

**PUBLIC ACCOUNTABILITY STATEMENT  
ACHIEVEMENTS AND CHALLENGES  
2003-2006**

# BACKGROUND

The Kenya National Commission on Human Rights (the National Commission) is celebrating its third anniversary since its establishment in July 2003. Many will be asking, what has the National Commission achieved in this period? What difference has it made to Kenyans? We take this opportunity to share with Kenyans our own assessment of achievements and challenges of the Commission in the past three years.

This is not the annual report of the National Commission. Annually the Commission publishes a report that details its activities and results over the years. The reports are for 2003/4, 2004/5, and 2005/6.

The National Commission is a public body established through the Kenya National Commission on Human Rights Act. The National Commission became operational on 29 July 2003 when the President, on the recommendation of Parliament, appointed nine Commissioners after a rigorous process of vetting and interviews. Although established by Government, the National Commission is independent. Its operations are guided by the United Nation's approved *Paris Principles* on national human rights institutions; and is not a unique institution in its independence nationally and internationally.

The mandate of the National Commission is to enhance the promotion and protection of human rights. The National Commission has two primary functions. On the one hand, it has a watchdog role. It monitors Government institutions, carries out investigations on alleged violations, and in appropriate cases provides redress to those whose rights have been violated. On the other hand, the National Commission has an advisory role. It gives advice to Government on how to enhance the promotion and protection of human rights.

The National Commission believes that public institutions have to be accountable and open to scrutiny by the public. As part of its accountability processes, the National Commission publishes in the national media each year a statement of its achievements and challenges and holds forums for the public to discuss and critique its work. This year, the National Commission wishes to specifically focus its public accountability statement on its impact over the past three years.

This year, public accountability forums will be held in three different places; Nairobi on 19th August 2006, Mandera 30th August 2006, and Malindi on a date to be announced.

The National Commission's Strategic Plan for the period 2004/9 guides its work. The programmes of the Commission are organized around five strategic objectives.

These are:

- ↖ Reduction of systemic human rights violations
- ↖ Taking leadership in framing and informing human rights discourse
- ↖ Increasing opportunities for realization of economic, social and cultural rights
- ↖ Establishment of comprehensive human rights education systems
- ↖ Establishment of institutional capacity to deliver effectively on human rights

The Commission's work is organised around the following programmes:

- ↖ The Investigations Programme coordinates investigations into reports of human rights violations
- ↖ The Redress Programme manages the quasi judicial functions of the Commission including providing remedies to persons whose rights have been violated
- ↖ The Human Rights Education and Capacity Building Programme focuses on promoting human rights knowledge and awareness among public officers
- ↖ The Research, Policy, and Legislation Programme works towards the infusion of human rights in policy and legislation
- ↖ The Campaigns and Advocacy Programme works towards police and penal reform, transitional justice, national integration, and anti corruption initiatives
- ↖ The Institutional Strengthening Programme is a support programme that manages the resources of the Commission and coordinates its programmatic work.

The Commission has, in three years, grown steadily and taken its place among other public institutions. There is the Chairperson, and eight full time Commissioners, 30 members of staff, and 22 interns. In the last three years, the Commission spent Ksh 51m in 2003/4, Ksh 114m in 2004/5, and approximately Ksh 200m in 2005/6. The head office is in Nairobi and the first regional office was opened on 16th June 2006 in Wajir, North Eastern Province.

The work of the National Commission would not have been possible without the support of the Commissioners and staff; our clients; the Government; civil society organisations; and development partners, including the Canadian International Development Agency, Australian International Development Agency, UNDP, National Endowment for Democracy, Action Aid, and the consortium of donors under GJLOS reform programme.

The conditions for greater impact by the National Commission include increased funding from Government, protection of its independence, and greater commitment to reform by the Government.

# OUR ACHIEVEMENTS: 2003-2006

## 1. Advising the Government on infusion of human rights principles into policy and legislation

We have advised the Government on proposed policies and legislation with a view to entrenching human rights principles. A number of recommendations have been adopted. Examples of policy and legislative areas where the National Commission has impacted are summarised below.

- (a) As a result of its critique and that of other actors on the Suppression of Terrorism Bill, published in 2003, the Government shelved the bill. The National Commission was at the forefront articulating the fact that the Bill as published fell foul of fundamental human rights standards and that, for instance, it shifted the burden of proof to the accused as well as lowering the standard of proof from “beyond reasonable doubt” to “on a balance of probability”.
- (b) The National Commission contributed towards speedy ratification by Kenya in March 2005, of the International Criminal Court (ICC) Statute and subsequently contributed to the content of the proposed legislation to domesticate the Statute (the International Criminal Court Bill). On the advice of the Commission and other actors, the Government has commendably resisted pressure from the United States of America to waive the application of the ICC Statute on Americans who might commit crimes in Kenya (the so called ‘Article 98’ agreement).
- (c) The National Commission contributed to the enactment of the Sexual Offences Act, 2006. Considering the proliferation and the brutality of sexual offences in the country, the National Commission found it necessary to be part of an intellectual and advocacy campaign for fine tuning and lobbying for the passage of the Sexual Offences Bill. With its enactment, the National Commission expects that vulnerable sectors of society such as girls, boys and women who for long have suffered the scourge of sexual abuse without commensurate response from the justice system will be better protected.
- (d) The Government has adopted the National Commission’s proposals on amendments to the Evidence Act concerning the power of police officers to take confessions from accused persons. This power had been removed from police officers in a 2002 amendment to the Evidence Act which provided that confessions could only be

admissible if made in court. The police argued that the amendment had limited their ability to fight crime since a magistrate may not be available at the point a suspects wishes to make his or her statement. Human rights organisations were concerned that the past in which police officers were accused of torturing suspects in order to obtain confessions could return. The National Commission advised the Attorney General that the Evidence Act be amended to allow a police officer of or above the rank of Chief Inspector to take a confession but only in the presence of another person chosen by the suspect.

These proposals were accepted. They are contained in the Statute Law (Miscellaneous Amendments) Bill, 2006. These proposals also require the Attorney General, in consultation with the Law Society of Kenya, Kenya National Commission on Human Rights, and other suitable bodies to make detailed rules governing the making of confessions before a police officer.

- (e) The National Commission, working with the Law Reform Commission, Kenya Prisons Service, and other stakeholders, has proposed changes to the Prisons Act and Rules. The Vice-President, whose docket includes prisons, positively received the proposals. The Commission steered the review with the aim of embedding human rights principles into the Prisons Act and Rules. In its proposals, the Commission identified the importance of shifting the focus of prisons from institutions of detention and punishment to institutions of social reform and correction as one way to reduce insecurity and crime in Kenya.
- (f) The National Commission has contributed towards acceptance of the principle that economic and social rights should be written into the bill of rights. Today, inclusion of economic and social rights in the bill of rights no longer seems to be a controversial issue. Whenever Kenyans begin to discuss the content of their new Constitution, inclusion of these rights is unlikely to be challenged. The National Commission prepared a position paper stating and explaining the reasons why economic social and cultural rights would need to be included in any new Bill of Rights.
- (g) The Commission reviewed the Water Resources Management Rules (first draft). In the revised draft for June 2006, 60 percent of the Commission's proposals have been adopted. These related to

greater protection of public interest, more effective planning for water works, greater protection for poor individual water users (over wealthy private users) and ensuring that information relating to applications for permits for water works in any community is posted at the local authority offices for accessibility.

- (h) The Government has accepted proposals to develop legislation on hate speech. The Minister for Justice and Constitutional Affairs has personally undertaken, on the advice of the National Commission, to lead in the drafting and enacting of hate speech legislation which will be presented to Parliament. The National Commission is working on draft proposals.
- (i) The Government has adopted a significant number of the recommendations made by the National Commission in the State of Human Rights report for 2003/4. The report found that policy documents do not 'pay heed to the vexing issues of inequality in Kenya', across regions, social groups and among groups. The Ministry of Health's sector wide plan now captures issues of equity across regions. The report had also recommended that to enhance health care, there be greater focus at dispensary and health centre levels in order to benefit the poor majority who use such facilities. This is now reflected both at narrative levels and in the shift of resource allocation in the health plans.

