



**United Nations Development Programme (UNDP)**  
**End of Project Evaluation**

**Support to the Realization of Human Rights and Access  
to Justice in Kenya (2012 – 2015)**

**November 2015**



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## **Acknowledgements**

The Bassiouni Group would like to extend its gratitude to the UNDP team; Hanna Ferguson, David Maina, Mary Njoroge and Francis Mwangi for providing oversight and guidance throughout the evaluation process. We would also like to thank Ms. Riika Raatikainen of the Finnish Embassy and Josephine Mwangi-Mweki of the Swedish Embassy in Kenya for their generous assistance to the evaluation team.

The team appreciated the generous support offered by the focal persons from the three commissions, KNHCR, NGEC and CAJ. Many individuals, counterparts and stakeholders provided valuable feedback to the team by participating in interviews and focus group discussions – which allowed for rich and diverse data gathering.

Our deepest gratitude is extended to all who engaged in the process to ensure that UNDP Kenya's commitment to the realization of human rights and access to justice for all reverberates clearly throughout this report.

## **List of Acronyms**

AIDS	Acquired Immune Deficiency Syndrome
ASALs	Arid and Semi Arid Lands
CAJ	Commission on Administrative Justice
CAT	Cruel, Inhuman and Degrading Treatment or Punishment
CBOs	Community Based Organizations
CIC	Commission on the Implementation of the Constitution
CIDP	County Integrated Development Plan
COTU	Central Organization of Trade Unions
COYA	Company of the Year Award
CPAP	Country Programme Action Plan
CREAW	Centre for Rights Education and Awareness
CRPD	Convention for the Rights of People with Disabilities
CSW	Commission on the Status of Women
CUCs	Court User Committees
CwDs	Children with Disabilities
DAC	Development Assistance Committee
ECJP	Ecumenical Centre for Justice and Peace
ECOSOC	Economic, Social and Cultural Rights
FBOs	Faith Based Organizations
FGD	Focus Group Discussion
FKE	Federation of Kenya Employers
GBV	Gender-based Violence
GOF	Government of Finland
GOK	Government of Kenya
GOS	Government of Sweden
GSU	General Service Unit
HIV	Human Immune-deficiency Virus
HRBA	Human Rights Based Approach
ICC	International Criminal Court
IDP	Internally Displaced Persons
IEBC	Independent Electoral and Boundaries Commission
IHRD	International Human Rights Day

IPCRM	Integrated Public Complaints Referral Mechanism
KEPSA	Kenya Private Sector Alliance
KFS	Kenya Forest Service
KII	Key Informant Interview
KMJA	Kenya Magistrates and Judges Association
KNCHR	Kenya National Commission on Human Rights
KNHREC	Kenya National Human Rights and Equality Commission
KSG	Kenya School of Government
LAPSSET	Lamu Port, South Sudan Ethiopia Transport Corridor
LGBTI	Lesbians, gays, Bisexuals, Transgendered and Intersex
MDAs	Ministries, Departments and Agencies
MDGs	Millennium Development Goals
MoU	Memorandum of Understanding
MTP	Medium Term Plan
NACADA	National Authority for the Campaign Against Alcohol
NFP	National Forest Programme
NGEC	National Gender and Equality Commission
NSSF	National Social Security Fund
NTV	Nation Television
OHCHR	Office of High Commissioner of Human Rights in Kenya
PALWECO	Programme for Agriculture and Livelihoods in Western Counties
PFM	Participatory Forest Management
PLHIV	People Living with HIV
PWD	People with Disabilities
PWGID	Protection Working Group for Internally Displaced
PSC	Project Steering Committee
SIGs	Special Interest Groups
TBG	The Bassiouni Group
TOR	Terms of Reference
UNDAF	United Nations Development Assistance Framework
UNDP	United Nations Development Programme
UNEG	United Nations Evaluation Group
UNV	United Nations Volunteers Programme

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## **Executive Summary**

### **Background and Introduction**

In August 2010, Kenya promulgated a new Constitution, which for the first time includes an advanced comprehensive Bill of Rights. Article 59 (1) of the 2010 Constitution established the Kenya National Human Rights and Equality Commission (KNHREC) to monitor the implementation of and to operationalize the Bill of Rights. However, Article 59 (4) allowed Parliament through legislation to restructure the KNHREC into two or more separate Commissions. In 2011, laws were enacted to establish three separate but related successor Commissions to the KNHREC: the Kenya National Commission on Human Rights (KNCHR), the National Gender and Equality Commission (NGEC), and the Commission on Administrative Justice (CAJ), also known as the Office of the Ombudsman. The three commissions, which have distinct, though related mandates, present the opportunity of devoted institutions that are practically effective towards the promotion of good governance, administrative justice, gender equality and non-discrimination, and human rights protection of vulnerable groups. The commissions achieve this through respective mandates in promoting human rights compliance pursuant to their core functions of monitoring, education, advocacy, capacity strengthening, advisory, research and complaints handling and redress.

UNDP in partnership with the Government of Sweden and Finland defined a three-year programme *Support to the Realization of Human Rights and Access to Justice in Kenya (2012 – 2015)* with KNCHR, NGEC and CAJ. The purpose was to extend support to the three institutions along two core areas of a) institutional strengthening, and b) programmatic assistance to core strategic areas towards progressive fulfillment of their new distinct but interrelated mandates relating to the promotion of human rights and access to justice.

The reforms introduced by the Constitution of 2010 are supported by the country's development blueprint: Vision 2030.. Vision 2030 recognizes that for development to be meaningful, rights must be realized for those whose development is at stake – the rights holders. This includes provision and facilitating the realization of economic, social and cultural rights (health, housing, food and water, education, work and social security). The political pillar of Vision 2030 recognizes the role of the State as a duty bearer for realization of all human rights provided for in the Constitution.

Furthermore, the State has an obligation to ensure access to justice for all persons. The reforms introduced by the 2010 Constitution paved the way for improved access to justice in the country. In particular, Article 48 of the Constitution provides that access to justice is a fundamental human right. This is considered to include: awareness of and understanding of the law; easy availability of information pertinent to one's rights; equal right for the protection of one's rights by the legal enforcement agencies; easy entry into the formal and informal justice systems; easy availability of physical legal infrastructure; affordability of the adjudication engagement; cultural appropriateness and conducive environment within the judicial system; timely processing of claims; and, the timely enforcement of judicial decisions.

### **Evaluation Purpose, Objectives and Scope**

The purpose of the evaluation was to assess achievements that have enabled good governance, access to justice and human rights observance in Kenya during the project period, and to harness lessons learned and other strategic and operational recommendations, which will inform the next phase of the project. The evaluation was deemed necessary given that the project is scheduled to end in October 2015 after a six months no-cost extension, while a new phase is being developed. The overall objective of the evaluation



is to provide an analysis of the relevance, effectiveness, efficiency and sustainability of the project. The evaluation scope covers all seven outputs of the project, and the geographic coverage includes Nairobi and select counties (Kisumu, Busia and Laikipia) where there have been substantive interventions and a critical number of project beneficiaries.

## Evaluation Methodology

The evaluation was carried out using a mixed method (qualitative and quantitative) approach, including a rigorous desk review assessing progress achieved across the seven (7) project outputs and associated indicators, field interviews/consultations and focus group discussions, and programming site visits in Nairobi, Kisumu and Busia counties – with telephone interviews reaching out to Laikipia county. Data collection instruments, tools and guidelines were developed using a gender equality perspective and human rights based approach, and all project documents produced during the life cycle of the project were analyzed with reference to key UNDP and UNEG corporate evaluation policy documents and guidelines. The desk review was carried out with an emphasis on assessing linkages to the Kenya Vision 2030 framework, and within the broader context of its relevance to the United Nations Development Framework (UNDAF), and Kenya's Country Programme Action Plan (CPAP) goals and objectives.

## Key Findings

The evaluation found that over the project period, substantive institutional and programmatic progress has been made towards the overarching project goal of providing *Support for the Realization of Human Rights and Access to Justice in Kenya* by effectively influencing good governance, access to justice, and improved human rights observance in Kenya.

The work of the three commissions was found to be of *relevance and closely aligned with UNDAF objectives, Kenya CPAP objectives, and Kenya Vision 2030* – and the project implementation has made important tangible contributions (in collaboration with the GOK, COBs, universities and other stakeholders) in putting in place a variety of mechanisms and systems which have the potential to transform Kenyan society to become more accountable in its service delivery, more focused on individual humans rights and gender considerations, and to be more inclusive towards marginalized and disadvantaged sectors of society. Interview feedback from stakeholders and beneficiaries confirmed that demand for the project's service have continued to increase throughout the life of the project, including requests for increased legal and Human Rights training, increased access to human rights clinics and services, requests for additional gender training and awareness raising within communities, among other project service requests.

A rigorous assessment of the progress achieved across the seven (7) project outputs and associated indicators, brought forth several exemplary accomplishments, including progress identified pertaining to both of the core project objective areas of a) institutional strengthening and b) programmatic assistance. Several of the project's primary accomplishments are highlighted below.

- The capacity of the commissions and relevant government bodies to deliver on their constitutional mandates has been strengthened as a result of project support. The commissions successfully drafted strategic plans through inclusive consultative processes; improved financial systems; organized internal training on the integration of human rights-based approaches (HRBA); developed user-friendly websites; and have created awareness of their mandates at the national and lower government levels through the media, as well as public forums and targeted interactions with other government agencies. These institutional strengthening accomplishments have led to more effective strategic delivery of the commissions' mandates.

- As a result of the project, there has been a vast improvement among the commissions and other public institutions and ministries in complaints handling and, increased public awareness about these complaints mechanisms considering the number of complaints and cases received and mediated or referred by the three commissions. The number of complaints handled by the CAJ increased from 2,440 to 109,224 complaints by the end of the project and so far 83,457 of them had been completed. Meanwhile, KNCHR received 6,621 complaints and completed 70, and NGEC received 230 complaints and at the time of evaluation 27 had been completed – with increasing numbers coming from persons with disabilities (PWDs) and Kenya’s youth.
- Project support has allowed the commissions to provide critical election observation and monitoring activities impacting women, PWDs, the elderly, persons in hard-to-reach areas, and other groups experiencing discrimination. For instance, NGEC and CAJ conducted election observations and monitoring activities during the March 2013 elections in which the process was monitored from the perspective of gender equality and non-discrimination. A total of 181 electoral process monitors were trained and placed in 47 counties, and follow-up on recommendations were provided to the IEBC to ensure elections are more inclusive. In its report titled *Living and Voting with Dignity and Justice: The Human Rights Manifesto*, KNCHR provided specific short and longer term recommendations for ensuring that all public institutions and the people of Kenya uphold the Bill of Rights during the processes leading up to the 2013 general elections and the same may to a larger extent guide the 2017 general elections.
- On enhancing the capacity of state and non-state actors to deliver on their human rights obligations, audit reports of 2013 and 2014 compiled by CAJ have been published highlighting the performance of different institutions and ministries and the recipients of the Company of the Year Award (COYA). The NGEC spearheaded the process of reporting on progress made by Kenya to implement the Convention on Rights of Persons with Disabilities (CRPD), the Convention on Elimination of all forms of Discrimination Against Women (CEDAW), and on the promotion and protection of women’s rights in Kenya during the Commission on the Status of Women (CSW) annual sessions. The KNCHR took the lead in compiling the Kenya Universal Periodic Review, and the progress reports on the implementation of the Convention Against Torture (UNCAT), ICPD Beyond 2014, and the International Convention on Economic Social and Cultural Rights (ICESCR) using the national multi-sectoral monitoring and evaluation framework and the sector specific monitoring frameworks and standards developed.

The evaluation determined that project achievements have been feasible largely due to the *added value* of the three commissions that have brought complementary technical strengths and innovative service delivery approaches to the project. Most notably, the commissions have effectively utilized various media outreach efforts and the Huduma centers – both of which were identified by project stakeholders (including beneficiaries) as being highly effective and valuable interventions (best practices) with continued potential for expansion. An area identified during the evaluation as having not yet being fully realized is the delivery of transitional justice due to factors beyond the scope of this project, but for which the commissions have been able to support partially through engagement with the victims. As such, the identification of mechanisms which will better facilitate achievements in this area will be important as the project moves forward.

Finally, with respect to internal processes, the evaluation determined that the establishment of the project steering committee and the project technical committee has been a particularly valuable mechanism which has served to effectively enhance strategic implementation, technical oversight, and leadership in achieving planned activities. While technical and financial oversight from UNDP has, overall, been an enabling factor in project implementation, the evaluation found that budget allocation was utilized at a mixed efficiency in attaining the seven results. There remain budgetary constraints and processes which

have impacted the operational, staffing and programming capacity of the project, for which improvements will allow for greater programming effectiveness.

## **Recommendations**

As part of the process of drafting recommendations for the next phase of the project, the evaluation team carefully considered those offered as part of the Mid-Term Project Evaluation. While some of the issues raised by the mid-term evaluation have already been successfully addressed by the project, most of the issues raised still remain relevant. The evaluation team recommends that to consolidate the gains made in the previous project period, it is pertinent that another follow up project is developed and agreed upon at the onset by all parties involved to make sure that their strategic focus in terms of implementing their respective mandates is well aligned with the new project objectives and expected results. Several important strategic, operational and programming recommendations were identified which serve to offer UNDP/GOF/GOS, the three commissions, and the GOK valuable insights and feedback from the perspective of partners, stakeholders and beneficiaries towards future programming directions. Brief highlights are provided below, with detailed recommendations provided in Section 4 of the report.

### ***Strategic Recommendations***

- To ensure continued project relevance, efficiency and effectiveness, and in line with the UN DAO and UNDAF, it is recommended that UNDP consider establishing a follow-up joint programme including other UN agencies holding mandates on human rights and gender equality. In this way, UNDP (which would continue to be the lead agency) could leverage high-level expertise on human rights, gender, children's rights, women's rights and sexual and reproductive health rights.
- To strengthen the adequate adaptive capacity of the three commissions, collaborations with other constitutional commissions should be further strengthened so as to effectively and smoothly enable them to take on parts of the mandate of the Commission on the Implementation of Constitution (CIC) (whose timeframe is ending) – with the aim of sustainably promoting human rights and access to justice in Kenya.
- Strengthening partnerships at all levels with relevant stakeholders should be emphasized, particularly with respect to the dissemination of the Bill of Rights in the Constitution and the various laws and policies reviewed during the previous project period which the commissions have deemed as human rights compliant and aligned with the Constitution. These strengthened partnerships will allow for greater outreach and improved programming across all project objectives.

### ***Operational Recommendations***

- Joint programming of the three commissions has been determined to have a resulting added value, and as such, the next project phase should continue to work through these entities. However, to solidify the gains made thus far, priority attention should be placed upon strengthening the communication, coordination and planning mechanisms between these entities and ensuring that advocacy for adequate staffing and resources remains an area of collective action.
- A large majority of evaluation interview respondents raised concerns about the need for additional funding and related budgetary constraints, and processes impacting operational, staffing and programming capacity. As such, the next project phase should review the existing funds disbursement processes, and strengthen advocacy with the GOK to close financial, human and material resources gaps.

- It is recommended that data collection and analysis be strengthened in the new project phase. One approach for the commissions to consider is the establishment of a joint data management and information system with a common data bank for effective case handling and data management.

### ***Programmatic Recommendations***

- The evaluation determined that while accomplishments have been made regarding gender equality programming, it is essential for the project to place higher priority on girls and women, gender equality and the non-discrimination of women and girls within the next project phase. The recommendations section offers multiple interventions required to both deepen and expand the project's gender focus and outreach.
- Priority emphasis should be placed upon expanding the geographical reach of the commissions and their capacity to build partnerships with different stakeholders so that improved support and engagement with under-served and rural populations at the local and community level is achieved. One approach is to establish cost-effective models for the establishment of county-based cluster commission offices (comprised of three to five counties) to accelerate devolution of KNCHR, CAJ and NGEC's services from central to local governance levels.
- The evaluation found that the delivery of transitional justice has not yet been fully realized by project interventions. As such, the identification of mechanisms which will better facilitate achievements in the delivery of transitional justice will be essential as the project moves forward.
- Increased youth programming targeting both females and males should be implemented in the next project phase to improve the achievement of programme objectives. The recommendations section offers interventions to deepen the project's outreach to Kenya's youth, including the effective use of social and other media channels.
- A large majority (90%) of evaluation interview respondents identified a need to expand public sensitization/awareness pertaining to their human rights. The next project phase should expand considerably in this area to ensure that women, vulnerable and marginalized populations are aware of their rights and know how to access social services and justice. In particular, increased public awareness is needed regarding complaint resolution procedures and relevant laws and policies available to improve access to justice at the county level.
- The project should significantly increase training and capacity building for rights holders, as there remains a discrepancy between knowledge possessed by the duty bearers (mainly GOK cadres to those who have received such training) and ordinary Kenyans. Heavy investment is needed for capacity building among rights holders at all levels in order to fulfill the intentions in the 2010 Constitution.
- The project should greatly enhance its programming in the areas of Economic, Social and Cultural Rights. To improve interventions, the project should seek collaboration with other UN agencies and civil society organizations, which offer long-term experience in the implementation of social sector programmes in the Kenya context.

## **SECTION 1: INTRODUCTION**

### **1.1 Background and Country Development Context**

The Preamble to the Constitution promulgated in August 2010, recognizes the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law. Article 10 of the Constitution sets out the National Values and Principles of Governance which includes human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized. Chapter 4 of the Constitution, also referred to as the Bill of Rights, makes detailed provisions for the realization of both civil and political rights as well as economic, social and cultural rights. Article 59 (1) established the Kenya National Human Rights and Equality Commission (KNHREC) which was mandated to monitor and advise on the implementation and operationalization of the Bill of Rights. However, Article 59 (4) allowed Parliament, through legislation, to restructure the KNHREC into two or more separate commissions. As a result, in 2011, laws were enacted to establish three separate but related successor commissions to the KNHREC: the Kenya National Commission on Human Rights (KNCHR), the National Gender and Equality Commission (NGEC), and the Commission on Administrative Justice (CAJ), also known as the Office of the Ombudsman.

The three commissions, with distinct but related mandates, present the opportunity of having institutions devoted to practically and effectively promote good governance, administrative justice, gender equality and non-discrimination, and human rights protection of vulnerable groups. The commissions are intended to achieve this through their respective mandates of promoting human rights compliance pursuant to their core functions of monitoring, education, advocacy, capacity strengthening, research, and provision of advisory, complaints handling and redress services. The institutional background and status of the three commissions is outlined below.

#### **1.1.1 Kenya National Commission on Human Rights (KNCHR)**

The Kenya National Commission on Human Rights (the National Commission or KNCHR) is an independent Constitutional Commission and the National Human Rights Institution (NHRI) established under Article 59(1) as read with Article 59(4) of the Constitution of Kenya, 2010. It was initially founded in 2003 as a statutory National Human Rights Institution. After 2010, it was re-established through the Kenya National Commission on Human Rights Act, 2011 within the framework of the 2010 Kenya Constitution. The Commission implements two key broad mandates: first, to advise and support public and private actors to promote the respect, protection and realization of human rights (promotion mandate), and secondly, to act as a watchdog over the various government and non-governmental organs in the area of human rights (protection mandate) in the Republic of Kenya. These mandates are implemented through various strategies including research, advocacy and lobbying, education and training, outreach, complaints handling and investigations, litigation, monitoring, partnership building and networking among others.

The functions of the Commission are spelled out in Article 59(2) of the Constitution and have been operationalized through Section 8 of the KNCHR Act, 2011. These include:

1. Promote respect for human rights and develop a culture of human rights in the Republic.
2. Promote the protection and observance of human rights in public and private institutions.
3. Monitor, investigate and report on the observance of human rights in all spheres of life in the republic.

4. Receive and investigate complaints about alleged abuses of human rights, except those relating to the principle of equality and freedom from discrimination handled by the National Gender and Equality Commission, and take steps to secure appropriate redress where human rights have been violated.
5. On its own initiative or on the basis of complaints, investigate or research a matter in respect of human rights, and make recommendations to improve the functioning of state organs.
6. Act as the principal organ of the state in ensuring compliance with obligations under international and regional treaties and conventions relating to human rights except those that relate to the rights of special interest groups protected under the law relating to equality and non-discrimination.
7. Formulate, implement and oversee programmes intended to raise public awareness of the rights and obligations of a citizen under the Constitution.
8. Work with the National Gender and Equality Commission and the Commission on Administrative Justice to ensure efficiency, effectiveness and complementarity in their activities and to establish mechanisms for referral and collaboration.
9. Perform such other functions as the Commission may consider necessary for the promotion and protection of human rights.
10. Perform such other functions as may be prescribed by the Constitution and any other written law.

Additionally, under Article 252 (1) and (3) of the Constitution, the Commission has the following quasi-judicial powers:

- a) Adjudicate on matters relating to human rights.
- b) Conduct investigations on its own initiative or on a complaint made by a member of the public;
- c) Resolve cases through conciliation, mediation and negotiation.
- d) Issue summons to a witness as it deems necessary for the fulfillment of its mandate.
- e) Subject to a court order, enter premises or land, obtain or safeguard information and property.
- f) Conduct audits of any public or private institution to establish human rights compliance.

Finally, the Commission is also guided by the Paris Principles of 1991<sup>1</sup> as adopted by the United Nations Human Rights Commission by Resolution 1992/54 of 1992 and the UN General Assembly Resolution 48/134 of 1993 relating to the status and functions of national institutions for the protection and promotion of human rights. These include:

1. Monitoring all forms of violation of human rights.
2. Advising government, parliament and any other competent body on specific violations, on issues related to legislation and general compliance and implementation of international human rights instruments.
3. Relating to regional and international organizations that promote and protect human rights.
4. Educating and informing people and public and private institutions about human rights.
5. Having quasi-judicial competence.

The functions of the commission are fulfilled through eight programme areas namely i) Complaints and investigations; ii) Redress; iii) Reforms and accountability; iv) Research and compliance; v) Public affairs and communication; vi) Public education and training; vii) ECOSOC rights; and, viii) Regional outreach. The Commission has one National Secretariat in Nairobi and four regional offices namely: North Rift, Northern Kenya, Coastal and Western regional offices.

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<sup>1</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>

### **1.1.2 National Gender and Equality Commission (NGEC)**

The NGEC derives its mandate from the Constitution of Kenya 2010 especially from Articles 10, 27, 43, 59 and Chapter Fifteen among others. Article 10 provides for the national values and principles of governance, which include: human dignity, equity, social justice, inclusiveness, equality, human rights and non-discrimination. Article 27 refers to the principle that under the Constitution of Kenya, every person is equal before the law and has a right to equal protection and benefit under the law. The overarching goal of the NGEC is to contribute to the reduction of gender inequalities and discrimination against all women and men; with a special focus on persons with disabilities, the youth, children, the elderly, minorities, and marginalized communities.

