





**THE COMMISSION ON  
ADMINISTRATIVE JUSTICE**  
*(Office of the Ombudsman)*  
***Hata Mnyonge ana Haki***

**STATUS OF ADMINISTRATIVE JUSTICE  
AND ACCESS TO INFORMATION  
REPORT  
2012 TO 2023**

*Prepared and issued in accordance with Article 254(1) of the Constitution and Section 8(i) of the Commission on Administrative Justice Act No 23 of 2011 and Section 26(1) of the Access to Information Act No. 31 of 2016*

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## LIST OF ABBREVIATIONS

<b>Abbreviation</b>	<b>Definition</b>
ADR	Alternative Dispute Resolution
ASAL	Arid and Semi-Arid Lands
ATI	Access to Information
CA	Communications Authority
CAJ	Commission on Administrative Justice
CCIOs	Constitutional Commissions and Independent Offices
CLD	Centre for Law and Democracy
CMIS	Complaint Management Information System
ELGIA	Electoral Law and Governance Institute
FiloCA	Financing Locally-Led Climate Action Program
GIZ	German Agency for International Cooperation
IAO	Information Access Officer
ICJ	International Commission of Jurists
ICT	Information, Communication and Technology
IDLO	International Development Law Organization
IDUAI	International Day for Universal Access to Information
IEBC	Independent Electoral and Boundaries Commission
IPOA	The Independent Policing Oversight Authority
KARMA	Kenya Archives and Records Managers in Kenya
KDSP	Kenya Devolution Support Programme
KNADS	Kenya National Archives and Documentation Services
KPA	Kenya Ports Authority
KPLC	The Kenya Power & Lighting Company
KVDA	Kerio Valley Development Authority
MDA	Ministries, Departments and Agencies
MDAC	Ministries, Departments, Agencies and Counties
NCAJ	National Council of the Administrative Justice
NEMA	National Environment Management Authority
NGO	Non-Governmental Organizations
OCDS	Open Contracting Data Standards
ODPP	Office of the Director of Public Prosecutions
OGP	Open Government Partnerships
SGR	Standard Gauge Railway
TSC	Teachers Service Commission
UNESCO	United Nations Educational, Scientific and Cultural Organization

## STATEMENT OF THE CHAIRPERSON

It is my pleasure and honour to present the Commission's first Status of Administrative Justice and Access to Information report which provides an evaluation of the Commission's performance in the discharge of its dual mandate as conferred to it by the Constitution and other statutes.

Since its establishment, the Commission has had two sets of Commissioners who have provided policy guidance and strategic direction towards the realisation of its mandate. The pioneer Commissioners developed a strategic framework that steered the Commission through its first four years of operation (2012 – 2016) while the second-generation Commissioners developed the 2<sup>nd</sup> strategic plan that has been the Commission's blueprint since 2019. In both plans, the Commission's key focus areas have been on implementation of its mandate, enhancing public awareness and knowledge of its mandate, strengthening institutional capacity for effective delivery of mandate and promotion of constitutionalism.

The Commission has over the past 12 years witnessed expansion in its mandate, size, reach and impact. The Commission's mandate was expanded to include oversight and enforcement of the Access to Information Act in 2016. The Commission also grew its staff establishment from 46 staff in 2012 to 113 staff in 2023. This enabled decentralisation of its head office services to 16 other counties through establishment of 6 branch offices and 12 Huduma Centre service delivery points, including one in Nairobi. Consequently, citizens have continued to appreciate the work of the Commission, as evidenced by the increasing number of complaints lodged at all the service delivery points.

Operations of the Commission have, however, not been without challenges. Notably, budgetary constraints have affected programmatic work and staffing, while insufficient legal framework has affected enforcement of the Commission's decisions. As well, unresponsiveness and lack of cooperation on

the part of public institutions and officers has affected timely resolution of complaints. Another key challenge faced has been an entrenched culture of secrecy among public offices and officers, which has affected citizens' right of access to information.

Moving forward, the Commission will explore available and emerging opportunities to overcome the identified challenges as we strive to live up to our mantra – *Hata Mnyonge ana Haki*. Specifically, the Commission will pursue strengthening of its legal frameworks, leverage on technology for service delivery, enhance resource mobilisation efforts and foster partnerships with both local and international stakeholders.

Lastly, I wish to take this opportunity to thank my fellow Commissioners, the Management and Staff for their cooperation, commitment and dedication in serving the public. I also wish to reiterate our unwavering resolve in combating maladministration and the culture of secrecy within the public sector at both National and County Governments, towards creating a society that upholds administrative justice and access to information in Kenya.



**HON. FLORENCE KAJUJU, MBS**  
**CHAIRPERSON OF THE COMMISSION**

## FOREWORD

This is the 12th year since the establishment of the Commission on Administrative Justice (CAJ) under article 59(4) and Chapter Fifteen of the Constitution of Kenya and the Commission on Administrative Justice Act, 2011. The Commission bears the mandate of promoting administrative justice and the right to information at both National and County levels of government. Pursuant to Section 8(i) of the Commission on Administrative Justice Act, 2011, the Commission is required to report on the Status of the Administrative Justice and Access to Information in the Kenyan public institutions as part of its functions.

In Kenya, the establishment of the Office of the Ombudsman (the Commission) was necessitated by the need to address widespread maladministration in the public service. The Commission promotes the rule of law and access to justice through redress of administrative injustices in the public sector, improved public service delivery through specific and systemic investigations, providing advisories on matters affecting the members of the public, and oversight and enforcement of the right to access to information. These strategies informed the focus on the key result areas laid out in our strategic plan for the year 2019-2023. The Commission is in the process of developing the succeeding strategic plan focusing on the period 2024-2028.

To this end, the Commission has promoted best practices in the public sector institutions through training, technical assistance, and enhanced programmes to create public awareness and increased participation of the members of public in matters of administrative justice. Consequently, the number of Ministries, Departments and Agencies (MDAs) certified by the Commission has increased to 377 institutions in the year 2022/23 up from 200 MDAs certified in the year 2012. These efforts have contributed to good governance through mainstreaming of the complaints handling in the public service which is a component in the Performance Contracting Framework of the government of

Kenya as well as improving Access of Information in the public service as provided in the Access to Information Act of 2016.

The Commission has also employed many other strategies to widen the reach of services to the members of public that it serves directly. Part of these strategies include the adoption of technology in administration of complaints and applications for review of requests to access information. This culminated in the development of the Complaints Management Information System (CMIS) which was launched in the month of May, 2021. The Commission has also mainstreamed Alternative Dispute Resolution (ADR) in public service, and decentralised the ombudsman services through regional offices and contact desks at several Huduma Centers. Owing to this, the Commission has achieved an overall resolution rate at 59.8% of the total number of complaints handled by the Commission since 2012 to the year 2022.

I must appreciate the immense contribution of our three Commissioners led by Hon. Florence Kajuju, for advancing towards the vision of the Commission through their great leadership, support and commitment. Equally, I thank the senior management team and the entire secretariat for their dedicated services to citizens.

The Commission remains committed to its mission of enforcing administrative justice and access to information by upholding transparent and accountable public service that will ensure there is good governance and efficient service delivery in the public sector.



**MERCY K. WAMBUA, OGW**  
**COMMISSION SECRETARY/CEO**

## EXECUTIVE SUMMARY

The Status Report on Administrative Justice and Access to Information is prepared according to Article 254(1) of the Constitution and Section 8(i) of the Commission on Administrative Justice Act No 23 of 2011 and Section 26(1) of the Access to Information Act No. 31 of 2016 which obligates the Commission to prepare and submit periodic reports on the Status of Administrative Justice and Access to Information to Parliament and the President.

The report highlights among others: description of the activities undertaken by the Commission, recommendations on legal and administrative measures to address specific concerns identified, and the financial status. The Report is structured into six chapters with each chapter addressing a specific thematic area. Chapter one gives background information on establishment and mandate, vision, mission, and core values. The content of the subsequent chapters is highlighted below.

### Status of Administrative Justice (Chapter Two)

This chapter highlights the activities the Commission undertook in redressing maladministration in public sector.

During the period under review, the Commission received **42,678** complaints, out of which, **25,501** complaints were resolved - representing a resolution rate of **59.8%**.

The Commission also conducted **73** investigations and issued several advisories on key emerging issues that affected democratic values and principles of governance in public service. Advisory opinions provide an important avenue for the Commission to recommend preventive measures and remedial action to government

### Access to Information (Chapter Three)

The Commission is mandated to oversee and enforce implementation of the right to access to information as guaranteed Article 35 of the Constitution and operationalized by the Access to Information (ATI) Act, 2016.

During the period under review the Commission received **854** ATI applications for review, out of which **786** were resolved representing a resolution rate of **85%**.

Equally the Commission put in place several mechanisms for implementation of the right to access information. These included but not limited to mainstreaming of access to information in all public entities, reporting by public entities on implementation of access to information, review of appeals on access to information applications, capacity building and sensitisation of public officers on the access to information law.

## Performance Contracting and Survey on Administrative Justice Status (Chapter Four)

The Commission facilitates the setting up of, and strengthening of the complaint-handling infrastructure in the public sector. This is realised through training, monitoring of service delivery standards, provision of technical support and certification of MDAs in line with Performance Contracting requirements.

The degree of compliance by public institutions in the implementation of citizen service delivery charters and the resolution of public complaints increased gradually over the evaluation period, rising from 200 in the FY 2012–13 to 377 in the FY 2022/2023- representing **8.5%** increase. This is attributed to the Commission's unwavering technical support to these institutions in setting up of complaints and access to information management infrastructure as well as building capacity of public officers.

In promoting administrative justice, public institutions are expected to put in place infrastructure that will enhance service delivery to citizenry. Presence of institutional infrastructure translates to adequate complaints handling mechanisms, efficient service delivery and prompt complaints redress. In this regard the Commission carried out a survey in ten counties.

**3.8%** of the respondents indicated that institutions have displayed their service charters at strategic points. This was a positive indicator ensuring that citizens are knowledgeable on

## Public Awareness and Partnerships (Chapter Five)

Public education and awareness is a key focus area for the Commission towards promoting visibility and creation of demand for services.

To support administrative justice and information access, the Commission improved public education and awareness-raising during the reporting period. The Commission used multi-faceted approaches to carry out public education and trainings. In the last ten years the Commission trained **28,372** public officers on effective public service delivery, resolution of public complaints, and promotion of the right to access information.

During the period under review, the Commission, enhanced its efforts in the promotion of good governance through strategic local and international partnerships and linkages. This entailed cooperation with other Ombudsman institutions, joint initiatives with players in the administration of justice and engagement with development partners.

## Strengthening the Capacity of the Commission *(Chapter Six)*

Institutional capacity of the Commission has increasingly been strengthened enabling the Commission to discharge its mandate more effectively. The Commission has improved in several key areas, including the decentralisation of its services to six regional offices, the strengthening of its human resource capacity, and the use of technology to improve administrative justice.

At inception, the Commission had only a total of **25** officers, inherited from the then Public Complaints Standing Committee, which was succeeded by the Commission in 2011, after promulgation of Kenya's 2010 Constitution. The Commission has continued to advocate for attainment of the optimum staffing of **292**. The current workforce is **113** which is only **38%** of the optimum staffing levels required in the approved structure for realisation of the strategic vision.

The Commission faced several challenges during the period under review which hindered achievement of some of the targets. These included but not limited to financial constraints, delayed disbursement of the quarterly budgetary allocations, low public awareness levels of the Commission, citizens and insufficient legal frameworks which inhibit enforcement of the decisions and recommendations of the Commission.

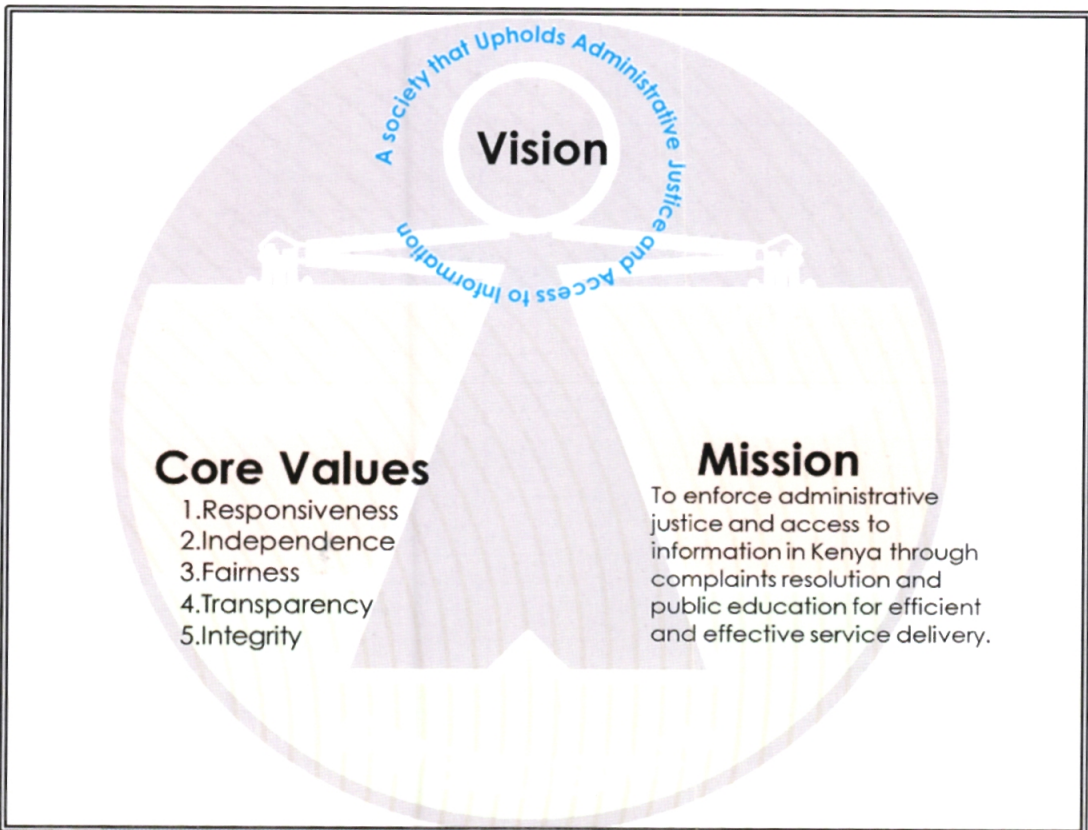
# CHAPTER ONE

## 1.0 ESTABLISHMENT AND MANDATE

### 1.1 Introduction

The Commission on Administrative Justice (CAJ) is established under Article 59(4), Chapter 15 of the Constitution, and the Commission on Administrative Justice Act, 2011.

### 1.2 Vision, Mission and Core Values



### 1.3 Mandate

The Commission derives its mandate from the Commission on Administrative Justice Act (CAJ Act) 2011 and the Access to Information (ATI Act) 2016. The constitutive Act mandates the Commission to deal with maladministration and redress grievances by citizens against public officers and institutions in National and County Governments. On the other hand, the ATI Act gives the Commission the mandate to enforce and oversee implementation of the right to access information as guaranteed under Article 35 of the Constitution. In addition, the Fair Administrative Action Act 2015 which implements Article 47 of the Constitution gives further impetus to the mandate of the Commission.

### 1.4 Composition

Pursuant to the CAJ Act, 2011, the Commission was established and the founding commissioners serving from 2012 to 2018 were;

- i. Commissioner Otiende Amollo – Chairperson
- ii. Commissioner Dr. Regina Mwatha – Vice-Chairperson
- iii. Commissioner Saadia Mohamed – Member

The Secretariat was headed by Commission Secretary/CEO, Mr. Leonard Ngaluma.

The current commissioners are: -

- I. Hon. Florence Kajuju, MBS – Chairperson
- II. Mr. Washington Opiyo Sati, MBS – Vice Chairperson
- III. Mrs. Lucy Ndung'u, EBS – Commissioner in charge of Access to Information

The Commission executes its mandate through a Secretariat headed by Ms. Mercy Kalondu Wambua, OGW, who is the Commission Secretary/CEO.

## COMMISSIONERS



**Hon. Florence Kajuju, MBS**

Chairperson



**Mr. Washington O. Safi, MBS**

Vice Chairperson



**Mrs. Lucy Ndung'u, EBS, HSC**

Access to Information Commissioner

## SENIOR MANAGEMENT



**Ms Mercy K. Wambua, OGW**  
Commission Secretary/CEO



**Mr. Daniel Karomo**  
Director, Corporate Services



**Mr. Geoffrey Obonyo**  
Director, Strategy, Research and  
Compliance



**Mrs. Florence Mumbi**  
Director, Complaints, Investigations and  
Legal Services



**Ms. Viola Ochola**  
Director, Access to Information



**Mr. Osman Mohammed**  
Director, Public Education Advocacy  
and Corporate Communication

## 1.5 Functions

The functions of the Commission are stipulated under Section 8 of the CAJ Act and Section 21 of the ATI Act and include: -

### A. Section 8 of CAJ Act

- I. Investigate any conduct in state affairs, or any act or omission in public administration by any State organ, State or public officer in national and county governments that is alleged or suspected to be prejudicial or improper or is likely to result in any impropriety or prejudice;
- II. Investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct within the public sector;
- III. Report to the National Assembly bi-annually on the complaints investigated under paragraphs (a) and (b), and the remedial action taken thereon;
- IV. Inquire into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehaviour, inefficiency or ineptitude within the public service;
- V. Facilitate the setting up of, and build complaint handling capacity in the sector of public service, public offices and state organs;
- VI. Work with different public institutions to promote alternative dispute resolution methods in the resolution of complaints relating to public administration;
- VII. Recommend compensation or other appropriate remedies;
- VIII. Provide advisory opinions or proposals on improvement of public administration, including review of legislation, codes of conduct, processes and procedures; and
- IX. Promote public awareness of policies and administrative procedures on matters relating to administrative justice.

## B. Section 21 of the ATI Act

- i. Investigate violations of the provisions in the ATI Act;
- ii. Receive reports from public entities with respect to implementation of the Act and evaluating the use and disclosure of information;
- iii. Facilitate public awareness and develop programmes on the right to access information and the right to protection of personal data;
- iv. Promote right of access to information in public entities;
- v. Monitor state compliance with international obligations related to the right to access information and protection of personal data;
- vi. Hear and determine complaints and review decisions arising from violations of the right to access information; and
- vii. Promote protection of data.

### 1.6 Powers

Pursuant to sections 26, 27 and 28 of the CAJ Act read together with the CAJ Regulations and sections 23 and 24 of ATI Act, the Commission has powers to:

- i. Issue summons;
- ii. Require that statements be given under oath;
- iii. Compel production of documents;
- iv. Conduct searches and seizures of documents with court orders;
- v. Interview any person;
- vi. Require the discovery and production of any information from any person;
- vii. Adjudicate on matters relating to administrative justice and access to information;

- viii. Requisition of any public record or copy thereof from any public officer.
- ix. Order release of any information withheld unlawfully; and
- x. Recommend for the payment of compensation.

### **1.7 Execution of the Mandate**

The Commission executes its mandate through: -

- i. resolution of complaints by way of inquiries, investigations, and application of alternative dispute resolution mechanisms;
- ii. public education, advocacy and awareness creation;
- iii. capacity building of public officers and institutions on complaints management and promotion of access to information;
- iv. issuance of advisory opinions on matters affecting public administration;
- v. undertaking public interest litigation;
- vi. reviewing and determining access to information applications made to public and certain private institutions; and
- vii. promotion of public service delivery standards.

### **1.8 Key Result Areas**

The Commission's Second Strategic Plan (2019/2023) stipulates the following key result areas:

- I. Resolution of Public Complaints;
- II. Oversight and Enforcement of Access to Information;
- III. Public Education, Awareness and Visibility; and
- IV. Institutional Strengthening and Capacity Building.

## CHAPTER TWO

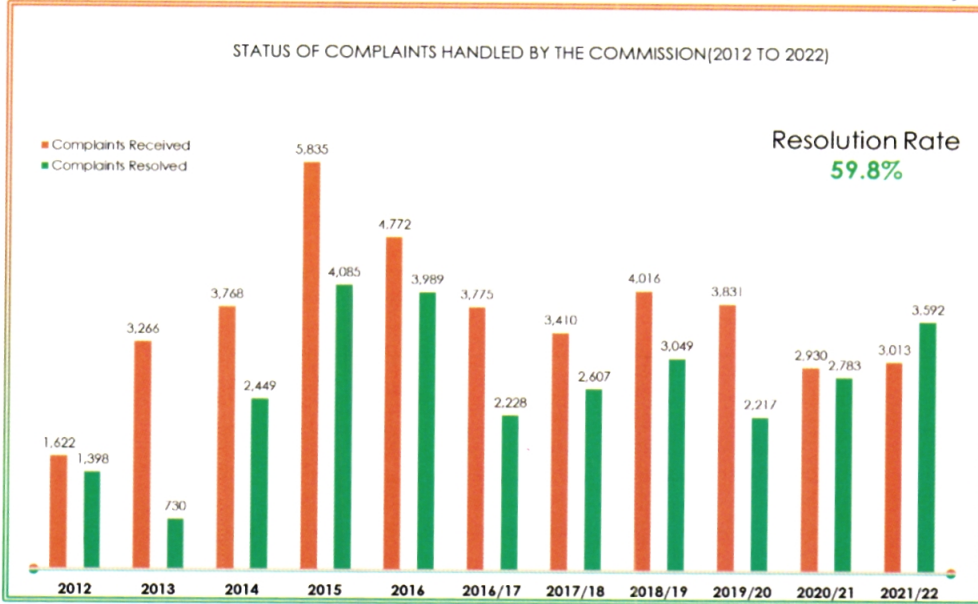
### 2.0 STATUS OF ADMINISTRATIVE JUSTICE

The core mandate of the Commission is tackling maladministration in the public sector. This is provided for under Article 59(2) (h-k) of the Constitution and Section 8 of the constitutive Act, both of which empower the Commission to enforce administrative justice. Maladministration is a hindrance to efficient public service delivery and manifests itself in various ways including unfair treatment, unresponsive official conduct, delay, discourtesy, misconduct, incompetence, improper conduct, and abuse of power, among others. Accordingly, the Commission receives complaints against public institutions and officers on various forms of maladministration. Such complaints may be lodged by an aggrieved person or by a person acting on their behalf in person or anonymously. The Commission may also take up a matter on its own initiative (*suo moto*).

### 2.1 Complaints Handled by the Commission

In the eleven years of its existence, the Commission has handled 42,678 cases out of which 25,501 have been resolved - representing a resolution rate of 59.8 %. Figures 1 to 11 are graphical representation of cases handled since establishment.

**Figure 1: Analysis of complaints Handled by the Commission (2012 to 2022)**



NOTE: In the Financial Year 2021/22 the Commission received 3,013 complaints and resolved 3,592 complaints. The number of complaints resolved were more than those received because of an RRI strategy conducted on complaints brought forward.

**Figure 2 : Analysis of complaints Received by the Commission based on Gender (2012 to 2022)**

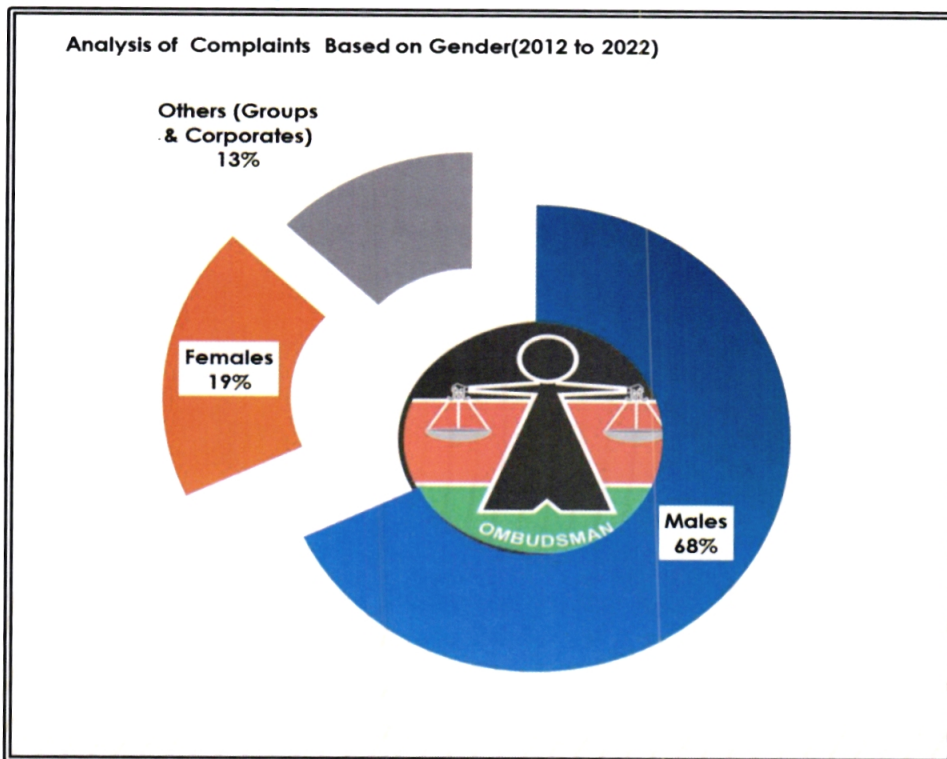
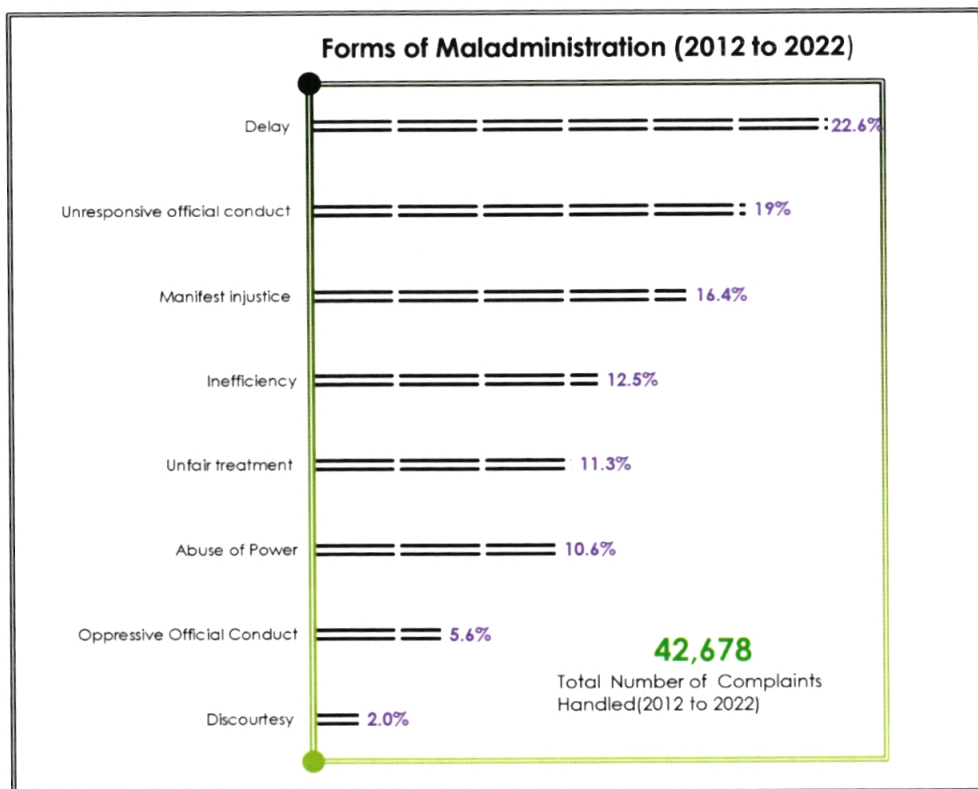


Figure 3 : Analysis of Forms of Maladministration Received by the Commission (2012 to 2022)

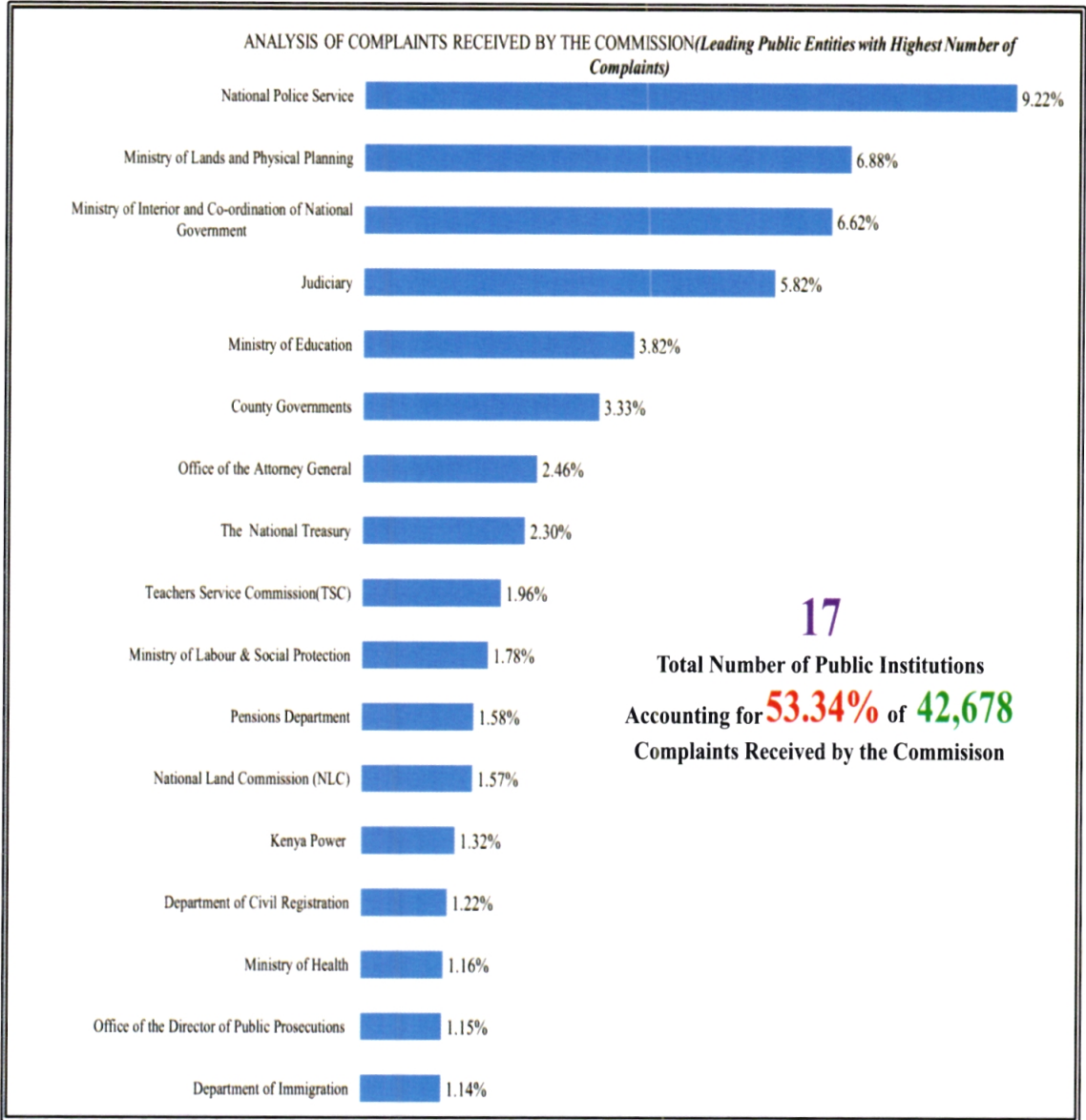


The prominent forms of maladministration handled since inception include the following:

- **Delay** which entails the failure by a public institution to act within reasonable time in tandem with the laid down standard procedures and practices.
- **Unresponsive official conduct** which denotes the failure by a public officer without any justifiable cause to act or respond to official communication within public administration.
- **Abuse of power** denotes the misuse of authority by a public officer that negatively impacts others which includes inducing them to commit an improper act.
- **Unfair treatment** means an act or omission in the conduct of public duty which does not conform to approved standards of justice, honesty or ethics.

