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RT. HON. SEN
AMASON J. KINGI

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21/11/2023

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT | SECOND SESSION

THE SENATE

STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND
HUMAN RIGHTS

REPORT ON THE PETITION BY MUINDI MBINGU MEMORIAL
NGELANI ASSOCIATION CONCERNING HISTORICAL INJUSTICES
SUFFERED BY RESIDENTS OF NGELANI AREA, IN MACHAKOS
COUNTY, DURING THE COLONIAL PERIOD

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November, 2023

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LIST OF ABBREVIATIONS AND ACRONYMS

KHRC	Kenya Human Rights Commission
KNCHR	Kenya National Commission on Human Rights
NLC	National Lands Commission
SEN	Senator
TJRC	Truth, Justice and Reconciliation Commission

PRELIMINARIES

Establishment and Mandate of the Committee

The Standing Committee on Justice, Legal Affairs and Human Rights is established under standing order 228 of the Senate Standing Orders and is mandated '*to consider all matters relating to constitutional affairs, the organisation and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights*'.

Membership of the Committee

The Committee is comprised of –

- | | |
|--|--------------------|
| 1) Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson |
| 2) Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chairperson |
| 3) Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 4) Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 5) Sen. Hamida Ali Kibwana, MP | - Member |
| 6) Sen. Catherine Muyeka Mumma, MP | - Member |
| 7) Sen. Veronica W. Nduati, MP | - Member |
| 8) Sen. Karen Njeri Nyamu, MP | - Member |
| 9) Sen. Andrew Omtatah Okoiti, MP | - Member |

The Minutes of the Committee in considering the Petition by Muindi Mbingu Memorial Ngelani Association concerning historical injustices suffered by the residents of Ngelani Area, in Machakos County, during the colonial period are attached to this Report as *Annex 1*.

FOREWORD BY THE CHAIRPERSON

Honourable Speaker,

The Petition by the Muindi Mbungu Memorial Ngelani Association concerning historical injustices suffered by residents of Ngelani Area in Machakos County was presented in the Senate, by the Senator for Machakos County, on Tuesday, 3rd October, 2023. Pursuant to the standing order 238 of the Senate Standing Orders, the Petition was referred to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.

Honourable Speaker,

The salient issues raised in the petition were that the Akamba people residing at Ngelani area in the present Machakos County suffered historical injustices dating back to 1938 at the hands of the British Colonial Administration, the effects of which they continue to suffer to date. These included confiscation of their land and livestock, restriction of movement, arrests and detention of their leaders and young men, and administration of collective punishment including forced labor under extreme conditions.

The confiscation of livestock was particularly grievous on the community as, not only did it deny them a source of livelihood, but it also denied them the exercise of important cultural and religious rites for which the cattle were a central feature, such as payment of dowry for marriage, and the offering of traditional sacrifices.

The Petitioners therefore prayed that the Senate investigates the matter and recommends appropriate measures to provide redress for the historical injustices suffered by the Akamba people.

Honourable Speaker,

Upon receipt of the Petition, the Committee considered the available historical material on the issue, and invited submissions from the Office of the Attorney General, the Kenya National Commission on Human Rights, and the Kenya Human Rights Commission. The Commission further visited Ngelani Area on Friday, 3rd November, 2023 where it held a public hearing to receive testimonies from the victims and stakeholder submissions on the Petition.

Arising from these, the Committee found that the Petitioners have sufficiently demonstrated the injustices and human rights violations that they were subjected to during the colonial period, and that the same continue to adversely affect the community to date.

This included the –

- i) the loss of land;
- ii) loss of livestock, and the economic, social, cultural, and spiritual benefits that the community derived from it;
- iii) arbitrary arrests, torture, detention, beatings, and other forms of cruel, inhumane, and degrading treatment;
- iv) arrests and deportation of their leaders; and
- v) loss of opportunity through denial of access to education.

Honourable Speaker,

In considering the appropriate redress to recommend in this case, the Committee observed that there exists various legislative gaps that make it difficult to compensate or pay reparations to victims of historical injustices and gross human rights violations. Consequently, in addition to directing the Kenya National Commission on Human Rights to take steps to secure appropriate redress for the victims, the Committee recommends the immediate commencement of steps to put in place –

- a) a policy framework on reparations for historical injustices and gross human rights violations;
- b) a legislative framework providing the mechanism through which the State can compensate victims of historical injustices and gross human rights violations;
- c) regulations to operationalize the said legislative framework, including anchoring the proposed Restorative Justice Fund under the Public Finance Management Act, 2017; and
- d) a legislative framework to guide county governments in budgeting and offering reparative measures, including the recognition of heroes and establishment of monuments, at the county level.

Mr. Speaker,

It is now my pleasant duty, pursuant to Standing Order 238(2), to present the Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Petition by Muindi Mbingu Memorial Ngelani Association concerning historical injustices suffered by the residents of Ngelani Area in Machakos County during the colonial period.

Signed



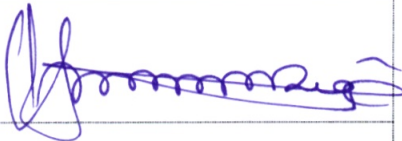








Date.....

14.11.2023

**SEN. WAKILI HILLARY SIGEI, MP
CHAIRPERSON, STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS
AND HUMAN RIGHTS**

ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS ON THE PETITION BY MUINDI MBINGU MEMORIAL NGELANI ASSOCIATION CONCERNING HISTORICAL INJUSTICES SUFFERED BY RESIDENTS OF NGELANI AREA, IN MACHAKOS COUNTY, DURING THE COLONIAL PERIOD.

We, the undersigned Members of the Standing Committee on Justice, Legal Affairs and Human Rights, do hereby append our signatures to adopt this Report.

No	Name	Signature
1.	Sen. Wakili Hillary Kiprotich Sigei, MP <i>(Chairperson)</i>	
2.	Sen. Raphael Chimera Mwinzagu, MP <i>(Vice-Chairperson)</i>	
3.	Sen. Fatuma Adan Dullo, CBS, MP	
4.	Sen. William Cheptumo Kipkiror, CBS, MP	
5.	Sen. Hamida Ali Kibwana, MP	
6.	Sen. Catherine Muyeka Mumma, MP	
7.	Sen. Veronica W. Nduati, MP	
8.	Sen. Karen Njeri Nyamu, MP	
9.	Sen. Andrew Omtatah Okoiti, MP	

CHAPTER ONE: INTRODUCTION

1.0 Summary of the Petition

1. The right to present petitions to public authorities is provided for in Article 37 of the Constitution. Article 119(1) further provides that *‘Every Person has the right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.’*
2. Parliament enacted the Petition to Parliament (Procedure) Act (No. 12 of 2012) to make provision for the procedure for the exercise of this right. Further, Part XXVII of the Standing Orders of the Senate also makes provision of how this right will be enjoyed or exercised.
3. Pursuant to the said provisions, at the sitting of the Senate held on Tuesday, 3rd October, 2023, the Senator for Machakos County presented a Petition by Muindi Mbingu Memorial Ngelani Association concerning historical injustices suffered by the residents of Ngelani Area, in Machakos County, during the colonial period.
4. The salient issues raised in the Petition were that –
 - a) The Akamba people residing at Ngelani area in the present Machakos County suffered historical injustices dating back to 1938 at the hands of the British Colonial Administration and continue to suffer the effects of the same up to now;
 - b) The historical injustices include detention without trial, economic crimes through the forceful confiscation of cattle, unlawful detention of their leaders such as Muindi Mbingu and unlawful administration of collective punishment such as forcible labor under extreme conditions;
 - c) Around 1938, the colonial administrators started confiscating cattle belonging to the Akamba people of Ngelani area on the pretext of livestock disease control;
 - d) The community had relied on cattle as a source of income and as a means of paying dowry and other cultural rites. This confiscation of cattle therefore greatly interrupted exercise of the community’s cultural rites, especially marriage;

- e) The confiscated cattle were later taken and slaughtered at *Liebigs*, a predecessor of what is now the Kenya Meat Commission, thus greatly impoverishing the residents of Ngelani area and the neighboring communities; and
 - f) That this led to systemic poverty that continues to plague the area and the Akamba people to the present day.
5. The Petitioners therefore prayed that the Senate considers the Petition and –
- i) investigates this matter with a view to establishing an accurate record and documentation of the true extent of the said historical injustices as well as the identity of individuals and institutional perpetrators in the colonial period; and
 - ii) recommends to the National Government and any other person on measures that ought to be undertaken to provide redress for the historical injustices suffered by the Akamba people.
6. Pursuant to standing order 238 of the Senate Standing Orders, the Petition was committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration. A copy of the Petition is attached to this Report as *Annex 2*.

CHAPTER TWO: CONSIDERATION OF THE PETITION

2.0 Introduction

7. Upon committal of the Petition to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration, the Committee proceeded to –
 - a) undertake a desk review of the documentation available on the issues raised in the Petition, as well as the legislative framework on resolution of such claims;
 - b) invite submissions from selected stakeholders, among them, the Office of the Attorney General and Department of Justice, the Kenya National Commission on Human Rights, and the Kenya Human Rights Commission. The Committee received written submissions from the KNCHR; and
 - c) visit Ngelani area in Machakos County to receive first-hand accounts from the community on the injustices suffered during the colonial period and their lasting impact.

2.1 Background: Report by the Kenya Human Rights Commission

8. In considering the Petition, the Committee observed that the Kenya Human Rights Commission had undertaken a detailed inquiry into the issues raised in the Petition and published a Report thereon in the year 2021. In the said Report¹, it was established that –
 - a) there were massive and serious human rights abuses in Machakos during the colonial period. These abuses were meted on people of the Akamba community who were traditionally residents of Machakos County;
 - b) the Akamba people were forced to sell their livestock to a single investor at a very low price, within given timelines, thus losing the true value of their livestock;
 - c) where members of the community resisted the forced destocking, the colonial government resorted to impounding and confiscation of livestock, where animals determined as not suitable for slaughter were shot and killed;

¹ KHRC (2021), *A Report of human rights abuses committed during the colonial period: A case of the members of the Muindi Mbingu family and the people of the now Machakos County*, KHRC, Nairobi

- d) incidences of cattle theft attracted collective punishments where a whole village was punished for crimes committed by one or a few members of the society;
- e) members of the community were subjected to forced labour where they worked under dangerous and threatening conditions both at the meat canning factory (*Liebig's*) and in digging terraces. There were also instances of child labour;
- f) they were subjected to arbitrary arrests, detention, and torture whenever they resisted the confiscation of their livestock or expressed dissatisfaction with the colonial government;
- g) cultural practices such as hunting were made illegal, with those who breached such laws facing arrest;
- h) during the Emergency (1952 – 1961), members of the community were rounded up, arrested, detained, and tortured. They also participated actively in the *Mau Mau* activities, leading to the arrest of Paul Ngei who was one of the *Kapenguria Six*;
- i) land belonging to members of the community was alienated and forcibly taken away for the settlement of European investors and other colonial projects. This included land set aside for economic and cultural activities of the community, including traditional worship sites. This land alienation reduced their grazing land and subjected them to untold hardship;
- j) the boundaries established by the colonial government restricted trade as the movement in and out of the native reserves required government approval;
- k) the removal of large numbers of the male population through forced labour and forced recruitment created a vacuum in the supply of labour through the Akama community. This led to incessant attacks from other communities, as the Akamba were unable to defend themselves, and there was famine in the land due to lack of labour for cultivation; and
- l) by taking away their cattle, this deprived the Akamba community of their means of livelihood (currency), cultural rites (cattle was used to pay dowry), and worship (sacrifices were conducted through slaughter of cattle).

9. The Report further noted that many victims of colonial repression from the Akamba community had hoped that the colonial government or the Kenyan government would acknowledge that these violations did occur and that the journey of truth telling would not only see the perpetrators being held liable for numerous violations but would also be the beginning of embracing reparations as a form of addressing systemic human rights violations.
10. The Report made two key recommendations, namely –
 - i) that the Government of Kenya fast-tracks the establishment of a Restorative Justice Fund to facilitate the restorative justice process; and
 - ii) that the Government considers compensating victims of past historical injustices, like members of the Muindi Mbingu Ngelani Association, to enable them bring closure to the suffering that they were subjected to.
11. A copy of the KHRC Report is attached to this Report as *Annex 3*.
12. The Committee further looked at the Report of the Truth Justice and Reconciliation Commission², where it noted that the claim by the Ngelani community appeared to not have been documented.

2.2 Submissions by the Kenya National Commission on Human Rights

13. The Kenya National Commission on Human Rights (KNCHR) presented written submissions to the Committee in which it observed and proposed as follows –
 - i) KNCHR observed that the Petition was about alleged historical injustices suffered by the residents of Ngelani area in Machakos County during the colonial times, and that this was a matter of reparations;
 - ii) That KNCHR had been advocating for a National Reparation Framework as well as the adoption of the Report of the Truth, Justice and Reconciliation Commission (TJRC) which recorded historical injustices country wide and gave recommendations on reparations;
 - iii) KNCHR noted that the TJRC Report documented historical injustices in Kenya, including affronts by security agencies and aggressions, massacres, political assassinations, detentions, torture and ill-treatment, sexual violence, land conflict, displacement, economic marginalization, violation of socio-

² TJRC (2013), *The Final Report of the Truth, Justice and Reconciliation Commission*, TJRC, Nairobi

economic rights, grand corruption and economic crimes, all of which adversely affected women, children, youth, the elderly, minority and indigenous communities;

- iv) The Commission further noted that, while the issues raised in the subject Petition did not form part of the TJRC Report, the issues qualified to be referred to as historical injustices in which case the recommendations given by in the TJRC Report could apply *mutatis mutandis*;
 - v) The Commission urged the Committee to initiate reforms that would deliver to Kenyans a legal framework that would ease access to reparations to survivors and victims of historical injustices as guided by the TJRC Report findings and recommendations;
 - vi) It further urged the Committee to guide and encourage the County Governments on their role in reparations which includes law and policy reforms as well as budgeting and offering actual reparative measures; and
 - vii) KNCHR submitted that, in making its findings and recommendations, the Committee should consider the reparative measures proposed in the TJRC Report, which include restitution, rehabilitation, compensation, satisfaction (which includes restoration of dignity, public apology, commemoration and tributes), and guarantee of non-repetition.
14. On the question of an appropriate legislative framework for reparations, KNCHR highlighted that Kenya was a party to various regional and international human rights instruments which, by virtue of Article 2 (5) and (6) of the Constitution, form part of the law in Kenya. Further, Articles 21 and 22 of the Constitution recognize the State's duty to promote, protect and fulfil human rights, and provide for various remedies to human rights violations, including reparations.
15. The Commission further underscored that any reparative law, regulations, or funds passed by Parliament should be comprehensive enough to cater for the grievances of many Kenyan Communities, small or large, against the British Colonial Government as well as against Kenyan perpetrators.
16. Lastly, KNCHR recommended that the Committee adopts the recommendations contained in the Report by the predecessor Committee on a Petition by the National Victims and Survivor's Network (NVSN) representatives (Wachira Waheire and Jacqueline Mutere) regarding non-implementation of the TJRC Report.

17. A copy of the submissions by the KNCHR is attached to this Report as *Annex 4*.

2.3 Submissions Received during the Visit by the Committee to Ngelani Area, in Machakos County

18. On Friday, 3rd November, 2023, the Committee visited Ngelani Area, in Machakos County, where it held a public hearing on the Petition. The Committee received testimonies and submissions from the Petitioners and invited stakeholders as set out below –

a) Submissions by the Petitioners

19. The plight of the Ngelani community was presented to the Community by Mr. Luka Kituku Mutuma, Ms. Josephine Mutuku, Mr. Charles Manyenze, Mr. Julius Mutiso and Ms. Agnes William. In their submissions, they highlighted the following grievances –

- i) ***Loss of land*** – that, the members of the community lost approximately 8,600 acres of land stretching from the Embakasi area to Machakos which was forcibly taken by the colonial government and was never surrendered back to the community. The land comprised their grazing lands, farmland, cultural and religious sites, among others. The loss of the land denied them their economic livelihood and impoverished the community for generations, with its effects being experienced to date.
- ii) ***Loss of cattle*** – that, members of the community lost approximately 80,960 heads of cattle which were confiscated on the pretext of livestock disease control. The healthy ones were taken to Leibigs for slaughter while those assessed to be unsuitable were shot dead. This denied the community its economic life stay as cattle were not only a source of food, but also provides hides and skin for clothing and other items, and were also traded in exchange for other commodities. Additionally, cattle were used to pay dowry, and the lack of cattle meant that many young men could not marry.
- iii) ***Arbitrary arrests, torture, detention and degrading treatment*** – that, the members of the community were subjected to untold cruel and degrading treatment, including forced labour in quarries, beatings, arrests, rape, detention, and even castration of some men who were rendered unable to sire children. This was done to break the willpower of the community and to

ensure that there was minimal resistance to the confiscation of land and cattle owned by the community.

- iv) *Arrest and deportation of their leaders* – that those who led the community in resisting the actions of the colonial authorities were arrested and deported to far-off lands where they could not contact the community. This included Muindi Mbingu who was arrested and deported to Lamu for speaking out against the injustices that the colonialists subjected them to.
- v) *Loss of opportunity* – that the confiscation of their land and cattle meant that many children born in that and subsequent generations could not access education, and this compounded the impoverishment of the community.

20. The Petitioners therefore urged the Committee to ensure that justice was done and that the community received compensation for the loss and suffering they had through over the years, as well as the land and livestock that they lost during the colonial administration.

b) Submissions by Kenya Human Rights Commission

21. Mr. Davis Malombe, the Executive Director at KHRC, briefed the Committee on the work that the Commission had done in documenting the injustices committed against the members of the Muindi Mbingu Memorial Ngelani Association during the colonial period, and the effect that this continued to have on the community to date.

