



# Kenya National Commission on Human Rights

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## **PUBLIC ACCOUNTABILITY STATEMENT FOR 2003-2008**

The Kenya National Commission on Human Rights (KNCHR) is five-years-old! The Commission became operational on July 29 2003 when Commissioners were appointed under the Kenya National Commission on Human Rights Act, 2002. The National Commission succeeded the Standing Committee on Human Rights (SCHR) that had been established through a presidential decree in 1996. The establishment of the Commission was a collaborative effort between civil society, the Government, and the Office of the United Nations High Commissioner for Human Rights.

The Commission's broad mandate is to enhance the promotion and protection of all human rights for everyone in Kenya. The Commission plays both a watchdog and advisory role on human rights in Kenya. It monitors Government institutions, carries investigations on alleged human rights violations, and in appropriate cases, provides redress to those whose rights have been violated. The National Commission also gives advice to the Government on how to enhance the promotion and protection of human rights. Although established by the Government, the Commission is independent. Its operations are guided by the United Nation's approved principles on establishment and functioning of independent national human rights institutions.

Five years since its establishment, the terms of office for the first nine Commissioners have expired. Five new Commissioners have been appointed and three former Commissioners re-appointed for a second term. The current Commissioners are Maina Kiai (outgoing chairman), Florence Simbiri-Jaoko (incoming chairperson), Hassan Omar (incoming vice chair), Wambui Kimathi, Dr. Samuel Tororei, Fatuma Dullo, Fatuma Ibrahim, Winfred Lichuma and Lawrence Mute.

In the past five years, what has the Commission achieved in enhancing the realization of human rights for Kenyans? What are the successes and challenges experienced by the National Commission in executing its mandate? As we mark our fifth anniversary, we take this opportunity to share with Kenyans our achievements and challenges in the past five years. We welcome members of the public to scrutinize our work and point out areas that need improvement.

The Commission thanks the Government for its financial support over the years, as well as development partners under the Governance, Justice Law and Order Sector (GJLOS) basket who have supported its work.

## **OUR ACHIEVEMENTS, 2003-2008**

The National Commission's Strategic Plan for the period 2003-2008 guided its work. The Commission's five strategic objectives around which its programmes are organised include: reducing systemic human rights violations; framing and informing human rights discourse; increasing opportunities for realization of economic, social and cultural rights; establishing a comprehensive human rights education system and establishment of institutional capacity to deliver effectively on human rights.

### **Advising the Government on Infusion of Human Rights Principles into Legislation and Policy**

The Commission in partnership with civil society has made proposals for new legislation to advance human rights. The proposals have been on legislation to prohibit hate speech (Prohibition of Hate Speech Bill) and freedom of information (Freedom of Information Bill) among others. It has also reviewed Government bills and advised on how to improve them from a rights perspective; examples include the Truth Justice and Reconciliation Commission Bill, the National Ethnic and Race Relations Commission Bill, the International Crimes Bill, the Suppression of Terrorism Bill, and the National Social Health Insurance Bill, among others. The Commission has proposed amendments to existing legislation such as the Persons with Disabilities Act, the Prisons Act, and others.

In the ground breaking report titled The State of Human Rights Report: Deficits, Critiques and Recommendations, the Commission made policies on a wide range of measures to advance economic and social rights in the country. Policy proposals have also been made to government on abolition of the death penalty, enhancing access to education for those with special needs, issuance of national identity cards for border communities. The Commission together with the Ministry of Justice and Constitutional Affairs (MOJCA) are spearheading the process of development of a comprehensive National Policy on Human Rights. Regional level hearings to receive the views of Kenyans on the proposed policy are concluded. Reviews were made of the Water Sector Policy and recommendations forwarded.

To advance the international mechanisms available for promotion and protection of human rights, the Commission successfully lobbied the Government to ratify the Rome Statute that established the International Criminal Court. After ratification, the National Commission worked with the Government to draft the International Crimes Bill that would domesticate the Statute. The Commission also lobbied for ratification of the Maputo Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa.