**Administrative injustice** entails an act, omission or decision of a public entity that is wrongful or unjust.

**Figure 4 : Analysis of Complaints Received by the Commission (Leading Public Entities with Highest Number of Complaints)**



During the period under review, 17 Public Institutions (Figure 4) accounted for 53.34% of 42,678 complaints received by the Commission

Table 1: Sample cases that illustrate forms of maladministration

Reference Number	Public Institution	Classification	Summary	Status
CAJ/HELB/013/2359/22-EF	Higher Education Loans Board (HELB)	Delay	The complainant alleged that the Higher Education Loans Board delayed refunding money which was deducted from his salary and remitted by his employer, on account of a loan which was already settled. Upon inquiry by the Commission, the Board acknowledged the erroneous remittance and paid back the money to the Complainant.	Resolved
HUD/ELD/M.LAN/022/49/22-NK	Ministry of Lands & Physical Planning	Delay	The complainant alleged that the Lands Registrar, Laikipia County had failed to address her complaint on failure to include her name in the details of ownership to land parcel no. Nanyuki/Ngobit/Supuko Block 4/73 which was jointly owned with Susan Nyawira. The error was duly rectified following the Commission's intervention.	Resolved
HUD/WND/PEN/000/2/2021-KC	Pensions Department	Delay	The complainant alleged that the Pension Department failed to process her retirement benefits in full. She claimed that she retired from teaching service in 2017 and submitted all requisite documents. However, the Pension Department paid her a lump sum of Kshs. 3,523,567 but had failed to pay arrears of Kshs. 734,084/-. Her Pension No. is APN/PC 293367. Claimed efforts to seek the balance had not borne fruit. Upon Commission's intervention, the pending dues were settled.	Resolved

Reference Number	Public Institution	Classification	Summary	Status
CAJ/PEN/000/1347/2021 -SAK	Pensions Department	Delay	A complaint regarding delay in payment of pensions. The complainant retired from teaching, TSC No 216015, on March 31, 2019. In July 2020, after processing at the TSC offices, the file was forwarded to Treasury and allocated APN/PC337662. Upon Commission's intervention, the pension dues were settled.	Resolved
CAJ/MSA/M.LAB/017/172/2021-EM	Ministry of Labour & Social Protection	Delay	The complainant alleged delay at the County Occupational Safety & Health Office, Mombasa to resolve an incident of workman injury sustained in the course of duty at Portside Freight Terminals, Mombasa. He claimed that the Occupational Safety & Health Office upon assessment computed his compensation at Kshs. 48,000 but the employer had not settled this award to date. Upon Commission's intervention, the pending dues were settled.	Resolved
CAJ/MSA/KPA/004/118/2021-KC	Kenya Ports Authority	Unfair Treatment	The complainant alleged that he was discriminated against on account of disability at KPA during the recruitment process of Artisan-electrical engineer position in 2017. He claimed to have attended the interview successfully & was issued with letter of offer dated 1.9.2017 which he accepted in writing. However, he was not issued with an employment letter on account that he did not have KCSE qualifications. Upon Commission's intervention, the complainant was issued with employment letter.	Resolved

Reference Number	Public Institution	Classification	Summary	Status
CAJ/KSM/M.EDU/013/350/21-WT	Ministry of Education	Manifest Injustice	The complainant alleged that sixteen students were assaulted in Kisumu Girls High School on 27/06/2021 by fellow students over lesbianism. No action was taken against the culprits by the school administration. Her sister was one of the assaulted. The Principal through the Board of Management suspended her sister together with three other students and later expelled them verbally. She therefore wanted the girls to be admitted back to school since some of them were form four students. Upon Commission's intervention, the students were re-admitted to school.	Resolved
CAJ/KSM/ATI/JUD/001/1/2021-WT	Judiciary	Unresponsive official conduct	The complainant alleged failure by the Chief Magistrate, Kisumu Law Courts to supply her with certified copies of judgment and proceedings in Kisumu CMC ELC No. 460 of 2018. She had applied and paid for the same on 15 <sup>th</sup> June 2021. Upon Commission's intervention, the documents were availed.	Resolved
CAJ/MSA/M.ICG/062/4/2022 KC	Ministry of Interior & National Administration	Access to information	The complainant alleged refusal by the DCC Kinango Sub County to supply him with copies of proceedings and judgment rendered in Land Adjudication Appeal Case No. 5 of 2022 as he was desirous of filing a further appeal against the decision reached. Upon Commission's intervention, the documents sought were availed.	Resolved

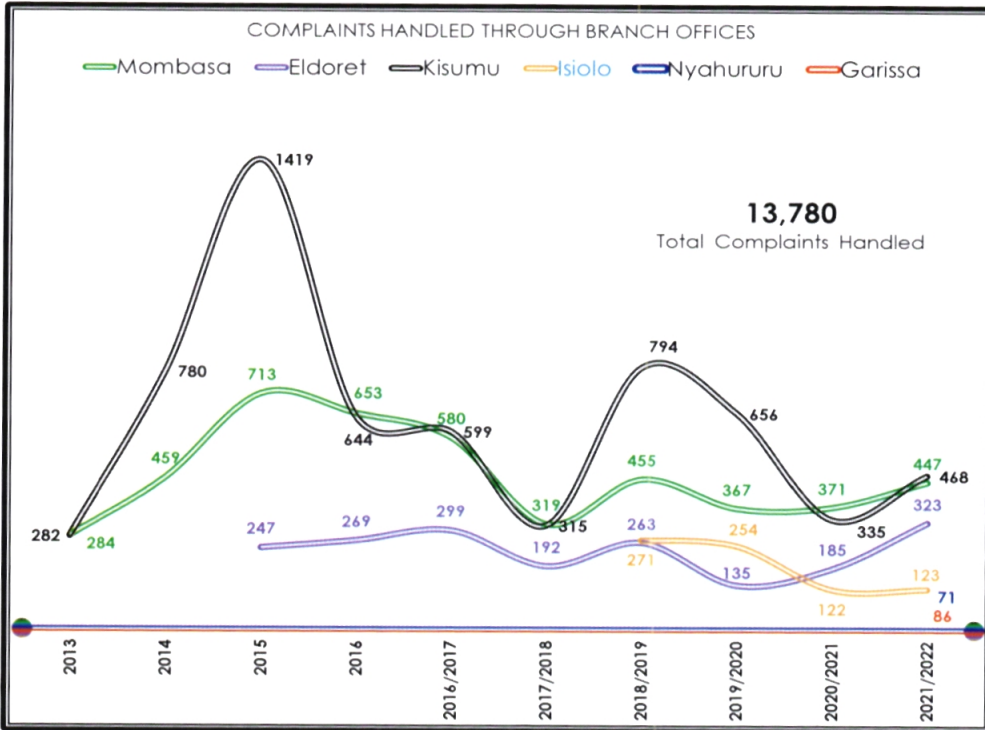
Reference Number	Public Institution	Classification	Summary	Status
CAJ/KPLC/021/505/21-MBA	Kenya Power	Inefficiency	The complainant alleged that on the 26 <sup>th</sup> February 2021 he reported a case of fallen electricity poles at Syotuvali market near Thwake multipurpose dam. That as a result of the falling of the poles there were live electricity wires hanging loosely on the ground posing danger to the public. That despite making several follow ups on the matter the issue was yet to be rectified. Upon Commission's intervention, the matter was addressed accordingly.	Resolved
HUD/KSI/JUD/001/89/22-AO	Judiciary	Inefficiency	A complaint against the Judiciary on allegations of a missing court file, Kisii CMC ELC No. 83 of 2019. Following the intervention of the Commission, response dated 31/10/2022 was received to the effect that the said file was traced and available in the registry.	Resolved
CAJ/ISL/M.IGC/062/038/2021 KWK	National Registration Bureau	Delay	The Complainant alleged inordinate delay in issuance of a National Identification card (ID). She stated that she applied for an ID on 17th September 2020 and availed all the requisite documents in support of her application but the ID had not been issued. Upon Commission's intervention, the matter was addressed accordingly.	Resolved
CAJ/TSC/013/2078/21-SK	Teachers Service Commission	Unfair treatment	The complainant alleged unfair treatment by Teachers Service Commission for removing a Disability Guide Allowance from his pays lip from May 2020. The complainant is a Person Living with Disability as he suffers from hearing impairment. Upon Commission's intervention, the matter was addressed accordingly and allowance reinstated.	Resolved

Reference Number	Public Institution	Classification	Summary	Status
CAJ/TVETA/013/2118/2021 -SAK	Technical and Vocational Education and Training Authority	Oppressive Official Conduct	A complaint regarding payment of pensions. The complainant is a former public servant under PF No. 1986129099 who retired having attained the age of 60. The last service station was KTC department of TVETA. After surrendering all the requisite documents to TVETA pension section on 6 <sup>th</sup> January 2021 the department had refused/neglected to calculate pension dues and lump sum payment and forward the same to Treasury and subsequent assignment of a pension. Upon Commission's intervention, the matter was addressed accordingly.	Resolved
CAJ/MS A/M.IC G/062/3 38/2023-EM	Ministry Of Interior & National Administration	Delay	The Complainant, a prison warden stationed at Kaloleni GK Prison alleged delay at Kenya Prison Headquarters to process Kshs. 30,000 being transfer allowance due to him upon transfer from Shimo la Tewa Prison, Mombasa to Kaloleni GK Prison in August 2022. Upon Commission's intervention, the allowance was paid and matter was addressed accordingly.	

## 2.2 Complaints Handled at Offices

The Commission has established six branch offices across the country; Kisumu, Mombasa, Eldoret, Isiolo, Garissa and Nyahururu. A total of **13,780** complaints were handled through branch offices.

Figure 5: Analysis of complaints Handled at Branch Offices.

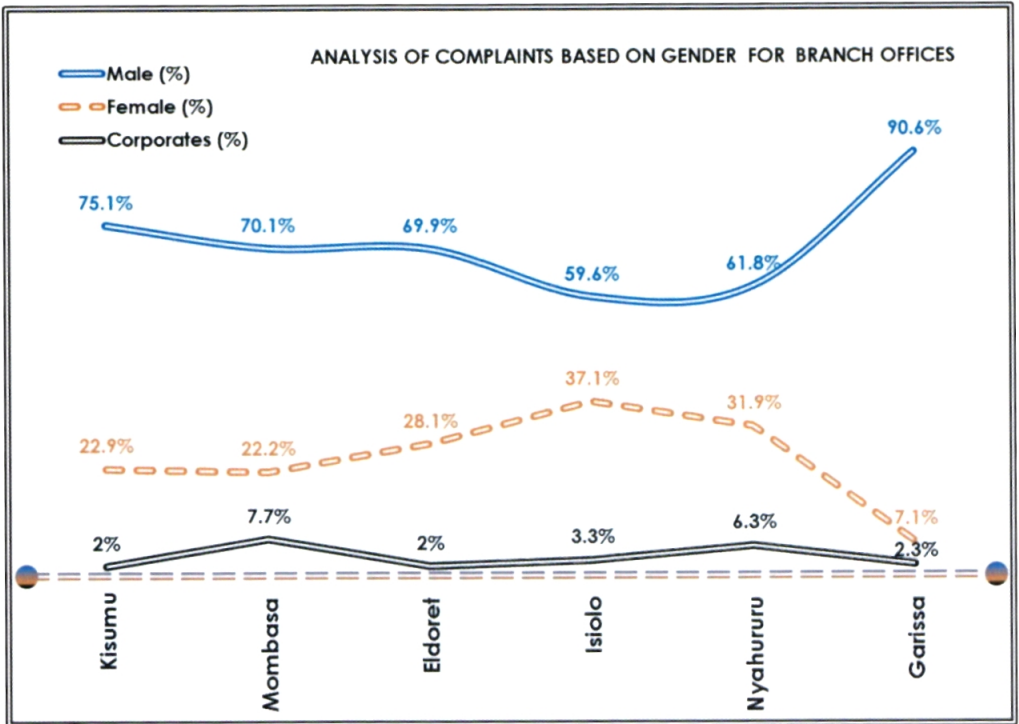


Kisumu office registered more complaints in the year 2015 following increased public awareness of the Commission through partnerships. However, the number of complaints received by Kisumu office later reduced as a result of increased capacity building of public officers on complaints handling enabling them to resolve complaints within the institution hence less complaints escalating to the Commission.

### a) Analysis of Complaints Based on Gender - Branch Offices

Branch offices cumulatively handled 13,694 complaints. More males complained than females in all the branch offices. Figure 5 presents an analysis of complaints handled through branch offices based on gender.

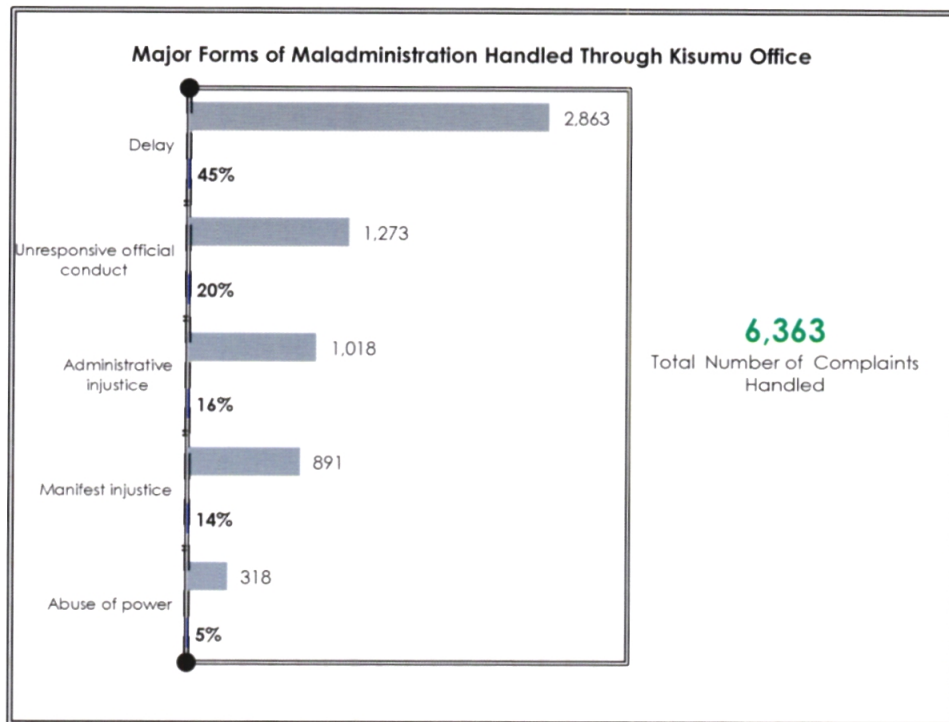
**Figure 6: Analysis of Complaints Handled through Branch Offices Based on Gender**



## b) Kisumu Branch Office

The Kisumu Branch Office was opened on 3<sup>rd</sup> May 2013. The office serves 10 counties from the Nyanza and Western regions of the Republic of Kenya, namely Kisumu, Siaya, Homa Bay, Migori, Kisii, Nyamira, Bungoma, Kakamega, Busia and Vihiga. The Office also serves as the back office for the Commission's Desks in the Kakamega, Kisii and Bungoma Huduma Centres. Since inception, Kisumu office has handled 6,363 complaints. Figure 7 presents major forms of maladministration.

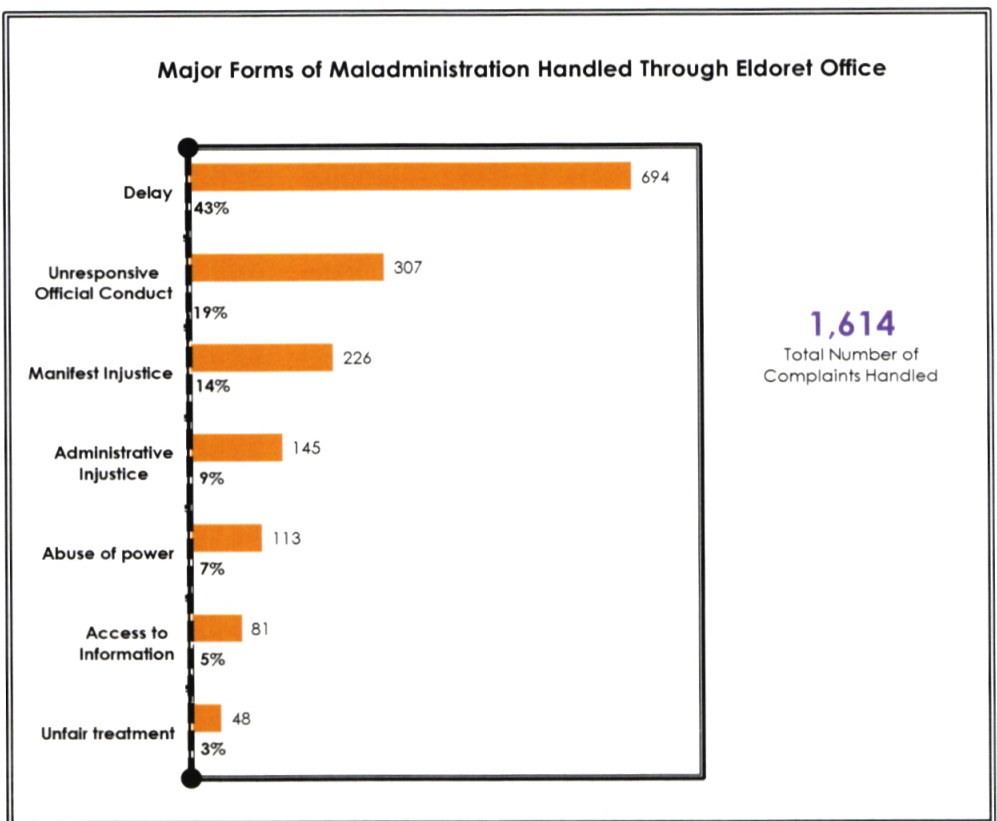
**Figure 7: Analysis of Major Forms of Maladministration Handled at Kisumu Office**



### c) Eldoret Branch Office

The Eldoret Branch Office was opened on 1<sup>st</sup> September, 2015 and has been serving the North Rift Region. Since its inception, the Office has received complaints through its various forms of lodging the same. In light of the complaints received, 1,614 complaint files have been opened from September, 2015 to September, 2023. Figure 8 highlights the major forms of maladministration handled.

**Figure 8: Analysis of Major Forms of Maladministration Handled at Eldoret Office**

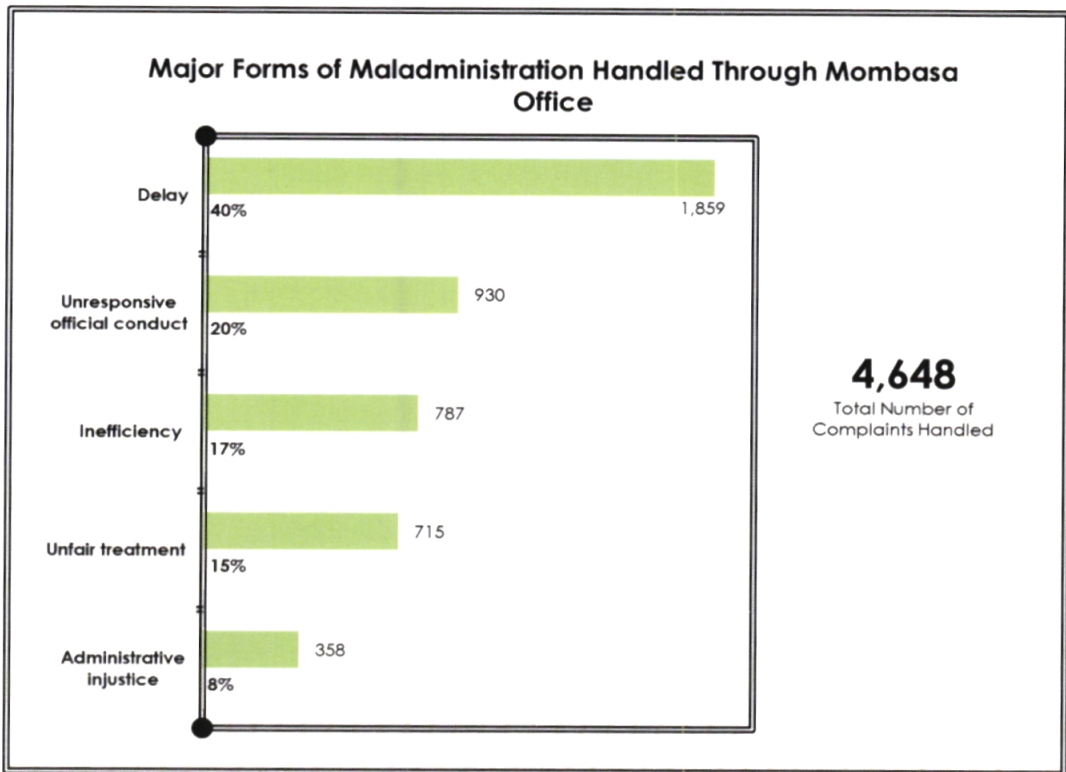


#### d) Mombasa Branch Office

In line with its strategic framework, 2013-2016, the Commission opened the Mombasa Branch Office in October 2013. This was aimed at decentralising the services of the Commission to the county level to facilitate easy access to its services.

The Mombasa Branch Office serves six counties from the coast region namely, Taita Taveta, Kwale, Mombasa, Kilifi, Tana River and Lamu. Further, the office serves as the back office for the Commissions representatives in the Kwale and Taita Taveta Huduma Centres. The Office has received over 4,648 complaints since its inception. This is from walk-in complainants, outreach activities and the Huduma Centers. Figure 9 presents an analysis of major forms of maladministration.

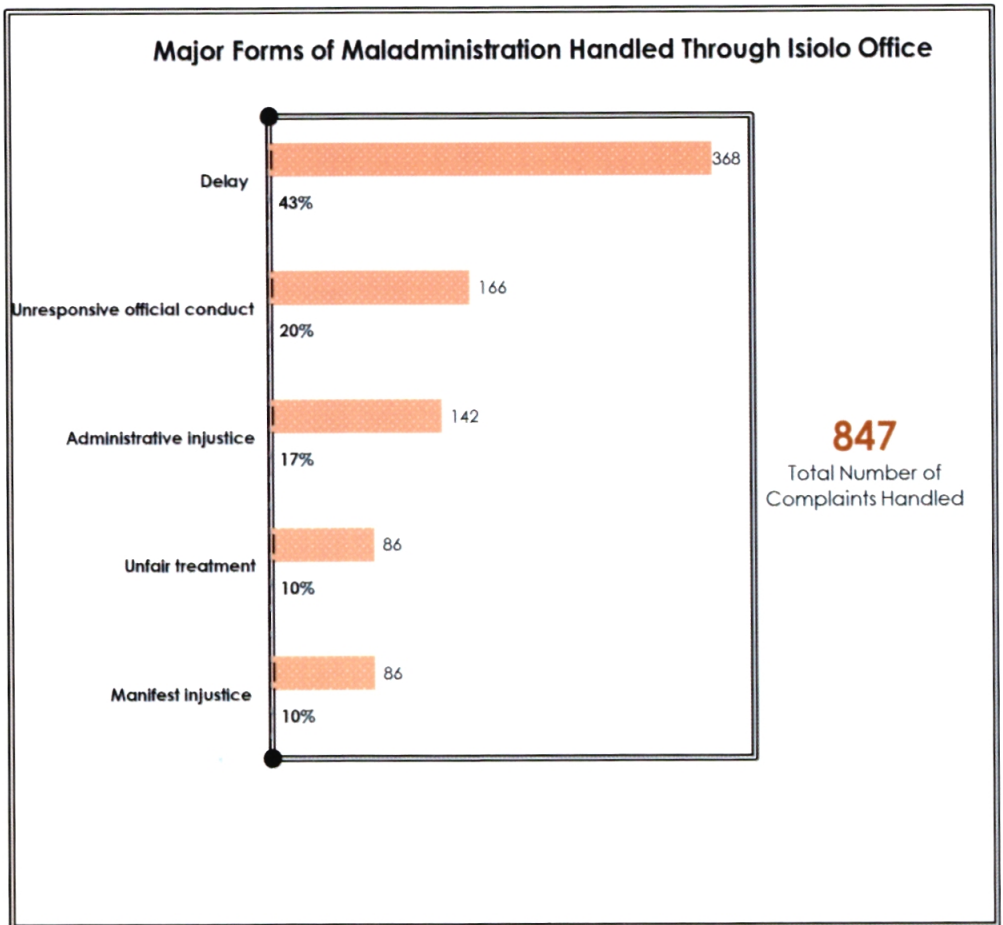
Figure 9: Analysis of Major Forms of Maladministration Handled at Mombasa Office



### e) Isiolo Branch Office

The Isiolo Branch Office was officially launched on 27th April 2017. The Branch office covers Meru, Marsabit, Tharaka Nithi, and Samburu counties. Since its inception, the Office has received over 847 complaints.

