



Annual Report
2010/11



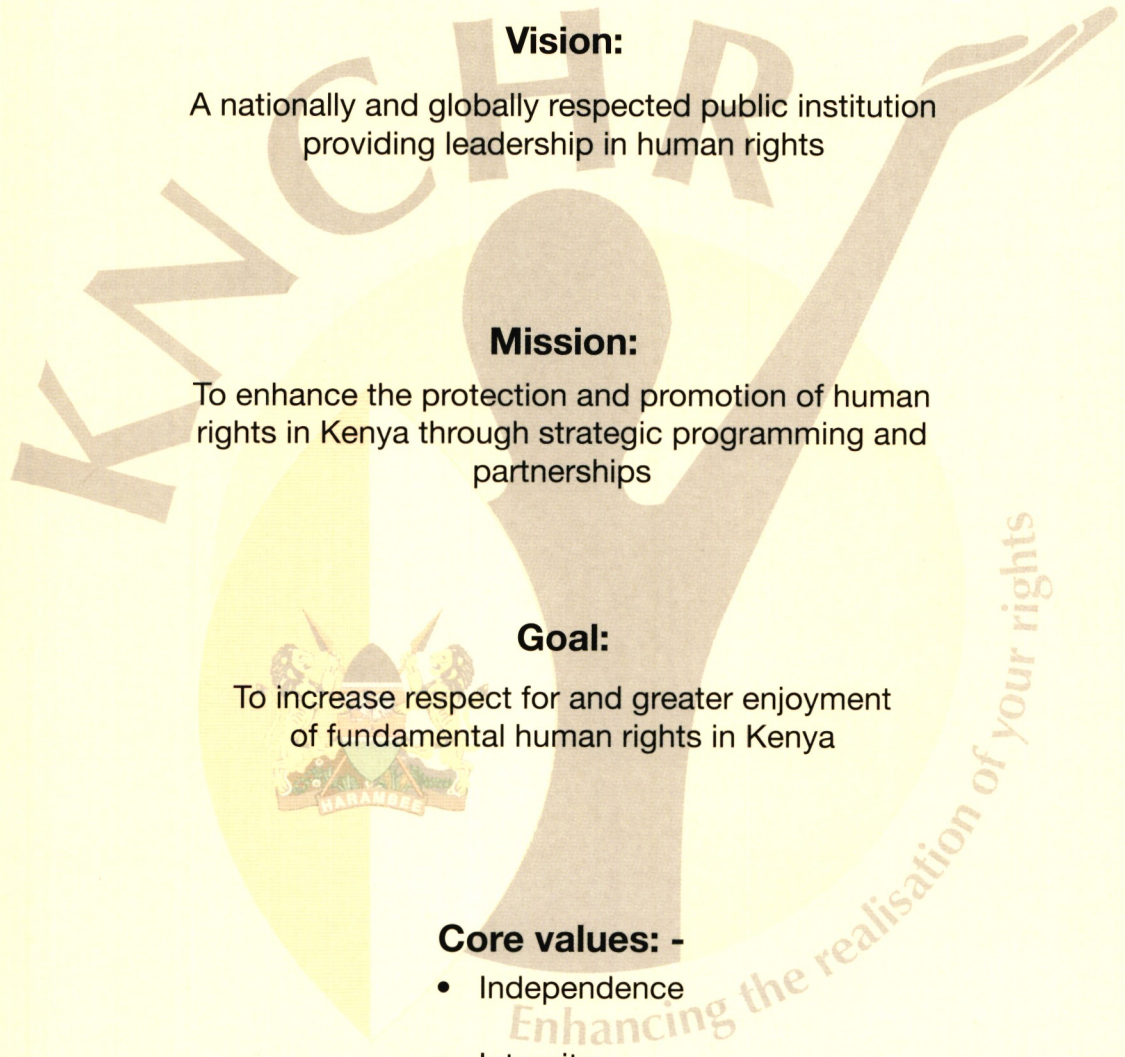
**Kenya National Commission
on Human Rights
(KNCHR)**



Annual Report 2010/11



**Kenya National Commission
on Human Rights
(KNCHR)**



Vision:

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

Mission:

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

Goal:

To increase respect for and greater enjoyment of fundamental human rights in Kenya

Core values: -

- Independence
- Integrity
- Inclusiveness
- Tolerance
- Accessibility

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List of Abbreviations

ACHPR:	African Commission on Human and Peoples Rights
ADR:	Alternative Dispute Resolution
AG:	Attorney General
APCOF:	African Police Civilian Oversight Forum
ASK:	Agricultural Society of Kenya
CAJ:	Commission on Administrative Justice
CAT:	Convention Against Torture, Cruel, Inhuman and Degrading Treatment
CBOs:	Community Based Organizations
CEDAW:	Convention on Elimination of All Forms of Discrimination Against Women
CIC:	Commission on Implementation of the Constitution
CESR:	Center for Economic and Social Rights
CoE:	Committee of Experts
COTU:	Central Organization of Trade Unions
COVAW:	Coalition on Violence against Women
CREAW:	Center for Rights Education and Awareness
CRMW:	Convention on the Rights of Migrant Workers
CRPD:	Convention on the Rights of Persons with Disabilities
CSOs:	Civil Society Organizations
CSR:	Corporate Social Responsibility
CuCs:	Court users Committees
DC:	District Commissioner
DCIC:	Disability Caucus on Implementation of the Constitution
DCIO:	District Criminal Investigation Officer
DO:	District Officer
DPCs:	District Peace Committees
EPZ-A:	Export Processing Zone Authority
EU:	European Union
FBOs:	Faith Based Organizations
FGM:	Female Genital Mutilation
FIDA-K:	Federation of Women Lawyers-Kenya
FKE:	Federation of Kenya Employers
GBV:	Gender Based Violence
GDRL:	Global Disability Rights Library
GIZ:	German Technical
GoK:	Government of Kenya
GSU:	General Service Unit
GTIs:	Government Training Institutes
HRBA:	Human Rights Based Approach
HRC:	Human Rights Council
HRDs:	Human Rights Defenders
ICC-NHRIs:	International Coordinating Committee of National Human Rights Institutions
ICC:	International Criminal Court
ICCPR:	International Covenant on Civil and Political Rights
ICD:	Independent Complaints Directorate
ICERD:	International Covenant of Elimination of Racial Discrimination
ICESR:	International Covenant on Economic, Social and Cultural Rights
ICJ-K:	International Commission of Jurists, Kenya Chapter
ICTJ:	International Center for Transitional Justice
IDPs:	Internally Displaced Persons
IDS:	Institute of Development Studies
IEC:	Information, Education and Communication
IHRB:	Institute for Human Rights and Business

ILO:	International Labor Organization
IMLU:	Independent Medico-Legal Unit
JATCO:	Joint Advisory Technical Committee on Transitional Justice
JSC:	Judicial Service Commission
KACC:	Kenya Anti Corruption Commission
KAM:	Kenya Association of Manufacturers
KARA:	Kenya Alliance of Residents Association
KEBS:	Kenya Bureau of Standards
KELIN:	Kenya Legal and Ethical Issues on HIV/AIDS Network
KEPSA:	Kenya Private Sector Alliance
KHRC:	Kenya Human Rights Commission
KIE:	Kenya Institute of Education
KLRC:	Kenya Law Reform Commission
KMJA:	Kenya Magistrates and Judges Association
KNCHR:	Kenya National Commission on Human Rights
KNHREC:	Kenya National Human Rights and Equality Commission
KPTJ:	Kenyans for Peace, Truth and Justice
KRAs:	Key Result Areas
KUJ:	Kenya Union of Journalists
LARC:	Labor Awareness and Resource Center
LRF:	Legal Resources Foundation
LSK:	Law Society of Kenya
M&E:	Monitoring and Evaluation
MHRF:	Malindi Human Rights Forum
MoJNCCA:	Ministry of Justice, National Cohesion and Constitutional Affairs
MoSSP:	Ministry of State for Special Programs
MTP:	Medium Term Plan
MUHURI:	Muslims for Human Rights
NACC:	National AIDS Control Council
NALEAP:	National Legal Aid and Awareness Program
NANHRI:	Network of African National Human Rights Institutions
NCIC:	National Cohesion and Integration Commission
NEMA:	National Environmental Management Authority
NGEC:	National Gender and Equality Commission
NGO:	Non Governmental Organization
NHIF:	National Hospital Insurance Fund
NHRIs:	National Human Rights Institutions
NSC:	National steering Committee on Peace Building and Conflict Management
NSSF:	National Social Security fund
OCPCD:	Officer Commanding Police Division
OCS:	Officer Commanding Station
OHCHR:	Office of the High Commissioner for Human Rights
PCSC:	Public Complaints Standing Committee
PEV:	Post Election Violence
PIL:	Public Interest Litigation
PWDs:	People with Disabilities
PWG:	Protection Working Group on Internal Displacement
RCK:	Refugee Consortium of Kenya
SSR:	Security Sector Reforms
TI:	Transparency International – Kenya Chapter
TJRC:	Truth, Justice and Reconciliation Commission
TNCs:	Trans National Corporations
UN:	United Nations
UNHCR:	United Nations High Commissioner for Refugees
UPR:	Universal Periodic Review

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Foreword by the Chairperson



The period 2010/ 2011 represents a defining moment in Kenya's democratic history. It is during this period that the Proposed Constitution was overwhelmingly adopted by a majority of Kenyan voters (66.9%) and promulgated on 27th August 2010. The Constitution makes a distinct departure from the previous constitutional order by investing in institutions and structures that set the stage for an enhanced democratic culture. Governance is brought closer to the citizens through a detailed devolution structure that seeks to ensure that wananchi play a more active role in matters relating to governance and the exercise of political power. Furthermore, it outlines a mechanism of ensuring that the youth, women and other previously marginalized segments of the Kenyan society are adequately represented.

The Constitution has also registered tremendous gains for the human rights discourse in the country. Human rights are identified as one of the national values and principles of governance that guide all persons including state organs, state officers and public officers in the exercise of their functions. Moreover, a robust and expanded bill of rights has been included which provides enhanced protections for both civil and political rights and economic, social and cultural rights. The Constitution is clear that the Bill of Rights bind all state organs and all persons. Institutions such as the Judiciary and the Police that were hitherto perceived as largely ineffective and corrupt have been restructured to make them more transparent, independent, professional and citizen friendly. Indeed, all serving judicial and police officers must undergo a thorough vetting process to assess their suitability for continued service. The appointment process of the Inspector-General of Police has been made more transparent and merit oriented: Article 245 (2)(a) of the Constitution removes the President's sole authority of appointing the head of police and gives the National Assembly a central role in this process.

Additionally, a number of Commissions and Independent Offices have been entrenched in the Constitution and expressly granted the necessary structural and operational independence to enable them effectively and efficiently discharge their respective mandates. Article 249 outlines the objects of these commissions and independent offices as to protect the sovereignty of the people; secure the observance by all State organs of democratic values and principles and to promote Constitutionalism.

In addition to the new constitutional framework, the reporting period witnessed significant developments in Kenya's transitional justice processes, with the pre trial chamber of the International Criminal Court issuing summons to appear to six Kenyans (popularly known as the Ocampo Six) suspected of bearing the greatest responsibility for the international crimes that were perpetrated during the 2007/2008 post-election violence. The Truth, Justice and Reconciliation Commission also overcame its institutional challenges and commence regional and thematic hearings, giving Kenyans, for the first time, a chance to participate in a formal truth seeking process that aims to comprehensively address the injustices of the past.

This period saw the transformation of the KNCHR from a statutory body to a Constitutional Commission under Article 59(1) of the Constitution which creates the Kenya National Human Rights and Equality Commission, and the enactment of the KNCHR Act, 2011. The import of this provision is that the Commission is now able to directly acquire resources from the Treasury, a measure which will further enhance its operational independence as outlined in the Paris Principles. It also shields the Commission from potential legislative excesses as it requires a referendum to amend any provisions on the Commission's structure and functions. This is a welcome protection given that this is the year when some members of Parliament threatened to take action to disband the KNCHR. The KNCHR Act, 2011, reduces the number of Commissioners from nine to five, and provides for the direct appointment of the Chairperson. With the departure of four Commissioners on 8th January 2012, the Commission will operate with the required five Commissioners under the KNCHR Act: vacancies for the Chairperson and three Commissioners shall arise in November 2012 when the terms of four more Commissioners will come to an end.

As a Constitutional body with an enhanced mandate, it was expected that KNHREC would function as a one-stop shop that would be able to effectively and efficiently discharge its mandate as a National Human Rights institution. However, this was not achieved and at the time of reporting, KNHREC has been split into three Commissions: one on Human Rights, one on Gender and Equality; and one on Administrative Justice. Our considered view is that multiple commissions not only increase the burden on taxpayers but also fragment the human rights agenda, leading to

unnecessary institutional turf wars by the three commissions and confusion to the already overburdened public. A well resourced unified commission would have been able to comprehensively deal with all human rights matters under one roof.

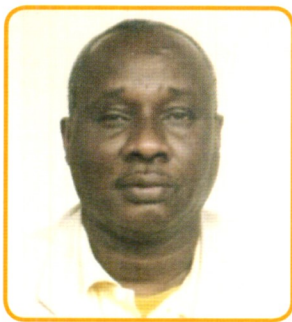
The Commission observes that much still remains to be done in terms of constitutional implementation - from the passage of key legislation to the creation of institutions and the appointment of persons of integrity to lead these institutions. Kenyans will need to remain vigilant to ensure that the letter and spirit of the Constitution is respected in all these developments. In addition, as the ICC process continues, we wish to urge Kenyans to exercise restraint and tolerance. We would want to remind them that this is an independent judicial process that seeks to determine individual criminal responsibility, and is not a political contest. This will remain relevant as we move into an election year that has the potential for heightened feelings of ethnic animosity particularly within the context of the ICC process.

Finally, we appreciate the unwavering support that the Commission has received in implementing its mandate and reaffirm our commitment to boldly safeguard Kenyans' rights even as we transition into a Constitutional body.



FLORENCE SIMBIRI-JAOKO
CHAIRPERSON

Secretary's Message



The Eighth Annual Report of the Kenya National Commission on Human Rights (KNCHR or the Commission) covers the work of the Commission for the period 1st July 2010 to 30th June 2011, and is prepared in fulfillment of the Commission's constitutional obligation under Article 254 of the Constitution of Kenya, 2010. The Commission is an independent national human rights institution established under Article 59(1) of the Constitution and is operationalized through the KNCHR Act, 2011, which succeeded the statutory Commission which was established under the KNCHR Act, 2002. The Constitution gives Parliament the leeway to restructure the Kenya National Human Rights and Equality Commission into two or more separate commissions. Parliament subsequently enacted legislation establishing the KNCHR, the National Gender and Equality Commission and the Commission on Administrative Justice. The Commission will in the next year coordinate with the two Commissions to ensure that any overlaps in their mandates are sufficiently addressed and that an effective referral mechanism is developed and operationalized for delivery of their respective mandate.

The re-constituted KNCHR retains its watchdog and advisory mandate and continues to implement its work with the overall goal of steering the country towards becoming a human rights state. The Commission envisions itself as a nationally and globally respected public institution providing leadership in human rights. Its mission is to enhance the protection and promotion of human rights in Kenya through strategic programming and partnership. The Commission bases its core values on the internationally recognized human rights principles of universality, indivisibility, interdependence and interrelatedness of human rights and seeks to foster and uphold values of independence, integrity, inclusiveness, tolerance and accessibility.

This report covers a momentous period for the country: this is the period during which the country got a new Constitution, ushering in a new era of human rights promotion and protection through an expanded Bill of Rights and mainstreaming human rights principles in the Constitution. Article 59 of the Constitution, provides the Commission with enhanced safeguards for its autonomy and independence, and creates a framework for strengthened human rights protection in Kenya.

The Commission in the reporting year continued with implementation of its activities under the second Strategic Plan, while recasting some key result areas in line with the Constitution. The transformation of the Commission entailed a realignment of some of its work in line with the enhanced mandate, while at the same time retaining the values that made it a leader in human rights promotion and protection nationally and internationally. In the reporting year therefore, it became important to clarify the Commission's mandate under the Constitution.

The dedication and commitment of the Commission's staff and Commissioners enabled the Commission to realize successful implementation of the strategic plan and mandate through the activities detailed in this report. Additionally, partnership with local and international organizations played a key role in enabling the Commission implement its activities.

While inadequate government budgetary allocation remained a challenge, the Commission remains grateful to development partners who have continued to support its work. The Commission received Ksh. 135,000,000 from the government in the 2010/2011 financial year against a budget of Ksh. 551,328,074: the budgetary deficit was however addressed through direct support from the Embassy of Norway, Embassy of the Netherlands, UNHCR, OHCHR, GIZ and the European Union. The Commission remains grateful to these development partners and will continue to seek enhanced partnership to enable implementation of the Commission's wide mandate under the Constitution. Additionally, having for the first time been allocated a direct vote by Treasury in April 2011, the Commission will continue to lobby for increased Government funding to enable it open up more regional offices for enhanced accessibility and to enable it recruit adequate staff. At the end of the year, the Commission only had three offices in Nairobi, Wajir and Kitale and had a staffing capacity of 70 against the required 115 officers: staff shortage hampers the Commission's effectiveness and the extent to which it can sufficiently deliver services to Kenyans.

The next financial year will be a defining one for the Commission: it will be a year when most of the Constitutional provisions take effect, implication being that the Commission will need to reach every sphere of the Republic as services get devolved to the counties. The next year will also bring in new challenges in terms of defining the Commission's mandate vis-à-vis that of the National Gender and Equality Commission and the Commission on Administrative Justice. The Commission remains committed to working with these institutions to ensure enhanced realization and enjoyment of human rights by all Kenyans.

The Commission makes a commitment to undertake the following, given adequate Government budgetary allocation:

1. **Accessibility and outreach to the regions** – Regional offices remain a key mechanism to enhance outreach and accessibility of the Commission: there is need therefore to expand the work of the Commission to reach Kenyans beyond Nairobi, North Rift and Northern Kenya where it has offices. The Commission has already zoned the 47 counties into regions (where to establish additional regional offices) for better services to Kenyans. This will however only be possible if Treasury allocates additional funding to the Commission's budgetary needs.
2. **Public education and publicity on the mandate of the Commission** - Given the large number of complaints that are not admitted because they either fall outside the Commission's mandate or do not fit the admissibility criteria, the Commission will undertake branding, usage of the media and dissemination of IEC materials and sensitization to the public and the civil society on its mandate. This is because if the Commission's mandate is clearly understood, it will not only limit the number of complaints that are rejected but will also enhance public confidence in the Commission when it is able to resolve matters brought before it.
3. **Working with Government agencies** – To make meaningful impact from the Commission's work around institutional reforms and to contribute to the entrenchment of the human rights based approach in Government; the Commission will proactively focus on enhancing the capacity of Government agencies to understand and apply human rights standards in service delivery, including awareness of the Commission's mandate. This will be undertaken through regular dialogue and engagement in an environment of mutual partnership. The Commission will therefore not only engage with these institutions when exercising its watchdog mandate but will advise and inform about human rights through regular meetings, trainings and joint activities.
4. **Working with the civil society** – The Commission will identify and build coordinated and structured partnership with NGOs, FBOs and CBOs across the country through which the Commission can reach the public in the regions where it has no physical presence. These civil society organizations are not only an important avenue through which to sensitize and disseminate human rights information to the public but will remain key in channeling complaints of human rights violations to the Commission.
5. **Working with the media** – The Commission will engage the media on a regular basis to inform them about the state of human rights in the country, the work and mandate of the Commission and will use the media to profile and educate the public on their rights and responsibilities. The media is a key mechanism through which to educate the public and profile the Commission, hence will be supported through regular briefings and trainings to enable them accurately highlight the work of the Commission and to inform the public regarding the human rights situation as well as of their rights. The Commission will also train specialized media reporters to take this up.



MOHAMED KONSO HALLO
SECRETARY TO THE COMMISSION

Executive Summary

The Kenya National Commission on Human Rights is an independent National Human Rights Institution established in August 2011 and is entrenched in the Constitution of Kenya, Article 59 (1) on the establishment of the Kenya National Human Rights and Equality Commission. The Commission is operationalized through the Kenya National Commission on Human Rights Act, no 14 of 2011, which succeeded the statutory Kenya National Commission on Human Rights, which was established in July 2003 through an Act of Parliament (the KNCHR Act, 2002).

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 enhanced protection of human rights: the promotion mandate. The functions of the Commission are provided for under Section 8 of the KNCHR Act, 2011 which include among others to: promote the protection and observance of human rights in public and private institutions; monitor, investigate and report on the observance of human rights in all spheres of life in the Republic; investigate or research a matter in respect of human rights, and make recommendations to improve the functioning of State organs and to act as the principal organ of the State in ensuring compliance with obligations under international and regional treaties and conventions related to human rights. Section 26 of the KNCHR Act confers on the Commission powers to: issue summons; 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 and conduct audits of any private and public institution to establish the level of compliance with the Constitution with regards to integrating the principle of equality and equity in its operations.

The work of the Commission during the 2010/2011 Financial Year was guided by both the mandate under the constitutive Act and the Strategic Plan from which the Commission's strategic priorities derive. The work of the Commission was therefore built around achievement of four Key Result Areas (KRAs) as follows:

- 1) Reduced systemic human rights violations;
- 2) Increased application of human rights principles and standards in the implementation of the Constitution;
- 3) Increased practice and knowledge of human rights principles and standards in public and private spheres and;
- 4) Organizational growth and development.

This report highlights the work of the Commission in the 2010/11 financial year including the Auditor General's report for the same period. The report is structured in four parts as follows:

PART ONE:

Gives a broad overview of the Commission, including the mandate, functions and powers under both the Constitution and the KNCHR Act, the international framework for the establishment and operation of national human rights institutions and a discussion of the strategic priorities and strategic direction for the reporting year. It concludes by an analysis of the budget and funding in the year as well as staffing matters.

PART TWO:

Presents a detailed description of the activities that the Commission implemented, in a thematic structure as follows:

I. Protection of human rights through investigations and resolution of complaints

The Commission is mandated under both the Constitution and the KNCHR Act to receive and investigate complaints of human rights abuses, and to provide appropriate redress where human rights are found to have been violated. This section of the report provides an analysis of the complaints received in the reporting year (3,142 complaints were received up from 1,931 complaints in the 2009/2010 financial year), the investigations conducted, referral mechanisms as well as the redress initiatives undertaken including Public Interest Litigation, Alternative Dispute Resolution and the National Public Inquiry on Sexual and Reproductive health rights. One of the key challenges addressed is the lack of response to Commission's letters by some public agencies, a factor which inhibits the Commission's investigatory and redress mandate. Another challenge is high public expectations, a factor mainly occasioned by the limited understanding of the Commission's mandate. To manage this challenge, the Commission commits to undertake increased outreach in the counties where the Commission has no physical presence to create awareness of its mandate.

II. Protection and promotion of the rights of special groups

The Commission has since its establishment prioritized programming to enhance the protection and awareness of the rights of special groups, which have often remained on the margins of policy formulation and implementation despite being the most vulnerable to human rights abuses. This section addresses the work of the Commission around protecting the rights of the following groups:

- a) Internally displaced persons,
- b) Persons with disabilities,
- c) Persons with HIV/AIDS,
- d) Stateless persons,
- e) Domestic workers, and
- f) Indigenous communities.

The Commission makes a general recommendation to the Government to ensure that legislation is put in place to protect the rights of these groups. Specific recommendations are in Part Three of this report.

III. Infusion and mainstreaming of human rights in public and private spheres

The Constitution and the KNCHR Act, 2011, mandate the Commission to “promote respect for human rights and develop a culture of human rights in the republic”, and to “formulate, implement and oversee programmes intended to raise public awareness of the rights and obligations of a citizen under the Constitution”. This section details the work of the Commission to implement this mandate through public education and human rights awareness programmes, seminars and workshops for public officers, including law enforcement agencies, development of human rights training manuals and curriculum for training public officers and law enforcement agencies, media programmes and production of IEC materials to enhance public awareness of rights and obligations. This section also describes the nature of collaboration and partnerships with both state and non state agencies, through which the Commission facilitated mainstreaming of human rights towards development of a culture of human rights in the republic. With regards to the private sector, this section describes the work undertaken under Business and Human Rights, given the key role businesses play in enabling the realization of human rights, as well as their potential for violating them. Local and international engagements to profile the understanding of the responsibilities of business in human rights protection are discussed.

IV. Profiling and enhancing realization of economic, social and cultural rights

Even in the absence of guiding legal framework for economic, social and cultural rights in Kenya, the Commission had prioritized work around profiling and enhancing realization of these right, which has been guided by the principle of indivisibility of human rights, such that one cannot sufficiently realize one’s civil and political rights without adequate provisions for the realization of economic, social and cultural rights. This section describes work undertaken to profile and enhance awareness of economic, social and cultural rights as mainstream human rights priorities. This section also describes work on culture and human rights in which the Commission has been exploring the potential for using cultural institutions to protect the rights of vulnerable groups in particular women, widows and orphans. In the reporting year, the Commission worked with the Njuri Ncheke of Meru and embarked on a project of using the Maslah system of dispute resolution in Northern Kenya to protect the rights of girls and women, especially in the context of sexual offences.

V. Transitional justice

The Commission has been at the forefront of campaigning for the establishment of a credible and effective transitional justice mechanism to address the legacy of human rights abuses in Kenya. In pursuing the transitional justice agenda, the Commission is driven by the conviction that establishing the truth about past human rights violations and delivering justice is a prerequisite for democracy, a culture of respect for human rights and the rule of law. The section details the Commission’s engagements with the TJRC and ICC processes. The work of the Commission in training select victim groups to effectively engage with the TJRC as well as monitoring and advising on the TJRC process are presented. The Commission’s work in profiling the Wagalla massacre in Northern Kenya is highlighted. The Commission’s advocacy to enhance awareness of the TJRC process is presented against the background of some communities that had declined to engage with the process, in light of controversies that surrounded the TJRC. These communities eventually participated in the hearings, hence enabling the TJRC to achieve its objectives. On the ICC process and its politicization, the Commission jointly with the ICC civil society network embarked on a nation-wide advocacy campaign to demystify the myths surrounding the ICC process to create awareness and understanding of judicial proceedings in situations and cases before the International Criminal Court and to foster realistic expectations about the court’s work.

VI. Constitutional reform

This section details the activities implemented with regards to constitutional reform including monitoring the 2010 Referendum, civic education on the proposed Constitution, publications focusing on different aspects of the Constitution and constitutionalism and the Sixth Annual Human Rights and Democracy Awards that recognized key actors in the struggle for a new constitution.

The Commission conducted an intensive monitoring exercise of the August 2010 referendum on the proposed Constitution, which was driven by the need to safeguard the right of citizens to participate effectively in democratic processes. The Commission also conducted civic education through the media and local level forums, and workshops targeting the youth and women. The objective of civic education was to clarify various constitutional provisions, especially contentious issues, misinformation and myths that had been spread in campaigns for or against the draft Constitution. As part of civic education, the TV talk show, *Agenda V*, was aired live on location in eight regions across the country. The Commission published Issue No. 11 of the *Nguzo za Haki* magazine on constitutionalism entitled, 'Celebrating the New Constitution' which analyzes the history and context under which the country achieved this historic milestone. Additionally, an Occasional Report titled 'Operationalizing Kenya's New Bill of Rights: Policy, Legal and Administrative Priorities and Considerations' was also prepared with focus on the Bill of Rights. Finally, in December 2010, the Commission issued a special award (the *Katiba Award*) to three individuals and one institution that had made significant contributions in the constitution making process. The following were awarded: Hon. Martin Shikuku, Prof. Yash Pal Ghai, Hon. Abdikadir Mohammed, and the Committee of Experts on Constitution Review. Additionally, The Rt. Hon Prime Minister, Hon. Raila Odinga, and H.E the President, Hon Mwai Kibaki, were presented with honorary awards in recognition of their contribution to the realization of the Constitution of Kenya, 2010.

VII. Monitoring and advising on institutional reforms

This section analyses work around security sector, penal and judicial reforms. The Commission engaged in lobbying and advocacy for fast-tracked police reforms, successfully campaigned for the suspension of the flawed police vetting process, monitored the 2011 police recruitment process to ensure its integrity, and prepared and disseminated a popular version of the report of the Task Force on police reforms (the *Ransley Report*). The Commission also reviewed and advised on three Police Bills (the *Independent Policing Oversight Authority Bill 2011*, the *National Police Service Bill 2011* and the *National Police Service Commission Bill 2011*). On Judicial reforms, the Commission facilitated establishment and the work of Court users Committees in Eldoret, Malindi, Nyeri, Wajir, Eldoret and Kitale, with the objective of enhancing collaboration among agencies in the criminal justice sector to jointly address problems causing delayed dispensation of justice. On penal reforms, the Commission continued to monitor conditions in places of detention and conducted inspection visits to 58 prisons and places of detention. One of the key findings from the visits was congestion in prisons, an issue which was subsequently raised in the *CuCs*. Proposals for decongestion (such as the use of community service for lesser offences, use of non-punitive bail terms, use of free bonds and quick dispensation of cases to reduce remand populations) were made. From the monitoring visits, the Commission prepared and launched a report on the status of human rights in prisons.

VIII. Infusion of human rights in policy and legislation

One of the key activities undertaken to implement the Commission's advisory mandate is the review and preparation of advisories on proposed and existing legislation and policies to ensure that they conform to human rights. The Commission reviewed 26 Bills and made proposals for amendment where found not be fully compliant with human rights. Of the 26 bills reviewed, seven namely the Commission on the Implementation of the Constitution Bill, 2010 (CIC); the Vetting of Judges and Magistrates Bill, 2010 (Vetting Bill); the Judicial Service Bill, 2010 (JSB); the Independent Electoral and Boundaries Commission Bill, 2011; the Supreme Court Bill 2011; the Independent Offices Bill, 2011; and the Salaries and Remuneration Bill, 2011 have since been enacted into law. Twenty-seven out of eighty-seven (or 31%) of the Commission's proposals were accepted and reflected in the final legislation. The following advisories were prepared: an advisory to the Task Force on Education on the alignment of the Education Sector with the Constitution; advisory to the Task Force on Citizenship; advisory on the ILO Convention on domestic workers; and advisory on the UN Protect, Respect, Redress Framework on business and human rights.

In a bid to operationalize Article 59(1) of the Constitution on the establishment of KNHREC, the Ministry of Justice prepared three bills, namely the Kenya National Human Rights Commission Bill, the National Gender and Equality Commission Bill and the Commission on Administrative Justice Bill. The Commission reviewed and proposed amendments to these Bills and at the same time developed a draft Kenya National Human

Rights and Equality Commission Bill that sought to operationalize the said constitutional provision under one Commission, set up a framework for the protection of human rights and proposed establishment of the KNHREC. At the time of writing this report, Parliament had set up three commissions under Article 59 (4), namely the National Gender and Equality Commission; the Commission on Administrative Justice; and the Kenya National Commission on Human Rights.

