REPORT OF THE TRUTH, JUSTICE AND RECONCILIATION COMMISSION



TJRC KENYA

Volume IV

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His Excellency

President of the Republic of Kenya

Nairobi

3 May 2013

LETTER OF TRANSMITTAL

By Gazette Notice No. 8737 of 22 July 2009 and pursuant to section 10 of the Truth, Justice and Reconciliation Act No. 6 of 2008, the undersigned were appointed to be Commissioners of the Truth, Justice and Reconciliation Commission. The Commission was established with the objective of promoting peace, justice, national unity, healing, reconciliation and dignity among the people of Kenya.

Having concluded our operations, and pursuant to section 48 of the Truth, Justice and Reconciliation Act, we have the honour to submit to you the Report of our findings and recommendations.

Please accept, Your Excellency, the assurances of our highest consideration.

Amb. Bethuel Kiplagat
Chairperson

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(Vice Chairperson)

Judge Gertrude Chawatama

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Foreword

This volume contains the core operational legacy of the Commission's work: its findings and recommendations; the blueprint for the institution tasked with monitoring and implementing the recommendations; and the Commission's proposed reparations policy and framework.

One of the most anticipated parts of a truth commission report is always the commission's findings and recommendations. Having spent four years engaging with Kenyans throughout the width and breadth of the country, including over a year of public hearings, the expectations of those who followed the process are understandably high, notwithstanding the Commission's efforts to educate the public about its powers and limitations. The Commission's statement taking form provided a specific avenue through which any Kenyan could suggest recommendations to the Commission. Every witness who testified before the Commission was asked what he or she would recommend given the violations they had witnessed or experienced. The Commission was thus presented with a wealth of information and creative ideas concerning our recommendations, including recommendations for individual and collective forms of reparations.

The first chapter in this volume sets out the Commission's findings and recommendations. The findings are based upon the facts and analysis in the Report itself, as well as additional research and investigations undertaken by the Commission. It is, understandably, one of the most highly anticipated parts of the Report. The Commission received a broad range of ideas concerning recommendations. Not all of them could be included. In choosing which recommendations to include, the Commission was conscious of, on the one hand, honoring the commitment and sacrifice of the thousands of people who participated in the process, and the thousands who suffered and continue to suffer from the legacy of historical injustices and gross violations of human rights, and on the other hand, the understandable limitations of a government that has a broad mandate in areas of economic development, welfare, education, and security. In other words, the Commission strove to make meaningful and reasonable recommendations which, it is hoped, will have a higher chance of implementation. Better to have fewer recommendations that are implemented, than many recommendations that gather dust on a bureaucrat's shelf.

The Commission was conscious of the fact that one of the biggest challenges that has traditionally faced truth commission recommendations is the lack of political will by

government to implement them. Every truth commission before this one has made recommendations that were not implemented in a timely fashion or, in most cases, not implemented at all. Often, the political pressure to implement the recommendations of a truth commission fades as soon as the commission finishes its work and issues its report. The drafters of the TJR Act clearly had this challenge in mind when they specifically empowered the Commission to design a monitoring and implementation mechanism to ensure that its recommendations are followed and implemented. The second chapter in this volume sets out the rationale for creating such an institution; describes the institution that should be created; and provides a justification for the same institution.

Lastly, the third chapter sets out the Commission's proposed reparations policy and framework. Reparations are key to the legitimacy of a truth commission, and particularly for this truth commission which is the first of its kind to have "Justice" in its title. Justice was achieved in part by the acknowledgement the Commission provided to witnesses who engaged with the Commission through the statement taking process and public hearings. Justice was also achieved in part by the identifying of individuals or institutions responsible for specific historical injustices and gross violations of human rights. Justice is further achieved by the recommendations the Commission made with respect to further investigations and prosecutions, set out in Appendix 1 of Chapter 1 of this Volume.

Equally important, however, to furthering justice is providing reparations to those who have been wronged. As set out in this chapter, international law makes clear that justice demands reparations for those who have been wronged. Reparations are not the same as compensation, though reparations may take the form of compensation to individuals. Reparations may also consist of memorials, community facilities (such as health clinics, schools, etc.), and other mechanisms by which the suffering of victims is acknowledged and addressed. The reparations framework provided here, along with the wealth of information the Commission collected in its four years of work, will guide the implementation mechanism in developing specific reparations awards. The Commission has recommended that the Government set aside an initial Ksh 500 million for reparations. It is not enough to redress all of the violations described in this Report, but we hope that it will provide a beginning that can later be supplemented.

List of Abbreviations

ADR	Alternative Dispute Resolution
AMPs	Adversely Mentioned Persons
CBOs	Community Based Organizations
CDF	Constituency Development Fund
CSOs	Civil Society Organizations
DSC	District Security Committee
EACC	Ethics and Anti-Corruption Commission
ECOSOC	Economic, Social and Cultural Rights
FERA/M	February Eighteenth Revolutionary Army/ Movement
GSU	General Service Unit
ICC	International Criminal Court
IDP	Internally Displaced Person
ILO	International Labour Organization
KIC	Kenya Intelligence Committee
KNCHR	Kenya National Commission on Human Rights
MOU	Memorandum of Understanding
NCIC	National Cohesion and Integration Commission
NGOs	Non-Governmental Organizations
PEP	Post-Exposure Prophylaxis
PEV	Post-Election Violence
PMTCT	Prevention of Mother to Child Transmission
PSC	Provincial Security Committee
SLDF	Sabaot Land Defence Force
TRC SA	Truth and Reconciliation Commission of South Africa
TRC SL	Truth and Reconciliation Commission of Sierra Leone
UNHCR	United Nations High Commissioner for Refugees



The Commission shall submit a report of its work to the President at the end of its operations. The Report shall:

(a) summarize the findings of the Commission and make recommendations concerning the reforms and other measures, whether legal, political, or administrative as may be needed to achieve the object of the Commission;

(b) make recommendations for prosecution;

(c) recommend reparation for the victims;

(d) recommend specific actions to be taken in furtherance of the Commission's findings;

(e) recommend legal and administrative measures to address specific concerns identified by the Commission.

Truth, Justice and Reconciliation Act, sec 48(1) & (2)

All recommendations [of the Commission] shall be implemented, and where the implementation of any recommendation has not been complied with, the National Assembly shall require the Minister to furnish it with reasons for non-implementation.

Truth, Justice and Reconciliation Act, sec 50(2)

CHAPTER ONE

Findings and Recommendations

Introduction

1. One of the most anticipated parts of a truth commission report is always the commission's findings and recommendations. This Chapter provides a catalogue of the Commission's findings and recommendations.

2. The Truth, Justice and Reconciliation Act (TJR Act) required the Truth, Justice and Reconciliation Commission (the Commission) to make findings in respect of gross violations of human rights inflicted on persons by the State, public institutions and holders of public office, both serving and retired, between 12 December 1963 and 28 February 2008. The Act stipulated that such findings must include the Commission's conclusions on: the antecedents, circumstances, factors and context of such violations; the causes, nature and extent thereof; and perpetrator responsibility and motives.[1] The Act further required the Commission to summarize its findings in this Report.[2] This Chapter summarizes the main findings of the Commission as required by section 48 of the TJR Act.

3. The findings of the Commission are based upon the totality of its investigations and research. These include the detailed analysis of the statements it received, the investigations it carried out, conclusions drawn from its open and closed hearings, and the study of a large number of primary source documents and materials.

1 TJR Act, sec 5(a)–(c) and (j).
2 TJR Act, sec 48(2)(a).

4. The Commission has made findings of responsibility against individuals where such persons had an adequate opportunity to respond to allegations in interviews, hearings or in writing. However, a significant number of adversely mentioned persons did not respond to the Commission's invitation to respond to allegations levelled against them. In the absence of a response from such AMPs, the Commission presumed the allegations as levelled against them to be truthful. This is in accordance with the jurisprudence of quasi-judicial human rights bodies. In the practice of the African Commission on Human Rights and Peoples' Rights and the Inter-American Commission on Human Rights (IACHR) the facts alleged in a complainant's petition is presumed to be true if the respondent state has not provided responsive information during the maximum period set by the respective commissions.[3] Similarly, the Human Rights Committee has established the practice of drawing its decision on the basis of information provided by the complainant when the respondent state fails to participate in the communications procedure.[4]

5. In making findings of responsibility against individuals and groups, the Commission employed the balance of probabilities standard of proof. This standard is akin to the preponderance of evidence normally used in civil cases. It is the same standard used by similar truth commissions internationally. The Commission was not a court of law and therefore the finding it has made in reference to an adversely mentioned person is not a finding of guilt.

6. It is noteworthy that some compared this Commission's work with that of the International Criminal Court (ICC) or asked about the relationship between the Commission and the ICC. As noted, the Commission was not a court of law, and while some of the purposes of the Commission were similar to that of the ICC, they were very different institutions. First, the Commission was a more victim-centered institution. The ICC, while more victim-centered than many courts, still has as the subject of its primary focus the suspect, and determining by a high standard of proof whether the suspect is guilty of the charges alleged. Second, the Commission was focused on historical narratives, context, and perspectives of victims, perpetrators, and witnesses. The ICC, like all courts, is much more narrowly focused. As a result of these and other differences, the Commission was able to interact with, and provide participation for, far more victims and other Kenyans than the ICC. Third, the ICC's temporal mandate is relatively narrow – from the time of the ratification of the Rome Statute by Kenya on 1 June 2005 to 26 November 2009 (the date of the ICC Prosecutor's filing of a request for the initiation of an

3 See IACHR Rules of Procedure, rule 38; *Lawyers for Human Rights v Swaziland* (2005) AHRLR 66 (ACHPR 2005).

4 D McGoldrick *The Human Rights Committee: Its role in the development of the International Covenant on Civil and Political Rights* (1994) 145-150.

investigation into the Kenya situation). The Commission's temporal mandate is far broader, from 12 December 1963 to 28 February 2008, and in fact extends before and after that period.

7. Some also asked about the role of the Commission with respect to the 2007 PEV. As noted earlier, it was the 2007 PEV that provided the immediate impetus for the creation of the Commission, and that period of Kenya's history is clearly within the temporal mandate of the Commission. Consequently the Commission heard a good deal of testimony concerning the PEV. The Commission, however, limited the amount of resources that it devoted to that period for three reasons. First, the period of post-election violence was a very small part of the time period in which the Commission was to examine historical injustices and gross violations of human rights. Second, a previous commission of inquiry – the Commission of Inquiry on the Post-Election Violence, also known as the Waki Commission – had focused specifically and narrowly on violations during this period. Third, through its focus on initially six, and now three, individuals, the ICC was and is investigating this period of Kenya's history. In other words, it was the view of the Commission that a good deal of time and resources had already been, and were continuing to be, focused on this period within the mandate. Without commenting on the quality of either of these separate investigative institutions, it was the considered view of the Commission that its limited time and resources would be better served focusing on those broad areas of the mandate that were not the subject of any other investigative process.

8. The TJR Act also required the Commission to make recommendations concerning the reforms and other measures, whether legal, political, or administrative as may be needed to achieve the objects of the Commission.[5] In this regard, the objects of the Commission were to promote peace, justice, national unity, healing, and reconciliation.[6] In particular the Commission was enjoined to make recommendations regarding:

- Prosecution;
- Specific actions to be taken in furtherance of the Commission's findings;
- Legal and administrative measures to address specific concerns identified by the Commission;
- Measures to prevent the future occurrence of human rights violations.

5 TJR Act, sec48(2)(a).
6 TJR Act, sec 5.

9. The Commission was authorized to make recommendations concerning any other matter with a view to promoting or achieving justice, national unity and reconciliation within the context of the Act.[7]

10. The Commission was also mandated to recommend the grant of amnesty in respect of certain offences. However, as explained in the mandate chapter of this Report, the Commission did not process any amnesty applications and as such no recommendations pertaining to amnesty have been made. The Commission was also mandated to recommend a reparation framework that would serve as the basis for repairing the harm suffered by victims and survivors of gross violations of human rights and historical injustices. Chapter Three of this Volume sets out the Commission's recommendations in relation to reparations. Finally, the Commission was required to make recommendations on the mechanism and framework for the implementation of its recommendations. Chapter Two of this Volume makes recommendations relating to such a mechanism.

11. In essence, the legal framework provided by the TJR Act facilitated the making of comprehensive recommendations on a range of topics. As such, and to facilitate implementation and monitoring, the Commission has tried to make recommendations which are specific, feasible and which have measurable short, medium or long-term goals. Recommendations which strike a resonance with the Kenyan people are likely to be the subject of mobilization and lobbying. Such recommendations are more likely to be implemented by the Government. Each recommendation has been directed to a specific entity or office holder.

12. The recommendations made by the Commission are a synthesis of views expressed to the Commission and the Commission's own reflection on the findings reached with respect to various violations and issues. The recommendations reflect views expressed to the commission by victims, witnesses, civil society organisations, experts and government officials who interacted with the Commission. With respect to victims, the Commission solicited their views on recommendations through the statement taking process. Additional recommendations were proposed to the Commission by those who testified during the individual, thematic and institutional hearings held around the country.

13. With respect to recommendations concerning the investigation and possible prosecution of an individual, the following shall apply: The DPP or appropriate authority shall immediately commence an investigation into the individual named.

7 TJR Act, sec 5(2)

Unless otherwise provided in the specific recommendations, such an investigation shall conclude no later than twelve months after the issuance of this Report. At the completion of such investigation the DDP or appropriate authority shall make an immediate determination concerning whether the evidence warrants a criminal prosecution. The DPP or appropriate authority shall immediately make that determination public, and shall include in that public statement detailed reasons justifying its decision.

14. The above procedure with respect to investigations for possible prosecution is a recommendation of the Commission, and as with all recommendations as set out in the TJR Act is binding as a matter of law.

15. In thinking about and formulating recommendations, the Commission took note of the fact that the Commission was established as part of the Kenya National Dialogue and Reconciliation process which led to the initiation of numerous reforms and mechanisms intended to address long-standing historical issues. As a consequence, many of the issues that the Commission was tasked to address have been addressed (either in whole or in part) or are in the process of been addressed. For instance, the Constitution of Kenya 2010 has dealt with or laid the basis for addressing such issues as historical land injustices and economic marginalization.

16. The Commission was also aware that there have been established in recent time a number of permanent institutions charged with dealing with the very issues that the Commission was mandated to inquire into. These include:

- The National Land Commission, which has the mandate to deal with, among other issues, historical land injustices;
- The National Cohesion and Integration Commission, which has the mandate to foster national cohesion and unity;
- The National Gender and Equality Commission, which has the mandate to promote and protect the rights of minority and vulnerable groups, including women and marginalized groups;
- The Ethics and Anti-Corruption Commission, which has the mandate to investigate cases of corruption and economic crimes;
- The Commission on Revenue Allocation, which has the mandate to determine allocation of revenue; and
- The Independent Police Oversight Authority, which has the mandate to, *inter alia*, inquire into killings committed by the police.

17. In essence, the Commission's work evolved at a particular historical moment that coincided with a reform process. Thus, the Commission viewed its role as that of building on the existing reform initiatives.

18. Like truth commissions before it, the Commission had to consider whether or not to recommend lustration. The term lustration is derived from the Latin *lustrum* and refers to a process of purification. In the field of transitional justice, the process of lustration has been used to remove from public office individuals who are associated with past human rights violations. It has also been used to prevent individuals associated with human rights violations from holding public office in the future.

19. The United Nations recognize the important role that vetting and lustration can play in the prevention of future human rights abuses and violations by the State.[8] Lustration can serve two purposes: preventing the recurrence of human violations by public officers who have committed such violations in the past, and restoring the population's trust in the State after a period of systematic human rights violations.

20. The process of lustration has been controversial in many societies when it has been used to remove from office all individuals associated with past political regimes. For example, lustration has been used in former communist countries to remove all individuals associated with the past communist regime, and in Iraq to remove all officials associated with the deposed Baath Party.[9] In the context of Kenya, this kind of mass action is not recommended.

21. However, the prevalence of impunity throughout the history of Kenya compelled the Commission to consider lustration for past abuses committed by individuals while acting in an official capacity. The Commission considered that tackling impunity is a necessary and urgent step in the full restoration of the rule of law in Kenya, in establishing lasting peace and stability, and in fostering reconciliation. For this reason, the Commission has recommended that specific individuals should not hold public office in Kenya's constitutional order on account of their past conduct and/or decisions which resulted in gross violations of human rights.

8 Rule of Law Tools for Post-Conflict States: Vetting, an operational framework, Office of the High Commissioner for Human Rights (OHCHR), United Nations, New York and Geneva (2006) 1.
9 This process has been referred to as de-Baathification.

Primary Findings

22. The Commission finds that between 1895 and 1963, the British Colonial administration in Kenya was responsible for unspeakable and horrific gross violations of human rights. In order to establish its authority in Kenya, the colonial government employed violence on the local population on an unprecedented scale. Such violence included massacres, torture and ill-treatment and various forms of sexual violence.

23. The Commission also finds that the British Colonial administration adopted a divide and rule approach to the local population that created a negative dynamic of ethnicity, the consequences of which are still being felt today. At the same time the Colonial administration alienated large amounts of highly productive land from the local population, and removed communities from their ancestral lands.

24. The Commission finds that between 1963 and 1978, President Jomo Kenyatta presided over a government that was responsible for numerous gross violations of human rights. These violations included:

- in the context of the Shifta War, killings, torture, collective punishment, and denial of basic needs (food, water and health care);
- political assassinations of Pio Gama Pinto, Tom Mboya and J.M. Kariuki;
- arbitrary detention of political opponents and activists; and
- illegal and irregular acquisition of land by the highest government officials and their political allies

25. The Commission finds that between 1978 and 2002, President Daniel Arap Moi presided over a government that was responsible for numerous gross violations of human rights. These violations include:

- massacres;
- unlawful detentions, and systematic and widespread torture and ill-treatment of political and human rights activists;
- assassinations, including that of Dr. Robert Ouko;
- illegal and irregular allocations of land; and
- economic crimes and grand corruption.

26. The Commission finds that between 2002 and 2008, President Mwai Kibaki presided over a government that was responsible for numerous gross violations of human rights. These violations include:

- unlawful detentions;
- extra judicial killings; and
- economic crimes and grand corruption

27. The Commission finds that state security agencies, particularly the Kenya Police and the Kenya Army, have been the main perpetrators of bodily integrity violations of human rights in Kenya including massacres, enforced disappearances, torture and ill-treatment, and sexual violence.

28. The Commission finds that Northern Kenya (comprised of the former North Eastern Province, Upper Eastern and North Rift) has been the epicenter of gross violations of human rights by state security agencies. Almost without exception, security operations in Northern Kenya have been accompanied by massacres of largely innocent citizens, systematic and widespread torture, rape and sexual violence of girls and women, looting and burning of property, and the killing and confiscation of cattle and other livestock.

29. The Commission finds that state security agencies have as a matter of course in dealing with banditry and maintaining peace and order employed collective punishment against communities regardless of the guilt or innocence of individual members of such communities.

30. The Commission finds that during the mandate period the state adopted economic and other policies that resulted in the economic marginalization of five key regions in the country: North Eastern and Upper Eastern; Coast; Nyanza; Western; and North Rift.

31. The Commission finds that historical grievances over land constitute the single most important driver of conflicts and ethnic tension in Kenya. Close to 50 percent of statements and memorandum received by the Commission related to or touched on claims over land.

32. The Commission finds that women and girls have been the subject of state-sanctioned systematic discrimination. Although discrimination against women and girls is rooted in patriarchal cultural practices, the state has traditionally failed to curb harmful traditional practices that affect women's enjoyment of human rights.

33. The Commission finds that despite the special status accorded to children in Kenyan society, they have been subjected to untold and unspeakable atrocities including killings, physical assault and sexual violence.

34. The Commission finds that minority groups and indigenous people suffered state-sanctioned systematic discrimination during the mandate period. In particular, minority groups have suffered discrimination in relation to political participation and access to national identity cards. Other violations that minority groups and indigenous people have suffered include: collective punishment, and violation of land rights and the right to development.

Recommendations

- The Commission recommends that the President, within six months of the issuance of this Report, offer a public and unconditional apology to the people of Kenya for all injustices and gross violations of human rights committed during the mandate period.
- The Commission recommends that State security agencies, and in particular the Kenya Police, Kenya Defence Forces, and the National Intelligence Service apologize for gross violations of human rights committed by their predecessor agencies between 12 December 1963 and 28 February 2008, especially acts of extra-judicial killings, arbitrary and prolonged detention, torture and sexual violence.
- The Commission recommends that the Kenyan Government considers entering into negotiations with the British government with a view to seeking compensation for victims of atrocities and injustices committed during the colonial period by agents of the colonial administration. This should be done within 12 months of the issuance of this Report.
- The Commission recommends that the British government offer a public and unconditional apology to the people of Kenya for all injustices and gross violations of human rights committed by the colonial administration between 1895 and 1963.
- The Commission recommends that the Judiciary apologize to the people of Kenya for failing to address impunity effectively and perform its role of deterrence to prevent the perpetration of gross human rights violations, during the period between 12 December 1963 and 28 February 2008.
- The Commission recommends the creation of a National Human Rights Day on 10 December, to coincide with the international Human Rights Day, which will be used to promote respect for human rights in Kenya.
- The Commission recommends that the judiciary fast-tracks the establishment of the International Crimes Division of the High Court which shall be responsible for the trial of some of the cases referred to the Director of Public Prosecutions for investigations and prosecution.

- The Commission recommends that the fast-tracking of the enactment of human rights related laws as envisaged by the Constitution of Kenya, including on: freedom of the media; fair hearing; and rights of persons held in custody or detained.
- The Commission recommends that the government makes a declaration in terms of article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights thus allowing individual victims of human rights violations who have exhausted local remedies to directly access the African Court.
- The Commission recommends that the Ministry of Justice fast-tracks the expansion of the national legal aid scheme to cover the entire country.

Factors that Encouraged Perpetuation of Gross Violations of Human Rights

35. The Commission finds that the following factors encouraged the perpetuation of gross violations of human rights during the mandate period:

- The failure of the first government in independent Kenya (led by President Jomo Kenyatta) to dismantle the repressive state structures established by the colonial government.
- The use of and subsequent enhancement of repressive laws, policies and practices initially employed by the colonial government by the first two post-independence governments (President Jomo Kenyatta's and President Daniel Arap Moi's administrations).
- The creation of a *de jure* one party state by President Moi's government, resulting in severe repression of political dissent and intimidation and control of the media. Repression of political speech and the media allowed many violations to occur with little public scrutiny, much less accountability.
- Consolidation of immense powers in the person of the President, coupled with the deliberate erosion of the independence of both the Judiciary and the Legislature.
- The failure of the state to investigate and punish gross violations of human rights. The Commission finds that in most cases, the state has covered-up or downplayed violations committed against its own citizens, especially those committed by state security agencies. During the entire mandate period (1963-2008), the state demonstrated no genuine commitment to investigate and punish atrocities and violations committed by its agents against innocent citizens.

Findings and Recommendations on Specific Violations and Injustices

Colonial Era

36. The Commission finds that in order to establish and consolidate its rule in Kenya, the British government employed violence on a locally unprecedented scale. To force the local population into submission, the colonial administration in Kenya conducted punitive expeditions in the 1890 and 1920 against what they called 'recalcitrant tribes'. There were military expeditions against the Nandi in 1901, 1905 and 1906, against the Embu in 1905, against the Kisii in 1904, 1908 and 1914, against the Kipsigis in 1905 and against the Abagishu and Kabras in 1907. These military expeditions were characterised by massacres, torture, sexual violence, and destruction of property.

37. The British administration divided Kenyan territory into provinces and districts. These administrative boundaries were based on ethnic and linguistic units, in effect freezing cultural development and population mobility. The boundaries were arbitrary, in some cases dividing groups more sharply than had been the case and in some cases combining groups that were originally distinct. The Commission finds that the creation of these administrative units planted the seeds of ethnic hatred as communities started to establish ownership of their territories to the exclusion of others.

38. In certain cases, the British established its authority by establishing alliances with local leaders. These alliances were created through manipulation and, at times, through the circumventing existing indigenous systems of authority. The British manipulated leaders of the Maasai and Luhya (Mumia in Wanga and Sudi Namachanja in Bukusu). The British alo imposed leaders on local populations as was the case of Karuri wa Gakure and Kinyanjui wa Gathirimu among the Kikuyu. Manipulations were more evident in the signing of treaties involving British administrators and African leaders such as the Anglo-Maasai treaties of 1904 and 1911.

39. After violently bringing the local population into some form of submission, the Colonial administration proceeded to find means of making the colonial territory self-financing. This was achieved through the creation of the chief as agents of local administration who were tasked with the responsibility of tax collection, maintenance of law and order and mobilization of labour for settler requirements. Chiefs were empowered by a series of labour laws to call out any number of able-bodied persons to labour without pay. This mandate was extended at the outbreak of World War 1 to finding able-bodied manpower for the war. Chiefs had retainers who in the process of tax collection, confiscated peoples' animals and produce,

seized their women and routinely whipped men. The Commission finds that such coercive authority, supervised and approved by the colonial administration, explains the intense hatred for chiefs and the provincial administration in general, even in the post-colonial period.

40. Colonial violence reached its zenith in the 1950s (and mainly during the emergency years), a time when communities in Kenya staged a fight for political and economic self-determination. The British interned thousands of Africans in detention camps set up around the country. The treatment at these camps was brutal. Information about what happened at the camps was carefully controlled and the British colonial office consistently denied reports of torture and other gross violations of human rights.

41. Although the British administration was responsible for atrocities during the emergency years, the Mau Mau also committed atrocities against those they perceived as local beneficiaries of colonial power, in effect turning neighbours and relatives against each other. Contrary to African customs and values, the Mau Mau assaulted old people, women and children.

Shifta War

42. The Commission finds that the Kenyan military inflicted violations and atrocities on innocent civilians during the conflict. In particular, the Commission finds that the Kenyan Army committed mass killings of civilians during the Shifta War and that the number of people who were killed during the War is possibly much higher than the official figure of 2000. Most of the killings took place in villages but the Commission also received evidence showing that killings took place in places of worship.

43. The Commission finds that violations against women were widespread and systematic. These violations included rape and other forms of sexual violence. The Commission received evidence that women were held as sexual slaves by members of the Kenyan Army. The Commission rejects the prevailing official view that sexual violence during the Shifta War was infrequent and isolated.

44. The Commission finds that the Kenyan Army was responsible for the killings and large-scale confiscation of livestock belonging to civilians. The shooting of especially camels was a particular strategy employed by the Army as it was believed that camels were used by the Shifta to transport guns and other supplies. The Army was responsible for the poisoning of livestock. Testimony received by

the Commission reveal that it was common for soldiers and government officers to invade villages and confiscate cattle, sheep, camels and goats. The owners of such livestock were never told what happened to their livestock. Nor were they ever compensated for their losses.

45. The Commission finds that as part of the Shifta War, the Kenyan government established restricted or protected villages or camps in which residents of Northern Kenya were essentially detained and their movement severely restricted. This villagisation programme was eerily reminiscent of the detention camps created during the colonial period. The conditions in the restricted villages in Northern Kenya were squalid. Accounts received by the Commission indicate that diseases such as dysentery, pneumonia, malaria and tuberculosis were common in the villages

46. The Commission finds that the Shifta War had a particularly devastating impact on minority groups living in Northern Kenya such as the Sakuye.

47. The Commission finds that while those fighting against the Kenyan government committed violations against the local civilian population, the vast majority of violations were committed by the Kenyan government through its military and police officers and provincial administrators

48. The Commission finds that those fighting against the government stole, often violently, from the local population in order to support their military activities.

49. The Commission finds that military and political leaders conducted the conflict with little if any regard to the basic rights of the Kenyan citizens in the region.

50. This inattention to the rights and welfare of the local population continued after the end of the conflict and to some extent even continues today. Economic marginalization and continued violations of the rights of those living in the former Northern Frontier District have their origins in the actions and attitudes of the colonial government and the newly independent Kenyan government.

51. The Commission finds that the Kenyan government made a deliberate and concerted effort to cover up abuses committed in connection with the conflict, and enacted the Indemnity Act in order to protect government officials for accountability for wrongful acts committed in the conflict.

52. The Commission finds that the Indemnity Act not only covered up human rights abuses and other violations of both Kenyan and International Law, but itself is a violation of international law as it denies the victims of the conflict access to truth,

We appeal for the revealing of the content of Arusha Declaration between Kenya and Somali governments about the North Eastern Frontier District, which could have led to the atrocities and marginalization of the people of NFD by successive Kenya regimes.

reparations, and accountability for what they suffered. The effects of the Indemnity Act, the amount of time that has passed since the atrocities occurred, and fading memories of victims and other witnesses to such atrocities, all contribute to making it difficult to identify individual combatants who committed violations of the Geneva Conventions and other applicable bodies of law.

53. The Commission finds that Brigadier Joseph Ndolo and Brigadier Jackson Mulinge (as they were then) bear command responsibility for the atrocities committed against civilians by the Kenyan Army during the Shifta War.

Recommendations

- The Commission recommends that the President, as the Commander-in-Chief of the Armed Forces, within twelve months of publication of this Report, acknowledges that the military committed atrocities during the Shifta War and offer a public and unconditional apology to the people of North Eastern and all who were affected by the conflict.
- The Commission recommends the repeal of the Indemnity Act within nine months of the issuance of this Report. If the Indemnity Act is not repealed within the stipulated time, the Attorney General shall immediately thereafter (and no later than one month after such six month period) issue a public report explaining why the Indemnity Act has not been repealed and what steps, if any, the government plans to take to ensure its repeal and to provide accountability for the violations committed during the Shifta War.
- The Commission recommends that within nine months of the publication of this Report, the government, and particularly the Ministry of Foreign Affairs, publishes the entire Memorandum of Agreement (Arusha Agreement) signed between the Kenyan and Somalia governments and which marked the formal end of the Shifta War. The Agreement should be published in at least three local newspapers with wide circulation. Moreover, copies of this Agreement should be translated into local languages spoken in Northern Kenya and be widely disseminated in the region.
- The Commission recommends the establishment of a public memorial to commemorate the victims of Shifta War. The memorial should be established within 24 months of the issuance of this Report.

Massacres

Primary findings

54. Massacres have occurred throughout the history of Kenya. While they increased during and as a result of colonialism, massacres predate the colonial period. The Commission has documented the following massacres which occurred during the colonial period:

- Kedong Massacre
- Massacres committed in the context of the Giriama Rebellion
- Kollowa Massacre
- Massacres committed in the context of Mau Mau War including Lari Massacre and Hola Massacre

55. The Commission finds that most massacres committed by state security agents in the post-independence period have occurred in Northern Kenya, that is, North Eastern, Upper Eastern and North Rift. These massacres were committed during security operations with the stated purpose of, among other things, combatting cattle rustling and disarming the population. The Commission finds that state security agencies were responsible for the following massacres: Massacres during the Shifta War; Bulla Karatasi Massacre, 1980; Wagalla Massacre, 1984; Lotirir Massacre; and Malka Mari Massacre.

56. Massacres committed by civilians mostly occurred as a result of cattle rustling and inter-ethnic or inter-communal conflict. The Commission finds that the motivation for inter-ethnic massacres was mostly contestations for control of land for pasture and water. Another motivation includes retaliation. As such, ethnic groups which were victims of massacres were often previously perpetrators of massacres themselves against the attacking group. Inter-ethnic conflict was characterised by reprisals and revenge attacks.

57. Most accounts of massacres that were presented to the Commission were undocumented which made investigating such incidents difficult if not impossible. The vast majority of perpetrators responsible for the massacres have not had to answer for their crimes. To this day they remain unpunished.

58. Massacres that took place during the mandate period were invariably accompanied by the committal of a range of other violations. These included rape and other

gender-based violations, torture, enforced disappearances and destruction of property.

59. The Commission finds that because most massacres committed by security agents have occurred in Northern Kenya, victims of massacres are therefore predominantly of Somali, Borana, Sakuye, Gabbra, Pokot and Turkana ethnic groups. Most victims of massacres in North Eastern and Upper Eastern were predominantly Muslims.

60. The communities targeted for attack by way of massacres in inter-ethnic conflict were in most cases isolated and far from police or government presence. Victims were mostly attacked or ambushed at watering points, while herding livestock or while in their homesteads.

61. Children were sometimes the targets of massacres. In the case of the Turbi Massacre of 2005 a primary school was specifically singled out for attack and 21 children killed. Similarly in the Murkutwa Massacre, a total of 12 children were killed.

62. In respect of massacres committed by state security forces, the Commission finds that these massacres were the products of a desire on the part of the relevant security forces to impose collective punishment on communities whose members were suspected of committing various transgressions.

63. The Commission finds that the prevailing security environment of lax controls and almost total impunity for perpetrators effectively encouraged and condoned the committal of such heinous crimes.

64. The Commission is not aware of a single criminal conviction for any massacre committed by the security forces in Kenya during the mandate period.

65. The Commission notes that command responsibility can be attributed to those who exercise actual authority over subordinates. It applies to both civilian and military officials. It arises when those in command knew, or had reason to know, that crimes were about to be committed or had been committed by their subordinates or those under their effective authority and control, and they failed to take the necessary and reasonable measures within their power to prevent or punish those subordinates. Commanders are under an objective responsibility to try to establish what their subordinates are doing and discipline them where appropriate. Responsibility can even be imposed where the commander does not take adequate steps to keep abreast of the criminal activities of his or her subordinates.

66. The Commission made formal requests to the Ministry of Defence for information in respect of the role of the Army in the Shifta War and other massacres but no response was received. The Commission finds it regrettable that the Ministry of Defence chose to ignore or refuse the request, and thus to act in clear violation of the provisions of the TJR Act. In so doing the Ministry of Defence has undermined Kenya's truth and reconciliation process.

Bulla Karatasi/Garissa Gubai Massacre

67. The Commission finds that the security operation conducted in Garissa in November 1980 resulted in the massacre of hundreds of civilians. Numerous other atrocities were committed by state security agents (the regular police, administration police, General Service Unit, and the Kenya Army), including torture, brutal beatings, rape and sexual violence, burning of houses and looting of property.

68. The Commission finds that the Bulla Karatasi Massacre, and the detention, torture, rape and sexual violation of women, burning of houses and the looting of property, was a systematic attack against a civilian population and thus qualifies as a crime against humanity.

69. The Commission finds that to cover up the massacre, security agents involved in the operation disposed of the bodies of those killed into the Tana River.

70. The Commission finds that collective punishment was a key component of the Bulla Karatasi security operation which resulted in the mass killings of civilians. Security agents operated on the presumption that the entire population of Garissa town and its environs was somehow responsible for the shooting of civil servants, the crime which prompted the mounting of the security operation. On this basis, all Somali male adults were rounded and detained at Garissa Primary School where they were screened, tortured and brutally beaten.

71. The Commission finds that the military participated in the Bulla Karatasi Massacre. The commander of the Kenya Army, amongst others, flew to Garissa the day after the operation on a fact-finding mission. It is difficult to see what would have necessitated a high ranking member of the Kenya Army to visit the site of the massacre other than some level of military involvement in the operation. The Commission therefore rejects the official position that the military did not participate in the operation.

72. The Commission finds that members of the North Eastern Provincial Security Committee (chaired by Benson Kaaria, the then Provincial Commissioner for

North Eastern Province) and Garissa District Security Committee at the time of the Bulla Karatasi operation bear responsibility for the massacre and other atrocities committed during the security operation. The members of both the Provincial and District Security Committees sat in the same emergency meeting at which the security operation and the collective punishment of male adults of the Somali ethnic community was authorised. The Commission also finds that the Minister for Internal Security at the time of the security operation, Godfrey Gitahi Kariuki (popularly known as G.G. Kariuki), bears responsibility for the operation and the ensuing atrocities.

73. The Commission finds that the conduct of Benson Kaaria and G.G. Kariuki, both of whom appeared before the Commission, is consistent with the official denials and deflections that followed in the aftermath of the Bulla Karatasi Massacre. Before the Commission, Benson Kaaria repeatedly asserted that the Bulla Karatasi operation did not result in any deaths nor were any women raped or otherwise sexually violated. Similarly, G.G. Kariuki denied knowledge of any deaths or rapes. The Commission finds that members of the North Eastern Provincial Security Committee and the Garissa District Security Committee and the Minister of Internal Security at the time of the Bulla Karatasi Massacre are unfit to hold public office in Kenya's new constitutional order.

74. The Commission finds that despite the numerous atrocities committed by security agents during the Bulla Karatasi operation no one was ever identified as responsible or held to account.

Wagalla Massacre

75. The Commission finds that the security operation conducted in Wagalla, Wajir, in February 1984 resulted in the massacre of hundreds of civilians. Numerous other atrocities were committed by state security agents including torture, brutal beatings, rape and sexual violence, burning of houses and looting of property

76. The Commission finds that the Wagalla Massacre, including the detention, torture and killing of the male members of the Degodia tribe at the airstrip, and the rapes, killing of livestock and burning of homes in the villages, was a systematic attack against a civilian population and thus qualifies as a crime against humanity.

77. The Commission was unable to determine the precise number of persons murdered in this massacre but accepts that a large number died, possibly close to a thousand. The official figure of 57 given by the state therefore grossly underestimates the number of people who were killed at Wagalla and is an example of the generally

thoughtless manner in which the state has traditionally treated massacres committed by its own agents.

78. The District Security Committee (DSC) at Wajir authorized the security operation that resulted in the massacre. The plan involved confining people at the airstrip, a place not officially gazetted as a detention center.

79. The Provincial Security Committee (PSC) at Garissa had a role to play in the authorizing of the operation as is evidenced from the signal that was sent from the Garissa PSC to the Wajir DSC that called for the rounding up of persons and livestock and for them to be "*treated mercilessly*". The Commission finds such language in official communications to be highly inappropriate and reckless. Such words stood as an effective license for subordinates to take the law into their own hands. The Commission finds the PSC and in particular, the author of the signal, Provincial Police Officer Aswani, to be responsible for encouraging the recipients of the instruction to act in a lawless manner.

80. The Kenya Army is held to be responsible for the actual execution of the massacre. The military as a matter of necessity must also have played a role in the planning of the operation.

81. The Commission is satisfied that the DSC, the PSC and the Kenya Intelligence Committee (KIC) knew or should have known that the security approach adopted would lead to gross violations of human rights, including the deaths of innocent individuals. None of the members of these bodies learnt any of the lessons from earlier massacres, such as the 1980 massacre in Garissa (Bulla Karatasi). Alternatively these persons chose to ignore such lessons.

82. There was a deliberate effort by the government to cover up the details and extent of the massacre. The cover-up involved most if not all of those in positions of authority in Wajir, Garissa and Nairobi.

83. The Commission notes that members of the KIC visited Wajir the day preceding the Wagalla Massacre, during which visit they held a meeting with the District Security Committee. The Commission finds that members of the KIC deliberately mischaracterized to the Commission the nature of the KIC trip and withheld or concealed information concerning their knowledge and/ or involvement in the security operation. The Commission finds that while development may have been on the KIC's agenda as alleged by such members, its primary mission was in fact to assess the state of security in the region. This much is apparent from the documents

concerning the planning of the trip, as well as the documents prepared shortly after the trip. This conclusion is also confirmed by some of the witnesses who testified.

84. The Commission notes with deep concern that notwithstanding their positions and seniority, their specific brief in the area, the security briefings received, and their knowledge of ongoing incidents and the declining security situation in Wajir, that all of the KIC members interviewed or who appeared in the hearings denied any knowledge of the plans to follow up or deal with the security situation. The Commission finds that, in the circumstances described above, such denials are not credible.

85. The Commission accordingly finds that the KIC must have been apprised of the plans for the pending security operation. In fact the Commission was told that the security operation was planned by the National Security Council in Nairobi in January 1984 which, if true, makes it extremely difficult to believe that the KIC would not have been made aware of such plans in connection with their tour of the area. One of the questions the Commission was unable to answer is why the KIC members have chosen to feign total ignorance as to what measures were to be taken, even close to thirty years after the event.

86. The KIC members were likely to have received news of the massacre before most people. However they deny this. Some of them went so far as to claim that they only heard of the Wagalla Massacre through newspaper reports that surfaced weeks afterwards. The Commission finds these claims implausible

87. The conduct of the KIC members is consistent with the official wall of silence that descended over the facts and details of the Wagalla Massacre. In feigning ignorance, the KIC members have invited deep suspicion about answers to the most serious questions as to their specific roles in the days preceding and just after the Wagalla Massacre. The Commission finds the conduct of the KIC members unbecoming of their high offices. Indeed the Commission finds that particularly because of their continued cover up of the circumstances surrounding the massacre that none of the individuals who were members of the KIC are fit to occupy any position of responsibility in the new Kenyan constitutional order.

88. The Government refused to make available to the Commission specific documents related to its investigation of this and other massacres in clear violation of the TJR Act. Specifically the Commission did not receive the full set of minutes of meetings of the relevant PSC, DSC, and KIC meetings, and did not receive any minutes of the NSC, despite repeated requests. This violation of the TJR Act has severely hindered

the ability of the Commission to discover the entire truth and context of these and other violations.

Malka Mari Massacre

89. The Commission finds that the 1981 security operation in Malka Mari, Mandera, resulted in the massacre of hundreds of individuals. During the security operation, women were raped and were subsequently shunned in the community. Others suffered serious injuries, including the loss of limbs.

90. The Commission finds that the state has maintained an official silence over the massacre.

Turbi and Bubisa Massacres

91. The Turbi Massacre occurred on the morning of 12 January 2005 when raiders attacked Turbi village in Marsabit. Afterwards, nine people were killed in Bubisa in revenge for the killings in Turbi. This killing of nine people is commonly referred to as Bubisa Massacre.

92. The Commission finds that preceding the Turbi and Bubisa Massacres were numerous resource-based conflicts between the Borana and Gabbra communities.

93. The Commission finds that about 95 people were killed during the Turbi and Bubisa massacres, including 12 children who were killed at Turbi Primary School.

94. The Commission finds that the Turbi and Bubisa Massacres were both ethnic-based and politically motivated.

95. The Commission finds that the Turbi and Bubisa Massacres occurred partly as a result of the failure of the state to provide security for the people of Marsabit and particularly the victims and survivors of the massacres. While there were early warnings of looming violence in Marsabit, the government security apparatus failed to respond in good time.

96. The Commission finds that that the Turbi and Bubisa Massacres has had severe impact on the communities living in Marsabit, especially the Gabras and Boranas.

97. The Commission finds that no one was ever identified as responsible or held to account for the Turbi and Bubisa Massacres. A criminal trial was against 3 people allegedly responsible for the Bubisa Massacre but the case was later withdrawn.

Lotirir Massacre

98. The Commission finds that the security operation conducted in West Pokot District between 22 February and 22 May 1984 by the Kenyan security agents (mainly the Kenya Army) resulted in what is popularly referred to as Lotirir Massacres.

99. The security operation also resulted numerous other gross violations of human rights, including torture, and sexual violence. The security agents used heavy artillery and bombed the following areas in West Pokot District: Kadam Hill; Achalau Hill; Lorusuk Hill; Kasei Hill; Chepyomot (Cheloboi arear); Tarakit Hill; Alale; Nauyapong; and Kishiaunet. Moreover, the security agents confiscated or killed livestock belonging to the local population.

Murkutwa Massacre

100. The Murkutwa Massacre took place on the morning of 12 March 2001 when heavily armed Pokot raiders attacked residents of Murkutwa location in Marakwet District.

