



## Kenya National Commission on Human Rights

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### **PUBLIC ACCOUNTABILITY STATEMENT FOR 2006-7**

#### **STATEMENT OF SUCCESSES AND CHALLENGES**

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On July 29 2007, the Kenya National Commission on Human Rights celebrated the fourth anniversary since its establishment. In accordance with the values of the Commission and previous practice, we take this opportunity to share with Kenyans our successes and challenges over the past year. The National Commission believes that public institutions have to be accountable and open to public scrutiny. The Commission responds to this need by publishing in the national media a statement of its successes and challenges every year, and holding open forums for the public to discuss and critique its work.

#### **THE NATIONAL CONTEXT:**

Political space remained vibrant in the period. Press freedom has been at its highest in decades. Some of the reforms spearheaded by the Governance, Justice Law and Order Sector Reform programme (GJLOS) are beginning to bear fruit. The benefits of increased social spending in education and health are making a difference to the lives of poor Kenyans. Economic recovery is providing a better basis for realizing economic and social rights. Inequalities in our society remain a big concern.

Failure to make gains in Constitutional reform has been a serious draw back to better promotion and protection of human rights. The rise in insecurity across the country, particularly the challenge posed by criminal gangs such as *Mungiki*, can easily erode gains in human rights in recent years. The police response has sometimes been disproportionate. Estimates show that over 236 people have been extra judicially killed by security forces from January to June 2007.

Conflicts over land and other resources, often fuelled by local politics, erupted in different parts of the country, from Mt Elgon to Tana River District and in Kuresoi/Molo. Some of those conflicts are fuelled by impunity of the past: those who instigated conflicts previously have not been held accountable yet.

Ethnic polarisation remains one of the country's biggest challenges to democratization. Political mobilisation and horse trading within the Government of National Unity and in the opposition has been primarily anchored on ethnic identity.

With the rise in political temperatures, the likelihood of violence will not be far from the surface in the run up to the 2007 General Elections.

## **THE INSTITUTIONAL CONTEXT:**

The National Commission is a public body established in 2002 through the Kenya National Commission on Human Rights Act. It became operational on 29 July 2003 when the President, on the recommendation of Parliament, appointed nine Commissioners. The National Commission is constituted of the Commissioners and the Secretariat. Commissioners who served during the period are Maina Kiai (Chairperson), Fatma Ibrahim (Vice Chair), Lawrence Mute, Godana Doyo, Wambui Kimathi, Florence Jaoko, Tirop Kitur, Hassan Omar, and Winfred Lichuma. The Secretariat, with a staff of 33, is managed by the Commission Secretary, Mburu Gitu.

The mandate of the Commission is to enhance the promotion and protection of human rights. Although established by Government, the National Commission is independent. Its operations are guided by the United Nation's approved *Paris Principles* on the establishment and functioning of independent national human rights institutions.

The National Commission is a watchdog body. It monitors Government institutions, carries out investigations on alleged violations, and in appropriate cases provides redress to those whose rights have been violated. The Commission also gives advice to Government on how to enhance the promotion and protection of human rights. Balancing the 'watchdog' and the 'advisory' role of the National Commission is an everyday challenge.

The National Commission has sometimes been perceived as being anti-government. This perception is wrong, and is based on incorrect appreciation of the role of state watchdog institutions in general and national human rights institutions in particular. The National Commission cannot be an anti-government institution because it is a Government institution: its mandate is set out by the law, its employees are public officers, and it is funded by taxpayers money. The Commission's statutory obligations require it to be critical of the State and its officers by, for example, reporting on violations and holding the State accountable. This is what some perceive to be anti-government.

In the reporting period, the National Commission spent a total of approximately Ksh 200 million out of which Ksh 107 m was from the Government and the rest from development partners who included the Canadian International Development Agency (CIDA), the Governance Justice Law and Order Sector reform programme (GJLOS), the United Nations Development Programme (UNDP), the German Technical Cooperation agency (GTZ), the United Nations Democracy Fund (UNDEF), TROCAIRE, UNESCO, AUSAID, and the European Union.

