



ombudsman

Newsletter



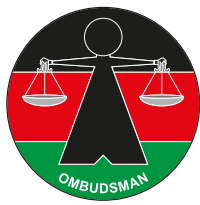
The Commission Saves Former NCPB Employee from Unlawful Termination



Remote Accessibility for Public Institutions Present but Inadequate for Effective Complaints Management, Ombudsman Investigation Reveals



Commission Conducts Public Inquiry on Issuance of Legal Identity Documents in Wajir County



Commission on Administrative Justice
(Office of the Ombudsman)
Hata Mnyonge ana Haki



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THE EDITOR'S NOTE**Empowering Citizens': Unveiling Legal Identity Challenges and Redressing Administrative Wrongs**

I am pleased to present to you Issue 12 of the Ombudsman Newsletter.

In this Edition, the Commission, in partnership with the Geneva Centre for Security Sector Governance (DCAF), held a public inquiry in Wajir County on the barriers to the acquisition of legal identity documents including birth and death certificates, identification cards and passports by the residents of the county. The Commission also continued redress administrative wrongs in the public sector with one of the notable cases being the case of Mr. Parminas Oyori Monayo, a former employee of the National Cereals and Produce Board (NCPB) who was reinstated to his job following the implementation of a formal determination of the Commission on Administrative Justice (Office of the Ombudsman) which recommended that the Board reinstates him to continue serving as its officer with no loss of benefit.

The Commission found that the decision by the Board to retire the employee from service on account of age amounted to unlawful termination and that the Board did not have the power to retire the employee at the age of 60 years since he had not attained the mandatory retirement age for persons with disability.

In this edition, the Commission also undertook a systemic investigation on remote accessibility of selected public institutions in various sectors. The investigation revealed that most public institutions have functional websites and have put in place sufficient infrastructure for remote accessibility. The investigation, however, established that the availability of remote accessibility infrastructure in most institutions was inadequate in facilitating effective complaints management as some telephone numbers were not working, unresponsiveness to email inquiries, and service charters with no clear response to inquiries and complaints management.

The Commission also upscaled capacity building of public officers and public awareness and education for the public on its mandate and the complaints handling procedure to enable the public to be able to file complaints with the Commission both under the administrative justice and the access to information mandates.

Thank you for your continued support, and we look forward to keeping you informed in future editions of the Ombudsman Newsletter.

Enjoy the read!

Editor

Mr. Osman Mohamed

Director - Public Education,
Advocacy and Corporate
Communications



MESSAGE FROM THE CEO

Leading in Inclusion and Diversity

By Mercy K Wambua, OGW, Commission Secretary/CEO

“Diversity requires commitment. Achieving superior performance diversity can produce further action– most notably, a commitment to develop a culture of inclusion. People do not just need to be different, they need to be fully involved and feel their voices are heard.”

–Alain Dehaze (CEO of Adecco)

The Commission continues to live and practice the words of Alan Dehaze. The Commission emerged as the overall winner in the DIAR (National Diversity and Inclusion Awards and Recognition) Award on Diversity and Inclusion for the best Constitutional Commission and Independent office in the office of the diversity, equity, inclusion, and Belonging (DEIB) & sustainability category during the award Gala at the Sarit Expo Centre on Friday, March 22, 2024. This was the fifth time the Commission was being declared the winner having emerged as the overall winner in 2019, 2020, 2022, and 2024.

Partnership and linkages are key for the Commission to effectively achieve its mandate. To this end, the Commission signed two MOUs with Uraia Trust and the National Government Affirmative Action Fund (NGAAF). The partnership with financial support from UraiaTrust under a Norway-funded project RITAI will see the two institutions undertake a comprehensive study on “Milestones and Challenges in the Implementation of the Access to Information Law.”

The study aims to address the need for evidence-based findings on the milestones and difficulties faced by public agencies in the implementation of the Access to Information Act, 2016, to identify the existing gaps in the implementation, and recommend policy strategies geared toward addressing the challenges. On the other hand, the Commission will partner with NGAAF to collaborate in advancing Administrative Justice, Access to Information, Inclusivity, and Gender Equity.

In partnership with the Geneva Centre for Security Sector Governance (DCAF), the Commission in January and February 2024 conducted public outreach in Marsabit and



Meru counties aimed at taking its services to the grassroots. The activities presented an opportunity for citizens to be educated on the mandate of the Commission and to file complaints with the Commission both on administrative justice and access to information.

The Commission's Management Team and the technical staff were also privileged to have been trained on mainstreaming Sustainable Development Goals, particularly Goal 16, into strategic planning, reporting, and management. The training facilitated by representatives from DCAF aimed at contributing to the effective operationalisation of the Commission's security sector oversight mandate and the better articulation and integration of the Commission's contribution to the achievement of SDG 16 of a peaceful, just, and inclusive society in Kenya, in particular, the targets of ensuring equal access to justice for all (SDG16.3), developing effective, accountable, and transparent institutions (SDG 16.6), providing legal identity for all (SDG 16.9), and ensuring public access to information and the protection of fundamental freedoms (16.10). The training will go a long way in ensuring that the lessons learned from the implementation of the Strategic Plan (2019-2023) into the forthcoming strategy.

HOW WE HAVE HELPED - SUCCESS STORIES

The Commission Saves Former NCPB Employee from Unlawful Termination

A former employee of the National Cereals and Produce Board (NCPB) has a reason to smile after he was reinstated to his job following the implementation of a formal determination of the Commission on Administrative Justice (Office of the Ombudsman) which recommended that the Board reinstates him to continue serving as its officer with no loss of benefit.

The Commission found that the decision by the Board to retire the employee from service on account of age amounted to unlawful termination and that the Board did not have the power to retire the employee at the age of 60 years since he had not attained the mandatory retirement age for persons with disability.

Mr. Parminas Oyori Monayo, a former employee of the NCPB, complained to the Commission alleging unfair treatment and unlawful termination of his employment. According to him, he retired from service in January 2023, however, before his retirement, he applied for an extension of retirement age from 60 to 65 years on the basis that he has a disability that is recognised by law. His application was however unfairly declined without any reason being given for the same.

This predicament impelled him to seek the intervention of the Commission to have the dispute resolved with a view to being retained in employment until he attains the mandatory retirement age for persons living with disability as provided for under Regulation 70(1)(b) of the Public Service Commission Regulations, 2020.

The Commission by way of inquiry took up the matter with the Managing Director, NCPB. The Board in its response to the Commission indicated that Mr. Monayo was involved in a road traffic accident on 1st February 2003 that resulted in his disability status and after that, he was transferred from Kedowa Depot to Nyansiongo Depot on humanitarian grounds in September 2004 to enable him to report for duty from his home, which was near the latter station.

The doctor's report on the case dated 24th February 2006 indicated that his permanent incapacity was at 65 per cent and recommended that he be assigned light duties while he continued undergoing medical attention. According to NCPB, the management decided to retain the officer in service until he attained the official retirement age of 60 years on 1st January 2023 even though he was not productive after being issued a notice for retirement on 7th March 2022.



He appealed on 25th March 2022 and requested an extension of retirement age to 65 years which is the retirement age for persons living with a disability. The management deliberated on his appeal and decided against extending his employment in line with Section 80(2c) of the Public Service Commission Act, 2017.

The Board further indicated that a decision to extend an employee's period of service is at the employer's discretion depending on their contribution, the decision was made on the premise that the former employee was not productive.

Dissatisfied with the position taken by the Board, particularly on the assertion that "A decision to extend an employee's period of service is at the discretion of the employer depending on their contribution." The Commission wrote to the Public Service Commission (PSC) seeking clarification as to whether the decision to retire a person with disability at the age of 65 was discretionary.

In its response, the PSC stated that it had pronounced itself on the matter of declaring a public officer as a person living with disability and extending of retirement age to 65 years under Regulation 70(2) and (4) of the Public Service Regulations 2020. Regulation 3 of the PSC Regulations 2020 guides that "subject to Articles 155(3)(a), 158, and 234 of the Constitution, these regulations shall apply to public bodies and all persons holding or acting in an office in a public body. The PSC therefore indicated that they expected all public bodies to adhere to the provisions of the regulations and any process outside these regulations was considered a violation of the law.

Having analysed the response from both the Board and the PSC, the Commission had the following issues for determination;



HOW WE HAVE HELPED - SUCCESS STORIES

- i. Whether the decision to retire a person with a disability at the age of 65 years is discretionary.
- ii. Whether the Complainant should continue to serve as an officer of the NCPB

The Commission having considered all the facts, provisions of the law, and precedent, vis a vis the issues for determination, found as follows;

- i. The NCPB did not have the discretion on whether to retire Mr Monayo at 65 years or not.
- ii. The Commission found that the decision of the NCPB to retire Mr. Monayo at 60 years instead of 65 years was invalid.

In light of the above, the Commission, in exercise of its powers under Article 59(2)(j) of the Constitution and Sections 8(g) and 26(g) of the Commission on Administrative Justice Act, 2011, held and recommended as follows:

- i. There was no need for Mr. Monayo to apply for an extension of his retirement age from 60 to 65 years since he is a person with disability within the meaning of Regulation 70 of the PSC Regulations.
- ii. The NCPB did not have the power to retire Mr. Monayo at the age of 60 years since he had not attained the mandatory retirement age for persons with disability. The purported retirement of Mr. Monayo from service by the Board on account of age amounted to unlawful termination.
- iii. The Commission directed the NCPB to recall Mr Monayo to continue to serve as an officer of the Board with no loss of benefits.
- iv. NCPB to report to the Commission on the steps taken in compliance with this determination within 30 days.

Following the determination of the Commission issued on 23rd August 2023, the MD, NCPB in a letter to the Chief Executive Officer, PSC, and copied to the Chairperson, Commission on Administrative Justice confirmed compliance and implementation of the determination of the Commission.

“We acknowledge receipt of the letter dated 7th December 2023 informing the Board to implement the formal determination of the Commission on Administrative Justice of recalling Mr. Parminus Oyori Mionayo who was a staff at the NCPB. This is to inform the Commission that the Board will reinstate Mr. Monayo from 1st January 2024.” Read a letter from the MD.

Mr Monayo in an appreciation letter to the Commission on 10th January 2024 confirmed that he reported to work and thanked the Commission for the intervention.

Dangling Electricity Pole Fixed, Power Restored

"I am happy to inform you that Kenya Power and Lighting Company PLC (Kenya Power) staff were at my home for four hours and they replaced the dangling pole and restored electricity supply. I appreciate the good work you are doing at the Commission in assisting Kenyans." These were the words of Issac Mbui in an appreciation email to the Commission.



Mr. Mbui complained to the Commission alleging inaction by Kenya Power to fix a dangerously dangling electricity pole. According to him, there was a blackout on Christmas Eve and when the lights came back on, they caused a short circuit on the leaning pole and his house which disconnected the power supply to his house. As a result of this, he had to move his freezer containing foodstuffs to his neighbor's house and was forced to move his family out of the home to a rented house due to the danger posed by the dangling pole. He sought the intervention of Kenya Power but the company was unresponsive pushing him to seek the intervention of the Commission through the Mombasa Regional Office on 8th January 2024.

The Commission took up the matter with Kenya Power leading to the fixing of the dangling electricity pole and the restoration of electricity supply. Mr. Mbui in an email to the Commission on 13th January 2024 confirmed the same and thanked the Commission for the intervention.

Frequent Power Fluctuations Resolved

A resident of Kiserian can finally enjoy an uninterrupted power supply thanks to the intervention of the Commission in a case of unresponsiveness from Kenya Power.

Mr. Antony Omtatah complained to the Commission alleging inaction by Kenya Power to sort out a persistent voltage fluctuation. According to him, his premise was experiencing power fluctuations which impelled him to seek the intervention of the power company.

HOW WE HAVE HELPED - SUCCESS STORIES

The company assured him that the technicians from their Ongata Rongai branch would visit and resolve the issue but that was not forthcoming as he was being told that the technicians would visit when they were available. The never-ending promises from the company and his continued frustration pushed him to seek the intervention of the Commission on 27th November, 2023.

The Commission by way of inquiry took up the matter with the Managing Director, Kenya Power, on 4th December, 2023, leading to the replacement of the faulty cables.

"A visit to the customer's premises by our technical team on 8th December, 2023, established that the frequent voltage fluctuations were caused by a chemical reaction between aluminum conductors and copper service line. This is due to the terminal power line being aluminum while the service line to the premises is copper. The Copper Service Line cable approximately 35 metres was replaced with Aluminum cable on 11th December, 2023, which resolved the issue," read a letter from Kenya Power to the Commission.