101. The Commission finds that the Murkutwa Massacre occurred partly as a result of the failure of the state to provide security for the people of Murkutwa and particularly the victims and survivors of the massacre.

Loteteleit Massacre

102. Loteteleit Massacre occurred on 28 April 1988 when cattle raiders believed to be the Toposa of Southern Sudan and the Nyangatom of Ethiopia ambushed the Turkana at a water point at Loteteleit.

103. The Commission finds that the Loteteleit Massacre occurred partly as a result of the failure of the state to provide security for the people of Loteteleit and particularly the victims and survivors of the massacre.

> *The President and the Prime Minister should admit that atrocities like … wanton killings, rape, looting and everything have happened and then they say, 'we apologize to the people of North Eastern Province (NEP)'. We can accept that.*

Recommendations

- The Commission recommends that within six months of the issuance of this Report, the President formally apologizes for those massacres committed by government forces, and for the failure of the state to avert the massacres at Turbi and Bubisa despite having prior information of the same.
- The Commission recommends that the victims of the above-reference massacres be provided with reparations, both individual and collective, within 36 months of the issuance of this Report and consistent with the Reparations Framework of the Commission.
- The Commission recommends that all of the individuals identified in this Report as responsible for the planning, implementation, and cover up of the Bulla Karatasi and Wagalla Massacres – including but not limited to the then members of the DSC, PSC, and KIC – be barred from public office or any other position of public authority.
- The Commission recommends that within six months of the issuance of this Report, the Government shall release to the Implementation Committee all of the minutes of the relevant DSC, PSC, KIC, and NSC meetings with respect to each and every one of the massacres referred to above.
- The Commission recommends that the Government take into account the history of such massacres and other violations, including the related economic marginalization of the region, in formulating relevant development policies, including in prioritizing crucial infrastructure development. An explicit goal of such development policies must be addressing the historic economic marginalization of this and other similar areas.
- The Commission recommends that the Catholic Church facilitate the return of Father Adrian Joseph Janito to the country to testify about the massacre in Bubisa.

Political Assassinations

General findings

104. The Commission finds that during the mandate period, political assassination was one of the tactics used by the state and the political elite to repress dissent or eliminate political competition.

105. The Commission finds that political assassinations have exacerbated ethnic divisions and tensions. The assassination of Tom Mboya is a prime example of how assassinations can further divide communities and increase ethnic tensions.

106. The Commission finds that investigations into specific assassinations, when undertaken, were usually deliberately shut down before conclusion. Even in instances where such investigations had been concluded, their reports of findings and recommendations were never publicized. The multiple investigations into the assassination of Robert Ouko are an extreme example of this phenomenon, but it is not the only example. The Commission finds that there is a lack of critical political goodwill to conduct thorough and objective investigations into cases where the victims are suspected to have been assassinated for political reasons.

107. The Commission finds that the lack of a credible legal and institutional mechanism for witness protection continues to hamper any objective inquiry into cases of suspected political assassination. Witness intimidation and murder continue to pose fundamental challenges to such inquiries. While there have been attempts at fortifying legal and policy structures for witness protection, much more is needed before credible and thorough investigations in such sensitive issues can be undertaken.

Specific findings

Pio Gama Pinto

108. The Commission finds that the assassination of Pio Gama Pinto was motivated by ideological differences that were at the heart of the global Cold War but also mirrored in domestic Kenyan politics.

109. The Commission finds the conviction of Kisilu Mutua did little to clarify the circumstances and motives behind Pinto's assassination. The Commission agrees with the finding of Justice Ainley that "the case wears an unfinished aspect and that we may not have all who were involved in the crime before us."

110. The Commission finds that Kisilu, Chege Thuo and a third unidentified man who disappeared, were used as scapegoats to divert attention away from the true motive and the more responsible perpetrators of Pinto's assassination.

111. The Commission finds that there is sufficient circumstantial evidence, including the failure by the government to uncover the truth of who was responsible, to conclude that the government was involved in the killing of Pio Gama Pinto.

Tom Mboya

112. The Commission finds that Mboya was assassinated for his political beliefs, and the perception that he posed a threat to the political establishment.

113. The Commission did not receive any credible evidence refuting the involvement of Nahashon Isaac Njenga Njoroge in the assassination, but did receive sufficient evidence to find that Njoroge did not act alone.

114. The Commission finds that the circumstances surrounding Mboya's assassination – including the political rivalries he provoked, and the failure of the government to investigate fully the assassination – point to the involvement of government officials in the killing and subsequent cover up.

JM Kariuki

115. The Commission finds that J.M. Kariuki was assassinated for political reasons. Based upon credible and direct evidence presented to the Commission, the Commission finds that state officials, including members of the police and the Special Branch, were directly involved in the assassination of Kariuki.

116. The Commission finds that there is sufficient evidence implicating the following individuals in the assassination and/or subsequent cover up: Peter Kinyuanji (aka Mark Twist); Pius Kibathi; Ben Gethi; Patrick Shaw; Waruhiu Itote; Ignatius Nderi; Arthur Wanyoike Thungu; John Mutung'u; Silas Mburu Gichua; and Mbiyu Koinange.

117. The Commission finds that there is sufficient evidence implicating the following individuals in the cover up of the assassination: Lee Kinyuanji; Bernard Hinga; James Mungai, Senior Administrative Commissioner of Police for Rift Valley; Thuo, District Commissioner of Nyandarua; Inspector Henry Waga; and Superintendent Kiarie.

118. The Commission finds that President Kenyatta deliberately interfered in the independent investigation undertaken by the Parliamentary Select Committee by, among other things, directly removing the following two names from the report because they worked in the Office of the President: Mbiyu Koinange and Arthur Wanyoike Thungu.

Robert Ouko

119. The Commission finds that Robert Ouko was assassinated, and that there is sufficient evidence to find that government officials were involved in his assassination and in the subsequent cover up.

120. The Commission finds that government officials deliberately sabotaged every attempt to investigate Dr. Ouko's assassination, including the investigation undertaken by Scotland Yard.

121. The Commission finds that the government never intended to support an investigation that would unearth the truth of the assassination of Dr. Ouko.

122. The Commission finds that the multiple investigations into Dr. Ouko's murder have served to decrease clarity concerning the circumstances surrounding his assassination, including who was responsible and why he was killed.

123. The Commission finds that a number of individuals connected to the Ouko assassination have died in mysterious circumstances. The Commission finds that the failure to undertake a credible investigation into the deaths of these individuals is part of the official cover up.

124. The Commission finds that the failure to investigate the many deaths associated with the Ouko assassination has created a climate of fear that has deterred individuals with knowledge of the circumstances surrounding the assassination to reveal what they know.

125. The Commission finds that the failure to make any of the investigations into the assassination public – including the Troon Report, the report and materials collected by the Gicheru Commission – is a breach of public trust by the government and has contributed to the cover up of the killing.

That among other things, we would like the Government of Kenya to be compelled to give a public apology via print media on the way they have handled the investigation of the late J.M. Kariuki's murder, and the involvement of the state in the numerous cover-ups that have ensued.

Crispine Odhiambo Mbai

126. The Commission finds that Crispine Odhiambo Mbai was assassinated because of his political views related to his chairing of the Devolution Committee of the National Constitutional Conference.

127. The Commission finds that there is sufficient evidence to link Norman Nyaga to the assassination of Dr. Mbai.

128. The Commission finds that the State is either unable or unwilling to engage in a process that would shed light on the death of Dr. Mbai.

Recommendations

- The Commission recommends that within six months of the issuance of this Report, all reports and materials of all previous investigations into these assassinations be made available to the public through the National Archives.
- The Commission recommends that within three months of the issuance of this Report the President shall publicly apologize to the families of those assassinated, and to the nation, for these assassinations and the failure of previous governments to investigate adequately such killings.
- With respect to the Ouko assassination, the Commission recommends that those individuals who have been identified by previous inquiries (including that of Troon, Gicheru, and Sungu) as individuals who should be further interviewed and investigated, and additional individuals identified in this Report linked to the assassination or its cover up, should in fact be interviewed and investigated, and the results of those investigations made public. These investigations and the submitting of a report setting out the result of such investigations to the public shall be finalized no later than eighteen months after the issuance of this Report.
- With respect to the Kariuki assassination, the Commission recommends that an investigation be commenced into the circumstances surrounding the assassination, paying particular attention to those individuals identified in the report of the Mwangale Committee and in this Report. At the conclusion of such investigation, any individuals for whom sufficient evidence exists shall be prosecuted, and a report will be issued setting out all of the information discovered through such investigation concerning the circumstances, motives, and those responsible for the assassination and subsequent cover up. Such report shall be made public no later than eighteen months after the issuance of this Report.
- With respect to the Mbai assassination, the Commission recommends that an investigation be commenced into the assassination and cover up, and that in particular such investigation include an investigation into Norman Nyaga. At the conclusion of such investigation, any individuals for whom sufficient evidence exists shall be prosecuted, and a report will be issued setting out all of the information discovered through such investigation concerning the circumstances, motives, and those responsible for the assassination and subsequent cover up. Such report shall be made public no later than eighteen months after the issuance of this Report.
- The Commission recommends that the government establish public memorials commemorating the lives Pio Gama Pinto, JM Kariuki, Robert Ouko, Father Antony Kaiser, and Crispin Odhiambo-Mabi and that such memorials include an educational component detailing the contributions such individuals made to the nation. Such memorials may include statues, museums, or educational institutions and shall be completed within 2 years of the issuance of this Report.
- The Commission recommends that an independent prosecutor be appointed to investigate and, if the evidence warrants prosecute, individuals linked to the death of Father Kaiser.

Extra-Judicial Killings and Enforced Disappearances

129. The Commission finds that throughout the mandate period there was a common trend pattern and state-sanctioned killings and disappearances. Indeed, the use of excessive and disproportionate force by the police has been a common theme running through Kenya's history.

130. The Commission finds that during the mandate period, it was common for the state, and particularly the police, to summarily execute individuals who were suspected to be criminals or members of proscribed criminal gangs.

131. The Commission finds that excessive use of force by the police resulted in significantly high numbers of death during, *inter alia*, the following contexts: security operations; the official opening of the Nyanza General Hospital in Kisumu in 1969; 1991 Saba Saba riots in1991; and 2007/2008 Post-Election Violence.

132. The Commission finds that in the last half of 2007, state security agents, mainly the Kenya Police, summarily executed and/or forcefully disappeared large numbers of individuals suspected to be members of the outlawed Mungiki militia group. The Commission finds that the killing and disappearance of suspected members of Mungiki was a systematic attack against a civilian population and could thus qualify as a crime against humanity.

133. The Commission finds that in March 2008, as part of *Operation Okoa Maisha*, state security agents, including Kenya Police and Kenya Army, were involved in the summary execution and/or disappearance of suspected members of Sabaot Land Defence Force (SLDF). The Commission finds that the killing and disappearance of suspected members of SLDF was a systematic attack against a civilian population and could thus qualify as a crime against humanity.

134. The Commission finds that whenever the state has been faced with allegations of extra-judicial killings and/or disappearances, its traditional response has been to blatantly deny these allegations and attack the credibility and legitimacy of those making the allegations, rather than investigate those allegations.

Recommendations

- The Commission recommends that the President and the respective heads of the Kenya Police and the Kenya Defence Forces, within six months of the issuance of this Report, offer a public and unconditional apology for extra-judicial killings committed during the mandate period.
- The Commission recommends the fast-tracking of reforms in the Police Service, including introduction of new standard operating procedures on the use of force.
- The Commission recommends that within two years of the issuance of this Report, the government ratifies the International Convention for the Protection of All Persons from Enforced Disappearance.
- The Commission recommends the establishment of a fully equipped national modern forensic laboratory within 36 months of the issuance of this Report, and thereafter in every county.
- The Commission notes that while Kenya is not an abolitionist state, it has not exercised the death penalty for close to three decades. The Commission recommends the abolition of the death penalty and the commuting all death sentences to life imprisonment or other appropriate sentence.
- The Commission recommends reparations for families of victims of extra-judicial killings in accordance with the Commission's Reparation Framework.

Unlawful Detention, Torture and ill-Treatment

135. The Commission finds that the deliberate use of unlawful detention, torture and ill-treatment by security forces was encouraged and sanctioned by law in all three post-independence governments. Each of these successive political regimes failed to stop the practice, and failed to prosecute and punish the torturers. The use of torture as a government practice has its origins in the colonial period.

136. The Commission finds that both the colonial and post-independence state abused the provisions of states of emergency to sanction the use of unlawful detention and torture in quelling actual and perceived political opposition.

137. The Commission finds that systematic use of torture was employed by the Special Branch during interrogations of detained persons in Nyayo House, Nyati House, police stations, prisons, and other locations that victims were not able to identify.

138. The Commission finds that the practices of illegal detention and torture were used during joint security operations in Northern Kenya (North Eastern, Upper Eastern and North Rift), Likoni and Mount Elgon regions.

139. The Commission finds that the Nyayo House basement cells and the 24th, 25th and 26th floors were used for interrogations and torture after the attempted *coup* of 1982, during the *Mwakenya* crackdown, and the FERA/M crackdown, and further finds that the state sanctioned the use of these places for torture purposes. The Commission finds that the use of the Nyayo House basement cells as police cells was never an afterthought but a well meditated plan by the government. The cells at the basement of Nyayo House were designed and built specifically for torture purposes. Indeed, the State established a task force for the specific purpose of interrogation and torture of suspects.

140. The Commission finds that during the crackdown on political dissent by the government, torture was used to incriminate and incarcerate those who were considered critical of the government and perceived as a threat to the security of the regime. The Commission finds that the repression of political expression and dissent has been a fundamental threat to the development of a meaningful culture of democracy in Kenya.

141. The Commission finds that the judiciary frequently cooperated with the prosecution and security forces in the commitment of violations by refusing bail and by admitting evidence obtained through torture. The judiciary was also complicit in these violations by conducting trials beyond working hours, thus minimizing transparency and public scrutiny.

142. The Commission finds that torture and ill-treatment included the following: detention in water-logged cells; being sprayed with hot and cold water; denial of food, water and medical attention; beatings; humiliation; and the use of insects to terrorize and attack detainees.

143. The Commission finds that torture and ill-treatment by state operatives was often extended to families of suspects and political activists.

144. The Commission finds that victims of torture and their families suffered psychologically, including through post-traumatic stress disorder (PTSD). Direct victims of torture have had their professional lives and livelihoods destroyed while their families lived under great uncertainty and anxiety of not knowing the fate of their loved ones, especially as to whether they were dead or alive.

145. The Commission finds that unlawful detention in the form of prolonged pre-trial detention is a continuing violation of human rights even up to today. Thousands of inmates in Kenya are still awaiting an opportunity to defend themselves in court, sometimes for years.

146. The Commission recognizes the role played by the media, civil society organizations and faith based organizations in advocating for respect for human rights and championing the release of political prisoners.

Recommendations

- The Commission recommends the enactment of legislation prohibiting all forms of torture and other forms of cruel, inhuman or degrading treatment or punishment committed both by state and non-state actors. Such legislation shall be enacted within one year of the issuance of this Report.
- The Commission recommends the establishment, through legislation, of the Office of the Independent Inspector of Prisons and All Places of Detention. This office shall be charged with the function of inspecting prison conditions and investigating allegations of torture and death in custody. The office shall issue periodic reports to the public on the condition of prisons in Kenya and other matters under its mandate.
- The Commission recommends the rapid, effective and transparent implementation of the proposed police reforms, including the introduction of new standard operating procedures on the use of force based on international standards. In particular, Force Standing Order 51, which allows the use of lethal force to protect property, should be repealed.
- The Commission recommends the prosecution of police officers and other state agents who were involved in the torture and ill-treatment of individuals during the mandate period. The Commission has identified individuals who were involved in the torture and ill-treatment of, amongst others, Mwakenya and FERA suspects and recommends their investigation and, where there is sufficient evidence, prosecution. In particular, the Commission recommends the prosecution of the following: James Opiyo; James Mathenge; Sam Chelimo; Munene Muhindi; John Mburu; SP Okwemba; Petkay Miriti; G Koskey; James Kilonzo; James Gachanja Kariuki; Christopher Karanja Kiarie; Noah Arap Too; Geoffrey Kinoti; Leonard Wachira; Elias Mjomba; Thomas Kiarie; Nyaga Wambora; and Benjamin Ogol.
- The Commission recommends that the President offer a public apology to all victims of torture and unlawful detention and acknowledge the role of the state in the design and use of the Nyayo House torture cells.
- The Commission recommends that Nyayo House be converted into a memorial after consultation with victims of torture.
- The Commission recommends the provision of reparation for victims of unlawful detention, torture and ill-treatment as per the framework described in the Chapter on Reparation Framework.

Sexual Violence

147. The Commission finds that sexual violence was committed throughout the mandate period, and included gang rapes, sodomy, defilement, sexual slavery, sexual assault and torture, and forced circumcision and other mutilation of sexual organs. The Commission finds that cases of sexual violence increased during times of conflict. The perpetrators took advantage of the breakdown of social order, the increase in armed conflict, as well as general lawlessness to commit sexual violence with impunity.

148. The Commission further finds that, in most cases, victims were attacked on the basis of ethnicity and assumed political affiliations. Many are said to have been violated for belonging to ethnic groups alleged to have supported the 'wrong' political parties.

149. The Commission finds that cases of sexual violence remain largely unreported with victims citing reasons ranging from stigma; cultural taboos that prevent them from talking about sex let alone sexual violation; harassment by hostile or disinterested police officers; threats by the perpetrators; and lack of clear reporting lines, among others. Where sexual violence had been committed by police officers, the victims feared encountering their perpetrators at the police station and thus often did not report the violation.

150. The Commission finds that sexual violence took place in peoples' homes, on the roadside as victims tried to flee from violence, in places of confinement including police stations and prisons, centres of interrogations, and IDP camps where victims of displacement had sought refuge following the eruption of violence.

151. The Commission finds that sexual violence against women was rampant during forceful evictions conducted by the state and/or its agents. In one particular case, the Commission received about 30 statements from women who were raped in Kitui during an eviction referred to as 'Kavamba operation'.

152. The Commission finds that there is sufficient evidence implicating British soldiers for the rape and sexual violation of women in Samburu and Laikipia between the 1980s to early 2000. In October 1997, for example, soldiers attached to the British Regiment of Gurkhaswere stationed in Archers Post not only attacked and raped about 30 women but also sodomised. As a result of the rapes, some Samburu or Maasai women now have children of Gurkhas or British origin. These children now face social stigma in the local community.

153. The Commission finds that the Kenyan government has neither committed to nor shown any political will to investigate allegations of rape and sexual violence committed by British soldiers stationed in Kenya for military training.

Perpetrators

154. The Commission finds that perpetrators of sexual violence included state security agents, ordinary citizens, members of organised militia groups, as well as British soldiers stationed in Kenya for training purposes.

155. The Commission further finds that of all the cases of sexual violence committed during conflict, the majority of them were committed by state security agents, primarily by the General Service Unit (GSU), the Kenya Police, the Administration Police, the Anti Stock Theft Unit, as well as the Kenya military. The Commission further finds that state security-led interventions in situations of conflict were the single most important cause of sexual violations including gang rape and sexual torture. Security agents used sexual violence as a weapon to terrorise, suppress, intimidate and humiliate communities, and they not only actively committed atrocities of a sexual nature, but also failed in their duty to ensure the security and protection of citizens, particularly women and girls.

156. The Commission finds that despite evidence of sexual violence perpetrated by state security agents during security operations, there have been few if any investigations, much less prosecutions, of those responsible. The Commission further finds that in most cases, security agents colluded with each other in the commission of sexual violence as well as in frustrating any efforts to have fellow security agents investigated or prosecuted, thus breeding a culture of impunity.

Victims

157. The Commission finds that contrary to the traditional belief that women and girls are the sole victims of sexual violence, men and boys have also been targeted. Unfortunately, reporting on sexual violence against men has been low compared to that of women and girls. Further, persons with disability have also been targeted.

158. The Commission finds that victims of sexual violence range from the very young to the very old. The Commission finds that most victims of sexual violence also experienced other forms of violations including displacements, loss of family members, loss of property, and torture.

Effects

159. The Commission finds that other than physical and psychological trauma stemming from being a victim of sexual violence, victims also suffered acute injuries; permanent disabilities; contracting, and in some cases spreading, incurable diseases like HIV/AIDs and Hepatitis B; ostracism; unwanted and unplanned pregnancies; miscarriages and other health complications including incontinence, impotence and infertility; abandonment by their spouses and parents; loss of abode and income; as well as extreme feelings of humiliation and shame. In some cases, sexual violence resulted in the death of the victims.

160. The Commission further finds that not only the victims but also the children who were born as a result of rape were equally shunned and suffered psychological harm even though they were not the primary victims. The Commission further finds that the situation is even worse for children of mixed race.

Access to justice

161. The Commission finds that despite Kenya ratifying many international human rights instruments and having enacted various pieces of domestic legislation with regard to sexual violence, the failure to implement fully such legislation has not only left many Kenyans exposed to sexual violence but also denied the victims of sexual violations access to justice.

162. The Commission finds that the government response to sexual violence has been wanting. While some victims tried to report sexual violence, their complaints were either not recorded or not followed up for investigations. Victims complained of being frustrated by the officers to whom they were supposed to report, who often blamed the victims for the violations.

163. The Commission further finds that the majority, if not all, of officers investigating cases of sexual violence lack the prerequisite ability and knowledge of not only preserving evidence but also successfully investigating and prosecuting cases of sexual violence. As a result, very few reported cases have successfully been prosecuted in court, thereby denying the victims an opportunity to achieve justice for their violation.

164. The Commission finds that the majority of victims of sexual violence cannot afford legal services. Reported cases are thus rarely pursued through the legal system as victims cannot afford legal representation. Although the government has established a pilot national legal aid scheme, the Commission finds that it is still limited in scope and capacity as it has only operated on a pilot basis. Victims also

expressed their lack of awareness of the legal process, while others complained of other obstacles such as long distances to the courts and the attendant cost of travelling there and perhaps having to spend a night away from home. Accordingly legal services are not widely and freely available across the country, thus negating the citizens' constitutional right to access to justice.

165. The Commission further finds that the requirement of victims of sexual violence to obtain, from the police, the Kenya Police Medical Examinations Report Form 3 (commonly known as P3 form), that is necessary for supporting medical evidence, has acted as a hindrance in their quest for justice. The Commission finds that although the form is required to be free, its unavailability in most police stations and the demand for a 'photocopy fee' of up to Ksh. 20 per sheet have discouraged many from obtaining it. The form's availability on the police website has not helped to make it easily accessible, especially for victims from rural areas where electricity and internet services are not readily available. Even where it is possible to download the forms, victims are forced to pay for downloading and subsequent printing of the form. Further, the Commission finds that where victims managed to get a P3 form and were attended to by a doctor, the doctor charged for the provision of that service. The fee was usually couched as facilitation for transportation to court to give expert testimony on the medical examination results. These requests for money are a further burden and cause for stress on already traumatised victims, and create barriers for many victims to access their constitutional right to justice.

166. The Commission also finds that in cases of sexual violence committed against children, parents, guardians and other authorities such as teachers are often willing to enter into agreements with the perpetrators to either 'compensate' the victim's parents or, in the case of girls, marry them off to the perpetrator. Public officers such as chiefs are sometimes complicit in these acts of subverting justice for the victim.

Access to medical services

167. The Commission finds that the majority of victims of sexual violence were not able to obtain the crucial medical attention (PEP) that is required to be administered within 72 hours after the violation to prevent HIV/AIDS and sexually transmitted infections as well as unwanted pregnancies. Even where the same was obtained, very few victims of sexual violence attended the required follow up medical check-up. The victims cited the following reasons: a breakdown in security and the fear of leaving home lest they expose themselves to further attacks; lack of transport; ignorance about PEP and not knowing that it is free and available in most public medical facilities; fear of being stigmatized if it were known they had been raped; and an overriding concern to protect, feed, and shelter their children and family

members at their own expense. As indicated elsewhere in this report, the majority of victims of sexual violence had also suffered other violations, and for some of them the provision of shelter and food was the biggest priority for them. For some, medical services were a luxury. The result is that many victims died while others' health deteriorated for lack of follow up medication.

168. The Commission further finds that there are insufficient public medical facilities countrywide with expertise and equipment to provide services to victims of sexual and gender based violence.

Recommendations

- The Commission recommends that the President, within three months of the issuance of this Report, acknowledges and offer a public and unconditional apology for acts of sexual violence committed by state security agencies during security operations and other periods of generalized violence such as the 2007/2008 Post-Election Violence.
- The Commission recommends the establishment of a gender violence recovery center in every county. Such a center shall serve as a one-stop centre for provision of comprehensive services for victims and survivors of sexual violence including medical and counseling services. Investigators trained in the investigation of sexual violence should also be permanently stationed in such a center. In respect to this recommendation, the governments may borrow good practices and lessons from South Africa's thuthuzela care centers and the Nairobi Women's Hospital.
- The Commission recommends the provision of reparation for victims and survivors of sexual violence as per the Reparation Framework proposed by the Commission.
- The Commission recommends the setting up of the Office of the Special Rapporteur on Sexual Violence as recommended by the Commission of Inquiry into the Post-Election Violence. This shall be done within 12 months of the issuance of this Report.
- The Commission recommends that the National Police Service Commission formulates a new Code of Conduct and Ethics for the National Police Service in line with the Constitutional values and principles and spelling out disciplinary and accountability measures for failure to adhere thereto.
- The Commission recommends the prosecution of Nganda Nyenze who allegedly planned, supervised or was otherwise involved in the Kavamba Operation in which women were raped and/or sexually violated.
- The Commission recommends that the British government apologizes for sexual violence committed against women in Samburu and Laikipia by British soldiers.
- The Commission recommends that the Kenyan Government considers entering into negotiations with the British government with a view to seeking compensation for victims of sexual violence committed by British soldiers in Samburu and Laikipia.

Women

169. The Commission finds that throughout the mandate period, women did not enjoy equal status with men. This is largely attributed to patriarchal customary norms and practices which relegated women to a subordinate status. These norms and practices, many of which still remain pervasive today, include disinheritance, preference for boys, polygamy, payment of dowry, cultural traditions relating to burial, early and forced marriages, chastisement of wives, female genital mutilation and widow inheritance. These norms and practices have, over the years, not only been entrenched but were also protected and permitted by legislation and sanctioned by the state itself.

170. The Commission finds that despite Kenya having ratified many international human rights instruments and having enacted various domestic laws that promote the rights of women, the existence of structural and systematic discrimination against women by the state itself prevented women from fully enjoying their rights. Some laws were manifestly discriminatory whereas others were discriminatory in their effects. Other laws such as the Judicature Act sanctioned customary practices which were manifestly discriminatory.

171. The Commission finds that although there have been deliberate constitutional, legislative and institutional reforms aimed at tackling gender discrimination in the country, thereby gradually advancing the rights of women in several spheres, women continue to be the subject of deeply rooted discriminatory norms and practices.

172. The Commission finds that violations of human rights have had greater consequences for the most vulnerable amongst women. These include: women with disabilities, women living with HIV/Aids, women in the rural areas and women from minority and indigenous communities. Moreover, economic marginalization of specific parts of the country has further marginalised women living in these regions.

173. The Commission finds that discriminatory cultural practices relating to access, use and ownership of land remain persistent despite legal provisions which guarantee everyone the right to property, whether they are female or male.

174. The Commission finds that although violence against women is prevalent during peacetime, it escalated during conflict and episodes of generalised violence, during which time women were specific targets of heinous crimes and violence including rape and sexual violence,.

175. The Commission finds that security operations conducted by state security agencies have almost without exception often resulted in rape and other sexual violations.

176. The Commission finds that violation of women's reproductive health is widespread and rampant. Many women are unable to access health facilities because of poverty. In many parts of the country, health facilities are physically inaccessible and women opt to give birth at home. The Commission further finds that the delivery of health services around the county does not take into account local cultural norms about health.

177. The Commission finds that although awareness on the subject of HIV/AIDS has permeated most parts of the country, discrimination and social stigma is still relatively common. Many HIV positive women are routinely evicted from their matrimonial homes after the death of their spouses. Moreover, patriarchal social norms make it difficult for women to exercise autonomy over matters of sex, and specifically, to negotiate safe sex.

178. The Commission finds that although the government has taken positive steps to address the nation's HIV epidemic, the rights of women living with and affected by HIV continue to be violated. These violations include: failure to seek informed consent before HIV-testing; breach of confidentiality and lack of proper disclosure; inadequate pre- and post-testing counseling; inadequate PMTCT and post-partum counseling; lack of medical attention or inattentive medical staff; lack of equipment, supplies, infrastructure, and hygienic conditions; and mistreatment and harassment in seeking delivery of services.

179. The Commission finds that although men were the predominant victims of repressive and authoritarian means employed by the state, women were also victims, both as primary and secondary victims. As primary victims, scores of women, especially politicians, academics or human rights activists, and female Members of Parliament who were vocal in their opposition to repressive rule in both Kenyatta's and Moi's administrations, were often detained, tortured and subjected to politically motivated charges. As secondary victims of state repression, many women were widowed after their husbands were killed in security operations or died in police custody after undergoing torture. Some were subsequently thrown into destitution following the detention or death of their spouses.

180. The Commission further finds that although men were the main active agents of President Kenyatta's and President Moi's repressive governments, some women were also involved in the perpetuation of gross violations of human rights.

181. The Commission finds that women constitute the majority of the poor, a situation that has been aggravated by various factors that range from their lack of access to productive resources (mainly land) and the labour markets.

182. The Commission finds that discrimination against women in the workplace remains despite years of concerted efforts to ensure that men and women are treated equally. Women with disabilities particularly find it difficult to access employment opportunities.

183. The Commission finds that throughout the history of Kenya, women have had limited access to education opportunities. During the colonial period, when formal schooling was introduced, it is boys rather than girls who were encouraged to join. When girls were allowed to go to school, it was not without resistance from communities, which invariably perceived the new education offered by missionaries as informed by the bad intentions of 'spoiling' good girls. The education offered to girls by colonial schools and later by schools in independent Kenya was not completely progressive either. The syllabus was designed to nurture girls' domestic roles as wives and mothers

184. The Commission further finds that although huge strides have been made towards promoting the education of the girl child, the rigidity of socially ascribed gender roles has seen girl child education interrupted by early marriage, female genital mutilation and other harmful cultural practices. In some areas, culture continues to dictate who, between the girl and the boy, should be given priority in accessing education. Further, in some areas, especially the arid and semi-arid regions of the country, girls' education is routinely interrupted by constant migration of families in search of pasture and water. Insecurity and poverty are other factors that impede girls' access to education. In addition, lack of sanitary towels has meant that girls periodically skip going to school during their menstrual flow. The Commission further finds that the situation is even worse for girls with disabilities.

185. The Commission also finds that girls' and women's limited access to education has strong and direct linkages with the multiple violations and abuses that they routinely suffer.

186. The Commission finds that although women are the majority of the population, they continue to be excluded in public spaces of influence and decision-making due to various factors, chief amongst which are cultural notions pertaining to the role and place of women and men in society. Discrimination against women and their exclusion in decision-making processes is also rampant and sanctioned

in religious institutions. Further, many women who aspire to be leaders lack the requisite resources to undertake political campaigns and have also been subjected to violence or threat of it.

187. The Commission finds that the Mt. Elgon Conflict and the subsequent security operation (*Operation Okoa Operation*) had a particularly devastating impact for women. In this regard, a vivid impact of the conflict and *Operation Okoa Maisha* is the huge numbers of widows (approximately more than 300) in Mt. Elgon whose husbands were killed or forcefully disappeared during the conflict.

188. A huge proportion of widows in Mt. Elgon witnessed the brutal and cruel killing by SLDF or state security agents of their husbands, children and relatives. In certain cases, the SLDF in particular forced wives to watch the killing of their husbands or children.

189. The Commission finds that rape and sexual violence against women was routinely committed by SLDF members during attacks at homes and in their hideouts in the forest. In many cases, these heinous acts were witnessed by family members, including children. Moreover, sexual violence was often accompanied by other forms of inhuman and degrading treatment.

190. The majority of Mt. Elgon women were sexually violated by SLDF members. However, state security agents – police and military officers – were also responsible for sexual violence during the entire period of Operation Okoa Maisha.

191. The Commission confirms the findings of the Commission of Inquiry into the Post Election Violence (CIPEV) in respect of experiences of and violations suffered by women during the 2007/2008 Post-Election Violence:

- the Commission received evidence showing that female headed households were particularly targeted for looting and torching;
- Many women were raped and sexually violated during the PEV;
- Women were disproportionately affected by the PEV, including the fact that they constituted the largest percentage of internally displaced persons

192. The Commission finds that the state's response to the plight and needs of internally displaced women generated by the 2007/2008 Post-Election Violence was less than satisfactory. The resettlement programme, *Operation Rudi Nyumbani*, did not cater for the particular needs or interests of women. A considerable number of

women received neither the start-up capital nor the payment in lieu of housing. In certain cases, women were discriminated against in the registration process.

193. The Commission finds that Kenyan refugee women in Uganda (as is the case with refugee men and children) experience discrimination on the basis of their nationality. Due to their inability to speak the local language, Kenyan refugees find it difficult to access public services, especially medical and health care services.

194. On the question of returning to Kenya, statistics availed to the Commission by the Office of the United Nations High Commissioner for Refugees revealed that the majority of Kenyan refugees (60 percent) were not willing to return to Kenya. The Commission's visit and hearing at Kiryandongo Refugee Camp in Uganda revealed that many women have found themselves in a dilemma as to whether they should return or not. While some women were willing to return, their husbands were not. As such, these women could not return to Kenya without straining or breaking up their marriages.

Recommendations

- The Commission recommends that the President, within six months of the issuance of this Report, offers a public and unconditional apology for states' sanction of discrimination against women during the mandate period.
- The Commission recommends that the Gender and Equality Commission steps up measures to raise awareness about harmful cultural practices that adversely affect women's enjoyment of human rights.
- The Commission recommends that the Attorney General and Parliament expedites the enactment of the following bills relating to women's rights: Marriage Bill, 2007; Matrimonial Property Bill, 2007; Family Protection Bill, 2007; Equal Opportunities Bill, 2007
- The Commission recommends that within nine months of the issuance of this Report, the government, in conjunction with the UNHCR and the Uganda Government, conducts its own independent survey of the willingness of Kenyan Refugees in Uganda to return to Kenya and immediately facilitate the return and resettlement of those willing to return.
- The Commission recommends that within twelve months of the issuance of this Report, the government shall ensure that the composition of land dispute tribunals meets the Constitutional gender ratio requirement.
- The Commission recommends that within twelve months of the issuance of this Report, the Ministry of Health adopts a Plan of Action outlining measures to be taken to increase and improve maternal health facilities in the country and particularly to reduce the number of cases of delivery at home.

Children

195. The Commission finds that during the mandate period, children were both direct and indirect victims of gross violations of human rights. As direct victims, they suffered atrocities including killing, maiming, torture and sexual violence. Children also witnessed atrocities and as a result of which many of them remain traumatized.

196. During the Mau Mau War, children were subjected to traumatic experiences; many children witnessed the atrocious crimes committed against their parents and adults in generally.

197. The Commission finds that the Sabaot Land Defence Force and Mungiki militia forcefully recruited children into their militia. Some of these children were subsequently involved in atrocities.

198. The Commission finds that with the introduction of free primary education in Kenya in 2003, many children are now able to attend school. However, there still remain real impediments that prevent children from accessing education, such as lack of school uniforms and writing materials. Children with disabilities face particular challenges in this regard. Institutions catering for the education of children with disabilities are few and inadequately resourced.

199. The Commission finds that there are still alarming rates of gender inequality in some parts of the country where very few girls attend school. This inequality is attributed to cultural beliefs and practices which privilege male children. Female children are often forced to remain at home to carry out household chores and other tasks. If they do attend school they are often unable to focus on schoolwork due to responsibilities given to them at home. Finally, forced/early marriages and pregnancies are also barriers to girls accessing education.

200. The Commission finds that sexual violence against children is perpetrated by people holding positions of authority or individuals who ought to protect them, such as parents, family members, teachers, religious leaders and members of the police and military. Due to the nature of the relationships in this setting, many of the cases are unreported and victims experience the abuse repeatedly. Children have also been sexually violated by their peers. There is also evidence that female relatives perpetuate this vice either through complacency or even actively encouraging it.

201. The Commission finds that sexual violence against children increasingly occurs in environments that should be safe havens for them, such as homes and schools, with homes being the most common. The Commission finds that violations against children remain largely unreported.

202. The Commission finds that despite the implementation of a number of programmes aimed at improving child health, infant and child mortality rates remain unacceptably high in Kenya, a situation that has been linked to factors such as economic status, infrastructural factors, the mother's level of education; and health care and nutrition. The Commission further finds that even minimal fees payable at health care institutions are beyond the reach of a good number of families.

203. The Commission finds that child labour is an increasing problem, and is often the product of the vulnerable economic status of families. Children from indigent families are forced to fend for themselves and their families. HIV/AIDS infections and health crises in general have also increased the number of orphaned children and made them more vulnerable for child labour recruitment. Domestic violence also potentially increases the vulnerability of children to child labour. The absence or loss of parents often leads to children fending for themselves, leaving them susceptible to being exploited for labour.

204. The Commission finds that enforcing the law in cases of sexual exploitation is hampered by uncooperative relatives who opt to receive compensation instead of calling for the prosecution of the perpetrators.

205. Children experiencing violence at home sometimes opt to run away from home and end up as street children.

206. Children have traditionally constituted a huge proportion of displaced persons, a situation that has exposed children to extremely harsh conditions which negatively interfere with their enjoyment of other rights including access to education, health care, decent shelter, adequate food and other basic human needs

207. The Commission finds that the majority of Kenyan refugee children and youth living in Kiryandongo, Uganda, are willing to return to Kenya but are unable to do so because their fate is tied to that of their parents or guardians.

208. The Commission finds that whereas there have been attempts by the Government to establish institutions crucial to the protection and enforcement of children's rights, such institutions remain understaffed and do not have adequate resources. Where staff exists, they either lack proper training on children's rights or are stationed at the district level, and as a consequence the majority of children are not reached.

209. Non-state actors such as non-governmental organisations (NGOs) have stepped in and played a key role in the promotion and protection of children's rights in a variety of different ways including investigating and reporting about the abuses

committed against children; creating public awareness about the rights of children and promoting social change against practices that are not compatible with the realisation of these rights; providing technical assistance by training stakeholders who are directly involved in matters of children's rights, such as the police as well as providing financial assistance to key government departments. Their presence within communities has provided practical solutions preventing or dealing with violations of children's rights. In spite of their immense contribution in promoting and ensuring the realisation of children's rights, some non-state actors, especially some children's homes, have been accused of violating these rights.

Recommendations

- The Commission recommends that the President, within six months of the issuance of this Report apologizes for atrocities committed against children during the mandate period.
- The Commission recommends that psychosocial and counseling services be provided to children victims of gross violations of human rights and injustices.
- The Commission recommends that reparation be provided to children victims of gross violations of human rights and injustices in accordance with the Commission's Reparation Framework.
- The Commission recommends that Borstal institutions be placed under the Department of Children's Services in the Ministry of Gender, Children and Social Development as opposed to the Prisons Department in the Ministry of Home Affairs. These institutions should be removed from prisons' premises and should be run by children officers trained in counseling and psychology.
- The Commission recommends that children's desks at police stations be well funded and in the meantime only officers who have been trained on child rights should deal with children. Gradually all officers should be trained on child rights and child sensitive procedures.
- The Commission recommends that more remand homes be established to avoid placing of alleged juvenile delinquents in police cells and prisons.
- The Commission recommends that restorative justice mechanisms be formally introduced in the juvenile justice system and police officers should be sensitized and trained on how to set these in motion. Structures should be established to incorporate different players such as children's officers and community workers.
- The Commission recommends that the Department of Children's Services be well funded to adequately respond to violations of child rights. More offices should be established to enhance accessibility to children's officers. The role and availability of children's officers should be publicized for their services to be sought.
- Although court procedures to enforce parental responsibility are user friendly, there is need to provide more assistance to parties who cannot afford lawyers as

well as illiterate parties. It is acknowledged that judicial officers are proactive in this but there is need for formal mechanisms to ensure that needy parties are able to obtain justice.

- Children are subjected to harm and danger where institutions fail to provide safe custody. Adequate security must be provided in institutions such as schools which have children in their custody. Guidelines should be developed on the minimum security requirements for such institutions.
- Institutions that are mandated to have children in their custody must be regularly and closely monitored to ensure that child rights are not violated.
- While primary education is free, many children are still unable to enjoy the right to education due to various factors including lack of necessary amenities such as school uniform and writing materials. The Commission recommends that a scheme be established to provide further financial support to indigent children to enable them acquire these necessary amenities.
- In some marginalized areas, the schools are few and are inaccessible to children living far from where they are located. The Commission recommends that more schools be constructed and a policy be developed as to the minimum standards on the number of schools serving a given area.
- The Commission recommends that the Ministry of Education work towards the progressive integration of children with disabilities in the mainstream educational facilities by tailoring these facilities to suit the specific needs of children with disabilities. In this regard, the Ministry of Education should within one year formulate a Plan of Action outlining modalities for progressive integration of children with disabilities in mainstream educational facilities.

Minority Groups and Indigenous People

210. The Commission finds that throughout the mandate period the state failed to recognize the existence, unique culture and contributions of many minority and indigenous communities in Kenya.

211. The Commission finds that over a period of decades the state discriminated against minority and indigenous communities, specifically those residing in North Eastern, Upper Eastern, Rift Valley and Coast provinces, through emergency laws and regulations that violated their rights to equality before the law and due process of law.

212. The Commission finds that the state discriminated against the Nubian, Somali, Galjeel and other Muslim communities in Kenya through legislation and regulations on citizenship that has denied them equality before the law.

213. The state failed in its responsibility to protect communities in predominantly pastoralist areas from inter-communal violence. This failure has resulted in thousands of deaths, injuries, forced displacement, sexual violence, loss of property and destruction of entire homesteads and villages over a period of more than 40 years.

214. The state engaged in a pattern of oppressive security operations in pastoralist areas since independence that, in some cases, amount to crimes against humanity. Specific examples include the Wagalla Massacre targeting the Degodia Somali community, attacks on the Pokot community, bombings of Samburu communities, as well as multiple other operations.

My recommendation to this Government is that it should address the question of equality in this country. We do not want to feel as if we do not belong to this country. We demand to be treated the same just like any other Kenyan in any part of this country. We demand for equal treatment

215. The state failed to engage communities in addressing boundary disputes among Turkana, Pokot, Borana and Somali clans, which has led to constant conflicts and wanton killings, the displacement of thousands, loss of livelihood and undermining of social development, including education.

216. The Commission finds that the expulsion of Endorois, Ogiek, Sengwer, Wataa, Bajuni, Boni, Talai and other communities from their ancestral lands, and the allocation of forest lands to other communities, have led to the destruction of forests upon which the traditional livelihood of these communities depends, and has rendered it virtually impossible for hunter-gatherers to practice their culture.

217. The state failed to protect minority and indigenous women and girls from violence and harmful traditional practices that undermine their fundamental rights to personal integrity, health, and dignity.

218. The land regime in Kenya, whether Trust Land, Government land, or Group ranches, has resulted in *de facto* discrimination and led to the massive dispossession of ancestral lands of pastoralist and hunter-gatherer communities.

