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TRUTH, JUSTICE AND RECONCILIATION COMMISSION

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PROGRESS REPORT TO THE NATIONAL ASSEMBLY SUBMITTED PURSUANT TO  
SECTION 20(3) OF THE TRUTH, JUSTICE AND RECONCILIATION ACT NO. 6 OF 2008

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24 JUNE 2011

## FOREWORD

There is perhaps no better and wise decision that our beloved nation has ever taken than the decision to confront its past; a past which many Kenyans often remember for its injustices and brutality. Although the decision came after the darkest moment of our history – the 2007/2008 post-election violence – there is no doubt that it marked a new dawn for Kenya. Since the signing of the National Accord and Reconciliation Agreement on 28<sup>th</sup> February 2008, the nation has taken several steps to address injustices and failures of the past. The establishment of the Truth, Justice and Reconciliation Commission undeniably stands out as the boldest of these steps.

The Commission was established with the acknowledgment that the underlying causes of the post-election violence were much deeper including poverty, inequitable distribution of resources, and historical injustices. Its overarching objective is thus to promote peace, justice, national unity, healing, and reconciliation among the people of Kenya. Thus far, the Commission has endeavored to provide a platform upon which these values are nurtured and fostered. For five months, from September 2010 to January 2011, the Commission recorded more than 30,000 individual statements representing the largest number of individual statements ever collected by a truth commission. The statements have given voice to a multitude of stories and perspectives about Kenya's history.

The statement taking process was followed by the launch of the Commission's public hearings on 11 April 2011. The Commission has so far held public hearings in North Eastern, Upper Eastern and Mt. Elgon. For the vast majority of victims and witnesses, the oral testimony they gave before the Commission at these hearings marked the first time they had spoken publicly about their pain and suffering. In North Eastern and Upper Eastern, the stories narrated covered various thematic issues including the massacres that have occurred in the two regions. The Commission's uncovering of the stories behind these massacres in a public forum is another example of the Commission's endeavor to create an accurate and complete historical record of largely undocumented events in the country, and to facilitate a national conversation about such violations.

The Commission has achieved the above milestones in the most difficult of situations. At one point even optimists were skeptical about the Commission's continued existence. Yet, the Commission has managed to wade through a turbulent beginning and is making huge strides in fulfillment of its mandate. Kenyans are increasingly exuding confidence in the work of the Commission as evidenced by the large number of statements they recorded with the Commission and their participation in and support for the ongoing public hearings.

Evidently, the only challenge that now lies ahead for the Commission is to complete its work by November 2011 when its temporal mandate terminates. This Progress Report makes the case for the extension of the Commission's time-frame. At the heart of the Commission's request for extension is, firstly, the need to afford the most number of victims and witnesses the opportunity to narrate their experiences, and secondly, the imperative of paying sufficient attention to the Commission's broad and complex mandate. It is the Commission's sincere hope that its time-frame will be extended in order to allow for the effective execution and delivery of its terms of reference.

**Tecla Namachanja Wanjala**  
**Ag. Chairperson**

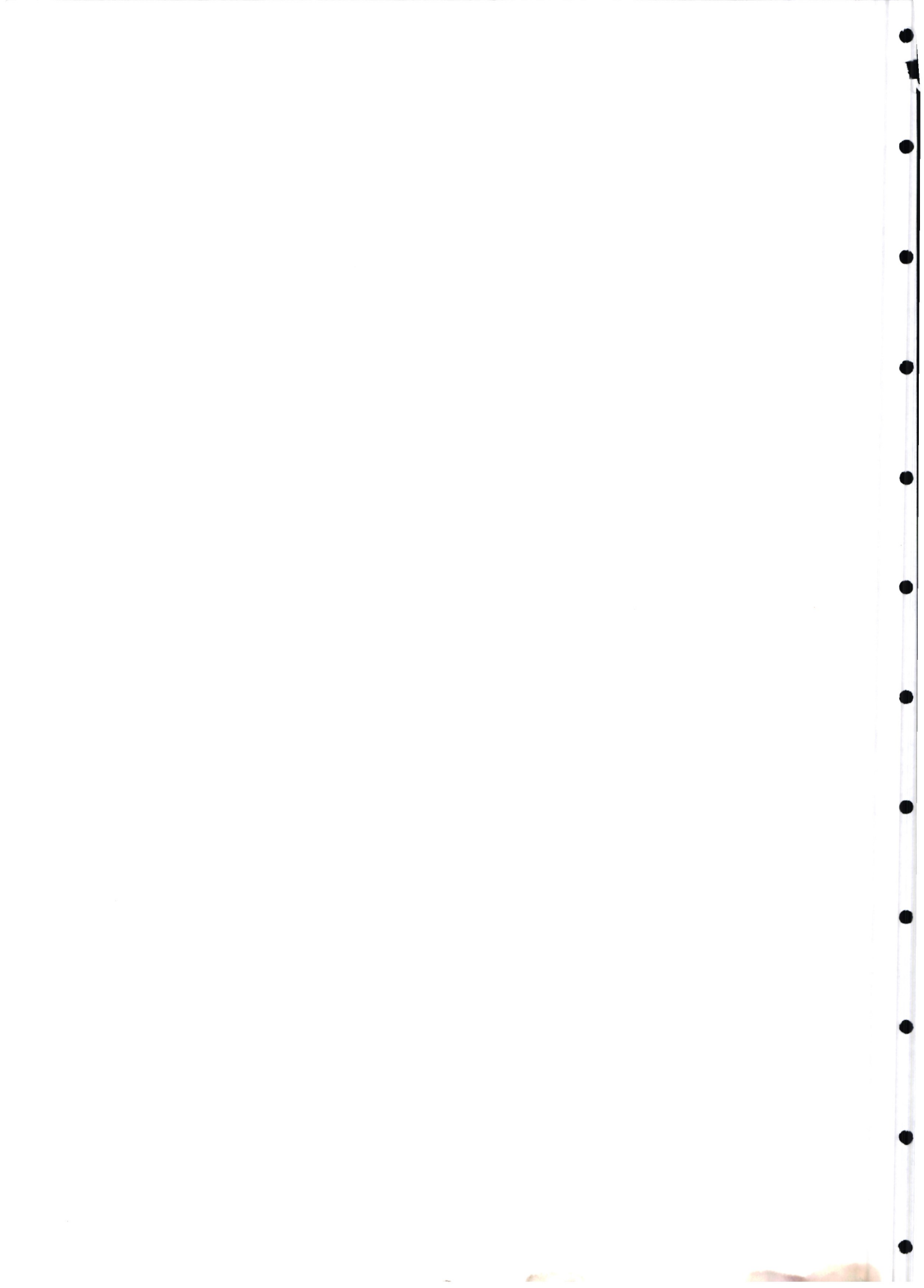
## EXECUTIVE SUMMARY

This Report is submitted to the National Assembly pursuant to section 20(3) of the Truth, Justice and Reconciliation Act No. 6 of 2008 under which the Truth, Justice and Reconciliation Commission may request for extension of its life beyond the statutory two year limit. The Report demonstrates the progress that the Commission has made in executing its mandate since its inception. It also gives an account of the factors and reasons that has made it necessary for the Commission to request for an extension of its life.

The Commission was established with the objective of promoting peace, justice, national unity, healing and reconciliation among the people of Kenya. It commenced its operations in August 2009 and has since made significant progress in the execution of its mandate. The Commission has structured its work into four key deliverables: statement taking, hearings, community dialogue and the writing of the final report. These key deliverables are not mutually exclusive but form part of the process leading up to the Final Report of the Commission. In fulfilling its mandate, the Commission has made significant achievements including:

- (a) establishing a functioning Secretariat with eight harmonized and fully operational Units;
- (b) conducting a successful statement taking process, at the end of which it had collected more than 30,000 individual statements – the largest number of individual statements ever collected by a truth Commission;
- (c) collecting over 600 memoranda from communities, organizations and individuals;
- (d) conducting successful public hearings in North Eastern, Upper Eastern and Mt. Elgon regions which have offered victims and witnesses a public platform, for the first time ever, to narrate their experiences in relation to gross human rights violations that they, their families and/or friends were subjected to in the past;
- (e) conducting successful public hearings at which present and past top government and security officials have, for the first time in Kenyan history, given account in a public forum of security operations in North Eastern and Upper Eastern;
- (f) conducting successful Women's hearings in North Eastern, Upper Eastern and Mt. Elgon regions as platforms for women to freely and safely narrate their experiences in relation to gross human rights violations;

These achievements were realized in the most difficult of situations. Since its inception, the Commission has faced several challenges that have hampered its work and slowed down its momentum. Two particular challenges have had the greatest impact on the work of the Commission. Firstly, the Commission lost considerable amount of time and credibility at the beginning of its term due to the controversy that surrounded the suitability of its Chairperson.

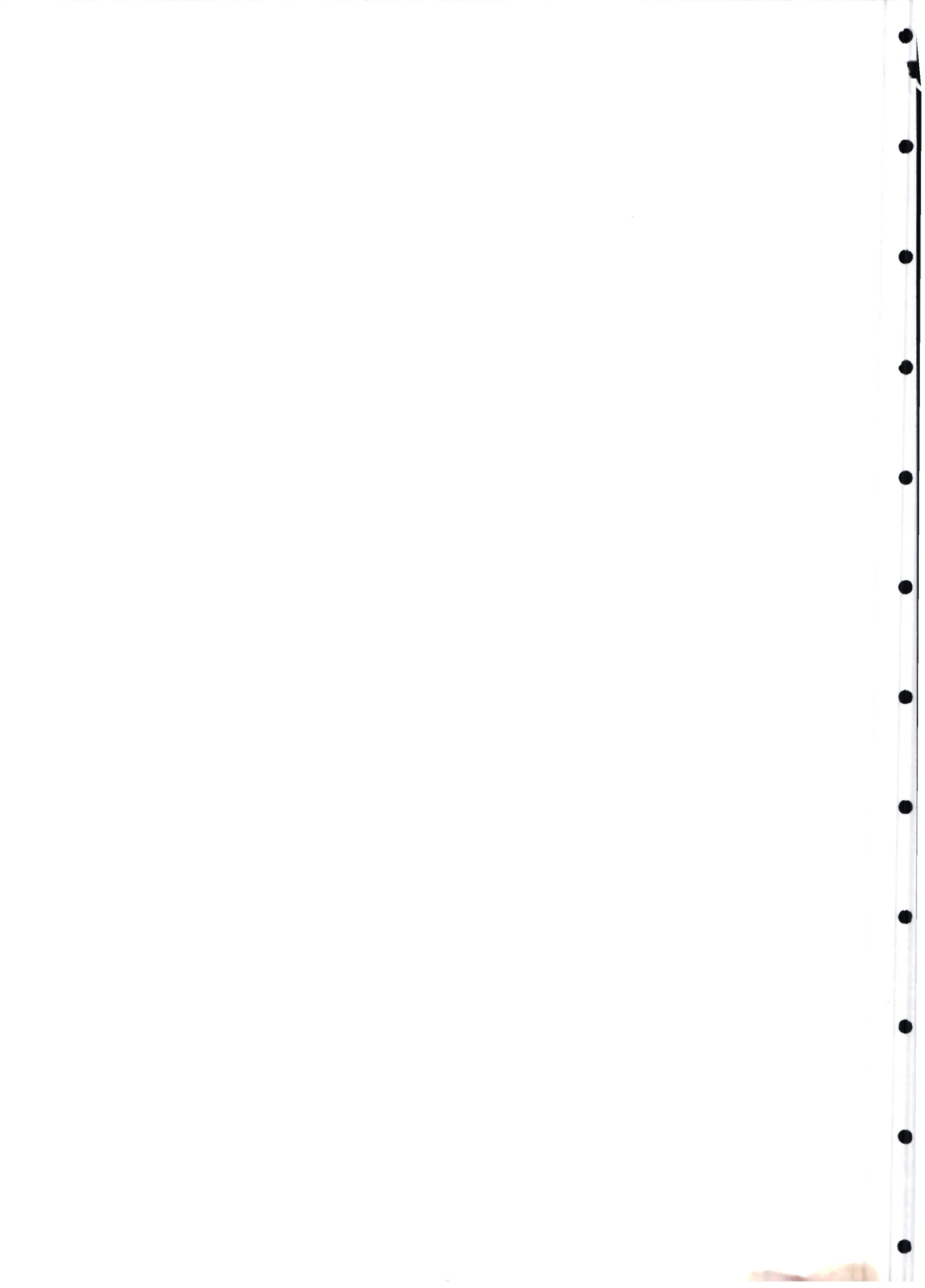


Secondly, the Commission has suffered from financial and resource constraints that has resulted in recurrent delays and limitations in its operations. In particular:

- a) the Commission had neither a Secretary nor a functional Secretariat for the first nine months and its preparatory period had to run for more than the statutory three months.
- b) the operational Units of the Commission became functional only in September 2010 when directors and staff of the various Units were hired.
- c) the Commission did not have adequate and appropriate office space until January 2011, more than a year after its establishment.
- d) the Commission's launch of public hearings was delayed for a year (from April 2010 to April 2011) adversely affecting the Commission's hearing schedule which is of necessity compressed thus denying many victims and witnesses the opportunity to narrate their experiences.
- e) The delay in commencing hearings has in turn had an adverse 'ripple effect' on the general Work Plan of the Commission. The most far reaching impact is that the Commission will not be able to hold public hearings in some parts of the country, and will not be able to hold hearings on the breadth of issues within its mandate. In addition, the Commission will have to write its Final Report within the final one month of its life as opposed to the final three months as initially planned. This shortened time frame will inevitably affect the quality and effectiveness of the Commission's findings and recommendations.

Although the Commission has taken several measures to mitigate the effects of these challenges, it is now evident that despite these efforts, the Commission will be unable to complete its work in a satisfactory manner before its time-frame expires. Faced with the challenge of finishing its work in the limited time currently allocated, and in view of the challenges it has and will continue to face, the Commission grounds its strategic decisions on two important aspects of its work. Firstly, the importance of providing victims and other witnesses the opportunity to narrate their specific experiences and secondly, the obligation to touch upon the broad range of issues included within the Commission's enormous material and temporal mandate

The public support of the statement taking process and the public hearings demonstrates, on the one hand, that the Commission's work is viewed as a vital component in the country's quest for truth, justice, and reconciliation, and on the other, that the Commission has both the ability and good will to make a significant important contribution to the healing of the nation. That the Commission has managed to record significant achievements and progress in the execution of its work amidst the serious challenges it has encountered is a testament to the commitment of the Commissioners and staff, and to the important role the Commission has already and will continue to play during the transition to a more just democracy. For these reasons, it is imperative that the life of the Commission be extended in order to allow for the effective execution and delivery of its terms of reference.



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## ABBREVIATIONS

AU	African Union
CBO	Community Based Organization
CIPEV	Commission of Inquiry into the Post Election Violence
CSO	Civil Society Organization
FBO	Faith Based Organization
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GVRC	Gender Violence and Recovery Centre
HURIDOCS	Human Rights Information and Documentation Systems
KACA	Kenya Anti-Corruption Commission
KNCHR	Kenya National Commission for Human Rights
MOJNCCA	Ministry of Justice, National Cohesion and Constitutional Affairs
NARA	National Accord and Reconciliation Agreement
NCIC	National Cohesion and Integration Commission
NGO	Non-Governmental Organization
NSC	National Steering Committee on Peace Building and Conflict Management
PWD	Persons with Disabilities
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNFPA	United Nations Population Fund
TJRC	Truth, Justice and Reconciliation Commission

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# 1 CONTEXTUAL BACKGROUND

## 1.1 Introduction

The post-election violence that engulfed Kenya following the 2007 General Elections left a blot on the country's history. It is estimated that more than 1300 people succumbed to the violence while many more, approximately 300,000, were displaced from their homes. Although the immediate trigger was the dispute over the results of the presidential election, it is now acknowledged that the underlying causes of the violence were much deeper including poverty, inequitable distribution of resources, historical injustices and an embedded culture of impunity. Through a mediated process facilitated by the African Union (AU), the protagonists at the centre of the disputed presidential election negotiated a peace agreement, the National Accord and Reconciliation Agreement (NARA), which effectively halted the post-election violence and formed the basis for the formation of a grand coalition government.

Under Agenda Four of NARA, the parties recognized that the post-election violence had brought to the surface deep-seated and long-standing issues that needed to be addressed if the country was to achieve sustainable peace, stability and justice. It was thus agreed that a number of institutions, including a Truth, Justice and Reconciliation Commission, would be established to lead the way in nurturing a spirit of reconciliation and national healing.

In keeping with the Accord, the Truth, Justice and Reconciliation Act (TJR Act) was enacted into law on 23 October 2008 and it received presidential assent on 28 November 2008. The Act created the Truth, Justice and Reconciliation Commission (TJRC or Commission) with the mandate to inquire into historical injustices that have occurred in Kenya from 12 December 1963 when Kenya got its independence to 28 February 2008 when NARA was signed. The Act came into force on 17 March 2009 and was amended on 23 July 2009. On 22 July 2009 the President appointed nine (9) members of the Commission who were sworn in 12 days later on 3 August 2009.

In terms of the TJR Act, the Commission was granted a three month establishment phase which ran from August to October 2009. Thereafter, the Commission was granted a two year operational phase. Thus, the Commission began to operate in November 2009 and in terms of section 20(1) of the TJR Act, it is expected to submit a report of its findings and recommendations in November 2011, two years after it began to operate.

The Commission has assessed, on the one hand, the progress it has made so far in executing its mandate and, on the other, the outstanding workload vis-à-vis its capacity, and it has come to the considered opinion that it will be unable to finalize its work within the two years statutory limit. Although the Commission has sought to execute its mandate with expediency and efficiency, it has faced several constraining factors that have had the effect of slowing down its functioning. Thus, the Commission wishes to invoke section 20(1) of the TJR Act under which the Commission may request for the extension of its lifetime beyond the two years statutory limit. Section 20(3) states that

[w]here for any reason the Commission is unable to finalize its work within the period of two years in accordance with subsection 1, it shall, at least three months before the expiry of the two years period, submit a progress report to the National Assembly together with a request for extension of the period beyond two years.

This Report is submitted to the National Assembly in accordance with section 20(3) of the TJR Act. It serves a two-fold objective. Firstly, it seeks to demonstrate the progress that the Commission has made in executing its mandate since its inception. Secondly, it gives an account of the factors and reasons that has made it necessary for the Commission to request for an extension of its life beyond two years.

## **1.2 Organization of the Report**

The Report is structured into five main parts. The first part provides background information that is relevant to understanding the work of the Commission. The second part is an account of the Commission's progress in executing its mandate. In the third part, the operations of the various units of the Commission are described in detail. The fourth part highlights the challenges that the Commission has faced in executing its mandate. The final part presents the Commission's proposal for the way forward, and in particular, the argument in support of the Commission's request for extension of its life.

## **1.3 Composition of the Commission**

The TJR Act provides for the formation of a Commission of nine Commissioners: six Kenyan citizens appointed through a national consultative process; and three non-citizens selected by the AU Panel of Eminent African Personalities. The Act requires gender equity (and geographical balance in the case of Kenyan citizens) in the selection of the Commissioners. By Gazette Notice dated 22 July 2009, the President appointed the following nine individuals to serve as members of the Commission:

- a) Bethuel Kiplagat (Kenyan)
- b) Betty Murungi (Kenyan)
- c) Tecla Namachanja Wanjala (Kenyan)
- d) Gertrude Chawatama (Zambian)
- e) Berhanu Dinka (Ethiopian)
- f) Ahmed Sheikh Farah (Kenyan)
- g) Tom Ojienda (Kenyan)
- h) Margaret Shava (Kenyan)
- i) Ronald Slye (American)

The nine Commissioners were sworn in on 3 August 2009. From amongst the Commissioners, the President appointed Ambassador Bethuel Kiplagat as the Commission's chairperson. During their inaugural meeting, and in accordance with section 11(2) of the TJR Act, the Commissioners elected Betty Murungi as the Vice-Chairperson.

However, the Commission currently consists of seven Commissioners. On 2 November 2010, Ambassador Bethuel Kiplagat stepped aside from the Commission to allow for investigations to be conducted as to his suitability to chair the Commission. Months earlier, on 21 April 2010, Betty Murungi resigned from the Commission owing to the chairperson's refusal to step down from the Commission despite the allegations that had been leveled against him. In view of these series of events, Tecla Namachanja was elected as the Vice-Chair and currently serves as the Acting Chairperson of the Commission.

## 1.4 Objectives and functions of the Commission

The objectives and functions of the Commission are spelt out under sections 5 and 6 of the TJR Act, respectively. The Commission's overarching objective is to promote peace, justice, national unity, healing and reconciliation among the people of Kenya. The Act stipulates 10 ways by which the Commission should fulfill this objective:

- a) Establishing an accurate, complete and historical record of violations and abuses of human rights and economic rights inflicted on persons by the State, public institutions and holders of public office, both serving and retired, between 12<sup>th</sup> December, 1963 and 28<sup>th</sup> February 2008, including the –
  - (i) Antecedents, circumstances, factors and context of such violations
  - (ii) perspectives of the victims; and
  - (iii) motives and perspectives of the persons responsible for commission of the violations

by conducting investigations and holding hearings.

- b) Establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights and economic rights which were committed during the period between the 12<sup>th</sup> December, 1963 and the 28<sup>th</sup> February 2008.
- c) Investigating gross human rights violations and violations of international human rights law and abuses which occurred, including massacres, sexual violations, murder and extra-judicial killings and determining those responsible for the commission of the violations and abuses.
- d) Recommending the prosecution of the perpetrators of gross human rights violations.
- e) Facilitating the granting of conditional amnesty to persons who make full disclosure of all relevant facts relating to acts associated with gross human rights violations and economic crimes and complying with the requirements of the Act.
- f) Determining ways and means of redress for victims of gross human rights violations.
- g) Providing victims, perpetrators and the general public with a platform for non-retributive truth telling that charts a moral vision and seeks to create a value-based society for all Kenyans.
- h) Providing victims of human rights abuses and corruption with a forum to be heard and restore their dignity.
- i) Providing repentant perpetrators or participants in gross human rights violations with a forum to confess their actions as a way of bringing reconciliation.
- j) Compiling a report providing as comprehensive an account as possible of the activities and findings of the Commission under paragraphs (a), (b), and (f), with recommendations on measures to prevent the future occurrence of such violations.

