

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)



ANNUAL REPORT FOR THE 2008 – 2009 FINANCIAL YEAR

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ACRONYMNS

ADR	Alternative Dispute Resolution
AU	African Union
CAT	Convention against Torture, Cruel, Inhuman and Degrading Treatment
CEDAW	Convention on Elimination of all Forms of Discrimination against Women
CHRI	Commonwealth Human Rights Initiative
CIDA	Canadian International Development Agency
CCK	Communications Commission of Kenya
CIPEV	Commission of Inquiry on Post-Election Violence
CRMC	Complaints Referral and Monitoring Committee
CSO	Civil Society Organizations
CSR	Corporate Social Responsibility
DCIO	District Criminal Investigation Officer
DPP	Department of Public Prosecutions
EPZs	Export Processing Zones
FY	Financial Year
GJLOS	Governance, Justice, Law and Order Sector
GTI	Government Training Institute
GTZ	German Technical Cooperation
HeRWAI	Health Rights of Women Assessment Instrument
HRDs	Human Rights Defenders
HRBA	Human Rights Based Approach
IBHR	Institute for Business and Human Rights
ICC	International Criminal Court
ICERD	International Convention on the Elimination of all forms of Racial Discrimination
ICJ-K	International Commission of Jurists – Kenya Chapter
ICTJ	International Center for Transition Justice
IDPs	Internally Displaced Persons
IEC	Information, Education and Communication
ILO	International Labour Organization
IMLU	Independent Medico-Legal Unit
IMTC	International Mines Training College
ISO	International Organization for Standardization
KHRC	Kenya Human Rights Commission
K-HURINET	Kenya Human Rights Network
KIA	Kenya Institute of Administration
KIM	Kenya Institute of Management
KNCHR	Kenya National Commission on Human Rights
MoJNCCA	Ministry of Justice, National Cohesion and Constitutional Affairs
MOPA	Movement for Political Accountability
NAP	National Policy and Action Plan for the Promotion and Protection of Human Rights
NHRIs	National Human Rights Institutions
OCPD	Officer Commanding Police Division

OCS	Officer Commanding Station
ODM	Orange Democratic Movement
OHCHR	Office of the High Commissioner for Human Rights
PCEA	Presbyterian Churches of Eastern Africa
PEV	Post Election Violence
PNU	Party of National Unity
RWI	Raoul Wallenberg Institute
SITAN	Situation Analysis
TJRC	Truth, Justice and Reconciliation Commission
UN	United Nations
UNDEF	United Nations Democracy Fund
UNDOC	United Nations Office on Drugs and Crime
UNHCR	United Nations High Commissioner for Refugees

CHAIRPERSON'S FOREWORD

In the period 2008/2009, the country was recovering from the events of the post election violence. The enactment of the National Accord and Reconciliation Act in 2008 provided for a wide range of reforms including Constitutional, Electoral, Institutional, Land and other reforms that would address the root causes of the conflict and prevent the resurgence of violence.

During this financial year, the Commission focused on monitoring and advocating for implementation of Agenda 4 reforms of the National Accord. In particular, the Commission focused on advocating and advising on security sector and judicial reforms, land reforms, constitutional review, establishment and operationalization of a Truth, Justice and Reconciliation Commission, prosecution of the perpetrators of the post election violence through either a local tribunal or the International Criminal Court and the resettlement of internally displaced persons.

This year also saw the Commission finalize and release its report on investigations of the post election violence titled "*On the Brink of the Precipice: A Human Rights Account of Kenya's Post 2007 Election Violence*". This report made wide ranging findings with regards to the patterns of the post election violence, the conduct of state agencies, the role of non state actors, and the criminal culpability of alleged perpetrators including an analysis of whether the crime of genocide and crimes against humanity had been committed. The Commission found evidence of organization of some of the violence in the Rift Valley, Nyanza, Western, Coast and Central provinces. The Commission further found that the violence was characterized by widespread or systematic ethnically-targeted killings of civilians, looting and destruction of property belonging to persons politically aligned to either PNU or ODM. In relation to the conduct of state agencies, the Commission found among other things evidence of use of excessive and lethal force by security forces (Administration Police, Regular Police and General Service Unit) in actual or apparent endeavors to quell the violence. The Commission also found the media culpable for inciting hatred immediately prior to the violence. Finally, the Commission found evidence of violations of human rights protected under the Constitution, international treaties to which Kenya is a party and other national laws. Based on these findings, the Commission among other things recommended that the Attorney General undertake investigations regarding the list of alleged perpetrators to determine their criminal culpability under the law.

Following the release of the post election violence report, a number of politicians moved to court seeking to have their names expunged from the report. These cases against the Commission are still pending in court. The Commission wishes to reiterate that it undertook the investigations in fulfillment of its mandate as set out in Section 16 of the KNCHR Act. Moreover, the Commission was acting in pursuance of its Strategic Objective of *Reducing Systemic Human Rights Violations* through accountability of perpetrators. Next year, the Commission will continue to strongly advocate for a mechanism (whether local or international) for the prosecution of perpetrators of the post election violence as a measure for ending impunity, which has been entrenched in the country.

This year also saw the Commission finalize its investigation into allegations of extra-judicial killings and the publication of the report *Cry of Blood: A Report on Extra Judicial Killings and Disappearances*. The Commission's findings caused the Government to invite the UN Special

Rapporteur on Extra-Judicial Killings to undertake investigations on allegations of extra-judicial killings and disappearances. It will be recalled that the Special Rapporteur's findings corroborated those of the Commission, and in his recommendations he among others things called for an overhaul of the police force and the setting up of an independent civilian oversight over the police. The Commission takes this opportunity to commend the Government for the establishment of the Police Civilian Oversight Board and the Task Force on Police Reforms (the Commission is a member of both).

One of the negative consequences of the extra-judicial killings investigations was the intimidations and threats to many human rights defenders, including staff of the Commission. As a result, the Commission was forced to send its staff away for protection and many human rights defenders were forced to flee the country. It is for this reason that the Commission will in the next planning period seek to have a structured mechanism, strategy and funds for the protection of human rights defenders and/or witnesses facing threats and risks arising out of their human rights protection work.

The Commission remains optimistic that the Coalition Government will stick to the terms of the National Accord and Reconciliation Act 2008 by implementing the reforms therein. We are also optimistic that political interests will not override the interest of Kenyans to see the wide ranging reforms be implemented and that Kenyans will be reconciled as a people rather than divided into ethnicities. It is also our hope that the remaining internally displaced people in various camps across the country will be resettled to ensure that they live a dignified life with their rights protected. The Commission will therefore remain vigilant in monitoring the Government's compliance with its obligations to implement various reforms, particularly Agenda 4 reforms.

Finally, the Commission underwent yet another transition internally with the end of term of the founding Chairman, Mr. Maina Kiai and the Secretary to the Commission, Mr. Mburu Gitu. The Commission will remain indebted to them for laying a strong and firm foundation and framework upon which the Commission was operationalized and continues to operate to date. A new Chairperson, Ms. Florence Simbiri-Jaoko, Vice Chair Person, Mr. Hassan Omar Hassan and Secretary, Mr. Mohammed Konso Halo were appointed in this year to continue with the excellent human rights work undertaken by their predecessors.

Finally, we appreciate all Kenyans for their unwavering support of the Commission in implementing its mandate. We will remain at the forefront in ensuring that the rights of all Kenyans are protected and promoted through law, policy and other actions.

Florence Simbiri-Jaoko
CHAIRPERSON

SECRETARY'S REPORT

This is the sixth Annual Report of the Kenya National Commission on Human Rights, and it comes at a time when the Commission is moving towards the final year of implementation of its Strategic Plan (2003-2009). This report is prepared in partial fulfillment of the Commission's statutory obligation under section 21(2) of its constitutive Act and covers its work for the period July 2007 to June 2008.

The Kenya National Commission on Human Rights is an independent National Human Rights Institution established by an Act of Parliament (KNCHR Act, 2002) and became operational in July 2003. Its core mandate is to further the protection and promotion of human rights in Kenya. The Commission succeeded the Standing Committee on Human Rights which was established in 1996 through Presidential Decree, and which lacked independence. The Commission envisions a strong and vibrant human rights culture founded on equality and social justice for all. Its mission is to contribute to the establishment of a society that respects human dignity, social justice and equal opportunity for all. The Commission believes in its independence, accessibility, humility, professionalism, gender equity, accountability, participation, equality and people-centeredness.

The Commission's broad mandate is to act as a watch-dog over the Government in the area of human rights. This embraces all human rights - economic, social and cultural rights as well as civil and political rights. The Commission also has the powers of a Court under section 19(1) to issue summons or other orders, question any people in respect of any subject matter under investigation by the Commission, and require any person to disclose any information within such person's knowledge relevant to any investigation by the Commission. Under section 19 (2) of the KNCHR Act, the Commission also has powers to provide remedies where there is a human rights violation, including the release of any unlawfully detained or restricted person, the payment of compensation, and any other lawful remedy or redress.

The Commission's core functions (as set out in section 16 of the KNCHR Act) include investigations (on its own initiative or upon complaints made), assessing conditions under which inmates are held in prisons, informing and educating the public on human rights, recommending to Parliament effective measures to promote human rights, inculcating citizens awareness of their civic responsibilities and obligations, and ensuring governments' compliance with international obligations under human rights treaties.

The Commission's planning direction is focused on five strategic objectives as stipulated in the current Strategic Plan as follows: reduction of systemic human rights violations; leadership in framing and informing human rights discourse; increased opportunities for realization of economic and social rights; establishment of comprehensive human rights education systems; and establishment of institutional capacities to deliver effectively and efficiently on human rights. During the reporting period, the Commission implemented activities aimed at realization of these objectives. Implementation was however affected by inadequate government funding and staffing shortage. The funding challenge was worsened by the suspension of Governance, Justice, Law and Order Sector reform programme (GJLOS) basket funding, which had over the previous years been the main source of programme funding for the Commission. Because of this, some planned activities were not implemented.

In this Financial Year, the Commission received a total of Ksh. 110,000,000 from the Government against a budget of Ksh. 379, 969, 821. The deficit was mainly funded by the Governance, Justice, Law and Order Sector reform programme (GJLOS) basket funds before suspension, and direct donors. Direct funding support was received from the Embassy of Finland and Denmark, Canadian International Development Agency (CIDA), United Nations Development Programme (UNDP), UN Office of the High Commissioner for Human Rights (OHCHR), Swedish International Development Agency (SIDA) and the International Labor Organization (ILO). The Commission acknowledges and appreciates the overwhelming support that it has continued to receive from development partners to enable it to implement its mandate. The Commission will in the coming year endeavor to seek additional funding from the Government, in particular, to enable it to build its human resource capacity and to increase its accessibility through the establishment of additional regional offices.

I acknowledge with special thanks the support of the Government of Kenya and the Commission's development partners during the period under review. I also wish to sincerely thank the Commission's staff for their contribution during the year. Their dedication enabled the Commission to deliver on its mandate and obligations as required under the KNCHR Act. As the next year will mark the final year in the implementation of the Commission first strategic Plan (2003-2009), the Commission will in the next year focus on evaluating its performance vis-à-vis its mandate and objectives. The outcome of this evaluation will enable it to re-strategize and re-focus its strategies and programmes to ensure that it realizes results for all Kenyans in the most efficient and effective manner. It is my hope that the Government will take up its responsibility of resourcing the Commission well to enable it undertake its mandate, and achieve its financial independence as expected under the Paris Principles relating to the status of national human rights institutions.

Finally, we hope that the Government will take up its responsibility of ensuring that the recommendations of the Commission arising out of various investigations, research and reports are implemented so as to ensure that Kenya becomes a human rights state. The Commission will on its part continue to advise the Government on its human rights obligations and also act as watchdog to ensure that the rights of all Kenyans, in particular the most vulnerable, are respected.

Mohammed Konso Hallo
SECRETARY TO THE COMMISSION

EXECUTIVE SUMMARY

The Kenya National Commission on Human Rights (KNCHR) is an independent National Human Rights Institution established by an Act of Parliament. Its core mandate is to further the protection and promotion of human rights in Kenya. The Commission was created as a strategy towards the better protection and promotion of human rights in Kenya.

The commission's core functions (as set out in Section 16 of the KNCHR Act) include investigations (on on initiative or upon complaints made), assessing conditions under which inmates are held in prisons, inform and educate the public on human rights, recommend to parliament effective measures to promote human rights, inculcate citizens awareness of their civic responsibilities and obligations, and to ensure governments' compliance with international treaties.

In the period under review, the Commission spent half the period investigating and documenting the violations of human rights that occurred after the 2007 national elections. The findings were documented and shared with the government and relevant international and regional organizations including the International Criminal Court (ICC) with recommendations to investigate the matter since crimes against humanity were found to have been committed.

The Commission received a total of 2,023 complaints from the head office and the two regional offices in Wajir and Kapenguria. However, the processing of complaints to completion through redress was hampered by the court order that stopped the constitution of complaints hearing panels. The Complaints and Investigation programme gave legal advice and used Alternative Dispute Resolution Mechanisms (ADR) to settle some of the petitions filed by complainants.

The Redress Programme sought and was allowed to join as an amicus curie in a case regarding the rights of intersexual persons. It also represented the Commission in two matters which arose from the Commission's post election violence investigations report. Two senior politicians who were listed in the report as alleged perpetrators moved to court seeking to expunge their names from the report. In the report, the Commission investigated and documented its findings and made recommendations to the government on various aspects of human rights. Key among these was the recommendation that the Attorney General conduct investigations to determine the criminal culpability of the alleged perpetrators.

Under the Campaigns and Advocacy programme, the team focused on advocacy for an effective Truth, Justice and Reconciliation Commission by profiling and building the capacity of civil society organizations and citizens to engage with the process once it commenced. The programme also led investigations and advocacy regarding the cases of disappearances and extra judicial killings by the Kenya police. The Commission released the report titled "*Cry of Blood: A Report on Extra Judicial Killings and Disappearances*". Upon the recommendation to the government to allow the Special Rapporteur on Extra Judicial Killings to visit Kenya, Prof Alston did visit Kenya in February 2009 and made his findings public. The programme also contributed to the reduction of systemic human rights violations, which is currently a key strategic focus of the Commission, by working through its four main programmes namely Security Sector Reforms Program, Transitional Justice Program, Peace building and National

Integration Program, Judicial and Penal Reforms. The Commission acted as the platform to champion for reforms and enhance accountability in various institutions in line with Agenda 4 of the National Accord.

The Commission was able to inform and educate stakeholders about human rights principles through the Human Rights Education and Capacity Building programme, which enhanced the respect and understanding of human rights. This was achieved through the infusion of human rights in the curriculum of public officers training; enhancing human rights awareness through training for state and non-state actors and through the network on human rights based approach. All the approaches taken were successful and enhanced human rights awareness among public officers. The understanding of the general public was enhanced through trainings and the dissemination of IEC materials. Partnerships were established with stakeholders such as the Ministry of Education and the Prisons Department. The Commission's participation in ASK increased the public education role of the department. The department plans to perform more human rights activities next year, for example review of the prison curriculum for training mid-level prison officers, participation in more ASK shows, validation of the draft curriculum and training manual for public officers.

