Review of Compliance with Constitutional Provisions on National Values and Principles of Governance under Article 10 and Fulfillment of International Human Rights Obligations Under Article 132 (c) (i) & (iii) during the Year 2017
REVIEW OF COMPLIANCE WITH CONSTITUTIONAL PROVISIONS ON NATIONAL VALUES AND PRINCIPLES OF GOVERNANCE UNDER ARTICLE 10 AND FULFILLMENT OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS UNDER ARTICLE 132 (C) (I) & (III) DURING THE YEAR 2017
Acknowledgements

The preparation of this report involved the contributions of many people and institutions. The Commission sincerely appreciates the contributions of the KNCHR staff who tirelessly reviewed and provided overall guidance towards the development and finalization of the report.

The Commission also appreciates Department of Sociology and Social Work, University of Nairobi and the lead consultant for the research partnership towards compilation of this report.

Finally, the Commission expresses its gratitude for the continued financial support of the Embassy of the Kingdom of the Netherlands that made this project possible.
Preface

A nation without values is one without identity. The preamble to the Constitution of Kenya 2010 recognises 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.

The Constitution gives prominence to national values and principles of governance. Article 10 (2) of the Constitution provides the national values and principles of governance as follows: a) Patriotism, national unity, sharing and devolution of 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. Article 232 of the Constitution further provides for the principles that inform public service which include; high standards of professional ethics; efficient, effective and economic use of resources; responsive, prompt, effective, impartial and equitable provision of services; accountability for administrative acts; transparency and provision to the public of timely, accurate information; fair competition and merit-based appointments and promotions; public participation in policy making processes; representation of diverse communities; and affording adequate and equal opportunities for appointment, training and advancement at all levels of public service of men and women; the members of all ethnic groups; and persons with disabilities. These principles are binding on all State organs, State officers, public officers and all persons whenever any of them applies, or interprets, the Constitution; enacts, applies or interprets any law; or makes or implements public policy decisions.

Article 132(1) (c) (i) of the Constitution provides that the President shall once every year, address the nation on all the measures taken and the progress achieved in the realization of the national values. This report must be published in the Kenya Gazette. The President is also constitutionally bound to submit a report for debate to the National Assembly on the progress made in fulfilling Kenya’s international obligations.

The Commission is mandated to act as the principal organ of the State in ensuring compliance with obligations under international and regional treaties and conventions relating to human rights as well national laws and policies and the protection of human rights.
KNCHR submits this alternative report on the status of the implementation of national values and principles of governance in line with its constitutional mandate under Articles 59, 254 and the KNCHR Act 2017. The year 2017 was especially significant for the Nation, the second General Elections under the 2010 Constitution were held on 8th August 2018 followed by the repeat presidential election on 26th October as ordered by the Supreme Court of Kenya. The country witnessed political party primaries between April and May 2017 culminating in the official campaign period which ran between May 28th to August 5th 2017. The months leading to the political primaries, the General Election and the repeat presidential poll of August 2018 were precipitated by a clamour for electoral reforms and heated political rivalry. The all-important exercise of democracy and people’s participation in governance some of the cherished national values put many of the other national values and principles of governance, particularly the rule of law to test.

The report highlights key achievements and challenges for the year 2017 in relation to implementation of national values and principles of governance and provides recommendations for action by both the national government and county governments. It is hoped that the report shall inform objective debate and form basis for further actions by both levels of government towards better implementation of the national values and principles of governance.

Kagwiria Mbogori

Chairperson, KNCHR
Abbreviations

ACHPR  African Charter on Human and Peoples’ Rights
ACRWC  African Charter on the Rights and Welfare of the Child
AIDS  Acquired Immune Deficiency Syndrome
CSOs  Civil Society Organizations
CEDAW  Convention on the Elimination of All forms of Discrimination Against Women
CRPD  Convention on the Rights of Persons with Disabilities
CDF  Constituency Development Fund
CBA  Collective Bargaining Agreement
CRC  Convention on the Rights of the Child
CERD  Convention on the Elimination of all forms of Racial Discrimination
EACC  Ethics and Anti-Corruption Commission
FSW  Female Sex Workers
HIV  Human Immune-Deficiency Virus
ICCCPR  International Covenant on Civil and Political Rights
ICESCR  International Covenant on Economic, Social and Cultural Rights
IPRS  Integrated Population Registration System
ICT  Information Communication Technology
IPOA  Independent Policing Oversight Authority
IEBC  Independent Electoral and Boundaries Commission
IGAD  Inter Governmental Authority on Development
JKIA  Jomo Kenyatta International Airport
KNCHR  Kenya National Commission on Human Rights
KFS  Kenya Forest Service
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>KNBS</td>
<td>Kenya National Bureau of Statistics</td>
</tr>
<tr>
<td>KWS</td>
<td>Kenya Wildlife Service</td>
</tr>
<tr>
<td>KHRC</td>
<td>Kenya Human Rights Commission</td>
</tr>
<tr>
<td>MDAs</td>
<td>Ministries, Departments and Agencies</td>
</tr>
<tr>
<td>MCAs</td>
<td>Members of County Assembly</td>
</tr>
<tr>
<td>MSM</td>
<td>Men who have Sex with Men</td>
</tr>
<tr>
<td>MUHURI</td>
<td>Muslim Human Rights</td>
</tr>
<tr>
<td>NANHRI</td>
<td>Network of African National Human Rights Institutions</td>
</tr>
<tr>
<td>NVPG</td>
<td>National Values and Principles of Governance</td>
</tr>
<tr>
<td>NEPAD</td>
<td>New Partnership for Africa's Development</td>
</tr>
<tr>
<td>NCIC</td>
<td>National Cohesion and Integration Commission</td>
</tr>
<tr>
<td>PWDs</td>
<td>Persons With Disabilities</td>
</tr>
<tr>
<td>PWID</td>
<td>People Who Inject Drugs</td>
</tr>
<tr>
<td>PBO</td>
<td>Public Benefit Organization</td>
</tr>
<tr>
<td>SGR</td>
<td>Standard Gauge Railways</td>
</tr>
<tr>
<td>SDG</td>
<td>Sustainable Development Goals</td>
</tr>
<tr>
<td>SRC</td>
<td>Salaries and Remuneration Commission</td>
</tr>
<tr>
<td>TJRC</td>
<td>Truth Justice and Reconciliation Commission</td>
</tr>
<tr>
<td>TICAD</td>
<td>Tokyo International Conference on African Development</td>
</tr>
<tr>
<td>UPR</td>
<td>Universal Periodic Review</td>
</tr>
<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
</tr>
<tr>
<td>WHO</td>
<td>World Health Organization</td>
</tr>
</tbody>
</table>
Executive Summary

The Kenya National Commission on Human Rights is mandated under section 8 of the KNCHR Act, 2011 (Revised 2012) to act as the principal state agency in the promotion and protection of human rights. The Commission is required to ensure observance of human rights in all spheres within the Republic of Kenya.

This report on the status of the implementation of National Values and Principles of Governance highlights key achievements and challenges for the year 2017. It also provides recommendations for action by the Government, at national and county levels.

The report acknowledges the efforts made by the National Government in implementation of the national values and principles of governance. These include putting in place enabling legislation and policy frameworks. Most significantly, the commitment by the government towards a National Human Rights Policy and Action Plan demonstrates its commitment to promoting the respect for human rights and good governance. In addition, oversight institutions are now appropriately in place to ensure the citizens are not only able to claim their rights but also play their rightful role on matters of good governance.

The report highlights a wide range of gaps such as low public participation, insecurity, corruption, impunity, inadequate funding to institutions that have oversight mandates on the values and principles of governance, disrespect for human rights, violence, and disregard for court orders by government officials.

It is observed that the President’s past Annual Reports to Parliament have been heavy on national values but scanty on international human rights obligations.

This Report is organized in the following format: The first section provides the background and objectives of the Report as well as the methodology. The section also highlights the legal framework and the President’s Annual Address to Parliament on progress implementation of the NVPG. The following section captures the progress made in implementing the NVPG as stipulated in Article 10 (2) in turn. These values and principles are examined in groups as follows: The first subsection discusses Patriotism, national unity, sharing and devolution of power, rule of law, democracy, participation of the people, as well as the Implementation Progress, Challenges and Recommendations for each. The subsection that follows is devoted to good governance, transparency and accountability as well as the progress in Implementation Challenges and Recommendations. The next
subsection is on Human Rights, Equity, Social Justice, Inclusiveness, Equality, Gender Inequality, Non-discrimination, Protection of the Marginalized and sustainable development. The last section, forming a separate Chapter is on Kenya’s scorecard in fulfilment of her international obligations.
REVIEW OF COMPLIANCE WITH CONSTITUTIONAL PROVISIONS ON NATIONAL VALUES AND PRINCIPLES OF GOVERNANCE UNDER ARTICLE 10 AND FULFILLMENT OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS UNDER ARTICLE 132 (C) (I) & (III) DURING THE YEAR 2017
# CONTENTS

<table>
<thead>
<tr>
<th>Acknowledgements</th>
<th>i</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface</td>
<td>ii</td>
</tr>
<tr>
<td>Abbreviations</td>
<td>iv</td>
</tr>
<tr>
<td>Executive Summary</td>
<td>vi</td>
</tr>
</tbody>
</table>

## CHAPTER ONE
**INTRODUCTION AND BACKGROUND**

1.1 The Kenya National Commission on Human Rights 3
1.2 Objectives of the Report 6
  1.2.1 Main Objective 6
  1.2.2 Specific Objectives 6
1.3 Methodology 6
1.4 Limitations 7
1.5 Legal Framework 8
  1.5.1 The Constitution of Kenya 8
  1.5.2 Sessional Paper No. 8 of 2013 9

## CHAPTER TWO
**IMPLEMENTATION PROGRESS, GAPS AND RECOMMENDATIONS**

2.1 National Values and Principles of Governance 10
  2.1.1 Progress Implementation, Challenges and Recommendations 11
  2.1.2 Progress in Implementation 11
  2.1.3 Gaps / Challenges 12
  2.1.4 Recommendations 13
2.2 Article 10(2) Patriotism, National Unity, Sharing and Devolution of power, Rule of Law, Democracy and Participation of the People 14
CHAPTER THREE
FULFILMENT OF INTERNATIONAL OBLIGATIONS 41

3.1 Implementation Progress 41
  3.1.1 Challenges/Gaps 43
  3.1.2 Recommendations 45
INTRODUCTION AND BACKGROUND

A nation’s values define its identity. They are fundamental beliefs of a nation guiding the choice, actions and behaviour… 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. Shared national values offer a tradition, a sense of rootedness and belonging.”