Section 6 of the TJR Act requires the Commission to discharge the following functions:

- (a) Investigate gross violations and abuses of human rights including abductions, disappearances, detentions, torture, sexual violations, murder, extra-judicial killings, ill-treatment and expropriation of property suffered between 12<sup>th</sup> December, 1963 and 28<sup>th</sup> February, 2008.

- (b) Investigate the context in which and causes and circumstances under which the violations and abuses occurred and identify the individuals the individuals, public institutions, bodies, organizations, public office holders, the State, state actors, or persons purporting to have acted on behalf of any public body responsible for or involved in the violations and abuses.
- (c) Identify and specify the victims of the violations and abuses and make appropriate recommendations for redress.
- (d) Investigate and determine whether or not the violations and abuses were deliberately planned and executed by the State or by any person referred to in paragraph (k)(ii).
- (e) Conduct investigations relevant to its work and or seek the assistance of the police and any public or private institution, body or person or the purpose of an investigation.
- (f) Identify any persons who should be prosecuted for being responsible or involved in human rights and economic rights violations and abuses.
- (g) Investigate economic crimes.
- (h) Investigate and provide redress in respect of crimes of a sexual nature against female victims.
- (i) Educate and engage the public and give sufficient publicity to its work so as to encourage the public to contribute positively to the achievement of the objectives of the Commission.
- (j) Investigate any other matter that it considers requires investigation in order to promote and achieve national reconciliation.
- (k) Make recommendations with regard to-
  - i. The policy that should be followed or measures that should be taken with regard to the granting of reparation to victims or the taking of other measures aimed at rehabilitating and restoring the human and civil dignity of victims.
  - ii. Prosecution of persons responsible for or involved in human rights and economic rights violations and abuses.
- (l) Make recommendations with regard to the creation of institutions conducive to a stable and fair society and the institutional, administrative and legislative measures that should be taken or introduced in order to prevent the violation of human rights.
- (m) Consider the reports of the relevant commissions of inquiry and make recommendations on the implementation of such reports.
- (n) Investigate economic crimes including grand corruption and the exploitation of natural or public resources and the action, if any, taken in respect thereof.
- (o) Inquire into the irregular and illegal acquisition of public land and make recommendations on the repossession of such land or the determination of cases thereto.
- (p) Inquire into and establish the reality or otherwise of perceived economic marginalization of communities and make recommendations on how to address the marginalization.
- (q) Inquire into the misuse of public institutions for political objectives.
- (r) Inquire into acts of state repression including torture, cruelty and degrading treatment for political objectives.
- (s) Inquire into the causes of ethnic tensions and make recommendations on the promotion of healing, reconciliation and co-existence among ethnic communities.
- (t) Investigate into the whereabouts of victims and restore the human and civil dignity of such victims granting them the opportunity to relate their own accounts of violations of which they are victims, and recommend reparation measures in respect of victims.

## **1.5 Setting up the Commission**

The setting up of the Commission involved four foundational tasks: establishing the Commission's secretariat; developing internal policy and procedural documents to guide the work of the Commission; conceptualizing and interpreting the Commission's mandate; and informing the public about the Commission's existence and the purpose of its work. The various components of these four tasks were performed by nine thematic working groups composed of three or four Commissioners. The working groups were as follows:

- Structure Working Group
- Gender Working Group
- Stakeholder Collaboration Working Group
- Rules of Procedure Working Group
- Human Resources Working Group
- Security Working Group
- Outreach and Public Awareness Working Group
- Internal Rules and Policy Working Group
- Communications and Media Working Group
- Legal Affairs Working Group

### **1.5.1 Establishing the Secretariat**

Soon after its inauguration, the Commission embarked on designing an organizational structure for its Secretariat. This was done with the assistance of, initially, an independent consultant, and later, a five member team comprising of officers from the Ministry of Justice, National Cohesion and Constitutional Affairs (MOJNCCA) and Ministry of State for Public Service.

In terms of the TJR Act, the functions and objectives of the Commission are discharged by the Commissioners who are at the apex of the Commission's organizational structure. Section 22 of the TJR Act allows the Commission to establish such committees as it considers necessary for the better performance of its functions. In pursuant to this provision, the Commission has established seven committees that fall under two broad categories: Mandate and Administrative Committees. Mandate Committees are responsible for guiding, both conceptually and practically, the Commission's execution of its substantive mandate. There are four such Committees:

- Human Rights Violations Committee;
- Reparations and Rehabilitation Committee;
- Reconciliation committee; and
- Amnesty Committee.

Administrative Committees provide policy guidance on various aspects related to the daily functioning of the Commission. Three Committees and one Sub-committee have been established for this purpose:

- Committee on Finance and Administration and its Sub-committee on Recruitment and Human Resources;
- Committee on Logistics, Security and Procurement; and
- Committee on Communications and Civic Education.

The Commission’s Secretariat is headed by the Secretary to the Commission who is also its Chief Executive. She is responsible for the day to day administration and management of the affairs of the Commission. The technical operations of the Commission are carried out by eight (8) units which are headed by Directors who are responsible for conducting and coordinating work within their respective Units. The seven Units are:

- Civic Education and Outreach;
- Research;
- Investigations;
- Legal Affairs;
- Special Support Services;
- Communications;
- Finance and Administration; and
- Information and Documentation.

Although the various units have specific terms of reference, their operations are harmonized to ensure coherence and efficiency in the execution of the Commission’s mandate. The work of each of the Units feed into and inform the work of each of the other Units.

The process is underway to operationalize the eighth Unit of the Commission – Information and Documentation. In particular, the staff of this Unit have been hired and the necessary facilities procured for the Unit to commence its operations not later than July 2011. This Unit will be responsible for managing the Commission’s information and documentation system.

*Chart 1: TJRC organizational structure*

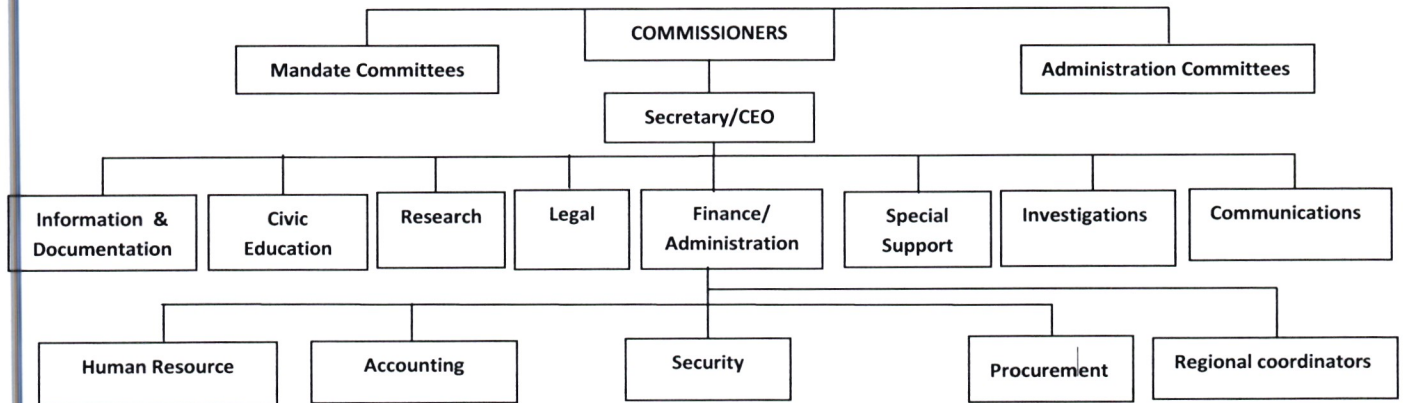
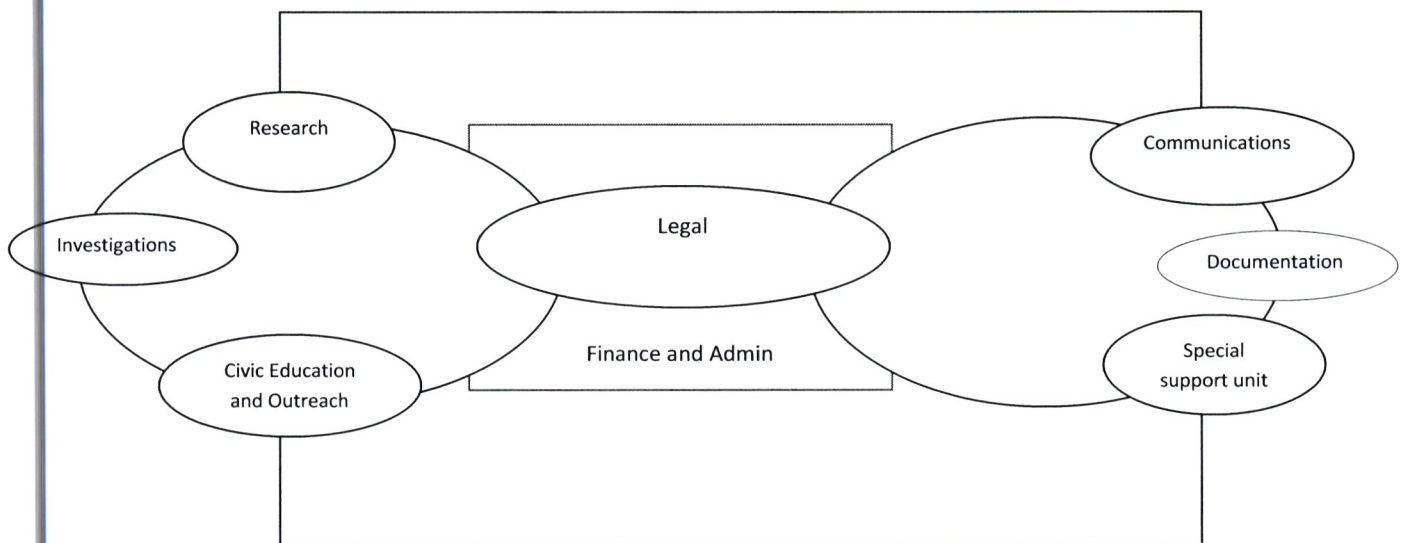


Chart 2: Inter-departmental synergies



In order to decentralize its presence and reach out to as many Kenyans as possible, the Commission has established regional offices in Eldoret, Garissa, Kisumu and Mombasa. Each regional office has a regional coordinator and an assistant regional coordinator. The assistant regional coordinator is the opposite gender of the regional coordinator. The regional offices are responsible for facilitating all administrative support services of the Commission within the region.

The Eldoret and Mombasa offices serve Rift Valley and Coast Provinces respectively. The Kisumu office serves Western and Nyanza Provinces while the Garissa office serves North Eastern province and the upper region of Eastern Province. The Commission's headquarters in Nairobi is host to the regional office for Central Province, Nairobi Province (including Kajiado County) and the lower region of Eastern Province.

As at 31 May 2011, the Commission had engaged a total of 120 staff. The composition of the Commission's staff is reflective of both gender balance and the diversity of the Kenyan people.

### 1.5.2 Development of internal policy and procedural documents

The administrative operations of the Commission are guided by the following internal policy and procedural documents:

- a) Staff Manual;
- b) Commissioner's Code of Conduct;
- c) Staff Oath of Confidentiality and Code of Conduct;
- d) Gender Policy; and
- e) Security Policy.