The functions of NGEC are found in detail in Section 8 of NGEC Act, 2011. The functions are classified into seven categories as follows:

- a) Coordination, Advisory and Facilitation: Promote, monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions.
- b) Compliance: NGEC is the principal state organ responsible for ensuring compliance with all treaties and conventions ratified by Kenya relating to issues of equality and freedom from discrimination and relating to special interest groups including minorities and marginalized groups, women, PWDs, and children.
- c) Monitoring and Audit: NGEC will conduct audits on the status of special interest groups including minorities, marginalized groups, PWDs, women, youth and children through research and secondary review of databases.
- d) Investigations: NGEC has powers to investigate any matter in respect of any violations of the principle of equality and freedom from discrimination and make recommendations.
- e) Development of Standards for ECOSOC Rights: Through collaboration with other relevant institutions, NGEC will develop standards for the implementation of policies for the progressive realization of the economic and social rights specified in Constitution and other written laws.
- f) Reporting: NGEC will prepare and submit annual reports on the status of implementation of its obligations under the law.
- g) General Facilitation: NGEC is mandated to perform other functions as the Commission may consider necessary for the promotion of the principle of equality and freedom from discrimination;

NGEC has two divisions: Finance and Administration and Programming and Research. In the latter there are eight programme areas namely, i) Legal, investigations and redress; ii) Gender and women; iii) Youth and children; iv) Disability and elderly; v) Marginalized and minorities; vi) Compliance and international treaties vii) ECOSOC rights and compliance; and viii) Research, monitoring and documentation.

NGEC is at the center of the national institutional framework with obligations to ensure that all provisions relating to equality and freedom from discrimination in the Vision 2030 are executed in a timely fashion and by all sectors and players.

### **1.1.3 Commission on Administrative Justice (CAJ)**

The quest for an independent Office of the Ombudsman was given impetus by the adoption and progressive implementation of the Constitution of Kenya, 2010. Pursuant to Article 59(4) of the Constitution, the Commission on Administrative Justice (CAJ) was established in September 2011 through the enactment of the Commission on Administrative Justice Act, 2011. The Commission has three Commissioners and a National Secretariat headed by the Commission Secretary.

The mandate of the Commission is to enforce administrative justice in the public sector by addressing maladministration through effective complaints handling and alternative disputes resolution. In addition, the Commission has a Constitutional mandate to safeguard public interest by promoting constitutionalism, securing the observance of democratic values and principles, and protecting the sovereignty of the people of Kenya.

The functions of the Commission, as provided for under Article 59, Chapter Fifteen of the Constitution, and Section 8 of the Commission on Administrative Justice Act, 2011 include to:

- a) Investigate any conduct in state affairs, or any act or omission in public administration by any state organ, state or public officer in National and County Governments that is alleged or suspected to be prejudicial or improper or is likely to result in any impropriety or prejudice.
- b) Investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct within the public sector.
- c) Report to the National Assembly bi-annually on the complaints investigated under paragraphs (a) and (b), and the remedial action taken thereon.
- d) Inquire into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehavior, inefficiency or ineptitude within the public service.
- e) Facilitate the setting up of, and build complaint handling capacity in, the sectors of public service, public offices and state organs.
- f) Work with different public institutions to promote alternative dispute resolution methods in the resolution of complaints relating to public administration.
- g) Recommend compensation or other appropriate remedies against persons or bodies to which this Act applies.
- h) Provide advisory opinions or proposals on improvement of public administration, including review of legislation, codes of conduct, processes and procedures.
- i) Publish periodic reports on the status of administrative justice in Kenya.
- j) Promote public awareness of policies and administrative procedures on matters relating to administrative justice.
- k) Take appropriate steps in conjunction with other state organs and Commissions responsible for the protection and promotion of human rights to facilitate promotion and protection of the fundamental rights and freedoms of the individual in public administration.
- l) Work with the Kenya National Commission on Human Rights to ensure efficiency, effectiveness and complementarity in their activities and to establish mechanisms for referrals and collaboration.
- m) Perform such other functions as may be prescribed by the Constitution and any other written law.

In executing its stated functions, the Commission has powers to conduct investigations on its own initiative or on a complaint made by a member of the public, issue summons and require that statements be given under oath, adjudicate on matters relating to administrative justice, obtain relevant information from any person or public authority, and to compel the production of such information. It has a National Secretariat and two regional offices in Coastal and Western regions.

## 1.2 Overview of Project

In partnership with the Governments of Sweden and Finland, UNDP defined a three-year programme, **Support to the Realization of Human Rights and Access to Justice in Kenya (2012 – 2015)**, with KNCHR, NGEAC and CAJ as the main implementing partners. The purpose was to extend support to the three institutions along two core areas of a) institutional strengthening, and b) programmatic assistance to core strategic areas towards progressive fulfillment of their new distinct but interrelated mandates. Within



these two core areas, programmatic activities supported are elucidated through specific project outputs. These include:

- Result 1: Article 59 Commissions' Capacity Strengthened in Order to Implement Their Mandates More Effectively
- Result 2: Capacity of Government Staff Strengthened to Apply a Human Rights Based Approach (HRBA) and Related Principles
- Result 3: Economic, Social and Cultural Rights Enhanced
- Result 4: Strengthened Framework on Access to Justice at National and County Level Applying HRBA
- Result 5: Transitional Justice Processes Strengthened to Effectively Redress Historical Injustices
- Result 6: Capacity of State and Non-State Actors Enhanced to Deliver on Their Human Rights Obligations
- Result 7: Electoral Processes Monitored with Respect to Abuse of State Resources, Engagement and Participation of Women, Youth and Other Marginalised Communities

These results were intended to respond to the implementation of some of the constitutional reforms that transformed the governance landscape in Kenya. The reforms substantially reduced the executive powers (particularly of the president) and introduced new checks and balances to curtail possible excesses of the executive as evidenced under the previous political dispensation. For the first time, Kenya now has a bicameral legislature with the Parliament and Senate having elected representatives. The Constitution established a number of other commissions and agencies charged with different mandates that have a bearing on the promotion of human rights and access to justice in Kenya (for example the Kenya Land Commission and the Office of the Director of Public Prosecutions). In addition, two levels of government were created: the national and county level governments. The implications for the three Article 59 commissions is that they have to create working relationships with all of the county governments and the national institutions/ministries/agencies particularly in the area of monitoring and compliance for the effective implementation of the Bill of Rights in the Constitution.

At the time of formulating the project, Kenya was in a period of transition intended to actualize the reforms introduced by the Constitution of 2010, and by Kenya Vision 2030, the country's development blueprint. Vision 2030 recognizes that for development to be meaningful, rights must be realized for those whose development is at stake – the rights holders. This includes provision and facilitating the realization of economic, social and cultural rights (health, housing, food and water, education, work and social security). The political pillar of Vision 2030 recognizes the role of the state as a duty bearer for the realization of all human rights provided for in the Constitution. The reforms introduced paved the way for improved access to justice in the country. In the 2010 Constitution (Article 48) access to justice is a fundamental human right.

Furthermore, the Kenya Constitution obligates the state to ensure access to justice for all persons. This is considered to include the following: awareness of and understanding of the law; easy availability of information pertinent to one's rights; equal right to the protection of one's rights by the legal enforcement agencies; easy entry into the formal and informal justice systems; easy availability of physical legal infrastructure; affordability of the adjudication engagement; cultural appropriateness and conducive environment within the judicial system; timely processing of claims; and timely enforcement of judicial decisions.

However, it was clear at that time that Kenya was still struggling with how to address the findings of the Truth, Justice and Reconciliation Commission (TJRC) Report which had not been officially released. The objective of initiating the TJRC process was to address the root causes of the long standing historical injustices and cultures of human rights violations in Kenya that contributed to the eruption of the post-

election violence in 2007/2008 (that left thousands of people killed and over 500,000 displaced as far as Uganda). Public suspicions were escalating that there was no political will on the part of the government to address the issues identified by the Commission.

Kenya's general elections were also expected to take place in March 2013. The two leaders of the Jubilee Coalition that was contesting to lead the next government (2013–2017) in Kenya were battling with alleged cases of gross human rights violations at the International Criminal Court (ICC) in The Hague. A majority of the complainants of the human rights violations during the post-election violence of 2007/08 had not benefited from the internal processes of reparation and the judicial redress processes. In a nutshell, the political context was not only complex but extremely volatile.

The establishment of the three commissions was a new ray of hope for the people of Kenya as the commissions provide new avenues for the prevention of and seeking redress for human rights and administrative justice violations. They not only investigate complaints based on the ones received through their complaints handling systems, but emphasize the use of proactive measures like law and policy reforms, training of state actors on HRBA, issuance of advisories and popularizing public education on human rights and the corresponding duties and responsibilities of different public institutions. The aim is to raise the level of accountability for human rights protection and fulfillment.

In addition, it was at this time that Kenya introduced major reforms in the judiciary particularly through the vetting of all judicial officers, establishment of the Supreme Court, restructuring of the judicial system, and streamlining of court processes to make them more accessible to all people. The reorganization raised the level of public confidence in the judiciary and there was a lot of expectation that the right of access to justice could finally be realized by the majority of people in Kenya irrespective of their status, gender, ethnic background or economic means.

Despite these far-reaching reforms, a majority of Kenyans were still poor at the time the project was initiated. High unemployment specifically amongst youth, the growing inequalities, and the high levels of crime and poverty all combined to make it difficult for Kenyans to demand for their rights and make adequate use of the complaints and redress mechanism. This reality was coupled with low levels of awareness on legal and human rights. According to the Strategic Plans of all the three commissions, the majority of the population does not know their legal rights and the forms of redress available to them in instances of violation. The Baseline Survey, 2012 alluded to in the Strategic Plan of the KNCHR revealed that interpretation and understanding of ECOSOC rights for example, was interpreted narrowly and rarely discussed in the context of the Constitution. The public did not perceive it as expressly the duty of the government to uphold ECOSOC rights.

### **1.3 Evaluation Purpose, Objectives and Scope**

As defined within the Terms of Reference (TOR), the purpose of the evaluation was to “assess achievements made to influence good governance, access to justice and human rights observance in Kenya during the project period, to harness lessons and other strategic and operational recommendations which will inform the next phase of the project.” The evaluation was deemed necessary to assess project performance between January 2012 and October 2015, in order to inform the next phase being developed.

The overall objective of the evaluation was to provide an analysis of the appropriateness, relevance, effectiveness, efficiency and sustainability of the project. More specifically, as specified within the TOR, the evaluation aimed to:

- Assess the relevance of the project in the Kenyan context.

- Determine the contribution of the project to national reform priorities on democratic governance and the programme's impact on various stakeholders.
- Determine the extent to which the project results were realized by assessing the achievements of the project.
- Assess the extent to which the project resources were utilized for the realization of the desired results.
- Identify the factors that facilitated or hindered the achievement of the outcomes, both in terms of the external environment and those internal to the project and document lessons learned.
- Propose recommendations for the future of the programme.

The evaluation scope covers all seven outputs of the project (as described in Section 1.2), and the geographic coverage includes Nairobi and the counties of Kisumu, Busia and Laikipia where there have been substantive interventions and a critical number of project beneficiaries.

## 1.4 Methodology

The evaluation was carried out using a mixed method (qualitative and quantitative) approach which included a thorough desk review, key informant field interviews/consultations and focus group discussions, and programming site visits.

**Data Collection Instruments:** Data collection tools and guidelines were developed, including 1) a list of questions for project funders/implementation partners and collaborators; 2) a list of questions for project beneficiaries/participants (focusing on information, training and services); and 3) an Evaluation Framework.

**Desk Review:** A rigorous desk review was carried out, including a review of all project documents produced during the life cycle of the project, as well as key UNDP and UNEG corporate evaluation policy documents and guidelines, including the following publications (among others):

- UNDP Country Programme Action Plan (CPAP) 2009-2013
- Quarterly and Annual Reports
- Mid-Term Review of the Project Report
- Annual Work Plans (2012, 2013, 2014, 2015)
- Commission Strategies
- Project Document (2011) and Update Project Document (2013)
- Handbook on Monitoring and Evaluation for Results
- UNDP Results Management Technical Note
- UNDP Evaluation Policy (2013)
- UNEG Quality Checklist for Evaluation Reports (2010)
- Other Publications (Please refer to Annex 3 for a complete List of References).

The desk review was carried out with a view to assess linkages to the Kenya Vision 2030 framework, and within the broader context of assessing relevance in advancing the United Nations Development Framework (UNDAF) and Kenya's Country Programme Action Plan (CPAP) goals and objectives.

Primary data was collected by the evaluation team during the field work phase of the evaluation. Individual and group interviews, as well as focus group discussions, were carried out in Nairobi and selected counties, including Kisumu, Busia and Laikipia counties. The evaluation reached out broadly to obtain perspectives from a diversity of groups (males, females, youth, adults, older persons, disabled individuals, etc.), from a variety of geographical locations, and on a range of different topics (health,

sanitation, justice, education, political participation, etc.) so as to capture the impact of the project on the human rights status and overall wellbeing of Kenya's citizens.

A total of 47 individuals (55% females/45% males) were interviewed/consulted during the course of the evaluation. These included key staff/representatives of the primary donors involved in management and implementation of the project (Government of Finland, Government of Sweden, UNDP) and all primary programme development partners (Kenya National Commission on Human Rights (KNCHR), National Gender and Equality Commission (NGEC), and The Commission on Administrative Justice (CAJ)).

Interviews were also conducted with multiple Government of Kenya (GOK) representatives, including from the Department of Justice, Department of Gender and Social Development, Ministry of Labour, Ministry of Devolution and Planning, National Land Commission, and the National Police Service among others. Several interviews were conducted with representatives from the County Government of Busia (in Western Kenya) within the Office of Health and Sanitation and the Office of Culture and Social Services. Interviews were also carried out with representatives of the National Police Service serving with the Kisumu (County) Central Police Station/Child Protection Unit.

Beyond the donors, programming partners and government entities, the evaluation also included interviews and consultations with other UN agencies, such as the Office of the High Commissioner of Human Rights in Kenya (OHCHR), as well as several relevant universities and research institutes (such as Laikipia University College, Kenyatta University Students Complaints Office, and the University of Nairobi pertaining to their collaborations with the NGEC on the Two-Thirds Gender Rule).



**Figure 1:** Interview with Ms. Riikka of Finnish Embassy

Finally, interviews were also carried out with members of various community and/or faith-based organizations (CBOs/FBOs), such as the Amasha Youth Organization and the Ecumenical Centre for Justice and Peace (ECJP) – as well as various media outlets, such as the IQRA FM Radio Station. The emphasis for these interviews was to ascertain project impacts and to assess the *continued relevance* of the project to the needs of local communities and individuals in terms of public outreach – as well as to obtain feedback on the accessibility, affordability and quality of service delivery. (Please refer to Annex 2 to review the full list of persons interviewed).

## SECTION 2: ANALYSIS OF FINDINGS

The evaluation offers an analysis of the project's overall performance utilizing the DAC criteria for evaluating development assistance of *relevance, effectiveness, efficiency and their contributions towards impact and sustainability* strategies. Based on the evaluation findings, key lessons learned were identified, and conclusions and a set of recommendations are offered. The evaluation highlights key project achievements of the three Article 59 Commissions over the implementation period (2012 – 2015).

### 2.1 Relevance

The evaluation found that over the project's duration, substantive institutional and programmatic progress has been made towards the overarching project goal of *Supporting the Realization of Human Rights and Access to Justice in Kenya*. Project support effectively contributed towards influencing good governance, access to justice, and improved human rights observance in Kenya. The work of the three commissions was found to be of *relevance and closely aligned with the United Nations Development Assistance Framework for Kenya (UNDAF) objectives, the Kenya CPAP objectives, MTP II and Kenya Vision 2030*.

The United Nations Development Assistance Framework (2014 -2018) for Kenya is an expression of the UN's commitment to support the Kenyan people in their self-articulated development aspirations. The Kenya UNDAF was developed according to the principles of UN Delivering as One (DaO), aimed at ensuring Government ownership, demonstrated through UNDAF's full alignment to government priorities and planning cycles, as well as internal coherence among UN agencies and programmes operating in Kenya.

The UNDAF has four strategic results areas: 1) transformational governance encompassing policy and institutional frameworks, democratic participation and human rights, devolution and accountability, and evidence-based decision-making; 2) human capital development comprised of education and learning, health, including water, sanitation and hygiene (WASH), environmental preservation, food availability and nutrition, multi-sectoral HIV and AIDS response, and social protection; 3) inclusive and sustainable economic growth, with improving the business environment, strengthening productive sectors and trade, and promoting job creation, skills development and improved working conditions; and, 4) environmental sustainability, land management and human security including policy and legal framework development, and peace, community security and resilience. The UNDAF results areas are aligned with the three Pillars (Political, Social and Economic) of the Government of Kenya's Vision 2030 transformational agenda.

The evaluation determined that the *Supporting the Realization of Human Rights and Access to Justice in Kenya* project has made important tangible contributions (in collaboration with the GOK, NGOs, CBOs, universities and other stakeholders) in putting into place a variety of mechanisms and systems which have the potential to transform Kenyan society to become more accountable in its service delivery, more focused on individual human rights and gender considerations, and to be more inclusive towards marginalized and disadvantaged sectors of society. Notable actions include integration of HRBA by state and non-state actors, enhancement of Court Users Committees and the Chairpersons Form as well as Annual Huduma Ombudsman Awards that focuses on compliance with HRBA by government agencies. These contributions are closely aligned with the UNDAF objectives, and continue to be relevant and essential for Kenya's progress towards equitable and democratic development – particularly with respect to the project's support in the areas of transformational governance, human rights, gender considerations, social protection and democratic/political participation.

The evaluation also concluded that the project goal is well-aligned to the strategic mandates of the three commissions, considering their central role as national institutional frameworks with obligations to ensure that all provisions in the Vision 2030 are executed in a timely fashion by all sectors and players. While appreciating relevance to the prevailing circumstances, the KNCHR has recently, in June 2015, reviewed its strategic plan so as to align its strategic directions with current emerging issues regarding human rights and access to justice in Kenya. The project has supported the delivery of the commissions' mandates, and interviews carried out as part of the evaluation determined that project support was highly relevant by stakeholders to the existing country context.

In particular, the project's emphasis upon implementation of a Human Rights Based Approach (HRBA) among learning institutions and government parastatals was highlighted by the evaluation interviewees as being a particularly relevant and important aspect of programming, given that it addresses both obligations of duty bearers and right holders in upholding human rights. Progress on this front was evident from interviews with the Kenya School of Government, Laikipia University College, and Kenya Forest Service – which indicated having fully embraced HRBA in their programmes and operations.

It should also be noted that the 2010 Constitution specifically addresses long-standing historical, geographic, demographic, and gender issues that have hindered Kenya's development. As such, the emphasis of the UNDAF and Kenya CPAP has been to increasingly focus on implementing a people-centered, gender-aware and human rights-based approach, with a key feature being to promote the devolution of political power and to provide support to the 47 newly decentralized counties in accessing services and information. To ensure that devolution is effective, the UNDAF specifies the need for the strengthening of institutional leadership, human resource capacities, and accountability systems at both national and county levels. This emphasis is to ensure the county governments' delivery of sustainable results and the potential for innovation and advancement. The evaluation has established engagement between the three commissions and the county governments mainly through trainings as well as integration of HRBA that have greatly contributed to increased awareness among state officers and ultimately led to improved service delivery.

The evaluation found that project partners and implementers are placing increasing emphasis upon devolution, and stakeholder interviews found that *a majority of the project's implementing partners believe that speeding up the devolution process will be central to the project's long-term success*. Clearly, the project's devolution efforts are fully relevant/aligned with and serve to support the UNDAF and CPAP objectives of effectively reaching out to all Kenyans for improved social, political and economic participation and development.

With respect to the project's relevance and effectiveness towards addressing the needs of marginalized groups, interview feedback showed *mixed results* in terms of successfully reaching out to women and girls, youth (males/females), people with disabilities, persons living with HIV or AIDS, marginalized ethnic groups, older persons, and LGBT individuals, among other targeted marginalized groups. These project results (both accomplishments and areas needing improvement) are fully detailed in section 2.2.

In terms of determining their relevance and the continued importance of reaching out to these marginalized populations (via the project's interventions in the next phase of the project) – both the desk review and evaluation interviews clearly revealed that these efforts to reach marginalized groups are, and will continue to be, central in terms of successfully achieving the project goals and objectives.

For instance, with respect to the continued relevance of reaching out to Kenya's youth, it should be noted that Kenya (and East Africa as a whole) faces daunting health challenges, including rapid population growth, high rates of maternal and child morbidity and mortality, and a high burden of infectious diseases. In East Africa, the regional population of 200 million is expected to double in less than 30 years

due to continued high birth rates and the large number of youth who are entering reproductive age. The sustainability of development gains is dependent on future economic growth, equitable development, and political and social stability – which will, in turn, be largely influenced by the ability of nations (such as Kenya) to ensure that their youth – both female and male – have the knowledge, skills and opportunities to contribute meaningfully to this growth. Interviews conducted during the field work *confirm that the project's continued and increased outreach to Kenya's youth will be critical towards transforming the country's "youth bulge" challenge into an opportunity for equitable political, social and economic development on a multitude of levels.*

Another example pertains to gender equity and inclusion in the Kenya context and interviews conducted overwhelmingly identified the *continued relevance of addressing gender considerations as an essential component of the project.* For instance, recent estimates indicate that approximately 45 percent of women in Kenya (between the ages of 15 and 49) have experienced physical or sexual violence. Many survivors have limited access to appropriate services, and further, many incidences of gender-based violence (against both males and females) remain under-reported. Further, women's political participation, while greatly improving, continues to merit concerted support in the Kenyan context. As detailed in section 2.2 below, the timely support to the NGEC made it possible to undertake consultations on the implementation of the "not more than two-thirds" gender principle on political representation at all governance levels. This led to the successful drafting of the Bill that provides a comprehensive formula for the implementation of the principle.<sup>2</sup> Despite these affirmative action measures, the guaranteed 47 seats are still far below the 117 needed to satisfy the one-third gender rule. As such, the project remains highly relevant in terms of the continued need to address these and many other pressing gender issues within the Kenya context.

Given the Government of Kenya is embarking on a new structure that fundamentally changes the way the government works and relates to the people, this approach towards devolution with the 47 county governments is creating an environment where the national and county governments aim to work in tandem for the betterment of Kenya. Under devolution, the potential for reaching women and girls to address issues such as improved political participation, access to justice, and support for GBV prevention and reproductive health and other support services is limitless. Clearly, the importance and relevance of the project's concerted outreach to youth, women and girls, the disabled, older persons and other marginalize groups, remains central and highly relevant to the project's overall success.

It should be noted that while the project has made progress in promoting human rights and access to justice in Kenya (with details provided in section 2.2), much work remains to be done in terms of reaching (and being of relevance to) marginalized groups. For instance, during the project's duration, attacks attributed to the Somali-based armed group, Al-Shabaab, increased. Police counter-terror operations resulted in several deaths and the arrest of hundreds of people whose screening was not carried out in a timely manner. During the same period, Kenyan authorities intensified measures to restrict and control the activities of civil society organizations, as well as the media. There were also reported incidents of unlawful killing, rape, torture, and other mistreatment by the police. Furthermore, violence against women and girls has persisted and access to redress is still very slow for the ordinary individual in Kenya.