(National Values and Principles of Governance Sessional Paper No. 8 of 2013).

The Constitution of Kenya was promulgated in August 2010 and ushered in a new dispensation in the public and private domains. The Constitution is all encompassing for it has provisions on diverse aspects including: the system of governance, Bill of Rights, identity of the Republic, leadership and integrity, public finance, socio-economic and cultural spheres among others. One of the key foundations that the Constitution brought relates to National Values and Principles that inform good governance as provided for in Article 10(1).

The National Values and Principles of Governance (NVPG) bind all state organs, state officers, public officers and all other persons who apply or interpret the Constitution, enact/ apply or interpret any law and those who make or implement public policy decisions. The inclusion of the national values and principles of...
governance was particularly informed by the country’s chequered history of bad governance practices by successive regimes especially in public service. The period 1963-2002 was largely characterized by torture, disappearance of persons, extrajudicial mechanisms, negative ethnicity and general gross human rights violations. These values and principles later found grounding through the National Values and Principles of Governance, Sessional Paper No. 8 of 2013.

The national values and principles of governance are spelt out under Article 10(2). They include: patriotism, national unity, sharing and devolution of power, rule of law, democracy and participation of the people; human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized; good governance, integrity, transparency and accountability and sustainable development. Flowing from the transformative Constitution, Kenya has sought to infuse NVPG in her socio-economic and political processes. The Constitution provides a framework and an in-built mechanism through which the NVPG ought to be realized.

Chapter Two of the Constitution defines and provides the identity of the Nation in terms of: its sovereignty, territory, division into counties where the national and county governments are distinct and inter-dependent, national, official and other languages, national symbols and national days.

Article 131(2) is instructive to the President to inter-alia respect, uphold and safeguard the Constitution and ensure the protection of human rights and fundamental freedoms and the rule of law. The President of Kenya is under obligation as per Article 132 (1) (c) to table an Annual Report in Parliament during the State of the Nation Address outlining all the measures undertaken and the progress made in actualizing the NVPG as provided for in Article 10. The Annual Report must be published in the Kenya Gazette. Additionally, the President is required to annually submit to the National Assembly for debate on the progress made in fulfilling the international obligations of the Republic.\(^1\) Kenya has ratified a number of international human rights treaties which she is obliged to observe. In order to realize this, the President is under obligation as per Article 132 (5) of the Constitution to ensure that the international obligations of the Republic are fulfilled through the actions of the relevant Cabinet Secretaries.

Parliament is mandated under Article 94(4) of the Constitution to protect the Constitution and promote democratic governance in the Republic. The National

\(^1\)Article 132(1) (c) (iii) Constitution of Kenya.
Assembly is also obligated to:

(i) Deliberate on and resolve issues of concern to the people;

(ii) Enact legislation;

(iii) Determine allocation of national revenue between the levels of government;

(iv) Exercise oversight over national revenue and its expenditure by national and government and other national state organs;

(v) Exercise oversight over national review and its expenditure; and

(vi) Exercise oversight of state organs and state officers in the discharge of their functions.

Article 249 of the Constitution provides the objects of all constitutional commissions and independent offices to include: protection of the sovereignty of the people, secure observance by all state officers/ organs of democratic values and principles and promotion of constitutionalism.

These independent institutions therefore play a key role in ensuring that state organs adhere to the dictates of the national values and principles of governance and international obligations of Kenya.

### 1.1 The Kenya National Commission on Human Rights

The Kenya National Commission on Human Rights (KNCHR) is an independent constitutional commission and a National Human Rights Institution (NHRI) created under Article 59 of the Constitution and operationalized through the Kenya National Commission on Human Rights Act, 2011 (No. of 14 of 2011) as revised in 2012. It has both watchdog and advisory roles to ensure the promotion and protection of human rights in Kenya. KNCHR is accredited by the Global Alliance of National Human Rights Institutions as an “A Status” institution operating in line with the Paris Principles, 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 People’s Rights since 2004. Under Article 59(g) of the Constitution (as read with section 8(f) of the KNCHR Act, 2011), the KNCHR is designated the responsibility, “to act as the principal organ of the

---

2 This is in line with Resolution on the Granting of Affiliate Status to National Human Rights Institutions and specialized human rights institutions in Africa - ACHPR/Res. 370 (LX) 2017.
state in ensuring compliance with obligations under treaties and conventions relating to human rights”.

The functions of KNCHR are provided for under section 8 of the KNCHR Act, 2011 and Article 59(2) (a) – (k) of the Constitution. These are:

(a) To promote respect for human rights and develop a culture of human rights in the republic;

(b) To promote the protection and observation of human rights in public and private institutions;

(c) To monitor, investigate and report on the observance of human rights in all spheres of life in the republic including observance by the national security organs;

(d) To receive and investigate complaints about alleged abuses of human rights and take steps to secure appropriate redress where human rights have been violated;

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

(f) To act as the principal organ of the state in ensuring compliance with obligations under treaties and conventions relating to human rights;

(g) To investigate any conduct in state affairs, or any act or omission in public administration in any sphere of government, that is alleged or suspected to be prejudicial or improper or to result in any impropriety or prejudice;

(h) To investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct;

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

(j) To report on complaints investigated and take remedial action;

(k) Work with the National Gender and Equality Commission and the Commission on Administrative Justice to ensure efficiency, effectiveness and complementarity in their activities and to establish mechanisms for referrals and collaboration;
(l) To report on complaints investigated and take remedial action; and

(m) To perform any other functions prescribed by legislation.

In the fulfilment of this constitutional and statutory mandate, KNCHR has in the recent past implored the President to ensure realization of NVPG and that Kenya fulfils her pending international obligations. In the 2016 reporting period, KNCHR submitted its recommendations before the President’s annual address. Subsequently in his State of the Nation speech, the President particularly committed to undertake legislative, policy and other appropriate measures in the realization of the national values and principles of governance.

In this context, KNCHR has undertaken the investigation to determine the status of compliance with fundamental constitutional requirements on the NVPG in the year 2017. The report is meant to track the progress made in 2017 by the State in its capacity as the primary duty bearer on moving the country towards constitutionalism, actualization of the NVPG as provided for in the Constitution and fulfilment of her regional and international human rights obligations and commitments.

Article 254 on reporting by commissions and independent offices provides that at any time, the President, the National Assembly or Senate may require a commission or holder of an independent office to submit a report on a particular issue. The report submitted under this Article is to be published and publicized.

The KNCHR prepares and submits this report in fulfilment of its obligation to ensure observance of human rights by both public and private actors. In addition, the Commission submits this report in line with its mandate in Article 249 to secure the observance by all state organs of democratic values and principles.

The National Values and Principles of Governance affect the rights of all persons in Kenya. In General Comment Number 12 on the Right to Adequate Food, the Committee on Economic, Social and Cultural Rights observed that good governance is essential to the realization of human rights3. In addition, The Bill of Rights cannot be comprehensively addressed if national values and principles of good governance are not followed. Given the close link between good governance and realization of human rights, KNCHR monitors state compliance in the implementation of these values and principles of governance.

---

Therefore KNCHR presents this report to the Presidency in order to highlight the progress made as well as the challenges/gaps experienced in the realization of NVPG and the fulfilment of the international obligations of the Republic of Kenya as provided for in Article 132 (c) (i) & (iii) (5) of the Constitution.

1.2 Objectives of the Report

1.2.1 Main Objective

The principal objective of the report is to assess and report on the implementation of NPVG under Article 10(2) of the Constitution as well as Kenya’s fulfilment of her international human rights obligations for the 2017 reporting period.

1.2.2 Specific Objectives

1. Document the progress made by both the National and County levels of government in the realization of the NVPG.

2. Document the progress made by the government with regard to compliance with her international obligations as specified under Article 132(c)(iii) of the Constitution.

3. Identify gaps and challenges faced in actualizing Articles 10(2), 132(1) (c)(i) and 132 (1) (c) (iii) of the Constitution.

4. Make recommendations towards enhancing compliance by the Republic to the NVPG and Kenya’s international human rights obligations.

1.3 Methodology

The findings of the report were generated through a desk review of relevant documents mainly from the three arms of government namely Executive, Judiciary and Legislature as well as reports from the private sector. The key documents reviewed include;

(i) State of the Nation Report tabled in Parliament in 2017 as provided for in Article 132 (c) (i) of the Constitution.

(ii) The Constitution of Kenya 2010
(iii) Public Service (Values and Principles) Act No. 1A of 2015.

(iv) County Governments Act No. 17 of 2012.

(v) Report by the Public Service Commission to Parliament on adherence to NVPG for 2017.

(vi) Reports by Civil Society Organizations (CSOs) actively involved in overseeing state compliance under Article 10 and Article 132 (c) (i) of the Constitution.

(vii) KNCHR Complaints and investigation reports.


(x) KNBS 2018 Economic Survey 201

(xi) KNBS Statistical Abstract 2016-2017

(xii) National Audit office Annual Reports and Accounts 2016-2017

(xiii) National Government Budget Implementation Review Reports 2016-2017

1.4 Limitations

Reliance on documentary evidence alone does not capture the current mood of the public. The NVPG are too many, hardly defined and some are implied in others. It is therefore difficult based on existing literature whether reference is made to one, several or all of the NVPG. In addition, the President’s State of the Nation Report for 2016 has information presented in earlier years. This obscures the achievements of 2016.
1.5 Legal Framework

1.5.1 The Constitution of Kenya

The Constitution of Kenya outlines the NVPG as the core on which the nation is founded. It captures the aspirations of all Kenyans to have a government that is founded on essential human values: human rights, equality, freedom, democracy, social justice and the rule of law. The Constitution further affirms Kenya as a sovereign Republic, a multi-party democratic state founded and rested on NVPG. In Article 10(1) the Constitution provides that the NVPG bind all state organs, state officers, public officers and all other persons whenever any of them does the following:

(a) Applies or interprets the constitution;
(b) Enacts, applies or interprets any law; and
(c) Makes or implements public policy decisions.