### **1.5.3 Conceptualization and interpretation of the Commission's mandate**

The conceptualization and interpretation of the Commission's mandate was a particularly important task during the establishment phase of the Commission. In addition to the obvious fact that the success of any truth commission depends to a considerable degree on a clear and in-depth understanding of its terms of reference, it was important for the Commission to map and demarcate the material focus of its investigations and inquiries for three specific reasons. Firstly, the Commission is treading on a new path insofar as it is mandated to inquire into violations of not only civil and political rights but of also socio-economic rights. Truth commissions established in other parts of the world have traditionally inquired into violations of civil and political rights only. Thus, the Commission has perhaps the widest material mandate in comparison with other truth commissions. The Commission's temporal mandate is equally wide, spanning from 12 December 1963 to 28 February 2008; a period of approximately 45 years.

Secondly, the Commission is mandated to inquire into violations and events some of which have been the subject of inquiry and investigations by prior commissions of inquiry and/or are presently under inquiry by existing institutions. Thirdly, the Commission is operating within the context of numerous ongoing reforms which, in one way or the other, impact on the work of the Commission.

Following a thorough analysis of its constitutive Act, the Commission prepared a conceptual framework that demarcates the scope of its work. The framework lays down the Commission's understanding of and the approach in executing its mandate. In particular, the following issues that are relevant to understanding the mandate of the Commission are analyzed in depth.

- The material mandate of the Commission;
- The temporal mandate of the Commission;
- The notion of contextualized inquiry; and
- The gross human rights violations test

The Commission also prepared an analytical framework for case selection. This framework defines the Commission's approach in selecting cases for investigation and inquiry.

### **1.5.4 Informing the public of the Commission's existence and the purpose of its work**

Section 20(5) of the TJR Act requires the Commission, after its inauguration, to inform the public of its existence and the purpose of its work. Towards this end, the Commission conducted outreach and familiarization meetings in different parts of the country. The specific objectives of these meetings were to:

- (a) introduce the Commission and to explain its mandate, objectives and powers to the public;
- (b) explain to the public the Commission's processes and how it intended to achieve its mandate;
- (c) identify, through consultations, key issues of concern in the various regions in the country and to various groups; and
- (d) explored opportunities for partnership with various groups and the public.

The first of such outreach and familiarization meetings were held in Coast Province in January 2010, particularly in Kwale, Lamu, Malindi, Mombasa, and Voi. Thereafter, the Commission moved to Nairobi where it held several meetings targeting specific thematic groups including the youth and children, women, religious groups, persons with disabilities, prisoners and civil society organizations.

As part of its outreach and familiarization initiative in Nairobi, the Commission visited Kamiti Maximum Prison and Langata Women's Prison. In each of these detention facilities, the Commission held discussions with the management staff, trained the prison wardens on the mandate and processes of the Commission, and received views from selected representatives of the detainees.

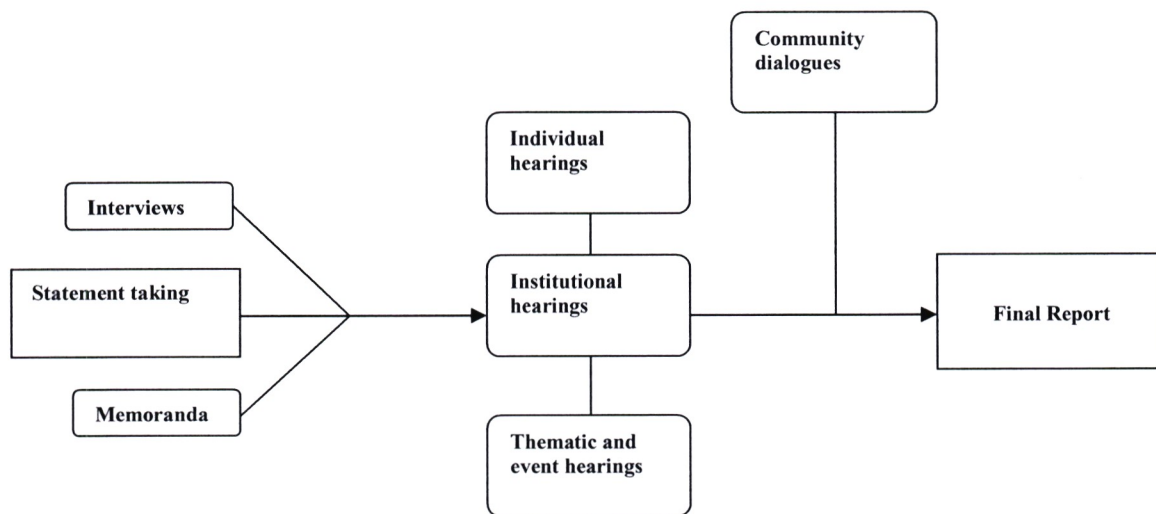
Due to financial constraints, the Commission did not hold similar meetings in other provinces. Instead, it ran a radio campaign on all major radio stations in the country. Through vernacular radio stations, the Commission was able to reach out to people in the rural areas. The campaign was also run on region-specific radio stations (Star FM and Pwani FM) and on Ghetto FM in a bid to reach out to urban youth, especially those living in Nairobi informal settlements.

In addition to the radio campaign, individual Commissioners were guests on radio and television talk shows in which they spoke about the Commission's mandate and processes. Commissioners also made presentations to various fora hosted by different professional and civil society organizations such as the Association of Media Women of Kenya (AMWIK), Network of Persons with Disabilities, and Editor's Guild. In recognition of the important role that the media plays in any transitional justice process, the Commission conducted training, on 20 August 2010, of journalists from across the country on transitional justice, the mandate and processes of the Commission.

## **2 EXECUTION OF COMMISSION'S OBJECTIVES AND FUNCTIONS: SIGNIFICANT ACHIEVEMENTS**

The Commission has structured its work into four key deliverables: statement taking, hearings, community dialogue and the writing of the Final Report. These key deliverables are not mutually exclusive but form part of the process leading up to the final report of the Commission. The Commission has made significant achievements in attaining these key deliverables as discussed below in detail.

Chart 3: TJRC workplan



## 2.1 Statement taking

Statements from victims, their families, and witnesses, are the primary source of information for truth commissions. Statement taking was thus the initial step in the Commission's strategy for gathering information from victims and witnesses. The statement taking process marked an important part of the Commission's commitment to giving voice to a multitude of stories and perspectives about Kenya's history.

To aid the process of statement taking, the Commission prepared 'statement forms' which victims, their families, and witnesses were required to complete. The statement forms were designed to ensure that as much information as possible about gross human rights violations was gathered. The statement taking form was reviewed by a team from HURIDOCs, internationally recognized experts in human rights data gathering and analysis. The team from HURIDOCs evaluated the Commission's statement taking form and found it to be one of the best they had seen from a truth commission.

The Commission recruited a total of 304 statement takers. Of these, 113 were male and 191 female. On various dates between 23 August 2010 and 9 September 2010 statement takers underwent training, specifically on the process of statement taking and more generally on transitional justice, human rights, and trauma management. The training workshops were held in each of the eight provincial headquarters and were conducted by the staff of the Commission in conjunction with independent consultants.

Following the successful training of statement takers, the Commission officially launched the statement taking exercise on 9 September 2010. The exercise ran for a period of 5 months, from September 2010 to end of January 2011. The statement taking process provided victims, their families, and witnesses of gross human rights violations the opportunity to share their stories about their experiences and those of close friends and relatives. The process focused on the history of conflict and human rights violations in the country. Statements were sought from

victims and witnesses of various forms of violations including ethnic based and politically motivated violence, displacement, sexual violence, assault and torture. The statement taking process also sought to capture violations of socio-economic rights.

The process of sharing an experience of violation is a delicate one. The Commission put into place a number of policies to ensure that the statement taking process was inclusive and safe. First, the Commission recruited statement takers from all regions of the country. Second, individuals were permitted to give statements in the language of their choice, though the statement taking form would be filled out in English. Third, individuals could request a different statement taker if they were uncomfortable giving their statement to the person before them (e.g. an elderly person may prefer not to give a statement to someone much younger than them). Fourth, the Commission learned from the experience of other truth commissions that women were less likely to give their statements to male statement takers. For this reason, as far as it was possible, statements from women were taken by female statement takers. Finally, the Commission made special provisions to reach out to those who could not normally access a statement taker. Thus the Commission deployed 16 statement takers to prisons across the country to take statements from prisoners.

In November 2010, the Commission reviewed the statement taking process in consultative meetings with CSOs based in all the eight provinces. Through these meetings, the Commission built working arrangements with local organizations who undertook to support the statement taking process through civic education and mobilization of their respective constituents. At the end of the statement taking session, debriefing sessions for statement takers were held in each province.

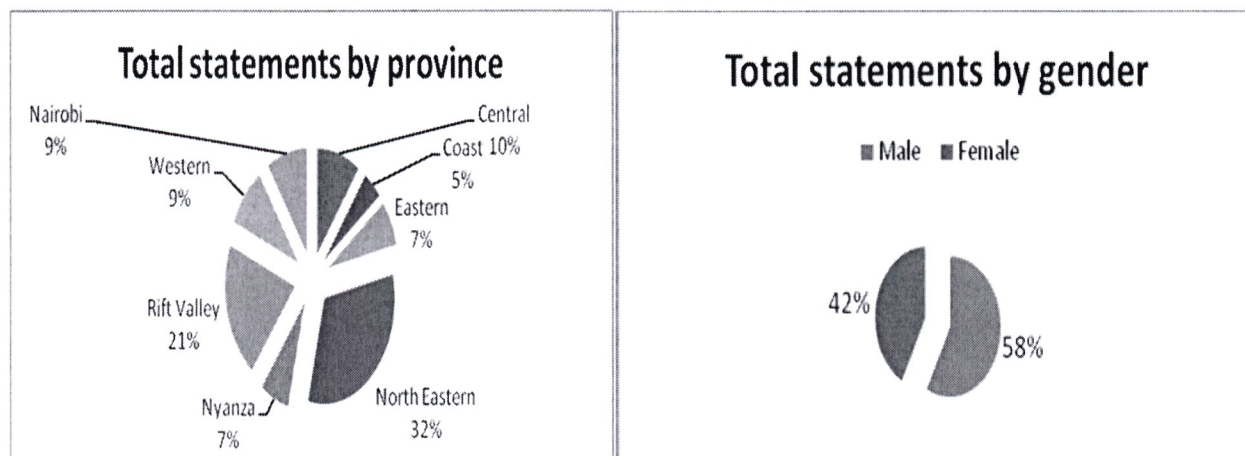
By 31 April 2011, the Commission had collected a total of 27,301 individual statements. This volume of individual statements is the largest ever in the history of truth commissions. The sheer volume of statements collected by the Commission is remarkable especially in light – as discussed below – of the challenges that the Commission has faced. More importantly the statements testify to the confidence and trust that Kenyans have placed in the TJRC process.

The Commission has continued to record and receive more statements and memoranda on an *ad hoc* and informal basis at its offices and during its ongoing hearings. By 31 May 2011, the Commission had collected more than 30,000 individual statements. The Commission has initiated a process of committing all the recorded statements to a database in a bid to preserve them for posterity and to make them accessible to the public upon the completion of the Commission's work.

Preliminary analysis of the statements show that of the total number of statements recorded, 42% were recorded by women and 58% by men. North Eastern and Rift Valley provinces recorded the highest number of statements while Coast and Eastern provinces recorded the lowest.