219. The state's development policies have failed to protect the rights of minorities and indigenous peoples to free, prior and informed consent.

220. The state's development policies have not created the conditions that would lead to qualitative improvement in the lives of minority and indigenous communities. On the contrary, the vast majority of development projects have deepened marginalization and exclusion of minority groups.

221. The state has failed to implement important judicial decisions related to promoting and protecting the rights of minority groups, such as the Ilchamus' and Endorois' decisions. This trend has consistently undermined minority groups' confidence in the ability of the Kenyan justice system to deliver substantive equality.

Recommendations

- The Commission recommends that within two years of the issuance of this Report, the government ratifies the following international and regional instruments: ILO Convention 169; Convention on the Prevention and Punishment of the Crime of Genocide; Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Convention Against Discrimination in Education; and Statelessness Conventions.
- The Commission recommends that the President, within six months of the issuance of this Report, issues an official, public and unconditional apology to minority and indigenous communities in Kenya for the state's systematic discrimination against these groups and communities during the mandate period.
- The Commission recommends that obstacles experienced by minority groups such as members of Somali and Nubian ethnic communities in accessing the national identity cards be removed within 12 months of issuance of this Report.
- The Commission recommends that the Kenya Law Reform Commission examines all Kenyan legislation to ensure that it does not result in de jure or de facto discrimination against minority groups. In consultation with minority and indigenous groups, develop national legislation governing state-sponsored or private development programs that requires free-prior and informed consent of affected communities and that includes specific guidelines as to how to engage in a process of consultation with communities.
- The Commission recommends that the government develops a plan on data collection and disaggregation on minority and indigenous communities, with special attention to ensuring disaggregation of data related to minority and indigenous women. The process shall incorporate the principles of the United Nations Expert Workshop on Data Collection and Disaggregation for Indigenous Peoples.
- The Commission recommends the release and implementation by the Government of the recommendations of the Presidential Special Action Committee to Address Specific Concerns of the Muslim Community in Regard to Alleged Harassment and/or Discrimination in the Application/Enforcement of the Law. The recommendations of the Special Action Committee related to the following seven areas: citizenship and registration of persons; security; access to and administration of justice; lands; education; representation and participation; and development and investment.

Economic Marginalization and Violation of Socio-Economic Rights

Primary findings

222. The Commission finds perceptions of economic marginalization are deeply held in North Eastern and Upper Eastern, Coast, Nyanza, Western and North Rift. The Commission finds that economic and other policies adopted by the state during the mandate period resulted in the economic marginalization of these five regions.

223. In certain regions, there exist intra-regional narratives of marginalisation that are blamed on regional and local rather than national forces.

- In Central Province, residents of Nyandarua, where the assassinated leader JM Kariuki hailed from, considered themselves marginalised by others within the region.
- Residents of Kuria see their counterparts in the broader region as somewhat advantaged vis-a-vis themselves and that they (Luo and Kisii) are in some way part responsible for their situation.
- In Western Province, a region that appears to share Nyanza's political and economic fortunes, narratives of marginalisation are not uniform. Evidence shows that certain parts of Western that have been close to power, in particular Bungoma and Vihiga appear to be the main beneficiaries of the limited social goods due to co-option, at least under President's Moi administration.
- In North Eastern and Upper Eastern, sub-regional claims of marginalisation invariably assume an ethnic or clan flavour. For instance, the Commission recorded testimony from members of the Ajuran clan who see themselves as victims of the Degodia clan, and with complicity from the Provincial Administration and central government.

224. The Commission finds that residents of regions that were not identified as economically marginalized also consider themselves to have been marginalised at one point or another in history. The Commission acknowledges and affirms these perceptions.

- In the case of Central Province, testimonies were received to the effect that the region's fortunes dwindled under President Moi, with social infrastructure being degraded and the vast majority of elites excluded at the top, at least after the 1982 coup attempt.

- Residents of Rift Valley see themselves as the main 'victims' of marginalisation under the Kibaki administration, at least as far as appointments to key positions in the public service are concerned

225. The Commission finds that while Lower Eastern is often not regarded as a marginalised region, at least not in popular narratives, this silence obscures shocking levels of poverty and lack of social facilities in parts of this region. Cases of drought, famine and starvation in parts of Ukambani have become a staple of national news and shame. This state of affairs is in part due to policies of marginalisation by President Kenyatta's and President Moi's administrations. Other than the harsh climatic conditions, the failure by successive regimes to take measures to arrest the perennial food insecurity situation and enhance access to basic goods such as potable drinking water must be acknowledged as a key factor

Context of economic marginalization

226. The Commission finds that economic marginalisation experienced by various regions, groups and communities in Kenya since independence has occurred in a historical, socio-economic and political context marked by certain factors. These include: an overly centralised state both in terms of power and resources; ethnicisation of politics and public life in general; an all-powerful 'imperial' presidency marked by lack of accountability, lack of judicial independence, weak rule of law and personalization of power; bad governance and rampant corruption; a stunted economy in which the state was the main dispenser of largesse; and conflicts revolving around land with large swathes of the population unable to access this important resource. All these evolved against a backdrop of historical irredentist/secessionist struggles marked by the 'Shifta War' and its aftermath in Northern Kenya as well as independence claims borne out of perceived marginalisation in the former Coast Province. While some of these factors were the root cause of marginalisation, they produced distortions that worsened the effects of economic marginalization

227. The Commission finds that the seeds of inequality and marginalisation were planted by the colonial administration. The practices of the colonial administration, mostly through its 'divide and rule' strategy planted the seeds of inter-ethnic rancour, but also set off a process that would produce economic marginalization.

228. The failure of subsequent governments (in particular the Kenyatta government), to correct this injustice by restoring communities to their lands from which they had been forcibly evicted by the colonial government can be said to be largely to blame

for inequities in land ownership and access in many parts of Kenya (especially in Central, Rift Valley, Western and Coast provinces).

229. While post-independence governments have had a role in skewing economic empowerment in favour of certain ethnic communities, certain communities – in particular sections of the Kikuyu community – got a head start by virtue of their proximity to centers of settler economy

230. The Commission finds that there is a perception, at least among residents of the former Northern Frontier District, that the claims of secession by a group of Somalis explains, at least in part, how the region and its residents have been treated by successive government over the years. Residents of this region complain of discriminatory laws, regulations, practices and procedures that apply to them only and not to other Kenyans. This is especially so in the area of citizenship and immigration laws

Role of the state in economic marginalization

231. The Commission finds that the seeds of economic marginalisation of certain regions were planted by the first formal economic blueprint, Sessional Paper No. 10 titled 'African Socialism and its Application to Planning in Kenya' published in 1965. Although this Policy was imbued with values of inclusion, human dignity, brotherhood and social justice and could have anchored equitable development, certain aspects of the policy, in particular its implementation, carried the seeds of inequality and economic marginalisation that would characterize the Kenyan state in succeeding years.

- the policy justified prioritization of investment in certain regions to the exclusion of others
- the economic policy took a decidedly capitalist slant, with a limited welfare component.
- although the Policy recognized that land was previously owned communally with access regulated through membership in a particular group (clan or ethnic group), it asserted that a system of secure private title to land was necessary to anchor economic growth. Yet, the diversity of claims (that included communal title that governed property in most communities in the pre-colonial era) as well as the effects of dispossession during the colonial period was not taken into account.

232. The restructuring of the state by the Kenyatta government soon after independence did not match, and in fact undermined the vision articulated in the economic

policy based on African Socialism. The systematic dismantling of the independence constitution (abolishing of regional governments, the strengthening of the presidency while emasculating parliament and the judiciary) was inimical to the stated goals of African Socialism that underpinned economic policy

Economic Marginalization of North Eastern

233. The marginalisation of the North Eastern region is marked by four key developments: the carving off of the Northern Frontier District; the enactment and application of separate laws to the region; the Shifta War (1963 to 1967) waged by separatist ethnic Somali forces and; the application of discriminatory development policies by post-independence governments. The marginalisation of the communities in the former NFD, who are largely pastoralists, goes back to the colonial era

234. The Commission finds that there is a clear link between the government's policy of viewing every issue in the North from a security perspective and the economic marginalisation suffered by the region. Many residents attribute the marginalisation the region suffered in subsequent years to the fact that they had expressed an affirmative voice in favour of secession from Kenya that was brutally muzzled

235. The state has also been directly responsible for economic marginalisation as a result of deprivations visited on residents because of policies aimed at enhancing security. In particular the numerous security operations conducted in this region have often resulted in loss and confiscation of property, especially cattle, by state security agents.

236. Difficulties encountered by residents of this region in having their citizenship recognised, including acquiring identity documents and passports goes to the core of the economic marginalisation that they have experienced. Without citizenship, the people could not claim their rights. They became vulnerable to abuse. The Commission heard many heart-wrenching stories about lives that have been destroyed for lack of national identity cards and by extension passports

Economic marginalization of Nyanza

237. The disintegration of the Kikuyu-Luo coalition that formed the core of KANU at independence and the eventual fallout between Kenya's first President Jomo Kenyatta and first Vice-President Oginga Odinga in 1966 over differing visions for the country as described earlier forms an important context within which to contemplate the marginalisation of Nyanza

238. The Commission takes the view that while Luo personalities served in President Moi's administration, the co-option of these elites did not necessarily translate into economic inclusion in a broad sense. The inclusion of certain elites in government also had a political goal under the first two post-independence administrations: it served to politically isolate Odinga who had taken a hard-line stance against both the Kenyatta and Moi governments since the 1966 fallout and his eventual banishment in 1969.

Economic marginalization of Coast

239. Like the former North Eastern Province, the NFD in general and Nyanza, the Coast region could be placed in the category of 'politically dissident' regions that have suffered marginalization under successive regimes. However, marginalization experienced in the Coast, especially when understood from the point of view of dispossession, is due also to the confluence of interests arising from the region's strategic value as a principal gateway to the country and the East and Central African region and its valued seafront land resources.

240. Submissions from Coast residents invariably link their state of economic marginalisation marked by poverty, illiteracy and lack of access to basic services to frequent land-related dispossessions. The Commission heard many accounts of police brutality and other kinds of mistreatment by the provincial administration, including extra-judicial killings, arrest and imprisonment of those who agitate for restitution, as well as the destruction of property and evictions of those who live off these lands with contested titles.

Economic marginalization of Western

241. While many perceive Western as a marginalized region, this characterization has not featured as prominently in formal accounts as has been the case for Nyanza, Northern Kenya and the Coast regions. This depiction is perhaps attributable to a combination of factors, including the fact that due to its rich fertile soils that favour agriculture and relative security, Western has been perceived to be economically stable, in spite of the high levels of poverty.

242. Western has often been ignored in classification of marginalized regions in Kenya, yet its historical evolution and political fortunes are closely tied with that of Nyanza province, which is acknowledged in formal accounts as a marginalized region. Backed up with a history that lacks political favour with successive governments and the high level of poverty, it is evident that Western Kenya is marginalized. Recent trends reveal that the region has been forgotten in the development agenda.

Economic marginalization of North Rift

243. The North Rift region has experienced political marginalisation since the colonial period. Regarded as part of the Northern Frontier region (together with North Eastern Province), the closed-area policy imposed by the colonial regime isolated the region from the rest of the country and made it impenetrable by 'outsiders'.

244. In contemporary times, the people of North Rift have complained that they are inadequately represented in national political institutions and the public service since independence. It is a glaring contradiction that in representation in Parliament, a vast county like Turkana (with an area covering 77 000 square kilometers and a population of one million) only has three constituencies. Furthermore, for a long time it has been administered as one district.

Recommendations

- The Commission recommends that, within 12 months of the submission of this Report, the government formulate, adopt and implement a policy that deliberately targets the socio-economic development of historically marginalised regions identified by the Commission.
- The policy must include strategic development plans and budgetary allocations aimed at the economic and social development of marginalised communities.
- The policy must recognise that these reparative actions are over and above the provisions of Article 204 of the Constitution (2010) in utilisation of the Equalisation Fund.
- The Government consider actions such as building an efficient road networks linking marginalized areas with the rest of Kenya, building boreholes and water-catchment systems, building hospitals within reach of all communities adequately stocked and well-staffed, schools with adequate facilities, courts of law, and ensure that all government services and public facilities are available to them.
- In the five years subsequent to the enactment of the policy, preference be given to marginalised regions in the sharing of national revenues as envisaged under Article 202 of the Constitution (2010) to ensure that the development projects are realised and the policy is implemented.

Land and Conflict

245. The Commission finds that there is a very close linkage between land injustices and ethnic violence in Kenya. More specifically, land related injustices are prominent factors that precipitate violence between and within ethnic tribes in Kenya.

246. The Commission finds that land-related injustices take many forms, including: illegal alienation and acquisition of individual and community land by public and private entities, illegal alienation of public land and trust lands, preferential treatment of members of specific ethnic groups in settlement schemes at the expense of the most deserving landless, forceful settlement of members of a community outside of their homelands, forceful evictions and the phenomenon of land grabbing, especially by government officials.

247. The Commission finds that land-related injustices started recognizably during the period of colonization at the coast by Arabs and, later, by the British both at the coast and in mainland Kenya. However, indigenous Kenyans expected the injustices to be fully addressed soon after independence but the first independence government failed to fully and genuinely address the problems.

248. The Commission finds that all post independence governments have failed to honestly and adequately address land-related injustices that started with colonialism.

249. The Commission finds that failure of both colonial and post-independence governments to address the problem of landlessness is the reason individuals and communities often resort to self-help measures, including violence.

250. The Commission finds that existing land-related injustices are sometimes taken advantage of or used to address other societal problems, especially political differences.

251. The Commission finds that athough land-related injustices have affected virtually every part of Kenya, communities at the coast, especially the Mijikenda, the Taita and Pokomo have suffered the most and the longest.

252. The Commission finds that land-related injustices at the coast constitute one of the key reasons for underdevelopment in the area. Land-related injustices at the coast lie at the root of the emergence of the Mombasa Republican Council (MRC).

253. The Commission finds that the Provincial administration has pervasively and significantly perpetrated land-related injustices including forceful evictions of individuals and communities and land grabbing for personal gain, and should

not at all participate in any efforts to redress land related problems in the new constitutional dispensation because of their lack of moral authority and support.

254. The Commission finds that the current constitutional dispensation, including the new constitutional body on land and related laws, provide a sound basis to fully address land-related injustices, including historical ones, but only if there is political will to so use these laws and institutions.

Recommendations

- The Commission recommends that the Ministry of Lands or other appropriate government authority immediately begins a process of surveying, demarcating and registering all remaining government lands, including those that were formerly owned or managed by local authorities, all protected wildlife areas and river banks, among other public lands.
- The Commission recommends that the National Land Commission commences work with the Ministry of Lands and settlement to undertake adjudication and registration exercises at the coast and all other areas where the same has not been conducted. Measures shall be designed to revoke illegally obtained titles to and re-open all public beaches, beach access routes and fish landing beaches, especially at the coast.
- The Commission recommends that the National Land Commission in furtherance of its mandate expedites the process of addressing and/or recovering all irregularly/illegally acquired land. Measures should be designed by the Ministry of Lands and settlement to encourage individuals and entities to surrender illegally acquired land.
- The Commission recommends that the Ministry of Land in conjunction with the National Land Commission design and implement measures to revoke illegally obtained tittles and restore public easements
- The Commission recommends that the National Land Commission develops, maintains and regularly up dates a computerized inventory of all lands in Kenya, including private land that should be accessible to all Kenyans as required by law. Land registries country wide should be computerized and made easily accessible as required by the law.
- The Commission recommends that the National Land Commission formulates and implement strict guidelines in terms of maximum acreage an individual or company can buy hold in respect of private land.

Economic Crimes and Grand Corruption

255. The Commission finds that corruption is endemic in Kenya. This is despite of the fact that there has been a growing public awareness of the consequences of corruption, its negative and destructive effects on the economy and development, and the need to eliminate corruption.

256. There is a direct link between corruption and gross violation of human rights. Individuals have been killed, tortured and subjected to other violations of human rights because of their efforts to combat corruption.

257. Corruption has a disproportionate impact on vulnerable groups such as the poor, minorities and indigenous people, women, children, persons with disabilities, people living with HIV/AIDS, refugees and internally displaced persons, and prisoners. Members of these groups are more and are less able to defend themselves.

258. Poor people are affected by corruption because it diverts resources from investment in infrastructure that is crucial to lift them out of poverty. Corruption undermines the quality of public services on which the poor depend particularly to meet their basic needs. Minority and indigenous people suffer effects of corruption when they are displaced by, for example, corruptly approved infrastructure developments.

Recommendations

- The Commission recommends the formulation of a national anti-corruption policy to guide the war against corruption**.** It is necessary to criminalise other offences that are in United Nations Convention Against Corruption but not yet domesticated in Kenya.
- The Commission recommends that the provisions of Anti-Corruption and Economic Crimes Act, Public Officers Ethics Act, Ethics and Anti-Corruption Commission Act and the Leadership and Integrity Act be harmonised to avoid confusion and duplicity. The Commission recommends the merging of all the four pieces of legislation into one.
- The Commission recommends that the number of commissioners of the Ethics and Anti-Corruption Commission (EACC) be increased to the maximum constitutional limit of nine (9). An increased number of staff is also required to deal with the increased workload created by the two levels of government with the attendant huge sums of public funds being allocated to the 47 counties. There is a real danger of corruption being 'devolved' to the counties unless the EACC is quickly restructured, empowered and visible at both levels of government.
- The Cmmission recommends that the EACC be given a sound constitutional grounding through amendment of Article 79 of the Constitution to specifically provide for its powers and functions as is the case with other Constitutional commissions.

- The Commission recommends the clarification of the definition of integrity and the attendant integrity threshold that should be used to either disqualify or remove a person from public office. Chapter 6 of Constitution of Kenya 2010, if properly interpreted and applied, will definitely be a major boost in the war against corruption in Kenya. It should be clearly defined as to when the integrity bar begins to operate, that is, whether it is at the time:
  - when mere allegations are made against an individual
  - when an individual is under investigation
  - when an individual is under prosecution
  - when an individual is convicted, or
  - when an individual has exhausted his right of appeal after conviction
- The EACC shall commence or hasten investigations into grand corruption scandals mentioned in this Report, which have remained un resolved for many years. Appropriate criminal and or civil sanctions must thereafter be taken against the perpetrators of grand corruption and economic crimes.

Ethnic Tension

259. The Commission finds that colonial government pursued a policy of 'divide and rule' in order to consolidate their hold on the country, and to lessen the possibility that the African population would resist colonial rule. To that end, the colonial government magnified the differences between the various communities and regions, and stereotyped each community in a manner that would sow suspicion, hatred and the sense of 'otherness'.

260. The Commission finds that the colonial government created ethnically defined administrative boundaries. In determining such boundaries, no serious thought was given to historical inter-ethnic interactions and relations.

261. The Commission finds that the colonial government focused on developing infrastructure and social services in productive areas of the country (the so called 'White Highlands') at the expense of the rest of the country. The resulting inequality remained largely unaddressed in the policies and practices of independent Kenya. The preferential treatment given to some areas of the country because of their clear productivity thus led to differential treatment of ethnic communities that were patterned around the ethnic enclaves created by the colonial government.

262. The Commission finds that the colonial land policy, particularly in the so-called 'white highlands,' contributed enormously to regional and ethnic marginalisation from the economy. Colonial land policies resulted in displacement, the creation of 'native reserves', as well as the movement of masses of population from areas of their habitual residence to completely different regions and settling them on lands that traditionally belonged to other communities.

263. The Commission finds that Kenya entered the era of independence with a heightened sense of ethnicity that continued to divide rather than unite the country. However, ruling elites in independent Kenya did not have the political will or commitment to create a truly democratic and prosperous Kenya for all its citizens. The result was the worsening of ethnic relations such that by 2007 long standing grievances erupted into an unprecedented scale of violence.

264. The Commission finds that in the post-independence period, causes of ethnic tension include the following:

- **Insider/Outsider dynamics:** Ethnic tension and violence occur when communities assert a superior claim over a territory at the expense of or to the exclusion of others. Such superior claims are based on the assumption that ownership or occupation at some point in the past created an exclusive claim for such ownership or occupation in the present. Such exclusive claims to territory inevitably create classes of 'insiders' and 'outsiders'. This perception of people as outsiders as opposed to fellow citizens often lead to increased tension based on ethnicity which, in turn, created the potential for ethnic violence.

- **Of names and their meaning:** In Coast and Rift Valley alike, a thorny issue that is intricately tied to the notion of insiders and outsiders relates to names of places. In particular, local communities in these two regions are aggrieved that places occupied by those they consider outsiders have been given 'outside names'.

- **State sanction of outside/insider notions:** The designation of a community as 'other' or as an outsider has sometimes found support in state policy. In the northern region of the country, particularly in those areas that made up the former North Eastern Province, the Government has institutionalised the disparate treatment of Kenyans based on ethnicity by requiring that Kenyans of Somali origin carry a special pass

- **Negative perceptions and stereotypes:** Negative perceptions and stereotypes are a major cause of ethnic tension in the country. Labels have been put on certain communities, portraying them in broad, often negative terms that generalise certain traits and apply them to all individuals belonging to the described community, regardless of how individuals perceive themselves. For example, the Kikuyu are sometimes described as thieves, the Maasai as primitive, the Somali as terrorists, etc.

- **Culture and stereotypes:** While the colonial government played an important role in cultivating ethnic stereotypes, the Commission also received evidence that some stereotypes are drawn from and driven by traditional cultural beliefs and practices. For instance, the Commission heard that men from communities that do not practice male circumcision have always been stigmatised and regarded as lesser or weaker men, and therefore, incapable of or unsuitable to take political leadership of the country.

- **Ethnicity and access to public office:** The perception that ethnic representation in government results in direct economic and other benefits to the represented community is pervasive in Kenya. While the Commission acquired evidence that such benefits do not necessarily accrue to those communities who are represented - even in the highest offices of the land - the perception that they do leads to intense competition for such representation, and thus increases the likelihood of violence during elections.

Ethnic Tension, Land and Politics in Mt. Elgon

265. The Commission finds that the emergence of the Sabaot Land Defence Force in the Mt. Elgon region was precipitated largely by government failure to fully address land-related injustices that members of the Sabaot community have suffered since the colonial period.

266. The Commission finds that the SLDF was responsible for numerous gross violations of human rights including killings, torture, mutilation, and sexual violence.

267. The Commission finds that during *Operation Okoa Maisha* the Kenya Police and the military were equally responsible for gross violations of human rights including killings, enforced disappearance, torture, and sexual violence.

Recommendations

- The Commission recommends that within six months of the issuance of this Report, the President offers a public and unconditional apology to the people of Mt. Elgon for the atrocities committed against them by the Kenya Police and the Kenya Army and for the failure of the state to protect them against atrocities committed by SLDF
- The Commission recommends that within six months of the issuance of this Report, the Government establishes a trauma and healing center in Mt. Elgon region for purposes of providing psychosocial support to the victims and survivors of Mt. Elgon conflict. Special attention be paid to widows in the region.
- The Commission recommends that individuals who suffered atrocities during the Mt. Elgon conflict be provided with reparation in accordance with the Reparation Framework proposed by the Commission.
- The Commission recommends the establishment of a monument in Mt. Elgon to commemorate the victims and survivors of the Mt. Elgon conflict, especially those who were killed or forcefully disappeared both by the SLDF and state security agents.
- The Commission recommends that within 18 months of the issuance of this Report, the Government maps all mass graves and other locations where bodies were dumped or disposed of during the Mt. Elgon conflict, with a view to exhuming and identifying the bodies for proper burial.
- The Commission recommends the prosecution of the following individuals against whom it received evidence of involvement in militia activities in Mt. Elgon including financing, planning and instigating violence in the region: Fred Chesebe Kapondi; John Bomet Serut; and Jackson Psongoiywo.
- The Commission recommends the prosecution of Colonel Stephen Boiywo who was serving as the Commanding Officer during the military intervention in Mt. Elgon in 2008 referred to as *Operation Rudi Nyumbani* during which numerous gross violations were committed by members of the Kenya Army.
- The Commission recommends that the Police Service Commission ensures that every police station in Kenya reflects ethnic diversity and gender balance.

Reconciliation

268. For decades, Kenya has remained a nation in which communities stand divided along ethnic and regional lines, suspicious and distrustful of one another. Over the decades, feelings of inter-community distrust, even hatred, have festered mainly because a myriad of issues which are at the core of nation-building have largely remained unresolved. These issues include access to land, inequality and regional imbalances, and impunity combined with a lack of transparency and accountability. These issues have eroded a sense of belonging, nationhood, and public trust in political and governance institutions.

269. Since independence, successive governments have employed silence, denial and selective amnesia whenever individuals and agencies have raised the need to address these fundamental issues. Painful memories have been passed from one generation to another, and as a consequence present generations continue to hold grudges for violations and historical injustices meted against their forefathers and mothers. Until now, the scale and impact of human rights violations and historical injustices have neither been fully acknowledged nor sufficiently addressed.

270. Meaningful reconciliation is not an event, but rather a long process. The decision to reconcile is a personal decision, aimed at setting the stage and establishing the basis for the beginning of a reconciliation process.

271. The Commission acknowledges the efforts undertaken by civil society and faith-based organizations in fostering organizations. However, it is noteworthy that most of these efforts have been reactive rather than proactive, short term rather than long term, and uncoordinated and unsustainable.

272. The Commission finds that at the individual level, many Kenyans who have been victims of injustices and atrocities require psycho-social support. This is a necessary in order for them to engage in a process of reconciliation.

273. The Commission finds that District Peace Committees are under-utilized and not widely known amongst many Kenyans. This is partly due to lack of adequate funding of the District Peace Committees.

Recommendations

- The Commission recommends that within six months of the issuance of this Report, the President convenes a National Reconciliation Conference/Day, during which the President and heads of the various security agencies shall offer a public apology for violations and injustices committed during the mandate period. The President shall also outline the nation's Reconciliation Agenda. Representatives of victim groups from around the country shall be facilitated to attend the conference. The Commission further recommends that the day on which the Reconciliation Conference will be held should be declared a public holiday in order to ensure a nation-wide focus on the subject of national healing and reconciliation.
- The Commission recommends that alleged perpetrators of ethnic incitement and violence be investigated and prosecuted accordingly, notwithstanding their official or other status. The Director of Public Prosecutions shall ensure that those individuals recommended for investigation or prosecution by previous commissions of inquiry on ethnic violence, namely the Parliamentary Select Committee to Investigate Ethnic Clashes in Western Kenya and Other Parts of Kenya (Kiliku Commission), and Judicial Commission of Inquiry into Tribal Clashes in Kenya (Akiwumi Commission), are prosecuted or investigated. The Director of Public Prosecutions shall also take action in respect to the recommendations of various reports of the Kenya National Commission on Human Rights on ethnic and political violence including its report on the 2007/2008 PEV. The Commission has compiled a list of adversely mentioned persons in these reports to aid their identification.
- The Commission recommends that within 3 months of the issuance of this Report, the Director of Public Prosecutions shall issue a public report indicating the progress that the office has made in investigating and prosecuting the 2007/2008 Post-Election related cases.
- The Commission notes that there is a lack of a coordinated and streamlined approach to the subject of peacebuilding and reconciliation in the country. Multiple state organizations are involved in this endeavor without much formal coordination. The Commission recommends the evaluation of all institutions and mechanism involved in peacebuilding, reconciliation and early warning with a view to harmonizing their activities and adopting a coordinated approach.
- The Commission recommends that concerted efforts be taken to foster reconciliation and cohesion in areas where there has been a perennial problem of ethnic tension and violence. In this regard, the Commission recommends that comprehensive and sustained community dialogues be carried out in these areas.
- The Commission recommends that District Peace Committees be adequately funded and the public be made aware of the existence of these committees.
- The Commission recommends that the Ministry of Education develops a peace education curriculum for use in schools.

Annex:

Recommendations and Implementation Matrix

#	THEME/SUBJECT	RECOMMENDATIONS	RESPONSIBILITY FOR IMPLEMENTATION	TIMELINE
1	**Atrocities committed during colonial era**	Acknowledgment and apology	British government	
		Negotiation for compensation from the British government	Kenyan government and British government	12 months
2	**Shifta War**	Acknowledgment and apology	President and Chief of Defence Forces	6 months
		Repeal of Indemnity Act	Attorney General and Parliament	9 months
		Publication and dissemination of the 1967 Arusha Agreement between Kenya and Somalia	Ministry of Foreign Affairs/Office of the President	9 months
		Establishment of a public memorial	Implementation Mechanism/Ministry responsible for National Heritage/ National Museum	24 months
3	**Massacres**	Acknowledgment and apology	President, Inspector General of Police and Chief of Defence Forces	6 months
		Reparation for victims and survivors	Implementation Mechanism	36 months
		Release of all minutes of the relevant District Security Committees, Provincial Security Committee, Kenya Intelligence Committee and National Security Council	President/Office of the President	6 months
		Further investigations of individuals found to have played a role in a security operation that led to a massacre	Director of Public Prosecutions	18 months
		Lustration of individuals found to have played a role in a security operation that led to a massacre	Public Bodies	
		Establishment of memorials at the sites of massacres	Implementation mechanism/Ministry responsible for National Heritage/ National Museum	24 months
		Return of Father Adrian Joseph Janito for purposes of giving testimony on Bubisa Massacre	Catholic Church	
4	**Political assassinations**	Acknowledgment and apology	President	6 months
		Release of all reports and materials of all previous investigations of political assassinations	President/Office of the President	6 months
		Further investigations relating to the assassination of JM Kariuki, Robert Ouko, Crispin Odhiambo-Mbai and Father Antony Kaiser	Director of Public Prosecutions	18 months
		Further investigation of the assassination of Father Antony Kaiser	Director of Public Prosecutions to appoint independent investigator(s)	18 months
		Establishment of public memorials	Implementation Mechanism/ministry responsible for national heritage/ National Museum	24 months

#	THEME/SUBJECT	RECOMMENDATIONS	RESPONSIBILITY FOR IMPLEMENTATION	TIMELINE
5	**Extra-judicial killings**	Acknowledgment and apology	President, Inspector General of Police and Chief of Defence Forces	6 months
		Ratification of International Convention for the Protection of All Persons from Enforced Disappearance	Ministry of Foreign Affairs	24 months
		Fast-tracking of reforms in the Police Service, including introduction of new standard operating procedures on the use of force	Inspector General of Police and Police Service Commission	
		Establishment of a fully equipped modern national forensic laboratory	Ministry responsible for internal security and other relevant ministries/ institutions	36 months
		Establishment of fully equipped modern forensic laboratories in each county	Ministry responsible for internal security and other relevant ministries/ institutions	36 months
		Abolition of the death penalty and commuting of all death penalties to life imprisonment	Attorney General and Parliament	24 months
		Reparation for victims and survivors	Implementation mechanism	36 months
6	**Unlawful detention, torture and ill-treatment**	Acknowledgment and apology	President	3 months
		Enactment of legislation prohibiting torture	Attorney General and Parliament	12 months
		Legislation on and establishment of the Office of the Independent Inspector of Prisons and All Places of Detention	Attorney General and Parliament	12 months
		Prosecution of individuals involved in torture and ill-treatment	Director of Public Prosecutions	18 months
		Designation of Nyayo House as memorial for victims of detention and torture	Implementation mechanism/Ministry responsible for National Heritage/ National Museum	12 months
		Reparation for victims and survivors	Implementation mechanism	36 months
7	**Sexual violence**	Acknowledgment and apology	President, Inspector General of Police and Chief of Defence Forces, and British government	6 months
		Negotiation for compensation (in relation to victims and survivors of sexual violence committed by British soldiers in Laikipia and Samburu)	Kenyan government and British government	
		Establishment of one-stop gender recovery centers for provision of comprehensive services to victims and survivors of sexual violence, including medical, counseling and legal services	Relevant government ministries, departments and bodies including: Ministry of Health; Ministry of Justice; Director of Public Prosecutions; Police Service; NGEC; etc.	
		Legislation on and establishment of the Office of the Special Rapporteur on Sexual Violence	Attorney General and Parliament	12 months
		Fast-tracking of the establishment of a sexual offenders registry	Chief Registrar of the Judiciary	12 months
		Reparation for victims and survivors	Implementation Mechanism	36 months

#	THEME/SUBJECT	RECOMMENDATIONS	RESPONSIBILITY FOR IMPLEMENTATION	TIMELINE
8	**Access to justice and promotion of human rights**	Fast-tracking of the establishment of the International Crimes Division of the High Court	Chief Justice	12 months
		Fast-tracking of establishment of a nationwide legal aid system	Ministry of Justice/National Legal Aid (And Awareness) Programme in Kenya (NALEAP)	18 months
		Declaration under article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights	Ministry of Foreign Affairs	12 months
		Issuance of a public report on the progress of investigations and prosecution of 2007/2008 post-election related violence	Director of Public Prosecutions	3 months (and in 3 months intervals thereafter)
		Designation of 10 December as a National Human Rights Day	Parliament	6 months
		Fast-tracking of enactment of human rights related laws as envisaged by the Constitution of Kenya: ▪ Legislation on freedom of the media (section 34) ▪ Legislation on fair hearing (section 50) ▪ Legislation on the rights of persons detained, held in custody or detained (section 51)		
9	**Women**	Acknowledgment and apology	President	6 months
		Stepping up of measures to raise awareness about harmful cultural practices	Equality and Gender Commission	
		Enactment of relevant laws (e.g. marriage; matrimonial property; family protection/domestic violence)	Attorney General and Parliament	18 months
		Adoption and implementation of a Plan of Action to increase and improve maternal health facilities and measures to reduce delivery at home	Ministry of Health	12 months
		Equitable representation of women in all land dispute tribunals in accordance with the Constitution	Ministry of Lands	12 months
10	**Children**	Acknowledgment and apology	President	6 months
		Psychosocial counseling for children victims of atrocities	Implementation Mechanism and relevant government departments/ institutions	
		Reparation for children victims of atrocities and injustices	Implementation Mechanism	36 months
		Reorganization of Borstal institutions to fall under the Department of Children's Services	Office of the President	12 months
		Adequate funding of the Department of Children's Services	Ministry of Finance	Continuous
		Robust plan for Integration of children with disabilities in mainstream educational facilities	Ministry of Education	12 months

#	THEME/SUBJECT	RECOMMENDATIONS	RESPONSIBILITY FOR IMPLEMENTATION	TIMELINE
11	**Minority groups and indigenous people**	Acknowledgment and apology	President	6 months
		Implementation of decisions relating to minority/indigenous communities: ▪ Decision of the African Commission on Human and Peoples' Rights in Communication No. 276/2003 Center for Minority Rights Development (Kenya) & Minority Rights Group International (on behalf of Endorois Welfare Council) v Kenya ▪ Decision of the African Committee of Experts on the Rights and Welfare of the Child in Communication No. 002/09 IHRDA & OSJI (on behalf of children of Nubian descent in Kenya) v Kenya ▪ Decision of the High Court of Kenya in Charles Lekuyen Nabori & 9 Others v Attorney General and 3 Others [Petition No. 466 of 2006, High Court at Nairobi]	Various relevant ministries and institutions	12 months
		Ratification of relevant treaties: ▪ ILO Convention 169 ▪ Convention on the Prevention and Punishment of the Crime of Genocide ▪ Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ▪ Convention Against Discrimination in Education ▪ Statelessness Conventions	Ministry of Foreign Affairs	24 months
		Fast-tracking of legislation on as envisaged by section 100 of the Constitution of Kenya	Attorney General, Constitutional Implementation Committee, and National Gender and Equality Commission	
		Removal of existing obstacles experienced by minority groups (e.g., members of Somali and Nubian ethnic groups) in accessing national identity cards	Ministry of Immigration and Registration of Persons	12 months
		Review of all legislation to eliminate de jure and de facto discrimination against minority/indigenous communities	Kenya Law Reform Commission and National Gender and Equality Commission	6 months
		Development and implementation of a plan on data collection on minority and indigenous communities	Kenya Bureau of Statistics and Ministry of National Planning	
		Implementation of the recommendations of the Presidential Special Action Committee to Address Specific Concerns of the Muslim Community in Regard to Alleged Harassment and/or Discrimination in the Application/Enforcement of the Law	Relevant ministries and institutions	

#	THEME/SUBJECT	RECOMMENDATIONS	RESPONSIBILITY FOR IMPLEMENTATION	TIMELINE
12	**Economic marginalization and violations of socio-economic rights**	Formulation, adoption and implementation of a policy on the economic development of marginalized regions identified by the Commission Focus: ▪ Roads and infrastructure ▪ Health ▪ Education ▪ Water	Relevant Ministries and institutions including Ministry for Finance, Ministry of Health, Ministry of Education, Commission on Revenue Allocation, etc.	12 months
		Collective reparation for communities in marginalized regions identified by the Commission	Implementation mechanism and relevant state ministries and institutions	36 months
13	**Land**	Further investigations of alleged illegal or irregular acquisition of land	National Land Commission	
		Survey, demarcation and registration of public land		
		Adjudication and registration of land at the Coast and other areas where this has not been done	National Land Commission	
		Development and maintenance of a computerized inventory of all land	Ministry of Lands and National Land Commission	
		Reparation for historical land injustices	Implementation Mechanism and National Land Commission	36 months
14	**Economic Crimes and Grand Corruption**	Harmonization of the various laws relating to combating economic crimes and grand corruption	Attorney General and Parliament	18 months
		Domestic criminalization of certain offences stipulated in the UN Convention Against Corruption	Attorney General and Parliament	18 months
		Expansion of the Ethics and Anti-Corruption Commission (from 3 to 9 commissioners)	Attorney General and Parliament	18 months
		Fast-tracking of investigations of corruption cases which have remained unresolved for many years	EACC	18 months
		Clarification of 'integrity test'	EACC	6 months
15	**Ethnic tension and reconciliation**	National Reconciliation Conference/ Day	President/Implementation Mechanism/ NCIC/NSC	6 months
		Investigation and prosecution of all adversely mentioned persons in official reports on political instigated ethnic violence or clashes	Director of Public Prosecutions	
		Audit of institutions and mechanism involved in peacebuilding, reconciliation and early warning with a view to harmonizing their activities and adopting a coordinated approach.	Joint Task Force of the NCIC, NSC and CSOs/CBOs	6 months
		Comprehensive and sustained nation-wide community dialogues	NCIC and National Steering Committee on Peacebuilding and Conflict Management (NSC)	Continuous

#	THEME/SUBJECT	RECOMMENDATIONS	RESPONSIBILITY FOR IMPLEMENTATION	TIMELINE
16	**Mt. Elgon conflict**	Acknowledgment and apology	President/Inspector General of Police/ Chief of Defence Forces	6 months
		Establishment of a counseling and healing center	Implementation Mechanism and relevant government ministries/ institutions	12 months
		Establishment of a memorial for victims and survivors	Implementation mechanism/Ministry responsible for National Heritage/ National Museum	36 months
		Reparation for victims and survivors	Implementation Mechanism	36 months
		Exhumation and reburial	Implementation Mechanism and relevant government ministry/ institution	36 months
		Prosecution of individuals alleged to have been involved in the planning, financing and instigating violence and other atrocities	Director of Public Prosecutions	18 months
		Prosecution of army commander in charge of Operation Okoa Maisha	Director of Public Prosecutions	18 months
17	**Forced displacement**	Facilitation and resettlement of Kenyan refugees in Uganda who are willing to return to Kenya	Relevant Government Ministry/ Department responsible for matters relating to internal displacement.	18 months
		Fast-tracking of the operationalisation of the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, No. 56 of 2012	Relevant Government Ministry/ Department responsible for matters relating to internal displacement.	6 months
		Audit and registration of all IDPs who did not benefit from Operation Rudi Nyumbani with a particular focus on integrated IDPs	Implementation Mechanism and National Consultative Coordination Committee on Internally Displaced Persons	12 months
		Reparation for IDPs and refugees	Implementation Mechanism	36 months
		Ratification of the African Union Convention for the Protection and Assistance of Internally Displaced Persons	Ministry of Foreign Affairs	24 months
18	**Reports of commissions of inquiry**	Release of reports of previous commission of inquiries and related bodies: ▪ Report of the Commission of Inquiry into the 1992 Raid on Bishop Gitari's House in Kirinyaga ▪ Report of the Commission of Inquiry into the Conduct of the Artur Brothers and their Associates ('Kiruki Report') ▪ Report of the Presidential Action Committee to Address Specific Concerns of the Muslim Community in Regard to Harrassment and/or Discrimination in the Application and Enforcement of the Law ('Sharawe Report')	President	6 months

I CALL FOR JUSTICE

(poem narrated by students of Garissa High School during the launch of the Commission's hearings in Garissa)

Justice! I call for justice
Fear is in my heart

In the street, I pass calling for justice
In the police station, I pass calling for justice
In the court, I pass calling for justice

When I saw streams of blood flowing down the road
I could not believe my eyes
For what man had done
Killing innocent people mercilessly
Fear is in my heart
Justice! I call for justice

Children are left orphans
Rolling on the street meaninglessly
Sleeping on the street hungry
And the cold breaking their ribs
I am afraid of losing my life
Fear is in my heart
Justice! I call for justice

The widows are stressed
Recalling the love of their husband
Recalling the loss of their children
Fear is in my heart
Justice! I call for justice

Justice! where are you?
In the police?
In the court?
In the local tribunal?
In the ICC?
Justice? where are you?

Truth be told
Justice to prevail
Justice! justice! Justice!
I call for justice



The report [of the Truth, Justice and Reconciliation Commission] shall … make recommendations on the mechanism and framework for the implementation of its recommendations and an institutional arrangement in that connection.

Truth, Justice and Reconciliation Act, sec 48(2)(f)

The implementation committee shall …submit its own quarterly reports to the public evaluating the efforts of the Government and the efforts of any other person or body concerned to implement the recommendations of the Commission.

Truth, Justice and Reconciliation Act, sec 49(2)

The Minister shall report to the National Assembly within three months of receipt of the report of the Commission, and twice a year thereafter, as to the implementation of the Commission's recommendations.

Truth, Justice and Reconciliation Act, sec 50(1)

CHAPTER TWO

Implementation and Monitoring Mechanism

Introduction

1. Past experiences with the work of truth commissions and commissions of inquiry around the world have shown that a major challenge lies in the implementation of the recommendations contained in the reports of these commissions. More often than not, the life of these commissions ends at the point of submission of their final report, leaving the implementation to other actors who often do not follow through with the recommendations. This challenge has also characterized the work of many commissions of inquiry in Kenya in the past.

2. The consequences of this challenge have been to limit the impact of the work of these commissions and to contribute to public fatigue and disappointment about such commissions after expectations were raised. The drafters of the TJR Act must have had this challenge in mind when they empowered the Commission to recommend an implementation mechanism to ensure its recommendations are duly and timely implemented, and to monitor progress in that implementation. The government is expressly obligated under the TJR Act to create the implementation mechanism as set out in this Report. In this Chapter, the Commission provides for the nature, composition and functions of the Implementation Committee envisaged in the law.

Mandatory Nature of Commission's Recommendations

3. Recommendations contained in this Report are, in Parliament's wisdom, of mandatory application and must be complied with by all constitutional, legislative and administrative institutions and bodies so as to achieve the object and purpose of the TJR Act expressed in the Preamble and the relevant sections therein. This is clearly stipulated under Section 50(2) of the TJR Act which states that:

> All recommendations shall be implemented, and where the implementation of any recommendation has not been complied with, the National Assembly shall require the Minister to furnish it with reasons for non-implementation.