Figure 10: Analysis of Major Forms of Maladministration Handled at Isiolo Office

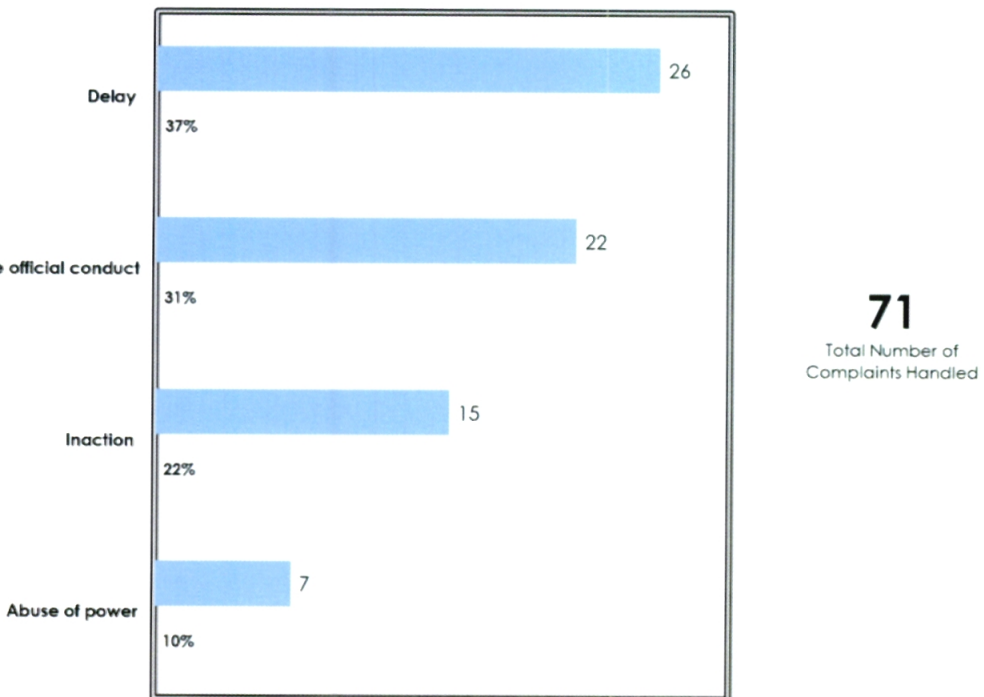


### f) Nyahururu Branch Office

The Nyahururu Branch Office was opened on 17<sup>th</sup> March 2022. The office serves counties from the lower Rift Valley and Central region, namely; Nyandarua, Laikipia, Nakuru, and Narok. The office has handled a total of **71** complaints and **1** ATI request since inception. Figure 11 represents major forms of maladministration handled by the Nyahururu office.

**Figure 11: Analysis of Major Forms of Maladministration Handled at Nyahururu Office**

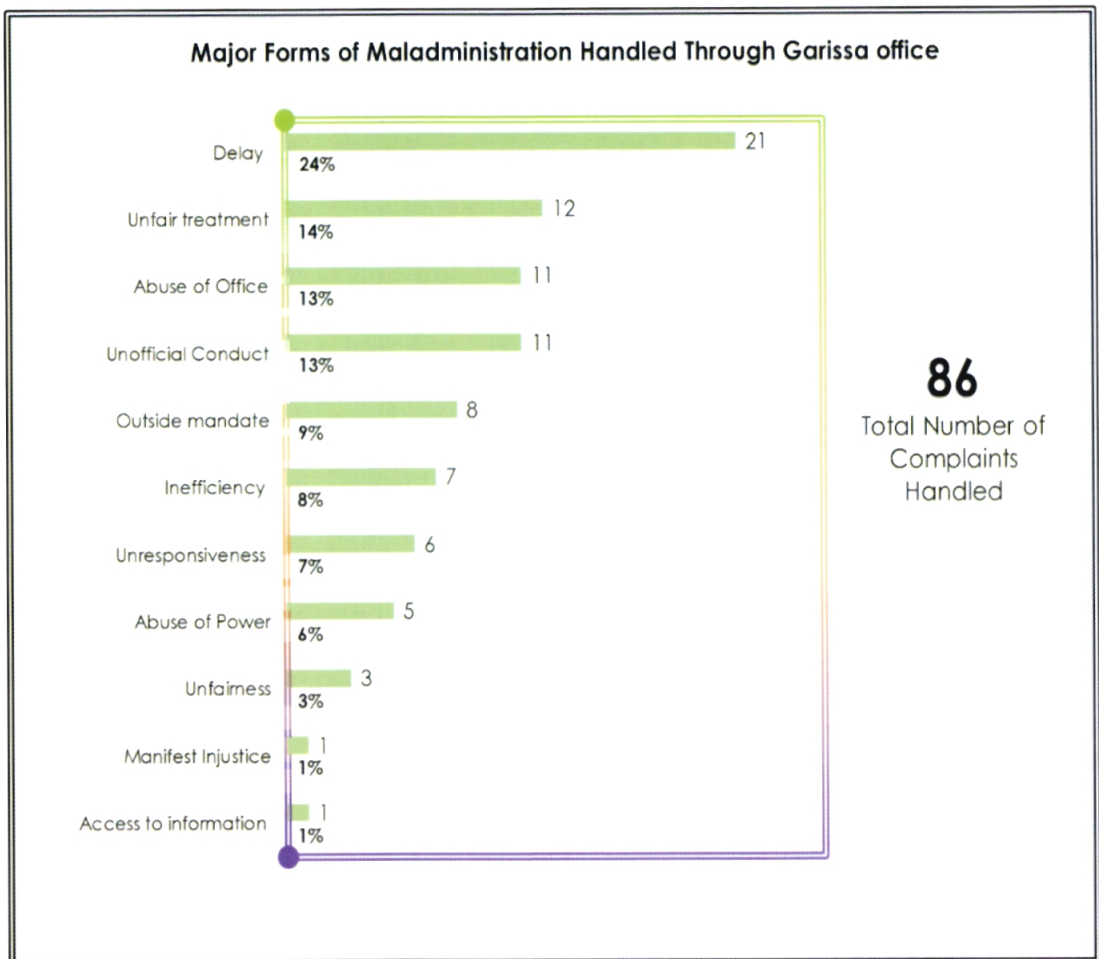
**Major Forms of Maladministration Handled Through Nyahururu office**



### g) Garissa Branch Office

The Garissa Branch Office was opened in September 2022. The office serves counties from the North Eastern and Coast regions, namely; Garissa, Mandera, Wajir, and Tana River. The has received a total of 86 Cases since its inception. Figure 12 represents major forms of maladministration handled by the office.

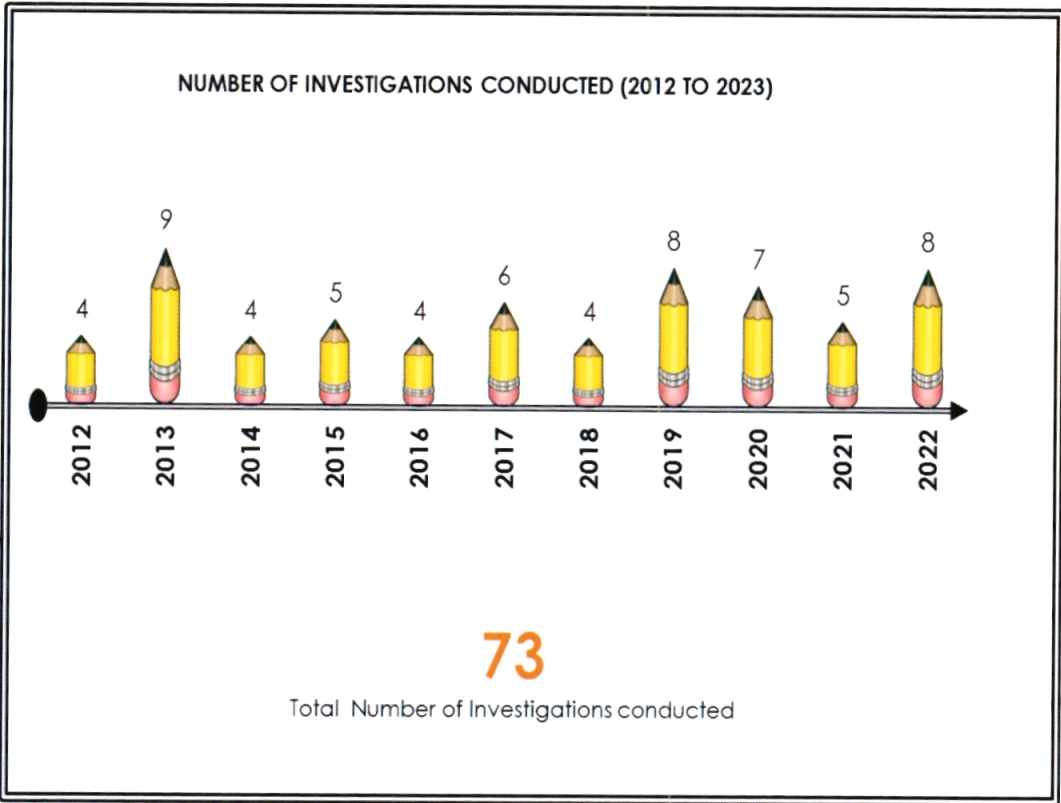
**Figure 12: Analysis of Major Forms of Maladministration Handled at Garissa Office**



### 2.3 Major Investigations Conducted by the Commission

This section highlights the systemic and specific investigations that were undertaken by the Commission during the reporting period.

Figure 13: Analysis of Investigations conducted (2012 to 2023)



#### a) An Investigation on Systemic Issues Inherent in the Payment of Pensions, Gratuity, and other Benefits

The Commission on Administrative Justice (CAJ) undertook a Systemic Investigation into systemic issues relevant to the payment of pensions, gratuities, and other retirement benefits pursuant to Section 8 of the CAJ Act, 2011. The investigation was prompted by over 183 complaints received by the Commission on the subject by 2012. The complaints on

payment of benefits accounted for 20% of all the complaints received by the Commission by 2015.

Reasons for the delay in the processing and payment of benefits included; missing files or wrong documentation/poor records management, and delay by the employer to submit relevant documents to the Pensions Department. Corrupt offices engaged in the pension cycle, and a lack of awareness of the pension requirement by some pensioners. Lack of a service charter defining an expected service delivery standard and shortfalls in the legal framework governing pensions.

Backlog clearance, adequate funding of the Pensions Department, devolution of pensions service, the establishment of proper complaint management infrastructure, formulation of customer service charter, review of pension laws, and civic education to officers before retirement were some of the recommendations made. Recommendations were shared with the National Treasury for action.

#### **b) Investigations on the Baragoi Police Operation on November 10, 2012, And the Welfare of the Victims of the Operation**

The Commission investigated the attack against Police Officers who had been deployed in Baragoi on November 10, 2012, to track and recover stolen livestock. This was prompted by media highlights between 10th and 13th November 2012 and a copy of a letter addressed to the then Permanent Secretary, Internal Security, authored by Ekuru/Kabage/Nyamathwe and Company Advocates lamenting/regretting deeply the way conflicts between the Samburu and Turkana Communities were mishandled.

Investigations established that;

- › 30 police officers and several police reservists lost their lives in that massacre.

- › The PPO, Mr. Mbijiwe, DCP, and Mr. Lugusa, ACP are collectively responsible for the mismanagement of the Baragoi Police Operation on 10th November 2012.
- › As of September 2014, no compensation had been made by the Pensions Department to the victims of the operation.
- › There was no policy regarding compensation for the injured and to the next of kin of the deceased Police Reservists.
- › There was poor communication and coordination between the National Police Service, Ministry of Interior and Coordination of National Government, Directorate of Occupational Health and Safety Services, and the Pensions Department causing delay in the processing of compensation.

Proper coordination of operations, proper management of records, community policing, police welfare, and compensation of deceased and injured officers were some of the recommendations made to relevant departments. This report was also shared with the Chief Justice (Rtd) David Maraga-led taskforce on police reforms.

### **c) Investigation on the 2nd April, 2015 Garissa University College Attack (Alleged Dereliction of Duty by Security Agencies/Public Officers in Garissa County)**

The Commission investigated the alleged dereliction of duty by various security organs and public officers in relation to the Garissa University College terror attack on the 2<sup>nd</sup> day of April, 2015.

Garissa University College was attacked by four (4) armed suspected Al-Shabaab gunmen at 5.30 am on 2nd April 2015. The gunmen killed one hundred and forty-seven (147) people among them, one hundred and forty-two (142) students, two (2) security guards, one (1) KDF Officer, and two (2) police officers. The attack left 83 people seriously injured, the majority of them being students

Lack of clear working and reporting structure, demotivated officers (transferred on disciplinary grounds or living in deplorable conditions), shortage of officers, complicated rescue operations and unspecific intelligence were some of the administrative issues noted.

Skills upgrading, adequate resourcing of police both in skills and equipment, review of county police command structure, police welfare, and the health and safety standards of learning institutions were some of the recommendations made.

#### **d) Investigation on Alleged Dereliction of Duty by Nairobi County Officials in Relation to the Residential Building That Collapsed in Huruma Estate, Nairobi on 4<sup>th</sup> January, 2015**

The Commission undertook specific investigations into the dereliction of duty by public officials responsible for regulating and enforcing building and construction regulations. In particular, the investigation focused on possible omissions or commissions, including inaction, that may have contributed to the collapse of the seven-storey residential building in Huruma Estate, Nairobi County, on the night of 4<sup>th</sup> January, 2015.

Investigations established that the seven-storey residential building in Huruma Ngei II estate collapsed on 4<sup>th</sup> January, 2015 at around 9.00 pm killing five tenants and injuring thirty-two (32) others. The collapse of the residential building was attributed to poor workmanship, very shallow foundation on black cotton soil, structural defects due to poor concrete mix, use of sub-standard bars, lack of adequate reinforcements, and lack of building supervision. It was noted that the collapse of the building could have been avoided if the Housing Development Department in Dandora and the Directorate of Planning, Compliance, and Enforcement had acted on time to demolish the unsafe building. Several Nairobi County officers were found culpable of dereliction of duty for failing to enforce building and construction regulations in Nairobi County.

Recommendations were made to The Nairobi City County Government to increase and strengthen the capacity of its Planning, Compliance and Enforcement Department to effectively discharge its role including continuous surveillance and inspections on existing buildings and ongoing constructions to ensure adherence to building and construction regulations. It was also recommended that the County in conjunction with the National Construction Authority, monitors the building and construction industry in order to identify and prosecute non-professionals operating as professionals. The County was to adopt one system of building and construction approval that encompasses all types of housing development in the County to avoid a lacuna potential for sub-standard construction and disciplinary action was to be taken against the officers who failed to effect a Warrant of Arrest issued on 27<sup>th</sup> October 2014 by the City Court in respect of Case No.665A of 2014.

#### **e) Investigation on the 29th September 2019 Likoni Ferry Tragedy and the Systemic Issues Affecting the Ferry Services**

The Commission carried out an investigation into the 29th September 2019 Likoni Channel tragedy in which a 35-year-old woman Mrs. Mariam Kighenda and her four-year-old daughter Amanda Mutheu were reported by various media outlets to have lost their lives after their car, Toyota Isis, Registration Number KCB 289C, slid back and plunged into the Indian Ocean. According to the reports, they were aboard MV Harambee and were traveling to Mombasa Island from their farm in Msambweni, Kwale County.

Investigations established that the car stayed afloat for only one minute and twelve seconds. The crew on board MV Harambee made some effort to rescue the occupants of the car including throwing life buoys and rings. A rescue boat was also at the scene within 3 minutes by which time the car had already sunk. The ferry's prows were not functional and hence could not prevent the car from sliding back and plunging into

the ocean. Additionally, the safety chain had not been fixed on both the entrance and exit of the vessel which could have possibly restrained the car from falling into the ocean. It was also noted that other vessels namely MV Nyayo and MV Kilindini also had defective prows. These vessels are 30 years old and had surpassed the recommended 20-year lifespan, and had been decommissioned in 2007. Kenya Maritime Authority had inspected the vessels and certified them as safe for navigation despite having defective prows. The Kenya Ferry Services (KFS) coxswains operating the vessels did not meet the minimum requirements stipulated in the Merchant Shipping (Training and Certification) Regulations, 2016 (Legal Notice No. 41 of 2016). The level of KFS's preparedness to deal with disasters of such nature was found to be wanting. The agency did not have trained divers and adequate equipment to deal with such disasters.

In light of the findings, the Commission proposed a raft of recommendations including thorough inspections of the vessels with a view to decommissioning the old and defective vessels and rehabilitating the ones in fair condition to acceptable maritime safety standards. CAJ also recommended that the family of the late Mariam Kighenda is compensated in line with relevant laws.

#### **f) Systemic Investigation into the Plight of Kenyan Migrant Domestic Workers in the Kingdom of Saudi Arabia**

Following several media reports highlighting the mistreatment, injustice, and oppression of Kenyan domestic workers in the Kingdom of Saudi Arabia, the Commission conducted a systemic investigation in 2022 to interrogate the shortfalls in the measures put in place by the Kenyan Government to protect Kenyan migrant workers. Particularly, the investigation sought to examine the existing labor policies, processes, and procedures relating to the recruitment and management of Kenyan migrant domestic workers in Saudi Arabia.



*Commission Releasing Systemic Investigation Report on the Plight of Kenyan Immigrant Domestic Workers in Saudi Arabia*

The Commission's investigations established that some Kenyan migrant domestic workers in Saudi Arabia experienced various forms of abuse and that the recruitment and management of Kenyan migrant workers were undertaken in a disjointed manner by the stakeholders who work independently of each other. Investigations also found that there was no accurate data on migrant domestic workers in Saudi Arabia and that the legal framework currently available is weak.

In light of these findings, the Commission proposed a range of recommendations that include the establishment of a multi-agency working platform for all the stakeholders and made additional suggestions to be included in the draft Labour Migration Management Bill that is meant to provide a national legal framework for the recruitment and management of migrant workers in Kenya.

#### **g) Investigation on Alleged Manifest Injustice in the Issuance of Passports by the Department of Immigration**

The Commission undertook investigations into allegations that the Department of Immigration was overcharging citizens for passports. The investigation was triggered by several complaints

made online on social media via a Facebook page called "Wanderlust Diaries Ltd" against the Department of Immigration. The Office of the Director General Immigration Services was notified of the Commission's decision to investigate the matter on 3rd November, 2022.



*The Commission releasing an investigation report on alleged manifest injustice in the issuance of passports by the Department of Immigration.*

All nine complaints alleging overcharge of passport fees were found to be true while the allegation by the Department of Immigration that the complainants edited their application to a lower series was found to be false. Investigations revealed that the Department of Immigration lacks an internal policy or a procedure guiding and regulating issues that may arise out of passport processing such as editing and cancellation of applications and also lacks a mechanism to automatically refund excess payments.

Delays in the processing of passports and the unavailability of a particular passport series on the e-citizen platform were found to be occasioned majorly by two factors; delays in the approval of the procurement of blank passport booklets, and, the recurrent breakdowns of printing machines at the Department of Immigration. The e-citizen system was found to have eased and improved the efficiency of the passport

application and payment processes but needed an upgrade to deal with emerging trends.

In light of these findings, it is recommended *inter alia* that the Department of Immigration refunds all applicants with outstanding overpayment while formulating policy guidelines that will formalize and standardize the management of issues arising from the passport application processes. This report ignited the current reforms ongoing at the Department of immigration.

## 2.4 Advisory Opinions

The Commission, alongside other Constitutional Commissions and Independent Offices (CCIOs), has the mandate to protect the sovereignty of the people, while also ensuring observance by state organs of fair administrative action, democratic values and principles as provided by Article 249(1) of the Constitution. Further, Article 59 (2) (h) and (i) of the Constitution, and Section 8 (a) and (b) of CAJ Act, 2011, grant the Commission powers to investigate any conduct of State officers, or any act or omission in public administration that is alleged or suspected to be prejudicial or improper, or to result in any impropriety or prejudice. Section 8(h) of the Act empowers the Commission to issue Advisory Opinions or proposals on improvement of public administration, including review of legislation, codes of conduct, processes and procedures while section 2(1) empowers the Commission to deal with a decision made or an act carried out in public service or a failure to act in discharge of a public duty.

Advisory opinions provide an important avenue for the Commission to recommend preventive measures and remedial action to government agencies. The advisories deal with a variety of issues with the objective of improving public administration and promoting good governance. Some of the key advisories issued by the Commission in the reporting period include.


- **Advisory Opinion on the Draft Policy on National Values System for Kenya:** The Commission advised against a proposal to establish a Statutory Commission on National Values. The Draft Policy on National Values for Kenya spearheaded by the Ministry of Justice, National Cohesion and Constitutional Affairs had recommended the setting up of a "National Values Commission" but the Commission advised that it was unnecessary to set up a statutory Commission to undertake tasks that an existing Constitutional Commission is mandated to undertake. The Commission advised that insofar as integrity, governance principles and national values go, the Commission had full competence and authority to demand and ensure observance of the principles as much from Government, as from all other CCIOs.
- **Advisory Opinion on Declaration of Wealth Forms:** The Commission issued an advisory opinion to the Speaker of the National Assembly regarding declaration of wealth forms. The Commission, upon considering Articles 1,35, 59 (l)(h) and (i), 249 and 252(3), and Chapter Six of the Constitution, read together with Sections 2, 8 and 26 of CAJ Act , advised that it was empowered to act as a single and central depository of all wealth declaration forms from all public officers at the National and County governments; to examine and investigate where necessary and ensure accessibility to the information therein by the public where such a request has been made.
- **Advisory Opinion on the Truth, Justice and Reconciliation Commission Dispute:** The Commission issued an advisory opinion that led to the resolution of the standoff between


the Truth, Justice & Reconciliation Commission (TJRC) Chairperson and other Commissioners.

- **Advisory Opinion on the Constitution of Kenya (Amendment Bill), 2013:** The Commission issued an advisory opinion to the National Assembly and the Senate on the proposed amendment to Article 260 of the Constitution that had sought to remove Members of Parliament, Members of County Assemblies, and Judges and Magistrates from the list of designated State Officers. The Commission considered the implications of the proposed amendment and stated that it would be an affront to the constitutional provisions on leadership and integrity. Further, the Commission found that the proposed amendment would create an absurdity whereby the National Assembly, Senate and Judiciary, as state organs, would be constituted by non-state officers. The Commission also found that the proposed amendment would allow Members of Parliament to determine their remuneration. In addition, the amendment would remove the said State Officers from the jurisdiction of several Constitutional Commissions hence weakening accountability mechanisms. Based on the foregoing, the Commission advised as follows:
  - a. In the design of the Constitution, the terms State, State Office, State Officer and State Organ are carefully defined and applied in such intricate manner, that to seek to amend the definition of State Officer without amending the other related terms would not only be impossible, but would fundamentally alter the structure, design and integrity of the entire Constitution.
  - b. To the extent that the terminology State Organ is entrenched in Article 6, while the foundations of

Chapter Six principles are captured in Article 10(2)(c) of the Constitution, an amendment that seeks to reduce the threshold of integrity, accountability and good governance in State Officers is one that would require a referendum in accordance with Article 255(1)(d) of the Constitution.

- c. In seeking to obliterate the essential independent jurisdiction of the Salaries and Remuneration Commission (SRC), the amendment would require a referendum as it would interfere with the independence of SRC under Article 255(1)(d) of the Constitution.
- d. The amendment would erode the roles and functions of independent institutions meant to regulate the National and County Governments, thereby creating a threat to statehood.


 **Advisory Opinion on the Appointment of Members of the Teachers Service Commission:** The Commission issued an advisory opinion to the President on the failure to appoint the Chairperson and Members of the Teachers Service Commission (TSC). The Commission noted that the failure to make the appointments posed a danger to public administration in the education sector, as the operations of TSC were likely to be crippled. The Commission advised the President that the proper procedure was to nominate suitable candidates from the list forwarded to him earlier for as long as they had not been disapproved by Parliament. The President eventually appointed two members to TSC in accordance with the advisory, and the decision of the Court relating to the appointments.

 **Advisory Opinion on the Appointment of Members of the National Land Commission:** The Commission issued an

advisory opinion to the President and the then Prime Minister on the failure to appoint Members of the National Land Commission (NLC). In particular, the Commission was concerned that there was continued delay despite the conclusion of the matters before court (Nairobi HCCC Nos. 266 of 2012, 373 of 2012 and 426 of 2012). While highlighting the critical mandate of NLC, the Commission noted that the delay constituted a breach of the Constitution and was an obstacle to the speedy realisation of land reforms. Accordingly, the Commission advised the President and the Prime Minister to appoint the Chairperson and Members of NLC in line with the Constitution and NLC Act as a matter of urgency. The President eventually appointed members to NLC in accordance with the advisory, and the decision of the Court relating to the appointments.

- **Advisory Opinion on the Appointment of Members of the Kenya National Commission on Human Rights:** The Commission issued an advisory opinion to the President on the failure to appoint the Chairperson and Members of the Kenya National Commission on Human Rights (KNCHR) despite the names of the nominees having been forwarded for appointment, and the matters pending before the court having been concluded (Nairobi High Court Petition No. 385 of 2012). The Commission stressed the importance of KNCHR in the protection and promotion of human rights and advised the President to speed up the appointments to avoid further legal and operational challenges.
- **Advisory Opinion on the Relationship between the National Government, County Governments, and County Commissioners:** The Commission issued an advisory

opinion on the relationship between the national government, county governments, and county commissioners. While noting that Kenya was a unitary state, the Commission stated that Kenya is divided into 47 devolved units whose relationship with the national government ought to be based on consultation and co-operation.

 **Advisory Opinion on the Relationship between Administrative Requirements in Public Universities and the Right to manifest one's Religion:** The Commission issued an advisory opinion on request by the Technical University, formerly Kenya Polytechnic University College, on the issues raised by two students admitted to the University. The students had refused to undergo medical check-up, a prerequisite for admission, stating that their faith prohibited them from undergoing such medical check-ups. Further, they had sought the waiver of the medical fees of Kshs. 2,000 based on their faith. Having considered the relevant provisions of the Constitution and other laws, the Commission advised the University as follows:

- a. That the University should not make concessions as demanded since the right to religion is not absolute, and the limitation of the right to religion in this instance was reasonable and justifiable as contemplated by Article 24 of the Constitution. The limitation was necessary insofar as it sought the harmonisation and co-existence of students at the University.
- b. That the University should expunge all requirements demanding for a compulsory HIV test since they violate the HIV/Aids Prevention and Control Act. However, where courses to be undertaken require

compulsory testing, the same should be done in accordance with sections 13 and 14 of the Act.

- c. That where a student has not attained the age of 18 years, a provision should be inserted requiring the consent of the parent and/or the legal guardian of the child for such medical check-ups to be conducted.

**● Advisory Opinion on the Dispute between the National Assembly and the Judiciary:**

The Commission issued an advisory opinion to the President on the dispute pitting the National Assembly, and the Judiciary and Judicial Service Commission (JSC). This was prompted by the recommendation of the National Assembly to the President to establish a tribunal to remove six members of JSC in spite of a court order. The Commission advised the President as follows:

- a. That once the National Assembly had considered the petition and forwarded it to the President, the President had no choice but to appoint a tribunal to consider the matter in accordance with Article 251(4)(b) of the Constitution. The issue on whether the National Assembly had erred was a matter to be adjudicated upon by the tribunal.
- b. The six members of JSC to be allowed to continue serving pending the outcome of the work of the tribunal to allow for continuity and prevent the Judiciary from grinding to a halt.
- c. It was improper for the National Assembly to have ignored the orders of the High Court issued in the Nairobi Petition No. 518 of 2013. The disregard of the court orders by the National Assembly set a bad precedent and could result in the breakdown of the rule of law.

d. It was improper for the six members of JSC to have ignored the summons issued by the Parliamentary Committee on Justice and Legal Affairs since JSC is separate and distinct from the Judiciary, and could, therefore, not hide under the veil of judicial independence.

**Advisory Opinion on the decision by the Judicial Service Commission to Suspend the Chief Registrar of the Judiciary pending investigations:** The Commission issued an advisory opinion to the Chief Justice following the decision by JSC to suspend the Chief Registrar of the Judiciary pending investigations. The Commission was concerned that the process might have impugned the right to fair administrative action under Article 47 of the Constitution. The Commission advised that JSC ought to have invited CAJ, Ethics and Anti-Corruption Commission, and the Public Procurement Oversight Authority to investigate the issues raised and present the findings for action. This, the Commission noted, would have provided a fair, unbiased and transparent process in keeping with the principles of judicial authority under Article 159 of the Constitution. The Commission further noted that while the Parliamentary Committee on Justice and Legal Affairs was empowered to summon any person to appear before it, it was improper for the Committee to invoke this power against an independent commission in respect of an act done in accordance with the law and in furtherance of its constitutional mandate.

