KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)

ANNUAL REPORT FOR THE 2009 – 2010 FINANCIAL YEAR
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<tr>
<th>ADR</th>
<th>Alternative Dispute Resolution</th>
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<tr>
<td>CAT</td>
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<td>IDS</td>
<td>Institute for Development Studies</td>
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<td>IEC</td>
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<td>MoJNCCA</td>
<td>Ministry of Justice, National Cohesion and Constitutional Affairs</td>
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<td>MOPA</td>
<td>Movement for Political Accountability</td>
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CHAIRPERSON'S FOREWORD

The period under review was a momentous year for the country in general and for the Kenya National Commission on Human Rights in particular. This is the year in which a draft Constitution that would consolidate long-term reforms and move the country towards a human rights state was published. The draft Constitution was overwhelmingly passed by Kenyans at the Constitutional Referendum on 4th August 2010 and was promulgated on 27th August 2010. The new Constitution entrenches the human rights commission as a constitutional commission, with an expanded mandate. It has also expanded the Bill of Rights to include economic, social and cultural rights and explicitly recognizes minority and vulnerable groups. This Constitution is, therefore, expected to make several gains for Kenyans not only with regards to human rights, but in their overall well-being: the Commission will therefore focus on monitoring as well as advising the Government on implementation of the Constitution to ensure that the gains made are not lost but are translated into actual benefit for Kenyans.

As work on the constitutional review got underway, the Commission compiled and submitted various memoranda and advisories to the Committee of Experts on Constitutional Review (CoE), the Parliamentary Select Committee on Constitutional Review and Parliament both on the Bill of Rights and the entire constitutional content. The Commission monitored every stage of the constitution making process to ensure human rights standards were infused into the (then proposed) Constitution. With the referendum fast approaching, the Commission embarked on a countrywide civic education drive to inform Kenyans of the content of the proposed constitution to enable them to make an informed choice as they cast their votes. The Commission also focused on educating Kenyans on the gains made in the proposed Constitution and monitored the campaigns of both the YES and NO sides to document politicians engaging in hate speech and incitement of the public, and other violations of human rights.

This year also saw the country concentrate its energies on sustaining the reform momentum outlined under Agenda 4 of the National Accord to address the root causes and prevent the resurgence of violence as seen in the wake of the disputed 2007 General Elections. Constitutional reform was one of the key milestones outlined in the National Accord as a measure towards preventing the resurgence of violence in Kenya. As part of its focus on monitoring implementation of the National Accord, the Commission continued to advise and
advocate for land reforms, constitutional review, prosecution of the perpetrators of the post election violence through either a local tribunal or the International Criminal Court and the resettlement of internally displaced persons. The Commission also made significant contributions to judicial and security sector reforms as a member of the Taskforce on Judicial Reforms and the Taskforce on Police Reforms.

The Commission remains optimistic that the reform agenda, in particular focus on addressing institutional reforms and issues of transitional justice will not be lost even as we commence implementation of the new Constitution. The Commission will continue to monitor and advice with regards to institutional reforms, and will support both the work the TJRC and the ICC should it open investigations into the 2007 post-election violence to ensure that justice for the victims of historical injustices prevail.

During this financial year, the Commission finalized and launched its second strategic plan for the period 2009-2013, in which it reaffirms its vision of being a nationally and globally respected public institution providing leadership in human rights. This report therefore marks the first year of implementation of the Strategic Plan through the work of the Commission. In the next financial year, besides being guided by the Strategic Plan, the work of the Commission will additionally be guided by the new Constitution. In line with the priorities in the new Strategic Plan, the Commission is focusing on an elaborate outreach and regionalization strategy as well as building partnership with local CSOs and CBOs spread across the country to enhance its reach and accessibility to Kenyans. Towards this end, the Commission has already engaged a consultancy firm to conduct a baseline survey on the status of human rights and to map out key strategic partners with who the Commission would collaborate in its work. A formal MoU will be entered into with these partners in the nest financial year, including an elaboration of the nature of partnership to be entered into.

Finally, we express our appreciation of Kenyans for their unwavering support to the Commission in delivering its mandate. We will remain faithful to the trust and confidence that Kenyans have bestowed on us to ensure that they are able to realize the full enjoyment of their fundamental rights.

Florence Simbiri-Jaoko
CHAIRPERSON
SECRETARY’S MESSAGE

This report is the seventh Annual Report of the Kenya National Commission on Human Rights and it comes at a time when the Commission is embarking on the first year of implementation of its second Strategic Plan (2009-2013): the first Strategic Plan covered the period 2003 to 2009. This report, which covers the work of the Commission for the period July 2009 to June 2010, is prepared in partial fulfillment of the Commission’s statutory obligation under section 21(2) of the Kenya National Commission on Human Rights Act (2002).

The Kenya National Commission on Human Rights (KNCHR) is an independent national human rights institution established by an Act of Parliament (KNCHR Act, 2002). It became operational in July 2003, having succeeded the Standing Committee on Human Rights which was established in 1996 through a Presidential Decree. The Commission envisions itself as a nationally and globally respected public institution providing leadership in human rights. Its mission is to enhance the protection and promotion of human rights in Kenya through strategic programming and partnership. The Commission bases its core values on the internationally recognized human rights principles of universality, indivisibility, interdependence and interrelatedness of human rights and seeks to foster and uphold values of independence, integrity, inclusiveness, tolerance and accessibility.

The Commission has a twofold mandate, to act as a watch-dog over the Government in the area of human rights and to provide a leadership role in moving the country towards becoming a human rights state. This mandate is achieved through the discharge of the Commission’s core functions and powers as set out under section 16 and 19 of the KNCHR Act. The functions include conducting investigations (on its own initiative or upon complaints made), assessing conditions under which inmates are held in prisons and other places of detention, informing and educating the public on human rights, recommending to Parliament effective measures to promote human rights, inculcating citizens’ awareness of their civic responsibilities and obligations, and ensuring governments’ compliance with international obligations under human rights treaties.

The second Strategic Plan re-organized the Commission’s strategic direction, including the re-organization of the departments of the Commission towards better realization of its mandate and the introduction of new strategies with a focus on enhancing accessibility of the Commission through regional outreach and strategic partnership building. This Strategic Plan has formed the basis of sustained fundraising for increased financial resources to support the
work of the Commission. The implementation of the Strategic Plan is focused towards realization of four Key Result Areas (KRAs) as follows: reduced systemic human rights violations; increased application of human rights principles and standards in implementation of the Constitution; increased knowledge and practice on human rights principles and standards in public and private spheres; and organizational growth and development. With the adoption of the new Constitution (which took place after this financial year), the KNCHR will be transformed into a Constitutional Commission, the Kenya National Human Rights and Equality Commission (KNHREC), which has an expanded mandate to include the work of the Gender Commission and the Ombudsman. The modalities of transition into KNHREC (that is expected to be completed by 27th August 2011 in line with the Fifth schedule) will form part of the key focus of the Commission in the next (2010/2011) financial year. The entrenchment of the Commission as a Constitutional Commission provides stronger safeguards for the Commission’s independence and protection from political interference. We also hope that this will provide an avenue for increased resource allocation to the Commission given the expanded mandate, and that this will enable the Commission to establish more regional offices to enhance its accessibility to Kenyans.

While the Commission was successful in the implementation of many of its set out activities, there were some challenges, including inadequate staffing levels owing to limited government funding that affected the implementation of its work. The Commission received a total allocation of Ksh.135,000,000 against a budget of Ksh. 366,784,000. With the coming to an end of the GJLOS basket funding, the Commission engaged with donors to seek direct funding for its work. The budget deficit was therefore funded by development partners that the Commission acknowledges with special thanks, specifically, the European Union, Embassy of Norway, the Dutch Embassy, GTZ, UNDP and OHCHR. Over the next financial year, the Commission will continue to liaise with the Government for more funding so as to increase staffing capacity to enable it to realize its goals and objectives as set out in the Strategic Plan, as well as to enhance its accessibility across the country through the establishment of additional regional offices. Through funding from development partners, the Commission was able to hire additional staff in core critical positions that will enhance the Commission’s efficiency, effectiveness, results tracking and optimal resource use. These include the positions of Internal Auditor, Monitoring and Evaluation Officer and IT officer, positions which did not exist in the Commission’s staff establishment under the first Strategic Plan. At the end of the financial year, the Commission was able to increase its staff from 45 to 60 and more positions are expected to be filled in the next financial year.

The Commission would not have realized its mandate and achieved as much as it did without the dedication of Commissioners and Staff, whom I wish to sincerely thank. The next financial year will be an important year as the country commences implementation of the new Constitution. The Commission will therefore engage in further internal re-organization and rethinking to ensure that its focus and priorities are in line with the new Constitution. It will also engage in projects aimed at monitoring and advising the Government on implementation of the new Constitution. Of particular significance to the Commission in the next financial year will be transition from the KNCHR to KNHREC and the development of new legislation
that will ensure an even stronger and well resourced human rights commission effectively discharging its constitutional mandate.

Mohammed Konso Hallo
SECRETARY TO THE COMMISSION
EXECUTIVE SUMMARY

The Kenya National Commission on Human Rights (KNCHR or the Commission) is an independent National Human Rights Institution (NHRI) established in July 2003 with the mandate to protect and promote human rights in Kenya. The Commission consists of nine commissioners nominated by Parliament and appointed by the President, and the Secretariat headed by the Secretary who is also its Chief Executive Officer. The Commission is independent of any government ministry or department and it sets its own priorities and directs its own activities. The Commission is nevertheless subject to existing government laws that mandate it to submit its Annual reports to the President and the National Assembly. For operational purposes, the Commission obtains budget approval from the Ministry of Justice, National Cohesion and Constitutional Affairs.

This report documents the work of the Commission during the 2009/2010 financial year in line with the Strategic Plan and also annexes the Auditors General’s report for the same period.

The Commission has two broad mandates. While on one side it plays a watchdog role over the government in the area of ensuring compliance with human rights, on the other hand it plays a key role in leadership and advisory on key issues with a view to transforming Kenya into a human rights state. Section 16 of the KNCHR Act provides for the functions of the Commission, including: investigations of violations of human rights; visiting and inspecting prisons and other places of detention; educating and training the public on human rights; advising Parliament on the enactment of policies and legislation to promote human rights; ensuring government compliance with international obligations and assisting other institutions to promote and protect human rights. The Commission also has the powers of a court to summon attendance and require a person to disclose any information relevant to matters under investigation. The Commission is able to order the release of anyone unlawfully held, payment of compensation and any other lawful remedy or redress.

The Commission’s programmatic operations are guided by its Strategic Plan with its four Key Result Areas (KRAs), namely: reduced systemic human rights violations; increased application of human rights principles and standards in the implementation of the new constitution; increased practice and knowledge of human rights principles and standards in public and private spheres; and organizational growth and development. To deliver on the KRAs, the Commission has organized its programmatic work around seven core departments. These are: Complaints and Investigations; Redress; Research and Compliance; Reforms and Accountability; Public Education and Training; Economic and Social Rights and Outreach and Regionalization Departments with two Regional Offices in the North Rift (Kitale) and Northern Kenya (Wajir). Seven support departments provide facilitative assistance to these departments as follows: Public Affairs and Communication; Finance; Information Technology; Human Resource and Administration; Procurement; Internal Audit; and Monitoring and Evaluation.
The Complaints and Investigation department received and processed human rights violations complaints and analyzed the trends of systemic human rights violations. It held human rights clinics to increase accessibility and promote human rights and also conducted capacity building trainings on investigations and gender based violence. The headquarters received a total of 1,533 complaints, indicating a decline from 1,803 received the previous year. The establishment of other relevant bodies with complaints and redress mechanisms like the Public Complaints Standing Committee, the Truth, Justice and Reconciliation Commission and the National Cohesion and Integration Commission could have contributed to the decline, since matters which would otherwise have been reported to the Commission were reported to these bodies. The programme referred complaints to these bodies when they were best suited to handle them. A high percentage of complaints were received from Nairobi with least from North Eastern region. In the period under review, the Commission closed 52 files for various reasons that included lack of mandate, want of follow up by complainants, cases pending before court and where referrals were made to other competent bodies. Key investigations were undertaken in some areas, including harassment of inmates in Langata Women Prison, sodomy allegations against one Father Kizito, insecurity in Isiolo, allegations of harassment by government officials in Orma, various complaints of police harassments, fatal shootings by the police, and cases of disappearances committed by the police and matters of personal security. Human rights clinics were conducted to educate vulnerable segments of society, namely the IDPs in various camps in the country. The program recorded success stories which are documented in this report.

The Redress department undertook public litigation, represented the Commission in matters pending before court and also handled litigation for cases filed against the Commission emanating from the post election violence. Specifically, the Commission appeared as amicus curiae in the case of Richard Muasya vs. the AG and three others. This was a constitutional petition by an intersexual person claiming that the Constitution failed to protect his unique sexuality status. The case provided a forum for engagement and discussions of rights of intersexual persons in Kenya. The case is pending judgment. Other cases emanating from the post-election violence handled include Uhuru Kenyatta vs. KNCHR, William Ruto vs. KNCHR and Stanley Githunguri vs. KNCHR and Florence Simbiri Jaoko. All the applicants in the matters are seeking to expunge their names from the KNCHR’s post-election violence report titled On the Brink of the Precipice: A Human Rights Account of Kenya’s Post 2007 Election Violence. One judgment was obtained in the Uhuru case where the court declined to expunge his name as requested. The other two matters are still pending before court.

The Reforms and Accountability department focused its work on four major areas, namely transitional justice, reforms in the security, penal and judicial sectors, peace building and national integration and anti-corruption and political accountability. The department engaged in heightened advocacy for police reforms through capacity building of officers and also sustained dialogue on security sector reforms. The information gathered through these interventions was presented to the Committee of Experts (CoE) that was writing the new Constitution. The department developed a documentary on the security sector that is
intended to inform the public about the challenges faced by the security sector. The human rights defenders program facilitated the protection of nine witnesses, who were mainly witnesses from the KNCHR’s PEV investigations. The department engaged in sustained advocacy for the protection of witnesses and was key in advocating for the establishment of an independent witness protection unit free from governmental influence.

The Research and Compliance department also worked closely with the CoE and the Parliamentary Select Committee on the Constitution to ensure the infusion and integration of human rights standards and principles in the new Constitution. The department commenced work on writing the Third State of Human Rights report, which is a requirement under the constitutive Act. The report focuses on assessing government performance on Vision 2030 using the 1st Medium Term Plan of Kenya’s Vision 2030 as the guiding factor for implementation. Jointly with the UNHCR, the department commenced work on a study of statelessness in Kenya. The study brought to the fore the challenges faced by persons resident in Kenya but who do not have any nationality and as such are unable to claim or enjoy their rights. They also continued working with stakeholders on the National Policy and Action Plan for the promotion and protection of human rights (NAP). The government finalized the Policy and commenced work on the action plan. Linked to the NAP was the development of national human rights indicators in which a forum was held jointly with the Office of the High Commissioner for Human Rights (OHCHR) to raise awareness on development of common and appropriate human rights indicators to assess realization of human rights. Research and Compliance continued to give leadership in the development of the common human rights indicators to be used for programming by government ministries and departments.

The Research department further implemented various activities aimed at increasing the ratification and domestication of international and regional human rights treaties and standards. It worked on the prohibition of torture and cruel inhuman or degrading treatment or punishment in Kenya and has developed the Prevention of Torture Bill. The department spearheaded the Universal Period Review (UPR) and brought together CSOs by building their capacity to engage in the UPR process, including through the presentation of reports. The outcome of the engagement was a very successful UPR process that saw interactive dialogue with the Human Rights Council. The department also enhanced inclusion and participation of vulnerable sectors of society, particularly persons with disabilities, by holding stakeholder’s forums to discuss intervention strategies for lobbying for full domestication of the Convention on the Persons with disability through amendment of the Disability Act.

The Economic, Social and Cultural Rights department, whose core mandate is to enhance the realization of economic, social and cultural rights, broadly worked on various subject areas relevant to the promotion of ECOSOC rights. Its outcomes forged on greater commitment by businesses to the respect of human rights, protection of the rights of the internally displaced persons, profiled public expenditure as a tool of realization of rights of the vulnerable and marginalized groups and worked on profiling corruption as a human rights issue. The department also worked with cultural systems for the protection of the rights of the
vulnerable, and profiled and promoted rights of minority and indigenous people. The department conducted three missions to monitor resettlement in areas identified by the government. The process was documented and the reports were shared with the relevant ministries. To this end, in collaboration with partners (Protection Working Group), the department participated in the development of a draft National IDP policy. The department’s focus on business and human rights work enhanced engagement through round table discussions with the public sector, which identified key areas and initiatives that public sector corporations could work on to promote human rights. This includes training on human rights, corporate social responsibility and employment, and review of employment wellness programmes. Further with regards to businesses, the department commenced working with cooperatives to mainstream human rights in the handling of cooperative affairs. The department intervened in the matter of Lyengo Farmers Cooperative Society where farmers alleged that their rights had been violated. Upon request, the department facilitated training for the farmers and built their capacity to understand human rights and the Cooperative Act.

Following a successful public inquiry in Malindi in 2006, the department continued to engage CSOs to empower them to monitor implementation of the recommendations of the inquiry. Further, complaints were received from the communities on continuous violations of their rights by the provincial administration and the police for using excessive force. The department was able to reconcile the parties after meeting with them. The department has successfully worked with the Luo Council of Elders in Nyanza and has facilitated the resettlement of widows who were disinherited using cultural structures. The project now has been replicated in Meru with the Njuri Njeke. The design of the Meru project is borrowed from the lessons learnt in Nyanza. Finally, the department responded to several other issues that are relevant under ECOSOC rights. These included responding to cases of forced evictions; advising on the right to housing, protection of domestic workers, and protection of the rights of minority and indigenous groups; and promoting the right to water. The various lessons learnt will be used to plan future interventions.

The Public and Education department worked to enhance the knowledge and skills relating to human rights of the public, state and non-State actors. It also conducted training of trainers to enable them to appreciate and implement the rights based approach to programming principles. To this end, the department conducted public education and training for various groups. These included local governments, immigration officers, peacekeepers, administration police, prison officers, the police, CSOs and FBOs. To enhance sustainable capacity building, the department also assisted prison officers to review their curriculum to include human rights principles and standards. In partnership with Kenya Institute of Administration (KIA), the department developed a human rights training curriculum for use during the training of public officers at the institution. The department also participated in awareness raising activities that included ASK public shows and Public Service Week. While the department successfully developed partnerships and enhanced awareness, the department lacked sufficient human and financial resources to meet Kenyans’ expectations regarding its work.
The Regional Outreach programme mainly promoted the activities of the two regional offices in Wajir and Kitale. The Commission set up these offices in order to increase and enhance its accessibility in the most marginalized areas of the country. The Northern Kenya Regional Office in Wajir received and processed 185 complaints: labor related matters recorded the highest complaints received. Only a small fraction was assessed and found admissible whereas the majority of the cases were found inadmissible. To enhance human rights awareness in the region, the Wajir office conducted forums on civic education on the draft Constitution. The forums were held for women, CSOs, and religious leaders. The office also made various inspection visits to places of detention and investigated allegations of torture by the police. Other activities undertaken included awareness raising, strengthening the region’s human rights networks and using the media to enhance human rights awareness.

The North Rift Regional office had initially been set up in Kapenguria but was moved to Kitale due to the accessibility challenges that were experienced. The office received and processed a total of 213 petitions. The office was also engaged in public education and training, collaboration and working with partners, profiling and monitoring IDPs’ resettlement, and monitoring prisons and other places of detention. A key success story for the region was an intervention in a matter where a police officer had shot and injured a complainant but was not arrested. After the intervention of the regional office, the culprit was charged, four years after the incident. Generally, however, the office faced significant operational challenges owing to the vast size of the area serviced and the high rate of poverty amongst its residents. The office also engaged in other activities, among them public education and training, collaboration and networking, and monitoring the IDPs’ resettlement. A notable investigation handled by the office related to the murder of 17 individuals for allegedly engaging in witchcraft. The office intervened and some suspects have been arrested and charged in court.