The Economic, Social and Cultural Rights programme increased opportunities for realization of economic and social rights. As part of the programme's activities, it undertook to enhance greater commitment by business to respect for human rights by participating in the Malindi Public Inquiry follow-up, sought protection of the rights of IDPs by having various field missions to monitor the resettlement of IDPs, ensured greater understanding of the role of cultural systems in the protection of the rights of the vulnerable and profiled minority and indigenous peoples' rights in partnership with the ILO. The project on culture in Nyanza demonstrated that cultural institutions play a key role in protecting and promoting the rights of the vulnerable, such as widows, and in addressing the rights of minority and indigenous people. In the coming year, the department seeks to train public officers on the right to water and develop and increase the capacity of the public to claim their rights.

The Research, Policy and Legislation programme focused on informing and shaping human rights discourse and catalyzing policy, legislative and institutional reforms that enhance the protection and promotion of human rights. It conducted research into human rights issues and made recommendation for policy and law reforms, a clear example being the study on the issuance of identity cards. The programme also participated in several regional and international human rights forums. As a result, there was increased government compliance with human rights obligations. For the coming year, the department will focus on ensuring that the proposed Constitution presented to Kenyans contains sound human rights principles and norms.

Regional Outreach was achieved through the Northern Kenya and North Rift regional offices. The offices conducted many advocacy and investigations, including visits to places of detention, and highlighted the recurrent problems of congestion in prisons. The issue was addressed at all levels and lead to a more pro-active role by the head office in championing prison reforms and enhancing the human rights education of prison officers. To expand on this, the regions in the coming year intend to have routine screening and processing of complaints, including investigations, continuous monitoring and profiling of the ongoing government programs on IDP

protection, public education and training, awareness programmes to increase understanding and respect for rights by the general public and government institutions. The regional offices will also conduct human rights clinics and public forums as an outreach strategy, and enhance regional office visibility and effectiveness through strategic networking and strategic partnership building.

In conclusion, the harmonious work and synergy between the Commission's programmes has enhanced the realization of the mandate granted to the Commission under the KNCHR Act. Efforts have been and will continue to be made to realize the mandate granted to the Commission by the constitutive legislation. As the Commission moves towards final implementation of its current Strategic Plan (2004-2009), it will focus on documenting lessons learnt over the years, to inform programmatic focus, prioritization and strategy of engagement for the next Strategic Plan period.

CHAPTER ONE

1.1 INTRODUCTION

1.2 Structure of the National Commission

The Kenya National Commission on Human Rights (hereinafter “the Commission” or “the KNCHR”) is an independent National Human Rights Institution established by an Act of Parliament. Its core mandate is to further the protection and promotion of human rights in Kenya. Many countries in the world have similar bodies that are created as a strategy towards the better protection of human rights. The Commission became operational in July 2003 to succeed the Standing Committee on Human Rights, which was established in 1996 by presidential decree and which lacked independence.

The Commission envisions a strong and vibrant human rights culture founded on equality and justice for all. The mission of the Commission is to contribute to the establishment of a society that respects human dignity, social justice and equal opportunity. The Commission believes in the following core values: independence, accessibility, humility, professional, gender, accountability, participation, equality and people-centeredness. These values are fully integrated in the Commission’s work.

The Commission consists of nine Commissioners and the Secretariat; the Commissioners are nominated by the National Assembly and appointed by the President and are engaged on a full time basis. Commissioners have five year tenure renewable once and enjoy security of tenure; they elect the chairperson and the Vice Chairperson amongst themselves. Below is the list of Commissioners that served during the current reporting period:

Commissioners	Position	Appointment	Tenure ends
Ms. Florence Simbiri-Jaoko	Chairperson	January 2007	January 2012
Mr. Hassan Omar Hassan	Vice Chairperson	January 2007	January 2012
Ms. Winfred Osimbo Lichuma	Commissioner	January 2007	January 2012
Ms. Wambui Kimathi	Commissioner	Reappointed in January 2007	January 2012
Ms Fatuma Ibrahim Ali	Commissioner	Re-appointed in November 2007	November 2012
Mr. Lawrence Mute	Commissioner	Re-appointed in November 2007	November 2012
Ms. Fatuma Adan Dullo	Commissioner	November 2007	November 2012
Dr. Samuel Tororei	Commissioner	November 2007	November 2012

Anne Kyalo Munyiva-Ngugi	Commissioner	January 2009	January 2014
Mr. Mburu Gitu	Secretary	November 2003	Tenure ended February 2009
Mohammed Konso Hallo	Secretary	May 2009	May 2014

The secretariat is composed of the Secretary, who is appointed by the Commission and acts as its Chief Executive Officer, together with members of staff. At the close of the reporting period, there were 50 members of staff. The Commission's members of staff serve on renewable five-year contracts. The Commission has an active internship programme that annually provides opportunities to young professionals interested in human rights.

The Commission enjoys independence; it is not subject to the authority or control of any person or authority in the performance of its functions. The Commission values and strongly safeguards its independence. The Commission sets its own priorities, and determines how to use the resources allocated to it. Operationally, the Commission gets its budget approval through the Ministry of Justice and Constitutional Affairs. The Commission is required to submit its annual estimates of expenditure to the Minister of Justice for approval (section 30(3)). The Commission's Annual and Special reports are submitted to the President and the National Assembly through the Minister (section 21). This has been done through the Minister for Justice, National Cohesion and Constitutional Affairs as per the Presidential circular that puts the Commission's operations under this Ministry.

1.3 Mandate and powers of the Commission

The Commission implements two key broad mandates. It acts as a watch-dog over the Government in the area of human rights (protection mandate). Secondly, it plays a key leadership role in moving the country towards becoming a human rights state (promotion mandate).

The functions of the Commission are set out in section 16 of the Act. These are:

1. To investigate, on its own initiative or upon a complaint made, the violation of any human right;
2. To visit prisons and other places of detention or related facilities to access and inspect the conditions under which inmates are held;
3. To inform and educate the public about their human rights for the purposes of enhancing respect for human rights;
4. To recommend to Parliament effective measures to promote human rights;
5. To formulate, implement and oversee programmes intended to inculcate citizens' awareness of their civic responsibilities and appreciation of their rights and obligations;
6. To act as the Chief Government agent in ensuring the Government's compliance with its obligations under international treaties and conventions on human rights;
7. To encourage the efforts of, and to cooperate with, other institutions working in the field of human rights for the purpose of promoting and protecting human rights;

8. To perform such other functions as the Commission may consider necessary for the promotion and protection of human rights.
9. The Commission is mandated to promote and protect all human rights – economic, social and cultural rights as well as civil and political rights.

The Commission has the power of court under section 19(1) to:

1. Issue summons or other orders requiring the attendance of any person before it, and the production of any document or record relevant to any investigation by the Commission;
2. Question any person in respect of any subject matter under investigation to the Commission, and
3. Require any person to disclose any information within such person's knowledge, which is relevant to any investigation by the Commission.

The Commission has the power under section 19(2) of the Act to provide remedies where there is a human rights violation, including:

1. The release of any unlawful detained or restricted person;
2. The payment of compensation; and
3. Any other lawful remedy or redress.

When carrying out an investigation, the Commission can:

1. Summon and enforce the attendance of any person for examination;
2. Require the production of any document; and
3. Subject to the Official Secrets Act, requisition any public records or copies from any servant.

1.4 Strategic Priorities for the Commission for 2008/2009 Financial Year

The Commission's mandate is realized through five strategic objectives which express the key results that the commission works to achieve in the period 2004-2009. These are:

1. Reduction of systemic human rights violations;
2. Leadership in framing and informing human rights discourse;
3. Increased opportunities for the realization of economic, social and cultural rights;
4. Establishment of comprehensive human rights education systems; and
5. Establishment of institutions capacities to deliver effectively and efficiently on human rights.

The Commission's work is guided by its strategic plan for 2004-2009. In the reporting period 2008-2009, the strategic priorities of the Commission were:

1. Investigating human rights complaints;
2. Providing redress to victims of human rights violations;
3. Finalization and publication of the report on investigations of post election violence;
4. Profile the rights and protection of internally displaced persons;

5. Publish a report summarizing the results of the Commission's investigations of extrajudicial killings and undertake advocacy and lobbying for redress and accountability of responsible agencies;
6. Undertake campaigns and advocacy activities on transitional justice with a focus on advocating for the establishment of a truth, justice and reconciliation commission;
7. Catalyze security sector and penal reforms;
8. Undertake awareness and capacity building trainings for both state and non state actors;
9. Review bills and legislations to infuse human rights standards;
10. Research and write a report assessing the Government's performance in the area of human rights;
11. Publish a bi-annual journal on human rights;
12. Ensure compliance with international human rights obligations, including the submission of periodic reports to monitoring bodies;
13. Steer and provide leadership in developing the National Policy and Action Plan for Human Rights (NAP);
14. Advance the recognition and protection of economic, social and cultural rights;
15. Advance human rights education within the public service and private sector;
16. Undertake institutional strengthening; including work planning, recruitment of staff, and the strengthening of financial and accountability mechanisms.

The Commission is organized around six main programme areas as follows: Complaints and Investigations, Campaigns and Advocacy, Human rights Education, Research, Policy and Legislation, Economic, Social and Cultural Rights and Institutional Strengthening. In addition, it has two regional offices – the North Rift regional office based in Kapenguria and the Northern Kenya regional office based in Wajir.

This report provides details of each programme under the headings of what was planned, achievements, challenges and reasons for the variance.

CHAPTER TWO: COMPLAINTS AND INVESTIGATIONS PROGRAMME

2.1: Programme overview

The Commission is empowered under section 16(1)(a) of the KNCHR Act “to investigate, on its own initiative or upon a complaint made by any person or group of persons, the violation of any human rights”. This mandate has been operationalized by the Commission’s Strategic Objective 1 on “*Reduction of Systemic Human Rights Violations*”. Towards this end, the Complaints and Investigations programme in the period under review worked towards achievement of the following outcomes:

- Establishment of effective and efficient system of processing and investigating human rights complaints.
- Collection of gender disaggregated data.
- Establishment of effective and efficient human rights monitoring systems.

To realize the above outcomes, the programme receives and processes allegations of human rights violations and conducts investigations where necessary, upon which it makes recommendations for redress. The programme also conducts human rights clinics across the country to enhance its accessibility in marginalized areas and builds partnerships with other referral partners for the purpose of referring complaints that do not fall within its mandate and admissibility criteria. In this planning period, the overall goal of the programme was to work towards reduction of impunity and ensure that there was timely relief for victims of human rights violations through efficient and timely processing of complaints, including investigations.

2.2: Summary of interventions

2.2.1: Screening human rights complaints

During the reporting period, the programme received and screened a total of 1,803 allegations of human rights violations. Out of these, 1,452 were lodged by male petitioners while 351 were received from female petitioners. The programme processed a total of 1,938 allegations of human rights violations; of which 1,445 were new complaints while 493 were follow ups from the previous year.

The bulk of the complaints (60%) were from Nairobi Province followed by 12% from Central, 7% from Rift Valley, 6.8% from Eastern, 6.7% from Nyanza, 3.3% from Western, 3 % Coast, and 0.6% from North Eastern. The high percentage of cases reported in the head office may be accounted for by the proximity of the head office to complainants in Nairobi compared to other provinces. The programme received complaints through different means: 1,297 were lodged physically, 412 by postal mail, 53 by e-mail and 2 complaints were received via fax.

2.2.2: Processing human rights complaints

The programme is guided by both the mandate of the Commission under section 16 of the KNCHR Act, and by the laid down admissibility criteria to determine which complaints should be admitted for processing. Therefore on this basis, out of the 1803 petitions received, 148 were admitted. 303 complaints were referred to various government institutions/departments and civil society organizations (which have a mandate to address the complaints) for consideration as they did not meet the admissibility criteria. Legal advice was nevertheless given to the rest of the complaints not admitted and some were resolved through ADR.

The bulk of the complaints (24%) related to labor rights. This was followed by those relating to personal security at 8.4%. Petitions related to land rights came in next with 7.8%. Those related to police shooting accounted for 5.6% of the total petitions received. Other significant petitions (ranging from 2%-3.9%) related to administration of justice, inaction by police, police harassment, complaints against lawyers, civil contracts and abuse of office.

2.2.3: Complaints admitted

The Commission opened 25 new complaint files (for admitted complaints) during the reporting period, up from 13 files opened in the previous period. Files are usually opened for those complaints for which preliminary investigations have been concluded and recommendations made for further investigations.

Of the 25 files opened, 5 were on extrajudicial killings by police; 5 related to torture by the police; 4 cases were on the right to life and 2 cases dealt with issues of personal security, labor (unfair termination) and degrading treatment. There was 1 case each on inaction by police, discrimination on HIV grounds, and discriminative transfer by the Teachers Service Commission, health matters, and unlawful detention.

2.2.4: Further investigations

During the period under review the programme undertook further field investigations for different complaints received: These are summarized in the table 1 below.

Table 1: Summary of further investigations

Nature of complaint	The issue	Action taken	Results	Way forward
Inter – clan conflict in Merti in Isiolo	Control and access to limited water and pasture resources due to prolonged drought	Held public conciliatory meetings jointly with Provincial Administration and Peace Committees	The fighting stopped	Tasked provincial administration and peace committees to work on ways to prevent future raids
				Recommended disarmament of the local communities

Complaints of violation of personal rights in Mombasa	8 persons allegedly arrested and unlawfully detained on suspicion of abetting terrorism.	Brought out written evidence that the rights of the 8 had been violated through illegal detention	Allegations verified	Recommended that harassment of Muslims on suspicion of terrorism to stop, including the issue of illegal detentions beyond stipulated period
Discrimination of XXX in Thika	Alleged that being an Indian national, he has been discriminated upon at a lodging where he stays and in the temple	The programme investigated and conclude that the claims are unfounded	Advised the complainant to lodge specific threats to the police	Case and the file closed.
Urgent filing of Habeas Corpus in the high court on behalf of XXX and XXX	Alleged extra judicial killing at the hands of Police	Commission's counsel requested the court that <i>viva voce</i> evidence be taken from certain key persons	Judge ruled in favour of <i>viva voce</i>	The case is on-going in court

2.2.5: Rapid response investigations

These are quick response/actions by the programme on emergency petitions that are outside the scheduled complaints processed above. The programme responds to such petitions based on the seriousness of the matter. During the year, seven such petitions were attended to. The insights of the petitions are summarized in table 2 below.