In Article 10(2), the national values and principles include:

(a) Patriotism, national unity, sharing and devolution of 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.

Article 132 (c) (i) of Constitution is couched in mandatory terms that the President reports in an annual address to the nation on all compliance measures taken as well as the progress achieved in the realization of the national values and principles of governance and publish this in the Kenya Gazette. The Public Service Commission (PSC) also has the mandate to promote national values and principles of governance. In addition, the PSC should evaluate and report to the President and Parliament on the extent to which these values and principles have been complied within the public service.
Independent Commissions have the responsibility for observance of the values and principles by all state organs. Therefore all public institutions and officers are required to play a primary role in the promotion of the realization of national values and principles of governance.

1.5.2 Sessional Paper No. 8 of 2013

The Sessional paper on national values and principles of governance (Sessional Paper No. 8 of 2013) was approved by Cabinet and forwarded to the National Assembly for discussion and adoption. The policy requires that public institutions make reports which include assessment of the promotion and practice of values, measures taken, progress achieved and identification of any challenges encountered. It provides goals, objectives and guidelines to government, non-state actors and citizens to develop action plans to mainstream national values and principles of governance into their programmes, activities and finally ensure that the values become a way of life for the Kenyan people. The policy provides a framework for fostering national unity, inculcating patriotism, redressing marginalization and promotion of accountable and democratic Kenyan society. It is meant to ensure equitable distribution of resources and opportunities, promote and protect the objects of devolution as provided for in the constitution.

The Treaty Making and Ratification Act 2012 provides a framework for the making and ratification of treaties which affords an open and more participatory process to treaty making.

---

8The Constitution of Kenya Article 249(1)(b).
Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.

Article 2(6) of the Constitution

2.1 National Values and Principles of Governance

The national values and principles of governance are implied in the treaties, conventions and covenants which Kenya has ratified and which form part of the laws of Kenya as provided for in Article 2(6) of the Constitution. They include:

- the African Charter on Human and Peoples Rights (ACHPR)\(^9\);
- African Charter on the Rights and Welfare of the Child (ACRWC)\(^10\);
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment\(^11\);
- International Covenant on Civil and Political Rights (ICCPR)\(^12\);
- Convention Relating to the Status of Refugees\(^13\);
- International Covenant on Economic, Social and Cultural


### 2.1.1 Progress Implementation, Challenges and Recommendations

It is critical to note that the period under review was an electioneering period.

### 2.1.2 Progress in Implementation

In line with his constitutional obligation H.E. President Uhuru Kenyatta presented his annual report on the 2016 year to Parliament on March 5, 2017. He made a clear commitment to realization of the national values and principles of governance. He also mentioned the progress made in their implementation. The President’s report did not however mention the following: the challenges encountered in their implementation; how to overcome them; the role played by oversight agencies and civil society organization in the realization of the NVPG.

The Public Service Commission (PSC) is mandated by Article 234 (2)(c) of the Constitution to promote national values and principles of governance. In pursuance of this mandate, the PSC in 2017, implemented the following\(^\text{21}\):

- Dissemination of the Framework for the implementation of values and principles in Article 10 in the public service and the Revised Code of Conduct (Legal Notice No. 53 of 2016). A total of 200 public officers from several Ministries, Departments and Agencies (MDAs), County Secretaries, Public Service Boards and County Human Resources Advisory Committee members were sensitized;

- Developed and piloted the curriculum on values and ethics for public

---


service in collaboration with the Kenya School of Government. The objective was to inculcate an ethical culture, respect for values and principles and to enhance compliance with the values and principles in public service;

- Participation in the 91st edition of the Kenya National Music Festival held at Masinde Muliro University of Science and Technology. In the process promoted the theme of enhancing national unity, cohesion and integration through music. In the festival, PSC donated thirteen trophies; and

- Participation in the 58th edition of the Kenya National Drama Festival held in Kisumu. The festival’s theme was enhancing national values for development.

2.1.3 Gaps / Challenges

1. It is acknowledged that the government has made considerable progress in the creation of the necessary frameworks, laws, policies and institutions towards the full realization of the values and principles. The energy with which these were created waned, and the implementation has been slow and in some cases out-rightly ignored. For example, the public service is still dominated by two ethnic groups far beyond their quota, furthermore, there are observations that appointments to cabinet and national commissions and other government agencies are tribalized or partisan hence contrary to the ideals of the national values and principles of governance. In the National Assembly (Male 290, Female 59) the two thirds gender principle as per Article 27 (8) of the Kenya Constitution is yet to be realized. The Senate had Male 45, Female 16 and attained the two-thirds principle through nomination.

2. The contribution by civil society organizations (CSOs) in awareness creation and monitoring of the implementation of the values and principles is not acknowledged and / or captured in the annual reports and president’s annual address to Parliament.

3. The 2017 annual address to Parliament enumerated achievements

---

22PSC. Evaluation Report for the Year 2016/2017 on Public Service Compliance with the Values and Principles in Articles 10 and 232 of the Constitution.
23https://www.kenyans.co.ke/news/reshuffle-full-list-uhuru-kenyattas-new-cabinet
reported in earlier annual reports. For instance, the Integrated Population Registration System (IPRS) was reported as an achievement in 2015 and again reported in 2016 in a similar way.

4. The emphasis in the annual report was more on quantitative aspects but hardly delved into qualitative domains that address quality of service. A case in point is the annual police recruitment of 10,000 per year. Whether and how this has translated to quality policing is neither reported nor ascertained.

5. The President’s annual report is seen as a business of Parliament. There is no effort made to ensure the report is available to all people in Kenya. For instance having the report on Parliament website alone is not enough to demonstrate that it is accessible by everybody given the limitations many Kenyans have in terms of access to ICT. This puts into question whether there is compliance with Article 35(1)(a) and (3) that guarantees every citizen the right of access to information held by the State and obligates the State to, ‘publish and publicise any important information affecting the nation’.

6. The President’s Annual Report presented in the year 2017 was very scanty on fulfilment of international human rights obligations based on treaties or conventions. Instead it was repetitive of what had been presented in the earlier annual reports for 2015 and 2016. The focus was more on diplomacy, peace keeping and humanitarian work.

2.1.4 Recommendations

1. The contribution by civil society organizations in the realization of the values and principles needs to be acknowledged in subsequent President’s annual address to Parliament.

2. While quantitative measures easily present a picture of what government has done, it is recommended that qualitative and analytical presentations be part of the president’s annual report.

3. The President’s annual report need to be published in hardcopy and distributed to MDAs, counties, educational institutions, libraries and other public places to afford more and more people access. This could go a long way in transforming the country.
2.2 Article 10(2) Patriotism, National Unity, Sharing and Devolution of power, Rule of Law, Democracy and Participation of the People.

2.2.1 Patriotism and National Unity

The government took deliberate measures to ensure patriotism and national unity in 2017. These measures were to a large extent guided by laws, policies, guidelines and institutions created prior to 2017. The most prominent include: Sessional Paper No. 9 on National Cohesion and Integration, Sessional Paper No. 3 of 2014 on National Policy and Action Plan on Human Rights, Sessional Paper No. 5 of 2014 on Peace Building and Conflict Management, National Cohesion and Integration Act No. 12 of 2008, National Honors Act No. 11 of 2013 and the continued use of the Integrated Population Registration Systems. In 2017, the government held the National Prayer Breakfast on May 5, 2017. The event was open to all Kenyans irrespective of area of origin, political, social class or religious affiliation. National Honours and Presidential Awards in 2017 were done in accordance with the Kenya Heroes Act 2014 and hitherto little known Kenyans who had made useful contributions to society were honoured. Currently, the Act uses the media to call on nominations and public consultations in the identification of the heroes.

2.2.2 Challenges/Gaps

The Non-implementation of the Truth Justice and Reconciliation Commission (TJRC) report was a huge let down to those who had suffered historical injustices. While on a political campaign visit to Mandera County, the Deputy President is reported to have stated that there was no need to implement it. The statement by the Deputy President undermined:

- Patriotism and national unity;
- The Reparations Fund; and
- The spirit of the Truth Justice and Reconciliation Commission (TJRC) report.

In all institutions offering secondary education, history as a subject is not

---

compulsory\textsuperscript{25}. A review of the curriculum of Social Studies shows scanty content on NVPG. Therefore, students go through the education system with no or bare knowledge of their heritage. This in itself does not help promote patriotism.

In the interviews for the position of Vice Chancellor at Moi University in November 2017, a known Council member allegedly consciously awarded a candidate from his/her ethnic group 99% in order to ostensibly defeat candidates from other ethnic groups. This undermined patriotism\textsuperscript{26}.

Section 65 (1) (e) of the County Governments Act No. 17 of 2012 provides that the County Public Service Board shall ensure that at least thirty percent of the vacant posts at entry level are filled by candidates who are not from the dominant ethnic community in the county.

Notably, employment in the County governments continued to rise reaching 132.6 thousand persons in 2017. The increase was attributed to hiring of more personnel following the continued implementation of devolved functions such as Agricultural services, provision of healthcare and pre-primary education services.\textsuperscript{27} In county governments, ethnic exclusion as it relates to employment and access to other services is most apparent. Dominant ethnic groups continue to exclude others. This partly accounts for the non-compliance by 29(61.7\%) of the 47 counties on the requirement that not more than two thirds of the available jobs in any county should be held by the dominant ethnic group\textsuperscript{28}. Kiambu County passed a motion compelling all companies and institutions in the county to employ 70\% local people\textsuperscript{29}. In Kilifi County, the MCAs were pushing for 70\% employment of local people\textsuperscript{30}. In the case of Kiambu County, neither the national government nor the National Cohesion and Integration Commission took appropriate action.

Noteworthy is the fact that county governments are themselves bound to uphold the national values and principles of governance. However, there is no evidence of County Public Service Boards reporting on compliance to NVPG in the respectively counties.

Increased ethnic intolerance was seen in the social media exchanges in the run-
up to the 2017 general elections and thereafter. Ethnic lines coupled with political party opinions were clearly manifest\(^{31}\).

Political polarization was apparent especially towards, during and after the 2017 general election and the repeat presidential election of 26th October 2017. The ethnic voting character and pattern in 2017 reflect decline in national unity and a spiral of allegiance to ethnic groups.

