabilities.

KNCHR through its work on disability mainstreaming is engaging with the government and other stakeholders towards ensuring the realization of reasonable accommodation for persons with disabilities especially with regards to accessing public buildings and public transport and other facilities.

Petition No.179 of 2012 - Jayne Mati and another vs. A-G

The petition filed by Jayne Mati challenges the amendments made to the Finance Act and the National Assembly Remunerations Act 2012 whose effect would have increased the severance arrangement for MPs in the former parliament in violation of article 116(3) of the constitution of Kenya.

KNCHR appeared in the matter as *amicus curiae* to highlight the unconstitutionality of the amendments and the overall threat to the enjoyment of human rights occasioned by such acts of impunity by the legislature. The matter is pending hearing. It is however observed that the matter has since been overtaken by events and any orders that the petitioners had sought would have been spent by the time the matter comes up for hearing. Nonetheless the filing of the case and the subsequent participation therein by the Commission is evidence of the high level of vigilance not only by Kenyans, but also by the Commission in safeguarding the constitution from being breached by the Executive.

Petition No. 404 of 2012 - Albert Mulindi and another vs the Minister for State for Provincial Administration and Internal Security and 4 Others.

This is a Constitutional Petition that sought orders halting the recruitment of the Inspector General of Police until after the General Elections in March 2013. The petitioners herein claimed that it would be in the interest of national security to have the police formations preserved as is, until the new government came into place.

KNCHR applied and was enjoined in the matter as interested parties to the suit. The interest is anchored in Article 249 of the Constitution that requires Constitutional Commissions to protect the sovereignty of the citizens and to promote constitutionalism and rule of law.

KNCHR's position in this suit was that there was no credible evidence that the recruitment of a new IGP would prejudice security during elections since the Police Service as an institution has sufficient internal and external mechanisms to ensure that it is still able to function optimally, the presence of a new IGP notwithstanding. KNCHR appeared in court for mention on 8th October 2012 and the petitioners requested that the matter be placed before the Chief Justice to appoint an even number of judges to hear the matter. The matter has been pending since then

It is however observed that the matter has since been overtaken by events as the Inspector General has been appointed. We consider our intervention crucial in ensuring that the process of the appointment of the Inspector General was not halted as intended.

2.3.1 Matters pending before court

Petition No.127 of 2012 - KNCHR & another vs A.G and 3 others

The Commission filed the above Petition to among others seek redress for the families of two people unlawfully killed by police in Kawangware Estate, Nairobi in November 2011.

Petition No.273 of 2011 FIDA and 27 others vs Attorney General and 3 others.

This is a Constitutional Petition filed by FIDA-Kenya and 27 other applicants seeking among other things compensation and accountability for loss of life, sexual violations and damage to property, suffered by Internally Displaced Persons during the 2007/8 Post Election Violence.

The participation of the KNCHR is geared towards securing a declaration that would require that the Government of Kenya comply with constitutional, international and regional standards in managing IDPs

Petition No.132 /2013 - KNCHR vs AG

KNCHR filed this case on 26 February 2013 to seek among others, orders for invalidation of the Presidential Benefits (Amendment) Act of 2013. KNCHR's argument in this matter is that the Act was enacted in an unconstitutional manner; without the involvement of the Salaries and Remunerations Commission.

2.4 Promoting access to justice through traditional justice mechanisms

The KNCHR has over time been grappling with the contending reality between culture and human rights particularly in the Northern Kenya region, a region with deeply embedded cultural beliefs, values and systems some of which are inimical to human rights standards and principles. A good example is the Maslah dispute resolution method.

In its endeavor to address this problem, the commission has engaged on a pilot basis the council of elders in Wajir and Isiolo counties and carried out a desk research in these two Counties to analyze the role played by the traditional justice systems in the region and whether the same were minding the human rights tenets.

The research led to many (8) follow up meetings with various stakeholders and the resultant effect of these meetings was the signing of a framework of agreement between the religious leaders, traditional (*Maslaha)* elders, representatives from the Provincial Administration and other leaders defining the role of the traditional leaders as well as strengthening the coordination and relationship with criminal justice institutions.

The commission further in an attempt to publicize this agreement, piloted distribution through public forums and radio programs on local community radio station (*Wajir Community Radio)* in Wajir East constituency and further rolled out the same distribution to Wajir North and Wajir West constituencies.

2.5 Key Recommendations

In order to address the above captioned systemic violations of human rights the Commission recommends that Parliament ensures:

1. The government takes measures to fully operationalize the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012 and in particular that it constitutes without further delay the National Consultative Coordination Committee on Internally Displaced Persons established by Section 12 and the Humanitarian Fund established by Section 14.
2. The enactment of the Evictions and Resettlement Procedures Bill, 2013 into law is fast tracked.
3. H.E. the President make Public the Report of the Judicial Commission of Inquiry into ethnic violence in Tana Delta Districts and put in place measures to implement the recommendations.
4. A National policy to govern the exploitation of Natural Resources in a manner that is in line with the provisions of the Constitution be immediately developed and adopted by Parliament.

At the outset it was evident that the implementation of the constitution in a manner that embraced the aspirations of Kenyans as articulated in the preamble was going to be a challenge. The constitution dismantles the old order of governance that has at its foundations opaqueness, arbitrariness and corruption and replaces it with one based on the principles of participation, accountability, transparency and non discrimination. The Commission is monitoring the implementation of the Constitution to ensure that it remains faithful to its letter and spirit.

3.1 Greater application of human rights in the implementation of the constitution

3.1.1 Devolution

One of the identified priorities in implementation of the Constitution is devolution. The Country transformed its governance system upon the conclusion of the March 2013 elections. In order to roll out Devolution it was necessary to enact the necessary legislation. During the period under review, the commission reviewed the following drafts bills on devolution to ensure that they were in consonance with human rights provisions and the principles of Devolution as provided for under Article 174 of the Constitution: Devolved Government Bill, Urban Areas and Cities Bill, Intergovernmental Relations Bill, Intergovernmental Fiscal Relations, County Governmental Financial Management Bill, and the Transition to County Governments Bill,. These proposals were shared with the Decentralization and Governance Non-State Actors Network (DEGONSA), which is a network of organizations focusing on decentralization. The proposals were compiled and discussed by the network and other stakeholders before being submitted to the Commission on Implementation of the Constitution. The proposals of the Commission were to a large extent adopted.

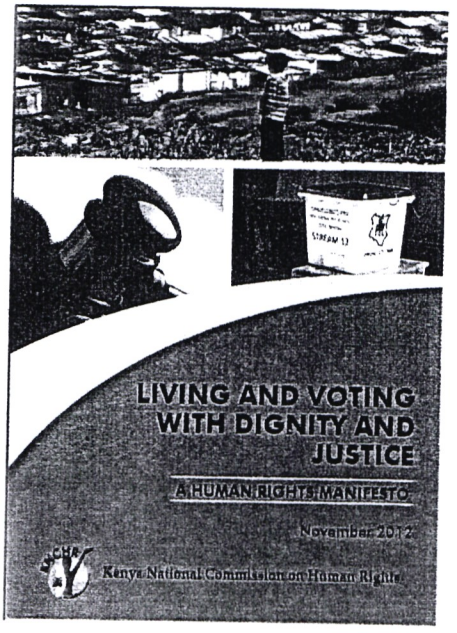
3.1.2 Implementation of the Bill of Rights

The hallmark of the Constitution is the robust Bill of Rights in Chapter 4. The expanded Bill of Rights has the potential of exponentially improving the lives of Kenyans.

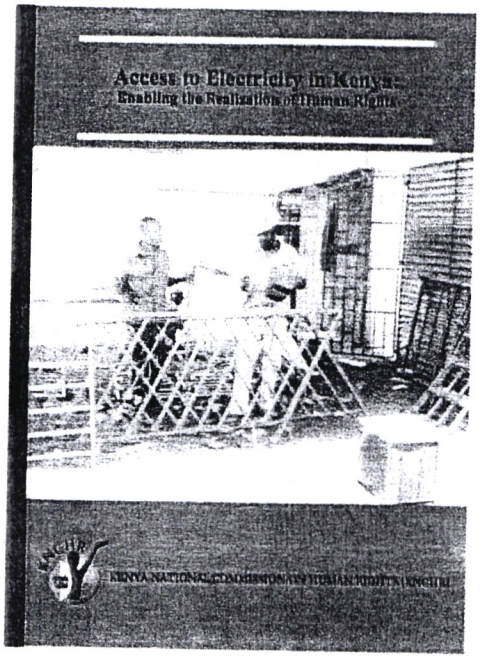
Accordingly, the Commission set out to create awareness on the content of these rights through public forums and trainings of various institutions, both public and private. Increased awareness of rights will not only empower citizens to claim their rights but also enhance institutional capacity to respect and promote these rights.

The commission conducted two human rights clinics in Lower Eastern region (Kathonzweni, Emali and Wote) and Nyanza (Ekerenyo and Kisumu town) during the reporting period. Approximately 1000 people attended the said clinics. The main objectives of the clinics were to sensitize members of the public on their rights and to offer legal aid. After the sensitization sessions the public was able to engage the Commission officers with questions and comments on various human rights issues and further recorded a total of 35 Petitions.

The Commission also undertook a study on the extent to which the Bill of Rights has impacted on the lived realities of Kenyans two years after promulgation. The publication, Living and Voting with Dignity and Justice- a Human Rights Manifesto, was published and disseminated.



Another publication during the reporting period was *'Access to Electricity in Kenya: Enabling the Realization of Human Rights'* which illustrates the centrality of electricity in enhancing the realization of human rights. It captures recent progress and setbacks in the implementation of electrification reforms also seeks to assess the targets, expected outcomes and indicators of electrification by considering such factors as the affordability and reliability of electricity in Kenya. By discussing the measures that the Kenya government has taken to address any shortcomings, the study concludes by making a case for universalization of access to electricity in Kenya.



3.1.3 Promotion of socio economic rights

The constitution elevates Socio Economic rights and requires the state to take measures to guarantee their progressive realization. During this period the Commission set out to provide education on the content of these rights and the corresponding state responsibility.

Promoting the right to water and sanitation

During the year under review the Commission set out to profile the right to water and sanitation and the right to health among duty bearers and claim holders. To this end, over 5000 fact sheets on the right to health and also on the right to water and sanitation were developed and disseminated.

