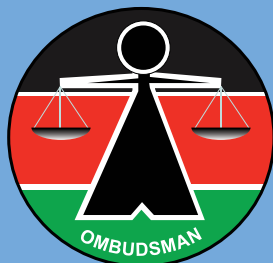


# THE COMMISSION ON ADMINISTRATIVE JUSTICE (Office of the Ombudsman)

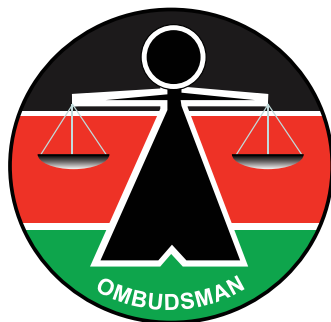


*Hata mnyonge ana Haki*

## LAYING THE FOUNDATION FOR ADMINISTRATIVE JUSTICE IN KENYA Six Years Later



# THE COMMISSION ON ADMINISTRATIVE JUSTICE (Office of the Ombudsman)



*Hata mnyonge ana Haki*

## LAYING THE FOUNDATION FOR ADMINISTRATIVE JUSTICE IN KENYA

Six Years Later

## Ombudsman censures the Treasury on Budget cuts

BY VICTOR JUMA

The Treasury's decision to cut funding to various government departments in the current fiscal year is illegal, the Commission on Administrative Justice (the Ombudsman) has said, insisting that such moves are in breach of the Constitution and must be reversed.

Ombudsman asks staff fired unlawfully to visit their offices for constitutional recourse

BY JOSEPH NGUNJIRI  
josephngunji@gmail.com  
AND KENNEDY KIMANTHI  
@KimanthiKen  
kkimanthi@ice.nationmedia.com

The umbrella workers union has put six workers on notice, saying it will prosecute them should they fail to reinstate sacked

## Ombudsman lays bare the new anti-secrecy laws

Isiolo >

Ombudsman to set up office in county today

The Commission on Administrative Justice is set to open a branch in Isiolo County today. The launch will see the Ombudsman's office have a presence in upper Eastern region and brings its total branches to 4 across the country. The office will serve residents of Isiolo and the neighbouring counties of Meru, Samburu, Marsabit and

## Ombudsman wants killings probed

The call comes a week after 37 local and international civil society groups, including the Kenya National Commission on Human Rights, made a similar demand



Office of the Ombudsman Commissioner Saadia Mohan (left) addressing the media during the sacking of county workers by governors the commission's offices in Nairobi yesterday. She is with the commission's acting chairperson, Regina Mwatia

## EACC panel to rely on Ombudsman

BY DOMINIC WABALA

THE tribunal appointed to investigate EACC chairman Mumo Matemu and

## Public officers warned of politicking

Politicians who aid public servants to participate in politics might also be barred from participating in politics in the future. Regina Mwatia, the acting chairperson of the Commission on Administrative Justice (CAJ), warned public servants against taking part in political activities or face the law.

## Ombudsman orders fresh probe into 2015 KICC tender disputes

Complainants say they had already done some renovations before the jobs were cancelled and they have not been paid. They say banks are now after their money.

PUBLIC SERVICE | Commission recommends overhaul of pension payment system

## Retirees 'go through hell to get dues'

Ombudsman's report details how retirees go through to access pension and other benefits

BY VINCENT KIBAKI

The Ombudsman has ordered a fresh probe into the 2015 KICC tender disputes, saying the government's response to the Garissa University College massacre.



96,000

Number of staff who have been

## Ombudsman pokes holes in new law on CJ

By ROSELYNE OBALA

The Commission on Administrative Justice (CAJ) has expressed reservations over a recent amendment to the Judicial Commission of Service (JCS) Act, empowering the president to nominate the Chief Justice from a list of three candi-

## Ombudsman to probe Garissa varsity attack

BY JAMES MBAKA

THE ombudsman has launched investigations into the government's response to the Garissa University College massacre.

the 2013 Westgate Shopping Mall attack, the 2014 Nairobi bus bombings, Gikomba bombings, Mpeketoni and Lamu attacks, are indicative of possible security lapses and weaknesses, in terms of response by security agencies.

## Ombudsman summons two civil servants

By GEOFFREY MOSOKU

The Commission on Administrative Justice (Ombudsman) has summoned two civil servants to answer to charges of failure to perform their responsibilities.

The head teacher of Kibos School for the Blind Meshack Too and Thika District Lands Registrar Felix Nyakundi could face jail terms or be fined if the Ombudsman finds them guilty of being unresponsive public officers.

from a ladder and fractured his leg, occasioning partial impairment.

About a year ago, we were told the school was waiting for money from the ministry and later the same head teacher wrote to us saying the complaint had been withdrawn by the victim and a new payment of Sh25,000 had been agreed upon which we found suspicious. It later turned out to be a lie hence the summons Mr Angima said.

On the other hand, Mr Nyakundi is accused

# Start search for new CJ now, says Ombudsman

## Parliament doesn't have final say on security bill, says ombudsman



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## ABBREVIATIONS

<b>ADR</b>	Alternative Dispute Resolution
<b>CAJ</b>	Commission on Administrative Justice
<b>EACC</b>	Ethics and Anti-Corruption Commission
<b>GAA</b>	Government Advertising Agency
<b>GoK</b>	Government of Kenya
<b>IEC</b>	Information, Education and Communication
<b>KCSE</b>	Kenya Certificate of Secondary Education
<b>KNCHR</b>	Kenya National Commission on Human Rights
<b>NCAJ</b>	National Council on the Administration of Justice
<b>NSSF</b>	National Social Security Fund
<b>PCSC</b>	Public Complaints Standing Committee
<b>TI</b>	Transparency International
<b>UNDP</b>	United Nations Development Programme

## STATEMENT OF THE Ag. CHAIRPERSON



The Commission on Administrative Justice (Office of the Ombudsman), as a successor of the Public Complaints Standing Committee, was established in November 2011 to enforce administrative justice in Kenya. It was the first time that Kenya was joining the list of nations with a true ombudsman office, its predecessor having been established through a Gazette Notice as a department within the then Ministry of Justice, National Cohesion and Constitutional Affairs. As with any nascent institution, we embarked on the journey of operationalising the Commission to deliver on its mandate under the constitutive law.

This entailed development of the organizational structure, recruitment of staff, and development of regulatory and operational framework among others.

With the understanding that the Ombudsman could call to account the administrative and service failures and shortcomings in public service, we formulated strategies for achieving the mandate. This included review of administrative decisions or actions, issuance of advisory opinions, public education and awareness creation, capacity building for public institutions and public interest litigation.

Through these strategies, we stayed true to our vision of an effective overseer of responsiveness and servant-hood in public offices at national and county levels. Accordingly, we handled 345,703 complaints in the six years of the Commission's existence and resolved 286,059 on various matters, straddling across unreasonable delay, administrative injustice, discourtesy, misconduct, incompetence, misbehaviour, improper or prejudicial conduct, manifest injustice, abuse of power, unfair treatment, and unlawful, oppressive, or unresponsive official conduct. The Commission also conducted 25 investigations into various matters that impede good public administration and issued 42 advisory opinions while participating in 30 matters of public interest litigation. In addition, we have registered tremendous growth in the field of alternative dispute resolution to the point of handling court-mandated disputes. We have run awareness campaigns, produced and disseminated IEC materials in a bid to enhance visibility of the Commission. Similarly, we have built partnerships at local and international levels to strategically position

the Commission to benefit from good practices elsewhere in the world in the practice of ombudsmanship.

Looking back over the last six years, I have no doubt that ours has been a journey of giant strides affirmed by significant milestones that we have achieved as the very first ombudsman office in Kenya. It has been an epic journey. To cap it, we got additional mandate to enforce the Access to Information Act last year. As an integral part of good governance, access to information enhances public participation and accountability. With such a mandate, entrenchment of good governance in public administration can only get better.

No doubt, we have set the stage for realization of good governance in Kenya. Though challenges abound, the Commission's has been on a six-year journey of laying a sound foundation for the realization of good governance in Kenya. I am grateful to my fellow commissioners and staff of the Commission who have worked tirelessly and made it possible for the Commission to fulfill its responsibility to the public over the six formative years.

A handwritten signature in black ink, appearing to read 'Rmwatha', with a long horizontal line extending to the right.

**DR. REGINA MWATHA, Ph.D, MBS**  
**ACTING CHAIRPERSON**



## FOREWORD



It gives me great pleasure to foreword this report which is the first of its kind. The Commission on Administrative Justice came into existence in September of 2011. The first commissioners to be appointed assumed office in November 2011 for a tenure that was to run for six years. They are Dr. Otiende Amollo (Chairperson), Dr. Regina G. Mwatha (Vice Chairperson) and Saadia Mohamed (Commissioner). Dr. Amollo served for five years having opted to retire one year before the end this tenure.

The Commission being the inaugural one, had the difficult task of building and setting up the institution. This included the physical tasks such as developing the organisational structure, recruitment of staff and locating and furnishing offices premises and building the technical foundation such as providing the vision, mission and setting up the agenda that would guide the institution for the next six years. I must say that much of the success that the commission was able to achieve in the last six years as will be seen in this report, has as its foundation, the clear and visionary agenda set by the Commissioners in the early years.

We stand now at the tail end of the tenure of the Commissioners and as we reflect through this report on the contribution of the commission to administrative justice and good governance in general, I can state with confidence that there is no better foundation that could have been laid for this all important institution. As the present commissioners exit, the incoming Commissioners will find a solid basis to build on and continue to enhance administrative justice.

I take this early opportunity on behalf of the secretariat to thank the outgoing Commissioners and to wish them well in their endeavours beyond this Commission. Kenya as a country will remember their contribution to governance and this report will always act as a reference point. I wish to also thank members of the secretariat who provided the technical support without which the successes of the commissioners would not have been realised.

I welcome all of us to peruse through this report and see what a seamless and well-functioning office can be able to achieve in such a short period of existence. We will continue to ask for the support of our partners and all well-wishers in the coming years, for the task of reforming our administrative systems is yet to be completed.

A handwritten signature in blue ink, appearing to read 'Leonard Ngaluma', with a stylized flourish at the end.

**LEONARD NGALUMA**  
**COMMISSION SECRETARY/CEO**

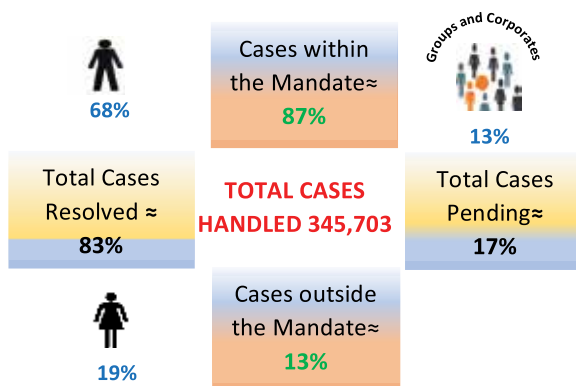
## EXECUTIVE SUMMARY

This is the first end of tenure report of the Commission on Administrative Justice (CAJ) Commissioners. This report presents key milestones, achievements, and challenges encountered during their stay in office.

The Report is divided into seven chapters with each addressing a specific thematic area. The first chapter gives background information: the Ombudsman concept, its philosophy and origin together with the history of the Kenyan Ombudsman. The content of the subsequent chapters is highlighted below.

### Righting Administrative Wrongs

The Commission has continued to address maladministration in the public sector through complaints handling and investigations.



### Empowering the Public through Education and Advocacy

The Commission employed three broad approaches in respect to public education and advocacy: awareness and education, production and dissemination of Information, Education and Communication (IEC) materials, and advocacy.

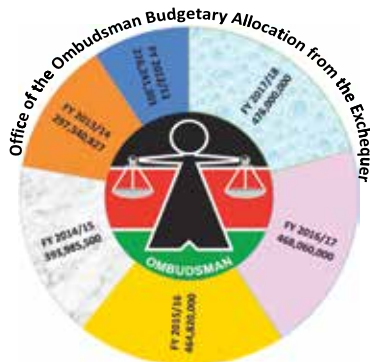
## Entrenching Good Governance in the Public Sector

In a bid to promote good governance in the public sector, the Commission has strengthened the complaints handling management systems of public institutions, issued advisory opinions and participated in public interest litigation matters.



## Engendering Open Governance through Access to Information

The right of access to information is provided for under Article 35 of the Constitution. Parliament passed the Access to information Act in 2016. The Commission has since designated one of its members as the Access to Information Commissioner and implemented a number of programmes and activities geared towards the full operationalisation of the Act.



## Institutional Growth and Development

Having been appointed in November 2011, the Commissioners commenced the operationalisation of the Commission to enable it effectively deliver on its mandate. This entailed development of the organisational structure, recruitment of staff, and development of regulatory and operational framework among others.

## Challenges

The Commission experienced a number of challenges during the reporting period. The main challenges included; budgetary constraints, widespread impunity in the public sector, insufficient statutory framework and limited accessibility of the Commission to most parts of the country.

## Way Forward

The Commission should continue to execute its mandate as it seeks to promote good governance in the public sector. Therefore, moving forward, the Commission should seek to among other things:

- a) Leverage on technology to synchronise complaints handling processes.
- b) Strengthen the legal framework by developing regulations required to fully operationalise the Access to Information Act.
- c) Devolve the services of the Commission to all counties.
- d) Escalate education and advocacy to create awareness on the Commission's mandate especially the new jurisdiction on access to information.
- e) Deepen administrative justice reforms through research and public inquiries.
- f) Reposition itself on its expanded jurisdiction as contemplated by various legislation.



