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The Final Report of the Truth Justice and  
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# TJRC Report (Abridged Version)

Truth, Justice and Reconciliation Commission

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## REPORT OF THE TRUTH, JUSTICE AND RECONCILIATION COMMISSION

### ABRIDGED VERSION

#### INTRODUCTION

The Truth, Justice and Reconciliation Commission (TJRC or the Commission) was established in the wake of the tragic events of the 2007/2008 Post-Election Violence (PEV).

The Commission has produced its Report as the culmination of a process that lasted four years and took the Commission to all regions of the country.

The violence, bloodshed and destruction of the PEV shocked Kenyans into the realisation that their nation, long considered an island of peace and tranquillity, remained deeply divided since independence from British colonial rule in December 1963. It prompted a fresh opportunity for the country to examine the negative practices of the past four and half decades that contributed to a state that still holds sway in Kenya: normalization and institutionalization of gross violation of human rights, abuse of power and misuse of public office.

In the aftermath of the 2007/2008 PEV, the Kenya National Dialogue and Reconciliation (KNDR) process resulted in the adoption of among others, the Agreement on the Principles of Partnership of the Coalition Government (Coalition Agreement) on the basis of which, the National Assembly enacted the National Accord and Reconciliation Act on 18 March 2008. The National Accord paved the way for the establishment of a coalition government with a President, Prime Minister and two Deputy Prime Ministers.

As part of the KNDR process, an agreement for the establishment of a truth, justice and reconciliation commission (TJRC Agreement) was also adopted. Pursuant to the TJRC Agreement, the National Assembly enacted the Truth, Justice and Reconciliation Act (TJR Act) on 23 October 2008. The Act received Presidential Assent on 28 November 2008 and came into operation on 17 March 2009.

In terms of the TJR Act, the Commission was inaugurated on 3 August 2009. The broad mandate of the Commission was to inquire into gross violation of human rights and historical injustices that occurred in Kenya from 12 December 1963 when Kenya became independent to 28 February 2008 when the Coalition Agreement was signed

#### METHODOLOGY AND PROCESS

The work of the Commission was structured into four mutual and overlapping phases: statement-taking, research and investigations, hearings and report writing. Civic education was conducted alongside these activities.

**Statement taking:** The Commission designed a Statement Form to capture information from witnesses. The Statement Form was designed to ensure the gathering of as much information as possible about gross violations of human rights. The Commission undertook an initial statement taking exercise in Mt Elgon in May and June 2010. This was a pilot project which the Commission used to get feedback from victims and other witnesses about the statement-taking methodology, including the Statement Form. The nation-wide statement taking exercise was officially launched on 9 September 2010 and lasted five months. It was anticipated that some individuals would be unwilling or unable to record statements during the formal statement taking exercise and so the Commission, continued to record and receive statements and memoranda at its offices and during individual and thematic hearings.

A special Children's Statement-Taking Form was also prepared in consultation with child protection agencies and was pre-tested in October 2011 to assess its suitability and effectiveness in taking statements from children. The draft was subsequently revised to incorporate insights from the pre-testing exercise. Statement takers were then guided on the use of the Children's Statement Form before they were deployed to take statements from children for a period of one month. A total of 996 statements were collected from children: 500 from boys and 496 from girls. On the basis of these statements, the Commission subsequently organised a thematic hearing for children in December 2011, details of which are discussed later in this Chapter.

#### Research and investigations:

The Commission established an Investigation Department which was responsible for identifying and interviewing witnesses whose individual stories would contribute to the historical narrative of gross violations of human rights in the country. The role of the Department also extended to the collection and analysis of relevant documentary and other forms of evidence. Investigations were conducted in three main phases: before, during and after the hearings.

**Hearings:** The Commission started its hearings in mid-April 2011 in Garissa and concluded at the beginning of April 2012 in Nairobi. The Commission conducted three kinds of hearings: individual hearings, women's hearings and thematic hearings.

Individual hearings focused on the experience of individuals in relation to gross violation of human rights. Testimony was heard from individuals whose rights had been violated, as well as from those who either had knowledge of or allegedly participated in acts that resulted in the violations.

Women's hearings were exclusively attended by women. The hearings were framed as 'conversations with women'. They were designed to and were safe spaces where women could freely talk about violations that were specific to them. Thematic hearings that focused on specific violations, events, or groups of victims.

Thematic hearings were meant to elicit public testimony on specific themes that are of particular importance in Kenya's pursuit for truth, justice and reconciliation. The Commission held a total of 14 thematic hearings focusing on diverse subjects.

**Report writing:** The final product of the Commission is a Report which was compiled in terms of section 5(j) and 48(2) of the TJR Act. These sections essentially tasked the Commission to compile a report providing as comprehensive as possible an account of its activities and findings together with recommendations on measures to prevent the future occurrence of violations. Details of the Report are provided below.

#### THE REPORT

##### The Report is structured into four volumes:

**Volume I** provides an account of how the Commission was formed, how it interpreted its mandate and conducted its work, and the challenges it faced in carrying out its mandate.

**Volume II** is further divided into three sub-volumes. **Volume IIA** focuses on the major violations of bodily integrity rights that were committed during the Commission's mandate period. These are: unlawful killings and enforced disappearances (that is, massacres, extra-judicial killings, and political assassinations); unlawful detentions, torture and ill-treatment; and sexual violence. While much of this volume is focused on violations directly committed by the state, it also includes descriptions of killings, severe injury and violence, sexual violence, detention, and other similar violations committed by non-state actors.

**Volume IIB** focuses on some of the unique parts of the Commission's mandate concerning historical injustices in Kenya. The volume has three chapters: land and conflict; economic marginalization and violation of socio-economic rights; and economic crimes and grand corruption.

**Volume IIC** focuses on the stories and narratives of groups of people that are provided special protection under domestic and international law because of a history of discrimination and oppression. These are: women, children and minority and indigenous people. Historically members of these groups were not recognized as having the same rights as others. The Commission established a Special Support Unit that focused on, among other things, ensuring that the Commission's activities adequately addressed and were accessible to historically vulnerable groups. The Commission also held thematic hearings that focused not only on the plight and rights of the aforementioned three groups but also the experiences of persons with disabilities (PWDs). Indeed, the Commission did put into place specific procedures in its statement

taking exercise and public hearings to accommodate persons with disabilities. The experiences of PWDs are reflected across the various Chapters of this Volume.

**Volume III** focuses on issues relating to national unity and reconciliation in Kenya. The Commission was mandated to inquire into the causes of ethnic tension and make recommendations on the promotion of healing, reconciliation and coexistence among ethnic communities.

The final volume of the Report - **Volume IV** - provides a catalogue of the findings and recommendations of the Commission. Included in this volume is the Commission's recommendation relating to the implementation mechanism and reparation framework.

#### THEMATIC OVERVIEWS

##### Political History: A general outline

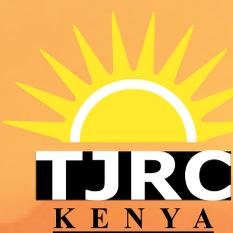
In order to contextualise gross violations of human rights and historical injustices that occurred during the mandate period, the Commission divided the political history of Kenya into four distinct epochs. These epochs correspond with the four political administrations that governed the country prior to and during the Commission's mandate period:

- British colonial era (1895 to 1963);
- President Jomo Kenyatta's era (1963 to 1978);
- President Daniel arap Moi's era (1978 to 2002); and
- President Mwai Kibaki's era (2002 to 2008).