Mr. Omtatah in a phone call to the Commission confirmed the matter was resolved.

Part-Time Lecturers Paid

"The last batch of the payment has been deposited awaiting reflection. It has been a success with the Ombudsman. I am now cleared. Much regards too from my fellow colleagues, they say thank you." This was an appreciation email from Mr. Abraham Kerich, a former part-time lecturer at the Kenya Industrial Training Institute (KITI) to the Commission.

Mr. Kerich complained to the Commission alleging delay by KITI to settle dues owed to him. According to him, he worked as a part-time lecturer from 8th May 2023 to 31st October 2023 when his contract ended. However, the institution had delayed settling his dues for four months.

"I have not received payments for June, July, September, and October, I was paid Kshs. 20,000 for May and since then I have not received any payment. According to the agreement, my monthly salary was supposed to be Kshs. 20,000. I am concerned about the delay and I must be paid for the work I have done since I have accumulated pending bills. The money will enable me to provide basic needs for my family, pay my child's school fees, house rent, and some medical fees," read the complaint from Mr. Kerich to the Commission.

The Commission, by way of inquiry, took up the matter with the Director, KITI, leading to the settlement of pending salaries for 30 part-time lecturers. Mr. Kerich in an email to the Commission confirmed receipt of his payment, together with 29 of his colleagues whose dues were pending.



Former Employee Paid Eight Years' Withheld Dues

A former employee of the Women Enterprise Fund (WEF) finally received his outstanding dues from the Fund following the intervention of the Commission. According to him, the Chief Executive Officer of the fund issued him with a suspension letter without pay on 25th September 2015 and he was handed over to the Directorate of Criminal Investigation officers. Later, he was arraigned before the Kibera Magistrate Court and charged with the offence of stealing by a person employed in public service contrary to Section 261 (1) as read with Section 280 of the Penal Code. The case went on for eight years and one month.

However, the Fund suspended him without pay which offended the provisions of the Employment Act, 2007. The case was heard to finality and on 30th October 2023, he was found not guilty and acquitted. Following his acquittal, he wrote a letter to the Fund on 7th November 2023 requesting the release of his withheld salaries, allowances, and gratuity and the lifting of his suspension to resume work following his acquittal by the court.

However, the letter did not elicit any response prompting him to write a reminder and later through a letter dated 20th November 2023, he escalated the matter to the Principal Secretary, the State Department for Gender and Affirmative Action. The letters still did not elicit any responses prompting him to seek the intervention of the Commission on 10th January, 2024.

"The failure by the Fund to acknowledge my letter in my view amounts to unprofessionalism, inhumane treatment, and abuse of power by the Fund's management because I believe the time which has elapsed from the judgment date is reasonable," read his complaint to the Commission.

HOW WE HAVE HELPED - SUCCESS STORIES



The Commission by way of inquiry took up the matter with the CEO, WEF, on 16th January 2024. In its letter, the Commission noted that the practice of withholding an employee's emoluments during a disciplinary process has no foundation in the Employment Act and hence has no legal validity, the court having held so in a previous judgment.

Furthermore, the Commission brought to the attention of the CEO the provisions of Clause K.7(4) of the Public Service Commission Human Resources and Procedures Manual which provides that:

"Where a disciplinary or a criminal proceeding has been taken or instituted against an officer under suspension and such an officer is neither dismissed nor otherwise punished under the regulations, the whole or any salary withheld shall be restored to him upon the termination of such proceedings with effect from the date the salary was stopped."

The CEO in a letter to the complainant and copied to the Commission on 19th January 2024 confirmed the payment of final dues.

"Following the concluded criminal case and subsequent request for payment of final dues, you are hereby notified that the Fund Management approved payment of your outstanding final dues totaling Kenya Shillings 1,142,230.66 upon submission of completed clearance form."

Amended Certified Copy of Marriage Certificate Issued

"I would like to sincerely thank the Office of the Ombudsman as well as the officers who handled my case. I managed to get a certified copy of my marriage certificate and I am now processing my medical plans. Thank You," this was the message in an appreciation letter from Ms. Zinafa Aseyo to the Commission.

Ms. Aseyo complained to the Commission alleging delay by the Registrar of Marriages to correct her marriage certificate. According to her, she applied for correction of her marriage certificate on 18th May 2023 to read that she was married at the age of 37 as opposed to 36. However, three months later the correction had not been done.

"I am complaining about my certified copy of marriage which I applied on 18th May 2023 to be renewed. Normally the process should take one month but to date, I have not received it from (their) Kilifi County office. I applied for a visa to Germany for treatment and the embassy noted that there was an error with the date which was to be sorted at Sheria House. The Embassy therefore gave me a rejection notice on my visa application if I delay in submitting the certified copy after correction. I hereby ask for help since I am afraid that my visa application might be rejected due to the negligence of the department," read her complaint to the Commission on 4th September, 2023.

The Commission by way of inquiry took up the matter with the Registrar of Marriages, Office of the Attorney General. In their response, the office indicated that a marriage search was conducted in the marriage register in their Malindi office and was found within their records and that Ms. Aseyo was requested to present the paperwork that she presented before getting married in Malindi and that upon submission and verification of the requested documents, their Malindi office was to effect the amendment on the register available and certification of the marriage certificate would be done immediately.

Following the submission of the documents and subsequent follow-up by the Commission, Ms. Aseyo was finally issued with a certified copy of the certificate.

"We received your letter which served as a 1st reminder. Kindly note that we were able to issue our client, Zinafa Aseyo, a certified copy of the marriage certificate after she complied with all the requirements. A copy of the certified copy of the marriage certificate is hereby attached for your information," read a letter from the Registrar of Marriages to the Commission.

Ms. Aseyo, in a letter to the Commission, confirmed receipt of the certificate.





By Edward Opany

OPINION

Improving Public Service Delivery: The Imperative of Implementing Ombudsman Decisions for Transparency and Accountability

The Nation Media Group, through its print outlets; the Daily Nation, Taifa Leo, and its broadcast outlet, NTV, has been highlighting service failure and inordinate delay in the critical sectors including the health sector, the Pensions Department, the Department of Immigration, the Registration of Persons and the failures of the e-citizen platform to operate optimally.

The media outlets have played a critical role in setting the agenda by shaping public discourse and playing its watchdog role by scrutinising government institutions and their performance through their investigative reporting which has shed light on deficiencies in public service delivery. Indeed, the media has highlighted these issues which are affecting access to quality and timely services and denying Kenyans the opportunity to enjoy other fundamental rights. This shows the important role that the media continues to play in setting the agenda on important national issues and holding institutions to account as the fourth estate.

The Commission being the agency mandated with addressing all forms of maladministration in the public service receives complaints on a daily basis from Kenyans from all over the country on inordinate delays in accessing their pension dues and processing of vital documents such as birth certificates, Identification Documents and Passports, among other services.

Due to the high number of complaints the Commission has been receiving from the above government departments, the Commission has undertaken investigations to address the systemic failures in service delivery and came up with recommendations aimed at addressing the issues.

The Living Nightmare: The Plight of Public Service Retirees

In 2016, following numerous complaints by retirees over delays in processing their pensions, the Commission undertook a systemic investigation into administrative processes, policies and legislative framework of retirement benefits in the public service. The investigation was carried out with a view to recommending remedies for curing inherent systemic failures and called for systemic overhaul to ease long-running national pain for retirees.

The investigation revealed that about 70 per cent of retirees from the public service were unhappy with the services they were receiving in regard to processing and disbursement of retirement benefits.

Delay in payment of pensions, bureaucracy, inefficient and uncooperative officers, corruption and lack of transparency in calculating benefits were just but some of the reasons cited for their dissatisfaction

The investigation established there is undue delay in the processing of pensions and other retirement benefits. Indeed, accessing pensions has remained a perennial problem for Kenya's retirees with many of them compelled to make endless trips to pension offices in pursuit of what is rightfully theirs. This largely confirms the reason for the high number of complaints the Commission receives on retirement benefits which have ballooned over the last few years.

The investigation revealed that, it takes between one to 10 years for a retiree to access their retirement benefits. This is attributable to poor records management (resulting in misplacement of files), centralisation of services, bureaucracy, complex and rigid system, and corruption. It was also established that some employers take long to submit relevant documents necessary for processing of benefits to the Pensions Department. It is unacceptable that those who have committed most of their productive years to serving our country and our people are subjected to endless pursuits when they should be left to enjoy their sunset years.

A number of retirees cited corruption as a major challenge that hinders timely disbursement of pensions. Retirees pointed out that they are encouraged to bribe for their missing files to be retrieved.

The Commission also established that there is need to reform the regulatory framework concerning pensions for it is replete with provisions that do not apply to the changing social dynamics. For instance, many provisions seem to favour female beneficiaries (widows) as opposed to male beneficiaries (widowers) which may not fit in the current constitutional dispensation.



OPINION

Based on its findings, the Commission recommended that:

- i. The Cabinet Secretary (CS) National Treasury should ensure adequate disbursements of funds to the Pensions Department to reduce the backlog, and forestall the suffering of retirees. In order to realise this, the CS should make adequate budgetary provision for Parliament's approval.
- ii. The Ethics and Anti-Corruption Commission needs to investigate claims of corruption in public bodies concerned with the processing and disbursement of retirement benefits to facilitate prosecution of specific cases in order to clip graft in these bodies.
- iii. The Attorney General and the Kenya Law Reform Commission should facilitate the review of the legal and regulatory framework for pensions to ensure its alignment with the Constitution and current social realities.
- iv. The Pensions Department should, with immediate effect, streamline administrative procedures on processing and disbursement of retirement benefits, including full automation of the Pensions system.

Framing a discussion on access to vital documents – Institutionalised graft, inefficiency, absenteeism fanning Kenya's "identity" crisis

In a 2015 systemic investigation by the Commission on the issuance of vital documents in Kenya, corruption, inefficiency, absenteeism, and a lack of awareness regarding application requirements were identified as some of the challenges contributing to the crisis associated with the issuance of vital documents in the country.

Numerous complaints and public outcry in the Commission's interactions with the public in various counties relating to issuance of identity cards, birth and death certificates, passports, passes and permits, and the granting of dual citizenship, pointed to an underlying systemic problem that demanded more than just tackling the individual complaints received.

It is essential to note that in the year 2014 alone, the Commission addressed 2,151 complaints related to vital documents. Based on this, the Commission conducted investigations to examine various aspects, including the procedures and processes involved in the issuance of vital documents, the alignment of timelines stipulated in service charters with the actual timelines on the ground, and the challenges and problems encountered in these processes. The aim was to identify and recommend appropriate solutions to enhance the overall efficiency of the system.

In the course of its investigations, the Commission carried out a survey in 17 counties - Mombasa, Lamu, Kilifi, Garissa, Samburu, Embu, Nakuru, Uasin Gishu, Bungoma, Busia, Migori, Kisumu, Kisii, Nyamira, Kakamega, Nairobi, and Kiambu - and involved both the members of the public and public officers from Civil Registration Bureau, National Registration Bureau the Immigration Department, and the Provincial Administration. In this regard, 1,594 respondents drawn from the general public were interviewed: 921 males and 673 females.

A total 248 public officers from the relevant government agencies were also interviewed. It is sad to note that indeed there was a crisis in the issuance of vital documents in our country.

The investigations then revealed inefficiency and ineffectiveness in the issuance of these documents by the Civil Registration Department, National Registration Bureau and the Immigration Services. This often resulted in undue delays in processing and issuance of the documents. Some of the respondents reported that after applying for vital documents, they had to make follow ups for up to 20 times with the relevant departments, and in some isolated cases, respondents reported waiting for as long as 3 years before issuance.

The investigation also revealed rampant corruption with bribes ranging from Sh500 to Sh43,000. In Garissa for example, it was reported that members of the public know it costs Sh40,000 to obtain an identification card; Sh15,000 for a passport and Sh1,500 for a birth certificate. Another issue that emerged is inaccessibility of offices that issue vital documents. Many citizens have to travel for long distances and spend a lot of money on transport to access the services. The Immigration Department is worst hit as there are very few Immigration centers in the country. In Northern Kenya, some respondents stated that they had to travel distances of over 245 kilometers to access the services.

It is imperative to highlight that the accumulation of new IDs has surpassed 600,000 in the last two and a half months, with a reported daily increase of approximately 10,000.