IX. Compliance with regional and international human rights obligations

Section 8(f) of the KNCHR Act, 2011 mandates the Commission to “act as the principal organ of the State in ensuring compliance with obligations under international and regional treaties and conventions relating to human rights”. The Commission facilitates and ensures government compliance with international and regional human rights obligations through:

- Lobbying for the ratification of Treaties and Conventions,
- Advocating for ratified Conventions to be domesticated; (now a constitutional obligation) and researching on the status of implementation of the various Conventions and Treaties ratified before the passage of the new Constitution,
- Engagement with treaty bodies and committees, and
- Monitoring and advising on compliance with recommendations/concluding observations of treaty bodies/committees.

The Commission, therefore, advised the Government on and facilitated stakeholder engagement with the Universal Periodic Review Mechanism, participated in the review of Kenya under the UPR and followed up on implementation of the recommendations made, monitored and assisted the Government to fulfill its reporting obligations under CEDAW and ICERD, and convened a workshop to brainstorm on the options which should inform Kenya’s determination on the ratification and accession to Optional Protocols at which 8 Optional Protocols were extensively discussed and recommendations made to the Government.

X. Monitoring the human rights situation – the State of Human Rights Report

The Third State of Human Rights Report entitled ‘A Human Rights Assessment of Kenya’s Vision 2030’ evaluating the government’s performance under vision 2030 was prepared and launched. Some of the key findings of the report were that there was generally a suitable policy framework for improved service delivery and standards of living; that the Government had focused on increasing focus and resources in various initiatives aimed at enhancing economic growth, social welfare development and democratization; and that there were still accountability challenges in relation to the management of initiatives under the Medium Term Plan (2008–2012). The report made recommendations with regards to access to electricity, the right to food, work, education, health, clean water and sanitation, housing, access to justice and the right to participation in public affairs and effective governance.

PART THREE: Provides an analysis of concluding observations made with regards to the work of the Commission in the reporting year. This part is structured in terms of challenges encountered in the year, opportunities presented to the Commission, key lessons learnt during the year, and recommendations on legal and administrative measures to be taken to implement the findings of the Commission.

PART FOUR: This section contains the Commission’s Financial Statements for the 2010/2011 Financial Year, and the Report of the Auditor General for the period ended 30th June 2010.

About the Kenya National Commission on Human Rights

1: Introduction

1.1: Overview of the Kenya National Commission on Human Rights (KNCHR)

The Kenya National Commission on Human Rights (the Commission or KNCHR) is an independent National Human Rights Institution (NHRI) established in August 2011. The Commission is entrenched in the Constitution of Kenya (2010), Article 59(1) on the establishment of the Kenya National Human Rights and Equality Commission (KNHREC). Pursuant to Article 59(4) which states: “Parliament shall enact legislation to give full effect to this Part and any such legislation may restructure the Commission into two or more separate Commissions”, Parliament in August 2011 enacted three separate legislations establishing the Kenya National Commission on Human Rights; the National Gender and Equality Commission (NGEC); and the Commission on Administrative Justice (CAJ). The KNCHR is subsequently established under the Kenya National Commission on Human Rights Act, No. 14 of 2011, and succeeds the statutory Kenya National Commission on Human Rights, which was established in July 2003 through an Act of Parliament (the KNCHR Act, 2002).

The core mandate of the Commission is to promote respect for and to develop a culture of human rights in Kenya. There are 135 similar bodies established around the world, with 40 NHRIs in Africa. The Commission has its head office in Nairobi with two regional offices in Wajir for Northern Kenya region and in Kitale for the North Rift region.

At the end of the financial year, the Commission consisted of nine Commissioners and a Secretariat. The KNCHR Act, 2011 however limits the number of Commissioners to five (a Chairperson and four other members). Part 6 of the sixth schedule of the Constitution on Transitional and Consequential provisions provides that “Commissioners of the KNCHR appointed under the KNCHR Act...shall become members of KNHREC for their unexpired term but each shall retain the terms of service as at the effective date”. It is for this reason that the Commission at the time of reporting had nine Commissioners. The KNCHR Act, 2011, Section 11, provides for the procedure of appointment of Chairperson and members, who serve on a single term of six years (Commissioners and Chairperson previously served on five-year terms renewable once). Commissioners enjoy security of tenure, a guarantee that facilitates independence of the Commission. Below is the list of Commissioners who served during the reporting period.

TABLE 1: LIST OF COMMISSIONERS WHO SERVED IN THE REPORTING YEAR

Commissioners	Position	Appointment date	Tenure ends
Ms. Florence Simbiri-Jaoko	Chairperson	January 2007	January 2012
Mr. Hassan Omar Hassan	Commissioner	January 2007	January 2012
Ms. Winfred Osimbo Lichuma	Commissioner	January 2007	January 2012
Ms. Wambui Kimathi	Commissioner	Reappointed in January 2007	January 2012
Ms. Fatuma Ibrahim Ali	Commissioner	Re-appointed in November 2007	November 2012
Mr. Lawrence Mute	Commissioner	Re-appointed in November 2007	November 2012
Ms. Fatuma Adan Dullo	Commissioner	November 2007	November 2012
Dr. Samuel Torei	Commissioner	November 2007	November 2012
Anne Kyalo Munyiva-Ngugi	Commissioner	January 2009	January 2014
Mohammed Konso Hallo	Secretary	May 2009	May 2014

The KNCHR is a Commission within the meaning of Chapter 15 of the Constitution and has the status and powers of a Commission under that Chapter.¹ 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:

¹ Section 4 of the KNCHR Act, 2011.

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.

This report is prepared pursuant to the Commission's constitutional and statutory obligation. The Constitution under Article 254 requires the Commission to:

254 (1) As soon as practicable after the end of each financial year, each Commission, and each holder of an independent office, shall submit a report to the President and to Parliament. (3) Every report required under this Article shall be published and publicized.

Section 53 of the KNCHR Act, 2011, provides that:

53 (1). The report of the Commission under Article 254 of the Constitution shall, in respect of the financial year to which it relates, contain-

- (a) The financial statements of the Commission;*
- (b) A description of the activities of the Commission;*
- (c) Recommendations on specific actions to be taken in furtherance of the findings of the Commission;*
- (d) Recommendations on legal and administrative measures to address specific concerns; and*
- (e) Any other information relating to its functions that the Commission considers relevant.*

(2) The Commission shall publish the report in the Gazette and in at least one newspaper with national circulation.

1.2: International framework for the establishment and operation of National Human Rights Institutions (NHRIs)

a) *The Paris Principles*

The Commission is accredited by the International Coordinating Committee of National Human Rights Institutions as a **Status A** NHRI, owing to its full compliance with Paris Principles² relating to the status and functioning of NHRIs. This is the highest accreditation status for NHRIs. Paris Principles are international standards that serve as minimum conditions that a NHRI needs to meet to be considered credible by its peers and within the UN system. These Principles relate to the role, composition, status and functions of NHRIs. Paris Principles assess the establishment and functioning of NHRIs around six key areas, below:

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 investigation

For effective compliance, NHRIs are required to:

- Monitor any situation of human rights violation which it decides to take up;
- Be able to advise the Government, Parliament or any other competent body on specific violations, legislation and compliance with international human rights instruments;
- Relate and interact with regional and international organizations;
- Have a mandate to educate and inform on human rights; and
- Have quasi-judicial competence.

The above are given effect in Article 59 of the Constitution and the Kenya National Commission on Human Rights Act, 2011.

b) *International Coordinating Committee of National Human Rights Institutions (ICC-NHRIs)*³

The International Coordinating Committee of National Human Rights Institutions is an international, independent body established to promote the establishment and strengthening of NHRIs in conformity with Paris Principles. The ICC's Sub-Committee on Accreditation conducts periodic review (every five years) of existing NHRIs to assess their continued compliance with Paris Principles, and strengthens NHRIs to ensure full compliance through technical assistance. Proposed and new NHRIs are assessed against Paris principles benchmarks before their accreditation as Status A, B or C NHRI depending on their level of compliance.

² Full text of the Paris Principles can be accessed at <http://www.ohchr.org/english/law/parisprinciples.html>

³ <http://www.nhri.net/>

Accreditation regulates NHRIs' access to the UN Human Rights Council⁴ and the treaty body mechanisms, hence the key significance of this mechanism to the work of NHRIs.

NHRIs accredited by the International Coordinating Committee as being in compliance with Paris Principles (Status A) may participate and address the Human Rights Council in an independent capacity.

The ICC of NHRIs facilitates interaction and cooperation between NHRIs and the UN system, as well as coordination and collaboration among NHRIs. In addition, it strengthens NHRIs to ensure full compliance with Paris Principles through technical assistance. The ICC currently has 16 voting members representing four regions (Africa, Americas, Europe and Asia/Pacific region). The KNCHR is a member of the ICC Bureau representing Africa Group and is also the Secretary of the ICC, through which it has influenced the international agenda of NHRIs. This is a representation of the role that the Commission plays in leadership on human rights issues at both the African and international level and is further a demonstration of the competency of the KNCHR in working to promote and protect human rights in Kenya. In the year under review, the Chair of the KNCHR represented the ICC Bureau in various functions at the international and UN level including speaking on behalf of NHRIs at meetings of the UN Human Rights Council.

c) The Network of African National Human Rights Institutions (NANHRI)⁵

The work of NHRIs in Africa is coordinated by the Network of African National Human Rights Institutions (NANHRI), which is headquartered in Nairobi and is hosted by the KNCHR, which provides it with institutional support. 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. The Commission additionally supports strengthening of African NHRIs through exchange visits: in the year under review, the Commission hosted a delegation of the Chairperson and four Commissioners from the Zimbabwean Human Rights Commission on an exchange visit to learn from the KNCHR mechanisms to strengthen the Zimbabwean Commission. The Commission has in previous year's hosted delegations from the Lesotho, Somaliland and South Sudanese human rights commissions and accepted staff from the Ugandan and Pakistani human rights Commission to be attached at the KNCHR. The Commission has also facilitated training sessions to newly formed Commissions in Cameroon and Sierra Leone. It also built the capacity of the Tanzanian human rights Commission and Zimbabwean human rights commission on business and human rights and the Universal Periodic Review mechanism, respectively.

1.3: Mandate, functions and powers of the Commission

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

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;

⁴ A/HRC/4/91, para. 15.

⁵ <http://www.nanhri.org/>

- 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 are prescribed under the Constitution and the KNCHR Act.

Article 252 on the General functions and powers of Commissions states

252 (1) 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 the KNCHR Act, 2011, provides for the general powers of the KNCHR:

26. *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.*

The Commission has the powers of a Court under Section 27 of the KNCHR Act to:-

- a) Issue summons or other orders requiring the attendance of any person before the Commission and the production of any document or record relevant to any investigation by the commission;*
- b) Question any person in respect of any subject matter under investigation before the Commission; and*
- c) Require any person to disclose any information within such persons' knowledge relevant to any investigation before the Commission*

The Commission, in implementing its mandate, will in the coming year fully operationalize its functions and powers for the realization of human rights in Kenya.

1.4: Strategic priorities of the Commission for the 2010/2011 Financial Year

The Commission's strategic priorities derive from both the now defunct KNCHR Act, 2002, and the Strategic Plan (2009-2013), which provides guidance to the Commission in terms of its strategic direction and focus. These strategic priorities however remain relevant even in the context of the constitutional human rights commission, whose mandate and powers do not significantly deviate from those in the previous Commission. These strategic priorities are guided by the Commission's vision and mission as follows:

Vision	<ul style="list-style-type: none">• <i>A nationally and globally respected public institution providing leadership in human rights.</i>
Mission	<ul style="list-style-type: none">• <i>To enhance the protection and promotion of human rights in Kenya through strategic programming and partnerships.</i>
Goal	<ul style="list-style-type: none">• <i>To increase respect for and greater enjoyment of fundamental human rights in Kenya.</i>

The Commission fosters and upholds the following core values:

- Independence
- Integrity
- Inclusiveness
- Tolerance
- Accessibility

These values are fully integrated in the Commission's work, including the human rights principles of universality, indivisibility, interdependence and interrelatedness of ALL human rights. For this reason, the Commission's work cuts across civil and political rights; economic, social and cultural rights; and group rights since all these have to be equally prioritised and realized for there to be effective fulfilment and enjoyment of human rights.

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 practice and knowledge of human rights principles and standards in public and private spheres; and
- 4) Organizational growth and development.

1.5: Budget and funding in the reporting year

Operationally, the previous KNCHR used to submit and get its budget approval through the Ministry of Justice, National Cohesion and Constitutional Affairs (MoJNCCA). In the current financial year, the Commission received, through the Ministry of Justice, a budgetary allocation of Ksh. 105 million for recurrent expenditure and 30 million for development expenditure. However, with the Commission now a constitutional body with clear provisions under *Article 249 (3) that Parliament shall allocate adequate funds to enable each Commission and independent office to perform its functions and the budget of each Commission and independent office shall be a separate Vote, in April 2011, Treasury allocated the Commission a direct vote, VOTE 64, which now ensures that the Commission directly submits and receives its annual budget from the Treasury. This is a move that ensures that the Commission moves towards better compliance with the Paris Principles requirement of financial independence and autonomy. With this new provision, the Commission was in this financial year able to negotiate for its budgetary allocations for 2011/2012 financial year directly with Treasury, a move that saw the annual budget of the Commission increase for the first time in many years from 135 million to 210 million for that financial year. The Commission will continue seeking increased budgetary allocation to enable it devolve its services to the 47 counties through the opening of new regional offices and the recruitment of more staff. Notwithstanding the support from development partners over years, the Commission hopes to reduce its dependence on donor funding and increase Government funding to at least 70% of its annual budget.*

In the 2010/2011 Financial Year, the Commission received core funding from the following development partners to supplement Government allocation: the Royal Netherlands Embassy, the Royal Norwegian Embassy, GIZ, UNHCR, OHCHR-Kenya office and the EU. These are elaborated in the section on finance in the final chapter of this report.

1.6: Staffing

The Secretariat of the Commission is composed of the Secretary, who is appointed by the Commission and acts as the Chief Executive Officer, and members of staff. At the close of the reporting period, the Commission had 70 staff, 13 additional staff having been recruited in the year under review and with three resignations from members of staff. The Commission's officers serve on five-year renewable contracts. The Commission has an active internship programme that annually provides opportunities to between 20 and 25 young professionals to learn and build their capacity in human rights. Given that the Secretariat is the engine of the institution, the Commission continuously strives to increase its staffing levels to enhance its capacity to deliver on its mandate. During the reporting period, the 13 additional officers recruited included officers for critical new positions namely M&E, Internal Audit and ICT specialists. It is expected that these recruitments will facilitate the Commission to achieve even higher levels of efficiency, effectiveness and optimal resource utilization for the benefit of Kenyans.

1.7: Departments of the Commission

The Commission is organized around 14 departments: seven programmatic departments and seven support departments, through which the goals, KRAs, objectives and core outcomes of the Commission are realized. These are:

1. Complaints and Investigations,
2. Redress,
3. Research and Compliance,
4. Reforms and Accountability,
5. Public Education and Training,
6. Economic, Social and Cultural Rights; and
7. Outreach and regionalization department

These above programmatic departments are supported by:

1. Public Affairs and Communications,
2. Finance,
3. Human Resource and Administration,
4. Procurement,
5. Information and Communication Technology,
6. Internal Audit; and
7. Monitoring and Evaluation.

This report documents and presents the work of the Commission as organized around these departments during the 2010/2011 Financial Year, in line with the Strategic Plan and mandate of the Commission under the KNCHR Act.

The Work of the Commission

Part Two of this report gives a detailed description of the activities that the Commission implemented in the 2010/2011 financial year, which are guided by priorities identified in the Strategic Plan and geared towards implemented of its mandate as elaborated in the KNCHR Act, and in the Constitution of the Republic of Kenya, 2010. All the activities implemented in the reporting year were guided by the four Key Result Areas (detailed in Part 1.4 of this report) and were geared towards achievement of the goals, mission and vision of the Commission. Sections 2 to 11 of this report therefore describe the work of the Commission in the reporting year.

2: Protection of Human Rights Through Investigations and Resolution of Complaints

The Commission is mandated under both the Constitution and the KNCHR Act to receive and investigate complaints of human rights abuses and to provide appropriate redress where human rights are found to have been violated.⁶ This mandate is realized through the Strategic Plan, KRA 1 on **Reduced Systemic Human Rights Violations**. The work of complaints handling and redress is built around the following outcome areas of the Commission:

- a) Increased enjoyment of human rights by all people in Kenya;
- b) Greater respect and enforcement of human rights standards by state agencies; and
- c) Reduction of human rights violations by state agencies.

This mandate is operationalized by the Complaints and Investigations; and the Redress departments of the Commission. The two regional offices for Northern Kenya and North Rift regions are also mandated to receive, process and investigate complaints of human rights violations. Below is an overview of work undertaken in terms of complaints and redress mandate of the Commission.

2.1: Processing and investigating complaints

2.1.1: Overview of complaints received

During the reporting period, the Commission received 3,142 complaints, up from 1,931 the previous year, a 38.5% increase. 2,439 complaints were lodged at the head office, 347 at the North Rift office in Kitale, and 356 at the Northern Kenya office in Wajir. The increase in the number of complaints received can be attributed to various outreach activities conducted by the Commission in the reporting year through human rights clinics, participation in ASK shows and open days organized by various agencies, as well as a legal aid day held at the Nairobi Remand & Allocation prison in commemoration of the World Day against Torture.

Gender analysis of the 2,439 complaints received at the head office in Nairobi indicate that women accounted for 558 (22.9%), while men comprised 1,881 (77.1%). In the North Rift, out of the 347 petitions, 196 (or 56.4%) were lodged by male petitioners, whereas 151 (or 43.6%) were lodged by female petitioners and in Northern Kenya, 151 complaints (or 42.4%) were lodged by male petitioners as compared to 205 (or 57.6%) lodged by female petitioners.

The bulk of the complaints in the North Rift were (25%) related to land rights. This was followed by those relating to domestic issues at 23.6% and labor rights at 18.4%. Those relating to children accounted for 12.1%. Other significant petitions (ranging from 10%-2%) related to administration of justice, inaction by police, police harassment, complaints against lawyers, civil contracts and abuse of office. The majority of complaints in Northern Kenya related to domestic/family issues and refugee matters at 18.5% each. This was followed by children matters (maintenance/custody) at 16%. These can be directly correlated to the higher number of complaints being lodged by female petitioners. Other significant complaints related to complaints against the police at 8.4%, complaints relating to land at 6.2%, labour matters at 5.9%, complaints against chiefs at 3.4%, and on defilement at 2.2%.

Table 2 below shows that the bulk of the complaints at the head office came from Nairobi (50%) followed by Central Province at 14.6%. This is as a result of the proximity of these two regions to the head office. Additionally the Commission conducted a human rights awareness clinic in Central Province where various complaints were received.

⁶ See Article 59(2) (d),(e),(f) of the Constitution of Kenya, 2010. See also Section 8(c),(d),(e) of the KNCHR Act, 2011.

TABLE 2: GEOGRAPHICAL DISTRIBUTION OF COMPLAINTS LODGED AT HEAD OFFICE (SOURCE: KNCHR DATABASE)

	Provinces and other countries	Number	Percentage (%)
1	Nairobi	1,218	50.0
2	Central	356	14.6
3	Rift Valley	241	9.9
4	Nyanza	172	7.1
5	Eastern	144	5.9
6	Western	113	4.6
7	Coast	111	4.6
8	North Eastern	78	3.2
9	Others	6	0.2
	Total	2,439	100.0

The mode in which complaints were lodged at the head office was as follows: 1,624 complainants physically visited the office, 493 lodged their complaints via postal mail, and 276 were through telephone, 45 via email and one through fax. For the North Rift office, 341 complainants physically visited the office, four lodged their complaints via postal mail, two by telephone, none were via email and none by fax.

Violations of economic, social and cultural rights were the largest category in the reporting period accounting for 1,024 (46.2%) of complaints, as demonstrated in the table below:-

TABLE 3: COMPLAINTS RECEIVED AT THE HEAD OFFICE (SOURCE: KNCHR DATABASE)

Category	Sub-category office	Total
Civil and political rights	Access to information	9
	Freedom from discrimination	29
	Freedom from slavery/forced labor	1
	Freedom of assembly and association	4
	Freedom of conscience, religion, belief and opinion	3
	Freedom of movement	7
	Freedom of opinion and expression	5
	Political rights under Article 38	1
	Rights of arrested persons	30
	Right to fair trial	173
	Right to human dignity	25
	Right to life	94
	Right to participate in government	4
	Right to personal integrity and dignity	20
	Right to personal liberty/security	89
	Right to privacy	3
Right to property	8	
Sub-total		505
Economic, social and cultural rights	Child Rights	98
	Consumer rights	3
	Corruption	35
	Family rights	75
	Labor rights	387
	Land rights	212
	Right to adequate standard of living	25
	Right to clean and healthy environment	4
	Right to education	19
	Right to fair administrative action	143
	Right to health	8
	Right to social security	15
Sub-total		1024
Group Rights	General complaints	484
	Refugee rights	99
	Right to development	1
	Right to a clean and healthy environment	1
	Minorities and indigenous people's rights	3
	Right to peace and security	79
	Right to self determination	2
Rights of IDPs	20	
Sub-total		689

During the reporting period, the head office successfully completed an overhaul of the complaint filing system by installing a new complaints data management system and training staff on the same. (The regional offices complaints handling mechanism will be fully computerized in the next financial year). This system has enabled the complaints handling process to be more efficient and user friendly especially with regards to record keeping, follow up and in generation of reports.

TABLE 4: COMPLAINTS RECEIVED AT THE REGIONAL OFFICES (SOURCE: KNCHR DATABASE)

Nature of petitions	No. of petitions
North Rift Regional Office (Kitale)	
Labor	74
Land	87
Police inaction	5
Children (child abuse, maintenance)	42
Breach of contract	2
Domestic	87
Defilement	12
IDP cases	8
Malicious arrest	1
Threats	8
Compensation	8
Professional negligence	2
Corruption	9
Destruction of property	1
Terminal benefits	1
Total cases received (Kitale)	347

Nature of petitions	No. of petitions
Northern Kenya Regional Office (Wajir)	
Labor	20
Land	21
Complaints against the Police	28
Children (Child abuse, maintenance, custody)	56
Civil/Contractual matters	18
Domestic/Family Issues	64
Defilement and rape	8
Refugees complaints	65
Administration of Justice (court delays)	18
Complaints against local administration (Chiefs)	12
Complaints against the Armed Forces	11
Health issues	5
Follow ups on existing cases	30
Total Cases received (Wajir)	356

Admission status of complaints

Out of the 3,142 complaints received during the reporting period, 667 were admitted, some were resolved through closure and clarifications by the parties involved, 99 are pending admission after further clarifications and submission of supporting documents, and 2,377 were not admitted (for not falling within the Commission's mandate). For the complaints not admitted, the complainants were given legal advice and/ or referred to the relevant Government Institutions and partner CSOs with the mandate or who were better placed to resolve the matters, for further assistance.

Files opened/closed

During the reporting period, the Commission opened 63 files and closed 29 files below.

TABLE 5: CLOSED CASES

	File reference	Nature of complaint	Date of closure	Reason for closure
1	KNCHR/2004/672	Murder case	14/4/2011	Lack of follow up
2	KNCHR/2004/849	Murder case	13/4/2011	Lack of follow up
3	KNCHR/2004/808	Labor rights	14/4/2011	Report with recommendations forwarded to the Labor Commissioner
4	KNCHR/2010/002	Right to life	4/4/2011	Lack of follow up
5	SCHR/2003/587	Torture	12/5/2011	Lack of follow up
6	KNCHR/2004/791	Inaction by police	18/5/2011	Matter was taken over by OCPD
7	KNCHR/2009/034	Various allegations against the police	13/5/2011	Lack of follow up
8	KNCHR/2006/998	Riparian rights	25/5/2011	Complaint did not disclose any violation
9	KNCHR/2005/925	Police shooting	25/5/2011	Lack of follow up
10	KNCHR/2011/024	Land rights-conversions	26/5/2011	Petitioner advised and referred to seek services of an advocate
11	KNCHR/2010/001	Administration of justice	25/5/2011	Lack of follow up
12	KNCHR/2010/004	Right to life	20/4/2011	Matter in court-Inquest ongoing
13	KNCHR/2007/1097	Police shooting	24/5/2011	Petitioner's advocate is dealing
14	KNCHR/2011/016	Labor rights	25/5/11	Matter referred to PCSC
15	KNCHR/2011/026	Right to fair trial	27/5/2011	Matter to be handled in court
16	KNCHR/2011/009	Labor rights-Unfair dismissal	27/5/2011	Matter to be handled in court
17	KNCHR/2011/025	Labor rights	25/5/2011	Lack of follow up
18	KNCHR/2006/1074	Labor rights	20/6/2011	Lack of follow up
19	KNCHR/2011/017	Labor rights-unlawful termination	20/6/2011	Matter was clarified by the corporation that the petitioner resigned and was not unlawfully terminated as alleged.

2.1.2: Counseling and psycho-social support

The Commission as part of its complaints handling work receives petitioners who are traumatized from having undergone or witnessed a gross human rights violation such as torture, defilement, and child abuse among others and hence break down when narrating their cases during screening. For a long time, this made the process of screening very difficult given that the legal officers are not trained counselors. The Commission has however recruited an in-house counselor and such petitioners are now properly counseled and stabilized before the screening officers can attend to them. There are other petitioners who come to the Commission seeking financial assistance and have the perception that the human rights commission can help them solve their financial problems. There are yet others who come perceiving themselves to be persecuted and wronged, even though they can't tell a coherent story, and their discourse with the legal officers reveals a state of mental and/or emotional instability.

The in-house counselor has been able to bring in professionalism in handling such petitioners making it possible for them to be offered psychosocial support, and even if they have absolutely no case, they are nevertheless assisted to face their problems and to resolve them either by seeking medical help or other appropriate means. Other examples of petitioners who receive counseling are petitioners in abusive families or other relationships. All these groups of petitioners will typically come to any complaints handling institution and seek assistance. Instead of not admitting the cases and turning the petitioners away, they are given the necessary basic support through counseling to alleviate their dependency.

During the human rights awareness clinics in Kuria held between 30th August and 2nd September 2010, a case of defilement was brought to the Counselor's attention. The victim, a minor aged 15 years and a primary school pupil, had been allegedly defiled by a person known to her after being lured by the perpetrator. The victim had suffered trauma and was stigmatized by the community and her peers in school. This necessitated the counselor's visit to the victim's school for crisis counseling; a session was conducted at the Deputy Head Teacher's office to ensure confidentiality. The Counselor later had a session with both the mother and the victim to build the girls confidence with the parent. The Counselor further had a brief meeting with the Deputy Head Teacher and discussed modalities of continuing with the victim's psychosocial support while in school.

The Commission has greatly benefitted from having a counselor on board, because many of the extra-legal problems which the legal officers have absolutely no expertise to handle have been satisfactorily addressed thereby leaving the screening officers to handle more mandate-related cases. A further benefit is that the Counselor has been able to arrange de-briefing sessions for the complaints department staff who daily come into contact with petitioners who exact a lot of emotional strain on them, hence the importance of a counselor as an integral part of any good complaints-handling mechanism.

2.1.3: Investigations and rapid response missions

The Commission conducts both preliminary and further investigations of admitted complaints and rapid response to address matters requiring urgent intervention of the Commission. In its preliminary stage, the investigations set out to identify existence of a human rights violation, and if so, it leads to further investigations. Investigations are conducted *suo moto* (on its own initiative) and upon receipt of complaints from individuals or group of persons. During the reporting period, the Commission conducted 38 field investigations and 11 rapid response missions on reported cases and others taken up *suo moto* in Nairobi, Garissa, Kajiado, Machakos, Muranga, Nakuru, Migori, Laikipia, Malindi, Naivasha, Mwingi, Kisumu, Isiolo, Moyale, Dadaab, Wajir, Thika, Mount Elgon, Turkana and Machakos.

Sample of the cases investigated:

1. The right to health: The Commission conducted investigations into allegations of discrimination by Kenyatta National Hospital in the provision of services to a person suffering from albinism. Investigations established that the hospital management had failed to update the patient's family of the various challenges they were facing while trying to graft his skin owing to skin cancer; a condition that continued to deteriorate leading the family to allege neglect of the said patient. The Commission mediated between the hospital and the family and resolved the communication deadlock that had been created. Follow up efforts confirmed that the doctors had been updating the family on each step taken and the patient was faring well.
2. The right to life: The Commission conducted *suo moto* investigations into alleged extra-judicial killings in Longonot, Kisamis and Kinale areas as reported by various media houses. It was found that the pattern in which the executions were perpetrated were similar in that corrosive substance had been poured onto the faces of the victims possibly to conceal their identity. The Commission liaised with IMLU and conducted post mortems which lead to positive identification of three bodies. Media adverts of missing persons were used to create awareness and to help in the identification of the remaining bodies. The Commission was still following up the matter with the Commissioner of Police to ensure that their investigations are conducted expeditiously. Additionally, an investigation was conducted following a complaint from 6 petitioners who alleged that their relatives were arrested at Shauri Moyo within Nairobi by persons believed to be police officers, and had since disappeared. Efforts to trace them in various police stations bore no fruit and they visited KNCHR offices for further assistance. The Commission jointly with the relatives visited various mortuaries but did not trace any of the alleged five bodies. Follow up efforts with the District Criminal Investigation Officer (DCIO) Buruburu Police station were underway as investigations were still ongoing.
3. Land rights: Investigations were conducted following complaints that the petitioners were threatened with and/or evicted by alleged land grabbers in Khwisero and Maseno. In one case it was found that the matter was pending in court and therefore the file was closed, while in the other case, parties were advised to consider conciliation for an expeditious solution that would end the impasse between them. The parties were advised on the right mechanisms to consider in case conciliation efforts were unsuccessful.
4. Refugee rights: The Wajir regional office received a complaint that a refugee mother of five children was allegedly raped by police officers while in custody at Dadaab police station on charges of being in the country illegally. The Court ordered that she be sent to Dadaab refugee camp for appropriate processing of refugee status. The Commission conducted interviews with the OCPD, GIZ Health Officials, Department of Refugee Affairs and the UNHCR and established that the police had forwarded the file to the office of the Director of Public Prosecutions and they were awaiting confirmations on charges to press from the said office. The Commission continued to follow this case at the end of the reporting year.