Related to issues of equity and equality, we note with satisfaction that while the budget speeches of 2003/4 and 2004/5 mentioned such issues as meagre three times, in the budget speech of 2006/7 such issues get mentioned 19 times. Equitable distribution of resources is also identified as a key lever for achieving 'a prosperous new future', while otherwise excluded groups are allocated resources or proposals for legislative measures to address their issues, for example, youth and young parents have been made.

On education, the report documented the neglect of Youth Polytechnics by not providing any budgetary resources. In the budget for 2006/7, funds have been provided through the Constituency Development Fund to revive at least one institution in each constituency.

The recommendations in the State of Human Rights Report for 2003/4 are influencing the strategic choices of development partners working in Kenya e.g. GTZ Kenya.

The National Commission has reviewed a number of other proposed statutes that have for one reason or another not become law. These include: the National Social Health Insurance Fund Bill, 2004; the Witness Protection Bill, 2005; proposed amendments to the Coffee Act; and proposed legislation on the media and freedom of information.

## **2. Promoting accountability in the use of public resources**

The National Commission has contributed to making Government more accountable to citizens in the exercise of State powers and the use of public resources; thereby enabling the Government to save approximately 1.5 billion shillings. These monies could be used for pro-poor development programmes. Following publication by the National Commission in February 2006 of the report '*Living Large*' which documented wastage of public resources in the purchase of large luxurious vehicles for Ministers and senior public officers, the Government expressed an intention to cut down on the numbers of vehicles allocated to Ministers and senior government officials. Wasteful expenditure of public resources leads to fewer resources available to fulfil rights for the poorest of Kenyans, for example, purchase of anti-retroviral drugs, provision of bursaries for bright children from poor families, and famine relief for the hungry. This report was published jointly with Transparency International (TI- Kenya). In a circular to all Permanent Secretaries issued on 31<sup>st</sup> March 2006, the Head of Public Service asked Permanent Secretaries to compile and submit to him a list of the official vehicles allocated to Ministers and Assistant Ministers.

In the budget speech for 2006/7, the Minister for Finance adopted recommendations of the National Commission concerning reduction of waste in expenditure on motor vehicles. The Minister 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 Minister promised to seize all excess government vehicles within a period of two months and recommended that many of them to be sold off. We expect that the Government will fully implement this policy. Earlier policy pronouncements by the previous administration to control use of vehicles by Ministers had failed due to lack of adequate political will.

## **3. Promoting accountability in electoral processes**

During the November 2005 referendum, the National Commission embarked on a campaign of monitoring the referendum rallies focusing on the use

of hate speech, incitement to violence and the illegal use of Government resources. The Commission released a *'list of shame'* documenting which officials were using Government resources and perpetuating hate speech. Once this list was publicized in the media, there was a marked difference in behavior by Government officials. Many stopped openly mis-using Government resources and using hate speech. Those that continued to use Government resources claimed that they paid for them from their personal accounts in an effort to be perceived as accountable. There was also increase in the use of vehicles with private registration numbers, some of which may have been masked public vehicles. Many officials became ashamed and went to great lengths to disguise Government vehicle number plates. The Kenyan public started to report Government officials who were using GK cars and other resources, using hate speech, and inciting people to violence.

The Commission initiated a private criminal prosecution against former Assistant Minister and MP for Hamisi, Hon. George Khaniri for incitement, contrary to Section 96 of the Penal Code. Another case was filled against Titus Mbathi, Chairman of KenGen, a parastatal body, for publicly campaigning for the 'Yes' side in violation of the Public Officers Ethics Act. Additional cases will be brought to court.

#### **4. Profiling corruption as a human rights issue**

The National Commission has contributed to profiling corruption as a key human rights issue in Kenya. Previously it was viewed merely as economic fraud. The National Commission has demonstrated that corruption drains public resources from social good. The Commission has emphasised and created awareness that corruption means fewer anti-retroviral drugs, fewer resources to fight insecurity, and fewer bursaries for gifted children from poor families. The National Commission has ensured that the public is aware that the consequences of corruption are that poorer Kenyans cannot access their basic fundamental rights. Such profiling has been done through various means and strategies – e.g. issues of *Nguzo za Haki(Pillars of Justice)* journal explaining the linkage between corruption and human rights.

The Commission is influencing other national human rights institutions in Africa to address corruption as a human rights issue. The *Nairobi Declaration*, which was issued in March 2006 at the conclusion of the African Regional Conference on the *'Human Rights Dimensions of Corruption'* hosted by the National Commission, and attended by representatives from

National Human Rights Institutions from all over Africa, concluded that corruption has manifest human rights dimensions. *The Nairobi Declaration* was mentioned during the Conference of African National Human Rights Institutions hosted by the African Union in Gambia in June 2006. It was also noted and appreciated during the meeting of National Human Rights Institutions from across the world held in Geneva, Switzerland in April 2006. The National Commission has used the media and other forums to consistently speak out against corruption.

## **5. Provision of legal advice and other support concerning human rights violations**

In 2006, the Commission begun hearing the first of a series of cases reported to its Tribunal. The Commission has competence to sit as a quasi-judicial body and offer remedies including compensation to victims of human rights violations.

During the period January to March 2006, the Commission received 460 walk-in complainants, 185 letters and 32 e-mail complaints. This shows that Kenyans have appreciated the opportunity afforded to them by the Commission to access legal aid and support in cases of human rights violation. By aiding victims of human rights violations, the National Commission has had a direct impact on the lives of hundreds of Kenyans. The high numbers of complaints received illustrates the increased awareness of and faith in the National Commission's role and mandate amongst the Kenyan populace. In addition, the Commission carried out several investigations and rapid responses on violations of human rights.

## **6. Improving linkages within the criminal justice system**

The National Commission has encouraged criminal justice actors towards greater collaboration and linkages in order to promote access to and delivery of justice. At a widely attended national conference for judges and magistrates and other actors in the criminal justice system held in June 2006, judicial officers recommended that there should be a coordination mechanism from the national level, replicated at the local level, for criminal justice actors. In addition, the recommendation for establishment of court users committees was adopted.

Local level coordination of criminal justice agencies has taken place in Nakuru, Kericho and Meru. The June 2006 workshop was held to enhance coordination of criminal justice actors in order to improve the delivery

of justice. Although the police, judiciary, prisons, and probation officers are key to effective delivery of justice, handicaps and inefficiencies in one institution affect the other, often there is no dialogue among these institutions both at policymaking level and at station level. The Prisons Department is often the most affected by inefficiencies in the criminal justice system. Poor coordination and lack of dialogue among these actors is one of the major causes of congestion in Prisons. Delayed hearings and appeals in courts, swoops by the police and heavy fines for petty offenders among other factors translates into an increase in prisons population often resulting into congestion in the prisons. Judicial accountability is critical for the rule of law.

## **7. Enhanced recognition of the human rights based approach to development**

The interventions of the National Commission has contributed to government officials increasingly accepting the human rights based approach to development. The Commission's contribution has been positively recognised in a forthcoming publication; *The development dimension: Integrating human rights into development*, published by the Organization on Economic Cooperation for Development (OECD). The approach emphasises that the human rights principles of participation, equality and non-discrimination; and, transparency and accountability should be part of all development processes, including construction of roads and boreholes. The human rights based approach to development is central to the training that the Commission has provided to a number of public servants in the Ministries of Agriculture, Roads and Public Works, Labour, Health, Water, National Development, and others.

During the National Conference on the human rights based approach to development held in 2006 in partnership with development partners such as SIDA Kenya, GTZ, CIDA Kenya and others, the Minister for Planning and National Development identified the need to mainstream the human rights based approach in the medium term expenditure framework and in the public expenditure reviews. The Minister for Justice and Constitutional Affairs has observed that human rights provide the standards for the minimum requirements for interaction with people in planning, implementation and evaluation of delivery of Government services and there is need to sensitise budget officers and policy makers on the rights based approach.

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

The National Commission's Annual Human Rights and Democracy Awards are now widely known and recognised. These awards, coming from a State institution, are encouraging individuals and institutions to defend human rights and good governance in their different callings.

In February 2006, the National Commission held the 3<sup>rd</sup> Annual Human Rights and Democracy Awards. The 'Milele' (Lifetime Achievement) Award was awarded posthumously to Father John Anthony Kaiser for his lifelong dedication to the pursuit of human rights in Kenya, and to Prof. Wangari Maathai for her work in protecting the environment and empowering women. The 'Firimbi' (Whistle blower) Award was awarded to John Githongo for his courageous act of whistle blowing on the Anglo-leasing scandal which led to the resignation of several Ministers who were implicated in his dossier, and to Davinder Lamba for his 'Operation Firimbi' campaign which blows the whistle on land grabbing and corruption in Kenya. The 'Waziri' (Government Minister) Award and the 'Utumishi' (Police station Award) were withheld as no minister or police station met the awards nomination criteria.