A review of the colonial period by the Commission revealed a litany of offences and atrocities committed by the British administration against the people now known as Kenyans. These violations included massacres, torture, arbitrary detention, and sexual violence, most of which were committed, initially, when the British government forced its authority on the local population, and later, when it violently sought to quash the Mau Mau rebellion. From 1952 onwards, the British administration established detention camps in which suspected members of Mau Mau and/or their sympathisers were tortured and ill-treated. Others were detained in restricted villages where they were used as forced labour under harsh and inhuman or degrading conditions. The colonial government was also responsible for massive displacement of thousands of people from their lands. More than 2 million hectares of land were taken away from the original inhabitants. This displacement created the conflicts over land that remain the cause and driver of conflict and ethnic tension in Kenya today.

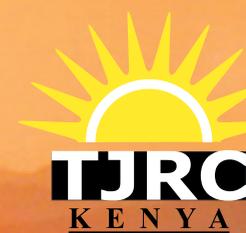
On 12 December 1963, Kenya gained independence from British rule. Independence came with high expectations and hopes. It signaled an end to practices that had been institutionalised under British rule; the end of racial segregation, detention camps, torture, massacres, unlawful killings and similar practices that had been institutionalised under colonialism. To the citizens of a new free nation, independence meant the return to lands from which they had been forcibly evicted and of which they had been dispossessed in order to pave the way for British settlers. It was supposed to be the beginning of political and economic emancipation; the start of respect for the rule of law, human rights and dignity and the laying down of the foundations and tenets of democracy. Many envisioned a newly invigorated, united nation.

These expectations never materialized. President Kenyatta made no substantial changes to the structure of the state. Nor did he commit to or put in place mechanisms to redress the land problems that had been created by the colonial administration. Instead, President Kenyatta embarked on consolidating his power. Under his administration, any political dissent was met with quick rebuke and reprisals in effect forcing the populace into a silence of fear. Reprisals included harassment, various forms of intimidation, attacks on the person, detention and even assassination. Many fled into exile for fear of their lives and to avoid the heavy hand of the Kenyatta administration. It was also during President Kenyatta's administration that Kenya waged a war in northern Kenya to quash a desire by residents of this region to secede to Somalia. This war has come to be popularly known as the 'Shifta War'. State security agencies committed various forms of atrocities during the Shifta War and the Commission has dedicated a chapter in this Report



# TRUTH, JUSTICE AND RECONCILIATION COMMISSION

Promoting Peace, Justice, National Unity, Dignity, Healing and Reconciliation Among The People of Kenya



that documents those atrocities.

Under President Moi the status quo remained for a couple of years before becoming notably worse after the coup attempt of 1 August 1982. In the aftermath of the coup, members of the Kenya Air Force were rounded up and transported to prison facilities and other locations where they were tortured and subjected to inhuman and degrading treatment.

Thereafter, President Moi stepped up measures aimed at controlling the state and further consolidating his power. He filled government positions with loyalists, mainly from his own Kalenjin community. His government, which had in June 1982, amended the constitution to make Kenya a de jure one party state, removed security of tenure for constitutional office holders such as judges. The patterns of violence that started under Kenyatta continued under President Moi's administration. Notably, members of state security agencies routinely committed atrocities against a people they had sworn to protect. Security operations, particularly in Northern Kenya often resulted in the massacres of innocent citizens. Almost without exception, security operations entailed the following atrocities: torture and ill-treatment, rape and sexual violence, looting of property and burning of houses. These systematic attacks against civilians have all of the attributes of a crime against humanity.

When movements arose to advocate for opening up of the democratic space and respect for human rights, President Moi's government unleashed a reign of terror. Between 1986 and 1997, hundreds of individuals were detained and tortured because they were suspected to be members of illegal organizations. The infamous Nyayo House torture chambers were designed and built during this period specifically for the purpose of terrorizing those who were critical of, or perceived to be critical of, the established regime.

In 1991, in response to local and international pressure prompted by the end of the Cold War, President Moi yielded to demands for a multi-party state. However, with the advent of multi-party politics, elections began to be identified with violence. Ethnicity became an even more potent tool for political organising and access to state resources. Like his predecessor, President Moi lacked the commitment to address grievances related to land. Instead, irregular and illegal allocation of land became rampant during his era in power.

In December 2002, KANU was dislodged from power by NARC under the leadership of President Mwai Kibaki. As a political party, NARC came to power on a platform that promised to curb and ultimately eliminate the political transgressions and human rights violations that had become so common during the 39 years of KANU's rule. NARC also pledged to address and rectify historical injustices. True to its commitment and in response to concerted calls by political activists and civil society organisations (CSOs) in the first few months of attaining power, the NARC government initiated numerous legislative and institutional reforms and a range of activities aimed at redressing past injustices.

However, it was not long before autocratic tendencies and KANU-like practices began to emerge in the Kibaki administration. An informal clique of powerful individuals who were keen on promoting narrow and regional interests formed around the President. Like President Moi before him, President Kibaki purged the public service of his predecessor's nominees and filled it with people from his Kikuyu community and the larger GEMA community. The administration paid lip service to the struggle against corruption. In 2005, all pretensions by the Kibaki administration that it was pursuing reforms and a transitional agenda faded after the rejection of the Proposed New Constitution of Kenya in 2005 by the majority of Kenyans.

The period leading up to the 2007 General Election was characterised by intense violent activities by militia groups, especially the Mungiki sect and Sabaot Land Defence Force (SLDF). The government responded to the violence with excessive force. In effect, the General Elections of 27 December 2007 were conducted in a volatile environment in which violence had been normalised and ethnic relations had become poisoned. Fertile ground had been prepared for the eruption of violence. Therefore, when the results of the Presidential Election were disputed, and both PNU and ODM claimed victory, violence erupted.

The scale of the post-election violence (PEV) was unprecedented.

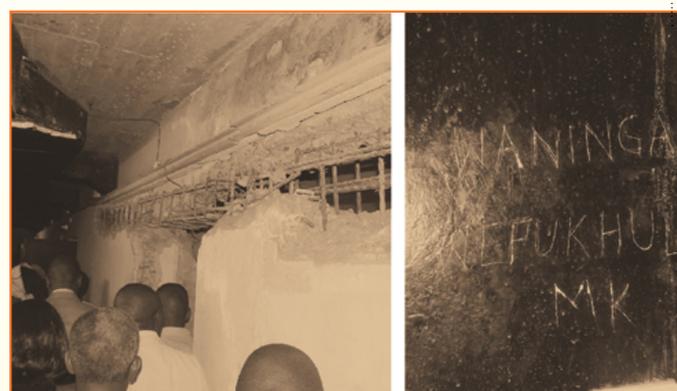
It lasted for a period of two months and substantially affected all but two provinces in the country. It is estimated that 1,133 people were killed, thousands assaulted and raped, hundreds of thousands more displaced from their homes, and property worth billions of shillings destroyed. It was one of the darkest episodes in Kenya's post-independence history

## Security Agencies: The police and the military

The police and the military forces are at the centre of Kenya's history of gross violations of human rights. While other agencies of the state were responsible for historical injustices and gross violations of human rights during the mandate period, security agencies were both primarily responsible for many of the acts of commission documented in this Report, as well as the acts of omission (the failure to provide security) that allowed many of the violations committed by non-state actors to occur.

Across the country, the Commission heard horrendous accounts of atrocities committed against innocent citizens by the police and the military. The history of security operations conducted by these two institutions, either jointly or severally, is dominated by tales of brutal use of force, unlawful killings (sometimes on a large scale), rape and sexual violence, and burning and looting of property. In security operations, the police and the military often employed collective punishment: the indiscriminate rounding up of individuals in a specific area, then brutally punishing them, all with the expectation that this would yield the desired results of increased security. Thus, since independence, the police and the military in Kenya have been viewed and invariably described as rogue institutions; they are still feared and seen as perennial violators of human rights rather than protectors of the same.