OPINION

It is on the basis of the aforementioned that the Commission recommended that:

- i. The Ethics and Anti-Corruption Commission (EACC) investigates rampant corruption in three concerned Departments - Civil Registration Department, National Registration Bureau and the Immigration Services – especially in border counties, namely: Garissa, Mombasa, Lamu and Busia where applicants are subjected to a more rigorous vetting process which is invariably abused.
- ii. The three concerned Departments automate their services and introduce an integrated database to save on time spent seeking confirmation of documents and background information on applicants.
- iii. The Ministry of Interior and Coordination of National Government allocates adequate resources: offices, equipment and well-capacitated human resource. The Ministry as a matter of priority undertake an audit of available skills and competencies.
- iv. The Ministry of Interior and Coordination of National Government initiates the process of reviewing policies governing issuance of these documents, and in particular, in relation to composition, appointment and functions of vetting committees.
- v. The Ministry and the concerned Departments consider further devolution of their services. Although Huduma Centres have partly addressed this problem, accessibility of vital documents still remains a challenge to many citizens.
- vi. The Ministry of Interior and Coordination of National Government creates awareness on the process, and standard documents required for processing vital documents.

Inordinate delay in the processing of Passports

In its latest systemic investigation on Alleged Manifest Injustice in the Issuance of Passports by the Department of Immigration released in June 2023, the Commission found that the delays in the processing of passports and the unavailability of a particular passport series on the e-citizen platform were found to be occasioned majorly by two factors; delays in the approval of the procurement of blank passport booklets, and, the continuous breakdown of printing machines at the Department of Immigration. The e-citizen system was found to have eased and improved the efficiency of the passport application and payment processes but needs an upgrade to deal with emerging trends

Pursuant to section 42 (2) (c) of the CAJ Act, the Commission recommended that:

- i. The Cabinet Secretary, Ministry of Interior and Administration of National Government to ensure an increase in the budgetary allocation to the Department of Immigration for the purchase of new high-capacity passport printing machines, service of the old passport printing machines, and provide the immigration officers with sufficient working tools.

It is critical to acknowledge the invaluable role played by the Nation Media Group in shedding light on critical issues affecting the efficiency of public services, as highlighted in their investigation series. These issues encompass service failures and delays in crucial sectors. The critical function of the media as the fourth estate, shaping public discourse and overseeing institutional responsibilities, is essential in fostering transparency and championing citizens' rights. The Commission values and intends to maintain its partnership with the media to uphold efficient public service delivery.

Through its systemic investigations, the Commission identified and gave recommendations on how to resolve significant challenges in the pension system, vital document issuance, and passport processing. The recommendations issued emphasised the need for systemic overhauls, increased budgetary allocations, and a focus on eliminating corruption and inefficiencies within relevant government departments.

There should be immediate action by relevant authorities, including the Cabinet Secretary of the National Treasury, the Ethics and Anti-Corruption Commission, the Attorney General, the Law Reform Commission, and the Ministry of Interior and Coordination of National Government. These actions are essential to alleviate the hardships faced by retirees, streamline the issuance of vital documents, improve the efficiency of passport processing and make the e-citizen work effectively now that close to 19,000 services are accessing on that platform.

In addition, government departments should implement the recommendations of the Commission on Administrative Justice for improved service delivery.

It is my hope that if the recommendations of the Commission are implemented it will contribute to a more transparent, accountable, and citizen-centric public service, ensuring that Kenyans can access their entitlements without unnecessary delays or obstacles.





OPINION

International Women's Day: Invest in Women: Accelerate Progress

By Elizabet Musembi

International Women's Day, celebrated on March 8th, is a global occasion to recognise the achievements of women and advocate for gender equality. This year's theme, **"Invest in Women: Accelerate Progress,"** highlights the critical need to prioritize investments in women and girls to advance gender equality and drive sustainable development.

Investing in women is not just a matter of social justice; it is also a smart economic decision. Numerous studies have shown that when women are empowered and given equal opportunities, they contribute significantly to economic growth and prosperity. For example, a report by McKinsey & Company found that advancing gender equality could add \$12 trillion to global GDP by 2025. Investing in women's education, health, and economic participation has a multiplier effect, benefiting families, communities, and entire nations.

One key area where investment in women can accelerate progress is in the workforce. Despite making up nearly half of the global population, women are still underrepresented in many industries and face barriers to advancement. Closing the gender gap in labor force participation could increase global GDP by \$28 trillion by 2025, according to the World Economic Forum.

To achieve this, it is essential to invest in policies and programs that promote gender equality in the workplace. This includes implementing equal pay for equal work, providing access to affordable childcare and parental leave, and addressing discriminatory practices. Investing in women's education and skills training is also crucial, as it enables women to access higher-paying jobs and break into male-dominated fields.

Another area where investment in women can accelerate progress is in health and well-being. Women and girls often face barriers to accessing healthcare services, leading to higher rates of maternal mortality, gender-based violence, and other health issues. Investing in women's health not only improves their quality of life but also has broader societal benefits, including healthier families and communities.

Additionally, investing in women's political participation and leadership is crucial for achieving gender equality. When women are represented in decision-making roles, policies are more likely to reflect the needs and priorities of all members of society. This can lead to more inclusive and equitable outcomes for everyone.

International Women's Sustainable Development Goal 5: Gender Equality: Achieve gender equality and empower all women and girls

Goal 5 aims to empower women and girls to reach their full potential, which requires eliminating all forms of discrimination and violence against them, including harmful practices. It seeks to ensure that they have every opportunity for sexual and reproductive health and reproductive rights; receive due recognition for their unpaid work; have full access to productive resources; and enjoy equal participation with men in political, economic and public life.

Target 5.1:

End all forms of discrimination against all women and girls everywhere.

Efforts in Kenya to Address Discrimination Against Women and Girls:

Legal Reforms: Kenya has made significant strides in addressing discrimination against women and girls through legal reforms. The country's 2010 Constitution contains provisions that promote gender equality and prohibit discrimination based on gender. The Constitution also guarantees equal rights and opportunities for women and men in political, economic, cultural, and social spheres. Additionally, Kenya has enacted various laws to protect women's rights, such as the Sexual Offenses Act, the Matrimonial Property Act, and the Prohibition of Female Genital Mutilation Act.

Progress in Reducing Discriminatory Practices and Policies

Legal Reforms: Kenya's legal reforms have contributed to the reduction of discriminatory practices and policies. For example, the Matrimonial Property Act gives women equal rights to matrimonial property acquired during marriage, addressing the historical discrimination women faced in property ownership.

Women's Political Participation: Kenya has made progress in increasing women's political participation, although more efforts are needed. The country has a legal framework that promotes gender equality in political representation, including a constitutional provision that requires not more than two-thirds of the members of elective public bodies to be of the same gender.

Target 5.2: Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.

OPINION



Prevalence of Violence Against Women and Girls in Kenya

Violence against women and girls remains a significant issue in Kenya. According to a national survey conducted in 2014, 45% of women aged 15-49 have experienced physical violence, while 14% have experienced sexual violence. These figures indicate the pervasive nature of gender-based violence in the country, affecting women and girls in both public and private spheres.

Efforts to Combat Violence Against Women and Girls

Legal Framework: Kenya has enacted several laws to address violence against women and girls, including the Sexual Offences Act, the Domestic Violence Act, and the Female Genital Mutilation Act. These laws provide a legal framework for prosecuting perpetrators and protecting victims of gender-based violence.

National Policy Framework: Kenya has also developed a national policy framework to address gender-based violence, including the National Policy on Prevention and Response to Gender-Based Violence. This policy outlines strategies for preventing and responding to gender-based violence, including provisions for survivor support and rehabilitation.

Civil Society and Community Interventions: Civil society organizations and community-based initiatives play a crucial role in preventing and addressing gender-based violence in Kenya. These organizations provide support services to survivors, raise awareness about gender-based violence, and advocate for policy reforms to address the root causes of violence.

Kenya

This year's theme, "**Invest in Women: Accelerate Progress,**" resonates deeply with Kenya's journey towards gender equality and empowerment of women and girls.

The Current Status of Women in Kenya

Kenya has made significant strides in advancing gender equality and women's empowerment, as evidenced by the adoption of the 2010 Constitution, which guarantees equal rights and opportunities for all citizens, regardless of gender. However, despite these legal and policy frameworks, women and girls in Kenya continue to face numerous challenges, including limited access to education, healthcare, economic opportunities, and political representation.

Investing in Women: A Pathway to Progress

Investing in women and girls in Kenya is not just a matter of social justice; it is also crucial for the country's economic development. Women constitute a significant portion of Kenya's workforce, with agriculture being the primary sector of employment for women. However, women in agriculture often lack access to land, credit, and technology, which limits their productivity and income.

By investing in women's education, skills training, and access to resources, Kenya can unlock the full potential of its female workforce, leading to increased productivity, economic growth, and poverty reduction. Moreover, investing in women's health, particularly maternal and reproductive health, can have a significant impact on reducing maternal mortality rates and improving the overall health and well-being of women and children in Kenya.

Political Participation and Leadership

Despite constituting more than half of the population, women in Kenya are significantly underrepresented in political leadership and decision-making roles. Investing in women's political participation and leadership is crucial for achieving gender equality and ensuring that women's voices are heard in the decision-making processes that affect their lives.

To effectively combat gender-based violence in Kenya, it is essential to address the root causes of violence, strengthen legal and policy frameworks, increase funding for prevention and response programs, and promote gender equality and women's empowerment. Collaboration among government agencies, civil society organizations, and communities is crucial to achieving Target 5.2 of the Sustainable Development Goals.

Investing in women in Kenya is not just a moral imperative; it is also a smart economic decision. By prioritizing gender equality and investing in women's education, health, economic empowerment, and political participation, Kenya can accelerate progress towards achieving the Sustainable Development Goals and building a more inclusive and prosperous society for all.

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INVESTIGATION

Remote Accessibility for Public Institutions Present but Inadequate for Effective Complaints Management, Ombudsman Investigation Reveals

A systemic investigation by the Commission on Administrative Justice (Office of the Ombudsman) has revealed that most public institutions have functional websites and have put in place sufficient infrastructure for remote accessibility.

The investigation, however, established that the availability of remote accessibility infrastructure in most institutions was inadequate in facilitating effective complaints management as some telephone numbers were not working, unresponsiveness to email inquiries, and, service charters with no clear response to inquiries and complaints management.

Further, most of the institutions were found to have complied with the proactive disclosure requirement under Section 5 of the Access to Information Act, 2016. However, the majority of the institutions failed to disclose salary by grade for its officers as required by the Act.

Moi Teaching and Referral Hospital (MTRH), Kenya Revenue Authority (KRA), and Kenya Power Company were found to have the most robust and solid structures of complaints management while the University of Nairobi (UoN) and the Kenya Wildlife Services (KWS) were found to have complied with all requirements of proactive disclosure of information as outlined in the Access to Information Act, 2016.

The Commission undertook the systemic investigation to establish the status of complaints infrastructure and the status of proactive disclosure of information by public entities, as per the provisions of the Access to Information Act, 2016, in select National Government Ministries, Departments and Agencies (MDAs). The Commission purposively selected 20 institutions for the investigation, with focus being on institutions which interact with the public frequently.

The investigation sought to establish;

- i. Whether there are avenues of lodging complaints/inquiries with the public institutions remotely;
- ii. Whether complaints/inquiries lodged remotely are responded to in a timely, clear, and professional manner;
- iii. Whether there are clear systems/measures to ensure accountability in complaints handling in the institutions;
- iv. whether the institutions use complaints data to assess trends and improve organisational practices; and
- v. Institutions' level of compliance with proactive disclosure of information requirements.

The investigations established that all the twenty institutions investigated had functional websites and had put in place sufficient infrastructure for remote accessibility and that 95% of them had provided their service delivery charters on their websites. However, 16% of the charters provided did not provide clear timelines for response to inquiries/complaints and resolution of complaints.

The investigations further revealed that 80% of the telephone numbers provided were working while 20% were either not reachable/out of service or were not answered.

When contacted through the email addresses provided, 55% of the institutions were found to be responsive while 45% were unresponsive. For those that were responsive, 67% responded within the timelines provided on their service charters while 33% responded beyond the provided timelines. For the institutions that responded, all responses were clear, courteous, and professional.

Further, all the institutions investigated were found to have proactively disclosed information on particulars about the institution, with 65% of the selected institutions disclosing their channels of supervision and accountability while only 10% of the institutions had disclosed the salary scales of its officers by grade.

