



ombudsman

Newsletter



The Commission Conducts Public Awareness and Education in Four Counties



Ombudsman Wants Department of Immigration to Refund Outstanding Overpayment to All Passport Applicants



The Commission Hosts Information Commissioners from Africa



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



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*The Ombudsman Newsletter
 is an Independent publication by
 the Commission on Administrative
 Justice.*

THE EDITOR'S NOTE**Building Better Through Partnerships**

Dear reader,

On behalf of the editorial staff, it is a pleasure to present the ninth issue of the Ombudsman Newsletter. The editorial team extends its gratitude to all team members and stakeholders for their contributions to the continuous growth of this newsletter.

In this edition, we highlight the activities the Commission undertook with the support of the National Treasury under the Financing Locally Led Climate Action Program (FLLoCA). The Commission sensitised officers drawn from 28 counties on effective public complaints management and access to information. The Commission also held citizen engagements through public awareness and education in four counties under the FLLoCA support. The Commission also held engagements with the leadership of both the county executives and the assemblies in Makueni, Embu, Nakuru, and Garissa and the commitment by the counties to establish a Grievance Redress Mechanism and domesticate the access to information law is commendable.

On investigation, the Commission released an investigation report on the Alleged Manifest Injustice in the Issuance of Passports by the Department of Immigration. The Commission recommended that the Department of Immigration refunds all applicants with outstanding overpayment and formulate policy guidelines that will formalise and standardise the management of issues arising from the passport application processes. The Commission will monitor the implementation of the recommendations made to the various agencies to ensure that the issues are resolved and service delivery is improved.

The Commission also continued with the capacity building initiatives where public officers from various Ministries, Departments and Agencies were trained on effective complaint management and access to information with the County Assembly of Machakos receiving technical support from the Commission in developing its complaints management and access to information which will play a very central role in streamlining complaint management and access to information at the Assembly.

Two memorable complaints the Commission resolved in this quarter is of a Kiambu Widow who can finally find peace following the removal of restriction on her land after seventeen years and a Doctor of Philosophy student who can finally complete his studies after five years thanks to our intervention.

The Commission also explored areas of possible partnerships and collaborations with long-standing partners and new partners and also had the privilege of hosting the Information Access Commissioners from all over Africa.

In closing, I want to thank the Commissioners and staff for the important role they are playing in promoting administrative justice and access to information in Kenya through complaints resolution and public education. Through teamwork and partnerships, we will always achieve better.

Enjoy the read!

*Editor***Mr. Osman Mohamed**Director - Public Education,
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MESSAGE FROM THE CEO

Building on the Vision: A Society that upholds Administrative Justice and Access to Information.

By Mercy K Wambua, OGW, Commission Secretary/CEO

In the quarter ending June 2023, the Commission with the support of the National Treasury under the Financing Locally Led Climate Action Programme (FLLoCA) undertook sensitisation of county officers on complaints handling and access to information. To this end, the Commission trained officers drawn from twenty-eight counties. The Commission also utilised the county visits to engage citizens in four counties namely Makueni, Embu, Garissa and Nakuru through public education and awareness.

I am pleased to report that both the county executive and assemblies of Makueni, Embu, Nakuru and Garissa committed to partner with the Commission in establishing a Grievance Redress Mechanism and to domesticate the access to information law. So far Embu County Assembly has passed the access to information law.

The Commission also hosted the second Stakeholders' Consultative Forum on the Implementation of the African Court of Human and Peoples' Rights Decision Regarding the Ogiek Community. The consultative forum aimed at evaluating the advancement made by different government agencies in executing the African Court's decision and to identify any challenges that might need collective stakeholder action to monitor the progress of each state agency toward the implementation of the court's judgment and to detect and tackle any emerging challenge.

The Commission also released an investigation report on the Alleged Manifest Injustice in the Issuance of Passports by the Department of Immigration. The Commission launched an investigation into allegations that the Department of Immigration was overcharging citizens for passports. The investigation was triggered by several complaints made online on social media via a Facebook page called "Wanderlust Diaries Ltd" against the Department of Immigration.

The investigation revealed that all nine complaints alleging overcharge of passport fees were found to be true while the allegation by the Department of Immigration that the complainants edited their application to a lower series was found to be false and that

the Department of Immigration lacks an internal policy or a procedure guiding and regulating issues that may arise out of passport processing such as editing and cancellation of applications and also lacks a mechanism to automatically refund excess payments.

The investigations further revealed that the delays in the processing of passports and the unavailability of a particular passport series on the e-citizen platform were found to be occasioned majorly by two factors; delays in the approval of the procurement of blank passport booklets, and, the continuous breakdown of printing machines at the Department of Immigration. The e-citizen system was found to have eased and improved the efficiency of the passport application and payment processes but needs an upgrade to deal with emerging trends.

The Commission made recommendations to various agencies and we will monitor the implementation of the report.

The Commission will continue to execute its mandate and will build on the partnerships and collaborations in realising its vision of a society that upholds administrative justice and access to information.



PARTNERSHIPS

Commission Explores Partnership with Global Fund for Widows



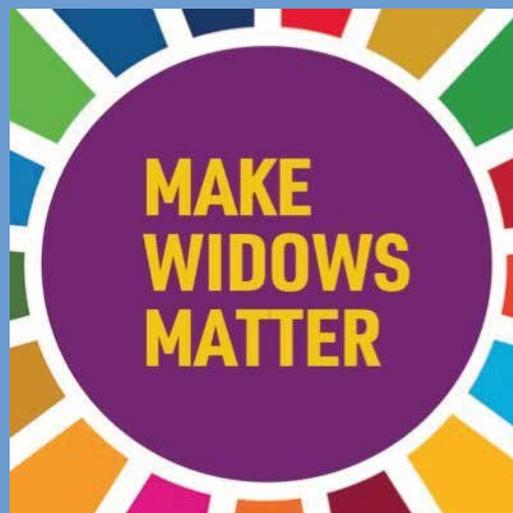
A team from the Commission led by the Chairperson, Hon Florence Kajuju, pose for a photo with a delegation from the Global Fund for Widows(GFW) led by the Executive Director, Shannon Isaacs.

The Commission on Wednesday, April 12, 2023, hosted a delegation from the Global Fund for Widows(GFW) led by the Executive Director, Shannon Isaacs. GFW is seeking to diversify its education and empowerment program by bringing on board human rights institutions that will contribute to the empowerment of the widows on their rights and entitlements under the law.

To this end, the Commission will enhance the awareness and education among the widows on their rights, participate in paralegal training and also undertake public interest litigation to provide precedence for future cases on the plight of the widows.

The two institutions also agreed to collaborate in advocacy efforts toward the implementation of the UN General Assembly resolution that once implemented would ensure policies are in place to address the Plight of Widows. The resolution was developed by the African Groups which Kenya was a co-sponsor and presented during the 66th Commission on the Status of Women and Kenya.

Present at the meeting was the Commission Chairperson, Hon Florence Kajuju, the Commissioner in Charge of Access to Information Ms. Lucy Ndung'u, Commission Secretary/CEO, Ms. Mercy Wambua, and the technical staff from the secretariat. Ms. Shannon was accompanied by the Program Manager Elena Saenz.



PUBLIC INTEREST COMPLAINT

The Commission Hosts the Sectoral Committee on Justice, Legal Affairs, and Cohesion Committee of the County Assembly of Meru



Members of the Sectoral Committee on Justice, Legal Affairs, and Cohesion Committee of the County Assembly of Meru during a meeting at the Commission's office.

The Commission on Friday, April 14, 2023, hosted the members of the Sectoral Committee on Justice, Legal Affairs, and Cohesion Committee of the County Assembly of Meru chaired by Hon. Gacheri Muthuru.

The Committee visited the Commission for a consultative meeting on the ongoing clashes in the Meru and Tharaka- Nithi counties' border which has so far led to the loss of lives, human rights violations, and destruction of property and formally presented a complaint to the Commission and requested the Commission's intervention as the ongoing interventions have not helped in addressing the conflict.

The Chairperson of the Commission, Hon Florence Kajuju welcomed the step by the Members of the County Assembly (MCAs) of seeking the intervention of the Commission and committed that the Commission will employ Alternative Dispute Resolution (ADR) and will engage the relevant officers and institution to ensure that the issues are addressed.

Hon. Kajuju further said that the Commission will look at the various reports and interventions so far on the issue and come up with a workable strategy noting that the conflict has equally affected public service delivery in the area. The Commission will equally explore conducting a systemic investigation on the border dispute between the Meru and Tharaka- Nithi counties as well as other counties where similar conflicts have been reported.

The Commission utilised the opportunity to lobby the County Assembly of Meru to domesticate the Access to Information law noting that effective public participation can only be conducted if citizens have access to information.

The County Governments Act, of 2012 gives county governments powers to make laws and regulations that guarantee citizens the right to effectively undertake their oversight role. Some of the key laws that are to be put in place include access to public information and public participation Acts. She also informed the members that the Commission has developed a Model Law on Access to Information for the Counties and committed that the Commission will offer technical support to the county.

The Commission will also offer technical support to the county in setting up complaints handling infrastructure and access to information and will build the capacity of the members of the county assembly and the assembly staff on effective public complaints management.

Present at the meeting were the Commission Secretary/ CEO, Ms. Mercy Wambua, the Director in Charge of Complaints, Investigation, and Legal Services, Ms. Florence Mumbi, the Assistant Director, Regional Coordination, Ms. Sarah Muthiga, and other secretariat staff.

FLLoCA PROGRAMME

The Commission Trains Officers Drawn from Twenty-Eight Counties, Conducts Public Education in Four Counties.

By Edward Opany



The Commission continues to influence good governance, and continuous improvement of service delivery in the public sector. As an oversight institution, the Ombudsman plays a central role in instilling a culture of responsiveness, transparency and accountability which are key ingredients of good governance and quality service delivery.

