It’s Hard to be Good


May 2012
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List of Abbreviations

ACHPR  | African Commission on Human and Peoples’ Rights
AG    | Attorney-General
CAJ   | Commission on Administrative Justice
CAT   | Convention Against Torture
CEDAW | Convention on the Elimination of All Forms of Discrimination against Women
CRC   | Convention on the Rights of the Child
CSO   | Civil Society Organisation
EAC   | East African Community
ECOSOC| Economic and Social Council
GJLOS | Governance, Justice, Law and Order Sector
ICC   | International Criminal Court
ICC-NHRI| International Coordinating Committee of National Human Rights Institutions
ICCPR | International Covenant on Civil and Political Rights
ICESCR| International Covenant on Economic, Social and Cultural Rights
KANU  | Kenya African National Union
KHRC  | Kenya Human Rights Commission
KNCHR | Kenya National Commission on Human Rights
KNHREC| Kenya National Human Rights and Equality Commission
LSK   | Law Society of Kenya
MOJCA | Ministry of Justice and Constitutional Affairs
MOJNCCA| Ministry of Justice, National Cohesion and Constitutional Affairs
MOPA  | Movement for Political Accountability
NARC  | National Rainbow Coalition
NAP   | National Action Plan
NHRI  | National Human Rights Institution
NGEC  | National Gender and Equality Commission
NGO   | Non-Governmental Organisation
SCHR  | Standing Committee on Human Rights
TI    | Transparency International
TSC   | Teachers Service Commission
UN    | United Nations
UNHCR | United Nations High Commissioner for Refugees.
UPR   | Universal Periodic Review
Preface

The Kenya National Commission on Human Rights (‘KNCHR’) has come of age. The past eight years of the Commission’s existence have witnessed remarkable milestones in the never-flagging national aspiration of ensuring that Kenyans have effective exercise of their human rights; and the Commission has played essential roles in facilitating this progress. Yet coming of age has had its ups and downs, and its high as much as low points. KNCHR has withstood and perhaps paradoxically prospered as an independent, determined and dedicated human rights institution.

This publication is a candid assessment of the record of KNCHR from its establishment in July 2003 as a statutory institution to its reconstitution as a constitutional body in August 2011. The theme of the publication is drawn from its title, ‘It’s Hard to be Good.’ The thread of this theme knits the publication together in the way it establishes and nuances the tensions, dilemmas, paradoxes and dichotomies at the heart of the Commission’s successes and failings in the course of those eight years. Despite the Commission’s best and honest efforts, the volume and variety of the issues which confronted the Commission meant it had to spend valuable energy not only ensuring the protection and promotion of human rights in the country, but also watching its back: protecting itself from the fallout of its successes.

Indeed, being good was hard!

The Commission’s human rights mandates hinged on two mutually inclusive roles: the human rights protection/watch-dog roles and the human rights advisory/promotional roles. The execution of these twin sets of roles has entailed strategies that have not always pulled in one direction. The Commission’s human rights promotion/advisory roles have seen it continuously establishing and cultivating networks within various state agencies; while the Commission’s protective/watch dog roles have on many occasions impelled it to make robust demands for accountability from the same state institutions. Added to this double-edged stratagem has been the reality that the varied interlocutors with who the Commission has worked have been driven by their own concerns and agendas with the effect that at one moment they back and partner with the Commission while at other moments they vilify the Commission’s work or approaches.
The tensions, dilemmas and paradoxes which the Commission contended with covered relationships in different arenas of interaction: with the executive, legislature, civil society organisations, the media, development partners and even the public generally.

The first key site of tension related to the tumult which characterised the Commission’s relationship with the country’s executive and legislative branches of government. At times the government was very weary of and would vilify KNCHR whilst at other times it would be keen to work with KNCHR when its interests coincided with those of the Commission. Whenever the Commission exercised its protective/watch-dog mandate on matters such as corruption, wasteful expenditure and police misconduct, the government would make pugnacious unresponsive responses, while when the Commission was fulfilling its promotional mandate the government would be fairly receptive. For example in 2010, during Kenya’s review under the Universal Periodic Review (‘UPR’) mechanism at the Human Rights Council, the Minister for Justice, National Cohesion and Constitutional Affairs (‘MOJNCCA’) readily cited KNCHR as the key partner with which the Government would undertake campaigns seeking to change public antipathy against de jure abolition of capital punishment.¹ A few years before then, a minister in the National Rainbow Coalition (‘NARC’) Government remarked that his cabinet colleagues referred to the Commission as ‘the Government-funded NGO!’² On another occasion, when the Commission was presenting its first state of human rights report³ at a convening of permanent secretaries, one official remarked that the Government must ask whether it was putting its money to good use if the Commission went around telling donors not to fund the Government.

¹. For the context of Kenya’s UPR process, see: Kenya National Commission on Human Rights, Accounting for Human Rights Protection Under the Universal Periodic Review: The Difference That the Stakeholders Made, 2011
³. The remark was in reaction to reports that the Commission’s Chairperson had called on Nordic countries to stop funding the Government because of its human rights violations.
A second key site of tension revolved around the Commission’s work with civil society organisations (‘CSOs’). It was indeed ironic that although CSOs played key roles in ensuring that first class legislation was passed as the basis for forming the Commission, and while the bulk of the first Commission’s members were from civil society backgrounds, CSOs fairly soon following the Commission’s formation began worrying that KNCHR would impinge on turf which until then was wholly dominated by civil society human rights organisations. These organisations’ concerns were that the development funding (and accompanying kudos) traditionally disbursed to them would now be invested in the Commission.4

Furthermore, an even more significant matter which coloured mutual Commission-CSO relations and strategies arose from the perception or expectation that the Commission should in every instant articulate the agendas of CSOs since they, as it were, had ‘made’ the Commission. Commissioners had to repeatedly but subtly keep explaining that while indeed the Commission drew deeply from the human rights values fashioned within civil society, the Commission’s national statutory responsibilities meant that it necessarily might employ strategies, for example, of engaging state agencies which CSOs might dislike. An example of this was during activism against the 2003 Suppression of Terrorism Bill where while both CSOs and the Commission agreed that the proposed law was draconian and it should be abandoned, CSOs sought to prevail on the Commission not only to reject that Bill but also not to engage state agencies at all on options for anti-terrorism legislation.

A third arena of dilemmas was exposed in the engagements between the Commission and the public generally. KNCHR was always clear on the point that its energies should be focused on protecting and promoting the rights of the most vulnerable in society. Towards this end, the Commission worked relentlessly to identify, publicise and condemn state excesses such as extra-judicial killings and other forms of impunity. So KNCHR would be surprised when the public’s appreciation or adulation of its work was less than whole-hearted. The Commission was often criticised by the public as only caring about criminals as distinct from victims of crime. The public’s impression was that the Commission was quick in condemning police excesses and slow to ensure the rights of police officers. The difficult conundrum the Commission had to keep navigating is illustrated by two

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4. It is indeed the case that in the immediate period following installation of the NARC government in 2003, faith in state institutions grew dramatically and development partners in particular perhaps unconsciously failed to realise it was still essential they continue engaging substantively with the civil society sector.
related incidents. Following a spate of instances when police officers were shot by criminals, KNCHR held a joint press conference with the spokesman of the Kenya Police at which the Commission affirmed the importance of the work which the Police performed and urged the public to respect and assist the Police. This press conference received limited media coverage, at least in part because of a most unfortunate event which happened on the day following the conference, when police officers forced a couple of civilians from their car and shot them dead in cold blood on Lang’ata Road.5

Again, engagements between the Commission and the private sector were conflicted. At one level, many believed that there was no role for the private sector in Kenya’s human rights discourse of rights and obligations; that this was an exclusive state matter. A senior business executive once described the Commission as ‘trigger happy’, an image not in consonance with the type of institutions the private sector desired to associate with.

KNCHR also had essential engagements with international development partners. Over time the Commission interacted with many foreign embassies and development partners. On the one hand, international development agencies and embassies filled the Commission’s funding and technical gaps; as well as providing critical moral support. At the same time, though, the Commission’s cherished independence had to be set side by side with the funding criteria established by these partners. For example, partners could notionally set the agenda if they specified a restricted number of themes for which applicants like the Commission could seek funding for. It is the case that in most instances the programme aims of the Commission coincided with the terms of available grants, but KNCHR had to be aware that it could turn down grants if they did not suit the purposes of its mandates. It is notable too that for example in the case of the Royal Netherlands Embassy and the Embassy of Finland, an arrangement for programme basket funding was instituted to fund the Commission’s strategic plan, which the Commission preferred when compared with partners who chose to cherry-pick themes.

Finally, yet critically, the Commission experienced deep internal struggles relating to its identity. At one level, commissioners and staff were in a sense supposed to be detached from their personal subjective value considerations so as to execute objectively on the institution’s programmes. The truth of the matter of course was that at the end of the day, Commissioners and staff were human beings with families, constituencies and personal convictions. How the institutional sphere might be balanced with the private sphere remained a matter of great pertinence. For example, discussions on abolition of the death penalty had to appreciate colleagues whose convictions or faith made it difficult for them to agree to abolition. Even more tellingly, the Commission’s engagement with the rights of sexual minorities was particularly difficult because of arising moral considerations or religious persuasions. Colleagues had to keep reminding each other to remain faithful to a minimum human rights agenda and not to specific personal agendas. Then again, the law that established the Commission required that commissioners should be recruited from the broadest diversities of the country. Did this mean that each commissioner should carry the agenda from his or her diversity and insist on it? Subsequently, a fair dose of pragmatism was needed to temper the idealism which on its own could never have facilitated protection and promotion of human rights.

This report shows that responding to all these contexts and paradoxes has not been easy. KNCHR has had to perform an incredibly difficult balancing act of ensuring that the strategies supporting its promotional and protective mandates mutually reinforce the effective exercise of human rights in the country; and that one or other strategy do not cause mortal wounds on the country’s human rights body-politic. The report is written with an eye for the next epoch of implementing Kenya’s Constitution. It is hoped that KNCHR, as reconstituted by Act No. 14 of 2011, and its sister Article 59 Commissions, the Commission on Administrative Justice and National Gender and Equality Commission, will learn from the times and work of the pre-constitutional KNCHR. It is indeed also hoped that the other constitutional commissions established pursuant to the 2010 Constitution6 will also not need in every instance to reinvent the wheel as they seek to detail the nuts and bolts of their institutions and in particular establish their governance value systems.

KNCHR could not have survived for eight years as a first-class human rights institution with nationally-acclaimed results and global recognition without the continued moral, technical and resource support of multiple partners: from the public, CSOs, state agencies, development partners, media, faith sector and business sector. We do trust and expect that the foundational work of the pre-constitutional Commission forms a sound basis for the next generation of human rights professionals and workers to deliver on the human rights mandates. One final note which must be made here is to acknowledge all the persons and institutions without whose hard work and dedication this report would not have been prepared: Projects and Allied Consultants for researching and preparing initial drafts of this report; Commission staff and Commissioners (both current and former) for strengthening the initial concept of the report and participating as respondents and reviewers of drafts of the report; and Rose Kimotho and Commissioners Wambui Kimathi and Lawrence Mute for providing leadership to this initiative.

KNCHR
May 2012
Summary of Report

Introduction


At its 118th statutory meeting on July 25, 2011, the Commission resolved to prepare and publish a report assessing the eight years of the Commission – from its establishment as a statutory commission to its elevation to a constitutional commission (2003-2011).

This report examines and analyzes the key defining moments of the Commission and explains their significance. It also explains how the Commission’s profile was created, nurtured and sustained over the eight-year period. The theme which knits this report together is that despite the great adversities which the Commission had to confront as it undertook its human rights protection and promotion mandates, it implemented with success many human rights initiatives which today make Kenya a far better place for individuals and communities to live and exercise human rights. The report though too continually acknowledges that Kenya is still struggling to attain adequate trajectory as a human rights respecting and social justice state.

The report makes a deliberate effort to render an honest internal account of the work of the Commission. This will, hopefully, enable the successor Commission to proceed on a positive path, neither reinventing the wheel nor falling into the snares that the predecessor Commission encountered. Lessons learned may also be of interest and benefit to other constitutional or statutory Commissions (and similar other bodies).