3.2 Reduction of Human Rights violations by Institutional reform: State agencies

Historically various state institutions have been identified as violators of rights. As part of its reform agenda post 2007, Kenya set out on a course to reform a number of institutions. The Commission has been actively monitoring and working to influence the reform of the Judiciary, Police, Prisons and the Independent Electoral and Boundaries Commission (IEBC).

3.2.1 Judiciary

The Commission is an active member of the National Council of the Administration of Justice. The National Council will formulate policies relating to the administration of justice, implement, monitor, evaluate and review strategies for the administration of justice and facilitate the establishment of court users committees at county level.

The Commission identified limited access to justice as a major impediment to the full enjoyment of rights. The Commission advocated for the establishment of Court Users Committees (CuCs) at all levels of the Judiciary as this would allow for public participation and a multi sectoral approach towards addressing the challenges faced in dispensation of justice. The Commission supported meetings of CuCs in four regions: Kisii, Kuria, Machakos and Nyahururu. During the year KNCHR supported two new CuCs in Machakos and Kuria. KNCHR noted that the court users committees in Machakos and Kuria were not well coordinated in terms of dealing with key issues affecting access to justice. Building on the best practice in Nyahururu, KNCHR advocated for the establishment sub-committees in Machakos and Kuria to deal key issues affecting the delivery and access to justice which culminated in the establishment of sub commitees on child protection, sexual offences, offender rehabilitation and reintegration. The Machakos Court Users Committee has since acquired land to construct a child protection centre that will mitigate the non availability of a suitable detention centre for child offenders.

Using the avenue of the CuCs presentations were made to the Chief Justice and a mobile court was established at Mpeketoni in October 2012.

In addition the Judiciary provided two boats for the Court at Lamu in October 2012 after the matter was raised at the CUC meeting. This facilitated travel and access to the Court.

3.2.2 Prisons

Standards and norms for the treatment of persons deprived of their liberty are provided for in international, regional human rights instruments and national Legislation.

The United Nations Standard Minimum Rules for the Treatment of Prisoners, 30 August 1955, provides for the handling of prisoners and management of places of detention. At the national level, Article 49 of the Constitution provides for the protection of persons deprived of their personal liberty. The Prisons Act Cap 90, the Borstal Institutions Act Cap 92 and the Prisons Standing Orders also guarantee in specific terms the rights of detained persons and provide for the management, treatment and care of inmates in places of detention.

KNCHR monitors places of detention and gives advisories and recommendations to the prisons department and Ministry of Home affairs. These efforts have been effective in establishing constructive dialogue of cooperation with prison authorities, the Ministry of Home Affairs and prison officers. The Commission has worked around penal reforms to ensure the protection and respect of the rights of persons held in detention. The focus has been on increased transparency and accountability.

During the period under review, the Commission inspected 16 prison facilities namely; Maralal, Nanyuki, Rumuruti, Hindi, Hola, Kodiaga, Embu, Mombasa, Kisumu, Bungoma, Busia and Kisii, Kericho Women Prison, Malindi Women Prison, Kisumu Women Prison and Kakamega Women Prisons. The monitoring also was extended to 17 borstal institutions and remand homes namely; Nakuru Remand Home, Girls Probation Hostels, Kericho Vocational Rehabilitation Centre, Eldoret Children Remand Home, Nairobi C Remand Home, Getathuru Rehabilitation School, Dagoreti Rehabilitation School, Youth Corrective and Training Centre, Likoni Children Remand Home, Likoni Rehabilitation School, Malindi Children Remand Home, Shimo La Tewa Borstal Institution, Kisumu Children's Home, Manga Children's Home, Shikusa Borstal Institution and the Kakamega Rehabilitation School. KNCHR identified the challenges facing places of detention that made it difficult for the penal institutions to protect Human Rights.

The Commission further visited 39 prisons to conduct a survey on death row inmates in order to build evidence-based advocacy on the issue of capital punishment. The Commission interviewed 160 people held on death row to determine the effects of the death sentence on death row inmates and their families. The Commission also interviewed Prison Officers to understand their experience and challenges in providing custody and security of convicts on death row. The Commission, in partnership with various stakeholders is planning a country-wide inquiry on the value of capital punishment in order to be able to advice Parliament appropriately.

Further, the commission has undertaken trainings of prison officers and it is working on formalizing the trainings it holds through the execution of a memorandum of understanding with the Prisons Service.

Following our continued engagement with the prisons department and in response to some of our recommendations, there was an increased budgetary allocation to women prisons that took into consideration the children accompanying mothers and those born in prison and day care centers set up in Kodiaga, Embu and Meru Prisons.

In addition, the Prisons set up Human Rights Desks in prisons and appointed officers to man the desks. Gender and Children Desks were also set up in Kodiaga, Langata, Meru, Nyahururu and Embu, Kisii and Machakos prisons.

Reforms in prisons and correctional services have been slowed by lack of review on legal framework. To ensure that the reforms are holistic, the Commission has advocated for the repeal of the Prisons Act and the enactment of a Correctional Services law that would embrace international standards as well as implement the Constitution. KNCHR initiated the penal reforms through advocacy that led recommendations to review the prisons Act, Cap 90, enactment of legislation under article 50(9) of the Constitution and article 51. To this end, KNCHR participated in the task force on arrested and detained persons, victims of offences Bill and the working group for the review of Cap 90. The resulting improved laws from these taskforces are yet to be enacted. These laws if enacted will address challenges facing correction services such as, lack of transparency and accountability in recruitment, promotion transfers and deployment. The laws will also comply with the Constitutional

requirement in article 73 of the Constitution and the UN minimum standard rules for the treatment of offenders.

3.2.3 Police

The KNCHR has been actively involved in various initiatives aimed at reforming the police service. In the past the police service has been characterised by institutional weaknesses, lack of transparency, accountability and pro- citizen service delivery. The institutional failures of the police service were highlighted in the report of the inquiry set up to investigate the police impostor Joshua Waiganjo in 2013. The Commission was represented in the inquiry.

The current constitutional dispensation necessitates that government institutions reform so as to eradicate such institutional failures that foster violations of human rights as was evidenced in the previous political regimes.

The passage of the Constitution heralded a new era in so far as policing, security and reforms is concerned. The Commission together with its partners under the USALAMA Forum actively engaged in review and drafting of security sector legislation, which included the Independent Police Oversight (IPOA) Bill, the National Police Service (NPS) Bill and the National Police Service Commission (NPSC) Bill. These Bills were subjected to extensive stakeholder consultations. We are pleased that the final laws take into consideration recommendations that originated from the KNCHR.

The Commission was represented in the selection panel for Commissioners for both the Independent Policing Oversight Authority and the National Police Service Commission. This engagement resulted in appointment of individuals with a track record in the protection of Human rights.

Vetting of police officers is one of the prominent themes of discussion in the ongoing police reforms. The National Police Service Act (2011) lays down the legal provision for vetting of police officers; it however does not provide the detailed framework and operational tools for the exercise. It's against this background that the KNCHR in partnership with a group of civil society organizations convened the Working Group on Police Reforms (WGPR) platform so as to address this gap. The WGPR held various meetings and developed three tools that will be used in this very important exercise; (i) the Guidelines on Vetting of Police Officers; (ii) the Vetting Tool; and (iii) a tool for collecting information from members of the public. These three documents were presented for validation at various meetings – with the media, the public and other stakeholders and widely accepted.

3.2.4 Transitional Justice

Consultative meetings with partners and stakeholders on Transitional Justice.

Transitional justice comprises a range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large scale human Rights abuses. This process is intended to ensure accountability, serve justice and achieve reconciliation. The mechanisms that may be adopted include judicial and non judicial mechanisms like individual prosecutions, reparations, truth seeking, institutional reform and vetting. The objective of transitional justice is to address the root causes of conflicts related violations of all rights including economic, social and cultural rights and Civil and political Rights. KNCHR was involved in a number of activities aimed at ensuring that Human Rights are protected, accountability maintained and impunity combated.

Consultative meetings were held with partners and stakeholders on transitional justice who included, TJRC, ICTJ, ICJ, and KHRC, victim groups, media and Article 59 Commissions. The main objective

of the meetings was to advocate for the release of the TJRC report. A policy brief was prepared and shared with media houses and the Article 59 Commissions. The outcome was a release of the TJRC report that was published in two major newspapers and presentation of the report to the president. One review retreat was held in Naivasha with Civil society groups where strategies for implementation of the report were formulated. A national victim's conference is scheduled to be held on the 26th August 2013. KNCHR will create awareness on the TJRC report with victim groups and enhance the capacity of victims to advocate for the implementation of the report. The TJRC report has not been gazetted and adopted by the National Assembly. A Bill was published to amend the TJRC Act. KNCHR is reviewing the amendment and will make submissions to the Parliamentary legal Committee. KNCHR will continue advocating for the implementation of the recommendations of the TJRC report to ensure accountability for Human Rights violations and protection of Human Rights.

3.2.5 Electoral Reforms

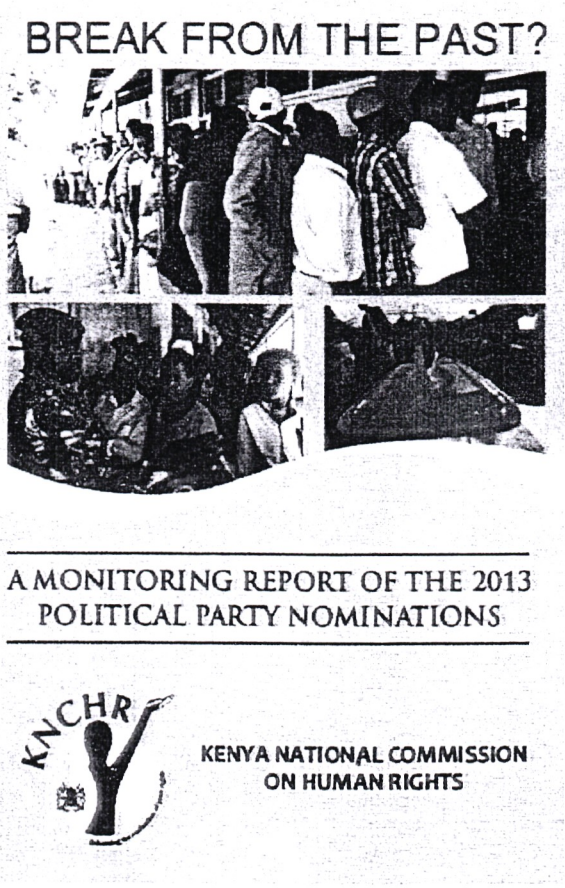
As part of its work on enhancing political accountability in the country, the KNCHR monitors electoral processes to determine that they uphold the rule of law and are conducted within the highest possible standards of transparency and accountability. In the past elections, KNCHR's monitoring, documentation of malpractices and issuance of advisories have contributed to remarkable reforms in the manner in which political campaigns and electoral processes are conducted and regulated. For instance the Commission recommended the enactment of anti-hate speech law. This led to the creation of the National Cohesion and Integration Commission that played a central role in taming inflammatory speech during political campaigns.