# CHAPTER ONE

## THE OMBUDSMAN ENTERPRISE IN KENYA

### 1.1. Understanding the Ombudsman Concept

#### 1.1.1. Origin and Development

The origin of the ombudsman can be traced to Sweden when the Swedish King Charles XII signed a decree establishing the *Hogste Ombudsmannen* (the Highest Ombudsman) in October 1713. This was at a time when Sweden lay in ruins being ruled by a king who lived far away after years of war and hardship. The Highest Ombudsman was to make sure that state officers acted in accordance with the laws. The Highest Ombudsman would later metamorphose to what is now known as the Chancellor of Justice. On the other hand, the Swedish Parliamentary Ombudsman was formally established in 1809. The concept would then permeate first into the Scandinavian countries and ultimately to the rest of the world. Finland would adopt it in 1919, Norway in 1952 and Denmark in 1953. The rest of Europe and the world would then benefit from the concept with New Zealand being the first Commonwealth country to adopt the concept in 1962. In Africa, Tanzania was the first country to adopt the concept when it established the Permanent Commission of Inquiry in 1967. Presently, the concept has been accepted in Africa with 75% of the countries having established the institution of the ombudsman.

It is worthwhile to note that, whereas the scope of the early ombudsman was at national level, the concept has now been embraced in the global governance system beyond the national sphere to include supra-national bodies such as United Nations, the Commonwealth and the European Union. Furthermore, at the national level, it has permeated into various sectors, institutions and private bodies. Similarly, the jurisdiction and powers of institution of ombudsman has evolved into other frontiers such as protection human rights and environment, and anti-corruption and integrity.

### 1.1.2. Philosophy of the ombudsman

The ombudsman is an important mechanism for the realisation of good governance. It assures good governance by providing a platform for public participation in governance and realisation of civil liberties. The redress of grievances and systemic audits by the ombudsman democratises the administrative system thereby engendering fairness, transparency and accountability in public administration. Further, it brings the elements of good governance in administration by striking at the root of maladministration, and bringing the lamp of scrutiny on the operations of public institutions. In essence, the presence of an ombudsman has a 'tonic effect' on public administration simply because public officers are cognisant that their decisions, actions or inactions may be questioned.

There are six principles that guide the work of the ombudsman. First, **"getting it right," which** embraces the following:

- a) acting in accordance with the law and due regard for the rights of those concerned;
- b) acting in accordance with the public bodies' policies and guidelines;
- c) taking proper account of established good practice;
- d) providing effective services using appropriately trained and competent staff; and
- e) taking reasonable decisions based on all relevant considerations.

The second principle is **"being customer focused"**, which includes:

- a) ensuring that people can access services easily;
- b) informing complainants and service consumers what they can expect and what the ombudsman or public body expects of them;
- c) keeping to its commitments, including any published service standards; dealing with people helpfully, promptly and sensitively; and

- d) responding to customer's needs flexibly and efficiently, including, where appropriate, coordinating a response with other public bodies.

The third principle of good administration is “**being open and accountable**”. This demands that the relevant public body:

- a) be open and clear about policies and procedures;
- b) states its criteria for decision making and gives reasons for decisions;
- c) handles information properly and appropriately;
- d) keeps and maintains accurate records; and
- e) takes responsibility for its actions.

The fourth principle requires that the public body should act “**fairly and proportionately**”. This requires that an institution:

- a) treats people impartially, respectfully and courteously;
- b) treats people fairly and avoids conflict of interest;
- c) deals with people and issues objectively and consistently; and
- d) ensures that decisions and actions are proportionate, appropriate and fair.

The fifth and penultimate principle is “**putting things right**”. It requires that a public body:

- a) acknowledges and addresses complaints and mistakes in a timely manner;
- b) operates an effective complaints handling mechanisms; and
- c) offers a suitable remedy.

The final principle is “**seeking continuous improvement**,” which requires that the relevant body:

- a) reviews policies and procedures regularly; and seeks feedback for improvement.

***“...undoubtedly the most valuable institution from the viewpoint of both citizen and bureaucrat that has evolved during this century...there has been broad public demand for the establishment of an Ombudsman to resolve problems in a very large number of countries and institutions. This astonishing growth of an institution is not and has not been emulated by any other body. Contrast the many centuries that it took Parliament and the Courts to establish their roles...”***

- D. Pearce, “The Ombudsman: Review and Preview – The Importance of Being Different”  
The Ombudsman Journal, (Canada)  
Number 11, 1993, pp. 45; 13)**

## 1.2. Establishment of the Ombudsman in Kenya

### 1.2.1. Introduction

Since independence, public officers in Kenya constantly faced accusations of maladministration, characterised by delay, injustice, incompetence and inattention in service delivery. It was not uncommon to find public officers such as the provincial administration, civil servants, and members of the disciplined forces and chief executive officers of state corporations exercising their powers in ways that caused grievances to the public. Delivery of public services had become a favour rather than a right. The wrongs of public officers went unaddressed and the public found itself in a difficult situation of having to put up with inefficiencies in service delivery with majority of the citizens getting discouraged by the complexities, technicalities and expenses involved in litigation. Furthermore, the judicial process sometimes lacked remedies for certain administrative wrongs. This called for the introduction of a public defender who was to be accessible, flexible and inexpensive. It is from the foregoing and other related reasons that the idea to establish the office of an Ombudsman in Kenya was conceived.

### 1.2.2. Establishment and mandate

The Commission is a body established under Article 59(4) and Chapter Fifteen of the Constitution of Kenya. It is operationalised by the Commission on Administrative Justice Act, 2011 that provides for its *modus operandi*, functions and powers of the Commission. The Commission is a successor to Public Complaints Standing Committee (PCSC) (which was established through a gazette notice in June 2007 to address maladministration in the public sector), a department within the then Ministry of Justice, National Cohesion and Constitutional Affairs. The Commission constitutes three Commissioners who assumed office in November 2011, and the Secretariat.

The Government mandated PCSC to make appropriate legislative and administrative reforms to address specific and systemic maladministration or injustices. Its core mandate was to receive, inquire into, address and deal with complaints against public officers and public institutions concerning maladministration that compromised service delivery. However, this body lacked essential characteristics of



the office of ombudsman due to the nature of its establishment and independence which affected its operations.

The mandate of the Commission is two-fold, and extends to both national and county governments. Firstly, the Commission has the mandate of tackling maladministration (improper administration) in the public sector. In this regard, the Commission is empowered to, among other things, investigate complaints of delay, abuse of power, improper, unlawful or oppressive conduct, administrative injustice, unfair treatment, and manifest injustice or discourtesy. Secondly, the Commission has the mandate of overseeing and enforcing the implementation of the Access to Information Act, 2016.

### **1.2.3. Functions**

The functions of the Commission as provided for in Section 8 of the CAJ Act, are:

- a) Investigate any conduct in state affairs, or any act or omission in public administration by any State organ, State or public officer in National and County Governments that is alleged or suspected to be prejudicial or improper or is likely to result in any impropriety or prejudice;
- b) Investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct within the public sector;
- c) Report to the National Assembly bi-annually on the complaints investigated under paragraphs (a) and (b), and the remedial action taken thereon;
- d) Inquire into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehaviour, inefficiency or ineptitude within the public service;
- e) Facilitate the setting up of, and build complaint handling capacity in the sector of public service, public offices and state organs;
- f) Work with different public institutions to promote alternative dispute resolution methods in the resolution of complaints relating to public administration;

- g) Recommend compensation or other appropriate remedies against persons or bodies to which this Act applies;
- h) Provide advisory opinions or proposals on improvement of public administration, including review of legislation, codes of conduct, processes and procedures; and
- i) Promote public awareness of policies and administrative procedures on matters relating to administrative justice.

In addition, the Commission has the following functions under Access to Information Act;

- a) to investigate violations of the provisions of the Act;
- b) to receive reports from public entities with respect to implementation of the Act and evaluating the use and disclosure of information;
- c) to facilitate public awareness and develop programs on the right to access information and the right to protection of personal data;
- d) to promote right of access to information in public entities;
- e) to monitor state compliance with international obligations related to the right to access information and protection of personal data;
- f) to hear and determine complaints and review decisions arising from violations of the right to access information;
- g) to promote protection of data; and
- h) to perform such other function as the commission may consider necessary for the promotion of access to information and protection of data protection.

#### **1.2.4. Powers**

The Commission derives its powers from the Constitution, the constitutive Act and the Access to Information Act. In the conduct of its functions, the Commission exercises the powers conferred in Article 252 of the Constitution and powers of a court of law. In this regard the Commission

has powers to;

- a) Issue summons;
- b) Require that statements be given under oath;
- c) Compel production of documents;
- d) Conduct searches and seizures of documents with court orders;
- e) Interview any person;
- f) Obtain relevant information from any person; and
- g) Adjudicate on matters relating to administrative justice and access to information.

### **1.2.5. Achieving the Mandate**

The Commission implements its mandate in varied ways, including the following;

- a) Complaints handling which is carried out through inquiries, investigations, adjudication or alternative dispute resolution methods;
- b) Public education and awareness;
- c) Training and technical support on complaints management and access to information;
- d) Advisory opinions on matters affecting public administration and right of access to information;
- e) Public interest litigation; and
- f) Audits or spot checks on public offices to ascertain standards of service delivery.

# CHAPTER TWO

## RIGHTING ADMINISTRATIVE WRONGS

### 2.1. Introduction

Righting administrative injustice in the public sector is the core mandate of the Commission. This is aptly captured under Article 59(2)(h-k) of the Constitution and section 8 of the constitutive Act both of which empower the Commission to enforce administrative justice. Accordingly, the Commission conducts administrative reviews in instances of unreasonable delay, administrative injustice, discourtesy, misconduct, incompetence, misbehaviour, improper or prejudicial conduct, manifest injustice, abuse of power, unfair treatment, or unlawful, oppressive, or unresponsive official conduct. The overall goal of the Commission in this regard is to nurture a public service that upholds fairness, responsiveness, accountability and efficiency. The primary redress mechanism employed by the Commission in addressing maladministration is through complaints handling. In discharging this function, the Commission provides oversight across the entire public sector, acting as a check on administrative action, processes, systems and procedures.

### 2.2. Complaints Handling

In the six years of its existence, the Commission handled 345,703 cases out of which 87% were admissible and 13% were outside the mandate of the commission. A total of 286,059 were resolved, which represented a resolution rate of 83%. Complaints outside the mandate of the commission were handled through referrals and advisory services to the complainants on the appropriate channels of redress. The figures 1 to 6 are graphical representation of cases handled since establishment.

Figure 1

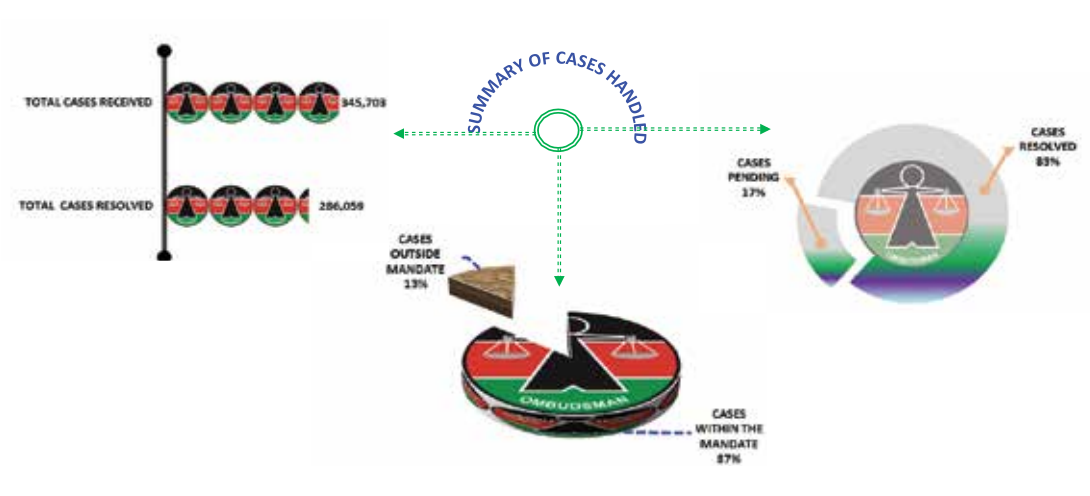
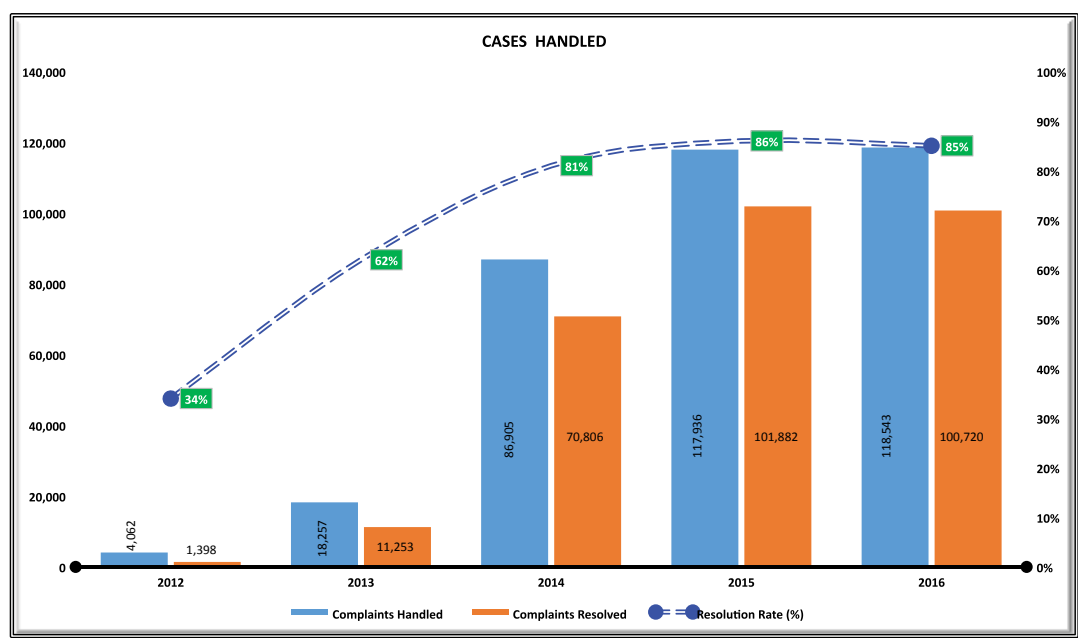
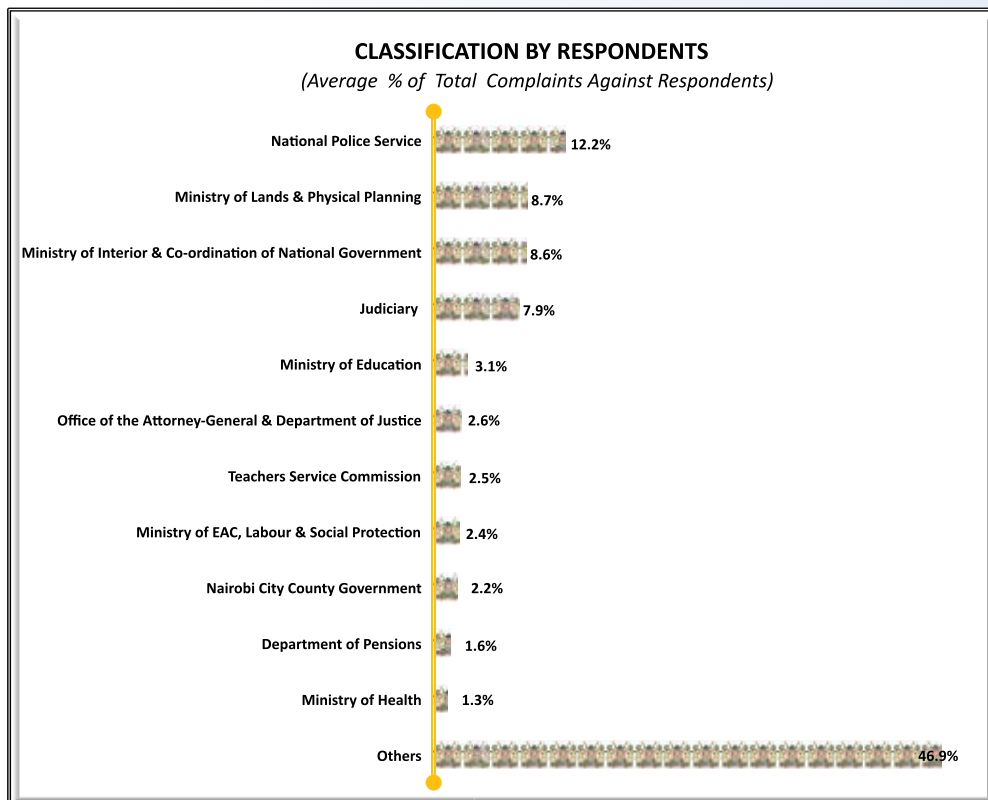


