

Kenya Transitional Justice Network

# Summary

Truth, Justice and Reconciliation Commission Report

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## Abbreviations

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|         |  |
|---------|--|
| ASK     | Agricultural Society of Kenya  |
| Barasas | A social gathering held to share knowledge, discussion and experiences |
| CBO's   | Community Based Organizations  |
| CSo's   | Civil Society Organizations  |
| EACC    | Ethics and Anti-Corruption Commission                                  |
| EDs     | Enforced disappearances (EDs)  |
| EJKs    | Extra-judicial killings  |
| FERA    | February 18th Revolution Arm   |
| FGM     | Female genital mutilation  |
| GEMA    | Gikuyu Embu Meru Association   |
| GSU     | General Service Unit   |
| ILO     | International Labour Organization                                      |
| KANU    | Kenya Africa National Union  |
| KPU     | Kenya People's Union   |
| KTJN    | Kenya Transitional Justice Network                                     |
| MIP     | Minority and Indigenous Population                                     |
| MRC     | Mombasa Republican Council   |
| NCIC    | National Cohesion and Integration Commission                           |
| ODM     | Orange Democratic Movement   |
| PEV     | Post election violence   |
| SLDF    | Sabaot Land Defence Force  |
| SOP     | Standard Operating Procedures  |
| TJRC    | Truth, Justice and Reconciliation Commission                           |
| TJR     | Truth Justice and Reconciliation (TJR)                                 |
| UNWGEID | United Nations Working Group on Enforced Disappearances                |

## Foreword

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The objective of producing this summary is to enable Kenyans to have access to a user friendly, easy to read version of the report, and to generate public discussions on the main aspects raised. It is not a critical analysis of the report, but a summary of the main findings and recommendations for each chapter of the report, along with the recommendations.

The information presented in this summary was solely extracted from the TJRC report which comprises of 2,210 pages, divided into four volumes: Volume 1 describes the mandate of the TJRC, the methodology of its work and the challenges it faced; Volume 2 is divided into three parts, IIA, IIB and IIC - Volume IIA presents information collected by the TJRC on violations of bodily integrity rights, such as unlawful killings, torture, enforced disappearances and sexual violence - Volume IIB focuses on violations of social and economic rights, as well as historical injustices - Volume IIC concentrates on violations of the rights of special groups, such as women, children and minorities; Volume 3 covers ethnic tensions and reconciliation; and lastly, Volume 4 presents the findings and recommendations of the TJRC, as well as the structure and mandate of the proposed implementation committee—and does not include, neither does it seek to incorporate other sources.

The establishment of a committee to implement the recommendations of the TJRC report has been proposed as the way forward, with the objective of working with relevant stakeholders to facilitate the implementation process, including, administering the proposed reparations.

KTJN hopes that civil society organizations, government bodies, community-based organizations, faith-based organizations, and other parties who are actively engaging in Kenya's transitional justice process will find this summary useful.

## Acknowledgements

The Kenya Transitional Justice Network (KTJN) would like to present this summary of the report of the Truth Justice and Reconciliation Commission (TJRC).

This is a summary of the findings and recommendations contained in the report of the TJRC released and handed over to President Uhuru Kenyatta on 21<sup>st</sup> May 2013.

KTJN acknowledges and appreciates the commitment of its members and partners who were instrumental in summarizing the various chapters of the report into easy-to-read brief summaries. They include: the Kenyan Section of the International Commission of Jurists (ICJ Kenya), Kenya Human Rights Commission (KHRC), the International Centre for Transitional Justice (ICTJ), GIZ, the Kenya National Commission on Human Rights, Constitution & Reform Education Consortium (CRECO), Coalition on Violence Against Women (COVAW), Federation of Women Lawyers (FIDA), Accord International, Freedom House and the International Center for Policy and Conflict (ICPC).

KTJN also wishes to recognize the efforts of committed programme teams and partners: Andrew Songa, Sarah Muthiga, Chris Gitari, Sandra Milena, Zoe Dugal, Sarah Gale, Ruth Nekura, Njoroge Njenga, Njonjo Mue, Davis Malombe, Davinder Lamba, Bakari Moses, Julian Muturia, Juliet Kamau and Earl Sullivan for their work on the summaries of the various chapters of the report and participation at the technical workshop to analyze the report of the TJRC on 16<sup>th</sup> – 19<sup>th</sup> June 2013. We also thank Lucy Wariara and Naomi Maina for their assistance in the compilation and editing of these summaries into this concise document.

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### About Kenya Transitional Justice Network

1. Vision  
National accountability, equity and unity
2. Mission  
To collaborate towards the realization of transitional justice programmes (components) in Kenya comprising Truth-seeking, Criminal Justice, Constitutional Change and Institutional reform.
3. KTJN Membership
  - a) KTJN is the Transitional Justice Network for Kenya.
  - b) Individuals and groups [general, working and thematic] form the membership of the KTJN.
  - c) The working group forms the executive committee steering or coordinating the network to realize the above vision, mission and the programmes. This committee is made up of the following members: KHRC, ICJ-Kenya, ICPC, KNCHR, FIDA-Kenya, COVAW, CREAM, KLA, ICTJ, Mazingira Institute, UAF-Africa, CMD CRECO, 4Cs, AfriCOG and CEDMAC.
  - d) The criterion for general membership is pegged on subscription to the mission and vision of the KTJN.
  - e) To join KTJN please contact any of the organizations named above or those with their contacts below

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# Volume I

## Background of the Commission

The Truth, Justice and Reconciliation Commission (TJRC) was created by Parliament through the Truth Justice and Reconciliation (TJR) Act 2008. Its objective was to promote peace, justice, national unity, healing and reconciliation, among the people of Kenya by:

- investigating and establishing a record of human rights violations by the State, since Kenya's independence in 1963 to 2008;
- explaining the causes of the violations; and
- recommending prosecution of perpetrators and reparations for victims.

The TJRC collected 42,465 statements and 1,828 memoranda from Kenyans, and conducted public hearings all over the country. During the hearings, victims, witnesses and alleged perpetrators gave their stories to the TJRC. Additionally, the TJRC conducted research and investigations. All the information was analyzed and used to compile the final report.

In May 2013, the TJRC published its final report. The report comprises of 2,210 pages, which are divided into four volumes: Volume 1 describes the mandate of the TJRC, the methodology of its work and the challenges it faced; Volume 2 is divided into three parts, IIA, IIB and IIC - Volume IIA presents information collected by the TJRC on violations of bodily integrity rights, such as unlawful killings, torture, enforced disappearances and sexual violence - Volume IIB focuses on violations of social and economic rights, as well as historical injustices - Volume IIC concentrates on violations of the rights of special groups, such as women, children and minorities; Volume 3 covers ethnic tensions and reconciliation; and lastly, Volume 4 presents the findings and recommendations of the TJRC, as well as the structure and mandate of the proposed implementation committee.

## Interpretation of Mandate

The TJRC focused on investigating and establishing a record of 'gross human rights violations' in Kenya, from independence in 1963 to 2008. According to the TJR Act 'gross human rights violations' include the following:

- violations of fundamental human rights, including, but not limited to acts of torture, killing, abduction and severe ill-treatment of any person;
- imprisonment or other severe deprivation of physical property;
- rape or any other form of sexual violence;
- enforced disappearance of persons;
- persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious or gender, or other grounds universally recognized as impermissible under international law;
- any attempt, conspiracy, incitement, instigation, command, procurement to commit the mentioned acts, carried out between 12th December 1963 and 28th February 2008; and
- crimes against humanity.

In addition to the human rights violations described in the TJRC Act, the TJRC also focused on violations of socio-economic rights:

- Socio-economic impact of violations that targeted individual's bodily integrity or their civil and political rights. The TJRC established that most security operations in the country where killings, torture and sexual crimes were committed, were also characterized by the burning of houses, theft or killing of cattle, looting of property and destruction of crops. The impact of these violations was particularly borne by the most vulnerable in the society, namely women, children, persons with disabilities and the elderly.
- Socio-economic marginalisation of communities.
- Economic crimes and grand corruption.

### Methodology and process

The TJRC structured its work under four phases:

- Civic education and outreach: The Civic Education and Outreach Department conducted a number of activities, including training stakeholders, hosting workshops and meetings, and participation in barazas and the Agricultural Society of Kenya (ASK) shows, in an effort to reach as many Kenyans as possible, from all sectors of the society.
- Statement-taking: The TJRC recruited 304 Statement Takers—113 male and 191 female. The nation-wide statement taking exercise was officially launched on 9th September 2010, and lasted for five months. Owing to this, some individuals were either unwilling or unable to record statements during the formal statement taking exercise periods, the TJRC continually recorded and received statements and memoranda at its offices, and during individual and thematic hearings.

**Table 1: Statements taken- distribution by region and gender**

| Region               | Male  | Female | Unknown | Total |
|----------------------|-------|--------|---------|-------|
| <b>Central</b>       | 1778  | 1574   | 6       | 3358  |
| <b>Coast</b>         | 2455  | 1079   | 13      | 3547  |
| <b>Eastern</b>       | 3467  | 1775   | 7       | 5249  |
| <b>Nairobi</b>       | 832   | 947    | 2       | 1781  |
| <b>North Eastern</b> | 2883  | 1307   | 2       | 4192  |
| <b>Nyanza</b>        | 2602  | 1828   | 7       | 4437  |
| <b>Rift Valley</b>   | 7211  | 4698   | 23      | 11932 |
| <b>Western</b>       | 3934  | 2890   | 8       | 6832  |
| <b>Not Given</b>     | 649   | 405    | 83      | 1137  |
| <b>Grand Total</b>   | 25811 | 16503  | 151     | 42465 |

- Memoranda and other materials: The TJRC collected 1,828 memoranda submitted by representatives of affected communities, groups or individuals, which provided longer narrations of the history, context and causes of violations.
- The TJRC also used other materials such as the national archives, government registries, academic papers and reports of relevant organizations and institutions. The Research Department also organized thematic workshops with relevant experts and stakeholders, to explore various research themes.
- Hearings: The TJRC started its hearings in Garissa, in mid-April 2011, and concluded with Nairobi at the beginning of April 2012. It conducted three kinds of hearings.
  - Individual hearings, which focused on the experiences of individuals in relation to gross violations of human rights. Testimonies were heard from individuals whose rights had been violated, as well as those who either had knowledge of—or allegedly participated in acts that resulted in violations.
  - Women's hearings were exclusively conducted and attended by women, with the objective of creating a safe space for them to freely speak about violations which exclusively affected them.
  - Thematic hearings focused on specific violations, events, or groups of victims. The TJRC held a total of 14 thematic hearings which focused on the following subjects: access to justice; economic marginalisation and minorities; land; armed militia groups; prisons and detention centres; torture; ethnic tensions and violence; the 1982 attempted coup; security agencies, extra-judicial killings and massacres; persons with disabilities; women; children; internally displaced persons; and political assassinations.

### **Challenges in execution of mandate**

- The report discusses four main challenges:
  - the controversy surrounding the credibility and suitability of the Chairperson;
  - financial and other resource constraints;
  - legal challenges; and,
  - the lack of sufficient state and political will to support the work and implementation of the objectives, for which the TJRC was established.
- Other challenges generally stemmed from one or more of these four major challenges, including the disengagement of key stakeholders (notably CSOs and donors) from the processes of the TRJC.