Human rights audit of the state of Mental Health - investigation

In February 2011, CNN aired a documentary titled “*Kenya’s Mentally Ill Locked up and Forgotten*” on the decaying mental health infrastructure in Mathari Mental Hospital. The documentary reported that persons with mental illness were being held in inhumane and degrading conditions. Alleged human rights abuses highlighted by the CNN documentary included: forced medication; crowded wards; and rape and sodomy by other patients. The CNN crew also filmed a deceased patient lying in an isolation cell in one of the male wards, who had reportedly passed away the night before. Another patient could be seen lying next to him. At around the same time, the Commission received a petition lodged by a relative of a patient at the hospital regarding the condition under which patients were kept. The petitioner’s specific complaints, expressed through their legal guardian, included lack of food, forced medication, physical assaults, and poor hygiene standards.

The Commission conducted an investigation to ‘audit’ the state of mental health in Kenya from a human rights perspective and to make recommendations towards improving the condition of mental health institutions towards creating awareness on the status of mental health in Kenya. Consultations were conducted with stakeholders in the mental health sector. The Commission also visited and inspected three main mental health facilities - Mathari Hospital, Rift Valley Provincial General Hospital, and Port Reitz Mental Health Hospital. At the end of the year, a draft report had been prepared: the report makes a preliminary conclusion that the Government through practice and policy has to a great extent discriminated against persons suffering from mental illness by marginalizing mental health. For this reason, the report urges the Government to significantly enhance its efforts to provide mental health care around the country in order to meet its human rights obligations. The report will be published and disseminated in the next financial year.

2.1.4: Rapid response investigation missions

The Commission conducts ‘rapid response’ investigations into human rights violations that require urgent response without going through the usual routine investigation process. 10 rapid response missions were conducted in the period under review – below are some sample cases:

1. Freedom from discrimination: On 10th February 2011, Citizen News at 1.00 pm highlighted a case in which a woman and her infant child had been evicted from her matrimonial home in Ikinu village in Kiambu district allegedly due to her HIV-positive status. A rapid response mission found that the mother-in-law had actually evicted the said woman; not because of her HIV status but because she had allegedly been disrespectful. The Commission resolved the case through mediation by bringing together the disputing family members and the area District Officer (DO) after finding out that there was a misunderstanding arising out of the stigmatization the lady was facing. Awareness the rights of persons living with HIV/AIDS was created amongst the family members and the woman was allowed back to her home.
2. Right to education: A petition was received on alleged violation of the right to education of a form four student who was sent away from school on medical grounds. On seeking treatment, the student was diagnosed with TB and treated for two months. Upon discharge from hospital, the petitioner took her son back to school and the headmaster allegedly declined to re-admit the student on grounds that the petitioner was rude to him. Investigations established that there was a misunderstanding between the petitioner and the head teacher. The matter was mediated and the student was allowed back to school.
3. Environmental rights: The Commission received a petition from resident of Kinago village and a CBO in Marereni-Malindi alleging that one of the salt mining companies, Kurawa Limited (which sub-let the land to Krystalline Salt manufacturing company) had sought an early renewal of its lease agreement despite the fact that its lease had another 19 years before expiring. The major concern was that since 2005, the salt company had extended its boundary encroaching on the community’s land and the community feared that the company may evict them. An investigative mission entailed interviews and focus group discussions with the community, the provincial administration and the area councilor as well as with Malindi County Council officials. The investigation determined that the company had indeed sought an early renewal of their lease agreement on claims to the County Council and to the Ministry of

Lands that the reason behind the renewal was that they were seeking a loan to build a salt processing company. It was observed by the community and the provincial administration that the company had been leasing the land to other companies to mine salt in turn violating the lease agreement which states that the company should not sub-lease the land. The Commission held discussions with members of the community and engaged with the Commissioner of Lands.

4. Right to security: On the 14th May, 2011, the Wajir regional office received calls from Moyale reporting tension between the Boran and Burji communities owing to allegations of rape of a Borana woman by six Burji men and that the police were not taking any action to arrest the culprits. The Commission conducted a rapid response to investigate the matter and calm the building tensions. The following were interviewed: the acting OCPD, the Senior Resident Magistrate, District Criminal Investigations Officer (DCIO), Councilors and the County Council Chairman. The investigation found that the district security team had not sufficiently calmed the rising tensions and that there was growing animosity between these communities hence the potential for more conflict. A recommendation was made to the NCIC to conduct peace work in the region to de-escalate tensions among these communities.
5. The Kitale regional office received a petition from the Ogiek in Mount Elgon on alleged threats of eviction from the Chepkitale forest. A rapid response investigation was conducted to verify the allegations, which found that Chepkitale forest had been Gazetted vide gazette notice no 88 of 2006 as a game reserve and vested to the County Council of Mt Elgon for the purposes of developing and protecting the area as a game reserve. The Commission also found that the Ogieks were not consulted before Chepkitale was converted from trust land to a game reserve leading to their resistance to move out of the forest, and that the Ogiek were to be resettled in Chebyuk Phase 3 but that this had not happened hence they still inhabited the Chepkitale forest. From this investigation, the Commission recommended that the Government should consider settling the Ogiek either in the glades and clearly demarcating them for avoidance of conflict or settle them near the forest to enable them be able to practice their rites. The Commission will in the coming year continue to monitor the situation of the Ogiek in the Mount Elgon region.

2.1.5: Working with referral partners for more efficient complaints handling and redress

Referral partners are members of civil society organizations and state complaints handling institutions with whom the Commission works closely with for resolution and redress of complaints and to whom the Commission refers complaints that they are better placed to handle by reason of their mandate, expertise and track record. The Commission therefore holds quarterly referral partners' meetings to keep the members abreast on the practices, mandates or change thereof and other important information which helps to more efficiently manage referrals, and to get an update on action taken to resolve cases referred to them. The referral partners include the Coalition on Violence Against Women (CoVAW), Refugee Consortium of Kenya (RCK), Federation of Women Lawyers (FIDA-K), Kenya Anti-Corruption Commission (KACC)⁷, Legal Resources Foundation (LRF), Centre for Rights Education and Awareness (CREAW), Public Complaints Standing Committee (PCSC)⁸, Transparency International (TI-Kenya), Independent Medico-Legal Unit (IMLU), Kenya Human Rights Commission (KHRC), International Justice Mission, Advocates Complaints Commission and the Ministry of Labor. In the year under review, the Commission strengthened existing partnerships and created three new partnerships with the National Environmental Management Authority (NEMA), Ministry of Gender, Children and Social Development and the National Legal Aid and Awareness Program (NALEAP). In the coming year, the Commission will engage the National Gender and Equality Commission as a new referral partner due to its new mandate in complaints handling.

Due to the strengthened partnership during the referral partners' committee meetings, the Commission participated in a joint consultative forum with the Advocates Complaints Commission in Embu on 27th May 2011 which strengthened the linkages with the ACC in solving complaints against advocates as promptly as possible. The referral partners committee, therefore, assists the Commission in bringing on board various agencies to redress human rights violations so that petitioners are not turned away but are directed to where they can get assistance. It provides a platform where complaints handling agencies share best practices for more efficient and effective complaints handling. Additionally, efforts are currently underway to establish a one-stop-shop mechanism to handle complaints; the mechanism will be composed of state complaints handling agencies aimed at easing referral work, limit duplication and reduce the burden on the public having to be directed from one public agency to another. This mechanism will be further clarified in the next financial year.

⁷ Currently transformed to the Ethics and Anti Corruption Commission.

⁸ Currently transformed to the Commission on Administrative Justice.

Concluding observations with regards to complaints handling and investigations

The following are the key lessons learnt in the course of handling complaints and conducting investigations:

- Teamwork at the Commission level and increased synergy between the complaints and investigation department and other Commission departments has helped the Commission to deliver its key result areas.
- Proper documentation helps facilitate easy access to information. The upgrading of the filing system and the computerization of data management has improved data storage and retrieval within the Commission. The complaints email (complaints@knchr.org) proved useful in the reporting year.
- The advantage of exploring other processes to resolve complaints like counseling has reduced the time the Commission spends dealing with complaints which are not within its mandate. The legal officers, therefore, spend more time in processing admitted complaints.

Challenges

- Unresponsiveness to letters by respondents especially the police, which makes it difficult to resolve complaints expeditiously.
- Meeting high expectations of petitioners who often insist on instant redress even on matters that do not fall within the Commission's mandate. It was noted that this is a cross-cutting issue among all complaints handling institutions, hence the proposed one-stop-shop for complaints handling.
- Petitioners lodging cases long after occurrence of the violations as a consequence of which crucial evidence is lost hence the difficulty to investigate and conclude the cases.
- Complaints lodged without supporting documents are difficult to process, leading to delays even when the complaints fall within the Commission's mandate.

In order to improve the complaints handling process, the Commission will:

- Create more awareness through outreach activities including human rights clinics to manage the high expectations from complainants and to create an understanding of the complaints admissibility criteria.
- Reach out more to rural and marginalized areas through various activities since the Commission remains inaccessible to many Kenyans outside the three regions where the Commission has a physical presence.
- Strengthen existing relationship with referral partners and move from having meetings to conducting regular joint activities which increase efficiency and effectiveness in the processing of complaints.
- Strengthen existing partnerships and create new focal points especially in areas where the Commission has limited reach. This will enable the Commission to be informed of human rights violations in marginalized areas for informed response.

2.2: Redress for human rights violations

One of the key components of the Commission's mandate is the provision of redress for victims of human rights violations. The redress mechanisms employed by the Commission include Public Interest Litigation, conducting Public Inquiries and Alternative Dispute Resolution (ADR).

2.2.1: Public Interest Litigation

Sections 25 (a) (ii) and (b) of the KNCHR Act, 2002 empower the Commission to institute cases in the High Court on alleged violations of constitutional human rights on behalf of a party or for broader public interest. This has similarly been strengthened under Article 22 of the Constitution. Further, Rule 43 of the KNCHR (Complaints Procedures) Regulations 2005 empowers the Commission to appear in any judicial proceedings as *amicus curiae* for the purpose of advocating the human rights interests of the concerned proceedings. In order to enhance its capacity and presence in public interest litigation, the Commission, together with civil society organizations, forms part of the Public Interest Litigation Caucus, which regularly meets to identify and develop strategies on moving law and policy through strategic litigation.

Following the quashing of the powers of the Commission's Complaints Hearing Panel by the High Court in the decision (Justices Nyamu, Wendoh and Dulu in *HCCC Misc Application 688 of 2006 KCB v KNCHR*), the Commission decided to pursue public interest litigation as an alternative redress mechanism in lieu of the hearing panels. Cases are selected on the basis of being either of broad public interest or of having a significant impact on the legal discourse of human rights in Kenya. The selected cases ought to also have strategic goals such as the setting up of legal precedents, highlight a discriminatory position in law or one that would lead to legal and social reform. It is against this background that the Commission in January 2009, filed to appear as *amicus curiae* (Friend of the Court) in the case of *Richard Muasya v. The AG and 3 Others*, which is a constitutional petition by an intersex person claiming, *inter alia*, that the Constitution of Kenya does not

recognise his unique sexuality status and that there are no legal provisions that would recognise the gender rights of persons born with intersexual conditions.

As *amicus curiae*, the Commission provided information to the Court on the gaps in Kenyan law and presented a case for legal reform. The Commission also highlighted precedents from international jurisdiction where similar cases have been dealt with and how progressive courts have tackled the complex issue of intersex persons. In July 2010, the Commission presented a human rights position of the case, arguing that the Constitutional prohibition against discrimination on the basis of sex ought to be widely interpreted to include intersexual persons, considering mainly that intersexual persons being persons born with indeterminate genitalia must receive protection of the law from discrimination and be accorded full rights to identity and citizenship. Therefore, any discrimination against any person on the basis of intersexuality would qualify as discrimination on the basis of sex. Judgment was delivered on 2nd December 2010, where the court declined to accord the case the status of a 'public interest' case as, in the opinion of the Court, "*it was not shown how the public as a whole was at stake. The petitioner had not identified any other intersex person in the country, his condition is rare and it ought to be treated as an isolated one, and not a representative suit. It further noted that his handicap is biological and not legal*". However, the Court found that the petitioner's right to protection from inhuman treatment was violated by prison officials and awarded the petitioner damages of Ksh 500,000/- as compensation.

The Commission is of the opinion that the decision highlights the nature of judicial conservatism still prevalent in our courts. It also highlights the need for increased litigation and activism required to bring the judiciary to take note of current international human rights jurisprudence and the progressive nature of human rights courts in other jurisdictions. Although no other public interest cases were filed in the reporting period, research on a case around the rights of workers with disability was instituted with a high likelihood of joining an already instituted case on the same as *amicus curiae* and instituting a similar one that has been received as a complaint by the Commission. The Public Interest component of the Commission's work will be strengthened and hopefully utilised more by Kenyans to give effect to the Bill of Rights in the Constitution.

2.2.2: National Public Inquiry on sexual and reproductive health rights

One of the redress mechanisms that the Commission engages in is the conduct of public inquiries on pertinent human rights issues. Inquiries present an opportunity for the Commission to respond to systemic human rights violations and propose practical and innovative measures to redress them. It is in this regard that the Commission commenced a National Public Inquiry into the state of Sexual and Reproductive Health in Kenya.⁹ The Inquiry was based on a complaint received by the Commission from FIDA-K on the violations to reproductive health suffered by women at the Pumwani Nursing Home in Nairobi. An examination of the complaint and a report by FIDA-K and the Centre for Reproductive Rights revealed that the violations found at Pumwani Nursing Home were systemic in nature and widespread in most government and private health institutions across the country. It was found that issues on sexual and reproductive rights went further than just the violations suffered at health institutions but also were affected by government policies and economic and socio-cultural factors. With this background, the Commission found it imperative to undertake a national public inquiry in order to investigate the multi-faceted nature of the violations and the widespread problem. The objectives of the public inquiry were:

- To establish the legal and policy framework governing the implementation of sexual and reproductive health rights in Kenya and the effectiveness thereof;
- To assess compliance by the government and non-state actors in sexual and reproductive health rights in Kenya;
- To determine the extent of sexual and reproductive health awareness and utilization in Kenya; and
- To identify and document cases of discrimination in and violation of sexual and reproductive health rights in Kenya, for informed intervention to redress the situation.

The inquiry was officially launched on 6th June 2011 and was attended by a diverse group of stakeholders from the public and private sectors. It is scheduled to be completed in November 2011. During the reporting period, the following were undertaken:

- a) Literature review on reproductive health generally and the Kenyan situation in particular to provide a contextual background around which the inquiry would be conducted.
- b) Development of indicators on reproductive health.
- c) Forum with stakeholders and government agencies in the reproductive health sector to disseminate information about the proposed inquiry, and to get their buy-in. Meeting with the Director of medical Services and Director of Public Health were also held.

⁹ Article 43(1)(a) of the Constitution provides for the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care.

- d) Pre-hearing visits to provincial and district hospitals, and nursing homes to establish the state of reproductive health services and facilities.
- e) A media briefing to consolidate collaboration of the media in profiling and creating awareness of the inquiry as well as issues of sexual and reproductive health right. Owing to this, articles on sexual and reproductive health have been featured in mainstream print media, including highlight of the deteriorating conditions at the Pumwani Maternity hospital.
- f) At the close of the year, two public hearings had been conducted in Nairobi and Mombasa, with a diverse group of witnesses including victims of the post election violence, sexual violence and medical negligence, traditional birth attendants, persons with disabilities and sexual minorities.



A participant at a public hearing on sexual and reproductive health rights makes his submissions through a sign language interpreter

The Public Inquiry was still ongoing at the close of the reporting year. The inquiry report will highlight challenges facing Kenyans regarding sexual and reproductive health, and will make recommendations on policy and legal reforms as well as budgetary requirements to facilitate realization of this constitutional right.

Concluding observations on the work of redress

The Commission was able to break the ground in terms of Public Interest Litigation, learn from this process and make a deliberate decision to pursue it as one of the key redress mechanisms. The Constitution has also opened up additional space for the Commission to reinforce its redress mechanisms specifically on ADR and PIL. The Courts have additionally been given the authority to uphold and enforce the Bill of Rights, hence making the work of complaints handling more effective when findings with regards to human rights violations become clearly enforceable. It is anticipated that the next financial year will see a more robust, more visible Commission that is able to effectively and efficiently provide redress to victims of human rights violations. In this regard, focus will be on enhancing the Commission's capacity and presence in PIL and ADR.

3.0 Protection and Promotion of the Rights of Special Groups

The Commission has since its establishment focused on the protection and promotion of the rights of special interest groups, in particular, persons with disabilities, minorities and indigenous persons, persons living with HIV/AIDS and internally displaced persons. This objective stems from the realization that these groups live on the margins of law and policy, and are not adequately addressed by government programmes. These groups also are among the most vulnerable, hence susceptible to human rights abuses. The Commission, therefore, designed programmes not only to monitor the realization of their rights, but also to promote and advocate their protection against discrimination.

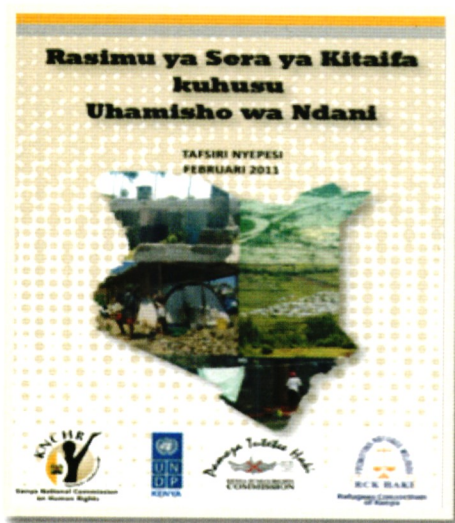
3.1: Internally Displaced Persons

The Commission worked with stakeholders to address concerns facing internally displaced persons (IDPs), which was informed by the fact that many IDPs from the 2007/2008 post-election violence (PEV) have not yet been fully resettled although immediate resettlement of IDPs was agenda 2 of the National Accord. Further, the issue of internal displacement in all its manifestations has also not been comprehensively appreciated in the country where the legal and policy framework for protecting internally displaced persons remains weak. During the year, the Commission undertook activities aimed at profiling human rights of IDPs. These activities were mainly on monitoring, documenting, reporting and advising the Government on human rights of IDPs. Strategic partnership through the Protection Working Group on Internal Displacement (PWGID¹⁰) was core in implementing these activities and helped drive the Commission to achieve its stated goals. The Commission, therefore, worked closely with various partners, including the Ministry of State for Special Programmes (MoSSP), the PWGID and the Parliamentary Select Committee on the Resettlement of Internally Displaced Persons, to address concerns affecting IDPs and to develop an IDP Policy for Kenya.

Several activities were undertaken aimed at profiling the rights of IDPs as follows.

- a) Lobbying for adoption of and creating awareness on the draft national IDP policy
- b) Capacity building forums on internal displacement
- c) Engagement with the Ministry of State for Special Programmes
- d) Monitoring, documentation and advising on the human rights of IDPs

a) *Lobbying for adoption of and creating awareness on the draft national IDP policy*



In March 2010, the MoSSP together with partners in the PWGID prepared a *draft National Policy for the Protection and Assistance to Internally Displaced Persons* (Draft National IDP policy). The draft policy was prepared to help the country address challenges relating to internal displacement. During the year, the Commission with partners in the PWGID undertook several activities aimed at creating awareness on the policy by sensitizing partners and key stakeholders, and lobbying and advocating for the adoption of the draft policy.

The Commission developed (in English and Swahili) and disseminated 2,000 copies of the simplified version of the draft National IDP policy (pictured), which were disseminated through PWGID meetings, meetings with stakeholders, lobbying and awareness forums and capacity building workshops. The aim of the popular version of the draft policy is to create awareness of the policy and create a critical mass of partners that will be able

to demand for the adoption and implementation of the policy. Further the Commission and its partners in the PWGID continually engaged top officials at the MoSSP to ensure that the policy is adopted. By the end of May 2011, MoSSP had forwarded the policy to the Cabinet and at the close of the year, it was waiting tabling for discussion. The Commission also secured the commitment of the Parliamentary Select Committee to support the adoption and implementation of the draft national IDP policy.

¹⁰ Members of the PWGID are the Government of Kenya, through representation from different Ministries; IDPs, through individual and group representations; national NGOs and CSOs; international NGOs and international and regional organizations and bodies including agencies members of the UN family

b) Capacity building forums on internal displacement

The Commission conducted four capacity building forums, in conjunction with the UNHCR, for targeted stakeholders and supported 3 capacity building and planning workshops for PWGID partners at the national and field level. The workshops include:

- Capacity building on IDP protection for state and non state actors - targeting public officers who handle IDP issues directly at the district level as well as youth groups in areas most affected by the post election violence. The draft policy on internal displacement was disseminated to participants. The Regional Commissioner for Central Rift, Mr. Amos Gathecha summed up the importance of the forum to the GoK actors in the field during the closing ceremony as follows:
- Two IDP monitors' capacity building workshops, National PWGID planning retreat, Nakuru and Eldoret PWGID planning workshops, which organized in conjunction with the PWGID, aimed at creating awareness and to disseminate the draft national policy on IDPs at the field and national level for state and non-state agencies.

"50 per cent of government work in the Rift Valley entailed internal displacement, as such the workshop was the first formal training that a significant number of government officials have undertaken on internal displacement and this was highly relevant to their work."

Regional Commissioner for Central Rift, Mr. Amos Gathecha

- Capacity building workshop for the members of the Parliamentary Select Committee on Internal Displacement in May 2011 - to create awareness on and lobby for the adoption and implementation of the draft National Policy on Internal Displacement. From the workshop, the Commission was identified as the focal point to monitor the IDP challenge ahead of the 2012 general elections and to regularly report on the same.



Participants at the forum with the members of the Parliamentary Select Committee on Internal Displacement, including Members of Parliament

The Commission in partnership with the UNHCR launched a project to monitor and document the situation on internal displacement and the resettlement process in various parts of the country. From the field reports, advisories were issued to the Interim Coordination Secretariat implementing the recommendations of the Mau Forest Report as well as the MoSSP and the inter-ministerial committee on the resettlement of IDPs. The Commission's work around protection of IDPs has contributed to government efforts to document and resettle IDPs, even though this has been moving at a slow pace. The Government has also eventually agreed to consider resettling persons evicted from Mau and other forests Out of which Ksh 1billion was allocated for this purpose in the March 2011 supplementary budget whereas some camps that hosted IDPs such as Keringet IDP camps and Total camps in Kuresoi and Molo respectively are going to be considered for the IDP resettlement process.¹¹

Concluding observations with regards to IDP resettlement

The IDP resettlement process is on course albeit at a slow pace. It continues to face unexpected challenges such as rejection of IDPs by host communities. However, understanding of who is an IDP is still vague and most stakeholders are still unaware about the draft National IDP policy. The Commission makes the following recommendations:

1. MoSSP should fast track the IDP resettlement process. In this regard it should work with key stakeholders including host communities and IDPs in order to own the solutions proposed,
2. Government should as a matter of priority adopt and implement the [draft] National IDP policy, and
3. Planning for monitoring of the situation of internal displacement ahead of the 2012 general elections will be crucial to avert a displacement crisis of the magnitude witnessed in 2008.

3.2: Persons with disabilities

In the year under review, the Commission continued to be a focal point for the realization of the rights of persons with disabilities (PWDs). Of note is the designation of the Commission in February 2011 as the monitoring agency under Article 33(2) of the Convention on the Rights of Persons with Disabilities (CRPD), by the Attorney General which entails:

- a. Monitoring activities on human rights and disability at national, county and local levels to ensure compliance with the CRPD. Other activities include conducting consultative proactive studies and publications to inform the public of the state of the human rights of PWDs in the country.
- b. Reviewing policies, programmes and judicial decisions to ensure that they are compliant with the CRPD;
- c. Auditing the extent to which PWDs participate in the development of policies and laws that affect them; and
- d. Monitoring media to gauge public sensitivity and awareness of issues of disability.

Towards the above, the Commission mapped out how the country-wide monitoring would be undertaken in the next four years to correspond with the CRPD reporting cycle. In addition, a capacity building workshop on reporting under the CRPD was held to train on the reporting guidelines and requirements. The Commission also worked in collaboration with the Government and the Disability Caucus on the Implementation of the Constitution (DCIC), which is a network of organizations of and for PWDs which works towards effective protection and promotion of the rights of PWDs in implementation of the Constitution. A key result is that the Commission and the DCIC set up a team that developed and submitted recommendations with regards to special needs education to the Task Force on Education.

The Commission participated in and organized forums to raise awareness on the rights of PWDs generally. Among these were the launch of *'The Voice of 650 Million Times One'* in partnership with stakeholders, application for the award of a free digital Global Disability Rights Library ('GDRL') whose purpose is to empower the deployment site to disseminate valuable disability rights knowledge and toolkits to their communities, preparation of recommendations on special needs education for submission to the Task Force on Education, preparation of a paper on social protection with particular emphasis on the Cash Transfer Programme for persons with severe disabilities to the Ministry of Gender, Children and Social Development and preparation of a paper on political participation of PWDs in Kenya for presentation at the International Disability Alliance (IDA) event during a session of the UN Human Rights Council.

At the regional level, the Commission engaged with the African Commission on Human and Peoples' Rights during its 49th session at which it successfully contributed to advocacy efforts to shelve the draft African Protocol on Disability that had not been drafted in a consultative manner and an undertaking given to secure the best possible framework

¹¹ See MoSSP presentation during the workshop with Parliamentary Select Committee on IDP resettlement

for the protection of PWDs in Africa. Subsequently, the African Commission appointed a KNCHR Commissioner (Lawrence Mute) as one of the experts to its Working Group on Older Persons and People with Disabilities in Africa: the appointment provides the Commission with opportunity and leverage to influence disability matters at the continental level.

The activities contributed to raising awareness on the rights of PWDs, increased access to information on disability by PWDs and contributed to policies and legislation for the protection and promotion of the rights of PWDs.

3.3: Stateless persons

The Commission undertakes research on human rights issues with the objective of informing the Commission's interventions in relation to policy, law making and implementation. It similarly facilitates and ensures government compliance with international and regional human rights obligations. Some of the Commission's research is conducted in relatively new areas that are not in the public domain but which are critical to the enjoyment of human rights. In the reporting period, the Commission undertook research on statelessness in Kenya: there are an estimated 12million people around the world who are stateless¹².

The two international instruments which define statelessness at global level are the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The treaties are complimented with other international and regional human rights treaties¹³ to form the international regime establishing minimum standards on the treatment of stateless persons. During the reporting period, the Commission jointly with the United Nations High Commissioner for Refugees (UNHCR), whose mandate includes responsibility for stateless persons, undertook a study on statelessness in Kenya as a follow-up to an earlier study by the Commission entitled '*An Identity Crisis: A Study on the Issuance of the National Identity Cards in Kenya (2008)*'. The study on the issuance of national identity cards had been conducted in response to numerous complaints received by the Commission alleging discrimination against some ethnic communities or certain parts of the country in the issuance of identity cards. Its key findings and recommendations were on the question of citizenship of some ethnic groups in Kenya.

The aim of the study on statelessness was to identify the probable and root causes of lack of nationality as well as statelessness, and to evaluate the human rights violations faced by stateless persons and those at risk of statelessness in the country. Some of the findings of the study are that:

- a) The legal and administrative framework is not adequate to deal with the issue of statelessness in Kenya,
- b) Nationality laws in Kenya discriminate against various categories of persons and lack safeguards against statelessness,
- c) The number of stateless persons in Kenya is unknown hence the need for sensitization so that these categories of persons realize their rights and are entitled to confirmation of their nationality,
- d) The committees established to vet persons for issuance of national identity cards in border regions lack statutory basis, are discriminatory in nature and prone to abuse, and
- e) Applicants' lack adequate information on the procedures for issuance of ID cards leading to abuse and also experience bureaucratic delays.

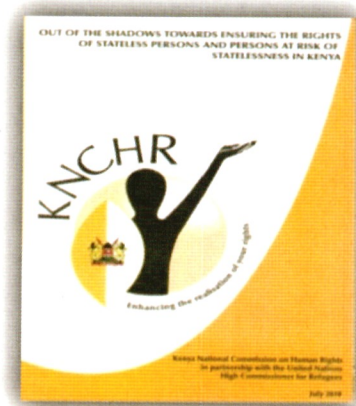
The study made numerous recommendations ranging from the call to accession and domestication of the relevant international treaties (now a constitutional provision¹⁴) and to take legislative and other measures to address the situation of stateless persons and those at risk of statelessness in the country.

12 KNCHR: Out of the Shadows: Towards Ensuring the Rights of Stateless Persons and Persons at Risk of Statelessness in Kenya. vi.

13 Such as the universal declaration on human rights, international covenant on civil and political rights, international convention on the elimination of all forms of racial discrimination, convention on the elimination of discrimination against women, convention on the rights of the child, international convention on the protection of the rights of all migrant workers and members of their families, convention on the rights of persons with disabilities, African charter on the rights and welfare of the child, American convention on human rights and the European convention on nationality.

14 Article 2(6) of the Constitution of Kenya, 2010.

The report (pictured) was published and disseminated to policy makers and implementers, CSOs and public institutions. As a follow up to the release of the report, the Commission and the UNHCR held a meeting in March 2011 with the Speaker of the National Assembly and some Members of Parliament to appraise them of the research findings, the challenge of statelessness in Kenya for informed policy intervention. There have however been several developments with regard to the issue of statelessness: the Kenya Citizenship and Immigration Bill 2011, which has since been signed into law and is awaiting publication includes provisions to address the issue of statelessness experienced by certain groups in Kenya.¹⁵ The law contains provisions that will register as Kenyan citizens any person who does not have an enforceable claim to the citizenship of any recognized state and has been living in the country for a continuous period since independence.¹⁶ Also to be registered will be any person who voluntarily migrated into Kenya before then and has been continuously living in the country as long as she/he does not hold a passport or identification document of any other country.



An additional related law is the Kenya Citizens and Foreign Nationals Management Board Bill, 2011 which establishes the Kenya Citizens and Foreign Nationals Management Service that will be responsible for the implementation of policies, laws and any other matters relating to citizenship and immigration, births and deaths, marriages, identification and registration of persons, issuance of identification and travel documents, foreign nationals management and the creation and maintenance of a comprehensive national population register. Further, legal reforms are envisaged in regard to the following laws: Births and Deaths Registration Act (Cap. 149), Registration of Persons Act (Cap. 107), Refugees Act, 2006 (No. 13 of 2006), Marriage Act (Cap. 150) and African Christian Marriage and Divorce Act (Cap. 151)- all of which touch on issues of citizenship and/or registration of persons. Any amendments to these laws will be guided by the constitutional values and principles which encompass equality, non-discrimination and the protection of the marginalised.

