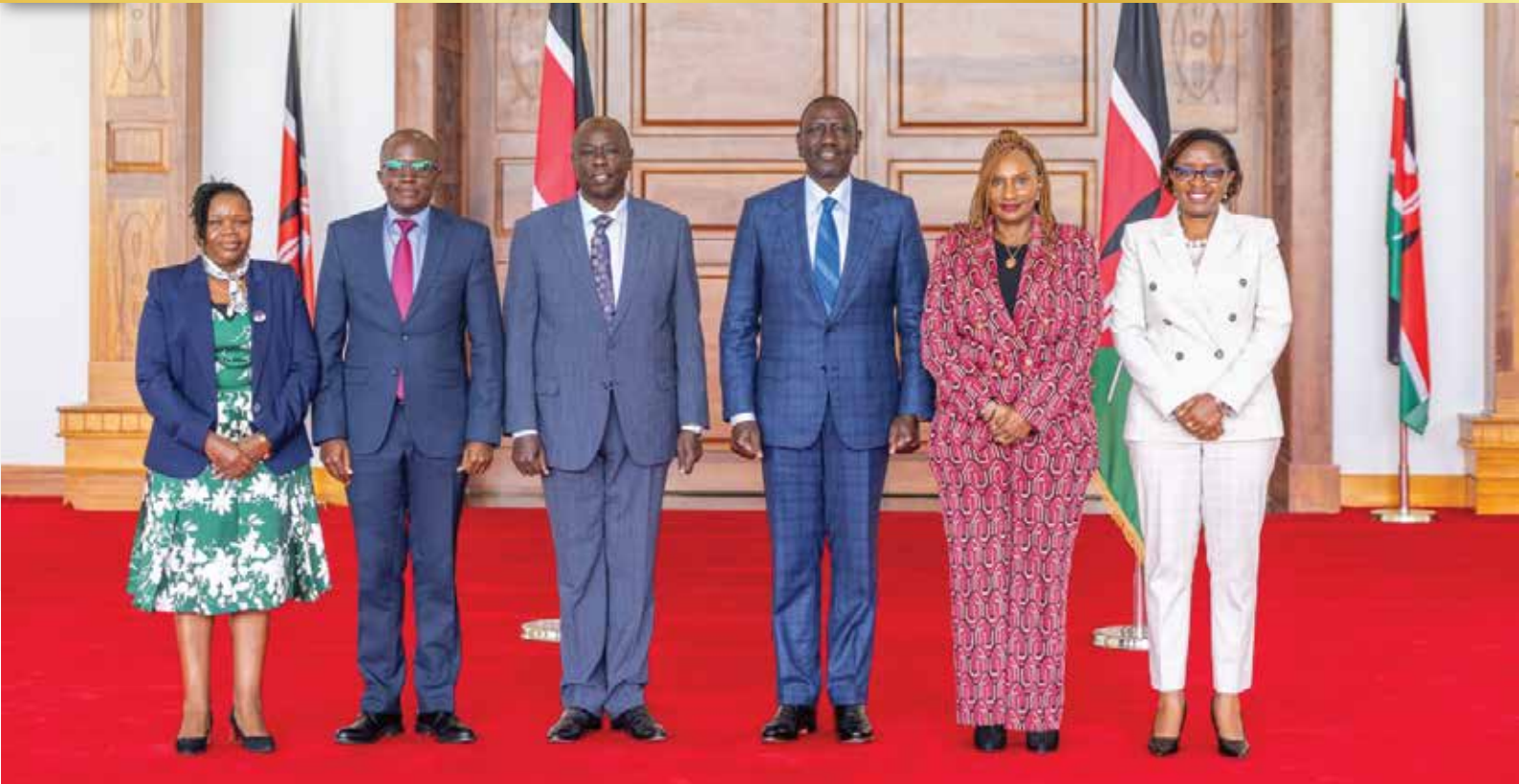


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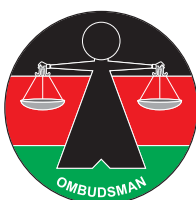
Commission opens Meru Regional Office



Dereliction of Duty by Public Officers led to Shakahola Tragedy, Ombudsman Investigations Reveal



Second Cohort Commissioners Exit Office



**Commission on Administrative Justice
(Office of the Ombudsman)**

Hata Mnyonge ana Haki



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Commission Secretary/CEO
Ms. Mercy K. Wambua, OGW

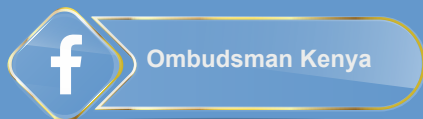
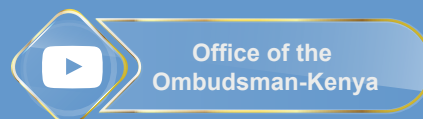
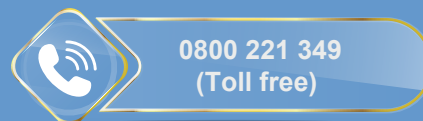
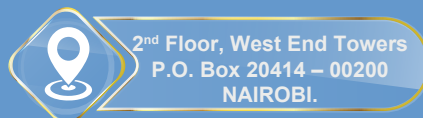
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THE EDITOR'S NOTE

Celebrating Milestones

Our cherished readers,

I am delighted to present the fourteenth issue of the Ombudsman Newsletter. In this edition, we highlight the launch of our seventh regional office. The Commission on Thursday, July 18, 2024, commissioned its seventh regional office in Meru Town as part of continuing efforts to decentralise its services. The launch of the office, situated on Njuri Ncheke Street, 6th floor of the Royal Business Park building, will complement the services offered through the Meru Huduma Centre and Isiolo Branch Office.

The Commission also hosted a farewell luncheon for the second cohort commissioners whose term came to an end having served their term of six years. The Commissioners also presented their exit report to H.E. President William Ruto. During the six years under their leadership, the Commission recorded 19,730 complaints on maladministration with an average resolution rate of 40.2% with delay in service being a service issue mostly complained about. The Commission also issued several advisories to National Governments on matters of national interest to enhance administrative justice and access to information reforms in the Country.

The Commission also continued redressing administrative wrongs and enforcing the right of access to information. One of the outstanding complaints the Commission resolved was of a beneficiary who will finally be able to access the dues of her late mother after fifteen years thanks to the intervention of the Commission in a case of inordinate delay by the Teachers Service Commission to process and submit the documents to the Pension Department. The Commission also issued several orders under the Access to Information Act which has enabled citizens to access the requested information.

The Commission also took several own motion issues. The complaints the Commission took up included the shortage of life-saving vaccines in public hospitals and the delay in processing of ID cards, among others.

In this edition, we also highlight the investigation by the Commission on the Shakahola Tragedy. The investigation has revealed that there was a dereliction of duty by the National Government Administration and National Police Service officers that allowed the occurrence of the Shakahola tragedy. Following the investigations, the Commission has recommended that the Principal Secretary State Department for Interior and Coordination of National Administration and the National Police Service Commission to hold to account the various duty bearers.

Enjoy the Read.

Editor

Mr. Osman Mohamed

Director, Public Education, Advocacy
and Corporate Communications



MESSAGE FROM THE CEO

Decentralisation: Taking Ombudsman Services to the Grassroots'

By Mercy K Wambua, OGW,
Commission Secretary/CEO

In the first quarter of the 2024/2025 Financial Year, the Commission made great strides in the implementation of its twin mandate on promoting administrative justice as well as overseeing the enforcement of the right to information both at the National and County levels.

During the period under review, the Commission, in partnership with the Geneva Centre for Security Sector Governance (DCAF) co-hosted an International Seminar which was held in Mombasa from 2nd to 4th July 2024. The objective of the seminar was to support Ombuds institutions in implementing their mandate in the context of multilateral peacekeeping operations. The seminar was attended by representatives of ombuds institution including signatories of the Berlin Resolution, members of the International Conference of Ombuds Institutions for the Sub-Saharan Africa, and select states with significant troop contributions to peacekeeping missions.

The Commission officially launched a regional office in Meru County, in July 2024. The event marked a culmination of relentless collective efforts by the Commission to decentralize its services in line with Article 6 (3) of the Constitution that requires all national state organs to ensure reasonable access to its services in all parts of the country. The Commission also opened an additional regional office in Makueni County whose operationalisation is being done progressively. Following the opening of the two offices, Commission will have a total of nine offices including the Head-Office and eight regional offices. This is in addition to the twelve service delivery points at Huduma Centers across the country where the Commission has presence.

The Commission also launched its first Public Inquiry Report On the **Problems Kenyan Citizens Encounter When Obtaining Legal Identity Documents in Border Counties**. The Report highlights a range of systemic and practical obstacles hindering residents of Wajir from obtaining Legal Identity documents which is exacerbated by the absence of dedicated immigration offices and a lack of understanding among residents about the application process.

As the term of the second cohort of Commissioners came to an end, the Chairperson and the Commissioners presented the Exit Report to H.E Dr. William Ruto, the President of the Republic of Kenya. The report highlighted considerable progress and milestones achieved by the Commission during its tenure from 2018 to 2024.



Key among them included the exponential growth of the budget of the Commission from KES. 216,241,303 in 2012/2013 FY to KES. 730,194,424 in the 2023/24 FY, signifying 284% growth. The Commission also made good progress towards actualising the optimal staffing levels, where a total of seventy-two additional staff were recruited during their tenure signifying 116% growth rate. The report also showed that complaints resolution rate has grown from 31.8% in 2018/19 to 65.6% in 2023/2024.

Similarly, the Strategic Plan for the period 2019-2023 came to an end and the evaluation shows that the Commission has made great strides in implementation of the various thematic areas, with the Resolution of Public complaints being evaluated at 86%, Oversight and enforcement of Access to Information at 85%; Public Education Awareness and Visibility at 78%; and Institutional Strengthening & Capacity Building at 78%.

Comparatively, the Commission has made commendable overall implementation of the strategic plan from a score of 63% at the Mid-term review to 82% score at the end-term despite challenges with constrained budget and the occurrence of the COVID-19 pandemic at the start of the plan.

As we embark on the next planning phase, the Commission remains committed to redressing all cases of maladministration within the Public Sector and promoting & enforcing Access to Information as per our constitutive Act (CAJ Act 2011) and the Access to Information Act, 2016.

OFFICE & REPORT LAUNCH

Commission Opens Meru Regional Office, Launches a Public Inquiry Report on Issuance of Legal Identity Documents

The Commission on Thursday, July 18, 2024, commissioned its seventh regional office in Meru Town as part of continuing efforts to decentralise its services.

The launch of the office, situated on Njuri Ncheke Street, 6th floor Royal Business Park building, will complement the services that were being offered through the Meru Huduma Centre and Isiolo Branch Office. The other regional offices are located in Garissa, Nyahururu, Mombasa, Kisumu, Eldoret, and the head office in Nairobi, in addition to desks in 12 Huduma Centres.



The official launch ceremony was presided over by the Commission Chairperson, Hon. Florence Kajuju, alongside Vice Chairperson, Mr. Washington Sati, Access to Information Commissioner, Ms. Lucy Ndung'u, Commission Secretary, Ms. Mercy Wambua. Guests who graced the occasion included; Meru County Commissioner, Mr. Jacob Ouma, representative of the Grassroots Justice Network (NAMATI), Mr. Mustafa Mahmoud, Mr. Joel Mutuma Buria, Chairperson, Mt. Kenya Bar Association, representatives from the National Gender and Equality Commission, EACC, Media Council of Kenya, Huduma Kenya, Kenya National Chamber of Commerce and Industry, religious leaders, civil society representatives, and members of the public.



At the same time, the Commission released a special inquiry report, 'An Inquiry Report on the Problems Kenyan Citizens Encounter when Obtaining Legal Identity Documents in Border Counties: A Case Study of Wajir County'.

The report reveals a multitude of issues encountered throughout the acquisition process, ranging from delays in issuance to instances of discrimination and challenges with biometric verification and application processing.

"These challenges underscore systemic issues within the identity document issuance process, necessitating urgent reforms to ensure equitable and efficient service delivery to all citizens," states the report. The report cites the process of birth registration in Wajir County as presenting stringent requirements and procedures, contributing to low registration rates, particularly for nonhospital births.