### **Credibility and suitability of the Chairperson**

- Almost immediately after the inception of the TJRC, CSOs and a range of other actors, raised concerns over the suitability and credibility of Ambassador Bethuel Kiplagat to serve as the its Chairperson. The TJRC explains this challenge in detail, because of the great impact it had on its operations, also states that it was the single challenge which threatened its existence.
- The controversy about Kiplagat's suitability as the Chairperson of the TJRC, and the legal suits that ensued, adversely affected operations throughout its life span. The controversy diverted and distracted the attention and energy of the TJRC from executing its core mandate. Kiplagat's refusal to step aside led to the resignation of Kaari Betty Murungi as the Vice-Chairperson, and later as a commissioner.



- The Chairperson's refusal to step aside led to the loss of important stakeholders to the work of the TJRC. Social media outlets were awash with calls for the disbandment of the TJRC. Donor organisations equally refused to fund the TJRC, and those who had initially committed to fund it, withdrew their offers. The general public, CSOs, FBOs, CBOs, the media and other relevant stakeholders adopted a policy of 'non-cooperation' with the TJRC.
- Conflict of Interest issues were not just confined to Ambassador Kiplagat alone. There were also allegations that commissioner Major General (Retired) Ahmed Farah had been involved in security operations which led to the Wagalla Massacre.
- The TJRC also immediately undertook investigations into these allegations, and established that:
  - the Navy, of which General Farah was part of, was not involved in any way with the Wagalla Massacre
  - that General Farah was in fact out of the country before, during, and after the Wagalla Massacre.

### Legal challenges

Soon after its establishment, two legal actions were lodged in the High Court, both of which sought the dissolution of the TJRC. The substance, outcomes and impact of the two cases are discussed in this sub-section.

- **Augustine Njeru Kathangu and 9 Others v TJRC and Bethuel Kiplagat [High Court Misc App No. 470 of 2009]**

The Applicants in this case were members of a lobby group named Kenyans Against Impunity, which was formed in the aftermath of the 2007/08 PEV. They were also victims of violations that fell under the TJRC's scope of inquiry. They raised a constitutional challenge on the composition and statutory mandate of the TJRC.

- **Moraa Gesicho v Attorney General and TJRC [High Court (Kisii) Petition No. 1 of 2010]**

The petitioner in this case described herself as a victim of the 2007/08 PEV. She sought a declaration from the High Court that the TJRC had no basis upon which to pursue justice for victims of the PEV. She therefore prayed for the dissolution of the TJRC.

### Lack of political will

1. Firstly, in spite of the express and mandatory provisions of the TJR Act, the President failed to fill the position of commissioner Kaari Betty Murungi when it fell vacant in April 2010. This forced the TJRC to operate with eight commissioners, and later, when Ambassador Kiplagat stepped aside, it remained with only seven commissioners.
2. Secondly, despite multiple requests, the state refused to hand over to the TJRC relevant documents pertaining to its mandate, including the reports of previous commissions of inquiry, that the TJRC was obligated to review and evaluate. Because of this consistent lack of cooperation, the TJRC was forced to acquire for many relevant documents, including the reports of previous commissions of inquiry, through unofficial and informal means.
3. Thirdly, the State failed to adequately support the TJRC's reconciliation work. By their stature and position in society, political leaders, especially the President and the Prime Minister, had key roles to play in steering the nation towards national unity and reconciliation. However, their support for this particular work was ad hoc and inconsistent.

## Volume IIA

### Historical Context: General overview through regimes

The historical and contextual analysis of the TJRC report is important because it helps to assess the extent to which the TJRC has established an accurate, complete and historical record of violations and abuses from the antecedents, circumstances, factors and contexts—pursuant to Sections 5(a)(ii) and 5(b)(ii) of the TJR Act, 2008.

It also guides in establishing the accuracy and patterns of the violations carried out across different regimes, times and space. This is also referred to as systemic violations and crimes. To this regard, the following are key findings of the TJRC report:

- i. With respect to its scope in time and space, the TJRC strived to develop a very clear understanding and dynamic interpretation of its mandate, with regard to the relevant issues and periods, both pre and post-independence. This is well captured in the following observations: “After clarifications, those who harboured fears came to understand that the envisaged commission could inquire into the colonial period. No changes were therefore made to the clauses in the TJR Bill, relating to the mandate of the TJRC. Therefore, in the TJR Act, the first part of the relevant sections mandates the TJRC to investigate violations of human rights that occurred in Kenya between 12th December 1963 and 28th February 2008. The second part mandates it to look into 'background, circumstances, factors and context”. According to the TJRC, this helped them to contextualize violations and atrocities carried out beyond 12th December 1963, and to discover the genesis of the problem.
- ii. Additionally, the TJRC seems to have developed an understanding that it could, in certain circumstances, inquire on events and extend its mandate beyond 28th February 2008, if a violation under inquiry was of a continuing nature. In this regard, the report indicates that the TJRC informed concerned individuals filling out the Statement Form to indicate whether the violation they were recording was of a continuing nature. In relation to this, the report affirms that the TJRC was expressly mandated to 'investigate on any other matter that it considered to be in need of investigations, in order to promote and achieve national reconciliation. This then gave it more leeway, in terms of time and space, to implement its mandate.
- iii. In the context of Volume 1 (the Executive Summary), the TJRC provided a good synopsis of its historical and contextual perspectives on emerging issues, within what it calls the “primary findings” and “thematic overviews”.

Under the “primary findings”, the TJRC summarizes the violations and abuses carried out between 1895 to 1963; 1963 to 1978; 1978 to 2002; and 2002 to 2008. These trends give a picture of what happened between the colonial and Jomo Kenyatta, Daniel Moi and Mwai Kibaki regimes, respectively.

This section profiles the findings with regard to thematic and regional-based violations, within the historical dimensions, which tend to fluctuate between the colonial and post-colonial regimes.

Under the so called “thematic overviews” the report begins with the “political history—a general overview” and then contextualizes gross violations and injustices carried out within the above-mentioned political epochs. The reports indicates that “these epochs correspond to the four political administrations that governed the country, prior to and the during the TJRC’s mandate period”.

- I. While the report clearly blames the colonial government for the entrenching the retrogressive systems, and for committing gross atrocities, it admonishes the Jomo Kenyatta, Daniel Moi and Mwai Kibaki regimes, for maintaining the status quo. The following statements are critical to note: “President Kenyatta made no substantial changes to the structure of the State”. “Under President Moi, the status quo remained for a couple of years, before becoming notably worse...” “...it was not long before autocratic tendencies and KANU-like practices began to emerge in the Kibaki administration”.
- ii. Key violations and atrocities committed from a historical perspective are noted. These entail affronts by security agencies and aggressions experienced: in the context of the Shifta war, massacres, political assassinations, detentions, torture and ill-treatment; within sexual violence; land and conflict; economic marginalization and violation of socio-economic rights; grand corruption and economic crimes; women and children rights violations; ethnic tensions, and violations to minority and indigenous people from a historical perspective.

Finally, other volumes of the TJRC's report-II(A); II(B); III and IV, have investigated, documented and profiled the findings and recommendations, with regard to different themes and issues, from both historical and contemporary perspectives.

## History of security agencies

### Chapter summary and findings

- The Kenya Police and Military forces have been at the center of the country's history of violations of human rights. Both have either committed the violations themselves, or have failed to protect Kenyan citizens. These violations of human rights include massacres, unlawful killings, enforced disappearances, torture and ill-treatment, as well as rape and sexual violence. The Police and Military forces have been the main perpetrators of these violations.
- Throughout the colonial and independence history of Kenya, the Police and Military forces have engaged in excessive violence against communities while addressing cases of banditry, and when maintaining peace and order. These violations were commonly used during large-scale security operations and states of emergency. For example, in response to the Mau Mau insurgency, and during Operation Okoa Maisha in Mount Elgon, both cases were handled with no regard to the guilty civilians, or the impact of violations against those who were innocent in these communities. The two forces' interactions with local communities were characterized by excessive violence and abuse of power, throughout the history of Kenya.
- Lack of professionalism and efficiency in the Police force is rooted to the former British colonial police administration, whose aim was to protect the interests and properties of the colonial State, and a small elite, racial minority—and not to fight crime and establish the rule of law. This lack of professionalism and efficiency persists to date. The policy of the colonial administration, with regards to the Police and Military forces, was only to offer positions of responsibility to Europeans or other foreigners. At independence, these forces were left without experienced high ranking African officers, thus establishing the foundation of lack of professionalism thereafter.

Some sections of the Police and Military forces created during the colonial period remained in placed after independence, and are noted in other sections of the TJRC report, for numerous human rights violations. These include the Special Branch, the General Service Unit and the King's African Rifles.

- Among the factors that encouraged the perpetuation of violations of human rights were:
  - The failure of both Jomo Kenyatta's and Daniel Moi's regimes, after independence, to dismantle the repressive State structures, and repeal the repressive laws and policies of the colonial government. The Police unit was not properly converted into a force which serves the population, instead, it continued to service a small and powerful elite post-independence group of people, with methods characterized by excessive violations of human rights.
  - The cover-up of cases of violations of human rights by the State, especially those committed by security agencies. The State has never shown commitment to investigate and prosecute State agents for violations of human rights.

Recommendations

| Recommendation   | Responsibility for implementation  | Timeframe     |
|--|--|---------------|
| There is need for rapid, effective and transparent implementation of the proposed police reforms, including the introduction of new operating procedures on the use of force, based on international standards. Force Standing Order 51 which allows the use of lethal force to protect property should be repealed. | Inspector General of Police and Police Service Commission                                | Not specified |
| The police force should formulate a new code of conduct and ethics, in line with constitutional values, including disciplinary and accountability measures.  | Not specified – presumably the Inspector General of Police and Police Service Commission | Not specified |
| The police desks at police stations should be well-funded and serviced by officers who have been trained to deal with children.  | Not specified – presumably the Inspector General of Police                               | Not specified |
| Every police station in Kenya should reflect a good representation of ethnic diversity and gender balance.   | Not specified – presumably the Police Service Commission                                 | Not specified |
| The police officers who were involved in violations of human rights should be prosecuted, especially those who are incremented in torture cases. The list of persons recommended for additional investigation and prosecution is contained in Volume IV of the report.   | Director of Public Prosecution   | 18 months     |
| The Police and Military forces should apologize for gross violations of human rights, especially extra-judicial killings, arbitrary detention, torture and sexual violence.  | President, Inspector General of Police and Chief of Defense Forces                       | 6 months      |

## Shifita War

### Chapter summary and findings

- The Shifita War which took place from 1964 to 1967, between the newly independent Kenyan State and the Somali Separatist Movement, presents a period of widespread violations of human rights. The Military force committed mass killings, torture, sexual violence and rape against civilians. The police force, especially the General Service Unit, also committed violations of human rights. It is estimated that between 2,000 and 7,000 people were killed during the War.
- The Somali Separatist Movement and the Northern Frontier District Liberation Military also committed violations of human rights against civilians, but on a much smaller scale, compared to the Military force.
- The Military force is responsible for large-scale confiscation and killings of cattle, especially by poisoning of water sources, which killed both cattle and civilians. The owners of the cattle were never compensated for the loss, leaving many destitute. The levels of loss reported to the TJRC range from 70 percent to 90 percent of cattle.
- The government created restricted villages, where communities were forced to live, and were forbidden to leave. These villages were more like detention camps. The living conditions were very bad, with poor sanitation, disease outbreaks, and poor security. These resulted in numerous rape cases and other violations of human rights. Some children were forcibly taken from their families and relocated in these villages.
- The government covered up the violations committed by the Police and Military forces, as well as the civilian administration. It passed the Indemnity Act to protect all government officials from prosecution, for violations committed during the war. To date, the Indemnity Act is still a law in Kenya.
- The TJRC identifies Brigadier Joseph Ndolo and Brigadier Jackson Mulinge as those who were responsible for the atrocities, because of their roles as commanders in the Military force during the Shifita War period. The TJRC received reports of many mass graves around Northern Kenya, which date back to the Shifita War period.
- The Shifita War ended when the Kenya and Somalia governments signed an agreement. In this agreement, the government of Somalia promised to stop supporting the Kenyan Somali Separatist Movement.
- The Shifita War had a devastating effect on minority groups in Northern Kenya, and on the region as a whole. Currently, Northern Kenya is a neglected region with poor living conditions, lack of government services and lack of security. Discrimination against the Somali community still persists, because of the earlier separatists ambitions expressed during the Shifita War.