4. Furthermore, the Minister (or Cabinet Secretary in the language of the Constitution of Kenya, 2010) is tasked with reporting on the progress of the implementation of the Commission's Report to the National Assembly within three months of submission of the Report, and twice a year thereafter.[1] Section 49(3) further states that implementation of the Report of the Commission shall commence within six months upon publication of the Report.

5. In relation to the provisions of section 50(2), the Commission recommends that the Cabinet Secretary's reasons for any non-compliance and non-implementation with its recommendations must take cognizance of and be evaluated on the basis of the following principles:

- The primary responsibility of implementing the recommendations resides with the State;
- The State shall ensure all state organs and public officers with a duty to implement the recommendations are indeed doing so and that organs or officers not in compliance shall face appropriate sanction;
- The State shall be required to demonstrate that it is undertaking the legislative, policy and other measures required to implement the recommendations.
- In the event that the State cites resource constraints as the cause for non-compliance, the State shall be required to demonstrate that the resources are not available and further articulate an action plan for resource mobilization.

1 TJR Act, sec 50(1).

6. In addition to the express provisions of the TJR Act, it is noteworthy that in terms of international best practice governments are obliged to 'undertake to give due consideration' to the findings and recommendations of investigative reports into human rights violations.[2] The United Nations High Commissioner for Human Rights has issued a statement on the obligation of member states to facilitate truth-seeking tribunals and 'encourages the States concerned to disseminate, implement, and monitor implementation of, the recommendations of non-judicial mechanisms such as truth and reconciliation commissions, and provide information regarding compliance with the decisions of judicial mechanisms.'[3]

Authority for an Implementation and Monitoring Mechanism

7. Section 48(2)(f) of the TJR Act mandates the Commission to 'make recommendations on the mechanism and framework for the implementation of its recommendations and an institutional arrangement in that connection.'[4] The Act then requires the Minister of Justice to *operationalise* the implementation mechanism as proposed by the Commission:

> The Minister shall, upon the publication of the report of the Commission, operationalize the implementation mechanism or arrangement in accordance with the recommendations of the Commission under section (48) (2) (f) to monitor the implementation of the recommendations of the Commission and to facilitate their implementation.[5]

8. The provision for an implementation mechanism in the TJR Act is no doubt borne out of the experience of past truth commissions and other commissions of inquiry in Kenya. Indeed, the drafters had foresight in proposing that a body be created to lead and facilitate implementation of the Report. This model is replicated in the implementation of the Constitution with the creation of the Commission for the Implementation of the Constitution, albeit with a decidedly different and broader mandate.

9. The Commission notes that section 49(1) of the Act enjoins the implementation mechanism '*to monitor the implementation of the recommendations of the Commission*

2 Report of the independent expert to update the Set of Principles to Combat Impunity, Diane Orentlicher, Addendum: Updated Set of principles for the protection and promotion of human rights through action to combat impunity, Commission on Human Rights, E/CN.4/2005/102/Add.1, principles 12 and 19.
3 UN Commission on Human Rights, *Human Rights Resolution 2005/66: Right to the Truth*, 20 April 2005, E/CN.4/RES/2005/66.
4 TJR Act, sec 48(2)(f).
5 TJR Act, sec 49(1).

and to facilitate their implementation'. This provision thus envisages a dual mandate for the mechanism: to *monitor* and *to facilitate* implementation of the Commission's recommendations.

Objectives of the Mechanism

10. The objectives of the implementation and monitoring mechanism are to:

- Work with relevant agencies and departments of government, civil society, faith based organisations, the private sector, international donors, and any other relevant individual or organisation to facilitate the implementation of the Commission's recommendations
- Monitor and report to the public with respect to the fulfilment of specific recommendations, including progress made on implementation since the last monitoring report
- Manage and administer the Reparations Fund
- Any other activity necessary to fulfil the letter and spirit of the recommendations in this Report.

Nature of the Mechanism

11. The Commission is sensitive to balancing a number of important objectives in its recommendation for an implementation mechanism. First, it is imperative that the Commission's Report, the result of close to four years of work, be widely disseminated and accessible to the Kenyan public, and in particular to the thousands of Kenyans who directly participated in and contributed to the Commission's work. As noted in other parts of this Report, far too often commissions of inquiry have been established in Kenya at the expense of the public taxpayer only to have their reports withheld from public dissemination.

12. Second, it is imperative that the Commission's recommendations, including but not limited to recommendations related to reparations, be fully implemented. Most truth commissions are criticized for having engaged with victims, raised their expectations, and then dashed their hopes by not providing for or resulting in concrete reparations. This is often not because the commissions themselves do not recognize the need for such reparations; rather it is often because the commissions themselves do not have the power to grant reparations, and while they recommend such reparations there is little or no political will to implement such recommendations. The drafters of the TJR Act must have been aware of

this problem with previous truth commissions, and thus both provided that our recommendations would be binding as a matter of law, and that the Commission would be empowered to create its own implementation mechanism.

13. Third, given the importance of many of the recommendations included in this Report, including the recommendations related to reparations, the Commission realized that the implementation mechanism would need to be independent of those bodies to which such recommendations are directed in order to monitor them effectively. In addition, the Commission was concerned that the implementation mechanism be sufficiently resourced in terms of time and staff to ensure effective monitoring and that its recommendations were in fact implemented. With effective monitoring and other related activity it is more likely that the recommendations would be implemented thus ensuring that Kenya would not be subject to the same criticism as other countries which had created truth commissions but then done little or nothing to provide for reparations and the fulfilment of other important recommendations.

14. Based upon these and other considerations, the Commission decided not to recommend that an already existing organization be the primary entity tasked with monitoring and implementing the Commission's recommendations. First, those existing independent organizations whose mandate is related to the work of the Commission (such as the KNCHR and NCIC) already have a full plate of activities and already face challenges with respect to inadequate resources to fulfil their current obligations. Placing even more obligations on such bodies would risk them being spread too thin with inadequate resources, or force them to choose between their existing activities with those activities related to the Commission. Second, while government agencies are less likely to have resource constraints, they are tasked with implementing many of the recommendations in this Report and thus would not be able to provide the independent and credible monitoring of their own activities. Finally, given that the implementation mechanism will also be continuing some of the work of the Commission – most notably administering the Reparations Fund – it is proper that the mechanism be an independent legal entity in the same way that the Commission was.

15. The Commission thus recommends the establishment of a Committee for the Implementation of the Recommendations of the Truth, Justice and Reconciliation Commission (the "Implementation Committee'). The Implementation Committee shall be established by legislation. A proposed bill title 'Committee for the Implementation of the Recommendations of the Truth, Justice and Reconciliation Commission Act' is annexed to this Chapter.

The Implementation Committee

16. The Implementation Committee shall be the main body responsible for implementing and monitoring the implementation of the Report of the Commission. It shall be an independent body with its own offices and budget, including the ability to raise its own funds. The Implementation Committee will be supported by a Technical Secretariat.

17. It is recommended that Parliament pass a law establishing the Committee and providing for its functions, powers and other related issues as proposed in this part within one month of the issuance of this Report. The TJR Act provides that the Commission shall be dissolved within three months of submission of its Report to the President and the public. In this regard, it is important that the Implementation Committee be in place before the Commission is dissolved in order to allow for a smooth and direct handover of sensitive documents in the custody of the Commission to the Implementation Committee.

18. The Committee shall be an independent body corporate with perpetual succession and a common seal. The Committee shall in its corporate name, be capable of —

- suing and being sued;
- acquiring, holding, charging and disposing of movable and immovable property;
- borrowing and raising money from governmental and non-governmental sources; and
- doing or performing all such other things or acts for the proper discharge of its functions under the Constitution and this Act.

19. The headquarters of the Committee shall be in Nairobi, but the Committee may establish other offices at any place in Kenya.

Composition of the Committee

20. The Implementation Committee shall consist of a Chairperson and four (4) other members appointed through an open and transparent process.

21. The Chairperson and members of the Committee shall have the following qualifications:

- Knowledge and experience in matters of transitional justice, human rights, reparations, law, gender or governance. The Chairperson shall be a person of 15 years experience in his/her field of experience while the members shall be persons of 10 years experience in their field of expertise.
- A citizen of Kenya
- Satisfy the requirements of Chapter Six of the Constitution
- Shall not be a state officer

22. Appointment of the Chairperson and members of the Committee shall be through an open and transparent process involving as set out by Parliament.

Functions of the Committee

23. The Committee shall have the following functions:

- Primary responsibility for the implementation of the aspects of the report assigned to it, in particular:
  - management and administration of the Reparations Fund;
  - map, register and process victims' claims using the Commission's database as the starting point (see details below);
  - facilitating, in consultation with the relevant government body, the process of memorialization in line with the recommendations set out in this Report; and
  - management and securing of the archives of the Commission, with due regard to the importance of transparency and access to information, and consistent with the promises of confidentiality made to specific individuals and organizations.
- Monitor the implementation of the aspects of the Commission's Report assigned to government ministries, departments and commissions.
- Solicit, accept, manage and administer funds from the government, donors, and others dedicated to the Reparations Fund.
- Ensure public awareness of the process at each stage, through appropriate media activity, public education forums and liaison/information sessions with victims, community based organisations, faith based organisations and civil society in general. In particular, the Committee shall implement a public

outreach and awareness campaign through the development of a transparent and comprehensive outreach plan in consultation with relevant government bodies, civil society groups, and victim representatives. The plan will be publicly available for comment and input and will specify measures of cooperation with local organizations and victim advocacy groups, as well as measures to reach out to women and girls, persons with disabilities, people living with HIV/AIDS, minorities and marginalized communities who have traditionally been excluded from public life. The Committee's Outreach Strategy should be carefully conceptualized so as to:

- Manage victim expectations about the reparations process
- Clearly explain who is eligible for what type of reparations under the scheme
- Clearly explain why and how decisions about eligibility have been made
- Pilot-test outreach methods before creating any nationwide effort
- Take advantage of new technologies to save costs and reach previously marginalized groups
- Reflect the stepped approach to reparations registration and the priorities of the eligibility policy, described below.
- Encourage group claims when appropriate.

- Recruit in an open and transparent process, the Chief Executive Officer and other staff of the Technical Secretariat
- Disseminate the final report and other Commission-related published materials to the public
- Facilitating the preservation, security, and public access to the archives of the Commission
- Create a monitoring and evaluation plan to measure progress periodically on the implementation process;
- Prepare and publish periodic reports relating to its activities including implementation and monitoring of implementation of the Report.

Powers of the Committee

24. The Commission recommends that the Committee shall have all powers necessary for the execution of its functions related to the implementation and monitoring of the Report of the Commission.

25. The Commission recommends that the Act establishing the Committee shall impose an obligation upon government departments and all organs of state to respond timeously to each reasonable request made by the Committee in pursuance of its obligations.

Technical Secretariat

26. The Committee shall be supported by a Technical Secretariat headed by a Chief Executive Officer and have a core staff comprising of experts in the following fields: communications/outreach; reparations and transitional justice; land; human rights; reconciliation and peacebuilding; and such other experts whose skills may be relevant in the implementation and monitoring of the Commission's Report.

27. The Commission recommends that the core staff at the Technical Secretariat be full time employees. The Technical Secretariat should be empowered to engage such other staff on full-time and consultancy basis as is necessary for the effective performance of its duties.

28. The Committee should, where appropriate, set up a reference group and or ad hoc thematic sub-committees consisting of key government departments, civil society and victims' organisations to provide focused policy orientation of the implementation process.

Staffing of the Secretariat

29. It is recommended that the Implementation Committee's Technical Secretariat establish the following units, or a comparable structure that ensures it can effectively fulfil its functions:

- Outreach & Registration Unit
- Evaluation & Classification Unit
- Individual Claims Section
- Group Claims Section
- Victim Participation, Gender and Minorities Unit

30. Each unit will make an assessment of its staffing and support needs based on its functions. Moreover, each unit should include a gender focal point to ensure equal access for women in the reparations process. The Implementation Committee will then assess the capability of relevant existing structures to provide services and staff

support to be coordinated by the Implementation Committee. The Implementation Committee will make specific requests to government bodies, ministries, INGOs and NGOs to second staff, provide services (based upon a transparent list of criteria), and make available other support to the Implementation Committee. Memoranda of Understanding will be completed with relevant actors to delineate roles and supervising structures.[6]

31. For example, the Implementation Committee might establish MOUs with civil society organizations across the country to undertake effective outreach related to the reparations program. CSOs would undergo training coordinated by the Implementation Committee, would undertake activities as designated by the Implementation Committee, but would remain employees or volunteers of their respective organizations.[7] The Implementation Committee would closely monitor the implementation of activities in such a case and would take corrective action, even to the extent of revoking an MOU, should that become necessary.[8]

Operationalization of the Implementation Committee

32. The TJR Act provides that the Minister shall upon the publication of this Report operationalize the implementation mechanism as recommended by this Commission.[9] The Act also states that the implementation of the Report shall commence within six months upon publication. As already indicated above, it is imperative that Implementation Mechanism be put in place before the Commission is dissolved. This will allow for the smooth and direct transfer of sensitive and confidential documents in the custody of the Commission to the Implementation Committee. In making this proposal, the Commission took note of its mandatory obligation under section 52(2)(a)(ii) which requires the Commission to organize its archives and records giving special consideration to 'the measures that may be necessary to protect confidential information'.

6 This model is proposed in order to ensure maximum efficiency of the reparations programme and to ensure that entities with relevant expertise are mobilized to carry out the reparations mandate. Because resources are necessarily limited, it is critical to ensure that any reparations structure does not create a large bureaucracy that consumes resources that could otherwise be directly used on reparations programmes. It must be made clear in any enabling legislation that government bodies at the national and local level have a responsibility to cooperate with the Implementation Committee and to provide such staff and support as is reasonably requested. This will also require that the enabling legislation mandate ministries to allocate funds for reparations support and implementation in their budgets.

7 Guidelines related to funding arrangements for the implementation of service by non-governmental organizations will need to be developed, depending on the overall budget for the Implementation Committee and the types of organizations involved.

8 Clear performance criteria should be drafted into every MOU, linked to victim participation and satisfaction, so that the conditions for revocation of the MOU are clear to both parties to the agreement.

9 TJR Act, sec 49(1).

33. Should the Implementation Committee not be operationalized within three months, it is recommended that the Secretariat of the Commission remain in place until such a time as the Implementation Committee is operationalized. In this regard, the Commission Secretariat shall be the immediate successor in law to the Commission. The Secretariat shall be charged with the safe custody of the Commission's documents and materials. The Secretariat shall stand dissolved upon the transfer of its materials to the Implementation Committee.

Annex 1: Draft Bill

AN ACT of Parliament to provide for the functions, powers, qualification of, and appointment procedure for members of the Committee for the Implementation of the Report of the Truth Justice & Reconciliation Committee

Part I- Preliminary

Short Title and Commencement

1. This Act may be cited as the Committee for the Implementation of the Report of the Truth Justice and Reconciliation Committee Act, 2013 and shall come into operation six months upon publication of the Report of the Truth Justice and Reconciliation Committee and upon subsequent publication in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires —

"Chairperson" means the chairperson appointed in accordance with section 8 of this Act;

"Committee" means the Committee for the Implementation of the Truth Justice and Reconciliation Act established under this Act.

"Secretary" means the Secretary appointed in accordance with section 14 of this Act.

"Report" means the Report of the Truth Justice and Reconciliation Committee

"Cabinet Secretary" means secretary responsible for matters relating to the administration of justice.

Part II – Administration

Incorporation of the Committee

3. (1) The Committee shall be a body corporate with perpetual succession and a common seal and shall in its corporate name, be capable of —

a) suing and being sued;

b) acquiring, holding, charging and disposing of movable and immovable property;

c) borrowing and raising money from governmental and non-governmental sources; and

d) doing or performing all such other things or acts for the proper discharge of its functions under this Act.

(2) The headquarters of the Committee shall be in Nairobi, but the Committee may establish other offices at any place in Kenya.

Functions of the Committee

4. The functions of the Committee shall be to—

(i) monitor, and report to the public with respect to the fulfilment of specific recommendations, including progress made on implementation since the last monitoring report;

(ii) co-ordinate with the relevant agencies and departments of government, civil society, faith based organizations, the private sector, international donors, and any other relevant individual or organisation to facilitate the implementation of the Commission's recommendations;

(iii) manage and administer the Reparations Fund;

(iv) map, register and process victims' claims using the Commission's database as initial reference point;

(v) facilitate, in consultation with the relevant government body, the process of memorialisation in line with the recommendations set out in the Report;

(vi) manage and secure the archives of the Commission, with due regard to the importance of transparency and access to information, and consistent with the promises of confidentiality made to specific individuals and organisations;

(vii) monitor the implementation of the aspects of the Commission's Report assigned to government ministries, departments and commissions;

(viii) solicit, accept, manage and administer funds from the government, donors and others dedicated to the Reparations Fund;

(ix) ensure a public awareness of the process at each stage, through appropriate media activity, public education forums and liaison/information sessions with victims, community-based organisations and civil society in general;

(x) recruit in an open and transparent process, the Chief Executive Officer and other staff of the Technical Secretariat;

(xi) Disseminate the final report and other commission-related published materials to the public;

(xii) facilitate the preservation, security, and public access to the archives of the commission;

(xiv) prepare and publish periodic reports relating to its activities including implementation and monitoring of implementation process;

(xv) formulate and develop an Outreach Strategy to—

a) manage victim expectations about the reparations process;

b) clearly explain who is eligible for what type of reparations under the scheme;

c) clearly explain why and how decisions about eligibility have been made;

d) pilot-test outreach methods before creating any nationwide effort;

e) take advantage of new technologies to save costs and reach previously marginalized groups;

f) reflect the stepped approach to reparations registration and the priorities of the eligibility policy, described below; and,

g) encourage group claims when appropriate.

(xvi) exercise such other functions as are provided for by the Truth Justice and Reconciliation Act, 2008 or any other written law necessary for the fulfilment of the letter and spirit of the recommendations in the Report

Powers of the Committee

5. The Committee shall have all powers generally necessary for the execution of its functions under the defunct Truth Justice and Reconciliation Act, 2008 and this Act.

Composition of the Committee

6. (1) The Committee shall consist of a Chairperson and four (4) other persons appointed through an open and transparent process.

Qualifications of Chairperson and Members

7. (1) A person is qualified for appointment as the chairperson or a member of the Committee if such person –

a) is a citizen of Kenya;

b) has knowledge and experience or has had a distinguished career of not less than fifteen years in, but not limited to, any of the following fields –

(i) law;

(ii) transitional justice'

(iii) human rights;

(iv) reparations;

(v) gender or governance;

(vi) public administration;

c) meets the requirements of Chapter Six of the Constitution.

(3) No person shall be qualified for appointment as a member if such person—

a) is a State officer;

b) is a member of a local authority;

c) is a person against whom an adverse recommendation has been made in the Report, or in any other report of a Committee of inquiry; or

d) is bankrupt.

8. (1) For the purposes of this Act, the Cabinet Secretary shall constitute a selection panel consisting of -

(a) two people jointly nominated by a joint forum of religious organizations comprising -

(i) the Kenya Episcopal Conference;

(ii) the National Council of Churches of Kenya;

(iii) the Evangelical Alliance of Kenya;

(iv) the Hindu Council of Kenya;

(v) the Seventh Day Adventist Church; and

(vi) the Supreme Council of Kenya Muslims;

b) one person nominated by the Law Society of Kenya;

c) one person nominated by Federation of Kenya Women Lawyers;

d) one person jointly nominated by the Central Organization of Trade Unions and the Kenya National Union of Teachers;

e) one person nominated by the Association of Professional Societies of East Africa;

f) one person nominated by the Kenya National Commission on Human Rights;

g) one person jointly nominated by the Kenya Private Sector Alliance and the Federation of Kenya Employers; and

h) one person nominated by the Kenya Medical Association.

(2) The function of the selection panel shall be to nominate persons for appointment as commissioners in accordance with the Second Schedule.

(3) Members of the selection panel shall elect a chairperson and vice-chairperson of the selection panel from amongst their number.

(4) The chairperson and vice-chairperson elected under subsection (3) shall be persons of opposite gender.

(5) Subject to the provisions of the First Schedule, the selection panel shall determine its own procedure for the purposes of considering the applications, interviewing and shortlisting three persons qualified for appointment as chairperson and eight persons who qualify for appointment as members and shall forward the shortlisted names to the President for nomination.

(5) The President shall, within seven days of the expiry of the period prescribed under subsection (4), nominate the person for appointment as chairperson and four persons for appointment as members of the Committee, and shall forward the names of the persons so nominated to the National Assembly.

(6) The National Assembly shall, within fourteen days of receipt of the names under subsection (5), consider all the nominations received and approve or reject any nomination.

(7) Upon consideration and approval by the National Assembly, the Speaker shall, within seven days, forward the names of the approved persons to the president for appointment.

(8) Where the National Assembly rejects any nomination, the Speaker shall, within three days, communicate its decision to the President to submit fresh nominations.

(9) Where a nominee is rejected by Parliament under subsection (6), the President shall, within seven days, submit to the National Assembly a fresh nomination from amongst the persons short listed and forwarded by the Public Service Committee under subsection (4).

(10) If Parliament rejects all or any subsequent nominee submitted by the President for approval under subsection (9), the provisions of subsection (8) shall apply.

(11) The President shall, within seven days of receipt of names from the Speaker, by notice in the Gazette, appoint the chairperson and members approved and forwarded by the National Assembly.

(12) In shortlisting, nominating or appointing persons as Chairperson and members of the Committee, the shortlisting Committee, the National Assembly and the President shall ensure that not more than two-thirds of the members are of the same gender.

Chairperson

9. (1) The chairperson and members of the Committee shall be appointed by the President in accordance with section 8.

(2) The chairperson shall, within seven days of the appointment of the members, convene the first meeting of the Committee at which the members shall elect the vice-chairperson of the Committee from amongst the members.

(3) The chairperson shall—

a) preside over all meetings of the Committee and

b) be the spokesperson for the Committee

(4) In the absence of the chairperson, the vice-chairperson shall act as the chairperson and in the absence of both the chairperson and the vice-chairperson, a member elected by the Committee shall act as the chairperson.

Tenure of Office of Chairperson and Members

10. The term of office of the chairperson or a member shall be from the date of appointment and shall, unless the office falls vacant earlier owing to any reason specified in section 11 of this Act, terminate on the dissolution of the Committee

Vacancy

11. (1) The office of the chairperson or a member shall become vacant if the holder—

a) dies;

b) by a notice in writing addressed to the President, resigns from office;

c) is removed from office under any of the circumstances specified in Article 251 and Chapter Six of the Constitution;

d) is unable to discharge the functions of his office by reason of physical or mental infirmity;

e) is absent from three consecutive meetings of the Committee without good cause; or

f) is declared bankrupt.

(2) The chairperson or a member may be removed from office for misbehavior or misconduct incompatible with the functions of the Committee.

(3) The President shall notify every resignation, vacancy or termination in the Gazette within seven days.

Filling of Vacancy

12. (1) Where a vacancy occurs in the membership of the Committee in accordance with section 11, the President, shall nominate a member for approval by the National Assembly in accordance with section 8.

(2) Notwithstanding the provisions of subsection (1), the President, may select a nominee from the list provided by the selection panel under section 8(4) for the purposes of filling a vacancy.

(3) The member appointed under subsection (1) shall serve for the remainder of the term.

Establishment of Reparation Fund

13. (1) There is established a fund to be known as the Reparation Fund which shall-

a) be a national fund consisting of moneys for reparation to victims of gross human rights violations and historical injustices;

b) be a charge on the Consolidated Fund;

c) comprise of any moneys accruing to or received by the Committee from any other source;

d) disbursed by the national government through the Committee as a grant to be channelled to the Fund in the manner provided for by this Act, and by regulations made thereunder ;

e) be administered by the Committee.

(2) During the life of the Implementation Committee, assets recovered through proceedings of the Ethics and Anti-Corruption Commission and the Kenyan Courts shall be used to fund the reparations process.

Appointment of Secretary

14. (1) There shall be a Secretary of the Committee and whose term of office shall be from the date of appointment until dissolution of the Committee unless the office falls vacant earlier owing to any reason specified under subsection (4).

(2) The secretary shall be the Chief Executive Officer of the Committee and the head of the Secretariat and shall be responsible to the Committee for –

a) the day to day administration and management of the affairs of the Committee;

b) the co-ordination of the studies, research and evaluation of the Committee;

c) the recording of the proceedings of the Committee;

d) recruitment of such other staff on full time and consultancy basis as is necessary for the effective performance of its duties.

d) the custody of all records and documents of the Committee and

e) the performance of such other duties as may be assigned by the Committee from time to time.

(3) The secretary shall be appointed by the Committee through a competitive recruitment process.

(4) The secretary may be removed by the Committee only for—

a) inability to perform the functions of his office arising out of physical or mental incapacity;

b) misbehavior or misconduct; or

c) incompetence.

(5) Before the secretary is removed under subsection (4), he shall be informed of the case against him and shall be given an opportunity to defend himself against any allegations against him.

Oath of Office

15. The chairperson, members and the secretary shall each make and subscribe before the Chief Justice, the oath or affirmation set out in the First Schedule.

Sub Committees

16. (1) The Committee may, from time to time, establish sub-committees for the better carrying out of its functions.

(2) The Committee may hire experts or consultants whose knowledge and skills are found necessary for the functions of the Committee.

Procedure of the Committee

17. (1) Subject to this section, the Committee shall regulate its own procedure.

(2) The Committee shall hold such number of meetings in such places, at such times and in such manner as the Committee shall consider necessary for the discharge of its functions under this Act.

(3) The quorum of the Committee shall be two-thirds of its members.

Independence of the Committee

18. (1) In the exercise of its mandate, the Committee shall be subject only to this Act and the law and shall not be subject to the control or direction of any person or authority.

(2) The provisions of the Official Secrets Act and the Indemnity Act shall not apply to any matter that is the subject of implementation by the Committee.

Terms and Conditions of Service

19. (1) The salaries and allowances payable to, and other terms and conditions of service of the chairperson and the members shall be determined by the Salaries and Remuneration Committee in consultation with the Treasury.

(2) The salaries and allowances provided for under subsection (1) shall be charged on the Consolidated Fund, but not the salaries of the Secretariat.

Appointment of Staff

20. (1) There is established a Secretariat which shall consist of the following and such other units as it may require in fulfilling its functions:-

(i) Outreach and Registration Unit;

(ii) Evaluation and Classification Unit;

(iii) Individual Claims Section;

(iv) Group Claims Section; and,

(v) Victim Participation, Gender & Minorities Unit.

(2) The Committee may appoint such officers and other staff as are necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service.

(3) The officers and other staff appointed under subsection (1) shall serve on such terms and conditions as the Committee, in consultation with the Salaries and Remuneration Committee and the Treasury, may determine.

(4) The Government may, upon request by the Committee, second to the Committee such number of public servants as may be necessary for the purposes of the Committee.

(5) A public servant seconded to the Committee shall, during the period of secondment, be considered an officer of the Committee and shall be subject only to the direction and control of the Committee.

The Common Seal of the Committee

21. (1) The Common seal of the Committee shall be kept in such custody as the Committee shall direct and shall not be used except on the order of the Committee

(2) The common seal of the Committee when affixed to a document and duly authenticated shall be judicially and officially noticed and unless the contrary is proved, any necessary order or authorization of the Committee under this section shall be presumed to have been duly given.

Protection from Personal Liability

22. No matter or thing done by a member of the Committee or any officer, employee or agent of the Committee shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Committee render the member, officer, employee or agent personally liable to any action, claim or demand whatsoever.

Part III- Financial Provisions

Funds of the Committee

23. The funds of the Committee shall consist of—

a) monies provided by Parliament for the purposes of the Committee;

b) such monies or assets as may accrue to the Committee in the course of the exercise of its powers or the performance of its functions under this Act; and

c) all monies from any other source provided, donated or lent to the Committee

Financial Year

24. The financial year of the Committee shall be the period of twelve months beginning first July and ending on the thirtieth June in each year.

Annual Estimates

25. (1) Before the commencement of each financial year, the Committee shall cause to be prepared estimates of the revenue and expenditure of the Committee for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Committee for the financial year concerned and in particular, shall provide for—

a) The payment of the salaries, allowances and other charges in respect of the staff of the Committee

b) The payment of pensions, gratuities and other charges and in respect of benefits which are payable out of the funds of the Committee

c) The maintenance of the buildings and grounds of the Committee

d) The funding of training, research and development of activities of the Committee

e) The creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Committee may think fit.

Audit and Accounts

26. (1) The Committee shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Committee.

(2) Within a period of three months after the end of each financial year, the Committee shall submit to the Auditor-General the accounts of the Committee in respect of that year together with a—

a) statement of the income and expenditure of the Committee during that year; and

b) statement of the assets and liabilities of the Committee on the last day of that financial year.

(3) The annual accounts of the Committee shall be prepared, audited and reported upon in accordance with the provisions of the Constitution and the Public Audit Act, 2003.

Part IV - Miscellaneous Provisions

Progress Report

27. (1) The Committee shall prepare a progress report every three months and submit the report to the Parliamentary Select Committee and the President.

(2) The progress report shall—

a) state the progress in the implementation of the Report;

b) identify any impediments to the implementation of the Report;

c) recommend any legal and administrative measures to address specific concerns identified by the Committee; and

d) state any other information relating to its function that the Committee considers necessary.

(3) The Committee shall publish the report in the Gazette and in such other manner as the Committee may determine.

Annual Report

28. (1) The Committee shall cause an annual report to be prepared for each financial year.

(2) The Committee shall submit the annual report to the President and Parliament within three months after the end of the year to which it relates.

(3) The annual report shall contain, in respect of the year to which it relates—

a) the financial statements of the Committee;

b) a description of the activities of the Committee;

c) such other statistical information as the Committee considers appropriate relating to the implementation of the Report;

d) any other information relating to its functions that the Committee considers necessary.

(4) The Committee shall cause the annual report to be published in the Gazette and in such other manner as the Committee may determine.

Duty to Co-operate

29. (1) A public officer, State Organ or State office shall at all times co-operate with the Committee in ensuring the successful implementation of the Constitution and the provisions of this Act and shall in particular;

a) respond to any inquiry made by the Committee;

b) furnish the Committee with periodic reports as to the status of implementation of the Constitution in respect of the question raised;

c) provide any other information that the Committee may require in the performance of its functions under the Constitution and any other written law.

(2) Any public officer who breaches any of the provisions of this Act shall be deemed to be in contempt of Parliament and shall be liable, on conviction, to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

Regulations

30. (1) The Committee may make regulations generally for the better carrying into effect of the provisions of this Act.

(2) The regulations made under subsection (1) shall be tabled in the National Assembly for debate and approval before publication in the Gazette.

Dissolution of the Committee

31. (1) The Committee shall stand dissolved fifteen years after it is established or at the full implementation of the Report as determined by Parliament, whichever is sooner, but the National Assembly may, by resolution, extend its life.

(2) Upon dissolution of the Committee under this Act, this Act shall lapse.

(3) During the period prescribed in subsections (1) and (2), the Committee shall ensure that its affairs are wound up in an orderly manner and, in particular shall ensure that—

a) those aspects of its work that will be of value to other institutions are preserved, documented and transferred; and

b) its files and records are preserved and transferred to the Kenya National Archives and Documentation Service.

(4) Upon the dissolution of the Committee under subsections (1) and (2), any assets and liabilities of the Committee, shall become assets and liabilities of the Government.

(5) The terms of the Chairperson and members shall expire upon dissolution of the Committee.

Transitional Provisions

32 (1) The secretariat of the Truth, Justice and Reconciliation Commission shall continue to operate until such a time that the Committee is duly established.

(2) The Secretariat shall stand dissolved upon the transfer of its materials to the Committee.

Schedules

FIRST SCHEDULE

(s. 14)

OATH/AFFIRMATION OF THE OFFICE OF CHAIRPERSON/A MEMBER/SECRETARY

I …… having been appointed (the chairperson/member of / Secretary to) the Committee for the Implementation of the Truth Justice and Reconciliation Committee under the Committee for the Implementation of the Report of the Truth Justice and Reconciliation Committee Act, 2013, do solemnly (swear/ declare and affirm) that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my ability, discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice. (SO HELP ME GOD).

Sworn/Declared by the said ……

Before me this …….....…… Day of……

Chief Justice

SECOND SCHEDULE
(s.29)
CRITERIA FOR VETTING/APPROVAL OF NOMINEES FOR APPOINTMENT TO PUBLIC OFFICE BY THE NATIONAL ASSEMBLY

QUESTIONNAIRE

Notes:

a) This questionnaire applies to appointments to public office arising by or under the Act where parliamentary approval is required.

b) The questionnaire shall be used by the relevant parliamentary committee to vet a nominee appearing before the committee in the process of parliamentary approval.

c) The questionnaire shall be filled and submitted by the nominee to the relevant parliamentary committee through the Clerk of the National Assembly on or before a date set by the committee.

d) The submission of false information in the questionnaire is an offence and may result in prosecution.

e) Any form of canvassing by a nominee shall lead to disqualification.

f) The nominee must answer all the questions.

---

1. Name: (State full name).
2. Position: (State office to which you have been nominated).
3. Sex:
4. Date of Birth: (State year and place of birth).
5. Marital Status:
6. Daytime phone number:
7. Mobile phone number:
8. Email Address:
9. ID Number:
10. PIN Number:
11. Nationality:
12. Postal Address:

13. Town/City:

14. Knowledge of Languages: (Specify Languages).

15. Education: (List, in reverse chronological order, each university, college, or any other institution of higher education attended and indicate, in respect of each, the dates of attendance, academic award obtained, whether a degree was awarded, and the dates on which each such degree was awarded).

    Employment Record: (List in reverse chronological order all government agencies, business or professional corporations, companies, firms or other enterprises with which you have been affiliated as an officer, director, partner, proprietor, employee or consultant).

16. Honours and Awards: (List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards and any other special recognition for outstanding service or achievement and in respect of each, state the date of award and the institution or organization that made the award).

17. Professional Association (where applicable): (List all professional associations of which you are or have a member and give any positions held and the respective dates when each such position was held).

18. Memberships: (List all professional, business, fraternal, scholarly, civic, charitable or other organizations, (other than those listed in response to Question 16) to which you belong or have belonged).

19. Published Writings:

    a) List the titles, publishers and dates of books, articles, reports letters to the editor, editorial pieces or other published materials you have authored or edited.

    b) Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of any bar association, committee, conference or organization of which you were a member.

20. Public Office, Political Activities and Affiliations:

    a) List chronologically any public offices you have held or are currently holding, including the terms of service and whether such positions were elected or appointed.

    b) List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities. Also include any linkage you have to a political party at present.

    c) Have you ever been dismissed or otherwise removed from office for a contravention of the provisions of Article 75 of the Constitution?

    d) Have you ever been adversely associated with practices that depict bias, favoritism or nepotism in the discharge of public duties?

21. Deferred Income/Future Benefits: (List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and

other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, etc).

22. Outside commitment during service in office: (Do you have any plans, commitments or agreements to pursue outside employment with or without compensation during your service in office? If so explain).

23. Sources of Income: (List sources and mounts of all income received during the calendar year preceding your nomination and in the current calendar year).

24. Tax Status: (State whether you have fully complied with your tax obligations to the State to date).

25. Statement of Net Worth: (State your financial net worth).

26. Potential Conflicts of Interest:

    a) Identity the family members or other persons, parties, categories of litigation or financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to rise.

    b) Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

27. Pro-Bono/Charity Work: (Describe what you have done by way of pro bono or charity work, listing specific instances and the amount of time devoted to each).

28. Have you ever been charged in a court or law? If so, specify the nature of the charge, where the matter is ongoing, the present status of the matter, or where the matter is concluded, the judgment of the court, or otherwise, how the case was concluded.

29. Have you ever been adversely mentioned in an investigatory report of Parliament or any other Committee of inquiry?

30. Have you any objection to the making of enquiries with your present employer/referees in the course of consideration of your nomination?

31. References: (List three persons who are not your relatives who are familiar with your character, qualification and work).



We need total compensation for both economic and social crimes. How do we get compensation? Our version of compensation will be in terms of infrastructural development and educational development. When I talk of infrastructure, I want all the roads in North Eastern Province to be tarmacked. There is only one kilometre of tarmac, even as we are talking, in the entire province which is one third of Kenyan land mass. The roads are usually impassable during the rainy season. If that is done urgently, some kind of healing will come up. It will be difficult to ascertain individual compensation because they are in thousands..

We want this community to have a tarmac road in Teso District and if possible, it be named after Tito Adungosi. We need something monumental about Tito. This monument has to be built at the county headquarters as a reminder of Tito's struggle, his blood and martyrdom. As we celebrate the Kenyattas, Kagias and Onekos of this country, let us also celebrate Tito Adungosi as a national hero. We need an apology to the family.

CHAPTER THREE

Reparation Framework

Introduction

1. The Truth, Justice and Reconciliation Act (TJR Act), under Section 6 (k) (i), requires the Truth Justice and Reconciliation Commission (the Commission) to:

> make recommendations with regard to the policy that should be followed or measures that should be taken with regard to the granting of reparation to victims or the taking of other measures aimed at rehabilitating and restoring the human and civil dignity of victims.

Reparation is defined as "dignifying the victims by measure that will alleviate their suffering, compensate their social, moral and material losses, and restitute their rights."[1] A primary responsibility of the proposed Committee for the Implementation of the Recommendations of the Truth, Justice and Reconciliation Commission (hereinafter 'the Implementation Committee') shall be to manage and administer reparations. Therefore, this Chapter outlines the Commission's recommendations relating to reparation and how the Implementation Committee shall manage and administer such reparations.

1 TJR Act 2008, Section 2

The Concept of Reparation

2. The State of Kenya is responsible for reparations for the violations covered under the mandate of the Commission, either because violations were perpetrated by State agents or the State failed to protect its citizens. The right to reparation is recognized[2] under international law and Kenyan law. Victims can obtain reparation either through state administrative programmes, or through recourse to the courts. The burden of pursuing damages through the courts is high both for the victims and the legal system. The reparation recommendations of the Commission contained in this chapter aim to achieve the objective of reparation while avoiding high burdens upon the victims, both individual and groups.

Grounds for reparation

3. The Commission recognizes that the key objective of reparations is to restore the dignity of victims through acknowledging the wrongdoing, the harm suffered and the state responsibility to promote, protect and fulfil human rights. In that way reparations are a means to contribute to a rebalancing of society and a healing process. These reparation recommendations are designed to be practical and implementable. Other truth commissions' recommendations have demonstrated that this is most often a challenge. Unfortunately, recommending a proportionate and tailored reparation measure for each individual victim would be impractical and impossible to implement.

4. In designing recommendations for reparation the Commission considered a number of factors. These included, among others, the large number of victims in Kenya and the extreme vulnerability of some groups of victims.

5. It is against this background that priorities for reparations are set out and that the Commission recognizes that realistically implementable reparations measures cannot satisfy individual victims or respond adequately to individual suffering and harm.

2 The Constitution of Kenya (2010) at Article 2(5)-(6) stipulates that general rules of international law and any treaty or convention ratified by Kenya shall form part of the law of Kenya. Several regional and international treaties have asserted the right to a remedy and reparation for violations of serious human rights. International Covenant of Civil and Political Rights (1966) (Art 2(3), 9(5) and 14(6); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965) (art 6), Convention on the Right of the Child (1989) (Art 39) Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (1984) (Art 14) and the Statute of the International Criminal Court (1998) (Art 75). Also the African Convention on Human and Peoples' Rights 1981 (Art 21(2), the European Convention for the Protection of Human Rights and Fundamental Freedoms (Art 5(5), 13 and 41) and the American Convention on Human rights 1969 (Art. 25, 63(1) and 68). This right has also been affirmed by regional human rights courts, United Nations bodies and other declarative instruments. E.g. Human Rights Committee, General Comment No. 31 [80] nature of the General Legal Obligation Imposed on State parties to the Covenant 26/05/2004, (u.N. Doc. No. CCPR/C/21/Rev.1/Add.13. atparas. 15-17; United Nations Committee against Torture, GC No.2, Implementation of Article 2 by State Parties (U.N. Doc. CAT/C/GC/2/CRP.1/Rev.4 (2007),) at para 15.

Types of reparation

6. The *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*[3] have distinguished five forms of reparations.

   - Restitution: restores the victim to the original situation before the violation occurred. It includes restoration of liberty, enjoyment of identity and citizenship
   - Rehabilitation: includes medical and psychological care
   - Compensation: provides money for damage suffered
   - Satisfaction: includes official declarations restoring dignity and reputation, public apology, commemoration and tributes
   - Guarantees of non-repetition: includes structural measures that will prevent re-occurrence of the violations.

7. The reparation recommendations below are a combination of measures that fall within these five forms.[4] The reparation measures below can also be distinguished according to the beneficiary of the measure. Individual reparation measures will be available for certain individuals, while collective reparation measures will benefit a group of people or a community. Collective reparation measures aim to reach a larger group of people both from the perspective of increasing the effective use of resources and improving sustainability.

8. Another distinction is made between material reparation measures and non-material reparation measures. Material reparations measures imply a tangible benefit (e.g. monetary pension, provision of health services, socio-economic measure). Non-material reparations do not involve any provision of any monetary payments or free service provision, but instead address the harms suffered in ways that may not have any economic component. The latter are critical in restoring the dignity of victims and survivors, through the restoration of rights (expunging criminal records, granting citizenship), the provision of critical documents (identity cards) or honouring the memory of those who have suffered violations (through monuments, naming ceremonies or days of remembrance).

3 Resolution 2005/35 (UN Doc. No.E/CN.4/RES/2005/35 (2005)) and GA Res'n 60/147 (UN Doc. No.A/RES/60/147 (2006)).
4 Other recommendations of the TJRC can be considered as being part of guarantees of non-repetition and therefore are not detailed again in this chapter.

Methodology

9. The chapter is based on international standards concerning reparation. The Commission considered the full extent of data it collected throughout its work with victims, including from statements and memoranda, from hearings and from other forms of interactions with the public. In addition, the Commission worked closely with various state institutions, Kenyan and international civil society organisations that have specific expertise on the topic of reparation.[5]

Analysis of proposed forms of Reparation

Moreover, the Commission's Statement Taking Form included a section for recording recommendations for reparation. The Form specifically asked statement givers to indicate what form of reparation they preferred both at an individual and community level. They were also asked to recommend what was best for the nation. Figures 1 and 2 below show the analysis of recommendations proposed by individuals and communities respectively.

Forms of reparation proposed by individuals

Reparations Category	Statement/Memo Count
Compensation (Financial reparation)	31,020
Prosecution	5,716
Identification of perpetrators	2,620
Exhumation & burial	130
Apology	1,929
Memorials	59
Support for Children	2,038
Counseling	1,081
Tangible Goods Reparations	1,613
Traditional Justice	459
Resettlement	5,304
Other	2,053
Not Given	5,798

5 Those included the International Commission of Jurists – Kenya (ICJ), the Kenya Human Rights Commission (KHRC), GIZ, the Open Society Institute for East Africa (OSIEA), the International Center for Transitional Justice (ICTJ) and the Kenya National Commission on Human Rights (KNCHR).