Violent radicalization and the violent police response functioned to undermine patriotism and national unity especially in the coastal region. The trust between the members of the Somali ethnic group, Muslims and other Kenyans was at the lowest ebb\(^{32}\). In addition, it has been documented that non-resolution of historical injustices fuels violent radicalization and extremism. Therefore failure to resolve the land-related injustices in the coastal region is partly the catalyst to the high rate of radicalization\(^{33,34}\). National Cohesion and Integration Commission (NCIC) also appeared weak and indecisive and only issued threats of prosecution of politicians\(^{35}\). This undermined patriotism and national unity.

The racial and ethnic zoning of Nairobi into Eastlands and Westlands, although a colonial relic has not gone away. There has been some considerable infusion of local elite/middle class into the hitherto perceived European and Asian sections of the city but the racial and class divide still remain and this undermines national unity\(^{36}\).

2.2.3 Recommendations

1. The government needs to implement the TJRC report in order to address the long–held historical injustices. In order to expeditiously implement it, there should be developed regulations to govern the process. The President of Kenya should take lead in its implementation.

2. Review the history curriculum to include NVPG and the subject made compulsory at all levels of the education system. The Ministry of Education should take lead in curriculum review to effect this or mainstream national

\(^{31}\)http://www.knchr.org/Portals/0/CivilAndPoliticalReports/MIRAGE%20AT%20DUSK%20-%20-%20Human%20Rights%20Account%20of%20The%202017%20General%20Election.pdf.pdf?ver=2017-10-09-130024-457
\(^{33}\)IGAD(2015) Regional Assessment and Mapping of Radicalization and Violent Extremism in the IGAD Region.
\(^{34}\)https://www.google.com/search?q=igad-counter-terrorism-strategy&ie=utf-8&oe=utf-8&client=firefox-b&edgeclient=firefox-b
\(^{36}\)http://www.knchr.org/SubmissionsToThe92ndSessionOfTheCommitteeOnTheEliminationOfAllFormsOfRacialDiscrimination(Cerd).aspx
values and principles of governance into the school curriculum.

3. County Public Service Boards need to be strengthened to streamline recruitment in the respective county to ensure adherence to national values including inclusivity, national unity integrity and protection of the marginalised.

4. County Public Service Boards need to prepare and submit annual reports on compliance with the NVPGs.

5. The NCIC should be strengthened to undertake its mandate impartially.

6. All public Service recruitments and postings, at national or county levels must strictly adhere to the principle of ensuring representation of Kenya’s diverse communities and provide equal opportunities for appointment or recruitment based on merit and without discrimination, in line with Articles 10 and 232 of the Constitution.

7. The Public Service Commission to develop a mechanism to reward counties that comply with NVPG annually.

8. The Ministry of Infrastructure Housing and Urban Development needs to come up with mixed housing projects in the major urban centres to accommodate low, middle and high income households in the same neighbourhood as a way of breaking down the colonial legacy of social class and racial separation. A Public-Private Partnership arrangement is recommended to effect this proposal.

2.3 Sharing and Devolution of Power

The Constitution provides that sharing of power and devolution are a tool for enhanced delivery and access to services. Devolution is meant to ensure and promote the democratic exercise and delegation of power to the people. In this way, the interests of minority and marginalized groups would be better addressed. In order to make devolution achieve its intended purposes, the Ministry of Devolution and Planning put in place several mechanisms to promote the realization of sharing and devolution of power. These prior mechanisms include: the Transition to Devolved Governments Act, 2012; the County Governments Act, 2012, The Urban Areas and Cities Act 2011, Intergovernmental Relations

—

Act 2012 and Public Finance Management Act 2012. Furthermore, institutions that promote sharing and devolution of power were established: Commission on Revenue Allocation\textsuperscript{38}, the Council of Governors and Inter-Governmental Budget and Economic Council.

In his annual address to Parliament in 2017, President Uhuru observed that devolution had been rapidly implemented. He also noted that there were disagreements and strong opposing views as well. That Parliament, Council of Governors, County Assemblies and Constitutional Commissions had all supported devolution. In his speech he enumerated the following achievements: Over 30\% of the national revenues had been transferred to county governments in 2016/2017 financial year, Kshs 168 billion was transferred to County Governments in Arid and Semi-Arid regions; Kshs 6 billion for Equalization Fund; Kshs 87 billion to the Constituency Development Fund (CDF); Kshs 4 billion to the Youth, Women and Persons with Disability. In all, he implied devolution had brought positive changes. This notion was also held by 51\% of members of public\textsuperscript{39} regarding utilization of resources. The table below shows the allocations to county governments from 2015 to 2017.

### Table 1: County Revenue Allocations

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Total Shareable Revenue in Kshs</th>
<th>County Share in Kshs</th>
<th>County %</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>1,242,700,000,000</td>
<td>259,774,500,000</td>
<td>33</td>
</tr>
<tr>
<td>2016</td>
<td>1,380,199,000,000</td>
<td>302,197,516,719</td>
<td>32.3</td>
</tr>
<tr>
<td>2017</td>
<td>1,560,275,840,000</td>
<td>345,681,018,499</td>
<td>36.95</td>
</tr>
</tbody>
</table>


Notably, a sizeable proportion of the funds were not used to the peoples’ expectations. The amount of money sent to counties is far above the tangible evidence on the ground.\textsuperscript{40} There is evidence of unscrupulous consumption, corruption, wastage, and use for person reward, palatial homes/offices, luxurious cars and extensive foreign trips\textsuperscript{41}. Members of County Assemblies physically fight and demand for cash benefits that are not provided for. A case in point is the MCAs

\textsuperscript{38}Constitution of Kenya, Article 215.
\textsuperscript{41}Auditor General Report 2016-2017
in Murang’a who fought the County Clerk on November 27, 2017 demanding to be allocated free car and mortgage loans. One MCA was quoted as saying, “You and the speaker are the main reason why we have remained poor even after securing our seats. You must get out.”

Low accountability has remained a persistent problem in counties. Audit reports have severally shown a trail of unclear financial transactions and overspending on non-core functions. The notion that county government funds are inexhaustible and unaccounted for has been a common characteristic for persistent MCAs demand for more payment / allowances and trips.

Irregular disbursement of funds to the county governments has often hampered efficient delivery of services. In some cases, county governments have operated on bank overdrafts leading to delay in payment of staff salaries and service providers. There have been instances when the national treasury and county governments provide contradictory reports on the actual amounts disbursed and received.

The Controller of Budget in her report on County Government Budget Implementation Review Report has noted that the high expenditure of budget on ‘personnel emoluments, underperformance in local revenue collection, delay by the National Treasury to disburse the equitable share of revenue raised nationally, IFMIS connectivity challenge and frequent downtime as having affected effective budget implementation at county level’.

The Transitional Authority appears not to have clearly broken down the functions between national and county governments. The notion at county level that the national government is bent on controlling county affairs has been strong and functioned to strain relations between the two levels of government. The push by county governments to be in charge of security and the refusal by national government is a case in point. County governments by virtue of being at grass-root have consistently argued for devolved policing which the national government

---

43Ibid.  
45KNBS Statistical Abstract 2016 page 146.  
has declined to relinquish\textsuperscript{48}. The county policing authorities as provided in section 41 of the National Police Service Act\textsuperscript{49} have not been activated. The suspicious relationship between county and national governments does not augur well for devolution. The tussle over the management of the Equalization Fund (EF) between county and national governments, demonstrate the uneasy relationship. The implementation of the Integrated Financial Management Systems (IFMIS) or automation of financial management has been resisted by county governments on the account that it was a ploy by the national government to control them. County governments rejected it on the account of its unreliability and slowness in processing.

There is also lack of clarity in implementation of functional mandates by county and national governments in certain functional areas. For example, education is a national mandate but county governments are deeply involved in infrastructure in primary and secondary schools. Some county governments take credit for projects implemented by national government or Constituency Development Fund (CDF) and vice versa\textsuperscript{50,51}. Similar tussles exist in road projects, water projects, construction of classrooms and education bursaries. Therefore, monies are being expended not in alignment with the purposes under Schedule Four of the Constitution.

2.3.1 Recommendations

1. There is need for clarity in functional division between national and county governments. The Inter-Governmental Relations Act provides for structures in which relationship between the National Government and County Government is managed.

2. The Inter-Governmental Relations Technical Committee should lead the dialogue between national and county governments on the management of the Equalization Fund.

3. A clear timetable for disbursement of funds from treasury to county governments needs to be developed and implemented in order to resolve the problem of delayed funds which affects delivery of services.

\textsuperscript{48}https://www.standardmedia.co.ke/article/2001264810/governors-demand-operationalisation-of-county-policing-authority-as-po-
lce-bosses-resist.
\textsuperscript{49}Act No 11 A of 2011 available at http://www.kenyalaw.org/lex/actview.xql?actid=No.%2011A%20of%202011#part_VI (accessed on 13\textsuperscript{th} March 2018)
\textsuperscript{50}http://kenyanewsagency.go.ke/en/?p=68942
\textsuperscript{51}https://www.standardmedia.co.ke/article/2000213031/akaranga-accused-of-taking-credit-for-cdf-projects-in-vihiga-county
4. County governments need to adopt and implement the salaries and remuneration commission system of reward for MCAs in order to avoid arbitrary demands.

5. The Public Service Commission needs to engage more and build the capacity of county governments in order to promote compliance with national values and principles of governance.

6. Review the Public Finance Management Act to help counties increase their tax base.

7. National government should build the capacity for counties to enhance tax collection.

8. Implementation of IFMIS by counties should be made compulsory as a precondition for receiving funds from Treasury.

2.4 Rule of Law and Democracy

Rule of law has been a challenging area in Kenya. In order to address the challenge, several initiatives were undertaken post the 2010 promulgation of the Constitution. They include: establishment of the Independent Policing Oversight Authority (IPOA) in 2011, review of the National Police Service Standing Orders in 2014, establishment of the Community Policing Authority in 2013, enactment of the Billon Small Arms and Light Weapons in 2013, construction of a forensic laboratory, increased police recruitment and availability of funds for policing equipment. In addition the Judiciary, pursuant to Article 159(2) (c) established a task force on Alternative Dispute Resolution in 2016 in order to work out a framework for increased access to justice especially for the poor and marginalized. The council of elders have been established at county levels to arbitrate on disputes.