On obtaining passports, the report cites challenges such as the absence of dedicated immigration offices and a lack of understanding among residents about the application process. High fees, prolonged processing times, and discretionary decision-making in background checks contribute to corruption and unnecessary delays, further compounded by reports of discriminatory practices and insufficient communication on application statuses, adds the report.

"Transparency, efficiency, and consistency are critical to ensuring equitable access to National Identity Documents for all residents" the report says.



COMMISSIONERS EXIT

Second Cohort Commissioners Present Exit Report (2018-2024) to H.E President William Ruto



The outgoing second cohort Commissioners led by the Chairperson, Hon Florence Kajuu, on Tuesday, August 20, 2024, presented the Commission's Exit Report (2018-2024) to His Excellency Dr. William Samoei Ruto, C.G.H., President of the Republic of Kenya and Commander-in-Chief of the Defence Forces, at State House, Nairobi.

During the six years under their leadership, the Commission recorded 19,730 complaints on maladministration with an average resolution rate of 40.2% with delay in service being a service issue mostly complained about. The Commission also issued several advisories to National Governments on matters of national interest to enhance administrative justice and access to information reforms in the country.

The Commission equally, undertook investigations on complaints on maladministration against public institutions and officers. Some of the investigations related to issuance of passports, plight of Migrant Domestic Workers, and many others. The investigations sought to remedy the administrative injustices and identify gaps in processes and procedures that impede efficient service delivery.

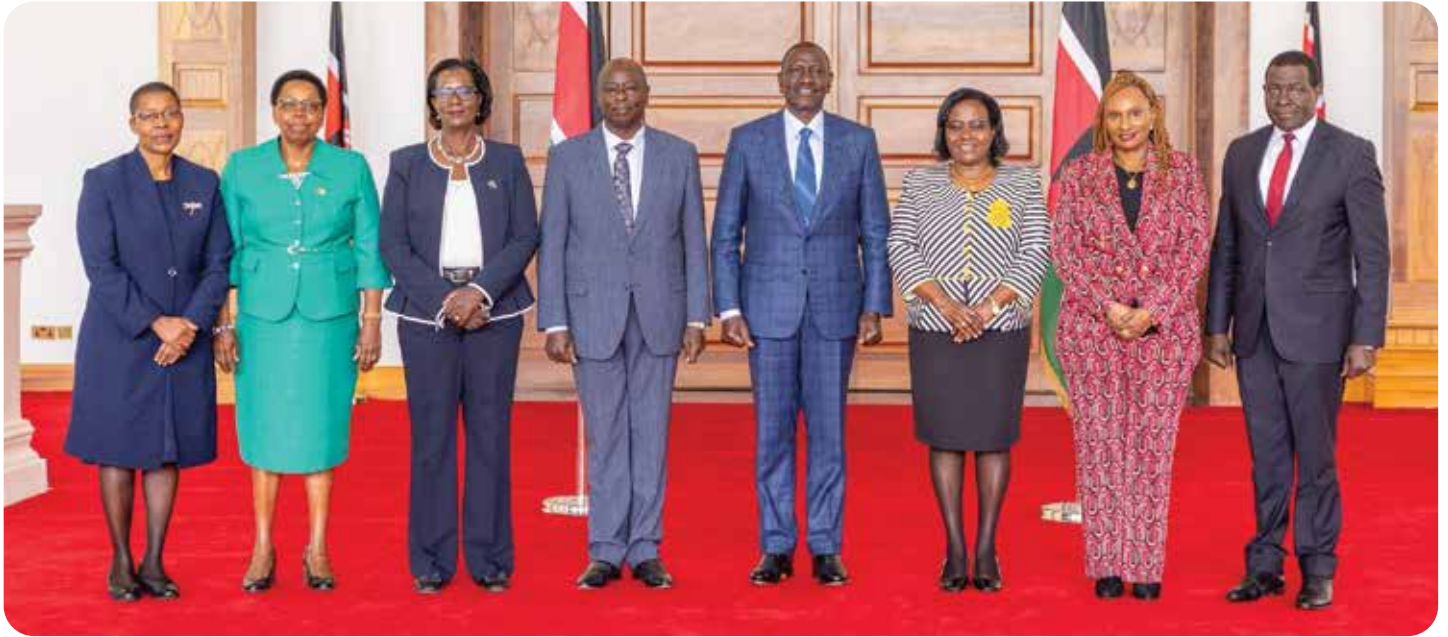
On its second mandate of overseeing the enforcement and implementation of the right of access to information as guaranteed by Article 35 of the Constitution and operationalised by the Access to Information Act, 2016, the Commission received 1,076 applications for review.

The Commission together with the Ministry of ICT and Digital Economy, also spearheaded the development of the ATI (General) Regulations and the National Access to Information Policy which will support the operationalisation of the Access to Information law and ensure that it is streamlined with in the operations of public entities.

The Commission created a framework to enable County Governments to have customised County access to information laws as a means of increasing active transparency on county services, development, and policies. The Commission in partnership with the Kenya School of Government and with the support of Article 19 Eastern Africa, Local Development Research Institute (LDRI) and the International Development Law Organization (IDLO) equally developed an ATI Curriculum targeting public officers involved in processing access to information requests in public entities to equip them with knowledge, skills and competencies to implement the legal framework on access to information.

COMMISSIONERS EXIT

Second Cohort Commissioners Present Exit Report (2018-2024) to H.E President William Ruto



During the period, the awareness of the Commission's mandate increased from 28% in 2018 to 59.3% in 2023 while awareness of the right to information by Kenyans stood at 64% in 2023. This is a reflection of the strategies the Commission put in place to undertake public awareness and education in its mandate including Ombudsman Mashinani, county visits, radio and TV programs, legal aid clinics among others. In support of public outreach forums, the Commission visited 45 of the 47 counties and carried out robust public education and awareness creation campaigns. The Commission also trained over 17,991 public officers from Ministries, Departments, Agencies, and Counties with compliance by public institutions increasing by 59.07%.

Despite the milestones, the Commission also experienced challenges including; financial constraints which remain a big challenge and an impediment to service delivery and the endeavor to strengthen the capacity of the Commission, in terms of human resource recruitment and skills development, physical infrastructure, and application of technology. It also inhibits the improvement of the work environment, to enhance occupational health and safety.

The challenge is often compounded by the austerity measures instituted by the Government, which result in a reduction of the allocated funds to the detriment of contracted services, resulting in pending bills. The Commission's legal framework, particularly on the traditional mandate, is inhibitive as it does not provide the mechanism to enforce its recommendations.

There is a need to fast-track amendment of the Constitutive Act and other relevant legislation to strengthen the legal framework, Non-responsiveness and/or delay by the responsible officers in public institutions in responding to inquiries made by the Commission about complaints raised against them has continued to impede timely resolution of complaints.

Inadequate public awareness of the mandates of the Commission is largely due to the limited financial resources allocated to the Commission to support its initiatives in this regard. There is a need for continued lobbying for enhanced budgetary allocation to further support public education and awareness, as well as scaling-up awareness programs that embrace innovation and creativity.

Accompanying Hon. Kajuju were the outgoing Vice Chairperson, Mr. Washington Sati, the Commissioner in Charge of Access to Information, Ms. Lucy Nd'ung'u and the Commission Secretary/CEO of the Commission, Ms Mercy Wambua.

The Commissioners were appointed on 2nd August 2018 for a non-renewable term of six years.



HOW WE HAVE HELPED - SUCCESS STORIES

Introductory Letter Issued

A resident of Rumuruti in Laikipia County was finally issued with an introductory letter following the intervention of the Commission.

According to the complainant, she was the wife of a police officer who unfortunately passed away on 14th March, 2023. Following the death of the husband, she tried getting an introductory letter from the Chief of Rumuruti, Laikipia West, to institute succession proceedings but she was sent away by the Chief on the allegation that she was not a wife to the deceased. On 25th May, 2023, she went to the Chief of Kibugu Location who issued her with an acknowledgment letter to show that she was the deceased's wife but the Chief of Rumuruti still refused to give her an introductory letter. Her predicament impelled her to seek the intervention of the Commission.

The Commission, by way of inquiry, took up the matter with the County Commissioner, Laikipia County, and the Principal Secretary, State Department for Interior and Coordination of National Administration. The Principal Secretary in a letter to the County Commissioner and copied to the Commission, requested the Commissioner to investigate the matter, take the necessary action, and share a report with the Commission and the State Department within two weeks from the date of the letter.

Following the investigations and follow-up by the Commission, the complainant and the co-wife were issued with a joint introduction letter.

Following the investigations, it emerged that the complainant was cohabiting with the deceased and had two children. In light of this, the Chief requested the complainant to provide the children's birth certificates to ascertain their relationship with the deceased. The matter has since been resolved amicably by the Deputy County Commissioner, Laikipia West, who engaged the wife of the deceased and the complainant, and a joint introductory letter was issued. "We, therefore, request that you consider the matter resolved and ask you to proceed to close it accordingly," read a letter from the Principal Secretary, Interior and Coordination of National Administration to the Commission.

The complainant, in a phone call to the Commission, confirmed receipt of the letter.



Deceased's File Forwarded to Pensions Department After Fifteen Years

The Teachers Service Commission (TSC) finally computed and forwarded a deceased employee's file to the Pensions Department for processing following the intervention of the Commission in a case of inordinate delay.

Ms. Faith Kendagor complained to the Commission alleging delay by TSC in computing and forwarding the deceased employee's file to the Pensions Department for processing. She is a beneficiary of the estate of the late Christine Ayabei who until her demise in November 2008 was an employee of TSC. Upon her demise, she was advised that all dues owed to the deceased shall be computed and the personal file forwarded to the Pensions Department for subsequent payment. However, fifteen years later, she was yet to be paid the dues owed to the deceased's estate as TSC had failed to forward the file to the Pensions Department. This predicament pushed her to complain to the Commission to have TSC forward the file to the Pensions Department for processing and payment.

The Commission, by way of inquiry, took up the matter with the Chief Executive Officer, TSC, leading to the forwarding of the file to the Pensions Department.

"We refer to your letter dated 8th May, 2024, on delay by the Commission to update on the status of dues owed to the estate of Christine Ayabei TSC/20**26. We wish to respond that Christine's death gratuity was processed and submitted to Director Pensions on 24th May, 2024. Kindly advise the complainant to follow up with the National Treasury. We hope that this information will resolve the complaint," read a letter from TSC to the Commission.

HOW WE HAVE HELPED - SUCCESS STORIES

Rape Perpetrator Arrested and Charged



A rape perpetrator was finally arrested and charged at the Kapsabet Law Courts following the intervention of the Commission in a case of police inaction.

The victim complained to the Commission alleging that the police at the Mosoriot Police Station had failed to update her on the outcome of investigations into a rape complaint that was occasioned to her by a person known to her which she reported at the station vide OB Number 24/**/**/23.

According to her, the failure of the police to update her on the outcome of the investigations was causing her pain and suffering. Additionally, the failure by the police to arrest the perpetrator was posing a risk to her safety as he was threatening her with dire consequences if she continued to pursue the matter. She reported the threats at Mosoriot Police Station but the police never acted on the report. This forced her to seek the intervention of the Commission.

The Commission took up the matter with the Office of the Directorate of Public Prosecutions, Nandi. The ODPP office sought to be furnished with the police investigation file from Mosoriot Police Station. The police station remained unresponsive to the demands of the ODPP which prompted the Commission to make a follow-up on 16th October, 2023, and 18th March, 2024. Consequently, the complainant informed the Commission that the matter was taken to the Kapsabet Law Courts where the accused was arraigned and charged with the offense of rape with the case currently ongoing.



Deceased's Dues Paid

The Anglican Church of Kenya Cheptiret High School finally settled dues owed to a former employee in a case of inordinate delay in clearing the dues.

Ms. Eunice Terer complained to the Commission alleging delay by the school to pay the dues owed to the late Joseph Terer. She is an administrator of the estate of the late Joseph Terer who passed away on 7th August, 2018. At the time of his demise, he had retired from the service of ACK Cheptiret High School as a Board of Management employee on 31st January, 2017, having taken early retirement due to health challenges.

Upon his retirement, the school failed to settle dues owed to him despite his numerous follow-ups and the same remained unsettled at the time of his demise. Ms. Terer then made a follow-up with the school but was also unsuccessful in following up the dues impelling her to seek the intervention of the Commission.

The Commission by way of inquiry took up the matter with the Principal leading to the payment of dues owed to the estate.