Generally, the Commission was able to successfully deliver on its core mandate. This is in spite of the limited budget that it received from the Government. The budget shortfalls were addressed through sustained fundraising and budgetary support from various development partners as indicated in the Secretary’s report.
CHAPTER ONE: INTRODUCTION

1.1: About the Kenya National Commission on Human Rights

The Kenya National Commission on Human Rights (hereinafter “the Commission” or “the KNCHR”) is an independent National Human Rights Institution established in July 2003 through an Act of Parliament. Its core mandate is to further the protection and promotion of human rights in Kenya. There are a total of 119 similar bodies established in many countries in the world. The Commission succeeded the Standing Committee on Human Rights that was established through a Presidential decree in 1996. The Commission has its main office in Nairobi with two regional offices in Wajir for Northern Kenya region and in Kitale for the North Rift region. The Commission plans to open two additional regional offices in the coming financial year.

The Commission consists of nine Commissioners and the Secretariat. Commissioners are nominated by the National Assembly and appointed by the President and are engaged on a full time basis. Commissioners have five year tenure renewable once and enjoy security of tenure; they elect the Chairperson and the Vice Chairperson amongst themselves. Below is the list of Commissioners that served during the reporting period.

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<tr>
<th>Commissioners</th>
<th>Position</th>
<th>Appointment</th>
<th>Tenure ends</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. Hassan Omar Hassan</td>
<td>Commissioner (Tendered resignation as Vice-chair in May 2009)</td>
<td>January 2007</td>
<td>January 2012</td>
</tr>
<tr>
<td>Ms. Winfred Osimbo Lichuma</td>
<td>Commissioner</td>
<td>January 2007</td>
<td>January 2012</td>
</tr>
<tr>
<td>Ms. Wambui Kimathi</td>
<td>Commissioner</td>
<td>Re-appointed in January 2007</td>
<td>January 2012</td>
</tr>
<tr>
<td>Ms Fatuma Ibrahim Ali</td>
<td>Commissioner</td>
<td>Re-appointed in November 2007</td>
<td>November 2012</td>
</tr>
<tr>
<td>Mr. Lawrence Mute</td>
<td>Commissioner</td>
<td>Re-appointed in November 2007</td>
<td>November 2012</td>
</tr>
<tr>
<td>Ms. Fatuma Adan Dullo</td>
<td>Commissioner</td>
<td>November 2007</td>
<td>November 2012</td>
</tr>
<tr>
<td>Dr. Samuel Tororei</td>
<td>Commissioner</td>
<td>November 2007</td>
<td>November 2012</td>
</tr>
</tbody>
</table>
The secretariat is composed of the Secretary, who is appointed by the Commission and acts as its Chief Executive Officer, and members of staff. At the close of the reporting period, there were 60 members of staff. The Commission’s members of staff serve on five-year renewable contracts. The Commission has an active internship programme that annually provides opportunities to young professionals interested in human rights. During the reporting period, with assistance from development partners, the Commission was enabled to hire additional staff including those relating to previously non-existent but vital positions of Internal Auditor, monitoring and Evaluation officer and IT officer. It is expected that these recruitments will facilitate the Commission to achieve even higher levels of efficiency, effectiveness and optimal resource utilization with results for Kenyans.

The Commission is not subject to the authority or control of any person or authority in the performance of its functions: it values and strongly safeguards its independence. The Commission sets its own priorities, and determines how to use the resources allocated to it. Operationally, the Commission gets its budget approval through the Ministry of Justice, National Cohesion and Constitutional Affairs (MoJNCCA). The Commission submits its annual estimates of expenditure to the Minister for approval (section 30(3) of KNCHR Act) and is required to submit its Annual and Special reports to the President and the National Assembly through the Minister (section 21 of KNCHR Act).

1.2: Mandate, functions and powers of the Commission

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

The functions of the Commission are set out in section 16 of the KNCHR Act. These are:

1. To investigate, on its own initiative or upon a complaint made, the violation of any human right;
2. To visit prisons and other places of detention or related facilities to access and inspect the conditions under which inmates are held;
3. To inform and educate the public about their human rights for the purposes of enhancing respect for human rights;
4. To recommend to Parliament effective measures to promote human rights;
5. To formulate, implement and oversee programmes intended to inculcate citizens’ awareness of their civic responsibilities and appreciation of their rights and obligations;
6. To act as the Chief Government agent in ensuring the Government’s compliance with its obligations under international treaties and conventions on human rights;
7. To encourage the efforts of, and to cooperate with, other institutions working in the field of human rights for the purpose of promoting and protecting human rights;
8. To perform such other functions as the Commission may consider necessary for the promotion and protection of human rights.
9. The Commission is mandated to promote and protect all human rights – economic, social and cultural rights as well as civil and political rights.

The Commission has the powers of court under section 19(1) to:
- Issue summons or other orders requiring the attendance of any person before it, and the production of any document or record relevant to any investigation by the Commission;
- Question any person in respect of any subject matter under investigation to the Commission, and
- Require any person to disclose any information within such person’s knowledge, which is relevant to any investigation by the Commission.

The Commission has the power under section 19(2) of the Act to provide remedies where there is a human rights violation, including:
- The release of any unlawful detained or restricted person;
- The payment of compensation; and
- Any other lawful remedy or redress.

When carrying out an investigation, the Commission can:
- Summon and enforce the attendance of any person for examination;
- Require the production of any document; and
- Subject to the Official Secrets Act, requisition any public records or copies from any servant.

1.3: Strategic priorities of the Commission for the 2009/2010 Financial Year

The Commission’s strategic priorities derive from both the KNCHR Act and the Strategic Plan. The Commission’s second Strategic Plan (2009-2013), which was launched during the period under review, provides guidance to the Commission in terms of its strategic direction and focus. These are guided by the Commission’s vision and mission as follows:
**Vision:** a nationally and globally respected public institution providing leadership in human rights.

**Mission:** to enhance the protection and promotion of human rights in Kenya through strategic programming and partnerships.

**Goal:** to increase respect for and greater enjoyment of fundamental human rights in Kenya.

The Commission fosters and upholds the following core values: Independence, Integrity, Inclusiveness, Tolerance and Accessibility. These values are fully integrated in the Commission’s work, including the human rights principles of universality, indivisibility, interdependence and interrelatedness of human rights.

In the current Strategic Plan, the priorities and work of the Commission are focused around four Key Result Areas (KRAs), namely:

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

**The key planned interventions during the reporting period included the following:**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Process and investigate human rights complaints,</td>
</tr>
<tr>
<td>2.</td>
<td>Provide redress to victims of human rights violations,</td>
</tr>
<tr>
<td>3.</td>
<td>Undertake outreach activities to enhance accessibility of the Commission by marginalized populations,</td>
</tr>
<tr>
<td>4.</td>
<td>Profile the rights and protection of internally displaced persons,</td>
</tr>
<tr>
<td>5.</td>
<td>Undertake campaigns and advocacy activities on transitional justice,</td>
</tr>
<tr>
<td>6.</td>
<td>Catalyze reforms within the police, prisons and judicial sectors,</td>
</tr>
<tr>
<td>7.</td>
<td>Review bills and legislation to infuse human rights standards,</td>
</tr>
<tr>
<td>8.</td>
<td>Undertake research and assess the Government’s performance in the area of human rights,</td>
</tr>
<tr>
<td>9.</td>
<td>Publish a bi-annual journal on human rights and the state of human rights report,</td>
</tr>
<tr>
<td>10.</td>
<td>Ensure compliance with international human rights obligations, including the submission of periodic reports to monitoring bodies,</td>
</tr>
<tr>
<td>11.</td>
<td>Advance the recognition and protection of economic, social and cultural rights,</td>
</tr>
<tr>
<td>12.</td>
<td>Undertake human rights education, awareness and capacity building for both state and non state actors, including through curriculum development and development of IEC materials,</td>
</tr>
<tr>
<td>13.</td>
<td>Strengthen existing two regional offices through additional budget and staffing</td>
</tr>
</tbody>
</table>
14. Undertake institutional strengthening through work planning, recruitment of staff, enhanced efficiency and the strengthening of financial and accountability mechanisms.

Departments of the Commission

The Commission is organized around seven core programmatic departments and seven support departments, through which the goals, Key Result Areas (KRAs) and objectives of the Commission are to be realized in a four-year action plan. These are:

1. Complaints and Investigations,
2. Redress,
3. Research and Compliance,
4. Reforms and Accountability,
5. Public Education and Training,
6. Economic and Social and Cultural Rights, and
7. Outreach and regionalization department (with two regional offices in the North Rift and Northern Kenya).

These above programmatic departments are supported by:

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

This report documents and presents the work of the Commission as organized around these core departments during the 2009/2010 Financial Year, in line with the Strategic Plan and mandate of the Commission under the KNCHR Act.
THE WORK OF THE COMMISSION

CHAPTER TWO: COMPLAINTS AND INVESTIGATIONS DEPARTMENT

2.1: Overview of the department

The Commission is empowered under section 16(1) (a) of the KNCHR Act “to investigate, on its own initiative or upon a complaint made by any person or group of persons, the violation of any human rights”. This mandate has been made operational by the Commission’s Key Result Area 1 on “Reduced systemic human rights violations”. Towards this end, the Complaints and Investigations Department in the period under review worked towards the achievement of the following outcomes:

- Increased enjoyment of human rights by all people in Kenya
- Reduction of human rights violations by state agencies
- Greater respect and enforcement of human rights standards by state agencies

To realize the above outcomes, the department routinely receives and processes allegations of human rights violations and conducts investigations where necessary, upon which it makes recommendations for redress. The department also conducts human rights clinics across the country to enhance its accessibility in marginalized areas and builds partnerships with other referral partners for the purpose of referring complaints that do not fall within its mandate or admissibility criteria. In the year under review, the overall objective of the department was to contribute to the reduction of impunity and ensure that there was timely relief for victims of human rights violations through the efficient and timely processing of complaints, including investigations.

In the period under review, the department set to undertake the following:

- Receive and process complaints alleging human rights violations;
- Conduct preliminary and further field investigations into the received complaints;
- Conduct rapid response missions on human rights violations in line with the rapid response guidelines and document and prepare reports for further action;
- Prepare quarterly case trends reports of systemic human rights violations;
- Hold human rights clinics to increase accessibility to the Commission and to promote public awareness on human rights and the rule of law; and
- Conduct capacity building training on human rights investigations, including investigation of gender based violence.
2.2: Summary of interventions

2.2.1: Screening and processing human rights complaints

The Complaints and Investigations department is guided by both the mandate of the Commission under Section 16 of the KNCHR Act and the laid down admissibility criteria in determining the complaints to admit for processing.

During the period under review, the department received a total of 1,533 complaints compared to the 1,803 complaints received in the previous Financial Year, and 2,580 complaints in the 2006/2007 Financial Year. This decline may be attributed to the establishment of other public institutions dealing with violations of human rights: these include the Public Complaints Standing Committee (PCSC) and the Truth, Justice and Reconciliation Commission (TJRC) that deals with historical injustices, which cases in the past would have been lodged at the Commission. It may also further be attributed to greater adherence to the rule of law by state agencies, in particular following the release of the Commission’s report documenting extra-judicial killings by the police, and the reduction of these killings following the visit by the UN Special Rapporteur on Extra-Judicial killings.

Complaints trends
Out of the complaints/allegations received in the year under review, 101 of the complaints were within the Commission’s admissibility criteria and hence were admitted. 1,433 complaints were not admitted. However the petitioners whose matters were inadmissible were given legal advice or referred to other partner organizations and government agencies that have the mandate to deal with the complaints. Table 1 below gives a breakdown of the complaints and alleged violations lodged at the Commission. In terms of geographical distribution of the complaints, Table 2 below illustrates that the bulk of the complaints came from Nairobi province, mainly owing to the enhanced awareness of human rights issues amongst Nairobi residents as well the ease of access to the office for Nairobi residents.

**Table 1: The Nature of petitions received (source: the KNCHR database)**

<table>
<thead>
<tr>
<th>NATURE OF COMPLAINT</th>
<th>NUMBER OF COMPLAINTS</th>
<th>PERCENTAGE OF TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor rights</td>
<td>274</td>
<td>17.9</td>
</tr>
<tr>
<td>Personal security</td>
<td>116</td>
<td>7.6</td>
</tr>
<tr>
<td>Land rights</td>
<td>164</td>
<td>10.7</td>
</tr>
<tr>
<td>Police shooting</td>
<td>56</td>
<td>3.7</td>
</tr>
<tr>
<td>Administration of justice</td>
<td>41</td>
<td>2.7</td>
</tr>
<tr>
<td>Inaction by police</td>
<td>36</td>
<td>2.3</td>
</tr>
<tr>
<td>Police harassment</td>
<td>43</td>
<td>2.8</td>
</tr>
<tr>
<td>Criminal related matters</td>
<td>90</td>
<td>5.9</td>
</tr>
<tr>
<td>Complaints against lawyers</td>
<td>28</td>
<td>1.8</td>
</tr>
<tr>
<td>Issue</td>
<td>Count</td>
<td>Percentage</td>
</tr>
<tr>
<td>--------------------------------------------</td>
<td>-------</td>
<td>------------</td>
</tr>
<tr>
<td>Civil/contractual matters</td>
<td>49</td>
<td>3.2</td>
</tr>
<tr>
<td>Abuse of office/Inaction</td>
<td>38</td>
<td>2.5</td>
</tr>
<tr>
<td>Child rights</td>
<td>27</td>
<td>1.8</td>
</tr>
<tr>
<td>Legal representation</td>
<td>30</td>
<td>2.0</td>
</tr>
<tr>
<td>Corruption</td>
<td>36</td>
<td>2.4</td>
</tr>
<tr>
<td>Refugees</td>
<td>25</td>
<td>1.6</td>
</tr>
<tr>
<td>Torture</td>
<td>13</td>
<td>0.9</td>
</tr>
<tr>
<td>Discrimination</td>
<td>24</td>
<td>1.6</td>
</tr>
<tr>
<td>Domestic Disputes</td>
<td>29</td>
<td>1.9</td>
</tr>
<tr>
<td>Landlord-Tenant disputes</td>
<td>16</td>
<td>1</td>
</tr>
<tr>
<td>Succession</td>
<td>9</td>
<td>0.6</td>
</tr>
<tr>
<td>Evictions</td>
<td>15</td>
<td>1</td>
</tr>
<tr>
<td>Financial assistance</td>
<td>6</td>
<td>0.4</td>
</tr>
<tr>
<td>Malicious prosecution</td>
<td>8</td>
<td>0.5</td>
</tr>
<tr>
<td>Insecurity</td>
<td>12</td>
<td>0.8</td>
</tr>
<tr>
<td>Prolonged detention</td>
<td>3</td>
<td>0.2</td>
</tr>
<tr>
<td>Right to education</td>
<td>2</td>
<td>0.1</td>
</tr>
<tr>
<td>Professional negligence</td>
<td>5</td>
<td>0.3</td>
</tr>
<tr>
<td>Unfair arrests</td>
<td>5</td>
<td>0.3</td>
</tr>
<tr>
<td>Humanitarian assistance</td>
<td>21</td>
<td>1.4</td>
</tr>
<tr>
<td>Harassment by the Provincial Administration</td>
<td>4</td>
<td>0.3</td>
</tr>
<tr>
<td>Right to health</td>
<td>5</td>
<td>0.3</td>
</tr>
<tr>
<td>Environmental rights</td>
<td>2</td>
<td>0.1</td>
</tr>
<tr>
<td>Delayed Pensions</td>
<td>12</td>
<td>0.8</td>
</tr>
<tr>
<td>HIV/AIDS issues</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Rights of persons with disabilities</td>
<td>3</td>
<td>0.2</td>
</tr>
<tr>
<td>Rights of whistleblowers</td>
<td>4</td>
<td>0.3</td>
</tr>
<tr>
<td>Delayed Court cases</td>
<td>25</td>
<td>1.6</td>
</tr>
<tr>
<td>Rights of hawkers</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Wrongful confinement</td>
<td>2</td>
<td>0.1</td>
</tr>
<tr>
<td>Freedom of expression</td>
<td>2</td>
<td>0.1</td>
</tr>
<tr>
<td>Accident Claim</td>
<td>11</td>
<td>0.7</td>
</tr>
<tr>
<td>Inquiry/Advice</td>
<td>16</td>
<td>1</td>
</tr>
<tr>
<td>Others</td>
<td>224</td>
<td>14.6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,533</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

**Mode of lodging complaints**

1,034 (67.5%) of the 1,533 complaints were lodged physically at the Commission’s offices. 346 (22.6%) were lodged through mail. 97 (6.3%) were through telephone, while 54 (3.5%) were lodged through email and finally 2 (0.1%) were through the fax.
### Table 2: The geographical distribution of complainants

<table>
<thead>
<tr>
<th>Province</th>
<th>Number</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nairobi</td>
<td>466</td>
<td>52.59</td>
</tr>
<tr>
<td>Rift Valley</td>
<td>112</td>
<td>12.64</td>
</tr>
<tr>
<td>Central</td>
<td>109</td>
<td>12.03</td>
</tr>
<tr>
<td>Nyanza</td>
<td>59</td>
<td>6.65</td>
</tr>
<tr>
<td>Eastern</td>
<td>49</td>
<td>5.53</td>
</tr>
<tr>
<td>Western</td>
<td>45</td>
<td>5.07</td>
</tr>
<tr>
<td>Coast</td>
<td>37</td>
<td>4.17</td>
</tr>
<tr>
<td>North Eastern</td>
<td>9</td>
<td>1.01</td>
</tr>
<tr>
<td>Others</td>
<td>547</td>
<td>100</td>
</tr>
</tbody>
</table>

### Table 3: Complaints files opened

<table>
<thead>
<tr>
<th>FILE REF</th>
<th>CATEGORY OF RIGHTS VIOLATED</th>
<th>DATE OPENED</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 KNCHR/CIP/IP/POL/2009/025</td>
<td>Right to life 2/7/09</td>
<td></td>
</tr>
<tr>
<td>2 KNCHR/CIP/IP/POL/2009/026</td>
<td>Personal security 7/7/09</td>
<td></td>
</tr>
<tr>
<td>3 KNCHR/CRD/DISC/2009/027</td>
<td>Discrimination 3/8/09</td>
<td></td>
</tr>
<tr>
<td>5 KNCHR/CIP/IP/LAB/029/2009</td>
<td>Labor rights 19/8/09</td>
<td></td>
</tr>
<tr>
<td>6 KNCHR/CIP/IP/POL/030/2009</td>
<td>Police harassment 28/8/09</td>
<td></td>
</tr>
<tr>
<td>7 KNCHR/CIP/IP/POL/031/2009</td>
<td>Right to property 7/9/09</td>
<td></td>
</tr>
<tr>
<td>8 KNCHR/CIP/IP/TOR/032/2009</td>
<td>Torture 7/9/09</td>
<td></td>
</tr>
<tr>
<td>9 KNCHR/CIP/IP/LAB/033/2009</td>
<td>Labor rights 9/9/09</td>
<td></td>
</tr>
<tr>
<td>10 KNCHR/CIP/IP/POL/034/2009</td>
<td>Police 10/9/09</td>
<td></td>
</tr>
<tr>
<td>11 KNCHR/CIP/IP/VARIOUS/035/2009</td>
<td>Various allegations of harassment 22/11/09</td>
<td></td>
</tr>
<tr>
<td>12 KNCHR/CIP/IP/VARIOUS/036/2009</td>
<td>Various allegations 10/11/09</td>
<td></td>
</tr>
<tr>
<td>13 KNCHR/CIP/IP/POL/037/2009</td>
<td>Labor rights 24/11/09</td>
<td></td>
</tr>
<tr>
<td>14 KNCHR/CIP/IP/POL/038/2009</td>
<td>Shooting by police 15/12/09</td>
<td></td>
</tr>
<tr>
<td>15 KNCHR/CIP/ADM//2010/001</td>
<td>Administration of justice 11/019</td>
<td></td>
</tr>
</tbody>
</table>
### Table 4: Complaints files closed