Eighty per cent of the institutions were also found to have provided operational documents on dealing with the public and private bodies, with 65% providing information on the procedure for requesting for information. However, only 65% of the institutions were found to have disclosed information on public procurement.



INVESTIGATION

The investigation utilised a purposive sampling technique to identify the institutions that were selected for the investigation and was undertaken in two phases; phase one being desktop investigation where the Commission's investigators audited the institutions' websites to establish the level of accessibility and responsiveness of channels provided for accessing the institutions remotely and lodging complaints as well as proactive disclosure of information through the institutions' websites.

In the second phase, the investigators visited the institutions to inspect their complaints-handling infrastructure and interviewed officials to establish whether the institutions have clear accountability mechanisms for complaints handling, and mechanisms of institutional learning through complaints. A standard checklist was used in investigating the institutions and relevant documents were obtained.

Twelve (12) ministries were selected out of the 22 ministries under the National Government for the investigation. Of the 12 selected ministries, twenty Departments/Agencies were identified to represent the respective ministries also based on their frequent direct interaction with members of the public.

Ministry	Department/ Agency
Ministry of Interior & National Administration	▶ National Police Service (NPS)
Ministry of Education	▶ University of Nairobi (UoN) ▶ Kenya National Examinations Council (KNEC)
Ministry of Lands, Public Works & Housing	▶ State Department for Lands ▶ National Construction Authority (NCA)
The National Treasury and Economic Planning	▶ The National Treasury ▶ Kenya Revenue Authority (KRA) ▶ LAPFUND
Ministry of Energy and Petroleum	▶ Kenya Power and Lighting Company
Ministry of Health	▶ Kenyatta University Teaching, Referral & Research Hospital (KUTRRH) ▶ Moi Teaching and Referral Hospital (MTRH)

Ministry	Department/ Agency
Ministry of Labour and Social Protection	▶ National Employment Authority (NEA) ▶ National Industrial Training Authority (NITA)
Ministry of Roads & Transport	▶ National Transport & Safety Authority (NTSA) ▶ Kenya Urban Roads Authority (KURA)
Ministry of Tourism, Wildlife & Tourism	▶ Kenya Wildlife Service (KWS)
Ministry of Environment, Forestry & Climate Change	▶ Kenya Forest Service (KFS) ▶ National Environment Management Authority (NEMA)
Ministry of Co-operatives & MSME Development	▶ Youth Enterprise Development Fund (YEDF)
State Law Office	▶ Business Registration Service (BRS)

The Commission's findings revealed the following:

i. Whether there are avenues of lodging complaints/enquiries with the public institutions remotely.

Findings

The investigation revealed that all the institutions had functional websites and had provided telephone numbers and email addresses on their website through which they could be contacted. All the institutions also provided links to their social media platforms with Facebook (100%) and Twitter (100%) being the most preferred social media platforms while Instagram (40%), LinkedIn (25%), YouTube (25%), and TikTok (5%) being the least preferred.

Additionally, 80% of the institutions investigated had "Complaint/Inquiry/Get in touch with us/Customer Feedback/Service Request" forms on their websites. However, 30% of those forms provided were not functional with most displaying "error" messages.

On service delivery charters, 95% of the institutions had provided their service charters on their websites. However, 16% of the charters provided did not provide clear timelines for response to inquiries/complaints and resolution of complaints. The investigation established that the service delivery charters for NEA, NTSA, LAPFUND, and State Department for Lands did not stipulate timelines for the resolution of complaints.

INVESTIGATION

In the case of KFS, a link to the service charter was provided on the website but it did not open at the time of the investigation.

Further, KUTRRH did not provide the service charter on its website. The institution responded that the charter they were using at the time of the investigation was a provisional one since the institution began operations in the year 2019. As such, the process of determining charges for various services was actively ongoing.

In the case of KNEC, the service charter was not available on the website stipulating timelines for receipt of complaints and queries and subsequent acknowledgement of the same.

ii. Whether complaints/enquiries lodged remotely are responded to in a timely, clear and professional manner

Findings

From the telephone contacts provided, 80% were confirmed to be working when calls were made, while 20% were either not reachable/out of service or were not answered.

In the case of KNEC, phone calls were made to two of the telephone contacts provided. One went through but was not answered (0720741094) and the other (0720741003) did not go through at all at the time of the investigation. However, for the State Department for Lands and Physical Planning, phone calls were made to all the provided numbers but they were all "no longer in service". For the National Treasury and Economic Planning, a call was made to the number provided but it was unreachable.

All institutions provided email addresses for contacting them. However, only 55% were found to be responsive when contacted, while 45% were unresponsive. For those that were responsive, 67% responded within timelines provided on their service charters while 33% did not.

For NPS, NCA, BRS, NEMA, YEDF, UON, NITA, and State Department for Lands and Physical Planning, inquiries sent to their email addresses provided had not received a response to date despite some of the institution's service charter indicating that inquiries are to be responded to immediately while in the case of KFS, an inquiry was sent through the availed email address (info@kenyaforestservice.org) and a fictitious complaint filed but to date, no response has been received.

For KWS, an inquiry was sent through the provided email address (customerservice@kws.go.ke) but the email was responded to exactly one month later;

this was outside the timelines stipulated in the service charter, which is 12 hours, with an email response from KURA coming after 12 working days, ten days outside the service charter timeline for responding to inquiries.

iii. Whether there are clear systems/measures to ensure accountability in complaints handling in the institutions

Findings

The investigation established that most of the institutions have structures in place to ensure accountability in complaints handling and organisational improvement through feedback from complaints. The major challenges noted in most organisation were:

- i. Fragmented/non-centralised structures in the recording of complaints data.
- ii. Unclear definition of what constitutes a complaint to determine what is worth recording as a complaint.
- iii. Indirect/unclear mechanisms of informing complainants on avenues of appeal.

iv. Whether the institutions use complaints data to assess trends and improve on organisational practices

Findings

The investigation established that NEA and NTSA had no evidence to indicate that complainants are informed on avenues of appeal in the event they are dissatisfied. The Director of Labour Migration indicated that most of their complainants are satisfied with how their complaints are handled.

In the case of KRA, the Authority provided evidence to show instances where the agency has changed its practices and/or made recommendations on changes in law and policy as a result of complaints it has received. An example is complaints on erroneous deductions which resulted in legislative proposals to remedy the same. The recommendations were adopted in the Finance Act, 2022.

NEMA, on the other hand, has an automated system in place that records, classifies, and tracks incidences. The automated system is used at the headquarters as well as at five metropolis regional offices. The rest of the regions utilise a manual system for recording complaints with a manual backup register being maintained at the incident report desk at the headquarters.

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The agency also provides alternative redress channels notably CAJ's contacts have been provided on the organisation's service charter. Evidence also indicated that the organisation undertakes periodic customer satisfaction surveys and remedial measures recommended where issues are identified.

UoN also demonstrated extensively how it uses complaints data as feedback for continuous organisation improvement. Investigations established that the University continuously addresses grievances on administrative and academic matters by developing sustainable corrective measures.

The investigation further revealed that the State Department for Lands had no staff designated to handle complaints and that there were no systems in place to record complaints data.

v. Establish the institutions' level of compliance with proactive disclosure of information requirements.

Findings

The investigation revealed that all the institutions had disclosed information on particulars about the institution which includes the location, contacts, functions, and duties of the organisation while 65% of the institutions were found to have disclosed their channels of supervision and accountability while 35% did not.

On disclosing salary by grade for its officers, only 10% of the institutions had complied while 90% did not. It was also noted that this requirement was the least complied with. Eighty per cent of the institutions had provided operational documents on dealing with the public and private bodies. These include relevant policies, regulations, manuals, and guidelines.

On the other hand, sixty-five per cent of the institutions were found to have provided information on the procedure for requesting information from the institutions, including names and contacts of the information access officer. However, 35% of the institutions did not provide this information.

Further, 65% of the institutions were found to have disclosed information on public procurement. This encompasses details on contracts the institutions have entered into, including the contracted goods/services, contract sum, and the name of contractors to whom the contracts had been awarded. But 35% had not disclosed.

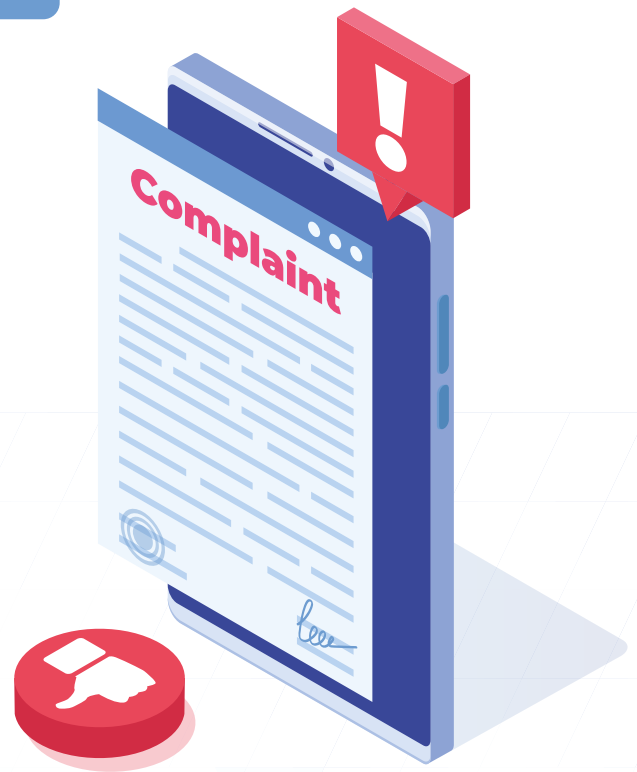
The only institutions which had disclosed salaries by grade for officers were KWS and UoN which disclosed the salary of teaching staff.

Based on the investigation's findings, the Commission recommends that;

- i. The Inspector General of the National Police Service, through the Internal Affairs Unit, develop mechanisms of using trends assessed from complaints data and reports as feedback to initiate organisational change and improvement.
- ii. All public agencies, including institutions investigated, to fully comply with the provisions of section 5(1)(a) (iii-iv) of the Access to Information Act No. 31 of 2016 by proactively disclosing information on the salary scales of its officers by grade and the channels of supervision and accountability on their website.
- iii. NEA Director-General to develop mechanisms to communicate avenues of appeal to unsatisfied complainants as well as utilise complaints data to assess trends and stimulate organisational improvement.
- iv. NEA formulates strategies for publicising the Migrant Worker Complaint portal to create awareness among migrant workers and promote its usage.
- v. The Director General, NTSA, to ensure that the institution strengthens its complaints handling mechanism by having frontline staff dedicated to receiving, recording, and tracking complaints lodged both online and in person.
- vi. NTSA also establishes ways of communicating mechanisms of appeal to dissatisfied complainants and also includes in its service charter the timelines for acknowledgment and resolution of complaints.
- vii. The Director General, BRS, to ensure that the institution's response mechanism via the email addresses provided is enhanced, with special focus on the email address provided for reporting allegations of corruption.
- viii. The CEO, KUTRRH, to ensure improvement of complaints handling infrastructure by constituting a complaints committee to oversight and periodically consolidate complaint records from all departments to ensure comprehensive handling and recording of complaints.
- ix. The KUTRRH to disclose its current provisional service charter through its website.
- x. The CEO, KNEC, to ensure the telephone contacts the institution has provided via its website are functional and subsequently have staff dedicated to receiving complaints and enquiries via the telephone contacts.

INVESTIGATION

- xi.** KNEC to provide the following information via its website; channel of supervision and accountability, salary scales, and public procurement information.
- xii.** The Pension Department's call centre to be enhanced by ensuring it is sufficiently staffed and that toll-free telephone sets capable of making external calls are provided to the staff to enhance responsiveness.
- xiii.** The Principal Secretary, Lands and Physical Planning, in partnership with CAJ to facilitate the capacity building of its staff on all components of complaints handling as investigations established that the Department is at the initial stages of developing its complaints handling infrastructure, and no substantive complaints handling structures exist currently.
- xiv.** The Chief Conservator of Forests to ensure the institution improves on its responsiveness via the email address provided on the website.



Processing of Complaints on Maladministration





OPINION

The Ombudsman Plays a Critical Role in the Consolidation of Peace and Social Harmony

By Edward Opany

The Ombudsman is one of the important governance institutions worldwide. It not only ensures good governance, but also provides citizens with a cheap, accessible, expeditious, objective and impartial platform for redress of their grievances against public institutions and officers. In deeply divided societies and post-conflict societies, the Ombudsman plays an additional responsibility of preventing conflicts and providing the platform for transitional justice.