Chart 4: Total statements by province

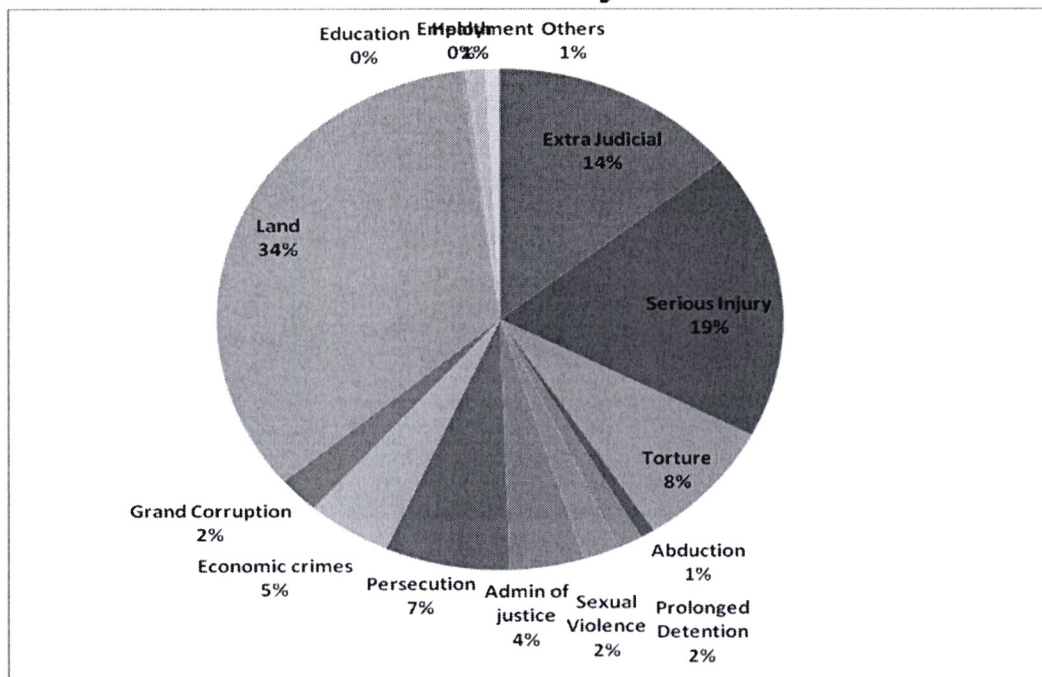
Chart 5: Total statements by gender



Analysis also shows that although the pattern of violations vary from region to region, most violations stem from land disputes or are related to the acquisition, ownership or use of land. Other types of violations recorded include torture, serious bodily injury, extra-judicial killing, sexual violence, unlawful and prolonged detention, economic crimes, and violations related to administration of justice. essentially, individuals tended to focus on traditional human rights violations. While some individuals spoke about socio-economic rights and their violations, the reporting in that area is low.

Chart 6: Total statements by violations

### Total statements by violations



## 2.2 Hearings

The Commission’s public hearings provide victims, witnesses and the general public with a platform for non-retributive truth telling. The Commission made a decision early in its life to refer to all those who testify before the Commission as witnesses, rather than as victims, perpetrators, or some other characterization. The Commission adopted this policy in order to make the hearings as open and as non-retributive as possible.

The Commission’s hearings are divided into five broad categories:

- (a) Individual hearings focus on individual cases and the experience of individuals in relation to gross human rights violations.
- (b) Institutional hearings focus on the role played by institutions in perpetrating or preventing gross human rights violations. Institutional hearings provide contextual insight into structural and systemic elements of gross human rights violations. They also provide the Commission with information on how institutions operate or function, which information will form the basis for recommendations on institutional reforms. According to its current schedule, the Commission will start its institutional hearings in September 2011. Among the institutions that these hearings will focus on include:
  - Security forces: Police Force and the Kenya Armed Forces
  - Provincial administration
  - Kenya Prisons
  - Media

- Legal/Justice Sector: Judiciary, State Law Office and the Bar
  - Civil society and Faith Based Organizations
- (c) Thematic hearings which focus on specific types of violations or events or specific groups of victims and other broad themes relating to the mandate of the Commission. Thematic hearings provide a forum for public dialogue on these violations, events, and groups of victims. According to its current schedule, the Commission will start its thematic hearings in August 2011. Among the themes that will be covered during the thematic hearings include:
- the rights of women, children, persons with disabilities and other minority and vulnerable groups;
  - the rights of internally displaced persons and refugees;
  - massacres;
  - extra-judicial killings;
  - political assassinations;
  - torture and illegal detention;
  - negative ethnicity; and
  - Illegal and irregular acquisition of land.
- (d) Amnesty hearings will be conducted to consider applications for the Commission to recommend amnesty. As provided for in the TJR Act, only acts that do not qualify as gross violation of human rights will qualify for such a recommendation
- (e) Reparation hearings will be conducted to consider applications for reparation by persons who are of the opinion that they have suffered harm as a result of gross human rights violations.

The conduct of the hearings are governed by the Hearing Procedure Rules which were published on 8 April 2011. In order to ensure that the hearings foster truth, justice, healing and national reconciliation, the hearings are non-judicial, non-retributive and non-adversarial. The hearings are held both in public and in private. Private or in-camera hearings are reserved for victims and witnesses who require protection from possible reprisals and/or the nature of their testimonies demand privacy.

### **2.2.1 North Eastern and Upper Eastern hearings**

The Commission launched its public hearings on 11 April 2011 in Garissa. Following the launch, the Commission held hearings for the next six weeks throughout North Eastern Province and the upper region of Eastern Province. The hearings were held in the following counties: Garissa, Wajir, Mandera, Moyale, Marsabit, and Isiolo. The Commission recorded 124 testimonies from victims, their families, witnesses, and community representatives. The stories narrated covered various thematic issues such as economic marginalization and citizenship, and specific events such as the various disturbing events and massacres that have occurred in this region including in Alayaley, Bagalla, Bulla Karatasi, Gallmagalla, Malka Mati, Sangailo, Turbi and Wagalla.

Until now, knowledge about some of these incidents has remained stubbornly restricted to those living in North Eastern and Upper Eastern; those outside the region know little, if anything, about these and other violations that have occurred in this region. The uncovering of the stories

behind these violations in a public forum is just one example of the Commission's endeavor, in accordance with its mandate, to create an accurate and complete historical record of largely undocumented events in the country, and to facilitate a national conversation about such violations.

In addition to holding public hearings, the Commission made site visits to important and symbolic places where some of the region's violations occurred. In particular, the Commission visited the Wagalla Airstrip – the site of the Wagalla Massacre – and Turbi town – where the Turbi Massacre occurred. The Commission also visited the site of the protected villages and detention camps established in Garbatulla and Kinna divisions of Isiolo district during the Shifita War.

For the vast majority of victims and witnesses, the oral testimony they gave before the Commission marked the first time they had spoken publicly about their pain and suffering. Many of these individuals told the Commission that it was the first public agency to show concern for their situation. Witnesses gave horrific accounts of violations that they or their relatives or friends suffered. It was not uncommon for witnesses to break down entirely. Others were overcome with anger at the injustices visited upon them and their families. The overwhelming emotion, however, was gratitude at having been provided with a forum that allowed them to unburden themselves of emotional loads that they had carried for years or decades.

*Text Box 1: Excerpts from testimonies in North Eastern and Upper Eastern*

'Later, nobody came to ask about what had happened to us. Nobody bothered to know about the calamity that had befallen us ... You people [the Commission] are very good because you remembered my mother'.

A victim of the Bulla Karatasi Massacre, Private Hearing, Garissa, 13 April 2011

'If you [the Commission] are taking statements, I have written ten statements before but nobody did anything for me. This is the first time I have been told to talk openly about it and I thank you very much for that.

A victim of the Wagalla Massacre, Women's Hearings, Wajir, 19 April 2011

'We are just fortunate now that we can talk about it because this helps'.

A victim of the Wagalla Massacre, Public Hearing, Wajir, 19 April 2011

'When people heard about this Commission, we got hope and people started changing their attitude.'

A victim of the Wagalla Massacre, Women's Hearing, Wajir, 19 April 2011

'I just want to give my thanks to the TJRC for visiting us to establish what we went through.'

A victim of the Bulla Karatasi Massacre, Public Hearing, Garissa, 13 April 2011

In addition to wanting the truth, the residents of North Eastern and Upper Eastern also desire justice. Part of the justice they seek is official acknowledgment that the atrocities they witnessed

and suffered did in fact occur, followed by official apology. This quest was aptly summarized in an oral presentation of a memorandum before the Commission in Garissa:

Finally, this is what I want to say to the Commission: You can never compensate people who were killed, raped or people who became poor because of Government agencies. The solution is very simple to me. The President and the Prime Minister should admit that atrocities like genocide, wanton killings, rape, looting and everything have happened and then say 'we apologize to the people of North Eastern Province'. We can accept that.

*Text box 2: I call for justice: A poem narrated by students of Garissa High School during the launch of public hearings (abbreviated version)*

### I CALL FOR JUSTICE

Justice! I call for justice  
Fear is in my heart

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

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

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

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

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

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

In addition to accounts of extra-judicial killings and torture, two more topical issues dominated the Commission's hearings in North Eastern and Upper Eastern: economic marginalization and the difficulties in obtaining national identity cards. From Garisaa to Moyale and everywhere in between, it was pointed out that this region has remained on the periphery of the country's economic development and growth. Economic development has lagged far behind the rest of the country, with large populations enjoying limited if any access to adequate schools, medical clinics, hospitals, electricity, water, and other basic necessities of modern life. The entire region has only nine kilometers of tarmac road making travel, trade, and other economic activity extremely difficult. As a result the residents of the region view themselves, at best, as second class citizens. Presenting a memorandum before the Commission in Garissa, an elder expressed a sentiment that was all too frequently heard in the region:

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

The issue of economic marginalization of Northern Kenya is intricately related to the difficulties that residents of this region continue to experience in obtaining primary identification documents such as birth certificates, national identity cards and passports. The Commission heard over and over again how the process of acquiring these basic yet crucial documents takes longer and far more rigorous than in other parts of the country.

*Text box 3: 'The animal which is only found in Northern Kenya'*

'Thank you very much Commissioners for coming here to listen to our views. Whatever you have been listening to from yesterday, I thought of putting all those things into a diagram. This is a picture of an animal which is only found in northern Kenya. It cannot live in cold places. It lives in hot and dry places. It is a very large mammal. One leg is in Garissa and the other in Mandera. The other leg is in Isiolo and the other one in Moyale. So, it is as large as that. It has two heads and each head takes one other human being. This animal, for your information is security and corruption. Each head takes one person per day in normal circumstances, if it is not disturbed.

...

For your information each head rotates. Each head has four eyes. This animal is 48 years old and has three children. The first born is 15 years old. It counts its years differently. So, we shall just take it like that. If I may explain, it is 15 years of Kenyatta regime, 25 years of Moi regime and eight and a half years of Kibaki regime. So, you will find that this animal is called 'security and corruption'. You will find that in this region, there are many soldiers. There are Kenya army camps, Administration Police, and regular Police. On top of that we have people called 'homeguards' and their work is to maintain security. I wonder who is fighting with us. I have not seen that enemy. So, security people have turned into wild animals and started eating human beings. So, for the last 48 years, it eats two adults per day times 365 days. That is about 35,000 people and it is not disturbed. But if it disturbed it can cause massacres.'

