



KENYA HUMAN RIGHTS
COMMISSION

ANNUAL REPORT 2011

Investing in the **Constitution**
for **Accountability** and
Justice





Mau Mau War Veteran Association members at a press briefing and prayer meeting held at the KHRC offices before the July 2011 ruling for the case filed in London to continue

Contents

1.0	List of Abbreviations and Acronyms	2
1.1	Message From the Chair	3
1.2	Executive Director's Foreward	4
1.3	Executive Summary	6
1.4	Context	8
Part One		
	Justice	11
Part Two		
	Economic, Social and Cultural Rights (ESCR)	36
Part Three		
	Equality and Anti-discrimination	50
Part Four:		
	Media and Communications	55
Part Five		
	Institutional Development and Programme Effectiveness	58
Part Six		
	Financial Statements	62

1.0 List of Abbreviations and Acronyms

AEA	Agricultural Employers Association
CAJ	Commission on Administrative Justice
CDF	Constituency Development Fund
CIC	Commission on the Implementation of the Constitution
CIOC	Constitution Implementation Oversight Committee
CJ	Chief Justice
CBO	Community Based Organisation
COTU	Central Organisation of Trade Unions
CSO	Civil Society Organisation
EACC	Ethics and Anti-Corruption Commission
EJKs	Extra Judicial Killings
ERT	Equal Rights Trust
ESCR	Economic, Social and Cultural Rights
FKE	Federation of Kenyan Employers
FIDA	Federation of Women Lawyers
FPEAK	Fresh Produce Exporter Association of Kenya
GALCK	Gay and Lesbian Coalition of Kenya
GEMA	Gikuyu, Embu and Meru Association
HURINETs	Human Rights Networks
ICC	International Criminal Court
ICJ	International Commission of Jurists (Kenya Chapter)
ICT	Information, Communication and Technology
IDPs	Internally Displaced People
IEBC	Independent Electoral and Boundries Commission
JRTT	Judicial Reforms Think Tank
KACC	Kenya Anti-Corruption Commission
KAMATUSA	Kalenjin, Masai, Turkana and Samburu
KAP	Knowledge, Attitude and Practice
KESREF	Kenya Sugar Research Foundation
KFC	Kenya Flower Council
KHRC	Kenya Human Rights Commission
KNCHR	Kenya National Commission on Human Rights
KPAWU	Kenya Plantations and Agricultural Workers' Union
KTJN	Kenya Transitional Justice Network
LGBTI	Lesbian, Gay Bisexual, Transgender and Intersex
LSNSA	Land Sector Non State Actors
M&E	Monitoring and Evaluation
MSC	Most Significant Change
NARC	National Rainbow Coalition
NCIC	National Cohesion and Integration Commission
NGEC	National Gender and Equality Commission
NGO	Non-Governmental Organisation
PC	Provincial Commissioner
PEV	Post Election Violence
PMs	People's Manifestos
PWDs	People With Disabilities
Q&A	Question and Answer
SCIs	Score Card Initiatives
SMS	Short Message Service

1.1 Message From the Chair

I am very pleased to once again salute the great work of the Kenya Human Rights Commission (KHRC) in another stellar year of pioneering and excellent work.



By definition, human rights work entails working at the intersection of power and powerlessness. But in our country, it often feels as though we work at the crossroads of sanity and insanity. That is because Kenya is buffeted by a long and torturous transition from dictatorship to democracy, from opacity to transparency, and from ethnic myopia to the nation. These are daunting challenges especially in view of a ravenous political class that lacks a moral compass, or worse, common human decency. But the KHRC does not exist in a vacuum. It must deal with these realities for that is why indeed it was founded.

In spite of these huge societal deficits, Kenya has witnessed some rays of hope. We have a new constitution. At least one arm of government -the judiciary- is in the capable reformist hands of former KHRC Executive Director, Chief Justice Willy Mutunga. He has initiated a process of unshackling the judiciary and restoring faith in the administration of justice. But he is doing so at great odds where the political arms - the legislature and the executive - remain resistant to change and reform and under the control of deeply anti-reformist cabals. Corruption remains rife.

In the horizon, ominous clouds gather as the March 2013 elections approach. The crescendo of deadly voices fills the air. Two prominent Kenyans indicted for crimes against humanity at the International Criminal Court continue to exact unremitting control over the political process, including a quest for the highest offices in the land. Political alliances that reek of the old order threaten to continue their stranglehold over Kenya beyond the March elections. The electorate seems enthralled with political vagabondage and malignancy. Kenya teeters on the brink of another election that could easily make the last one -- in 2007 -- seem tame. Will Kenya survive the March elections? What is to be done?

It is in this disturbing environment where the KHRC is exerting its voice of sobriety. We continue to work with our partners on the ground and our allies and friends everywhere to foster a culture of accountability and transparency. We know that Kenya stands on the precipice and that only the work of those who hold the ideals of human rights dear will get us over the bridge. This report is a testament to that work. But it is also a call to action of how much must be done to avert the worst. Let us go forth and work round the clock to vindicate the ideals that we all believe in. Aluta continua!

*Prof. Makau Mutua, Board of Directors
Kenya Human Rights Commission
Dean*

*SUNY Distinguished Professor
Floyd H. & Hilda L. Hurst Faculty Scholar SUNY Buffalo Law School
The State University of New York
319 O'Brian Hall
Buffalo, New York 14260*

1.2 Executive Director's Foreward

The period of April 1st 2011 to March 31st 2012, has been challenging and inspiring for the Kenya Human Rights Commission (KHRC). The year 2012 marks the end of one strategic plan for the KHRC and the beginning of a new strategic plan. Currently the KHRC's 2008 – 2012, strategic plan is under review and a new one for the period 2013-2018 is being developed.



The Commission's external operational environment is dynamic providing new opportunities as well as challenges. In the April 2011-March 2012 operational year four individuals stood accused before the International Criminal Court (ICC) of having perpetrated crimes against humanity during the post-election violence that took place in Kenya in December 2007 – February 2008. Two of these individuals have declared their intention to run for the presidency in the next election. KHRC has stood in partnership with other human rights institutions to remind the State of its obligations to ensure respect for constitutional provisions that demand the highest standards of integrity for those seeking public office.

One of the most dangerous ways in which the ICC intervention in Kenya is being resisted is through political ethnic mobilisation, which could again plunge the country back into violence. The KHRC remains vigilant in seeking to prevent any such recurrence. Aside from speaking out against the politicisation of the ICC cases and the continued ethnicisation of the country's politics, the KHRC is engaged in several programmatic initiatives to ensure a peaceful election that respects human rights norms.

The KHRC continues to seek justice for victims of electoral violence not only in relation to the 2007 election but also earlier cases and has filed a case on behalf of internally displaced persons. This is not the only area of transitional justice in which the KHRC is involved. During the period under review, the KHRC also recorded success in relation to the case that has been filed before the British Courts seeking justice for Mau Mau veterans who were victims of torture during the independence struggle. Several victims of torture who suffered under the Moi Regime in the infamous "Nyayo Torture Chambers," have also recorded successes in litigation brought through the support of the KHRC.

The KHRC has also in the past year recorded success in addressing several concerns in respect of equality including the initiation of litigation with respect to equal citizenship rights for northern Kenyans. KHRC also has worked in partnership with organisations representing members of the Lesbian, Gay, Bisexual, Transgendered and Intersex (LGBTI) communities to engage in media outreach to sensitize the public and in particular those in educational institutions on the rights of sexual minorities. The KHRC also engaged in training on human rights for Persons with Disabilities in Malindi.

In the area of economic rights and social protection rights the KHRC has undertaken work to address stereotyping and discrimination in education through developing an equality story book 'The Attack of the Shidas: AKAs Save the Planet Earth'. It is now intended that this book will be published and launched in the

next year. The KHRC also conducted a study to understand the Knowledge, Attitudes and Practise of pupils in target schools with regard to five areas of equality (Gender, Disability, Ethnicity, Age and Wealth Status/Class).

The KHRC also engaged in various initiatives to improve workers' livelihoods through various laws and policies which include land reforms, security sector reforms and citizenship policies. Some of the processes around the policies included the making and airing of documentary on sugar cane farmers' rights, titled: "Bitter Sugar, the bitter, sweet livelihoods of sugarcane farmers in Western Kenya." The KHRC has also completed a policy brief on the sugar cane value chain. In order to understand women's rights as workers, the KHRC also undertook a study on women's labour rights that was focused on the floriculture sector. A validation of the report of this study which is titled 'WILTING IN BLOOM, the Irony of Women's Labour Rights in the Cut flower Sector in Kenya' was conducted on Valentine's Day, 14th February, 2012. The validation workshop was covered in all the mainstream print media and also received wide coverage in the electronic media. One of the findings of the study was with regard to the conditions of day care centres and the general impact of working in the cut-flower industry on women's family life and livelihoods. Similar studies on the sisal sector are underway. The KHRC is also engaged in a case with regards to economic partnership agreements (EPAs) and is actively engaged in bringing together a broad fair trade network.

In respect of media and communications, the KHRC is engaged in setting up an intranet and extranet so that the KHRC can share learning and documents internally as well as with the communities it partners with through the HURINETS. In the next year the KHRC will be working towards the development of a communications strategy and style booklet.

The KHRC thanks all its grant makers who have supported us during the past year and we look forward to a continued partnership for the realisation of a human rights state and society. We also appreciate the support received from the different state and non-state actors in our interventions at all levels in the society.

Pamoja Tutete Haki
Atsango Chesoni,
Executive Director, KHRC.

1.3 Executive Summary

A) INTRODUCTION

The Kenya Human Rights Commission (KHRC) was founded in 1992 and registered in 1994 as a non-governmental organisation (NGO). Our vision is a Kenya that respects, protects and promotes human rights and democratic values. Our mission is to work towards a human rights state and society. To achieve this mission, the KHRC agreed in April 2011 to pursue a goal for the year of 'Investing in the Constitution for Accountability and Justice.' We work with communities through 27 human rights networks (HURINETS). The KHRC links community, national and international human rights concerns. Thus the constitution of Kenya promulgated in August 2010 has been based on the framework of engagement in governance processes.

To ensure that this framework is effectively enshrined in legislation and fully implemented, the KHRC decided to focus its attention on grasping this opportunity and ensuring that both the letter and spirit of the constitution are entrenched in the governance systems. We are aware of the attempts by some politicians to undermine human rights by passing weak Bills and appointing people with either questionable integrity or competence to new state institutions. This year the KHRC has focused on five programmatic goals and a number of objectives:

Goal 1: Justice realised for gross and systemic human rights violations in Kenya.

- Objective 1: To contribute to the development of effective and accountable land, justice and security systems.
- Objective 2: To influence the formulation of and compliance with principles of leadership, integrity, public participation and accountability in governance.
- Objective 3: To contribute towards the pursuit of effective and enforceable remedies for survivors and victims.

Goal 2: Improved access to Economic, Social and Cultural Rights (ESCR) for poor and marginalised people under devolution.

- Objective 1: To influence the formulation of gender responsive devolution policy and laws that improve social service provision.
- Objective 2: To improve workers' livelihoods / standard of living.

Goal 3: A society that has attained equal, accessible and inclusive rights and opportunities for all.

- Objective 1: To influence the formulation, review and/or enactment of policies and legislation.
- Objective 2: To ensure public access to basic personal national documents.
- Objective 3: To recognise and protect marginalised and minority communities.

Goal 4: Increased publicity to improve understanding of and commitment to building a human rights state and society.

- Objective 1: To increase publicity to improve understanding of and commitment to building a human rights state and society.

Goal 5: KHRC is financially secure and implementing programmes that are creating durable impact.

- Objective 1: To develop skilled and progressive human rights workers.
- Objective 2: To increase accountability and programme effectiveness.

B) STRUCTURE OF THE REPORT

This report is broken down according to the above goals and objectives and within 5 Parts: 1) Equality and Anti-discrimination, 2) Justice, 3) Economic, Social and Cultural Rights, 4) Media and Communications, and 5) Institutional Development and Programme Effectiveness.

Each Part will consider; activities, opportunities grasped, results, difficulties and solutions, next steps and sustainability. Basically, the report will explain what the KHRC did, what difference it made, the challenges it faced and how those challenges were overcome. Results will be presented to particularly capture duty bearers; a) commitments, b) actions, and c) results for communities. These correlate to the UN Office of the High Commission for Human Rights recommendations of using *structural, process and outcome* indicators of change.

At the same time, the KHRC wants to measure changes in community empowerment. In this way, the KHRC will be measuring results from the duty bearer (supply), rights holder (demand) and outcomes angles. This report will check progress against the outcomes and outputs envisaged in our operational plan as well as identify unanticipated changes. The annual report will also consider any early signs of movement towards the achievement of 'long term results.' The report will also describe any work undertaken additional to that originally planned in order to capitalise on arising opportunities. Sustainability of project activities and results is also considered. In conclusion, the report will draw together the key lessons learnt during the 11/12 year and summarise some plans looking forward.



C) KEY RESULTS

The KHRC has realized the above goals in three ways:¹ first, we influenced the *implementation of the Constitution of Kenya for justice and accountability* through: i) the development of policy, legislative and institutional frameworks; ii) Research, documentation and publications; iii) realization of justice to victims and accountability for perpetrators. These results were attained via the above thematic areas and the following projects and interventions: equality and non-discrimination; IDPs protection; truth telling, seeking remedies/ justice and reparations for victims of human rights violations such as the *Mau Mau*, *Nyayo House*, *Endorois* and so on; legal aid and urgent action; judicial, security, and public service sector reforms; fair trade and labour rights; land, environmental and water sector reforms; electoral and political governance; educational sector reforms; agricultural sector reforms within the coffee, sisal and sugar sub-sectors; social development and protection; devolved governance; stakeholder liaison and partnerships; publicity and communication; human resources development, and organizational accountability and programme effectiveness among others.

Second, the Commission has enhanced its institutional sustainability – through improved financial security; increased capacity building for staff; effective transition within the management team; and, increased organizational visibility, accountability and programme effectiveness. The shift from core funds to basket/project funding has also necessitated the KHRC to consider implementing full cost recovery and multi-year fundraising on all future proposals to secure institutional sustainability. We have also managed to secure some funding and good prospects from the some of the existing and new development partners as we go to the OP and strategic planning. KHRC has continued to raise funds through managing sub-grants; foreign exchange translation and sale of publications and investments. Finally, there has been improvement in tracking results.

1. Detailed and specific activities and outcomes are captured in sections below.

1.4 Context

In a dynamic and rapidly changing Kenya only the most key contextual issues can be captured here. The KHRC is working to take advantage of this momentum and to ensure human rights based constitutionalism through pro-people legislation and institutions, greater accountability of state and non-state actors to achieve justice for survivors of human rights abuses, reduced poverty and increased equity.

To begin with the judiciary, the appointment of a progressive Chief Justice (CJ), and persons to the Supreme Court paves the way for legal provisions towards the implementation of the Constitution. The establishment of a National Council for the Administration of Justice (NCAJ) anchored stakeholder participation in the justice system through mechanisms such as court users' committees. The development of an 'integrated comprehensive and institutional transformation framework' will increase the number of Court of Appeal special sessions. This should help deal with the approximately 2,000 pending criminal appeal cases and approximately 1,850 pending civil appeal cases and will help to reverse the current situation where justice delayed is causing justice to be denied.

There have been enormous advances in women's representation in the Judiciary since the CJ took office. Out of 62 judges in the country, 25 are women. In the recent appointments to the High Court, 13 out of 25 judges were women. Half of Kenya's magistrates are now women. However, the ruling where the High Court upheld the appointment of four men against one woman to the Supreme Court was a great loss in the interpretation and application of the principle of gender equality in the judiciary and other state institutions. The on-going vetting of judges and magistrates will pave way for increased credibility and effectiveness in the administration of justice. However, the emergency of flimsy litigations may end up clogging the wheels of justice in Kenya.

Kenya's national security system has for long been characterised by impunity and opaqueness. The leadership of security systems are secretive beyond what is necessary for national security. For example, vetting of police positions began without the notification or involvement of the public. It is paramount that this mind-set changes to be in line with the values in the Constitution especially with regards to public participation. Moreover, there has been some progress on the legislative frameworks around the National Police Service Commission, Independent Police Service and the Independent Police Service Authority (IPOA).



Dr Willy Mutunga is sworn in as the new Chief Justice at State House, Nairobi on June 20, 2011.

Security personnel have a challenging job fighting violent crime. In the past, Extra Judicial Killings (EJKs) were used mainly as a means of silencing state critics. EJKs now target low-income earners in informal settlements and rural areas. Research is required to better understand the underlying causes of this shift in focus and what can be done to address it whilst also maintaining the police safety. Although we have witnessed increased restraint and response by police in their engagements with civilians, incidents of police brutality have been noted through the excesses displayed during arbitrary displacements, disruption of public forums among other interventions. The upholding of human rights of both the accused and victims, following the correct legal provisions and not using a position of power for personal gain are essential in order to increase respect for police officers and their ability to implement justice.

In the last year the International Criminal Court (ICC) confirmed charges against four of the six named as potentially the most responsible for the post-election violence. The fact that two of the suspects are eyeing high level political seats has led to increased political



Back Row: Vincent Kiptoo, Victor Okioma (Deputy PS – Internal Security), Fatuma Saman, Rose Bala, Njeri Onyango, Grace Madoka, Jedidah Ntoyai (Vice-Chair IPOA) Front Row: Tom Kagwe, Macharia Njeru (Chair, IPOA), Dr. Willy Mutunga (Chief Justice and president of the Supreme Court)

mobilisation and ethnic instrumentalisation against the two cases. To muster support for these proposals those accused have lobbied and gained the support of heads of state within the African Union, lobbying for the postponement of the hearings until after the March 2012 General Elections, and, currently pushing to have the cases transferred to the East Africa Legislative Assembly in Arusha.

They have also held 'prayer meetings' and most divisively issued statements through tribal organisations that are led by elite individuals such as the Gikuyu, Embu and Meru Association (GEMA) and the Kalenjin, Masai, Turkana and Samburu (KAMATUSA) grouping. Return to these ethnic groups is of concern to all Kenyan's who respect the rights of all 42 tribes within Kenya. Whilst those accused of being most culpable for the atrocities that took place immediately after Kenya's last elections seek to escape justice, many Internally Displaced People (IDPs) are still languishing in camps or other places of



The International Criminal Court in the Hague, where four Kenyans are facing crimes against humanity charges following the 2007-08 post-election violence

hosting without adequate protection and assistance from the Government.

The Truth, Justice and Reconciliation Commission which has faced massive legitimacy and operational crisis now has to struggle with its chairperson, Bethwel Kiplagat, who is linked to the Wagalla Massacre and alleged to have illegally acquired public land, returning to office which is a disaster for the Commission's credibility. Since there are many options for truth telling and justice seeking, it is critical that Kenyans now review their previous strategies for transitional justice. The Kenya Transitional Justice Network (KTJN) is working on a long term programme towards truth telling; criminal accountability, guarantees for non-repetition, reparations and reconciliation.

Regarding past injustices, the post-independence governments of Kenyatta and Moi ignored the plight of the Mau Mau veterans. With the assumption of political power by National Rainbow Coalition (NARC) in 2003 this changed. Since then and with the KHRC's encouragement the Government of Kenya, particularly the Ministry of Foreign Affairs and the State Law Office, has slowly come on board to support the Mau Mau case as has the British public. Unfortunately, simultaneously the UK coalition Government is taking a harder line against the Mau Mau's quest for justice. The KHRC will continue to seek justice for the torture that was carried out by representatives of the British state.

The release of previously hidden 'Watch Files' which document the destruction of papers that incriminate the British Government with regards to treatment of Kenya nationals will greatly assist with the case. Countries such as Malaysia and Zimbabwe are interested in accessing the Watch Files and learning from Kenya's success with litigation to achieve justice for victims.

At the national level, the progressive precedence set by positive legal rulings for survivors of the Nyayo House torture chambers has created a good environment to successfully litigate for cases of torture. The period under review has seen a number of judgements where victims have been awarded gracious monetary reparations. KHRC has also been pursuing reparations for the Endorois community following the ruling by the African Union (AU) in 2010.

Kenya's politicians are not hurrying to pass Bills related to issues of leadership and integrity. The status quo suits them well as the politicisation of the war on corruption continues unabated. Political interference for instance forced the Kenya Anti-corruption Commission (KACC) to be disbanded before the set-up of the new



Mau Mau War Veteran Association members at a press briefing and prayer meeting held at the KHRC offices before the July 2011 ruling for the case filed in London to continue.

commission. Existing cases of grand corruption, in which those accused and under investigation are mostly members of the political elite, have been obstructed or ceased due to the transfer to a new commission. The new commission also lacks the enforcement powers that the KACC had. Since the President can appoint the leadership of the new Ethics and Anti-Corruption Commission (EACC) with Parliament's approval there have been fears that Kenya's elite will seek to choose malleable officials. However, the current problem is a vacuum in leadership with a delay in appointing the directors to the EACC. It is clear that some leaders want to derail the EACC's mandate that could bar them from contesting the next elections due to issues of integrity.

10

The decision to split a proposed Kenya National Human Rights and Equality Commission (KNHREC) into three separate commissions; 1) Kenya National Commission on Human Rights(KNCHR), 2) National Gender and Equality Commission(NGEC), and 3) Commission for Administration of Justice(CAJ) is not the best for Kenyans. One commission acted as a one stop shop for human rights complaints and recognised that people's suffering of abuses and discrimination can be multi-faceted. Moreover, KNCHR is going through a transition that may end up with unfilled positions or new commissioners not properly grounded in human rights advocacy. The KHRC will seek to build the capacity of the commissions, hold them to account and ensure that positions are filled by individuals with requisite integrity and competency.

The forthcoming elections are already shaping the KHRC's external environment. Communities are demanding political education on the post constitution political system (especially devolution), affirmative action and effective representation and high threshold of integrity to candidates and credibility about the progress. Barriers to voting also need to be addressed alongside hindrances to successfully achieving equity in

political representation. Human rights-based monitoring and advocacy will be essential to prevent electoral violence and other violations and to ensure confidence in the democratic system. For the elections will be one of the key determinants of how the Kenya will move towards constitutional democracy.

The 2011/2012 budget is huge; KSh.1.555 trillion. It is the biggest in Kenya's history. Such ambition would be positive were it not for concerns on its focus, lack of compliance with i) constitutional requirements on participation, lack of compliance to regional and international commitments such as the Abuja Declaration which requires that Kenya spends 15% on health, the Ksh 67 billion unabsorbed by ministries in the previous budget and the huge amounts to be decentralised through CDF and the other 12 decentralised funds. The Ksh 7.8 Million allocated to each of the 210 constituencies to complete unfinished CDF projects raises questions, on why these white elephant projects have not duly been completed in the 7-8 years that CDF has existed.

Current inflation will go a long way in robbing Kenyans their purchasing power and further decimate their ability to afford the basic commodities in the society. This will consequently lead to gross violation to the enjoyment of their economic rights in a country with little social protection. At the same time rifts within the Grand Coalition Government which are visible in how government ministries departments and agencies operate, as well as the desire to hang on to a centralised system of government have posed a great challenge in undertaking advocacy work on devolution.

Kenya is not food secure; every drought predisposes citizens in arid and semi-arid areas to starvation, often characterised by conflict resulting from water scarcity among pastoralist communities and conflicts between



A section of a small scale farmland in one of Kenya's rural agricultural areas

sedentary farmers and nomadic pastoralists. Agriculture remains the most important economic activity in Kenya, with areas of high agricultural potential focusing mostly on cash crop growing. About 80% of the work force engages in agriculture. Large scale elite or foreign owned plantations in, for example, coffee, tea, and sisal, employ large numbers of workers. Small scale food and cash crop farming is carried out by about three million farming families whose plots are usually no more than two hectares (about five acres).

These small-scale farms account for 75% of total production. Ironically, these farmers make up a large number of Kenya's hungry who struggle to grow or buy enough food and who are unable to meet other ESCR needs such as access to healthcare and education. As buyers of food, high food prices mean less to eat for marginal farmers. The distance from markets, the lack of facilities for value addition, and the weak governance of farmer's organisations such as cooperatives and grower institutions mean that these farmers are unable to take advantage of the higher prices as food producers.

The KHRC is seeking to research and advocate on behalf of producers so that plantation owners employ workers on fair terms and respect their rights and cash crop producers also receive a fair price for their products. As some of the poorest people in Kenya these farmers do not have a voice with Government. Time and again farmers tell you that no one listens to them. Financial, policy and power related factors combine to ensure an environment conducive to the exploitation of marginal farmers. For example, the owners of powerful sisal farms hold sway within the Kenyan Government. As such, they have a degree of control over government machinery, very often, at the expense of workers.

