His Excellency, Hon. Uhuru Kenyatta C.G.H.
President and Commander in Chief of the Defence Forces of the Republic of Kenya

LETTER OF TRANSMITTAL


Please accept, Your Excellency the assurances of our highest regard.

Kagwiria Mbogori.
Chairperson

Cc,

Speaker of the Senate

Hon. Justin B. Muturi E.G.H, M.P
Speaker to the National Assembly
INTRODUCTION

Overview of the Kenya National Commission on Human Rights

• Independence of the Commission
• Functions and powers of the KNCHR
• Affiliation to International and Regional Networks
• Strategic Direction for the Financial Year 2015/2016

STRATEGIC OBJECTIVE 1

To Promote the Respect and Observance of Human Rights in Public Institutions

• Human Rights Protection Mainstreamed in the Processes & Operations of Selected Public & Private Actors.
• Empowered individuals and communities that are able to claim their rights
• Improved redress for victims of human rights violations by public institutions
• Enhanced State Compliance with International & Regional Human Rights Standards & Obligations.
STRATEGIC OBJECTIVE 2

To Increase Application of Human Rights Principles and Standards in Institutions and Mechanisms of Justice.

• Improved penal conditions and synergy among correctional services
• Increase utilization and strengthened ADR mechanisms
• Increased integration of human rights standards in the administration of Justice
• Expeditious and fair delivery of Justice
• Recommendations

STRATEGIC OBJECTIVE 3

To Enhance the Realization of Economic & Social Rights in Kenya

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• Enhanced delivery of quality services and standards in health, water, education, food and housing.
• Recognition and integration of human rights principles in various private and public practices.
• Recommendations

STRATEGIC OBJECTIVE 4

To Enhance the Efficiency & Effectiveness of the Commission

• Recommendations

FINANCIAL REPORT

Report of the Auditor-General

• Financial Statements for the Year Ended June 2016
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>AJS</td>
<td>Alternative Justice System</td>
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<tr>
<td>CAJ</td>
<td>Commission on Administrative Justice</td>
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<td>CAT</td>
<td>Convention Against Torture</td>
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<td>CMS</td>
<td>Complaints Management System</td>
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<td>CRPD</td>
<td>Convention on Rights of People with Disability</td>
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<td>CSOs</td>
<td>Civil Society Organizations</td>
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<td>CTIP</td>
<td>Counter Trafficking in Person Act</td>
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<td>CuC</td>
<td>Court User Committee</td>
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<td>DCI</td>
<td>Directorate of Criminal Investigation</td>
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<td>ECOSOC</td>
<td>Economic Social and Cultural Rights</td>
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<tr>
<td>FIDA</td>
<td>Federation of Women Lawyers</td>
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<td>GANHRI</td>
<td>Global Association of National Human Rights Institutions</td>
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<td>GIZ</td>
<td>Deutsche Gesellschaft für Internationale Zusammenarbeit</td>
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<td>GoK</td>
<td>Government of Kenya</td>
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<td>HRBA</td>
<td>Human Rights Based Approach</td>
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<td>HRDs</td>
<td>Human Rights Defenders</td>
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<td>ICC</td>
<td>International Criminal Court</td>
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<td>IPCRM</td>
<td>Integrated Public Complaints Referral Mechanism</td>
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<td>IPOA</td>
<td>Independent Policing Oversight Authority</td>
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<td>JTI</td>
<td>Judiciary Training Institute</td>
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<td>KDF</td>
<td>Kenya Defence Forces</td>
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<td>KFS</td>
<td>Kenya Forest Service</td>
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<tr>
<td>Abbreviation</td>
<td>Description</td>
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<td>KNCHR</td>
<td>Kenya National Commission on Human Rights</td>
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<td>KWS</td>
<td>Kenya Wildlife Service</td>
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<td>MUHURI</td>
<td>Muslims for Human Rights</td>
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<td>NACCSC</td>
<td>National Anti-Corruption Campaign Steering Committee</td>
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<td>NCAJ</td>
<td>National Council on the Administration of Justice</td>
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<td>NCIC</td>
<td>National Cohesion and Integration Commission</td>
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<td>NEMA</td>
<td>National Environment Management Authority</td>
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<td>NGEC</td>
<td>National Gender and Equality Commission</td>
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<td>NHRI</td>
<td>National Human Rights Institution</td>
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<td>NLC</td>
<td>National Land Commission</td>
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<td>NPS</td>
<td>National Police Service</td>
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<td>NPSC</td>
<td>National Police Service Commission</td>
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<td>ODPP</td>
<td>Office of the Director of Public Prosecutions</td>
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<td>OECD</td>
<td>The Organisation for Economic Co-operation and Development</td>
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<td>OSIEA</td>
<td>Open Society Initiative for Eastern Africa</td>
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<td>PEV</td>
<td>Post-Election Violence</td>
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<td>PIL</td>
<td>Public Interest Litigation</td>
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<td>RRM</td>
<td>Rapid Response Mission</td>
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<td>SDGs</td>
<td>Sustainable Development Goals</td>
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<td>SMS</td>
<td>Short Message Service</td>
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<td>ToT</td>
<td>Training of Trainers</td>
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<td>UPR</td>
<td>Universal Periodic Review</td>
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We are happy to present our Annual Report for the period 2015/16. The report documents the work of the Commission during this period and makes recommendations for the advancement of human rights.

During the period, we worked in collaboration with other Institutions and Offices to promote the implementation of the Constitution of Kenya so as to contribute to the improvement in the standard and quality of life of the people of Kenya.

Effective public participation is key to the promotion of human rights, it is for this reason that we continue to urge the public to remain vigilant and hold the state to account with regard to fulfillment of the Constitutionally guaranteed rights.

Human rights thrive in an environment where human rights champions are enabled to carry out their work absent of restraint. We continue to urge that measures be taken to ensure that there is an enabling and conducive environment for the promotion of human rights.

In the final analysis, human rights must be seen to transform the lives of people, affirming their dignity. It is for this reason that as a Commission we continue to emphasize the promotion of economic, social and cultural rights. The recently adopted Sustainable Development Goals give further impetus to our work.

In the absence of Security, it is impossible to enjoy human rights. The state has a primary obligation to guarantee security within the Country. The Commission is concerned at the prevalence of incidents of insecurity and even more at the state response which on some occasion has failed to comply with human rights norms. We urge that measures that violate human rights are themselves counterproductive and only serve to escalate insecurity.

As a demonstration of its commitment to Human rights we urge the government of Kenya to allocate sufficient resources to the Commission to enable it effectively execute its mandate.

Finally, we take this opportunity to thank all who have supported us during the course of the year, we attribute all the successes to this mutually beneficial collaboration.

KAGWIRIA MBOGORI
The Kenya National Commission on Human Rights is an independent National Human Rights Institution (NHRI) established in accordance with Article 59 of the Constitution and operationalized by the Kenya National Commission on Human Rights Act of 2011 (Revised 2012).

The Monitoring and Evaluation, Internal Audit, Information Communication Technology, Finance, Human Resource and Administration and the Public Affairs Communication Units provide administrative and logistical support to the programmatic departments.

The Commission has 97 Staff against an approved staff establishment of 205.

The Commission is currently implementing its 3rd Strategic Plan for the period 2015-2018. The Key themes of the Strategic Plan are Access to Justice, Institutional Reform, Promotion of Socio-economic Rights and Organizational Strengthening.

The total Budget of the National Commission for the 2015/2016 financial year was Kshs. 683,610,663. The Commission secured Kshs. 602,459,996 in funding for this year. Of this amount, the Government of Kenya’s contribution was Kshs. 459,100,000 and the balance of Kshs. 143,359,996 is the portion funded by the Development partners. This represents an increase of Kshs. 184,065,425 (43%) from the previous financial year. The overall absorption rate in the year 2015/16 was 88%, whilst the work plan implementation was at 72%.

The Commission is organized around six programmatic departments as follows:


The Commission’s Principal Office is situated in Nairobi and it has presence in the following regions Western (Kisumu), North Eastern (Wajir), North Rift (Kitale), Coastal (Mombasa) and Rift Valley (Laikipia University). Currently the Commission
In accordance with its promotional mandate the Commission continues to advocate for the inculcation of a Human Rights culture within the Republic. Key interventions include capacity building of duty bearers and communities. A total of 290 public officials and 4,552 community members were trained in the period under review.

The Commission has also worked to increase its presence on both traditional and the “new media” i.e the social media. During the period the Commission was able to increase its social media audience by about 4,500 members of the public and institutions. Further, we were able to get over 150 media hits on print and electronic media that derived through press conferences, studio interviews and paid up advertorials. To also supplement public outreach, the Commission was able to print, produce and disseminate over 10,000 Information Education and Communication materials that were used in public forums. In addition, the Commission has published the following reports as shown on the table next page to advocate for the inculcation of a human rights culture within the country;

**KEY FIGURES**

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<th>Increase from Previous Year</th>
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<td>+ 43%</td>
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<tr>
<th>Funding</th>
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<tr>
<td>Kes. 602,459,996</td>
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<th>GoK Contribution</th>
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<td>Kes. 459,100,000</td>
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<th>Development Partners</th>
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<td>Kes. 143,359,996</td>
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During the period the Commission participated in the review of various legislation. In undertaking these reviews the Commission sought to ensure that legislation that is enacted infuses human rights principles and is in consonance with the Constitution of Kenya, 2010. The legislation reviewed include, inter alia, KDF Amendment Bill, 2015, Health Bill 2015, The Small Claims Court Bill 2015, Access to Information Bill 2015, Election Laws Amendment Bill 2015, Penal Code Amendment Bill 2016.

Working in close collaboration with the Parliamentary Caucus on Human Rights the Commission successfully advocated for the adoption of the National Human Rights Policy and Action Plan. Acting on The directions of the High Court, the Commission successfully oversaw the implementation of the decision of the Court with regard to allocation of houses in the Kibera Slum upgrading project.

The Commission has partnered with key learning institutions so as to take advantage of their scholarly expertise. Working with the University of Nairobi, Centre for Human Rights, the Commission undertook an audit of the Police reforms. The Commission has also in collaboration with Laikipia University undertaken a study that seeks to examine the

<table>
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<tr>
<th>Report Title</th>
<th>Compendium on submissions to the Committee on Economic, Social, and Cultural Rights (ICESCR)</th>
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<tr>
<td>(Nairobi, 7-9 December 2015)</td>
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<tr>
<td>Revised Strategic Plan 2015-2018</td>
<td>Nguzo za Haki: Radicalization of youths in coastal region</td>
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<td>National values and principles of governance</td>
<td>Champions of Rights: Report on the Situation of Human Rights Defenders (Busia, Kwale and Marsabit Counties)</td>
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<td>Implementing Article 12 of CRPD regarding legal capacity in Kenya</td>
<td>Universal Periodic Review Implementation Matrix 2015-2019</td>
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<td>Compendium on submissions to the Committee on Child Rights (CRC)</td>
<td>Audit of the Status of Police Reforms in Kenya</td>
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<tr>
<td>Compendium on submissions to the Convention on Persons with Disabilities (CRPD)</td>
<td>Soldiers of Justice: A case for increased citizen participation In Promoting Security within Kisumu County</td>
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impediments to the full roll out free primary education.

In fulfillment of its protection mandate, the Commission continued to intervene in instances where the rights of Human Rights defenders were at risk. Further the Commission undertook investigations to establish accountability for Human Rights violations.

