ADVISORY MEMORANDUM TO THE BUILDING BRIDGES INITIATIVE

PRESENTED TO:

THE BUILDING BRIDGES INITIATIVE SECRETARIAT

6th August, 2019
I. Introduction

1. The Kenya National Commission on Human Rights (“KNCHR” or “National Commission”) is an independent National Human Rights Institution established under Article 59 of the Constitution and operationalized under the KNCHR Act, 2011. KNCHR is accredited by the Global Alliance of National Human Rights Institutions as an ‘A status’ institution and is a member of the Network of African National Human Rights Institutions (NANHRI). KNCHR was granted affiliate status by the African Commission on Human and Peoples’ Rights (ACHPR) since 2004.

2. The National Commission has a broad mandate to promote a culture of respect of human rights in the Republic of Kenya. The operations of the National Human Rights Commission are guided by the United Nations Paris Principles on the establishment and functioning of independent national human rights institutions commonly referred to as the Paris Principles.

3. This submission is made pursuant to the Commission’s mandate and in response to the invitation by the Building Bridges Initiative. In this submission, the Commission discusses the core issues as follows:

   a) Ethnic antagonism and competition
   b) Lack of a national ethos
   c) Inclusivity and devolution
   d) Divisive elections
   e) Safety and security
   f) Corruption
   g) Shared prosperity
   h) Responsibilities and rights

II. Recommendations for Consideration by the BBI

A. Ethnic antagonism and competition

4. In 1992, Kenya held its first multi-party election in 26 years. Since the re-introduction of multiparty politics, ‘negative ethnicity politics’ has been blamed for the country’s political tribulations. This has led to a system under which leaders channel government resources to their ethnic supporters to ensure their political survival. In turn, their supporters begin to feel entitled to government resources. The politics of ethnicity therefore become an inter-community competition, not merely for representation in governance, but for resources. The bitter contests witnessed every
election cycle can be largely attributed to the possibility of attaining control of state resources and being in-charge of their allocation.

5. The Constitution of Kenya (2010), the country’s supreme law, envisages a society in which ethnic identity is a force for good. It proceeds from the premise that individuals and communities are proud of Kenya’s — ethnic, cultural and religious diversity and are determined to ‘live in peace and unity as one indivisible sovereign nation’. More importantly, the Constitution contains provisions directly addressing the question of ethnic identity in politics and governance. These include article 27(4) of the Constitution which provides that the State shall not discriminate directly or indirectly against any person on any ground including ethnic or social origin, and articles 56 on affirmative action for minorities and marginalized groups and article 21(3) on the duty of State organs to address the needs of vulnerable groups. These constitutional provisions are further fleshed out in a string of legislative enactments as will be discussed in these submissions.2

6. National unity is paramount if we are to achieve any meaningful economic and social development and security. The words of Martin Luther King, Jr. are apposite in this regard; “We must learn to live together as brothers or perish together as fools”. As our recent history would have it, consolidating national cohesion and unity was one of the items under Agenda 4 of the Kenya National Dialogue and Reconciliation Agreement3 that birthed the extant National Cohesion and Integration Commission.4 Sadly, national cohesion still remains elusive and Kenya ‘continues to grapple with the challenge of social unification into one truly cohesive nation’.5

7. The National Cohesion and Integration Commission (NCIC) has published a number of reports and issued recommendations on addressing ethnic antagonism and competition. These reports include the following: ‘Ethnic and diversity audit of the County Public Service, 2016’; ‘Ethnic and diversity audit of parastatals, 2016’ and ‘Ethnic and diversity audit of Commissions, 2016’. The findings in these reports demonstrate that discriminatory practices in hiring in the public service at both national and county government levels continue to exist. This goes against the national values and principles of governance laid down in articles 10 and 232 of the Constitution. These include a) patriotism, national unity, sharing and devolution of

---

3 The Agreement was signed on 1st February 2008 to end the post-election violence following the 2007 disputed Polls.
4 The NCIC established under the National Cohesion and Integration Act, 2008 (No. 12 of 2008) whose main object is to promote equality n opportunity, promote good relations, harmony and peaceful co-existence between persons of different ethnic and racial communities in Kenya.
power, the rule of law, democracy and participation of the people; b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized; c) good governance, integrity, transparency and accountability; and d) sustainable development.

8. Ethnic antagonism and competition is also demonstrated in the operations of political parties. By way of background on this issue, the 2009 population census placed Kenya’s total population at 38.6 million. Like the five national population surveys preceding it, the 2009 census revealed that five large ethnic groups account for more than 66% of the country’s total population. The ‘Big Five’, as they are sometimes called, are: Kikuyu (17.7%), Luhya (14.2%), Kalenjin (13.3%), Luo (10.8%), and Kamba (10.4%). Other relatively big ethnic groups are the Somali (6.4%), Kisii (5.9%), Mijikenda (5.2%) and Meru (4.4%). This ethnic configuration has direct implications on Kenyan politics, and especially, on the formation of political parties or coalitions and voting patterns. 6 Political parties draw the majority of their membership from and are founded to basically advance the interests of specific ethnic groups, and by extension, to counter the interests of perceived ‘enemy’ ethnic groups.

In the light of the above, the Commission makes the following recommendations on addressing ethnic antagonism and competition:

**Recommendations**

i. We recommend that the functions of the NCIC should be merged with the National Steering Committee on Peace Building housed under the Ministry of Interior and Coordination of National Government. In the alternative, Parliament should urgently finalize on the review of the National Cohesion and Integration Commission Act to align the same with the Constitution.

ii. The government should implement recommendations of reports published by the National Cohesion and Integration Commission (including the ‘Ethnic and diversity audit of the County Public Service, 2016’; ‘Ethnic and diversity audit of parastatals, 2016’; and the ‘Ethnic and diversity audit of Commissions, 2016’) in order to build cohesion in the long term.

iii. The Office of the Registrar of Political Parties should be strengthened by the appointment of a substantive holder, delinking the office from the electoral body, and allocating it sufficient resources.

---

6 Kenya Human Rights Commission ‘Ethnicity and Polarization in Kenya’
B. Lack of a national ethos

9. Kenyans gave themselves and future generations a progressive Constitution with an expansive Bill of Rights. Imbibed in the body and soul of the Constitution are the national values and principles of governance which are the foundation of our Republic. By promulgating the close to a decade-old document, Kenyans recognized the ‘aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law.’ Indeed, so fundamental are the National Values and Principles of governance that they define our identity as a nation. They are: ‘...fundamental beliefs of a nation guiding the choices, actions and behaviour of its citizens. They exert influence on the way citizens relate with each other and how communities engage with others. They impact the pace and direction of national development. Indeed, what will set Kenya apart as a great nation are the qualities of her people, and the values they uphold.’