## **9. The promotion and protection of economic, social and gender rights has been enhanced**

The National Commission has contributed to a rising profile for economic and social rights. Its report titled *'The State of Human Rights 2003-4'* was an assessment primarily on the realisation of economic and social rights in Kenya. Previous human rights reports in Kenya have tended to focus on civil and political rights.

### ***Women and property rights in Nyanza***

Together with the Policy Project, the National Commission has successfully initiated a project that uses cultural frameworks to reinstate widows who had lost their property to relatives following the death of their husbands. The project started in Nyanza Province. Over 30 women and their children have been reinstated. The project advances women's right to own and inherit property, while working specifically within the existing cultural frameworks which are often more respected and adhered to than formal law.

The National Commission enlisted the help of various partners; CBOs, NGOs, Chiefs, FBOs, development partners, and area MPs. Together, they worked with the *Ker* (the leader of the Luo council of elders).

The initiative has been praised as an example of ‘best practice’ by UNAIDS in dealing with issues relating to women’s property ownership rights in the context of HIV/AIDS.

***Land, labour, and environmental rights in Malindi District***

In 2005, the National Commission held its first public inquiry in Malindi, Coast Province. The inquiry was on allegations of deprivation of ancestral land, abuse of rights of workers, and degradation of the environment in the Marereni region of Malindi arising from activities of a number of salt mining companies working there. In an independent evaluation of the Commission’s work, the evaluators concluded that the inquiry had succeeded in increasing understanding of human rights by the residents, giving voice and legitimacy to community struggles for rights, and initial improvements in protection of workers, including provision of protective wear.

In its report on the inquiry, the Commission has made decisions requiring, among other things:

- ↪ That salt manufacturing companies which have breached the terms and conditions of their grants must be penalised as provided by the law.
- ↪ That the salt companies must ensure they provide protective implements necessary for harvesting salt at no cost to the workers.
- ↪ Salt companies must provide sanitation facilities appropriate for both male and female workers.

**10. The National Commission’s identity and role in the public service has been enhanced**

Until recently, the National Commission was often confused for a non-governmental organisation (NGO) by public servants, the media, and petitioners. It did not help that there was, and still is, an NGO with a name very similar to that of the National Commission. This is changing.

Media reports on the National Commission clearly show that it is a public institution. As the identity of the National Commission as a public institution has become clearer, more public institutions have turned to it for specialist input. For example, the National Commission has received, and responded to requests for training or consultation from, among others, the Administration Police, Kenya Prisons Service, National Security Intelligence

Service, Public Communications Office, the National Agriculture and Livestock Extension Programme (NALEP), Ministry of Water Development, and others. More than 1,000 public officers have received training from the National Commission.

The distinctions and complementariness of roles between the National Commission and civil society organisations working on human rights has become clear. After a series of discussions, the National Commission and the Human Rights Network (K-HURINET) agreed on a framework for and principles of engagement between them. This should contribute to more effective partnerships.

## **11. Successful institutionalisation and improved accessibility of the National Commission**

The National Commission has established the infrastructure that will enable it to deliver on its mandate. We have a fully functional office in Nairobi and a regional office in Wajir was launched in June 2006. Core staff is in place.

In 2006, the Commission improved its accessibility to the public by moving its Nairobi headquarters from the NSSF building to the more spacious CVS Plaza on Lenana Road, Kilimani. This has improved the working environment of the Commission to ensure maximum efficiency. Due to the extra space there are now better facilities for petitioners, and the Commission has been able to hire additional members of staff, and interns, to alleviate its heavy workload. On the other hand, by opening an office in Wajir, the National Commission has begun a rigorous process of expanding to different parts of the country.

## **12. The National Commission has been recognised internationally, through accreditation to the International Coordinating Committee of National Human Rights Institutions**

In April 2005, the National Commission received accreditation to the International Coordinating Committee of National Human Rights Institutions, which is housed by the United National High Commissioner for Human Rights, Geneva. Only those national human rights institutions that are judged to be independent and established in compliance with the

Paris Principles on such institutions receive accreditation. The method of appointment of Commissioners to the Kenya National Commission on Human Rights (which involves public advertisements, nomination by Parliament, and appointment by the President) was praised as best practice by the International Coordinating Committee of National Human Rights Institutions that should be promoted globally. As a result of our reputation internationally, the National Commission has secured the location of the Secretariat of African National Human Rights Institutions in Nairobi.

# OUR KEY CHALLENGES

## 1. Financing and financial independence

The grant that the National Commission receives from the Government is grossly inadequate compared to statutory bodies such as the Electoral Commission of Kenya (ECK) and the Kenya Anti-Corruption Commission (KACC) that receives an annual budget of 3 billion and 1.2 billion shillings respectively from the Government. In 2004/5, the Commission received Ksh 80m only although it presented a budget in excess of Ksh 174 million while in 2005/6 the grant was Ksh 90 million. The National Commission uses the Government grant to recruit and pay staff and meet other operational costs, while relying on donors for programme costs. The inadequacy of the Government grant has meant that the Commission cannot hire adequate staff or open more offices in the rural areas (the target was one regional office each year and so far we have only managed to open up one).

A related challenge is that the National Commission does not have control over its money. 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 Commission may be called upon to investigate. The Commission has continued to urge Government, unsuccessfully so far, to establish a separate vote for the National Commission. This has been done for the Kenya Anti-Corruption Commission and there is no reason it cannot be extended to the National Commission.

## 2. Staff capacity

As of June 2006, the Commission had a staff of 39 (Commissioners included) against an establishment of 156 over the 5-year strategic plan period. Currently, the desirable staff size at the 3-year mark is 94. Staff shortage seriously impacts on the capacity of the National Commission to deliver effectively and leads to harmful work overloads.

## 3. Cooperation by Government agencies

For the National Commission to be effective, it requires full cooperation by Government ministries and departments. Though there has been a marked improvement in particular Government Ministries, cooperation is still less than optimal.

The top leadership of the Kenya Police in particular has displayed a poor attitude to the National Commission. The Commission is still being denied access to some police stations in defiance of the law and government policy.

In a ministerial statement issued in Parliament in August 2005, the Government through the Minister of State in the Office of the President confirmed the statutory mandate of the Commission to access police stations. He made it ‘abundantly clear to any persons that may doubt the commitment of the government to the rule of law to unequivocally understand that no Government machinery or its agents shall be allowed to obstruct or frustrate the legitimate functions of the National Commission.’ He instructed that a circular be issued to all law enforcement agencies to sensitise them on the legal mandate of the Commission, just in case this may not be clear to some of them. Commendably, middle level police officers in a number of police stations have been cooperative.

#### **4. Regional accessibility to the National Commission**

The National Commission presently has one office in Nairobi, and a newly opened regional office in Wajir. It thus remains rather inaccessible to those in rural areas as the table below shows.

| <b>Province</b> | <b>No. of Walk in Complainants</b> | <b>Percentage</b> |
|-----------------|------------------------------------|-------------------|
| Nairobi         | 581                                | 41                |
| Central         | 340                                | 24                |
| Eastern         | 154                                | 11                |
| Rift Valley     | 119                                | 8                 |
| Coast           | 79                                 | 6                 |
| Western         | 70                                 | 5                 |
| Nyanza          | 41                                 | 3                 |
| North Eastern   | 28                                 | 2                 |
| Total           | 1,412                              | 100               |

*Regional source of complaints received at the National Commission in 2004/5*

#### **5. Linkages with Parliament and the Ministry of Justice and Constitutional Affairs**

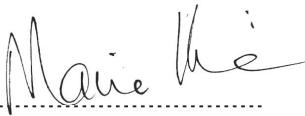
To be effective, the National Commission needs strong linkages with Parliament, which is a key institution in influencing policy, legislation, and public accountability. The Commission’s linkages with Parliament have been weak. The Commission has not dialogued adequately with the Parliamentary Committee on the Administration of Justice and Legal

Affairs, which deals with human rights and justice issues. Linkages with the Ministry of Justice and Constitutional Affairs have improved tremendously since the appointment of the new Minister, Hon Martha Karua.

