Kenya National Commission on Human Rights

11th Annual Report 2013/2014
President
His Excellency, Hon. Uhuru Kenyatta C.G.H.
President and Commander in Chief
of the Defense Forces Of the Republic of Kenya

LETTER OF TRANSMITTAL

Pursuant to Article 254(1) of the Constitution of Kenya, 2010 and section 53(1) of the Kenya National
Commission on Human Rights Act 2011, I have the honour of submitting to you our report for the
Financial Year 2013/2014.

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

Kagwiria Mbogori.
Chairperson

Cc,
Speaker of the Senate
Rt. Hon. Ekwe Ethuro E.G.H, E.B.S, M.B

Speaker to the National Assembly
Hon. Justin Muturi E.G.H, M.B
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<th>Description</th>
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<tbody>
<tr>
<td>ACHPR</td>
<td>African Commission on Human and Peoples’ Rights</td>
</tr>
<tr>
<td>ACP</td>
<td>Assistant Commissioner of Police</td>
</tr>
<tr>
<td>CAJ</td>
<td>Commission on Administrative Justice</td>
</tr>
<tr>
<td>CAT</td>
<td>Convention Against Torture</td>
</tr>
<tr>
<td>CBO</td>
<td>Community Based Organization</td>
</tr>
<tr>
<td>CIC</td>
<td>Commission on the Implementation of the Constitution</td>
</tr>
<tr>
<td>CID</td>
<td>Criminal Investigation Department</td>
</tr>
<tr>
<td>CJPC</td>
<td>Catholic Justice and Peace Commission</td>
</tr>
<tr>
<td>CRPD</td>
<td>Convention on Rights of People with Disability</td>
</tr>
<tr>
<td>CuC</td>
<td>Court User Committee</td>
</tr>
<tr>
<td>CSOs</td>
<td>Civil Society Organizations</td>
</tr>
<tr>
<td>DCIC</td>
<td>Disability Caucus for the Implementation of the Constitution</td>
</tr>
<tr>
<td>DPP</td>
<td>Director of Public Prosecutions</td>
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<tr>
<td>ECOSOC</td>
<td>Economic Social and Cultural Rights</td>
</tr>
<tr>
<td>FIDA</td>
<td>Federation of Women Lawyers</td>
</tr>
<tr>
<td>GoK</td>
<td>Government of Kenya</td>
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<tr>
<td>HRBA</td>
<td>Human Rights Based Approach</td>
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<tr>
<td>ICC</td>
<td>International Criminal Court</td>
</tr>
<tr>
<td>IEBC</td>
<td>Independent Electoral and Boundaries Commission</td>
</tr>
<tr>
<td>IED</td>
<td>Improvised Explosive Devise</td>
</tr>
<tr>
<td>IHRB</td>
<td>Institute for Human Rights and Business</td>
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<tr>
<td>IPCRM</td>
<td>Integrated Public Complaints Referral Mechanism</td>
</tr>
<tr>
<td>IPOA</td>
<td>Independent Police Oversight Authority</td>
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<tr>
<td>KMJA</td>
<td>Kenya Magistrates and Judges Association</td>
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<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>-----------</td>
<td>---------------------------------------------------------------------------</td>
</tr>
<tr>
<td>KNCHR</td>
<td>Kenya National Commission on Human Rights</td>
</tr>
<tr>
<td>KPRs</td>
<td>Kenya Police Reservists</td>
</tr>
<tr>
<td>LAPSSET</td>
<td>Lamu-Port-South Sudan Ethiopia Transport</td>
</tr>
<tr>
<td>M&amp;E</td>
<td>Monitoring and Evaluation</td>
</tr>
<tr>
<td>MOL</td>
<td>Ministry of Land, Housing and Urban Development</td>
</tr>
<tr>
<td>MoSSP</td>
<td>Ministry of State for Special Programmes</td>
</tr>
<tr>
<td>MOJNCCA</td>
<td>Ministry of Justice, National Cohesion, and Constitutional Affairs</td>
</tr>
<tr>
<td>NGEC</td>
<td>National, Gender and Equality Commission</td>
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<tr>
<td>NERO</td>
<td>KNCHR, North Eastern Regional Office</td>
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<tr>
<td>NHRI</td>
<td>National Human Rights Institution</td>
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<tr>
<td>NORRO</td>
<td>KNCHR, North Rift Regional Office</td>
</tr>
<tr>
<td>NPS</td>
<td>National Police Service</td>
</tr>
<tr>
<td>NPSC</td>
<td>National Police Service Commission</td>
</tr>
<tr>
<td>PEV</td>
<td>Post-Election Violence</td>
</tr>
<tr>
<td>PLSWC</td>
<td>Parliamentary Labour and Social Welfare Committee</td>
</tr>
<tr>
<td>PWGID</td>
<td>Protection Working Group on Internal Displacement</td>
</tr>
<tr>
<td>RRM</td>
<td>Rapid Response Mission</td>
</tr>
<tr>
<td>SMRTP</td>
<td>UN Standard Minimum Rules for the Treatment of Prisoners</td>
</tr>
<tr>
<td>TJRC</td>
<td>Truth, Justice and Reconciliation Commission</td>
</tr>
<tr>
<td>UNCRC</td>
<td>United Nations Convention on the Rights of the Child</td>
</tr>
<tr>
<td>UPR</td>
<td>Universal Periodic Review</td>
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<tr>
<td>WGPR</td>
<td>Working Group on Police Reforms</td>
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The Chairperson and 3 members of the Commission were sworn in on 7th April 2014 after a prolonged wait that saw the process subjected to two constitutional court challenges.

A number of human rights issues had engulfed the country at the time the new team was assuming office. These were insecurity, high cost of living that disproportionately burdens the low income population, constricted space for civil society, highly politicized environment and an increasingly cynical population.

These challenges notwithstanding, there exist definite opportunities to not only counter the specific issues but also chart a definite course for the country towards inculcation of a culture that entrenches respect for rule of law and good governance. Such opportunities include the transformative constitution with a robust bill of rights, the establishment of oversight bodies as provided for under the constitution, the restructuring of government from centralized to a devolved governance and the roll out of the 2nd Medium Term Plan for Vision 2030 that recognizes implementation of the Constitution as a key driver.

Programmatically we focused on the State’s compliance with its national and international obligations especially with regard to response to insecurity. We also strove to ensure that there is increased appreciation and enjoyment of socio economic rights focusing on the right to education and health. We continue to advocate for institutional reforms and are keenly monitoring the ongoing Police vetting by the National Police Service Commission. We also continue to monitor the prioritization of reforms for our Prison system to align it with the Constitution.

On assumption of office we were quick to identify priorities for our intervention. These include solidifying and expanding the funding base for the Commission, providing clarity on the mandate of the Commission especially State agencies so as to facilitate cooperation and implementation of the Commission’s recommendations. We are happy to report for the year 2014/2015 we have so far secured Kshs 463,022,039 which represents 68% of the Commission’s projected budget.
We also thank the Government, development partners, our fellow state agencies and partners in Civil Society for their continued support. We are cognizant of the limited resources available from the Treasury and have taken deliberate cost cutting measures and invested heavily in partnerships and collaboration as a way of ensuring the effective and efficient utilization of the resources at our disposal.

In light of the above, we are honored to present the Annual report for the year 2013/2014 that constitutes the background of the Commission, reporting on activities and recommendations on specific actions as well as our financial statements.

We appreciate that a number of recommendations made in the previous report have been acted upon. These include the appointment of Commissioners, enhancement of funding to the Commission, commencement of the Police vetting, steps have been taken to establish an interagency committee to guide the implementation of the TJRC report and the process of setting up a committee to guide on the implementation of the IDP Act has commenced. Conversations are ongoing on the need to address the gaps in the electoral framework prior to the next elections.

In accordance with Section 51(1) of the KNCHR the KNCHR makes the following recommendations.

That Parliament;


2. Takes measures to review laws relating to penal institutions, including the Prisons Act and the Borstal Institutions Act to bring them into conformity with the Constitution of Kenya, 2010

3. Take measures to align the National Security policy with human rights principles and norms.

4. Pay attention to the situation of Human Right Defenders and take measures that will guarantee an enabling environment for their work.

5. The Cabinet Secretary for Health Publish and Disseminate the National Health Policy and Action Plan

We are optimistic that we will work with Parliament and other stakeholders to ensure the implementation of the recommendations.

Comm. Kagwiria Mbogori
Chairperson
Foreword

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. The Commission is organized around the following departments; Complaints and Investigations, Redress, Reforms and Accountability, Public Education and Training, Research and Compliance, Public Affairs and Communications and Economic, Social and Cultural Rights. The Monitoring and Evaluation, Regional Outreach, Internal Audit, Information Technology, Finance and Human Resource and Administration departments support these.

The Commission is implementing its 3rd strategic plan since its inception. The Key themes of the strategic plan are access to justice, institutional reform, promotion of socio-economic rights and organizational strengthening.

The main activities undertaken during the period included raising public awareness and understanding of the Bill of Rights. Capacity building of various state and non state actors including Police, Prison Officers and members of Civil Societies and learning institutions.

The Commission also undertook investigations into allegations of violations of rights. These include investigations into the Narasha Evictions and the Embobut forest forceful evictions.

The Commission also invested in the capacity building of various counties on rights based approach to development with emphasis on citizen participation. In keeping with our mandate to promote a culture of respect of human rights, the commission issued advisories on topical issues, including insecurity and community participation. The Commission continued to advocate for the implementation of the TJRC report and held dissemination forums of the report across the country.

Key achievements by the Commission included An assessment of provision of health services in Busia County (the assessment was conducted in conjunction with the University of Maryland, USA (School of Medicine) and Health Strat, Kenya.

The commission is also setting up human rights clubs in institutions of learning in Northern Kenya. In addition the Commission implemented a project that seeks to improve accountability with regard
to the cash transfer programme in Northern Kenya. The Commission in partnership with the local community and county government in Wajir erected a monument in Wajir as a memorial of the Wagalla Massacre of 1984. In Mombasa County the Commission implemented a project aimed at increasing public participation in County governments so as to prevent conflict.

In compliance with Government’s Public Procurement Preference Policy, 26% of the Commission procurements were awarded to companies and businesses registered by women and youth.

The Commission expanded its regional presence to Western Kenya by setting up a desk at the Kisumu office of the Commission on Administrative Justice. Under a reciprocate arrangement the Commission has provided a desk for a CAJ officer at its Mombasa office.

The Commission also issued advisories on a number of Bills pending before parliament and had engagements with the respective Parliamentary Committees. For instance, the Bill seeking to amend the National Police Service Act, the Campaign Financing Bill, the matrimonial property bill, the Marriage Bill and the Bill seeking to amend the TJRC Act.

Internal evaluation indicates that on average we were able to implement 69% of our work plan for the current year. The major hindrances were limited funding and insecurity affecting our offices in the Coast and North Eastern regions. The Commission is grateful for the support it continues to enjoy from the Government of Kenya and its development partners, including GIZ, BHC, Help Age, Action Aid and UNDP. In the next financial year the Commission will continue with work to promote economic, social and cultural Rights. We will also seek to promote the use of ADR in resolution of disputes, including mediation, negotiation, conciliation and application of traditional justice mechanisms. Combating insecurity and aligning state response with Human rights will be a priority of the Commission.