All these issues merit concerted efforts to take the promotion and protection of human rights and access to justice to another level beyond legal protection, and hence, the project is still relevant in the Kenyan context. The joint approach by the three commissions has, to a larger extent, demonstrated added value in

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<sup>2</sup> The initial two-thirds gender principle has since been revised to "not more than two-thirds gender principle. Refer to the website for NGEC: <http://www.ngeckenya.org>

this respect and therefore the three commissions working with other actors have an opportunity to sustain the gains made, while aiming for the high standards enunciated in the Constitution.

## 2.2 Effectiveness

This sub-section presents the overall project achievements across the seven results that collectively contribute to the realization of human rights and access to justice in Kenya. The actual performance on relevant indicators across the results is provided in the Data Mining Tool under Annex 1.

### Result 1: Article 59 Commissions' Capacity Strengthened in Order to implement their Mandates More Effectively

The project was envisaged to enhance the institutional capacity of the KNCHR, NGEC and CAJ through a number of organizational development activities. Based on the progress reports and interviews with the commissions, the institutional changes and transitions have been facilitated mainly through re-branding, awareness creation of the three commissions, and development of the commissions' websites and strategic plans. In addition, trainings of all newly recruited or promoted staff members were conducted to ensure clarity and understanding of the mandates of the commissions and how to apply the HRBA in their work across all programmes. During the review period, 22 staff members from CAJ were trained in report writing, 157 staff members of KNCHR and 200 from NGEC were also trained on issues related to corporate governance, HRBA, international norms, treaties and conventions that Kenya has ratified, public procurement and human resource issues, leading to improved staff and institutional performance. These efforts to a large extent have led to more strategic delivery of the commissions' mandates while addressing the overlapping aspects initially perceived in 2011 when the commissions were established. As a result, the commissions have progressively improved on reporting by providing disaggregated information. CAJ and KNCHR improved in this aspect and it is evident in their 2014 Annual Reports as compared to the ones for 2012 and 2013 and this could also be a result of the collaboration to harmonize the standard of reporting.

At the strategic level, the three commissions were supported to develop Strategic Plans that guide the strategic directions of the commissions in line with their mandates and upon which future programmes and projects will be anchored. In responding to emerging trends, KNCHR adopted a new Strategic Plan (2015-2018), which takes into account the lessons of working alongside the other constitutional commissions in the promotion of human rights and access to justice. The new strategy was launched on 30<sup>th</sup> June 2015. The table below presents overall project performance across the four indicators under this result.

**Table 2.1: Project Performance under Result 1**

Indicators	Baseline	Overall achievements
1. Referral and engagement system in place	0 for the 3 commission	2 for each commission
2. No. of complaints and cases received and mediated as an indicator of improved complaints handling as well as public awareness	2,440 for CAJ, 0 for CNCHR and NGEC	116,075 (NGEC – 230; KNCHR – 6,621; CAJ – 109,224)
3. No. of strategic plans in place guiding the work of the Commissions	0 for all the commissions	1 for each commission
4. Percentage level of public awareness of the commissions	Low across the 3 commissions	84.57%



As the project ends, the three commissions have been able to profile and create awareness of their mandates at the national level through the media, as well as public forums and interactions with other government agencies. This has been made possible by the accessibility to the different head offices that are based in Nairobi, thus providing opportunities for engagement with relevant stakeholders at national levels. Efforts have also been made to enhance visibility of the three commissions at the county level through the establishment of shared regional offices by the 3 commissions in the coastal and western regions, as well as organizing public awareness forums across the country on the mandates of the commissions. Furthermore, the commissions operate as referral partners at the local level – a balancing situation of their mandates even in project delivery.

However, it is worth noting that despite the sharing of offices and/or operating in the same regions, the implementation efforts of the commissions are not necessarily harmonized to take advantage of the synergistic benefits. This may have inhibited optimizing the contributions of the project to the desired outcomes at the decentralized level by the three commissions particularly when considering the resource constraints for programming experienced by all three commissions. The missed opportunities at the regional level relate to joint implementation which could ensure the leveraging of resources while achieving better results and also strengthening partnerships with other actors at the same time rather than individually by each commission.

In establishing mechanisms for coordination of Chapter 15 Commissions for which the Article 59 Commissions belong, the Commissions' Chairpersons' Forum was established in May 2012 which brings together the heads/leaders of the 24 constitutional commissions and independent offices. The Forum was first chaired by the CAJ Chairperson and deputized by the NGEK chairperson and the current chairperson is that of the CIC and his deputy is the Controller of Budget. Through this forum, a coordinated approach to delivery on the constitutional mandates has been enhanced, in addition to

#### **THE CHAIRPERSONS' FORUM**

The Forum provides a platform for the leaders of the 3 commissions to jointly work with other constitutional commissions to address matters of national importance, promote constitutionalism and address other issues of commonalities amongst the commissions and independent offices. The Forum has crystallized into a powerful and effective platform for defining the role and place of the commissions and independent offices, and has given them an opportunity to 'speak with one voice' on issues of national interest. For instance, they used the Forum to define their independence and issued statements on the state of insecurity in the country, in preparation for the March, 2013, general elections, leadership and integrity requirements among other issues. The Forum also provided a platform for benchmarking for the constitutional commissions and independent offices in areas of interest such as annual reporting, salaries and allowances for staff and auditing by the Auditor-General. In addition, the commissions and independent commissions were able to enhance co-ordination and collaboration in their operations.

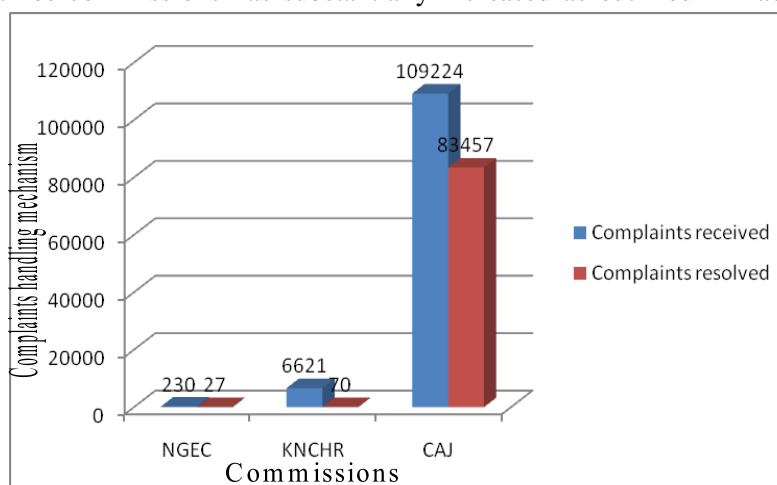
providing an opportunity for collective learning and reflections across the member commissions. This is evidenced from the reports available indicating that the project financial support enabled a functional referral and engagement system to emerge. This is supported with memorandums of understanding (MoUs) on how to facilitate the functioning of the chain linked referral partners' mechanisms and to guide the operations of the three commissions in terms of effective partnerships to deliver human rights and access to justice in Kenya. Considering that the Commission on Implementation of the Constitution (CIC) is coming to an end, it is clear that the three commissions will take up and share some of the CIC's mandates and this has implications in terms of functions, as well as the need for extra capacity to deliver on the outstanding aspects.

Furthermore, in supporting the capacity building aspects of the commissions UNDP promoted south-to-south learning between Kenya's human rights institutions and those in South Africa, the United Kingdom, and Brazil. From the two separate events, key lessons relevant to the commissions for the project, and

more, emerged. For instance, the tour to South Africa revealed the extent to which African countries are least prepared to manage social media communications systems and lack enough legislation to control proliferation of consequences of use of social media (cybercrime). Learning visits to Britain focused on methods, tools and systems used to audit and monitor compliance of state, public and private institutions to constitutional provisions and international commitments. From Brazil, development and institutionalization of gender equality and inclusion systems and structures in emerging democracy lessons emerged. During the review period, the evaluation has also established that benchmarking visits were made in which 15 staff members from NGECH participated. There has also been support for leadership and management training in-country, the main one being capacity building for Commission Chairs of Article 59 of the Constitution and the focus on the protection and promotion of human rights via human rights institutions. Most of these experiences have been integrated into the operations of the commissions in line with the project areas of focus while also aligning with the mandates of the individual commissions.

Furthermore, the project has provided a facility for UN volunteers (UNVs) to fill in personnel gaps on a short term basis (one year) and KNCHR and CAJ have taken advantage of this facility, with KNCHR benefiting from 1 staff and CAJ benefiting from 11 staff all of whom brought relevant expertise into the commissions with focus on Constitutional and International Law, Legal Research, Human Rights, Governance and Access to justice. However, it is important to note that where there were delays in appointing commissioners (like in the case of the KNCHR) they missed out on the exchange opportunities. NGECH, which is still lacking directors to lead six departments at the national secretariat, was not able to fully benefit from these benchmarking opportunities. This is not only affecting the full implementation of the strategic direction of the Commission it is also overstressing the capacities of the commissioners and the Commission Secretary to provide leadership for the implementation of the wide mandate of NGECH.

As a result of the work of the three commissions, there has been an improvement in the complaints handling mechanisms as well as the commissions' capacity to create public awareness on how to access the mechanisms. For example, the CAJ can receive complaints in writing (English and Swahili) and in any other language and the Commission facilitates the translation. Complaints can also be submitted online, by phone and verbally and this information has been democratized by making it readily available to the public through all forms of media including social media. As a result the number of complaints and cases received and mediated by the three commissions has substantially increased as outlined in Table 2.1. Between 2012 and 2015 for instance, CAJ has been able to handle 109,224 complaints from 2,440 at the start of the project; KNCHR received 6,621 complaints as at the time of evaluation; while among 230 complaints received by NGECH, 27 had been successfully concluded with cases coming from the marginalized groups, PWDs and the youth. In this sense, there has been evidence of increased resolution of caseload as a result of the commissions' work. This is demonstrated by the corresponding Figure 2.



**Figure 2:** Complaints handling mechanism by the commissions

From the information presented above based on the latest reports by the three commissions, cumulatively the rate of resolution of all complaints received is 72%. It is worth noting that CAJ has recorded the highest rate (76.4%) of complaints resolution followed by NGEK (11.7%) while KNCHR has been able to resolve 1.06% of complaints received. According to NGEK, the reasons for the low rate of resolution include: lack of sufficient staff handling complaints hence cases are not resolved with speed; lack of adequate funds; and, a rudimentary complaints database which is not interlinked to other complaints handling agencies.

The achievements under this result area have been realized through capacity building support in terms of establishing proper communication systems and improved capacity to apply information and communication technologies (ICTs). Monitoring and evaluation (M&E) systems have been greatly improved as well as the financial management capacity to handle multi resource portfolios. UNDP support also facilitated a series of internal trainings for the commissions to entrench management of interventions and resources as per UNDP guidelines. Coupled with this has been the support for improvement of staff recruitment and management systems use of the UNV programme to provide additional relevant expertise. This has been a success factor in project implementation.

Whereas staffing remains a challenge following the freeze on recruitment by the GOK according to the interview with the commissions, the three commissions have, to a larger extent, built on the partnerships to leverage their work through internal systems established whereby each commission is a referral partner in specific areas of strength. The commissions are also working with other implementing partners identified in the public and private sectors as well as consultants to support project delivery particularly where there is low budget support from the GOK compared to the required staffing needs.

Furthermore an aspect of monitoring, evaluation and learning that has been recognized in this project is the quarterly joint review and reflection sessions that bring together the three commissions under the stewardship of UNDP with occasional participation of Finnish and Swedish Embassies. These have been very instrumental in identifying capacity gaps and devising solutions on how to address them in an efficient and timely manner.

## **Result 2: Capacity of Government Staff Strengthened to Apply a Human Rights Based Approach (HRBA) and Related Principles**

The MTPII for the implementation of Kenya's Vision 2030 provides for all government development plans (national and county level) to be consistent with the human rights-based approach (HRBA) to development. Furthermore HRBA should guide the implementation of policies and plans at all levels to ensure that the government is compliant with the principles of human rights and good governance. In this regard, the project intended to contribute to this result by strengthening the capacity of government staff at different levels through the provision of training on HRBA and related topics such as gender equality and administrative justice. Furthermore, the capacity of police and prison officers was to be strengthened through training and through feedback provided after prisons and police monitoring visits. In addition to training, relevant materials/tools/publications were to be produced and disseminated to reach government staff especially at the county levels to enable them to apply the HRBA to programming, budgeting and implementation. The publications would ensure that human rights principles, especially the principles of participation and accountability, are followed by duty bearers.

Accordingly, project interventions contributing to this result were mainly undertaken in 2013 and 2014, including: the development, publishing and dissemination of training manuals on HRBA; the conducting of HRBA training for public officers at the county level; the conducting of human rights training for police and prison officers; the facilitation of the review of PWDs tax exemption regulations; and, the facilitation of the review of PWDs Act of 2003. The project promoted the implementation of best

practices and standards in public administration through the Huduma Ombudsman Awards that has led to improved public service delivery by government agencies.

In order to motivate and reward outstanding public administration and service the CAJ, with support from the project, initiated the Huduma Ombudsman Awards to honor public servants and institutions that have consistently stood out in their performance, demonstrated innovativeness, responsiveness, and accountability in public service, and that have infused good governance principles and administrative justice standards in their work. The Awards Scheme is a key strategy that the Commission deploys to motivate and reward outstanding public servants to improve responsiveness and accountability in public service. Over 1500 delegates representing all levels of Government attended the event which was officiated by His Excellency President Uhuru Kenyatta on 14th May 2014. The event successfully promoted accountability, responsiveness and servant-hood in public service, and enhanced confidence in public service.

This project has enabled the commissions to build capacity of government staff drawn from ministries, learning institutions, parastatal bodies and other government agencies both at national and county level, including police and prison officers. So far, CAJ has trained 7,694, KNHCR has trained 1,392 and NGECE has trained 3,588 public officers. The categories of those trained were senior county officers, disabled persons organization/senior officers, political and church leaders, and youth on the need to appreciate the rights of persons with disabilities, women and youth. The table below is a summary of public officers trained by the commissions.

**Table 2.2: Number of Public Officers trained**

<b>Commissions</b>	<b>Number of public officers trained</b>
NGEC	3,588
CAJ	7,694
KNCHR	1,392
<b>Total</b>	<b>12,674</b>

The progress data reveals that efforts towards disaggregation by gender have not been given due consideration by the commissions and hence it is a challenge to know the extent to which trainings on HRBA have targeted males and females across the categories of institutions both at the national and county level. However, notwithstanding, the trainings have led to greater appreciation and integration of HRBA in various engagements and processes. For instance, according to the interview with the Kenya Forest Service (KFS) team, the trainings on HRBA have *“really contributed to better understanding and coordination between the KFS staff and the community living in forest areas.”* Furthermore, Community Forest Associations are *“more empowered on their rights and responsibilities.”*

In line with devolution, the commissions have made efforts in ensuring that county governments receive relevant capacity building and also consider HRBA in their operations. Continued training has ensured that county officials also integrate HRBA principles in county planning and development processes. For instance, HRBA induction has been carried out in 33 counties followed by human rights clinics and in all those counties HRBA has been embraced. In Busia County, while the County Integrated Development Plan (CIDP) to some extent addresses aspects of HRBA, the departmental plans have, to a larger extent, integrated HRBA in terms of actual planning, budgeting and service delivery. NGECE, in 2013, developed a *Guide for County Government Leadership: Integration of Gender and Inclusion in County Development* and this is used to monitor progress made in achieving the targets which are also included in the performance contracts.

Targeted trainings for county leaders and technical staff have also been undertaken to enhance knowledge and practical skills of integrating gender, non-discrimination, and human rights in planning, programming, budgeting processes, and formulation of county laws and policies. For instance, NGECE was able to train 47 county secretaries, 60 county executives in charge of finance and planning and gender affairs, and 47 county chairpersons of Maendeleo ya wanawake. To complement this, KNCHR has also trained non-state actors at the county levels on the application of HRBA to ensure civil society can make a meaningful contribution at the local level and contribute to the planning processes. This was evident from interviews with the Ecumenical Centre for Justice and Peace which has embraced HRBA in its operations, and is currently applying the same in their community level interventions in Laikipia and Kisumu counties. According to the Programme for Agriculture and Livelihoods in Western Counties (PLWECO) Programme Director, “HRBA forms an important aspect of our programming as we design and implement projects that aim at addressing poverty alleviation of the community in this region.” KNCHR’s plan is for this to be scaled up to other counties. By training civil society actors, the commissions have been able to build the capacity of rights holders to demand for the protection and fulfillment of their rights, and these can provide the support networks to vulnerable community members in the processes of seeking justice and redress where rights are violated.

Furthermore, NGECE is undertaking a review of the existing legislation and policies to enhance county capacities by reviewing laws which will help in integrating equality and inclusion, and to develop legislation that would guide the county assemblies in developing future laws to embrace equality and inclusion principles. This exercise involved visiting six counties, namely Kilifi, Isiolo, Nyandarua, Elgeyo Marakwet, Kakamega and Kisii counties. Based on the work of the commissions, the following achievements have been realized regarding the review of laws and/or policies; the Persons with Disability Act by Nairobi and Kericho Counties; County integrated and investments plans (by half of the counties); Affirmative Action Law in Kiambu County; Cash Transfer policy in Bomet County; Gender policy in Embu County; Health Bill which is under debate in Embu County; and, Alcoholic Drinks Control Act in Uasin Gishu County. This is complemented by CAJ’s efforts to recruit one county ombudsman though the plan had been to recruit five county ombudsmen.



**Figure 3:** County Secretaries at the NGECE Workshop to validate the Handbook on Gender and Inclusion

In an interview with the Kenya Forest Service (KFS) headquarters’ team of three (two females and one male) on the processes of integrating HRBA, they confirmed having been trained from the management level to rangers, and this, to a larger extent, has led to management support of HRBA in the KFS. As a



result, there is improved public participation and more women are increasingly taking up management positions. Furthermore, in collaboration with KNCHR, KFS has developed a HRBA guide together with a training manual and pocket booklet to be used by rangers and the community scouts to enable internalization of HRBA principles in their day-to-day operations as they interact with the community members. It is hoped that the gains made at KFS will be sustained through the signing of a MoU with continued support from KNCHR and the two other commissions for continued trainings and sensitization on HRBA as the sector is unique with various issues of relevance to be addressed using HRBA principles especially with the communities.

Efforts to promote crosscutting issues and HRBA are visible in the support to policy level (e.g. forest policy and legislation, NFP process) as well as KFS organization development (e.g. KFS Business Plan, KFS HIV/AIDS Awareness Programme) and local level interventions (e.g. forest enterprise development in ASALs and a PFM review).

The evaluation also determined that the three commissions have established partnerships with institutions of higher learning, notably, Kenya School of Government, Kenyatta University and Laikipia University for the integration of HRBA in the academic programmes. The three institutions have maintained key management and middle level staff, as well as some lecturers trained on HRBA, and there have been

In 2014 KNCHR explored new avenues to reach out to institutions of higher learning on human rights training. Student Leaders from Mosoriot Teachers Training College and Moi University were trained on human rights and HRBA. Furthermore an MoU was put in place with Laikipia University on building and strengthening of human rights education programme.

follow up interventions by KNCHR that have culminated into the signing of MoUs with Kenya School of Government (KSG) and Laikipia University College. In an interview with the Laikipia University's Dean of School of Humanities and Development Studies, it was established that the university has taken steps to integrate HRBA in the programme, and so far, lecturers have been inducted on the same. First year students have to go through the course on

HRBA as a common course. An important milestone was realized through the support from UNDP and KNCHR to conduct an audit of university policies with a view of integrating HRBA, furthermore in June 2015 the university opened the Human Rights Centre, an event presided over by the US Ambassador. The university is in the process of reviewing the curriculum so that HRBA can be fully integrated into the university's academic programmes.

Similar efforts have taken place at the Kenya School of Government (KSG) with the institution taking up HRBA in its academic programmes through strengthened collaboration with KNCHR. Efforts with the institutions of higher learning have the opportunity to reach more people and, with additional support, can be sustainable through multiplier effects in ensuring that a critical mass of graduates acquire skills and knowledge of HRBA and are able to apply the same.

### **Result 3: Capacity of State Actors to Understand Government Obligation with Regards to Economic, Social and Cultural Rights Enhanced**

The inclusion of economic, social and cultural rights in the Bill of Rights has brought about increased interest in ECOSOC rights and their implementation and monitoring. Despite the indivisibility of rights, focus has, in the past, been more on political and civil rights. The KNCHR strategic plan for the period 2013 – 2018 reflects this shift and provides for a more prominent role for ECOSOC rights. As work on ECOSOC rights is fairly new in Kenya, there was a need to develop standards for the constitutional Commissions to be better able to keep the government accountable. The NGEK was given a mandate to “work with other relevant institutions in the development of standards for the implementation of policies for the progressive realization of the economic and social rights in Article 43 of the Constitution and other

written laws.”<sup>3</sup> The project was meant to enable NGEC to facilitate the development of standards for the realization of ECOSOC rights in a selected area, and for KNCHR and NGEC to work together to improve awareness of ECOSOC rights and available redress mechanisms. As the time of evaluation, draft standards on the right to health had been developed and were being finalized.

KNCHR and NGEC have mandates regarding monitoring and advising the government on treaty obligations regarding compliance with human rights, gender and equality standards that Kenya has committed to on behalf of her citizens through international and regional human rights instruments. In this regard, the commissions have demonstrated progress through a number of platforms during the project period that not only have assessed the government’s level of implementation of the commitments in such treaties, but also increased awareness about the commitments and visibility for the technical capacity of the two commissions in this area. The evaluation has revealed that so far, Kenya has to a larger extent complied with the various treaty recommendations and on 25<sup>th</sup> June 2015 the Human Rights Council adopted outcomes from the Universal Periodic Review of Kenya with the President of the council concluding that out of 253 recommendations, 192 were accepted by Kenya and 61 noted. This progress has been a result of a number of processes that NGEC and the other commissions have engaged in alongside state and non-state actors.

For instance, in 2012 NGEC participated in the 5<sup>th</sup> Session of the Conference of State Parties to the Convention on the Rights of Persons with Disabilities. In 2013 Kenya’s Second Periodic Report on implementation of the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT) was due to be reviewed by the Committee against Torture. KNCHR played a lead role in informing the Committee on the Government’s adherence to the treaty obligations by providing a shadow report that incorporated the views of other non-state actors as well to supplement the official government report. After the concluding observations had been disseminated by the Committee, KNCHR organized a stakeholders meeting to develop a strategy to influence government actions for the implementation of the recommendations in the Committee’s Concluding Observations.