In view of the brevity and aims of this report, it should be stressed that this is not a programmatic report of the eight years of the Commission: annual reports for each of the eight years are available to readers who wish to look at the nuts and bolts work of the Commission.
Chapter one summarizes the antecedents to KNCHR, including the Standing Committee on Human Rights (‘SCHR’). It also describes the methodology applied in developing the report, chiefly through review of Commission documents and interviews with past and present commissioners and staff.

Chapter two summarizes the key moments and relationships covering the work of the KNCHR. These include its origins (in SCHR, a body established by Executive fiat); the establishment of the KNCHR and the transition to a statutory agency; interpretation of its mandate and early strategies; evolution of programmes; ITS founding values and principles; institutional development; and evolution of relations with the state and other actors.

Chapter three focuses on the theme of the report, ‘It’s Hard to be Good.’ It uses examples to explain the elemental successes of the Commission. The chapter uses three criteria to make its analyses: the Commission’s leadership of the human rights and social justice agenda; the innovative approaches the Commission used; and the extent to which its work had a transformative effect on the exercise of human rights in the country.

Chapter four provides an analysis of the legacy of the Commission, listing lessons which may be drawn from the Commission’s successes and challenges. The chapter also covers the transition to the successor Commission. It concludes by highlighting other transitional issues that should be addressed by the Commission’s leadership for a successful transition.

Summary of Good Practices, Opportunities and Limitations
The report identifies approaches which have worked well for the Commission. It also identifies limitations and opportunities for other like commissions.

- **Establish strong founding values and live by them**: Every institution needs clear rationale for its rooting, bonding and for shaping its identity and relationships. The Commission’s founding values, especially those in pursuit of independence, equality and humility were strong and, though sometimes questioned within and without the Commission, survived over the years.
- **Ensure accountability begins from the inside**: Strong performance accountability measures carried the Commission through rough waters. The Commission
instituted annual accountability statements and accountability forums as a way of accounting to the public. Further measures to improve accountability will be a worthwhile investment for a body whose daily duty is to hold others to account.

- **Build internal ownership of mandate continually:** The Commission was ultimately able to maintain unity when there was the broadest agreement on its mandate, values and modus operandi. The occasional stormy exchanges and differing interpretations among Commissioners and between Commissioners and the Secretariat turned out to be opportunities to clarify things and build broad ownership, both internally and also with external stakeholders.

- **Stick to your knitting, but keep an eye on the broader governance reform environment:** The Commission interpreted its human rights mandates broadly and always acted in the pursuit of social justice. The Commission’s work on corruption as a human rights issue; or on how to use cultural institutions like the Luo Council of Elders and the Njuri Nceke to ensure the rights of vulnerable groups, were illustrative. This paid dividends beyond what a narrow interpretation would have achieved.

- **Seek and maintain a balance between oversight and advisory mandates:** The debates still going on within the Commission on the need to balance between oversight and advisory work; between promotion and protection; between naming/shaming and negotiating; and so on, are healthy and present the Commission with opportunities for improving on its future work.

- **Clarify ‘board’ and ‘management’ separation:** KNCHR has both a governance body of full-time commissioners and a professional management team led by the Commission Secretary. The enabling statute demands that commissioners work full-time. Leadership will be required in discussing and agreeing on how to model board-management separation.

- **Institute accountability among commissioners:** The commissioners should put in place mechanisms for horizontal accountability at the commissioners/board level and hold each other accountable for delivering on their responsibilities. This should include mechanisms for vertical accountability to the chairperson.
and the secretariat in respect to programme work, conduct and compliance with institutional regulations. In this respect the Commission should finalise the efforts to come up with a code of conduct, job descriptions and performance measures in respect of commissioners.

• **Strengthen field offices and devolve services further:** The two field offices in Wajir and Kitale have their own unique challenges. The Commission should address the challenges of these offices (which could be its first county offices) and internalize lessons learned from their experiences.

• **Understand how the public sector works:** Understanding government regulations is critical because the Commission, though independent, is a public body subject to public financial management and procurement regulations. Understanding those regulations is a sine qua non for its effective engagements with other public bodies.
Background

Introduction

1. This chapter provides background information for the report, including an introduction of the Kenya National Commission on Human Rights (‘KNCHR’). It explains the institutional basis for preparing the report; and describes the methodology used to develop the report.

2. KNCHR was established by the Kenya National Commission on Human Rights Act (No. 9 of 2002) as an autonomous human rights institution (‘NHRI’). The Constitution of Kenya (2010) established the Kenya National Human Rights and Equality Commission (‘KNHREC’) pursuant to Article 59, and then Parliament passed the Kenya National Commission on Human Rights Act (No. 14 of 2011) reconstituting KNCHR as one of the three new Article 59 Commissions.

3. At its 118th statutory meeting on July 25, 2011, the Commission resolved to prepare and publish a report of KNCHR’s eight years since its establishment in 2003.

4. This report examines and analyzes the key defining moments of the Commission. It explains how the Commission’s profile was created, nurtured and sustained over the eight-year period. The report is a deliberate effort to render an honest internal account of the work of KNCHR between 2003 and 2011. This will, hopefully, enable the successor Commission to proceed on a positive trajectory, neither reinventing the wheel nor falling into the snares that the predecessor Commission encountered. Lessons learned may also be of interest and of benefit to the other constitutional and statutory Commissions operating or being established within and even outside the country.  

Introducing the Predecessor Commission

5. The first nine Commissioners of KNCHR were appointed in July 2003 and the Commission commenced operations in August of that year, when the Commissioners held their first statutory meeting and elected the first chairperson. The Commission thereafter hired staff, developed its first strategic plan and proceeded to implement a range of programmes in pursuance of its statutory mandates.

7. See ibid
6. All this was happening against the backdrop of a political transition triggered by the 2002 General Elections. President Kibaki was elected in December 2002 on a National Rainbow Coalition (‘NARC’) pro-reform ticket, marking the end of almost forty years of rule by the Kenya African National Union (‘KANU’). Although the law establishing the Commission was passed in the final days of the Moi administration, its commissioners were appointed by the Kibaki administration. The Commission was therefore constituted and commenced work at a time when Kenyans were reportedly the most optimistic people in the world, a time of heady euphoria and great public expectation. The Commission’s work, successes and challenges therefore reflected not only the politics of the time but were also impacted by that politics.

7. Within the first five years of its existence, the Commission put respect for human rights and social justice on the national agenda; hired professional and dedicated staff; gained international repute amongst its peers; and had a generally positive public image. During this period, the Commission was a leader in the semi-autonomous government agencies sector – in particular in the areas of institutional accountability, leadership, work ethic and the internalization of pro-people policies and values. Its international reputation and stature also grew. The Commission undertook numerous formal and ad hoc human rights engagements and interventions with state, non-state, community and international actors; processed thousands of complaints; gave policy and legal advisories; and published many human rights reports.

8. However, this public profile was set alongside a range of challenges that the Commission faced in discharging its obligations to Kenyans. For instance, while the Commission had broad public support, its work (and some of its approaches) earned it condemnation from some quarters, notably in Government. As is illustrated in chapters two and three of this report, the Commission also had long-running administrative and leadership challenges. These external and internal challenges became all-too clear in the period between mid-2008 and 2010.

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8. The immediate post-Moi days in 2003 for example saw the public making civilian arrests of police officers who were taking bribes (see 2003 Human Rights Watch Report, available at http://www.hrw.org/wr2k3/africa6.html (last accessed on 6 April 2012)
9. See Annex 2 for a list of all the Commission’s publications
9. In its overall relationship with the government, the Commission was variously applauded and bashed – sometimes by the same person or office, depending on circumstances. Overall, these challenges did not prevent the Commission from working, but presented continuing constraints on the Commission’s overall performance. Be that as it may, the Commission’s raison d’etre was validated through its eventual inclusion in Kenya’s new constitutional order.

The Successor Commission and the Basis for Compiling a Transition Report

10. Article 59 of the Constitution of Kenya (2010) established KNHREC, with an expanded human rights mandate and enhanced powers. It provided that Parliament would enact legislation to give full effect to Article 59 of the Constitution, and any such legislation could restructure the Commission into two or more separate commissions. Later, in performing this role, Parliament was presented with three bills to establish three commissions to give effect to Article 59 of the Constitution: The Kenya National Human Rights Commission Bill, 2011; The Commission on Administrative Justice Bill, 2011; and The National Gender and Equality Commission Bill, 2011. Although KNCHR was of the view that Parliament’s power to restructure the successor Commission into two or more commissions should be guided by the principle that human rights are universal, interdependent and interrelated, and while it made a spirited case for a single Commission with departments capable of discharging the constitutionally expanded mandate, Parliament eventually passed the three Bills, establishing three commissions – the successor KNCHR, the Commission on Administrative Justice (‘CAJ’); and the National Gender and Equality Commission (‘NGEC’).
11. KNCHR as reconstituted by the new statute is different from its predecessor Commission in a number of respects. It is anchored in Article 59 of the Constitution of Kenya – which the Kenya National Commission on Human Rights Act (No. 14 of 2011) gives effect to and, following the decision to establish NGEC and CAJ, seeks to better delineate the powers of the successor KNCHR with those of the other two commissions. In comparison with the powers and functions of the predecessor Commission, the successor Commission’s functions with respect to private institutions are explicitly stated; its investigative powers are better elaborated; and it is required to work with NGEC and CAJ to ensure efficiency, effectiveness and complementarity; and to establish mechanisms for referrals and collaboration. It is also smaller, comprising the Chairperson and four Commissioners.


Preparation of this Report

13. This report was prepared by consultants hired by the Commission and supervised by two commissioners and two members of staff. The information used in its compilation was largely obtained from the Commission’s official documentation (such as the various strategic plans of KNCHR; KNCHR monitoring, special and annual reports; and programme reviews). In order to properly contextualize this information and to fill information gaps, thirteen former and current Commissioners were also interviewed. Interviews were also conducted with fifteen former and current staff. The consultants prepared a first draft, which was critiqued at a feedback harmonization meeting comprising Commissioners and staff on December 16, 2011. In addition to receiving feedback, the consultants were also provided with additional material for inclusion in the next draft of the report. Thereafter, the consultants revised and submitted a second draft. The Commission was responsible for finalizing the final report.

Report Structure

14. Summarizing eight years of an organization’s work into a concise report is an arduous task. In the quest for focus and brevity, sacrifices have had to be made – and an organizing framework for excluding certain detail has had to be found. Accordingly, this report organizes the material available on the predecessor Commission’s work into four chapters. Chapter one summarizes the antecedents to KNCHR, including the Standing Committee on Human Rights (‘SCHR’). It also describes the methodology applied in developing the report, chiefly through review of Commission documents and interviews with past and present commissioners and staff. Chapter two summarizes the key moments and relationships covering the work of the KNCHR. These include its origins (in SCHR, a body established by Executive fiat); the establishment of the KNCHR and the transition to a statutory agency; interpretation of its mandate and early strategies; evolution of programmes; its founding values and principles; institutional development; and evolution of relations with the state and other actors. Chapter three focuses on the theme of the report, ‘It’s Hard to be Good.’ It uses examples to explain the elemental successes of the Commission. The chapter uses three criteria to make its analyses: the Commission’s leadership of the human rights and social justice agenda; the innovative approaches the Commission used; and the extent to which its work had a transformative effect on the exercise of human rights in the country. Chapter four provides an analysis of the legacy of the Commission, listing lessons which may be drawn from the Commission’s successes and challenges. The chapter also covers the transition to the successor Commission. It concludes by highlighting other transitional issues that should be addressed by the Commission’s leadership for a successful transition.
Chapter 2
Defining Moments and Relationships

Introduction

15. In this chapter, the Commission elaborates on its journey of institutional development. The chapter describes the predecessor Commission’s key defining moments, from its establishment to the point of transition to the successor Commission. It aims to highlight the growth of KNCHR as an institution from the vantage point of the key moments that defined that development. While an attempt has been made to present the material chronologically, greater attention has been paid to describing these moments in sufficient detail to illustrate their significance.

16. In sum, the Commission’s defining moments are: its beginnings (from a body established by Executive fiat); the establishment of the KNCHR, and the transition to a statutory agency; interpretation of its mandate and early strategies; evolution of programmes; establishing founding values and principles; institutional development; evolution of relations with the state and other actors; and internal dynamics and tensions within the Commission.