Within the sugar sub sector, the Sugar Amendment Bill (2011) has many progressive proposals that if adopted and implemented would help address the suffering currently facing cane farmers. For example, it stipulates that weighbridge management should be by an independent person and not the miller and that input prices should be regulated. Moreover, the new Kenya Sugar Board directors have come with a mixed blessing. Some are lauded for their progressive advocacy efforts for farmers whilst others are known to lack neutrality as their campaigns were funded by millers.

Moreover, the Ministry of Agriculture stands accused for failing to provide election guidelines to ensure that no more than 2/3rds of directors are of the same gender. Justice Aroni stated in February 2012 with regards to the legal case regarding minimum gender representation that: 'The 13 directors to compose the Board does not indicate that it will be of one gender and the application is premature because we do not know whether the composition will meet the gender threshold.' However, the judges also said that the Board should put in place legislative measures that will address inequalities in the spirit of the new Constitution.

The new constitution, the National Land Policy and new land laws provide many opportunities for entrenching land reforms. End with a full stop, remove the comma. Then add: These land laws are:- the National Registration Act; and the Community Land Act. They also create an enabling environment to realise comprehensive and integrated legal and institutional frameworks within that sector.

11

Part One Justice

GOAL 1

JUSTICE REALISED FOR GROSS AND SYSTEMATIC HUMAN RIGHTS VIOLATIONS.

OBJECTIVE 1:

TO CONTRIBUTE TO THE DEVELOPMENT OF EFFECTIVE AND ACCOUNTABLE LAND, JUSTICE AND SECURITY SYSTEMS

LAND SECTOR REFORMS

Activities:

Some of the activities organised included:

Public actions and engagements on land reforms in Kenya including a demonstration with regards to unfair eviction in the coastal region of Kenya. Moreover, six trainings were held for HURINETS on endangered and rights-based land reforms in May in Mombasa, Kisumu, Isiolo, Nakuru, Wajir and Nairobi. On November 17, 2011 the KHRC hosted a training for HURINET thematic committees on devolution, electoral governance and land reforms. Policy briefs, position papers, petitions, advisories, memorandums, press statements and adverts on the National Land Commission Bill; Land and Environment Court Bill; Land Registration Bill; Community Land Bill; Matrimonial Property Bill and other legal, policy and administrative frameworks on land governance were developed. The Position Paper on Engendered Land Reforms² was finalised and disseminated.



Activists demonstrating for their land rights in Kwale, April 2011

Based on these campaign tools, the KHRC organised or co-hosted strategy, lobbying and engagement meetings with stakeholders and duty bearers on land

² This paper applies the rights-based and gender justice frameworks to analyse the different governance frameworks from land rights and reform perspectives.



Nduta Kweheria (centre), KHRC Senior Programme Officer for Economic Rights and Social Protection, in dialogue with community members as stakeholders in Isiolo on oil exploration

reforms such as the Ministry of Lands, Land Sector Non State Actors (LSNSA), HURINETS, Media organisations, the Parliamentary Committee on Land and Natural Resources, the Public Transformation Unit of the Office of the Prime Minister, and the Commission on the Implementation of the Constitution (CIC). Together with the LSNSA, the KHRC appeared before the Parliamentary Select Committee on Evictions on November 30th 2011 where we presented our memorandum on the rights of the arbitrarily displaced or evicted persons.

January and February 2012 saw the KHRC upscale its advocacy on land legislation; contributing substantively to the closing stages of drafting the Land Bill, Land Registration Bill, National Land Commission Bill and the Community Land Bill. The KHRC engaged in validation forums convened by the CIC and the Parliamentary Committee on Land and Natural Resources. In both instances, the KHRC made recommendations to various clauses within the Bills and this culminated in the presentation of a memorandum on proposed amendments to the parliamentary committee during its public hearings held in late February. These efforts have been consolidated through the development of a

legislative scorecard on the Bills and the development of media supplements and other advocacy materials to advance a message of irreducible minimums on land legislation.

Opportunities Grasped:

The initial document entitled “legislative advisory on the National Land Commission Bill and other administrative and policy reform process” was developed and used for different applications in line with emerging opportunities, for example, it was changed later to a communiqué and finally to a memorandum to the CIC. It has also acted as a checklist for analysis and engagements with the emerging land reform processes e.g. when reviewing the Community Land Bill; Land Registration Bill, Land Bill and government’s concept paper. We exploited the invitation from the Parliamentary Select Committee on Evictions to advance other land reforms agendas since the evictions were occasioned by the repugnant land governance and information system.

The “Position Paper on Engendered Land Reforms” was used as a working document during our engagements with the Parliamentary Committee on Evictions. Moreover, the above mentioned training during the period under review also ensured the need to bring the different groups working on related reform agendas together. The relative goodwill from the Parliamentary Committee on Lands and Natural Resources has seen the KHRC ably track the evolutionary process of the respective land Bills and contribute accordingly at every juncture. Our contributions especially through written memoranda have been accorded due consideration and seen a series of amendments introduced to the draft Bills.

Results:

The KHRC’s engagements have enhanced civic awareness and action on land reforms at the local and national levels, positively enhanced land administrative processes especially through the resuscitation of the working committees of the Land Reforms Transformation Unit. The KHRC’s work also informed the contents of the Bills especially the National Land Commission Bill and Land Environment Court Bill. For instance, the provisions in the National Land Commission Bill on regional and gender balance, competences and composition of the Commission members are some of the gains attributed to the work of the KHRC and other partners.

Moreover, while the Ministry of Lands wanted to derail the finalisation of this Bill, the KHRC and LSNSA

worked with the CIC to fast track the Bill and prevent the Ministry from recalling it. Our advisories and press statements caused the Parliamentary Committee on Land and Natural Resources and Lands Ministry to call for consultative meetings where a framework to fast track comprehensive land reforms was developed. Our engagements with and presentation to the Parliamentary Select Committee on IDPs and Parliamentary Committee on Evictions led to the adoption of most of the KHRC’s and LSNSA’s proposals by the Committees—that is the need to compensate those evicted; establish the National Land Commission; enact and implement the pending land Bills and evictions guidelines; and, fast track the land information management system.³

The KHRC has been able to substantively contribute to the revision of the draft land Bills, introducing progressive amendments such as: clarifying and enhancing the independent role of the National Land Commission; safeguarding role of communities in administering community land and; calling for extensive vetting of officers joining the National Land Commission.

Difficulties and Solutions:

Many laws are being churned out at the same time; vested interests especially where the bureaucrats in the Land Ministry feel threatened by the creation of the National Land Commission; and failure by the Executive and Parliament to have the National Land Commission Bill enacted by August 27th has created disharmony and disorder in the processing of the pending land Bills. This has culminated in a standoff with the Land ministry on how to prioritise and fast track the land reform agenda. The LSNSA is experiencing considerable strain in an attempt to cope with the frantic pace of the process; as characterised by impromptu meetings and demands to churn out materials in record time, inevitably leading to poorly mobilised meetings and limited inputs from members.

The KHRC has been working with a coalition of civil society organisations in campaigning for community land rights in Kwale. While the land dispute between the Kwale community and Kwale International Sugar Company Ltd is in court, it has become apparent that, ultimately, a sustainable partnership between the community and the sugar company needs to be forged. In this regard and without prejudice to the pending legal

3. Refer to the report by the Parliament Committee on Evictions. The Parliamentary Select Committee on IDPs is in the process of concluding and submitting the report but an overview of recommendations presented by the chair of the committee indicated strong support for the positions advanced by KHRC and other members of the Protection Working Group on Internal Displacement (PWGID)

suit, the KHRC is spearheading efforts towards bringing the two protagonists to the table over a sustainable corporate social responsibility framework.

Next Steps:

The KHRC will lobby for the final enactment of the pending Community Land Bill; the Mining Bill; and the Matrimonial Property Bill; and Evictions Guidelines and Land Bill. We shall also advocate for operationalisation of the National Land Commission Act, Land Act and Land Registration Act and the recommendations of the Parliamentary Select Committee on IDPs and Parliamentary Committee on Evictions; and administrative and institutional land reforms. The KHRC will also participate in a national civic education effort on land reforms under the LSNSA. In Kwale, there are valid claims to various aspects of land ownership by both parties. Therefore, it is in the best interests of both parties to maintain mutual goodwill. The KHRC intends to exploit this reality in order to prepare both parties for dialogue.

Sustainability:

It is important to ensure that HURINETs and other partners are empowered and involved in all processes. Moreover, partnerships and linkages between the different interventions and actors has been a cost effective way of doing land rights work. Finally, working with the key state actors is critical for it is the government’s obligation to address land injustices.

JUDICIAL REFORMS

Activities:

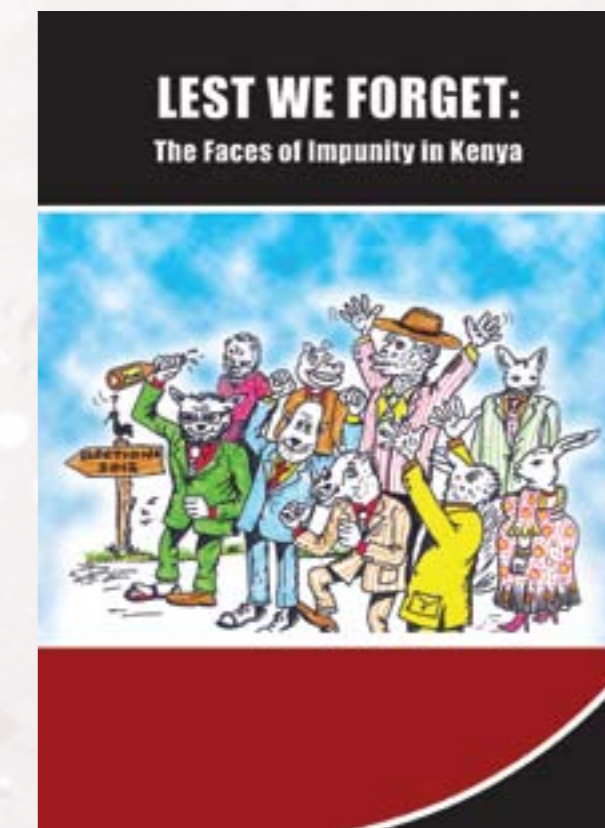
With regards to Kenya’s Justice system, the KHRC has been engaged in activities to ensure the establishment of structures that have a culture of efficiency, accountability and fairness. Specifically, in order to ensure access to justice, protection from discrimination and the right to public participation in judicial systems, the KHRC has with the Judicial Reforms Think-Tank (JRTT) critiqued the Supreme Court Bill and submitted views to the CIC and Parliament.

The KHRC has worked with the JRTT, CSO partners, KNCHR, and Law Society of Kenya to vet candidates for judicial offices. A memorandum documenting civil society and public views on the suitability of candidates to judicial offices was produced and submitted to the Judges and Magistrates Vetting Board (JMVB) and Judicial Service Commission (JSC). A press conference on the appointment of judicial officers was also held.

The KHRC has publicly given evidence on the integrity and competence of Dr. Willy Mutunga in order to defend his appointment as CJ. In contrast, the KHRC filed a legal petition against the appointment of Mr. Keriako Tobiko as Director of Public Prosecutions. The petition has since been heard, and a series of abortive judgement dates set. The judgement is still pending which demonstrates the clogged up nature of the Kenyan judicial justice system.

In August 2011, the KHRC and its JRTT partners developed a raft of rules for vetting judges and magistrates and presented the same to JMVB, at the Board’s inaugural induction retreat. This guiding framework for the screening of judicial officers has almost wholly been adopted by the JMVB. Furthermore, the KHRC has prepared a memorandum on one sitting judge of the High Court, urging further investigation by the JMVB. This intervention will rely on the KHRC’s latest publication “Lest We Forget: The Faces of Impunity in Kenya” that hinges on the principle of Lustration.

The judge in question was among state officers named by the Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land (the Ndungu Report) as having acquired public land through dubious means. The Judges and Magistrates Vetting Board has concluded its first round of vetting, having appraised the judges of the Court of Appeal and one justice of



Lest We Forget: The Faces of Impunity in Kenya

the Supreme Court. Their verdict on the propriety of the said judges will be provided on 25th April 2012 after-which they will embark on vetting judges of the High Court of Kenya and the remaining judges of the Supreme Court.

To ensure grassroots participation in the reform process, the KHRC held a two-day training workshop for community leaders and the local membership of court users committees. The workshop drew participants from Nyanza Province and parts of Western Province and was held in Kisumu. Participants were sensitised on how to monitor the judicial reforms process at grassroots level, through their respective court users committees.

They were also sensitised on their potential roles in advancing public participation in the vetting of judges and magistrates. Their roles would, specifically, include: dissemination of information on vetting at grassroots level; helping collate public information and channelling it to the JMVB and monitoring the reforms programme.

Opportunities Grasped:

The existence of the Justice William Ouko Commission Report on Judicial Reforms provides a useful basis on which to anchor judicial reforms. By working closely with the JRTT, in addition to critiquing and providing views on the Supreme Court Bill, the KHRC has also been able to give recommendations on the Judicial Service, Vetting of Judges and Magistrates, Environment and Land Court, Industrial Court, Power of Mercy, and Commission on Administration of Justice Acts. Currently, different institutions use different methods and standards for vetting. Some of these are stronger than others.

To ensure a universally high standard of vetting that is easily understood, a vetting tool, vetting manual and a paper on public participation have been produced. Co-operation by the new Chief Justice and by extension, JSC in the vetting process augurs well for the agreement on the establishment of an appropriate vetting tool. The project has established a score-card for auditing the performance of the CJ, a tool which has been embraced by the CJ. Formalisation of the use of the score card is presently before the Constitutional Court. The process of vetting of judges and magistrates can use information contained in KHRC's publication "*Lest We Forget: the Faces of Impunity in Kenya*," as the basis for holding at least one sitting judge of the High Court to account.

Results:

Activities have influenced the Ministry of Justice, Constitutional Affairs and National Cohesion Commissions to agree to adopt a judicial vetting tool. The Vetting Board hasn't yet sat to adopt the tool. The KHRC's collaborative activities for judicial reforms have contributed to new offices and structures being established, to a large degree, in a fair and transparent manner. The public is more aware of their right to access justice and is increasingly demanding avenues for inclusion in judicial appointment processes and judicial oversight.

The KHRC ensures citizen participation by soliciting views on the appointment of judicial staff, supporting the submission of memoranda and sworn statements, enabling advocacy via the mass media and the exchange of views through public forums and the now legally rooted court users' committees. On the vetting of judges and magistrates, concerted advocacy through the JRTT has seen the following Constitutional check-lists, being adopted in the vetting board's screening: Integrity; Competence; Temperament; Experience and credentials of service to the public.

Difficulties and Solutions:

At times Bills were not given enough time to ensure proper stakeholder input, either because many Bills were rushed through together or because they were brought for discussion amid tight Constitutional deadlines. The CIC should list all the upcoming Bills publicly but this has not always been the case. To respond to these challenges the KHRC is drawing data from a range of sources and internally circulating all Bills for discussion.

Retrogressive legal cases, such as the petition against the appointment of the Chief Justice and the petition challenging the constitutionality of the vetting mechanism have been filed. These cases have prompted swift action from the KHRC to defend against these attempts to frustrate judicial reforms.

Next Steps:

Whilst much of the hotly debated legislation is in place for judicial reform the KHRC will now need to participate in the review of and influence the "Rules of Procedure of the Supreme Court," and the, "Rules of Procedure of the Vetting of Judges and Magistrates Board." The KHRC will continue to monitor the vetting process against Constitutional standards by attending the hearings. Further lobbying of the Vetting of Judges and Magistrates' Board will be essential to ensure the

adoption of the Judicial Vetting Tool. Also lobbying for the establishment of an appropriate performance review mechanism and disciplinary procedure for judicial officers will be necessary.

Facilitation of public participation in the vetting process through awareness creation, collation of public statements, and a reporting and feedback mechanism on the judicial reform process will continue. A particular set-back has arisen in the JMVB's decision to close the vetting sessions to third parties and would-be independent monitors, on account of confidentiality requirements. Thus, this narrows the window for close-up monitoring of the process. However, the JRTT is working on a feedback mechanism between the JMVB and the former, to ensure that timely briefs are remitted both ways.

With the imminent judgment on the appointment of the Director of Public Prosecutions, the KHRC will convene members of the Judicial Reforms Think-tank for a scenario setting forum, which will anticipate the various advocacy options available, upon delivery of the judgement. The KHRC's participation on the Technical Committee of the National Council on the Administration of Justice provides a forum for influencing Law and policy reform within the Justice Sector. Through the Judicial Reforms Think-tank, it will be able to contribute to monitoring the reforms process in the various departments of government in the justice chain.

Sustainability:

Ultimately, supporting the rolling out of vibrant and effective Court Users' Committees in the counties will ensure that there is a feedback system between the various actors in the administration of justice. The JRTT has become a strong civil society mechanism for ensuring judicial reform. It is stronger than the sum of its parts and has a momentum that will continue even if some members drop out.

Should the vetting tool be formalised it will be a permanent tool to ensure judicial officers have requisite skill and integrity. Already, the utility of the vetting tool by the JMVB has established a best practice that can be propagated to other sections of government. Introduction of disciplinary mechanisms short of the invocation of the removal procedure for judges and magistrates will end the culture of impunity within the judicial service. The vetting and disciplinary mechanisms would be administered by the Judiciary and would hence be self-sustaining.

SECURITY SECTOR REFORMS

Activities:

In line with the Police reforms and other institutional reforms taking place in the country, the Police in conjunction with the Public Service Commission initiated a nation-wide police vetting exercise early 2011. The KHRC recognised the unconstitutionality of police vetting exercises and security sector reforms more generally. In this regard the, KHRC and other civil society organisations lobbied and advocated for the halting of the vetting exercise in wait for the establishment of the National Police Service Commission which was constitutionally tasked with the vetting process.



George Morara (left) of the Kenya Human Rights Commission visits with a family of one of victims of violence in Isiolo

Further, the KHRC in collaboration with the CSO Working group⁴ on Police Reforms developed a police vetting guidelines and tool intended to be shared with the National Police Service Commission (NPSC) once constituted.

Moreover, the KHRC participated and made written submissions/memorandum in forums organised by CIC and the Henri Friedrich Foundation to interrogate the National Police Service Bill, the National Police Service Commission Bill and the Independent Police Oversight Bill. In addition, the KHRC has made submission/memorandums towards the formulation of the National Intelligence Service (NIS) and the Kenya Defence Forces (KDF) bills. The KHRC has also shared with a view to get

⁴ Other members include:- Independent Medico Legal Unit (IMLU), Release Prisoner Trust (RPP), Usalama Forum, Kenya National Commission on Human Rights (KNCHR), Legal Resources Foundation (LRF), International Justice Mission (IJM) Kenya, International Commission on Jurists (IJM), FIDA, Kenya, Transparency International (TI), Kenya.

inputs and validation of the vetting tool and guidelines with national as well as grassroots organisations as well as with the a cross section of police officers in different forums.



Villagers view burnt out home by the *Sungusungu* belonging to an alleged 'crime suspect'

The KHRC in partnership with the Working Group closely monitored and reported on the nationwide police recruitment exercise and made recommendation to the Kenya Police Force. The KHRC also attended consultative meetings which targeted CSOs working on the security sector and sought solutions to the irregularities. As a result of the consultative meetings, it was agreed that the KNCHR would organise a public forum. Finally the KHRC participated in radio talk show on police reforms on Family TV. The talk show was able to emphasis on the need to operationalise the Independent Policing Oversight Authority (IPOA) Act 2011 and to subsequently establish the board that would govern the authority. The IPOA is expected to investigate and address cases of Extra-judicial Executions (EJEs) and corruption among the police officers.

The KHRC undertook work to strengthen community policing and to address vigilantism. Following engagements with the Police Headquarters ensuing from the KHRC/KNCHR interim report on the Kisii fact-finding mission on community policing and witch lynching dubbed "Merchants of Terror and Death: Sungusungu and Witch Lynching in Gusii Land," a combined team comprising of the Kenya Police-Directorate of Community Policing, KHRC and KNCHR held a variety of training sessions in Kisii and Kisumu Rural areas.

Over 212 (34% female and 66% male) participants drawn from Community based organisations, faith based organisation, community policing committee members, regular police, administration police and provincial administrators (senior chief, chiefs and sub-chiefs) were trained on the fundamentals of human rights as relates to policing, laws governing community policing in Kenya and principles and other procedural matters related to community policing. Further a tentative action plan was developed.

Cases on cattle theft have been rife in the period under review especially in Baringo and Isiolo areas. During this period, the KHRC together with the Baringo Human Rights Consortium (a human rights network partner of the KHRC) responded to the incidence of cattle theft that took place in Baringo resulting in two deaths as well over thirty goats belonging to a local women group. The team held bilateral discussion with Rift Valley Provincial Commissioner (PC) and presented him with a petition which called for among other a recovery and return of the stolen goats as well as setting up a police post in the Mukutani area. Consequently, the KHRC supported the Human Rights Consortium to independently engage with the Provincial administration and specifically the Provincial Commissioner when a second cattle rustling incident occurred where two community members lost their lives. Whereas this conflict manifested as cattle rustling, the root cause was attributed to the issue of the on-going exercise of the delimitation of boundaries by the IEBC. This engagement benefitted more than 15,000 members of the Ilchamus and Endorois community who were affected by the conflict. These activities were followed by various media engagement which included a press conference to highlight challenges and possible solutions on the issues of cattle theft and related violence in Nakuru and a visit to the Standard Group to highlight human rights issues surrounding cattle rustling.

The KHRC also went on a fact-finding mission to Isiolo where conflict manifesting as cattle rustling had claimed the lives of over thirty residents. As a follow up to the mission, the KHRC attended meetings convened by the KNCHR on the conflicts in the northern part of Kenya which drew representation from both state and non-state actors. This forum aims at designing a multi-pronged approach to resolving the endemic conflict affecting this region. The KHRC has also prepared a draft status report on the implementation of the Protocol on the Prevention, Combating and Eradication of cattle rustling in Eastern Africa.⁵ This will inform the development of a position paper calling on the state to adopt and ratify the Protocol.

⁵ The Protocol is at the cabinet level awaiting ratification.

The KHRC convened a security thematic committee reflection meeting on February 8, 2012 with the aim of consolidating the security thematic community committees that are from cattle rustling prone areas. The meeting also critiqued a draft position paper towards ratification of the Protocol⁶ on the prevention, combating and eradication of cattle rustling in Eastern Africa as well as developed an annual action plan which informed the KHRC's operational planning session. The meeting was attended by 35 members (30 men and five women). The meeting also validated and made inputs to the election monitoring tool that the KHRC has developed.

Opportunities Grasped:

The KHRC attended a week long consultative meeting convened by the Ministry of Internal Security, United Nations Development Programme (UNDP) and Open Society Initiative for East Africa (OSIEA) on armed gangs and violence. The KHRC led sessions on the security sector and human rights. During this forum the KHRC and a few other participants emphasised the need to highlight women and youth's role as both victims and perpetrators of violence. This meeting also resulted in opening up dialogue between the CSOs, state actors and other private sector actors in dealing with security issues.

Results:

The campaign against the unconstitutional police vetting resulted in the Ministry of Internal Security agreeing to temporarily halt the police vetting. This has allowed for more public engagement with the process and as such the KHRC together with the Police Reforms Working Group has developed a vetting guidelines and tool which has been extensively shared with national as well as local (grassroots) based organisation in different forums for inputs and validation. The guidelines and tools have also been shared with a group of police officers from Nairobi who have also made critical inputs to it. This process of dissemination/sharing the guidelines and tools has led to a buy in to the intended vetting process as well as the guidelines and tools. The forums also interrogated the timeliness of the vetting exercise and a proposal to have the vetting exercise done after the general election was made. This proposal will be shared with the National Police Service Commission (NPSC) by the working group.

⁶ Protocol on the Prevention, Reduction and Eradication of Cattle Rustling in Eastern Africa

On community policing, collaboration between the Police, the KHRC and KNCHR has been established. The collaborative trainings will provide a benchmark for future community policing training and monitoring mechanisms which will inculcate human rights into community policing in Kenya. Working with the community and especially those directly affected by security incidences to advance their security concerns has occasioned autonomy of the communities who established a working relationship with the duty bearers and especially the Provincial Commissioner (PC) of Rift Valley. For example, in Baringo when the KHRC together with the community visited the PC in Nakuru to consult on the issue of stolen goats (belonging to a group of women in Baringo called the Shinyati Womens Group). The women were able to articulate their concerns very well and this resulted in the PC making a commitment (which he kept) to have the women's animals recovered.