The Commission has supported Government to fulfil its reporting obligations under the several international human rights instruments it is a party to. Periodic reports have been prepared and submitted under the International Covenant on Civil and Political Rights, the International Covenant on Economic Social and Cultural Rights, the Convention against Torture, the African Charter on Human and Peoples' Rights, and the Convention

on the Rights of Children, among others. As a result, reporting backlogs have significantly reduced, thus giving the Government positive image.

The Commission participated actively in the drafting of the International Convention on the Rights of People with Disabilities up to its adoption by the UN General Assembly in November 2006. The Commission lauds the Government for having signed and ratified the convention. Following the signing of the Convention, the Commission is advising the Government to domesticate the Convention to enable its implementation in Kenya.

### **Training and Capacity Building Of Public Officers On Human Rights**

The Commission has contributed in promoting understanding and the gradual socialization of human rights into the public service in Kenya. The Commission has conducted dozens of human rights education trainings to promote understanding and awareness of human rights among public officers. Within the first two years, the Commission targeted officers in ministries, the Judiciary, Police and Prisons departments. In the past two years, government schools and institutions, the Ministries of Information, Planning, Health, Water, Agriculture, Labour, Public Works and Roads were the major targets. Using the rights based approach to programming, the National Commission is empowering duty bearers within government and the civil society to mainstream human rights principles in the delivery of services to the public.

The Commission is working to infuse human rights into curriculum and training manuals of government training institutions, including the Police and Prisons Training Colleges.

Together with other actors, the Commission has contributed in raising public awareness and understanding of human rights by the public through agricultural shows forums, human rights clinics and public accountability forums, especially in marginal areas of the country. The National Commission in conjunction with the Kenya Police Service developed and produced over 100 billboards on the rights of arrested persons to inform citizens of their rights and duties at the time of, and subsequent to their arrest. The billboards are being mounted in strategic locations where members of public and persons being admitted into police stations access them.

### **Provision of Legal Advice and Other Support Concerning Human Rights Violations**

The National Commission has routinely initiated investigations, on its volition or upon receiving a complaint, on human rights violations. The number of cases relating to human rights violations reported to the Commission has increased over the five years. The increasing number of cases is an indicator of the niche that Commission has established for itself as a lead agency in the pursuit of justice in Kenya. In resolving some of the complaints brought before it, the Commission either invokes its quasi-judicial competence or alternative dispute resolution mechanisms. The number of complaints that the Commission has received over the years have been increasing steadily, starting with 611 (2003-2004), 1,412 (2004-2005), 1,499 (2005-2006) and 2,274 (2006-2007). In the

2007-2008, the National Commission received 1,200 complaints; the lower figure is attributed to the disruptions caused by the post election violence.

Following massive human rights abuses that took place in the country after the disputed 2007 presidential results, the National Commission launched investigation to determine the violations that happened and who is accountable for them.

The Commission's Complaints Hearing Panels, through which the Commission exercises quasi judicial functions, are gradually emerging as a key forum where significant human rights issues will be canvassed. For example, in the precedent setting case of Peter Makori, the petitioner, a journalist, alleged violations of his rights by State officials over a period spanning more than three years. The Commission awarded Peter Makori compensation of Ksh 5 million. In the Medo Mesama case, the Commission directed the Attorney General to register the applicant's political party since no valid reasons had been given in declining to register it and this amounted to a human rights violation.

### **Promoting Accountability in the Use of Public Resources**

The Commission's efforts to hold the Government accountable has increased awareness and probity in use of public resources in Kenya; increased public demand for accountability from the political class, increased publicity by the media of incidences of misuse of public resources during campaigns, and improved the culture of accountability within Government. Following the National Commission and Transparency International's (TI- Kenya) publication in February 2006 of the '*Living Large*' report, which documented wastage of public resources in the purchase of luxurious vehicles for Ministers and senior public officers, the Government publicly committed to cut down on the numbers of vehicles allocated to Ministers and senior Government officials. The recommendations of the publication were adopted by the Minister of Finance, in the budget speech for 2006/7, leading to a Government decision to reduce the number of vehicles used by cabinet Ministers. The Government also precluded almost all public servants from using official cars for private use (home to office). In their analysis of this new policy, the media widely referred to the earlier research findings by the Commission in the report '*Living Large*'. The Government is yet to make public its findings following the exercise to reduce excess usage and number of vehicles in public service.