The Commission will follow up state compliance with its international and regional obligations with regards to the various treaties and conventions. We shall scale up our work on the protection of Human Rights Defenders. We hope that resources will be made available to enable the Commission expand its regional presence.

We are hopeful that adequate resources shall be availed to the Commission to enable it effectively carry out its mandate.

**Patricia Nyaundi**
Commission Secretary
THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

1.1 Overview of the Kenya National Commission on Human Rights


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). These mandates are 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 Commission has its head office in Nairobi with 4 regional offices in Wajir, Kitale, Mombasa and Kisumu. Currently the Commission has 108 staff.

The KNCHR Act provides that the membership of the Commission shall be a Chairperson and 4 members appointed in accordance with the provisions of the Constitution and the Act. At the end of the financial year, the Commission had a Chair and 3 members.

Table 1: List of Commissioners who served in the reporting year.

<table>
<thead>
<tr>
<th>Commissioner</th>
<th>Position</th>
<th>Appointment Date</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ms. Kagwiria Mbogori</td>
<td>Chairperson</td>
<td>March 2014</td>
<td>Term expires in March 2020</td>
</tr>
<tr>
<td>Mr. George Morara Monyongo</td>
<td>Vice Chairperson</td>
<td>March 2014</td>
<td>Term expires in March 2020</td>
</tr>
<tr>
<td>Ms. Suzanne Shatikha Chivusia</td>
<td>Commissioner</td>
<td>March 2014</td>
<td>Term expires in March 2020</td>
</tr>
<tr>
<td>Ms. Jedidah Wakonyo Waruhiu</td>
<td>Commissioner</td>
<td>March 2014</td>
<td>Term expires in March 2020</td>
</tr>
<tr>
<td>Ms. Patricia Mande Nyaundi</td>
<td>Commission Secretary</td>
<td>December 2012</td>
<td>Term expires in December 2017</td>
</tr>
</tbody>
</table>
1.2 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:

a) Are subject only to this Constitution and the law; and

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

The Commission receives funding from both the Government of Kenya and development partners. It, however, sets its own priorities in accordance with its statutory mandate and the strategic plan.

1.3 Functions and Powers of the KNCHR

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. 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.

1.4 Powers of the KNCHR

The powers of the Commission are prescribed under the Constitution and the KNCHR Act. Article 252 on the general functions and powers of Commissions states;

252 (1) 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.
252 (2) 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 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 fulfillment 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 fulfillment 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.

1.5 Affiliation to International and Regional Networks

The Commission is affiliated to the International –Coordinating Committee of National Human Rights Institutions (ICC) an international, independent body established to promote the establishment and strengthening of NHRIs in conformity with the Paris Principles. The ICC’s sub-committee on accreditation conducts periodic review (every five years) of existing NHRIs to assess their continued compliance with Paris Principles, and strengthen NHRIs 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 NHRIs’ access to the UN Human Rights Council and the treaty body mechanisms, hence the key significance of this mechanism to the work of NHRIs. The International Coordination Committee of National Human Rights institutions has accredited the KNCHR as status “A” NHRI, owing to its compliance with Paris Principles relating to the status and functioning of NHRIs. This is the highest accreditation status for NHRIs.

The ICC facilitates interaction and cooperation between NHRIs and the UN system, as well as coordination and collaboration among NHRIs. In addition, it strengthens NHRIs to ensure full compliance with Paris Principles. The ICC currently has 16 voting members representing four regions (Africa, America, Europe, and Asia/pacific region). The KNCHR is a member of the ICC Bureau representing Africa group and in the past has served as Secretary to the ICC. The Commission has utilized this space to provide leadership on human rights issues at the international level.

The work of NHRIs in Africa is coordinated by the Network of African National Human Rights Institutions (NANHRI), which is headquartered in Nairobi and is hosted by the KNCHR. NANHRI encourages and supports the establishment of strong and independent African NHRIs in compliance with Paris Principles through national, sub-regional, regional and international cooperation. It strives to ensure that African NHRIs 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 NHRIs in Africa.

1.6 Strategic Direction for the Financial Year 2013/2014

The Commission’s strategic direction is outlined in the 2013-2018 strategic plan. The Commission’s vision and mission guide these strategic priorities, as follows:

1.6.1 Vision
A society that upholds human rights for all.

1.6.2 Mission
To protect, promote and monitor the respect for human rights in Kenya through law, policy and practice.

1.6.3 Goal
Increased enjoyment of fundamental rights and freedoms by all in Kenya.
1.6.4 Values

The Commission believes in and upholds the following core values:

- Accessibility
- Impartiality
- Inclusiveness
- Independence
- Integrity

1.6.5 Strategic Objectives

In the Strategic Plan, the priorities and work of the Commission are focused around four Strategic Objectives namely:

1. To promote the respect and observance of human rights standards in public institutions;
2. To increase the application of human rights principles and standards in institutions and mechanisms of justice;
3. To enhance the realisation of economic and social rights in Kenya; and
4. To enhance the efficiency and effectiveness of the Commission.
Chapter 2
Report on Activities & Recommendations

Strategic Objective 1: To Promote the Respect and Observance of Human Rights Standards in Public Institutions

Recognizing that state actors (individuals and institutions) are primarily responsible for realization of rights as encapsulated in the Constitution, the Commission continuously monitors to ensure that state agencies act in compliance and in furtherance of the Bill of Rights. Activities conducted in furtherance of this objective included screening of complaints, conducting investigations, trainings, holding public forums and reviewing legislation to ensure that laws that are enacted are in compliance with human rights standards.

The following is a detailed report on these activities.

2.1 Complaints received in the reporting period

In the period under review, the KNCHR received a total of 1,797 complaints translating to 1.38% increase from the previous financial year.

Table 2: Schedule of Complaints Received at the KNCHR Offices

<table>
<thead>
<tr>
<th>Office</th>
<th>Number Received</th>
<th>Percentage</th>
</tr>
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<tbody>
<tr>
<td>Nairobi Office</td>
<td>820</td>
<td>45.63%</td>
</tr>
<tr>
<td>North Rift Regional Office</td>
<td>451</td>
<td>25.10%</td>
</tr>
<tr>
<td>North Eastern Regional Office</td>
<td>133</td>
<td>7.40%</td>
</tr>
<tr>
<td>Coast Regional Office</td>
<td>340</td>
<td>18.92%</td>
</tr>
<tr>
<td>Kisumu Regional Office</td>
<td>53</td>
<td>2.95%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,797</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
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2.1.1 Analysis by Mode of Lodging Complaints

Table 3: Mode of Lodging Complaints

<table>
<thead>
<tr>
<th>Mode of lodging</th>
<th>Number received</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical visits</td>
<td>1479</td>
<td>82.90%</td>
</tr>
<tr>
<td>Post mail</td>
<td>46</td>
<td>2.58%</td>
</tr>
<tr>
<td>Telephone</td>
<td>170</td>
<td>8.80%</td>
</tr>
<tr>
<td>Email</td>
<td>57</td>
<td>3.2%</td>
</tr>
<tr>
<td>Website</td>
<td>27</td>
<td>1.51%</td>
</tr>
<tr>
<td>IPCRM</td>
<td>17</td>
<td>0.95%</td>
</tr>
<tr>
<td>Fax</td>
<td>1</td>
<td>0.06%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1797</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>
2.1.2 Gender analysis of the complaints received

The Commission continued to receive more petitions from male petitioners. Out of the 1,797 complaints received at the Commission, 1,287 (71.6%) were by male petitioners while 510 (28.4%) were by female petitioners. The representation by women recorded a slight increase of 39 from the previous year, which can be attributed to deliberate focus on violations against women by the Commission like in the context of operation usalama watch. The Commission continues to put in place programmes that will encourage more females to report complaints.

The table below shows the distribution of petitions by gender for all Commission offices:

Table 4: Petitions by Gender

<table>
<thead>
<tr>
<th>Office</th>
<th>Male Petitioners</th>
<th>Female Petitioners</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nairobi Head Office</td>
<td>593</td>
<td>227</td>
</tr>
<tr>
<td>North Rift Regional Office</td>
<td>294</td>
<td>157</td>
</tr>
<tr>
<td>North Eastern Regional Office</td>
<td>101</td>
<td>32</td>
</tr>
<tr>
<td>Coast Regional Office</td>
<td>262</td>
<td>78</td>
</tr>
<tr>
<td>Kisumu Office</td>
<td>37</td>
<td>16</td>
</tr>
<tr>
<td>Total</td>
<td>1287</td>
<td>510</td>
</tr>
</tbody>
</table>

2.1.3 Analysis of complaints by categories of human rights violations

Economic, Social and Cultural Rights violations continued to be the largest category of complaints that were received by the Commission during the reporting period. This accounted for 1163 (64.33%), which translated, to 1.44% increase. This can be attributed to KNCHR’s deliberate focus on addressing ECOSOC rights in line with its current strategic plan. Civil and Political Rights were 474 (26.22 %) and Group Rights constituted 171 (9.46 %) of the received complaints.

Nairobi office recorded a high number of labor related cases followed by violations dealing with land issues. The bulk of complaints reported at the North Rift regional Office were related to violation of land rights followed by labor related complaints. Most of the complaints reported at the Coast Regional Office were related labor rights followed by right to property while the bulk of complaints reported to Kisumu Regional Office were complaints on torture and assault by Police.

2.1.4 Analysis of complaints by geographical distribution

KNCHR received most complaints from the Rift valley region followed by Nairobi while the least number of complaints was received from the Western region. The variance in the distribution of complaints can be partly attributed to the Commission’s increased accessibility by opening of an additional regional office in Kisumu and also its continued outreach program conducted by the various offices.
Of the 1,797 complaints received 174 were against the National Police Service and it is for this reason that in the next year the Commission will deliberately work with the Police with the objective of ensuring that in the execution of their mandate the Police comply with Article 244 of the Constitution.

2.2 Processing of Complaints
Of the above 1,797 complaints reported, violations against the state and non-state actors, 221 complaints were further processed and various redress actions taken. 228 complaints are pending admission due to want of provisions of supporting information before they can be admitted. 1,308 complaints were assisted through the provision of legal advice and referral to partners.

2.2.1 Concluded Matters/ Closed Files
During the 2013-2014 year KNCHR the commissions’ head office had a total of 145 cases files. It closed 3 files in this year after the matters were investigated and adequate responses were made.

2.3 Summary of investigations undertaken
The Commission conducted field investigations and Rapid Response Missions (RRM) on complaints that merited such actions. Field investigations are informed by the findings of the preliminary investigations and are done as follow up to give effect to the recommendations made at the preliminary investigations report. Further investigations are thus conducted to determine whether the violation actually occurred and thereby inform appropriate redress measures.

RRMs are investigations conducted in situations that warrant urgent intervention with a view to forestalling an on-going violation or to prevent the imminent violation from occurring. An RRM is usually conducted within 24 hours from the time of receipt of the alleged violation.
The total number of investigations conducted by the Commission’s three offices during the reporting period was 100 out of which 82 were field/further investigations while 18 were RRM s. The table below shows the number of investigations conducted by the various KNCHR offices.