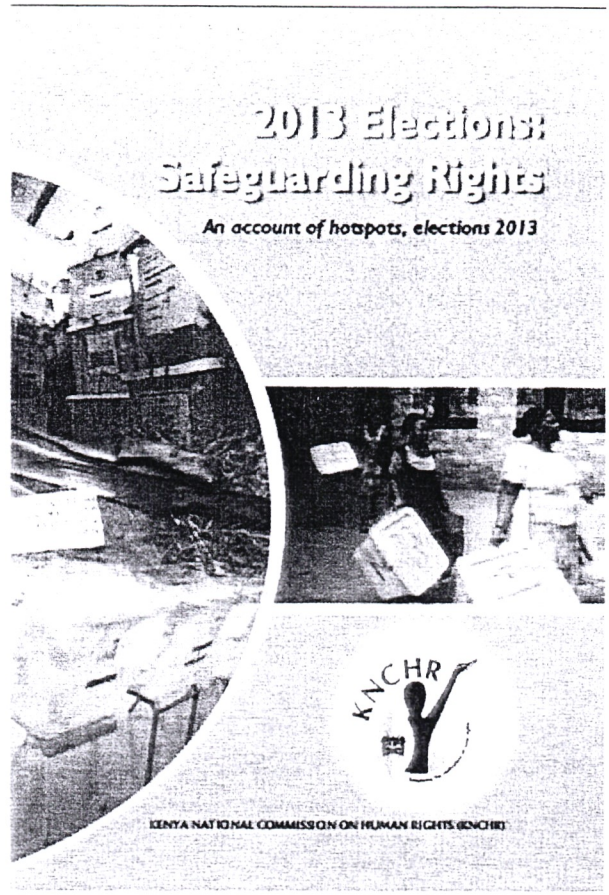
The Commission monitored the 2013 elections beginning with the political party nominations held in January 2013, the pre-elections campaigns and the election and has published two reports namely; *'Break from the Past: A monitoring Report of the 2013 Political Party Nomination'* and *'2013 Elections: Safeguarding Rights'*. In both reports we make the point that free, fair and credible elections are the cornerstone of the establishment of a democratic society. It is our observation that the Electoral Management Body needs to firmly exercise its constitutional mandate so as to inculcate discipline, transparency and accountability in political parties during party nominations.

In addition during the elections we witnessed numerous incidences of misconduct that amounted to electoral offences. The IEBC was however hesitant to exercise its powers under statute and offenders were therefore not held accountable. This had the effect of tainting the electoral result.

An unfortunate occurrence were the last minute amendments made to the Elections Act that had the effect of allowing party hopping and lowered qualifications for candidates seeking political office.

A key failing in the last election was the uncertainty around the Voters register. We observed that in certain polling areas the voters register had not been verified even at the time of voting and this undermined confidence in the electoral process.





3.3 Adoption of anti-discrimination laws and policies

The political violence in 2007-8 brought to the fore divisions within Kenyan society that are occasioned partly by perceptions of inequality, marginalization and exclusion. To address this, the Constitution of Kenya 2010 is emphatic in the pronouncement of the national values that Kenyan society shall be defined by the promotion of equality and non-discrimination. The attainment of this shall be on the basis of enabling policy and legislation.

The Commission partnered with the Ministry of Justice National Cohesion and Constitutional Affairs in the development of the National Human Rights policy and Action Plan. The Policy and Plan were approved by the Cabinet and await approval by the National Assembly.

The Commission reviewed draft policies and Legislation to ensure that they were compliant with the Constitution. During the reporting period twelve Bills were reviewed and a similar number of advisories prepared and submitted to relevant policy makers/focal points on the various pieces of legislation. Many of the Bills underwent several reviews and while some have since been passed into law, there are those which are still pending. An audit of the advisories prepared indicates that 59% of our proposals were accepted and incorporated in ensuing legislation. Below is an overview of some of the Bills reviewed specifying the recommendations made by the Commission.

1. National Legal Aid Bill, 2013

The Commission noted that the bill as drafted made provision for legal aid on the basis of charges that an accused person faced, and the sentence that such charges attract; the

position of the commission was that provision of legal aid ought to be based on the ability of the person to afford legal aid and not on the criteria set out on bill, which is discriminatory.

2. Prevention of Terrorism Bill , 2012

The bill as drafted did not take into consideration the provisions of Article 49(1) of the Constitution on the rights of an arrested person and those provided for under Article 25 of the Constitution. The Commission made recommendations that take cognizance of the above-mentioned Articles. The bill has since been passed into Prevention of Terrorism Act No. 30 of 2012; the recommendations made were adopted and incorporated in the Act in Sec 3(2), 3(3) and Section 32(1) (b).

3. Persons with Disabilities (Amendment) Bill, 2013

The Key issue noted in the bill was that the bill did not set out specific guidelines for the implementation of various sections of the bill and left it at the discretion of the Cabinet Secretary; the Commission made recommendation for amendment of various provisions of the bill taking into account the principles espoused in Article 20(5) of the Constitution, given that the wide discretion given to the Cabinet Secretary had affected the realization of rights of PWDs as evident in implementation of Disability Act 2003.

4. Mental Health Care Bill, 2012

The Mental Health Care bill did not properly define the difference between mental illness and mental disability and the causation relationship between the two, the bill emphasized substituted decision making and this therefore interfered with the legal capacity of persons with mental illness and those with mental disability. The Commission made recommendations that the principle of the best interest of a person with a mental illness adopted in the bill contravened the constitution and CRPWD and legal capacity should be re-evaluated to ensure that all other provisions in the bill promote this right and do not negate it.

5. Victim Protection Bill, 2011

The main concerns noted in the bill included that the bill is oriented towards children as the main victims of the criminal activities yet both adults and children are potential victims, interpretation of abuse of power in the bill imply that abuse of power only occurs in the public offices and does not mention of private offices. The Commission made recommendations that the bill be amended to cater for both adult and child victims and that there is need to amend Section 17 of the Bill to ensure that the Victim protection fund is resourced from the consolidated fund.

6. The Revised Leadership and Integrity Bill, 2012

The key concern in respect to the bill was that it did not make provision for lifestyle audit for state officers and maintenance of a data base for all found to be unfit to hold office. The commission also felt that the application of different penalties to state officers for a similar offense may result in injustice. While the commission concurs that those violations which amount to criminal offenses should attract criminal sanctions; it is an issue of contention that those which do not should attract measures of equitable magnitude to the officers concerned. The Commission therefore made recommendations for amendment of the clauses in the bill to address the issues raised above.

'. National Intelligence Service Bill, 2012

he Commission had two main issues with NIS bill namely; that the bill contained provisions that mited fundamental freedom such as the right to privacy and that the provision on the membership of ıe National Intelligence Board does not set the criteria for membership; it does not make reference ɔ academic qualification and the fact that the person to be appointed ought to be a person of ıtegrity. The Commission made recommendation on the amendment of the various clauses of the ill to address the key concerns raised.

ɜ. Health Bill, 2012

Main concern was access to health care by vulnerable groups including refugees and persons with isabilities. The need for the bill to spell out the right of persons with disabilities to access health elated information, physical access and right to dignity and confidentiality

). Basic Education Bill, 2012

'he Commission lauded the efforts to put in place a Basic Education Act through the Basic Education ıill, the Commission however raised several concerns about the bill as drafted; The bill provided for powerful cabinet secretary who wields too much power that may be prone to abuse in the absence ıf checks and balances in contravention of Article 10 of the Constitution , The bill failed to recognize he distinctness of county governments and the requirement under Article 6 that these two levels ıf government conduct their mutual relations on the basis of consultation and cooperation. For ıstance, the county education board is tasked to oversee the operation and management of village ɔolytechnics and pre-primary which are the functions of the county government as spelt out in the ourth schedule of the Constitution. The bill also gave too much discretion to the Cabinet Secretary o make regulations to enable the effective functioning of the basic education law. The bill has ince been passed into law, the Basic Education Act with the comments of the Commission being ncorporated in the final Act.

ɜ.4 Defining a human rights agenda for the Government

n fulfillment of its advisory role the Commission published a ten point agenda to guide the ;overnment in the formulation of priorities that would mirror constitutional aspirations. We have ;et out the text of that advisory below:

Kenya National Commission on Human Rights

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KEEPING THE FOCUS: A HUMAN RIGHTS AGENDA

The Kenya National Commission on Human Rights (KNCHR) congratulates Kenyans for turning out in large numbers and peacefully exercising their democratic right to vote. KNCHR further congratulates all elected leaders as they assume office.

KNCHR wishes to call upon the new Government to ensure that the aspirations of Kenyans as eloquently pronounced in the Constitution of Kenya, 2010 are actualized by addressing the following concerns:

STATE OF THE NATION

The Country remains polarised along ethnic lines as evidenced by the voting patterns and the reactions to the outcome of the just concluded general elections. Rather than run issue based campaigns, the lead political candidates mobilized support along ethnic lines. This runs contrary to the provisions of the Constitution which proudly takes cognizance of our ethnic, cultural and religious diversity and affirms that our diversity notwithstanding, we aspire to live in peace and unity as one indivisible and sovereign nation. While urging the government to take deliberate steps to build a cohesive nation, we remind Kenyans that the primary responsibility of building a unified nation rests with all of us.

RESPECT FOR HUMAN RIGHTS

The Constitution recognizes the aspirations of all Kenyans for a government based on the essential values of human rights; equality, freedom, democracy, social justice and the rule of law.