22. He further proposed that the Committee, having considered the matter and received first-hand accounts from the community, should make far-reaching recommendations, including –

- i) That the British government should offer an unconditional apology for the human rights violations meted upon the Akamba people. This should go beyond expressing regret and sadness, to offering an actual apology;
- ii) That, the Akamba people should be compensated for the property lost and the injustices committed by the British government;
- iii) That the issue of the land lost by the community should be investigated by the National Land Commission and a solution proffered;

- iv) That Muindi Mbingu should be honoured as a national hero and a monument be built in Ngelani area to recognize what people went through;
- v) That the Committee pursues implementation of the Report of the Truth, Justice and Reconciliation Commission, including negotiations between the British and the Kenyan governments on payment of reparations for the historical injustices;
- vi) That the Committee leads the process for putting in place a legal framework on reparations; and
- vii) That the County Government of Machakos be urged to prioritize affirmative action programs to help the victims of historical injustices especially the Ngelani residents.

c) Submissions by Kenya National Commission on Human Rights

23. Mr Cyrus Maweu, the Deputy Director at the KNCHR, highlighted the submissions by the Commission, and urged the Committee to –
- i) fast-track enactment of a national reparations framework to address cases of human rights violations and other injustices, including those contained in the Report of the Truth, Justice and Reconciliation Commission;
 - ii) ensure that Regulations were put in place to provide operational guidance on how to implement the Act, once passed;
 - iii) set aside resources to facilitate implementation of the reparations measures;
 - iv) enact policy and legislation to facilitate the implementation of reparation measures by the county governments; and
 - v) work with stakeholders to set up guarantees to ensure that similar violations do not occur in future.
24. The Deputy Director further urged the Committee to review the Kenya Reparations Bill, which was sponsored by Hon. Gladys Shollei, MP in 2017 and 2019, with a view to having the Bill considered and passed by Parliament. The Bill sought to provide for the recognition and reparation of victims of human rights violations in Kenya arising from but not limited to the period covered in the TJRC report and any other violations up to 2nd October, 2014.

d) Office of the Attorney General and Department of Justice

25. The Office of the Attorney General and Department of Justice was represented at the public hearing of the Petition by a Senior Legal Counsel. The officer informed the Committee that the AG's Office would take note of the submissions made by the various stakeholders, and would render its advisory to the Committee in due course.

e) Local Leaders

26. Various leaders who had been invited by the Committee spoke in support of the Petition and urged the Committee to ensure that members of the community received compensation for the injustices that they had suffered. The leaders who addressed the meeting included –
- i) Hon. Johana Munyao, the Member of County Assembly, for Mutituni Ward;
 - ii) Hon. Caleb Mule, MP, the Member of Parliament for Machakos Town Constituency; and
 - iii) Sen. Agnes Kavindu, MP, the Senator for Machakos County.

CHAPTER THREE: FINDINGS AND OBSERVATIONS

27. Having considered the Petition and the responses and submissions received thereon, the Committee makes the following findings and observations –
- a) The Committee finds that the Petitioners have sufficiently demonstrated the injustices and human rights violations that they were subjected to during the colonial period, and that the same continue to adversely affect the community to date. This included –
 - i) loss of land;
 - ii) loss of livestock, and the economic, social, cultural, and spiritual benefits that the community derived from their livestock;
 - iii) arbitrary arrests, torture, detention, beatings, and other forms of cruel, inhumane, and degrading treatment;
 - iv) arrests and deportation of their leaders; and
 - v) loss of opportunity through denial of access to education.
 - b) The extent of the violations and losses suffered have however not been fully documented, and there is need for further investigation to fully document this.
 - c) The historical injustices and gross human rights violations meted on the Akamba community in Ngelani area of Machakos County occurred before the year 1963 and, therefore, were not submitted to or documented in the Report of the Truth, Justice and Reconciliation Commission, whose mandate was to investigate and document gross human rights violations and other historical injustices that occurred in Kenya between 12th December 1963 and 28th February, 2008.
 - d) In its final Report, the Truth, Justice and Reconciliation Commission recommended the setting up of a reparations mechanism for which the State would be responsible. Further, it recommended the following forms of reparations to be provided to victims of historical injustices –
 - i) *Restitution*: restoration to original position before the violation occurred.
 - ii) *Compensation*: money for damage suffered.
 - iii) *Rehabilitation*: medical care and psychosocial support.
 - iv) *Satisfaction*, which includes official declarations restoring dignity and reputation, public apology, commemoration, and tributes.
 - v) *Guarantees of non-repetition*: prevention of re-occurrence of violations including structural measures that will prevent re-occurrence of the violations.

- e) The TJRC Report also recommended the establishment of a reparation fund to achieve the following aims –
 - i) Compensating victims, both individually and communally;
 - ii) Rehabilitation; and
 - iii) Building memorial monuments.

- f) The framework proposed in the Report of the Truth, Justice and Reconciliation Commission may be adopted in addressing historical injustices and gross human rights violations that occurred in Kenya before 12th December, 1963 and after 28th February, 2008.

- g) Implementation of the Report of the Truth, Justice and Reconciliation Commission stalled following the passage of the Truth, Justice and Reconciliation (Amendment) Act (No. 44 of 2013) which deferred implementation of the Report until its consideration by the National Assembly, which is yet to be done to date.

- h) During the 2015 State of the Nation Address, H. E. the President –
 - i) urged lawmakers to expedite processing of the Truth Justice and Reconciliation Commission (TJRC) report, seen as critical in the formulation of a reparation framework;
 - ii) instructed the National Treasury to establish a Fund of Kshs.10 billion over the next three years to be used for restorative justice; and
 - iii) issued a public apology on behalf of the government for all past human rights violations and other historical injustices.

- i) Following the President's directive, the Attorney General and the Kenya National Commission on Human Rights led efforts to come up with regulations under the Public Finance Management Act to anchor the Restorative Justice Fund into a legal framework. This culminated in the draft Public Finance Management (Reparations for Historical Injustices Fund) Regulations, 2017. The purpose of the Regulations was to provide a framework for the establishment and operationalization of a reparations program which would include:
 - i) administration of the Reparation Fund;
 - ii) registration and verification of claims; and
 - iii) any other matter necessary to give effect to the Regulations.

- j) During the 2019 State of the Nation Address, H.E. the President –
 - i) reaffirmed the commitment previously made to Parliament of designating KShs.10 billion to heal the wounds of historical grievances; and
 - ii) indicated that the Fund would be applied towards establishing symbols of hope across the country through the construction of heritage sites and community information centres.
- k) The public apology issued by H.E. the President during the 2015 State of the Nation Address was an important step in acknowledging the historical injustices and human violations that have occurred in Kenya’s past, and in laying ground for healing and reconciliation processes to commence among the Kenyan people.
- l) On the other hand, the British government has failed to offer an unconditional apology to peoples and communities affected by historical injustices and gross human rights violations that occurred in Kenya during the colonial period.
- m) The Petitioners may be time-barred from submitting their claim for historical land injustices for investigation by the National Land Commission as –
 - i) the statutory mandate of the NLC to admit claims of historical land injustices for investigation lapsed on 20th September 2021. This is because section 15 (3)(e) of the National Land Commission Act provides that claims for historical land injustices are only admissible if brought within five years from the date of commencement of the Act. Whereas the Act commenced on 2nd May, 2012, this provision was inserted through Land Laws (Amendment) Act, 2016, which commenced on 21st September 2016; and
 - ii) unless the Act is amended and section 15 of the Act repealed, the NLC does not have the statutory mandate to receive and investigate fresh claims alleging historical land injustices.
- n) Key policy and legislative gaps remain which, if addressed, would help unlock reparations for historical injustices and gross human rights violations in Kenya. These include –
 - i) a policy framework on reparations for historical injustices;
 - ii) a legislative framework providing the mechanism through which the State can compensate victims of historical injustices and gross human rights violations;
 - iii) regulations to operationalize the said legislative framework, including

anchoring the proposed Restorative Justice Fund under the Public Finance Management Act, 2017;

- iv) a legislative framework to guide county governments in budgeting and offering reparative measures, including the recognition of heroes and establishment of monuments, at the county level; and
- v) an amendment to section 15 of the National Land Commission Act (No. 5 of 2012) to delete section 15(3)(e) and section 15(11) which limit the mandate of the National Land Commission of investigating present and past historical injustices, contrary to the provisions of Article 67 of the Constitution.

CHAPTER FOUR: RECOMMENDATIONS

28. Arising from its observations as contained in the preceding Chapter, the Standing Committee on Justice, Legal Affairs and Human Rights recommends the following –

- a) The Kenya National Commission on Human Rights to take note of the Report by the Kenya Human Rights Commission³ on the historical injustices and human rights violations committed against the Akamba community in Ngelani area of Machakos County and, pursuant to its mandate under the Constitution and the KNCHR Act (No. 14 of 2011), take steps to secure appropriate redress for the victims. The Commission is directed to submit a report to the Committee on the progress made, within **three months** of the tabling of this Report.
- b) The Office of the Attorney General and Department of Justice, in liaison with the Kenya National Commission on Human Rights, the National Treasury and Planning, Parliament, and the Council of County Governors, to commence the process of putting in place –
 - i) a policy framework on reparations for historical injustices and gross human rights violations;
 - ii) a legislative framework providing the mechanism through which the State can compensate victims of historical injustices and gross human rights violations;
 - iii) regulations to operationalize the said legislative framework, including anchoring the proposed Restorative Justice Fund under the Public Finance Management Act, 2017; and
 - iv) a legislative framework to guide county governments in budgeting and offering reparative measures, including the recognition of heroes and establishment of monuments, at the county level.

The Attorney General is directed to submit a report to the Committee on the progress made, within **three months** of the tabling of this Report.

- c) The Committee further urges the National Assembly to fast track the consideration and passage of the National Land Commission (Amendment) Bill, 2023 (National Assembly Bills No. 43 of 2023), which seeks to confer back to the National Land Commission the power to continue admitting and processing historical land injustices claims.

³ KHRC (2021), *A Report of human rights abuses committed during the colonial period: A case of the members of the Muindi Mbingu family and the people of the now Machakos County*, KHRC, Nairobi

LIST OF ANNEXES

- Annex 1:** Minutes of the Committee in Considering the Petition
- Annex 2:** Copy of the Petition
- Annex 3:** KHRC (2021), *A Report of human rights abuses committed during the colonial period: A case of the members of the Muindi Mbingu family and the people of the now Machakos County*, KHRC, Nairobi
- Annex 4:** Submissions by the Kenya National Commission on Human Rights

Annex 1: Minutes of the Committee in
Considering the Petition



13TH PARLIAMENT | 2ND SESSION

MINUTES OF THE EIGHTY-THIRD SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON WEDNESDAY, 18TH OCTOBER, 2023 AT 8.00 A.M. AT COMMITTEE ROOM 5, FIRST FLOOR, MAIN PARLIAMENT BUILDINGS AND ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | |
|------------------------------------|------------------------------|
| 1. Sen. Fatuma Adan Dullo, CBS, MP | - Member (<i>Chairing</i>) |
| 2. Sen. Hamida Ali Kibwana, MP | - Member |
| 3. Sen. Veronica W. Maina, MP | - Member |
| 4. Sen. Catherine Muyeka Mumma, MP | - Member |
| 5. Sen. Karen Njeri Nyamu, MP | - Member |
| 6. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|---------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson |
| 2. Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chair |
| 3. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |

SECRETARIAT

- | | |
|--------------------------|---|
| 1. Mr. Charles Munyua | - Senior Cler Assistant |
| 2. Ms. Lilian Waweru | - Legal Counsel II |
| 3. Ms. Lynn Aseka | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 4. Ms. Ndindi Kibathi | - Research Officer III |
| 5. Mr. Constant Wamayuyi | - Research Officer III |
| 6. Mr. Josphat Ng'eno | - Media Relations Officer III |
| 7. Ms. Judith Aoka | - Assistant Audio Officer |
| 8. Mr. David Barasa | - Assistant Serjeant at Arms |

MIN. NO. 411/2023

PRELIMINARIES

Senator Fatuma Dullo, CBS, MP, called the meeting to order at fifteen minutes past eight O'clock and opened with a word of prayer.

MIN. NO. 412/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Andrew Omtatah Okoiti, MP, and seconded by Sen. Catherine Muyeka Mumma, MP.

MIN. NO. 413/2023

**CONFIRMATION OF MINUTES OF THE
PREVIOUS MEETINGS**

- a) The Minutes of the 81st Sitting held on Thursday, 12th October, 2023 were confirmed as a true record of proceedings, after being proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.
- b) The Minutes of the 82nd Sitting held on Tuesday, 17th October, 2023 were confirmed as a true record of proceedings, after being proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 414/2023

**PETITION BY MUINDI MBINGU MEMORIAL
NGELANI ASSOCIATION CONCERNING
HISTORICAL INJUSTICES SUFFERED BY THE
RESIDENTS OF NGELANI AREA IN MACHAKOS
COUTY DURING THE COLONIAL PERIOD**

The Committee commenced consideration of the Petition by Mr. Muindi Mbingu Memorial Ngelani Association concerning historical injustices suffered by the residents of Ngelani area in Machakos County during the colonial period and was taken through a research and legal brief on the Petition.

During deliberations, the Committee observed that –

- a) The Kenya Human Rights Commission had inquired into the matter and published a detailed report, in 2021, on the injustices suffered by the Muindi Mbingu family and the residents of Machakos County during the colonial period. In the Report, the Commission recommended that the government fast-tracks the establishment of a Restorative Justice Fund to facilitate the restorative justice process for victims, and that the government considers compensating victims of past historical injustices to enable them bring closure to the suffering that they were subjected to.
- b) It was not sufficient to indicate that the colonial government handed over all responsibilities and liabilities to the Kenyan government upon independence. Instead, the Committee may explore avenues through which the petitioners and other communities may be supported to pursue compensation from the colonial administration.

Thereupon, the Committee resolved that –

- a) a paper be prepared for the Committee on precedents whereby parties had succeeded in securing compensation for historical injustices and human rights violations committed during the colonial period, including the question whether criminal and/or civil liability was transferable from one administration to another; and
- b) resolved to undertake a visit to Machakos County, on Friday, 3rd November, 2023, to receive submissions from the Petitioners and other stakeholders.

MIN. NO. 415/2023

ADJOURNMENT

The Chairperson adjourned the meeting at forty-nine minutes past eight O'clock. The next meeting was scheduled to be held on Tuesday, 31st October, 2023 at eight O'clock.

SIGNED:

A handwritten signature in black ink, appearing to be 'W. H. M. M. M.', written over a dotted line.

DATE:

24/11/2023



13TH PARLIAMENT | 2ND SESSION

MINUTES OF THE EIGHTY- SEVENTH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON FRIDAY, 3RD NOVEMBER, 2023 AT 10.00 A.M. AT NGELANI AREA, IN MACHAKOS COUNTY

PRESENT

1. Sen. Wakili Hillary Kiprotich Sigei, MP - Chairperson (*Chairing*)
2. Sen. Hamida Ali Kibwana, MP - Member
3. Sen. Catherine Muyeka Mumma, MP - Member
4. Sen. Andrew Omtatah Okoiti, MP - Member

ABSENT WITH APOLOGY

1. Sen. Raphael Chimera Mwinzagu, MP - Vice-Chair
2. Sen. Fatuma Adan Dullo, CBS, MP - Member
3. Sen. William Cheptumo Kipkiror, CBS, MP - Member
4. Sen. Veronica W. Maina, MP - Member
5. Sen. Karen Njeri Nyamu, MP - Member

SECRETARIAT

1. Mr. Charles Munyua - Senior Cler Assistant
2. Ms. Lilian Waweru - Legal Counsel II
3. Ms. Lynn Aseka - Clerk Assistant III (*Taking Minutes*)
4. Mr. Constant Wamayuyi - Research Officer III
5. Ms. Ndindi Kibathi - Research Officer III
6. Ms. Ngesa Rosebella - Public Communications Officer III
7. Ms. Judith Aoka - Assistant Audio Officer
8. Mr. David Barasa - Assistant Serjeant at Arms

INATTENDANCE

1. Sen. Agnes Kavindu, MP - Senator Machakos County
2. Hon. Caleb Mule, MP - MP, Machakos Town Constituency
3. Hon. Johana Munyao - MCA, Mutituni Ward
4. Mr. Davis Malombe - Executive Director, Kenya Human Rights Commission
5. Mr. Cornelius Oduor - Deputy Executive Director, Kenya Human Rights Commission

6. Ms. Betty Mwasao - Senior State Counsel, Office of the Attorney General
7. Mr. Cyrus M. Maweu - Deputy Director, Kenya National Commission on Human Rights
8. Mr. Kiptoo Baraza - Officer, Kenya National Commission on Human Rights
9. Mr. Hezron Krop - Officer, Kenya National Commission on Human Rights
10. Mr. John Ndonge Mbeti - Petitioner, Ngelani Area
11. Ms. Joyce Ndunge Mutuku - Petitioner, Ngelani Area
12. Ms. Eunice Muthama - Petitioner, Ngelani Area
13. Mr. John Muiei Maingi - Petitioner, Metuma
14. Mr. Edward Kasiva - Petitioner, Kavete

MIN. NO. 429/2023 **PRELIMINARIES**

The Chairperson called the meeting to order at fifteen minutes past ten O'clock and invited one of the Petitioners to open with a word of prayer.

This was followed by a self – introductory session by the Members, Secretariat, and the invited Stakeholders. The host Senator and host MCA proceeded to make welcoming remarks, following which the Chair presided over the meeting.

MIN. NO. 430/2023 **ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Sen. Andrew Omtatah Okoiti, MP, and seconded by Sen. Hamida Ali Kibwana, MP.

MIN. NO. 431/2023 **PETITION BY MUINDI MBINGU MEMORIAL
NGELANI ASSOCIATION CONCERNING
HISTORICAL INJUSTICES SUFFERED BY
RESIDENTS OF NGELANI AREA IN MACHAKOS
COUNTY DURING THE COLONIAL PERIOD**

The Committee proceeded to receive testimonies and submissions from the invited stakeholders on the Petition submitted to the Senate by Muindi Mbingu Memorial Ngelani Association concerning historical injustices suffered by residents of Ngelani area in Machakos County during the colonial period.

i) Mr. Lukas, Chairperson Muindi Mbingu Ngelani Association

The Chairperson of the Muindi Mbingu Ngelani Association informed the Committee that –

- a) The Akamba people were pushed from Embakasi Nairobi to Ngelani Area in Machakos County.
- b) The British Colonialists wrote a letter to the District Commissioner and stated the cows of the Akamba people be taken away from them. They took the letter

to their leader Muindi wa Mbingu and was sent to England for Jomo Kenyatta to read and be informed of what was happening at Ngelani Area.