Pursuant to section 8 (e) of the constitutive Act, the Commission serves to facilitate the setting up of, and build complaint handling capacity in the public sector. One of the strategies adopted by the Commission to build capacity of public institutions at the national and county levels is training.

To this end, the Commission with the support of the National Treasury under the Financing Locally Led Climate Action Program (FLLoCA) undertook sensitisation of county officers on complaints handling and access to information and public awareness and education in four counties.

The objectives of the activities was to strengthen complaints handling in the public sector by training county government officials, promote proactive disclosure of information in the public sector by

sensitising members of the public, State, on the mandate of the Commission, enhance awareness of the need for counties to enact access to information legislation, and empower citizens to hold counties accountable through awareness creation on effective redress of complaints and access to information.

The forums aimed at developing and strengthening complaints handling mechanisms in the counties and promoting disclosure of information within the public and private sectors.

The activities included courtesy calls on the host county leadership both the executive and the assemblies, two-day training for county officials including Climate Change Unit members from at least twenty-eight counties on the Commission's mandate, and setting up of complaints handling mechanisms to improve complaint-handling mechanisms in the counties and establishing mechanisms that enable proactive disclosure of information to the public they serve, engagement with county assemblies and county attorneys on the domestication of access to information law for the counties and public awareness and education on the mandate of the Commission and how the public can access the services of the Commission.



The Commission Chairperson, Hon Florence Kajuju and the Commission staff pose for a photo with county attorneys drawn from Embu, Kirinyaga, Muranga, Nyeri, Meru, Isiolo and Tharaka Nithi during the Embu Training

FLLoCA PROGRAMME

Training of Public Officers in Embu, Makueni, Garissa and Nakuru Counties

The Commission conducted trainings for county officers from 17th April to 27th April 2023 in Embu, Makueni, Garissa and Nakuru Counties. The Officers were drawn from twenty-eight counties across the republic.

Speaking during the opening of the training in Embu, the Commission Chairperson, Hon. Florence Kajju, emphasised the need for the counties to domesticate access to information law noting that effective public participation can only be conducted if citizens have access to information and encouraged the counties to take up the model law developed by the Commission in coming up with their laws.



Participants follow a presentation during a training in Makueni.

In Makueni County, the Vice Chairperson, Mr. Washington Sati, noted that the training was very important and that the Commission will offer the required support to enable counties to establish effective complaint handling and access to information infrastructure. He also noted that the effective implementation of access to information requires that national and county governments release information proactively to promote good governance and a culture of openness in public service.



Commission Vice Chairperson, Mr. Washington Sati making his remarks during a training in Makueni County.



Participants during the Nakuru County Training

Mr. Sati also urged the counties to ensure proper records management and to leverage technology, noting that proper records management is a key enabler for the effective implementation of access to information. The counties are also required to domesticate the access to information law and to this end, the Commission has developed a Model Law on Access to Information for counties which will be a reference point for the counties.

On her part, the Commission Secretary/ CEO, Ms. Mercy Wambua, thanked the county governments for releasing the county staff to attend the trainings.



The Commission Secretary/ CEO, Ms. Mercy Wambua addressing the press at the sideline of the Makueni County Training.

On day three of the sensitisation, the Commission trained county attorneys, officers from the county assemblies, and those from the county governments. The training was on the implementation and domestication of the Access to Information Act for counties. Section 96 of the County Governments Act provides that "subject to national legislation governing access to information, a county government shall enact legislation to ensure access to information to give further effect to Article 35 of the Constitution."

FLLoCA PROGRAMME

No County will be Left Behind in the Implementation of FLLoCA Programmes



The Program Co-ordinator, FLLoCA, Dr. Peter O. Odhengo engaging with county officials during a training in Makueni County

" We will not leave any county behind, and nobody should be left out under the Financing Locally Led Climate Action Program (FLLoCA) programmes." This was the message of Dr. Peter O. Odhengo, the Program Co-ordinator, FLLoCA, during his engagement with county officials during a training on the Grievance Redress Mechanism and Access to Information being spearheaded by the Commission with the support of FLLoCA through the National Treasury.

He noted that the program is citizen centered and all complaints from the citizens will be taken seriously and noted that the program is for everyone and that no county is immune to the effect of climate change even urban counties like Nairobi. Further, he said that the partnership with Commission is key in ensuring that complaints from citizens will be addressed expeditiously and that the right of citizens to access information will be protected.

Counties Commit to Establish Complaints Handling Infrastructure, Domestic Access to Information Law.

The Chairperson of the Commission, Hon Florence Kajju has commended the Embu County Assembly for being among the first two counties to domesticate the access to information law. Hon. Florence Kajju led a team from the Commission during a courtesy call on Hon. Muriithi Thiriku, Speaker of the Embu County Assembly on Monday, April 17, 2023.

During the meeting, the two institutions agreed to work together in capacity building of assembly staff on effective public complaints management and in ensuring the effective implementation of the access to information law.

The team later paid a courtesy call on the Embu County Governor, H. E Cecily Mbarire where the two institutions discussed on the creation of a county administrative ombudsman office in Embu county to provide an avenue for citizens to lodge complaints and facilitate access to information. Hon. Mbarire also committed to establishing an access to information office with the Commission committing to facilitate training of officers to be appointed on grievance redress and access to information.



Chairperson, Hon Florence Kajju poses for a photo with the Governor, Embu County, Hon. Cecily Mbarire and her team during the courtesy visit.

In Nakuru County, the Commissioner in Charge of Access to Information, Ms. Lucy Ndung'u paid a courtesy call on the Deputy Governor, County Government of Nakuru, H.E David Kones. Their meeting discussed strengthening the service delivery processes up to the ward level through effective grievance redress and facilitation of access to information, in light of the implementation of the FLLoCA program which targets the local people.

The Commission committed to offering confined technical support to the county in the promotion of Administrative Justice and implementation of the Access to Information requirements.



Deputy Governor, County Government of Nakuru, H.E David Kones with a team from the Commission led by Commissioner in Charge of Access to Information, Ms. Lucy Ndung'u when he hosted the team.

FLLoCA PROGRAMME

County Government of Makueni Commits to Domestication Access to Information Law, Set up Grievance Redress Infrastructure



Makueni County Governor, H.E. Mutula Kilonzo Jr with a team from the Commission during a courtesy visit.

The County Government of Makueni will FastTrack the domestication of the access to information law and support the Commission's quest to devolve its service to Makueni. This was the commitment from the governor, Hon. Mutula Kilonzo Jr when he hosted a team from the Commission on Monday, April 17, 2023.

The team led by the Vice Chairperson, Mr. Washington Sati held a meeting with Hon. Mutua where Mr. Sati briefed the governor on the FLLoCA activities where the Commission was training county officials drawn from seven counties on effective complaints handling and access to information in Makueni County and the need for counties to domesticate the access to information law and committed that the Commission will offer the necessary support to the counties on this endeavor.

The Commission Secretary/ CEO, MS Mercy Wambua who was part of the team emphasised that the county governments are also required to submit reports to the Commission on the number of complaints received and handled by the counties as well as the number of information requests received and processed.

Ms. Wambua also informed the governor that the Commission is also building the capacity of county officers on effective complaints management and access to information and that the Commission has developed a

Model Complaints Policy for counties that will assist counties that have not yet developed a complaint management infrastructure.

Ms. Wambua also thanked the county for being responsive in addressing complaints lodged with the Commission against the County Government of Makueni and encouraged the county to comply with its obligations on proactive disclosure of information as outlined in the Access to information act.

On his part, Hon Mutula thanked the Commission for visiting the county and informed the Commission that his county has been a beneficiary of an 11 million grant under one of the programmes under FLLoCA and that Makueni County has been selected to pilot another programme on innovation under FLLoCA funding. On Grievance Redress Mechanism and Access to Information, he noted that the cabinet already approved the necessary papers that the county is in the process of putting up the GRM and ATI infrastructure, and that he is keen on the implementation of the access to information law.

Hon. Mutula further challenged the Commission to also train the national government officers on access to information noting that the said group should be prioritised and that access to information must be made a tradition where the government must make information accessible.

FLLoCA PROGRAMME

Behaviour Change for Public Officers

For the effective implementation of the law, Hon. Mutula noted that the country must move from the old government culture of secrecy to an open government where information is accessible to the public and that the capacity building must go hand in hand with behavior change so that public officers realise that the information the government holds belongs to the people and that the public officers are just the custodians.

Hon. Mutula urged the Commission to also develop the Model Access to Information Policy to accompany the Model Access to Information Law for the counties. The governor also raised a concern that record management in Kenya is a major challenge and that there cannot be access to information without proper records, emphasising that there is a need for institutions both at the national and the counties to manage their records properly noting that some public officers are also guilty of destroying public records.

The meeting agreed on areas in which the Commission and the County Government of Makueni will partner including capacity building, and domestication of access to information among others.

County Assembly of Makueni to Partner with the Commission on GRM and Access to Information



Speaker of the County Assembly of Makueni, Mr. Douglas Mbilu with a team from the Commission during a courtesy visit

"We will be the model county assembly on grievance redress and we will domesticate the access to information law," this was the Commitment from the Speaker of the County Assembly of Makueni, Mr. Douglas Mbilu during an engagement with a team from the Commission on Monday, April 17, 2023, led by the Vice Chairperson of the Commission, Mr. Washington Sati.



Speaking at the meeting, Mr. Sati, briefed the Speaker and his team that the Commission was in the county on FLLoCA engagements including training of county officers drawn from seven counties on Grievance Redress as well as access to information and to engage the county assemblies and attorneys on the domestication of the access to information law by the county. He urged the county assembly to domesticate the access to information law and to put in place Grievance Redress Mechanism.

The Commission Secretary/ CEO committed that the Commission will offer the necessary support both to the executive and the assembly in the development of the Grievance Redress Mechanism and the Access to Information Infrastructure.