Further, when an attack recently happened in the same area, the community members made an appointment on their own with the PC to push for the establishment of a police post in the area. This self-drive by the community also shows that the HURINET has gained legitimacy both among the community as well as the state actors. In addition, the community has gained confidence to engage the duty bearers as they claim for their right to security. In the longer term, the KHRC hopes that its work will reduce incidences of and improve police response to cattle theft and related violence.

Difficulties and Solutions:

The security sector is a sensitive area of focus, conflict and crime is often complex and requires up to date information. Simultaneously, the confidentiality card is often played by the state security actors. It has been challenging to get information on what reform processes are taking place in the sector. For example, the vetting process started without citizen knowledge and involvement. Secondly, the changing dynamics within and complexity of the so called cattle rustling conflicts makes it difficult to find a sustainable and effective intervention on the issue.

For instance in Baringo, a recent cattle rustling incident was attributed to the larger county boundary debate. While the Isiolo conflict is complex and related to resources (proceeds from game parks, water and pasture, and the implementation of Vision 2030 as it relates to the 'Resort City' and the current purchase of land by many people from outside of the region). The conflict is also attributed to the fight for political supremacy which has heightened with the increased

power and resources that will be available at local level due to devolution.

Specifically, during the last election, a candidate from the Turkana community came a close second for the first time which challenged the existing status quo with regards to ethnicity and leadership. Since that election, there have been statements such as there being an 'influx' of Turkana to the area and perceptions that the Meru county boundary was drawn purposefully to reduce Turkana representation in Isiolo. Discrimination (Tribalism) is the root of much of the conflicts related to cattle theft.

The slow manner at which the state is dealing with the police reforms is a challenge. For instance the National Police Service Act 2011 has not been gazetted and hence the appointment of the Inspector General has not taken place. The establishment of the National Police Service Commission – a critical organ which has the primary mandate of implementing the Police Force reforms- is shrouded with controversy and yet to be established.

In trying to respond to these challenges, the KHRC has attended meetings convened by the state to establish dialogue avenues while reducing the tensions and suspicions between stakeholders. Secondly, by sharing the vetting guidelines and tool with not only non- state actors but significantly with the Police has ensured consensus and shared ownership of the tools and the process. On the issue of cattle rustling conflict, the multi-sectoral approach being employed by the various state and non-state actors is intended at providing a sustainable solution to the conflict.

For example, the KHRC also has programmes on ethnicity and equality in schools in cattle theft hot spots. In addition, building the capacity of the grassroots communities (national security agenda committee) will result in their ability to articulate the issue as a national agenda and thus will pool diverse communities to collectively respond to the conflict by developing home-grown solutions and intervention mechanisms. Lastly, the approach by the KHRC to work on the issue of security within the police reforms working group provides more social capital to deal with the issue of security holistically.

Next Steps:

The police vetting guidelines and tool will undergo further review and validation to ensure that the end product is comprehensive enough to be shared with the NPSC once established. The KHRC will continue

to engage and advocate for the establishment of the NPSC as well as effective operationalization of the IPOA. Review and input to the remaining security castor Bills will also continue. Secondly, the KHRC will continue to build the capacity of the HURINETS to respond to, articulate and advocate on their security concerns locally, nationally and internationally. The KHRC will convene a meeting with HURINETS and stakeholders dealing with security issues and especially on cattle rustling to interrogate the position paper that is being developed by the KHRC. Once agreed, the position paper on the ratification and adoption of the protocol will be shared with various duty bearers especially the Police headquarters, Ministry of Internal Security and the Parliamentary Select Committee on Internal Security.

Further, in dealing with the cattle rustling issue, the KHRC will map the areas most affected and conduct a research into the areas with anti-stock theft unit (ASTU) deployment to check for the resources (personnel, equipment, money) allocated in each area. This will inform advocacy to the police to address gaps in the geographic, type and level of the police service resource allocation. Similarly, the KHRC in conjunction with other state and non-state actors plan to carry out more fact-finding missions to Isiolo to respond to the persistent conflict incidences. This is aimed at expanding the scope of engagement with the community in a multi-sectoral approach i.e. peace-building and human rights approaches to the problems in the Northern parts of Kenya.

The KHRC will also launch a report on the fact-finding mission undertaken in November 2011 in Isiolo. In recognition of the intensity of the conflict attributed to the proliferation of small arms and light weapons, a position paper will be developed to be used as an advocacy tool in a campaign that aims at ratification and adoption of the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, 2004.

Sustainability:

The programme builds awareness of communities to recognise that, while they have a right to security, they also have a responsibility to support the security efforts in their areas and to actively participate in the reform agenda on security. The proposed approaches of: research, advocacy, capacity building, formal ratification of the protocol, brokering relationships between duty bearers and rights holders, positive attitudes change and improved education service delivery to ensure

improved community opportunities will enable long term change.

These approaches also tackle both the root causes of the violence and ensure a better response to it. The KHRC believes that attitude, policy and institutional structural changes will be sustainable as will the improved capacity of different actors. The collaboration with the Police headquarters will ensure that Human right perspectives are entrenched in the training manuals/curriculum of not only the community policing but all policing course outlines.

EXTRA-JUDICIAL KILLINGS

Activities:

The KHRC organised a post-mortem on the 28th June 2011 for Julius Yator who was killed by police at the Moi Referral Hospital in Eldoret. The KHRC has an ongoing court case in Eldoret on the killing of Julius Yator. The Sungu Sungu report will be printed very soon.

Opportunities Grasped:

The KHRC met with; 1) a leading investigative journalists to discuss a joint strategy on how to proceed with investigations into EJKs, 2) an official from the KNCHR who is well-versed on EJK matters to share tips on how to proceed on the sensitive research, 3) a key informant from an area where EJK are rampant.

With the assurance that the KHRC and the other civil society partners were fully behind them, the community (in Elgeyo Marakwet) where Julius Yator was killed was emboldened and took steps to call for accountability from the police. They organised a demonstration, marched to the District Officers (DOs) office and demanded that the police who were involved in the killing of Yator be arrested.

Results:

Prior to KHRC's intervention the police had been intimidating the family members of the late Julius Yator and the wider community who were seeking justice. With the assurance that the KHRC will provide support to help them find Justice for the deceased they felt more confident in dealing with the authorities.

The three police officers who killed Julius Yator have been arrested and will be brought to court soon. This is a positive step in that it clearly shows that those who wield power (in this case the police) over civilians must not use that power to the detriment of society and where cases of misuse of power are reported, remedial measures will be taken.

Difficulties and Solutions:

The KHRC had planned an intensive one month monitoring of EJKs which would include documenting the; number killed, number killed that are extra judicial, officers name, station and units, whether police procedures were followed, post mortems, investigations conducted in the deaths, results and follow-up of investigations and families responses. However, as a result of the discussions held with the investigative journalist, the KNCHR and key informants the plan is now to undertake a research documentary which will be used for advocacy.

Next Steps and Sustainability:

The KHRC will ensure that the family of Julius Yator gets justice (through the court) for his killing. With some of the funding now generously agreed by Misereor, activities can begin in earnest in line with the consultations so far held with key partners.

Completion of a research and documentary by the end of 2012 will act as a basis for lobbying and campaigning for a EJK-free police force. Together with the team of investigative journalists and researchers, the KHRC will particularly follow-up on cases of EJKs in Isiolo, Nairobi's informal settlements, Kisii, Kisumu, Nyeri and Kirinyaga.

The campaign should start by mid-January 2013. Due to the changed demography of those targeted by EJKs the KHRC will ensure that data is broken down by sex, ethnicity, location and income bracket. In the longer term the KHRC hopes that the research on EJKs will lead to a reduction in cases of extra-judicial killings by ending impunity and an improvement in police investigations into/ response to killings by and of police.

OBJECTIVE 2:

TO INFLUENCE THE FORMULATION OF AND COMPLIANCE WITH PRINCIPLES OF LEADERSHIP, INTEGRITY, PUBLIC PARTICIPATION AND ACCOUNTABILITY IN GOVERNANCE.

Activities:

The KHRC participated in a meeting convened by the CIC to interrogate the Bill establishing the Ethics and Anti-corruption Commission and submitted a Critique of the Bill. The KHRC published and launched the report titled '*Lest we Forget: The Faces of Impunity in Kenya*' which publishes the names of the public officers who have been adversely mentioned in different official reports from 1992-2011.

The report was out of stock within a week and had 13,780 downloads from the internet in one month. The report received significant coverage from all the main media houses and a few smaller ones. The KHRC also visited the Nation Media Group and Royal Media Services to further raise the importance of lustration. The KHRC also developed a terse legal response against Hon. Sally Koskey's threats to sue the Commission on the basis that our reports defamed her.

Opportunities Grasped:

The KHRC participated in a meeting convened by the Task Force on the development of a Bill on National Values⁷ and submitted a presentation to this Task Force. This report has been used as a tool for policy and public engagement on a number of reforms, justice and accountability processes in the society.

Results:

Some of the KHRC's recommendations were taken on board in the Ethics and Anti-Corruption Commission Act. For example, the KHRC strongly advocated that there should be separate legislation to operationalise article 79 and article 80. Happily the new Act only operationalises article 79.

Also the KHRC had proposed that the staff serving in the KACC should continue to serve in the new commission until their term expires and may only be reappointed through due process of vetting as new applicants. Unfortunately, this advice was not headed and a completely new team for the new Commission was put together which derailed cases that were underway.

⁷ Article 10, Constitution of Kenya (2010)



Integrity Centre, the headquarters of the Ethics and Anti-Corruption Commission

Difficulties and Solutions:

The leadership and integrity Bill has not yet been developed as it is scheduled to be agreed by August 2012. Also the political interests of individuals with poor integrity, most notably those currently being questioned by the ICC, wish to stall discussions in this area as they wish to vie for key political positions in the 2012 elections. However, it is important that the KHRC pre-empts the Act by developing a framework for principles of leadership and integrity. This if completed in the second half of 2012 will provide a comprehensive framework of vetting and lustrating persons eyeing public positions.

Moreover, the attempts by some alleged perpetrators to sue the Commission on the basis of defamation were vehemently and effectively responded to. For those who had either misread or misinterpreted the report out of context, we offered timely and comprehensive clarification and resolution of the issues.

Next Steps and Sustainability:

The Ethics and Anti-Corruption Commission Act (2011) is disappointing with the chairperson and two other key EACC representatives nominated by the President and then vetted by Parliament. Therefore, the people at the top of the new Commission are unlikely to be the people

who would undermine the very people who put them in place. The EACC lacks prosecutorial powers. The KHRC together with other CSOs will seek to reinstate some of the EACC's powers which was lost but still required for the Commission to fulfil its mandate. The EACC Act in itself is not the end of the fight against corruption. There is the pending leadership and integrity legislation which must be enacted within two years of the effective date of the Constitution i.e. by August 27th 2012. The KHRC will, therefore, develop a framework for principles of leadership and integrity.

Whilst ensuring quality legislation and strong and independent institutions will achieve a measure of

sustainability at the highest levels, oversight will be essential to ensure sustainability. In the next phase, therefore, the KHRC will work closely with the media. HURINETS will also be engaged in identifying what integrity means to them. For example, in the lead up to the next elections tools such as 'Vote for Policies not Ethnicity' education materials that prevent a focus on tribe, the *Lest we Forget: The Faces of Impunity in Kenya* book which includes a list of shame for politicians and People's Manifestos will be used. Moreover, community based human rights monitors will be trained to act as the eyes and ears of Kenya both before and after the forthcoming elections.



Esther Waweru of KHRC address the media in one of the media engagement forums with other members of the ICC working group made up of the civil society organizations

In the last quarter the KHRC, under the Kenyan's for Peace with Truth and Justice (KPTJ) ICC working group, met with Ms. Sureta Channa and Mr. Morris Anyah, the common legal representatives (CLR) of the victims admitted to participate in the ongoing Kenyan cases. At these two meetings, The KHRC raised issues of concern to victims in light of the decision to confirm the charges against 4 of the 6 suspects. In particular concerns were raised as to the communication of the decision to the victims; the effect of the decision with respect to geographical scope of the cases with the effect of throwing out some geographical areas and thus locking out some victims who were already participating in the cases.

Activities:

Intensive countrywide mapping of survivors of post-election violence (PEV) took place from the 9th July 2011 and ran for 46 days. A number of focus group discussions and key informant interviews were held in over 200 different locations. The KHRC has also carried out a joint media briefing on the ICC process and the confirmation hearings. Training was provided to the HURINETS Justice Sub-Committees on June 9, 2011 about justice mechanisms.

Accountability for perpetrators with High criminal responsibility for post-election violence (PEV)

OBJECTIVE 3:

TO CONTRIBUTE TOWARDS THE PURSUIT OF EFFECTIVE AND ENFORCEABLE REMEDIES FOR SURVIVORS AND VICTIMS.

The KHRC also met with the officers of the ICC Country office and raised issues relating to the trainings that were being carried out by VPRS (Victims Participation and Reparation Section) with regard to filling out of application forms for participation before the ICC as well as the issue of timely and effective outreach on the process. Different ideas on effective outreach were shared with the team. A collaborative way forward was reached in that the outreach officers and the VPRS officers would liaise with organisations within the ICC working group before they roll out their interventions. It was also agreed that the Country office and the working group should meet monthly in order to address issues as they arise and review strategies.

Opportunities Grasped:

The KHRC agreed to work jointly with International Commission of Jurists (ICJ) -Kenya on the victims mapping project so that costs and human resource needs (time and expertise) could be shared. Moreover, various media houses have approached the KHRC to comment on various issues touching on the ICC process. This has had the effect of correcting certain misconceptions and to give the KHRC's position on the same.

Results:

The KHRC now has a clear understanding of who the survivors are and how they were affected. In addition to this and from the meetings with the VPRS of the ICC, a common outreach strategy has been agreed which should ensure that those who wish to participate in the ICC process are better able to do so. It has also been agreed that there should be monthly update and strategy meetings with the KPTJ ICC working group.

Difficulties and Solutions:

Whilst conceptualising work around the ICC the KHRC assumed that it could rely on other institutions to provide a comprehensive mapping of survivors. However, whilst many organisations have undertaken survivor mapping, they have cherry picked survivors who underwent abuses that match their mission, for example sexual and gender based violence, or who are in certain geographical areas, for example the rift valley. The KHRC, therefore, decided that it needed to bridge the information gap to prevent certain survivors from being excluded from the ICC process.



Atsango Chesoni, Executive Director of the KHRC addresses the media on the quest for justice through the international justice mechanisms such as the ICC process. Looking on are Gladwell Otieno, Executive Director of Africa Centre for Open Governance (right) and George Morara, then KHRC Senior Programme Officer, Civil and Political Rights

The mapping was not initially planned for under the operational plan but was critical in the realisation of the objectives set therein. With a growing movement of politicians seeking to withdraw from the ICC process through arguments that defendants can be effectively tried in Kenya, NCIC stating that the ICC process runs counter to national cohesion and statistics showing waning though still strong support for the ICC, the KHRC felt that aggressive pursuit of a local tribunal was not prudent until the cases had been confirmed or otherwise.

It had been anticipated that with the setting up of a Field office by the ICC, the Outreach and VPRS departments of the ICC would have been more active in terms of sending out certain messages in light of the propaganda that was going on in Kenya about the process, the intimidation and outing of alleged witnesses, the alleged disappearance of victims of the cases among other things. However, following the meeting with the field officers, these issues were dealt with.

The KHRC would have played a key role, working within the KPTJ ICC working group, in outreach missions with Kenyans in different parts of the Country. However, this was not possible due to unavailability of funds. Moreover, we had hoped to launch the mapping report before the year end, but this was not possible because the report that was submitted by the consultants had a lot that needed to be rectified e.g. in some parts of the report the true identity of the victims had been disclosed and in some parts there were certain aspects that were unsupported by evidence from the field. This is being rectified and the final report should be out in May 2012.

Next Steps:

In light with the above, the KHRC will hold monthly update and strategy meetings with the ICC officers in Kenya. Joint outreach missions will also be organised in collaboration with the KPTJ ICC working group and the ICC Outreach Officers. The KHRC will also organise media briefings on developments in the ICC process.

Once finalised, the KHRC/ICJ-Kenya mapping report will be shared with the ICC Country office and other stakeholders. The KHRC will also assist victims and victims' leaders to prepare application forms for participation in the Kenyan cases.

Planned activities surrounding complimentary justice mechanisms will now be reinvigorated. Whatever the outcome the submission of survivors' application forms to the court for participation and the entire process

is leaving an indelible mark on the psyches of senior politicians. The ICC is giving the message loud and clear that no-one is above the law.

PROTECTION TO THE INTERNALLY DISPLACED PERSONS

Activities:

The following were the major interventions:

A meeting with the lawyers and 26 potential petitioners drawn from various parts of the Country was held on 9th of September 2011 in Nakuru. Statements were collected for purposes of affidavits in support of a representative suit, is designed to benefit all IDPs countrywide. The IDP case was filed in November 2011. It has been mentioned thrice for directions before the Human Rights and Constitutional Division of the High Court. The Attorney-General has filed his response to the application for information and to the petition. CREAM, Article 19 and Kituo Cha Sheria have been admitted as interested parties and have filed affidavits in that respect. The case is now set for hearing for 13th June 2012.

The KHRC has organised the national elections, reflections and engagement forums for the National Network for IDPs in Kenya; with the latest forum taking place from March 2-3, 2012. The reflections forum saw the KHRC and IDPs Network discuss and reflect on their joint activities over the past year, agree proposed interventions for the coming year and discuss a strategy for the case.

In April 2011, the KHRC launched its reports entitled: *Gains and Gaps: The Status Report on IDPs in Kenya (2008-2010)*. The KHRC, Kenya Land Alliance (KLA) and National Network for IDPs commissioned a monitoring and documentary on the Protection of Women and Land Rights for IDPs. A preliminary report entitled "Score Card on the Protection of IDPs' Land and Women's Rights in Kenya" and a position paper entitled: "Lopsided Priorities in the Protection of Kenyan's IDPs" were developed and shared with stakeholders.

The position paper was also published in the October 2011 edition of the *Nairobi Law Monthly*. These reports capture the gains realised and gaps and proposed different administrative and policy actions towards attaining durable solutions. The documentary entitled "Unfinished Business" has since been aired on a national broadcaster (Citizen TV) and will be further disseminated to other stakeholders. To complement this project and ensure rapid response, the Commission supported a



fact finding mission by IDPs network to Laikipia, Molo and Kericho. This has since been further enhanced by a fact-finding mission by KHRC to Muhoroni District from March 7-9 in response to a spate of ethnic clashes that saw several persons displaced.

The KHRC in partnership with other members of the Protection Working Group on Internal Displacement (PWGID) organised briefing and lobbying meetings with the Ministry of State for Special Programmes (MoSSP); and Parliamentary Select Committee on IDPs (PSC) to discuss the protection and assistance to IDPs. So far the Commission in partnership with the KNCHR, United Nations High Commissioner for Refugees (UNHCR) and Refugee Consortium of Kenya (RCK) and the other members of the PWGID have organized 3 retreats (May, September and December 2011) with the MoSSP and the PSC in Mombasa.



The first retreat (May) saw State actors sensitised on the international and regional frameworks governing internal displacement; the second retreat (September) initiated a discussion on creating a legal framework that responds to internal displacement in Kenya and; the third retreat (December) focused on the final recommendations to be submitted by the Parliamentary Select Committee on IDPs and a draft legislation on internal displacement (IDP Bill).

In a bid to enhance the assistance accorded to IDPs, the Commission in collaboration with the Mazingira institute has embarked on developing an Incidents, Impacts and Redress Assessment (IIRA) Tool. The purpose of the tool is to contribute to the realisation of redress for the impacts that bear on the dignity, well-being, wealth and habitat of persons, as a result of incidents of involuntary evictions and involuntary displacements from their settlements. The tool was developed and introduced to a cross-section of the IDP Network members on December 10, 2011 during half-day training. Based on feedback from the participants, the tool was subjected to further review to ensure that it was fully responsive to the needs of IDPs⁸.

The tool has since been subjected to wider stakeholder validation during a regional workshop of the Housing and Land Rights Network that took place in Nairobi from February 13-16, 2012. In addition to supporting the attendance of members from the National IDPs Network, KHRC prepared a Human Rights Violations Matrix on the 2007-08 post-election violence. The meeting provided valuable critique of the IIRA tool that has since been considered and incorporated in readiness for a prototype study to test the tool.

Opportunities Grasped:

The lawyers working on the IDPs case had an opportunity to visit one of the camps (Pipeline in Nakuru) to get a feel of the real needs of the victims and the actual status on the ground. ICJ-Kenya, FIDA Kenya and the IDP Network are the strategic partners in this litigation. Inviting potential interested parties to join the case early has helped in reducing the delay that this would have had.

The IIRA tool benefited and continues to benefit from the wealth of knowledge on IDP concerns already obtained from the Commissions prior work on monitoring IDP protection. The IIRA tool also continues to benefit from the availability of an empowered, enlightened and engaged partner in the IDP-Network who provides the much needed link of contemporary

⁸ A sample of the tool is available for circulation.

information and access to victims. The true potential for the tool lies in its evidentiary value and capacity to enhance public interest litigation as it seeks to establish the true aggregate cost of displacement for each IDP.

The KHRC has continued to provide technical and political leadership and partnership in regards to IDPs policy formulation and legislative advocacy process and engagements with the key duty bearers at all levels. Interactions with the UN Special Rapporteur on the Human Rights of IDPs saw that office reiterate KHRC positions and that of the wider PWGID regarding durable solutions and a legal framework on internal displacement to the President and Prime Minister. The office of the Special Rapporteur has further committed its long-term support to assist the PWGID and PSC with drafting the legislation on internal displacement, as discussed further below. These positions have since been reflected in his latest report to the Human Rights Council.



Deputy Executive Director, Davis Malombe discuss an issue with Hon. Esther Murugi (left), Minister for Special Programmes and Hon. Ekwe Ethuro (centre) Turkana Central MP during a stakeholders meeting to ensure the popularisation, adoption and implementation of the draft National Policy on IDPs and the draft IDPs Bill.

Thus our engagements have been realised through knowledge-grounded, rights-based and victims-centred advocacy. Our latest publication, *Gains and Gaps*, has for instance becomes one of the reference points on IDPs matters. We have also taken advantage of our engagements e.g. the meeting with the PSC; Parliamentary Committee on Land and natural Resources; Select Committee on Evictions; meetings on transitional justice, land reforms and the ICC to advance the agenda for protection and assistance to IDPs. Our consistent engagements with the PSC in particular have seen KHRC inform their parliamentary report and considerations on IDP legislation. Our engagements

with the Ministry saw the KHRC make considerable advancements in discussions regarding verification of the government's IDP database; a joint concept was developed by the Ministry and PWGID and is currently under consideration.

Results:

At present 26 IDPs are being facilitated to access justice in addition to a wider illumination of IDP rights. A higher potential for networking and collaboration has been realized with organizations of varied competencies and expertise coming on as interested parties. Government attempts to inhibit the case bureaucratically and withhold information is a clear indicator of the intervention's traction.

The Government through the Ministry of Justice and the MoSSP maintain their commitment to pursue the ratification of the 'African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa'. During the May, September and December 2011 retreats with the MoSSP and PSC; we have managed to enhance their awareness on the mechanisms for IDPs protection; get updates and critique the government programmes on IDPs; created opportunities for engagements between the executive, legislature and other duty bearers on IDPs issues; secure the commitment by the Government and other stakeholders to ensure the popularisation, adoption and implementation of the draft National Policy on IDPs and the draft Evictions Guidelines. The cabinet memo is now at the Cabinet Sub-Committee.

The KHRC was part of a PWGID taskforce further directed by the PSC to initiate discussions and draft legislation on internal displacement during the September 2011 retreat. A series of meetings and engagement with 2 legal drafting consultants (1 from the PWGID and 1 from the office of the Special Rapporteur) saw a draft IDP Bill prepared for consideration by the PSC at the December retreat. The December retreat, resulted in input and acceptance of the Bill from the MoSSP and PSC. The executive and legislature further committed to a roadmap that would see them collaborate on the implementation of the Parliamentary Select Committee report on internal displacement in addition to ensuring that the draft IDP Bill and draft national IDP policy receive their joint impetus for enactment. This will also help in the domestication and implementation of the international and regional instruments and obligations on IDPs

The KHRC's reports on IDPs mentioned above have enhanced public and stakeholder awareness and



Consultative Forum with the P.S.C. on the resettlement of I.D.P. at Serena Beach & SPA Hotel Mombasa on 23rd May 2011

engagements with IDPs protection and women rights issues. For instance, we used the latest Scorecard to critique the government's presentation during the September 2011 retreat with state and non-state actors and further enrich the final report by the PSC.