- c) After the British Colonials took their cows away, the men of the Ngelani Community were not able to marry because they could not pay for the bridal price.
- d) Their children dropped out of school and did not go to school because their cows were their source of wealth and after the British took cows away they were unable to educate their children.
- e) After their cows were taken away, it led to the poverty levels of the Ngelani Community.

ii) *Ms. Josephine Mutuku*

Ms. Josephine Mutuku informed the Committee that –

- a) All the dogs in their community were killed.
- b) The men of the Ngelani community were physically assaulted and they were even castrated which made them unable to reproduce. She further told the committee that this caused a major gap in the population of the Akamba people.
- c) The Akamba women were physically and sexually assaulted by the British Colonialists.
- d) Since they did not have any cows left, they fed their infants with water from beans and maize that caused malnutrition among their children.

iii) *Mr. Charles Manyenje*

Mr. Charles Manyenje went ahead and informed the Committee that –

- a) Liebigs (current Kenya Meat Commission) was established to take away the Akamba cows. Their cows were confiscated and slaughtered at Liebigs where the meat was later taken to Philippines to the white people who lived there.
- b) The British Colonial Administration later ordered the reduction of the Akamba cows claiming that they were too many, they polluted the environment and that they were infected with diseases that could be spread to the cows that belonged to the colonialists. It became a law that the Akamba people should all reduce the number of cows they owned.
- c) The Governor went round and took away all the healthy cows from them and took them to the slaughter house. The Akamba people were left with the unhealthy cows which were later killed. They lost about 80,960 cows in total.
- d) They lost a total of 8600 acres of land to the colonialists where each family lost ten (10) acres of land. The colonialist later went ahead and sold this piece of land.

iv) *Mr. Julius Mutiso*

Mr. Julius Mutiso informed the Committee that –

- a) His father among others were captured and arrested by the British Colonialists for three and a half years at the Kapenguria prison without trial for having a herd of cattle.
- b) When they were detained, they were not able to look after their families and with no cattle left to sell, the families did not have the financial will to take their children to school and this resulted to high levels of illiteracy and underdevelopment in the area.
- c) While in prison, they were forced to clear the roads by breaking stones to pave way for the confiscation of cattle and those who resisted were beaten to death. The harsh conditions in prison caused their early deaths.
- d) All they are pledging for is compensation for their cattle lost and injustices meted on them by the British Colonial Administration.

v) *Ms. Agnes William*


Ms. Agnes William informed the Committee that –

- a) Her great grandfather was captured by the British Colonialists in front of his child one early morning and they took him to work in a quarry where he met other men. Anyone who was not able to work was beaten to death and her great grandfather was one of those who was beaten to death.
- b) The death of her great grandfather caused them to live in harsh living conditions with no education.

MIN. NO. 432/2023

ADJOURNMENT

The Chair adjourned the meeting at fifty minutes past twelve O'clock. The next meeting was scheduled to commence the same day at two O'clock.

SIGNED: 

DATE: 21/11/2023



13TH PARLIAMENT | 2ND SESSION

MINUTES OF THE EIGHTY- EIGHTH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON FRIDAY, 3RD NOVEMBER, 2023 AT 2.00 P.M. AT NGELANI AREA, IN MACHAKOS COUNTY

PRESENT

1. Sen. Wakili Hillary Kiprotich Sigei, MP - Chairperson (*Chairing*)
2. Sen. Hamida Ali Kibwana, MP - Member
3. Sen. Catherine Muyeka Mumma, MP - Member
4. Sen. Andrew Omtatah Okoiti, MP - Member

ABSENT WITH APOLOGY

1. Sen. Raphael Chimera Mwinzagu, MP - Vice-Chair
2. Sen. Fatuma Adan Dullo, CBS, MP - Member
3. Sen. William Cheptumo Kipkiror, CBS, MP - Member
4. Sen. Veronica W. Maina, MP - Member
5. Sen. Karen Njeri Nyamu, MP - Member

SECRETARIAT

1. Mr. Charles Munyua - Senior Cler Assistant
2. Ms. Lilian Waweru - Legal Counsel II
3. Ms. Lynn Aseka - Clerk Assistant III (*Taking Minutes*)
4. Mr. Constant Wamayuyi - Research Officer III
5. Ms. Ndindi Kibathi - Research Officer III
6. Ms. Ngesa Rosebella - Public Communications Officer III
7. Ms. Judith Aoka - Assistant Audio Officer
8. Mr. David Barasa - Assistant Serjeant at Arms

INATTENDANCE

1. Sen. Agnes Kavindu, MP - Senator Machakos County
2. Hon. Caleb Mule, MP - MP, Machakos Town Constituency
3. Hon. Johana Munyao - MCA, Mutituni Ward
4. Mr. Davis Malombe - Executive Director, Kenya Human Rights Commission
5. Mr. Cornelius Oduor - Deputy Executive Director, Kenya Human Rights Commission

6. Ms. Betty Mwasao - Senior State Counsel, Office of the Attorney General
7. Mr. Cyrus M. Maweu - Deputy Director, Kenya National Commission on Human Rights
8. Mr. Kiptoo Baraza - Officer, Kenya National Commission on Human Rights
9. Mr. Hezron Krop - Officer, Kenya National Commission on Human Rights
10. Mr. John Ndonge Mbeti - Petitioner, Ngelani Area
11. Ms. Joyce Ndunge Mutuku - Petitioner, Ngelani Area
12. Ms. Eunice Muthama - Petitioner, Ngelani Area
13. Mr. John Muiei Maingi - Petitioner, Metuma
14. Mr. Edward Kasiva - Petitioner, Kavete

MIN. NO. 433/2023

PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes past two O'clock and invited Hon. Johana Munyao, MCA to open with a word of prayer.

MIN. NO. 434/2023

**PETITION BY MUINDI MBINGU MEMORIAL
NGELANI ASSOCIATION CONCERNING
HISTORICAL INJUSTICES SUFFERED BY
RESIDENTS OF NGELANI AREA IN MACHAKOS
COUNTY DURING THE COLONIAL PERIOD**

The Committee resumed to receive submissions from the invited stakeholders on the Petition.

i) Mr. Davis Malombe – Executive Director, Kenya Human Rights Commission

Mr. Davis Malobe gave background on the cases Kenya Human Rights Commission had won in the Court on injustices. He further informed the Committee that –

- a) The people of Ngelani area went to Kenya Human Rights Commission and stated their case.
- b) Kenya Human Rights Commission then went to Nairobi Archives, did their research and came up with a Report on the injustices meted on the Ngelani people thereafter, Sen. Kavindu, MP took it upon her to present the petition by the Muindi Mbingu Memorial Ngelani Association concerning historical injustices suffered by residents of Ngelani Area in Machakos County during the colonial period before the Senate.
- c) Kenya Human Rights Commission recommended that -

- i) The British government should offer unconditional apology on the human rights violation meted on the Akamba people. What the king did when he visited the country was he gave a statement of regret which is barely an expression of sadness and not an apology;
- ii) The Akamba people should be compensated for the property lot and injustices committed by the British government;
- iii) A Muindi Mbingu museum should be built in the Ngelani Area, be gazetted and maintained; and
- iv) Recommendations of the TJRC report should be implemented especially on how the Kenya Government can negotiate with the British Government on issues of historical injustices.

Mr. Davis Malombe submitted the KHRC report on the Ngelani people to the Chairperson of the Committee.

ii) *Mr. Cyrus M. Maweu - Deputy Director, Kenya National Commission on Human Rights*

Mr. Maweu informed the Committee that –

- a) they had been advocating for a National Reparation Framework as well as the adoption of the TJRC report¹ which recorded historical injustices country wide and gave recommendations on reparations;
- b) that any reparative law, regulations, or funds passed by Parliament should be comprehensive enough to cater for the grievances of many Kenyan Communities, small or large, against the British Colonial Government as well as against Kenyan perpetrators; and
- c) The Government should set aside resources to act on cases on injustices.

iii) *Sen. Agnes Kavindu – Senator, Machakos County*

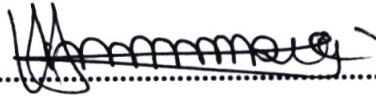
Sen. Kavindu informed the Committee that –

- a) The Akamba lost their land and cattle to the British Colonial Administration and this caused poverty, illiteracy and even psychological and emotional disorder.
- b) There is need of rehabilitation for the affected Akamba people during the colonial period.
- c) The Akamba people needed to be compensated in monetary value for the cattle they lost during the colonial period and in the current market value.

MIN. NO. 435/2023

ADJOURNMENT

The Chair adjourned the meeting at thirty minutes past three O'clock. The next meeting was scheduled to be held on Tuesday, 7th November, 2023 at eight O'clock.

SIGNED: 

DATE: 21/11/2023



13TH PARLIAMENT | 2ND SESSION

MINUTES OF THE NINETY-SECOND SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON FRIDAY, 10TH NOVEMBER, 2023 AT 2.00 P.M. AT SAROVA WHITESANDS HOTEL, IN MOMBASA COUNTY

PRESENT

1. Sen. Raphael Chimera Mwinzagu, MP - Vice-Chair (*Chairing*)
2. Sen. Catherine Muyeka Mumma, MP - Member
3. Sen. Andrew Omtatah Okoiti, MP - Member

ABSENT WITH APOLOGY

1. Sen. Wakili Hillary Kiprotich Sigei, MP - Chairperson
2. Sen. Fatuma Adan Dullo, CBS, MP - Member
3. Sen. William Cheptumo Kipkiror, CBS, MP - Member
4. Sen. Hamida Ali Kibwana, MP - Member
5. Sen. Veronica W. Maina, MP - Member
6. Sen. Karen Njeri Nyamu, MP - Member

SECRETARIAT

1. Mr. S. Njenga Nguguna - Director
2. Mr. Charles Munyua - Senior Cler Assistant
3. Ms. Lilian Waweru - Legal Counsel II
4. Ms. Lynn Aseka - Clerk Assistant III (*Taking Minutes*)
5. Mr. Constant Wamayuyi - Research Officer III
6. Ms. Ndindi Kibathi - Research Officer III
7. Ms. Ngesa Rosebella - Public Communications Officer III
8. Ms. Judith Aoka - Assistant Audio Officer

MIN. NO. 451/2023

PRELIMINARIES

The Chairperson called the meeting to order at fifteen minutes past two O'clock and opened with a word of prayer.

MIN. NO. 452/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Andrew Okoiti Omtatah, MP and seconded by Sen. Catherine Muyeka Mumma, MP.

MIN. NO. 453/2023

**CONSIDERATION OF THE PETITION BY
TARATISIO IRERI KAWA CONCERNING
INTRODUCTION OF AN AMENDMENT TO THE
CONSTITUTION OF KENYA AND OTHER
RELEVANT LAWS ON THE ELECTION OF THE
DEPUTY PRESIDENT AND DEPUTY GOVERNORS.**

The Committee resumed consideration of the Petition by Mr. Taratisio Ileri Kawa concerning introduction of an amendment to the Constitution of Kenya and other relevant laws on the election of the Deputy President and Deputy Governors.

The Committee was taken through and considered the draft Report on the Petition and Members made proposals be incorporated as observations and recommendations at chapters Three and Four of the report, following which the report will be scheduled for adoption.

MIN. NO. 454/2023

**CONSIDERATION OF THE PETITION BY MUINDI
MBINGU MEMORIAL NGELANI ASSOCIATION
CONCERNING HISTORICAL INJUSTICES
SUFFERED BY RESIDENTS OF NGELANI AREA IN
MACHAKOS COUNTY DURING THE COLONIAL
PERIOD.**

The Committee resumed consideration of the Petition by Muindi Mbingu Memorial Ngelani Association concerning historical injustices suffered by residents of Ngelani area in Machakos County during the colonial period.

The Committee was taken through and considered the draft Report on the Petition and Members made proposals be incorporated as observations and recommendations at chapters Three and Four of the report, following which the report will be scheduled for adoption.

MIN. NO. 455/2023

**CONSIDERATION OF THE PETITION BY MR.
LABAN OMUSUNDI ON BEHALF OF RESIDENTS
OF NAKURU COUNTY CONCERNING THE
ENACTMENT OF A CLAUSE IN THE ELECTORAL
LAWS THAT WILL MAKE SURE THAT ALL
NOMINATED MEMBERS OF THE COUNTY
ASSEMBLY (MCAS) ARE VOTERS AND
RESIDENTS OF RESPECTIVE COUNTIES.**

The Committee resumed consideration of the Petition by Mr. Laban Omusundi on behalf of residents of Nakuru County concerning the enactment of a clause in the electoral laws that will make sure that all nominated Members of the County Assembly (MCAs) are voters and residents of respective counties.

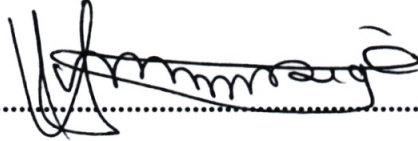
The Committee was taken through and considered the draft Report on the Petition and Members made proposals be incorporated as observations and recommendations at chapters Three and Four of the report, following which the report will be scheduled for adoption.

MIN. NO. 456/2023

ADJOURNMENT

The Vice-Chairperson adjourned the meeting at fifty-five minutes past three O'clock. The next meeting was scheduled to be held on Tuesday, 14th November, 2023 at eight O'clock.

SIGNED:

A handwritten signature in black ink, appearing to be 'W. Ammaag', written over a dotted line.

DATE: 21/11/2023



13TH PARLIAMENT | 2ND SESSION

MINUTES OF THE NINETY-THIRD SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 14TH NOVEMBER, 2023 AT 8.00 A.M. AT COMMITTEE ROOM 5, FIRST FLOOR, MAIN PARLIAMENT BUILDINGS AND ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chair |
| 3. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 4. Sen. Catherine Muyeka Mumma, MP | - Member |
| 5. Sen. Karen Njeri Nyamu, MP | - Member |
| 6. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 2. Sen. Hamida Ali Kibwana, MP | - Member |
| 3. Sen. Veronica W. Maina, MP | - Member |

SECRETARIAT

- | | |
|--------------------------|---|
| 1. Mr. Charles Munyua | - Senior Clerk Assistant |
| 2. Ms. Lilian Waweru | - Legal Counsel II |
| 3. Ms. Lynn Aseka | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 4. Mr. Constant Wamayuyi | - Research Officer III |
| 5. Ms. Ndindi Kibathi | - Research Officer III |
| 6. Mr. Josphat Ng'eno | - Media Relations Officer III |
| 7. Ms. Ngesa Rosebella | - Public Communications Officer III |
| 8. Ms. Judith Aoka | - Assistant Audio Officer |

MIN. NO. 457/2023

PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes past eight O'clock and opened with a word of prayer.

MIN. NO. 458/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Karen Njeri Nyamu, MP.

MIN. NO. 459/2023

THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL, 2023 (SENATE BILLS NO. 37 OF 2023)

The Committee was taken through and considered the draft Report on the Parliamentary Powers and Privileges (Amendment) Bill, 2023 (Senate Bills No. 37 of 2023) with the proposed amendments incorporated as observations and recommendations at chapters three and four of the Report.

Thereafter the Committee adopted the Report, having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Karen Njeri Nyamu, MP.

MIN. NO. 460/2023

PETITION BY MS. ZIPPORAH C. K. SERONEY CONCERNING MISTREATMENT, HARASSMENT, PROPERTY LOSS AND HUMAN RIGHTS VIOLATIONS METED ON THE FAMILY OF THE LATE HON. JEAN MARIE SERONEY

The Committee considered the draft Report as revised to incorporate the observations and recommendations proposed by Members.

Thereupon, the Committee adopted the Report, having been proposed by Sen. Fatuma Adan Dullo, CBS, MP and seconded by Sen. Raphael Chimera Mwinzagu, MP.

MIN. NO. 461/2023

PETITION BY TARATISIO IRERI KAWA CONCERNING INTRODUCTION OF AN AMENDMENT TO THE CONSTITUTION OF KENYA AND OTHER RELEVANT LAWS ON THE ELECTION OF THE DEPUTY PRESIDENT AND DEPUTY GOVERNORS

The Committee considered the draft Report as revised to incorporate the observations and recommendations proposed by Members.

Thereupon the Committee adopted the Report, having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Catherine Muyeka Mumma, MP.

MIN. NO. 462/2023

PETITION BY MUINDI MBINGU MEMORIAL NGELANI ASSOCIATION CONCERNING HISTORICAL INJUSTICES SUFFERED BY RESIDENTS OF NGELANI AREA IN MACHAKOS COUNTY DURING THE COLONIAL PERIOD

The Committee considered the draft Report as revised to incorporate the observations and recommendations proposed by Members.

Thereupon the Committee adopted the Report, having been proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 463/2023

PETITION BY MR. LABAN OMUSUNDI ON
BEHALF OF RESIDENTS OF NAKURU COUNTY
CONCERNING THE ENACTMENT OF A CLAUSE
IN THE ELECTORAL LAWS THAT WILL MAKE
SURE THAT ALL NOMINATED MEMBERS OF
THE COUNTY ASSEMBLY (MCAS) ARE VOTERS
AND RESIDENTS OF RESPECTIVE COUNTIES

The Committee considered the draft Report as revised to incorporate the observations and recommendations proposed by Members.

Thereupon the Committee adopted the Report, having been proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Andrew Omtatah Okoiti, MP

MIN. NO. 464/2023

ADJOURNMENT

The Chairperson adjourned the meeting at twelve minutes past nine O'clock. The next meeting was scheduled to be held on Wednesday, 15th November, 2023 at eight O'clock.