On his part, Mr. Mbilu noted that there is a need to amend the access to information law to have counties to allow counties to submit reports to the Commission on petitions and motions which the assembly has dealt with noting that the petitions are always issues of public interest and the public has a right to know as some are complaints which the Commission can monitor their implementation or pick issues which may be out of the jurisdiction of the assembly but may fall under the mandate of the Commission.

The Speaker also committed that the assembly will partner with the Commission as they want to be a model assembly on grievance redress and access to information where other counties can benchmark.

The Commission will partner with the county on areas of setting up a grievance redress infrastructure, the domestication of access to information, and capacity building of county staff.

FLLoCA PROGRAMME

Commission to Support Counties in Operationalisation of GRM and Domestication of Access to Information Law.

Makueni County

The Commission will support the counties in the operationalisation of the Grievance Redress Mechanism and the domestication of the access to information law. This was the commitment by the Commission Secretary/CEO, Ms. Mercy Wambua, during the closing ceremony of a three-day training of county officers drawn from seven counties in Makueni.



The Commission Secretary/CEO, Ms. Mercy Wambua during the official closing of Makueni county training.

Ms. Wambua also thanked the officers and the counties for releasing the officers to the important training noting that it's an investment of both time and resources. She committed that the Commission will walk the journey with the counties and will support capacity building and technical support in having the Grievance Redress Mechanism (GRM) and ATI infrastructure in place.

The Commission will also be sharing with the counties the Model Grievance Redress Policy for Counties and the Model Law on Access to Information for Counties to act as a guide in coming up with the relevant policies.

Moving forward, the county executives and the assemblies will be required to report to the Commission on complaints handled and access to information with Ms. Wambua reinforcing the importance of the institutions being responsive to the inquiries of the Commission and implementation of its determinations.

Garissa County



A team from the Commission led by the vice Chairperson, Mr. Washington Sati with County Executive Committee members of Garissa County.

The Commission will offer technical support to the County Government of Garissa in strengthening the existing Grievance Redress Mechanism (GRM) and access to information infrastructure. This was discussed during a courtesy visit by a team from the Commission led by the Vice Chairperson, Mr. Washington Sati to the county executive led by the County Executive Committee member in Charge of Lands, Physical Planning, and Urban Development, Hon. Mohammed Hussein.

Commissioner Sati informed the team that the Commission was in Garissa to train county officials from four counties namely; Garissa, Tana River, Wajir, and Mandera on GRM and access to information under the Financing Locally-Led Climate Action (FLLoCA) supported by the National Treasury. The Commission, he said, will be supporting the counties in the establishment and strengthening of the existing GRM and access to information infrastructure and capacity building of the county officers. He also urged the county to domesticate the Access to Information Act.

On its part, the county executive undertook to designate access to information officer and to strengthen the GRMs in the county. The Commission will also partner with the county on civic education by leveraging the various forums organised by the county for awareness creation and public education on its mandate.

Present at the meeting were the CEC, Finance, and Economic Planning, Mr. Abass Ismail, CEC Education, Information and ICT, Ms. Ebla Minhaj, Director Climate Change Unit Garissa, Mr. Abdilatif Ahmed and Commission's Director in Charge of Strategy, Research, and Compliance, Mr. Godfrey Obonyo.

The team later paid a courtesy call to the leadership of the county assembly where they met the Deputy Speaker, Hon Mustafa Abdulrashid, and the Clerk of the County Assembly, Mr. Mohammed Santur.

FLLoCA PROGRAMME

The meeting discussed the domestication of the access to information law by the assembly and the entrenchment of the GRM at the assembly.

The county assembly committed to fastrack domestication of the ATI law in consultation with the executive and to partner with the Commission in establishing a GRM. So far only Embu and Kwale counties have domesticated the ATI law.



Commission Vice Chairperson Mr. Washington Sati when he paid a courtesy visit to the Deputy Speaker, Hon Mustafa Abdulrashid, and the Clerk of the County Assembly, Mr. Mohammed Santur.



CAJ staff engaging with the public in Garissa Town during the public education and awareness

The engagements presented an opportunity for the public to learn more about the mandate of the Commission in addressing, maladministration and the oversight and implementation of the access to information law as well as to seek legal advice and to lodge complaints. During the citizen engagements, the Commission reached over one thousand people with complaints being filled with the Commission

The Commission Conducts Public Awareness and Education in Four Counties

As part of its strategy of taking its services closer to the citizens and creating awareness and education on its mandate on addressing maladministration and the implementation of the access to information law, the Commission conducted public awareness and education on its mandate in Wote, Makueni County, Kianjokoma, Embu County, Garrissa Town and in Nakuru City.

The citizen engagements were a culmination of the activities the Commission undertook in the four counties which included the training of county officers on Grievance Redress Mechanism and Access to Information and engagements with the leadership of both the country assembly and executive.



Members of the public at the Commission's booth during a public awareness and education in Kianjokoma, Embu County.

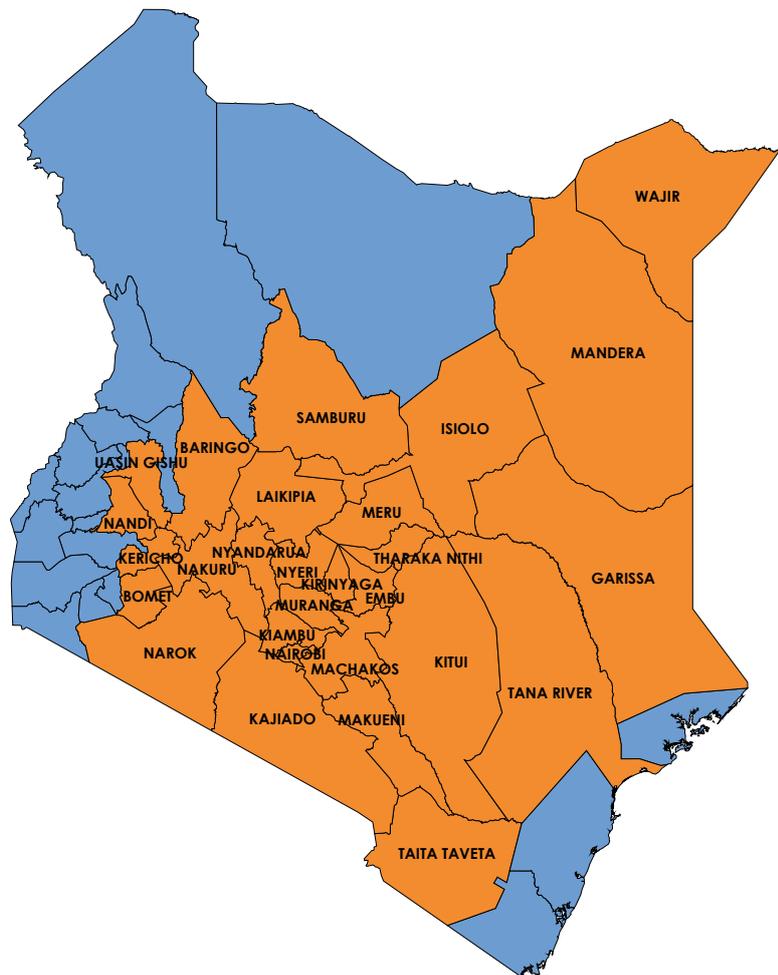


Fig. 1 Counties reached through the Flloca Program

OPINION

Citizens demand for information key in the realisation of Access to Information

By Edward Opany



The Constitution of Kenya, in Article 35, reaffirms the right of the public to access information from government and private entities. The incorporation of this provision in the Constitution was necessitated by the need for open, participatory and accountable governance. Put differently, it took cognisance of the fact that Kenya had become a society where social vices such as corruption and impunity reigned supreme under the cover of official secrecy.

The Official Secrets Act had acted as a license for opaqueness and Kenyans felt that it was important to open access to information held by the government to citizens. Indeed, a number of social audit reports on devolved funds by The Institute for Social Accountability (TISA) have consistently cited opaqueness as one of the challenges to transparency and accountability in the management of devolved funds in Kenya.

Access to information is undoubtedly critical in enabling citizens to have their voices heard, to effectively monitor and hold the government to account, and to enter into informed dialogue about decisions which affect their lives. It is seen as a vital tool for empowering all citizens, including vulnerable and excluded people, to claim their broader rights and entitlements.

However, its potential contribution to good governance lies in both the willingness of the government to be transparent, as well as the ability of citizens to demand and use information. Without an adequately developed "demand side," the law is likely to wither on the vine. In other words, the demand and supply sides must match, and where they intersect will determine the quality of the transparency regime.

In a good number of the counties, for example, budgets remain opaque due to the deeply entrenched culture of secrecy that hinder access to information. This culture of secrecy requires an active citizenry that demands information. When citizens cannot demand for information then it becomes difficult for them to hold leaders and institutions to account. It is unfortunate that information gap is rarely cited as one of the major challenges in the fight against corruption.

Corruption cannot be fought without access to information. Further, it is important to breakdown information to establish the reasons for service failures and come up with practical solutions. The civil society, media and the public need to make use of the law. Social accountability mechanisms such as tracking of budget allocations and expenditure for development and recurrent expenses at the national and county



level can only be effective if citizens access relevant information in a timely manner.

Moving beyond the enactment of the law, it is important to create public awareness of the framework and processes of accessing information. Legislation, however its progressive nature, would be of no utility value if the citizens who are the main beneficiaries are not aware of its existence. In the case of the Access to Information Act, there is unanimity that it is a game changer in terms of influencing open government and enhancing socio-economic development.

In spite of this, many Kenyans are yet to know about the existence of this law, let alone understanding its contents. A recently concluded campaign on access to information by TISA revealed that the majority of Kenyans are not familiar with the Act and those polled did not know how to request for information from public institutions and some private entities. The level of awareness is even worse in relation to access to information laws by some County Governments that have enacted them pursuant to the County Governments Act. Interestingly, in some of these cases, even staff in the County Governments are not aware of the existence of such laws!