## NYAYO HOUSE TORTURE VICTIMS NAME ON WALL



In this regard, the Commission sought to trace the origins of practices employed by security agencies during security operations. What emerged is that the practices adopted by the police and military forces in independent Kenya are starkly similar to those employed by the same forces during the colonial period. In essence, Independent Kenya inherited a police force that was deeply and historically troubled. From the 1890s right through to the late 1950s and early 1960s, the Kenya police force clearly structured itself around the policing needs of a small and politically powerful elite and racial minority. Kenya's police force was from the outset built to cater to these privileged few. When, however, the Kenya Police Force did encounter African populations it was with a force and devastating violence. Throughout the temporal period of the Commission's mandate this resort to brutality by the security agencies never changed. The police force remained a law unto itself. The Kenya Police Force of today largely resembles the Kenya Police Force of the colonial period: narrow in outlook, unclear in mission and violent in tendency.

The history of the military paints a similarly grim picture. During the colonial period, and especially during the emergency period, the military was engaged in the screening and interrogating of people in order to extract information from them concerning Mau Mau. It is from these twin processes of screening and interrogation that the most astonishing evidence of widespread and institutionalized torture has emerged. The military would continue to use similar brutal tactics way into the post-independence era and as recently as March 2008 during Operation Okoa Maisha in Mt. Elgon.

## Shifita war

The Shifita War, waged between 1964 to 1967, represents a period in Kenya's history during which systematic and widespread violation of human rights (including mass killings) of Kenyan citizens occurred. Officially, the death toll stands at 2,000. Unofficial estimates place the death toll at 7,000. The Shifita War acts as a bridge from the violations committed by the colonial power prior to independence and the violations committed by the newly independent government. The War arose out of a long history of political unrest in Northern Kenya where ethnic groups resisted centralised colonial rule. After independence state security agents alongside military personnel were deployed in what was called the Northern Frontier District to quell the continuing resistance.

Witness testimonies before the Commission brought to the surface the long history of violation of human rights and related activities in Northern Kenya. From the colonial days, Northern Kenya had been administered differently from the rest of the country. Travel and movement restrictions were imposed and administrators were given extraordinary powers to arrest and detain members of what the state referred to as 'hostile tribes'.

The Commission did not get much information about the war itself because of the secrecy around military operations and the government's reluctance to provide the information in its possession. However, individuals and communities affected by the war submitted memoranda and information to the Commission which enabled it to set out the broad characteristic of the war. The Commission established that the Shifita War was characterised by unimaginable brutality committed by state security agents, mainly the Kenya Army. Mass killings featured prominently in the witness testimonies and narratives. Pastoralist communities lost almost 90 percent of their livestock through heavy handed strategies in which livestock were shot dead or confiscated. Many residents of the region trace the high levels of poverty experienced by communities of Northern Kenya to the excesses of the Shifita War.

Women narrated horrible stories of rape and other forms of sexual violence and the military and police were reported as major perpetrators. The Commission also received testimony pointing to the fact that women were held as sexual slaves by state security agencies during the War. As a result of the War, some communities fled to Somalia to escape the violence and only returned decades later, in 2000.

As part of the Shifita War, the Kenyan government established restricted or protected villages 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 these villages were squalid and diseases such as dysentery and tuberculosis were common.

The signing of a Memorandum of Understanding in Arusha, Tanzania on 28 October 1967 between the governments of Kenya and Somalia marked the formal end of the war. Witnesses complained that they had no idea what was decided during the bilateral negotiations between the Somali and Kenyan governments as the contents of the agreement were never revealed to the people of the Northern Kenya, including the citizens residing in the north.

The Commission found that the Kenyan government made a deliberate effort to cover up abuses committed in connection with the Shifita War, and enacted the Indemnity Act in order to protect government officials for accountability for wrongful acts committed during the conflict. As such, the Commission has recommended the repeal of the Indemnity Act within nine months of the issuance of its Report. The Commission has also recommended that the Arusha Agreement be made public and be widely disseminated in Northern Kenya. Further, the Commission has recommended reparation for victims of Shifita War and the establishment of a public memorial to commemorate the victims of the War.



# TRUTH, JUSTICE AND RECONCILIATION COMMISSION

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## REPORT OF THE TRUTH, JUSTICE AND RECONCILIATION COMMISSION

### Massacres

The history of massacres in Kenya predates colonialism in Kenya. There were inter and intra-ethnic killings, as illustrated by the Maasai wars of the 1800s. This was the context in which the colonialists entered the scene and opened fresh horizons for mass violence.

The Commission studied the history of massacres in Kenya to identify broad trends and patterns of mass violence that have recurred throughout Kenya's history. The first properly documented massacre in Kenya's colonial past was the Kedong Massacre of 26 November 1895. Other massacres include those committed in the context of the Giriama Rebellion of 1912-1914, and the Kollowa Massacre of 24 April 1950. Other massacres were committed during the Mau Mau uprising between 1952 and 1959. In this regard, the Lari and Hola Massacres stand out. In all these massacres, the colonial state was present and was always unapologetic. Indeed, the colonial state always tried to minimise, cover up or flatly deny the occurrence of such mass killings.

At independence, the country was blood-drenched with a history of massacres and entered its future with historical baggage that was to affect future events. The Commission's research, investigations and hearings revealed that most massacres in Kenya have occurred in Northern Kenya and have always occurred in the context of what the state refers to security operations. The Commission has documented the following massacres committed by state security agents: Bulla Karatasi Massacre; Wagalla Massacre; Malka Mari Massacre; and Lotiriri Massacre. To date, no government official has been prosecuted or otherwise publicly held to account for these atrocities. The Commission also focused on a few massacres committed by non-state actors: Turbi Massacre, Murkutwa Massacre, and Loteteleit Massacre. The primary findings of the Commission in relation to the

#### Bulla Karatasi Massacre:

The Commission found 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 including torture, brutal beatings, rape and sexual violence, burning of houses and looting of property. The Commission found that the atrocities committed during the security operation qualified as crimes against humanity. Moreover, the Commission found that the North Eastern Provincial Security Committee (chaired by Benson Kaaria), Garissa District Committee and the Minister for Internal Security (G.G. Kariuki) at the time of the security operations bear responsibility for the operation and the ensuing atrocities.

#### Wagalla Massacre:

The Commission found 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. The Commission found that the atrocities committed during the security operation qualified as crime against humanity. The Commission was unable to determine the precise number of persons killed in the massacre but found that a large number died, possibly close to

a thousand. As such, the official figure of 57 given by the state grossly underestimated the number of people 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. In relation to responsibility and accountability, the Commission found that the Wajir District Security Committee, North Eastern Provincial Security Committee, and Kenya Intelligence Committee bear various levels of responsibility for the operation and the ensuing massacre and atrocities.

I could not even get water to give the children. I left them under a tree and went back, only to find that the father was among the people who were killed by the police. I witnessed his body been put in a car. They threw the dead body into the river. Men were in the field while women and children at home. The women were raped, girls were crying for help and no one could help them.

#### Witness to Bulla Karatasi Massacre

During that short period that we stood there, what I saw and what has remained very distinctly in mind today is a pile of bodies to my right and two naked people carrying yet another body to put on the pile.

#### Witness to Wagalla Massacre

#### Malka Mari Massacre:

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

#### Lotiriri Massacre:

The Commission found that the security operation conducted in West Pokot District, between 22 February and 22 May 1984 by state security agents (mainly the Kenya Army) resulted in the massacre of

individuals. Numerous other atrocities were committed during the security operation including torture and sexual violence.

The Commission has recommended the provision of reparation for families of victims of massacres and the establishment of memorials at the site of such massacres.

The Commission has also recommended that individuals identified as been responsible for planning, authorizing and implementing of security operations that resulted in massacres be further investigated to determine any criminal culpability on their part, if any, and that they should not hold public office in Kenya's new constitutional dispensation.

