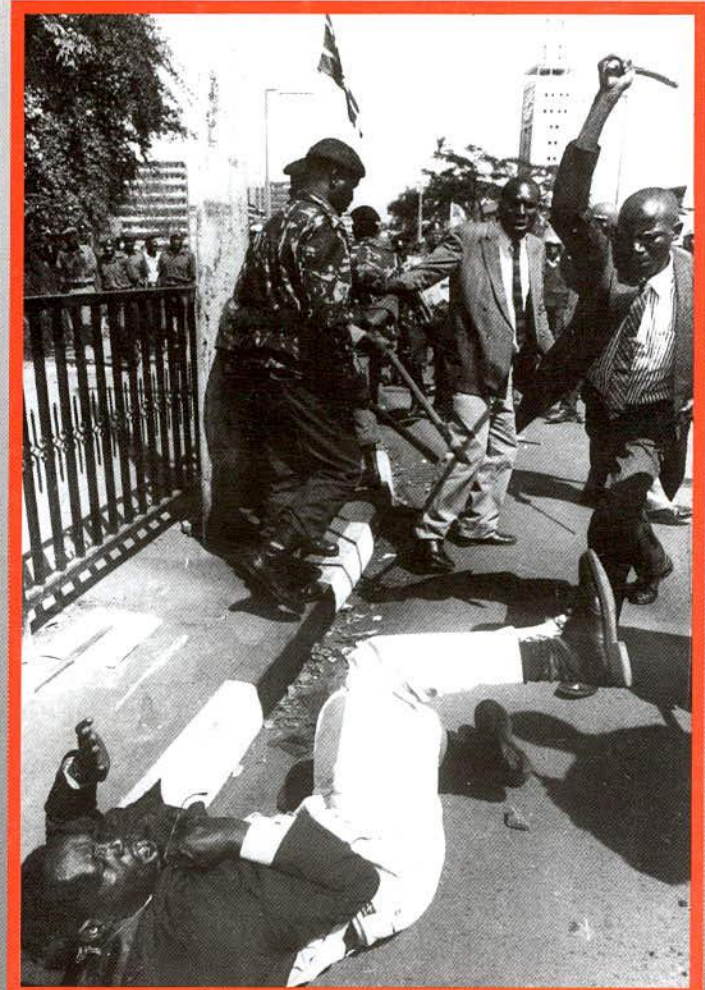


# ANNUAL REPORT 1999



**“Pamoja tutetee Haki”**



**KENYA HUMAN RIGHTS  
COMMISSION**

# Contents

<b>MESSAGE FROM THE EXECUTIVE DIRECTOR</b>	<b>3</b>
<b>PROGRAMS</b>	<b>5</b>
<b>RESEARCH</b>	<b>8</b>
<b>ADVOCACY</b>	<b>8</b>
<b>HUMAN RIGHTS EDUCATION AND OUTREACH</b>	<b>11</b>
<b>OTHER PROGRAM ACTIVITIES</b>	<b>12</b>
<b>CAPACITY BUILDING, AWARDS AND PUBLICATIONS</b>	<b>15</b>
<b>ACCOUNTS</b>	<b>16</b>



## Board of Directors

Makau Mutua, *Chair*  
Njeri Kabeberi, *Vice Chair*  
Maina Kiai  
Helena Kithinji  
Alamin Mazrui  
Mwambi Mwasaru  
Willy Mutunga, *Executive Director*

## Introduction

The Kenya Human Rights Commission (KHRC) is a non-governmental membership organisation founded in 1992. It has an observer status with the African Commission on Human and People's Rights. KHRC is the 1998 winner of the MS International Award, bestowed in Denmark.

## Mission statement

The mission of the Commission is to promote, protect and enhance the enjoyment of the human rights of Kenyans.

It does this through monitoring, research and documentation of human rights violations. It organises activist events and undertakes public awareness campaigns on human rights. KHRC is committed to mainstreaming gender in all its programmes and initiatives.

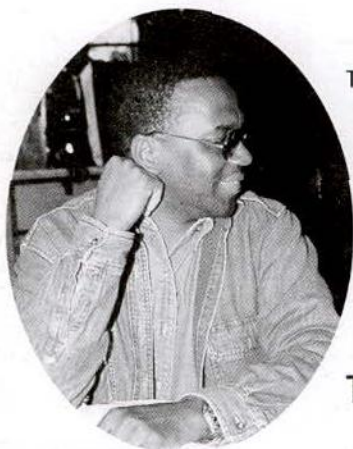
KHRC is committed to the realization of human rights ideals in Kenya by strengthening the human rights movement. KHRC supports social, political, economic, and cultural change aimed at enhancing respect for the rule of law, the development of a society that upholds democratic values, a society aware of its rights and comes to their defense whenever threatened or attacked.

## Strategic Objectives

**KHRC strategic objectives are to:**

1. Reduce human rights violations in Kenya
2. Strengthen the human rights movement in Kenya
3. Hold state, institutions and individuals accountable for human rights violations
4. Raise awareness of human rights in Kenya
5. Place Kenya on a truly democratic trajectory.

# Message from the Executive Director



**Dr. Willy Mutunga**  
*HHRC's Executive Director*

The year 1999 marked the take off stage of the structural and programmatic changes that the Kenya Human Rights Commission (KHRC) sought to institute following recommendations made after the 1998 institutional audit and the Strategic Planning Exercise in December the same year.

Among the major milestones marking this take-off have been the following:

## **The Strategic Plan, 1999-2003**

The review process that began in June 1998 was 'completed' in February 1999 when the strategic plan document was finally compiled and adopted as a blue print for KHRC's activities for the next five years. Among the major changes/improvements included the streamlining of programs from six projects in 1998 to three programs – Monitoring and Research, Advocacy and Human Rights Education and Outreach. Other areas of improvement included the strengthening of the management, governance and administrative procedures. One staff representative was elected to the Board and another to the Management Committee while improved administrative and finance systems were put in place.

The Strategic Plan Report was presented and discussed with a pool of donors for support. This marked the birth of a group of core donors whom the Commission hoped to work with for the period of the Plan, and beyond.

## **Funding of KHRC's Strategic Plan For 1999-2003**

Following a series of very productive meetings between the core donor group and us, in which the concept of core donors and what this meant for KHRC was discussed, we secured funding and support for the Strategic Plan -1999-2003. This core group of donors comprises the Danish International Development Agency (DANIDA), DFID, Finnish Embassy, Ford Foundation, NOVIB, the Royal Netherlands Embassy, Swedish International Development Agency (SIDA), the Swedish NGO Foundation for Human Rights and Trocaire.

Other funding partners who supported the Commission in 1999 are USAID, MS Kenya, Friedrich Ebert Stiftung (FES) and Actionaid.

This support has enabled us to take up on more and long-term activities thus continuing the arduous task of institutionalizing both the Commission and its work.

## **The Gender Mainstreaming Policy**

We are proud that as a part of our strategic objectives, we have developed a gender policy that represents our pursuit towards gender equity in the workplace and in society at large. The policy document titled *Mainstreaming Gender: A Gender Policy for KHRC, 1999* was launched in September.

Two gender debates were held at the Commission in 1999, one on affirmative action, and another on globalization and gender equity. These stimulating debates were instrumental in the making of our gender mainstreaming policy.

*The Strategic Plan, 1999-2003*

*Funding of KHRC's Strategic Plan For 1999-2003*

*The Gender Mainstreaming Policy*

*Our March to the Grassroots*

*Our Focus for 2000*



# Message from the Executive Director

By mainstreaming gender at the Commission, we hope to achieve equal participation for women and men within the Commission and in our outreach program activities. A Gender Action Team (GAT) has been put in place to monitor and ensure the implementation of this Policy. We hope that this Policy will serve as a model and guide to other organizations that have made a strategic decision to mainstream gender in their work.

*The Strategic Plan, 1999-2003*

*Funding of KHRC's Strategic Plan For 1999-2003*

*The Gender Mainstreaming Policy*

*Our March to the Grassroots*

*Our Focus for 2000*

## Our March to the Grassroots

As a membership NGO the criteria for membership sparked off a healthy debate and the Board should approve it in the coming year. Our march to the grassroots has started as we are quickly establishing horizontal relations with CBOs and organisations we have given legal cover.

## Our Focus for 2000

The consolidation of our march to the grassroots will be a major priority for us. We believe we have made the first steps to the creation of a human rights movement in Kenya and what is needed is continued expansion of the constituency and its consolidation. Our work plans for 2000 reflect that. We will continue building on our strengths and achievements, resisting our weakness and displaying our unmitigated commitment to our vision and mission.



*Members of the 5Cs theatre group entertain guests at the launch of the KHRC's gender policy.*

## Programs Overview

The biggest challenge in this area has been the fact that we have been learning and instituting the various changes simultaneously.

To ease the difficulties of transition, a number of all-staff activities were organized during the first half of the year including a training of trainers workshop, a gender sensitization workshop and in-house reflections focusing on different issues of interest to the Commission.

Consequently programs implementation has fared on well in spite of challenges that came with the transition.

## Monitoring and Research Program

Funded by the Danish International Development Agency (DANIDA), the Monitoring and Research Program is perhaps the most visible area in which we have continually demonstrated the highest level of competence. The program produces the information upon which the Advocacy and Education programs of the Commission base their work. It also produces quarterly reports on human rights issues in Kenya, which are highly regarded by both local and international groups and individuals interested in the state of human rights in Kenya.

This year, besides its routine monitoring work, the program established the KHRC Human Rights Violations Database and held two workshops, one on informal repression in Africa, and the other on monitors training. It also began working on the establishment of mechanisms to facilitate collaboration between human rights groups and the media. To wrap up a year's work, a human rights photo exhibition was held in Nairobi.

## The Quarterly Human Rights Report (QHRR)

Formerly known as the Quarterly Repression Report (QRR), the new look Quarterly Human Rights Report (QHRR) not only changed by name but also in content. It now includes a focus on one major human rights issue each quarter and also highlights of achievements/improvements in human rights both in terms of government policy and public activities geared towards defending and claiming rights. The major sources used in compiling the report include newspaper reports, human rights monitors and information from people reporting directly to us. We also receive information from other NGOs and regional human rights groups across the country.

## The KHRC Human Rights Violations Database

We have established a Human Rights Violations Database which will be a source of detailed data on human rights abuses and which can be processed for analysis within zero downtime. The database will be useful in helping us to discern trends and patterns of human rights violations and in effect enable us to make better-informed interventions. It will also help us operationalise an early warning system that may be used to prevent human rights violations before they occur and also serve the wider public that may wish to have such information.

*Monitoring and Research Program*

*The Quarterly Human Rights Report (QHRR)*

*The KHRC Human Rights Violations Database*

*Informal Repression Workshop*

*Monitors Training Workshop*

*The Media Project*

*Human Rights Photo Exhibition*

*Research*

*Advocacy Program*

*Human Rights Outreach and Education Program*

*The Constitutional Reforms Project*

*Internship Program*

*Other Program Activities*

# Programs

## *Monitoring and Research Program*

### *The Quarterly Human Rights Report (QHRR)*

### *The KHRC Human Rights Violations Database*

### *Informal Repression Workshop*

### *Monitors Training Workshop*

### *The Media Project*

### *Human Rights Photo Exhibition*

### *Research*

### *Advocacy Program*

### *Human Rights Outreach and Education Program*

### *The Constitutional Reforms Project*

### *Internship Program*

### *Other Program Activities*

## Informal Repression Workshop

Informal repression refers to state sponsored repression that is carried out through surrogate agents with the aim of disguising the involvement of the state in violation of rights. Such agents might take the shape of civilian groups such as 'Jeshi la Mzee' that engage in blatant rights violations with impunity.

Together with the London-based Article 19, the Durban-based Network of Independent Monitors (NIM) and the Lagos-based Civil Liberties Organization (CLO), we have since 1997 worked together to develop a project that will monitor informal state repression in Africa. The project, formally launched in January 2000, is designed to explore informal repression in Africa and develop mechanisms for effectively monitoring it.

During the project's design phase an intern exchange program between NIM and CLO and KHRC took place. The exchange program's main goal was to facilitate the exchange of ideas and provide the interns with comparative knowledge on informal repression. We hosted an intern, Steve Aluko, from CLO in Nigeria, who was sponsored by Article 19, and CLO reciprocated by hosting a KHRC staff member Eva Kiiru and Saida Ali a member of the human rights network fraternity. NIM also hosted our staff member Brigit Moraa and human rights activist Githuku Ndungu.

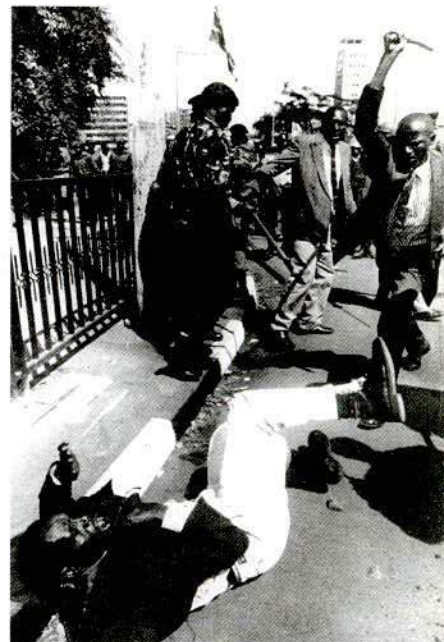
Prior to the launch of the project we facilitated a workshop on informal repression last April in Nairobi. Participants in the well-attended workshop comprised human rights monitors, journalists and NGO workers. Twenty-five participants represented the following organizations; Public Law Institute, East African Standard, Citizen's Coalition for Constitutional Change, Federation of Women Lawyers-Kenya, Nation Media Group, Education Center for Women in Democracy, Pepo La Tumaini Jangwani, International Commission on Jurists-Kenya, Justice and Peace Commission Diocese of Ngong, Release Political Prisoners and the KHRC.