Recommendations

| <b>Rcommendation</b>  | <b>Responsibility for implementation</b>                     | <b>Timeframe</b>                     |
|---|--|--------------------------------------|
| The government should repeal the Indemnity Act within nine months of the publication of the TJRC's report.  | Attorney General and Parliament                              | 9 months                             |
| Further investigations of persons adversely mentioned in regards to violations of human rights, committed during the Shifta Wars should be conducted. The list of persons recommended for additional investigation and prosecution is contained in Volume IV of the report. | Director of Public Prosecution                               | Not specified – presumably 18 months |
| The government should publish the agreement which was signed by Kenya and Somalia in 1967 to end the Shifta War.  | Ministry of Foreign Affairs & Office of the President        | 9 months                             |
| The President of Kenya, as Commander in Chief of the Armed Forces, should publicly recognize and apologize for the violations committed during the Shifta War.  | President  | 6 months                             |
| A memorial to commemorate the victims of the Shifta War should be put up.   | Ministry responsible for National Heritage & National Museum | 24 months                            |

**Unlawful killings and enforced disappearances**Chapter summary and findings

- The TJRC report analyzed extra-judicial killings (EJKs) and enforced disappearances (EDs) as gross violations of human rights to the TJR Act. EJK's are killings carried out by the State. Some examples are political assassinations, executions without due process of law and deaths resulting from torture, ill treatment, detention, ED's, or excessive use of force. The State's actions in complacency with these actions are contrary to its constitutional requirement, to protect individuals within its jurisdiction from unlawful killings.
- The TJRC recognized extra-judicial killings and enforced disappearances as two distinct legal categories, while also recognizing the close relationship between the two human rights violations.
- Kenya is a signatory to the International Convention for the Protection of All Persons from Enforced Disappearance, which was entered into force on 23rd December 2010. Because Kenya has signed this treaty, the State is obligated not to act contrary to the object and purpose of the Convention. It is noted that the State does not make regular reports to the United Nations Working Group on Enforced Disappearances (UNWGEID).
- One of the challenges encountered by the TJRC was lack of access to accurate records held by the Police, which contained details of the number of people who had reportedly been killed by State agents, as well as records of ED's. This led to TJRC's heavy reliance on secondary information, mostly captured from civil society reports and the media.
- The legal system in place in Kenya is not sufficient to prevent EJKs and EDs. This failure is mainly due to lack of specificity in laws defining EJKs and EDs, which in turn led to the inability of perpetrators from being prosecuted. This vagueness resulted in impunity of State perpetrators of EJKs and EDs.

- Some of the cited cases in post-independence Kenya were massacres, such as the Wagalla massacre, military operations, the ethnic clashes of 1992, 1997, 2007, and the EJKs of youths who were alleged to belong to Mungiki.
- In most cases, such as during tribal clashes and military operations, security forces—Police force, Administration Police and the Military were either complicit to the acts, or perpetrators of these acts. For example, the 2007 post-election violence was characterized by the use of excessive force and EJKs by the Police force.
- The State has also engaged in efforts to conceal EJKs and EDs. These efforts include deliberate failure to investigate and sham investigations, and frustrating genuine investigations. The TJRC reports that there were many cases of EJKs and EDs which, the State completely ignored, and did not undertake any effort to investigate.
- Criminal justice institutions in Kenya have provided little—if any remedy to victims of EJKs and EDs. Shoddy investigations were carried out, rendering it difficult to link evidence to the alleged criminals. Further, the low quality of evidence often prolonged the trials. This led to the acquittal of most of the accused persons, due to lack of evidence, while those in remand and prison awaiting trials, often died in the process.

### Recommendations

| Recommendation   | Responsible   | Timeline  |
|--|---|-----------|
| The President and respective heads of the Police and Military forces, should within six months of issuance of this Report, offer a public and unconditional apology for extra-judicial killings committed during the mandate period.                   | The President and Police and Military forces  | 6 months  |
| Reforms in the Police force should be fast-tracked, including the introduction of new Standard Operating Procedures (SOP).   | Inspector General of Police and Police Service Commission                               | -         |
| Within two years of issuance of the report, the government should ratify the International Convention for the Protection of All Persons from Enforced Disappearance.   | Ministry of Foreign Affairs   | 2 years   |
| Within 36 months of the issuance of this Report, the government should set up a fully equipped national modern forensic laboratory, followed by every county thereafter.   | Ministry responsible for internal security and other relevant ministries/ institutions. | 36 months |
| Abolish the death penalty, and commute all death sentences to life imprisonment or other appropriate sentences. The Commission notes that while Kenya is not an abolitionist state, it has not exercised the death penalty for close to three decades. | Attorney General and Parliament   | 24 months |
| Compensate families of victims of extra-judicial killings, in accordance with the TJRC's Reparation Framework.   | The President   | -         |
| Compensate victims; the British government should also offer a public and unconditional apology to victims and Kenyans at large.   | The President and British Prime Minister  | -         |
| Reparation for victims and survivors   | Implementation mechanism  | 36 months |

## Unlawful detention, Torture and Ill-treatment

### Chapter summary and findings

- This chapter focuses on violations committed directly by the State and other similar violations committed by non-State actors. The chapter provides a composite account of the dynamics and factors that nurtured an environment under which these violations and injustices thrived.
- Between 1963 and 1978, the government of President Jomo Kenyatta was responsible for numerous gross violations of human rights. These violations include:
  - killings, torture, and collective punishment
  - denial of basic needs (food, water and health care); and
  - arbitrary detention of political opponents and activists.
- Between 1978 and 2002, the government of President Daniel Moi was responsible for numerous gross violations of human rights. These violations included unlawful detentions, as well as systematic and widespread torture and ill-treatment of political opponents and human rights activists, for example, during the Mwakenya crackdown and after the 1982 attempted coup. This also included torture of families of the suspects.
- Between 2002 and 2008, the government of President Mwai Kibaki was responsible for numerous gross violations of human rights, including unlawful detentions.
- Security operations in Northern Kenya were accompanied by systematic and widespread torture, rape and sexual violence against girls and women. Additionally, the colonial and post-colonial States abused the provisions of state-of-emergency, to use unlawful detention and torture.
- State security agencies, particularly Police and Military forces, have been the main perpetrators of bodily integrity violations of human rights in Kenya, including massacres, enforced disappearances, torture and ill-treatment, and sexual violence. The Police and Military forces used unlawful detention and torture during security operations in Northern Kenya (North Eastern, Upper Eastern and North Rift), in Likoni and Mount Elgon.
- The Special Branch of the Police force systematically used torture against detainees in Nyayo House, Nyati House, police stations and prisons. Torture practices included detention in water-logged cells, spraying detainees with hot and cold water, denial of food, water and medical attention, beatings, humiliation and the use of insects to bite detainees.
- Nyayo House was constructed by the government with the intention of using its basement as torture cells.
- The Judiciary was frequently complicit with the commission of violations of human rights, by denying suspects due process. For example, the use of prolonged detention before trial, as well as through unfair trials. Violations due to prolonged pre-trial detention continue to date.
- Victims of torture and their families still suffer the consequences of the violations they experienced. Many have had their health, self-esteem and livelihoods destroyed.



## Recommendations

| Recommendation   | Responsible             | Timeline      |
|--|-------------------------|---------------|
| Apologise for gross violations of human rights committed by predecessor agencies between 12 <sup>th</sup> December 1963 and 28 <sup>th</sup> February 2008, especially acts of extra-judicial killings, arbitrary and prolonged detention, torture and sexual violence.  | State security agencies | -             |
| Enter into negotiations with the British government with a view of seeking to compensate victims of atrocities and injustices, committed during the colonial period, by agents of the colonial administration.   | Kenyan Government       | 12 months     |
| Create a National Human Rights Day on 10 December, to coincide with the international Human Rights Day, which will be used to promote respect for human rights in Kenya.   | Parliament              | 6 months      |
| Fast-track the enactment of human rights related laws as envisaged by the Constitution of Kenya, including: freedom of the media; fair hearing; and rights of persons held in custody or detained.   | -                       | -             |
| Make a declaration in terms of article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, thus allowing individual victims of human rights violations, who have exhausted local remedies to directly access the African Court.                              | -                       | -             |
| Fast-track the expansion of the national legal aid scheme to cover the entire country.   | Ministry of Justice     | Not specified |
| Enact a legislation prohibiting all forms of torture and cruelty, inhuman or degrading treatment or punishment committed both by State and non-State actors.   | Government              | 12 months     |
| Establish through legislation, of the Office of the Independent Inspector of Prisons and All Places of Detention.  | -                       | -             |
| Rapid, effective and transparent implementation of the proposed police reforms, including the introduction of new standard operating procedures on the use of force, based on international standards.   | -                       | -             |
| Repeal of Force Standing Order 51, which allows the use of lethal force to protect property.   | -                       | -             |
| Prosecute police officers and other State agents who were involved in torture and ill-treatment of individuals during the mandate period. In particular, the prosecution of the following 18 individuals <sup>1</sup> . Investigations of identified individuals involved in the torture and ill-treatment of, amongst others, Mwakenya and FERA suspects. | -                       | -             |
| A public apology to all victims of torture and unlawful detention and acknowledgement of the role of the State in the design and use of Nyayo House torture cells.   | President               | -             |
| Conversion of Nyayo House into a memorial site after consultations with victims of torture.  | -                       | -             |
| Compensation for victims of unlawful detention, torture and ill-treatment, as per the framework described in the Chapter on Reparation Framework.  | -                       | -             |

<sup>1</sup> James Opiyo; James Mathenge; Sam Chelimo; Munene Muhindi; John Mburu; SP Okwemba; Petkay Miriti; G Koskey; James Kilonzo; James GachanjaKariuki; Christopher Karanja Kiarie; Noah Arap Too; Geoffrey Kinoti; Leonard Wachira; Elias Mjomba;

## Sexual Violence

### Chapter summary and findings

- This chapter focuses on Sexual and Gender Based Violence violations against women, men, girls, and children. The TJRC's mandate comes from section 5(c) of the TJR Act, which mandated the TJRC to investigate gross human rights violations, which include rape and any other form of sexual violence.
- Over 1,100 statements were received from adults, regarding sexual violations. 103 of these were given by men. Combined, the statements and memoranda represented a victim count of 2,646 women and 346 men.
- The TJRC held public hearings where 778 witnesses (213 women and 656 men) gave testimonies regarding sexual violations. Out of 778 cases that were heard, 26 reported that sexual violence violations were committed to them. Of these, 21 were from women while 5 came from men.
- Out of 100 total cases heard in camera, 19 related to sexual violence. Two of the sexual violence cases heard in camera were from men, while the other 17 came from women. Separate thematic hearings were also organized exclusively for women. Over 1,200 women participated in these thematic hearings—women-only hearings.
- The Report covers sexual violations throughout the TJRC mandate period. This included instances, from the colonial period until 2008, during cattle raids, security operations and everyday life.
- The TJRC received reports of many types of sexual violations. For example, some victims reported mass rapes, defined as the rape of many women in a community at the same time; gang rape, defined as the rape of women by more than two men at the same time; sodomy; mutilation of male and female genitals; defilement; sexual torture; sexual slavery; and penetration of women's sexual organs with harmful objects.