Figure 2





**Figure 3**



**Figure 4**

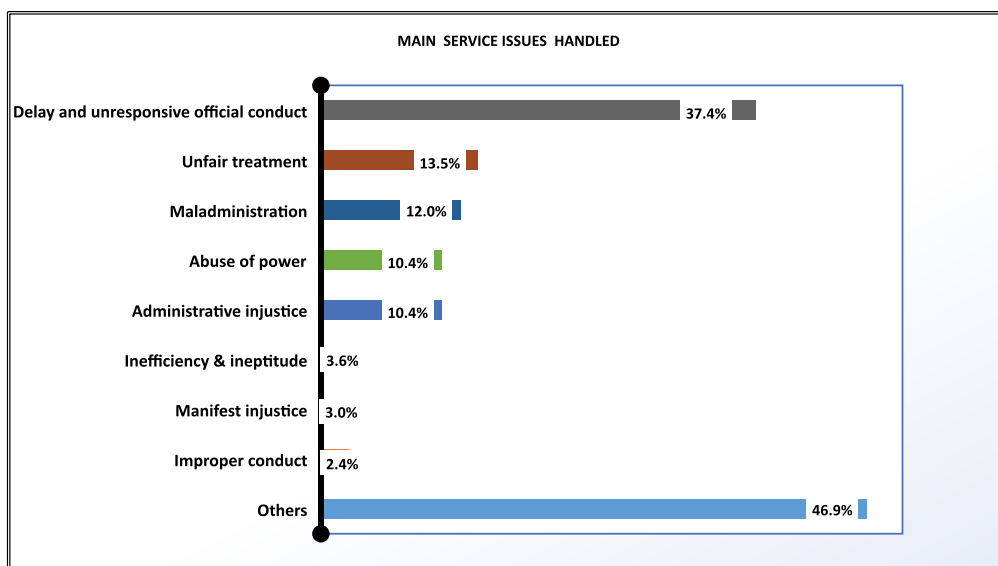


Figure 5

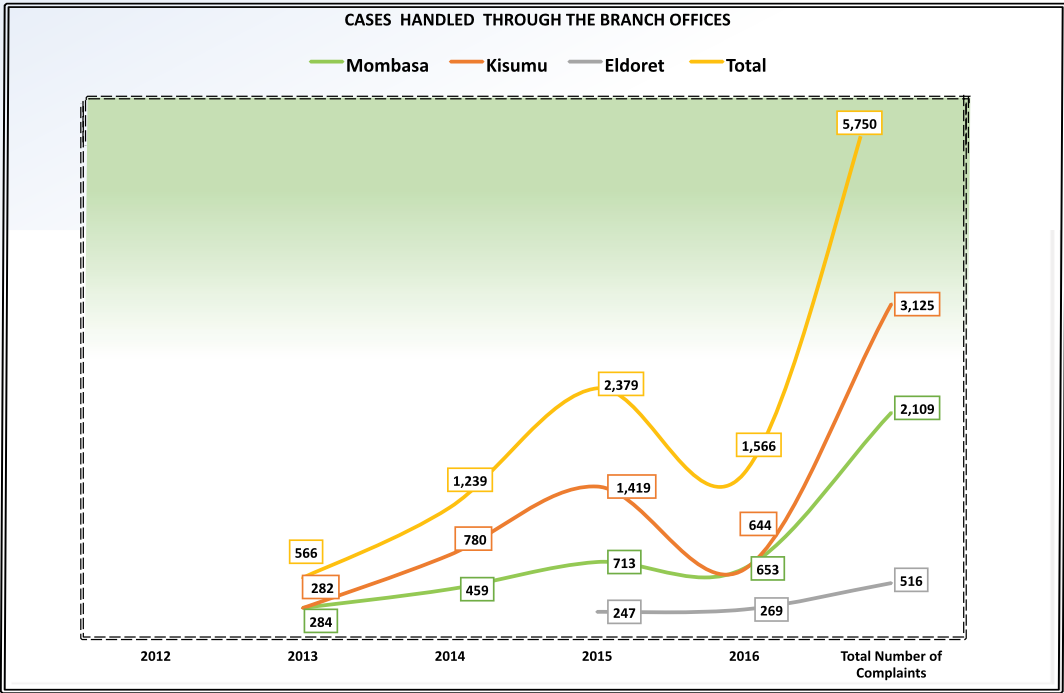
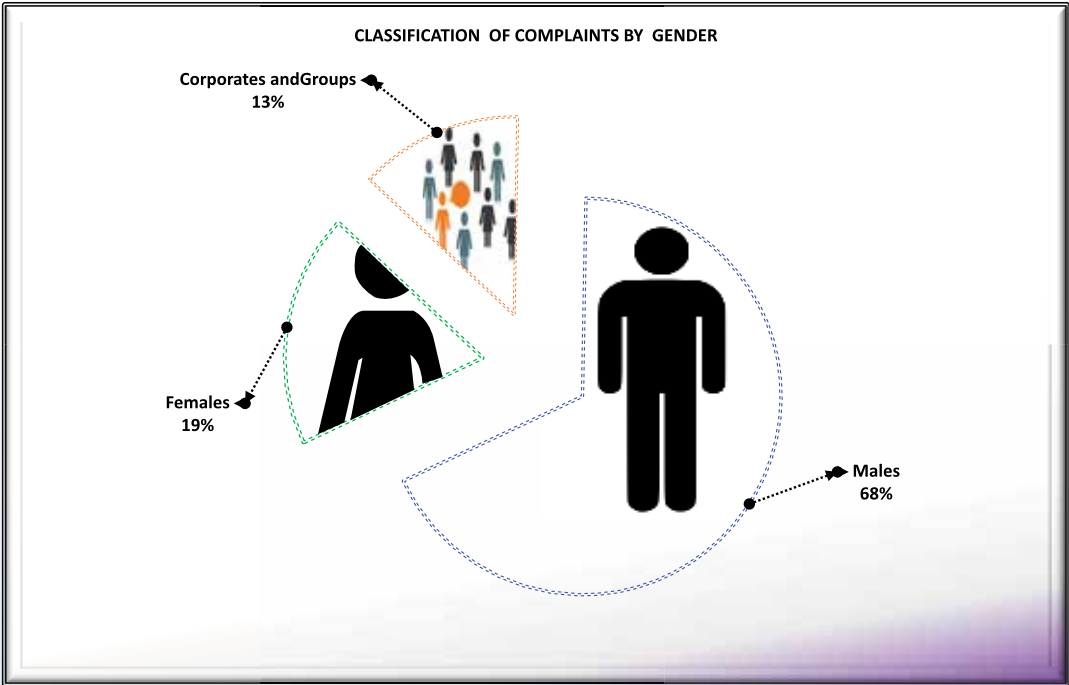


Figure 6



*“Governance isn’t just about making the right decision; rather, it’s about the process of decision-making.”*

- **Ricardo Chavira, Associate Director,  
Governance, Service Management &  
eServices**

## 2.3. Investigations

Pursuant to Article (59)(h-k) and section 8 of the constitutive Act, the Commission investigated various matters that impede public administration. The investigations were prompted by either complaints made by members of the public or the Commission's own initiative. The investigations were either systemic or specific. Whereas the systemic investigations were conducted on issues related to inherent weaknesses in structures and procedures of public institutions, specific investigations focused on improper conduct of public officers. During the reporting period, the Commission conducted 25 investigations some of which are presented below.

No.	Investigation	Issues	Findings	Recommendations
<b>Systemic Investigations</b>				
1	Investigation on the Issuance of Vital Documents	The investigation focused on the weaknesses inherent in the issuance of vital documents (birth and death certificates, passports, citizenship, national identity cards, permits and passes).	<ul style="list-style-type: none"> <li>• There were delays, corruption and inefficiencies in the issuance of vital documents.</li> <li>• Inadequate resources and facilities, low remuneration and staffing levels affected the issuance of vital documents.</li> <li>• Lack of awareness of/ and weak internal complaints management system undermined service delivery.</li> </ul>	<ul style="list-style-type: none"> <li>• Establishment of a one stop shop for agencies and departments handling issuance of vital documents.</li> <li>• Enhancement of staffing levels, welfare and supervision.</li> <li>• Improvement of equipment and facilities for issuance of vital documents.</li> <li>• Full implementation of the integrated population registration system.</li> </ul>

No.	Investigation	Issues	Findings	Recommendations
2	Investigation on the payment of pensions, gratuity and other terminal benefits	The Commission undertook an investigation to establish the weaknesses inherent in the processing and payment of pension, gratuity and other retirement benefits.	<ul style="list-style-type: none"> <li>Inadequate resources, bureaucracy, inefficiency, outdated laws, centralisation of services and poor records management were the main causes of delay and non-payment of pension and other retirement benefits.</li> </ul>	<ul style="list-style-type: none"> <li>Allocation of adequate resources for timely processing of benefits</li> <li>Development of a comprehensive policy for processing of benefits</li> <li>Automation of pension records and processes</li> <li>Strengthening of the complaints management system for timely feedback to the public.</li> <li>Review of relevant laws</li> </ul>

#### Specific Investigations

3	Investigation into allegations of encroachment of land for Machakos GK Prison and other related matters	An investigation of encroachment on the land for Machakos GK Prison by private developers. Other issues of the investigation were the non-payment to prisoners for their labour and failure to allow them to bask in the sun.	<ul style="list-style-type: none"> <li>Private developers had constructed on the prison land and rented some of the facilities to prison wardens.</li> <li>There were cases in court relating to the ownership of part of the land for the Prison.</li> <li>Prisoners were not being paid the prescribed rate of 10 cents daily which in itself was too low.</li> <li>There was serious congestion which overstretched the facility.</li> </ul>	<ul style="list-style-type: none"> <li>NLC to assess land owned by the Kenya Prison Service and recover any grabbed land.</li> <li>Fast tracking of the cases in court in respect of the land.</li> <li>Payment of prisoners and review of the daily rate.</li> <li>Expansion of the facility to cater for the additional inmates.</li> <li>Development of a government policy for public institutions to purchase furniture and related wares from the prison industries.</li> </ul>
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No.	Investigation	Issues	Findings	Recommendations
	Investigation into allegations of abuse of power by a Principal of Ngara Girls' High School	The investigation related to a report of ghost workers and students, and misuse of public properties by a Principal of Ngara Girls' High School in Nairobi.	<ul style="list-style-type: none"> <li>• The Principal had been using the School van for her private business.</li> <li>• There were ghost students at the School thereby falsely attracting more funds from the Ministry. There were, however, no ghost workers at the School.</li> </ul>	<ul style="list-style-type: none"> <li>• The Principal should be surcharged and disciplined for misuse of the School van.</li> <li>• An audit should be conducted for the students enrollment at the School.</li> </ul>
	Investigation into the allegations of unresponsive and improper conduct by the officers at the Industrial Area Police Station	An investigation was conducted into the conduct of certain police officers attached to Industrial Area Police Station for failure to act on a report by a security guard. Further, the officers were alleged to have threatened the Complainant with criminal action if he failed to withdraw the complaint.	<ul style="list-style-type: none"> <li>• The officers acted improperly by failing to open a case file, record statements, visit the scene of crime and take appropriate action.</li> <li>• There was abuse of power by Officer Commanding the Station who had directed the investigating officer to refund the cash bail to the suspects before the conclusion of the investigation.</li> </ul>	<ul style="list-style-type: none"> <li>• A new team of investigators be assigned to carry out the investigation.</li> <li>• Disciplinary action be taken against officers who failed to perform their duties professionally.</li> </ul>
	Investigation into an accident involving a school bus belonging to Rioma Secondary School	The investigation focused on the circumstances surrounding the accident which led to loss of lives and injuries.	<ul style="list-style-type: none"> <li>• The driver of the bus was inexperienced, incompetent and lacked a valid driving license.</li> <li>• The bus was overloaded and in flagrant disregard of the traffic law.</li> </ul>	<ul style="list-style-type: none"> <li>• Action be taken against the driver.</li> <li>• Disciplinary action be taken against the Principal and the then Marani District Quality Assurance and Standards Officer for failure to enforce the law.</li> </ul>