### Political Assassinations

I remember that Mr. Shikuku had warned us before we went to State House [to present the Report of the Parliamentary Select Committee on the disappearance and death of JM Kariuki] because he refused to join us to go there. Even Mr. Seroney did not join us. He has told us: 'It is better that you go a few of you because you may never return and if you do not return, we will tackle this issue outside here before we are also picked ... On the day of voting for the Report, Hon. Masinde Muliro who was a cabinet minister, and Hon. Peter Kibisu, who was an assistant minister, voted for the adoption of the report. In the evening or at around 6 pm, they had lost their positions in the Government.

#### TJRC witness

Kenya has lost some of its best and brightest to political assassination: Pio Gama Pinto, Tom Mboya, Josiah Mwangi Kariuki (popularly known as JM Kariuki), Robert Ouko, Father Antony Kaiser, Bishop Alexander Muge, and many others. A number of these deaths have been the subject of high profile investigations; in some cases they have been subject to repeated investigations. Yet despite all of the investigations in these and other similar cases, the uncertainty concerning who was responsible for the killings and why specific individuals were killed is often as unclear as it was on the day the body was found. Given the failures of past investigations, the Commission was fully aware that solving any of the mysteries surrounding these deaths would be difficult and challenging.

Nevertheless, the Commission gathered information, undertook research and investigations, and solicited testimony to understand the context in which such

killings took place; the circumstances and thus probable causes of such killings; the impact of such killings, particularly on the family and friends of the victim; and the failure of investigations to solve the mystery of why a person was killed and who was responsible. The Commission's work in relation to political assassinations confirms that the state was complicit in the assassination of Pio Gama Pinto, Tom Mboya, and Josiah Mwangi Kariuki, Robert Ouko

#### Pio Gama Pinto:

The Commission found 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. The Commission further found that the arrest and prosecution of Kisilu, Chege Thuo, and a third unidentified man who disappeared, was used to divert attention away from the true motive and the more responsible perpetrators of Pinto's assassination. Finally,

#### Tom Mboya:

The Commission found that Tom Mboya was assassinated for his political beliefs and the perception that he posed a threat to the political establishment. 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. The Commission found that the circumstances surrounding the 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.

#### Josiah Mwangi Kariuki:

The Commission found that JM Kariuki was assassinated for political reasons. Based on evidence, the Commission found that state officials, including members of the police and the Special Branch, were directly involved in the assassination of JM Kariuki. The Commission further found that government officials were involved in the cover up of the assassination and that President Kenyatta

deliberately interfered in independent investigation undertaken by the Parliamentary Select Committee by, among other things, directly removing two names from the report because they worked in the Office of the President.

#### Robert Ouko:

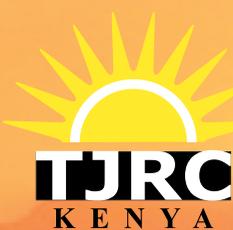
The Commission found that Robert Ouko was assassinated and that government officials were involved in his assassination and in the subsequent cover up. The Commission further found that individuals connected to the assassination of Ouko have died in mysterious circumstances and that the failure of the government to undertake credible investigations into these deaths is part of the official cover up.

#### Crispin Odhiambo Mbai:

The Commission found that Crispin Odhiambo Mbai was assassinated because of his political views related to his chairing of the Devolution Committee of the National Constitutional Conference. The Commission further found that the state is either unable or unwilling to engage in a process that would shed light on the death of Dr. Mbai.

### Extrajudicial killings and enforced disappearances

The Commission found that throughout the mandate period, there was a common trend or pattern of state-sanctioned killings and disappearances. The use of excessive and disproportionate force by the Kenyan police force has been a common theme running through Kenya's history. The Commission found that during the mandate period, it was common for the police to summarily execute individuals who were suspected criminals or members of proscribed criminal gangs such as Mungiki and SLDF. Importantly, the Commission found that police killings and enforced



# TRUTH, JUSTICE AND RECONCILIATION COMMISSION

Promoting Peace, Justice, National Unity, Dignity, Healing and Reconciliation Among The People of Kenya



disappearances of members of Mungiki and SLDF could amount to crimes against humanity. Moreover, the Commission found 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.

The Commission has, amongst others, recommended the provision of reparation to families of victims of extra-judicial killings and enforced disappearances.

## Detention, torture and ill-treatment

In many ways, and despite the many challenges that it continues to face, Kenya is a country whose democratic and political space is relatively wide and dynamic. At least from 2003, the state has more often than not respected citizens' freedom of expression, assembly and the right to association. However, it was not always this way. The freedom that Kenyans enjoy today is the result of many years of activism and struggle against dictatorship and state repression or violence. It is a freedom that came at a high price for many men and women who dared criticize or oppose Jomo Kenyatta's and Daniel Arap Moi's political administrations. Many of them were detained without trial, tortured, and subjected to inhuman and degrading treatment. Their families were equally subjected to untold sorrows by state operatives. Many others succumbed to torture or were killed after undergoing torture.

Research and investigations conducted by the Commission coupled with the testimonies it received, shows that widespread and systematic use of torture occurred in the following contexts:

- during the Shifita War;
- in the aftermath of the 1982 attempted coup;
- between 1982 and 1991 purposely to quell dissenting political voices and as part of the crackdown on Mwakenya;
- between 1993 to 1997 as part of the crackdown on the February Eighteenth Revolutionary Army (FERA);
- in 1997 following a raid on a police station in Likoni; and
- most recently in 2008 during Operation Okoa Maisha, a security operation to flush out members of the Sabaot Land Defence Force (SLDF) in the Mount Elgon region.

On the basis of its research, investigations and hearings, the Commission has made, amongst others, the following findings:

- 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.
- 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 that the state purposely designed and built these places for torture purposes.
- the State established a task force for the specific purpose of interrogation and torture of suspects. The Commission has recommended the prosecution of the members of the this task force.
- 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 to the extent that they conducted trials beyond working hours.

To prevent the recurrence of torture, the Commission has recommended 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. The Commission has also made the following recommendations:

- 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 for torture purposes

- that Nyayo House be converted into a memorial after consultation with victims of torture
- the establishment 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. The Office shall also be mandated to investigate all cases of 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 has also recommended 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

Sexual violence is a crime that intimately impacts the victim both physically and psychologically. It uses the victim's own sexual anatomy to dominate, suppress and control. For a long time, women and girls were believed to be the main, if not the only, victims of sexual violence. Over time, there has been acknowledgement that men and boys are also victims of sexual violence.

The Commission received hundreds of statements from women, men and children outlining serious sexual violations perpetrated by individuals and groups of people including ordinary citizens and state officials. A total of 1,104 statements from adults were received in regard to

sexual violations, representing a victim count of 2,646 women and 346 men. The Commission acknowledges that due to shame and stigma associated with sexual violence, many victims of sexual violence did not report sexual violence to the Commission.

Recognizing that sexual offences are ordinarily complex to investigate, the Commission adopted specific measures to ensure that sexual offences were effectively and sensitively investigated. Firstly, investigators who had previous experience in investigating sexual offences and who had undergone training on the same, including on the Sexual Offences Act, were recruited. Secondly, a set of guidelines outlining the approach to be taken in investigating sexual violence was prepared. The overall goal of the guidelines was to ensure that survivors of sexual violence were treated with dignity.

In acknowledgement of the stigma, shame and embarrassment associated with sexual violence, the Commission offered victims of sexual violence the option of testifying either in camera or in public. The idea was to provide victims of sexual violence with not only a platform to be heard, but also a safe environment in which they could share their experiences freely. The Commission also engaged the services of counsellors to offer psycho-social support before, during and after the hearings to enable the victims not only to narrate their experiences but also to cope with what they had experienced.