**BE OUR JUDGE:**

There can be no accountability in the management of public institutions unless citizens know what the institutions are doing on their behalf, and unless mechanisms for public participation and accountability are institutionalised. This is our effort at beginning to account to the public and we would appreciate your feedback and input in our work.

Please send your comments on our work to Ms. Linda Ochiel on Tel. 020-2717928/08/00 Email: [lochiel@knchr.org](mailto:lochiel@knchr.org) or write to our address: P.O. Box 74359 - 00200, Nairobi, Kenya.



**Maina Kiai**  
**Chairman**



**Mburu Gitu**  
**Commission Secretary**

**28th July 2006**



**TAARIFA YA UWAJIBIKAJI KWA UMMA.  
MAFANIKIO NA CHANGAMOTO KATI YA  
2003-2006**

# HISTORIA

Tume ya Kitaifa ya Kutetetea Haki za Kibinadamu nchini inasherehekea miaka mitatu tangu kubuniwa kwake mwaka 2003. Wengi watajiuliza Tume hii imeafikia nini katika kipindi hicho? Imeleta mabadiliko yapi kwa wakenya? Tunatumia fursa hi kuwaelezea wakenya yale ambayo Tumeafikia mbali na mikakati tulokumbana nayo katika kipindi cha miaka mitatu uliyopita. Hii siyo taarifa ya mwaka ya Tume hii. Kila mwaka Tume hii huchapisha ripoti inayoonyesha shughuli zake na matokeo. Ripoti hiyo ni ya mwaka 2003/4, 2004/5, na 2005/6.

Tume ya Kitaifa ya Kutetetea Haki za Kibinadamu ni kama asasi nyengine ile ya umma na ilibuniwa kupitia sheria ya kitaifa ya kutetetea haki za kibinadamu. Ilianza kutekeleza shughuli zake mnamo julai 29 mwaka 2003 wakati ambapo Rais kupitia mapendekezo ya bunge aliteua makamishna tisa kupitia mahojiano makali. Licha ya kubuniwa na serikali Tume hii ni huru. Shughuli zake huzingatia maafikiano ya *Paris* kuhusu asasi za kitaifa za kutetetea haki za kibinadamu yaliyoidhinishwa na Umoja wa Mataifa; na wala sio asasi ya namna yake inapofikia uhuru wake nchini na hata nyanja ya kimataifa. Jukumu la Tume hii ni kudumisha na kuhifadhi haki za kibinadamu. Tume hii ina majukumu mawili ya kimsingi; kwa upande mwingine ina jukumu la kulinda serikali. Inafuatilia mashirika ya serikali, inachunguza madai yoyote ya ukiukaji wa haki za kibinadamu na hata kutoa usaidizi kwa wale ambao haki zao zimekiukwa. Aidha, Tume hii ina jukumu la kutoa ushauri. Inatoa ushauri kwa serikali kuhusu namna ya kudumisha na kulinda haki za kibinadamu. Tume hii inaamini kuwa mashirika ya umma hayana budi kuwajibika kwa umma.

Kama mojawapo ya uwajibikaji, Tume ya Kitaifa ya Kutetetea Haki za Kibinadamu huchapisha kila mwaka kwa vyombo vya habari taarifa kuhusu yale iloafikia na mikakati yake mbali na kuandaa vikao kwa umma kuijadili na kuikosoa. Katika taarifa ya uwajibikaji ya mwaka huu, Tume hii imelenga yale ambayo imeafikia katika kipindi cha miaka mitatu iliyopita. Mwaka huu vikao vya umma vya Tume hii vitafanyika katika maeneo matatu; Nairobi tarehe 19 Agosti 2006, Mandera tarehe 30 Agosti 2006, na Malindi katika taraha itakayotangazwa baadaye.

Tume ya Kitaifa ya Kutetea Haki za Kibinadamu inaongozwa na mikakati yake ya kipindi cha kati ya mwaka 2004 na 2009.

Mipango ya Tume hii inatekelezwa kutokana na mikakati mitano. Nayo ni:

- ↳ Upunguzaji wa ukiukaji wa haki za kibinadamu.
- ↳ Kuongoza katika harakati za hamasisho kuhusu haki za kibinadamu.

- ↪ Kuhakikisha mazingira ya ukuaji wa haki za kiuchumi, kijamii na tamaduni.
- ↪ Kubuniwa kwa mfumo bora wa elimu unaozingatia haki za kibinadamu.
- ↪ Kubuniwa kwa mashirika yenye uwezo wa kuhakikisha haki za kibinadamu.

Tume hii inatekeleza kazi zake kutokana na mipango ifuatayo.

- ↪ Mpango wa uchunguzi unachunguza ukiukaji wa haki za kibinadamu.
- ↪ Mpango wa urekebishaji unasimamia majukumu ya kisheria ya Tume hii ikiwemo kuhakikisha usaidizi kwa watu ambao haki zao zimekiukwa.
- ↪ Mpango wa kutoa mafunzo na hamasisho kuhusu haki za kibinadamu unashughulikia utoaji zaidi wa elimu kuhusu haki za kibinadamu kwa maafisa wa umma.
- ↪ Mpango wa sera na mafunzo unahusisha kuambatanisha masuala ya sheria katika udumishaji wa haki za kibinadamu.
- ↪ Mpango wa kampeni na utetezi unashughulika na polisi na mabadiliko katika sheria zinazotoa adhabu, haki na mikakati ya kupiga vita ufisadi.
- ↪ Mpango wa kuimarisha mashirika unasimamia raslimali za Tume hii na kuhakikisha mipango yake inaendelea sambamba.

Kama mashirika mengine ya umma, Tume hii imekua pakubwa katika kipindi cha miaka mitatu iliyopita. Pamoja na mwenyekiti, kuna makamishna wengine wanane, wafanyikazi 30 na wanafunzi 22 wanaopata ujuzi wa kazi katika Tume hii.

Katika miaka mitatu iliyopita Tume hii imetumia shilingi milioni 51 kati ya mwaka 2003 na 2004, shilingi milioni 114 kati ya mwaka 2004 na 2005 na takriban shilingi milioni 200 kati ya mwaka 2005 na 2006. Makao makuu ya Tume hii yako Nairobi, na afisi ya kwanza ya kieneo ilifunguliwa Wajir katika Mkoa wa Kaskazini Mashariki mnamo tarehe 16 Juni 2006.

Kazi ya Tume hii haingefaulu pakubwa bila ya usaidizi wa makamishna, wafanyikazi, wateja wake, serikali, mashirika ya umma na washirika wa

maendeleo ikiwemo the Canadian International Development Agency, Australian International Development Agency, UNDP, National Endowment for Democracy, Action Aid, na wafadhili mbali mbali chini ya mpango wa mageuzi wa GJLOS.

Ili Tume hii iweze kuafikia majukumu yake ipasavyo serikali haina budi ila kuongeza ufadhili wake, kulinda uhuru wake mbali na kujitolea katika kuhakikisha mageuzi zaidi.

## 1. Kuishauri serikali kuhusu uingizaji wa haki za kibinadamu katika sera na sheria

Tumeishauri serikali kuhusiana na sera na sheria zilizopendekezwa katika harakati za kuhakikisha zinazingatia haki za kibinadamu. Mapendekezo kadhaa yameidhinishwa.