No.	Investigation	Issues	Findings	Recommendations
	Investigation into abuse of power and disregard of procurement laws by the National Social Security Fund with respect to Tassia II Infrastructure Development Project	The investigation focused on an allegation of impropriety by NSSF in the award of a tender of over KES5 billion for the Tassia II Infrastructure Development Project.	<ul style="list-style-type: none"> <li>• There was non-compliance with the law regarding the design, cost estimates and advertisement of the Project.</li> <li>• The revision of the cost upwards and approval of the project was improper and irregular.</li> <li>• The project was awarded without a budget and was fraught with irregularities and impropriety.</li> </ul>	<ul style="list-style-type: none"> <li>• The award of the tender be cancelled.</li> <li>• The Managing Trustee of NSSF and the Board be held personally and severally liable for any losses incurred.</li> <li>• A properly constituted Board to look into the project and determine its viability.</li> </ul>
	Investigation into abuse of power and unfair treatment in the recruitment of clerical officers at the National Registration Bureau at Rachuonyo North Sub-County	The investigation focused on alleged improper recruitment of clerical officers at Rachuonyo North Sub-County. It was further claimed that the officers involved in the exercise disregarded the recommendations of the interviewing panel and left out the deserving candidate (complainant).	<ul style="list-style-type: none"> <li>• The Complainant was unfairly treated despite having been the top candidate in the interview.</li> <li>• The minutes and other documents of the interview were doctored to justify the appointment of another candidate who was number eight in the interviews.</li> </ul>	<ul style="list-style-type: none"> <li>• The complainant be appointed to the position and the person already appointed be retired in public interest.</li> <li>• Action be taken against officers who aided the unlawful process.</li> </ul>

“The Ombudsman can bring the lamp of scrutiny to otherwise dark places, even over the resistance of those who draw blinds. If his scrutiny and observations are well founded, corrective measures can be taken in due democratic process, if not, no harm can be done in looking at that which is good.”

- **Chief Justice Mulvain of the Supreme Court of Alberta**

## 2.4. Overview of Milestones in Redressing Administrative Wrongs

The role played by the Commission in the administration of justice cannot be gainsaid. The Commission has fully established itself as a key pillar in the justice system as highlighted below.

1. In line with Article 48 of the Constitution (on access to justice), the Commission has provided an effective platform for members of the public and public officers who are aggrieved with the service delivery standards and practices, and administrative injustices in the public service to lodge their complaints for redress. Indeed, the Commission has gained prominence among the Kenyan public owing to its accessibility, fairness, flexibility, turnaround time and cost effectiveness-(Ombudsman services are free of charge). This explains why the Commission has handled 345,703 complaints within a period of six years only which is a record for any grievance handling oversight institution in Kenya. Moreover, a number of complaints handled by the Commission are non-justiciable meaning that they would not ordinarily be appropriate or entertained in a judicial forum. Yet, these are some of the complaints that affect the majority of Kenyans for which they require solutions.

*The Commission successfully assisted an orphan to acquire a birth certificate to enable him register for the Kenya Certificate of Secondary Education (KCSE). The Complainant had failed to register for KCSE in 2012 due to lack of a birth certificate which made him to repeat the said class in 2013. However, he still faced the same challenge since he could not get a birth certificate because he did not have his parents' identification documents and the deadline for KCSE registration in 2013 was in two weeks' time. This was compounded by the fact that the Complainant had grown up in a children's home in his formative years and later taken in by a distant relative. The matter was eventually lodged at the Commission which intervened and the certificate was expeditiously issued by the Department of Civil Registration. This enabled him to register for KCSE.*

2. Through handling of complaints, the Commission has enabled Kenyans to claim their constitutionally secured rights as explained below.

- a) Payment of retirement benefits amounting to millions of shillings which had remained outstanding for many years. The Commission received and resolved thousands of complaints on non-payment of retirement benefits thereby enabling pensioners and their relatives to enjoy their retirement and pursue other interests such as education, businesses as opposed to making endless trips from one office to another to pursue payment of the benefits. It is important to note that prolonged non-payment of retirement benefits has far reaching ramifications not only to the pensioners but also to the beneficiaries. Informed by the aforementioned the Commission conducted a systemic investigation that recommended reforms that would improve the pension regime in Kenya.

The Commission assisted a Complainant to renew her Permit from the Department of Immigration Services to enable her seek urgent medical attention outside Kenya. The Complainant had alleged that the Department had failed to renew the Permit for a period of two and a half months after her application on 22<sup>nd</sup> May 2012. Her Permit had expired on 20<sup>th</sup> June 2012. Further follow-ups with the Department had not borne any fruits since she was informed that the file for her application was missing. Having failed to get the Permit, the Complainant approached the Commission which intervened and the Permit was issued immediately.

A complaint was lodged with the Commission against the Public Trustee for failure to pay the death gratuity of the Complainant's relative amounting to KES. 376,117.50. In particular, it was alleged that the Public Trustee in Kakamega acted unfairly and abused his powers by withholding the gratuity despite receiving the money from the Department of Pensions and the requisite documents from the beneficiaries. It is worth noting that one of the beneficiaries was an 85 years old man who for years had been following-up the payments with no success. Upon intervention by the Commission, the Complainant was paid the death gratuity.

- b) Acquisition of vital documents (national identity cards, passports, & birth and death certificates e.t.c.) thereby enabling them to realise other rights such as the freedom of movement, rights to property, education, social security as well as political rights. In a number of instances, the realisation of any one or more of these rights and freedoms has been undermined by lack of provision of vital documents.

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- C) Facilitation to get services from different public offices in an expeditious, lawful, efficient and procedurally fair manner. To this end, the Commission empowered and facilitated thousands of Kenyans to have power and water connection, enjoy the government's social welfare programmes, computation of service dues, computation and compensation for work injuries.

The Commission assisted the Complainant to secure payment of work injury benefit amounting to KES.1,027,992 which had been outstanding since 2010. According to the complaint, the defunct Ministry of Internal Security and Provincial Administration had failed to pay dues for the injuries sustained by the Complainant in the course of his duties in Kakamega in 2010. Following the intervention by the Commission, computation of the dues was done and the Complainant subsequently paid the same.

The Commission successfully resolved a complaint against the Rural Electrification Authority for failure to replace a faulty transformer to the Complainant's property located on plot No. 1889 Njaabinio/Cheese Road-Mukeu in South Kinangop since November 2014 despite paying the requisite fees. As a result, the Complainant alleged that she was inconvenienced since she had to stay without power for several months despite making several follow-ups. The matter was reported to the Commission which intervened and the transformer was repaired.



The Commission successfully resolved a complaint against the Nairobi City Water Sewerage and Company for unfair disconnection of water supply to a Complainant who operated a hotel in Kayole Estate in Nairobi. According to the Complainant, the Company had sent him a bill of KES. 300,000 in 2014 despite the fact that he had not received water from the Company for two years. Further, he alleged that his efforts for a breakdown of the bill were unsuccessful and that officers from the Company's Kayole Branch broke into his premises and took the water meter for his borehole. Upon intervention, the Company adjusted the bill from KES. 319,977.38 to KES. 55,514.20. The Complainant paid the bill and his water supply was restored.

The Commission received a complaint against the Registrar of Trade Unions alleging delay, unresponsiveness and abuse of power in a case where the Aviation and Allied Workers Union had allegedly failed to pay a Complainant his salary and allowances for two years amounting to KES. 1.9 million. The Complainant further stated that the action by the Registrar amounted to unfair administrative action since he had earlier agreed to take action against the Union. Upon receipt of the complaint, the Commission intervened and the Complainant was paid his salary and allowances.

D) Intervention in cases of alleged injustices and abuse of power in the administration of justice. These included instances of unresponsiveness, inaction or inefficiency by investigative and prosecution agencies, misplacement or loss of files, and delay in hearing or determining cases and disciplinary matters.

The Commission secured justice for a minor who had been knocked down by a motorist along the Mombasa-Malindi Highway in April 2016. The matter was reported to Nyali Police Station, but no action was taken to bring the suspect to book. This prompted the Complainant to lodge a complaint with the Commission on behalf of the minor. Upon receipt of the complaint, the Commission intervened and the motorist was arrested and charged in court.

The complaint arose out of a criminal case in which it was alleged that a State Counsel who had the conduct of the matter had unprocedurally and without justification terminated the criminal proceedings against two accused persons. It was alleged that there was connivance between the State Counsel and the accused persons which resulted in the termination of the cases. Upon intervention by the Commission, the two persons were charged afresh and administrative action

The Commission received a complaint against the District Commissioner, Nyamira North District, alleging that he had unlawfully and unfairly withheld the Complainant's letter of appointment as an Assistant Chief. The Complainant further alleged that she had performed well in the interviews and an appointment letter dispatched to her through the District Commissioner. However, she alleged that the letter was not issued to her despite her several follow-ups. Further, she alleged that the action was part of the scheme to deny her the position and requested the Commission to intervene. Upon intervention of the Commission, the Complainant was issued with the appointment letter.

The Commission received a complaint against the District Criminal Investigation Officer (DCIO) alleging abuse of power and unlawful conduct. In particular, the Complainant alleged that the DCIO had failed to take action against suspects who had forged court orders that enabled them to transfer Land Parcel Nos. Karai/Karai 1496 and 1497. The Judiciary, vide a letter dated 21st December 2010, confirmed that the said court order had not originated from them (Nairobi HCCA No. 326/2996 and HCCA 126/2000). The Complainant further alleged that the suspects were arrested, but could not be charged in court since the DCIO had withheld the police file. The third suspect, a Senior Court Clerk, was arrested, but released under unclear circumstances. Upon receipt of the complaint, the Commission successfully intervened and the suspects were arraigned in court upon the directive by the Director of Public Prosecutions.

- e) Facilitation of settlements of court awards which had remained outstanding for long. Whereas settlement of court awards may be hampered by budgetary constraints, bureaucratic processes and improper conduct have largely contributed to the backlog of unsettled awards. As such, the Commission's interventions have focused on addressing the bottlenecks that undermine settlement of such claims. While the majority of the matters have been resolved through normal inquiries, a few have ended up in court where orders compelling payment have been granted.

The Commission assisted a police torture victim to secure payment of compensation amounting to KES. 7,122,915 awarded by the High Court in Embu against the Ministry of Interior and Co-ordination of National Government. The Commission was informed that there had been inordinate delay and unresponsiveness by the Ministry in releasing the money to the Complainant. Upon inquiry, the Commission was informed by the Office of the Attorney General that payment of the award had been approved by the National Treasury in the 2013/2014 financial year and that the same would be disbursed to the Complainant once it was received from the Ministry. Following the inordinate delay in settling the matter, the Commission successfully instituted a suit in court to compel payment to the Complainant.

The Commission secured payment of a court award to a former political detainee which had not been settled by the Ministry of Interior and Co-ordination of National Government and the Office of the Attorney General. Specifically, the Complainant stated that he had been awarded KES. 20 million shillings in Nairobi High Court Civil Case No. 845 of 2003; Otieno Mak'Onyango v The Attorney General & Another. However, he alleged that neither the Ministry nor the Office of the Attorney General had settled the decree. This prompted him to lodge a complaint with the Commission. Upon the Commission's intervention, the Complainant was paid the money.

- f) Facilitation of expeditious and fair resolution of thousands of disputes relating to land, which form the bulk of complaints by Kenyans. As a result, many Kenyans have received title documents for their parcels of land, and disputes relating to land ownership, boundaries and sub-divisions have been addressed.

The Commission successfully intervened in a case of failure by the Thika Land Registry to issue a title deed for land parcel No. Thika Municipality Block 24/1721 and 1287. The Complainant alleged that the application for transfer of the said parcel of land had not been processed by the Land Registry without any lawful justification despite meeting all the requirements. Upon the Commission intervention, the title deed was issued.

The Commission intervened in a complaint of fraudulent transfer of land LR No .Central Kitutu/ Mwasioma/1090 by the Kisii Land Registrar in July 2011. The Complainant alleged that the Registrar aided in the fraudulent transfer and had further refused to resolve the matter, including producing the documents used in the transfer of the land. The Commission took up the matter with the Ministry of Land, Housing and Urban Development (as it then was), Directorate of Criminal Investigations and the Director of Public Prosecutions. The investigation revealed that the Registrar was indeed party to the irregular transfer of the said parcel of land. Accordingly, he was charged in court and land reverted to the complainant.

- g) Facilitated compensation of millions of shillings to the public for private land or properties that had been compulsorily acquired by the government for public services.’

The Complainant, aged over 80 years old, lodged a complaint with the Commission against the Kenya National Highways Authority for delaying to pay compensation of KES. 221,317 for his plot, KISUMU/KANYAKWAR “A”/1552. He alleged that the land had been compulsorily acquired by the Government under Gazette Notice Numbers 8753 and 8754 of 23rd July 2010 for the construction of the Kisumu Bypass-Kericho-Mau Summit Road. Further, he alleged that he had furnished the Authority with all the requisite documents and even visited their offices in Kisumu and Nairobi. Upon intervention, the Complainant was compensated.

The Commission assisted a Complainant, an elderly woman, to get compensation from the Kenya Pipeline Company for laying down a pipeline that had been laid through her parcel of land in Kikuyu in 2006. In the process her crops were damaged. She further alleged that despite several follow-ups the matter remained unaddressed and therefore sought help from the Commission. Upon intervention, the Company compensated her accordingly.

- h) Facilitated the repossession of public land that had been hitherto acquired by private individuals. Many such complaints were lodged by groups of citizens whose livelihood or wellbeing had been affected by the conversion of public property to private hands. This mandate was executed in collaboration with relevant government agencies.