Oral presentation of a community memorandum, Public Hearings, Mandera, 27 April 2011

During May and June 2011, the Commission continued its hearings related to the Northern region with a series of hearings in Nairobi. These hearings marked another important milestone in the Commission's effort to understand some of the most vexing episodes in the history of human rights violations in these two regions.

Over two dozen current and former government officials, including current and past Ministers, testified publicly before the Commission concerning historical injustices in the region, including the infamous Wagalla Massacre. These witnesses were particularly useful in shedding light on hitherto little and poorly understood security operations. Until the Commission's public hearings, top government and security officials had never shared their knowledge of these security operations in a public forum. The testimony and assistance provided by some of the witnesses have allowed the Commission to unearth long hidden information concerning past injustices meted out to residents of North Eastern and Upper Eastern. The Nairobi hearings have demonstrated the power of providing such a forum to current and former state officials

### **2.2.2 Women's hearings in North Eastern and Upper Eastern**

In order to encourage women in North Eastern and Upper Eastern to speak about their experiences, and to capture their voices in the Final Report of the Commission, women's hearings were conducted to provide a safe space for women to share their experiences with the Commission. Women's hearings were facilitated exclusively by female Commissioners with the assistance of female staff members. Each such dialogue was attended by about 30-45 women. The women narrated their personal experiences in relation to violations they suffered or witnessed. Psycho-social support and interpretation services were provided to enhance intense exchange and narration. Local CSOs and women leaders were instrumental in mobilizing women for these hearings.

Approximately, 286 women attended the women's hearings in North Eastern and Upper Eastern. Their stories covered a multitude of violations including sexual violence, torture, and loss of property and livelihood. In Wajir, the 'Wagalla widows' came forward to show physical scars from sexual violence to which they were subjected to during the Wagalla Massacre. It was evident too that they had psychological scars which they continue to bear as a result of the violence they were subjected to and the loss of their loved ones.

The women's hearings highlighted a number of issues facing women in the region, including lack of access to justice, indifference or hostility by local administration authorities concerning sexual violence, division of matrimonial property and maintenance of children following divorce. Issues surrounding discrimination against women featured quite strongly in these meetings. Among the discriminatory practices highlighted included the inability of women to inherit property from their parents, and exclusion from decision-making bodies such as peace and vetting committees. Other issues of concern included: corruption in public offices especially in relation to acquiring identity cards and allocation of land; economic marginalization; lack of access to and inadequately equipped health and education services; and lack of information on political and policy processes.

*Text box 4: Comments by an independent observer on the women's hearings*

I informally write to commend, congratulate you and encourage you to continue doing a great job as you have been doing at the Public hearings and as very well demonstrated this morning with the women's private hearings.

Kindly allow me to briefly share my experience today with you, on two particular areas I observed: managing of the day's women's hearing and strong concluding remarks.

You are conducting a laborious task for and on behalf of Kenyans, and we appreciate your tireless efforts and great commitment to deliver on this task under [an] immensely busy schedule.

Today, you two, supported by your team, really managed the hearings well, and demonstrated very high level [of] cultural and emotional intelligence. You connected with the women participants very well in the morning session, and set the mood and atmosphere right for the women to openly share and narrate their experiences,

I wish to commend you, [firstly, on how you managed the hearings. I observed the following positive things]

i) Letting the women sing and dance to their favorite choice songs at the beginning (and also at the end), let them psychologically relax and start bonding as the women-folk gathered for the same agenda.

ii) Emphasis on the importance and significance of the hearings for the individual and the group, and that each participant narrating their story should be heard with equal respect and attention and by reprimanding the participants laughing at another's story

iii) Your empathy with each of the participants who narrated their story (even when the events narrated were very emotionally difficult or disturbing), and acknowledging and letting them enlighten TJRC on their own cultural practices on how to handle certain experiences.

iv) giving each one the opportunity to give their own opinion of what is the best recommendation that they would contribute to TJRC

Secondly, the other notable observations to which I wish to extend my compliments, was in your very strong closing remarks.

i) Helping the women understand the TJRC process and timeframe so as not to raise high expectations by giving the assurance that the recommendations and actions will not be immediate, but will be included in the TJRC final report, which will also take time and will come at the end of the process of public hearings around the country

ii) Explaining that healing in the period after the TJRC is equally important and must continue:  
- by inviting the women to continue [the process] amongst themselves [by] telling or narrating their traumatic stories in an environment where they can be comfortably vulnerable enough to allow for the healing process and with the support of CBOs and NGOs, [and to] even write these stories for record.

iii) [The] gesture of friendship and willingness to continue engaging with public:  
- by encouraging those women who did not have a chance to record their statements or have a memorandum written to do so  
- leaving a token (TJRC 'kikoy') of appreciation for participants for taking time to support TJRC

I apologize for the long email, but having only previously experienced the mock hearings and then Isiolo hearings, I could not resist applauding you and the entire TJRC team- Commissioners and Staff for working tirelessly to make the hearings a success.

The journey continues, but be encouraged that TJRC will only do it better!

### **2.2.3 Mt. Elgon hearings**

Between 23 and 26 May 2011, the Commission conducted hearings in the Mt. Elgon region. A total of 27 witnesses were heard over a four day period. The hearings focused on ethnic violence, particularly during recent elections, as well as issues of land, ethnic discrimination, and marginalization.

Mt. Elgon is home to three ethnic groups: Bukusu, Sabaot, and Teso. These three groups have lived together on the mountain for decades albeit with tensions that have often resulted in ethnic clashes, especially during elections. The tensions primarily revolve around the question of acquisition, ownership and use of land. To initiate a conversation around these issues and to cultivate reconciliation amongst the three ethnic groups, the Commission heard presentations from elders from each of the ethnic group. The common thread in their testimonies was the call for a lasting solution to the land dispute that has entangled the region for decades now and the need for a peaceful co-existence amongst the three ethnic groups.

A women's hearing was held in Kapsakwony on 24 May 2011. It was evident from the testimonies of most of the women that both physical and psychological scars resulting from violations they were subjected to by members of the Sabaot Land Defense Force (SLDF) and during 'Operation Okoa Maisha' have not healed. Women and children have bore the greatest brunt of the clashes and security operations that have been conducted in this region. Despite their situation, some women narrated stories of everyday heroism and optimism. Many of the women who attended the meeting are members of local self-help groups that draws their membership from different ethnic backgrounds and political affiliation together to seek solutions to common problems. The story of Mt. Elgon is thus a story of a people who are willing to chart the way forward despite their ethnic differences and the injustices that they have suffered in the past.

### **2.3 Community dialogues**

Community dialogues are designed to foster a conversation about historical injustices both within and across communities. They bring together individuals who live in proximity to each other but who may have very different historical experiences. The dialogue is facilitated by the Commission with the support and involvement of local community-based organizations.

The overall objective of the Commission is to promote peace, justice, national unity, healing, and reconciliation among the people of Kenya. The Commission has identified community dialogues as one of the key instruments for fostering these values. In particular, community dialogues are linked to the Commission's mandate relating to discovery of truth, which is instrumental in furthering healing and reconciliation. As opposed to factual or forensic truth which is 'factual, verifiable and can be documented and proved', 'dialogic truth', on the other hand, is social truth, the truth of experience that is established through interaction, discussion and debate. Social truth relates to societal views and perceptions about phenomena, motives behind how people acted or collectively perceive one another. Discussing these openly can trigger a process of reconciliation.

Community dialogues are integrated into and complement other processes of the Commission. Community dialogues are one way that the Commission mitigates the limits of the Commission's public and private hearings. The hearings provide an opportunity for a small number of witnesses to tell their stories, and are not conducive to dialogue, deliberation, and the interactive sharing of ideas and experiences. Community dialogues fill those gaps. They provide an opportunity for the discussion of communitywide concerns as well as the broader context of inter-group relations

In preparation for community dialogues, the Commission undertook a mapping exercise with the objective of familiarizing itself with the national terrain in which it operates from a reconciliation and national unity perspective.

The Commission also adopted a Reconciliation Policy to guide the reconciliation aspect of the community dialogues. The Commission's Reconciliation Policy recognizes that reconciliation is both a goal and a process. As such, the work of the Commission entails initiating dialogue and laying the groundwork for long term processes of reconciliation. These activities are undertaken in partnership with local and national organizations that will continue to further reconciliation after the life of the Commission, such as local and national faith-based organizations and the National Cohesion and Integration Commission (NCIC).

In March 2011, the Commission held a three-day Stakeholders' Consultative Meeting on National Healing and Reconciliation. The meeting drew together 40 participants representing civil society and faith based organizations involved in furthering reconciliation. Experts and resource persons made presentations on various aspects of reconciliation with case studies from around the world. The topics covered included: global principles on reconciliation and transitional justice; Christianity and reconciliation; Islam and reconciliation; African philosophy on peace and symbols of reconciliation; media and reconciliation; and the experience of ongoing reconciliation initiatives including under the auspices of the National Steering Committee on Peace Building and Conflict Management (NSC) and NCIC. At the end of the Meeting, the following conclusions and recommendations were adopted by the participants:

- (a) African philosophy and values such as *ubuntu* and appropriate cultural practices should be integrated into reconciliation processes;
- (b) religious values and traditions should also, in appropriate contexts, be integrated into reconciliation processes;
- (c) the theory and practice of conflict sensitive reporting should be mainstreamed in media training syllabi;
- (d) success stories from around the country on reconciliation should be documented and shared with those in other parts of the country
- (e) the capacity of CSOs and FBOs should be strengthened in order for them to carry on reconciliation work after the Commission's time-frame expires;
- (f) CSOs and FBOs should work closely with the Commission and other 'Agenda 4 Commissions' to hasten healing, reconciliation and social cohesion and integration;
- (g) The private sector should invest and be more involved in the reconciliation process; and

- (h) The concepts of trauma healing, reconciliation and social cohesion should be developed and taught in academic institutions.

In addition to its own reconciliation activities, the Commission is involved in similar initiatives by other state and non-state actors. The Commission is a member of the Inter-Ministerial Steering Committee on the Development of Policy on National Cohesion and Integration. The Steering Committee is responsible for developing a Policy on National Cohesion and Integration that will guide the building of a just and cohesive society that enjoys equitable social, economic and political development in the new constitutional dispensation.

## **2.4 Report writing**

The ultimate product of the Commission's work will be a report which will be submitted to the President at the end of the operations of the Commission. The Report will contain:

- (a) The findings of the Commission.
- (b) A catalogue of specific actions to be taken in respect to the Commission's findings.
- (c) A proposed framework and institutional arrangement for the implementation of the recommendations of the Commission.

Although the report of the Commission will be the final step in the work of the Commission, background work relating to various aspects of the report is ongoing. The Commission has adopted a provisional outline of its Report.

During its hearings and civic education and outreach activities, participants have often expressed concern as to whether the Report of the Commission will be implemented. This concern does not come as a surprise considering that reports of inquiry of commissions established in the last three decades or so have never been implemented. The TJR Act provides for sufficient safeguards to ensure that the Commission's Report will be implemented (see Text Box below). In particular, section 50(2) of the TJR Act provides that:

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

*Text Box 5: Implementation of the Report of the Commission*

**Step 1:** The Commission, in its Report, makes recommendations on the mechanism and framework for the implementation of the Report and institutional arrangement in that connection (TJR Act, sec 48(2)(f)).