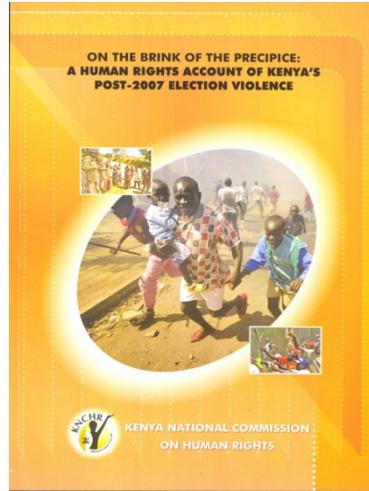
Table 2: Summary of rapid response missions

Nature of complaint	The issue	Actions taken	Results	Way forward
Police torture of XXX at Pangani police station	Alleged police torture on suspicion of theft by servant; Discrimination in treatment by Kenyatta National Hospital	A visit to this hospital confirmed he was being attended to by the hospital. He could not record a statement as he was recuperating from an operation	Torture claims not ascertained.	Investigations still on-going

Extra judicial killing of XXX in Zimmerman estate	Police allegedly shot and killed XXX while in lawful custody.	Investigations by the department revealed that the deceased was arrested after a domestic quarrel and was shot a few minutes later	Matter pending	Matter pending
Extra judicial killings in Central and Nairobi provinces	Police allegedly executed young people on suspicion of being Mungiki followers	Investigations conducted, and the report published	The UN Special Rapporteur on Extra Judicial Killings visited Kenya and based his findings on the report	Independent oversight body of police established Government issued a statement on the issue
Muslim women detained in a Nairobi hotel under appalling conditions	Alleged human trafficking of Kenyan women to the Middle East	Site visit to the hotel with police. Interrogations revealed intention to traffic the women to the Middle East	76 women held were released. The agent was arrested and prosecuted	Matter was taken over by the police
Hawkers in Muthurwa market petitioned against City Council Askaris for harassment	Alleged unfair dispossession of stalls by City Council Askaris	Mediated a process between the hawkers association and city authorities	An amicable stall allocation formula was agreed upon and implemented	Successfully completed

2.2.6: Investigations into 2007 Post Election Violence

During the period under review, the Commission released the report on investigations of the post election violence. This is an activity that commenced in the previous reporting period and which was finalized in reporting period. The report is titled “*On the Brink of the Precipice: a Human Rights Account of Kenya’s Post 2007 Election Violence*”.



In the report, the Commission made key findings with regard to the patterns of post-election violence, the conduct of state agencies, the role of non-state actors, the criminal culpability of alleged perpetrators, including an analysis whether the crime of genocide and crimes against humanity were committed, and lastly findings were made in respect of Kenya's human rights obligations.

With regard to the patterns of violence, the Commission found evidence of organization and method to some of the violence in the Rift Valley, Nyanza, Western, Coast and Central regions. The Commission found that the violence was characterized by widespread or systematic ethnically-targeted killings of civilians, looting and destruction of property belonging to persons politically aligned to either PNU or ODM. In relation to the conduct of state agencies, the Commission found among other things evidence of use of excessive and lethal force by security forces (Administration Police, Regular Police and General Service Unit) in actual or apparent endeavors to quell the violence. This was the case in Kisumu, parts of the Rift Valley and the Coast. The Commission also found the media culpable for perpetrating hatred immediately prior to the violence. Finally, the Commission found evidence of violation of human rights protected under the Constitution, international treaties to which Kenya is a party and other national laws.

In light of those findings, the Commission among other things recommended that the Attorney General undertake investigations pursuant to section 26 of the Constitution on the list of alleged perpetrators set out in the annex 1 to the report to determine their criminal culpability for human rights violations under Kenya's penal law. The Commission further recommended the establishment of a civilian board to oversee the Police force. The Commission further recommended that special courts be set up in areas of violence to expedite the determination of post election violence related criminal cases. The Commission invited the Prosecutor of the ICC to open an investigation in Kenya to determine who bears the greatest responsibility for the offences outlined in the report.

To ensure that the human rights violations and associated impunity are not repeated, the Commission recommended various structural reforms. For instance, the Commission recommended that the Communications Commission of Kenya (CCK) be empowered to monitor the content of local language as well as other media to prevent the use of hate speech and ethnic

stereotypes; the Commission also recommended the enactment of a comprehensive legislation outlawing hate speech, among other reforms. The report was shared with the President, the Prime Minister, the Minister for Justice, the Minister for Internal Security and relevant parliamentary committees on administration of justice, defense and security. The report also formed a critical basis upon which the Commission of Inquiry on Post Election Violence (Waki Commission) proceeded with its investigations. The Waki Commission relied on the database established by the Commission for its investigations. The said database was the most comprehensive and accurate reservoir of information related to the post-election violence since it was established immediately following the violence, when there was little opportunity for fabrication of information by witnesses interviewed. The report was also shared with the United Nations High Commissioner for Human Rights and the Prosecutor of the International Criminal Court.

2.2.7: Closed files

During the reporting period, the programme closed 23 files for various reasons. Among them were matters where petitioners failed to turn up for follow up and in other cases, petitions were referred to other organizations with more competence over the complaints lodged, or upon satisfaction that the Commission could no longer deal with the matters in question.

Of the closed files, 10 were closed after the matter was referred to the court, which took them up. Four of the files were closed after the petitioners showed no interest in pursuing their issues, despite reminders. Three were referred to the Attorney General for further action and two were terminated for lack of merit. One file was closed after satisfactory conclusion and one was closed after the police resolved the matter administratively.

2.2.8: Stakeholder and partnership collaboration

One meeting of the Complaints Referral and Monitoring Committee (CRMC) was held in the reporting year. Participants deliberated on the need to simplify the database of contacts and mandate of key referral partners. During the reporting period, the programme witnessed an improvement in its relationship with some of the key government departments, namely the Teachers Service Commission and the Department of Defense, both of who are now responding positively to the letters of inquiry by the Commission. However, much work still needs to be done to improve relations between the Commission and the Police as most of the letters sent out to them are not responded to.

2.2.9: Human rights clinics

The programme conducted one regional human rights clinic as an outreach measure to enhance its accessibility in marginalized areas of the country. It was held in Nyanza covering Gucha, Ogembo, Karungu, Sindo, Homa Bay and Bondo districts. The clinic was able to create awareness of the Commission's mandate and the services provided by the Commission. The human rights clinic was useful in providing free legal advice and assistance to the public as access to justice continues to be a challenge for a majority of the population, where legal literacy is low and legal services are costly. Additionally, the public was educated as to their human rights and simplified IEC materials were disseminated.

2.3: Success stories

1. As a result of the investigations into extra-judicial killings and the subsequent release of the report '*The Cry of Blood, a Report on Extra-judicial Killings and Disappearances*', the UN Special Rapporteur on extra-judicial killings, Professor Phillip Alston, visited Kenya with the aim of conducting further investigations. Prof Alston's report condemned the police for carrying out extra judicial killings of many young men mainly from Central and Nairobi Provinces and the Mt. Elgon region. He also called for the President's official acknowledgment of the existence of widespread extra judicial killings and the need for sweeping reforms within the Police. From his findings, Prof Alston recommended the dismissal of the Police Commissioner and the setting up of an independent civilian police oversight body with sufficient resources and the power to investigate and institute prosecutions against the police.
2. In November 2008, an anonymous advocate made a report to the Commission on the alleged human trafficking being carried out in downtown Nairobi where female persons were being held under mysterious circumstances at a hotel, known as Zahara Hotel. The programme embarked on urgent investigations by visiting the hotel and also informed the police of the matter. On arrival at the scene, the team witnessed a large number of women entering and exiting the hotel. The team reported the matter to the police, which promptly came to the scene and found at least 76 ladies aged between 20-40 years who had been housed at the hotel. It was established upon interrogation that they came from Coast Province, mainly from Mikindani region. They had been transported to Nairobi to enable them to acquire passports and other travel documents for travel to Dubai and the Middle East to work. Their living conditions were deplorable. The intervention helped to avert the possible trafficking of young women to Dubai and led to the arrest of the suspect. The women were later released and transported back to their homes in Mikindani.
3. Various complaints were made by representatives of hawkers operating at the Muthurwa market against City Council *askaris* over the allocation of market stalls to the hawkers. The allegation was that the hawkers had been evicted from their allocated trading stalls and would not be allowed to trade in those stalls or in the market. The Commission's officials were able to confirm the allegations. They spoke with the market officials, inclusive of the market superintendent, regarding the issues raised by the petitioners. This was done in collaboration with the hawkers' representatives. After negotiations, a settlement satisfactory to the hawkers' interests was reached and witnessed by officials from the Commission.
4. The Commission received a complaint from XXX, an American citizen of Somali origin. She complained of the abduction of her three daughters by her husband's relatives, with the support of her husband. The Programme recorded a statement by the complainant and presented it to the Pangani Police Station. The investigation team accompanied the police to the premises where one of the suspects conducts business and the said suspect was arrested and arraigned in court. The said abducted children were recovered shortly thereafter in Nakuru district and presented to the petitioner, while the people who planned the abduction have been arraigned in court. Subsequently, the petitioner reported to the department the

suffering that she was undergoing, and her fruitless efforts to return to the USA. The programme was able to facilitate her return with the help of the US Embassy in Kenya.

5. Following the recent occurrences of extra-judicial executions, the department filed a *Habeas Corpus* applications at the High Court in Nairobi with respect to petitions lodged by a complainant on behalf of XXX, a 22 year old man who was said to have been arrested by the Administration Police attached to the D.O's office in Kiambaa and by one other complainant on behalf of one XXX. The two matters were certified as urgent and the Commission filed an amended chamber summons application. The evidence before the Court was lodged in affidavits; but the Commission's counsel requested that the court hear *viva voce* evidence from certain key persons as a basis for determining whether or not a writ of *habeas corpus* was appropriate. This was highly contested by Counsel for the State.

The presiding Judge in his ruling dated 24th November 2008 ordered in favour of the Commission by stating that the applicant's application shall be determined on the basis of *viva voce* evidence. Further, the Court ordered that the final ruling of the court would be made on the basis of such *viva voce* evidence, the documentation on file and the submissions of counsel. The matter is still pending in court.

2.4: Lessons learnt

1. The programme needs to improve documentation of its activities, including by internally sharing the reports and best practices of team members. There is also need to have a central point where these reports can be filed for easy access when required.
2. There is need for better synergy with the Campaigns and Advocacy programme. The two programmes often undertake joint investigations and rapid response to allegations of human rights violations, in particular those relating to the security sector and penal institutions.

2.5: Challenges

1. Resources: The budget allocated to the department for investigations and other activities was inadequate; this paralyzed most of the department's activities, especially field investigations and human rights clinics. This has led to a backlog of cases that require investigations.
2. Admissibility Criteria: Managing the high expectations of petitioners who sometimes do not understand that their complaints are outside the Commission's mandate or admissibility criteria.
3. Threats to staff: The programme experienced personnel issues for some time within the period as some of the Commission's officers had to seek protection from threats related to the Commission's investigations into extrajudicial killings. Three of the Commission's officers were forced to exit the country, leaving the department with only three officers and an overwhelming workload.

4. Dealing with whistle blowers: Closely related to the above is the uncertainty that the programme experiences when dealing with whistle-blowers or petitioners with confidential or sensitive information. This is caused by a lack of proper mechanisms and guidelines for dealing with the protection of such witnesses. The programme at times finds it difficult to refer the matter to the office of the Attorney General under the Witness Protection Program as in most cases, the confidential information given to the programme incriminates the government, and thus, the programme may not assure the petitioner of his/her safety.
5. Hearing Panels in redress: The High Court ruling that quashed the KNCHR Rules has in effect stopped the tribunal from hearing cases. This has negatively impacted the work of the Programme as cases which had been investigated and finalized and recommendations made to forward the files to the Complaints Hearings Panel for redress have not been attended, meaning that the complaints have to received prompt redress to their complaints. The Commission is however sustaining its appeal to the ruling and hopes to have the complaints hearing panel restored in the course of the next year.

Nevertheless, these challenges notwithstanding, the Programme was able to investigate and provide prompt redress to a number of cases reported on human rights violations. In instances where cases did not meet the admissibility criteria, the Programme still provided legal advice to the complainants, and resolved some through ADR. In particular, the Programme successfully worked towards the reduction of systemic human rights violations by conducting large-scale investigations into allegations of widespread human rights violations, including allegations of extra-judicial killings and the human rights violations committed during the post election violence.

2.6: Focus for the next year

Some of the activities planned for the next financial year will be carried over from the year under review. The activities are those that were not implemented as anticipated. These activities that form the focal area for next year include:

- Screening, processing and investigating human rights complaints and making appropriate recommendations for redress.
- Making periodic quarterly statutory reports on cases received showing the trends analysis.
- Conducting regional human rights clinics to enhance accessibility to marginalized areas.
- Continuing engagement with the government and relevant stakeholders through strategic partnerships.
- Ensuring effective referral mechanisms through holding meetings, publishing and disseminating referral guidelines with the aim of institutionalizing the referral and monitoring committee.
- Strengthening/upgrading the complaints data collection and case management database.

CHAPTER THREE: REDRESS PROGRAMME

3.1: Programme overview

The Redress programme works closely with the Complaints and Investigations programme to ensure that victims of human rights violations obtain prompt redress for human rights violations. These are undertaken either where the Commission has completed investigations on a given matter or directly where it feels there have been systemic human rights violations that merit immediate redress. The forms of redress undertaken include the Complaints Hearing Panel (Tribunal), Public Inquiry and Public Interest Litigation. This programme is also responsible for other legal services performed by the Commission, such as the drawing of contracts and institutional litigation. The overall goal of the programme is to ensure that victims of human rights violations are provided with prompt relief through timely redress of their complaints. The Redress programme's work is guided by the Commission's Strategic Objective 1 on *Reduction of Systemic Human Rights Violations*.