<table>
<thead>
<tr>
<th>Complaint No.</th>
<th>Nature of Violation</th>
<th>Date Closed</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>KNCHR/2009/016 Unlawful detention</td>
<td>6/8/09</td>
<td>Advised to file suit in court</td>
</tr>
<tr>
<td>2</td>
<td>KNCHR/2009/022 Discrimination</td>
<td>5/8/09</td>
<td>Successfully resolved</td>
</tr>
<tr>
<td>3</td>
<td>KNCHR/2009/020 Right to personal liberty</td>
<td>5/8/09</td>
<td>Complaint withdrawn</td>
</tr>
<tr>
<td>4</td>
<td>KNCHR/2009/011 Degrading treatment</td>
<td>5/8/09</td>
<td>Want of follow up</td>
</tr>
<tr>
<td>5</td>
<td>KNCHR/2009/014 Extrajudicial killing</td>
<td>5/8/09</td>
<td>Inquest opened</td>
</tr>
<tr>
<td>6</td>
<td>KNCHR/2009/009 Right to health</td>
<td>5/8/09</td>
<td>Corrective measures taken by respondent</td>
</tr>
<tr>
<td>7</td>
<td>KNCHR/2009/007 Labor rights</td>
<td>9/10/09</td>
<td>Corrective measures taken</td>
</tr>
<tr>
<td>8</td>
<td>KNCHR/2006/081 Police shooting</td>
<td>16/3/09</td>
<td>Inquest opened by the courts</td>
</tr>
<tr>
<td>9</td>
<td>KNCHR/2005/932 Police murder</td>
<td>15/10/09</td>
<td>Inquest opened by the courts</td>
</tr>
<tr>
<td>10</td>
<td>SCHR/2003/624 Administration of justice</td>
<td>15/10/09</td>
<td>Petitioner to follow up in registry Embu</td>
</tr>
<tr>
<td>11</td>
<td>KNCHR/2009/026 Personal security</td>
<td>9/10/09</td>
<td>Lack of mandate</td>
</tr>
<tr>
<td>12</td>
<td>KNCHR/2009/015 Discrimination</td>
<td>26/10/09</td>
<td>TSC handling the matter</td>
</tr>
<tr>
<td>13</td>
<td>KNCHR/2009/030 Police harassment</td>
<td>9/10/09</td>
<td>Lack of mandate</td>
</tr>
<tr>
<td>14</td>
<td>KNCHR/2009/035 Various</td>
<td>22/10/09</td>
<td>Pending in court by the complainant</td>
</tr>
<tr>
<td>15</td>
<td>KNCHR/2006/1073 Police assault</td>
<td>29/10/09</td>
<td>Recommendations given by AG</td>
</tr>
<tr>
<td>16</td>
<td>KNCHR/2004/821 Extra judicial killing</td>
<td>11/11/09</td>
<td>Lack of mandate</td>
</tr>
<tr>
<td>17</td>
<td>KNCHR/2008/001 Administration of Justice</td>
<td>26/10/09</td>
<td>Want of follow up by complainant</td>
</tr>
<tr>
<td>18</td>
<td>KNCHR/2003/660 Property</td>
<td>21/1/2010</td>
<td>Matter in court</td>
</tr>
<tr>
<td>19</td>
<td>KNCHR/2003/663 Police</td>
<td>21/1/2010</td>
<td>Want of follow up by the complainant</td>
</tr>
<tr>
<td>20</td>
<td>KNCHR/2003/664 Child Rights</td>
<td>21/1/2010</td>
<td>Want of follow up by the complainant</td>
</tr>
<tr>
<td>21</td>
<td>KNCHR/2005/882 Discrimination</td>
<td>21/1/2010</td>
<td>Lack of mandate</td>
</tr>
<tr>
<td>22</td>
<td>KNCHR/2005/883 Miscarriage of Justice</td>
<td>21/1/2010</td>
<td>Want of follow up by the complainant</td>
</tr>
<tr>
<td>23</td>
<td>KNCHR/2006/980 Administration of Justice</td>
<td>21/1/2010</td>
<td>Pending in Court by the complainant</td>
</tr>
<tr>
<td>No.</td>
<td>Case Reference</td>
<td>Issue Description</td>
<td>Date</td>
</tr>
<tr>
<td>-----</td>
<td>----------------</td>
<td>---------------------------</td>
<td>---------</td>
</tr>
<tr>
<td>24</td>
<td>SCHR/2003/595</td>
<td>Assault</td>
<td>21/1/2010</td>
</tr>
<tr>
<td>25</td>
<td>SCHR/2003/597</td>
<td>Extra-judicial killings</td>
<td>21/1/2010</td>
</tr>
<tr>
<td>26</td>
<td>KNCHR/2006/949</td>
<td>Police shooting</td>
<td>21/1/2010</td>
</tr>
<tr>
<td>27</td>
<td>KNCHR/2007/1107</td>
<td>Police shooting</td>
<td>22/1/2010</td>
</tr>
<tr>
<td>28</td>
<td>KNCHR/2009/027</td>
<td>Discrimination</td>
<td>22/1/2010</td>
</tr>
<tr>
<td>29</td>
<td>KNCHR/2007/1101</td>
<td>Labor</td>
<td>25/1/2010</td>
</tr>
<tr>
<td>30</td>
<td>KNCHR/2007/1100</td>
<td>Extradjudicial killing</td>
<td>25/1/2010</td>
</tr>
<tr>
<td>31</td>
<td>KNCHR/2006/1049</td>
<td>Accountability</td>
<td>25/1/2010</td>
</tr>
<tr>
<td>32</td>
<td>KNCHR/2006/1076</td>
<td>Administration of Justice</td>
<td>25/1/2010</td>
</tr>
<tr>
<td>33</td>
<td>KNCHR/2007/1092</td>
<td>Prolonged detention</td>
<td>25/1/2010</td>
</tr>
<tr>
<td>34</td>
<td>KNCHR/2007/1094</td>
<td>Police harassment</td>
<td>25/1/2010</td>
</tr>
<tr>
<td>35</td>
<td>KNCHR/2006/981</td>
<td>Police shooting</td>
<td>25/1/2010</td>
</tr>
<tr>
<td>36</td>
<td>KNCHR/2009/032</td>
<td>Torture</td>
<td>21/1/2010</td>
</tr>
<tr>
<td>37</td>
<td>SCHR/2000/416</td>
<td>Multi-issues</td>
<td>29/1/2010</td>
</tr>
<tr>
<td>38</td>
<td>KNCHR/2005/945</td>
<td>Police shooting</td>
<td>29/1/2010</td>
</tr>
<tr>
<td>39</td>
<td>KNCHR/2007/1089</td>
<td>Torture</td>
<td>29/1/2010</td>
</tr>
<tr>
<td>40</td>
<td>KNCHR/2006/1088</td>
<td>Corruption</td>
<td>21/1/2010</td>
</tr>
<tr>
<td>41</td>
<td>KNCHR/2007/1114</td>
<td>Police shooting</td>
<td>29/1/2010</td>
</tr>
<tr>
<td>42</td>
<td>KNCHR/2005/920</td>
<td>Irregular allocation</td>
<td>29/1/2010</td>
</tr>
<tr>
<td>43</td>
<td>KNCHR/2004/788</td>
<td>Police</td>
<td>29/1/2010</td>
</tr>
<tr>
<td>44</td>
<td>KNCHR/2007/1111</td>
<td>Labor</td>
<td>29/1/2010</td>
</tr>
<tr>
<td>45</td>
<td>KNCHR/2005/931</td>
<td>Police shooting</td>
<td>29/1/2010</td>
</tr>
<tr>
<td>46</td>
<td>KNCHR/2006/1013</td>
<td>Police shooting</td>
<td>29/1/2010</td>
</tr>
<tr>
<td>47</td>
<td>KNCHR/2007/1093</td>
<td>Prolonged detention</td>
<td>29/1/2010</td>
</tr>
<tr>
<td>48</td>
<td>KNCHR/2005/914</td>
<td>Corruption</td>
<td>20/1/2010</td>
</tr>
</tbody>
</table>
2.2.2: Preliminary Investigations

Preliminary investigations refer to the process of seeking clarification from respondents and complainants regarding complaints being processed. During the reporting period, officers from the department dispatched 212 letters and 42 e-mails to respondents and complainants as part of preliminary investigations. However, some of the letters and e-mails sent out, especially to the Commissioner of Police and Officer Commanding Police Divisions (OCPDs), were not responded to. Over the years, the work of the Commission has been challenged by this trend of uncooperative police department.

2.2.3: Rapid response missions

In the first half of the financial year, the Commission received several complaints of targeted persons or witnesses of the post election violence and in particular those who testified before the Waki Commission or gave statements to the Commission during its post-election violence investigations. The reports received indicated that either the witnesses received threatening text messages or direct verbal threats both from persons they knew and strangers. Subsequent to this, the Commission deployed a rapid response team to the North Rift region to ascertain the veracity of the said reports.

As a result, investigations were conducted in Kitale and Eldoret towns and their environs and several witnesses of the post election violence were interviewed; these included religious leaders, civil society organizations, the police department as well as community leaders. A report was prepared with recommendations for further action.

2.2.4: Further/field investigations

During the period under review, the department conducted further field investigations for various complaints as tabulated below:

<table>
<thead>
<tr>
<th>No.</th>
<th>Reference</th>
<th>Description</th>
<th>Date</th>
<th>Complainant</th>
</tr>
</thead>
<tbody>
<tr>
<td>49</td>
<td>KNCHR/2007/1099</td>
<td>Accountability of public resources</td>
<td>17/2/2010</td>
<td>Referred to KACC</td>
</tr>
<tr>
<td>50</td>
<td>KNCHR/2007/1117</td>
<td>Harassment</td>
<td>17/2/2010</td>
<td>Matter investigated by police</td>
</tr>
<tr>
<td>51</td>
<td>KNCHR/2006/951</td>
<td>Police shooting</td>
<td>17/2/2010</td>
<td>Want of follow up by the complainant</td>
</tr>
<tr>
<td>52</td>
<td>KNCHR/2006/1078</td>
<td>Police shooting</td>
<td>24/2/2010</td>
<td>Forwarded to IOM</td>
</tr>
</tbody>
</table>
Table 5: Analysis of further investigations for the reporting period

<table>
<thead>
<tr>
<th>Nature of Complaint</th>
<th>The issue</th>
<th>Action taken</th>
<th>Results</th>
<th>Way forward</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harassment of inmates by a female prison warder</td>
<td>Allegations of harassment of convicts by a female warder at Langata Women’s Prison who was accused of mistreating inmates by strip searching them in the presence of male warders and locking them up for up to a week.</td>
<td>Investigations conducted into the allegations</td>
<td>None - The Team was denied access to the facility</td>
<td>The Department planned to follow up the matter with Reforms and Accountability Department and the Prison Authorities</td>
</tr>
<tr>
<td>Sodomy allegations</td>
<td>Fr. Kizito, a Catholic Priest was accused of sexually abusing male children under his care</td>
<td>Investigations were conducted into the allegations and witness statements were recorded. Analysis of the statements did not disclose any credible evidence to support the allegations. File was closed.</td>
<td>Petitioners advised of the outcome of our investigations</td>
<td>None</td>
</tr>
<tr>
<td>Insecurity in Isiolo</td>
<td>Cattle rustling leading to insecurity.</td>
<td>Consultative meetings held with stakeholders Press statement released by the KNCHR. Matter closed.</td>
<td>More publicity (on the matter) created. Security beefed up within the area.</td>
<td>None</td>
</tr>
<tr>
<td>Harassment by Government</td>
<td>Harassment of Orma</td>
<td>Investigations conducted.</td>
<td>No human rights violation</td>
<td></td>
</tr>
<tr>
<td>Category</td>
<td>Description</td>
<td>Actions</td>
<td>Outcomes</td>
<td></td>
</tr>
<tr>
<td>-------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------</td>
<td>------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Officials</td>
<td>Community by General Service Unit, Kenya Wildlife Service, Agricultural Development Corporation (ADC) on various allegations of trespassing into ADC Malindi farm.</td>
<td>Group discussions held with a section of the community and statements recorded. A report on the findings was prepared.</td>
<td>disclosed. Awareness raised within the Provincial Administration.</td>
<td></td>
</tr>
<tr>
<td>Police harassment</td>
<td>Alleged arbitrary arrest, being held incommunicado and denial of food to members of the Somali Community in Mwingi by the local police on allegation of being members of Al-shabaab.</td>
<td>Investigations conducted. Report prepared and findings shared with the Police and Provincial administration.</td>
<td>No credible evidence of human rights violations established.</td>
<td></td>
</tr>
<tr>
<td>Fatal shootings</td>
<td>Allegations of unlawful shooting of a youth by police officers from Murangá Police station.</td>
<td>Investigations conducted, statements recorded from witnesses and investigation report compiled with recommendations</td>
<td>None Further investigations to be conducted</td>
<td></td>
</tr>
<tr>
<td>Disappearance of persons</td>
<td>A youth was allegedly arrested by Police Officers from Murangá police station and his dead body found</td>
<td>Investigations conducted and statements recorded. Report compiled with findings and the same shared with the Deputy</td>
<td>None Follow up to be undertaken</td>
<td></td>
</tr>
</tbody>
</table>
2.2.5: Human rights clinics

As part of its outreach mission to enhance accessibility to the Commission by the most marginalized groups and communities, the Commission conducts human rights clinics in those regions of Kenya where it has little or no physical presence. Currently, the Commission has only two regional offices in Wajir and Kitale, leaving the majority of the country without the ability to contact the Commission except by telephone, mail or email. During the reporting period, the department conducted human rights clinics in Lower Eastern and the Rift Valley covering six districts (Meru, Imenti North, Mwingi, Mbeere, Molo and Soy) as well as in camps for the internally displaced. In addition to the human rights clinics, the department organized one public forum to sensitize the public on key human rights issues, disseminate information on the Commission’s complaints handling system and provide free legal advice. One such forum was conducted at the Mombasa Tononoka grounds.

The clinics enabled the department to create public awareness of the Commission’s mandate and services. They were used to provide free legal advice and assistance to the public, given that access to justice remains a challenge to the majority of Kenyans due to the long distances and high costs associated with obtaining legal services. As part of the human rights clinics, the public was educated as to their rights and simplified IEC materials were disseminated. Additionally, the Commission was able to, in line with its priority in the strategic plan, build partnerships and networks with local NGOs and CBOs that had been engaged to mobilize the public for the clinics.

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Human rights clinics in camps for the internally displaced
The department, in conjunction with the ECOSOC IDP Monitoring Project, visited 13 IDP camps to conduct human rights clinics and to monitor IDP resettlement. The purpose of the clinics was to educate IDPs on their rights and the obligation of the Government to enforce
these rights, as well as to provide free legal advice and receive allegations of violations of human rights.

Human rights clinics were conducted in the following IDP camps:

1. Huruma village- Thika
2. Ebenezer- Naivasha
3. Vumilia- Naivasha
4. Vumilia(Eldoret)- Naivasha
5. Jikaze- Naivasha
6. Imani Ndogo & Imani Kubwa- Mai mahiu
7. Mawingu/ Kirathimo- Nyandarua
8. Wiyumiririe- Laikipia
9. Pipeline- Nakuru
10. Mauche- Njoro
11. Ndoinnet Forest - Kuresoi
12. Njoro - Njoro
13. Ndeffe - Njoro

2.3: Success stories

1. The department successfully processed 1,533 complaints, exceeding the set target of 1,000 by 533.
2. The department gave invaluable legal advice to 1,433 petitioners whose complaints were deemed inadmissible, many of who would have had difficulty accessing private legal services, thereby empowering them to take action regarding their legal issues on their own behalf.
3. A petitioner X visited the Commission with her five children to lodge a complaint against her neighbor, who had allegedly evicted her from her house. She reported the matter to Pangani Police Station but was not assisted as her neighbor had allegedly influenced the officers at the station and her attempts to see the OCS and the OCPD were futile as the officers allegedly refused her access to the senior officers. The department spoke to the OCS and was assured that the petitioner would be assisted. The petitioner later informed the Commission that the OCS assisted her and that she got officers to escort her to her house where they warned her neighbor to cease the threats.
4. The Commission received a report from the Kuresoi People’s Watch regarding referendum-related threats and hate speech. A team conducted investigations in the area and shared its findings with the police, as a result of which some of the people suspected of engaging in hate speech were summoned and warned to keep the peace.
5. Petitioner X visited the Commission and alleged that she had a domestic dispute with her fiancée after which he decided to disengage from the relationship even though they had joint investments. The two were summoned to the Commission and
mediation was conducted, after which counseling sessions ensued and the parties were able to reconcile and the matter was successfully closed.

6. The Commission received a complaint from an interdicted warder from Busia GK prison during the Kakamega prison visits. He stated that his case had been reviewed and concluded with recommendations for his reinstatement but no action had been taken one and a half years after. The department intervened by engaging the Provincial Prison Commander for a period of two months as a result of which the file was retrieved at the Prison headquarters and the petitioner was reinstated.

7. There are some petitioners complaints that do not fit within the Commission’s admissibility criteria, but are by nature issues that need to be addressed through psychosocial support and counseling. During the screening process when the need for counseling is discovered, the Commission’s Counselor (housed in the department) is available to assist the petitioners. The department has been able to utilize this service fully and a total of 21 petitioners were counseled during the year under review. Follow up undertaken showed that the petitioners were satisfied with the assistance they received from the counselor.

2.4: Lessons learnt

- The department needs to improve documentation of its activities. In this regard, it would be important to utilize the existing registry as the central point where reports are filed for easy access and retrieval by all Commission staff who wish to make reference to them.
- Monthly departmental meetings are important to enable officers to keep abreast of what is happening in the department, to share information, to provide help to each other and to give updates. The department will use the monthly departmental meetings to report on progress made during planned activities and rapid response interventions.

2.5: Challenges

The department continued to experience two significant challenges:

- Limited funding continues to affect the work of the department, in particular with regards to investigations and rapid response missions, which caused a backlog of cases to be investigated and undermined the ability of petitioners to obtain redress. Similarly, some planned activities such as human rights clinics have not been implemented as was scheduled.
- Managing the high expectations of petitioners, especially those who expect instant redress/action from the Commission, remains a challenge. The Commission’s mandate is not clearly understood by most Kenyans, which is evidenced by the
large number of complaints not admitted because they fall outside the Commission’s mandate. Many petitioners nevertheless expect their complaints to be addressed. The department will continue to focus on creating awareness regarding the mandate of the Commission by holding human rights clinics, disseminating IEC materials and liaising with the media and partners.

2.6: Conclusions and recommendations

The department has continued its role of receiving, processing and investigating allegations of human rights violations to enable petitioners to receive redress. Nevertheless, a large percentage of human rights complaints are ruled inadmissible because petitioners bring complaints outside of the Commission’s mandate or are better handled by a referral organization. The Commission will therefore focus on strengthening its referral mechanisms and partnerships to ensure that the complaints it refers to partners are addressed. A strong follow up mechanism will also be put in place. Elsewhere, the continued delay by the courts in deciding the fate of the complaints hearing panel/tribunal has led to a backlog of petitions that had their investigations concluded and needed to be forwarded to the panel for redress. The Commission has appealed this decision and is awaiting its outcome.

2.7: Focus areas for the next year

The focal areas for the next financial year include:

- Screening, processing and investigating complaints of human rights violations and making appropriate recommendations for redress.
- Conducting human rights clinics in rural and or marginalized/vulnerable communities.
- Holding counseling and debriefing sessions for commissioners and staff.
- Writing quarterly statutory reports of complaints received showing the trend analysis for informed interventions.
- Continued engagement with government and other non state actors to enhance strategic partnerships.
- Upgrading of the data collection and management system.
- Holding consultative forums with likeminded partners.
CHAPTER THREE: REDRESS DEPARTMENT

3.1: Overview of the department

The Commission in its current Strategic Plan intends to achieve its goal to increase respect for and greater enjoyment of fundamental human rights in Kenya through, among other strategies, investigation and redress for identified human rights violations. The Redress department responds to the Strategic Plan’s Key Result Area 1 (Reduced Systemic Human Rights Violations) by coordinating the Commission’s redress mechanisms. The redress mechanisms include the Complaints Hearing Panel (Tribunal), Public Inquiries, Public Interest Litigation, and other redress activities relating to human rights violations as captured under Section 25 of the KNCHR Act. The department engages closely with the Complaints and Investigations department to ensure that victims of human rights violations obtain prompt redress as provided by law. Furthermore, it also undertakes other legal services for the Commission such as the drawing of contracts and litigating court cases on behalf of the Commission.