Forms of reparation proposed by communities	
Reparations	**Statement/memo Count**
Promote Peace	7122
Build a school	4280
Build hospital	1604
Repair or build roads	725
Repair or build water facilities	633
Repair or Build houses	733
Improved security	2,297
Identification of perpetrators	273
Exhumation and burial	222
Annual religious service	1,550
Recovery of stolen funds/property	3,611
Affirmative action	4,103
Replacement of goods	575
Community service	61
Other	5,009

10.3 Reparation proposed for the Nation

Following table shows the analysis of the reparations for the nation extracted from the statements and memos.

Reparations for Nation	
Reparations	**Statement/memo Count**
Monuments	1,071
Recovery of stolen funds	2,143
Prosecutions	4,356
Apology	2,966
Legal/institutional reforms	10,589
National day of remembrance	3,067
Enhance peace and unity	5,892
Other	1,340
Not Given	14,123

Fig 1.85 Statement /Memo Count Vs Reparations for Nation

For recommendations for reparations to the nation, 'legal and institutional reforms' was the most popular at 23.2%. The second highest category was to 'enhance the peace and unity' among the people of Kenya. Similar analysis was carried out at regional levels when the TJRC reconciliation team went across the country to conduct the reconciliation forums.

Commission's Recommendations relating to Reparation

10. The Commission recommends that the National Assembly should append to the proposed Committee for the Implementation of the Recommendations of the Truth, Justice and Reconciliation Commission Act, a set of regulations relating to reparation. The Reparation Regulations shall mirror the provisions of the reparations policy framework outlined in this Chapter.

Principles for the implementation of reparation measures

11. The Commission underscores the importance of victims' involvement in the implementation of reparation measures and the need for victim empowerment to this end. The responsible institutions have to be integrated as much as possible in existing structures in order to avoid additional costs. The service logic has to be applied by all structures involved; victims should not be faced with unnecessary bureaucratic practices or burdens (e.g. avoidance of duplication of submission of documents, etc.).

12. It is through the combination of the various types of reparation measures and the active involvement of victims in the implementation process that the recommendations below aim to contribute to a process of reconciliation and healing in Kenya.

Eligibility for reparation measures

13. The eligibility is determined by type of violations, the time of occurrence of the violation and the type of beneficiaries. Both individuals and groups can be beneficiaries of reparation measures.

Violations

14. Reparation measures are limited to gross violations of human rights as defined inthe Commission's mandate under the TJR Act. Gross violations of human rights are those violations that were perpetrated by:

- State agents as part of a policy or systematic course of action
- Non-state actors acting with state complicity as part of a policy or systematic course of action

- State or non-state actors as a result of the failure to protect in the context of large-scale human rights violations

15. Only violations occurring between 12 December 1963 and 28 February 2008 are considered eligible within this reparations framework. Gross violations of human rights are categorized as follows:

- ***Category 1. Violations of the right to life***
  - Massacres
  - Summary or arbitrary executions
  - Political assassinations
  - Disappearances or killings of political actors and human rights defenders in which the state was complicit.
- ***Category 2. Violations of the right to personal integrity***
  - Torture
  - Inhuman and degrading treatment or punishment of political detainees or human rights defenders
  - Arbitrary arrests and illegal/prolonged detention of political detainees or human rights defenders
  - Rape
  - Sexual and gender-based violence other than rape
  - Mutilation and grievous bodily harm[6]
- ***Category 3. Forcible transfer of populations***
  - Conflict-induced displacement
  - Development-induced displacement[7] without appropriate consultation, compensation, and resettlement plans for communities
  - Deaths or disability directly resulting from conditions of forced displacement
  - Violations of ECOSOC rights within the context of forced displacement

6 Penal Code of Kenya, Ch. 63, sec. 263.
7 This category specifically refers to large-scale development projects by the state or parastatal actors.

- ***Category 4. Historical and contemporary land injustices***
  - Illegal acquisition or occupation of land of communally held land
  - State seizure of private, community or Trust lands without sufficient public purpose or for evident personal gain
  - Violations of the right to free, prior and informed consent in allocation of rights to, or legal designation of, the ancestral lands of indigenous communities specifically including hunter-gatherers, fisher peoples, and pastoralists.
- ***Category 5. Systematic marginalization***
  - Direct discrimination through state policy (including identifiable patterns of action or lack of action)
  - Facially neutral laws that have a discriminatory effect
  - Violations of minority rights to language, culture and religion
  - Violations of the right to nationality
  - Violation of indigenous peoples' rights to identity and recognition
  - Violation of the group right to participation in decisions that directly affect the minority or indigenous group in question
  - Violations of ECOSOC rights in the context of marginalization.

Reparation measures and their prioritization

16. This section details the beneficiaries and benefits available through the reparations programme as recommended by the Commission. Under this programme, both individuals and groups are eligible for reparations, but the criteria for determining who ultimately benefits from reparations are designed to ensure that the programme is manageable. Accordingly, the reparations programme prioritizes extremely vulnerable individuals, groups who have suffered injustice specifically including historical land injustices, and individuals who have been victims of violations of the right to life as well as the right to personal integrity.

17. Human rights violations are by their nature interconnected. As described elsewhere in this Chapter, individuals and communities are eligible for a series of reparation measures. It is the intention of the Commission that this use of multiple measures

will more effectively address the interconnected nature of the violations that Kenyans have experienced as well as the ripple effects that violations may have on a family or community throughout the generations.

Category of Violation	*Priority A – Most Vulnerable*	*Priority B – Collective Reparations*	*Priority C – Individuals, Non-expedited*
1. Violations of the Right to Life	Victims in this block are eligible for pensions, medical & psychosocial vouchers.	Victim groups in this block are eligible for land reparations, socio-economic measures, government policy interventions, as well as non-material reparations such as restitution of rights, recognition, self-determination measures, and memorials.	Victims in this block are eligible for standardized pensions.
2. Violations of Personal Integrity, including SGBV			
3. Forcible Transfer of Populations	If a victim died as a direct result of conditions of displacement, family can claim reparations as above.		
4. Historical and Contemporary Land Injustices	These violations can only be eligible for reparations under Priority B.		
5. Systematic marginalization			

Priority A: Most Vulnerable

Who is eligible under Priority A?

18. Victims who are defined as most vulnerable, using the criteria below are eligible for reparations in Priority A:

- Individual victims[8] of gross human rights violations in Categories 1 & 2 above who meet any of the following criteria will have their claims expedited:
  - Child victims (under 18 years of age at the time of filing)
  - Elderly victims (above 60 years of age at the time of filing)
  - Victims demonstrating urgent health concerns with a causal relationship to the violations in categories 1 and 2
  - Single heads of household demonstrating significant economic hardship with a causal relationship to the violations in categories 1 and 2

8 In the case of an individual victim who has died as a result of the violation, her or his beneficiaries may apply for reparation and receive the reparation on his or her behalf, subject to regulations established by the TJRC recommendations or by the Implementation Mechanism .

- Orphans (under 30 years at the time of filing) as a result of the violations in Categories 1, 2, & 3 above also will have their claims expedited.
- Individuals who died as a direct result of violations in Category 3 above.

19. The Implementation Committee will conduct outreach and proactively register victims in this category first. These claims will undergo an expedited adjudication and will be eligible for the various forms of individual reparation specified under Priority C below.

20. Individuals who have already received monetary compensation should not be available for additional monetary measures. Appendix 1 details monetary compensation already awarded by courts to individual victims. However, the Implementation Committee should inquire whether the amounts awarded have actually been paid by the State and, if not, follow up to advocate compliance with court orders.

What reparations measures are available under Priority A?

21. The number of victims of gross human rights violations that took place in Kenya between 1963 and 2008 is vast. As expressed in several research and survey reports, there is a clear demand among victims from across the spectrum that monetary compensation would be the most effective type of reparation for them. However, the class of eligible individuals who may receive financial compensation must be narrowed in order to make any reparations programme financially feasible. In addition, it has to be recognized that the necessarily limited amounts of monetary compensation may not be sufficient to have a sustainable and meaningful impact on the lives of the victims.

22. Individuals who are determined to be eligible for reparations under Priority A will receive the following reparation:

- ***Compensation***: Monetary compensation in the form of a standardized ten-year annual payment (pension). If the eligible victim is deceased, compensation will be paid to the immediate family of the victim pursuant to guidelines established by the Implementation Committee.
- ***Rehabilitation***: Medical care and psychosocial service vouchers will be provided to victims demonstrating need pursuant to guidelines established by the Implementation Committee.

What are the evidentiary standards[9] for Priority A?

23. Individuals registered for reparations should be considered for expedited processing if on the face of the claim it appears more likely than not that an individual is eligible for reparations under Priority A. Final eligibility of the individual for Priority A reparations should be determined based on a preponderance of the evidence demonstrating that the individual meets the criteria above. Evidence might include birth and death certificates, medical records, recommendations from the Implementation Committee's partners (NCIC, KNCHR, CBOs, CSOs, NGOs), or other evidence as specified by the Reparations Regulations.

Priority B: Collective Reparations

24. This reparation framework adopts a deliberate policy of encouraging collective reparation so as to maximize the efficient use of available resources for reparations and because a substantial percentage of the grievances raised before the Commission relate to policies and practices that negatively impacted entire groups of people. As a result, collective reparation measures will receive the second highest priority for registration and processing. Collective reparation measures will be specifically handled by a Group Claims unit that will focus on helping communities document, register and administer a multidimensional for reparation package.

Who is eligible under Priority B?

25. Collective reparations will be awarded to groups of victims to remedy violations of individual and group rights. The beneficiary groups of victims may be bound by a common identity, experience or violation. Collective reparations will be available to groups of victims in the following instances:

- For victims who have suffered human rights violations as a group including
  - Systematic marginalization of minority and indigenous communities, communities living in arid and semi-arid areas
  - Historical land injustices
  - Violations targeting and/or affecting populations of a specific area, such as massacres, environmental degradation
- To address individual reparations through collective measures that could

9 Evidentiary requirements should not be onerous on victims and should take into account the availability of different types of proof in the context of the violations listed in the categories above.

promote collective reconciliation and/or facilitate optimal use of available resources. Such measures may include enhancing victims' ability to secure micro-financing for business opportunities; provision of health services to groups or regions; peer group support and counselling; and skills training.

- To address structural inequalities such as identity and gender-based dimensions of individual violations (e.g. violations targeting groups on the basis of their gender, ethnicity and/or religion such as rape as a means of repression, denial of citizenship rights, etc.)
- To address needs for symbolic reparations, such as apologies, recognition of groups, or memorials.

What reparation measures are available under Priority B?

26. This reparation framework identifies several collective reparation measures, both material (such as socio-economic measures) and non-material (commemorative measures). The collective reparations measures respond to various violations and types of harm, both individual and collective. The interconnection between the different violations and harms is fully recognised as well as the fact that the interconnectedness may lead to aggravating effects. Though the set of violations and the harm suffered are not considered as isolated occurrences, separate material reparation measures and non-material measures are identified to deal with the variety of violations and harms. It is recognised that none of these measures, individually or jointly, will be able to undo the harm suffered by both individual and communities. The measures aim to contribute to restore the balance in society, provide material benefit and enhance public recognition of the suffering.

Reparations for Historical Land Injustices

27. The Commission prioritizes historical land injustices in reference to its mandate to examine the causes and consequences of marginalization as well as the root causes of ethnic conflict in Kenya.[10] This is not to say that the Commission does not recognize that individuals have also been victims of land injustices, but the Commission's mandate does not require it to deal directly with those violations. It was clear in the Commission's individual public hearings around the country that land injustices are one of the major contributors to conflict and that land loss and development of lands without any benefit to surrounding communities is one of the major contributors to marginalization and ethnic tensions. The Commission recognizes that land injustices are interconnected with many other human rights violations experienced by

10 TJR Act 2008, Functions of the Commission, Section 6(p) and (s)

communities. As described elsewhere in this Chapter, communities are eligible for a series of reparation measures to address other human rights violations.

28. The Commission also recognizes that groups who have experienced documented and proven historical land injustices shall be eligible for reparations through the National Land Commission (as specifically mandated by Article 67(2)(e)) of the 2010 Constitution and the National Land Commission Act No. 5 of 2012). *The role of the Implementation Committee shall be limited to processing and forwarding to the National Land Commission all claims of historical land injustices received by the Truth, Justice and Reconciliation Commission.* In this regard, the Implementation Committee shall review group claims and make recommendations to the National Land Commission as to the following potential reparations measures:

- Restitution of land (including conversion of public land to community land when feasible and appropriate)
- Formal recognition and registration of specific areas as 'community land' as defined under Article 63 of the Constitution (2010)
- Resettlement and/or access to alternative community lands
- Compensation
- Benefit-sharing schemes related to land on which development has taken place (e.g. Turkwell Gorge Dam, National Parks such as Hell's Gate or Lake Bogoria, or the Lamu Port)

29. In processing and reviewing land claims for onward transmission to the National Land Commission, the Implementation Committee shall develop guidelines for:

- The standardization of historical injustice claims from communities.
- Investigating land claims in a participatory manner based on international best practices, and considering examples such as South Africa and New Zealand, and incorporating multiple forms of evidence, such as cultural memory, oral tradition, natural markers (i.e. trees, rivers, etc.), recognition by neighbouring groups, and other forms of evidence as determined in consultation with community groups.
- The level of evidence required, specifying at a minimum that groups must present clear and convincing evidence of their claims.
- Identifying overlapping land claims amongst communities and recommend

facilitated alternative dispute resolution (ADR) that takes account of customary dispute resolution practices.

- In recommending reparations measures, the Land Unit will:
    a. Consider the rights of bonafide third party purchasers in determining the appropriate reparations measure (e.g., compensation instead of restitution);
    b. Prioritize delineation and registration of community land through an approved Government of Kenya process;
    c. Whenever possible define community land in terms of ancestral boundaries, and in consideration of mapping exercises that have credibility amongst the community itself (whether those maps are from the colonial period, government surveys, or from recent community mapping exercises);
    d. Give enhanced weight to ritual and spiritual use of land by communities who are claiming restitution or ownership.

30. These guidelines will also be forwarded to the National Land Commission as recommendations for its work on historical land injustices.

Socio-economic measures

31. The Commission recommends that communities or groups of victims[11] have access to a process in which they can collectively decide upon the use of the reparations funds for the community. A wide range of measures or combination of measures can be envisaged; examples are a library for the community, a micro-credit facility, a psychosocial service, or a child-care service for women at work. In principle, the focus of the Commission's recommendations for this socio-economic collective reparation measure does not lie with the substance. The Commission's recommendations focus on the process to be followed by the community to arrive at the determination of socio-economic reparation measures. The final measures should however be guided by the principles of non-discrimination, fairness and equality.

32. Whether a community is eligible for a collective reparation fund should be determined based on guidelines established by the Implementation Committee. Those guidelines should minimally require that evidence of group harm and need for a fund meets the more likely than not evidentiary standard. The

11 See definition of who is a group or community for the purpose of Priority B above.

amount of money available to the group or community will be determined by the number of victims in the community and the harm suffered. The amount available for collective reparations for a given group should also take into account any previous measures that have addressed part of the harm suffered, such as permanent resettlement of displaced persons. Immediate relief measures and/or humanitarian assistance, however, should not be taken into account in determining the amount available.

33. The groups will be supported by the Implementation Committee to propose a collective reparation measure or a set of measures. The Implementation Committee will, in consultation with victims, survivors, civil society groups and technical experts, develop clear guidelines and procedures for this engagement by and with the groups. These guidelines will aim to avoid elite capture and enable broad ownership of the proposed measures.

34. The Implementation Committee will develop guidelines to specify that socio-economic measures can be incorporated as a component of reparations only under the following minimum standards of participation:

- Affected communities have to be informed through a participatory and inclusive decision making process.
- The information process specifically targets inclusion of women and children.
- The proposed socio-economic measures have to include sustainability aspects.
- An independent, credible expert assessment of the impact of the proposed socio-economic measures has to be conducted. The assessment has to be shared with the communities in a way that they can understand, so as to enable them to be fully informed and give their opinions (local consultation rounds).
- The independent voices of most affected persons in the community (e.g. women, children or persons with disabilities, as the case may be) must be included in the consultation.[12] A community decision to not adopt a specific socio-economic measure will be based on a qualified majority decision making.

12 See the United Nations Declaration on the Rights of Indigenous Peoples, Human Rights Council, Report to the General Assembly on the First Session of the Human Rights Council, at 58, U.N. Doc. A/HRC/1/L.10 (2006) and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities,G.A. res. 47/135, annex, 47 U.N. GAOR Supp. (No. 49) at 210, U.N. Doc. A/47/49 (1993) for specific parameters related to the right to participation and development. Guidelines should also be based on best practices related to implementation of ILO 196, which can be found at Indigenous & Tribal People's Rights in Practice - A Guide to ILO Convention No. 169.

The Implementation Committee will determine the principles for qualified majority decision making thresholds for specific situations. For example, when women or girls particularly suffered from the violations being addressed, a qualified majority decision making means that at least a high percentage of the people in favour of the measures must be female. Another example would be the approval by a minimum percentage of persons with disabilities in cases where the measure responds to an event that has caused a lot of physical impairment. Modern technology or community practices can be used when expressing support or non-support (e.g. SMS voting systems or community information boards).

- The participatory processes should recognise and incorporate customary structures of decision making, to the extent they respect the minimum standards here above.
- The Implementation Committee has to overview the participation process or mandate a local actor to do so.

35. The Implementation Committee will formalize the principles of participation into a procedure of participation.

Government policy measures

36. The government must also prioritise socio-economic development as a significant component of reparations for groups, under Priority B above, especially as a means of correcting historic marginalisation of communities. The use of development as a component of reparation is often problematic as States have a clear obligation to ensure the right to development, which is separate from any obligation to provide reparations. Whereas reparations and development are often conceptualised and approached independently, for victims the demand for both arises simultaneously.[13] Unlike the State's obligations to provide basic services to all its citizens, this particular reparation programme has to be linked with the State's previous neglect and/or oppression of marginalised areas or groups and its attempt to correct this injustice.

37. The issue of exclusion from national social, cultural and political processes is central to marginalization. Reparative measures must include specific and deliberate efforts by the government to prioritise development of marginalisedregions and communities in order to build trust and integrate them into the national fabric.

13 '*A Complementarity Relationship: Reparations and Development*' Research Brief, International Centre for Transitional Justice, July 2009

What will distinguish these reparative measures from other development projects is the moral and political content under which they are undertaken. They must not be implemented in isolation but will be accompanied by a symbolic dimension. For instance, the government needs to *acknowledge* that it is prioritising development of marginalised areas such as North Eastern Kenya because of previous neglect. The victims on the other hand need to feel *entitled* to the development because their rights have been violated.

38. The Commission therefore specifically recommends that:

- Within one year of the submission of the Commission's Final Report to the President of Kenya, the government enact and implement a policy that deliberately targets the socio-economic development of historically marginalised areas in Kenya.
- This policy must include strategic development plans and budgetary allocations aimed at the economic and social development of marginalised communities.
- The policy recognizes that these reparative actions are over and above the provisions of Article 204 of the Constitution (2010) in utilisation of the Equalisation Fund.
- The Government consider actions such as building an efficient road networks linking marginalized areas with the rest of Kenya, building boreholes and water-catchment systems, building hospitals within reach of all communities adequately stocked and well-staffed, schools with adequate facilities, courts of law, and ensure that all government services and public facilities are available to them.
- In the five years subsequent to the enactment of the policy, preference be given to marginalised areas in the sharing of national revenues as envisaged under Article 202 of the Constitution (2010) to ensure that the development projects are realised and the policy is implemented.

39. The government can utilise development of marginalised areas as a tool to create sustainable, culturally relevant change. The development policies and implementation cannot, and should not, replace long-term development strategies. They should be designed to be the initial transformative face of the government in order to create trust and set the stage for more positive long-term interaction between the government and the marginalised communities.[14]

14 *Ibid*

Non-material reparation measures

40. Collective reparations will include non-material measures which, while insufficient to fully address the harm suffered by victims, will provide recognition of victims' experiences, restore their dignity and reputation, and demonstrate the State's acknowledgement of responsibility for violations and its resolve to ensure non-recurrence. Non-material measures have the potential to rebuild civic trust in the government, particularly among communities that have hitherto suffered systematic violations. These measures also provide an opportunity for closure for victims. The Implementation Committee shall engage with groups to develop proposals, and then with State institutions and other appropriate entities to ensure implementation of the above non-material measures.

41. Some of the non-material reparative measures that should be provided to victims include:

    i) Restitution of civil rights including expunging criminal records of victims who were wrongly convicted of crimes for political reasons;

    ii) provision of citizenship documents to those who have been denied this right due to discriminatory policies etc.

    iii) Revocation of laws and policies that perpetuate discrimination on the basis of gender and ethnic or religious identity

    iv) Removal of legal and other obstacles to the realization of accountability for violations, e.g. the Indemnity Act.

    v) Official recognition of marginalized communities, e.g. in official census processes, and in registration of community groups.

    vi) Clarification of historical facts to facilitate a common public understanding of Kenya's past e.g. in education curricula; and expositions in museums.

    vii) Identification of disappeared individuals, including through exhumation and reburial.

    viii) Official State acknowledgement of responsibility and formal apologies to victims

    ix) Establishment of memorials and tributes to commemorate victims including observance of special days of remembrance, naming of streets, buildings or other public places, and creation of monuments.

42. Points viii and ix are discussed in more detail below.

Public Apologies and Memorialization

43. Of the five types of reparations internationally recognized, *satisfaction* refers to a series of measures including public apologies, commemorations and memorialization[15]. This form of reparation is considered "symbolic" in that it entails recognition of wrongdoing, acceptance of historical injustices and recognition of the suffering and experiences of victims rather than material compensations. Symbolic reparations are aimed at fostering recognition, at restoring the dignity of victims and at making the suffering and experiences of victims part of the public domain, thus transferring the burden of keeping the memory alive from victims and their families to society as a whole.[16]

44. The right to satisfaction for victims of gross human rights violations is internationally recognized by UN General Assembly Resolution 60/140 of 2005[17] on the right to remedy and reparation, which states under Article 22 that "satisfaction should include any or all of the following: public apology, including acknowledgement of the facts and acceptance of responsibility; and commemorations and tributes to the victims.

45. Section 5 (h) (i) of the TJR Act 2008 defines one of the objectives of the Commission as to promote healing and reconciliation by, among other things, "providing repentant perpetrators or participants in gross human rights violations with a forum to confess their actions as a way of bringing reconciliation." In addition, the Commission is mandated to looking specifically at the perspectives of victims.[18]

The concept of public apologies

46. Public apologies are acknowledgement of wrongdoing by governments and other political entities. States have a general duty to acknowledge past human rights abuses.[19] This duty is rooted in thenotion of the State's responsibility to provide security for its citizens and ensure law and order[20]. The Oxford Dictionary defines public apology as aregretful acknowledgment of an offense or failure or a formal, public statement of regret, such as one issued by a government.[21]

15 Rule of law tools for post-conflict states: reparations programmes, Office of the High Commissioner for Human Rights, United Nations, 2008, page 8
16 Ibid., page 23
17 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN General Assembly Resolution 60/140 of 16 December 2005.
18 TJR Act 2008, Section 5 (ii)
19 International Centre for Transitional Justice, "Truth and Memory", http://ictj.org/our-work/transitional-justice-issues/truth-and-memory
20 In various international treaties and conventions, for example the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Genocide Convention, etc.
21 http://oxforddictionaries.com/definition/apology

47. The principle of State continuity in Public International Law recognizes that "a State's identity as a legal person persists notwithstanding unconstitutional or even violent changes in its government."[22] Accordingly, the State is legally responsible for actions and omissions of previous regimes and governments.

48. To be reconciliatory, a public apology needs to be sincere, and to include at least the following elements:

- Acceptance of blame by the State for past abuses[23]: the State must recognize that it failed in its fundamental duties;
- Specificity of the apology: it must be made cleared what violations and abuses the apology is meant to cover; it is not sufficient to apologize in general;
- Recognition of victims: the apology must recognize the suffering of victims and aim at restoring their dignity;
- Recognition of the immoral character of the violations and abuses committed[24];
- Recognition of the need for reform: the apology must include an aspect of redress and a guaranty of non-repetition[25];
- The apology needs to be public in that it needs to be given sufficient publicity in the media or otherwise to reach victims.

The concept of memorialization

49. Complementary to the State's duty to apologize for past violations is the State's responsibility to preserve the memory of those violations[26]. Memorialization refers to the process of perpetuating the memory of a person, group of persons, incident, event or era.[27]Memorialization and commemoration can assist divided societies to re-write the narratives of the past, recognize victims of human rights violations and begin the process of healing and reconciliation.

50. Possible measures include the renaming of public spaces and buildings; the creation of memorials, statues and museums; the dedication of places of detention and torture to sites of memory; calls for artistic contributions and art exhibits; and the establishment of national days for remembrance.

22 Public International Law, 2nd edition, John H. Currie, 2008
23 *I was wrong: the meanings of apologies*, Nick Smith
24 *Reconciliation in Divided Societies: Findingcommon ground*,D Erin & S Jeremy,2006, page 162
25 Idem
26 International Centre for Transitional Justice, "Truth and Memory", http://ictj.org/our-work/transitional-justice-issues/truth-and-memory
27 *Transitional Justice In Kenya: A toolkit for Training and Engagement Justice Final*, 2010

51. In order to contribute to reconciliation efforts, victim groups and communities need to be involved in the design, the choice of location and the use of memorials. Making the wrong choices can lead to re-traumatization of victims and feelings of exclusion and marginalization if a group of victims or a specific community is left out. Equally, politicization of the process of memorialization and commemoration can be offensive and insulting to victims, for example when repressive governments build statues to the glory of a dictator or establish national days to commemorate the use of repressive authority.[28]

52. Memorials can foster reconciliation in the following ways:

- Memorial sites can serve as spaces to foster public dialogue and discussions on past abuses and a common vision for the future;
- Memorialization processes can assist in correcting distorted versions of the past and enabling societies to build consensus on a common historical narrative;
- Memorialscan help keep social and political issues on the agenda and can be used for advocacy and pedagogical purposes;
- Memorialization can serve as a reminder of the futility of violence and a pledge for the non-repetition of the past.

Public Apologies and Memorialization in other Truth Commissions

53. To determine its approach to symbolic reparations and design recommendations, the Commission considered experiences of other truth commissions around the world and their work on public apologies and memorialization.

54. The Truth and Reconciliation Commission for Sierra Leone (TRC SL) used the concept of "symbolic reparations" to recommend, among other things, the creation of memorials as a means to restore the dignity of victims and facilitate healing and reconciliation, and recommended that victims and their communities be consulted in the creation of the memorials.[29] Further, the TRC SL considered that symbolic reparations can address the needs of victims for remembrance. In this line, the TRC SL recommended that the government recognize the suffering of victims and apologize publicly for the "actions and inactions of all

28 Daniel T arapMoi, the former President of the Republic of Kenya, set aside the 10th of October as a public holiday to commemorate his rule and named the day after himself.
29 *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission*, Volume 2, page 235.

governments" since independence[30]. Finally, the TRC SL recommended the use of commemoration ceremonies and dates, including the creation of a national reconciliation day.[31] The TRC SL issued a call for public contributions in the form of works of art to express people's experiences of the conflict and aspirations for the future; this initiative was called the National Vision for Sierra Leone and contributions received[32] were integrated in an exhibit that was toured around the country and abroad.

55. The South African Truth and Reconciliation Commission (SA TRC), in its final report, defined symbolic reparations as "measures aimed at restoring the dignity of victims and survivors of gross human rights violations. These include measures to facilitate the communal process of commemorating the pain and celebrating the victories of the past."[33] The SA TRC recommended interventions at the individual, community and national levels. The SA TRC also considered the role of works of art in memorialization, for example plays that contribute to remembrance and public dialogue on past violations.

56. The National Commission for Truth and Reconciliation in Chile also recommended symbolic reparations in the form of creation of memorials and artistic projects to recognize the memory of victims and promote peaceful coexistence. The Commission also recommended that the government fully use the National Human Rights Day to promote respect for human rights.[34]

57. The Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR) as, among other initiatives, created a public interactive exhibition on its final report, located in the old Dili prison.[35] It also recommended that victims and communities be consulted in the design of memorials, which it considers "symbolic measures to honour victims of past atrocities, strengthen the social commitment to oppose repetition of such acts, are educative and promote reconciliation."[36]

On-going memorialization initiatives in Kenya

58. Current initiatives at memorialization and commemoration in Kenya include:

- The Dedan Kimathi memorial at the Junction of Kimathi street and Mama

30 Ibid., page 264
31 Idem
32 In the form of plays, essays, paintings, drawings, poems, songs and sculptures
33 Report of the Reparations and Rehabilitation Committee, Vol. 6, Section 2, Chapter 1, Truth and Reconciliation Commission for South Africa Final Report, 1998
34 Report of the National Truth and Reconciliation Commission, Chile, Part 4, Chapter L, 1991
35 http://www.cavr-timorleste.org/
36 *Chega!, Final report of the Timor-Leste Commission for Reception, Truth and Reconciliation*, Part 11 Recommendations, page 35

Ngina Street.

- Tom Mboya monument erected along Moi Avenue in Nairobi. It stands about twenty meters from where the late Tom Mboya was assassinated in 1969.
- Mashujaa Day on 20 October in commemoration of the arrest of Mau Mau fighters by the British colonial government during the state of emergency declared in 1952.
- Naming of streets and highways, e.g. Muindi Mbingu Street, Tom Mboya Street, Waiyaki Way and Pio Gama Pinto Road.
- Naming of public institutions or public buildings, for instance, Kimathi, Masinde and Muliro Universities.

Recommendations on public apologies and memorialisation

59. The Commission in section 6(k)(i) of the TRC Act was mandated to 'make recommendations with regard to the policy that should be followed or measures that should be taken with regard to the granting of reparation to victims or the taking of other measures aimed at rehabilitating and restoring the human and civil dignity of victims'. In this regard, and in the spirit of fostering reconciliation and recognizing the suffering of victims, the Commission makes the following recommendations:

    a) The Commission recommends that the Government of Kenya, through the President, formally acknowledge the occurrence of and apologize to Kenyans for gross violations of human rights committed in Kenya between 12 December 1963 and 28 February 2008.

    b) The Commission recommends that State security agencies, and in particular the National Police Service, the National Defence Forces and the National Intelligence Service, apologize for gross violations of human rights committed by their predecessor agencies between 12 December 1963 and 28 February 2008, especially acts of extra-judicial killings, arbitrary and prolonged detention, torture and sexual violence.

    c) The Commission recommends that the Judiciary apologize to the people of Kenya for failing to address impunity effectively and perform its role of deterrence to prevent the perpetration of gross human rights violations, during the period between 12 December 1963 and 28 February 2008.

    d) The Commission recommends that the air strip in Wagalla, Wajir, be made a

national monument to commemorate the victims of the Wagalla massacre. The Commission recommends that sites of other massacres also be considered for memorialization, in close consultation with the communities affected.

e) The Commission recommends that the Nyayo House basement (which served as torture chambers) be converted into a museum and a monument in commemoration of the victims of torture by state security agencies.

f) The Commission recommends that the Implementation Committee create a sub-committee to call for and consider community proposals for memorialization and for funding for community initiatives aimed at commemoration of past violations, specific events and victims of gross human rights violations.

g) The Commission recommends the creation of a National Human Rights Day on 10 December, to coincide with the international Human Rights Day, which will be used to promote respect for human rights in Kenya.

Priority C: Individual Reparations – Non Expedited

Who is eligible under Priority C?

60. Priority C applies to individual victims who have experienced violations in Category 1 or 2. Individuals who have the opportunity to access material reparations under Priority A or B cannot access reparations under this Priority. Reparations in this Priority are functionally a symbolic payment designed only to acknowledge the violation and state responsibility. The harm that victims experienced can never be fully repaired, and this policy does not attempt to do so.

What reparations are available under Priority C?

61. Individuals are eligible for monetary compensation in the form of a standardized five-year pension.[37] If the victim is deceased, compensation will be paid to the immediate family of the victim.[38] The amount of the pension per deceased victim is

37 The pension for individual compensation is proposed because of the problematic implementation of lump-sum payments in multiple contexts, including in Kenya, such as the compensation granted for Maasai land claims. Moreover, the pension scheme is time-bound so as to allow the government of Kenya to plan for a defined cost, as opposed to an indefinite term based on the lifetime of the beneficiaries.

38 The Implementation Mechanism will be required to determine appropriate regulations to equitably distribute reparations to deceased victims' families. See the Chilean pension scheme for an example of a potential formula which allocated 40% to a surviving spouse, 30% to the mother of the deceased, and 15% for each child of the deceased, even if this amounted to more than 100%. Pablo de Greiff, ed., *The Handbook of Reparations* (Oxford: Oxford University Press, 2006), p. 754.

standard and does not vary regardless of the number of family members eligible as indirect victims. Individuals are eligible for non-material reparation such as restitution of rights, dignity and recognition. Restitution of rights, dignity, and recognition, including for example:

i. Criminal records of those who were wrongly convicted of crimes for political reasons or whose confessions were extracted as a result of torture should be expunged.

ii. Individuals who were denied citizenship or identity documents as a result of discriminatory policies should be granted appropriate documentation.

What are the evidentiary standards[39] for Priority C?

52. Certain classes of individuals may be determined to be eligible for reparations based on the victim mapping exercise. In the event that evidentiary assumptions cannot be made based on mapping, individual victims should demonstrate their claim based on a preponderance of the evidence standard.

Victim Participation

63. Participation of victims in the process of design, implementation, and monitoring of the reparations programme is a fundamental principle. The Implementation Committee will be required to develop policies on engagement with victims and their representatives through each stage of the reparations process. The policies should consider:

- How victims currently are mobilized/organized
- Which victims may be left out of existing structures
- How women and girl victims can most effectively participate in reparations processes
- How marginalized victims can be facilitated to participate in reparations processes
- How participation in reparations programs can enhance victim capacity building to advocate for their own interests and contribute to empathy amongst victims

64. The Implementation Committee will develop operational guidelines and principles

39 Evidentiary requirements should not be onerous on victims and should take into account the availability of different types of proof in the context of the violations listed in the categories above.

for victim participation to be applied when collective reparation measures are designed and implemented.

65. The Implementation Committee will review all operational plans with the view to integrating the voices of victims in the process. The Implementation Committee will be specifically tasked with procuring regular and independent evaluations of the Implementation Committee interaction with victims throughout its mandate. Reports on victim participation and victim satisfaction with the Implementation Mechanism and other reparations service providers will be submitted to the Implementation Committee every six months, and will include a scientific sampling of victim opinion on these issues.

Financing Reparations

66. The Reparation Fund shall be appropriated annually from the Consolidated Fund. Because many aspects of the reparations programme should be implemented by existing government entities, this provides the opportunity for donor support to those institutions to enhance their capacity to effectively provide the required services under the reparations mandate.

67. The Commission specifically recommends that during the life of the Implementation Committee, assets recovered through corruption proceedings of the Ethics and Anti-Corruption Commission and the Kenyan Courts are used to fund the reparations process.

Annex 1:

Victims' Reparations Fund Guidelines

1. The TJRC's understanding of reparations is in line with the definition provided in section 2 of the TJR Act and the UN's Basic Principles on the Right to a Remedy and Reparation. Section 2 defines reparations as follows

   Reparation means dignifying the victims by measure that will alleviate their suffering, compensate their social, moral and material losses, and restitute their rights.

2. The UN's Basic Principles on the Right to a Remedy and Reparation, which provides a comprehensive understanding of reparations, lists five basic categories of reparations: restitution or restitutio in integrum: compensation; rehabilitation; satisfaction and; guarantees of non-repetition.

3. While the scope of reparations is broad, the resources of the Victims' Reparations Fund shall be applied for the following purposes:

   a. Compensation of victims, both individually and communally

   b. Rehabilitation of victims by providing medical and psychosocial assistance

   c. Memorialization

   d. Exhumation, identification and reburial of victims

4. The Commission appreciates that the ongoing constitutional and institutional reforms accommodate and address various aspects of reparations, including lustration (administrative sanctions), and guarantees of non-repetition (by reforming institutions implicated in gross violations such as the security forces and prisons). In addition, the Constitution provides for various mechanisms and facilities that are reparative in nature. For instance, in addition to extensive affirmative action measures that should guarantee inclusion of previously marginalized groups in political life, the equalization fund to be used to supplement provision of social services for previously marginalized regions and counties is partly reparative. Equally, as outlined in the Report's chapter on economic marginalization, the devolution framework, through which a portion of national revenues will flow to counties, constitutes a structural response to economic injustice and marginalization. A number of other devolved funds such as the Constituency Development Fund (CDF) have a similar function.

5. For the reasons advanced in the preceding paragraph, the Reparations Fund proposed will, in as far as compensation is concerned, be applied in favour of individual victims and establish flagship projects in favour of communities identified through set criteria.

6. The Commission recommends that in line with the Annexed policy on reparations, the implementation of the reparations program must prioritize urgent interim measures that provide immediate assistance, services and facilities to the most vulnerable victims.

7. Aware that a recent reparations program by government favored or focused on a

specific category of victims (IDPs from PEV), the Commission recommends that in line with its report (that relates to a wide range of gross violations of human rights), that the implementation of reparations program must relate to and cover all categories of victims.

8. The Commission recommends that the Victims' Reparations Fund shall operate as a 'no liability model', in terms of which eligibility for an award is based on being a victim who meets set criteria (based on loss or injury suffered) even in the absence of an identified perpetrator. Having considered various approaches adopted by other reparations programs, the Commission believes that this is the best approach as it guarantees access to justice for the greatest number of deserving victims who would face difficulties should the identification of perpetrators be a precondition for eligibility. Funds obtained from identified perpetrators through avenues provided in the law can benefit specific victims or be added to the Fund to benefit a larger group in appropriate cases.

9. The Commission proposes the adoption of the definition of 'victim' used in its report, which is consistent with international human rights instruments, in particular, the Basic Principles on the Right to a Remedy and Reparation and Rule 85 of the International Criminal Court's Rules of Procedure and Evidence. In line with these instruments, a victim is a natural person who has suffered harm as a result of the commission of any gross violation of human rights. A victim includes someone directly affected by the violation, as well as relatives of that direct victim.