Regulator Finally Registers Medical Facility

The Kenya Medical Practitioners and Dentists Council (KMPDC) finally registered a medical facility following the intervention of the Commission in a case of inordinate delay.

Mr. Richard Simiyu complained to the Commission alleging delay by the council to register his facility and issue a registration certificate. According to him, he presented documents for registration of a facility on 23rd August, 2023, and was told that the process would take two weeks from the date of submission for the license to be ready. However, he later realised that the application was rejected due to the name. He made a second application under a different name and presented the documents to KMPDC for processing in October, 2023. However, five months down the line his application had not been processed.

"Since October I have been following the application to no avail. Every time I visit, they always come up with excuses such as the board has not sat for reviews or the official in charge is on official duty in the field or the official in charge is attending a burial so there is no one to assist," read the complaint by Mr. Simiyu to the Commission.

HOW WE HAVE HELPED - SUCCESS STORIES



The Commission by way of inquiry took up the matter with the CEO, KMPDC.

"The Commission requests you to investigate the matter and respond to the concerns indicating your position and action taken if any, as well as the time frame for any intended remedial action. In line with the urgency of the matter, we look forward to hearing from you within twenty days," read a letter from the Commission to the CEO.

In his response to the Commission, the CEO indicated that they processed the application and issued a registration certificate for Astralharmony Health Centre and attached a copy of the registration certificate.

Ombudsman Writes to PS, State Department for Energy, Director REREC to Provide Two Villages with Transformers

The Commission has written to the Principal Secretary, State Department for Energy, and the Director General, Rural Electrification and Renewable Energy Corporation (REREC) to provide transformers to Ngurumo Village, Kirugua Sub-Location, Ntima East, Imenti North Constituency, and Kithwene Village, Kithwene Sub- location, Rwarera Location, Ruiru-Rwerera Ward, Buuri Constituency and that the two public officers to provide the Commission with tentative timelines for the provision of the transformers.

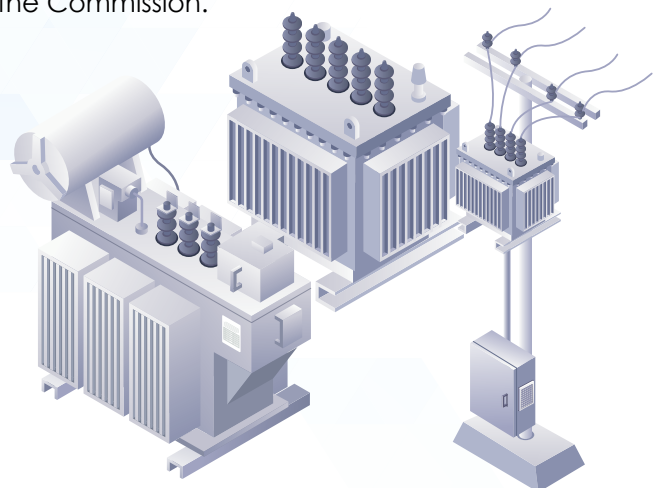
The Commission took up the matter pursuant to Section 8 of the Commission on Administrative Justice Act, 2011, following complaints by the residents. According to media reports, the lack of electricity in the two areas has caused the residents untold suffering with a case of a minor being highlighted.

A minor from Buuri Constituency who is reliant on a life-saving supplementary breathing machine has been away from the family for more than two years due to lack of electricity in the area. The minor, according to the reports, has been compelled to reside at the Kenyatta National Hospital and Meru Teaching and Referral Hospital because the essential medical equipment cannot be operated at home due to lack of electricity.

"The Commission considers the reported delay in electricity installation and access particularly when it hinders critical services like healthcare and education to be a serious case of maladministration. The Commission seeks the Authority to kindly consider this request and revert within fourteen days," read a letter from the Commission to the Principal Secretary, and the Director General, REREC.

Following the intervention of the Commission, the Principal Secretary, State Department for Energy requested the Director REREC to undertake a survey and act.

"The Commission on Administrative Justice indicates that it has taken note of a publication circulating across media platforms highlighting the lack of electricity access in Ngurumo village, Imenti North Constituency, and Kithwene village, Buuri Constituency. The Commission has also highlighted some of the attendant adverse effects of lack of electricity access to these areas. In this regard, the Commission has requested for provision of two transformers in the highlighted areas and tentative timelines for the provision of the transformers or any intended intervening measures. The purpose of this letter therefore is to request you to take note of the content of that letter from the Commission and to urgently carry out survey of the indicated villages and thereafter expeditiously implement the resultant schemes under the Rural Electrification programme. Further, you are requested to prepare and avail a tentative action plan for implementation of these schemes to the Commission as requested," read the letter from the PS to the Director REREC and copied to the Commission.



DCAF

The Commission Partners with DCAF to Train Community Leaders, Security Officers on Alternative Dispute Resolution



The Commission will with support from the Geneva Centre for Security Sector Governance (DCAF) from Monday, August 5, 2024, to Wednesday, August 7, 2024, conducted training for community leaders and security officers in Meru County.



The Commission met with community leaders from Meru, Isiolo, and Tharaka Nithi counties in Laare, Igembe North, and Meru Town. The meeting aimed to discuss Alternative Dispute Resolution (ADR) methods for addressing longstanding administrative injustices in the region. The engagement aimed to evaluate traditional dispute resolution methods and explore how they can be supplemented by ADR to resolve issues such as border conflicts, cattle rustling, insecurity, and land disputes.



The Commission later engaged with the Security Council of Meru County. The meeting discussed the role of the ombudsman in advocating for Alternative Dispute Resolution (ADR) methods and the right to access information to address longstanding administrative injustices in the region. Grievances aired by residents over the past two days, particularly concerning border conflicts, cattle rustling, insecurity, and land disputes, were presented during the engagement.



The activities which were supported by the Geneva Centre for Security Sector Governance (DCAF), complements Section 8(f) of the CAJ Act (2011), which empowers the Commission to collaborate with various public institutions to promote ADR methods in resolving complaints related to public administration. The capacity-building workshop was attended by Commission Chairperson, Hon. Florence Kajuju, the Vice Chairperson, Mr. Washington Sati, Access to Information Commissioner, Ms. Lucy Ndungu, Commission Secretary/CEO, Ms. Mercy Wambua, and DCAF representatives, Mr. Daniel Reimers and Mrs. Ajla Kuduzovic.

BUDGET PREPARATION

Budget Preparation Process for Financial Year 2025/2026 Launched

The Commission was on Monday, September 9, 2024 represented by the Commission Secretary/CEO, Ms. Mercy Wambua during the official launch of the Financial Year 2025/26 and Medium-Term Budget Preparation Process.



The Cabinet Secretary for the National Treasury and Economic Planning, CPA Hon. John Mbadi presided over the launch setting the stage for significant economic reforms aimed at improving Kenya's fiscal health. In a significant break from the norm, the Treasury has introduced a ten-day public participation window, allowing Kenyans from various economic sectors to submit proposals on legislative reforms. These reforms will not only help manage the 2024/25 budget but are also geared towards shaping the country's future economic stability.

"By adopting a more participatory approach to the budget-making process, we hope to address challenges that may lead to situations like the recent nationwide protests against the Finance Bill," said Hon. Mbadi, referencing the deadly demonstrations that rocked the country earlier this year.

As part of cost-cutting measures, the CS issued a directive to all departmental accounting officers, instructing them to avoid adjustments to spending on hospitality, conferences, and domestic and foreign travels. "As a stringent measure to save taxpayer money, the Treasury will not permit any additional expenditures on these items," Mbadi emphasised.

The Treasury also unveiled a broader plan to reduce the country's tax rates. The key among the proposed changes is the reduction of VAT from 16% to 14%, corporate tax from 30% to 25%, and planned cuts to PAYE, aimed at providing relief to both businesses and individuals.

Additionally, Hon. Mbadi announced that all government departments would adopt an end-to-end e-government procurement system. This new system is designed to enhance transparency and accountability in procurement processes while maximizing value for money for taxpayers.

Present during the launch were the Chairperson, Council of Governors, H.E. Ann Waiguru, Principal Secretary, National Treasury, Dr. Chris Kiptoo, Principal Secretary, Economic Planning, Mr. James Muhati, National Assembly Budget Committee Chairperson, Hon. Ndindi Nyoro, development partners, and other senior government officials.



OPINION



By Edward Opany

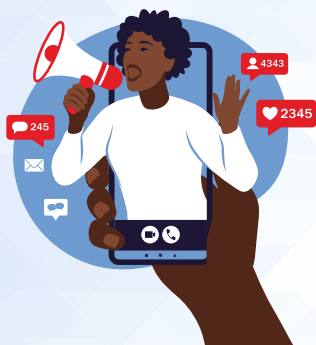
Streamline the Use of Social Media for Official Information for Optimum Benefit to the Public

There is a new trend in the country where state officers including Cabinet Secretaries and heads of various public institutions are conducting official business and sharing information on various government plans, launches and projects through their personal Facebook and Twitter accounts.

The development, which is not a departure from the previous regime, raises fundamental issues that the government must address. First, the implications of public officials using personal social media accounts to conduct official business; and second, the retention and/or disposal of official records in cases of change of social media accounts in light of the requirements for information access.

One of the uncontested recent global developments is transformative nature of social media which has not only allowed users to communicate directly with each other, but it has also enabled the users to interact with the duty bearers, including the government. The use of social media by governments has been called the new public square because of its impact on citizen participation in government activities. Using social networking sites can allow governments not only to keep up with the changing technology and be where their constituents are, but also to create an easy way for the public to participate.

Social media provides information and a means of participation for those who may not otherwise be able to attend a meeting or hearing, to ensure that their opinion is heard. Audiences now have more means and channels available to create, comment on and share content than ever before. This has challenged organisations to engage in conversations with audiences in new and different ways from their traditional approaches. As social media promotes greater engagement and transparency, so too has opinion and criticism become. These processes have influenced the ways in which governments and state officials communicate and do business with members of the public.



In appreciation of its immense benefits, public institutions and public officials in Kenya have adopted social media as a means of engagement with the public. The upshot of this is that the traditional institutions like the mainstream media, corporations and public agencies no longer play the role of controlling information flows. While this development is commendable, challenges have arisen where public officials have decided to transact official business using their personal social media accounts. Apart from the retention of information, an emerging concern regarding use of personal accounts for official business has been the blockage of some users by the account holders ostensibly on account of unpalatable posting.

It is important to note that communication via a government-sponsored or maintained website or social media site (including comments and other postings) has and continues to be subject to public records laws. While the Access to Information Act, 2016 does not specifically mention social media records, it can rightly be stated such records are subject to access to information laws. This would apply even in instances of official information held by public officials in their personal social media accounts.

A number of countries that have encountered this challenge have determined that social media records are subject to access to information laws. In such instances, social networking sites are subject to public disclosure and records disposal laws if the information was made or received in connection with the transaction of official business by or on behalf of the public agency. Thus, governments must be aware of the requirement that these records be retained indefinitely or that permission must be sought prior to destroying them under public records law, and that the records must often be provided upon request.

OPINION

In the United States, for instance, the New York Federal Appeals Court ruled in July 2019 that President Donald Trump had violated free speech by blocking critics on Twitter. In arriving at this decision, the Court stated that a public official who utilises a social media account for official purposes cannot exclude other people from using that platform because of their views with which the official disagrees. In other words, the use of personal social media account to transact official business by the President inevitably made it to be an extension of the Government's communication channel for public information and debate.

The experience of the United States offers a lesson to Kenya regarding use of social media for official information. To the extent possible, public institutions should discourage the use of personal social media accounts to transact official business due to challenges associated with privacy, retention and disposal of records. However, where the use of such personal accounts is necessary, the requirements for public records management and access to information should apply. Further, public institutions participating in social networking sites must start with the realisation that what is posted on social networking sites is public information.

That means that public officials should not post information that neither they nor the government would want everyone to know. By realising the public nature of the information being published, confusion, lawsuits, and other problems can be more easily avoided.

In addition, all public institutions that use any form of online communication should develop and implement a website and social networking policy. The policy should include a well-defined purpose and scope for using social media, identify a moderator in charge of the site, develop standards for appropriate public interaction and posting of comments, establish guidelines for record retention and compliance with the laws, and include an employee access and use policy.