## **OUR SUCCESSES IN 2006-2007:**

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

Between July 1, 2006 and June 30, 2007, the National Commission through the Nairobi office received and attended to reports from 2, 274 persons alleging violations of their rights, surpassing the targeted 2,000 persons. In comparison, the commission attended to 1,499, 1,412 and 411 people in the first three years of its existence - 2005/2006, 2004/2005 and 2003/2004 period respectively.

In exercise of its quasi-judicial jurisdiction, the Commission rendered judgement 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. In its judgement of September 6, 2006, the National Commission awarded Peter Makori compensation of Ksh 5 million. In the *Medo Mesama* case also before the Commission, whose hearing has commenced, the petitioner is challenging the exercise of powers by the Registrar General after the Registrar declined to register the applicant's proposed political party, *Chama Cha Mapinduzi*. The Commission's Complaints Hearing Panels are gradually emerging as a key forum where significant human rights issues will be canvassed.

### **2. Training and Capacity Building of public officers on human rights**

The efforts of the National Commission alongside those of other actors are contributing to the gradual socialization of human rights into the public service. A series of training workshops on human rights were held for judicial officers in a partnership between the National Commission and the Kenya Magistrates and Judges Association (KMJA). The trainings were held at regional levels in Nyeri, Nakuru, and Mombasa. In April 2007, a colloquium on human rights was held for Judges of the Court of Appeal and the High Court. Other trainings were conducted for prison officers and public relations officers in government ministries. Short training courses on human rights were also presented for, and at the request of, police officers, administration police officers, and newly recruited District Officers. Efforts to entrench training of public officers on human rights through public training institutions such as the Kenya Institute of Administration (KIA) are ongoing.

### **3. Promoting Accountability in the use of public resources**

The Commission views corruption as one of the critical impediments to the realization of human rights. The Commission has therefore taken the lead in profiling corruption as a human rights issue. As part of this broad strategy, the Commission embarked on a series of publications 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 first issue in the series (titled-Unjust Enrichment) was produced in the period under review and focused on the allocations in three forests. The second issue will cover the illegal and irregular allocations of parastatal lands.

#### **4. Promoting Accountability in the electoral process**

The actions of the Commission have substantially raised the bar of accountability in the conduct of election campaigns in the country. Throughout the period in review, the National Commission has worked with diverse organizations and groups to launch the Movement for Political Accountability (MOPA). MOPA aims to promote accountability of elected leaders from ‘bottom up’ through empowerment of voters, who are asked to take their civic duty seriously and make demands for accountable leadership upon their leaders. MOPA has developed presidential and parliamentary aspirants’ human rights and accountability Charters which outline a set of key commitments to issues that define what a good leader should stand for, in line with the consistent calls over the years for Kenyans to elect “good” leaders. Several provincial launches to disseminate the charters to the public have been held and outreach activities with religious leaders from the provinces undertaken. MOPA has received the endorsement and support of key religious leaders and civil society organizations.

In July-August 2006, the National Commission carried out a two-month monitoring exercise during the by-election campaigns following the deaths of five MPs in a plane crash.

Building on these experiences, the National Commission will monitor the 2007 General Elections.

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

A policy and legislative framework anchored on human rights is a key pillar for sustaining rights in a country. During the period, the National Commission provided advice to the Government on a number of proposed bills and policies. The Commission seeks to ensure that proposed bills and policies advance the promotion and protection of human rights. The National Commission is pleased that the Government is increasingly seriously considering and in many cases adopting the recommendations of the Commission. Examples of bills and policies which the Commission reviewed in the period are summarised below.

##### **a. Media Bill, 2007**

The National Commission made strong recommendations on the Media Bill 2007 calling for the government to focus on establishing a framework for providing redress to individuals or groups alleging grievances against media practitioners and media self regulation. It is further anticipated that both the Government and the media industry will participate in constructive dialogue to develop a regulatory framework that will promote democracy, human rights and accountability in Kenya.