10. The Commission notes that because the nature and design of the body that implements reparations is crucial to the success of a reparations program, the Reparations Fund must conform to at least the following imperatives:

    a. Gender sensitivity and perspectives in the design, structure, operations and evaluation.

    b. Implementation at the County and National levels;

    c. Involvement of actors across various government ministries and departments given that reparations needs are dispersed across almost all ministries (infrastructure, housing, lands, education health and finance etc);

    d. Consultation of victims at all stages of the design and implementation of the reparations program

11. The Commission recommends that the government commit an initial KES 500m to the Reparations Fund.

Annex 2:

Sample list of detention and torture victims who have been awarded variable compensation by the courts

NAME	CASE NO.	VIOLATION TYPE & DATE	REPARATIONS
Wafule Buke		Illegal arrest, torture and illegal detention – 1995	KES 500,000
Dominic Amolo Arony	HC. Misc. App. 494/2003	Torture – 1982	KES 2.5m
Odhiambo Olel	HCCC. 366/1995	Torture – 1987	KES 12,477,675
David Mbewa Ndede	HCCC. 284/1994	Torture – 1987	KES 2.7m
Rumba Kinuthia	HCCC. 1408/2004	Torture – 1990	KES 1.5m
Ngotho Kariuki		Illegal detention – 1986	KES 1m
WanyiriKihoro	HCCC. 151/1998	Torture and illegal detention – 1986	KES 400,000
NjugunaMutahi	HCCC. 1410/2004	Torture – 1986	KES 1.5m
Andrew M. Ndirangu	HCCC. 1409/2004	Torture – 1986	KES 1.5m
Margaret W. Kinuthia	HCCC. 1412/2004	Torture – 1986	KES 1.5m
Alex O. Ondewe	HCCC. 384/2004	Torture – 1986	KES 1.5m
Naftaly K. Wandui	HCCC. 385/2005	Torture – 1986	KES 1.5m
Joseph G. Karanja	HCCC. 386/2005	Torture – 1986	KES 1.5m
Elijah G. Kabubu		Illegal detention and torture	KES 651,000
Wallace Gichere	HCCC. 1235/2002	Torture – 1991	KES 9.4m
Harun Thung'u Wakaba	HC Misc. App. 1411/2004	Illegal detention and torture – 1990	KES 3m
Samuel Kaberere Njenga	HCCC. 1187/2003	Illegal detention and torture – 1987	KES 1.5m
Ali Cheptegei Salkwa	HC. Misc. App. 35/2005	Illegal detention and torture – 1987	KES 2.5m
James Mwangi Kariuki	HC. Misc. App. 36/2005	Illegal detention and torture – 1986	KES 2.5m
Paul Amina	HC. Misc. App. 37/2005	Illegal detention and torture – 1987	KES 1.5m
Sylvanus Oketch Oduor	HC. Misc. App. 1311/2004	Illegal detention and torture – 1987	KES 2.5m

NAME	CASE NO.	VIOLATION TYPE & DATE	REPARATIONS
Edward AkongoOyugi	HC. Misc. App. 1309/2004	Illegal detention and torture – 1990	KES 2.5m
Joe Njoroge	HC. Misc. App. 1310/2004	Illegal detention, torture, and unfair trial – 1990	KES 2m
Kiongo Maina	HC. Misc. App. 1323/2004	Illegal detention and torture – 1986	KES 2m
Florence Nyaguthie Murage	HC. Misc. App. 1313/2004	Illegal detention, torture, and unfair trial – 1990	KES 1.5m
Kamonye Manje	HC. Misc. App. 34/2005	Illegal detention and torture – 1986	KES 1.5m
Munene Kamau	HC. Misc. App. 1743/2004	Illegal detention and torture – 1987	KES 1m
Fredrick Murage Gathuku	HC. Misc. App. 1741/2004	Torture - 1986	KES 1m
Stephen Mulili Kituu	HC. Misc. App. 1744/2004	Illegal detention and torture – 1989	KES 1.5m
Wilson Nduati Njoroge	HC. Misc. App. 1742/2004	Illegal detention and torture – 1987	KES 2m
Francis Nduthu Karanja	HC. Misc. App. 1745/2004	Illegal detention and torture – 1987	KES 2m
James H. Gitau Mwara	HC. Misc. App. 56/2005	Torture and unfair trial – 1990	KES 1.5m
George Chitechi Osundwa	HC. Misc. App. 409/2004	Torture – 1986	KES 1.5m
Zacharia Kariuki Mwati	HC. Misc. App. 1183/2003	Illegal detention and torture – 1988	KES 2m
Jackson Maina Wangombe	HC. Misc. App. 1182/2003	Illegal detention and torture – 1988	KES 2m
Peter G Kihara	HC. Misc. App. 1189/2003	Illegal detention and torture - 1986	KES 2.5m
James Njau Wambururu	HCCC. 3829/1994	Torture – 1993	KES 800,000
Gitari Cyrus Muraguri	HC. Misc. App. 1185/2003	Illegal arrest, detention, and torture – 1988	KES 7,907,011
Wachira Weheire	HC. Misc. App. 1184/2003	Illegal detention and torture – 1986	KES 2.5m
Mwangi Stephen Mureithi	HCCC. 625/2009	Illegal detention	KES 50m

Appendices

Appendix 1:

List of Adversely-Mentioned Persons and Recommendations of the TJRC

#	NAME	ALLEGED VIOLATION	DATE OF NOTICE/ SUMMONS	RECEIPT OF RESPONSE/ HEARING	NATURE OF RESPONSE	COMMISSION'S FINDINGS & RECOMMENDATIONS
1	**NGANDA NYENZE** TJRC/L/ITR/038/13	Between 2001 and 2004 while leading a group called "Ndieeteleka", incited members to violence, which led to torture and grievous harm to innocent individuals; forceful eviction, arson and looting of property; rape and sexual abuse on residents of Mwakini village, Mwakini farm, Kitui County, an operation which came to be known as "Kavamba Operation." He drove the gang using his own motor vehicle, Registration Number KAA 197X canter lorry.				**Recommendation to the Director of Public Prosecution for prosecution**
2	**AMOS CHEBOI** (Former OCPD, Marsabit)	Abuse of office; assault of a police officer while serving as an Officer Commanding Police Division in Marsabit.			He appeared before the Commission during the hearings in Marsabit.	**Recommendation to the Director of Public Prosecutions for prosecution**
3	**JAMES MATHENGE** TJRC/LM/Vol.1	It is alleged that he was involved in the torture and ill-treatment of Mwakenya suspects.	*20th May 2011*		He failed to attend the Commission's hearings on 24th June 2011 at 9.00 a.m. at the Kenyatta	**Recommendation to the Director of Public Prosecutions for prosecution**
4	**SAM CHELIMO** TJRC/LM/Vol.1	It is alleged that he was involved in the torture and ill-treatment of Mwakenya suspects.	*20th May 2011*		He failed to attend the Commission's hearings on 24th June 2011 at 9.00 a.m. at the Kenyatta International	**Recommendation to the Director of Public Prosecutions for prosecution**
5	**MUNENE MUHINDI**	It is alleged that he was involved in the torture and ill-treatment of Mwakenya suspects.	*20th May 2011*		He failed to attend the Commission's hearings on 24th June 2011 at 9.00 a.m. at the Kenyatta International	**Recommendation to the Director of Public Prosecutions for prosecution**
6	**JOHN MBURU**	It is alleged that he was involved in the torture and ill-treatment of Mwakenya suspects.	*20th May 2011*		He failed to attend the Commission's hearings on 24th June 2011 at 9.00 a.m. at the Kenyatta International	**Recommendation to the Director of Public Prosecutions for prosecution**
7	**SP OKWEMBA**	It is alleged that he was involved in the torture and ill-treatment of Mwakenya suspects.	*20th May 2011*		He failed to attend the Commission's hearings on 24th June 2011 at 9.00 a.m. at the Kenyatta International	**Recommendation to the Director of Public Prosecutions for prosecution**
8	**PETKAY MIRITI** TJRC/LM/Vol.1	It is alleged that he was involved in the torture and ill-treatment of Mwakenya suspects.	*20th May 2011*		He failed to attend the Commission's hearings on 24th June 2011 at 9.00 a.m. at the Kenyatta International	**Recommendation to the Director of Public Prosecutions for prosecution**
9	**G. KOSKEY** TJRC/LM/Vol.1	It is alleged that he was involved in the torture and ill-treatment of Mwakenya suspects.	*20th May 2011*		He failed to attend the Commission's hearings on 24th June 2011 at 9.00 a.m. at the Kenyatta International	**Recommendation to the Director of Public Prosecutions for prosecution**

#	NAME	ALLEGED VIOLATION	DATE OF NOTICE/ SUMMONS	RECEIPT OF RESPONSE/ HEARING	NATURE OF RESPONSE	COMMISSION'S FINDINGS & RECOMMENDATIONS
10	**JAMES KILONZO** TJRC/LM/Vol.1	It is alleged that he was involved in the torture and ill-treatment of Mwakenya suspects.	*20th May 2011*		He failed to attend the Commission's hearings on 24th June 2011 at 9.00 a.m. at the Kenyatta International	**Recommendation to the Director of Public Prosecutions for prosecution**
11	**JAMES GACHANJA KARIUKI** TJRC/LM/Vol.1	It is alleged that he was involved in the torture and ill-treatment of Mwakenya suspects.	*20th May 2011*		He failed to attend the Commission's hearings on 24th June 2011 at 9.00 a.m. at the Kenyatta International	**Recommendation to the Director of Public Prosecutions for prosecution**
12	**CHRISTOPHER KARANJA KIARIE** TJRC/LM/Vol.1	It is alleged that he was involved in the torture and ill-treatment of Mwakenya suspects.	*20th May 2011*		He failed to attend the Commission's hearings on 24th June 2011 at 9.00 a.m. at the Kenyatta International	**Recommendation to the Director of Public Prosecutions for prosecution**
13	**NOAH ARAP TOO**	It is alleged that he was involved in the torture and ill-treatment of Mwakenya suspects.			He failed to attend the Commission's hearings on 24th June 2011 at 9.00 a.m. at the Kenyatta International	**Recommendation to the Director of Public Prosecutions for prosecution**
14	**JAMES OPIYO**	It is alleged that he was involved in the torture and ill-treatment of Mwakenya suspects..			He attended the Commission's hearings on 21st March 2012	**Recommendation to the Director of Public Prosecutions for prosecution**
15	**GEOFFREY KINOTI**	It is alleged that he was involved in the torture and ill-treatment of Mwakenya suspects.			He failed to attend the Commission's hearings on 24th June 2011 at 9.00 a.m. at the Kenyatta International	**Recommendation to the Director of Public Prosecutions for prosecution**
16	**DAVID WACHIRA** TJRC/LM/Vol.1	It is alleged that he was involved in the torture and ill-treatment of Mwakenya suspects.	*20th May 2011*		He attended the Commission's hearings on 21st March 2012.	**Recommendation to the Director of Public Prosecutions for prosecution**
17	**LEONARD WACHIRA**	It is alleged that he was involved in the torture and ill-treatment of Mwakenya suspects.	*20th May,2011*		He failed to attend the Commission's hearings on 24th June 2011 at 9.00 a.m. at the Kenyatta International	**Recommendation to the Director of Public Prosecutions for prosecution**
18	**ELIAS MJOMBA** TJRC/LM/Vol.1	It is alleged that he was involved in the torture and ill-treatment of Mwakenya suspects.	*20th May, 2011*		He failed to attend the Commission's hearings on 24th June 2011 at 9.00 a.m. at the Kenyatta International	**Recommendation to the Director of Public Prosecutions for prosecution**
19	**THOMAS KIARIE**	It is alleged that he was involved in the torture and ill-treatment of Mwakenya suspects.	*20th May, 2011*		He failed to attend the Commission's hearings on 24th June 2011 at 9.00 a.m. at the Kenyatta International	**Recommendation to the Director of Public Prosecutions for prosecution**
20	**NYAGA WAMBORA**	It is alleged that he was involved in the torture and ill-treatment of Mwakenya suspects.	*20th May 2011*		He failed to attend the Commission's hearings on 24th June 2011 at 9.00 a.m. at the Kenyatta International	**Recommendation to the Director of Public Prosecutions for prosecution**
21	**BENJAMIN OGOL** TJRC/LM/Vol.1	It is alleged that he was involved in the torture and ill-treatment of Mwakenya suspects.	*20th May 2013*		He failed to attend the Commission's hearings on 24th June 2011 at 9.00 a.m. at the Kenyatta International	**Recommendation to the Director of Public Prosecutions for prosecution**

#	NAME	ALLEGED VIOLATION	DATE OF NOTICE/ SUMMONS	RECEIPT OF RESPONSE/ HEARING	NATURE OF RESPONSE	COMMISSION'S FINDINGS & RECOMMENDATIONS
22	**SAMUEL MOROTO** TJRC/L/HRG/13/07	Incitement of the Pokots and facilitating the youths to attack & evict non-pokots during his tenure as M.P. He also held public meetings where he would incite the Pokots to fight the other communities for instance in Kolongolo area, in Kitale.	*25th March 2013*			**Recommendation to the Director of Public Prosecutions for prosecution**
23	**HON. ALFRED KHANGATI** TJRC/L/ITR/OP/1	He is alleged to have abused his office while serving as an Assistant Minister in the defunct Office of the Prime Minister.	*8th February 2013*		He responded by denying the allegations	**Recommendation to the Director of Public Prosecutions for prosecution.**
24	**ELIZABETH ONGORO** TJRC/L/ITR/093/13	On diverse dates between 27th - 31st December 2007, issued inflammatory statement calculated at inciting other communities and/or perceived sympathizers of President Kibaki living in Kasarani Constituency, Mathare North Area kijiji cha Chewa. She publicly directed and/or urged the removal; of "madoadoa" (Kikuyu and Kamba communities) from the aforestated areas. As a result of the statements, houses of persons of Kikuyu and Kamba descent were burnt, property looted and lives lost as her supporters carried out her above stated directives.	*25th January 2013*			**Recommendation to the Director of Public Prosecutions for prosecution.**
25	**JACKSON KIBOR**	Financed and/ or facilitated the 2007/8 Post –Election Violence			Previously invited to attend Commission's hearings in Eldoret. However, he did not testify. He was invited a second time to appear before the Commission on the 10th of April, 2013, but he failed to attend.	**Recommendation to the Director of Public Prosecution to undertake further investigations**
26	**HON JOSHUA KUTTUNY**	Planned, facilitated, and/or directed attacks against non-Kalenjins living within Cherangany area, acts which led to the displacement, serious injuries, deaths and loss of property during 2007/8 Post-Election Violence in Eldoret.	*25th March 2013*		Failed to honour invitation to appear before the Commission on 8th April 2013.	**Recommendations to the Director of Public prosecutions to undertake further investigations**
27	**FRANCIS SIGEI** (Former District Commissioner, North Eastern Province)	He is alleged to have been involved in the security operation that led to the Galmagalla Massacre.			He appeared before the Commission during the hearings in Garissa.	**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
	HON NJENGA MUNGAI (Former Molo Member of Parliament)	Incitement of persons of Kikuyu origin against those from other ethnic communities in 1992;Purchasing for and arming the youth with weaponry (pangas)				**Recommendation to the Director of Public Prosecution to undertake further investigations**
28	**SHADRACK KIRUKI** TJRC/AMP/LU/007	In 1997, he participated in the funding and facilitation of an illegal group "Kabuithu" that illegally and forcefully evicted over 2,000 Tharaka families	*19th March 2013*			**Recommendation to the Director of Public Prosecutions for prosecution**

#	NAME	ALLEGED VIOLATION	DATE OF NOTICE/ SUMMONS	RECEIPT OF RESPONSE/ HEARING	NATURE OF RESPONSE	COMMISSION'S FINDINGS & RECOMMENDATIONS
29	**MAJ GEN(Rtd) JOSEPH NKAISSERY** and **PETER LANGAT** (then a District Commissioner)	From 22nd February to 22nd May, he spearheaded Operation "Nyundo" where many people lost their lives and over 20,000 animals starved to death. Operation was also punctuated with rape and beating of the locals. The disarmament exercise resulted in deaths of civilians in what has come to be known as "Lotiriri Massacre."	*25th March 2013*		Major (Rtd) Nkaissery failed to appear before the Commission for hearings on 23rd February 2013 and again on 8th April, 2013.	**Recommendation to the Director of Public Prosecution for prosecution**
30	**MAMO WAKO** **ROBERT GUYO** **DAMOCHA DIBO** **GALGALLO BARILLE**	The four are alleged to have been involved in the Bubisa Massacre.			Counsel for Galgalo Barille appeared before the Commission during its hearings in Marsabit and objected to the proceedings.	**Recommendation to the Director of Public Prosecutions for prosecution**
31	**HON JOHN BOMET SERUT**	He is alleged to have been directly involved in financing, planning and instigating violence in Mount Elgon between 2006 and 2008, which acts led to death, serious injuries, displacement and destruction of property.			The witness on two occasions appeared before the Commission	**The Commission is satisfied that there is ample evidence capable of sustaining prosecution. Recommendation to the Director of Public Prosecutions for prosecution.**
32	**HON FRED CHESEBE KAPONDI**	He is alleged to have been directly involved in financing, planning and instigating violence in Mount Elgon between 2006 and 2008, which acts led to death, serious injuries, displacement and destruction of property.			The witness on two occasions appeared before the Commission	**The Commission is satisfied that there is ample evidence capable of sustaining prosecution. Recommendation to the Director of Public Prosecutions for prosecution.**
35	**COL STEPHEN K. BOIYWO**	While serving as the Commanding Officer during the military intervention in Mount Elgon in 2008, dubbed,"Operation Okoa Maisha", he allegedly instigated and/or directed the commission of gross violations of human rights including but not limited to extra-judicial killings, torture, maiming, illegal detentions, destruction and loss of property of the residents of Mount Elgon.			The Commission was unable to effect personal service on him as the Department of Defence misled the Commission on his whereabouts. The Commission has since established that he is still in service.	**The Commission is satisfied that there is ample evidence capable of sustaining prosecution. Recommendation to the Director of Public Prosecutions for prosecution.**
36	**JACKSON PSONGOIYWO**	As the "mawoitwo"(spiritual leader), he is alleged to have administered unlawful oath to the SLDF members, and was directly involved in planning and instigating violence in Mount Elgon between 2006 and 2008, which acts led to death, serious injuries, displacement and destruction of property.			The witness appeared before the Commission during its hearings in Bungoma.	**The Commission is satisfied that there is ample evidence capable of sustaining prosecution. Recommendation to the Director of Public Prosecutions to prosecute.**

#	NAME	ALLEGED VIOLATION	DATE OF NOTICE/ SUMMONS	RECEIPT OF RESPONSE/ HEARING	NATURE OF RESPONSE	COMMISSION'S FINDINGS & RECOMMENDATIONS
37	**ANTHONY OYIER** TJRC/AMP/LU/007	He was involved in the Mitheru massacre on 11th October 1992, by virtue of his position then as PC, where 5 people were killed at Mitheru village.	*19th March 2013*		He failed to attend the Commission's hearings scheduled for 10th April, 2013.	**Recommendation to the Director of Public Prosecutions for prosecution.**
38	**JOSEPH MANGIRA** TJRC/AMP/LU/007	Involved in the Mitheru massacre on 11th October 1992, by virtue of his position then as DC, where 5 people were killed at Mitheru village.	*19th March 2013*	*Personally served on 30th March 2013*	He failed honour the invitation to attend hearings scheduled for 10th April, 2013.	**The Commission recommends that the individual should not hold public office.**
39	**I. N. MUTHUURI** (Former OCPD, Garissa) **INSPECTOR MULI** (Police officer Wajir, 1984) **J.K. KINYANJUI** (Member, Kenya Intelligence Committee) **A.H. LINDAMBISA** (Former District Commissioner in North Eastern Province) **AMOS BORE** (Former Provincial Commissioner) **J.P GATUI** (Representative of the Commissioner of Police at the mission to Wagalla **NJERU MUGO** (Kenya Army,Wajir, 1984) **MAJOR ISAIAH KAMAU** (5Kenya Rifles, Garissa) GITAU (Criminal Investigations Officer, Wajir, 1984) **MARETE** (District officer, Wajir, 1984) **PATRICK MUGO** (Deputy Criminal Investigations Officer, North eastern Province) **WABWIRE** (Officer Commanding Police Division, Garissa) **Sgt. AHMED BISHAR ABDILLE** **STEPHEN AMARATIA** (police officer)	The named individuals ordered the security operations that led to the Wagalla Massacre			The individuals were invited to appear before the Commission in Nairobi but failed to attend.	**Recommendation to the Director of Public prosecutions to undertake further investigations.** **Should not hold public office**

#	NAME	ALLEGED VIOLATION	DATE OF NOTICE/ SUMMONS	RECEIPT OF RESPONSE/ HEARING	NATURE OF RESPONSE	COMMISSION'S FINDINGS & RECOMMENDATIONS
40	**JAMES MATHENGE** (Head of Delegation and permanent Secretary, Ministry of State in charge of Internal Security) **ALEX NJUE** (Former Deputy Provincial Commissioner, North Eastern Province) **JOSEPH KAGUTHI** **DAVID MWIRARIA** (Kenya Intelligence Committee Member) **DAVID MATIVO** (Former District Commissioner, Wajir (1984-1986) **J.P MWANGOVYA** (Former Office of the President Intelligence Committee Representative) **MANASSEH TIEMA** (Acting District Commissioner, Wajir, 1984) **BENSON KAARIA** (Former Provincial Commissioner, North Eastern) **BETHUEL KIPLAGAT** (permanent Secretary, Foreign Affairs and member, Kenya Intelligence Committee) **JOHN GITUMA** (Former Permanent Secretary, Information and Broadcasting and member, Kenya Intelligence Committee) **Z.J.M. KIMENCU** (Former Deputy Secretary, Office of the President, Kenya Intelligence Committee) **L.T MURIUNGI** (Kenya Army, Wajir) **MAJ. (Rtd) PHILLIP CHEBET** (Kenya Army, Garissa) **M. ASWANI** (Former Provincial Police Officer, North Eastern Province) **GEN. (Rtd) J. R. KIBWANA** (Former member, Kenya Intelligence Committee) **JOSHUA MATUI** (Former District Commissioner, Wajir, 1982-1984) **J.M. NDIRANGU** (Deputy provincial Special Branch officer, Garissa) **P.N. KING'ORI** (Former Criminal Investigations Officer, North Eastern Province)	The named individuals ordered the security operations that led to the Wagalla Massacre		.	The individuals were summonsed by the Commission to appear before it on 31st March 2011 and on 25th May 2011.	**Recommendation to the Director of Public Prosecutions to undertake further investigations. To determine criminal culpability if any.** **Should not hold public office.**

#	NAME	ALLEGED VIOLATION	DATE OF NOTICE/ SUMMONS	RECEIPT OF RESPONSE/ HEARING	NATURE OF RESPONSE	COMMISSION'S FINDINGS & RECOMMENDATIONS
41	**GODFREY GITAHI KARIUKI**	He was the Minister of State in-charge-of Internal Security during the Wagalla Massacre	*3rd May 2011*		He attended the Commission's hearings in Nairobi.	**Recommendations to the Director of Public Prosecutions to undertake further investigations.**
42	**FRED MACHOKA SILA** (Former security officer who served in northern Kenya)	He is alleged to have been involved in the Wagalla massacre.			He appeared before the Commission during the hearings in Nairobi.	**The allegation was disproved.**
43	**BERNARD CHUNGA**	As the Deputy Public Prosecutor and State Counsel, he is alleged to have infringed fair trial guarantees of Mwakenya and February Eighteenth Army dissidents.			The witness appeared before the Commission for a hearing on 8th April, 2013 and denied the allegations.	**The Commission recommends that the individuals should not hold public office.**
44	**SHARAD RAO**	Was a public prosecutor during the trial of persons suspected of having taken part in the 1982 coup attempt, and in the prosecution of Mwakenya dissidents.	*25th March 2013*		He was invited to shed light on his role in the said trials but declined, claiming he had no documents or exhibits of any value to the Commission. He also denied having been a prosecutor at the material time as he had left government services and was in the Netherlands serving other institutions.	**The Commission's investigations revealed that Mr. Rao left employment as a public prosecutor in September 1983 and might have participated in the prosecutions. Recommendations to the Director of Public Prosecutions for further investigations.**
45	**JEREMIAH ODEDE** TJRC/AMP/LU/007	On or about March 1981 as a Senior Superintendent of Police in Machakos, he participated in unlawful arrest, detention, torture, persecution of innocent civilians in the course of his duty.	*19th March 2013*			**Recommendation for further investigations by the Director of Public Prosecutions.**
46	**BRIG JOSEPH MBYATI MUSOMBA**	As the Chairman of the Court-martial, he is alleged to have infringed fair trial guarantees of persons suspected of having taken part in the attempted coup of 1982.				**Recommendation to the Director of Public Prosecution to undertake further investigations.**
47	**JOHN MORENGO** TJRC/L/ITR/001/13	Between 1999 and 2003, he was a member of Sungusungu vigilante group. He unlawfully detained and meted physical violence and intimidated citizens suspected of having stolen.	*17th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations**
48	**MWITA MAGIGE** TJRC/L/ITR/007/13	In 2003, he was a member of Sungusungu vigilante group. He unlawfully detained and meted physical violence and intimidated citizens suspected of having stolen.	*17th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations**
49	**KIRONGI BUSUNGU** TJRC/L/ITR/002/13	In 2003, he was a member of Sungusungu vigilante group. He unlawfully detained and meted physical violence and intimidated citizens suspected of having stolen.	*17th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations**
50	**MAGANYA KINYANYI** TJRC/L/ITR/003/13	In 2003, he was a member of Sungusungu vigilante group. He unlawfully detained and meted physical violence and intimidated citizens suspected of having stolen.	*17th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations**

#	NAME	ALLEGED VIOLATION	DATE OF NOTICE/ SUMMONS	RECEIPT OF RESPONSE/ HEARING	NATURE OF RESPONSE	COMMISSION'S FINDINGS & RECOMMENDATIONS
51	**BURURE SABAI** TJRC/L/ITR/004/13	In 2003, he was a member of Sungusungu vigilante group. He unlawfully detained and meted physical violence and intimidated citizens suspected of having stolen.	*17th January 2013*	*26th March 2013*	He denied the allegations.	**Recommendation to the Director of Public Prosecutions to undertake further investigations**
52	**JOSEPH RIOBA MAIRUGWA** TJRC/L/ITR/005/13	In 2003, he was a member of Sungusungu vigilante group. He unlawfully detained and meted physical violence and intimidated citizens suspected of having stolen.	*17th January 2013*	*26th March 2013*	He denied the allegations.	**Recommendation to the Director of Public Prosecutions to undertake further investigations**
53	**MRENGO MWITA** TJRC/L/ITR/006/13	In 2003, he was a member of Sungusungu vigilante group. He unlawfully detained and meted physical violence and intimidated citizens suspected of having stolen.	*17th January 2013*	*26th March 2013*	He denied the allegations.	**Recommendation to the Director of Public Prosecutions to undertake further investigations**
54	**OKELLO OKETCH** TJRC/L/ITR/008/13	In the wake of 2007/8 post election violence, he was a member of a gang that committed arson in Malongo, Gwassi.	*17th January 2013*	*11th February 2013*	He denied the allegations.	**Recommendation to the Director of Public Prosecutions to undertake further investigations**
55	**AGGREY MUDINYO** TJRC/L/ITR/009/13	In 1983 while he was a DO in Taveta, he authorized the unlawful arrest of 45 people from Kitobo Location, Bomeni Division, Taita Taveta District in Coast Province and detained them at Taveta Police Station and Voi Remand Prison.	*17th January 2013*	*4th April 2013*	He responded by denying the allegations in toto and stated that he was not in Taita Taveta in 1983, but was a DO I in West Pokot up to October of the same year before proceeding to the UK for further studies. He claimed he was DO in Taita in 1980 but did not handle Kitobo and at the time, Taita Taveta District had only three divisions, viz: Wundanyi, Taveta and Voi.	**Our investigations revealed that the evidence of alibi was convincing. Hence individual culpability disproved.**
56	**JUDE WESONGA** TJRC/L/ITR/085/13	In 1983, while he was a DO in Msambweni in 1983, he authorized the unlawful arrest of residents in Msambweni, Kwale district in Coast Province and detained residents and destroyed property.	*23rd January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations**
57	**JUMA NASSORO MWANYALU** TJRC/L/ITR/086/13	While a Chief in Msambweni, authorized the arrest of residents of Nyumba Sita, Msambweni, Kwale District of Coast Province; intimidation, arrest and unlawful detention of residents and destruction of property	*23rd January 2013*	*20th March 2013*	He denied the allegations.	**Recommendation to the Director of Public Prosecutions to undertake further investigations**
58	**MSHENGA RUGA** TJRC/L/ITR/087/13	While being the Chair, Kwale County Council, authorized the arrest of residents of Nyumba Sita, Msambweni, Kwale District of Coast Province; intimidation, arrest and unlawful detention of residents and destruction of property	*23rd January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations**

#	NAME	ALLEGED VIOLATION	DATE OF NOTICE/ SUMMONS	RECEIPT OF RESPONSE/ HEARING	NATURE OF RESPONSE	COMMISSION'S FINDINGS & RECOMMENDATIONS
59	**RICHARD KIBWARATA** TJRC/L/ITR/010/13	While serving as a Chief of Kitobo-Madarasani in Taita-Taveta Distirict,in July/ August 1983, he authorized the unlawful arrest of 45 people from Kitobo Location, Bomeni Division, Taita Taveta District in Coast Province; illegal detention at Taveta Police Station and Voi Remand Prison	*23rd January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations**
60	**JEREMIAH KIMUYA** TJRC/L/ITR/012/13	While serving as a Sub Chief of Kitobo-Madarasani in Taita-Taveta Distirict,in July/ August 1983,he authorized the unlawful arrest of 45 people from Kitobo Location, Bomeni Division, Taita Taveta District in Coast Province; illegal detention at Taveta Police Station and Voi Remand Prison	*23rd January 2-13*			**Recommendation to the Director of Public Prosecutions to undertake further investigations**
61	**ERASTUS ARAMIS NAMUNANE** TJRC/L/ITR/026/13	On or about 26th February 2008, whilst a member of the SLDF militia group, was involved in the abduction and beating of victims, in Burkeino area, Chepkube Location, Mt Elgon District,	*17th January 2013*			**Recommendations to the Director of Public Prosecutions to undertake investigations.**
62	**TIMOTHY SICHEI AKA** CHONGA VIAZI TJRC/L/ITR/027/13	As a leader of SLDF, planned, instigated, and/or ordered killings of persons by use of guns and other crude weapons in an attack on 3rd July 2007 at about 7.00 p.m. in Toroso Village, Cheptais Village.	*17th January 2013*			**Recommendations to the Director of Public Prosecutions to undertake investigations.**
63	**ARAMOGI JACKSON** TJRC/L/IRT/028/13	During an attack by SLDF on 3rd November 2006 at about 11.00p.m., in concert with others, planned, instigated, ordered killings within Cheptais Location, Mt Elgon.	*17th January 2013*			**Recommendations to the Director of Public Prosecutions to undertake investigations.**
64	**CHENAI ALIAS MSITUNI** TJRC/L/IRT/029/13	During an attack in September 1992 by Baghdad Boys militia group in which he was a member, he planned, instigated and/ or ordered killings of persons at Chesurubu, Chebweek Sub-Location, Chepkube Location, Cheptais Division, Mt Elgon District; In the course of the said attacks, involved himself in the beating of victims who had refused to cooperate with the militia men.	*17th January 2013*			**Recommendations to the Director of Public Prosecutions to undertake investigations.**
65	**CHESANG KITII** TJRC/L/ITR/030/13	During an attack by SLDF militia, of which he was a member, he, in collaboration with others planned, instigated, and /or ordered the killing of persons in Kang'ang'a village, Cheptais Division, Mt Elgon.	*17th January 2013*			**Recommendations to the Director of Public Prosecutions to undertake investigations.**
66	**CHEPANGUR** aka AMOS SAMOEI SIMOTWO TJRC/L/IRT/032/13	During the 1989 Chepyuk Phase I Settlement Programme , and more particularly on or about 14th April 1989, a violent land conflict erupted between the Mosop and Soy clans, in which he shot victims, thereby causing them serious bodily injuries.	*17th January 2013*	*26th March 2013*	Allegations denied. That no violence ever took place, but admits that he had a dispute with neighbours over a parcel of land.	**Recommendations to the Director of Public Prosecutions to undertake investigations.**

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67	**NATHAN WASAMA MASAI** TJRC/L/IRT/033/13	During an attack on or aboutr 3rd July 2007 by the SLDF militia group, in which he was a member, he planned, instigated and/or ordered the killing of persons in Toroso Village, Cheptais Division, Mt Elgon.	*17th January 2013*			**Recommendations to the Director of Public Prosecutions to undertake investigations.**
68	**ROBIN KABONGE** TJRC/L/IRT/033	During an attack on or about 3rd July 2007 by the SLDF militia group, in which he was a member, he planned, instigated and/or ordered the killing of persons within Kapnashome Village, Cheptais Division, Mt Elgon; During the said attack, he was involved in collecting fines and looting property.	*17th January 2013*			**Recommendations to the Director of Public Prosecutions to undertake investigations.**
69	**AMOS CHEMINGWA** TJRC/L/IRT/035/13	During an attack on or aboutr 3rd July 2007 by the SLDF militia group, in which he was a member, he planned, instigated and/or ordered the killing of persons within Kapnashome Village, Cheptais Division, Mt Elgon; During the said attack, he was involved in collecting fines and looting property.	*17th January 2013*			**Recommendations to the Director of Public Prosecutions to undertake investigations.**
70	**KISO SIOI** TJRC/L/IRT/035/13	During an attack some time in September 1992, the Baghdad Boys militia group of which he was the leader, planned, instigated and/or ordered killings within Chesurubu (near Lama Stream) , Chebweek Sub-Location, Chepkube Location, Cheptais Division, Mt Elgon District.	*17th Janaury 2017*			**Recommendations to the Director of Public Prosecutions to undertake investigations.**
71	**MATU WAMA**E TJRC/L/ITR/037/13	Some time between1999 and the year 2000 irregularly and illegally benefitted from irregular allocation of Hombe Forest land, within Mathira Constituency. The said allocation is said to have been orchestrated by the then Central Provincial Commissioner, Mr. Peter Kiilu.	*17th January 2013*	*28th February 213*	Allegation denied	**Recommendations to the National Land Commission to undertake further investigations.**
72	**JUDICIARY** (CHIEF REGISTRAR JUDICIARY) TJRC/L/IRT/039/13	Delayed and/or denied justice to 38 members of Kugitimo Livestock Farmers. Reference was made to Nairobi Civil Suit No. 989 of 2004 filed by 38 members of Kugitimo Livestock Farmers, Kegonga regarding illegal attachment of their cattle worth Kshs. 6,444,900.00. The Commission was informed that despite the plaintiffs having duly lodged civil proceedings at the High Court, for the last eight years, little or no effort has been expended by the latter to have the matter expedited to conclusion.	*17th January 2013*		No response to the allegation	**Recommendation to the Commission on the Administration of Justice for intervention.**
73	**FRANCIS M NYENZE** TJRC/L/IRT/040/13	As Minister in charge of forests, oversaw the illegal excision of 3000 acres of Hombe forest and irregularly allocated the same to himself and to others.	*17th January 2013*			**Recommendation to the National Land Commission to undertake further investigations.**

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74	**ESAU LURONGA** TJRC/L/IRT/041/13	On or about November 2004 in a police operation at Nalado area, Keiyo Sub-Location in Kwanza, Trans Nzoia District of Rift Valley Province, he killed and/or participated in the extrajudicial killing of civilians.	*17th January 2013*		He denied the allegations.	**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
75	**DOMINIC LANGAT** TJRC/L/IRT/042/13	Directly involved in perpetrating violence during PEV of 2007/2008 at Jogoo Village in Mau Summit Location, Kamara Division Molo District in Rift Valley Province, which led to the killing of civilians, arson, looting and destruction of property within the area.	*17th January 2013*	*20th March 2013*	He denied the allegations	**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
76	**RICHARD ROTICH** TJRC/L/IRT/043/13	He was directly involved in perpetrating violence during PEV of 2007/2008 at Total Molo District in Rift Valley Province, which led to the killing of civilians, arson, looting and destruction of property within the area.	*17th January 2013*	*20th March 2013*	He denied the allegations.	**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
77	**ERIC KIBET** TJRC/L/IRT/044/13	Directly involved in the perpetration of the 2007/2008 post-election violence at Kimura Village, Kagema Farm in Timboroa Sub-Location, Rift Valley province where three civilians were killed as a result of his conduct.	*17th January 2013*		He denied the allegations.	**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
78	**SHADRACK LANGAT** TJRC/L/IRT/045	Directly involved in the perpetration of the 2007/2008 post-election violence at Jogoo Village, Mau Summit Location, Kamara Division, Molo in Rift Valley province where three civilians were killed as a result of his conduct.	*17th January 2013*		He denied the allegations.	**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
79	**STANLEY KIPKOECH** TJRC/L/046	On or about late 2007, was privy to illegal meetings that coordinated, directed and/ or facilitated the attacks at Kio Farm in Kuresoi Location, Kuresoi District, Rift Valley Province, leading to loss of lives and destruction of property.	*17th January 2013*		He denied the allegations.	**Recommendation to the Director of Public Prosecutions to undertake further investigations**
80	**FRANCIS CHEPTALAM** TJRC/L/ITR/047/13	On or about December 2007 after land demarcation exercise at Chebyuk, was a member of SLDF and participated in the illegal acts and/or omissions of the group including meting out physical violence on innocent civilians at Embakassi Village, Teldet Sub-location, Kisawai Location, Saboti Division, Trans Nzoia District of Rift Valley province.	*17th January 2013*		He denied the allegations.	**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
81	**PATRICK NAIBEI** TJRC/L/IRT/050/13	Between January and February 2008 at Kalaha Farm, Teldet Sub-Location, Kisawai Location, Saboti Division, Trans Nzoia District of Rift Valley Province, he conducted violent attacks against members of other communities living within the said area, which acts led to the forceful eviction, killing and grievous assault of innocent individuals.	*17th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations.**

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82	**PETER MIBEI** TJRC/L/ITR/051/13	Involved in the planning, facilitating and/or executing 2007/8 Post-election Violence at Kio Farm in Kuresoi Location, Kuresoi District, Rift Valley Province, which led to the killing of civilians and destruction of property.	*17th January, 2013*	*28th February 2013*	He denied the allegations	**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
83	**SAMUEL NAMUNI** TJRC/L/ITR/052/13	On or about January 2008 during the Post-Election Violence, killed and/or participated in the killing of civilians at Muserechi Trading Centre, in Muserechi Location of Esageri Division, Koibatek District, Rift Valley Province, while ethnic profiling along Ravine- Nakuru Road	*17th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
84	**MOSES CHEMIAT** TJRC/L/ITR/052/13	Between January and February 2008 at Kalaha Farm, Teldet Sub-Location, Kisawai Location, Saboti Division, Trans Nzoia District of Rift Valley Province, he conducted violent attacks against members of other communities living within the said area, which acts led to the forceful eviction, killing and grievous assault of innocent individuals.	*17th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
85	**MODING RENGEI** TJRC/L/ITR/053/13	On or about 1998, while serving as the area Assistant Chief for Kapedo Location, Lomelo Division, Turkana East in Rift Valley Province, ordered the killing of civilians within the area.	*17th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
86	**JOHANA CHEPKUTO** TJRC/L/ITR/054/13	Some time in the year 1993 at Arimi Farm in Kuresoi District, Rift Valley Province, he issued inflammatory statements calculated at inciting members of his community into violence, leading to arson, killing of civilians, rape and destruction of property.	*17th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
87	**JOHN LANGAT** TJRC/L/IRT/055/13	Some time in the year 1993 at Arimi Farm in Kuresoi District, Rift Valley Province, issued inflammatory statements calculated at inciting members of his community into violence, leading to arson, killing of civilians, rape and destruction of property.	*17th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
88	**ALEXANDER NGETICH** TJRC/L/IRT/056/13	Some time in the year 1993 at Arimi Farm in Kuresoi District, Rift Valley Province, issued inflammatory statements calculated at inciting members of his community into violence, leading to arson, killing of civilians, rape and destruction of property.	*17th January 2013*	*11th February 2013*	He denied the allegations and claimed he was in Kitale, Trans Nzioia District and only came to Kuresoi in 1994 when he bought a parcel of land at Soliat Company.	**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
89	**SIMON CHESIKTES** TJRC/L/IRT/058	Some time in the year 1993 at Arimi Farm in Kuresoi District, Rift Valley Province, issued inflammatory statements calculated at inciting members of his community into violence, leading to arson, killing of civilians, rape and destruction of property.	*17th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations.**

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90	**ALICE KOECH** TJRC/L/IRT/059/13	In late 2007 and in early 2008, he was privy to illegal meetings that coordinated, directed and/or facilitated the attacks at Kio Farm in Kuresoi Location, Kuresoi District Rift Valley Province, leading to loss of lives and destruction of property.	*17th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
91	**CHELUK KIPKOGE** TJRC/L/IRT/063/13	On or about January 2008 during the Post-Election Violence period, killed and/ or participated in the killing of civilians at Muserechi Trading Centre, in Muserechi Location of Esageri Division Koibatek District Rift Valley Province, while ethnic profiling along Ravine-Nakuru Road.	*17th January, 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
92	**KIBWOT SAN**G TJRC/L/IRT/065/13	On or about January 2008 during the Post-Election Violence period, killed and/ or participated in the killing of civilians at Muserechi Trading Centre, in Muserechi Location of Esageri Division Koibatek District Rift Valley Province, while ethnic profiling along Ravine-Nakuru Road.	*17th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
93	**KIPTOROMOS KIBWALE** TJRC/L/ITR/066/13	On or about January 2008 during the Post-Election Violence period, killed and/ or participated in the killing of civilians at Muserechi Trading Centre, in Muserechi Location of Esageri Division Koibatek District Rift Valley Province, while ethnic profiling along Ravine-Nakuru Road.	*17th January 2013*	*27th February, 2013*	Allegations denied. Request for particulars.	**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
94	**JEREMIAH ESSEKON TJRC/L/**ITR/067/13	On diverse dates in 1998 while serving as the area Chief for Nadome Location within Turkana East District in Rift Valley Province, authorized and/or directed the killing of civilians within the aforesaid area.				**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
95	**FUNDI OCHIENG** TJRC/L/ITR/064	On or about January 2008 during the Post Election Violnce period, killed and/ or participated in the killing of civilians at Muserechi Trading Centre, in Muserechi Location of Esageri Division Koibatek District Rift Valley Province, while ethnic profiling along Ravine-Nakuru Road.	*17th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
96	**GENERAL NDOLO** TJRC/L/ITR/069/13	Some time in 1964, planned, instigated, ordered and/or abetted the invasion of Modogashe Ada area of Isiolo in eastern region, maimed and/or killed civilians while forcing them to move into concentration camps	*22nd January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
97	**INSPECTOR JAMES KARISA** TJRC/L/ITR/068/13	As a military officer, he was involved in extrajudicial killings during the 1998 Shifta wars which took place within Iresa Guyo and Turucho areas near Garba Tulla.	*22nd January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations.**

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98	**KIIA NGUSO** TJRC/L/ITR/070/13	Between 1982 and 1983 during the conflict between residents of Nzalae area and Nzalae Group Ranchers, as Chairman, he planned, instigated, ordered and/or abetted torture and forceful eviction of residents of Nzalae from the area; was involved in the looting of property belong to Nzalae residents.	*22nd January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
99	**CHIEF OLENKOI** TJRC/L/ITR/071/13	In the years 1972, 1978 and in 1989, severally led a group of youth in forcefully evicting non-Maasais from Kalembwani village, Kapatai Location, Kajiado District, Rift Valley Province.	*17th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
100	**DIDA KALICHA** TJRC/L/ITR/072/13	In the year 1967 during the Shifta war while participating in a State operation, invaded the Waso Boran community in Machuro village of Garba Tulla in Eastern region, and maimed and/or summarily executed civilians.	*17th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
101	**DAVID MUSILA** TJRC/L/ITR/073/13	Between 1982 and 1983 during the conflict between residents of Nzalae area and Nzalae Group Ranchers, as Chairman, planned, instigated, ordered and/or abetted torture and forceful eviction of residents of Nzalae from the area; was involved in the looting of property belong to Nzalae residents; in 1988 as a Member of Parliament for Mwingi Constituency, unduly influenced the dismissal of area's administrative officers who did not support your interests regarding the disputed land in Nzalae.	*17th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
102	**MAJOR HALKANO** TJRC/L/ITR/074/13	While participating in a State operation during the Shifta wars between 1964 and 1967, within Bisan Dero area near Garba Tulla, he drove people into concentration camps, executed them and killed their livestock.	*22nd January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
103	**OLEKEOKO** TJRC/L/ITR/075/13	He planned, instigated, ordered and/or abetted several raids and forceful evictions during the Kalembwani ethnic clashes of 1972 and 1992.	*22nd January 2013*	*21st February 2013*	Allegations denied.	**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
104	**KULLY SOMO** TJRC/L/ITR/076/13	On 20th June, 2005, planned, instigated, ordered and/or abetted the forceful eviction of members of Gabbra community from Saku Constituency in Marsabit.	*22nd January 2013*	*15th February 2013*	The allegations were malicious and motivated by politics.	**The Commission's investigations revealed that the allegations were malicious and the matter was motivated by politics. It was recommended that the matter be laid to rest.**

#	NAME	ALLEGED VIOLATION	DATE OF NOTICE/ SUMMONS	RECEIPT OF RESPONSE/ HEARING	NATURE OF RESPONSE	COMMISSION'S FINDINGS & RECOMMENDATIONS
105	**ADAN CHUKULIZA** TJRC/L/ITR/077/13	On 20th June, 2005, planned, instigated, ordered and/or abetted the forceful eviction of members of Gabbra community from Saku Constituency in Marsabit.	*22nd January 2013*	*22nd February 2013*	The allegations were malicious and motivated by politics.	**The Commission's investigations revealed that the allegations were malicious and the matter was motivated by politics. It was recommended that the matter be laid to rest.**
106	**ROBA ODHA** TJRC/L/ITR/078/13	On diverse dates between 1964 and 1969, he planned, instigated, ordered, ordered, committed and/or abetted killings in Garba Tulla Town.				**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
107	**NGIYE KIMANI** TJRC/L/ITR/080/13	He planned, instigated, ordered and/ or abetted several raids and forceful evictions during the 1972 and 1992 Kalembwani ethnic clashes.	*22nd January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
108	**GALGALO GURGURO** TJRC/L/ITR/081/13	Some time in 1969, he unlawfully arrested and detained innocent civilians in Manyilla after which he bundled them in a lorry and executed them in Toiboto area.	*22nd January 2013*			**Recommendation to the Director of Public Prosecutions to order further investigations.**
109	**NZIOKI KILETA** TJRC/L/ITR/082/13	Between 2001 and 2004 while leading a group called "Ndieeteleka", he incited members to violence, which led to torture and grievous harm to innocent individuals; forceful eviction, arson and looting of property; rape and sexual abuse on residents of certain two villages.	*22nd January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations**
110	**OWINO OTANDA** TJRC/L/ITR/088/13	On or about late 2008 and early 2009, in the company of Mr. Otulo Justus, Mr. Abdalla, Mr. Oduor and Mr. Oscar Loreh, authored and authorized the sending of, had knowledge of and/or sent threatening letters to the members of the Kikuyu and Kamba communities living within Mathare North requiring them to vacate the area or face reprisals from the authors for, inter alia, causing an escalation of rent within Mathare North area; their association or perceived association with the Mungiki sect.	*25th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake investigations.**
111	**OTULO JUSTUS OTULO** TJRC/L/ITR/089/13	On or about late 2008 and early 2009, in the company of Mr. Owino Otanda, Mr. Abdalla, Mr. Oduor and Mr. Oscar Loreh, authored and authorized the sending of, had knowledge of and/or sent threatening letters to the members of the Kikuyu and Kamba communities living within Mathare North requiring them to vacate the area or facew reprisals from the authors for, inter alia, causing an escalation of rent within Mathare North area; their association or perceived association with the Mungiki sect.	*25th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations**