10. The National Commission notes that despite these progressive values, Kenya continues to be plagued by violence, corruption, negative politics and pervasive inequality. To reverse these trends, the country must make efforts to infuse a culture of patriotism: love peace and unity. This should be infused first through the education system and the public service and ultimately through the private sector. These efforts will result into a nation that is patriotic and thus committed to protection and promoting Kenya as a country that is sovereign, peaceful and development conscious.

To address the lack of a national ethos, the Commission makes the following recommendations.

Recommendations

i. The Public Service Commission should ensure strict adherence to Articles 10 and 232 of the Constitution.

ii. It is commendable that the new Competency Based Curriculum introduces Human Rights Education in grades 1, 2, and 3. The Commission calls for the inclusion of Human Rights Education in the higher grades as well. Additionally, Article 10 values should be deeply inculcated in the curriculum.

iii. The government should ensure that it meets its international obligations under the various treaties in a timely manner. Examples of conventions under which the State has delayed in reporting include the International Convention on Civil and Political

---

8 Sessional Paper No. 8 of 2013 on National Values and Principles of Governance, Para 2.0.1.
Rights and the Convention Against Torture, as well as reporting under the African Charter.

iv. Identification of national heroes and subsequent awards should be rooted in national values.

v. The government should develop mentorship programme on national values targeted at the youth through a variety of programmes including the scouting movement.

vi. The Brand Kenya Board under the Ministry of Industry, Trade and Cooperatives should be well capacitated to carry out its mandate of identifying and refining the key attributes of Kenya, that contribute positively to the image and reputation of the Nation.

C. Inclusivity and devolution

Two thirds gender principle

11. Under the Universal Periodic Review Process, the State in 2015\(^9\) undertook to enact legislation to implement the two thirds gender rule and promote representation of women, persons with disabilities, youth, ethnic and other minorities as well as marginalized communities in line with the provisions of the Constitution.\(^10\) Notably, the Constitution (Fifth Schedule) gives a timeline of five years within which Parliament must have enacted the legislation. Notwithstanding the commitment and constitutional requirement, gender equality in the political sphere remains an aspiration. Following the 2017 general elections, the composition of 12\(^{th}\) Parliament fell below the constitutional threshold that would require at least 117 women in the National Assembly and 23 women in the Senate.\(^11\) Parliament is yet to put in place legislative measures as required in the Constitution to address gender inequality in the political sphere despite court decisions compelling it to do so.\(^12\)

Recommendations

i. The State expedites the adoption of the Equality and Gender Policy

---

\(^9\) Recommendation 142.122; 142.130; 142.134; 142.139; 142.141; 142.144; 142.177; 142.178

\(^10\) Article 100 of the Constitution of Kenya binds Parliament to enact legislation to promote the representation in Parliament of women, persons with disabilities, youth, ethnic and other minorities as well as marginalised communities.

\(^11\) Currently, there are 23 women elected to single constituency seat, 47 elected as county women representatives and six women nominated by political parties bringing the tally to 76 and a deficit of 47. Senate has three women elected and 18 women nominated by political parties bringing the tally to 21 women and deficit of 2.

\(^12\) Centre for Rights Education and Awareness & Another versus Speaker of the National Assembly & 2 Others [2017] e KLR available at [http://kenyalaw.org/caselaw/cases/view/142135](http://kenyalaw.org/caselaw/cases/view/142135). In this case the court found that failure of the legislature to pass legislation to ensure implementation of the two third gender principle is a violations of the Constitution and women’s rights. The court then directed parliament to enact the law within 60 days from the day of the judgment.
ii. The State expedites the enactment of a comprehensive anti-discrimination law in line with Article 27 to ensure that women, persons with disabilities and the marginalised are represented in line with the Constitution of Kenya, 2010.

iii. Parliament should enact legislation to ensure implementation of the two third gender principle.

Indigenous peoples

12. In the Second Universal Periodic Review, the State undertook to strengthen the protection of the rights of indigenous peoples including their ancestral lands.\(^\text{13}\) The KNCHR acknowledges the steps made in advancing the rights of indigenous persons including the enactment of various laws and policies such as the Community Land Act, 2016 and Mining Act, 2016 and the establishment of Taskforces.\(^\text{14}\) The Commission however remains concerned at the slow pace of implementation of the decisions of the regional human rights mechanism\(^\text{15}\) as well as the delayed protection of the rights of indigenous peoples and their ancestral lands.

Recommendations

i. Address the land question within the country to cater for all the indigenous forest community dwellers as well as resettlement of displaced persons;

ii. Comply with the recommendations of the African Commission in Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council).\(^\text{16}\)

Persons with disabilities


14. Despite the equality provisions and the constitutional safeguard in the Bill of Rights, persons with disabilities continue to face legislative and social hurdles which hinder

---

\(^\text{13}\) Recommendations No. 142.176; 142.179 and 142.180


\(^\text{15}\) Minority Rights Groups International & 2 Others (on behalf of Ogiek community) and Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) available at [http://www.achpr.org/files/sessions/46th/comunications/276.03/achpr46_276_03_eng.pdf](http://www.achpr.org/files/sessions/46th/comunications/276.03/achpr46_276_03_eng.pdf).

them from competing equally with other members of the society. It is then no wonder that according to a recent Survey on Equality and Inclusion in Kenya, nearly half (46%) of PWDs cannot afford to eat three meals in a day, while 9% cannot afford a meal a day.\footnote{National Gender and Equality Commission ‘Equality and Inclusion in Kenya’ (2016) p 166; accessible at \url{https://www.ngeckenya.org/Downloads/Status%20of%20Equality%20and%20Inclusion%20in%20Kenya.pdf}}

15. A person with any disability is entitled to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning; this according to Article 54 (1)(a) of the Constitution. Notwithstanding the express safeguards, legislation including the Penal Code uses derogatory language that refers to persons with intellectual or psychosocial disabilities as ‘imbeciles’,\footnote{Section 146, Penal Code, Cap 63 Laws of Kenya} ‘idiots’\footnote{Section 146, Penal Code, Cap 63 Laws of Kenya}, ‘person with mental disorders’\footnote{Mental Health Act, 1989}, ‘retarded’ or ‘lunatics’.\footnote{Section 125, Evidence Act} This is in violation of Article 3(a) of the Convention on the Rights of Persons with Disabilities\footnote{The Article provides for the ‘Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons’} and Article 28 of the Constitution.\footnote{Article 28 of the Constitution is one that states that, ‘Every person has inherent dignity and the right to have that dignity respected and protected’.}

16. The government is yet to meet the five percent employment quota for persons with disabilities in the public sector in compliance with the dictates of Article 54 (2) of the Constitution. The provision obligates the State to ‘ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities’. Section 13 of the Persons with Disabilities Act, 2003 obliges the National Council for Persons with Disabilities to, ‘secure the reservation of five percent of all casual, emergency and contractual positions in employment in the public and private sectors for persons with disabilities’.