3.4: Profiling the rights of domestic workers

The Commission's decision to profile the rights of domestic workers was prompted by the controversy surrounding implementation of *Legal Notice 159- The National Social Security Fund (Commencement of Contributions) Order 2009*. This was a directive issued by the Minister for Labour requiring all employers with at least one employee to start remitting contributions to the National Social Security Fund. The directive took effect on November 1, 2009.

The Commission prepared a brief on the issue, the basis upon which it engaged with the National Social Security Fund (NSSF) and the Labor Awareness and Resource Centre (LARC). A roundtable discussion on protection of domestic workers was convened in June 2010 bringing together relevant government agencies, workers unions, employers, employment bureaus, civil society organizations and other relevant stakeholders to discuss collaborative efforts aimed at addressing the existing challenges relating to the protection of domestic workers in Kenya. In particular, it was intended to help clarify the important issues and strategies that can contribute to emergence of a framework for the protection of domestic workers in light of the new legal notice and other developments at the International Labor Organization (ILO). In July 2010, the Commission organized a *Listening Forum* on promoting the rights of domestic workers, which was an experience sharing session with over 150 domestic workers drawn from various parts of the city and open discussions were held where panelists from the trade unions, employment bureaus, Ministry of Labor, Civil Society, NSSF, NHIF and the Commission listened and responded to their concerns.

The Commission subsequently held a tripartite roundtable meeting in May 2011 to discuss the draft ILO Convention on Domestic Workers ahead of the International Labor Congress at which the Convention would be considered. During the meeting, the Commissioner of Labour observed that the stakeholders should seek to campaign for the protection of the rights of domestic workers by engaging first with a constituent that is able to pay workers a minimum wage which is Ksh. 7,600. The ILO Convention was unanimously adopted on 17th June 2011, setting the stage for ratification.

The Commission is cognizant that the five labor statutes do not discriminate against domestic workers. However, enforcement of the laws has remained a challenge to the Ministry of Labour due to the nature of domestic work. The Commission plans to engage the tripartite members to develop a guidance note based on the ILO Convention

¹⁵ Sections 15, 16, 17 and 18. Thereof.

¹⁶ 12th December, 1963.

and the Constitution to enhance the protection mechanisms for domestic workers. The Commission also intends to build the capacity of domestic workers to better articulate their rights in the workplace by holding listening forums in 4 urban areas (Nakuru, Mombasa, Eldoret and Nyeri).

3.5: Minorities and indigenous persons

a) Profiling minority and indigenous peoples rights: working with the Endorois Community

During the reporting period, the Commission worked to profile the rights of minority and indigenous peoples through support to the development of strategies to implement the ruling made by the African Commission on Human and Peoples Rights (ACHPR) following a petition by the Endorois community regarding access to their land, cultural sites of worship and the Lake Bogoria among other concerns¹⁷. Towards this, the Commission organized a workshop in October 2010 for elders from the Endorois community to draft a resolution document to be used by the community and stakeholders negotiating team to engage the Government and County Councils of Baringo and Koibatek on implementation of the decision.

The Commission continued to engage both the government and the Endorois community in order to realize implementation of the ruling by the ACHPR, and convened a meeting of experts to draw a road map on implementation of the ruling. The Commission is, however, concerned by the lack of progress, which it has communicated to the ACHPR. The Commission also made efforts to engage the Ministry of Justice and Ministry of Foreign Affairs by inviting them to the working group on indigenous issues, and followed up on the commitments made to the Endorois by the Minister for Lands during a forum to celebrate the decision at which the Minister committed to ensure that his ministry [of Lands] implemented those aspects of the decision falling within its docket and to bring the matter before Cabinet for discussion and guidance: this is however yet to happen. The Commission has observed that bringing the government to the negotiation table on the Endorois case has been a challenge since there seems to be no clear path of progression due to an apparent lack of political will on its implementation.

In addition to participation in local, regional and international forums on indigenous peoples, the Commission participated in a stock taking meeting hosted by the OHCHR on “Indigenous People in Kenya in the New National Legislative Framework” and a regional convening on business and human rights in which the Endorois case was used as a case study to examine and make proposals on guidance relating to land. The meeting resolved to restart dialogue and set priorities for work relating to indigenous communities in Kenya, which are guiding the work of the Commission. However, the issues concerning minority and indigenous peoples rights remain inadequately addressed and the Commission continues to engage all stakeholders in order to enhance the rights of these communities. The Commission hopes that the Endorois case will provide guidance on the implementation of the Constitution with regards to provisions on the rights of minority groups including indigenous peoples.

Key recommendations

1. The Government should speedily implement the provisions of the Constitution touching on minority and marginalized communities,
2. The Government should fully implement the decision of the ACHPR on the Endorois Community,
3. The Government and non-state actors should involve the minority and indigenous communities in decision making especially in matters regarding them.

3.6: HIV/AIDS and human rights

The Commission’s focus in the area of HIV/AIDS is guided by the principle of non discrimination and the issue of stigmatization against persons with HIV/AIDS, an issue which constitutes a violation of human rights. In this engagement, the Commission has closely collaborated with the National AIDS Control Council (NACC).

The Commission has found that although general awareness on HIV and AIDS is high, numerous human rights challenges remain even with a legal and policy framework in place. Persons living with HIV and AIDS continue to face stigma and discrimination with women and children being the most vulnerable. Most at risk populations such as men who have sex with men, sex workers and injecting drug users are disadvantaged due to religious and socio-cultural biases that hinder their access to information and services. During the year, the Commission worked with partners to promote human rights of persons infected or affected with HIV and AIDS, with a particular focus on the human rights challenges of stigmatization and discrimination. The Commission is currently working with the NACC technical working group on human rights to develop a draft manual on HIV/AIDS and human rights. The Commission,

¹⁷ 276/2003- Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council vs. the Government of Kenya. To access the decision of the African Commission on the Endorois case, visit http://www.achpr.org/english/Decision_Communication/Kenya/Comm.%20276-03.pdf

in collaboration with the NACC and KELIN (Kenya Legal and Ethical Issues on HIV/Aids Network), marked the 2010 International Human Rights day whose theme was **Speak up.....Stop Discrimination** by focusing on stigmatization and discrimination against persons with HIV/AIDS.

Elsewhere, following the controversial case in which *Mr. Daniel Ngetich* and *Mr. Patrick Kipngetich* of Kapsabet were jailed for failure to adhere to TB treatment and posing a threat to the community as under the Public Health Act, KELIN and NEPHAK (local NGOs working in the field of HIV/AIDs), with support from the Open Society Foundation initiated a program to engage communities in and around Kapsabet area on health and human rights issues to enhance effective management of TB. In response to an invitation by KELIN and NEPHAK, the Commission participated in a build up activity towards 2011 World TB Day celebrations held on 24th March. A Community Dialogue Forum was held to mobilize complementary action by all in the effective management of TB in the area. The public forum was attended by government representatives working on TB & health issues, development partners, local NGOs, Community TB Support groups and the media. The key outcome of the forum was the increased capacity of all the participants, especially the persons living with HIV/AIDS who often suffer from TB as an opportunistic infection, to claim their rights through enhanced awareness of their rights under the Constitution and the new mechanisms available for enforcement under Article 43 (1, a) and 43(2) of the Constitution.

Further, in response to an invitation from the Kenya Alliance of Residents Association (KARA), the Commission took part in two human rights and HIV/AIDS training workshops in Kisumu and Kisii as well as public forum on the same. The outcome of these workshops was the creation of networks of CBOs working on human rights and HIV/AIDS issues as well as sensitization of members of the public on HIV and AIDS, stigma and discrimination and the law relating thereto. 50 CBOs were trained in each town and a minimum of 100 persons attended each of the public forums. The forums and workshops participants represented various groups including PLHWA, PWDs, the youth, women and children. The Commission makes a recommendation for enhanced partnerships between the Commission and other actors from the civil society, government and development partners working on HIV/AIDS and human rights, in particular to address challenges of stigma and discrimination which in turn contribute to the spread of HIV/AIDS and affect access to treatment and care.

4.0 Infusion and Mainstreaming Human Rights In Public and Private Spheres

4.1.: Increasing public awareness of human rights through training, capacity building and public forums

The Commission, as part of its mandate to enhance awareness of human rights and civic duties, including to enhance its reach and develop partnerships with grass roots organizations, conducts capacity building trainings for the public and local level CBOs, NGOs and FBOs on identified human rights issues. This is in line with the constitutional mandate under article 59(2)(a) 'to promote respect for human rights and develop a culture of human rights in the republic; and 'to formulate, implement and oversee programmes intended to raise public awareness of the rights and obligations of a citizen under the Constitution'.

The Commission's focus on the public is premised on the fact that developing a culture of human rights will only be possible when in addition to duty bearers, rights holders (the public) are aware of their rights and are sufficiently empowered to claim them. Human rights awareness activities were therefore conducted either directly through public forums in various localities, production of IEC materials, media programmes or through local CBOs, FBOs and NGOs, who were expected to undertake further lower level human rights awareness activities using the information provided in various workshops targeting these organizations. In the reporting year, the following trainings for FBOs, NGOs and CBOs were undertaken.

- a) Training workshop for 80 Community-Based Organizations (CBOs) and Faith-Based Organizations (FBOs) in Lower Eastern Province – with a focus on the Constitution/Bill of Rights, gender and children rights. One organization, Kitui paralegal, has since the training updated the Commission on the progress regarding sensitization on child rights, in particular on issues of child defilement.
- b) Training for a CBO consortium working in the area of health and HIV/AIDS – with a focus on integrating human rights and gender issues into HIV and AIDs programming. At the end of the training, participants developed proposals on integrating human rights and gender into their HIV/AIDS programmes.
- c) Training workshop on ADR and human rights for Malindi Human Rights Forum and other CBOs in Marereni - to strengthen and develop the participants' knowledge in human rights and alternative dispute resolution and to familiarize the participants with substantive provisions of the bill of rights. At the end of the workshop, a plan of action was developed in which the groups came up with activities that they would implement towards increasing human rights awareness in their localities.
- d) Human rights training for 60 opinion leaders in Meru and Kisumu Counties – having noted the limited knowledge among some leaders of the contents of the Constitution. The leaders were sensitized on the constitution with a focus on chapter 4 on the Bill of Rights and Chapter 6 on Leadership and Integrity since these relate directly to their work.
- e) Capacity building for communities in northern Kenya - four human rights trainings on the Bill of Rights and the HRBA were conducted with approximately 200 local residents reached. The target groups were from local CBOs and NGOs, FBOs and women leaders from Isiolo, Marsabit and Moyale regions. The trainings focused on enhancing awareness and understanding of the Bill of Rights, as well as Chapter 11 on Devolution and how these may benefit residents of northern Kenya especially with regards to redressing the longstanding marginalization of the region.
- f) Training on health rights in collaboration with IPAS - the Constitution expressly provides for the right to health including reproductive health. It is against this background that the Commission in partnership with IPAS (an international NGO that deals with reproductive health), Kenya Obstetrical and Gynecological Society, and the National Nurses Association of Kenya organized a two day workshop targeting 50 stakeholders of health regulatory bodies and the two Ministries dealing with health matters to begin to map a way forward regarding implementation of the reproductive health provisions (Article 43) of the Constitution. The Commission has since commencement of the national public inquiry on sexual and reproductive health been undertaking research, training and collaborative engagements with stakeholders in the reproductive health sector to inform this inquiry. The engagement with IPAS is one such collaborative effort.

4.2: Engagement with District Peace Committees in North Rift region

The overall role and goal of District Peace Committees (DPCs) is to promote peaceful co-existence of different groups in a given district as well as neighboring districts (including cross-border areas) through peace building and dialogue to prevent, manage and resolve conflicts. DPCs in the North Rift region, of which the Commission's regional office is a member, have been promoting peace and security through dialogue and reconciliation by conducting reconciliation meetings between communities in conflict. The strategic membership of the Commission in the DPCs allows it to engage in the peace initiatives initiated by the DPCs. The DPCs draws its membership from elected members of the community, representatives of security agencies and the District Commissioner as an ex officio member.

In the reporting year, the Commission facilitated meetings of two district peace committees in Eldoret and Turkwel Gorge, which brought together 80 peace actors and members of the DPCs in the region. The choice of the locations was guided by the perennial conflicts in these regions. The aim of the meetings was to assess the peace situation in the region, increase understanding/capacity of district peace committee members on the ongoing security sector reforms and increase the knowledge of the members of the DPCs on early warning, monitoring and reporting on conflict.

The joint meetings by the DPC in Turkana South and Pokot Central have contributed to reduced tension between the two communities and in the event of conflicts; the two DPCs cooperate with each other in the resolution. Due to this approach, incidences of counter attacks have substantially reduced. The regional office will continue with this engagement in order to reduce inter ethnic/border conflict which have a direct impact on the enjoyment of human rights.

4.3: Development and dissemination of IEC materials

In order to complement capacity building efforts, the Commission develops human rights information, education and communication (IEC) materials to disseminate to state actors, partner CSOs and CBOs and the public. The materials facilitate the dissemination of human rights information to the intended target group and areas to stimulate discourse and awareness of human rights. During the reporting year, the Commission developed and disseminated a booklet on the rights of internally displaced persons and on prevention of torture with the objective of causing attitudinal and behavioral change in the way policy makers and citizens view issues affecting IDPs and the issue of torture. In addition, the IDPs booklet was also developed to be used as an advocacy tool in terms of promoting the rights of IDPs.

The Commission as a national human rights institution commemorates international human rights days every year. On the occasion of the International day in Support of Victims of Torture which fell on June 26th, the Commission developed T-shirts with slogans/messages against torture, which were disseminated in Kariobangi area which had been identified as a hotspot of torture. Additionally, a newspaper supplement on torture was placed in the local dailies. The objective of the supplement was to raise awareness to state actors on the importance of the international day in support of victims of torture as well as highlighting provisions of the draft anti-torture bill, which the Commission together with other stakeholders had developed.

4.4: Media and publicity

Media and publicity aspects of the Commission mainly fall under the functions of the Public Affairs and Communication department. As a support function, media and publicity are cross-cutting across all the work of the Commission. Additionally, media has been critical in propagating human rights information and in branding the Commission externally. In the reporting period, the following actions were undertaken:-

- Enhanced engagement with journalists and the media generally,
- Partnership with media organizations and journalists' associations,
- Media monitoring, and
- Branding and profiling.

a) *Engagement with journalists/the media*

The media plays a critical role in the lives of Kenyans through entertainment, education and information. By engagement with the media, the Commission kept abreast of emerging human rights issues across the country, including reports on human violations and informed the media of developments on the human rights sector. For example, on the provisions relating to freedom of the press and access to information under the Constitution, the Commission, engaged with news correspondents, reporters, writers and editors on the

implications of the Constitution, how to claim the rights, and how to promote their enjoyment by all Kenyans. Media engagement was also undertaken through various Commission events such as event planning, media mobilization, and post-event media reporting analysis. As a result of the engagement with journalists, there was increased media reporting of human rights violations from an informed perspective.

b) *Partnership with media organizations and journalists' associations*

In recognition that the Commission does not have the necessary capacity to conduct media training in certain areas, the Commission established relations with the Media Council of Kenya (MCK), the Kenya Union of Journalists (KUJ), and the Kenya Correspondents Association. Significantly, the Commission brought together the Media Council and KUJ in April 2011 to review upcoming legislation on the Media Council Bill 2010, and the Communication Commission of Kenya Bills 2010. In May 2011, a training workshop was conducted in Eldoret in conjunction with the Media Council of Kenya: this workshop debated various issues that concern not only journalism in Kenya but also focused on how the Constitution captures human rights issues touching on the practice of communication and information in Kenya.

c) *Training on the bill of rights and freedom of information for the Media Council*

After the promulgation of the Constitution, the Media Council of Kenya conducted workshops for journalists, correspondents and reporters from Western, Nyanza and North Rift regions with the objective of enabling them to accurately interpret the new Constitution in their reporting. The participants were trained on how the media can be the channel through which constitutional implementation is actualized and on how media practitioners can correctly interpret the Constitution to their audiences and the Kenyan public at large. The Commission was invited to facilitate sessions on the bill of rights, access to information and on freedom of the media. The sessions covered the opportunities and challenges presented by the Constitution for media practitioners. One of the challenges identified was on the interpretation of article 35 (access to information) and article 34 (on freedom of the media). The understanding of these articles was seen as an opportunity to enhance investigative journalism and which would also give them guidance in ensuring that the media do not misinterpret the constitution. The Commission will continue engaging with the media in the coming year, in particular, community media, given their direct interaction with the public in the rural areas.

d) *Media monitoring*

The Commission is only located in Nairobi, Wajir and Kitale; a factor that limits its reach to other parts of Kenya. Even then, media reports in the form of news enables the Commission to capture human rights issues in the areas where it is not physically present: the Commission, therefore, monitored reported incidents requiring intervention in the form of investigations, redress, research or public education and training. In the reporting period, media reporting of the killing of suspects in Central and Nairobi regions helped inform interventions on extrajudicial killings. While not entirely constituting the Commission's interventions in this area, media reporting supported the Commission's information gathering and publicity. On another level, media reporting helped the Commission understand the trends of human rights issues across the country. Through media reporting, the Commission observed, for example, that extra-judicial killings were reported mainly in the electronic media.

4.5: *Infusion of the Human Rights Based Approach (HRBA) in the public sector*

The Commission recognizes that enhancing the respect, protection, promotion and fulfillment of human rights can be achieved through infusion of human rights standards and principles in the public sector and as such, the Commission has identified workshops and capacity building trainings for state officers as a means of achieving this. In the reporting year, several trainings were undertaken for prisons and police officers, below.

a) *Capacity building training for Prisons officers*

In continuation of and as part of penal reforms initiatives, the Commission carried out capacity building trainings on human rights for various cadres of prisons officers. Three training workshops were conducted for 148 duty officers/deputies in charge of prisons in Kenya and 365 other officers were trained inside Lodwar, Marsabit and Athi river prisons. In total of 513 officers were trained. The objective of the trainings was to enhance promotion and protection of human rights and ensure that accountability, good governance, rule of law and application of human rights principles are upheld and observed in the course of service delivery in prisons. These officers are charged with actual responsibility of implementing prison policies: the Commission therefore used the opportunity to enhance the capacity of these officers in administering the rule of law in their respective institutions. Emphasis was placed on prevention of torture, and cruel, degrading and inhuman

treatment. Human rights issues affecting the officers and the welfare of prisons officers in general were discussed. The Commission targets to have trained over 50% of the prison officers across the prisons facilities in the country by the end of the next financial year.

b) *Training of Police Officers*

The Commission conducted training for 50 police instructors from Embakasi GSU Training College and Kiganjo Police Training College in line with the Commission's goal of infusing human rights in the training curriculum of law enforcement officers. The objectives of the training were: to create an understanding and respect for human rights among the Police officers and raise awareness on the rule of law, enhance the respect and realization of human rights by the Police officers, familiarize participants with the method and tools for human rights based approach to their work and raise the capacity of police officers to prevent torture cases in police stations. The strategy adopted by the Commission to train police instructors was informed by the strategic role that instructors play in training of police recruits, thereby providing an opportunity to infuse human rights content from the point of recruitment and training police recruits. An additional training of trainer's was conducted at the GSU training school in Embakasi for 196 police officers with a specific focus on human rights and gender. Special focus was on gender mainstreaming for the purposes of infusing it into the police service programs and policies. This is expected to lead to an empowered pool of police officers with good understanding of human rights and gender issues.

The Commission has addressed a previous communication challenge with the police by arranging for regular and direct contact with the police through official visits to their offices for mutual discussion on the activities intended to be carried out through their partnership.

c) *Development of manual and curriculum for training public officers*

A further avenue that the Commission has adopted to infuse human rights standards and principles within the public service is the development of training manuals and curriculums for human rights training for public officers. Training manuals and curriculums are designed to improve the quality of performed tasks of the respective target group, address gaps on human rights understanding and application and at the same time are used as a general human rights reference document. In the reporting period, a training manual on human rights was developed for public officers who are trained at the government training institutions (GTIs). The training content was geared towards informing and making them more conscious of their human rights obligations while discharging their duties and apply human rights based approaches in performance of their duties.

The Commission also collaborated with the Raoul Wallenberg Institute of human rights (RWI) and the Kenya Prison Service in the finalization of the prisons training curriculum. This was identified as an avenue that can be used to infuse human rights standards in the prisons training by ensuring that quality human rights content is captured. In a similar move, the Commission participated in the validation of the police training curriculum to ensure that it captures human rights content that will eventually result to the infusion of human rights standards in the work of policing.

d) *Engagement with the Office of the Prime-Minister, Performance Contracting department*

Article 10 of the Constitution provides for the National Values and Principles of Governance that are binding on state organs, public officers and all persons whenever they apply or interpret the Constitution or make and apply public policy decisions. These national values and principles of governance include human rights based approach elements that are; the rule of law, participation, human dignity, equity, inclusiveness, equality, human rights, non-discrimination, protection of the marginalized, good governance, integrity, transparency and accountability and sustainable development. The Commission sees its role as that of guiding and evaluating performance of state organs, public officers and citizens in the process of understanding and applying the human rights based approach in their work as per the requirements of the Constitution.

The Commission has identified the mandate of the Performance Contracting department which brings together all Government Ministries and Departments to set commitments aimed at improving service delivery as the appropriate entry point in dealing with the public sector. Infusion of human rights in the performance contract of public officers will ensure direct incorporation of human rights targets in all phases of government planning and project execution including annually measuring the said performance. In this regard, public officers will be required to design, implement and monitor their activities and interventions in line with the HRBA principles and values captured in article 10 of the Constitution. The Commission, jointly with the Ministry of Justice, has been in consultation with the Performance Contracting office to join them as a specialized agency in all aspects of mainstreaming human rights in the public sector. This activity will be broadened in the next year.

4.6: Business and human rights

Business enterprises play an integral role in the realization human rights. They influence policies and practices by governments; and their activities have the potential to have positive or negative impacts on human rights. Human rights discourse has therefore in the recent past begun to analyse the responsibility of transnational corporations and other business enterprises to respect human rights. The Commission has since inception worked in this area while moving away from dealing with complaints lodged by employees and communities affected by business activities to making inputs into international and national policy and legal frameworks aimed at enabling business take greater responsibility for their human rights impacts.

At the international level, the debate on business and human rights has led to the development and adoption of the UN 'Protect, Respect, Remedy' Framework, which clarifies the roles and responsibilities of governments and business in relation to human rights and are underpinned by three pillars – the state duty to protect; the corporate responsibility to respect and access to remedial mechanisms for victims of corporate related human rights violations. To operationalize the Framework, the Special Representative of the Secretary General (SRSG) developed Guiding Principles (GPs) through a highly consultative process in which KNCHR participated. The GPs provide governments and business concrete and practical recommendations for the operationalization of the UN Framework. When the Guiding Principles were opened for review and comment in November 2010, the Commission held two meetings to collect and collate the views of business enterprises, CSOs, ministries and state agencies, who included: Ministry of Labour, Kenya Electricity Generating Company (Kengen), Kenya Power & Lighting Company (KPLC), Kenya Bureau of Standards (KEBS) and Kenya Commercial Bank (KCB). A second meeting was organized in partnership with the OHCHR and the Muslim for Human Rights (MUHURI). The views presented at both meetings were compiled into a report that was submitted to the ICC Working Group on Business and Human Rights. The report was used to strengthen the Commission's advisory to the government of Kenya on implementation of the Framework, which was shared with key government institutions such as the Ministries of Justice, Trade, Industrialization, Planning, Kenya Chamber of Commerce, the Kenya Investment Authority (KIA) and the Export Processing Zones Authority (EPZ-A). This advisory provides policy makers with a brief on international developments in relation to business and human rights. It makes recommendations to the Government on how to actualize its human rights obligations with respect to business enterprises. A summary of the advisory was also carried in the Business Daily on 16 June 2011.

Other activities implemented with regards to business and human rights include:

a) **10th International Conference of National Human Rights Institutions (NHRIs) on Business and Human Rights**

The Commission participated and contributed to the 10th International Conference of National Human Rights Institutions held in Edinburgh, Scotland both in its capacity as a member of the ICC Working Group on Business and Human Rights and as a NHRI. The conference addressed the theme of *Business and Human Rights: the role of national human rights institutions* with recommendations made to broaden NHRIs work in the area of business and human rights. At the end of the conference, NHRIs agreed to:

- Incorporate business and human rights in their strategic plans and work plans.
- Engage with and support the ICC Working Group on Business and Human Rights, and in all activities encourage participation from relevant stakeholders including government, legislatures, trade unions, and business including SMEs, NGOs and civil society.

During the conference the Commission, in partnership with the Spain based Center for Economic and Social Rights (CESR) and the Scottish Human Rights Commission held a side event on *Monitoring states' obligation to fulfill economic, social and cultural rights: methodologies for national institutions*. The workshop, focused on methodologies that NHRIs can use to assess public policy against the state's obligation to fulfil economic, social and cultural rights. CESR is currently undertaking a project on this question, in partnership with the Commission. The goal of the project is to learn from NHRIs' experiences in monitoring ESC rights; to identify if the monitoring framework developed by CESR would be useful in the NHRI context and, if so, to produce a guide on the framework for use by NHRIs around the world. During the event, the Commission gave its perspectives on monitoring economic, social and cultural rights, through a presentation of the Commission's report *Living Large: Counting the Cost of Official Extravagance in Kenya (2006)*.

5.0 Profiling and Enhancing Realization of Economic, Social and Cultural Rights

Since 2003, even in the absence of guiding legal framework for protection of economic, social and cultural rights in Kenya, the Commission has prioritized work around profiling and enhancing realization of these rights. Towards this end, the Commission established a fully fledged department and implemented programmes directed towards ensuring that Kenyans understand and enjoy their economic, social and cultural rights. This work has been guided by the human rights principle of indivisibility of human rights such that one cannot sufficiently realize their civil and political rights without adequate provisions for the realization of economic, social and cultural rights. It is noteworthy that the Constitution of Kenya, 2010 under Article 43 expressly recognizes and provides the legal basis for the enjoyment of economic, social and cultural rights. In the reporting year, the following were undertaken.

5.1: Culture and human rights

Since 2005, the Commission has engaged with cultural institutions to strengthen the protection and promotion of human rights particularly for vulnerable groups such as widows and orphans. The partnership with local elders has been based on the premise that they provide a platform for the settlement of disputes for many Kenyans and it is imperative that human rights norms are infused in this process to promote equality and non discrimination. The Commission has sought to enhance dialogue between traditional elders, civil society, community organizations and state actors. To this end, a forum was organized bringing together 40 elders from Njuri Ncheke, CBOs, community representatives and the provincial administration in greater Meru in which participants were trained on human rights and awareness on the role of cultural institutions in protecting human rights was enhanced. The elders also passed a resolution to protect vulnerable members in their community and utilize human rights principles in their dispute resolution mechanisms. The Commission intends to monitor the cases that will be handled by the Njuri Ncheke Elders to ensure that human rights principles have been utilized in their judgments.

The Commission, through the Northern Kenya regional office embarked on a project to identify focal women organizations, leaders and council of elders on a project on culture and Maslah system of dispute resolution to address the issues of sexual offences and other violations of the rights of women and girls in the northern Kenya region. Maslah is a traditional system of dispute resolution used in the region: despite its numerous benefits to the community including its ease of accessibility and speedier dispensation of justice in a manner that reconciles both parties to a dispute, it has been abused especially with regards to sexual offences. The regional office found that 90% of cases relating to sexual offences are solved out of court through Maslah. The system, however, violates the rights of victims (mainly women and girls) because offenders are allowed to get away with the crime by compensating the victim's family through the payment of livestock. The direct victim is not addressed in any way in the process, hence gets victimized further.

The regional office linked elders under Maslah and women in Wajir with the Court users Committee and other criminal justice departments including the Children's Department to address the misuse of Maslah for rape and defilement cases hence ensuring enhanced access to justice for the most vulnerable. Towards this end, meetings and forums were held with women leaders and the council elders to design and firm up the project before commencing implementation. The project is in its initial phase and it involves strengthening capacities of local women leaders, local CBOs working on sexual offences, the council of elders and the court users committee. The project will be fully implemented in the next financial year including expansion to two more counties in the region. The ultimate goal is to enhance the capacity of traditional justice mechanisms in the region to protect human rights especially of vulnerable members of the community, and to learn lessons for replication in other regions.

6.0: Transitional Justice

The Commission has been at the forefront in campaigning for a credible and effective transitional justice mechanism to address the legacy of mass abuses committed by the successive governments. In actively pursuing the transitional justice agenda, the Commission is driven by the conviction that establishing truth about past human rights violations, delivering justice and learning from the past is a prerequisite for the establishment of democracy, a culture of respect for human rights and the rule of law.

6.1: Monitoring and advising on the TJRC process

In the context of the transitional justice, the Government established the Truth, Justice and Reconciliation Commission (TJRC), through an Act of Parliament, as part of the accountability component of Agenda Four of the National Accord. The key mandate of the TJRC is to investigate gross human rights violations and other historical injustices in Kenya between 12 December 1963 and 28 February 2008. The Commission played an instrumental role in the process leading to the enactment of the TJRC Act and was part of the selection panel of TJRC Commissioners. The TJRC, however, delayed commencement of its work when it encountered a credibility crisis touching on the probity of the chairperson, Bethwel Kiplagat, which eventually led to his stepping aside. The TJRC finally commenced public hearings in April 2011. The Commission has remained a strategic partner in facilitating the work of the TJRC and in enabling victims to effectively engage with and participate in the hearings. The following were undertaken as part of the TJRC process:-

a) *Training selected victim groups on effective engagement with the TJRC*

The Commission organized forums to prepare victims of past injustices to effectively participate in the TJRC hearings that were held in Nairobi, Nakuru, Isiolo, Mombasa, Mt. Elgon, Kisumu, Kisii and Kuria. This activity was informed by the monitoring of the TJRC hearings in the Northern Kenya and upper Eastern regions where the Commission observed that women were ill prepared in giving their testimonies. The forums were used to ensure that women among other vulnerable groups were able to effectively present their case to the TJRC and that the gender dimension of the atrocities was accurately captured. The forums gave the Commission the opportunity to strengthen the capacity of the victims as an important component in ensuring that justice is realized in the long term. Victim groups were empowered to present their grievances and pursue their demands for justice, accountability and compensation during and after the TJRC and related transitional justice processes. The immediate outcome of the trainings was increased awareness of the TJRC process among victim groups and effective presentation of victim's testimonies before the TJRC. Meetings with stakeholders and partnership with TJRC led to increased engagement and support to the work of the TJRC.

b) *Monitoring and advising on the TJRC process*

The Commission held public forums on transitional justice in Nairobi, Mombasa, Nakuru, Wajir, Marsabit, Isiolo, Kisumu, Trans Nzoia and Mt Elgon which were used to map out areas and engage in fact finding missions to prepare victim groups to effectively engage with the TJRC process. They were also used to ensure that there is a consistent focus on the rights and needs of victims. Special interest groups comprising of women survivors of the Mt. Elgon operation and the Ogiek and Dorobo minority groups of Trans-Nzoia were also prepared in order to increase their capacity to effectively engage in the TJRC process. The forums gave the Commission an opportunity to strengthen the TJRC process as an important component in ensuring justice for victims. This particular intervention contributed to clarity on transitional justice in Kenya from victims' perspectives. The forums also gave TJRC an opportunity to put in place mechanisms for dealing with vulnerable victims like children, people with disabilities and victims of gender based violence.