The lack of awareness of the right to access information among the citizens is one of the key obstacles to the successful implementation of the law in Kenya. The demand side is very crucial in access to information. Citizens need to be informed that they have the right to access information, how to exercise this right, and the steps they should take in the event they are denied information. In order to achieve this, the demand side should be propped up through a series of measures. In addition, immediate, short-term action including country wide access to information campaigns involving various government agencies, civil society and the media should be adopted.

OPINION

The media and civil society also have to play a pivotal role in strengthening access to information. The media has a role in using, facilitating and educating the public about the right to access information. Journalists in Kenya should use the access to information law to gather information and substantiate their news reports and stories. The media can also play a more substantial role in creating public awareness of the law by carrying news reports, editorials, and stories about the Act, highlighting success stories, and turning the spotlight on implementation efforts and challenges.

There is a need, at the same time, to impress upon media decision makers and newsroom leaders the importance of the right to access information, and to train journalists to use the law for investigative reporting. The civil society organisations similarly should play a key role as advocates, educators, and users of the right of access to information and to assist citizens in filing requests for information.

They should also set up the right to access information helplines and help desks to act as one-stop-shops for information on the law's provisions and procedures.

On the supply side, the public officers, they not only need to be aware of the existence of the Act, but also understand their mandate under the Act which is to proactively disclose information. The Act provides an offence of failure to disclose information by a public official and imposes a penalty of Kshs. 50,000- or three-months imprisonment. Public officers must also understand the paradigm shift established by the Act that information belongs to citizens and not government; government is only the custodian of information on behalf of the public.

HOW WE HAVE HELPED - SUCCESS STORIES

Minor's Name Corrected

The Civil Registration Officer, Ruiru, finally corrected the register of birth of a minor to reflect the correct name of the father following an order of the Commission in line with section 13(1) of the Access to Information Act, 2016.

The minor's mother made an application for review to the Commission for correction of the minor's name under section 14 (1)(h) of the access to information law.

According to her, she made an application to the Principal Registrar of Births and Deaths on 3rd September 2021 seeking the correction of misleading information in her daughter's name which emanated from an error in the recording in the hospital at the time of her birth. Her daughter was born in a hospital in Ruiru in May 2020, however, a staff at the hospital entered wrong information in their records indicating that the minor's biological father was one Mr. Kamau as opposed to Mr. Mwaura. She further alleged that the principal registrar's office could not even receive the application which prompted her to send the application through courier services.

The registrar's office having failed to address the matter, she sought the intervention of the Office of the Attorney General on 18th November 2021 and by May 2022, the registrar had not corrected the details compelling her to seek the intervention of the Commission to review the application under section

14 (1)(h) the access to information law on a decision refusing to correct, update or annotate a record of personal information in accordance with an application made under section 13.

The Commission took up the matter with the Director, Civil Registration Service, in line with section 13(1) of the Access to Information which provides;

“At the request of the applicant, a public entity or private body shall within reasonable time, at its own expense, correct, update or annotate any personal information held by it relating to the applicant, which is out of date, inaccurate or incomplete.”

The Civil Registration Department in their letter to the Commission indicated that they advised the Civil Registration Officer, Ruiru, to make the relevant correction in the register of birth of the minor to reflect the correct name of the minor's father. The mother was therefore requested to visit the Ruiru office to make an official application for correction of particulars in the birth register.

In an email to the Commission on March 20, 2023, she confirmed the correction of the minor's name.

“The correction of the birth certificate was done and I received the corrected birth certificate on 9th January 2023. Thank you,” she wrote.

HOW WE HAVE HELPED - SUCCESS STORIES

Ex-Serviceman's Compensation Dues Settled After Twenty-Three Years

A widow of a deceased ex-serviceman finally received the General Personal Accident (GPA) insurance dues owed to the estate of her late husband following the Commission's intervention in a case of inordinate delay.

Ms. Chepkorir complained to the Commission alleging delay in processing of GPA insurance dues. According to her, she is the widow of late SPTE Kipkori Korir who died in line of duty on 16th December 2000 through a road accident. She followed up on compensation and was advised that the compensation would be effected through the office of the District Commissioner Nakuru but that was never done despite numerous visits to the office. Her predicament impelled her to complain to the Commission at the Huduma Centre, Nakuru.

The Commission by way of inquiry took up the matter with the Principal Secretary, Ministry of Defence. In his response, the PS indicated that the deceased's benefits were processed and paid to the widow in two installments of Ksh212,126 through the District Commissioner, Nakuru, on 6th November 2001, and Ksh72,802 plus the monthly arrears with effect from 16th November 2000 to 30th June 2003 at the rate of Kshs. 2,385. However, Ms. Chepkorir denied receiving any of those payments prompting the Ministry to conduct further investigations on the issue.

In their letter to the Commission in November 2022, the Ministry acknowledged that they reviewed the matter and noted that there were quite several claims with some dating back to 2000 which the insurer failed to honour but assured the Commission that the compensation dues in respect of the estate of Spte Korir would be processed and paid under the Kenya Defence Forces Compensation Scheme.

Based on a follow-up from the Commission, the Ministry in April 2023 confirmed that the matter had been settled.

"The complainant visited the headquarters on 28th March 2023 and signed the discharge voucher to process the outstanding payment. The matter is now settled and there is no further claim from the complainant," read a letter from the Ministry to the Commission.

Ms. Chepkorir confirmed receipt of Kshs. 567,000 being the insurance dues owed to the estate.

Deceased's Estate Dues Settled

A complainant, Waweru Wanjiru, complained to the Commission alleging delay by the Nakuru Public Trustee to settle dues owed to the estate of Solomon Kimemia who until his demise in July, 2008, was an employee of the Teachers Service Commission.

According to him, the dues had been duly computed by the Pensions Department and forwarded to the Public Trustee on 3rd September 2020 but were yet to be paid to the estate prompting Waweru to seek the intervention of the Commission on 4th November, 2022.

The Commission took up the matter with the Public Trustee Nakuru who confirmed that they received the dues and had initiated the administration process. Further, the office confirmed receipt of the consent on the mode of distribution. Following the conclusion of the process, Mr. Waweru confirmed that the dues owed to the estate amounting to Kshs. 257,000 was settled on 24th April 2023 after a cheque was issued to his mother.

Eldoret Law Courts Comply with Commission's Order, Grants Access to Information

An applicant, David Kanyungu, can finally pursue his complaints at the Advocates Complaints Commission following the release of information by the Eldoret Law Courts.

Mr. Kanyungu made an application for review under Section 14 (1)(a) of the Access to Information Act following the decision of the court to deny his request for access to information. According to him, the Eldoret Law Courts failed to furnish him with the information requested being the proceedings for Eldoret Chief Magistrate's Court Civil Suit Number 1456/2004-David Maina Kanyungu versus Standard Assurance (K) Limited-which he had requested on 13th December, 2022.

Mr. Kanyungu was not issued with the requested information despite the lapse of the twenty-one (21) days statutory period.

According to him, the proceedings were required by the Advocates Complaints Commission to enable them address a professional misconduct complaint that he had lodged against his advocate.

The Commission reviewed the appeal and issued an order leading to the release of the court proceedings upon the payment of the requisite court fees for the same which shall enable him to pursue his complaint at the Advocates Complaints Commission.

GENERAL PERSONAL ACCIDENT (GPA)



HOW WE HAVE HELPED - SUCCESS STORIES

Personal Information Corrected



The Directorate of Criminal Investigations (DCI) finally corrected personal information and issued an updated clearance certificate following the intervention of the Commission in an application for review of decision not to correct the record of personal information.

Mr. Yegon made an application for review to the Commission under the access to information law following the failure of the DCI to correct information on his Certificate of Good Conduct. According to him, he had been charged with the offense of having fake currency. However, upon conclusion of the investigations, no culpability was found against him leading to the withdrawal of the charges.

Subsequently, he sought to be issued a Police Clearance Certificate in January 2023 which was a requisite document for an employment opportunity that he was desirous of making an application.

However, upon being issued with the certificate, it emerged that the information therein was yet to be corrected and he sought the correction of the same by the DCI. There was a delay in effecting this correction prompting him to appeal to the Commission.

The Commission took up the matter with the DCI in line with section 13(1) of the Access to Information Act which provides;

“At the request of the applicant, a public entity or private body shall within a reasonable time, at its own expense, correct, update or annotate any personal information held by it relating to the applicant, which is out of date, inaccurate or incomplete.”

The intervention of the Commission led to the correction of the information and subsequent issuance of a Police Clearance Certificate.

Former Student Gets Fee Refund Following Ombudsman Intervention

“Heartfelt gratitude for all your efforts towards my complaint, it is with a heart full of joy that I would like to say that after your efforts my excess fee has finally been refunded in full and I am very happy and thankful to you.” These were the words of David Wasike, a former student at Egerton University, in an email to the Commission.

Mr. Wasike complained to the Commission alleging a delay by the University to refund his excess fee. According to him, he was a Bachelor of Medicine and Surgery student at Egerton University and on 28th August 2022, he paid an excess fee of Kshs. 130,000 by mistake for his third trimester which was not in line with the fee structure. Upon graduation, he made a formal request to the Finance Officer to process the excess fee and pay it to his account. However, the refund was not forthcoming which impelled him to seek the intervention of the Commission on 24th April 2023.

The Commission by way of inquiry took up the matter with the Vice Chancellor, leading to the processing and payment of the excess fee to Mr. Wasike's account.

Mr. Wasike, in an email to the Commission on 31st May 2023, confirmed receipt of the payment and thanked the Commission for the intervention.

Restriction on Land Removed After Seventeen Years

“I appreciate the assistance you accorded me through Eunice Moraa and Director Florence Mumbi who took up the matter with the Kiambu County Land Registrar. I appeared with officers from Kiambu County Government before the Kiambu Land Registrar on 21st May 2023. The results were released after twenty-one days and the restriction placed was removed after seventeen years. God bless you for the assistance you extended to me.” These were the words of Ms. Rose Warui in a letter to the Commission.