##### **b. Bill on hate speech**

The National Commission worked with stakeholders in both government and the civil society, including the Kenya Law Reform Commission, to draft a ‘Prohibition of Hate Speech Legislation’. The core objectives of the proposed legislation are to foster national unity, promote ethnic and cultural diversity, democracy and preserve public order. It is expected that the proposed Bill will be placed before Parliament for deliberation and eventual enactment the soonest.

**c. Bill on Constitutional and Electoral reforms**

The National Commission submitted possible constitutional amendments to a number of forums including Parliament, the Ministry of Justice and Constitutional Affairs, and the Attorney General during the various discussions on the Constitution review process. Some of these recommendations were adopted by the various forums. However, the review process has been held hostage by interested parties, which remains a concern to Kenyans,

**d. Proposed Amendments to the Constituency Development Fund Act**

The National Commission has been keen on the discussions regarding the review of the Constituency Development Act, 2003. Apart from recommendations sent to Parliament and the National Management Committee, the National Commission in collaboration with the Kenya Law Reform Commission and other key members of the Thematic Group 5 under the GJLOS Programme, consolidated even stronger recommendations which will strengthen the proposed amendments CDF Bill of 2007.

**e. Labour bills**

The Commission reviewed the Employment Bill, the Labour Relations Bill, the Occupational Safety and Health Bill, the Work Injury Benefits Bill and the Labour Institutions Bill that are meant to promote the rights of workers and working conditions amongst other things, and presented its recommendations to the Attorney General. These Bills ought to be treated with the urgency they deserve.

**f. Education for persons with disabilities**

The National Commission has made several recommendations towards reforming and enacting policies and legislation that would enhance access to education by children with disabilities through an occasional paper. The report makes a key observation that basic education is not free for children with disabilities, whereas the Government is implementing Free Primary Education.

**g. The Convention on Rights of Persons with Disabilities**

The contribution of the National Commission on the development of the Convention on Rights of Persons with Disabilities (CPD) is a success story. The Commission participated actively in the drafting of the Convention up to its adoption by the UN General Assembly in November 2006. The Commission lauds the Government for having signed it on 30<sup>th</sup> March 2007. The Commission plans to have Government ratify and domesticate the Convention to enable its implementation in Kenya.

**h. Guidelines on evictions**

Working with relevant ministries as well as other organizations active in housing rights, the National Commission has been participating in the development of guidelines that can be used to ensure that evictions, where necessary, are conducted in a 'human rights' manner. In partnership with a coalition of national and international human rights organizations the Commission organized a national people's symposium on eviction guidelines, developed

brochures on the “Peoples’ declaration on Eviction Guidelines” and undertook a fact finding missions.

**i. Position paper on abolition of the death penalty**

The National Commission launched a position paper in 2007 calling for the abolition of the death penalty in Kenya. While no death penalties have been carried out in Kenya since 1987, the laws that allows imposition of the death penalty remains, and every day Kenyans are being sentenced to hang for murder, robbery with violence, and attempted robbery for violence. The National Commission’s view is that the death penalty is not a deterrent to crime and constitutes a violation of the right to life.

**j. Development of national policy on human rights**

The National Commission together with the Ministry of Justice and Constitutional Affairs has continued to spearhead the process of development of a national policy on human rights. Regional level hearings to receive the views of Kenyans on the proposed policy on human rights have commenced, and have been completed for the Rift Valley province. More hearings are already planned.