**Advisory Opinion on the Expenditure by County Governments on Foreign Trips:** The Commission issued an advisory opinion to County Governments on the expenditure on foreign trips. The Advisory was

necessitated by expressions in the media, which indicated that County Governments were spending a lot of money on foreign trips to the detriment of development activities. The Commission considered the issues surrounding the trips and noted that they could undermine devolution if not addressed. The Commission also outlined the requirements for fiscal prudence and responsibility by the County Governments in line with Article 201 of the Constitution and Section 102(1)(a) and (b) of the Public Finance Management Act, 2012, and advised as follows:

- a. County Governments to exercise fiscal discipline by ensuring that public money is used in a prudent and responsible manner.
- b. County Governments to embrace a participatory approach to identifying the specific areas requiring interventions in terms of best practices from other countries, and the nature of interventions to bridge the gaps.
- c. County Governments to ensure prudent allocation of resources during the budgeting process based on the constitutional and statutory requirements.
- d. County Governments to use alternative ways of learning about the best practices in other countries through the use of available literature or engaging local and international experts.
- e. That speakers and members of county assemblies could be held liable for misuse of public funds.
- f. That there should be proper coordination and cooperation between the county and national governments in relation to the foreign trips by the county governments.

g. Where it is necessary to conduct foreign study tours, reports of such visits should be prepared and tabled in the County Assemblies.

- **Advisory Opinion on Alternative Dispute Resolution (ADR) for Credit Information Sharing (CIS) in Kenya:** The Commission provided an Advisory Opinion to the Association of Kenya Credit Providers who had sought advice on the following:
  - a. The structure of the proposed ADR mechanism as documented in Chapter 3 of the CIS ADR Handbook;
  - b. The possibility of a representative of the Commission sitting in the proposed Steering Committee of the CIS ADR office.
  - c. The inadequacy of the Draft CIS Bill and Regulations.

The Commission considered the issues and the Draft CIS Bill and Regulations and advised as follows:

- a. That the proposed Ombuds office should be independent and satisfy international principles.
- b. That the composition of the Steering Committee be lean to enhance its effectiveness.
- c. That there should be a reporting obligation of the activities of the proposed office to Parliament.
- d. That the Bill and Regulations should incorporate aspects of good governance in relation to the powers of the relevant cabinet secretary.

- **Advisory Opinion on the Directive to County Commissioners regarding the Co-ordination and Delivery of Comprehensive HIV/ AIDS Services to Counties:** The

Commission issued an advisory opinion to the President following his directive to County Commissioners to collect up to date data on all school-going children who were HIV positive. The Directive also sought information on the guardians or caregivers, and expectant and lactating mothers who were HIV positive. The information, which was to be collected in a prescribed data matrix that links the names of the groups to their home area and school (in the case of children), was to be submitted to the Office of the President by 15th March, 2015. The Commission examined the Directive and noted that it raised legal and ethical issues relating to privacy and confidentiality for persons living with HIV/AIDS. Based on the above, the Commission advised that another Directive be issued to recall the one of February 2015. The Commission further recommended further consultations among the relevant stakeholders on the matter.

Upon engagement with the Office of the President, the Commission issued a further Advisory recommending the following:

- a. The Cabinet Secretary for Health should, in consultation with relevant stakeholders, develop the long overdue guidelines under section 20 of the HIV and AIDS Prevention and Control Act as a matter of priority.
- b. The national government in consultation with the county governments should adopt a conscious HIV testing policy aimed at ensuring accessibility, counseling and care services to the vulnerable groups.
- c. The Ministry of Health and relevant agencies should share the available data on HIV and AIDS to facilitate appropriate government response.

d. HIV status should be considered as part of the larger vulnerability index in the provision of psychosocial support to children and adolescents living with HIV.

- **Advisory Opinion on the Boundary Disputes between County Governments:** As a result of increasing disputes between county governments over boundaries, the Commission issued an advisory with a view to forestalling conflicts. Based on the analysis on the causes of conflicts on boundaries, the Commission recommended as follows:
  - a. The President should set up a special Technical Task Force comprising representatives of the Department of Surveys, Department of Lands and other relevant technocrats to establish the boundaries of all Counties.
  - b. Where there are disputes relating to boundaries, county governments should embrace consultation and alternative dispute resolution as redress mechanisms.
  - c. The existing boundaries of counties should be jealously guarded. However, in extremely special cases, Parliament should invoke the option for altering boundaries under Article 188 of the Constitution. The opinion was shared with relevant stakeholders for consideration. As a result, the Commission received a draft County Boundaries Bill, 2015, from the Senate for its input.
  
- **Advisory Opinion on the Framework for Co-operation between the Senate and the Council of Governors:** The Commission issued an advisory opinion on the framework for co-operation between the Senate and Council of Governors arising from frequent disputes relating to their

operations. The Commission noted that the disputes had the potential of undermining devolution and public administration. Accordingly, the Commission advised as follows:

- a.** A consultative and advisory forum be established at the county level to enable Senators effectively undertake their duties.
- b.** The participation of county governments in the legislative process should be enhanced through the consultative and advisory forum at the county level.
- c.** The Senate should be seized of the reports of the Controller of Budget and Auditor General after consideration of such reports by the relevant county assembly unless: -
  - the relevant County Assembly has failed to consider the report within the stipulated timeline,
  - it is evident that the consideration of the report has been marred by complicity or collusion between the County Assembly and the County Executive,
  - the action taken by the County Assembly is otherwise unsatisfactory;
  - the emerging issues bring to the fore systemic or wanton levels of maladministration or misappropriation of funds,
  - the emerging issues are of public or national interest,
  - the Senate resolves to consider the report of the oversight body, or
  - Issues are referred to the Senate by the oversight bodies in their subsequent reports.

- **Advisory Opinion on Restructuring of the Ethics and Anti-Corruption Commission:** The Commission issued an advisory on restructuring of the Ethics and Anti-Corruption Commission (EACC) pursuant to the EACC (Amendment) Bill, 2015. The Commission considered the Bill and noted that it would fundamentally change the structure of EACC and concentrate power in the Office of the Commission Secretary. Having examined the matter, the Commission advised as follows:
  - a. While it is important to strengthen the legal framework for the fight against corruption, the process should be done within the Constitution.
  - b. Any process to bolster the fight against corruption should appreciate the role of the Commissioners, and safeguard the independence and accountability of EACC.
  - c. The Commissioners of EACC should serve on full-time basis to enable them fully discharge their duties, insulate them from any incidences of conflict of interest and make them accountable to the public.
  - d. Care should be taken to ensure persons appointed to the Commission are not only qualified, but are objective, courageous, passionate and dedicated to the war on corruption.
  
- **Advisory Opinion on the Vetting of Persons Nominated to the Positions of Cabinet and Principal Secretaries:** An advisory opinion was issued by the Commission concerning the vetting of persons nominated to the positions of Cabinet and Principal Secretaries. The advisory was precipitated by the ruling by the Speaker of the National Assembly on 2<sup>nd</sup> December, 2015, concerning the vetting of nominees by the National

Assembly. The Commission noted that the action would impugn the Constitution in the following ways:

- a.** The nomination of sitting Members of Parliament to the Cabinet would be un-constitutional due to their ineligibility for appointment by virtue of Article 152(3) of the Constitution.
- b.** The ruling by the Speaker was incorrect insofar as it exempted serving Cabinet and Principal Secretaries who were transferred to other Ministries or State Departments from vetting. While the Constitution empowered the President to re-assign a Cabinet or Principal Secretary, it did not extinguish the application of Articles 152(2) and 155(2)(b) of the Constitution on the vetting by the National Assembly where a serving Cabinet Secretary or Principal Secretary is re-assigned to a different position. A re-assignment would, therefore, amount to a nomination within the meaning of the constitutional provisions.
- c.** The nomination breached the Constitution insofar as it did not comply with the gender and regional principles under Article 10 of the Constitution. In light of the above, the Commission recommended, inter alia:
  - i.** The National Assembly should ensure compliance with the Constitution, including the eligibility of the nominees, and attainment of the gender principle.
  - ii.** Cabinet and Principal Secretaries reassigned to other positions should be vetted afresh by the National Assembly to determine their suitability for the new positions.
  - iii.** There is need to ensure transparency and competition in the appointment of Principal

Secretaries in line with Article 155(3)(a) of the Constitution.

- Advisory Opinion on the Parliamentary Service Bill, 2015:**  
The Commission issued an advisory on the Parliamentary Service Bill, 2015, that sought to repeal the Parliamentary Service Act, 2000. The Commission analysed the Bill and called for its review regarding the following:
- a.** Clause 11(1)(b) vested the functions of the Salaries and Remuneration Commission on the Parliamentary Service Commission (PSC) contrary to Article 230 of the Constitution.
  - b.** Clause 17(4) watered down the security of tenure for the Clerks of the two Houses which had the potential of undermining their operations and independence.
  - c.** Clause 23(4) was restrictive since it limited PSC to the selection of a private firm to review its organisational structure.
  - d.** Clause 49(a) contravened Article 127(3) of the Constitution, and the Public Finance Management Act insofar as it sought to re-define the term 'accounting officer' to include the Clerk of the Senate, Clerk of the National Assembly and any other officer as may be designated by PSC. According to the Constitution, the Clerk of the Senate is the Secretary to PSC and, therefore, the accounting officer.
  - e.** Clause 44 sought to unreasonably and unjustifiably limit the right of access to information under Article 35 of the Constitution insofar as it sought to make non-disclosure the general rule, and give PSC wide discretion in declining to release information.
  - f.** Clause 50 sought to irregularly oust the provisions of the Kenya Citizenship and Immigration Act, 2011, in

relation to the members of PSC. It further sought to give special and unlimited privileges to Members of Parliament, their spouses and some officers of PSC against the aforementioned Act.

 **Advisory Opinion on the Proposed Amendment to the Independent Policing Oversight Authority Act, 2011:**

The Commission issued an Advisory on the proposed amendment to section 14 of the Independent Policing Oversight Authority (IPOA) Act. The amendment sought to empower the President to remove the Chairperson or Members of IPOA if he deemed necessary, without receiving recommendations from a tribunal established for that purpose. The Commission examined the Bill and noted the following:

- a. There was no justification for the amendment or evidence of gap in the existing framework. This went against one of the cardinal principles in law making which requires legislation to address a mischief or seal the existing gaps in law. There was no evidence of how the existing framework that was sought to be amended impeded policing or the work of IPOA.
- b. The proposed amendment was likely to undermine the independence and effectiveness of IPOA insofar as it would remove the security of tenure of the Chairperson and Members.
- c. The amendment would negate the values and principles of the Constitution insofar as it sought to concentrate power in the Office of the President. In light of the above, the Commission opined that the proposed amendment lacked merit, and undermined constitutionalism and the rule of law. The Commission, therefore, advised the National Assembly to reject it in totality.


- **Advisory Opinion on the Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2015:** The Commission issued an advisory to the Speakers of the two Houses of Parliament regarding Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2015. In particular, the Commission examined the proposed amendments to the Industrial Training Act, the National Hospital Insurance Fund Act, the Copyright Act, the Kenya Institute of Curriculum Development Act, and the Kenya Law Reform Commission Act, and noted the following:
  - a. The proposed amendments sought to concentrate power of appointment in the Office of the President for the bodies established by the above statutes in contravention of the Constitution.
  - b. Some of the proposed amendments sought to unreasonably and unjustifiably increase the number of board members to the statutory bodies. For instance, the proposed amendment to the National Hospital Insurance Fund Act had sought to increase the number of board members from seven to seventeen without any justification, and contrary to the recommendation of the Task Force on Parastatal Reforms of 2013 which had recommended a membership of between seven and nine, including the Chairperson.
  
- **Advisory Opinion for the Removal of the Principal Secretary for the Ministry of Lands, Housing and Urban Development from Office:** The Commission issued an advisory to the President for the removal of the Principal Secretary for the Ministry of Lands, Housing and Urban Development from office because of unresponsiveness and inefficiency. Specifically, it was noted as follows:

- a. The Commission had made inquiries on complaints from the public regarding maladministration at the Ministry.
- b. In spite of the inquiries and several follow-ups, the Ministry had continually failed to respond to the inquiries and/or address the complaints.
- c. Despite undertaking to address the matters following a meeting at the Commission on 23rd May 2014, the Principal Secretary had failed to take any action, including cases of personal service.
- d. The unresponsiveness by the Ministry had affected the turnaround time for resolution of complaints thereby prolonging the suffering of the complainants, and undermining reforms in the lands sector.
- e. The conduct of the Principal Secretary impugned the constitutional values and principles of leadership and integrity.

 **Advisory Opinion on the Recruitment of the Managing Director of the Kenya Airports Authority:** The Commission issued an advisory to the Cabinet Secretary for Transport and Infrastructure regarding the implication and status of its Determination in the matter of the recruitment of the Managing Director of the Kenya Airports Authority. The Commission advised as follows:

- a. The responsibility to communicate the Determination of the Commission to all agencies represented on the Kenya Airports Authority Board rested on the Ministry. In this regard, the Ministry, through the Principal Secretary, was not absolved of the responsibility to communicate the Commission's Determination on the earlier contested recruitment process to the relevant agencies for implementation.

- b. The Commission is an independent body created by the Constitution to perform a specific function. Accordingly, it is not under the direction, control of the Attorney General in the performance of its functions.
- c. The Commission and the Office of the Attorney General are two distinct offices created by the Constitution to perform specific functions, and the opinion of the Attorney General cannot be sought after a matter has been dealt with by the Commission. In this regard, once the Commission had made a Determination, it was not open to the Ministry to determine whether to comply or not, and seek a different opinion to avoid implementation. If dissatisfied, the only avenue was to seek judicial review in court.


 **Advisory Opinion on Succession Planning in State and Public Offices:** The Commission issued an advisory opinion on succession planning in the public sector in Kenya. Specifically, the advisory focused on succession in the Judiciary and the Independent Electoral and Boundaries Commission (IEBC). This was occasioned by the uncertainty on the retirement age of judges and the possible expiry of the term of service of IEBC commissioners before the conclusion of the 2017 general elections. The Commission noted the following:

- a. There was a possibility of a dysfunctional Supreme Court to preside over any presidential election petition after the elections due to lack of quorum since three of its members, including the Chief Justice and his Deputy, were likely to have retired;
- b. The likelihood of vacancies in the offices of Chief Justice and the Deputy Chief Justice would create a

- constitutional crisis in the context of administration of the oath of office to the president-elect;
- c. The amendment to the Judicial Service Act which required the Judicial Service Commission to recommend to the President names of three candidates each for the position of Chief Justice or Deputy Chief Justice violated Articles 166(1) and 259(1)(a) of the Constitution which required only one name to be forwarded to the President.

Having examined the law and the prevailing circumstances, the Commission recommended that:

- i. In the context of the Judiciary, there was need for the Judicial Service Commission to immediately commence the appointment process of the new Chief Justice to avert a constitutional crisis that may arise.
- ii. In the interest of the country, and for the greater public good, IEBC commissioners should voluntarily leave office with their full benefits to enable appointment of their successors in good time to prepare for the 2017 general elections.
- iii. The determination of the court cases on the retirement age of Judges be fast tracked and the decision of the Court of Appeal be accepted as final to avoid conflict of interest since the litigants were members of the Supreme Court.


 **An Advisory Opinion on the National Treasury Circular No. 13/2016:** The Commission issued an advisory opinion to the Cabinet Secretary for the National Treasury on Circular No. 13/2016 regarding the implementation of the budget for 2016/2017 Financial Year. While appreciating


the role of the National Treasury in public financial management, the Commission noted that the manner in which the Circular was issued and implemented undermined public administration in the following ways:

- a. It contravened the Constitution and the Public Finance Management Act, 2012, insofar as the National Treasury usurped the role of Parliament through review of the budget estimates immediately after parliamentary approval.
- b. The National Treasury had unilaterally effected the Circular by withholding part of the allocations for government ministries and departments for the Financial Year even before implementation of the budget.
- c. The Circular undermined the functioning of government ministries, departments and independent agencies. On the basis of the foregoing and the need for good public administration, the Commission advised, inter alia, that:
  - i. The National Treasury withdraws the offending part of Circular No. 13/2016, and disburses the total allocations; and
  - ii. The National Treasury seeks parliamentary approval in instances where such adjustments are necessary.

- **Advisory Opinion on the County Government (Amendment) Bill, No. 21 of 2015:** The Commission issued an advisory opinion to the Senate on the County Government (Amendment) Bill, 2015, which proposed to amend the principal Act by conferring the power to appoint the sub-county, ward and village administrators to incoming county government after every election. The Commission examined the Bill and noted, inter alia, that:

- a. The proposal would abrogate the rights of the holders of those offices under Articles 41 and 47 of the Constitution on fair labour practices and the right to fair administrative action, respectively;
- b. The proposal contravened Article 236(b) which provides for protection of public officers from arbitrary removal from office; and
- c. The proposal failed to consider the cost implications of the Bill in terms of litigation and compensation if enacted into law.

 **Advisory opinion on the participation of public officers and use of public resources in political activities:** The Commission issued an advisory opinion on the alleged involvement of public officers in appointive positions, and use of public resources in political activities. The Commission noted that such actions would not only be an affront to the Constitution but also contrary to the law in terms of sections 14 and 15 of the Election Offences Act, 2016. It also noted that such actions would undermine professionalism, the rule of law, efficiency and accountability in the public service. On this basis, the Commission advised against use of public resources and involvement of holders of appointive positions in partisan political activities. The Commission also advised IEBC and the Director of Public Prosecutions to monitor and ensure strict compliance with the law.

 **Advisory Opinion on Management of Employees During Transition at the County Government After an Election:** This was precipitated by the aftermath of the 2017 general elections which was characterised by dismissal, suspension, intimidation and threats to county employees.

- **Advisory Opinion on Mandatory Covid-19 Vaccination for Public Officers:** The advisory was in reference to the circular emanating from the Head of Public Service directing public servants to be vaccinated against Covid-19 by 23<sup>rd</sup> August, 2021. The directive further stated that non-compliance would attract disciplinary actions with the attendant consequences. The Commission raised concerns on the legality of the circular in view of the logistical and procurement challenges witnessed in the quest for mass availability of vaccines, priority for those at the greatest health risk and human rights implications.
  
- **Advisory to the Office of the Director of Public Prosecutions (ODPP):**  
The Commission issued an advisory pursuant to a statement issued by the ODPP on 19<sup>th</sup> April, 2022, titled "Statement on Prosecution of Cases During the Election Period". In the said statement, the Director of Public Prosecutions indicated that prosecution and fight against corruption would not be a priority for the next three months, a position not grounded on any provision of law. The Commission advised that suspension of prosecution of individuals facing graft charges three months to an election, on the justification of prioritisation by the ODPP was a threat to the rule of law. In line with its oversight role to ensure effective and efficient service delivery in the public sector, the Commission emphasised that all public administration processes civil and criminal proceedings should continue seamlessly notwithstanding the election period.
  
- **An advisory Opinion on the Misuse of Public Resources for Political Gain:** The Commission issued an advisory opinion

on the misuse of public resources during the 2022 electioneering period, pursuant to the media statements on the reckless misuse of government vehicles by persons who had access to the public resources. The Commission emphasised that public officers were entrusted with the responsibility of safeguarding public resources in public interest. The misuse of public resources in reference to Election Offences Act, 2009, but also undermines the principles of good governance and breaches Articles 10 and 232 of the Constitution.

## CHAPTER THREE

### 3.0 ACCESS TO INFORMATION

#### 3.1 Introduction

The Commission is mandated to oversee and enforce implementation of the right of Access to Information (ATI) guaranteed by Article 35 of the Constitution and operationalised by the Access to Information (ATI) Act, 2016. Article 35 of the Constitution guarantees access to information as a fundamental right by providing that...

***“(1) Every citizen has the right of access to—  
(a) information held by the State; and  
(b) information held by another person and required for the exercise or protection of any right or fundamental freedom.”***

Article 232(1)(f) of the Constitution further provides values and principles of public service which includes the provision of timely and accurate information. The ATI Act, 2016, was enacted to provide a framework for accessing information from public entities and relevant private entities. The Act makes provision for proactive disclosure and provides processes through which citizens can make information requests. It also provides for an appeal process and mandates the Commission with oversight and enforcement functions.

The established Access to Information legal framework enables implementation of the right to information in Kenya, thus enhancing progressive transition to open governance. These enabling legal measures include:

- i. The guarantee of the right in the Constitution which gives it maximum weight and impetus required to drive cultural change.

- ii. Clear and express legal provisions defining the right, scope and requisite obligations.
- iii. The law providing clarity on the status of Commission's ATI decisions as binding upon implementing institutions thus providing the force of law required for effective implementation.
- iv. Enactment of regulations to fully operationalise information disclosure.
- v. Development of a national ATI policy to drive desired change and ensure uniform Government approach on information disclosures.

Access to accurate, adequate and relevant information allows citizens to make informed decisions and take effective actions. Such information enables citizens and institutions to identify opportunities, solve problems and make right choices. Sharing of information allows citizens to participate in matters affecting their lives thus improving good governance and inclusive growth. The following are some of the benefits of ATI as enjoyed by citizens.

- i. **Enhances transparency and accountability:** Citizens who access information can engage in socio-economic issues affecting them and hold leaders to account on their actions.
- ii. **Aids in combating corruption:** The right to information has the power to combat corruption and other forms of malpractices in government. Using the right, different stakeholders can facilitate public scrutiny of decisions made by leaders. The United Nations Convention against Corruption (UNCAC) for instance, encourages member States to adopt right to information laws to assist in the fight against corruption.

- iii. **Enables better decision making:** The right to information assists policy makers, public officers, leaders and citizens to make informed decisions on issues affecting the society.
- iv. **Enhances equitable economic growth:** Economic development is enhanced through involvement of all stakeholders in development initiatives while enabling a conducive investor environment. Citizens who are key stakeholders in the development agenda benefit by using the right to access information thus enhancing their role in the design and implementation of development and economic projects.
- v. **Enhances protection of human rights:** More often, violations of human rights such as danger to public health tend to occur in a climate that denies people access to information.

### 3.2 Operationalisation of the Access to Information Act, 2016

#### a) Strengthening Institutional ATI Infrastructure

The Commission's Strategic Plan 2019-2023 embeds oversight and enforcement of Access to Information as one of its strategic themes. To this end, the Commission designated Commissioner Lucy Ndung'u as the Commissioner in charge of Access to Information pursuant to section 20(3) of the ATI Act, 2016. Further, a standalone Access to Information Department was established in 2020 to enhance implementation of ATI.

The Commission in collaboration with implementing institutions, has further taken measures to ensure strengthening of institutional framework on Access to Information through: -

- i. Engagement with a wide breadth of institutional leadership to allow understanding and goodwill on ATI.

- ii. Mainstreaming ATI in public institutions' processes and procedures through the appointment of Information Access Officers (IAOs) to act as ATI champions and take lead on awareness creation and information disclosures. Additionally, Access to Information Committees have been set up in some public entities which serve to enhance acceptance and implementation of ATI and capacity building of institutional ATI focal points (IAOs and ATI Committees) to enable implementation.
- iii. Development of institutional policies on access to information, whistleblower protection and records management thus enabling discussion, embracing, implementation and sustainability of ATI.



*Official launch of Access to Information in Kenya: A Journalists' Handbook*

#### **b) Applications for Review Processed by the Commission**

The ATI Act, 2016, confers the Commission with review jurisdiction on decisions of public entities and relevant private bodies in relation to requests for access to information in

various instances. The Commission has to-date received a total of 854 applications for review of decisions by implementing institutions under the Act. Figure 14 presents an analysis of ATI applications for review processed.

**Figure 14: Analysis of ATI Review for Applications Received**

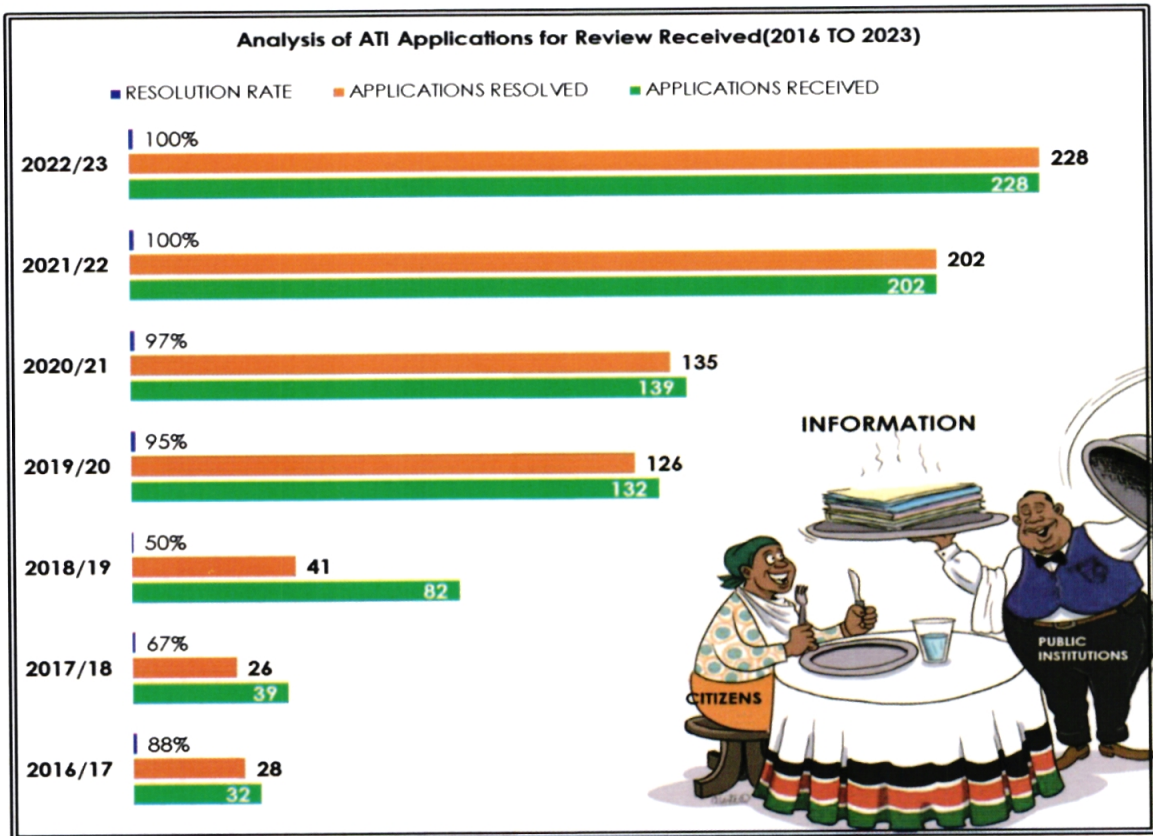
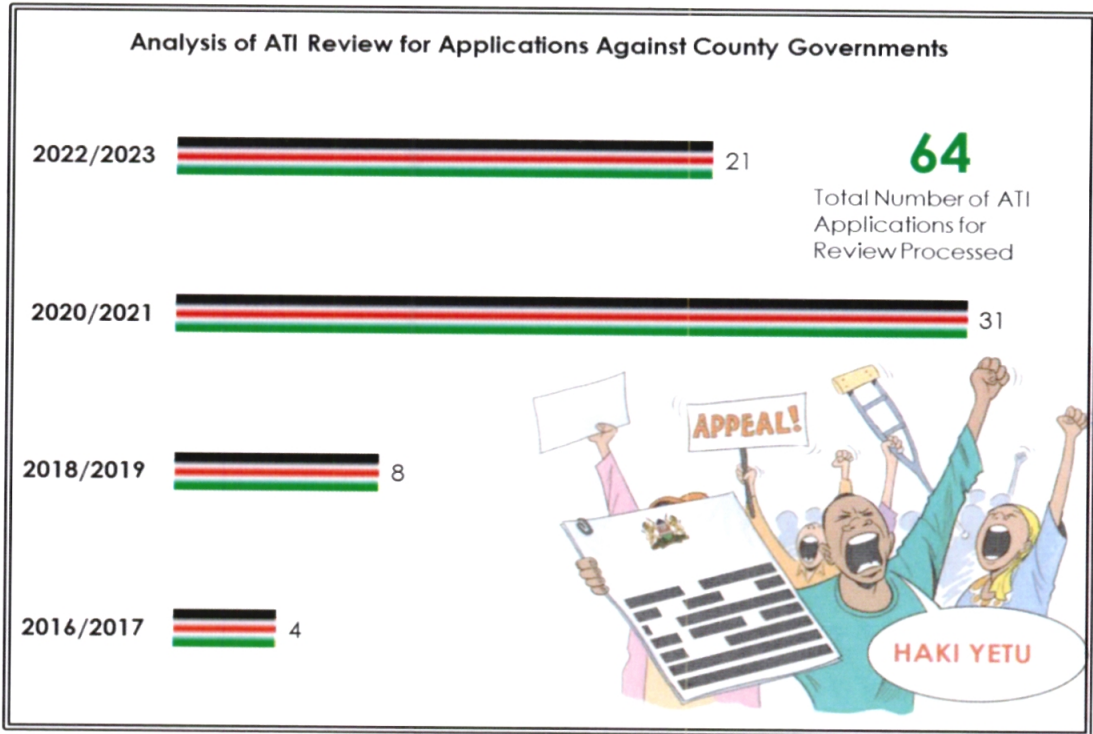


Figure 15: Analysis of ATI Review for Applications Against County Governments



### c) Sensitisation and Awareness Creation on ATI Act

Stemming from an identified need for increased awareness creation on the right of access to information, the Commission has over the years undertaken various activities aimed at increasing awareness on the right among members of the public. The initiatives taken by the Commission include:

- i. Awareness forums, talk-shows, one-on-one engagements, county visits, public forums, and participation in activities under the International Day for Universal Access to Information (IDUAI).