Furthermore, the project enabled KNCHR to play a role in taking forward the rights of indigenous people in Kenya through participating in the 53<sup>rd</sup> and 54<sup>th</sup> Sessions of the African Commission on Human and People’s Rights in Gambia in April and October through to November 2013 respectively. Through assistance from the UNDP project, KNCHR was able to produce an Annual Universal Periodic Report (UPR), a monitoring report that provides a general overview of the human rights status in the country. KNCHR was able to bring together stakeholders to contribute to the Kenya UPR review and to have representatives at the actual review session held during the Human Rights Council session in Geneva in January 2015. The shadow reports produced by KNCHR and other stakeholders are important as they give a more balanced view of the state’s achievements and areas where progress has lagged behind. The UPR is an important advocacy tool for the improvement of human rights in Kenya. In 2014 KNCHR compiled another important report to assess the level of insecurity in Kenya and the implications on human rights observance. The report brought insight on the state of the country’s risky security situation and highlighted the most recent and tragic attacks that the country has ever witnessed since independence. Advisories and press releases were issued by the Commission highlighting areas that can easily lead to human rights violations and how to address them even when the situation is volatile.<sup>4</sup>

In relation to women’s rights, NGEC took part in the 57<sup>th</sup>, 58<sup>th</sup> and 59<sup>th</sup> sessions of the Commission on the Status of Women (CSW) in New York in 2013, 2014 and 2015 and participated in the preparation and delivery of the country statement to CSW. Lessons learned from the 57<sup>th</sup> CSW session have been used to formulate programmes and strategies for eliminating gender-based violence in Kenya. NGEC joined the

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<sup>3</sup> The National Gender and Equality Commission Act, 2011

<sup>4</sup> Copies of the press releases and advisories to the Government of Kenya appear on the website [www.knchr.org](http://www.knchr.org)

government delegation to the 58<sup>th</sup> Session to report on the performance and progress of Kenya in achieving the MDGs for the benefit of women and girls. Using the findings, NGEC has advocated for strengthening the mechanisms for gender responsive budgeting at both the national and county levels. As a result of participation in the three consecutive sessions, NGEC, working with the two other commissions as well as other actors, has been able to spearhead development of the following key programmes and/or strategies; the Programme on equality and inclusion in the private sector, Gender and climate change, Not more than two-thirds gender principle, and Resolution 1325: Plan of Action for implementation of intervention towards promoting women participation in peace negotiation.

In the 2014/2015 reporting period, NGEC further participated in a number of key international and regional mechanisms aimed at monitoring and reporting progress on ECOSOC rights. The key one included 5<sup>th</sup> Session of United Nations Open Ended Working Group on Ageing (OEWGA) held between 29<sup>th</sup> July and 2<sup>nd</sup> August 2014 in New York. During the session, NGEC presented Kenya's Country position paper on older persons, and recommended for the need for a convention on older persons and the ageing. In October 2014, the Commission participated in the Experts' Group Meeting On Delivering On Human Rights and Social Inclusion in the Post 2015 Development Agenda: Equality, Quality & Accountability For Marginalized & Excluded Populations. The event was held in Madrid, Spain and NGEC presented a paper on using National Human Rights Mechanisms to hold the government accountable on realizing sexual and reproductive health rights.

In 2012, KNCHR developed 10,000 fact sheets focusing on ECOSOC rights to explain the links of ECOSOC rights with issues such as clean water and sanitation, and health. In 2013, KNCHR trained representatives of the Endorois and El Molo Communities to increase their knowledge and awareness of rights. In the same period, 226 young adolescent girls were sensitized on the role of culture and cultural institutions in promoting and protecting human rights. The young women were empowered with information to know their rights and to understand that cultural practices should never undermine the rights they have as individuals. During the review period, NGEC conducted an assessment of: a) the status of minority and marginalized groups and communities in the 47 counties in respect to access to education opportunities, bursary funds and employment, and b) assessed the level of integration of equality and inclusion in homes for older persons, and conducted an assessment in 11 counties on drivers of violence meted against older members of society leading to condemnation of communities approving the killing of old persons in Kenya.

#### **Assessment on violence against older persons**

In February 2014, the Commission executed a rapid assessment on violence against older persons in Kenya to inform legal and programmatic interventions by the National and County Governments towards protection of older persons' rights and privileges. The assessment was limited to four counties; namely Kisii, Murang'a, Narok and Tharaka Nithi. The findings indicated many cases of abuse of the elderly most of which go unreported. The places of violence and profiles of perpetrators makes it difficult for the older persons to report the vice or access social justice. Subsequently, the Commission published a report dubbed 'Whipping Wisdom' which enumerates recommendations towards the protection of the rights and privileges of older persons, mechanisms for guaranteeing social security, infrastructure for promoting legal obligations at the national and county levels, and influencing family members and private sector to increase their attention and investment towards aging.

Working with the private sector, KNCHR has made efforts to improve protection of ECOSOC rights through increased citizens' participation in issues of business and human rights during the review period. This has been achieved by monitoring the Lamu Port, South Sudan Ethiopia Transport Corridor (LAPSSET) and oil and gas explorations in Lamu County. As a result, citizens in Lamu are now



increasingly active in ensuring the LAPSET project and the oil and gas explorations are done in ways that uphold human rights and the principle of public participation.

As far as the realization of Rights to Health is concerned, in 2014 KNCHR developed an assessment tool on the core minimum standards on the right to health which was piloted and validated in Busia and NGEC initiated a process to develop standards for the realization of the right to health which will feed into KNCHR's assessment tool once completed. The NGEC also undertook an audit of the operationalization of the presidential directive for free maternal health care and it was established that proper guidelines do not exist for the implementation of the directive nor is it supported by a policy framework. This means that the directive is open to interpretation and is inconsistently applied at the ground level. Also, it is unclear how the directive is put in practice at the county budget/expenditure level. Important recommendations have been put forward for the development of a policy framework to guide the implementation of the directive.

Despite the policy gaps, this has to a larger extent been addressed both through counties' commitment and other initiatives like the Beyond Zero Campaign spearheaded by Kenya's First Lady aimed at reducing child and maternal deaths. Furthermore, the interview with the Busia County Executive Committee member in charge of Health and Sanitation revealed that sensitization of the health team – both at the county and sub-county levels – has led to improved public perception and ultimately impacted positively on access and utilization of health services by the citizens. Another remarkable achievement under this result is the involvement of NGEC in successfully lobbying the Kenya Revenue Authority to extend the tax exemption period for PWD from three to five years.

Recognizing that older people are also marginalized in economic, social and cultural services and, at the same time, are an excluded group, NGEC continued to advocate for improvements in the cash transfer programmes for the older persons as part of the government's social protection programmes, as a result of an audit and ensuing report on the issue. Various stakeholder forums have been conducted with public and private institutions on the rights of older persons. The reports on cash transfers and violence against the older persons, and the recommendations made, have contributed to an increased budget allocation to social protection programmes for older persons to 4.9 billion Kenyan shillings (Kshs.) in 2014 targeting 180,400 older persons. This is an increase from Kshs. 1.5 billion in the 2012/13 fiscal year and Kshs. 3.2 billion in the 2013/14 fiscal year.

In furthering the protection for the internally displaced persons, the KNCHR facilitates a monthly protection working group for internally displaced persons. Four forums were held in 2014 focusing on the Bill of Rights and internal displacement with 26 new partner organizations joining regional Protection Working Group for Internally Displaced (PWGID) forums. The forums deliberate the unresolved protection needs of the displaced persons and affected communities, as well as families likely to be displaced, and explore the possible collaboration with the chair of the National Consultative Coordination Committee for implementation of the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012. The KNCHR trained the working groups on the roles and responsibilities of the government and private developers in the case of forced eviction, and especially on the provisions of the IDP act. The Commission also disseminated a handbook on forced evictions in Kenya. Further work will be done to enact the IDP bill into law and the process is ongoing.

During the project period, KNCHR also enhanced human rights protection in extractive industries through various avenues including community engagements, providing advice to the government on the mining bill, and auditing alleged violations of human rights in limestone exploration activities by Athi River Mining Limited (ARM) in Ngaaie area of Kitui County. The activities addressed have helped to build the capacity of both rights holders and duty bearers. The integration of HRBA in the mining bill is expected to have long lasting impacts of protecting human rights in the extractive industry.

In ensuring increased citizen awareness on ECOSOC rights the KNCHR reached out to citizens with ECOSOC messages in 2014 and disseminated the draft National Human Rights Policy and draft National Action Plan on Human Rights in the coastal (Malindi) and Eastern (Isiolo) regions. The celebrations during International Human Rights Day (IHRD) in December 2014 and International Day in Support of Victims of Torture in June of the same years provided opportunities for a widespread campaign and lobbying on human rights with special focus on ECOSOC rights. Celebrations were held throughout the week, with various activities including a haki caravan passing along Nairobi East, Nairobi North, Nairobi West and Westlands districts. The caravan had stopovers to inform the citizens of the importance of the IHRD and their rights. Legal officers also gave sporadic legal aid during the caravan movements and stopovers. The celebrations also included a live broadcast on the current human rights situation in the country in relation to “Insecurity and Human Rights” moderated by Ken Mijingu (NTV). This culminated with the successful official launch on the state of insecurity in Kenya.

Based on the above interventions, it is worth noting that men, women, children, the disadvantaged and people with disabilities are participating in the project activities and this is likely to continue even after the end of the projects. In this sense, the abovementioned interventions provide an opportunity for sustaining the gains made in terms of realization of human rights and access to justice in Kenya

#### **Result 4: Strengthened Framework on Access to Justice at National and County Level Applying HRBA Approach**

In order to strengthen the legal and operational framework on access to justice in Kenya, the project

focused on replication of best practices in Court User Committees (CUCs), protection of human rights within the penal system through the creation and training of prison human rights officers. As such, in 2012 KNCHR was instrumental in documenting best practices with regards to CUCs leading to enhanced replication of best practices within partaking regions. KNCHR also helped in establishing new CUCs in courts, which did not previously have a committee in place. According to Mr. Adika, Deputy Court of Appeal Registrar in Kisumu, who is also a member of CUC, this has enhanced communication and strengthened the linkage between the prisons and the court thereby speeding up the process of access to justice, *“the committee members these days visit prisons and find out why certain cases are not brought to court and this has speeded up the hearing of cases.*

*The criminal cases which used to take long to be heard and prosecuted are now heard more quickly. Instead of taking months in the past they now take 2 weeks on average”.* KNCHR has also strengthened the formal justice system by supporting various Court User Committees around the country and by facilitating the sharing of best practices for replication and forums have been held in Bungoma, Winam, Nyando, Kibera, Maua and Tigania, Mombasa, Kilifi, Garsen and Voi Law Courts. Strengthening CUCs has resulted in increased coordination among stakeholders for achieving access to justice for the public.

##### **Court Users Committee**

In 2006, the Kenya Magistrates and Judges Association (KMJA) crafted the idea of establishing Court Users Committees (CUCs). The objective being to address several hardships that had been experienced by members of the public and judicial officers on judicial process. The concept of the CUCs is to bring together players in the administration of justice as well as the users of the justice system to address the problems of the sector such as complicated judicial processes and low public confidence.

The Kenya National Commission on Human Rights (KNCHR) as a National Human Rights Institution has an important role to play in ensuring access to justice. KNCHR is keen on partnering with other stakeholders in the justice sector to ensure that the right of access to justice is fully realized.

The project has strengthened KNCHR's complaints handling by increasing the capacity of their referral partners nationally on monitoring, reporting and profiling of human rights violations, as well as on complaints handling procedures. CAJ has increased their complaints handling capacity 1) *internally* through carrying out investigations and research on systemic issues, and 2) *nationally* by providing training for seven public institutions in Nairobi, Kakamega and Busia Counties on performance contracting, and being more responsive to citizens complaints.

The project has continued to strengthen KNCHR's complaints handling through regular referral partner meetings held nationally and regionally while also promoting integration of HRBA among the referral partners. Referral partner meetings were held in Tana River, Eldoret, and Nairobi, among others. In Tana River County, the meetings lead to the establishment of a working group/referral network. In Nairobi, key partners have joined the referral partnerships with The Office of the Director of Public Prosecutions and The National Transport and Safety Authority joining the partnership. The KNCHR continues the bid to involve other key partners, including CREAM, Pendekezoletu, National Land Commission, National Council of Persons with Disabilities, and the National Cohesion and Integration Commission to join the partnership. Through the referral partnerships, KNCHR was able to refer over 50 cases – the majority of which related to labor rights, legal representation and land cases to other actors in the referral partnership.

The three commissions under this project together with other constitutional commissions and independent offices are committed to public complaints resolution and this is an integral part of performance contracting. The process of public complaints resolution is led by CAJ working closely with the two other commissions and, according to the interviews with the Director of Public Service Management at the Ministry of Devolution and Planning, this has considerably improved public service delivery as the same is considered of the Annual Huduma Ombudsman Awards which provides motivation to various agencies in public service delivery. The Commission has also provided technical support to public institutions in establishing internal mechanisms for handling complaints. Spot checks on various institutions revealed the existence of functional complaints handling structures and feedback mechanisms. This is evident in the number of complaints handled by MDAs during the reporting period. Members of the public are now able to lodge complaints directly with the concerned institutions for redress. The Commission's address is provided for in their service delivery charters to enable members of the public to escalate their complaints in case of dissatisfaction. Furthermore, public officers have also come to appreciate complaints as an important form of feedback that enables them to build customer loyalty and gauge service delivery.

As far as judicial reforms are concerned, the project has strengthened formal and informal justice systems in various regions of the country. This has been undertaken by KNCHR through a training provided for 60 community elders (including 10 women) on how to infuse human rights and HRBA into the traditional justice system and alternative dispute resolution in which they play an important role. KNCHR, in collaboration with CAJ, intends to develop guidelines and regulations to improve the efficiency and effectiveness of the council of elders.

Under the project, capacities of penal institutions have been enhanced towards respect for human rights. Besides training provided on HRBA to prison officers (in result 2), over 22 prisons across the country have been inspected by the KNCHR in accordance with the Standard Minimum Rules. The first visits were followed up with outcome monitoring visits in which both junior and senior prison officials were assessed on the implementation of human rights principles and standards. Inmates were also engaged to establish the real degree of human rights compliance and the application of standard minimum rules in prison service. In the institutions inspected, there was a deliberate effort by the State to provide basic human rights for the inmates including food, accommodation, clothing, medical care, education, and vocational training. This has contributed to national efforts on enhancing the promotion and protection of human rights in penal institutes.

Furthermore, in 2012 the Commission influenced the creation of human rights desk officers at different police stations and prison facilities. In addition, 170 prison human rights desk officers' capacity was strengthened through training. As an indicator of success, the Kenya Prisons Service Headquarters set up a participatory M&E framework in which the Human Rights Officers in prisons will work together with KNCHR in data collection, analysis and change tracking. It is worth noting that in 2013 KNCHR visited and inspected 12 places of detention across the country to determine compliance with the national



**Figure 4:** CAJ Chairperson with Prison officers and inmates

and international human rights principles and standards. The first visits were followed up with outcome monitoring visits in which both junior and senior prison officials were assessed on the implementation of human rights principles and standards. Along with this, inmates were engaged to establish the real degree of human rights compliance and the application of standard minimum rules in prison service. This has resulted in improved compliance of human rights principles at the visited facilities.

In addressing systemic issues involved in service delivery with a view to recommending an appropriate remedy, the three commissions have carried out studies and published the same with a view of information sharing and, more importantly, for advocacy and policy influence towards this result. For instance, CAJ, as part of its integral process of evidence gathering, commissioned a number of research studies in 2014. These include: Investigations on Baragoi Police Operation; Investigations into Industrial Area Police; COTU vs NSSF abuse of power and maladministration; Investigations on Embu Land Case; Kisii Municipal Land Case; Investigations of Principal on abuse of power and maladministration, Ngara Girls School; and Prison warders case. The reports reveal the maladministration identified and collates the evidence examined. Recommendations were provided on a case-by-case basis and the CAJ is following up on their implementation.

Public interest litigation (PIL) has also been used by the commissions to influence the public agenda on maladministration and human rights. The CAJ participated in 13 cases of public interest litigation to advance constitutionalism and good public administration in Kenya. Notable cases include ones on NSSF and on IRA. The KNCHR also initiated 23 public interest litigation cases. This included cases such as one on Extra Judicial Killing by the state, by a GSU Police Officer. A team from the KNCHR traveled to Eldoret and Kitale to obtain court records from Eldoret Law Courts and finalize on filing of the Chemorei petition by obtaining an affidavit from the 3<sup>rd</sup> Petitioner and Speaking to Doctors who treated the 3<sup>rd</sup> Petitioner. The case is still pending in the court, but is an example of the KNCHR using public interest litigation to advance the human rights agenda in Kenya. NGEC has been involved in 22 PIL cases and so far five (5) have been concluded.

***Nairobi Industrial Court Constitutional Petition No. 23 of 2014, Severine Luyali vs. the Ministry of Foreign Affairs and International Trade & the Attorney General***

The Petitioner in this matter was a government employee in the Ministry of Foreign Affairs who had been stationed at the Kenya high commission in South Africa. At the end of her duty she applied for a one-year extension which was granted by the ministry, a few weeks later she was instructed that she had been recalled to the ministry and was expected to report at the ministry headquarters in Nairobi. She complained that such a recall was unfair since it was done without notice and contrary to the earlier directive of extension of her tour of duty which had made her commit to various engagements like the schooling of her children. The ministry had despite her protests threatened to terminate her services hence the petition. The matter was heard and determined that indeed the recall was unfair. She was given ample time to prepare for her returning to the headquarters.

The work of the three commissions in addressing this result has contributed to the following key achievements:

- i. Places of detention like prisons were dehumanizing before the project and the prison staffs were blocking reform. Due to the project interventions and sensitizations, this has changed and they are now championing it. That is because Police and Prisons staff members were trained on the Human Rights Based Approach to service delivery and they are now mainstreaming it in their work. For example, there is a human rights department in the Prison's services and this has contributed to national efforts on enhancing the promotion and protection of human rights in penal institutes.
- ii. The human rights policy is operationalizing the Constitution. Citizens are questioning the people and institutions responsible for providing human rights. Furthermore, the Ombudsman Committees have not only enhanced awareness and accessibility of the commission, but have also prompted the public to play an active role in demanding for accountability, thereby contributing to reforms in the public sector.
- iii. There is an increased engagement with GOK as far as the implementation of the Constitution is concerned and county level Human Rights Committees have been formed. Because of the shame that goes with the "exposure," public officers make an effort to operate within the law. Media-based advocacy has compelled compliance and speedy action from various public agencies. As a result, more citizens are accessing justice through their work.

**Result 5: Transitional Justice Processes Strengthened to Effectively Redress Historical Injustices**

In response to long standing historical injustices that remain unresolved, the project intended to make some contribution to address this result. It is worth noting that in 2012, the activities were limited partially due to the fact that some of the systems which were expected to be in place were not formed. For example, an expected report by the Truth Justice and Reconciliation Commission (TJRC) was not released and therefore a committee to implement report recommendations was not put in place. Nevertheless, the work on reparations was a good opportunity to ignite the debate on the truth, justice and reconciliation process in the country after the expectations of election violence victims' were not met by the TJRC Commission. For this reason KNCHR together with other partners such as the Kenyans for Peace with Truth and Justice (KPTJ) carried out some activities directly with the victims of violence. This included reparation forums reaching 300 people. Public forums reaching a further 300 members of the public were carried out to inform citizens of the on-going International Criminal Court (ICC) process.

The project provided support to KNCHR to take the lead in advocating for the release of the TJRC report which was handed over to the President of Kenya in May 2013. To achieve this result KNCHR involved all the key state and non-state stakeholders including the Article 59 commissions to put pressure on the

GOK to publish the TJRC report. In 2013, KNCHR engaged with victims of reparations during the public inquiry in the TJRC process and also at the dissemination of the TJRC report to ensure that the findings of the report are enforced. This included holding victim forums in 8 locations nationwide (Muranga, Kitui, Embu, Thika, Narok, Nanyuki, Isiolo and Nairobi) reaching 242 citizens (172 men and 70 women) to disseminate the report to the victims of reparations. KNCHR also established an advisory committee to the parliament on the proposed amendment to the TJRC report to prevent watering down of the report. Furthermore, NGEK carried out an audit of community perception on land use among the marginalized groups mentioned in the TJRC report in Kitui and Isiolo, together with the National Land Commission. In 2014, the NGEK continued work to address issues in relation to community perception on land use and natural resource management among marginalized communities mentioned in the TJRC report. As a result of these efforts, the majority of secondary victims of torture who filed compensation cases in courts are being awarded compensation. However, the commissions have taken cognizance of the fact that many of the survivors have not received their awards and therefore further consultations are ongoing to unlock the gridlock.

As a result of this commendable work, KNCHR was able to attract additional resources from GIZ and OHCHR to work with several civil society actors and the commissions to develop a summarized (popular version) of the report for ease of reference, access and dissemination. KNCHR, working closely with NGEK, reviewed the legal framework and submitted recommendations for the review of the TJRC Act. By the end of the project period the Bill introducing amendments to the TJRC Act was still pending. KNCHR has continued to lobby for the implementation of recommendations from the TJRC report and has provided forums for citizens, especially survivors of injustices, to present their demands to the government. An immediate output of the forums was an increase in the number of victims who have filed cases in court for redressing the historical injustices. The KNCHR, with its partners on transitional justice simplified the report released by TJRC in 2013 and has been engaging in disseminating it to victims in various places. A hallmark decision was taken by the government to establish a TJRC Inter-Agency Implementation Committee, which brings together state agencies and Civil Society Organizations working on transitional justice.

This establishment cements the gains KNCHR has made since the mobilization and empowerment of victims and survivors process, the monitoring of the forums, and post TJRC forums. Being part of the Committee, KNCHR has a unique opportunity to positively influence the Committee to ensure that the voices of the victims of historical injustices are not lost. It also gives the civil society groups a launching pad for further advocacy since there will be enhanced synergy among key interested actors. The committee will, among other duties, oversee the full implementation of the recommendations of the TJRC report and, therefore, ensure access to justice for victims of historical injustices is realized. Building on the value added by the two commissions, this is an opportunity to use their complementary strengths in the next processes.

In partnership with the national land commission, NGEK sought to address some of the injustices related to land listed and documented in the TJRC report. This includes the emerging exclusion of many communities due to mass mineral deposits or conflicts due to scarce resources including natural resources. The report covered the Eastern region with coal deposits (mui belt), Northern Eastern region (Isiolo) marked for ultra modern development including construction of airports, and Kwale region with rich deposits of titanium. In 2014, the NGEK continued work to address issues in relation to community perception on land use and natural resource management among marginalized communities mentioned in the TJRC report. The report previously produced was widely disseminated to counties with the county governments and with the communities in community forums.