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112	**OSCAR LOREH** TJRC/L/ITR/090/13	On or about late 2008 and early 2009, in the company of Mr. Otulo Justus, Mr. Abdalla and Mr. Oduor authored and authorized the sending of, had knowledge of and/or sent threatening letters to the members of the Kikuyu and Kamba communities living within Mathare North requiring them to vacate the area or facew reprisals from the authors for, inter alia, causing an escalation of rent within Mathare North area.	*25th January, 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
113	**NOAH NONDIN ARAP TOO** TJRC/L/ITR/091	While serving as a Director and/or senior officer of the Special Branch on or about May 1995, directed and/ or facilitated the killing of Senior Superintendent of Police Bernard Nganga Kahumbi who was attached to the then Special Branch Division after he allegedly refused, failed and/or neglected to execute an unlawful order to kill a named prominent person. In the alternative, it is alleged that he may have been involved in covering up the cause of the said death.	*25th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
114	**MR ODUOR** (aka Kiritho) TJRC/L/ITR/092/13	On or about late 2008 and early 2009, in the company of Mr. Otulo Justus, Mr. Abdalla and Mr. Oscar Loreh, he authored and authorized the sending of, had knowledge of and/or sent threatening letters to the members of the Kikuyu and Kamba communities living within Mathare North requiring them to vacate the area or face reprisals from the authors for, inter alia, causing an escalation of rent within Mathare North area.	*25th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations**
115	**CAPT GITHIORA** TJRC/L/ITR/095/13	Following the attempted coup of 1st August 1982, and while serving as captain with the Kenya Army , he allegedly authorized and/or unlawfully detained Commissions' Witness NRB 80 for 71/2 months without trial at Kenya Air Force –Eastleigh Barracks and Naivasha. He further required of him to implicate another named officer as also having participated in the planning of the coup so that the witness could secure his own release from detention.	*25th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations.**

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116	**MR ABDALLAH** TJRC/L/ITR/096/13	On or about late 2008 and early 2009, in the company of Mr. Otulo Justus, Mr. Oduor and Mr. Oscar Loreh, he authored and authorized the sending of, had knowledge of and/or sent threatening letters to the members of the Kikuyu and Kamba communities living within Mathare North requiring them to vacate the area or face reprisals from the authors for, inter alia, causing an escalation of rent within Mathare North area.	*25th January 2013*			**Recommendation to the Director of Public Prosecutions to order further investigations.**
117	**HON WILLIAM OLE NTIMAMA** TJRC/L/ITR/097/13	Some time in the year 1992 at different locations and as a respected Maasai leader and elder, made utterances capable of inciting ethnic violence against non-Maasai community members living in Enoosupukia of Narok District and particularly within Sintagara area. This led to the killings of scores of individuals, destruction of property and mass evictions.	*25th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations**
118	**WILLIAM OLE LITIET** TJRC/L/ITR/098/13	Some time in the year 1992 as the local area Assistant Chief, led a group of Maasai youths in a violent attack targeting non-Maaasai community members living in Sintagara, Enoosupukia, Narok District, leading to the killing of individuals, destruction of property and mass evictions.	*17th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations**
119	**KWAMBAI** TJRC/L/099/13	Some time in the month of June 2006, while in the company of some police officers, he arrested a youth by the name of Henry Kaberia Mwangi from his parents' home, on allegations of being a member of the outlawed Mungiki sect and took him to an unknown location. He was later found dead with gunshot wounds after about a week.	*28th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations**
120	KEMBOI TJRC/L/ITR/0100/13	That some time in the year 2003, while in the company of police officers, he oversaw the torching of Mama Mary Karanja's house located at Kahiga Kogi village of muranga District, following allegations that her sons were members of the outlawed Mungiki sect.	*28th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations**
121	**DUNCAN KAGAMBO** Police Officer TJRC/L/ITR/0101/13	Some time in the year 2001, while in the course of his duty as CID officer attached to the Murang'a Police Station, he physically assaulted Kenneth Irungu Macharia by kicking him hard on his chest occasioning him difficulties in breathing from which he succumbed to death.	*28th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations**

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122	**SOLICITOR GENERAL** TJRC/L/ITR/0102/13	Following judgment against the Attorney General (on behalf of the State) in Civil Suit Embu CMCC No. 385, Susan Njeri Waweru v AG, the office failed to honour the said compensatory judgment wherein the Plaintiff had sued the Attorney General following the unlawful shooting and killing of her husband, Mr. Francis Weru Kanyago.	*28th January 2013*			**Recommendation to the Commission on Administrative Justice to investigate the matter and report to the Implementation Committee.**
123	**COUNCILLOR OLE GETISH**E TJRC/ITR/0103/13	That some time in year 1992 in his capacity as a local area Councillor, he led a group of Maasai youths in a violent attack targeting non-Maasai community members living Sintagara, Enoosupukia, Narok District. This led to the killing of scores of individuals, destruction of property and mass evictions.	*28th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations**
124	**SIMEON NG'ETICH** TJRC/L/ITR/0104/13	That on or about 30th December 2007, at Kondoo Farm, Burnt Forest, while in the company of others, he stabbed to death Mr. Henry Mugo Kinuthia.	*28th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations**
125	**BENJAMIN LAMAI** TJRC/L/ITR/0105/13	On or about 1st January 2008, in the company of other youths from the Kalenjin community and while armed with crude weapons,he participated in the destruction and looting of property belonging to the non-Kalenjin community living in Kiambaa of Uasin Gishu District of Rift Valley. Further, he similarly participated in the torching of Kiambaa KAG Church, an act which led to the death of many innocent civilians.	*28th January 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations**
126	**HON NORMAN G.K. NYAGA**	He is alleged to have been involved in the assassination of Crispine Odhiambo Mbai while serving as the Chief Whip.			The Commission was unsuccessful in establishing his whereabouts for purposes of effecting service.	**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
127	**GILBERT KITIYO** TJRC/L/ITR/084/13	While a DC in Msambweni, he authorized the arrest of residents of Nyumba Sita, Msambweni, Kwale District of Coast Province; intimidation, arrest and unlawful detention of residents and destruction of property	*23rd January 2013*	*19th March 2013*	He denied the allegations and gave a brief background of Nyumba Sita and admitted certain aspects of the facts as alleged.	**Recommendation to the Director of Public Prosecutions to undertake further investigations**
128	**EPHANTUS NJUHIU** TJRC/L/ITR/013/13	Some time in the year 2000 as the area Councilor, he illegally benefitted from irregular allocation of Hombe Forest land, within Mathira Constituency to the tune of 40 acres or thereabouts. The said allocation is said to have been orchestrated by the then Central Provincial Commissioner, Mr. Peter Kiilu.	*17th January 2013*			**Recommendations to the National Land Commission to undertake further investigations**

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129	**GATURUKU** TJRC/L/ITR/014/13	Some time in the year 2000 as the area Councilor, he illegally benefitted from irregular allocation of Hombe Forest land, within Mathira Constituency to the tune of 40 acres or thereabouts. The said allocation is said to have been orchestrated by the then Central Provincial Commissioner, Mr. Peter Kiilu.	*17th January 2013*			**Recommendations to the National Land Commission to undertake further investigations**
130	**JACK KANJA** TJRC/L/ITR/015/13	Some time in the year 2000 as the area Councilor, he illegally benefitted from irregular allocation of Hombe Forest land, within Mathira Constituency to the tune of 40 acres or thereabouts. The said allocation is said to have been orchestrated by the then Central Provincial Commissioner, Mr. Peter Kiilu.	*17th January 2013*	*21February 2013*	He denied the allegations.	**Recommendations to the National Land Commission to undertake further investigations**
131	**MR KEGA** TJRC/L/ITR/016/13	Some time in the year 2000 as the area Councilor, he illegally benefitted from irregular allocation of Hombe Forest land, within Mathira Constituency to the tune of 40 acres or thereabouts. The said allocation is said to have been orchestrated by the then Central Provincial Commissioner, Mr. Peter Kiilu.	*17th January, 2013*	*26th Marchn2013*	Allegation denied	**Recommendations to the National Land Commission to undertake further investigations**
132	**PETER KIILU** TJRC/L/ITR/017/13	As the Central Province Provincial Commissioner,in the years between 1999-2000, spearheaded the grabbing of a 240 acre piece of forest land Muhuruini in Magutu Location. He also illegally oversaw the excision of 3000 acres of Hombe forest land and irregularly allocated it to himself and others including the then Mathira Constituency MP Matu Wamae, Hon Nyenze Francis (who was then the Minister in charge of forests) and a host of local councilors.	*17th January 2013*	*25th March 2013*	He denied the allegations	**Recommendations to the National Land Commission to undertake further investigations**
133	**MWANGI KIBARA** TJRC/L/ITR/018/13	Some time in the year 2000 as the area Councilor, he illegally benefitted from irregular allocation of Hombe Forest land, within Mathira Constituency to the tune of 100 acres or thereabouts. The said allocation is said to have been orchestrated by the then Central Provincial Commissioner, Mr. Peter Kiilu.	*17th January 2013*			**Recommendations to the National Land Commission to undertake further investigations**
134	**MR NDIRA KIHIURIA** TJRC/L/ITR/019/13	Some time in the year 2000 as the area Councilor, he illegally benefitted from irregular allocation of Hombe Forest land, within Mathira Constituency to the tune of 100 acres or thereabouts. The said allocation is said to have been orchestrated by the then Central Provincial Commissioner, Mr. Peter Kiilu.	*17th January 2013*			**Recommendations to the National Land Commission to undertake further investigations**

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135	**PETER NGARI** TJRC/L/ITR/021/13	Some time in the year 2000 as the area Councilor, he illegally benefitted from irregular allocation of Hombe Forest land, within Mathira Constituency to the tune of 40 acres or thereabouts. The said allocation is said to have been orchestrated by the then Central Provincial Commissioner, Mr. Peter Kiilu.	*17th January 2013*			**Recommendations to the National Land Commission to undertake further investigations**
136	**LT COL L.N.NYAKERI** TJRC/L/ITR/SIT/1	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot Nos. 147, 148, 149, 150, 151, 152, 153, 154, 155, 156 and 157)	*8th February 2013*	*26th March 2013*	Allegations were denied. The owner is deceased, but documents of ownership were supplied.	**Recommendation to the National Land Commission to undertake further investigations.**
137	**JOSEPH GICHOGO** TJRC/L/ITR/LYV/1B	Irregular/illegal allocation of parcels of land meant for Sitatunga Farmers Co-operative Society	*18th February 2013*		Summoned for hearings on 10th April, 2013; failed to attend.	**Recommendation to the National Land Commission to undertake further investigations.**
140	**CAPT WILLIAM K. RONO** TJRC/L/ITR/SIT/2	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plots no. 11, 12, 25 and 26)	*8th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
141	**CAPT C.B.MALOBA** TJRC/L/ITR/SIT/3	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot Nos. 170, 179, 180, 195, 196, 205, 206, 207 and 232)	*8th February 2013*	*6th March 2013*	The witness requested for more information and claimed that TRANS NZOIA/ SITATUNGA/100 is a first registration under the Registered Land Act, whose effect is preserved under the Land Registration Act, 2012.	**Recommendation to the National Land Commission to undertake further investigations.**
142	**DR. N.W.WAMBUGU** TJRC/L/ITR/SIT/4	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot Nos. 118, 119, 166, 167, 181, 182, 193, 194, 208 and 209	*8th February 2013*	*20th March 2013*	Allegations denied. Evidence of ownership supplied.	**Recommendation to the National Land Commission to undertake further investigations.**
143	**JOHN.K.KIMARENG** TJRC/L/ITR/SIT/5	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot Nos. 125, 126, 127, 128, 129, 130, 131, 132, 133 and 134)	*8th February 2013*	*1st March 2013*	The family stated that the witness was deceased and the family was yet to institute succession proceedings. A letter was written to their lawyer who never responded to the allegations.	**Recommendation to the National Land Commission to undertake further investigations.**
144	**PIUS CHELIMO** TJRC/L/ITR/SIT/7	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot Nos. 191 and 192)	*8th February 2013*	*28th February 2013*	The allegations were denied by the witness' family, who claimed to be a purchaser for value without notice. Documentation in support of acquisition were supplied.	**Recommendation to the National Land Commission to undertake further investigations.**
145	**SAMUEL.M.MANGARE** TJRC/L/ITR/SIT/8	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot Nos. 93, 94, 95, 96, 97, 98, 99, 100, 101 and 102)	*8th February 2013*	*12th March 2013*	The allegations were denied by the witness' family, who claimed to be a purchaser for value without notice. Documentation in support of acquisition were supplied.	**Recommendation to the National Land Commission to undertake further investigations.**

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146	**TOM IMBWAGA** TJRC/L/ITR/SIT/9	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot Nos. 228,229 and 230)	*8th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
147	**WALTER KIPTARUS** TJRC/L/ITR/SIT/10	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot Nos. 221 and 213)	*8th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
148	**RUTTO TOROITICH** TJRC/L/ITR/SIT/11	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot Nos. 231 and 233)	*8th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
149	**CHEBII CHEMWENO** TJRC/L/ITR/SIT/12	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot Nos. 234 and 235)	*8th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
150	**CHARLES KOLONGEI** TJRC/L/ITR/SIT/14	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot Nos. 225)	*8th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
151	**JOHN N. KINGARA** TJRC/L/ITR/SIT/15	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot Nos. 223)	*8th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
152	**JOHNSTONE O. NYAMIAKA** TJRC/L/ITR/SIT/16	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot Nos. 221)	*8th February 2013*	*18th March 2013*	The allegations were denied by the witness' family, who claimed to be a purchaser for value without notice. Documentation in support of acquisition were supplied.	**Recommendation to the National Land Commission to undertake further investigations.**
153	**WILLIAM K. RONO** TJRC/L/ITR/SIT/17	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot Nos.16,17,18,19,20 and 21)	*8th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
154	**ELIZABETH NYAKOTHE** TJRC/L/ITR/SIT/18	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot Nos. 145)	*8th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
155	**TOM W. WASWA** TJRC/L/ITR/SIT/19	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot Nos. 140)	*8th February 2013*	*6th March 2013*		**Recommendation to the National Land Commission to undertake further investigations.**
156	**SGT. J. ASHIMENE** TJRC/L/ITR/SIT/20	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot Nos. 123 and 188)	*8th February 2013*	*1st March 2013*	The allegations were denied by the witness. Documentation in support of acquisition were supplied.	**Recommendation to the National Land Commission to undertake further investigations.**
157	**WYCLIFFE S. WERUNGA** TJRC/L/ITR/SIT/21	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot No. 144)	*8th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**

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158	**CYRUS WANANGWE** TJRC/L/ITR/SIT/22	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot No. 124)	*8th February 2013*	*6th March 2013*		**Recommendation to the National Land Commission to undertake further investigations.**
159	**MWANGI KABURA** TJRC/L/ITR/SIT/24	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot Nos. 123)	*8th February 2013*	*6th March 2013*	The allegations were denied by the witness' family, who claimed to be a purchaser for value without notice. Documentation in support of acquisition were supplied.	**Recommendation to the National Land Commission to undertake further investigations.**
160	**JAMES MWALA** TJRC/L/ITR/SIT/25	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot Nos. 116,117,168 and169)	*8th February*	*18th March 2013*	A letter was sent from Advocate, requesting to be furnished with more information.	**Recommendation to the National Land Commission to undertake further investigations.**
161	**JOHN J. LETTING** TJRC/L/ITR/LYV/26	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot Nos. 227)	*6th February 2013*	*8th March 2013*	He denied the allegations and supplied documents in support of ownership.	**Recommendation to the National Land Commission to undertake further investigations.**
162	**JOHN M. MARITA** TJRC/L/ITR/SIT/27	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot Nos. 222)	*8th February 2013*	*18th March 2013*	He denied the allegations and supplied documents in support of ownership.	**Recommendation to the National Land Commission to undertake further investigations.**
163	**JULIUS S. KUNDU** TJRC/L/ITR/SIT/28	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot Nos. 237)	*8th February 2013*	*6th March 2013*	He denied the allegations and supplied documents in support of ownership.	**Recommendation to the National Land Commission to undertake further investigations.**
164	**SGT. G. K. KIPKURUI** TJRC/L/ITR/SIT/30	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot No. 14)	*8th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
165	**J. K. KOSGEY** TJRC/L/ITR/LYV/31	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot Nos. 188)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
166	**AMBASSADOR BETHUEL KIPLAGAT**	Illegal/irregular acquisition of land in Liyavo Farm, Kitale			.	**Recommendation to the National Land Commission to undertake further investigations**
167	**CPL.V.MUTUNGI** TJRC/L/ITR/LYV/31	Irregular/illegal acquisition of parcels of land meant for Sitatunga Farmers Co-operative Society (Plot Nos. 121)	*8th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
168	**A.MAKILA** TJRC/L/ITR/LYV/1	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No.7) (25 Hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
169	**ALICE CHEPKEMOI** TJRC/L/ITR/LYV/2	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot Nos. 110)(5 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**

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170	**ANDREW.K.SIKA** TJRC/L/ITR/LYV/3	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot Nos. 83)(10 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations..**
171	**BENJAMIN K. CHEPSAT** TJRC/L/ITR/LYV/5	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot Nos. 9)(5 hectares)	*12th February, 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
172	**ANDREW M. ONDIEKI** TJRC/L/ITR/LYV/4	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 15)(5 hectares)	*12th February 2013*	*1st March 2013*	He denied the allegations and supplied documents in support of ownership.	**Recommendation to the National Land Commission to undertake further investigations.**
173	**BENJAMIN K. KATTAM** TJRC/L/ITR/LYV/6	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 89)(20 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
174	**CHARLES KIGEN** TJRC/L/ITR/LYV/7	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 118)(5 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
174	**DANIEL KAMAU MUNA** TJRC/L/ITR/LYV/9	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 108)(5 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
176	**E.OKINYI NANGA** TJRC/L/ITR/LYV/10	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 130)(20 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
177	**DAVID KASUTO** TJRC/L/ITR/LYV/11	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 169)(5 hectares)	*12th February 2013*	*26th March 2013*		**Recommendation to the National Land Commission to undertake further investigations.**
178	**DIANA C.W. IMBOGO** TJRC/L/ITR/LYV/12	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 92)(5 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
179	**DORCAS CHEROTICH** TJRC/L/ITR/LYV/13	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 172)(5 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
180	**DR MUKASA MANGO** TJRC/L/ITR/LYV/14	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 133)(50 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
	DR ESTHER K. KEINO TJRC/L/ITR/LYV/15	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 187)(10 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**

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181	**DR. J.A. TINDI** TJRC/L/ITR/LYV/16	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot Ns 248 and 249) (5 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
182	**ELIZABETH W. KINYANJUI** TJRC/L/ITR/LYV/18	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 248 and 249) (20 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
183	**ELLY.K.SIGOT** TJRC/L/ITR/LYV/19	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 90)(5 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
184	**HON.EZEKIEL** K.BARNGETUNY TJRC/L/ITR/LYV/20	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No.3)(50 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
185	**FRANCIS.K.CHEROGONY** TJRC/L/ITR/LYV/21	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 5)(50 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
186	**FRED CHEROTWO** TJRC/L/ITR/LYV/22	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 20 (5 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
187	**GEORGE.K.KANGOGO** TJRC/L/ITR/LYV/23	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 35)(5 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
188	**HARISON OPEMI** TJRC/L/ITR/LYV/24	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 24)(5 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
189	**IBRAHIM.O.KUTAYI** TJRC/L/ITR/LYV/25	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 19)(5 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations..**
190	**INGATI MUKUNA** TJRC/L/ITR/LYV/26	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 242)(10 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
191	**J.S.ONGUKO** TJRC/L/ITR.LYV/27	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 87)(5 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
192	**JAMES.K.LETING** TJRC/L/ITR/LYV/28	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 11)(5 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**

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193	**JAMES TIRENI** TJRC/L/ITR/LYV/29	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 36)(20 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
194	**JAPHETH KEGOKO** TJRC/L/ITR/LYV/30	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 115)(5 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
195	**CPL.S.KEITANY** TJRC/L/ITR/SIT/31	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 11)(5 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
196	**JOHN BORE** TJRC/L/ITR/LYV/32	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 32)(20 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
197	**JOHN KIBERENGE** TJRC/L/ITR/LYV/33	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 34)(20 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
198	**KIPTOLO ROTICH** TJRC/L/ITR/LYV/34	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 123)(5 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
199	**KUTO A KOGU** TJRC/L/ITR/LYV/35	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 135)(5 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
200	**LEAH CHEMUTAI** TJRC/L/ITR/LYV/36	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 176)(5 hectares)	*12th February 2013*			**Recommendation to the National Land Commission for further investigations.**
201	**MICAH.K.CHESEREM** TJRC/L/ ITR/LYV/37	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 8 (20 hectares)	*12th February 2012*	*1st March 2013*	He denied the allegations and supplied documents in support of the acquisition.	**Recommendation to the National Land Commission for further investigations.**
202	**MICHAEL.K.MAINA** TJRC/L/ITR/LYV/37	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 6 (30 hectares)	*12th February 2013*			**Recommendation to the National Land Commission for further investigations.**
203	**MICHAEL.K.SANG** TJRC/L/ITR/LYV/39	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 8 (20 hectares)	*12th February 2013*			**Recommendation to the National Land Commission for further investigations.**
204	**MILKA.K.ONYONI** TJRC/L/ITR/LYV/40	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 2 (30 hectares)	*2th February 2013*			**Recommendation to the National Land Commission for further investigations.**

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205	**MUTUNGI MISI** TJRC/L/ITR/LYV/41	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 18 (5 hectares)	*12th February 2013*			**Recommendation to the National Land Commission for further investigations.**
206	**P.M.MAHEBO** TJRC/L/ITR/LYV/42	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 14 (20 hectares)	*12th February 2013*			**Recommendation to the National Land Commission for further investigations.**
207	**PAUL K. CHERUIYOT**	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 91 (20 hectares)	*12th February 2013*	*6th March 2013*	Letter responded to by James Alusiola. Documents in support of occupation supplied.	**Recommendation to the National Land Commission for further investigations.**
208	**NELSON OSIEMO** TJRC/L/ITR/LYV/44	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 212 (5 hectares)	*12th February 2013*			**Recommendation to the National Land Commission for further investigations.**
209	**PETER GICHUKI THUKU** TJRC/L/ITR/LYV/45	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 112 (5 hectares)	*12th February 2013*			**Recommendation to the National Land Commission for further investigations.**
210	**PETER M. MANYARA** TJRC/L/ITR/LYV/46	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 131 (20 hectares)	*12th February 2013*			**Recommendation to the National Land Commission for further investigations.**
211	**REUBEN CHERUIYOT** TJRC/L/ITR/LYV/47	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 30 (20 hectares)	*12th February 2013*			**Recommendation to the National Land Commission for further investigations.**
212	**REUBEN KATAM** TJRC/L/ITR/LYV/48	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 85 (20 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
213	**R.M.RAINA** TJRC/L/ITR/LYV 48B	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 8 (20 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
214	**ROBERT ONGWAE** TJRC/L/ITR/49	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 117 (5 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
215	**SILA KIMAIYO ARUSEI** TJRC/L/ITR/LYV/50	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 125,126, and 127 (15 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
216	**SILAS M. OMBENGI** TJRC/L/ITR/LYV/51	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 150 (10 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**

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217	**SOLOMON ANJEGA** TJRC/L/ITR/LYV/53	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 96 (5hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
218	**SOLOMON LEBA OBUOR** TJRC/L/ITR/LYV/54	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 124 (5 hectares)	*12th February 2013*	*26th March 2013*	Allegation denied. Documents in support of ownership supplied.	**Recommendation to the National Land Commission to undertake further investigations.**
219	**STANLEY O. NYAMBOCHO** TJRC/L/ITR/LYV/55	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 173 (5 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
220	**WILLIAM KEITANY** TJRC/L/ITR/LYV/56	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 213 (o.5 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
221	**WILSON NATO** TJRC/L/ITR/LYV/57	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 93 (5 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
222	**Z.T. ONYONKA** TJRC/L/ITR/LYV/58	Irregular/illegal acquisition of parcels of land meant for Liyavo Farmers Co-operative Society (Plot No. 121 (110 hectares)	*12th February 2013*			**Recommendation to the National Land Commission to undertake further investigations.**
223	**STEPHEN KALONZO MUSYOKA** (Former Vice President) TJRC/AMP/LU/007	In the year 1997, he and others participated in the funding and facilitation of an illegal group "Kabuithu" that evicted over 2,000 Tharaka families. After the eviction, he and others awarded themselves huge tracts of deserted land at Tholoni. The piece on which Mwingi Cottages stand was irregularly and illegally acquired.	*19th March 2013*	*5th April 2013*	He denied the allegations that he sponsored the eviction. The vendor for Mwingi cottages produced evidence of sale of the property to Hon Kalonzo Musyoka.	**Recommendation to the National Land Commission to undertake further investigations in regards to Kabuithu. The Commission was satisfied with the response in respect of the Mwingi cottages.**
224	**CHAIRMAN, KITUI COUNTY COUNCIL** TJRC/AMP/LU/007	Irregular allocation of land; irregular allocation of Plot No. 124 belong to Kilivi Self Help Group to a local politician.	*19th March 2013*			**Recommendation to the National Land Commission to undertake investigations.**
225	**GODFREY MUNG'ANIA** TJRC/AMP/LU/007	Involved in the Mitheru massacre on 11th October 1992, by virtue of his position then as DC, where 5 people were killed at Mitheru village.	*19th March 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
226	**MAJ. GEN (Rtd) JOSEPH MUSOMBA** TJRC/AMP/LU/007	Participated in the grabbing of 20,000 hectares of land belonging to 19th Mukaambita Ranching &Farmers Cooperative Society, Sultan Hamud, Machakos.	*19th March 2013*	*27th March 2013*	Allegations were denied	**Recommendation to the National Land Commission to undertake investigations.**
227	**SHADRACK MUTIA MUIU** TJRC/AMP/LU/007	Participated in the grabbing of 20,000 hectares of land belonging to 19th Mukaambita Ranching &Farmers Cooperative Society, Sultan Hamud, Machakos.	*19th March 2013*	*4th April 2013*	The Allegations denied and documents of ownership supplied	**Recommendation to the National Land Commission to undertake investigations.**

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228	**KALEMBE NDILE** TJRC/AMP/LU/007	Participated in the grabbing of Kiboko A, B and C schemes in Makindu belonging to Muungano wa Wanavijiji, Kibwezi Constituency, and allegedly allocated it to his supporters, leaving out legitimate squatters.	*19th March 2013*		The allegations were denied by the witness, and he stated that he is the one who assisted the squatters to settle in Koboko A.B and C.	**Recommendation to the National Land Commission to undertake further investigations.**
229	**HUSSEIN MAALIM** TJRC/AMP/LU/007	On or about 14th February 1984, while serving as Minister of State in the Office of the President in charge of Provincial Administration, State agents caused several violations during the Wagalla Massacre which is believed to have been sanctioned by the Government.	*19th March 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
230	**SWALEH A. BAJABER** TJRC/L/10/106/2013	Fraudulent acquisition of land in Koreni, LR. No. 26781 allegedly belonging to the Koreni community; Improper use of the Provincial Administration machinery to suppress the community's claim and evicting them	*5th March 2013*	*8th April 2013*	He denied the allegations and supplied documents in support of the acquisition and ownership.	**The Commission's investigations and perusal of the documents revealed no evidence of irregularity.**
231	**BONIFACE MGHANGA** **TIMOTHY SIRMA** (Former Provincial Commissioner, Nairobi) **TOSHIBAI PATEL** (Former Senior Lands Officer,Ministry of Lands) **JOHN MWAURA** (Former Physical Planning Officer, Coast Province) **ANDERSON KARIUKI** **JAMES ISAAC**	The listed public officers illegally acquired large tracts of land in the Mtwapa Settlement Schemes and Kijipwa Settlement Scheme yet they were not squatters.				**Recommendations to the National Land Commission to undertake investigations.**
232	**KING'ORI MWANGI** and Officers from the Special Crimes prevention Unit: **SNR. SGT. PETER MUTHEE** **SGT. NJOROGE** **CPL. MBOGO** **CPL. ZABED MAINA** **CPL. ISAAC SANG**	The officers were involved in cover-up after extrajudicial killing of youths in Malindi. An Inquest Court disagreed with Mwangi's assertion that the slain youth were armed robbers and recommended the prosecution of the officers and directed him to arrest and arraign the said officers in court, but he neglected the order and/ or refused.				**Recommendations to the DPP for further investigations.**
233	**PHILEMON MWAISAKA**	Grabbing of land measuring approximately 81 hectares in Mtwapa.				**Recommendations to the National Land Commission to undertake investigation.**

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234	**HON JOHN KEEN**	Fraudulent dealing in land belonging to Kibarani squatters.				**Recommendations to the National Land Commission to undertake investigation.**
235	**JULIUS L. SUNKULI**	While serving as the area Member of Parliament, he was involved in the forceful evictions of persons within Trans Mara on 2nd February, 1989 where lives were lost, women raped, property lost.			The witness responded to the allegations and stated that he was not in Government at the time.	**Investigations revealed that the witness was not a Member of Parliament in 1989. The allegations were therefore disproved.**
236	**HON LUCAS CHEPKITONY** (Former MP, Kerio North)	He illegally acquired a parcel of land belonging to St. Patrick Iten School.	*24th February 2012*		The witness appeared before the Commission on his own volition and produced documents in support of his claim that he had leased the land from St Patrick Iten, and has since given it back.	**The parcel of land has since been returned to its rightful owners. The allegations were therefore disproved.**
237	**KOMBO MWERU**	He illegally acquired land in Tebeson and Kaptich Farm in Eldoret.	*24th February 2012*			**Recommendation to the National Land Commission to undertake further investigations.**
238	**NATHANIEL TUM**	He is alleged to have illegally/irregularly acquired a parcel of land in Sitatunga Farm, Trans Nzoia.			He appeared before the Commission during the hearings in Kitale and produced documents of ownership.	**Recommendations to the National Land Commission to undertake further investigations**
239	**ELIZABETH KEGODE**	She is alleged to have illegally/irregularly acquired a parcel of land in Sitatunga Farm, Trans Nzoia.			She appeared before the Commission during the hearings in Nairobi and produced documents of ownership.	**Recommendations to the National Land Commission to undertake investigations**
240	**AINEAS INDAKWA**, Clerk, County Council of Trans Nzoia)	He is alleged to have been involved in the fraudulent allocation of Chebarus Trading Centre, situated in Sitatunga Farm			He appeared before the Commission during the hearings in Nairobi and produced documents of ownership.	**Recommendations to the National Land Commission to undertake investigations**
241	**LAZARUS SUMBEIYWO**	He is alleged to have illegally/irregularly acquired a parcel of land in Sitatunga Farm, Trans Nzoia.			He appeared before the Commission during the hearings in Nairobi and produced documents of ownership.	**Recommendations to the National Land Commission to undertake investigations**
242	**MAJOR (Rtd)WANAMBISI**	He is alleged to have illegally/irregularly acquired a parcel of land in Maridadi Farm, Trans Nzoia.				**Recommendations to the National Land Commission to undertake investigations**
243	**CHRIS ABIR** (MANAGER, DOMINION FARMS , YALA)	The Company has been adversely mentioned in regards to the illegal encroachment of private land, pollution and environmental degradation in Yala.			Failed to honour invitation to appear before the Commission on 8th April 2013.	**Recommendation to the National Environmental Management Authority for further investigations and appropriate action.**

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244	**BISHOP, CATHOLIC ARCHDIOCESE OF NYERI** TJRC/AMP/LU/007	Alleged boundary dispute between Hill Farm belonging to the Catholic Diocese and the witness who appeared before the Commission.			The witness has had a long standing boundary dispute with the Hill Farm owned by the catholic church which has seen the witness and his family suffer persecution. Another witness had been charged with assaulting one Father Ndumia at Hill Farm, whereupon he was harassed and assaulted by state agents. There was corroborative evidence of the allegations of state harassment on account of the land dispute.	**Recommendations to the National Land Commission for investigations and resolution of the dispute. Recommendations to the Director of Public prosecutions to undertake investigations in respect of the claim of assault.**
245	**KINGFISHER FISHING INDUSTRY** TJRC/L/10/116/2013	The Company is alleged to have been using its jetty for purposes of drug trafficking in Malindi and in the nearby towns. The jetty has been used for illegal sale, production , transport, movement, and distribution of illegal drugs and controlled substances.	*5th March 2013*			**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
246	**ANUAR ALI "BAGRHUSSEIN"** TJRC/L/10/117/2013	The witness is alleged to have been engaging in drugs trafficking in Malindi and the nearby towns. In particulars he is involved in illegal sale, production, transport, movement, and distribution of illegal drugs and controlled substances.	*5th March*	*5th April 2013*	He denied the allegations.	**Recommendation to the Director of Public Prosecutions to undertake further investigations.**
247	**MUNYU INDUSTRIES LIMITED** TJRC/L/10/114/2013	Forceful evictions at Msumarini with the help of the state security agents and the local provincial administration; and encroachment into private land under the false pretence of future compensation and confiscation of property, beating of victims of eviction; environmental degradation of the ecosystems adjacent to the industrial areas, lack of audits and assessments; violation of various labour rights.	*5th March 2013*			**Recommendation to the National Land Commission to investigate the circumstances of acquisition of the said parcels of land; National Environmental Management Authority to undertake comprehensive Environmental Audits and sanction accordingly for non-compliance; Ministry of Labour to address the concerns on the protection of labour rights..**

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248	**MOMBASA SALT WORKS LTD** TJRC/L/10/112/2013	Forceful evictions at Msumarini with the help of the state security agents and the local provincial administration; and encroachment into private land under the false pretence of future compensation and confiscation of property, beating of victims of eviction; environmental degradation of the ecosystems adjacent to the industrial areas, lack of audits and assessments; violation of various labour rights.	*5TH March 2013*			**Recommendation to the National Land Commission to investigate the circumstances of acquisition of the said parcels of land;National Environmental Management Authority to undertake comprehensive Environmental Audits and sanction accordingly for non-compliance; Ministry of Labour to address the concerns on the protection of labour rights.**
249	**KENSALT LIMITED** TJRC/L/10/109/2013	Forceful evictions at Kadzuhoni with the help of the state security agents and the local provincial administration; and encroachment into private land under the false pretence of future compensation and confiscation of property, beating of victims of eviction; environmental degradation of the ecosystems adjacent to the industrial areas, lack of audits and assessments; violation of various labour rights.	*5th March 2013*			**Recommendation to the National Land Commission to investigate the circumstances of acquisition of the said parcels of land;National Environmental Management Authority to undertake comprehensive Environmental Audits and sanction accordingly for non-compliance; Ministry of Labour to address the concerns on the protection of labour rights.**
250	**MALINDI SALT WORKS LIMITED** TJRC/L/10/111/2013	Forceful evictions at Kambi ya Waya with the help of the state security agents and the local provincial administration; and encroachment into private land under the false pretence of future compensation and confiscation of property, beating of victims of eviction; environmental degradation of the ecosystems adjacent to the industrial areas, lack of audits and assessments; violation of various labour rights.	*5th March 2013*	*2nd April 2013*	Allegations denied	**Recommendation to the National Land Commission to investigate the circumstances of acquisition of the said parcels of land; National Environmental Management Authority to undertake comprehensive Environmental Audits and sanction accordingly for non-compliance; Ministry of Labour to address the concerns on the protection of labour rights.**

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251	**SOLAR LIMITED** TJRC/L/115/2013	Forceful evictions at Msumarini with the help of the state security agents and the local provincial administration; and encroachment into private land under the false pretence of future compensation and confiscation of property, beating of victims of eviction; environmental degradation of the ecosystems adjacent to the industrial areas, lack of audits and assessments; violation of various labour rights.				**Recommendation to the National Land Commission to investigate the circumstances of acquisition of the said parcels of land;National Environmental Management Authority to undertake comprehensive Environmental Audits and sanction accordingly for non-compliance; Ministry of Labour to address the concerns on the protection of labour rights.**
252	**KRYSTALLINE SALT LIMITED** TJRC/L/10/110/2013	Forceful evictions at Marereni with the help of the state security agents and the local provincial administration; and encroachment into private land under the false pretence of future compensation and confiscation of property, beating of victims of eviction; environmental degradation of the ecosystems adjacent to the industrial areas, lack of audits and assessments; violation of various labour rights.	*5th March 2013*	*3rd April 2013*	Allegations denied	**Recommendation to the National Land Commission to investigate the circumstances of acquisition of the said parcels of land; National Environmental Management Authority to undertake comprehensive Environmental Audits and sanction accordingly for non-compliance; Ministry of Labour to address the concerns on the protection of labour rights.**
253	**KEMUSALT WORKS LTD** TJRC/L/10/107/2013	Forceful evictions at Kanagoni with the help of the state security agents and the local provincial administration; and encroachment into private land under the false pretence of future compensation and confiscation of property, beating of victims of eviction; environmental degradation of the ecosystems adjacent to the industrial areas, lack of audits and assessments; violation of various labour rights.	*5th March 2013*			**Recommendation to the National Land Commission to investigate the circumstances of acquisition of the said parcels of land; National Environmental Management Authority to undertake comprehensive Environmental Audits and sanction accordingly for non-compliance; Ministry of Labour to address the concerns on the protection of labour rights.**

#	NAME	ALLEGED VIOLATION	DATE OF NOTICE/ SUMMONS	RECEIPT OF RESPONSE/ HEARING	NATURE OF RESPONSE	COMMISSION'S FINDINGS & RECOMMENDATIONS
254	**ATHI RIVER MINING COMPANY** TJRC/L/10/108/2013	The Company's mining activities have resulted in land degradation through loss of vegetative cover, soil erosion, and contamination of water sources and severe dust and noise pollution in Bondora Village. As a result, the inhabitants have contracted respiratory ailments and other occupational lung diseases. Blast activities within the quarry site have led to solid debris flying into the neighbouring residences, thereby endangering the lives of the inhabitants. Heavy vibrations from rock blasting have caused serious cracks in houses and pit latrines, some of which have crumbled. There are concerns that the necessary environmental impact assessments were not conducted prior to the commencement of the mining and blasting project. Following several complaints by the inhabitants against the company, it has in the past promised to put in place measures to mitigate against these environmental concerns but has reneged on them. It has consistently ignored or refused to comply with environmental requirements and specified directives from the Ministry of Environment and Natural Resources. The Company has illegally and/or irregularly expropriated land belonging to inhabitants of Kambe, destroyed trees and crops thereon, and converted the same to access roads for its exclusive usage.	*5th March 2013*			**Recommendation to the National Land Commission to investigate the circumstances of acquisition of the said parcels of land; National Environmental Management Authority to undertake comprehensive Environmental Audits and sanction accordingly for non-compliance; Ministry of Labour to address the concerns on the protection of labour rights.**
255	**KURAWA INDUSTRIES LIMITED** TJRC/L/10/113/2013	Forceful evictions at Kanagoni with the help of the state security agents and the local provincial administration; and encroachment into private land under the false pretence of future compensation and confiscation of property, beating of victims of eviction; environmental degradation of the ecosystems adjacent to the industrial areas, lack of audits and assessments; violation of various labour rights.	*5th March 2013*		Appeared before the Commission on 10th April 2013.	**Recommendation to the National Land Commission to investigate the circumstances of acquisition of the said parcels of land; National Environmental Management Authority to undertake comprehensive Environmental Audits and sanction accordingly for non-compliance; Ministry of Labour to address the concerns on the protection of labour rights.**

Appendix 2:

List of Adversely Mentioned Persons in Official/Public Reports Relating to Politically Instigated Ethnic Violence/Clashes

No.	Name of the Adversely Mentioned Person/ status at the Time of Alleged Violation.	Alleged Crime/ Violation	Recommendation by Official Body	Action Taken	Reference	Recommendation by TJRC
1	Hon. Willy Kamuren, Former MP Baringo North	Ethnic Clashes 1991 – 1992, 1997-1998, Kericho District Ethnic incitement	Investigations and legal action to be taken	No action taken	• Akiwumi Report Pg 50 • Kiliku Report Pg 9, 10.	Implement recommendations of Akiwumi and Kiliku Reports
2	Hon. Kimunai Soi, Former MP Chepalungu	Ethnic Clashes 1991-1992. Nakuru District Ethnic Incitement	Investigation and prosecution for incitement.	No action taken	Akiwumi Report Rift Valley province	Implement recommendation of Akiwumi Report
3	Jackson Kibor, Former KANU Chairman Uasin Gishu	Ethnic Clashes 1991-1992. Nakuru District Ethnic Incitement	Investigation and prosecution for incitement.	No action taken	Akiwumi Report Rift Valley province	Implement recommendation of Akiwumi Report
4	R.K. Kirui Former DO, Tinderet Division	Ethnic Clashes 1991-1992. Nakuru District Involvement in ethnic clashes in Meteitei Farm	Investigation with a view to charges of being an accessory.	No action Taken	Akiwumi Report, Rift Valley Province Pg, 14	Implement recommendation of Akiwumi Report
5	Philip Kipserem Karoney, Chief Miteitei Location	Ethnic Clashes 1991-1992. Nakuru District Involvement in ethnic clashes in Meteitei Farm	Investigation with a view to charges of being an accessory.	No action Taken	Akiwumi Report, Rift Valley Province Pg, 14	Implement recommendation of Akiwumi Report
6	Henry Arap Tuwei, Senior Chief Songhor Location.	Ethnic Clashes 1991-1992. Nandi District Involvement in ethnic clashes in Owiro Farm	Investigation with a view of taking appropriate legal action.	No action taken.	Akiwumi Report Pg9, 14; Kiliku Report Pg 70.	Implement recommendations of Akiwumi and Kiliku Reports
7	Julius Ndegwa, OCS, Songhor Police Station.	Ethnic Clashes 1991-1992. Nandi District	Investigation with a view of taking appropriate legal action.		Kiliku Report Pg	Implement recommendation of Kiliku Report
8	Tolowen Tirop – Chief of Turbo Location	Ethnic Clashes 1992. Involvement in ethnic clashes (openly partisan against non-Kalenjin.)	Investigation with a view of taking appropriate legal action.		Kiliku Report Pg 69.	Implement recommendation of Kiliku Report
9	Simon K. Ng'eny, Assistant Chief Turbo	Ethnic Clashes 1992. Involvement in ethnic clashes (openly partisan against non-Kalenjin.)	Investigation with a view of taking appropriate legal action.		Kiliku Report Pg 69.	Implement recommendation of Kiliku Report
10	Kiprotich Arap Kebenei, Chief of Eldoret Municipality	Ethnic Clashes 1992. Involvement in ethnic clashes	Investigation with a view of taking appropriate legal action.		Kiliku Report Pg 69	Implement recommendation of Kiliku Report