SIGNED: 

DATE: 21/11/2023

Annex 2: Copy of the Petition

PETITION TO THE SENATE
IN THE MATTER OF HISTORICAL INJUSTICES SUFFERED BY
THE KAMBA COMMUNITY OF NGELANI AREA MACHAKOS COUNTY

AND

IN THE MATTER OF ARTICLES 119, 97 AND 174 (c) OF THE CONSTITUTION OF
KENYA 2010

AND

IN THE MATTER OF PETITION TO PARLIAMENT




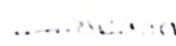
(PROCEDURE ACT) NO 22 OF 2012

The Right Honourable Speaker
Senate of the Republic of Kenya

Dear Sir,

THE HUMBLE PETITION OF MUINDI MBINGU MEMORIAL NGELANI ASSOCIATION, WHOSE ADDRESS OF SERVICE FOR PURPOSE OF THIS PETITION SHALL BE: P.O BOX 457-90100 MACHAKOS.

We the under signed executive committee, having been instructed by the Members of Muindi Mbingu Memorial Ngelani Association herein the petitioners a society duly registered under the Society's Act bring this petition on behalf of our members. The petition is about historical injustices suffered by the Akamba community of Machakos county in the hands of the colonial administration that include abuse of human and civil rights, confiscation and distraction of property especially livestock, unlawful detention among others and failure by successive independent government regimes to right these wrongs.

<u>NAME</u>	<u>SIGN</u>
a) LUKA KITUKU MUTUMA P.O BOX 116 -90100 <u>MACHAKOS.</u>	
b) PATRICK KITULYA NZOMO P.O BOX 209 -90100 <u>MACHAKOS.</u>	
c) CHARLES KYALO MANYIZI P.O BOX 457-90100 <u>MACHAKOS.</u>	
d) SUSAN MUENI MUANGE P.O BOX 39 -90100 <u>MACHAKOS.</u>	

Draw attention to the senate of the following.

1. **THAT** petitioner is a society duly registered under the societies act whose membership are residents of Ngelani area in Machakos county with a membership of over Eight Hundred people.
2. **THAT** the affected residents from the brutality of the colonial administration were and continue to be the people living in Machakos County
3. **THAT** the Akamba people of Ngelani area suffered historical injustices dated back to 1938 at the hands of the British Colonial Administration and continue to suffer effects of the same up to now.

These include:-

- (a) Detention without trial.
 - (b) Economic crimes of the forceful confiscation of cattle.
 - (c) Unlawful detention of their leaders such as Muindi Mbingu.
 - (d) Unlawful administration of collective punishment such as forcible labour under extreme condition.
4. **THAT** on or about 1938 the colonial administrators started confiscating cattle belong to the Akamba people of Ngelani area as well as contiguous areas
 5. **THAT** the confiscation of cattle was done in the pretext of livestock disease control, and this created an avenue for the local colonial administrators to confiscate the cattle for their own economic gains.
 6. **THAT** the confiscating of cattle by the colonial government greatly impoverished the residents of Ngelani area and neighboring localities and this led to systemic inter-generational poverty in the area whose effects can still be seen and felt today.

NAME

SIGN

- a) LUKA KITUKU MUTUMA
P.O BOX 116 -90100
MACHAKOS.
- b) PATRICK KITULYA NZOMO
P.O BOX 209 -90100
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- c) CHARLES KYALO MANYEZE
P.O BOX 457-90100
MACHAKOS.
- d) SUSAN MUENI MUANGE
P.O BOX 39 -90100
MACHAKOS.

.....
Luka Kituku Mutuma

.....
Patrick Kitulya Nzomo

.....
Charles Kyalo Manyeze

.....
Susan Mueni Muange

7. **THAT** the community relied on cattle as a source of income and as a means of paying dowry and other cultural rites, this confiscation of cattle greatly interrupted exercise of the communities cultural rites especially marriage.
8. **THAT** the confiscated cattle were later taken and slaughter at LEIBIGS predecessor of what is now the Kenya Meat Commission.
9. **THAT** this has led to systemic poverty that continues to plague the area and Akamba Community to the present day.
10. **THAT** this matter has been severally addressed by the Kenya National commission on human rights.
11. **THAT** the petitioners have sought in vein information from government agencies to establish the truth extent of historical injustices suffered by the community with a view to ensuring accountability and redress.
12. **THAT** our efforts seeking co-operation and support from relevant government agencies on this matter have been met with denials obstruction and evasion of responsibility.
13. **THAT** the senate of the Republic of Kenya which represents communities in all counties of the Republic is vested with the Constitutional mandate to inquire into the aforesaid historical injustices and has the power to summon British Government and obtain any information from any person pertinent to this matter.

<u>NAME</u>	<u>SIGN</u>
a) LUKA KITUKU MUTUMA P.O BOX 116 -90100 <u>MACHAKOS.</u>	<i>[Signature]</i>
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d) SUSAN MUENI MUANGE P.O BOX 39 -90100 <u>MACHAKOS.</u>	<i>[Signature]</i>

14. **THAT** a record of the said historical injustices is necessary to ensure accountability for the said wrong and accord redress to the aggrieved community.
15. **THAT** none of this issues raised in this petition are pending in any court of law or any other legal body.

Hereby pray

1. The senate of Republic of Kenya using its oversight mandate, initiates an inquiry into the historical injustices suffered by the Akamba people as described in this petition with a view to establishing an accurate record and documentation of the true extent of the said historical injustices as well as the true identity of individual and institutional perpetrators in the colonial period.
2. Without prejudice the senate of the Republic of Kenya makes any necessary recommendation to the national government and any other person on measures that ought to be undertaken to provide redress for the historical injustices suffered by the Akamba people as described in this partition.

<u>NAME</u>	<u>SIGN</u>
a) LUKA KITUKU MUTUMA P.O BOX 116 -90100 <u>MACHAKOS.</u> <i>[Signature]</i>
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d) SUSAN MUENI MUANGE P.O BOX 39 -90100 <u>MACHAKOS.</u> <i>[Signature]</i>

Presented by Honourable AGNES KAVINDU MUTHAMA elected Senator for Machakos County.

On thisday of2023

SIGNATURE.....

Annex 3: KHRC (2021), *A Report of human rights abuses committed during the colonial period: A case of the members of the Muindi Mbingu family and the people of the now Machakos County*, KHRC, Nairobi



**A REPORT OF HUMAN RIGHTS ABUSES
COMMITTED DURING THE COLONIAL PERIOD**

A case of the members of the Muindi Mbingu family
and the people of the now Machakos County





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NOVEMBER, 2021

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ABBREVIATIONS AND ACRONYMS

ADC	African District Council
DC	District Commissioner
GPPAC	Global Partnership for the Prevention of Armed Conflict
IDRC	International development Research Center
KMC	Kenya Meat Commission
LNC	Local Native Council
ODI	Overseas Development Institute
PC	Provincial Commissioner
UN	United Nations

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The Kenya Human Rights Commission (KHRC), wishes to express much gratitude to Mr. Peterson Kithuka for researching and putting together this report titled *“A report on human rights abuses committed during the colonial period- A case of the members of the Muindi Mbingu family and the people of the now Machakos County”*.

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EXECUTIVE SUMMARY

This report is a product of a study that was commissioned by and undertaken on behalf of the Muindi Mbingu Foundation by the Kenya Human Rights Commission. The objectives of the study was to identify human rights abuses, to which members of the Muindi Mbingu family, and other residents of Machakos County, were subjected to during the colonial period. Machakos then was mainly inhabited by people from the Akamba (or Kamba) ethnic community. In particular, the study identified incidences of human rights abuses relating to:

1. Destocking
2. Loss of cattle
3. Land injustices
4. Forced labour
5. Assault
6. Torture
7. Detention
8. Loss of livelihood
9. Operations at Liebig's/Kenya meat factory

The methodology utilized in the gathering of information, which went into the writing of this report, entailed the following procedure:

First, a list of relevant documents was extracted from catalogs. The topics listed above guided the identification of relevant documents. In particular, the documents listed were those which touched on police, intelligence reports, annual reports, handing over reports, complaints in general, law and order, veterinary (including agriculture generally), land, labor, and Mau Mau (Emergency). The next step was the retrieval of listed documents. The third step involved a thorough and critical review of the documents to extract the relevant information. Documents that contained relevant information were set aside for photocopying.

The study established that indeed, there were massive and serious human rights abuses in Machakos during the colonial period. These abuses were meted out on people of the Akamba ethnic community who were traditionally residents of Machakos County. In the area of destocking and loss of livestock, the study established that, indeed, there were human rights abuses whereby the Akamba people were forced to sell their livestock to a single investor at a very low price. The sale was given a timeline. Thus, in destocking, the Akamba people lost the true value of their livestock. There were also other human rights

abuses relating to livestock. Some of the incidences involving cattle theft attracted what was called, "collective/communal punishments". These were punishments where a whole village was punished for crimes committed by one or a few members of the society. The government's position was that there was a lack of grazing land and that, therefore, the Akamba livestock had to be reduced. The Akamba did not buy into this idea. For them, grazing should have been made available by returning the land, which Europeans took away, back to the Akamba people. Destocking was a government ploy to deny the Akamba access to their traditional grazing areas. They also argued that some of the lands under European occupation were not being utilized fully yet they were not allowed to access them for grazing. They also resisted destocking because the prices at which they were to sell their livestock were very low and the government-appointed buyer (Liebig's) was in the habit of buying only "suitable" livestock and condemning the "unsuitable" ones. As they continued to resist destocking, the government resorted to yet another disastrous strategy whereby they would impound/confiscate livestock that belonged to those who resisted destocking. This also added to human rights abuses to which the Akamba were subjected.

In the area of forced labor and general working conditions, the study established that, indeed, there were human rights abuses whereby the Akamba worked under dangerous and threatening conditions. In particular, some of those who worked at a meat canning factory (Liebig's) suffered serious injuries (including death). Those who suffered injuries, as well as death, were accused by the labor officer of being careless and lacking concentration at their place of work. More abuses were recorded in the area of labor recruitment. Women were forced to dig terraces and there were, also, incidences of child labour.

Also, human rights abuses were committed in the area of effecting arbitrary arrests, employing torture to obtain information from suspects as well as assaulting and detaining the Akamba people. In particular, force was always resorted to whenever the Akamba people expressed dissatisfaction towards the government as happened during destocking projects. In most cases, human rights abuse was legalized through the enactment of laws or gazettment of Government Legal Notices. For example, when some Akamba people refused to comply with the government-initiated destocking directive, their livestock was impounded and some were shot and killed. This was justified through a legal Notice which had been issued to legalize the inhuman act. Arbitrary arrests were always experienced when the Akamba people were arrested for charges they did not understand or failure to obey laws that they did not know existed in the first place. Cultural practices such as wildlife hunting were illegalized and, whenever the Akamba people breached such laws, they were arrested.

Yet again, other human rights abuses regarding arbitrary arrests, torture, and unlawful

detention occurred during the Mau Mau Emergency. What needs to be emphasized here is the fact that many Akamba people, just like the Kikuyu, were arrested/rounded up, tortured, and detained during the Mau Mau Emergency. This partly results from the fact that, apart from being neighbors of the Kikuyu people, the Akamba were culturally, linguistically, and economically akin to the Kikuyu. They traded with each other, intermarried, and had a linguistic resemblance. Apart from that, the Akamba participated actively in Mau Mau activities. It is for this reason that one of the leading political leaders from Kamba land, the late Paul Ngei, was among the famous Kapenguria six¹ was detained alongside the founding father of the Republic of Kenya, the late President Jomo Kenyatta.

Under land injustices, the study established that human rights abuses were committed against the Akamba people by way of land alienation. The land was taken away from the Akamba people for the settlement of European investors and other government projects such as the construction of the railway and the conservation of wildlife. Some of the land which was alienated served economic and cultural purposes either as areas for salt licks for Akamba livestock, or for shifting cultivation, or for worship (traditional worship sites), just to mention but a few. In most cases, these issues were ignored when alienating land for government purposes and European settlements. Also, land injustices were committed during the creation of government administrative units such as provinces and districts. The argument was usually that the land was uninhabited. The Akamba people appeared before the land commission in 1932 and presented their evidence. The evidence pointed to the displeasure of the Akamba regarding land alienation for European settlement. Land alienation reduced their grazing land and subjected them to untold hardships. This was in addition to taking away their sacred land where they used to offer religious sacrifices.

Loss of livelihoods is a cross-cutting theme that overflows into the other areas discussed above. By creating district boundaries (Native Reserves), hitherto unknown to the Akamba people, the Akamba people lost all the land that existed outside of their areas. Loss of land led to the loss of grazing areas as well as food reservoirs (the Akamba being a hunting and food gathering community in those old days). Lack of grazing led to the loss of livestock through death. Boundaries also restricted trade as the movement in and out of the native reserves required government approval. The Akamba people were known to be long-distance traders. By restricting movement, and consequently trade, the Akamba people's livelihoods were affected. Mostly affected was trade between the Akamba and the Kikuyu. As such, restricted movement and regulated trade cut off their traditional channels of flow of goods, mostly food. Also, the removal of large numbers of the male population, sometimes through forced labour and labour recruitment created a vacuum in the supply chain of labor throughout Ukamba land. As more men went into poorly paid government

¹ https://en.wikipedia.org/wiki/Kapenguria_Six

service and factory/plantation work, the Ukamba province and Machakos district lost able-bodied men who served the various interests of the Akamba people (warriors were taken away exposing the Akamba to incessant wars from their neighbors, there was famine occasioned by the loss of male labour). Last but not least, destocking and confiscation of livestock (already mentioned above) served to deprive the Akamba of their currency and food. Cattle meant a lot to the Akamba people. Most transactions were settled through the use of cattle as a medium of exchange (currency). Dowry was paid through cattle, sacrifices were conducted through the slaughter of cattle, and food was exchanged with cattle. Loss of livelihood was also experienced with the enactment of forest and wildlife laws which, consequently, resulted in the establishment of protected government sites. This impacted the Akamba people in various ways. In the first instance, the Akamba people were prevented from practicing their traditional cultural practice of hunting. Wildlife was annexed from the Akamba people and made a government asset.

1.0 INTRODUCTION

According to Maxon (2014: 97) "the movement in support of human rights... emerged during and after World War II". At that time, former colonial empires like Britain and France played a leading role in spearheading the human rights movement that culminated in the founding of the United Nations (UN) and the United Nations Charter on Human Rights (UNCHR). Unfortunately, Britain, which was spearheading the human rights movement at the global level, was alive to the massive human rights abuses which were taking place in its overseas colonies. As early as 1913, Kenyan Africans were already being punished for the mistakes of others under what was called collective punishment. This punishment was sanctioned following the enactment of the Stock and Native Produce Theft Ordinance No. 8 of 1913 (East African Protectorate 1913).

Alive to the abuse of human rights in Kenya, Winston Churchill (of the Colonial Office in London) issued an order in 1921 to the Governor of Kenya to stop coercive labor (Ndanyi 2016:5-6). Equally disturbing is the fact that repression of independence struggles in Kenya, as well as other anti-colonial struggles, particularly during the Mau Mau uprising, involved the "use of techniques such as systematic torture, detention without trial, collective punishment, villagization, and pervasive violence" (Maxon 2014: 97). Even though the colonial government's approach towards dealing with the Mau Mau uprising raised "widespread and gross abuse of human rights" (Maxon 2014: 97), it has to be realized that there were many other human rights fits of abuse committed by the Colonial government in general against its predominantly African subjects.

The rights of men, women and children were violated in the sphere of labor. Kamba women were forced to dig terraces in Machakos (Bahemuka and Tiffen `1992), while their children were employed (Cashmore 1965; see also MV/10/16) and their men squeezed out of the Machakos Native Reserve to take up poor-paying jobs and work under inhuman working conditions in government service and private enterprises. It was in the sphere of labor that laws, which had been enacted to protect peoples' rights were breached. The Employment of Servants Ordinance, 1938 (Kenya Colony and Protectorate 1938), prohibited the employment of juveniles as porters, fuel cutters, trolley or rickshaw boys, or in any other class of labor for which, in the opinion of a Government medical officer, they were physically unsuitable (Ndanyi 2014). Important to note, was that the working conditions to which adults were subjected to was deplorable. These conditions, apart from dehumanizing, violated the rights to life through killing.

In March 1918, Ukamba which had supplied about 30,000 porters, reported that 10,000 had returned and a further 2,400 were known to be dead (quoted in Cashmore 1965: 200).

According to Macharia (2003: 7), acquisition of "cheap labor force was always the goal especially for the settler community". But apart from the cheapness of the labor, the methods

employed in the recruitment were equally dehumanizing. In the District of Kiambu, which was a neighbor of Machakos, a judge raised concern regarding the method which was used to recruit labor that included "kidnapping, flogging and fining to find labor" (quoted in Cashmore 1965: 29-30).

Force was not only used in the acquisition of labor. It was also used to enforce government directives such as destocking (control of livestock numbers) in Machakos (Bahemuka and Tiffen 1992, see also DC/MKS/12/2/2). The problem lay not in the use of force alone but in the fact that those who served in security operations "were attracted by hopes of revenge or the lust for loot (quoted in Cashmore 1965: 78). The police and other security agencies were heavily involved in the abuse of human rights. According to Cashmore (1965: viii),

Organized, authorized, uniformed, force, wielded by soldiers or police, in any case, underlay all colonial relationships at a deeper level than any 'illegal measures'.

Yet that was not all. There was the issue of land injustices. Nzioki (2000) observes that the colonial government enacted a series of Ordinances (in 1902, 1908, and 1915) to facilitate the alienation of large tracts of land from the indigenous people. The only land which was set aside for African habitation, then called Native Reserves (Cashmore 1965), were nothing more than concentration camps from which Africans would be extracted to provide labor. Cashmore 1965:45) observes that the Reserve police was used to "squeeze labor from the Reserves like ." Men who left the reserve to seek paid work did not do so voluntarily. In 1913 D.C. for Machakos District held that:

To increase taxation to drive natives out to work is forced labor under a subterfuge and it is impossible to get away from the fact.... (Quoted in Cashmore 1965: 60).

However, it would be unfair to the entire colonial administration if, in this report, mention is not made of those officers who stood in defense of Africans human rights. In this regard, Kenneth Dundas and his young brother Charles deserve credit. The two seemed to have heeded the advice of Winston Churchill who wrote in 1908 that the colonial government officers were there as "guardians of native interests and native rights against those who only care about exploiting the country and its people (quoted in Cashmore 1965: 38-39)".