Kwa mfano:

- (a) Kutokana na uhakiki wa Tume hii pamoja na washirika wake, mswada kuhusu ugaidi wa mwaka 2003 ulitupiliwa mbali na serikali. Tume ya kitaifa ya kutetee haki za kibinadamu ilikuwa katika msitari wa mbele kupinga mswada huo kwa sababu ulionekana kukiuka haki za kibinadamu kwa sababu ulikuwa unamlimbikizia mshukiwa jukumu la kuthibitisha kwamba hakutekeleza kitendo cha ugaidi mbali na mengine mengi.
- (b) Tume ya Kitaifa ya Kutetea Haki za Kibinadamu ilishiriki pakubwa katika kuhakikisha uidhinishwaji haraka wa sheria za mahakama za kimataifa (ICC) mnamo machi mwaka 2005 na wakati huo huo ikashiriki kwenye harakati za kutaka sheria hizo za mahakama ya kimataifa kutumika humu nchini. Kutokana na ushauri wa Tume hii na wahusika wengine, serikali imepinga vikali shinikizo kutoka Marekani (USA) za kutaka sheria hizo kutotumiwa dhidi ya Wamarekani ambao huenda wakahusika na uhalifu wakiwa humu nchini maarufu kama ('Article 98' agreement).
- (c) Tume ya Kitaifa ya Kutetea Haki za Kibinadamu ilishiriki katika kuhakikisha mswada wa dhuluma za kimapenzi wa mwaka 2006 unapitishwa. Kutokana na ongezeko la visa vya dhuluma za kimapenzi humu nchini, Tume hii iliona haja ya kushiriki katika kampeni za kila aina kuhakikisha mswada huo unaidhinishwa. Kutokana na kupitishwa kwa mswada huo, Tume hii sasa inahisi watoto wa kike wa kiume pamoja na wanawake ambao wamejikuta katikati mwa dhuluma za kimapenzi watalindwa ipasavyo.
- (d) Serikali imeidhinisha mapendekezo ya Tume ya Kitaifa ya Kutetea Haki za Kibinadamu kuhusu marekebisho katika sheria ya ushahidi, hasa uwezo wa polisi kutwaa ushahidi kutoka kwa mshukiwa. Uwezo huo ulipokonywa polisi katika mabadiliko katika sheria ya ushahidi mwaka 2002, ambayo ilishurutisha ushahidi kutolewa mahakamani pekee. Polisi waliteta kuwa mabadiliko hayo yalititiza harakati zao za kupiga vita uhalifu kwani huenda hakimu asiwepo wakati ambapo mshukiwa anataka kuandikisha taaarifa yake. Mashirika ya

kutetea haki za kibinadamu yalihofia huenda zikarejea tena zile enzi ambapo polisi waliwatesa washukiwa wakati wakitwaa ushahidi. Tume hii ilimshauri Mkuu wa Sheria kuhakikisha mabadiiko katika sheria ya ushahidi yatakayoruhusu tu afisa wa polisi wa kiwango cha inspecta mkuu kutwaa ushahidi kutoka kwa mshukiwa lakini kuwepo mtu mwingine aliyechaguliwa na mshukiwa. Mapendekezo hayo yalikubalika. Yamo katika mswada wa mwaka 2006 (Miscellaneous Amendments).

Mapendekezo haya pia yanamtaka Mkuu wa Sheria kuwa na mashauriano na Chama cha Wanasheria Nchini, Tume ya Kitaifa ya Kutetea Haki za Kibinadamu na mashirika mengine yanayostahili, kubuni sheria zinazosimamia utoaji ungamo kwa polisi.

- (e) Tume ya Kitaifa ya Kutetea Haki za Kibinadamu ikishirikiana na Tume ya Kufanyia Marekebisha Sheria, Magereza na washikadau wengine imependekeza mabadiliko katika sheria na kanuni ya magereza. Makamu wa Rais, ambaye idara ya magereza iko chini yake alipokea vyema mapendekezo hayo. Tume hii ilishinikiza mabadiliko hayo katika harakati za kuhakikisha kutelezwa kwa haki za kibinadamu katika magereza. Kwenye mapendekezo yake, Tume hii ilitaka magereza kuwa maeneo ya kurekebisha tabia badala ya kuwa maeneo ya mateso kama mojawapo ya njia za kupunguza uhalifu nchini.
- (f) Tume ya Kitaifa ya Kutetea Haki za Kibinadamu imechangia katika kuhakikisha kukubalika kwa hali kuwa haki za kiuchumi na kijamii ziidhinishwe katika mswada wa sheria za haki za kibinadamu. Sasa kuidhinishwa kwa haki za kiuchumi na kijamii katika msada wa sheria za haki za kibinadamu sio swala bishi. Wakati wowote ule wakenya watakapoanza kuijadili katiba mpya kujumuishwa kwa haki hizo hakutapingwa. Tume hii ilichapisha mapendekezo kuelezea ni kwanini haki za kiuchumi, kijamii na kitamaduni zinahitaji kujumuishwa katika sheria za haki za kibinadamu.
- (g) Tume ilifanyia mabadiliko sheria kuhusu usimamizi wa raslimali za maji (mswada wa kwanza) katika mswada uliofanyiwa mabadiliko wa juni 2006 . Asilimia 60 ya mapendekezo ya Tume hii yameidhinishwa. Hii ilihusisha mipango kabambe ya maji, kuhakikisha maskini hawanyanyaswi na matajiri ama kampuni za kibinafsi za maji na kuhakikisha kuwa taarifa kuhusu maombi ya leseni za maji yanawasilishwa katika afisi za mabaraza ya miji ili kuwezesha jamii kuifikia rahisi.

- (h) Serikali imekubali mapendekezo kubuni sheria dhidi ya matamshi yanayozua uhasama na chuki. Waziri wa Sheria na Maswala ya Katiba amejitolea binafsi kuongoza katika uchapishaji na ubunifu wa sheria hizo ambazo zitawasilishwa bungeni. Tume ya kitaifa ya kuteteta haki za kibinadamu inaandaa mapendekezo yake.
- (i) Serikali imeidhinisha mapendekezo mengi ya Tume ya kitaifa ya kutetea haki za kibinadamu kuhusu hali ya haki za kibinadamu nchini yaliyo kwenye ripoti yake ya 2003/4. Ripoti hiyo ilithibitisha kuwa sera za serikali hazizingatii swala nyeti la usawa nchini, katika maeneo ya humu nchini, miongoni mwa makundi ya kijamii na makundi mengine. Mpango wa wizara ya afya unaonekana sasa kuzingatia swala la usawa kote nchini. Ripoti hiyo pia ilipendekeza kuwa ili viwango vya afya vidumishwe nchini, basi itabidi zahanati na vituo vya afya zaidi kujengwa ili kuhakikisha maskini wananufaika na vifaa vya afya. Hilo linaanza kudhihirika wazi.

Kuhusiana na maswala ya usawa, Tumeridhika kuwa ingawa neno hilo lilitajwa mara tatu pekee katika taarifa ya bajeti ya kati ya mwaka 2003 na 2004, na ile ya 2004 na 2005 maswala ya usawa yalitajwa mara 19 katika bajeti ya mwaka 2006 na 2007. Utoaji sawa wa raslimali umetambuliwa kama njia mwafaka ya kuhakikisha watu wanaotengwa katika jamii wanatengewa raslimali. Mfano ni vijana na wazazi wachanga.

Kuhusu elimu, ripoti hiyo ilionyesha kuwa taasisi za mafunzo anuwai zimetetekezwa kwa kutotengewa raslimali katika bajeti. Katika bajeti ya mwaka 2006 na 2007 pesa zimetengwa kupitia hazina ya ustawi wa maeneo bunge kufufua angalau taasisi moja ya mafunzo anuwai katika kila eneo bunge.

Mapendekezo kuhusu hali ya haki za kibinadamu nchini ya mwaka 2003 na 2004 yanashawishi namna washirika wa kimaendeleo humu nchini kama vile GTZ Kenya wanavyotoa misaada.

Tume hii, imefanyia marekebisho miswada mingine ambayo kwa sababu moja au nyingine haijakuwa sheria. Hii ni pamoja na mswada wa bima ya kitaifa ya matibabu wa mwaka 2004, mswada wa kulinda mashahidi wa mwaka 2005, mswada uliopendekezwa wa kahawa na ule wa uhuru wa vyombo vya habari.

## **2. Kuhakikisha uwajibikaji katika matumizi ya mali ya umma**

Tume hii, imachangia katika kuhakikisha serikali inawajibika kwenye matumizi ya mali ya umma, hali ambayo imepelekea kuokoa shilingi bilioni 1.5. Pesa hizi zinaweza kutumika kwenye miradi ya maendeleo kwa ajili ya watu maskini. Kutokana na kuchapishwa kwa taarifa ya Tume hii kwa kichwa; *'Living Large'* mnamo Februari mwaka 2006, ambayo ilionyesha ubadhirifu wa mali ya umma kupitia mawaziri na mawaziri wasaidizi kununuliwa magari ya kifahari, serikali ilichukua hatua mwafaka. Matumizi mabaya ya raslimali za umma hupelekea raslimali ndogo kutengewa maskini, huathiri ununuzi wa dawa za kukabiliana na makali ya ukimwi, hazina ya malipo ya elimu kwa watoto kutoka jamii maskini pamoja na hazina ya kukabiliana na baa la njaa. Ripoti hii ilichapishwa kwa pamoja na shirika la Transparency International (TI-Kenya).