*A public sensitisation forum during the 2022 IDUAI in Bungoma County.*

- ii. Publishing and publication of various information, education, and communication materials on the right of access to information, including banners, and brochures.

#### **d) Development of ATI Guidance Documents**

The Commission has developed, published, and publicised various key access to information guides and guidance documents which have deepened ATI appreciation, understanding and use thus catalysing transparency, accountability, and citizens' participation in governance.

These include:

- i. *A Journalist's Handbook on Access to Information in Kenya* to increase awareness and use of ATI in journalistic work.
- ii. *Simplified Version of the Access to Information Act* to enhance understanding of the law by citizens and catalyse public participation in governance.
- iii. *A Guide on Proactive Disclosure for Public Entities* to provide procedures and parameters guiding public agencies to comply with the requirements of proactive disclosure.



*Validation forum for Access to Information reporting guidelines for public Entities and Private Bodies under ATI Act, 2016*

- iv. *A Handbook on Best Practices on Implementation of Access to Information* which serves as a source book for public officers in implementation of the law.
- v. Circulars on Proactive Disclosure of information to elaborate and guide public entities on the Proactive Disclosure obligations.
- vi. Training curriculum on ATI to enable public officers implementing the law acquire knowledge, skills and tools for implementing ATI.

- vii. *Reporting Guidelines for Public Entities and Private Bodies under the ATI Act* to enable reporting of progress in implementation of the Act.
- viii. *ATI Reviews Manual* to support the review of institutions' decisions on ATI by the Commission.

### **e) Development of the Access to Information (General) Regulations**

The Commission developed the draft '*Access to Information (General) Regulations, 2023*', to provide an appropriate framework for the operationalisation of the Access to Information Act, 2016, in conjunction with other key stakeholders. These stakeholders included; Ministry of Information, Communication and Digital Economy, the National Communications Secretariat, Kenya Law Reform Commission, the National Council on Persons with Disabilities, the Office of the Attorney General, and non-state actors.

A robust stakeholders' consultation and public participation was undertaken throughout the development process in accordance with Articles 10 and 232 of the Constitution. The Commission received feedback from a wide range of institutions such as County Governments, Constitutional Commissions, professional associations, several parliamentary Committees, MDAs, CSOs, private sector and members of the public. The feedback was mainly through memoranda, in-person and virtual submissions.

The Committee for the development of the Regulations finalised its work by submitting the final draft to the Cabinet Secretary, Ministry of Information, Communication and the Digital Economy for execution and transmission to Attorney General's office for publication.

The Access to Information (General) Regulations 2023 were published in the Kenya Gazette Supplement No. 197 (Legislative Supplement 69) vide Legal Notice No. 161 of 19<sup>th</sup> October, 2023 and were approved by Parliament on 23<sup>rd</sup> November, 2023.

## f) Capacity Development for Public Entities on Information Disclosures

To ensure obligations under the Act are well understood and thus enhance compliance, the Commission has undertaken sensitisation and training forums of various public entities. To this end:

- i. By the end of 2022/2023 financial year, a total of 16,470 public officers from National Government and Counties had been trained on ATI.
- ii. Engagements with County leadership leading to the appointment of Information Access Officers in 47 County Executives and 38 County Assemblies.



*The Legal and Advisory team during a sensitization of the County Government of Kitui, Access to Information Committee.*

- iii. The Commission has trained Information Access Officers drawn from all the 47 County Governments.
- iv. As a follow-up to the County Governments' training, several County Governments have formed Access to Information Committees comprising of strategic officers within their County Governments.

- v. The Commission has conducted county specific trainings for several Counties on ATI such as Machakos, Vihiga, Kisumu, Laikipia, Elgeyo Marakwet, Kitui, Nandi, Mombasa, Isiolo, Marsabit, and Nairobi County.

#### **a) Technical Support to Institutions on ATI Implementation**

Technical guidance and support is key to ensuring understanding and implementation of the ATI Act and a corresponding positive response by officers. To this end, the Commission supported institutions through:

- a. Development of policies on access to information and establishment of access to information infrastructure to enable adoption of a citizen-friendly service approach.
- b. Training officers, technical support, and guidance to institutions in building their capacities on resolution of information requests, constitution of Access to Information Committees, records management as well as protection of public interest disclosures.

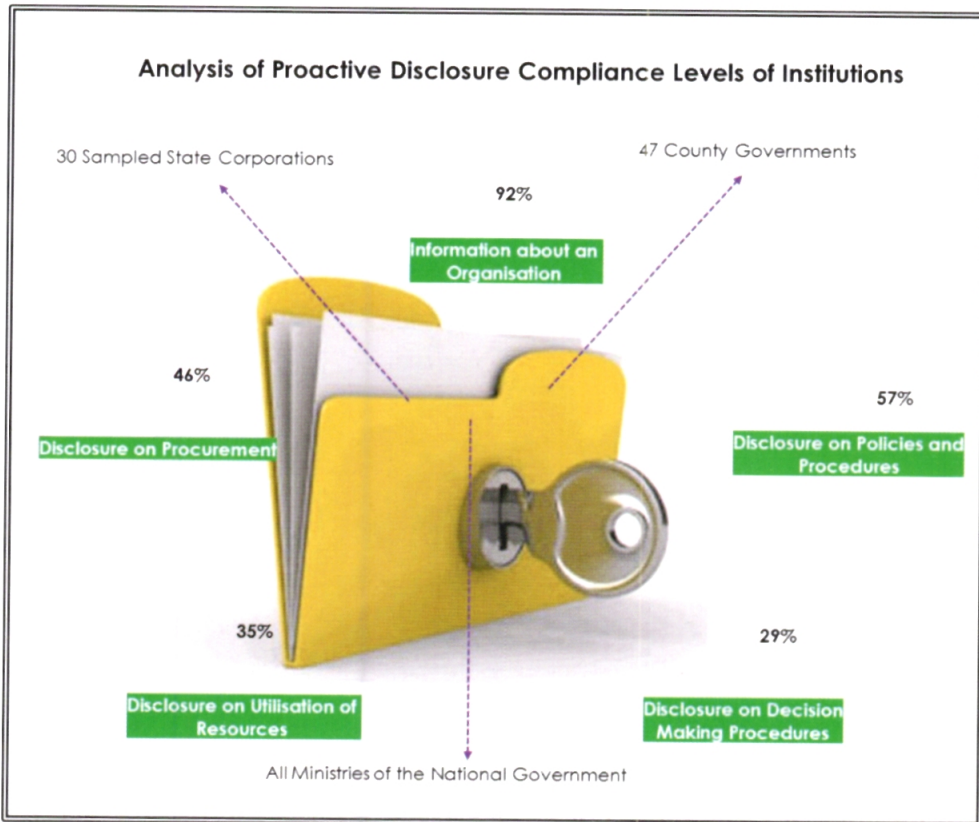
Through constant engagement and capacity building, some entities such as Kitui County Government have established ATI implementation Committees comprising of senior officers in the County to Ward Administrators, representing a homegrown mechanism for enabling citizens' access to information from headquarters to grassroots level. Further, Elgeyo Marakwet and Makueni counties have become champions on public procurement information disclosure and grass-root public participation respectively, which are strongly anchored on ATI.

#### **b) Proactive Disclosure of Information by Public Entities**

The Commission has played a critical role in ensuring increased application of Open Contracting Data Standards (OCDS) within

the public sector aimed at improving transparency and reducing opportunities for corruption by enhancing openness and accessibility to public procurement information. This has been through offering appropriate guidance to public entities and ensuring proactive disclosure of information as a means of increasing active transparency.

**Figure 16: Analysis of Proactive Disclosure by Public Institutions**



To this end, the Commission in 2019 undertook a survey on the status of proactive disclosure within public entities on proactive disclosure of public procurement information by public entities. The survey found that institutions disclosed most information on 'who we are and what we do' which ranked highest. On the parameter of policies and procedures utilised, institutions

disclosed this information at an average rate of 57%. The survey noted that public institutions performed poorly on disclosure of public procurement information which ranked at 46%, while resources expenditure ranked at 35% and decision-making processes at 29%. It has to be noted that the areas where institutions performed poorly in information disclosure are the areas which experience problems of corruption and other vices.

In relation to County Governments, Makueni county was found to be most proactive in disclosing information on its website and procurement portal, at 90%. Further, Makueni and Nandi counties were found to have proactively disclosed detailed, readily accessible procurement information and had easy at-one-glance breakdown of information on county budgets and allocations for each project.

The Commission has further engaged a raft of measures to enhance proactive disclosure implementation including issuance of circulars on the required standards; advisory opinions on disclosure of information; and training and capacity building.

### **c) Enabling County Level Information Disclosure**

The Commission has created a framework to enable County Governments to have customised County access to information laws as a means of increasing active transparency on county services, development and policies. This is premised on section 96 (3) of the County Government Act which requires county governments to enact legislation on access to information. Thus, the Commission developed a '*Model Law on Access to Information for County Governments*' to support County Governments in legislating County ATI Laws. The model law acts as a guide on minimum ingredients for County Governments' ATI Laws and thus ensures the spirit of the national law is

maintained. A number of counties like Kwale and Embu have already enacted their own access to information laws.

#### **d) Monitoring Compliance with International Treaty Obligations**

The ATI Act, 2016, requires the Commission to monitor and report on Kenya's compliance with international treaty obligations relating to the right to information. At the international level, UNESCO monitors implementation of the right to information as part of realization of the Sustainable Development Goal 16.10.2 which requires States commitments on access to information. The Commission submits annual reports to UNESCO on Kenya's compliance with international treaty obligations on ATI. The report gives the position on implementation mechanisms in place including government's efforts to publicly promote the right, citizens' awareness on the right, their ability to use it and the capacity of public institutions to provide information.



*UNESCO, ANIC Regional Meeting Held in Nairobi.*

Additionally, the Centre for Law and Democracy (CLD), a non-profit organization that works to promote, protect and develop human rights in the world, developed a leading, and accepted

global tool for assessing the strength of national access to information implementation mechanisms. According to CLD assessment, Kenya's legal framework is rated highly based on seven parameters representing the strength of ATI legal framework as shown in table 2.

**Table 2: Kenya's ATI Rating Vis-a-Vis Some African Countries Based on the Global Standards**

NO	Categories	Index	South Africa	Liberia	Kenya
1.	Right of access	6	6	5	4
2.	Scope	30	22	30	29
3.	Requests	30	21	19	19
4.	Exceptions	30	23	27	19
5.	Appeals	30	29	20	24
6.	Sanctions	8	6	7	6
7.	Promotional measures	16	12	16	12
	<b>Total</b>	<b>150</b>	<b>119</b>	<b>124</b>	<b>113</b>

### e) Digitisation of Government Records

The ATI Act, 2016 requires public entities to computerise their records and automate information management systems within three years from September 2016. As a starting point, the Commission supports institutions to understand and appreciate the place of digitisation of records and automation of information management systems through sensitisation and training. Further, the Commission partnered with the Ministry of Information, Communication and Digital Economy through ICT Authority (ICTA) where it sits at the steering and technical Committees for Digitization of Public Records. The work of the Committee is centered on development of standards for

digitisation to guide institutions on how to undertake the process.

## f) Disposal of Public Records

The obligation on proper records management under the ATI Act encompasses the disposal of public records in a manner that enhances future access to information. Consequently, the Public Archives and Documentation Services Act was amended by the ATI Act to enable consultations between Kenya National Archives and Documentation Services (KNADS) and the Commission before authority for destruction of public records is given. Through a partnership between the Commission and KNADS, the Commission has so far granted concurrence to dispose 7,745,383 records and withheld its concurrence to disposal for 338,577 public records as illustrated in table 3:

**Table 3: Concurrences Granted by the Commission for Disposal of Records**

DETAILS	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	Total
Number of requests	17	71	86	88	77	74	58	<b>471</b>
Totals Number of Records	124,055	152,751	131,197	943,018	929,617	5,363,399	439,931	<b>8,083,960</b>
Number of records (concurrence granted)	124,055	152,751	131,197	620,118	919,211	5,363,378	434,673	<b>7,745,383</b>
Number of records (concurrence not granted)	0	0	0	322,900	10,406	21	5,258	<b>338,577</b>

### **g) Development of a National Access to Information Policy**

The enactment of ATI Act in 2016 was as a result of sustained and concerted efforts by a few reforms-minded members of parliament and civil society actors. The effect of this is that the law was passed ahead of the national policy framework, which gap has continued to hamper the seamless implementation of access to information. Accordingly, the Ministry of Information, Communications and the Digital Economy in January, 2023, constituted a Multistakeholder Committee to develop an Access to Information Policy for Kenya, co-chaired by the Communications Secretary within the National Communication Secretariat, and the Commissioner in charge of Access to Information.

The Committee has developed a draft National Access to Information Policy which has undergone stakeholders' engagement and public participation in accordance with Constitutional principles.

### **h) Development of ATI Curriculum with the Kenya School of Government**

The Commission in partnership with the Kenya School of Government, and with the support of International Development Law Organisation (IDLO) has developed an ATI Curriculum targeting public officers involved in processing of access to information requests in public entities to equip them with knowledge, skills and competencies to implement the legal framework on access to information. A pool of trainers

from the Commission and Kenya School of Government have been identified to undertake the training.

### **i) Strategic Partnerships aimed at Establishing and Building Resilience in Access to Information**

To allow concerted efforts towards implementing the Access to Information Act, the Commission created strategic partnerships with relevant stakeholders. Subsequently, the Commission has consistently engaged with these partners with a view to creating awareness on the law, increasing the level of compliance in order to allow for accurate and timely reporting and sharing of information. The engagements also increase the capacity of entities in handling Access to Information matters. Some of the partnerships include:

- i. Partnership with Ministry of Information, Communication and Digital Economy to enable policy coordination on access to information including automation of information management systems and digitisation of government records to enhance ease of access to information.
- ii. Partnership with the Council of Governors to allow counties engagement on Access to Information and improvement of service delivery at the county level.
- iii. Partnership with Kenya School of Government on development of Access to Information Curriculum for training of public officers on ATI;
- iv. Partnership with the Media Council of Kenya on capacity development of journalists to be able to use ATI in their work;
- v. Partnership with the Kenya National Archives & Documentation Service on records management including digitization and disposal of records.
- vi. Open Government Partnership (OGP) to support the government in being more inclusive, responsive and

accountable through the Access to Information Commitment in the National Action Plan.

- vii. Partnership with Kenya Archives and Records Managers in Kenya (KARMA) geared towards creating awareness and sensitizing records officers on appropriate records management.
- viii. Partnerships with key Civil Society Organisations like Article 19 Eastern Africa, Katiba Institute, International Development Law Organisation (IDLO), International Commission of Jurists-Kenya, Transparency International-Kenya among others to enable awareness creation on ATI.



*The Commission with the support of the International Development Law Organisation (IDLO), Kenya during a three- day training of officers from the County Government of Isiolo*

#### **j) Development of Ministries, Departments and Agencies (MDA) Portal**

Over the years, the Commission has developed the capacity of MDAs in setting up their own access to information mechanisms with a view to supporting the receipt and timely resolution of access to information matters for continued service delivery. The Commission is in the process of revamping its internal ICT

systems through development of an MDA portal aimed at creating a linkage between institutional ATI digital frameworks and the Commission's oversight digital platform to enhance efficiency in ATI oversight, enforcement and reporting.

### **3.3 Key ATI Review Applications Processed by the Commission**

#### **a) Enhancing Transparency and Accountability**

The Commission received an application for review from residents of Kaptagat Ward in Uasin-Gishu County after the County Government refused to proactively disclose information during the construction of the Naiberi Tendwo road. The residents made a request to be furnished with Bill of Quantities for the project. An inquiry was initiated by the Commission and the County Government supplied the requested documents thus enabling citizen's participation in assessing quality of work done vis-a-vis the cost and thus hold County Government to account on resource expenditure.

#### **b) Enabling Better Decision Making**

In March 2021, Hon. Dr. Otiende Amollo, Member of Parliament for Rarieda Constituency, made a request for information from Pharmacy and Poisons Board seeking information regarding the importation, registration and use of Sputnik V Covid vaccine in Kenya. The Board responded by providing the requested information thus allowing requester and citizens to be informed on the vaccine.

#### **c) Enhancing Protection of Human Rights**

The Commission received an application for review dated 22<sup>nd</sup> January 2021 from John Ekai Erika, the Chairman of Turkana Empowerment Advocacy Group (TEA-G) addressed to the Director General, National Environment Management Authority requesting for information regarding the contractor's NEMA license conditions for Twiga 1 hazardous holding site within South Lokichar basin. In March 2021, through the Commission's intervention, NEMA responded to the request by providing

documents relating to the licence which facilitated social audit and interrogation on environmental conservation by the Group.

#### **d) Enabling Public Participation**

The Commission received an application for review from Mr. Sila Kaloki and other community members who requested for information regarding the upgrading of the 30 kilometres Sultan Hamud-Kasikeu-Kyambeke-Kikoko (D515) road and particularly information relating to the contract sum, the contractors and the projected date of completion from the Kenya Rural Roads Authority. On 12th July 2021, the Director General of KERRA responded providing all the information requested together with the supporting documents relating to the contract and a progress report. Thus, the right enabled public participation and accountability which is an effective way of addressing governance problems in Kenya.

#### **e) Combating Fraud and Malpractices in Public Offices**

Former employees of Kerio Valley Development Authority who retired under Voluntary Retirement requested to be granted access to documents submitted by KVDA Board to the National Treasury for processing of their voluntary retirement, the approved benefits by the National Treasury as well as the documents which were utilised to prepare their final benefits. Upon intervention by the Commission, the requesters were supplied with the information allowing them to know that their rightful entitlements had been illegally deducted to cater for other unrelated costs. The former employees were enabled to make follow-up complaint for payment of the illegally deducted benefits.

### **3.4 Litigation on Access to Information Issues**

Since the enactment of the ATI Act, the courts have been very active in pronouncing themselves on the right to Access Information and the Commission has been enjoined in some of the matters in various capacities. The table below illustrates the key outcomes from some of the court matters.

**Table 4: Key Access to Information Case Law**

Case	Key Issues	Brief facts	Final Decision
David Mugasia Inyang'u Vs. Joshua Oigara & 3 others [2023] eKLR	<p>-Adoption of an order of CAJ</p> <p>-Whether a party who is dissatisfied by an order of CAJ who fails to appeal within 21 days under section 23(3) ATI Act can be allowed to oppose adoption proceedings</p>	<p>The Applicant requested for information from KCB who failed to respond to his request and thus moved to CAJ for a review of KCB's decision. The Commission issued an order directing KCB to facilitate access to the information. The applicant moved to court to enforce the order.</p>	<p>The Court held that: -</p> <p>-Section 23(3) ATI Act allows an appeal against an order of the Commission and a party failing to appeal cannot raise any issue in adoption proceedings</p> <p>-Order of the Commission was adopted and KCB Bank ordered to supply information within seven days.</p> <p>-Enforcement proceedings under section 23(5) ATI Act are <i>ex parte</i> proceedings</p>
Khalifa & another v Principal Secretary, Ministry of Transport & 4 others [2022] eKLR	<p>-Circumstances in which the right to information could be limited;</p> <p>-Factors to be demonstrated when establishing that a restriction on access to information was necessary to protect a legitimate national security interest;</p> <p>-who bore the burden of establishing that the refusal of access to</p>	<p>The respondents requested the agreements, contracts, and memorandum of understanding in relation to the SGR project. The petitioners were aggrieved that the Respondents had not complied with the request and thus moved to Court.</p> <p>The respondents opposed the petition on among other grounds that the petitioners had not exhausted the available dispute resolution mechanisms and</p>	<p>-The burden of establishing that the refusal of access to information was justified rested on the State or any other party refusing access.</p> <p>-Any restriction on information that a government sought to justify on grounds of national security had to have genuine purpose and demonstrable effect of protecting a legitimate national security interest. To establish that a restriction on access to information was necessary to protect a legitimate national security interest, a government had to demonstrate that:</p> <p>1. The expression or information at issue posed a serious threat to a legitimate</p>

Case	Key Issues	Brief facts	Final Decision
	information was justified	that the petition was res judicata. The respondents averred; that the agreements had non-disclosure clauses; that if granted the orders would endanger national security; that the information was protected under section 3(6) (7) of the State Secrets Act.	<p>national security interest;</p> <p>2. The restriction imposed was the least restrictive means possible for protecting that interest; and</p> <p>3. The restriction was compatible with democratic principles.</p> <p>-A restriction sought to be justified on the ground of national security was not legitimate if its genuine purpose or demonstrable effect was to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest.</p> <p>- A restriction sought to be justified on the ground of national security was not legitimate unless its genuine purpose and the demonstrable effect was to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.</p> <p>-A declaration of violation of petitioners' right of access to information through respondents' failure to supply information or publicising it was made with further order that the information requested be supplied.</p>

Case	Key Issues	Brief facts	Final Decision
Legal Advice Centre t/a Kituo Cha Sheria & 33 others v Cabinet Secretary, Ministry of Education & 7 others [2021]eKLR	<p>-Conditions to be met before a right or fundamental freedom could be limited;</p> <p>-The test for determining whether a restriction was appropriate;</p> <p>-Whether disclosure of information contained in reports by security agencies concerning terrorist attacks was in the public interest.</p>	<p>Petitioners filed a petition seeking respondents (IPOA &amp; CAJ) to furnish them with the reports that they held touching on the Garissa University terrorist attack case.</p> <p>Petitioners argued the right to information was a constitutionally guaranteed right, and access to the information and reports regarding the Garissa University terrorist attack would enhance accountability by State officers and boost confidence in the Government. The petitioners contended that the ability of the petitioners to demand their rights and seek their protection would be enhanced by accessing the requested information in order to prove complacency and laxity by State and other office bearers in the Garissa University terrorist attack.</p> <p>The petitioners further argued that the withholding of information by the respondents did not outweigh the</p>	<p>-The court took judicial notice of the fact that the threat of terrorism across the world and in Kenya, in particular, was very real. Due to that threat, and being mindful that Kenya had been a target on several occasions, the release of the reports would pose a threat to national security and prejudice public interest.</p> <p>Directing IPOA &amp; CAJ to release reports which contained the strategies employed by the security agencies in combating the threat to terrorism was likely to put Kenya and the lives of its citizens', in jeopardy.</p> <p>-On a balance of probabilities, the substantial harm to the overall public interest far outweighed the right of the petitioners to access the information sought. The petitioners had already been supplied with the abridged versions of the reports for their purposes. Accordingly, the application and threshold for limitation of disclosure of the subject reports had been demonstrated and met by IPOA &amp; CAJ.</p>

Case	Key Issues	Brief facts	Final Decision
		public interest in accountability by the State and the right to information and fair hearing.	
Philip Njoroge Kimani v Liberty Africa Technologies Limited & another [2021] eKLR	-Whether the applicant was entitled to information held by Safaricom Ltd on skiza tune.	The applicant sought information from Safaricom Ltd on the month downloads for his skiza tunes and moved to court to enforce such right of access after what he termed as unsatisfactory disclosure by Safaricom	Court held that for a person (private body) other than the State to be obligated to provide information to an applicant, the Applicant ought to show, firstly, that the information is held by that person. It is not enough for a party to speculate who has the information. Court further held that the information sought by the petitioner was subject to limitation under Section 6(1) of Access to Information Act 2016 thus could not be released.
Commission for Human Rights and Justice v Khandwalla & 3 others [2021] eKLR	-Whether an applicant can be allowed to move to court to enforce right to information without approaching CAJ	The applicant applied to Coast General Hospital for information on closure of its entrance based on alleged prevention of COVID 19 measures which information was not supplied and thus moved to court.	-Petitioner failed to follow the laid down procedure as stipulated in the Access to Information Act No. 31 of 2016, and therefore the Court held that it had no jurisdiction to determine the application before it.
Christine Nzula vs. CEO Nairobi Womens Hospital & Anor [2021]eKLR	-Adoption of CAJ order. -Whether CAJ had jurisdiction of issuing orders capable of being enforced by the Court.	The Applicant requested for information relating to her treatment at Nairobi Womens' Hospital but there was no response. The Commission after inquiry issued an order to have the applicant supplied with the information which was not complied with prompting the	-Any person denied information must exhaust or satisfy the laid down mechanism in law by approaching CAJ first before going to court -Section 23 established the High Court as an appeal mechanism on issues of ATI - The consequence of failing to appeal allowed the applicant under Section 23(5) of the Act to apply for leave to enforce CAJ order as decree. -CAJ has jurisdiction to issue

Case	Key Issues	Brief facts	Final Decision
		adoption proceedings.	orders on ATI -The right to access information is a sacrosanct right which applies to actions by both public and private bodies -The respondent was not ordered to supply the information since the court noted from the affidavit that respondent said information was missing and thus ordered compensation of Kshs 1,000,000/=.
Savraj Singh Chana v Diamond Trust Bank (Kenya) Limited & another [2020] eKLR	-The Commission as the first forum on ATI disputes.	The Petitioner, Savraj Singh Chana, sought to enforce the right of access to information under Article 35 of the Constitution to seek certain information from the 1st Respondent, Diamond Trust Bank (Kenya) Limited and the 2nd Respondent, Airtel Network (Kenya) Limited. The Petitioner alleged that he held two bank accounts with the 1st Respondent and had a mobile telephone number with the 2nd Respondent which he used to operate a Mobile Banking Facility known as "DTB Mobile Banking" with the 1st Respondent. The Petitioner wanted to access information on certain irregular, illegal and	The Court by interpreting ATI Act recognised CAJ as the first forum for resolution of ATI disputes.

Case	Key Issues	Brief facts	Final Decision
		unauthorized transactions which had been made vide the Mobile Banking Facility resulting in loss of Kshs. 592,864/- from his account.	
Mercy Nyawade v Banking Fraud Investigations Department & 2 others [2017] eKLR	Limitation of access to information.	The Petitioner requested for investigations report from Banking Fraud Investigations Department concerning suspicious transactions they were investigating in relation to transfers of monies within Standard Chartered Bank to a body in Singapore.	-The burden of establishing that the refusal of access to information is justified rests on the State or any other party refusing access. -Although the right of access to information is not absolute, to satisfy the requirements set out under article 24 of the Constitution, the respondents must demonstrate that the limitation imposed on the constitutional right is "fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom and that it falls within the exceptions provided in section 6 of the Act." -Court ordered disclosure of information to the petitioner.
Zebedeo John Oporo V IEBC [2017] EKLK	-Whether the Respondent had established that refusal to grant access to information is justified within Section 6 of the Access to Information Act.	The Petitioner requested from IEBC information and records pertaining to elections of Bonchari MP seat held on 8 <sup>th</sup> August 2017, including number of voters identified by the electronic voter identification devices at every polling station; Copies of Forms 32A (Voter Identification & Verification Forms) at every polling	The court held that the refusal to grant access must be reasonable and justifiable. The court found that the respondent had violated the right of access to information and ordered that the petitioner be granted access to the requested forms.

Case	Key Issues	Brief facts	Final Decision
		station; Polling Station Diaries as prepared and submitted by the respective presiding officers at every polling station for the purposes of filing an election petition.	
Katiba Institute v. President's Delivery Unit & 3 others [2017] EKLK	-Whether a juristic person (Company or body) has a right to access information	Katiba Institute wrote to President's Delivery Unit seeking information on number of advertisements published, the total cost incurred as well as the government agency that met the cost.	The learned judge considered that the Access to Information Act under Section 2 considers a citizen to include a juristic person whose director(s) is a citizen. The court ordered that the information be availed to the petitioner.
John Harun Mwau v Linus Gitahi & 13 others [2016] eKLR	-Access to information held by private body -Information required for protection of fundamental right.	Harun Mwau was accused, in a report published by the Nation Media Group, of owning a container full of 1.1 tonnes of cocaine impounded in Malindi. Subsequently, the US imposed sanctions against Mwau. Mwau moved to Court seeking information from those who had implicated him. He argued that the information he sought was necessary to protect his rights to human dignity, privacy and life. The Court was	The Court ruled that all the information held had to be disclosed as it was needed to protect another right.