KNCHR continues to lobby the government to recognize the human rights violations on people and communities over the years including lobbying for the Nyayo House torture cells to be converted into a



memorial. Therefore, this remains a work in progress. In a nutshell, the project support under evaluation ensured that the commissions kept the implementation of the TJRC report on the national agenda. Despite the challenges that have led to slow implementation of planned interventions under this result, the table below demonstrates some work that has been done so far.

**Table 2.3: Commissions' Role in Transitional Justice Processes**

Indicators	Progress to date
1. No of victims reached through victims forums	953
2. Action framework/ strategy in place following up the publication of the TJRC report in May 2013	KNCHR organized county forums targeting county government officials and victims groups in 30 counties NGEC conducted an audit on land use and natural resource management, and held dialogue meetings with the council of elders in Migori and Kisumu counties on the need to embrace formal justice systems in regards to sexual and gender based violence.

#### **Result 6: Capacity of State and Non-State Actors Enhanced to Deliver on Their Human Rights Obligations**

In achieving this result, an important aspect of the project was in the mainstreaming of the HRBA into national development planning. In 2012, both the Government and the United Nations in Kenya went through the process of developing the Vision 2030 Medium Term Plan II (2013-2017) and UNDAF. In accordance with the Constitution, the Government of Kenya aims to have the MTPII embed the principles of HRBA as well as have a monitoring framework that adopts a HRBA.

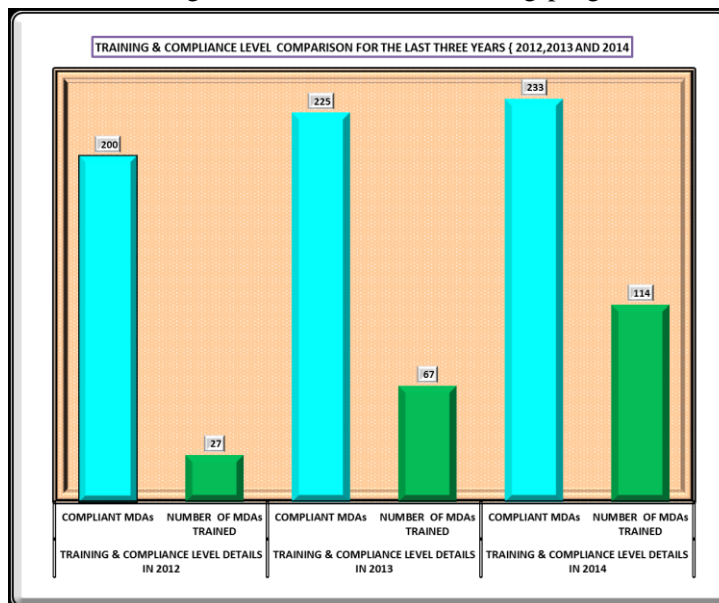
To this end, the project supported the training of 12,674 government officers both at the national and county levels in various departments including the very critical directorate on Monitoring and Evaluation in ensuring that MTPII indicators are rights based. The Government fully adopted HRBA in the planning process. All the 19 sector working groups that were involved in the MTPII development had a KNCHR representative that ensured that these sectors adopt a HRBA. Through a separate but related initiative the project supported the development of a Human Rights Implementation Guide that would inform all public institutions on the application of human rights in their respective day-to-day activities. KNCHR has been able to mainstream disability rights and those of the vulnerable by the state and non-state actors. This has been done through regular disability monitoring visits in government offices, public and private offices, the judiciary, and, churches, among others, to check compliance with the human rights standards as stated in the Convention on Person with Disabilities (CRPD) and other legislations on disability.

Similarly, over 700 members of the public have been sensitized on the rights of persons living with disabilities (PWDs). About 800 IEC materials on the same have also been produced and disseminated. As a result of these, there have been reforms witnessed in handling PWDs. For instance, some government offices have begun to comply to ensure that PWDs can access these facilities. A case in point is *Paul Anupa vs. Judiciary* where, with the input of KNCHR, the judiciary was directed to put up ramps in the court premises to enable persons with physical disabilities to comfortably use wheelchairs.

In 2013, NGEK initiated work in equality and non-discrimination in the private sector through conducting a situation analysis, establishing networks and conducting a public enquiry on complaints emanating from the private sector. This promoted the participation of the marginalized communities in the land reform process. Evidently, during the evaluation process the team observed efforts made by NGEK to ensure that

entrance to the NGECE regional office is disability-friendly as ramps have been installed next to the staircases.

After the Huduma Awards in May 2014, the CAJ received numerous requests from government ministries, departments and agencies (MDAs) for capacity building on issues of maladministration, service delivery and complaints management. The CAJ organized an extensive training programme and reached 1,930 public officers representing 128 government agencies (mainstream ministries, state corporations, tertiary institutions). After the training, the MDAs have an improved capacity to respond to complaints from the public, to address the concerns, and to report to the CAJ through the performance contracting system. The CAJ also trained 60 community radio journalists on maladministration issues to be able to report on them correctly. As a result, various radio stations (e.g. KBC Radio with national coverage and IQRA FM with coverage in Nairobi, Central and parts of Eastern regions) have offered CAJ opportunities for free radio talk shows on the major thematic areas of the Commission.



**Figure 5:** Comparative analysis of complaint handling training and compliance level of MDAs for last three years (2012, 2013 & 2014)

The NGECE also conducted training of the MDAs on how to report against gender mainstreaming in performance contracting. As a result of the support provided by NGECE, monitoring government performance on gender, equality and inclusion in Kenya has improved. In 2014, the gender mainstreaming indicators used in government performance contracting have been broadened to measure the progressive realization of equality at the process and outcome level as compared to the past generation of indicators which measured mainly inputs and processes. This has improved the quality of reporting on gender mainstreaming from government ministries, departments and agencies.

In improving women's political participation through furthering the two-thirds affirmative action agenda, the NGECE was selected to chair and coordinate the committee which included members from all key stakeholders including IEBC and the Gender Directorate. The seed funding through the project enabled the NGECE to acquire further support from development partners. Through the analyses, the evaluation team consolidated the ideas and developed a zero draft framework incorporating eight (8) possible options with their constitutionality and viability. A meeting with the National Assembly Committee on Justice and Legal Affairs indicated the members leaned towards a constitutional amendment to anchor the two-thirds gender principle. Two preferred framework options were forwarded to the Attorney General (AG) for the AG's office to develop into a framework to be put in place before the August 2015 deadline. The process is still ongoing after an extension of the deadline by the national assembly.

The private sector has a wealth of experience in programming around human rights principles in business. However, their effort in addressing issues of inclusion and equity is disjointed and less systematic. In 2014, the NGECE tapped into the wealth of experience existing in the private sector in the field to institutionalize a framework of increasing recognition of critical issues and gaps on equity and diversity



so that the private sector can strategically implement and raise the bar on the same. Partnerships were created with key private sector companies including Safaricom, Nation Group and Equity Banks. The NGECE conducted a gap assessment on equality and inclusion in the private sector. As a result, a draft tool kit has been produced with monitoring minimal indicators of equality and inclusion in the private sector. The NGECE also established an incentive scheme on compliance with principles of equity and inclusion in the private sector.

Preliminary findings show that, although the private sector is addressing the needs of SIGs, the participation of SIGs in the workforce is dismal especially the participation of the persons with disability. Few companies have adjusted their structural infrastructure to cater for the needs and rights of PWDs, older members, and minority groups. The affirmative action programmes and actions are not a performance factor in the private sector, however there are multiple forms of affirmative action exercised. There are limited interventions for older members of the society in most spheres of the private sector such as product development, innovation, and investment. Some have elaborate social programmes for the old

A framework with minimum standards for equality and inclusion in the private sector is also available. NGECE developed this framework with inputs from KEPSC, FKE and associations of various private sector groups including the bankers' association, manufactures, among others. The framework identifies eight (8) key parameters for measuring compliance with equality and inclusion principles in the private sector workforce distribution, promotions and retention, representation in boards, and capacity development of the workforce. Study findings suggested that the private sector is becoming more responsive to issues of equality and inclusion. The adherence to provisions is largely documented in company manuals and policies. Further, the Capital Markets Authority, the regulator for the publicly quoted companies in Kenya, provides NGECE with quarterly reports on the representation of women, youth, PWD in the boards, and management (Chief Executive) of these companies. A similar initiative was established with the National Non-Governmental Organization Council to report to NGECE on representation of SIG (special interest groups in boards and management of none state actors).

In an effort to improve accountability by state and non-state actors, in the year 2014 the NGECE has carried out various audits and public enquiries to dig deep into issues of inequality in Kenya and to provide recommendations for corrective action. These have included an audit on the emerging perception on exclusion of the boy child, an audit of private owned drug rehabilitation centers, and a public enquiry on teenage pregnancy in Kenya. *The audit shows the extent of discrimination of the boy child and increasing inequities affecting the boy child. For example in some schools the dropout-rate for boys in upper primary school levels was 30% or more. Key drivers for marginalization of the boy child were established and included: legal and policy frameworks; cultural and tradition factors; perceived poverty; dimensionality of development programmes; contemporary socialization processes; and, family and parent roles.* The assessment on exclusion of the boy child has heightened national and county leadership and government to focus on boy child and call for programmes to protect the rights of the boy child.

The audit of privately owned drug rehabilitation centers was undertaken when Kenya lost more than 300 persons in alcohol related incidences. The audit has contributed to the following: proposed increased powers of The National Authority for The Campaign Against Alcohol (NACADA) to have an inspectorate department; increased allocation of funding to NACADA; county governments and a NACADA improved partnership to construct more drug rehabilitation units in sub-counties; Increased number of counties legislating laws and policies to curb illegal alcohol drinks e.g. Nairobi county; and, an improved strategic partnership between Kenya Bureau of Standards, NACADA, private sector, and bar owners towards curbing the high leakage of unlicensed alcohol drinks in the Kenyan markets, ascertain

contents by volume of ingredients of alcoholic substances before licensing and mitigate consumption of alcohol among children. The audit report was completed and shared with key stakeholders who include non-state actors and state actors such as Ministries of, Health, Planning and Devolution, and NACADA, among others. At the time of evaluation, the public inquiry on teenage pregnancy in Kenya was still on-going but has already led to the establishment of a multi-sectoral national mechanism for monitoring child rights' protection at both the national and county levels. The inquiry should be completed before the end of 2015 and the report published soon after.

As far as mainstreaming disability rights by the state and non-state actors is concerned, the NGEC carried out county-based community sensitization and public advocacy programmes on the representation of persons with disabilities. The forums revealed a low level of understanding and awareness on the role of special interest groups' representatives in county assemblies and that rigid cultural practices and norms that affect the participation of vulnerable groups, especially PWDs, in the development agendas in some of the counties. The NGEC recommended that there will be further capacity building of PWD's representatives and further sensitization of communities on the value of PWD's engagement in all development aspects in their societies, the process is ongoing.

The NGEC is also lobbying for the amendment of the political parties Act 2012 and the elections Act 2012 to enhance participation of PWD in political agenda and development. The KNCHR continued activities on the legal capacity of PWDs. A report was published on this in March 2014 with key recommendations for state and non-state actors on the improved legal capacity rights of PWDs. Forums were held to build capacity on the same and follow up meetings have been held on implementation of specific recommendations. The KNCHR also participated in the 7<sup>th</sup> session of the Convention for the Rights of People with Disabilities (CRPD) state parties and compiled a report on national monitoring and implementation of the CRPD (Article 33 of the CRPD).

The table below is a summary of the Commissions' contributions towards the result across respective indicators.

**Table 2.4: Commissions' role in enhancing capacity of state and non-state actors on their human rights obligations**

Indicators	Status to date
1. MTPII sector plans integrate HRBA	KNCHR is represented in all the 19 sector working groups of the MTPII
	NGEC has made the following progress; i) Under the Equality and Inclusion Project, the NGEC awarded companies that had integrated the principles of equality and inclusion in Human Resource Management and Leadership and Management. ii) Audit of cash transfer programme to vulnerable groups iii) Drug rehabilitation centers audited to determine equality and inclusion
2. No of statutory reports submitted on global human rights commitments	22
3. % level systemic business related violations	Integration of the principles of equality and inclusion in the private sector
4. Sector specific monitoring frameworks in place	KNCHR is represented in all the 19 sector working groups of

Indicators	Status to date
	the MTPII and review of the document
	NGEC has developed; i) National multi sectoral M & E framework towards prevention of and response to SGBV developed. ii) Framework for monitoring equality and non-discrimination in public and private sector
5. Sector specific standards developed	KNCHR has made the following progress: 1. Training of members of the M&E Directorate of the Ministry of Planning aimed at infusing HRBA principles into the development of MTPII 2. Representation of the commission in all 19 sector specific working groups 3. Commission's participation in strengthening the indicator framework of MTPII
	Draft standards on the rights to health already developed by NGEC

### **Result 7: Electoral Processes Monitored with Respect to Abuse of State Resources, Engagement and Participation of Women, Youth and Other Marginalised Communities**

NGEC and CAJ both conducted election observation and monitoring activities during the March 2013 elections. NGEC monitored the process from the perspective of gender equality and non-discrimination to ensure special interest groups (SIGs) were fully involved, and encouraged to participate in the election process. Altogether, 181 electoral process monitors were trained and placed in 47 counties. NGEC also supported IEBC with voter literacy programmes with a focus on SIGs to ensure these marginalized groups were adequately informed of their rights as voters, and aspirants for the 2013 elections. NGEC monitored then IEBC preparations for conducting the elections through monitoring the political parties' nomination process and conducting a simulation of a voting exercise in readiness for the elections. A monitoring report was published with observations on the challenges that especially women and PWDs faced during the different phases of the election process. Recommendations were made to IEBC and other relevant stakeholders to ensure elections in the future are more inclusive and facilitate the participation of all groups.



**Figure 6:** Electoral Process Monitor during 2013 General Election

CAJ carried out election monitoring from the perspective of the use of state resources during elections. Various observations were made on how state resources were used during election campaigns against election laws. For example, politicians used state vehicles to attend campaign meetings even through state

resources cannot be utilized for political campaigning. The Elections' Observation and Monitoring Report, 'Championing Values in Hard Times' elicited positive responses by a number of institutions to whom recommendations had been made. The Independent Electoral and Boundaries Commission (IEBC), for instance, commended the commission for the good work, acknowledged that the report is an accurate documentation of the electoral process and promised to act on the recommendations of the commission to the IEBC. Other offices that have acknowledged the report include the Office of the Attorney General, the Clerk of the National Assembly, the Commission on Implementation of the Constitution (CIC), and the Kenya Human Rights Commission (KHRC), as well as civil society.

NGEC was enjoined in a matter on determination on whether realization of the not more than two-thirds gender principle in the national parliament was progressive or attainable in the 2013 elections. Further NGEK petitioned IEBC on failure to supervise the elections for the special interest groups as provided for

Before, during, and after the March 2013 elections NGEK examined the extent of integration of principles of gender equality and non-discrimination in the electoral process, and evaluated the participation of special interest groups, especially women and PLWD. A report was published with recommendations to IEBC and other stakeholders for addressing the gaps which were identified and which presented challenges to SIGs to participate fully, and with dignity, in the election process.

The election monitoring activities led NGEK to challenge the adherence of political parties with article 177 of the constitution on seats reserved for the special interest groups. Because of the action taken by NGEK through court, 61 PWDS, 632 women, 66 youth's and 19 persons from the marginalized communities were nominated to county assemblies, who would have otherwise missed the opportunity. NGEK election activities therefore contributed substantially to increased representation of SIG at political decision-making levels.

in Article 90 of the Constitution among other omissions including failure to publish names of nominated members after elections representing the special interest groups. The journey towards the realization of the not more than two-thirds gender principle in political representation received a major boost after President Uhuru Kenyatta, in September 2015, officially unveiled the national multimedia campaign dubbed Tubadili, *Tusitawi Pamoja* – a Swahili rallying call for partnership between men and women to promote sustainable development. The campaign is part of a broad strategy to lobby for the passage of the Constitution of Kenya Amendment Bill No. 4 of 2015 which provides an elaborate formula that will ensure that at any one time Parliament is constitutionally constituted as per the not more than two-thirds gender principle. The campaign also seeks to promote behaviour and attitude change among voters to appreciate the economic value of electing women in key leadership positions.

Speaking during the event, President Kenyatta reiterated his government's commitment to the fidelity of law and the full implementation of the Constitution. *"As President, it is my obligation to protect the Constitution of Kenya. That means defending among others the provisions on gender equality."* The President said Kenya made a deliberate decision to break away from the old habit of exclusion by embracing the rights of women in equal participation in their governance and development processes. The UNDP project support contributed to this achievement and, in the process, greatly profiling the NGEK, its unique mandate and the

urgent need to get the support of the President and the Parliament of Kenya to pass the crucial Bill so that there is no crisis in the 2017 elections as was the case in 2013.

## 2.3 Efficiency

### *Project Structures*

The project had a number of structures that facilitated the coming together of the different actors that were involved in the project design and redesign, harmonization of annual and quarterly plans to identify synergetic opportunities, and minimize possible areas of conflicts and duplication of efforts. The

structures included the Project Steering Committee that brought together the leaders of the three commissions (Chief Executive Officers) and the Focal Point officers. The Committee (once its role and mandate was defined) held meetings regularly to ensure that all actors remained focused on the overall goal and objectives of the project, and that each commission remained accountable for the commitments made through its approved work plans and budgets. At this level, UNDP and the Commissions were able to negotiate changes in the funds disbursement procedures to minimize on bureaucratic bottlenecks in order to facilitate quick disbursements of funds directly to each of the Commissions (instead of the earlier arrangement where funds would be released to KNCHR and then later KNCHR would transfer the portions for the two other commissions – CAJ and the NGEC to their respective accounts). This was because the project was initially designed with only one commission as the implementing partner.

Furthermore, there was a functional Project Technical Committee (PTC) in place, composed of the focal point officers and senior technical staff members drawn from each commission plus the Governance Expert from UNDP. The Committee was tasked with ensuring solidarity in strategizing at the national level, sharing lessons learned and best practices, and harmonizing programme activities to minimize duplication.

### ***Provision of Technical Assistance***

UNDP provided technical assistance to the PTC to ensure that the responsible staff members of the commissions were able to meet the planning, reporting and accountability requirements of the project. UNDP also provided support in developing the content of the tools used in training staff from the commissions on mainstreaming gender in development programmes and integration of the human rights-based approach in all aspects of their work. The team at UNDP built the capacity of the financial management staff and those responsible for the monitoring and evaluation function in the three commissions to not only strengthen the internal government systems of accountability, but also generation of reliable data and information on the project's performance and outreach. UNDP also participated in key activities carried out and made strategic contributions in those areas for the strengthening of overall results. An example of this is UNDP's participation in the strategic planning processes and contributions to shape the outputs.

### ***Establishment of Joint Regional Offices***

The three commissions made a strategic decision to establish joint regional offices in Mombasa and in Kisumu. This factor contributed positively to sharing of resources and applying the available resources through the project in an efficient and sustainable manner. The arrangement also made it easier for the public to have access to the services provided by the three commissions from the one-stop center. However, the limiting factor in this arrangement is that, despite the sharing of offices and/or operating in the same regions, the implementation of the approved work plans for each commission was done independently and this, to a certain extent, inhibited optimizing the contributions towards the project outcomes at the decentralized level by the three commissions.

Additionally, there is no evidence of a structured Project Technical Committee at the sub-national level compelling the staff members of the three commissions to meet regularly to address a common agenda and neither is it a requirement in terms of their performance targets. Having a sub-national PTC, the staff members interviewed in Kisumu indicated, would have facilitated the process of identifying opportunities for strategic collaborative actions for optimal results considering the resource limitations each commission has to grapple with to deliver on its mandate.

### ***Technical expertise to support programme delivery***

UNDP was able to provide UN Volunteers to address some of the staffing gaps in CAJ and the KNCHR and this brought relevant expertise including Constitutional and International Law, Legal Research, Human Rights, Governance and Access to justice. However, the NGEC did not take advantage of this

facility mainly due to the fact that the critical staffing gap was at the senior level which requires immediate attention by government to make an exception on the freeze on recruitment to enable the NGEC to recruit at least three of the five Directors needed to head the Departments at the National Secretariat. Without this critical leadership team needed to work with the CEO, it is not possible for the NGEC to effectively deliver on its mandate of addressing the human rights issues of the most vulnerable and marginalized in society. However it is worth noting that NGEC had a UNV to help establish the resources center/library to facilitate the work of the Commission.

### ***Efficiency of Resource Utilization***

The original project document for the “Support to the Realization of Human Rights and Access to Justice in Kenya” was agreed upon at the end of 2011 by UNDP, the Kenya National Commission on Human Rights, and the Ministry of Finance. The project was set for a three-year period from 2012 to 2014. The proposal was updated in 2013 with key revisions to the project as approved by the Project Steering Committee (PSC). The updated project proposal was supplemented by a two-year annual work plan (for 2013 and 2014) and the budget for the period 2013-2014. This budget had a funding gap for this period in the amount of USD 3.9 million (U.S. \$ three million nine hundred thousand, an equivalent of KShs 390 million). The Finnish Government provided an additional €2 million (U.S. \$ 2.3M, an equivalent of KShs 230 million) for the funding gap, the first allocation of which was provided in September 2013.

To ensure efficient utilization of the project funds, efforts were made to reduce the bottlenecks in the disbursement procedures. Secondly, UNDP provided technical support in terms of facilitating the direct procurement of goods and services. The submission of quarterly plans, accountability reports (both narrative and financial reports) facilitated close monitoring of the project implementation by UNDP. Through the PSC and PTC it was possible to discuss the observations, lessons and experiences in order to promote efficiency in the utilization of the resources available to the commissions through the project.