The Commission investigated the conversion of public land belonging to Machakos G.K. prison into private use. The investigation revealed that land for the Prison had indeed been encroached into by private developers who had constructed permanent buildings and rented them to some of the prison officers. As a result, one of the developers surrendered her title documents to the prison authorities. Other aspects of the matter were handed over to the National Land Commission for consideration.

- i) Provided a platform for public officers to realise their entitlements in relation to employment without undermining the working relationship. Accordingly, the Commission facilitated compensation to public officers for unfair labour practices such as unlawful or unfair termination, and unfair treatment in promotions and transfers.

The Commission successfully intervened in a complaint against the Kenya Copyright Board in 2012 alleging unfair administrative action. The complainant's appointment had been revoked on account that the appointment letter was mistakenly sent to her complainant whose appointment had been terminated on account of a mistake sent to her. The Complainant had resigned from her previous employment and reported to her new work station and worked for two months. Upon receiving the complaint, the Commission made an inquiry to the Board which responded that there was a technical error that led to the issuance of the letter of offer to the Complainant. Having assessed the matter, the Commission determined that the action by the Board was unfair and unjust and therefore, recommended compensation.

The Commission successfully handled a complaint from 522 employees of the Metrological Department regarding the non-implementation of a circular of 9th January 1995 and a subsequent court order in Nairobi High Court Civil Case No. 709 of 2003 in relation to the same. The Circular was issued by the Head of Public Service for an upgrade of certificate and diploma holders in the civil service with effect from 1st January 1995. Following the failure by the then Ministry of Environment and Natural Resources to implement the Circular and the subsequent court order issued by the court on 28th April 2004, the Complainants lodged a complaint with the Commission in 2012. The Commission made an inquiry and the Ministry upgraded the Complainant's salary scales and paid arrears amounting to over KES.115 million shillings. The upgrading also had a positive effect on the affected employees who had retired by significantly raising their monthly pension.

The Commission secured conversion of terms of employment to permanent and pensionable for over 400 employees of the Moi Teaching and Referral Hospital. The Complainants stated that the Hospital had failed to convert their terms of employment as casual labourers to permanent and pensionable terms since 2010. Upon failing to get any positive response from the Hospital, the Complainants lodged a complaint with the Commission in September 2015. The Commission intervened and determined, inter alia, that the complainants be engaged on permanent and pensionable terms and that Hospital's Human Resource Manual be reviewed so as to mainstream fairness, transparency and equity in recruitment process.

The Commission successfully intervened in a complaint of unfair treatment of 32 employees of the Kenya Airports Authority. The Complainants alleged that the Authority had irregularly and unlawfully terminated their employment in September 2015. They also alleged that the recruitment process that followed the termination of their employment was unfair, discriminatory and lacked transparency. The Commission initiated an inquiry and determined that the action by the Authority was unfair and unprocedural. Consequently, the Authority paid the concerned employees' three months' salary in lieu of notice. Further, the Authority committed to undertake a skills analysis with a view of absorbing some of the Complainants.

A complaint was lodged with the Commission against the defunct Ministry of State for Provincial Administration and Internal Security for delay and unfair treatment. The Complainant, a police officer, had alleged that he had been unfairly dismissed from work on account of absconding duty despite being on sick leave. The Commission established that indeed the Complainant was on lawful leave as he had claimed and recommended his reinstatement. The Complainant was subsequently reinstated.

- j) Secured justice for the down trodden, marginalised and special interest groups. Noting that many people in these categories are usually disadvantaged and their concerns most often remain unheard, the Commission developed strategies of reaching out to them to provide a redress platform. The adoption of the slogan 'Hata Mnyonge ana Haki' was part of the Commission's strategy of enhancing access to justice to all Kenyans and assuring them of the Commission's fairness, non-discrimination, objectivity and unwavering support for social justice and the rule of law. To this end, the Commission assisted internally displaced persons, persons with disabilities, the elderly, women and prisoners to claim their entitlements.

The Commission successfully intervened on a complaint by an inmate at Kibos Main GK Prison against the officer in charge of the facility. The Complainant had alleged that the Officer had failed to appreciate his asthmatic medical condition and comply with a recommendation by a doctor for him to be deployed in an environment with minimal dust and cold. Instead, he alleged that he continued to be assigned duties in areas that triggered asthmatic attacks. His efforts for resolution with the Department of Correctional Services were unsuccessful which made him to lodge the complaint with the Commission. The Commission intervened and the Complainant was deployed in environmentally friendly areas and later transferred to Siaya GK Prison.

The Commission assisted an internally displaced person to receive support from the Government following destruction of his property and loss of businesses during the 2007/2008 post-election violence. The Complainant had lost his six shops, two residential houses, two tractors, fuel tanks and several agricultural equipment within Manyatta Estate in Kisumu during the incident. The Complainant's efforts for compensation through the police, Ministry of Interior and Co-ordination of National Government as well as the Ministry of Devolution and Planning did not succeed. This prompted him to lodge the complaint with the Commission in September 2015. On receipt of the complaint, the Commission wrote to the Ministry of Devolution and Planning whereafter the matter was considered as a special case and the Complainant was paid KES. 200,000.



The Commission received a complaint against the Ministry of Education, Science and Technology for failure to approve the request by Kiriko Special School in Gatundu North District to open an account to enable them secure funds from Liliane Foundation of the Netherlands. The action of the Ministry was alleged to have frustrated the partnership and care of children with special needs in the School. Upon the intervention of the Commission, the request was approved by the Ministry.

The Commission successfully intervened in a complaint of delay by the National Council for Persons with Disabilities to issue the Complainant with a tax exemption certificate. The Complainant alleged that his application for the certificate had unreasonably delayed to be processed. Upon intervention, the certificate was issued.

- k) Promoted resolution of complaints through the use of Alternative Dispute Resolution (ADR) methods in accordance with Article 252(1)(e) of the Constitution and section 8(f) of the constitutive Act. ADR was not only employed in resolving complaints brought to the Commission, but also those lodged with public institutions directly. Indeed, the Commission mainstreamed ADR in its indicator 'Resolution of Public Complaints' under the performance contracting framework and training curriculum for public officers. It is worthy to note that a number of the disputes handled through ADR were court mandated while others were prompted by the parties to the disputes. For example, in *Nairobi High Court Miscellaneous Application No. 690 of 1997, Lepapa Ole Kisotu v Ntulele Group Ranch & 2 Others*], the High Court referred the case to the Commission vide an order of 21<sup>st</sup> March 2016 for mediation.

The Commission successfully mediated a dispute between a Complainant and the Revenue Authority (KRA) following his summary dismissal by the Authority on 23rd July 1998. The Complainant had admitted losing some funds while working for KRA as a clerical officer, but attributed the loss to lack of concentration due to his ailment and death of one of his siblings. He was subsequently charged in court, but was acquitted under section 215 of the Criminal Procedure Code on 16th November 2000. The Complainant appealed twice against his dismissal on the grounds that he had been acquitted by the court, but the appeals were rejected on the basis that KRA had lost confidence in him. He thereafter lodged a complaint with the Commission when his second appeal was rejected. The Commission took up the matter which culminated in a mediation meeting which resolved that the dismissal be changed to termination in the Authority's interest, he be paid his outstanding leave days.



3. Fostered good governance in public administration through complaints handling system which requires responsiveness, fairness, lawfulness, transparency and accountability in the performance of duties and delivery of public services. Indeed, public officers in the national and county governments are presently aware that their actions, if unlawful, irregular or improper, can be questioned before the Commission. Further, the propagation of the constitutional principle of personal accountability for administrative acts in complaints handling by the Commission has enhanced accountability since public officers are aware that they would be held personally liable for their actions. Through this, the Commission has promoted the realisation of the principle of servant-hood enshrined in the Constitution and relevant laws

The Commission successfully foiled an attempted loss of revenue amounting to KES 1,120,000 in respect of land parcel No. Kisii Municipality Block III/139 in Kisii County. According to the complaint lodged with the Commission, the memorandum of registration of transfer of the land stated that its value was KES. 7 million instead of KES. 60 million which would have had an effect on the amount of stamp duty for transfer of the said piece of land. Upon receipt of the complaint, the Commission made an inquiry to the Ministry of Land, Housing and Urban Development which thereafter sent the Chief Government Valuer for fresh valuation of the land. The valuation revealed that the true market value of the land was KES. 35 million with an expected stamp duty of KES. 1,120,000. In light of the findings, the Commission advised the Ministry to take action against its officers at the Kisii Land Registry.

# CHAPTER THREE

## EMPOWERING THE PUBLIC THROUGH EDUCATION AND ADVOCACY

### 3.1. Public Education and Advocacy

Public education is not only one of the key mandates of the Commission, but is also an important mechanism that propels realisation of the overall mandate of the Commission. The Commission employed three broad approaches in respect to public education and advocacy: awareness and education, production and dissemination of Information, Education and Communication (IEC) materials, and advocacy.

#### 3.1.1. Public Awareness and Education

##### a) Training of Journalists

The Commission trained 50 journalists with the aim of promoting accurate and responsible reporting of administrative justice matters and enhancing visibility of the Commission among the audiences targeted by the media outlets. In addition, it sought to contribute to the general awareness creation on the Commission's mandate. Further, the Commission undertook public education in various radio stations reaching about 10 million people.



- ❖ Kitwek Fm( Kalenjins)
- ❖ West Fm( Luhya)
- ❖ Radio Nam Lolwe (Dholuo)
- ❖ Ghetto Fm, (Kiswahili/Sheng')
- ❖ Radio Salaam( Kiswahili)
- ❖ Radio Mwenedu (Taita and Swahili)
- ❖ Coro Fm( Kikuyu)
- ❖ Nosim Fm (Maasai)
- ❖ Minto ( Kisii)
- ❖ Wajir Community Radio (Somali)
- ❖ Athiani FM (Kamba)
- ❖ Baliti FM (Borana and Kiswahili)
- ❖ Gulf FM (Dholuo)
- ❖ KBC (Kiswahili)
- ❖ Mayienga (Dholuo)
- ❖ Radio Citizen(Kiswahili)
- ❖ KU FM(English)
- ❖ Emoo FM (Kalenjin)
- ❖ Angaf FM
- ❖ Radio Ramogi (Dholuo)

## **b) TV Programmes**

The Commission produced and aired a docu-drama series and a feature on success stories to educate the public on its mandate. They were also aimed at enhancing public trust on the Commission as an alternative for redressing administrative injustices. The feature and docu-drama series aired on KBC, KTN and Citizen TV. Further, the Commission carried out public education and commentated on a variety of topical governance issues on various television platforms.

## **c) Print Media**

The Commission created awareness through sponsored advertisements, and news stories and features on various matters it dealt with in the context of public administration and promotion of good governance.

## **d) Public Engagement through Own Media**

The Commission has a vibrant online presence through which it engaged the public in respect to information sharing and handling enquires. The platforms are:

- Twitter (@KenyasOmbudsman);
- Facebook (Ombudsman Kenya); and
- Website: [www.ombudsman.go.ke](http://www.ombudsman.go.ke)

## **e) Public Awareness Forums**

Over the last six years, the Commission conducted public awareness and education through public forums and related platforms as highlighted in the matrix below.

<b>County Visits</b>	The programme was designed chiefly for public awareness at the counties. County visits also provided a platform to offer advisory services, receive reports on maladministration and create linkages with county governments and other actors at the county level. The initiative has been carried out in 45 counties.
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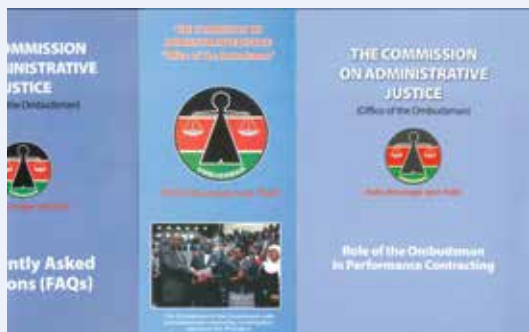
<b>Huduma Mashinani</b>	<p>This is a community empowerment and social accountability initiative that employs existing community structures. The initiative has been implemented in eight informal settlements in Nairobi with the help of 64 local committee members (dubbed Ombudsman Committee members) selected from opinion leaders in each of the areas.</p> <p>The Commission has, through the initiative, carried out public awareness and offered advisory services to residents of Mukuru kwa Njenga, Mukuru kwa Reuben, Kibera, Mathare, Kiambiu, Korogocho, Kangemi, and Kawangware.</p>
<b>Agricultural Society of Kenya (ASK) shows and other exhibitions</b>	<p>The Commission has leveraged on various platforms provided by different actors including the ASK, the Judiciary, Transparency International (Kenya), Ecumenical Centre for Justice and Peace, religious organisations and the Law Society of Kenya to conduct public education to various publics.</p>



Members of the public being served by a CAJ officer at Nairobi (ASK).

### 3.1.2. Production and dissemination of thematic IEC materials

Information, Education and Communication (IEC) materials formed an important part of the comprehensive public education and awareness plan. The Commission produced varied IEC materials to aid public education and awareness, and bolster its brand.



#### Impact

First, the public have come to appreciate their rights and the need to demand them. As a result, the Commission has handled 345,703 complaints since establishment.

Secondly, there is enhanced public trust in the Office of the Ombudsman as a credible avenue for redressing maladministration and promoting good governance.

# CHAPTER FOUR

## ENTRENCING GOOD GOVERNANCE IN THE PUBLIC SECTOR

### 4.1. Introduction

The Commission, has since inception, influenced good governance, and continuous improvement of service delivery in the public sector. As an oversight institution, the Ombudsman plays a central role in instilling a culture of responsiveness, transparency and accountability which are key ingredients of good governance and quality service delivery. In this regard, the Commission continues to work with consumers of public services on one part and duty bearers on the other. Accordingly, the Commission promotes public participation in governance by providing a link between right holders and duty bearers. As such, the complaints received against public institutions provide valuable feedback, which positively contributes towards improving service delivery.