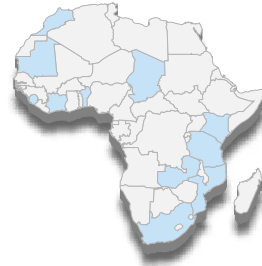
While the history of the Ombudsman has always been traced to Sweden, there is evidence to show that the equivalent of the Ombudsman existed in many traditional societies. For instance, in ancient Christian times, Prophets played the role of the Ombudsman. They always advised and rebuked Kings on various matters. A notable illustration is Prophet Nathan who rebuked King David about his excesses against Uriah the Hittite. His brave and famous words to King David **'It is you my Lord'** aptly capture the role of the Ombudsman in society. In the Africa, a number of societies had individuals who played the role of the Ombudsman.

These were respected people of high standing who could easily interact with both the citizens and the rulers. In Rwanda and South Africa, for instance, there existed an equivalent of the Ombudsman who performed the roles of advising and reprimanding the rulers on matters of interest to the people. The Makhadzi among the Venda Community in South Africa acted as the link between the people and those in power, and always voiced their concerns with the rulers.

Nonetheless, the modern Ombudsman can be traced to Sweden when 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 ensure that state officers acted in accordance with the law. This later metamorphosed into what is today known as the Chancellor of Justice. On the other hand, the Swedish Parliamentary Ombudsman, Justitie Ombudsman, was formally established in 1809 as a representative of Parliament to control the observance of the law by courts and government employees. He was empowered to take action against those who committed illegal acts or failed to do what was expected of them.

The Ombudsman also acted as a protector of people's rights. The success of the Ombudsman in Sweden led to its adoption in Finland in 1919 and Denmark in 1953 before spreading to the rest of the world.



The Rise of Ombudsman in Africa

In Africa, the growth of the Ombudsman in the last five decades has been phenomenal. From its humble beginnings in Tanzania in 1966, the Ombudsman has grown to over 44 countries. The philosophy behind the creation of the Ombudsman in Tanzania was informed by the report of the Permanent Commission of Enquiry which emphasised the need to provide safeguards for citizens against the exercise of wide discretionary powers and decisions of government officials in a rapidly developing country.

In Kenya, the Ombudsman ensures administrative justice in the public sector and is empowered to 'adjudicate' on such matters and 'take remedial action.' The power to take remedial action is similar to that of the Public Protector of South Africa. This is a novel quasi-judicial jurisdiction which is paramount in the redress of maladministration.

Legally, it means that after carrying out inquiries, investigations or adjudication, the Ombudsman can give decisions and tangible remedies. The Ombudsman of Kenya is also empowered by the Access to Information Act, 2016 to make binding decisions, which can only be appealed to the High Court by an aggrieved person.

The strengthening of the Ombudsman in Africa was occasioned by the ineffectiveness of compliance through Parliamentary reporting due to (i) the nature of formation of Parliament in many African countries, (ii) the nature of work of the Ombudsman, especially where it also incorporates the anti-corruption mandate. In such cases, Parliamentarians would work towards making the office ineffective to their benefit. Reports would be received by Parliament and never be discussed or contents revealed, (iii) the politicisation of the Ombudsman decisions as the office checks public offices and the Government. The recommendations are, therefore, swept to the back burner.

OPINION

Role of the Ombudsman in Governance

Modern day narratives on Africa relate to the structures and processes for improving governance and constitutionalism. While appreciating the past governance challenges, a number of countries in Africa have taken unprecedented steps to address the challenges. Stakeholders in Africa's development are increasingly utilising governance as the basis of their action towards attaining the objectives of the African renaissance.

As earlier stated, the Ombudsman is one of the institutions established in many African countries to promote good governance. As noted by the Human Development Report of 2002, '*Deepening Democracy in a Fragmented World*,' there is a direct relationship between the Ombudsman and living standards of the public. The Ombudsman provides an easy access for redress of grievances by the public against public offices. The Ombudsman assures good governance by ensuring that public entities operate within the law and respect the rights of citizens



Role of the Ombudsman in Peace Consolidation and Social Harmony

The Ombudsman plays an important role in consolidation of peace and social harmony in society. The Ombudsman is an integral part of a multifaceted strategy for administration of justice and good governance. In societies emerging from conflict, the Ombudsman plays an additional role of providing the platform for transitional justice, including restorative justice, peace building and reconciliation. Generally, the Ombudsman contributes to peace consolidation and social harmony in the following ways:

a) Redress of Administrative Injustices

The Ombudsman receives and investigates complaints of maladministration and administrative injustices. In cases where the Ombudsman has multiples competencies, it would also investigate complaints of corruption and human rights abuses. These grievances, if unaddressed, can implant seeds of discontentment thereby leading to conflict. Through redress of administrative injustices, the Ombudsman provides a safety valve thereby limiting resort to violent protest by groups dissatisfied with public administration.

It is worthwhile to note that the, in comparison with the formal judicial system, the Ombudsman provides a cheaper, more flexible, expeditious, accessible and less formal system of justice. This not only ensures retributive justice, but also provides a preventive measure thereby promoting peace and social harmony.

b) Remedial of Systemic Weaknesses in Public Administration

The Ombudsman plays an important role in societal transformation through the investigation of underlying systemic problems that cause disputes or bad administration and developing corrective measures. Systemic weaknesses may include deficiencies in the legal, political or social systems, or historical injustices that remain unaddressed. In appropriate instances, the Ombudsman would undertake fact finding or public inquiries on systemic issues. The systemic weaknesses are usually the single most cause of conflicts or disputes in public administration in many African countries. By undertaking systemic investigation on various issues, the Ombudsman contributes to peace building and social harmony thereby preventing conflicts.

c) Implementation of Transitional Justice Initiatives

The Ombudsman plays an integral role in the implementation of transitional justice in post-conflict societies. In such societies, the Ombudsman is placed centrally in the implementation of the initiatives geared towards ensuring accountability for violations as well as consolidation of peace. Indeed, a number of Ombudsmen in Africa were established as a result of the transitional justice initiatives in countries emerging from conflict. In Burundi, for instance, the Office of the Ombudsman was established in 2005 as part of the transitional justice mechanisms to manage conflict and improve governance. In other countries, the Ombudsman plays a key role in the implementation of reports of task forces on historical injustices, commonly known as the Truth, Justice and Reconciliation Commission. In so doing, the Ombudsman contributes to consolidation of peace and social harmony in society.

d) Promotion of Alternative Dispute Resolution

Globally, the Ombudsman is recognised as a key player in promoting access to justice through Alternative Dispute Resolution (ADR) methods. This stems from its attributes that enable it to conduct mediation, conciliation, reconciliation, negotiation, adjudication or other forms of ADR effectively, which explains the reason for the title 'Mediator' is some countries, particularly in Francophone countries.

OPINION



The ever-increasing number and nature of conflicts in contemporary world make ADR relevance and appropriate as a mechanism of addressing disputes. Further, ADR is cost and time effective, flexible, non-confrontational, fair and examines the underlying causes of disputes or conflicts in comparison with litigation. The Ombudsman plays an important role in this regard. This also complements the convention judicial dispute resolution method.

In Kenya, the Ombudsman has undertaken mediation on matters of public administration which would otherwise threaten the peace, including the disputes between various State Organs, and also between citizens and State Organs. In addition, the Ombudsman is a member of the Board of the National Cohesion and Integration Commission which promotes national cohesion and considers the issues that threaten the peaceful co-existence of various communities in Kenya. In Burundi, the Ombudsman has regularly brought different stakeholders together with a view to addressing the conflict in the country.

e) Redress of Human Rights Abuses

The Ombudsman addresses human rights abuses in the context of investigation of injustices in public administration. This includes addressing grievances relating to minority and marginalised groups in society, which would otherwise create conflict.

In Kenya, the Ombudsman a complementary role in promoting human rights jointly with the Kenya National Commission on Human Rights and the National Gender and Equality Commission, and is also empowered to ensure compliance with minority and marginalised groups in the context of public service.

In a number of countries in Africa, the Ombudsman has direct mandate to protect and promote human rights besides the traditional mandate of the Ombudsman. The Ombudsman of Namibia, Tanzania, Namibia and Ghana are examples in this regard. In such cases, the Ombudsman directly investigates human rights abuses thereby preventing conflicts and promoting social harmony.

f) Issuance of Advisory Opinions

Advisory opinions provide an important avenue to the Ombudsman to recommend preventive measures (an early warning system) to address conflicts before they happen. The Advisories deal with a variety of issues that affect or likely to affect public administration thereby contributing to peace building.

The Ombudsman of Kenya has always issued advisory opinions on various matters with the objective of improving public administration. Some of the pertinent Advisories issued by the Ombudsman include:

- Advisory on the Framework for Co-operation between the Senate and the Governors;
- Advisory on the Boundary Disputes between County Governments; and
- Advisory on the Relationship between the National Government and County Governments.

g) Awareness Creation on Good Governance

While redress of administrative injustices and human rights violations is important in consolidation of peace and social harmony, having informed public is key to the prevention of conflicts and sustainable co-existence. The two mechanisms complement each other in ensuring good governance.

Accordingly, the Ombudsman has been empowered to create awareness on administrative justice, corruption and human rights. In Kenya, the Ombudsman is empowered to create awareness on matters relating to administrative justice. To this end, the Ombudsman of Kenya has proactively sensitised the public through various outreach programmes (media, county visits, ASK Shows, Ombudsman Mashinani in informal settlements and Information, Education and Communication materials.

OPINION

h) Networking and Collaboration

Networking and collaboration are key in conflict management, redress of impunity and sustainable peace. While the Ombudsman has a direct role in conflict management, it cannot single-handedly succeed. The input of local and international stakeholders is critical thus the need for networking and collaboration. Networking and collaboration would enable the Ombudsman to bring the situation to the attention of all stakeholders for action, but also engender support to the Ombudsman.

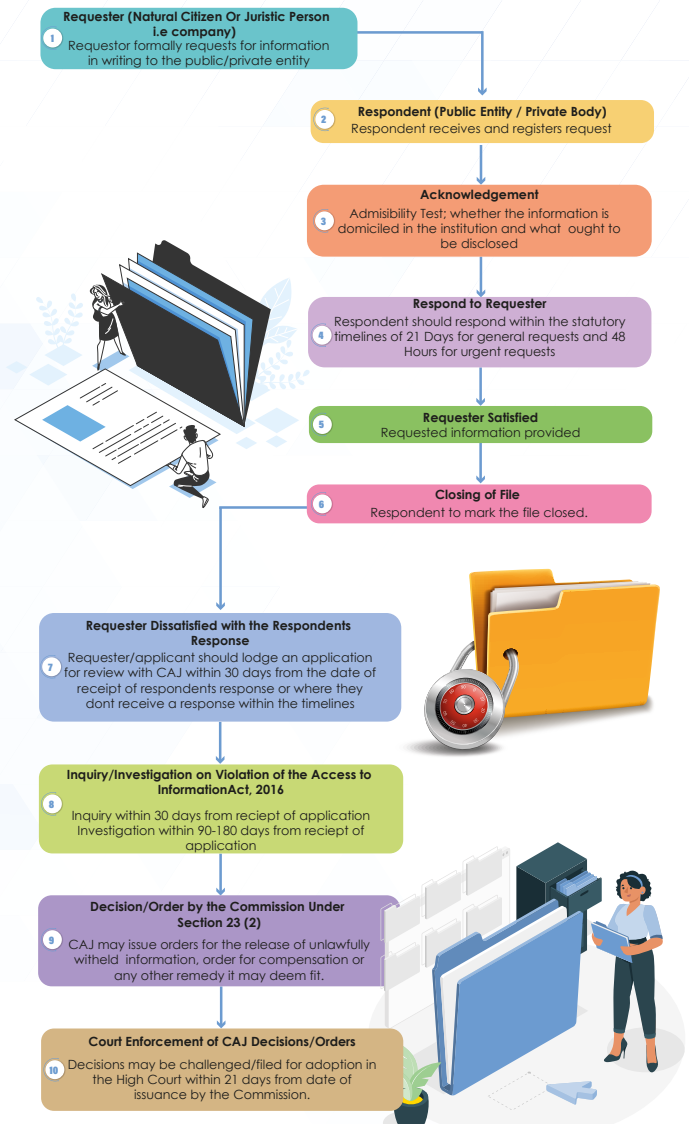
The Ombudsman therefore plays a critical role in consolidation of peace and social harmony. This role is more prominent in Africa owing to the nature of the African state and the prevailing socio-political circumstances. The fragility of the African state occasioned by weak legal foundation, lack of respect for the rule of law, and majoritarian and ethnic based democracy means that institutions of governance such as the Ombudsman have to play a central role in democracy, conflict management and social harmony.