The government should also post express disclaimers on its websites reserving the right to delete submissions that contain vulgar language, personal attacks of any kind, or offensive comments that target or disparage any ethnic, racial, or religious group. Finally, public institutions should train employees regarding appropriate use of social networking and how the use might impact the employer.



IDUAI 2024

IDUAI 2024 – Integrity Walk



By Joyce K. Wandia

This year, the Commission commemorated the International day for Universal Access to Information (IDUAI) by taking part in the 'Integrity walk' organized by Transparency International-Kenya. IDUAI is celebrated annually to highlight the importance of the right to information and the progress made in its implementation worldwide. It also provides a platform to mobilize governments to enact access to information laws to build effective, accountable and inclusive institutions at all levels of Government.

Due to the importance of access to information in fighting corruption, TI – Kenya organized a walkathon dubbed the 'Integrity walk' which is a people's initiative that was inaugurated in 2017 to create awareness on the adverse effects of corruption and look at the available anti-corruption initiatives that can be undertaken by ordinary citizens. The theme of the walkathon was 'Standing up for Integrity' guided by the main theme of this year's IDUAI which is 'Mainstreaming Access to information and public participation practices across government sectors'.

The walk brought together stakeholders from the Government, Civil Society Organizations, media and private sectors to walk together towards a corruption free society. It provided a platform to create awareness of the right to access information as a tool for driving good governance and the fight against corruption in Kenya. The walk further called for increased citizen action and advocacy to foster transparency, accountability and information disclosures.

Corruption is a cancer that has been festering the country with each subsequent Government trying to slay the giant with little success. Corruption affects the entire social fabric of a nation. Economically, it hinders development resulting in high cost of goods and services. Politically, it impedes democracy and the rule of law leading to social unrest. Socially, it widens the gap between the rich and the poor exacerbating social injustice.

IDUAI 2024



The Government in a bid to curb corruption, has enacted several legal instruments such as the Anti-Corruption and Economic Crimes Act no. 3 of 2003, Bribery Act no. 47 of 2016, Public Officers Ethics Act no. 4 of 2003 and Proceed of Crime and Anti-Money laundering Act no. 9 of 2009 among others. It has also established the Ethics and Anti-Corruption Commission charged with the responsibility of combating and preventing corruption, economic crimes and unethical conduct in Kenya through law enforcement, prevention and public education. The establishment of the Anti-corruption courts have also fast tracked the hearing and determination of corruption cases.

However, it is important to note that the fight against corruption requires the joint efforts of every member of the society. All citizens should stand up for integrity and say no to corruption. We should refrain from offering inducements, gifts and favors for services rendered. In the event we see corrupt dealings being executed in our offices or in business dealings, we should take initiative and blow the whistle.

Role of information in the fight against corruption
Enhanced citizen participation - Access to information equips citizens with requisite knowledge about government policies, procedures and decisions thereby enabling them to have meaningful participation in matters that concern them. This enables them to ask questions and demand for accountability from Government.

Advocates for an open government – access to information initiatives such as proactive disclosure results to openness in Government dealings such as in public procurement which has been marred with corruption scandals leading to loss of public funds. It further champions for a change of culture from secrecy to transparency and openness.

Protection of whistleblowers – whistle blowers play an integral role on the fight against corruption as they disclose information in public interest. Access to information laws should adequately protect whistle blowers from legal, administrative and employment related sanctions to encourage people to disclose information on malfeasant officers.

Increased public trust – opening up the finances of public officials to public scrutiny deters corruption and improves public trust in the Government. Public trust is very important in the overall health of the country as it enhances collaboration and partnership particularly in development projects.

Access to information is an important tool in the fight against corruption. It increases transparency and accountability and allows for the identification and uncovering of corrupt practices. As citizens we are called upon to use the available laws and institutions to report corruption and transform our country. The Constitution gives all citizens sovereign power which can only be realized when we stand up for integrity.



ACCESS TO INFORMATION

Environment and Climate Change Principal Secretary Ordered to Release Information

The Commission has ordered that the Principal Secretary, State Department for Environment and Climate Change facilities access to information relating to the Framework of Collaboration (FOC) agreement signed between the State Department and Blue Carbon, a company based in the United Arab Emirates, around October, 2023.

Ms. Sarah Wesonga, on behalf of Article 19 Eastern Africa, requested information from the PS on 12th March, 2024. The information sought included all records related to the agreement including but not limited to the deal itself, implementation/ action plans, minutes of negotiations, implementation progress reports, monitoring reports, and any other relevant documents.

The PS did not respond to the request within the stipulated timelines, prompting Ms. Wesonga to appeal for review to the Commission on 3rd May, 2024.

"I am writing to appeal the decision made by the Ministry of Environment, Climate Change, and Forestry to deny my request for information regarding the Framework of Collaboration (FOC) agreement signed between the State Department for Environment and Climate Change and Blue Carbon, a company based in the United Arab Emirates, around October 2023. On March 12th, I submitted a formal request to the PS, State Department for Environment and Climate Change, although the ministry acknowledged the receipt of my request, the 21 days stipulated by section 9 of the Access to Information Act, 2016, has elapsed without feedback or response hence the application is deemed to have been rejected. Therefore, I kindly request the Commission on Administrative Justice to intervene in the matter and compel the Ministry of Environment, Climate Change and Forestry to provide the requested information promptly," read the appeal to the Commission.

The Commission took up the matter and on 8th May, 2024, requested the PS to respond to the request within seven days.

"The Commission notes that the statutory timeliness to process the request for information under section 9(1) of the ATI Act has since elapsed. The Commission, therefore, requests for your institutional report under section 22 (3) of the ATI Act within seven days to allow for appropriate decision," read the letter.

The letter by the Commission did not elicit any response prompting the Commission to issue an order on 25th May, 2024, directing the release of the requested information within seven days.



Caritas Microfinance Bank Releases Information following Ombudsman Intervention

Caritas Microfinance Bank finally released information thanks to the intervention of the Commission. Mwangi Wahime and Co Advocates made an appeal for review to the Commission on behalf of their client, Mr. Mark Mwaura Macharia, following the failure by the bank to supply them with information.

According to the law firm, they made an information request to the Head of Legal, Caritas Microfinance Bank, pursuant to Sections 4, 5 and 8 of the Access to Information Act, 2016, requesting for the following information;

- i. Certified copy of the account opening form(s) with respect to A/C No. 1***056****17
- ii. The class of loan facility allegedly advanced to their client (e.g. Asset Finance Loan, Salary Finance etc.)
- iii. Certified copy of the loan application form(s) for the financial facility allegedly advanced to the requestor
- iv. Certified copy of the Loan Account Statement Account Number and/or name and/details of the
- v. account holder/person who used to service the loan before defaulting
- vi. Any other relevant document and /or information relating to financial facility, A/C No. 1***056****17 and requestor's alleged indebtedness to the bank



The bank did not respond to the information request within the stipulated timelines prompting the law firm to seek the intervention of the Commission.

The Commission took up the matter with the Managing Director, Caritas Microfinance Bank, on 24th April, 2024, requesting the bank to respond to the information request in line with Section 9 (4) of the Access to Information Act, 2016.

In their response in a letter dated 8th May, 2024, the bank provided the requested documents to the law firm and to the Commission.

"Reference is made to the above subject matter and your email dated 24th April, 2024. In line with your letter, please find attached the following documents as per your request. Kindly acknowledge receipt and do not hesitate to contact us if in need of any further information," read the letter from the bank.

ACCESS TO INFORMATION

Nairobi City County Government Ordered to Release Information

The Commission has ordered that the County Executive Committee Member (CECM), Built Environment and Urban Planning, Nairobi City County, facilities access to information relating to the issuance of an irregular Change of User and Development Permit to De La Salle Brother over Land Reference Number 7**3, located off Marula Lane in Karen area.

A law firm, Wamae and Allen, on behalf of Karen and Langata District Association, requested information from the CECM on 22nd March, 2024. The information sought included;

- i. Details of the Change of User that may have been obtained converting the land from residential to commercial;
- ii. Copy of application for Change of User;
- iii. Copy of all approvals issued, including Notification of Approval/ Deferment of Application (Planning);
- iv. Copy of approval from the National Environmental Management Authority and the County Government of Nairobi;
- v. Minutes of the technical meeting approving the Change of Use; and
- vi. The written decision of the CECM approving the Change of User and development plan of a tertiary institution within a residential area.



The CECM did not respond to the information request prompting the law firm to issue two reminders on 5th April, 2024, and 16th May, 2024, which did not elicit any response. The firm, therefore, made an appeal for review with the Commission on 4th June, 2024.

The Commission took up the matter and on 8th May, 2024, requested the CECM to respond to the request within seven days.

"The Commission notes that the statutory timeliness to process the request for information under section 9(1) of the ATI Act has since elapsed. The Commission, therefore, requests for your institutional report under section 22 (3) of the ATI Act within seven days to allow for appropriate decision," read the letter.

The letter by the Commission did not elicit any response prompting the Commission to issue an order on 17th July, 2024, directing the release of the requested information within seven days.

Teachers Service Commission Corrects Personal Information

The Teachers Service Commission (TSC) has finally corrected the name of a teacher following the intervention of the Commission under the Access to Information Act, 2016.

The teacher appealed for review under the ATI Ac, 2016, following failure by TSC to correct her name on the payslip and the medical scheme.

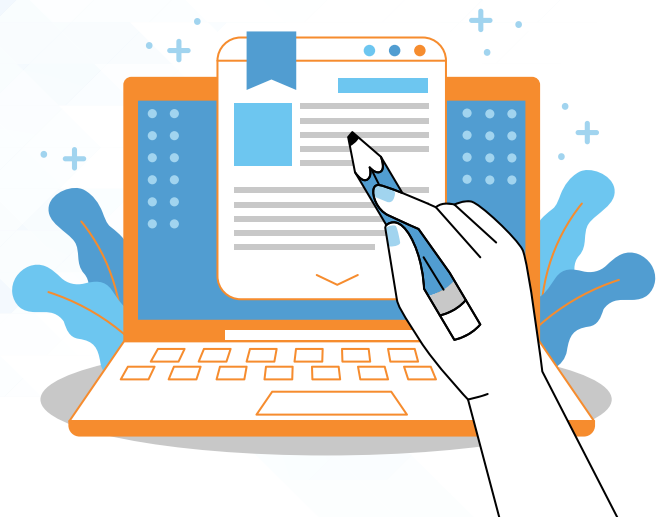
"I am Anet employed by TSC on permanent and pensionable terms. I have had an issue with how my name appears on the payslip and the medical scheme offered by TSC. I have tried contacting the Commission through email for the issue to be resolved. Attached please find the email and my Identification Card which I forwarded to the Commission for reference and assistance," read an email from Ms. Anet to the Commission.

The Commission took up the matter with the Chief Executive Officer, TSC, on 20th May, 2024, requesting the Commission to respond to the request for correction of personal information.

"The Commission received an email dated 13th May, 2024, (enclosed) from the requestor, Ms Anet addressed to your office and copied to the Commission relating to correction of the spelling /sequence error in the name as per the payslip from your institution. We, therefore, request you to respond to the request for correction of personal information in line with Section 13 (1) of the ATI Act, 2016, as soon as possible and update the Commission on the status thereof," read a letter from the Commission to TSC.

TSC, in a letter to the Commission on 14th June, 2024, confirmed the correction of the name.

"We wish to respond and state that the name has been corrected as per the personal file records. The amendment will reflect on the June 2024 payslip," read a letter from TSC to the Commission.



ACCESS TO INFORMATION

Mwea Rice Mills Limited Releases Information

The Mwea Rice Mills Limited has released information following an order by the Commission that the company facilitates access to information and records on several issues relating to Mwea Rice Mills and that the company redact the personal information of members contained in the register of members.

A law firm, Otieno and Ogola, and Company Advocates made an appeal for review to the Commission on behalf of Canon Dr. Wachira Njiri, 16 others, and the Shareholders Forum of Mwea Rice Mills Limited following the refusal of the company to respond to their request for information dated 12th February, 2024. The information sought included;

- i. A list of all individual members/farmers paid dividends since 2007 to date;
- ii. A list of all members of the Company;
- iii. Annual audit reports of the Company since 2007 to date;
- iv. Annual returns of the Company lodged at the Registrar of Societies since 2017 to date;
- v. Certified copy of the Memorandum and Articles of the Company;
- vi. List of all directors of the Company since 2007 to date indicating how the directors were selected/appointed into office; and
- vii. The latest Form CR 12 of the Company.