Table 5: Number of Investigations Conducted in all KNCHR Offices

<table>
<thead>
<tr>
<th>Office</th>
<th>Field investigations</th>
<th>Rapid response missions</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Headquarters</td>
<td>40</td>
<td>14</td>
<td>54</td>
</tr>
<tr>
<td>North Eastern Regional Office</td>
<td>10</td>
<td>1</td>
<td>11</td>
</tr>
<tr>
<td>North Rift Regional Office</td>
<td>18</td>
<td>2</td>
<td>20</td>
</tr>
<tr>
<td>Coast Regional Office</td>
<td>11</td>
<td>1</td>
<td>12</td>
</tr>
<tr>
<td>Kisumu Regional Office</td>
<td>3</td>
<td>-</td>
<td>3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>82</strong></td>
<td><strong>18</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

2.3.1 Sample of investigations and interventions undertaken during the period: Investigations in respect to Operation Usalama Watch

In response to a spate of violent attacks across the country and suspected terrorist attacks the Police conducted an operation dubbed “Operation Usalama” commenced in April 2014. The KNCHR was petitioned following alleged human rights violations by security agencies during the abovementioned operation from alleged arbitrary arrests, extortion, theft and looting of homesteads, to sexual harassment, arbitrary detentions, illegal renditions, torture, inhuman and degrading treatment. Consequently, KNCHR commenced fact-finding missions to Kasarani Stadium and various police stations namely, Kasarani, Embakasi, Pangani, Buru Buru, Gigiri, JKIA, Majengo, Kamukunji, Langata and Kiamumbi where the detainees were being held.
KNCHR established and documented various violations that were witnessed. In addition, two group cases were referred to Refugees Consortium of Kenya (RCK) which is one of KNCHR’s referral partners for further action as well as to the Director of Refugee Affairs.

The investigations of the Commission found that the Police in their operation did not comply with Article 244 of the Constitution and in particular the National Police Service is yet to embrace the standards of professionalism envisaged by the Constitution. It is of great concern that the operation was marred by reports of corruption. We further found that the Police did not take measures to ensure that their actions comply with Constitutional standards on human rights and fundamental freedoms.

In the conduct of this operation the Police considered themselves not to be accountable. This was demonstrated by their refusal to cooperate with the Commission and other interested parties. We are particularly concerned by the fact that during the entire duration of the operation the Police denied the Commission staff access to enable them independently ascertain how the operation was being conducted at the holding centre in Kasarani Stadium notwithstanding the Constitutional mandate of the Commission as provided under Article 59(1)(d).\(^1\)

The stance adopted by the National Police Service does not augur well for the protection of human rights. In the experience of the Commission this attitude by the National Police Service is not an isolated incident. Across the country Commission staff have had to deal with non-cooperative Police Officers.

2.3.2 Fact-finding on reported human rights violations during evictions from Embobut forest

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1. The functions of the commission are to monitor, investigate and report on the observance of human rights in all spheres of life in the Republic, including observance by National Security Organs.
KNCHR conducted suo moto investigations on alleged unlawful evictions conducted by Government officers against forest dwellers in Embobut. Our investigations documented a number of human rights violations; these include infringements on the right to property, food, water, security, education and health. The investigations established that the evictions were conducted in spite of the existence of a court order barring the said evictions. In addition the process exposed itself to a challenge of discrimination as it was established through our investigations that some who were entitled to compensation may have been excluded. KNCHR jointly with other stakeholders like Katiba Watch prepared and presented a memorandum to the National Land Commission (NLC) with recommendations on the way forward regarding the Embobut and other evictions of minority communities.

2.3.3 Investigations relating to alleged illegal / irregular allocation of land in Chepchoina and harassment by Kenya Police Reservists

The Commission also received a complaint on alleged illegal/irregular allocation of land during phase II of the Chepchoina settlement scheme (former ADC Chepchoina farm). The complainants accused the vetting committee of bribery and allocation of land to non-deserving individuals. They further alleged harassment by the Kenya Police Reservists. NORRO held discussions with the relevant authorities among them the Deputy District Land Adjudication and Settlement Officer (DLASO) Trans-Nzoia and the OCS Endebeess Police Station. The office has not received any additional complaints regarding harassment by KPR and the file was closed as the dispute was already before court. The parties were however urged to keep peace as they await the outcome of the court case.

2.3.4 Sample of unresponsiveness on the part of government institutions

The failure of government institutions to respond has posed a challenge to the Commission in delivering on its mandate. We cite a few cases below.
Investigation on police brutality in Khorof Harar

The Commission’s office in Wajir received a complaint from a petitioner who alleged to have been assaulted by police officers based at Khorof Harar police station on 11/2/14. The complainant produced a filled P3 form to support his case. The Wajir OCPD informed the team that the injuries were as a result of a scuffle between the complainant and the said police officer. The KNCHR team recommended that the Wajir OCPD institute independent investigations into the matter and the report be forward DPP for advice. The office also raised its concern with the OCPD regarding what the officers consider as either lack of understanding of KNCHR’s roles and mandate or non-cooperation.

Alleged Sexual Assault of Complainant by Police Officers

KNCHR received and investigated a complaint on alleged unlawful arrest by Police Officers from Githurai Kimbo Police Station. The complainant reported that he was incarcerated at the regional District Officer’s office and sodomized by a group of Police Officers whom he could identify. Further his efforts to report to the OCS Githurai Kimbo and Provincial Criminal Investigations Office were futile necessitating seeking of KNCHR’s intervention. KNCHR intervened by formally referring the matter to the aforementioned offices for urgent action. In addition, the petitioner was assisted to receive preliminary treatment and counseling at the Nairobi Women’s Gender Violence Recovery Centre (GVRC) and further specialized treatment through support of Independent Medical Legal Unit (IMLU) which is one of KNCHR’s referral partners. The matter was followed up with the Office of the Director of Public Prosecution (ODPP) to fast track progress on the criminal investigation due to unresponsiveness by the PCIO. The matter is pending at the Director of Criminal Investigation’s office and KNCHR continues to monitor the progress.

2.3.5 Examples of Collaboration that Resulted in Positive Results

The Commission appreciates that collaboration with other public agencies will go a long way in resolving many of the matters that are presented to it. For this reason, the Commission coordinates a referral partners committee that brings together both state and non-state actors. The Commission also participates in the Integrated Public Complaints Referral Mechanism, which brings together the Commission on Administrative Justice, the National Anti Corruption Campaign Steering Committee and the Ethics and Anti Corruption Commission on a joint complaints referral digital platform.

The Commission recorded an increase in number of cases resolved through the referral partners’ mechanism and IPCRM. Out of the 227 sampled complaints, 146 were referred to various institutions out of which 34 received assistance, 30 cases are still in progress within the referral institutions while 43 were unable to receive assistance and 30 others did not visit the said institutions as referred by the Commission. The proportion of the petitioners whose cases were resolved through the referral mechanism therefore translates to an increase of 18.5% as compared to the previous financial year. Further, there was an increase in proportion of cases resolved by public institutions through referral for example, out of the 227 sampled cases, 30 were successfully resolved by various public institutions.
Dadaab Refugee Camp Rapid Response

The Commission received reports through its Wajir office, that one lady had a miscarriage while many other men and women were injured as a result of beatings by police in Dadaab. The Commission carried out a rapid response mission to investigate the reports.

The team interviewed 19 individuals comprising of victims, camp leaders and eyewitnesses. The team also acquired a list of 40 individuals who were said to have been assaulted by Police Officers on the material day. In addition Islamic relief’s hospital based at Ifo promised to share medical report as most of the victims were treated at the facility.

The team established that the action by the police may have been triggered by the detonation of an IED on a police convoy on 8th January 2014. A group of Police Officer stormed into section S; block S2 of the Ifo refugee camp. All the victims reported that they were caught unawares as they were carrying out their daily chores in their homes. That the officers forced themselves into the Refugee houses/tents after which they beat the occupants with tent poles. The victims sustained injuries that remained visible a month after the incident happened. Additionally three women were allegedly bed ridden as a result of the beatings/ torture and another alleged to have had a miscarriage.

The team held discussions with the in charge of the Dadaab station, an Assistant Commissioner of Police who promised to initiate an internal investigation and forward the same to the CID regional head quarters in Garissa for possible disciplinary action if culpability is established.

NERO has since made a follow up and the ACP confirmed that some of the recommendations agreed upon which included recording witness statements and opening of an inquiry into the violation had been initiated in the presence of officials from the Protection Unit of the UNHCR and officials from the Refugee Consortium of Kenya (RCK) and the file was forwarded to the CID Garissa office.

2.3.6 Matters that have been Referred to Relevant Authorities for Further Action

Narasha Village

In Olkaria, Naivasha where a fact-finding mission was conducted following reports of massive violations of human rights against residents of Narasha village during an eviction operation conducted on 26th July 2013. Following the investigations the Commission conducted advocacy on the issue as a result of which the government ordered compensation to the victims and action against Police Officers involved in the unlawful evictions. The President established a high level-working group in a bid to resolve the land dispute that led to the evictions. The Commission also wrote to the Auctioneers Licensing Board seeking sanctions against the auctioneers who organized and conducted the evictions under the supervision of the Police.
**Embobut Forest - Elgeyo Marakwet County**

Upon receiving complaints of human rights violations during evictions at Embobut forest, the Commission sought to monitor compliance by the state with relevant national, regional and international evictions standards and was able to secure humanitarian assistance to the victims from partners such as Kenya Red-Cross North Rift Office and Kenya Forest Service. The Commission prepared a joint memorandum with Civil Society organizations that was submitted to the National Land Commission for their further follow up action.

2.3.7 Intervention on Violation by Non State Actors

**Investigation on Alleged Torture, Inhumane or Degrading or Punishment of a Hotel Employee ‘T’ in Karen, Nairobi**

On 6th November 2013, the KNCHR conducted a Rapid Response Investigation following allegations of torture of an employee by security guards of a private establishment. The report indicated that a member of staff of the hotel had been found stealing from a patron on the previous day at about 6.30pm. Consequently, the suspect was stripped naked, beaten up, and tied at the garbage pit of the establishment, and subjected to cruel and inhuman treatment by the manager and security guards of the establishment. The petitioner informed the KNCHR that the victim was still being held as a prisoner at the establishment and risked suffering more injuries.

The KNCHR’s investigations established that the victim had indeed been tortured, treated inhumanely, wrongfully confined and assaulted contrary to the law. The KNCHR efforts halted the on-going violations, caused the victim to be released and facilitated him to report the matter to Karen Police Station. Further, the investigations findings were shared with the hotel’s proprietors and the latter undertook to take appropriate action on involved persons. The KNCHR is following up the matter with the Police and the hotel to ensure redress for the victim.

2.4 Public Interest Litigation.

KNCHR engages Public Interest Litigation to influence change in policy and legislation in appropriate cases. The following are concluded cases;

2.4.1 Concluded Cases

**Petition No.127 of 2012 - KNCHR & Another vs. A.G and 3 others**

The Commission filed the above Petition to among others seek redress for the families of 2 people unlawfully killed by police in Kawangware in November 2011. In its submissions, the KNCHR indicated that the act of killing the 2 deceased persons, one of them a minor aged 16 years, was unlawful considering the fact that they did not pose any threat to the police officers nor did they resist arrest. The court found in favor of the petitioners and ordered the state to pay Kenya Shillings Four million as compensation to the surviving family members. It further declared that the action by the Police Officers (the state) violated the deceased right to life as per Article 26 of the Constitution of Kenya.
This judicial pronouncement on unlawful killings is significant and the Commission will use the decision in its capacity building forums with the Police.