Ms. Warui complained to the Commission alleging that she is the legal and registered owner of LR NO.Karai/Karai/1666 and that the then Kiambu County Council placed a caution on the land in 2006 one year after the title deed was changed from her late husband's name to hers. According to Ms. Warui, she wrote severally to the Chief Officer, Land, Housing and Planning and Urban Development, County Government of Kiambu but got no response. The inaction from the county prompted her to complain to the Commission.

HOW WE HAVE HELPED - SUCCESS STORIES

The Commission by way of inquiry took up the matter with the Chief Officer. The inquiry and the subsequent reminders did not elicit any response prompting the Commission to issue a show cause to the Chief Officer for unresponsiveness.

The Chief Officer, Land, Housing and Planning and Urban Development, County Government of Kiambu wrote to the Commission on 24th October 2022 indicating that the land parcel claimed by Ms. Warui existed but that it belonged to Rengutu market.

According to the Chief Officer, the former County Council of Kiambu wrote to the District Land Registrar and restricted the parcel to allow investigations and to solve a dispute which was at hand.

He further informed the Commission that two things were eminent;

1. The shopping center be acquired and an equal parcel of land or monetary compensation be given to the registered owner of parcel No. Karai/Karai/1666
2. Seek for an alternative land to relocate the five plot owners who are already on the ground.

The Commission in a letter dated 29th November 2022 acknowledged receipt of the letter from the Chief Officer and requested him to set clear timelines within which the county intended to answer the two issues and to resolve the complaint.

Ms. Warui in a rejoinder to the Commission indicated that she was not open to relocation and she was currently in occupation of the parcel of land which was a farm and not a shopping center as was being reported by the county. She further indicated that she had all the documents including the title deed and the green card and that the husband was buried on the same piece of land. Further, she indicated that there was no market but dilapidated structured belonging to people who had been moved.

To have the complaint resolved, an officer from the Commission, Ms. Eunice Nyabio, held a meeting with the Kiambu Land Registrar on 16th February 2023. The registrar confirmed that the land was in Ms. Warui's name and requested that she makes an application for the removal of the caution lodged by the Kiambu County Council.

The Commission on 17th February 2023 informed Ms. Warui to apply to the registrar for the removal of the restriction. Following that application, the registrar called the two parties for an appearance leading to the removal of the restriction.

Ms. Warui in a letter to the Commission on 29th June 2023 confirmed that the restriction placed on the land has been removed and thanked the Commission for the intervention.

HELB Disburses Scholarship Funds Following Ombudsman Intervention

A Doctor of Philosophy student at Chuka University can finally complete his studies following the disbursement of scholarship fees by the Higher Education Loans Board (HELB) thanks to the intervention of the Ombudsman.

Mr. Jason Jomba, a Doctor of Philosophy student at Chuka University, complained to the Commission alleging that he was studying under a scholarship from HELB and was awarded Kshs. 450,000 to cover his tuition fee through a letter dated 8th November 2019.

According to him, he received the first installment after which he submitted the original progress report and transcript to the Board thrice and did not get any response on the second disbursement forcing him to suspend his studies for several semesters. He further alleged that the board was unresponsive as his several visits to the Nairobi office and emails did not bear any fruits. His predicament impelled him to complain to the Commission on 18th February 2023.

The Commission by way of inquiry took up the matter with the Chief Executive Office, HELB, leading to the disbursement of the second installment.

"This is to confirm that Jason Jomba HELB Postgraduate Scholarship second installment of Kshs. 200,000 was paid on 17th March 2023. Mr. Jomba has been updated via SMS and a call and the payment details have also been shared with Chuka University," read a letter from HELB to the Commission.

Mr. Jomba confirmed the payment and thanked the Commission for the intervention.



PARTNERSHIPS

The Commission and GIZ Kenya Explore Areas of Collaboration

A team from the Commission led by the Commissioner in Charge of Access to Information, Ms. Lucy Ndung'u on Thursday, May 11, 2023, paid a courtesy call on the leadership of Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), Kenya led by the Country Director, Bodo Immink. The Commission utilised the opportunity to that GIZ, Kenya for the partnership and support and to explore areas of collaboration in the good governance space.

Present at the meeting were Mr. Thomas Ansorg, Program Manager, Good Governance Programme, Titus Ogalo, Technical Advisor-Complaints Management and Access to Information, Strengthening Good Governance Programme, the Commission Secretary/ CEO, Ms. Mercy Wambua, Mr. Osman Mohammed, Director, Public Education, Advocacy and Corporate Communication and officers from the two institutions.

GIZ, Kenya has been a long-standing partner of the Commission since its inception, and through the support, the Commission has been able to improve access to its services through Complaints Management Information System. Developed with the support from GIZ, the public portal of the CMIS system launched on Tuesday, May 24, 2022, has improved complaints management and continues to allow the public to lodge and monitor their complaints online with over two thousand complaints being lodged through the system since the launch.

Complaints Management Information System (CMIS)

The support to Commission has been able to support the county governments to establish complaints handling and access to information infrastructure. The Commission conducted compliance audits/ spot checks on the effectiveness of service delivery in six partner counties including, Elgeyo Marakwet, Kakamega, Vihiga, Kisumu, Siaya, and Bungoma, and training on effective complaints handling mechanisms and access to information.

The Commission later shared with the leadership of the counties the report and the gaps identified and recommendations to establish complaints handling and access to information infrastructures in those counties to better service delivery.



A team from the Commission led by the Commissioner in Charge of Access to Information, Ms. Lucy Ndung'u during a courtesy call on the leadership of GIZ, Kenya led by the Country Director, Bodo Immink.

Capacity Building of Media Stakeholders on Access to Information

The Access to Information (ATI) Act came into effect on 21st September 2016. The Act provides the necessary framework and mechanisms for the operationalisation of the right of access to information guaranteed under Article 35 of the Constitution. Access to information right is important in that it not only enables the public to effectively participate in governance but also ensures transparency and accountability in the management of matters that affect the public.

In line with its mandate of oversight and enforcement, the Commission entered into a partnership with the Media Council of Kenya to build the capacity of media stakeholders including reporters, editors, content producers, station managers, media owners, and other relevant stakeholders on access to information.

With the support of GIZ, the Commission has been able to train journalists drawn from Nairobi, Mombasa, and Eldoret on access to media as the most trusted institutions in Kenya and therefore improved media performance, facilitated by access to information to enhance this trust is critical. The time calls upon the media information. The training was informed by research that showed that the fourth estate emerged to provide the necessary checks and balances through its watchdog role.

Studies by the Media Council of Kenya have revealed an overwhelming need for training on how journalists can use the right to access information to enhance their ability to source and compile public interest and investigative stories. Findings of a 2019 MCK survey on training needs showed that 91 percent of the respondents said they needed such training.

PARTNERSHIPS

Due to low levels of compliance with the Access to Information Act journalists writing stories of public interest run the risk of irresponsible reporting which can lead to defamation suits and increase conflict between news sources and subjects. The effect of this is therefore skeptical attitudes towards the media as a tool for conveying objective information on various issues affecting the society. Access to information, therefore, is one way of promoting Ethics in journalism and helps protect journalists from avoidable attacks and criticism.

The Commission considers the media an important partner in the execution of its mandate and promotion of good governance in general.

Production and Airing of CAJ Documentary



The Commission with the support of GIZ produced a 24-minute documentary titled **"10 Years of Service to Citizens in Addressing Maladministration and Access to Information in Kenya"**. The documentary highlights the milestones, successes, and beneficiaries of Ombudsman services across the country, as well as how their lives changed as a result of the Commission's intervention, as well as the challenges and journey ahead.

The documentary played an important role in creating visibility for the Commission and public education on the mandate of the Commission and the services the Commission offers in addressing administrative justice and access to information.

Support to Ministries, Departments, Agencies, and Civil Society Organisations

One of the key functions of the Commission is training public officers on effective public complaints management and access to information and supporting the institutions in establishing an efficient complaint-handling infrastructure and access to information. To this end and with the support of GIZ, Kenya. The Commission has been able to train officers from various MDAs, counties, and CSOs to effectively manage complaints and facilitate citizens' access to information. Three hundred and fourteen persons including one hundred and fifty-seven officers from MDAs, sixty-six county government officers, and ninety-one from CSOs have been trained.

Ombudsman Mashinani Programme

Ombudsman Mashinani (service at the grassroots) is an initiative the Commission adopted to facilitate outreach in informal settlements through existing structures. It was inspired by the need to reach poor populations who cannot afford legal representation and whose only hope of getting redress is the Ombudsman because of free services. The initiative deploys existing community structures for public education and opportunities to render advisory services.

With the support of GIZ, the Commission was able to conduct four forums in the informal settlements in Nairobi including Kawangware, Kiambu, Korogocho, and Kangemi. The objectives of the programme were to create awareness of the mandate of the Commission (traditional mandate and access to information) to residents of informal settlements, mobilise community members to champion accountability in public institutions, and promote public participation on matters of administrative justice and access to information, and to receive complaints in line with the mandate of the Commission. Through the initiative, the Commission was able to reach over five hundred people.

It is evident that the support from the GIZ, Kenya has been instrumental in helping the Commission achieve its mandate and has led to the promotion of good governance in Kenya and the Commission will continue exploring other areas of collaboration with GIZ, Kenya, and other development partners in this endeavor.

SUPPORT

The Commission to Support County Government of Embu in Setting up GRM and Capacity Building

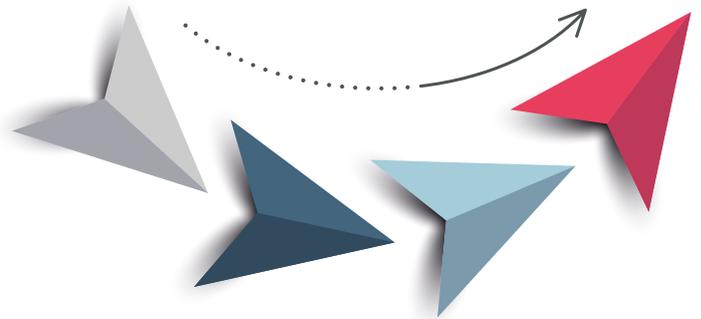


A team from the County Government of Embu led by the Chief Officer, Administration and Public Service, Mr. Henry Nthiga during a meeting at the Commission's office.