The KHRC's activities have also improved the IDPs Network's ability to continuously engage with the IDPs policy and protection issues at all levels in the society.

Difficulties and Solutions: Lack of accurate data, legal and policy frameworks which are supposed to guide the protection, assistance and other durable solutions to IDPs. A lack of consistency and tenacity by the Ministry of Special Programmes has stalled crucial processes. Despite the existence of a jointly prepared concept note on a joint validation of the government's IDP database the process failed to commence as the Ministry realised it would not have total control of the process via-a-vis stakeholders coupled with the potential of increasing the State's burden.. The draft national IDP policy is yet to be discussed and approved by the entire cabinet. We will push for these legal and policy frameworks and improved data systems for better protection and assistance to IDPs.

At the initial stages the IDP case could not move because two of the three judges sitting in the Human Rights and Constitutional Division of the High Court disqualified themselves from hearing the case- Justice David Majanja on account of having served in CIPEV and Lady Justice Mumbi Ngugi on account of being a FIDA-Kenya (one of the co-petitioners) board members. This therefore left us with one option- Justice Isaac Lenaola.

Next steps and Sustainability:

KHRC will continue to pursue the public interest litigation case on behalf of IDPs and support their active participation during the substantial hearings of their case. A legal ruling would provide a sustainable legal solution to the needs and rights of IDPs. The active involvement of IDPs in the planning and implementation of this litigation will help ensure their understanding of and momentum to ensure any rulings are enforced. The KHRC will also publicise this case. Meetings with the partners will be held in order to update and strategize on the case. KHRC will continue to pursue access to information from State offices required to advance the case.

The KHRC and KLA will publish, launch and disseminate the final status report on women's land rights and other protection needs for IDPs; ensure protection monitoring and follow-ups on the resettlement of IDPs; organise briefing and lobbying forums for stakeholders on the formulation and adoption of the IDPs Policy and legislation, and the implementation of the African Union Convention; and foster continuous training, support and involvement of the National IDPs Network in all the above processes.

The KHRC will continue to provide technical support to the drafting process of the IDP Bill commenced at the close of 2011 and prepare a sustained advocacy strategy with various actors to support the Bill through the various stages of the legislative process in Parliament.

The KHRC will use the IIRA tool to assess the impact of displacement on a cross-section of the 2007-08 Post-Election Violence IDPs and this will entail: a desktop

analysis of the human rights violations committed during the post-election violence; participation in the Housing and Land Rights Network Workshop on Evictions and Displacements (will also mobilise the IDP-Network to attend); train a wider representation of the IDP Network on the use of the tool in Nakuru; map out key regions and groups for a proto-type study using the tool; develop data collection tools; conduct the proto-type study and produce data and launch the findings.

LEGAL AID:

Activities: With respect to the legal aid clinic, the KHRC has received 538 clients (373 men and 165 women) in the last six months. This number includes 47 clients that attended the legal aid clinics in Korogocho and Kibera that were organized by the KHRC as part of the International Human Rights Day (IHRD) celebrations.

Results:

Complaints resolved conclusively through mediation and negotiation was 168. Cases still pending conclusion of the conciliation are 107. No cases have been committed for long term intervention by KHRC due to unavailability of funds. The rest of the clients received were either referred to other organisations or advised on their legal rights and responsibilities. Other clients came with issues not related to the law and human rights and were advised of this. An example of a case that has been successfully resolved as a result of KHRC's intervention is that of Lucy Wakonyo Kariuki.

First, this client had been displaced on several occasions from different places during previous post polls violence and resides in Limuru. When she first came to the KHRC in April 2011, the client had lost her daughter and grandson in a tragic road accident in Narok. She was desperate and poor. At the time of reporting at the Client's desk, the bodies of her family members had been in the mortuary for over one month; she had no means to cater for the interment of the bodies or even for pursuing a compensatory suit. The Client's desk and the urgent action team took up the matter and assisted the client with the burial of her kin and advised and guided her through the steps of pursuing compensation for the loss of her family members. She was assisted by the KHRC to get the necessary documents to apply for Letters of Administration of the estate of her deceased daughter.

The KHRC then entered into negotiations with AMACO, the insurance company that had insured the motor vehicle in which the deceased was travelling in order to settle the matter without the need to go through a

lengthy and time consuming court process in light of the plight that the old lady was in. This was successful and the insurance company agreed to pay a total of Kshs. 614,300; of which only Kshs. 300,000 is pending as at the time of this report. This money will be transferred to the KHRC for management for the benefit of the surviving children of the deceased daughter.

Difficulties and Solutions: There has been an influx of matters being reported that do not fall within the ambit of human rights or law. In such cases the clinic serves more of a therapeutic channel for the clients by offering a listening ear. In addition to this, the KHRC has been unable to support deserving cases due to funding gaps. As such, some of the cases have been referred to other civil society organisations that could assist the clients, depending on their funding status.

To resolve this problem the KHRC needs to strengthen community linkages and capacity. HURINETs often refer clients from the grassroots to the clinic. They also act as the first point of advice and can assist in filtering who comes to the KHRC's legal aid clinic. HURINETs need to be linked with effective paralegals or CSOs that can provide paralegal training. The KHRC should consider recruiting a full time advocate to head the legal aid department, which should be well funded. The advocate can then act on behalf of the clients and assist in filing cases and representing the clients; this will better enhance the right of access to justice and reduce the number of referrals that are done to other CSOs.



A legal aid clinic conducted in Korogocho informal settlement area during the International Human Rights Day celebrations in 2011

Next steps:

During regular clinics the KHRC will look out for strategic cases to be supported by KHRC.

HISTORICAL INJUSTICES - MAU MAU, NYAYO HOUSE, AND ENDOROIS

Activities:

In April 2011, the KHRC and a few Mau Mau went to London to follow the proceedings of the strike out case and to raise media attention of the cases from the perspective of survivors with the UK public. Medical examinations of the claimants were conducted and reports were put together for submission during the case hearing.

In June and July 2011, the KHRC met with approximately 3,500 veterans in Nyeri, Meru, Machakos, Nakuru, Nyahururu, Bondo, Kisii and Kitale and updated them on the case. During these meetings the KHRC also warned veterans not to fall prey to fraudsters who were telling them to register with them so that they could get compensation money supposedly already released by the UK Government. The KHRC also raised awareness of the cases through well covered press statements. On 21st August 2011, the KHRC helped to organise a big public rally in Uhuru Gardens. Approximately 6,000 Mau Mau veterans attended. At this meeting the KHRC gave the veterans a status report on the case and used the meeting to call for more direct government support for the case.

The KHRC managed to have 3 Nyayo Houses cases concluded during the period under review. The results are as indicated below. A reflections forum was held from February 6-7, 2012 with the Nyayo House torture victims which saw a discussion on the successes and failures noted thus far and a discussion on possible future engagements including instituting cases on behalf of the widows of torture victims.

In the reporting period, the KHRC also met with the ministry of lands with regards to the Endorois and revisited the February 2010 African Union ruling on



Four Mau Mau VETERANS demonstrate near 10 Downing Street, London

the case. A further preliminary meeting with the office of the Attorney General took place in February 2011 resulting in a commitment from the AG's office to accelerate discussions on this matter with the Endorois community.

Opportunities Grasped:

Following the Uhuru Gardens rally and the related media interest the Government seemed willing to meet with the veterans. High-level meetings involving Leigh Day &



Members of the public join civil society members in a peaceful march to the former Nyayo House torture chambers the 14th International Day Against Torture on June 26, 2011. Inset: During an inspection of the notorious Nyayo House Torture Chambers is Njoroge Mwangi, a survivor of the narrates to an Administration Police Officer his ordeal while detained in the Chambers.

Co, the KHRC, the Mau Mau War Veterans Association and the Centre for Multi-party Democracy (CMD) were convened with the following: the Prime Minister, the Chief Justice, the Attorney General and the Minister for Foreign Affairs. Also a memorandum on the kind of help (financial, political, media and legal) the Mau Mau need was drafted and submitted to cabinet through the Attorney General's office.

The KHRC together with the Independent Medico Legal Unit, ICJ-K, the KNCHR and other partners organised the 14th Commemoration of the International Day Against Torture. This event saw a petition, supplement, press statement and public forums which ensured continuous public awareness and engagements between the civil society and victims with the duty bearers on torture issues in Kenya. A visit to the torture chambers at Nyayo

house ensured that the government is honouring the February 16 2009 interim preservation order to the former torture chambers.

Results:

The government has strongly indicated that it will fully support the Mau Mau case in London. The buy-in from the Prime Minister, the Chief Justice, the Attorney General and Ministry of Foreign Affairs and their commitment to support the case has been a key success story. Already the government has offered technical legal support to Leigh Day & Co through Freshfields, a law firm retained by the Government of Kenya; the Government has also paid Prof. David Anderson of Oxford University and Prof. Githu Muigai to conduct research on the Mau Mau case. The Ministry of Land has agreed to allocate land to Mau Mau fighters.

The briefing sessions helped the veterans get the true picture of the case and made them less susceptible to Mau Mau fraudsters. The KHRC has supported the Mau Mau case since 2003. Whilst Justice has not yet been achieved the veterans have managed to get their story about how they liberated Kenya and the torture they suffered to both a national and international audience. Those who suffered horrendous acts of torture during the emergency period have through the process gained a sense of purpose and boosted their sense of self-esteem and sense of personal dignity.

In July, 2011, Cyrus Gitari Muranguri, one of the Nyayo House torture survivors was awarded Ksh. 7,907,011 by Justice David Musinga for torture suffered during the Moi regime. This is one of the cases which has attracted the highest monetary reparations for the torture victims since 1987. In September 29, 2011, Justice Musinga awarded Ksh. 1.5 to 6.5 million to 9 other victims. In October 11, 2011, twenty one other victims were awarded Ksh. 2.5 to 6.5 million. From December 2008 to December 2011, the KHRC had managed to get court awards for 72 victims and survivors amounting to Ksh. 226,269,748. The KHRC's engagements in these suits have created an opportunity where survivors of torture can easily claim and get political, legal and reparative justice and the executive is admonished by courts for engaging in egregious human rights violations.

Following the petition by and positive ruling of the African Union in January 2010 in regard to their right to land, the Endorois are still awaiting implementation of the ruling. A further 36 cases have been filed for community land rights following the positive ruling. During the meeting held between the LSNSA and the Permanent Secretary (PS) in the Ministry of Lands

in September 2011, the PS committed to act on the ruling in the interest of both restorative and reparative justice. The KHRC, KNCHR and other partners have also organized a follow-up meeting with the Attorney General.

Difficulties and Solutions:

The main challenge has been the impostors who are busy telling the Mau Mau veterans that the UK Government has already paid compensation for the case. We are addressing this through a court case that seeks to stop the impostors from propagating their falsehoods. It is hoped that as a result of the advocacy undertaken that some of the financial burden imposed by the case on the KHRC will be shifted to the Government.

The initial excuse of the British Government was that they are not responsible due to state succession. Now the coalition Government in the UK is trying to escape its responsibility and deny justice by arguing that too much time has elapsed since the torture took place for the case to still be valid. The KHRC hopes that this argument can be overturned and justice can be done before it really is too late. Far too many of Kenya's heroes and heroines have already passed away. They deserve to see justice in their lifetimes.

On Nyayo House reparations, there has been a contest between the lawyers and victims on how much should be deducted for costs from the awards granted. An initial round of discussions with the lawyers was held during the reflections forum but yielded mixed results; with the lawyers agreeing to a proposed settlement by a section of the victims and not all. Efforts at mediation will however continue.

There are fears within the Government that the Endorois case has created a room for other landless communities to make claims over historical injustices which may be hard to fulfil. The National Land Commission if established will fill in the existing gap in the Government.

Next Steps and Sustainability:

The KHRC is currently pushing the Government to clarify the actual level of its financial commitment to the Mau Mau case. We will also prepare survivors for the hearing on limitation of time set for July 13th to 29th in London. Additional evidence (statements and medical reports) will be collected and verified particularly considering the discovery of the previously hidden British Colonial Government 'Watch Reports' which document some of the human rights abuses. The growing support amongst the UK public needs to be magnified and harnessed.

Given the release of the new 'Watch Reports' and that other countries have suffered a settler colonial history with gross human rights abuses perpetrated against the indigenous people the KHRC wants to expand its success in challenging historical injustices and atrocities during the colonial era beyond Kenya's boundaries by partnering and organizing exchange programmes and visits between the Mau Mau war veterans and survivors from Malaysia, Zimbabwe and South Africa.

The KHRC will use the precedent on the Nyayo House torture cases to have the pending cases concluded and new cases instituted. We will continue to monitor the government's compliance with the February 16, 2009 interim preservation orders to the chambers. We will continue to facilitate forums to resolve the dispute between the victims and lawyers and celebrate the victories/ impact. The KHRC will institute another suit targeting women survivors/ widows and children of the victims to support their claims for reparations. The learning from addressing post-colonial era atrocities can also be shared with the ICC to strengthen their approach to justice related to reparations and psychosocial support.

URGENT ACTION

Activities:

One action was in response to the arbitrary suspensions of students from Loreto Secondary School, Limuru. A letter was written to the Convent seeking remedial action. The letter was copied to affected families and relevant state actors. The KHRC also held a press conference on violations of children's rights at the School. The KHRC has rallied crucial witnesses who have been interviewed by the KNCHR.

The KHRC has also responded to calls for fact-finding missions to Isiolo, Muhoroni, Kisii and Kisumu. The fact finding in each place involved information gathering from the following sources:

- Isiolo: A total of 1,000 people drawn from victims of inter-ethnic conflict, CBOs and FBOs working in the region, the area DCs, the media and the Police.
- Muhoroni: A total of 500 people drawn from victims of inter-ethnic conflict, CBOs working in the region, the area DCs, the media and the Police.
- Kisii: A total number of 200 people drawn from victims of vigilantism, CBOs and FBOs working in the region, the area DCs, Chiefs and Assistant Chiefs, the media and the Police. This was follow-up to confirm findings from a previous mission;

- Kisumu: A total number of 80 people drawn from the Chiefs, the Assistant Chiefs and the Police.

Together with the KNCHR and NCIC, the KHRC launched to the media the report entitled '*Sungu Sungu: Merchants of Terror and death in Kisii.*' Different media houses attended the launch held at the Catholic Justice and Peace Commission's Kisii offices.

Results:

The parents of the students from Loreto Convent are now more emboldened and willing to work with KHRC to pursue justice for their children. As a result, a number of persons have been interviewed by the investigatory arm of the KNCHR. The final report from the KNCHR is expected in due course.

We now have elections of community policing members in Kisii South mainly because of the KHRC's interventions in pushing for the same. The police have agreed to partner with the KHRC in community policing to ensure that community policing in Kisii, Kisumu and Kirinyaga is done within the confines of the law.

The issues raised in the '*Sungu Sungu: Merchants of Terror and death in Kisii*' report were extensively highlighted by different media houses including classic FM, Hot 96, Capital. The People Newspaper as well carried a headline story on the findings.

Next Steps:

Follow-up with Loreto Convent to ensure justice for the students. We shall also organise a follow-up on the situation in Isiolo and launch a Public Interest Litigation case on insecurity in the region. This litigation will be targeting the Government of Kenya for its inability to offer security and other protection to Isiolo people. A further mission will be conducted regarding vigilante actions in Kirinyaga. Further training will be given in community policing.

INTERNATIONAL HUMAN RIGHTS DAY (IHRD)

Activities: In December the KHRC held a human rights film festival in Korogocho and Kibera as well as its usual annual lecture in order to bring in participants that are not usually reached by human rights messages. The objective was to inspire action to end human rights abuses and the attitudes that perpetuate them. The films 'Why Now?' and 'Tomorrow Will Come' were shown in community centres followed by discussions that involved community members, the KHRC and a representative from the National Cohesion and Integration Commission.



Participants at the Annual Human Rights Lecture themed 'Constitutionalism: Judiciary as a Bastion for Democracy'

The Annual Human Rights Lecture themed 'Constitutionalism: Judiciary as a Bastion for Democracy' focused on the role of the judiciary in ensuring the implementation of the constitution and urged all Kenyans to remain vigilant on the same. The Senior Judge of the Supreme Court 'Justice Ojwang' was the key note speaker at this event. Approximately 350 participants attended the event. In attendance were distinguished national leaders in both the Government and NGO sector, constitutional matters experts and to ensure grassroots participation the KHRC also invited representatives from partner Human Rights Networks.

Opportunities Grasped:

The KHRC together with other CSOs members of YETU coalitions organised and coordinated the 1st Katiba peoples conventions –a 3 day event between the 25th and the 27th August in Nairobi. The KHRC organised a day on the theme of public accountability in the implementation of the constitution. The KHRC also mobilised 25 participants (14 men and 14 women) from CBOs with whom we partner.

Results:

Feedback from attendees at the film festival showed enhanced understanding of the constitution, the causes of the post-election violence and the ICC process. Attendees also insisted that as a result of the session they would in turn spread the messages of the importance of saying no to tribalism, peace and encourage youth not to be taken in by politicians wishing to use them for their own ends. The Katiba people's convention looked at ways to ensure the implementation of the constitution with sessions on issues such as ensuring no more than 2/3rds of any political body is of the same gender.

Difficulties and solutions:

The KHRC had limited funds for IHRD and therefore activities were Nairobi based. However, to overcome this, the KHRC facilitated the travel of key community representatives to Nairobi and ensured that marginalised communities in Nairobi were engaged and educated through events in informal settlements.

Next Steps:

2012 is the KHRC's 20th anniversary and it plans to document and publicise the last 20 years of struggle, what has been achieved as well as look at the key challenges that we face as human rights activists today.

MEMORIALISATION RESEARCH

Activities:

The KHRC has undertaken field visits to meet with re-independence Heroes and Heroines and to see sites of conscience. History with regards to human rights struggle is contested, therefore, to try and get a least subjective view of events as possible, the KHRC worked with researchers from a range of backgrounds. The team of researchers included historians, ethnographers, military experts, political scientists and journalists so that evidence of historical injustices and struggles linked to each of the focus memorial sites could be interrogated and verified from different perspectives.

The KHRC wanted to document some of the overlooked stories such as the independence struggles from a range of ethnic groups and both male and female freedom fighters stories. Specifically, the research team met with the following: members of the Malindi Cultural Association on Mekatilili; members of Mau Mau veterans in Nyeri, Ukambani, Kisii and Narok members of Dini

ya Msambwa in Western Kenya on Elijah Masinde, and visited sites of Conscience in Lodwar, Kapenguria, Narok and the Kyumbi Hills.

Results:

Once concluded, this work will create a permanent record of memorial sites and related struggles for future generations. The report will include photographs enabling the final publication to act as a memorial in its own right. In addition, the report will be used as an advocacy tool to ensure that the memorial sites are recognised and protected. In the longer term, this work should help to enable closure, healing of wounds and cross community understanding. The documentation of a shared Kenyan history will act as the basis for national healing and reconciliation.

Next

Steps and Sustainability: Compilation of research findings on pre-independence human rights abuses will be brought together into a report by the end of June 2012 and there will be a launch event to draw attention to the research findings. The KHRC plans to embark on research on post-independence memory. Both pre-independence and post-independence memorialisation work will be used in the exchange visits mentioned under the 'next steps' section on historical injustices. These findings together with research outputs in this report will be used to advocate for the adoption and implementation of the reparations policy.

ACADEMIA RESEARCH

Activities: The KHRC has concluded a study on the violations to the academia. The study report entitled "Bold Minds: The Role of Kenyan Academia in the Struggle for Change" provide up-to-date and rights-based account of the struggle for democracy in Kenya by the academia; the progress realized; the violations and challenges encountered.

Results:

A final report has been developed and is awaiting publication and dissemination.

Next Steps and Sustainability: This project builds on the previous works of the KHRC and other scholars and practitioners in the field of transitional justice where the search for truth, justice and accountability remains

elusive. It also provides finding and recommendations that can be used for policy and legal action.

ELECTORAL REFORMS

In November and December 2011, the KHRC participated in 2 workshops convened by Independent Electoral Boundaries Commission on Early Warning signs of electoral violence. The workshop which had representations from all the counties in the country was able to map out areas that had potential for electoral violence. The KHRC was able to influence the meeting on the aspect of mapping out cattle rustling prone areas with an aim to closely monitor incidences as causal manifestation of potential election violence and malpractices. An interim report of the same has been shared with the team at KHRC mapping out violence prone areas for election monitoring and training.

Activities:

The KHRC has mapped out the constituencies and Counties in Kenya and identified host spots and other situations that may lead to human rights violations towards, during and after the March 2013 General Elections. The Commission has also organized and attended press briefings and public forums to respond to emerging electoral governance issues.

Results:

The KHRC has established a database that will guide its human rights based election monitoring project. The Commission has shaped the enactment of legislation and formation of the institutions related to electoral governance in Kenya. Finally, the KHRC supported its HURINETS to engage IEBC in the delimitation of boundaries.

Difficulties and solutions:

It took time for the country to know the dates of elections.

Next Steps and Sustainability:

KHRC will launch its Human Rights Elections Monitoring and Advocacy Centre in May 2012 so as to centralise its electoral governance work. KHRC will be involved the vetting of the leaders vying for political offices. The KHRC will also develop a Case Digest and institute legal actions on electoral governance issues.

Part Two

Economic, Social and Cultural Rights (ESCR)

GOAL 2:

IMPROVED ACCESS TO ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ESCR) FOR POOR AND MARGINALISED PEOPLE UNDER DEVOLUTION

OBJECTIVE 1:

TO INFLUENCE THE FORMULATION OF GENDER RESPONSIVE DEVOLUTION POLICY AND LAWS THAT IMPROVE SOCIAL SERVICE PROVISION

GENDER RESPONSIVE DEVOLUTION POLICY

Introduction

The KHRC prides itself on its ability to sustain interest and advocacy on issues identified by its community based human rights networks (HURINETs). In 2007 the KHRC undertook a participatory Peoples' Manifesto and Score Card Initiative (PM&SCI) in 54 constituencies to establish what communities expected of the government. This resulted in the identification of nine issues that were common and rated as priority demands in all the 54 constituencies. These were corruption, equality, participation, security, water, healthcare, education, land and property rights, and poverty and unemployment. The latter is caused by poor returns on produce for self-employed farmers and poor terms of work for the employed and poor infrastructure (roads, electricity, markets for produce etc). While some community demands have been addressed, most are dependent on how the devolved system of government will be implemented.

The 2009 KHRC-SPAN Study titled "Harmonisation of Decentralised Financing" recommended fewer laws to facilitate citizen understanding and participation, the conversion of the Constituency Development Fund (CDF) into a conditional grant, the separation of powers so that legislators do not also play an executive role as Members of Parliament have under the Constituency Development Fund (CDF), and the adoption of best practices particularly on citizen participation that were part of the various laws on decentralised financing and generally bringing governance closer to the people through devolution, the use of women-friendly media for dissemination of information particularly on finances and increased women's participation in political and administrative governance. The KHRC's advocacy on devolution built up on the 2007 PM&SCI's identification of priority community needs by lobbying for the formulation of laws and policies that address its recommendations.

The KHRC's devolution work is informed by the realization that devolution is the vehicle through which community demands for access to human rights through service delivery on all of these demands will be realised. Devolution cuts across the entire constitution of Kenya, 2010 in the form of explicit and implicit provisions. Devolution is about taking decision making, use and control of political, administrative and fiscal power to the lowest level possible based on the principle of subsidiarity. Political, administrative and fiscal systems and decision making are all areas in which the participation of women and other marginalised groups has traditionally been low. The KHRC's work on devolution was aimed at i) ensuring that laws formulated will improve delivery of all of the above community demands and ii) that the process of doing so facilitates citizen participation and particularly of women, the poor and other marginalised groups.

Activities:

The KHRC undertook three national level and seven community level capacity building and critique of Bills sessions and attended several meetings and other national and county level forums aimed at inputting on the drafting of devolution Bills. The KHRC also wrote articles that were published in national and other media, was invited to make presentations to shape views on devolution, organised one press conference and was involved in two other press conferences hosted by networks of CSOs working on devolution.

Results:

These activities resulted in the KHRC being approached by the Office of the Prime Minister to set up the first Prime Minister's Roundtable with Civil Society, a platform that has been of great value in CSO-Government interaction in the formulation of laws to implement the constitution. The KHRC has also been able to influence devolution laws through papers and memoranda presented to the Task Force on the Devolved Government (TFDG), the

Parliamentary Budget Committee, IEBC, CIC as well as contributions to sessions organised by the Prime Minister's Round Table with Civil Society, and various government departments.