The workshop's main objectives were to present and discuss mechanisms used in executing informal repression and those areas most vulnerable to such repression. A guidebook developed by KHRC, Article 19, NIM and CLO to be used by monitors of informal repression, was assessed and pre-tested following the workshop. Titled *Monitoring State-Sponsored Violence in Africa*, it was formally launched with the project in January 2000.

A follow-up partners meeting to the workshop, comprising donors, Comic Relief and Article 19, was held in October in London to finalize and integrate the recommendations of the April workshop. Njuguna Mutahi of the monitoring team represented us.

## Monitors Training Workshop

As a way of strengthening our human rights monitoring network, a three-day workshop on monitors training, facilitated by our Monitoring and Research team, was held in August at the Kolping Vocational Training Center in Kilimambogo. The workshop focused on the development of skills for human rights monitoring and documentation.



**Rev. Timothy Njoya under attack from 'Jeshi la Mzee' members as police officers watch**

# Programs

It brought together participants from human rights groups, religious groups and development associations from various regions in the country including Pepo La Tumaini Jangwani, Justice and Peace Archdiocese of Nyeri, Catholic Diocese-Lodwar, Wings of Hope, Igonga Players, CJPC -Kitale Catholic Diocese, CJPC, Methodist Church of Kenya, Kisumu Green Town Environmental Initiative, Ugunja Community Resource Center, Kandaria Community Center for Development and Information, Anyuola Cultural Center, CJPC-Dioecese of Meru, Ukambani Human Rights and Democracy, Tom Mboya Memorial Health Center, The Great Evangelical Crusades in Africa, Justice and Peace Mwingi, Tricot Organization-Kenya, Pastoralists Peace and Development Initiative, Wajir South Development Association and Relief and Development Self-Help Group.

The overall goal of the workshop was to strengthen the human rights network in Kenya through the following objectives:

- Increasing the monitors awareness of human rights
- Improving participants monitoring skills in order to standardize reporting formats
- Pre-testing and approving the *Monitor's Training Manual* developed by the Monitoring and Research team of the Commission.

Enthusiastic participation by all parties involved made the workshop a success and a vital step forward for the human rights movement in Kenya.

## The Media Project

In recognition of the central role played by the media as a critical source of information we have been working at engaging media practitioners to interest them in improving human rights coverage.

At the beginning of the year, we conducted a needs assessment to determine the causes of irregular and ineffective reporting of human rights issues. The needs assessment exercise was carried out through face-to-face interviews, questionnaires and breakfast meetings with senior editors from all sections of the media co-organized with the African Women and Child Feature Service (AWC).

A follow-up meeting to the needs assessment exercise was held at The Stanley Hotel, Nairobi in March 2000. The Nation Media Group, Development Through Media (DTM), Inter Press Service (IPS), African Women and Child (AWC) Feature Services, People Daily and Central Africa News Agency (CANA), East African Standard, The East African and Rights Features Service attended the meeting.

Out of these consultative forums the media recommended that the Commission institute a regular mechanism of providing feedback on their performance on human rights coverage and also to be providing well packaged, media friendly human rights information to facilitated improved coverage. This will continue into the following year.

## Human Rights Photo Exhibition

As part of our awareness creation effort, the Monitoring and Research team held a photo exhibition at Kibera, Nairobi in November. The photographs displayed are part of our photograph archive which covers a wide range of human rights issues in Kenya and have proved useful in igniting discussions on the role of individuals and the larger society in preventing the proliferation of human rights violations.

*Monitoring and Research Program*

*The Quarterly Human Rights Report (QHRR)*

*The KHRC Human Rights Violations Database*

*Informal Repression Workshop*

*Monitors Training Workshop*

*The Media Project*

*Human Rights Photo Exhibition*

*Research*

*Advocacy Program*

*Human Rights Outreach and Education Program*

*The Constitutional Reforms Project*

*Internship Program*

*Other Program Activities*



# Research, Advocacy Program

## Research

This project bears the remit of researching on topical human rights issues and issuing occasional reports on such issues.

## Advocacy Program

Starting April, the team embarked on a research focusing on the Mwea rice farmers with the aim of identifying the human rights dimensions to the struggle for economic independence which the farmers were waging against the state body National Irrigation Board (NIB). This research also provided the Commission an entry point into looking at socio-economic rights.

## Other Activities in Advocacy

The research culminated into a report ***“Dying to be Free: The Struggle for Rights in Mwea*** which was released in March 2000.

## International Advocacy

Another research on the state of human rights in the districts of Moyale and Marsabit was undertaken in the second half of the year. The two districts have largely been neglected by the government in terms of soft and hard infrastructure. Their proximity to borders of Somalia and Ethiopia have often exposed them to armed incursions that have turned them into havens for human rights violations. A forthcoming report called ***“Forgotten People Revisited”*** will be released soon.

The research was a follow-up of another that KHRC had conducted in 1997 and compiled a report titled ***“The Forgotten People”***.

Towards the end of the year, another research focusing on police brutality in another similarly neglected district of Garissa was initiated. A video documentary on the same is still under development.

## Advocacy Program

The Advocacy program has continued to keep in public arena some of the major human rights issues that we have chosen to focus on. Among the key ones this year have been land related which have continuously provided us with an effective entry point into addressing social and economic rights issues.

### Displacement of Residents of Makindu Slums

The Advocacy team and the Catholic Diocese of Machakos organized a well publicized media event to expose the plight of these residents with the objective of pushing the government resettle them. The Makindu people have since been resettled in the Kiboko Settlement Scheme.

### The Ogiek Community Land Case

The Ogiek community, a forest-dwelling people, was threatened with eviction from the Tinet forest in May. The Commission together members of the Ogiek community and the Catholic Justice and Peace Commission of Nakuru have so far managed to restrain the eviction through litigation. Since then the case has been heard by the High Court and is currently awaiting judgment at the Court of Appeal.

The team has been involved in making other interventions in similar land grabbing/eviction cases including the Katulembo squatters' case in Machakos, East African Tanning and Export Company (EATEC) squatters' case, the grabbing of Kamukunji Park in Kitale and the Kenya National Theatre vs. Norfolk Hotel land case.

**Members of the Ogiek Community outside the Nairobi Law Courts at the start of their Land Rights case.**





# Research, Advocacy Program

## Del Monte Kenya Campaign

As part of strengthening our economic rights advocacy, we have been involved in an international campaign against the deplorable working and living conditions workers are subjected to at Del Monte Kenya Limited's pineapple plantation in Thika. The company employs two thousand factory workers and between four and five thousand farm workers and two thousand factory workers. As a first step towards publicizing the issues at stake, we held a joint press conference with the Labour Caucus and the Labour Insight Center at Chester House in Nairobi on November 22, 1999. Among the issues focused on were that

- Seasonal workers are not eligible for retirement benefits
- Del Monte does not abide to its obligations as far as salaries are concerned
- Workers are not equipped with protective clothing/equipment to ensure safe handling of poisonous chemicals

Though the Del Monte's management invited the press and us to visit their plantation to prove that our allegations were misplaced we were denied entry into their facilities when we showed up. This campaign is still going on to get the Management to address the plight of workers, and will be one of the key activities for 2000.

## Community Policing Project

This project was borne out of realization that as insecurity grew the environment in which human rights could be violated grew in similar proportion. Such violations ranged from increased incidents of mob violence, police swoops, increased cases of extra-judicial executions and general lawlessness. It became apparent that involving people in dealing with security issues in their communities would support an environment in which human rights could be better respected hence the birth of the community policing project.

To pilot the project two sites – Kangemi and Korogocho which are low-income areas of residence in Nairobi were selected.

Through the support of Ford Foundation, we brought in resource persons from VERA Institute of Justice New York, and two senior police officers from Vera South Africa, in November, to discuss the mechanisms of establishing community policing projects with our partner communities and other stakeholders. During their visit they met with the residents of Kangemi and Korogocho, members of parliament, community-based organizations and NGOs. They also met with the Ford Foundation Human Rights Program Officer Dr. Joseph Gitari, the Director of Operations Commissioner Otieno Osur and the Police Spokesperson Peter Kimanthi.

IEC materials to popularize the concept of Community Policing nationally including a TV program are currently underway and will be a key area of focus in the coming year.

## Other Activities in Advocacy

### Rapid Response Team

This team was initiated for the purposes of responding to urgent actions and alerts. It consists of a team of prominent Kenyans and is aimed at placing cases of human rights violations which require urgent intervention in the limelight on short notice.

*Research*

*Advocacy Program*

*Other Activities in  
Advocacy*

*International Advocacy*

# Research, Advocacy Program

*Research*

*Advocacy Program*

*Other Activities in  
Advocacy*

*International Advocacy*

## Freedom of Expression and the rule of law – the case of Tony Gachoka

As a safeguard to achievements made in this area, KHRC joined others to advocate for the release of Tony Gachoka the editor of the *Weekly Post on Sunday*, who was jailed for six months and fined 1 million shillings for contempt of court. The Court of Appeal judges contended that Gachoka was in contempt of court for publishing a story in the *Weekly Post on Sunday* that criticized their (judges) handling of the infamous Goldenberg case. Of great concern, was the fact that of the three judges presiding at his trial were among those adversely mentioned in the story. To add to that, Gachoka was not allowed to call any witnesses to his defence. The judges, however, permitted him to submit his defence through writing. This ruling, in effect, killed his defence, a basic human right also protected by the Constitution of Kenya.

KHRC joined others to organize a protest group known as “Friends of Gachoka (FOG)” which comprised of Gachoka’s friends and religious groups. A series of activities including an inter-denominational service, a reflection evening and petition signing for his release were held. Gachoka was released before completing his prison term. There is no definitive evidence however, that suggests Gachoka was released because of FOG’s protest activities.

## International Advocacy

### African Commission on People and Human Rights

A representative of the Advocacy team attended the 26<sup>th</sup> Session of the African Commission on People and Human Rights in Kigali. The session focused on human rights education in the Great Lakes, with participants drawn from Uganda, Tanzania, Rwanda, Burundi and Kenya. The main topic of discussion was the importance of strengthening the relationship between NGOs and governments.

### The Visit by the UN Rapporteur on Torture

The UN Special Rapporteur on Torture, Sir Nigel Rodley visited the country in September and we submitted report on the various cases of torture that we had so far documented. KHRC also facilitated a meeting between him and survivors of torture with People Against Torture (PAT) and International Medico-Legal Unit (IMLU).

### Focus on Prisons

In December we participated in a workshop on **Health In Prisons** facilitated by Penal Reform International, Kampala. At the workshop, health conditions in different prisons throughout Africa were presented and discussed with a view to improving them. It was agreed that NGOs needed to provide greater input in efforts towards improving health conditions in African prisons and that strategies to involve donors in these efforts would need to be drawn.

# Human Rights Education and Outreach Program and Other Program Activities

## Human Rights Education and Outreach Program

The Human Rights and Outreach Education Program main objectives are to raise human rights awareness through training and developing human rights IEC materials as a way of strengthening the human rights movement in Kenya. Its main focus this year was to identify human rights information gaps in selected areas with a view to developing Information, Education and Communication (IEC) materials and prioritizing areas where we should form human rights communities.

## The Constitutional Reforms Project

The aim of this project was to prepare communities inhabiting the marginalised districts of Isiolo, Marsabit and Moyale in North Eastern Province for meaningful participation in the constitutional reforms process. The project strategy was to train community-based human rights activists in community mobilization and organization skills to engage their communities in debate in readiness for a presentation of community memoranda to the then anticipated Constitutional Review Commission. In implementing the project, the following activities were conducted.

### (i) Education and training needs assessment

An exercise to identify information and knowledge gaps was conducted in preparation for designing appropriate educational materials and training program. Thematic areas for the education work of the project were identified.

### (ii) IEC materials development activities

These activities were held to develop a variety of human rights information, education and communication materials. The data collected during the needs assessment was used to develop relevant messages that were communicated through posters and stickers. Three different posters and four different stickers have been produced and disseminated in different parts of the country.

### (iii) Training of human rights activists

We conducted six workshops on Human Rights and Constitutional Reform Education from the 11-21 of October in the districts of Isiolo, Marsabit, and Moyale in Northern Kenya. The participants, most of whom were members of CBOs in the area, demonstrated a high level of enthusiasm and participation during the workshops. Following the workshops, participants drew action plans for their communities. To carry out these actions plans new human rights activists groups were formed.

The workshop in introduced and explored the following:

- Skills and knowledge necessary for participatory training
- Gender issues
- Human rights and Constitutional issues
- Skills necessary for community mobilization, organization and advocacy

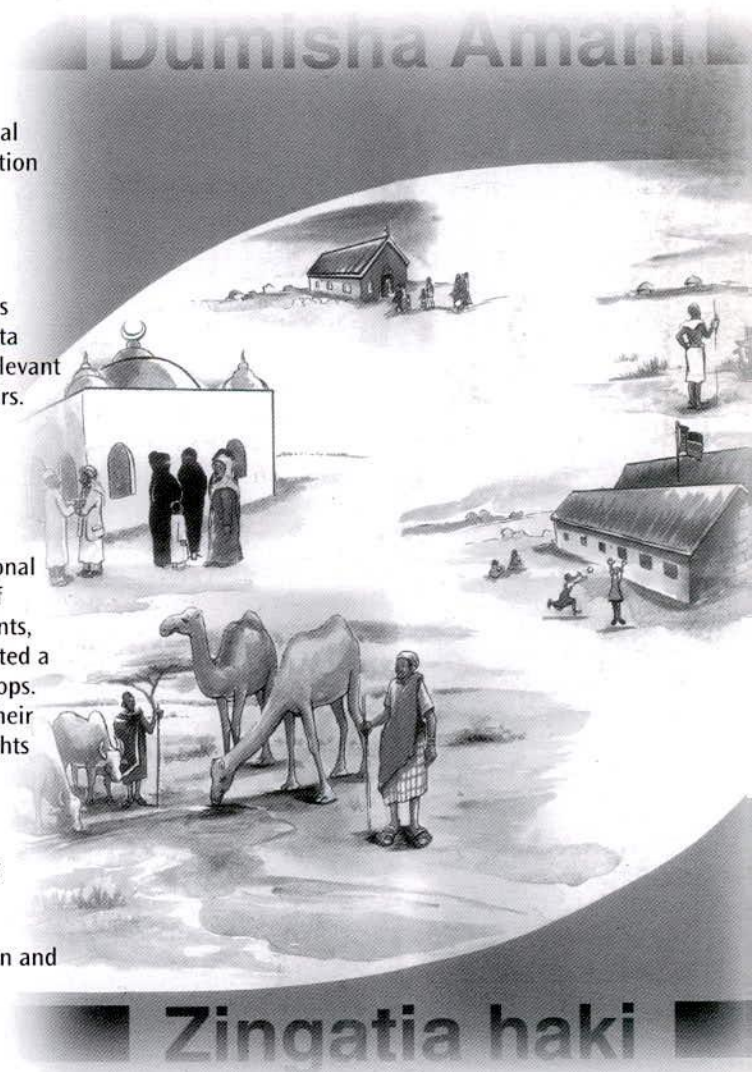
The project will be evaluated late next year to determine its effectiveness in meeting its objectives.