In the year under review, the Complaints Hearing Panel was no longer sitting to determine human rights cases because its operations were suspended by a high Court ruling in the previous year. In the ruling in Misc. Application 688 of 2006 Kenya Commercial Bank vs. Kenya National Commission on Human Rights, the court held that it was only the High Court that had ‘exclusive original jurisdiction’ over human rights cases and that as such, the complaints hearing panel of the Commission could not have jurisdiction to determine such cases, despite the KNCHR Act empowering the Commission to do so. The Commission has appealed this decision. In the year under review, therefore, the Commission’s mandate of providing redress through this mechanism was therefore not realized.

This report captures the departmental activities as follows:
1. Public Interest Litigation
2. Status of cases emanating from the KNCHR Report on the Post Election Violence
3. Updates on the Complaints Hearing Panel
4. Miscellaneous

3.2: Summary of interventions

Public Interest Litigation
Sections 25 (a) (ii) and (b) of the KNCHR Act empower the Commission to institute cases in the High Court of Kenya relating to alleged violations of human rights on behalf of a party or for broad public interest. Rule 43 of the KNCHR Regulations also empowers the Commission to appear in any judicial proceedings as amicus curiae (friend of the court) for the purpose of advocating for the human rights interests of the concerned proceedings.
Due to capacity challenges, however, the Commission can only take up cases that are either of broad public interest or that will have a significant impact on the legal discourse of human rights in Kenya. More specifically, the case should have a strategic goal such as establishing a legal precedent or highlighting unjust laws that require reform. It is against this background that the Commission in January 2009 filed to appear as amicus curiae in the case of Richard Muasya vs. The AG and 3 Others. An intersexual person brought a constitutional petition claiming that the Constitution of Kenya does not recognize his unique sexual status and that there are no legal provisions that recognize the gender rights of intersexual persons.

The Commission’s role as amicus curiae was limited to providing information to the court on the gaps in Kenyan law as well as to presenting a case for legal reform. As a National Human Rights Institution, the Commission’s main argument was that the constitutional prohibition against discrimination on the basis of sex ought to be widely interpreted to include intersexual persons. Thus any discrimination against any person on the basis of intersexuality would qualify as discrimination on the basis of sex. Judgment on the above case is set for delivery on 29th September 2010. In addition to the legal significance of the case, it has also facilitated open discussion by the public and media on matters relating to the rights of intersexual persons.

Appeal for the restoration of the Complaints Hearing Panel
Court of Appeal Civil Application No. Nai 71 2009 KNCHR VS. Kenya Commercial Bank
The High Court in Miscellaneous Application No.688 of 2006 Kenya Commercial Bank vs. Kenya National Commission on Human Rights declared certain portions of the KNCHR Regulations relating to the creation and operation of the Complaints Hearing Panel inconsistent with the KNCHR Act. The overall effect of this ruling was that the Commission could no longer constitute panels to hear and determine cases of alleged human rights violations. The Commission engaged Counsel to appeal the judgment of the High Court. Due to delays occasioned by the Court in providing case proceedings, the Commission had to seek leave to appeal out of time, which was formally granted by the Court of Appeal on 19th of February 2010. The Commission is currently in the process of piecing together the Record of Appeal for filing at the Court of Appeal, after which a hearing date will be issued.

Litigation for cases filed against the Commission - emanating from the Report on the 2007 Post Election Violence (re-affirming the Commission’s independence)
In 2008, the Commission in the exercise of its statutory mandate set out to investigate and document the events surrounding Kenya’s post-election violence. This culminated in a report titled On the Brink of the Precipice: a Human Rights Account of Kenya’s post 2007 Election Violence, which contained among other things, a list of 230 alleged perpetrators who had been implicated in the planning, financing and execution of the PEV. Upon its release, a number of those mentioned as alleged perpetrators moved to court to have their names expunged from the report.

Specifically, the following matters were filed in court against the Commission:
JR Misc Civil Application 86 of 2009, Uhuru Kenyatta vs. KNCHR

Hon. Uhuru Kenyatta filed a suit in the High Court seeking orders to quash and annul ‘the decision’ of the Commission to name him as a participant in the post-election violence in its report, and also to quash and annul the report’s allegation that he was involved in aspects of the post-election violence by way of planning, inciting and financing the violence. The Commission’s legal team, together with Senior Counsel Pheroze Nowrojee, successfully represented the Commission in court and received judgment in its favor on 5 June 2010. The court ruled that although the Commission did not give the applicant an opportunity to present his version of events, it could not expunge his name from the report due to public interest considerations.

JR Misc Application 647 of 2009, William Ruto vs. KNCHR

Similarly, Hon. William Ruto filed a Judicial Review application in the High Court on 30th November 2009, which was served on the Commission on 16th December 2009. He sought orders to quash and annul ‘the decision’ of the Commission to name him in its report as a participant in the post-election violence, and also to quash and annul the decision to allege that he was involved in aspects of the post-election violence by way of planning, inciting, meeting and financing the violence. All preliminary documents have been filed in court. The matter is awaiting mention before the Chief Justice for the purposes of selecting Judges and a hearing date. The Commission similarly engaged Senior Counsel Pheroze Nowrojee to represent it in this suit.

HCCC 264 of 2009, Stanley Githunguri vs. KNCHR and Florence Jaoko

The Plaintiff, Stanley Githunguri, filed a libel case against the Commission and the Chairperson alleging that his name was defamed by the PEV Report. His allegations are similar to those of Hon. Uhuru Kenyatta, only he was out of time to file a Judicial Review application and instead opted to launch a libel suit. The Commission filed its defenses, and now awaits the Plaintiff’s advocates to invite it for a hearing date.

The Commission’s objective in defending the above suits is to reaffirm its independence, impartiality and restate its steadfast commitment to discharging its statutory role of investigating and providing redress for human rights violations.
Finally, the Commission filed a judicial review HCC C NO. 183 of 2010 against the Permanent Secretary Ministry of Finance, the Minister for Finance, Kenya Revenue Authority and three others in order to challenge an administrative decision made to the effect that the Commission was part of the Executive and consequently moved to unlawfully tax the nine Commissioner’s allowances and backdated such recovery to cover the entire period from the time of employment. The Matter is pending in the High Court.

3.3: Achievements

The following were the main achievements of the Redress department in the reporting period:

- The Commission was able to reaffirm its independence and mandate as a human rights institution with powers to investigate and make recommendations thereon. This was re-affirmed by the High Court, which dismissed the suit filed by Hon. Uhuru Kenyatta seeking to have his name expunged from the KNCHR report into post-election violence.
- The Commission, through the Redress department, has successfully explored a hitherto unchartered portion of its mandate by participating as *amicus curiae* in the Richard Mwasya case. It is anticipated that this will lay the foundation for further human rights litigation by Commission.

3.4: Lessons learnt

The main lesson learnt during the reporting period was drawn from the public interest litigation case that the Commission participated in as *amicus curiae*. The Commission recognized the value of creating strategic partnerships with civil society organizations in prosecuting the matter. This ensured that the financial implications were kept minimal whereas the team had a pool of experts in law, children and gender issues. Furthermore, it has in essence created a core group of institutions and individuals that will in future work to drive law and policy reform through strategic litigation of human rights cases.

3.5: Challenges

- Human resource constraints: the main challenge that the department faced was the lack of adequate human resources. It has one full-time staff member and two others were shared with other departments of the Commission. It is proposed that additional human resources be allocated to this department for optimal performance.
Legal framework challenges: the Complaints Hearing Panel was rendered inoperable by the *KCB vs. KNCHR* case, which declared portions of the KNCHR Regulations creating the Complaint Hearing Panels *ultra vires* the KHCHR Act. With the coming into force of the new Constitution, the legal challenges emanating from the above ruling will be addressed through the new Act of Parliament that will detail the structure, functions and powers of the Kenya National Human Rights and Equality Commission, which will succeed the Kenya National Commission on Human Rights.

3.6: Conclusions and recommendations

Activities during the reporting period have greatly leaned on court matters with the post-election violence cases and the public interest litigation case taking much of the department’s time. It is also not definite whether the appeal against the ruling in *KCB vs. KNCHR* will proceed in light of the provisions of the new Constitution which will require the enactment of new legislation and thus render the appeal an academic exercise. Furthermore, the department still continues to operate at below optimal levels due to limited human resource capacity and there is an urgent need to consider recruiting more staff to the department.

3.7: Focus for the next year

The following activities will be the Department’s main focus in the next 2010/2011 Financial Year:

- Complete the public interest litigation case *Richard Mwasya vs. Attorney General*;
- Review and draft new rules and protocols for Public Interest Litigation;
- Conduct a Public Inquiry on Reproductive Health rights;
- Provide court representation in the remaining Post Election Violence report cases;
- Enhance the Commission’s capacity in Alternative Dispute Resolution (ADR); and
- Prepare a draft KNHREC Act in case the proposed constitution is passed.
CHAPTER FOUR: REFORMS AND ACCOUNTABILITY DEPARTMENT

4.1: Overview of the department

The Reforms and Accountability department contributes to the reduction of systemic human rights violations, which is currently a key strategic focus of the Commission. Due to their systemic nature, these violations affect an immense section of the Kenyan population, especially vulnerable groups. In the year under review, the department focused its advocacy efforts on the following key areas of systemic human rights violations:

1. Transitional Justice
2. Institutional (security, judicial and penal sector) reforms
3. Peace building and national integration
4. Anti-corruption & political accountability

During the period under review, the department worked towards the realization of two Key Result Areas: KRA 1 on Reduced Systemic Human Rights Violations and KRA 2 on Increased Application of Human Rights Principles and Standards in the Implementation of the Agenda 4 of the National Accord.

Expected outcomes of the department

Under the two KRAs above, the department worked to realize the following outcomes:

1. Greater respect for laws and human rights standards
2. Greater application of human rights standards in the implementation of Agenda 4
3. Reduction of human rights violations by state agencies.

4.2: Summary of interventions

4.2.1: Advocacy for security sector reforms

Security sector reforms were prioritized in the year under review because the country’s security sector continues to face a number of serious challenges. These include disregard for the rule of law by security sector agencies resulting in the violation of human rights, weak legislation, weak enforcement and lack of proper accountability mechanisms critical in eradicating impunity. Additionally, there has been a resurgence of organized criminal gangs
such as the Mungiki and Sabaot Land Defense Force, which continue to pose a threat to the security of Kenyans.

During the year under review, the department continued to engage in heightened advocacy for police reforms in which a two pronged approach was adopted. First, the department engaged members of the security forces in capacity building initiatives aimed at improving their capacity as duty bearers. The department therefore conducted human rights trainings for officers in charge of police stations in Nairobi, Eldoret, Kisumu and Mombasa. Useful contacts were built during the trainings and the Commission has subsequently seen an improvement in its formerly frosty relationship with the police. Secondly, the department sought to build and sustain dialogue on security sector reforms within the public and human rights field. To that end, the department conducted two forums on security sector reforms – these forums sought to promote dialogue on security sector reforms and to disseminate to the public the report of the task force on police reforms. The impact of this work has been the consolidation of various views on security sector reforms from a cross section of stakeholders. These views were presented to the Committee of Experts on Constitutional Review and other organs of review and informed the provisions relating to national security in the Harmonized Draft Constitution and the Proposed Constitution of Kenya. The department also worked on a documentary on security sector reforms which was screened to the general public in May 2010. The documentary was intended to inform the public about the challenges faced by the security sector and the importance of reforming that critical institution in line with Agenda 4 of the National Accord.

In addition to the foregoing, the department continued to lobby and advocate for accountability for the murders of human rights defenders Oscar Kingara and GPO Oulu and others. The Commission held a forum to commemorate the deaths of the human rights defenders on 5th March 2010 during which speakers drawn from the human rights fraternity called for thorough investigations to be conducted and for the perpetrators to be prosecuted. In addition, the Commission published a statement on human rights defenders to bring greater public attention to the issue. The commemoration was critical in sustaining pressure on the government to make good its commitment to investigate the crime.

In the next financial year, the department will continue to engage in security sector reforms in partnership with civil society organizations, in particular the Usalama Forum.

4.2.2: Protection of human rights defenders

Human rights defenders continue to face various threats emanating from their work in human rights activism. Members of staff of the Commission have also been victims of such threats. Arising from these, the Commission was prompted to initiate a human rights defenders fund to be used in protecting and relocating human rights defenders at risk including witnesses of the post 2007 election violence.
During the reporting period, the department facilitated the safe relocation of a member of a local civil society organization as well as the protection of some of the witnesses to the post election violence. A total of nine witnesses were put under protection during the year under review and the basis for engaging in this work was to ensure that there would be a litany of individuals available to give evidence against persons who bear the greatest responsibility for the violence witnessed in 2008. Through these protective measures, the Commission has been able to protect the lives of those who have come forward to speak against impunity. It is anticipated that the evidence provided by these witnesses will contribute towards the prosecution of those bearing the greatest responsibility for the post election violence, thereby providing justice to the victims and survivors and helping to end the culture of impunity that is entrenched in Kenya.

In addition to protecting human rights defenders, the Commission has engaged in advocacy to establish an independent witness protection unit. In that regard, the Department participated in the review of the Witness Protection (Amendment) Bill which seeks to create an autonomous witness protection agency. The Bill was passed late last year and it is hoped that its passage will relieve the Commission of the requirement to protect witnesses since the Commission does not have the requisite capacity to engage in long term witness protection.

**Discussion of results**

The department planned to undertake main 10 activities stated below.

- Conduct three campaigns on security sector, judicial reforms and transitional justice: this was conducted with the expectation that it would lead to a strengthened legal and institutional framework for law enforcement institutions and enhanced national integration and reconciliation through the TJRC process. One forum for faith based organizations was undertaken whereas the remaining activities did not take off due to capacity challenges and the focus on the referendum. In addition, the department planned to conduct three public workshops to create awareness to the public on the importance of institutional reforms under Agenda 4 of the National Accord and their recommendations. Out of this it was hoped that there would be enhanced public understanding on institutional reforms. The activity was however not undertaken due to capacity restraints.

- Research on organized crimes and human rights. A workshop was conducted in collaboration with Akiba Uhaki, a local non-governmental organization and the research paper was developed and will be used as an advocacy tool. Further to this, media advocacy on organized crime and human rights was undertaken in which key IEC materials were produced and disseminated through the media, local NGO's and during workshops and forums.

- Popularization of police and penal reforms task force recommendations: a popular version of the report of the task force was produced to be used for advocacy for police reforms. The communication strategy that was expected was not developed and it is expected that it would be finalized in the next financial year. However, scheduled and
unscheduled inspection visits to prisons, police stations and other places of detention were conducted. Some 26 prisons and other places of detention were visited and inspected during the period and a consolidated report prepared and disseminated to various government authorities for action. The visits also entailed investigation into allegations of human rights violations in places of detention. Only one investigation was undertaken and this is attributed to the low staffing levels in the department.

- Strengthening coordination and linkages among the criminal justice agencies: Three regional meetings of court users committees and a national conference for law enforcement was to be implemented. The meetings with court users committees were not implemented and were pushed to the next financial year. The conference was however undertaken successfully and the report shared with relevant stakeholders in government.

4.3: Lessons learnt

The following were some of the key lessons learnt during this financial year:

- Building partnerships with both state and non state actors is important in achieving the goals of the department. The department made great strides in security sector reforms through its engagement with the Usalama Forum, which brings together various civil society organizations dealing with security sector related issues.
- The Commission will continue to rely on the support of key government institutions in order to make meaningful progress towards the institutional and other reforms that it advocates for. The Commission recognizes that security sector reforms will require the engagement of the police department, which is why the Commission through the Chairperson has continued to engage as a member of the Task Force on police reforms.
- An operationally independent Witness Protection Authority is important to complement the investigative work of institutions such as the Commission. Such an independent authority would ensure that the Commission focuses on investigations while another independent agency offers protection to witnesses.

4.4: Challenges

1. The work of the department was affected by low staffing levels – this was compounded by having one member of the department relocated due to threats faced from work around investigations of extra-judicial killings.
2. Threats faced by the Commission’s staff as well as other human rights defenders who are crucial partners in the work that the department engages in have disrupted some core programmes of the department.
4.5: Conclusions and recommendations

The department recognizes the need for the Commission to strike a balance between its watchdog and advisory roles when dealing with state institutions such as the police. The Commission must proactively seek to have state institutions understand the importance of observing human rights to avoid reactive advocacy that fosters animosity between these institutions and the Commission. The Commission therefore must not only engage with such institutions when exercising its watchdog mandate over them but we must engage them to advise and inform them about human rights through regular meetings, trainings and joint forums.

4.6: Focus for the next year

In the 2010/2011 financial year, the department will focus on the following:

- Research, document and launch the Commission’s report on the status of implementation of human rights principles in institutional reforms,
- Conduct targeted lobbying and advocacy for reform of key institutions, namely the police, judiciary, and prisons,
- Engage with and monitor the TJRC process, including through the preparation of select victim groups to facilitate their informed engagement with the TJRC,
- Host stakeholder consultations on Kenya’s truth seeking process,
- Provide targeted outreach and education on the Proposed Constitution through live interactive shows, public forums, media advocacy and awareness creation activities with a focus on marginalized groups,
- Monitor and document any incidences of hate speech and incitement to violence in the course of the constitutional referendum campaigns, and advocate for accountability for the perpetrators of hate speech and incitement to violence,
- Provide targeted advocacy and education on peace building and conflict management in Greater Molo and Burnt Forest,
- Undertake scheduled and unscheduled inspections and visits to places of detention, and prepare a report on the status of human rights in prisons and other places of detention, and
- Commence baseline survey on the status of children's rights in the juvenile justice sector.
CHAPTER FIVE: RESEARCH AND COMPLIANCE DEPARTMENT

5.1: Overview of the department

The overall purpose of the Research and Compliance department is to conduct quality research that informs the Commission’s interventions in constitutional, legal and institutional reforms. The department, which is crafted around the Commission’s advisory mandate, provides the Commission with quality and timely research into various human rights issues to inform the Commission’s engagement with the Government and policy makers. It undertakes review of both existing and proposed legislation to ensure their compliance with human rights and works around ensuring that the government complies with its international and regional human rights obligations, as provided for under the KNCHR Act.

The department focuses on the following KRAs of the Commission:

1. Increased application of human rights principles and standards in implementation of Agenda 4 of the National Accord
2. Increased knowledge and application of human rights principles and standards in public and private spheres.

In the year under review, the department implemented a number of activities with a view to achieving the above-cited KRAs and with the following expected outcomes:

1. Greater respect and enforcement of human rights standards by state agencies, with a focus on legislation and policies that are compliant with human rights standards and principles
2. Increased ratification and domestication of international and regional human rights treaties and standards
3. Enhanced inclusion and participation of vulnerable groups to allow them to claim their rights
4. Adoption of anti discrimination laws and policies

5.2: Summary of interventions

5.2.1: Greater respect and enforcement of human rights standards by state agencies

1. Constitutional Review
   The Constitutional review process was under way during the year under review, and in a similar manner to the constitutional review process in 2005, the Commission actively
engaged with the process in order to ensure that human rights standards and principles were infused in the new Constitution. The Commission undertook various reviews of the draft Constitution, compiled and submitted memoranda and advisories to the Committee of Experts and the Parliamentary Select Committee on the Constitution both on the Bill of Rights and the entire constitutional content. The Commission monitored the process at every stage to ensure human rights standards were infused into the Constitution and participated in various other debates on key thematic issues that were of concern to Kenyans. Having majorly contributed to the formulation of the Bill of Rights, the Commission was satisfied with the outcome of the final document and continued to support the review process through both critiques and advisories. The key outcome of this engagement was a comprehensive Bill of Rights that has been expanded to include economic, social and cultural rights, and environmental rights, as well as an explicit recognition of the rights of marginalized and vulnerable groups.