In his annual report to Parliament in 2017, the President reminded the nation that terrorism, violent extremism, organized crime, human and drug trafficking remain a potential threat to rule of law and national security. In light of this, he enumerated several steps undertaken to enhance rule of law. They are: a review of security related legislation; roll-out of a collaborative approach to counter-terrorism; establishment of an integrated command and control centre; reforms in National Police Service, National Administration, Immigration Department, Correctional Services, Peace Building and conflict management and citizens
participation in security.

Other achievements enumerated were: establishment of the Integrated Population Registration System; operationalization of the Asset Recovery Agency; Integrated Border Management Programmes; recruitment of 10,000 police officers, increased number of police patrol vehicles through the Managed Lease Service Framework; acquisition of specialized armoured vehicles, communications and personal body armour; launch of National Police Service Communications and Surveillance Command Centre. In the financial year 2016/2017 the security sector was allocated Kshs. 54.6 billion.

In June 2017, the Chief Justice appointed (Gazette Notice No 5857) a multi-agency committee – the National Council on the Administration of Justice Committee on Criminal Justice Reform. Its role was to spearhead the review and reform of the entire criminal justice system. On September 1st 2017, the supreme court of Kenya nullified the presidential results. This was a progressive step towards the realization of the independence of the judiciary and a milestone to safeguarding the rule of law.

During the period under review, the Parliament enacted the Prevention of Torture Act No 2 of 2017 which provides an overarching framework for the prevention of torture in Kenya as well as the National Coroners Service Act (No. 18 of 2017) providing a progressive step in investigations of reportable deaths and inquests.

### 2.4.1 Challenges/Gaps

In spite of the massive security related investments to enhance rule of law, 2017 witnessed increased crime. The total number crimes reported to the Police increased by 1.3 per cent to 77,992 in 2017 while the total number of persons reported to have committed criminal offenses decreased by 2.7 per cent to 73,013 in 2017. Stealing, breakings and offences relating to dangerous drugs were more prevalent in 2017 and accounted for 14.9, 7.9 and 7.1 per cent respectively of all crimes reported to the Police. The total number of cases handled by the Ethics and Anti-Corruption Commission (EACC) increased by 2.3 per cent from 7,917 in 2015/16 to 8,096 in 2016/17. The number of cases filed...
in courts decreased by 25.6 per cent from 462,792 in 2016 to 344,180 in 2017.\textsuperscript{55} Cases disposed of decreased by 26.6 per cent from 426,603 in 2016 to 313,075 in 2017. Pending cases increased by 6.2 per cent from 499,341 in 2016 to 530,446 in 2017.\textsuperscript{56} Total persons committed to prison decreased marginally from 210,227 in 2016 to 209,870 in 2017. According to the KNBS report, the number of convicted prisoners decreased by 2.5 per cent from 82,433 to 80,404 in 2017 while those remanded increased by 1.3 per cent from 127,794 in 2016 to 129,466 in 2017.\textsuperscript{57} The daily average prison population increased from 50,900 in 2016 to 51,021 in 2017.

It has been noted that there are too many police (approximately 10,000) assigned to guard individuals and government and private property at the expense public safety\textsuperscript{58}.

Kenyan politics continue to be characterized by incidents of electoral violence. The election period brought in worst cases of abuse of rule of law. Police killed at least 33-50 people (mainly opposition protestors) and excessive use of force in opposition strongholds\textsuperscript{59}. There was also too much use of teargas. In its report on the 2017 General Elections, the KNCHR documented several cases of lawlessness, disruption of campaign rallies and injuries inflicted by opposing sides of the divide. For instance, out of the 1,112 political-campaign related events that KNCHR monitored and documented, 86 (equivalent to 7.7\%) were cases of electoral violence. The acts of electoral violence were mostly widespread in the Nairobi City, Bungoma, Kakamega, Kisumu, Migori, and Siaya Counties.\textsuperscript{60} The perpetrators of sexual assault and rape were mainly police and civilians. To this time, no police has been brought to account\textsuperscript{61}.\textsuperscript{62} The Commission documented 35 deaths resulting from post poll violence covering the period 1st September to October 2017. Three of the deceased were minors, 2 were females the rest were males between the ages of 18 and 50yrs approximately. KNCHR reports put at 92 the total number of Kenyans who lost their lives in elections related violence.\textsuperscript{63} The documented cases of deaths and injuries within Nairobi City County were mainly in Kawangware, Kibra, Mathare, Embakasi, Starehe, Kamukunji and Ruaraka.

\textsuperscript{55}Ibid.  
\textsuperscript{56}Ibid.  
\textsuperscript{57}Ibid.  
\textsuperscript{58}KNCHR Alternative Report on NVPG 2016.  
\textsuperscript{59}http://www.theafrican.co.ke/news/Kenya-Police-killed-over-33-demos-HRW/2558-4141680-2h3nry/index.html  
\textsuperscript{60}KNCHR Mirage at Dusk: A Human Rights Account of the 2017 General Elections p.43.  
The KNCHR report also documented several cases of assault on Police officers by civilians.  

The Commission also raised concern regarding the rising cases of the number of Kenyans who lost their property (mostly at the hands of some civilians but in some cases, at the hands of some police officers) during this electioneering period. Cumulatively, KNCHR’s three election reports 2017-titled; The Fallacious Vote, Mirage at Dusk and Still a Mirage documented worrying trends of human rights violations that included 101 cases of deaths (10 among them children), 247 cases of injuries, 37 cases of damage to property, 64 cases of bribery, 85 cases of misuse of public resources, 46 cases of misuse of children and school grounds during campaigns, 39 cases of incitement and 123 cases of electoral related sexual and gender based violence (SGBV).

Failure by government officials to honour court orders has undermined the rule of law. The leader of majority in Parliament Hon Adan Duale ignored Court Orders. In addition, in the run-up to the 2017 general elections, President Uhuru Kenyatta and Deputy President William Ruto accused the Judiciary of working with the opposition parties following a high court ruling that IEBC re-advertises the tender for printing of presidential ballot papers. Other state officers who have defied court orders are; Defence principal secretary Mr Saitoti Torome; Interior Principal Secretary Karanja Kibicho and Defence Principal Secretary Monica Juma. In May 2017 Raila Odinga and Kalonzo Musyoka called on their supporters to protest in the streets in case the Court of Appeal ruled in favour of IEBC on the declaration of the final presidential poll. Following the nullification of the presidential election results, the President publically labelled Supreme Court judges as crooks (wakora). The attacks on the judiciary demonstrated absence of rule of law and antithetical the dictates of judicial independence.

Police were accused of committing sexual crimes during the election period. That 50% of the women who were raped in the process implicated uniformed policemen. A Report by the Human Rights Watch revealed devastating tales accounts of sex and gender based violence being used as a weapon to perpetuate conflict. Most of the incidents of sexual violence documented in the Report occurred in August,

---

64 KNCHR Still A Mirage P 30.
67 www.judiciary.go.ke/portal/blog/post/jsc-statement-on-attacks-on-the-judiciary-by-political-leaders.
after announcement of presidential elections and some following the repeat October election. The KNCHR also investigated and recorded over a hundred cases of SGBV in the General Election Period.

In the period under review, the police invaded, beat and injured University of Nairobi students in their hostels and lecture rooms. The students were protesting the arrest of Hon Paul Ongili alias Babu Owino, Member of Parliament for Embakasi East and the immediate former chairperson of the now defunct Students Organisation of Nairobi University SONU. The KNCHR report documented cases of unjustified use of teargas in closed spaces, including the ADD lecture halls. The KNCHR investigations report recorded shocking accounts by 46 witnesses raging from indecent assault on students, theft and damage to property as well as torture.

Amnesty International report 2016/2017 ranked Kenya top in Africa in extra judicial killings. Kenya accounted for 122 (69%) of the 177 cases reported in Africa. Most of the cases were in the coastal region of Kenya. Haki Africa reported 16 cases of police killings / disappearances in Mombasa in 2017. Police committed numerous human rights violations during the election period.

Further, investments in the security sector (rule of law sector) were more on hardware/procurement. There was apparently little or no effort directed at police behaviour change. There is no corroboration between the massive investments / huge budgetary allocation vis-a-vis quality of policing. The gulf between investments and quality of policing became wider and wider in 2017.

Kenya has not complied with comprehensive review of hate speech law which currently only covers ethnic or racial utterances. Hate speech in Kenya peaked in 2017 during the electioneering period when 176 cases were flagged by NCIC. There was a tendency for ‘VIP treatment’ of those who engaged in it particularly if they were in the president’s political party as they were never prosecuted nor restrained. For example, Bahati constituency Member of Parliament Kimani Ngunjiri was captured in a video asking the youth to ensure members of a particular community leave Nakuru Town and its environs immediately.

73 KNCHR, Mirage at Dusk: Human Rights Account of the 2017 General Election...
75 https://www.nation.co.ke/counties/25513134-3245172-1jme7z/index.html.
It is also apparent that human rights content in the police curriculum has had no impact on the observance of human rights and police have resisted human rights training by KNCHR despite several overtures.

In 2017 there were many protests regarding the democratic process of the general elections. However instead of engaging in dialogue to address the root concerns of protesters the government adopted measures to restrict public freedoms and resorted to violent repression of the protests. The power of police and military was used and abused to curtail democratic space.

The amendments to election laws (*Elections Act, 2011, The Independent Electoral and Boundaries Commission Act 2011 and The Election offences Act, 2016*) introduced through the *Election Laws (Amendment) Act (No. 34 of 2017)* were done hurriedly in a partisan manner during the electioneering period, in what was seen as a calculated move to unfairly benefit the Ruling Party in the October repeat presidential poll. The KNCHR submitted a detailed advisory to the joint Parliamentary Committee against the partisan process and contents of the law. Several of these amendments were subsequently annulled by the High Court in April 2018.76

### 2.4.2 Recommendations

1. The Commission calls upon the Government to ratify The African Charter on Democracy, Elections and Governance.

2. The government needs to implement the Prevention of Torture Act 2017.77

3. The Executive needs to implement recommendations contained in the KNCHR Report (2015) titled “The Error of Fighting Terror with Terror”

4. The Executive and Parliament need to support IPOA to strengthen investigations and disciplinary action against police officers who abuse human rights.

5. Implement the provisions of the TJRC to address historical injustices that formed part of the causes of violent extremism especially in the coastal region.

---


6. Government officers who defy court orders with impunity should be held to account at personal level.

7. Need for the survivors and families of sexual and gender based violence to receive the necessary psychosocial support and justice.