*Human Rights Education and Outreach Program*

*The Constitutional Reforms Project*

*Internship Program 1999*

*Other Program Activities*



# Human Rights Education and Outreach Program and Other Program Activities

*Human Rights Education  
and Outreach Program*

*The Constitutional  
Reforms Project*

*Internship Program 1999*

*Other Program Activities*

## Internship Program 1999

The internship program is dedicated to providing individuals with knowledge and skills to enhance their understanding of human rights issues. Interns are hosted for three months and may be attached to any of our Programs all of which offer them opportunities to contribute to the work of the Commission on a daily basis.

The Commission in 1999 hosted the following interns:

- *Mikael Lassen* from Denmark
- *Patrick Okumu* worked on the concept of mob violence.
- *Mutuma Nkanata*, a teacher at Kathera Girls High School in Meru, assisted with taking statements from victims of human rights violations, facilitation of sensitization session in Kirmwe Kirmwe, Machakos and fact finding mission on torture in Maua.
- *Mary Wachira* from The School of Professional Studies, Nairobi interned as administrative assistant.
- *Jessie Forsyth* from Canada worked on the Advocacy, monitoring and research programs in writing and organizational capacity. She assisted in organizing the informal repression workshop, wrote a number of articles for the People Newspaper, compiled statistics and wrote editorials for the Jan-Mar Quarterly report. She also co-organized the Economics of Survival symposium that was held on June 6, 1999.
- *Gabriel Collet* from the University of California, Santa Cruz was attached to the Human Rights Education and Outreach Program and helped work on the IEC materials that the Program was developing particularly the training of trainers manual.
- *Maria Blakenstiener* from the International Development Studies, Roskilde University Center-Denmark was also attached to the Human Rights and Education program.

## Other Program Activities

### Human Rights Clinics

One human rights clinic was held at Freedom Corner, Uhuru Park. The idea behind human rights clinics is to facilitate informal open-air sessions where popular education methods are applied to sensitize the public about human rights. Poems, theatrical skits and songs were used to initiate discussion on human rights issues affecting Kenyans.

### Outreach/Networking Activities

On the invitation of a local MS-Kenya Development worker in Yatta District, two-day training workshops on Human Rights and Responsibilities were conducted in Yatta and Machakos.

### The CRE-CO Initiative

The Human Rights Education Program represented the Commission in the Constitution and Reform Education Consortium (CRE-CO) activities. The Commission is a member of this consortium and is part of the commitment to progressive mass civic education for constitutional reform in Kenya. The Commission was appointed as the conveners of the Materials Development Committee of the consortium.

# Other Program Activities

## **Elimu Ni Yetu Coalition**

We were instrumental in the founding of this coalition late last year. The aim of the Coalition is to lobby for the attainment for universal education in Kenya. A key issue for us in the Coalition is the pursuit of the realization of education as a fundamental right.

## **The Freedom House Initiative**

As a member of the Legal and Human Rights NGOs, KHRC has been involved in discussions on this initiative through collaboration with the Norwegian Human Rights Foundation (NHRF). The Initiative proposes the development of a building to be shared by members of the human rights network in Kenya. The proposal has already been presented to donors for consideration. If adopted it will be the first of its kind in Africa. At present freedom houses have only been established in Eastern Europe and Norway.

The proposed Freedom House will contain a legal aid center, a resource center, conference and training facilities, an auditorium and even a freedom house shop. If realized, all parties will benefit in terms of sharing costs associated with renting office space. More importantly the human rights network will be able to consolidate its activities, enhance efficiency and develop institutional channels for interaction with its constituents. Sharing common resources will also create an environment for greater cooperation among the participating organizations.

## **Litigation Fund For Victims of Torture**

The Commission, in conjunction with People Against Torture (PAT) and Independent Medico-Legal Unit (IMLU), has established the Litigation Fund for Victims of Torture. The Royal Netherlands Embassy, Danish International Development Agency (DANIDA), and DFID support the fund. The Commission hosts the Fund and offers the day-to-day administrative support.

## **Participation In Local And International Human Rights Activities**

Our staff participated in local and international activities aimed at promoting human rights.

In February and August the Executive Director attended the Board of Trustees meeting of MWENGO in his capacity as Vice-Chair of the board. In March, June and October he also attended board meetings of the International Center for Human Rights and Democratic Development, in which he is the director for Africa. He also became a member of the 12 Member Expert Advisory Steering Committee on Constitutional Challenges and Conflict Resolution in Africa whose proposed patrons are President Thabo Mbeki of South Africa and President Olusegun Obasanjo of Nigeria.

On the academic front, Dr. Mutunga and Alamin Mazrui, a member of the Commission's board, presented a paper in July at a conference in the University of Illinois at Urbana Champagne which expressed the Commission's vision and its intended activities in the national, regional, continental and international human rights movement.

On February 10, 1999 Dr. Mutunga launched his book, *Constitution-Making from the Middle: Civil Society and Transition Politics in Kenya, 1992-1997*. Besides this publication he has constantly written with Mugambi Kiai, a programs officer at the Commission, on human rights and constitutional issues in their column in the Sunday Nation.

Dr. Mutunga was also involved in drafting a chapter on constitutional issues for the Association of Local Authorities of Kenya (Algak) as their proposal for an autonomous local government system in Kenya.

*Human Rights Clinics*

*Outreach/Networking  
Activities*

*The CRE-CO Initiative*

*Elimu Ni Yetu Coalition*

*The Freedom House  
Initiative*

*Litigation Fund For  
Victims of Torture*

*Participation In Local And  
International Human  
Rights Activities*

*Guests to the Commission  
and In-house Meetings*

# Other Program Activities

## *Human Rights Clinics*

## *Outreach/Networking Activities*

## *The CRE-CO Initiative*

## *Elimu Ni Yetu Coalition*

## *The Freedom House Initiative*

## *Litigation Fund For Victims of Torture*

## *Participation In Local And International Human Rights Activities*

## *Guests to the Commission and In-house Meetings*

Mutuma Ruteere, head of KHRC's research team attended a conference on Social and Economic Rights in Stockholm, Sweden, organized by the Swedish NGO Foundation (SNF). He also attended another conference in MS training Center in Arusha and presented a paper entitled *Communication in Human Rights Advocacy*.

Dr. Mutunga traveled to Zimbabwe as part of a group of African experts on a Ford Foundation/CDD consultancy monitoring the constitutional process in Zimbabwe. They attended the launch of the draft constitution that was rejected in a referendum earlier this year (2000).

Odenda Lumumba attended a conference titled "Sub-regional Reflection Forum on NGO Action on Land in East and Southern Africa". The conference held in Arusha between the 29 November-1 December was arranged by MWENGO and hosted by MS-TCDC. 38 participants from all over East and Southern Africa attended.

James Nduko attended a conference on land issues in South Africa in June while Wambui Kimathi attended one in Ghana on Litigating human rights and another in Washington DC on Jubilee 2000 campaign in September.

We also played an important role in keeping the Human Rights and Legal NGOs Network moving through the participation in its various meetings.

## **Guests to the Commission and In-house Meetings**

In July, Mwambi Mwasaru a member of the KHRC Board led an in-house reflection on "integrated human rights approach". This began a series of other reflections that provided direction to our programs during the Strategic Review in December.

The chair of KHRC, Makau Wa Mutua, visited KHRC on October 12, 1999. He spoke to us on the importance of building a sustainable organization, dependent on local support instead of foreign donor support. Mutua emphasized the need for human rights advocates to have trust in the people whom he said are actually the only ones who can change the situation of human rights violations. In this process he sees human rights workers as missionaries. Professor Makau teaches at the SUNY Buffalo Law School and is a director of the Human Rights Center in Buffalo.

US Secretary of State Madeleine Albright and Assistant Secretary of State in the Bureau of Democracy, Human Rights and Labor, Harold Hongju Koh, were in Kenya in October for an official state visit. Mr. Koh visited the Commission offices while Wambui Kimathi, on behalf of the Executive Director joined a group of other civil society actors in a meeting with Secretary Albright.

**Miloon Kothari - the convener of Habitat International and Land Rights Committee and the joint convener of International NGO Committee on Human Rights in Trade & Investment.**



In November, Miloon Kothari, a member of the Habitat International Coalition at the United Nations in Geneva while on an official visit to the country was invited to the Commission to speak on the subject of globalization and human rights. He highlighted the limitations and human rights opportunities provided by globalization which we should take advantage of.

# Capacity Building, Awards and Publications

## General Capacity Building

We held five in-house meetings in 1999 aimed at strengthening our organizational capacity and our capacity to carry out human rights work. The meetings also acquainted the staff with emerging issues in human rights. Below is a brief description of each of the five meetings.

The first meeting, facilitated by Wambui Kimathi and Jane Karanja, discussed the concept of teamwork. It explored the ingredients necessary for successful team building. The second meeting, facilitated by James Nduko, discussed globalization and the challenges and prospects it presented for human rights. The third meeting, facilitated by Pamela Colette, discussed integrated approaches to training while another facilitated by Mutuma Ruteere, discussed the challenges of differentiating human rights violations from cases of ordinary crime.

## Staff Development

*Mutuma Ruteere*, Program Officer, Research successfully completed a one month-long certificate course in July on international human rights monitoring and education at Hamline University, Minnesota.

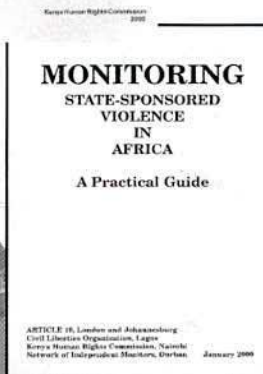
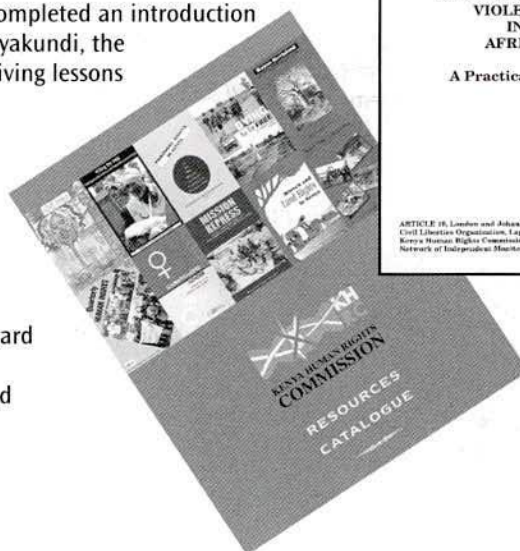
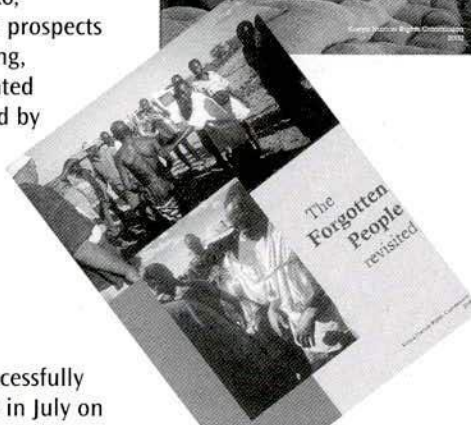
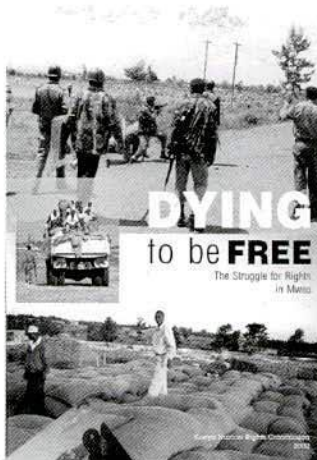
*Brigid Moraa*, an Assistant Program Officer in the Human Rights Outreach and Education Program, successfully completed a six months postgraduate Certificate course in qualitative and quantitative research methods at the University of Nairobi.

*Lumumba Odenda*, a Program Officer in the Advocacy Program, received a diploma after successfully completing a training course in Advanced Human Rights and Humanitarian Law at Lund University at Raoul Wallenberg Institute.

*Rephar Anindo*, an Office Assistant completed an introduction to computers course while Daniel Nyakundi, the Caretaker successfully completed driving lessons with the Automobile Association.

## Awards

In April 1999, Dr. Willy Mutunga traveled to Denmark to receive on behalf of the Commission an MS Award of K15, 000 in recognition of the Commission's work in promoting and protecting human rights in Kenya.



## KHRC's Latest Publications

*Dying to be Free. The Struggle for Rights in Mwea*—Perhaps the most important report produced last year, this report describes the struggle of rice farmers in Mwea Rice Irrigation Scheme in Kirinyaga District, Central Province to free themselves from the planned economic deprivation they have suffered for the last 42 years orchestrated by the Kenya government, who control and manage the rich scheme and their efforts to realize their economic rights.

*Forgotten People Revisited-a* Follow-up report to *Forgotten People*-a report on the human rights situation in Garissa, Moyale and Marsabit districts, Kenya.