Antecedents to Kenya’s First National Human Rights Institution

17. The origins of KNCHR can be traced to Kenya’s human rights struggles within the context of geopolitical developments towards the end of the 20th Century. The years preceding 1991 in Kenya were marked by gross human rights abuses. In the political environment in which the KANU regime’s hold on power was challenged by an emboldened opposition, people were detained without trial, maimed and even killed. The police used excessive force to disperse demonstrators, anything to frustrate the conversion of Kenya from a single-party dictatorship to a multi-party democratic state.

18. Despite disappearances, arbitrary arrests, detentions, torture and ethnic clashes in many parts of the country, political activists did not relent in their quest for multi-party politics, and the international community among other interventions called for the establishment of an institution that would address those human rights violations.

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12. Ibid
19. Yielding to international and national pressure, KANU in 1996 chose to establish the Standing Committee on Human Rights (SCHR’). This non-statutory body was weaker than what human rights actors were recommending: a NHRI established in accordance with the 1991 Paris Principles.  

Standing Committee on Human Rights

20. As aforesaid, the idea of the SCHR was not endogenous. It arose following long standing pressure from local human rights organisations, the United Nations (‘UN’), international human rights organisations (like Human Rights Watch and Amnesty International) and the Bretton Woods institutions. These debates gained traction after the 1993 Vienna World Conference on Human Rights in which states were invited to integrate human rights as ‘pillars’ of governance. As a result, NHRIs were formed in a number of countries between 1993 and 1999.  

21. The SCHR was established by President Daniel arap Moi on May 22, 1996. Its members were Prof. Onesmus Mutungi (Chairman), Prof. Hastings Okoth-Ogendo, Amb. (Rtd.) Dennis Afande, Rev. John Gichinga, Prof. Mohammed Bakari, Mr Norman Brooks, Ms Philomena Chelagat, Mrs Martha Mugambi, Dr Esther Keino, Ms Sultana Fadhili, Mr M. Z. A. Malik and Prof. J. K. Kiteme.

22. Despite its assertions of independence, the SCHR was: ‘a body formed at the discretion of the President, whose members are appointed by him, which reports only to him, whose action is decided by him, and whose members can be removed by him’. The Committee’s mandate was narrow; it lacked independence; and worked in a constrained environment. The members of the Committee, for instance, worked for the institution on a part time basis, had no security of tenure and lacked adequate funding and human resources making it impossible for the Committee to carry out its mandate effectively. As a non-statutory committee formed under the office of the Attorney General (‘AG’), the SCHR was mandated to carry out investigations on complaints of human rights.

13. The Paris Principles were prepared at the international workshop on National Institutions for the Promotion and Protection of Human Rights held in Paris and which were subsequently adopted by the UN Human Rights Commission by Resolution 1992/54 of 1992, and by the UN General Assembly in its Resolution 48/134 of 1993. The principles set out the status and functioning of NHRIs and identified their competences as: the competence to promote and protect human rights; a broad mandate derived from the constitution and other legislation; and responsibilities which include an advisory role to government, parliament or any other competent body on issues related to legislation and general compliance and implementation of international human rights treaties (See, http://www2.ohchr.org/english/law/parisprinciples.htm)


15. Kenya Gazette, June 21, 1996 (Gazette Notice No. 3842). Its legal basis was argued to be section 23 of the Constitution of Kenya, which allowed the president to establish any office in the public service.

16. Supra, note 11.
rights violations as well as educate the public on human rights. However the Committee was limited in the scope of work it could carry out: the Committee was required to submit a report after every three months to the President, but the Committee’s reports for the first four years of its existence were never made public. Towards the end of its tenure, the Committee grew increasingly bold, but its recommendations were largely ignored within Government.

23. In September 1996 the Committee issued its first report and recommended that an Act of Parliament be passed to grant the Committee adequate powers and autonomy. In pursuance of this, the Committee in early 1998 prepared a draft Bill and submitted it to the AG for review and tabling in Parliament. Technical advice on the draft Bill was provided by the Office of the High Commissioner for Human Rights (‘OHCHR’). It took another five years before a law was passed and the Committee was transformed from a presidentially-appointed Committee to a genuine NHRI.

24. The Committee, despite its lack of autonomy, is credited with laying a basis for some of the activities of its successor, KNCHR. For example, the SCHR released a special report on the freedom of thought, conscience and worship in public schools. 17 Its 2003 seventh report notably highlighted the challenges and successes of the Committee and even offered proposals to the successor Commission on how to deal with setbacks. The report also detailed the status of human rights in the country at the time as well as the status of prisons. The development of the National Action Plan on Human Rights (NAP'), a government initiative in response to the recommendations of the 1993 Vienna World Conference on Human Rights, began under the watch of the SCHR. The Committee undertook activities such as developing a concept paper, holding conferences, drawing up NAP thematic areas as well as establishing the format for addressing the thematic areas to assist the government fulfill its obligation. The government assigned the Committee a coordination role at the launch of the NAP activities, a role it faithfully played while in office.

17. See: Standing Committee on Human Rights (K), Special Report on Freedom of Thought, Conscience and Worship in Public Schools, 2003
Establishment of KNCHR and Transition from SCHR

25. On 11th June 2002, Parliament passed the Kenya National Commission on Human Rights Act (No. 9 of 2002). This brought to an end a three-year-long process of developing a law that would establish an independent NHRI. Besides creating an independent statutory agency, the Act was progressive in a number of respects. In a key shift from previous legislation that almost invariably made appointment to senior public office an unfettered presidential prerogative, this time round Parliament would nominate twelve people for the President to appoint nine. Once appointed, the commissioners were to elect a chairperson and a vice-chairperson of opposite gender from amongst their number. They also would hire the Commission’s Secretary and other staff. The chairperson and commissioners had a term of five years, with security of tenure, and were eligible for re-appointment for a further term. The law though included a staggering mechanism under which, in respect of the first set of commissioners, four would have three-year terms while the other four would have four-year terms – the respective tenures determined by casting lots. This staggered tenure was valuable for the retention of institutional memory; and it is significant that the statutes establishing constitutional commissions under the 2010 Constitution have failed to include that staggering mechanism.

26. The new law took effect on March 12, 2003, following a Gazette notice by the then Minister for Justice and Constitutional Affairs (‘MOJCA’), Hon. Kiraitu Murungi. Subsequently, the Clerk to the National Assembly published a Kenya Gazette Notice in accordance with Section 6 of the Act, and an advertisement in three daily newspapers with national circulation inviting applications from persons qualified to be appointed commissioners.

27. In the climate of political goodwill then prevailing, the selection process proceeded smoothly. On July 3, 2003, following the recommendation of the Departmental Committee on the Administration of Justice and Legal Affairs, Parliament nominated Ms. Violet Khadi Mavisi, Mr. Philip Tirop Kitur, Mr. Khelef Khalifa, Ms. Fatuma Ibrahim Ali, Mr. Maina Kiai, Mr. Maurice Odowo Onduru, Ms. Wahu Kaara, Mr Godana Doyo Adhi, Ms. Catherine Muyeka Mumma, Mr. Hassan Omar Hassan, Mr. Lawrence Murugu Mute, and Ms Wambui Kimathi for appointment and forwarded their names to the AG for onward transmission to the President. The President subsequently appointed Maina Kiai, Violet Mavisi, Wambui Kimathi, Tirop Kitur, Khelef Khalifa, Fatuma Ibrahim, Catherine Mumma, Godana Doyo and Lawrence Mute as commissioners.
28. At the first meeting of the new Commission, convened by the AG on 11th August 2003, the Commissioners elected Maina Kiai as the Chairperson, with a five-year term; and Violet Mavisi as the Vice-Chairperson. They also determined, by casting lots, which commissioners would have three-year terms and which ones would have four-year terms. Violet Mavisi, Wambui Kimathi, Catherine Mumma and Khelef Khalifa would serve three-year terms while Tirop Kitur, Fatuma Ibrahim, Godana Doyo and Lawrence Mute would serve for four years.

29. In making the selection decisions for Commissioners, the Departmental Committee on Administration of Justice and Legal Affairs had considered regional balancing (based on Kenya’s eight provinces). Debate in Parliament also included justifications based on ethnic distribution of the nominees to the Commission. Upon assuming office, the commissioners resolved to work as one team focusing on Kenya’s human rights challenges rather than regional interests.

30. With the Commission duly constituted, the process of taking over institutional infrastructure from SCHR proceeded. This process was messy and sometimes disagreeable, yet it had its pleasant surprises too. Some SCHR staff expected the new Commission to absorb all of them into KNCHR; yet the Commissioners expected to draw on fresh personnel to serve the new Commission. Tussles between the two approaches ensued: for example it was only after some initial resistance that the Secretary of the SCHR handed over properties like vehicles. Tellingly, the Secretary of the SCHR wrote an opinion piece in the newspapers disparaging KNCHR’s membership as ill-qualified and incompetent to serve on such a Commission. 18 The Chairman of the Law Society of Kenya (LSK) at the time, Ahmednassir Abdullahi, also made public comments critical of the membership of the Commission, questioning the suitability of some commissioners to serve. 19 Such public attacks on the competence of the Commissioners were disconcerting for some Commissioners, who felt that they were being singled out for censure, not for falling short of the qualifications in Section 5 of the Act, but for lacking university degrees.

31. All was not doom and gloom though. Some individuals from SCHR were tremendously supportive of the new Commission and did their best to aid the hand-over process. They worked enthusiastically to help with the exercise. Amongst SCHR Committee members, Denis Afande, Martha Mugambi and Okoth Ogendo stood out as those most willing and readily available to support the incoming Commission. Later that year, after interacting with the commissioners in a two-day human rights workshop, Prof. Makau Mutua dismissed the Commission’s critics and described the commissioners as people who were ‘thirsty for knowledge ... men and women of high moral integrity’.  

Interpretation of Mandate and Early Strategies

32. The first key task of the KNCHR following its constitution was preparation of its initial five year strategic plan. The Commission held an initial retreat in October 2003 where it drew lessons from other regional NHRI’s such as the Uganda Human Rights Commission and the South Africa Human Rights Commission. It also undertook consultations at a strategic planning meeting with representatives of Government departments such as the Kenya Police, the Kenya Prisons Service, and civil society organisations (‘CSOs’).

33. The Commission commenced its work in a euphoric setting, largely due to the political transition that the country had just witnessed from KANU to NARC: for example having earned praise from the Kenyan citizenry and the international community for providing universal free primary education, it was also expected that the Government would oversee completion of constitutional review expeditiously. The Commission was seen as having the ability to clear the road blocks to a social justice state erected by the Moi state and finally deliver justice for all the victims of human rights abuses.

34. The Commission’s decision on what its mandate was and its early strategies responded to the public expectations at the time. The Commission determined that its mandate would comprise the following three aspects:

- Its focus would be on all human rights, meaning cultural, economic and social, civil and political, and third generation rights (environmental and developmental rights);

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• It would draw upon all human rights instruments, including those not ratified and domesticated by Kenya; and
• It would have powers to sit as a quasi-judicial body to provide remedies to victims of human rights violations. 21

35. Following its strategic planning process, the Commission determined that its vision would be: ‘A strong and vibrant human rights culture founded on equality and social justice for women and men’. 22

36. The organizing framework on which the Commission would deliver its mandates to the public would involve the following six themes:
• Conducting human rights investigations and providing appropriate redress to victims of violations;
• Researching and monitoring compliance with human rights norms and standards;
• Undertaking human rights education and training;
• Undertaking campaigns, advocacy, and collaboration with other stakeholders;
• Undertaking institutional capacity building; and
• Ensuring gender mainstreaming with deliberate focus on women, children, the poor and people with disabilities.

37. Having the membership of the Commission drawn from diverse backgrounds including from civil society and non-civil society backgrounds was a boon.23 Some Commissioners by dint of their training and experience led advocacy work while others led the Commission’s work of engaging with policy-making. The Commission used advocacy to profile itself through the media by adopting a visible and hands-on approach to address human rights issues. At the same time, there was quiet but intensive engagement by other Commissioners with policy development to back the work of their colleagues in the field and to efficiently carry out the advisory roles of the Commission.