At community level, capacity building resulted in the informed participation of community based Human Rights Networks being able to attend, and give verbal and written recommendations during county level hearings of the various bodies tasked with collating views on devolution. The relevance and quality of formal written memoranda submitted by HURINETs to these bodies has greatly contributed to shaping devolution Bills and lays a good foundation towards the achievement of Article 10 of the Constitution on participation as one of the national values and principles of governance.

It is noteworthy that most of the recommendations made by the KHRC and SPAN in 'Harmonisation of Decentralised Financing in Kenya' are being progressively realized first through provisions in the Constitution on devolution and in the past year through adoption into the devolution Bills assented into law on February 27, 2012. For example, the KHRC was concerned about the huge number of Bills (13) initially recommended for drafting by the first TFDG report. However, following presentations of extracts of the KHRC and SPAN study report at county forums to validate the report, the number of Bills came down from 13 to 6. The CDF has been converted into a conditional grant and will not be managed by the legislature, which is another milestone.

The prompt action through the December 2011 press statement titled 'Attempts to Scuttle Devolution' contributed to the fading away of Hon. Jeremiah Kioni's spirited attempt to gain public following for a motion to amend the constitution to abolish Senate. Further attempts to amend the constitution in the pretext of delivering the two thirds gender principle for elective public office resulted in the withdrawal of the draft Bill. In its place, the KHRC has written the paper titled 'Achieving Gender Equality in Elective Office without Amending the Constitution.'

This paper has been presented at various forums of government and civil society to seek support in lobbying against amendment of the constitution. This advocacy culminated with the February 27th assenting into law of 5 of the 6 devolution Bills. The five Bills so far passed, while not perfect deliver on most of what the KHRC has continuously advocated for since the 2007 baseline on community expectations of good governance as well as

the proposals in the 2009 study report 'Harmonisation of Decentralised Financing in Kenya.'

Challenges:

The year has been characterised by a tug of war between two groups: The diehard centralists who cannot fathom any other form of government on the one hand and the devolution romanticists who see it as the instantly fix to all of Kenya's past corruption and centralisation woes. The KHRC has had the challenge of delicately walking the tight rope in between by ensuring that all who sit at the negotiating table on all matters relating to devolution understand it well enough to be able to make practical proposals on how to implement it. While part of the tug of war was caused by ignorance on the technical subject of devolution, there was also an element of central governments resistance to cede power to counties; to truly devolve both finances and authority. This is manifested in the tug of war on the Inter-Governmental Relations and Public Finance Management Bills, and the reluctance to truly restructure the provincial administration. Also the retention of the provincial administration and agreeing any proposals for achieving a maximum of two thirds of either gender through nomination or a constitutional amendment would amount to watering down devolution in big way.

Next Steps:

There is, therefore, still more work to be done in 2012-3 particularly on the two thirds gender principle through legislative means and the restructuring of the provincial administration to comply with the letter and spirit of the Constitution. The KHRC will also support the full transition from the centralized to devolved governance; and moot and work with 'model counties' in the country.

WATER SECTOR REFORMS

Activities: Meetings have been held with HURINET representatives in Western, Coastal, Central, Rift and Eastern regions of Kenya about the right to water and related concerns with regards to devolution. These meetings were not initially planned but the KHRC felt that a national level policy brief should encompass views from across Kenya and not just Northern Kenya. As the KHRC transitions to a programmatic rather than geographic way of working the meetings have enabled network members that are passionate about the right to water to meet the KHRC staff member who focuses on this area.



Wastage of a scarce commodity-Women fetching water from a burst pipe

In the longer term, information will be shared across Kenya and a diverse but united voice on the right to water will evolve. A forum to review and validate the draft water policy brief was held and involved grassroots Human Rights Networks and representatives from the relevant water sector agencies. In January the KHRC and our partners in Wajir and Isiolo met with duty bearers and service providers (Water Service Regulatory Board, Water Service Provider, Teachers, Parents, Children's Officer, and District Education Officer).

We also met with rights holders (Pupils, Children and Adult water users). Each stakeholder group suggested potential indicators and prioritised their top 5 most important indicators for change. From these proposals 5 indicators for water and 5 indicators for education that are frequently suggested by different groups or that most clearly demonstrate the concerns of each group were selected as standard indicators of change for that geographical area.

Results:

The water policy brief validation meeting has ensured state and non-state actors buy-in to its contents and their support for the final recommendations. Moreover, the result of the work to identify community indicators for the PM&SCI is that we now have a clear and documented understanding of the indicators that different stakeholders in Isiolo and Wajir would like to use. When this process is replicated elsewhere we will then have national indicators and we can begin to set a baseline based on those indicators.

The process also helped to build community understanding of the challenges to improving access to the rights to water and education and certainly increased commitment to the PM&SCI process. Duty bearers now feel like they want to be involved in assessing themselves against set indicators rather than feeling alienated by the process.

Difficulties and Solutions:

The KHRC decided that it wanted to continue with the Manifestos and Score Card Initiative (PM&SCI) work as it has proved so successful in the past. Key challenges in the past have been proving results, taking issues to the national level and maintaining duty bearer engagement in the process. Therefore, the KHRC decided that it wanted to adapt the way it went about the PM&SCI work so that it can act as an effective baseline against which to monitor progress in achieving the rights to water and education. Because communities have their own priorities for improving their access to rights and their own way of identifying indicators and measuring change, the KHRC felt that it was important that communities themselves set the indicators.

This participatory indicator setting will ensure a sense of ownership, duty bearer engagement from the outset and relevance. Also by getting community generated standard indicators the KHRC will be able to set a baseline and show change against specific indicators nationally and in each target county. The KHRC will actually be able to see percentage changes for each indicator in each place and across all target counties. By standardising indicators we will also be able to more easily take community level concerns up to national level with a united voice.

Sustainability:

The deep involvement of communities in this work will ensure that without the KHRC activities on this topic will continue. A positive policy environment would act as a useful tool in future actions to secure the right to water. Involving duty bearers in policy development will help to ensure they better understand grassroots concerns and that they internalise them in their attitudes.

Next Steps:

The policy brief will be finalised and published in the next few months. The policy brief will be used for advocacy to ensure that devolution does not have negative effects on absolute service delivery or equity of delivery. A popular version of the policy brief will be produced in Kiswahili. This will be used to improve community level understanding of how devolution could affect water service delivery. The Kiswahili flier will also be used as an advocacy tool by community members concerned about their right to water. Press articles will be published to raise awareness of policy recommendations and the brief itself will be presented

at bilateral meetings with the Task Force on Devolved Government, the Ministry of Water and the Ministry of Northern Kenya.

In the next year, the community identified indicator development process for water and education will be repeated in 4 more counties and through analysis of all 6 areas (Wajir, Isiolo, Marakwet, Taveta, Ugunja and Kangemi) national standard indicators will be agreed. The same standard indicators of change will then be used in all target counties and assessment will be made, with communities and duty bearers, of where they are at with regards to each indicator. The results of the baseline will be publicised through 8 radio shows, 1 TV show and 2 newspaper articles. Candidates for the forthcoming elections will sign up to agree to work towards improvement in each of the indicators. In the 13/14 year (year after next) score cards will be developed, interface meetings with duty bearers will be held and media will be used to strengthen this advocacy.

EDUCATION REFORMS AND CHILDREN RIGHTS

Activities:

The KHRC believes that it can address stereotyping and discrimination through school children. The KHRC has some evidence for the success of this approach from previous programming. Therefore, in the last year the KHRC has conducted a review of schools' and teachers curricula to assess the human rights education content gaps in the education system. This review proposes ways of incorporating human rights content aligning it with the Constitution of Kenya and international best practice into the curriculum.

Also as a direct input to human rights and equality education the KHRC has developed an equality story book 'The Attack of the Shidas: AKAs Save the Nation.' Schools with whom the KHRC partners plan to build or strengthen existing human rights clubs where this book will be used. The storybook relates poverty to inequality in the sharing of national resources and has three children as its super heroes whose strength comes from the ability to recognise and reject discrimination. The storybook will be marketed by Story Moja Limited, a publishing house with extensive experience in children's books and should be available in supermarkets and other outlets and launched in May 2012.

To better measure changes as a result of its work with regards to equality with schools, the KHRC this year conducted a study to understand the Knowledge, Attitudes and Practice (KAP) of pupils in target schools

with regards to 5 areas of equality (Gender, Disability, Ethnicity, Age and Wealth Status/Class). To gather qualitative data, Focus Group Discussions (FGDs) were conducted in 2 schools in each of the following areas - Wajir West, Isiolo, Marakwet East, Ugenya, Taveta, and Westlands amongst pupils from one stream of the standard 7 class. Each school had 2 FGDs. One involved approximately 5 boys and the other approximately five girls. The KHRC sought to ensure that the FGDs participants were as much as possible representative of local diversity with regards to ethnicity and disability.

There were also Key Informant Interviews that were administered to the head teacher/deputy of the school and the patron for the Human rights club. Finally, to get quantitative data on the KAP of children a self-filling questionnaire was also administered to one stream of standard 6 and one stream from standard 7 at target schools. In total 24 Focus Group Discussions were conducted, 844 self-administered questionnaires and 24 key informant interviews. The final report is now available.



A focus group discussion meeting in Marakwet East

Opportunities Grasped:

The Kenyan constitution has elaborate provisions in the chapter on the Bill of Rights which then requires alterations revamping and changing of the legal and policy frameworks of the education sector. In this regard, the Ministry of Education (MoE) put in place a taskforce to analyse the implication of the constitution on education, training and research for national development and to give advice on realignment of the education sector to the Kenyan constitution.

The KHRC worked with the education coalition 'Elimu



Yetu.' The coalition engaged the education taskforce. Specifically, the KHRC with Elimu Yetu critiqued and inputted into the draft interim report of the education task force before it went to the MoE. The KHRC with the coalition drafted a new education Bill and forwarded it to the taskforce which was positively received and informed the final Act.

Results:

Working closely with the Elimu Yetu coalition has given the KHRC a voice with regards to aligning the education sector with the rights, principles and values as enshrined in the Constitution. Continuing engagement with the Ministry and the taskforce will ensure that KHRC influences the policy formulation process: Education policy and legislation.

The KHRC has also set a baseline for our engagements with schools on equality which is particularly pertinent at this time when in many parts of the country in the lead up to the coming elections; clan and tribal conflict are getting worse.

Difficulties and Solutions:

Education reform in Kenya has not been one of the initial 49 priority Bills. To jumpstart the implementation of the Constitution, it is imperative that civil Society Organisation in general and those in the Education Sector remain perpetually vigilant to the organisation

of real change in the sector, not just realign to the Constitution but also follow through the actual implementation.

The KAP study to ascertain impact with regards to equality issues as a result of the production and use of the equality story book and other interventions in schools was initially delayed but became possible at the end of the year because of agreement for reallocation of funds from Christian Aid.

Next Steps:

The KHRC will continue to partner with the community based HURINET's education committees, education coalitions, MoE and likeminded organisations on education campaigns to ensure local, national and international linkages. The findings of the curriculum audit will enable the KHRC to advise the Government on human rights curriculum content. These will be publicised advocated for inclusion of recommendations in policy and practice.

In the coming year, the KHRC will train patrons of schools clubs in equality issues and provide them with the equality story book. The KHRC will also print copies of the equality story book and distribute them to targeted schools. In partnership with Pamoja Kwa Haki initiative, the KHRC is also finalising a teacher's handbook on the Constitution. Due to the wide spread perception amongst targeted children that, disabled people cannot be independent and largely warrant pity, successful disabled people will give talks in target schools and act as positive role models.

In March 2013, the KHRC will repeat the KAP study to ascertain change. The results if positive will be used in advocacy with the MoE and Kenya Institute of Education (KIE) to strengthen the coverage of equality in the curriculum and to make the equality story book a set book.

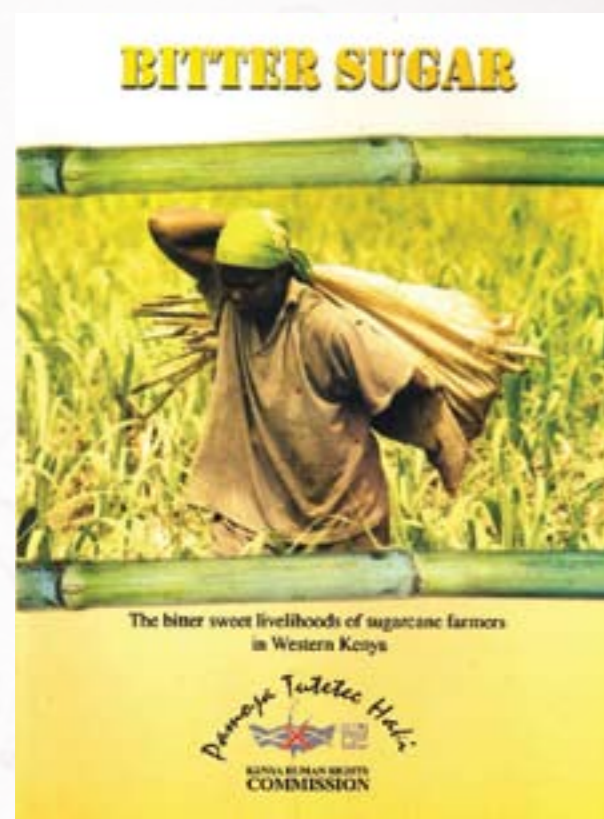
OBJECTIVE 2:

TO IMPROVE WORKERS' LIVELIHOODS / STANDARD OF LIVING

SUGAR CANE FARMERS RIGHTS

Activities:

The KHRC commissioned a firm to produce a documentary on how benefits from sugar production are shared along the value chain from the farmer, miller, out grower companies, middlemen and the shareholders and the gender dynamics therein. Farmers highlighted many issues but primary concerns were around farmer representative institutions. Specifically, there was a concern that there is a multiplicity of farmer representative institutions each of which has its own interests. Farmers struggle to decide which institution to choose and membership of each costs 1-2% of their



income.

Bitter Sugar Documentary

At the same time, farmer representative institution services are not standardised in line with the roles and responsibilities provided in the Sugar Act and most provide poor service. Millers provide services that should be provided by farmer representative institutions. Consequently, farmers are abandoning their

representative organisations, losing joint bargaining power and becoming completely in the control of the miller. In areas where there is a miller monopoly, the problem is compounded and farmers do not have any leverage regarding the payment levels for sugar cane.

The documentary entitled: *'Bitter Sugar, the bitter sweet livelihoods of sugarcane farmers in Western Kenya'* exposes unfair trade in the cane industry that is exploitative to both male and female producers. The documentary shows that the sugar cane industry is not having the hoped for impact on poverty reduction and hence general access to human rights. For sugar farmers live in poverty while companies (outgrowers and refiners) continue to declare profits in the billions every year and the shareholders take home lump sum dividends.

It also shows that power imbalances between men and women mean that women face an extra layer of oppression. Whilst women provide much of the labour in sugar cane production and toil for 24 months or more to tend to the sugar crop, they do not own or control the land that work on and have limited or no access to the benefits or proceeds of their toil.

In addition to the documentary, the KHRC supported media around the election of sugar board officials. Specifically, there were two radio programmes in Dholuo and Luhya languages. There was not a single woman elected to these boards which is not aligned with constitutional rules that state that no more than 2/3rds of any gender should make up any elected body.

In recognition of and in an attempt to address some of the challenges faced by female sugar farmers, on International Women's Day (March 8th), the KHRC screened the documentary at the community level (Migori, Nyando, Kuria and Kakamega). The documentary was screened in churches, social halls, shopping centres and other women-friendly spaces. A total of 16 screening sessions were held with approximate 1,600 participants, 40% being women.

Each screening was followed by a discussion session of key issues raised in the documentary including; women's human rights issues, management of key institutions in the industry, women's political participation⁹ in both the

institutions in the industry and in the upcoming elections, women's property rights, and public funds that have a direct impact on profits in the cane industry.

Discussions focused on how these challenges can be overcome.

In March 2012 the 'Bitter Sugar' documentary was also aired through mainstream media stations such as Citizen TV, KTN and KBC. The aim of these public airings was to improve policy makers and consumers understanding of the bitter plight that sugarcane has on its producers. The KHRC reproduced the 25 minute and 49 minute documentary for both the key stakeholders at the local and national level in order to increase action in addressing the problems raised in the film.

Finally, a policy brief has been developed which drew on a desk based study, interviews used for the documentary, and two stakeholder forums which involved farmers, millers, farmer's organisation representatives, provincial administrators and Kenya Sugar Research Foundation (KESREF). One of these forums was held in Kakamega (19 stakeholders – 6 women, 13 men) and the other in Migori (24 stakeholders – 6 women and 18 men).

Results:

The sugar cane value chain policy brief and documentary are useful tools to help bring to the fore issues that the KHRC has been supporting farmers to address at local level for some time. Happily it is not only the KHRC that holds this view. Some members of the public and parliament have told the KHRC that these are critical tools for engaging the parliamentary committee on agriculture. A duty bearers from an out grower institution stated that *'we have done the analysis and realised that a sugar cane farmer earns less than a house help per month.'* Ironically this is from an institution that collects 2% from farmer's proceeds. Increased public support for the recommendations given in the documentary and policy brief means that as consumers and voters sufficient pressure can be built for the key institutions to streamline.

The participatory process of recording and screening the documentary and developing the policy brief have been an empowering process for farmers because these resources are; 1) giving poor farmers a voice outside

⁹ The Kenya Sugar Board elections have been questioned through a court case that aims to determine whether or not the non-compliance with the constitutional requirement of at least 1/3 women representation of women in all elective public office is an immediate or progressive one; i.e. the constitutionality of the office elected.



A teen-age boy cutting cane in one of the sugar plantations in western Kenya

of their farms and local communities, 2) articulating what needs to be done (institutional, policy, legal and practice reforms) to turn around the sugar sub sector and to subsequently improved farmers livelihoods, and 3) increasing HURINETs / farmers awareness of the root causes of their stunted livelihoods, which some have been oblivious to despite being the ones experiencing it.

Project outputs included the production of copies of the documentary DVD which has a 49 min and 25 minutes version on it. Copies of a DVD with the you-tube files for uploading were also produced. 500 more copies were produced for distribution to the key players at national and local level.

Difficulties and Solutions:

There was a problem with funding for the planned sugar cane research. However, by using the expertise of in-house staff rather than employing a consultant for the policy brief helped to minimise costs. Further, advocacy using the tools will be conducted in the next operational year.

Next Steps:

In the next operational year, the KHRC will utilize the policy brief and the documentary as advocacy tools to influence reforms in the sugar subsector and hold meetings with the parliamentary committee on agriculture, Kenya Sugar Board and the Ministry of Agriculture. Advocacy will also be held with local players towards restructuring the farmer's representative institutions to ensure they are responsive to farmers needs instead of acting as parasites on farmers hard earned proceeds. The advocacy will aim to ensure the industry is fairer to all the key players in the production chain.

Sustainability:

The approaches outlined above are sustainable as they build knowledge, recommendations and change attitudes, policies and institutional arrangements. The approaches build awareness of farmers so they can recognise that the current relationships within the sub sector are parasitic. However, the KHRC has also encouraged farmers to have a positive attitude to farming as a business, to explore and test other crops that would do well in the region, and to realise that they have a responsibility to only engage in sugar farming if it's profitable.

WOMEN'S RIGHTS AS WORKERS IN FLOWER FARMS**Activities:**

Within the reporting period the KHRC conducted a study on women's labour rights in the cut-flower sector. The goal of this research was to improve access to rights for female workers. The study focussed on the condition of women workers with regard to six areas of concern; *equal pay for equal work, maternity and paternity leave, child support, sexual harassment, dismissal, casual labour and contracts.* The study looked at existing legislation, institutional policies, attitudes and practices, practical realities for women workers to provide best practices for learning and recommendations to inform future work.

The study was keen to establish the impact of five labour laws enacted in 2007, in addressing human rights concerns of women workers and to find out what response the inclusion of labour rights in the Constitution of Kenya has elicited among workers and their employers. The study was carried out in 15¹⁰



10 Farms sampled for this study include Large farms (Flamingo, Van den Berg, PJ Dave); Medium farms (Simbi, Redlands, Harverst Ltd, Shalimar, Nini, Maridadi flowers, Plantation plants, Carnation, Aquila & Enkasiti) and small farms (Sunbird and Gatoka)

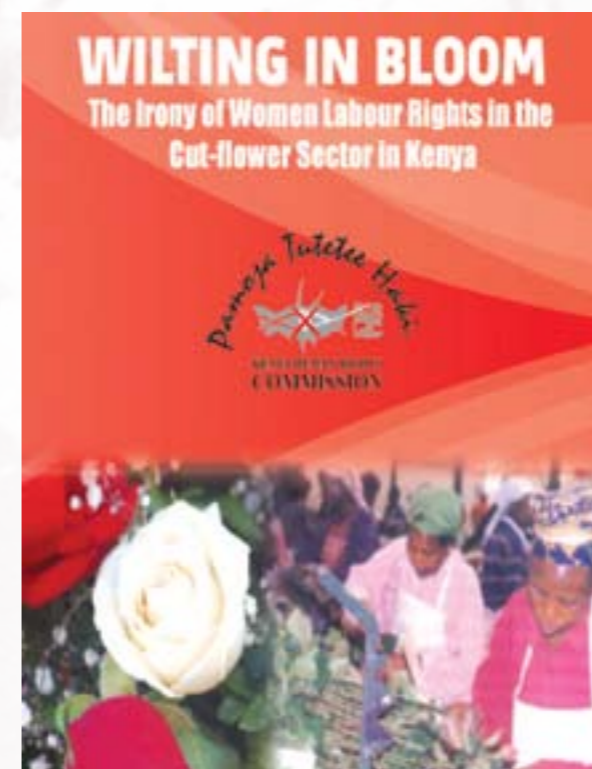
companies in Naivasha, Thika and Athi River. Sampling was purposeful¹¹ and looked into farm size, location, ownership, market, certification and number of migrant workers. Of the targeted farms, 10 of the 15 companies gave full cooperation; 3 withdrew cooperation midway and 2 did not cooperate at all. 5% representative sample of workers was taken for interviews and this percentage was raised to 7.5% for farms that did not allow access.

A total of 738 workers were interviewed (327 male and 411 female) with different periods of service (219 for 0-2 years, 216 for 3-5 years and 303 over 5 years). An additional 395 respondents completed the survey questionnaire for quantitative data. Interviews were held with management in 10 companies (28 respondents). Other players interviewed include producer organisations Kenya Flower Council (KFC) Fresh Produce Exporter Association of Kenya (FPEAK) Agricultural Employers Association (AEA) Federation of Kenyan Employers (FKE), relevant ministries (health, labour, local authorities), day care centres¹² and local union¹³ officials. National and corporate policies and documentation were also reviewed. A report entitled *'WILTING IN BLOOM, The Irony of Women Labour Rights in the Cutflower Sector in Kenya'* was produced.

The report found key challenges with compliance with certification requirements regarding maternity leave. For example, a number of farms insist that expectant mothers take maternity leave from their 7th or 8th month of pregnancy and also use their 1 month of annual leave before resumption of duties. As a result the women working in these farms have to go back to work when their children are 1 month old. The babies are left in day care centres. Rickets has been seen as a challenge at these centres as well as poor hygiene. A 1 month old child is particularly vulnerable to immediate (morbidity and mortality) and long term effects (cretinism) of malnutrition and poor hygiene. In addition, a number of farms are subjecting women to urine tests and denying women who are identified as pregnant employment or renewal of contract. Certification should enable consumers to make ethical choices on where to buy flowers from but if companies hold certificates but are not complying with the standards then these choices become meaningless.

11 Size - Large (over 70 ha), Medium (15 – 69 ha) and Small (below 15). Ownership - foreign (European, Dutch, and Asian) and Local (Market, Auction, Retail). Workers (local area and immigrant)

12 14 day care centres were visited in Naivasha & Thika Areas
13 Interviews were sought with KPAWU and COTU. Those contacted could not participate officially. Those who participated requested anonymity for fear of reprisal (3 branch level and 18 shop floor officials of the union)



'WILTING IN BLOOM, The Irony of Women Labour Rights in the Cutflower Sector in Kenya'

The KHRC shared the draft report with the all the targeted companies and the union secretary general. There was no evidence provided by these institutions contrary to the reported findings. In February a wider critiquing and discussion session regarding the research report was held. This session provided useful feedback on the reports contents and initiated dialogue with key players. The 1 day forum brought together 58 representatives from; cut-flower companies, civil society organisations, producer organisations, standards bodies, Ministry of Health, Ministry of Labour, Directorate of Occupational Health and Safety services, and workers. Follow up meetings amongst the producers have also been held in Naivasha under their umbrella organisation Agricultural Employers Association (AEA) to discuss the report findings amongst the membership.