3.2: Summary of interventions

During the reporting period, the programme focused on the following interventions:

- 1 Public Interest Litigation
- 2 Representing the Commission in cases emanating from the KNCHR Report on the Post Election Violence
- 3 Undertaking updates on the Complaints Hearing Panel, including following up on the appeal of the judgment quashing the panel

Table 3: Summary of Public Litigations

Activity	The issue	Action taken	Results	Way forward
Public Litigations				
High Court Petition No. 705 Of 2007, Richard Muasya vs. the Attorney General and 3 Others	Protection of the human rights of intersexual persons	Commission filed an application seeking to be enjoined in as <i>amicus curiae</i> , (friend of the court) with the aim of advising the court of the human rights aspect of intersexual persons.	The matter was placed before Justice Nyamu, and there being no objection raised by the Attorney General, consent was recorded allowing the Commission an <i>amicus</i> status in the case	Through this case, the Commission will highlight the challenges that face intersexual persons and argue for their rights on the basis of the Constitution
Cases emerging from the KNCHR Report on Post Election Violence				

JR Misc Civil Application 86 of 2009, <i>Uhuru Kenyatta v. KNCHR</i>	Breach of the rules of natural justice by the Commission after being named as an alleged perpetrator	KNCHR filed Submissions and List of Authorities. Argument is that reports of independent Commissions cannot be subjected to Judicial Review.	Matter pending hearing	To have the case heard and determined
HCCC 264 of 2009, Stanley Githunguri v. KNCHR and Florence Jaoko	A libel case against the Commission and the Chairperson, alleging that his name was defamed by the PEV Report.	The Commission engaged a lawyer for its defense	The Commission's objective in defending the suit is to reaffirm its independence and impartiality, as well as to restate its steadfast commitment to discharging its statutory role of investigating and providing redress for human rights violations	To have the case heard and determined.
Update on Complaints Hearing Panel				
Misc Civil Application 688 of 2008, Kenya Commercial Bank v. Kenya National Commission on Human Rights	The High Court ruling in favour of Kenya Commercial Bank citing inconsistencies in the Commission's rules.	The Commission filed a Notice of Appeal on 19th February 2009 and proceeded to instruct a lawyer to prosecute the appeal in the Court of Appeal.	The Commission drafted 'draft amendments' to the Act and Rules in response to the High Court ruling that have been circulated for comments.	To have the Appeal listed for hearing and submit our amendments to the AG.

3.3: Outcomes

The Commission's participation in the *Richard Muasya* case profiled the human rights issues and challenges faced by intersex persons in Kenya. More civil society organizations joined the suit and the media covered the issue by carrying several reports of other intersex persons in the country, especially on the public misconception of the nature of intersex persons.

There was also greater media attention on the Commission's post-election violence report as a result of the Uhuru Kenyatta case.

3.4: Lessons learnt

The Programme needs to closely follow all cases that are delegated to external lawyers to ensure that the Commission's interests are protected at all times. The increase in suits filed against the Commission calls for a careful assessment of the impact the Commission's reports are likely to have to allow the Commission to plan for their fall-out, including the budgetary and human resource capacity that will be called for in event of law suits and similar challenges.

3.5: Challenges

The main challenge faced by the programme during the reporting period was the effect of the High Court ruling quashing the Commission's rules and regulations. This has meant that the Commission is no longer able to constitute Complaints Hearing Panels to determine cases of alleged human rights violations and to provide redress through this process. As earlier indicated, the Commission has engaged a counsel to appeal against the ruling, but is also in the process of revising its regulations to make them comply with the Act so as to preempt any other litigation that would jeopardize its proper functioning.

Arising from the High Court ruling quashing the Commission's rules, the Redress programme was unable to continue with three cases that were ready for hearing before the Complaints Hearing Panel.

The Programme has also faced staffing and budgetary limitations that have prevented it from undertaking public inquiries on systemic human rights violations and from engaging in more sustained public interest litigation.

3.6: Focus for the next year

The programme plans to begin work on one inquiry into a systemic and widespread human rights violation. The initial activity will involve mapping out the concerns surrounding the issue and developing a concept note on the same. With the Complaints Hearing Panel being rendered unoperational, the programme will focus on other redress mechanisms available, including public inquiries and public interest litigation. In the meantime, the programme will prioritize the revision and redrafting of the Commission's rules and regulations to address the challenges raised by the High Court ruling. The programme will also attempt to conclude the post-election violence related cases, subject to the availability of court hearing dates.

CHAPTER FOUR: CAMPAIGNS AND ADVOCACY PROGRAMME

4.1: Programme overview

The Campaigns and Advocacy Programme monitors and at the same time seeks to catalyze reform of law enforcement institutions such as the Police Force and the Prisons Service pursuant to section 16(1)(b) of the KNCHR Act. The programme also implements activities aimed at addressing past historical injustices; infusing values of national integration; and consolidating political accountability among the political class. During the period under review, the programme worked towards Strategic Objective 1 on “*Reducing Systemic Human Rights Violations*”. The Strategic Plan identifies systemic human rights violations as those embedded in the country’s constitutional, legal and administrative systems and practices.

Under this strategic objective, the Programme expects to realize the following outcomes:

- Entrenchment of human rights principles in key public documents
- Enhancement of the observance of human rights by state and non-state actors
- Implementation of recommendations on improvements in prisons and other places of detention
- Enactment and implementation of human rights compliant policies and legislation including those of vulnerable women, children, and the disabled

4.2: Summary of interventions

The programme was not able to implement most of the activities that had been planned in the year under review, owing mainly to the necessity of investigating post election violence and extra-judicial killings. They were large-scale projects that had not been planned but which the programme felt were urgent and important enough to warrant the Commission’s intervention. At the same time, during the reporting period, there were a number of issues that flowed from the previous year’s work and which needed to be addressed. Some of these related to widespread human rights violations by the police force, the military, militia groups; and the general breakdown of law and order, mistrust of governance institutions in the period immediately following the 2007 general elections.

During the reporting period, and owing to the effects of the post election violence in terms of perceived negative ethnicity, the Commission lobbied for the creation of a Truth, Justice and Reconciliation Commission. This was seen as a mechanism that would not only redress historical injustices, but assist in reconciling Kenyans by building a culture of tolerance and respect for human rights.

These are the highlights of the key activities that were planned for and undertaken;

4.2.1: Advocacy for an effective Truth, Justice and Reconciliation Commission

This activity flowed from the previous work plan. The Commission continued to lobby and advocate for an effective and strong TJRC that conforms to best practices and international human rights standards. In that regard, the Commission held 3 meetings with the Parliamentary Committee on Legal Affairs and the Administration of Justice to create a better understanding of transitional justice and to lobby for necessary amendments to the Bill. Further, the Commission, together with the Multi Sectoral Task Force, held a workshop for political party leaders to advise them on the TJRC Bill and get their input on proposed amendments.

The TJRC Bill, which was passed into law in October 2008, incorporated most of the recommendations made by the task force and the Commission. It was assented to by the President on 28th November 2008 and was operationalized in March 2009.

In December 2008, the Commission invited organisations set to nominate members of the TJRC Selection Panel under section 9 of the TJRC Act to an informal consultation. The meeting was held successfully and attended by 17 representatives of the nominating organizations. The objective was to help the organisations to understand their role under the TJRC Act and to prepare for the task given the tight timelines given by the Act once it comes into force.

4.2.2: Profiling and Building Capacity in Transitional Justice

The programme continued to engage in activities aimed at profiling and building the capacity of the public in transitional justice matters. In that regard, the Commission in partnership with the Kenya Human Rights Commission held a public forum on the topic “*Transitional Justice in Post-Election Kenya: the Case for an Effective Truth Justice and Reconciliation Commission*”.

The programme further organized various internal forums aimed at building the capacity of staff to engage in transitional justice matters both as a Commission and with the newly established Truth Justice and Reconciliation Commission. These included a forum on “*Transitional Justice in Kenya: Breaking with the Past to Take on the Future*” and a screening on “*Confronting the Truth*” highlighting the work of Truth Commissions worldwide.

In addition one staff member participated in the International Center for Transition Justice (ICTJ) Transitional Justice Fellowship. The program presented an opportunity for the member of staff to be educated on conceptual and practical aspects of transitional justice by experts and faculty members from South African universities, the ICTJ and other visiting practitioners and scholars from around the region and the world. This training was particularly useful in terms of building the capacity of the Commission to engage in transitional justice work.

4.2.3: Campaign against Extra-Judicial Killings and Disappearances

This activity was jointly implemented by the programme and the Complaints and Investigations Programme. Investigations had been completed at the end of the previous financial year and the process of analyzing the information for purposes of preparing the final report commenced. The

report titled “*Cry of Blood: A Report on Extra Judicial Killings and Disappearances*” was released in September 2008. The findings established that the Kenya Police had in place a policy to execute members of illegal groups, particularly the Mungiki Sect. A four pronged advocacy strategy was adopted to have the recommendations of the report implemented. The strategies included lobbying government and parliament, engaging in litigation and lobbying the international community to put pressure on the government of Kenya to end extra-judicial killings through observance of the rule of law and due process.

With regard to the government, the report was shared with various government officials including the Prime Minister, the Minister for Justice, the Attorney General, and the Minister for Internal Security in a bid to lobby for and have the killings stopped as well as enable perpetrators to be held accountable in courts of law. The report was also shared with the various committees of parliament including the committee for administration of justice, security and defense. Various members of parliament were lobbied in order to have them raise questions on the matter for a response from the Minister for Internal Security. The programme also engaged in litigation and to that end, several *habeas corpus* applications were filed. The international community was also engaged when the Commission sent its final report to the United Nations High Commissioner for Human Rights. The Commission requested that the High Commissioner’s office send an investigator to the country as well as send the Special Rapporteur on Extra Judicial Killings and Disappearances.

The government did invite the Special Rapporteur, Professor Phillip Alston, in February 2009 and he embarked on a 10-day fact-finding mission. The Commission presented its findings to the Special Rapporteur on extra judicial killings in the context of post election violence, the security operation in Mount Elgon and the elimination of members of illegal sects. The Commission also supported a working group of civil society organizations to be able to utilize effectively the visit of the Special Rapporteur. The findings of the Special Rapporteur corroborated those of the KNCHR and in his report he called for the overhaul of the police force and the resignation of the Police Commissioner, among other recommendations.

4.2.4: Investigations into human rights violations by Security Forces in Mount Elgon

This activity flowed from the previous year. Following finalization of investigations into allegations of human rights violations by security forces in Mount Elgon “*The Mountain of Terror*” a special report on the findings was prepared and released and meetings held with the Parliamentary Committees on Security and Defense to share the said findings and deliberate on the allegations. The programme scheduled a meeting with the Attorney General to present the findings but it was postponed to a later date. The programme nevertheless sent his office copies of statements and other evidence of torture by the military. At the end of the reporting period, there were still reports of violations occurring in the region and no action had been taken by the government in terms of holding accountable members of the military for engaging in violations in that area. The programme plans to undertake further follow-up investigations and peace building activities, as well as advocate for accountability for both the military and militia operating in the region.

4.3: Outcomes

1. Enhanced advocacy: The programme had pressured the government to extend an invitation to the UN to the Special Rapporteur on Extra Judicial Killings and Disappearances to visit Kenya to investigate extrajudicial killings and disappearances of youth mainly in Nairobi and Central Province. . That the Government finally invited the Special Rapporteur represents an admission by the State of its failure to adequately reform the police and security sectors. The visit by the Special Rapporteur presented a critical opportunity for the Commission to present its reports on post election violence, extra-judicial killings and torture of civilians during the security operation in Mount Elgon.
2. The commencement of ICC investigations once Kenya failed to meet the deadline for the creation of the Special Tribunal for Kenya was another key outcome of the activities of the programme and of the Commission generally. The ICC's decision to open investigation to document the gross violation of human rights at the height of the post election violence was primarily based on the Waki report, which relied heavily on information from the Commission's database.
3. The Government of Kenya established a 10-member police oversight board in September 2008. Though the board as established was not perfect, the programme felt that it was an important first step in the right direction, particularly in terms of promoting accountability and reforms of the police force. Further, the creation of the board vindicates the Commission's advocacy initiatives to create an independent police oversight mechanism. The establishment of the Task Force was an acknowledgement of the systemic challenges facing the police force and the need to reform it to conform to human rights principles. The co-option of the Chair of the Commission as a member of the task force reflected the important role played by the Commission in mainstreaming human rights during institutional reforms. The programme intends to help build the new board's capacity and support its creation of process norms and standards of operation.

4.4: Lessons learnt

The following were some of the key lessons learnt during this financial year:

1. Partnership building is important in achieving the goals of the programme especially with regards to advocacy for various reforms.
2. Support of key government institutions is crucial in the work the programme undertakes, including the police and other key law enforcement institutions.
3. An operationally independent Witness Protection Authority is important to complement the investigative work of institutions such as the Commission. An independent authority would allow the Commission to focus on investigations while it offered protection to crucial witnesses.
4. The Commission observes that it is imperative that other government agencies fulfill their mandates, because otherwise the efforts of the Commission amount to naught. For instance, the Commission collected evidence of violence by security forces in Mount Elgon, which the Commission shared with the Attorney General. No prosecutions were

instituted. This undermines efforts to hold perpetrators of human rights violations accountable for their actions and fosters impunity.

5. In terms of human rights defenders, there is need for funding and strategic plans to protect individuals who are determined to be at risk of reprisals or violence.

4.5: Challenges

1. During the period under review, the Commission lost a key witness to the extra-judicial killings; this had a negative impact on the Commission's investigations and attempts to ensure that persons who were implicated in the criminal activities were held accountable.
2. Some members of staff faced threats due to their participation in investigations of extra-judicial killings, forcing them to seek protection abroad. This exposes members of the Commission to threats that affected the work of the Commission.
3. A large number of staff left the country, which left the programme severely understaffed. It was therefore difficult to implement planned activities and realize desired objectives. As a consequence, most activities could not be implemented.
4. The government's failure to hold accountable persons who were named in the Commission's investigative reports undermined the Commission's efforts to eliminate impunity.

4.6: Focus for the next year

In the coming year – 2009/2010 the programme intends to focus on the following issues;

- Conduct three campaigns on security sector, judicial reforms & TJRC
- Conduct three public workshops to create awareness of the importance of institutional reforms
- Organize breakfast meetings with key stakeholders for the implementation of recommendations for institutional reform
- Research organized crimes and human rights
- Conduct media advocacy on organized crimes and human rights
- Inspect prisons, police stations, and other places of detention
- Investigate alleged violations of human rights in prisons
- Strengthen coordination between criminal justice agencies
- Advocate for a review of legislation and rules governing prisons and police
- Advocate for security sector reforms
- Advocate for the police civilian oversight mechanism to be strengthened
- Participate in national, regional and international forums on penal reforms
- Advocate for the enactment of proposed Amendments to the Prisons Act, Rules and Regulations
- Engage, sensitize and monitor compliance of human rights principles in Agenda 4
- Build strategic partnerships and increase human rights capacity at the regional level to increase engagement within Kenya on Agenda 4 issues

CHAPTER FIVE: HUMAN RIGHTS EDUCATION AND CAPACITY BUILDING PROGRAMME

5.1: Programme overview

The focus of the education and capacity building programme is to *inform* and *educate* the public on human rights principles so as to enhance the respect and understanding of such rights. Capacity building for government agencies (duty bearers) and non-state actors (claim holders) on their responsibility for human rights is also part of the mandate. Section 16(1)(c) of the KNCHR Act gives the Commission the mandate “to inform and educate the public as to human rights for the purpose of enhancing respect for such rights.” This mandate has been given effect through Strategic Objective 4 on *Establishment of Comprehensive Human Rights Education Systems*, in which the Commission strives to build the capacity of both right holders and duty bearers through public education, trainings, workshops, seminars, public forums and the development of key Information, Education and Communication (IEC) materials, curriculum and training manuals. The programme also aims to infuse a human rights based approach (HRBA) in public service.