22. Ibid
23. Some of the commissioners were professionals who had worked in the civil society and human rights sectors (Maina Kiai, Violet Mavisi, Wambui Kimathi, Godana Doyo, Lawrence Mute and Fatuma Ibrahim); others were involved in human rights and political activism (Tirop Kitur and Khelef Khalifa); and one had worked in government (Catherine Mumma).
Programme Development and Evolution

38. The Commission’s strategic objectives were:

**Reduction of systemic human rights violations:** This was the commission’s primary objective due to the fact that Kenyans suffered systemic violations attributable to weak legal foundations or weak institutional capacities. Kenya had previously been mentioned by local CSOs, international lobby groups and the international community as being a perpetrator of systemic violations which included torture, excessive use of force by its law enforcers, violence against women and children, gender based violence, violation of workers’ rights, and delays in trial of cases and inhuman conditions and treatment in detention facilities. By the end of 2004, the Commission had 976 active files with the principal complaints handled being labour (36%), general matters (13%), land (10%), administration of justice (9%), abuse of office (9%) and police brutality (7%). The Commission responded to them by carrying out investigations, catalyzing pro-human rights reforms in the Police and Prison services, conducting research and carrying out advocacy activities to address negative ethnicity, corruption and wastage of public resources as well as focusing on transitional justice.

**Leadership in framing and informing human rights discourse:** As a pioneer government institution fighting to protect and promote the rights of the citizens, the Commission endeavoured to influence legislation and policy to make it more human rights friendly, coordinating the development of NAP, publishing an annual journal on topical human rights issues (Nguzo za Haki), developing assessment reports on the status of human rights in the country, promoting adherence to international human rights obligations by the government and organizing public debates and forums on emerging human rights issues.

**Human rights education and institutional capacity building:** The Commission resolved to improve the knowledge of its stakeholders, especially public officers working in government, on the use of a rights based approach in policy making and in the implementation of development activities.

**Increased opportunities for the realization of economic and social rights:** At the time of the establishment of the Commission, economic and social rights were not enshrined in the Constitution; and the country did not approach economic...
and social issues as justiciable rights exercisable by Kenyans. The Commission developed policy proposals to improve the livelihoods of the people. It also addressed the question of wasteful spending witnessed among government officials. A visit by the then UN Special Rapporteur on the Right to Housing, Miloon Kothari, also opened a window of opportunity for KNCHR to monitor the provision of basic rights.

Strengthened institutional capacity of the national commission to deliver effectively and efficiently on human rights: In 2004, the Commission’s first Secretary/Chief Executive Officer, Mburu Gitu, was appointed. The Commission was understaffed in its formative years, which strained both commissioners and staff. However, despite being a relatively young institution, the Commission through its work gained the confidence of development partners as a credible institution worthy of their support. The Commission sought to ensure that clear strategic and operational plans were laid down to guide its work.

39. By the end of the first strategic plan period, the Commission had laid a firm foundation as the foremost public agency in the promotion and protection of human rights in Kenya. In that period, the country had also undergone tumultuous moments: the 2005 constitution referendum process that crystallized the balkanization of communities; the 2007 general elections; and the subsequent post-election violence of 2007/2008. These situations brought on new human rights challenges that the Commission sought to respond to. In addition, the Commission had made progress in creating greater appreciation of human rights by government through its various ministries, departments and agencies; as well as in reaching underserved populations. Drawing on these, the Commission in its second strategic plan of 2009-2013 refined it vision to: ‘A nationally and globally respected public institution providing leadership in human rights’ and its mission as: ‘To enhance the protection and promotion of human rights in Kenya through strategic programming and partnerships’. The new plan would be implemented around four objectives:

• promoting greater adherence to the rule of law;
• advocating for increased compliance and adherence to human rights principles and standards;
• enhancing protection of human rights through investigations, redress and referrals; and
• promoting human rights through public education.

24.KNCHR, Strategic Plan 2009-2013
Establishing Founding Values and Principles

40. For its first strategic plan, the Commission identified NINE core values, which it would adhere to in all of its work. These were: independence, accessibility, humility, professionalism, gender diversity, equity and equality, accountability, participation, people-centredness.

41. Here, we discuss only a few of those values:

**Independence:** Though a public body, the Commission sought to operate without the direction or influence of any government arm, political party, company, non-governmental human rights organization, group of activists or development partner. Every day at the Commission was an assertion of this value: As witnessed in the way the commission carried out its duties, ranging from its media interactions, prison and police cell visits, and investigations into allegations of Human Rights Abuses. Though the commission’s ability to fully adhere to this value was challenged from time to time, the Commission has stood tall in living by this value; and its reputation for standing up to speak truth to power is outstanding: this is exemplified by its post 2007 elections violence work and its investigations of operations by Kenya’s security forces in the Mount Elgon area.

**Accessibility:** The Commission sought to maintain an open-door policy and ensure that its services were within the reach of women, men, children and people with disabilities. It aimed to be empathetic to petitioners in seeking to resolve their complaints, and it would be close to members of the public through travelling to any part of the country to investigate violations and by striving to make all its publications easy to understand. There are questions as to whether the Commission successfully adhered to this value fully. In terms of physical accessibility, the Commission inherited its first offices from the SCHR at NSSF Building. In 2005, the Commission moved house to its present location, CVS Plaza on Lenana Road. These offices are harder to access for clients using public transport since the matatu stop serving the area is a little distant from the offices. Some persons with disabilities in particular find it inconvenient to walk that distance. Furthermore, over the eight-year period, the Commission has only set up two regional offices, in Wajir and Kitale. The Commission therefore remains rather inaccessible to persons living outside Nairobi and the two areas.

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25. See the On the Brink of the Precipice
26. See the Mountain of Terror Report
where these satellite offices are located. All in all though, the Commission has made hundreds of visits to all parts of the country to undertake investigations, perform human rights education and lobbying.

**Humility:** The commission would approach its tasks with humility, be accountable to its clients, the government and partners. It would strive to be flexible, simple and responsive. It would be prudent with public resources, and avoid wasteful spending. Towards this end, for example, the commission decided that its Commissioners would use vehicles which were smaller and inexpensive rather than the top of the range fuel guzzlers that the commissioners were ‘entitled to’ as senior state officials: so they used Honda CRV saloon cars. The Commission also opted not to hire drivers for all but a few commissioners whose circumstances necessitated a driver. The commissioners chose to forego the extra luxuries that come with the position of judges of the Court of Appeal (in the case of the Chairperson) or the High Court (in the case of the other Commissioners): such as business class air travel and body guards. As is illustrated elsewhere in this report, these decisions have not always been popular and have, at times; been challenged by some commissioners.

**Accountability:** The Commission pledged to take responsibility of its objectives with full recognition of all its stakeholders in a transparent way. It would be open to feedback and criticism, annually report on its work and submit audited accounts to the National Assembly. One of the innovations introduced by the Commission towards this end was an annual public accountability statement which was prepared and disseminated in the media and other public forums. The accountability statement provided the public with opportunities to query the Commission on how it had spent public resources to facilitate the promotion and protection of their rights. Accountability forums were held in different parts of the country: as far as Mandera and in Nairobi’s informal settlements such as Korogocho. Later, this would extend to a decision by some commissioners to voluntarily remit tax on their allowances even though the law at the time exempted them from this responsibility.

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27. Of the nine commissioners in the initial Commission, only three did not self-drive – because one had a visual disability and the other two were not licensed drivers.
42. In living these values, the first set of commissioners embraced an equalisation policy which flowed throughout the Commission: the staff of the Commission and the commissioners, for instance, received equal allowances and stayed in the same hotels and travelled together in the same vehicles during their field visits. This was unlike the approach within the public service where allowances for field trips were determined on the basis of seniority. This policy was so well-entrenched that when attempts were later made to change it in subsequent years, its most ardent defenders were the staff! Although some argued that the expenditure of a commissioner cannot equal that of staff and that the limited allowances made it hard for them to socialise with colleagues from other commissions, this policy is not only a distinguishing feature with other Commissions, but also a source of institutional pride in the Commission.

43. In its 2009-2013 strategic plans, the Commission reduced the core values to five after subsuming some values into others and also based on the rationalization that fewer are better than more. Those retained were: independence; integrity; inclusiveness; tolerance; and accessibility.

Institutional Development

44. Following its establishment, the Commission sought to build a strong institution on which to anchor its work. Once all the commissioners were on board and a skeleton staff in place, the Commission commenced work, while at the same time putting in place a coherent strategy, mapping out a realistic work plan and looking for resources.

45. The Commission’s strategic plan and its work attracted international development partners who augmented its financial resources and enabled it to conduct more work and to further institutionalize. In addition, the Commission also put in place other institutional systems such as Results-Based Management, to improve its programmes and management effectiveness, efficiency and accountability, human resource, financial and procurement policies. In setting up these systems, the Commission considered experiences and best practice from government, the private sector and civil society. MOJCA was originally of the opinion that the Commission could only procure through the ministry’s tender committee. The Commission saw this as a serious threat to its independence, a view that was shared by Treasury. Treasury subsequently granted the Commission a separate Vote Head from 1st July, 2004. However,
the Commission did not receive an in-depth induction into government financial regulations, as a result of which some mistakes were made in its initial years. An often-cited example is the hiring of a firm to audit the Commission, which was interpreted as an attempt to oust the role of the Auditor-General. In April 2011, Treasury finally created Vote No. 64 for the Commission, completing the Commission’s quest for financial independence.

46. The Commission faced a lot of bureaucratic red tape from within government circles. Civil servants including the Head of Public Service, Amb. Francis Muthaura, ignored and/or refused the persistent attempts of the Commission to explain its role as a NHRI and to map a way for the government to collaborate with the Commission. This bureaucracy raised serious questions on the government’s commitment to fighting corruption and promoting human rights. In a report submitted by MOJCA to Parliament by a letter dated 28th July, 2005, the Minister criticized KNCHR for misinterpreting its mandate by working on anti-corruption issues.

47. With minimal resources and a government that was uncooperative, the Commission, by 2005, did not have any regional office. On June 16, 2006, the Commission opened its first regional office in Wajir, North Eastern Province with the then Minister for Justice and Constitutional Affairs, Hon. Martha Karua, as the chief guest. The choice of Wajir was based on a number of factors: analysis of the number and origin of complaints; the historical marginalization of the region; and the fact that there were few organizations working in the area. Perhaps rather optimistically in view of the vastness of the region, the office would cover North Eastern Province and Upper Eastern Region. The North Rift Regional office opened in Kapenguria in September 2007, to improve the Commission’s accessibility in Kenya’s North Rift. The field offices have helped increase the Commission’s reach but the expectation is that the reach should be greater. Moreover, as one of the shared institutions under the Constitution, the Commission is expected to work at both national and county level, thus expansion is no longer a choice but an imperative.
Relations with the State and Other Actors

48. The Commission was expected, by dint of its mandate, to have substantial engagement with the state, CSOs, the private sector and donors. These engagements shaped the Commission’s work in diverse ways.

Relations with the State

49. Initially, in 2003, it was widely expected within and outside of the Commission that the fledgling Commission could count on the support of the ‘reformers’ in the NARC regime to address human rights and social justice issues. By the beginning of 2004, doubts had emerged regarding the state’s commitment to reform. Open disagreements over a pre-election memorandum of understanding rocked NARC and focus gradually shifted away from the reform agenda. This had a knock-on effect on the state’s relations with a number of institutions, including the Commission.

50. During the 2003/4 reporting period, MOJCA was designated through a Presidential Circular as the line ministry for the Commission. The Commission did not originally find fault with this – since the minister in charge, Hon. Kiraitu Murungi, had a history in human rights advocacy – but as relations soured, the Commission protested this reporting relationship, stating that the AG was the Minister under the Act. The Executive refused to budge, and the issue remained unresolved until the 2010 Constitution was promulgated.

51. Lack of financial autonomy also impacted negatively on the Commission’s work as the government sometimes delayed disbursement of funds. In the beginning, the Commission had estimated the number of staff needed to support its work to be 156 people. However the Commission suffered serious limitations as it only had 15 members of staff at the end of the reporting year in 2004, representing a 90% deficit, a fact that greatly impacted on the work of the Commission. The Commission also realized that it only had operational independence – its funding would still come through MOJCA.

29. He is a founder member of the NGO Kenya Human Rights Commission and a human rights lawyer of repute.
Table 1: Commission Staff Numbers (2003-2011)

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<tr>
<th>Year</th>
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<td>2011</td>
<td>74</td>
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Source: Commission’s records.

52. In its first year, the Commission operated on a budget of Kshs. 59 million against a budget of KSh. 150 million (a deficit of 60%). Though funding levels grew over the succeeding years, they were always below the Commission’s requirements. Indeed, were it not for international development partners who supported the Commission through the Governance, Justice, Law and Order Sector (‘GJLOS’) reform programme and bilateral arrangements, much of the Commission’s early work would have either been substantially limited or not undertaken at all. In the 2004/5 period, for example, GJLOS funding accounted for 68% of the Commission’s budget.