2. Third State of Human Rights Report
Section 21 of the KNCHR Act requires the Commission to submit an annual report detailing its assessment of the performance of the Government in the field of human rights during the period under review. The Commission therefore commenced work on the Third State of Human Rights Report in which it made a deliberate decision to assess the Government’s performance under Vision 2030, which is the blueprint of the Government’s development agenda. Further research on the theme of the report showed that there was need to carry out a survey which would assess access to certain economic and social rights by Kenyans. The Commission engaged an institution (Institute of Development Studies – University of Nairobi) to carry out this survey and to determine what percentage of Kenyans had access to water and electricity. This survey will give the Commission real information with which to hold the government accountable under the objectives it had set out to meet in the Medium Term Plan (MTP) of Vision 2030. The Commission’s aim in this regard was to ensure that the MTP was actually resulting in real benefits for Kenyans and that it was not just another document devoid of implementation. This activity will be finalized in the next financial year.

3. Study on Statelessness in Kenya
The Commission commenced work jointly with the UNHCR on a study on statelessness in Kenya following from previous research and findings with regards to access to national identity cards, which demonstrated that a number of people in Kenya either already were or are at risk of statelessness and had no access to identity cards. Field research was carried out to identify this group of persons. The Commission carried out research in a number of provinces in Kenya and an initial report was subjected to peer review by key stakeholders, including government officials from the Ministry of Immigration and the National Registration Bureau, who were involved at this early stage since they would be the main agencies for implementation of the recommendations made. Various other forums were held to get the stakeholders’
views before publication of the final report. The study brought to the fore the challenges faced by persons resident in Kenya but who do not have any nationality and are therefore unable to claim or enjoy their rights. The report, which will be published in the next financial year, will be used to lobby for official identification and recognition of stateless persons as well the need for the state to put in place policies and other mechanisms to prevent statelessness.

The Commission continued to lead, in conjunction with the Ministry of Justice, National Cohesion and Constitutional Affairs as well as other stakeholders, in the development of the National Policy and Action Plan for Human Rights (NAP). In the year under review, the National Policy was finalized and work towards a National Action Plan for Human Rights commenced, including the development of national indicators for measurement and review of implementation of the plan. The Commission continues to play a lead role in the development of the policy and action plan, which will strengthen the framework for protection of human rights in Kenya.

5. Development of national human rights indicators
The Commission organized a forum on the development of human rights indicators jointly with the OHCHR with the aim of raising awareness and fostering knowledge about how to use common indicators for the promotion and monitoring the implementation of human rights at the national level. This forum attracted representatives from relevant Government departments and civil society organizations. The Commission is particularly interested in this project due to its core mandate of carrying out an overall assessment of the performance of the Government in the field of human rights. To operationalize this mandate, it is important to develop indicators that will provide guidance to the Commission in assessing the performance of the Government generally and with regards to monitoring treaty body implementation. It is also important that the Government be involved from the onset so that they understand the indicators used to assess their performance. An initial forum was carried out in September 2009 and the Commission is currently working with other stakeholders to develop human rights indicators, in particular the Ministry of Justice, Ministry of Planning and Vision 2030 Secretariat, in finalizing the indicators. This process will continue into the next financial year.

5.2.2: Increased ratification and domestication of international and regional human rights treaties and standards

1. Prevention and Prohibition of Torture and Cruel, Inhuman or Degrading Treatment or Punishment in Kenya: The Prevention on Torture Bill
The Commission undertook various activities to lobby for the ratification and domestication of international instruments dealing with human rights and/or compliance with international reporting mechanisms. The Commission recognizes that while the
country has ratified many human rights instruments, Kenyans have not fully enjoyed the provisions of these treaties since many have not been domesticated. In the year under review, priority was placed on the Convention against Torture and Other Cruel or Inhuman Treatment or Punishment (CAT), which Kenya acceded to in 1997 but has not yet been domesticated. The Commission noted that this was despite the fact that in 2007 the Committee against Torture in its concluding observations on Kenya’s initial report made recommendations for the domestication of CAT.

The Commission, in partnership with civil society organizations, held an initial workshop to establish the principles for the draft legislation to domesticate the CAT. A technical committee to draft an anti-torture law was subsequently established with representation from the Commission, Civil Society and Government departments. A number of review forums elicited substantial comments which illustrated the shortfalls of that draft in attaining the standards of a comprehensive anti-torture law. A consultant was engaged to finalize the bill and a subsequent draft was compiled and subjected to peer review. The Bill was put on hold to await the outcome of the constitutional review process with the aim of incorporating provisions of the Constitution, if passed, into the bill. Once enacted, the prevention of torture act will form the basis for the comprehensive prevention of torture as well as the punishment of perpetrators of torture in Kenya.

2. Universal Periodic Review (UPR)

The Universal Periodic Review is a United Nations mechanism introduced in 2006 under which the Human Rights Council (HRC) examines the situation of human rights in each State after every four years. The HRC was mandated by UN General Assembly Res. 60/251 of 15 March 2006 to: “undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each state of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all states.” The Resolution provided that the review would be based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs and complement rather than duplicate the work of treaty bodies.

Objectives of the Universal Periodic Review

The UPR aims to improve the human rights situation on the ground and ensure the fulfillment of each State's human rights obligations and commitments through an assessment of positive developments and challenges faced. The UPR also seeks the enhancement of each State's capacity and of technical assistance; the sharing of best practices among States and other stakeholders; support for cooperation in the promotion and protection of human rights; and the encouragement of full cooperation and engagement with the Council, other human rights bodies and the Office of the High Commissioner for Human Rights (OHCHR).

The UPR is undertaken on the basis of the treaty and other commitments which a State has made, including: the Charter of the United Nations; the Universal
Declaration of Human Rights; human rights instruments to which a State is party; voluntary pledges and commitments made by States; and applicable international law.

The review for any State is based on the following set of information:

a. Information prepared by the state concerned, which can take the form of a national report and any other information considered relevant by the state, which could be presented either orally or in writing. States are encouraged to prepare the information they submit “through a broad consultation process at the national level with all relevant stakeholders”;

b. A compilation prepared by the OHCHR of the information contained in the reports of treaty bodies, special procedures, including observations and comments by the state concerned, and other relevant official UN documents; and

c. Additional, credible and reliable information provided by other relevant stakeholders to the UPR which should also be taken into consideration by the Council in the review. Other relevant stakeholders include civil society organizations and NHRRs.

The Commission in the UPR Process
Kenya was scheduled for review in May 2010. In 2009, the Commission embarked on a leadership role to ensure all stakeholders in Kenya prepared for and participated in the UPR for Kenya. The Commission coordinated some 97 organizations and institutions working on human rights and development concerns in Kenya to prepare for the UPR. The stakeholders held weekly meetings, coordinated by Commission and worked on a joint advocacy strategy, producing various materials for dissemination, lobbying and advocacy. A joint stakeholder report was prepared and submitted to the OHCHR and a number of organizations also submitted independent reports to the OHCHR. The Commission as a National Human Rights Institution also submitted a separate report.

In 2010 and with Kenya due for review under the UPR on 6th May 2010, the Commission spearheaded the setting up of various teams to research on and work around certain strategies. The Commission co-ordinated weekly stakeholder meetings at which the various documents that were prepared by the teams were analyzed. Buy-in was also sought from the media through an initial workshop that was held for the Kenyan media in April 2010 to explain to the Kenyan media what the UPR process was all about and to request that the process be broadcast widely to sensitize the public about it. There were also several appearances in TV shows with a view to educating the public about the UPR.
International engagement

Once the stakeholders had agreed on the key concerns that they wished to be addressed by the State, the Commission coordinated the lobbying of various missions to have questions and recommendations put through to the State when it came up for review. This included the production of various advocacy materials and meetings with various missions to advocate for issues that should be raised during the review. An interactive side event was organized by the Commission in Geneva on 4th May 2010, which was attended by around 30 representatives from state delegations, civil society and the media. This side event served to remind state delegations of the concerns that they should address to Kenya during its review.

On 6th May 2010, Kenya was reviewed by the United Nations Human Rights Council working group. The Commission participated in this review and afterwards lobbied the Kenyan delegation to accept the majority of the recommendations that were made during the review. Subsequently, the Commission organized various meetings and a workshop of the stakeholders with the aim of taking stock of stakeholders’ activities in relation to the UPR, making assessments and determining strategies which stakeholders should employ to ensure maximum gains for human rights at the completion of Kenya’s review by the HRC (scheduled for September 2010) and going forward after that. This workshop was held on 22nd and 23rd June 2010 and attended by Government officials and over 50 organizations. An advisory to the Government was issued thereafter on the recommendations it had deferred and rejected.

The Commission is currently coordinating a stakeholders’ presentation for the September adoption of the Kenya report by the Human Rights Council and will continue to monitor the implementation of various recommendations which the State accepted. Work around the UPR demonstrated the extent to which the Commission
can successfully meet its objectives when it has structured partnerships with stakeholders.

**Outcome of the Commission’s engagement in the UPR Process**

The broad-based approach that the Commission used to engage with the UPR process was very successful. As a result of the Commission’s approach, the interactive dialogue at the Human Rights Council was dominated by the concerns that the stakeholders had raised. 13 out of 15 concerns advocated for by the stakeholders were raised to Kenya during its review and several recommendations, the majority of which the state accepted, were crafted around the concerns raised by the stakeholders. The Government of Kenya was therefore forced to respond to key human rights issues and pledged to address the majority of those issues.

The strategy adopted in the UPR process was also widely acclaimed by state delegations and other international organizations. In 2010, a representative of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights wrote as follows;

‘In many ways, the Kenya Commission has creatively made best use of its opportunities in engaging with the UPR process. This is certainly a best practice example that we would wish to share with other NHRIs as well as the wider public.’

Arising from this, the Commission has on many occasions been requested to make presentations on its UPR process and some of the process’ other stakeholders have also been invited to train civil society organizations outside Kenya to prepare for their
countries’ UPR. The Commission will document its experience in the process to share with other NHRI s and the public at large. The Commission is, however, conscious of the fact that true results will only be attained once the recommendations are implemented and will therefore monitor the implementation process. If effectively implemented, these recommendations will go a long way towards improving the human rights situation in the country. Overall, the strategic manner in which the Commission engaged in the process helped to bring to the discussion table issues that the state would not have otherwise addressed.

3. Validation of the ICCPR Report
The department participated in the validation of the report prepared by the Government for submission to the Human Rights Committee on implementation of the International Covenant on Civil and Political Rights (ICCPR). The Commission aimed to ensure that what is presented in the report reflects the real situation in the country and further, through this engagement, to make recommendations for improvement.

4. Dissemination of the ICESCR report
During the year under review, the department organized a dissemination workshop on the concluding observations of the UN Committee on Economic, Social and Cultural Rights on Kenya’s first country report. The workshop was jointly organized with the Ministry of Justice, National Cohesion and Constitutional Affairs. Its main objective was to disseminate to relevant Government Ministries the Concluding Observations of the Committee. 15 Government ministries and agencies were represented at the forum, which discussed the state report, considered some of the parallel reports from civil society organizations and the recommendations of the Committee. As part of the plan of action adopted at the workshop, the Ministry of Foreign Affairs was tasked to liaise with the Government with regards to whether Kenya would sign the Option Protocol to the Convention on Economic, Social and Cultural Rights as well as follow up needed in the various ministries to ensure that there is a critical mass within the ministries to ensure implementation of the recommendations. This was undertaken in line with the Commission’s mandate of ensuring Government’s compliance with its international human rights obligations.

5.2.3: Enhanced inclusion and participation of vulnerable groups to claim their rights

The Commission during the year under review continued to be a focal point and provide leadership in the realization of the rights of persons with disabilities. To this end, the Commission coordinated meetings of stakeholders to discuss intervention points and develop strategies around lobbying for domestication of the Convention of the Rights of Persons with Disabilities (CRPD) and amendment of the Persons with Disability Act to incorporate provisions of the Convention.
During the year under review, a substantial part of the Commission’s engagement involved networking, building strategic alliances and working together with civil society organizations focusing on the rights of persons with disabilities. Most of the planned activities with regards to persons with disabilities will be undertaken in the next financial year when the Commission will have recruited an officer who will work as the disability focal point.

5.3: Achievements

1. The Commission submitted various memoranda and advisories to the Committee of Experts, the Parliamentary Select Committee and Parliament both on the Bill of Rights and the entire constitutional content to ensure the infusion of human rights standards into the Constitution. Of significance is the expanded Bill of Rights in the draft Constitution, which will result in enhanced protection and realization of human rights by Kenyans.

2. The department, through its work on the UPR, NAP, statelessness, development of the prevention of torture bill and the third state of human rights report, fostered working relationships and partnerships with key Government agencies, civil society organizations, UN agencies, research institutions and the academia. Such engagement and partnerships enabled the Commission to achieve its broad mandate and objectives in a framework of shared resources and responsibility, and provides a strong framework for future partnerships for human rights.

3. The department, jointly with the UNHCR, commenced a study on statelessness in Kenya to identify stateless persons or those at risk of statelessness in Kenya. This is a new area of study that brought to the fore challenges faced by Kenyan residents who have no nationality and are therefore unable to actualize their rights, and is in line with the Commission’s focus of profiling human rights issues that are not usually in the public domain. The Commission will use the research findings from the study to lobby state agencies regarding both protection of the rights of stateless persons as well as prevention of statelessness.

5.4: Lessons learnt

- It is important to undertake follow-up to ensure the Commission’s recommendations to various Ministries and Government institutions are acted upon. The outcomes of the Commission’s research, findings and recommendations, including advisories submitted to the Government, do not translate into actual benefit to Kenyans unless the relevant duty bearer implements them.
- The department recognized the importance of involving the Government from the onset in the UPR exercise so that it is aware of the indicators used to assess its performance. This is also pertinent when dealing with other stakeholders, as was
realized when the Commission successfully sought buy-in from the Kenyan media by explaining the UPR process and achieved wide publicity and several appearances on TV shows to sensitize the public about the universal periodic review.

- The Commission learnt that forming strategic partnerships with both state and non-state actors would enhance its effectiveness and realization of its objectives. This was evident in the UPR process, the development of the prevention of torture bill, and other research projects.

5.5: Challenges

The key challenges experienced by the department include:

i) Human resource constraints, which had a negative impact on the implementation of planned activities.

ii) Keeping each partner organization on board since much of the work done in the period under review required input from stakeholders and the building of strategic alliances.

5.6: Conclusions and recommendations

The department, through its activities, continued to make key contributions to the Commission’s mandate of strengthening the legal framework for the promotion and protection of human rights in Kenya. Further, the Commission continued to set the national human rights agenda through its work around the UPR, the development of draft legislation and innovative research in areas not previously addressed.

The department recommends that the Commission continue to implement its activities through networking and partnerships with other stakeholders as this will not only enhance its efficiency and buy-in for its activities but also enable it to maintain its position as a leading human rights institution in the national and regional arenas.

5.7: Focus for the next year

- Undertaking research to inform law, policy and institutional reforms;
- Monitoring the implementation of various constitutional provisions, under the new Constitution;
- Auditing and reviewing various legislation and policies under the new Constitution to ensure infusion of human rights standards and principles;
- Carrying out treaty monitoring to ensure that international human rights instruments translate to actual gains for the Kenyan citizens through domestic application;
- Monitoring the implementation of recommendations and concluding observations made by international human rights bodies; and
- Ensuring that vulnerable groups access and enjoy their rights, including through finalization of the study and national strategy for equal treatment and non-discrimination.
CHAPTER SIX: ECONOMIC, SOCIAL AND CULTURAL RIGHTS DEPARTMENT

6.1: Overview of the department

The core function of the Department is to enhance the realization of economic, social and cultural rights. This function will become more relevant in the context of the new Constitutional dispensation, in which the Bill of Rights has been expanded to incorporate economic, social and cultural rights. The department will therefore in the next financial year focus on creating more awareness of ESC rights, as well as monitoring their realization. The department responds to the first three KRAs of the Commission as follows:

1. Reduced systemic human rights violations
2. Increased application of human rights principles and standards in implementation of Agenda 4 of the National Accord
3. Increased knowledge and practice on human rights principles and standards in public and private spheres.

The key areas of work in the year under review continued to revolve around the following broad outcomes:

- Greater commitment by business to respect human rights
- Greater protection of the rights of internally displaced persons
- Public expenditure profiled as a tool for the realization of the rights of the vulnerable and marginalized groups
- A more informed citizenry on past corruption practices
- Greater understanding of the role of cultural systems in the protection of the rights of the vulnerable
- Rights of minority and Indigenous peoples profiled as a national human rights issues.

6.2: Summary of key interventions

6.2.1: Profiling the human rights of Internally Displaced Persons (IDPs)

Conducting monitoring missions in camps for the internally displaced
The department continued its work on profiling the human rights of IDPs, which continued from the previous financial year. It conducted three missions between October and December 2009 to monitor the resettlement process in Nakuru, Rongai, Nyahururu, Molo, Kuresoi and
Kipkelion. Another mission was conducted in January 2010 which covered Huruma village (Thika), Naivasha, Nakuru, Nakuru North Molo, Nyandarua, Rongai, Kipkelion, Njoro and Kuresoi. Over 30 IDPs camps and sites where IDPs had reintegrated with the community were visited, findings made and reports shared with the Protection Working Group (PWG) as well as the Ministry of State for Special Programmes.

These missions reviewed the progress that has been made so far to implement the Presidential directive on resettlement, and assessed and documented the human rights situation of IDPs who are still in camps and those (re)integrated with the community. Based on this, reports were prepared on the progress of the IDP resettlement process and an Advisory sent to the relevant ministries, including Ministry of State for Special Programmes and Ministry of Internal Security.

Investigations into allegations of corruption in the resettlement exercise
Following reports received alleging that there had been corruption in the IDP resettlement exercise, the department scaled up advocacy and documentation activities by gathering and verifying data with the aim of generating a report to the Government to provide backup information alongside those of other agencies such as the KACC. After background information was collected, reconnaissance and field visits were made to Molo, Nakuru, and Kipkelion. These investigations found and documented credible reports of allegations of corruption involving public officers, IDPs and other individuals posing as IDPs. It also documented inconsistencies in the IDP profiling exercise that may have contributed to corruption in the resettlement process.

On the basis of these findings, the Commission made public its findings through a press release in December 2009. The department also prepared an advisory on the embezzlement of IDP funds by Government officials and called for an investigation of the allegations and the prosecution of those found culpable. The Advisory was shared with the Government for action.

Support to the Development of a National Policy on IDPs
During the year under review, the Commission, working with the Ministry of State for Special Programmes and the Ministry of Justice and in partnership with the Protection Working Group on Internally Displaced Persons, was engaged in a process to develop a draft IDP Policy for Kenya. This process began in 2009 and by February 2010 a draft had been prepared. In March 2010 the partners held a workshop whose main objective was to create a platform where all stakeholders – the Government of Kenya, other national actors, IDPs and the UN – would discuss the draft IDP Policy for Kenya with a view to developing a common framework for all actors involved on issues related to internal displacement. The Commission facilitated the process through stakeholder meetings and a workshop which was attended by 118 participants comprising wananchi (citizens), local leaders, development partners, members of the diplomatic community, civil society groups, human rights activists, professionals from various fields, UN Agencies Representatives, researchers and research institutions,
representatives from various government Ministries, Departments and Agencies, private sector and business leaders, and media representatives.

Support to the meetings of the Protection Working Group on Internally Displaced Persons

The department continued hosting the monthly protection working group as well as smaller sub-cluster meetings. The sub-cluster meeting for the legal aid working group worked to finalize the draft national policy for the protection of and assistance to internally displaced persons before its presentation to cabinet for approval. One of the protection working group meetings held during the year was on scenario planning on the referendum. The Commission hosted and participated in all the national protection working group meetings as well as two regional meetings in Nakuru and Eldoret. The information received was used to feed into the Commission’s campaign and referendum monitoring project as well as similar initiatives of partners in the larger protection working group. The protection working group draws representation from the State, UN agencies, and Civil Society Organizations.

Other significant activities undertaken to profile the rights of IDPs during the reporting period include:

- Consultations with Dr. Walter Kalin, the Representative of the UN Secretary General on Human Rights of IDPs. The RSG was briefed on the Commission’s interventions with regards to IDPs and the general situation of IDPs in the country.
- Participation in a technical workshop for the International Conference of the Great Lakes Region (ICGLR) Members States on the implementation of the Great Lakes Protocols between in July 2009.
- Participation in the National Stakeholders’ Forum on the Protection and Durable Solutions of IDPs in Kenya under the auspices of the Kenya Protection Working Group on IDPs. The Forum which was attended by Government, UN Agencies, NGOs, donors and displaced people discussed the progress made in protection and assistance to IDPs over the last twenty years as well as ways to develop mechanisms for collective action and durable solutions.