Petition No. 78 of 2013 Jonnes Ludomia Nalianya & 2 others vs The Director of Children Services & 2 others

The case involves parents who were denied access to their twin infants born out of a surrogacy agreement on the grounds that they were not the legal parents. The Commission sought and was granted leave to be enjoined as amicus curiae to reveal the challenges that flow from the lack of legal provision for children born out of surrogacy agreements. In our brief, KNCHR demonstrated that Kenyan law does not explicitly make provision for the rights of children born under surrogacy agreements and their genetic parents. Lack of legal recognition is likely to result in discrimination of such children and their parents. Furthermore, the Amicus has shown that lack of specific mention does not mean that children born under surrogacy agreement and their genetic parents may not enjoy Constitutional protection under the Bill of Rights. The principle of non-discrimination and equality enshrined in Article 27 of the constitution, if widely interpreted, could be used to extend Constitutional protection to this unique group.

The court ruled that the Director of Children Services breached the petitioners’ right to privacy by disclosing their medical conditions and that the act of separating the infants from their mother was not in their best interest. Further the court directed that the genetic parents be registered as the legal parents of the infants.

Petition No. 502 / 2013 KNCHR Commissioners’ case.

An individual, Brian Weke\(^2\), filed the matter soon after the re-advertisement for the positions of Commissioners for KNCHR. The matter sought to nullify the recruitment of new interviewees for

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\(^2\) He is also the Executive Director of Institute for Education in Democracy
the positions of Commissioners and Chair for the Commission arguing that the list of Chair and Commissioners originally given to the president by the original selection panel should be used for purposes of appointing the Chair and Commissioners. Judgment was delivered on 21st January 2014 where the court ordered that the names appearing in the original list be forwarded to Parliament for approval or otherwise. The Commissioners and Chair have been appointed and the matter is closed.

2.4.2 Matters Pending before Court

**Petition No.273 of 2011 FIDA and 27 others vs. Attorney General and 3 others.**

This is a Constitutional Petition filed by FIDA-Kenya and 27 other applicants seeking among other things compensation and accountability for loss of life, sexual violations and damage to property, suffered by Internally Displaced Persons during the 2007/8 Post Election Violence.

The participation of the KNCHR is geared towards securing a declaration that would require that the Government of Kenya comply with constitutional, international and regional standards in managing IDPs.

**Petition No.132 /2013 - KNCHR vs. AG**

KNCHR filed this case on 26 February 2013 to seek among others, orders for invalidation of the Presidential Benefits (Amendment) Act of 2013. KNCHR’s argument in this matter is that the Act was enacted in an unconstitutional manner; without the involvement of the Salaries and Remunerations Commission.

**Petition No. 266 of 2013-Baby ‘A’ vs. AG (Intersex Children Case)**

The Cradle, the children’s Foundation filed this case on 24th May 2013 to seek among others, a declaration that intersex children are entitled to and / or are guaranteed the rights under various provisions in the Constitution of Kenya, 2010, part II of the Children Act and in all the international instruments. KNCHR was granted leave to appear as interested party in the suit with the aim of bringing to the court’s attention the vulnerabilities of an intersex person / child and the existing legal gaps with regard to the protection of the said special group. The KNCHR is of the opinion that Kenyan law does not explicitly make specific provisions for the rights of intersex persons and that lack of the said legal recognition results in discrimination against persons who manifest such conditions. Further, there should be rules and regulations that guide any medical procedures that are to be performed on intersex persons and the said rules should have in mind the best interests of the child.

**Petition No 286 of 2013 Njenga Mwangi & Another vs. TJRC & 4 others**

This is a Petition filed with reference to the Report of the Truth Justice and Reconciliation Commission. The Petitioners seek to have certain portions of the TJRC report expunged, in particular the mandatory recommendations, inter alia, for being contrary to the Constitution. KNCHR is appearing in this case as an Interested Party and we have submitted that the nature of recommendations made by the 1st Respondent do not amount to directives made in violation of the Constitution, but are rather
recommendations made to these institutions to be implemented as part of the normal course of their duties and within the provisions of the existing law.

The substantive hearing has not commenced as the court ordered that all matters concerning the TJRC be consolidated and a list of issues in dispute be filed in court to avoid instances of duplicity of issues raised.

**Petition No. 45 of 2014 Anthony Njenga Mbuti & 5 others vs Attorney General &2 others**

The case was initiated by the International Justice Mission involving several Petitioners who have over the years been arrested and taken to court pursuant to the provisions of Sections 41 to 61A of the Criminal Procedure Code (Cap 75) which are abused by the Police who use them to arbitrarily arrest, detain and extort money from vulnerable members of the public. The Commission sought and was granted leave to be enjoined as amicus curiae to show that the aforesaid provisions wrongfully legitimize arrest, detention, confinement and imposition of bond on mere suspicion of unspecified criminal activity, without any formal charge or trial.

**Petition No. 393 of 2013- the National Conservative Forum vs The Attorney General**

The National Conservative Forum filed the suit on the grounds that the older and the disabled persons continue to face discrimination when accessing public transport and in accessing various buildings. The Petitioner prays that the Cabinet Secretary for transport and communication formulates a policy framework to guide the realization of the rights comprised in Articles 53, 56 and 57 of the Constitution. The KNCHR was enjoined in this matter as an interested party based on its mandate of promotion and protection of human rights in the Republic.

**Petition No. 122 of 2013 ‘COVAW Sexual Violence Case’**

The Case was filed in 2013 by the Coalition on Violence against Women and other civil society organizations seeking inter alia compensation for victims of sexual and gender based violence during the 2007/2008-post election violence.

The Commission has been enjoined in the matter as amicus curiae to highlight the development and key features of human rights standards related to victims of SGBV at the international and regional level, and to discuss the ongoing relevant policy and legal initiatives. The brief also highlights the applicability of the Bill of Rights in the Constitution of Kenya 2010 to the situation of IDPs of the 2007/8-post election violence.

**Petition No. 323 of 2014 Wilfred Olal & 5 others (including KNCHR as fifth petitioner) vs AG & 2 Others**

This Petition was filed on 25th March 2014 by four human right defenders, KNCHR and IMLU challenging the constitutionality and continued prosecution of the four petitioners in criminal case No.251 of 2014 in which the four petitioners are charged with offences relating to a peaceful demonstration organized on 13th February 2014 to protest against corruption, mutilation of the constitution, poor governance among other issues.
Marsabit Criminal Inquest No. 1 of 2014 Hassan Guyo

The case involves the death of a human rights defender who was shot dead by the Kenya Defence Forces soldiers while on a motorbike ride to his home on 7th August 2013. The Commission is watching brief over the proceedings on behalf of the deceased’s family members. The hearing has progressed positively with a total of 10 witnesses having given their witness accounts on the events of that fateful day.

Petition No. 21/2013-Muslims for Human Rights vs. IEBC

This Petition was filed by MUHURI to seek redress for violations of the right to vote for residents of the Coastal region. KNCHR sought and was granted leave to be enjoined as an Interested Party to seek redress for Kilifi voters who were not able to vote due to closure of polling stations on claims of violence or threat to violence that occurred during the election in March 2013.

2.5 Inspection of Places of Detention

The inspection of places of detention is premised upon the fulfillment of KNCHR’S mandate of ensuring that the State through its ministries and departments respects and promotes the rights of the public including those in prisons and places of detention.

The Constitution and the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMRTTP) provide for a framework for the respect of rights of arrested persons as well as the responsibilities for the arrested persons within the institution and the respect for the authorities while in detention.

The Commission inspected and compiled feedback reports in 34 prisons which included, Kibos Machakos, Kitui main, Kitui women, Mwingi, Busia main, Busia women, Kakamega main, Kakamega women, Kerugoya, Maranjau, Wamumu rehabilitation school, Shikusa Borstal, Kibos medium, Kibos maximum, Nakuru women, Naivasha maximum, Narok main, Hola, Hindi, Kajiado, Athi River, Nairobi medium, Kangeta, Nanyuki, Maralal, and Rumuruti, Kamiti prison and Industrial prisons. The Commission also inspected Hindi G.K Prison- Lamu County, Hola G.K Prison- Tana River County and Malindi G.K Prison- Kilifi County and also inspected Manyani and Taveta prisons in Taita-Taveta County.

The inspections were geared at monitoring compliance of the institutions with the standard minimum rules on the treatment of offenders and Human Rights standards as per the Bill of Rights under the Constitution. In inspecting places of detention, the Commission realized the following outcomes.

1. There was a marked reduction of torture in all places of detention inspected. This can be attributed to continued advocacy and inspection of prisons and places of detention.

2. There have been demonstrated efforts by managers of penal institutions to provide a clean, healthy and appealing prison environment. This can be supported by the various initiatives prison have engaged in including construction, farming and sanitation projects evident in some institutions.
3. There has been an evident attitude change and motivation of prison officers brought about by human rights education and awareness coupled with the advocacy for their welfare by KNCHR. To promote a human rights culture amongst the officers, the officers in charge must lead by example and consistently admonish human rights violations whenever they occur instead of covering them up.

The Commission, based on inspections of places of detention, determined that it is necessary to develop measures for improving human rights conditions in places of detention in relation to the use of protective equipment and mechanism in conducting searches and restraining inmates from escape. Following previous recommendations to the prisons department, the Commission established that the department had acquired horses, dogs and metal detectors in Kamiti prison. The metal detectors and dogs will reduce the incidents of inhumane searches.

The main challenge in prisons was congestion in all the prisons inspected attributed to a systemic problem over the years. The Commission holds the opinion that massive congestion constitutes inhumane treatment of persons and therefore made recommendations for decongestion ranging from the use of community service for lesser offences, use of non-punitive bail terms, free bonds and quick dispensation of cases to reduce remand populations as well as building of more prisons where necessary.

Though some inmates serving less than six months had been released during the promulgation of the Constitution, it was noted that they were rearrested for various petty offences and were back in prison. KNCHR attributed this recidivism to systemic and institutional weaknesses within the Kenyan criminal justice system. KNCHR recommended that the problem be addressed by coordination of criminal justice sector agencies and the efficient use of Court Users Committees. The Commission will in the next phase of implementation of this project focus on revitalizing Court Users Committees in various Counties and will facilitate their meetings to ensure that they undertake speedier dispensation of justice and decongest prisons.

2.6 Trainings and Public Forums held
The Commission provided trainings on Human Rights to both state and non-state actors. The Commission targeted duty bearers so as to build their capacity to act and deliver on their respective mandates in a manner that would advance the enjoyment of rights. The Commission trained Rights Holders so as to increase their understanding and knowledge of human rights in order that they would be empowered to claim rights.
2.6.1 Training of State actors

The Commission trained Officials from various institutions and agencies as detailed below.

2.6.1.1 Prisons

The Constitution of Kenya, 2010 is transformative in so far as the management of penal institutions and the rights of prisoners. It is therefore necessary to train Prison Officials to ensure that they adhere to Human Rights principles. The focus of the trainings was also informed by observations of the Commission during the inspection visits. A total of 421 officers were trained in the following prisons, Kibos Medium Prison in Kisumu, Nakuru, Nyeri Main Prison, Nairobi GK Prisons (consortium of different officials from different Prisons in Nairobi), Tambach GK Prison and Isiolo. Emphasis was laid on the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMRTP) and the Bill of Rights. Subsequent to these trainings the Commission conducted monitoring to evaluate the impact that the trainings had and was able to confirm that on the whole that the trainings resulted in increased observance of human rights principles thereby resulting on an improvement in conditions for Prisoners.