17. Data from the Public Service Commission indicates that of 251 institutions evaluated on inclusion of persons with disabilities in the financial year of 2017/18, only 10 institutions complied with the 5% requirement for employment of persons with disabilities. The report further indicates that there are only, 155 persons with disabilities represented translating to 1.1% of the total number of persons in post. The limited representation still exist nine years after the promulgation of the new constitution in 2010.
18. The Kenya Integrated Budget Household Survey 2015/16 sets the derived poverty lines at Ksh3, 252 overall expenditure per month per person in the rural areas and Ksh5, 995 in urban areas.\(^{24}\) The Ksh2, 000 allocated under the Cash Transfer Programme for persons with severe disabilities falls way below the derived poverty line. The monies allocated do not take into account the differentiated cost of living and variations of poverty within counties. Furthermore, the criteria for determining beneficiaries is delegated to local administration- chiefs and assistant chiefs instead of a designated committee where guidelines for allocation can be varied in favour of ineligible beneficiaries. There is also inadequate monitoring of the cash transfer program which would help identify officers failing to follow laid down guidelines in the cash transfer program.

The National Commission makes the following recommendations.

**Recommendations**

i. Complete as a matter of priority and within a specific time frame the process of reviewing the Persons with Disabilities Act 2003 to bring it into line with the provisions of the Constitution and the Convention and the human rights-based approach to disability.

ii. The Legislature should as a matter of priority amend the offensive derogatory terminology against persons with disabilities contained in the statute books.

iii. The State should comply with the requirement under article 54 (2) of the Constitution that at least 5% of members of government in elective and appointive positions are persons with disabilities.

iv. The State review the budget allocation to cash transfer program to take into account the national derived poverty lines and differentiation of cost of living and variation of poverty levels per county.

v. The State should enforce measures put in place to reduce irregularities and award of the cash transfer program to persons with severe disabilities.

**Intersex Persons**

19. The Taskforce on Policy, Legal, Institutional and Administrative Reforms regarding Intersex persons was constituted by the Attorney General vide Gazette Notice No. 4904 on 26th May 2017, with an initial term of 6 months which was subsequently extended twice and expired on 10th December, 2018. The taskforce members included: Kenya Law Reform Commission (KLRC) as the Chair, office of the Attorney General/Department of Justice (OAG & DOJ), Kenya National Commission on Human

Rights (KNCHR), Department of National Registration Bureaus/ Civil Registration, Department of Immigration, Department of Children Services, National Gender and Equality Commission (NGEC), the CRADLE Foundation and co-opted the Intersex Persons Society of Kenya (IPSK) and Director of medical services however, the latter’s participation in the meetings was constrained.

20. The taskforce terms of reference were fulfilled after carrying out a nationwide survey on the plight of Intersex persons in thirty seven (37) counties in the Republic of Kenya. The survey targeted intersex persons, their family members and care givers, and the general public and institutions. Secondly the taskforce conducted meetings with various key government ministries and agencies, received presentations from doctors, judicial officers, academic institutions, various care givers and service providers in respect to their interactions with intersex persons, their care, treatment and protection.

21. In fulfillment of its mandate and the outlined expected outputs, the Taskforce produced a detailed report on:
   i. the number, distribution and challenges of Intersex persons,
   ii. a comparative analysis of approaches to care, treatment and protection of intersex persons,
   iii. an analysis of the policy, legal, medical, administrative and/or institutional frameworks governing structures and systems with regard to Intersex persons,
   iv. recommended reforms to safeguard the interests of intersex persons and,
   v. A prioritized implementation matrix based on the immediate, medium and long term interventions to promote and protect intersex persons in Kenya.

22. The Taskforce handed over the final report to the Office of the Attorney General on 21st March 2019 which detailed the key findings, challenges, gaps and comprehensive reforms on policy, law, administrative and institutional processes. To implement the taskforce recommendations a three (3) years’ timeline was stipulated a matrix. The final report was also officially launched and shared with the public on 15th April 2019 which drew a lot of media and public interest in the subject and the intersex persons present expressed their gratitude for the milestone made.

23. The plight and situation of intersex persons remain in need of urgent intervention to avoid the systemic discrimination in policy, law and practice. The Taskforce on Intersex established that the current statutory framework in Kenya, administrative actions and institutional arrangements within the health, education, employment, civil registration, immigration and justice sectors are fashioned along a binary concept of male and female, which effectively compromises on the recognition and protection of
human rights and fundamental freedoms of intersex persons in Kenya, throughout their life cycle. For instance, in terms of legal recognition and documentation, the Taskforce on Intersex found out that whilst the majority of the intersex persons had birth certificates, the recorded sex (the sex indicated in the registration documents at birth) conflicts with the self-recognised sex (the sex category an individual uses following biological developments or surgical intervention). The birth certificates make it difficult for intersex persons to acquire identity cards (ID). This is compounded by their changed physical appearance that conflicts with the recorded sex. Moreover, majority of the intersex persons of school-going age experience low levels of access to education, with only about 10% of them attaining tertiary education.

24. The Taskforce on Intersex made several recommendations. On law reform, the Taskforce recommended legislative amendments to various laws including the Interpretation and General Provisions Act, Cap 2; Births and Deaths Registration Act Cap. 149, Registration of Persons Act Cap. 107, Kenya Citizenship and Immigration Act, Cap 172, the Children Act, 2001, Criminal Procedure Code, Cap 75, Borstal Institutions Act, Cap 92 and Probation of Offenders Act, Cap 64 to facilitate recognition of intersex persons before the law through the introduction of an intersex (I) marker. The Taskforce also called for streamlining of administrative procedures by the relevant agencies to effect expeditious provision of birth certificates, identification documents, passports and other official personal documentation that include provisions for the intersex (I) marker. Using comparative practices, the taskforce also rooted for the protection of the physical integrity of intersex children by prohibition of intersex genital mutilation and other unnecessary medical interventions.