Expected outcomes

- Adoption of human rights principles and curriculum in learning and training institutions
- Increased capacity of the public to claim their rights
- Greater respect for laws and human rights by law enforcement officers

5.2: Summary of interventions

5.2.1: Infusion of human rights in the curriculum of public officers’ training

The programme developed and commenced a review of the Kenya Institute of Administration (KIA) public officer’s curriculum and training manual. At the close of the year, the review process was still on-going. The review was commenced because the Commission prioritizes sustainable and long-term results, which are better realized when human rights are mainstreamed as a core subject of training, rather than being covered in ad hoc trainings.

5.2.2: Enhancing human rights awareness through training for state and non state actors

The programme undertook a number of both structured and ad hoc capacity building training activities for state and non state actors with the objective of building their capacity to be able to claim their rights and enforce human rights protection as core duty bearers. This draws from the theory that the public is able to claim their rights only when they are made aware of having those rights. Similarly, state actors will better observe their responsibility to protect human rights when they understand their obligation as core duty bearers. In this regard, the Programme conducted

human rights training for 24 Local Government Clerks, 24 Senior Immigration Officers, 29 senior staff from the Ministry of Education, 100 UN peace keepers, 45 social workers and 29 lecturers from KIA and GTI. The Programme held a colloquium of 27 Members of Parliament, which was undertaken in conjunction with the Raoul Wallenberg Institute (RWI), followed by an exchange visit to Sweden.

The programme further carried out human rights awareness and clinics for RODI Kenya (Thika), Kisumu Youth Olympic Centre and the Wisdom Nest Community Education Programme in Kayole. A total of 125 persons participated.

The Commission, in conjunction with Kenya Human Rights Commission and Kenya Institute of Education, jointly wrote human rights radio programmes in line with the upper primary school curriculum. These programme were aired in primary schools as part of the teaching and learning strategy on human rights.

5.2.3: Network on the Human Rights Based Approach

The Programme continued to steer the HRBA network; in this regard, meetings were held in conjunction with National Agricultural and Livestock Extension Programme (NALEP) and CRADLE. A draft proposal on the Network has been developed and is awaiting further discussion and validation.

Results matrix

Activity	Expected Output	Actual Output	Variance Analysis
Objective One: Adoption of human rights principles and curriculum in learning and training institutions.			
Development of a KIA public officers training curriculum and manual on human rights	A curriculum and a manual on human rights for public officers	A draft curriculum and a trainers guide developed	To be finalized to reflect comments made by the stakeholders
Objective Two: Increased capacity of the public to claim their rights			
Participation in ASK shows	Increased public knowledge and awareness of human rights	Public educated on human rights through participation in the ASK shows	none
Participation in Public service week	Increased knowledge and awareness of human rights	Programme participated in the Public Service week and educated the public on human rights	none
HRBA trainings for state actors	Increased knowledge and awareness on	Officers from the Ministry of Education	Done

	human rights	and senior Immigration Officers trained and lecturers from KIA	
Ad hoc training on HRBA for non-state actors	Increased knowledge and awareness on human rights	Four Community Based Organizations trained on HRBA (RODI Kenya, wisdom Nest, Kisumu Youth Olympic and social workers)	None
Members of Parliament colloquium	Strengthen strategic partnership on human rights with MPs	Strategic partnership on human rights created	A few members of Parliament attended the colloquium
Development of human rights content for schools radio programmers	Human rights content for schools radio programme developed	Radio programmes developed	None
Monthly Meetings of the HRBA Network	Developed a proposal on the HRBAD network	Draft proposal developed	Awaiting stakeholders' input and validation
Objective three: Greater respect for human rights by law enforcement officers			
Human rights training for law enforcement officers	Increased knowledge and awareness on human rights	Awareness on human rights instilled in 100 peacekeepers	none

5.3: Outcomes

1. Human rights awareness among public officers and the general public enhanced through capacity building trainings and the dissemination of IEC materials.
2. Partnerships established with stakeholders such as the Kenya Institute of Education, Kenya Institute of Administration, Ministry of Education, Ministry of Immigration and Parliament. The partnership with the Ministry of Education has lead to the insertion of more content on human rights in the Primary and Secondary schools' curricula and radio broadcasts to schools on topics on human rights. The Kenya Institute of Administration now includes content on human rights in their in-service programmes for public officers.

5.4: Lessons learnt

The following were key lessons learnt during this financial year:

1. Partnership building with key State and non-State stakeholders is important to achieve the Programme's objectives.
2. Participatory approach is key to achieve and implement programme work
3. Timely planning is of paramount importance for the planning and execution of programmes.

4. Targeted IEC materials are effective in the achievement of objectives.

5.5: Challenges

1. Budget limitations affected the extent to which the programme was able to respond to requests for ad hoc trainings and awareness programmes.
2. Personnel limitations and poor planning led to the programme not being able to implement all planned activities.

5.6: Focus for the next year

The main areas of focus in the year 2009-2010 are as indicated below:

- Review the prisons' curriculum for training mid-level prisons officers.
- Participate in Ask shows (Nakuru, Kitale, Eldoret, Nanyuki and Kakamega) and Public Service Week in Nairobi.
- Increase understanding of HRBA through training for Town Clerks from the Ministry of Local Government and senior immigration officers from the Ministry of State for Immigration.
- Conduct needs assessment on the forms of torture in places of detention. The findings from this assessment will guide the development of a training manual /curriculum on prevention of torture.
- Training of law enforcement officers on prevention of torture, cruel and inhuman treatment for persons held in detention.
- Training of CBOs and FBOs on human rights as part of forming strategic partnership in the promotion and protection of human rights with non state actors.
- Validation of the draft KIA curriculum and training manual for public officers.
- Conduct ad hoc trainings and awareness programmes on human rights – to state and non state actors.

CHAPTER SIX: RESEARCH, POLICY AND LEGISLATION PROGRAMME

6.1: Programme overview

The Research, Policy and Legislation programme is established with the main purpose of conducting research into human rights issues with a view to making recommendations for policy and law reform. It provides the Commission with quality and timely research into various human rights issues, reviews existing and proposed legislation and ensures the State complies with its international human rights obligations.

During the period under review, the programme focused on using research findings to shape human rights discourse, both at the national and international level, thereby gaining recognition as the national focal point for reliable and current information about human rights.

The expected outcomes included:

- Gain recognition as the national focal point for reliable, current human rights information about Kenya.
- Emerge as the key human rights agenda setting institution.
- Emerge as the authority in judging human rights violations situations.
- Emerge as a regional leader in agenda setting on human rights.

6.2: Summary of interventions

6.2.1: Strengthened framework for the protection of human rights

In the previous financial year, the programme conducted a study on the issuance of Identity Cards. Following the findings and recommendations of the study's report, the programme engaged with the National Registration Bureau and the Ministry of Immigration to ensure that relevant policies were reviewed in accordance with the Commission's recommendations on persons affected by legal and institutional barriers in accessing identity documents.

As a result of the study, the Commission received a request from the United Nations High Commissioner for Refugees (UNHCR) to jointly undertake a study on the issue of nationality and statelessness in Kenya that would lead to recommendations for the Government on measures to protect persons who are at risk of being stateless. In the current reporting period, the Commission entered into a Memorandum of Understanding with UNHCR to undertake the study on statelessness, to identify challenges faced by stateless persons or persons at risk of statelessness in Kenya and to make recommendations for reform. The study will also establish how the rights of stateless persons or those at risk of statelessness could be protected through law and policy as well as adherence to international human rights mechanisms for the prevention of statelessness. The programme commenced this study by engaging a consultant and research assistants who will carry out the field research. Preliminary research was undertaken to identify

stateless persons or groups of persons who were at risk of statelessness and their possible location and to contextualize the study within the international human rights framework.

The preliminary research identified the Galje'el Somali group based in Tana Delta, which has an estimated population of 4,000, the Nubian Community, the Vapostori and some members of the Asian Community based in Nairobi and Nyanza provinces. It was not possible to estimate the size of the other communities from office research. Other likely groups identified included children born to Kenyan mothers and foreign fathers, as well as groups residing in border districts. The preliminary office research formed the basis upon which field research was later undertaken. The project highlighted the plight of stateless persons and persons at risk of statelessness whose human rights issues would otherwise go unnoticed.

6.2.2: Hosting and participation in regional and international human rights forums

The 9th biennial Conference of the International Co-coordinating Committee of NHRIs

The Commission successfully organized and hosted the 9th International Conference of National Human Rights Institutions, which had the theme of Administration and Access to Justice. The Commission undertook substantial preparatory and organizational work and partnered with the United Nations Office of the High Commissioner on Human Rights, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), the African Union, a number of Government Ministries, local and international NGOs, the African Commission on Human and People's Rights and the East African Community to make the conference a success.

The event allowed the Commission to actively participate in shaping the international agenda on human rights and to advance its objective of emerging as a regional leader in human rights issues. More than 200 representatives of national and international human rights institutions, AU and UN Agencies, and local and international NGOs attended the conference. The conference was hosted in Africa for the second time, the first Conference in Africa having been hosted in Morocco. Holding the conference in Kenya was an indication of the international community's recognition that the international community of Kenya's role in human rights protection and promotion. At the end of the conference, resolutions were adopted for the improvement of access to justice and administration of justice, especially for the most marginalized groups and communities.

6.2.3: National Policy and Action Plan on Human Rights (NAP)

The programme, in conjunction with the Ministry for Justice, National Cohesion and Constitutional Affairs, continued to steer the development of the National Policy and Action Plan for the promotion and protection of human rights. The remaining regional hearings were held in Eastern, North Eastern and Nairobi provinces, where the public was able to make oral submissions and submit written memoranda to contribute to the development of a human rights policy. The year before, regional public hearings were held in Central, Western, Nyanza, Coast and Rift Valley provinces. Each hearing was preceded by preparatory research, field work,

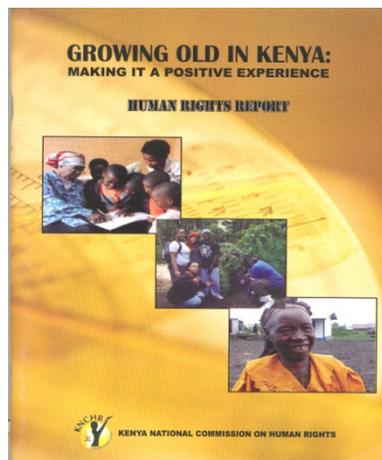
awareness creation, mobilization and joint consultation meetings between CSOs and the Provincial Administration at the respective provincial headquarters. The programme also participated in regular meetings of the NAP Steering Committee and in the drafting of the first part of the National Policy for Human Rights (NAP). This policy, once finalized will provide the context for a strengthened framework for the protection of human rights in Kenya.

6.2.4: The 2nd status of human rights report

Section 21 of the KNCHR Act places an obligation on the Commission to submit a human rights report detailing its assessment of the performance of the Government in the field of human rights. During the period under review, The 2nd State of Human Rights report was developed and published under the special theme “*Growing Old in Kenya*”.

The report was not about older persons per se, but about the government putting in place policies and programmes that would target younger persons to ensure that they grow old with dignity and with rights. It also focused on younger persons preparing for their old age while they are still young – this includes measures targeted at saving for old age. The report therefore makes recommendations for social protection, social security reform, saving for old age and preventive health care, among others.

The report was subsequently presented to the Minister for Gender and Social Services for onward submission to Parliament. It was also launched and disseminated widely. The theme was to highlight some of the issues that rarely find a place in the human rights discourse but that are a reality in a country that has yet to develop a comprehensive social protection policy.



6.2.5: Anti-discrimination and equal treatment strategy

During the period under review, the Programme set up the Committee on Equal Treatment with representatives from Government and different non-governmental organizations working on issues related to non-discrimination and equal treatment. This Committee was constituted to steer research and to create an anti-discrimination strategy, as well as provide a forum for the exchange of expertise and knowledge. In the reporting period, the Programme commenced the necessary background research that would inform the scope of the study and compilation of the

publication and commenced holding preparatory meetings. The objective of this study was to test the extent to which normative principles on equal treatment and non-discrimination are actually implemented at various levels. While the Constitution outlaws discrimination on certain grounds, the Programme was keen to find out whether the practice reflects the legal position and if not, how this can be addressed to the benefit of those who may suffer discrimination for one reason or another.

6.2.6: Strengthened access to mechanisms for the protection of human rights

The programme continued to advocate for Government's compliance with its international obligations through ratification and domestication of regional and international human rights treaties. In this regard, the programme reviewed various reports before their submission to treaty bodies, and prepared its own shadow reports to ensure that all human rights issues are highlighted for consideration at the international level.

The programme engaged with the following specific human rights instruments:

1. *The Convention against Torture, Cruel, Inhuman and Degrading Treatment (CAT)*: The programme participated in consideration of the initial Kenya country report submitted to the CAT Committee and thereafter held a workshop to disseminate the Committee's concluding observations. Subsequently, the Commission, in partnership with the International Commission of Jurists (ICJ-K) and Independent Medico-Legal Unit (IMLU), embarked on a process to prepare a draft legislation to domesticate the CAT. This was done with the knowledge that periodic reporting at the international level does not benefit the citizen much unless the treaty's norms are domesticated so that the rights become enforceable at the national level.
2. *International Convention on all forms of Racial Discrimination (ICERD) report*: The ICERD Country Report was prepared by the Ministry for Justice, National Cohesion and Constitutional Affairs (MOJNCCA) reflecting the post-election crisis. The Commission advised and participated in the validation workshop. The final report has yet to be submitted to the Committee on the Elimination of Racial Discrimination.
3. *Validation of the 7th Country Report on the Convention on Elimination of Discrimination against Women (CEDAW)*: Further to the drafting of the 7th CEDAW country report, the programme attended the validation workshop organized by the Ministry of Gender and Social Services and advised on the same.
4. *International Covenant on the Rights of Persons with Disabilities (ICRPD)*: The programme participated in discussions, consultative meetings and a workshop held to review the extent of implementation of the CRPD. The Commission continued to give guidance towards policy review and domestication of the Convention.
5. *African Charter on Democracy, Elections and Governance*: The Commission held consultations with various stakeholders, and in particular the Open Society for Eastern Africa, on the need for popularization and ratification of the Charter. The Charter, adopted in 2007, requires ratification by 15 States to enter into force and the Commission recognizes the importance of advising Kenya to be one of the first 15 ratifications so that the Charter can be implemented. The Charter, if ratified, will strengthen the framework for political reforms and promote democracy and good governance in Kenya.

6.2.7: Infusion of human rights principles in the Constitution

Constitutional Review: The program spearheaded the compilation of a KNCHR report on its views on the contentious and non-contentious issues pertaining to the draft Constitution. The report was presented to the Committee of Experts on Constitutional Review. The program also participated in various other debates on thematic issues organized by the Committee of Experts to inform the chapter on the Bill of Rights.