The Constitution is a social contract between the people and their leaders; the people who are holders of the sovereign power -entrust that power to their leaders in the hope that there will be good governance and that they will have their needs and aspirations met. These needs are expressed in the bill of rights as the minimal expectations of the people. In meeting these needs the State is expected to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Constitution. In fulfillment of these obligations, the state is stopped from violating civil and political rights and creating an enabling environment through facilitation and resource allocation for the realization of economic and social rights.

The approval of the National Action Plan on Human Rights is a key achievement in establishing a human rights state. We urge the government to take steps to ensure its full implementation.

ADDRESSING INSECURITY

The right to freedom and security of the person is guaranteed under Article 29 of the constitution. The state therefore has the responsibility to ensure that its citizens are protected from internal and external acts of aggression. The volatile situation in various parts of the particularly the Rift Valley, North Eastern and Coast regions undermines this right. The lawlessness has occasioned loss of life, massive displacements and loss of livelihoods. We call upon the Government to take immediate steps to contain the violence and ensure the restoration of a peaceful environment that will enable the residents of these regions to enjoy their fundamental rights, live a life of dignity and contribute to the development of the country in general. In the same vein, the government should ensure institutional reforms that guarantee to Kenyans an effective, accountable and responsive security sector.

AFFIRMATIVE ACTION

Kenya has been ranked as one of the most unequal societies in the world. Gender and regional disparities have continued widening since independence. The resultant effect of this inequality is that women, persons with disabilities, youth and certain regions of the country lag behind in terms of access to the national resources and participation in governance. We are for example concerned at the conservative approach adopted by the supreme court in its interpretation of the application of the 2/3 gender principle. We urge the government to take measures to ensure that all Kenyans are afforded equal opportunity in accessing government services and to elective and appointive positions.

EFFICIENT AND RESPONSIBLE MANAGEMENT OF PUBLIC FUNDS

Under the new Constitutional dispensation there is a requirement for openness and accountability, including public participation in financial matters. The government should practice zero tolerance to corruption. Measures to be taken include facilitating the Ethics and Anti Corruption Commission to fully execute its mandate. In addition, amendments should be made to the Leadership and Integrity Act to ensure that it conforms to the provisions of the Constitution. We urge that appointments to Public Office should fully comply with the requirements of Chapter 6 of the Constitution.

We urge strict adherence to fiscal discipline in the utilization of public funds and resources so as to guard against wastage, ostentatious spending and official extravagance. The Commission is concerned by the efforts of the recently elected state officials to disregard and undermine the work of the Salaries and Remuneration Commission (SRC). The Commission fully supports the ongoing measures by the SRC to tame the public wage bill. We counsel the legislators both at the national and county level to desist from enacting self serving legislation aimed at increasing their personal emoluments. We remind them of the constitutional provision in Chapter 6 that prohibits state officers from behaving in a manner that creates conflict between personal interests and the public good. The public expects that the government immediately states its position on this matter.

ECONOMIC AND SOCIAL RIGHTS

The Constitution under Article 43 entrenches citizen's rights to economic and social rights. This commitment to providing these basic services of health, housing, education, food and water must be reflected in the budgetary provisions both at the national and county level. We urge the government to prioritize the delivery of accessible, affordable and quality basic services to its citizens.

While acknowledging that great strides have been made in guaranteeing access to education through the introduction of free primary education and subsidized education at secondary level, there is need for urgent measures to be taken to ensure the quality of public education offered guarantees equal competition with that in private institutions.

Regarding the right to adequate and quality food, it is regrettable that in this day and age, Kenyans do not enjoy food security amidst availability of vast productive agricultural land. We urge the government to institute policies and implement urgent programmes to guarantee food security for all Kenyans.

HISTORICAL INJUSTICES AND GROSS VIOLATIONS OF HUMAN RIGHTS

We urge the government to address historical injustices and gross violations of human rights so as to foster healing and national reconciliation. In this regard, the Government must commit to fully implement the report of the Truth Justice and Reconciliation Commission expected to be released in May 2013. While acknowledging that efforts have been made at resettling internally displaced persons, we urge that the government moves decisively to address this matter comprehensively and conclusively. Deliberate and decisive measures must be taken by the government to address impunity and ensure accountability for political and economic crimes.

STRENGTHENING OF INSTITUTIONS

In the past five years, investment has been made towards establishing independent institutions that foster good governance and act as pivotal pillars in the Country's reform agenda. These institutions must be sufficiently resourced to ensure that they are able to fully execute their mandates. In instances where doubts are cast on the professionalism of any institution, measures must be taken to inquire into and address any issues arising. In this regard, we recommend that the Executive commissions an independent public audit of the Independent Electoral and Boundaries Commission regarding the level of preparedness and the actual conduct of the 2013 Elections to ensure that the irregularities witnessed do not recur in future elections.

FIDELITY TO THE SPIRIT OF THE CONSTITUTION

The sum total of all the issues stated herein is that in all that the government sets out to do it must maintain fidelity to the ideals of the Constitution. The government must be open to constructive criticism and allow for strong and vibrant opposition and civil society. In this regard we expect that the government shall adhere to the provisions of the Constitution that recognize the Citizen's right to participation, information and freedom of expression and opinion.

In conclusion, we call upon Kenyans to jealously safeguard the gains thus far realized and re- commit to ensuring that the ideals as pronounced in the constitution become a reality for all regardless of race, gender, sex or political affiliations.

1.4 Recommendations

In order to ensure that the implementation of the Constitution is guided by human rights principles the Commission recommends that Parliament ensure that:

1. The National human Rights Policy and National Action Plan on Human Rights are adopted by parliament.

2. Legislation under Article 50 (9) and 51 of the Constitution is passed without further delay to ensure (i) greater protection to victims of crimes and other offences and (ii) adherence of human rights principles and standards in prisons and other places of detention.

3. Electoral reforms are undertaken so that Chapter 7 of the Constitution is fully implemented. In particular Parliament should reverse the last minute amendments made to the Elections Act and ensure that the IEBC makes rules and regulations that will govern party nominations and also elections or nominations for special seats.

The Commission considers it important that the Electoral laws are revised so as to capture the requirements of Chapter 6 of the Constitution especially as relates to the standards set on integrity.

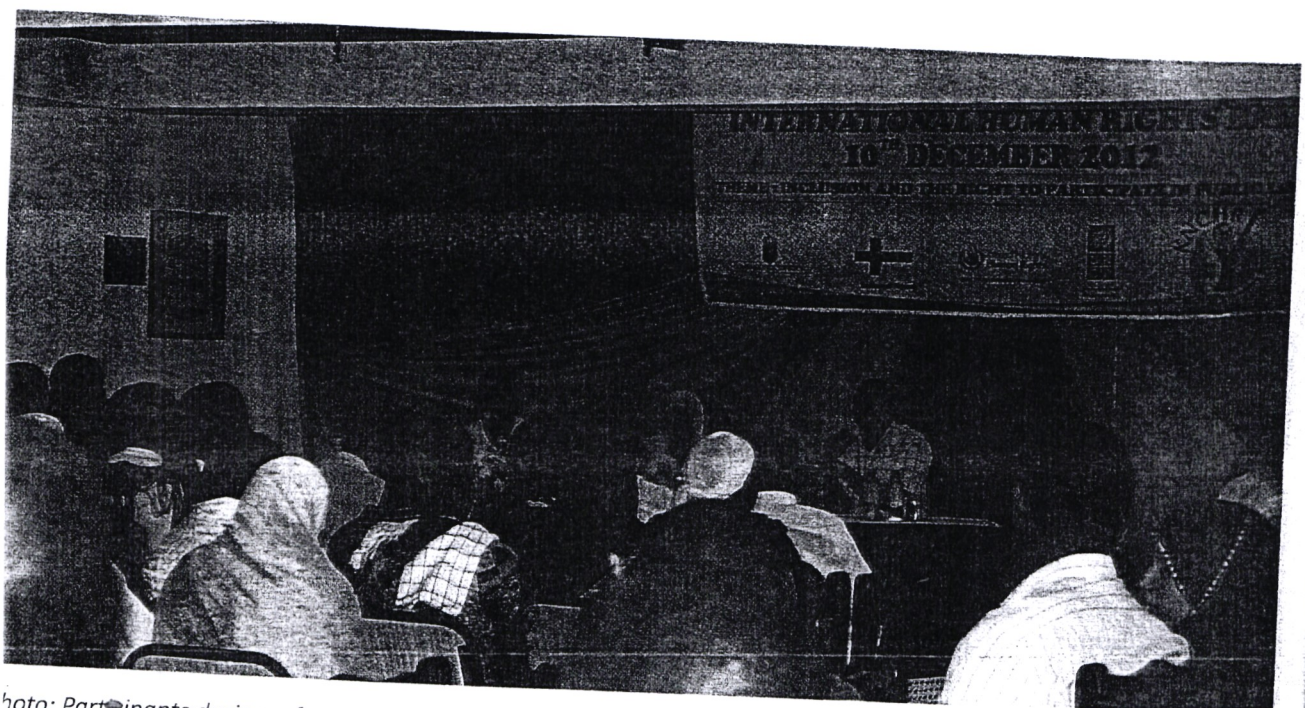
STRATEGIC PRIORITY 3: Increased practice and knowledge of human rights principles and standards in public and private spheres

Kenya is a signatory to several human rights instruments both at the regional and international level. The ratification and domestication of these legislative instruments places on the state a responsibility to ensure that it acts in compliance with its obligations. The Commission is mandated to monitor state compliance with its international obligations. In the period under review, the Commission facilitated several trainings to members of the public, targeted institutions of learning, the police and the prisons.

The Commission developed and disseminated IEC materials increasing public awareness on the role of the commission. The interventions of the Commission resulted to positive changes, for instance, there was a noted an increase in the number of referrals from the police to the commission in the handling and disposal of complaints. This was indicative of the change in attitude from the police to the Commission further enhancing their role in safeguarding the rights of the public.

Owing to the increased mob justice reports in Baringo and Bungoma Counties, the Commission organized for sensitization forums to members of the public. The forums focused on increasing public understanding on the rule of law and effectiveness in upholding due processes. . The forums facilitated dialogue between the Public and duty bearers such as the officers in the county administration and police promoting greater clarity on the part of the public on the role of the police and the County government. Through this intervention, the Commission was able to record a decrease in mob justice reports in the two counties.