The Commission also participated in meetings with the TJRC including mock hearings which gave the TJRC an opportunity to improve on the aspects like protecting vulnerable witnesses, interpretation and sign language services for deaf persons, Braille for the visually impaired victims and support mechanisms for witnesses who are in danger by virtue of the evidence to be adduced before the TJRC.

Several achievements were realized in this regard:

- Through advocacy, the Commission raised awareness and provided clarity on the work of the TJRC as an important component in the broader transitional justice agenda thereby contributing to the reduction of misinformation about the TJRC process.
- Effective public participation and empowerment were enhanced through the preparation of victim groups for the TJRC hearings in Nairobi, Kisumu, Mombasa, Isiolo, Garissa, Moyale, Mt, Elgon and Nakuru.

- The Commission ensured that the process is victim-centered and that special attention is given to vulnerable groups such as persons with disabilities, minorities, internally displaced persons, women and children.

The Commission will in the coming year remain engaged in the TJRC process and will:

- a) Support the formulation of a comprehensive national reparations policy for victims of historical injustices,
- b) Monitor and advocate for full implementation of the recommendations of the TJRC report,
- c) Work with partners in the transitional justice network in developing strategies to prevent future gross and systematic human rights violations.

Case study: TJRC process in northern Kenya

The northern Kenya regional office embarked on creating publicity regarding the Wagalla Massacre, which took place in 1984 in Wajir, as well as the Garissa massacre, Malkamari massacre and the Turbi massacre as key historical injustices in the context of the TJRC process. The output of these profiling actions and consultations were incorporated during the stakeholder consultations on the TJRC process. In this regard therefore, the regional office conducted activities to create awareness on the TJRC process to enable effective participation. These included victim preparation, media publicity on the TJRC process, identifying cases and victims for the hearings, monitoring the TJRC hearings, feedback to the TJRC team for improvements in the conduct of the hearings (given that these constituted the first leg of the hearings countrywide) and post hearings with victims to take stock of the process. Generally a total of 160 victims were prepared to give their submissions before the TJRC hearings: these comprised both men and women.

The regional office established a monitoring team composed of staff, commissioners and also engaged 5 external monitors during the hearings to ensure that the TJRC Rules and hearing procedure are observed and adhered to; monitor the observation of the rules of natural justice, procedural fairness, and adoption of a victim-centered approach during the hearings; map out key issues touching on access to justice, treatment of minority groups, and witness protection/security; increase the overall participation of communities/stakeholders in the public hearings, and monitor their participation; and address the immediate concerns that local organizations, media groups and victims/witnesses may have with regard to the hearings. The monitoring exercise utilized the structured KNCHR Monitoring Tool and focus group discussions during post hearing. The independent observations provided crucial supplementary information to the TJRC.

Post-Hearing Feedback

The regional office Monitoring Team held post-hearing review meetings with the Wajir, Mandera, Moyale and the Marsabit witnesses and victims. The participants at these meetings raised the following key issues:

- There was a general feeling of relief (“pressure off-load”). It was reported that the local communities felt that, for the first time in the region’s history, they had a forum to openly air their long-standing grievances.
- The participants felt that the presentation of common County-level memorandums had effectively disseminated issues that happened in the specific counties. This diffused the tensions that had earlier emerged, following revelations that some communities contemplated presenting memoranda that would jeopardize the local inter-ethnic healing and reconciliation process.
- In working on transitional justice matters in the region including monitoring the TJRC hearings, the regional office built upon good working relations with the media, who were used to profile the transitional justice priorities in the region. This not only enabled more informed participation of the locals, but also clarified and profiled the issues among Kenyans in general. Through the Commission’s engagement with the media, the Wagalla massacre for instance has become a national agenda.

6.2: The International Criminal Court (ICC) process

Advocacy on the ICC process – the ICC Network

The Commission is part of the ICC-Civil Society Network which was founded in 2010 to foster strategic engagement with the ICC. The network comprises several civil society organizations working on various aspects of human rights and transitional justice, among which are the International Centre for Transitional Justice (ICTJ-Kenya), ICJ-K, Kituo cha Sheria, Independent Medico-Unit, Coalition of Violence against Women (COVAW) and the Federation of Women Lawyers (FIDA-Kenya). The network is coordinated by Kenyans for Peace Truth and Justice (KPTJ) and works towards cultivating awareness and understanding of judicial proceedings in situations and cases before the ICC. It also aims to foster realistic expectations about the Court's work. The network has since inception formulated a number of strategies around the ICC process in Kenya and continued to engage with the public in a clear and informative manner as well as countering politicization of the Court's work.

The Commission's engagement with the network was founded on its investigation of the 2007 Post- Election violence, which was documented in its report '*On the Brink of the Precipice: A Human Rights Account of Kenya's Post 2007 Election Violence.*' The report was cited in the ICC's subsequent rulings which authorized the conduct of investigations into the Kenyan situation. Thereafter, the Commission was involved in providing protection to prospective witnesses to ensure their safety pending the formal provision of protection by the ICC mechanism.

During the period under review, the ICC network concentrated on victim-centered processes with some members engaging in victim registration. The network also supported local lawyers to be involved in the ICC process and to seek to represent victims in the Court. The Commission's role remained largely the provision of technical guidance through various public forums organized to discuss and inform the public about the ICC process. It is noteworthy that the ICC process has been heavily politicized in the country and the lack of an outreach office has exacerbated the situation. Disseminating objective and accurate information about the ICC to the public has assisted in clearing some of the misconceptions and the public has become better educated on ICC matters. During a study visit conducted by the network to the Hague in April 2011, the ICC Prosecutor Louis Moreno-Ocampo stated that Kenya was one of the countries where the awareness level on the ICC matters was very high, hence the Prosecutor's office after conducting a survey came to the conclusion that they did not need to establish a presence in Kenya. This awareness has been partly through the efforts of the network, though the role of the media cannot also be discounted. The Commission and the ICC Network will in the next year upscale its outreach work to educate Kenyans on the role of the ICC, away from its politicization.

7.0 Constitutional Reform

7.1: Monitoring the 2010 Referendum on the draft Constitution

The Commission conducted an intensive monitoring exercise of the August 2010 referendum on the then proposed Constitution. The engagement of the Commission in this area of work was informed by the need to contribute towards the institutionalization of a culture of respect for the rule of law and democracy in political contests. The referendum monitoring was undertaken against a background of poor management of the electoral process in 2007 and the need to safeguard the right of citizens to participate effectively in democratic processes. This work was also informed by the acknowledgement that the manner in which the referendum would be conducted would set the pace for the 2012 General Elections. The idea was to monitor the referendum in order to position the Commission to be able to exert influence over processes aimed at reforming electoral laws and regulations and the political environment in readiness for what is likely to be highly competitive elections in 2012. The main activities that were implemented under the project included hotspot mapping, campaign monitoring, media monitoring, establishment of a call center, civic education and actual referendum monitoring.

A media monitoring firm was engaged to monitor hate speech with 43 FM radio, 11 television stations and 4 newspapers monitored. A call center was established through which information was received from the public on incidences of hate speech and incitement. Staff implemented the activities but the operations were beefed up by the recruitment of 43 temporary project officers (project coordinator, data analyst, data entry clerks and monitors). For the referendum, 40 teams (120 staff in total) were deployed to 100 constituencies for six days.

The following were the key achievements of the monitoring exercise:

- The release of the interim report which detailed cases of electoral law violation and recommendations for improving the integrity of the electoral process.
- The Commission established partnerships and vital collaborations with key actors, including the National Steering Committee on Peace Building and Conflict Management (NSC), the NCIC and the UWIANO platform through information sharing and joint interventions to diffuse tensions.
- Through regular monitoring and issuing of reports, the Commission contributed to reduction of instances of hate speech and incitement to violence which had began emerging at the onset of referendum campaigns.
- The Media adopted the Commission's definition of hate speech which served to guide them in terms of reporting instances of hate speech perpetrated by politicians. This common understanding was useful and contributed to reduction of instances of hate speech reporting by media houses.
- The Commission's participation in referendum monitoring helped secure the integrity of the vote: the mere presence of the Commission in polling stations and tallying of votes (in 100 constituencies) enhanced transparency and accountability.

7.2: Civic education on the [draft] Constitution

In the run up to the August 2010 referendum, the Commission undertook various targeted public outreach strategies to create awareness on the then proposed Constitution. In addition to public forums, the Commission sponsored an interactive Television and Radio talk show on the proposed Constitution in partnership with the Kenya Television Network (KTN) and Radio Maisha. The TV talk show dubbed **Agenda V** was aired live on location in Nairobi, Kisumu, Isiolo, Garissa, Kakamega, Eldoret, Nakuru, Mombasa and Embu and allowed panelists to clarify to members of the public various constitutional provisions or misinformation and myths that they had regarding the then proposed Constitution. Nine radio talk shows were aired in the period preceding the referendum through Radio Maisha. Some 40,000 IEC materials on the various gains in the proposed Constitution were prepared and disseminated during the outreach forums. These included T-shirts, posters and information sheets.

The key outputs realized through these interventions include:

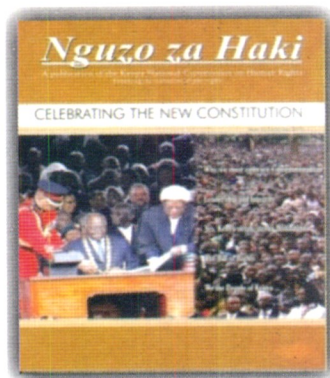
- Contribution to the reduction in levels of misinformation that was rife during the campaign period as well as clarification of contentious clauses. The interactive shows were therefore a useful platform through which citizens were able to air their views and get informed about the proposed constitution and the referendum process.
- Awareness on the proposed constitution was enhanced.
- Shaping public discourse on the proposed Constitution, which was particularly critical since politicians and other leaders were keen on misinforming the public and therefore influencing the voting patterns.

7.3: Occasional report on the Constitution

The Commission prepares occasional reports as well special reports on identified human rights issues with the aim of generating policy and administrative proposals for reform purposes. During the reporting period, the Commission prepared one occasional report entitled '*Operationalizing Kenya's New Bill of Rights: Policy, Legal and Administrative Priorities and Considerations*'. The report is based on Kenya's new Constitution which was endorsed by an overwhelming majority (66.9%), and ushered in the changes that Kenyans had been clamoring for decades. It focuses on clarifying the gains and opportunities that the Bill of Rights (Chapter 4 of the Constitution) presents to Kenyans and also provides policy makers and implementers with practical proposals on effective use of the Bill of Rights while undertaking their executive, legislative or judicial functions as provided in the Constitution.

Kenya's new Bill of Rights has been described as novel in that in contrast to the 16 articles provided in the former Constitution, the new Bill of Rights contains 38 articles and expands the scope of rights from civil and political rights to economic and social rights. The latter, which had not been specifically provided for in the previous constitution have now been identified and granted constitutional protection.¹⁸ In addition, the rights of vulnerable persons such as persons with disabilities, women, children, the elderly and the youth have been highlighted.¹⁹ That the Bill of Rights is '*binding to all state organs and persons including private actors*' is unusual since the duty bearer in the implementation of rights is usually the state.²⁰ It is hoped that this progressive legal framework will ensure protection and equality for all persons in Kenya. This Occasional report will be published and widely disseminated in the next financial year with advocacy towards influencing the implementation of the Constitution with a focus on the Bill of Rights.

7.4: Nguzo za Haki



The Commission, as part of its efforts to inform Kenyans on emerging human rights issues, produces a bi-annual magazine known as *Nguzo za Haki*. The publication seeks to sensitize the public and stimulate discourse on topical human rights issues with the aim of generating individual, collective and official action. The Commission, during the reporting year, published Issue No. 11 of the *Nguzo za Haki* magazine (pictured) on constitutionalism entitled, '*Celebrating the New Constitution*' which analyzes the history and context under which the country achieved this historic milestone. The publication, launched in December 2010, provides a selection of key issues that the country needs to consider in its transition to the 'second republic'.

7.5: Annual Human Rights and Democracy Awards

The Commission organises the Annual Human Rights and Democracy Awards to inspire, support and motivate individuals and institutions that have positively contributed to the protection of human rights and promotion of democracy Kenya. The event has been held annually since the inaugural ceremony held in February 2004.

In December 2010, the Commission issued one special award (the Katiba Award) to three individuals and one institution that had made significant contributions in the constitution making process in Kenya. The sixth Human Rights Awards Ceremony was held on 11th December 2010. The selection of awardees was done by an independent awards Committee comprising Kevit Desai from the private sector, Eric Shimoli from the media, George Kegoro from ICJ-K, and Brian Kahumbura from the British High Commission, together representatives of the Commission. The nomination criteria were widely publicised in the local dailies and radios, and circulated to partners.

¹⁸ Article 43 of the Constitution, 2010

¹⁹ Articles 52-57 of the Constitution, 2010

²⁰ Article 20 (1) of the Constitution, 2010

A list of four awardees: Hon Martin Shikuku, Prof. Yash Pal Ghai, Hon. Abdikadir Mohammed and the Committee of Experts (CoE) was adopted unopposed. The Rt. Hon Prime Minister, Hon. Raila Odinga, and H.E the President, Hon Mwai Kibaki, were nominated for honorary awards in recognition of their contribution to the realisation of the new Constitution of Kenya, 2010.

Hon Martin Shikuku, former Member of Parliament for Butere, was given the Katiba Special Award 2010 for his extraordinary commitment to the struggle for constitutional reform and multi-party democracy. By conferring the Katiba 2010 Special Awards on Hon Shikuku, the award recognized all the unsung heroes and heroines of Kenya's first and second liberation.

Prof. Yash Pal Ghai, a renowned legal scholar and former chair of the Constitution of Kenya Review Commission which wrote the Bomas Draft Constitution, was recognized for having consistently provided technical expertise and encouraged wide participation in the constitution making process. His effective leadership was demonstrated in facilitating the merging of the two competing initiatives – the parliamentary group and the Ufungamano initiative to form one Commission on the Constitution Review in 2000.

Hon. Abdikadir Mohammed, the Mandera Central MP, was awarded the Katiba Special Award 2010 in recognition of his exceptional efforts and outstanding leadership. As Chair of the Parliamentary Select Committee on Constitution Review, he steered delicate political negotiations to arrive at a consensus, leading to the enactment of the new Constitution.

Committee of Experts on the Constitution Review (CoE) was recognized for its outstanding performance and exceptional efforts in delivering a new constitution through a peaceful, transparent and credible process. In spite of different political and other interests competing to influence and/or scuttle the constitution making process, resource constrains and time limitation, the CoE navigated the charged political environment to deliver a popular constitution within stipulated time. By conferring the Katiba 2010 Special Award on the Committee of Experts, the Awards Committee sought to inspire and motivate state institutions to demonstrate the highest levels of integrity, ethical and professional standards, efficiency and effectiveness in fulfilling their mandate to restore public confidence in public institutions.



L: Former CKRC Chair, Prof. Yash Pal Ghai receives the Katiba Special Award 2010 from the Executive Director of ICJ-K, George Kegoro. R: Hon Martin Shikuku receives the Katiba Special Award 2010 from Commissioner Wambui Kimathi.



*L: Lands Minister, Hon. James Orengo receives the Katiba special Award, 2010, on behalf of the President, H.E Mwai Kibaki, presented by the KNCHR Chairperson, Florence Simbiri-Jaoko
R: The Permanent Secretary, Ministry of Justice, Amb. Amina Mohamed receives the Katiba Special Award 2010 on behalf of the Prime Minister, Rt. Hon Raila Odinga*

8.0 Monitoring and Advising on Institutional Reforms

The Commission focuses on advising on security sector, penal and judicial reforms given the understanding that these sectors have the potential to play a key role as enablers of enjoyment of human rights. This is an area of work that the Commission will continue to monitor and advise on measures to ensure that they are structured and operate within the context of human rights principles, and that they are ultimately centered around efficient and result-oriented and rights-based service delivery to the public, especially the most vulnerable.

8.1: Security sector reforms

Reform of the security sector was one of the priority areas under the Agenda Four items of the National Accord. The Commission has since its formation focused on catalyzing reforms in this sector especially the police given the critical role they play in the protection and promotion of human rights. The following activities were therefore undertaken in the reporting period:-

a) *Stakeholders' National Conference on security sector reforms in Kenya*

The Commission organized a stakeholders' *National Conference on security sector reforms in Kenya*, which came against the backdrop of rising national debate on security sector reforms issues at constitutional, legislative and institutional levels. The reform process had however provided for limited cross-sector stakeholder participation. The conference thus provided a platform to broaden stakeholder engagement and foster dialogue on security sector reforms. A key result was the creation of the Usalama Forum which is a framework for partnership of actors pushing for reforms within the security sector.

The Usalama Forum brings together local, national and international organizations that promote active citizen engagement with ongoing security sector reforms. The Commission in partnership with Usalama Forum has pushed for various reforms including advocacy and lobbying for policy and legislation, police professionalism, community policing and oversight. In the reporting period, the Commission and Usalama reviewed and advised on various Police Bills that include the Independent Policing Oversight Authority Bill, the National



L to R: Chairperson of the KNCHR; the Minister for Justice, Hon. Mutula Kilonzo and the Minister for Internal Security, Hon. Prof. George Saitoti at the official opening of the National Conference on Security Sector Reforms

Police Service Bill and the National Police Service Commission Bill of 2011. The input of the Commission and the Usalama Forum were taken into account and are included in the Bills published on the 12th August 2011. The Independent Policing Oversight Authority Bill 2011 recognizes the Commission as a member of the board and the Commission is one of the bodies that form the selection panel of the members of the National Police Service Commission.

b) Campaign on human rights and counter-terrorism

The Commission has continued to play a lead role in monitoring and investigating serious violations of human rights by the Police and other security sector agencies in the context of the war against terrorism. Following a terrorist bomb attack in Kampala, Uganda in July 2010, several Kenyans were renditioned to Uganda by the Kenya Police in contravention of both the Kenyan Constitution and international law. The Commission joined other human rights groups in raising concerns regarding the illegal renditions and in seeking the return/fair trial of the renditioned Kenyans. Four public forums and advocacy initiatives were therefore held in Mombasa and Nairobi to address the salient issues around rule of law and human rights vis-a-vis terrorism and global peace. A team of lawyers was put together and instructed to pursue justice for the renditioned Kenyans.

Key achievements from this campaign include:

- Following the public awareness generated by this campaign, the Minister for Justice publicly condemned the police for the renditions, saying that it was a violation of the Kenyan Constitution and the fundamental rights of the suspects.
- The Commission engaged MPs which led to a major debate in Parliament during which Parliament took the executive to task for the continued violations of human rights within the context of war on terrorism.
- Continued fostering of co-operation by the Commission with other human rights actors and institutions interested in security and human rights.

c) Monitoring police recruitment

The Commission together with the Usalama Forum hosted a secretariat formed to monitor the 2011 police recruitment process. This followed media reports that police recruitment was not transparent and credible. The Commission in partnership with the CIC, Usalama Forum and civil society organizations established a national police recruitment watch centre to monitor national police recruitment exercise. The integrity, credibility and gender equity of the recruitment exercise were specifically scrutinized. The Commission had contact with the national recruitment committee through the Police Reforms implementation Committee and constantly updated the Kenya Anti Corruption Commission. A short text message-only line for members of the public to report on any complaints and emerging issues was established and monitors were sent to all the 47 counties to cover the recruitment exercise. The recruitment was in the end lauded as a major improvement (given the rampant corruption that has characterized past recruitments in the police establishment) due to the monitoring conducted by various actors, including the Commission and the Usalama Forum. A key achievement of the monitoring exercise was the notable reduction in reported incidences of bribery and other malpractices. The Commission will continue monitoring the national police recruitment exercises to enhance its transparency.

d) Campaign for a transparent and accountable police vetting process

Vetting of police officers was one of the key recommendations of the Justice Philip Ransley Task Force Report of 2009 as a way of restoring public confidence and enhancing accountability and professionalism within the police service. The constitution also calls for transparency, accountability and public participation in the appointment and vetting of public officers. However, serious concerns were raised regarding the manner in which the vetting of the police was being conducted.

In July 2011, the Commission embarked on a campaign for a transparent and accountable police vetting process following concerns raised with regards to the manner in which the police had commenced the vetting process. The Commission and Usalama forum and other civil society partners recommended that the ongoing vetting be stopped immediately, it be reconstituted to make it compliant with the Constitution and that stakeholders map the means and the timing of a comprehensive vetting exercise that ensures public participation and

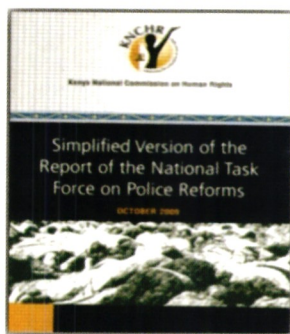
accountability. The Commission convened meetings with partners and appealed to the CIC to offer guidance in the matter. The immediate was that CIC successfully required the police to call off the vetting terming it premature. The police vetting process was subsequently suspended until legislation was put in place. The Commission will continue to monitor, advocate and lobby for proper police vetting and will develop a vetting tool to assist in guiding the process.

e) *Publication of the popular version of the report of the Task Force on Police Reforms*

The report of the National Task Force on Police Reforms popularly known as the Philip Ransley Report of November 2009 was handed over to the President and the Prime Minister in November 2009 and contained a number of findings and recommendations geared towards a radical reform of the police force. In order to make the report accessible and understandable to the public, the Commission published a popular version of the report (pictured) with a focus on the key findings and recommendations for police reforms. This was launched and a nationwide dissemination exercise carried out in various towns across the country. A total of 2,600 copies of the report were disseminated during the forums where an estimated 4,600 people were educated on the contents of the report and further on the security chapter of the Constitution as well as the pending bills on police reforms (the Independent Policing Oversight Authority, the National Police Service Bill 2011 and the National Police Service Commission Bill 2011).

The key output realized in this activity was increased awareness by the public of key provisions in the Ransley report and key provisions in the Constitution in relation to the security sector. This will position the public strategically to be able to demand better services and accountability of police officers.

8.2: Judicial reforms



A major milestone for the Commission during the year under review has been the establishment of closer collaboration with the Judiciary. Several collaborative activities geared towards reforming the judiciary and fostering partnership were carried out. In March 2011, the Commission in conjunction with the Kenya Magistrates and Judges Association (KMJA) held a stakeholders consultative forum on the role of the judiciary in the implementation of the new Constitution. Various issues were discussed at the forum including vetting of judges and magistrates; constitutional supremacy and the rule of law; the role of the judiciary in nurturing constitutionalism; access to justice and human rights; and securing a credible institution through proper legislative and structural framework. This led to wide acceptance of significant portions of the vetting tool which the Commission had actively participated in developing. The tool was utilized during

the vetting of members of the newly constituted Judicial Service Commission. Additionally, consensus was reached among the stakeholders on the need for the establishment of a permanent constitutional court.

Enhanced coordination and linkages among the criminal justice actors (Court users Committees)

One of the perennial problems in the effective administration of justice has been lack of coordination amongst the various agencies in the administration of justice sector thereby leading to delayed dispensation of justice (through huge backlog of cases) and congestion in prisons. To address this problem, the Commission has been supporting Court users Committees (CuCs) in various stations across the country to enhance coordination of agencies in the administration of justice sector. In the year under review, the Commission focused on Eldoret, Malindi, Nyeri, Wajir, Eldoret and Kitale. The objective of the CuCs is to enhance collaboration among state agencies in the criminal justice sector so that they may be able to jointly address problems leading to delayed dispensation of justice and its corresponding consequences such as congestion in prisons. In Wajir for example, the regional office is the Secretary to the CuC, hence ensuring that regular meetings are held (every last Thursday of the month) and that the agenda is reflective of the human rights agenda that the Commission seeks to be infused in the administration of justice process. A key output has been greater collaboration and linkages amongst local level criminal justice actors in order to promote access to and delivery of justice.

8.3: Penal reforms

In the exercise of the Commission's mandate, 58 inspection visits were conducted in prisons and other places of detention during the period under review. Efforts were made to focus on prisons that the Commission had previous little contact with and places of detention rarely visited like juvenile detention centers, court holding cells, hospitals and mental institutions. Most of the visits were impromptu and covered both urban and rural areas. A key focus was assessing conditions under which the detainees are held and to secure commitment from the authorities in charge

towards ensuring the observance of human rights standards and principles in the facilities. Through the prison visits the Commission proposed and was able to gain commitment from the prisons management regarding in-house training of lower cadre prison officers. The officers were trained within the prisons given the logistical difficulty of taking them out of the prisons for training. The monitoring visits were also used to gather information to inform the upcoming vetting of judicial officers.

One of the key findings from the visits was that congestion remains rampant. This in turn affects the right to food, adequate shelter, health, sanitation and represents inhuman and degrading treatment of persons held in such conditions. From Table 6 below, it is evident that persons in remand largely contribute to the congestion in prisons. This was mainly attributed to the delay in the conclusion of cases and high bail terms (these issues have subsequently been raised through the CuCs).

The Commission, therefore, made several recommendations with regards to decongesting prisons as an effective measure towards enhancing dignity and the rights of persons in detention, including recommendations with regards to coordination of criminal justice sector agencies and the efficient use of CuCs. The recommendations made include the use of community service for lesser offences, use of non-punitive bail terms, the use of free bonds and quick dispensation of cases to reduce remand populations as well as building of more prisons where necessary.

TABLE 6: DEPICTING THE EXTENT OF CONGESTION IN THE PLACES OF DETENTION VISITED

PLACE OF DETENTION	CAPACITY	EXCESS POPULATION	NUMBER OF INMATES (on date of visit)	CONVICTED PRISONERS	REMAND PRISONERS	Date visited
Kakamega Main	800	371	1171	844	327	1/10/2010
Bungoma Main	600	295	895	645	250	30/9/2010
Shimo la Tewa Main	800	1700	2500	1225	1275	11/10/2010
Shimo la Tewa Annex	600	600	1200	228	972	12/10/2010
Wundanyi Main	100	50	150	34	116	14/10./2010
Wundanyi Women	300	-	219	100	119	14/10/2010
Kisii Main	600	475	1075	397	677	22/10/2010
Kisii Women	70	1	71	43	28	23/10/2010
Migori Main	400	-	362	205	157	24/11/2010
Migori Women	50	-	15	8	7	24/11/2010
Homabay Main	300	-	275	160	106	23/11/2010
Rachuonyo Main	115	-	90	90	0	23/11/2010
Siaya Main	71	139	210	154	56	26/11/2010
Kitale Main	600	428	1028	451	577	19/11/2010
Lodwar Main	300	10	310	153	129	23/11/2010
Lodwar Women	50	-	13	6	7	23/11/2010
Nakuru Main	800	1199	1999	833	1166	24/11/2010
Nakuru Women	100	44	144	49	46	24/11/2010
Naivasha Medium	181	455	636	39	597	25/11/2010
Naivasha Maximum	1500	1542	3042	3042	0	26/11/2010
Nakuru Girls Remand	60	-	36	-	-	24/11/2010
Moyale Main	84	19	103	76	21	19/10/2010
Marsabit Main	100	-	56	43	9	21/10/2010

a) Prisons human rights desks

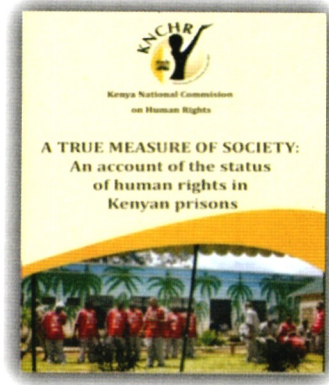
The Commission worked with the prisons department in order to ensure that human rights are observed in prisons and places of detention by influencing the establishment of human rights desks in prisons, which in the year under review, were launched by the Permanent Secretary in the Ministry of Home Affairs. In addition, Human Rights Desk Officers were appointed to take charge of the human rights desks. In the next financial year, the Commission will focus on building the capacity the 101 human rights desk officers and equip them with human rights resource materials to enable them undertake their work; and will monitor their work to ensure that they are effective in addressing human rights issues in Prisons.

b) Launch of the report on the status of human rights in prisons

The Commission launched the report on the status of human rights in prisons and places of detention titled 'A true measure of society' in March 2011 (pictured). The report highlights key challenges faced by the prisons service including underfunding, overcrowding, inadequate provision of healthcare and poor resourcing of health facilities, poor reintegration and rehabilitation of offenders and the social exclusion of offenders released from prisons. The report recommends that in order to adequately deal with the problem of overcrowding and congestion in prisons, reforms in the criminal justice sector must be undertaken and a proper sentencing policy be developed.

Key achievements of work under penal reforms included:

- Increased awareness by the public and stakeholders of the state of human rights in prisons; and increased awareness of human rights amongst prison officers.



9.0 Infusion of Human Rights in Policy and Legislation

9.1: Advisories on policy and legislation

The Commission undertakes review of policy and legislation and makes recommendations for infusion of human rights into the same. This involves reviewing existing and proposed policies and legislation to ensure they conform to human rights principles and standards and to the Constitution. The activity entails among others, examination of Bills, development of proposals, sharing the same with stakeholders to gather their input and lobbying technical drafting committees and Parliament for adoption of the proposals. This is owing to the realization that developing a culture of human rights in the republic, in line with the Commission's function in Section 8(a) of the KNCHR Act, would not be possible with laws and policies that are not human rights compliant. In the reporting year, the following laws and policies were reviewed and recommendations/ advisories submitted to relevant agencies.

a) *Advisory to the Task Force on Education on the alignment of the Education Sector with the Constitution*

In January 2011, a Ministerial directive to implement affirmative action for the benefit of students from public schools sparked off a controversy. While some sections of the public supported the move, others felt that the government was violating the rights of students from private schools. The Commission sought to advise the Government on the matter from a human rights perspective. The debate involved a contest between two constitutional principles: first is the pursuit of individual interests in a free, non-discriminatory environment, and second is the creation of a fair society embracing the principle of affirmative action to enhance sustainable equity. The Commission developed a briefing paper that provided context to the topic under debate and proceeded to make recommendations on actions necessary to address the issue. However, the establishment of a *Task Force on the Re-alignment of Education Sector to the Constitution* vide Gazette Notice No 103 of 28 January 2011, with the mandate to look into the alignment of the education sector with the new Constitution informed a change of strategy. Towards this end, the Commission decided to develop an advisory to the Task force on six key issues requisite for the realization of the right to education. These are:

- a) Molding and mentorship values;
- b) Relevance and responsiveness of the curriculum to national values and to Vision 2030;
- c) Access, equity, transitional issues and human capacity in education at all levels;
- d) Structure of education system;
- e) Investment in education; and
- f) Institutional management of governance.