The primary findings of the Commission in relation to sexual violence include the following:

- sexual violence was committed throughout the mandate period, and included gang rapes, sodomy, defilement, sexual slavery, and other forms of sexual violence. The Commission found that sexual violence increased during times of conflict.
- 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'.

- there is sufficient evidence implicating British soldiers for the rape and sexual violation of women in Samburu and Laikipia between the 1908s and early 2000. 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.
- State security agents are responsible for the majority of cases of sexual violence committed during conflict in Kenya.

In addition to recommending the provision of reparation for victims and survivors of sexual violence, the Commission has recommended the establishment of a gender violence recovery center in every county. Moreover, the Commission has recommended the setting up of the Office of the Special Rapporteur on Sexual Violence as initially recommended by the Commission of Inquiry into the Post Election Violence.

## Land and conflict

For the majority of Kenyans, land is the basic, and in most cases, the only economic resource from which they eke out a livelihood. The ability to access, own, use and control land has a profound impact on their ability to feed and provide for their families and to establish their socio-economic and political standing in society. However, tensions and structural conflicts related to land have simmered in all parts of Kenya throughout the years of independence. In recent years, many land related problems have degenerated into social unrest and violence.

Illegal acquisition of large tracts of land from indigenous communities during the colonial period rendered many communities at the Coast and in mainland Kenya landless. While affected communities expected redress through re-settlement, restoration of their land and compensation from the Kenyatta and subsequent post-independence administrations, the government, instead alienated more land from already affected communities for the benefit of politically privileged ethnic communities and the political elite. This led to deeply held resentments against specific ethnic communities

who benefited from resettlement at the expense of those who believe they are the rightful owners of the land.

The Commission confirmed that land has been and remains one of the major causes of intra and inter-ethnic conflicts in the country. However, addressing historical and post-independence land injustices has not been genuinely prioritized by successive governments despite the critical importance of land to the country's economic development. There has never been any sustained effort to address land injustices that have occurred since colonial times.

The Akiwumi Commission of Inquiry established in 1998 to look into the ethnic clashes related to the 1997 General

Election vividly demonstrated how the skewed land allocation and ownership has fuelled ethnic tension and led to violent conflicts throughout Kenya and particularly in the Rift Valley and Coast regions. During the mandate period, land-related grievances led to the emergence of militia groups in some parts of the country. The stated aims of these militia groups often relates to the reclamation of lands, and the removal by violent means, of current occupants who they claim rendered them squatters. The Sabaot, for example, took up arms in 2006 in the Mount Elgon region to reclaim what they consider to be their land.

Politicians often exploit the real or perceived land injustices especially around election time, for personal gain. The dangerous mix of land-related claims with political aspirations of specific groups or individuals remains a tinderbox that could ignite at any time.

The Commission found that the 'willing-buyer, willing-seller' land tenure approach was grossly abused and is one of the major factors causing disinheritance and landlessness, especially in the face of rising human populations.

"Have you ever had your genitals tied and forced to make you diarrhoea? I told him that has never happened to me and he told me "You are a very young person. Do you have any children?" I told him no, I was still a young boy. So, he told me: "If you have ever had any children, then there is no hope of you ever having children."

*TJRC Witness*

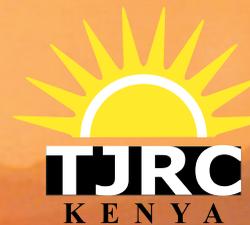
Before we started the session, the National Anthem was sung. I want to tell you that we have never been part of the National Anthem. The National Anthem talks of justice, fellowship, awareness, good life, abundance, among other things. These things have never been experienced in this region [Northern Kenya]. In totality, I can say that we have never been part of this country

*TJRC witness*



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The unresolved land injustices have led to discriminatory and exclusionary practices that work against nationhood. The increasing feeling among the long-disadvantaged pastoral communities and the Kalenjin in particular (both herders and farmers) that they should fight at all cost to reclaim their 'stolen' land from the rich 'foreign' (non-Kalenjin) settlers is one example. Although no attempt was made by President Moi's government to revoke the land settlements of President Kenyatta's regime, it became increasingly difficult for 'non-indigenous' people to buy land north of Nakuru. Non-Kalenjin individuals and groups who bought parcels of land in Kalenjin-dominated areas found it hard to get them demarcated or obtain title deeds.

Negative ethnicity appears to be reflected even in the settlement of internally displaced persons; those who get resettled often come from communities able to access political power.

The litany of historical injustices relating to land involves a complex variety of permutations. Almost every type of public land was affected: from forest land, to water catchments, public school playgrounds, road reserves, research farms, public trust lands and land owned by public corporations and private individuals. Perpetrators of the injustices were equally varied and include holders of public office and government leaders at every level, the political and economic elite, church organisations, individuals and communities. Those who held sway usurped the institutions of government to their bidding including the legislature, the executive and the judiciary.

Officials who were supposed act as custodians of public land under the public trust doctrine, became the facilitators of illegal allocation, increasing landlessness and land scarcity. The practice of land grabbing in many cases resulted in violence, as squatters resisted eviction from government land that was often subsequently lost to land grabbers. State corporations became conduits for 'get-rich-schemes' in which public lands were transferred to individuals and then quickly bought off at exorbitant prices by state corporations.

## Economic marginalisation and violation of socio-economic rights

The TJRC Act mandated the Commission to 'inquire into and establish the reality or otherwise of perceived economic marginalisation of communities and make recommendations on how to address the marginalisation'.

Evidence shows that while the majority of Kenyans may not have been detained without trial or subjected to torture and other physical integrity violations, government's exclusionary economic policies and practices in the distribution of public jobs and services inflicted suffering on huge sections of society at different historical moments. As the Commission traveled the country receiving statements and conducting public hearings, the pervasiveness of socio-economic violations was evident.

In terms of its mandate, the Commission identified a number of regions as economically marginalised in the post-independence era:

- North Eastern (including Upper Eastern) Province;
- Nyanza;
- North Rift;
- Coast;
- Western Province.

Although poverty was found to be prevalent all over the country it was disproportionately so in these marginalised areas. By definition the Commission noted that marginalisation involves direct and indirect discrimination in the distribution of social goods and services. The economically marginalised also tend to be marginalised culturally, socially and politically. The Commission found that in almost all cases, the state played a direct role in increasing or decreasing inequality in communities.

The Commission experienced a challenge in getting reliable and quality data, particularly on state funding of social programmes and

infrastructure over the years in regions identified as marginalised. In making its assessment the Commission used a number of indicators of marginalisation including physical infrastructure, employment (especially in the public sector), education, health, housing, access to land, water, sanitation and food security.

Although Central, Nairobi, South Rift Valley and Lower Eastern provinces were not profiled as economically marginalized regions, this does not mean that poverty is not evident in these regions. In fact, some residents of these regions also considered themselves marginalised at one time or another.

Other examples of marginalisation include narratives from within specific regions based on local rather than national forces. In Nyanza, the Kuria blamed their plight on the Luo and the Abagusii, while in Nyandarua the residents considered themselves marginalised by their neighbours within the region. In the Western region, Bungoma and Vihiga were seen as beneficiaries of the limited social goods through co-option of individuals by the Moi regime. Co-option of leaders from the region often camouflaged the reality of marginalisation giving the sense of political inclusion that did not necessarily translate to economic inclusion.

Marginalisation has been used deliberately as a political tool to punish recalcitrant politicians by punishing their ethnic group or religion.

The 1966 fallout between Jomo Kenyatta and Jaramogi Oginga Odinga was the beginning of the disintegration of the Kikuyu-Luo alliance, which was at the core of KANU at independence. It marked the start of the marginalisation of Nyanza and the first blatant use of negative ethnicity at a political level. Later similar disagreements between Raila Odinga and Mwai Kibaki led to the blacklisting of Luo Nyanza both in terms of access to capital development and appointments to public positions. Testimony before the Commission suggested that Nyanza had been in the economic and political cold for all but 10 years since independence. This isolation increased poverty and left various social and economic problems unaddressed.