25. On matters relating to data, the Taskforce recommended that the Kenya National Bureau of Statistics as the principal government agency for collecting, analysing and disseminating statistical data include intersex as a third sex code/category in the Kenya Population Housing Census scheduled for 2019. The timeline for this was within six months of the Report (in time for the August 2019 Census). Further, that all government agencies and ministries focusing on collection of data and surveys introduce ‘intersex’ as a third code/category within sex in their enumeration instruments and tools. The Commission notes that the 2019 Kenya Population and Housing Census will include an Intersex Marker.

26. The recommendations propose interventions to begin from the child’s conception to adulthood which will include medical, registration, educational, social, employment, and social protection interventions. To support implementation of the recommendations, the Hon Attorney General transitioned the taskforce membership

---

into an implementation committee known as ‘Intersex Persons Implementation Coordination Committee (IPICC) with a mandate to provided leadership towards taskforce report implementation process. Therefore the IPICC will oversee, communicate, coordinate and complement in the implementation of the strategies and specific actions including: policy dialogue on law reform and public health, strategic advocacy, public awareness and the dissemination of the taskforce recommendations.

Recommendations

The National Commission therefore recommends that:

i. Fully implement recommendations of the Taskforce and provide adequate resources to the Committee to ensure it implements its mandate

Victims of historical injustices

27. Historical injustices remains a concern for many Kenyans. The KNCHR has continued to advocate for the right to remedy for those who suffered the historical injustices guided by key Government reports including the Truth Justice and Reconciliation Commission’s report. Further the Commission has continued to pursue efforts for reparations in the broad theme of transitional justice by engaging various stakeholders to advocate for establishment of a comprehensive reparations mechanism for historical injustices. To this end the KNCHR recommends to the BBI to recommend the fast tracking of the enactment of the Kenya Reparations Bill, 2017, and the development of a national policy on reparations for sustainable interventions. Further, there is urgent need for the National and County Governments to take lead in addressing the historical injustices and this should be commenced by anchoring in law the Restorative justice fund for effective management and transparent operationalization of the same.

28. In order to enhance inclusivity based on our shared history, KNCHR recommends that BBI considers fast-tracking of previous efforts towards transitional justice. This includes full publication, adoption and implementation of the Truth, Justice and Reconciliation Commission (TJRC) Report. In this regard, KNCHR recommends enactment of supporting legislations and legal framework such as the Kenya Reparations Bill, 2017, and development of a national policy on reparations, both material and symbolic, for sustainable interventions. Further, there is urgent need for the National and County Government to take lead in addressing historical injustices and human rights violations. In addition, BBI should consider recommending for full implementation taskforce and other public inquiry reports which contain solutions for root causes of division or impediments to devolution. KNCHR recommends anchoring in law the Restorative Justice Fund for effective management and transparent operationalization of the same.
29. The President during the state of nation address in 2015 issued a public apology for historical injustices and announced a Ksh10 Billion restorative justice fund for reparations. The Office of the Attorney General and Department of Justice in consultation with the Commission and other stakeholders, drafted regulations and reparations policy to facilitate payment of reparations from the restorative justice fund. However, the regulations and policy are yet to be finalized and adopted. In 2019, the President announced that the restorative fund will go towards providing collective reparation by establishing symbols of hope through construction of heritage sites and community information centres leaving individual reparations in limbo. The TJRC report requires both individual and community reparations to be paid as part of implementation of its recommendations.

**Inclusion in County governments**

30. Devolution remains one of the hallmarks of our Constitution. Since the onset of devolution, over 1.7 Trillion Shillings have been transferred to the Counties. The National Commission notes the steady increase in the equitable share to the counties, from the maiden allocation of Ksh. 210 billion in the 2013/14 financial year to Ksh. 327 billion for the financial year 2017/18 to Ksh. 372 billion in the 2018/19 financial year. The Commission appreciates that the allocation is within the threshold of 15 percent of all national government revenue in line with Article 203(2) of the Constitution.

**Funds Disbursed to Counties in FY 2013 to 2019 (Source: Annual Division of Revenue Acts)**

<table>
<thead>
<tr>
<th>FY</th>
<th>Funds Disbursed to County Governments</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013/2014</td>
<td>Kshs. 210 Billion</td>
</tr>
<tr>
<td>2014/2015</td>
<td>Kshs. 227 Billion</td>
</tr>
<tr>
<td>2015/2016</td>
<td>Kshs. 294 Billion</td>
</tr>
<tr>
<td>2016/2017</td>
<td>Kshs. 307 Billion</td>
</tr>
<tr>
<td>2018/2019</td>
<td>Kshs. 372 Billion</td>
</tr>
<tr>
<td>2019/2020(Proposed)²⁷</td>
<td>Kshs. 310 Billion <em>(Debate ongoing)</em></td>
</tr>
</tbody>
</table>

²⁷ The Division of Revenue Bill, 2019(Kenya Gazette Supplement No. 18(National Assembly Bills No. 11).
31. The National Commission is deeply concerned at the extravagant expenditures by the County Governments. The Controller of Budget report for the half year 2018/2019 financial year revealed that a whopping Kshs.6.51 billion was spent by county assemblies and county executives on domestic and foreign travel alone. This expenditure comprised of Kshs.5.68 billion on domestic travel and Kshs.826.42 million on foreign travel; an increase of 89 per cent compared to Kshs.3.77 billion incurred in a similar period of the previous financial of 2017/18. All this, amidst hue and cry over want in basic service delivery and poor state of healthcare. The report further revealed that the Counties incurred an aggregate of Kshs.112.25 billion (81.9 %) of the total expenditure on recurrent activities. County governments incurred Kshs.24.73 billion on development activities, representing an absorption rate of 13.2 per cent of the annual development budget. Some counties did not even report any developmental expenditure in the period.

32. Every county resident and Kenyan from every corner of the Republic deserves utmost value for every cent. The slow absorption rate and ballooned recurrent expenditure is worrying. The National Commission therefore challenges the county governments and the various oversight institutions to play their role to curb wastage and ensure that public resources are prudently utilized to improve the wellbeing of the people.