Some evidence of financial contribution emerged from the discussions with the commissions. The following are some key examples:

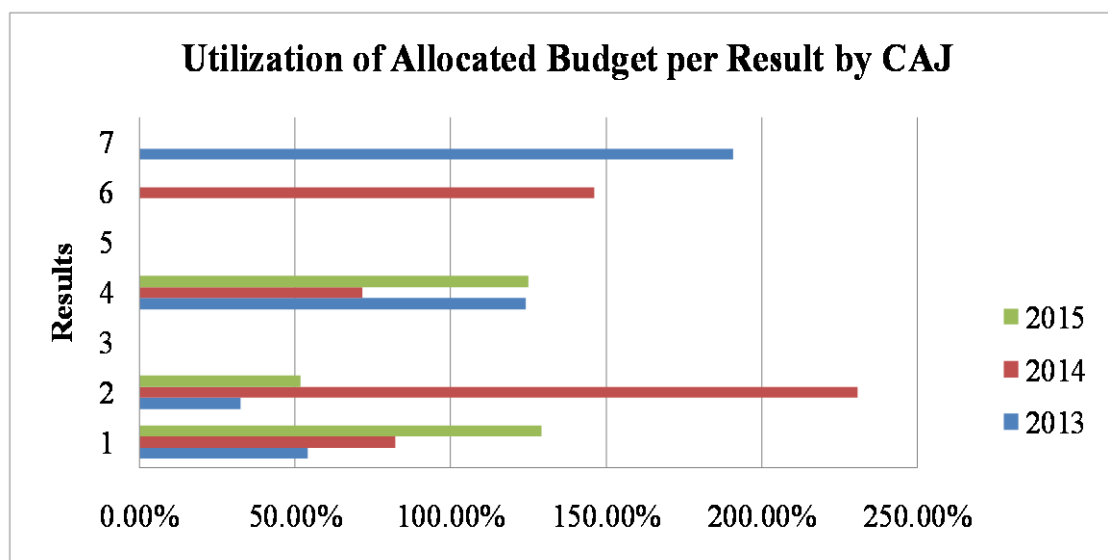
- Interviews with stakeholders provided evidence that GOF/GOS/UNDP funds have contributed to ensuring more timely implementation and delivery of planned interventions among the commissions. For instance, representatives of the CAJ shared that project funds have allowed the Commission to improve its programme delivery by about 90%; developed their Strategic Plan; strengthen legal frameworks; and expand their engagement with the judiciary and parliaments on issues of access to justice. Interviewees also explained that due to this financial support, the CAJ has realized substantive “improvements [in their] complaints management systems [and has] become involved in public interest litigation.” Another CAJ respondent stated, “The project helped in monitoring elections in the 47 Counties.”
- Interviews with CAJ representatives also indicated that project funds have also directly contributed to the CAJ's "increased branding and visibility of the Commission's [support in the areas of] human rights and access to justice." Further, interviews with the CAJ indicate that as a result of the project's financial support, the Commission was able to “develop the Commission's website, [and] purchase field cars that were essential to supporting programme work.”
- The seed resources from UNDP to NGEC have seen the Commission expand its resource base and attract funding from other development partners. For instance, the NGEC-GOK budget increased by ten percent between 2013 and 2015. In the same period, NGEC received resources from UN Women in 2014 and 2015, Norwegian Embassy in 2014/15, and USAID and DFID through their local implementing partners in 2014/15, as well as the Ford Foundation. These funds supplemented GOK and UNDP's available resources.

However, there are still noticeable funding gaps both between the commissions as well as between each output. While the CAJ allocated significant funds to Results 1, 2, 4, 6 and 7, the funding for Results 3 and

5 (“Capacity of State Actors to Understand Government Obligation with Regards to Economic, Social and Cultural Rights Enhanced and Transitional Justice Processes Strengthened to Effectively Redress Historical Injustices”) was non-existent, as indicated in the table below. This has resulted in the CAJ allocating and utilizing more funds for the attainment of the other results. However, the activities associated with 3 and 5 have not been realized as of yet due to an insufficient allocation of funds.

**Table 2.5: CAJ Budget Allocations vs. Expenditure per Result 2013-2015**

Result	2013		2014		2015	
	Budget	Expenditure	Budget	Expenditure	Budget	Expenditure
1	11,488,000	6,201,358	2,335,537	1,920,885	1,654,000	2,136,350
2	500,000	162,400	500,000	1,155,023	4,789,700	2,476,465
3	-	-	-	-	-	-
4	7,000,000	8,687,898	1,384,742	991,906	2,800,000	3,500,278
5	-	-	-	-	-	-
6	-	-	576,000	841,538	-	-
7	4,000,000	7,635,450	113,420	-	-	-



**Figure 7: Utilization of allocated budget per Result by CAJ**

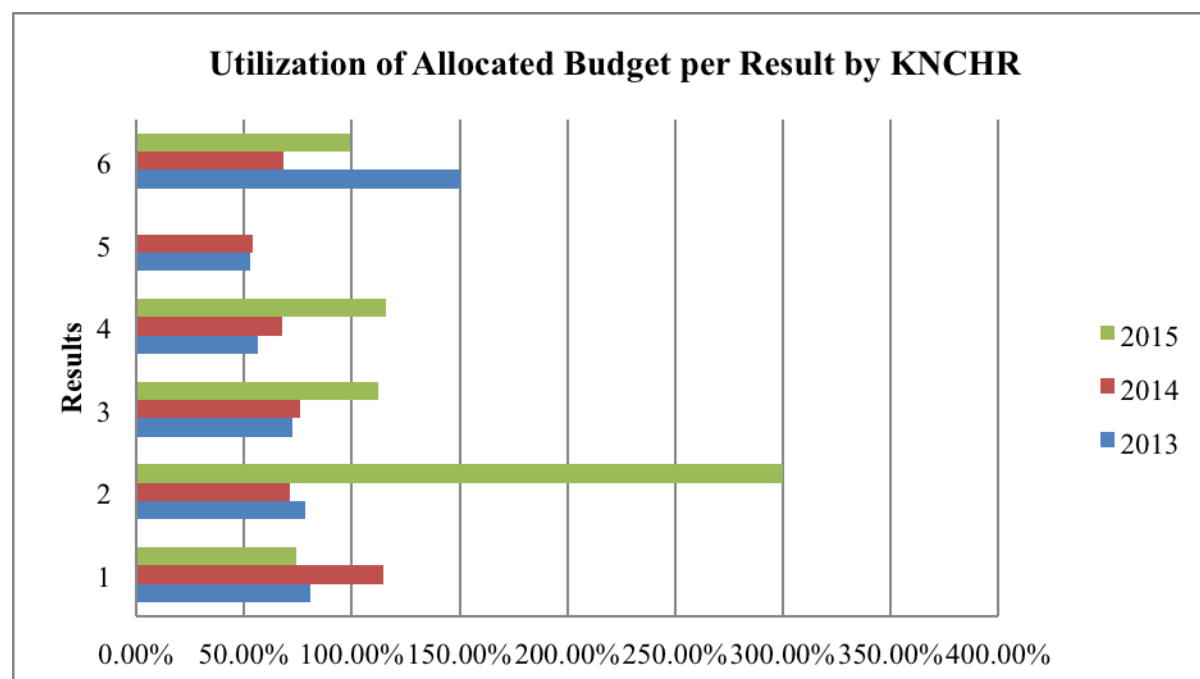
While the CAJ had minimal budget allocation for activities under results 3 and 5, the KNCHR’s budget allocation did not include any funds for result 7 (“Electoral Processes Monitored with Respect to Abuse, State Resources, Engagement and Participation of Women, Youth and other Marginalized Communities”). As a result, KNCHR did not (based on the data provided) report any achievements associated with that result throughout the programme period. The KNCHR, however, did provide



sufficient funding for all of the other six results, and as depicted below, increased or maintained their funding for each of the outputs over the three-year period.

**Table 2.6: KNCHR Budget Allocations vs. Expenditure per Result 2013-2015**

Output	2013		2014		2015	
	Budget	Expenditure	Budget	Expenditure	Budget	Expenditure
1	7,525,060	6,100,681	4,645,801	5,328,438	6,000,000	4,441,215
2	1,486,362	1,165,817	7,740,439	5,527,042	400,000	4,667,081
3	2,742,067	1,981,783	5,180,738	3,946,356	1,500,000	1,680,391
4	6,788,782	3,812,126	11,629,813	7,849,941	1,350,000	1,565,517
5	1,156,600	614,000	1,753,835	946,495	700,000	-
6	-579,889	870,725	813,550	557,156	500,000	495,123



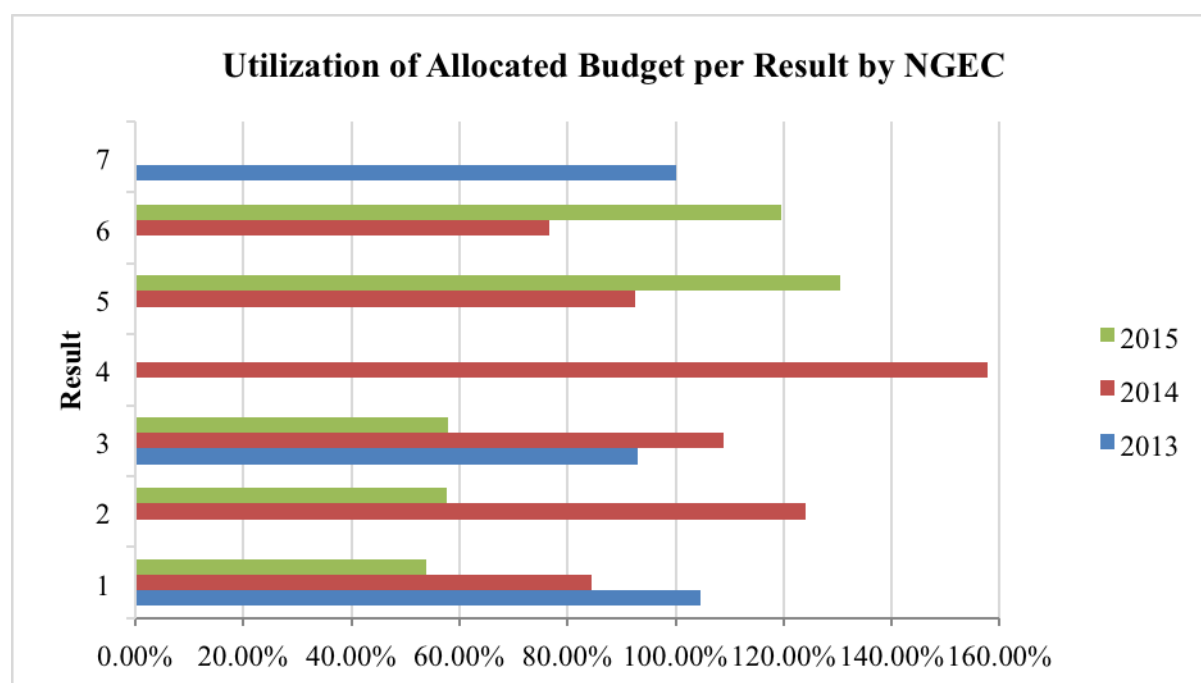
**Figure 8: Utilization of allocated budget per Result by KNCHR**

Finally, based on the trends, the NGECE allocated funds in an inconsistent manner. The NGECE was only focused on allocating funds for results 1, 3, and 7 in 2013. However, it increased its budget allocation to cover all but result 7 in 2014 and 2015. The amount budgeted per result per year also fluctuated with a heavier financial emphasis on Results 2 and 3 in 2014, and 5 and 6 in 2015. Overall, the NGECE utilized their budget allocation with moderate efficiency throughout the project period due to the fluctuations in budget allocation per result each year.



**Table 2.7: NGECE Budget Allocations vs. Expenditure per Result 2013-2015**

Result	2013		2014		2015	
	Budget	Expenditure	Budget	Expenditure	Budget	Expenditure
1	\$3,000,000	\$3,140,412	\$282,915	\$238,958.96	\$2,500,000	\$1,345,263
2	-	\$49,200	\$809,700	\$1,814,461	\$1,000,000	\$576,985
3	\$3,393,123	\$3,152,562	\$3,072,330	\$3,404,599.40	\$3,500,000	\$2,022,760
4	-	-	\$637,177	\$1,642,748.91	\$4,700,000	\$4,852,133
5	-	\$1,042,692	\$1,172,750	\$1,085,000	\$700,000	\$913,239
6	-	-	\$9,515,440	\$7,304,544	\$500,000	\$598,300
7	\$19,392,525	\$19,524,045	-	-	-	-

**Figure 9:** Utilization of allocated budget per Result by NGECE

The above table and graphs, which highlight the utilization rates of each commission per result, demonstrates each Commission's varying focus and goals throughout the project period.

Overall, the evaluation found that budget allocation was utilized at a mixed efficiency (during the project period) in attaining the seven results. Financial implementation rates (FIR) have provided the evaluation with a proxy indicator for the level of efficiency UNDP has utilized its budget allocation for the attainment of each result. The rates were determined by dividing the total expenditure that occurred under each result by the budget that was allocated to it.

The evaluation team determined that out of the 7 results, two displayed comparatively low levels of efficiency in budget allocation (49.99% and under FIR), three displayed moderate efficiency (50% to 79.99% FIR), and two displayed good efficiency (80% and above FIR).

**Table 2.8: Average Financial Implementation Rates by Result**

<b>Result</b>	<b>Average Financial Implementation Rate (FIR)</b>	<b>Key Notes</b>
Result 1: Article 59 Commissions' Capacity Strengthened in Order to Implement Their Mandates More Effectively	CAJ – 88.46%	CAJ utilized the budget for Result 1 efficiently throughout the project period
	KNCHR – 89.93%	KNCHR utilized the budget for Result 1 efficiently throughout the project period
	NGEC – 80.93%	NGEC utilized the budget for Result 1 efficiently throughout the project period
	Project Period – 86.44%	Overall, the project efficiently funded Result 1 throughout the duration of the project
Result 2: Capacity of Government Staff Strengthened to Apply a Human Rights Based Approach (HRBA) and Related Principals	CAJ – 105.06%	CAJ utilized the budget for Result 2 efficiently throughout the project period
	KNCHR – 150%	KNCHR utilized the budget for Result 2 efficiently throughout the project period
	NGEC – 80.93%	NGEC utilized the budget for Result 2 efficiently throughout the project period
	Project Period – 105.21%	Overall, the project was highly efficient in utilizing funds for Result 2 throughout the duration of the project
Result 3: Economic, Social and Cultural Rights Enhanced	CAJ – 0 %	CAJ did not allocate any funds for Result 3 throughout the duration of the project period
	KNCHR – 86.82%	KNCHR utilized the budget for Result 3 efficiently throughout the project period
	NGEC – 86.5%	NGEC utilized the budget for Result 3 efficiently throughout the project period
	Project Period – 57.77%	Due to the lack of funds allocated and utilized by the CAJ towards the attainment of Result 3, the overall utilization efficiency was moderate for the project period.
Result 4: Strengthened Framework on Access to Justice at National and County Level Applying HRBA Approach	CAJ – 106.91%	CAJ utilized the budget for Result 4 efficiently throughout the project period
	KNCHR – 79.87%	KNCHR utilized the budget for Result 4 with moderate efficiency throughout the project period
	NGEC – 87%	NGEC utilized the budget for Result 4 efficiently throughout the project period
	Project Period – 91.26%	Result 4's financial implementation was highly efficient throughout the project period despite moderate utilization efficiency by the KNCHR.
Result 5: Transitional Justice Processes Strengthened to Effectively Redress Historical Injustices	CAJ – 0%	CAJ did not allocate any funds for Result 5 throughout the duration of the project period
	KNCHR – 35.66%	KNCHR utilized the budget for Result 5 with a comparatively low level of efficiency throughout the project period with no

Result	Average Financial Implementation Rate (FIR)	Key Notes
		allocated budget thus far in 2015
	NGEC – 74.30%	NGEC utilized the budget for Result 5 with moderate efficiency throughout the project period however did not allocate funds to the result in 2013
	Project Period – 36.65%	Overall Result 5 has not been allocated the same funds as the other results which as resulted in a low FIR for the project period
Result 6: Capacity of State and Non-State Actors Enhanced to Deliver on Their Human Rights Obligations	CAJ – 48.7%	KNCHR utilized the budget for Result 6 with a comparatively low level of efficiency throughout the project period with no allocated budget for 2013 or 2015
	KNCHR – 105.83%	KNCHR utilized the budget for Result 6 highly efficiently throughout the project period
	NGEC – 65.43%	NGEC utilized the budget for Result 6 with moderate efficiency throughout the project period
	Project Period – 73.32%	Due to the high efficiency in budget allocation from KNCHR for Result 6, the overall project period saw a moderate level of efficiency in budget utilization
Result 7: Electoral Processes Monitored with Respect to Abuse of State Resources, Engagement and Participation of Women, Youth and Other Marginalised Communities	CAJ – 63.63%	CAJ utilized the budget for Result 7 with moderate efficiency throughout the project period however it was only allocated a budget in 2013
	KNCHR – 0%	KNCHR utilized the budget for Result 7 with a comparatively low level of efficiency throughout the project period with no allocated budget throughout the project period
	NGEC – 33.33%	NGEC utilized the budget for Result 7 with a comparatively low level of efficiency throughout the project period, only having allocated a budget for the result in 2013
	Project Period – 32.32%	Overall Result 7 has not been allocated the same funds, only having been allocated a budget in 2013 by two of three Commissions which has resulted in a low FIR for the project period

As noted above, each Commission's financial implementation per result varied in efficiency however the project, as a whole, was moderately efficient in budget utilization throughout the duration of the project. Result 5 and Result 7 were not provided with the same budget allocation as the rest of the results throughout the project which produced a lower level of efficiency in FIR. However Results 2 and 4 utilized the majority of the money allocated to them for their various activities which has resulted in the project showing high efficiency in the attainment of those results.

In terms of burn rate, the table below presents the extent to which the project has been utilized.

**Table 2.9: Overall budget absorption rate**

Year	Source (US\$)			Total budget (US\$)	Total expenditure (US\$)
	UNDP	Finland	Sweden		
2012	91,130	1,593,626	449,994	2,134,750	731,506
2013	65,000	1,324,503	151,814	1,541,317	1,691,231
2014	22,000	1,379,310	0	1,401,310	1,320,763
<b>Total</b>	<b>178,130</b>	<b>4,297,439</b>	<b>601,808</b>	<b>5,077,377</b>	<b>3,743,500</b>

Therefore, overall, UNDP contributed 3.5% of the total project funds, the Government of Sweden contributed 11.9% and the Government of Finland contributed 84.6% of the total contributions. Of the total money contributed, the project utilized 73.7% of the funds in its total expenditure therefore reflecting a moderate efficiency rate throughout the project period.

## 2.4 Impact

The project has contributed to a transformation of the societal culture in Kenya to better understand their human rights and expect accountability and transparency in basic government service delivery as well as improved performance. Field interviews revealed that many Kenyans now feel more empowered to question government actions at the national and local governmental levels.

The project has also contributed to new institutional systems and mechanisms that ensure more accountability/transparency and protection to Kenyan citizens (such as through the improved complaints processes). The project, through its advocacy role, has also successfully changed laws and policies impacting marginalized groups, such as the disabled, older persons, and prisoners, and is changing the election monitoring process to be more inclusive and participatory, for instance through: the Persons with Disability Act by Nairobi and Kericho Counties, county integrated and investments plans (by half of the counties), the Affirmative Action

### CAJ/MWAT/009/93/13/CK

CAJ received a complaint against Nairobi Water and Sewerage Company about inadequate water supply. The complainant alleged water shortage in the area and stated that despite several follow ups at the Woodley office and the head office the problem had not been addressed. The Commission wrote a letter to the Managing Director of Nairobi Water and Sewerage Company laying out the allegation. The Managing Director responded and informed the Commission and the complainant that the company had taken action to address the complaint. The complainant confirmed to the Commission in writing that appropriate remedial action had been taken.

law in Kiambu County, the cash transfer policy in Bomet County, the gender policy in Embu County, the health bill which is under debate in Embu County, and the Alcoholic Drinks Control Act in Uasin Gishu County. Interviews with representatives of the National Gender Equality Commission identified the following change for which the project has contributed, *"Places of detention, like prisons, were dehumanizing before the reforms introduced by the 2010 Constitution. The project has enabled the KNHCR to engage with the Prisons Service and agree on basic human rights standards that must be adhered to. Before, prison staff members were blocking reforms. Today, this has changed and they are now championing the reforms to the extent of establishing a Human Rights Department."*

A rigorous assessment of progress achieved across the seven (7) project outputs and associated indicators, brought forth several exemplary accomplishments, including progress identified pertaining to both of the core project objective areas of a) institutional strengthening and b) programmatic assistance. Several of the project's primary accomplishments are highlighted below.

- On enhancing the Capacity of State and Non-State Actors to deliver on their Human Rights Obligations, audit reports of 2013 and 2014 and a report highlighting the Company of the Year Award (COYA) have been published. The Commissions participated in a number of matters of national importance before the court as a way of promoting public administration. The main aim was to advance constitutionalism and democratic governance in Kenya, particularly, from the administrative justice perspective. Reports from the Department of Justice in the Office of the Attorney General show the number of cases pursued through public interest litigation and the MTPII sector plans integrate HRBA.
- Huduma Awards have, to a larger extent, contributed to improvement in public service delivery. According to an interview with CAJ, the President of Kenya officiated at the first Huduma Awards Ceremony held in 2014 and the one for 2015 was presided over by the Attorney General. This is an innovation through which public officers who exemplify outstanding service delivery are acknowledged and rewarded. Having the Head of State at the Awards ceremony provided an opportunity for the highest office in the land of Kenya to name the high performers and shame institutions that are lacking in rigour to meet the required performance standards in terms of quality service delivery, adoption and integration of gender and disability issues and the human rights-based approaches in their planning, budgeting, resource allocation, programming, implementation and monitoring processes. This external factor has enabled many public MDAs to adopt the democratic governance changes initiated by the commissions, which in turn have facilitated improved human rights observance and increased access to justice. After the training, the MDAs have an improved capacity to respond to complaints from the public, to address the concerns, and to report to the CAJ through the performance contracting system.

As far as promotion of human rights and access to justice is concerned, the work of the three commissions has made significant changes to other stakeholders and beneficiaries in Kenya. Interviews conducted during the evaluation uncovered many areas of notable positive impact from the perspective of stakeholders (including beneficiaries), a sample of which are highlighted below.

Interviews with representatives from the Ministry of Devolution and Planning (MoDP) indicated that the project's financial support has contributed to a positive change in Kenya on a number of fronts. According to one of the MoDP representative, *"before the changes were introduced in the public offices, most Kenyan's were not using public facilities like public schools and hospitals. As the quality of services improves, more Kenyans are getting back to the use of public hospitals and schools. There has been positive culture in the public sector because the public service institutions want to be rewarded with a good performance certificate and not to be listed in the black book for non-performance. The public servants are delivering good value services for the money the government spends because they can focus on results. Customer care in the public services has greatly improved."*

Another Ministry of Devolution and Planning representative shared a similar perspective, stating: *"The way of doing business in the public service has changed to the positive...now public servants have a human face as far as the public is concerned. The performance contracting tool has produced positive results. The members of the public are being sensitized about their rights and reforms...and they have confidence in the public sector."*

Interviews with representatives of Kenyatta University also offered generally positive feedback pertaining to the project's contribution to change in Kenya. Reflecting upon the partnership between Kenyatta University's Directorate of Public and Student complaints and the CAJ, a university representative explained that through the partnership with CAJ, the directorate has "sensitized the entire university on the benefits of resolving complaints which has been integrated in the orientation of new students and,

through this, there is a common understanding on the linkage between university policy framework and the fact that the university is a public service provider.”