Figure 1: KNCHR Funding (2004-2011)
53. By the end of its first year of work, the Commission had to confront the issue of the most effective way of engaging with the state since the state was both the principal violator of rights and the primary duty bearer for purposes of preventing abuse. Should the Commission rely on its status as a government body and negotiate with the state or should it pursue a more public and visible approach, in speaking truth to power? An approach entailing public demands for accountability was called for given the fact that the state was the greatest violator of human rights, yet it was also necessary that there be opportunities for round-table engagements.

54. A collegial approach was agreed in which the Commission actively engaged in the watchdog role while it at the same time engaged in the advisory role including developing policy frameworks within which advocacy would be undertaken. The Commission spoke collectively while addressing human rights issues both with the government and with other partners. Critical decisions were only reached after exhaustive deliberations where the pros and cons of taking particular steps were weighed.

55. The Commission’s work of investigating human rights complaints and providing redress drew mixed responses:

- The Commission had a particularly difficult time with the Kenya Police, with respect to whom it had not only received complaints from ordinary citizens but also from police officers. Occasionally, the Commission would be denied access to police stations for inspection visits, in contravention of the Commission’s powers. For example, in its early inspection work, four Commissioners were denied entry into a police station at the Inland Container Depot by a police officer, citing powers under the Police Act and the Force Standing Orders. The Commission’s letters to the Commissioner of Police routinely went unanswered.
- In similar fashion, the Public Service Commission and the Teachers Service Commission either belatedly or selectively responded to communications from the Commission.
- In contrast, the Prisons Service was quite responsive even though it initially did not show an appetite for reform.
56. Over the eight years, the Commission’s relations with the government were conflicted. Despite its best efforts, President Kibaki never gave audience to the Commission and it was never clear to the Commission if that was a message of presidential displeasure with its work.\textsuperscript{30} The Commission’s engagements with the various ministers of Justice and Constitutional Affairs oscillated between warm and strained depending on the political context.\textsuperscript{31} In stark contrast to this, the Commission had excellent working relations with technical staff of MOJCA: \textsuperscript{32} over the years a lot of human rights work was realized successfully on this account.\textsuperscript{33} At the same time, though, despite the Commission’s best efforts, public servants in many ministries remained doubtful of the value of the Commission’s work and they did not fully engage with it. This was noticeably the case when while compiling its first state of human rights report few ministries and departments responded to the data collection questionnaire circulated by the Commission.\textsuperscript{34}

57. The Commission gradually tried other methods of engaging the state. Training and capacity building of public officers and civil servants was such a means of engaging the state. For example, in the 2004/2005 review period, the Commission trained 326 senior civil servants on aspects of human rights. These trainings were aimed at, amongst other issues, introducing the Commission to the civil servants, and clarifying the mandate and the role of the Commission with regards to human rights. This was to ensure mutual access, for example by imploding the myths held by civil servants such as the Commission being a busy body and a government-funded NGO whose work was to discredit the government.

\textsuperscript{30} Yet at the same time, Kibaki’s Vice President, Moody Awori, gave the Commission quality time: on multiple occasions he officiated at Commission events and he took up concerns raised by the Commission.

\textsuperscript{31} All the three ministers – Kiraitu Murungi, Martha Karua and Mutula Kilonzo, visited the Commission’s offices and graced many of its meetings. There were particular instances when the three did not take the Commission’s advice: in relation to dealing with corruption as a human rights issue (Kiraitu Murungi), and the best approach for making KNHREC operational (Mutula Kilonzo). On occasion the ministers conceded that the Commission’s approaches had been vindicated (for example Martha Karua in relation to the Commission’s investigations on the extra-judicial killings of youth said to be from the Mungiki gang). Mutula Kilonzo acknowledged the partnership role between his ministry and the Commission (for example at the Human Rights Council in September 2010 during Kenya’s review under the UPR mechanism).

\textsuperscript{32} Or ‘MOJNCCA’ – Ministry of Justice, National Cohesion and Constitutional Affairs – as reconstituted in 2008.

\textsuperscript{33} Notable partnerships included finalisation of NAP, engagements around the UPR, and implementation of Kenya’s obligations in relation to its core human rights treaties – from capacity building towards report preparation, treaty body hearings and dissemination of concluding observations.

CSOs

58. Relations between KNCHR and CSOs were also mixed. Some CSOs felt threatened following the Commission’s establishment, viewing the Commission as a competitor and an institution that sought to take over their work. This threatened the possibility of establishing mutually beneficial relationships and may have affected the Commission’s effectiveness. The Commission overcame this hurdle by identifying a niche for itself, in consultation with CSOs (beginning with its initial strategic planning retreat), and coming out strongly as an ally in defending CSOs to carry out their work without intimidation. The Commission further extended its good will to local CSOs and worked on several investigations in partnership with them. Over time, CSOs ‘owned’ the Commission and collaborated with it in much of its work; used the Commission’s premises for strategic meetings and press conferences; and came to the Commission’s defence in times when it was under attack by vested interests.

The General Public

59. Generally, the Commission’s relationship with the public was good, but there were some sticky points. A recurrent issue was that of dealing with crime: the rights of the accused persons versus the rights of the victims of crime. The public on occasion accused the Commission of focusing on the former while forgetting the latter. One response to this complex web of realities and perceptions was when the Commission instituted discussions on how human rights practice should deal with issues of crime and human rights. Furthermore, even as the Commission was making robust arguments for protection of the rights of suspected criminals - for example by condemning extra-judicial killings, the Commission fulfilled what it understood as a principal role of its existence – that of seeking justice for victims. Indeed that was what drove the Commission’s investigations following the 2007-2008 post elections violence.

35. A long outstanding quirk of history which illustrates KNCHR’s challenges here involves its branding. The Commission’s clients to date confuse the state agency, KNCHR (Kenya National Commission on Human Rights) with the human rights NGO, KHRC (Kenya Human Rights Commission). KHRC was founded over a decade before KNCHR. Despite branding campaigns, confusion about the two commissions remains, even with the media attributing statements made by one commission to the other.

36. As already described in this report, the Commission undertook regular consultations with the public for example using its annual accountability statements.


The Media

60. The Commission maintained an amicable relationship with the media, which it utilized as an avenue to communicate to the public on diverse human rights issues. Kenyans were kept abreast of the Commission’s engagements with the state and the Commission’s stand on wide ranging issues: from profligacy in government, to extra-judicial killings. During times when relations with the state were bad, these media engagements were particularly valuable. However, this general picture did not obtain all the time, as there were times in the Commission’s life when the media bashed and/or misreported the Commission’s work or it was used by other actors in society for similar purposes. For instance, the media would routinely refer to KNCHR personnel as ‘activists’; criticize the Commission’s stand on extra-judicial killings by the police; or, in spite of numerous clarifications, confuse KNCHR with KHRC.

The private sector

61. KNCHR also recognized the need to protect individuals and communities against oppression and degradation perpetrated by non-state actors. The Commission was aware that its human rights mandate extended beyond the state to the private business sector as duty bearers. In March 2004, the Commission began focusing on Business and Human Rights. The Commission’s recognition that private enterprises were also violators of human rights was significant as it was the first time an NHRI in the region was investigating non-state actors. Working with the private sector was not easy, as it tended not to appreciate its role in the promotion of human rights. The Commission sought to break into this arena by using different means: such as its 2005 public inquiry on salt harvesting companies located in Magarini, Malindi; and by championing the clear inclusion of the private sector as duty bearers within the Bill of Rights in the Constitution.

International Development Partners

62. The Commission attracted critical financial and moral support from international development partners and continued to nurture these partnerships, which largely filled its resource gaps. The European Union and its member countries were particularly supportive.

39. Article 260 of the Constitution of Kenya 2010 defines ‘person’ to include ‘a company, association or other body of persons whether incorporated or unincorporated’; meaning that businesses too are bound by the rights and duties established in the Bill of Rights. This approach establishes a threshold even higher than that of the UN ‘Protect, Respect, Remedy’ framework.
Table 2: Donor Funding to the Commission (2004-2011)

<table>
<thead>
<tr>
<th>Donor</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>ActionAid</td>
<td>2,722,820</td>
</tr>
<tr>
<td>AusAID</td>
<td>5,030,071</td>
</tr>
<tr>
<td>British High Commission</td>
<td>8,816,553</td>
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<tr>
<td>CIDA</td>
<td>54,663,391</td>
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<tr>
<td>DFID</td>
<td>24,815,118</td>
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<tr>
<td>Embassy of Finland</td>
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<tr>
<td>Embassy of Norway</td>
<td>118,410,369</td>
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<tr>
<td>Embassy of Switzerland</td>
<td>740,400</td>
</tr>
<tr>
<td>EU</td>
<td>31,420,531</td>
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<tr>
<td>GJLOS</td>
<td>184,741,493</td>
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<tr>
<td>GTZ</td>
<td>30,525,953</td>
</tr>
<tr>
<td>ILO</td>
<td>7,672,592</td>
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<tr>
<td>NED</td>
<td>2,950,300</td>
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<td>OHCHR-ANHRI</td>
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<tr>
<td>OHCHR-ECOSOC</td>
<td>2,412,000</td>
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<tr>
<td>Royal Danish Embassy</td>
<td>1,174,038</td>
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<tr>
<td>Royal Netherlands Embassy</td>
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<tr>
<td>Sida</td>
<td>1,040,000</td>
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<tr>
<td>Trocaire</td>
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<td>UNDEF</td>
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<tr>
<td>UNESCO</td>
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<tr>
<td>UNHCR</td>
<td>5,137,553</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>617,218,191</strong></td>
</tr>
</tbody>
</table>

Source: Commission’s records
Engagements with International and Regional Human Rights Initiatives

63. The Commission learnt a lot from the engagements with older NHRI...
Dynamics of Note Within the Commission

66. This chapter would not be complete without mentioning the sometimes heated exchanges of views which the Commissioners had and which on occasion became public. Perhaps the single most public of these exchanges arose in 2010 when Commissioners unsuccessfully sought to remove their colleague Florence Jaoko from chairmanship of the Commission. On other occasions, Commissioners found it necessary to closely question the actions or statements of colleagues particularly when such colleagues’ remarks had been attributed to the Commission when in fact those remarks were personal to the speakers. Concerted attempts to finalise a code of conduct which would bind all Commissioners did not succeed; and binding Commissioners to performance contracts too remained an unattained aspiration.

67. Throughout all these difficult moments of the Commission’s life, what is definitely true is that Commissioners’ actions were driven by the desire to ensure that KNCHR would continue to deliver optimally on facilitating the protection and promotion of human rights in the country. The enthusiasms and innovations discussed in the next chapter show how easily individuals could fall short as they strained to do their best for the Commission and the country. Particularly poignant moments were had in the Commission’s boardroom: when in early 2008, as Commissioners and staff were training before being deployed to investigate the post election violence, it was reported that the killings had drawn as near as Naivasha; or when a human rights whistle-blower under the Commission’s protection, Bernard Kiriinya, was shot dead in cold blood; or when the Commission had to evacuate members of staff who were in actual physical danger because of their investigations work.
Chapter 3
Were We Good?

Introduction

68. This chapter focuses on the theme of the report, ‘it’s hard to be good’. It uses examples to explain the elemental successes of the Commission. The chapter uses three criteria to make its analyses: the Commission’s leadership of the human rights and social justice agenda; the innovative approaches the Commission used; and the extent to which its work had a transformative effect on the exercise of human rights in the country. The reader is invited to set this chapter side by side with the rest of the report and then respond to the question if indeed the Commission was good – whether it was an effective counterweight against human rights violations and a transformative bulwark for ensuring protection and promotion of human rights in the country.

Leadership of the Human Rights and Social Justice Agenda

69. From the moment the commissioners took up office in July 2003, they were in no doubt about the daunting task ahead. Though they expected political good will, it was also too early to rule out any change of mind. With hindsight, many of the Commission’s early decisions, such as the equalization policy and parsimony in financial expenditure, turned out to be valuable when the expected political good will from government began running out. The Commission began speaking truth to power from its first year of establishment and, by choosing to live by example; it insulated itself against the political backlash that ensued. Illustrations of how the Commission spoke truth to power are set out here.