### Recommendations

| Recommendation  | Responsible                        | Timeline   |
|---|------------------------------------|--|
| Acknowledge and offer a public and unconditional apology for acts of violence committed by State security agencies, during security operations and other periods of generalized violence, such as the 2007/2008 PEV.  | President                          | Three Months(within the issuance of this Report) |
| Establish gender based violence recovery centres in every county.   | Kenyan Government                  | 12 months  |
| Set up the office of the Special Rapporteur on Sexual Violence, as recommended by the Waki Report.  | Government                         | 12 Months  |
| Formulate a new Code of Conduct and Ethics for the Police force, in line with Constitutional values and principles.   | National Police Service Commission | Not specified                                    |
| Prosecute Nganda Nyenze who allegedly planned, supervised or was otherwise involved in the Kavamba Operation, where women were raped and/or sexually violated.  | DPP/Government of Kenya            | Not specified                                    |
| Apologize for sexual violence committed against women in Samburu and Laikipia by British soldiers.  | British Government                 | Not specified                                    |
| Enter into negotiations with the British Government with a view of seeking to compensate victims of sexual violence committed by British soldiers in Samburu and Laikipia.<br>Provision of compensation of victims and survivors of sexual violence as per the Reparation Framework proposed by the TJRC. | Government of Kenya                | Not specified                                    |

## Volume IIB

### Economic Marginalization and violation of socio-economic rights

#### Chapter summary and findings

- The chapter on Economic Marginalisation and Violation of Socio-Economic Rights finds its statutory support in the Truth Justice and Reconciliation Act (TJR), which adopted a modern approach to analyzing the violation of human rights, whereby the differences between bodily integrity violations and socio-economic rights are not distinguished. While the TJR provides the overall mandate for the commission section 6(p) of the TJR, it is most explicit regarding this chapter and requires the TJRC to “inquire into and establish the reality of otherwise perceived economic marginalization of communities, and make recommendations on how to address the marginalization.”
- Marginalisation: Though there were perceptions of marginilisation in all provinces, the TJRC specifically focused on five: North Eastern, Nyanza, North Rift, Coast and Western. While the indicators of marginilisation used by the TJRC (physical infrastructure, employment [especially in the public sector], education, health, housing, access to land, water, sanitation and food security) were used throughout, the manifestation of these differed by province. Though many provinces suffered, such as Nyanza, for being “politically dissident” there were also a range of other unique situations, resulting in marginilisation. For some provinces with lower natural resources, such as North Eastern Province, this took the form of a lack of adequate government support, while other provinces, like the Western Province, with better access to natural resources, often suffered active government mismanagement or were left out of development schemes, due to the perception that they were independently sustainable. Other provinces such as the North Rift Valley have suffered due to lack of adequate security, which is quite different then the Coast Province’s major issue of landlessness resulting from historical dispossession schemes.
- TJRCs key operational definitions:
  - **Marginalization:** Process that denies opportunities and outcomes to those “living on the margin,” while enhancing the opportunities and outcomes for those who are “at the center.”
  - **Economic marginalization:** situation produced by the process through which groups are discriminated directly or indirectly, in the distribution of social goods and services.
  - **Discrimination:** any distinction, exclusion, restriction or preference based on any ground such as race, colour, descent, or national or ethnic origin, which has the purpose or effect of nullifying and/or impairing the recognition, enjoyment or exercise, on equal footing of human rights and fundamental freedoms in political, economic, social, cultural or any other field of public life.
  - Violations were measured by practices which had either a discriminatory effect or were constructed with a discriminatory intent. Discriminatory intent was analyzed by looking at the direct impact of a practice, commonly seen though laws or policies. Discriminatory effect may be seen by indirect impacts, such as the effect the removal of a group from land would have on that society or culture. Further, the TJRC established that economically marginalized groups tend to be socially marginalized as well. This process has also been referred to as “social exclusion”, whereby certain groups are systematically disadvantaged, because they are discriminated against.

- TJRC's Approach to Examining Violations: The role of the State, in respect to marginalisation, was analyzed by the TJRC to determine if it either increased or decreased the inequality in a given region. This level of inequality was then measured horizontally (between groups and regions), rather than vertically (income difference within social groups).
- Context of Economic Marginalisation: The TJRC established that the historical, socio-economic and political context in which marginalisation developed was affected by many factors. Six main factors, affecting the historical and structural inequality in Kenya, were identified and examined in detail. These factors were Kenya's colonial legacy; ethnicity; centralized State and personalization of power; client-patron relations and corruption; land and economic marginalisation; and the historical irredentist and/or secessionist struggles and State sovereignty.
- State Involvement: The TJRC established that the State was responsible, in many cases, for both direct and indirect marginalisation of certain regions, communities and groups. The Sessional Paper No. 10, premised on African Socialism, fostered economic marginalisation through a number of policies, including the elimination of communal land titles, a willing-seller/willing-buyer based resettlement programme, a failure to rectify past injustices, and regional investment strategies based on high/low potential regions.

Political Power, Ethnicity and Perpetuated marginalisation: Ethnicity was instrumentalized through what the TJRC called the "evil triumvirate" of patronage, corruption and tribalism.

- The TJRC found that there was a clear link between political power and benefits to the community to which those in power belonged, quickly making politics and economic inclusion a zero-sum game "win and be rewarded, lose and be marginalized". This manipulation for political and economic gain limited the spread of economic empowerment. For example, the GEMA communities were supported by the Jomo Kenyatta regime, while the Kalenjin's were supported by the Daniel Moi regime.
- State Responses: The State responded to claims of marginalisation by often working against those who made any claims which were perceived to weaken the power held by the State or any infringement on the incumbent leader's position. When it was not possible to accomplish the desired outcomes by a more authoritarian regime, the State would often co-opt key members of marginalized communities (tokenism). This co-option rarely benefited the communities from which the member was selected. The TJRC went on to note that the development of the State's responses to claims of marginalisation saying that Kibaki started to align himself with a more integrated government with greater diversity, but this was later disregarded. The report discusses the new hope enshrined in the Bill of Rights, is the devolution process and land reform.

Recommendations

| Recommendation  | Responsibility for implementation                                       | Timeline  |
|---|---|-----------|
| Formulate, adopt and implement a policy that deliberately targets the socio-economic development of historically marginalized regions. <ul style="list-style-type: none"> <li>• Include strategic development plans and budgetary allocations, aimed at the economic and social development of marginalized communities.</li> <li>• The policy must recognize that these reparative actions are over and above the provisions of Article 204 of the Constitution (2010) in utilization of the Equalization Fund.</li> <li>• Build an efficient road network which links marginalized areas with the rest of Kenya. Build boreholes and water-catchment systems, adequately stocked and well-staffed hospitals within the reach of all communities, schools with adequate facilities, courts of law, and ensure that all government services and public facilities are made available.</li> <li>• Enact a policy which gives preference to marginalized regions in sharing of national revenues, as envisaged under Article 202 of the Constitution (2010), to ensure that the development projects are realized and the policy is implemented.</li> </ul> | Government  | 12 months |
| Provide collective reparation to communities in marginalized regions.   | Implementation mechanism and relevant State ministries and institutions | 36 Months |

**Land and Conflict**Chapter summary and findings

This chapter offers a detailed explanation of historical land injustices in Kenya, and is divided into two phases: the colonial era and post-independence era.

**Colonial era**

The colonial administration used irregular and/or illegal methods to obtain land from local communities such as the establishment of native reserves; forced evictions of the Talai, Pokot, Turkana, and Saboot communities, land alienation by multinational corporations and coercive measures such as forced African labour, forced taxation and forced military service. These colonial policies, laws and practices had both immediate and long-term effects on African communities, including permanent displacement. The colonial system created ethno-specific boundaries, which gave the impression that land rights within particular boundaries could only be enjoyed by certain communities, in certain areas. These ethnic ties to land continues to affect Kenya to date.

**Post-independence era**

Officials of the newly-formed independent government in Kenya turned the foreign-funded settlement schemes into cartels for their own benefit, and bought land in the Rift Valley, among other parts of the white highlands. Through this process, government officials swindled communities that were supposed to benefit from the settlement schemes, after being displaced by the British.

Three main categories of land emerged—government (including local authority) land, trust land/community land and private land. However, the laws on land were not respected, and this resulted in illegal and/or irregular allocation of land, such as Karura and Ngong Forest, amongst others. State officials such as the provincial administration continued historical injustices related to land,

including forceful evictions of individuals and communities, and land grabbing for personal gain.

The TJRC found that:

- There is a close link between land injustices and ethnic violence in Kenya.
- Land related injustices took many forms such as illegal takeover of individual and community land by public and private institutions; illegally hiving off public land and trust lands; preferring members of a specific ethnic group to benefit from settlement schemes, at the expense of others who were more deserving; forcefully settling a community outside its homeland; forceful eviction; and land grabbing by government officials.
- Land injustices started during the colonization of the Coast by Arabs and were followed by the British. All post-independence government regimes failed to honestly and adequately address these injustices.
- The failure of colonial and post-independent governments to address landlessness, has caused individuals and communities to turn to violence.
- Some take advantage of existing land-related injustices, when addressing other social problems, such as political differences.
- Land-related injustices have affected the whole country, but communities at the Coast, especially the Mijikenda, Taita and Pokomo, have suffered the longest and most severe injustices.
- Land-related injustices at the Coast are one of the key reasons for under-development in the area, and have caused the emergence of the Mombasa Republican Council (MRC).
- The provincial administration has committed land-related injustices, including forced evictions, and should participate in efforts to redress land related problems.
- The current Constitution and its institutions provide an opportunity to fully address land-related injustices, but only if there is political will to do so.