**k. Development of ISO 26000 on Social Responsibility**

The National Commission has been working to influence the corporate world and other non-state actors to contribute towards the realization human rights by investing in social responsibility activities. The ISO 26000 Standard is intended to provide guidance for organizations to take responsibility for the impact of their activities on society and the environment. During the year under review, the Commission organized a regional meeting to promote awareness on Social Responsibility among Small and Micro- Enterprises. It provided input to the draft ISO 26000, participated in 4<sup>th</sup> Meeting of the ISO Working Group on Social Responsibility held from 27 January to 2 Feb 2007 in Sydney, Australia, in addition to facilitating the meetings of the National Mirror Committee. It is also involved in activities aimed at promoting initiatives such as the UN Global Compact

**6. Catalysing police and penal reforms**

The Commission conducted visits to at least twenty three (23) police stations, posts and patrol bases on the basis of reported complaints. These visits helped in monitoring the excesses of the police towards suspects held in custody and occasionally resulted in the release of illegally confined persons and among other immediate relief.

The National Commission has continued advocacy for the establishment of an oversight mechanism for the police. In October 2006 the Minister for Justice announced the creation of a new body to receive public complaints about police excesses and hold the police accountable. Not much has been heard from the Government on what would be a key development in policing in the country. A regional conference bringing together national institutions and civil society organisations to discuss policing, with a focus on oversight, was held in Nairobi in June 2007.

The National Commission continues to welcome the pro-reform policy of the Prisons Department. However, translating the pro-reform policy into lasting structural and attitudinal changes has been slow. For example, proposals to reform Prison Rules have yet to be gazetted nor have visiting justices been reappointed as advised. Congestions in prisons continues to grow yearly.

#### **7. Strengthening national level coordination and linkages among criminal agencies**

The National Commission together with other players in the criminal justice sector has been at the forefront to bring the actors in the criminal justice system to dialogue over issues of access to justice for the people who utilize their services. Towards this end, the Commission supported a number of court users committees which bring together all the actors who are service providers in the justice system to dialogue and come up with ways of removing clogs in the administration of justice. Such forums took place in Kitale, Kerugoya, Meru, Mwingi, Nakuru, Kericho, Nairobi, Mombasa, Bungoma, Gatundu, Kajiado, and Naivasha among others.

#### **8. Follow Up on Malindi Public Inquiry on Human Rights Violations**

During the reporting period, the Final Report on the Inquiry on Human Rights Violations by Salt Mining Companies in Malindi was released. Key findings included violations of the rights of workers by the companies and environmental degradation. There has been ongoing work to disseminate the report locally. The Commission has been actively engaged with government officers in the region, salt mining companies, and the local community towards a phased implementation of the recommendations.

#### **9. Setting the Agenda for Human rights in Kenya**

Minorities and indigenous people's rights started evolving within the Commission late 2006. This followed a workshop of experts held in Nairobi to shed more light on the issues affecting especially the pastoralists and hunter-gatherer communities in Kenya. The National Commission in partnership with the Ministry of Justice and Constitutional Affairs, Civil Society and the Office of the High Commissioner on Human Rights successfully facilitated the mission of the UN Special Rapporteur on Indigenous Peoples Rights and Freedoms to Kenya.

#### **10. Leadership on topical Human Rights through the Journal, *Nguzo za Haki***

The Commission's human rights journal *Nguzo za Haki* is fast emerging as a useful resource reference on topical human rights issues. The recently released Kenya National Human Development Report used the Commission's Issue No 4, September 2005 of *Nguzo za Haki* on the theme of Security and Human Rights, as a reference material. Similarly, the Commission's 5<sup>th</sup> and 6<sup>th</sup> edition of *Nguzo za Haki* on Land and Human Rights; and Labour and Human Rights respectively, have been quoted as useful reference materials. The Commission continues to receive feedback from *Nguzo za Haki* readers appreciating the usefulness of the publication.

## **11. Motivating reformists through National Human Rights Awards: the 4<sup>th</sup> Awards**

The Commission's Annual Human Rights and Democracy Awards continue to honour, motivate and reward human rights reformists in Kenya. In the 4th Annual Human Rights and Democracy Awards issued in February 2007, the Commission honoured Kenya's freedom fighter, Pio Gama Pinto with the 2007 *Milele* (Lifetime Achievement) Posthumous Award. This Award was in recognition of his tireless commitment to the fight for freedom, equality and Justice. The 2007 *Milele* (Lifetime Achievement) Award was also conferred to an exceptional Kenyan athlete, Tegla Loroupe, for her determined work on peace, women's rights and education.