This section of the report focuses on interventions of the Commission with regard to capacity building for public bodies on complaints management, issuance of advisory opinions, public interest litigation, Huduma Ombudsman Award, and election monitoring and observation.

#### **4.1.1. Setting up and Strengthening of Complaints Handling Infrastructure and Capacities in the Public Sector**

The Office of Ombudsman is an important stakeholder in public service delivery. Pursuant to section 8 (e) of the constitutive Act, the Commission serves to facilitate the setting up of, and build complaint handling capacity in the public sector. The Commission also acts as a check on policies, processes, systems and procedures involved in service delivery. Equally, it plays a critical role in the process of implementing performance contract in the public service. This is done by monitoring the implementation of the indicator, 'Resolution of Public Complaints.' In this respect the Commission is guided by a training curriculum and a complaints management framework (Guidelines).

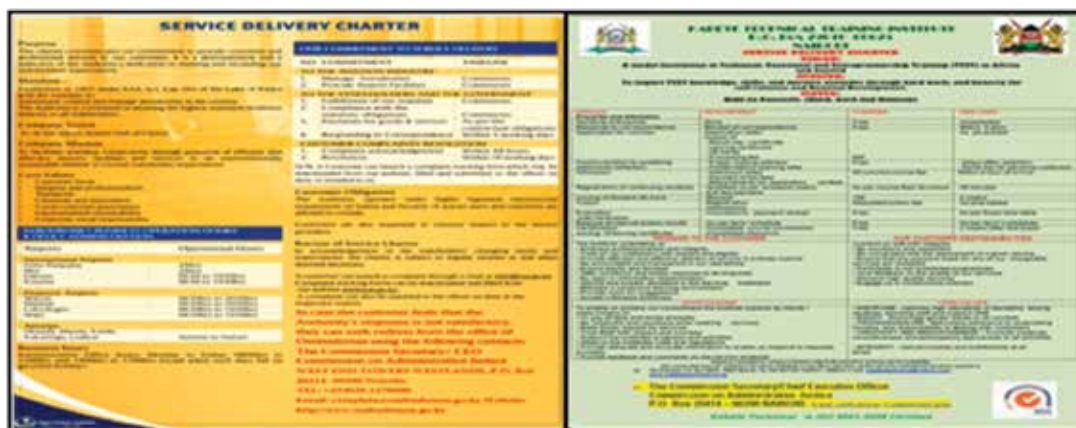


#### 4.1.1.1. Complaints Management Infrastructure

In order to assist public institutions to mainstream complaints handling the Commission supported 350 public institutions to:

- i) Establish complaints office/desk;
- ii) Constitute complaints committees;
- iii) Put in place communication channels through which members of the public can lodge complaints;
- iv) Develop service delivery charters that provide for grievance redress mechanisms ;

#### Samples of Service Delivery Charter from Public Institutions



- v) Maintain complaints registers; and
- vi) Develop complaints handling policies and procedures.

Consequently, more members of the public are now lodging complaints directly with the concerned institutions, and accountability of public institutions has been enhanced. It is also important to note that the number of institutions complying with the Indicator has increased. The figures 7 & 8 present the trend of complaints lodged with public institutions and the number of compliant institutions.



Figure 7

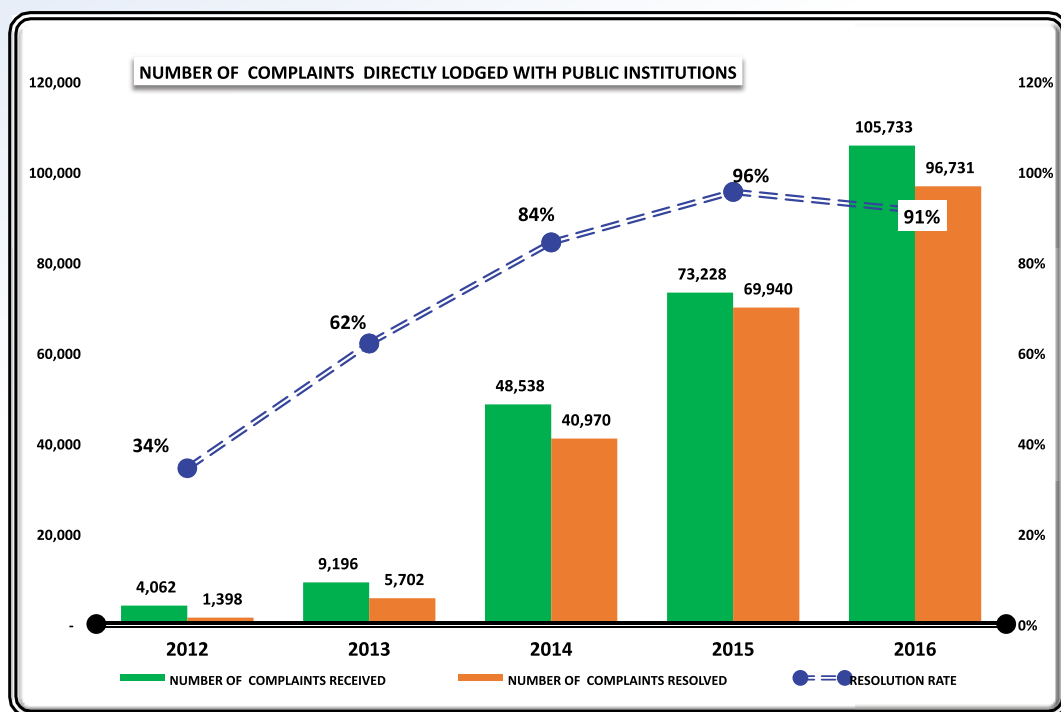
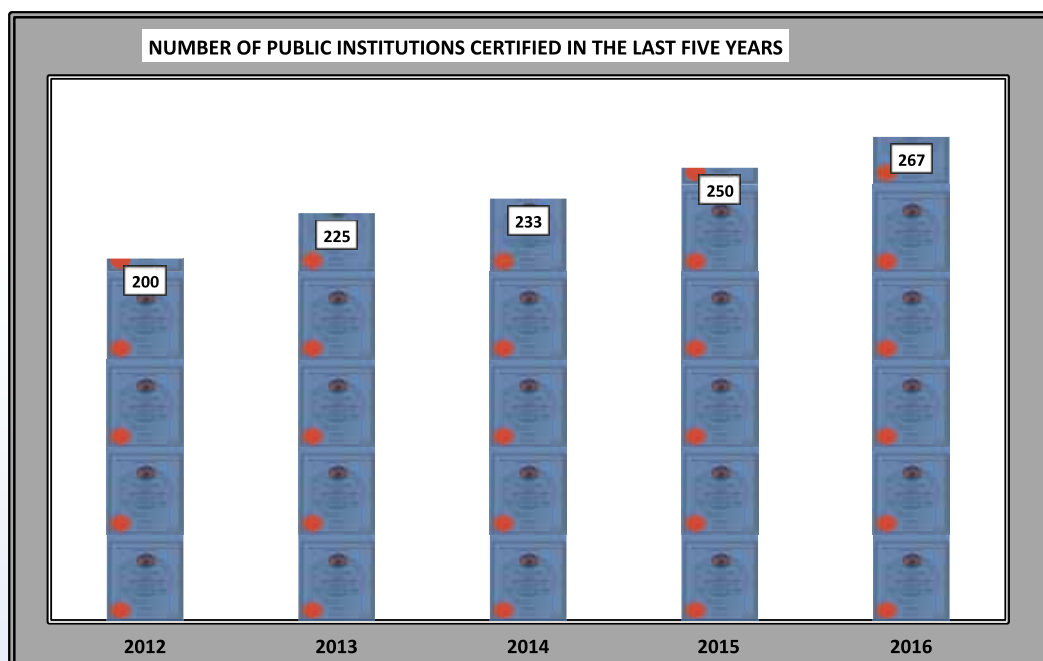


Figure 8



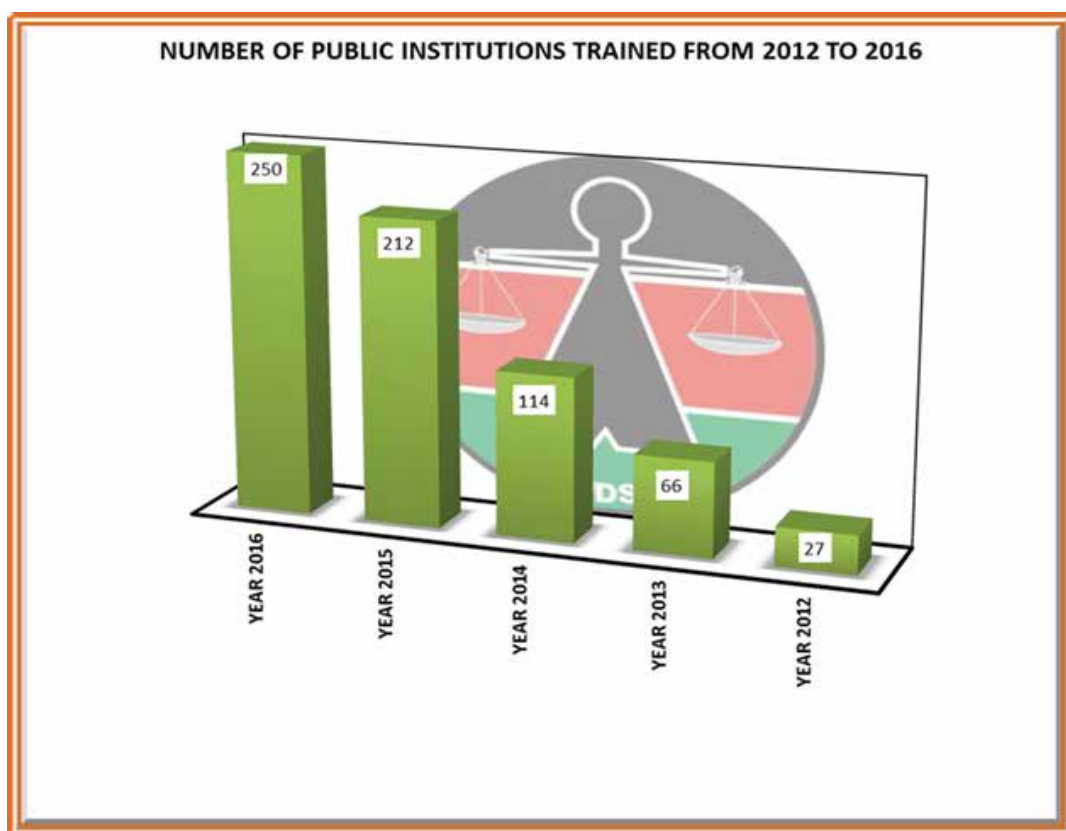
#### 4.1.1.2. Capacity Building

One of the strategies adopted by the Commission to build capacity of public institutions at the national and county levels is training. The trainings targeted heads of department, complaints handling personnel and frontline staff. The objectives of the trainings were to:

- I. Educate them on the legal and regulatory framework governing handling of complaints;
- II. Create an understanding of principles of public administration and good governance; and
- III. Enhance the skills of public officers on complaints management and development of service delivery charters and standards.

Figure 9 is a graphical presentation of public institutions trained from which over 10,000 officers were drawn

**Figure 9**





CAJ Director of Compliance and Risk, Mr. Ismael Maaruf with participants during a training on effective complaint management.

#### 4.1.1.3. Audit of Service Delivery Standards

To ensure improvement in service delivery the Commission carried out audit exercises on public institutions focusing on the following

- I. Accessibility;
- II. Service quality standards;
- III. Availability of complaints management infrastructure; and
- IV. Customer perception of services offered.



## 4.2. Issuance of Advisory Opinions

Advisory opinions refer to the soft power given to a public body to influence policy, legal and administrative decisions in public administration. The overall aim of advisory opinions is the improvement of good governance. Though not binding, advisory opinions can form the basis of action in public administration, including judicial decisions.

Section 8(h) of the constitutive Act mandates the Commission to issue advisory opinions or proposals on the improvement of public

administration, including review of legislation, codes of conduct, processes and procedures. This is reinforced by Article 249 of the Constitution which empowers the Commission to safeguard public interest and promote good governance. The Commission has since issued 42 advisory opinions. In issuing an advisory, the Commission is guided by one or more of the following considerations:

- a) Whether the matters is of public interest;
- b) Whether it substantially affects public administration;
- c) Whether it has grave policy implications; and/or
- d) Whether it is of interest to the mandate of the Commission.

The following are some of the advisories issued by the Commission since establishment.

NUMBER	ADVISORY OPINION	SUMMARY
<b>1</b>	Advisory Opinion on the differences within the Truth, Justice and Reconciliation Commission (TJRC).	The Commission issued an advisory opinion that led to the resolution of the stand-off between the Chairperson and members of the TJRC which had threatened its operations. the delivery of its mandate.
<b>2</b>	Advisory Opinion on the Constitution of Kenya (Amendment Bill), 2013	The Commission issued an advisory opinion to the National Assembly and the Senate against the proposed amendment to Article 260 of the Constitution which was intended to exclude Members of Parliament, Members of County Assemblies, and Judges and Magistrates from the definition of State Officers.
<b>3</b>	Advisory Opinion on the appointment of members of the National Land Commission	The Commission issued an advisory opinion to the President and the Prime Minister on the failure to appoint members of the National Land Commission even after conclusion of cases that had been pending before the courts.
<b>4</b>	Advisory Opinion on the relationship between the national government and county governments	The Commission issued an advisory to improve the working relationship between the national government and county governments. While noting that Kenya was a unitary state, the Commission advised that the relationship ought to be based on consultation and co-operation.