The Commission will support the County Government of Embu through the capacity building of its staff on the Grievance Redress Mechanism and the development and review of its policies. This was discussed when the Commission hosted a team from the county led by the Chief Officer, Administration and Public Service, Mr. Henry Nthiga, on Friday, May 12, 2023.

The discussion centered on establishing complaints redress mechanisms in the county and further localising access to information policies the county having domesticated the access to information law in line with Section 96 (3) of the County Government Act, 2012 which requires the counties to enact legislation to ensure access to information subject to national legislation governing access to information. Embu County was the first county to domesticate the law.

Present at the meeting were, Mr. Osman Mohamed Director of Public Education, advocacy, and Corporate Communications, various heads of divisions, and officers from the various departments, divisions, and units.



SPECIAL RIGHTS

Commission Hosts Second Stakeholders' Consultative Forum on the Implementation of the African Court of Human and Peoples' Rights Decision Regarding the Ogiek Community

The Commission in line with its mandate of enforcing administrative justice in Kenya and in collaboration with the Food and Agriculture Organization of the United Nations (FAO) through the European Union (EU) & FAO, Digital Land Governance Programme (DLGP) on Wednesday, 3rd May 2023 convened a second stakeholders meeting on the Implementation of the African Court of Human and Peoples' Rights Decision Regarding the Ogiek Community. This was a follow-up meeting the Commission having convened the first meeting on Wednesday, January 18, 2022.

The objective of the second consultative forum was to evaluate the advancement made by different government agencies in executing the African Court's decision and to identify any challenges that might need collective stakeholder action to monitor the progress of each state agency toward the implementation of the court's judgment and to detect and tackle any emerging challenge.

The meeting brought together various government agencies including; the Ministry of Lands and Physical Planning, the Ministry of Environment and Forestry, the Ministry of Interior and Co-ordination of National Government, the National Treasury and Economic

Planning Ministry, Kenya National Commission on Human Rights, National Gender and Equality Commission, National Lands Commission, National Cohesion and Integration Commission, Kenya Forest Services and the Council of Governors. Also in attendance were representatives of the Ogiek Community, the Ogiek Council of Elders, the media, and the Ogiek People's Development Programme (OPDP), a civil society organisation.

Speaking at the event, the Chairperson of the Commission, Hon. Florence Kajuju noted that the Commission had taken up the Ogiek matter pursuant to its mandate to hold the government accountable and ensure fulfillment of its duty to implement the judgment of the African Court.

SPECIAL RIGHTS

Commission Hosts Second Stakeholders' Consultative Forum on the Implementation of the African Court of Human and Peoples' Rights Decision Regarding the Ogiek Community

Hon Kajju also pointed out that the government had entered an appearance as respondent and attended hearings that led to the judgment of the African Court, and as such, it was expected that the government would implement the judgment – having been party to the court proceedings. She reiterated that the duty of the Ombudsman in the forum was to receive a status report of the progress made by each government stakeholder towards the implementation of the judgment emphasizing that the Commission has to ensure efficient service delivery, administrative justice, and access to justice for all Kenyans, including the Ogiek Community.

Hon Kajju noted that it is the Commission's responsibility to ensure that the relevant government agencies resettle and compensate the Ogiek as stipulated in the decision of the African Court and hoped that each government agency had made progress as per the commitments made during the first consultative meeting, given that the government was expected to report its progress to the African Court on the course of the year.

On his part, the Vice Chairperson of the Commission, Mr. Washington Sati, appreciated that the implementation of the African Court judgment required a multi-stakeholder approach and noted the centrality of the institutions present in implementing the judgment. He further reminded the institutions about the timelines for complying with the judgment and hoped that the updates provided would assist in charting the way forward.

The Commission Secretary/ CEO, Ms. Mercy Wambua, on the other hand, thanked the Food and Agriculture Organization for supporting the forum geared at bringing justice to the Ogiek Community. She further outlined the antecedent events that had precipitated the consultative forum noting that the Commission received a complaint on behalf of the Ogiek Community calling for the implementation of the judgment of the African Court by relevant government agencies.

Ms. Wambua highlighted that this being as a follow-up meeting, the focus would be on the implementation of the court orders as opposed to detailing the case of the Ogiek case which had been dispensed during the first consultative meeting and urged the government agencies present to render a good account of their progress in implementation of the African Court decision.



CAJ Chairperson, Hon. Florence Kajju addressing the media during the stakeholders consultative forum.

The representative of the Food and Agricultural Organization (FAO), Ms. Husna Mubarak, highlighted the importance of looking at the Ogiek land issue from the prism of sustainable land management of the Mau ecosystem.

On the implementation, the Ministry of Interior which is to facilitate consultations with the Ogiek and provide the roles of administrators, confirmed that they have initiated the provision of registration services to Ogiek like issuance of birth/death certificates and additional administrative services to ensure services are brought nearer to the Ogiek Community.

The representative of the Ministry of Environment who also reported on behalf of the Kenya Forest Service reported that the Ministry had chaired the Inter-Ministerial Committee established to fast-track implementation of the judgment of the African Court and that the report of the Inter-Ministerial Committee and a Cabinet memo on compensation of Ogiek community have been drafted.

On awareness creation and non-repetition of violations, the Ministry reported the start of a 15-Billion-Tree Campaign with adjacent-to-forest communities that will ensure the Ministry works together with these communities to ensure sustainability.

The National Treasury which was required to allocate 157 million and establish a compensation fund reported that there had been established an Inter-Ministerial Committee to deal with implementation of the judgment, including consideration of the payment of the compensation award. The Inter-Ministerial Committee had worked on a report and a cabinet memo to apprise the Cabinet of the judgment of the African Court and seek approval funds.

SPECIAL RIGHTS

Commission Hosts Second Stakeholders' Consultative Forum on the Implementation of the African Court of Human and Peoples' Rights Decision Regarding the Ogiek Community

The National Land Commission, on the other hand, reported that the function of land demarcation was transferred to the Ministry of Lands and that the Commission will finalise the identification of genuine Ogiek people by June 2023. The NLC was charged with the responsibility of Demarcation of the communal land, leases to be determined and the land returned to Ogiek, and determination of the claims [report of their hearings].

National Gender and Equality Commission (NGEC) confirmed that the Commission held consultation meetings with representatives from Ogiek Community and also issued two advisory opinions; one to the Head of State and the other to the Public Service Commission (PSC). The advisory to the President was on the need to establish a department to address issues of minority and marginalized communities. The advisory to PSC delved into the need to replace the term "Ndorobo" with "Ogiek" to enable easier identification of the Ogiek for public service opportunities and address their systemic discrimination. NGEC had also written to the Attorney General on the status of the implementation of the decision of the African Court.

National Cohesion and Integration Commission (NCIC) which is committed to facilitating dialogue and peaceful resolution of disputes reported to have held various inter-ethnic dialogues and mediation meetings with the Ogiek, Maasai, Nandi, and the Kipsigis communities and conducted intra and inter-ethnic cohesion and reconciliation meetings between Ogiek, Kikuyu and Kalenjin communities culminating into a joint peace dialogue meeting with the communities' councils of elders.

The Kenya National Commission on Human Rights is confirmed to have written to the Attorney General to lobby for setting up of an implementation committee to resolve the issue of recognition of the Ogiek. KNCHR is also advocating for ratification of the UN Declaration on the Rights of Indigenous People, which will not only protect the rights of the Ogiek but all indigenous communities. The Commission will engage in public education from June 2023.

The Ogiek are one of Kenya's indigenous tribes alongside the Sengwer, Yaaku Waata, Sanya, and Endorois. Among other challenges, the indigenous peoples of Kenya face scarcity and insecurity of land and resources, poor services, and discrimination. Stemming from these challenges, the Ogiek of Mau Forest took their plight of eviction to the African Union Commission on Human and Peoples' Rights, after failing to secure justice domestically.

The human rights violations case filed by the Ogiek community against the Government of Kenya culminated in a judgment of the African Court on Human and Peoples' Rights, following referral by the African Commission and hearing of the parties.

On May 26, 2017, the African Court delivered a ruling favoring the community. The court upheld the recognition of the Ogiek as an indigenous community and concluded that the Government of Kenya had infringed on the community's rights to property, natural resources, development, culture, and religion.

The court also ordered the government to take appropriate measures to have a remedy to the violations

- i. Allocate title deeds to the Ogiek community for their ancestral lands in Mau Forest. Pay compensation to the community of KES 57,850,000 in material damages and KES 100,000,000 in moral damages.
- ii. Take all necessary measures, in consultation with the Ogiek community and its representatives, to identify, delimit and grant collective land title to the community and, by law, assure them of unhindered use and enjoyment of their land.
- iii. To recognize, respect, protect and consult the Ogiek in accordance with their traditions and customs, on all matters concerning development, conservation, or investment in their lands.
- iv. Establish a Community Development Fund within 12 months, in which all funds ordered as compensation, in this case, will be deposited



The Commission Secretary/CEO with the representatives of the Ogiek People's Development Program.

INVESTIGATION

Ombudsman Wants Department of Immigration to Refund Outstanding Overpayment to All Passport Applicants



Release of an investigation report on Alleged Manifest Injustice in the Issuance of Passports by the Department of Immigration.

The Commission on Administrative Justice (Office of the Ombudsman) has recommended that the Department of Immigration refunds all applicants with outstanding overpayment and formulate policy guidelines that will formalise and standardise the management of issues arising from the passport application processes.