Indeed, unlike its counterparts elsewhere, the African Ombudsman has to primarily deal with civil and political rights which usually leads to politicisation of the work of the Ombudsman, and in some extreme cases, threats to the Ombudsman. In order to ensure effective realisation of this responsibility, the following is suggested:

- a. **Strengthening of the Ombudsman:** The Ombudsman plays a central role in promoting accountability, the rule of law and active citizenship. However, the effectiveness of the Ombudsman is dependent on the extent of its institutionalisation and independence. In order to ensure effectiveness and relevance, the institution should be strengthened to entrench it in the state machinery, broaden the scope of its jurisdiction and powers and provide adequate resources.
- b. **Speaking Truth to Power:** Generally, the Ombudsman should execute its mandate objectively, impartially and fearlessly. He should be able to point out the excesses of the State and take appropriate action. In countries facing or emerging from civil unrest, the Ombudsman plays a central role in peace efforts, including taking deliberate and decisive steps towards conflict management. Such Ombudsman is likely to carve a niche and receive support from the public even in the face of threats from other sources.

- c. **Innovation and Dynamism:** The Ombudsman exists in a dynamic environment characterised by rapid technological advancement and new threats to social order. The Ombudsman cannot afford to take a back seat in the face of these challenges. As such, the institution should continually reposition itself to the changing needs of society through innovation of effective tools and strategies.
- d. **Partnerships and Linkages:** The nature and extent of relationship with other stakeholders is key to the consolidation of peace and social harmony as well as the effectiveness of the Ombudsman. Accordingly, there is need for continuous engagement with other stakeholders, including the courts, the State's bureaucracy and regional bodies, on the peace and collaborative efforts. Further, efforts should be made towards enhancing information sharing, support and collective action.

REVIEW OF APPEALS UNDER THE ACCESS TO INFORMATION



DCAF ENGAGEMENTS

Ombudsman Partners with DCAF to Conduct Public Outreach in Two Counties

The Commission, in partnership with Geneva Centre for Security Sector Governance (DCAF), in January and February 2024 conducted public outreach in Marsabit and Meru counties.

As part of the activities, a delegation from the Commission led by the Director, Public Education, Advocacy and Corporate Communications, Mr Osman Mohammed, on Tuesday, 23rd January, 2024, paid a courtesy call on the Deputy Governor, County Government of Marsabit, H.E. Solomon Gubo, the Speaker of the County Assembly of Marsabit, Hon. Edin Wario, and the County Commissioner, Marsabit County, Mr. Nobert Komora.

Thereafter, the team held a public sensitisation forum in Moyale which was attended by officials from the National and County Governments, members of the public, Civil Society Organizations and media practitioners, among others. The forum was aimed at creating awareness on the mandate of the Commission.

The need to take the commission's services to communities in the grassroots, including those in remotest parts of the country, through public education and free legal aid clinics, also informed the decision to hold the forum in Moyale.

"The Commission will also explore opportunities for strengthening realisation of SDG 16 through bridging gaps on Administrative Justice for better service delivery to all citizens," said Mr. Osman on behalf of commission chairperson, Florence Kajuju

The Commission observed that there are issues that ought to be addressed among marginalised communities such as challenges in accessing legal identity documents, particularly for children and youth, due to inefficiencies and delays in processing applications by relevant government agencies.

"Having an effective complaint handling mechanism is crucial to address the concerns and complaints of all citizens, especially those living in marginalised and far-flung areas," Mr. Osman said.

The event was also attended by Moyale Deputy County Commissioner Robert Nzuki and Sololo Sub County Administrator Abdo Ala

The visit came as a precursor to a series of activities to be held in partnership with DCAF to foster SDG 16 which aims to promote peaceful and inclusive societies, provide access to justice for all, and build effective, accountable, and inclusive institutions at all levels.



Meru County

On Friday, 26th January, 2024, the Commission conducted a one-day sensitisation forum for the security sector stakeholders, non-state actors and select community leaders in Meru County. Present at the stakeholder engagement was the Media Council of Kenya's Meru Regional Coordinator, Mr Karanja Jackson, who urged participants to embrace technology in exercising their constitutional right to access information.

The training was officially opened by the Chairperson of the Commission, Hon. Florence Kajuju. Simultaneously, another team from the Commission was stationed at Gakoromone Market to raise awareness about the Commission's mandates, provide legal aid to citizens, and to receive complaints.

And on Saturday, 27th January, 2023, a team led by Hon. Kajuju together with representatives from DCAF, conducted a public outreach activity in Makutano, Meru Town. The Commission's presence at the location sought to receive grievances, raise awareness about its responsibilities, and offer legal assistance to citizens.

On Sunday, 28th January, the team conducted a public outreach and education in Giaki Catholic Parish Church, Meru County.



DCAF ENGAGEMENTS

Management Team Trained on Sustainable Development Goals



The Commission's Management Team on Tuesday, January 30, 2024, undertook a two-day training workshop on mainstreaming Sustainable Development Goals, particularly Goal 16, into strategic planning, reporting, and management.

The training was facilitated by representatives from the Geneva Centre for Security Sector Governance (DCAF) in Nairobi.

It was aimed at contributing to the effective operationalisation of the Commission's security sector oversight mandate and the better articulation and integration of the Commission's contribution to the achievement of SDG 16 of a peaceful, just, and inclusive society in Kenya, in particular, the targets of ensuring equal access to justice for all (SDG16.3), developing effective, accountable, and transparent institutions (SDG 16.6), providing legal identity for all (SDG 16.9), and ensuring public access to information and the protection of fundamental freedoms (16.10).

The objectives of the workshop included the integration of lessons learned from the implementation of the Strategic Plan (2019-2023) into the forthcoming strategy, raising awareness among the Commission's Strategy Unit on developing strategic documents, with a particular focus on justice and security sector oversight-related strategy development and raising awareness on how to integrate SDG 16 considerations into the forthcoming strategy.

Speaking during the official opening of the training, the Chairperson of the Commission, Hon Florence Kajuju, noted that Kenya has mainstreamed SDGs in various national development plans, unfortunately, the Commission did not mainstream SDGs in its

Strategic Plan (2019-2023) but promised that SDGs will be streamlined in the new Strategic Plan to address the gaps.

Hon. Kajuju further appreciated the support from DCAF, noting that through the support, the Commission is deepening public awareness of the importance of efficiency in the provision of vital documents to citizens in border counties.

She added that the Commission had improved its systems such as the Complaints Management Information System and PASHA which will be rolled out in collaboration with the Ministry of Public Service. The new strategic plan will be the basis for the Commission to ensure that the public sector is responsive, fair, and just to the people of Kenya.

The Commissioner in Charge of Access to Information, Ms. Lucy Ndung'u, thanked DCAF for the support and noted that access to information is very central in the realisation of SDGs.



DCAF ENGAGEMENTS

On her part, the CEO, Ms. Mercy Wambua, appreciated the support DCAF has extended to the Commission to undertake public sensitisation, public inquiries on the access of citizenship documents in border areas, development of a Strategic Plan, and legislative review.



Richard Steyne, DCAF's SDG 16 Programme Manager, noted that they have had first-hand experience with the Commission's work in enhancing access to justice during public outreach in Meru County in January. He noted that the training is to prepare the management team for the development of the new strategic plan and streamlining SDGs and security issues in the new plan and that it presents a learning opportunity for both the Commission and DCAF.



SDG 16 aims to promote peaceful and inclusive societies, provide access to justice for all, and build effective, accountable, and inclusive institutions at all levels. To achieve these ambitions, all States will need to redouble their efforts to ensure that their national security sector is both effective and accountable, and operates within a framework of democratic civilian oversight, rule of law, and respect for human rights.

As an independent oversight body responsible for enforcing administrative justice in the public sector, including the security sector, the Commission plays a key role in facilitating access to justice and advancing good security sector governance and, by extension, SDG 16. The Commission's mandate extends to both national and county government and includes enforcement of administrative justice in the public sector by addressing maladministration through complaints handling and alternative dispute resolution, and oversight and enforcement of the right of citizens to access information held by the State.

The workshop is part of the DCAF's SDG 16 Project, which is funded by the Ministry of Foreign Affairs of the Kingdom of the Netherlands. Under the programme, the Commission with support from DCAF, has conducted public awareness education and training of security sector players in Marsabit and Meru counties and is set to conduct a public inquiry on the issuance of vital documents at the border counties among other areas.

Commission Conducts Public Inquiry on Issuance of Legal Identity Documents in Wajir County

The Commission, in partnership with the Geneva Centre for Security Sector Governance (DCAF), held a public inquiry and series of engagements in Wajir County from Monday 19th February 2024 to Friday 23rd February 2024 on the barriers to the acquisition of legal identity documents including birth and death certificates, identification cards and passports by the residents of the county.

The decision was prompted by numerous media reports and complaints received by the Commission regarding the persistent challenges encountered by residents of the Northern Frontier Counties in acquiring legal identity documents. In preparation for the inquiry, the Commission on Thursday, February 8, 2024, held discussions with officials from the Civil Registries Services, National Registration Bureau, and the Immigration Department to establish the institutional overview of their mandates, the legal framework and procedures followed in the issuance of the documents.

During the visit to Wajir County, the Commission held engagements with Non-state Actors, community leaders, religious leaders, and other relevant stakeholders, and a public inquiry engagement with the public to provide them with an opportunity to share their experiences and challenges.

DCAF ENGAGEMENTS

The Commission later engaged the service providers from the Civil Registries Services, National Registration Bureau, Immigration Department, and National Government Administration Officers to respond to issues raised during the inquiry.



The Commission further examined the processes in the acquisition of the above documents beginning from application, vetting, and issuance to better understand the challenges and make recommendations aimed at addressing the challenges.

Ahead of the engagements, a team from the Commission led by the Vice Chairperson, Mr. Washington Sati, and the Commissioner in charge of Access to Information, Ms. Lucy Ndungu, on Monday, February 19, 2024, paid a courtesy call on the leadership of the County Assembly of Wajir. The meeting discussed partnership on the domestication of the Access to Information law and public awareness and education creation. Present from the Assembly were Hon. Abdille Yussuf Mohammed, Speaker of the County Assembly of Wajir, and Mr. Shalle Sheikh Mursal, the Clerk of the Assembly.



Later, the team paid a courtesy call to the Deputy County Commissioner, Wajir, Mr. Said Abdalla. The meeting explored possible areas of partnership with the National Government Administration Officers. Both parties agreed to use available mechanisms to sensitise the citizens of Wajir on the Commission's mandates.

On Tuesday, February 20, 2024, the Commission had an engagement workshop with Public Opinion Shapers and Special Interest Groups (CSOs, Interfaith, PWDs, Women, and Youth) at the Wajir Hilton Palace Hotel. Later on, Wednesday, February 21, 2024, the Commission received submissions from members of the public on their knowledge and experience during the process of the application to issuance of the legal documents.



A team led by the Vice Chairperson, Mr. Sati, also paid a courtesy call to the Governor, County Government of Wajir, H.E Ahmed Abdullahi. The team briefed the Governor on the public inquiry with the two teams discussing possible areas of partnership and collaboration between the Commission and the County Government of Wajir. Present during the meeting were the Deputy Governor, the County Secretary, Mr. Ali Mohamud Adan, and representatives from the North Eastern regional office of the Kenya National Commission on Human Rights.

The culmination of the activities was an Ombudsman Open Day on Thursday, February 23, 2024, where the Commission undertook public awareness and education in Wajir Town. The residents were educated on the mandate of the Commission, get legal aid, and an opportunity to lodge complaints.

PARTNERSHIPS AND LINKAGES

Commission and Uraia Trust Partner to Conduct Study on Access to Information



The Commission, with financial support from Uraia Trust under a Norway-funded project titled "Empowering Kenya: Rights, Inclusion, and Transparency for Accountable Institutions (RITAI)", will undertake a comprehensive study on "Milestones and Challenges in the Implementation of the Access to Information Law."

To this end, the two institutions on Tuesday, February 20, 2023, signed a Project Agreement (PA). The PA was signed by the Commission Secretary, Ms. Mercy Wambua, and the Executive Director - Uraia Trust, Mr. Oliver Waindi.