6.2.2: Business and human rights

Forum on business and human rights

In September 2009, the department organized a business and human rights forum for state enterprises. The forum’s objective was bring to a roundtable relevant public sector actors to examine the role of private actors in human rights to determine if human rights standards are relevant to state enterprises; identify how state enterprises and the Commission can engage more cooperatively to mitigate the complaints raised by citizens with regards to business entities; identify capacities and support needed by both business and human rights actors in furthering this agenda; and dialogue on ways through which the duty to respect rights by
businesses can be seen not as a cost, a constraint or a charitable deed but as a source of opportunity, innovation and competitive advantage.

Organizations represented at the forum outlined some of the initiatives they were undertaking in relation to human rights. An assessment of the human rights situation in Kenya was undertaken based on a tool developed by the Danish Human Rights Institute and the indicative deductions were that the questions of non-discrimination, freedom of association, workplace health and safety, conditions of employment, corruption and bribery were major problem areas in Kenya. To address the above mentioned human rights challenges, organizations represented at the meeting identified initiatives that they committed themselves to undertake, such as training on human rights, corporate social responsibility and employment; and review of employment wellness programmes. These will form part of the department’s business and human rights work in the next financial year.

6.2.3: Malindi Public Inquiry follow-up

Consultative forum with civil society groups
Following a successful public inquiry in Malindi, the department continued to engage with local civil society organizations to empower them and to monitor implementation of the recommendations made, as well as to report any further human rights violations. In this regard, the department held a one day forum with community groups and civil society organizations in Malindi on 29th September 2009. This was informed by two needs: to ensure that the inquiry’s recommendations are implemented and sustained at the district level, and to ensure that district-level community groups and civil society organizations form the cornerstone of follow-up efforts, rather than the Commission.

The objectives of the forum were to audit the level of implementation of the recommendations of the inquiry report; to take stock of, document and consolidate the gains made in the implementation of the recommendations; to outline the sustainability of the project ‘post the Commission’s involvement’; organize and sustain community initiative and come up with a way forward in addressing challenges faced in implementation of the recommendations.

The forum discussed the community’s perspective on the status of the implementation of the recommendations of the Malindi Inquiry report. A notable outcome of the inquiry process was the creation of the Malindi Rights Forum as an advocacy group of community-based organizations in the area as well as the establishment of a working arrangement of the Community, provincial administration and salt companies through a committee to amicably resolve identified issues such as land, labor and the environment. The main challenge, however, was the low uptake of many of the recommendations of the inquiry report. At the end of the forum, the organizations represented agreed to form a working coalition of civil
society organizations in the region to pursue and take ownership of the process through capacity building and resource mobilization.

In February 2010, the department received complaints from residents of Marereni area in Malindi district, following violent confrontations with the police. The complainants alleged that as a consequence of the said conflict, their rights were grossly violated. The residents accused the local provincial administration and police of having used excessive force in quelling the protests. The department thereafter held consultations with the area MP and a fact finding mission was conducted jointly with Complaints and Investigations department and the issue was resolved.

Responding to business related complaints - Coffee Farmers Petition
In late 2009, the Commission received a complaint from a group of representatives of coffee farmers from Kangema, Muranga alleging systemic abuse and violation their rights by Lyego Farmers Cooperative Society. During the year under review, the department made fact finding visits to verify the issues raised by the petitioners and to obtain responses from the Cooperative Society and the provincial administration. During these visits, the farmers requested the Commission to undertake a capacity building workshop on cooperative matters. Subsequently, the Commission held a two day workshop in June 2010 during which the farmers were exposed to a variety of issues including introduction to human rights, the Cooperative Act and by-laws, as well as lobbying and advocacy. They also shared experiences and best practices with leaders from other more successful societies. This work will continue into the next financial year.

6.2.3: Protection of the rights of indigenous and minority groups: profiling the ruling on the Endorois Community

The Commission has been participating (since 2006) in the hearing of a case filed by the Endorois Community through the Center for Minority Rights and Development (CEMIRIDE) at the African Commission on Human and People’s Rights. In that case, the Endorois community alleged that the government had violated their rights under the African Charter on Human and People’s Rights by forcibly evicting them from their ancestral lands around Lake Bogoria area with neither proper consultation nor adequate and effective compensation. In the year under review, the African Commission ruled that the government had indeed violated the African Charter by forcibly removing the Endorois from their ancestral lands around Lake Bogoria and made recommendations relating to restitution, access to the suit property and compensation, among others.

In recognition of the significance of this ruling in terms of enhancing access to land rights by indigenous communities, and further recognizing the vulnerability of these communities and the historical injustices that they have been subjected to, as well as the need to highlight these as matters of transitional justice, the Commission, under the umbrella of the Kenya
Land Alliance joined the Endorois Community to commemorate, disseminate and discuss at a Community level the ruling by the African Commission. This took the form of a forum held at the Endorois ancestral lands near Lake Bogoria in March 2010. The commemorative event was preceded by a nationwide media campaign in both print and electronic media to generate nationwide debate and raise the profile of indigenous peoples’ rights as a matter of national concern. It is hoped that through profiling of this ruling, many other indigenous communities in Kenya, whose rights have been violated, will be provided with the platform to speak up and seek redress for the violations.

The main impact of this was the enhanced awareness and appreciation of the rights of minorities and indigenous groups as well as appreciation of other legal mechanisms (at the regional level) for safeguarding their rights. Furthermore, this activity marked a launching pad for lobbying and advocacy for the implementation of the recommendations of the African Commission in its ruling. It also served as a forum for the Endorois community and other indigenous communities to synergize with partners in civil society to strategize on how to profile issues of indigenous peoples before the TJRC for historical injustices perpetrated against them.

6.2.4: Culture and human rights

Evaluation of the culture and human rights project in Nyanza
The Commission, in partnership with the Health Policy Initiative (Futures Group) and the Luo Council of Elders, has over the last five years undertaken work in the Culture and Human Rights project which aims to apply positive cultural structures to enhance the promotion and protection of the rights of vulnerable groups. Its emphasis has been on the protection of the property inheritance rights of widows and orphans. It identifies the denial of women’s property and inheritance rights as a serious human rights concern and recognizes the need to come up with a show case study for addressing the violations that occur under the guise of culture.

The project recognizes and promotes instances where culture provides protection to vulnerable groups and is therefore an ally for human rights protection. It also promotes debate about negative practices within cultural institutions that maybe contribute to human rights violations.

In September 2009, the Commission engaged the services of an external consultant to undertake an evaluation of the project so as to document the success and challenges of the project. This ensuing report was subjected to critique in a workshop with experts in cultural issues and elders from Kenya’s various cultural groups in February 2010. During the forum, the department’s experiences from Nyanza were shared with government institutions and other actors. The workshop made recommendations and suggested various activities to guide the project’s future. This project, which succeeded in protecting the rights of widows and
orphans in Nyanza, is currently being replicated in Meru with the Njuri Njeke. The lessons learnt in Nyanza are informing the design and implementation of the Meru project.

Training of Elders
The commission held a training workshop on alternative dispute resolution for the Luo Council of Elders in September 2009 with the purpose of empowering the cultural institutions to use locally available cultural structures and solutions to resolve disputes. Traditional dispute mechanisms remain important in Kenya because they represent an easier way to access justice, obtain redress and seek human rights protection than the formal justice system, which remains inaccessible to the majority of Kenyans.

6.2.5: Evictions and human rights

Development of evictions guidelines
The Land Reform Transformation Unit at the Ministry of Lands has been in the process of developing guidelines on evictions. Though this initiative started some years back it developed new momentum in the year under review and the department found it imperative to participate and support it. The guidelines promise to provide a national framework for conducting evictions in line with internationally accepted standards, which will enhance protection of the rights of evictees.

In September 2009, the department participated in a meeting of the Taskforce on Development of Evictions and Resettlement Guidelines. The workshop highlighted the justification for evictions and resettlement guidelines and experiences. The workshop’s participants also shared challenges and concerns on evictions in Kenya. Various stakeholders were provided with information on applicable international and regional human rights standard on evictions as well as comparative experiences from Africa, including a summary of existing applicable legal and administrative mechanisms. The meeting developed terms of reference, scope of work and activity plans for the taskforce. Subsequently, the task force organized a series of meetings and prepared draft guidelines. This work will continue into the next financial year.

Responding to cases of forced evictions
Deep Sea: Following complaints received from residents of the Deep Sea informal settlement in the Highridge area of Nairobi, the department (in partnership with the Complaints and Investigations department) sent a team to the area to address the residents’ complaints and provide redress/legal advice where possible. The team held discussions with community members, local leaders, and the provincial administration. The department highlighted the residents’ plight to the CDF committee, the Vision 2030 secretariat and the Ministry of Roads. It also held discussions with civil society organizations active in the issue and will follow up regarding resolution of the issue.
Mau evictions: In November 2009, the Commission sent a team to Mau forest in Kuresoi to assess and monitor the state’s intended eviction of the settlers after the deadline earlier issued. The objectives of the field mission were to monitor whether the exercise was conforming to the accepted international and national laws on eviction and or internal displacement; to appraise the supportive machinery put in place to help evictees cope with the movement; to ascertain whether there was appropriate consultation with the evictees before the exercises began; and to document any human rights violations and pre-empt any human rights violations by law enforcement agencies. The mission visited 9 camps hosting Mau evictees and some of the IDP camps for victims of the post election violence. It was established that the process created an evident humanitarian crisis that required immediate attention from the Government and other stakeholders. Ethnic tensions were reported as a result of the eviction, which was perceived to be targeting a particular community. The Commission shared its findings with the Provincial Administration, including the DC Kuresoi, for quick preventive action.

Advising on the right to housing
During the year under review, the UN Special Rapporteur on the right to housing requested information from the Commission regarding the implementation of recommendations of his previous mission to Kenya in 2004. After various preparatory activities including a visit to eviction sites (Kieni Forest and parts of Rift Valley) and following receipt of information requested from eight government ministries, the department prepared and circulated a draft report.

In July 2009, the department held a half day stakeholders forum to discuss the draft report and gather more information from civil society organizations as well as government ministries, city council and other relevant stakeholders. The report was then revised and submitted to the Special Rapporteur. This report will be used to hold the Government accountable with regards to its implementation of recommendations around the right to housing.

6.2.6: Protection of domestic workers

Protection of domestic workers
During the year under review, the Commission’s attention was drawn to remarks attributed to the Federation of Kenya Employers (FKE) regarding the implementation of Legal Notice 159-The National Social Security Fund (Commencement of Contributions) Order 2009, a directive issued by the Minister for Labor requiring all employers with at least one employee to start remitting contributions to the National Social Security Fund (NSSF). The directive took effect on November 1, 2009.

The Commission submitted a brief on the issue to NSSF and subsequently successfully engaged the Fund and other stakeholders on the matter. It convened a roundtable discussion
on protection of domestic workers in June 2010 following a series of separate deliberations with the NSSF and the Labor Awareness and Resource Centre (LARC). The round table was aimed at bringing together relevant government agencies, workers unions, employers, employment bureaus, civil society organizations and other relevant stakeholders to discuss collaborative efforts aimed at addressing the existing challenges relating to the protection of domestic workers in Kenya. In particular it was intended to help clarify the important issues and strategies that can contribute to the emergence of a framework for the protection of domestic workers in light of the new legal notice and other developments taking place at the level of the International Labor Organization (ILO).

The department further organized a Listening Forum on Promoting the Rights of Domestic Workers. The forum was an experience sharing session with domestic workers drawn from various parts of Nairobi and open discussions were held where panelists from the trade unions, employment bureaus, Ministry of Labor, civil society, NSSF, NHIF and the Commission listened and responded to the concerns of over 150 domestic workers who responded to the Commission’s invitations through the media. This work will continue into the next financial year; it will in the end lead to profiling human rights challenges faced by domestic workers and to better protection of the rights of domestic workers.

6.2.7: The right to water

The Commission has made a deliberate decision to focus on and profile the right to water in the current strategic plan. In the year under review, the department prepared a concept paper to guide the Commission’s work on the right to water and sanitation. The concept paper outlines the normative framework and principles that anchor the work on the right to water, locates it in the Commission’s strategic plan, and outlines proposed activities. The department subsequently held consultations with GTZ and the Ministry of Water to discuss the Commission’s planned work on the right to water. A working group comprising representatives from the institutions represented was formed to, among other things, agree upon the nature of the intervention and to design a working program and work schedule.

The department also participated in a multi-stakeholder dialogue on the right to water and sanitation, which discussed the progress made to reform the water sector, as well as the recommendations put forward by CSOs on the implementation of the reforms, law, policy and practise based on international human rights standards. The final output of this activity will be policy recommendations to the Government on measures to be undertaken to enhance realization of the right to water, in particular in line with Kenya’s Vision 2030.
6.3: Achievements

One of the key achievements of the department was the contribution towards durable solutions for internally displaced persons specifically with regards to preparation of the IDP policy, of which a draft was ready at the end of the financial year under review. The department also succeeded in profiling the plight and rights of IDPs, thereby keeping the issue in both the public and Government’s domain.

The department also enhanced the State’s awareness of the human rights obligations of the business sector. Further, the department enhanced awareness of the landmark decision and recommendations of the African Commission on Human and Peoples Rights on the Endorois and also helped clarify the importance of the development and enforcement of a framework for the protection of domestic workers.

6.4: Lessons learnt

Given the variety and wide range of issues that demand attention from the department, partnerships are indispensable as the Commission lacks the capacity to sufficiently address all of them. Additionally, an evaluation of the culture and human rights project in Nyanza informed the department of the need to develop innovative ways to enhance access to justice, particularly for the vulnerable.

6.5: Challenges

Planned work in the following areas was not undertaken due to time and resource capacity constraints:

- Monitoring of the realization of the right to water.
- Community meetings on culture and human rights
- Development of training materials on business and human rights

In addition, the department was not fully in charge of some key processes, such as the development of policies which require wide consultations and are driven by state agencies. As such it was not able to move as fast as it would have wanted to.

6.6: Conclusions and recommendations
For the department to achieve its targets and meet the high expectations of Kenyans there is an urgent need to enhance its capacity by increasing and equipping its staff. This will be more so in light of the department’s mandate to monitor the enforcement of the new Constitution’s expanded Bill of Rights, which incorporates economic, social and cultural rights. The department further needs to improve its planning and monitoring of the impacts of its activities and to nurture partnerships and find innovative ways of enhancing the realization of Ecosoc rights.

6.7: Focus for the next year

The department's focus in the next financial year will be in the following areas:

- Profiling the rights of IDPs/ lobbying for the adoption of IDP Policy;
- Developing of Eviction and Resettlement Guidelines;
- Profiling the rights of domestic workers;
- Clarifying and advising on the role of business in the protection of human rights;
- Enhancing awareness of economic, Social and cultural rights in the new Constitution;
- Enhancing awareness of the role of cultural institutions in protecting human rights; and
- Popularizing the rights of minority and indigenous peoples.
CHAPTER SEVEN: PUBLIC EDUCATION AND TRAINING

7.1: Overview of the department

Section 16 (1) (c) of the KNCHR Act mandates the Commission “to inform and educate the public as to human rights for the purpose of enhancing respect for such rights”. This mandate is given effect through the Public Education and Training department, whose focus is to inform and educate the public, state and non state actors on human rights principles so as to enhance the respect, promotion and protection of such rights. The department undertakes to achieve these goals by building the capacity of both rights holders and duty bearers through public education and training, workshops, seminars, public forums and the development of curriculum, training manuals and key IEC materials. The department also seeks to infuse human rights based approach in the public service through capacity building. To undertake these, the department is guided by the following KRAs of the Commission:

- Reduced systemic human rights violations
- Increased knowledge and application of human rights principles in public and private spheres.

In the year under review, the department expected to realize the following outcomes:

- Increased capacity of the public to claim their rights
- Greater respect and enforcement of human rights by state agencies
- Greater respect and adherence to laws and human rights standards by non state actors

7.2: Summary of key interventions

7.2.1: Human rights training and capacity building for public officers

The department conducted various capacity building and awareness trainings for public officers with the objective of enhancing their capacity, as key duty bearers, to enhance the protection of human rights. The trainings conducted are discussed below.

1. The Commission conducted training for Town Clerks from Rift Valley province. The training covered various topics including an introduction to human rights, gender, the rights-based approach to development and the rights of persons with disabilities. As a government agency that directly interacts with the public on a daily basis, the department felt the need to conduct more trainings for other officers of the Local
Authorities to equip them with skills to undertake their work in accordance with human rights principles and standards. Further training will therefore be undertaken in the next financial year.

2. The department conducted a training-of-trainers workshop on the rights-based approach for the Senior Immigration Officers from Nairobi, Eastern, Central, Western and Nyanza Province. The participants were drawn from various immigration departments inclusive of border control, citizenship, Kenyanization, passports and investigations. The training focused on domestic and international human rights standards regarding the handling of persons in detention, refugees and children, and the concept of gender and minority rights. It also offered suggestions on how the departments could mainstream the rights-based approach into their work. The trained officers developed action points on how they were to train the trainer of trainers (TOTs) on the human rights-based approach. The evaluation of the extent to which the human rights-based approach has been mainstreamed will form part of the department’s core focus in the next financial year.

3. Since 2005, the Commission has been receiving invitations from the Peace Support Training College to conduct human rights awareness trainings for peacekeeping officers waiting to be deployed on peacekeeping missions outside the country. In the year under review, the department conducted training sessions for senior military officers scheduled for peacekeeping in various countries, and included officers from the Army, Prisons and Police. Through these training sessions, the Commission is able to enhance the officers’ awareness of the relationship between human rights and peacekeeping, as well as mainstreaming the human rights approach in their work as peacekeepers. The trainings have also fostered a closer working relationship between the Commission and these agencies. In the next financial year, the Commission will continue to respond to requests to train this group.

4. Related to 3 above, the department has continued to respond to requests for training for recruits as well as refresher trainings at the Administration Police staff training college in Embakasi. In the year under review, the department trained 120 senior sergeants and corporals during the Administration Police Leadership Development and Skill Enhancement Courses in September 2009. This was followed by a public forum on human rights and policing for 600 cadet officers in the same venue in October 2009. The department further conducted two human rights and policing sessions for 96 Senior District Administration Police Commandants and Chief Inspectors at the Administration Police Senior Staff College in Emali. They were inducted on the human rights based approach in relation to their work as District Administration Police Commanders. A further training was conducted for 90 other administration police officers at the Kanyonyo Administration Police camp in Kitui. This training was specific to issues of human rights and gender based violence, which they had identified as a key human rights violation that they interact with in their work and for which they needed capacity on how to handle. These training sessions have enhanced the officers’ appreciation and awareness of issues on human rights and policing.
5. Additionally, the department facilitated human rights sessions for a total of 80 senior CID Superintendents at South-C Criminal Investigation Police Training School in October 2009 and January 2010. The officers were inducted on the rights-based approach in relation to criminal investigation work and on policing and how they are to protect and promote citizen’s human rights. At the end of these sessions, the officers appreciated the work and mandate of the Commission, and that the Commission is not always out to fault them, but to ensure that citizens’ rights are upheld at all times. The Commission will continue further such engagement and partnership for human rights.

7.2.2: Human rights curriculum for prisons officers

The Commission, together with the Raoul Wallenberg Institute for human rights (RWI) and the Prisons department, undertook a review of the human rights training curriculum for Prisons Officers in September 2009. The curriculum was edited in 2010 following a stakeholders forum where different organizations involved in penal reform work critiqued and provided input on what they expected to be covered and included in a prisons training curriculum. The curriculum will be used as a training guide to mainstream human rights and the rights based approach in prisons operations to ensure accountability, good governance and rule of law in handling persons in detention as well as its application in the daily management of prisons. The draft curriculum will be validated in the next financial year, after which it will be applied as part of the core training materials for prisons officers.
7.2.3: Training of CBOs and FBOs on human rights

As part of forming strategic partnerships in the promotion and protection of human rights with non state actors, a training of trainer’s workshop was conducted for leaders of CBOs and FBOs from lower Eastern Province. This region was selected by virtue of it having had very limited contact with the Commission in the past, which means that it has not benefited from sensitization and capacity building on human rights by the Commission. The training covered discussions on the Constitution, gender and gender-based violence, human rights and the rights of minorities. This saw the formulation and adoption of an action plan that the organizations will implement in their respective areas in the promotion and protection of human rights, including during future engagement with the Commission. Over the next year, the Commission will endeavor to increase partnerships with local organizations across the country, in accordance with its new focus under the strategic plan.