An investigation by the Commission has revealed that all nine complaints alleging overcharge of passport fees were found to be true while the allegation by the Department of Immigration that the complainants edited their application to a lower series was found to be false and that the Department of Immigration lacks an internal policy or a procedure guiding and regulating issues that may arise out of passport processing such as editing and cancellation of applications and also lacks a mechanism to automatically refund excess payments.

The investigations further revealed that the delays in the processing of passports and the unavailability of a particular passport series on the e-citizen platform were found to be occasioned majorly by two factors; delays in the approval of the procurement of blank passport booklets, and, the continuous breakdown of printing machines at the Department of Immigration. The e-citizen system was found to have eased and improved the efficiency of the passport application and payment processes but needs an upgrade to deal with emerging trends.

The Commission launched an investigation into allegations that the Department of Immigration was overcharging citizens for passports. The investigation was triggered by several complaints made online on social media via a Facebook page called **"Wanderlust Diaries Ltd"** against the Department of Immigration.

Due to the veracity of the allegations, the Commission recommended an investigation pursuant to Section 8 of the Commission on Administrative Justice Act, 2011. The following issues were considered for investigation:

1. Circumstances surrounding the complaints alleging payment for "B" series passports but issuance of "A" series instead.
2. Whether the changes on the series of passports applied for were initiated by the applicants.
3. Whether there are communication channels available at the Department of Immigration for informing applicants about the available number of pages after payments, before processing, and issuance of lesser pages.
4. Whether the Department of Immigration has an automatic way of refunding extra payments by passport applicants.
5. To find out whether there is an existing channel of recourse for aggrieved applicants.
6. To understand the cause of the availability of the 'B' Series Passport as an Only Option at the Digital Passport Application Platform (e-Citizen).
7. The effectiveness of the e-Citizen platform and recommendations to improve the system.
8. To identify any form of maladministration arising from the numerous complaints and suggest appropriate remedial action.

The report was informed by analysis of the information gathered and the examination of documents obtained in the process of the investigation.

INVESTIGATION

Ombudsman Wants Department of Immigration to Refund Outstanding Overpayment to All Passport Applicants

Various recommendations were made to the PS, State Department of Immigration and Citizen Services; Director General, Department of Immigration and Director General, Department of Accounting Services and Quality Assurance of the National Treasury. The recommendations are geared towards improvement of the passport processing services.

Findings

1. Veracity of the complaints alleging payment for "B" series passports but issuance of "A" series instead.

All the nine allegations were substantiated. The seven applicants/complainants applied and paid for 'B' Series passports but were issued with 'A' series passports with no refund of the excess payment. One Complainant topped up her payment from "A" series to "B" series but was still issued with "A" series without a refund of the excess payment while another complainant was forced to reapply for her passport as a lost passport (when immigration officers allegedly misplaced her application during an application for renewal) only for her to be issued with the originally applied for renewed passport though with fewer pages than that paid for without a refund of either her first excess payment of Kshs 1500 or her second payment for a lost passport of KShs.12,050.

2. Veracity of the allegation that the Changes on the Passport Series Applied for were initiated by the Applicants/Complainants.

The allegation that the complainants edited their application to a lower series was found to be untrue. It was confirmed that the application once submitted on the e-citizen platform cannot be edited. The Department also failed to avail any letter/email from the complainants and even from other applicants requesting the printing of fewer pages than that applied for



Commission staff during the release of the investigation report.

3. Communication channels available at the Department of Immigration for informing applicants about the available number of pages after payments and before processing and issuance of lesser pages.

Investigations established that the Immigration Department neither communicated to the applicants the fact that the series they applied for had run out of stock nor sought their consent for a downgrade. Furthermore, after being issued with the fewer pages, there was no communication in regard to the procedure for a refund.

It was noted that the Department does not have an internal policy or a procedure guiding and regulating issues that may arise out of passport processing such as editing and cancellation of applications, thereby giving immigration officials the leeway to resolve such issues arbitrarily.

4. Whether the Department of Immigration has an Automatic Way of Refunding Extra Payments Made by Passports Applicants.

Even though it was confirmed that the Department has a complaints-handling infrastructure, some of the affected applicants were not aware of it hence a need for awareness creation among the public.

Investigations also established that the Department of Immigration has no mechanism for automatically refunding excess payment occasioned by the issuance of passports with fewer pages than that applied for. The manual procedure available was found to be bureaucratic and cumbersome making it very difficult for applicants to get a refund. The manual refund procedure was also neither documented in a policy/procedure nor followed by immigration officials thus the refund process for the complainants was only initiated when the Commission commenced its investigations.

5. To understand the availability of the 'B' Series Passport as an Only Available on the Digital Passport Application Platform (e-Citizen)

It was established that delays in processing passports and the occasional unavailability of a particular passport series on the e-citizen platform were occasioned majorly by two factors; delays in the approval of the procurement of blank passport booklets, and, the continuous breakdown of printing machines at the Department of Immigration.

INVESTIGATION

Ombudsman Wants Department of Immigration to Refund Outstanding Overpayment to All Passport Applicants

6. The effectiveness of the e-Citizen platform

The e-citizen system has eased and improved the efficiency of the passport application and payment processes. However, Investigations revealed that the platform cannot merge into one invoice different payments made at different times by an applicant especially when upgrading from the 'A' series to 'B' and 'C' or even from 'B' to 'C' Series. Further, it was noted that the e-citizen system is not programmed in such a way that it can automatically refund in cases of excess payments but would never allow for less payments.

7. Forms of Maladministration Arising from the Numerous Complaints and the Appropriate Remedial Action.

The Commission categorically notes that the above-proven allegations amount, inter alia, to the following forms of maladministration:

- a. **Manifest Injustice:** The Decision by the Department of Immigration in exercising its power, to issue applicants passports with fewer pages than that paid for without their consent and/or consideration for refund was unfair in a direct, obvious, and observable manner.
- b. **Inefficiency:** The Inability of the Department of Immigration to provide Kenyans with all categories of passport series on the e-citizen platform, the lack of effective communication to applicants on the challenges faced in processing passport, and the loss of an applicant's application documents inclusive of their expired passports forcing them to apply afresh as lost passport are all markers of inefficiency.
- c. **Discourtesy:** The casual, impolite, and inconsiderate dismissal of the aggrieved applicants who tried to raise complaints over the lack of refund of their excess payments and the lack of structured guidance to applicants who made inquiries on the way forward points to discourtesy by staff at the department of immigration.

Pursuant to section 42 (2) (b) of the CAJ Act, the Commission considers that the following actions should be taken:

- i. The Principal Secretary State Department of Immigration and Citizen Services to cause an audit of the NADRA system for the period of 2021-2023 to identify all passport applicants whose excess payments have not been

refunded. The PS is to provide the Commission with the data within three months upon release of this Report.

- ii. The PS, State Department of Immigration and Citizen Services to ensure that the nine complainants in this case and all the other applicants whose excess payments have not been refunded identified from the system audit are promptly refunded their monies. The PS is to report back to the Commission on steps taken within six months upon release of this Report.
- iii. The PS, State Department of Immigration and Citizen Services to plan and implement a strategy that will ensure prompt approval of procurement requests for blank booklets and continuous servicing of passport printing Machines to ensure its efficiency and effectiveness. The PS is to report back to the Commission on steps taken within six months upon release of this Report.
- iv. The Director General (DG), Department of Immigration to formulate policy guidelines and procedures that will formalise and standardise the management of issues arising from the passport application processes such as cancellation of applications; upgrading/downgrading of applications; handling of applications considered '**urgent**'; and, procedures for refund. This will help eliminate opportunities for corruption, unnecessary bureaucracies, and abuse of power by immigration staff. The DG is to report back to the Commission on steps taken within one year upon the release of this Report.

Recommendations

Pursuant to section 42 (2) (c) of the CAJ Act, the Commission recommends as follows:

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

INVESTIGATION

- ii. The Director General, Accounting Services and Quality Assurance to consider upgrading the e-citizen system to enable it automatically adjust payments as per alterations made by both the applicants and the immigration officers by introducing automatic refunds for passport series downgrade and automatic consolidation of payments for passport series upgrades.
- iii. The Director General, Department of Immigration to take note of the Maladministration identified in this investigation and take necessary action to prevent future recurrence.
- iv. The Director General, the Department of Immigration to consider partnering with the Commission on Administrative Justice in improving the effectiveness of its Complaint Handling Infrastructure and customer care practices.
- v. The Director General, Department of Immigration to proactively inform applicants about the unavailability of their applied series and seek their consent for a downgrade or an upgrade of their applications where necessary.

CONTINENTAL RELATIONS

The Commission Hosts Information Commissioners from Africa



Information Commissioners from across Africa led by the Chairperson of the African Network of Information Commissioners (ANIC) and Information Regulator of South Africa, Adv. Pansy Tlakula when they visited the Commission

The Commission on Wednesday, June 7, 2023, hosted Information Commissioners from across Africa led by the Chairperson of the African Network of Information Commissioners (ANIC) and Information Regulator of South Africa, Adv. Pansy Tlakula, together with Mr. Jacob Du Toit, Chief of the Section for Universal Access to Information at the United Nations Educational, Scientific and Cultural Organisation (UNESCO).

The team was in the country for a two-day regional meeting of the Africa Network for Information Commissioners (ANIC) at the Trademark Hotel, Nairobi. The two-day meeting brought together the Information Commissioners in Africa to discuss the strategic positioning and institutional development of ANIC.

Both parties discussed promoting the development of transparency policies and access to public information in Africa, through the exchange of good practices, and specific knowledge and the promotion of international cooperation through the implementation

of SDG 16.10 on access to information and promotion of effective, accountable, and inclusive institutions

The delegation was received by the Vice Chairperson of the Commission, Mr. Washington Sati, the Commissioner in Charge of Access to Information, Ms. Lucy Ndung'u, and the CEO, Ms. Mercy Wambua.

Also, present at the meeting were officers from the United Nations Educational, Scientific and Cultural Organisation (UNESCO) office.