### Recommendations

| Recommendation  | Responsibility for implementation                                 | Timeframe     |
|---|---|---------------|
| Survey, demarcation and registration of public land.  | Ministry of Lands or other appropriate government authority       | Not specified |
| Adjudication and registration of land at the Coast and other areas, where this has not been done.   | National Land Commission  | Not specified |
| Investigate all alleged illegal or irregular acquisition of land.   | National Land Commission  | Not specified |
| Design and implement measures to revoke illegally obtained titles, and restore public easements.  | Ministry of Land in conjunction with the National Land Commission | Not specified |
| Development and maintenance of a computerized inventory of all land.  | National Land Commission  | Not specified |
| Formulate and implement strict guidelines, in terms of the maximum acreage that an individual or company can buy, in respect of private land. | National Land Commission  | Not specified |
| Reparations for historical land injustices.   | Implementation mechanism and National Land Commission             | 36 Months     |

## **Economic crimes and Grand Corruption**

### **Chapter summary and findings**

- Corruption is an endemic in Kenya. Throughout history, Kenya has had many large-scale corruption scandals, and most individuals responsible have not been prosecuted. 5,646 people testified before the TJRC on corruption.
- There is a direct link between corruption and gross violations of human rights. Kenyans have been killed, tortured and subjected to other violations of human rights, because of their efforts of combating corruption.
- Corruption has a disproportionate impact on vulnerable groups such as the poor, minorities and indigenous people, women, children, persons with disabilities, people living with HIV/AIDS, refugees and internally displaced persons, and prisoners. Members of these groups are less able to defend themselves. Corruption wastes resources for development, infrastructure building, and public services, while discriminating against those who cannot afford to pay bribes to the police and judges. Additionally, this practice often leads to accidents, for example, when safety measures are compromised due to bribing. Minority and indigenous people usually suffer from the effects of corruption when they are displaced. For example, whenever there are corruptly approved infrastructure developments.
- The main challenges to fighting corruption in Kenya are as follows:
  - Kenya does not have a national anti-corruption policy, and has not fully integrated the United Nations Convention against Corruption into Kenyan law. Additionally, there are no laws that allow the audit of the wealth of public servants. There are currently no laws which criminalize corruption in the private sector.
  - The functions and powers of the Ethics and Anti-Corruption Commission (EACC) are not properly described in the Constitution, and the EACC does not have any power to prosecute.
  - There are conflicting definitions of the term integrity applied by courts in using Chapter VI of the Constitution. EACC's role as regards to Chapter VI and the Leadership and Integrity Bill is not clear, especially when it comes to vetting provisions that were removed from the Bill by Parliament.
  - There is a lack of political will to fight corruption, harassment and intimidation of whistle-blowers.
  - The process to take cases through the court system is often lengthy and requires many resources.
- Historically, several commissions of inquiry have been established to investigate large-scale corruption scandals, and have recommended the prosecution of individuals who were responsible. Most of the recommendations of these commissions have been ignored by the State, leading to a culture of impunity.

## Recommendations

| Recommendation  | Responsibility for implementation     | Timeframe     |
|---|---------------------------------------|---------------|
| Formulate a national anti-corruption policy to guide the fight against corruption.  | Attorney General & Parliament         | 18 months     |
| Criminalize offences contained in the United Nations Convention Against Corruption, and include in the Kenyan law.  | Attorney General & Parliament         | 18 months     |
| Harmonize into one law the Anti-Corruption and Economic Crimes Act, Public Officers Ethics Act, the Ethics and Anti-Corruption Commission Act and the Leadership and Integrity Act.   | Attorney General & Parliament         | 18 months     |
| <p>Make a definition of integrity and the integrity threshold that should be used to disqualify or remove a person from public office, and especially whether it is at the time:</p> <ul style="list-style-type: none"> <li>- when mere allegations are made against an individual</li> <li>- when an individual is under investigation</li> <li>- when an individual is under prosecution</li> <li>- when an individual is convicted</li> <li>- when an individual has exhausted his right of appeal after conviction</li> </ul> | EACC                                  | 6 months      |
| Undertake investigations into the grand corruption scandals mentioned in the Commission's report, which have remained unresolved for many years. Appropriate prosecution must follow the investigations. The list of persons recommended for additional investigation and prosecution is contained in Volume 4 of the report.   | EACC                                  | 18 months     |
| Increase to nine, and the staff number should also be increased, in order to deal with the work-load due to devolution.   | Attorney General & Parliament         | 18 months     |
| Amend Article 79 of the Constitution to specifically provide for the powers and functions of EACC.  | Not specified – presumably Parliament | Not specified |
| Release the report of the Commission of Inquiry into the conduct of the Artur Brothers and their Associates (Kiruki Report).  | President                             | 6 Months      |



## Volume IIC

### Gender and Gross Violation of Human Rights: Focus on Women

#### Chapter summary and findings

This chapter identifies abuses which took place against women during the course of the mandate, in addition to the deep-rooted historical injustices perpetrated against women by the State.

- Women experience broad, gender based, persecution due to male dominance embedded in the Kenyan culture. This has been manifested in aspects of widow rights, both regarding matrimonial property rights, and widow inheritance; sexual violence; preference of male children; early marriage and bride price; female genital mutilation (FGM); and State discrimination.
- Kenyan women faced an array of difficulties, which perpetuated their lower standing in the society, as a result, there is an culmination of complex social and economic factors which affected them. These factors include the feminization of poverty, women employment, women and land rights, maternal mortality, due to lack of access to health facilities, and the perception of women living with HIV/AIDS.
- Women were not sufficiently represented in decision making arenas, and there has been a history of political exclusion and State repression in a meaningful political participation of women.
- State repression for women involved in politics included false accusations, which led to wrongful convictions, public humiliation and torture. Women have also suffered State repression through the effects of harm inflicted to their husbands and children.
- In recent conflicts, women have become the specific targets of violence during conflicts, which was particularly evident in instances of sexual violence. While this has been observed in Kenya throughout history, the Report focused on the Mau Mau war, the Mt. Elgon conflict, the 2007/2008 post election violence, and periods of forced displacement. Forced displacements, have been described as a permanent feature of Kenya's history, and still persists to date. Women, already in a vulnerable state at refugee camps, were exposed to increased risks of human rights violations, sexual violence in particular.
- Formal peace making processes have often excluded women, despite their known positive contributions at the informal level, and in the process of rebuilding of communities.
- Special attention should be paid to the most vulnerable among women, including those in rural and slum areas, internally displaced and refugees, disabled, living with HIV/AIDS, and from minority and indigenous groups.
- Cooperation is needed from all levels of the society, including the government, social services, health providers, civil servants and communities, to end long lasting human rights violations against women.
- The report is calling for an end to the outlined violations against women in all forms, and for the advancement of substantive gender equality, in order to prevent these abuses from progressing into the future.
- Women's issues have long been neglected by the State, but it was noted that for Kenya to heal and grow as a nation, the problems and hardships faced by women must be addressed.

Recommendations

| <b>Recommendation</b>   | <b>Responsibility for Implementation</b> | <b>Time Frame</b> |
|---|--|-------------------|
| Make a public and unconditional apology for the State's sanction of discrimination against women.   | President                                | 6 months          |
| Increase measures to raise awareness about harmful cultural practices, that adversely affect the enjoyment of human rights by women.  | Equality and Gender Commission           |                   |
| Expedite the enactment of the Marriage Bill 2007, the Matrimonial Property Bill 2007, the Family Protection Bill 2007 and the Equal Opportunities Bill 2007.                                      | Attorney General and Parliament          | 18 months         |
| Conduct an independent survey of the willingness of Kenyan refugees in Uganda to return to Kenya, and return and resettle those who are willing.  | Kenyan and Ugandan governments and UNHCR | 9 months          |
| Ensure that the composition of land dispute tribunals meet the Constitutional gender ration requirement.  | Ministry of Lands                        | 12 months         |
| Enact a Plan of Action, highlighting measures to be taken in order to increase and improve maternal health facilities in the country, with the aim of reducing the number of home delivery cases. | Ministry of Health                       | 12 months         |

**Children and Gross Violation of Human Rights**Chapter summary and findings

- The TJRC worked with the relevant child protection organizations and agencies, in formulating both the narrative and recommendations for this chapter. The TJRC made deliberate efforts to facilitate children's participation in its proceedings in order to ensure that children's interests and views were captured in the findings. Furthermore, because children have also witnessed human rights violations, they were identified as holders of relevant information to TJRC's mandate.
- The TJRC's findings were based on approximately 2000 statements from children, and multiple reports and testimonies from adults and representatives from civil society organizations and child protection agencies.
- The TJRC established that conflict and political unrest further increased the vulnerability of children.
- Education: The TJRC established that there was lack of accessibility to education by children with disabilities.
- Health: The TJRC established that not all children in Kenya were able to access health care services due to economic and infrastructural factors, and the lack of responsible care givers.

- Child labour: The TJRC established that the phenomenon of child labour has been a historical issue, dating back to the colonial period when children worked on farms owned by white settlers. However, incidences of child labour have been on the rise since then.
    - Enforcing the law in cases of sexual exploitation of children is hampered by uncooperative relatives, who choose to receive a compensation instead of prosecution of the perpetrators.
    - Domestic violence increases the vulnerability of children to child labour. Similarly, violent conflict also makes children vulnerable to child labour. Many children, for instance, were forced into the labour market by the 2007/2008 post election violence (PEV).
  - Children and Conflict: Violent conflicts have marred Kenya's history since independence and have had a profound impact on children. For example, during the colonial period, the Mau Mau children were subjected to traumatic experiences, and witnessed atrocious crimes committed against their parents and adults in general.
    - Atrocities were committed against children including killing, maiming, torture and sexual violence. Children were also witnesses to crimes, from which many survivors remain traumatized.
    - The TJRC established that children were both direct and indirect victims of gross violations of human rights committed in the following contexts: the Shifta War, security operations in Northern Kenya, the Mt. Elgon conflict, ethnic clashes of 1992 and 1997, and most recently, during the 2007/2008 PEV.
  - Sexual violence: Sexual violence occurred in many different contexts, from conflict scenarios to an increasing number of girls being defiled by their peers in school. This underscored how unsafe, even perceived safe havens can be in Kenya.
    - Male children are also victims of sexual violence. According to the 2011 Kenya Police Statistics, 114 cases of sodomy were reported.
  - Forced recruitment: Vigilante and militia groups in Kenya sometimes forcibly recruit children.
  - The phenomenon of forced recruitment of children into these groups, highlights the complex status of such children as victims and perpetrators all at once. Examples given are Mungiki, SLDF, PEV.
  - Plight of internally displaced children: Have had an adverse impact on health and education.
  - Plight of refugee children: The TJRC went to Kiryandongo Refugee Camp in Uganda and found that many youth want to return to Kenya. It also discovered that many of their parents were not ready to return to Kenya, because some have found land where they can cultivate and make a livelihood, which has made the prospect of returning to uncertainty in Kenya, not very desirable.
- Juvenile Justice: The TJRC received testimonies concerning violations against juvenile delinquents. According to these findings, children in need of care and protection, such as abandoned children, often find themselves in the juvenile system which is designed for child offenders. Street children, many of whom fall under this category, told the TJRC that they are harassed by police officers instead of being assisted.