Pursuant to its monitoring mandate the Commission has commenced a National Public Inquiry on Insecurity and its impact on Human Rights. During this period the Commission held hearings in Northern Kenya and is poised to hold hearings in the Coastal region in the next financial year. The Commission has also initiated or participated in key litigation such as the challenge to the Government action to dissolve the Directorate of Refugee Affairs in High Court (Petition No. 227 of 2016), the constitutional challenge to the death penalty in Supreme Court (Criminal Appeal No. 101 of 2015) and the intervention of the court to obtain an operationalization date for the Public Benefit Organisations Act (Petition No. 351 of 2015). In addition KNCHR participated in Mombasa High Court where we successfully challenged the attempt by the State to paralyse the operations of MUHURI and Haki Africa, two civil society organizations based in Mombasa (Petition 19 of 2015).

The Commission is grateful for the support it continues to enjoy from the Government of Kenya and its Development Partners, including Deutsche Gesellschaft fur Internationale Zusammenarbeit (GIZ) GmbH, European Union, German Embassy, Open Society Initiative for Eastern Africa, The Royal Netherlands Embassy and United Nations Development Programme. We are particularly indebted to the people of Kenya who continue to support us in the work that we do.

In the coming year the Commission plans to collaborate with other agencies towards ensuring a free and democratic election. In addition, the Commission will double efforts to promote the actualization of economic social and cultural rights. The Commission will work closely with the Department of Justice to initiate the process of developing a National Business and Human Rights Policy and Action Plan.

Patricia M. Nyaundi
Commission Secretary

The Commission undertook review of various legislations including:

KDF Amendment Bill 2015,
Health Bill 2015,
The Small Claims Court Bill 2015,
Access to Information Bill 2015,
Election Laws Amendment Bill 2015,
Penal Code Amendment Bill 2016

The Commission implements two key broad mandates: first, it acts as a watchdog over the Government in the area of human rights (the protection mandate); secondly, it plays a key leadership role in advising and moving the country towards becoming a human rights state (the promotion mandate). This mandate is implemented through various strategies including research, advocacy, lobbying, education and training, outreach, investigations and redress, issuing advisories and publications, and through partnerships building and networking. The KNCHR has its head office in Nairobi with 4 regional offices in Wajir, Kitale, Kisumu and Mombasa and a Desk in Laikipia University. Currently the Commission has 97 staff.
Independence of the Commission

The KNCHR has the status and powers of a Commission within the meaning of Chapter 15 of the Constitution. The Commission is not subject to the authority or control of any person or agency in the performance of its functions. Chapter 15 of The Constitution, Article 249(2) on Commissions and Independent Offices provides that:

- The Commissions and holders of independent offices are:
  
a) Subject only to this Constitution and the law; and

b) Independent and not subject to direction or control by any person or authority

The Commission gets its funding from both the Government of Kenya and development partners. It, however, sets its own priorities in accordance with the strategic plan and mandate under its constitutive Act. Additionally, the Commission determines how to use the resources allocated, which are utilized as per the annual work plans and budget estimates to deliver the objectives set out in the strategic plan.
The functions of the Commission are set out in Article 59(2) of the Constitution and have been operationalized through Section 8 of the KNCHR Act, 2011 (revised in 2012). These are to:

a) Promote respect for human rights and develop a culture of human rights in the Republic;

b) Promote the protection and observance of human rights in public and private institutions;

c) Monitor, investigate and report on the observance of human rights in all spheres of life in the Republic;

d) Receive and investigate complaints about alleged abuses of human rights, except those relating to the principle of equality and freedom from discrimination under the Gender and Equality Commission, and take steps to secure appropriate redress where human rights have been violated;

e) On its own initiative or on the basis of complaints, investigate or research a matter in respect of human rights, and make recommendations to improve the functioning of State organs;

f) Act as the principal organ of the state in ensuring compliance with obligations under international and regional treaties and conventions relating to human rights except those that relate to the rights of special interest groups protected under the law relating to equality and non-discrimination;

g) Formulate, implement and oversee programmes intended to raise public awareness of the rights and obligations of a citizen under the Constitution;

h) Work with the National Gender and Equality Commission and the Commission on Administrative Justice to ensure efficiency, effectiveness and complementarity in their activities and to establish mechanisms for referral and collaboration;

i) Perform such other functions as the Commission may consider necessary for the promotion and protection of human rights; and

j) Perform such other functions as may be prescribed by the Constitution and any other written law.

The powers of the Commission on the other hand are prescribed under the Constitution and the KNCHR Act. Article 252(1) states; each Commission, and each holder of an Independent office –

a) May conduct investigation on its own initiative or on a complaint made by a member of the public;

b) Has the powers necessary for conciliation, mediation and negotiation;
c) Shall recruit its own staff; and

d) May perform any functions and exercise any powers prescribed by legislation, in addition to the functions and powers conferred by this Constitution.

Article 252(2) states; a complaint to a Commission or the holder of an independent office may be made by any person entitled to institute court proceedings under article 22(1) and (2).

Section 26 of KNCHR Act, 2011 (revised in 2012) provides for general powers of the KNCHR;

In addition to the powers conferred in Article 252 of the Constitution, the Commission shall have powers to

a) Issue summons, as it deems necessary for the fulfilment of its mandate;

b) Require that statements be given under oath or affirmation and to administer such oath or affirmation;

c) Adjudicate on matters relating to human rights;

d) Obtain, by any lawful means, any information it considers relevant, including requisition of reports, records, documents and any information from any person, including governmental authorities, and to compel the production of such information for the proper discharge of its duties;

e) By order of the Court, enter upon any establishment or premises, and to enter upon any land or premises for any purpose material to the fulfilment of the mandate of the Commission, in particular, for the purpose of obtaining information, inspecting any property or taking copies of any documents, and for safeguarding any such property or document;

f) Interview any person or group of persons

g) Subject to adequate provisions being made to meet his expenses for the purpose, call upon any person to meet with the Commission or its staff, or to attend a session or hearing of the Commission, and to compel a person who fails to respond to a request of The Commission to appear and to answer questions relevant to the subject matter of the Session or hearing;

h) Conduct audits of any public or private institution to establish the level of compliance with the Constitution with regards to integrating the principle of equality and equity in its operations; and

i) Require any public or private institution to provide any special report on matters relating to the institution’s implementation of the principle of equality and equity including gender equity.
Affiliation to International and Regional Networks

The Commission is affiliated to the Global Association of National Human Rights Institutions (GANHRI), formerly known as the International – Coordinating Committee of National Human Rights Institutions (ICC), an international, independent body established to promote the establishment and strengthening of NHRI s in conformity with the Paris Principles and enjoys ‘A’ Status accreditation. GANHRI’S sub-committee on accreditation conducts periodic review (every five years) of existing NHRI s to assess their continued compliance with Paris Principles and strengthen NHRI s to ensure full compliance through technical assistance. Proposed and new NHRI are assessed against Paris Principles benchmarks before their accreditation as status A, B or C NHRI depending on their level of compliance. Accreditation regulates NHRI s’ access to the UN Human Rights Council and the treaty body mechanisms, hence the key significance of this mechanism to the work of NHRI s.

GANHRI facilitates interaction and cooperation between NHRI s and the UN system, as well as coordination and collaboration among NHRI s. In addition, it strengthens NHRI s to ensure full compliance with Paris Principles. GANHRI currently has 16 voting members representing four regions (Africa, America, Europe, and Asia/ pacific region.

The work of NHRI s in Africa is coordinated by the Network of African National Human Rights Institutions (NANHRI), which is headquartered in Nairobi, it is hosted by the KNCHR. NANHRI encourages and supports the establishment of strong and independent African NHRI s in compliance with Paris Principles through national, sub-regional, regional and international cooperation. It strives to ensure that African NHRI s effectively undertake their mandate of human rights monitoring, protection, promotion and advocacy towards a continent characterized by human rights culture and justice for all.

The Commission remains a full member of NANHRI and has committed to continue offering institutional support to the Network to enable it undertake its mission of strengthening NHRI s in Africa.
Strategic Direction for the Financial Year 2015/2016

The commission’s strategic direction as outlined in the 2013-2018 strategic plan is structured as follows:

**Vision**

A society that upholds human rights for all.

**Mission**

To protect, promote and monitor human rights in Kenya through law, policy and practice.

**Goal**

Increased enjoyment of fundamental human rights and freedoms by all in Kenya.

The Commission believes in and upholds the following core values:

**Core Values**

- Independence
- Accessibility
- Impartiality
- Integrity
- Inclusiveness
In the Strategic Plan, the priorities and work of the Commission are focused around four Key Result Areas (KRAs), namely:

1. To promote the respect and observance of human rights standards by public and private actors.

2. To increase the application of human rights principles and standards in institutions and alternative justice systems.

3. To enhance the realization of economic, social and cultural rights in Kenya.

4. To enhance the efficiency and effectiveness of KNCHR.
The KNCHR has been at the forefront in monitoring of public political rallies and demonstrations to ensure that this right as encapsulated in Article 37 of the Constitution is respected and promoted. In April 2016, the clamour for electoral reforms reached its peak with the CORD party calling for mass action to rally for the removal of the IEBC Commissioners. Between April and June 2016 the KNCHR monitored more than 6 political demonstration across the country that led to the death of five, hundreds injured and property worth millions destroyed. In each of these demonstrations, the KNCHR strongly denounced the use of excessive force by the police and called upon the Cabinet Secretary for Interior and Coordination of National Government and the Inspector General of Police to take action on the responsible officers involved in the violations.

**Human Rights Protection Mainstreamed in the Processes & Operations of Selected Public & Private Actors.**

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**DEVELOPED DRAFT REGULATIONS TO GOVERN THE POLICE ON HOW TO CONTROL PEACEFUL DEMONSTRATIONS. ALSO, KNCHR IN PARTNERSHIP WITH THE NPS, DEVELOPED DRAFT OF GUIDELINES ON THE USE OF FORCE AND FIREARMS BY THE POLICE.**
The Commission persuaded and supported the NPS to develop guidelines on how to manage peaceful demonstrators, pursuant to Article 37 of the COK, 2010 and development of guidelines on the use of force and firearms. It is hoped that the IG will adopt both the guidelines and regulations and oversee their implementation.

IN AUDITING THE STATUS OF SECURITY SECTOR REFORMS IN KENYA, IT WAS CLEAR THAT:

“DESPITE THE HEAVY INVESTMENT IN SECURITY SECTOR REFORMS BY THE DIFFERENT STAKEHOLDERS, THERE IS VERY LITTLE CHANGE IN SERVICE DELIVERY TO THE GENERAL PUBLIC AND THUS THE TRANSITION FROM REGIME POLICING TO DEMOCRATIC POLICING IS YET TO BE FULLY REALIZED IN KENYA”

Subsequent to this intervention the officers of the NPS exercised restraint.

In August 2015, the Commission in collaboration with the University of Nairobi led a joint audit based on field work conducted in 17 counties in different parts of the country. Police officers across all ranks from the Kenya Police, Administration Police and DCI were interviewed to give their views on various aspects of reforms. Non – state actors working on security sector reforms in different parts of the country were also consulted. Further, several documents were reviewed which provided an insight on the various reforms within the sector as well as the various initiatives that have been carried out by other actors.