The study aims to address the need for evidence-based findings on the milestones and difficulties faced by public agencies in the implementation of the Access to Information Act, 2016, with a view to identifying the existing gaps in the implementation and recommend policy strategies geared toward addressing the challenges.

Beyond enhancing the realisation of the right to information as enshrined in Article 35 of the Constitution, the project will also seek to contribute to Sustainable Development Goal 16 on promoting peaceful and inclusive societies, providing access to justice for all and building effective, accountable and inclusive institutions at all levels.

Commission Chairperson Delivers Keynote Address at Kabarak University



The Commission Chairperson, Hon. Florence Kajju, delivered a key note address at the Kabarak University's School of Music and Media Studies during its 14th International Research Conference held on 25th and 26th March, 2024 at the Kabarak University main campus.

Hon. Kajju delivered the address on the topic "The Role of the Commission on Administrative Justice in Access to Information," shedding light on the crucial role the Commission plays in upholding citizens' right to access information, a cornerstone of transparency and good governance.

The conference focused on the critical issue of content moderation in the digital age and brought together scholars, practitioners, and regulators to discuss the challenges and opportunities presented by the rise of social media and other online platforms.

Other speakers included Dr. Ezekiel Mutua, CEO of the Music Copyright Society of Kenya, and Ms. Christine Nguku, Assistant Director in Charge of Training and Curriculum Development at the Media Council of Kenya.

The conference attracted over 450 participants.

FLLoCA COUNTY ENGAGEMENTS

Commission to Support Tana River County in Operationalisation of GRM and Domestication of Access to Information Law

The Commission will support Tana River County to operationalise Grievance Redress Mechanism (GRM) and in the domestication of the access to information law. This was discussed when a team from the Commission led by the Vice Chairperson, Mr. Washington Sati, had an interactive engagement with the Speaker, County Assembly of Tana River, Hon. Osman Galole, as part of the Financing Locally Led Climate Action Programme (FLLoCA) county engagements supported by the World Bank through the National Treasury.



The meeting was part of a series of activities in the county aimed at strengthening complaints handling in the public sector by training county government officials, promoting proactive disclosure of information in the public and private sector by sensitising members of the public, State, and Non-State Actors on the mandate of the Commission, enhancing awareness on the need for counties to enact access to information legislation, and empowering citizens to hold counties accountable through awareness creation.



The Commission later on Wednesday, February 28, 2024, conducted an Ombudsman Mashinani citizens' empowerment outreach forum in Hola Town Market, Tana River County. The activity was aimed at creating awareness of the mandates of the Commission and provided a platform for the public to lodge complaints and receive legal aid.

The Vice Chairperson later paid a courtesy visit to the County Commissioner, Tana River County, Mr. David Koskei,



During the meeting, both parties agreed to enhance their collaboration on resolving complaints, improving access to information, and conducting public outreach through the effective utilisation of the existing National Government administrative frameworks.



INVESTIGATION

Ombudsman Recommends Prosecution of Public Officers for Fraud and Neglect of Official Duty

The Commission on Administrative Justice (Office of the Ombudsman) has recommended that the Directorate of Public Prosecutions (DPP), the Directorate of Criminal Investigations (DCI) and the Public Service Commission investigate Mr. Francis Asiago Marita, a former employee of the Ministry of Information, Communication and Technology and his accomplices for commission of fraud as well as neglect of official duty by public officers.

Mr. Asiago complained to the Commission on 15th February 2022 alleging that he was transferred from the then Ministry of Water, Environment and Natural Resources where he was employed as a Supply Chain Management Officer II in the year 2013, to the then Ministry of Information, Communication and Technology (ICT).

According to him, upon the transfer, his employment file was not released from the Ministry of Water and was subsequently expunged from the government payroll without notice and his personal employment file went missing. Consequently, he worked at the Ministry of ICT for about a year without receiving a salary after which he left to seek medical treatment for a medical condition that he was suffering from. He made several follow ups with the Ministry of Water to have him reinstated to the payroll and his salary be paid accordingly but his efforts did not bear fruit.

This predicament impelled him to seek the intervention of the Commission to have the issue addressed. The Commission commenced a preliminary inquiry into the allegations through various correspondences with the Ministry of Water Sanitation and Irrigation, the then Ministry of ICT, Innovation and Youth Affairs, and the National Treasury. Thereafter, a full investigation into the matter was initiated.

The investigation by the Commission sought to establish;

- i. Circumstances under which Francis Marita was employed in the Public Service;
- ii. Circumstances surrounding Mr. Marita's alleged removal from the government payroll and disappearing of his personal file; and
- iii. To identify remedies available to Mr. Marita, if any.

The Commission notified the Principal Secretary, State Department for Water and Sanitation, of its decision to undertake the investigation vide a letter dated 2nd May 2023.

The Commission's findings revealed the following:

i. Circumstances under which Francis Marita was employed in the Public Service

a. Engagement at National Water Conservation and Pipeline Company

- i. Mr. Marita's first employment in the Public Service was at the then National Water Conservation and Pipeline Company (NWPC), currently the National Water Harvesting and Storage Authority (NWSA). It was established from records obtained at the NWSA that Mr. Marita was first appointed as a clerical officer at the institution on 7th June 2002. In a correspondence to the Commission, the organisation's Manager, Human Resource and Administration, explained that it could not be confirmed how Mr. Marita was recruited as the institution's records were destroyed in a fire that gutted down the premises in the year 2009.
- ii. During the Water Sector reforms that occurred in the year 2005, a directive dated 30th June 2005 was issued by the then PS in the Ministry of Water that all staff working under the then NWPC regional offices were to report to the headquarters for redeployment to various water service boards. Consequently, Mr. Marita was deployed to the Lake Victoria North Water Services Board as he was by then working under the NWPC Rift Valley region. Mr. Marita was an employee of the Board up to 31st October 2008, as per a last pay certificate from Lake Victoria North Water Services Board indicating that he was paid a salary up to the said date.
- iii. Investigations established that thereafter, through a letter dated 18th August 2008, the then PS in the Ministry of Water and Irrigation, deployed Mr. Marita as a procurement officer to the then Water Appeals Board (WAB). Investigations further revealed that the PS further directed that Mr. Marita's salary be paid by NWPC during the deployment period, then the institution to seek reimbursement of the same from WAB.
- iv. On 7th June 2013, Mr. Marita was deployed back to NWPC from WAB. Records indicate that Mr. Marita did not report to NWPC following the redeployment. He proceeded to decline the redeployment and relinquished his position vide a letter dated 15th August 2013. He was subsequently cleared and issued with a certificate of service from NWPC dated 22nd October 2014.

INVESTIGATION

- v. Investigations noted that Mr. Marita's deployment to WAB, change of terms from clerical officer to procurement officer as well as determination of terms of pay, were all done at the discretion of the then PS in the Ministry of Water and Irrigation, Eng. David Stower.

b. Engagement at the Ministry of Water, Sanitation and Irrigation

- i. Documents adduced by Mr. Marita indicate that he was appointed as a Procurement Officer II under Job group J at the then Ministry of Water and Irrigation vide a letter dated 25th January 2010 signed by one Tom Emonde. It was noted that during the said period, Mr. Marita was still employed by NWPC and deployed at WAB.
- ii. It was established that Mr. Marita was introduced into the Public Service Integrated Payroll and Personal Database (IPPD) system in July 2013 and deleted on 24th September 2013, while at the then Ministry of Water payroll. The State Department for Public Service which is in charge of the IPPD system, in a correspondence to the Commission, confirmed that any action implemented into the system including deletion of staff data is done by the respective Ministry/Department, and must be recorded in the officer's personal file. In this case, the action was taken at the then Ministry of Water, Sanitation and Irrigation and ought to have been recorded in Mr. Marita's personal file held at the Ministry. This was supported by assertions made by the Director HR&A at the National Treasury, which is the Public Service Scheme Administrator for supply chain staff, that a staff's employment file is domiciled at the Ministry where the staff is deployed. It was, therefore, confirmed that Mr. Marita was engaged as a Procurement Officer II at the then Ministry of Water, Sanitation and Irrigation between July 2013 and September 2013.
- iii. The State Department for Water and Sanitation, however, reiterated through correspondences to the Commission that it is not in possession of Mr. Marita's employment records as it is not the administrator of procurement personnel in the Public Service.

From the minutes of the Department's Human Resource Management Advisory Committee meeting held on 27th February 2023, the Committee noted that Mr. Marita's employment file was missing and thus they were unable to verify information about his appointment at the Ministry. Consequently, the State Department forwarded the case to the Public Service Commission for further guidance. The PSC vide a letter dated 3rd November 2023 confirmed that it was pursuing the matter.

c. Engagement at the Ministry of ICT

- i. It was confirmed that Mr. Marita was engaged at the then Ministry of ICT from June 2014 to May 2015. This was evidenced by a copy of a letter dated 19th June 2014 authored by one Davis Kariuki for the PS in the Ministry of ICT, confirming that Mr. Marita had reported for duty at the Ministry, and subsequently requesting for transfer of his file. Various correspondences indicating his nomination to tender committees at the Ministry during the period were also obtained from the now State Department for Broadcasting and Telecommunications, with the latest one dated 19th May 2015. This was despite Mr. Marita's personal employment file being non-existent at the time and him not being at the Ministry's payroll. Mr. Marita confirmed that during the period when he worked at the Ministry of ICT, he was paid other allowances but was never paid a salary as his employment details were never transferred from the Ministry of Water and Irrigation to the Ministry of ICT.

ii. Irregularities in the Employment and Transfer of Mr. Marita

a. Appointment to and Transfer from the Ministry of Water

- i. The investigation by the Commission confirmed that Mr. Marita's appointment letter from the Ministry of Water was dated 25th January 2010, but he was never introduced to the Ministry's payroll until July 2013. Through his own admission, Mr. Marita confirmed that he was not recruited to the Ministry through a competitive process. He also confirmed that he was issued with the letter in the year 2013 by one Tom Emonde, giving an indication that it was backdated.

The investigation by the Commission confirmed that Mr. Marita's appointment letter from the Ministry of Water was dated 25th January 2010, but he was never introduced to the Ministry's payroll until July 2013. Through his own admission, Mr. Marita confirmed that he was not recruited to the Ministry through a competitive process. He also confirmed that he was issued with the letter in the year 2013 by one Tom Emonde, giving an indication that it was backdated.

- i. Investigations by the Commission confirmed that the National Treasury is the scheme of service administrator for procurement/ supply chain staff in all government ministries. The letter of appointment dated 25th January 2010 bearing the signature of Tom Emonde and submitted by Mr. Marita, indicates that he was appointed as a Procurement Officer II in job group J. In an interview with the Director HR&D National Treasury, he indicated that;

INVESTIGATION

- a. Staff under job group J are recruited by the PSC and the list of appointed persons issued to the National Treasury for deployment. He indicated that there is no record of Mr. Marita in the National Treasury database to support his appointment and deployment.
- b. The Director further questioned the authenticity of the offer of appointment dated 8th January 2010 as well as the letter of appointment dated 25th January 2010, both signed by T.M. Emonde. He indicated that the letter of appointment ought to have cited a PSC reference number and copied to the National Treasury, and both aspects were missing from the said letter. Subsequently, a copy ought to have been at the National Treasury records, but the same is missing. In a letter dated 27th November 2023, the National Treasury confirmed that names of all procurement officers appointed in the year 2010 were contained in a PSC letter dated 2nd December 2009, and Mr. Marita was not among them.
- c. The Director further questioned the authenticity of the transfer letter dated 22nd October 2013 with respect to Mr. Marita from the Ministry of Water to the Ministry of ICT, bearing the signature of one C.A. Otunga for the PS Treasury. He confirmed that the procedure for such a transfer was that it ought to have been initiated through a posting order from the PS National Treasury, which in this case is missing from the National Treasury records. The transfer letter should have then been authored from the Ministry where the officer was domiciled which was Ministry of Water, making reference to the posting order from National Treasury and copied to the National Treasury. In the case of Mr. Marita, however, the transfer letter was authored at the National Treasury and did not make any reference to a posting order.

The investigations further established that Mr. Tom Emonde who signed Mr. Marita's offer of employment and appointment letter was at the time a Principal Human Resource Officer at the Ministry of Water and has since retired from Public Service. The whereabouts of one Mr. C.A. Otunga could not be ascertained as he is no longer an employee of the National Treasury.

a. Introduction and Deletion from the IPPD system

- i. Mr. Marita was introduced into the IPPD (intergraded payroll and personal database) system on 22nd July 2013 and deleted on 24th September 2013. Upon further interrogation of the system, the investigations established that he was introduced into the system by one

Tom Magero and deleted by one Reuben Kitony Totona, both of whom were Human Resource Officers at the then Ministry of Water working under the payroll section during the period in question.