8. Police officers who violate human rights should individually be held to account.

9. Future instruments in the security sector need to channel resources towards the soft aspects, behaviour change and quality policing.


11. Parliament needs to fast-track the amendment of NCIC Act to be in line with Article 4 of International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

2.5 Good Governance, Transparency and Accountability: Progress Implementation, Challenges and Recommendations

2.5.1 Progress Implementation

To promote good governance, transparency and accountability in public sector, the presidency issued Executive Order No. 6 of 2015 on March 6, 2015. The Order is on promoting ethics and integrity in public service. The order requires that the institutions in the ethics and anti-corruption war (Ethics and Anti-corruption Commission, Judiciary, National Police Service, Criminal Investigation Department, Office of the Director of Public Prosecution) act swiftly without hesitation to detect, investigate and prosecute all the perpetrators irrespective of their social status. In addition, that laws touching on good governance, transparency and accountability were implemented as well. They include: Leadership and Integrity Act enacted pursuant to Article 80 of the Constitution\(^78\); the Public Officer Ethics Act of 2003\(^79\); Ethics and Anti-Corruption Act, Access to Information Act (No. 31 of 2016) 2011\(^80\) and the Public Finance Management Act of 2012 which regulates the use of public finance by both county and national governments. Other key offices

---

\(^78\)Article 80 of the Constitution on leadership.
\(^79\)CAP 183, Laws of Kenya.
\(^80\)Act No. 22 of 2011.
are the office of the Commission on Administration of Justice (Ombudsman).

The country has had protracted fight against corruption and always performed far below the public expectations. In his annual report to Parliament in 2017, the President made a renewed call and outlined the steps that have been taken to address the problem of corruption, transparency and accountability in public service. The measures taken / achievement were: 360 corruption cases involving public officers in courts; investments in preventive measures, tracking, seizing and confiscating proceeds of corruption; establishment of a multi-agency institutional framework that unites investigation and prosecution entities and Kshs1.66 billion provided to effect it; creation of a special High Court to handle corruption crimes; office of the public prosecution trained and deployed 90 special prosecutors for corruption cases; operationalization of the Financial Reporting Centre and Asset Recovery Agency; tracing and plans to seizure of corruption property worth Kshs 1.6 billion. Other achievements were enhanced cooperation with other jurisdictions through mutual assistance programs, however success cases with respect to mutual assistance programs have not been mentioned; cooperation with the private sector to develop tools and agreements to curb corruption (no details were given hence difficult to evaluate); seizure of Kshs 400 million assets acquired through corruption at National Youth Service (NYS); automation of service delivery in the public sector; increased use of mobile money payments and on-line transactions.

2.5.2 Challenges/Gaps

In spite of the massive investments in this sector, economic crimes increased in 2017. The number of economic crimes increased by 9.1% in 2017 and were 23% of the offences committed in the category of drugs, criminal damage, economic / corruption crimes81. In the same period, the cases handled and actions taken by the Ethics and Anti-Corruption Commission (EACC) increased by 40.1%. Complaints under investigation increased by 40.4%.

### Table 2: Corruption cases handled and Action Plan by EACC 2011-2016

<table>
<thead>
<tr>
<th>Action taken</th>
<th>2011/12</th>
<th>2012/13</th>
<th>2013/14</th>
<th>2014/15</th>
<th>2015/16</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corruption cases for investigation</td>
<td>2,183</td>
<td>1,423</td>
<td>1,950</td>
<td>2,747</td>
<td>3,856</td>
</tr>
<tr>
<td>Cases referred to other investigative agencies</td>
<td>178</td>
<td>111</td>
<td>120</td>
<td>117</td>
<td>215</td>
</tr>
<tr>
<td>Cases referred to public organizations for administrative intervention</td>
<td>754</td>
<td>506</td>
<td>561</td>
<td>649</td>
<td>633</td>
</tr>
<tr>
<td>Cases pending for more information</td>
<td>30</td>
<td>18</td>
<td>65</td>
<td>80</td>
<td>115</td>
</tr>
<tr>
<td>Complaints advised on the right authority to report</td>
<td>1,597</td>
<td>900</td>
<td>868</td>
<td>1,384</td>
<td>2,002</td>
</tr>
<tr>
<td>Complaints advised to seek civil redress</td>
<td>301</td>
<td>270</td>
<td>264</td>
<td>288</td>
<td>566</td>
</tr>
<tr>
<td>Cases with no further action (terminated)</td>
<td>187</td>
<td>127</td>
<td>178</td>
<td>395</td>
<td>542</td>
</tr>
</tbody>
</table>

### Table 3: Public assets traced, recovered and loss averted by EACC 2011 – 2016

<table>
<thead>
<tr>
<th>Period</th>
<th>Value of public assets traced in Millions</th>
<th>Value of public assets recovered in Ksh. Millions</th>
<th>Loss averted in Ksh. Millions</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011/2012</td>
<td>126.5</td>
<td>41.2</td>
<td>1,208.2</td>
</tr>
<tr>
<td>2012/2013</td>
<td>16,380.0</td>
<td>567.4</td>
<td>55,016.5</td>
</tr>
<tr>
<td>2013/2014*</td>
<td>7,214.0</td>
<td>2,068.0</td>
<td>5,600.0</td>
</tr>
<tr>
<td>2014/2015</td>
<td>3,669.6</td>
<td>140.3</td>
<td>1,600.0</td>
</tr>
<tr>
<td>2015/2016</td>
<td>3,614.1</td>
<td>420.6</td>
<td>2,600.0</td>
</tr>
</tbody>
</table>


According to the 2018 Economic Survey, the value of public assets recovered in 2016/17 stood at Ksh 239.9 million compared to Ksh 420.6 million in the
previous financial year.\footnote{KNBS, Economic Survey 2018 p 263.}

Notably, in spite of the high number of corruption cases handled by EACC there are exceedingly low convictions. The Economic Survey statistics do not either show the number convicted on economic (corruption crimes) or whether there was any. There has been allegedly continued manipulation of court process to escape accountability through unwarranted delays and too much reliance on legal technicalities to stifle justice\footnote{https://www.standardmedia.co.ke/article/2000213018/attorney-general-githu-muigai-criticises-judiciary-over-injunctions (Accessed on March 19 2018).}. The Judiciary has been accused of being accommodative of technicalities and multiple applications for delay\footnote{https://www.standardmedia.co.ke/article/2000142587/plan-to-rethink-injunction-rules-timely.}. Even when the Judiciary established a division of the High Court to try economic / corruption cases convictions are not known, for instance, the Economic Survey 2017 summarizes all convictions for the year by type of crime but does not include economic / corruption crime convictions, if any, in 2017. Generally, the low convictions on corruption have been blamed on lapses with police investigation and the work of the Office of the Director of Public Prosecution (ODPP) in terms of overall performance by various courts in the resolution of cases. The statistics do not reflect the commitments and promises made. The number of cases pending increased while disposed off cases reduced in 2017.

Table 4: Case status as at June 2017

<table>
<thead>
<tr>
<th>Years</th>
<th>Status of Case</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Filed</td>
</tr>
<tr>
<td>2014</td>
<td>500,349</td>
</tr>
<tr>
<td>2015</td>
<td>359,946</td>
</tr>
<tr>
<td>2016</td>
<td>226,554</td>
</tr>
</tbody>
</table>

Source: Economic Survey, 2017

Besides the myriad of promises, policies and laws on good governance, integrity, transparency and accountability, corruption spiralled in 2017. The most noticeable was in the Ministry of Health which could not account for Ksh. 250 Million and which subsequently led to the suspension of Ksh2.1 billion funding by the US government.\footnote{https://www.standardmedia.co.ke/article/2001239153/united-states-agency-withdraws-sh2-1-billion-health-support.} Throughout 2017 the traffic police department, Ministry of Lands
and the Judiciary were in the media most of the time on corruption allegations\textsuperscript{86,87}. In 2017, a total of 127 police officers were sacked for failing the vetting exercise due to various corruption links.\textsuperscript{88}

The EACC has no delegated powers to prosecute yet other state agencies like Kenya Wildlife Service (KWS) and Kenya Bureau of Standards (KBS) have prosecutorial powers. Therefore EACC has to depend on the assessment by other agencies.

In the run-up to the 2017 general elections some aspiring politicians who had integrity issues relating to corruption, impersonation and forged academic qualifications were cleared by IEBC against the advice of EACC to contest the 2017 elections. In one classic case the University of Nairobi Senate later nullified Mithika Linturi’s (Senator, Meru County) law degree which he had presented as part of the requirements for eligibility to contest\textsuperscript{89}. During the 2017 General Elections, county and national public officers and politician used public resources to campaign and IEBC further allowed cabinet secretaries to do so\textsuperscript{90}.

### 2.5.3 Recommendations

1. There is need for Parliament to enhance the mandate of EACC to include prosecution in addition to its investigative mandate under Article 157(12) which empowers Parliament to enact legislation conferring powers of prosecution on authorities other than the Director of Public Prosecutions. This is possible since other state agencies have prosecution power.

2. The government needs to fully implement the provisions of the Proceeds of Economic Crime and Anti-Money Laundering Act 2017.

3. The government to fast-track implementation of Access to Information Act especially on proactive disclosure of information and Bribery Act. In addition, regulations to guide their implementation should be developed urgently.

\textsuperscript{90}The 2017 ELOG General Elections Observation Report.
2.6 Article 10(2) (b) Human Rights, Equity, Social Justice, Inclusiveness, Equality, Non-Discrimination and Protection of the Marginalized

2.6.1 Introduction

The Bill of Rights provides for equity, social justice, inclusiveness, quality, non-discrimination and protection of the marginalized are core tenets that underpin human rights. The Bill of Rights is an integral part of Kenya’s democratic state as well as the framework for social, economic and cultural policies.

The Sengwer people live in Embobut forest and have faced eviction since December 2017. The Kenya Forest Service (KFS) carried out evictions despite an Eldoret High Court order to stop the evictions. In May 2017, the African Court delivered a ruling in favour of the Ogiek community following repeated government evictions from their ancestral land in Mau forest. In November 2017 the government of Kenya gazetted a Task Force to implement the ruling. However, the Task Force consisted of only government officers without Ogiek representation.