6.2.8: Infusion of human rights norms and principles in policies, legislation and institutions

The programme reviewed the following Acts of Parliament and legislative Bills and submitted comments/proposals on them to relevant authorities, with the aim of entrenching human rights norms and principles in policy and legislation.

The TJRC Bill - This Bill sought to establish a Truth, Justice and Reconciliation Commission in Kenya to address historical injustices and human rights violations. The Commission suggested amendments to make the Bill more comprehensive and submitted its suggestions to MoJNCCA. The Commission's suggestions were incorporated into the amended TJRC Bill.

Draft Statute of the Special Tribunal - The Statute for the Special Tribunal was drafted following the 2007 post-election crisis and recommendations by the Commission of Inquiry into the Post-Election Violence to establish a special tribunal for Kenya. The Commission reviewed and made suggestions and amendments to the bill. The suggestions and amendments were discussed with the Parliamentary Committee on Administration of Justice and Legal Affairs and were profiled in the media.

Prohibition of Hate Speech Bill – The Commission continued to undertake lobbying and advocacy activities for the enactment of the draft Prohibition of Hate Speech Bill, which was drafted by the Commission in partnership with key stakeholders, including the Ministry of Justice, office of the Attorney General, Ministry of Information, Media Council, Media Owners Association, KHRC, ICJ, IMLU among others. An advocacy meeting with media owners and various other meetings with other stakeholders including Civil Society Organizations was held in this regard. The Commission continued to maintain the urgency of the bill, particularly following the events of the post-election violence.

6.3: Outcomes

Strategic partnerships for human rights: The use of regional hearings to develop a National Policy and Action Plan for the promotion and protection of human rights, ensured broad-based public participation in development and formulation of the policy. The process also enhanced public-private partnerships with regards to human rights.

Focus on neglected human rights issues: The 2nd State of Human Rights report under the theme “*Growing Old in Kenya*” profiled ageing issues from a human rights perspective with a focus on the process of ageing and not just on the final stage of old age. Profiling the aging process

ensures that the Kenyan Government pays attention to human rights issues that are often neglected because of competing human rights priorities.

Leadership in framing and informing the human rights discourse: The Commission successfully organized and hosted the 9th International Conference of National Human Rights Institutions bringing together more than 200 representatives of national human rights institutions, AU and UN Agencies plus local and international NGOs. Through this event, the Commission reinforced Kenya's as a key human rights player, contributed to shaping the human rights agenda and also advanced its objective of emerging as a regional leader in human rights issues.

Enhanced Government compliance with human rights obligations: The Commission supported and facilitated the Government in meeting its human rights obligations by advising and facilitating preparation of state reports on various human rights treaties: the CAT, ICERD, CEDAW, ICPRD and the African Charter on Democracy, Elections and Governance. The Commission also advised on the domestication of ratified human rights instruments to facilitate better realization of the rights contained therein.

6.4: Lessons learnt

During the period under review, one of the lessons learnt was the importance of follow-up to ensure recommendations made by the Commission are acted upon by the appropriate Government Ministries and Agencies. While it is important to profile human rights issues, the programme learnt that such activities did not result in actual benefit to Kenyan people unless the relevant duty bearers implement the Commission's recommendations.

6.5: Challenges

The key challenges experienced by the programme were:

1. Delays in implementation of programme's activities due to the small size of the team. This was further aggravated by some programme members being assigned to finalize the report on investigations of post-election violence.
2. Suspension of funds by the GJLOS funding programme following the 2007 post-election violence, which prevented the timely implementation of planned activities.

6.6: Focus for the next year

Next year the Commission will strive to ensure the Constitution presented to Kenyans contains sound human rights principles and norms. The Commission will also continue to set the human rights agenda by researching and profiling various issues, undertaking studies, preparing occasional and position reports, and by issuing policy briefs and advisories to Parliament and the Government.

Apart from focusing on national laws and legislations, the Commission will also engage with international human rights instruments to ensure that citizens benefit from a wider framework of

human rights protection. This will be done by ensuring the government domesticates international instruments that it ratifies and conforms to its international obligations.

CHAPTER SEVEN: ECONOMIC, SOCIAL AND CULTURAL RIGHTS PROGRAMME

7.1: Programme overview

The Economic, Social and Cultural Rights programme (ECOSOC) responds to the Commission's Strategic Objective 3 on "*Increased Opportunities for Realization of Economic and Social Rights*". The expected results in the year under review included:

1. Greater commitment of businesses to the respect of human rights.
2. Greater protection of the rights of internally displaced persons.
3. Public expenditure profiled as a tool for the realization of the rights of the vulnerable and marginalized groups.
4. A citizenry that is better informed of the State's past corruption practices.
5. Greater understanding of the role of cultural systems in the protection of the rights of the vulnerable.
6. The rights of minority and indigenous peoples profiled as a national human rights issue.

7.2: Summary of key interventions

7.2.1: Greater commitment by businesses to the respect human rights

The programme undertook the following activities to foster improved corporate commitment to human rights.

1. The Malindi Inquiry follow-up

The Malindi Inquiry conducted in the previous year had investigated salt mining in Kenya to determine the extent of human rights violations in the industry. The Commission held consultations to support the Malindi Rights Forum's effort to voice its concerns to key policy makers and to provide institutional support to keep the initiative alive following the end of the inquiry. The Commission also participated in the National Action Plan hearings in Coast Province where it was expected that the issue of salt mining would be raised. The programme gave training to the Malindi Rights Forum on how to approach matters arising from the inquiry. This has given rise to a more sensitive community and mining companies are now more consultative when it comes to their activities in the area.

2. Partnership with the Institute for Business and Human rights (IBHR)

The programme had developed a partnership with the Institute for Business and Human Rights (IBHR), which requested that the Commission co-host a regional consultative meeting on business and human rights with a view to determining whether IBHR was a useful idea. The meeting led to the establishment of the IBHR, and the Commission was invited to sit on its board.

The Commission participated in the following activities of the institute:

- a) A forum was held, entitled *Dilemma Session on Water*, which highlighted the issue of corporate responsibility with respect to the right to water.
- b) Another *Dilemma Session on the Right to work/Living Wages* was organized to examine the issues of low wages and unfavorable working conditions, especially in Export Processing Zones (EPZs) and other large scale employment entities.
- c) A presentation made on issues relating to Corporate Social Responsibility (CSR) in Africa, with a focus on Kenya, to the *Copenhagen International Conference on Corporate Social Responsibilities for Human Rights* in October 2008.
- d) A presentation made to a group of business representatives attending a Marcus Evans Forum on “*Directors Duties and Governance Accountability Forum* in November 2008. The Commission received an excellent review of its presentation, on the basis of which it was invited to make another during the 2nd Annual East African Company Secretaries Forum.

These forums provided a platform to deepen knowledge of how to manage human rights issues from the perspective of both business and human rights actors¹.

3. The International Conference for National Human Rights Institutions.

The Commission hosted the 9th International Conference for National Human Rights Institutions from October 21st -24th 2008. The Conference presented the programme with a view to galvanize other NHRIs to initiate programmes in certain areas where it has developed a specialization. The programme therefore hosted a special forum for the delegates to highlight the emerging issue of “Business and Human Rights”. Through this event, the programme was able to:

- a) Demonstrate the contribution made by businesses towards the protection, promotion and realization of human rights and to situate the business and human rights agenda in NHRIs’ discourse; and
- b) Identify ways that NHRIs can engage with businesses to protect human rights.

4. Training for Commission on Human Rights and Good Governance

The Tanzanian Commission on Human Rights and Good Governance invited the programme to share its experiences and train its Commissioners and senior staff on Business and Human Rights. Through this two day training, the programme was able to enhance awareness on the following issues:

- a) Why NHRIs should get involved in business and human rights
- b) The Commission’s experiences in the area of business and human rights
- c) Why businesses should be interested in human rights

d) International initiatives on business and human rights

7.2.2: Greater protection of the rights of internally displaced persons

One of the programme's objectives in the period under review was to profile the human rights of IDPs and to monitor the re-settlement programme. Various activities were undertaken, including the preparation of a monitoring tool, a concept note to guide the programme's work and several field missions in North, South and Central Rift, Nyanza and Western Provinces. More specifically the programme undertook the following activities:

1. Three field missions to monitor the resettlement programme were conducted in the Rift Valley, Western and Nyanza provinces.
2. An advisory was prepared and submitted to the Minister of State for Special Programmes.
3. Continued engagement of the working group on IDP protection, which brings together various UN agencies, NGOs and other State and non-State actors.
4. Organization of a media field visit to profile IDP issues, which was well covered by various media houses.
5. Participation in public forums including :
 - a) Radio and TV programmes
 - b) Legal awareness week on IDPs by LSK

Throughout the reporting period, the programme engaged in the continuous documentation of open source information relating to IDPs. The programme also maintained a very fruitful engagement with the Ministry for State for Special Programmes, leading to the Minister's request for the Commission to work alongside the Kenya Anti Corruption Commission in investigating the allegations of corruption in the disbursement of funds for the compensation of IDPs. The programme then embarked on advocacy and documentation activities around corrupt practices, which included:

- Gathering and verifying data on corruption allegations in the distribution of compensation to IDPs;
- Naming and denouncing the individuals proved to have been involved; and
- Generating a report to the Government to provide backup information alongside the KACC report.

These activities helped to profile the rights of IDPs as well as to focus the attention of duty bearers on the need to address their plight. The programme's activities contributed to the identification of the need for the development of a National Policy on IDPs to provide durable solutions. This ensured better protection of the rights of IDPs and the progressive realization of their rights through resettlement and the provision of basic necessities like food, housing and access to land and businesses/employment.

7.2.3: Greater understanding of the role of cultural systems in the protection of the rights of the vulnerable

The programme continued to observe and track the resolution of a sample case before the *Njuri Ncheke* to establish how the Meru Council of Elders works to resolve human rights violations.

This was aimed at identifying the strengths and weaknesses of the Council and to inform the project's future direction. The sample case being observed was particularly significant given that the accused was the Secretary General of *Njuri Njeke* and therefore the elders were sitting to decide on a matter affecting one of their own. The programme participated in two sittings as an observer, and reviewed the judgment that was later rendered with the support of the Complaints and Investigations Programme.

The programme also prepared and made a presentation on culture and human rights during the 9th International Conference of National Human Rights Institutions. The Commission showcased its new and innovative work to enhance access to justice, especially in the context of developing countries. It further identified a potential partner (Kenya Ethical and Legal Issues Network on HIV/AIDS or KELIN) with which to collaborate on the Nyanza project to work with the Luo Council of Elders to protect the rights of women. The programme also commenced an evaluation of the project.

7.2.4: Informed input into Kenya's report on the ICESCR

The United Nations Committee on Economic Social and Cultural Rights (CESCR) reviewed Kenya's country report on the implementation of the International Covenant on Economic, Social and Cultural Rights at its 41st session in November 2008. The programme participated in this event. Subsequently, discussions were held with the Ministry of Justice, National Cohesion and Constitutional Affairs with the aim of partnering in the dissemination of the concluding remarks on the report.

The programme also made a presentation on *Adjudicating Economic Social and Cultural Rights: NHRI's as a Judicial Monitor and Complaints Handling Body* during the Human Rights Council's 10th session's side event on the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Further to this, the programme held consultations with the NGO Coalition on Economic and Social Rights to explore ways to collaborate on work regarding the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Since the Optional Protocol was adopted late in 2008, there was a need to focus on national level actions to ensure the prompt entry into force of this mechanism, as well as the full implementation of all economic, social and cultural rights. Follow-up meetings with the Ministry of Justice and other stakeholders were held to consider the key actions to undertake, including writing an advisory to the Government on this protocol. Through these activities, the Commission was able to fulfill its mandate to advise the State on its international human rights obligations.

7.2.5: Profiling minority and indigenous peoples rights

In partnership with the International Labor Organization (ILO), the programme held a national training workshop on human rights, minorities and indigenous peoples in February 2009. The meeting discussed diverse issues affecting indigenous peoples and specific human rights systems and how they protect indigenous peoples. The programme also successfully held a similar workshop drawing participants from various African countries to deliberate on the topic of minority and indigenous peoples rights and to draft resolutions for their enhanced protection.

Additionally, during the period under review the programme followed up on a petition received from the *Endorois* Community.

7.3: Outcomes

1. *Greater commitment by businesses to respect of human rights:*

Work around Malindi salt mining has profiled the role of businesses in the protection and respect of the rights of workers and the community where they draw resources and manpower.

2. *Greater protection of the rights of internally displaced persons.*

The program has ensured the progressive realization of the rights of internally displaced persons. As it is now, more than 75 % of the IDPs have been either resettled, integrated into the community where they initially sought shelter or returned to their original homes.

3. *Greater understanding of the role of cultural systems in the protection of rights of the vulnerable.*

The projects in Luo Nyanza and Meru have proved that cultural institutions play a key role in promoting and protecting the rights of the vulnerable. One of the cardinal reasons to approach cultural institutions is that they form the first line of governance in society and they have a close relationship with their communities. Most Kenyans, and especially the poor or marginalized, find it easiest to approach these institutions for assistance since they are cheaper and easier to access. The Commission was able to facilitate the resettlement of many widows and orphans in Luo Nyanza who were evicted from their homes following the death of the primary income earner. By end of 2009, more than 40 widows were recorded as resettled in their homes and many more were in the process of being resettled.

4. *Rights of minority and indigenous peoples profiled as a national human rights issue*

As a result of the Commission's work, the subject of minority and indigenous people has become a key area of focus in the national agenda. This is reflected in the draft Constitution recently presented by the Government of Kenya, which accords new rights and protections to minorities and indigenous peoples.

7.4: Lessons learnt

The program has learnt that human rights must not be approached from only from conventional angles. The Commission's work in the areas of culture and human rights has opened new ground when it comes to addressing violations, especially vulnerable groups such as orphans, the poor, and widows.

7.5: Challenges

1. The programme continues to be understaffed, which makes it difficult to fulfill its mandate.

2. The Government has been slow to respond to issues raised by the programme. For instance, the Government has been hesitant to implement the recommendations made by the Commission following the Malindi salt mining inquiry.
3. The nature of economic, social and cultural rights has made it difficult to document the programme's successes. These rights are progressively realized and it has been difficult to capture the extent of the Commission's achievements in each one-year reporting period.

7.6: Focus for the next year

As earlier mentioned, ECOSOC rights are progressively realized and hence cumulative efforts must be made to drive towards achieving these rights. Therefore, the programme aims to achieve the following next year:

1. Greater respect and enforcement of human rights standards by State agencies. To realize this, the programme has lined up several activities, including training duty bearers on the right to water. The programme will also develop and disseminate public messages on the right to water, develop eviction guidelines, develop a policy on IDPs and support the participation of IDPs in the TJRC process.
2. Increased capacity of the public to claim their rights. This will be done through the following activities: development of a tool to monitor devolved funds, regional forums on business and human rights, research on companies' compliance with Capital Markets Authority guidelines, profiling the rights of domestic workers, community workshops on culture and human rights, among others.