The study critiquing and discussion session was undertaken on Valentine's Day and re-ignited media attention on the plight of women workers. The report findings were covered in the print media (East African Standard, The Star, The People and Nation); electronic media (GBS, KTN, K24 and KBC television) and radio stations (Radio Jambo),

Capital, Classic and Kiss 100). Journalists from three stations¹⁴ made follow up visits to further investigate

14 KBC, KTN and Internews agency

some of the human rights violations the study findings unearthed particularly with regard to the condition of day care centres and the general impact of working in the cut-flower industry on women's family life and livelihoods. These features were aired as part of the International Women's Day. KHRC also secured free airtime with K24 breakfast talk show as part of the publicity for the research findings.

KHRC has also received requests for copies of the report from organisations running similar programmes e.g. FIDA Kenya; and researchers interested in using it as a reference, indicating that it has both practical and academic relevance. KHRC has contracted the publishing of 500 copies of the report for dissemination to the key stakeholders. A high level conference on Women's Rights was held in early February. The 3 day conference was held bringing together 42 HURINET representatives from their equality and fair trade thematic committees. Deliberations focused on the place of women and minorities in the devolved government system, strategies for securing a minimum of 1/3 representation for women through elections as well as a session on the relationship between fair trade, community livelihood struggles, labour and employment.

Opportunities grasped:

Workers in Naivasha informed the KHRC about a bogus human rights office with a very clear sign post that offers to follow up on labour related cases. Workers pay Kshs 200 for this service but no action is ever taken. Investigation revealed that this is a private enterprise registered as 'Feus Bureau Services,' by one Dan Maina Kiranga. This office worked only to exploit vulnerable workers. The KHRC met with Mr. Jiranga who resolved to stop stealing money from workers and to remove the sign post. The workers indicated the sign posts to his office have been removed.

Results:

As a result of the above interventions, towards increasing respect for women's rights, there has been dialogue initiated amongst key players, with the following immediate results:

- The research showed a significant reduction in incidences of workplace sexual harassment. This was attributed to both past campaigns and the revision of labour laws.
- The data generation process with workers and management was informative to the KHRC in gauging how well they understand their rights and responsibilities.
- The research process provided an avenue to shed light on areas of human rights that workers

- were confused about and to provide advice on how to handle some of their cases.
- Women workers despite fear of reprisal came out to share their stories about ongoing human rights violations in the companies with the media. These women's bravery in speaking out has enabled their issues to get greater coverage.
 - The Ministry of Labour has contacted the KHRC requesting a formal partnership mechanism to deal with emerging and underlying issues in the sector.
 - Central Organisation of Trade Unions (COTU) and Kenya Plantations and Agricultural Workers' Union (KPAWU) have written to the KHRC asking for a meeting to discuss the findings.
 - Producers have committed to comply with Kenyan law. Illegal actions including pre-employment pregnancy testing, delayed or non-payment during maternity leave and forced early confinement for pregnant workers, portray the whole sector in a bad light. Producers have put forward the idea of peer monitoring and outing producers that do not comply.
 - Best practices on balancing business demands and human rights compliance have been identified as learning points for other companies. Some of the best practices were freedom in worker organisation and representation and the provision of professional child care services.
 - The report names and shames companies involved in bad practices and especially where these companies have codes of practice and certification standards to which they don't adhere to.
 - The consultative session identified the need for: a floriculture sector specific union and an audit of small farms that have no certification but engage in malpractices. These farmers sell their produce through large farms and hence there is no traceability of their produce. The session also identified the need for enhanced communication of the research findings to consumers; and, constant dialogue sessions amongst all key players in the sector.
 - There has been increased awareness among women on devolution, public finance and electoral, governance at community level. Participants from the high level conference on women's rights stated that they had enhanced skills to effectively articulate women's issues and to tackle issues related to economic rights.

Difficulties and solutions:

The research process encountered challenges of non-cooperation by some of the key players. Specifically, the

workers union KPAWU and the umbrella body COTU did not participate in the study process. Interviews were sought, but no top level official was available for an interview. The research team however held interviews with branch secretaries and the union representatives from the companies. Similarly, the team received denial of entry into 4 of the 15 targeted farms. This resulted in the more time being investment in the field research process than anticipated. The research teams working within the non-cooperative farms had to undertake extensive offsite interviews within the workers living quarters, as well as meeting workers over the weekends. The offsite interviews were more successful as the workers did not feel intimidated by the management and could talk freely about their issues.

Next steps:

The KHRC plans to have targeted interventions with relevant duty bearers regarding the main findings and recommendations of the report. With regards to company specific findings, the KHRC will hold bi-lateral meetings to seek resolution to identified problems. Most of the companies sampled have workplace policies complying with the Employment Act and Constitution. However, practices in some companies differ from the institutional policies and existing statutes.

As relates with the general state of the sector, the KHRC will lobby for a cut flower specific union which will pay particular attention to the challenges workers in the sector are facing. The KHRC will also hold Training of Trainers (ToT) capacity building sessions with workers representatives and develop IEC materials that the ToTs can use to sensitise workers on their rights.

SISAL PRODUCERS' RIGHTS

Activities:

Field research has been conducted in Kibwezi, Mogotio and Taveta with workers on sisal plantations. Between June 20 and July 10, 2011 meetings were held at research sites to seek the initial engagement of a range of duty bearers and to identify community members linked to HURINETs who would help to implement the research.

On July 11 and 12, 2011 nine enumerators (three women and six men) and six community HURINET representatives (five men and one woman) and two research assistants (two women) were trained. The training equipped the participants with knowledge of the right's-based context of the KHRC's research on livelihoods; the geographic and political aspects of the terrain in which they would be operating; Labour Laws;

Historical context of settlement and agribusiness in the focus areas; Constitutional underpinnings relating to livelihood; Corporate Social Responsibility; the survey tools and logistical aspects of the study._

Between July 16 and August 31, 2011, data was generated through one-on-one interviews (587 people, 414 male, 173 female – across nine farms), questionnaires and Focus Group Discussions two in Kibwezi, two in Mogotio and one in Taveta. In August (in Mombasa) and November (in Voi), 2011, KHRC staff conducted a series of interviews with present and past farm workers whose testimonies reveal incidences of grave violations of human rights. The interviewees included four men and one woman. These violations range from cold blooded killings to assault, findings which will feature in the study report.

Results:

The research interrogates the right to equality and protection from discrimination particularly in relation to employment. The research will help to redress concerns on the right to human dignity; freedom of association; the right to assembly, demonstration, picketing and petition; the right to labour relations and ultimately, the freedom of expression and the right to access to justice.

Through the study the community HURINETs have been equipped with knowledge of how to conduct field-based research, Labour Laws, and the historical context of land ownership and its effect on people's livelihoods.

The studies have promoted a sharing of experiences between communities from the different focus areas of the study and has instigated a synergy of purpose among the various communities, hence, providing better leverage for future advocacy. Participation in the study has also provided community networks with valuable visibility and prominence in the eyes of the local communities, a commodity that will come in handy for future advocacy.

A sense of obligation to fulfil legal requirements relating to labour has been aroused in the respective agricultural actors and other government agencies. It is expected that the research findings will, ultimately, contribute to the evidentiary basis of seeking redress and the review of law and policy, hence redressing the balance of power relating to livelihood.

Difficulties and Solutions:

The research into sisal workers' rights encountered challenges due to delays in issuing the research permit, a lack of co-operation from farm managers, and potential interviewees fearing reprisal from their employers.

While in Mogotio the study was embraced fully from the beginning, by the sisal farm, getting access to Gicheha Farm of Taveta and Dwa Sisal Estate of Kibwezi proved difficult. After a series of meetings and correspondence between the KHRC and the research team and the management of Dwa Sisal Estate the KHRC gained access to the farm two weeks after deployment of the research team to the field. In Gicheha Farm, the management declined to allow entry into the farm, prompting the research team to employ other means towards reaching the farm workers, outside their workplace. This also means that the data collected will not include the views of the management of Gicheha Farm.

Many workers who were approached for the survey expressed fear that their participation would attract punitive measures from their employers, including the risk of losing their jobs. Other persons who have witnessed grave violations of human rights, including killings and assault were similarly apprehensive about coming forth. A number of the employers within the farms under study are well-connected people who wield a lot of power and influence in government circles. To freely obtain information the team of researchers had to promise the interviewees anonymity and discretion in the use of material gathered so as not to expose the interviewees to harm.

In light of the above challenges the KHRC found that working with a mix of community resource persons and research enumerators drawn from outside the community was most effective. Working with the Human Rights Networks in all the three regions has proved instrumental. They have ensured that the research team was always guided through the local terrain, both, in geographic and other logistical terms. Moreover, it brought in the invaluable element of community participation and ownership to the project.

Lastly, engaging community HURINETs in such activities increases their visibility on the ground, hence strengthening their brand name as human rights defenders. Ultimately, this is beneficial to future human rights struggles. Working with enumerators drawn from outside the community was beneficial to the project

because it provided a sense of neutrality to the duty bearers. Some research respondents preferred to speak with someone from within their community and others felt safer with someone from outside.

Next Steps:

The publication and unveiling of the final sisal workers study report will be launched in April 2012 and will pave the way for further advocacy thereafter.

HUMAN RIGHTS IN LAMU PORT DEVELOPMENT

Activities: In November, 2011, the KHRC undertook a fact-finding mission to Lamu County, with the aim of establishing the actual and potential impact of the proposed Lamu Port complex on the human rights of the people of Lamu. The particular concern of the excursion was to enquire into the livelihoods of the endangered Aweer community and the fisher-folk of the Lamu Archipelago in relation to imminent developments relating to the Lamu Port project.

The Commission posted a team of four staff and a researcher to Lamu Island and Milimani and with the assistance of the Lamu Human Rights Network, conducted interviews with opinion leaders of the Aweer community, the fisher-folk of Lamu, the Lamu Beach Management Unit (BMU), the fisheries department, Lamu Island opinion leaders and youth representatives. Outside Lamu, interviews were scheduled with other key actors including government departments.

Results:

The KHRC has a deeper understanding of the concerns of the people of Lamu with regards to the development of the new Port. Research has revealed a lack of consultation with the people of Lamu in the development of the project. Consequently there are fears that the new port will lead to the decimation of large swathes of fishing grounds and breeding sites, an eventuality which would put many of the Lamu fisher-folk out of work. The Aweer community remains vulnerable to losing their land to developers and unscrupulous government functionaries.

Overall, the KHRC found that the Lamu community is ill prepared to deal with the economic and social upheavals that the project is likely to create. For example, long standing economic marginalisation and poor investment in education have contributed to poor education standards in the area, hence exposing the host community to competition from outsiders in the new job market that the port will bring. While the dynamics of the project are likely to reshape the livelihood options in



Lamu from a tourist hub to an industrial town and from a fishing archipelago to a shipping port, the government has not put in place mechanisms to mitigate the loss of livelihood or to assist local people to adapt to new livelihood options.

Difficulties and Solutions:

The study on the proposed Lamu Port has run into the headwinds of lack of government cooperation in some quarters. While various government departments have been forthcoming with information about the port project, the Office of the Prime Minister has seemingly hoarded information relating to the environmental impact assessment as well as to the findings of the feasibility studies on the project. The KHRC will continue to push for this information with the use of the media if necessary to highlight this lack of transparency.

Next Steps:

The development of the Lamu Port was causing much excitement amongst the business community who heralds the project as one that will massively reduce the costs of trade, encourage investment, provide jobs and open up new areas of Kenya (the North) to development. However, Lamu residents complain that land is being stolen or bought at such low rates that it isn't providing a fair return and that the fishing industry will be destroyed due to dredging, mangrove destruction, pollution and legal restrictions. The KHRC is calling for dialogue between the different actors and for compensation for compulsorily acquired land or loss of livelihood. Advocacy for training for local residents to take up new opportunities will also be conducted.

What is clear is that the developers have all the power and are not interested in speaking to poor people whose lives and livelihoods are at stake. An environmental impact assessment has not been published and whilst the Kenya Ports authority has promised to engage all stakeholders it is not clear when this will happen and whether this will be a deep engagement or simply an

information session. Those funding the development are the most powerful politicians and business people in Kenya. If community concerns are valid it is doubtful that mere negotiations will be sufficient. People this powerful don't need to listen. The KHRC will ensure that consultation with the Kenya Ports Authority take on board the views of local residents and push for the release of the environmental impact assessment.

The report on the Lamu Port is due for release in May, 2012, paving the way for grassroots and national level advocacy. As part of judicial advocacy on the matter, the KHRC is seeking to be enjoined in a petition by the Lamu stakeholders as *amicus curiae*. The petition seeks to uphold, among others, the host community's rights to economic and social development, the freedom of information and the right to life, among others.

ECONOMIC PARTNERSHIP AGREEMENTS (EPAS)

Activities:

The KHRC continues to pursue EPA case that seeks to block the Kenyan Government from entering into a trade arrangement with Europe that would compromise the competitiveness of local producers and in turn, the human rights of the various actors along the local value chain.

Results:

In February 2012, Mr. Justice Lenaola, sitting in the High Court of Kenya, pronounced that the petition raised grave matters of Constitutional import that warrant the empanelling of a three judge-bench to arbitrate over the matter. As such, the file has been placed before the Chief Justice for the purposes of empanelling the bench.

Next Steps:

As a petitioner, the KHRC intends to write directly to the Chief Justice in order to influence the speedy constitution of the bench. Meanwhile, the EPA negotiations resumed again in September, after a lull induced by disagreements between the negotiating parties. In the financial year 2012-13, the KHRC intends to bring together a broad Fair Trade network to deliberate on and be actively involved in the EPA negotiation process. Their involvement is expected to directly leverage on the national and regional positions as well as being part of the European Community/ East Africa Community negotiations. The KHRC hopes to ensure any final agreement promotes the social and economic interests of Kenyan producers and stakeholders in global trade.

Part Three

Equality and Anti-discrimination

OBJECTIVE 1:

TO INFLUENCE THE FORMULATION, REVIEW AND/OR ENACTMENT OF POLICIES AND LEGISLATION

Activities:

The KHRC presented its position on the need for a comprehensive and substantive anti-discrimination and equality law in various meetings with key stakeholders (CBOs, CSOs and Lawyers) and through the media. A workshop held in Mombasa in June 2011 attracted 63 participants including members of Parliament and law makers. At this workshop the KHRC presented its views on a comprehensive anti-discrimination law and our position on the need for one rather than multiple human rights and equality commissions. The KNCHR and Gender and Equality Acts were enacted in August 2011, taking on board at least 50% of the proposals made in the KHRC legislative advisory.

Opportunities Grasped:

Broad participation in agreeing the core principles for the law was essential. Whilst a partnership with FIDA – Kenya and the Equality Rights Trust (ERT) was envisaged from the outset the KHRC was happy to also get strong backing for the proposed legislation from KNCHR.

Results:

Positively the KHRC has increased understanding of the need for comprehensive equality and anti-discrimination legislation amongst the public, Government officials, Commissioners and Lawyers.

Difficulties and Solutions:

Unfortunately, most of the recommendations from the KHRC were not factored into the legislation passed. The three laws passed under Article 59 are very weak and do not have substantive equality provisions that address substantive issues in society.

Also many actors in the women's movement advocated for separating the human rights and gender commissions. This move will weaken the two institutions. The KHRC feels that a lack of understanding of the benefits of having one strong institution, positive methodologies for gender mainstreaming and the desire to protect jobs led to this position being taken. Moreover, there is a lack of clarity on a number of issues and the risk of overlapping or duplicity of functions.

Next Steps:

In the next phase the KHRC will advocate for the enactment of substantive equality and anti-discrimination legislation that will complement the legislation enacted under Article 59 of the Constitution. The project's funding by UKAID came to an end on the September 30, 2011. However, there is need to ensure that substantive equality provisions are embedded in the law.

The KHRC will also audit the constitutive acts and the work of the three Article 59 Commissions i.e. KNCHR, National Gender and Equality Commission (NGEC) and Commission on Administrative Justice (CAJ) to ensure that they comply with the general principles of equality. Also the KHRC wants to undertake capacity building in equality and practice with the National Cohesion and Integration Commission (NCIC), NGEC and the National Coalition of Human Rights Defenders (NCHRD). The KHRC also wants to do more to mainstream equality in its policies, culture and programmes. Continuing to mainstream equality with our HURINET partners will also be essential.

OBJECTIVE 2:

TO ENSURE PUBLIC ACCESS TO BASIC PERSONAL NATIONAL DOCUMENTS

Activity:

Early in the year the KHRC held a consultative meeting with stakeholders (18 participants) working on citizenship issues. This meeting involved the critiquing of the five proposed citizenship Bills: The Identification and Registration of Kenya Citizens Bill; Birth and Death Registrations Bill; The Kenya Citizens and Foreign Nationals Management Service Bill; Kenya Citizens Immigration Bill; and, The Refugee Bill 2011. An advocacy tool was jointly agreed that outlined the minimum standards for the Bills.

The "Chapter 3 Coalition" which brought together a group of NGOs working around issues of discrimination and which were spearheading proposals for the citizenship Bill also had a session with the CIC at the Kenya School of Law. The KHRC went through two of the Bills chapter by chapter and also outlined the minimum standards agreed by civil society which all 5 citizenship related Bills should meet.

The KHRC already has deep knowledge of the citizenship issues faced by Northern Kenyan's and particularly the residents of Wajir and Isiolo areas. However, meetings have been held in different regions of Kenya to gain a deeper understanding of issues faced in these areas and to feed the communities' experiences into legislation advice.

An exciting breakthrough was a high level meeting with the Ministry of Immigration which the KHRC had lobbied to hold for many years. At this meeting, the KHRC shared the findings of its research report 'Foreigners at Home' its advice on the pending Bills and also the concerns of Northern Kenyan's with regards to discrimination in accessing citizenship. The KHRC has a case in court regarding discrimination against Northern Kenyan's in accessing identity documents. The Immigration department has opened up for informed partnership and invited the KHRC for a meeting to brainstorm on how best the issue of stateless persons can be resolved.

Opportunities Grasped:

Working in coalition really helped the KHRC to draw the attention of the duty bearers to its recommendations. It created a powerful, united and authoritative voice for those agitating for specific changes.

Results: The CIC stated that they appreciated the expertise within the Chapter 3 Coalition and the useful contributions made towards the development of the citizenship Acts. This recognition should make it easier to work with the CIC on such issues in the future. The KHRC is very pleased that the majority of its proposals for consideration into the Citizenship and Immigration Bill and the Kenya Citizens and Foreign Nationals' Management Service Bills have been enacted by parliament.

Next Steps and Sustainability:

The KHRC now wants to see the implementation of the Acts. Together with Communities the KHRC will monitor the implementation of the new legislation. Much advocacy will be needed through the media including local language radio and meetings at community and national levels to push the respective duty bearers to honour the provisions in the new Acts.

The KHRC is developing a simplified Question and Answer (Q&A) template for use by the grassroots communities for civic education. The Q&A will highlight citizenship gains so that Kenyan's can understand and demand their rights to citizenship more effectively. We plan to provide vernacular radio stations with this information and to assist them to broadcast information regarding citizenship rights. In the run up to the elections, identification documents will become all the more essential as Kenyan's prepare to vote. Now that the Ministry of Immigration has opened up to the KHRC we will follow up on their offer of further engagement.

OBJECTIVE 3:

TO RECOGNISE AND PROTECT MARGINALISED AND MINORITY COMMUNITIES

Activities:

The KHRC planned to undertake a variety of initiatives focused primarily on rights related to sexuality, gender and disability (physical and intellectual). Some of these initiatives include public interest litigation towards the decriminalisation of the penal code provisions which criminalise homosexuality between men. To begin this process we facilitated two meetings of a technical committee between the KHRC, the Gay and Lesbian Coalition of Kenya (GALCK), Gay Kenya and ICJ-Kenya.

The KHRC has also supported the Mwito (calling) network of LGBTI organisations to convene meetings in order to develop joint strategies to reduce stigma and discrimination and to divide responsibilities for implementation between the organisations. As a result of these meetings, the multi-tier approach towards equality and non-discrimination was envisioned and created. The activities were enumerated in a plan which was presented for validation at the end of the year, through a workshop that was jointly facilitated by the KHRC and GALCK. This plan is now being implemented.

To reach audiences outside of the gay community with messages on the importance of respecting the rights of people of different sexuality, the KHRC in partnership with the GALCK participated in an interview with KISS T.V. The aims of the show were; 1) to sensitise the public on the rights of the gay community, and 2) to sensitise educational institutions on the rights of students of different sexual orientations. The KHRC also facilitated a meeting of college media students in order to provide training on responsible reporting on gay rights. An International Day Against Homophobia conference was also supported.

With regards to disability, the KHRC organised training on human rights for Persons with Disabilities (PWD) at Kakuyuni Special Needs School in Malindi. The objective was to provide education on human rights generally but also the constitutional and legal provisions on the rights of PWD's. A second training was held in Malindi at Maduguni on the various provisions in both national and international laws and policies that affect PWD's. The aim of this training was to provide information to people with disabilities on the provisions that are in place that ensure their rights to equality and non-

discrimination and those of inclusivity in the different political processes.

One of the KHRC's key partners in equality is the Equality Rights Trust (ERT). The KHRC and the ERT have jointly carried out a feasibility study to set up an equality hub in Kenya which the KHRC could host. After noting a rise in security concerns, the KHRC in collaboration with GALCK conducted training for human rights defenders in the LGBTI community. The aim of the training was to educate the participants on key human rights issues and advocacy around the same. Their training also focused on ensuring protection and educating them on how they can protect themselves as they go about their activities.

The KHRC in collaboration with different LGBTI organisations and their allies such as 'Other Sheep Kenya', planned to train 40 imams (in Mombasa) on the importance of equality and non-discrimination and inclusion of the LGBTI community in religious practices. A programme was agreed, the facilitators identified and information to be disseminated was prepared. However, despite securing the participation of the imams in the seminar, The KHRC was unable to raise funds and therefore the activity was postponed until such a time where the funds were available.

Opportunities Grasped:

Rarely are men who deny their offspring held to account. However, one woman in the coastal region of Kenya decided that the father should accept responsibility for their child. With the KHRC's support, a case was filed that the father should pay child maintenance.

David Kuria agreed to be on the technical committee and to provide his expert knowledge on decriminalisation of men who have sex with men. Mr. Kuria is one of only a few openly gay politicians in Kenya. His public profile should also help to drive this campaign forward. Another opportunity grasped was KISS T.V's interest in running a show on gay rights. By partnering with Inter News media training on campus on LGBTI issues for media students became a possibility and by linking with Malindi Municipal Council the training at Kakuyuni Special Needs School became feasible.

Noting the key areas of inclusion of the LGBTI community in a variety of political and legal processes, the KHRC

was involved in the facilitation of various forums where they were invited to assist in the critiquing of Bills that affect the LGBTI community such as the Marriage Bill and the Registration of births and deaths in Kenya. These interventions have helped the community to better participate in the discussions that were happening around the Bills before they became law.

Further, the KHRC took up the opportunity to be actively involved in the formulation of policies of key strategic LGBTI partners. The KHRC also helped facilitate various sessions with the Gay Kenya Trust on their strategic planning for the organization. Between December and March, the KHRC assisted the organization to register, supported the submission of registration papers and creation of the organisations constitution. The KHRC was also actively involved in aiding Ishtar Men who have Sex with Men and Minority Women in Action in the facilitation of contracts that they were getting into with donors. The KHRC reviewed the contracts and advised the organizations on the changes that needed to be made.

Results:

The meetings convened by the KHRC on decriminalisation of homosexuality culminated in the agreement of a draft implementation matrix which lays out a multi-pronged approach to decriminalisation. After the validation of the matrix by the stakeholders, various organisations included different strategic initiatives in their work plans. This was instrumental to the success of these initiatives as this guaranteed ownership of the process. There have been quarterly reviews which the KHRC participated in and the outcome reflected the work that had already begun in this area.

Media coverage and training of media students on LGBTI rights will enable the public to re-evaluate their prejudicial views and in the longer term reduce discrimination against LGBTI people. The security trainings that have been conducted have served to increase the capacity of the LGBTI community to take care of their personal security. There has also been a notable rise in the reports to the police of black mail and personal threats that LGBTI persons have been undergoing. This could signify growing confidence of the LGBTI community to demand their right to security from the police.

Within the Persons with Disabilities (PWD) community, one of the participants of the training has gone on to vie for the position of counsellor in his area and intends to run for the national positions of either senator or governor. This shows the use of the improved knowledge that had been received through the training. While the



parental responsibility legal case has been closed, an agreement between the parents, which is enforceable in court, is in place to ensure that the welfare of the child is protected.

There are plans to have a variety of consultative forums with key political persons, religious leaders and various persons in the health sector. This is indicative of the improvements in the community and the level of engagement that they are willing to undertake in the quest for equality and non-discrimination.