Katika taarifa rasmi kwa makatibu wa wizara tarehe 31 Machi mwaka 2006, Mkuu wa Utumishi wa Umma na Katibu wa Baraza la Mawaziri aliwauliza Makatibu wa Wizara kuandaa taarifa kuhusu magari rasmi ya serikali yalotengewa mawaziri na mawaziri wasaidizi katika wizara zao na kuiwasilisha kwake.

Katika bajeti ya mwaka 2006 na 2007, waziri wa fedha aliidhinisha mapendekezo ya Tume hiyo kuhusu upunguzaji wa matumizi mabaya ya mali ya umma kupitia ununuzi wa magari. Waziri alipiga marufuku utumiaji wa magari ya umma kwa shughuli za kibinafsi. Katika kuhakiki swala hilo vyombo vya habari vilirejelea ule utafiti wa Tume hii kwa kichwa; *'Living Large'*. Waziri aliahidi kutwaa magari yote katika kipindi cha miezi miwili na kupendekeza mengi yao kuuzwa.

Tunatarajia kuwa serikali itaidhinisha kwa dhati sera hiyo. Serikali iliyotangulia ilikosa kutekeleza azimio kama hilo kutokana na kutokuweko nia ya kisiasa.

## **3. Kuhakikisha uwajibikaji katika shughuli za uchaguzi**

Wakati wa kampeni za kura ya maoni kuhusu katiba mpya mnamo Novemba mwaka 2005, Tume hii ilianzisha harakati za kuchunguza kampeni hizo ikizingatia hasa matumizi ya matamshi ya kuzua uhasama na chuki, uchochezi mbali na matumizi ya raslimali za umma kinyume na sheria.

Tume hii ilitoa orodha ya majina maarufu kama *list of shame* ambayo ilionyesha ni afisa yupi wa serikali aliyetumia raslimali za serikali na

wale waliotumia matamshi ya kuzua chuki na uhasama. Punde taarifa hii ilipochapishwa katika vyombo vya habari kulikuwa na mabadiliko katika mienendo ya maafisa wa serikali. Wengi walikomesha tabia ya matumizi ya raslimali za umma pamoja na lugha chochezi. Wale walioendelea kutumia raslimali za umma walidai kuwa wameilipia katika juhudi za kutaka kusafisha majina yao. Kulikuwa na ongezeko la matumizi ya magari yenye usajili wa magari ya kibinafsi licha ya kwamba yalikuwa ya umma.

Maafisa wengi wa serikali waliaibika pakubwa. Wakenya wakaanza kuripoti maafisa wa serikali wanaotumia magari ya umma, raslimali nyingine za umma, wenye matamshi ya kuzua chuki na wachochezi.

Tume hii, iliwasilisha kesi ya kibinafsi dhidi ya waziri msaidizi na Mbunge wa Hamisi George Khaniri, kwa uchochezi kinyume na kifungu 96 cha sheria. Aidha iliwasilisha kesi nyengine dhidi ya Mwenyekiti wa KENGEN Titus Mbathi, kwa kupigia debe kundi la ndizi kinyume na sheria za maadili ya wafanyikazi wa umma. Inapanga kuwasilisha kesi zaidi mahakamani.

#### **4. Kuorodhesha ufisadi kama swala la haki za kibinadamu**

Tume ya kitaifa ya kutetea haki za kibinadamu imechangia pakubwa katika kuorodhesha ufisadi kama swala muhimu la haki za kibinadamu nchini. Awali ufisadi ulionekana tu kama uhalifu wa kiuchumi. Tume hii imedhihirisha kuwa ufisadi unavuja raslimali zinazonuia kuinua maisha.

Tume hii imesisitiza na kuhamasisha umma kuwa ufisadi unamaanisha uhaba wa dawa za kukabiliana na makali ya ukimwi, raslimali chache kukabiliana na utovu wa usalama, ukosefu wa hazina ya masomo kwa watoto kutoka familia maskini.

Tume hii imehakikisha wakenya wanafahamu kuwa madhara ya ufisadi nipamoja na wakenya maskini kutoafikia haki zao muhimu.

Tume hii imeweza kuwasilisha ujumbe huo kupitia njia na mikakati mbalimbali kama vile jarida la *'Nguzo za Haki'* linaloelezea uhusiano kati ya ufisadi na haki za kibinadamu.

Tume hii pia inashawishi Tume nyengine za kitaifa za kutetea haki za kibinadamu barani Afrika kushughulikia ufisadi kama swala la haki za kibinadamu.

Azimio la Nairobi lililotolewa mnamo Machi 2006, wakati wa kufungwa kwa kongamano la bara la Afrika kuhusu haki za kibinadamu lililoandaliwa na Tume ya Kitaifa ya Kutetea Haki za Kibinadamu nchini lilikubaliana kwa kauli moja kuwa ufisadi una athari kubwa katika kuafikia haki za kibinadamu. Azimio la Nairobi lilitajwa katika kongamano lingine la haki za kibinadamu barani Afrika lililoandaliwa na Umoja wa Afrika kule Gambia mnamo Juni 2006. Aidha, azimio hilo la Nairobi lilipokelewa vyema wakati wa Tume za kitaifa za kuteteta haki za kibinadamu lililoandaliwa huko Geneva, Uswizi mnamo Aprili mwaka 2006.

Tume ya kitaifa ya kutetea haki za kibinadamu imetumia vyombo vya habari na vikao mbali mbali kuzungumza mara kwa mara dhidi ya ufisadi.

## **5. Utoaji wa huduma za kisheria kuhusiana na ukiukaji wa haki za kibinadamu**

Mnamo mwaka 2006, Tume hii ilianza kusikiza mfululizo wa kesi za ukiukaji wa haki za kibinadamu zilizoripotiwa kwa mahakama yake maalum.

Tume hii ina uwezo wa kuandaa kikao maalum cha mahakama na kutoa huduma za kisheria kwa waathiriwa wa ukiukaji wa haki za kibinadamu na hata kuwafidia. Wakati wa kipindi cha kati ya mwezi Januari na Machi mwaka 2006 walalamishi 460 wa haki za kibinadamu walifika kwayo, ilipokea barua 185 za kulalamikia ukiukaji wa haki za kibinadamu na barua pepe 32 pia za malalamishi kama hayo.

Kwa kuwasaidia wahasiriwa wa ukiukaji wa haki za kibinadamu, Tume hii imekuwa na athari ya moja kwa moja kwa maisha ya mamia ya wakenya. Idadi kubwa ya malalamiko yalowasilishwa katika Tume hii ni ishara tosha ya hamasisho na imani kubwa walo nayo Wakenya kwa Tume ya Kitaifa ya Kutetea Haki za Kibinadamu. Tume hii ilitekeleza uchunguzi kadhaa na kuchukua hatua za dharura.

## **6. Kuimarisha mshikamano katika mfumo wa utekelezaji wa sheria za jinai**

Tume ya Kitaifa ya Kutetea Haki za Kibinadamu inashawishi washiriki katika idara ya utekelezaji wa sheria za jinai kushirikiana kwa ajili ya haki kutendeka. Katika mkutano wa kitaifa wa majaji na mahakimu na washikadau wengine katika sekta hiyo uliofanyika mnamo juni mwaka 2006 na kuhudhuriwa pakubwa, ilipendekezwa pawe na mfumo ambapo maafisa wa idara hiyo katika nyanja kitaifa wanaweza kushirikiana mara kwa mara na wenzao wa nyanjani.

Aidha mapendekezo ya kubuniwa kwa kamati za mahakama yaliidhinishwa. Ushirikiano wa mashinani wa mashirika ya kisheria umeshuhudiwa katika maeneo ya Nakuru, Kericho na Meru. Warsha hiyo ya Juni mwaka 2006 ilifanyika kuboresha uhusiano wa watekelezaji wa sheria za jinai ili kuimarisha utoaji huduma za haki.

Ingawa polisi, idara ya mahakama, magereza na maafisa wa mahakama ni nguzo muhimu katika utekelezaji wa haki utendaji duni katika mojawepo ya idara hizo unaweza kuathiri nyengine. Mara nyingi hamna ushirikiano kati ya idara hizi hasa katika utungaji sera. Idara ya mahakama hasa hasa ndiyo inayoathirika kutokana na nyufa kwenye mfumo wa utekelezaji sheria za jinai. Utovu wa mashauriano katika mfumo huo umesababisha msongamno katika magereza. Uwajibikaji katika idara ya mahakama ni muhimu sana.