Case	Key Issues	Brief facts	Final Decision
		invited to determine if Mwau was entitled to information on the location of the depot where the container was being held, the actual person who impounded it, the serial number and shipping line and the consignee under Article 35.	
Kahindi Lekalhaile & 4 others v Inspector General National Police Service & 3 others [2013] eKLR	-Information must first be requested from the public entity holding it -Whether the Court was the appropriate place of first instance to seek the information.	Kahindi Lekhaile and others sought to have an audit of the ivory stock in the country that is held by the Kenya Wildlife Service and other private establishments pursuant to reports that such ivory may have found its way to the illegal market. Kahindi and others moved to Court requesting for this information.	While ruling that a person seeking information must first do so to the public entity holding the information and be denied. The Court noted that the right of access to information was not self-propelling and a person must request for information to exercise the right.

## CHAPTER FOUR

### 4.0 PERFORMANCE CONTRACTING AND SURVEY ON STATUS OF ADMINISTRATIVE JUSTICE

Performance Contracting is part of the broader public sector reforms aimed at improving efficiency and effectiveness in the management of the Public Service. The Government continues to use Performance Contracting as a key accountability tool in its endeavour to improve service delivery.

The Commission is one of the specialised agencies under the performance contracting framework in Kenya whereby it oversees implementation of two indicators namely; 'Resolution of Public Complaints and Implementation of Citizens' Service Delivery Charters.

To this end, the Commission facilitates setting up and building complaints handling capacity in the public sector to enhance efficient service delivery. Public institutions submit quarterly reports on complaints received and processed, Access to Information requests received and processed and report on implementation of citizen service delivery charters to the Commission for evaluation and certification.

Over the eleven-year period, the level of compliance by public institutions increased by **88.5%**. This is attributed to the Commission's unwavering technical support to these institutions in setting up of complaints and access to information management infrastructure as well as building capacity of public officers.



*The Commission Chairperson, Hon Florence Kajuju accompanied by the Commission Secretary, Ms. Mercy Wambua presenting compliance certificates to various institutions.*

**Figure 17: Analysis of Institutions Certified (2012 to 2016)**

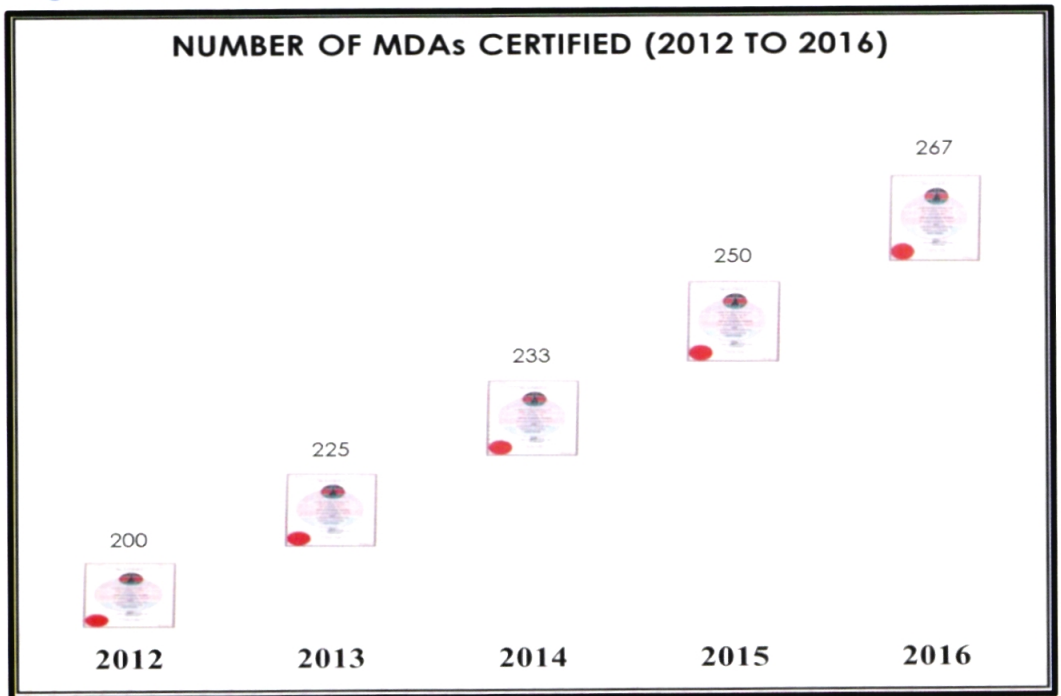
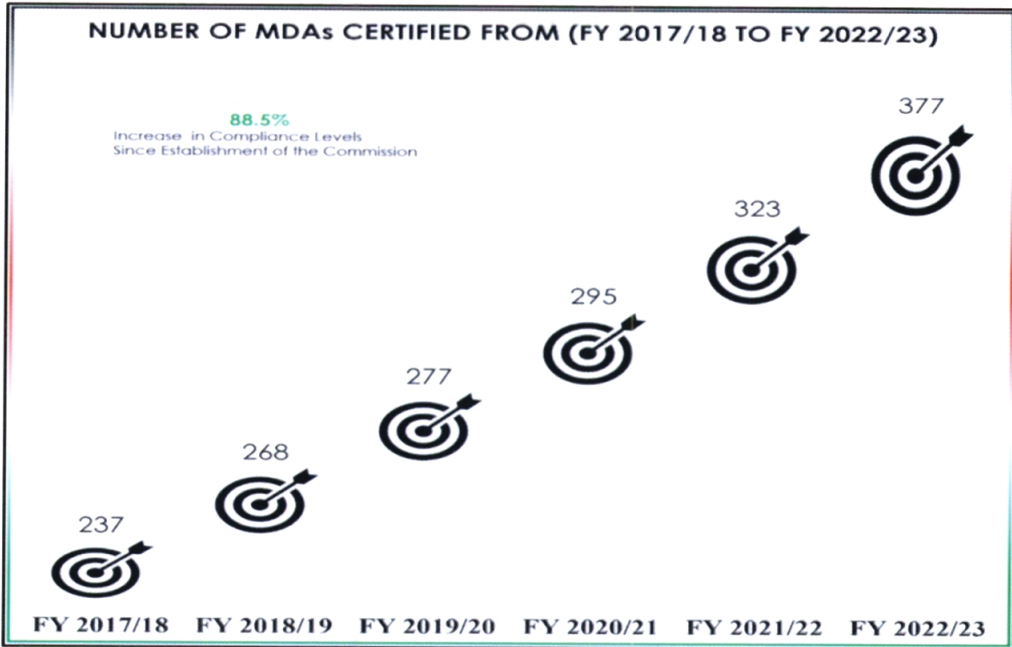


Figure 18: Analysis of Institutions Certified (2017 to 2023)



The Commission mainstreamed complaints management in the public sector through inclusion of 'Resolution of Public Complaints' and implementation of citizen service delivery charter indicators in the performance contracting framework. Under the Indicators, public institutions were required to establish a mechanism of addressing complaints and create awareness on service delivery charter and complaints handling mechanisms. The institutions were required to report to the Commission on quarterly basis. The Commission analyses the reports and certified the Ministries, Departments, Agencies and Counties (MDACs) based on the established assessment criteria to ensure compliance. During the period under review, the Commission developed reporting guidelines for implementing the indicators.

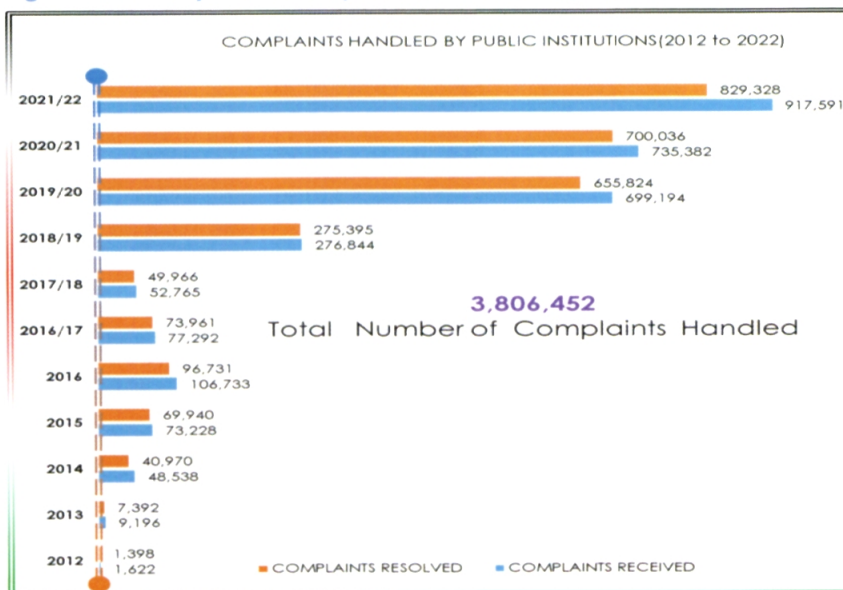
In assessing the level of compliance, the Commission considers the following parameters:

- i. Establishment of infrastructure for managing complaints and facilitating access to information;
- ii. resolution of all complaints received by MDACs;
- iii. proactive disclosure of information under section 5 of access to information act;
- iv. Development of quality service delivery documents that include service delivery charter, complaints handling procedures and policy, complaints registers and access to information registers;
- v. processing all access to information requests received;
- vi. submission of quarterly reports to the Commission; and
- vii. awareness creation initiatives on complaints handling framework and citizen service delivery charters.

#### 4.1 Complaints Handled by Public Institutions

During the reporting period, a total of **3,806,452** complaints were received by public institutions out of which **3,561,055** complaints were reported by the MDACs through PC obligation to be resolved, translating to **94%** resolution rate by the MDACs. Figure 18 depicts total number of complaints received by the institutions.

Figure 19: Analysis of Complaints Handled by Institutions (2012 to 2022)



Source (PC Reports by MDAs)

The number of complaints received and reported by public institutions have increased over the years. In the Financial Year 2012/13, 1,622 complaints were handled while in the FY 2021/2022 the total number of complaints processed and reported by the public institutions were 917,591. This is attributed to public education and outreach facilitated by the Commission, empowering citizens on their rights to effective public service delivery and the available redress mechanisms.

The Commission facilitated the MDAs in setting up of complaints management infrastructure to over 400 public institutions and build the officers' capacity for complaints handling. This began from the establishment of the Commission and is continually done as new institutions are being established.

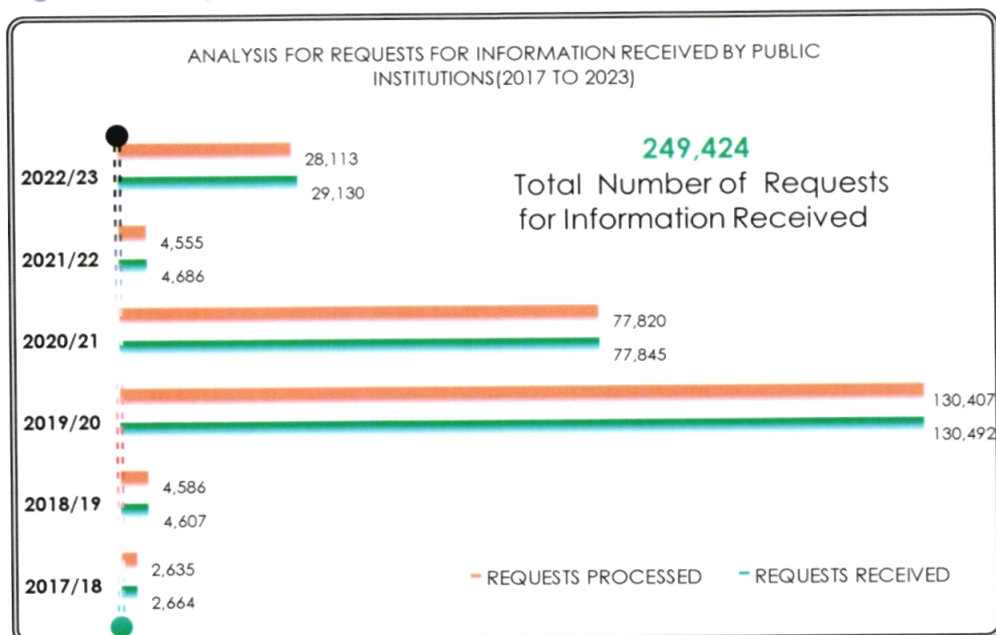
The Commission provides technical assistance and guidance to public entities in building their technical capacities on handling of information disclosures. Following the said support, many public offices have established service delivery charters, resolved and reported on information disclosures and implemented decisions of the Commission on access to information. The reports from institutions demonstrate that public offices, including County Governments are actively involved in disclosure of information and thus facilitating fundamental rights including public participation.

The Commission developed guidelines for reporting by public entities which enables the Commission to receive annual institutional reports on ATI implementation.

#### **4.2 Requests for Information Processed by Institutions**

During the period under review public institutions received a total of 249,424 requests for access to information since the enactment of Access to Information Act. Based on the reports submitted to the Commission through PC obligation, a total of 248,116 requests for information were processed. Figure 19 represents requests for information processed.

Figure 20: Analysis of Requests for Information Processed by Institutions

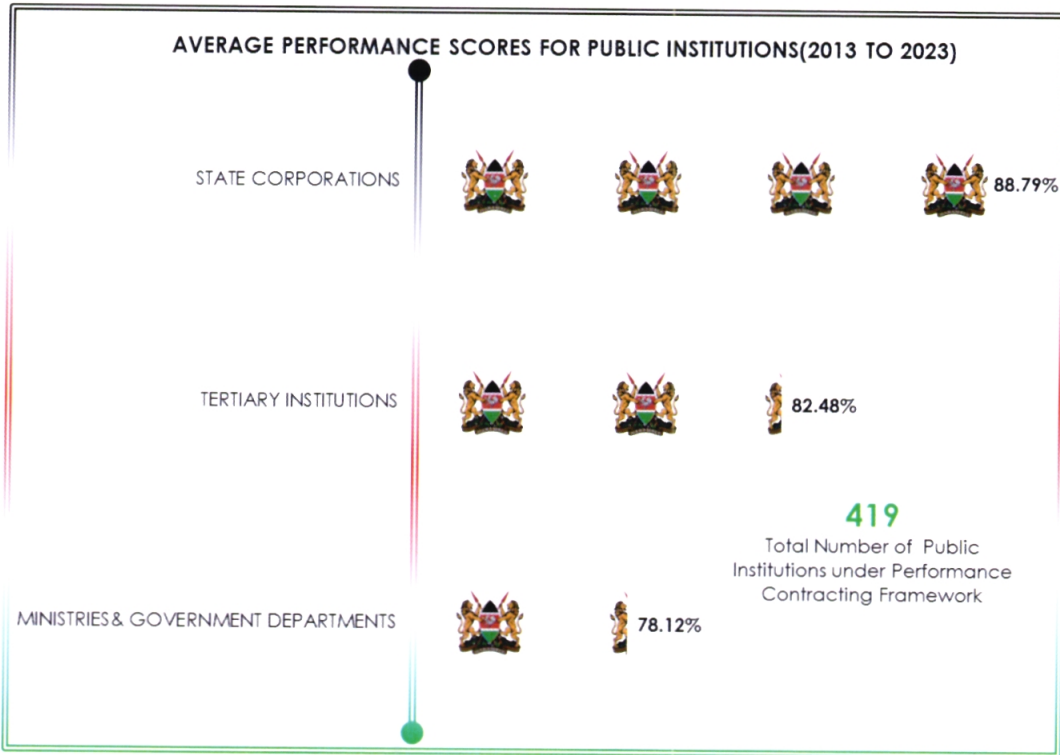


Source: MDA reports submitted under the PC obligation

### 4.3 Average Performance Scores of Public Institutions

The Government has used Performance Contracting since 2003 as a key accountability framework in its endeavour to improve service delivery in the public service. Performance Contracting is part of the broader public sector reforms aimed at improving efficiency and effectiveness in the management of the public service. Currently, 419 institutions are on performance contracting. These institutions submit quarterly reports to the Commission for assessment on two indicators: *Resolution of Public Complaints* and *Implementation of Service Delivery Charters*. Figure 21 depicts the average performance scores for public institutions per category.

**Figure 21: Analysis of Institutions Performance (2012 to 2023)**



#### 4.4 Nature of Maladministration Handled by Public Institutions

Majority of complaints were reported in state corporations (76.1%) followed by tertiary institutions (12.4%) and Ministries and departments (11.5%). Delay, inefficiency and incompetence accounted for the most complaints. Figures 22,23 and 24 presents analysis of forms of maladministration handled by MDAs.

Figure 22: Analysis of Forms of Maladministration Handled by State Corporations (2012 to 2022)

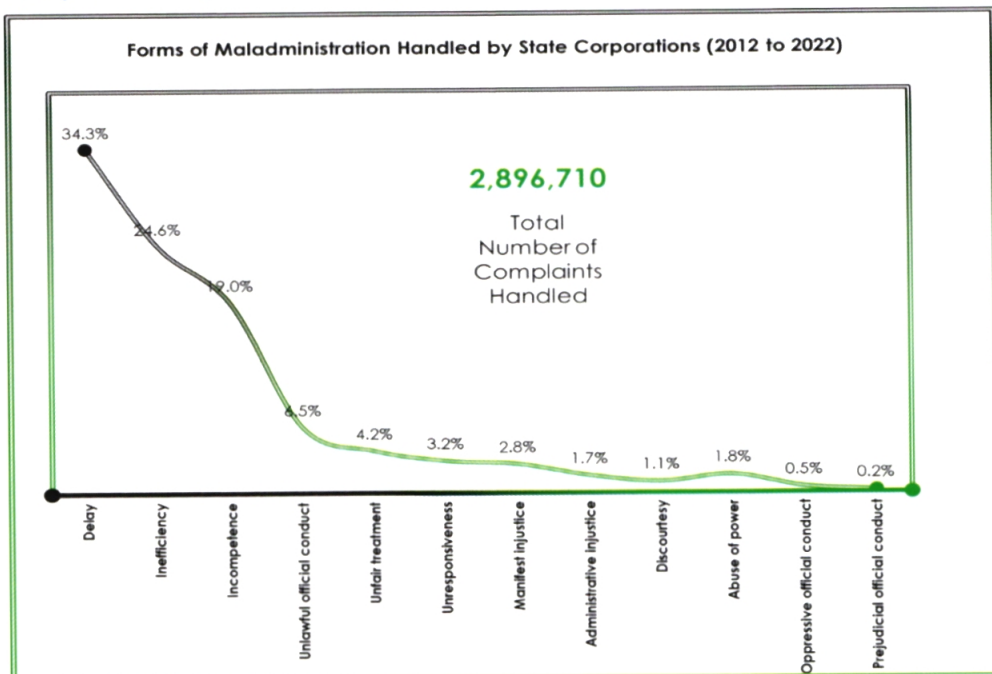
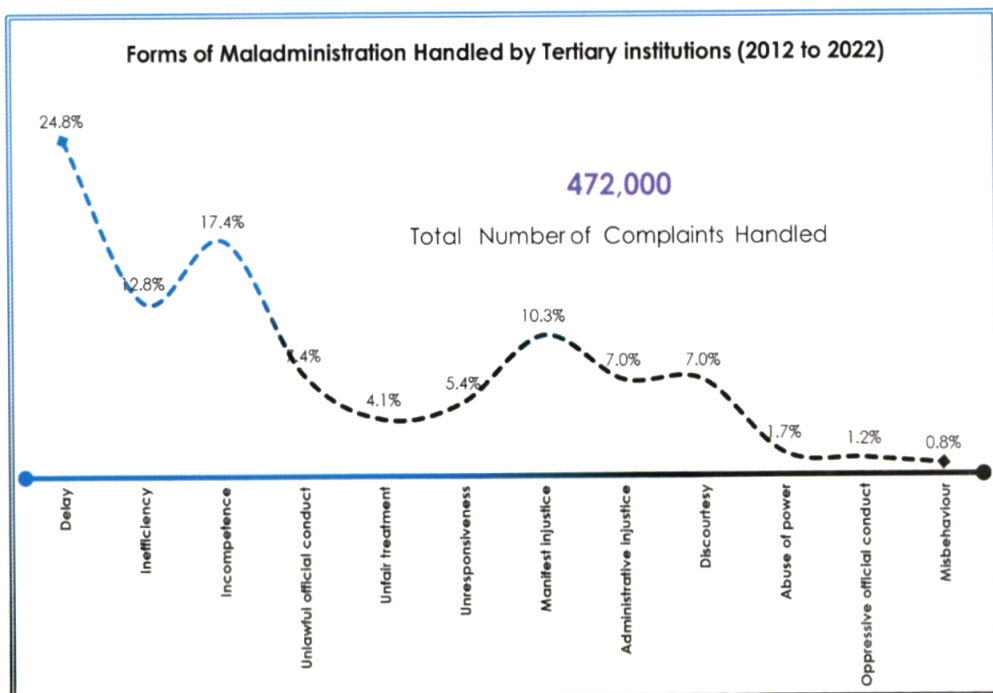
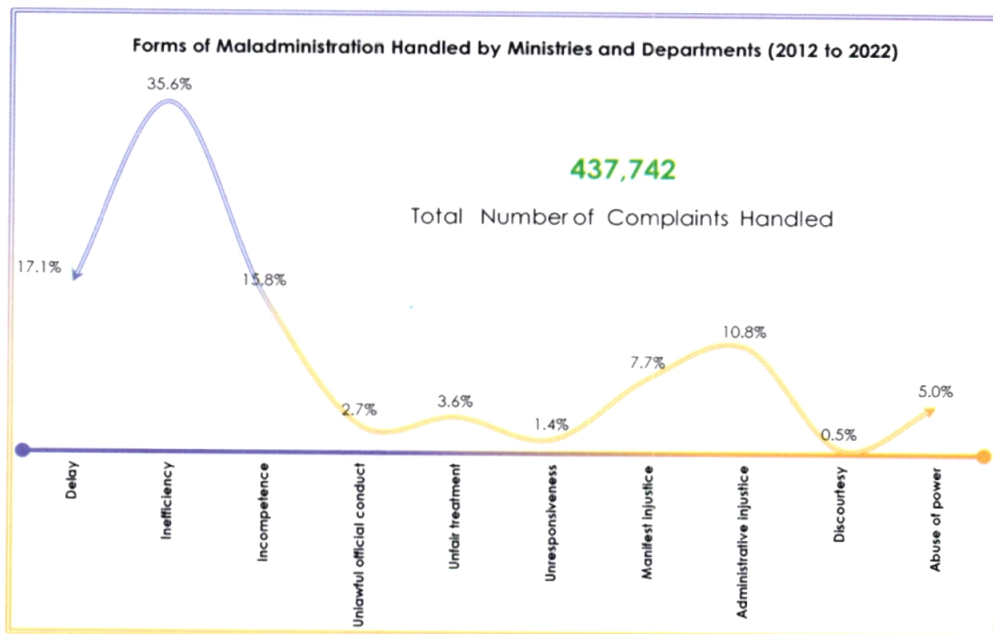


Figure 23: Analysis of Forms of Maladministration Handled by Tertiary Institutions (2012 to 2022)



**Figure 24: Analysis of Forms of Maladministration Handled by Ministries and Departments (2012 to 2022)**



#### 4.5 Public Perception Survey on Administrative Justice and Access to Information

Administrative justice is the standard required of public entities and those who exercise public functions to adhere to due process principles when making administrative decisions or taking administrative action. It plays a pivotal role in entrenching good governance and best practices in public institutions. The enforcement of administrative justice impacts on service delivery.

The Commission conducted a survey in ten counties in 2023 to establish the status of administrative justice and access to information in Kenya. The survey was conducted in Mombasa, Kwale, Garissa, Isiolo, Nyeri, Makueni, Uasin Gishu, Bungoma, Kisumu and Nairobi. A mixed method research was utilised in undertaking the study. Exit interviews were administered at various service points by the research assistants. In addition, key informant interviews were administered; this permitted triangulation of the findings from the members of the public

and the public officers. The county sample was proportionately allocated based on the number of households.

The survey assessed public perception on complaints resolution by the Commission, awareness levels of the general public on administrative justice and access to information, the systems for seeking redress for administrative injustice and challenges related to administrative justice.

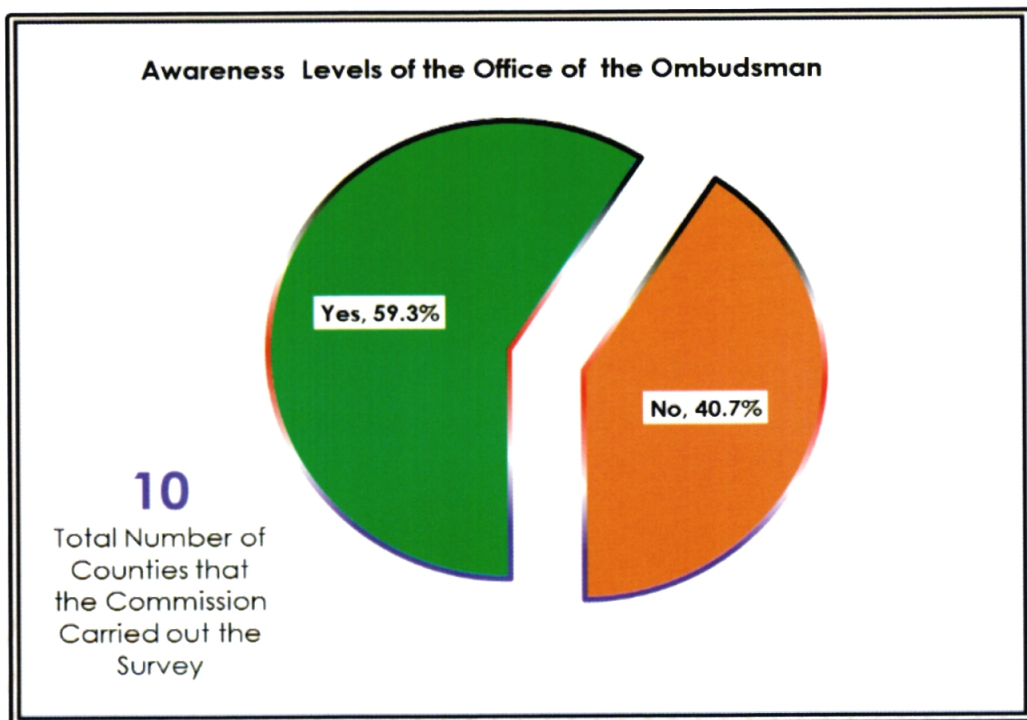
### Findings of the Survey

The findings of the survey were;

#### a) Public awareness of the Office of Ombudsman

The majority of respondents (59.3%) said they were aware of the Ombudsman's office and its mandate while those who were unaware of it (40.7%) accounted for the least as indicated in figure 25.

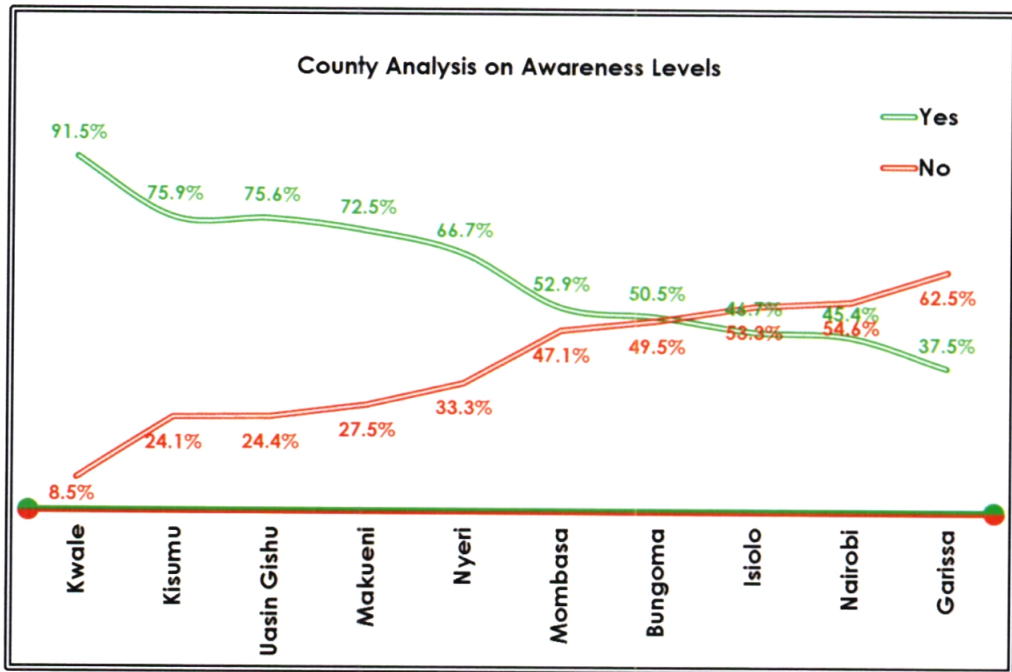
Figure 25: Awareness on the Office of the Ombudsman



## b) County analysis on awareness levels

Figure 26 presents county analysis on the public awareness of the Office of the Ombudsman and its mandate. Most of the respondents in 7 out of 10 counties were aware of the office of the Ombudsman and its mandate. In three counties, namely; Isiolo, Nairobi, and Garissa most of the respondents were unaware of the office and its mandate.