An interview with the Busia County Executive Committee member in charge of Health and Sanitation indicated that sensitization of duty bearers and rights holders has *“greatly improved health service delivery in the County, based on feedback from the County Health Management Team (CHMT) and Sub-County Health Management Teams.”*

According to an interview with the leader of the Hamsha Youth Organization to obtain feedback on the project's support from his perspective in reaching marginalized groups, he explained the following positive changes in his community as being directly attributable to project support: *“Before the CAJ awareness session, I did not know that such a body existed and was part of the Kenya Constitution. Through project support we have had increased exposure and profiling of our Youth Group in the area. More people got to know about our existence and our work and our membership increased. We got into partnerships with different actors in the community to spread the information about the Ombudsman in the vast slum community. We also applied our leadership skills to boldly seek for opportunities at churches and regular Forums convened by the Chiefs to speak about the work of the Ombudsman. We assisted a number of people in the community to lodge their complaints with the CAJ. Common complaints are on land grabbing cases by public officers in the slum area, rape cases that are mishandled by the police, mistreatment by public officers, abuse of public office for personal benefit at a high cost for the local impoverished community, and failure to obtain justice through courts of law.”*

Meanwhile, the County Executive Committee Member of Culture and Social Services of Busia County, Western Kenya, noted that the county has benefited from NGECC project support through training and workshops on gender responsive budgeting. The interviewee shared that through such engagements, *“the county has established partnerships with relevant NGOs in the region through which issues aimed at promoting human rights and access to justice have been tackled.”* Specifically, she indicated that *“as a result of community sensitization and partnerships with NGOs, there has been increased reporting of SGBV cases that initially used to be addressed through family/alternative dispute resolution leaving the victim without justice.”* She also indicated that there has been a “decrease in school dropouts as a result of involving the community, as well as working with the department of education.”

In further fast tracking access to justice, the Court Users Committees brings together all the stakeholders and tries to find out where the chain of justice is getting broken along the way. Challenges are identified and jointly resolved by stakeholders. The Committees are made up of doctors, the police, judges, Lawyers and magistrates. According to an interview with the Deputy Registrar of Kisumu Court of Appeal, *“these groups of people never used to talk to each other about what they do and how they do it but they are now talking and advising each other regarding handling technical human rights and access to justice issues in their offices. The committee members these days visit prisons and find out why certain cases are not brought to court. This has sped up the hearing of cases. The criminal cases which used to take long to be heard and prosecuted are now heard more quickly. Instead of taking months in the past they now take 2 weeks on average. In the past fake land titles were a problem but using the committee members in the lands office has reduced the problem. Members of the public can now get free bond releases because verification of their properties is easy through using the court committee referral system.”*

Based on the evaluation finding, the project bringing together the three commissions has made tangible impacts right from institutional strengthening of the individual commissions that will continue be useful in enabling them to delivery on their mandates. Furthermore, clear results speak to the efforts that have been made in promoting human right and access to justice and it hoped that with further support the gains made can be sustained in the longer term.

## **2.5 Sustainability**

The three commissions operate on distinct but related mandates, and are representative of dedicated institutions that are practically effective towards the promotion of good governance, administrative justice, gender equality and non-discrimination, and human rights protection of vulnerable groups. The commissions achieve this through respective mandates in promoting human rights compliance pursuant to their core functions of monitoring, education, advocacy, capacity strengthening, advisory, research, and complaints handling and redress. Through this project, this has been successfully demonstrated to a larger extent. It is also worth noting that there are key legal, operational and programmatic frameworks that have established a sustainability strategy.

### ***Political Commitment***

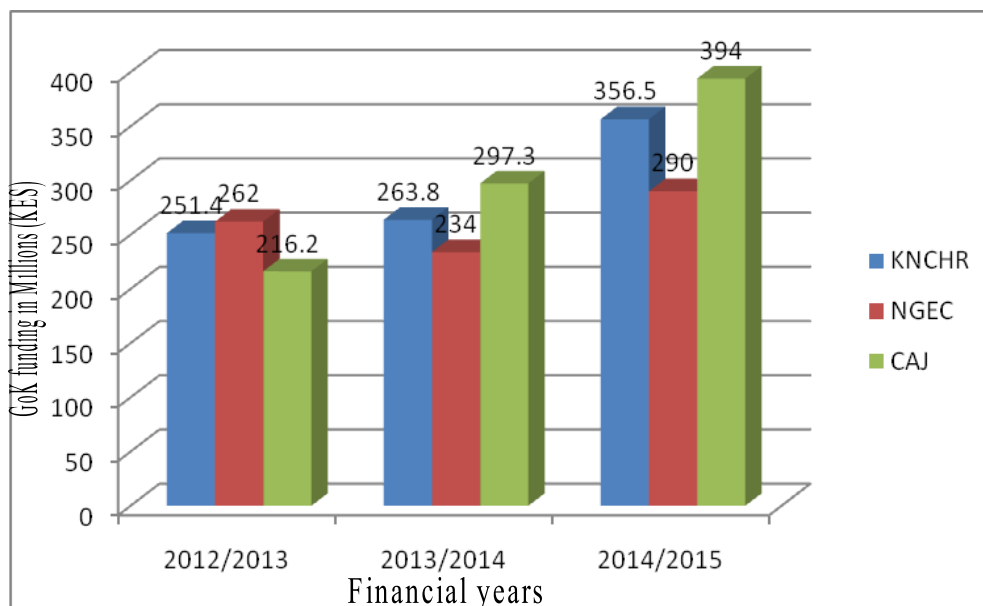
Since the promulgation of the 2010 Constitution of Kenya, the leadership and government of Kenya has demonstrated commitment to deliver on the transformative agenda that Kenyans voted for in the referendum. Kenya's Vision 2030 and the Medium Term Plan II (MTPII) 2013 – 2017 identify the implementation of the Bill of Rights as a high priority programme within the Governance, Judiciary and Rule of Law Sector. Implementing the Bill of Rights includes the adoption of the National Policy and Action Plan by Parliament, mainstreaming the human rights-based approach (HRBA) to development in all aspects of government development planning, budgeting and implementation, and continuation of the fulfillment of the obligations under international and regional human rights mechanisms. This is further enhanced at the legislative level by the existence and operation of Parliamentary and Senate Committees on Legal and Justice Affairs that have direct mandates to work closely with the three commissions.

### ***Partnership Building and attraction of more donor support***

Whereas staffing remains a challenge following the freeze on recruitment by the Government of Kenya the three commissions have, to a larger extent, built on the partnerships to leverage their work, working with other implementing partners as well as consultants to support project delivery. Additionally, the commissions, once they were stronger and more visible, have been able to attract additional resources from other donor partners. For example, the CAJ was able to secure funding from GIZ to expand the outreach for the training of government officers under Result 2 in the application of the human rights-based approach and other principles of good governance.

### ***Funding from the Government of Kenya***

Considering that the three commissions are mandated by the Constitution to enhance the promotion of human rights and access to justice, key funding is from the government. This is further promoted by the fact that the government fully supports its operation as well as the key committees in the National Assembly and the Senate. Funding trends over three years demonstrate gradual increase except for NGEK whose funding from GoK reduced in 2013/2014 financial year but in the following year it increased and it is hoped that the trend will continue so as to enable the commissions deliver their mandates effectively. This is illustrated in the figure below.



**Figure 10:** GOK funding trends to the Commissions

### ***Existing Structures***

The project, while supporting the three Commissions, has built on the existing institutional structures ensuring alignment with various legal and institutional processes in Kenya. This means the human resource capacity and the organizational systems and processes put in place under the project will outlive the project hence contributing to the sustainability of the gains made under the project. The project has invested heavily on the institutional capacity of the three Commissions and this is a major step towards supporting future programmes by the commissions, while also enhancing adaptive capacity to take up some of the mandates of the Commission for the Implementation of the Constitution whose term is coming to an end. The project has also supported training of state and non-state actors, and this clearly has led to improved capacity and more importantly a multiplier effect beyond the primary beneficiaries which improves changes of sustainability.



## **SECTION 3: KEY LESSONS LEARNED**

As part of the end of the project evaluation, efforts were made to assess the factors that contributed to the gains made during the project implementation period.

### ***The Chairpersons' Forum***

In establishing mechanisms for coordination of the Article 59 Commissions with the other constitutionally established bodies, a Commissions Chairpersons' Forum was established in May 2012. The Forum brings together the Chairpersons of the 24 Commissions and Independent Offices established by the 2010 Constitution of Kenya. Through this Forum, a coordinated approach to the delivery of the constitutional mandates of each body has been enhanced. The regular meetings and interactions have provided opportunities for collective learning, peer support and reflections, which have all contributed to enhancing the observations of human rights. The leaders of the commissions and independent bodies have been able to harmonize their views and provide a common front and message on several contentious issues affecting human rights observance and access to justice in Kenya. Interviews conducted during the evaluation confirm that the Chairperson's Forum has been an especially effective mechanism for coordination and the sharing of knowledge.

Interviews with the CAJ indicated that joint programming has allowed for the promotion of learning and knowledge management. Specifically, feedback from a CAJ respondent was as follows: "The Chairs Forum brings the commissions together and this ensures that lessons learned can be shared with others." Further the Chairs Forum has allowed for "harmonizing positions on emotive issues; speaking with a collective voice on governance issues of national importance; and, willingness by different commissions to undertake collective actions." Further, interviews with a representative of the Swedish Embassy in Nairobi offered feedback on the added value of continued joint programming as being that "the three commissions have complementary strengths, and this has facilitated the realization of human rights and access to justice."

### ***Established Referral Mechanism***

Though the partnerships worked well to support the implementation of the project activities and contribute to expanding the outreach and impact of the project, the voluntary nature of these partnerships may be a threat to the sustainability of the interventions. Hamsha Youth Organization based in Mukuru kwa Njenga Slums in Nairobi, which was trained and encouraged to set up an Ombudsman Committee articulated, during interviews with the evaluation team, the need for strengthening the feedback mechanisms in the complaints referral systems established by CAJ. Improvements on this front will be important towards expanding the outreach and having a broad and sustainable impact on communities in Kenya.

### ***Strategic Planning Flexibility and Prioritization***

Due to the complex and volatile political context within which this project was designed and implemented, it was necessary to have a certain level of flexibility to facilitate effective implementation. Though initially the project document had been designed with only the KNCHR, it was possible to bring the NGEK and CAJ fully on board and adjust the funding modalities and the outputs of the project through the revised project document to take care of the distinct and interconnected mandates of the three commissions. The need to engage in the electoral process leading to the 2013 presidential and parliamentary elections was also considered a great opportunity to integrate in this project to demonstrate how constitutional guarantees can be practically promoted, protected and fulfilled as part of the fabric that secures the independence and fairness of an electoral process.

### ***Joint Programming and Added Value of the three Commissions***

The three commissions are required to submit annual reports outlining what they have done to promote human rights and access to justice for all in Kenya. Reviewing the respective reports of the commissions, it is clear that the focus is mainly on their individual achievements and there is limited analysis on how their joint and collaborative actions are contributing to improving the status of human rights observance and access to justice for all in the country. With the apparent need for additional resources from the GOK to expand their presence in all parts of the country, interviews during the evaluation indicated that the commissions hope that working together and highlighting the benefits of the joint efforts in their respective reports (like those accruing from the joint offices established in Kisumu and the coastal regions), will give them the required break through – particularly on the financial aspect.

### ***Streamlining Training Programmes***

All three commissions have been providing training to state and non-state actors during the project period. This is consuming significant time and resources. Though it was necessary in the first phase of the project to do so as part of increasing the visibility of the work of the commissions, moving forward the commissions have generally agreed that it is necessary to collaborate with training institutions that can provide the structured training, which can also be properly certified i.e. for public officers. This shall release resources (financial, human and material) to meet some of the under-resourced areas of their work. The KNCHR is also exploring these opportunities in its new Strategic Plan.

### ***Innovative Approaches in Programme Delivery***

In terms of innovative approaches to programme delivery, use of local radio stations has been critical in reaching out to the wider community especially in rural settings. This has also been enhanced by the use of television, though viewership is not as high as radio listenership. These approaches provide an opportunity for the three commissions to engage with wider audience across the country. Another important aspect is the utilization of Huduma Centres, which are stationed in most areas in Nairobi and all the counties in Kenya. CAJ has used this model which has proved to be an innovative approach to delivering its mandate. The use of Huduma Centers therefore present an opportunity that the two other commissions can explore.

### ***Documentation and Disaggregation of Data***

It is noted that though all of the three commissions consciously endeavored to make their project activities inclusive, this is not clearly evident in their reporting and documentation. It is only the NGEK that has provided gender-disaggregated data to some extent. To be able to overcome this gap, the commissions agree that they need to harmonize their planning and M & E monitoring tools as well as ensure that HRBA is integrated. A good example is where a commission is targeting specific position holders in an institution, for example, speakers of county governments. If they all turn out to be male or a very small percentage is female, then at the planning stage they may need to adjust and bring some deputy speakers on board. This applies to marginalized population groups, individuals or locations. The commissions appreciate the need to involve the people and the institutions targeted to make proposals on how they can best make their interventions more inclusive and targeted so as to ensure that there is gender mainstreaming in the capacity building initiatives.

## SECTION 4: CONCLUSIONS AND RECOMMENDATIONS

### 4.1 Conclusions

Based upon the analysis and findings of the evaluation, it is highly recommended that the project is extended for another phase so as to sustain the gains made. The evaluation found that substantive institutional and programmatic progress has been made over the project period towards the overarching project goal of the *Support to the Realization of Human Rights and Access to Justice in Kenya* project of effectively influencing good governance, access to justice, and improved human rights observance in Kenya.

The work of the three Commissions was found to be of *relevance and closely aligned with UNDAF objectives, Kenya CPAP objectives, and Kenya Vision 2030* – and the project has made important tangible contributions (in collaboration with the GOK, NGOs, CBOs, universities and other stakeholders) in putting into place a variety of mechanisms and systems which have the potential to transform Kenyan society to become more accountable in its service delivery, more focused on individual humans rights and gender considerations, and to be more inclusive towards marginalized and disadvantages sectors of society.

Specifically, the project (along with many other institutional and community interventions) has contributed to a *transformation of the societal culture* in Kenya to better understand their human rights and expect accountability and transparency in basic government service delivery and improved performance. Further, the project has also contributed to *new institutional systems and mechanisms* that ensure more accountability/transparency and the protection to Kenyan citizens (such as through the improved complaints processes). Through its advocacy role, the project has also successfully *changed laws and policies that have positively impacting marginalized groups*, such as the disabled, older persons, women, girls and prisoners – and it is (importantly) serving to change the election monitoring process to be more inclusive and participatory.

The evaluation also identified several areas for which improvements are merited. An area identified during the evaluation as having not yet being fully realized is the *delivery of transitional justice* due to factors beyond the scope of the project, but for which the commissions have been able to support partially through engagement with the victims. As such, the identification of mechanisms which will better facilitate achievements in this area will be important as the project moves forward. While the evaluation found that the technical and financial oversight from UNDP has been an enabling factor, this has only been moderately effective/efficient with a major lack of budget allocation/utilization for results 5 and 7. Furthermore, interviews indicated that there are various budgetary constraints and processes which have impacted the operational, staffing and programming capacity of the project – for which improvements will allow for greater programming effectiveness and impact. These and other recommendations are provided in Section 4.2 below.

### 4.2 Recommendations

Below are several recommendations meant to further improve the project's relevance, effectiveness, efficiency, sustainability and long-term impact on Kenyan society. The evaluation team carefully compiled the recommendations taking into consideration the practical feedback provided from UNDP/GOF/GOS, the three commissions, the GOK (including national and local government entities), and the many other stakeholder and beneficiary representatives and groups interviewed as part of the evaluation. As part of the process of drafting recommendations for the next phase of the project, the evaluation team reflected upon those offered as part of the Mid-Term Project Evaluation. It was found

that while some of the issues raised by the mid-term evaluation have already been successfully addressed by the project, the majority continue to remain relevant.

The evaluation recommendations are intentionally broad in nature, rather than detailed and prescriptive – given it is appreciated that those most closely involved in the project are best positioned to operationalize the recommendations in a way which complements the day-to-day realities of the project’s programming context. The recommendations have been grouped under the broad categories of strategic, operational and programmatic recommendations for ease of reference.

### ***Strategic Recommendations***

- Establish a joint programme with other UN agencies: To ensure continued project relevance, efficiency and effectiveness, and in line with the UN DAO and UNDAF, UNDP should consider establishing a joint programme with other UN agencies holding mandates on human rights and gender empowerment (such as UN Women, UNICEF, UNFPA, UNAIDS and OHCHR). In this way UNDP (which would continue to be the lead agency) may solicit high-level expertise on human rights, gender, children's rights, women's rights and SRH rights, and leverage additional financial resources for a new programme phase.
- Collaborate with other constitutional commissions: To strengthen the adequate adaptive capacity of the three commissions, the commissions should initiate collaborations with other constitutional commissions in order to effectively and smoothly take over some of the mandates of the Commission on the Implementation of Constitution (CIC) (whose term is coming to an end) with the aim of sustainably promoting human rights and access to justice in Kenya.
- Strengthen partnerships at all levels: Strengthening partnerships at all levels with relevant stakeholders should be emphasized, particularly with respect to the dissemination of the Bill of Rights in the Constitution and the various laws and policies reviewed during the previous project period which the commissions have deemed to be human rights compliant and aligned with the Constitution. Increased public demand for services of the commissions has the potential to further accelerate improvements in the human rights respect, along with the promotion of, and access to justice at the county levels. Strengthened partnerships will allow greater outreach and improved programming across all project objectives.

### ***Operational Recommendations***

- Strengthen coordination between the commissions: Joint programming among the three commissions has been determined to add value. Hence, the next project phase should continue to work through these entities. To solidify gains, priority should be given to improving communication, coordination and planning mechanisms between the three commissions. Improvements in this area may come as a result of a joint UNDP/UN programme where planning and coordination would be central, and through regular programmes and operational implementation reviews.
- Address budget-related impediments: A large majority (70%) of the evaluation interview respondents raised concerns regarding the need for additional funding and related budgetary constraints and processes impacting operational, staffing and programming capacity. As such, the next project phase should increase attention to the following budget-related items:
  - The commissions should expand efforts to further strengthen advocacy for the GOK to address resource gaps.

- Explore opportunities with training institutions for the delivery of training/capacity building programmes to improve cost efficiency, and to increase effectiveness in delivery of training programmes, for instance building on similar work with the Laikipia University and Kenya School of Government, and extend such efforts to other higher learning institutions.
  - Address the reporting gaps observed in phase one important systems such as ICT should be prioritized in the next phase to address issues of data quality including disaggregation by gender, timeliness, alignment with project indicators and between the commissions.
- Strengthen M&E systems: It is recommended that data collection and analysis be strengthened in the next project phase. The commissions should consider establishing a joint data management and information system with a joint data bank for effective case handling and management of data. Given the mandate of NGEC (which covers more than 50% of Kenya's population – including girls, women, vulnerable and marginalized groups), the NGEC should be considered to host a databank.
  - Conduct a baseline survey: During the next project phase there should be close collaboration with the Kenya Bureau of Statistics and other relevant institutions to conduct a major baseline survey to strengthen the government's data on gender-specific, socio-political, and socio-economic indicators.

### ***Programmatic Recommendations***

- In the design of the next phase, it is therefore pertinent that the three commissions are involved right from the start, their mandates considered, as well as the commitments they have made through their strategic plans. For example, the KNCHR already has a new strategic plan (2015-2018), NGEC is in the process of developing its second strategic plan, and the one for CAJ (2013 – 2016) is on-going. These should be taken into account so that their set priorities are in tandem with the project objectives and goals.
- Place higher priority on gender equality programming: The evaluation determined that while some accomplishments have been made on gender equality programming, it is essential for the project to place higher priority on girls and women, gender equality and the non-discrimination of women and girls within the next project phase. This may be done through the following programme activities:
  - Improve staffing capacity at the NGEC to ensure that the Commission can execute its mandate and oversight role effectively and efficiently.
  - Conduct regular internal strategic planning and monitoring exercises, including the attainment of feedback from representative groups of women and girls.
  - Establish a gender equality monitoring framework (all indicators disaggregated by sex), and a database with clear indicators to improve gender focused programming, monitoring, evaluations and reporting.
  - Provide human and financial resources for NGEC to expand their focus to include the implementation of CEDAW and CRC, and not only the disability convention.
- Expand geographical outreach to county level: A large majority (85%) of the evaluation interview respondents emphasized the need for a greater presence in the 47 counties to enhance accountability and provision of services at county and community levels. Priority emphasis should be placed upon expanding the project's geographical outreach to enhance support and engagement with women, vulnerable and marginalized groups at county and community levels. One approach might be to develop cost-effective models for the establishment of county-based cluster commission offices (comprised of three to five counties) to accelerate devolution of KNCHR, CAJ and NGEC's services to local levels. This would also support expansion of the programme to a national scale.

- Place emphasis on delivery of transitional justice: An area which was identified during the evaluation as not yet being fully realized is the delivery of transitional justice. As such, the identification of more effective measures and mechanisms which will better facilitate achievements in the delivery of transitional justice will be important as the project moves forward in the next phase of programming – especially ahead of the 2017 elections. As such concerted efforts should be made to ensure that the existing legal frameworks are operational and effective and that victims are also compensated accordingly.
- Enhance outreach to youth: Interview feedback indicated that outreach to youth merits more attention in a new project phase. Working with youth (girls and boys) brings significant opportunities in terms of participation in development programmes and processes in areas such as health, education, employment, political participation, and social development. It is recommended the new project phase increase the participation of youth in the project design and implementation through the use of social and other media channels, as well as outreach to youth through local organizations and groups.
- Expand sensitization/awareness raising activities: A large majority (90%) of the evaluation interview respondents identified a need to expand public sensitization/awareness about their human rights. It is essential to expand in this area to ensure that women, vulnerable and marginalized populations are aware of their rights and know how to access social services and justice. The project should increase availability and access to human rights related information, and the service institutions/offices available to the public. To facilitate dissemination of human rights information, increased public awareness raising is needed on complaint resolution procedures and laws and policies to improve access to justice at the county level should also be formulated. The next phase needs to build on the opportunity presented by Huduma Centers as well as use of media to reach as wider audience as possible, furthermore use of local stations would increase reach to the rural areas that have not been targeted.
- Increase training and capacity building for rights holders: There has not been enough training and capacity building for rights holders; hence there is a discrepancy between knowledge possessed by the duty bearers (mainly GOK cadres who have received such training) and ordinary people. The next project phase should invest heavily in capacity building among rights holders at all levels in order to fulfill the intentions in the 2010 Constitution pertaining to moving Kenya towards a human rights based society.
- Enhancing efforts in Economic, Social and Cultural Rights: The project should greatly enhance its efforts in the areas of Economic, Social and Cultural Rights. Youth group leaders interviewed as part of the evaluation shared that issues such as clean water, improved sanitation and access to health care were of primary concern to their communities. Others interviewed indicated that affordability of social services is another problem among some rights holders at the community level. An effective method of improving interventions would be to seek collaboration with other UN agencies and civil society organizations who offer long-term experience in the implementation of social sector programmes.

In conclusion, the evaluation found that substantive institutional and programmatic progress has been made over the duration of the project towards the overarching goal of the *Support to the Realization of Human Rights and Access to Justice in Kenya* project by effectively influencing good governance, access to justice, and improved human rights observance in Kenya. It is hoped that the analysis of findings, identification of lessons learned and recommendations put forth by the evaluation contribute in a meaningful and positive way towards the continued efforts of UNDP and the commissions to effectively sustain and deepen the gains already made towards improving the lives of Kenyans.