## **7. Utambuzi wa haki za kibinadamu katika mipango au utaratibu wa maendeleo**

Tume ya kitaifa ya kutetea haki za kibinadamu imechangia kuhakikisha kuwepo mtazamo kuwa haki za kibinadamu ni kigezo cha maendeleo miongoni mwa wafanyikazi wa serikali.

Mchango wa Tume hii umetambulika katika toleo linalotarajiwa la kwa kichwa; *'The development dimension: Integrating human rights into development'*, linalochapishwa na Organization on Economic Cooperate for Development (OECD).

Mtazamo huo unasisitiza haki ya kibinadamu ya kushiriki, usawa, kutobaguliwa, uwazi na uwajibikaji uwe sehemu ya mfumo wa maendeleo, hii ikiwemo ujenzi wa barabara na visima vya maji.

Mtazamo huo unatokana na mafunzo ambayo Tume hii imetoa kwa wafanyikazi wa umma katika wizara za kilimo, afya, barabara na ujenzi, leba na nyingine.

Katika kongamano la kitaifa kuhusu mtazamo wa haki za kibinadamu katika maendeleo, uliofanyika mwaka 2006 kwa ushirikiano na mashirika ya maendeleo kama vile SIDA Kenya, GTZ, CIDA Kenya na mashirika mengine, Wizara ya Mipango ya Kitaifa ilitambua haja ya kuidhinisha mtazamo wa haki za kibinadamu katika mfumo wa wastani wa matumizi ya pesa za serikali pamoja mageuzi katika matumizi ya pesa za umma.

Wizara ya Sheria na Maswala ya Katiba imetambua kuwa pana haja ya kuhamasisha maafisa wa bajeti na watunga sera kuhusu haja ya kuzingatia mtazamo wa haki za kibinadamu wanapotekeleza wajibu wao.

## **8. Kuwatia motisha wakereketwa wa kutetea haki za kibinadamu kupitia tuzo za kitaifa**

Tuzo za kitaifa za haki za kibinadamu na demokrasia zinazotolewa kila mwaka zinaheshimiwa na kutambuliwa sana. Kwa kutolewa na shirika la umma tuzo hizi zinahimiza watu binafsi na mashirika kupigania haki za kibinadamu na maongozi bora.

Mnamo Februari 2006, Tume iliandaa hafla yake ya tatu ya mwaka ya kutoa Tuzo kuhusu Demokrasia na Haki za kibinadamu. Tuzo la mafanikio maishani la 'Milele' lilimwendea marehemu Kasisi John Anthony Kaiser kwa kujitolea kwake maishani katika kutetea haki za kibinadamu humu nchini na pia akatuzwa Prof. Wangari Maathai kwa kazi yake ya kulinda mazingira na kuwapa uwezo kina mama.

Tuzo la Firimbi, la Mfichuzi wa kashfa lilimwendea John Githongo kwa ukakamavu wake kufichua kashfa ya Anglo-leasing iliyopelekea kujiuzulu kwa mawaziri kadhaa waliotajwa katika taarifa yake. Naye Davinder Lamba akatuzwa kwa kampeini yake ya 'Operation Firimbi' iliyofichua kashfa za unyakuzi wa ardhi na ufisadi humu nchini. Tuzo la 'Waziri' na la Polisi la 'Utumishi' (Police Station Award) hazikupeanwa kwani hakuna waziri yeyote ama kituo chochote cha polisi kilichostahili kupewa tuzo hilo.

## **9. Kuimarishwa na kulindwa kwa haki za kiuchumi, kijamii na kijinsia**

Tume hii imechangia katika kuimarika kwa kiwango cha haki za kiuchumi na kijamii. Ripoti yake kwa kichwa; *'The State of Human Rights 2003-4'*, ilitokana na tathmini iliyolenga yaloafikiwa katika nyanja ya haki za kiuchumi na kijamii nchini kenya. Ripoti za awali za haki za kibinadamu zililenga tu haki za raia na kisiasa.

Tume ya Kitaifa ya Kutetea Haki za Kibinadamu imefanikiwa kuanzisha mradi ambapo inatumia mfumo wa tamaduni kuhakikisha kuwa wajane waliopoteza mali yao kwa jamaa zao kufuatia kufariki kwa waume zao wanapata mali hiyo. Mradi huo ulianzishwa Mkoani Nyanza. Takriban wajane 30 na watoto wao wamenufaika. Mradi huo unatetea wajane kurithi mali kupitia mfumo huo wa tamaduni ambao unaheshimika kuliko sheria za kawaida. Tume ilipata usaidizi kutoka kwa mashirika ya kijamii, mashirika yasiyokuwa ya kiserikali na wabunge wa eneo hilo.

Harakati kama hizo zilipongezwa na kutajwa kuwa mfano mzuri na shirika la Umoja wa Mataifa la kukabiliana na Ukimwi (UNAIDS) kwa kushughulikia masuala ya haki ya umiliki wa mali kwa kina mama kuhusiana na ugonjwa hatari wa Ukimwi, masuala ya ardhi, ajira na mazingira katika wilaya ya Malindi.

Mnamo 2005, Tume hii ilifanya uchunguzi wake wa kwanza wa umma huko Malindi mkoani Pwani. Uchunguzi huo ulifanywa kutokana na madai ya kukiukwa kwa haki za wafanyikazi na kuharibiwa kwa mazingira katika eneo la Marereni kutokana na shughuli za machimbo ya chumvi. Katika utathmini wake wa kibinafsi Tume hii ilifanya uchunguzi na kuwahamasisha wakazi wa sehemu hiyo kuhusu haki za kibinadamu na kutoa mwelekeo wa kulindwa kwa haki za wafanyikazi, ikiwa ni pamoja na wafanyikazi kupewa vifaa vya kuwalinda dhidi ya madhara wanapokuwa kazini.

Katika taarifa yake, Tume hii ilitoa mapendekezo yafuatayo:

- ↪ Kwamba kampuni za kutoa bidhaa ya chumvi ambazo zimekiuka masharti zichukuliwe hatua kwa mujibu wa sheria.
- ↪ kwamba kampuni za machimbo ya chumvi zinapasa kuhakikisha kwamba zinatoa vifaa kwa wafanyikazi kujikinga na hatari na kutowakata fedha za kugharamia vifaa hivyo katika malipo yao.
- ↪ Kampuni za machimbo ya chumvi zinahitajika kutoa vifaa vya kudumisha usafi kwa wafanyikazi wake wa kike na wa kiume.

## **10 Tume hii imetambuliwa na kuwajibika zaidi katika utumishi wa umma**

Hadi siku za hivi majuzi, Tume hii imekuwa ikichukuliwa kuwa ni shirika lisilokuwa la kiserikali na watumishi wa umma, vyombo vya habari na wakinzani wake. Lakini jambo hilo limeanza kubadilika. Taarifa za vyombo vya habari kuhusu Tume hii, zimethibitisha kwamba ni taasisi ya umma. Na kutokana na ukweli huo asasi zingine za umma zimejitokeza kupata ushauri.

Tume hii kwa mfano imepokea maombi ya kuitaka itoe mafunzo na ushauri kutoka kwa Idara ya Polisi, Idara ya Magereza Idara ya Upelelezi wa jinai, Idara ya Mawasiliano kwa Umma pamoja na wizara mbalimbali. Zaidi ya maafisa 1000 wa umma wamepokea mafunzo pia kutoka kwa Tume hii.

Tofauti ya majukumu kati ya Tume hii ya kitaifa na makundi ya umma yanayoshughulikia utetezi wa haki za kibinadamu iko wazi. Baada ya mashauriano kadhaa Tume hii ilikubaliana na mtandao wa kutetea haki za kibinadamu (K-HURINET) kuhusu msingi wa ushirikiano.

## **11. Tume hii imeanzisha mfumo wa kuwasilisha muundo wa mamlaka yake**

Tuna ofisi kuu jijini Nairobi na ofisi la kieneo Wajir ambayo ilianzishwa mnamo mwezi tarehe 16 Juni 2006.