Joint research teams from KNCHR and University of Nairobi’s Centre for Human Rights and Peace (CHRP) visited police stations, police offices, police work stations and chiefs offices. Officers were interviewed on their views and experience including how the community policing and Nyumba Kumi are implemented in their respective counties and stations. The report gave 16 recommendations key among them being; harmonize the training curricula of all police services in order to produce National Police Service officers who are neither affiliated to the AP, GSU nor KP. This might call for a constitutional review of section 243 to merge the two services. Need to harmonize the role of the County Coordinators, County Commanders and OCPDs, need for sensitization at the local level to ensure that officers clearly understand their roles, improvement of the relationship between IPOA and NPS, decentralization of the Internal Affairs Unit (IAU), need to heighten surveillance and regularize vetting of the police officers and creation of the County Policing Authorities, which provide a perfect opportunity for Security functions to be handled at the lower level.
The Monitoring of the Police Recruitment exercise of 2016 was carried out in 120 recruitment centres spread across different parts of the Country with the monitors being recruited from among the various actors that the KNCHR has worked with, that included individual Human Rights Defenders, Civil Society Organizations, Faith Based Organizations, KNCHR regional offices and Kenyans with an interest in police reforms. A monitoring tool designed to measure the extent to which the process complied with the applicable laws and regulations was developed and shared with the monitors. All monitors were furnished with an introduction letter for purposes of securing their entry into the recruitment centres and obtaining the required information that would be useful for the monitoring exercise. An SMS based platform was used where questions were sent to the monitors at periodic intervals for responses. In addition, an operation centre was established at the KNCHR Head Office in Nairobi to coordinate the monitoring exercise throughout the Country. This operation centre was managed by KNCHR.

The KNCHR mandate obligates the Commission to ensure the observance of human rights in all spheres of life and specifically by security organs not only due to the important role played by the security agencies in protecting life but due to the immense power that is endowed on the security agencies to enable them carry out their work. This power can be abused in the absence of necessary safeguards and thus the importance of the Commission and other actors in ensuring the observance of human rights by the security agencies when carrying out their work. The KNCHR is further obligated to protect the Constitution. Article 10 of the Constitution on National Values and Principles as read with Article 244 of the Constitution requires that the following principles be observed in the public sector and specifically the NPS; Accountability, transparency, professionalism and public participation. The monitoring was thus aimed at ensuring an adherence to these principles as this would ensure the inculcation of professionalism in the NPS.

IN MONITORING THE 2016 RECRUITMENT OF POLICE CONSTABLES WE NOTED THAT:

“EVEN WITH THE GAZETTEMENT OF RECRUITMENT AND APPOINTMENT REGULATIONS BY THE NATIONAL POLICE SERVICE COMMISSION, THE REGULATIONS ARE YET TO APPLIED IN THE RECRUITMENT PROCESS. THIS IS A REAL CAUSE FOR ALARM ON MATTERS OF PROFESSIONALIZING THE NATIONAL POLICE SERVICE”

The Monitoring of the Police Recruitment exercise of 2016 was carried out in 120 recruitment centres spread across different parts of the Country with the monitors being recruited from among the various actors that the KNCHR has worked with, that included individual Human Rights Defenders, Civil Society Organizations, Faith Based Organizations, KNCHR regional offices and Kenyans with an interest in police reforms. A monitoring tool designed to measure the extent to which the process complied with the applicable laws and regulations was developed and shared with the monitors. All monitors were furnished with an introduction letter for purposes of securing their entry into the recruitment centres and obtaining the required information that would be useful for the monitoring exercise. An SMS based platform was used where questions were sent to the monitors at periodic intervals for responses. In addition, an operation centre was established at the KNCHR Head Office in Nairobi to coordinate the monitoring exercise throughout the Country. This operation centre was managed by KNCHR.

The KNCHR mandate obligates the Commission to ensure the observance of human rights in all spheres of life and specifically by security organs not only due to the important role played by the security agencies in protecting life but due to the immense power that is endowed on the security agencies to enable them carry out their work. This power can be abused in the absence of necessary safeguards and thus the importance of the Commission and other actors in ensuring the observance of human rights by the security agencies when carrying out their work. The KNCHR is further obligated to protect the Constitution. Article 10 of the Constitution on National Values and Principles as read with Article 244 of the Constitution requires that the following principles be observed in the public sector and specifically the NPS; Accountability, transparency, professionalism and public participation. The monitoring was thus aimed at ensuring an adherence to these principles as this would ensure the inculcation of professionalism in the NPS.
The KNCHR has been involved in the police vetting both as an individual organization with representation in the vetting panels of various cadres across the country, as well as through working with other organizations working on the Police Reforms Agenda and specifically on vetting. The KNCHR through the Police Reforms Working Group supported the development of the police vetting tool and guidelines to guide the process. In collaboration with the National Police Service Commission and other Civil Society Organizations both at the national and local levels, KNCHR took part in public awareness forums on the police vetting process. The KNCHR interest in the Police Vetting process is twofold; seeking accountability for human rights violations and enhancing public participation in the vetting process.

Through the vetting process, it is hoped that public confidence in the Police Service will be enhanced for improved service delivery which translates to better protection and promotion of human rights. The police vetting has largely failed to unravel human rights violations as the focus has been largely on financial probity without focus to some of the human rights concerns within the Police such as service delivery, extra - judicial executions, illegal arrest and detention, torture, cruel and degrading treatment, corruption among others. It is on the basis of this that the KNCHR specifically engaged in collection of information on police officers serving in Kwale, Marsabit and Busia Counties that were later transmitted to the NPSC for the vetting exercise. It is hoped that this information will contribute to ensuring that implicated officers are held to account.
The KNCHR presented oral and written submissions before the Joint Parliamentary Committee on Electoral reforms. These submissions and comprehensive memorandum were informed by the KNCHR’s past monitoring of elections and the recommendations thereof. The report of the Joint Parliamentary Committee referenced the submissions of the KNCHR as evidenced in its final report and adopted 90% of the KNCHR proposals in the now enacted Election Amendment Bill of 2016 including; having a stringent mechanism for inspection and scrutiny of the voter registration, submission of names of candidates to IEBC at least 45 days before the primaries and enhanced role of IEBC in this process, capping the total number of voters in a polling station to 500 among others.

Turkana Governor H.E Josphat Nanok during the opening ceremony of the inquiry in Turkana County.
KNCHR, in conjunction with NGEC & IPOA, led the hearings of the National Public Inquiry into Insecurity in the North Rift region of Kenya which kicked off on the 9th May 2016 with hearings spanning a 4-week period over which witnesses were heard in Marigat Sub-county at Yatya, Bartabwa, Chemolingot and Kapedo. Further hearings were conducted in Turkana County in June at Lokichar, and Kainuk and later in West Pokot County at Orwa.

By the end of the hearings a total number of 150 witnesses were heard and 226 memoranda received. The inquiry accorded the Commission a closer interaction with various dynamics informing the conflict in the North Rift, but more importantly, interaction with real survivors of the insecurity and the attendant human rights violation enabled the Commission to fathom the degree of human rights violations in the region. It is anticipated that the recommendations of the Commission will be fully implemented so as to ensure justice for the victims and avoid recurrence.
Human Rights Education is a crucial requirement for the development of human rights awareness and ultimately for the realization of human rights. KNCHR in the period under review embarked on strengthening partnership with strategic state actors; Laikipia University; Kenya School of Government (KSG) and University of Nairobi. The Commission had fruitful deliberations with the Laikipia University that resulted in the formation of a joint committee that reviewed the human rights training module used to facilitate the common course on human rights at the university. The Commission also organised Public Lectures on topical issues.

KSG staff were taken through a Training of Trainers (ToT) program to equip them (especially the facilitators) with the knowledge and understanding of human rights norms and principles, the values that underpin them and the mechanisms for their protection. The participants of the ToT program on human rights are now capable of independently of delivering human rights training at Management & Development Programmes. The results are significant for KNCHR, as in the future the organization has the option to draw on the services of the participants for its capacity building efforts at the institution.
Empowered individuals and communities that are able to claim their rights

IN TAITA TAVETA AND MANDERA COUNTIES, PROFESSIONAL CAREGIVERS SUCH AS TEACHERS AND COMMUNITY HEALTH WORKERS DID NOT SEE THEMSELVES AS CAREGIVERS BUT RATHER SERVICE PROVIDERS. THUS THE PROFESSIONAL CAREGIVERS DIDN’T AGREE THAT THEY HAD ANY DUTY TOWARDS PWDS AS PROVIDED FOR UNDER ARTICLE 12 OF THE CRPD”.

This excerpt is part of findings of a research study conducted by the Commission in the review period: Implementing Article 12 of the Convention on the Rights of Persons with Disabilities (CRPD) regarding legal capacity in Kenya: A study carried out in Mandera and Taita Taveta Counties. The briefing paper studies the Kenyan policy and legislative environment relating to issues of legal capacity linking it up to implementation and interpretation by different key individuals and institutions. The paper then shows the situation of PWDS in Kenya with regard to legal capacity; interpretation of legal capacity by key institutions, highlighting current practice and local good practice models on implementing the right to legal capacity. The research also highlights the challenges in implementing the right to equal recognition before the law, from an institutional perspective and how various institutions have addressed them.

ADVOCACY AND POLICY PLATFORMS ESTABLISHED FOR EFFECTIVE ENGAGEMENT BETWEEN CIVIL SOCIETY AND THE GOVERNMENT

Some of the issues undermining observance and respect for human rights in Kenya include, lack of understanding of the role of human rights defenders and suspicion and mistrust between the HRDs and the security agencies. To deal with this problem, KNCHR set out to establish Seven (7) CSO platforms to leverage engagements between CSO and state actors for greater human rights promotion. Six (6) CSO platforms were established in Mandera, Kilifi, Isiolo, Nakuru, Uasin Gishu and Kisumu during the reporting period. Through these platforms, Civil Society members and government agencies convened to discuss issues of concern and explore ways of joint working. Since their establishment, the platforms have become useful in bridging the gap between CSOs and government for greater respect and accountability for human rights.
In Nakuru for instance, the platform has served as an opportunity to engage the government on the human rights issues in the region and brought on board more than 11 CSOs to forge a common front in dealing with powerful interests. Through this platform, the human rights situation is monitored and complaints received and channelled to KNCHR for processing. In Kitale, 21 actors and in Isiolo 30 actors meet regularly to discuss human rights issues and agree on joint action. The participation of media in the Mandera CSO platform has facilitated the reporting of human rights violations and provided an important avenue for advocating for human rights respect. These are now useful advocacy platforms and spaces for strengthening the capacity of members on identified topics.

In Kilifi the platform brings together CSOs and government agencies such as National Environment Management Agency (NEMA), National Land Commission (NLC) and the County Government. Monthly meetings for information sharing and feedback have become integral to the running of the platform. A secretariat led by Civil Society members who will coordinate future actions including hosting of meetings has been formed. Through the Kilifi platform, an advocacy campaign on the challenges facing CSOs especially those dealing with land and environmental rights which are at the heart of the historical injustices has been initiated.

During the year under review, 2 major public forums were conducted in Nairobi and Meru counties. The human rights clinics were done in collaboration with several referral partners. Complaints were received and processed appropriately through advisory, referrals, investigations and follow ups. The communities were sensitized during the forums on human rights, the mandates of the referral partners and the Constitution.

KNCHR has handled cases of human rights violations brought up by CSOs especially on abuse of office by duty bearers for example police excessive use of force. To support and strengthen the role of the CSOs, KNCHR in

KNCHR IN PARTNERSHIP WITH REFERRAL PARTNERS CONDUCTED FREE LEGAL AID CLINICS IN NAIROBI AND MERU COUNTIES.

KNCHR IN PARTNERSHIP WITH OTHER INSTITUTIONS LIKE OSIEA AND UN WOMEN, TRAINED CSOS OFFICERS ON HUMAN RIGHTS INVESTIGATIONS AND DOCUMENTATION.
partnership with other institutions like OSIEA and UN Women has enhanced the knowledge capacity of several CSOs officers on human rights investigations and documentation through trainings. These officers were drawn from organizations working with KNCHR on complaints handling. In addition representatives from Kakamega County were trained on human rights, Constitutionalism and public participation.

Lack of a comprehensive civic education programme on human rights and state and individual obligations for human rights continue to fuel rights violations by individuals and non-state actors. To counter this, KNCHR organized a regional human rights conference and organized activities to mark internationally recognized human rights days such as International Human Rights day (IHRD).