The Commission made remarkable contributions in profiling corruption as a key human rights issue in Kenya. The Commission views corruption as one of the critical impediments to the full realization of human rights by most Kenyans. As part of its broad strategy to fight corruption in public institutions, the Commission closely monitors progress and developments in the review of policy and legislation impacting on corruption in Kenya. The Commission also enhances the capacity of community groups to effectively monitor budgets and other devolved funds.

In 2007, the Commission undertook an analysis of proposed amendments to the Public Officers Ethics Act and the Anti-Corruption and Economic Crimes Act to make them more effective in the fight against corruption. The recommendations were forwarded to relevant Government offices. The Commission has also published a number of reports

aimed at publicizing the cost and other human rights dimensions of the illegal and irregular allocation of public land as reported in the Ndungu Report. The Publications include '*Unjust Enrichment, The Making of Land Grabbing Millionaires*', documenting illegal and irregular allocation of forest and other public land; and the 'Human Rights Dimensions of Corruption,' following an international conference on Corruption and Human Rights. The broad aim of these publications has been to enhance the protection of public resources, give voice to those who are most hurt by the illegal diversion of resources, empower the general public to demand accountability and transparency, and serve as a check on unscrupulous leadership.

### **Promoting Accountability in the Electoral Process**

There exists very few or no mechanisms in Kenya for holding leaders accountable to their electorates. To empower citizens to move beyond simply expressing their views and preferences, and demand for accountable leadership, the Commission with its partners, in preparation for the 2007 General Elections, initiated and supported a national campaign, dubbed the Movement for Political Accountability (MOPA), as a strategy to promote accountable leadership. MOPA, an independent coalition of civil society groups, religious groups, the National Commission and interested citizens, developed presidential and parliamentary aspirants' accountability charters that contained a set of key commitments that members of parliament were to sign on to and deliver on once elected into office. Some of the key issues of the Charters included commitment to equitable salaries in public service and commitment to not to engage in inflammatory or hate speech along gender, race, religious, ethnic and/or other lines during campaigns or in any public or private function. Several parliamentary aspirants, some of who are sitting Members of Parliament signed the charters and will be held accountable on the basis of the charters.

The National Commission has also successfully monitored the process of conducting by-elections and general elections to promote accountability in electoral processes. The process began with the successful monitoring of the Referendum on the Draft Constitution in November 2005, the by-elections that happened in between and culminated with the December 2007 General Elections. The three key issues monitored were, the misuse of state resources, participation of public servants in the campaigns, and use of incitement and hate speech. The Commission has published in the media its series dubbed '*Behaving Badly*' containing, a list of shame with names of recalcitrant politicians, including particulars of offences committed. The Commission forwarded evidence of election-related malpractices to the Electoral Commission of Kenya (ECK) and the Attorney General for action.

### **Monitoring and Documenting Human Rights Violations by Law Enforcement Agencies**

Pursuant to its statutory mandate, the National Commission visits police stations, posts and patrol bases, often on the basis of reported complaints. These visits helps in monitoring the excesses of the police towards suspects held in custody and occasionally results in the release of illegally confined persons, among other immediate reliefs.

The Commission has in the past five years, monitored extra-judicial killings, police and military operations, evictions, torture in places of detention and harassment of persons with disabilities. Consequently, the National Commission prepares reports that are released to the media and recommendations discussed with relevant Parliamentary Committees and Government departments.

At the end of 2007, the Commission released a preliminary report on the Mungiki killings that indicated that between June and October 2007 close to 500 bodies of young men have been deposited in various mortuaries in the country by the police. The report further revealed that scores of other bodies bearing classic execution signs of gunshots were dumped in the wild in various locations including Ngong, Magadi, Suswa and Athi River. A final report is being completed.