CHAPTER EIGHT: REGIONAL OUTREACH

Background

The Commission continues to focus on strengthening its two regional offices (North Rift regional office in Kapenguria and the Northern Kenya Regional Office in Wajir) to ensure that they undertake their outreach mandate effectively. The focus of outreach is based on the premise that the public is better able to benefit from the work of the Commission when services are provided closer to them. Regional offices were therefore established, with the first priority being the most marginalized regions of Kenya to enhance the Commission's accessibility in those communities. These offices perform several roles that are similar to those of the national office in Nairobi, including processing and investigating allegations of human rights violations, offering public education and training, improving public awareness of human rights and the role of the Commission, and conducting human rights research. They are also encouraged to implement activities that are unique to each region to ensure that the public in these regions benefit from programming that directly addresses their needs.

8.1: THE NORTH RIFT REGIONAL OFFICE

8.1.1: Programme overview

The North Rift regional office (located in Kapenguria) focused on expanding the outreach and accessibility of the core Commission functions in the region, while at the same time addressing some unique human rights issues. During the 2008/2009 period, some of the office's accomplishments arose from the implementation of activities outside the work plan because the office responded to several emerging human rights issues related to the post-election violence. The North Rift region was an epicenter of violence, which led to a large number of Internally Displaced Persons (IDPs), and the Commission took an active role in providing assistance. The North Rift regional office also investigated and addressed the Mau forest evictions by the Government, the Mt. Elgon conflict and the Government's response to the Mt. Elgon conflict through the military "*Operation Okoa Maisha*".

8.1.2: Summary of Interventions

8.1.2.1: Complaints and investigations

1. Nature and distribution of complaints

The North Rift regional office received 238 petitions relating to human rights violations. Out of these, 154 complaints were not admitted because they failed to meet the admissibility criteria. Nevertheless the petitioners were given legal advice. Of the 238 petitions received, 167 were from male complainants while 71 were from females. All of the petitioners visited the Commission's office to file their complaints. Most complaints lodged by women were about domestic issues and children matters.

The highest number of cases received by the office related to labour and children. Most of the cases were referred to the relevant bodies (as shown in table 5 below) for the purposes of resolution through either conciliation or arbitration. Land cases mainly required advice on how to transfer property in the event of the death of a landowner, although some of the complaints also related to boundary and /or ownership disputes, which the District Land Tribunal has the mandate to address. The nature of the violations is summarized in table 4 below.

Table 4: The summary of the nature of violations

	Nature of violations	Number received
1	Civil and political rights, including land rights, administration of justice, police harassment, delayed court cases, torture, unfair arrest, registration of political parties, and insecurity	91
2	Economic, social and cultural rights, including labour rights, civil/contractual matters, corruption, and right to health	86
3	Special interest, including children rights, persons with disabilities, HIV/AIDS issues, rights of whistle blowers	39
4	Other issues, including domestic disputes, complaints against lawyers, criminal matters, succession, humanitarian assistance, and inquiry/advice	21

Complaints that were not admitted were referred to institutions and agencies with the mandate to handle such complaints. The office remains conscious of the fact that its mandate is still not very well understood in the community, such that all manner of petitions are brought to the office. The office's priority has therefore been to inform and educate the region's residents regarding its mandate and to form strategic partnerships with other institutions and agencies for referral purposes.

Table 5: The Summary of Referred Cases

	ORGANIZATION	MANDATE	NUMBER OF REFERRALS
1	Labour Department	Administration of labour matters	17
2	Children's Department	Government department dealing in children's welfare	12
3	Ministry of Lands	Government department charged with issues dealing with land use and ownership	2
4	Provincial Administration	Government department that ranges from the Chief to the Provincial Commissioner – represents the Central Government at the local level	17
5	State Law Office	Government department that addresses legal issues	5
6	Other organizations		4

7	Courts		10
8	Advocates Complaints Commission	Receives and investigates complaints against advocates	9
9	Police	Security sector and law enforcement	15

Challenges

1. The bulk of the complaints received by the regional office did not fall within the mandate of the Commission and therefore did not meet the Commission's admissibility criteria.
2. Some public servants to whom referrals are made remained un-cooperative. The resolution of issues referred largely depends on the cooperation of these public officers.
3. Closely related to the above is that the public does not trust the institutions that cases are referred to. On several occasions, petitioners refused or showed reluctance to being referred to other institutions, especially government institutions, because they believe that their issues would not be resolved to their satisfaction.
4. Attempted interference in the work of the office by some local leaders. A case in point is the Munyaka Kahuho incidence, where the local area councilor incited the locals to attack the commission staff because he perceived them to be undermining his popularity and influence in the area.

Success stories

a. KNCHR/NORRO/COM/04/2009

On September 11, 2002 a young girl XXX was defiled by a man known to her and the family. The matter was reported at Songor police station in Nandi South district and was issued with a P3 form. When the suspect learnt that the matter had been reported to the police station he took off, only to resurface on 21st September 2008, at which time he was arrested but released without any charges being laid against him. Upon requesting to be told the circumstances under which the accused was released, the guardian was allegedly harassed and intimidated by police officers at Songor police station. On 25th September 2008, the police took the girl from school and took her to hospital for medical examination without the knowledge or consent of her parents. Upon the office's intervention, the DPP directed that a new file be opened and the accused be arrested and arraigned in court. The accused was arrested, charged and convicted to serve 10 years imprisonment.

b. KNCHR/NORRO/PET/VOL9/2008

The petitioner lodged a complaint that a police officer attached to Kapenguria police station had assaulted her. She had allegedly made a complaint at the police station but no action was taken against the officer. It is upon the regional office's intervention that investigations were launched by the OCPD and a report was sent to the Commissioner of Police for advice on action to be taken. The Police Commissioner recommended that the officer be charged with committing a disciplinary offence under the police rules. The officer was subsequently charged and fined 5,000 shillings. The Commission further advised the petitioner that she was at liberty to file a civil suit for compensation for the injuries that she sustained.



Assaulted petitioner.

c. XXX

The petitioner, a disabled man, was accused of having had a relationship with a married woman and was fined to pay 11 goats pursuant to the Pokot customs. The petitioner maintained his innocence but his goats were swiftly taken away in settlement of the fine. His pleas to the provincial administration did not bear fruit, but upon the intervention of the regional office, the area chief and village elders, the matter was mediated and the goats returned to the petitioner.

8.1.2.2: Public education, training and outreach

1. During the period under review, three human rights clinics were conducted in North Pokot (Alale), Central Turkana (Napetet) and Uasin Gishu Districts (Soi). In these public forums, peoples' awareness was raised of rights issues/human rights violations touching on land, marginalization, and insecurity, and proper advice on redress mechanisms was offered by Commission staff. Individual cases/petitions were received, legal advice was given, and follow ups were recommended.



Members of the public at the Napetet human rights clinic in Turkana Central District

2. The regional office also participated in the Kitale ASK show with the objective of creating public awareness on human rights, increasing the regional office's visibility and receiving/addressing human rights petitions.

Participation in the Kitale ASK show was successful in enabling many people to have an opportunity to know the Commission and to have their matters addressed. It also provided an avenue for profiling the relatively new regional office. During the show, the regional office engaged with various government departments and CSOs and disseminated IEC materials. It was also a good opportunity to reach out to as many people as possible, which was done through our media interview as well as the IEC materials circulated.

8.1.2.3: Monitoring places of detention

In keeping with the broad mandate of the Commission, the regional office monitored prisons in Rift Valley, Western and Nyanza provinces by visiting the Bungoma, Eldoret, Kodiaga, Kabarnet, Tambach, Kapenguria and Lodwar prisons. All the prisons monitored had similar problems, which included congestion in remand cells, lack of beddings, uniforms, poor lighting and poor sanitation.

The spiritual needs of the prisoners were, however, well taken care off. The presence of the mosque in the prison was an indication that freedom of worship was allowed and the prisoners attested to this. Christian inmates receive spiritual nourishment through pastors who visit the prisons on Sundays. We confirmed that prisoners had the option of pursuing education while in prison. Others gain skills in workshops where they make furniture.

The remandees pointed out that the main problem they experienced was delay in the courts that determine their cases. The longest serving remandee has been in prison for the last ten years.

Recommendations

1. Women prisoners accompanied by their children should be isolated and given spacious cells.
2. The court process needs to move more quickly to avoid delays in the conclusion of cases.
3. The prisons need to be decongested and expanded.
4. The prisons also face a serious shortage of bedding and therefore the concerned authorities should equip the facilities with enough bedding.
5. Prisoners infected with HIV/AIDS need to be provided a special diet and an adequate supply of ARV drugs.

8.1.2.4: Protection of Internally Displaced Persons

The regional office monitored and advised on the situation of IDPs, many of who were displaced as a result of the post-election violence. There were also IDPs resulting from forest evictions carried out by the Government, for example in Embobut, Mochongoi/Marmanet, Cherangani, and Kipkurere.

Table 6: IDP data and Findings

Name of Camp	No. Of the IDPs	Nature /type of camp	Remarks
Ya Mumbi	210 Households (1421people)	Post Election Violence (PEV)	This was a satellite camp. The IDPs have yet to reconcile with the host community.
Burnt Forest	71 Households (450 people)	PEV	The population was initially 3000, but many left after receiving the 25,000/= that they were allocated, leaving behind households who have yet to receive their allotment.

Kamuyu	1700 households (10,200 people)	PEV	It is the second biggest camp in the region, with residents working in their farms and returning to the camp due to lack of housing and security.
Eldoret Show ground	2000 households approx (12,000 people)	PEV	It was hard for the Government to identify genuine IDPs because even squatters and hawkers from the town are residing in this camp.
Embobut	About 1500 people	Forest evictions by the Government	A task force was appointed to discuss what action to take to address the plight of the camp's residents and make recommendations to the Government. No action has been taken to date.
Mt Elgon	About 15,000 people were affected.	SLDF criminal gang and later by the military during the "Operation Okoa maisha"	The preliminary findings of the task force indicate that the disputed Chebyuk settlement scheme was the main cause of the conflict with the rival community group (Soy & Ndorobo).
Lodwar	Approximately 1200 households	PEV (Turkana people who were settled in Kericho, Nakuru, Kitale, Eldoret).	Most of the camp's residents were omitted from the Government IDP programme to release 10,000/=, 25,000/= and building materials to affected individuals.

The monitoring data collected helped the Commission effectively engage the Ministry of Special Programmes to address the plight of IDPs. The data was also shared with humanitarian organizations like IOM and the Kenya Red Cross under the umbrella of the Protection Working Group on IDPs, and the information influenced their humanitarian assistance programs. The data also informed the creation of the current draft IDP policy. In collaboration with other partners, the regional office highlighted several malpractices in the process of identifying and resettling IDPs. This informed the Government's decision to create transparent vetting and resettlement criteria. Investigations were conducted by the Government on reported cases of misappropriation of IDP funds, which led to the suspension, arrest and arraignment in court of the suspects.

Recommendations

1. The Government should investigate and prosecute corruption allegations against the public officers who mismanaged IDP funds.
2. The Government should approve and operationalize the IDP draft policy in order to streamline IDP issues in Kenya.
3. The Government should provide humanitarian support to IDPs who reside in camps or are homeless and require basic services to which they have a right, including food, shelter, clothing, and health care.
4. The Government should improve security, particularly in areas that experienced high rates of post-election violence, and lead other stakeholders in peace and reconciliation initiatives.

5. The Government and non-State actors should work together as partners in advocating and supporting IDPs' needs to avoid the duplication, competition, suspicion and mismanagement of resources.

8.1.3: Outcomes

1. The plight of IDPs in the region was effectively profiled and advocated through the intervention of the North Rift regional office.
2. The regional office strengthened its partnership with other stakeholders (under the Protection Working Group) to address the plight of IDPs and other human rights issues.
3. There was increased knowledge on human rights and wider understanding of the mandate of the commission by the public.
4. The Commission successfully addressed human rights complaints that were lodged at the regional office.
5. The Commission profiled the conditions of penal institutions in North Rift region.

8.1.4: Lessons learnt

The Commission should initiate more structured engagements with partners in the North Rift region. Additional partnerships would enhance the public's understanding of the Commission's mandate, and would be strategic in conducting human rights clinics and other outreach activities.

8.1.5: Challenges

1. The public has high expectations of the Commission's ability to resolve their reported cases, even where their issues do not fall within the Commission's mandate and admissibility criteria.
2. There is still some mistrust of the Commission within the community, which was particularly visible after the release the Commission's report on post-election violence and its report on alleged human rights abuses by the military in Mt. Elgon.
3. Financial limitations remained a challenge due to the vastness of the region to be covered by the regional office.

8.1.6: Focus of next year

- Routine screening and processing of complaints, including investigations.
- Continued monitoring and profiling of ongoing government programs for IDP protection.
- Public education and training, which includes awareness programmes to increase the understanding and respect of rights by the general public and government institutions.
- Organization of human rights clinics and public forums as an outreach strategy.
- Enhanced regional office visibility and effectiveness through strategic networking and strategic partnership building.

8.2: THE NORTHERN KENYA REGION OFFICE

8.2.1: Programme overview

The Northern Kenya regional office is located in Wajir. Like the North Rift regional office, the Northern Kenya regional office focused on expanding the outreach and accessibility of the core Commission functions in the region, while at the same time addressing some unique human rights issues that face residents of Northern Kenya. The work of the regional office covers Garissa, Wajir, Mandera, Moyale, Marsabit and Isiolo regions.

8.2.2: Summary of interventions

8.2.2.1: Complaints, investigations and rapid response initiatives

The regional office continued to receive, screen and process walk-in and telephone complaints from diverse parts of the region. Complaints were also lodged during public education forums and mobile human rights clinics hosted by the Commission.

In an attempt to develop a sustainable strategy to deal with rampant complaints relating to administrative injustices, the regional office adopted a round-table approach. This involved collecting data on complaints against a particular office, calling for a meeting with the concerned administrative officer(s) or heads of departments, tabling the complaints and focusing on long-term solutions. This approach has so far been employed with the following offices with some level of success: the Ministry of Health, the Ministry of Education, the Arid Lands Resource Management Project, the Provincial Administration, the Police Department and the Children's Department.

A rapid response team made a field visit to Mandera following a report of inter-clan conflict to ascertain the cause of the conflict and the current situation since no reliable information was available. The second rapid response team was to assess what human rights violations were committed during the resulting military operation.

8.2.2.2: Liaison with the Children's Department

Child rights and maintenance issues continued to dominate the complaints received by the regional office. In an attempt to develop a long term mechanism to address these issues, the regional office met and held discussions with the Children's' Officer of Wajir. It was determined that the two offices have to coordinate their efforts to handle child rights related complaints. It was resolved that the two offices would conduct a joint training programme for Chiefs, Imams, teachers and other officials on child welfare and protection.