The Commission also utilized commemorative human rights days to highlight and propagate the human rights agenda such as the United Nations (UN) International Day in Support of Victims of Torture on 26th June, International day for People with Disability on 3rd December and the international Human Rights day on 10th December. 2014.



hoto: Participants during a forum organized by KNCHR in commemoration of the International Human Rights Day.

4.1 Promoting a Rights-Based approach to devolution

Remaining cognizant of the devolved governance structure entrenched in the Constitution, the Commission embarked on a series of trainings targeting the representatives of the County Assembly. In so doing, the Commission worked collaboratively with the Transitional Authority to induct elected members of county assemblies from 33 counties. The trainings were conducted in the following counties: Nairobi, Bungoma, Busia, Kakamega, Vihiga, Kisii, Migori, Nyamira, Kisumu, Siaya, Uasin Gishu, Nandi, Elgeyo Marakwet, Narok, Kericho, Bomet, Baringo, Isiolo, Samburu, Embu, Meru, Nyeri, Kirinyaga, Nanyuki, Kajiado, Garissa, Makueni, Machakos, Lamu, Kwale, Kilifi and Mombasa. The objectives of the trainings were to enhance the capacity of county officers on Human rights based approach (HRBA); mainstreaming the principles in policy and budgeting as well as influencing the application of the human rights principles in county legislation and budget.

Further engagements were held with the Ministry of Devolution and Planning with the financial support from the Embassy of Finland. This was a continued engagement building on the foundation laid during the process of mainstreaming HRBA in the MDG's, vision 2030 and Development of the medium term plan II. The training attracted a total of 66 representatives' who included; members from County Transitional Coordinators, County Development Planning Officers, Technical Officers and Ministry of Finance staff. In terms of training content, the officials were trained on human rights, human rights indicators, HRBA and integration of HRBA principles in programming.

4.2 Enhancing the respect and adherence to human rights standards by non state agencies

Business and Human Rights Project

In the period under review, it became apparent that the Government had not taken adequate measures to ensure that the extractive and mining industries are well regulated in their operations in adhering to human rights principles. Left unchecked, Kenya is likely to suffer the "resource curse" that has been experienced by other countries in Africa.

The Commission continued to engage with the business community in the country promoting the understanding of their role in ensuring business compliance with human rights. The Commission focused mainly on the mining and extractive industries and undertook several activities as summarized below:

1. The Commission conducted human rights due diligence exercise on the proposed Lamu Port South Sudan Ethiopia (LAPSSET) project. This was in effort to promote accountability by government and business enterprises on their respective obligations to protect and respect human rights. The exercise covered oil and gas exploration projects in Lamu and Turkana. For example in Lamu, this involved holding consultative forums with stakeholders following complaints made by community members and CSOs alleging violation of their rights in the implementation of the LAPSSET and gas exploration projects. The Commission raised the issues with the relevant state agencies as well as business enterprises contracted to implement the project to find avenues for resolution. It, for example, intervened in a dispute between the Kenya Airports Authority (KAA) and the community in Manda Island concerning compensation of families whose land had been seized by the KAA to expand the Manda Island Airstrip in Lamu.

The contemporary experience of the extractive industry has shown that businesses in the sector have undertaken their operations without due regard of human rights especially those of the host local communities. In an effort to reverse this trend, the Commission partnered with the Institute for Business and Human Rights (IBHR) to convene forums on 5th and 6th November, 2012 on human rights due diligence in the extractive sector. The forums aimed to support businesses and the government towards respecting, appreciating and recognizing the human rights perspective in the extractive sector. It offered platforms for discussions with businesses in the oil and gas sector on human rights compliance in their operations. Further the commission was able to engage civil society organizations' by collaborating and coordinating efforts to advance human rights in the oil and gas sector. The institutions involved in the continuous forums included: 47 companies, the Ministry of Energy, Environment and Natural Resources; the Ministry of Water and Irrigation, the Office of the Prime Minister, foreign missions and National Human Rights Institution (NHRI's) of Ghana and Uganda.

The Commission in partnership with the Global Business Initiative on Human Rights (GBI) also organized a roundtable for African business leaders on corporate compliance and respect for human rights. The companies shared their experiences and challenges in implementing the UN framework and paved the way for setting a human rights agenda for businesses in the country. The Commission also worked towards encouraging the enforcement of the UN Guiding Principles for Business and Human Rights in the oil and gas sector. In partnership with the Institute for Business and Human Rights (IHRB), KNCHR organized a forum attended by eighteen oil and gas companies on human rights due diligence in the sector. The objective of the forum was for oil and gas exploring companies operating in the country to discuss their human rights experiences and challenges of operating in the country and provide recommendations on overcoming these challenges. The companies were also introduced to the Nairobi Process – 'A Pact for Responsible Business'- an initiative being developed by the Institute for Human Rights and Business (IHRB) in collaboration with the Commission which aims to embed human rights due diligence through the application of the UN Guiding Principles on Business and Human Rights in the emerging oil and gas sector in Kenya.

In an effort to adequately address human rights issues in the nascent oil and gas sector in the country, the Commission trained staff and civil society representatives including four county representatives from the Turkana County Council from 14th to 16th May 2013 in Nairobi. The training enhanced participant's capacity on the basics of oil and gas to engender informed engagements with the sector on human rights issues.

2. In Malindi the Commission intervened in a dispute between the Coast Water Services Board (CWSB) and the local community, concerning the company's failure to compensate individuals on whose land the company had put up water and sewerage pipelines. The Commission raised the allegations with the Board and requested them to promptly and amicably engage the community to solve the impasse. The Board subsequently entered into an MOU with the community on compensation.

3. In line with the Commission's mandate of protecting human rights in the country, the Commission conducted a human rights monitoring exercise of the coal-mining project in Kitui. Focus group discussions were held with the local community in Mui Basin, where the impending displacement was assessed and profiled.

Photo: KNC
Kilifi County

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Photo: KNCHR staff in a public listening forum on community grievances against a mining company in Rabai Location, Kilifi County.

The Commission further reviewed and developed an advisory on the Mining and Minerals Bill 2011 with the view of infusing human rights principles and standards into Bill. The advisory made eight proposals for amendment to the bill and was discussed with the Commissioner for Mines and Geology.

4.3 Monitoring State Compliance with international Obligations

The Commission continued to partner with UPR Stakeholders coalition to monitor implementation of the recommendations made to the state during the UPR process. The Commission coordinated the drafting and publication of the 2nd Annual Progress Report, which assessed the state's performance on implementation of the recommendations two years after they were made. The report concluded that progress on implementation was slow, with less than 50 % of the recommendations implemented. 500 copies of the report were published and disseminated amongst state actors and civil society organizations, with an overriding recommendation that implementation needs to be accelerated.

The Commission also led stakeholders in developing a template linking the UPR to national, regional and international human rights mechanisms. This was done to consolidate all recommendations made under various treaty body mechanisms and holistically assesses their implementation. In preparation for the review of the State's periodic report on the implementation of the Convention against Torture and other Cruel, Inhuman and Degrading treatment or Punishment (UNCAT), KNCHR convened a stakeholder's forum which served to discuss the various alternatives and shadow reports that had been presented to the Committee against Torture and to agree on joint advocacy strategies.

The same period also saw the Commission participate in the review of the State's Periodic Reports on implementation of the ICCPR as well as its 2nd periodic report on implementation of CAT by the UN Human Rights Committee and the Committee against Torture respectively. In so doing, the Commission ably provided the Committees with valuable information, which formed the basis of the review as well as the concluding observations that it subsequently issued. KNCHR also attended the 52nd and 53rd Sessions of the African Commission on Human and People's Rights (ACHPR). During the 5nd session held in October 2012 at Yamoussoukro Cote d' Ivoire, an intervention report on the status of human rights in Kenya was presented at which KNCHR made presentations on the rights of women, prevention of torture, extractive industries, the situation of Indigenous People/Communities and the Death Penalty. The 52nd Ordinary Session was unique in that it commemorated the African Commission's 25th anniversary with the underlying theme of all sessions being an analysis of the state of human rights in Africa vis-à-vis the Commission's 25 years of existence. At the 53rd session of the ACHPR held in April 2013 in Banjul, Gambia KNCHR once again presented a statement on the human rights situation in country which was well received by the chairperson of the ACHPR who lauded its balanced view in acknowledging efforts that the Kenyan government had made concerning the issues raised; she also thanked the commission for highlighting the deficiencies in the governance and human rights fields plus the challenges faced and advised that the recommendations given such as urging Kenya to actively engage the public in discussions and take concrete steps to abolish the death penalty, the need to impress the Kenya State to put in place mechanisms to enhance legal capacity for persons with disabilities and repeal laws that undermine exercise of the same and urging the African Commission to provide the Working Group on Older Persons and Persons with Disabilities with the requisite resources to finalize the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa would be taken into account.

The submission of KNCHR's annual reports for the years 2006-2011 at the said session resulted in the commendation of KNCHR, together with 10 other NHRIs (out of 22 accredited) as being in good standing. Subsequent to KNCHR's participation at the 53rd session, it was selected by the ACHPR working group on indigenous populations to be the country focal point, a position that is expected to enhance the Commission's engagement with the African Commission and other African human rights mechanisms on key human rights concerns for Kenya and contribute to the shaping of the human rights agenda in Africa.

KNCHR also presented, an advisory on the ACHPR discussion document on The Use and Conditions of Police Custody and Pre-trial Detention which seeks to address a pertinent situation on our continent-the over use of pre-trial detention in the criminal justice system. In light of the State review expected in the next financial year, KNCHR, through consultative and collaborative efforts with various CSOs in Kenya is currently working on reporting on Articles 1,2,3,4,5,19 and 24 of the ACHPR apart from preparation of the alternative report expected of it as a National Human Rights Institution.

During the reporting period a capacity-building forum on alternative human rights mechanisms was held where the African Human Rights System was discussed extensively. The UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance who took part in the same discussed his work and highlighted opportunities available for engagement. Further capacity building forums on the African Human Rights System were held to foster understanding and better engagement with the Regional mechanisms.