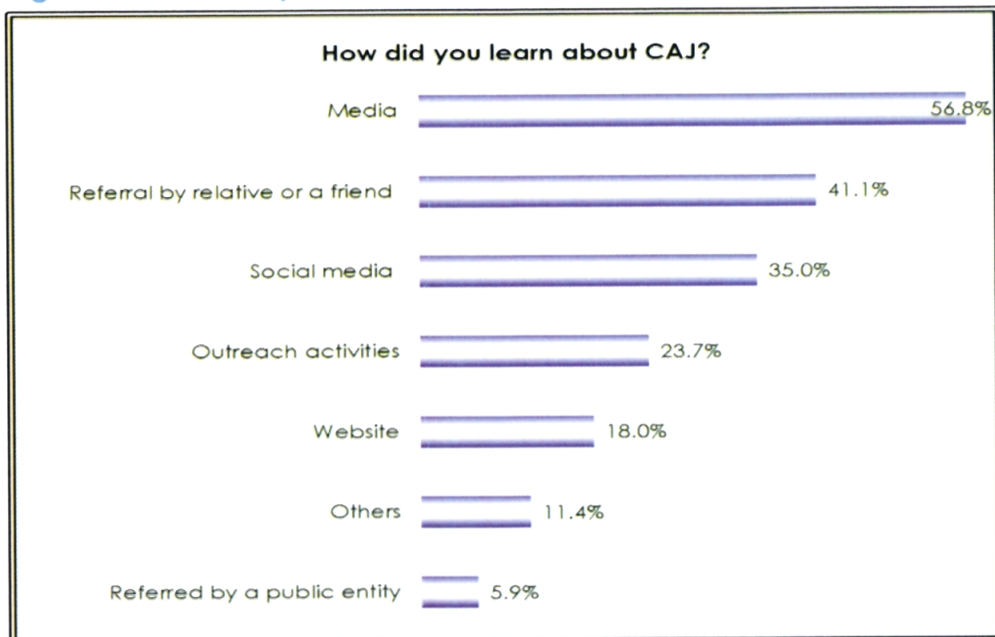
Figure 26: County analysis on awareness levels



Of the 59.3% who were aware of the office of the Ombudsman and its mandate, the majority 56.8% said they learnt of it through the media. This was followed by referral by a relative or a friend, social media, and outreach engagements with 41.1%, 35.0% and 23.7% respectively. Notably, some of the respondents

learnt of the office of the Ombudsman through referrals by public entities at 5.9% as in figure 27.

**Figure 27: How did you learn about CAJ**

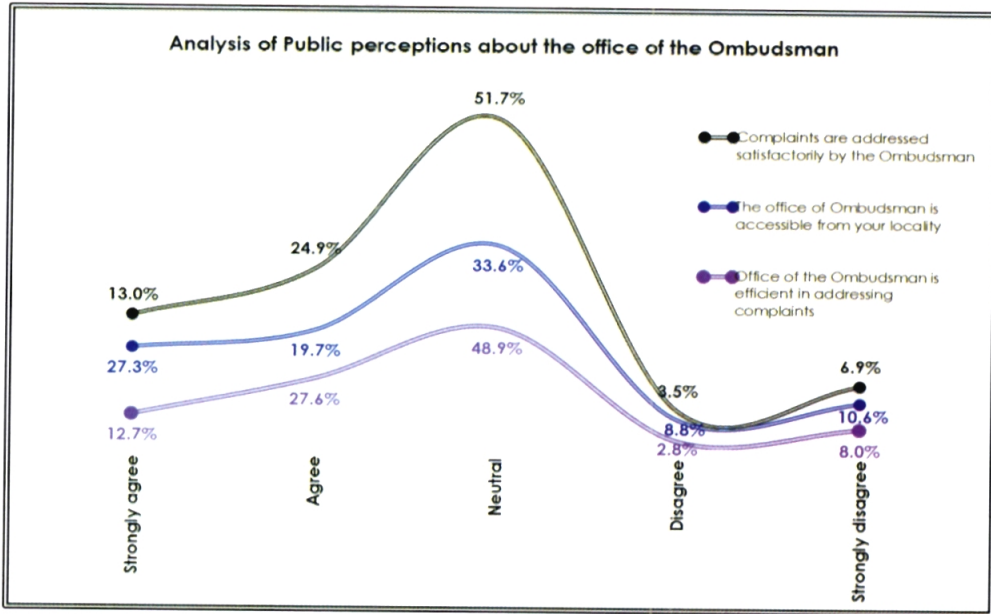


The 'others' category constituted of learning institutions, stakeholder engagements and Huduma Centres.

### **c) Complaints redress at the Office of the Ombudsman**

A significant number of respondents (89.0%) had not sought for complaints redress at the Commission whereas the remaining (11.0%) affirmed having sought for complaint redress. A comparison analysis shows that most respondents were in agreement that the Office of the Ombudsman is accessible in their various localities as indicated in figure 28. Pertaining the satisfaction levels with how complaints are addressed and how efficient the institution is, most of the respondents could not affirm or disagree with the hypothesis, though in general they are satisfied.

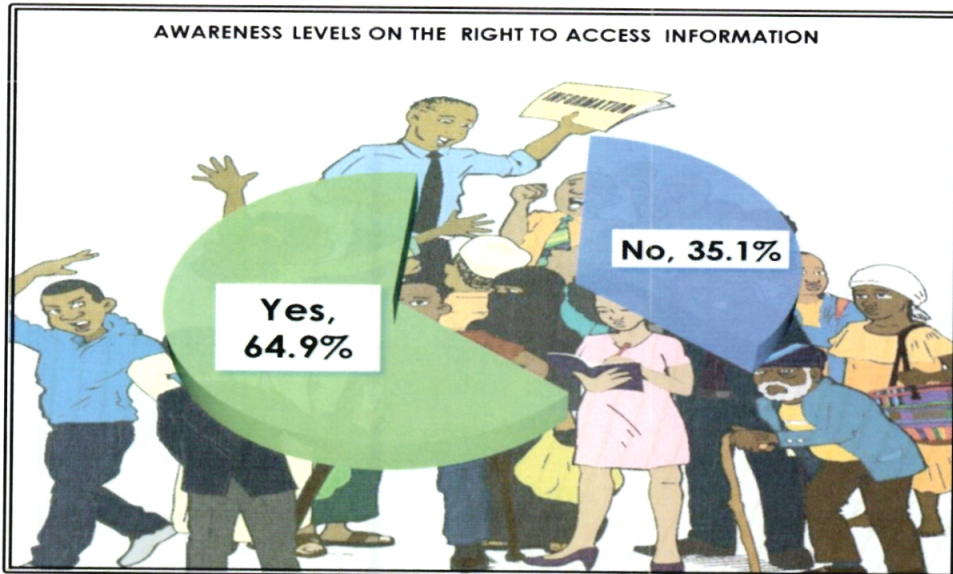
Figure 28: Public Perceptions about the Office of the Ombudsman



### d) Right of Access to Information

In regards to the right of access to information, approximately six in every 10 respondents affirmed knowing that it is their constitutional right as indicated in figure 29.

Figure 29: Awareness levels of right of access to information



### e) Existence of infrastructure for Promoting Administrative Justice

Customer service delivery charter conveys information to the members of public on the services offered, requirements, fee and timelines. Respondents who had sought for services in public entities were asked whether the service charters were well displayed as shown in figure 30.

**Figure 30: Prominence of Customer Service Delivery Charter**

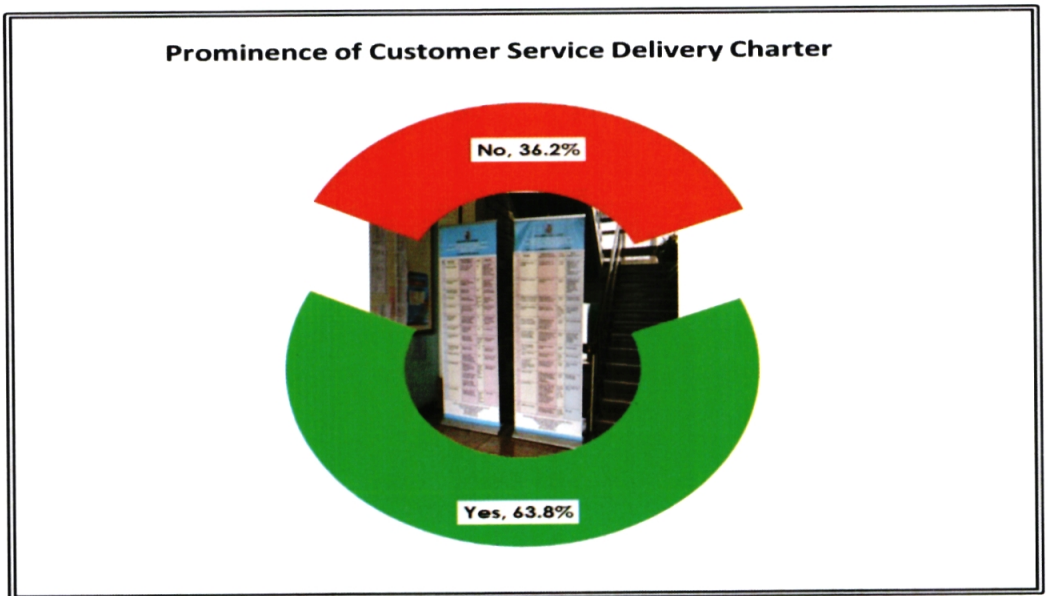


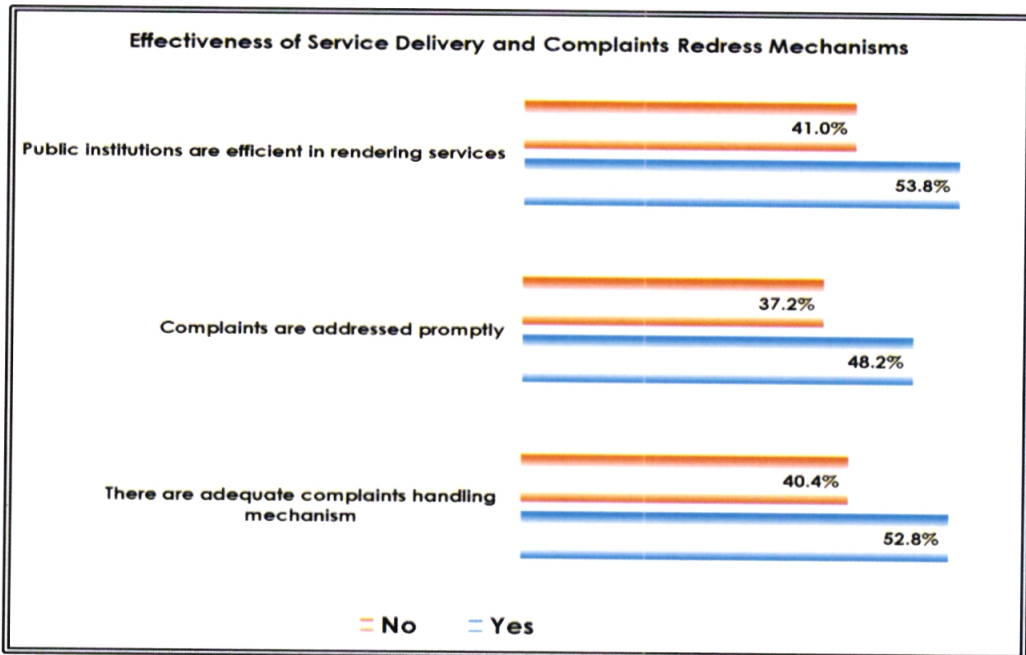
Figure 30 shows that 63.8% of the respondents indicated that institutions have displayed their service charters in strategic points. This was a positive indicator in ensuring that citizens are aware of the services offered and necessary documents needed to access a given service.

In promoting administrative justice, public entities are expected to have in place infrastructure that enhances service delivery to citizens. Presence of institutional infrastructure translates to adequate complaints handling mechanisms, efficient service delivery and prompt complaints redress.

### f) Comparative Analysis on Infrastructure for Promoting Administrative Justice

A Comparative analysis on the extent to which respondents agreed with the statements when asked if the institutions had displayed their service charters is presented in figure 31.

**Figure 31: Effectiveness of Service Delivery and Complaints Redress Mechanisms**



Majority of respondents who confirmed that service charters were displayed agreed with the statements that public

institutions are efficient in rendering services (53.8%) and that there are adequate complaints handling mechanisms in public institutions (52.8%). Pertaining how complaints were addressed, 48.2% were in agreement that complaints are addressed promptly in public institutions.

In response to individuals who claimed that the customer service charters were not displayed, 41.0% agreed that public institutions are efficient in rendering services, 37.2% agreed that complaints are addressed promptly and 40.4% agreed with the statement that there are adequate complaints handling mechanism in public institutions.

Approximately 52.0% of respondents who stated that service charters were prominently displayed in public institutions agreed that infrastructure for promoting administrative justice exist.

## CHAPTER FIVE

### 5.0 PUBLIC AWARENESS AND PARTNERSHIPS

#### 5.1 Introduction

Communication is an integral part of the Commission's twin mandates of advancing administrative justice, and promotion and enforcement of the right to access to information as provided under the respective enabling legislations, namely; the Commission on Administrative Justice Act, 2011, and the Access to Information Act, 2016.

#### 5.2 Visibility and Awareness of the Commission

Since its establishment more than a decade ago, the Commission has implemented strategies and activities to create public awareness on administrative justice and the right to information through county visits *Huduma mashinani programmes*, public and media engagements.

To facilitate outreach activities, the Commission developed and disseminated various policy documents and information, education, and communications (IEC) publications for public education and awareness creation. These include; thematic brochures, posters, short videos, among others.

In addition, the Commission has produced and published booklets such as the 'Simplified Version of the Access to Information Act', 'Handbook on Best Practices on

Implementation of Access to Information in Kenya', 'A Guide on Proactive Disclosure for Public Entities at National and County Government Level in Kenya', 'Model Law on Access to Information for County Governments', 'Access to Information in Kenya: A Journalists' Handbook', 'Complaints Handling Guidelines for the Public Sector', and Effective public service caricature booklet.


To support awareness of the Commission and its activities, there have been deliberate efforts to leverage on FM and community radio stations, vernacular television and radio stations. To mitigate the limitation of resources, the Commission has also leveraged on partners to undertake public awareness and advocacy.



**THE COMMISSION ON ADMINISTRATIVE JUSTICE**  
*(Office of the Ombudsman)*  
*Hata Mnyonge ana Haki*

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**COMMISSIONER LUCY NDUNGU,**  
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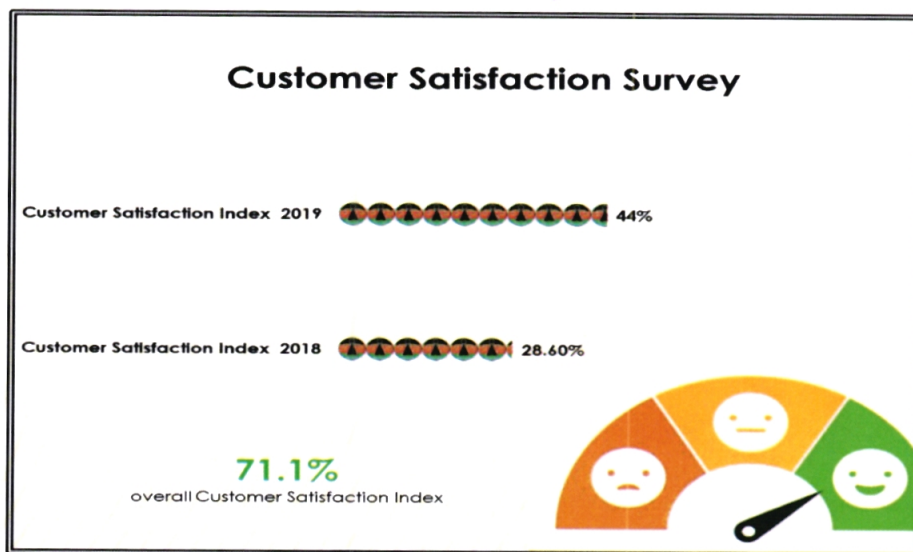
The Commission also undertakes public engagement through social media to share information and respond to enquires. The Commission's social media platforms are:

- Twitter (@KenyasOmbudsman);
- Facebook (Ombudsman Kenya); and
- Website: [www.ombudsman.go.ke](http://www.ombudsman.go.ke)

Through the support of GIZ, the Commission documented its 10 years' milestones in a video documentary which was aired in 2023 in two leading television stations, attracting viewership impressions of about 10 million.

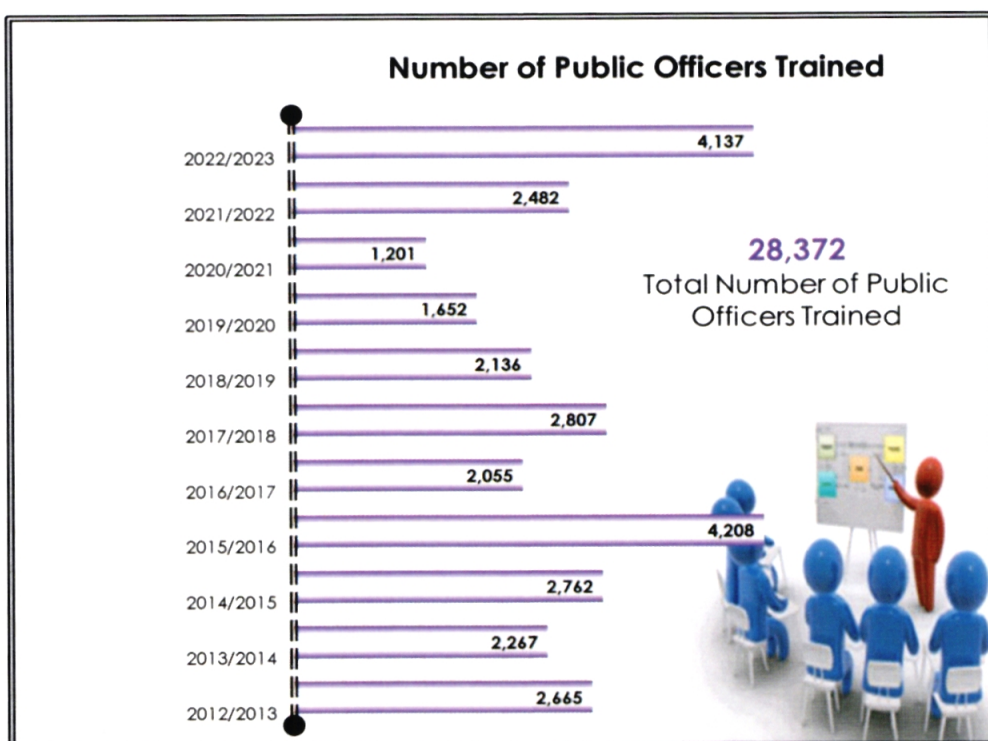
In 2019, the Commission carried out a Customer Satisfaction Survey which revealed an improved awareness of the Commission by citizens. The survey further revealed that the overall Customer Satisfaction Index of the Commission stood at 71.1%, an improvement of 5.3% from the baseline survey conducted in 2018.

**Figure 32: Customer Satisfaction Survey**



To improve public service delivery, the Commission continues to provide technical support and capacity building for public officers from Ministries, Counties, Departments and Agencies within the framework of performance contracting. To date, 28,372 public officers have been trained/sensitised on effective public service delivery, resolution of public complaints, and promotion of the right to access to information. Figure 33 presents an analysis of public officers trained.

**Figure 33: Number of Public Institutions Trained (2012 to 2023)**



Similarly, to empower media practitioners to better report on its programmes and use of access to information law to advance their journalistic work, the Commission has trained and sensitized more than 200 journalists.

## Huduma Ombudsman Award

### Rewarding Exemplary Service Delivery in The Public Service



*The Fourth Edition Huduma Ombudsman Awardees poses with CAJ Commissioners*

Huduma Ombudsman Award is one of the approaches the Commission has adopted to enhance transparency, accountability and responsiveness in the public service as well as promote compliance with administrative justice and access to information mechanisms.

To this end, the Commission has so far successfully held four editions of the Award Scheme to recognise and reward responsive and dedicated public officers and institutions in the country.

## Objectives of the Award Scheme

The broad objective of the award is to reward contributions of a public officer or a public institution that lead to a more effective, accountable and responsive public service. The specific objectives of the scheme are to:

- i. Promote accountability, responsiveness and servant-hood in public service,
- ii. Promote the right to access information held by government bodies,
- iii. Motivate public officers and public institutions to further promote service delivery and good governance,
- iv. Enhance professionalism to transform the image of the public service,
- v. Enhance trust in government and confidence in public service, and
- vi. Identify and share best practices in service delivery for the benefit of Kenyans.

The Award is an incentive for those who have - in their service to the public – aligned themselves to the values and objectives of the Constitution. It also augments efforts designed to restore public trust and confidence in public institutions.

## Philosophy Behind Huduma Ombudsman Award

The Award is also based on the thinking that rewarding individuals enhances their contribution to organisations as there is a positive correlation between reward and recognition, and performance.

Recognising hard work, dedication and innovation in public service will go a long way in motivating public officers and consequently, enhancing service delivery in the public sector.

### **Huduma Ombudsman Award- Fourth Edition- 2023**

Fourth Edition of the Huduma Ombudsman Award ceremony was held at the Kenyatta International Convention Centre **on Thursday, 23<sup>rd</sup> November 2023.** The **Chief Guest was His Excellency Dr. William Samoei Ruto, C.G.H., President of the Republic of Kenya**, who was represented by Hon. Moses Kuria, HSC, the Cabinet Secretary, Ministry for Public Service, Performance and Delivery Management.

Among the dignitaries who attended the event were: Hon. George G. Murugara the Chairperson, Justice and Legal Affairs Committee of the National Assembly who was accompanied by three other members; Dr. Margaret Nyakango, CBS the Controller of Budget; Ms. Ummir Bashir, PS Culture, the Arts & Heritage; Ms. Silvia Musenya, PS State Dept. for Wildlife; Mr. Ismail Maalim, PS Youth Affairs & Creative Economy; Ms. Veronica Nduva, PS State Dept. for Performance & Delivery Management; Dr. Joyce Mutinda, Chairperson NGECC; Amb. Anthony Muchiri, Chairperson Public Service Commission; Mr. Gershom Otachi, Chairperson National Lands Commission; Dr. Monica Muiru, Vice-Chairperson, Ethics and Anti-Corruption Commission; Ms. Dorcas Oduor, ODPP; H.E. Prof. Anyang' Nyong'o, Governor Kisumu County; H.E. Irungu Kangata,

Governor Murang'a County; H.E. Gladys Wanga, Governor Homa Bay County; H.E. Kenneth Lusaka, Governor, Bungoma County; Hon. Caroline Sokoni the Public Protector of Zambia; Hon. Stephen Tiroyangosi Ombudsman of Botswana among others. Also in attendance were development partners including Ms. Teresa Mugadza Country Manager, IDLO and Mr. Alexander Fierley German Embassy and Mr. Thomas Ansory of GIZ.

The event was attended by 821 participants including the awardees.

## Huduma Ombudsman Award Categories

The Huduma Ombudsman Award has three categories;

### a. Public Service Delivery Category

#### i. Individual Category

This category seeks to recognise individuals for their contribution within an organisation or sector. All persons working in the public service in Kenya are eligible for the Award

#### ii. Institutional Category

This category of award honours outstanding public institutions in service delivery and respect for the rule of law

## b. Access to Information Category

### i. Institutional Category

This recognises and honours public institutions that are most transparent, proactive in disclosing information, and efficient in facilitating public requests for access to information in their custody.

### c. Ombudsman Valour Award

This category is dedicated to members of the disciplined forces for heroic acts in service to our country. The Commission introduced this category in 2014 to honour those who serve in the disciplined forces, a number of who make the ultimate sacrifice to protect our liberties. The Award was informed by the fact that many public servants in the disciplined forces lose their lives often with little commendation or acknowledgement of their role.



*Cabinet Secretary, Hon. Moses Kuria, CAJ Chairperson Hon. Florence Kajuju, Commissioners and the Commission Secretary presenting an award to the winner.*

#### d. Ugatuzi Award

This category recognises outstanding leadership of devolved units' leaders, Governors.



*Governor Kenneth Lusaka being awarded during the fourth edition Huduma Ombudsman Awards*

#### Nomination and Selection of Awardees

The Commission sent out the call for nominations on 9<sup>th</sup> November 2022. The nominations were in two Categories; Public Service (Individual and Institutional Sub Categories) and the Access to Information Category (Institutional Sub-

Category). The Commission **received 357** nominations in the two categories as follows.

**Sub Category One:** Public Service Delivery (331)

*Individual Sub- Category - 163*

*Institution Sub- Category – 168*

**Sub category Two:** Access to Information

*Institution Sub- Category – 26*

The activity was spearheaded by a multi sectoral Steering Committee that had representation from the Commission, Association of Professional Societies in East Africa (APSEA), State Department of Public Service, State Department of Devolution, Kenya School of Government, Council of Governors, Transparency International-Kenya, and the Media Council of Kenya.

The terms of reference for the Steering Committee included;

- a. Providing support to the Commission in driving the entire process of the Award;
- b. Assess all nominations received and generate a shortlist;
- c. Undertake verifications on the shortlisted officers and institutions;
- d. Collect any other information that may be relevant to the verification process;
- e. Review of the verification reports and come up with a final shortlist;
- f. Plan and organise the Award ceremony; and
- g. Undertake any other assignment that will contribute to the successful staging of the Award.

Preceding the Award ceremony, the Commission carried out publicity campaigns in media and social media platforms to raise awareness on the Award.

In addition, a public exhibition at the KICC grounds was staged for three days, including during the day of the Award ceremony. The exhibition brought together 10 Constitutional Commissions and Independent Offices (CCIOs) who interacted with members of the public and sensitised them on their respective mandates. In addition to the Commission, the following CCIOs took part in the exhibition:

- National Police Service/Directorate of Criminal Investigations
- Office of Attorney General
- National Gender and Equality Commission
- Independent Policing Oversight Authority
- Judicial Service Commission
- Ethics and Anti-Corruption Commission
- Office of Director of Public Prosecutions
- Teachers Service Commission
- Controller of Budget.
- Office of the Auditor General



*Exhibition booths during the award ceremony*

## Public Service Delivery Category: Individual Category

Position	Name	Designation
<b>Winner</b>	Ms. Precious Dama Randu	Assistant County Commissioner Matsangoni Division, Kilifi North Sub-County, Kilifi County
<b>First Runner-Up</b>	Ms. Joyce Khandali Khamala	Senior Head Teacher, Kimilili FYM and Junior School in Kimilili Sub-county, Bungoma County
<b>Second Runner-Up</b>	Dr. Andrew Gitau Kimani	CEO, Transport Licensing Appeals Board
4.	Mr. Okongo Kimari Orlale	Research and Innovation Office, Kenya Revenue Authority
5.	Ms. Joyce Thairu	Lecturer, Department of Physics, Faculty of Science & Technology of Multimedia University of Kenya
6.	Mr. Bernard Omolo Oloo	Administrator/Chief, Maweni Location, Mombasa County
7.	Mr. Ahmed Hassan Surow	Clerk, Mandera County Assembly
8.	Mr. Edward Inzofu Indimuli	Advisor/ Ombudsman, County Government of Kakamega
9.	Ms. Ninah Musanga Sitti	Lawyer, Capital Markets Authority
10.	Ms. Eldah Aketch Odongo	Head of Corporate Affairs and Communication Company: Kisumu Water and Sanitation Company Ltd (KIWASCO)
11.	Ms. Rose Muthee	Centre Manager- Huduma Centre Migori
12.	Mr. Geoffrey M. Mwachof	Assistant County Commissioner, Kasameni Division, Kwale County
13.	Ms. Ruth Wanjiru Wachera	Assistant County Commissioner, Kapenguria Division, Kapenguria Sub County
14.	Mr. Abdifatah Galgallo Godana	Marsabit County Convener

Position	Name	Designation
15.	Mr. Elvis Wafula Makokha, Huduma	Centre Manager, West Pokot
16.	Mr. Josephat Ngugi Ngama,	County Coordinator, Civil Registration Departments, Ministry of Interior and Coordination

ii. **Public Service Delivery Category: Institutional Category**

Position	Name of Institution
<b>Winner</b>	National Council for Law Reporting
<b>First Runner-Up</b>	Huduma Kenya
<b>Second Runner-Up</b>	Kenya Revenue Authority
4.	Kisumu Water and Sanitation Company Limited
5.	Agricultural Finance Corporation

iii. **Access to Information Category: Institutional Category**

Position	Name of Institution
<b>Winner</b>	Kenya Revenue Authority
<b>First Runner-Up</b>	National Cancer Institute
<b>Second Runner-Up</b>	Kenya Yearbook Editorial Board

iv. Valour Award Category

Nominee	Recognition
Corporal Julius Karanja Irungu	For heroic services to the nation at great personal cost

v. Ugatuzi Award Category

Position	Governor/County	Recognition
<b>Winner</b>	H.E Gladys Wanganga, Governor, County Government of Homabay	Advocating for climate change and open governance
<b>First Runner-Up</b>	H.E Cecil Mbarire, Governor, County Government of Embu	Promoting access to information for enhanced public service delivery.
<b>Second Runner-Up</b>	H.E Mutula Kilonzo Junior, Governor, County Government of Makueni	Leveraging technology and innovation for enhanced transparency and social accountability.
<b>4.</b>	H.E Dr. Francis Irungu Kang'ata, Governor, County Government of Murang'a	Digitisation of county government services for improved transparency and efficiency.