*State and Land: Case Studies on Corruption and Mismanagement*

Garissa Documentary - Documents incidences of human rights violations in Garissa district, Kenya.

*Gender policy -* monitoring state-sponsored violence in Africa.

*A KHRC publications catalogue*

KHRC now has a newly reconstructed website. The current website address: [www.hri.ca/partners](http://www.hri.ca/partners) will soon be providing a link to the new website.

# Accounts - Auditors' Report



■ Certified Public Accountants  
Alico House  
Mamlaka Road  
P.O. Box 44286  
Nairobi, Kenya

■ Phone: + 254 2 715300  
Fax: + 254 2 716271  
E-mail: eyoung@nbnet.co.ke

## REPORT OF THE INDEPENDENT AUDITORS TO THE MEMBERS OF KENYA HUMAN RIGHTS COMMISSION

We have audited the accounts set out on pages 3 to 10 which have been prepared on the basis of accounting policies set out on page 6. We obtained all the information and explanations which we considered necessary for our audit.

### RESPECTIVE RESPONSIBILITIES OF THE DIRECTORS AND THE INDEPENDENT AUDITORS

The directors are responsible for the preparation of accounts which give a true and fair view of the state of affairs of the commission and of its operating results. Our responsibility is to express an independent opinion on the accounts based on our audit and to report our opinion to you.

### BASIS OF OPINION

We conducted our audit in accordance with International Standards on Auditing. We planned and performed our audit so as to obtain reasonable assurance that the accounts are free from material misstatement. An audit includes examining, on a test basis, evidence relevant to amounts and disclosures in the accounts. It also includes and assessment of significant estimates and judgments made by the directors in preparation of the accounts and whether the accounting policies are appropriate, consistently applied and adequately disclosed.

### OPINION

In our opinion, proper books of account have been kept and the accounts, which are in agreement therewith, give a true and fair view of the state of financial affairs of the commission at 31 March 2000 and of the results of its operations and cash flows for the period then ended and comply with International accounting Standards.

*Ernst & Young*

Nairobi

30<sup>th</sup> August.....2000



# Accounts - Balance Sheet

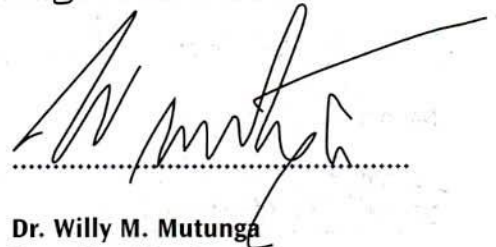
**KENYA HUMAN RIGHTS COMMISSION  
BALANCE SHEET  
AS AT 31 MARCH 2000**

	Note	2000 Kshs	1998 Kshs
<b>Current Assets</b>			
Bank and cash balances		18,667,715	2,771,822
Fixed deposits	2	-	6,255,198
Sundry debtors	3	848,957	1,420,116
		<u>19,516,672</u>	<u>10,447,136</u>
<b>Current Liabilities</b>			
Sundry creditors	4	3,299,868	4,995,705
		<u>16,216,804</u>	<u>5,451,431</u>
<b>Net Current Assets</b>			
		<u>16,216,804</u>	<u>5,451,431</u>
<b>Financed by:</b>			
General Fund	5	5,722,100	6,753,001
Donor Funding Accounts	5	10,494,704	(1,301,570)
		<u>16,216,804</u>	<u>5,451,431</u>

These accounts were approved by the Board of Directors on 30 August 2000 and signed on its behalf by:-



Prof. Makau Wa Mutua  
Chairman of the Board of Directors



Dr. Willy M. Mutunga  
Executive Director

# Accounts - Fund Account

**KENYA HUMAN RIGHTS COMMISSION  
FUND ACCOUNT  
FOR THE 15 MONTHS ENDED 31 MARCH 2000**

	<u>Note</u>	<u>2000</u> <u>15 months</u> Kshs	<u>1998</u> <u>12 months</u> Kshs
<b>Income</b>			
Grants	6	44,263,654	14,568,978
Fixed Deposit Interest	7	41,376	1,144,164
Bank Interest		67,905	35,952
Sale of Publications		89,841	62,183
Consultancy fees		54,721	-
Other		587,196	-
		<u>45,104,693</u>	<u>15,811,277</u>
<b>Expenditure</b>			
Data Collection/needs assessment		530,191	-
Information, education & communication materials		946,758	-
Community based training		672,595	-
Community based theatre		525,200	-
Campaigns		2,112,279	2,827,418
Quarterly human rights & occasional reports		1,623,927	1,361,971
Urgent actions/rapid response network		1,425,385	-
Internship		533,794	-
Habeas corpus		76,000	81,258
Organisational & staff development		2,196,487	730,856
Public relations		180,034	-
Staff costs	8	16,394,168	10,914,345
Administration costs		5,505,476	4,815,117
Capital costs		2,851,278	-
Bad debts written off		-	1,003,947
Reversed Provisions		<u>(1,234,252)</u>	<u>(672,805)</u>
<b>Total Expenditure</b>		<u>34,339,320</u>	<u>21,062,107</u>
<b>Surplus/(deficit) for the Period</b>	9	<u>10,765,373</u>	<u>(5,250,830)</u>
<b>The Surplus/(Deficit) for the period is made up of:-</b>			
Donor Funding Accounts		11,796,274	(4,761,291)
General Fund		<u>(1,030,901)</u>	<u>(489,539)</u>
		<u>10,765,373</u>	<u>(5,250,830)</u>

# Accounts - Cash Flow Statement

**KENYA HUMAN RIGHTS COMMISSION  
CASH FLOW STATEMENT  
FOR THE 15 MONTHS ENDED 31 MARCH 2000**

	2000 15 months Kshs	1998 12 months Kshs
Cash flow from operating activities surplus/(deficits)	10,765,373	(5,250,830)
Adjustment for:-		
Interest on fixed deposits	(41,376)	(1,144,164)
Transfer of surplus on 1997 election project to general reserve:-		
Project vehicle	-	712,500
Other assets	-	319,948
Operating surplus/(deficit) before working capital changes	10,723,997	(5,362,546)
Sundry debtors	571,159	(272,673)
Sundry creditors	(1,695,837)	895,241
Net cash flow from operating activities	9,599,319	(4,739,978)
Cash flow from investing activities		
Interest received from fixed deposits	41,376	1,144,164
Fixed deposits recalled	6,255,198	1,008,975
Net cash flow investing activities	6,296,574	2,153,139
Net increase/(decrease) in cash equivalents	15,895,893	(2,586,839)
Cash and cash equivalents at the beginning of the period	2,771,822	5,358,661
Cash and cash equivalents at the end of the period	18,667,715	2,771,822

# Accounts - Notes

## KENYA HUMAN RIGHTS COMMISSION NOTES TO THE ACCOUNTS FOR THE 15 MONTHS ENDED 31 MARCH 2000

### 1. ACCOUNTING POLICIES

a) Accounting convention

The accounts are prepared under the historical cost convention.

b) Income / Funding

Income / funding comprises grants from various donors and interest received from bank deposits and other income. Income received is recognised as income in the period received.

c) Expenditure

Expenditure comprises expenses incurred directly for programme activities. These are recognised when payments are made. Appropriate accruals are made for expenditure incurred and not paid for at the year-end and for prepaid expenses.

d) Fixed assets

Fixed assets purchased using donor funds are expensed in the year of purchase.

e) Employee benefits

The commission operates a defined contribution pension scheme for its employees. Contributions made to the scheme are charged in the income and expenditure account in the year of contribution.

### 2. FIXED DEPOSITS

The fixed were held with Commercial Bank of Africa Limited.

### 3. DEBTORS

The debtors balances are made up of the following:-

	2000 KShs	1998 KShs
Citizens Coalition for Constitutional Change	515,462	515,462
Dr. Ling Kituyi	-	21,000
John Munuve	115,000	120,000
USAID-Election 1997	-	1,399,116
Staff advances	499,409	-
Unicover Insurance Brokers	86,824	-
Mediplus Services Limited	262,724	-
Less: Provision for doubtful debts	<u>(630,462)</u>	<u>(635,462)</u>
	<u>848,957</u>	<u>1,420,116</u>

# Accounts - Notes

## KENYA HUMAN RIGHTS COMMISSION NOTES TO THE ACCOUNTS (Continued) FOR THE 15 MONTHS ENDED 31 MARCH 2000

### 4. CREDITORS

Creditors balances are made up of the following:-

	2000 KShs	1998 KShs
Filomeno Raufus De Costa	300,000	-
Printing reports	539,310	432,041
Urgent actions	40,080	-
Telephone	82,969	296,956
Exchange visits	732,005	-
Audit fees	588,525	550,000
Office utilities	7,391	-
Salaries	556,865	315,000
NSSF	135,760	97,840
PAYE	164,964	1,727,846
Media sensitisation workshop expenses	84,780	-
Motor vehicle fuel	8,708	-
Postage and delivery	14,811	69,390
Printing Stickers	34,500	-
Equipment repairs	9,200	-
Office securities	-	239,066
Printing and stationery	-	112,405
Monitoring expenses	-	15,000
Rent	-	120,000
Loan-Ford (elections)	-	200,000
Provisions (elections)	-	573,776
Provision (UDHR) celebrations	-	158,000
Provision (medical insurance)	-	88,385
	<u>3,299,868</u>	<u>4,995,705</u>

### 5. FUNDING

General Fund		
Balance brought forward	6,753,001	7,242,540
Deficit for the period	<u>(1,030,901)</u>	<u>(489,539)</u>
	<u>5,722,100</u>	<u>6,753,001</u>
Donor Funding Accounts		
Balance brought forward	(1,301,570)	3,459,721
Surplus/(deficit) for the period	<u>11,796,274</u>	<u>(4,761,291)</u>
	<u>10,494,704</u>	<u>(1,301,570)</u>

# Accounts - Notes

## KENYA HUMAN RIGHTS COMMISSION NOTES TO THE ACCOUNTS (Continued) FOR THE 15 MONTHS ENDED 31 MARCH 2000

### 6. GRANTS DURING THE PERIOD

These are made up of the following:-

	2000 KShs.	1998 KShs.
Ford foundation	7,238,700	6,193,000
DANIDA	10,378,104	500,000
Danchurch Aid	-	561,814
USAID	3,659,334	2,251,200
Swedish NGO Foundation	566,575	2,957,500
Ministry of Foreign Affairs of Finland	4,023,117	2,105,464
Novib	6,174,367	-
Action Aid	69,000	-
Konrad	150,000	-
SIDA	5,800,000	-
Ms-Kenya	240,070	-
Unifem	617,068	-
Article 19	895,616	-
FES	72,032	-
Trocaire	3,102,511	-
Westminister	527,160	-
DFID	450,000	-
RNE	300,000	-
	<u>44,263,654</u>	<u>14,568,978</u>

### 7. INTEREST ON FIXED DEPOSITS

This is made up of the following:-

Ford Foundation	-	153,140
Secretariat	41,376	991,024
	<u>41,376</u>	<u>1,144,164</u>

### 8. STAFF COSTS

These are made up of the following:-

Staff Salaries	14,542,238	10,279,167
Staff medical cover insurance	895,672	635,178
Terminal dues	652,892	-
Recruitment	87,984	-
Provident fund	215,385	-
	<u>16,394,168</u>	<u>10,914,345</u>

Included in these amounts are program staff cost which are direct program expenses and these constitute about 40% of the total staff costs. The terminal dues relate to staff who left Kenya Human Rights Commission in the course of the financial year 1999/2000.



# SPECIAL BRIEF

## Human Rights Norms and The Management of Corruption in Kenya

### *About the Brief*

Over the past four decades, Kenyan public institutions and citizens have suffered many deprivations brought about by corruption. An intricate part of this tragic encounter has been largely a function of poor mechanisms of checks and balances and a lack of stringent measures of accountability on the part of institutions and systems. This special brief analyses the critical need to view corruption as a violation of human rights owing to the social and economic imbalances it fosters.

In this brief, *Human Rights Norms and the Management of Corruption in Kenya*, Dr. Migai Akech seeks to

heighten the war against graft through the lens of human rights instruments in modern day Kenya. Dr Akech is a distinguished academic of note. He has profound experience in the drafting of policy and law, and has drafted a land policy for the Government of Kenya. He is also engaged as a consultant by the National Council for Law Reporting, Kenya, where he edits the Council's land and environmental law reports.

This brief was conceptualized by Wangeci Chege, the immediate former Senior Programme Officer at KHRI.

---

**Special Brief 03/2010**

**July 2010**

---

<i>Introduction</i> .....	3
<i>Human Rights and the Management of Corruption</i> .....	4
<i>Corruption in Kenya</i> .....	8
<i>Human Rights and the Management of Corruption</i> .....	11

---



Kenya Human Rights Institute  
PO Box 41079 00100, Nairobi Kenya  
Tel.: (+254 20) 387 4999/8, 387 6065  
Fax: (+254 20) 387 4997

KHRI 2010

This brief may be cited freely as long as the Kenya Human Rights Institute is acknowledged.