In the case of North Eastern Province, employment, land, infrastructure, poverty, education and the institutional framework and capacity were the key indicators of the marginalisation of the region. One of the greatest impediments to development of the region is the lack of land registries in the region. As for infrastructure, which includes public utilities and is a major determinant of development and progress, the

region has no tarmac road except the Isiolo-Moyale road, which is still under construction. The region has the highest rural population living under the poverty line at 70 percent, compared to 32 percent for Central province. Lack of food security is compounded by the erratic and low rainfall and declining pastures and other resources. This in turn creates conflict over these resources, further depleting the limited resources and the livestock. The paucity of schools and their relatively prohibitive cost in an area of widespread poverty has affected access to the limited education opportunities. School enrolment stands at about 18 percent for primary schools and 4.5 percent for secondary schools compared to the national average of about 88 percent and 22 percent for primary and secondary schools respectively. Service delivery for health, water and sanitation were also way below the national average figures.

The face of marginalisation was found to be different in diverse regions. The relatively fertile land and security of Western province tended to underplay the indicators and perceptions of marginalisation. While marginalisation has

not reached the extent of that in North Eastern or Nyanza, Western was found to be forgotten in the development agenda with cash crops and related industries (cotton, sugarcane, rice and fisheries) completely ignored or badly mismanaged when compared to those of other regions.

The North Rift Valley region was found to have been marginalised from colonial times through to the present. Insecurity, a harsh climate and regular inter ethnic and cross border conflict make the region difficult to live in. Absence of security personnel has led to a localised small arms race as groups accumulate arms to protect themselves. Successive governments maintained the same closed area policies as the colonialists preventing interaction with the rest of the country effectively marginalising the region. Indicators for education, health, infrastructure, water, housing and sanitation were dismal compared to the rest of the country. Only one hospital serves the six districts of Turkana.

Landlessness is the major indicator of marginalisation at the Coast; land is the most intractable of the problems because of its historical origins. The original local inhabitants were dispossessed of their land, first by the colonialists, and later by fraudulent transactions that again ignored the original owners of the land. This left most of the land in the 10-mile Coastal Strip in the hands of absentee landlords. After independence, the dispossession of the local people was confirmed and certified instead of being rectified, which led to a palpable sense of a conspiracy against coastal communities orchestrated by people from up-country.

Hearings of the Commission were dominated by this problem. The most affected areas were Taita Taveta, Lamu, Malindi and Tana River counties. The Coast lags behind in terms of almost all indicators from infrastructure to health, education, housing, water and sanitation. The region also exhibits gender marginalisation attributed to religious and cultural dynamics of the locale. Rural areas are served by dilapidated road networks compared to Mombasa, Kilifi, Malindi and Kwale.

## Grand corruption and economic crimes

The fight against corruption is central to the struggle for human rights. Corruption has always greased the wheels of exploitation and injustice which characterize our world. As such, corruption is not just a crime that provides an undeserved benefit to a private individual (often an enormously large such benefit), it is a crime that lessens the availability and access to the fundamental needs of human life: food, education, health care, shelter, etc. In other words, the crime of corruption is directly related to the violations of socio-economic rights.

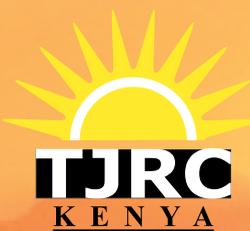
While corruption violates the rights of all those affected by it, it has a disproportionate impact on people who belong to vulnerable groups. Examples of these are minorities, indigenous people, persons with disabilities, persons living with HIV/AIDS, refugees, prisoners, the poor, women and children. They are more exploited and less able to defend themselves. Their vulnerability makes them easy victims of corruption.

Kenya's post-independence history has been marred by successive cases of huge scandals. In order to appreciate the magnitude and scale of grand corruption in Kenya, the Commission resorted to documented cases of grand corruption from as early as the KenRen scandal in the 1970s up to the IEBC's procurement of biometric voter registration kits in 2013. In the last two decades, the media and civil society exposed numerous multimillion dollar financial scams in Kenya including the following: Ken Ren Scandal; Goldenberg Scandal; Charter House Bank Scandal; and Anglo Leasing Scandal.

In its Chapter on Grand Corruption and Economic Crimes, the TJRC has

As we travel to Kenya, we face the strict burden of proof that we are, indeed, Kenyans. If the four of us were to travel in the same vehicle, the presumption would be that the rest are all Kenyans, but I am a foreigner. So, at the numerous roadblocks which are lined up all the way from here to Isiolo where Kenya starts, I have to produce my identity card, in default of which I would face severe consequences. This scenario does not stop in Isiolo. In our own country, I feel the indignity of being stopped at a public office and being subjected to security and other checks simply because from my looks, I am a dangerous person or a terrorist. This is the kind of pain we have been living in since Kenya attained its independence

*TJRC witness*



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demonstrated the linkages between these crimes and the enjoyment of human rights and the huge cost that Kenya is paying through corruption and economic crimes.

## Women

Men and women experience violations of human rights and injustices differently. Building on the provisions of the TJR Act, the Commission adopted policies and took measures that ensured that the experiences of and violations suffered by women were appropriately and comprehensively covered both in its work and this Report. These policies and measures related to the Commission's statement-taking process, hearings, focus group discussions, and other activities undertaken by the Commission.

Perhaps most importantly, the Commission held separate hearings for women in order to encourage women to speak about their own experiences. The women's hearings were framed as 'conversations with women'. They were presided over by female Commissioners and staff, and were thus designed to be safe spaces where women could freely talk about violations that were specific to them. The women's hearings were conducted in all regions of the country. In total, over 1000 women attended the women's hearings across the country, with an average of 60 women in each hearing.

The Commission's chapter on gender deliberately focuses on the various injustices that women faced during the mandate period. Although women have always constituted half of Kenya's population, they have been traditionally relegated to a subordinate status by patriarchal cultural norms and practices. Harmful traditional practices in Kenya include, amongst others, preference for male children, early or forced marriages, wife beating, female genital mutilation and widow inheritance. These norms were standard and sanctioned by law in the greater period covered by the Commission's mandate. As such the Commission has found that women were the subject of systematic discrimination and/or gender-based persecution throughout the mandate period.

An important finding made by the Commission is that in situations of conflict women are specific targets of violence, particularly sexual violence which is often accompanied by other forms of violations. The Commission has documented atrocities committed against women during the following three selected conflicts: Mau Mau War; Mount Elgon conflict and the 2007/2008 Post-Election Violence.

Conflicts always result in the forced displacement of populations. The Commission's hearings revealed that the state's response to the plight and needs of internally displaced women was less than satisfactory. Generally, the state's response fell short of its obligations as stipulated in relevant human rights instruments.

Although most women who testified before the Commission were victims of displacement occasioned by the 2007/2008 PEV, many of them had been victims of prior evictions and displacement. During the PEV, women suffered violations during flight to the camps or to places where they hoped they would find refuge. On resettlement of IDPs under Operation Rudi Nyumbani, the Commission's hearings revealed that the corruption and mismanagement which marred the entire process had a particularly devastating impact on women. A considerable number of displaced women told the Commission that they received neither the start-up capital nor the payment in lieu of housing.

Kenyan refugee women in Uganda face a peculiar problem. During their women's hearings, it became evident that many women found themselves in a dilemma as to whether they should return to Kenya or not. While some women were willing to return, their husbands were not. As such, they could not return to Kenya without straining or breaking their marriages. The general feeling among the Kenyan refugees in Uganda is that of a people who have been neglected

and abandoned by their government.