Following the release of this report, the Commissioner of Police promised to launch further investigations into allegations of extra judicial killings by the police. To effectively monitor the pattern and document extra-judicial killings in Kenya, the National Commission designed and maintains a database of such killings since January 2007. The database has been instrumental in elucidating the magnitude of what appears to be a de facto 'shoot to kill policy' by the police.

In 2008, the Commission acting on complaints of torture and harassment from residents of Mount Elgon conducted investigations into the joint military and police operations in the area. The Commission subsequently shared the report Mountain of Terror with various state agencies including, the Parliamentary Committee on Defence, on the role of the military in the torture of suspected Sabaot Land Defense Forces in Mount Elgon District of Western Kenya. The Attorney General Amos Wako has stated that he was perusing the report of the National Commission on the Mount Elgon military operation with a view to possibly prosecute those responsible for torture and human rights violations.

The National Commission has been one of the principal players in the Prisons Reform Agenda. The National Commission has statutory powers to access prisons and other places of detentions in Kenya. The Commission conducts regular prisons inspections across the country with a view to gauging and suggesting improvements on the living and working conditions of prisoners and warders. As a result of these prisons visits, the National Commission published a report titled '*Beyond the Open Door*'. The report gave recommendations to the Government and relevant bodies to play their role in improving conditions in prisons. The Commission was represented in the Taskforce set up to investigate the 2008 Prison Warders Strike and also made presentations to the Taskforce drawing on its previous recommendations in terms of Policy and Legislation. The presentation was well received.

The National Commission has succeeded in the past five years in strengthening linkages between the criminal justice actors in Kenya. Together with other actors such as the Kenya Magistrate and Judges Association (KMJA), the Commission initiated and supported dialogue and consultations between a number of agencies i.e. the Judiciary,

the police, prisons, probation officers and children's department resulting in the creation of court users committees to reduce back log in cases and decongest prisons. The Court Users Committees are operational in Kitale, Kerugoya, Meru, Mwingi, Nakuru, Kericho, Nairobi, Mombasa, Bungoma, Gatundu, Kajiado, and Naivasha among other places. The Commission continues to play a facilitative role in this regard.

### **Enhancing the Capacity of Local Communities in Social Monitoring**

The National Commission believes that the realization of economic, social and cultural rights is key to the realization of its vision of creating a strong and vibrant human rights culture founded on equality and social justice for all. Drawing from its experience, the Commission believes that the most optimal way facilitating the realization of economic, social and cultural is by enhancing stakeholders' participation in public policy, lobbying for greater provisioning for these rights through public expenditure as well as ensuring increased legal and other protection by state and non- state actors.

Consequently, the Commission conducted a review of the Constituency Development Fund (CDF Act) and submitted its proposals to the relevant parliamentary committee. A review of the Act would encourage greater accountability in the management of the funds. Together with the Institute of Economic Affairs, the National Commission carried out a survey on the effectiveness of the Constituency Development Funds and published a report 'Kenyans Verdict: A Citizens Report Card on the Constituencies Development Funds (CDF). The Commission is also working with other actors to train communities on how to conduct budget monitoring so that, among other things, they can effectively monitor the use of CDF and other devolved funds.

### **Business and Human Rights**

The National Commission has emerged strongly as one of the National Human Rights Institutions with programs in this area and has participated in several international forums aimed at enhancing understanding of the duty to respect human rights amongst business. Recently it co-hosted with London based Human Rights Institute a successful regional Business and Human Rights conference that was chiefly aimed at interesting African National Human Rights Institutions to develop programs around this area.

Locally, the Commission has been at the forefront in providing redress on violations of workers rights in Kenya. A detailed inaugural Inquiry into Human Rights Violations by Salt Mining Companies in Malindi was conducted upon which a report with several recommendations was released and disseminated. Key findings included violations of the rights of workers by local salt companies and environmental degradation. Following the publication of the report, a number of salt mining companies initiated several reforms in their work places. The Inquiry also led to the formation of the Malindi Human Rights Forum, now championing the rights of the communities and hosting dialogue with salt mining companies to improve the living and working conditions for salt workers in Malindi.