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4.4 KNCHR as the Independent monitoring body on implementation of the CRPD

4.4.1 Monitoring status of PWDs

As the monitoring body under Article 32 (2) of the UN Convention on the Rights of Persons with Disabilities, the Commission conducted a monitoring exercise in Kisii and Migori counties to ascertain the human rights status of PWDs. Twenty-four institutions and nine homesteads of PWDs were visited. The exercise also sensitized four hundred and seventy-four persons on the rights of PWDs. The results of the assessment indicated that the rights of persons with disabilities in the two counties are far from being realized despite the gains in the Constitution. It further emerged that in addition to the human rights violations suffered by PWDs, their care givers, who were mostly women were invisible to the Government as they suffered socio-economic marginalization. KNCHR is currently working on a periodic report (2011-2013) that will be used as a basis to inform relevant stakeholders on challenges faced by PWDs, existing gaps and proposed recommendations. In addition, during the time under review, KNCHR participated in various forums in which these findings were disseminated.

4.4.2 Development of guidelines on legal capacity of Persons with Disabilities

In partnership with the Open Society Initiative of East Africa the Commission contributed to the development of Guidelines on Legal Capacity for PWDs with the view to enhancing the protection of PWDs through policy and legislative reforms. The process was participatory and included the convening of a stakeholder's forum in June 2013 with fifty-four participants drawn from various Civil Society Organizations, Government Ministries, Agencies and Commissions. The forum also served to create awareness on the legal and policy gaps on the right to legal capacity in the country and the discussions formed a platform for further discourse on the right to legal capacity and the requisite legal and policy interventions. It is expected that once the briefing paper is finalized, it will be shared with the Attorney General and the Kenya Law Reform Commission for additional review and development of a policy and law on legal capacity that endorses the rights of PWDs.

In addition to the above, the Commission continued to engage with networks for the promotion and protection of rights of PWDs notable among which were activities by the Disability Caucus in the implementation of the Constitution under the theme "political participation by persons with disabilities" and the CRPD implementation technical working group which has since developed a draft work plan for the same. The advocacy work on political participation by persons with disabilities led to an increase in number of PWDs who voted and sought political positions during March 2013 elections. According to electoral results in 2013, 8 PWDs were nominated as senators, others as members of National Assembly, one elected as a senator and 67 nominated as members of County Assembly. In addition, for the first ever, sign language interpretation was provided during the announcement of national presidential results.

In compliance with Article 35 read together with Article 54 that entitles PWDs to access information held by the public that affects them, the Commission published 600 and brailed 50 copies of the reports of the monitoring visits conducted in Elgeyo Marakwet and Uasin Gishu Counties in the preceding reporting year and disseminated them in both counties. key findings of the report included; challenges faced by persons with disabilities while seeking services in public and private offices mainly due to physical inaccessibility, information and communication barriers; stigmatization and stereotyping of PWDs in the community, limited access to healthcare services, education and employment. Finally, findings of the report indicated that most PWDs were unable to enjoy their economic and social rights as many lived in extreme poverty and the Kshs2000 from the monthly Cash Transfer programme was not adequate to meet the basic needs.

4.5 Recommendations

In order to ensure that the there is increased understanding and application of human rights for Kenyans' benefit, the Commission recommends that Parliament ensures that;

1. There is publication of the Constitution especially in Kiswahili, which is constitutionally recognized along English as the country's official language. In addition parliament should ensure that popular versions of the Constitution are published in Swahili and English.

2. The President submits a report on the progress made in fulfilling the international obligations of the Republic in accordance with Article 132(1) (iii) of the Constitution.

The Commission enjoys 'A' Status accreditation with the International Coordinating Committee of National Human Rights Institutions. This is in part on account of the investment that the Commission has made towards building institutional capacity and integrity. During the period under review the following are the highlights of progress made towards institutional growth and development.

5.1 Restructuring the Commission

Under the guidance and with support from the Directorate of Personnel Management, the Commission undertook a reorganization of its structure. It is anticipated that when fully implemented the Commission will better coordinate its activities. The Directorate of Personnel Management has also provided the Commission with career progression guidelines. The Commission is implementing both documents and is optimistic that this will also stem the high staff turnover that the commission has experienced in the past. Regrettably the full transition to the recommended structure has not been fully implemented owing to the resource constraints.

5.2 Expansion and growth of the Commission

During the period under review the commission opened a regional office in Mombasa. The office will attend to the coast region. The opening of this office in Mombasa is a major milestone in the Commission's objectives to ensure that its offices are accessible to all Kenyans. This office is strategic in the sense that the Commission will focus and address emerging region specific issues like marginalization, insecurity and respect for human rights by commercial enterprises setting up base in the region.

5.3 Use of ICT to enhance efficiency and Visibility of the Commission

The Commission has effectively utilized ICT in the implementation of its programmes. For instance the Commission utilized Databases to manage its IDP Project, the Election Monitoring Project and manages the Complaints Management System on line. In addition the Commission has made all its publications available online. The Commission maintains an interactive website and disseminates information and interacts with the public using social media such as Facebook and twitter.

5.4 Learning Institution

The Commission has a fully-fledged Monitoring and Evaluation Department that coordinates the monitoring for results. Programme implementation is monitored regularly on a monthly, quarterly, half yearly and annual basis. The Department offers field based support to departments and regional offices and has organized trainings so as to build the capacity of staff on M&E.

5.5 Resource center

Since its inception, the KNCHR resource center has witnessed remarkable growth in terms of resource acquisition and information service provision. The resource center is inspired by the vision of becoming an authority in the country in supporting research in human rights and humanitarian law. The period was marked with the installation of a library-automated system (Koha) that digitized the entire library's operations right from acquisition of materials to selective dissemination of the same. This has seen the online library catalogue put up following the successful registration of a library domain. This means that the staff and public can view and search our information resources online regardless of their physical locality. The housing of sufficient information resources in the resource center coupled with a rigorous marketing strategy, the resource center has recorded an average of 22 patrons quarterly, highest number of scholars visiting the library ever witnessed since

the installation of the resource center.

Members of the KNCHR staff after a Leadership training forum

5.6 Recommendations

In order to ensure that the Commission is fully facilitated to fulfill its mandate the Commission recommends that Parliament ensure;

1. The immediate appointment of Commissioners as required under the Constitution and the KNCHR Act.

2. Sufficient allocation of resources to the Commission in accordance with article 249(3) of the Constitution of Kenya and also in line with the Paris Principle that states that, 'The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

ANNUAL REPORT

AND

FINANCIAL STATEMENTS

2012-2013

For the year ended 30th June 2013

REPUBLIC OF KENYA

KENYA NATIONAL AUDIT OFFICE

REPORT

OF

THE AUDITOR-GENERAL

ON

THE FINANCIAL STATEMENTS OF THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

FOR THE YEAR ENDED 30 JUNE 2013

REPUBLIC OF KENYA

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NAIROBI

KENYA NATIONAL AUDIT OFFICE

REPORT OF THE AUDITOR-GENERAL ON KENYA NATIONAL COMMISSION ON HUMAN RIGHTS FOR THE YEAR ENDED 30 JUNE 2013

REPORT ON THE FINANCIAL STATEMENTS

I have audited the accompanying financial statements of the Kenya National Commission on Human Rights (KNCHR) set out pages 16 to 29, which comprise the statement of financial position, the statement of comprehensive income, cash flow statement, the statement of changes in fund balances and the appropriation account for vote R.164 for the year then ended, together with a summary of significant accounting policies and other explanatory information in accordance with the provisions of Article 229 of the Constitution of Kenya, Section 20 of the Public Audit Act, 2003. I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit.

Accounting Officer's Responsibility for the Financial Statements

The Accounting Officer is responsible for the preparation and fair presentation of these financial statements in accordance with Government Financial Regulations and Procedures and Public Finance Management Act, 2012 and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatements, whether due to fraud or error.

The Accounting Officer is also responsible for the submission of the financial statements to the Auditor-General in accordance with the provisions of Section 20 of the Public Audit Act, 2003.

Auditor-General's Responsibility

My responsibility is to express an opinion on these financial statements based on the audit and report in accordance with the provisions of Section 20 of the Public Audit Act, 2003. The audit was conducted in accordance with the International Standards on Auditing. Those standards require compliance with ethical requirements and that the audit be planned and performed to obtain reasonable assurance that the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation

and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Commission's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the management, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence obtained is sufficient and appropriate to provide a basis for my qualified audit opinion.

Basis for Qualified Opinion

1. Long Outstanding Bank Reconciliation Items

The bank reconciliation statements provided for audit review includes items totalling Kshs.598,520.83 that have been consistently reflected for a long period. No reasons were given for not clearing the items.

2. Unresolved 2011/2012 Audit Issues

The Commission has not adequately responded to and resolved the following audit issue which was the basis of qualification of the financial statements in the year 2011/2012.

The account receivables balance of Kshs.7,499,791 shown in the statement of financial position as at 30 June 2012 includes a temporary imprest of Kshs.93,792 and a staff advance of Kshs.954,201.32 owed by a former employee and former Commissioner, respectively. No evidence of the action taken to recover the long outstanding imprest and advance has been provided.

Qualified Opinion

In my opinion, except for the effect of the matters described in the Basis for Qualified Opinion paragraph, the financial statements fairly present, in all material respects, the financial position of the Kenya National Commission on Human Rights as at 30 June 2013, and of its financial performance and cash flows for the year then ended, in accordance with Government Financial Regulations and Procedures, Public Finance Management Act, 2012 and comply with the Kenya National Commission on Human Rights Act, 2011.