**Step 2:** The Commission presents its Report to President at the end of its operations (TJR Act, sec 48(1)).

**Step 3:** Immediately upon submitting its Report to the President, the Commission publishes the Report in Kenya Gazette and in such other publications as the Commission may consider appropriate. Additionally, the Commission makes copies of the Report, or summaries thereof, widely available to the public in at least three local newspapers with wide circulation (TJR Act, sec 48(3)).

**Step 4:** The Minister, upon the publication of the Report, operationalizes the implementation mechanism or arrangement in accordance with the recommendations of the Commission to monitor the implementation of the recommendations of the Commission and to facilitate their implementation (TJR Act, sec 49(1)).

**Step 5:** Implementation of the Report begins within six months upon its publication (TJR Act, sec 49(3)).

**Step 6:** The Minister reports to the National Assembly within three months of receipt of the Report, and twice a year thereafter, as to the implementation of the Commission's recommendations (TJR Act, sec 50(1)).

In cases of non-implementation of the recommendations of the Commission, the National Assembly require the Minister to furnish it with reasons thereof (TJR Act, sec 50(2)).

Table 1: Summary of TJRC significant achievements and challenges

Phase	Activity	Execution	Challenges
1	<p>Establishing the secretariat</p> <p>Development of internal policy and procedural documents</p> <p>Conceptualization and interpretation of the Commission's mandate</p>	<p>-established a functioning Secretariat with eight harmonized operational units.</p> <p>-established operational and mandate Committees composed of several Commissioners to provide policy guidance to the Secretariat</p> <p>-developed internal policy and procedural documents including: Staff manual; Commissioner's Code of Conduct; Staff Oath of Confidentiality and Code of Conduct; Gender Policy; and Security Policy.</p> <p>-developed a conceptual framework that demarcates the scope of the Commission's work.</p> <p>-developed an analytical framework for case selection that has formed the basis for</p>	<p>-delay of more than a year in the establishment of the Secretariat caused by financial and resource constraints and the controversy over the Commission's Chairperson</p> <p>-lack of adequate and appropriate office space until January 2011</p> <p>-recurrent delays in paying bills and salaries due to financial constraints</p> <p>-although most of these documents were prepared early in the life of the Commission, the Commission was unable to hire its staff, due to lack of funds, until August 2010</p> <p>-although these documents were prepared early in the life of the Commission, it could not, due to lack of funds, commence its mandate operations until September 2010 when</p>

		<p>Informing the public of the Commission's existence and purpose of its work</p>	<p>selecting cases for hearings</p> <ul style="list-style-type: none"> <li>-conducted outreach and civic education meetings in Coast and Nairobi provinces</li> <li>-conducted outreach and civic education meetings with a wide range of thematic groups including prisoners</li> <li>-ran a radio campaign on all major radio stations including in vernacular and region-specific radio stations</li> <li>-Commissioners appeared on radio and television talk shows as guests</li> <li>-Commissioners made presentations to various events hosted by different professional associations and organizations</li> <li>-conducted training of targeted professional groups such as journalists and lawyers</li> </ul>	<p>statement taking process kicked off.</p> <ul style="list-style-type: none"> <li>-lack of adequate funds to carry out outreach and familiarization meetings throughout the country</li> <li>-lack of adequate funds and resources to counter initial misconceptions and misinformation about the Commission's mandate and work</li> <li>-loss of time and diversion of public attention and distraction of Commission's work occasioned by the controversy around the suitability of the Chairperson</li> </ul>
<p>2 Operational phase</p>	<p>Statement taking</p>	<ul style="list-style-type: none"> <li>-prepared user-friendly 'statement forms' for collecting statements</li> <li>-conducted training workshops for statement takers</li> <li>-deployed 304 statement takers across the country including to prison facilities to collect statement for a period of 5 months</li> </ul>	<ul style="list-style-type: none"> <li>-lack of financial capacity to carry out intensive training for statement taking process, especially in trauma identification and management</li> </ul>	

		<ul style="list-style-type: none"> <li>-collected more than 30,000 individual statements, the largest volume ever in the history of truth commissions</li> <li>-trained over 100 additional statement takers through local CSOs</li> <li>-collected about 600 memoranda from communities, organizations and individuals</li> <li>-conducted debriefing sessions for statement takers at the end of the statement taking process</li> <li>-developed a framework for focus group discussions on violations of socio-economic rights</li> </ul>	
	Hearings	<ul style="list-style-type: none"> <li>-prepared and published in the Kenya Gazette the Hearing Procedure Rules</li> <li>-conducted public and private hearings in North Eastern, Upper Eastern, and Mt. Elgon region</li> <li>-conducted 'Women's hearings' in North Eastern, Upper Eastern and Mt. Elgon region</li> <li>-conducted hearings at which retired and present government officials gave their account of security institutions and operations in North Eastern and Upper</li> </ul>	<ul style="list-style-type: none"> <li>-delay in commencing public hearings due to lack of funds</li> <li>-lack of time and capacity to conduct extensive hearings throughout the country in the remaining time-frame</li> </ul>

		Eastern for the first time in a public forum	
Community dialogue		<ul style="list-style-type: none"> <li>-developed a Reconciliation Policy</li> <li>-held a Stakeholders' Consultative Meeting on National Healing and Reconciliation</li> <li>-involved in reconciliation initiatives and activities by other actors (e.g. NCIC and MOJNCCA)</li> </ul>	<ul style="list-style-type: none"> <li>-lack of funds to conduct extensive community dialogues throughout the country</li> </ul>
Report writing		<ul style="list-style-type: none"> <li>-background work relating to various aspects of the Final Report currently ongoing</li> </ul>	<ul style="list-style-type: none"> <li>-delay in establishing Secretariat</li> <li>delay in commencing other mandate operations of the Commission has adversely impacted on the time available for report writing</li> </ul>

### **3 DEPARTMENTAL ACTIVITIES**

#### **3.1 Civic Education and Outreach Unit**

A key function of the Commission involves educating the public about the work of the Commission. This function is expressly spelt out under sections 6(i) and 20(5)(a) of the TJR Act. Pursuant to these provisions, the Civic Education and Outreach Unit is responsible for educating, engaging, and encouraging the public to contribute positively to the achievement of the objectives of the Commission. In particular, the Unit:

- (a) coordinates the dissemination of information about the Commission to the general public through education and public awareness campaigns and other forums.
- (b) coordinates reconciliation initiatives.
- (c) develops and updates the Commission's civic education and advocacy materials.

The Civic Education and Outreach Unit is headed by a Director who is assisted by two programme officers. The Unit became operational in August 2010 and some of its activities since then have included:

- (a) the development and wide distribution of civic education materials;
- (b) conducting pre-hearing civic education drives in North Eastern, Western and Nyanza provinces which have been instrumental in preparing the general public for the Commission's public hearings;
- (c) training of statement takers; and
- (d) organizing a three-day Stakeholders' Consultative Meeting on National Healing and Reconciliation.

The Unit has established collaborations and partnerships with several CSOs and FBOs that have been instrumental in mobilizing local communities to attend civic education drives and campaigns. These organizations include: Action Aid; Pact Kenya; Catholic Justice and Peace Commission; PeaceNet-Kenya; NPI Africa; and Kenya Muslim Youth Alliance.

#### **3.2 Research Unit**

The Research Unit is responsible for three broad tasks that are geared towards shaping and giving effect to the Commission's objectives and functions. These tasks are:

- a) conducting research into all aspects of the Commission's substantive mandate;
- b) servicing the research needs of other departments of the Commission; and
- c) coordinating the writing of the Final Report of the Commission.

The Research Unit is composed of a Director, four researchers and nine interns. In execution of its mandate the Unit has carried out the following activities:

- (a) developed the Commission's foundational documents such as the conceptual framework and the analytical framework for case selection;
- (b) developed a guide for statement takers

- (c) trained statement takers
- (d) developed background research papers on North Eastern and Mt. Elgon which have informed the hearings in these regions; and
- (e) produced reports of workshops and meetings organized by the Commission

The Unit has developed partnerships with research institutions such as Seattle University and Georgetown University and is currently pursuing similar partnerships with other research and donor institutions.

### **3.3 Investigations Unit**

The Investigations Unit draws its mandate from several provisions of sections 5 and 6 of the TJR Act. The primary role of the Unit is to collect, analyze and provide accurate information to enable the Commission to build a complete historical record and picture of gross human rights violations. In particular, the Unit is responsible for:

- (a) identifying and interviewing victims and witnesses of gross human rights violations;
- (b) collection and recovery of evidence from victims and witnesses of gross human rights violations;
- (c) mapping out areas identified as scenes of gross human rights violations for the Commission's site visits.

The Investigations Unit is composed of a Director and six investigators. In fulfillment of its mandate, the Unit has performed the following broad tasks:

- (a) development of an 'investigation strategy' which provides operational direction to the Unit.
- (b) conducted investigations in North Eastern, Upper Eastern, Western and Nyanza during which victims and witnesses were identified and evidence collected.

### **3.4 Legal Affairs Unit**

The Legal Affairs Unit is responsible for handling all legal issues that arise in the course of the Commission's execution of its mandate. In particular, the Unit:

- (a) provides legal advice on all aspects related to the work and operations of the Commission;
- (b) provides legal advice on all lawsuits to which the Commission is a party;
- (c) coordinates and manages the hearings of the Commission;
- (d) in conjunction with the Special Support Unit, provides appropriate support to victims and witnesses of gross human rights violations; and
- (e) assists with the leading of evidence during the Commission's hearings.

The Legal Affairs Unit is headed by the Director, Legal Affairs. There are three legal affairs officers and three legal interns in the Unit. It has carried out the following activities in fulfillment of its mandate:

- (a) training of statement takers and coordination of the statement taking process;
- (b) training of lawyers in Nairobi, Kakamega and Kisumu on the mandate and work of the Commission;
- (c) development of procedural documents and policies to guide the Commission's processes including the Hearing Procedure Rules;
- (d) preparation of victims and witnesses for the hearings in North Eastern and Mt. Elgon;
- (e) coordination and management of the hearings in North Eastern and Mt. Elgon; and
- (f) facilitated the representation of the Commission in all legal matters to which it is a party.

### **3.5 Special Support Services Unit**

Section 27 of the TJR Act provides that the Commission may put in place special arrangements and adopt specific mechanisms and procedures to address the experiences of women, children, persons with disabilities (PWD), and other vulnerable groups. The Special Support Unit is one such institutional mechanism established within the organizational structure of the Commission to ensure that the experiences of these vulnerable groups are consistently and adequately addressed in all the processes of the Commission. In particular, the objectives of the Unit are to:

- (a) address the specific experiences of women, children, people with disability and other vulnerable groups;
- (b) pay particular attention to gender based violations;
- (c) enhance accessibility to the Commission;
- (d) ensure that witnesses and their families are treated with dignity, compassion, minimum inconvenience, privacy and protection; and
- (e) ensure that witnesses are able to communicate with the Commission in the language of their choice.