Interaction with the Prisons also extended to training of Prison Officers on their rights. The Commission was also able to assess that the Prisons Service is yet to undertake the reforms as envisaged under the Constitution. The Commission is of the view that demoralized and demotivated staff are unlikely agents of change.

2.6.1.2 Police

Kenya Police Reservists

Following reported complaints against Police Reservists the Commission organised for training for 56 Kenya Police Reservists from Trans Nzoia. The training covered human rights, the Bill of Rights under the Constitution, institutional reforms, investigation and documentation of torture and the application of Human Rights Based Approach (HRBA).

Sexual and Gender based Violence

Following the decision in the Meru Case3 the Commission working with the Equality Effect4 has organised for the training of Police Officers on the management of defilement cases. During the period meetings were held with the Inspector General and his two Deputies and it was agreed that officers from the various training institutions would attend a Training of Trainers Programme in October 2014 in Toronto Canada and that thereafter trainings of various officers would commence in November 2014. The project also looks to roll out a Public Education Programme so as to address the challenges that Communities face in addressing sexual and gender based violence.

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3. Petition No. 8 of 2012 C.K (A child) & Others V The Commissioner of Police/ Inspector General, DPP & Minister of Justice & Constitutional Affairs
4. A Canadian based NGO
Police Vetting

During this period the Police Vetting by the National Police Service Commission commenced. The Commission and other organisations working on police reforms worked with the NPSC to develop the vetting tools and also monitored and gave feedback to the NPSC once the process started. The Commission has provided technical support to the NPSC by availing senior staff to sit on some of the panels.

2.6.1.3 Nairobi County City Inspectorate

The Commission commenced a Human Rights audit of the Nairobi City Council Inspectorate pursuant to its mandate under article 59(1) (c) of promoting protection and observance of Human Rights in public and private institutions.

The aim of the audit was to establish the extent to which the County Inspectorate complied with Human Rights principles and standards. The Commission carried out activities that included a spot check in various parts of the city. A check tool was developed and various meetings were held with members of the City Inspectorate, hawkers, organization, OCPD Central Division to resolve the impasse between hawkers and the Inspectorate.

A meeting was also held with the Nairobi Governor and the Commission and the Governor committed to having members of the City Inspectorate trained on Human Rights and the Rights Based Approach. The training will be conducted in conjunction with other stakeholders.

2.6.1.4 County Government Officials

The Commission piloted training in a number of Counties. A total of 274 County officials were trained from Samburu, Bomet, Embu, Nairobi, Trans Nzoia and Mombasa Counties. The trainings focused on conflict sensitivity, legislative drafting and Human Rights Based Approach. The trainings were meant to ensure that County Government is accountable to the public and conflicts are minimized when county resources are being shared.

In collaboration with Action Aid Kenya the Commission has undertaken a training and capacity needs assessments in; Kericho, Nyeri, Kwale, Lamu, Nakuru and Taita Taveta. A training manual has been designed and in the next financial year the Commission will work in the selected counties.

2.6.1.5 Kenya Forest Service

Observing that the forest evictions effected by the Kenya Forest Service Officers were marred by human rights violations the Commission offered to train the officers so as to increase their understanding of human rights. A total of 100 officers were trained. The engagement with the Kenya Forest Service has resulted in the development of a training manual, pocket friendly handbook and training curriculum to be used by forest rangers.
2.6.2 Training of Non State Actors

During the year under review, KNCHR undertook capacity building workshops and forums targeting members of grassroots community associations, the youth, farmers and professionals working in various sectors. This activity was jointly undertaken with partners: Ecumenical Centre of Peace and Justice, KENAFF, PALWECO and the NGO network in Maseno. The trainings focused on enhancing awareness and understanding of the human rights, Bill of Rights and the application of human based approach on Devolution, the forum provided an opportunity for the commission to impart knowledge and skills to 365 participants at the grass roots.

The Commission KNCHR noted that there was public concern on the understanding of the public and community and the police on the process of vetting of police officers. The concern bordered on the ability of the public to participate in the vetting process by giving relevant information that could assist the vetting board in vetting police officers. This concern prompted KNCHR to commence public forums to create awareness on the vetting process, its objectives and the role of the public in the process. Forums on police vetting were held in Kitui, Mwingi, Machakos, Nakuru, Naivasha, and Molo.

As a leader in developing skills and advancing knowledge about human rights, KNCHR has been central in influencing and shaping theoretical and practical knowledge on HRBA, the Commission selectively organized a workshop on human rights and leadership to students of institutions of higher learning. The programme targeted student leaders from Moi University and Mosoriot Teachers Training College.

This human rights and leadership training program was designed to respond to a need for greater attention to leadership transition and empowered individuals with a culture of respect to human rights, integrity and teamwork with well versed skills in adapting to emerging human rights challenges and opportunities.

The Commission held forums with opinion leaders, media houses and members of public in Elgeyo Marakwet, Uasin Gishu and Turkana Counties. During the forums, over 2,000 copies of simplified version of the Truth Justice and Reconciliation (TJRC) report were disseminated to over 2,000 members of the public who attended the forums and were sensitized on human rights and HRBA.

Public forums on mob violence were held in Matisi, Kipsongo, Huruma, Nyimbei and Simatwet. This was informed by prevalence of mob violence in the regions for instance, in early 2013, 4 incidences of mob violence had been reported in Simatwet location. The forums brought together the KNCHR, Civil Society Organizations, and the Police, the public and local administration. Members of the public were sensitized on the rule of law and urged to report criminal activities to the police and members of community policing.
The Commission held human rights clinics in various parts of the Country. During the clinics the Commission disseminated IEC materials and received complaints of human rights violations. Clinics were held in Elgeyo Marakwet and Baringo, Wajir (at Buna, Bute, Garakilo, Danaba, Eldas, Machesa, Kursin, Sarif, Meri, Biyamadhow, Abakore, Sabule, Dilmanyale, Leheley, Kargi, Kurkum, Maikona, Kalacha, Hulahula, Karare, Bubisa, Korondile and Garsakof.), Hola, Lamu, Mpeketoni, Mwakitau, Taveta and Witu and Tharaka Nithi. A total of 4713 people attended the clinics.

2.7 Establishing of Human Rights Clubs
Towards empowering communities to be able to claim their rights, the Commission held a stakeholders meeting in Wajir where modalities of starting up Human Rights clubs were discussed. The forum agreed to start 12 Human Rights clubs in Secondary schools and tertiary institutions in Wajir County through imparting Human Rights knowledge to teachers who are patrons of the clubs. During the year under review, a total of 34 teachers from 12 secondary schools in Wajir were trained on human rights principles and standards. It is expected that the teachers will pass down the knowledge they have acquired to members of Human Rights clubs in their schools.

2.8 Commemoration of International Dates
The Commission utilized international dates to engage with the public and create awareness on topical human rights issues. To commemorate the international Human Rights day (10th December 2013), the Commission in conjunction with KHRC hosted a televised live debate themed ‘Kenya @50; A human rights score card’ on Citizen TV with a distinguished panel comprising Betty Murungi, Senior Advocate and Distinguished Human Rights Activist, Cyprian Nyamwamu, Human Rights Activist, Hon. Kabando wa Kabando Member of Parliament and Hon. Mumbi Ngugi, Judge High Court of Kenya Constitutional Court Division. The Debate also had the participation of a studio audience of about 200 people. The Ambassadors of Finland and Netherlands were present at the Debate.

In decentralizing these celebrations, the Commission also had activities in Kisumu which coincided with the opening of our Kisumu office. With the help of Kenya Football Federation officials, a football tournament was organized for children between the ages of 10 and 13 years, a target group for awareness on human rights. The football tourney was held at Jomo Kenyatta ground which is one of the populated parks/recreational centres in Kisumu town.
To Commemorate the UN International Day in Support of Victims of Torture on 26th June, 2014, the Commission in partnership with civil society partners hosted talk shows on five radio stations and two television stations. In addition a public forum was held at Kibera to raise awareness among the public and empower them so that they are not subjected to torture.

In Kitale, to commemorate this day the Commission in collaboration with stakeholders held a public forum on protection of street-children from acts of torture. The Commission had received reports of acts of violence meted out by Police on the street children.

2.9 Participation at Regional Fora
The Commission also enhanced knowledge on human rights and business among African NHRI on two occasions. The first involved training participants from African NHRI on Business and Human Rights during the Regional Foundation Course for African NHRI in Abuja, Nigeria from 11 – 13 September 2013. The second one involved show casing the work the Commission on Business and Human Rights pertaining to the oil and gas sector in Tanzania and Uganda from 18 – 19 July 2013 through an invitation by the Institute for Human Rights and Business (IHRB)

2.10 Review of Legislation and Policy
The National Assembly and the Senate have largely embraced human rights principles in the development of bills and passage of laws. Unlike in the past, the parliamentary committees have embraced the constitutional requirement of public participation in legislation making processes. As a result of these consultative and participatory processes, the Kenya National Commission on Human Rights has been able to give input into the various bills before parliament with the aim of mainstreaming human rights principles into them as required by the constitution. However the Commission has registered its plea for more time in order to give meaningful contribution in the bills.
During the reporting period 12 bills were reviewed and advisories submitted to committees of the Legislature; The bills reviewed included the Mining bill, Persons with Disabilities amendment bill, Flags and emblems bill, Languages bill, Energy bill, Amendments to the children’s Act, Affirmative Action bill, Victim protection bill, East Africa Community Civic Education bill, Kenya Information (Amendment bill) 2013, Public Benefit Organizations (Amendment) bill and Marriage and Matrimonial Causes Bill 2013

Many of the Bills underwent several reviews and while some have since been passed into law, there are those which are still pending. An audit of the advisories prepared indicates that 61% of the proposals submitted by the commission were accepted and incorporated in ensuing legislation. Below is an overview of some of the Bills reviewed specifying the recommendations made by the Commission.

1. Mining Bill, 2014

The Mining Bill seeks to give effect to Articles 60, 62 (1)(f), 66 (2), 69 and 71 of the Constitution in so far as they apply to minerals; provide for prospecting, mining, processing, refining, treatment, transport and any dealings in minerals and for related purposes; After the first reading of the bill, the Committee on Environment and Natural Resources invited memoranda from members of the public to give comments on the provisions of the proposed bill; the Commission reviewed the Bill and shared an advisory with the parliamentary committee. The concerns raised in the advisory included the unfettered powers of the Cabinet Secretary in the Bill, the role of County Governments in respect to mining was not well spelt out; the concept of public participation which should have been a central theme in the bill was lacking since there was no deliberate effort to inform the community; the commission raised a total of 23 issues.

The bill underwent the third reading on 5th August 2014, the same was passed by the National assembly and is awaiting presidential assent.

2. The National Flag Emblems and Names Amendment Bill, 2013

The Flags and Emblems bill sought to amend the National Flag, Emblems and Names Act; the gist of the Amendments sought was to specify who could fly the National flag and other connected purposes; The commission’s position about the bill was that the flag is a symbol of Nationhood and that there should be no exclusivity in the use and flying of the flag. The commission shared its concerns with the National Assembly but the commission’s concerns were not considered. The president has since signed the bill into law.