---



## Introduction

Corruption is perhaps the most formidable problem that Kenya faces today. Powerful political and economic elites have hatched various schemes to embezzle public funds or otherwise defraud the public. Goldenberg, Anglo-Leasing, and the Maize scandal provide good examples of such scams. The Goldenberg scandal revolved around a deal between government officials and a businessman, in which the businessman agreed to remit \$50 million annually to the Central Bank of Kenya on condition that the Government would give him a monopoly on gold and diamond exports from Kenya and a compensation of 35% on his exports. No such exports took place, however. Instead, the businessman exported "fictional commodities to fictional companies that paid for them in fictional foreign exchange."<sup>1</sup> For its part, the Anglo Leasing scandal involved government contracts for goods and services that were paid for but never received from companies that did not exist. These contracts resulted in the loss of millions of dollars. And the more recent maize scandal revolved around the sale of imported maize. Here, briefcase millers were awarded large quantities of maize by the Strategic Grain Reserve at a time when the country was facing a serious shortage of maize in the market. Instead of offering this maize for sale in the country, these millers exported the maize to Southern Sudan where they were guaranteed higher profits. While the millers may not have broken any law as such, many Kenyans questioned the propriety of exporting the maize, as it was meant to cushion citizens against rising maize flour prices and a looming famine.<sup>2</sup>

In addition, there is pervasive corruption involving the irregular or illegal allocation of public land, including important natural resources such as the Mau Forest, which is an important water tower. Such corruption has an adverse impact on the livelihoods

of many citizens, and undermines environmental conservation efforts. Similarly, political and economic elites have stolen from health funds, such as those meant for the management of the HIV/AIDS pandemic. These elites then use their ill-gotten wealth to distort the political and judicial processes, thereby ensuring that they remain in power and that they are never punished for their crimes. The troubling culture of impunity that is quickly taking root in the country can be attributed to this distorting effect of corruption. At the same time, ordinary citizens are typically compelled to bribe government officials – such as police officers, councilors, clerks in government ministries, and school functionaries – to obtain services that they are entitled to at little or no cost. Accordingly, life becomes quite precarious for many of those who are unable to bribe these government officials. For example, the liberties of these citizens are often under threat from police officers, who often detain them or continue to detain them as a result of their inability to pay bribes. Further, these citizens are often unable to access health care services because they have no money to pay the bribes demanded by health officials. In addition, they do not have security of tenure in many cases since their land is often grabbed by powerful political and economic elites in collusion with bureaucrats at the Ministry of Lands. These daily experiences of grand and petty corruption have led Michela Wrong to assert that corruption is "gradually throttling... life from the country."<sup>3</sup>

In official policy, successive governments have acknowledged the magnitude of the problem of corruption and have established various mechanisms to fight it. In practice, however, government has not done much to fight corruption. Those accused of corruption, especially the powerful elites, are never held to account, and continue to hold public office. As a result of persistent prevarication by

<sup>1</sup> Letitia Lawson, *The Politics of Anti-Corruption Reform in Africa*, 47(1) JOURNAL OF MODERN AFRICAN STUDIES 73 at 80 (2009).

<sup>2</sup> See, e.g., *Revealed: Shs. 150 Million Maize Scandal*, SUNDAY NATION, July 5, 2009.

<sup>3</sup> Michela Wrong, *IT'S OUR TURN TO EAT: THE STORY OF A KENYAN WHISTLEBLOWER* 11 (Fourth Estate, 2009).

government, the citizens have little or no confidence in the government's commitment to fight corruption.<sup>4</sup> Indeed, Kenya is now ranked as the third most corrupt country in Sub-Saharan Africa.<sup>5</sup>

This paper considers how a human rights approach can contribute to the management of corruption in Kenya. It suggests that because the human rights approach emphasizes human equality, dignity and democracy, it provides strong organizing principles which can play a critical role in managing corruption. In particular, these organizing principles can enable non-state actors such as civil society organizations to clearly demonstrate how corruption undermines the lives of citizens in specific ways, thereby facilitating targeted anti-corruption campaigns. By doing so, the human rights approach can facilitate the identification of specific rights undermined by corruption. In turn, this would facilitate better public oversight of governmental anti-corruption initiatives. In addition, the human rights approach can facilitate the empowerment of poor, marginalized and disadvantaged groups who are often the victims of corruption.

**While the millers may not have broken any law as such, many Kenyans questioned the propriety of exporting the maize, as it was meant to cushion citizens against rising maize flour prices and a looming famine.**

Part II provides the paper's conceptual framework and examines corruption from the perspective of human rights norms. In doing so, this Part analyses how relevant existing treaties on human rights treat corruption. Part III provides an overview of the fight against corruption in Kenya. In particular, it examines the legislative and institutional framework for the management of corruption, and assesses its effectiveness from a human rights perspective – using

<sup>4</sup> AfriCOG, *An Audit of the Kibaki Government's Anti-Corruption Drive 2003-2007: Shattered Dreams* at 3 (2008).

<sup>5</sup> Peter Orenge, *TI Ranks Kenya Third Most Corrupt Country*, *STANDARD*, June 8, 2009 at 7.

a number of rights and court cases as illustrations. Part IV concludes.

## Human Rights and the Management of Corruption

In order to understand the relationship between human rights and corruption, it is useful to define these two terms. The term "human rights" refers to the basic rights and freedoms to which all humans are entitled by virtue of their humanity.<sup>6</sup> It expresses the idea that all human beings are born free and equal in dignity and rights, which others – especially those who have power – should respect. Thus the preamble to the Universal Declaration of Human Right states that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" and that human rights should be protected by the rule of law. Human rights are said to be universal, independent from social or legal recognition, inalienable, non-forfeitable, and imprescribable.<sup>7</sup> Essentially, therefore, human rights are moral or ethical demands, which can be advanced and implemented through different means, including legislation, monitoring and other activist support.<sup>8</sup> Indeed, it is the moral appeal of human rights language that explains why "Human rights language has become the most common language of emancipation."<sup>9</sup>

On the other hand, although there is no single, comprehensive and universally accepted definition of corruption, the term "corruption" has been defined broadly as "moral decay, wicked behaviour, putridity or rottenness."<sup>10</sup> A more specific definition by Transparency International sees it as "the abuse

<sup>6</sup> See, e.g., Mathias Risse, *What are Human Rights? Human Rights as Membership Rights in the Global Order*, Harvard University, John F. Kennedy School of Government, Faculty Research Working Papers Series, RWP08-006, 2008.

<sup>7</sup> *Ibid* at 6.

<sup>8</sup> Amartya Sen, *Elements of a Theory of Human Rights*, 32(4) *PHILOSOPHY & PUBLIC AFFAIRS* 315 at 327 (2004).

<sup>9</sup> Risse, *supra* note 7 at 1.

<sup>10</sup> International Council on Human Rights Policy (ICHRP), *Corruption and Human Rights: Making the Connection*, at 15 (2009).

of entrusted power for private gain.” It is also important to note that such abuse of power can occur in the public sector as well as in the private sector.<sup>11</sup> In particular, the potential for private sector corruption is pronounced in the context of the privatization of public goods such as water, health, transport, education and telecommunications. Defined this way, corruption can assume different forms, including unilateral abuses by government officials such as embezzlement and nepotism, as well as abuses linking public and private actors such as bribery, extortion, influence peddling, illicit enrichment, fraud and abuse of functions. Corruption is also often classified as grand or petty.<sup>12</sup> On the one hand, grand corruption refers to the corruption of heads of state, ministers, and top officials, and usually involves large amounts of assets. On the other hand, petty corruption involves modest sums of money and refers to the kinds of corruption that citizens experience in their day-to-day encounters with public officials and when they use public services such as hospitals, schools, local licensing authorities, police and tax offices.

What, then, is the link between human rights and corruption? Quite simply, those who abuse the power entrusted to them often abuse the human rights of others, whether directly or indirectly. Because the above forms of corruption are often criminalized by law, those who engage in corruption often abuse the human rights of those who attempt to ensure that they are punished for their crimes. In particular, those who engage in grand corruption often suppress the civil and political rights of others or otherwise subvert the course of justice in a bid to hold on to power and ensure they are not held to account for their corrupt deeds. Further, corruption often deprives the state of the resources it needs to provide its citizens with essential services such as security, health care, water and education. In

addition, corruption creates discrimination in access to these public services in favor of those who are able to influence public authorities to act in their personal interest, including by offering bribes. Corruption thus often undermines the social, cultural and economic rights of many people, especially the poor, marginalized and disadvantaged groups.

**Quite simply, those who abuse the power entrusted to them often abuse the human rights of others, whether directly or indirectly.**

It should also be noted that human rights rhetoric may be used to undermine the fight against corruption. In particular, claims of due process rights may be used to frustrate efforts to punish corruption. If the protection of the human rights of individuals accused of corruption is not to undermine efforts seeking to punish corruption, it will be necessary to properly balance the rights of such individuals with the rights of society at large. Such a balancing exercise is particularly necessary since corruption has an adverse impact on the poor and marginalized, who are particularly dependent on public services.

More significantly, perhaps, human rights norms provide strong organizing principles that can be instrumental in the fight against corruption. These principles come in the form of obligations that human rights norms impose, primarily, on the State. These are the state’s obligations to respect, to protect and to fulfill human rights.<sup>13</sup> These principles enable us to distinguish between corrupt practices that violate human rights directly and those that only do so indirectly. By doing so, they facilitate targeted interventions to safeguard human rights against corruption.

Let us briefly examine these obligations. The obligation to respect requires the State to refrain from any measure that may deprive individuals of the

<sup>11</sup> Julio Bacio-Terracino, *Corruption as a Violation of Human Rights*, Paper prepared for the International Council on Human Rights, at 5 (2008).

<sup>12</sup> ICHRP, *supra* note 11 at 15.

<sup>13</sup> *Ibid* at 25-26.

enjoyment of their rights or their ability to satisfy those rights by their efforts. This type of obligation is often associated with civil and political rights (such as refraining from committing torture) but it equally applies to economic, social and cultural rights. With regard to the right to adequate housing, for example, states have a duty to refrain from forced or arbitrary eviction.

The obligation to protect requires the State to prevent violations of human rights by third parties. The obligation to protect is normally taken to be a central function of states, which have to prevent irreparable harm from being inflicted upon members of society. This requires states: (a) to prevent violations of rights by individuals or other non-state actors; (b) to avoid and eliminate incentives to violate rights by third parties; and (c) to provide access to legal remedies when violations have occurred, in order to prevent further deprivations.

The obligation to fulfill requires the State to take measures to ensure that its citizens can satisfy the basic needs (as recognized in human rights instruments) that they are unable to secure by their own efforts. Although this is the key state obligation in relation to economic, social and cultural rights, the duty to fulfill also arises in respect of civil and political rights. Thus, for instance, enforcing the prohibition of torture (which requires states to investigate and prosecute perpetrators, pass laws to punish them and take preventive measures such as police training), or providing the rights to a fair trial (which requires investment in courts and judges), to free and fair elections, and to legal assistance, all require considerable costs and investments.

It should be noted that these obligations also apply to non-state actors. Thus the Universal Declaration of Human Rights imposes an obligation to promote respect for human rights and to secure their universal and effective recognition and observance not only on

states but also on “every individual and every organ of society”, including private corporations.<sup>14</sup> The need to impose these obligations on private actors arises, for example, in the context of the privatization of essential services, which in particular implicates social, cultural and economic rights.

The value of these obligations is that they enable us to hold the State and non-state actors accountable whenever their specific acts or failures to act (relative to incidents of corruption) lead to the violation of the obligations to respect, protect and fulfill human rights. In this respect, it is also important to distinguish between corrupt practices that directly violate human rights from those that do so indirectly.

An act of corruption is linked directly to a violation of human rights when it is deliberately used as a means to violate human rights.<sup>15</sup> For example, a bribe offered to a judge directly affects the independence of that judge thereby violating the right to a fair trial.<sup>16</sup> Corruption may also directly violate a human right when the state or state official fails to act in a way that prevents individuals from having access to that right. For example, when an individual is compelled to bribe a doctor to obtain medical treatment at a public hospital, or bribe a teacher at a public school to obtain a place for her child, then corruption directly infringes the rights to health and education.

***More significantly, perhaps, human rights norms provide strong organizing principles that can be instrumental in the fight against corruption.***

On the other hand, corruption violates human rights indirectly where an act of corruption is an essential factor contributing to a chain of events that eventually

<sup>14</sup> Peter Muchlinski, *Human Rights and Multinationals: Is there a Problem?* 77 INTERNATIONAL AFFAIRS 31 at 40 (2001).

<sup>15</sup> ICHRP, *supra* note 11 at 27

<sup>16</sup> *Ibid.*

leads to violation of a right.<sup>17</sup> For example, women or children are often traded for sexual exploitation by corrupt officials who in return for bribes, supply documents for crossing borders, or turn a blind eye to the trafficking activity. Corruption may also be an indirect cause where corrupt authorities seek to prevent the exposure of corruption. Thus when a whistleblower is silenced by harassment, threats or imprisonment, or killed, the rights to liberty, freedom of expression, life, and freedom from torture or cruel, inhuman or degrading treatment may all be violated. In such a case, in addition to the original act of corruption that the whistleblower was trying to denounce, it is highly probable that the acts that subsequently infringed his or her rights would also have been caused by corruption (for example, corruption at the level of law enforcement). In both examples, acts of corruption are essential factors in the violation of rights.

Using this approach, it is then possible to specify how acts of corruption violate the human rights recognized by international human rights treaties, the such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), and regional human rights instruments, such as the African Charter on Human and People's Rights (ACHPR).

Although the linkages between corruption and human rights are increasingly recognized and appreciated by policy makers, it is worth noting that the protection of human rights has not been a core objective of international anti-corruption initiatives. Indeed, the commitments that states have made to combat corruption run parallel with their commitments to promote and respect human rights.<sup>18</sup> Thus while international anti-corruption conventions rarely refer to human rights, major human rights instruments

rarely mention corruption.<sup>19</sup> One explanation for the relative neglect of human rights in the global anti-corruption agenda is that corruption emerged as a governance concern in the World Bank and the International Monetary Fund, rather than as a human rights concern within the human rights agencies of the United Nations.<sup>20</sup>

Nevertheless, the United Nations Convention against Corruption (UNCAC) of 2005 recognizes the right to participation, a fundamental human right which is instrumental in the fight against corruption. As the International Council on Human Rights Policy has noted, "Low political participation creates conditions for impunity and corruption. The effective exercise of political rights counterbalances state power and its abuse, including corruption."<sup>21</sup> The right to participation would be particularly instrumental in endeavors to empower poor and disadvantaged groups who are often the victims of corruption. It is therefore laudable that Article 13 of the UNCAC imposes an obligation on States parties to take appropriate measures to promote the active participation of individuals and groups outside the public sector in the prevention of and the fight against corruption. Further, this right to participation is to be strengthened by measures such as enhancing the transparency of public decision-making processes and ensuring that the public has effective access to information.