4,000 people who directly participated in the International Human Rights Day (IHRD) in activities organized in Nairobi, Kwale, Taita Taveta, Uasin Gishu, Mandera and Kisumu counties were sensitized in human rights. Awareness on human rights was raised using the series of events organized and through local FM stations. Public support for the agenda was built and grass root voices were linked with the international agenda through use of social media. In Nairobi, the national event which was co-organised by 25 CSOs provided much needed synergy and a platform to speak jointly on human rights concerns and the shrinking civic space in the region. The participation of high level government personalities, heads of missions, civil society leaders and human rights defenders raised the profile of the day. The participation of Attorney General Hon. Githu Muigai, was significant in that he reiterated governments’ commitment to working with CSO in expanding the human rights arena in the country, lauded the adoption of the Human Rights Policy and Action Plan by Parliament and committed to ensure its implementation. This was a major milestone in ensuring greater respect for human rights by both state and non-state actors.

Coming out of a three day International conference, on ‘Promoting Good Governance in Eastern Africa: the role of NHRIs’, 123 delegates drawn East African region and CSO groups, Government NGOs representatives from Independent Offices and Constitutional Commissions and staff of the foreign missions in Nairobi agreed on the role of NHRIs in providing leadership for accountability. CSO representatives at the conference are now able to claim their rights. The linkages created between CSOs and members of the independent offices and commissions have strengthened networking for claiming rights. Additionally, an 8 point joint communiqué¹ was released by the leadership of the NHRIs committing to joint working and collaboration in safeguarding democracy and the rule of law through enforcement of human rights obligations.

¹ http://www.knchr.org/LinkClick.aspx?fileticket=Rp_ TxX7oY%3d&tabid=161&PortalId=0&mid=988

Improved redress for victims of human rights violations by public institutions

The Commission through its complaints handling arm addressed this strategic objective by; processing human rights complaints lodged by complainants (petitioners) using various modes, providing psychosocial support to complainants, conducting investigations, holding quarterly referral partners’ meetings as well as half yearly public forums/legal aid clinics with referral partners. The various modes of lodging complaints included; physical visits to KNCHR offices (walk in petitioners), via telephone, emails, IPCRM and website. In addition, the Commission employed different strategies to offer appropriate redress to petitioners such as; providing legal advice, resolving complaints through alternative dispute resolution methods, conducting field investigations, holding strategic meetings with state and non-state actors, offering psychosocial support services to needy petitioners, giving legal advice and referring complainants to KNCHR’s strategic partners for further action.

It is notable, that the Commission has continued to strengthen its partnership with other referrals partners for easy complaints processing in particular for matters that are not within KNCHR’s mandate. Petitioners whose complaints fell outside KNCHR’s mandate were adequately advised and thereafter referred to other partners through the established referral partners mechanisms such as the; referral partners’ network and the Integrated Public Complaints Referral Mechanism (IPCRM) for further assistance. These mechanisms enhanced efficiency in human rights complaints processing and resolution due to coordinated approach, regularized feedback which reduced time wastage brought about by parallel interventions in different institution.
During the financial year 2015-2016, KNCHR received and processed 3,335 complaints as lodged by complainants (petitioners) using various modes shown in the figure 1. In processing the complaints, the KNCHR employed different strategies including; providing legal advice, referral to partners with better mandate to deal, employing alternative dispute resolution methods (low level), conducting field investigations on admitted complaints, holding strategic meetings with state and non-state actors, offering psycho-social support services to petitioners who required such services towards alleviating their psychological suffering to uphold human dignity.
The 3,335 complaints resulted from the categories as shown in figure 2. It is notable that the ECOSOC related cases formed the major category of processed cases, a trend that had been seen in the previous years. In response to this notable trend, the department has created partnership with Ministry of Labour which is one of the referral partners and the Commission is exploring the possibility of adopting pro-bono-lawyers that will ensure provision of legal representation to warranting petitioners as a way of resolving the ECOSOC related complaints.
Emanating from the numerous complaints received, KNCHR initiated various investigation missions, prepared reports on these cases and used the reports to demand accountability for these violations. In total, 121 investigations against an annual target of 200 investigations were conducted during the reporting period. The need to conduct more investigations was occasioned by the state response to increasing insecurity countrywide and increased reports of violations by agencies such as KWS, KFS. Witness accounts and victim statements documented by KNCHR indicated a systematic attack against those deemed to be connected to or sympathetic with terrorist groups. This brought to the fore the atrocities committed by the defence forces in their involvement in management of internal security. In Lamu for instance, KNCHR reports of 76 cases of torture and disappearance by KDF. Victim accounts and witness statements during investigations into these reports were corroborated by interviews with security officers in the area. These reports will provide useful information in securing accountability for these violations during the inquiry on insecurity scheduled for reporting in the next financial year.

IT IS NOTABLE THAT THE COMPLAINTS PROCESSED INFORMED 98% OF THE INVESTIGATIONS CONDUCTED. THIS SPEAKS TO THE INCREASED AWARENESS OF THE KNCHR’S MANDATE BY THE PUBLIC.

121 INVESTIGATIONS CONDUCTED

SECURED APPROPRIATE REDRESS ON RIGHTS VIOLATIONS THROUGH SUSTAINED MONITORING, DOCUMENTING, PUBLIC INTEREST LitIGATION (PIL) AND ALTERNATIVE DISPUTE RESOLUTION (ADR).

Figure 3: Human Rights violations by category
Reports of abductions, torture and killings by KWS in parts of the country in what appeared to be a close connection between the extra judicial killings by security agencies and KWS were received. In response, KNCHR conducted six (6) major investigations into human rights violations by KWS, involving about 69 complainants in Isiolo, Nanyuki, Garsen, Garissa, Mt. Elgon and Kwale. The complaints ranged from arbitrary arrests, assault and torture by KWS officers. In addition, 11 complaints of assault were investigated in Nanyuki. In this case, forest farmers were found to have suffered inhumane and degrading treatment in the hands of KWS officers on suspicion of being involved in poaching. Reports of human wildlife conflict were also investigated in which it was established that claims against loss of life and property including destruction of farmlands by wild animals have not received compensation.

KNCHR’s decisive report on the enforced disappearances ‘The error of fighting terror with terror’2, released in the later part of 2015 sparked a public condemnation of State’s response to the threat to terror, and increased demand for accountability. As a result, there was a reduction in cases of disappearances.

Under section 26 of the KNCHR constitutive Act, KNCHR summoned officers of KWS to appear before the Commissioners to provide more information on the conflict that rocked Isiolo in May-June 2015 following the abduction/disappearance and killing of 4 people allegedly by KWS in Kinna area and other parts of Isiolo. Information obtained has helped in deepening understanding on these cases and informed discussions with the leadership of KWS on how to resolve these cases. A more long term strategy has been drawn to address the more systemic issues in the operations of KWS among them non-adherence to the rule of law and impunity amongst the KWS intelligence/investigating officers, delay, non-responsiveness and non-application of HRBA by the KWS officers in addressing grievances by the communities around the protected areas.

The final report on the disappearances in Isiolo submitted to the Senate Committee on Security, Land and Natural Resources in September 2015, led to the commissioning of an independent investigation into these violations. In addition, KNCHR is preparing a comprehensive report highlighting systemic rights violations by KWS covering 6 areas. KNCHR elected to prepare a single report to expose the multi-faceted issues fuelling tensions between KWS and communities bordering parks and the endemic rights violations.

Overall, sustained monitoring, documenting and reporting of violations by the Commission and the increase in public demands for accountability for rights violations has led to a 39.9% reduction in systemic human rights violations by state and non-state actors.

The Commission resolved other human rights violations public interest litigation matters and initiating ADR processes. It participated in PIL through either originating petitions in its own name or joining existing petitions filed by other parties which have a major public interest component either as *amicus curiae* or an interested party as appropriate. Below is a selected sample cases the Commission participated in during the reporting period.

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2This report is available on KNCHR website
Petition 19 of 2015 MUHURI and HAKI AFRICA vs. Inspector General and 4 others.

The petition was filed by the two NGOs following a Gazette Notice issued by the Inspector General of Police giving them, amongst others, 24 hours to show cause why the IGP should not recommend to the Cabinet Secretary that the Petitioners be declared as specified entities in accordance with Section 3 of the Prevention of Terrorism Act (No. 30 of 2012). The petitioners made an application to seek conservatory orders against the respondents from listing them and an order to unfreeze their accounts. The Commission joined as amicus in this petition stating that Article 24 of the Constitution provides for the qualifications when limiting fundamental freedoms and rights and the right to property is not absolute and hence can be limited by law. However, the limitation has to be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors. Further, that the principle of fair hearing should be upheld in all cases. Judgment was delivered on 12th November 2015 and the court held that the actions of the IGP were ultra vires the powers given to him under the POTA and that he had no powers to gazette any entity as those were powers specifically reserved for the Cabinet Secretary. Second, that the action of freezing the accounts was unconstitutional and therefore ordered that the accounts be unfrozen forthwith. The court further added that, the actions of the IGP contravened Article 47 of the Constitution and more so the right to reasons before any action is taken adversely against any person.

Petition No. 484 of 2014 - L.N.W vs. Attorney General and Another

This was a case in which an anonymous single mother (L.N.W, sued the Registrar of Births and Deaths petitioning the court to declare S.12 of the Registration of Births and Deaths Act unconstitutional for violating express provisions of the Constitution of Kenya and other laws. The section under discussions stipulates as follows: - “no person shall be entered in the register as the father of any child except either at the joint request of the father and mother or upon the production to the registrar of such evidence as he may require that the father and mother were married according to law, or in accordance with some recognized custom”.

The Commission joined the Petition as amicus and filed its submissions on the matter in 2015 after directions following an ambiguity involving a similar case in another court. Judgment was delivered on 26th of May 2016 and the court, in tandem with the Commission’s submissions, declared Section 12 of the said Act as unconstitutional thereby confirming all children born out of wedlock the right to have their father’s name recorded in their birth certificates.

Criminal Appeal No. 101 of 2015 Kyalo Mutua Muthiani vs. The Republic

The Commission filed this appeal on 24th June 2015. It involves a minor who was committed to death row at Kamiti Maximum Prison for a charge of Robbery with Violence on his own plea of guilty. The Commission argued that the minor’s right to fair hearing as envisaged in Article 50(1) (h) was violated as the State did not assign an advocate to represent him during trial. Second, that he was serving his sentence in a maximum prison for adults instead of being detained in a borstal institution. Further, that the trial Magistrate in the lower court contravened section 190 of the Children Act by handing a death sentence to a minor. The Commission urged the court to acquit the appellant on the stated grounds and the same was granted on 23rd November 2015.
KNCHR successfully introduced an SMS based platform for complaints processing and feedback sharing to the public. This platform was aimed at affording the public and opportunity to report to the Commission with ease. The operationalization of an ‘SMS based platform’ was tested during the Commissions major projects in the last financial year, such as, Kibera housing project and the monitoring of the police recruitment processes. For instance, in the Kibera housing project the platform facilitated communication and receiving of complaints to receiving complaints and facilitating communication with Kibera residents during the house allocation process. Further, KNCHR re-launched the new-look Complaints Management System (CMS) following a system’s review with the aim of optimizing the data-processing and retrieval. The new system sought to enhance the efficiency and effectiveness in management of complaints, for instance, by click of a button one is able to compare and analyse complaints trends. Inputting information in the system has also become easy thereby reducing the cumbersome process of keying in data in different windows which was time consuming.

One of the functions of the Kenya National Commission on Human Rights (KNCHR) is to monitor state compliance with its human rights obligations. During this period, KNCHR planned to submit two periodic reports to treaty bodies, advocate for 5 optional protocols, issue two policy advisories and engage with 40 public institutions on the enactment of policies.