The company did not respond to the request within the statutory timelines prompting the law firm to seek the intervention of the Commission on behalf of its clients on 8th March, 2024. The Commission took up the matter with the Chief Executive Officer, Mwea Rice Mills Limited, on 19th March 2024 and requested the company to respond to the request within seven days.

"The Commission notes that the statutory timeliness to process the request for information under section 9(1) of the ATI Act has since elapsed. Therefore, the Commission requests your institutional report under section 22 (3) of the ATI Act within seven days to allow for appropriate decision," read the letter from the Commission.

The letter from the Commission did not elicit any response from the company leading to the issuance of an order on 7th June, 2024, to the company with a copy to the Chief Executive Officer, National Irrigation Authority.

"Pursuant to powers granted by sections 22(3)(a)(i) and 23(2)(a) of the Access to Information Act, 2016, the Commission determines that the information requested by the Applicants is public information/records held by the respondent and thus hereby orders that the Chief Executive Officer, Mwea Rice Mills Limited, facilitates access to information and records held relating to the request for information made by Canon Dr. Wachira Njiri, 16 others and Shareholders Forum of Mwea Rice Mills Limited through the letter dated 12th February, 2024.

In disclosing information contained in numbers (i) and (ii) of the request dated 12th February 2024, the Chief Executive Officer, Mwea Rice Mills Limited, shall redact the personal information of members contained in the register of members. The compliance with the order is to be within seven days," read the order of the Commission.

Following the issuance of the order, the National Irrigation Authority which has a 55% shareholding of Mwea Rice Mills Limited complied with the order and on 8th July, 2024, released the requested information to the Commission for onward transmission to the law firm. "The Commission acknowledges receipt of your letter dated 8th July, 2024, whose contents we have noted. By a copy of this letter, the information/ documents are hereby forwarded to the applicant," read a letter from the Commission to the CEO, National Irrigation Authority.

Mwea Rice Mills Ltd is a subsidiary of the National Irrigation Authority. The rice mill is a limited liability company jointly owned by the Authority (55%) and Mwea rice farmers through Mwea Rice Growers Multipurpose Co-operative Society Limited which has 45% shareholding.

Aldai Constituency Fund Manager Ordered to Release Information

The Commission has ordered that the Aldai Constituency Fund Manager, facilitates access to information relating to Aldai Schools Renovation Program where the seventeen schools were renovated at a cost of Kshs. 52,000,000.

A law firm, Kipkosgei Choge and Company Advocates, on behalf of Aldai residents, requested information from the Constituency Fund Manager on 5th December 2023. The information sought included;

- i. Particulars of the schools where the program was rolled out and each specific budget;
- ii. Scope of Works;
- iii. Minutes of schools BOM/stakeholders that prioritised the renovations;
- iv. Appointment letters of Project Management Committee and their technical expertise;
- v. Account signatories for each school and where the accounts are domiciled;
- vi. Safeguards put in place to prevent loss of public funds;
- vii. Names of the suppliers and how they were sourced;
- viii. How the payments to suppliers and labour were done; and
- ix. How public money will be audited by the Office of the Auditor General

The Fund Manager did not respond to the information request prompting the law firm to make an application for review with the Commission.

The Commission took up the matter and requested the Fund Manager to respond to the request.

ACCESS TO INFORMATION

"The Commission notes that the statutory timeliness to process the request for information under section 9(1) of the ATI Act has since elapsed. The Commission, therefore, requests for your institutional report under section 22 (3) of the ATI Act to allow for appropriate decision," read the letter.

The letter by the Commission did not elicit any response prompting the Commission to issue an order on 30th July, 2024, directing the release of the requested information within seven days.

"Pursuant to powers granted by sections 22(3)(a)(i) and 23(2)(a) of the Access to Information Act, 2016, the Commission determines that the information requested by the Applicants is public information/records held by the respondent and thus hereby orders that the Fund Manager, Aldai Constituency, facilitates access to information and records held relating to the request for information made by Choge and Company Advocates through a letter dated 5th December 2023. The compliance with the order is to be within seven days," read the order of the Commission.

Kenya Rural Roads Authority Releases Information

The Kenya Rural Roads Authority (KeRRA) finally released information regarding the road projects undertaken by the Authority and its contractors for the financial year 2021/2022 and 2022/2023 in Embakasi Central Constituency.

Mr. Christopher Kioko appealed to the Commission under the Access to Information Act, 2016, for a review following failure by KeRRA to respond to his request for information. Mr. Kioko wrote to the Authority requesting the list of the road projects and the contractors responsible for Embakasi Central Constituency under the Constituency Roads Committee for the financial years 2021/2022 and 2022/2023. The request did not elicit any response from the Authority which prompted him to seek the intervention of the Commission.

The Commission took up the matter with the Regional Director, KeRRA.

"The Commission notes that the timeline for responding to the request has lapsed without a response to the requestor. As such this is to request for your institutional report pursuant to Section 22 (3)(a) of the Access to Information Act, 2016 within seven days to enable the Commission to decide on the application," read a letter from the Commission.



In response to the Commission, the KeRRA Regional Director released the information for onward transmission to the requestor.

"We received your letter Ref: CAJ/ATI/KERRA/006/9/24-JK regarding the request for information by Christopher Kioko relating to road projects and their contractors for the FY 2021/2022 and 2022/2023 in Embakasi Central Constituency. Enclosed herewith, please find a detailed tabulated list of the information requested," read the letter from the KeRRA Regional Director.

Nairobi Technical Training Institute Releases Information

The Chief Principal, Nairobi Technical Training Institute (NTTI), finally released information related to the breakdown of a student's fee statement.

Mr. Michael Maoga, a student at the institution, made an appeal for review to the Commission following the failure by the Chief Principal to respond to his information request. Mr. Maoga requested information, including;

- i. A breakdown of the total college fees for the semester/year;
- ii. Confirmation of the capitation grant amount he is eligible to receive from the Kenya Universities and Colleges Central Placement Service (KUCCPS); and
- iii. An explanation for any discrepancies between the expected capitation grants and the amount reflected in the college account.

"I am writing to formally express my concern regarding the discrepancies between the fees I am expected to pay and the amount of government capitation I received. As a participant in the Government Sponsored Programme, I am entitled to receive Kshs. 30,000 per module. However, after completing two modules I have only received Kshs. 18,500. This leaves me with an outstanding fee of Kshs. 41,500 for the upcoming third module. I kindly request clarification on this matter in accordance with the Access to Information Act, 2016," read his information request to the Chief Principal.

His request did not elicit any response impelling him to appeal for review with the Commission.

The Commission took up the matter with the Chief Principal requesting her to respond within seven days. The Chief Principal responded to the request providing the detailed breakdown of the fee statement for onward transmission to the requestor.

"We received your letter on the request for information by Michael Maoga. We have gone through his fee statement and confirmed that he has received the available allocated capitation funding. Attached please find the student's current fee statement showing the allocated capitation funding for the two years," read the letter from the Chief Principal to the Commission.

ACCESS TO INFORMATION

Naivasha Sub-County Referral Hospital Releases Information

"Your letter REF: CAJ/ATI/NSCRH/012/61/61/24-MW dated 1st August refers. Attached is the hospital medical report on Rebecca Kagio IP NO. 12**00. A copy of the postmortem report is also attached. We apologise for the delay in submitting the report," read a letter from the Medical Superintendent, Naivasha Sub-County Referral Hospital to the Commission.

Ms. Jane Kagio, through the law firm, Mbugua Mureithi and Co Advocates, requested medical reports of Ms. Rebecca Kagio from the Naivasha Sub-County Referral Hospital.

"We are requesting the medical report of the deceased from her admission at your hospital on 6th January, 2023, to her demise on 12th January, 2023, while still admitted. As you are aware, despite our client Jane Kagio (the mother and administrator of the estate of the deceased) being entitled by law to access the said medical report under Article 35 of the Constitution and Section 4 of the Access to Information Act, 2016, to date, you have failed and/ or refused to furnish us with the said information," read the information request from the law firm to the Medical Superintendent of the hospital and copied to the Commission.

The hospital did not release the requested information within the stipulated statutory timelines prompting the Commission to act by asking the hospital to respond to the request within seven days.

Following the intervention of the Commission, the hospital released the medical report and the postmortem report to the Commission for onward transmission to the requestor.

KeRRA Releases Information

The Kenya Rural Roads Authority finally released information following the intervention of the Commission under the Access to Information Act, 2016.

Mr. Julius Okoth, the Coordinator for Kenyans for Tax Justice Movement, appealed to the Commission following the failure by the Director General, KeRRA, to process his information request. The information sought included

1. Steps taken by Kenya Rural Roads Authority to stop overloaded trucks, carrying loads beyond axle load limit and against weighbridge rules damaging the paved 4.4-kilometer road number C716 that connects Rongai and Salgaa trading centre and a section of road number A104 Nakuru-Eldoret highway; and
2. Whether Kenya Rural Roads Authority has taken any steps to fix, repair, or tarmac the damaged sections of the said road and a section of road number A104 Nakuru-Eldoret highway caused by overloaded Simba Cement trucks.

The Authority did not respond to the request within the stipulated timelines prompting him to seek the intervention of the Commission. The Commission took up the matter with the Director General, KeRRA, requesting him to respond to the request in line with section 9(4) of the Access to Information Act, 2016.

Following the intervention of the Commission, the Authority released the requested information for onward transmission to the requestor.

In its response, the Authority confirmed that it had prioritised axle load monitoring on the road in the first half of the current Financial Year 2024/25. In addition, they have partnered with the Kenya National Highways Authority, who have a more prominent axle load monitoring infrastructure in Nakuru County to assist in continuous monitoring of vehicles plying the road. The monitoring activities, according to the Authority, shall result in the arrest and prosecution of any vehicle found in violation of the law as a deterrence measure.

The Authority also shared the concerns raised by Mr. Okoth and other stakeholders who have expressed concerns regarding overloading on public roads in particular those under their purview. As such they have initiated several measures to protect the road assets on a wider scale including national axle load monitoring, strengthening partnerships with other key players in the transport sector, and continuous stakeholder sensitisation on overloading.

The Authority confirmed that the road is in motorable condition and is earmarked for maintenance works as captured in their Annual Public Roads Works Programme for the Financial Year 2024/2025. The maintenance works shall entail pothole sealing, repairing of damaged road sections, and installation of road signage including signs warning against overloading.



ACCESS TO INFORMATION

Vivo Energy Kenya Releases Information



A petroleum company, Vivo Energy Kenya, finally released information following the intervention of the Commission under the Access to Information Act, 2016. Mr. Dunstan Majanja through the law firm of Mwamba and Gitonga Advocates, appealed for a review to the Commission following the failure by the company to release information. The law firm, on behalf of the client, requested information relating to Enersense Solutions Limited from 2018. The information requested included; stock records, records of payments, invoices, statements of accounts, copies of contracts between Vivo Energy Kenya and Enersense Solution Limited and whether the contract thereof was terminated, and correspondences on contract termination. The information sought was premised on, inter alia, the constitutional right to access information held by another person, which is required to protect a right.

The company did not respond to the information request within the statutory timelines prompting the law firm to seek the intervention of the Commission.

The Commission took up the matter with the Chief Executive Officer, Vivo Energy Kenya, requesting for the institutional report within seven days.

"An application for review under section 14(1) (a), ATI Act, 2016 has been lodged by Mwamba & Gitonga Advocates on behalf of Dunstan Ingoyi Majanja indicating that on 28th April, 2024, they requested information relating to Enersense Solution Limited from the period 2018...The Commission notes that the statutory timelines to process the request for information under section 9(1) of, the ATI Act have since lapsed. Therefore, the Commission requests for your Institutional Report under section 22(3), ATI Act, within seven (7) days to allow appropriate decision on the application," read a letter from the Commission to the CEO.

In their response, the company indicated that they were in the process of gathering the requested information and would supply the requested information.

"We are in the process of gathering the information required. We will send the same to you by the end of the next week," read a letter from the company to the Commission.

The company finally provided the requested information to the Commission for onward transmission to the requestor.

Murang'a Land Registrar Releases Documents

The Murang'a Land Registrar finally released documents regarding a land transaction following the intervention of the Commission.