From the foregoing, it is about time to put former colonial empires to face abuse of human rights charges because, despite what they did, they have stood ground to deny that techniques used to suppress anti-colonial struggles on the African continent "were internal disturbances and, thus, not wars that were subject to the regulations laid down in The Hague and Geneva Conventions" (Maxon 2014:97).

To put them to answer to charges of human rights abuses, this study documents evidence of human rights abuses that were committed to the Muindi Mbingu family and the people of the now Machakos County. The study was conducted at the Kenya National Archives.

2.0 OBJECTIVES OF THE STUDY

The main objective of the study was to highlight cases of human rights abuses suffered by the Muindi Mbingu family and the people of the now Machakos County during the colonial era.

The desktop review that was conducted at Kenya National Archives focused on the following identified injustices:

1. Land injustices
2. Destocking
3. Loss of cattle
4. Loss of livelihoods
5. Forced labour
6. Operations at the Liebegs factory/Kenya Meat Commission
7. Assault
8. Arrests, torture, and deportation
9. Detentions during the Mau Mau uprising

3.0 METHODOLOGY

This report was purely a desktop research undertaken at the Kenya National Archives. The methodology utilized in gathering, analyzing, and presenting findings in this report included the following procedure. Firstly, a list of relevant documents was extracted from catalogs. These were documents containing information on the following topics: police, intelligence, forest and wildlife conservation, law and order, livestock and veterinary, land, labor, riots and disturbances, and Mau Mau (Emergency).

Secondly, the extracted documents went through a critical analysis in line with aforementioned topics. Thirdly, the findings were carefully combined into this report.

Much of these topics feature in District Commissioners' annual reports and handing over reports as well as reports and correspondences from select government departments and ministries. Including the Police, Forest and wildlife conservation departments, ministries of lands, agriculture and livestock development and labor and attorney general's office and the War Council. Records from these government agencies were reviewed.

Documents on colonial police were relevant because they contained sub-topics such as police raids, police discipline, and code of conduct. The police were mandated to enforce law and order alongside effecting arrests and detention of suspects and culprits. They were also mandated to deal with riots and disturbances. The manner in which the police dispensed their mandate raises human rights concerns. More importantly, their use of reasonable force while carrying out their mandate, and there are issues as to how they carried out their mandate either within or outside the confines of the law are issues that border on human rights. The study also reviewed documents dealing with complaints against the police.

Related to the police are intelligence reports. These reports were reviewed because they highlight security issues in general. In particular, they point out security problems. From these reports, we get a clue as to what constituted a security problem as seen through the lens of the colonial administrators and how judgments were made concerning the choice of appropriate action against security problems.

District annual reports were singled out as relevant sources of information for this study. These reports were usually prepared by District Commissioner (DC) and, in these reports, issues that were of focus included law and order, police activities, livestock, and veterinary matters, among other issues. These issues were considered to be relevant to the study. Also closely related to District Annual Reports were District handing Over Reports which were also prepared by the District Commissioner. They too carried information on matters that are sensitive to human rights.

Documents dealing with forestry and wildlife conservation were also targeted because these were areas of contestation between the colonial government and the local indigenous populations. Much of the land had traditionally been under the jurisdiction of local indigenous communities. Once set aside, these spaces were used at the exclusion of local indigenous populations. Yet such places were of cultural and economic importance in the lives of the excluded people. Also, of importance was the fact that once set aside, those who trespassed into these spaces were arrested, fined, jailed, or assaulted. The same happened to Africans who were found hunting wildlife or in possession of game trophies such as ivory and leopard skins.

Documents containing information on livestock and veterinary were targeted because they contain information on destocking and loss of cattle. These are topics that constituted part of the terms of reference. Also, it is in these documents that information about the Liebig meat factory was found. A lot of human rights abuses were committed through destocking and impounding of cattle as established by the study.

Documents relating to land were useful in establishing land injustices in Machakos District. In particular, the information sought related to land alienation in Machakos and complaints arising therefrom. In this regard, a review of the evidence presented to the Land Commission which was set up in the early 1930s to review land grievances came in handy.

Equally useful were documents relating to labor and taxation. Taxation was introduced to push Africans to go out in search of paid work and earn wages out of which they paid taxes. It is an accepted fact that work generates human rights issues either by way of slave labor, forced labor, laboring under dangerous conditions, unpaid labor, child labor, and so forth. Equally useful was a review of labor inspection reports which were prepared by labor officers upon assessing general working conditions provided by a given employer.

Documents relating to Mau Mau (state of emergency) were also relevant as the study sought to find out how the state handled the Mau Mau uprising in Machakos. Even though this kind of information is available from secondary sources, much of it is centered on the Kikuyu people of central Kenya which was considered the epicenter of the Mau Mau uprising. Thus, a lot more information was to be gathered about the Kamba people of Machakos.

4.0 FINDINGS

Below are the findings from the desktop review of the selected documents as per the topics highlighted in the previous section.

4.1 LAND INJUSTICES

Land alienation formed a frontier against which human rights abuses were committed against the Akamba people of Machakos. Nzioki (2000) observes that the colonial government enacted a series of Ordinances to facilitate the alienation of large tracts of land from the indigenous people. In particular, we had the three notorious land ordinances of 1902 (which facilitated European settlement in Kenya), the one of 1908 that conferred power upon the commissioner to make grants of 99-year leases to the settlers, and the Crown Land Ordinance in 1915 which created Native Reserves. These notorious Ordinances facilitated land alienation leading to the loss of huge chunks of land and the Kamba were among the main losers. Kariuki (2015: 6) observes that communities "that lost most land were the Maasai, the Kamba, the Kikuyu, the Nandi, the Kipsigis and the Mijikenda" with the Kamba losing "Masaku, now Machakos". The Kikuyu tried to challenge land alienation but they lost the court case in 1921 (Elkins 2005:5). The verdict of the court seemed to have opened a floodgate for alienating more land.

Land alienation took away most of the land which belonged to the Akamba people. This is attested to by the nature of the evidence which the Akamba people, presented before the Land Commission in 1932. A few of the testimonies which were presented to the Commission are reproduced in this report. James Mutua appeared before the Commission and presented his testimony on 8th August 1932. When Mutua was asked by the Commission chairperson to say whether "the Yatta belonged to them before the Europeans came to the country" Mutua replied:-

The people of Kibwezi were using the Yatta always because their villages were on the Yatta side of the river and they were grazing their cattle on the Yatta. The people of Mwala, Masii, and Kiteta, living this side of the river and grazing their cattle on the Yatta, brought them home in the evening. The Kitui people were also grazing on the Yatta..... About twenty years ago they were better. They were having enough grazing, but at present, they were being attacked and they had better take their cattle back (Kenya Colony and Protectorate 1933)

James Mutua did not only clarify that the land belonged to them before the coming of the Europeans, contrary to the European position that it was uninhabited, but he also affirmed that they were using the land for their benefit. The land to which the Akamba lay claim was

not only useful for economic purposes, but was also useful for cultural and religious purposes. Headman Kiamba affirmed this point when he told the Commission that:

From Kitindini Hill down to Emali.... Before the Europeans came and even now there are shambas of bananas at emali. There was a big tree there that was originally used as a sacrificial altar before they went to fight the Maasai and now the tree is no longer there and has not been there for at least six years but the stump is still visible. If they had the land they would still use it for sacrifice. What they would do if they had Emali would be to cultivate it and put up some shops there (Kenya Colony and Protectorate 1933: 1340).

More evidence was adduced before the Commission by a sub-committee appointed by the Local Native Council on 27th June 1932, consisting of James Mutua Muli, James Mwanthi Kiusui, headman Mulandi Labu, Headman Kiamba Nthuli, Kalovoto Sere. The spokesman of the sub-committee raised issues that concerned Akamba loss of land and livelihoods thus:

A long strip of land of varying width has been lost to us, since the Reserve boundary was first demarcated from where the Machakos Nairobi Road crosses the Mugongoni to Simba... we lay claim to that strip.... We also lay claim to Yatta. We look upon the Yatta as our land by rights we enjoyed before the Europeans arrived in this country. We slung our honey boxes and cut trees there before Mr. Ainsworth arrived at Machakos. We ask, then, for the strip of land that we have lost along the boundary from Machakos to Simba, Ngelani Farm, and the Yatta. We have no complaints to make about areas at present occupied by missionaries in the Native Reserve because we realize that they have done much to help the Kamba (Kenya Colony and Protectorate 1933: 1344-1345)

It is alleged that the land which was taken away from the Akamba by Europeans was so large that no words would describe it. Kitia Wakibati tried to describe the extent of land taken by Europeans in the following words: -

There are some European shambas so big that it takes four hours to walk from one end to the other and the area of development is very small. A great deal of the rest is left as grassland and there is game wandering over it. It is better to look at the interests of these natives than it is to look at the interests of the game. The government gets no profit from the Kongoni. In the old days, Athi River was the boundary between Kikuyu and the Kamba (Kenya Colony and Protectorate 1933)

Land alienation created a condition of co-existence between Europeans and Africans in Machakos. This co-existence led to the problem of cattle trespassing from and to either side.

However, the disturbing issue is that whenever African cattle trespassed into European farms, Africans were prosecuted while nothing was done when European cattle trespassed into African lands. This thorny issue was made a subject of the Machakos Local Native Council when they had a meeting in 1941. This state of affairs underscores discrimination in the area of administration of law.

T. Muteta complained that the fines imposed by magistrates on the trespassers into settled areas were excessive and caused hardship. He also alleged that Europeans whose cattle trespassed into the Reserve were not prosecuted (DC/MKS/5/1/4)

The thinking of the colonial government was always that land which was not under active use by natives was uninhabited. DC Kitui once noted that:

If the area in question is only that marked C and enclosed green on the map there are no native rights affected there as the land is uninhabited and always has been as far as I can gather nor do I think that the natives want it (DC/MKS.10A/21/1)

As time went by, the population of Akamba shot up and this created land scarcity both for human habitation and for grazing cattle. Even though land alienation in Machakos dates back many years, the land was still being sold to Europeans in Machakos in 1929 through what was called land auctions. Europeans who had settled in Machakos near Ulu area had an association called the Ulu Settlers Association. When, in 1929, the land was floated for sale/auction, they protested against the prices at which the land was being auctioned. Through their honorary secretary, Mr. George Sheraton, they wrote a letter to the District Commissioner, Machakos, stating:

The farms are solely of value as grazing areas and it is considered that there is little chance, if any, of selling the same at the coming auction unless the Upset price which is at present put at Ksh.20/- per acre on all these farms, is considerably reduced (DC/MKS/10B/1/1).

But even as the government was planning the sale/auction of land in the Ulu area, the Akamba people were running short of grazing land. This situation was created by the fact that the part lying east of the Iveti hills was considerably overstocked while that part of Machakos called Mua Hills, in which the Akamba people used to graze, had been alienated. Due to this land shortage, the Akamba people applied for grazing in Yatta Plateau with their application stating that:

The suggestion is apparently due to an application by the Akamba of the Ulu District to be allowed to graze their cattle on the Yatta. The alleged reason for this application is

the shortage of grazing in the Ulu District of itself (Dc/MKS 10A/13/1)

The application for land use in Yatta Plateau was granted on condition that they were to sign a grazing agreement requiring them to pay grazing fees and not to put up settlements in the grazing area. However, some of them had built huts on the land contrary to the agreement and were therefore prosecuted.

Thus, land alienation created land scarcity, landless and squatter families. By 1947, squatters were presenting a problem to the colonial government prompting the need to resettle them.

The committee recommended that the 8 families who used to live at Makuyuni near the boma who had migrated to the Mua Hills as squatters from whence they and since been removed should be given alternative land (DC/MKS/5/1/4)

While the problem of land scarcity was biting the people of Machakos, there were large chunks of land under the Forest Department that were not being used.

There were certain areas of the forest land which were not being used by the Forest Department and which could be returned to the people particularly in Momandu (DC/MKS/5/1/4)

Only a small piece of land would be set aside for the exclusive use of Africans. These land units were referred to as Native Reserves. As the population of Africans increased, these areas became inadequate. This played in the hands of those who schemed to have Native Reserves because, as conditions became unbearable in Native Reserves, Africans would move out to sell their labor. Thus, contrary to what the colonial administration promoted (Native Reserves for the enjoyment of the "undisturbed and exclusive possession of the areas set aside for their use"), the creation of Native Reserves was "influenced by a desire to obtain labor" (quoted in Cashmore 1965: 45).

The actual creation of Reserves led to the loss of large tracts of land. According to the colonial government, such lands were uninhabited. Conditions to which Africans were subjected to within these Reserves (taxation included) were meant to "squeeze labor from the Reserves" (Cashmore 1965: 45). To some these harsh conditions were to squeeze primitivity out of the Africans while at the same time "providing a refuge in which the tribesman could adjust gradually to the pressures of civilization" (Cashmore 1965: 49). In 1913 the D.C. Machakos held that

To increase taxation to drive natives out to work is forced labor under a subterfuge and it is impossible to get away from the fact.... No labor, white or black, is purely voluntary (quoted in Cashmore 1965: 60).

An undated article signed by Samuel Muindi, though bearing a rubber stamp dated 21st July 1938 and originating from the Criminal Investigation Department (CID) and addressed to the editor of *Muigwithania*, states that the Akamba people did not just lose their livestock (cattle and goats) but also land. Native Reserves became reservoirs of labor (call it forced labor, cheap labor, or child labor). In the article to the editor, Mbingu states that

**You have all heard and seen cattle, goats and lands being taken away from us”
(DC/MKS/10B/15/1).**

Generally, the land which was taken from the Akamba ended up benefitting the Europeans at the expense of the Akamba. Europeans who were settled in Kibwezi where they practiced sisal farming were reportedly doing very well in the 1930s. This was in contrast to what was happening to the Akamba people in the neighboring Machakos district. Land alienation in Maasai Native Reserve created shortages for grazing Maasai livestock and, as a result, the colonial government was of the view that the Maasai graze their livestock in Kambaland. Some of the lands which were taken away from the Maasai were leased to Liebig as cattle holding grounds (DC/KAJ/2/3/15 Liebig), to the railway and the National Park Trustees (DC/KAJ/3/14/3). Maasai land having been taken up for colonial projects left them without access to two very vital areas which supported their livelihoods in terms of grazing and watering their livestock.

**I feel sure that the District Commissioner and veterinary officer Machakos could not agree to allow the Masai to water in Athi River Township, and Mr. Cowie told me some time ago of his objections to allowing them to water at [that stretch of the Mbagathi River which on the South is now bounded by the small extension of the Nairobi National Park which formerly was part of the Liebig Holding ground] because in this area there are the hippo pools. This latter area is within the area which was exchanged in 1938 or thereabout for the mile strip along the railway
(DC/KJD/3/14/3)**

According to the Akamba people, land alienation took away their grazing land. While presenting his grievances before the Land Commission in 1932, Ex-headman DundaWanduli stated that”

The complaint is about the lands which have been alienated by the Europeans. we do not want to raise the grazing problem separately but if we can get back the land that has been taken and given to the Europeans we should have enough grazing (Kenya Colony and Protectorate 1933)

The Akamba people continued to be deprived of grazing land/areas as years passed. In

1956, for example, it was noted in the Annual Report of Machakos District by DC that land which had been under use by Emali grazers was taken and added to the Simba-Emali ranch then under the management of the Machakos African District Council (ADC):-

The year 1956 was the first full year of operations of the A.D.C. ranch at Simba-Emali the acreage of the ranch was increased by the inclusion of the Emali strip previously occupied by the Emali grazers...grazers had claimed land rights there due to length of tenure. An ADC sub-committee pointed out to them, after investigations, that they had no rights and could be moved off when desired. Given the needs of the ranch it was decided to remove them, but to give those people who had cattle here for a long time some grazing in the Lower Makueni area. This was only done to avoid immediate hardships and at a later date it might be found desirable to remove them altogether (DC/MKS/1/1/33)

5.0 DESTOCKING

Faced with an ever-increasing problem of shortage of grazing for Akamba livestock, the colonial administration came up with a destocking policy whose aim was to reduce the number of livestock owned by the Akamba people to fit available grazing options. Like land alienation, destocking also heightened human rights abuses committed against the Akamba by the colonial administration.

Destocking was a 'declared policy of the government to reduce the stock in this district to a figure which its grazing can carry' (DC/MKS/1/34/4). It was presented to the Akamba people as a bullet solution that would solve all the Akamba grazing problems and its implementation was necessary if the Kambaland was going to be saved from becoming a desert in the foreseeable future.

This has been decided only after the most careful investigation and is thought to be one of the only means to prevent the early reduction of this district to final and irrevocable desert conditions (DC/MKS/1/34/4)

As far back as 1929, the Agricultural Commission of 1929 had recommended that "compulsory auction must be exercised to reduce the number of livestock in the Akamba reserve "and that "before such action is taken, a meat factory must be established to take over the stock to be culled" (DC/MKS1/1/23). The use of force in destocking was justified by the local colonial administrators based on allegations that the Akamba people loved cattle for the sake of it. This was well captured in the statement by DC Machakos who said in 1930 that:

A Mkamba cannot bear, except under extreme necessity, to part with his cattle and goats, and despite the twenty years of propaganda on the part of the administration, certainly, the problem can only be solved by compulsory culling

There was discrimination when it came to forceful destocking. Force was applied in the process of destocking African areas and not in European settled areas. This is brought up in correspondence addressed to Provincial Commissioner, Rift Valley Province, which states:-

I have given the matter full consideration and have no hesitation in saying that I do not consider that it would be desirable to introduce compulsory culling in the Settled District.... In my opinion culling of stock for Liebigs (if forcible methods are to be used) should be effected in the Native Reserve (PC/RVP/6A/7/11)

To colonial administrators, a lot of livestock was a danger to soil conservation only in African areas and not in European areas. Traditionally, the Akamba people practiced destocking but not in the manner in which the colonial administration wanted them to do. Destocking

for the Akamba people took place during hard times such as drought. Cattle were used as food during drought or sold to obtain money which was used to transact other businesses which could only be resolved with money. This included paying government taxes among others. The DC Machakos noted in 1930 that:-

It is estimated that during the drought of 1938 and 1939 as many as 80,00 heads of Akamba cattle were either sold to obtain money with which to purchase grain, eaten in place of other food....(DC/MKS/1/1/23)

From the foregoing, it was natural that livestock would be depleted during the drought season and, as a result, there would be an ecosystem balance. When the rains resumed, grass would sprout nature to sustain grazing. Another strategy which the Akamba used to strike a balance between nature and human activities was through migration. During drought, the Akamba would migrate to areas where they would graze their livestock only to return to their original areas when rains begin. However, the colonial government was against the nomadic way of life, even as sustainable as it was in preserving the environment. According to the colonial government, living a settled life made administration easier especially as far as collecting taxes was concerned. The colonial government was determined to contain a nomadic way of life to which the Akamba people predisposed themselves during the drought season. The DC Machakos alluded to this when he wrote in 1930 that:-

The Akamba, who migrated to Mweya during the drought, are now being returned to Machakos with their cattle and this return, necessary as it is, will only further increase the difficulty (DC MKS/1/1/23).