The advisory was shared with the task force in June 2011 at which the Commission and the members of the Task Force deliberated extensively on the right to education and the task force members expressed their appreciation of the Commission's effort by noting that the Commission's presentation was comprehensive and illuminated on some areas the Task Force was unclear about, particularly the infusion of human rights principles and standards in the education sector management.

Key KNCHR recommendations to the Task Force on Education

- (a) The need for teachers to utilize peer education and other interactive modes of teaching as means of fostering the participation of students in the learning process and their empowerment through peer mentorship;
- (b) Affirmative action policies need to be developed to address the marginalization of the Northern parts of the country and the rural areas in the aspects of enrollment, retention, participation, completion and even achievement of girl child education;
- (c) The Government should consider offering incentives to private school owners such as making the process of registration of private schools less complex, and at best subsidizing private education designed to address the specific needs for the poor and most vulnerable and marginalized groups in the community; and
- (d) The Government needs to heighten and standardize the regulation and monitoring of for profit private schools, especially higher education, to ensure that they make quality education of higher priority than profit.

In addition, the Taskforce requested for further clarification on the operational definition of basic education, the minimum core content of the right to education and the Constitutional position on private investment in education: the Commission submitted a follow-up advisory addressing the three specific issues. The Commission therefore contributed to the clarification of key concepts which were raised by the Task Force on Education and which would eventually assist them prepare their report to the Ministry of Education. The issues included defining 'basic education', providing a description of the minimum core content of the right to education and how to regulate private investments in education using the Constitution.

b) Review of legislation and policy

The Commission reviews Bills and legislation to ensure compliance with human rights principles, standards and the constitution. In the period under review, the Commission reviewed 26 Bills and made proposals for amendment where found not be fully compliant with human rights. Of the bills reviewed, seven namely the Commission on the Implementation of the Constitution Bill, 2010 (CIC); the Vetting of Judges and Magistrates Bill, 2010 (Vetting Bill); the Judicial Service Bill, 2010 (JSB); the Independent Electoral and Boundaries Commission Bill, 2011; the Supreme Court Bill 2011; the Independent Offices Bill, 2011; and the Salaries and Remuneration Bill, 2011 have since been enacted into law. It is noteworthy that the enacted legislation did not contain all the provisions in the bills upon undergoing revision and on which some of the Commission's proposals had been made. Some 27 out of 87 (31%) of the Commission's proposals were accepted and reflected in the final legislation as provided in Table 7 below.

TABLE 7: COMMISSION'S PROPOSALS THAT WERE ADOPTED IN ENACTED LEGISLATION

Bill	No. of proposals by KNCHR	No of accepted proposals	Particulars of accepted proposals
CIC	17	5	<ul style="list-style-type: none"> - 4:provision encompassing principle of public participation as enunciated in the Constitution made - 8(14): proposal providing for the executive to overlook list of nominees removed - 13: members disqualified from holding elective office within 5 years of ceasing to be a member of the commission. - 30(1) clause aligned to Art 250(6) (a)of the constitution - Act drafted in gender neutral terms
Vetting	18	6	<ul style="list-style-type: none"> - 12(2d): one will be disqualified from membership if convicted of an offence and sentenced to imprisonment for a term of six months or more, without the option of fine - 15(2 a-d) Qualifications of secretary clearly specified - 18(1b): the past work record of the judge or magistrate, including judicial pronouncements, competence and diligence included among the considerations - 19(6): rules of natural justice to apply to the Board's proceedings - 21: determination of unsuitability to be communicated to judicial officer in writing and communicated to the public; decision subject to review - 23: timeframes reviewed to provide for extension of term where required.
Supreme Court	7	1	9: typographical error remedied

Judicial service Bill	17	4	<ul style="list-style-type: none"> - 10; use of gender neutral terms instead of male pronouns - 30: number of selection panel for appointment of judges increased from there to five - FIRST SCHEDULE 3(1) notice of vacancy: proposal for wider accessibility of advertisement for vacancies accepted with inclusion of provision for circulation of advertisement in any other appropriate manner. - 10 (4) interviews to be conducted also by telephone or other electronic means
Salaries and Remuneration	11	4	<ul style="list-style-type: none"> - 5(2)(c): clarity provide that qualifications is in 'either of 'the enumerated fields - 5(1) and 5(2): drafting language in the two sections harmonized - 7: Transient position of prime minister's office recognized : drafting language revised - 11: functions harmonized with Art 230(4) of the constitution
Independent Offices	6	2	<ul style="list-style-type: none"> - 4: Chapter six considerations included: membership of County Assembly a ground for disqualification/ compliance with tax obligations required - 5: Ministries described as those for the time being responsible for a specified issue as opposed to being named as currently constituted
Independent Electoral and Boundaries Commission Bill	11	5	<ul style="list-style-type: none"> - 25 (f): the word 'on a regular basis' deleted and 'as provided under the law 'inserted - 5(1):appointments to be made in line with Article 250 (4) of the constitution - First schedule (1) selection panel reviewed to include members from outside government - First schedule 2 (2) (b): provision for organizations to support one's application deleted as per recommendations - Fourth Schedule (7) definition of sexual harassment in conformity with Sexual Offenses Act

In addition to the above, the Commission engaged in collaborative efforts with CSOs to advocate for the enactment of legislation in various areas. Among these was legislation on the prevention and prohibition of torture entitled *Proposed Legislative Framework for the Prevention of Torture* which was finalized, published and launched and legislation on Citizenship. An advisory on the latter was prepared and presented to the Task Force on Citizenship. Further, the Commission participated at a meeting on national campaign on citizenship at which proposals were made on a series of strategies and activities geared towards supporting the campaign whose overall goal is to promote the right to citizenship. This activity was linked to the Commission's research and publication on citizenship. Elsewhere, the Commission, while reviewing the Vetting of Judges and Magistrates Bill 2010, developed a vetting tool to aid the anticipated vetting of judges and magistrates as part of the judicial reforms being undertaken within the country. The tool underwent several stakeholder critique sessions and revisions and was presented at various forums at which it was favorably received. The Commission has planned to lobby for the acceptance of the tool by the vetting board, which has since been constituted, and to train members on the same.

The Commission's work of reviewing legislation, Bills and policies contributed towards the following results:

- a. A better legal framework for the implementation of the Constitution.
- b. Greater respect and enforcement of the human rights of marginalized groups-legislation on citizenship to address those at risk of statelessness.

9.2: Article 59 of the Constitution on establishment of the Kenya National Human Rights and Equality Commission (KNHREC)

Subsequent to the promulgation of the Kenyan, the Commission is entrenched in the Constitution under Article 59 (1) as the Kenya National Human Rights and Equality Commission (KNHREC). In a bid to operationalize the said Commission, the Ministry of Justice, National Cohesion and Constitutional Affairs developed three bills namely the Kenya National Human Rights Commission Bill, 2011, the National Gender and Equality Commission Bill, 2011 and the Commission on Administrative Justice Bill (hereinafter the Article 59 (4) bills). In addition to the said bills, the Commission developed a draft Kenya National Human Rights and Equality Commission (KNHREC) Bill that sought to operationalize the said constitutional provision under one Commission, and which set up a framework for the protection of human rights in Kenya as well as proposed establishment of the KNHREC.

Nine meetings were held at which the Article 59 (4) bills were reviewed and positions on its provisions developed. In addition, several other meetings were held with the Article 59 Commissions, Kenya Law Reform Commission (KLRC), MoJNCCA, the media and CSOs at which the Commission's position with regard to operationalizing Article 59 (4) through one Commission was presented. The Commission's position was premised on several factors among which are that human rights are indivisible, interrelated and interdependent and that Kenyans would be best served at a 'one-stop shop' under one Commission as opposed to several Commissions where the possibility of fragmenting the human rights agenda and overlapping mandates may arise. In addition, the Commission was of the view that the wishes of Kenyans as expressed to the Committee of Experts (CoE) and international trends favor

the merger of Commissions. Kenyans had expressed concerns over the large number of constitutional commissions and offices, and the fact that some had overlapping mandates; in addition was the fact that certain tasks assigned to Commissions would be more appropriately carried out by government departments. Considerations of the weighty burden to be borne by taxpayers in the maintenance of numerous Commissions were also taken into account in advocating for one commission.

To advocate for its position, the Commission entered into a working relationship with the KHRC, ICJ-K and FIDA-K concerning the development of the draft KNHREC Bill.²¹ This entailed the setting up of a working committee comprising representatives of all the three organizations and a consultant to develop a draft KNHREC Bill that incorporates substantive law on human rights, equality and non-discrimination as an alternative to the three bills developed by the Kenya Law Reform Commission. Four forums were held with parliamentarians, the media and stakeholders to lobby support for the draft KNHREC Bill. It is noteworthy that all these activities related to one article of the Constitution, but which were important to the institutionalization of the Commission and its mandate.

The then Gender and Development Commission favored a separate commission from the human rights commission. Among the reasons advanced were that the gains made by women in the fight for their rights would be lost if one commission was established under Art 59 (4) of the constitution and that it was too risky to put Kenya's human rights agenda in the hands of one commission apart from the fact that the functions of KNHREC as provided in the constitution were too wide to be undertaken by any one commission.

At the time of writing this report, Parliament had made a decision to the formation of three commissions under Article 59 (4) namely the National Gender and Equality Commission, the Commission on Administrative Justice and the Kenya National Commission on Human Rights.²²

9.3: National Policy and Action Plan for the promotion and protection of human rights

The Commission together with the Ministry of Justice continued to provide leadership in the process of developing the National Policy and Action Plan for the promotion and protection of human rights in Kenya. During the reporting year, the human rights policy had been finalized and validated by stakeholders. However, with the promulgation of human rights based Constitution with an elaborate and progressive Bill of Rights, a decision was made to review the draft human rights policy to ensure that it is aligned with the new Constitution. In the reporting period therefore, a Consultant was engaged to undertake the review after which the draft human rights policy would be validated and submitted to Cabinet for approval. The action plan to implement the policy would subsequently be developed once the human rights policy is reviewed and finalized. This will continue into the next financial year.

21 Other organizations that supported this initiative include, Transparency International, Article 19 Kenya chapter, Legal Resources Foundation, ANNPCAN, Youth Agenda, Association of Professional Societies in East Africa, National Council of Churches of Kenya

22 The Bills bearing their respective names, all of 2011 were signed into law by the President on 27th August 2011

10.0 Compliance with Regional and International Human Rights Obligations

Section 8(f) of the KNCHR Act, 2011 mandates the Commission to “act as the principal organ of the State in ensuring compliance with obligations under international and regional treaties and conventions relating to human rights”. Pursuant to this mandate therefore, the Commission facilitates and ensures government compliance with international and regional human rights obligations through;

- Lobbying for the ratification of regional and international human rights Treaties and Conventions.
- Advocating for ratified Conventions to be domesticated – (now a constitutional obligation) and researching on the status of implementation of the various Conventions and Treaties ratified before the passage of the new Constitution,
- Engagement with treaty bodies and committees, and
- Monitoring and advising on compliance with recommendations/concluding observations of treaty bodies and committees.

In the period under review, the following were undertaken;

10.1: Advising on the Universal Periodic Review (UPR) Mechanism

The UPR is a mechanism under which the Human Rights Council (HRC) examines the situation of human rights in each state after every four years by reviewing the fulfilment of human rights obligations and commitments made by all the United Nations (UN) member states. The HRC is mandated to: “undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each state of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all states²³.”

Objectives of the UPR include:

- a) The improvement of the human rights situation in each country;
- b) The fulfillment of the state’s human rights obligations and commitments and assessment of positive developments and challenges faced by the state;
- c) The enhancement of the state’s capacity and of technical assistance, in consultation with, and with the consent of the state concerned;
- d) The sharing of best practice among states and other stakeholders;
- e) Support for cooperation in the promotion and protection of human rights; and

Kenya was reviewed by its peer States in the Universal Periodic Review Working Group on 6th May 2010 following which the Working Group adopted the country’s report on 10th May 2010. The HRC thereafter adopted Kenya’s outcomes report on 22nd September 2011. Throughout the review period, the Commission coordinated a number of stakeholders to prepare and participate in the review. In approaching the process jointly, a coalition, known as the Kenya Stakeholders Coalition for the UPR (KSC-UPR) was formed under the leadership of the Commission, who then submitted a joint UPR report. Following this, the stakeholders produced joint advocacy materials, approached and engaged with state delegations and International Organizations in a manner that would ensure the key human rights concerns in the country would be put to the state during the review. The media was also mobilized to ensure the UPR process was highlighted nationally. Prior to the review of Kenya, the Commission held a side-event in Geneva in which participants (including state delegations) were able to discuss the human rights situation in the country and hence approach the review from an informed position. Due to the strategies adopted by the Commission and stakeholders, the UPR process for Kenya was very successful and has been cited internationally as a best practice.

Following the adoption of the Kenya UPR Report, the Commission, together with stakeholders embarked on a process to ensure implementation of the recommendations through:

²³ UNGA Res. 60/252 of March 2006

- Sending an advisory to the government recommending approaches that it should take towards implementation of the UPR recommendations.
- Development and launch of an Outcome Charter which would be used in monitoring UPR recommendations outlining stakeholder's expectations, the specific actions to be undertaken to meet those expectations as well as providing monitoring indicators.
- Preparation of an annual progress report that assesses the progress in implementation and is set to be launched one year after Kenya's report was adopted by the HRC.
- Supporting government efforts in developing a national action plan for implementation of UPR recommendations through participation and facilitation at a workshop organized by the Government, where a draft National Action Plan on Implementation of the UPR recommendations was developed.

Having been cited as a best practice including by the Human Rights Council, the Commission decided to document the stakeholder's engagement in the UPR: the documentation outlines and explains the various roles and activities which KSC-UPR engaged in and their value to the process. This documentation also outlines some of the challenges faced by the stakeholders, such as an inadequate resource base, lack of media interest in the UPR and how the stakeholders navigated these challenges. Further, as a result of the successful engagement by stakeholders, the Commission has been invited severally to participate in UPR workshops (Denmark, September 2010), South Africa (October 2010) and Zimbabwe (February 2011). Members of the KSC-UPR have also been invited to train other civil society organizations in the UPR. Among the trainings have been 'Effective Advocacy strategies for the UPR' (Rwanda, Tanzania and Uganda); 'Strategies for implementation and monitoring the UPR' (Uganda, Rwanda, and Tanzania); 'The role of various stakeholders in the build-up to the UPR'- (Uganda, Rwanda and Tanzania) and Mapping and Identifying allies' (Uganda and Tanzania).

The UPR stakeholders are currently developing an annual progress report which will assess how far the government has progressed in implementing the recommendations.

10.2: Reporting and monitoring implementation of recommendations/ engagement with treaty body and special mechanisms

This activity takes the form of monitoring the reporting pattern of the state to see what reports are submitted to treaty bodies/committees and where necessary, submitting alternative reports to said bodies/committees. The Commission also assists the Government to fulfill its reporting obligations by building the capacity of relevant government agencies to prepare the reports to the treaty bodies. During the year under review, the Commission participated in the review of Kenya by the Committee on Elimination of Discrimination against Women, which considered Kenya's report on 19th January 2011. The Commission is currently disseminating the concluding observations of the CEDAW Committee. The Commission also prepared a report to the Committee on Racial Discrimination that is set to review Kenya's report on implementation of the International Convention on Elimination of All forms of Racial Discrimination (ICERD) in August 2011 at which the Commission shall participate. Once the treaty bodies issue concluding observations and recommendations to the State, the Commission will assist in disseminating these for public awareness and will advise and monitor implementation of these treaty body recommendations.

10.3: Advisories to the Government

During the reporting period, the Commission convened a workshop of 46 participants drawn from various Government Ministries and CSOs to brainstorm on the options which should inform Kenya's determination on the ratification and accession to Optional Protocols. Eight Optional Protocols were discussed extensively as follows.

- The First Optional Protocol to the International Covenant on Civil and Political Rights,
- 2nd Optional Protocol to the International Covenant on Civil and Political Rights,
- The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights,
- Optional Protocol to Convention on Torture and Cruel, Inhuman or Degrading Treatment or Punishment,
- Optional Protocol to the Convention on the Rights of Persons with Disabilities,
- Optional Protocol to the Convention on Elimination of All forms of Discrimination against Women,
- Optional Protocol to the Convention on the Rights of the child on the sale of children, child prostitution and child pornography, and
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

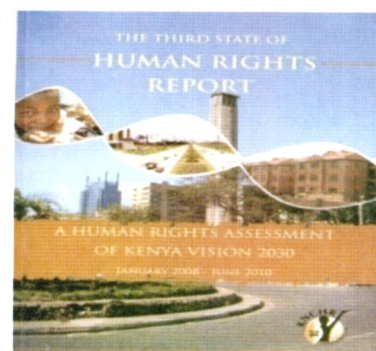
Specific recommendations were then made to the government on the approach to take regarding signing and ratification/accession of particular international and regional Optional Protocols. Thereafter, the Government accepted, during the adoption of its UPR report, that it would consider ratifying the optional protocols which provided individual remedies.

Related to the above is the Commission's engagement with Ratification of Treaties Bill, 2011 that is still under consideration. Upon publication of the Bill, the Commission reviewed it and realized that a lot of work was still needed to be done to improve the Bill. This was based on the research undertaken on the effect of Article 2(5) and 2(6) of the constitution. The Commission outlined the tenets of a good ratifications law and presented comprehensive proposals to the CIC for consideration, particularly on the need for clarity on the purpose of the bill, process of ratification and process of withdrawal and the roles which would be played by various sectors. The Commission attended an expert's round-table meeting where the bill was discussed and several of the Commission's proposals taken on board. CIC later drafted a much-improved Bill for consideration by Parliament.

11.0 Monitoring the Human Rights Situation in Kenya: The State of Human Rights Report

Among the Commission's key mandates is the preparation of the state of human rights report in the country. It is in line with this mandate that the 3rd State of Human Rights Report for the period 2008-June 2010 entitled 'A Human Rights Assessment of Kenya Vision 2030' evaluating the government's performance under vision 2030 was prepared and launched. The report (pictured) focuses on the realization of economic and social rights and assesses the government's performance based on its own stated priorities on human rights issues from the perspective of Kenya's Vision 2030.

The review of Kenya's performance under Vision 2030 was undertaken by a team constituting members of staff and commissioners. An initial desk review of relevant reports including government reports on various programs was undertaken. This followed the development of three instruments for data collection from public agencies, selected corporate sector institutions and NGOs. In addition, the Commission contracted the University of Nairobi's Institute for Development Studies (IDS) to undertake field research to determine how the policy programs would be implemented. The two areas chosen for this focus were the right to water and sanitation and access to electricity, on the basis of their particular economic and social impact in terms of health (water and sanitation) and productivity (electricity). To gauge public and expert opinion on the implementation of policy programs in the country, a national field survey comprising a sample size of 1,200 households across eight provinces in Kenya was undertaken and ten focus group discussions held in the different regions to complement the survey. In addition, the Commission engaged four external peer reviewers with expertise in human rights, experience in government planning exercises and research methodology to provide guidance and critique at various stages of compiling the report. This enhanced the quality and technical soundness of the report.



Key findings of the 3rd state of human rights report

- a) There is generally a suitable policy framework for improved service delivery and standards of living among Kenyans,
- b) The government had focused on increasing attention and resources in various initiatives aimed at enhancing economic growth, social welfare development and democratization,
- c) There were significant increases in budgetary allocations to various line ministries,
- d) Government agencies were concerned with the delivery of results under Vision 2030's three pillars,
- e) These investments had empowered more Kenyans by bringing services closer to the people,
- f) However, the above notwithstanding, basic rights of those classified as vulnerable and marginalized have not been met, and
- g) That there are still accountability challenges in relation to the management of initiatives under the Medium Term Plan 2008-2012.

The report made several recommendations with regard to access to electricity, the right to food, work, education, health, clean water and sanitation, housing, access to justice and the right to participation in public affairs and effective governance. It concludes by stating that Kenyans have far greater opportunities than ever before to bring governance institutions to account for their actions and that these new realities will facilitate Kenya's Vision 2030 goal of achieving sustained development.

The Minister for Justice, Hon Mutula Kilonzo, officially launched report that was published and disseminated in hard copy and CDs to relevant government departments and agencies and non-state actors.

12.0 Institutional Strengthening

12.1: Outreach and regionalization

The Commission, under the strategic plan, prioritized the use of outreach and regionalization as well as working with partners as a mechanism to enhance its reach and accessibility to Kenyans. Given its limited physical location to three areas (Nairobi, Wajir and Kitale), the Commission has seen the need to devise new strategies to enhance its accessibility.

a) *Outreach through human rights clinics*

The Commission, as part of its outreach work to enhance its accessibility to the public in areas where it does not have a physical presence, conducts quarterly human rights clinics to facilitate direct interaction with the public in areas where it lacks physical presence. Human rights clinics are therefore organized in marginalized parts of the country to among other things, receive complaints and provide legal advice, follow up on admitted human rights complaints from the region, educate the public as to their rights and civic responsibilities, disseminate reports of the Commission and IEC materials on various human rights topics and to profile and inform about the Commission and its mandate. The clinics also provide the Commission with an opportunity of engaging new partners from both the state and non state agencies.

During the year, the Commission (through the head office and regional offices) conducted human rights clinics in Narok, Sotik, Uasin Gishu, Kiambu, Migori, Marasabit, Mandera, Trans Nzoia, Elgeyo Marakwet and Nyeri. The clinics mainly focused on areas that were heavily affected by the 2007 post election violence and were also used as an avenue to sensitize members of the public on the provisions of the then proposed Constitution of Kenya. Through the human right clinics, the number of petitioners from these regions increased given the enhanced awareness not only of the mandate of the Commission, but generally of their rights and how/ where to report when their rights are violated. Human rights clinics therefore remain a strategic choice for reaching marginalized communities.



L: KNCHR officers with Maasai women after a human rights clinic in Narok. R: KNCHR Commissioner Anne Ngugi explains the ICC process at a human rights clinic in Mount Elgon.

b) Outreach through participation in ASK Shows

In its endeavors to enhance its outreach and accessibility, the Commission has continued to participate in ASK shows to educate the public in areas where the Commission has no physical presence, while at the same time creating partnerships with local civil society organizations and government agencies. Participation in the ASK shows also provides the Commission with an opportunity to brand the Commission, receive complaints regarding human rights violations, offer legal advice, educate the public as to their rights and issue targeted IEC materials to wananchi to empower them to know their rights. Further, the Commission uses the ASK shows as an avenue through which to engage communities on human rights issues and at the same time profile and enhance awareness of the Commission. In this financial year, the Commission participated in the Garissa, Kitale and Meru ASK shows.

By targeting the public directly, the Commission has learnt that participation in the ASK shows enables it to reach people at the grassroots levels including school pupils who otherwise would not have been reached through the various activities the Commission engages in such as training workshops, legal clinics and other forums. The participation in the ASK shows has been one of the best approaches to profile the Commission.

12.2: Enhancing partnerships with state and non-state actors

In the reporting year, the Commission engaged with partners from both state and non-state sectors to enhance its work of promotion and protection of human rights, and built working relationships with the security sector agencies (police and prisons departments) for the purposes of building their capacity in human rights. Of significance was the new relationship built with the Performance Contracting Department and the M&E Directorate of the Ministry of Planning for the purposes of working with them to infuse human rights principles within V2030 indicators and the performance contracting process. This is a process that will run into the next financial year and will be jointly implemented with the Ministry of Justice. Additionally, the Commission engaged CBOs at the local level as partners to monitor and report on observance of human rights and entered into a MoU with RODI Kenya (Resource Oriented Development Initiative) in conducting local level human rights awareness and capacity building trainings.

RODI Kenya is an NGO whose mission is to reduce poverty, crime and re-offending by training school pupils, prisoners and ex-prisoners in human rights, natural resource management, HIV/AIDS and drug and substance abuse prevention among others. In the reporting year, the Commission signed a formal MoU with RODI and facilitated capacity building training workshops in Thika and Awasi regions for a total of 90 participants with a focus on human rights issues including the bill of rights, HIV/AIDS and sexual and reproductive health rights, rights of an arrested person and general sensitization on the provisions of the Constitution.

12.3: Stakeholder partnership and collaboration: the one-stop-shop for complaints handling

The cascaded one-stop-shop complaints referral mechanism, is an initiative bringing together key state complaints-handling institutions which have independent mandates to receive, process and redress complaints. This mechanism has been proposed in the wake of multiple public bodies with the mandate to receive and handle complaints and the potential overlaps and confusion to the public that this might entail in terms of who to address their complaints to. The proposed mechanism would therefore provide a one-stop-shop where all complaints to public agencies would be received (in various strategic locations across the country), thus limiting the burden on the already aggrieved citizen. The receiver of the complaints would therefore be the one to immediately direct their complaints to the relevant agency.

The main purpose of this mechanism is to make these organizations accessible at a devolved level by use of members' existing regional or new offices to act as referral centers for complaints handled by the member institutions. This would enhance accessibility of the institutions and also reduce cyclic complaints which go from one agency to the other sometimes because of ignorance of the mandates of the institutions. The idea is that the centers would constitute a referral system whereby Kenyans would be given access to all the member institutions in a single place. The members are currently the KNCHR, the Ethics and Anti-Corruption Commission, Commission on Administrative Justice, National Cohesion & Integration Commission and National Anti-corruption Campaign Steering Committee. The National Gender and Equality Commission will be invited to join as a new member given its new complaints handling mandate. In the reporting year, the institutions held brainstorming meetings and workshops on the idea of the one-stop-shop. The structure of this engagement and its operationalization will be finalized in the next financial year.

12.4: Change management

In July 2010, the Commission engaged a team of change management consultants to work with the staff and Commissioners to develop and transfer skills, knowledge, and experience for sustainable implementation of identified changes that would enable more efficient and effective service delivery in line with the new strategic plan. The scope of work of the consultancy cut across implementation of identified changes in human resource, administration and programming to lead to improved service delivery hence delivery of planned targets.

At the end of the seven-month consultancy, the following results had been realized:

- Human Resources – Reviewed job descriptions for all staff including a skills audit and advice on placement of staff according to their skills and knowledge,
- Staff/ Commissioners training in M&E, proposal development, report writing and overall project management,
- Guidance in preparation of annual reports and quarterly program reports,
- Support to regional offices reorganization including a proposal on regional expansion.

Of particular significance was the strengthening of the M&E framework during the consultancy. The results of this consultancy has been a change in the way the Commission does things for a much improved service delivery with a focus on efficiency, value for money and results for Kenyans.

12.5: Strengthening the Monitoring and Evaluation (M&E) framework

The M&E function, which was fully established in the reporting year, has the primary responsibility of providing guidance to programmes on matters related to planning, result tracking, reviews and reporting. The year under review had a number of milestones towards embedding M&E as a component of programme management within the Commission so as to enhance programme accountability and learning. Quarterly training and capacity building in M&E were conducted, including on project cycle management. M&E quarterly supervisory and technical visits were made to regional offices to enable them catch up on M&E trainings conducted at the head office. Process evaluation for two departments was finalized, with recommendations made for design and process improvement. For the purpose of systematizing planning, monitoring and evaluation, about 17 tools have been developed which include a set of tools to be used for planning, implementation and post implementation evaluation. This has helped to harmonize financial, procurement and M&E functions.

The above activities contributed to the following results;

a) Improved staff knowledge on M&E Concepts

Six trainings on fundamental concepts such as understanding the result chain, logical framework and results based management were conducted; a review of the performances of programmes indicated a great improvement in understanding of these concepts. There has been for instance a reduction in misuse of the result chain terminologies both in speech and in written documents (outputs, outcomes, impacts), which is quite important to enable all programme officers to participate in running their own departmental M&E processes.

b) Establishment of M&E Committee

Following the setting up of the M&E department, the Commission appointed a set of individuals to compose an M&E committee, which has reviewed performance of departments after every joint quarterly program reviews and given feedback in helping the programs to improve on their planning shortfalls. It has also provided a leverage of a consistent and more systematic way of addressing challenges raised. The nature of complaints raised from the departments has drastically gone down as support departments work to improve service delivery.

c) Strengthened programmes quarterly review processes

Through peer reviews and comprehensive performance review matrix, there has been more robust reporting at quarterly level where every planned activity and results are reported against the initial plans. Particularly the inculcation of variance analysis between the planned and achieved has been a stimulation to programme learning.

Reporting formats

During the year, the following set of tools to be used to guide planning, M&E were introduced: the Back to Office Report, Performance Review Matrix and structured reporting formats. This has contributed to positive change of practice on the part of officers by significantly improving on documentation and accountability on use of time and resources. The development of programme purposes and distribution of outcomes, has also led to a strengthened programme implementation where efforts are made to address all the 14 design outcomes and reduce overcrowding of departments around a few outcomes at the expense of others.

The first year of establishing the M&E system in the Commission has laid down infrastructure for systematic programme management. With continued management support and cooperation from programme officers, progress so far portends good signs of more accountable and effective programming in an environment that also encourages institutional learning. All the above are key progress towards an efficient and effective institution to deliver on its mandate. These will be improved through proper documentation and planning for results.

12.6: Branding and profiling the Commission

Branding was done at two levels: perceptions and physically. Physical branding is straightforward, involving signage, office stationery and other physical facilities that capture the Commission's logo. In the period under review, physical branding was undertaken at the North Rift regional office in Kitale to enhance its visibility (an informal survey of Kitale ASK show goers indicated that a significant proportion of the local population were unaware of the location of the KNCHR North Rift office at Ambwere Plaza).

Perception branding was done through various methods, including:

- Engagement with the public (through human rights clinics, public education and training sessions, public forums, stakeholder meetings, roundtable meetings),
- Engagement with government officials, and
- Media advertisements, articles and editorials.

Ultimately, it was the consistent delivery of the Commission's mandate to Kenyans that served best to entrench brand perceptions. The Commission is known not so much for what it says but the manner in which it delivers its mandate.