- o At the pretrial stage and during trials, if a child had to remain in custody, he or she was placed in a remand home. However, remand homes in Kenya do not have the capacity to cater for all children. Children are therefore placed in cells and separate wards in prisons. Children's rights are not protected within these facilities. In some cases, children were kept together with adults where allegations of sexual abuse have followed.
- o While most prisons have created separate wards for children facing trial, the overall environment is not conducive for them. Like police cells, these wards lack adequate facilities, such as beds and appropriate food, necessary for the proper development of children. Though there may be separate wards for children in most of the facilities, in practice children are exposed to adult criminals who may influence their character.
- o While the diversion programme allows police officers to use restorative justice mechanisms when dealing with alleged child offenders, the TJRC established that such mechanisms were rarely used.
- o While children's desks are now provided in some police stations, it is evident that they are not operating optimally. Some officers running the desks have not been trained on child rights and child-friendly procedures.
- o Though legally custodial sentences were only to be ordered as a last resort, some children not suited for custodial sentences are committed to Borstal institutions. Borstal institutions are intended to rehabilitate children, yet they are operated by prison officers who are trained to run traditional retributive prisons meant for adults. For example, despite the outlawing of corporal punishment, it is still practised in some Borstal institutions.

State responses to human rights violations against children:

- o some Police help children in need of care;
  - o the Judiciary has progressive children's courts; and
  - o the creation of the Department of children's services.
- Non-State actors have played a key role in monitoring child protection, capacity building, etc.

### Recommendations

| Recommendation   | Responsibility for implementation  | Timeframe  |
|--|--|------------|
| Give a public and unconditional apology.   | President  | 6months    |
| Provide psychosocial counseling for children victims of atrocities.  | Implementation Mechanism and relevant government departments/ institutions |            |
| Reparation for children victims of atrocities and injustices.  | Implementation Mechanism   | 36         |
| Reorganize Borstal institutions so that they are under the supervision of the Department of Children's Services. | Office of the President  | 12         |
| Provide adequate funding of the Department of Children's Services.   | Ministry of Finance  | Continuous |
| Plan for the Integration of children with disabilities into mainstream educational facilities.                   | Ministry of Education  | 12         |

## **Minority Groups, Indigenous People and Gross Violation of Human Rights**

### Chapter summary and findings

- This chapter identifies Kenya's minorities to include:
  - o Non-Africans such as Kenyan Asians.
  - o Religious minorities such as Muslims, Hindus, and those who follow traditional African Religion.
  - o Ethno-linguistic minorities such as the Nubians.

- o The chapter also identifies indigenous people, for example hunter-gatherers and fisher people, and discusses internal minorities such as clans within the Somali community.
- The TJRC identified the following human rights issues regarding minorities and indigenous people:
  - o Lack of formal recognition: Communities such as the Nubians, Munyoyaya, Waata, Ogiek, Sabaot, Kuria, Kona, Bajuni, Itara, Saakuye, Burji, Issak, Sengwer and Suba were not identified in the national census exercises of the past, as the country only recognized 42 tribes.
  - o Citizenship: The chapter outlines the difficulty experienced by communities in Northern Kenya and the wider Muslim community, when applying for identification documents. The Galjeel community, in particular, went through a screening exercise in 1989, which led to a majority of them losing their national identification cards in the process. Court decisions calling for the protection of minorities in the area of citizenship have not been implemented.
  - o Discrimination: The chapter highlights the need to respect the unique identities of minority and indigenous communities. The Nubian community, among others, claims to be wrongly described in textbooks, where their history is inaccurately accounted for.
  - o Collective punishment: The chapter identifies collective punishment to have taken place mostly in Northern Kenya, during operations of disarmament. The Wagalla massacre is mentioned as a clear example of such collective punishment. Communities such as the Pokot have also lost their livestock to security personnel during security operations. The State has also used force to prevent communities such as the Maasai, from reclaiming their land. The State is also accused of failing to protect communities, by not responding to calls for assistance, to stop raids or inter-communal conflict.
  - o Violation of land rights: The chapter states that minority and indigenous communities have lost their lands, because of the State's failure to address historical injustices of colonialism and the trust land system, which allowed local governments to give away their land. Some examples of affected communities include the Ogiek, Sengwer, Boni, Endorois, Maasai and Coastal communities.
  - o Violation of the right to development: Government policies focused on investing in “high potential areas” and not the “low potential areas” where many minority communities live. Even with the current national development agenda, known as Vision 2030, there is not enough public participation to ensure that the interests of minority communities will be protected. (Examples of development projects that have harmed communities include the Turkwel Hydro-Electric power Station, and geothermal development project at Olkaria.
  - o Political participation: The chapter describes the experiences of the Sengwer, Ogiek, Maasai, Endorois and Il Chamus to demonstrate how difficult it is for minority and indigenous communities to have their members elected to political offices.
  - o Barriers to access justice: Often, in areas where minorities and indigenous cultures are predominate, there are no adequate courts. Additionally, there are also not enough legal aid services to assist these communities, and even where there are present, they lack the required expertise to help. Further, it is important to understand and respect the customary systems of justice alongside the formal ones.
  - o Minority and indigenous women: Poverty is higher among the women of minority and indigenous communities who suffer considerably in areas of education and health. They have also suffered discrimination in areas of marriage and inheritance, where negative customary practices have been applied. Women are far less likely to own land, as they only comprise less than 5 percent of land title holders in Kenya.

**In addition, the TJRC established that:**

- A series of massacres took place in Minority and Indigenous Population (MIP) regions: Bulla Karatasi/ Garissa Gubai, Wagalla, Malka Mari, Lotirir, Murkutwa and Loteteleit, and the State either was a perpetrator of collective punishment or failed to provide security.
- The State conducted numerous oppressive security operations.
- The State failed to recognize the existence, unique culture and contributions of minority and indigenous people, and has discriminated against these communities, through emergency laws and regulations, for example the Nubian, Somali, Galjeel and other Muslim communities.
- The State failed in its responsibility to protect communities, allowing for inter-communal violence in predominantly pastoralist areas.
- The State failed to engage communities in addressing boundary disputes, which led to constant conflicts, killings, displacement, loss of livelihoods and undermining of social development.
- The expulsion of Endorois, Ogiek, Sengwer, Wataa, Bajuni, Boni Talai and other communities from ancestral lands has led to loss of livelihoods.
- The State has failed to protect minority and indigenous women and girls from violence and harmful traditional practices.
- Kenya's land regime was discriminatory, and this led to massive dispossession of ancestral lands of pastoralist and hunter-gatherer communities.
- The State's development policies have failed to protect the rights of minorities and indigenous people to free, prior and informed consent. Development projects have deepened marginalization and exclusion of minority groups.
- The State has failed to implement important judicial decisions related to promoting and protecting the rights of minority groups.

**Recommendations**

| Recommendation   | Responsibility for implementation                            | Timeframe     |
|--|--|---------------|
| Ratification of various international instruments; ILO 169; Convention on Prevention and Punishment of the Crime of Genocide; Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; Convention Against Discrimination in Education; and Statelessness Convention. | Ministry of Foreign Affairs                                  | 24 months     |
| Fast-tracking of legislation on as envisaged by article 100 of the Constitution of Kenya.  | Attorney General, Constitutional Implementation Committee    | Not specified |
| Give a public and unconditional apology for systematic discrimination.   | President  | 6 months      |
| Remove obstacles experienced by minority groups in accessing national identity cards.  | Ministry of Immigration and Registrar of Persons             | 12 months     |
| A review of all legislation to eliminate <i>de jure</i> and <i>de facto</i> discrimination of MIPs, and also prepare legislation on free, prior and informed consent and consultation with communities.  | Kenya Law Reform Commission                                  | 6 months      |
| Institute a plan on data collection and disaggregation on MIPs, with special attention to MIP women and incorporation of the principles of the UN Expert Workshop on Data Collection and Disaggregation for indigenous peoples.  | Kenya Bureau of Statistics and Ministry of National Planning | Not specified |
| Release and implementation of recommendations of the Residential Special Action Committee, to Address the Specific Concerns of the Muslim Community.   | Relevant ministries and institutions                         | Not specified |

|  |   |                  |
|--|---|------------------|
| <p>Implementation of decisions relating to minority and indigenous communities:</p> <ol style="list-style-type: none"> <li>1. <u>Endorois decision</u>: Recognise rights of ownership to the Endorois and restitute Endorois ancestral land; ensure that the Endorois community has unrestricted access to Lake Bogoria and surrounding sites; pay adequate compensation to the community for the loss suffered and; pay royalties to the Endorois from existing economic activities and ensure that they benefit from employment possibilities within the reserve</li> <li>2. <u>Nubian children case</u>: Legislative, administrative, and other measures in order to ensure that children of Nubian decent in Kenya, who are otherwise stateless, can acquire a Kenyan nationality, and the proof of such a nationality at birth; adopt a short term, medium term and long term plan, to ensure a fulfillment of the right to the highest attainable standard of health, and of the right to education, preferably in consultation with the affected beneficiary communities; implement a birth registration system in a non-discriminatory manner, and take all necessary legislative, administrative, and other measures, to ensure that children of Nubian descent are registered immediately after birth.</li> <li>3. <u>Charles Lekuyen Nabori and 9 Others v. Attorney General</u>: A case regarding the right to sustainable development, where the government was held accountable for the damage caused after introducing a harmful weed in Baringo district should be finalized.</li> </ol> | <p>Various relevant ministries and institutions</p> | <p>12 Months</p> |
|--|---|------------------|

## Volume III

### Ethnic Tension

#### Chapter summary and findings

In this chapter, the TJRC documents the main causes and effects of ethnic tension in Kenya.

#### Colonial origins of ethnic tension

- The British colonial government utilized a policy of 'divide and rule' and ethnic stereotyping in order to consolidate their power, created ethnically defined administrative boundaries, affecting historical inter-ethnic interactions, and focused on developing productive areas of the country 'white highlands' at the expense of the rest of the country.
- These colonial policies resulted in inequality, forced displacement and land conflicts. Historical injustices remained largely unaddressed in independent Kenya, because ruling elites did not have the political will or commitment to create a truly democratic and prosperous Kenya for all its citizens.

#### Causes of ethnic tension in the post-colonial era

- Insider and outsider dynamics have directly or indirectly caused ethnic tension and violence when:
  - Communities assert a superior claim over a territory, to the exclusion of others.
  - Areas occupied by individuals from outside the region enjoy better services.
  - Places occupied by those considered 'outsiders' have been given 'outside' names.
  - During electoral processes, 'outsiders' are required to vote for the preferred political candidate of the local community. For example, in Rift Valley, non-Kalenjins are expected to vote according to the Kalenjin preferences.
- Negative ethnic stereotypes have caused exclusion, political discredit, economic marginalization and violence against members of stigmatized ethnic communities.
- Resource-based conflicts, such as cattle rustling, have directly or indirectly caused ethnic tension amongst pastoralist communities, particularly in the North Eastern regions.
- The following political related issues have directly or indirectly caused ethnic tension:
  - President Jomo Kenyatta's ethnic community enjoyed huge economic prosperity and political influence, alienating other ethnic groups as well as many non-conforming Kikuyus, from government affairs.
  - The assassination of some political leaders, such as Tom Mboya, and the banning of some political movements, such as KPU increased ethnic tension, and were perceived to be linked to certain communities.
  - President Daniel Moi filled the civil service and State-owned institutions with members from his ethnic group, and those from ethnic communities that were viewed as being supportive to his regime.
  - Since 1991, multi-party politics have mainly comprised of regional, ethnic-based and poorly institutionalized.
  - President Mwai Kibaki's cabinet also had a disproportionate number of members from his ethnic group.