Ms. Mary Kariuki complained to the Commission alleging refusal by Ministry of Lands officials to supply them with documents regarding a land transaction. She alleged that someone had grabbed their land and later forged the documents on the allegation that the succession process had been done. However, upon following up with the land's office in Murang'a, the officers at the office were unresponsive pushing her to seek the intervention of the Commission.

The Commission took up the matter with the Chief Land Registrar, State Department of Lands, to look into the authenticity of the documents and revert to the Commission.

"The Commission is in receipt of a complaint from Mary Kariuki who alleges that their parcel Loc.5/ Gitura/** was fraudulently processed and transferred from Esther Wairimu Kairuki aged 107 years to Njogu of ID N). 10****10 resulting in the title No. 06***5 on the strength of Succession Cause No. HCRM 112 of 2011 in the Estate of Kariuki Kabaka (deceased) at Murang'a Law Courts which documents she alleges are non-existent at the court registry and thus forgeries. The complainant now seeks to regain their land since it was allegedly transferred without due process. We kindly request that you look into the authenticity of the title issued to Njogu and revert to the Commission within twenty-one days indicating your position on the same," read the letter to the Chief Land Registrar.

Following the intervention, the District Lands Registrar Murang'a released all the documents regarding the land transaction and the court documents for onward transmission to the complainant to enable her to pursue the forgery case with the Directorate of Criminal Investigations and the courts.



OPINION



By Maryann Wanjiru

Reflections on International Day for Universal Access to Information

September 28 was proclaimed as the International Day for Universal Access to Information (IDUAI) during the 74th UN General Assembly in October 2019. The day had been proclaimed by UNESCO General Conference in 2015 following the Adoption of the 38 C/Resolution 57 declaring 28 September of every year as the International Day for Universal Access to Information. The theme for the 2024 Global Conference on Universal Access to Information is "Mainstreaming Access to Information and Participation in the Public Sector".

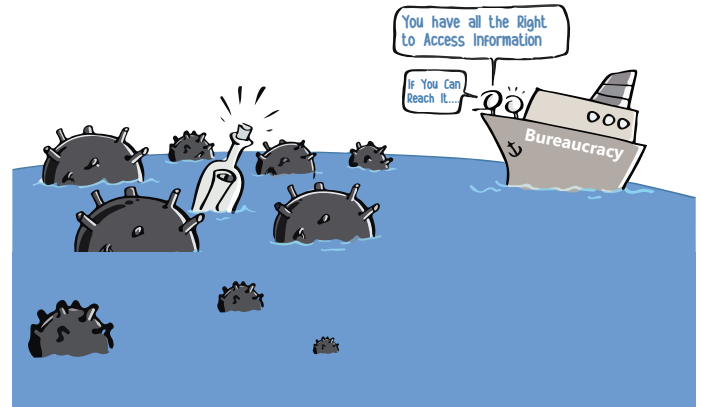
As Kenya commemorates this year's IDUAI, the Access to Information Act 2016 which operationalizes Article 35 of the Constitution guaranteeing the right of citizens to access information held by the State and relevant private bodies just turned 8 years following its commencement on 21st September, 2016. This year's theme is therefore timely as it is a reminder that the right of access to information is a fundamental human right and is of stark importance in creating an open, inclusive and transparent governance system especially now when there is sustained demand for accountability, good governance and respect for the rule of law in the Country.

Flowing from Article 1 of the Constitution on sovereignty of the people, it must be noted that the fundamental premise is that all information held by the State is in principle public and is held in trust of its citizens.

Democratic participation which is a national value and principle of good governance under Article 10 of the Constitution depends heavily on a citizenry that is well informed as a pre-requisite to effective monitoring of their elected leaders' performance at both levels of government. Therefore, access to information is an important tool that citizens can use to hold government into account by enhancing government efficiency and responsiveness while building citizens public trust and confidence.



Access to Information is a Basic Human Right.



It should be noted that mainstreaming of access to information in the public sector should entail embedding proactive disclosure in all spheres of governance by putting in place systems and structures to facilitate proactive sharing of information to citizens to enhance their participation in public affairs. In addition, full disclosure of information in public entities should be the default and in tandem with the principles of open government, maximum disclosure, obligation to publish to the widest extent and non-disclosure should be permitted only in circumstances envisioned in the limitation clause under section 6, Access to Information Act.

It is therefore incumbent on public entities to embrace novel technologies, leverage on digital platforms, community networks and movements to streamline access to information by making public information freely accessible, understandable and available to allow citizens amplify their voices through participation in public affairs.

Even as the public sector accelerates mainstreaming access to information, they must be cognizant of hurdles such as digital divide inequalities, bureaucratic barriers, apathy by citizens, institutional resistance and resource constraints. It is therefore important that strategic partnerships and approaches be forged by all relevant stakeholders with the aim of building resilience in the implementation of Access to Information.

Finally, as we reflect on this year's theme, let each one of us in our small ways amplify our voices by championing for the full implementation of the Access to Information Act in order to foster a culture of transparency and accountability in all areas of governance.

INVESTIGATION

Dereliction of Duty by Public Officers led to Shakahola Tragedy, Ombudsman Investigations Reveal

An investigation by the Commission on Administrative Justice (Office of the Ombudsman) has revealed that there was a dereliction of duty by National Government Administration and National Police Service officers that allowed the occurrence of the Shakahola tragedy.

The investigation further established that reports of Paul Mackenzie's illegal activities were made at Langobaya Police Station, the Chief's office in Chakama, and the Malindi Sub County and Langobaya Division Security Intelligence Committees, respectively, between the years 2021 and 2023. However, the duty bearers in the above-mentioned offices and Committees failed to take satisfactory action to prevent the tragedy from unfolding.

Following the investigations, the Commission has recommended that the Principal Secretary State Department for Interior and Coordination of National Administration and the National Police Service Commission to hold to account the various duty bearers including;

- Mr. Thuo Ngugi – Former Deputy County Commissioner, Malindi Sub-County
- Mr. Daniel Ntausi- Former Assistant County Commissioner, Langobaya Division
- Mr. Raymond Mcharo- Current Chief, Chakama Location
- SSP Charles Kamau -Former SCCIO Malindi Sub-County
- CI Hassan Hamara -Former OCS Langobaya Police Station
- Sgt. Joseph Yator -DCI Officer, Malindi Sub County

who failed to discharge their duties, and that the Directorate of Criminal Investigation to conclusively and comprehensively investigate reports made with regards to the matter.

The Commission further recommends that the PS State Department for Interior, and the Inspector General of Police enhance surveillance, accountability, and coordination among the members of the National Police Service and the National Government Administrative Officers.

The Commission commenced investigations in accordance with Article 59 (4) h of the Constitution of Kenya, 2010, and Sections 8 and 29 of the Commission on Administrative Justice (CAJ) Act, 2011.

This action followed the recommendation by the Senate Ad Hoc Committee which was formed to investigate the proliferation of religious organisations and the circumstances leading to more than 95 deaths in Shakahola, Kilifi County. The investigation aimed to determine whether there was any willful dereliction or misconduct of duty by any public officer that contributed to the Shakahola tragedy.

To establish administrative lapses that might have contributed to the Shakahola tragedy, the Commission was guided by the following objectives:

- i. Gain insight into the events surrounding the Shakahola tragedy.
- ii. Determine if public officials were aware of or informed about Mr. Mackenzie's purported illegal activities.
- iii. Ascertain any measures taken by public officials upon discovery of the aforementioned activities.
- iv. Investigate the possible dereliction of duty by public officials contributing to the Shakahola tragedy.

The Commission notified the Principal Secretary, State Department for Interior, as well as the Inspector General of the Police, on its decision to undertake the investigation vide a letter dated 10th July, 2023.

The Commission's findings revealed the following:

a. Events Surrounding the Shakahola Massacre

The events surrounding the Shakahola Massacre reveal a worrying sequence of incidences that culminated in a shocking tragedy. The tragedy unfolded with the discovery of neglected and malnourished children, ultimately leading to the unearthing of shallow graves and the rescue of survivors.

Before this catastrophic event, Paul Mackenzie's encounters with the law illustrate a recurring pattern of legal predicaments. Between 2017 and 2019, Mackenzie faced multiple charges for violating various laws, including the Basic Education Act, Children's Act, Prevention of Terrorism Act, Film & Stage Plays Act, and the Penal Code, while operating the Good News International Church in Furunzi, Malindi.

Following his relocation to Chakama Ranch, Mackenzie's activities, including the establishment of a settlement and the sale of land to his followers, the influx of strangers followed by a sudden decrease in their presence raised concerns within the community.

INVESTIGATION

Apprehensions over Mackenzie's potential illicit activities in Shakahola Forest between 2021 and 2023 were raised and brought to the attention of the Malindi Sub County and Langobaya Division Security Intelligence Committees. Additionally, reports regarding these activities were filed at Langobaya Police Station.

b. Dereliction of Duty by National Government Administration Officers Contributing to the Shakahola Tragedy.

- i. The investigation revealed significant lapses in the conduct of Mr. Raymond Charo, the Chief Chakama Location. Mr. Charo, who assumed office in August 2021, exhibited negligence by involving himself in a contentious land transaction without conducting due diligence to ascertain its ownership status. His failure to maintain proper documentation and record-keeping further highlights his disregard for his duties as a public officer. Moreover, the lack of timely and documented responses to critical situations, such as the discovery of children escaping from the Shakahola forest, highlights Mr. Charo's failure to fulfill his responsibilities effectively. These lapses in governance and accountability contributed to the severity of the tragedy.
- ii. Examination of the actions of former Assistant County Commissioner, Mr. Daniel Ntausi, concerning the Shakahola tragedy reveals a troubling pattern of negligence and inadequate response to serious allegations. Despite being informed of reports implicating Pastor Mackenzie in various illegal activities, including land invasion and the unlawful detention of minors in Shakahola forest, Mr. Ntausi failed to take decisive action. Minutes from Divisional Security Intelligence Committee meetings show repeated concerns raised about Mackenzie's behaviour, yet concrete steps to address these concerns were lacking. Despite recommendations for further investigation, including a planned visit to Mackenzie's farm, no action was taken.
- iii. Moreover, Mackenzie's activities in Shakahola forest, such as preaching against medical treatment and detaining minors without parental consent, were brought to his attention but the ACC's response seemed limited to interrogation without subsequent resolution or follow-up. This failure to address reported illegal activities associated with Mackenzie reflects a serious lapse in duty on the part of the ACC, raising significant concerns about his effectiveness as Chairperson of the Divisional Security Intelligence Committee.

- iv. It was established that Pastor Mackenzie's encroachment into Shakahola Forest and suspected illegal activities were brought to the attention of the Malindi Sub County Security and Intelligence Committee in October 2021. Despite discussions during the Committee meeting to visit Mackenzie's farm in Shakahola to assess the situation, this visit never materialised. The DCC, who served during that period, Mr. Thuo Ngugi, delegated the task to the Assistant County Commissioner (ACC) without evidence or follow-up in the subsequent Committee meetings. Additionally, the matter was not escalated to the County Security and Intelligence Committee level. The failure to undertake the planned visit and lack of follow-up by the Committee indicates a dereliction of duties by the DCC as the Chairperson. It represents a missed opportunity to uncover Mackenzie's illegal activities in the Shakahola forest at an earlier stage.

c. Dereliction of Duty by National Police Service Officers Contributing to the Shakahola Tragedy

- i. The former SCCIO of Malindi Sub County, Mr. Charles Kamau SSP, exhibited a significant failure in fulfilling his duties to detect, prevent, and investigate serious crimes. Despite receiving reports from two individuals about missing relatives believed to be associated with Mackenzie's activities in Shakahola, Mr. Kamau did not initiate an investigation. Though he brought the issue to the attention of the Malindi Sub County Security and Intelligence Committee, whereby a visit to Mackenzie's farm which never materialised was planned, his office retained the responsibility of investigating serious crimes and the prevention and detection of criminal activities as prescribed by the NPS Act, 2011.
- ii. The former Officer in Charge of Langobaya Police Station, Mr. Hamara Hassan CI, demonstrated a pattern of inaction and negligence in addressing reports related to Mackenzie's activities. Despite being informed of the illegal land invasion and as well as plans to visit Shakahola forest to investigate further, no concrete actions were taken by the OCS or officers under his command. Furthermore, reports of missing persons associated with Mackenzie's followers were disregarded, with no official documentation in the station's occurrence book. These failures to address reports of illegal activities and missing persons, coupled with the absence of proper documentation, indicate a significant dereliction of duty on the part of the former OCS.
- iii. Findings regarding Sgt. Joseph Yator's involvement in the investigation into Mr. Mackenzie's report on Brenda Mwaura's social media claims accusing Mackenzie of migrating people from Malindi to Shakahola and ultimately killing them reveal a significant failure in fulfilling his duty as a DCI Officer.