70. In its Living Large series,40 the Commission detailed the extravagant expenditure by NARC government between the years 2003 when they took office to September of 2004. It reported that the government had used a total of 878 million shillings in the purchase of luxury cars largely for personal use by government officials. In naming and shaming errant public officers, the Commission hoped to draw attention to the stark contrast between the lavish lifestyles of senior state officers and poor people and, thereby influence changes in government expenditure.

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71. Following the findings of a taskforce chaired by Professor Makau Mutua, the Commission in partnership with human rights CSOs had been in the forefront advocating for the establishment of the Truth, Justice and Reconciliation Commission (‘TJRC’). The Commission’s view was that Kenya was in dire need of a commission that would spearhead reconciliation and ensure peace and serenity in the country. KNCHR advocated for a commission that would address the needs of Kenyans in a holistic manner. The TJRC was eventually established by The Truth Justice and Reconciliation Commission Act (No. 6 of 2008) to investigate gross human rights violations and other historical injustices in Kenya between 12 December 1963 and 28 February 2008.

72. The Movement for Political Accountability (‘MOPA’) campaign was instituted by the Commission from its recognition that poor leadership led to poor service delivery and institutional performance denying citizens the possibility of leading dignified lives. The Commission sought to influence presidential and other candidates aspiring to leadership in the 2007 general elections to sign the MOPA Charter which committed them to minimum leadership standards. MOPA had its challenges, and the Commission learned lessons from this engagement. For instance, the post election violence was proof enough that even though political leaders may sign onto commitments of good behaviour, this was not a sure guarantee of good behaviour in the actual electoral process. The need for more broad-based arrangements and a firewall between the Commission and its partners in other similar arrangements also arose. There was also an internal view in the Commission that the Commission had, with initiatives like MOPA, swung too far in the advocacy direction and needed to get back to a more balanced approach.

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42. The TJRC was a component of Agenda 4 of the National Accord that advocated for addressing historical injustices as a means of promoting national unity.
43. These were:
   • Commitment to equitable salaries in the public service;
   • Commitment to protect public resources from theft and waste;
   • Commitment to diligence in parliament;
   • Commitment to actively support transparency and access to information by the public; and
   • Commitment not to engage in inflammatory or hate speech along gender, race, religious, ethnic and/or other lines during campaigns or in any public function.
73. Preceding the general elections in the country in 2007, the Commission received several complaints of disappearances of persons and subsequent executions that were suspected to have been committed by the police force. The Commission undertook investigations into the alleged killings and on 5th November, 2007, released a preliminary report which linked the police to the disappearances and subsequent killings of about 500 people between June and October 2007. The Commission sent its report to the President and relevant government departments asking them to act on the findings. The Commissioner of Police, Commissioner Mohammed Hussein Ali, accused the KNCHR of lacking the expertise to carry out investigations labelling it a meaningless busy body out to accuse the police force falsely with baseless claims. The Commission though reiterated that executions as a strategy to deal with criminals defies fundamental human rights. The Commission’s approach was vindicated when the UN sent its Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, to Kenya to further investigate the allegations of extra judicial killings and report to the UN Security Council on its findings. The Special Rapporteur concluded that there were widespread and high levels of police killings. The killings were opportunistic, reckless, personal and planned.

74. In an apparent change of position, the government promised to act on the recommendations.

75. The Commission played a key leadership role for a NHRI when it investigated the actions of Kenya’s Defence Forces: NHRI elsewhere have tended not to engage against the actions of the military. The Mountain of Terror was a fact-finding report of a KNCHR mission following reports of atrocities committed by the joint Kenyan military and police force that was sent to Mount Elgon in February 2008 to intervene in land-related conflict and stop the activities of the Sabaot Land Defence Force (‘SLDF’). The Commission called for a criminal investigation of the allegations against the security forces. It recommended that there should be no amnesty to perpetrators of gross violations of human rights, whether by SLDF, the military or the police. It even recommended the suspension of the Kenyan Armed Forces from ongoing or future UN peace keeping operations on account of the violations.
76. Finally, following the outbreak of the 2007-2008 post elections violence, the Commission undertook a 6-month investigation into the violations of human rights. The report from this investigation, On the Brink of the Precipice: A Human Rights Account of Kenya’s Post 2007 Election Violence, was the first comprehensive account of the post election human rights violations; and this report was a primary material used both by local 47 and international investigations 48 of the violence.

Effectiveness in the Discharge of its Mandate

77. As KNCHR belongs to the larger body of NHRIs, it is important to reflect on the principles guiding the establishment and operations of such bodies and how KNCHR measures up to these ideals. The Paris Principles 49 provide broad guidelines on the competence and responsibilities of NHRIs; their composition and guarantees of independence and pluralism; methods of operation; and their status and quasi-judicial competence. 50 The Paris Principles though are the lowest common denominator, not the maximum benchmark, for NHRIs. 51 Their application will depend on the unique context of the particular NHRI. In order to answer the question whether (and by how much) KNCHR achieved the intentions of its creators, a more nuanced national measure is necessary based on the specific functions bestowed upon it by the Kenya National Commission on Human Rights Act, 2002.

78. The core mandate of KNCHR was: to further the protection and promotion of human rights in Kenya. KNCHR was an independent governmental institution with its mandate spelt out in The Kenya National Commission on Human Rights Act, 2002. Its commissioners enjoyed security of tenure and were free from any interference from the government - the Act stated that ‘The commission shall have all the powers necessary or expedient for the proper performance of its functions ... and shall not be subject to the direction or control of any other person or authority.’ The Commission was expected to play a key role in moving the country towards a human rights-respecting and social justice state.

47. KNCHR made extensive submissions to the Commission on Investigations of the Post Elections Violence (‘CIPEV’) appointed by the Government to investigate the violence; and it made its database accessible to that Commission. CIPEV cites KNCHR’s report widely.
48. The Prosecutor of the International Criminal Court (‘ICC’) used information gathered by the Commission as one of his sources when arguing his case for the confirmation of charges against six persons brought before the ICC on allegations of being key perpetrators of the post election violence.
49. Endorsed by the Commission on Human Rights in March 1992 (resolution 1992/54) and by the General Assembly in its resolution A/RES/48/134 of 20 December 1993
50. See Annex 3
Looking back at how the Commission has fared, from 28th July 2003 to 26th August 2011, it is possible to make an assessment of its work against its statutory functions; recognize its challenges; and therefore determine to what extent it has contributed to the transformation of Kenya into a human rights respecting and social justice state.

**Investigation and redress of human rights violations**

80. The Commission received and attended to 14,510 complaints of alleged rights violations. In exercise of its quasi-judicial jurisdiction, the Commission rendered judgment in a number of cases; one of which was the precedent setting case of Peter Makori.\(^5^2\) The Commission’s Complaints Hearing Panels were gradually emerging as a key forum where significant human rights issues could be canvassed. This mechanism however ground to a halt when a party brought before a hearing panel successfully got a judicial review decision determining that the sections of the rules used by the panels were ultra vires of the parent statute of the Commission.\(^5^3\)

**Inspection and visits to prisons and other places of detention**

81. The Commission conducted visits to police stations, posts and patrol bases on its own initiative or on the basis of reported complaints. These visits helped in monitoring the excesses of prisons and police officers towards suspects held in custody and occasionally resulted in the release of illegally confined persons. Even more important, the Commission’s subsequent interactions with relevant state agencies resulted in changes in correctional approaches for in-mates. The Commission’s advocacy for the establishment of an oversight mechanism for the police is finally paying off with the passage of a raft of legislation establishing new police institutions.\(^5^4\)

\(^5^2\) The petitioner, a journalist, alleged violations of his rights by State officials over a period spanning more than three years. In its judgment of 6th September, 2006, the National Commission awarded Peter Makori compensation of KSh. 5 million for acts of torture which the panel defined as violative in terms of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment read together with Section 73 of the former Constitution.

\(^5^3\) KCB v Waiyaki

\(^5^4\) These include the National Police Service Commission Act No. 30 of 2011 and The Independent Policing Oversight Authority Act No. 35 of 2011
Information and education on human rights

82. The Commission alongside other actors contributed to the gradual socialization of human rights into the public service. Trainings for public servants, judicial officers, police and prisons officers on human rights generally or the human rights based approach to development were conducted. Efforts to entrench training of public officers on human rights through public training institutions, such as the Kenya Institute of Administration, continued.

83. The Commission’s human rights journal, Nguzo za Haki, was a valuable resource on topical human rights issues. These focused on human rights questions of currency such as land and human rights; labour and human rights; human development; and human rights and business.

Recommendations to Parliament

84. The Commission published three State of Human Rights Reports, covering the 2003/4 period; A thematic report; and covering the 2008/10 period. The Commission also published six annual reports, for the 2004/5; 2005/6; 2006/7; 2007/8; 2008/9; and 2009/10 financial years. These reports were submitted to Parliament and contained recommendations on measures for more effective promotion and protection of human rights. The Commission also reviewed draft legislation and submitted advisories to Parliament on how to ensure human rights content was captured effectively in those bills.

Awareness of civic responsibilities and appreciation of rights and obligations

85. The Commission viewed corruption as one of the critical impediments to the realization of human rights. It took the lead in profiling corruption as a human rights issue. It prepared a series of publications aimed at publicizing the cost and other human rights dimensions of the illegal and irregular allocation of public land as reported in the Ndung’u Report; the illegal and irregular allocations of state corporations’ land; and wasteful and lavish spending in the public service.

55. In partnership with the Kenya Magistrates and Judges Association.
Chief agency for compliance with state human rights obligations

86. Kenya has a strong record of ratifying international human rights treaties and regional human rights treaties. Kenya’s record with regards to submitting regular periodic reports on the progress made in realizing its obligations under various treaties was dismal before the establishment of KNCHR. The Commission has sought that every report due to every treaty body be submitted on time. At the same time, following the conclusion of Kenya’s review by its peer states under the Universal Periodic Review (‘UPR’) mechanism at the Human Rights Council in September 2012, KNCHR which performed a central role in the UPR process received numerous invitations to inform the review process in other countries, including Rwanda, Tanzania and Uganda. Individuals from the Kenya process have also been invited to UPR conferences and workshops where they have shared their experiences.

60. For example, in March 2005 when Kenya’s second periodic ICCPR report was considered, the Human Rights Committee welcomed it but regretted that it was 18 years late.

61. The UPR is a mechanism under which the UN Human Rights Council examines the situation of human rights in each state after every four years by reviewing the fulfilment of human rights obligations and commitments made by all the UN member states. It is a state-driven process in which non-governmental organisations have a limited role and the states under review have the right to accept or reject the recommendations made by other states during the review.
Table 3: Reporting Status of Core International and Regional Human Rights Instruments to which Kenya is Party