33. Article 174 of the Constitution lays down the objects of devolution. These include fostering national unity by recognising diversity and promoting the interests and rights of minorities and marginalised communities. Despite these noble objects of devolution, devolution is in many instances serving as an instrument of division. The National Cohesion and Integration Commission published a study entitled: 'Ethnic and Diversity Audit of the County Public Service' in 2016. The study reveals that new appointments made since the counties were established (in 2013) have contravened the law. Only fifteen counties (31.9%) have adhered to section 65 of the County Government Act (CGA) by giving more than 30% of the vacancies at entry level to members of ethnic groups that are not dominant in their precincts. According to the study, 68.1% of the counties have hired more than 70 percent of their staff from one ethnic group. This implies that in spite of the existing law, new recruitments continue to contravene the provisions of the law. The 15 counties that comply with the CGA include Laikipia, Migori, Trans Nzoia, Busia, Garissa, Embu, Narok, Nakuru, Lamu, Taita Taveta, Isiolo, Mombasa, Nairobi, Tana River, and Marsabit. This vindicates the fact that all counties can and should comply with the CGA provisions.

The National Commission recommends the following:

**Recommendations**

i. Implementation of section 65 of the County Governments Act, and especially section 65 (1)(e) which provides that at least thirty percent of the vacant posts at entry level should be filled by candidates who are not from the dominant ethnic community in the county.

ii. Prompt disbursement of the equitable share to counties whose delays have often been cited for derailment of service delivery and developmental agenda at the county level. This is a constitutional imperative; Article 219 demands prompt transfer of a county’s share to the county without undue delay and without deduction.

iii. Full actualization of the third Basis of Revenue sharing among the Counties championed by the Commission on Revenue Allocation. This presents a momentous opportunity for an improved formula that will lead to an enhanced value-for-money at the county level with better realignment of revenue sharing to functional assignment in tandem with the criteria set out in Article 203(1) of the Constitution.

**D. Divisive elections**

34. The behaviour of Kenyan voters has remained largely consistent over the past five multi-party elections. Regardless of where they reside, ethnicity has been the most influential motivator at the ballot. **2005 Referendum, the 2007 General Elections, the 2013 Political Party Nominations, the 2017 General Elections and the 2017 Repeat Presidential Elections.** The Commission’s various reports on election monitoring document a pattern of systemic human rights violations suffered during the party nominations, political campaigns, the actual elections and post-election period. The violations includes; loss of life, loss of property, destruction of livelihood, violence against children, women, persons with disability, contravention of leadership and integrity codes among others.

35. The promulgation of the Constitution of Kenya 2010 after the 2007/2008 Post – Election Violence provided the much needed impetus to reforms and Governance that included among others the establishment of a new/revamped Electoral Management Body (EMB), development of necessary laws, policies and regulations, appointment of new commissioners, adoption of new voter registration methods, adoption of new results transmission methods, cleaning of the voter register among other measures. It was believed that the adoption of the above reforms and other measures would

---

31 2005 Referendum, the 2007 General Elections, the 2013 Political Party Nominations, the 2017 General Elections and the 2017 Repeat Presidential Elections.
enhance the enjoyment of the right to vote and to be voted. However, despite efforts to reform the electoral processes in Kenya, the situation has not changed much. This is evident in the Commission’s findings where cases of human rights violations of a higher magnitude than before have been reported.

36. Political Parties are the key tenets for the promotion of democracy, good governance, and participation of the people, inclusivity and accountability among other values. However, the management of political parties in Kenya has fallen short of majority of the requirements that includes among others party membership, presence of a governing body, inclusion of special interests, conduct of affairs in democratic, participatory and inclusive manner which opens up the process of party registrations, nominations to unnecessary disputes. There is need to enforce the adherence of Political parties with the constitutional and statutory threshold. The office of the Registrar of Political Parties which is the body concerned with the management of affairs of political parties including their registration and de-registration also needs to be strengthened.

37. Sexual violence is one of the most heinous violations and an affront to the dignity of the human person. No one, friend or foe, opposition or Government should ever have to face such dehumanizing treatment. In a report launched by the National in November 2018 dubbed Silhouettes of Brutality 32, The Commission recorded 201 cases (96.26% being women and 3.74% men). The number of 201 cases, Your Excellency is not an exhaustive count and only reflective of survivors who courageously came out to the Kenya National Commission on Human Rights to share their ordeals. Shockingly, older persons were not spared with the eldest survivors being a 70-years-old female and a 68-years-old male. The innocence and decency of young children was thrown out of the window with as young as seven (7) years old having to face the brutality. 33 Our investigations revealed that according to the statistics, sexual and gender-based violations were perpetrated more by the police at 54.5% compared to civilians at 45.5%.

38. Political Party Primaries/nominations is an important exercise in harnessing democracy in the country. However, this is a process that has been faced with myriad

33 Silhouettes of Brutality pp xv, 109, 152.
34 Silhouettes of Brutality p 30, 31.
challenges including; lack of preparedness by political parties to carry out the exercise, lack of political party registers, inadequate voting materials, inadequate and unprepared polling staff, unclear information on polling stations and lack of support materials for the process among others.

39. The issue of Election Campaign Financing has remained thorny both at the political party primaries stage as well as during campaigns. While the Elections Campaign Financing Act 2013, the law meant to regulate political campaign spending and fundraising during an Election period was passed into law, the necessary policies, regulations and guidelines that would enforce this Act are yet to be provided. The lack of control of resources invested in the electioneering period by an individual or a party poses a great challenge to the fight against corruption, good governance and accountable leadership, as the urge to recover the investments made, accumulate more and reward cronies creates opportunities for massive corruption and human rights violations.