12.7: Training and exposure through local and international conferences

The Commission facilitates capacity building trainings and local, regional and international exposure conferences for its staff and Commissioners to build their capacity on cutting-edge human rights issues locally and abroad. The following were conducted in the year under review.

a) Capacity building on general investigations skills

The Commission recognises the importance of continuous learning and internal capacity building for its staff as a measure that contributes towards its overall effectiveness and institutional efficiency in addressing violations of human rights. In this regard, the Commission, organized two week training on investigations and police oversight in collaboration with GTZ South Africa, the South African Independent Complaints Directorate and the African Policing Civilian Oversight Forum (APCOF). The training targeted Kenyan agencies with an investigative mandate including the KNCHR, TJRC, KACC, NCIC, PCSC, and Civil Society Organisations such the CRADLE, LRF, FIDA-Kenya, ICJ-Kenya and Kituo cha Sheria. The training output have since been incorporated as part of the Commission's investigation manual and redress protocols.

b) Capacity building on investigating and addressing GBV

The Commission organized training on Gender Based Violence (GBV) for staff dealing with complaints and investigations. The training sought to build the capacity of staff on how to conduct effective investigations that address gender based violence, and was able to enhance the skills of staff in investigating complaints about alleged abuses of human rights in order to take steps to secure appropriate redress where gender based violence is reported.

c) Debriefing and counseling for staff handling complaints

In order to better deal with work related stress which the officers dealing with complaints encounter including traumatizing and stressful situations while listening to petitioners and during investigations and analysis of complaints, the Commission conducts regular debriefing sessions. The above-mentioned stress factors occasionally lead to emotional burnout hence affecting employee's health and consequently their performance. This is the reason why the Commission organizes debriefing sessions/training on basic counseling skills to assist officers even as they continue to handle the various complaints.

d) Training in Finance for non-finance managers

The Commission organized one week training in finance for non-finance managers to build its staff capacity in financial planning, budgeting, expenditure tracking and reporting. The training, tailored for heads of departments, empowered them to become better managers in charge of their departmental budgets and resources hence ensuring more efficient resource utilization. Out of this training, heads of departments are able to monitor their budgets, reduce wastefulness and track expenditure thereby allowing for informed budget revisions.

e) Training in project cycle management

A capacity building training on project cycle management was conducted for staff to enhance their capacity in project planning, execution, monitoring and reporting on results. The key result of this training has been improved program planning, monitoring and reporting on results than on activities. Staff are now conscious of planning and implementation based on the strategic plan and as result, there has been marked reduction in the number of unplanned activities implemented and an increase in the execution of planned activities.

f) Other trainings conducted in the year include

- Results Based Management training for all staff
- Training on human rights based approach to budget monitoring
- Defensive driving training for drivers
- Fleet Management training for Administration Assistant
- Senior Professional training in Human Resources for Human Resource Officer
- CISCO certification for ICT officer
- Continuous Legal Education for Legal officers
- Certified Public Accountants training for two Accounts staff
- Secretarial and Front office management training for one Office Assistant
- Sign Language training for one staff
- Sage Pastel training for all Finance staff
- Minority rights, indigenous peoples and international law training

The above trainings have enhanced staff capacity to undertake their work efficiently.

12.8: Information technology

In the reporting year, the Commission increased the use of ICT in order to efficiently and effectively deliver on its mandate by utilization of new technologies. This would enhance the creation of a common information infrastructure allowing greater interoperability and management of Commission's equipment and scalability in deployment amongst other benefits. The approach therefore involved development and installation of new systems such as the complaints management system, referendum monitoring and IDP monitoring systems, upgrading the computers, purchase of a high-end server and change of the internet service provider. The following specific activities were undertaken during the financial year.

- a) Computers memory upgrade leading to short response time for a given piece of work, high throughput (rate of processing work), high availability of the computing system or application and high bandwidth/short data transmission time.
- b) Purchase and installation of a high-end server leading to the following benefits;
 - Centralization: access, resources and data security are controlled through the server.
 - Scalability: any element can be upgraded when needed.

- Flexibility: new technology can be easily integrated into the system
 - Interoperability: all components (clients, network, servers) working together.
- c) Development and installation of key software's namely complaints management system, IDP and referendum monitoring systems. Their introduction to the Commission's work made it possible to easily perform data analysis and data mining as well as forming a focal point of data storage.
- d) Installation of security system (Firewall and corporate antivirus): installation of the software's ensured that there is security of the Commission's networks with stateful packet inspection, application layer inspection, and intrusion detection and prevention.
- e) Installation of Microsoft Exchange 2007 email system: a better and robust emailing system that offers great performance, scalability, Active Sync, room booking feature, centralized groups etc.
- f) Change of Internet Service Provider: the transition lead to a much more reliable and available internet service.

12.9: Court matters in defence of the Commission's independence

In 2008, the Commission in the exercise of its statutory mandate investigated and documented the events surrounding the post election violence, which culminated in the now famous report titled '*On the Brink of the Precipice: a Human Rights Account of Kenya's post 2007 election violence*'. The report contained among other things, a list of 230 alleged perpetrators who had been implicated in the planning, financing and execution of the violence. Upon its release, a number of those mentioned as alleged perpetrators moved to court to have their names expunged from the report.

Specifically, the following cases were filed in court against the Commission:

1. JR Misc Civil Application 86 of 2009,²⁴
2. JR Misc Application 647 of 2009,²⁵
3. High Court Civil Case No 264 of 2009,²⁶

In the reporting period these cases were listed in the High Court severally either for mention or the purpose of hearing.

JR Misc Civil Application 86 of 2009,

The Applicant in this suit, Hon. Uhuru Kenyatta, filed a suit in the High Court seeking orders to quash and annul 'the decision' of the KNCHR naming him to have participated in the post election violence, and also to quash and annul 'the decision' in the said report alleging that he was involved in aspects of the post election violence by way of planning, inciting, and financing the violence. Judgment on the matter was delivered on 5th June 2010, in favour of the Commission. The Court ruled that although the KNCHR did not give the applicant an opportunity to present his version of events, it could not expunge his name from the report due to public interest considerations. By the end of the reporting period, the Commission received a Notice of Appeal from the Applicant, but no subsequent suit documents had been served.

JR Misc Application 647 of 2009,

The Applicant in this suit, Hon. William Ruto, filed a Judicial Review application in the High Court on 30th November 2009 seeking orders to quash and annul 'the decision' of the KNCHR naming him to have participated in the post election violence and also to quash and annul the decision in the said report alleging that he was involved in aspects of the post election violence by way of planning, inciting, meeting and financing the violence. In March 2011, the Commission through its counsel argued a preliminary objection to the application filed by the Applicant, which had extraneous issues not related to the report on the post-election violence and affidavits of persons not parties to the suit. A ruling delivered on 20th May 2011 struck out five of the offending paragraphs from the said affidavits. An appeal has been lodged against the decision that seeks to have the affidavit struck out in its entirety.

²⁴ Uhuru Kenyatta v. KNCHR

²⁵ William Ruto v. KNCHR

²⁶ Stanley M Githunguri vs. KNCHR and Florence Simbiri-Jaoko

High Court Civil Case No. 264 of 2009,

The Plaintiff, Hon. Stanley Githunguri filed a libel case against the Commission and the Chairperson, alleging that his name was defamed by the post-election violence Report. On the 18th of August 2010, counsel for the Commission, appeared in court for the hearing of an application to consolidate this suit with another libel suit that the Plaintiff filed against the Star Newspaper for allegedly publishing contents of the post election violence report that were defamatory to the Plaintiff. The said application was not argued and matter stood over generally.

The Commission's objective in defending the above suits is to reaffirm its independence, its impartiality and restate its steadfast commitment to discharging its statutory role of investigating and providing redress for human rights violations without fear, favour or interference. The dismissal of the *Uhuru Kenyatta v KNCHR* case for instance, reaffirmed the independence of the Commission in its mandate to investigate and report human rights violations without interference. A different finding by the court would have greatly hampered the Commission's ability to continue independent investigations especially where powerful politicians are involved. It is the Commission's anticipation that the *William Ruto v KNCHR* case will come to a similar conclusion.

Part **THREE**

13.0: Conclusions and Recommendations

The Commission in the year under review effectively discharged its statutory mandate under the KNCHR Act, 2011 and constitutional mandate as stipulated in Article 59(2) of the Constitution of Kenya, 2010. The work implemented in the reporting period moved the Commission towards realization of its Objectives, Goals and Key Result Areas under the Strategic Plan (2009-2013). These have been achieved despite the budgetary constraints and human resource capacity gaps that the Commission faced during the year including challenges relating to post election violence witnesses, attempted political interference and suits from politicians arising from the Commission's 2008 report on the post election violence.

The Commission continued to implement its mandate without fear or favour and asserted its independence against attempts to interfere in its work. Additionally, development partners specifically the Royal Norwegian Embassy, Royal Danish Embassy, the GIZ, OHCHR, UNHCR and the European Union provided direct grants to the Commission for both programmatic and administrative support, without which the Commission would have been unable to undertake the work detailed in this report. The Commission was therefore able to realize substantial results through the work implemented by the national and regional offices, which are targeted towards the following results:

- Enhanced accountability of duty bearers and reduction of impunity for human rights violations;
- Increased capacity of the public to claim their rights;
- Mainstreamed human rights principles and standards in the implementation of the Constitution;
- Enhanced state compliance with its human rights obligations;
- Empowered vulnerable groups to claim their rights; and
- Strengthened capacity of the Commission to discharge its mandate.

This report had presented the work of the Commission during the 2010/2011 Financial Year, including the results of each intervention. However, the work of the Commission was constrained by numerous challenges. The following specific challenges affected the work of the Commission in the year under review.

13.1: Challenges encountered in the year

- Funding** – The Commission received Ksh. 135,000,000 from the government in the 2010/2011 financial year against a budget of Ksh. 551,328,074: the budgetary deficit was however addressed through direct support from the Embassy of Norway, Embassy of the Netherlands, UNHCR, OHCHR, GIZ and the European Union. The implication of the funding shortfall from the Government is that the Commission is unable to effectively discharge its mandate by opening additional regional offices, from the current two, to better serve Kenyans in all parts of the country. Additionally, this implies that the Commission is unable to recruit adequate number of staff and faces limitations in terms of equipment and other infrastructure to enable it efficiently undertake its work. The Commission will in the next financial year lobby for additional funding in line with Paris Principles requirement for National Human Rights Institutions to have financial independence and autonomy through allocation of adequate funding by respective governments.
- Human resources** – Related to the above is the staffing shortfall that remained in the year under review, and which is mainly as a result of limited government funding. At the end of the year, the Commission had a staffing capacity of 70 against an establishment of 115 meaning that the Commission is operating below its human resource capacity. For this reason, the Commission was not able to respond to the numerous requests from government agencies, civil society organizations and the public on urgent matters of human rights violations, or to conduct human rights trainings and awareness activities.
- High expectations by the public** – The Commission has over the years continued to have to face high expectations by the public and petitioners who expect the Commission to address and to get instant redress for all issues that they lodge before it. This is evident in the large number of complaints not admitted and which have to be referred to other agencies with a mandate over them. For instance, some members of the public did not understand why the KNCHR would not handle corruption issues or those regarding abuse of office, but instead referred them to agencies with the mandate over them. Additionally, the Commission has been faced with demands from the public to immediately address all complaints lodged without following the due process of contacting those to whom the allegations relate. Yet this is a requirement under the KNCHR Act. With the enactment of the Commission on Administrative Justice Act and the National Gender

and Equality Act, the high expectations coupled with confusion regarding overlapping mandates will remain and will need urgent resolution so as not to further confuse the already aggrieved and vulnerable members of the public.

- d) **Non-response to Commission's letters and request for information by some government agencies** – This continues to impact negatively on the work of the Commission, more so, where the information requested would assist in resolving complaints and in providing redress to victims of human rights violations. The non response contributes to delays in the conclusion of cases lodged before the Commission hence delayed justice to victims of human rights violations.
- e) **Attempted political interference in the work of the Commission** – The year under review saw some Members of Parliament threaten to disband the Commission due to misplaced perceptions that the Commission was responsible for the ICC charges against some prominent politicians alleged to have responsibility for the 2007 post-election violence (in which more than 1,000 Kenyans lost lives, several hundred thousand were rendered internally displaced and property lost). Such threats constitute attempts to undermine the work of and interfere with the independence of the Commission. The entrenchment of the KNCHR in the Constitution, however, provides better safeguards against such political interference. The Commission will continue to affirm its independence against political interference and its commitment to discharging its statutory mandate of investigating and providing redress for human rights violations.
- f) **The real or perceived threats to the victims and witnesses to the post-election violence** continued to undermine efforts at achieving accountability for the perpetrators and justice for the victims of the post election violence as well as reconciliation of Kenyans in general. This, by extension, will continue to entrench the culture of impunity in Kenya and further undermine realization and protection of human rights in Kenya given the proven inter-relation between impunity and continuation of gross and systemic human rights violations.
- g) **Reporting on human rights issues** – In-depth reporting on human rights remains weak within the media, hence leading to a misinformed public on both human rights issues nationally as well as the work and role of the Commission. Coupled with this is the limited clarity on the part of the public and some government agencies with regards to the mandate of the Commission, hence confusion over what the Commission is supposed to do.

13.2: Opportunities presented to the Commission

The challenges above notwithstanding, several opportunities presented themselves in the year under review, which the Commission will continue to exploit as it implements its mandate.

- a) The Constitution of Kenya, 2010, with one of the most progressive Bill of Rights has presented to the Commission the legal basis to authoritative address human rights issues relating to economic, social and cultural rights as well as vulnerable and marginalized populations. The Commission intends to fully implement this Constitutional mandate as part of its work. The Constitution has also opened up additional space for the Commission to reinforce its redress mechanisms specifically with regards to the use of Alternative Dispute Resolution and Public Interest Litigation.
- b) The use and popularity of social media such as Twitter and Facebook presents a new avenue through which the Commission is able to cheaply disseminate information in real time, to reach Kenyans locally and abroad, in particular the youth, a target group often left out of the human rights discourse. In the reporting, the Commission used its FaceBook and Twitter (@HakiKNCHR) pages to reach targeted human rights stakeholders on a timely basis at no additional cost, to get their views on various human rights topics and activities that the Commission was engaged in, which eventually influenced programming targeting the youth. A similar strategy was employed in the project on the national public inquiry on sexual and reproductive health rights, which benefitted immensely from the creation of a blog (<http://reproductivehealthinquiry.blogspot.com/>) to get feedback from members of the public on various sexual and reproductive health issues as well as post articles and statements to the Commission. Social media will therefore remain strategic in reaching and educating the public regarding human rights as well as for informing about the work of the Commission.
- c) The proposed one-stop-shop complaints handling mechanism, once agreed upon and implementation commences, would streamline complaints handling mechanisms of state agencies including referrals, clarify the mandate of each institution thus limiting public confusion with regards to where to lodge their complaints and would limit the number of cases not admitted due to these [cases] falling outside the mandate of the

Commission. The one-stop-shop complaints handling mechanism will also improve the complaints handling process leading to improved service delivery to Kenyans.

- d) The designation of the Commission by the Attorney General as the monitoring agency under Article 33(2) of the Convention on the Rights of Persons with Disabilities (CRPD) provides the Commission with the opportunity to provide leadership and engage in capacity building for NGOs and CBOs on monitoring the rights of PWDs under the CRPD. This provides a strengthened framework for monitoring and advising on matters relating to enjoyment of human rights by persons with disabilities.
- e) The adoption of the Convention on the rights of domestic workers presents a new opportunity to protect the rights of a group that has for a long time remained on the margins public policy formulation and implementation. The Commission will therefore engage with both state and non state partners, employers and trade unions to strategize on how to address this new emerging area of work, with potential impact on the enjoyment of human rights. Future work will include initiating dialogue at an individual level with constituencies that are able to pay domestic workers a minimum wage.

13.3: Key lessons learnt during the year

The following key lessons, learnt in the course of the year, will be factored into planning for subsequent years of implementation.

- a) The Commission during the year under review recognized the importance of and benefitted from strategic partnerships and networking with both state and non-state actors as a strategy to increase its efficiency and effectiveness by extending its reach and maximizing resources towards realization of its mandate. The Commission's limited presence at the local level (with only two regional offices in Kitale and Wajir) coupled with a high demand for its services (including processing and redress of human rights complaints, responding and investigating urgent violations of human rights and human rights education and sensitization) undermines its effectiveness. The Commission is able to extend its reach through a well-developed critical mass of local NGOs, CBOs and FBOs that can inform and receive complaints and provide human rights education on behalf of and in partnership with the Commission. The Commission has planned, in the next year, to enter into formal MoUs with local partners and to build their capacity to enable them to provide effective public education and receive/refer human rights complaints.
- b) Furthermore, the Commission has observed that the creation of networks with civil society organizations has the potential to drive the human rights agenda, including law, policy and institutional reform as well as the fight against impunity, which remains a key priority for the country. Partnerships have also led to ownership and buy-in for the Commission's activities and enabled the Commission to maintain its position as a leading human rights institution both nationally and regionally. This was evident in the partnership built through the ICC Network, Usalama Forum and the Joint Advisory Technical Committee on Transitional Justice (JATCO).
- c) The Commission continues to take cognizance of the importance of fostering close working relationship and coordination with Government agencies and departments, more so in its efforts towards institutional reforms and transitional justice as well as infusion of the HRBA and human rights indicators in government performance. The Commission will therefore continue to rely on the support and collaboration of key government institutions and agencies in order to make meaningful progress for institutional and other reforms that it advocates for. In the reporting year, the Commission has closely engaged with the Ministry of Justice on the Human Rights Policy, HRBA and development of human rights indicators, with the TJRC in matters transitional justice as well as prisons department in the establishment of Prisons Human Rights Desks. In the next year, engagement with the NCIC and the IEBC will be paramount given that it will be an election year as well as with the related Article 59 Commissions (Commission on Administrative Justice and the National Gender and Equality Commission).
- d) The Commission recognizes the importance of enhancing its accessibility to Kenyans through outreach and local level activities, to enable it effectively discharge its mandate by taking services closer to the people. This has been realized through regional human rights clinics, participation in public *barazas* and public forums to enhance awareness of human rights and the mandate of the Commission, as well as by participation in ASK shows. Such outreach activities enhance the Commission's visibility, reach and accessibility, including for receiving petition, to follow up on previously reported complaints and to engage with local level government agencies and civil society organizations.
- e) At the regional level, the Commission has re-focused the work of regional offices away from the generic type of work implemented at the head office to region-specific interventions. This is because the residents served

by the regional offices have to see a direct linkage between the human rights interventions undertaken and their concerns, without which the regional offices would remain alien to their daily lives.

- f) The Commission has recognized the importance of undertaking regular follow-ups of investigations conducted and recommendations made (from both investigations and research reports) to ensure that its recommendations are actually acted upon by various Government ministries, agencies and institutions. This is because the Commission's investigations, policy research, and recommendations to the Government will not result in actual benefit to Kenyans unless the concerned duty bearers implement them.
- g) Finally, the Commission has factored in the use of ICT as an enabler of change, both in the way that it does things to enhance its efficiency, and with regards to how it impacts on the lives of Kenyans. For instance, ICT has been utilized to reach Kenyans in real time and to receive information on human rights violations for quick intervention. ICT has also enabled more effective communication and inter-linkages with the regional offices and partners on the ground.

13.4: Recommendations on legal and administrative measures to be taken to implement the findings of the Commission

1. **Government funding** – In line with Article 249(3) of the Constitution on funding of Commissions and Independent offices, Treasury should ensure that adequate resources are allocated to the Commission to enable it implement its mandate as required under the Constitution and the KNCHR Act, 2011. In the remaining one year of implementation of the strategic plan, the Commission projects that it will require at least Ksh. 517,498,616 to undertake its human rights protection and promotion work effectively. The Paris Principles call for Governments to adequately resource NHRIs to ensure their operational independence and autonomy. This is a requirement that the Commission will pursue with Treasury and Parliament in the next financial year so that the Government allocates at least 70% of the Commission's annual budget and the remaining 30% can be sourced from donors. With increased funding from the Government, the Commission will be able to open two additional regional offices in the next year to enhance its reach and accessibility to Kenyans, and to retain and recruit additional staff for optimal delivery of its mandate.
2. **The expanded Bill of Rights** – The Constitution of Kenya is quite progressive with an expanded Bill of Rights which includes economic, social and cultural rights and explicit recognition and protection of vulnerable and marginalized groups. In order to operationalize Article 43 of the Constitution on economic and social rights and the Bill of Rights generally, the Government, through the Ministry of Justice, National Cohesion and Constitutional Affairs should urgently develop guidelines for operationalizing [Article 43] in order for Kenyans to realize the benefits of this progressive Bill of Rights. Towards this end, various responsible State agencies should initiate discussions on what the minimum core content of economic and social rights should be. The Commission will develop monitoring guidelines for the exercise of economic and social rights as guaranteed in the Constitution, and develop IEC materials as well as sensitization programmes to enable the public understand the implications of Article 43 and the Bill of Rights generally as well as the extent of the Government's obligations.
3. **Coordination between the KNCHR, NGEA and CAJ** - With the enactment of the Commission on Administrative Justice Act No. 23 of 2011, and the National Gender and Equality Act No. 15 of 2011, and the KNCHR Act No. 14 of 2011 under Article 59(1) of the Constitution, the state should facilitate the three Commissions to undertake sustained branding and sensitization on their respective mandates, to create understanding of and avoid overlaps and confusion with regards to which Commission to address complaints to. In addition, the three Commissions should establish an effective coordination, referral and follow-up mechanism to address the overlaps in their mandates and to ensure that these do not translate to burdens on the part of the public, in particular, petitioners.
4. **2012 General Elections** – With 2012 being an election year, and learning from the 2007 general elections, the Government, specifically the Ministry of Internal Security and the National Steering Committee on Peace Building in partnership with the civil society organizations should streamline and resource early warning mechanisms for the purposes of monitoring, identification and quick intervention in potential tension zones and conflict hot spots to avert a repeat of the 2007/2008 post election violence. The Commission will monitor the 2012 General Elections, with a specific focus on the violations of electoral laws, use of hate speech and incitement to ethnic hatred and the misuse of public resources in the campaigns.
5. **Negative ethnicity and use of hate speech** – The Commission is alive to enhanced negative ethnicity and the use of hate speech and other inflammatory statements in the context of the ICC proceedings. These are likely

to be on the increase in the run up to the 2012 General Elections. The Government and Parliament should therefore prioritize enactment of legislation on prohibition of hate speech and incitement to ethnic hatred; to curtail the impunity that has been enjoyed by the perpetrators of hate speech and negative ethnicity. The Commission in 2007 prepared a draft prohibition of hate speech and incitement to ethnic hatred Bill, which it forwarded to the Minister of Justice and the Attorney General for consideration. There has been no progress towards this end.

6. **The International Criminal Court** - In light of the various developments as regards the ICC including the impending decision of the ICC on whether to commit the Ocampo six to trial, the government should increase its monitoring actions in various conflict hotspots and establish mechanisms that will avoid a repeat of the events of the post 2007 General Election violence. In the same line, the Government should ensure that the lower-level perpetrators of the 2007/2008 post election violence are held accountable to deter possible perpetrators of election related violence: this should be undertaken in the context of a Special Tribunal.
7. **Witness protection** – The Witness Protection Agency should be fully operationalized and adequately resourced to undertake the important task of witness protection in an independent and credible manner. This is given the importance of credible and autonomous witness protection to the work of human rights protection and specifically, the watchdog mandate of the KNCHR.
8. **Internally Displaced Persons (IDPs)** – The Government should urgently finalize and adopt the draft IDP policy to facilitate among other things, measures to identify and prevent internal displacement, and to effectively and promptly protect IDPs where these occur. In addition, the Government should quickly resettle and compensate ALL IDPs in the country. The Ministry of State for Special Programmes should fast track the IDP resettlement process. In this regard it should work with key stakeholders including host communities and IDPs in order to own the measures taken towards resettlement. Additionally, efforts should be made to monitor the situation of internal displacement ahead of the 2012 General Elections to avert an internal displacement crisis of the magnitude witnessed in 2008. The Commission will continue to partner with the UNHCR, and local CBOs to monitor the situation of internal displacement and advise the Ministry of State for Special Programmes on the same.
9. **Extra-judicial killings** - The Commission is getting increasingly concerned by the various reported cases of extra-judicial killings, by both the public and law enforcement agencies, and which seem to clearly have a pattern. The reports are both through the media and the complaints that the Commission received in the reporting year. The Commission strongly urges the Government, specifically the Police and the Ministry of Internal Security to urgently take appropriate measures to stop extra-judicial killings towards enhancing accountability and the rule of law in the country.
10. **Security sector reforms** – The Commission has continued to monitor and advocate for reforms within the police and prisons departments given the key role they play in the criminal justice sector and in the general protection of rights as well as facilitation of access to justice by vulnerable groups. Given this central role that the police and prisons departments play in advancing (or violating) human rights, the Commission urges the Government to fast-track the much needed reforms in these sectors to infuse and build a culture of human rights in the republic. In addition, the general welfare and improvement of the terms of service of police and prisons officers should form a core component of the reforms initiatives. The Commission will on its part continue to exercise its watchdog mandate over these agencies, and will provide capacity building trainings for the police and prisons offices to enhance their awareness of and application of human rights principles in their work.
11. **Penal reforms** – The Ministry of Home Affairs should allocate earmarked resources to Prisons human rights desks to enable the desk officers undertake specific human rights monitoring and reporting and other activities. In addition, the Ministry of Home Affairs should fast track enactment of legislation and policy under Article 51 of the Constitution on the rights of persons detained, held in custody or imprisoned in addition to a comprehensive review of the Prisons Act, to be in line with the Constitution.
12. **Persons with Disabilities** – The Government should put in place provisions and mechanisms to ensure that the Convention on the Rights of Persons with Disabilities is fully implemented; this will facilitate full enjoyment of human rights by PWDs. Sign language should be made compulsory in all public sector meetings and forums at the national and county levels. The Commission will on its part continue implementing its mandate as a designated disability monitoring agency and will issue reports to guide the Government in implementing the CRPD.

Part **FOUR**

Financial Statements
For the 2010/2011 Financial Year

REPUBLIC OF KENYA



KENYA NATIONAL AUDIT OFFICE

**REPORT
OF
THE AUDITOR-GENERAL
ON
KENYA NATIONAL COMMISSION ON
HUMAN RIGHTS
FOR THE YEAR ENDED
30 JUNE 2011**



KENYA NATIONAL AUDIT OFFICE

REPORT OF THE AUDITOR-GENERAL ON KENYA NATIONAL COMMISSION ON HUMAN RIGHTS FOR THE YEAR ENDED 30 JUNE 2011

Report on the Financial Statements

I have audited the accompanying financial statements of the Kenya National Commission on Human Rights, set out on pages 6 to 23, which comprise the Statement of Financial Position as at 30 June 2011, the statement of comprehensive income, the statement of cash flows and the statement of changes in fund balances for the year then ended, together with a summary of significant accounting policies and other explanatory notes in accordance with the provisions of Article 229 of the Constitution of Kenya, Section 20 of the Public Audit Act, 2003 and Section 48 of the Kenya National Commission on Human Rights Act, 2011. 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.

Management's Responsibility for the Financial Statements

The Management is responsible for the preparation and fair presentation of these financial statements in accordance with the International Financing Reporting Standards and for such internal controls as management determines is necessary to enable the preparation of the financial statements that are free from material misstatement, whether due to fraud or error.

The Management is also responsible for the submission of the financial statements to the Auditor General in accordance with the provisions of Section 13 of the Public Audit Act, 2003.

Auditor-General's Responsibility

My responsibility is to express an independent opinion on the 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 International Standards on Auditing. Those standards require compliance with ethical requirements and that the audit be planned and performed with a view to obtaining

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 controls relevant to the commission'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 controls. 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. Motor Vehicles

The Property and Equipment balance of Kshs.31,227,064.00 as at 30 June 2011 includes two motor vehicles with a net book value of Kshs.658,987.30 (cost Ksh.4,687,000.00) whose logbooks were not provided for audit verification. Consequently, it has not been possible to ascertain the ownership of the vehicles.

2. Staff Advances

The Debtors, Deposits and Prepayments balance of Kshs.6,218,752.00 includes an amount of Kshs.957,678.06 relating to staff advances owed by a former commissioner and employee of the commission. As similarly reported in the previous year, no explanation has been provided for failure to recover these long outstanding advances.

3. Imprests

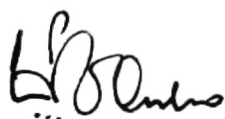
The Debtors, Deposits and Prepayments balance of Kshs.6,218,752.00 also includes imprests totalling Kshs.1,231,979.96 out of which an amount of Kshs.328,626.72 was owed by a former commissioner and three ex-employees of the Commission.

4. Unvouched Expenditure

Payment vouchers and other supporting records for expenditure totalling Kshs.4,123,519.90 incurred on stipend and rent for post election violence witnesses were not provided for audit review. Consequently, the propriety of the expenditure could not be ascertained.

Qualified Opinion

In my opinion, except for the effects of the matters described in the Basis for Qualified Opinion paragraph, the financial statements give a true and fair view of the financial position of the Kenya National Commission on Human Rights as at 30 June 2011, and its financial performance and its cash flows for the year then ended, in accordance with International Financial Reporting standards.



Edward. R. O. Ouko
AUDITOR-GENERAL

Nairobi

10 February 2012



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)

ANNUAL REPORT

AND

FINANCIAL STATEMENTS

30TH JUNE 2011

**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS
FOR THE FINANCIAL YEAR ENDED 30TH JUNE 2011**

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**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS
COMMISSION INFORMATION
FOR THE YEAR ENDED 30TH JUNE 2011**

PRINCIPAL PLACE OF BUSINESS

CVS Plaza, 1st Floor, Lenana Road
P.O. Box 74359-00200
NAIROBI

BANKERS

Kenya Commercial Bank
Milimani Branch
P O Box 69695
NAIROBI

AUDITORS

Kenya National Audit Office,
P O Box 30084 - 00100
NAIROBI

**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS
REPORT OF THE COMMISSIONERS
YEAR ENDED 30TH JUNE 2011**

The Commissioners submit their report and the financial statements for the year ended 30 June 2011 which show the state of the Commission's affairs.

1. PRINCIPAL ACTIVITY

The principal activity of the Commission is to enhance the protection and promotion of human rights in Kenya.

2. COMMISSION STRUCTURE AND NATURE OF ACTIVITIES

The Kenya National Commission on Human Rights (the Commission) is an independent national human rights institution established by the Kenyan Government through the Kenya National Commission on Human Rights Act, 2002 (No. 9 of 2002). The Commission is compliant with the United Nation's Paris Principles in terms of its mandate and operations. The Commission succeeded the Standing Committee on Human Rights, which was established in 1996. The first Commissioners were appointed on 29 July 2003.