3. Energy Bill, 2014

The Energy bill seeks to amend and consolidate the laws relating to energy, provide for national and county governments roles in relation to energy, to provide for establishment, powers and functions of the energy sector entities and promotion of renewable energy.
In the review of Energy bill, a total of 20 proposals were made by the commission for inclusion in the energy bill; including provisions that would facilitate community engagement, environmental impact, the definition of local content and giving a time frame for regulation of petroleum upstream operations among others. The bill is still pending and has not been passed into law.

4. **Victim Protection Act, 2014**

The Act seeks to protect victims of crime; The Commission welcomed the development of legislation and contributed to have the scope of the drafted bill to include Victims other than Children. The Commission also made proposals for strengthening the fund under the legislation so as to increase access by Victims to the fund.

5. **Kenya Information and Communication (Amendment) Bill, 2013**

Kenya Information and Communication (Amendment) Bill, 2013 sought to amend the Kenya Information and Communications Act, 1998; the commission submitted its views in respect to the proposed amendments which included submissions that the broadcast regulator is not free of state and political control as required by the Constitution. State control is heavily present in the membership and appointment process of members of the Board of the Communications Authority of Kenya severely compromising the independence of the Authority. The sanctions that the proposed Communications and Multimedia Tribunal can mete out are extremely punitive and this may stifle freedom of expression. The provisions are not in sync with the Spirit of the Constitution, which seeks to extend media freedoms and allow for access to information. The statute Law (Miscellaneous Amendments) Bill, 2013 was withdrawn therefore the Amendments were not effected.

6. **Public Benefit Organizations (Amendment) Bill, 2013**

The Bill was introduced through the Statute Law (Miscellaneous Amendments) Bill, 2013 which was introduced in Parliament on October 30, 2013 and went through the second reading in Parliament on November 27, 2013, The Proposed amendments seriously undermined the spirit and letter of the Public Benefit Organization (PBO) Act, 2013 and was likely to jeopardize the ability of civil society organizations to carry out their activities effectively, independently and free from interference.

In particular, the Bill, as presented to Parliament on 30 October, would have amended Kenya’s Public Benefit Organization Act of 2013 to prohibit NGOs from receiving more than 15% of their funding from external donors; prohibit PBOs from receiving their funding directly from donors and would have imposed that all funds be channeled through a new Public Benefits Organization (PBO) Federation; alter the composition of the PBO Regulatory Authority’s governance body in favour of the executive; and award the Authority broad discretionary powers, the government yielded to public pressure in opposition to this proposed amendments and withdrew the bill.

7. **Disability Amendment Bill, 2014**

The bill sought to amend various laws relating to persons with disabilities and align it with the
Constitution and the UNCRPD; the Commission in ensuring that the wider concerns of the public were taken on board convened members of Disability Persons Organizations (DPOs) so as to incorporate their suggestions in the advisory, eventually 13 of 17 proposals were incorporated in the Bill. Whereas the Bill in its original form adopted a Medical Model and Social model as evident from the definitions and other provisions of various sections, in its current form the Bill adopts the language of the draft ACHPR protocol on persons with disabilities- on legal capacity, which contextualizes legal capacity in Africa and conforms to the standards set in the UNCRPD.

8. Language Bill

The commission took part in the discussions and drafting of the Languages of Kenya bill; this is to give effect to Article 7 of the constitution which recognizes that the national language for the Republic is Kiswahili while the official languages are Kiswahili and English; the commission reviewed the draft bill and shared an advisory with the department of culture for the improvement of the bill so as to accommodate persons with disability. The draft bill has since been forwarded to Kenya Law Reform Commission for further action.

2.10.1 Petition on Insecurity to the National Assembly

Owing to the rising cases of insecurity in the country and the evident shortcomings of the security agencies the Commission petitioned the National Assembly under the provisions of Article 119 of the Constitution seeking that parliament constitutes a select/special committee of the National assembly to inquire into the causes of insecurity and the continued attacks on citizens despite various assurances that the security situation would be controlled.

2.10.2 Presentation to the Parliamentary Select Committee on Security

The Commission prepared an advisory and made a presentation to the Parliamentary Select Committee on Security addressing the proposed amendments to the National Police Service Act and the National Police Service Commission Act.

The key outcome of this was that the Acts were discussed in parliament and recommendations that were unconstitutional were rejected. Significantly, vetting of Police Officers was retained.

2.10.3 Advisory on the Bill on Persons Deprived of their Liberty

The Commission reviewed the Bill on Persons Deprived of their Liberty, which provides for the detention, imprisonment, institutionalization, or custody of a person in an institution where that person is not permitted to leave at will. The protection and promotion of the rights of persons deprived of their liberty is provided for under international, regional and national law. The Constitution provides for protection of persons deprived of their personal liberty under article 51.
The Commission reviewed the Bill for persons deprived of their liberty and submitted an advisory to the Commission on the Implementation of the Constitution and the Kenya Law Reform Commission. CIC and Kenya Law Reform Commission adopted the recommendations by the Commission. The Bill was presented to the National Assembly and is due for enactment into law.

2.10.4 Advocacy on Torture and Engagement with APCOF

The Commission has a long-standing partnership with African Policing Civilian Oversight Forum (APCOF) that essentially works on issues of Police Oversight all over the Continent. This partnership has seen the development of Domestication and Implementation Packages (DIPS) that are practical tools that are used for monitoring and reporting cases of torture.

The Commission was involved in the organization of a training session on the use of these tools for KNCHR staff, IPOA staff and civil society organizations working on combating torture. The training will go a long way in strengthening the oversight mandate of the Commission as far as monitoring security agencies is concerned. The Commission will ensure that the anti-torture legislation is enacted.

2.10.5 Promotion of Access to Justice

The Commission in partnership with the Judicial Training Institute and the National Council on the Administration of Justice held consultative meetings on the traditional dispute resolution mechanisms. The main objective of the meeting was to sensitize members of the public of the traditional dispute resolution mechanism as a form of alternative dispute resolution as provided for under article 159(2) of the Constitution and to identify challenges of mainstreaming traditional dispute resolution in the legal framework.

Challenges identified included the appropriate jurisdiction of the council of elders, the extent to which the council of elders will deal with matters given the capacity gaps, vetting of the members of the council of elders and identification of the legitimate members. KNCHR is working with the Judicial training institute and the NCAJ technical committee to develop guidelines to enable council of elders to operate under a uniform framework.

During the year under review, the Commission participated in eleven technical committee meetings of the National Council on the Administration of Justice and worked on several challenges that impede access to justice.

The visit was followed by the Judicial Service Week that was held between 14th and 18th October 2013. The Judicial Service Week targeted the hearing of 1,500 Criminal Appeals and review of 3,500 cases of prisoners incarcerated for petty offences. The Chief Justice Dr. Willy Mutunga launched the week on 11th October, 2013. The week was a multi-agency collaboration that brought together all the actors in the Criminal Justice Chain. Of the 4,054 cases, which were placed before the Judges, the Judges found that 2324 of the prisoners qualified for review. They were placed on Community Service
Orders or such order as the Court directed. KNCHR building from its work on the inspection of places of detention noted that lack of a sentencing policy contributed to the congestion in prisons and case backlog in the courts.

Through the NCAJ technical committee, KNCHR recommended that a sentencing policy be put in place. A task force on the sentencing policy was gazetted and will be led by Honorable Justice Mbogholi Msagha. KNCHR will continue monitoring and giving recommendations to enable the task force come up with an effective sentencing policy.

**2.11 Key Recommendations**

In order to address the above captioned systemic violations of human rights the Commission recommends that Parliament ensures that:

1. The government takes measures to fully operationalize the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012 and in particular that it constitutes without further delay the National Consultative Coordination Committee on Internally Displaced Persons established by Section 12 and the Humanitarian Fund established by Section 14.

2. The enactment of the Evictions and Resettlement Procedures Bill, 2013 into law is fast tracked.

3. In compliance with the Constitutional requirement the Ministry of Interior Develop and make public the National Security Policy that entrenches Human Rights.

4. In addition to 3 above, we recommend that the National Police Service develop a service charter that complies with Article 244 of the Constitution.


6. That the KLRC undertake a review of the Prisons Act and the Borstal Institutions Act so as to have them comply with the Constitution.
Strategic Objective 2: To Increase the Application of Human Rights Principles and Standards in Institutions and Mechanisms of Justice

3.1 Dissemination of TJRC Report and Transitional Justice

The TJRC report was handed to the president in May 2013. The report has shaped the work of the Commission in relation to Transitional justice.

The Commission has worked to disseminate the report to victims and survivors in various parts of the country. The dissemination forums were used to give victims an opportunity to critique and air their views on what the report highlighted. The forums were held in over 30 forums including Embu, Isiolo, Thika, Nairobi, Murang’a, Nanyuki, Narok, Kitui, Rumuruti, Maralal, Webuye, Emuhaya, Gilgil, Marigat, Kajiado, Machakos, Elgeyo Marakwet, Turkana, Uasin Gishu, Cheptais, Chogoria, Masinga, Wundanyi, Machakos, Wajir, Mandera and Taita Taveta. A total of 3034 people were reached during the forums.

With support from GIZ and OHCHR and in collaboration with other Civil Society partners the Commission developed a summarized version of the report.

The Commission also focused on community engagements where victim groups were mobilized and engaged on the reparation framework. Two petitions were prepared and presented to the county governments of Taita Taveta and Machakos. Through these engagements, victim groups were empowered to advocate for reparations. The Commission was involved with a number of activities to ensure the implementation of the TJRC report was achieved. Consultative meetings were held with victim groups and stakeholders on transitional justice who included Nyayo house torture chambers victims, gender and sexual violence victims and Civil society groups and academic institutions like ICTJ, ICJ, KHRC, NCIC, Peace net, Hekima institute of Peace and international relations and the faith based organizations.

KNCHR organized commemorations with the survivors and secondary victims of historical injustices with a specific focus on Nyayo house torture chambers and victims of gender and sexual violence. The main objective of holding the commemoration in Nyayo house was to recognize the existence of the Torture chambers and send a message to the government for the need to fast track the implementation of the TJRC report. In the next financial year, KNCHR will continue lobbying and advocating for the Nyayo house torture cells to be converted into a memorial.

Another key outcome of our transitional justice engagements was realized through the number of secondary victims of torture who have filed compensation cases in courts with majority being awarded compensation. However, the Commission has taken cognizance of the fact that many of the survivors have not received their awards and therefore further consultations will be held to unlock the gridlock.
The Commission will also continue advocating and lobbying for the implementation of the TJRC report with the County Governments to take up some of the reparation action points to curb ongoing violations. These include legislations on displacements, land grabbing and sexual and gender-based violations.

The Commission with the support of the social justice GIZ fund and in partnership with other partners and stakeholders has over the years worked around the issue of Wagalla massacre, an epitome of state excesses and historical injustices in the region. In the period prior to the year under review, the Commission coordinated the re-creation and verification of a list of those who died in the massacre for purposes of immortalizing them by imprinting their names on a stone wall in Wajir town.

In the year under review, a pamphlet with the names of the victims was developed and published for purposes of eliciting debated around the names to be embedded on the plaque. The pamphlet ‘The Wagalla Massacre: Journey and Milestones’, captures the journey the Wagalla community has travelled in search of justice since that fateful day in 1984.