2.6.2 Human Rights Economic and Social Rights

Article 43 of the Constitution of Kenya 2010 guarantees the right to the highest attainable standard of health, accessible and adequate housing, reasonable standards of sanitation to be free from hunger, to clean and safe water in adequate quantities, social security and education. The initiation of the “big four” development initiatives by your Government targeting increased; Manufacturing, Food Security, affordable Healthcare and Housing hopefully will go a long way in progressive realization of Article 43 rights.

The right to education continues to enjoy a major boost from your Government with the continued provision of free primary and free secondary day education, school meals to disadvantaged and vulnerable children and distribution of sanitary towels to female pupils and students. There however remain challenges in the quality and accessibility of the free primary education. In Wajir County, the right to education for over 14,000 secondary students and 111,500 pupils in primary

91Chapter 4, Constitution of Kenya, 2010
schools was threatened after the Teachers Service Commission withdrew 315 secondary school teachers and 585 primary school teachers due to insecurity concerns.

Government’s failure to honour Collective Bargaining Agreement (CBA) with university lecturers led to a yearlong boycott of duty by lecturers. This disrupted in higher institutions of learning for much of 2017.95

On the right to health, enhancement of the National Hospital Insurance Fund to increase the healthcare benefit for beneficiaries is a welcome move towards ensuring universal healthcare. However, the quality of emergency health care in the country especially counties is wanting; the quality of healthcare services in public hospitals is also grossly wanting as patients are offered substandard services as KNCHR’s recent research study reveals.96 Furthermore, Kenya is yet to attain the desired budgetary allocations on health of 15% of the national GDP in line with the Abuja Declaration. Notwithstanding the budget,

Disruption of health care services by industrial action is a great threat on the right to the highest attainable standard of healthcare. Health workers at county and Kenyatta National Hospital were on strike over a CBA for more than three months in 2017.

Rights of Sex Workers and other vulnerable groups

The Female Sex Workers (FSW), Men who have Sex with Men (MSM), People Who Inject Drugs (PWID) are still criminalized according to current penal laws. Hence the response to combating HIV/AIDS has been compromised.97 Their human rights are equally not respected.

Intersex children and adults continue to face discrimination in various spheres. The research study carried out by KNCHR98 revealed that they face serious human rights violations ranging from legal recognition through registration documents, to education, health and other sectors. Hope is however live as the Attorney General vide Gazette No. 4904 of 2017 appointed a multi-sectoral task force on policy, legal, institutional and administrative reforms regarding intersex persons in Kenya. The task force was to undertake research on intersex persons and recommend

reforms in order to safeguard their rights. At the time of publication, the work of the Taskforce was still ongoing and was expected to be concluded towards the end of 2018.

**Right to Information**

On the use of ICT, many MDAs created Twitter and Facebook accounts to engage with the public and enhance interaction. However, they do not put them to use thereby denying the public the right to access public information and obscure transparency.

In addition, the Access to Information Act, 2016 is yet to be fully operationalized due to failure by the Minister of Information, Communication and Technology to develop the implementing regulations.

**Transgression of Human Rights**

The conduct of the police during the period of the 2017 general election\(^99\) and the invasion of the University of Nairobi hostels\(^100\) and lecture halls led to serious human rights violations. The investigations carried out by the Kenya National Commission on Human Rights points to violations such as Torture, Cruel, and Inhumane Degrading Treatment or Punishment as well as violation of duty of care by the University of Nairobi in allowing police officers within the precincts of university premises while students where in class.\(^101\) The KNCHR released several reports highlighting gross human rights violation in the electioneering period\(^102,103\). The clubbing of baby Pendo highlighted the magnitude of police transgressions on human rights\(^104\). The police violated Article 26 of the Constitution which safeguards the right to life.

In most of 2017 medical personnel were on protracted strike over terms and conditions of service and the government reluctance to implement a CBA. Over

---

300 people died during the strike largely for lack of access to health services.\textsuperscript{105} The government intransigence over the matter worsened and the impact of the strike and millions of Kenyans did not access health services. Their right to health services was severely compromised\textsuperscript{106}.

Failure by several constituencies to vote in the repeat presidential poll of 26th October 2017 undermined political rights contrary to Article 38 of the Constitution.

The violation of the right to picket contrary to Article 37 was also outstanding in the 2017 electoral year. In many cases, police used excessive force to curb protests.

In 2017, there was an attempt by the government to constrict the civil society space when government threatened to deregister some CSO including Kenya Human Rights Commission (KHRC), AFRICOG and MUHURI following pressure on government failure to operationalize the Public Benefits Organization (PBO) Act despite several court orders.

**Social Justice and Protection of the Marginalised**

MDAs have not been fully committed to the realization of the provisions of the Bill of Rights. In some counties for instance, there is outright discrimination. At national level (in public service) certain ethnic groups still dominate public service employment (Kikuyu, Kalenjin, Embu, Kisii, Boran) far beyond their share while others (Luhya, Maasai) have far fewer positions compared to their ethnic numerical strength. In public service members of certain ethnic groups still dominate particular professions in MDAs especially accounting, security and procurement. At the executive level most cabinet secretaries and permanent secretaries are from two ethnic groups – Kikuyu and Kalenjin who constitute only (4.7\%) of the 42 ethnic groups that make up the Kenya nation.

In public service minority/marginalized groups appointment has been progressive. Out of 12,041 employed in 2017, 2679(20.5\%) were employed compared to 982 (15.5\%) in 2015/2016 financial year\textsuperscript{107}.

Article 54 of the Constitution grants PWDs equal treatment with dignity and respect. Article 13 of the Constitution guarantees every Kenyan the right to

freely participate in the government of his country. On October 2, 2017 a PWD politician in Kakamega County was teargassed by police\textsuperscript{108}. Article 54(2) provides for progressive implementation of the principle that at least 5\% of the members of the public in elective and appointive bodies shall be PWDs. However, this constitutional provision was not been followed by political parties in the nomination process for the 2017 national elections.

Cash transfer to vulnerable groups: Older Persons Cash Transfer, Orphaned and Vulnerable Children Cash Transfer and Cash Transfer to Persons with Severe Disabilities has been a programme of government for over a decade. Other PWDs benefit from the National Development Fund for Persons with Disabilities, which is provided for in the Persons with Disabilities act. However the penetration remains insignificant or unknown\textsuperscript{109}.

Article 260 of the Constitution has an elaborate definition of marginalized communities. Some efforts have been made through establishment of the Equalization Fund, Uwezo Fund, Youth Fund, and Women Fund, cash transfer for the older persons, orphans and PWDs. However planning and targeting has not been well done in order to reach those who had or are still marginalized by past laws, policies and practices are properly identified for support.

2.6.2.1 Recommendations

1. The Ministry of Gender and Social Services need to undertake an assessment on the impediments to increase cash transfer penetration and develop a way forward.

2. All persons with disabilities should be included in the cash transfer programme.

3. There is need for proper identification and targeting in order to reach all those who are still marginalized and discriminated against.

4. The State must ensure that funds allocated to these programs are properly utilized and cases of corruption severely punished.

5. The government to implement with commitment the provisions of the Proceeds of Crime and Anti-Money Laundering Act.

\textsuperscript{108}\url{http://www.knchr.org/Portals/0/CivilAndPoliticalReports/MIRAGE%20AT%20DUSK%20-%20Human%20Rights%20Counts%20of%20The%202017%20General%20Election.pdf.pdf?ver=2017-10-09-130024-457}

2.6.3 Gender Inequality

At both national and county governments women inequality is apparent. In the County Assemblies and National Assembly women representation is particularly low. Article 27(8) and 81(b) of the Constitution provide for mechanisms to address gender inequality in politics. Therefore the principle that two thirds of members in all public bodies shall not be of one gender is not fulfilled as promised in the Constitution. In the 2013-2017 parliament, women were 86(20%) of the total number of 416 thereby miserably failing to meet the minimum constitutional requirement. In the current parliament following the 2017 General Elections, only 22 women were elected in addition to 47 women representatives. This accounts for 19.7% which is below the two thirds gender requirement. The Cabinet had only five female cabinet secretaries (25%) out of twenty positions. In addition, there are only 14(33.3%) female principal secretaries out of a total of forty two.

As preparation for the 2017 general election preparations were in top gear, the Katiba Institute took IEBC to court with the view to compel it to conduct political party primaries in order to ensure that lists submitted by political parties met the constitutional requirements. The court agreed with the petitioners that the gender inclusion in the party lists will be implemented in 2022. In addition, the Supreme Court of Kenya also fails to meet the two thirds requirement as it has only two female judges (28.5%) out of seven. The Executive had only five female cabinet secretaries (25%) out of twenty positions. In addition there are only 14(33.3%) female principal secretaries out of a total of forty two. This demonstrates that all the arms of government have not adhered to Article 10(2) on value of equality. At paper work level, the government has performed well in this regard. There is a plethora of trainings, publications and guidelines on gender responsiveness but this is not reflected in actual scenario.

Article 204 of the Constitution establishes the Equalization Fund which is 1.5% of all the national revenue. The criteria for marginalization includes the following; legislated discrimination; geographical location, culture and lifestyle, external domination, land legislation and administration, minority recognition groups,
ineffectual political participation, and inequitable government policies\textsuperscript{115}.

Subsequently fourteen counties qualified namely: Turkana, Mandera, Wajir, Marsabit, Samburu, West Pokot, Tana River, Narok, Kwale, Garissa, Kilifi, TaitaTaveta, Isiolo and Lamu.\textsuperscript{116} However, other deserving counties or sections of counties were left out and therefore remain excluded and marginalization continues.

**2.6.4 Recommendations**

1. The Senate needs to ensure that sections of the counties that suffer marginalization are included in the Equalization Fund.

2. The is need to review section 204 of the constitution that sets out the criteria used in identifying counties to benefit from the Equalization Fund to include sections of counties or sub counties that deserve to benefit from the Fund.

3. The Access to Information Act No. 31 of 2016 should be fully operationalized. All MDAs must be compelled to activate and use on a daily/regular basis the ICT platforms to enable members of the public to access information and interact with public officers.

4. The government should honour and support the implementation of CBAs entered into by MDAs to avoid disruption of services. This applies to the Ministries of Health and Education which have the notoriety for not respecting CBAs. The government needs to hire more doctors as the doctor-patient ratio of 1:17,000 is to low compared to the WHO recommendation of 1:1,000.