Mnamo 2006, Tume hii ilitoa fursa zaidi kwa umma kuifikia kupitia kuhamisha makao yake makuu jijini Nairobi kutoka jumba la NSSF hadi jumba la CVS lililoko barabara ya Lenana katika sehemu ya Kilimani ambako kuna nafasi kubwa zaidi. Kutokana na hatua hiyo shughuli za Tume hii zinafanyika kwa wepesi zaidi. Pia Tume imeweza kuajiri wafanyikazi zaidi na wanafunzi wanaopata ujuzi wa kazi ili kumudu utekelezaji wa majuku yake yote na kazi nyingi ilizonayo.

Kwa upande mwingine kwa kufungua ofisi huko Wajir, Tume hii imeanzisha harakati za kusambaza shughuli zake kote nchini na hivyo itafungua ofisi katika wilaya zingine humu nchini.

## **12. Tume hii imetambuliwa kimataifa kupitia kuwekwa katika kamati ya kimataifa ya ushirikishaji wa asasi za kutetea haki za kibinadamu**

Mnamo mwezi April 2005, Tume hii iliwekwa katika kamati hiyo ambayo makao yake makuu yako katika ofisi za Balozi wa Umoja wa Mataifa anayeshughulikia haki za kibinadamu huko Geneva, Uswizi.

Asasi hizo ambazo ziko huru na ambazo zilibuniwa kupitia mikataba ya kimataifa kuhusu haki za kibinadamu ndizo ambazo hutambuliwa kimataifa. Mfumo wa uteuzi ulifanywa kwa utaratibu wake maalumu kupitia rais na Bunge baada ya arifa kutolewa kwa umma.

Na kutokana na kutambuliwa kimataifa, Tume hii imepata uwezo wa kuwa makao makuu ya asasi za Afrika zinazoshughulikia masuala ya haki za kibinadamu jijini Nairobi.

# CHANGAMOTO ZETU MUHIMU:

## 1. Udhamini na uhuru wa kifedha

Ruzuku inayopokewa na Tume hii kutoka kwa serikali haitoshi ikilinganishwa na kiwango kinachopewa Tume zingine kama vile Tume ya Uchaguzi (ECK) na Tume ya kukabiliana na Ufisadi KACC ambazo hupokea Bajeti ya shilingi bilioni tatu na bilioni 1.2 mtawalia.

Katika kipindi cha 2004/5, Tume hii ilipokea shilingi milioni 80 pekee licha ya kuwasilisha bajeti ya shilingi milioni 174, na kupokea kiwango cha shilingi milioni 90 katika Bajeti ya 2005/6.

Tume hutumia fedha hizo kutoka serikalini kuwaajiri na kuwalipa wafanyikazi na pia kugharamia mahitaji yake mengine mengi. Kutokana na upungufu huo wa fedha Tume imeshindwa kuwaajiri wafanyikazi wa kutosha na kufungua ofisi zaidi katika sehemu za mashambani ambapo ilikusudiwa kufunguliwa ofisi moja kila mwaka lakini mpaka sasa imeweza kufungua ofisi moja tu huko Wajir.

Changamoto kubwa ni kwamba Tume haina udhibiti kamili wa fedha zake. Ruzuku inayopata hupitia Wizara ya Sheria na Masuala ya Katiba. Jambo hilo linakwamisha uhuru wake kwa kuwa Wizara yenyewe ni moja ya asasi ambazo Tume hii inaweza kuitwa kuifanyia uchunguzi.

Tume imeendelea kuihimiza serikali lakini haijafanikiwa kukubali kuitengea fedha zake moja kwa moja. Jambo hilo limefanyiwa Tume ya kitaifa ya kukabiliana na ufisadi na hakuna sababu kwamba haliwezi kutekelezwa kwa ajili ya Tume hii.

## 2. Wafanyikazi

Kufikia mwezi Juni 2006, Tume ilikuwa na wafanyikazi 39, wakiwemo makamishna, huku ikiwa haijafikia kiwango kilichokusudiwa cha wafanyikazi 156 katika mpango wake wa kimsingi wa miaka mitano. Hata hivyo wafanyikazi iliyohitaji kuwa nao katika kipindi cha miaka tatu ni 94. Upungufu wa wafanyikazi umeathiri pakubwa uwezo wa Tume hii wa kutekeleza kikamilifu majukumu yake huku kukiwa na kazi nyingi ambazo hazijatekelezwa.

## 3. Ushirikiano na Serikali

Ili Tume iweze kufanya kazi kikamilifu, inahitaji ushirikiano mzuri zaidi kati yake na wizara na idara za serikali. Ingawa hilo limekuwa likihimizwa, ushirikiano huo haujaimarika kwa kiwango kinachohitajika.

Viongozi hasa katika Idara ya Polisi hawajaonyesha kutilia maanani Tume hii, ambapo bado haipewi ruhusa ya kuingia katika vituo kadhaa vya polisi kinyume na sheria na maongozi ya serikali. Katika taarifa ya wizara iliyowasilishwa Bungeni mnamo 2005, serikali kupitia Waziri katika Ofisi ya Rais alitoa mamlaka kwa Tume hii kuweza kuruhusiwa kuingia katika vituo vya polisi. Alisema wazi kwamba hakuna ruhusa kwa mtu yeyote kuitatiza Tume hii kuhusiana na suala hilo ambalo msingi wake uliwekwa kisheria.

Aliagiza kwamba arifa isambazwe kwa wahusika wote wa utekelezaji wa sheria endapo ingekuwa kuna baadhi yao ambao hawaelewi umuhimu huo. Ni jambo la kutia moyo kwamba idadi kubwa ya maafisa wa polisi katika vituo vingi humu nchini wamekuwa wakidumisha ushirikiano huo.

#### 4. Jinsi Tume inavyowasilwa kupitia maeneo ya mikoa

Tume hii sasa ina ofisi moja jijini Nairobi na ofisi mpya ya kieneo huko Wajir. Bado haiwezi kuwasiliwa kirahisi katika maeneo mengine ya nchi kama inavyoonyeshwa hapa chini.

| Mkoa                | Idadi ya watu waliowasilisha malalaamiko | Asilimia |
|---------------------|--|----------|
| Nairobi             | 581                                      | 41       |
| Kati                | 340                                      | 24       |
| Mashariki           | 154                                      | 11       |
| Rift valley         | 119                                      | 8        |
| Pwani               | 79                                       | 6        |
| Magharibi           | 70                                       | 5        |
| Nyanza              | 41                                       | 3        |
| Kaskazini Mashariki | 28                                       | 2        |
| Jumla               | 1,412                                    | 100      |

*Malalamiko yaliyopokelewa kwenye Tume katika kipindi cha 2004/5*

#### 5. Uhusiano na Bunge na Wizara ya Sheria na Masuala ya Katiba

Ili iweze kutekeleza kazi yake kikamilifu, Tume hii inahitaji uhusiano imara na Bunge ambalo ndilo linalohusika na sera, sheria za nchi na uwajibikaji wa umma. Uhusiano huo na Bunge haujakuwa imara. Tume haijapata fursa ya kushauriana kwa kina na kamati ya Bunge kuhusu utekelezaji wa

masuala ya kisheria ambayo ndiyo inayohusika na Haki za kibinadamu na masuala ya kisheria. Uhusiano na Wizara ya Sheria na Masuala ya Katiba umeimarika sana tangu kuteuliwa kwa waziri mpya katika wizara hiyo Mheshimiwa Martha Karua.

## **TUAMULIE WEWE**

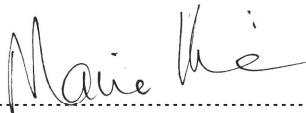
Hakutaweza kuwa na uwajibikaji katika usimamizi wa asasi za umma kama wananchi hawatapewa fursa ya kujua kinachotekelezwa na asasi hizo kwa niaba yao na pia kupewa fursa ya kutoa michango yao. Na hizi ndizo zimekuwa juhudi zetu tokea mwanzo kutoa uhasibu wa umma na sasa tutafurahia sana kusikia maoni yako kuhusiana na jambo hilo na pia kutupatia mchango wako kuhusiana na kazi yetu.

Tafadhali tuma maoni yako kuhusu kazi yetu kwa  
Bi. Linda Ochiel

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**Maina Kiai**  
**Mwenyekiti wa Tume**

**28 Julai 2006**



**Mburu Gitu**  
**Katibu wa Tume**