Difficulties and Solutions:

It is very expensive to book media shows. However, the KHRC is working hard to secure free or reduced rate programming. The Mwito network has suffered from internal wrangles and personal interests being propagated at the meetings. Negotiations have eased these issues and the network will continue on a firmer footing in the coming year. There have also been challenges in raising enough funds to run all the necessary activities in the LGBTI programme. The KHRC had planned to conduct research into human rights abuses in mental health institutions but upon realising that the Independent Medico Legal Unit was conducting similar work decided not to duplicate their efforts.

Next Steps:

There are a variety of initiatives that have been planned for the year. These include, training of the legal community (lawyers, advocates and judges) in order to capacitate them to work on issues of sexual orientation and gender identity. There are also forums planned with a variety of different actors such as the government, health sector, security sector (the police) and religious leaders.

Further, there are plans to collaborate with different other marginalised communities such as persons living with HIV and AIDS, persons with disabilities, pastoral and border communities and the youth through a variety of workshops to dispel myths and stigma and encourage equality and non-discrimination.

Part Four: Media and Communications



Beryl Aidi (left) Programme Officer Media and Communications, demonstrates to some HURINET members internet platforms available online activism during the ICT for democracy training held in March, 2012

The KHRC works with the media for its civic education and advocacy work, to monitor human rights abuses and seeks to ensure the continued freedom of the media. As the reality in Kenya is that much of the large-scale and mainstream media is captured by wealthy and powerful individuals the KHRC also uses alternative media (high-tech and low-tech) to ensure learning and information is shared. The use of the media in the KHRC's education and advocacy work has been outlined throughout the report so far, for example, the KHRC provides information to the media in the form of press statements and the launch of research reports. In addition, the KHRC is undertaking the following work:

Media Monitoring:

The KHRC produces a quarterly analysis of the trends of human rights violations reported in the media. Media monitoring acts as a complimentary mechanism to our reports from HURINETs and partner CSOs for gauging human rights abuses committed. To an extent this helps guide the KHRC's advocacy work but also highlights the issues which are not being covered in the media which the KHRC needs to make further efforts to raise. Media monitoring also ensures that NGOs have evidence for their advocacy, for example, allegations in the ICC confirmation of charges case No. 1 that, Hon. Charles Keter, MP for Belgut, had threatened witnesses on a vernacular station could be verified as the KHRC had a copy of the clip, was able to translate it and share with other NGOs involved in providing evidence for the two cases.

Freedom of Information:

Together with the Freedom of Information Network the KHRC undertook a media briefing and submitted a letter to the President on the National Security

and Intelligence Service Bill that seeks to monitor all communications. This Bill does not augur well for freedom of expression, freedom of assembly and access to information. As so often is the case the argument of needing additional powers to ensure national security are being pitted against maintaining human rights standards. Without access to information human rights abuses will be covered up.

Alternative Media: Bi-annually the KHRC produces and distributes 5,000 copies of the *Mizizi ya Haki* Community Newsletter. The newsletter is a human rights education tool reaching people who do not get newspapers on a daily basis due to cost or distance and may never have used the internet. *Mizizi ya Haki* is also an exchange platform for network members who use the newsletter to share learning. Finally, the Newsletter is viewed by communities as a way of raising awareness of their rights concerns and getting their voices heard. The first issue of the year is soon to be produced.

ICT For Development:

So far the KHRC has been developing a database of HURINET members. Particular focus is being given to those to be most involved in this project and in ensuring that programmatic community leaders are identified.

The website has been updated with information including press statements, organizational changes and publications. The success of the *Lest we Forget:*



Lest We Forget: The Faces of Impunity in Kenya report showed the importance of getting documents on line as soon as possible so that evidence for advocacy can reach a wider audience in a cost effective manner.

In May the KHRC also raised awareness of the ICT project with HURINETs. As the demand for this work comes from the grassroots network members were very happy to hear about the project components. A website with a page for each HURINET is due to go live any day now. This website will assist activists at community level to get the data they produce back in a way that shows trends at national level and changes at the local level. The website also will help community members to directly engage with duty bearers. An intranet and extranet are currently being set up so that the KHRC can share learning and documents internally as well as with its HURINET partners. An SMS platform is being installed so that the KHRC can send and receive texts in bulk form.

Communication equipment for use around electoral campaigns and monitoring (computers, power back-ups and modems) have been purchased for and distributed to 10 HURINETs and training has been provided to HURINETs on ICT including social media and government sites to help monitor the use of public funds. This training and equipment will help to ensure that HURINETs can make good use of ICT in their advocacy. The next step will be to contract a service provider to build web platforms to present maps using

data on human rights abuses gathered by text from community monitors.

The KHRC wants its library to be a useful resource for people anywhere in the world. Therefore, the KHRC plans to link the Resource Centre's online public access catalogue OPAC page to the KHRC website. The KHRC has raised awareness of the contents of its library at the Law Society of Kenya Week Exhibition, the International Book Fair, a workshop on Institutional repositories held at the University of Nairobi and the Kenya Library Association's conference. A total of 3,742 (1,662 male and 2,080 female) comprising of the KHRC staff members, interns, university and college students, individual researchers and partner organisations used the resource centre services during the year. There were also 27 and 38 enquiries through email and phone respectively. In the coming year, the KHRC will begin to digitise its research reports so that they can be accessed and searched for online.

Strategy, Style and Ethics:

In the next year the KHRC will work towards the development of a communications strategy. A style booklet will be developed that will guide staff on the use of colours, logos and fonts as well as ethics in the use of language and images. The style component is essential for the development of the KHRC's brand whilst the ethical dimension is important to ensure that the KHRC treats all people with dignity and does not reinforce inequalities.

Part Five

Institutional Development and Programme Effectiveness

GOAL 5

THE KHRC IS FINANCIALLY SECURE AND IMPLEMENTING PROGRAMMES THAT ARE CREATING DURABLE IMPACT



Staff celebrate the CRECO Civil Society of the Year Award in 2011

Restructuring:

The KHRC has this year focused on programmatic goals in order to increase the focus on what we want to achieve (results) rather than the process (how). The KHRC is also making a shift from geographic to programmatic working. This transition was discussed with HURINETs during the community reflection in May in which thematic committees were established.

Ultimately, KHRC staff and the HURINET programmatic committees will become experts in the area of their focus. They will also be most passionate on the issues that they pursue. The shift to programmatic areas instead of geographical areas is also helping to strengthen community, regional, national and international linkages (micro to the macro).

As with any transition it has to be well managed. Therefore, on the request of HURINETs the KHRC programmatic representatives have held consultation meetings with HURINETs programmatic committees. Whilst broadening the people the KHRC works with at grassroots level ensures improved sustainability and reduces power capture it is important that all communications are copied to and shared with the

HURINET co-ordinator. This is so that HURINETs can co-ordinate and maximise synergies in their work.

Monitoring and Evaluation:

As the KHRC draws to the end of its 2008-2012 strategic plan an independent, external evaluation is underway to consider the extent to which the KHRC achieved its strategic objectives. The evaluation will also consider how relevant, efficient, effective and sustainable programmes were and what long term results they achieved. An evaluation of the KHRC's equality programmes conducted in partnership with the ERT and FIDA Kenya has also been completed.

Recommendations from the above evaluations will help with the development of the Strategic Plan 2013-2017. This strategic plan will include an organisational log frame and programmatic log frames which interlock with the organisational log frame. A staff code of conduct will also be developed during the strategic planning process which will include a re-assessment of organisational values.

The KHRC collected and documented 21 stories of Most Significant Change (MSC) from HURINET partners. Out

of these stories five have been selected by the KHRC as most significant. The five stories will be circulated to HURINETs and donors and these stakeholders will vote on the two stories that they feel are most significant. Those chosen will be further documented and the final two stories will be published.

The KHRC now has clear internal reporting frameworks (Community and staff levels) that link to the operational plan and will link to the new strategic plan once developed. The KHRC also has a draft downwards accountability policy which includes indicators against which to measure change. Draft mid-term review Guidelines have also been developed.

A baseline and a Knowledge Attitude and Practice (KAP) study has been conducted in schools in five constituencies so that the KHRC can better measure the long term results of its work. In addition, a baseline on the achievement of the rights to education and water will be produced through the People's Manifestos process in the coming year.

Human Resources:

During the period under review the KHRC has recruited and maintained 20 interns, two being community interns. All of the interns have completed their time at the KHRC and are now working in various organisations. We endeavour to continue building the human rights movement.

Since April, 2011, the KHRC has experienced transitions on various fronts. The KHRC board recruited Atsango Chesoni as Executive Director after Muthoni's contract came to an end and she proceeded to pursue her post-graduate studies. The KHRC has also recruited Judy Ngugi as Finance and Administration Manager after Beatrice's contract came to an end. In an effort to utilise and reward internal skills, knowledge and experience, one of our Programme Officers (Davis Malombe) was promoted to the position of Deputy Executive Director. The KHRC also recruited Andrew Songa as a programme Officer to replace Malombe.

In the period under review, there have been collective trainings on security, devolution, policy and legislative drafting which has helped the KHRC staff to contribute substantially to Bills which have been forwarded for debate in parliament. Staff now engage in the process of Constitution implementation from an informed vantage position.

Ten members of staff are currently enrolled for both short and long term courses which are enriching their jobs

and performance. These courses range from Kiswahili, development studies, outcome mapping, law etc. In addition, all staff received training in power analysis, the human rights based approach and mainstreaming.

Training on M&E has been provided to all of the KHRC's HURINETs. This training focused on why M&E is important and three mechanisms - activity reports, registration forms/databases and Most Significant Change. All the KHRC's staff received training in project cycle management, problem trees and log frames. In the coming year training will be provided on the organisational Planning, Learning and Reporting Manual.

The KHRC attended a Christian Aid run workshop on gender sensitive programming, where we thoroughly audited every aspect of our organisation and programmes. The KHRC also conducted an equality mainstreaming baseline which is informing our equality mainstreaming process and will help the KHRC to ascertain the results of its equality mainstreaming over time.

Financial Sustainability:

The human rights field has matured and therefore, the architecture for the protection of human rights has become robust and the number and size of NGOs devoted to human rights has grown. As a result, there is both increased competition for funds and real opportunities to ensure human rights are protected and achieved. This has prompted the KHRC to take on a more pro-active role in encouraging giving to human rights work through maintaining bilateral funding outside of newly developed basket funds.

It has, therefore, become essential to focus on a donor's long-term potential / life time value and cultivating their trust and interest rather than simply focusing on one funding ask after another. In this resolve, various new partnerships have been pursued such as Misereor.

In the current operational year, the KHRC has gone through a shift from core to project/basket funding. This shift has negatively affected the KHRC with a large decrease in core funding. This has in some instances restrained the KHRC from being able to act and react on a broad front in relation to local and national issues of importance. Though the KHRC has been successful at securing money from basket funds, this shift has usually led to an overall reduction in funding, shift from core to project funding and more arduous reporting requirements.

We would particularly like to thank our grant makers named below without whom we would not have achieved what we have during the period under review:

- Akiba Uhaki
- Amkeni wa Kenya
- Canadian International Development Agency
- Christian Aid
- Danida through Drivers of Accountability Programme (DAP)
- Embassy of Switzerland
- Finnish Embassy
- Ford Foundation
- Misereor
- Royal Norwegian Embassy
- Open Society Initiative for East Africa
- Royal Netherlands Embassy
- SOMO: Stichting Onderzoek Multinationale Ondernemingen
- SPIDER: The Swedish Program for ICTs in Developing Regions
- Swedish International Development Agency
- Trocaire
- UKAID through Equality Rights Trust
- United Nations Voluntary Fund for Victims of Torture
- UN Women

Part Six

Financial Statements

Kenya Human Rights Commission Annual Report and **Financial Statements**

For the year ended 31 March 2012

CONTENTS

Commission Information	64
Report of the Directors	65
Statement of Directors' Responsibilities	66
Report of independent auditor	67
Financial Statements:-	63
Statement of Comprehensive income	68
Statement of financial Position	69
Statement of Changes in Fund Balances	70
Statement of cash flows	71
Notes: Significant accounting policies	72

Commission Information

Board of Directors

The directors who served during the year and to the date of this report were:-

Makau Wa Mutua	- Chair
Betty Murungi	- Vice Chair
Mwambi Mwasaru	- Member
Mumina Konso	- Member
Karuti Kanyinga	- Member
Davinder Lamba	- Member
Tade Aina	- Member
Atsango Chesoni	- Executive Director

REGISTERED OFFICE Kenya Human Rights Commission
P.O. Box 41079, 00100
NAIROBI

PRINCIPAL PLACE OF BUSINESS Valley Arcade
Gitanga Road
P.O. Box 41079, 00100
NAIROBI

INDEPENDENT AUDITOR PKF Kenya
Certified Public Accountants
P.O. Box 14077, 00100
NAIROBI

PRINCIPAL BANKERS National Industrial Credit Bank Limited
NIC House
Masaba Road
P.O. Box 44599, 00100
NAIROBI

Commercial Bank of Africa Limited
Mamlaka Branch
P.O. Box 45136, 00100
NAIROBI

SOLICITORS Waruhiu Kowade & Ng'ang'a Advocates
1st Floor Sameer Africa Complex
Mombasa/Enterprise Road Junction
P.O. Box 47122, 00100
NAIROBI

Report of the Directors

The directors submit their report and audited financial statements for the year ended 31 March 2012, which show the state of commission's affairs.

1. PRINCIPAL ACTIVITY

The principal activity of the commission is the protection of and advocacy for fundamental human rights in Kenya.

2. ORGANISATION STRUCTURE AND NATURE OF ACTIVITIES

The Kenya Human Rights Commission (KHRC) is a national Non-Governmental Organization (NGO) founded in 1992 and registered in Kenya in 1994 under the Non-Governmental Organisation Co-ordination Act. The goal of the KHRC is to entrench human rights and democratic values in Kenya.

Kenya Human Rights Commission's strategic objectives are as follows:

- Civic Action for Human Rights
- Accountability and human rights-centred governance
- Leadership in learning and innovation in human rights and democratic development in Kenya
- Mainstreaming equality, non discrimination and respect for diversity
- Organizational sustainability of KHRC

3. RESULTS

The results for the year are set out on page 68.

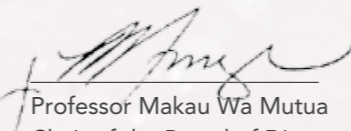
4. DIRECTORS

The directors who held office during the year and up to the date of this report are shown on page 1.

5. INDEPENDENT AUDITOR

The commission's auditor, PKF Kenya, has indicated willingness to continue in office

By order of the Board


Professor Makau Wa Mutua
Chair of the Board of Directors

5th July 2012

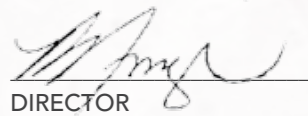
Statement of Directors' Responsibilities

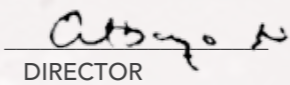
The NGO Co-ordination Act requires the directors to prepare financial statements for each financial year, which give a true and fair view of the state of affairs of the organisation as at the end of the financial year and of its operating results for that year. It also requires the directors to ensure the organisation keeps proper accounting records which disclose with reasonable accuracy, the financial position of the organisation. The directors are also responsible for safeguarding the assets of the organisation.

The directors accept the responsibility for the financial statements, which have been prepared using appropriate accounting policies supported by reasonable and prudent judgements and estimates, consistent with previous years, and in conformity with International Financial Reporting Standards and the requirements of the NGO Co-ordination Act. The directors are of the opinion that the financial statements give a true and fair view of the state of the financial affairs of the organisation as at March 31, 2012 and of its operating results for the year then ended. The directors further confirm the accuracy and completeness of the accounting records maintained by the organisation, which have been relied upon in the preparation of financial statements, as well as on the adequacy of the systems of internal financial controls.

Nothing has come to the attention of the directors to indicate that the organisation will not remain a going concern for at least the next twelve months from the date of this statement.

Approved by the board of directors on 5th July 2012 and signed on its behalf by:


DIRECTOR


DIRECTOR

Report of the Independent Auditor

To the Members of Kenya Human Rights Commission

We have audited the accompanying financial statements of Kenya Human Rights Commission, set out on pages 5 to 21 and which comprise the statement of financial position as at 31 March 2012 and the statement of comprehensive income, statement of changes in fund balance and statement of cash flows for the year then ended, and a summary of significant accounting policies and other explanatory information.

Directors responsibility for the financial statements

The directors are responsible for the preparation of financial statements that give a true and fair view accordance with International Financial Reporting Standards and the requirements of the Non Governmental Organisation Co-ordination Act, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the accompanying financial statements give a true and fair view of the financial position of the Kenya Human Rights Commission as at March 31, 2012 and of its financial performance and its cash flows for the year then ended in accordance with International Financial Reporting Standards.


Certified Public Accountants
PIN NO. P051130467R
NAIROBI

8th August 2012

Statement of Comprehensive Income

	Note	2012 Shs	2011 Shs
INCOME			
Revenue Grant income	1	170,867,079	135,725,105
Amortisation of capital grant	9 (b)	2,318,561	1,658,347
Interest income		1,724,474	327,740
Sales of publications		107,767	124,249
Other income	2	4,211,425	11,471,384
		179,229,306	149,306,825
EXPENDITURE			
Civic Action for Human Rights and 'ECOSOC/Devolution Accountability and human rights-centred governance (Justice system)		32,291,535	29,297,116
Leadership in learning and innovation in human rights,publicity media and democratic development in Kenya		5,594,495	5,147,742
Mainstreaming equality, non discrimination and respect for diversity		9,510,828	3,628,288
Organizational sustainability of KHRC		15,937,524	5,455,611
Staff costs	4	48,087,530	45,743,618
Administration costs		11,188,782	9,939,029
Depreciation		2,843,795	1,970,847
Total expenditure		178,443,715	145,037,646
SURPLUS FOR THE YEAR	3	785,591	4,269,179
TOTAL COMPREHENSIVE INCOME		785,591	4,269,179
Comprising of:			
Restricted Fund		1,958,452	2,441,693
Transfer to General Fund		(1,172,861)	1,827,486
		785,591	4,269,179

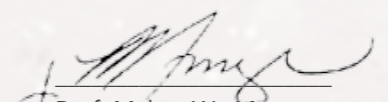
The significant accounting policies on pages 72 to 75 and the notes on pages 75 to 84 form an integral part of these financial statements.

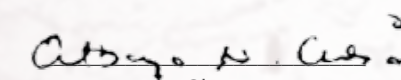
Report of independent auditor - page 67.

Statement of Financial Position

	Notes	As at 31 March	
		2012 Shs	2011 Shs
NON CURRENT ASSETS			
Property and equipment	6	4,997,715	4,054,519
CURRENT ASSETS			
Debtors	7	829,067	1,015,780
Cash and cash equivalents	8	57,605,211	88,326,592
Grant receivables	9 (a)	15,445,738	10,408,652
		73,880,016	99,751,024
TOTAL ASSETS		78,877,731	103,805,543
FUND BALANCES			
General fund balance		20,090,135	21,262,996
KHRC premises fund		10,375,643	10,375,643
Restricted Fund		1,958,452	2,441,693
		32,424,230	34,080,332
CURRENT LIABILITIES			
Deferred income	9 (a)	23,125,379	50,173,757
Capital grants	9 (b)	3,734,513	3,117,019
Payables	10	19,593,609	16,434,435
		46,453,501	69,725,211
TOTAL FUND BALANCES AND LIABILITIES		78,877,731	103,805,543

The financial statements on pages 68 to 84 were authorised for issue by the Board of Directors on 5th July 2012 and signed on its behalf by:


Prof. Makau Wa Mutua
Chair of the Board of Directors


Ms. Atsango Chesoni
Executive Director

The significant accounting policies on pages 72 to 75 and the notes on pages 75 to 84 form an integral part of these financial statements.

Report of independent auditor - page 67.

Statement of Changes In Fund Balance

	General fund Shs	KHRC Premises fund Shs	Restricted Fund Shs	Total Shs
Year ended 31 March 2011				
At start of year	19,435,510	10,375,643	763,605	30,574,758
Total Comprehensive income	4,269,179	-	-	4,269,179
Transfer to restricted Income	(2,441,693)	-	2,441,693	-
Funds utilized	-	-	(763,605)	(763,605)
At end of year	21,262,996	10,375,643	2,441,693	34,080,332
Year ended 31 March 2012				
At start of year	21,262,996	10,375,643	2,441,693	34,080,332
Total Comprehensive income	785,591	-	-	785,591
Transfer to restricted Income	(1,958,452)	-	1,958,452	-
Funds utilized	-	-	(2,441,693)	(2,441,693)
At end of year	20,090,135	10,375,643	1,958,452	32,424,230

The significant accounting policies on pages 72 to 75 and the notes on pages 75 to 84 form an integral part of these financial statements.

Report of independent auditor - page 67.

Statement of Cash Flows

	Notes	2012 Shs	2011 Shs
Operating activities			
Cash (used in)/from operations	11	(2,902,140)	3,591,307
Interest received		1,724,474	327,740
Net cash (used in)/from operating activities		(1,177,666)	3,919,047
Increase in debtors		186,713	(206,790)
Increase in grants receivable		(5,037,086)	(5,202,827)
(Decrease)/increase in deferred income		(27,048,378)	22,780,566
Increase/(decrease) in creditors		3,159,174	(1,625,605)
Increase in capital grants		617,494	1,055,601
Net cash (used in)/from operating activities		(29,299,749)	20,719,992
Cash flow from investing activities			
Cash purchases of property and equipment	6	(3,786,991)	(3,963,948)
Proceeds from disposal of property and equipment		-	900,000
Net cash used in investing activities		(3,786,991)	(3,063,948)
(Decrease)/increase in cash and cash equivalents		(33,086,740)	17,656,044
Movement in cash and cash equivalents			
At start of year		88,326,592	70,013,174
(Decrease)/increase		(33,086,740)	17,656,044
Foreign exchange gain		2,365,359	657,374
At end of year	8	57,605,211	88,326,592

The significant accounting policies on pages 72 to 75 and the notes on pages 75 to 84 form an integral part of these financial statements.

Report of independent auditor - page 67.

Notes

SIGNIFICANT ACCOUNTING POLICIES

The principal accounting policies adopted in the preparation of these financial statements are set out below. These policies have been consistently applied to all years presented, unless otherwise stated.

a) Basis of preparation

The financial statements have been prepared under the historical cost convention, 'except as indicated otherwise below and are in accordance with International Financial Reporting Standards (IFRS).

(i) New and amended standards adopted by the Commission

There are no prospective IFRSs or IFRIC interpretations that are effective for the first time for the financial year beginning on or after 1 January 2011 that would be expected to have a material impact on the Commission

(ii) New standards, amendments and interpretations issued but not effective for the financial year beginning 1 January 2011 and not adopted in advance of the effective date.

IFRS 9, 'Financial instruments', addresses the classification, measurement and recognition of financial assets and financial liabilities. IFRS 9 requires financial assets to be classified into two principal measurement categories: 'those measured as at fair value and those measured at amortised cost. The Commission is yet to assess IFRS 9's full impact and intends to adopt IFRS 9 no later than the accounting period beginning on or after 1 January 2013.

IFRS 13, 'Fair value measurement', aims to improve consistency and reduce complexity by providing a precise definition of fair value and a single source of fair value measurement and disclosure requirements for use across IFRSs. The requirements, which are largely aligned between IFRSs and US GAAP, do not extend the use of fair value accounting but provide guidance on how it should be applied where its use is already required or permitted by other standards within IFRSs or US GAAP. The Commission is yet to assess IFRS13's full impact and intends to adopt IFRS 13 no later than the accounting period beginning on or after 1 January 2012.

b) Income

Income comprises grants from various donors and interest received from investments in treasury bills, bank deposits and other income and is recognised as follows;

- Grants are recognised when the organizations' right to receive the funds is established.
- Sale of publications is recognised upon delivery of the materials and customer acceptance.
- Interest income is accrued by reference to time in relation to the principal outstanding and the effective interest rate applicable.

c) Expenditure

Expenditure comprises expenses incurred directly for programme activities.

d) Restricted Fund

Restricted funds comprise unutilized revenue grants for the year under review.

e) Deferred income

Grant receipts for which expenses are to be incurred in the future financial periods are deferred and recognised as income when the related expenses have been incurred.

f) Translation of foreign currencies

Transactions in foreign currencies during the year are converted into Kenya Shillings, at rates ruling at the transaction dates. Assets and liabilities at the balance sheet date which are expressed in foreign currencies are translated into Kenya Shillings at rates ruling at that date. The resulting differences from conversion and translation are dealt with in the income and expenditure account in the year in which they arise.