The African Union Convention on Preventing and Combating Corruption (AU Convention on Corruption) goes even further; it requires states parties to it to adhere to a number of principles, including respect for the rule of law, human rights, transparency and accountability in the management of public affairs, and the promotion of social justice.<sup>22</sup> Further, it imposes an obligation on states parties to "adopt

<sup>17</sup> Ibid.

<sup>18</sup> Ibid at 2.

<sup>19</sup> Ibid.

<sup>20</sup> James Thuo Gathii, *Defining the Relationship Between Corruption and Human Rights*, at 25 (2009).

<sup>21</sup> ICHRP supra note 11 at 11.

<sup>22</sup> African Union Convention on Preventing and Combating Corruption, Article 3 (2003).

such legislative and other measures to give effect to the right of access to any information that is required to assist in the fight against corruption and related offences.”<sup>23</sup>

**“Low political participation creates conditions for impunity and corruption. The effective exercise of political rights counterbalances state power and its abuse, including corruption.”**

Let us now examine how human rights norms have featured in the management of corruption in Kenya.

## Corruption in Kenya

### A. *The Record So Far*

It is fair to say that the fight against corruption began in earnest with the ascension to power of the National Rainbow Coalition (NARC) following the 2002 general elections. NARC had explicitly stated in its manifesto that it would pursue a policy of “zero tolerance” of corruption, and in his inauguration speech, President Kibaki even declared that “Corruption will now cease to be a way of life in Kenya and... there will be no sacred cows under my government.”<sup>24</sup> Upon assuming the reins of power, the NARC government began to construct a new anti-corruption framework, consisting of policy and legislative initiatives. The key policy initiative was the Economic Recovery Strategy for Employment and Wealth Creation (ERS), in which the government undertook to enact new laws to spearhead the fight against corruption. It also undertook to sue individuals involved in corruption, and to establish a commission to inquire into the Goldenberg scandal to facilitate proper prosecution and recovery of assets. It also contemplated the establishment of an ombudsman. The ERS thus adopted a multi-pronged approach to corruption, that included demonstrating political will, dealing with abuses of the past, initiating institutional and legal reforms,

<sup>23</sup> Ibid, Article 9.

<sup>24</sup> AfriCOG, *supra* note 5 at 3.

and coalition-building with non-state actors and the international community.<sup>25</sup>

In dealing with the past, the NARC government established the Commission of Inquiry into the Goldenberg Scandal (the Bosire Commission), the Commission of Inquiry into Irregular and Illegal Allocation of Public Lands (the Ndung’u Commission), and the Pending Bills Verification and Validation Committee. These bodies were all established in 2003. The mandate of the Bosire Commission was to look into the complex scheme by government officials and businessman Kamlesh Pattni involving non-existent exports of gold and diamonds from Kenya in the early 1990s, which ultimately cost the country over US\$ 1 billion.<sup>26</sup> Among other things, the Bosire Commission recommended that certain named individuals should be prosecuted and that further investigations be carried out establish the culpability of certain other individuals. The Ndung’u Commission was established to inquire into the illegal privatization of public land by government officials. It established that since independence there had been some 200,000 illegal allocations of public land to political elites.<sup>27</sup> For example, it established that illegal forest excisions amounted to some 299,077.5 hectares. For its part, the Pending Bills Committee sought to determine valid from invalid claims on the government in the area of construction and recommended that hundreds of millions of shillings be repaid by certain construction companies, and that some of these companies should be blacklisted.

The government also sought to reform the judiciary, which had become a discredited institution, and commanded little respect from the public since many people thought that it was corrupt.<sup>28</sup> President

<sup>25</sup> Gladwell Otieno, *The NARC’s Anti-Corruption Drive in Kenya: Somewhere over the Rainbow?* 14(4) AFRICAN SECURITY REVIEW 69 at 70 (2005).

<sup>26</sup> See Report of Judicial Commission of Inquiry into Goldenberg Affair (2005); Peter Warutere, *The Goldenberg Conspiracy: The Game of Paper Gold, Money and Power*, Institute for Security Studies, Paper No. 117 (2005).

<sup>27</sup> See Republic of Kenya, Report of the Commission of Inquiry into the Illegal/ Irregular Allocation of Public Land (2004).

<sup>28</sup> See, e.g., ICJ-Kenya, *The Judiciary in Review 2000-2002* (2002).

Kibaki's first move was to suspend Chief Justice Chunga (who later chose to resign) and to set up a tribunal to investigate him on charges of corruption.<sup>29</sup> The president then appointed Justice Evans Gicheru as acting Chief Justice, who then embarked on what has come to be known as the "Radical Surgery" of the judiciary. In March 2003, he appointed an "Integrity and Anti-Corruption Committee" which was to be headed by Justice Aaron Ringera, then judge of the High Court. The Ringera Committee's mandate was to investigate and report on "the magnitude and level of corruption in the judiciary, its nature and forms, causes and impact on the performance of the judiciary" and to identify corrupt members of the judiciary.<sup>30</sup> The Ringera Committee reported back to the Chief Justice six months later, and caused its list of the judges and magistrates it thought had engaged in corruption to be published in the popular media. The Chief Justice then advised the affected judges and magistrates to resign within two weeks, or be suspended without pay and face tribunals of inquiry.<sup>31</sup> A good number of the judges concerned duly heeded the advice of the Chief Justice.

The government also suspended some 1000 public procurement officers after an audit found widespread procurement irregularities.<sup>32</sup> In addition, the government froze or disavowed suspect pending bills by contractors. Further, it dismissed leading officials in public institutions and prosecuted some of them, including the heads of the Kenya Revenue Authority, the National Aids Control Council, the National Social Security Fund, and the Kenya Pipeline Company.

As far as institutions are concerned, the government initiated a number of policy and legislative measures. On the policy front, it created a new Ministry of Justice and Constitutional Affairs to coordinate the war against corruption and spearhead the enactment

of anti-corruption laws. Second, it created the position of Permanent Secretary in the Office of the President in charge of Public Ethics and Governance. Third, a cabinet committee on anti-corruption was established to review and coordinate the fight against corruption in government.

On the legislative front, the government has enacted a number of new laws on corruption, namely the Anti-Corruption and Economic Crimes Act, the Public Officers Ethics Act, the Public Procurement and Disposal of Assets Act, the Government Financial Management Act, the Privatization Act, and the Political Parties Act. The government has also ratified both the United Nations Convention against Corruption and the African Union Convention on Preventing and Combating Corruption.<sup>33</sup>

The Anti-Corruption and Economic Crimes Act provides a framework for the prevention, investigation and punishment of corruption, economic crimes and related offences. It establishes the Kenya Anti-Corruption Commission (KACC) as the lead institution and entrusts it with the function of investigating corruption and economic crime. However, the KACC does not have the power to prosecute corruption and economic crime, this being the constitutional preserve of the Attorney General.

The Public Officers Ethics Act seeks to advance the ethics of public officers by providing for a code of conduct and ethics, and requires certain public officers to declare their wealth periodically. Among other things, this act establishes a general code of conduct and ethics, which provides that public officers are under a duty of professionalism and prohibits improper enrichment, conflicts of interest, acting for foreigners, political partisanship, nepotism, and sexual harassment.

The Public Procurement and Disposal Act of 2005 seeks to enhance transparency and accountability

<sup>29</sup> See, e.g., ICJ-Kenya, *Judicial Independence, Corruption and Reform* 15 (2005).

<sup>30</sup> Republic of Kenya, *Report of the Integrity and Anti-Corruption Committee of the Judiciary of Kenya (The Ringera Report)* (2003).

<sup>31</sup> ICJ-Kenya, *supra* note 29 at 19.

<sup>32</sup> AfriCOG, *supra* note 5 at 4.

<sup>33</sup> *Ibid* at 9.

in the processes of public procurement and disposal of public assets. It establishes the Public Procurement Oversight Authority as the central organ for policy formulation, implementation, human resource development, and oversight of the public procurement process. The Act establishes open tendering as the preferred procurement procedure, requires that specifications be drawn objectively, prohibits the discrimination of candidates, mandates the advertisement of tenders, and requires the evaluation of tenders transparently and on the basis of objective criteria. Among other things, section 40 of the Act makes it an offence for any "person, agent or employee [to] be involved in any corrupt practice in any procurement proceeding." It should be noted that the Act does not apply to security and defence procurements, which have been an avenue for corruption, as the Anglo-Leasing Scandal demonstrated.

**However, the KACC does not have the power to prosecute corruption and economic crime, this being the constitutional preserve of the Attorney General.**

The Government Financial Management Act seeks to enhance efficiency and accountability in the management of government money and property. It requires the Treasury (or Ministry of Finance) to establish procedures and systems, including those relating to accounting, for proper and effective management of government money and property. It also empowers the Treasury to appoint "Accounting Officers" to manage government resources, and to ensure that the resources of the ministry, department or commission which they are in charge of are used in a way that is "lawful and authorized," and "effective, efficient, economical, and transparent."<sup>34</sup> These accounting officers are answerable to the Treasury.

Privatization processes have been a major source of corruption, and the Privatization Act of 2005, which

only came into effect at the beginning of 2008, seeks to facilitate transparency and accountability in privatization initiatives, hopefully reducing corruption in the process. The Act establishes a Privatization Commission, whose main function is to "formulate, manage and implement the privatization programme."<sup>35</sup> The Act envisages that privatizations<sup>36</sup> will be mainly be governed by a privatization program "formulated by the Commission and approved by the Cabinet."<sup>37</sup> Nevertheless, privatizations not included in the program may be managed and implemented by other public entities.<sup>38</sup> The Act establishes three accountability mechanisms. First, it mandates the Commission to prepare an annual report, which shall include its audited financial statements, statements of the assets and liabilities of any state corporation privatized during the year and the proceeds from the privatization, and "such information as the Minister may direct."<sup>39</sup> The Act further requires the Minister to lay the annual report before parliament.<sup>40</sup> Secondly, the Act imposes an obligation on the Commission to publicize various aspects of the privatization processes. For example, it requires the Commission to publish in national newspapers a notice of a proposed privatization after the privatization proposal has been approved by the Cabinet.<sup>41</sup> The third accountability mechanism is a Privatization Appeals Tribunal, whose function is to handle appeals from decisions of the Commission relating to objections filed by "a person" to a privatization determination of the Commission.<sup>42</sup>

The Political Parties Act also constitutes an anti-corruption device, in so far as many acts of

<sup>35</sup> Privatization Act, section 4(a), Kenya.

<sup>36</sup> The Act defines privatization as "a transaction or transactions that result in a transfer, other than to a public entity, of any of the following –

(a) assets of a public entity including the shares in a state corporation;

(b) operational control of assets of a public entity;

(c) operations previously performed by a public entity." Id at section 2(1).

<sup>37</sup> Id, section 17(2).

<sup>38</sup> Id, section 22

<sup>39</sup> Id, section 16(1) and (2).

<sup>40</sup> Id, section 16(3).

<sup>41</sup> Id, section 30(1)

<sup>42</sup> Id, sections 36 and 37; Second Schedule, Procedure for Objections and Appeals.

<sup>34</sup> Government Financial Management Act of 2004, section 18.



***On paper, the government therefore seems to have made some significant strides in the fight against corruption. In practice, however, many commentators agree that “the fight against corruption is in a dire state.”***

corruption, including the Anglo-Leasing scandal, have been motivated by a need to finance political campaigns. The Act requires the government to fund political parties, with the policy objective of reducing political corruption.<sup>43</sup> It establishes a political parties fund for this purpose; the fund is managed by the Registrar of Political Parties. The Act also establishes a formula for the distribution of the fund to political parties.

On paper, the government therefore seems to have made some significant strides in the fight against corruption. In practice, however, many commentators agree that “the fight against corruption is in a dire state.”<sup>44</sup> The implementation of the foregoing policies and laws has been dismal at best. Further, the KACC, which is supposed to be the premier anti-corruption, has failed to carry out its mandate effectively. Instead, it has been embroiled in a blame game with the Attorney-General’s Office as to which of the two agencies is frustrating the fight against corruption. And the Permanent Secretary for Governance and Ethics quit in 2005 after realizing that the government had no intention of fighting grand corruption, and that key figures in government were instead actively engaging in incidents of corruption.<sup>45</sup>

## **Human Rights and the Management of Corruption**

How have human rights featured in this fight against corruption? Although the protection of human rights has not been an explicit objective of government in

its anti-corruption policies and programs, corruption has clearly had adverse impacts – both direct and indirect – on various human rights, such as freedom of expression, the principles of equality and non-discrimination, the right of political participation, and various economic, social and cultural rights. In addition, the protection of human rights has had the paradoxical effect of protecting the due process rights of those accused of corruption. It is also important to bear in mind that in practice corruption may affect the enjoyment of several human rights simultaneously.<sup>46</sup> Thus, for example, the “failure to protect rights associated with political participation may have an impact on several economic, social and cultural rights because it may affect the design and implementation of social policies and thus the enjoyment of those rights.”<sup>47</sup> With this caveat in mind, let us now discuss these impacts.

### *i. Freedom of Expression*

Corruption thrives where there is a lack of transparency in governance and the citizenry have no access to governmental information. Conversely, corruption is unlikely to thrive where there is respect for freedom of expression, since such freedom “leads to exposure of the causes and consequences of corruption and an atmosphere within which anti-corruption strategies could be pursued.”<sup>48</sup>

Corruption has thrived partly because of a lack of transparency in governance and governmental repression of the freedom of expression of civil society and media actors seeking to expose incidents of corruption. These factors explain why there has been such widespread corruption in the privatization of public enterprises, for example. The privatization process has been characterized by secrecy, leading to corrupt acts such as the sale of public enterprises below their market value, irregularities in the bidding process, undervaluation of the assets of

<sup>43</sup> AfriCOG, *supra* note 5 at 7.

<sup>44</sup> *Ibid* at 1. -

<sup>45</sup> See Wrong, *supra* note 3.

<sup>46</sup> ICHRP, *supra* note 11 at 31.

<sup>47</sup> *Ibid*.