Edward R. O. Ouko, CBS
AUDITOR-GENERAL

Nairobi

10 February 2014

STATEMENT OF COMPREHENSIVE INCOME

FOR THE YEAR ENDED 30TH JUNE 2013

REVENUE	Notes	2013 Kshs	2012 Kshs
Grants Received	7	344,580,065	434,334,706
Grant income		322,701,809	418,899,760
TOTAL REVENUE		322,701,809	418,899,760
OPERATING EXPENSES			
Personnel costs	9	164,923,811	128,612,964
Programme support costs	10	82,553,263	55,550,357
Programme costs	11	75,224,735	234,736,440
Total Expenses		322,701,809	418,899,760
SURPLUS FOR THE YEAR:		34,980,239	39,189,092

STATEMENT OF FINANCIAL POSITION

AS AT 30TH JUNE 2013

	Notes	2013 Kshs.	2012 Kshs.
NON-CURRENT ASSETS			
Property, Plant and equipment	2	34,980,239	39,189,092
CURRENT ASSETS			
Inventories	3	1,325,204	1,044,520
Grant receivable		365,358	354,003
Accounts receivables	4	6,461,065	7,499,791
Cash and cash equivalents	5	57,493,804	65,474,583
		65,645,432	74,372,897
TOTAL ASSETS		100,625,671	113,561,988
FUND BALANCE AND LIABILITIES			
FUND BALANCE			
General reserve	6	2,491,674	2,491,674
Capital grants	6	34,980,239	39,189,092
Deferred income		61,974,948	61,540,228
CURRENT LIABILITIES			
Accounts payables	8	1,178,810	10,340,995
TOTAL FUND BALANCE AND LIABILITIES		100,625,671	113,561,988

The financial statements were approved by the Commissioners on 19th September 2013 and signed on its behalf by

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Patricia Mande Nyaundi

Commission secretary

Ann Munyiva Ngugi

Acting Chairperson

APPENDIX I

VOTE R201 KENYA NATIONAL COMMISSION ON HUMAN RIGHTS AND EQUALITY COMMISSION

RECURRENT APPROPRIATION ACCOUNT - FOR THE YEAR ENDED 30TH JUNE 2013

TITLES AND DETAILS	APPROVED ESTIMATES	ACTUAL EXPENDITURE	OVER	UNDER
	kshs	Kshs	Kshs	Kshs
Head 0001				
Unit 01 HEADQUARTERS				
2110200 Basic Wages-Temporary Employees	150,442,481	145,348,893		5,093,588
2210100 Utilities Supplies and Services	216,000	151,801		64,199
2210200 Communication, Supplies and Services	7,695,000	7,606,175		88,825
2210300 Domestic Travel and Subsistence , and Other Transportation Costs-Staff	7,555,450	7,913,880	358,430	
2210500 Printing , Advertising and Information Supplies and Services	8,037,500	5,110,117		2,927,383
2210600 Rentals of Produced Assets	28,174,428	29,173,484	999,056	
2210700 Training Expenses	10,128,689	8,777,237		1,351,452
2210800 Hospitality Supplies and Services	5,160,400	4,263,136		897,264
2210900 Insurance Costs	14,510,000	14,881,457	371,457	
2211100 Office and General Supplies and Services	2,000,000	2,974,234	974,234	
2211200 Fuel Oil and Lubricants	3,608,000	3,165,098		442,902
2211300 Other Operating Expenses	4,280,000	5,019,311	739,311	
2220100 Routine Maintenace- Vehicles and Other Transport Equipment	3,620,000	3,853,835	233,835	
2220200 Routine Maintenace- Other Assets	564,870	764,672	199,802	
2620100 Membership Fees and dues and Subscriptions to International Organizations	503,032	477,500		25,532
3111000 Purchase of Office Furniture and General Equipment	2,808,000	2,200,575		607,425
3111100 Purchase of Specialised Plant Equipment and Machinery	2,150,000	1,249,630		900,370
NET EXPENDITURE HEAD 0001	251,453,850	242,931,037	3,876,126	12,398,939
TOTAL NET EXPENDITURE VOTE R201	251,453,850	242,931,037	3,876,126	12,398,939

APPENDIX II
KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)
SUPPORT TO THE REALIZATION OF HUMAN RIGHTS AND ACCESS TO JUSTICE IN KENYA
PERIOD JANUARY 2012- DECEMBER 2012
UNDP BUDGET COMPARISON
FOR THE PERIOD ENDING 30TH JUNE 2013

SUB- ACTIVITIES	BUDGET	ACTUAL	VARIANCE	Burn
	KSHS	KSHS	KSHS	Rate %
INCOME				
Balance b/f				
Grants receivable				
Total Income	134,400,000.00	32,437,667.00	101,962,333.00	24%
	134,400,000.00	32,437,667.00	101,962,333.00	24%
EXPENDITURE				
Support transition of the Article 59 Commissions through re-branding PAC				
and (PAC/PET)	2,000,000.00	159,643.00	1,840,357.00	8%
Elaborate new mandates with related Government agencies PAC	1,800,000.00	1,602,861.00	197,139.00	89%
Establish mechanisms for coordination of article 59 Commissions (quarterly meetings) SECRETARY (M&E)	1,500,000.00		1,500,000.00	0%
Website re-design and interlinking PAC/IT	8,000,000.00	864,994.00	7,135,006.00	11%
Strategic planning for KNCHR, NGEC and CAJ SECRETARY	2,000,000.00		2,000,000.00	0%
Research and preparation of special reports and annual reports under Article 254 of the Constitution and specific implementing	3,000,000.00		3,000,000.00	0%
Monitor and advise on Government treaty obligations RESEARCH (ECOSOC)	1,000,000.00	390,330.00	609,670.00	39%
Monitor and advise on implementation of UPR recommendations. RESEARCH	3,000,000.00		3,000,000.00	0%
Institutional strengthening to enhance accessibility of the Commission through setting up of 1 regional office Coastal region.	1,500,000.00	1,075,842.60	424,157.40	72%
Institutional strengthening through recruitment of staff. HR (UNDP scales	15,000,000.00	4,582,310.20	10,417,689.80	31%
HR (IT)			-	
Strengthen internal systems on IT, Procurement and Finance. ADMIN	10,000,000.00		10,000,000.00	0%
Establishment and management of M&E and Learning systems. M and E	2,000,000.00		2,000,000.00	0%
Disseminate a manual and guidelines for HRBA training for both state actors.	4,000,000.00	551,530.00	3,448,470.00	14%
Conduct HRBA training of trainers for government staff, and create a sustainable mechanism of HRBA training within	2,000,000.00		2,000,000.00	0%
Conduct HRBA capacity building trainings Government officers including at the County level (6 trainings).	6,000,000.00		6,000,000.00	0%
Conduct human rights trainings for police and prisons officers.	7,200,000.00		7,200,000.00	0%
Conduct media training for journalists working in/with marginalized communities.	4,000,000.00	4,009,800.00	(9,800.00)	100%
Strengthen internal institutional capacity on the HRBA through 2 workshops.	2,000,000.00		2,000,000.00	0%
Document and share lessons learnt on integrating human rights in all phases of the project cycle within government.	1,800,000.00	479,500.00	1,320,500.00	27%
Create awareness of the Bill of Rights in the Constitution. ECOSOC	2,000,000.00		2,000,000.00	0%
Monitor and advice on operationalization of economic, social and cultural rights under the Bill of Rights, include	5,000,000.00	819,452.40	4,180,547.60	16%
Build the capacity of the Judiciary to interpret the Bill of Rights. REDRESS	4,000,000.00	378,775.00	3,621,225.00	9%
International Human Rights Day celebrations.	3,000,000.00	21,250.00	2,978,750.00	1%
Strengthen the complaints handling mechanisms of article 59 Commissions .	1,500,000.00	494,250.00	1,005,750.00	33%
set up of an efficient referral mechanisms for complaints handling.	2,000,000.00		2,000,000.00	0%
Promote utilization of traditional justice system (North Eastern and Turkana regions). KITALE OFFICE	2,000,000.00	802,074.00	1,197,926.00	40%
Promote utilization of traditional justice system (North Eastern and Turkana regions). WAJIR OFFICE	1,250,000.00	1,008,356.00	241,644.00	81%
Pilot utilization of public interest litigation under the Constitution (2 cases).	1,250,000.00		1,250,000.00	0%
Penal reform: build the capacity of prisons human rights desk officers in all Prisons.	1,800,000.00	421,960.00	1,378,040.00	23%
Monitor utilization of the capacity built to enhance protection of human rights of persons in detention.	2,500,000.00	427,300.00	2,072,700.00	17%
Monitor places of detention to asses conditions under which inmates are held.	750,000.00		750,000.00	0%
Judicial reforms: Support the setting up and use of court users committees (8).	2,000,000.00	794,000.00	1,206,000.00	40%
Monitor and document best practices by CuCs for replication.	2,400,000.00	323,239.00	2,076,761.00	13%
Security sector reforms: Monitor and advise on initiatives on police reforms.	750,000.00	275,580.00	474,420.00	37%
Monitor media reporting on human rights violations concerning marginalized communities.	3,000,000.00	2,190,114.00	809,886.00	73%
Engage with the TJRC implementation Committee on implementation of recommendations.	600,000.00		600,000.00	0%
Monitor implementation of the recommendations of the TJRC.	1,800,000.00	968,355.00	831,645.00	54%
Advise on measures on reparations and vetting of public officers as part of TJ initiatives.	2,000,000.00	584,400.00	1,415,600.00	29%
Lobby for reform of laws, policies and institutions in line with TJRC recommendations.	2,000,000.00		2,000,000.00	0%
Support local initiatives on enhancing awareness and understanding of the ICC process.	2,000,000.00		2,000,000.00	0%
Mainstream human rights indicators in the performance contracting process, MTP2 and the V2030	3,000,000.00		3,000,000.00	0%
Build the capacity of state actors on issues of disability, gender and marginalized groups	4,000,000.00		4,000,000.00	0%
Facilitate development of a strong community of practice on human rights / HRBA	2,500,000.00	849,515.00	1,650,485.00	34%
Project Monitoring and Evaluation by development partners and implementers	2,500,000.00		2,500,000.00	0%
Bank charges	1,000,000.00		1,000,000.00	0%
Disbursement -Other Partners	-	98,600.00	(98,600.00)	
	-	3,100,000.00	(3,100,000.00)	
Total				
	134,400,000.00	27,274,031.20	110,324,568.80	20%
Net Surplus/ (Deficit)				
	-	5,163,635.80		

APPENDIX III
KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)
2013 KENYA ELECTION HUMAN RIGHTS AND CONFLICT MONITORING PROJECT-K122
BRITISH HIGH COMMISSION BUDGET COMPARISON
FOR THE PERIOD ENDING 30TH JUNE 2013