## **ANNEXES**

### **Annex 1: Terms of Reference (TOR)**

#### **Terms of Reference for End of Project Evaluation Support to the Realization of Human Rights and Access to Justice in Kenya.**

##### **BACKGROUND**

In August 2010 Kenya promulgated a new Constitution which for the first time includes an advanced and comprehensive Bill of Rights. Article 59 (1) of the 2010 Constitution established the Kenya National Human Rights and Equality Commission (KNHREC) to monitor implementation and to operationalize the Bill of Rights. However, Article 59 (4) allowed Parliament through legislation to restructure the KNHREC into two or more separate Commissions. In 2011 laws were enacted to establish three separate but related successors Commissions to the KNHREC; The Kenya National Commission on Human Rights (KNCHR), The National Gender and Equality Commission (NGEC), and The Commission on Administrative Justice (CAJ), also known as the Office of the Ombudsman.

The three Commissions with very distinct mandates present the opportunity of devoted institutions that are practically effective towards promotion of good governance, administrative justice, gender equality and non-discrimination, and human rights protection of vulnerable groups. The Commissions achieve this through respective mandates in promoting human rights compliance pursuant to their core functions of monitoring, education, advocacy, capacity strengthening, advisory, research, and complaints handling and redress.

##### **Brief description of the Project**

After establishment of the three institutions, in partnership with the Government of Sweden and Finland, UNDP defined a 3 year programme with KNCHR, NGEC and CAJ to extend support to these three institutions along two core areas of a) Institutional strengthening and b) programmatic assistance to core strategic areas towards progressive fulfillment of their new distinct but interrelated mandates relating to rights and access to justice. Within these two core areas, programmatic activities are elucidated through specific outputs. These include:

##### **Result 1: Article 59 Commissions' Capacity Strengthened in Order to Implement Their Mandates More Effectively**

The project enhances the institutional capacity of the KNCHR, NGEC and CAJ through various organisational development activities. Some of these address key organisational weaknesses identified including internal systems on IT, finance, procurement and monitoring and evaluation. A key organisational strengthening activity supported is the development and finalisation of strategic plans for the Commissions. Other activities are more outward focused to increase the profile of the Commissions and to build awareness of their mandates. The project also supports the Commissions to fulfill their mandates regarding the monitoring of government treaty obligations.

##### **Result 2: Capacity of Government Staff Strengthened to Apply a Human Rights Based Approach (HRBA) and related principles**

The MTPII of Kenya's Vision 2013 states that all government development plans (national and county level) should be consistent with the human rights based approach to development. Furthermore HRBA should guide the implementation of policies and plans at all level to ensure that the government is compliant to 20 the principles of human rights. The project seeks to ensure that this will happen by strengthening the capacity of government staff at different levels and providing training on HRBA and

related topics. The related topics include important issues relating to administrative justice and ethics as well as issues of equality. Furthermore, the capacities of police and prison officers are strengthened through training and through feedback provided after prison monitoring visits.

### **Result 3: Economic, Social and Cultural Rights Enhanced**

The inclusion of economic, social and cultural rights in the Bill of Rights has brought about increased interest in ECOSOC rights and their implementation and monitoring. Despite the indivisibility of rights, focus has in the past been more on political and civil rights. As work on ECOSOC rights is fairly new in Kenya, there is a need to create awareness of the bill of rights in the constitution including ECOSOC rights, and to develop standards for implementation and monitoring. The ECOSOC area includes business and rights, the Commissions' work on the right to health, and raising awareness of ECOSOC rights.

### **Result 4: Strengthened Framework on Access to Justice at National and County Level Applying HRBA Approach**

The Article 59 Commissions play an important role in strengthening access to justice by providing a framework in which victims of violations relating to human rights, administrative justice, gender or discrimination can submit complaints and seek redress. The project helps to improve the current complaints handling mechanisms. Output 1, through the activity to establish regional offices, interlinks with the output 4 on the strengthened framework on access to justice. Additionally the project supports activities on penal, judicial and security sector reforms through initiatives such as support to court user committees.

### **Result 5: Transitional Justice Processes Strengthened to Effectively Redress Historical Injustices**

The activities supported under output 5 are driven by the conviction that establishing truth about the past human rights violations, punishing those responsible and delivering justice is a prerequisite for establishment of democracy, a culture of respect for human rights and the rule of law.

### **Result 6: Capacity of State and Non-State Actors Enhanced to Deliver on Their Human Rights Obligations**

Under this output activities focus on building state and non-state capacity on rights, administrative justice and equality, including the role of the private sector in ensuring human rights are realised and not violated in the Kenya context.

### **Result 7: Electoral Processes Monitored with Respect to Abuse of State Resources, Engagement and Participation of Women, Youth and Other Marginalised Communities**

March 4th elections provided an important opportunity for the constitutional Commissions to hold the government, and other agencies involved in the elections, accountable from a human rights perspective. The project provided for NGEC and CAJ to carry out monitoring activities before, during and after the elections to ensure human rights compliance. NGEC observed activities from gender and discrimination perspective and CAJ focused on the use of state resources during the campaign period.

By June 2015, approximately \$5 million would have been utilised to support project activities between Jan 2012 – June 2015. The main funders are the Government of Finland, Government of Sweden and UNDP.

## **EVALUATION PURPOSE**

The KNCHR, The CAJ, The NGEC and the UNDP seek to engage a private consultancy to undertake an end phase evaluation of the human rights and access to justice project.



The purpose of the end-of-project evaluation is to assess achievements made in influencing good governance, access to justice and human rights in Kenya over the project period, to harness lessons and offer strategic and operational recommendations which will inform the next phase of the project. The evaluation is needed at this particular time as the 3.5 year project is coming to an end in June 2015 and a new phase is being developed. The evaluation will provide an analysis of appropriateness, relevance, effectiveness, efficiency and sustainability of the project. The scope of the evaluation will cover all outputs of the project. The geographic coverage of the evaluation will be Nairobi and selected counties (where there have been many interventions and a critical number of project beneficiaries).

Specifically, the consultants are expected to:

1. Assess the relevance of the project in the Kenyan context
2. Determining the contribution of the project to national reforms priorities on democratic governance and the programme's impact on various stakeholders
3. Determine the extent to which the project results were realised by assessing the achievements of the project
4. Assess the extent to which the project resources were utilised for the realisation of the desired results
5. Identify the factors which facilitated or hindered the achievement of the outcomes, both in terms of the external environment and those internal to the project and document lessons learned
6. Propose recommendations for future of the programme

In pursuit of the overall objectives of the evaluation, the following key questions will be addressed:

#### **Relevance**

- Was the project relevant to the Kenyan context (policy relevance, and impact relevance)?
- Was the project useful in influencing good governance, access to justice and human rights
- Relevance of the project to minority and special groups (women, marginalized communities, LGTB, persons with disabilities, the elderly etc)

#### **Effectiveness**

- Was the project effective in delivering desired/planned results?
- What difference has been made through the project?
- Achievements towards identified outputs and contribution towards outcome?
- Project's contribution to capacity development at three levels – individual (citizens and public officers), organizational and systemic.
- Has the project contributed to improvements in good governance, access to justice and human rights? The extent the intervention sought to strengthen the application of the rights-based approach and mainstream gender in development efforts.
- Effectiveness of the partnerships that have been created through the project.

**Efficiency - of implementation of the project**

- Was the process of achieving results efficient?
- Were the resources effectively utilized?
- Did project activities overlap and duplicate other similar interventions (funded nationally and /or by other donors?)
- Are there more efficient ways and means of delivering more and better results (outputs and outcomes) with the available inputs?
- Could a different approach have produced better results?
- Was the management processes appropriate in supporting delivery?

**Sustainability**

- To what extent are the benefits of the projects likely to be sustained after the completion of this project?

**Lessons Learned**

- Key lessons learned throughout the period of the project which can be utilized to guide future strategies, and projects
- How could the project be improved to ensure increased sustainability? Particularly, in relation to future project design and management.
- Provide a set of recommendations for a similar initiative that UNDP may embark on, especially the development of a second phase of the project.

**METHODOLOGY**

The following are some of the proposed methodology that may be used by the consultant. Additionally the consultants can also incorporate other methodologies should they deem it appropriate in undertaking the assignment.

1. Desk review of relevant documents including project reports produced during the life cycle of the project
2. Briefing and debriefing sessions with KNCHR, NGEC, CAJ, UNDP and donor representative.
3. Focus Group Discussions/consultation meetings/interviews with key staff involved in management and implementation of the project; key staff of development partner(s), and key stakeholders identified.
4. Where necessary, field visits to selected regions/counties and discussions with stakeholders/beneficiaries.
5. The most significant change technique

**DELIVERABLES**

Evaluation inception report. A proposal indicating the detailed methodology (including tools) to be used in the evaluation process as well as a work plan for completion of work within five (5) days after recruitment. The inception report should include: should include:

- Evaluation purpose and scope—A clear statement of the objectives of the evaluation and the main aspects or elements of the initiative to be examined.
- Evaluation criteria and questions— The criteria and questions that the evaluation will use to assess performance and rationale

- Evaluation methodology— A description of data collection methods and data sources to be employed, including the rationale for their selection (how they will inform the evaluation) and their limitations; data collection tools, instruments and protocols and discussion of reliability and validity for the evaluation; and the sampling plan
- Evaluation matrix— This identifies the key evaluation questions and how they will be answered by the methods selected
- A revised schedule of key milestones, deliverables and responsibilities.
- Detailed resource requirements tied to evaluation activities and deliverables detailed in the work plan
- Draft Evaluation Report for discussion including all annexes of detailed work done and discussions/focus meetings held
- Final Evaluation Report, in hard and soft copy (MS Word and Acrobat Reader) that should include at least include the following contents:
  - o Executive summary
  - o Introduction
  - o The development context
  - o Findings and conclusions
  - o Lessons learnt
  - o Recommendations
  - o Presenting the report

## **DURATION**

The evaluation process should be completed within 20 days between August and September 2015

## Annex 2: List of Persons Interviewed

<b>Name</b>	<b>Gender</b>	<b>Institution/Agency</b>	<b>Designation</b>
1. Ms. Riikka Raatikainen	F	Embassy of Finland, Kenya	Counselor, Governance, Gender and Human Rights
2. Josephine Mwangi-Mweki	F	Swedish Embassy in Nairobi	Programme Manager Civil Society, Gender, Child Rights, Peace and Reconciliation
3. Hanna Ferguson	F	UNDP	Programme Analyst, Democratic Governance Unit
4. Francis Mwangi	M	UNDP	M&E Specialist, Amkeni Kenya
5. David Maina	M	UNDP	Governance Unit
6. Akademia Wandibba	F	OHCHR	Programme Officer
7. Mr. George Morara Monyoncho	M	KNCHR	Vice Chairman/Commissioner
8. Mrs. Patricia Nyaundi	F	KNCHR	Commission Secretary/CEO
9. Bernard Mogesa	M	KNCHR	Principle Human Rights Officer/Head of Department
10. Lucy Minayo	F	KNCHR	Senior Human Rights Officer
11. Veronica Mwangi	F	KNCHR	Human Rights Officer II
12. Patrick Bonyonte	M	KNCHR	Human Rights Officer I
13. Amos Wanyoike	M	KNCHR	Human Rights Officer II
14. Winfred Syombua	F	KNCHR	Human Rights Officer II
15. Rosemary Kirui	F	KNCHR	Human Rights Officer II
16. Janet Milongo	F	KNCHR	UNV Programme Officer
17. Fiona Bosibori	F	KNCHR	Intern
18. Beryl Orao	F	KNCHR	Human Rights Officer, Western Kenya Region
19. Antonina Okutah	F	KNCHR	Regional Coordinator, Western Kenya Region
20. Ms. Winfred Lichuma, EBS	F	NGEC	Chairperson/Commissioner
21. Mr. Paul Kuria	M	NGEC	Secretary/ Chief Executive Officer
22. Gorretty Osur	F	NGEC	Programme Officer
23. Joshua Ogembo	M	NGEC	Programme Officer, Western Kenya Region
24. Dr. Otiende Amollo, EBS	M	Commission on Administrative Justice (CAJ)	Chairman and Commissioner
25. Ms. Sadia Mohammed	F	CAJ	Commissioner
26. Mr. Leonard Ngaluma	M	CAJ	Commission Secretary/CEO

<b>Name</b>	<b>Gender</b>	<b>Institution/Agency</b>	<b>Designation</b>
27. Ismael A. Maaruf	M	Commission on Administrative Justice (CAJ)	Director, Risk & Compliance
28. Mohamed Adan	M	Commission on Administrative Justice (CAJ)	Planning Officer
29. Ms. Emily Chweya	F	Office of the Attorney General	Chief State Counsel, Department of Justice
30. Ms. Jacinta Nyamosi	F	Office of the Director of Public Prosecution	Senior Assistant Director of Public Prosecutions and Head of SGBV Division
31. Mrs. Abigael Mbagaya Mukolwe	F	National Land Commission	Vice Chairperson
32. Mr. Harrision Adika	M	Court of Appeal, Kisumu	Deputy Registrar
33. Ms. Cecelia Mbaka	F	Ministry of Labour	Department of Gender and Social Development
34. Ms. Florence Wahome	F	Ministry of Devolution and Planning (MoDP)	Deputy Director/Ag. Director, Directorate of Public Service Management – Division of Performance Contracting
35. Mr. Nyakwamba T. Kajwang'	M	Ministry of Devolution and Planning (MoDP)	County Youth Director, Kisumu
36. Ms. Carol Nderitu	F	Ecumenical Centre for Justice and Peace (ECJP)	Programme Officer
37. Hon. Grace Matinde	F	County Government of Busia, Western Kenya	CEC, Culture and Social Services
38. Hon. Dr. Maurice Peter Simiyu	M	County Government of Busia, Western Kenya	CEC, Health and Sanitation
39. Mrs. Lilian Boit	F	Kenyatta University	Students Complaints Officer, Directorate of Public & Students Complaints
40. Prof. Felicia Yieke	F	Laikipia University College	Dean, School of Humanities and Development Studies
41. Gilford Kimathi	M	Youth Agenda	Programme Officer
42. Prof. Biamah	M	NGEC Consultant and Lecturer, University of Nairobi	Consultant, Two-Thirds Gender Rule
43. Mr. Stephen Odhiambo Nabakho	M	Programme for Agriculture and Livelihoods in Western Communities (PALWECO)	Programme Director
44. Mr. John Kithela Kithiri	M	National Police Service, Kisumu Central Police Station	OCS Kisumu

<b>Name</b>	<b>Gender</b>	<b>Institution/Agency</b>	<b>Designation</b>
45. Ms. Yustin Kathambi	F	National Police Service, Kisumu Central Police Station	Inspector, Child Protection Unit
46. Ms. Khamis Abdalla	M	IQRA FM Radio Station	
47. Stephen Okoth	M	Hamsha Youth Organization	Ombudsman Committee

### **Annex 3: List of Documents Consulted**

Annual Work Plans (2012, 2013, 2014, 2015)

Commissions' Strategic Plans

Handbook on Monitoring and Evaluation for Results

Human Rights Based Approach Framework

Kenya National Commission of Human Rights, (2015); *Training Manual on Human Rights based Approaches*

Kenya National Commission on Human Rights (2012); *Living and Voting with Dignity and Justice: A Human Rights Manifesto*

Kenya National Commission on Human Rights (2012); *Realising the Sexual and Reproductive Health Rights in Kenya: A Myth or Reality*

Kenya National Commission on Human Rights (2013); *Annual Report (2012 – 2013)*

Kenya National Commission on Human Rights (2013); *Manual and Standard Operating Procedures on Investigation of Human Rights Violations*

Kenya National Commission on Human Rights, (2012), *Truth, Justice and Reconciliation Commission Report*

Kenya National Commission on Human Rights, (2012); *Report on the Rights of Persons with Disability in Uasin Gishu and Elgeyo Marakwet Counties: The Status Report*

Kenya National Commission on Human Rights, (2013); *Break from the Past: A Monitoring Report of the 2013 Political Party Nominations*

Kenya National Commission on Human Rights, (2013); *Elections: Safeguarding the Rights*

Kenya National Commission on Human Rights, (2014); *From Norm to Practice: A status Report on Implementation of the Rights of Persons with Disabilities in Kenya*

Kenya National Commission on Human Rights, (2015); *Strategic Plan*

KNHD Report 2013

MDG Acceleration Framework

Mid-Term Review of Project

National Gender and Equality Commission, (2013); *A Guide for County Government Leadership: Integration of Gender Equality and Inclusion in County Development.*

National Gender and Equality Commission, (2013); *Expanding the Space for Equality and Inclusion in delivery of Drug Rehabilitation Services in Uganda: An Assessment of Public and privately managed Drug Rehabilitation Centres in Rift Valley and Central Regions of Kenya*

National Gender and Equality Commission, (2013); *Gains and Gaps on Gender Mainstreaming in the Public Sector in Kenya: The Status Report (2012 – 2013)*

National Gender and Equality Commission, (2013); *The Strategic Plan (2013 – 2015)*

National Gender and Equality Commission, (2014); *Ageing of Older Populations: An Urgent Call for Kenya- A Paper from the 5<sup>th</sup> Working Session of the UN Open-ended Working Group on Ageing: Strengthening the Protection of the Human Rights of Older persons*

National Gender and Equality Commission, (2014); *Equality and Inclusion in the Private Sector: A Report on the Integration of Principles of Gender Equality and Inclusion in the Private Sector*

National Gender and Equality Commission, (2014); *Guidelines for Gender Responsive Budgeting in Kenya*

National Gender and Equality Commission, (2014); *Participation of Vulnerable Populations in their own Programmes: The Cash Transfers in Kenya*

National Gender and Equality Commission, (2014); *Whipping Wisdom: A Rapid Assessment on Violence against Older Persons in Kenya*

National Gender and Equality Commission, (2015); *Duty Bearers Handbook: Keeping the Promise to End Gender- based Violence Campaign*

Project Document (2011) and Update Project Document (2013)

Quarterly and Annual Reports

UNDAF Kenya 2014-2018

UNDP CPAP 2009-2013

UNDP Evaluation Policy (2013)

UNDP Results Management Technical Note

UNEG Quality Checklist for Evaluation Reports (2010)



## **Annex 4: Data Collection Instruments**

### **List of Evaluation Questions**

#### **Illustrative Questions for Project Funders, Implementation Partners & Collaborators**

What do you believe are the project's most *significant/meaningful achievements/successes* for *each of the seven (7) outcomes*, as well as with respect to reaching the project's *overall goal*?

- Commissions' capacity strengthened to implement mandates effectively?
- Capacity of government staff strengthened to apply the HRBA and related principals?
- Capacity of state actors to understand government obligation with regards to ECOSAC rights enhanced?
- Strengthened access to justice at national & country level applying HRBA?
- Justice process strengthened to redress historical injustices?
- Capacity of state & non-state actors enhanced to deliver on their human rights obligations?
- Election monitored from non-discrimination and maladministration perspectives? (Women, youth (boys and girls), elderly, disabled, marginalized communities, LGBT, etc?)

What factors *facilitated* the achievement of the *outcomes 1-7*, both in terms of *external* environment and *internal* to the project?

Were there any *unexpected outcomes/results* which have enhanced the achievements of the project?

What factors *hindered* the achievement of the *outcomes 1-7*, both in terms of *external* environment and *internal* to the project? How can this be improved for the next phase of the project?

*Who* do you believe has benefited *most* and in what ways? Share some concrete examples, if any.

Has the *investment in institutional capacity building* led to increased impact/results on the ground?

How well did the project *contribute to national reform priorities* on democratic governance (representation, citizen participation, separation of powers of the three arms of government and free and fair elections)?

What *priorities need additional emphasis* for the next project phase?

How well did the project *fuse the HRBA and concepts of gender mainstreaming/equality into its training and staff capacity building activities*? Do the HRBA trainings adequately integrate concepts of gender equity and equality or are these concepts (HRBA and gender equity) being addressed separately?

What is your perception regarding the project's *impact on various stakeholders*? Please describe in detail, including your thoughts regarding breadth, depth, geographical coverage, relevance, quality, gaps, target populations, etc. Encourage use of concrete examples.

Several materials have been developed during the project period. How did you ensure their *appropriateness for different population groups* to meet their varied information needs?

There are a number of other related projects which were contributing to enhancing access to justice for all, good governance and human rights promotion. How did you work with them to ensure *complimentarity and scaling up* of the impact of the project?

Are the achievements *sustainable* in the longer term? What *mechanisms* are in place to ensure the sustainability?

What are some primary *lessons learned* from the project in terms of what worked/what should be replicated/expanded and what did not work (in terms of approach/process)?

How *efficiently* do you believe the project's *financial resources* were utilized? What could be improved?

Are there any *approaches* used by UNDP and partners that have significantly contributed to the success of this project. Are there aspects that could be done differently?

What are your top three *recommendations* for the future of the project? Please provide specifics.

## Illustrative Questions for Project Beneficiaries/Participants

### (Focusing on Information, Training & Services)

What information, training or service did you access/receive from the project and from *which organization/entity/location*? Please describe the *type and extent* of information/service received.

Please describe how the information, training or service was beneficial in terms of improving your *knowledge of your basic human rights*, your right to *gender equality and non-discrimination*, your right to *health*, your *business* rights, and your ability to effectively *access* justice. If it was not beneficial, please provide recommendations for future improvement.

Was the information, training or service provided *easily accessible/understandable*? If so, please describe the context. If not, please explain how it could be improved/what *barriers* need to be removed.

Was the service (such as complaints handling and redress) *affordable* and *timely*? If so, please explain context. If not, please describe how the *process* could be further improved.

Was the service *culturally, linguistically and gender/age appropriate and relevant* to your needs/life circumstances? If so, please describe. If not, please offer suggestions for improvements.

Has the project *increased your awareness/understanding* of your rights to *access to quality basic public services/delivery*? If so, please describe this change in knowledge.

Has the project increased your awareness/understanding of your right to *gender equality and protection from discrimination – including in the work place*? If so, please explain.

Has the project increased your understanding regarding the Human Rights in the Constitution and the protection and enforcement *mechanisms*?

Are you aware of any *other international or regional instruments* that provides for the protection of human rights? Name at least one and how you became aware of it and some of the rights provided for.

If there was one *recommendation* you could offer to the project to *improve quality* or *expand the reach* of the project to more individuals (or to include sub-sectors of the population that have not been adequately reached), what would it be?

On a scale of one to three (1= not important, 2 = important, 3 = very important), how would you rate the importance of the work of this project toward *improvements in your life, your family and/or your community*?

On a scale of one to three (1= not important, 2 = important, 3 = very important), how would you rate the importance of the work of this project toward *improvements in your life, your family and/or your community*?

## Annex 5: Evaluation Framework