The mission of the Commission is to lead in enhancing the Government's role in protecting and promoting human rights in Kenya by initiating and advising on programmes and policies that transform Kenya into a society that respects human dignity, social justice and equality for all.

The Commission is constituted of the Commissioners and the Secretariat. The Commissioners (9) serve on a full time basis and enjoy security of tenure. The Secretariat is headed by the Commission Secretary.

3. RESULTS

The results for the year are shown on page 5.

4. MANAGEMENT

The Commissioners who served during the year and to the date of this report were:-

Ms. Florence Simbiri-Jaoko	-	Chairperson
Mr. Hassan Omar Hassan	-	Commissioner
Ms. Winfred O. Lichuma	-	Commissioner
Ms. Wambui Kimathi	-	Commissioner
Ms. Fatuma Ibrahim Ali	-	Commissioner
Mr. Lawrence Mute	-	Commissioner
Dr. Samuel Tororei	-	Commissioner
Fatuma Dullo	-	Commissioner
Anne Munyiva Kyalo Ngugi	-	Commissioner
Mr. Mohamed Hallo	-	Commission Secretary

5. **STATEMENT OF THE COMMISSIONERS' RESPONSIBILITIES ON THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30TH JUNE 2011**

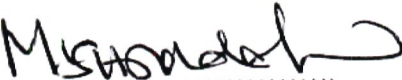
The Kenya National Commission on Human Rights Act (No. 9 of 2002), which establishes the Commission, requires the management of the Commission to prepare financial statements for each financial year, which give a true and fair view of the state of affairs of the Commission as at the end of the financial year and of its operating results for that year. It also requires the management to ensure proper accounting records are maintained which disclose with reasonable accuracy at any time the financial position of the Commission. They are also responsible for safeguarding the assets of the Commission.

The management of the Commission accepts responsibility for the financial statements, which have been prepared using appropriate accounting policies supported by reasonable and prudent judgments and estimates, in conformity with the Commission's financial regulations and generally accepted accounting principles. The management of the Commission is of the opinion that the financial statements give a true and fair view of the state of the financial affairs of the Commission and of its operating results. The management of the Commission further accepts responsibility for the maintenance of accounting records, which may be relied upon in the preparation of the financial statements, as well as adequate systems of internal financial control.


Nothing has come to the attention of the management of the Commission to indicate that Commission will not remain a going concern for at least the next twelve months from the date of this statement.

6. **AUDITORS**

Pursuant to section 31 (3) of the Kenya National Commission on Human Rights Act No. 9 of 2002, the Commission's Auditors remains the Kenya National Audit of the Government of Kenya.


.....
Commission Secretary

.....18/11/2011
Date


.....
Chairperson
.....25/11/2011
Date

**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS
INCOME STATEMENT
FOR THE YEAR ENDED 30TH JUNE 2011**

	<u>Notes</u>	<u>2011 Kshs</u>	<u>2010 Kshs</u>
Grants Received		<u>241,917,071</u>	<u>326,128,431</u>
INCOME			
Grant income	7	319,411,521	206,514,355
		<u>319,411,521</u>	<u>206,514,355</u>
EXPENDITURE			
Personnel costs	9	104,365,385	79,327,971
Programme support costs	10	45,085,563	32,024,521
Programme costs	11	169,960,573	95,161,862
Total Expenditure		<u>319,411,521</u>	<u>206,514,355</u>
SURPLUS FOR THE YEAR:			
Capital Reserve		<u>31,227,064</u>	<u>35,895,719</u>
		<u>31,227,064</u>	<u>35,895,719</u>

**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS
STATEMENT OF CHANGES IN FUND BALANCES
FOR THE YEAR ENDED 30TH JUNE 2011**

Details	General/Capital Reserves Kshs
As at 1st July 2009	40,557,035
Additions & Disposals	6,467,672
Depreciation	(8,637,314)
As at 30 June 2010	<u>38,387,393</u>
As at 1st July 2010	38,387,393
Additions & Disposals	2,481,695
Depreciation	(7,150,350)
As at 30 June 2011	<u>33,718,738</u>

Capital reserves relate to net capital value of the property and equipment, being capital grants received from the funding agencies.

**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS
CASH FLOW STATEMENT
FOR THE YEAR ENDED 30TH JUNE 2011**

	<u>Notes</u>	<u>2011 Kshs</u>	<u>2010 Kshs</u>
Operating Activities			
Cash flows from operating activities	I&E	(4,668,655)	(2,169,642)
Depreciation		<u>7,150,350</u>	<u>8,637,314</u>
Sale proceeds		-	-
Loss on disposal of fixed assets		-	-
Operating surplus before working capital changes		<u>2,481,696</u>	<u>6,467,672</u>
Working Capital Changes			
Stocks	3	(17,391)	(386,991)
Debtors	4	3,880,091	(3,961,715)
Grants receivable	7	1,675,300	21,026,985
Creditors	8	(235,193)	(5,279,457)
Deferred income	7	<u>(81,651,445)</u>	<u>92,119,419</u>
		<u>(76,348,638)</u>	<u>103,518,242</u>
Net cash flows generated by operating activities		<u>(73,866,942)</u>	<u>109,985,914</u>
Investing Activities			
Acquisition of Fixed Assets	2	<u>(2,481,696)</u>	<u>(6,467,672)</u>
Net increase in cash and cash equivalents	5	(76,348,638)	103,518,242
Cash and cash equivalents at beginning of the year		<u>150,046,720</u>	<u>46,528,479</u>
Cash and cash equivalents at end of year	5	<u>73,698,082</u>	<u>150,046,721</u>

**KENYA NATIONAL COMMISSION OF HUMAN RIGHTS
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30TH JUNE 2011**

1. ACCOUNTING POLICIES.

The financial statements have been prepared in accordance with International Financial Reporting Standards. The principal accounting policies adopted remain unchanged from the previous year and are stated below:

- a) **Basis of accounting**
The financial statements are prepared on the historical cost basis.
- b) **Income recognition**
Income comprises grants from various donors and other income. Operating grants are recognized over the period necessary to match them with related expenses.
- c) **Expenditure**
Expenditure comprises expenses incurred directly for and in support of programme activities. These are recognized on accrual basis.
- d) **Property and equipment**
Property and equipment are stated at cost less accumulated depreciation. Depreciation is calculated on the reducing balance method at annual rates estimated to write off carrying values of the assets over their expected useful lives. The annual depreciation rates used are:
- | | |
|----------------------------------|--------|
| Computers & Printers | 33.33% |
| Office Equipment | 12.5% |
| Furniture, Partitions & Fittings | 12.5% |
| Motor Vehicles | 25% |
- Full depreciation is charged in the year of purchase / acquisition and non in the year of disposal.
- e) **Foreign currency translations.**
Foreign currency grants and transactions during the year are converted into Kenya Shillings at rates ruling at the transactions dates. Gains and losses on exchange are dealt with in the Income Statement.
- f) **Retirement benefits costs**
The Commission contributes to a statutory defined contribution provident scheme and to the National Social Security Fund (NSSF). Contributions to NSSF are determined by local statute and are currently limited to Kshs 200 per employee per month, while those to the provident fund scheme is 10% of the consolidated monthly salary for all secretariat staff. The Commission's contributions to the above schemes are charged in the income and expenditure account in the year to which they relate.
- g) **Cash and cash equivalents**
Cash and cash equivalents comprise balances held in current accounts with banks and cash on hand.
- h) **Deferred income**
Unexpended grant receipts are deferred and recognized as income when the related expenses are incurred.
- j) **Comparatives**
Where necessary, comparative figures have been adjusted to conform with changes in presentation in the current year.

**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS
NOTES TO THE FINANCIAL STATEMENTS (Continued)
FOR THE YEAR ENDED 30TH JUNE 2011**

2. PROPERTY AND EQUIPMENT

	Computers & Printers Kshs.	Office Equipment Kshs.	Partitions, Furniture & Fittings Kshs.	Motor Vehicles Kshs.	Total Kshs.
COST					
At 1 July 2010	18,299,209	9,839,372	31,123,925	38,534,556	97,797,063
Additions	905,501	705,871	870,323		2,481,695
Disposals	-	-	-	-	-
At 30 June 2011	<u>19,204,711</u>	<u>10,545,243</u>	<u>31,994,248</u>	<u>38,534,556</u>	<u>100,278,758</u>
DEPRECIATION					
At 1 July 2010	12,979,245	3,508,572	15,330,243	30,083,283	61,901,343
Charge for the Year	2,074,948	879,584	2,083,001	2,112,818	7,150,350
Disposals					
At 30 June 2011	<u>15,054,193</u>	<u>4,388,156</u>	<u>17,413,244</u>	<u>32,196,101</u>	<u>69,051,694</u>
NET BOOK VALUE					
At 30 June 2011	4,150,518	6,157,087	14,581,004	6,338,455	31,227,064
At 30 June 2010	<u>5,319,964</u>	<u>6,330,800</u>	<u>15,793,682</u>	<u>8,451,273</u>	<u>35,895,719</u>

The Commission maintains a memorandum account showing details of the existing property and equipment at any one time.

**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS
NOTES TO THE FINANCIAL STATEMENTS (Continued)
FOR THE YEAR ENDED 30TH JUNE 2011**

3. STOCKS

Stocks comprise stationery stocks valued at the lower of their cost and net realizable values. No provision is made for obsolete, slow moving and defective stocks. The closing stock figure stood at Kshs 806,923.

4. DEBTORS AND PREPAYMENTS

DETAILS	2011 Kshs.	2010 Kshs.
Banker's Guarantee for Fuel – Total Kenya	930,000	-
Interproject	48,533	189,834
Rent deposit - CVS Plaza	2,400,986	2,400,986
Prepayment-Rent	-	5,280,596
Rent deposit – Kapenguria Office	60,000	60,000
Celtel telephone lines deposit	101,000	101,000
Safaricom telephone lines deposit	100,000	100,000
Staff Imprests	1,017,487	622,665
Staff Advances	1,560,745	1,343,761
TOTAL	<u>6,218,752</u>	<u>10,098,843</u>

5. CASH AND CASH EQUIVALENTS

For the purpose of the cash flow, cash and cash equivalents comprise: -

DETAILS	2011 Kshs.	2010 Kshs.
Bank and cash balances	73,698,082	150,046,719

6. RESERVES

DETAILS	2011 Kshs.	2010 Kshs.
Capital reserves	31,227,064	35,895,719
General reserves	2,491,674	2,491,674
	<u>33,718,738</u>	<u>38,387,393</u>

**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS
NOTES TO THE FINANCIAL STATEMENTS (Continued)
FOR THE YEAR ENDED 30TH JUNE 2011**

7. (GRANT RECEIVABLE) /DEFERRED INCOME

Movement in deferred grant income and grant receivable is analyzed as follows:

FUNDING	Opening Deferred Income Balance Kshs	Opening Receivable Income Balance Kshs	Receipts in the year Kshs	Expended in the year Kshs	Income Receivable Kshs	Deferred Income Kshs
SOURCE						
GOK	5,542,212		135,000,000	135,692,876		4,849,335
EU	17,866,268			17,639,302		226,966
Norway (105)	40,657,285		39,893,617	66,755,445		13,795,457
CIDA-3 (59)	3,643,256		(3,643,256)			
TROCAIRE	749,052					749,052
UNCHR	952,702		245,000	358,001		839,702
FINLAND STUDY (97)		138,871	138,871			-
DUTCH	39,946,137		66,998,560	74,933,556		32,011,141
CIDA-4 (95)		736,349	736,020	1,081	1,410	
GTZ -Witness protection		5,822	4,233,149	4,271,955	44,628	
FINLAND(92)	44,225		(44,225)			
OHCHR		276,715			276,715	
SIDA/UNDP -PEV (91)	15,066,504		(7,202,048)	7,805,114		59,342
Other Income	1,819,326		4,160,567	443,191		5,536,702
OHCHR (109)			2,412,000	99,095		2,312,905
BHC	2,768,671			28,884		2,739,787
NORWAY	3,010,686		(3,010,686)			
INVESTIGATIONS						
DFID -INVESTIGATIONS.	12,400,967		(2,695,507)	9,368,184		337,276
UNCHR - IDP (110)	-		3,008,553	3,603,577	595,024	-
GIZ-113			490,000	359,195		130,805
OHCHR -SOUTH AFRICA(111)			402,056	280,664		121,392
IIE - HRD CONFERENCE			794,400	253,095		541,305
Total	144,467,291	1,157,757	241,917,071	321,893,216	917,777	64,251,166
Capital Grants				2,481,695		
Grant Income				<u>319,411,521</u>		

**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS
NOTES TO THE FINANCIAL STATEMENTS (Continued)
FOR THE YEAR ENDED 30TH JUNE 2011
Government of Kenya (GOK) - Fund:**

The grant supported operational support costs such as wages and salaries, operations and maintenance, and donor counterpart contributions. It does not include the salaries and allowances for Commissioners which is met directly through the Consolidated Fund.

Canadian International Development Agency (CIDA) Fund:

The grant supported programmes on advocacy, research on human rights education in schools, and a conference on corruption as a human rights issue.

Governance Justice Law and Order Sector (GJLOS) Fund:

GJLOS is a Government managed reform programme, which started in 2004, and targets the governance, justice law and order sector. It brings together more than 32 departments and agencies across a number of ministries, including the Ministry of Justice and Constitutional Affairs, Ministry of Home Affairs, Office of the President, and Ministry of Immigration. A number of development partners have pooled their money in a basket to support the programme. The basket is managed by a Financial Management Agent. The support from GJLOS was critical in the implementation of a wide range of the Commission's programmes

TROCAIRE Fund:

The grant supported programmatic work on promoting accountability in political processes.

GTZ Fund:

Supporting potential witnesses after the post election violence, Kenya – for support of ICC trials.

DUTCH Fund:

The grant supports KNCHR strategic plan 2009-2013.

NORWAY Fund:

The grant supports KNCHR strategic plan 2009-2013.

E.U Fund:

Supports addressing torture as a systemic Human Rights violation in Kenya.

British High Commission Fund:

The grant supports Civil Society Support to Security Sector Reform.

UNHCR Fund:

The grant supports a research study on statelessness in Kenya

Canadian International Development Agency (CIDA-Democratic Governance) Fund:

The grant supported programmatic work on Protecting Human Rights in Kenya After the Post Election Violence.

**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS
NOTES TO THE FINANCIAL STATEMENTS (Continued)
FOR THE YEAR ENDED 30TH JUNE 2011**

United Nations Democracy Fund (UNDEF) Fund:

The grant supported programmatic work on promoting accountability in political processes and monitoring the 2007 elections.

Office of the High Commissioner for Human Rights (OHCHR) Fund:

This grant supported the setting up of the Secretariat for African National Human Rights Institutions, which is being temporarily housed at the Commission.

United Nations Development Programme Fund (UNDP-MOPA-ELECTIONS):

The grant supported programmatic work on promoting accountability in political processes and monitoring the 2007 elections.

German Technical Cooperation (GTZ-Investigations) Fund:

This grant supported documentation and investigation of serious human rights abuses following the 2007 post election violence.

Royal Norwegian Embassy (Investigations) Fund:

This grant supported documentation and investigation of serious human rights abuses following the 2007 post election violence.

Department for International Development Fund (DFID-Investigations):

This grant supported Kenya's National Civic Education Programme Phase two.

Embassy of Finland Fund (Training)

This grant supported training of two Senior Human Rights officers of the Commission in Helsinki.

United Nations Development Programme Fund (SIDA/UNDP):

This grant supports activities on the application of human rights principles and standards in the implementation of Agenda IV of the national accord.

None of the grants or donations were made or received for purposes of influencing the decision or ability of the Commission.

**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS
NOTES TO THE FINANCIAL STATEMENTS (Continued)
FOR THE YEAR ENDED 30TH JUNE 2011**

8. CREDITORS AND ACCRUALS

<u>DETAILS</u>	<u>2011 Kshs.</u>	<u>2010 Kshs.</u>
Amounts falling due within one year	14,898,692	15,133,884

9. STAFF COSTS

<u>DETAILS</u>	<u>2011 Kshs.</u>	<u>2010 Kshs.</u>
Salaries and benefits -Staff	89,277,062	68,957,487
Medical Insurance Scheme	10,458,346	7,006,659
Interns Stipend	4,629,977	3,363,825
TOTAL	<u>104,365,385</u>	<u>79,327,971</u>

The salaries and benefits of Commissioners (nine) are paid directly to them by Treasury from the Consolidated Fund and are not included under staff costs.

10. PROGRAMME SUPPORT COSTS

<u>DETAILS</u>	<u>2011 Kshs.</u>	<u>2010 Kshs.</u>
Office Rent	22,248,845	19,538,072
Telephone and E-Mail	4,412,433	3,172,057
E-Mail & Internet services	750,830	444,426
Printing and Stationery	2,084,429	950,194
Postage and deliveries	227,106	489,456
Equipment Repairs and Maintenance	1,015,622	572,608
Professional Subscription Fees	2,320,742	387,585
Office Utilities	1,192,651	1,542,236
Advertisement costs	1,482,930	553,728
Equipment Insurance	183,164	268,632
Legal fee	1,028,980	1,249,098
Bank Charges	400,597	264,409
Subscriptions	60,280	163,220
Training internal	3,514,100	548,295
Conference & workshop	475,830	348,472
Cleaning Services	686,668	375,128
Security Services	544,040	611,389
Library Materials & newspapers	331,887	196,026
Electricity bill	23,480	35,195
Water bills	56,987	5,296
Guest House Utilities	38,963	4,000
Consultancy on change management	2,005,000	305,000
TOTAL	<u>45,085,563</u>	<u>32,024,521</u>

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS
NOTES TO THE FINANCIAL STATEMENTS (Continued)
FOR THE YEAR ENDED 30TH JUNE 2011
11. PROGRAMME COSTS

	2011	2010
	ACTUAL	ACTUAL
DETAILS	Kshs.	Kshs.
Movement of political accountability & election monitoring		
Production of publicity materials		(133,081)
MOPA workshop, signing & newspaper advert		89,550
Sub-total		(43,531)
REFORM & ACCOUNTABILITY		
Institutional Strengthening		1,955,893
Civil society forum		133,285
Regional workshop on security sector reform		1,923,171
Public debates –Security sector reform		312,228
Lobby meeting with parliamentarians		53,418
Parliamentary committees workshop		1,034,483
Media advocacy – Security sector reform		1,741,366
Media/ publicity campaigns		1,247,814
Taskforce workshop –security sector reform		268,400
Investigation PEV detention without trial		179,065
Production of PEV report		2,103,944
Regional training & advocacy –TJRC		4,033,273
Participation of victims group –TJRC		2,122,052
Publish journal on IDP's		312,500
Workshop police oversight body	24,900	230,000
Monitoring visits to detention places	891,649	
Transport meeting torture survivor	151,350	
Media monitoring consultancy proposed constitution referendum	1,438,400	
Newspaper adverts & IEC material-proposed constitution	1,262,927	
B/fast meeting with political leaders- proposed constitution	581,728	
Media advocacy –proposed constitution	1,214,721	
Induction & capacity building of monitors for monitoring campaigns-proposed constitution	85,368	
Monitoring human rights in Rift Valley	23,000	
Monitoring reporting & advising resettlement of IDP's	1,081	1,889,212
Accommodation /Stipend –witness protection intervention	4,140,491	5,430,870
Incidentals-witness protection intervention	103,913	110,556
Human rights clinics	386,490	134,145
Training workshop- CSO's FBO's	1,583,620	536,950
Conducting of public forums-TJRC public forum.	4,306,258	3,279
Human rights officer	722,690	
Consultative forum –judiciary reform	39,360	101,142
Award reformist Institutional & individual on HR	2,930,942	
Sensitization forums on Implementation of HR	849,200	
Forums with NGO's FBOs CBO's on reforms	648,667	177,000
Development of task force on recommendation	309,250	472,500
Publication & dissemination of report	2,841,979	
Media campaign on reforms	3,600,864	1,170,720

**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS
NOTES TO THE FINANCIAL STATEMENTS (Continued)
FOR THE YEAR ENDED 30TH JUNE 2011
11. PROGRAMME COSTS**

	2011	2010
	ACTUAL	ACTUAL
DETAILS	Kshs.	Kshs.
Scheduled /unscheduled visits	53,000	1,039,202
Advocacy on rights of children in prisons	43,250	30,000
National conference –law enforcement	5,229,616	65,000
Protection of working groups		2,410
Implement task force –Judicial reform	1,450,250	
Partnership Key Stake holders Agenda 4	64,100	
Sensitization court users	767,688	
Training selected victims groups on effective engagement	4,453,727	
Media advocacy on transitional justice	223,060	
TJRC hearing	2,101,451	
Exposure visit on penal reform & prisons management	2,119,766	
Public education proposed constitution	5,380,203	3,762,373
Monitoring constitutional referendum	13,210,552	449,495
Agenda 4 IEC materials	24,233,085	9,260,363
Visits prisons & police stations	1,718,264	79,990
Sub-total	89,186,861	42,366,099
COMPLAINS & INVESTIGATION		
Human Rights complaints investigation-rapid response	2,439,978	1,108,077
Human rights clinics .	1,695,987	436,529
Capacity Building Counseling & debriefing -CIP	468,904	
Training on Gender Based Violence investigation	488,400	
Investigation alleged violation	218,250	15,128
Sub-Total	5,311,519	1,559,734
REDRESS		
Filing public interest case	-	61,088
Serv. Summons & court proceedings	22,000	7,885
Sustain the appeal for the restoration of Complaints Hearing Panel and other incidental cases	2,521,818	-
Recording complains hearing (Hansard)	150,000	-
Human Rights Defenders	3,644,081	1,830,364
Media publicity on regional hearing –Reproductive health	294,930	
Public inquiry incidental costs	1,908,185	35,000
Engage experts for regional hearing on productive health	431,909	-
Draft report & peer review on reproductive health report	861,500	-
Disseminations of report on reproductive health	178,280	-
Review & drafting of KNHREC act	1,091,468	
Sub-Total	11,104,171	1,934,337
REGIONAL OUTREACH		
Regional outreach & strengthening partnership	259,290	2,464,515
Regional local point Org. & stakeholders	3,830,577	5,108,804
Advocacy on Agenda 4 items	3,668,137	1,119,056
CEDAW – Gender mainstreaming	825,598	

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS NOTES TO THE FINANCIAL STATEMENTS (Continued) FOR THE YEAR ENDED 30TH JUNE 2011		
11. PROGRAMME COSTS		
	2011	2010
	ACTUAL	ACTUAL
DETAILS	Kshs.	Kshs.
Statutory Documents publication/Annual report	23,526	
Resource Centre for Regional for Offices/ Head office	1,000,965	
Forum with district peace committee to foster peace & reconciliation	380,950	
Forums with Local religious leaders on peace & reconciliation	103,000	
Conduct training for Endoroise	410,000	
Sub-total	10,502,042	8,692,357
ECONOMIC,SOCIAL & CULTURAL RIGHTS		
Document public & launch monitoring report on IDP	12,990	
Investors & stakeholders round table meeting	297,794	
Monitoring business compliance with human rights	641,614	
Production of documentary on regional imbalances & inequality	199,800	
Regional forum/dilemma session on business & human rights	811,250	
ILO convention & domestic workers	140,062	
Workshop on culture & human rights	613,394	
Protection of working groups	33,360	
Publication & dissemination draft National IDP policy	1,703,374	
Sensitization of public- property rights IDP's	83,598	263,590
Auditing land titles held-IDP's		199,940
Capacity building workshop –Regional monitors	295,000	
Support & facilitation 20 regional monitors	725,210	
Lobby & advocacy National Legal framework on IDP	1,152,055	
Monitoring workshop for PWG	100,890	
Monitoring/Secretariat-IDP	386,111	
Salary for monitors-IDPS	1,561,313	
Sub-total	8,757,816	463,530
RESEARCH & COMPLIANCE		
Nguzo za haki / Human rights Journal	187,000	
Stake holders forum on the shadow reporting on the Convention on the rights	2,773,711	
UN human rights universal periodic review	796,096	711,879
Workshop disseminate finding on human rights council	233,920	335,074
Document and publication of the third state of human rights report	6,522,114	
Universal periodic review	1,354,860	201,166
Launch Third state of human rights report	272,880	102,000
Baseline survey on the status of human rights in Kenya	1,784,080	517,293
Draft bill on prevention of torture	418,000	
Forum with stake holder to review bill	208,960	
Forum with the Office of Attorney General & MPS	73,780	
Workshop to lobby ratification of the OPCAT	1,511,699	
Development of IEC materials	104,000	
Media features –print & electronic	2,342,040	616,934
Targeted advocacy for implementation anti torture	6,704	

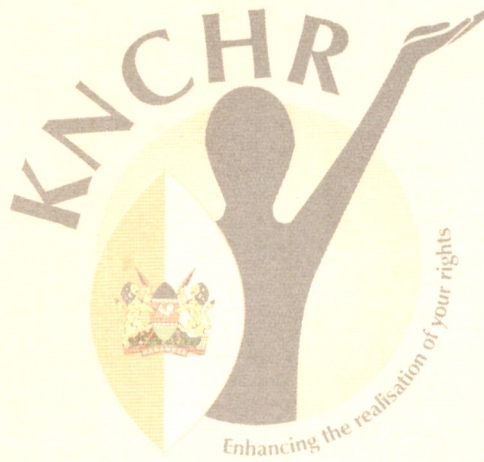
**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS
NOTES TO THE FINANCIAL STATEMENTS (Continued)
FOR THE YEAR ENDED 30TH JUNE 2011
11. PROGRAMME COSTS**

	2011	2010
	ACTUAL	ACTUAL
DETAILS	Kshs.	Kshs.
Publicity & branding visibility		1,262,908
Consultancy study on statelessness		620,000
State of statelessness project		485,258
Report drafting, publicity & launch	358,001	69,000
Sub-total	18,947,845	4,921,512
HUMAN RIGHTS EDUCATION		
Awareness on Human Rights	2,737,108	315,688
Conduct needs assessment on torture places	193,200	
Training police & prisons officers	5,657,367	95,380
Train prisons & police colleges	2,405,429	
Lobby & Implement HIV laws	98,285	
Monitoring & evaluation training	1,758,161	
Project management training	230,760	
GOK counterpart		1,433,144
Sub-total	13,080,310	1,844,212
GJLOS -MT3TG2		
Identify contributors & assign responsibilities-Nguzo		250,000
Design & layout & printing of 2000 copies		283,005
Prepare draft domestication bill for convention		400,000
Follow up/dissemination of recommend. of treaty		24,920
Participation in relevant local conference & workshop		464,017
Participation by staff in continuing professional educ. Course		471,453
Design & production of commissions diary- (300)		270,000
Design & productions of KNCHR calendars (500)		300,000
Design & production of fact sheets (3000)		175,000
Design & production of award mementos		142,783
Announcement of the award winners & presentation of the awards		42,817
STTP upgrades		22,288
Sub-total		2,846,283
GJLOS -MT4TG2.		
Development of a national policy & action plan for human rights		
Hold 10 hearings in North Eastern & Nairobi		1,119,000
Publicity through print & electronic media		363,668
IEC material production- brochures, pamphlets, fliers & T-shirts		1,600,000
Technical support and co-ordination of NAP		3,500
Peer review of draft report		67,850
Publication of report		485,590
Breakfast forum with the media to discuss the draft bill		51,000
Forum with civil society stakeholders		64,416

**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS
NOTES TO THE FINANCIAL STATEMENTS (Continued)
FOR THE YEAR ENDED 30TH JUNE 2011
11. PROGRAMME COSTS**

	2011 ACTUAL	2010 ACTUAL
	Kshs.	Kshs.
DETAILS		
Conduct field work		500,000
Workshop profiling & lobbying ratification of the OPCAT		264,470
Lobby & monitor implementation of the UNCRPD		157,395
Disseminate & follow up implementation of the TB recomm. ICESCR & CAT reports		200,000
Training for commissioners & staff on treaty bodies		88,380
Participation in meetings of the UN human Rights Council		350,742
Capacity building on human rights for Malindi community groups		363,863
Participate in an International ISO 26000 working group discussion		171,466
Evaluation of the project		400,000
Identify & work with a local partner to carry the work forward		100,000
Raising in ADR for LCE		500,000
Publish report		92,050
Undertake media campaign		103,403
Publication of report		500,000
Training ministry of education officials on infusion of human rights into curriculum		135,392
Conduct training for local government officers on HRBAD		733,423
Hold bi-monthly meetings of network of HRBAD		124,959
Announcement of the Award winners & presentation		843,464
Airtime for awards video clips		40,075
Produce institutional & programmatic radio & TV spots		1,000,000
North rift regional office		609,785
Publicize activities of the KNCHR through print & electronic media		942,368
Review the current appraisal too to achieve a 360 degree target		200,000
Retreat for all staff		800,000
Based on training needs assessment, implement training program		113,226
Participation in training workshops & conferences		1,500,000
Sub-total		14,589,484
GJLOS-MT4TG3		
Documented investigation & findings on serious & systemic human rights violation		
Investigation on the Mandera & Marsabit clan clashes & the response of security		155,570
Advocacy for implementation of report recommendation		242,070
Preparatory contact building		54,620
Conduct the HR clinics/Outreach		643,475
Contract Counselors		115,000
Training workshop for staff on investigation human rights violation		166,800
Sub-total		1,377,535
GJLOS -MT4TG4		
Strengthened legal & institutional framework for law enforcement institutions		
Scheduled & unscheduled inspections of prisons, police stations, & other detention places		580,534
Periodic report on state of prisons		495,000
Support to local level court users committee meetings		375,702
Mounting bill boards on the rights of arrested persons at police stations		477,112
Advisories for review of legislation & rules governing prisons & police		30,923
Advisories for security sector reform.		200,000

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS NOTES TO THE FINANCIAL STATEMENTS (Continued) FOR THE YEAR ENDED 30 TH JUNE 2011		
11. PROGRAMME COSTS		
	2011	2010
	ACTUAL	ACTUAL
	Kshs.	Kshs.
DETAILS		
Advisory for strengthening of police civilian oversight mechanism		200,000
Regional training & advocacy w/shop for rural based CSO's on TJRC		9570
Facilitating participation of eight victim groups in the TJRC		1,252,242
Training workshop for the media on effective reporting on TJRC		20,550
Sub-total		3,591,633
GJLOS -MT4TG6		
Training for religious leaders, women, police & prison officers		328,973
Advocacy trainings & meetings		340,940
Sub-total		669,913
total	156,890,564	84,813,112
Field Program support		
Vehicle running and maintenance.	13,070,009	10,348,750
Sub-total	13,070,009	10,348,750
TOTAL	169,960,572	95,161,862



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