The Akamba people were against European way of destocking. It went against their way of life, especially in the manner in which it was implemented. The Akamba had been accustomed to destocking but not in the manner in which the colonial government wanted them to do. They had not destocked under duress. It is for this reason that some of the leading personalities in Machakos, such as Muindi Mbingu stood their ground and led the Akamba people into resistance. The repercussions of the resistance were dire and ultimately Muindi Mbingu was deported (DC/MKS/14/3/1). Human rights abuses (in the form of arrests, assaults, torture, and deportation) committed against the people of Machakos are discussed separately elsewhere in this report.

There are other reasons which led the Akamba people to resist selling their livestock through government-controlled channels. One is the levy which they were charged upon sale. Other conditions discouraged the Akamba as well. They would only sell their healthy cattle and those which were in "unsuitable conditions" were rejected by the buyers. Instead, the Akamba preferred to continue selling their livestock through their traditional channels,

whereby most of their livestock was sold to Kikuyu traders. The DC Machakos noted in 1939 that: -

38,779 sheep and goats and 700 head of cattle were sold to the livestock Control, but with increased unwillingness. During the latter part of the year, the monthly quota was heavily reduced owing to the poor condition of the stock offered for sale. The Akamba have been continually asking for a reduction or even abolition of the levy, particularly since the end of the war. The chief reason for this agitation is the low price paid compared to what they could get from private traders, particularly Kikuyu (DC/MKS/1/1/29)

Despite the Akamba people's agitation to be allowed to sell their livestock using channels that guaranteed them maximum profits, the colonial government was determined to attain government-controlled livestock marketing channels. By 1935, several government-controlled stock marketing channels had been established throughout Machakos as noted by the DC thus:-

An attempt has been made to build an export marketing system through Stock Auction Rings at Kithimani, Emali, and Makindu with special sales being held at Miu. A total of 1,284 cattle passed through the Auction Rings at Emali (41) Makindu (395) Miu (512) Tala (91) and mainly for Machakos Township at Kithayoni (246)

Discrimination was experienced in the area of stock marketing. Whereas the government was hard on Akamba people as to where and through which channels they would sell their livestock, Europeans were allowed to sell their livestock to the Kenya Meat Commission (KMC), which could not at any point absorb all livestock presented to them for purchase, as well as to African traders.

Asking for views on future auction sales for European stock to African traders... for political reasons, I consider that to ban European stock from these sales entirely will cause a great deal of feeling. Some outlets through the auctions must be allowed until K.M.C. are in a position to cope with what is offered to them by the European farmer (PC/NKU/2/35/28)

It was ironic for the colonial government to force Africans to sell their livestock to KMC knowing that the KMC could not buy all the stock marked for sale. Knowing that they could not absorb all stock brought to them, KMC may have devised a strategy to reject African cattle on grounds that it was unsuitable.

Despite frustrations that the Akamba livestock keepers received from the colonial government, they proved invaluable during the war period. The table below "shows the total number of oxen taken out of the [Kamba Native] Reserve... for military and civil purposes" (DC/MKS/1/1/10). Year	Number of livestock
1918-1919	1531
1917-1918	1881
1916-1917	12538
1915-1916	7940

Source: DC/MKS/1/1/10

The Akamba people were made to unjustly pay grazing fees to graze their livestock in areas that originally belonged to them.

It has been estimated that during the period of drought as many as 40,000 head of cattle will be found grazing on the Yatta. An attempt will be made to place the collection of grazing fees on a better basis by having the cattle carefully counted by officers on the Yatta itself (DC/MKS/1/1/24)

The colonial policy on destocking, planned along the line of the colonial administration was a self-defeating program. The low prices which were offered by government-controlled market channels did not encourage people to sell their livestock to KMC. Low prices always meant that the Liebig meat factory was not adequately supplied with livestock. It was reported in 1947 that, "since Kenya had been unable to produce a regular supply of cattle for Liebig's, it sounded very questionable whether it would be wise to establish another similar factory until the future supply of meat had been secured, whether by compulsory destocking or other means" (DC/NGO/1/7/31).

The colonial government always defended its position regarding controlled livestock marketing. The government did so to protect the consumer against paying "a high retail price for poor, diseased meat" (PC/NGO/1/7/24). It may be true that some Akamba cattle were unhealthy but this was not entirely their fault because veterinary services in Kenya were offered discriminatively in favor of Europeans. However, despite all the blame that the colonial government piled on the Akamba people as a result of their poor cattle-rearing practices, it can be concluded from the foregoing that Akamba cattle always proved valuable to them the same way it was valuable to the colonial government during difficult times.

It was always not uncommon for the colonial administrators to frown upon Africans' livestock rearing practices. Worse still, colonial administrators had problems with the cattle breeds

which Africans reared. In most cases, the rearing of African breeds were considered unproductive and a threat to soil and pasture conservation. As a result, destocking came in handy to keep livestock numbers under check. Destocking itself was not the epicenter of contestation, but how it was justified and rolled out that created a hotbed of confrontations between the Akamba people and the colonial administration. For example, there were instances where the use of excessive force was used to affect the control of livestock numbers which generated human rights issues in Machakos (Bahemuka and Tiffen 1992, see also DC/MKS/12/2/2). In addition, this included when Africans were well aware as to when to sell their livestock. According to Nunow (2000:5) livestock owners "sold their livestock as long as the prices offered were high enough that they exceed or at least equaled the social value attached to a particular animal". Kerven (1992:6) also reinforces the same by stating that "Pastoralists tried to increase the exchange value of their animals and products by withholding animals for sale until prices increase". This common-sense was always missed by those who made Africans sell their cattle under duress and at low prices. According to Cashmore (1965: viii):

Organized, authorized, uniformed, force, wielded by soldiers or police, in any case, underlay all colonial relationships at a deeper level than any 'illegal measures'. And, the British had to use most force, to the least productive effect, where their purposes cut across existing African interests.

A lot of archival information on destocking is contained in District handing Over Reports. These were reports which were prepared by an incumbent District Commissioner while handing over to an in-coming District Commissioner. In 1938, for example, a handing-over report prepared by Mr. A. N. Bailward was handed over to Mr. D. G. Brumage, this report states that destocking started in Yatta. In a speech by H. E. the Governor in 1937 addressed to the Akamba people regarding destocking, it is stated that:

In short, their numbers must be reduced. The difficulty of bringing about a reduction hitherto has been that there is no means of disposing of the surplus. A new company is about to start work at Athi River which will give you a price at least some of your surplus cattle. They will start buying almost immediately (DC/MKS/4/9)

The company which was being referred to in the Governor's speech came to be called Liebegs Company. Destocking, as good as its intentions were made to look palatable, led to incidences of human rights abuses. While destocking was done with a view of maintaining an ecological balance by ensuring that the number of livestock kept within an area had enough pasture and that overgrazing and soil erosion was reduced, the manner through

which this seemingly good practice was rolled out bordered on human rights abuses. Firstly, force was used. Governor's speech in 1937 was clear that force would be used both in ensuring that people sold their stock to Liebegs factory and that if they resisted then they would meet government force. The speech stated in part:

... the government intends to enforce a general reduction of your cattle starting in Yatta with the help of this company to buy what it can take off the surplus... It will be done as fairly and as generally as is within the power of the officers to do it. The government will be prepared to meet resistance (DC/MKS/4/9).

Indeed, the Governor's prophesy that destocking resistance would be met with force turned out to be true. Resistance was generated around pricing. In a petition signed by Isaac Mwalonzi, Elijah Kavulu, and Samuel Muindi and addressed to the Secretary of State, through the Governor, the Akamba people presented several grievances. One of the grievances touched on the use of force and the other was on pricing. They complained that they were being forced to comply with government directives regarding destocking yet, the prices which were being offered were unsatisfactory. In their petition, in particular, they stated that:

At a place called Matungulu in Machakos District, a Barraza was held by the District Commissioner, and the Akamba were told outright at the Barraza that the government had decided that their cattle (both male and female) would be sold by force at a price fixed arbitrarily... and those which were not compulsorily sold would be branded with a government mark (Dc/MKS/10B/15/1).

Destocking was mainly undertaken through a method called cattle auctions. In 1938, for example, Mr. A. N. Bailward stated in his Handing over Report that "auctions of cattle were carried out... and 21,000 heads of cattle were disposed off realizing 15,000 pounds (DC/MKS/10B/14/1). In 1938, destocking operations were going on in Iveti as had already happened in Kangundo and Matungulu.

The colonial government did not wish anything good for the Akamba livestock keepers, especially in the area of trade. In particular, they did not want them to sell their livestock at better prices. Since the Kenya Meat commission was not paying better prices for Akamba livestock, they decided to exploit their traditional trading relationships with the Kikuyu. As such, they continued to sell their livestock in the neighboring central province. The view of the government was that this needed to be controlled. On this, the DC Machakos noted:

Stock auctions for Akamba cattle had already increased the flow of cattle into the central province but the potential demand could be greatly improved if there

was greater control over the meat purveyors in the African area of the central province. The Committee expressed anxiety that the Kenya Meat Commission with its greater resources and organization would capture the meat distribution from the African stock traders cum part-time butcher in this consuming area (DC/MKS/12/1/1)

But even when these livestock keepers wanted to sell their cattle, they had to obtain movement passes. This and many more trade restrictions discouraged them from looking for markets and they had to rely on licensed traders who often exploited them.

Akamba's livelihoods were also affected because only suitable cattle were bought leaving behind the unsuitable ones, probably less productive according to their traditions. The DC Machakos notes for example that

The Supply Board commenced buying slaughter oxen in both settled areas and Native Reserve.... And by the end of the year, had obtained some 3,282 heads. Many thousands more were offered but had to be rejected as unsuitable (DC/MKS/1/1/28)

Destocking was a government project which was not obeyed by all people of Machakos. Some resisted and the government felt that the best way to enforce destocking, where it was resisted, was through confiscation/impounding of livestock.

6.0 LOSS OF CATTLE

When destocking, already discussed earlier in the preceding section, was carried out, the Akamba people realized some benefits because they were paid for it. This is even though the prices offered were not satisfactory and that some use of force was employed. Nevertheless, people earned some money from the forced sale of their livestock, but there were times when force and treacherous schemes resulted to no monetary gain.

As for the people of Iveti who were generally considered rebellious to the government's destocking schemes, alternative but inhuman methods were employed to effect destocking. In the first instance, the cattle branded for destocking would be impounded with the aim of enticing cattle owners in question to look for them at a nearby government station. Knowing that the government scheme was to arrest them when they went for their livestock, the cattle owners did not show up for their livestock. This had been the method employed by Akamba to resist destocking and to evade arrest for violating destocking schemes.

Unable to deal with the people of Iveti, the government came up with a legal Notice (government Notice No. 688/38) which gave the government more teeth to bite and harm those who resisted destocking. The Legal Notice essentially provided a legal landscape against which destocking was enforced among the Akamba. Determined to deal with the people of Iveti, the government promoted the narrative that these people nursed a defiant attitude. This description of the people of Iveti and the consequent enactment of a Legal Notice as the legal basis of dealing with a defiant people is well captured in Mr. A. N. Bailaward's Handing over Report of 1937 which he states that:

Invitations to cooperate with the government were met with a defiant attitude... Under the sanction of the crop (production) improvement and livestock rules 1937 a raid was carried out through the disaffected area resulting in the removal of 2,500 head of cattle... It was anticipated that this would induce the natives to claim and receive them back reduced by the obvious culls and the quota branded. But resistance had so hardened and been so well organized by that time that this result was not attained. Cases were then accordingly taken under the rules against the known owners of the cattle and though they succeeded, were rendered ineffective by the native owners who refused to identify their cattle. It then became evident that to meet the possible repetition of the same set of circumstances it would be necessary to strengthen the rules to permit the impounding and sale of cattle in the event of an absolute refusal to cooperate with the requests of the government. As a result of government representations, Government Notice 688/38 appeared whereby it has been made possible to

impound cattle in certain circumstances and sell them if unclaimed within 28 days (DC/MKS/4/9).

There were also, incidences of forceful seizures of the property when Akamba people delayed paying their taxes as it happened to Mr. Mumba Nzioka. This incident happened without following the procedures (due process). Nzioka's 6 sheep had been seized on a charge of non-payment of tax. When Nzioka went to complain to the DC, the DC "ordered the sheep to be returned to Mumba" (DC/MKS/8/5). Thus, this section has established that the Akamba people lost their livestock through the confiscation of various forms.

7.0 FORCED LABOUR

Winston Churchill issued the order of 1921 to the Governor of Kenya to stop coercive labor (Ndanyi 2016:5-6). This order would not have been issued if forced labor which was imposed on both men and women was nonexistent. According Bahemuka and Tiffen (1992) Akamba women were forced to dig terraces which resulted in various riots (women riots) not only in Machakos but also in Nyeri and Baringo. We get a glimpse from the DC Machakos who wrote:

... and a climax was reached when about 500 women, egged by their men, commenced rioting. The establishment of the levy force quickly restored law and order; and, although several die-hards escaped from the area to hide in the adjoining districts (where most of them are still), the community settled down happily enough. It was found possible to withdraw the police at the end of December, as it was considered that the people concerned had learned their lesson. A few of the die-hards may still cause trouble in the sub-location and difficulties may be encountered in the collection of the whole amount of the police expenses which the inhabitants are expected to pay, but it would be surprising if general trouble and uneasy again took place there (DC/MKS/1/1/28)

The Akamba people were sometimes made to work for no pay and unfortunately, the Machakos Local Native Council was used to rubber-stamp the same. In 1941 for example, resolution No. 6 of 1941, passed the Machakos Local Native Council sanctioned the recruitment of Akamba people for no pay stating that;

this council approves the employment of unpaid communal labor to maintain any area which has been cleared of bush in such a condition as to remain free from the bush, and on the maintenance of local roads, tracks, bridges and dams, and on the establishment and maintenance of camps for the administrative purposes, and government schools and dispensaries in the Machakos Native Reserve, and for the construction and maintenance of such buildings of local materials as may be necessary at such camps, schools and dispensaries (DC/MKS/5/1/3)

To effect the recruitment of "free labor, when funds were insufficient... a clause had been added to the Native Authority Ordinance, giving headmen the right to call upon communal labor to take such measures for dealing with soil erosion as may be necessary" (DC/MKS/5/1/3).

When the Akamba people were not being employed for free, then their children were in 1947, for example, it was pointed out that:

Councilor George Sila considered that the recruitment of juveniles did great harm... referring in particular to the activities of the Kericho Tea Companies, who, they said, had recruited several boys, including school boys, on false signatures which were not their fathers' (DC/MKS/5/1/4)

Cashmore (1965) refers to the complaints raised by Mr. C. Campbell who was the DC for Machakos concerning the employment of Akamba juveniles who were recruited to work outside of the Kamba land. Archival data also attests to this (MV/10/16 labor employment of juveniles). The Employment of Servants Ordinance, 1938 (Kenya Colony and Protectorate 1938), prohibited the employment of juveniles as porters, fuel cutters, trolley or rickshaw boys, or in any other class of labor for which, in the opinion of a Government medical officer, they were physically unsuitable (Ndanyi 2014), this provision was not enforced and children ended up being employed and their rights violated. In addition, the working conditions of men, women and children were deplorable.

In Kenya, the outbreak of the two world wars heightened the demand for African labor including demand for male porter/carriers within the military circles with most of this demand being placed upon the Akamba people.

In March 1918, the Akamba had supplied about 30,000 porters out of which 10,000 were reported to have returned home and a further 2,400 reported dead (quoted in Cashmore 1965: 200). The Akamba people were made to participate in a war that not only endangered them but also one that had no significance to their lives. So, some of the employment opportunities presented by the colonial government were a danger to human life.

Akamba men who were recruited for government and private service are those who were able-bodied and medically certified as fit while those who were not were left in Machakos. The DC Machakos once noted:

A very large majority of able-bodied men are now either out at work or in the army. And it is most hard to find men whom the Medical officer will pass as fit for duty" (DC/MKS/1/1/28).

By employing only those who were medically fit, the Akamba | native reserve was deprived of men who would be relied upon to carry out day-to-day economic activities thereby jeopardizing livelihoods. Also, appalling was the fact that men who were recruited to work were always compelled to complete their contract, failure to which they were liable for arrest and prosecution. On this issue, the DC Machakos once noted:

616 Akamba who had overstayed leave or had returned to their homes before completing their contracts were arrested and prosecuted (DC/MKS/1/1/28)

Akamba men were usually considered "good soldiers" and "popular with all military units" (DC/MKS/1/1/28). Working conditions within the military were equally appalling.

Apart from poor working conditions, Africans supplied cheap labor which did not pay adequate wages to enable them to support their families. Indeed, the driving force behind child labor and forced labor was the acquisition of cheap labor. According to Macharia (2003: 7) "Cheap labor force was always the goal especially for the settler community". In some places, cheap labor was acquired in inhuman ways, for example a judge raised concern on the method used to recruit labour in Kiambu District saying:

The Government has brought pressure to bear on the District Commissioner; he, in turn, has brought pressure to bear on the government headman, who has instituted a system of kidnapping, flogging, and fining to find labor.... A High Court Circular of 1907 had to take the Collectors to task for illegal fines and floggings" (quoted in Cashmore 1965: 29-30).