## **12. Protecting Human Rights Using Culture**

Using cultural frameworks to address issues of human rights and development is an imperative because in spite of the protection afforded under national laws and formal institutions, many vulnerable members of society are unable to seek redress from the mainstream legal justice system in their quest to claim and protect their rights. The result has been a situation where existing legal structures and social trends have by and large worked to the detriment of the vulnerable in society in regard to the protection and enforcement of their human rights. During the period under review, the Commission continued working with the Luo Council of Elders to enhance the property ownership and inheritance rights of widows and orphans in the Nyanza region. It held three community workshops which drew participation from women CBOs, FBOs, Luo Council of Elders, local government and the provincial administration. The Commission also provided assistance to widows who were experiencing financial difficulties in relocating.

The Commission has also begun exploring the possibility of working with the Meru Council of Elders to advance human rights work in the region using cultural frameworks.

## **13. Increasing the Commissions Accessibility and Public Awareness on Human Rights Issues in the Country**

The Commission has finalised plans to open a second regional office in September, 2007 to be based in Kapenguria, West Pokot District, to increase its accessibility in the North Rift Valley. The first regional office is located in Wajir, North Eastern Province. To enhance accessibility by more Kenyans to its services, human rights clinics were held in different parts of the country including the Western province, Mandera, and Marsabit regions. Human rights sessions were also held at a number of agricultural shows across the country: Meru, Nakuru, Mombasa, and Nairobi.

## **OUR KEY CHALLENGES:**

### **1. Slow political and governance reforms**

The promotion and protection of human rights would have gained significantly if the 'Bomas' or 'Wako' drafts of the Constitution had been enacted; both had many, almost similar, proposals to advance human rights. The proposals included an expanded bill of rights and stronger institutions such as the proposed Commission on Human Rights and Administrative Justice. Regrettably, meaningful constitutional reform no longer appears to be a critical agenda of the political class in Kenya.

The Government's commitment to fighting corruption appears to have been on the wane during the reporting period. Failure to decisively deal with endemic high level corruption has also had an immediate linkage to human rights enjoyment. Not only does corruption contract our fundamental liberties and freedoms; by diverting public funding to personal 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 needs to speed up prosecutions of the corrupt.

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

The National Commission uses the Government grant to recruit and pay staff and meet other operational costs, while primarily relying on donors to fund programme costs. In 2006/7, the Commission received from the Government a grant of Ksh 92 million for recurrent expenditure. This level of support is inadequate for an institution with a wide and nationwide mandate. The inadequacy of the Government grant has meant that the Commission cannot hire adequate staff or open offices in the rural areas to increase its access and services to Kenyans. The current staffing of the National Commission is only 33 persons.

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 National Commission continues to request Government for the creation of a separate vote.

### **3. Managing public expectations**

Members of the public have very high expectations of the Commission considering the powers the Commission has. Their demands are often times not easy to meet in a short span of time. Members of the public expect to receive immediate remedy upon lodging a complaint.

#### 4. Poor accessibility to the Commission

The Commission presently has one office in Nairobi and one regional office in Wajir. To a large extent, this makes the Commission's accessibility to those living in rural areas difficult. When petitions are lodged through the mail, they may take a long time to reach us for the requisite intervention. To address some of these challenges, the National Commission is opening a second regional office in North Rift by September 2007.

#### 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 to Linda Ochiel on Tel. 020-2717928/08/00 Email: [lochiel@knchr.org](mailto:lochiel@knchr.org) or write at the above address.



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**Maina Kiai**  
Chairman



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**Mburu Gitu**  
Commission Secretary

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