NUMBER	ADVISORY OPINION	SUMMARY
5	Advisory Opinion on the dispute between the National Assembly and the Judiciary	The Commission issued an advisory opinion to the President on the dispute pitting the National Assembly and the Judiciary. This was prompted by the recommendation of the National Assembly to the President to establish a tribunal to remove six members of JSC in spite of a court order prohibiting the same.
6	Advisory Opinion on the Expenditure by County Governments on Foreign Trips	The Commission issued an advisory opinion to county governments on the excessive expenditure on foreign trips. The Commission noted that the expenditures had the potential of undermining devolution. The Commission, therefore, advised county governments to exercise fiscal prudence and embrace alternative ways of learning best practices.
7	Advisory Opinion on HIV/ AIDS Presidential directive.	The Commission issued an advisory opinion to the President following his directive to County Commissioners to collect up to date data on all school going children who were HIV positive. The directive also sought information on the guardians or care givers, and expectant and lactating mothers who were HIV positive. The Commission examined the directive and advised that it infringed the right to privacy and was counterproductive in addressing the HIV/ AIDS challenge.
8	Advisory Opinion on the proposed amendment to the Independent Policing Oversight Authority Act, 2011	The Commission issued an Advisory against the proposed amendment to section 14 of the Independent Policing Oversight Authority (IPOA) Act. The amendment sought to empower the President to remove the chairperson or members of IPOA if he deemed necessary, without receiving recommendations from a tribunal.

NUMBER	ADVISORY OPINION	SUMMARY
9	Advisory Opinion on succession planning in state and public offices	The Commission issued an advisory opinion on succession planning in the public sector. Specifically, the advisory focused on succession in the Judiciary and the Independent Electoral and Boundaries Commission (IEBC). This was occasioned by the uncertainty on the retirement age of judges and the possible expiry of the terms of service of IEBC commissioners before the conclusion of the 2017 general elections.
10	Advisory Opinion on the National Treasury Circular No. 13/2016	The Commission issued an advisory opinion to the Cabinet Secretary for the National Treasury on Circular No. 13/2016 regarding the implementation of the budget for 2016/2017 financial year. While appreciating the role of the National Treasury in public financial management, the Commission advised that effecting budget cuts without involvement of Parliament was unlawful.
11	Advisory Opinion on the County Government (Amendment) Bill, No. 21 of 2015	The Commission issued an advisory opinion to the Senate against the County Government (Amendment) Bill, 2015 which proposed to amend the principal Act by conferring the power to appoint the sub-county, ward and village administrators to incoming county governments after every election.
12	Advisory opinion on dispute between county governments	The Commission issued an advisory opinion on the disputes between various county governments over boundaries. The Commission advised the establishment of a special task force to demarcate the boundaries, and consultation between county governments in addressing any such disputes.

“The Ombudsman is an important instrument of governance that ensures public empowerment and accountable government. It contributes to the development of a public service culture characterised by fairness, responsiveness, openness and integrity.”

**Hon. Dr. Otiende Amollo, former Ombudsman of Kenya (Nov. 2011 to Dec. 2016)**



### 4.3. Public Interest Litigation

Public interest litigation is one of the strategies adopted by the Commission to advance administrative justice and constitutionalism. The importance of public interest litigation lies in the binding, coercive and conclusive nature of judicial pronouncements. As such, in the context of the Commission, it complements the Commission's other strategies for enforcing administrative justice and constitutionalism. In this regard, the Commission has participated in 30 matters thereby immensely contributing to the rule of law through enunciation of novel jurisprudence and restatement of the national values and principles of governance. Some of the cases handled during the period under review are highlighted below.

NUMBER	PUBLIC INTEREST LITIGATION	SUMMARY
	In the Matter of the Principle of Gender Representation in the National Assembly and the Senate (Supreme Court No. 2 of 2012)	The Commission participated in the proceedings before the Supreme Court for an advisory opinion on the attainment for gender principle during the 4th March 2013 general election, and whether an unsuccessful candidate in the first round of a presidential election under Article 136 of the Constitution or any other person is entitled to petition the Supreme Court to challenge the outcome of the first round of the said election under Article 140 or any other provision of the Constitution.
	Nairobi Constitutional Petition No. 284 of 2012; Commission on Administrative Justice v the Attorney General & Another	The Commission filed a petition before the High Court seeking to impugn the constitutionality of Sections 14, 16 and 23 of the Supreme Court Act, No. 7 of 2011. In particular, the Commission contended that the said sections were unconstitutional since they restricted access to justice and gave the Supreme Court jurisdiction outside their mandate under the Constitution. The court agreed that sections 14 and 16(2b) of Supreme Court as well as the attendant Rules were unconstitutional.

NUMBER	PUBLIC INTEREST LITIGATION	SUMMARY
	Nairobi, Judicial Review Application No. 171 of 2014; the Commission on Administrative Justice v the Principal Secretary, Ministry of Interior and Coordination of National Government & the Attorney General	The Commission successfully moved the court to order settlement of a decretal sum amounting to Kes. 7,122,915, by the Principal Secretary, Ministry of Interior and National Co-ordination of National Government. The sum had been awarded as damages by the Embu High Court to the Complainant for police torture. The amount had remained unpaid for many years.
	Nairobi Industrial Court Constitutional Petition No. 23 of 2014, Severine Luyali vs. the Ministry of Foreign Affairs and International Trade & the Attorney General	The Petitioner in this matter was a government employee in the Ministry of Foreign Affairs who had been stationed at the Kenya High Commission in South Africa. At the end of her duty she applied for a one-year extension which was granted by the Ministry and revoked a few weeks later without notice. The court found the action to have been unfair and extended her tour of duty.
	Nairobi Judicial Review No. 304 of 2014; Republic v the Commission on Administrative Justice ex-parte the National Social Security Fund	The decision of the Court in this matter affirmed the place and role of the Commission in the fight against impunity and implementation of Chapter Six on leadership and integrity. The court dismissed an application by NSSF to quash the report of the Commission in relation to an investigation into allegations of impropriety in the procurement process for the Tassia II Infrastructure Development Project.

NUMBER	PUBLIC INTEREST LITIGATION	SUMMARY
	Nairobi Petition No. 542 of 2013; Prof. Paul Musili Wambua v the Attorney General	The Petitioner in this matter was a professor at the University of Nairobi's School of Law and also the Chairman of the Betting Control and Licensing Board. It had been alleged by the Association of Human Resource Practitioners of Kenya that the Petitioner's holding of two positions was unconstitutional. The Petitioner sought declarations that lecturers in public universities were not state officers and that he was not in breach of the law further, he sought to stop the Commission from investigating the matter. The court held that the petition was an abuse of the court process since the matter was within the mandate of the Commission.
	Nairobi Petition No. 622 of 2014; the Commission on Administrative Justice v the Insurance Regulatory Authority & the Attorney-General	The Commission successfully moved the court to declare the Motor Insurance Underwriting Guidelines issued by the Insurance Regulatory Authority on 20th November 2009 unconstitutional. The Guidelines had outlined varied and wide ranging directive setting prices of premiums for motor insurance. The court found that the Guidelines did not have the force of the law since they were issued without jurisdiction and had never been gazette.

## 4.4 Election Monitoring and Observation

The Commission monitored and observed the 2013 and 2017 general elections in Kenya. The main aim of the exercise was to monitor and forestall use of public resources and participation of public officers in political activities. In this regard, the Commission issued an advisory opinion on the subject, and wrote to various agencies and county governments that published promos on planned advertisement bringing to their attention the provisions of the law. Significantly, the intervention by the Commission forestalled use of public resources in some instances and stimulated public debate on use of public

resources and participation of public officers in political activities. In view of the findings, the Commission made recommendations to relevant institutions for action.

#### **4.5 Huduma Ombudsman Award**

The Commission hosted three editions of an award scheme designed to enhance accountability and responsiveness in public service. The Award recognises outstanding and excellent public institutions and officers in service delivery and integrity. The initiative has not only served as motivation for public officers but has also enhanced service delivery.

#### **4.6 Public Forums on Good Governance**

The Commission convened public forums on various issues relating to good governance. This was mainly aimed at engendering public debate and proposing reforms. One of the public forums in this regard in March 2015 focused on maladministration, corruption and impunity. This was occasioned by multiple cases and allegations of corruption touching on senior public officers precipitating a governance crisis in early 2015. One of the key conclusions of the meeting was the need to enhance collaboration among oversight institutions, and a resolution to re-examine the legislative framework to seal loopholes to make agencies more effective.

#### **4.7 Strategic Partnerships and Linkages**

The Commission endeavored to leverage on partnerships to enhance its capacity and facilitate realisation of its mandate. The partners were drawn from both the local and international spheres.



*His Excellency President Uhuru Kenyatta with Ms. Hellen Machuka the winner in the individual category during the inaugural Huduma Ombudsman Award ceremony.*

#### **4.7.1 Chairs' Forum**

The Commission is a member of a platform that brings together constitutional commissions and independent offices. The platform titled “Chairs’ Forum” provides an avenue for the members to forge a united front in promoting constitutionalism and protecting the sovereignty of the people. Through the Forum, members were able to speak to matters of national importance such as elections management, devolution implementation of the new Constitution, and leadership and integrity. This had an effect of entrenching the role and place of constitutional commissions and independent offices in the promotion of good governance in Kenya.





*Former CAJ Chairperson Dr. Otiende Amollo addressing participants during the 2<sup>nd</sup> Annual conference of constitutional commissions and independent offices.*

#### **4.7.2 Integrated Public Complaints Referral Mechanism**

The Commission alongside other oversight agencies (Ethics and Anti-Corruption Commission, Kenya National Commission on Human Rights, National Cohesion and Integration Commission, National Anti-Corruption Campaign Steering Committee and Transparency International - Kenya) is part of an online platform that provides for referral of complaints. Titled, the Integrated Public Complaints Referral Mechanism, the platform enabled the public to lodge complaints with any of the partner institutions while providing the entities to collaborate in carrying out awareness on their mandates. The unique feature of the platform is that it allows a person to lodge a complaint with any of the partner institutions regardless of the mandate. The receiving agency would then transmit the complaint to the relevant institution thereby making lodging of complaints convenient.

### **4.7.3 National Council for the Administration of Justice**

The Commission participated in the activities of the National Council for the Administration of Justice (NCAJ). NCAJ is a multi-agency co-operation platform established under the Judicial Service Act with the main responsibility of overseeing and promoting sector-wide partnership through formulation of policies relating to the administration of justice. During the period under review, the Commission participated in the development of various laws such as the Office of the Director of Public Prosecutions Act, the Office of the Attorney-General Act, the National Coroners Service Act, the Contempt of Court Act and the Transfer of Prisoners Act. In addition, the Commission participated in the development of a framework for collaboration between NCAJ and county governments. Moreover, the Commission participated in the Court Users Committees. Court Users Committees are forums that bring together key stakeholders in the administration of justice to share information and best practices and propose solution to emerging challenges. The Commission is one of the partners under the court users' committees' platform. Other partners include the Judiciary, Police, Prisons, Children's Department, DPP, Witness Protection Agency, EACC, and FIDA among others.

### **4.7.4 Creating linkages with Regional Ombudsman Bodies**

The Commission facilitated creation of a platform bringing together ombudspersons from Africa and beyond. Titled the Regional Colloquium of African Ombudsman Institutions, the forum held twice in the last six years allowed participants to share experiences and expertise on good governance, public administration, and constitutionalism. Through the Colloquium, the Commission learnt lessons that have enriched its work.

### **4.7.5 International Ombudsman Bodies**

The Commission is an active member of international bodies, including the International Ombudsman Institute and the African Ombudsman and Mediators Association in which the Kenyan Ombudsman is currently the Secretary General. Through this the Commission has been able to benchmark and embrace best practices and emerging international trends in ombudsmanship.





*Participants following the proceedings during the second Regional Colloquium of African Ombudsman Institutions.*

# CHAPTER FIVE

## ENGENDERING OPEN GOVERNANCE THROUGH ACCESS TO INFORMATION

### 5.1. Introduction

Access to information is one of the integral components of good governance worldwide. It is not only a human right, but it also facilitates the full realisation of the civil liberties. Fundamental rights and freedoms such as equality, dignity, protection of the law, non-discrimination, education, health, expression, participation and clean environment are largely dependent on the right of access to information. Similarly, it promotes sustainable development, efficient delivery of public services and democratic governance. Essentially, access to information enhances public participation in governance and addresses the culture of secrecy which most often breeds impunity, inefficiency and corruption in government. It equips citizens with requisite information about the policies, procedures and decisions of duty bearers thereby engendering efficient delivery of services and the rule of law.

In the context of Kenya, the right of access to information as provided for under Article 35 of the Constitution is signified by the national values and principles of governance, the values and principles of public service under Article 232, and the objects of devolution under Article 174 of the Constitution. The enactment of the Access to Information Act in 2016 was, therefore, a bold step towards enhancing good governance. The Act which came into operation on 21st September 2016 gives effect to the right of access to information and confers oversight and enforcement functions on the Commission.

Pursuant to section 20(3) of the Act, the Commission designated one of its members as the Access to Information Commissioner. The Commission also formulated and implemented a number of programmes and activities geared towards the full implementation of the Act. This section of the report highlights some of the strides made by the Commission in this regard.

# 5.2. Administrative Review of Decisions

Administrative review refers to the examination of the decisions of a public or private body in response to a request for information. This includes a decision denying access to information, partial grant of access to information, deferment of access to information, grant of access to information in edited form, imposition of fee, grant of access only to a specified person, remission of a prescribed application fee, and refusal to correct, update or annotate a record of personal information.

In the twelve months since the Act came into effect, the Commission has handled 42 applications for review. Of these, 28 were resolved while 14 are ongoing. Further, out of the applications handled, 40 were against public bodies while two were against private bodies. It is worth noting that most of the applications handled by the Commission related to refusal to grant access to information while two related to proactive disclosure. Figures 10 and 11 illustrates the analysis of various issues and trends from the administrative review by the Commission during the period under consideration.