8.0 OPERATIONS AT THE LIEBEGS MEAT FACTORY

Signs that a company called Liebegs would be formed to facilitate destocking among the Akamba started to blossom in 1937 when H. E. the Governor hinted that the opening of the said company would facilitate destocking in Machakos (DC/MKS/4/9). The company that the Governor was referring to was Liebegs which gradually blossomed into the present-day Kenya Meat Commission factory situated in Athi River.

Operations of this company/factory were tainted with human rights abuses in which the Akamba people were subjected to poor working conditions. The opening of Liebegs meat factory which was geared towards the export of canned meat, led to the issuance of a petition by the Akamba people. This petition, of 1938, was sent to H. M. Principal Secretary of State for the Colonies and it was signed by Muindi Mbingu, Elijah Kavulu, and Isaac Mwalonzi (DC/MKS/10B/15/1). Whereas the factory was to receive a steady supply of livestock from across the country, the petitioners believed that much of the livestock was to come from the Akamba people owing to the fact that the factory was situated on land adjoining the Athi River station. Thus, the opening of the factory-made Akamba people uncomfortable and they asked themselves the question "is destocking to be achieved at an accelerated rate to supply Liebegs"? (DC/MKS/10B/15/1)

Apart from the fears generated by the factory among the Akamba, there were also other issues raised about the health of African workers at the factory which borders on human rights abuses.. A letter dated 24th June 1940, written by a medical officer by the name D. Watkins and addressed to the Director of Medical Services, exposes some of the human rights issues at Liebegs ::

Since the beginning of this year, approximately 76 Africans employed by Messrs. Liebegs factory have been admitted to this hospital².... The causes for admission have been as follows: malaria 35 cases, burns, scalds or machinery injuries 21, other conditions 19. Until the recent increase of Malaria following the rains, the proportion of cases admitted on account of machinery accidents or burns, etc., was very high. As it is, such accidents represent over 27% of the total, and my figures do not include at least one fatal accident which is known to have occurred a few months ago (see letter dated 24th June 1940, written by a medical officer by the name D. Watkins and addressed to the Director of Medical Services (DC. MKS/10B/15/1).

In response the labor officer, Mr. A. H. Kneller on 4th July 1940 downplayed the situation by

² The hospital in question was the Native Hospital in Machakos

stating that the number of employees, which was an average of 450 per day, compared to the injuries and accidents was not one that he would consider constituting a "dangerous state of affairs". If anything, the labor officer seemed to insinuate that factory accidents were the fault of the employees themselves who lacked the necessary care and concentration at their respective places of work. He wrote:

There are many intricate and complicated machines attended to by natives, particularly in the tin-making, soldering and filling shed. No guards are possible on many of these machines and the safety factor depends on the care and concentration of the worker... the fatal accident was caused by a native removing a safety device and inserting his hand into the moving machinery. He was dragged into the machine and killed (DC/MKS/10B/15/1).

9.0 ARBITRARY ARRESTS AND TORTURE

There are many instances when Africans were arbitrarily arrested, assaulted tortured, and deported. Right from the onset of the colonial project, excessive force was employed to pacify Africans who had shown some resistance towards colonial invasion. Resistance to the colonial invasion was nothing more than an exercise of the right where Africans defended their territories against foreign invasion and by so doing defended their rights and fundamental freedoms from abuse by those they perceived as enemies. In precolonial Africa, societies had warriors who prevented foreign intrusion and invasion much the same way that military forces defend state territories. In the case of the Akamba people, warriors were accustomed to the exercise of the aforementioned right however, their defense operations were crushed by force as military expeditions were made to descend on people causing physical injuries.

There were accusations of ill-treatment of Akamba people in Machakos by Europeans. In particular, in 1910, Mr. and Mrs. Langridge, who were white missionaries in Machakos, raised the following accusations, even though the colonial administrators denied knowledge of such accusations:

When you were camped here on this old mission ground I witnessed the most horrible torture instigated by your instructors and personally superintend over by you ordering a native sub-chief to heat in a fire the blade of a large knife.. And having it placed in that condition on our cook's tongue who is a Christian Kikuyu. This torture was inflicted I am understood not as a punishment, but by your only thinking, the poor boy was telling an untruth. the effect of this treatment could be seen by a deep scar burnt into this boy's tongue...on a more recent occasion on last Sunday I had to go to your A.D.C. Mr. Montgomerie's camp on this property accompanied by my wife and during the few minutes we were there two askaris ordered by Mr. Montgomerie to seize and beat up a Akamba native they threw him down and stripped him knocked before a lady, and brutally thrashed him with a huge kiboko... (DC/MKS 10A. 14/1)

On the issue of assault, there were convictions relating to "voluntary causing hurt to extort confession" (DC/MKS/1/3/5). Almost everywhere in Kenya, Machakos included, there are records of the use of military expeditions. Those who served in security operations "were attracted by hopes of revenge or the lust for loot (quoted in Cashmore 1965: 78) and it is within this context that many Africans were assaulted among other human rights abuses.

Laws that were enacted by the colonial government contemplated that there would be

resistance and, as a result, these resistances would be quashed through violence. And for this reason, Olola-Onyango 1990: 8) correctly states that violence was sanctioned and revealed that;

... in the laws and the practice of forced labor; the prohibitions against loitering and vagrancy; the consumption of native liquor; compulsory taxation; collective punishment; internal exile, deportation, and detention-without-trial. Each was enforced by either criminal or quasi-military sanctions, and yet, the underlying cause of resistance to them was often social, economic, or political. The police function in ensuring their enforcement, reinforced by the judicial-cum-administrative sanction of their violation, is unfettered. Hence the police function emerges in diametrical opposition to any notion of respect for individual and societal rights and freedoms.

Mr. George Ndegwa, who was a member of the Kikuyu Central Association, Nairobi, sent a telegram to Johnstone Kenyatta in London. This telegram was sent on behalf of the Akamba people stating that:

The local government had sent 122 soldiers armed with rifles in the Wakamba country collecting cattle wholesale (Telegram from George Ndegwa, Nairobi, to Johnstone Kenyatta in London)

The use of guns, in most cases, to impose and enforce government positions upon people ended up in assaults of the local populations. The forceful use of guns when impounding livestock was also accompanied by shooting at people as well as beating them. As expected, the colonial administrators would be careful at the use of the word torture in their records. Other than assaults, people like Muindi Mbingu were arrested and deported. Writing in the Handing over Report of 1937, Mr. A. N. Bailward states that:

It is then to be regretted that the resistance prompted by the agitators in Ngelani has not been broken down and discredited as has been the object of most of the activities of the past few months and as a last resort it is feared that the sledgehammer methods of deportation and the sale of their impounded cattle must be resorted to (DC/MKS/4/9).

Deportation had the effect of separating deportees from their families and this may have resulted in some form of mental torture. Thus, from the onset of colonial rule in Machakos, and Kenya in general, police laws or ordinances were intended to align the police towards being loyal to the colonial government with little regard placed on respect of the rights of Africans who were policed. By design, what such laws did was to invest in the police,

"paramilitary powers of enforcement" while doing little or nothing at all to hold the police accountable for acts of human rights abuses. Oloka-Onyango vividly captures this by stating that:

Thus, there is a total absence, even in later statutes, of provisions outlining sanctions against police officers for the abuse of power, save to apply the general provisions of the Penal Code to conduct deemed criminal. The Criminal Procedure Code contained stipulations regarding powers of arrest, search and detention, but was likewise silent on the sanction of their abuse, a task that was relegated to judicial scrutiny (Oloka-Onyango 1990: 10).

Apart from a faulty legal system, one that promoted police brutality and provided fewer avenues for people to seek redress whenever their rights were trampled upon, there was also the issue of poor training offered to the police. Whereas the colonial government was established in Kenya in 1895, it was not until 1948 that the "first formal police training school in Kenya was established" and the curriculum for training emphasized "instruction in counter-insurgency methods". Worse still, the judiciary was "only too willing to assist the state's efforts to suppress terrorism". It is not surprising therefore, that "human rights issues did not feature prominently throughout the colonial era" (Oloka-Onyango 1990: 11) as much of the abuses were either legally sanctioned or justified.

Unrest in native areas, which was usually combated through coercive means by the police and other security agencies, was sometimes generated by local colonial administrators, some serving in Native tribunals. In Machakos, corrupt and incompetent tribunals usually generated political unrest. Writing about, the DC Machakos noted:

Corrupt and incompetent tribunals contribute perhaps more than any other single factor to political unrest and discontent in a Native Reserve (DC/MKS/1/1/28)

Political unrest, the very issue over which the colonial administration would occasionally punish the Akamba people for, was sometimes justified on account that the colonial government made promises that they failed to honor. The DC Machakos once warned the very government he was serving by saying that the danger of political unrest lay in government not honoring its own promise thus: -

I toured the Reserve and held barazas at Kangundo, Sinthani, Mbooni, Nziu, and Kasikiu... the only topic at these barazas was food- flour and the meat levy... The recent cut in flour has left the people very hungry... given the recent cut in flour, there was all the more reason to stop the meat levy, to allow more meat to be eaten instead. Also that we are breaking our promise in continuing with the levy...

As you know, some thousands of ex-askaris have been demobilized, after quite a lot of rosy promises have been made to them about their life after demobilization- only to find that on their return to the reserve, the basic essential, food, is lacking... I feel that it would be both wise and just to relieve, as far as possible, the legitimate grievances of the tribe... (DC/MKS/10B/17)

Indeed, political unrests were common in Kamba land over many issues that would have been resolved wisely. In some cases, the Akamba were arrested on mere grounds of suspicion, this category were members of the Ukamba Members Association who were always operating under the government radar of suspicion (DC/NGO/1/17/7).

Those who dared to defend the rights of the Akamba people were also not spared. Indeed, human rights activities in Machakos were always the endangered lot who dreaded the counter-reaction from the government. In 1940, the DC Machakos wrote about how the government dealt with Akamba human rights activists noting that:

Political agitation on the part of the Ukamba members Association continued in many parts of the Native Reserve until the end of May when arrests of nine prominent members of the Association under Sec. 24 of the Defense regulations were ordered. Seven of these men- Isaac Mwalonzi, KabulaMuli, Shem Muthoka, Zakaria Musia, Petro Maingi, Elijah Kavula, and Jacob Mutiso- were promptly apprehended and sent to Nairobi, but the remaining two- Joseph Mwaka and Petro Maingi- made good their escape. Joseph Mwaka was finally arrested on the Tana River, where he was hiding, in October, but Petro Maingi, whose home is lower Mbooni, remains at large (DC/MKS/1/1/28 Machakos District Annual Report 1940, page 1)

Iveti area was "the stronghold of the Ukamba Members Association" and "a levy force, comprising of 30 rank and file of the Kenya Police under Assistant Inspector Slatter was stationed there" to bring order (DC/MKS/1/1/28 Machakos district Annual report 1940 page 1). The stationing of the police in Iveti became a permanent reminder to the local people of what the government held in store for them. The abuse of human rights by the police was again witnessed during the repression of the Mau Mau uprising.

10.0 DETENTIONS DURING THE MAU MAU UPRISING

It would seem that the accumulation of human rights abuses since the establishment of colonial rule in Kenya had reached boiling point when the Second World War came to a close. Towards 1950s, there was an upsurge of rebellion against the colonial administration with The Mau Mau uprising being prominent particularly among the Kikuyu people which resulted to a State of Emergency being declared in 1952, prompting the Governor to invoke The Emergency Powers Order of 1939 which vested in the Governor a lot of powers regarding arrests and detentions. The same powers were reproduced in 1952 during the Mau Mau uprising and partly stated that:

Whenever the Governor was satisfied that, to maintain public order, it is necessary to exercise control over any person, the governor may make an order (hereafter called a detention order) against such person directing that he be detained and hereupon such person shall be arrested and detained (Kenya Colony and Protectorate 1952, Government Legal Notice No. 1103).

Apart from such orders relating to arrest and detention, District officers also had powers regarding effecting collective punishment as stated below:

Where it appears to a District Officer concerning any area... forming part of the Native Lands, as defined in the Native Lands Trust ordinance and comprised within his district... that any crime defined by sub-regulation (7) of this regulation has been committed and that the inhabitants of the affected area have failed to take reasonable steps to prevent the commission of the crime to prevent the escape of any person who, they had reasonable cause to believe, committed the crime.it shall be lawful for such District Officer to take all or any of the following actions... to seize any cattle or vehicles... for the time being within the affected area... (Kenya Colony and Protectorate 1952)

Participation in the Mau Mau uprising took many forms other than the actual frontline fighting. While the Kikuyus took to actual fighting, others participated in the Mau Mau uprising in various ways. The colonial administration widened its definition of participating in Mau Mau uprising to include the mere carrying of a weapon during an emergency. One such weapon was the *panga* (machete) (DC/MKS/1/6/2) that the Akamba people used for farm implementation. Many people were charged with carrying a machete and other weapons which were traditionally used by the Akamba for self-defense while others were charged with harboring Mau Mau terrorists. Harboring a terrorist included "supplying a terrorist with shelter, food, drink, money, clothing, rubber, tin or other valuable commodities,

any medicine or drug or other medical supplies, or any material or instrument or part thereof for printing or duplicating wards or objects in visible form or means of conveyance or assisting a person in any way to evade apprehension" (DC/MKS/1/6/2).

Even though the Mau Mau emerged from central Kenya, mostly among the Kikuyu, it gradually appealed to the Kamba as well. This was partly because of how the colonial government had handled the destocking program. Arising out of destocking, the "Ukamba Members Association, the Kamba political association which had emerged strongly during the Destocking Crisis of 1938...maintained links with the Kikuyu Central Association" (Luongo 2006: 255). This link and the feelings of disaffection with the destocking program of the 1930s may have led the Akamba to join Mau Mau. Gradually, African lower ranks within the colonial administration became contaminated by taking the Mau Mau oath. It was pointed out in the Machakos District Annual report for 1953 that:

..in Mbitini, Mukaa, and Lower Kilungu, one Headman and three Asili took the Mau Mau oath without much force or persuasion being needed; it is only where the lower ranks of the Administration have been contaminated that we have had Mau Mau troubles (DC/MKS/1/1/31).

Apart from the disaffection with the destocking policy, the Akamba people, who mostly resided in Nairobi, were suspected to have provided an avenue through which Mau Mau ideas were transported from Nairobi to Machakos. Also, land issues rendered Mau Mau appealing to significant numbers of the Kamba, the same way as had happened with the Kikuyu.

In much the same way that many colonial accounts sought to gloss over the socioeconomic concerns driving Mau Mau amongst Kikuyu and in Kikuyuland, the colonial state largely ignored Kamba land-hunger and its political implications in arid, famine-prone Machakos despite the dramatic, highly politicized destocking controversy of a mere decade-and-a-half earlier which had produced the Ukamba Members Association and Paul Ngei, the anti-colonial Kamba "Big Man" detained with Kenyatta and other alleged architects of Mau Mau (quoted in Luongo 2006:259).

But unlike in central Kenya, the colonial government's approach towards Mau Mau in Machakos was different, mainly relying on cleansing (de-oathing) | activities. The Akamba 'witches' were courted by the colonial government to administer oaths to the Akamba people to encourage them to denounce their support for Mau Mau. This was despite the government's campaign against Akamba 'witches', most of whom faced court trials, and if found guilty were sentenced to death. Records from Kenya's National Archive disclosed

that many Akamba witches were indeed being sentenced to death in 1930s.

In the course of the 1931-1932 Wakamba Witch Trials, 60 Wakamba men were sentenced to death in the High Court of Kenya for killing a neighbor woman whom they believed to have been a witch (Luongo 2006: 2).

The violent nature through which the Mau Mau repression was conducted sowed a sense of fear among the Akamba. The atrocities committed by those who sought to nip the Mau Mau in the bud were more or less the same in Kamba land as in Kikuyu land.

But the coercive nature of the “cleansings” themselves and the fears that the rounding-up of the known/suspected/potential Kamba Mau Mau engendered among ordinary Kamba also emerge (Luongo 2006: 258)

Oloka-Onyango (1990) has rightly stated that the Mau Mau uprising was the only overt expression of resistance to colonial rule in Kenya which, also, received the most brutal form of repression from the colonial administration. Mau Mau uprising itself arose to oppose some of the human rights abuses but how it was dealt with also raised human rights issues. The Akamba people were not spared the wrath of colonial administration because apart from participating as adherents, they were neighbors of the Kikuyu just across Kiambu and Nairobi. The proximity of Machakos to Nairobi and Kikuyu land encouraged some of the Mau Mau adherents to seek refuge in the Machakos district. Indeed, Machakos was considered as “the central site of Mau Mau recruitment, activities and sanctuary” (Luongo 2006: 250; see also DC/MKS.1/1/32) and DC/MKS.1/1/31).

11.0 LOSS OF LIVELIHOODS

The theme of "loss of livelihoods" as an arena where human rights were abused in Machakos and cuts across and run through other areas already discussed. Loss of livelihoods was experienced during the destocking and confiscation of livestock and these have been discussed already under the relevant heading. Likewise, the same theme surfaces under land injustices. According to Onyango (2016) land provides people with an economic lifeline as well as an identity. Land alienation in colonial Kenya created a situation referred to as landlessness while in other spaces, it created squatters. The Akamba people not only lost their land but also their livelihoods which depended on the land as it led to loss of grazing for their livestock as well as their pre-colonial activities such as hunting and gathering. Onyango (2016:364) rightly concludes that:

Land alienation in Kenya by the colonial administration was a very grave issue indeed. Although the colonial Government alienated land from almost every section of Kenya, some communities were harder hit. This seriously affected the following communities: the Kikuyu, the Maasai, the Taita, the Kamba, the Luo, Nandi, Gusii, Kipsigis, Mijikenda and the Abaluhya.