The construction of the Wagalla massacre monument with the verified names imprinted on marble blocks was finally completed during the year under review. The monument was officially unveiled in an occasion graced by the Wajir County Governor during the 30th anniversary of the massacre on 14th February, 2014. The wall contains 480 names and the process of vetting of more names is ongoing.

As part of advocacy activities around the launch, the Commission developed a twelve-minute documentary detailing the quest for justice for the victims of the Wagalla massacre. The political leadership in the County is captured in the documentary pledging commitment and support for the fight of the victims’ rights. A commitment to ensure the implementation of the TJRC report in characterizes the documentary, with the Governor committing to do what falls within the ambit of his Government in the TJRC report’s implementation. The documentary was aired on national TV stations.

In addition the Commission brought all the regional leaders together in a meeting where they committed to support the cause of the victims. Key highlights of the meetings included a resolution to support the filing of a PIL for the victims or reviving a case filed earlier by the victims of the massacre, pushing for the adoption and implementation of the TJRC report without any amendments and supporting the process of collecting and verification of further names of victims of the massacre.

3.2 Participation in the National Council on Administrative justice

3.2.1 Strengthening Court Users Committees (CUCs)

KNCHR has been actively engaging with the CUCs as avenues to address in an open consultative approach, a broad range of administration of justice matters both precautionary as well as responsive. This is based on the recognition that there is need to coordinate responses to criminal and other justice issues as well as implementing reform initiatives in a collaborative and coherent manner.
In partnership with CRO, KNCHR held a one day stakeholders’ forum on access to Justice in Kwale. It was then followed by a CUC open day where members of the public got to interact with all the stakeholders in the CJS in Kwale County. This was based on previous engagements with Kwale CUC where it emerged that the County faced serious challenges in the administration of Justice. In its vastness, Kwale has only three sitting Magistrates and one Kadhi, all housed in one court which is not centrally placed, forcing many people to opt to unorthodox means of dispute resolution, which eventually violate other people’s rights.

It also emerged that the coordination of the various actors in the CUC was a problem. Through the forum, the various stakeholders in attendance committed to alleviating the justice quagmire by undertaking various responsibilities. The County government committed to supporting the construction of another Court as well as Child Protection Unit in the County. It also committed to financing various initiatives targeting the CJS in the County. The National Council on Administration of Justice (NCAJ) KNCHR’s main objective in the forum and the open day was embedded and buttressed by the resolve and commitment to the reform agenda with a goal to increase public accessibility and participation as outlined in the constitution. The CRO and KNCHR will continue to closely monitor the delivery of the commitments reached in the forum.

During the year, the Commission participated in six technical committee meetings of the NCAJ. With the deteriorating state of security in the country, KNCHR raised this as a key agenda item to be discussed by the NCAJ. A brief on security and Human Rights was prepared and submitted to the council. This led to an invitation to the Chairperson KNCHR to make a submission on security and Human Rights. As a result, the National Council has prioritized security and Human Rights. Through the Commission’s recommendations, the NCAJ is now drafting the Sentencing guidelines and the Bail and Bond Procedure guidelines.

3.2.2 Traditional justice mechanisms

The Commission in partnership with the Judicial training institute and NCAJ held consultative meetings on the traditional dispute resolution mechanisms. The main objective of the meetings was to sensitize members of the public of the traditional dispute resolution mechanism as a form of Alternative Dispute Resolution (ADR) as provided for under article 159(2) of the Constitution and to identify challenges of mainstreaming traditional dispute resolution in the legal framework.

Challenges identified included the appropriate jurisdiction of the council of elders, the extent to which the council of elders will deal with matters given the capacity gaps, vetting of the members of the council of elders and identification of the legitimate members. KNCHR is working with the Judicial training institute and the NCAJ technical committee to develop guidelines to enable council of elders to operate under a uniform framework. 3 community engagement forums on Traditional Justice Mechanisms (TJM) with the El Molo, Nandi and Pokot Council of elders were held. 32 (18 male, 14 female) El Molo community elders, 33 (23 males, 10 Females) Pokot elders and 32 Nandi elders were
sensitized on minority and marginalized people’s rights, infusion of HRBA in TJM, The Prohibition of Female Genital mutilation (FGM) Act 2011 and the Sexual Offences Act and their implication to the community.

In the Coastal region three trainings were held, in Lunga Lunga, Ganze and Magarini targeting key representatives of traditional justice institutions present in Kwale and Kilifi counties. The training focused on thematic areas; ADR mechanisms such as reconciliation, mediation, HRBA and conflict resolution, building the capacity of the traditional institutions involved in settling disputes in order to avoid contravening the Bill of rights, uphold justice and morality and respect rule of law in their day today activities. It was also further meant to promote the recognition of traditional justice mechanisms by the formal judicial authority.

Between February and March 2014, the border along Kericho West and Nyakach was rocked by ethnic conflict that led to the loss of 7 lives, injuries to hundreds, destruction of 57 houses and displacement of 2,516 local residents. KNCHR conducted investigations into the conflict. The investigations aimed at establishing the causes of the conflict; whether any human rights violations had been committed; the nature and extent of such violations as well as assess the adequacy of the State’s interventions and forestall further violations. KNCHR held several public forums and had meetings with key state agencies on the conflict. The investigations revealed that the conflict was triggered by cattle theft, which is rampant between the two communities (Luos and Kipsigis). Beyond this, there exists deep-rooted animosity and suspicion between the Luo and Kipsigis communities in the borderline of Nyakach and Kericho West Constituencies. The investigations also revealed that security agencies were thin on the ground and unable to prevent the conflict. Further, interventions by the State to assist victims of the attacks were inadequate.

KNCHR made several recommendations to state agencies and organized a follow-up visit to the area between 9th- 12th June 2014 to try and explore the use of traditional justice mechanisms in resolving the conflict and securing the rights of the many people who reside along the border. KNCHR is currently engaging with the local leaders from the two communities and the District Peace Committees on the prospects of awareness raising on human rights as well as attainment of lasting peace.

In North Eastern Kenya, KNCHR has been engaging actors in traditional justice system with the view of enhancing its use as well as streamlining it with the constitution, human rights principles and natural justice. In furthering this purpose, KNCHR designed a project that seeks to address the normative framework of the traditional justice system through building the capacity of the actors in the informal justice system. The project also aims at improving interaction and communication between the three main systems of conflict resolution that exists in the region. These systems are the Maslaha justice system, Sharia law and the judiciary system.

The project addressed the normative framework through consultative forums, which ended with the signing of a declaration purposed to coordinate the efforts of the traditional justice system.
The Commission brought together religious leaders, chiefs and maslaha elders with the view of enriching the maslaha framework, which was passed and adopted in 2012.

The religious leaders enriched the framework with knowledge on Islamic retribution mode, which as it were, is more consistent and higher in prescription of fines to offenders. The forum also explored the option of sharing the draft framework with the county assembly so as to move it from a declaration to legislation. KNCHR intends to continue engaging with stakeholders regarding the framework especially on areas of inconsistencies such as the stipulation of varying fines for the same offence depending on the gender of the victim.

The Commission also partnered with civil society organizations in Meru to enhance awareness on the relationship between culture and human rights. 226 adolescent girls were sensitized on the role of culture and cultural institutions in promoting and protecting human rights. KNCHR also worked to link cultural institutions in Meru with civil society organizations and targeted state actors.

The Commission also sought to strengthen the application of traditional justice mechanisms in Nyamira and Migori counties through community-based forums. Six forums held helped reach 190 community members, 93 of them being women. PWDs and youth were also well represented in all the forums.

3.2.3 Application and promotion of the use of ADR in Complaints Resolution

The Act requires that the Commission resolve the matters through mediation and conciliation. During the period the Commission conducted a successful mediation regarding a labor dispute. During the session, the parties agreed on a settlement of Kenya Shillings 863,320.00 to be paid to a former employee.

Additionally, The Judicial Training Institute has included the KNCHR on a taskforce to formulate a framework for the use of ADR in the Kenya Judicial system.
3.3 Recommendations

In order to ensure approved access to justice the Commission recommends as follows:

1. As part of the process of promoting national healing and reconciliation The Cabinet Secretary for Sports, Culture and Arts commence the process creating memorials at places such as the Nyayo house Basement.
4.1 Introduction

One of the most celebrated gains in the Constitution of Kenya 2010 was the expanded bill of rights that recognized and guaranteed economic and social rights. If the gains are to be realized however several challenges need to be overcome. One of them relates to a lack of awareness among state organs (particularly at the county level), of their fundamental duty to, respect, protect, promote and fulfill these rights and to take steps to improve the availability, accessibility, acceptability and quality of these basic entitlements. While being aware that these rights are provided for in the constitution, many state officers lack an understanding of how to operationalise them. Another challenge is the lack of mechanisms to ensure that these obligations are fulfilled. Currently there is no comprehensive framework that compels either the national or county governments to meet their obligations with regard to economic and social rights. The lack of a compelling framework to give Effect to Article 43 provides leeway for national and county governments to use the excuse of resource constraints to justify the non-enjoyment or violation of ECOSOC rights. It also denies individuals or groups the ability to make constitutional claims against the State with respect to issues such as food, housing, health and education.

The Commission responded to these challenges by developing a broad framework aimed at guiding the implementation of article 43. In partnership with the Department of Justice, the Commission disseminated this framework among representatives from various ministries and also among County Assembly members in regions covered by its North Eastern Regional Office. On invitation by the Danish Institute on Human Rights, the Commission also shared this framework to representatives of several African National Human Rights Institutions.

4.2 Salt companies

One of the notable outcomes in the period under review is the commitment salt companies have shown to the engagement initiative by the Commission and KAM. Some of the companies have sought the support of the Commission in dealing with immediate human rights issues affecting their operations and the local host community and have avoided actions, which may jeopardize the engagement initiative. One such example is Krystalline Salt Limited, which has sought the Commission advice on how to deal with a section of the Community occupying its land.

The Commission held two consultative stakeholder forums relating to human rights issues in the Salt belt sector in Malindi. The Commission participated in the consultative forum that was organized by KAM in partnership with Ufadhili Trust. The forum was attended by multi-sectoral stakeholders.
drawn from the National, County Governments, National Regulatory, Statutory and Constitutional Bodies, Private Sector Associations, Civil Society and Community representatives and was intended to avail a common platform to dialogue and seek ways of establishing a stakeholder driven mechanism to address and mitigate stakeholder concerns, strengthen alternative dispute resolution among others. The second open day forum was held in Marereni- Kilifi County with the referral partners in commemoration of the Human Rights Day.

4.3 Internally Displaced Persons

Following the peaceful election in 2013, the plight of internally displaced people took a back burner among state actors and development partners. The Commission viewed this development as tragic in view of the many unresolved issues as well as the rise in cases of forced evictions arising mainly from conflict and development projects. The Commission through concerted efforts such as facilitation of monthly National and Regional Protection Working Group Meetings in Nairobi, Nakuru, Eldoret & Kitale also managed to keep the issue of internal displacement alive. Through these efforts, the Commission became a reference point for information on internal displacement and was consulted on a variety of issues by leading institutions as well as foreign mission and a philanthropists seeking to support needy and deserving IDP children.