Notes Cont.

g) Property and equipment

Property and equipment is initially recorded at cost and thereafter stated at historical cost less depreciation. Historical cost comprises expenditure initially incurred to bring the asset to its location and condition ready for its intended use.

Depreciation is calculated using the straight line method to write down the cost of the property to its residual value over its estimated useful life using the following annual rates:

	Rate %
Furniture and fittings	12.5
Prefabs	20
Equipments	20
Motor vehicles	25
Computers	33.3

Fully depreciated assets that are still in use are assigned Kshs 100 per asset for the period that the asset will continue being in use.

The assets residual values and useful lives are reviewed, and adjusted if appropriate, at each reporting date.

An asset's carrying amount is written down immediately to its recoverable amount if the asset's carrying amount is greater than its estimated recoverable amount.

Gains and losses on disposal of property and equipment are determined by comparing the proceeds with the carrying amount and are taken into account in determining operating profit/loss. On disposal of revalued assets, amounts in the revaluation reserve relating to that asset are transferred to retained earnings.

h) Impairment of non-financial assets

Assets that have an indefinite useful life are not subject to amortisation and are tested for impairment annually. Assets that are subject to amortisation are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable.

An impairment loss is recognised for the amount by which the asset's carrying amount exceeds its recoverable amount. The recoverable amount is the higher of an asset's fair value less costs to sell and value in use. For the purposes of assessing impairment, assets are grouped at the lowest levels for which there are separately identifiable cash flows (cash-generating units).

Non-financial assets that suffered an impairment are reviewed for possible reversal of the impairment at each reporting date.

i) Financial instruments

Financial assets

The commission's financial assets which include other receivables, cash and cash equivalents and grant receivables fall into the following category:

Loans and receivables: financial assets with fixed or determinable payments that are not quoted in an active market. Such assets are classified as current assets where maturities are within 12 months of the statement of financial position date. All assets with maturities greater than 12 months after the statement of financial position date are classified as non-current assets. They are initially recognised at fair value and subsequently carried at amortised cost using the effective interest rate method. Changes in the amount are recognised in profit or loss.

Purchases and sales of financial assets are recognised on the trade date i.e. the date on which the commission commits to purchase or sell the asset value plus transaction costs for all financial assets not carried at fair

Notes Cont.

value through profit or loss. Financial assets are derecognised when the rights to receive cash flows from the investments have expired or have been transferred and the commission has transferred substantially all risks and rewards of ownership.

A financial asset is impaired if its carrying amount is greater than its estimated recoverable amount. Impairment of financial assets is recognised in the statement of comprehensive income under administrative expenses when there is objective evidence that the association will not be able to collect all amounts due per the original terms of the contract. Significant financial difficulties of the issuer, probability that the issuer will enter bankruptcy or financial reorganisation, default in payments and a prolonged decline in fair value of the asset are considered indicators that the asset is impaired.

Subsequent recoveries of amounts previously written off are credited to the profit or loss or other comprehensive income in the year in which they occur.

j) Financial liabilities

The commission's financial liabilities which include other payables fall into the following category:

Other financial liabilities: These are initially measured at fair value and subsequently measured at amortised cost, using the effective interest rate method.

All financial liabilities are classified as current liabilities unless the commission has an unconditional right to defer settlement of the liability for at least 12 months after the reporting date.

Financial liabilities are derecognised when, and only when, the commission's obligations are discharged, cancelled or expired.

Financial liabilities are recognised initially at fair value and subsequently measured at amortised cost, using the effective interest rate method.

k) Cash and cash equivalents

For the purposes of the cash flow statement, cash and cash equivalents comprise cash in hand, deposits held at call with banks, and financial assets with maturities of less than 3 months.

l) Capital grants

This represents funds received for purchase of equipment. The grant balance is amortised annually at a rate equivalent to that of depreciating the assets purchased with the grants.

m) KHRC premises fund

This represents funds set aside for purposes of acquiring premises for Kenya Human Rights Commission.

n) Withholding tax

Withholding tax recoverable is not recognised in the financial statement. Interest income is recognised net of withholding taxes.

o) Employee entitlements

The estimated monetary liability for employees' accrued annual leave entitlement at the balance sheet date is recognised as an expense accrual.

p) Retirement benefit obligations

The organisation operates a defined contribution staff retirement benefit scheme for its employees on confirmed employment contracts. The scheme is administered by an insurance company. The organisations' contributions to the defined contribution retirement benefit scheme are charged to the income and expenditure account in the year in which they relate.

Notes Cont.

The organisation and its employees contribute to the National Social Security Fund (NSSF) a statutory defined contribution scheme registered under NSSF Act. The organisations' contributions to the defined contribution scheme are charged to the income and expenditure account in the year to which they relate.

q) Accounting for leases - the commission as lessor

Leases of assets under which a significant portion of the risks and rewards of ownership are effectively retained by the lessor are classified as operating leases. Payments made under operating leases are charged to the income and expenditure over the period of the lease.

r) Comparatives

Where necessary, comparative figures have been adjusted to conform with changes in presentation in the current year.

1. REVENUE GRANT INCOME

	2012 Shs	2011 Shs
NORWEGIAN EMBASSY	65,446,500	15,894,295
SIDA	25,701,980	11,645,152
FORD FOUNDATION	23,952,270	14,900,698
TROCAIRE	10,678,024	13,667,876
CIDA	9,455,372	11,072,252
ERT (DFID)	8,643,917	3,710,465
CHRISTIAN AID	7,483,793	5,944,120
UN-Women	6,730,874	1,153,936
AMKENI Wa KENYA	4,950,659	7,500,000
RHRA	-	183,728
MISEREOR	2,909,805	-
SWISS	2,926,438	679,900
UNVFVT	-	138,288
SPIDER	1,828,639	-
OSIEA	1,400,000	1,121,024
AKIBA UHAKI	850,800	19,200
FINNISH	763,619	10,186,000
DANIDA	-	20,033,870
SIDA Thr' UNDP	-	2,260,629
DAP	69,183	-
UHAI	11,261	810,090
AUSAID	-	7,097,653
RNE	-	10,177,159
SOMO 2	-	242,718
Total Grant Income (Note 9)	173,803,134	138,439,053
Less: Amounts utilised for capital acquisition (Note 9(b))	(2,936,055)	(2,713,948)
	170,867,079	135,725,105

Amounts used in capital acquisition are deferred and recognized as income over the useful life of the related fixed assets.

Notes Cont.

2. OTHER INCOME

	2012 Shs	2011 Shs
Project hosting fees	1,125,280	8,980,047
Foreign exchange gain	2,365,359	657,374
Bank interest	455,343	871,038
Miscellaneous income	265,443	962,925
	4,211,425	11,471,384

3. SURPLUS

The following items have been charged in arriving at surplus for the year:

	2012 Shs	2011 Shs
Staff costs (Note 4)	48,087,530	45,743,618
Directors' remuneration	9,671,790	8,869,751
Auditors remuneration	500,000	450,000
Depreciation on property & equipment (Note 6)	2,843,795	1,970,847

4. STAFF COSTS

	2012 Shs	2011 Shs
Salaries	40,090,246	39,021,174
Medical insurance	2,934,532	2,448,344
Provident fund contributions	4,060,712	3,499,266
Group personal insurance	392,803	268,921
Group Life insurance	257,132	171,460
Leave accrual	-	133,483
Welfare	254,505	155,570
NSSF contributions	97,600	45,400
	48,087,530	45,743,618

5. RESERVES

	2012 Shs	2011 Shs
General fund	21,262,996	21,262,996
KHRC Premises fund	10,375,643	10,375,643
Restricted fund	1,958,452	2,441,693
Total reserves	33,597,091	34,080,332
General fund		
At start of year	21,262,996	19,435,510
Surplus for the year	(1,172,861)	1,827,486
At end of year	20,090,135	21,262,996

Notes Cont.

This fund represents accumulated surpluses from other income other than restricted funds. The reserves are to build up capital base so as to increase the stability of the commission overtime.

	2012 Shs	2011 Shs
Restricted fund		
At start of year	2,441,693	763,605
Transfer to restricted Income	1,958,452	2,441,693
Funds utilised	(2,441,693)	(763,605)
At end of year	1,958,452	2,441,693

Restricted funds comprise unutilized revenue grants for the year under review.

6. PROPERTY AND EQUIPMENT

Year ended 31 March 2012

	Prefabs Shs	Furniture and fittings Shs	Office equipment Shs	Motor vehicles Shs	Computers Shs	Total Shs
Cost						
At 1 April 2011	2,424,716	2,700,182	7,710,795	6,360,600	10,082,613	29,278,906
Additions			772,535	1,020,000	1,994,456	3,786,991
At 31 March 2012	2,424,716	2,700,182	8,483,330	7,380,600	12,077,069	33,065,897
Depreciation						
At 1 April 2011	2,424,716	2,258,903	7,186,601	3,665,600	9,688,567	25,224,387
Charge for the year	-	146,790	380,830	1,425,000	891,175	2,843,795
At 31 March 2012	2,424,716	2,405,693	7,567,431	5,090,600	10,579,742	28,068,182
Net book value	-	294,489	915,899	2,290,000	1,497,327	4,997,715

Year ended 31 March 2011

	Prefabs Shs	Furniture and fittings Shs	Office equipment Shs	Motor vehicles Shs	Computers Shs	Total Shs
Cost						
At 1 April 2010	2,424,716	2,524,929	7,475,170	7,838,925	9,579,543	29,843,283
Additions		175,253	235,625	3,050,000	503,070	3,963,948
Reversal on Disposal		-	(4,528,325)		(4,528,325)	
At 31 March 2011	2,424,716	2,700,182	7,710,795	6,360,600	10,082,613	29,278,906
Depreciation						
At 1 April 2010	2,424,716	2,023,366	6,938,648	7,023,925	9,371,210	27,781,865
Charge for the year	-	235,537	247,953	1,170,000	317,357	1,970,847
Reversal on Disposal			(4,528,325)		(4,528,325)	
At 31 March 2011	2,424,716	2,258,903	7,186,601	3,665,600	9,688,567	25,224,387
Net book value	-	441,279	524,194	2,695,000	394,046	4,054,519

Notes Cont.

7 DEBTORS

Staff advances
Less: provision for impairment

Net staff advances

Other debtors
Prepaid expenses
Interest receivable

Total trade and other receivables

Movement in impairment provisions

At start of year
Additions
At end of year

	2012 Shs	2011 Shs
Staff advances	493,374	546,040
Less: provision for impairment	(256,810)	-
Net staff advances	236,564	546,040
Other debtors	100,000	100,000
Prepaid expenses	50,000	42,000
Interest receivable	442,503	327,740
Total trade and other receivables	829,067	1,015,780
	2012 Shs	2011 Shs
At start of year		
Additions	256,810	-
At end of year	256,810	-

In the opinion of the directors, the carrying amounts of debtors approximate to their fair value. The debtors do not contain impaired assets.

The organisation's credit risk arises primarily from staff advances. The directors are of the opinion that the organisation's exposure is limited because the advances are recovered via the payroll.

The carrying amounts of the organisation's receivables are denominated in Kenya Shillings.

There is no significant concentration of risk.

Individually impaired receivables relate to advances to employees who left the organisation. These have been fully provided for as stated above.

8. CASH AND CASH EQUIVALENTS

For purposes of the statement of cash flows, cash and cash equivalents comprise :-

Bank and cash balances
Fixed deposit
Unaccounted Travel advances

	2012 Shs	2011 Shs
Bank and cash balances	26,657,580	40,906,953
Fixed deposit	29,943,106	45,000,000
Unaccounted Travel advances	1,004,525	2,419,639
	57,605,211	88,326,592

In the opinion of the directors, the organisation's cash and bank balances are held with major Kenyan financial institutions and, insofar as the directors are able to measure any credit risk to these assets, it is deemed to be limited.

The carrying amounts of the company's cash and cash equivalents are denominated in the following currencies:

Notes Cont.

Kenya Shillings
US Dollar
Euro
UK Pound

	2012 Shs	2011 Shs
Kenya Shillings	51,258,216	85,290,238
US Dollar	3,990,340	255,813
Euro	306,776	162,051
UK Pound	2,049,879	2,618,490.00
	57,605,211	88,326,592

Notes Cont.

9.(a) RESTRICTED FUND

Grant income and receipts are analysed as follows:-

Donor	Balance as at 1 April 11		Receipts		Transfer from deferred Income		Reversed Accruals		Grant Receivables		Transfer to deferred Income		Grant Income		Interest Income		Foreign exchange gain		Capital Grants		Expended		Balance as at 31 Mar 12	
	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs
	a	b	c	d	e	f	g=(a+b+c+d+e-f)	h	i	j=(g-h-i)														
NORWEGIAN	-	65,444,724	-	1,776	-	-	65,446,500	-	375,306	-	65,059,933	-	11,261	-	-	-	-	-	-	-	-	-	-	-
SIDA	-	22,800,877	16,538,152	-	-	13,637,049	25,701,980	-	71,995	-	25,799,673	-	1,458	-	-	-	-	-	-	-	-	-	-	-
FORD FOUNDATION	-	-	23,952,270	-	-	-	23,952,270	-	65,259	-	23,948,045	-	-	-	-	-	-	-	-	-	-	-	-	-
TROCAIRE/DCI	1,842,974	5,371,072	-	35,050	3,428,928	-	10,678,024	-	-	-	9,863,640	-	814,384	-	-	-	-	-	-	-	-	-	-	-
CIDA	-	9,455,372	-	-	-	-	9,455,372	-	1,012,172	-	8,086,574	-	356,626	-	-	-	-	-	-	-	-	-	-	-
ERT (DFID)	108,524	1,310,487	-	-	7,224,906	-	8,643,917	-	-	-	8,535,393	-	108,524	-	-	-	-	-	-	-	-	-	-	-
CHRISTIAN AID	478,934	5,066,559	-	-	1,938,300	-	7,483,793	-	-	-	8,791,281	-	672,425	-	-	-	-	-	-	-	-	-	-	-
UNIFEM	-	-	6,040,889	-	689,985	-	6,730,874	-	-	-	6,776,644	-	-	-	-	-	-	-	-	-	-	-	-	-
Amkeni Wa Kenya	-	5,827,500	-	-	-	876,841	4,950,659	-	-	-	4,950,509	-	150	-	-	-	-	-	-	-	-	-	-	-
SWISS	-	504,320	2,422,118	-	-	-	2,926,438	-	-	-	2,953,088	-	-	-	-	-	-	-	-	-	-	-	-	-
MISEREOR	-	3,176,025	-	-	-	266,220	2,909,805	-	-	-	2,922,023	-	1,411	-	-	-	-	-	-	-	-	-	-	-
SPIDER	-	5,792,155	-	-	-	3,963,516	1,828,639	-	-	-	383,724	-	-	-	-	-	-	-	-	-	-	-	-	-
OSIEA	-	470,000	839,528	-	1,400,000	839,528	1,400,000	-	-	-	801,040	-	(7,787)	-	-	-	-	-	-	-	-	-	-	-
AKIBA UHAKI	-	-	380,800	-	-	-	850,800	-	-	-	852,552	-	-	-	-	-	-	-	-	-	-	-	-	-
FINNISH	-	-	-	-	763,619	-	763,619	-	-	-	763,619	-	-	-	-	-	-	-	-	-	-	-	-	-
DANIDA	-	1,961,408	-	-	-	1,892,225	69,183	-	-	-	69,183	-	-	-	-	-	-	-	-	-	-	-	-	-
UHAI	11,261	-	-	-	-	-	11,261	-	-	-	11,261	-	-	-	-	-	-	-	-	-	-	-	-	-
SOMO	-	1,650,000	-	-	-	1,650,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Grand total	2,441,693	128,830,499	50,173,757	36,826	15,445,738	23,125,379	173,803,134	358,078	2,341,431	2,936,055	171,608,136	1,958,452	-	-	-	-	-	-	-	-	-	-	-	-

Notes Cont.

9.(a) RESTRICTED FUND

Grant income and receipts are analysed as follows:-

Donor	Balance as at 1 April 10		Receipts		Transfer From deferred Income		Reversed Accruals		Grant Receivables		Transfer to deferred Income		Grant Income		Capital Grants		Expended		Balance as at 31 March 11				
	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs	Shs			
	a	b	c	d	e	f	g=(a+b+c+d+e-f)	h	i	j=(g-h-i)													
Grand total	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
DANIDA	-	11,442,454	8,426,416	-	165,000	-	20,033,870	-	-	-	20,033,870	-	-	-	-	-	-	-	-	-	-	-	-
NORWEGIAN	-	15,894,295	-	-	-	-	15,894,295	-	-	-	15,894,295	-	-	-	-	-	-	-	-	-	-	-	-
FORD FOUNDATION	-	25,439,152	13,234,171	-	179,645	-	23,952,270	-	-	-	14,900,698	-	-	-	-	-	-	-	-	-	-	-	-
TROCAIRE/DCI	-	7,659,300	-	-	103,776	-	13,667,876	-	-	-	13,667,876	-	-	-	-	-	-	-	-	-	-	-	-
SIDA	-	28,183,304	-	-	-	-	11,645,152	-	-	-	11,645,152	-	-	-	-	-	-	-	-	-	-	-	-
CIDA	507,599	10,564,653	-	-	-	-	11,072,252	-	-	-	11,072,252	-	-	-	-	-	-	-	-	-	-	-	-
FINNISH	-	10,186,000	-	-	-	-	10,186,000	-	-	-	10,186,000	-	-	-	-	-	-	-	-	-	-	-	-
RNE	-	6,953,653	3,223,506	-	-	-	10,177,159	-	-	-	583,225	-	-	-	-	-	-	-	-	-	-	-	-
Amkeni Wa Kenya	-	5,625,000	-	-	1,875,000	-	7,500,000	-	-	-	7,500,000	-	-	-	-	-	-	-	-	-	-	-	-
AUSAID	-	7,097,653	-	-	-	-	7,097,653	-	-	-	7,097,653	-	-	-	-	-	-	-	-	-	-	-	-
CHRISTIAN AID	-	3,315,269	-	-	-	-	5,944,121	-	-	-	5,944,121	-	-	-	-	-	-	-	-	-	-	-	-
ERT (DFID)	-	3,710,465	-	-	-	-	3,710,465	-	-	-	3,710,465	-	-	-	-	-	-	-	-	-	-	-	-
SIDA Thr' UNDP	-	2,260,629	-	-	-	-	2,260,629	-	-	-	2,260,629	-	-	-	-	-	-	-	-	-	-	-	-
UNIFEM	-	7,194,825	-	-	-	-	6,040,889	-	-	-	1,153,936	-	-	-	-	-	-	-	-	-	-	-	-
OSIEA	-	-	1,960,552	-	-	-	839,528	-	-	-	1,121,024	-	-	-	-	-	-	-	-	-	-	-	-
UHAI	-	810,090	-	-	-	-	810,090	-	-	-	810,090	-	-	-	-	-	-	-	-	-	-	-	-
SWISS	-	2,737,200	364,818	-	-	-	2,422,118	-	-	-	679,900	-	-	-	-	-	-	-	-	-	-	-	-
SOMO	117,718	125,000	-	-	-	-	242,718	-	-	-	242,718	-	-	-	-	-	-	-	-	-	-	-	-
RHRA	-	-	183,728	-	-	-	183,728	-	-	-	183,728	-	-	-	-	-	-	-	-	-	-	-	-
UNVFVT	138,288	-	-	-	-	-	138,288	-	-	-	138,288	-	-	-	-	-	-	-	-	-	-	-	-
AKIBA UHAKI	-	400,000	-	-	-	-	380,800	-	-	-	19,200	-	-	-	-	-	-	-	-	-	-	-	-
Grand total	763,605	149,598,941	27,393,191	448,421	10,408,652	50,173,757	138,439,053	2,713,948	133,283,412	2,441,693	171,608,136	1,958,452	-	-	-	-	-	-	-	-	-	-	-

Notes Cont.

9.(b) CAPITAL GRANTS

	2012 Shs	2011 Shs
Cost		
At start of year	35,564,931	32,850,983
Additions	2,936,055	2,713,948
At end of year	38,500,986	35,564,931
Amortisation		
At start of year	32,447,912	30,789,565
Transfer to income	2,318,561	1,658,347
At end of year	34,766,473	32,447,912
	3,734,513	3,117,019

This represents funds received for purchase of equipment. The grant balance is amortised annually at a rate equivalent to that of depreciating the assets purchased with the grants.

10. PAYABLES

	2012 Sh	2011 Sh
Accrued expenses	14,637,437	13,549,207
KHRC projects	3,991,332	2,456,673
Other Creditors	964,840	428,555
	19,593,609	16,434,435

In the opinion of the directors, the carrying amounts of creditors approximate to their fair value.

The maturity analysis of creditors is as follows:

	0 to 1 month
Other accrued expenses	14,637,437
Other Creditors	964,840
KHRC projects	3,991,332
	19,593,609

11. CASH GENERATED FROM OPERATIONS

	2012 Shs	2011 Shs
Surplus for the year	785,591	4,269,179
Adjustment for:		
Depreciation	2,843,795	1,970,847
Foreign Exchange gain	(2,365,359)	(657,374)
Gain on disposal of property and equipment	-	(900,000)
Adjustment of restricted income for prior year	(2,441,693)	(763,605)
Interest income	(1,724,474)	(327,740)
Operating (deficit)/surplus before working capital changes	(2,902,140)	3,591,307

Notes Cont.

12. RELATED PARTY TRANSACTIONS

(i) Key management compensation

	2012 Shs	2011 Shs
Salaries	13,114,217	8,402,063
Post employment benefits	335,883	467,688
	13,450,100	8,869,751

13. COMMITMENTS

Capital commitments

Contractual commitments for the acquisition of property and equipment

	2012 Shs	2011 Shs
Property and equipment	-	2,607,500

Operating lease commitments

The future lease payments due in respect of non-cancellable lease of rental premises are as follows:

	2012 Shs	2011 Shs
Falling due within one year	1,166,304	2,332,609
Falling due between one and five years	-	1,166,304
	1,166,304	3,498,913

14. RISK MANAGEMENT OBJECTIVES AND POLICIES

Financial risk management

The organisations' activities expose it to a variety of financial risks: market risk (including foreign exchange risk). The organisations' overall risk management programme focuses on the unpredictability of financial markets and seeks to minimise potential adverse effects on the organisations' financial performance.

The organisation manages risks by preparing budgets which are approved and monitored by the board of directors.

(a) Market Risk

- Foreign exchange risk

The table below summarises the effect on surplus had the Kenya Shilling weakened by 10% against each currency, with all other variables held constant. If the Kenya shilling strengthened against each currency, the effect would have been the opposite.

Year 2012	US \$	Euro	UK Pound	Total
Effect of surplus/(deficit) increase	399,034	30,678	204,988	634,700

Notes Cont.

15. RISK MANAGEMENT OBJECTIVES AND POLICIES (CONTINUED)

Year 2011

	US \$	Euro	UK Pound	Total
Effect of surplus/(deficit) increase	25,581	16,205	261,849	41,786

Interest rate risk

The commission is exposed to fair value interest rate risk as the interest earned on its fixed deposits is fixed at the time of deposit. At 31 March 2012, if the interest had been 1% point higher with all other variables held constant, surplus for the year would have been Shs.17,244 (2011: Shs 3,277) higher.

16. CAPITAL MANAGEMENT

Internally imposed capital requirements

The Commission's objectives when managing capital are:

- to safeguard the entity's ability to continue as a going concern, so that it can continue to benefit all the stakeholders.
- to maintain a strong asset base to support the development of the Commission activities and programmes.
- to maintain an optimal capital structure to reduce the cost of capital.

The Commission sets the amount of capital in proportion to risk. The Commission manages the capital structure and makes adjustments to it in the light of changes in economic conditions and the risk characteristics of the underlying assets.

17. TAXATION

The organisation has not accrued for tax as the amount is not material. An application for tax exemption has also been made with the Commissioner of Income Tax department.

The Directors are of the opinion that an exemption will be granted.

18. EMPLOYEES

The number of employees at the end of the year was 21 (2011:21)

19. REGISTRATION

The organisation is registered in Kenya under the Non Governmental Organisations Co-ordination Act, 1990.

20. PRESENTATION CURRENCY

The financial statements are presented in Kenya Shillings (Shs).



Dumoya Tuteteo Haki



**KENYA HUMAN RIGHTS
COMMISSION**

Physical address: opposite Valley Arcade, Gitanga Road, Nairobi

Postal address: P.O. Box 41079, Nairobi, 00100 GPO

Telephone: +254-020-3874998/9 3876065/6 • Fax: +254-020-3874997

Email: admin@khrc.or.ke • Website: <http://www.khrc.or.ke>