The following land related issues have directly or indirectly caused ethnic tension:

- o The post-colonial land redistribution policy that was deliberately designed to favor the ruling class and not the landless masses, resulted in more than half of the arable land in the country landing in the hands of only 20 percent of the population.
- o Politicians in government used land to induce patronage and build political alliances.
- o The practice of illegal allocation and distribution of land led to a general feeling of marginalization among some communities, creating confrontations for access to rich and productive land.

Other government policies have benefited some ethnic groups, at the expense or to the exclusion of others. For example, assistance to some displaced people from certain favoured communities and the requirement for members of the Somali community to carry a special pass.

Other official inquiries on ethnic clashes have been conducted, namely the Akiwumi, Kiliku and KNCHR “on the Brink of the Precipice” 2008). The TJRC report recommends that appropriate legal action should be taken against the perpetrators.

### Recommendations

| Recommendation   | Responsibility for implementation                      | Timeline                   |
|--|--|----------------------------|
| Investigation and prosecution of all adverse person— notwithstanding their official or other status—mentioned in official reports on political instigated ethnic violence or clashes       | Director of Public Prosecutions                        | (No mention in the report) |
| Foster reconciliation and cohesion in areas where there has been a perennial problem of ethnic tension and violence. In this regard, hold comprehensive and sustained community dialogues. | NCIC and NSC on Peace-building and Conflict Management | Continuous                 |
| Ensures that every police station in Kenya reflects ethnic diversity.  | Police Service Commission                              | (No mention in the report) |

## **Ethnic Tension , land and politics: Case Study of Mt. Elgon Conflict**

### Chapter summary and findings

In this chapter, the TJRC has documented the case of conflict in the Mount Elgon region of Kenya.

- The TJRC established that the emergence of the Saboot Land Defence Force (SLDF) in Mt. Elgon region was precipitated by the government failure to address land-related injustices suffered since the colonial period.
- The TJRC also attributed much of the tensions in the region to the relationship between two politicians who represented the constituency in Parliament: Fred Kapondi and John Serut:
  - o The TJRC heard extensive testimonies about Kapondi's illegal actions. Kapondi's eventual political success, as an elected Member of Parliament under ODM in the 2007 election, has been credited to the ruthless elimination and intimidation of his rivals, by people who were believed to have been SLDF fighters. In 2005 the Chepkurur and Korng'otuny Community Based Organization members claimed that Kapondi, via informal conversations, advised them to take up arms. These allegations are denied by Kapondi.
  - o There were also allegations that Serut provided weapons to the SLDF at the initial stages.

- The TJRC established that the SLDF initially engaged in fairly low-scale skirmishes until the time when full-scale violence erupted, after the publication of the final list of plot allocation for the Chepyuk III land resettlement scheme in 2006.
  - The SLDF was responsible for numerous gross violations of human rights including killings, torture, mutilation, and sexual violence.
  - The membership of the group consisted mostly of boys and young men, who were either taken out of school, abducted from their homes or joined voluntarily.
  - The SLDF received financing from politicians (John Serut, Fred. Kapondi, Jackson Psongoiywo and other high ranking ODM officials, although they deny it), but this financial assistance has been limited, as the group largely sustained itself through looting, cattle rustling and extorting local residents through taxes, food theft, and “protection” fees.
- The TJRC established that the military, the GSU, and the police tortured, unlawfully detained, killed, forcibly disappeared, and committed sexual acts of violence against Mt. Elgon residents during the 2008 security operation Okoa Maisha. The TJRC stated that:
  - During the operation, the Police and Military forces were equally responsible for the gross violations of human rights.
  - It is clear that the Military force were in operational command over the purportedly joint mission. This chain of command suggests that not only did the commander of the military, Col. Boiwo, know what was taking place during the round-up in the villages, and later at the camps, but he also played an active role in giving orders that led to the alleged human rights abuses.
- By 2008, over 600 individuals had died because of the Mt. Elgon conflict, and approximately 66,000 had been displaced. This led to the separation of families and disruption of the education to thousands of pupils. Furthermore, as a result of the disruptions to farming activities due to people displacement, the economy suffered greatly.

Recommendations

| Recommendation   | Responsibility for implementation                                    | Timeline  |
|--|--|-----------|
| Prosecute individuals who were involvement in militia activities in Mt. Elgon including financing, planning and instigating violence in the region: Fred Kapondi; John Serut; and Jackson Psongoiywo.                    | Director of Public Prosecutions                                      | 18 months |
| Prosecute Colonel Stephen Boiywo who was serving as the Commanding Officer, during the military intervention in Mt. Elgon in 2008.   | Director of Public Prosecutions                                      | 18 months |
| Compensate individuals who suffered atrocities during the Mt. Elgon conflict.  | Implementation Mechanism   | 36 months |
| Establish a trauma and healing center in Mt. Elgon region, for purposes of providing psychosocial support to the victims and survivors. Special attention should be paid to widows in the region.                        | Implementation Mechanism and relevant government institutions        | 12 months |
| Map all mass graves and other locations where bodies were dumped or disposed off during the Mt. Elgon conflict, with a view to exhuming and identifying the bodies for proper burial.                                    | Implementation Mechanism and relevant government institutions        | 36 months |
| Public acknowledge and apologize to the people of Mt. Elgon, for atrocities committed against them by Police and Military forces, and for the failure of the State to protect them against atrocities committed by SLDF. | President /Inspector General of Police/ Chief of Defence Forces      | 6 months  |
| Establish a public monument in Mt. Elgon, to commemorate the victims and survivors of the Mt. Elgon conflict, especially those who were killed or forcefully removed, both by the SLDF and State security agents.        | Implementation mechanism/Ministry National Heritage/ National Museum | 36 months |

## Healing and Reconciliation

### Chapter summary and findings

This chapter begins with a narrative of Kenya's political history, stating that it has been characterized by gross violations of human rights that took place between 1963 and 2002. The human rights violations are attributed to the authoritarian, oppressive and corrupt governments of President Jomo Kenyatta and Daniel Moi. Over the four decades, Kenyan communities suffered both physical and psychological wounds, and remained divided along ethnic and regional lines. The causes of the conflict according to the report include: land inequality and regional imbalances, governments' impunity, and lack of transparency and accountability. These problems led to a lack of a sense of belonging, nationhood, and public trust, in political and governance institutions by the people of Kenya.

The report highlights the government's failure since independence, to acknowledge and address the above mentioned fundamental issues, which contributed to the bitter and painful memories that have been passed from one generation to the next. This led to the unprecedented violence that was witnessed in Kenya, following the disputed presidential elections of 2007. The violence that saw approximately 1,333 people lose their lives, approximately 650,000 displaced and property worth of millions destroyed, mainly on tribal/ethnic lines.

It was after the post election violence that the TJRC was established with a mandate to promote peace, justice, national unity, healing and reconciliation, among the people of Kenya.

The Truth Justice and Reconciliation Commission Act of 2008 provided the TJRC with the mandate of reconciliation under Section 5(g), Section 5(j), Section 6(s) and Section 6(j).

After deliberations amongst the commissioners, it was agreed that the role of the TJRC towards reconciliation was to provide a platform for beginning the process of reconciliation, between individuals and communities—it recognized that meaningful reconciliation is a personal decision, and not an event, but rather a long process. The TJRC agreed that reconciliation must be based on the following:

- Reconciliation is both a goal and a process; it is experienced at different levels (inter-personal, community and national);
- Reconciliation has links to redistribution, in terms of material reconstruction and the restoration of dignity;
- There is no universal model of reconciliation that can be applied by all countries'.

### ***Reconciliation Activities***

In accordance with section 22 of the TJRC act, reconciliation activities were spearheaded at the commissioners' level and at the secretariat level by the department of Civic education and outreach. The TJRC also initiated working relationships with the National Cohesion and Integration Commission (NCIC) and the National Steering Committee on Peace Building and Conflict Management. Reconciliation activities took the form of countrywide reconciliation forums, workshops on trauma healing and strategy formulation, healing and truth telling forums. These forums sought to understand the meaning of reconciliation for different communities; specific issues in each region that bring about tension, hostility, hatred and conflict; forums gave communities the opportunity to suggest specific solutions to issues affecting them; to assess levels of healing and reconciliation; to identify local actors who could spearhead trauma healing and reconciliation; to explore local mechanisms for healing and reconciliation; and to provide victims, perpetrators and the general public with a platform for non-retributive truth telling.

### ***Perspectives of victims***

The TJRC established that victims had various ways of dealing with trauma and the suffering they had encountered. Some were willing to forgive, based on their religious beliefs, the lapse of time since the violations took place, helplessness and the desire to move on with their lives. Some victims showed sympathy for the perpetrators, acknowledging that they too were victims of a bad system, while most indicated that reparation was key to reconciliation. The reparations conditions demanded from perpetrators were confession and apologies, justice, compensation and the demand for a meeting with the alleged perpetrators in order to understand why they acted the way they did. Some victims demanded an apology from the government for its inability to protect them from violations, when they occurred.

The TJRC also established that communities were not willing to integrate perpetrators back into the society, after going through the justice system.

#### **Perspectives of perpetrators and Adversely Mentioned Persons**

The TJRC established that most of the adversely mentioned persons denied their involvement and knowledge of violations.

They also trivialized the extent of the violation. For example when Benson Kaaria was questioned on the Wagalla massacre, he defended the security operation and stated that it was successful, and that is despite the fact that over 57 persons were killed and only four (4) Guns recovered.

Most of the adversely mentioned persons refused to apologize, stating categorically that they had nothing to apologize for.

### ***Challenges***

The TJRC established that although reconciliation efforts have been ongoing in Kenya through various governmental and nongovernmental organizations, the efforts have largely focused on the conflict prone areas, towards violence prevention and humanitarian interventions. There has been lack/limited involvement conflicting communities and concerned individuals. Failure to have follow up reconciliation processes and evaluation, duplication of efforts which are uncoordinated, and are not harmonized. The TJRC further noted that there is need for a 'bottom top' approach, in order to ensure that reconciliation efforts are not only home-grown, but are also sustainable.

Other challenges highlighted are: lack of political will; failure by the government to put in place social processes, structures and institutions, which should oversee the reconciliation processes so that they are not only promoted, but also where they exist, are solidified and maintained; and, failure to address the root causes and allegations of impartiality by government agencies.

### ***Opportunities and conclusion***

The report acknowledges the Constitution of Kenya and the existence of a progressive legislation, as the main opportunities that exist towards reconciliation. It concludes by noting that healing and reconciliation requires political leadership, the government should provide national direction, especially by making clear policies on reconciliation, followed by a commitment to implement these policies.