8.2.2.3: Liaison with the office of the Registrar of Persons

Following the intervention of the regional office to address the large number complaints received by the Commission concerning delays in the issuance of ID cards, the Registrar of persons streamlined the registration process and applicants have been receiving their ID cards. The regional office later held discussions with the Provincial Coordinator and the District Registrar of Wajir and Moyale. Both officers undertook to address the issue by streamlining the process to minimize complaints.

8.2.2.4: Visits to places of detention

Being part of a core programme of the Commission, the regional office team visited five prisons in Wajir, Mandera, Garissa, Moyale and Isiolo. Sanitation conditions were generally found to be poor, with high levels of congestion in all prisons. Sleeping and washing facilities are inadequate and sanitation is a big concern.

The regional office also visited Garissa, Isiolo, Mandera, Moyale, Marsabit and Wajir police stations and many of the officers cooperated with the Commission regarding issues concerning the rights of citizens. Nevertheless, police brutality was found to be a concern of the citizens of Garissa town and Mandera town.

8.2.2.5: Strengthening of the regional human rights network

In an effort to address the challenge of geographical distance, which affects the accessibility of the regional office, the office identified a number of NGOs that operate in the region with which it could create partnerships. Members of the partnership network are expected to forward complaints to the Commission's regional office and to assist in mobilizing the public to participate in the Commission's outreach programmes. This is in line with the Commission's mandate of encouraging the activities of other institutions working in the field of human rights and cooperating with such institutions to promote and protect human rights in Kenya. Partnership networks have been initiated in Moyale, Isiolo, Marsabit, Mandera, Garissa and Wajir districts. However, most networks are still weak and require strengthening and capacity building.

Table 7: Summary of activities implemented in the Northern Kenya region

Planned Activities	Achieved Activities
To conduct seven human rights clinics and public education.	Conducted five human rights clinic and public education activities to raise awareness and to collect complaints in Moyale, Marsabit, Isiolo, Wajir and Garissa.
To carry out three investigative missions.	Three investigative missions were conducted in Mandera, Lagdera and Wajir.
To form and strengthen three human rights networks.	Two human right networks were formed and strengthened in Garissa and Moyale.
Visit at least three police stations.	Five police stations were visited in Garissa, Isiolo, Wajir, Marsabit and Mandera.
Visit three prisons.	Five prisons were visited in Moyale, Wajir,

	Isiolo, Mandera and Marsabit.
Organization of one stakeholder workshop on cattle rustling between communities in Isiolo, Laisamis, Igembe, Samburu South and Garbatulla Districts.	One workshop held with the support of the Institute of Security Studies (ISS) for Northern Kenya, especially pastoralists from Upper Eastern, Igembe area and part of North Rift.
One regional visit by Commissioners to the region to document the human rights situation and to review the extent to which human rights issues affecting the region are brought to the limelight and are incorporated into the national policy.	The Commissioners visited Isiolo, Marsabit, Moyale, Wajir and Garissa districts. The communities' areas of concern included roads, livestock marketing, reproductive health, sanitation in Wajir, girl child education, access to justice and negative ethnicity.

Summary of petitions from the region

Table 8: The Summary of the status of complaints lodged in the region

District	Number of Cases Received	Female	Male	Cases resolved by ADR	Admitted Cases	Cases referred	Cases under investigation	Cases not admitted
Wajir	54	20	34	18	7	29	-	51
Marsabit	35	17	18	-	4	28	5	31
Isiolo	26	9	17	-	5	21	-	21
Moyale	22	7	15	9	2	11	-	20
Garissa	2	0	2	-	2	-	-	0
Mandera	1	0	1	-	1	-	-	0
Total	140	53	87	-	17	-	-	123

The high number of cases not admitted is caused by the fact that many petitions lodged with the office fall outside of the mandate of the Commission and its admissibility criteria. Many of the cases not admitted are referred to agencies and institutions that have the mandate to address them, and others are immediately resolved through alternative dispute resolution. Nevertheless, the Commission gave legal advice to every petitioner that visited its office.

8.2.2.6: The nature of human rights violations in Northern Kenya region

1. Social security, employment and labor-related rights

The regional office received complaints on delayed pension benefits and allegations of unlawful dismissal from employment without the payment of workers dues. There were also cases of malpractices such as corruption, nepotism, tribalism, bias and influence peddling in the hiring process, especially during recruitment for the Kenya Prison Warders, the Administration Police, the Kenya Police and Chiefs.

2. The right to nationality

The policy for persons residing in border towns is to require them to undergo a vetting process to ascertain their nationality before they are issued an identity card. The office received complaints

of unnecessary delays in the vetting process and of corrupt practices, especially by area Chiefs who demand bribes from applicants in order to be vetted. There were also allegations of aliens from neighboring Ethiopia and Somalia bribing the authorities to be issued with national identity cards at the expense of genuine Kenyan citizens.

3. Poor access to justice

Access to justice in the region is undermined by poverty, ignorance, the absence of legal services, and the distance of residents from sparsely located law courts. Where law courts exist, they are understaffed and plagued with delays, which violates the right of litigants to a fair trial within a reasonable period of time.

4. Gender Equity

Women in the region are completely relegated to the periphery in all sectors of social life. The Commission noted that women rarely come forward to talk about issues affecting them and those who came appeared intimidated and withdrawn. The girl child has less access to education and is affected by retrogressive cultural practices, such as female genital mutilation and forced early marriages. The crimes of defilement and rape are key issues in the region.

5. Negative Ethnicity

The Northern Kenya region experiences unique issues of ethnic conflict. The Commission received reports of tribal divisions among the region's residents, specifically in Laisamis and Marsabit districts between the Boranas and Rendille over border demarcations for new districts and livestock rustling. There also continues to be some tension between the Garreh and Murule tribes in Mandera district.

8.2.3: Outcomes

1. The regional office conducted outreach missions and held human rights clinics in five out of the seven districts in the region, i.e. Moyale, Marsabit, Isiolo, Garissa and Wajir, Also, the office conducted a rapid response investigation visit to Mandera district. At these outreach missions, the regional office conducted human rights education awareness activities, elaborated on the mandate of the Commission and processed complaints of various allegations. Legal advice was offered where it was deemed necessary. The regional office's outreach activities enhanced the accessibility and visibility of the Commission.
2. The regional office undertook a familiarization tour of the region, which also helped to build contacts with key civil society organizations operating in the region. The office made contact with partners (both state and civil society) that will in the future be involved in the Commission's activities relating to the process of developing the NAP.
3. The Commission built rapid response networks with individuals, groups, organizations/institutions and even volunteers.
4. The regional office gave immediate relief to residents by quickly responding to and highlighting the conflict in Mandera.

8.2.4: Lessons Learnt

1. Cooperation and engagement with Government departments will ensure an improved status of human rights in the region.
2. Strategic partnerships and networking is key for promoting and protecting human rights in the region.
3. Public education and awareness creation within communities living in the region is a key mechanism to enhance human rights awareness.

8.2.5: Challenges

1. Inadequate funding and the general disconnect of the regional office from the Commission's other core programmes.
2. The vastness of the region inhibits the adequate reach and accessibility of the regional office.
3. Managing the public's expectations has also been a major challenge, especially with regards to the Commission's mandate.

8.2.6: Focus of the Next Year

The following will be the focal area for the coming year:

- Public education in order to enlighten the public to claim their rights.
- Investigate and redress alleged human rights violations.
- Build and enhance the capacity of government officers to use the rights-based approach in their programming.
- Monitor devolved funds meant for poverty reduction in relation to excluded vulnerable groups.

CHAPTER NINE: CONCLUSIONS

9.1: Overall performance and achievements

During the period under review, the Commission was able to provide redress to human rights complainants by undertaking immediate interventions. The Commission conducted further investigations into various allegations and in the process contributed to the fight against impunity and the reduction of systemic human rights violations. Rapid response and investigations leading to immediate redress was given in complaints alleging trafficking of women to the Middle East, eviction of hawkers from a market and cases of defilement.

The Commission finalized its investigations of allegations of systemic and widespread human rights violations, including the allegations of extra-judicial killings out of which the report titled *'The Cry of Blood, a Report on Extra-judicial Killings and Disappearances'* was published. The Commission profiled extra-judicial killings in Kenya as a gross violation of human rights and the rule of law, leading to calls from the public, civil society and Parliamentarians for those responsible to be charged for their actions. The Commission's report informed the work of the UN Special Rapporteur on Extra-judicial Killings, Professor Phillip Alston, who visited Kenya at the invitation of the Government to conduct further investigations. The Special Rapporteur's findings were similar to the findings of the Commission, with recommendations for wide ranging reforms in the security sector and the establishment of an independent civilian oversight board over the police. The Government subsequently set up a Task Force on Police Reforms and established the Police Oversight Board. The Commission views this move by the Government as an important step towards the promotion of accountability and reforms in the police force. This is also an acknowledgment by the Government of the existence of systemic challenges in the security sector and the need to reform the sector to conform to human rights principles, as argued by the Commission. Additionally, the cooption of the Chair of the Commission as a member of the Task Force on Police Reforms is an acknowledgement of the important role played by the Commission in mainstreaming human rights in institutional reforms.

The Commission's report on investigations into the post election violence titled *"On the Brink of the Precipice: a Human Rights Account of the Post 2007 Election Violence"* formed a critical basis upon which the Commission of Inquiry into the Post Election Violence (the Waki Commission) undertook its investigations. This was due to the fact that the Commission's database was the most comprehensive and accurate reservoir of information related to the post-election violence. The creation of the database immediately following the violence fostered its accuracy because witnesses had little time to fabricate evidence. In turn, the work of the International Criminal Court has been based on the findings of the Waki Commission. The Commission's investigations therefore contributed to the fight for accountability of the perpetrators of post-election violence at both the national and international levels.

There was greater understanding of the role of cultural institutions and systems in the protection of the rights of the most vulnerable. This was achieved through the implementation of projects with the Luo Council of Elders and the Njuri Njeke of Meru communities. The implementation of these projects has enhanced access to justice for vulnerable groups, in particular women and children, by using the informal cultural structures that are most accessible to them.

Through capacity building trainings, awareness forums, workshops and the dissemination of IEC materials, the Commission enhanced the human rights awareness of the public and governmental officers in targeted ministries and agencies. Closely related to this, the Commission initiated trainings, forums, workshops, joint projects, and strategic partnerships for human rights with key State and non-State actors, including the Kenya Institute of Education, the Kenya Institute of Administration, the Ministry of Education, the Ministry of Immigration, the Ministry of Justice, the Retirement Benefits Authority, the Office of the High Commissioner for Human Rights, the United Nations High Commissioner for Refugees, cultural institutions and various civil society organizations.

During the reporting period, the Commission also directed attention towards human rights issues that are often neglected by conducting research on growing old and statelessness, and by applying to intervene in a case involving an inter-sex person. The Commission's objective was to bring these issues into mainstream public debate and to press for the development of Government policy to address them.

Finally, the Commission gained leadership in framing and informing the human rights discourse at the local, regional and international levels by bringing into the public domain previously ignored human rights issues. Internationally, the Commission organized and hosted the 9th International Conference of National Human Rights Institutions on the theme of Administration of and Access to Justice to ensure that corporate social responsibility became a core concern of national human rights institutions (NHRIs). Business and human rights was subsequently named the theme of the 10th International Conference of NHRIs. The Commission also examined the use of cultural institutions as a mechanism to enhance access to justice and shared best practices with other national human rights institutions. As a result of the Commission's work in the area of corporate social responsibility, the Commission was invited to sit on the Board of the Institute of Business and Human Rights to drive global interventions on the subject.

9.2: Challenges during the period under review

1. The Commission continued to face budgetary constraints caused by the limited budget provided by the Government. The Commission's limited budget affected its ability to implement its planned programmes. This challenge was made worse by the suspension of GJLOS basket funds (from which the Commission drew a substantial amount of its project funds) following the post-election violence. This affected the extent to which the Commission was able to implement planned activities, particularly because substitute government or direct donor funds were not immediately available to fill the funding gap. Next year, the Commission will continue to lobby for additional resources from the Government.
2. Human resource capacity remained low in the period under review. Low funding from the Government meant that the Commission could not hire an adequate number of staff. This challenge was worsened by the fall-out from the Commission's investigations into extra-judicial killings, which forced several members of staff who felt threatened to be temporarily protected outside of Kenya thus further reducing the already lean staff capacity. Over the

next year, the Commission will seek alternative funding to enable it to recruit additional qualified staff to run its various projects and programmes.

3. Managing the high expectations of petitioners who sometimes do not understand that their complaints are outside the Commission's mandate continued to be a challenge, hence the low number of complaints that were admitted after processing. The Commission also had to deal with some petitioners who were reluctant to take their complaints to other agencies and institutions where they were referred. For cases not admitted, the Commission gave legal advice to the petitioners or provided alternative dispute resolution to the parties, which often resolved the complaint. Next year, the Commission will sustain its branding strategy and will educate the public on its mandate through various outreach and awareness activities, including through the media, so that only cases that fall within the mandate of the Commission are lodged.
4. The Commission has had to act delicately when dealing with whistle blowers and petitioners with sensitive or confidential information, which was an issue particularly during the Commission's investigations into post-election violence and extra-judicial killings. A large number of people claimed to be at risk because of their testimony relating to these two systemic human rights violations. The situation was rendered particularly acute due to the lack of proper mechanisms and guidelines for witness protection.
5. The High Court ruling that quashed the Rules for the Commission's Complaints Hearing Panel halted the Panels' adjudication of cases of alleged human rights violations and affected the extent to which the Commission was able to provide redress. As a result, the Complaints and Investigations programme no longer presents recommendations to the Complaints Hearing Panel on how to provide redress for the human rights violations investigated by the programme. The Commission is appealing the ruling with the hope that the Complaints Hearing Panels will be restored in the next financial year.

9.3: Lessons learnt

In the reporting period, some of the key lessons learned included:

1. It is necessary to build partnerships with both State and non-State actors to achieve the goals of the Commission. In addition, collaboration with and support from key Government institutions and agencies, including the police, is crucial for the provision of redress for human rights violations.
2. It is important to have structured documentation and exchange of information and best practices within the Commission regarding programme implementation to facilitate learning as an institution towards improving programming and targeting of interventions.
3. There is great value in joint and complementary programming within the Commission's programmes to create synergy between the institution's diverse activities, which will increase the impact and efficiency of the Commission's work.

4. The Commission needs to follow up on work undertaken each year, including recommendations from researches and investigations, to ensure that the Government implements them. Kenyans will only realize benefits from the interventions of the Commission when its recommendations are acted upon by relevant duty bearers.
5. An operationally independent Witness Protection Authority is important for the purpose of complementing the investigative work of institutions such as the Commission. An independent authority would allow the Commission to focus on investigations while offering protection to crucial witnesses. There is also a need for funding and strategic mechanisms to protect human rights defenders that are at risk, in order to ensure that their human rights work is not negatively affected.