	INCOME			APPROVED BUDGET KSHS	ACTUAL KSHS	VARIANCE KSHS	Burn Rate %
	Balance b/forward						
	Grants receivable			40,967,500.00	30,000,000.00	10,967,500.00	73%
	Total Income			40,967,500.00	30,000,000.00	10,967,500.00	73%
	EXPENDITURE						
612	Vehicle hire	20,000	64	1,280,000.00	1,218,150.00	61,850.00	95%
613	Daily subsistence Allowance	10,000	192	1,920,000.00	1,703,516.00	216,484.00	89%
614	Stakeholder/press briefings	40,000	8	320,000.00	119,000.00	201,000.00	37%
615	Fuel-follow up with relevant agencies	10,000	10	100,000.00		100,000.00	0%
616	Meal allowance-follow up with relevant agencies	1,250	30	37,500.00		37,500.00	0%
617	Court fees, filing	30,000	6	180,000.00	133,025.00	46,975.00	74%
618	Vehicle hire	20,000	192	3,840,000.00	2,237,835.00	1,602,165.00	58%
619	Daily subsistence Allowance	10,000	576	5,760,000.00	4,640,640.00	1,119,360.00	81%
620	Communication	5,000	10	50,000.00	27,500.00	22,500.00	55%
621	Tea & Snacks for consultative forums	15,000	20	300,000.00	35,002.00	264,998.00	12%
622	Fuel-follow up with duty bearers	20,000	16	320,000.00	122,415.00	197,585.00	38%
623	Daily subsistence Allowance-follow up with duty bearers	10,000	72	720,000.00		720,000.00	0%
624	Editing periodic reports	300	3,000	900,000.00		900,000.00	0%
625	Dissemination of report	50,000	5	250,000.00	220,400.00	29,600.00	88%
626	Cameras	10,000	50	500,000.00	727,600.00	(227,600.00)	146%
627	Voice recorders	6,000	40	240,000.00		240,000.00	0%
628	Communication-Hot line	100,000	4	400,000.00	235,368.90	164,631.10	59%
629	Salary-Project coordinator	80,000	7	560,000.00	262,316.00	297,684.00	47%
630	salary- Data entry clerks	20,000	10	200,000.00		200,000.00	0%
631	Salary-Election Monitors	25,000	320	8,000,000.00	6,489,256.05	1,510,743.95	81%
632	Accomodation	10,000	270	2,700,000.00	1,801,536.00	898,464.00	67%
633	Transport reimbursement	2,500	90	225,000.00	123,100.00	101,900.00	55%
634	Media monitoring fees	150,000	4	600,000.00	289,884.00	310,116.00	48%
635	Vehicle hire	20,000	48	960,000.00	1,071,370.00	(111,370.00)	112%
636	Daily subsistence Allowance	10,000	144	1,440,000.00	1,206,000.00	234,000.00	84%
637	Stakeholder consultations	50,000	24	1,200,000.00		1,200,000.00	0%
638	Conference package	10,000	50	500,000.00		500,000.00	0%
639	Transport reimbursement	2,500	50	125,000.00	743,364.90	(618,364.90)	595%
640	Design and printing brochures	5,500	500	2,750,000.00	488,000.00	2,262,000.00	18%
641	Consultancy	600,000	1	600,000.00		600,000.00	0%
642	Printing (Hard copies)	1,000	500	500,000.00		500,000.00	0%
643	Electronic copies	2,000	150	300,000.00		300,000.00	0%
644	Conference package	3,500	200	700,000.00		700,000.00	0%
645	Accomodation	10,000	100	1,000,000.00		1,000,000.00	0%
646	Transport	5,000	100	500,000.00		500,000.00	0%
647	Postage	200	200	40,000.00		40,000.00	0%
648	Fuel-parcel delivery	50,000	1	50,000.00	-	50,000.00	0%
649	Consultant	400,000	1	400,000.00		400,000.00	0%
650	Meals	2,000	60	120,000.00		120,000.00	0%
651	Fuel	40,000	2	80,000.00	-	80,000.00	0%
652	Transport reimbursement	40	2,500	100,000.00		100,000.00	0%
653	Accomodation	10,000	20	200,000.00		200,000.00	0%
	Bank charges			-	67,654.00	(67,654.00)	
	Total			40,967,500.00	23,962,932.85	18,493,764.40	58%
	Net Surplus/ (Deficit)			-	6,037,067.15		

APPENDIX IV

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS
GIZ SOCIAL JUSTICE
BUDGET COMPARISON
FOR THE PERIOD ENDING 30 JUNE 2013

DETAILS	BUDGET	2011/2012	2012/2013	VARIANCE
	KSHS	ACTUAL	ACTUAL	KSHS
INCOME		KSHS	KSHS	
Balance B/F				
Grants receivable		130,805.00	3,217,959.00	
	34,000,000.00	18,814,443.00	9,076,141.00	6,109,416.00
Total Income				
	34,000,000.00	18,945,248.00	12,294,100.00	6,109,416.00
EXPENDITURE				
Truth, Justice and Reconciliation (TJRC) process				
	9,000,000.00	8,029,526.00	830,464.00	140,010.00
Elections 2012				
	4,500,000.00	43,250.00		4,456,750.00
Regional social justice issues				
	4,000,000.00	656,504.00	3,432,166.00	(88,670.00)
Joint coordination with the strategic partners				
	3,500,000.00	1,206,035.00	197,686.00	2,096,279.00
Expert Support				
	13,000,000.00	5,756,460.00	5,986,299.00	1,257,241.00
Office Administrative costs				
		35,514.00	11,400.00	(46,914.00)
Total				
	34,000,000.00	15,727,289.00	10,458,015.00	7,814,696.00
Net surplus/(Deficit)				
		3,217,959.00	1,836,085.00	

APPENDIX V

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)
GIZ (GOOD GOVERNANCE)
BUDGET COMPARISON
FOR THE PERIOD ENDING 30TH JUNE 2013

		2011/2012	2012/2013	
SUB- ACTIVITIES	**BUDGET**	**ACTUAL**	**ACTUAL**	**VARIANCE**
INCOME	**KSHS**	**KSHS**	**KSHS**	
Balance b/forward			192,696.00	
Grants receivable	12,800,000.00	5,760,000.00	5,402,084.00	1,637,916.00
Total Income	12,800,000.00	5,760,000.00	5,594,780.00	1,637,916.00
Human rights violations investigation missions	2,000,000.00	1,232,960.00	672,753.00	94,287.00
Rapid response missions on reported HR violations	1,850,000.00	1,268,630.00	101,000.00	480,370.00
Investigation capacity assessment-protocals, methodology and reporting	1,301,970.00	44,000.00	56,930.00	1,201,040.00
Development and production of customised materials	950,000.00		522,536.80	427,463.20
Workshop-Cascaded one stop public complaints and referral service centres concept agreed upon by all actors	1,664,060.00	1,291,210.00	377,000.00	(4,150.00)
Capacity building on ADR	900,000.00	464,000.00	294,580.00	141,420.00
Identification and filing of HR violation cases for judicial review-GBV/AJ	2,000,000.00	283,767.00	343,815.00	1,372,418.00
Curriculum development on the right based approach	-			-
Workshop-Review and finalize the Human Rights policy in accordance to the constitution	982,000.00	329,662.00	487,600.00	164,738.00
Half day workshop with GJLOs MDAs mandated constitution implementation task forces on HRBA and bill of rights	-	6,475.00		(6,475.00)
Training and Workshop-Review of strategic plan/Change strategy development workshop with KNHREC commissioners and Heads of	894,030.00	90,370.00	613,265.00	190,395.00
workshop on M&E / result based management	661,970.00	543,280.00	46,250.00	72,440.00
vehicle for elections	1,220,000.00		1,119,000.00	101,000.00
Bank charges		12,950.00	15,140.00	(28,090.00)
ICPRM	50,000.00			
TOTAL	**14,474,030.00**	**5,567,304.00**	**4,649,869.80**	**4,206,856.20**
Net Surplus/(Deficit)		192,696.00	944,910.20	

APPENDIX VI

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)
INTERNALLY DISPLACED PERSONS (IDP2)
UNHCR BUDGET COMPARISON
FOR THE PERIOD ENDING 30 JUNE 2013

DETAILS	BUDGET KSHS	2011/2012 ACTUAL KSHS	2012/2013 ACTUAL KSHS	VARIANCE KSHS
INCOME				
Balance B/F			2,144,524.00	
Grants receivable	19,100,440.00	4,775,110.00	10,959,202.10	3,366,127.90
Total Income	19,100,440.00	4,775,110.00	13,103,726.10	3,366,127.90
Law and Policy				
Training Fund Grant	1,400,000.00	-	334,760.00	1,065,240.00
National Personnel Costs	1,440,000.00		757,690.00	682,310.00
Sub-Total	2,840,000.00	-	1,092,450.00	1,747,550.00
Community Mobilization				
Other Commercial Contracts- Transport reimb and meal allowance for moni	165,000.00		34,580.00	130,420.00
Unspecified services-Meeting refreshments	135,000.00		-	135,000.00
Local Travel Allowances-DSA	165,000.00		781,505.00	(616,505.00)
Travel -Secretatriate DSA	160,000.00		90,285.00	69,715.00
Communication	10,000.00		10,000.00	-
Seminars & Related Costs- Induction	105,000.00		123,961.00	(18,961.00)
Sub-Total	740,000.00	-	1,040,331.00	(300,331.00)
Reintegration				
Data Processing Fee	500,000.00		465,000.00	35,000.00
Report Compilation	250,000.00		35,000.00	215,000.00
Training Fund Grant	510,000.00		-	510,000.00
Travel - DSA	575,000.00		278,090.00	296,910.00
Workshop-Induction	570,000.00		-	570,000.00
Travel Allowance- Monitors	1,650,000.00		1,087,310.00	562,690.00
Refugee Labour Wages	7,800,000.00	2,607,706.00	5,785,142.60	(592,848.60)
Staff Costs	1,562,940.00		1,673,864.00	(110,924.00)
Communication - Postage	150,000.00		411,640.00	(261,640.00)
Office supplies	660,000.00	22,880.00	488,231.50	148,888.50
Seminars & Related Costs	1,292,500.00		640,860.00	651,640.00
Sub-Total	15,520,440.00	2,630,586.00	10,865,138.10	2,024,715.90
TOTAL	**19,100,440.00**	**2,630,586.00**	**12,997,919.10**	**3,471,934.90**
Net Surplus/ (Deficit)		**2,144,524.00**	**105,807.00**	

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