No.	Name of the Adversely Mentioned Person/ status at the Time of Alleged Violation.	Alleged Crime/ Violation	Recommendation by Official Body	Action Taken	Reference	Recommendation by TJRC
11	Laban Sirma Assistant Chief Eldoret Municipality.	Ethnic Clashes 1992. Involvement in ethnic clashes	Investigation with a view of taking appropriate legal action.		Kiliku Report Pg 69	Implement recommendation of Kiliku Report
12	Timothy Sirma, Former PC Coast Province.	Ethnic Clashes 1991 – 1992 Kericho District Involvement/ Condoned ethnic clashes Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations to determine criminal culpability and legal action taken.	No action was taken	Akiwumi Report Pg 32 (Chapter on Introduction) and Pg 28 (Chapter on Rift Valley) Akiwumi Report Coast Province; Pg 38	Implement recommendation of Akiwumi Report
13	Nicholas Mberia, Former DC, Kericho District.	Ethnic Clashes 1991 – 1992 Kericho District Involvement/ Condoned ethnic clashes	Investigations to determine criminal culpability and legal action taken.	No action was taken.	Akiwumi Report Pg 32 (Chapter on Introduction) and Pg 28 (Chapter on Rift Valley)	Implement recommendation of Akiwumi Report
14	Eliud Langat, Deputy Commissioner of Police and former OCPD Kericho.	Ethnic Clashes 1991 – 1992 Kericho District Complicity to avert clashes	Investigation and legal action taken.	No action taken.	Akiwumi Report	Implement recommendation of Akiwumi Report
15	Hon. William Kikwai, Former MP, Kipkelion Constituency.	Ethnic Clashes 1991 – 1992 Kericho District Ethnic Incitement and intimidation of non-Kalenjin.	Investigations to determine criminal culpability and legal action taken.	No action was taken.	Akiwumi Report	Implement recommendation of Akiwumi Report
16	Chumo, Councilor from Kipkelion Division.	Ethnic Clashes 1991 – 1992 Kericho District Ethnic Incitement and intimidation of non-Kalenjin	Investigations to determine criminal culpability and legal action taken.	No action was taken.	Akiwumi Report	Implement recommendation of Akiwumi Report
17	Benjamin Ruto, Councilor from Kipkelion Division.	Ethnic Clashes 1991 – 1992 Kericho District Ethnic Incitement and intimidation of non-Kalenjin	Investigations to determine criminal culpability and legal action taken.	No action was taken.	Akiwumi Report	Implement recommendation of Akiwumi Report
18	Hon. Nicholas Biwott, Former Minister of Energy.	Ethnic Clashes 1991 – 1992 Kericho District Ethnic incitement	Investigations and legal action	No action taken	• Akiwumi Report Pg 50 (Introduction section) • Kiliku Report Pg 9, 10.	Implement recommendations of Akiwumi and Kiliku Reports
19	Hon. Christopher Lomada, Former Assistant Minister for Culture and Social Services	Ethnic Clashes 1991 – 1992 Kericho District Ethnic incitement	Investigations and legal action	No action taken	• Akiwumi Report Pg 50 (Introduction section) • Kiliku Report Pg 9, 10.	Implement recommendations of Akiwumi and Kiliku Reports
20	Hon. Paul Chepkok	Ethnic Clashes 1991 – 1992 Kericho District Ethnic incitement	Investigations and legal action to be taken.	No action taken	• Akiwumi Report Pg 50 (Introduction section) • Kiliku Report Pg 9, 10.	Implement recommendations of Akiwumi and Kiliku Reports

No.	Name of the Adversely Mentioned Person/ status at the Time of Alleged Violation.	Alleged Crime/ Violation	Recommendation by Official Body	Action Taken	Reference	Recommendation by TJRC
21	Hon. Timothy Mibei, Former Minister of Road and Public Works.	Ethnic Clashes 1991 – 1992 Kericho District Ethnic Incitement	Investigations and legal action to be taken.	No action taken	• Kiliku Report Pg 9, 10. • Akiwumi Report Pg 50.	Implement recommendations of Akiwumi and Kiliku Reports
22	William Kikwai	Ethnic Clashes 1991 – 1992 Kericho District Ethnic Incitement	Investigations and legal action to be taken.	No action taken	• Kiliku Report Pg 9, 10. • Akiwumi Report Pg 50.	Implement recommendations of Akiwumi and Kiliku Reports
23	John Terer	Ethnic Clashes 1991 – 1992 Kericho District Ethnic Incitement	Investigations and legal action to be taken.	No action taken	• Kiliku Report Pg 9, 10. • Akiwumi Report Pg 50.	Implement recommendation of Kiliku and Akiwumi Reports
24	Lawi Kiplagat	Ethnic Clashes 1991 – 1992 Kericho District Ethnic Incitement	Investigations and legal action to be taken.	No action taken	• Kiliku Report Pg 9, 10. • Akiwumi Report Pg 50.	Implement recommendations of Kiliku and Akiwumi Reports
25	Peter Nangole	Ethnic Clashes 1991 – 1992 Kericho District Ethnic Incitement	Investigations and legal action to be taken.	No action taken	• Kiliku Report Pg 9, 10. • Akiwumi Report Pg 50.	Implement recommendation of Kiliku and Akiwumi Reports
26	Ayub Chepkwony	Ethnic Clashes 1991 – 1992 Kericho District Ethnic Incitement	Investigations and legal action to be taken.	No action taken	• Kiliku Report Pg 9, 10. • Akiwumi Report Pg 50.	Implement recommendations of Kiliku and Akiwumi Reports
27	Robert Kipkorir	Ethnic Clashes 1991 – 1992 Kericho District Ethnic Incitement	Investigations and legal action to be taken.	No action taken	• Kiliku Report Pg 9, 10. • Akiwumi Report Pg 50.	Implement recommendations of Kiliku and Akiwumi Reports
28	Samson Ole Tuya.	Ethnic Clashes 1991 – 1992 Kericho District Ethnic Incitement	Investigations and legal action to be taken.	No action taken	• Kiliku Report Pg 9, 10. • Akiwumi Report Pg 50.	Implement recommendations of Akiwumi and Kiliku and Reports
29	Hon. Kipkalia Kones	Ethnic Clashes 1991 – 1992 Kericho District Ethnic Incitement	Investigations and appropriate legal action to be taken.	No action taken	• Kiliku Report Pg 9, 10. • Akiwumi Report Pg 50.	(Deceased)
30	Joseph Saina; Assistant Chief of Koguta in Belgut Division	Ethnic Clashes 1991 – 1992 Kericho District Ethnic killings	Investigations with a view of taking appropriate legal action	No action was taken.	Kiliku Report Pg 69.	Implement recommendation of Kiliku Report
31	Moses Kiptere; Chief of Kunyak location	Ethnic Clashes 1991 – 1992 Kericho District Ethnic incitement and killings	Investigations with a view of taking appropriate legal action	No action was taken.	Kiliku Report Pg 69.	Implement recommendation of Kiliku Report
32	Joseph Kipchumba; Assistant Chief	Ethnic Clashes 1991 – 1992 Kericho District Ethnic incitement and killings	Investigations with a view of taking appropriate legal action	No action was taken.	Kiliku Report Pg 69.	Implement recommendation of Kiliku Report
33	Wilson Koros	Ethnic Clashes 1991 – 1992 Kericho District Ethnic incitement and killings	Investigations with a view of taking appropriate legal action	No action was taken.	Kiliku Report Pg 69.	Implement recommendation of Kiliku Report

No.	Name of the Adversely Mentioned Person/ status at the Time of Alleged Violation.	Alleged Crime/ Violation	Recommendation by Official Body	Action Taken	Reference	Recommendation by TJRC
34	Paul Cheruiyot, Former DO, Olenguruone Division.	Ethnic Clashes 1991 – 1992 Nakuru District Complicity to avert clashes	Investigations with a view of taking appropriate legal action	No action taken	Akiwumi Report Pg 50,	Implement recommendation of Akiwumi Report
35	Jonathan Mutai, Chief of Amalo Location, Olenguruone Division.	Ethnic Clashes 1991 – 1992 Nakuru District Involvement in the ethnic clashes.	Investigation and legal action taken. .	No action taken	• Akiwumi Report Pg 49 and 50. • Kiliku Report Pg. 19 & 20.	Implement recommendations of Kiliku and Akiwumi Reports
36	Wilson Maritim, Former Assistant Chief Molo South Sub-location	Ethnic Clashes 1991 – 1992 Nakuru District Complicity to avert the clashes	Investigation and legal action taken. .	No further action was taken.	• Akiwumi Report Pg 56. • Kiliku report Pg. 19	Implement recommendations of Kiliku and Akiwumi Reports
37	Shem Petkay Miriti, Former PSIO Rift Valley Province	Ethnic Clashes 1997 – 1998 Nakuru District Complicity to avert the clashes	Investigations with a view of taking appropriate legal action	No action was taken.	Akiwumi report Pg 72, 74, 75, 76, 77, 78, 82.	Implement recommendation of Akiwumi Report
38	Kipkorir Siele, Former DSIO Nakuru District	Ethnic Clashes 1997 – 1998 Nakuru District Complicity to avert the clashes	Investigations with a view of taking appropriate legal action	No action was taken.	Akiwumi report Pg 72, 74, 75, 76, 77, 78, 82.	Implement recommendation of Akiwumi Report
39	All Other Provincial Security Committee Members, Rift Valley Province, and all District Security Members, Nakuru District, During 1998 Njoro Clashes.	Ethnic Clashes 1997 – 1998 Nakuru District Involvement in the ethnic clashes.	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Commission (recommendation Section.)	Implement recommendation of Akiwumi Report
40	Hon. John Njenga Mungai	Ethnic Clashes 1991 – 1992 Nakuru District Ethnic incitement	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku Report Pg, 15.	Implement recommendation of Kiliku Report
41	Kiplangat Arap Cherubo Assistant Chief of Bochege Farm.	Ethnic Clashes 1991 – 1992 Nakuru District Ethnic incitement	Investigations with a view of taking appropriate legal action.	No action taken.	Kiliku Report Pg 15, 16	Implement recommendation of Kiliku Report
42	Elijah Tanui, Local Assistant Chief	Ethnic Clashes 1991 – 1992 Nakuru District Ethnic incitement	Investigations with a view of taking appropriate legal action.	No action was taken.	Kiliku Report Pg. 16	Implement recommendation of Kiliku Report
43	Hon. Wilson leitich	Ethnic Clashes 1991 – 1992 Nakuru District Ethnic incitement	Investigations with a view of taking appropriate legal action.	No action was taken	Kiliku Report Pg. 16	Implement recommendation of Kiliku Report
44	Mary Leitich. Wife of Hon. Wilson Leitich.	Ethnic Clashes 1991 – 1992 Nakuru District Involvement in ethnic violence	-	N/A	Kiliku Report Pg. 17	Investigation with a view to prosecute

No.	Name of the Adversely Mentioned Person/ status at the Time of Alleged Violation.	Alleged Crime/ Violation	Recommendation by Official Body	Action Taken	Reference	Recommendation by TJRC
45	Richard Rono, A former Kenya Air Force personnel and "Teacher at Kaptambui Primary School"	Ethnic Clashes 1991 – 1992 Nakuru District Involvement in ethnic violence – Murder.	Investigation with a view to prosecute in connection with perpetration of crime.	No action was taken.	Kiliku Report Pg. 17.	Implement recommendation of Kiliku Report
46	Benjamin Ndegwa, Chief Olenguruone, Molo South	Ethnic Clashes 1991 – 1992 Nakuru District Ethnic incitement	Investigation and appropriate action taken	No action taken	Kiliku report Pg. 19 & 20.	Implement recommendation of Kiliku Report
47	Father Moses Mahuho of St. Kizito Church Olenguruone	Ethnic Clashes 1991 – 1992 Nakuru District Ethnic incitement	Investigation and appropriate action taken	No action taken	Kiliku report Pg. 19 & 20.	Implement recommendation of Kiliku Report
48	Josphat Kigo, Headmaster of Olenguruone Secondary School.	Ethnic Clashes 1991 – 1992 Nakuru District Ethnic incitement	Investigation and appropriate action taken	No action taken	Kiliku report Pg. 19 & 20.	Implement recommendation of Kiliku Report
49	Jonathan Kiprop Soi, Former DO Mau Division	Ethnic Clashes 1991 – 1992 Narok District Complicity to avert clashes	Investigation and appropriate action taken	No action was taken	Akiwumi report Pg 68	Implement recommendation of Akiwumi Report
50	Moses Ole Naimadu, former Councilor	Ethnic Clashes 1991 – 1992 Narok District Ethnic incitement.	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku Report Pg. 61	Implement recommendation of Kiliku Report
51	Moses Ole Sarumi, Former Councilor	Ethnic Clashes 1991 – 1992 Narok District Ethnic incitement.	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku Report Pg. 61	Implement recommendation of Kiliku Report
52	Ole Sano, a teacher at Kilgoris Secondary School	Ethnic Clashes 1991 – 1992 Narok District Ethnic incitement.	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku Report Pg. 61	Implement recommendation of Kiliku Report
53	Ole Nasa, Assistant Chief. He was once arrested for inciting the public.	Ethnic Clashes 1991 – 1992 Narok District Ethnic incitement.	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku Report Pg. 61	Implement recommendation of Kiliku Report
54	Hon. Julius Ole Sunkuli, a Magistrate at Sotik	Ethnic Clashes 1991 – 1992 Narok District Ethnic incitement.	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku Report Pg. 61	Implement recommendation of Kiliku Report
55	Zephania M. Anyieni former Mp for Majoge Bassi	Ethnic Clashes 1991 – 1992 Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku report Pg. 61	Implement recommendation of Kiliku Report
56	Chief Ongaro	Ethnic Clashes 1991 – 1992 Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action was taken	Kiliku Report Pg. 61	Implement recommendation of Kiliku Report
57	Hon. Chris Obure					

No.	Name of the Adversely Mentioned Person/ status at the Time of Alleged Violation.	Alleged Crime/ Violation	Recommendation by Official Body	Action Taken	Reference	Recommendation by TJRC
58	Peter Ondimu – Former member of Armed Forces Medical Corps	Ethnic Clashes 1991 – 1992 Involvement in ethnic clashes	No action was recommended against Mr. ondimu.	N/A	Kiliku Report, Pg 61.	Implement recommendation of Kiliku Report
59	Moses Nyaigoti of Chebilat	Ethnic Clashes 1991 – 1992 Kisii/Nyamira Districts Involvement in ethnic clashes	The Committee did not recommend any action against Mr. Nyaigoti.	No action taken	Kiliku Report Pg 61.	Implement recommendation of Kiliku Report
60	Arap Rono – A KANU sub-locational Chairman.	Ethnic Clashes 1991 – 1992 Kisii/Nyamira Districts Ethnic Incitement	Investigations with a view of taking appropriate legal action.	No action was taken	Kiliku Report Pg 61.	Implement recommendation of Kiliku Report
61	Councillor Richard Chepkibet Mibei, Chairman of Kipsigis County Council.	Ethnic Clashes 1991 – 1992 Kisii/Nyamira Districts Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action .	No action was taken	Kiliku Report Pg. 61.	Implement recommendation of Kiliku Report
62	Andrew Saikwa	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action was taken	Kiliku Report Pg 68	(Deceased)
63	John Ndiema Choito	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action was taken	Kiliku Report Pg 68	Implement recommendation of Kiliku Report
64	Christopher Kiraro Saikwa – Area Chief.	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action was taken	Kiliku Report Pg 68	Implement recommendation of Kiliku Report
65	William Changole – Bungoma District Commissioner	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Ethnic incitement	Investigations with a view of taking appropriate legal action	No action was taken	Kiliku report Pg 69	Implement recommendation of Kiliku Report
66	Aramisi King'a	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action was taken	Kiliku Report Pg 27	Implement recommendation of Kiliku Report
67	Andrew Rotich; Chief of Chepsiro	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Complicity to avert ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku Report Pg 28.	Implement recommendation of Kiliku Report
68	Simeon; A Councillor of Kapsikilai Ward	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Ethnic incitement	Investigations with a view of taking appropriate legal action.	No action was taken.	Kiliku Report, Pg. 28.	Implement recommendation of Kiliku Report

No.	Name of the Adversely Mentioned Person/ status at the Time of Alleged Violation.	Alleged Crime/ Violation	Recommendation by Official Body	Action Taken	Reference	Recommendation by TJRC
69	Sitati Maboni	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku R eport Pg 30.	Implement recommendation of Kiliku Report
70	Hon. Wilberforce Kisiero MP – Mt. Elgon	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Ethnic incitement	Investigations with a view of taking appropriate legal action.	No action was taken	Kiliku Report Pg. 32.	Implement recommendation of Kiliku Report
71	Mark Too; KANU chairman in Nandi District.	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Ethnic incitement	Investigations with a view of taking appropriate legal action.	No action was taken	Kiliku Report Pg. 36.	Implement recommendation of Kiliku Report
72	Wilson Chemosat	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Murder and involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku Report Pg 32.	Implement recommendation of Kiliku Report
73	Solomon Kirui; Assistant Chief Saboti Location	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku Report Pg 32.	Implement recommendation of Kiliku Report
74	Councilor Opindu of Nzoia County Council	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Ethnic incitement	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku Report Pg 34	Implement recommendation of Kiliku Report
75	Reuben Samoei Dara: Chairman Kapsakwony Town Council	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku report Pg 35.	Implement recommendation of Kiliku Report
76	Andrew Muneria; Vice Chairman Trans Nzoia County Council	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku report Pg 35.	Implement recommendation of Kiliku Report
77	Masai Masaranja; Vice Chairman Kapsakwony Town Council	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku report Pg 35.	Implement recommendation of Kiliku Report
78	Andrew Chamayeik; Member, C.P.K synod, Nambale	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku report Pg 35.	Implement recommendation of Kiliku Report
79	Reuben Sabet Assistant Chief of Kibuku	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku report Pg 35.	Implement recommendation of Kiliku Report

No.	Name of the Adversely Mentioned Person/ status at the Time of Alleged Violation.	Alleged Crime/ Violation	Recommendation by Official Body	Action Taken	Reference	Recommendation by TJRC
80	Ben Jipcho; Assistant Inspector of Primary Schools, in Trans-Nzoia.	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku report Pg 35.	Implement recommendation of Kiliku Report
81	Hon. Elijah Mwangale, M.P. Kimilili	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku report Pg 39.	(Deceased)
82	Hon. Joash wa Mang'oli M.P. Webuye	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku report Pg 39.	Implement recommendation of Kiliku Report
83	Hon. Noah Wekesa, M.P. Kwanza	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku report Pg 39.	Implement recommendation of Kiliku Report
84	Stephen Sisimo – Resident of Kiborwa Location	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku report Pg 39.	Implement recommendation of Kiliku Report
85	Joseph Cherogony – KANU Chairman – Saboti Location	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku report Pg 39.	Implement recommendation of Kiliku Report
86	Geoffrey Kipkut –Chief, Endebess Location	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku report Pg 39.	Implement recommendation of Kiliku Report
87	Samwel K. Moiben – Kaa Farm	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku report Pg 39.	Implement recommendation of Kiliku Report
88	Charles Cheptais – KANU Chairman – Kiborwa location	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku report Pg 39.	Implement recommendation of Kiliku Report
89	Councilor J. Toili – Nzoia County Council	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku report Pg 39.	Implement recommendation of Kiliku Report

No.	Name of the Adversely Mentioned Person/ status at the Time of Alleged Violation.	Alleged Crime/ Violation	Recommendation by Official Body	Action Taken	Reference	Recommendation by TJRC
90	Michael Kitio	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku report Pg 39.	Implement recommendation of Kiliku Report
91	Wafula Buke – Former Student Leader: The University of Nairobi	Ethnic Clashes 1991 – 1992 Trans Nzoia and Bungoma District. Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Kiliku report Pg 39.	Implement recommendation of Kiliku Report
92	Athuman Zuberi Mwakunyapa: Assistant Chief Pungu Sub-Location, Kwale District	Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Report Coast Province Pg 18	Implement recommendation of Akiwumi Report
93	Ramadhani Mwalimu Mwaonu: Assistant Chief Kiteje Sub-Location, Kwale District	Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Report Coast Province Pg 18	Implement recommendation of Akiwumi Report
94	Nyaume Mohamed: Assistant Chief Ngombeni Sub-Location, Kwale District.	Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Report Coast Province Pg 18	Implement recommendation of Akiwumi Report
95	Samuel Kipchumba Limo Provincial Commissioner of Coast Province	Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Report Coast Province Pg 18	Implement recommendation of Akiwumi Report
96	AP Inspector Mohamed Juma Kutsola Former Sergeant attached to DC Kwale District.	Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Report Coast Province Pg 18	Implement recommendation of Akiwumi Report
97	David Opala Former DO Matuga Division, Kwale District	Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Report Coast Province	Implement recommendation of Akiwumi Report
98	Paul Olando Former DC Mombasa	Ethnic Clashes 1997 – 1998 Mombasa	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Report Coast Province	Implement recommendation of Akiwumi Report
99	Wilfred Kimalat: Former Permanent Secretary, Provincial Administration and Internal Security.	Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Report Coast Province; Pg 38	Implement recommendation of Akiwumi Report
100	Mohamed Hassan Haji: Former PC Coast Province	Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Report Coast Province; Pg 38	Implement recommendation of Akiwumi Report
101	Wilson Boinett: Former Director of the Directorate of Security Intelligence	Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Report Coast Province; Pg 38	Implement recommendation of Akiwumi Report

No.	Name of the Adversely Mentioned Person/ status at the Time of Alleged Violation.	Alleged Crime/ Violation	Recommendation by Official Body	Action Taken	Reference	Recommendation by TJRC
102	Joseph Jakaiti	Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Report Coast Province; Pg 38	Implement recommendation of Akiwumi Report
103	Japheth Mwania: Provincial Police Officer	Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Report Coast Province; Pg 38	Implement recommendation of Akiwumi Report
104	Omar Raisi: Former Chief Inspector of Police, Mombasa	Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Report Coast Province; Pg17,	Implement recommendation of Akiwumi Report
105	Peter Wilson: Former DSIO, Mombasa	Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Report Coast Province; Pg17,	Implement recommendation of Akiwumi Report
106	Shukri Baramadi:Former PSIO, Mombasa	Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Report Coast Province; Pg17,	Implement recommendation of Akiwumi Report
107	Francis Gichuki Former PPO, Coast province	Ethnic Clashes 1997 – 1998 Mombasa Complicity to avert ethnic clashes. (Connivance)	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi commission, Coast Province Pg 26	Implement recommendation of Akiwumi Report
108	Karisa Maitha	Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi commission, Coast Province	(Deceased)
109	Rashid Sajjad	Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Commission, Coast province Pg. 39	Implement recommendation of Akiwumi Report
110	Rashid Shakombo	Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Commission, Coast province Pg. 39	Implement recommendation of Akiwumi Report
111	Suleiman Kamolle	Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Commission, Coast province Pg. 39	Implement recommendation of Akiwumi Report
112	Kassim Wamzandi	Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Commission, Coast province Pg. 39	Implement recommendation of Akiwumi Report
113	Juma Hamisi Mwansele	Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Commission, Coast province Pg. 19	Implement recommendation of Akiwumi Report

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114	Mwalimu Masoud Mwahima: Former Councilor	Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Commission, Coast province Pg. 32	Implement recommendation of Akiwumi Report
115	Hisham Mwidau	Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Commission, Coast province Pg. 32	Implement recommendation of Akiwumi Report
116	Swaleh Bin Alfan	Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Commission, Coast province Pg. 26 & 40	Implement recommendation of Akiwumi Report
117	Mohamed Mdogo	Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Commission, Coast province Pg. 40	Implement recommendation of Akiwumi Report
118	Omar Masumbuko	Ethnic Clashes 1997 – 1998 Mombasa Involvement in ethnic clashes	Investigations with a view of taking appropriate legal action.	No action taken	Akiwumi Commission, Coast province Pg. 41	Implement recommendation of Akiwumi Report
119.	Hon. William Ole Ntimama - MP, Narok North	Ethnic Clashes 1991 – 1992 Narok District Ethnic Incitement Incitement to violence. In 2007/2008 he Incited Maasai's against Kikuyus and Kisiis	Investigations and appropriate action taken. The Attorney General or the Kenya Police Force should undertake investigations in terms of Section 26 of the constitution to determine criminal culpability.	No action taken	Akiwumi Report Pg. 50 KNCHR 2008: On the Brink of the Precipice. A Human Rights Account of Kenya's post-2007 Election Violence. Pg 183	Implement recommendations of Akiwumi Report And KNCHR (2008) Report -On the Brink of the Precipice
120.	Hon. Omondi Anyanga - MP, Nyatike	Participating and funding 2007/2008 PEV .	The Attorney General or the Kenya Police Force should undertake investigations in terms of Section 26 of the constitution to determine criminal culpability	No action has been taken	KNCHR 2008: On the Brink of the Precipice. Pg183	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
121.	Hon. Henry Kosgey - MP Tinderet, Cabinet Minister	Planning, inciting and financing the 2007/2008 PEV	The Attorney General or the Kenya Police Force should undertake investigations in terms of Section 26 of the constitution to determine criminal culpability.	Accused of crimes against humanity at the International Criminal Court – charges were not confirmed.	KNCHR 2008: On the Brink of the Precipice. Pg 183	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice

No.	Name of the Adversely Mentioned Person/ status at the Time of Alleged Violation.	Alleged Crime/ Violation	Recommendation by Official Body	Action Taken	Reference	Recommendation by TJRC
122.	Hon. Sally Kosgey - MP Aldai Cabinet Minister.	Planning incitement and financing 2007/2008 PEV	The Attorney General or the Kenya Police Force should undertake investigations in terms of Section 26 of the constitution to determine criminal culpability.	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 182	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
123.	Hon. Boaz Kaino - Mp Marakwet West	Inciting violence during 2007/2008 PEV	The Attorney General or the Kenya Police Force should undertake investigations in terms of Section 26 of the constitution to determine criminal culpability.	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 182	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
124.	Hon. Fred Kapondi - MP Mt. Elgon	Inciting violence during 2007/2008 PEV	The Attorney General or the Kenya Police Force should undertake investigations in terms of Section 26 of the constitution to determine criminal culpability.	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 182	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
125.	Hon. William Ruto - MP Eldoret North	Planning incitement and financing violence during 2007/2008	The Attorney General or the Kenya Police Force should undertake investigations in terms of Section 26 of the constitution to determine criminal culpability.	Currently standing trial for Crimes Against Humanity before the International Criminal Court	KNCHR 2008: On the Brink of the Precipice. Pg 180	No Action recommended as the AMP is standing trial before the ICC
127.	Hon. David Kimutai Too - MP Ainamoi	• Planning incitement and financing violence during 2007/2008 PEV	The Attorney General or the Kenya Police Force should undertake investigations in terms of Section 26 of the constitution to determine criminal culpability.	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 180	(Deceased)
126.	Hon. Kipkalia Kones – Mp Bomet	Ethnic Clashes 1991 – 1992 Kericho District Ethnic Incitement • Planning incitement and financing violence during 2007/2008 PEV. • Hosted raiders during 2007/2008 PEV	Investigations and appropriate legal action to be taken. The Attorney General or the Kenya Police Force should undertake investigations in terms of Section 26 of the constitution to determine criminal culpability.	No action taken	• Kiliku Report Pg 9, 10. • Akiwumi Report Pg 50. • KNCHR 2008: On the Brink of the Precipice. Pg 180	(Deceased)

No.	Name of the Adversely Mentioned Person/ status at the Time of Alleged Violation.	Alleged Crime/ Violation	Recommendation by Official Body	Action Taken	Reference	Recommendation by TJRC
128.	Hon. Lorna Laboso - MP Sotik	Planning and incitement to violence during 2007/2008 PEV	The Attorney General or the Kenya Police Force should undertake investigations in terms of Section 26 of the constitution to determine criminal culpability.	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 177	(Deceased)
129.	Hon. Franklin Bett - MP Buret	Planning incitement and financing violence during 2007/2008 PEV	The Attorney General or the Kenya Police Force should undertake investigations in terms of Section 26 of the constitution to determine criminal culpability.	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 177	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
130.	Hon. John Pesa - MP Migori	Incitement to violence during 2007/2008 PEV	The Attorney General or the Kenya Police Force should undertake investigations in terms of Section 26 of the constitution to determine criminal culpability.	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 184	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
131.	Hon. Ramadhan Kajembe - MP Changamwe	Incitement and participation in violence during 2007/2008 PEV KNCHR 2008.	The Attorney General or the Kenya Police Force should undertake investigations in terms of Section 26 of the constitution to determine criminal culpability.	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 184	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
132.	Hon. Peter Mwathi - MP Limuru	Incitement to violence during 2007/2008 PEV	The Attorney General or the Kenya Police Force should undertake investigations in terms of Section 26 of the constitution to determine criminal culpability.	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 184	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
133.	Hon. Uhuru Kenyatta – MP Gatundu South	Planning and financing violence during 2007/2008 PEV	The Attorney General or the Kenya Police Force should undertake investigations in terms of Section 26 of the constitution to determine criminal culpability.	Currently standing trial for crimes against humanity at the International Criminal Court	KNCHR 2008: On the Brink of the Precipice. Pg 184	No action recommended as the AMP is standing trial before ICC

No.	Name of the Adversely Mentioned Person/ status at the Time of Alleged Violation.	Alleged Crime/ Violation	Recommendation by Official Body	Action Taken	Reference	Recommendation by TJRC
134.	Hon. Kabando wa Kabando - MP Mukurweini,	Planning and financing violence during 2007/2008 PEV	The Attorney General or the Kenya Police Force should undertake investigations in terms of Section 26 of the constitution to determine criminal culpability.	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 184	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
135.	Hon. Stanley Githunguri – MP Kiambaa					
136.	Hon. Elizabeth Ongoro - MP Kasarani	Financing and planning violence during 2007/2008 PEV	The Attorney General or the Kenya Police Force should undertake investigations in terms of Section 26 of the constitution to determine criminal culpability.	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 185	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
137.	Hon. Chris Okemo - MP Nambale	Incitement to violence during 2007/2008 PEV	The Attorney General or the Kenya Police Force should undertake investigations in terms of Section 26 of the constitution to determine criminal culpability.	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 185	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
138.	Maj-Gen Hussein Ali Police Commissioner	Police Officers under his command used excessive force during 2007/08 PEV	Investigation by a team of special investigators and prosecuted by a special prosecutor appointed for that purpose	Accused of crimes against humanity at the International Criminal Court – charges not confirmed.	KNCHR 2008: On the Brink of the Precipice. Pg 185	
139.	Paul Olando - PC Nyanza	Ordered the use of excessive force by giving shoot-to-kill orders during 2007/2008 PEV	Investigation by a team of special investigators and prosecuted by a special prosecutor appointed for that purpose	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 186	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
140.	Grace Kaindi - PPO Nyanza					
141.	Scaver Mbogo - PCIO Nyanza					
142.	Omwenga – NSIS Officer Nyanza					
143.	Peter Kavila – PPO Western,	Excessive use of force, shooting and killing peaceful demonstrators during 2007/2008 PEV	Investigation by a team of special investigators and prosecuted by a special prosecutor appointed for that purpose	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 187	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
144.	Wainaina - OCS Malava					

No.	Name of the Adversely Mentioned Person/ status at the Time of Alleged Violation.	Alleged Crime/ Violation	Recommendation by Official Body	Action Taken	Reference	Recommendation by TJRC
146.	Ngugi – OCS Langas Police Station and Officers under his command	Excessive use of force during 2007/2008 PEV	Investigation by a team of special investigators and prosecuted by a special prosecutor appointed for that purpose	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 186	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
147	Alfred Chepkwony Assistant Chief Chemamul Sub-location	Participating in the violence during 2007/2008 PEV	Investigation and prosecution if criminal culpability is determined	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 186	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
148.	William Sang – Chief Chepkoilel Location	Participating and organizing the violence during 2007/2008 PEV	Investigation and prosecution if criminal culpability is determined	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 186	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
149.	Dr Jacob Bitok - Lecturer at Moi University	Organizing, Planning, funding and participation in the violence during 2007/2008 PEV	Investigation and prosecution if criminal culpability is determined	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 187	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
150.	Thomas Cheruiyot Sirikwa – Agriculture/ Veterinary Officer Sirikwa	Incitement to violence during 2007/2008 PEV	Investigation and prosecution if criminal culpability is determined	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 188	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
151.	Joseph Rotich a.ka Survivor – Assistant Chief Mawingu Sub-location	Incitement to violence, partisanship during 2007/2008 PEV	Investigation and prosecution if criminal culpability is determined	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 188	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
152.	Steven Ngetich a.ka Alexander - Chief who lives at Sundu River Kuresoi	Planning and participation in the violence during 2007/2008 PEV	Investigation and prosecution if criminal culpability is determined	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 189	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
153.	Osewe – OCS Kuresoi Police Station	Negligence of duty during 2007/2008 PEV	Investigation by a team of special investigators and prosecuted by a special prosecutor appointed for that purpose	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 190	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice

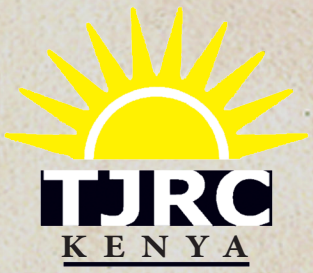
No.	Name of the Adversely Mentioned Person/ status at the Time of Alleged Violation.	Alleged Crime/ Violation	Recommendation by Official Body	Action Taken	Reference	Recommendation by TJRC
154.	Sammy Ng'etich – Acting Chief Chemaner Location	Incitement, Organizing and Planning the violence during 2007/2008 PEV	Investigation and prosecution if criminal culpability is determined	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 191	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
155.	William Ngerech – Chief Temuyota Location	Planning and participating in attacks during 2007/2008 PEV	Investigation and prosecution if criminal culpability is determined	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 191	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
156.	David Rugut – Chief Kamasian Location	Eviction of people from their houses during 2007/2008 PEV	Investigation and prosecution if criminal culpability is determined	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 191	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
157.	Cheruiyot – Policeman based at Murinduko Shopping Center	Organising Violence during 2007/2008 PEV	Investigation by a team of special investigators and prosecuted by a special prosecutor appointed for that purpose	No action taken	KNCHR 2008: On the Brink of the Precipice.	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
158.	Mohamed Ali – DO Olenguruone	Negligence of duty during 2007/2008 PEV	Investigation and prosecution if criminal culpability is determined	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 192	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
159.	Benjamin Koech - Policeman	Organizing and participating in violence during 2007/2008 PEV	Investigation by a team of special investigators and prosecuted by a special prosecutor appointed for that purpose	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 193	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
160.	Dennis a.k.a Deno – police officer attached to Kondele Police Station	Excessive use of force during 2007/2008 PEV	Investigation by a team of special investigators and prosecuted by a special prosecutor appointed for that purpose	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 193	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
161.	Ndegwa – police officer attached to Migori Police Station	Excessive use of force during 2007/2008 PEV	Investigation by a team of special investigators and prosecuted by a special prosecutor appointed for that purpose	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 193	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice

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162.	Tanui –AP officer attached to Siaya administration police camp	Excessive use of force during 2007/2008 PEV	Investigation by a team of special investigators and prosecuted by a special prosecutor appointed for that purpose	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 193	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
163.	Edward Kirui – police officer in Kisumu during post election violence.	Shot and killed youth at Kondele, Kisumu during 2007/2008 PEV	Investigation by a team of special investigators and prosecuted by a special prosecutor appointed for that purpose	Acquitted - Republic v Edward Kirui [2010] eKLR; High Court of Kenya At Nairobi Criminal Case 9 of 2008	KNCHR 2008: On the Brink of the Precipice.	No Action recommended
164.	Luseno Lusaba – Assistant Chief Soy Sub-location, Lukuyani	Participation in the 2007/2008 PEV	Investigation and prosecution if criminal culpability is determined	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 194	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
165.	Joshua Arap Sang	Incited violence through Radio broadcasts during 2007/2008 PEV	Facing charges at the International Criminal Court	Accused of crimes against humanity at the International Criminal Court – charges were confirmed.	KNCHR 2008: On the Brink of the Precipice. Pg 205	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
166.	Inooro FM – radio Station which broadcast in Kikuyu language	Disseminated incitement via call-in-programmes during 2007/2008 PEV	Investigation and prosecution if criminal culpability is determined	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 195	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
167.	Kameme FM – Radio Station which broadcast in Kikuyu language	Perpetration of hate speech during 2007/2008 PEV	Investigation and prosecution if criminal culpability is determined	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 195	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
168.	Kass FM – Radio Station which broadcast in Kalenjin language	Incitement and hate speech in its programmes during 2007/2008 PEV	Investigation and prosecution if criminal culpability is determined	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 195	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
169.	Radio Injili	Incitement and hate speech in its programmes during 2007/2008 PEV	Investigation and prosecution if criminal culpability is determined	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 195	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice

No.	Name of the Adversely Mentioned Person/ status at the Time of Alleged Violation.	Alleged Crime/ Violation	Recommendation by Official Body	Action Taken	Reference	Recommendation by TJRC
170.	Coro FM – radio Station which broadcast in Kikuyu language	Incitement through its programmes during 2007/2008 PEV	Investigation and prosecution if criminal culpability is determined	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 195	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
171.	Pastor Karathimo Church , Limuru	Incitement Violence during 2007/2008 PEV	Investigation and prosecution if criminal culpability is determined	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 196	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
172.	Rev. Kosgey – sometimes preaches on Kass FM	Incited violence through Radio broadcasts during 2007/2008 PEV	Investigation and prosecution if criminal culpability is determined	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 196	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
173.	Mr Benjamin Murei – Seventh Day Adventist Church elder	Aided and abetted violence during 2007/2008 PEV	Investigation and prosecution if criminal culpability is determined	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 196	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
174.	Pastor Isaya Nyongesa – Pastor in Likuyani	Incitement to violence during 2007/2008 PEV	Further investigation	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 196	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
175.	Mary Wambui – PNU Activist	Financing the violence during 2007/2008 PEV	Investigation and prosecution if criminal culpability is determined	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 238	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice
176.	Simeon Nyachae, Energy Minister and MP, Nyaribari Chache	Utterances and Incitement contrary to Section 96 of the Penal Code	The KNHCR and KHRC recommend the Investigation and prosecution of the politicians for incitement under Sections 95 & 96 of the Penal Code.	No action taken	Kenya National Commission on Human Rights (2006) "Behaving Badly" referendum Report Pg 30	Implement recommendation of KNCHR (2006) Report "Behaving Badly"
177.	Thirikwa Kamau, former MP, Ndaragwa	Utterances and Incitement contrary to Section 96 of the Penal Code	Investigation and prosecution for incitement under Sections 95 & 96 of the Penal Code.	No action taken	KNCHR (2006): Behaving Badly. Pg 30	Implement recommendation of KNCHR (2006) Report "Behaving Badly"
178.	Samwel Moroto, MP Kapenguria	Utterances and Incitement contrary to Section 96 of the Penal Code	Investigation and prosecution for incitement under Sections 95 & 96 of the Penal Code.	No action taken	KNCHR (2006): Behaving Badly. Pg 30	Implement recommendation of KNCHR (2006) Report "Behaving Badly"

No.	Name of the Adversely Mentioned Person/ status at the Time of Alleged Violation.	Alleged Crime/ Violation	Recommendation by Official Body	Action Taken	Reference	Recommendation by TJRC
179.	Daudi Mwanzia, MP Machakos Town	Utterances and Incitement contrary to Section 96 of the Penal Code	Investigation and prosecution for incitement under Sections 95 & 96 of the Penal Code.	No action taken	KNCHR (2006): Behaving Badly. Pg 30	Implement recommendation of KNCHR (2006) Report "Behaving Badly"
180.	George Khaniri, MP Khamisi	Utterances and Incitement contrary to Section 96 of the Penal Code	Investigation and prosecution for incitement under Sections 95 & 96 of the Penal Code.	No action taken	KNCHR (2006): Behaving Badly. Pg 30	Implement recommendation of KNCHR (2006) Report "Behaving Badly"
181.	Amos Kimunya, Minister for Lands and MP Kipipiri	Utterances and Incitement contrary to Section 96 of the Penal Code	Investigation and prosecution for incitement under Sections 95 & 96 of the Penal Code.	No action taken	KNCHR (2006): Behaving Badly. Pg 31	Implement recommendation of KNCHR (2006) Report "Behaving Badly"
182.	Mwangi Kiunjuri, Ass. Minister for Energy and MP Laikipia East	Utterances and Incitement contrary to Section 96 of the Penal Code	Investigation and prosecution for incitement under Sections 95 & 96 of the Penal Code.	No action taken	KNCHR (2006): Behaving Badly. Pg 31	Implement recommendation of KNCHR (2006) Report "Behaving Badly"
183	William Wambugu, Councillor Mukaru Ward	Utterances and Incitement contrary to Section 96 of the Penal Code	Investigation and prosecution for incitement under Sections 95 & 96 of the Penal Code.	No action taken	KNCHR (2006): Behaving Badly. Pg 31	Implement recommendation of KNCHR (2006) Report "Behaving Badly"
184.	Peter Munya, MP Tingania East	Utterances and Incitement contrary to Section 96 of the Penal Code	Investigation and prosecution for incitement under Sections 95 & 96 of the Penal Code.	No action taken	KNCHR (2006): Behaving Badly. Pg 31	Implement recommendation of KNCHR (2006) Report "Behaving Badly"
185.	Chris Murungaru, MP Kieni	Utterances and Incitement contrary to Section 96 of the Penal Code	Investigation and prosecution for incitement under Sections 95 & 96 of the Penal Code.	No action taken	KNCHR (2006): Behaving Badly. Pg 31	Implement recommendation of KNCHR (2006) Report "Behaving Badly"
186.	SM Wambugu, Councillor, Nyeri	Utterances and Incitement contrary to Section 96 of the Penal Code	Investigation and prosecution for incitement under Sections 95 & 96 of the Penal Code.	No action taken	KNCHR (2006): Behaving Badly. Pg 32	Implement recommendation of KNCHR 2006 Report "Behaving Badly"
187.	Hon. Najib Balala – MP Mvita	Inciting and funding violence Utterances and Incitement contrary to Section 96 of the Penal Code	The Attorney General or the Kenya Police Force should undertake investigations in terms of Section 26 of the constitution to determine criminal culpability. Investigation and prosecution for incitement under Sections 95 & 96 of the Penal Code.	No action taken	KNCHR 2008: On the Brink of the Precipice. Pg 185	Implement recommendation of KNCHR (2008) Report -On the Brink of the Precipice

No.	Name of the Adversely Mentioned Person/ status at the Time of Alleged Violation.	Alleged Crime/ Violation	Recommendation by Official Body	Action Taken	Reference	Recommendation by TJRC
188.	Gideon Moi, MP Baringo Central	Utterances and Incitement contrary to Section 96 of the Penal Code	Investigation and prosecution for incitement under Sections 95 & 96 of the Penal Code.	No action taken	KNCHR (2006): Behaving Badly. Pg 32, 33	Implement recommendation of KNCHR 2006 Report "Behaving Badly" Report
189.	Joe Khamisi, MP Bahari	Utterances and Incitement contrary to Section 96 of the Penal Code	Investigation and prosecution for incitement under Sections 95 & 96 of the Penal Code.	No action taken	KNCHR (2006): Behaving Badly. Pg 34	Implement recommendation of KNCHR 2006 Report "Behaving Badly" Report
190.	Joseph Kamotho, MP Mathioya	Utterances and Incitement contrary to Section 96 of the Penal Code	Investigation and prosecution for incitement under Sections 95 & 96 of the Penal Code.	No action taken	KNCHR (2006): Behaving Badly. Pg 34	Implement recommendation of KNCHR 2006 Report "Behaving Badly"
191.	Fred Gumo, MP Westlands	Utterances & Incitement contrary to Section 96 of the Penal Code	Investigation and prosecution for incitement under Sections 95 & 96 of the Penal Code.	No action taken	KNCHR (2006): Behaving Badly. Pg 34	Implement recommendation of KNCHR 2006 Report "Behaving Badly"



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