5. All the arms of government should respect the Constitution and implement the two thirds gender rule. The president in particular should use this Jubilee party majority in both senate and parliament to enact a law that compels IEBC to accept lists of nominees from political parties that conform to the constitution. Similarly, the president has the sole discretionary power in making cabinet secretary and principal secretary appointments hence he has all the tools needed to realize this requirement.

\textsuperscript{115}\textsuperscript{Kenya Constitution Section 204.}
\textsuperscript{116}\textsuperscript{www.kenyarep-jp-com/Kenya/ministries-e.html (Accessed on January 10, 2018).}
2.7 Article 10(2) (d) Sustainable Development

2.7.1 Implementation Progress

Towards achieving Vision 2030 the government undertook several infrastructure projects. In 2017, the most noticeable projects were: launch of the SGR passenger train, launch of the SGR container train, completion of the Outering Road Project and completion of Terminal AI at Jomo Kenyatta International Airport (JKIA). The Ministry of Devolution and Planning has the mandate to monitor the implementation of sustainable Development Goals (SDG) through the actions of MDAs and constitutional commissions.

The continued non-implementation of the NVPG by some public officers has entrenched corruption and undermined the rule of law which are a threat to sustainable development. The spiral in corruption has also scared away potential investors thereby undermining employment creation, a situation which undermines sustainable development. The continued insecurity in most of northern Kenya has also undermined sustainable development. In the mining sector the dearth of clear policies of operation has led to exploitation of workers. KNCHR report of inquiry undertaken in Taita Taveta County in 2017 demonstrated the poor working conditions mine workers are subjected to. The Energy Bill, Petroleum Bill (Exploration, Development and Production) and National Resource Fund (Benefit Sharing Bill) passed in 2016 are still waiting presidential assent in 2017.

In 2017 the government banned the use of polythene bags through a Gazette Notice No. 2356. The intention was to enhance environmental protection in the context of sustainable management.

The country’s wage bill is unsustainable despite spirited efforts by the Salaries and Remuneration Commission (SRC). In the 2017 State of the Nation Presidential Speech, he reported that half of the national revenue was used to pay salaries for 2% of the population.

Throughout 2017 unsustainable use of public resources was an issue of concern especially following cases of corruption, misuse of public resources, and an unsustainable wage bill.

The institutions mandated with environmental protection and sustainable use of resources are weak in enforcement hence the rapid depletion of resources, overgrazing, deforestation, soil erosion, increase in charcoal burning and poaching. Kenya’s forest cover declined to 3,456,000 hectares in 2017 from 3,464,000 hectares in 2015\textsuperscript{119}.

\subsection*{2.7.2 Recommendations}

1. The government needs to invest more in infrastructure projects in order to give opportunity to the public to utilize their potential.

2. The government needs to prioritize investment in labour intensive areas and manufacturing to create avenues for employment creation.

\textsuperscript{119}Human Rights in Kenya’s Extractive Sector: Exploring the Terrain, IHRB.
FULFILMENT OF INTERNATIONAL OBLIGATIONS

The President shall, once every year—
Submit a report for debate to the National Assembly on the progress made in fulfilling the international obligations of the Republic.”

Article 132 C (iii)

3.1 Implementation Progress

Apart from being a member of the United Nations, Kenya is also a member of the following: International Court of Justice (ICJ), The African Union (AU), East African Community (EAC), Intergovernmental Authority on Development (IGAD), New Partnership for Africa’s Development (NEPAD), and the Common Market for Eastern and Southern Africa (COMESA). These international and regional organizations have treaties, covenants and conventions which Kenya as a member state is a signatory to or has ratified. The KNCHR is mandated by the Constitution as the principal organ of the state in ensuring compliance with obligations under treaties or conventions relating to human rights. Therefore this report is confined to human rights regional and international treaties and convention that Kenya is signatory to. The relevant human rights treaties and conventions are: CRC, ACRWC, ACHPR, CEDAW, CERD, ICCPR, ICESCR, CRPD, the optional protocol on CRC on the sale of children, child protection and child Pornography, Optional

Article 132(1) and (iii) of the Constitution mandates the President annually to submit to Parliament a report on the progress made in fulfilling the international obligations of the Republic. The President submitted the annual report for 2016/2017 in March 2017.

Kenya’s record on compliance with its international human rights obligations has been fair. The significant achievements were:

- Kenya submitted its report to the 92nd Session of the Committee on the Elimination of All Forms of Racial Discrimination in May 2017 the last one having been submitted in 2011.

- In 2017 Kenya was among the eight African countries that submitted its periodic report to ACRWC.

- Kenya last submitted a combined 8th-11th Periodic Report for 2008-2014 on March 11, 2015 during the 19th Extraordinary Session. Hence the report to ACHPR for 2017 reporting period is yet to be submitted.

- Convention on the Rights of the Child (CRC). The last report was submitted in 2013 and Kenya was reviewed in 2016. The next report is due in 1st September 2021.

- Convention on Economic Social Political and Cultural Rights (ICESPCR). The last report was submitted in January 2016, the next report is due in 2020.

- During the period under review, the Parliament enacted the Prevention of Torture Act No 2 of 2017 which provides an overarching framework for the prevention of torture in Kenya. The Act seeks to give effect to articles 25 (a) and 29 (d) of the Constitution of Kenya as well as the principles contained in the Convention against Torture and other Cruel, Inhuman or

---

320 Article 59(2) (g) of the constitution.
324 http://www.achpr.org/states/reports-and-concluding-observations/
Degrading Treatment or Punishment.

- In addition, the state submitted its fifth and seventh periodic reports to the Committee on the Elimination of Discrimination against Women and was reviewed by the Committee on 2nd November 2017. Furthermore, the state submitted its report on Committee on Racial Discrimination and was reviewed on its implementation on the 3rd May 2017.

- The State continues to delay in submission of its periodic reports on Convention against Torture which was due on 31st May 2017 and the International Covenant on Civil and Political Rights which was due on 27th July 2015.

- Convention on the Rights of Persons with Disabilities (CRPD). The last report was submitted in April 2012.

3.1.1 Challenges/Gaps

In respect to CEDAW and Maputo Protocol, Kenya has a Constitution and other mechanisms that outlaw gender discrimination. There have been court rulings in favour of the constitutional provisions, however Parliament has failed to enact legislation to implement the two thirds gender rule. The Executive, and Judiciary have not implemented and discrimination against women continues.

Kenya continues to maintain reservations to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in African (Maputo Protocol), Kenya ratified the Protocol on October 13, 2010 with reservations to Articles 10 and 14(2)(c) of the Protocol. These relate to Article 10 (3) that calls on States Parties to take the necessary measures to reduce military expenditure significantly in favour of spending on social development in general, and the promotion of women in particular. The other is on medical termination of pregnancy.

For CRPD, there are constitutional and legal provisions that guarantee provisions for PWDs with a focus on social protection. However, PWDs remain grossly underrepresented in political, social and economic affairs. Government support to PWDs is only limited to those with severe disabilities. In terms of ACRWC, CRC and optional protocol on the involvement of children in Armed Conflict, Optional

---

128Article 14(2)(c) obligates state parties to take all appropriate measures to, “protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus”. Article 26(4) of the Constitution prohibit abortion safe in cases of emergency treatment or the life of the mother is in danger, or if allowed by a written law.
Protocol on CRC on Sale of Children and Child Prostitution and Child Pornography there were aspects of non-compliance in 2017. The protracted conflict in North Western Kenya between ethnic groups compromised the rights of the child. In addition during elections several children were shot dead by police. In 2017, nurses were on strike for five months. In the same year doctors were on strike for three months. In March of 2017 the rights and welfare of the Kenyan child were abused as access to health care was severely compromised. Many children in Kenya are in child labour, victims of harmful cultural practices, early marriage, and roaming the streets.

Kenya is actively engaged with the United Nations treaties but rather sluggish on African and regional mechanisms. For example Article 62 of the African Charter requires submission of periodic state reports every two years but Kenya has lagged behind in terms of reporting.


Kenya signed the International Convention for the Protection of All Persons from Enforced Disappearance over a decade ago but is yet to ratify it. Following the recorded cases of enforced disappearances, Kenya needs to ratify this treaty.

There has been marginal progress on ICCPR Optional Protocol on the death Penalty in Kenya. Kenya is yet submit its 2017 reports to ICCPR and CAT.

The President's annual report for 2017 was scanty on international obligations but focused more on national issues. It is therefore difficult for Kenyans to understand what international human rights obligations the State has or has not fulfilled and the consequences for non-fulfilment.

Kenya lags behind in terms of reporting on human rights obligations. This creates a bad image in the international community.

In 2017 the Office of the Attorney General and Department of Justice made

commendable efforts towards preparation of the Universal Periodic Review (UPR) midterm review report. The CSOs Stakeholders Coalition on UPR co-convened by KNCHR also made progressive steps towards assessing governments mid performance in implementing the UPR recommendations accepted in the second cycle.

3.1.2 Recommendations

1. There is need to sensitize the public on international obligations in order for them to hold the President accountable.

2. Civil Society Organizations in human rights need to actively monitor, report and expose the state for non-compliance or late reporting. In addition, they need to prepare and submit shadow reports on Kenya’s international obligations.

3. Kenya needs to ratify the following human rights treaties in order to provide Kenyans with an avenue to utilize international instruments/institutions for redress: Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Optional Protocol to the International Covenant on Civil and Political Rights; Second Optional Protocol to the International Covenant on Civil and Political Rights (aims at abolition of death penalty), Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women; Optional Protocol to the Convention on the Rights of the Child on Communication Procedure; International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and International Convention for the Protection of All Persons from enforced Disappearance.

4. The Government needs to withdraw reservations to Article 14(2) of the Maputo Protocol as well as withdraw of reservation under Article 10 of the ICESCR which requires that States make provision for paid maternity leave.

5. There is need for the government to fast-track the implementation of the African Court ruling with regard to the Ogiek and Endorois right to occupy their ancestral land in Mau Forest and Lake Bogoria Game Reserve.
respectively.

6. The government needs to come up with an improved coordinated mechanism of quality data collection, disaggregation of data that is appropriate for tracking progress and reporting under monitoring mechanisms at the regional and international arena.

7. The government needs to improve on reporting to comply with its obligations.

8. The government needs to implement all the Universal Periodic Review recommendations.