<sup>48</sup> Gathii, *supra* note 21 at 30.

public enterprises, and sale of these enterprises to well-connected elites.<sup>49</sup>

**The Official Secrets Act, which criminalizes the disclosure of “official secrets” by government officials and gives the government unlimited powers to declare official information secret, also constitutes a formidable obstacle to freedom of information, which is essential if Kenyan citizens are to access governmental information. Without access to such information, it also becomes difficult to manage corruption since much of governmental decision-making continues to take place in secrecy.**

Further, despite formal constitutional guarantees of freedom of expression, successive governments have persecuted media and civil society actors who have tried to expose corruption in government. Thus in the 1990s security agencies routinely harassed the private media and banned their publications.<sup>50</sup> Further, the government has imposed heavy handed measures against access to information, printing, publication and distribution of information exposing corruption in government.<sup>51</sup> The judiciary has also meted out harsh and arguably unjustified sentences in defamation cases, whose effect has been to suppress public debate and protect powerful elites in cases involving allegations of corruption. The case of *Republic v. Gachoka and Another*,<sup>52</sup> which concerned allegations of judicial corruption, illustrates this trend. Here, the accused person was convicted on charges of contempt of court for claiming in a newspaper article that the then Chief Justice had received a bribe to influence the outcome of a case relating to the Goldenberg scandal. At the same time, it should be noted that there are instances where the

courts have decried the use of defamation cases to stop the media from exposing corruption.<sup>53</sup>

Another illustration of governmental repression of critical media firms and journalists is the raid on the Standard Newspapers of 2005, which was carried out by persons believed to have been acting on the instructions of senior Government officials who were apprehensive that this firm was about to expose incidents of corruption that would embarrass the government. The media has also received threats and warnings from members of parliament, state officials and even private citizens for trying to expose incidents of corruption, for example, allegations of corruption in Constituency Development Fund committees.<sup>54</sup> The effect of such intimidation is to prevent the media from carrying out their important function of raising matters that are of interest to the public, such as corruption.

The Official Secrets Act,<sup>55</sup> which criminalizes the disclosure of “official secrets” by government officials and gives the government unlimited powers to declare official information secret, also constitutes a formidable obstacle to freedom of information, which is essential if Kenyan citizens are to access governmental information. Without access to such information, it also becomes difficult to manage corruption since much of governmental decision-making continues to take place in secrecy.

## *ii. Principles of Equality and Non-Discrimination*

Corruption may also violate the human rights principle that “every individual is equal before the law and has the right to be protected by law on an equal basis.”<sup>56</sup> This principle is affirmed in all the main human rights treaties.

<sup>49</sup> See, e.g., Migai Akech, *Public Law and the Neoliberal Experiment in Kenya: What Should the Public Interest Become?*, JSD Thesis, NYU School of Law at 123-128 (2004).

<sup>50</sup> See, e.g., Human Rights Watch, *Multipartyism Betrayed in Kenya: Continuing Rural Violence and Restrictions on Freedom of Speech and Assembly* (1994).

<sup>51</sup> Gathii, *supra* note 21 at 31.

<sup>52</sup> *R. v. Gachoka & Another*, Court of Appeal, Criminal Application No. Nai. 4 of 1999.

<sup>53</sup> Kenya Human Rights Commission (KHRC), Vol. 9 (1) HUMAN RIGHTS BI-ANNUAL REPORT 24 (2007).

<sup>54</sup> See, e.g., *ibid* at 23.

<sup>55</sup> Official Secrets Act, Chapter 187, Laws of Kenya.

<sup>56</sup> ICHRP, *supra* note 11 at 32.

For example, investigations and prosecutions in cases of corruption and economic crimes are in many cases perceived by the public to be "selective and discriminatory."<sup>57</sup> In practice, it is quite apparent that only minor players are investigated and prosecuted by the KACC and the Attorney General, while the major players appear to be untouchable. Critics of the KACC thus maintain that it is yet to prosecute a single high profile corruption case. The Anglo-Leasing Scandal provides an example of such selective investigation and prosecution.<sup>58</sup>

The principles of equality and non-discrimination are also violated by the discriminatory exercise of the powers of the police in the criminal justice system. Thus, there are instances where police officers have abused their powers, such as the power to arrest, conduct searches and investigations, and use firearms. For example, the constitution requires that any person who is arrested or is detained by *the police should be informed of the reasons for the arrest or detention and brought before a court "as soon as is reasonably practicable."*<sup>59</sup> Further, the constitution provides that if this is not done, then such a person may be entitled to compensation for unlawful arrest or detention.<sup>60</sup> One of the practical implications of these constitutional provisions is that the police may legally arrest and detain anybody without just cause for a period of up to twenty-four hours. Consequently, police officers frequently arrest and detain suspects they do not intend to charge with any particular offences, especially through a practice known as "the Friday Collection."<sup>61</sup> They make arrests on Friday evening, solicit bribes from

those arrested and tell those who refuse that they cannot have access to a lawyer or magistrate until Monday.<sup>62</sup>

### *iii. The Right to Fair Trial*

The objective of the right to a fair trial is to ensure fair, effective and efficient administration of justice. Judicial corruption can undermine the attainment of this objective. Judicial corruption has been defined as "acts or omissions that constitute the use of public authority for the private benefit of court personnel, and result in the improper and unfair delivery of judicial decisions. Such acts and omissions include bribery, extortion, intimidation, influence peddling and the abuse of court procedures for personal gain."<sup>63</sup>

There is a perception that the judiciary is corrupt, as demonstrated by a number of internal and external inquiries into the workings of the judiciary. One such inquiry was the Kwach Committee on the Administration of Justice of 1998, which established the existence of various practices that made the judiciary and judicial officers vulnerable to corruption, including engagement in business activities, lack of proper vetting in the appointment process, lack of transparency in the discharge of the judicial function, and lack of a transparent and merit-based judicial appointment system.<sup>64</sup> In particular, the Kwach Committee reported cases of "actual payment of money to judges and magistrates to influence their decisions."<sup>65</sup>

A subsequent inquiry by the Advisory Panel of Eminent Commonwealth Judicial Experts delivered a similar verdict in 2002.<sup>66</sup> This Advisory Panel found that

<sup>57</sup> Gitobu Imanyara, *Systems and Structures Set up by the Government to Fight Corruption: How Effective and What More can be done?* in STRENGTHENING JUDICIAL REFORMS IN KENYA VOLUME IX: THE ANTI-CORRUPTION COURT IN KENYA 49 at 52

<sup>58</sup> See, e.g., *A Harvest of Corruption Scandals*, EAST AFRICAN STANDARD, February 5, 2005.

<sup>59</sup> Constitution of the Republic of Kenya, s 72.

<sup>60</sup> Constitution of the Republic of Kenya, s 72(6).

<sup>61</sup> *Police as a Service Organisation: An Agenda for Change*, Report of the Proceedings of the Roundtable Conference on Police Reform in East Africa, Nairobi, 24-25 April, 2003 at p.35 [*Hereinafter Proceedings of Roundtable Conference*].

<sup>62</sup> *Id.*

<sup>64</sup> See Report of the Committee on the Administration of Justice (1998).

<sup>65</sup> *Ibid* at 10.

<sup>66</sup> Report of the Advisory Panel of Eminent Commonwealth Judicial Experts (2002). This inquiry was instituted by the Constitution of Kenya Review Commission in fulfillment of its statutory mandate to "examine and make recommendations on the Judiciary generally and in particular, the establishment and jurisdiction of the courts, aiming at measures necessary to ensure the competence, accountability, efficiency, discipline, and independence of the Judiciary." Constitution of Kenya Review Act, section 17(d) (v).

“the Kenyan judicial system suffers from a serious lack of public confidence and is generally perceived as being in need of fundamental structural reform.”<sup>67</sup> Further, the Advisory Panel found that two forms of corruption were commonplace, namely “bribery and political pressure or influence on a judge of magistrate to decide a case other than in accordance with the law and the evidence before the court.”<sup>68</sup> It also found “examples of incompetence in the Judiciary, and the frequency with which judges change their views of the law, delivering inconsistent judgments so that decisions even of senior judges have little value as precedent.”<sup>69</sup> The Panel also lamented the lack of “public exposure and consultation” in the appointment of judicial officers and concluded that “Lack of transparency in the manner in which judges are appointed has undermined public confidence in the quality of those named to judicial office.”<sup>70</sup> An inquiry by the International Commission of Jurists (ICJ) delivered a similar verdict in 2002.<sup>71</sup>

Judicial corruption continues to be a concern, and undermines the attainment of fair administration of justice. For example, it is alleged that “the rich and powerful interfere with the judicial process in the interests of those who are close to them.”<sup>72</sup>

#### *iv. Rights of Political Participation*

Citizens cannot protect their human rights if they are not able to participate in decision-making processes. The right to participation is therefore important since it enables individuals and groups thereof to shape the political processes that impact their liberties and livelihoods. This right, which is recognized by the main human rights treaties, includes the right to take part in government (for example, by voting or standing for elections), the right of equal access to public services, and freedoms

of association and assembly. The right to take part in government is worth emphasizing. It entails not only the right to vote but also to participate in the conduct of public affairs. The idea is to create the opportunity for all persons to assume responsibility for shaping the kind of civil society in which they live and work. In this regard, it is worth noting that one key objective of the African Union’s Charter on Democracy, Elections and Governance is to “Promote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs.”<sup>73</sup>

**Citizens cannot protect their human rights if they are not able to participate in decision-making processes.**

Corruption in electoral processes has severely violated this significant right. For example, this right has been violated in successive general elections by bribery and abuse of state resources.<sup>74</sup> Cases of abuse of power aimed at manipulating the electoral process have also been reported. For example, The Commission of Inquiry on Post-Election Violence (CIPEV) reported that as the 2007 general elections approached, the Head of the Public Service and Secretary to the cabinet ordered the Administration Police to train a large number of its officers before polling day so that they could act as agents of the Party of National Unity during elections polling.<sup>75</sup> CIPEV reported that the role of these officers “was to disrupt polling and where possible ensure that government supporters amongst the candidates and voters prevailed.”<sup>76</sup> Many commentators also agree that egregious acts of fraud were committed during the final stages of the tallying of the 2007 presidential poll and accuse the defunct Electoral

<sup>67</sup> Ibid at 6.

<sup>68</sup> Ibid at 18.

<sup>69</sup> Ibid at 6.

<sup>70</sup> Ibid at 28.

<sup>71</sup> ICJ, *The Judiciary in Review 2000-2002* at 11 (2002).

<sup>72</sup> KHRC, *supra* note 54 at 29.

<sup>73</sup> African Union, *Charter on Democracy, Elections and Governance*, Article 2(10) (2004).

<sup>74</sup> See, e.g., Kenya Human Rights Commission, *Violating the Vote: A Report on the 2007 General Election* (2008).

<sup>75</sup> Report of the Commission of Inquiry on Post-Election Violence 407 (2008).

<sup>76</sup> Ibid.

Commission of Kenya of rigging the contest in favor of President Mwai Kibaki.<sup>77</sup>

The effect of these incidents of corruption was not only to make a mockery of the right of citizens to take part in government by rendering their votes useless, it also “precipitated the most severe human rights crisis in Kenya’s independent history” as “Communal riots and militia-driven violence broke out in various parts of the country resulting in killings, rape, mob-violence, forced evictions, looting, arson and destruction of property.”<sup>78</sup> This is a clear instance where corruption led directly to the violation of human rights.

#### *v. Violation of economic, social and cultural rights*

Corruption violates economic, social and cultural rights in various ways. For example, corruption depletes the resources available for public spending, thereby preventing the state from taking steps to the “maximum of its available resources with a view to achieving progressively the full realization” of these rights as required by the International Covenant on Economic, Social and Cultural Rights.<sup>79</sup> Secondly, corruption creates discrimination in access to public services in favour of those able to influence public authorities to act in their personal interest, including by offering bribes.<sup>80</sup> In particular, such corruption has an adverse impact on poor, marginalized and disadvantaged groups, since “they are particularly dependent on public goods.”<sup>81</sup> It should also be noted that public services – such as health, water and education – generate large public contracts which not only create opportunities for corruption but also have a disproportionate impact on vulnerable and disadvantaged groups, such as

women.<sup>82</sup> This kind of corruption tends to thrive where governmental programs affecting public services (such as privatization) “lack transparency, are weakly monitored, or are inappropriately discretionary.”<sup>83</sup>

These impacts of corruption have been prevalent in Kenya. Grand corruption scandals such as Goldenberg and Anglo-Leasing have resulted in the loss of billions of public monies that would have been used to provide public services, thereby enabling the government to meet its international obligations. In addition, increased corruption in the health sector has denied Kenyans their basic right to health care.<sup>84</sup> Here, incidents of corruption have included diversion of drugs and medical supplies from public health facilities, irregularities in procurement and distribution of drugs, and bribery (including paying for access to hospital beds).<sup>85</sup> Further, “top public servants assigned the task of fighting HIV/AIDS turned their programmes into cash cows” and could not account for funds donated by donors.<sup>86</sup> Incidents of corruption have also been reported in the education sector, including school heads taking bribes for admitting students, clerks taking bribes to process transcripts, government officials taking bribes to recruit, promote, and transfer personnel, and irregularities in procurement and accreditation.<sup>87</sup> Further, teachers have also exploited out-of-school classes or “coaching” by deliberately failing to cover the 8-4-4 syllabus during normal school hours and made it into a money-minting enterprise.<sup>88</sup> These acts of corruption have a particularly adverse impact on the poor, who not only have to put up with poor public services but also have to bribe public officials to access them.<sup>89</sup>

<sup>77</sup> See, e.g., Human Rights Watch, *Ballots to Bullets: Organized Political Violence and Kenya’s Crisis of Governance* (2008); Kenyans for Peace with Truth and Justice (KPTJ), *Countdown to Deception: 30 Hours that Destroyed Kenya* (2008); International Crisis Group, *Kenya in Crisis*, Africa report No. 137 (2008).

<sup>78</sup> Kenya Human Rights Institute (KHRI), *Clarifying Human Rights Violations in the Kenyan Post-Election Crisis*, Special Brief 02/2008 at 3 (2008).