The KNCHR successfully prepared and submitted reports on state compliance under the International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Rights of the Child (CRC) and Convention on the Rights of Persons with Disability (CRPD) which were due for review. The processes entailed broad consultations with both GoK relevant departments and CSOs. Similarly, KNCHR convened its partners to prepare the country report under the Universal Periodic review (UPR). There was delay experienced in the reporting under Convention against Torture (CAT) and International Covenant on Civil and Political Rights (ICCPR) owing to lack of funds by the Government.

In this regard, various opportunities were used to raise awareness on the recommendations coming out of these treaties and monitor
the implementation. For instance, a one and a half days’ retreat for Senior County Government officials of the 6 counties of Coast region was organized. In this meeting, the recommendations made under the UPR were discussed and the implementation matrix earlier developed to monitor progress shared among the Deputy Governors, County Executive Committee members and Directors, Civil Society groups working in the region and representatives of the Department of Justice. Schedule 6 of the Constitution of Kenya details the functions that have been devolved among these are water and health therefore monitoring the implementation of the recommendations on the right to water, environment, health and sanitation are integral to rights realisation at the county. This process was a major step towards ensuring accountability for rights protections at the county level. Commitment to track progress against the county budget using the indicators that KNCHR had developed earlier was secured.

Taita Taveta county government was particularly interested in the process towards development of the National Action Plan on Business and Human rights which they viewed to be critical to the growing extractive sector in the region. Compendiums of the reports and recommendations of the Convention on the Rights of Persons with Disabilities (CRPD), the International Covenant on Economic and Social Cultural Rights (ICESCR) and the Convention on the Right of the Child (CRC) were published and are now being used to inform discussions both at national and county levels on the obligations of the state in ensuring compliance with these mechanisms and implementation of the recommendations. These sessions will be useful in entrenching conversations around accountability for implementation of the recommendations coming out of the treaty reports and serve to advocate ratification of other treaties.

45 institutions among them, the Parliamentary Human Rights Caucus, county governments, department of justice and various CSOs have engaged with the recommendations of the treaty bodies and are closely monitoring government implementation of the recommendations using the UPR matrix.
KNCHR participated in the 14th Session of the CRPD when Kenya’s initial report was reviewed. Kenya was reviewed by the Committee on 18th and 19th of August 2015. KNCHR submitted information to the Committee on the Status of the implementation of the CRPD in Kenya. KNCHR organized a side event in which Kenyan DPOs and CSOs interacted with the Committee and gave information prior to the meeting with the State Delegation. The Commission was also allowed to make opening remarks and closing remarks during the review process.

The Committee issued its Concluding Observations after reviewing Kenya’s report. The Commission participated in organizing a stakeholder workshop to review the Concluding Observations. The workshop was held on 22nd September 2015 and an action plan of implementation of the Committees recommendations was developed.

Kenya came up for review by the Committee on the Rights of persons with disabilities having submitted its initial report and responded to the list of issues that had been developed by the Committee. Towards this end the Commission collaborated with the disability organizations to engage with the committee in bringing to fore the human rights issues in respect to the implementation of the CRPD convention.

The Commission therefore held a side event in Geneva targeting members of the CRPD committee and civil society organizations working in the area of disability rights with the aim of bringing to the committees attention the human rights situation in the Country. It was attended by 8 Committee members and 5 International disability organizations. The Commission partnered with Local DPOs and raised several concerns on the implementation of the Convention. The issues that the Commissions raised were subsequently raised with the state by the Committee and eventually the Committee issued Concluding observation in line with the issues raised by the Commission.
The Constitution of Kenya under Article 132 (c)(iii) requires the President to address the nation on all measures taken and progress achieved in the realisation of national values and principles of governance as set out in Article 10. This report is supposed to be tabled in parliament for debate. As the principal organ of the state mandated to ensure compliance with obligations under treaties and conventions relating to human rights, KNCHR prepared a report on the Public perception on ‘National values and Principles of governance’ which was prepared through a participatory process with civil society groups and communities and assessed the state’s commitment in implementing its international obligations and made a raft of recommendations including the need for deeper public engagement with devolution as the vehicle through which rights will be actualized. The Commission will inform national conversations about government’s efforts at ensuring human rights are respected.

The Commission has since used the report in meetings with the Parliamentary Committee on Human Rights and the Presidential advisor on Constitutional affairs during which KNCHR emphasised the need for the State to comply with its human rights obligations, and used the opportunity to highlight the findings of the report. The KNCHR was tasked to regularly share its findings with the two offices.

Through the consultative process the rights holders were able to reflect on the human rights situation in the country; a process which served to bring back the dialogue on accountability for human rights and its importance in national development. The report which highlights the views of the public on performance of human rights provides KNCHR a platform from which to engage the Executive and further serves to inform the process for the next year.

The Commission took cognizance of the fact that despite the fact that the constitution has guaranteed access to information, there was no framework that ensured that this right was enjoyed despite the various efforts by non-state...
The Commission therefore engaged with African Commission Special Rapporteur (Commissioner Pansy Tlakula) to lobby the state to put in place an access to information legislation in line with Article 35 of the Constitution of Kenya and international human rights law. Due to the briefing by the Commission the Special Rapporteur jointly with the Commission held joint meetings with the members of Senate Committee on Education, Information and Technology. The Committee assured the Commission that the Senate was committed to ensure that the access to information legislation was enacted.

The Commission together with the Special Rapporteur also held discussions with the Attorney General on the need to enact the access to information legislation. The Attorney General assured the Commission that his office would fast track the enactment of access to information legislation and that his office had indeed drafted an access to information bill and data protection bill and submitted the same to the Cabinet Secretary for publication.

The Commission also raised the issue on the wide exceptions created by the bills and the need for the bills to be in tandem with the model law developed under the auspices of the African Commission on human and people's rights.

Business activities can have a wide range of positive and adverse impacts on human rights. It is on this basis that global focus is on how businesses operate within the context of protection and promotion of human rights. In advanced countries for instance, business organizations are subject to rigorous compliance audits based on the UN Guiding principles on business and human rights. National human rights institutions play an important part in engaging with business and human rights and this is the justification for KNCHR to carry out this audit. The Kenya Maritime Authority initiated the process for the audit to establish its compliance to human rights principles and standards.

The aim of this audit was to establish the extent to which KMA promotes and protects human rights while conducting business within its mandate. The audit applied the triangulation technique which is a mix of both qualitative and quantitative methods. These methods allowed respondents to share experiences, thus providing primary data that formed the basis for comprehensive recommendations and conclusions that drew generalizations within a given context.
The audit revealed that KMA has demonstrated commitment to the promotion, respect and protection of human rights. The audit identified areas for improvement and KNCHR recommended that the gaps be worked upon and the Commission was available for further consultations aimed at promoting the protection of human rights at the organization in particular and Kenya in general. This was the first audit of its kind and KNCHR is keen on duplicating the success of it to the business community in the country.

Recommendations

1. The Parliament hold the Security Agencies to account with regard to compliance with Article 238 of the Constitution.

2. That Parliament monitor the state’s implementation of the recommendations of the various treaty monitoring bodies.

3. That Parliament requires that the Cabinet Secretary immediately operationalise the Public Benefits Organisation Act and require that the leadership of the NGO Coordination Board desist from actions aimed at interfering with the smooth operations of CSOs.
To Increase Application of Human Rights Principles and Standards in Institutions and Mechanisms of Justice

Under this strategic objective, the KNCHR identified monitoring of courts, prison conditions and sentencing as priority areas. The Commission sought to generate recommendations on improvements of detention conditions and impact of custodial sentences in the various prisons in Kenya such as the review of Cap 90 and 92. Prison monitoring will be linked to the work of the Power of Mercy Committee and the National Council on the Administration of Justice (NCAJ) in order to generate comprehensive and actionable recommendations. The Commission also strengthened the various Alternative Dispute Resolution mechanisms to improve access to justice for Kenyans.

A preliminary survey was carried out within maximum prisons in Kenya to establish the extent of the application of presidential pleasure and its impact on the enjoyment of rights for by inmates. It was noted with great concern that most of the inmates under this category of sentence were people with mental disabilities. Through the survey, various human rights violations were discovered, stemming from scarce and scattered information on the sentence. It was also noted that there was no structured and consistent application of the sentence, creating a situation where most sentences were long and uncertain. The survey therefore provided KNCHR a basis to issue an advisory to the Judiciary on the need to establish a framework on access to justice for all persons within the criminal justice system, especially those with mental disability.

SUPPORTED THE REVIEW OF PRISONS ACT (CAP 90) AND BORSTAL INSTITUTIONS ACT (CAP 92) THROUGH SUBMISSION OF ADVISORY BRIEF AND CONVENING STAKEHOLDER MEETINGS.
The Commission has been convening the prison reforms working group on the review of the two Acts. KNCHR in conjunction with the working group prepared and presented before the senate a memorandum with various recommendations on reforms that the Commission deemed as vital within correctional facilities. The memorandum was based on past experience and various inspections and audits that had been done within the penal system. The recommendations were adopted by the Justice and Legal Affairs Select Committee to enhance the discussions on the review of the said laws.

KNCHR conducted inspections in Kisii Prison and Homabay Prison. The major concerns were congestion in the prisons and access to healthcare. It emerged that since the taking over of the health function by the County Governments, prisoners are also expected to pay for services when they go to public health facilities. Due to their state of incarceration, they are unable to afford the services. The result is that conditions which cannot be treated within the prison facilities go untreated, posing a serious challenge to their general health and life. The Commission is currently following up with the Commissioner of Prisons to address this.

The state of congestion in Kisii Prison
Increase utilization and strengthen ADR mechanisms

Section 29 of KNCHR’s Act 2011 empowers the Commission to deploy mediation, negotiation, and conciliation to resolve matters. However, internal capacity to utilize this provision has largely been lacking in the Commission. To address this situation, KNCHR planned to build the capacity of 35 staff and Commissioners in ADR, develop training modules and case selection guidelines. An ADR training curriculum which provides a tailor-made content for capacity building for Staff, Commissioners and partners has since been developed and a total of 37 staff and Commissioners trained in ADR using this training curriculum. Additionally, an ADR manual guiding the deployment of ADR by the Commission has been finalised alongside case identification guidelines. As a result, the institutional and instructional capacity of KNCHR to effectively use ADR in case resolution has been strengthened. The guidelines have been published and widely disseminated within KNCHR. The Commission had planned to resolve 32 cases of human rights violations through ADR.

A total of 94 cases were resolved mainly by deploying conciliation and negotiation; majority of them touching on labour issues, specifically withholding of terminal benefits by employers. Others have involved security officers acting in excess of their mandate as well as those that were resolved during the Kibera housing project.

In the next year KNCHR will upscale ADR to address the larger scale violations and utilise mediation. Towards this end, a data base of cases of human rights violations in line with these guidelines is being developed.

Increased integration of human rights standards in the administration of Justice

Access to justice for Human Rights Defenders when in conflict with the law is hampered by among other things, lack of appreciation of the role of HRDs by judicial officers. Alternative Justice Systems (AJS) play a key role in dispensation of justice in Kenya especially in remote and marginal areas. Lack of access (due to distance and cost) to formal justice systems, delays in delivery of justice and complexities in the court system are some of the factors contributing to this state of affair. These have become the new frontiers for rights violations for Kenyans seeking justice on account of capacity gaps and lack of understanding of human rights.
To ameliorate this situation, KNCHR planned to monitor and advise on human rights compliance by AJS, establish a training partnership with JTI, develop a training course for judicial and non-judicial officers on HRDs and access to justice and undertake trial observation for HRDs.