Indeed, before the colonial government snatched land away from indigenous communities, the Akamba and other Kenyan communities were sustainably, and in a state of equilibrium, subsisting in their respective territories. Thurston (1987: 3) notes:

At the end of the 19th century, the population of these fertile lands was expanding, but land use, as in most parts of the tropical world, was in a state of dynamic equilibrium. People still had enough land to shift their cultivation regularly within their land units, and there were still sparsely populated fertile lands.... Much of this uncultivated land was used by pastoral peoples, and some of it, forested and too high for traditional crops, was used for hunting, trapping, and honey gathering.

Trade was another source of Akamba's livelihood which was also adversely affected by the establishment of colonial rule in Kenya. The creation of no-go zones, and the subsequent establishment of boundaries to effect the same, dealt a blow to the Akamba peoples' long-distance trade. By restricting movement, and consequently trade, the Akamba people's livelihoods were affected as they were not autonomous, they traded with the Kikuyu, the Meru, Embu, and the Maasai (their neighbors) to obtain what they lacked. As such, restricted movement and regulated trade cut off their traditional channels of flow of goods, mostly food and livestock.

As for labor, the removal of large numbers of the male population from the Machakos Native

Reserve created a vacuum in the supply chain of labor throughout Akamba land. As more men went into poorly paid government service and factory/plantation work, the Kamba Province and Machakos District lost able-bodied men who served the various interests of the Akamba people thereby exposing the Akamba to incessant wars from their neighbors. Additionally, there was famine occasioned by the loss of male labor on farms and the death of Akamba men who were recruited in the military as porters in government service generally signifying loss of bread winners as happened in 1918 (Cashmore 1965)

The establishment of wildlife sanctuaries and forests also hit the Akamba hard. Dominguez and Luoma (2020: 2) observe that colonial governments adopted the "fortress" method of conserving wildlife and forests based on the "belief that biodiversity protection is best achieved by creating protected areas where ecosystems can function in isolation from human disturbance". Since "local people use natural resources in irrational and destructive ways, and as a result cause biodiversity loss and environmental degradation". However, this approach served to "restrict indigenous peoples' access to and traditional use of their ancestral lands to the detriment of indigenous livelihoods" (*Ibid*). In the end, "the creation of protected areas has denied indigenous peoples their rights, evicted them from their homelands and provoked long-term social conflict, starvation, and death" (*ibid*).

In Kenya, loss of livelihood was also experienced with the enactment of forest and wildlife laws which, consequently, resulted in the establishment of protected government sites. This impacted the Akamba people negatively in various ways. In the first instance, the Akamba people were prevented from practicing their traditional cultural practices of hunting with wildlife having been made a government asset. Secondly, they were banned from gathering food and obtaining building materials and herbal medicine from forests.

Generally, the enactment of laws relating to forests and wildlife conservation led to massive violations of human rights that cut across and through the other areas of human rights abuses. For example, arrests and imprisonment were applied to people who were caught with wildlife trophies such as ivory and leopard skins. Arrests and detention were also made on people who were found hunting wild game and trespassing in forests. The Akamba having been prohibited from killing/hunting game yet the wild animals were responsible for not only killing their livestock but also damaging crops and killing their children while on a cattle-herding. The DC Machakos noted this problem when he wrote:-

Lions and leopards do much damage among herds and lions are said to be responsible for several deaths which leopards are said to have taken many children while herding... Elephants do a certain amount of damage as also rhinoceros (DC/MKS/1/3/5).

A look at some of the charges for which the Akamba were arrested and convicted was in regard to the colonial governments need to preserve wild life. As such, there was attest to the fact that wildlife conservation was discriminatory in nature discrimination in the administration of justice in regard to cases of illegal poaching of wild life.. On one side of the racial divide the Akamba were targeted for arrests, fines ad imprisonment on charges of violating wildlife laws yet, on the other side of the racial divide, their European counterparts were not subjected to the same conditions. In 1959for example, the anti-poaching patrol of the Kenya police was employed in the southern division of Machakos. The police "made the local Akamba poachers aware that government was determined to stamp-out poachers" while on the other hand "shooting parties were being guided by the chief Game warden, either into Yatta or into the Makueni- Athi River area" (DC/MKS/1/1/34).

CONCLUSION:

The Akamba Community suffered various forms of human rights violations at the hands of the colonial government. Some of their leaders like Muindi Mbingu were unlawfully arrested and deported to Lamu for speaking out against the injustices that the colonialists subjected them to.

The Truth Justice and Reconciliation Commission Report represents the nearest national attempt to bring to a closure deep strata of historical gross human rights violations in Kenya. That the report received diminished political support from the three arms of government was not a peculiarity. Instead, it demonstrated perfect art and tendency of political negligence and dead-leg-response approach to systemic human rights violations. Despite the investment in truth commissions, regional inquiries, and various institutional research reports, Kenya lags behind in consolidating "national truth (s)" from various sources including court's rulings, and police stations for purposes of committing to reparations as well as acting as a rule of law-abiding nation. And yet again, we are reminded that there have been as many as 31 commissions of inquiries in Kenya that have come up with exceptional recommendations, whose implementation would alleviate suffering from individuals, communities and would have strengthened national healing.

Many victims of colonial repression from the Akamba community had hoped that the colonial government or the Kenyan would acknowledge that these violations did occur and that the journey of truth telling would not only see the perpetrators being held liable for numerous violations but this would also be the beginning of embracing reparations as a form of addressing systemic human rights violations.

RECOMMENDATIONS:

The Government of Kenya needs to fast track the establishment of the USD 100,000,00 Restorative Justice Fund that was announced by President Uhuru Kenyatta in March 2015, to facilitate the restorative justice process. Following directives from the AG for the RJF to be anchored within the Public Finance Management Act, KTJN and KNCHR collaborated with AG to draft the 'Public Finance Management (Reparations for Historical Injustices Fund) Regulations 2017'. But these are still pending. During 2019 State of the Nation Address 2019, the President reaffirmed designation of Restorative Justice Fund (RJF); xxi but stated that the Fund is for "...establishing symbols of hope across the country through the construction of heritage sites and community information centres..."^{xxii}; Victims of ERSV were disappointed as it excludes comprehensive appropriate individual reparations.

Secondly, there is an urgent need for the Government of Kenya to consider compensating victims of past historical injustices like members of the Mundi Mbingu Foundation and the Akamba Community in order to enable them bring closure to the suffering that they were subjected too.

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Annex 4: Submissions by the Kenya National
Commission on Human Rights



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)

**SUBMISSION
TO
THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS, AND
HUMAN RIGHTS**

**REGARDING A PETITION BY
MUINDI MBINGU MEMORIAL NGELANI ASSOCIATION CONCERNING
HISTORICAL INJUSTICES SUFFERED BY RESIDENTS OF NGELANI
AREA IN MACHAKOS COUNTY DURING THE COLONIAL PERIOD**

SUBMITTED BY:

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A. INTRODUCTION

1. The Kenya National Commission on Human Rights (KNCHR) is a constitutional body established under Article 59 of the Constitution of Kenya and Section 3 of the Kenya National Commission on Human Rights Act No 14 of 2011 (revised) 2020. It has the core mandate to develop a culture of human rights through the promotion and protection of rights and fundamental freedoms in the Republic of Kenya.
2. To achieve the above mandate, KNCHR undertakes functions that include; monitoring, researching, investigating, reporting, and making recommendations on matters of human rights issues as well as reviewing laws and policies to ensure compliance with the Constitution and international human rights principles and standards. KNCHR also issues advisories aimed at entrenching human rights values to both public and private entities.

B. KNCHR ANALYSIS OF THE PETITION AND OBSERVATION

3. This advisory makes proposals for consideration having perused the letter from the Standing Committee dated 17th October 2023 as well as the petition by **the Muindi Mbingu Memorial Ngelani Association concerning historical injustices suffered by residents of Ngelani area in Machakos County during the colonial period**. KNCHR observes that the petition touches on alleged historical injustices suffered by the residents of Ngelani area in Machakos County during the colonial times, and guides that these are matters of reparations.
4. KNCHR has been advocating for a National Reparation Framework as well as the adoption of the TJRC report¹ which recorded historical injustices country-wide and gives recommendations on reparations.

C. KNCHR GUIDANCE

5. KNCHR opines that the various TJRC reports starting with Volume 1 which documented the primary findings and thematic overview pointing to the fact that indeed historical injustices occurred. These historical injustices included key violations and atrocities entailing affronts by security agencies and aggressions resulting in the Shifta war, massacres, political assassinations, detentions, torture and ill-treatment, sexual violence, land conflict, displacement, economic marginalization, violation of socio-economic rights; grand corruption and economic crimes all of which adversely affected women, children, youth, the elderly, minority and indigenous communities. Further, the TJRC reports volumes 2-4 provide detailed investigative findings of violations suffered by individuals and communities as well as survivors and victims of historical injustices.

¹ See The Truth Justice and Reconciliation (TJRC) report (December 12th, 1963 to February 28th, 2008) Volume 1-4

6. KNCHR having perused the TJRC volumes 1-4 reports observes that the issues raised by the current petition of the Muindi Mbingu Memorial Ngelani Association concerning historical injustices suffered by residents of Ngelani area, do not form part of the TJRC reports therefore is not able to make any specific reference to any section of the report.
7. However, KNCHR takes cognisance of the issues raised by the Muindi Mbingu Memorial Ngelani Association, which clearly point to the fact that the allegations can qualify to be referred to as historical injustices which then means the recommendations given in the TJRC report on actual intervention and reparations can be applied *mutatis mutandi*. The Commission further notes a research publication dated November 2021² by a Civil Society Organisation- the Kenya Human Rights Commission (KHRC) that highlights the historical injustices faced by the residents of Ngelani area.
8. The petition does indeed raise key human rights violations that require further investigations to assess their veracity. This has been alluded by the standing committee's letter in which KNCHR has been requested to join the planned visit on Friday, 3rd November, 2023 at 9.00 a.m., which we are glad to be part of.
9. It is notable that the Historical injustices context presents room for human rights violations. For instance, this petition has outlined violations such as; - **detention without trial, unlawful detention of leaders, forced labour, forceful confiscation of livestock, and disruption of the economic and cultural rights and practices of the Ngelani community.**
10. KNCHR echoes the need for the standing committee to initiate reforms that will deliver to Kenyans a legal framework that will ease access to reparations to survivors and victims of historical injustices as guided by the TJRC report findings and publicised recommendations. A link to the summarized TJRC Report uploaded on KNCHR website is given below.³
11. In retrospection, KNCHR guides that upon verifying the said allegations the following steps can be taken towards assisting the Muindi Mbingu Memorial Ngelani Association; to seek justice and reparative measures for the historical injustices suffered.
 - i. Visit the area, and interview the affected people/ community;

² <https://www.khrc.or.ke/index.php/publications/233-human-rights-abuses-committed-during-the-colonial-period-a-case-of-the-muindi-mbingu-family-and-the-people-of-the-now-machakos-county/file>

³ TJRC Report summary. See <https://www.knchr.org/Portals/0/Transitional%20Justice/kenya-tjrc-summary-report-aug-2013.pdf?ver=2018-06-08-100202-027>

- ii. Senate to investigate the matter to establish an accurate record and documentation of the true extent of the historical injustices and true identity of individuals and institutional perpetrators in the colonial period;
- iii. Document the alleged violations in a report guided by the terminologies and provisions of the TJRC Act, 2008, or any relevant law;
- iv. Table the report to the relevant House committees in parliament for debate and adoption of the way forward;
- v. Alternatively, advise the parties to seek legal remedy in courts-national, regional, or international for a;
- vi. Enact a National Reparation Law to guide the nation on how to address such cases including those recorded in the TJRC reports;
- vii. Develop reparation regulations;
- viii. Allocate resources to implement the reparations law and reparative measures;
- ix. Advise the County Governments on their role in reparations which includes law and policy reforms as well as budgeting and offering actual reparative measures;
- x. Implement the TJRC reports through KNCHR who have been leading the advocacy for reparations legal frameworks both at the National and County Government level; and
- xi. Encourage the County Government to adopt county-based reparations laws that are customized to their unique context as part of the healing process, reconciliation and discourage reoccurrence of human rights violations.

12. In addressing the petition's prayers, KNCHR will adopt the broad definition of **Reparations** as set by TJRC to mean "*dignifying the victims by a measure that will alleviate their suffering, compensate their social, moral, and material losses, and restitute their rights.*"

13. KNCHR reiterates that upon its findings, the Standing committee should consider the reparative measures which are proposed in the TJRC report Volume 4 (Chapter 3, page 99 para 6) as follows:

- i. Restitution;
- ii. Rehabilitation includes psychosocial care;
- iii. Compensation (provides pecuniary, money for damage suffered);
- iv. Satisfaction which includes restoration of dignity, public apology, commemoration and tributes; and
- v. Guarantee of non-repetition.

D. REPARATIONS LEGAL FRAMEWORK GUIDANCE

14. The right to reparations is aligned with the rights recognized by the Constitution of Kenya (2010) in Article 2(5) (6) which stipulates the application of the general rules of international law and any treaty or convention ratified by Kenya as forming part of the law of Kenya. Further, Article 21 and 22 of the Constitution of Kenya

recognises the State's duty to promote, protect, and fulfill human rights and the later provides for various remedies to human rights including reparations.

15. Below is a list of several regional and international treaties most of which have been ratified by Kenya, that assert the right to a remedy and reparation for violations of serious human rights. These are:

- a. International Covenant on Civil and Political Rights (1966) (Art 2(3), 9(5) and 14(6));
- b. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965) (art 6)- acceded to by Kenya on 13 October 2001;
- c. Convention on the Rights of the Child (1989) (Art 39), ratified by Kenya on 2 September 1990;
- d. Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (1984) (Art 14), acceded to by Kenya on 21 February 1997;
- e. The African Convention on Human and Peoples' Rights 1981 (Art 7 and 21(2)) ratified by Kenya on 23 January 1992;
- f. Convention on the Elimination of All Forms of Discrimination Against Women (Article 2b), acceded to by Kenya on 9 March 1984;
- g. Article 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, ratified by Kenya on 23 February 1999;
- h. The Statute of the International Criminal Court (1998) (Art 68 & 75), ratified by Kenya on 15 March 2005; and
- i. The African Union Transitional Justice Policy which proposes forms of reparations including:
 - Material reparations such as monetary compensation or restitution of property;
 - Rehabilitation;
 - Healing;
 - Collective reparations such as restitution of community lands; and
 - Moral reparation for example public apologies or public Acknowledgment.t

16. Subsequently, KNCHR draws the attention of the Standing committee to the TJRC Act of 2008 and Volume IV of the TJRC report which outlines comprehensive recommendations and provision of reparations to affected individuals and communities that have suffered violations of the right to life, personal integrity, displacement, land injustices and systematic marginalization.

17. KNCHR enjoins our proposed interventions with the July 2020 Hansard report by the Standing Committee on Justice, Legal Affairs and Human Rights on consideration of a petition filed by Wachira Waheire and Jacqueline Mutere on implementation of the TJRC report and the need to fast-track the enactment of a

national legal framework and relevant policies and institutional reforms on reparations.

18. KNCHR is of the view that any reparative law, regulations, or funds passed by Parliament should be comprehensive enough to cater for the grievances of many Kenyan Communities, small or large, against the British Colonial Government as well as against Kenyan perpetrators.

E. PROPOSAL BY THE TJRC REPORT ON ALLEGED HISTORICAL INJUSTICES BY BRITISH COLONIALS

19. On historical injustices by the British Colonials, the Truth Justice and Reconciliation Commission recommended the following:

- i. The Kenyan Government considers entering into negotiations with the British government with a view to seeking compensation for victims of atrocities and injustices committed during the colonial period by agents of the colonial administration.*
- ii. The British government offers a public and unconditional apology to the people of Kenya for all injustices and gross violations of human rights committed by the colonial administration between 1895 and 1963.*

20. Some progress has been made with regard to undertaking the above recommendations by at least appreciating some of the violations though not satisfactory to most of the victims and survivors.

21. That groups that have experienced documented and proven historical land injustices shall be eligible for reparations through National Land Commission (as specifically mandated by 67(2)(e) of the 2010 CoK and National Land Commission Act No.5 of 2012).” Had the TJRC implementation Committee come into being, it would have reviewed group claims and made recommendations to the National Land Commission for land related reparations such as restitution, resettlement, and recognition of lands defined under Article 63 of the Constitution.

F. CONCLUSION

22. When the TJRC report was handed over to the Head of State in 2013, KNCHR, together with Civil Society Organizations went forth to engage some adversely affected communities to petition for redress of their various historical injustices through their elected leaders. KNCHR worked closely with the Justice and Legal Affairs Committees of both the Senate and National Assembly to advocate for the establishment of a reparations law. In addition, KNCHR has continued to advocate for County-based reparations laws and interventions as one way of harnessing reparations for victims, while reaching out to Parliament and the office of the Attorney General on the same.

23. Finally, KNCHR recommends that the Senate adopts the recommendations that were reported in the Senate Hansard of the twelfth Parliament (4th Session) following a petition by the National Victims and Survivor's Network (NVSN) representatives (Wachira Waheire and Jacqueline Mutere). NVSN is part of a larger working group known as Kenya Transitional Justice Network which KNCHR is part of. Having received and reviewed a petition filed by the two, the then Select Committee on Justice Legal Affairs and Human Rights made the following recommendations: -

- *Urged the National Assembly to formally consider the report of the Truth Justice and Reconciliation Commission, thus paving the way for the implementation of its recommendations*
- *Directed the Cabinet Secretary for the National Treasury to submit to Parliament, within thirty days, the regulations under the Public Finance Management Act to anchor the Restorative Justice Fund into legal framework*
- *Called upon County Governments to find a way of supporting the reparations in their own way, including through budgetary allocations for memorials in the Counties where massacres took place, to remember and honour the victims and survivors and to stand as a symbol for non-re-occurrence of violations*
- *Urged the County Governments to establish gender-based violence recovery and rehabilitation centres in all 47 Counties.*

SIGNED



DR. BERNARD MOGESA, PhD, CPM
COMMISSION SECRETARY/CEO