### Third Huduma Ombudsman Award Third Edition- 2017

The Third Edition of the Award saw the public submit 801 nominations for consideration for both individual and institution categories. The Advisory Panel scrutinised the nominations and verified information presented before coming up with the final shortlist. Seven individuals were enlisted to receive the award whereas one public entity - out of those nominated - met the threshold as follows. The Award ceremony was held at the Kenyatta International Convention Center (KICC) on 9<sup>th</sup> March 2017 and was officiated by the Attorney General Prof. Githu Muigai, on behalf of His Excellency the President.

Individual Category			
Name of Awardee	Position	Sector	Position
Corporal David Kipng'eno Chumo	Bomet Police Station (Traffic Department)	National Police Service	Winner
SACP Olivia L. A. Obell	Officer-In-Charge, Lang'ata Women Maximum Security Prison	Prison Services	First-runner up
Ms. Jennifer Wangari	Senior Childrens' Officer with the Ministry of East African Community, Labour and Social Protection	Public Service	Second-runner up
Mr. Wilson Lanoki	Head Teacher of Sarmach Primary School in West Pokot County	Education	Fourth Position
Mr. Joseph N. Ngundu	Senior Chief of Ngenda Location in Gatundu	National Government	Fifth Position

Individual Category			
Name of Awardee	Position	Sector	Position
	South	Officer	
Mr. George Natembea	County Commissioner of Isiolo	National Government Officer	Sixth Position
Mr. Erick Ngondi,	Environment Officer, National Environment Management Authority	Public Service	Seventh Position

Institution Category			
Awardees	County	Sector	Position
Independent Police Oversight Authority (IPOA)	Nairobi County	Oversight Institution	Winner

### Huduma Ombudsman Award Second Edition-2015

In the Second edition of the Huduma Ombudsman Award, the nomination process was initiated through a newspaper advert in *The Standard* on 3<sup>rd</sup> April 2015. Over 1,200 nominations were received, 1,161 of which were considered for the Individual and Institution categories. The Award ceremony was held at the Kenyatta International Convention Center on 31<sup>st</sup> July 2015 and was officiated by Attorney General Prof. Githu Muigai, on behalf of His Excellency the President.

Three institutions and individuals were identified as deserving of the second Huduma Ombudsman Award. Three individuals and one institution were identified as deserving of letters of commendation. To represent gallant officers in the security sector, a deceased member of the disciplined forces/services

was identified for a posthumous award, the Ombudsman Valuor Award as follows.

Individual Category				
Name of Awardee	Position		Sector	Position
Mr. Samuel Kimiti	Deputy County Commissioner, Central	Meru	National Government Officer	Winner
SSP Nicholas Kipsanga' Maswai	Officer In Charge, Manyani Prison and County Prison Commander, Taveta	Maximum Taita	Kenya Prisons Services	First-runner up
Hon. Sheikh Abdulhalim H Athman	Principle Mombasa	Khadhi	Judiciary	Second - runner up
Ms Milkah Njoki Gaita	Teacher, High School, County	Ndururumo Laikipia	Education	Fourth Position
Mrs Sophia Atieno Odumo	Teacher, Primary School, County	Kamondi Migori	Education	Fifth Position
Mr Richard Mwangi Macharia	Teacher, Nadir Primary School, Garissa County		Education	Sixth Position

Institution Category				
Awardees	County		Sector	Position
Huduma Kenya Secretariat	Nairobi County		Public Service	Winner
Sing'ore Girls Secondary School	Elgeyo Marakwet County		Education	First- runner up
Kenya Forest Service, Ndaragua Forest	Nyandarua County		Kenya Forest Service	Second- runner up

Institution Category			
Awardees	County	Sector	Position
Station			
Sinyolo Girls High School	Siaya County	Education	Fourth Position

### Ombudsman Valour Award

The late corporal Bernard Kipkemoi Tonui- National Police Service

### Inaugural Huduma Ombudsman Award-2014

In the inaugural Huduma Ombudsman Award a total of 1,141 nominations were received but 400 were eliminated at the preliminary stage for not meeting the deadline. A total of 741 nominations were assessed by the Committee based on a scorecard that guided the grading to arrive at the final shortlist of 16 nominees.

The winners of the inaugural Huduma Ombudsman Award were awarded during a high-level ceremony officiated by **His Excellency President Uhuru Kenyatta on 14<sup>th</sup> May 2014 at the Kenyatta International Convention Center (KICC)**. During the event over 1,500 delegates representing all levels of Government were present.

Three institutions and individuals were identified as deserving of the Inaugural Huduma Ombudsman Award. Two entities in each of the two categories were identified as deserving of letters of commendation. To represent gallant disciplined officers, a deceased member of the, disciplined forces/services

was identified for a posthumus award, the Ombudsman Valuor Award as follows.

Individual Category			
Name of Awardee	Position	Sector	Position
Hellen Nechesa Machuka	Principal, Kombeni Girls' Secondary School, Kilifi County	Education	Winner
Peter Kamande Mbugua	Assistant County Commissioner, Marsabit County	National Government Officer	First-runner up
Andrew Kipkurgat Rumenya	Chief, Kimalel Location, Baringo County	National Government Officer	Second-runner up
Josephat Murungi Ithali	Chief, Kendani, Meru Maua, County	National Government Officer	Fourth Position
Daniel Omondi Obure	Chief, Lambwe West Location, Homa Bay County	National Government Officer	Fifth Position

Institution Category			
Awardees	County	Sector	Position
Othaya Boys' High School	Nyeri County,	Education	Winner
Kenya School of Government	Baringo County	Education	First- runner up
Shimo Borstal Institution	Kilifi County	Correctional Facility	Second-runner up
Kenya School of Government	Nairobi County	Education	Fourth Position

Institution Category			
Awardees	County	Sector	Position
Kaptech Dispensary	Kakamega County	Health	Fifth Position

### Ombudsman Valuor Award

Late Police Constable Martin Munene Githinji – National Police Service

### Impact of the Huduma Ombudsman Award

- I. The Commission has hosted four editions of the Huduma Ombudsman Award ceremony. In the four editions a total of 33 individuals and eight institutions from different sectors have been awarded and commended. This has motivated the awarded public institutions and officers and others to appreciate the value of efficient and effective service delivery and good governance.
- II. A good number of the awardees were promoted on the recommendation of the Commission as captured below;

Name of Awardee	Position held before the award	Current Position
Mr. Samuel Kimiti	Deputy County Commissioner II (Job Group P)	Mr. kimiti was promoted to Senior Deputy County Commissioner (Job Group R) and to County Commissioner, Nyandarua County.
SSP Nicholas	Officer In Charge,	Senior Assistant

Name of Awardee	Position held before the award	Current Position
Kipsanga' Maswai	Manyani Maximum Prison and County Prison Commander, Taita Taveta (PG 18/ Job Group L)	Commissioner of Prisons (PG 10/ Job Group N)
Ms. Jennifer Wangari	Senior Children Officer (Job Group L) with the Ministry of East African Community, Labour and Social Protection	Chief Children officer (Job Group M)
Ms. Lilian Achieng Obell	Officer- In -Charge of the Lang'ata Women Maximum Prisons Assistant Commissioner of Prisons (PG9) to Senior Assistant	Commissioner of Prisons (PG10).
Mr. Joseph N. Ngundu	Senior Chief of Ngenda Location, Gatundu South	Principal Chief (Job Group M)
Mr. George Natembeya	The Isiolo County Commissioner	A salary increments by two notches within the scale of his then job group.

Further, all the individual awardees in the 2014 and 2015 Huduma Ombudsman Award were awarded with the **Head of State Commendation** on the recommendation of the Commission for their achievement and efforts towards improving service delivery.

## 5.3 Local Partnerships and Linkages

### a) Constitutional Commissions and Independent Offices (CCIOs)

These are institutions established under Article 249 of the Constitution to realise the objectives of protecting the sovereignty of the people of Kenya; promote constitutionalism and secure the observance by all State organs of democratic values and principles. Through this partnership, good governance and service delivery has been enhanced in the public sector. The Commission Chairperson serves as the Vice Chairperson of the Forum.



*10th anniversary of Constitutional Commissions and Independent Offices (CC&IOs)*

### b) National Council on the Administration of Justice (NCAJ)

NCAJ is a multi-agency co-operation platform established under the Judicial Service Act with the responsibility of overseeing and promoting sector-wide partnership through policy formulation and resource mobilization for effective administration of justice. The members include the Judiciary,

Office of the Attorney General, Office of the Director of Public Prosecutions, Witness Protection Agency, Office of the Inspector General, National Police Service, the Law Society of Kenya, Kenya Prison Service, the Independent Electoral and Boundaries Commission, the Ethics and Anti-Corruption Commission and the Kenya Law Reform Commission among others. The Commission is actively engaged in *ad hoc* committees and task forces in the administrative of justice and been instrumental in peer review and validation of nine policy documents and guidelines.

### **c) Media Council of Kenya**

In recognition of the critical role played by the media in promotion of good governance, the Commission signed a Memorandum of Understanding with the Media Council of Kenya to enhance transparency and accountability in the public sector.

### **d) International Development Law Organization (IDLO)**

The Commission partnered with IDLO to develop a comprehensive ATI training Curriculum- Access to Information in Public Service and Facilitator Guide for public officers.

### **e) Kituo Cha Sheria**

The Commission entered into a Memorandum of Understanding with Kituo Cha Sheria which allows the Commission to refer matters that require litigation to Kituo Cha Sheria.



*The Commission's Vice Chairperson signing a Memorandum of Understanding with Kituo Cha Sheria*

#### **f) German Agency for International Cooperation (GIZ)**

The Commission, through collaboration with GIZ under its Strengthening Good Governance Programme prepared a two-year work plan (2021-2023) for support. The objective of the support was to improve good governance in selected public sector institutions.



*Courtesy call on the leadership of Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), Kenya led by the Country Director, Bodo Immink.*

### **g) Kenya Devolution Support Programme (KDSP)**

The Commission through the support of KDSP, partnered with the Ministry of Devolution and ASALs to develop a generic draft county complaints management policy for adoption by counties in addressing grievances.

### **h) International Commission for Jurists - Kenya**

Existing Memorandum of Understanding supported in training the Ministry of health and Ministry of Education on access to information and the respective obligations.

### **i) Collaboration with the Electoral Law and Governance Institute (ELGIA)**

The Commission, with the support of the Electoral Law and Governance Institute, hosted a two and half days' training for election observers. The aim of the training was to impart skills that would provide the officers with an in-depth understanding of their role during elections observation and monitoring exercises. Further it was aimed at ensuring that the observation by CAJ officers was aligned with the mandate of the Commission.

### **j) Partnership with Misereor**

The Commission partnered with the German Catholic Bishop's Organisation for Development Cooperation based in Nairobi dubbed "MISEREOR" together with other 28 NGOs in a workshop on peaceful elections. The partnership was for awareness creation through grassroots NGOs.

### **k) Financing Locally Led Climate Action Programme (FiloCA)**

Financing Locally-Led Climate Action programme is the follow-up programme built on the pilot County Climate Change Funds and the World Bank technical assistance to devolution. It is a

government initiative that seeks to deliver locally-led climate resilience actions and strengthen the county and national government's capacity to manage climate risks. Under the programme the Commission will enhance the capacities of the County Governments on Complaints Handling and Access to Information.

### **l) Open Government Partnership (OGP)**

The Open Government Partnership is an initiative that brings together government reformers and civil society leadership to promote inclusivity, responsiveness and accountability in government. The Commission, being the institution mandated to oversee and enforce the right to Access to Information, is represented both at the steering and technical Committee level of the OGP.

### **m) The National Democratic Institute**

The National Democratic Institute (NDI) is a non-profit, non-partisan, non-governmental organisation that works in partnership around the world to strengthen and safeguard democratic institutions, processes, norms and values to secure a better quality of life for all.

The Commission partnered with NDI in several activities within the reporting period. The activities included forums which brought together beneficiaries under the 'Financial Transparency and Accountability Program' in Kitui, Busia, and Kisumu counties namely; Community Empowerment and Development Centre Youth Alive Kenya, Caritas Kitui Catholic Diocese, and Transform Empowerment for Action Initiative.

The main objectives of the programme were to improve the ability of citizens, civic group and political actors to advocate

for and operationalise greater financial accountability in the counties. The Commission leveraged on the opportunity and sensitised the participants on Access to Information and its mandate as a tool for enhancing financial transparency and accountability.

#### **n) Council of Governors - COG**

CoG is a non-partisan organisation established under section 19 of the Intergovernmental Relations Act (IGRA 2012). The CoG comprises the Governors of the 47 counties in Kenya whose mandate is provided under Section 20 of the same Act.

The partnership has enhanced and strengthened the Commissions' capacities in educating the public on principles of democracy and good governance across the 47 counties through administration of justice, access to information and complaints handling infrastructure.



*CAJ Chairperson, Hon. Florence Kajuju and the CEO, Ms. Mercy Wambua engaging a participant during the 1<sup>st</sup> Biennial Devolution Conference.*

### **o) Independent Electoral and Boundaries Commission- IEBC**

The Independent Electoral and Boundaries Commission is a constitutional commission mandated to conduct or supervise referenda and elections to any elective body or office established by the Constitution, and any other elections as prescribed by an Act of Parliament.

This partnership has enhanced and strengthened CAJ's & IEBC's institutional capacities in promoting the principles of democracy and good governance through complaints handling infrastructure and access to justice.

### **p) Witness Protection Agency-WPA**

The Witness Protection Agency promotes the rule of law by offering witness protection services in Kenya. The Commission partnered with the agency with a view of enhancing administrative justice.

### **q) United Nations Development Programme - UNDP**

The United Nations Development Programme (UNDP) is a UN agency that works to eradicate poverty and reduce inequalities through sustainable development.

The Commissions' partnership with UNDP has enhanced the Commission's work on administrative justice and promotion of constitutionalism, on three key result areas: Promotion of accountability and responsiveness in the public sector; awareness creation to enhance access to information, public service delivery and addressing administrative injustice, and strengthening the capacity of the Commission to effectively deliver on its mandate.

## r) UN Women

UN Women is the UN organisation delivering programmes, policies and standards that uphold women's human rights and ensure that every woman and girl lives up to their full potential.

In 2013, the partner supported the Commission in hosting the 2nd conference for CCIOs to deliberate on issues of constitutionalism and capacity enhancement.

## s) African Ombudsman & Mediators Association - AOMA

The African Ombudsman and Mediators Association is a regional organisation for ombudsman and mediators in Africa. The Commission is a member of AOMA where the Chairperson serves as the Secretary General. The network enhances information sharing, supports training and development of ombudsman offices and staff, which has promoted good governance, independence and autonomy of ombudsman offices and maintained liaison between ombudsman offices and other relevant institutions and organisations.



*AOMA Election Observer Mission*

## t) International Ombuds Institute - IOI

IOI is a global organization for the cooperation of independent Ombudsman institutions operating on a local, regional and national level.

The Chairperson of the Commission is currently the President of the IOI African Region.

## CHAPTER SIX

### 6.0 STRENGTHENING THE CAPACITY OF THE COMMISSION

Institutional capacity of the Commission has been expanding over time which enables the Commission to increasingly discharge its mandate effectively. The major areas where the capacity has increased include:

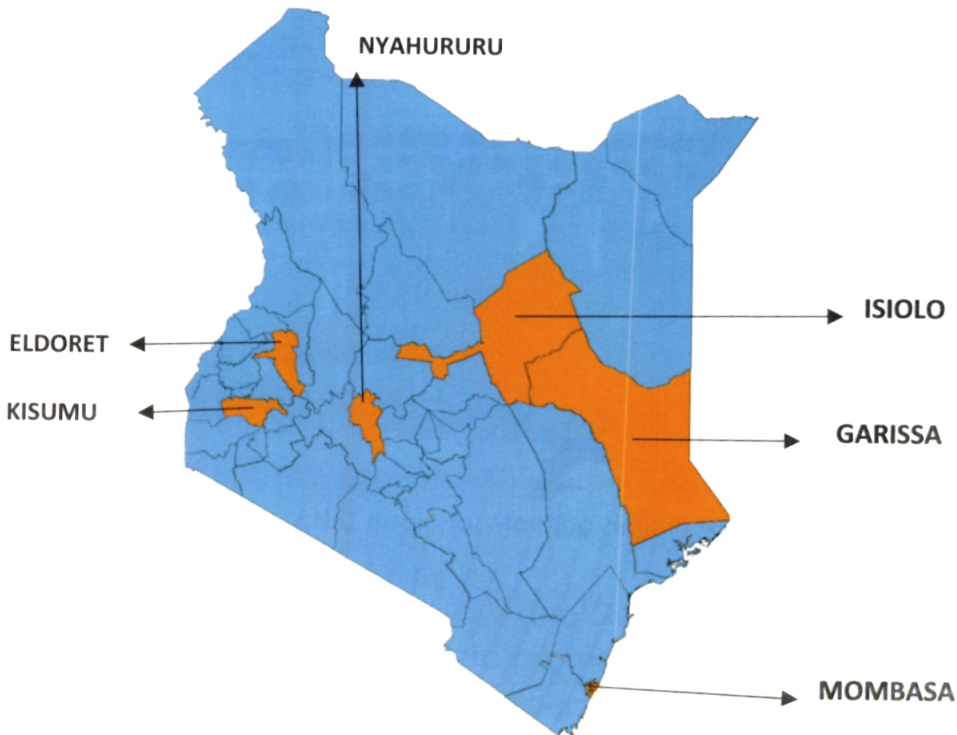
#### 6.1 Decentralisation

In its endeavour to strengthen its oversight role at the grassroots and in compliance with the Constitution which provides for devolution of public services, the Commission has established six regional offices. In addition, the Commission has established service delivery points in 12 Huduma centers.



*Launch of Garissa Regional Office*

**Figure 34: Ombudsman Regional Offices**



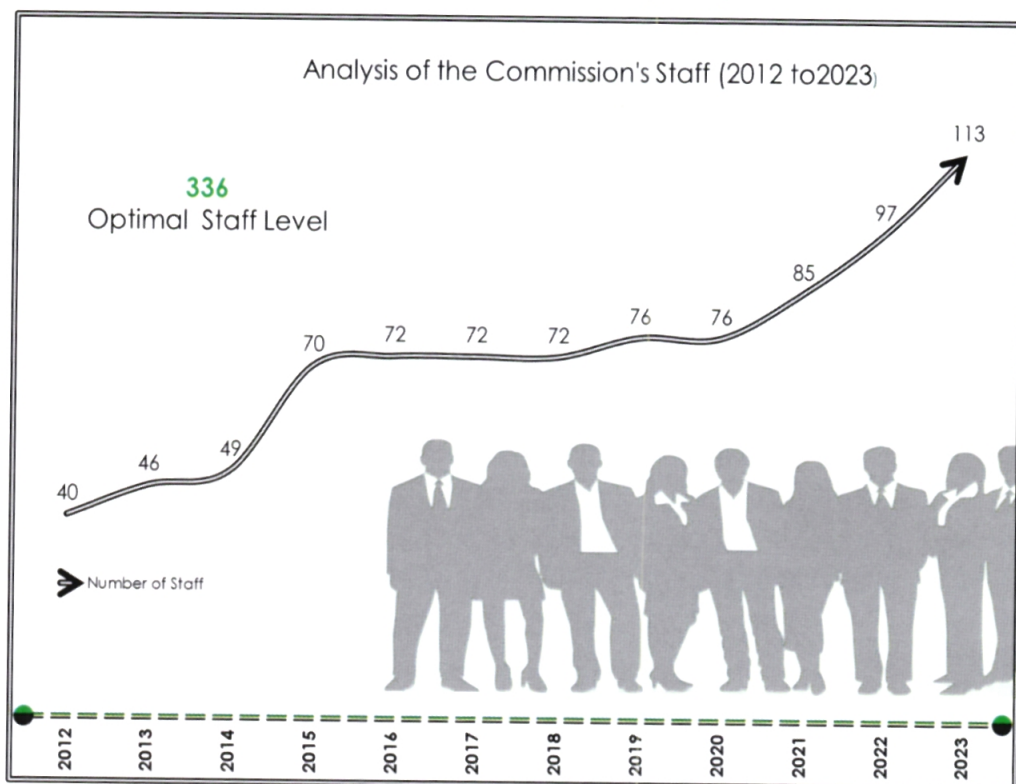


*Official Launch of the Ombudsman's Complaints Management Information System (CMIS) at KICC.*

## **6.2 Leveraging on Technology to Enhance Administrative Justice**

The Commission has prioritised digitisation of complaint handling to leverage on technology. Towards this goal, it has developed a robust Complaint Management Information System (CMIS) to enhance efficiency in management of public complaints. The system enables the public to lodge complaints on maladministration against public institutions and, track them online at their own convenience. It also strengthens the capacity of the Commission to monitor and evaluate complaint handling by public entities including the County Governments.

Figure 35: Commissions Human Resource Capacity



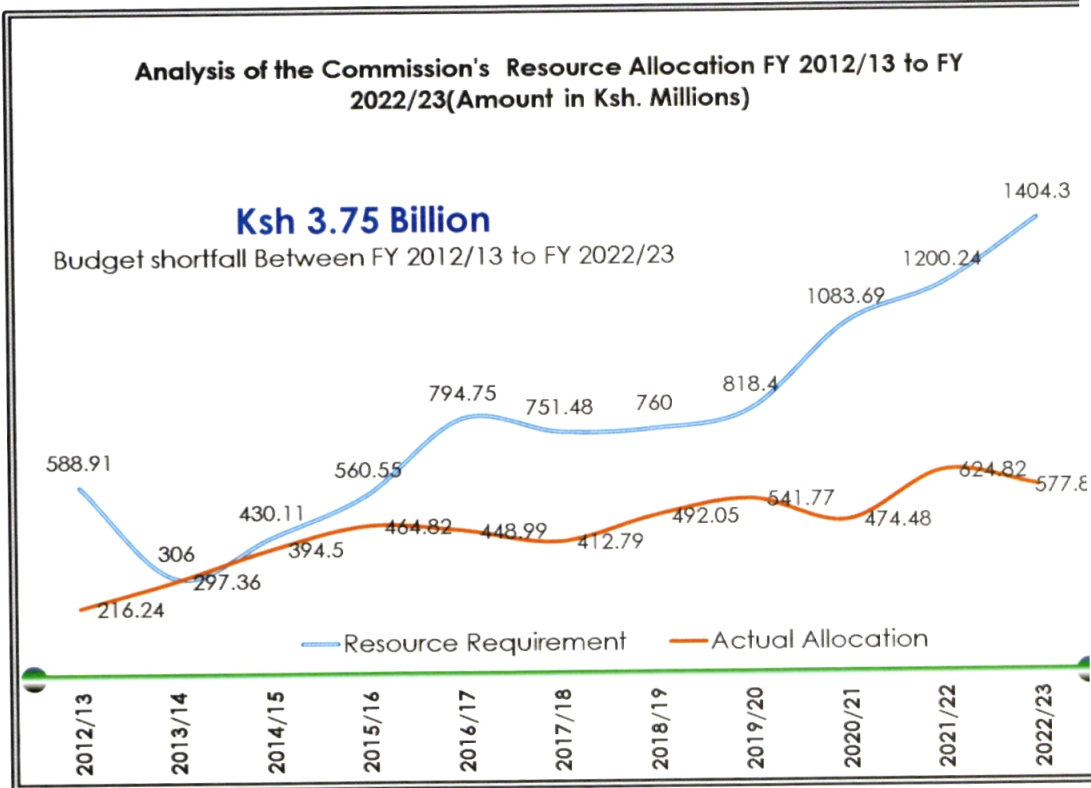
### 6.3 Strengthening Human Resource Capacity

At inception, the human capacity at the Commission 25. The Commission has continued to strengthen its staff capacity towards attainment of the approved establishment of 336. The current workforce is 113 which is only 38% of the optimal staffing levels required in the approved structure and establishment for realization of the strategic vision.

The Commission resource allocation has grown over time from Kshs 216.24 million that was allocated in the financial year 2012/13 to the current allocation of Kshs 767.51 million financial year 2023/24. This has enabled the Commission to make notable milestones as enumerated in chapter two to chapter

five. However, this allocation has always fallen short of the

**Figure 36: Financial Management and Accountability**



resource requirements of the Commission. Over the period under review the Commission has operated at 55 % of its resource requirements. Figure 36 depicts this scenario. For instance, the resource requirement at inception was Kshs 588.91million while the allocation was Kshs 216.24 million.

The Commission has put in place effective internal control systems for the management of the allocated financial resources. This has seen the Commission receive unqualified audit opinion over the last five years from the Office of the Auditor General.

## 6.4 Development of Policy Documents to guide the Commission

During the period under review, the following policy documents and manuals were developed to strengthen Commission's management processes: Access to Information Reviews Manual; Reporting guidelines for private and public entities; Resource Mobilisation Guide; Partnership Policy; Citation Framework; Sexual Harassment Policy; ICT Policies and Procedures Manual; Gender Mainstreaming Policy; Records Management Policy; HIV/Aids Policy; Occupational Health and Safety Policy; Gender Based Violence & Sexual Harassment Policy; Organisational Structure and Staffing Policy; HR Policies and Procedures Manual; Career Progression Guidelines; Mortgage Policy Framework; and Car Loan Policy Framework; Internal Audit Charter; Terms of Reference for the Audit & Risk Committee; Risk Management Procedures Manual; Risk Management Policy; Corporate Social Responsibility Policy; Communication Policy; Social Media Guide; Communication and Engagements Strategy; Media Engagements and Procedures Manual; Crisis Communication Plan and Brand Guidelines; Complaints Handling Manual; Investigations Manual; ADR Manual and Complaint Handling Model Policy for County Governments.

## 6.5 Challenges and Recommendations

### a) Challenges

The Commission faced several challenges during the period under review, which hindered achievement of some of the targets as follows: -

- 1) Inadequate Legal framework which inhibited enforcement of the decisions and recommendations of the Commission;
- 2) Financial constraints that have led to:

- i. Low public awareness levels of the Commission's mandate among citizens.
  - ii. Inadequate decentralization of the Commissions services.
  - iii. Staff capacity which is currently at 38% of the approved establishment.
- 3) Low application of technology that include;  
Manual records management systems in the public sector which curtailed quick retrieval and access to information;
- 4) The culture of secrecy, unresponsiveness and impunity in the public sector. This has manifested itself through continued resistance by duty bearers being public entities and relevant private bodies, from complying with their obligations under the ATI Act.

#### **b) Recommendations**

- 1) Strengthen legal framework to ensure that the decisions and recommendations of the Commission are binding to curb impunity;
- 2) Inclusion of access to information as one of the key performance Indicators in the performance contracting requirements by public entities.
- 3) There is need to appreciate and consider the uniqueness of MDAs functions and the services that they render, when instituting austerity measures, to avoid paralyzing the core mandates of these institutions, caused by "one-size-fits-all" approach. For instance, the Commission being an oversight agency is required to provide services to both national and county governments hence the need for domestic travels;
- 4) Increased budgetary allocation to the Commission to allow for better enforcement and oversight of its mandate;

- 5) Promote automation of processes, procedures and systems in the public sector including records management;
- 6) Digitisation of the records of Government be done as per the ATI Act which required under Sec.17 that by September 2019, all public entities should have digitized their records;
- 7) Intensify public education and awareness creation campaigns;
- 8) Enhancement of staff capacity to bridge the variance in the establishment through additional recruitment especially for regional offices; and
- 9) Establishment of regional offices to the envisaged 10 offices as per the approved establishment to increase service delivery points



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