In light of this, KNHCR set out to monitor human rights compliance by these institutions by conducting a study of AJS in Meru, Kwale, Turkana, and Kisumu and prepared a report on their human rights compliance. The findings of this report are being used to form the basis of the development of a human rights framework by the judicial task force on Alternative Justice Systems where KNCHR is represented. This becomes a first step towards infusing human rights principles in the operations of AJS.

The successful establishment of a training partnership with JTI as elaborated in a letter of understanding between KNCHR and JTI facilitated a two day retreat of key staff and KNCHR Commissioners, a team of judicial officers and representatives from CSOs to discuss the operating environment for HRDs and the legal framework for the protection of HRDS. This retreat helped in deepening understanding of the unique challenges human rights defenders face in the conduct of their work and how the various justice actors can support them. Insights from this retreat were beneficial in the development of the training module for Judicial Officers on the role of Judiciary in the promotion of human rights.

The Commission has continued to expand its network base and increase its efficiency through strengthened partnerships with key justice actors at National and International level for realization of human rights for all. For instance, the KNCHR was appointed as a member of the NCAJ special taskforce on children pursuant to the resolution of the NCAJ 15th meeting in line with the provisions of the Constitution, Section 5 and 34 of the Judicial Service Act and Section 22 (3) of the Children Act, 2001. The NCAJ Taskforce on Children Matters which was appointed by the Chief Justice is currently headed by Court of Appeal judge, Hon. Lady Justice Martha Koome. The Taskforce is mandated to inter alia, to review and report on the status of children in the administration of justice and give policy directions towards enforcement of fundamental rights of children.

So far the Commission’s engagement in the taskforce has been vibrant as one of way of remaining vigilant in the realization of children rights. Some of the key achievements have been KNCHR’s contribution to the review of the Proposed Children Bill, 2016, development of draft children court practice directions, conduct of the inspection visits to statutory

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1The National Council on Administration of Justice (NCAJ) is established under Section 34 of the Judicial Service Act (No. 1 of 2011). It is a high level policy making, implementation and oversight coordinating mechanism as reflected in its membership that is composed of State and Non-State Actors from the justice sector. Its mandate is to ensure a coordinated, efficient, effective and consultative approach in the administration of justice and reform of the justice system.
children institutions, held follow up meetings with key duty bearers on emerging issues from the said visits, involvement in the planning of nationwide children service week in all court station to ease backlog on children cases. The Commission has continued to receive and process complaints on children rights, conduct investigations, recommend appropriate redress as well as strengthen internal referral partnership network for effective realization of these rights. Further, the Commission has continued to share its statistics on children rights cases with the National Council of Children Services (NCCS) for reporting on states compliance to the committee on Convention of the rights of the child as well as African charter on the rights and welfare of the child.

KNCHR’S ENGAGEMENT WITH NATIONAL COUNCIL ON THE ADMINISTRATION OF JUSTICE (NCAJ) SPECIAL TASKFORCE ON CHILDREN MATTERS.

The Commission is a member of the National Advisory Committee (NAC) on counter trafficking in persons (CTiP), which is mandated to advice on implementation of the Counter trafficking Act, 2010 towards effective combating of human trafficking in Kenya. The Commission has continued to actively participate in the committees activities such as development guidelines on National Referral Mechanism (NRM) for victims’ assistance, standard operating procedures, the draft rules and regulations and given input in the proposed amendments to the CTiP Act, 2010 as well as contribution of statistics to the Advisory committee and compilation of the Kenya’s status report to the US Trafficking in persons report.

Internally, the Commission has continued to receive, process, investigate and strengthen referral processes to ensure access to justice and protection of the rights of the victims of human trafficking. The Commission has continued to support advisory committee by facilitating training sessions for key government officers, court users committees and CSOs on ways of effectively combating human trafficking and has introduced a module on effective investigative techniques for counter trafficking in person’s cases which proposes victim centred investigations and human rights based approach.

Expeditious and fair delivery of Justice.

THE COMMISSION TOOK A LEAD ROLE IN THE DEVELOPMENT OF REGULATIONS TO OPERATIONALIZE THE PROPOSED RESTORATIVE JUSTICE FUND

In the previous period of review, the Kenya Transitional Justice Network (KTJN), which KNCHR is a member, has been advocating for the State to acknowledge and undertake reparations for victims of historical injustices. In December 2016, KNCHR in conjunction with the International Centre for Transitional Justice (ICTJ) called for an expert group meeting to develop reparations guidelines. As requested
by the Office of the Attorney General, the guidelines are to be anchored in Public Finance Management Act. Cap 412 C of the Laws of Kenya with specific reference to Section 24 (4) to (11). The regulations, shall among others: create the restorative justice fund and spell out all operational structures under the administration of the Office of the Attorney General.

Following the 2007/2008 PEV, several interventions were put in place to bring a sense of justice to the victims. Key among them was prosecution of alleged perpetrators before the International Criminal Court and victim reparation, particularly for the internally displaced persons. These interventions however, were marred by various challenges such as victim interference, erosion/tampering of evidence, unwillingness of the State to prosecute perpetrators, perceived regional and ethnic bias in awarding compensation to victims, among other ills. As a result, many victims have been left without any form of reparation either through prosecution of perpetrators or access to compensation schemes disseminated to the victims. Victims from Western Kenya have been particularly critical of the Government’s compensation schemes.

Recent developments such as the establishment of the Shs. 10 billion Restorative Justice Fund in 2015 to compensate victims of the 2007/2008 PEV as well as those of historical land injustices has heightened the need for dialogue on reparations to take place to ensure that no victim is left out.

Through funding from Trust Africa Fund, the Civil Society Organization (CSO) Network in collaboration with KNCHR, NCIC, ICTJ, ICJ, transitional justice experts and law practitioners organized a conference creating a platform for dialogue on issues concerning reparations for victims of past injustices. The specific objectives of the conference were: to put into perspective the nature of compensation already provided and strategies applied; encourage discussions to evaluate success of these early interventions; to understand the nature of violations suffered by the victims and the form of redress they seek with a view to developing a needs-based victims assistance programme that would best serve them; to share proposed plan for rolling out the Victims Reparation Programme and develop recommendations that will ensure there is an integrated system for victims’ assistance.

During the conference, victims had a chance to narrate their experiences and to air their views on the forms of redress they were comfortable with. It was agreed that KNCHR in collaboration with the CSO Network should facilitate the harmonization of the list of IDPs and profile the IDPs at the sub-county level to ensure that everyone captured in their list is also in the database that would be used to disseminate compensation to the victims.
Securing redress for victims of human rights violations is a core mandate of the KNCHR. In the context of the PEV, securing accountability for the violations committed and obtaining redress for the victims is particularly important since the State has, by and large, failed to address the violations. This failure could create the impression that perpetrators of gross human rights violations can easily get away with the crimes they commit, especially if the perpetrators are State agents or private actors supported by the State. Arguably, the State has given the plight of the victims of police shootings during the 2007/2008 PEV a wide berth. Although the Commission investigated the police killings and made a report with recommendations for action, not much has been done to secure justice for the victims. In Kisumu, at least 64 lives were lost through police shootings. Scores were injured. But redress is yet to be obtained.

KNCHR sees this as a travesty to the victims and has set out to engage in public interest litigation for the victims. In preparation for its involvement in litigation, KNCHR held a consultative meeting with senior lawyers practicing in Kisumu. The objective of the meeting was to discuss the nature of KNCHR’s intended involvement in petition No. 18 of 2014 (concerning victims of police shootings) filed at the High Court in Kisumu by Citizens Against Violence (CAVI), Independent Medico-Legal Unit (IMLU) and thirteen (13) other individual petitioners. The petition was filed in September 2014 and is yet to be heard. KNCHR’s involvement is meant to help expedite the hearing of the case and to give the KNCHR an opportunity to introduce a human rights perspective to the case. KNCHR is keen on securing redress for the victims of police shootings who are named as parties in the Petition as well as other victims whose cases are yet to be filed but who have been identified. A successful prosecution of Petition number 18 of 2014 could serve to instil the confidence of the public in the justice system.

Recommendations

1. That Parliament calls upon the Attorney General and the Judiciary to formulate guidelines on the implementation of the Detention at the President’s Pleasure Sentence to ensure that it is not indeterminate and further that it does not result in the incarceration of persons with mental disabilities.

2. The Government should expedite appointment, training and deployment of labour atta-chés for the foreign missions especially the Middle East countries.

3. The Government should provide adequate funds to support the work of the National Advisory Committee as well as the board of trustee who manage the victim’s trust fund.

4. The Government should consider offering mode of transportation that is friendly to the needs of the child as they move to and from the
remand homes in line with the best interest principle. For instance, Nairobi remand home uses an old truck as a mode of transporting for children when numbers are high thus putting them at risk.

5. The Director of Children Services must be given adequate funding by the government to enable him put in adequate structures that ensure separation of institutionalized children, those in need of care and protection and those in conflict with law towards reducing contamination.

6. The Government must clarify the duplicity of roles assigned to the Department of Children Services and the Child Welfare Society of Kenya on the issue of children reintegration and instead promoted institutionalization of children in need of care and protection for longer periods than necessary hence exposing them to further human rights violations such as lack of education, parental care among others.
STRATEGIC OBJECTIVE 3

To Enhance the Realization of Economic & Social Rights in Kenya

KNCHR identified and prioritized the following five rights; the rights to housing, food, health (mental and reproductive), education, water and sanitation. These prioritized rights were also seen in light of the special interest groups including women, elderly, persons with disabilities, children, minorities among others. Under this strategic objective, the Commission identified the area of business and human rights as a priority area of focus. In addition, the Commission identified specific economic, cultural and social rights at the planning stage and work to ensure enactment of the necessary laws and development of policies and standards to improve realization of those rights.

Laws & policies enacted to promote ESR (Article 43 rights)

During the period under review the Commission focused its efforts on lobbying for its enactment. In September 2015, the Commission held a consultative workshop with the Senate Committee on Justice and Legal Affairs and representatives of the Council of Governors where the participants were taken through the rationale and provisions of the bill. Subsequently when the Bill was subjected to public hearings, the Senate Committee invited the Commission to make submissions in view of the fact that KNCHR would be overseeing the implementation if it became law. The Commission duly submitted a memorandum strongly in support of the Bill.

During the Universal Periodic Review, Kenya agreed to a recommendation by the committee to develop a National Action Plan on Business and Human Rights, which is the guiding document in the implementation of the United Nations Guiding Principles on Business and Human Rights. In fulfilment of its human rights obligations and as a National Human Rights Institution, KNCHR and the Department of Justice have partnered in the NAP development process. The partnership builds the legitimacy of the process as stipulated in the guidelines given by the UN Working Group (UNWG) on Business and Human Rights. In this regard, the process involves a wide stakeholder engagement, in which a steering committee has been formed to guide the process, invitation of experts from other jurisdictions to share experiences and where possible help with the process.

Through the assistance of the Royal Norwegian Embassy, the NAP process benefitted from experience sharing with Businesses from Norway and also the National Contact Point of Norway in the OECD. The process has also benefitted from the expertise and guidance of a member of the UNWG on Business and Human Rights (Professor Michael Addo), who helped in setting up and induction of the steering committee and also in the stakeholder dialogues on the NAP. Kenya therefore becomes a model country as far as adherence to the NAP development process is concerned.

One of the major highlight of the Commission during the year was ensuring that 691 houses constructed by the government under the slum upgrading project in Kibera were allocated to the rightful beneficiaries.

The petition, David Ngige Tharau and 128 others versus Principle Secretary Ministry of Land, Housing and Urban Development, the Attorney General and Soweto East ‘a’ housing Co-operative (Interested Party) had raised various concerns on the slum upgrading project which had led to the process being brought to a halt. In his ruling, Justice Odunga’s directed that “the allocation of units be overseen by representatives of Kenya National Commission on Human Rights to ensure that only those genuinely entitled to benefit of the project reap therefrom”.