7.2.4: KIA human rights curriculum for public officers

The Commission had in the previous year prepared a human rights curriculum and training manual for public officers, in partnership with the Kenya Institute of Administration (KIA). A validation workshop was held on the same out of which it was recommended that the curriculum should be simplified for both participants and the trainers. Officers from KIA who have expertise in developing curriculums were engaged to assist the Commission. Terms of reference were developed and a first draft of the trainer’s guide and participants manual has already been finalized. The manual and curriculum will be finalized and launched in the next financial year, and will be form the basis of infusion of human rights in the training of public officers.

7.2.5: outreach: Public Service Week/ participation in ASK shows

The Commission has over the years participated in Agricultural Society of Kenya (ASK) shows and the annual public service week as an outreach strategy for enhancing its accessibility and engagement with the public. In the year under review, the Commission participated in the Public Service Week in September 2009. As a public institution, the Commission used this as an opportunity to sensitize the public about its mandate and provide information on how to access the Commission. This forum was also used to educate the public about human rights and simplified IEC materials were disseminated.

The department further increased the Commission’s accessibility to the public by conducting outreach and human rights education in ASK shows in Nakuru, Kitale, Eldoret, Nanyuki and
Kakamega shows. The forums were used to conduct human rights education, offer legal advice and disseminate targeted IEC materials to the public. This forum was also used to engage the communities in those areas on human rights work and at the same time raise the profile and awareness of the mandate of the Commission. The Commission will continue to use the ASK shows as part of its outreach strategy, especially given that it is not established in all parts of the country.

7.3: Achievements

- The Commission built a network and partnerships for the promotion and protection of human rights: this was created with CBOs and FBOs from Lower Eastern provinces, who have in turn become trainers of trainers for human rights. Similar partnerships were built with the Administration Police, CID officers, and Prison officers.
- The Commission has facilitated enhanced understanding of human rights principles and standards among public officers: these included Town Clerks, Senior Immigration officers, and law enforcement officers.
- There has been enhanced awareness of and increased accessibility to the Commission by members of the public through participation in ASK shows and Public Service Week. Awareness of human rights has also been enhanced through the legal clinic and human rights education conducted at these forums, as well though the dissemination of IEC materials.

7.4: Lessons learnt

- When planning to undertake trainings for the public, State and non-State actors, CBOs or NGOs, it is important to undertake pre-planning sessions so that interventions are appropriate and tailored to the work and needs of the recipients.
- Strategic partnerships with various human rights stakeholders are a key factor to successfully educating the public and creating awareness at the grassroots level. The limited reach of the Commission and the demand for human rights education at the local level means that it is particularly important that a well-developed critical mass of local NGOs, FBOs and CBOs provide such education on behalf of and in partnership with the Commission. These organizations will, however, have to be empowered to adequately fill this role. The Commission will therefore continue to build the capacity of these organizations as trainers-of-trainers for human rights.

7.5: Challenges
1. The department’s limited funding has affected its ability to implement its mandate to conduct comprehensive human rights education, capacity building and awareness programmes. This is despite the fact that there is a lot of demand for human rights education in Kenya from both state and non-state actors.

2. Staffing challenges were such that the department was overwhelmed by the large demand for training and capacity building on human rights.

7.6: Conclusions and recommendations

The department will continue to conduct human rights education for state and non-state actors, given the importance of human rights knowledge and awareness to enable Kenyans to claim their rights as well as to empower duty bearers to enforce their obligation to protect. Given the budgetary challenges that the Commission continues to face, there will be a need to enter into partnerships with other organizations to extend the Commission’s reach to the public and to meet the high demand for human rights education and training.

The department recognizes the need to increase the Commission’s presence in Kenya by opening more regional offices: this will enhance the Commission’s reach and accessibility, including for quick redress of reported violations.

7.7: Focus for the next year

- Conduct capacity building trainings for public officers (KIA), government officers and law enforcement officers on general human rights and the rights-based approach;
- Monitor utilization of the KIA and Prisons human rights training manual and curriculum;
- Monitor application of the rights based approach in select government ministries, namely Local Government, Labor and Immigration;
- Conduct training-of-trainers for NGOs, FBOs and CBOs in select regions;
- Develop and disseminate simplified targeted IEC materials to enhance awareness of various rights;
- Hold public forums on topical human rights issues;
- Participate in four ASK shows and the annual Public Service Week;
- Conduct a needs assessment to identify gaps in the understanding (by law enforcement officers) of the prohibition of torture, or cruel and inhuman and degrading treatment in handling persons in detention. The needs assessment will be used to develop a training curriculum and training for law enforcement officers to enhance their understanding of this prohibition;
- Sensitize state and non-state actors on the proposed Constitution, with particular focus on devolved government, leadership, integrity and the Bill of Rights.
CHAPTER 8: REGIONAL OUTREACH

The Commission in the current Strategic Plan has focused on increasing its regional presence through an elaborate outreach strategy. This entails strengthening the existing two regional offices, opening two more regional offices and establishing structured partnerships with civil society organizations in all of Kenya’s 47 Counties (the Commission’s previous focus was on the 8 provinces that were recognized under the former Constitution). The Commission recognizes the importance of enhancing its accessibility to Kenyans through its outreach strategy, to enable it to effectively discharge its mandate by taking services closer to the people, in accordance with the principle of devolution in the new Constitution.

Given the limited budget that the Commission receives from the Government, priority has been placed on opening two new offices and on working through partners on the ground. These will be identified and mapped out through a baseline survey to be finalized in the next financial year. The Commission will continue to build the capacity of its partners, including on receiving and referring complaints to the Commission. They will also form the Commission’s entry point to undertake human rights work in areas where it has no physical presence.

This section of the report presents the work of the existing two regional offices: the Northern Kenya regional office in Wajir and the North Rift regional office in Kitale. The priority of the Commission in setting up these regional offices was to enhance its accessibility in the most marginalized parts of the country. These offices focus on addressing the unique human rights issues in their regions so as to directly address the needs of the regions’ residents. They also perform several of the functions of the national office in Nairobi – these including receiving and processing complaints, conducting investigations into allegations of human rights violations, conducting public education and training and research on thematic human rights issues. The focus of the Commission in the next financial will be to strengthen these offices through provision of more resources and personnel to enable them serve the regions even better.

The specific objectives of the regional offices feed into the Commission’s KRAs on:

- Reduced systemic human rights violations
- Increased application of human rights principles and standards to implement Agenda 4 of the National Accord
- Increased knowledge and practice on human rights principles and standards in the public and private spheres

8.1: THE NORTHERN KENYA REGIONAL OFFICE – WAJIR
8.1.1: Overview of the Northern Kenya regional office

The northern Kenya regional office, located in Wajir, continued with its focus of increasing its reach in North Eastern province and Upper Eastern (currently the Counties of Garissa, Wajir, Mandera, Marsabit and Isiolo) despite challenges including poor road network, inadequate resources and wide geographical coverage. The regional office in the year under review focused on training religious leaders, women leaders, chiefs, local stakeholders and civil society groups on human rights, transitional justice and the rights based approach as well as creating awareness on the gains to be realized through the then proposed Constitution. The regional office concentrated on conducting civic education on the proposed Constitution for civil society organizations, youth and women leaders in the region. The office also conducted various outreach activities, including human rights and legal aid clinics in Isiolo, Wajir, Garissa, Marsabit, Mandera and Moyale. The objective of these outreach activities was to raise and highlight issues of concern in the region specifically on the proposed constitution and its contents, conduct legal aid and human rights awareness and to carryout investigations for certain specific cases. Following is a detailed analysis of the activities undertaken in the reporting period.

The specific objectives of the northern Kenya regional office

1. Establish and strengthen linkages with grass-root partners and stakeholders;
2. Enhance linkages with the media to profile the region’s unique human right issues;
3. Increase capacity of partners and networks to mainstream human rights in their work; and
4. Address unique regional human right issues and concerns.

8.1.2: Summary of interventions

Complaints and case analysis
Most of the activities of the office in the year under review were concentrated around the Wajir office, given the easier access by Wajir residents to the office compared to other parts of the region; the office is also able to respond to cases of violations faster in Wajir than other areas. Below is a summary of petitions lodged in the office in the year under review.

Table 6: summary of petitions lodged

<table>
<thead>
<tr>
<th>Nature of Petitions</th>
<th>Number Received</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor and Labor-related</td>
<td>031</td>
</tr>
<tr>
<td>Complaints against the Police</td>
<td>025</td>
</tr>
<tr>
<td>Civil/contractual matters</td>
<td>008</td>
</tr>
<tr>
<td>Administration of Justice (e.g. court delays )</td>
<td>007</td>
</tr>
<tr>
<td>Land (evictions and other land issues)</td>
<td>001</td>
</tr>
</tbody>
</table>
Environmental issues 009
Children (child abuse, maintenance, custody) 022
Complaints against local administration 003
Domestic/family Issues 052
Health issues 004
Rights of refugees 007
Complaints against the Armed Forces 004
Follow ups on existing cases 012
**Total cases received** 185
Number of cases referred/not admitted 104
Cases solved 046
Cases pending investigation 030
Cases admitted 005

The small number of cases admitted is attributed to the fact that many of the complaints lodged at the regional office fall outside the mandate of the Commission and therefore do not fit the admissibility criteria. The regional office has been conducting some publicity around its admissibility criteria, in particular during its outreach and human rights clinics. The high number of domestic/family issues and complaints relating to children has also risen because for a long time there was no Kadhi in Wajir. Whereas the office resolved most of these issues through ADR, it continued to lobby for the posting of a Kadhi, who would have jurisdiction over these matters.

**Civic education (on the then Draft Constitution)**

**Forum for women leaders in northern Kenya**

The regional office organized a three day forum for 60 local women leaders to sensitize them on and discuss the proposed Constitution. The workshop presented an opportunity for the participants to build and strengthen their capacity on matters concerning the proposed constitution and empowered them to educate the public on the contents of the proposed Constitution. The forum was an avenue meant to increase their knowledge and understanding of the draft and to enable their future participation in not only educating their fellow women, but also furthering their general understanding and participation in matters affecting the region.

Issues of devolution, citizenship, the Bill of Rights and affirmative action, as well as those touching on historical injustices and the rights of monitors and vulnerable groups were discussed and their understanding of these as addressed in the new Constitution was enhanced. They in turn imparted this knowledge to their communities in order to foster informed participation in the referendum process.
Commissioner Fatuma Ibrahim in a women forum in northern Kenya explaining an issue on citizenship in the draft Constitution

**Forum for civil society groups on Agenda 4 reforms**

The office organized training on Agenda 4 reforms with specific focus on the proposed Constitution. A total of 50 participants from civil society groups working in the region were targeted for the forum. The workshop presented an opportunity for the participants to build and strengthen their understanding of the draft, and in turn facilitated them to educate the public on the contents of the proposed constitution.

**Advocacy and campaigns for various reforms**

During the reporting period, the office implemented activities targeted at various institutional reforms including through visits to places of detention (prisons and police cells), strengthening of the human rights networks, conflict and peace building and transitional justice.

**Visits to places of detention**

The regional office team visited three prisons in Isiolo, Mandera and Garissa and police stations in Garissa, Daadab, Moyale, Mandera and Wajir. The visits were conducted as part of the mandate of the Commission to visit prisons and other places of detention with a view to assessing the condition under which persons in detention are held. The main problem in prisons was found to be overcrowding, poor sanitation and delays in the conclusion of cases. Except the Isiolo prison, the rest of the prisons in the region do not have the Commission’s billboards that indicate the rights of inmates: this will be addressed in the next financial year.

In police cells, the office found that there were cases of torture by police: one such incident was in Wargadud in Mandera where a civilian was allegedly tortured by regular police officers...
(picture below). The office took up the case for further investigations to establish the veracity of the allegations made.

**Strengthening of the human rights network in the region**

In order to address challenges of accessibility, mainly occasioned by geographical distance to the office, the regional office focused on identifying, building the capacity of and working with human rights networks in the region. Such networks are expected to receive and forward complaints to the Commission and to assist in mobilization during outreach programmes. This is in line with the Commission’s mandate and strategic focus of encouraging the activities of other institutions working in the field of human rights and cooperating with such institutions for the purposes of promoting and protecting human rights in Kenya. These networks have been initiated in Moyale, Garissa, Isiolo, Mandera, Ijara, Marsabit and Wajir districts and are currently handling issues around the draft Constitution, transitional justice, negative ethnicity, women’s rights, security issues, children’s matters and other general human right concerns.

**Using the media to enhance human rights awareness**

During the year under review, the regional office participated in commemorating and profiled the Wagalla massacre (which occurred in Wajir District in 1984) through the media as a mechanism to enhance access to justice for the victims and survivors. This activity aimed at sustaining the claim for justice by survivors and kept the issue in the public domain.

8.1.3: Achievements
1. Peace building and conflict management: The office succeeded in resolving clan conflicts by working with District Peace Committees and other civil society groups working on peace-building in the region, such as Wajir Peace and Development Agency, Strategies for Northern Development (SND) in Moyale and the Mandera Women for Peace. The office led efforts to de-escalate conflicts in Wajir North and Moyale among the Ajuran and Boranas and among the Garre and the Murulle clans.

2. Promoting women's rights: one of the key focus areas of the regional office is to promote women’s rights and to improve the lives of women. The regional office empowered women through training and workshops to have greater control over their lives and against retrogressive cultural practices such as FGM and early marriages. There was also a focus on girl child education. During the year, the office teamed up with UNIFEM and other organizations working in northern Kenya for the advancement of women to support programmes and projects that will improve the quality of life for women in the region.

3. Empowering the most marginalized: The office sponsored the Wagalla massacre Commemoration to support victims and survivors to voice their issues on historical injustices and to seek redress. The Wagalla issue has now been brought to the public domain and the injustice debated as a matter of public concern.

8.1.4: Lessons learnt

- Coordination of activities with other government departments and partners will ensure an improved status of promotion and protection of human rights in the region.
- Human rights work cannot be achieved in isolation and therefore requires strategic partnerships and networking.

8.1.5: Challenges

- Managing public expectations, especially with regards to the admissibility criteria remains a key challenge. The office is inundated with complaints that fall outside the mandate of the Commission, yet petitioners expect all these to be addressed by the Commission. The office however attempts to solve most of the complaints using alternative dispute resolution mechanisms.
- Inadequate resources continue to affect the work of the office.
- Lack of representation of some government offices in the region (for instance Labor offices) limits the extent to which complaints can sufficiently be referred and redressed. The whole of the Northern Kenya has no labor office and the communities are forced to travel to Thika or Embu to lodge their complaints. In most cases, these complaints are lodged at the Commission’s regional office with the expectation that they will be resolved.
8.1.6: Conclusions and recommendations

As the regional office begins the next phase of its planning period, more emphasis will be laid on contact building and strengthening human rights networks, civil society and religious groups in the region through forums and workshops that will address specific human rights concerns. This will enhance the office’s accessibility to northern Kenya residents.

8.1.7: Focus for the next year

- Routine processing and investigation of human rights complaints
- Strengthening partnerships and networks for human rights work
- Working with the Council of Elders on using culture to protect human rights
- Developing radio programmes to increase public knowledge and understanding of human rights
- Training and public education to pastoralists, civil society groups, youth and women leaders on the Bill of Rights
- Working with transitional justice mechanisms, with a focus on the Wagalla massacre.

8.2: THE NORTH RIFT REGIONAL OFFICE - KITALE

8.2.1: Overview of the North Rift Regional Office

The North Rift regional office was successfully re-located from Kapenguria to Kitale in the year under review. This was relocation was necessitated by challenges of accessibility to north rift residents, and the recommendation made by the residents to re-locate the office to Kitale, which is considered much more accessible than Kapenguria and hence able to better serve the residents. Following this relocation, the office has focused on branding and publicizing its location and in forming close working partnerships with civil society organizations and key government offices. The new office location in Kitale has placed the region at a strategic point to effectively address human rights issues not only in North Rift but also even in parts of Western Province.

The North Rift regional office focuses on addressing unique human rights issues in the region and also implements routine activities such as processing of complaints, conducting investigations and undertaking public education on human rights. It also conducts outreach human rights clinics to enhance its reach in the most marginalized parts of the region.

8.2.2: Summary of Interventions
Processing complaints and investigation of human rights abuses
The North Rift regional office is empowered to receive, process and investigate allegations of human rights violations in the region, in line with the mandate of the Commission under section 16 of the KNCHR Act. In the period under review, the regional office received 213 petitions out of which 94 were not admitted since they fell outside the admissibility criteria set by the Commission. However, the petitioners were given legal advice and appropriate referrals were made. Of the 213 petitions, 128 were lodged by male petitioners while 86 were lodged by female petitioners. All the complaints were received from walk in clients.

The highest number of cases received by the regional office related to children rights (39 cases), labor complaints came second at 35 while land cases were 31. Most of the children cases/petitions were referred to the children’s office, while those that relate to labor issues were referred to the labor officer since they have the mandate over them. The office still faces the challenge of the mandate of the Commission not being clearly understood so that complaints that fall outside its mandate still get lodged at the Commission with the expectation that they will be addressed. Mostly the land cases were found inadmissible because the majority of the petitioners with land related complaints informed the office that the cases had already been filed in court; the KNCHR Act clearly states that the Commission cannot handle cases that are in court. However the petitioners were given legal advice.

Investigating human rights violations linked to allegations of witchcraft
Cases of gross human rights abuses associated with suspected witches, including murder, evictions, destruction of their property and harassment of their relatives are on the rise in North and Central Pokot. The office investigated and found that about 17 people had been killed on the basis of witchcraft allegations. Nine people from one family were killed in the month of March 2010 alone. Through pressure from the office, in collaboration with religious groups, some suspects were arrested but later released under unclear circumstances. The regional office advocated for legal action against the perpetrators and three suspects were apprehended and charged in a court of law.

Table 7: Case analysis

<table>
<thead>
<tr>
<th>NATURE OF COMPLAINT</th>
<th>FREQUENCY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children Rights</td>
<td>39</td>
</tr>
<tr>
<td>Civil/contractual</td>
<td>11</td>
</tr>
<tr>
<td>Land cases</td>
<td>31</td>
</tr>
<tr>
<td>Labor</td>
<td>35</td>
</tr>
<tr>
<td>Delayed court cases</td>
<td>14</td>
</tr>
<tr>
<td>Succession</td>
<td>16</td>
</tr>
<tr>
<td>Access to justice</td>
<td>11</td>
</tr>
<tr>
<td>Accident cases</td>
<td>1</td>
</tr>
<tr>
<td>Personal insecurity</td>
<td>3</td>
</tr>
<tr>
<td>Assault cases</td>
<td>9</td>
</tr>
<tr>
<td>Humanitarian assistance</td>
<td>4</td>
</tr>
</tbody>
</table>
Table 8: Summary of cases referred to other organizations/ institutions for resolution

<table>
<thead>
<tr>
<th>Referral Organization</th>
<th>Mandate of organization</th>
<th>No. of cases referred</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor office</td>
<td>To hear and resolve disputes that relate to labor disputes</td>
<td>25</td>
</tr>
<tr>
<td>Lands office</td>
<td>To register, issue and resolve disputes relating to land ownership</td>
<td>18</td>
</tr>
<tr>
<td>Judiciary/courts</td>
<td>To hear and resolve cases filed in court and render final judgment</td>
<td>14</td>
</tr>
<tr>
<td>State law office</td>
<td>File and prosecute criminal case on behalf of the state amongst other duties</td>
<td>10</td>
</tr>
<tr>
<td>Kenya Red Cross</td>
<td>Lead agency in humanitarian intervention such as food distribution</td>
<td>5</td>
</tr>
<tr>
<td>Kenya Police</td>
<td>Government agency charged with maintaining law and order</td>
<td>7</td>
</tr>
<tr>
<td>Children department</td>
<td>To deal with children issues</td>
<td>14</td>
</tr>
<tr>
<td>Others</td>
<td></td>
<td>4</td>
</tr>
</tbody>
</table>

The regional office acknowledges that there is still some level of public distrust in the institutions that cases are referred to, hence the insistence by many petitioners that the Commission takes up their cases even where these could be better addressed by other government agencies. This is compounded by the fact that the mandate of the Commission and its admissibility criteria are not well understood and complainants end up becoming frustrated. This is a challenge that the Commission has grappled with over the years and has seen the need for regular meetings and building capacity of referral partners to discharge their respective mandates effectively and address the complaints referred to them.