To enhance the duty to respect human rights by business in Kenya, the Commission has undertaken investigative missions and provided advisories to Pan Paper Mills, Tana River Development Authority, and Dominion Farms in Yala, and participated in the development of the International Standard Organization (ISO) process of developing ISO 26,000 Social Responsibility Standard.

### **Protecting Human Rights Using Cultural Institutions**

Using cultural structures amongst the Luo Community in Kenya, the Commission and the Policy Program have succeeded in facilitating reinstatement of at least 20 widows and orphans who had been stripped of their family property and sent away from their homes following the death of their spouses and/or parents. The affected are mainly widows and orphans whose spouses and parents succumbed to HIV/Aids. Working with the Luo Council of Elders, the Commission's efforts have enhanced property ownership and inheritance rights of widows and orphans in the Nyanza region. The project is currently being replicated in Eastern Province, in partnership with the Meru Council of Elders (*Njuri Ncheke*), to advance human rights work in the region using cultural frameworks.

### **Promoting Human Rights of Minority and Indigenous Peoples (MIPs)**

The Commission took the leadership in bringing to the forefront the human rights of MIPs by conducting training for public institutions, CSOs, CBOs and KNCHR staff to enhance the competence of stakeholders to secure respect, protect and fulfil the human rights of this group. In 2006, the commission held a 2 day forum on MIPs rights which enabled the actors to mainstream the protection and promotion of the rights of this group. This resulted in context specific actions points for actors and the commission made a deliberate creation of activities on MIPRs. In December 2006, the National Commission was the focal point in hosting the Special Rapporteur assessing the situation of human rights and freedoms of Indigenous People's rights in Kenya.

### **Providing Leadership on Topical human Rights through the Journal, *Nguzo za Haki* (Pillars of Rights)**

The Commission's human rights journal, *Nguzo za Haki* (Pillars of Justice), is fast emerging as a useful resource reference on topical human rights issues. The Commission has in the past five years produced seven editions of the authoritative journal, focusing on the following themes: Business and Human Rights, Corruption and Human Rights, Security and Human Rights, Land and Human Rights, Labour and Human Rights; and Leadership and Human Rights. The publications continue to be a resource of choice for researchers nationally and regionally and have been used as reference by students writing their thesis, the Law Society of Kenya in its 2005/2006 Human Rights Report, in an article in the Harvard Human Rights Journal, Spring 2006 and the 2007 National Human Development Report used the Commission's Issue No. 4 of *Nguzo za Haki*, on the theme of Security and Human Rights as a reference material on security matters.

### **Motivating reformists through National Human Rights Awards**

The Commission has in the past five years rewarded reformists through the Annual Human Rights and Democracy Awards. The Awards aim to honor, encourage and reward individuals and institutions to defend human rights and good governance in their different callings. The unsung independence heroes, Dedan Kimathi, Pio Gama Pinto, Father John Kaiser, and Dr. Geoffrey Giffins, have been recognized through the Awards' Milele Lifetime Achievement Posthumous Award. Prof Wangari Maathai and the legendary athlete, Tegla Loroupe won the 2006 and 2007, Milele (Lifetime achievement) Award; while John Githongo was rewarded with the Firimbi (Whistle Blower) Award for blowing the whistle on grand corruption within government.

### **Increased visibility, credibility and accessibility of the National Commission nationally and internationally**

The National Commission believes that it has firmly established itself as an effective independent National Human Rights Institution (NHRI) nationally and internationally. The Commission has carved a niche for itself in monitoring and providing redress on violations of human rights, providing advice to the Government on human rights issues and providing leadership in human rights discourse in the country and regionally. The reputation the Commission has earned in the past five years has largely been supported by the expertise, the commitment, the consistency, the diligence, realistic methodologies and strategies it has employed in its activities. The National Commission is also a regular news maker and is considered an authority regionally and internationally in human rights work. The Commission has been accredited by the International Coordinating Committee of National Human Rights Institutions in Geneva in the top most category; only effective and independent human rights commissions receive this.