ANIC is a regional network seeking to bring together African countries that have enacted the right to information laws with a view of providing a platform for information sharing to strengthen regional cooperation in implementing the right. The network further seeks to have more African countries enact access to information laws. The Commissioner in Charge of Access to Information, Ms. Lucy Ndung'u, is a member of the network's Executive Committee.

CAPACITY BUILDING

Commission Trains 683 Public Officers on Effective Public Complaints Management and Access to Information

The Commission trained 683 public officers drawn from Ministries, Departments and Agencies (MDAs) on effective complaint management and access to information and reporting under the performance contracting framework for the fourth quarter of the financial year 2022/2023.

Additionally, the Commission supported the County Assembly of Machakos in the development of complaint management and access to information policies.

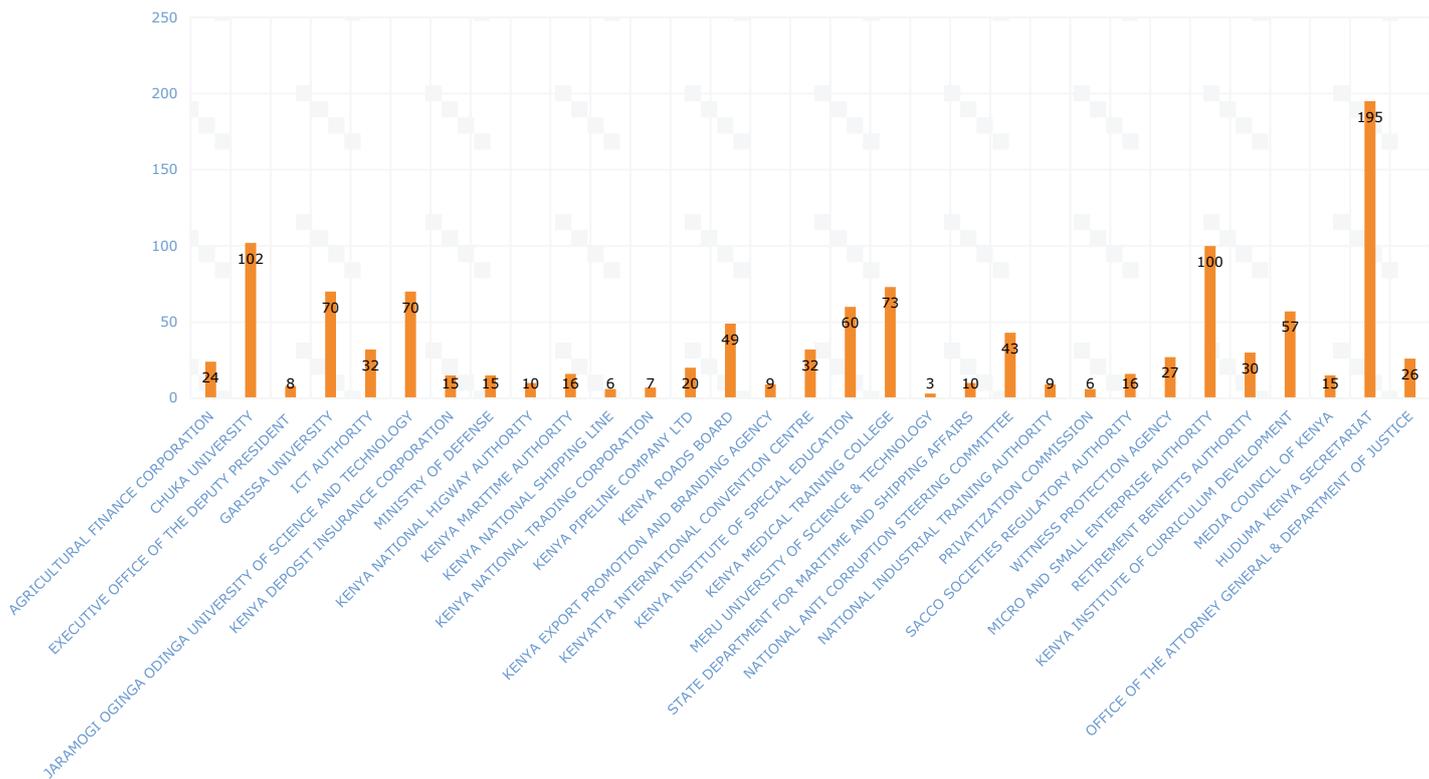
The Commission plays an important role in ensuring quality public service delivery. To this end, the Commission builds capacity of public officers on complaints handling and good governance, and provides technical support to public institutions to establish complaints handling infrastructure.



Director in-charge of Access to Information, Ms. Viola Ochola, during the development of complaint management and access to information policies for Machakos County Assembly.

A total of 106 county Officers were trained during quarter four.

INSTITUTIONS TRAINED IN QUARTER 4



Capacity building training for county officers on GRM & Access to Information at Enashipai, Naivasha

PUBLIC EDUCATION

Commission participates in International Widows' Day

Nakuru, Kenya - The Commission participated in a momentous event on Friday, June 23, 2023, to mark International Widows' Day at the serene Nyayo Gardens in Nakuru. The occasion presented an opportunity for the Commission to raise awareness and educate the public about its crucial mandate of addressing maladministration, oversight, and the enforcement of the access to information law. Additionally, the event served as a platform for the Commission to receive and address complaints pertaining to these issues.

The event, organized by the Come Together Widows and Orphans Organization (CTWOO), a Non-Governmental Organization dedicated to safeguarding the human rights and dignity of widows, was commemorated under the theme: "Prosperity For Widows" (*Ufanisi Kwa Wajane*) and brought together over 2000 participants.



Participants during the event

During the event, attendees had the opportunity to learn about the mechanisms in place for lodging complaints with the Commission. By actively receiving complaints, the Commission ensures that citizens have a platform to voice their grievances and seek redress. This fosters a culture of accountability and helps prevent maladministration, ultimately strengthening public trust in governance institutions.



Founder Come Together Widows and Orphans Organization, Ms. Dianah Kamande addressing the attendants.

The Commission's participation in this event demonstrates its commitment to addressing the specific needs and rights of widows. By utilizing this occasion, the Commission aimed to raise awareness and educate the public about the widows' rights and the importance of enforcing laws that safeguard their interests. Empowering widows not only benefits the individuals directly affected but also contributes to building inclusive and equitable societies.



Nakuru County Deputy Governor H.E Hon. David Kones visits the Ombudsman booth.



Senior Legal officer Ms. Wanjiru Kibaki making her presentation at the event.

In conclusion, the Commission's participation in the event commemorating International Widows' Day highlights its dedication to raising awareness and educating the public on the rights of widows and the enforcement of Access to Information law. By collaborating with organizations such as CTWOO, the Commission aims to bring positive change and prosperity to widows, ensuring they receive the support they need to overcome challenges and lead fulfilling lives.

ACCESS TO INFORMATION

Commission Holds Validation Workshop on Access to Information Reporting Guidelines



The Commission Secretary/CEO, Ms. Mercy Wambua with participants drawn from various agencies during the validation workshop at the Nairobi Safari Club.

The Commission on Thursday, June 15, 2023, held a validation workshop for Access to Information reporting guidelines for public Entities and Private Bodies under ATI Act, 2016. This is in line with the Commission's second mandate of overseeing and enforcing the implementation of the Access to Information Act, 2016.

The Access to Information Act, 2016 places obligations on public entities and applicable private bodies to submit reports annually to the Commission detailing the measures and actions undertaken in the implementation of the ATI Act, 2016 in a bid to allow monitoring and documentation of Kenya's progress on the right to information, transparency, and open governance.

To this end, the Commission in partnership with GIZ developed Guidelines for reporting by entities and private bodies to give effect to section 23(7) of, the ATI Act. The guidelines were shared with stakeholders for feedback and comments to comply with the values of public participation and subject to stakeholder validation.





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Visit our offices in:

Nairobi	2 nd Floor, West End Towers Opposite Aga Khan High School off Waiyaki Way – Westlands)
Kisumu	2 nd Floor, Central Square Building, Oginga Odinga Street)
Mombasa	4 th Floor, Posta Pension Towers(GPO), Digo Road - Mombasa City
Eldoret	7 th Floor, Kerio Valley Development Authority (KVDA) Plaza, Oloo Street)
Nyahururu	Next to Laikipia West Constituency Offices
Isiolo	County Estate along Kiwanjani Road
Garissa	Hosted by National Gender and Equality Commission, Off Lamu Road)

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Access to Information Officer, Ms. Joyce Wandia facilitating a session during a training of county officers at the Nomad Hotel, Garissa Town.



Chairperson and Board Member, Hon. Florence Kajuju with the International Ombudsman Institute President, Chris Field and other board members during the World Board Meeting in Vienna, Austria.



Commissioner in-charge of Access to Information, Ms. Lucy Ndungu making a presentation during the regional meeting of the Africa Network for Information Commissioners (ANIC) at the Trademark Hotel, Nairobi.



Director, Public Education, Advocacy and Corporate Communication, Mr. Osman Mohamed giving a tour of the Commission's head office to a delegation from the National Anti-Corruption Commission of Sierra Leone led by Nabilahi-Musa Kamara during a study tour.



A team from the Commissioners led by the Chairperson, Hon. Florence Kajuju during the presentation of a report to the Constitutional Oversight Implementation Committee(CCOI) of the National Assembly Chaired by Hon. Wamuchomba Gathoni.



The Deputy Governor, County Government of Nakuru H.E Hon. David Kones, visits the Commission exhibition booth at the 8th International Widows Day celebrations held at Uhuru Gardens, Nakuru City.



Commission's Legal Officer, Elizabeth Fundi, engaging with the public during a public awareness and education roadshow in Garissa Town.



CAJ Chairperson, Hon. Florence Kajuju, with a team from the Commission during a courtesy visit on the Attorney General of the Republic of Kenya, Hon. Justin B. N. Muturi.



Commission Staff during a mental health sensitisation facilitated by the LVCT Group. The activity was organised by the Human Resource Division as part of Employee Wellness Program.



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