Kenyan women were also victims of state repression during the mandate period. As primary victims of state repression, scores of women, especially politicians, academics or human rights activists, were targets of state violence both during Presidents' Kenyatta and Moi's administrations. A number of female members of parliament who were vocal in their opposition to repressive rule would be subjected to trumped-up charges, detained, or even tortured. The vast majority of women were however 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 since husbands are the main breadwinners

in many households in Kenya. Those whose husbands or sons were detained faced similar fate

In summary, women have suffered terrible atrocities just because of their sex and gender. The Commission has documented these atrocities not only for historical purposes, but also as a bold statement to political leaders and policy makers that achieving a just and fair Kenya partly depends on the initiatives they will take to heal the soul of the Kenyan woman. At present, the vast majority of women feel abandoned by the state. Although in recent years many reforms have taken place to ensure women's empowerment, much more still needs to be done for these reforms to make substantive and real contributions in the lives of women. There is need for special attention to the most vulnerable among women: women in rural and slum areas, internally displaced and refugee women, women with disabilities, women living with HIV/Aids and women belonging to minority and indigenous groups.

## Children

Children occupy a special place in any effort to understand the impact of gross human rights violations and historical injustices. Children are, on the one hand, some of the most vulnerable people in a community and as such are less able to defend themselves against those who would do them harm, and are more likely to suffer both short- and long-term effects from gross violations of human rights. At the same time, children are the future of the country. Their experiences of their community, of their peers, of officials, and of other people in authority have profound impacts on their future, including how they trust, or don't trust, those in

authority. In addition, experience throughout the world confirms that children who are themselves the victims of abuse are more likely themselves to be abusers of others when they become adults. Some, as the Commission discovered, were both victims and perpetrators while still under the age of eighteen; being forced, for example, to join a militia and then committing violations as a member of that militia.

Thus, while the mandate of the Commission did not have a child-specific focus, the Commission made deliberate efforts to facilitate participation of children and young people in its proceedings and to ensure that their interests and views both as direct and indirect witnesses and victims of human rights violations were captured. The Commission designed child-friendly processes to promote the participation and protection of children. Most notably, the Commission held a thematic hearing in Nairobi that included an opportunity for children to testify in their own words in an environment that was safe and supportive.

The Commission heard horrific and heart-rending stories of abuse,

violence, and other gross violations of the rights of children. The Commission also heard the anger of some of these children – some going so far as to say they wanted to kill the people who had abused them. As such, the Children's Chapter provides a cautionary tale for the future of the nation. The roots of tomorrow's conflicts and violations are found in part in the treatment of our children today.

## Minority groups and indigenous people

Testimony before the Commission clearly indicated that the rights of minorities and indigenous people have been violated repeatedly since independence. The problem is systemic.

Many oppressive laws sanctioned the collective punishment of minority and indigenous communities. While the laws were supposed to apply across the country, in practice they only applied to communities in northern Kenya where a significant number of minority groups and indigenous people are to be found. The anti-stock theft law, for instance, legalised the collective punishment of a community for the offences of individual members of that community.

Witness testimony before the Commission showed minorities and indigenous peoples routinely had their collective identity marginalised. National data classified them as 'others' creating deep-seated feelings of exclusion among groups such as the Munyoyoya, Nubians, Suba, Waata, Ogiek, Saboot, Kuria, Kona, Bajuni, Hara, Saakuye, Burji, Isaak and Sengwen whose existence was effectively denied by the state and unknown to the majority of Kenyans. Yet the right to identity is important as it is associated with several others, such as the right to culture.

The forced displacement of pastoralists and hunter-gatherers from their ancestral lands further increased their marginalisation, deepened their poverty and created conflict with neighbours. For instance, the Endorois were brutally evicted from the trust land they inhabited around Lake Bogoria when the government declared the area a game reserve. They were displaced, lost property and denied access to traditional cultural and religious areas.

The small population size that characterises minorities and indigenous groups, has denied them influence and left them out of policy and decision making – even where decisions directly affect them. During the mandate period, minority groups and indigenous people were unable to access justice at many levels frustrating their efforts to protect other rights. Minority and indigenous women

suffered multiple forms of discrimination. They bore the brunt of inter-ethnic conflicts and insecurity and had difficulty accessing social services and goods from education to health services.

The 2010 constitution has several provisions aimed at securing an efficient legal framework for the protection and promotion of the rights of minorities and indigenous people. However, it needs statutory and institutional mechanisms for the realisation of these objectives.

## Ethnic tension

The Chapter on Ethnic Tension documents the main causes and effects of ethnic tension in Kenya and is based mainly on testimonies that the Commission heard during its hearings countrywide. In addition to holding such hearings, the Commission also organized a thematic hearing on ethnic tension and violence on 2 February 2012 in Nairobi, received presentations by experts and relevant institutions such as the National Cohesion and Integration Commission (NCIC).

Through its research and hearings, TJRC identified several causes and drivers of ethnic tension in the country. The roots of most of these causes are traceable to the practices of colonial administration.

Is it a crime to be born a woman? What I have gone through is likely to affect my daughter. Will there be justice for women and the girl child in this country? That is my biggest concern.

*TJRC Witness*

My daughter has three children but she still does not have an ID Card although she has a waiting letter. All our Somali children in Naivasha do not have ID cards but they have all grown up here. There is even a 50-year-old woman who has not been given an ID card. We are not at a border such that they can say we crossed from another country. This is open discrimination.

*TJRC witness*

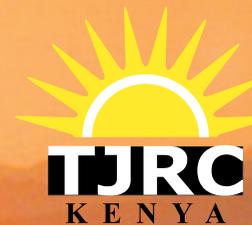
I would like to tell the Government to help us children because we did not vote or were not voted for. Therefore, we did not have any issues. The adults are the ones who had issues.

*TJRC child witness*



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Firstly, the 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, they magnified the differences between the various communities and regions, and stereotyped each community in a manner that would sow suspicion, hatred and create a sense of 'otherness'.

Secondly, the Colonial government created ethnically defined administrative boundaries. In determining such boundaries, little serious thought, if any, was given to historical inter-ethnic interactions and relations. Thirdly, 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.

Fourthly, 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 people from areas of their habitual residence to completely different regions and settling them on lands that traditionally belonged to other communities.

Thus, Kenya entered the era of independence with a heightened sense of ethnicity that continued to divide rather than unite the country. However, the ruling elite 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 unprecedented violence.

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 leads to increased tension based on ethnicity which, in turn, creates the potential for ethnic violence.
- Of names and their meaning: In Coast and Rift Valley alike, a prickly 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 sanctions 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. Certain communities have been labelled, 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..
- Culture and stereotypes: While the Colonial government played an important role in cultivating ethnic stereotypes, the

We must work from the basis that Kenya is a garment of many colours, which is beautiful because each colour is present. We cannot be one colour because we would be dull. Some colours cannot run over others because we would be ugly. We must all stay in place and be bright. That is an ideal situation of where Kenya ought to be.

*TJRC witness*

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.

To demonstrate the complicated mix of land, ethnicity, politics and violence, the Commission includes an analysis of ethnic violence in the Mt. Elgon region. While the history of violence in Mt. Elgon is unique, many aspects of the causes of violence and its impact are typical in many other parts of the country. The Commission found that the emergence of SLDF in the Mt. Elgon region was precipitated largely by government failure to fully address land-related injustices that members of Sabao community have suffered since the colonial period. The Commission found that both the SLDF and the Kenya Police and Army were responsible for gross violations of human rights including killings, enforced disappearances, torture and sexual violence.

## Reconciliation

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-communities 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 conflicts over 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.

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.