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His handling of the case lacked protocol, thoroughness, and follow-up despite the serious nature of the claims. Moreover, despite being the DCI representative at the Langobaya Division's Security Intelligence Committee, Sgt. Yator not only neglected to investigate reports against Mr. Mackenzie tabled before the Committee but also failed to appear for an interview with the Commission upon being summoned. This is a clear indication of negligence of duty and unresponsiveness exhibited by Sgt. Yator.

Pursuant to sections 42 (2)(b) and 42 (3) of the CAJ Act, 2011, the Commission considers that the following actions should be taken and reports on the same be submitted to the Commission within the specified periods:

- i. The PS State Department for Interior and Coordination of National Administration to institute disciplinary action against the following NGAO officers for dereliction of duty:

- Mr. Thuo Ngugi – Former DCC Malindi Sub-County
- Mr. Daniel Ntausi- Former ACC Langobaya Division
- Mr. Raymond Mcharo- Current Chief, Chakama Location

The PS is to report to the Commission on the steps taken within six (6) months upon the release of this report.

- ii. The CEO, the National Police Service Commission to investigate and institute disciplinary action against the following police officers for being negligent in the performance of their duties contrary to the eighth schedule of the National Police Service Act, 2011:

- SSP Charles Kamau -Former SCCIO Malindi Sub-County
- CI Hassan Hamara -Former OCS Langobaya Police Station
- Sgt. Joseph Yator -DCI Officer, Malindi Sub County

The CEO to report to the Commission on steps taken within six months upon the release of this report.

- iii. The Director, DCI, to cause investigations to be undertaken on the reports made at Langobaya Police Station by Daniel Kitsao and Jackson Safari Katana vide OBs 4/4/8/2021 and 37/5/01/2022, respectively. The Director to report to the Commission on steps taken within six (6) months upon the release of this report.



The Commission further makes the following recommendations pursuant to section 42 (2)(C) of the CAJ Act:

- i. The Inspector General of Police to ensure Langobaya Police Station is facilitated with an official vehicle.
- ii. The PS State Department for Interior to:
 - Ensure the offices of the ACC Langobaya and Chief Chakama location are facilitated with official means of transport.
 - Ensure that proper and up-to-date record-keeping is done in the offices of the ACCs and Chiefs in all jurisdictions.
 - Ensure all field officers, including chiefs and their assistants, undergo comprehensive induction training to equip them with the necessary skills and knowledge to fulfill their duties effectively.
 - Take measures to enhance accountability at the Sub-County and Divisional Security Intelligence Committees by Implementing robust monitoring and evaluation systems to track the implementation and escalation of decisions and hold officers responsible for their actions or inactions.



OWN MOTION MATTERS

Life-Saving Vaccines Now Available, Ministry of Health Assures



The State Department for Medical Services, Ministry of Health has assured the Commission that the ministry has stocked Polio, Measles Rubella, Tetanus Diphtheria, and Bacillus Calmette- Guerin (BCG) vaccines.

Following media reports on the shortage of life-saving vaccines in hospitals across the country, the Commission took up the matter on own motion with the State Department seeking an explanation on the reported shortage.

"According to media reports, numerous hospitals across various counties have either completely run out of essential vaccines or have limited stocks that are insufficient to meet the public's needs. Specifically, it is alleged that there is a shortage of the following vaccines for newborns; Polio Vaccine, Bacillus Calmette-- Guerin (BCG) vaccine, Measles Rubella vaccine, and Tetanus diphtheria (Td) and pentavalent vaccines. Given the critical importance of these vaccines in safeguarding public health particularly for newborns and pregnant mothers, this issue warrants immediate attention and action," read the letter from the Commission.

The Commission requested the State Department to consider the complaint and revert to the Commission within seven days with the following information;

- i. Confirmation of the current status of vaccine stocks in public hospitals across the country;
- ii. If the reported shortages are factual, highlight the contributory factors;
- iii. The measures that have been or are being put in place to address the shortages and ensure a speedy supply of essential vaccines; and
- iv. Any interim measures being taken to mitigate the impact on affected individuals, particularly the infants and pregnant mothers.

The letter by the Commission did not elicit any response prompting the Commission to issue a reminder on 5th August, 2024, to the Principal Secretary which finally elicited a response on 15th August, 2024.

In their response, the State Department for Medical Services acknowledged that there was a shortage which was occasioned by delayed disbursement and budget cuts that resulted in delayed procurement and supply of the vaccines. They, however, confirmed that the vaccines were procured and distributed to the whole country.

"The Ministry of Health acknowledges the unfortunate gaps in delayed disbursement and budget cuts that resulted in delay and supply of vaccines in the recent past. The Ministry subsequently received Kshs1.25 billion that was used to procure the vaccines that were stocked out: Polio, Measles Rubella, Tetanus Diphtheria, and BCG. The purpose of this letter is to share with your office the enclosed summary response," read a letter from the Principal Secretary, State Department for Medical Services to the Commission.

Additionally, the Principal Secretary provided a summary response that indicated the country received eight million doses of the life-saving vaccines as of 5th June, 2024, and were currently being distributed in the whole country. It was expected that all the regional vaccine stores in the country would have adequate stocks.

The State Department also assured the Commission that the procured quantities are adequate to cater for the vaccination needs of the country until the next scheduled shipment which is already in place.

As an interim measure to mitigate the impact on affected individuals, the PS assured the Commission that the National Vaccines and Immunisation programme is currently working on a vaccination catch-up strategy that will ensure that all under-immunised as well as zero doses are vaccinated with the catch-up activities already ongoing.

National Registration Bureau to Clear ID Card Production Backlog, Commission Assured

"I would like to update the Commission that the conservatory order halting the printing of Maisha Cards was lifted on 12th August, 2024. Consequently, the National Registration Bureau has cleared all the backlog on initial ID applications and will clear the backlog on duplicate ID cards in the next two weeks," read a letter from the Secretary, National Registration Bureau (NRB), to the Commission.

The Commission had on 29th July, 2024, given the Director, National Registration Bureau, seven days to respond to the delay in the issuance of Identification Documents. This followed complaints on various media platforms over the delay in processing and issuing ID cards. Specifically, the Commission wanted the Director to respond to the following;

OWN MOTION MATTERS

- i. Any challenges the NRB was experiencing in the issuance and processing of Identity Cards;
- ii. Measures that had been taken, if any, to resolve the crisis;
- iii. Expected timelines in the issuance of the Identity Cards; and
- iv. Service delivery timelines matrix regarding Issuance of Identity Cards.

In their response to the Commission the Secretary, NRB, indicated as follows:

i. Challenges the department is experiencing in the issuance and processing of ID Cards

The secretary indicated that the government rolled out third Generation National ID code-named Maisha Card on November 1, 2023, and on December 5, 2023, the High Court issued ex parte orders staying the production of Maisha cards in an application filed by Katiba Institute. The restriction was lifted on February 23, 2024. However, since the 2nd Generation ID printers had already been decommissioned, the restriction resulted in delays in production and delivery of 595,102 cards across the country. Additionally, the department had initially installed one Specialised Security Printing Machine for the production of ID cards which could cope with the daily demand for National ID cards which averages 10,000 cards per day. The Department was, however, not able to clear the backlog immediately when the restriction was lifted since the production centre receives the same number of ID applications daily and having one machine meant that there was no production of IDs when the machine needed maintenance.

ii. Measures that had been taken, if any, to resolve the crisis

The Secretary indicated that the Department adopted a 24-hour shift strategy and production of ID cards on a first in-first out basis except in cases where the applicants can provide justifiable reasons for prioritising of their ID cards such as medical emergencies and prospective university students. Additionally, the Department in July, 2024, installed an additional printer in a measure meant to increase production capacity. The department has also launched a customer care office where urgent cases are reported and printed on a priority basis. The department has also discontinued the vetting process which used to delay the processing of ID applications in border and cosmopolitan areas.



iii. Expected timelines in the issuance of the Identity Cards

The Department faced a fresh challenge when on 25th July, 2024, the High Court issued a conservatory order staying the further and continued implementation of Maisha Cards. The conservatory order halting the printing of Maisha Cards was, however, lifted on 12th August, 2024.

iv. Service delivery timelines matrix regarding Issuance of Identity Cards

In their service delivery timelines, initial registration, duplicate application, change of particulars, and correction of civil status would take 21 days with identification reports taking 10 days.



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OPINION



Championing Justice: How Kenya's Ombudsman Fights Impunity

By Edward Opany

Impunity refers to the exemption from punishment or failure to bring the perpetrators to account for their actions. In the context of human rights, the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, has defined it as 'the impossibility, de jure or de facto, of bringing the perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.' Impunity is often the primary obstacle to upholding the rule of law, and manifests itself in different ways such as corruption, maladministration and violations of civil liberties.

The root causes of impunity have been identified at four levels: failure to investigate violations; failure to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted and duly punished; failure to provide victims with effective remedies and to ensure that they receive reparation for the injustices suffered; and failure to ensure the inalienable right to know the truth about violations and to take other necessary steps to prevent a recurrence of violations.



The rule of law posits that matters of governance have to be based on established laws and principles rather than personal whims of the rulers. In its most basic form, the rule of law refers to the supremacy of the law and equality of all before the law. The concept is believed to have originated during the era of Aristotle.

In Kenya, like other African countries, impunity has been one of the main obstacles to the realisation of the rule of law. In particular, the period after independence witnessed unprecedented erosion of the rule of law occasioned by concentration of state power in the core Executive, weak governance system and deference of state oversight institutions. Indeed, a number of reports and studies by respected individuals and institutions consistently ranked Kenya as one of the countries with low respect for the rule of law and widespread impunity. It is noteworthy that impunity never reduced despite the initiatives by the government. The turning point for Kenya was the post-election violence of 2007/2008 which created the impetus for re-examination of the country's governance system. There was a general consensus that the culture of impunity needed to be addressed. This was substantially realised in August 2010 when Kenyans overwhelmingly adopted a new Constitution through a Referendum.

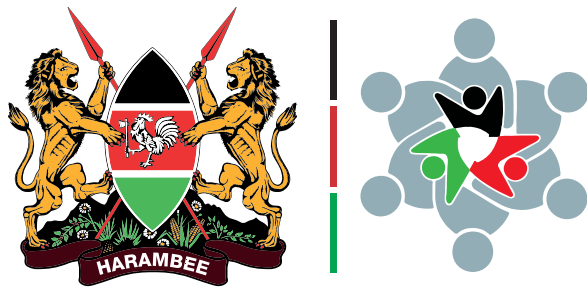
The adoption of a new Constitution in August 2010 marked a turning point in the history of Kenya. The Constitution radically transformed the governance structure and relations, and crystallised good governance in the country. Through this historic process, Kenyans not only restored a sense of pride, but also re-engineered the political, legal, social, economic and administrative structures and processes. First, the Constitution makes a paradigm shift in governance by recognizing the sovereignty of the people and their right to self-determination. This serves as a reminder to those entrusted with power that sovereign power belongs not to them, but to the people. In addition, the Constitution prescribes the values and aspirations of the Kenyan society in its preamble as 'a Government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law.'

It is worth noting that the Constitution of Kenya is one of the few constitutions in the world with enforceable national values and principles of governance. Second, the Constitution addressed the perennial bad governance that had impeded national development and realisation of civil liberties. It brings fundamental changes to the three arms of Government and introduces devolution, inclusive citizenship, a broad range of civil liberties and tenets of leadership and integrity.

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In terms of the design and structure, the Constitution of Kenya 2010 provides a departure from the 'old' Constitution which vested a lot of powers in the Executive. It begins with Chapter One on the Sovereignty of the People and Supremacy of the Constitution, Chapter Two on Sovereign Republic and its Territory, Chapter Three on Citizenship, Chapter Four on the Bill of Rights, Chapter Six on Land and Environment, Chapter Six on Leadership and Integrity, before providing for the three arms of Government.