40. The Electoral Management Body (EMB) has been the constant and first casualty of any electoral reforms in Kenya as can be seen from the period of ECK to the IIEC to the first IEBC and to the current IEBC that conducted the 2017 General Elections. To safeguard the right to vote and to be voted and prevent untold human rights violations in future General Elections, the KNCHR recommends that the BBI takes into consideration the following:

**Recommendations**

i. Operationalization of the Elections Campaign Financing Act 2013, by putting in place proper legal policy frameworks and institutions ahead of the 2022 and tighten enforcement of the Political Parties Fund management and specifically ensuring that the interest and representation of the special groups are taken seriously. Public participation should underscore the operationalization of the Elections Campaign Financing Act 2013 in line with article 10(2)(a) of the Constitution.

ii. Capacitate political parties adequately so as to carry out the nominations with clear oversight mechanism

iii. Development of a policy/ regulations for managing elections preparations must be put in place early in advance. Additionally, clarity and transparency on
IEBC’s timelines is needed to enable proper planning, going through procurement processes and avoiding the last minute processes that give rise to integrity concerns like corruption which stains the elections. Further, investment and testing in advance the election technology for voting and transmission of results is needed to avoid the last minute fails which raise concerns on the integrity of the elections and risks denying Kenyans value services for their monies.

iv. The IEBC must fully enforce its code of conduct among the candidates, political leaders, aspirants and any of their staff that contravenes it. Uniformity in compliance and follow up on any disciplinary or oversight processes must be upheld to avoid discrimination that would further erode confidence in the IEBC and affect the outcome of the election.

v. Continuous voter registration is a legal requirement that has not been well carried out possibly due to poor civic education which is the mandate of the IEBC. This is an area that requires emphasis to avoid disenfranchisement of voters as was seen during the 2017 General Elections. The KNCHR recommends that BBI keeps tab on use of technology such as the huduma namba platform to ensure that the same is not used to further perpetuate historical injustices and discriminate the vulnerable and the marginalised especially if the huduma namba registration is proposed for use as a voter registration.

vi. The management of polling Stations requires re-evaluation and rationalizing the provided cap of 700 voters. This would include the provision of special booths for persons with disabilities, nursing mothers, and the elderly among other groups that require special attention/reasonable accommodation.

vii. Adherence to Chapter 6 of the Constitution for vetting of all candidates is necessary. There is need for a policy to stipulate the timelines and communication of the vetting outcome which should be made transparent.

viii. Revision and inclusion of stringent penalties for sexual offences committed during the electioneering processes to a candidate or the larger public whether by supporters of a party, a law enforcement agency or candidates, in order to bring to book people who use SGBV as a tool of war or competition.
ix. **Amendment of Laws:** Any amendment to laws should be leave ample time for internalization of laws and in any case, not later than two years before the elections in line with the international best practices.

x. Similarly, any appointments/reorganization on the electoral management body should be made not later than two years before the General election in line with the recommendations of the Kriegler Commission.

41. The National Police Service continues to play a major role in securing different aspects of election that includes nominations, infrastructure, campaigns, and systems among others. However, the police have over time been accused of acts of omission and commission that have often contributed to human rights violations during the electioneering period. The KNCHR recommends that BBI follows up on the following:

   i. Reiterate the need for capacity building and full compliance by the National Police Service guidelines on use of force and firearms as well as strict provisions for officers found to have been involved in sexual or gender based violence in a humanitarian situation

   ii. Seeking accountability for all violations that are attributed to the members of the National Police Service including investigations, prosecutions, compensation among others.

   iii. Adopting democratic policing as a concept in managing election security including involving all the actors as may be required from time to time.

E. **Safety and security**

42. The Commission supports the Government’s Big Four agenda; the developmental initiative focused on manufacturing, food security, health and housing, which if well implemented will go a long way in improving the well-being of the people by fulfilling rights and fundamental freedoms secured under the Constitution. Indeed, it is an avenue to fulfilling Kenya’s regional and international frameworks including the Global Agenda 2030.

43. The Commission commends the enactment of the Food Security Bill[^35]. The law seeks to give effect to Article 43(1) (c) of the Constitution on the freedom from hunger and the right to adequate food of acceptable quality and Article 53(1) (c) of the

[^35]: Kenya Gazette Supplement No. 197 (Senate Bills No. 12).
Constitution on the right of every child to basic nutrition and Article 21 of the Constitution on the implementation of rights and fundamental freedoms under the Constitution. The Commission further urges the Government to strengthen the Disaster Risk Reduction and ending Drought Emergencies including the National Drought and Disaster Contingency Fund, the Integrated Drought Early Warning System, the Integrated Knowledge Management System for Drought as well as the Hunger Safety Net Programme.

44. There is substantial and significant variation in overall poverty incidence across Counties ranging from a low of 16.7 per cent in Nairobi City County to a high of 79.4 per cent in Turkana County.\(^{36}\) The National poverty headcount rate stands at 36.1%\(^{37}\). Notably, the burden of the poor is still significant and could be exacerbated by the threat of existing relatively high and persistent inequalities. There is thus a need for concerted efforts and commitment from all stakeholders to ensure that no one is left behind.

45. Efforts towards ensuring accountability and transparency for human rights violation committed by security forces has seen up to six police officers prosecuted and convicted for loss of life due to use of excessive force.\(^{38}\) Parliament has enacted the Prevention of Torture Act\(^{39}\) and the National Coroners Service Act\(^{40}\). However, the government is yet to operationalize the National Coroners Service Act by establishing the National Coroners Service.

46. Despite, increased scrutiny of security forces, the Commission continues to receive complaints of unlawful conduct by security forces\(^{41}\) such as arbitrary arrests, extortion,

---

\(^{36}\) KNBS, ‘Basic Report on Well Being in Kenya Based on the 2015/16 Kenya integrated Household Budget survey (KIHBs)’ (March 2018) p 49. The report indicates that overall poverty incidence is higher in Turkana (79.4 %), Mandera (77.6 %), Samburu (75.8 %), Busia (69.3 %) and Garissa (65.5 %). Overall poverty incidence is lower in: Nairobi City (16.7 %), Nyeri (19.3 %), Meru (19.4 %), Kirinyaga (20 %) and Narok (22.6 %) Counties.

\(^{37}\) KNBS, Basic Report on Well Being p 50.