Recommendations

| <b>RECOMMENDATION</b>  | <b>RESPONSIBLE FOR IMPLEMENTATION</b>   | <b>TIMELINE</b> |
|--|---|-----------------|
| Hold a national reconciliation Conference.   | President/implementation Mechanism, NCIC/ NSC                                       | 6 months        |
| Investigate and prosecute all adversely mentioned persons in official reports on politically instigated ethnic violence and/or clashes.  | Director of Public prosecutions   | Not specified   |
| Make an audit of institutions and mechanisms involved in peace building, reconciliation and early warning with a view of harmonizing their activities and adopting a coordinated approach. | Joint Task force of the NCIC, NSC and CSo's/CBO's                                   | 6 months        |
| Hold comprehensive and sustained national wide community dialogues.  | NCIC and National steering Committee on peace building and conflict management(NSC) | Continuous      |
| Issue a public report, indicating the progress on the investigation and prosecution of Post Election Violence related cases.   | Director of Public Prosecutions   | 3 months        |
| Provide adequate funds for the district peace committees, and the creation of Public awareness on the same.  | Not specified   | Not specified   |
| Develop a peace curriculum for use in schools.   | Ministry of Education   | Not specified   |

## Volume IV

### Implementation and monitoring mechanism

#### Chapter summary and findings

- This chapter recommends the establishment of a Committee for the Implementation of the Recommendations of the TJRC referred to as the Implementation Committee. The Implementation Committee shall be established by legislation. The proposal in the report is to have an implementation mechanism based on international best practices developed, due to challenges that truth commissions, all over the world have faced, in getting their recommendations implemented. The main objectives of the implementation mechanism are to work with relevant stakeholders, to facilitate the implementation of the TJRC's recommendations, monitor implementation of such recommendations, and to administer the reparations fund.

Recommendations (Further detailed in Annex Recommendations and Implementation Matrix).

| RECOMMENDATION  | RESPONSIBLE FOR IMPLEMENTATION   | TIMELINE        |
|---|--|-----------------|
| Establish by legislation the ' <i>Committee for the Implementation of the Recommendations of the Truth, Justice and Reconciliation Commission Act</i> '. The Implementation Committee should be a body corporate, with perpetual succession and a common seal.  | Secretariat of the outgoing TJRC (until the Implementation Committee is created) | Within 3 months |
| Have a Chair and four other persons. It is mandated that the Chair of the Committee should be a person with knowledge and experience in the fields of human rights, transitional justice, reparations, law, gender or governance. Further, the person should be a citizen of Kenya, not a State officer, and should meet the requirements of Chapter Six of the Constitution on leadership and integrity. |  |                 |
| The Implementation Committee is to conduct an implementation role as follows: <ul style="list-style-type: none"> <li>○ administration of the reparations fund</li> <li>○ mapping, registering and processing victim claims, using the TJRC database</li> <li>○ facilitating recommendations on memorialisation</li> </ul>   |  |                 |
| Solicit for funding for reparations, enhance public awareness, recruit personnel for the Technical Secretariat, and carry out other functions.  |  |                 |
| The Implementation Committee's Technical Secretariat establish the following units: <ul style="list-style-type: none"> <li>○ Outreach and Registration Unit</li> <li>○ Evaluation and Classification Unit</li> <li>○ Individual Claims Section</li> <li>○ Group Claims Section</li> <li>○ Victim Participation, Gender and Minorities Unit</li> </ul>   |  |                 |

## Reparations framework

### Chapter summary and findings

This chapter of the Report aligns with the TJR Act, which mandates the TJRC to make recommendations on granting reparations to victims. The TJRC recommends the establishment of a reparation fund, to compensate victims of violations of human rights and historical injustices. The Reparation Framework recommended by the TJRC sets out the categories of victims, who would access the funds and the criteria for such access.

Recommendations (Further detailed in Annex Recommendations and Implementation Matrix).

| RECOMMENDATION   | RESPONSIBLE FOR IMPLEMENTATION                        | TIMELINE |
|--|---|----------|
| The State to adhere to the <i>Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law</i> which defines and distinguishes five forms of reparations: restitution, rehabilitation, compensation (providing money for damage suffered), satisfaction and guarantees of non-repetition.  | Committee of the Implementation and National Assembly | -        |
| <u>Individual and collective reparations.</u> Collective reparations are targeted at groups or communities, while individual reparations are targeted at individual victims. The report proposes material (monetary and/or economic) reparation and non material (non monetary or non economic) reparations.   | -   | -        |
| Empower victims to enable them to participate meaningfully in the implementation of reparation measures should be put in place. Only violations which occurred during the TJRC's mandate, between 12 <sup>th</sup> December 1963 and 28 <sup>th</sup> February 2008, should be considered as eligible within the reparations framework.  | -   | -        |
| Five categories of human rights violations should be considered in the reparations process: <ul style="list-style-type: none"> <li>• Violations of the right to life</li> <li>• Violations of the right to personal integrity</li> <li>• Forcible transfer of populations</li> <li>• Historical and contemporary land injustices</li> <li>• Systematic marginalization</li> </ul>  | -   | -        |
| Victims to be categorized into three groups: Priority A, B and C. <ul style="list-style-type: none"> <li>• <b>Priority A</b> comprises of the most vulnerable victims are under priority A and these are orphans, child victims, elderly victims and single heads of households. These victims are those who suffered violations of the right to life, and violations of personal integrity. As such they will receive rehabilitation and compensation in the form of a 10-year pension.</li> <li>• <b>Priority B</b> comprises of groups of victims bound by a common identity, experience or violation. These victims include communities that have suffered massacres, systemic marginalization, historical land injustices, environmental degradation, gender based violence, etc. The victims should receive material (socioeconomic) and non-material reparative measures. Material measures include reparations for historical land injustices, socioeconomic measures to benefit affected communities and governmental policy measures. Examples of material socioeconomic measures are micro financing for business opportunities, provision of health services to the community, skills training and peer group counseling. Non-material measures include provision of citizenship documents restitution of civil rights, identification of disappeared people, formal apologies, establishment of memorials, etc.</li> <li>• <b>Priority C</b> is a third category of victims not otherwise provided for, who suffered violations of the right to life violations of personal integrity. Victims under this category receive a five-year pension. Persons under Priority A or B cannot receive reparations under Priority C.</li> </ul> | -   |          |



| REPARATIONS FRAMEWORK                      |  |  |   |
|--|--|--|---|
|  | CATEGORY OF RIGHTS   | ELIGIBILITY  | REPARATIONS MEASURES PROPOSED   |
| <b>Priority A – Most Vulnerable</b>        | <p>1. Violations of the Right to life</p> <p>2. Violations of Personal Integrity, including SGBV</p> | <ul style="list-style-type: none"> <li>• Child victims (under 18 years of age at the time of filing)</li> <li>• Elderly victims (above 60 years of age at the time of filing)</li> <li>• Victims demonstrating urgent health concerns with a causal relationship to the violations in Categories 1 and 2</li> <li>• Single heads of household demonstrating significant economic hardship with a causal relationship to the violations in Categories 1 and 2</li> <li>• Orphans (under 30 years at the time of filing) as a result of the violations in Categories 1, 2, &amp; 3 also will have their claims expedited</li> <li>• Individuals who died as a direct result of violations in Category 3</li> </ul> | <ul style="list-style-type: none"> <li>• Compensation: Monetary compensation in the form of a standardized ten-year annual pension.</li> <li>• Rehabilitation: Medical care and psychosocial service vouchers will be provided to victims.</li> </ul>   |
| <b>Priority B – Collective Reparations</b> | Communal /Group Violations   | <ul style="list-style-type: none"> <li>• Group victims including minority and indigenous communities living in arid and semi-arid areas</li> <li>• Historical land injustices</li> <li>• Individual reparations through collective measures</li> <li>• To address structural inequalities such as identity and gender-based dimensions of individual violations</li> <li>• To address needs for symbolic reparations</li> </ul>  | <ul style="list-style-type: none"> <li>• Restitution of land including conversion of public land to community land when feasible and appropriate</li> <li>• Formal recognition and registration of specific areas as ‘community land’</li> <li>• Resettlement and/or access to alternative community lands</li> <li>• Compensation</li> <li>• Benefit-sharing schemes related to land on which development has taken place</li> <li>• Enactment of a policy that targets the socio-economic development of historically marginalised areas in Kenya</li> <li>• The Government to consider building efficient road networks, boreholes, water-catchment systems, hospitals, schools and to ensure all government facilities are within reach of all communities</li> </ul> |

|  |   |  |   |
|--|---|--|---|
| <p><b>Priority C – Individuals, Nonexpedited</b></p> | <p>1. Violations of the Right to Life<br/>2. Violations of Personal Integrity, including SGBV</p> | <p>Individual victims who have experienced violations in Categories 1 or 2 and who have the opportunity to access material reparations under Priority A or B cannot access reparations under this Priority</p> | <ul style="list-style-type: none"> <li>• Monetary compensation in the form of a standardized five-year pension</li> <li>• Criminal records of those wrongly convicted of crimes for political reasons or whose confessions were extracted as a result of torture should be expunged.</li> <li>• Individuals who were denied citizenship or identity documents as a result of discriminatory policies should be granted appropriate documentation</li> </ul>   |
| <p><b>National Reparations</b></p>                   | <p>Kenyan people</p>  | <p>Kenyan people</p>   | <p><b>Public Apology</b></p> <ul style="list-style-type: none"> <li>• Formal acknowledgement and apology through the President on the occurrence of gross violations of human rights committed in Kenya</li> <li>• Apology from National Police Service, the National Defence Forces and the National Intelligence Service for gross violations committed by their predecessor agencies</li> <li>• Apology from the Judiciary for failing to address impunity effectively and perform its role of deterrence to prevent the perpetration of violations</li> </ul> <p><b>Memorialisation</b></p> <ul style="list-style-type: none"> <li>• Nyaayo House basement be converted into a museum and a monument in commemoration of the victims of torture by State security agencies.</li> <li>• The Implementation Committee should create a sub-committee to call for and consider community proposals for memorialisation and for funding for community initiatives</li> <li>• Creation of a National Human Rights Day on 10 December, to coincide with the International Human Rights Day, which will be used to promote respect for human rights in Kenya</li> <li>• The air strips in Wagalla, Wajir be made a national monument to commemorate the victims of the Wagalla massacre. Sites of other massacres also be considered for memorialisation</li> </ul> |

## Annex

## Recommendations and Implementation Matrix

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

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

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

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

| #  | THEME/SUBJECT   | RECOMMENDATIONS   | RESPONSIBILITY FOR IMPLEMENTATION  | TIMELINE   |
|----|---|---|--|------------|
| 12 | <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<br>Focus:<br>● Roads and infrastructure<br>● Health<br>● Education<br>● Water | Relevant Ministries and institutions including Ministry for Finance, Ministry of Health, Ministry of Education, Commission on Revenue Allocation, etc. | 12 months  |
|    |   | Collective reparation for communities in marginalized regions identified by the Commission  | Implementation mechanism and relevant state ministries and institutions  | 36 months  |
| 13 | <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 nationwide community dialogues  | NCIC and National Steering Committee on Peacebuilding and Conflict Management (NSC)  | Continuous |

| #  | THEME/SUBJECT                            | RECOMMENDATIONS  | RESPONSIBILITY FOR IMPLEMENTATION   | TIMELINE  |
|----|--|--|---|-----------|
| 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 Operation Okoa Maisha   | 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 Operation Rudi Nyumbani with a particular focus on integrated IDPs   | Implementation Mechanism and National Consultative Coordination Committee on Internally Displaced Persons | 12 months |
|    |  | Reparation for IDPs and refugees   | Implementation Mechanism  | 36 months |
|    |  | Ratification of the African Union Convention for the Protection and Assistance of Internally Displaced Persons   | Ministry of Foreign Affairs   | 24 months |
| 18 | <b>Reports of commissions of inquiry</b> | <p>Release of reports of previous commission of inquiries and related bodies:</p> <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 Harassment and/or Discrimination in the Application and Enforcement of the Law ('Sharawe Report')</li> </ul> | President   | 6 months  |