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Information</th>
<th>Reporting Status</th>
</tr>
</thead>
</table>
| International Covenant on Economic, Social and Cultural Rights (ICESCR) | • Opened for Signature 19/12/1966  
• Entered into force on 3/01/1976  
• Kenya acceded on 1/05/1972 with a reservation to article 10(2) | • Initial report due in 1995  
• Initial report submitted in 2006  
• 2<sup>nd</sup> report not yet submitted |
| International Covenant on Civil and Political Rights (ICCPR) | • Opened for Signature 19/12/1966  
• Entered into force on 23/03/1976  
• Kenya acceded on 1/05/1972 | • Initial report due in 1977  
• Initial report submitted in 1979  
• 2<sup>nd</sup> report due in 1986  
• 2<sup>nd</sup> periodic report submitted on 27/09/04  
• 3<sup>rd</sup> report due for consideration by the Committee |
| International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) | • Entered into force on 4/01/1969  
• Opened for signature on 21/12/1965  
• Kenya acceded on 13/08/2001 | • Initial, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> reports due in 2002, 2004, 2006 and 2008 respectively.  
• Combined report submitted in 2010, considered in August 2011 |
<p>| Convention against Torture and Other Cruel, Inhuman or | • Opened for signature 10/12/1984 | • 1&lt;sup&gt;st&lt;/sup&gt;, 2&lt;sup&gt;nd&lt;/sup&gt; &amp; 3&lt;sup&gt;rd&lt;/sup&gt; reports due in 1998, 2002 and 2006 |</p>
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<tr>
<th>Instrument</th>
<th>Information</th>
<th>Reporting Status</th>
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<tr>
<td>Degrading Treatment or Punishment (‘CAT’)</td>
<td>• Entered into force on 26/06/1987</td>
<td>• Report submitted in 2007 and considered in 2008</td>
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<td></td>
<td>• Kenya acceded on 21/02/1997</td>
<td>• 2&lt;sup&gt;nd&lt;/sup&gt; report due in 2012</td>
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<td>Convention on the Elimination of All Forms of Discrimination against Women (‘CEDAW’)</td>
<td>• Opened for signature 1/03/1980</td>
<td>• Initial &amp; 2&lt;sup&gt;nd&lt;/sup&gt; reports due 8/04/1985 &amp; 8/04/1989</td>
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<td></td>
<td>• Entered into force on 3/09/1981</td>
<td>• Initial &amp; 2&lt;sup&gt;nd&lt;/sup&gt; reports submitted in 1990</td>
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<td></td>
<td>• Kenya acceded on 9/03/1984</td>
<td>• 3&lt;sup&gt;rd&lt;/sup&gt; &amp; 4&lt;sup&gt;th&lt;/sup&gt; reports due 1993 &amp; 1997</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• 3&lt;sup&gt;rd&lt;/sup&gt; &amp; 4&lt;sup&gt;th&lt;/sup&gt; reports submitted on 5/01/2000</td>
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<tr>
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<td>• 5&lt;sup&gt;th&lt;/sup&gt; report due in 2001</td>
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<td>• 7&lt;sup&gt;th&lt;/sup&gt; report submitted in 2009 and considered in 2011</td>
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<td></td>
<td>• Entered into force on 2/09/1990</td>
<td>• Initial report submitted in 2000</td>
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<td></td>
<td>• Kenya signed on 26/01/1990</td>
<td>• 2&lt;sup&gt;nd&lt;/sup&gt; report due in 1997</td>
</tr>
<tr>
<td></td>
<td>• Ratified on 30/07/1990</td>
<td>• 2&lt;sup&gt;nd&lt;/sup&gt; report submitted in 2005</td>
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<tr>
<td></td>
<td></td>
<td>• 3&lt;sup&gt;rd&lt;/sup&gt; report due in 2012</td>
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<td>Reporting Status</td>
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<tr>
<td>------------</td>
<td>-------------</td>
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</tbody>
</table>
| Convention on the Rights of Persons With Disabilities (CRPD) | • Opened for signature on 30/03/2007  
• Entered into force on 3/05/2008  
• Kenya signed the Convention on 30/3/2007  
• Kenya ratified the Convention on 19/05/2008 | • 1st Report due 2010  
• 1st report submitted in December 2011 |
| African Charter on Human & Peoples’ Rights | • Opened for signature on 27/06/1981  
• Entered into force on 21/10/1986  
• Kenya ratified on 23/01/1992 | • 1st report submitted in May 2007 |
| African Charter on the Rights & Welfare of the Child | • Opened for signature on 11/7/1990  
• Entered into force on 29/11/1999  
• Kenya ratified on 25/07/2000 | • Kenya has not submitted any report |

Source: Various, including [http://www1.umn.edu/humanrts/research/ratification-kenya.html](http://www1.umn.edu/humanrts/research/ratification-kenya.html)
Innovative Approaches by the Commission

87. The success and reputation of the Commission owed a great deal to the expertise of its commissioners and staff; commitment; consistency; diligence; and the mix of methodologies and strategies which it employed in its work. The Commission’s effective leadership of state transformation is also in part attributable to the innovative approaches it employed to undertake its mandates.

88. As described in chapter two, the Commission embraced an equalization policy for all Commission personnel. It adopted a policy of parsimony rather than profligacy and entitlement, for example eschewing the luxury cars they were entitled to in favour of more inexpensive but functional cars; and declining the use of bodyguards and drivers. KNCHR also had a strong focus on pro-poor human rights work. These policy decisions projected the Commission as an institution that did not support wasteful spending, one caring about the taxpayers’ burden and prepared to walk its talk. The decision by some of the commissioners\(^62\) in 2009 to submit to taxation of their allowances before this was a legal requirement added to these critical innovations. KNCHR was therefore able to be in the forefront in calling for MPs to pay taxes on their allowances. This was received positively by the public and supported by CSOs. It is necessary here to note that the state used the tax issue to unfairly target the Commission. In 2009, the Ministry of Public Service decided that Commissioners should not only pay tax on their allowances (which indeed Commissioners did not contest), but that taxation on allowances should be back-dated to the beginning of Commissioners’ contracts. The effect of this was to leave Commissioners with huge tax arrears which they had to keep paying throughout their time in office. Commissioners felt that the state was effecting this punitive measure because of the firm approach taken by KNCHR on various human rights situations, including the post election violence.\(^63\)

\(^{62}\) Commissioners Florence Jaoko, Wambui Kimathi and Fatuma Ibrahim.

\(^{63}\) Commissioners have challenged the legality of that retrospective application of taxation on their allowances.
KNCHR adopted a unique and liberal outlook in the interpretation of the Paris Principles. The Commission envisioned itself as a human rights defender and protector in a country where human rights violations had been the norm for decades. Upon realization that different NHRIs interpreted the Paris Principles differently, the Commission resolved to fulfill its mandate in a manner unique to Kenya and, from the very start, struck the right chord with the Kenyan public. While the efficacy of some of the adopted methods is still debatable, it is uniquely Kenyan-inspired.

For instance, the practice among other NHRIs in the region and as stipulated in the Paris Principles encourages the issuance of summons to persons suspected to have committed human rights violations. The Commission successfully used summonses on a number of occasions: for example during the 2005 Malindi inquiry when officers from the Ministry of Lands among others adhered to summonses from the Commission. However, following instances where summoned officials failed to turn up, the Commission resorted to publicly confronting alleged violators by naming and shaming them. Although this strategy has since been questioned for the consequences it had for the Commission’s relationship with the state, it confirmed the Commission as an independent and fearless protector of the rights of individuals and communities. Related to this, the Commission also attempted the innovation of prosecuting officials who failed to abide by the law for example by denying it access to police cells.

The Commission developed and maintained the use of public accountability forums as part of its accessibility to Kenyans. Through these public ‘barazas’, the Commission explained its successes, challenges and activities to the public who in turn scrutinized and critiqued the information, giving feedback to the commission. These forums enhanced and maintained the visibility of the Commission among Kenyans. These were supplemented annually with the Commission’s Public Accountability Statement in which the Commission highlighted its successes and challenges, openly and in simple language.

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64. For example police officers summoned before the Commission’s complaints hearing panels.
65. In one such instance, the AG entered a nolle prosequi to terminate a case where the Commission was prosecuting two police officers who had declined to allow a Commissioner access to police cells.
92. One other innovation of note which the Commission introduced to manage internal relationships were meetings which came to be called ‘kamukunjis’. Fairly early following its establishment, Commissioners found it valuable to provide a safe space within the Commission where staff and Commissioners could engage each other on matters which either deemed important without being constrained by strict protocol or rank. KNCHR began to hold regular (mostly at least twice annually) meetings where staff and Commissioners articulated the mutual concerns they had about the wellbeing of the Commission. Candid exchanges were had during these meetings covering varied issues – from institutional performance to personal conduct. Action points would be negotiated and drawn up before later being processed formally through the Commission’s organs. While it is the case that some Commissioners were on occasion not enamoured by feedback from Kamukunjis, this innovation served the important function of airing mutual concerns without the need for a formal record.

93. Finally, in 2008, the Commission sought the help of a senior human rights personality to ‘mediate’ issues which had engendered internal tensions amongst Commissioners. This mediation as a valuable innovation helped the Commission to navigate around difficulties it was experiencing when a new cadre of Commissioners joined the Commission in 2007 following which KNCHR’s first chairperson, Maina Kiai, exited the Commission in 2008.
Chapter 4
The Commission’s Legacy, Opportunities and Limitations

Introduction

94. The Commission has, without doubt, lived up to the vision of its creators. It has not only taken the discourse on human rights in Kenya to a higher level than existed in the period preceding its formation but also expanded it and given it a clear linkage to social justice. Although its work has not been an unqualified success, due to the various challenges highlighted in this report, it is a sound basis on which the successor Commission can build to discharge its mandate. The successor Commission can also cash in on its predecessor’s national and international good will, such as the Commission’s A-status accreditation by the International Coordinating Committee of NHRI{s}, for the influence and clout that is a quintessential ingredient in successful human rights and social justice work.

95. The Commission’s eight years of work have produced a wide array of approaches and methodologies that are evident in the preceding chapters. From these approaches and methodologies, the Commission has achieved results; experienced challenges; and learned lessons in the course of the performance of its mandate. In this chapter, we summarize the approaches and methodologies that emerged as Commission good practice in those years. The chapter also describes the processes that the Commission is implementing (or needs to implement) to ensure a smooth transition to the successor Commission, with a view to retaining institutional memory and guaranteeing a successful transition overall which can also serve as learning points for similarly placed institutions.

Protecting a Sound Legacy

96. **Establish strong founding values and live by them:** The Commission’s legitimacy, respect and credibility were earned through hard work and sweat guided by values and principles. The Commission’s founding values laid a strong basis for an institution that could speak truth to power because it had done its own internal house cleaning. The highest public and CSO support for the Commission was clearly in the days when its legitimacy and credibility were not in doubt. The equalization and parsimony measures were the best public indicator of how deep the Commission’s sense of values ran.

97. Every measure that the Commission takes to illustrate conformity with its values and to strengthen their application in its work will continue to build onto its currently formidable social capital and ensure its continued independence, not only in law (which is assured) but also in fact. These values are also useful for managing conflict within the Commission.

98. **Accountability begins from the inside:** Strong performance accountability measures carried the Commission through rough waters. Although the Commission’s first year of work produced a huge number of audit queries, none of them was image-denting. The professionalism of its commissioners and staff enabled the Commission to achieve a lot with little. Its open-door policy and commissioners/staff kamukunjis (open meetings) were a valued part of its human resource management practice.

99. The Commission needs to guard against any slippages in accountability for performance. Any measures to improve accountability from current levels will be a worthwhile investment for a body whose daily duty is to hold others to account.

100. **Build internal ownership of mandate continually:** The Commission was able to maintain unity when there was the broadest agreement on its mandate, values and modus operandi. Not that this was always the case, but the less the conflicting interpretations, the better. The reverse is equally true. Clarifying a mandate is not a static thing that happens and the institution lives happily ever after. On the contrary, it needs to happen whenever conditions arise that require it, such as the arrival of new commissioners, at every strategic planning event, every time the interpretation of that mandate is publicly challenged and so on. The, at times, stormy exchanges and differing interpretations were an opportunity to clarify things and build broad ownership, at the level of the commissioners as well as with the staff but also with external stakeholders.
101. **Understand public sector principles:** This was one of the lessons the Commission learned the hard way. But it should not be seen from a negative sense (that is, the avoidance of problems) only. Understanding Government regulations is critical because the Commission though Independent, is a public body and therefore subject to public financial management and procurement regulations. Understanding those regulations is therefore a sine qua non for its effective engagements with other public bodies.

102. **Stick to your knitting, but keep an eye on the broader governance reform environment:** The Commission has a mandate on human rights; which it has interpreted broadly and stretched its actions in the pursuit of that mandate. The Commission’s work on corruption as a human rights issue and on the use of cultural institutions to facilitate exercise of human rights by the most vulnerable in society is good examples. This paid dividends beyond what a narrow interpretation would have achieved. The Commission will therefore see the fruits of its work on police reform not because its inspections and visits improved over time, but chiefly because it focused on the wider constitutional reform process and advocated for police reform. Its advocacy on electoral reforms will also reduce election-related human rights violations.

103. **Seek and maintain a programming balance:** Looking at the Commission’s work over the last eight years, it is possible to conclude that the Commission did not always have a sense of balance. This should come as no surprise, since institutional balance is not easy to attain and maintain. The debates currently going on within the Commission on the need to balance between oversight and advisory work; between promotion and protection; between naming/shaming and negotiating; and so on are healthy and present the Commission with an opportunity to ensure better effectiveness in its work. Maintaining a balance does not mean sacrificing one end for the other; it is not an either/or question. It requires the Commission to look at the seeming (or actual) competing priorities and allocate them in a manner that is justified by the prevailing circumstances, lessons learned and other considerations. At varying points in time, the Commission may therefore have an equal measure of advisory/oversight work (to the extent that it is possible to objectively measure), or more advisory work, or more watchdog work and so on – the question of balance is whether the degree of one over the other is justified in the circumstances.
104. **Clarify ‘board’ and management separation:** KNCHR has both a governance body of full-time commissioners and a professional management team led by the Commission Secretary. Though a challenging corporate model, especially in view of the trend of removing Executive Chairmen in state corporations, it is not unique to KNCHR – most commissions are similarly modelled, with the only exceptions being commissions in which some of the commissioners work part-time. The enabling statute demands that commissioners work full-time. Leadership will be required in discussing and agreeing on how to model board-management separation that is critical in dealing with the governance conflicts, supervision gaps, turf wars, blurred reporting lines and weak accountability (both vertical and horizontal) that still bedevil the Commission in varying degrees.