Figure: 10

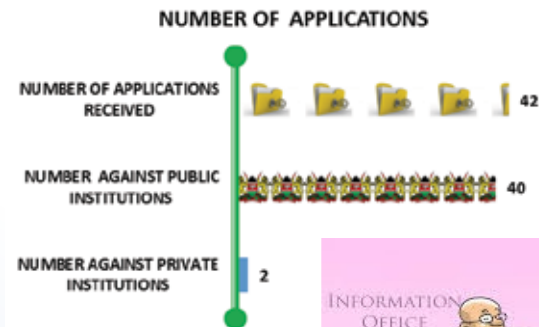
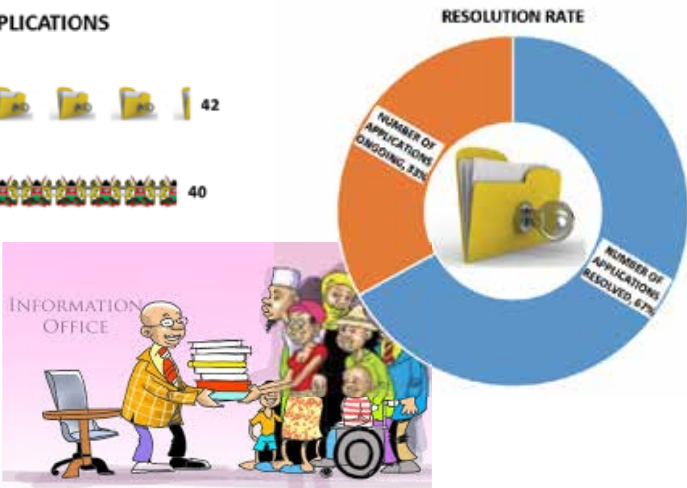


Figure: 11



Some of the applications considered during the reporting period are highlighted below:

- The Commission successfully handled an application for review against the decision of the National Construction Authority denying access to information on the names and contact details of the contractors and project owners/developers/sponsors in their databases meant to facilitate the Applicant's PhD research. Following the intervention by the Commission, the Authority supplied the requested information to the satisfaction of the Applicant.
- The Commission handled an application against the National Social Security Fund on proactive disclosure. The Applicant had alleged that the Fund had failed to publish information on all its audited financial statements and reports for public scrutiny on its website or any other medium as required under the Act. Upon scrutiny by the Commission, it was found that the Fund had had published the relevant information.
- The Commission successfully intervened in an application for review of the decision of the Ethics and Anti-Corruption Commission refusing to grant information sought by an applicant. The Applicant made a request for a copy of an investigation report on alleged corruption in the defunct Ministry of Transport and Communication which was finalised in October 2010. Upon intervention by the Commission, the requested information was supplied to the applicant.

### 5.3. Development of Regulatory Framework

The effective implementation of the Act is hinged on the development of appropriate mechanisms and tools such as regulations, guidelines and policies. In this regard, the Act envisages the development of such frameworks for complementarity. In recognition of this imperative, the Commission initiated consultations with relevant stakeholders, including the Cabinet Secretary responsible for information and the Chief Justice. The Commission also commenced the development of proactive disclosure guidelines to assist public and private institutions in undertaking their duties and responsibilities under the Act. In the meantime, the Commission developed a framework for implementation of access to information by public bodies. The framework known as "Reporting Framework on Complaints Management and Implementation of Access to Information," is premised on the performance contracting system for the 2017/2018 financial year. The framework applies to public bodies in the national and county governments. The primary objective of this initiative is to promote the development of necessary infrastructure for access to information in public bodies.

## 5.4. Public Education on Access to Information

Public education on access to information seeks to empower various publics to meaningfully participate in governance, and build the capacity of the duty bearers to undertake their duties and responsibilities under the Act. The upshot of public education is responsive, efficient, transparent and accountable delivery of services to the public. The Commission endeavoured to create awareness on the right of access to information and data protection during the last 12 months. This was achieved through initiatives targeting different audiences. The main strides made by the Commission in relation to public education are highlighted below.

**i) Capacity Building in the Public Sector:** The Commission mainstreamed access to information in the training of public officers under the performance contracting system. This enabled the Commission to sensitise a number of public bodies and public officers on their duties and obligations. Some of the public bodies sensitised were the Ministry of Lands and Physical Planning, the National Transport and Safety Authority, Agricultural Finance Corporation, the Communications Authority of Kenya, State Law Office, the Judiciary and the Insurance Regulatory Authority. In order to deepen its capacity building of public institutions, the Commission mainstreamed access to information in the 2017/2018 performance framework for public institutions which requires, *inter alia*, capacity building of staff.

### ii) Public Empowerment:

The Commission executed various initiatives to create public awareness about the right of access to information. This included publication of information on the Act in print media, sensitisation of civil society actors, sensitisation of the public through various forums, and engagement through social media. Similarly, the simplification of the Act and translation of the simplified version into Kiswahili is at an advanced stage.



The Commission's work under access to information was supported by a number of development partners. The support was in form of information sharing and enhancement of the capacity of the Commission to implement the new law. The partners include Kenya National Archives and Documentation Service, Article 19, USAID-AHADI and GIZ.



# CHAPTER SIX

## INSTITUTIONAL GROWTH AND DEVELOPMENT

### 6.1. Introduction

Upon appointment in November 2011, the Commissioners commenced the operationalisation of the Commission to enable it effectively deliver on its mandate. This entailed development of the organisational structure, recruitment of staff, and development of regulatory and operational framework among others.

### 6.2. Operationalisation of The Commission

Having assumed office, the Commissioners embarked on the development of the organisational structure in consultation with the Department of Personnel Management. The structure provided for a staff complement of 336 distributed across six directorates. It also provided for an internal audit section. Presently, the Commission has 72 members of staff. The Commission also enhanced its physical and IT infrastructure to improve accessibility and efficiency. In this respect, the Commission has established five offices-Headquarters in Nairobi and four branch offices (Mombasa, Kisumu, Eldoret and Isiolo), and has presence in 11 Huduma Centres, namely; Nairobi, Kakamega, Bungoma, Nyeri, Embu, Kajiado, Nakuru, Eldoret, Kisii, Mombasa and Kisumu.

### 6.3. Funding

The Commission is funded through the Exchequer, as per Article 249 (3) of the Constitution. It, however, received less funds than what it requested throughout the period under review. The amount disbursed varied a great deal with what had been budgeted for thereby compelling the Commission to source for funds from development partners to bridge the gap. Notably, the Commission received support from UNDP, GIZ and the Ford Foundation.

Figures 12 and 13 are graphical presentations of the projected budget, amounts received from the Exchequer and support from development partners.

Figure 12

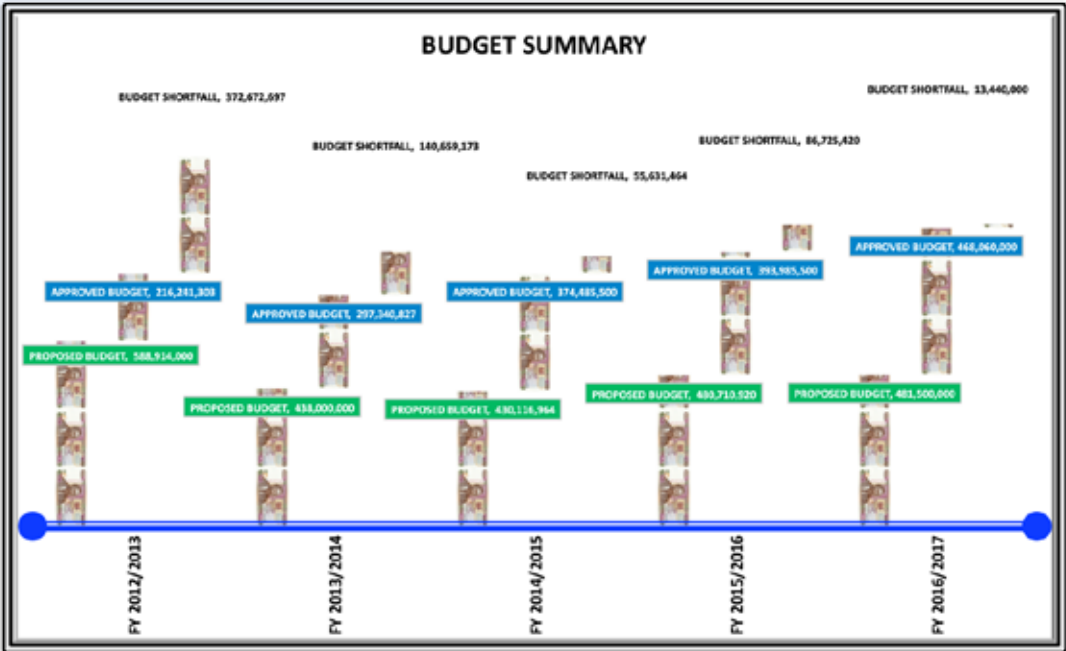
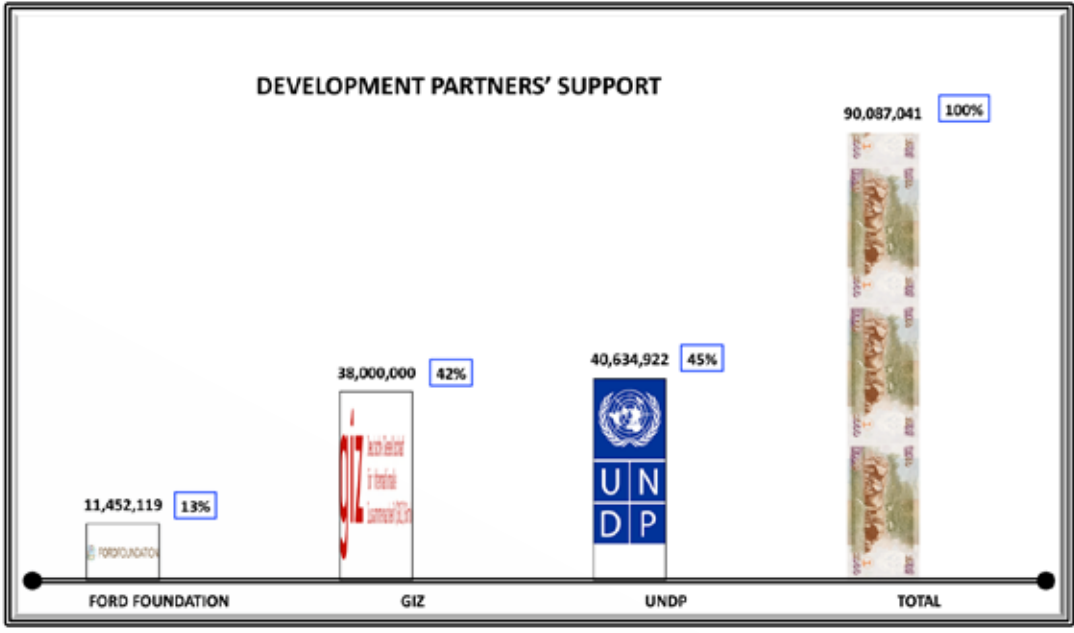


Figure 13





# CHAPTER SEVEN

## CHALLENGES AND WAY FORWARD

### 7.1. Challenges

Despite the milestones realised since establishment, the Commission continues to face a number of challenges that affect its work in varying degrees.

#### 7.1.1. Widespread Impunity

In spite of the gains made in the public sector reforms with the adoption of the Constitution of Kenya (2010), impunity remains a major challenge. Impunity manifests itself in lack of respect for the rule of law, including flagrant disregard to set standards and procedures, and unresponsiveness to the public needs and poor service delivery. This explains the large number of complaints the Commission has handled and the considerably long turn-around time for resolution.

#### 7.1.2. Budgetary Constraints

The oversight functions of the Commission are broad and encompass the entire public service. The increase in the number of complaints has not been commensurate with the financial allocation. This brings to the fore the question of institutional capacity which is getting overstretched with the increasing number of people seeking its services. The inadequacy has impacted negatively on programmatic work of the Commission and staffing. This was further compounded by a freeze on recruitment in the public sector.

#### 7.1.3. Limited Accessibility

The Commission is under the law, obligated to decentralise its services to all parts of the country to ease access. The Commission's services can only, however, be substantively accessed in Nairobi, Mombasa, Kisumu, Eldoret and Isiolo due to inadequate resource allocation alluded to above. This undermines efforts by the Commission to fight impunity countrywide.

#### **7.1.4. Insufficient Statutory Framework**

Considering the level of impunity in the country, it is desirable and logical that the legal framework should be sufficient to deal with the same. The present legal framework is insufficient in terms of clarity on enforceability of determinations of the Commission. Whereas this jurisdiction is clear and unambiguous under the Access to Information Act, it is ambiguous under the constitutive Act making it open to varied interpretations.

#### **7.1.5. Lack of Regulatory Framework for Implementation of Access to Information Law**

Development of regulations is necessary for the full operationalisation of the Access to Information Act. Whereas the law gives oversight and enforcement functions to the Commission, it places the responsibility of spearheading development of regulations to the Ministry of Information, Communication and Technology. It is important to note that the Ministry is yet to kick start the development of the regulation.

#### **7.1.6. Consolidation of Advertising and Publicity Budget**

Consolidation of advertising and publicity budgets of public entities under the Government Advertising Agency (GAA) from July 2015 hindered implementation of the Commission's key activities. This is because there was opaqueness on budget allocations and expenditure, and GAA on many occasions reported it had not received a budget to implement planned activities. Further, publicity through GAA-facilitated process introduced additional bureaucracy, and did not respond to urgent needs.

### **7.2. Way Forward**

- a) Leverage on technology to synchronise complaints handling processes in the public sector.
- b) Strengthening the legal framework by developing regulations required to fully operationalise the Access to Information Act, and making the necessary amendments to the constitutive Act and subsequently reviewing the attendant subsidiary legislation.
- c) Devolve the services of the Commission to all counties.

- d) Escalate education and advocacy to create awareness on the Commission's mandate especially the new jurisdiction on access to information.
- e) Deepen administrative justice reforms through research and public inquiries.
- f) Reposition itself on its expanded jurisdiction as contemplated by various legislation.
- g) Treasury to increase budgetary allocation to the Commission to lessen the budget deficit.



*Dr. Regina Mwatha, PhD, MBS  
Ag. Chairperson*



*Commissioner Saadia Mohamed, OGW, MBS  
Commissioner in charge of Access to  
information*



*Mr. Leonard Ngaluma, MBS  
Commission Secretary/CEO*



*Hon. Dr. Otiende Amollo, EBS  
Former Chairperson (Nov 2011-Dec 2016)*

## Directors



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