\(^{38}\) Republic versus IP Veronicah Gitahi and PC Issa Mzee: Involved the shooting of 14 year old girl in Kwale who died after being shot by police; Republic versus PC Titus Ngamua Musila: Involved the shooting of a 26 year old male at Githurai 45 bus station, Kiambu by police; Republic versus PC Banjamin Kahindi and PC Stanely Okoti: Involved the shooting of Geoffrey Mogoi, Amos Makori and Joseph Onchuru in Kangemi, Nairobi by police; and; Republic versus CIP Nahashon Mutua- Involved the killing of Martin Koome while he was detained in custody at Ruaka police station, Nairobi.


illegal detention, torture, killings, disappearances and sexual violence. The Commission in the context of monitoring elections has documented 101 cases of person who died, 247 cases of injuries and 37 cases of damage to property in election related violence. Furthermore, the Commission documented 201 cases of sexual and gender based violence arising out of the 2017 electioneering period of which 54.5% were reported as having been committed by the Police.\textsuperscript{42}

**Recommendations**

i. Fully implement the National Coroners Service Act and operationalize the National Coroners Service through appointment of the Coroner General, Coroners and by allocating adequate resources

ii. Law enforcement officers should take individual full responsibility for human rights violations

iii. The question of resource sharing needs to be dealt with comprehensively to curb the persistent inter-community disputes over resources

iv. That the State ratify International Convention on the Protection of all Persons against Enforced Disappearance and recognize the offence of enforced disappearances in its Penal Code in line with the international definition

v. Investigate and prosecute security officers responsible for human rights violations including extra-judicial executions, enforced disappearances, torture, and sexual violence; and

vi. Ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Withdraw reservation under Article 14 (2) (c) of the African Charter on Human and Peoples Rights on the Rights of Women in Africa.

vii. Fully implement the National Food and Nutritional Security Policy Implementation Framework 2017-2022

**F. Corruption**

47. Kenya occupies an unenviable place at **position 144 out of 180 in the global corruption index (2018)**; the global indicator of public sector corruption, with a dismal

\textsuperscript{42} Kenya National Commission on Human Rights ‘Silhouettes of Brutality: An Account of Sexual Violence during and after the 2017 General Elections’ available at https://www.knchr.org/Portals/0/KNCHR_Silhouettes_of_Brutality.pdf. Of the 201 cases of sexual violence documented, 54.5% were reported as having been committed by the Police whereas 45.5% were committed by civilians. 80% of the survivors did not receive medical attention within required 72 hour due to insecurity and fear of leaving their homes for fear over their safety.
score of 27%, a point lower than the year 2017 and way below the average score of 43.43

48. Indeed, corruption is a human rights issue, it is most reprehensible practice that threatens our very existence; it is a crime that is turning the Country into a ‘man eat man’ kingdom. We must stem this vice before it consumes us all; and our future generations. It is worth reiterating and reminding ourselves that corruption is a real threat to our country’s security, economic growth and democratic gains. Better medical care, education, roads, quality water and food and a host of other developmental agendas are put in abeyance and lives are lost as adults become greedy and divert public money meant for public good for their own short term personal gain.

49. We have institutions including the Ethics and Anti-Corruption Commission, the Office of Director of Public Prosecutions, the Directorate of Criminal Investigations and the Judiciary to deal with thieves of public coffers. These institutions must be strengthened. There must however be political good will to sternly deal with moral decay that is corruption.

50. The State is yet to enact legislation to protect whistle blowers contributing to a culture of silence due to systematic victimization of whistle blowers through harassment, threats and orders for payment of damage from defamation suits. The Commission calls for the enactment of the whistle blowers law to protect persons who point out corrupt practices and unethical conduct. This will fortify efforts at fighting corruption.

51. The National Commission notes the value of the political class supporting the war on corruption and further makes the following specific recommendations:

Recommendations

i. Enact legislation to protect whistle blowers.

ii. The law should be clear on how long an office should be vacant e.g the situation in Nairobi County as relates to the Deputy Governor post. Further, the law should clearly guide on the processes of stepping aside when one is facing charges of corruption. In this regard, clarity is required to the effect that officials who have stepped aside to give room for investigations should not continue to act in their public capacity. Existing laws on code of ethics for public officers should be implemented.

iii. Intensify prosecution of corrupt practices at all levels. This would entail capacity building of DPP officials so that the evidence presented in court is sufficient for conviction.

iv. Establish a mechanism/adopt a national policy for recovery of stolen assets, which should be invested in a fund for the benefit of Kenyans. It is also critical that such a framework reaches far and wide, including on the proceeds of crime. In this regard, the National Commission calls for full accountability so that assets recovered are commensurate to the assets that were illegally acquired.

v. The National Treasury should strengthen the resource base of EACC

G. Shared prosperity

52. There is substantial and significant variation in overall poverty incidence across counties ranging from a low of 16.7 per cent in Nairobi City County to a high of 79.4 per cent in Turkana County.44 The National poverty headcount rate stands at 36.1%.45 Notably, the burden of the poor is still significant and could be exacerbated by the threat of existing relatively high and persistent inequalities. There is thus a need for concerted efforts and commitment from all stakeholders to ensure that no one is left behind.

53. The Commission takes cognizance of the Governments’ efforts in respect to the Big Four (4) Agenda that strategically aims to boost manufacturing, universal health coverage, food and nutrition security and supporting affordable housing. The Commission welcomes the prioritization of the implementation of the “Big Four” initiatives in the Medium Term Plan III (2018-2022). Despite government’s commitment towards ensuring food security, incidences of food poverty persist which stands at 32% translating to 14.5 million Kenyans. On average 25% of the population suffers from chronic food insecurity and poor nutrition linked to stagnated food production, high food prices, and climate change. In addition, national level data shows 29 % of children less than five years are stunted while 11.4% of children are severely stunted linked to poor socio-economic conditions and inappropriate feeding practices. In response to food and nutrition insecurity, the State has put in place the National Food and Nutritional Security Policy Implementation Framework 2017-2022.

54. KNCHR recognizes that land as a factor of production is also a potential source of conflict especially areas shared by warring communities. The Commission recommends that Government, takes efforts to reexamine land tenure in these expansive areas in order to address increasing demand for private land, fragmentation that does not support traditional ways of living, and exploration for large scale

44 KNBS, ‘Basic Report on Well Being in Kenya Based on the 2015/16 Kenya integrated Household Budget survey (KIHBs)’ (March 2018) p 49. The report indicates that overall poverty incidence is higher in Turkana (79.4 %), Mandera (77.6 %), samburu (75.8 %), busia (69.3 %) and Garissa (65.5 %). Overall poverty incidence is lower in: Nairobi City (16.7 %), Nyeri (19.3 %), Meru (19.4 %), Kirinyaga (20 % and Narok (22.6 %) Counties.
45 KNBS, Basic Report on Well Being p 50.
extractive mining. While the Constitution at Article 40 protects the right to property and the Land Laws (Amendment) Act 2016 stipulates how humane evictions should be conducted, arbitrary evictions have continued unabated, particularly in informal settlement areas such as Kibera, Soweto, Deep Sea, Railways amongst others.