Other complaints were conciliated and solved using Alternative Dispute Resolution Mechanisms (ADR).

Public Education and Training
The office continued to use public education and training as a strategy for enhancing human rights awareness in the North Rift region. Towards this end, the office conducted human rights training and awareness workshops as follows:
- A workshop/training on transitional justice for 37 Leaders from marginalized, minority, vulnerable groups (persons with disability, IDPs, PLWA) including training on how to effectively engage with the TJRC once it commences hearings.
- District Peace Committees (DPCs), CBO and NGO leaders in the region were trained on security sector reforms, conflict management and peace building to enhance their capacity to address conflict and security related issues that are common in the region.
- This being the year that the draft Constitution was published, the office focused on sensitizing the residents of the region on the draft, educating them on the gains to be made from having the draft enacted and clarifying the contentious issues. Women leaders (drawn for the DPCs, Manedeleo Ya Wanawake and Wanawake wa Amani) were sensitized on the draft Constitution generally and specifically on the gains for women and children. The regional office also sensitized 54 Matunda/Kiminini location development committee members on the draft Constitution, with a focus on clarifying the contentious issues in the draft and other general human rights issues awareness.

Collaboration/Networking with partners
One of the serious causes of gross human rights violations in the region is insecurity caused by cattle rustling. Loss of lives, livestock theft, and displacements among other human rights abuses have frequently been reported mostly in Turkana/Pokot, Samburu/Pokot/Turkana, and also close to the Baringo/East Pokot borders. Apart from internal conflicts, there have been cases of border conflicts involving the Toposa of Ethiopia and Karamoja of Uganda. The regional office has been collaborating with partners, specifically the Provincial Administration, DPCs and CSOs, to promote peace and reconciliation among the warring communities. This is expected to be one of the key projects of the regional office in the next financial year.

Profiling and monitoring internally displaced persons

IDPs in Trans Nzoia and Mt. Elgon regions
The North Rift region has one of the highest concentrations of post election violence IDPs, hence the office’s focus on profiling and monitoring their situation and resettlement in the North Rift, in addition to the profiling conducted by the head office. The office found that most of the IDPs had vacated the camps for the displaced, leaving behind those who do not own land. IDPs in Gituamba, Saboti, Kalaha, Embakasi, Cheptobot (Kisii North), Geta farm and Kachibora have returned to their respective lands, where the government, through the International Organization of Migration (IOM) was building houses for them. Nevertheless IDPs camping at Patakwa and Gatatha, who were mostly casual laborers’ at private owned farms, still remained in the camps. This category of IDPs alleged that they had no homes to go to and they were still pursuing the resettlement money promised by the government so that they could pool resources and buy a piece of land.

The office also visited forest evictees at Teldet primary school who had camped near Saboti forest. The evictees were squatters in the forest since colonial time when their grandparents or relatives worked for ‘white farmers’ until the government took over the farms. The land in which they were resettled was re-possessed by the government as forest land. The office is engaging with the Provincial Administration for the resettlement of these forest evictees.

**IDPs in Turkana East and Turkana South**

The office found that the Turkana south region hosts 588 IDPs. The area councilor and chief reportedly allocated the IDPs plots, but they have not been able to get government resources to construct houses in those plots. The IDPs lack housing, face water problems and lack a source of livelihood. The same applied to the IDPs at Kalemung’orok location. Their total population was 259. They also have land but lack a means of constructing housing.

IDPs in Lokori division were also facing challenges. They alleged that they were being discriminated against by the locals and the leaders. They thanked World Vision Kenya for the aid they received in the form of foodstuff, blankets, utensils and tents. The office will in the next financial year continue to profile the plight of IDPs in the region and lobby the Government to provide them with resources to enable them construct housing thereby progressively realizing their right to housing and adequate standards of living.

**Monitoring Prisons and other places of detention**

The regional office team conducted monitoring visits in various prisons in North Rift, South Rift and Central Rift. The specific prisons visited were Kapenguria, Kabarnet, Eldama Ravine, Kericho main prison, Kericho female prison and Kericho farm prison. Others are Bomet, Rumuruti and Maralal prisons.

The office made the following general findings:

1. There were delays in the conclusion of cases, which caused congestion in the prisons.
2. There was a high level of congestion in the cells, which strained available facilities including accommodation, supplies such as blankets, mattresses and clothing, food rations and medical facilities.
3. There was poor sanitation especially in Kabarnet prison where inmates still use buckets to dispose their waste.
4. The warders’ living conditions were very poor, in particular with regards to housing, which contributed to their low morale.

Recommendations

- Speed up the court process to avoid delays in the conclusion of cases. This will lead to decongestion of prisons, which will in turn alleviate the problem of shortage of supplies, food, clothing and accommodation.
- Women prisoners accompanied by their children should be isolated and given spacious cells.
- Expand and equip the training facilities and workshops as a sustainable economic strategy for the inmates when they leave prison.
- Improve housing and conditions of living for prison staff /warders.

A section of prison warders’ houses in Eldama Ravine GK Prison.

8.2.3: Achievements

The regional office successfully addressed complaints lodged and provided redress to the complainants. For instance, in November 2007, an Administration Officer attached to Kobos chief’s camp allegedly shot and injured a petitioner leading to the amputation of his right index finger on allegation that the petitioner was in possession of the illegal brew *changaa*. The officer was however not arrested despite the petitioner’s continuous follow ups at the police station. The petitioner lodged his complaint with the regional office in June 2010 and upon the intervention of the office, investigations into the alleged shooting were conducted under the direction of the OCPD Kitale. Upon conclusion of the investigation it was recommended that the police officer be charged. The officer was arraigned in court in July
2010 more than 4 years after the commission of the offence; the case is currently ongoing in the chief magistrate’s court in Kitale.

8.2.4: Lessons learnt

- The mandate of the Commission needs to be properly understood – this will not only limit the number of complaints not being admitted, but will also enhance public confidence in the Commission when petitioners know that the complaints they lodge will be admitted and resolved.
- The regional office has learnt that it can achieve much through strategic partnerships with other state and non-state organizations.

8.2.5: Challenges

- Limited financial and human resources hampered the extent to which the office could implement its activities;
- It was hard to resolve cases alleging human rights violations by the police because they cite internal disciplinary mechanisms to stymie investigations;
- High levels of poverty amongst the residents of the region hampered the extent to which they are were able to follow up their complaints;
- Some government offices failed to respond to the Commission’s letters, which negatively affected the extent to which the office could investigate allegations made; and
- A section of political leaders from the region continued to criticize the Commission’s recommendations in its post election violence report, hence negatively tainting the image of the Commission in the region.

8.2.6: Focus for the next year

- Routine processing of complaints and investigations;
- Outreach activities through human rights clinics;
- IDP monitoring, including of the resettlement process;
- National cohesion and peace building activities, in partnership with the NCIC, DPCs and local CSOs;
- Civic education to popularize the new Constitution, with a focus on the expanded Bill of Rights;
- Form and build the capacity of local partners for human rights work; and
- Research into one unique human rights concern in the region.
CHAPTER NINE: OVERALL CONCLUSIONS

9.1: OVERALL PERFORMANCE AND ACHIEVEMENTS

The Commission during the period under review was able to effectively discharge its mandate as detailed in section 16 of the KNCHR Act. The work implemented under the reporting period also moved the Commission towards realization of its Objectives, Goals and Key Result Areas under the Strategic Plan (2009-2013). These have been achieved despite the budgetary challenges and human resource capacity gaps that the Commission faced during the year under review. There are however concrete plans in place to increase financial resources and to enhance human resource capacity, with the support of development partners such as the Royal Norwegian Embassy, Royal Danish Embassy, the GTZ and the European Union, who have committed to supporting both programme implementation as well as recruitment of additional staff, including recruitment of previous non-existent but core positions of Internal Auditor, Monitoring and Evaluation Officer, and ICT Officer. These are positions that will not only enhance the efficiency of the Commission to deliver on its mandate, but will also ensure that the Commission is doing the right things right by tracking and evaluating optimal resource utilization as well as work done towards achievement of results.

The Commission was therefore able to realize substantial results through the work undertaken at the national and regional offices, which are targeted towards:

- Enhanced accountability of duty bearers/reduction of impunity for human rights violations;
- Increased capacity of the public to claim their rights;
- Mainstreamed human rights principles and standards in the implementation of the Agenda 4 of the National Accord;
- Enhanced state compliance with its human rights obligations;
- Empowerment of vulnerable groups to claim their rights; and
- Strengthened capacity of the Commission to discharge its mandate.

The following are the highlights of the results of the work of the Commission in the 2009/2010 financial year:

1. The Commission, through its complaints handling mechanism and investigations, was able to sufficiently address various complaints alleging violations of human rights thereby providing timely redress to petitioners. A total of 1,931 petitions were processed during the year under review, exceeding the set target of 1,000. There was also marked action from respondents who in many of the complaints lodged took responsibility for the allegations reported and undertook to redress the same. In many other instances, the Commission’s intervention assisted petitioners in getting action from various Government departments such as the Police and the Judiciary. In
instances where complaints lodged fell outside the mandate of the Commission, petitioners were not simply turned away; they were given legal advice and many were counseled by the in-house counselor and referred to agencies and institutions with the mandate to address their complaints. The Commission was therefore able, through this process, to hold duty bearers accountable for human rights violations, a measure towards reduction of impunity.

2. With regards to redress, despite the Commission’s Complaints Hearing Panel still remaining non-operational owing to a High Court Ruling that quashed the rules (the Commission’s appeal is still pending), the Commission utilized other innovative legal mechanisms to provide redress for victims of human rights violations. For instance, the Commission has engaged in public interest litigation with regards to an inter-sex person and plans to conduct a public inquiry in the next financial year on reproductive health rights.

3. The Commission was able to reaffirm its independence and mandate as a human rights institution with powers to investigate and make recommendations for redress. This was after the High Court dismissed the suit filed by Hon. Uhuru Kenyatta seeking to have his name expunged from the Commission’s report into post election violence owing to public interest considerations. The Commission also affirmed its independence and commitment to discharging its statutory mandate of addressing human rights violations by defending itself against other suits filed with regards to the post election violence report.

4. Through public education and training, awareness creation and sensitization programmes, as well as dissemination of targeted IEC materials, the Commission sufficiently empowered the public to be able to understand their rights, thereby enhancing their capacity to claim their rights. In many places where the Commission has actively engaged with the public through human rights education, members of the public have been able to stand up against harassment by, for example, the police and local authorities, have demanded better service delivery from the Government, and have been empowered to monitor utilization of devolved funds and report corrupt practices in the management and utilization of these funds. Vulnerable groups such as indigenous and minority groups, internally displaced persons and the youth have also been able to engage with relevant government agencies to claim their rights.

5. Besides the public, the Commission focused on building the capacity of duty bearers to deliver on their human rights obligations by providing training and developing a human rights curriculum and training manuals. A number of government ministries and state agencies were trained on the application of the rights based approach and their obligations as duty bearers to protect human rights. The Commission therefore enhanced public officers’ understanding of human rights principles and standards, including Town Clerks, Senior Immigration officers, and law enforcement officers.
6. The Commission enhanced its networks and partnerships with both state and non-state actors, in line with its core strategy in the strategic plan to enhance the Commission’s accessibility through strategic partnerships and networking. Through initiatives such as the UPR, NAP, statelessness, development of the prevention of torture bill, security sector and judicial reforms, public interest litigation, various capacity building initiatives and the third state of human rights report, the Commission fostered working relationships and partnerships with key Government agencies, civil society organizations, UN agencies, research institutions and academia. The Commission was thereby able to achieve its broad mandate and objectives in a framework of shared resources and responsibility, and provided a strong framework for future partnerships for human rights. This is also in line with the Commission’s mandate under section 16 of the KNCHR Act of encouraging the activities of other institutions working in the field of human rights and cooperating with such institutions to protect and promote human rights in Kenya.

7. The Commission successfully profiled human rights issues that are not in the public domain and thereby continued in its role to set the human rights agenda nationally. The Commission explored an unchartered portion of its mandate by participating as amicus curiae in the Richard Mwasya case on the rights of inter-sex persons. Additionally, the Commission partnered with the UNHCR to commence a study on statelessness in Kenya to identify persons who are stateless or at risk of becoming stateless. This is a new area of study that brought to the fore challenges faced by Kenyan residents who have no nationality and are therefore unable to actualize their rights, and is in line with the Commission’s focus of profiling human rights issues that are not usually in the public domain. The Commission will use the research findings from the study to lobby state agencies regarding both protection of the rights of stateless persons as well as prevention of statelessness. Another new area of human rights that the Commission commenced working on was on the rights of domestic workers: this area of work will continue into the next financial year.

8. Following publication of the proposed Constitution of Kenya in May 2010, the Commission submitted various memoranda and advisories to the Committee of Experts, the Parliamentary Select Committee and Parliament both on the Bill of Rights and the entire constitutional content, which ensured infusion of human rights standards into the Constitution. Of significance is the expanded Bill of Rights in the new Constitution, which will result in enhanced protection and realization of human rights by Kenyans. The new Constitution has also entrenched the Commission as a Constitutional Commission with an expanded mandate that encompasses the Gender Commission and the Ombudsman hence placing it in a better position to ensure the realization of human rights of Kenyans.

9. The Commission in the year under review, and following from the effects of the 2007 post election violence, contributed to durable solutions for internally displaced persons by helping to prepare a draft IDP policy. The Commission also profiled the
plight and rights of IDPs, thereby keeping the issue in both the public and Government domain. The Commission hopes that its work will have a positive effect on the resettlement of current IDPs, as well as the prevention and quick response to future situations that will cause internal displacement.

9.2: CHALLENGES

1. The Commission continued to receive inadequate funding from the Government despite its efforts to lobby for additional funding to enable it to effectively and sufficiently discharge its mandate. The implication is that the Commission is unable to sufficiently discharge its mandate and is unable to recruit adequate staffing for its work. At the end of the financial year, the Commission had a staffing capacity of 60 against the required staff establishment of 115 members of staff. The Commission is therefore operating at less than half of its required staffing capacity. With regards to funding, the Commission received a total budget of Ksh. 135,000,000 from the Government against the submitted budget of Ksh. 366,784,000. Through sustained fundraising, this budget gap was filled through direct funding by development partners, without whom the Commission would not have been able to implement its programs since the 135 million largely goes towards covering its recurrent administrative and human resource expenditures.

2. The Commission’s redress mandate continues to be limited by delays in the conclusion of the court case appealing the dissolution of the Commission’s Complaints Hearing Panel. The panel was a direct mechanism used to redress cases of human rights violations whose investigations had been finalized and found to merit redress through the tribunal. In the year under review, the Complaints Hearing Panel had not yet been reinstated. The structure, functions and powers of the Commission will be clarified under an Act of Parliament that will soon be enacted in accordance with the new Constitution and will similarly create the opportunity to address the challenges identified in the said ruling. The new Constitution creates a Kenya National Human Rights and Equality Commission that will succeed the Kenya National Commission on Human Rights. The reinstitution of a hearing panel will provide effective redress for human rights violations because the panel is more accessible and quicker than the court system.

3. Managing the high expectations of petitioners, especially those who expect instant redress/action from the Commission remains a challenge. The Commission’s mandate is not very clearly understood by a cross-section of Kenyans and this is evident by the large number of complaints not admitted due to the fact that they fall outside the mandate of the Commission or do not fit the laid down admissibility criteria, yet petitioners expect all their complaints to be taken up and addressed. The Commission will therefore continue to focus on creating awareness regarding the mandate of the
Commission through human rights clinics, the dissemination of IEC materials and through the media.

4. The Commission’s investigative work is hindered by the failure of some Government departments and agencies, particularly the police department, to respond to the Commission’s letters of inquiry. The Government’s reluctance to provide information makes it difficult to address allegations of human rights violations.

5. The real or perceived threats to the victims and witnesses to the post election violence continued to undermine efforts at achieving accountability for the perpetrators, justice for the victims as well as reconciliation of Kenyans in general. This by extension will continue to entrench the culture of impunity in Kenya and further undermine realization and protection of human rights in Kenya.

9.3: LESSONS LEARNT

1. The Commission during the year under review recognized the importance of and benefitted from strategic partnerships building and networking with both state and non-state actors as a strategy for enabling it to realize its mandate. The Commission’s limited presence at the local level but a high demand for its services (including processing and redress of human rights complaints and human rights education and sensitization). The Commission is able to extend its reach through a well-developed critical mass of local NGOs, CBOs and FBOs that can provide such education on behalf of and in partnership with the Commission. In the future, the Commission will need to build the capacity of its partner organizations to enable them to provide effective public education and receive/refer human rights complaints.

2. Furthermore, the Commission has observed that the creation of networks and partnerships in civil society has the potential to drive human rights work, including law and policy reform and the fight against impunity, which remain a key priority for the country. Partnerships will also lead to buy-in for the Commission’s activities and will enable the Commission to maintain its position as a leading human rights institution both nationally and regionally.

3. The Commission will continue to rely on the support and collaboration of key government institutions and agencies in order to make meaningful progress for institutional and other reforms that it advocates for. The Commission recognizes that for instance, security sector reforms will require the engagement of the police department. For this reason, the Commission through the Chairperson has continued to engage as a member of the Task Force on police reforms.
4. The Commission recognizes the importance of enhancing its accessibility to Kenyans through the outreach and regionalization strategy, to enable it to effectively discharge its mandate by taking services closer to the people, in accordance with the principle of devolution contained in the new Constitution. In the next year, the Commission will focus on both strengthening its current two regional offices and on increasing its presence across Kenya by opening two more regional offices. These initiatives will enhance the Commission’s reach and accessibility, including for quick redress of reported violations.

5. Given the large number of complaints that are not admitted because they either fall outside the Commission’s mandate or do not fit the admissibility criteria, the Commission acknowledges the need to undertake branding and sensitization on its mandate. If the Commission’s mandate is properly understood, it will not only limit the number of complaints that are rejected but will also enhance public confidence in the Commission. Petitioners will know that the complaints they lodge are within the admissibility criteria and therefore will be admitted and resolved. Further to this, the Commission will work closely with and will build the capacity of referral partners to be able to discharge their respective mandates effectively and redress the complaints referred to them.

6. In order to make meaningful impacts in institutional reforms and to contribute to the entrenchment of the rights based approach within the Government, the Commission has realized that it must proactively seek to have government institutions and agencies understand the importance of observing human rights and be well versed with the Commission’s mandate. This is only possible through regular dialogue and engagement in an environment of mutual partnership and not an adversarial one that fosters animosity between these institutions/agencies and the Commission. The Commission will therefore not only engage with such institutions when exercising its watchdog mandate over them but we will similarly advise and inform them about human rights through regular meetings, trainings and joint activities.

7. The Commission has recognized the importance of undertaking regular follow-ups to ensure that its recommendations are actually acted upon by various Government ministries, agencies and institutions. The Commission’s investigations, research, and recommendations submitted to the Government will not result in actual benefit to Kenyans unless the relevant duty bearer implements them.

8. Finally, the Commission has learnt the importance of facilitating institutional knowledge building through structured documentation and the exchange of information and best practices across its departments. These strategies will improve will the Commission’s ability to discharge its mandate, target its resources effective and ensure that its interventions are relevant.
CHAPTER TEN: FINANCIAL STATEMENTS FOR THE 2009/2010 FINANCIAL YEAR