The Role of the Constitutional Commissions



CONSTITUTIONAL COMMISSIONS AND INDEPENDENT OFFICES

Under Article 249(1)(a) of the Constitution, the Commissions and Independent Offices have a collective residual power to protect the sovereignty of the people. This power has not been given to Parliament expressly as it has been given to Constitutional Commissions and Independent Offices. A clear reading of the Constitution shows that Judicial, Legislative and Executive authority derives from the people of Kenya and exercised in accordance with the Constitution. When there is a particular issue that threatens the sovereignty of the people, the Commissions and Independent Offices can individually and collectively make pronouncements on the issue under the provisions of Article 249(1) of the Constitution.

Another way in which the Commissions and Independent Offices protect the sovereignty of the people is in the nature of their entrenchment. Their structure and design enable them to operate without fear of disbandment as any such decision must be made by the Kenyan people through a referendum. Article 255(1)(g), for example, requires that any amendment touching on the independence, mandate and structure of the Commissions and Independent Offices under Chapter 15 of the Constitution would require a referendum.

Further, they protect the sovereignty of the people by exercising mutual policing against each other. Although they act collectively to protect the sovereignty of the people, each Commission and Independent Office has its unique mandate under the Constitution and each can check the other when exercising its respective constitutional mandate. This ensures checks and balances within the Commissions and Independent Offices.

Under Article 252(1), each Commission and Independent Office has powers to conduct investigations on its own initiative or on a complaint made by a member of the public. Each has the power necessary for conciliation, mediation and negotiation. Under Article 252(3), the Judicial Service Commission, the National Land Commission, the Auditor General and Article 59 Commissions have powers to issue summons. This enables them to protect the sovereignty of the people either through their quasi-judicial powers or through Alternative Dispute Resolution.

Role of the Commission in Fighting Impunity

The Commission plays an important role in fighting impunity thereby promoting good governance and constitutionalism.

The following are ways in which the Commission contributes to the fight against impunity in Kenya:

i. Inquiries

As part of its constitutional and statutory mandate to deal with maladministration, the Commission receives and investigates complaints on service failure, unethical conduct, impropriety, unreasonable delay, incompetence, inefficiency and unlawful, prejudicial or capricious conduct in the public sector. These instances of maladministration are usually a manifestation of impunity and could easily evolve into total erosion of the rule of law, if not addressed. For instance, a public officer who acts improperly or deliberately fails to provide services in a timely manner certainly implants the seeds of impunity in public administration. Noting that failure to act on allegations of maladministration is a precursor to impunity, the Commission has developed and implemented a robust complaint handling system in which all complaints are considered. Accordingly, in addressing maladministration, the Commission inevitably addresses impunity since public institutions and officers are reminded of the need to act lawfully or else their actions will be questioned, or in some instances punishment meted out against them.



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ii. Enforcing the Right of Access to Information

Access to information is pivoted on internationally and locally recognised rights. These instruments collectively encompass the core principles of democratic governance, participation, transparency and accountability. Under the Access to Information mandate, the Commission plays a crucial role in combating impunity by ensuring that public institutions provide timely and accurate information. Access to information is key in allowing citizens to hold public officials accountable, fostering a culture of transparency and responsibility. The Commission does review appeals on the violation of the law ensuring that the right to information is upheld.



iii. Specific Investigations

Besides inquiries, and in line with Article 59(2)(h&j) of the Constitution and section 8 of the Act, the Commission conducts investigations on allegations of impropriety and prejudicial conduct, abuse of power, inefficiency, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct. The coercive powers of investigations such as issuance of summonses, searches and inspections, production of relevant documents statements under oath and interrogations have always created discomfort among public officers under investigation thereby preventing and combating impunity. In a number of cases, public officers have sought to be extricated from the findings and recommendations of the investigations or comply with the recommendations of the Commission. The effectiveness of this strategy is further bolstered by the fact that the Commission reports to Parliament and publishes the list of malfeasant and unresponsive public institutions and officers. Ultimately, this helps in addressing impunity.

iv. Systems Review

The Commission conducts systemic investigations on complaints that relate to inherent structural and procedural weaknesses in public administration. This involves the identification of weaknesses or loopholes in service delivery and making recommendations for reforms. These weaknesses are the single most causes or precursors to malpractices and impunity in the public sector.

v. Advisory Opinions and Recommendations

The Commission issues advisory opinions and proposals on matters of public interest. This makes the Commission an important avenue for recommending preventive measures to address impunity before it occurs. The Commission has so far issued over 100 advisories, some of which have directly addressed incidences of impunity within the public sector.

The Commission also issued an advisory on the spending by county governments in Kenya on foreign trips in 2014, which was at the time a haemorrhage on public resources. As a result, and through joint initiatives with other oversight bodies, a circular was issued setting the expenditure thresholds for county governments. Similarly, the Commission issued an advisory opinion on the Constitution of Kenya (Amendment) Bill, 2013 which sought to remove the Members of Parliament and other State Officers from the list of designated State Officers. The Commission examined the implications of the proposed amendment and found that it would be an affront to the constitutional provisions on leadership and integrity.

Further, it found that it would create an absurdity whereby the National Assembly, Senate and Judiciary, as state organs, would be constituted by non-state officers. The Commission also found that the proposed amendment would allow Members of Parliament to determine their remuneration which would have amounted to abuse of power and negated the objects and principles of the Constitution. In addition, the amendment would have removed the said State Officers from the jurisdiction of several Constitutional Commissions hence weakening accountability mechanisms. Based on the Advisory and the efforts of other stakeholders, the amendment was withdrawn.

vi. Public Interest Litigation

The Commission undertakes litigation in areas of public interest as a way of promoting good governance. Public interest litigation has the potential of addressing the specific instances of abuse of power or gaps that allow impunity to occur. The Commission has so far participated in several matters before the courts. An example of effectiveness of public interest litigation as a tool for combating impunity is illustrated by a matter that the Commission handled that relate to flagrant disobedience of court orders by public officers. In the case, the Commission sought to compel the Executive to pay a victim of police torture 8 million Kenya shillings that had been awarded by the High Court in Embu. The action by the Commission elicited a response by the Executive who proceeded to make part payment of the award of over 5 million shillings.



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vii. Public Empowerment



One of the preventive measures adopted by the Commission is education and training. This involves training of public officers on complaints handling and good public administration on the one hand, and public awareness and advocacy on good governance on the other hand. Through this strategy, the Commission ensures the public's inalienable right to know thereby empowering them to actively and meaningfully participate in public affairs. It is noteworthy that an informed public is one of the potent strategies for combating impunity.

vi. Promotion of Constitutionalism

The Commission ensures proper public administration by monitoring compliance with the principles of good governance as set out in the Constitution. As an illustration, the Commission monitored the use of public resources in the 2013, 2017 and 2022 General Elections in Kenya. The results of the exercise revealed misuse of public resources in the election process, and formed the basis of action. Similarly, the Commission has instituted a reward system, known as the Huduma Ombudsman Awards, for outstanding and responsive public institutions and officers, the award which is in its fourth edition has enhanced good governance, including the tenets of leadership and integrity in the public service



FRAMEWORK LAUNCH

Commission CEO Participates in the Launch of Legislative Framework on Public Participation

The Commission Secretary/CEO, Ms. Mercy K. Wambua, OGW participated in the official launch of the Legislative Framework on Public Participation at the Kenya School of Government.

The event was hosted by the Office of the Attorney General and Department of Justice and was presided over by the Solicitor General, Hon. Shadrach J. Mose. During the launch, a road map was presented on the proposed law, where Ms. Wambua pledged the Commission's support to the process, noting that over time the Commission has received complaints from members of the public regarding inadequate involvement in policy formulation by both the National and County Governments.

She noted that the lack of a national legal framework to guide public participation has previously led to many key important pieces of legislation being set aside by the courts and committed that the Commission will submit a written memorandum so as to contribute towards strengthening the legal framework.

The CEO was accompanied by the Director, Complaints, Investigations and Legal Services, Ms. Florence Mumbi.



CAPACITY BUILDING AND PUBLIC OUTREACH



The Commission Partners with GIZ to undertake Public Awareness and Education

The Commission with the support of GIZ through the Strengthening Good Governance Programme in September 2024 undertook public awareness and education through radio programmes and an Ombudsman Open Day.

The Commission's Legal and Access to Information Officer, Ms. Kule Wario, and the Senior Legal, Complaints and Access to Information Officer, Mr. Franklin Lilako discussed the Commission's role in enforcing administrative justice and access to information on Angaff Radio and Radio Alpha on Tuesday, Sep 24, 2024, from 8-9 am and on Wednesday, Sep 25, 2024, from 7.30 to 9.30 pm respectively.

The radio programs also presented an opportunity for the public to learn how to lodge and track complaints via the Complaints Management Information System (CMIS) which was developed with the support of GIZ. Through the radio programs, the Commission reached 6.3 million people.



The Commission later on Thursday, September 26, 2024, sensitised members of the public in Kinna, Isiolo County. The sensitisation aimed to create awareness of the Office of the Ombudsman and its mandates of promoting administrative justice and oversight of the Access to Information Act, 2016. The public also learned to lodge and track complaints via the Complaints Management Information System (CMIS).

The Complaints Management Information System (CMIS) is an online system developed with the support from GIZ. The Public Portal of the CMIS system was launched on Tuesday, May 24, 2022, to improved complaints management. The portal allows the public to lodge and monitor their complaints online from the comfort of their homes.

During the Open Day, the Commission reached over three hundred people with forty complaints being lodged with the Commission. Majority of the complaints were against the Kenya Wildlife Service.



CAPACITY BUILDING AND PUBLIC OUTREACH

608 PUBLIC OFFICERS TRAINED

In the Commission's pursuit to enhance effective public service delivery, complaints management, and processing of information requests, the Commission trained 608 officers from various Ministries, Departments, Agencies and Counties (MDACs).

PUBLIC AWARENESS AND OUTREACH

The Commission continued to upscale public awareness and education on its mandate, aimed at addressing inadequate awareness by the public. As part of its strategy of taking its services to the grassroots, the Commission utilised various public education and outreach initiatives.

Commission Partners with NAMATI to Undertake Legal Aid Clinics in Embu and Nakuru Counties

The Commission in partnership with the Grassroots Justice Network (NAMATI) on 13th and 14th September, 2024 undertook legal aid clinics at Menegai Social Hall and Masjid Noor in Lanet, Nakuru County and Embu Town. The activities sought to redress cases of denials and delay of Identity Cards and other legal identity documents.

The Commission had on 18th July 2024, released a special inquiry report, 'An Inquiry Report on the Problems Kenyan Citizens Encounter when Obtaining Legal Identity Documents in Border Counties: A Case Study of Wajir County'.

The report revealed a multitude of issues encountered throughout the acquisition process, ranging from delays in issuance to instances of discrimination and challenges with biometric verification and application processing.

Namati's mission is to promote social and environmental justice by empowering communities to understand, utilize, and shape the law.

The Commission undertakes Legal Aid Clinic at Kabete Juvenile Home

The Commission visited the Kabete Juvenile Home. The Commission utilised the visit to undertake awareness creation on its mandates and offered legal aid. This endeavour underscores the Commission's commitment to upholding the principles of administrative justice and human rights.

The Commission participates in CTAWOO Open Day

The Commission participated in an open day organised by the Come Together Widows and Orphans Organization (CTAWOO). The open day provided an opportunity for the Commission to create awareness on its mandates, receive complaints and to offer free legal aid.



The Commission partners with IDLO to undertake Community Engagement in Marsabit County

The Commission in partnership with International Development Law Organization (IDLO) held a community engagement on 18th September 2024 in Marsabit County. The forum which brought together members of the public from different sub-counties was aimed at educating them on the Commission's mandates of addressing administrative injustices and oversight and enforcement for the right of access to information. The forum also presented them with an opportunity to lodge complaints with the Commission.



COMMISSIONERS' EXIT LUNCHEON



PICTORIAL



Commissioner Secretary/CEO, Ms. Mercy Wambua during an interview with Pawa Radio at Uhuru Park during the Integrity Walk 2024 to commemorate the International Day for Universal Access to Information 2024.



Commission staff engaging members of the public who visited the Commission's booth during a legal aid in Nakuru County.



CAJ officers during the Integrity Walk 2024 to commemorate the International Day for Universal Access to Information 2024.



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