55. In order to strengthen our shared prosperity, KNCHR recommends that resources allocated to marginalized counties such as Equalization Fund are utilized in ways that meet the expectation of Article 204 of the Constitution of Kenya. KNCHR recommends prudent utilization and accountability for expenditure of these resources alongside specific progress report to the public on achievements made by target Counties.

56. Owing to the increase in climate change and associated effects such as sudden epidemics to livestock and crops, KNCHR recommends for increased research and investment in agricultural extension services across the country with special focus on marginalized areas.

57. KNCHR recognizes the expansion in extractive industries and need for hydroelectric generation plants through dams. Whereas they serve economic development and energy needs in the long run, these projects also have potential for conflict and displacement of communities. In order to reduce volatility brought forth by these large-scale projects, KNCHR recommends for sustained consultation with affected communities and all considerations for human rights be put in place.

58. In order to achieve greater shared prosperity, KNCHR emphasizes the need to address systematic marginalization through deliberate investment including infrastructure and security to open up these places to investors and eventually employment opportunities.

Recommendations

i. The Constitution of Kenya 2010 (Article 46) protects consumer rights. We need to protect our local market from counterfeit goods, not only to safeguard the safety of the products but as well as encourage growth of local industries.

ii. The Constitution of Kenya 2010 (Article 33) safeguards the freedom of expression which includes freedom of artistic creativity and academic freedom and freedom of scientific research. Furthermore, the various international treaties ratified by Kenya further buttress this right. There is a need for Kenya to jealously guard results of innovations, research, artistic works, etc including through patenting so as to secure the intellectual property. Kenya should also promote these innovations by investing in them.
iii. Enact and enforce a comprehensive Eviction and Resettlement Bill that encompasses the UN basic principles and guidelines on evictions and displacement of communities and groups;


v. The Commission calls for the full implementation of the National Action Plan on Business and Human Rights

vi. Fully implement the National Food and Nutritional Security Policy Implementation Framework 2017-2022

H. Responsibilities and rights

59. Article 249 (3) obligates parliament to allocate adequate funds to enable the Commission to perform its functions. Article 249 (3) further states that the budget of the Commission shall be a separate vote. In the context of article 249 (3), the operative word is shall, therefore casting in mandatory terms the obligation upon Parliament to ‘allocate adequate funding to enable the Commission perform its function’. Parliament cannot wish away this responsibility under any circumstances. As the National Human Rights Institution established in accordance with the Principles on the Status and Functioning of National Institutions for the promotion and protection of Human Rights (Paris Principles)


25
with their enjoyment. The obligation to fulfil rights requires states to take positive measures to ensure that rights can be realized. The obligation to fulfil rights also requires states to establish legal, institutional and procedural conditions in order to realize rights. The fulfilment of the obligation to provide adequate funding is a precursor towards ensuring the independence of constitutional Commissions and independent Offices.


<table>
<thead>
<tr>
<th>Financial Year</th>
<th>GOK Receipts</th>
<th>GOK %</th>
<th>Partners</th>
<th>Partners %</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013/2014</td>
<td>263,770,000</td>
<td>80%</td>
<td>64,602,000</td>
<td>20%</td>
<td>328,372,000</td>
</tr>
<tr>
<td>2014/2015</td>
<td>345,200,000</td>
<td>82%</td>
<td>74,579,444</td>
<td>18%</td>
<td>419,779,444</td>
</tr>
<tr>
<td>2015/2016</td>
<td>441,700,000</td>
<td>85%</td>
<td>124,904,601</td>
<td>22%</td>
<td>566,604,601</td>
</tr>
<tr>
<td>2016/2017</td>
<td>416,145,000</td>
<td>78%</td>
<td>116,485,764</td>
<td>22%</td>
<td>532,630,764</td>
</tr>
<tr>
<td>2017/2018</td>
<td>398,766,234</td>
<td>68%</td>
<td>190,659,198</td>
<td>32%</td>
<td>589,425,432</td>
</tr>
<tr>
<td>2018/2019</td>
<td>393,789,280</td>
<td>89%</td>
<td>49,746,108</td>
<td>11%</td>
<td>443,535,388</td>
</tr>
</tbody>
</table>

The KNCHR notes with concern the persistent selective obedience and disobedience of court orders by duty bearers. Some of the notable cases of disobedience of orders of the Court include in the matter of *Miguna Miguna v Fred Okengo Matiang’i Cabinet Secretary, Ministry of Interior and Coordination of National Government & 7 others* in which the High Court gave at least 12 orders concerning production of the petitioner in Court following his arrest by police and decision concerning his citizenship which Orders have not been obeyed to date. Other past orders that have been disregarded touch on the operationalization of the Public Benefits Organizations (PBO) Act; enactment of legislation to implement article 27 of the Constitution and address gender inequality in the political sphere; provision of information following a request for access to information on advertisements by the Presidential Delivery Unit during general election. Moreover, the KNCHR continues to receive petitions from aggrieved Kenyans who obtained favourable judgments on cases concerning human rights violations which the government has failed to honour.

---

48 Ibid page 32
49 Ibid page 33
Recommendations

i. The Government should comply with court orders and pay outstanding compensation awards by courts.

ii. Adequately resource KNCHR to implement its programmes and mandate for a better Kenya. The current budget cuts continue to impede on KNCHR’s mandate including both the human rights promotion and protection mandates. The Commission’s protection mandate which includes monitoring, documentation and reporting of human rights violations before, during and after elections has in the past informed key reforms towards accountable leadership and a mature democracy.

iii. Review the National Action Plan on Human Rights

iv. Annually KNCHR produces a state of Human Rights Report. We recommend that the same should be debated in Parliament and recommendations taken up and considered in subsequent presidential addresses.

III. Conclusion

The KNCHR will be presenting its 2017 Election Series report to the BBI team. The KNCHR would want to emphasize the fact that elections should not be a process that perpetuates human rights violations but should be an opportunity for enhancing the promotion and protection of human rights and thus the recommendations of BBI would all be towards that effort. Seeking accountability for human rights violations for offences that happens during electioneering period as well as other historical injustices documented by the Government should be spearheaded by the BBI and other relevant actors.

The Commission truly trusts that the BBI team will present the views and voices of Kenyans in this process to enable realization of the aspirations of all Kenyans as espoused in our Constitution of Kenya, 2010.