In further efforts to lobby for the adoption of the IDP policy and implementation of the IDP Act, the Commission hosted and facilitated various engagements for the UN Special Rapporteur on the Human Rights of IDPs- Dr. Beyani Chaloka during his visit to the country. The Commission participated in consultative meetings with the UNCHR/SR office to plan the country’s visit by the UN Special Rapporteur, organized and participated in meetings between the SR, the Attorney General, National Land Commission, Speaker and Clerk of the Senate and Ministry of Foreign Affairs and finally held a bi-lateral meeting with the Special Rapporteur during which we submitted a memorandum on the resettlement of internally displaced persons in Kenya that informed part of the Press Statement released by the SR5.

Following work undertaken jointly with Internal Displacement Monitoring Centre (IDMC), a Country report titled “Unfinished business: Kenya’s efforts to address displacement and land issues in Coast Region” was published during the year. The report highlights the lack of progress on implementation of the IDP Act 2012, as well as lack of awareness of the law among responsible authorities both at national and county levels. The report further elaborates the protection needs faced by displaced families to include physical security and integrity, inadequate access to shelter, health care and sanitation, education, land and livelihoods. It also proposes participatory approaches towards establishing durable solutions for IDPs6.

During this period the Commission undertook investigations and interventions in a number of evictions that resulted in displacements these include:

- **Narasha Village, In Olkaria, Naivasha** where a fact-finding mission was conducted following reports of massive violations of human rights against residents of during an eviction operation conducted on 26th July 2013. Following the investigations the Commission conducted advocacy on the issue as a result of which the government ordered compensation to the victims and action against police officers involved in the unlawful evictions. The president to resolve the land dispute that led to the evictions established a high level-working group. The Commission also wrote to the Auctioneers Licensing Board seeking sanctions against the auctioneers who organized and conducted the evictions under the supervision of the police.

- **Embobut Forest- Elgeyo Marakwet County**—where upon receiving complaints of human rights violations during evictions at Embobut forest, the Commission sought to monitor compliance by the state with relevant national, regional and international evictions standards and was able to secure humanitarian assistance to the victims from partners such as Kenya Red-Cross North Rift Office and Kenya Forest Service.

- **Majani Mingi (Baringo County)** – the Commission received complaints of alleged violation of economic and social rights of IDPs in giving rise to tension and conflict in Majani Mingi (Baringo County) between recently resettled IDPs and the local community. The reports also alleged that Mau Forest Evictees in Kuresoi and IDPs in Yamumbi in Burnt forest and Gilgil had not received support from the state in their efforts to settle. Jointly with the Kitale regional office, preliminary investigations and need assessment for the IDPs was undertaken which established that the government did not integrate IDPs with the local communities during resettlement resulting in conflict and tension over utilization of the available scarce resources such as water points and social amenities.

### 4.4 Budget monitoring for delivery of socio economic rights

The Commission in partnership with the University of Maryland and HealthStrat undertook a baseline survey to determine county governments’ preparedness to provide health as a human right as provided for by the new constitution of Kenya. The results of a pilot survey conducted in Busia County revealed that no health facility in the county met the minimum standards required for health overall, as guided by both WHO and Kenya Norms and Standards for Health (developed by the Ministry of Health). Instead, 81% of the health facilities were approaching the minimum standards required, meaning they need targeted assistance to get to the minimum standards. 19% of the health facilities not close to meeting the minimum standards. This means that significant investment and support is needed to improve the status of such facilities.
The main reasons behind failure by health facilities to meet minimum standards are attributed to lack of infrastructure and inadequacy of staff, which result in services not being offered at the desired level.

The baseline assessment cited – which emanated from KNCHR work on public budget monitoring and accountability - has achieved some early indicators of the direction county governments ought to take to achieve progressive realization of human rights, particularly the social economic rights as envisioned in Article 43 of the Constitution of Kenya.

4.5 Recommendations

To enhance the enjoyment of socio economic rights the Commission recommends that Parliament:

1. Requires that the Cabinet Secretary Ministry of Health publish and disseminate the National Health Policy
Strategic Objective 4: Organizational Growth and Development

The Commission enjoys ‘A’ Status accreditation with the International Coordinating Committee of National Human Rights Institutions. This is in part on account of the investment that the Commission has made towards building institutional capacity and integrity. During the period under review the following were the highlights of progress made towards institutional growth and development.

5.1 Training and Capacity Building of Staff

48 staff was trained locally and internationally and acquired additional skills that helped improve the staff implementation capacity. This included the training of 28 Senior Officers on Leadership and management.

In the year, staff was also facilitated to undertake continuous professional development seminars.

5.2 Expansion and growth of the Commission

During the period under review the commission established a desk in Kisumu to cover the western region of the Country. The Commission on Administrative Justice hosts the Commission.

5.3 Use of ICT to enhance efficiency and Visibility of the Commission

The Commission continues to utilize the use of ICT to enhance visibility and expand outreach. During the period the number of visitors to the Commission site was recorded at 27,679.

In addition the Commission has now introduced on line chatting. It is anticipated that this will improve the Commission engagement with the public.

The Commission is actively utilizing social media particularly Facebook and twitter. Media presence of the Commission in print and electronic media was enhanced during the period. The number of subscribers increased to 94 chats, Facebook likes stood at 3,166 and Twitter followers stood at 2,447 which is an indication that the public is keen on the work of the Commission.

Owing to this there was an increased understanding by the public of the work and mandate of the Commission through better provision of information about the commission activities that enhanced the general public engagement on human rights concerns in the country. This was also necessitated by greater understanding of Commission work by the media which improved communication with varied publics by ensuring that the right channels of communication are used to ensure the public knows and benefits from what the Commission is doing.
5.4 Learning Institution

The Commission has a fully-fledged Monitoring and Evaluation Department that coordinates the monitoring for results. Programme implementation is monitored regularly on a monthly, quarterly, and half yearly and annual basis. The Department offers field based support to departments and regional offices and has organized trainings so as to build the capacity of staff on M&E. Owing to the continuous tracking of implementation the Commission was able to record a 69% implementation of the workplan. This is attributable to limited funding and incidences of insecurity affecting the coast and North Eastern regional offices.

5.5 Recommendations

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

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

2. 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.'
Kenya National Commission on Human Rights (KNCHR)

Reports and Financial Statements for the Financial Year ended June 30th, 2014
REPORT
OF
THE AUDITOR-GENERAL
ON
THE FINANCIAL STATEMENTS OF
KENYA NATIONAL COMMISSION ON
HUMAN RIGHTS
FOR THE YEAR ENDED
30 JUNE 2014
REPORT ON THE FINANCIAL STATEMENTS

I have audited the accompanying financial statements of Kenya National Commission on Human Rights set out on pages 8 to 33 which comprise statement of assets and liabilities as at 30 June 2014, 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, together with 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 8 of the Public Audit Act, 2003. 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 Public Finance Management Act, 2012 and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatements, 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 4 of the Public Audit Act, 2003.

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 9 of the Public Audit Act, 2003. The audit was conducted in accordance with International Standards on Auditing. 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 evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor’s judgement, including the assessment of the risks of material misstatement 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 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 opinion.

**Basis for Qualified Opinion**

1. **Over expenditure**

   A comparison between the approved estimates and the actual expenditure reflected in the statement of comprehensive income revealed that the Commission spent in excess of the voted provision a sum of Kshs.8,852,760.70 on various items. No evidence was availed to show that the Accounting Officer complied with the requirement of Section 43 (1) and (2) of the Public Finance Management Act, 2012.

2. **Long Outstanding Bank Reconciliation items**

   As previously reported, bank reconciliation statements provided for audit review, include items totaling Kshs.134,118.20 that have been consistently reflected as outstanding for a long period. No reasons were given for not clearing these items.

3. **Long Outstanding Imprest and Advance**

   As previously reported, account receivables balance of Kshs.7,499,791 shown in the statement of financial position as at 30 June 2012, included a temporary imprest of Kshs.93,792.00 owed by a former employee and a staff advance of Kshs.954,201.32 owed by a former Commissioner. No evidence of the action taken to recover the long outstanding imprest and advance has been provided.
Qualified Opinion

In my opinion, except for the effect of the matters 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 2014, and of its financial performance and its cash flows for the year then ended, in accordance with International Public Sector Accounting Standards and the Public Finance Management Act, 2012 and comply with the Kenya National Commission on Human Rights Act, 2011.

Edward R.O. Ouko, CBS
AUDITOR-GENERAL

Nairobi
5 February 2015
### Kenya National Commission on Human Rights

Reports and Financial Statements
For the year ended June 30, 2014 (Kshs’000)

V. STATEMENT OF RECEIPTS AND PAYMENTS

<table>
<thead>
<tr>
<th>Note</th>
<th>RECEIPTS</th>
<th>2013-2014</th>
<th>2012-2013</th>
<th>2011-2012</th>
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<td>Kshs</td>
<td>Kshs</td>
<td>Kshs</td>
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<tr>
<td>2</td>
<td>Social Security Contributions</td>
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<tr>
<td>3</td>
<td>Proceeds from Domestic and Foreign Grants</td>
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<td>251,000</td>
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<td>5</td>
<td>Transfers from Other Government Entities</td>
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<td>6</td>
<td>Proceeds from Domestic Borrowings</td>
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<td>-</td>
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<tr>
<td>7</td>
<td>Domestic Currency and Domestic Deposits</td>
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<td>8</td>
<td>Proceeds from Foreign Borrowings</td>
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<td>9</td>
<td>Proceeds from Sale of Assets</td>
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<td>10</td>
<td>Reimbursements and Refunds</td>
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<td>Returns of Equity Holdings</td>
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<td>Other Receipts</td>
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<td>TOTAL RECEIPTS</td>
<td>328,372</td>
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### PAYMENTS

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<th>2011-2012</th>
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<td>Interest payments</td>
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<td>16</td>
<td>Subsidies</td>
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<td>Transfers to Other Government Units</td>
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<td>18</td>
<td>Other grants and transfers</td>
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<td>19</td>
<td>Social Security Benefits</td>
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<td>Acquisition of Assets</td>
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<td>22</td>
<td>Repayment of principal on Domestic and Foreign borrowing</td>
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<td>23</td>
<td>Other Payments</td>
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<td>75,562</td>
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<td>TOTAL PAYMENTS</td>
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<td>347,690</td>
<td>439,559</td>
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### DEFICIT

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<th>2011-2012</th>
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<tr>
<td>27</td>
<td>(18,389)</td>
<td>(3,110)</td>
<td>(1,903)</td>
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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 25th September 2014 and signed by:

[Signature]
Commission Secretary

[Signature]
Finance Manager
VI. STATEMENT OF ASSETS AND LIABILITIES

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td><strong>FINANCIAL ASSETS</strong></td>
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<td></td>
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<tr>
<td>Cash and Cash Equivalents</td>
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<td>Bank Balances</td>
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<td>Cash Balances</td>
<td>24B</td>
<td>200</td>
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<td>Cash Equivalents</td>
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<td>6,728</td>
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<td>Outstanding Imprests and advances</td>
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<td>1,493</td>
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<td><strong>TOTAL FINANCIAL ASSETS</strong></td>
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<td><strong>65,715</strong></td>
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<tr>
<td><strong>REPRESENTED BY</strong></td>
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<td></td>
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<td>Fund balance b/fwd</td>
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<td>68,825</td>
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<td>Deficit for the year</td>
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<td>(3,110)</td>
<td>(1,903)</td>
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<tr>
<td>Prior year adjustments</td>
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<tr>
<td><strong>NET FINANCIAL POSSION</strong></td>
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<td><strong>47,326</strong></td>
<td><strong>65,715</strong></td>
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</table>

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