<sup>79</sup> Gathii, supra note 21 at 26.

<sup>80</sup> Ibid at 27.

<sup>81</sup> Ibid.

<sup>82</sup> ICHRP, supra note 11 at 45.

<sup>83</sup> Ibid at 47.

<sup>84</sup> Osendo Con Omore, *Corruption in the Kenyan Health Sector*, ADILI No. 74 at 6 (2006).

<sup>85</sup> Ibid.

<sup>86</sup> Ibid at 7.

<sup>87</sup> Dilip Parajuli, *What is Driving Educational Ineffectiveness in Kenya? The Role of Economic Inefficiency, Institutional Corruption and Poverty*, Transparency International-Kenya & Kennedy School of Government, Harvard University, at 7 (2001).

<sup>88</sup> Ibid at 9.

<sup>89</sup> Gathii, supra note 21 at 68.

Corruption in land transactions also undermines the attainment of economic, social and cultural rights. The reports of investigations carried out over the years on land transactions detail numerous cases of public land illegally allocated to individuals and companies in total disregard of the law and the public interest, for example, the need for environmental conservation.<sup>90</sup> Typically, these allocations only benefit the political elite, who are thereby unjustly enriched at the expense of the poor and marginalised groups. These allocations are said to be worth billions of shillings. The prevailing controversy of the illegal allocation of land in the Mau Forest, which threatens to destroy Kenya's most critical water tower, is a case in point. By privatising critical natural resources, such corruption undermines the human rights of the poor and marginalized, such as the right to life, the right to water, the right to shelter, and the right to food. In addition, such corruption worsens poverty and inequality within society.

#### *vi. Paradox – Do Human Rights Undermine the Fight against Corruption?*

An interesting paradox is that the protection of human rights may have the counterintuitive effect of undermining the fight against corruption. This is especially the case with the protection of the due process rights of individuals accused of corruption. Like everyone else, such individuals are entitled to due process rights such as the right to a fair trial within a reasonable time, and the right against self-incrimination. However, anti-corruption devices such as imposing obligations on individuals to declare their wealth and to provide reasonable explanations for how they acquired their wealth at the risk of forfeiture in the absence of satisfactory explanations may violate their human rights. How should these competing claims be adjudicated?

Kenyan courts are already grappling with this important question, as demonstrated by cases such

<sup>90</sup> See, e.g., Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land (2004).

as *R. V. Judicial Commission of Inquiry into the Goldenberg Affair, ex parte Saitoti*,<sup>91</sup> *R. v. Attorney General & Chief Magistrate's Court ex parte Kipng'eno arap Ng'eny*,<sup>92</sup> and *Christopher Ndarathi Murungaru v. Kenya Anti-Corruption Commission & Another*.<sup>93</sup> The *Saitoti* and *Ng'eny* courts held, in part, that the rights of the applicants to a fair trial within a reasonable time had been violated. On the other hand, the court in *Murungaru* upheld the powers of the KACC to compel individuals to explain the sources of their wealth, provided the orders of KACC relate to specific wealth of the individual in question and do not amount to "fishing expeditions."

These cases therefore represent two strands of thought. On the one hand, the *Saitoti* and *Ng'eny* decisions have been criticized for using the Bill of Rights "to protect powerful members of the government from an opportunity to be held accountable."<sup>94</sup> Indeed, these decisions may be privileging civil and political rights at the expense of social and economic rights.<sup>95</sup> In this regard, the *Saitoti* decision is arguably unsound logically. Here, the court reasoned that since Prof. Saitoti had already been "tried" in Parliament (where the Goldenberg scandal was discussed and he was exonerated), it would amount to double jeopardy if he were now to be tried in a court of law. Arguably, the court stretched the notion of double jeopardy beyond reasonable limits. More importantly perhaps, the idea of a fair trial should be looked at not only from the viewpoint of the applicant, but also from the viewpoint of the society at large, which is adversely affected by the loss of public monies because of this act of corruption. In this respect, it is arguable that in failing to prosecute the perpetrators of Goldenberg, whoever they were, the Government is violating the right of the citizens of Kenya to a speedy and fair trial. More than fifteen years after the scam was hatched, the citizens are yet to see justice being

<sup>91</sup> [2006] eKLR.

<sup>92</sup> Nairobi, High Court Miscellaneous Civil application No. 406 of 2006

<sup>93</sup> [2006] eKLR.

<sup>94</sup> Gathii, *supra* note 21 at 42.

<sup>95</sup> *Ibid* at 59.

done. The idea of a fair trial within a reasonable time should therefore be contextualized, taking into account the rights of all parties concerned.

On the other hand, the *Murungaru* decision has correctly been lauded for properly balancing the rights of individuals accused of corruption and those of society at large.<sup>96</sup> As the court noted, “the massive and debilitating nature of corruption in Kenya has impoverished and continues to impoverish the great majority of Kenyan masses and leads to robbing the government of resources to build and maintain a run down infrastructure, inadequate health services and mediocre and inadequate educational facilities. It has led to spiral inflation and unemployment.” Thus the court valiantly endeavored to interpret the applicant’s due process rights taking into account the rights of society at large. This decision clearly demonstrates that the protection of the human rights of individuals accused of corruption need not jeopardize the fight against corruption.

#### IV. Conclusions

Corruption violates cherished human values such as equality, dignity and democracy. It should therefore be of great concern to the human rights movement, which has made great strides in ensuring that these values are respected in all societies. However, national and international initiatives to further the respect of human rights and to fight corruption have tended to run in parallel. Nevertheless, this trend is now changing and the linkages between corruption and human rights are increasingly recognized and appreciated. Indeed, the human rights movement provides strong organizing principles that can be instrumental in the war against corruption. By constantly reminding us that the state and non-state actors have obligations to respect, protect and fulfill human rights, the human rights approach can demonstrate in practical ways how corruption adversely impacts on the livelihoods and liberties of

citizens, especially the poor and marginalized groups in society.

More specifically in the Kenyan context, the adoption of a human rights perspective may enhance the effectiveness of the fight against corruption in the following ways:

- Providing a framework for collaboration between human rights organizations and anti-corruption organizations, so that they can share their knowledge and experiences, since this is likely to ensure better protection of human rights and less corruption. In particular, the human rights approach to the fight against corruption should facilitate collaboration between Transparency International-Kenya and the Kenya Human Rights Commission.
- Raising awareness of the importance of fighting corruption (both petty and grand), by for example, translating the cost of corruption in terms that make its impact more obvious to citizens.<sup>97</sup>
- Enabling citizens to better understand how governmental corruption undermines the provision of public services. In this regard, there is an urgent need to document the specific ways in which petty corruption also undermines the protection of human rights.
- The human rights approach can provide a strong basis for the participation of citizens in governmental budgetary processes.
- Facilitate a better balancing of civil and political rights on the one hand and economic, social and cultural rights on the other – particularly in the context of prosecuting individuals accused of corruption.

<sup>96</sup> Ibid at 60.

<sup>97</sup> See, e.g., Kenya National Commission on Human Rights (KNCHR), *Living Large: Counting the Cost of Official Extravagance in Kenya* (2006); KNCHR & Kenya Land Alliance, *Unjust Enrichment: The making of Land Grabbing Millionaires* (2006).

- Facilitate targeted public interest litigation so that the state can live up to its international obligations to respect, protect and fulfill human rights.
- Provide a strong rationale for the enactment of laws on freedom of information and the protection of whistleblowers. In this regard, there is a need for human rights and anti-corruption organizations to work together in advocating for reform as these laws will facilitate the realization of transparency in governance, thereby reducing secrecy in decision-making.
- The human rights approach also provides a strong basis for collaboration between human rights and anti-corruption organizations in monitoring the implementation of anti-corruption initiatives such as wealth declaration and adherence to codes of conduct on professionalism and ethics.
- The human rights approach can also provide a strong foundation for the engagement of human rights and anti-corruption organizations in on-going initiatives to reform the judiciary.
- The human rights approach can also provide a strong conceptual framework for examining the involvement of development partners in the fight against corruption. In particular, it should provide a strong basis for critiquing the resistance of development partners to efforts to transform the political order.

In these different ways, human rights norms can therefore constitute a powerful advocacy tool for human rights groups working to ensure that specific rights are respected, protected and fulfilled in an environment in which corruption in government is prevalent.



### Interventionism and Human Rights in Somalia

KHRL, 2007 (60 p.)



In this collection, academic experts as well as human rights practitioners grapple with the meaning and human rights consequences of the renewed war in Somalia following the joint military action by the Ethiopian and the Somali Transitional Federal Government forces in December 2006. These experts reflect on the legality of the Ethiopian military action, its implications for regional peace and security, the significance of the of US-led "War on Terrorism", the plight of civilians caught in the crossfire, the fate of refugees, and the future of citizenship in the Eastern Africa region and the Horn, among other issues.

The essays seek to answer some of the following key questions: Is the future of regional security going to be one underwritten by military powerful states in Africa? Is Ethiopia going to play the role of military

hegemon in East Africa and the Horn? What is Kenya's place and role in this new arrangement? What are the implications of the military adventurism for human rights in Somalia and in the region as a whole? To what extent has the US 'war on terrorism' precipitated the Ethiopian military action in Somalia? How has focus on terrorism framed the discussions, the reporting and treatment of the victims of the fighting between the Ethiopian military, the Transitional Federal Government and the Union of Islamic Courts? *Is the refuge protection regime now a casualty of state terrorism concerns?* What is the extent of such a concern? How should a policy response sensitive to the rights of refugees look like?

In their conclusions the contributors to these essays do not offer packaged solutions to these problems. Rather, what they present to the reader is a problematisation of the Somalia crisis in its various dimensions and an invitation to engage in further critical analysis and research. This slim collection will appeal to all those with an interest in Somalia, the Eastern Africa region and the Horn, and human rights in general.

### KHRI Strategic Plan 2007—2012

KHRA, 2007 (30 p)



This is the Kenya Human Rights Institute's first strategic plan. The Plan sets out the contextual background informing the establishment of the Institute and its strategic focus from 2007 to 2012. Five strategic objectives are at the core of the Institute's programmatic work: to build the Institute's capacity to become a centre of excellence; to strengthen the capacity of key human rights actors to engage with the human rights discourse; to promote dialogue between scholars and practitioners

on pertinent human rights issues and to inform and influence human rights trends and engagements at local, regional and global levels.

While the Plan spells out a bold vision for the Institute, it also presents a realizable programme for the emergence of an intellectual centre for the study and research in the area of human rights theory and its practice. The Plan draws from the intellectual input of an array of outstanding human rights scholars and practitioners and discussions and consultations with key civil society actors in Kenya. Besides setting out the destination and the roadmap for the Institute's journey for the next five years, this Plan is also an invitation to our partners and friends to join us in the challenge.

---

## About the Institute

The Kenya Human Rights Institute is a think tank for the generation and dissemination of high quality research in the area of human rights as well as a centre for education and training in human rights. It is founded on the understanding that progress in the human rights arena is closely linked to the continuous interrogation of practice and its linkage to underlying theories, concepts and their interpretations from an interdisciplinary perspective.

As a centre for critical reflection and research on human rights, the Institute promotes the creative adaption of human rights concepts, ideas and methodologies to the local realities in Kenya and the region. The Institute carries out its broad mandate by conducting scholarly research on the knowledge and experience accumulated from the struggles and initiatives of civil society organizations and individuals organized in a variety of forms in Kenya and the region.



**Kenya Human Rights Institute**

PO Box 41079 00100, Nairobi Kenya

Tel.: (+254 20) 387 4999/8, 387 6065 • Fax: (+254 20) 387 4997

Email: [admin@khrc.or.ke](mailto:admin@khrc.or.ke)

---

**KENYA HUMAN RIGHTS COMMISSION  
NOTES TO THE ACCOUNTS (Continued)  
FOR THE 15 MONTHS ENDED 31 MARCH 2000**

## 9. SURPLUS/(DEFICIT) FOR THE PERIOD

a) The surplus/(deficit) for the period is stated after charging:-

	2000 KShs	1998 KShs
Provident contributions	215,382	-
Audit fees	475,000	440,000
Director's emoluments and after crediting:-	<u>2,250,000</u>	<u>1,800,000</u>
Interest income	<u>41,376</u>	<u>1,144,164</u>

b) Not all funds were received at the beginning of the financial year. Some of the grant receipts came in during the second half of the calendar year 1999 and cover activities planned for the period 1999 to 2001. Hence the surplus at the end of this period.

10. As stated in note 1(d), fixed assets purchased using donor funds are expensed in the year of purchase. All assets whose price exceeds KShs. 10,000 are included in KHRC's assets register. The details of assets so purchased and expensed but not disposed off as at the balance sheet date are as follows:-

Computers	2,262,934	1,497,360
Motor vehicles	3,085,014	2,070,014
Furniture and fittings	690,518	690,518
Office equipment	<u>2,712,303</u>	<u>1,926,599</u>
	<u>8,750,769</u>	<u>6,184,491</u>

## 11. TAXATION

No provision has been made in these accounts as the directors are of the opinion that tax exemption will be granted by the Commissioner of Income Tax

## 12. CAPITAL COMMITMENTS

Authorised but not contracted for

1,801,081

-

The capital commitments relate to computers and computer accessories, computer networking and PABX switchboard.

## 13. NUMBER OF EMPLOYEES

The number of employees at the end of the period was 14 (1998 - 17).

## 14. REGISTRATION

The commission is registered in Kenya under the NGO Act. (1990).

## 15. CURRENCY

These accounts are presented in Kenya shillings (KShs).

**1999**  
**ANNUAL REPORT**



**KENYA HUMAN RIGHTS  
COMMISSION**

**Kenya Human Rights Commission**  
**Gitanga Road, Valley Arcade**  
**P.O. Box 41079**  
**Nairobi, Kenya.**  
**Tel: +254(2) 576065, 574998/9**  
**Fax: +254(2) 574997**  
**E-mail: [khrc@africaonline.co.ke](mailto:khrc@africaonline.co.ke)**  
**Website: [www.hri.ca/partners](http://www.hri.ca/partners)**