- ii. Mr. Magero stated that he does not recall introducing Mr. Marita into the payroll, but there is a possibility that he was one among the many staff that he introduced into the payroll in the course of his duties. He explained that an employee file had to be present for any action to be undertaken on the respective employee's payroll.
- iii. Mr. Totona, on the other hand, explained that removal from the IPPD would only be done upon the employee's separation from Public Service. He stated that he does not recall Mr. Marita being an employee at the Ministry and neither does he recall expunging his details from the IPPD. He, however, clarified that for any action that he executed on the IPPD, instructions had to be issued by the Director in charge of Human Resource. The action would be recorded on a data capture sheet which would then be signed by the officer inputting the changes, the officer authorising the changes, and the officer verifying the changes. The data capture sheet would then be filed in the respective officer's employment file. This supports the assertion made by the State Department for Public Service that deletion could only be done at the Ministry level and recorded in the respective officer's employment file, which in this case is said to be missing.
- iv. The investigations, therefore, established that for Mr. Marita to have been introduced and expunged from the payroll, an employment file must have been in existence. The officers who executed the said actions on the payroll purport to have done so under the instructions of the then Director in charge of Human Resource, one Mr. Cleophas Khaseya, who has since retired from Public Service and his whereabouts are unknown.

b. Irregular Engagement with the Ministry of ICT

- i. Investigations established that Mr. Marita's engagement with the Ministry of ICT from June 2014 to July 2015 was irregular as he had by then been expunged from the Public Service payroll and his employment file was never forwarded to the Ministry.

INVESTIGATION

- i. It was further established that Mr. Davis Kariuki who was then in charge of records and who is purported to have confirmed Mr. Marita's reporting to the Ministry vide a letter dated 19th June 2014 has since retired. It was also established that one Ms. Rosemary Kariuki who was in charge of Human Resource at the Ministry then has since retired from Public Service.

Based on the investigation's findings, the Commission concludes that;

- i. Mr. Marita's first employment in the Public Service was at the NWCPC where he was employed as a clerical officer and subsequently a procurement officer. He joined the institution in June 2002 and resigned in August 2013.
- ii. Mr. Marita was employed as a Procurement Officer II at the then Ministry of Water and Irrigation from July 2013 to September 2013. His appointment was irregular as he did not undergo a competitive recruitment process. Further, the authenticity of his letter of offer and letter of appointment signed by one Tom Emonde are both in question.
- iii. Mr. Marita was allegedly transferred from the Ministry of Water and Irrigation to the Ministry of ICT in October 2013. Upon the transfer, his personal file disappeared and he was deleted from the payroll. Both his introduction and deletion from the payroll were done at the then Ministry of Water and Irrigation.
- iv. The authenticity of Mr. Marita's letter of transfer from the Ministry of Water to the Ministry of ICT signed by one C.A. Otunga is in question.
- v. Mr. Marita worked at the then Ministry of ICT for the period between June 2014 and May 2015 as a procurement officer, despite not being in the payroll and his personal employment file having disappeared.
- vi. The manner in which Mr. Marita was appointed to the Ministry of Water, introduced into the payroll, transferred from the Ministry, deleted from the payroll, and disappearance of his file, all point to the possible commission of a fraud.

The Commission also made the following observations:

- i. It was observed that most government officials who are suspected to have abetted the commission of fraud and/or neglected their duties leading to the irregular employment of Mr. Marita, have since retired from Public Service and their whereabouts are unknown.

These include:

- Mr. Cleophas Khaseya (former Director Human Resource and Administration at the then Ministry of Water)
 - Mr. Davis Kariuki (in charge records, then at Ministry of ICT)
 - Ms. Rosemary Kariuki (Director Human Resource and Administration, then Ministry of ICT)
 - Mr. C.A. Otunga from the National Treasury
- i. Mr. Tom Emonde was contacted by Commission investigators but declined to appear for an interview and statement recording.
 - ii. The PSC vide a letter dated 3rd November, 2023, indicated that it is conducting investigations into Mr. Marita's complaint. It did not, however, specify the scope and progress of its investigations.

Pursuant to section 42 (2) (c) of the CAJ Act, 2011, the Commission makes the following recommendations:

- i. The Director, Public Prosecutions, to take action against Mr. Francis Marita and Mr. Tom Emonde for possible commission of fraud contrary to section 345 and 347 of the penal code.
- ii. The Director, Criminal Investigations, to investigate Mr. Cleophas Khaseya, Davis Kariuki, Rosemary Kariuki, and C.A Otunga for a possible neglect of official duty contrary to section 128 of the penal code
- iii. The CEO, Public Service Commission, to share with the Commission its final investigation report on Mr. Marita's case.



PARTNERSHIPS

The commission, NGAAF Agree to collaborate in advancing Administrative Justice, Access to Information, Inclusivity, and Gender Equity



The Commission and the National Government Affirmative Action Fund (NGAAF) on Wednesday, March 27, 2024, signed a Memorandum of Understanding (MOU) that will see both institutions leverage each other strengths and opportunities for achievement of mutual objectives.

In the MOU, the Commission will provide technical support to NGAAF in the setup and operationalisation of complaint handling and access to information infrastructure. It will also provide its expertise in the capacity building of NGAAF officers on complaint handling and access to information.

The two institutions will also collaborate in undertaking civic education and community sensitisation initiatives for implementing

National Government Affirmative Action programs and policies.

NGAAF shall actively involve the Commission in activities seeking their expertise and participation to ensure comprehensive outreach and effective complaint handling.

Recognising the importance of leveraging technology for effective information dissemination, the two institutions will leverage technology to provide affirmative action groups and survivors of GBV with crucial information on available financial resources and support services.

The MOU was signed by the Commission Secretary, Ms. Mercy Wambua, and NGAAF CEO Mr. Roy Sasaka Telewa.



PARTNERSHIPS

The Commission hosts the Ambassador of Norway to Kenya.



The Commission on Wednesday, March 27, 2024, hosted the Ambassador of Norway to Kenya, H.E Gunnar Andreas Holm who paid a courtesy call on the Commission.

The meeting explored potential areas of collaboration with the Norwegian Agency for Development Cooperation. The central topic of discussion revolved around the pivotal role of access to information in fostering transparency and accountability for effective governance in both public and private sectors.

Among the key outcomes of the meeting was the proposal for a peer learning exchange and technical assistance program between the Kenyan Ombudsman and its Norwegian counterpart.

Present at the meeting were the Commission in Charge of Access to Information Ms. Lucy Ndungu, the Commission Secretary, Ms. Mercy Wambua and various Heads of Departments and Divisions.

DIAR AWARDS

The Commission shines at the DIAR Award Gala

The Commission bagged a DIAR (National Diversity & Inclusion Awards & Recognition) Award on Diversity and Inclusion for the best Constitutional Commission and Independent Office in the Diversity, Equity, Inclusion, and Belonging (DEIB) & Sustainability Category during the award Gala at the Sarit Expo Centre on Friday, March 22, 2024.

DIAR Awards celebrates Individuals, corporations, NGOs, government agencies, and civil society groups who champion inclusion and diversity in all its forms.

All national institutions must fulfill Section 7(2) of the NCIC Act which requires that no more than one-third of their staff should be from one ethnic group. The theme for this year was "Making inclusion an everyday reality - celebrating your diversity and inclusion successes and inspiring action on inclusion and equality".

Present during the award Gala from the Commission Secretary/CEO, Ms. Mercy Wambua,

Mr. Geofferey Obonyo, Director of Strategy, Research and Compliance, Ms. Christine Omollo, Assistant Director of HRM & Administration, and Dr. Mary Kimari, Assistant Director of the Advisory Unit.

The theme of this year's award was "Multiplying Positive Change Agents."



CAPACITY BUILDING AND PUBLIC OUTREACH

910 Public Officers Trained

In the Commission's pursuit to enhance effective public service delivery, complaints management and processing of information requests, the Commission trained 910 public officers drawn from 24 Ministries, Departments, Agencies and Counties.

Commission Participates in Mobile Legal Aid Clinics in Lamu County

The Commission, through the Mombasa Regional Office, in February 2024 participated in outreach activities organised by the National Legal Aid Service (NLAS) in collaboration with Amkeni Wakenya, Muslims for Human Rights (MUHURI), among other agencies in Lamu County

The activities involved reaching out to the marginalised communities with Mobile Legal Aid Clinics aimed at ensuring that the vulnerable and poor Kenyans can access justice and are aware of their legal rights.

The team began their engagements on Monday, February 19, 2024, at Hindi Prison in Lamu where they took time to discuss legal issues affecting the inmates before taking them through sessions on self-representation to ensure the inmates can access justice within the prison. NLAS donated laptops to facilitate virtual court attendance.



The team later in the week visited Witu, Mkunumbi, and Faza areas to reach out to the marginalised communities. The programme was supported by the European Union in Kenya under the Programme for Legal Empowerment and Aid Delivery (PLEAD).



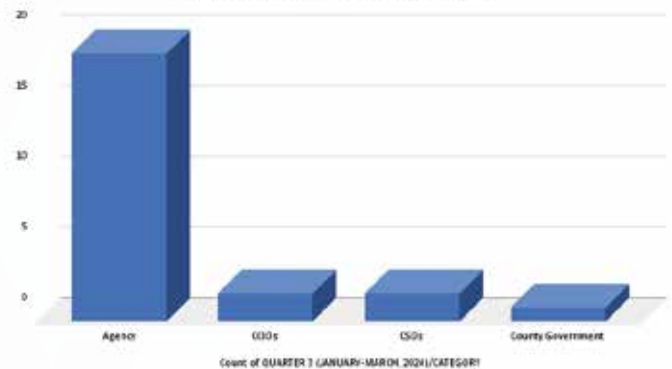
The Commission Participates in the Kisumu Law Courts Open Day



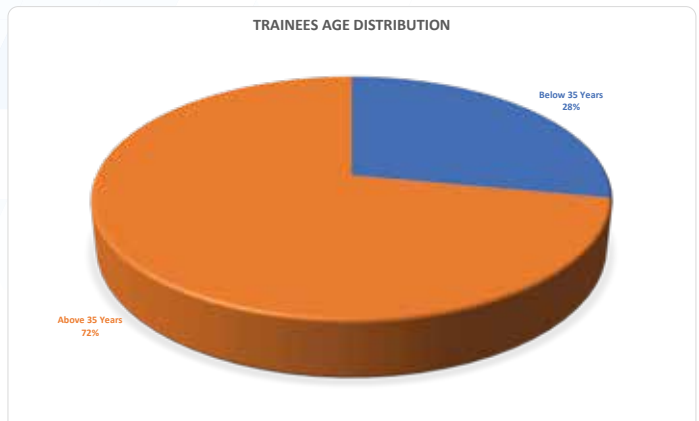
The Commission through its Kisumu Regional Office on Thursday, March 7, 2024, joined other stakeholders in the justice sector during the Kisumu Law Courts Open Day held at Jomo Kenyatta Ground, Kisumu City.

The Commission utilised the event to undertake public awareness and education on its mandates and functions. The Commission also offered legal aid services to those in need and publicised its service point in the Western Region. Present at the event was the Commission Vice Chairperson, Mr. Washington Sati.

TRAINED INSTITUTIONS CATEGORISATION



TRAINEES AGE DISTRIBUTION



PICTORIAL



Commission Vice Chairperson, Mr. Washington Sati presenting a gift bag to Deputy County Commissioner, Wajir County, Mr. Said Abdalla.



Commission Chairperson Hon. Florence Kajuju engaging with members of the public at Makutano Market in Meru County during a DCAF supported outreach activity.



A team from the Commission led by the Chairperson, Hon. Florence Kajuju during a meeting with Her Excellence Caroline Vicini, the Ambassador of Sweden to Kenya.

PICTORIAL



Commissioners and the Senior Management team pose for a photo with experts from the Geneva Centre(DCAF) during a training on Sustainable Development Goal 16.



Various stakeholders during a public inquiry into access to vital legal identity documents in Wajir County.



Commission Chairperson Hon. Florence Kajuju with the Chief Executive Officer and Board Secretar, Higher Education Loans Board (HELB), Mr. Charles Ringera at the newly commissioned Laikipia East Huduma Center .

INTERNATIONAL WOMEN'S DAY 2024





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