To further ensure accessibility to marginalized areas, the Commission has set up two regional offices, in Wajir in North Eastern Province; and Kapenguria in North Western Kenya, each with specific programmes targeting the unique human rights challenges and needs of these areas.

## **CHALLENGES**

### **Lack of human rights awareness**

High levels of illiteracy and poor understanding of human rights has over the years affected the National's Commission's work. The Commission is often confused for a development agency and/or a humanitarian organization, with members of the public asking that the Commission meets their developmental and humanitarian needs, especially in a crisis situation.

### **Slow political and governance reforms**

The promotion and protection of human rights would have improved significantly if the 'Bomas' or 'Wako' draft Constitutions had been enacted; both had many useful proposals for the advancement of human rights. The proposals included an expanded Bill of Rights,

including economic, social and cultural rights, and stronger public institutions, such as the proposed Commission on Human Rights and Administrative Justice.

The Government's commitment to fighting corruption appears to have waned in the past five years. Failure to decisively deal with endemic high level corruption has affected the realization of economic, social and cultural rights of the poor. Not only does corruption encroach on our fundamental liberties and freedoms; by diverting public funding to private pockets, corruption reduces what is available for the realization of economic and social rights, and further perpetuates discrimination by favouring the few with access to power and impunity. Government therefore needs to step the fight against corruption.

### **Inadequate finances and lack of adequate financial independence**

Over the past five years, the Commission received inadequate funds from the Government, its principal sponsor. Limited funds means poor accessibility of the Commission, as the Commission cannot open regional offices in different parts of the country, inadequate staff capacity and limited resources to monitor conduct investigations and provide redress for increasing human rights violations. The Commission normally uses the Government grant to meet its operational costs, while primarily relying on donors to fund programme costs. In 2006-2007, the Commission received a grant of Ksh 92 million from the Government while it got 120 million in the 2007-2008 and Ksh 116 million in the 2008-2009. This level of support is inadequate for an institution with a nationwide mandate.

A related challenge is that the National Commission does not have a separate vote. The grant it receives comes through the Ministry of Justice and Constitutional Affairs. This threatens the independence of the Commission since the Ministry is potentially one of the institutions the National Commission may be called upon to investigate. The National Commission continues to request Government for its separate vote with accountability on use of funds lying with Parliament.

### **Managing public expectations**

Members of the public have very high expectations of the Commission considering its statutory powers. The demands of members of the public are often times not easy to meet, because some expect to receive immediate remedy upon lodging a complaint. Additionally, most members of the public do not understand the mandate of the National Commission, and coupled with weak public institutions, they often expect the Commission to address issues that are out of its mandate.

### **Poor linkages with Parliament and Government**

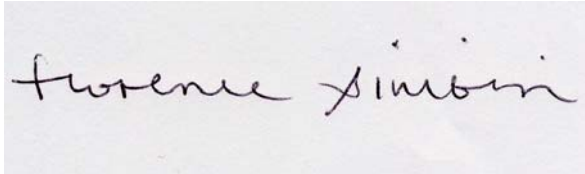
To be effective, the Commission needs strong linkages with parliament, which is the key institution in influencing policy, legislation and public accountability. On the other hand, though there has been marked improvement in understanding human rights in Government, cooperation is still not optimal. Access to key Government officials and information from Government is still difficult. Poor or lack of understanding by some

public officials of the role and mandate of the National Commission continues to be a problem, with some even believing that the National Commission is a Non Governmental Organization. Poor coordination within various departments also makes follow-up difficult.

**BE OUR JUDGE:**

There can be no accountability in the management of public institutions unless the public is fully informed on what these institutions are doing on their behalf, and unless the practice of public participation in running the institutions and accountability are institutionalised. We believe this is beginning of the journey to open up to public scrutiny and we shall appreciate your feedback.

Please send your comments 020-2717928/08/00 Email: [haki@knchr.org](mailto:haki@knchr.org) or write at the above address.



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Florence Simbiri-Jaoko  
Chairperson



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Mburu Gitu  
Commission Secretary

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