The Commission engaged in a variety of activities to implement the ruling. First, the Commission in consultation with key stakeholders, developed a Post Judgment Implementation Framework which was signed by the key actors (Ministry, KNCHR SACCO,
and SEC), deposited in court and eventually served to all the parties including the petitioner.

An Inter-Agency Technical Working Group was formed which drew membership from KNCHR, the State Department of Housing, the Settlement Executive Committee and Soweto East ‘A’ housing co-operative. The Working Group handled a variety of issues including complaints, verification of data at the Ministry and coming up with the final provisional list of potential beneficiaries. The working group examined all the 1,492 applications for allocation of units which had been received by the Ministry. It was able to satisfy itself that out of 1,492 applicants, 697 met the criteria set for successful applicants which was:

i. Be residents of Soweto East Zone A who had been enumerated and their details captured in the master register;

ii. No outstanding rent arrears at the decanting site and

iii. Be members of Soweto East Zone “A” Housing Cooperative with shares amounting to 10% of the negotiated price of the unit applied for.

In order to ensure that the process was both participatory and transparent, the Commission embarked on series of targeted consultative meetings. Cumulatively, 32 meetings were held with key stakeholders including: officials from the Ministry of Land Housing and Urban Development, civil society, political leaders, the affected community, Soweto East Cooperative Society Limited, Settlement Executive Committee, independent observers, Ethics and Anti-Corruption Commission, County Security Officials and the Registrar of persons.
The Commission ensured the involvement and continued engagement with the potential beneficiaries through various channels. A public forum was held which attracted over 800 of project targeted beneficiaries. Three (3) radio spots with Radio Pamoja were aired to sensitize the public and update the beneficiaries on the progress made. A Short Message System (SMS) platform for communication was developed and rolled out which became instrumental in reaching out to each individual potential beneficiary. A database / ICT system was developed to capture data of all the potential beneficiaries and the same was used during balloting exercise. Information on the allocation of houses was posted at strategically located public places and also published in the local media. The Commission further identified persons living with disability as well as the elderly and ensured that they were allocated units of their choice.

The Ministry had originally set aside 624 houses for allocation being the units that were complete by the time the matter went to court in 2015. Given that the qualified applicants were more than the houses set aside, the Commission saw a need to forestall conflict and disappointment by unsuccessful applicants. The Commission successfully negotiated with the Ministry to make available an additional units (73) to cater for all potential beneficiaries.

To further enhance transparency and accountability the Commission engaged independent observers from National Gender & Equality Commission, Independent Policing Oversight Authority, National Council for Persons with Disability, Co-operative Bank of Kenya, Commission on Administrative Justice as well as the main petitioner.

On 22nd March 2016, the Commission in collaboration with the Ministry of Lands Housing and Urban Development, Soweto East Zone “A” Cooperative Society Limited and Settlement Executive Committee carried out a balloting exercise at Nyayo Stadium and allocated six hundred and seventy nine (679) houses to the successful applicants. The units comprised of one hundred and forty-four (144) three roomed units and five hundred and thirty five (535) two roomed units.

**KNCHR DEVELOPED FRAMEWORKS FOR MONITORING AND REPORTING ON THE RIGHT TO HEALTH AND THE RIGHT TO WATER AND SANITATION.**

During the financial year under review, the Commission prioritized development of two monitoring frameworks on the rights to health and the right to water and sanitation.

On the right to health, the Commission partnered with Ministry of Health to develop a framework based on two latest sets of norms and standards that the Ministry has developed, namely, the Health Infrastructure Norms & Standards and the Human Resources for Health Norms and Standards. The framework consists indicators and benchmarks as well as a monitoring tool which will be developed into an IT-based system for ease of use and data analysis.

With regard to the right to water and sanitation, the Commission partnered with the World Health Organisation (WHO) and the Water, Sanitation and Hygiene (WASH) hub (a network of water sector stakeholders which is housed by the Ministry of Health) to develop a similar framework using the existing norms and standards to enable monitoring and reporting.
The Commission also involved the Ministry of Water and Irrigation, the Ministry of Devolution, Water Services Regulatory Board (WASREB), Kenya Water Services Network (KEWASNET – a CSO) and the WASH Alliance in the development of the framework.

A training session for county government officials on these frameworks will pave way for monitoring individual’s access to the right to water and health.

**Recognition and integration of human rights principles in various private and public practices.**

**DEVELOPED TRAINING MODULES, WHICH BOTH KNCHR AND THE MINISTRY OF HEALTH USED TO CONDUCT TRAINING FOR HEALTH FACILITY MANAGEMENT COMMITTEES AND HOSPITAL MANAGEMENT BOARDS IN BUSIA COUNTY.**
During the previous reporting period the Commission had conducted an assessment of provision of health services in Busia County designed on the basis of the provisions of Article 43(1) (a) & (2) of the Constitution of Kenya (right to the highest attainable standard of health) and published a report on the same. As a follow-up to this work, the County Government’s Department of Health and Sanitation requested KNCHR to support it to train health facility management committees and hospital management boards, a move aimed at quality improvement and public participation in health service delivery.

During the year under review the Commission carried out empowerment programmes for the communities in Kitui and Taita Taveta counties in order to enable them claim their rights. This empowerment programme has helped elevate dialogue between the state, the communities, businesses and other Non-state actors on how to enhance the realisation of human rights in the extractive sector.

To come up with comprehensive findings and recommendation on the challenges faced in the mining sector in Taita Taveta, the Commission is planning to carry out a public inquiry which will go a long way in addressing the problems of the sector.

Recommendations

The Commission urges:

1. That Parliament enacts the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bill No. 8 of 2015)
STRATEGIC OBJECTIVE 4

To Enhance the Efficiency & Effectiveness of the Commission

This strategic objective focuses mainly on activities and initiatives that the KNCHR undertook to help deliver its mandate in a more effective and efficient manner. It highlights the Commission’s roles and tasks as accomplished through various modes of engagement undertaken through partnerships and membership in the various taskforce and committees of which KNCHR is a member. This objective will also focus on; enabling skills as acquired through training of staff or partners, the innovations (survey and technological) that shaped service delivery during the reporting period.

CONDUCTED A HUMAN RIGHTS BASELINE SURVEY AS A TOOL OF ASSESSING PROGRESS IN GOVERNANCE AND HUMAN RIGHTS IN KENYA.

KNCHR conducted a human rights baseline survey towards the end of 2015 with the aim of gathering relevant quantitative and qualitative data to help assess achievements made on its revised strategic plan, 2015-2018. The survey mapped indicators at all level of results which will be used to measure progress against a set goals and objectives throughout the life cycle of the strategic plan. The baseline survey was carried out in all the 8 regions of the country (former provinces), i.e. Rift Valley, Nairobi, Western, Central, Coast, Eastern, North Eastern, Nyanza. The Commission sampled 14 Counties out of the 47 Counties.

This baseline was important for various reasons. Primarily, this was the first comprehensive baseline survey that the Commission conducted; with in-depth results based framework. The baseline answered so many questions that it has not been able to answer before. Secondly, the survey consolidated a wide range of multi sectorial development indicators that are operationalized from the provisions of the new constitution and the Vision 2030 national development blue print. Finally, it makes the beginning of an important statistical relationship between the Commission and other State and Non-state agencies.

This survey report developed in a very participatory process driven by key programme staff received important input and buy-in from key stakeholders in at least 6 counties. The baseline report is now widely used to inform program design as well as decision making by the Commission and its partners and has become a reference and planning tool for a number of County governments as they seek to entrench human rights standards in their operations.
Referral partners have remained an important vehicle for effective and efficient resolution of complaints. KNCHR therefore committed to convene 20 referral partners through 4 referral partners’ meetings in which it will ensure effective and efficient resolution of complaints. During the year 42 partners were convened in Nairobi, 13 in Mandera, 22 in Kisumu and 18 in Kitale. Using these meetings, discussions on important human rights concerns were held and feedback on ongoing cases received. The forums were useful in strengthening capacity of partners on specific issues. For instance in one of the meetings in Nairobi, the ODPP made a presentation on its legal mandate and powers in prosecution emphasizing on the function of the Complaints & Compliments Unit of the ODPP. The presentation provoked discussions on the scope of the legal powers of the ODPP regarding criminal investigations. A Memorandum of Understanding (MoU) developed by the referral partners has strengthened and formalized cooperation between partner institutions and created a mutually beneficial relationship. In Kitale, use of alternative communication and information sharing medium such as Social Media - WhatsApp groups have been developed. As a result, complaints handling, management and resolution has become more effective. Synergy among the partners has been built and public awareness on human rights and the role of each organisation in complaints management enhanced through joint activities such as public forums.

Since the Commission inception the main method of receiving of complaints from petitioners has been through physical access. The Commission currently has 5 regional offices, which is in no way enough to help cover the country. KNCHR therefore diversified and introduced new ways through which petitioners can report incidences. This led to acquisition of the short code service (22359) and bulk SMS. Through the platform, KNCHR is able to reach to petitioners in far flung areas easily and faster. Because of its ability to reach out to a larger audience with a specific message, there has been a significant reduction in costs of running the complaints system. Since inception, the SMS Platform has received over 2000 text messages and sent over 80,000 text messages.

The SMS platform has been integrated into the KNCHR complaints handling system where text messages are relayed real-time to petitioners on the status of their cases. The short code and bulk SMS is a ground breaking initiative that has brought the Commission closer to the petitioners can now send a complaint to us through short code **22359**.
local communities especially in areas where the Commission has no presence and in situations where information sharing is instantaneous. As a result complaints handling is easier and redress for human rights violations effective and efficient.

INCREASED ACCESSIBILITY TO KNCHR’S COMPLAINTS HANDLING SERVICES THROUGH PARTNERSHIP WITH MINISTRY OF DEVOLUTION FOR THE EFFECTIVE COMPLAINTS PROCESSING.

KNCHR’s accessibility and visibility to the public was increased through the opening of two Huduma Centre desks. These are: Thika Huduma Centre in Kiambu and Kibera Huduma Centre in Nairobi County. The opening of these centres has increased opportunities for the public to access Commission’s services without incurring cost of visiting the main office. It is notable that activities such as participating in the Huduma Centres public service awareness week has also increased the branding of the Commission and we have begun receiving complaints through the centres in addition to the already existing Eastleigh Huduma Centre. KNCHR also conducted two legal aid clinics in both Eastleigh and Makadara Sub-Counties within Nairobi county and created awareness to the public about KNCHR’s mandate and the complaint processing desk established in the Eastleigh Huduma Centre. The strengthened partnership within the referral partners was evident since our invitation to the partners on short notice received overwhelming response and six (6) partners participated. That is: CAJ, EACC, ODPP, NGEC, ACC and FIDA Kenya. Additionally partnership with the new OCS Pangani and the Eastleigh area Chief and other local leaders was created during these forums.

During the reporting period, two technical committee meetings were held with the Ministry of Public Service, Youth & Gender Affairs. Huduma Kenya (HK) presented the scores and statuses of the 19 partner agencies based on their regional presence in the Huduma Centres and service delivery. The KNCHR was poorly rated at number 19 with only 12.3% presence. On the 26th April 2016, a public baraza was held at St. Theresa Church in Eastleigh presided by the Assistant County Commissioner. The Commission used this opportunity to sensitize the public on its presence at Eastleigh Huduma Centre and its mandate including refugee rights which accounts for most of the complaints received at the centre.

MAXIMIZED ON TECHNOLOGY AND PARTNERSHIPS THROUGH THE IPCRM PLATFORM FOR EFFECTIVE PROTECTION OF HUMAN RIGHTS THROUGH COMPLAINTS HANDLING MANDATE.