105. **Institute accountability from the top:** The Commissioners should put in place mechanisms for horizontal accountability at the commissioners/board level and hold each other accountable for delivering on their leadership responsibilities. Mechanisms for vertical accountability to the Chairperson and the secretariat in respect of programme work, conduct and compliance with institutional regulations should be put in place. This should include the finalization of a comprehensive policy to govern commissioner-level responsibilities, a Code of Conduct for Commissioners, job descriptions and performance measures for the Chairperson and commissioners. The Chairperson, as first amongst equals, should be responsible for overseeing conformity to the agreed framework. Indeed the framers of The Kenya National Commission on Human Rights Act, 2011, seem to have had this in mind when Section 13(2) of the Act assigned the chairperson the duty to ‘supervise and direct the work of the Commission’.

106. **Strengthen field offices and devolve services further:** The two field offices in Wajir and Kitale have their own unique challenges, in addition to the systemic problems at the centre. As the successor Commission thinks through the modalities for devolving its services to the counties, it should also make efforts to address the challenges of the current regional offices (which could be its first county offices) and internalize lessons learned from their experiences.

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67. See 14 (2), KNCHR Act 2011
107. **Strengthen engagement with Treasury:** The engagement with Treasury has traditionally been done exclusively by senior management, mostly the Commission Secretary and/or Deputy Commission Secretary and the Finance Manager. This differs sharply from the practice of other commissions where the engagement is a mix of commissioners (sometimes even the Chairperson) and senior management. Given the need for the Commission to obtain sufficient resources for its work from Treasury, this engagement has to be stepped up, and led by either the Chair or a commissioner assigned the lead role in fundraising efforts, supported by senior management.

**The Constitutional Commission**

108. The Commission, as aforesaid, has been a vocal participant in Kenya’s constitutional reform. It therefore comes as no surprise that The Constitution of Kenya, 2010, in Article 59 establishes KNHREC. Parliament has since given effect to article 59 by establishing KNCHR, CAJ and KNGEC. This latest development did not come without challenge from the Commission, which saw in the move to establish 3 commissions further evidence of official wastefulness. KNCHR argued for one commission, KNHREC, to handle all aspects of human rights abuses while MOJNCCA, the National Gender and Development Commission and the Public Complaints Standing Committee argued for three separate entities. KNCHR’s position was that the country should maintain only one commission and probably add the number of staff and reduce the number of commissioners. In the commission’s view, this step would first save the tax payer a substantial sum of money that could be used in meaningful development work. Second the move would establish one focal point for human rights work, given that the Paris Principles did not anticipate multiple NHRIs in one country. The Commission will now endeavour to build on the gains in the Constitution and its new enabling legislation and work in harmony with CAJ and NGEC.

109. A discussion of the successor Commission’s mandate by the staff and commissioners is not only critical in this transition period, but is also an opportunity to settle some disparate visions of what the mandate of the Commission is and should be. It is an opportunity, for instance, to settle the competing views on balancing protection vis-à-vis promotion work; balancing watchdog and advisory roles; and appropriate programming approaches. This needs to be done and finalized before, or as part of the process of, the
development of the successor Commission’s first strategic plan. It is only when such an understanding has been reached that it will be possible to clarify and reach further agreement on other seemingly challenging institutional issues like the programme structure.

110. The successor Commission’s partnerships and networking strategy must, of necessity, include forging working relationships with its two sister commissions. This will enable the successor Commission to determine areas of exclusive jurisdiction; areas of concurrent jurisdiction and how to manage the same to avoid mandate conflicts; and mechanisms for referrals, including survival of claims, investigations and other actions. In addition to renewed overtures to other departments undergoing reform, such as the police service and the Directorate of Public Prosecutions, this should enable the Commission to be more effective in the delivery of its mandate.

111. The requirement to devolve services to the county presents a challenge given the current resource profile of the Commission, but this may improve. It should nevertheless be seen as an opportunity to make the case for an additional number of regional offices, even if it means grouping some counties in the initial period of this accelerated decentralization. It is also an opportunity to develop partnerships with the other article 59 commissions on shared goals, programmes, offices and staff at the county level.

Managing the Transition

112. On August 27, 2011, the Kenya National Commission on Human Rights Act, 2011, came into operation. The Commission is expected to assume its new mandate under the Act, still on human rights but now better-defined; take advantage of the independence it enjoys as a constitutional commission; hand over matters in its possession that could more appropriately be dealt with by CAJ and NGEC; and so on. In short, the successor Commission is being born and the predecessor is dying.
113. Already, the Commission has witnessed changes at the top. The terms of the Chairperson and 3 commissioners expired on 9th January 2012. This means the Commission has a vacancy in the office of Chairperson, which requires to be filled in accordance with the provisions of the Act. The terms of 4 other commissioners expire in November 2012, creating further vacancies to be filled in accordance with the Act. The Commission needs to think through the succession issues that are raised by this staggered transition in the Commission’s leadership. For instance, when is the right time to think through a strategic plan for the successor Commission, in 2012 or 2013? How will the new commissioners be inducted?

114. The Commission also needs to take time to understand its new mandate better. What substantive aspects of it have changed, and how? Should the commission still do business the same way or should it make fundamental changes, even before the development of a new strategic plan? What, if any, should those changes be?

115. The Commission should also develop a plan for how to hand over functions and matters that will now be properly the province of its sister chapter 59 commissions. As it is the one that pre-exists all of them, it helps to show leadership by crafting a plan even if a tentative one to be modified in consultation with CAJ and NGEC.
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<thead>
<tr>
<th>Name</th>
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<tr>
<td>Maina Kiai</td>
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<td>Tirop Kitur</td>
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<td>29th July 2003</td>
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<td>29th July 2007</td>
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<td>29th July 2003</td>
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<td>Commissioner</td>
<td>29th July 2003</td>
<td></td>
<td>28th November 2007</td>
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<td>Godana Doyo</td>
<td>Commissioner</td>
<td>29th July 2003</td>
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<td>Fatuma Dullo</td>
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<td>28th November 2007</td>
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<tr>
<td>Anne Kyalo Munyieva-Ngugi</td>
<td>Commissioner</td>
<td>29th July 2003</td>
<td></td>
<td>28th November 2007</td>
</tr>
<tr>
<td>Mohammed Hallo</td>
<td>Secretary</td>
<td>4th May 2009</td>
<td></td>
<td>4th May 2014</td>
</tr>
</tbody>
</table>

Annex 1: List of Commissioners and Secretaries (2003 - 2011)
Annex 2: List of Publications

Reports

a status report on prisons reforms in Kenya.


20. KNCHR (2007). Objects of pity or individuals with rights: the right to education for children with disabilities


23. KNCHR (2007). Luo culture and women’s rights to own and inherit property.


29. KNCHR (2009). Simplified version of the report of the National Task Force on Police Reforms


35. KNCHR (2011). The Rights of Internally Displaced Persons

**Institutional Documents**

Magazines
2. Nguzo za Haki, Issue 2: Business and Human Rights
Annex 3: The Paris Principles

Principles relating to the Status of National Institutions (The Paris Principles)
Adopted by General Assembly resolution 48/134 of 20 December 1993

Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

3. A national institution shall, inter alia, have the following responsibilities:
   (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
      (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
      (ii) Any situation of violation of human rights which it decides to take up;
      (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
(iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

(b) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
(b) Trends in philosophical or religious thought;
(c) Universities and qualified experts;
(d) Parliament;
(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution’s membership is ensured.

**Methods of operation**

1. Within the framework of its operation, the national institution shall:
   (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner,
   (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
   (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
   (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly concerned;
   (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
   (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);
(g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Additional principles concerning the status of commissions with quasi-jurisdictional competence

1. A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

   (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

   (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

   (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

   (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.
# Annex 4: List of People Interviewed

<table>
<thead>
<tr>
<th>Name</th>
<th>Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Florence Jaoko</td>
<td>Chairperson</td>
</tr>
<tr>
<td>Hassan Omar Hassan</td>
<td>Commissioner</td>
</tr>
<tr>
<td>Lawrence Mute</td>
<td>Commissioner</td>
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<td>Wambui Kimathi</td>
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<td>Samuel Tororei</td>
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<td>Catherine Mumma</td>
<td>Former Commissioner</td>
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<td>Khelef Khalifa</td>
<td>Former Commissioner</td>
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<tr>
<td>Mohammed Hallo</td>
<td>Secretary</td>
</tr>
<tr>
<td>Carol Abong</td>
<td>Deputy Commission Secretary</td>
</tr>
<tr>
<td>Rose Kimotho</td>
<td>Senior Human Rights Officer</td>
</tr>
<tr>
<td>Janice Misoi</td>
<td>Human Rights Officer</td>
</tr>
<tr>
<td>Kamanda Mucheke</td>
<td>Regional Coordinator, Wajir Office</td>
</tr>
<tr>
<td>Kevin Luyegu</td>
<td>Human Rights Officer</td>
</tr>
<tr>
<td>Jaffar Mohammed</td>
<td>Former Staff, Wajir Office</td>
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<tr>
<td>Bernard Kibet</td>
<td>Regional Coordinator, Kitale Office</td>
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<td>Dominic Rono</td>
<td>Human Rights Officer, Kitale Office</td>
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<td>Washington Barasa</td>
<td>Human Rights Officer, Kitale Office</td>
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<tr>
<td>Emily Rotuno</td>
<td>Former Staff, Kitale Office</td>
</tr>
<tr>
<td>John Komen</td>
<td>Office Assistant, Kitale Office</td>
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<tr>
<td>Alice Nderitu</td>
<td>Former Staff</td>
</tr>
<tr>
<td>Linda Ochiel</td>
<td>Former Staff</td>
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## Annex 5: Chronology of Key Events

<table>
<thead>
<tr>
<th>Year</th>
<th>Key Events</th>
</tr>
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| 2003 | Appointment of KNCHR commissioners  
Transition from SCHR to KNCHR  
Development of first strategic plan commences  
GJLOS Inception  
Free Primary Education |
| 2004 | First strategic plan launched  
Anglo- Leasing scandal  
Inaugural issue of “Nguzo Za Haki” journal  
Establishment of task force to coordinate police reforms |
| 2005 | KNCHR & KHRC partnership to monitor 2005 referendum  
2005 referendum report  
Standard Group raid  
Draft hate speech legislation  
ICC accredits KNCHR with an A status  
KNCHR hosts the secretariat of NANHRI  
The Mungiki menace and the rise of extra-judicial executions  
Development of the first Human Resource and Administration Manual |
| 2006 | Replacement of four Commissioners who exited  
Northern Kenya Regional Office established  
Living Large reports  
“Beyond the open door policy ” report |
| 2007 | North Rift Regional Office Opened in May  
Formation of MOPA  
Next four Commissioners exit and reappointed or replaced  
Behaving Badly report and Still Behaving Badly report  
General Elections |
| 2008 | Post-election violence and political instability  
First chair leaves the Commission  
Kriegler and Waki Commissions established  
Operation Rudi Nyumbani  
Mountain of Terror report  
On the Brink of Precipice report |
<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
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| 2009 | Leadership wrangles within KNCHR  
Ransley Task Force  
KNCHR appoints a new Commission Secretary  
TJRC formed  
Second Human Resources and Administration Manual  
Development of second strategic plan  
Kenya Stakeholders Coalition-UPR established on 10th March 2009 and submits national UPR Report on 2nd November 2009 |
| 2010 | Constitutional referendum  
New Constitution for Kenya, including establishment of KNHREC  
Landmark decision in Endorois Case by the ACHPR  
Kenya’s UPR report adopted by the UPR working group |
| 2011 | KNCHR Act, 2011 is passed  
ICC preliminary hearings for the “Ocampo 6” |

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<th>INCOME</th>
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<td>5,758,032</td>
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