In its work, the Commission recognised that meaningful reconciliation is not an event, but rather a long process. At the individual level, the decision to reconcile is a personal one, aimed at setting the stage and establishing the basis for the beginning of a reconciliation process. Accordingly, the Commission worked towards ensuring that its activities in the course of its life and the result of its work would substantially contribute to the process of reconciliation.

As part of its reconciliation activities, the Commission conducted reconciliation workshops across the country. It also conducted Workshops on Trauma Healing and Strategy Formulation in selected places in the country. 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,

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

the scale and impact of human rights violations and historical injustices have neither been fully acknowledged nor sufficiently addressed.

The Commission found that the views of victims on reconciliation are varied. There are those who willingly forgave their perpetrators and did not even need to meet them. There are those who simply wanted to know why atrocities were committed against them. But there are also those who were unwilling to forgive and wanted to see their perpetrators prosecuted for the wrongs they committed. Adversely mentioned persons, on the other hand, were largely unwilling to acknowledge any responsibility for events that resulted in unspeakable atrocities.

## Implementation mechanism

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.

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 were 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.

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

The Commission was 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.

Second, it is imperative that the Commission's recommendations, including but not limited to recommendations related to reparations, be fully implemented. Third, given the importance of many of the recommendations of the Commission, 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.

Based upon these and other considerations, the Commission decided to recommend 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.

## Reparation Framework

The TJR Act required 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. In this regard, the Commission has recommended the establishment of a reparation fund that shall be used to compensate victims of gross violation of human rights and historical injustices. The Reparation Framework recommended by the Commission sets out the categories of victims who would access the fund and the criteria for such access.



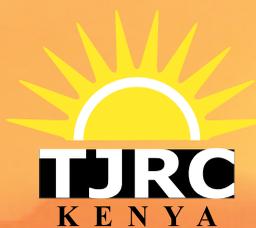
# TRUTH, JUSTICE AND RECONCILIATION COMMISSION

Promoting Peace, Justice, National Unity, Dignity, Healing and Reconciliation Among The People of Kenya



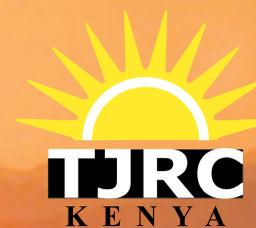
## Annex: Recommendations and Implementation Matrix

	Theme/Subject	Recommendations	Responsibility for implementation	Timeline
1	<b>Atrocities committed during colonial era</b>	Acknowledgment and apology	British government	
		Negotiation for compensation from the British government	Kenyan government and British government	12 months
2	<b>Shifita War</b>	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	<b>Massacres</b>	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
		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	<b>Political assassinations</b>	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
5	<b>Extra-judicial killings</b>	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	<b>Unlawful detention, torture and ill-treatment</b>	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	<b>Sexual violence</b>	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
8	<b>Access to justice</b>	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)

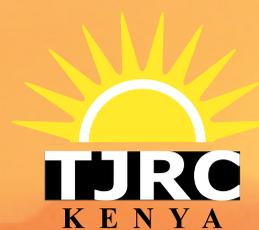


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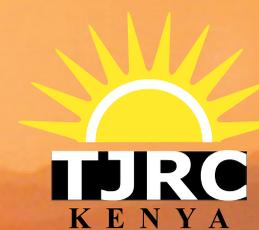


	Theme/Subject	Recommendations	Responsibility for implementation	Timeline
		Fast-tracking of enactment of human rights related laws as envisaged by the Constitution of Kenya: <ul style="list-style-type: none"> <li>▪ Legislation on freedom of the media (section 34)</li> <li>▪ Legislation on fair hearing (section 50)</li> <li>▪ Legislation on the rights of persons detained, held in custody or detained (section 51)</li> </ul>		
9	<b>Women</b>	Acknowledgment and apology Stepping up of measures to raise awareness about harmful cultural practices Enactment of relevant laws (e.g. marriage; matrimonial property; family protection/domestic violence) Adoption and implementation of a Plan of Action to increase and improve maternal health facilities and measures to reduce delivery at home	President Equality and Gender Commission Attorney General and Parliament Ministry of Health	3 months  18 months 12 months
10	<b>Children</b>	Acknowledgment and apology Psychosocial counseling for children victims of atrocities Reparation for children victims of atrocities and injustices Reorganization of Borstal institutions to fall under the Department of Children's Services Adequate funding of the Department of Children's Services Robust plan for Integration of children with disabilities in mainstream educational facilities	President Implementation Mechanism and relevant government departments/institutions Implementation Mechanism Office of the President Ministry of Finance Ministry of Education	6 months  36 months 12 months Continuous 12 months
11	<b>Minority groups and indigenous people</b>	Acknowledgment and apology Implementation of decisions relating to minority/indigenous communities: <ul style="list-style-type: none"> <li>▪ Decision of the African Commission on Human and Peoples' Rights in Communication No. 276/2003 <i>Center for Minority Rights Development (Kenya) &amp; Minority Rights Group International (on behalf of Endorois Welfare Council) v Kenya</i></li> <li>▪ Decision of the African Committee of Experts on the Rights and Welfare of the Child in Communication No. 002/09 <i>IHRDA &amp; OSJI (on behalf of children of Nubian descent in Kenya) v Kenya</i></li> <li>▪ Decision of the High Court of Kenya in <i>Charles Lekuyen Nabori &amp; 9 Others v Attorney General and 3 Others</i> [Petition No. 466 of 2006, High Court at Nairobi]</li> </ul> Ratification of relevant treaties: <ul style="list-style-type: none"> <li>▪ ILO Convention 169</li> <li>▪ Convention on the Prevention and Punishment of the Crime of Genocide</li> <li>▪ Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</li> <li>▪ Convention Against Discrimination in Education</li> <li>▪ Statelessness Conventions</li> </ul> Fast-tracking of legislation on as envisaged by section 100 of the Constitution of Kenya Review of all legislation to eliminate <i>de jure</i> and <i>de facto</i> discrimination against minority/indigenous communities Development and implementation of a plan on data collection on minority and indigenous communities	President Various relevant ministries and institutions  Ministry of Foreign Affairs  Attorney General, Constitutional Implementation Committee, and National Gender and Equality Commission Kenya Law Reform Commission and National Gender and Equality Commission Kenya Bureau of Statistics and Ministry of National Planning	6 months 12 months  24 months  6 months
		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	
12	<b>Economic marginalization and violations of socio-economic rights</b>	Formulation, adoption and implementation of a policy on the economic development of marginalized regions identified by the Commission Focus: <ul style="list-style-type: none"> <li>▪ Roads and infrastructure</li> <li>▪ Health</li> <li>▪ Education</li> <li>▪ Water</li> </ul> Collective reparation for communities in marginalized regions identified by the Commission	Relevant Ministries and institutions including Ministry for Finance, Ministry of Health, Ministry of Education, Commission on Revenue Allocation, etc. Implementation mechanism and relevant state ministries and institutions	12 months 36 months



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	Theme/Subject	Recommendations	Responsibility for implementation	Timeline
13	<b>Land</b>	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	<b>Economic Crimes and Grand Corruption</b>	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	<b>Ethnic tension and reconciliation</b>	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
16	<b>Mt. Elgon conflict</b>	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 <i>Operation Okoa Maisha</i>	Director of Public Prosecutions	18 months
17	<b>Forced displacement</b>	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 <i>Operation Rudi Nyumbani</i> 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	<b>Reports of commissions of inquiry</b>	Release of reports of previous commission of inquiries and related bodies: <ul style="list-style-type: none"> <li>▪ Report of the Commission of Inquiry into the 1992 Raid on Bishop Gitari's House in Kirinyaga</li> <li>▪ Report of the Commission of Inquiry into the Conduct of the Artur Brothers and their Associates ('Kiruki Report')</li> <li>▪ 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')</li> </ul>	President	6 months