In the reporting period, the redesigning of the new IPCRM system was completed and officers trained on the use of the same. Further, outreach activations were held in six regions to
coincide with the International Anti-corruption day and the International Human Rights Day. These were held in Kiambu, Kitui, Kisii, Mombasa, Mandera and Elgeyo Marakwet counties between 4th and 14th December, 2015. GIZ Good Governance Program evaluation was undertaken covering the period from January 2014 to 2016. A validation meeting was held with GIZ partners where the findings were presented. The IPCRM was commended for its well-coordinated collaboration between the six agencies. The e-system was recognized for its potential to manage complaints on a web based platform to address corruption, human rights violations, discrimination and mal-administration. Following this, the IPCRM was endorsed for support in the upcoming Good Governance Program set to begin in 2017.

Further, KNCHR supported NACCSC by training their County Anti-Corruption Civilian Oversight Committees on the IPCRM in Elgeyo Marakwet, Kisii and Kakamega to enhance reporting from the counties through the IPCRM. In the same period, the IPCRM was selected to make a presentation at the ICT4DEVELOPMENT conference on 19th May 2016. The presentation focused on how to use technological innovations for Good Governance and Human Rights, the use of ICT to decrease corruption, mismanagement, discrimination and to engage their citizens, the success factors, pitfalls and challenges and the IPCRM outlook in relation to SDG16 (Peace, Justice and Strong Institutions).

**Recommendations**

In order to ensure that the Commission is fully facilitated to fulfil its mandate the Commission recommends that Parliament:

- Secure the appointment of the remaining Commissioner as required under the Constitution and the KNCHR Act.

- Sufficient allocation of resources to the Commission in accordance with article 249(3) of the Constitution of Kenya and also in line with the Paris Principle that states that, ‘The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding.’
Commissioners

Kagwiria Mbogori
Chairperson

George Morara Monyoncho
Vice Chairperson

Jedidah Wakonyo Waruhiu

Suzanne Shatikha Chivusia

Secretariat

Patricia Nyaundi
The Secretary to the Commission, CEO

Evelyne Samba
Deputy Commission Secretary
OFFICE OF THE AUDITOR-GENERAL

REPORT

OF

THE AUDITOR-GENERAL

ON

THE FINANCIAL STATEMENTS OF
KENYA NATIONAL COMMISSION ON
HUMAN RIGHTS

FOR THE YEAR ENDED
30 JUNE 2016
REPORT OF THE AUDITOR-GENERAL ON THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS FOR THE YEAR ENDED 30 JUNE 2016

REPORT ON THE FINANCIAL STATEMENTS

I have audited the accompanying financial statements of the Kenya National Commission on Human Rights set out on pages 8 to 39, which comprise the statement of assets as at 30 June 2016, and the statement of receipts and payments, statement of cash flows, summary statement of appropriation – recurrent and development combined and summary statement of provisionings for the year then ended, and a summary of significant accounting policies and other explanatory information in accordance with the provisions of Article 229 of the Constitution of Kenya and Section 35 of the Public Audit Act, 2015. I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit.

Management’s Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Public Sector Accounting Standards (Cash Basis) and for such internal control as management determines is necessary to enable preparation of financial statements that are free from material misstatement, whether due to fraud or error.

The management is also responsible for the submission of the financial statements to the Auditor General in accordance with the Provisions of Section 47 of the Public Audit Act, 2015.

Auditor-General’s Responsibility

My responsibility is to express an opinion on these financial statements based on the audit and report in accordance with the Provisions of Section 48 of the Public Audit Act, 2015 and submit the audit report in compliance with Article 228(7) of the Constitution of Kenya. The audit was conducted in accordance with International Standards of Supreme audit Institutions. Those standards require compliance with ethical requirements and that the audit be planned and performed to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosure in the financial statements. The procedures selected depend on the auditor’s Judgement, including the assessment of the risks of material misstatements of the financial statements, whether due to fraud or error. In making those risk
assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Commission's internal control. An audit also includes evaluating the appropriateness of the accounting policies used and the reasonableness of accounting estimates made by the management, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence obtained is sufficient and appropriate to provide a basis for my qualified audit opinion.

**Basis for Qualified Opinion**

**Unsupported Cash-In-Transit**

As disclosed in note 22A to the financial statements, the bank balances of Kshs.63,735,113 reflected in the statement of assets as at 30 June 2016 are net-off cash in transit amounting to Kshs.3,715,167. However, no sufficient documentary evidence has been provided in support of the amount. As a result, completeness and accuracy of the bank balances of Kshs.63,735,113 cannot be ascertained.

**Qualified Opinion**

In my opinion, except for the effects of the matter described in the Basis for Qualified Opinion paragraph, the financial statements present fairly, in all material respects, the financial position of Kenya National Commission on Human Rights as at 30 June 2016, and of its financial performance and its cash flows for the year then ended, in accordance with International Public Sector Accounting Standards (Cash Basis) and comply with Public Finance Management Act, 2012.

FCPA Edward R.O. Ouko, CBS
AUDITOR-GENERAL

Nairobi

30 March 2017
## Financials

### STATEMENT OF RECEIPTS AND PAYMENTS

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<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Proceeds from Domestic and Foreign Grants</td>
<td>3</td>
<td>121,738,543</td>
<td>74,579,444</td>
</tr>
<tr>
<td>Exchequer releases</td>
<td>4</td>
<td>441,700,000</td>
<td>345,200,000</td>
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<tr>
<td>Transfers from Other Government Entities</td>
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<td>Proceeds from Domestic Borrowings</td>
<td>6</td>
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<tr>
<td>Proceeds from Foreign Borrowings</td>
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<td>Proceeds from Sale of Assets</td>
<td>8</td>
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<tr>
<td>Reimbursements and Refunds</td>
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<td>0</td>
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</tr>
<tr>
<td>Returns of Equity Holdings</td>
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<tr>
<td>Other Receipts</td>
<td>11</td>
<td>3,166,058</td>
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<tr>
<td><strong>TOTAL RECEIPTS</strong></td>
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<td>419,779,444</td>
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<tr>
<td><strong>PAYMENTS</strong></td>
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<tr>
<td>Compensation of Employees</td>
<td>12</td>
<td>189,803,819</td>
<td>177,437,359</td>
</tr>
<tr>
<td>Use of goods and services</td>
<td>13</td>
<td>178,915,305</td>
<td>125,037,056</td>
</tr>
<tr>
<td>Subsidies</td>
<td>14</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Transfers to Other Government Units</td>
<td>15</td>
<td>13,550,832</td>
<td>20,300,000</td>
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<tr>
<td>Other grants and transfers</td>
<td>16</td>
<td>2,056,884</td>
<td>14,800,010</td>
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<td>Social Security Benefits</td>
<td>17</td>
<td>7,494,527</td>
<td>2,715,805</td>
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<tr>
<td>Acquisition of Assets</td>
<td>18</td>
<td>59,058,841</td>
<td>31,828,308</td>
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<tr>
<td>Finance Costs, including Loan Interest</td>
<td>19</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Repayment of principal on Domestic and Foreign borrowing</td>
<td>20</td>
<td>0</td>
<td>0</td>
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<td>Other Payments</td>
<td>21</td>
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<td><strong>TOTAL PAYMENTS</strong></td>
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<td>422,641,216</td>
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<tr>
<td><strong>SURPLUS/DEFICIT</strong></td>
<td></td>
<td>28,060,652</td>
<td>(2,861,772)</td>
</tr>
</tbody>
</table>

The accounting policies and explanatory notes to these financial statements form an integral part of the financial statements. The entity financial statements were approved on 30th September 2016 and signed by:

**Commission Secretary**

**Finance Manager**
# Financials

## STATEMENT OF ASSETS

<table>
<thead>
<tr>
<th>Note</th>
<th>2015-2016</th>
<th>2014-2015</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Kes</td>
<td>Kes</td>
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<tr>
<td><strong>FINANCIAL ASSETS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Cash and Cash Equivalents</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bank Balances</td>
<td>22A</td>
<td>63,735,113</td>
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<tr>
<td>Cash Balances</td>
<td>22B</td>
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<tr>
<td>Cash Equivalents</td>
<td>22C</td>
<td>7,349,310</td>
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<td><strong>Total Cash and cash equivalent</strong></td>
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<td></td>
</tr>
<tr>
<td>Accounts receivables-Outstanding Imprests</td>
<td>23</td>
<td>1,240,111</td>
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<tr>
<td><strong>TOTAL FINANCIAL ASSETS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>72,524,535</td>
</tr>
<tr>
<td><strong>FINANCIAL LIABILITIES</strong></td>
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</tr>
<tr>
<td>Accounts Payables- Deposits and Retentions</td>
<td>24</td>
<td>0</td>
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<tr>
<td><strong>NET FINANCIAL ASSETS</strong></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>72,524,535</td>
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<tr>
<td><strong>REPRESENTED BY</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fund balance b/fwd</td>
<td>25</td>
<td>44,463,882</td>
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<tr>
<td>Surplus/Deficit for the year</td>
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<td>28,060,652</td>
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<tr>
<td><strong>NET FINANCIAL POSITION</strong></td>
<td></td>
<td></td>
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<td></td>
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<td>72,524,534</td>
</tr>
</tbody>
</table>

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**Commission Secretary**

**Finance Manager**
## Financials

### STATEMENT OF CASHFLOW

<table>
<thead>
<tr>
<th>Receipts for operating income</th>
<th>Note</th>
<th>2015-2016 Kes</th>
<th>2014-2015 Kes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax Revenues</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Social Security Contributions</td>
<td>2</td>
<td>0</td>
<td>0</td>
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<td>0</td>
</tr>
<tr>
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<td>10</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Other Revenues</td>
<td>11</td>
<td>3,166,058</td>
<td>0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Payments for operating expenses</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation of Employees</td>
<td>12</td>
<td>(189,803,819)</td>
<td>(177,437,359)</td>
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<td>13</td>
<td>(178,915,305)</td>
<td>(125,037,056)</td>
</tr>
<tr>
<td>Interest payments</td>
<td>14</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Subsidies</td>
<td>0</td>
<td>0</td>
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<td>(2,715,805)</td>
</tr>
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<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Other Expenses</td>
<td>21</td>
<td>(87,663,743)</td>
<td>(50,522,678)</td>
</tr>
</tbody>
</table>

| Adjustments during the year                        |      | 0             | 0             |

| Net cash flow from operating activities            |      | 86,981,301    | 28,966,536    |

### CASHFLOW FROM INVESTING ACTIVITIES

| Proceeds from Sale of Assets                       | 8    | 0             | 0             |
| Acquisition of Assets                              | 18   | (59,058,841)  | (31,828,308)  |

| Net cash flows from Investing Activities           |      | (59,058,841)  | (31,828,308)  |

### CASHFLOW FROM BORROWING ACTIVITIES

| Proceeds from Domestic Borrowings                  | 6    | 0             | 0             |
| Proceeds from Foreign Borrowings                   | 7    | 0             | 0             |
| Repayment of principal on Domestic and Foreign borrowing | 20   | 0             | 0             |
| Net cash flow from financing activities            |      | 0             | 0             |

| NET DECREASE IN CASH AND CASH EQUIVALENT          |      | 28,060,652    | (2,861,772)   |

| Cash and cash equivalent at BEGINNING of the year | 24   | 44,463,882    | 47,325,655    |
| Cash and cash equivalent at END of the year       | 25   | 72,524,535    | 44,463,882    |

The accounting policies and explanatory notes to these financial statements form an integral part of the financial statements. The entity financial statements were approved on 30th September 2016 and signed by:

Commission Secretary

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