The Special Support Unit is headed by a Director who leads a team of four officers; two witness support officers and two gender officers. The Unit began to operate in August 2010 and it has so far accomplished the following tasks:

- (a) the development of a gender policy which ensures that the Commission takes into account gender concerns in all its work – from recruitment of staff to operations of the Commission under the various units and in the Commission's general work plan.
- (b) the development of a concept note on child participation which guides the Commission in its interaction and engagement with children.
- (c) provided support, including counseling and psycho-social support, to victims and witnesses during the hearings in North Eastern and Mt. Elgon; and
- (d) organized and facilitated women's hearings in North Eastern and Mt. Elgon; and

In fulfilling its mandate, the Special Support Unit has collaborated and entered into partnerships with various agencies including the Kenya Red Cross, the Gender Violence Recovery Centre

(GVRC) and the Gender Violence Centre of the Kenyatta National Hospital. The Kenya Red Cross is providing first-aid services, on *pro bono* basis, to the Commission during its public hearings. The GVRC and Kenyatta National Hospital are providing counseling support services to witnesses, the public and TJRC staff during the hearings. Kenyatta National Hospital also trained Commissioners and staff on Identifying and managing stress and trauma prior to the start of the Commission's hearings. Plans are underway for GVRC and Kenyatta National Hospital to start receiving cases of referral from witnesses requiring reconstructive surgery as a result of gender based violations.

The Unit has held consultative meetings with various stakeholders, particularly civil society organizations (CSOs) and individuals, involved in the promotion of the rights of women, children, persons with disabilities and other minority groups. The consultative meetings have enabled the Commission to create awareness about its work and enlist the support and participation of these interest groups. The CSOs and individuals have in turn mobilized their constituents to attend and participate in the hearings of the Commission. They have also provided to the Commission the results of their own research on issues related to the Commission's mandate

The Unit has also held consultations with UN agencies such as the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) which provides technical support to the Commission, the United Nations Children's Fund (UNICEF), and the United Nations Population Fund (UNFPA). The Unit has also facilitated meetings between the Commission and government ministries, particularly the Ministry of Medical Services and the Ministry of Special Programmes.

### **3.6 Communications Unit**

The Communications Unit is the link between the Commission and the media and by extension between the Commission and the general public. The Unit manages the Commission's media relations, and in particular, it:

- (a) ensures that the Kenyan population, as widely as possible, has ready access to information on the Commission;
- (b) ensures a clear understanding of the Commission's mandate and processes;
- (c) actively enables the public, particularly those who have suffered gross human rights violations and other historical injustices, to productively engage with the Commission;
- (d) provides optimum exposure of the Commission's activities and events and centre the outcomes into national discourse;
- (e) supports the documentation of the Commission's public engagements for posterity; and
- (f) Setting up and managing the Commission's website.

The Communications Unit is composed of the Director, Communications, a Senior Communications Expert and three communications interns. Since it began operating, it has accomplished the following:

- (a) Developed the Commission's communication and media policy;

- (b) Organized training of media editors and reporters on transitional justice and the mandate of the Commission;
- (c) Produced a documentary on the Commission's statement taking process and civic education in Mt Elgon;
- (d) Facilitated media coverage of the hearings of the Commission in North Eastern, Mt Elgon and Nairobi;
- (e) Facilitated video coverage of the hearings of the Commission for documentation and preservation; and
- (f) Set up the Commission's website with constant updates on the activities of the Commission

### **3.7 Finance and Administration Unit**

The Finance and Administration Unit provides logistical and administrative support to the Commission. It coordinates the preparation and management of the Commission's budget and finance. The Finance and Administration Unit is composed of several Sub-units including human resources, finance and accounting, procurement, and security. Since the Unit began to operate, it has:

- (a) maintained the financial accounts of the Commission;
- (b) facilitated the procurement of goods and services for the Commission;
- (c) provided logistical and administrative services during the statement taking process and hearings.

Table 2: Summary of departmental significant achievements and challenges

Department	Mandate	Execution	Challenges
1 <b>Civic Education and Outreach</b>	<ul style="list-style-type: none"> <li>-Coordinate the dissemination of information about the Commission to the general public through education and public awareness campaigns and other forums.</li> <li>-Coordinate reconciliation initiatives.</li> <li>-Develop and update civic education and advocacy materials.</li> </ul>	<ul style="list-style-type: none"> <li>-developed and widely distributed civic education materials;</li> <li>-conducted pre-hearing civic education drives in North Eastern, Western and Nyanza provinces</li> <li>- trained statement takers;</li> <li>-organized a three day Stakeholders' Consultative Meeting on National Healing and Reconciliation</li> </ul>	<ul style="list-style-type: none"> <li>-lack of adequate funds and resources to roll out an extensive as possible a civic education campaign</li> <li>-lack of adequate staff</li> </ul>
2 <b>Research</b>	<ul style="list-style-type: none"> <li>-Conduct research into all aspects of the Commission's substantive mandate</li> <li>-Service the research needs of other departments of the Commission</li> <li>-Coordinate the writing of the final report of the Commission</li> </ul>	<ul style="list-style-type: none"> <li>-developed a conceptual framework demarcating the Commission's work</li> <li>-developed an analytical framework for case selection</li> <li>-developed background research papers for each province</li> </ul>	<ul style="list-style-type: none"> <li>-lack of adequate funds and resources, e.g. a fully equipped library</li> <li>-lack of adequate staff</li> </ul>
3 <b>Investigations</b>	<ul style="list-style-type: none"> <li>-Identify, interrogate and prepare victims and witnesses of gross human rights violations.</li> <li>-Collect and recover evidence from victims and witnesses of gross human rights violations.</li> <li>-Conduct risk assessment for victims, witnesses and the Commission's staff.</li> </ul>	<ul style="list-style-type: none"> <li>-developed Investigation Strategy</li> <li>-conducted investigations leading up to the hearings in North Eastern and Mt Elgon</li> </ul>	<ul style="list-style-type: none"> <li>-lack of funds and resources</li> <li>-lack of adequate staff</li> </ul>

	<p>-Map out areas identified as scenes of gross human rights violations for the Commission's site visits.</p>		
<p>4 <b>Legal Affairs</b></p>	<p>-Provide legal advice on all aspects related to the work and operations of the Commission.</p> <p>-Provide legal advice on all lawsuits that the Commission is a party.</p> <p>-Coordinate and manage the hearings of the Commission.</p> <p>-In conjunction with the Special Support Unit, provide appropriate support to victims and witnesses of gross human rights violations</p>	<p>-trained statement takers and coordinated the statement taking process.</p> <p>-trained lawyers in Nairobi, Kakamega and Kisumu on the mandate and work of the Commission.</p> <p>-developed procedural documents and policies to guide the Commission's processes including the Hearing Procedure Rules.</p> <p>-prepared victims and witnesses for the hearings in North Eastern and Mt. Elgon.</p> <p>-coordinated and managed the hearings in North Eastern and Mt. Elgon.</p> <p>-facilitated the representation of the Commission in all legal matters to which it is a party.</p>	<p>-lack of adequate funds and resources</p> <p>-lack of adequate staff</p>
<p>5 <b>Special Support Unit</b></p>	<p>-Address the specific experiences of women, children, people with disability and other vulnerable groups.</p> <p>-Pay particular attention to gender based violations.</p>	<p>-developed a Gender Policy.</p> <p>-developed a concept note on child participation in the Commission.</p> <p>-developed Guidelines for Investigation of Sexual Violence.</p>	<p>-lack of adequate funds and resources to meet the psycho-social needs of victims and witnesses</p> <p>-lack of adequate staff</p>

	<p>-Enhance accessibility to the Commission.</p> <p>-Ensure that witnesses and their families are treated with dignity, compassion, minimum inconvenience, privacy and protection.</p> <p>-Ensure that witnesses are able to communicate with the Commission in the language of their choice.</p>	<p>-Provided support, including counseling and psycho-social support, to victims and witnesses during the hearings in North Eastern and Mt. Elgon.</p> <p>-Organized and facilitated women's hearings in North Eastern and Mt. Elgon.</p>	
<p>6</p> <p><b>Communications</b></p>	<p>-Ensure that the Kenyan population, as widely as possible, has ready access to information on the Commission.</p> <p>-Ensure a clear understanding of the Commission's mandate and processes.</p> <p>-Actively enable the public, particularly those who have suffered gross human rights violations and other historical injustices, to productively engage with the Commission.</p> <p>-Provide optimum exposure of the Commission's activities and events and centre the outcomes into national discourse.</p> <p>-Support the documentation of the Commission's public engagements for posterity.</p> <p>-set up and manage the Commission's</p>	<p>-developed a communications strategy and media policy</p> <p>-Produced a documentary on the Commission's statement taking process and civic education in Mt Elgon</p> <p>-trained media editors and reporters on transitional justice and the mandate</p> <p>-Set up and managed the Commission's website of the Commission</p>	<p>-lack of adequate funds and resources to ensure comprehensive media coverage of the Commission's activities</p> <p>-lack of adequate staff</p>

7	<b>Finance and Administration</b>	website -provides logistical and administrative support to the Commission -coordinates the preparation and management of the Commission's budget and finances.	- maintained the financial accounts of the Commission; -facilitated the procurement of goods and services for the Commission; -provided logistical and administrative services during the statement taking process and hearings.	-lack of adequate funds and resources to ensure efficient and smooth running of the administrative operations of the Commission -lack of adequate staff
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## 4 CHALLENGES IN THE EXECUTION OF THE COMMISSION'S MANDATE

Although the Commission has tried its best to execute its mandate efficiently and expeditiously, it has faced several challenges and difficulties that have had the effect of hampering its work and slowing down its momentum. Two particular challenges have had the greatest impact on the work of the Commission. Firstly, the Commission lost considerable amount of time and credibility at the beginning of its term due to the controversy that surrounded the suitability of its Chairperson. Secondly, the Commission suffered from financial and resource constraints that stalled the operations of the Commission for the most part of its first year. The cumulative effect of these two challenges is that the Commission was not able to begin operating substantively and effectively until September 2010, a full year after its establishment. These challenges are discussed below in detail:

### 4.1 Loss of time

The Commission's constitutive Act provides for a three month establishment period, after which, the Commission is supposed to commence its substantive operations. While this timeline was ambitious in the best of circumstances, the Commission faced additional hurdles soon after its inception when concerns were raised over the suitability of Ambassador Bethuel Kiplagat to serve as the Commission's chairperson. These critics argued that the Chairperson was linked to three issues within the mandate of the Commission (illegal or irregular land transactions; the murder of the Honourable Robert Ouko; and the Wagalla Massacre), thus creating a conflict of interest between him and the Commission. Calls were made for the Chairperson to resign from the Commission and/or for the Commission to be disbanded altogether. These calls were coupled with negative publicity and misconceptions about the mandate and operations of the Commission. At this point in time, however, the Commission did not have the financial resources to counter the misconceptions, nor could it count on civil society or the media to correct prevailing misperceptions.

As months went by without a resolution of the issues surrounding the Chairperson, most CSOs and other relevant stakeholders broke ties with the Commission and called upon donors not to support the Commission. Two law suits were filed in the High Court both of which sought the dissolution of the Commission. In *Augustine Njeru Kathangu & 9 Others v TJRC and Bethuel Kiplagat* (High Court Misc App No. 470 of 2009), the Applicants raised a constitutional challenge on the composition and statutory mandate of the Commission on the basis of which they sought the disbandment of the Commission. This case is still pending before the Court. In *Moraa Gesicho v Attorney General and TJRC* (High Court Petition No. 1 of 2010 – Kisii), the petitioner sought a declaration from the High Court that the Commission had no basis upon which to pursue justice for victims of the 2007 post-election violence. She argued that the Commission was 'a diversionary tactic to deny victims of post 2007 election violence justice'. This case is similarly still pending before the Court.

On 16 April 2010, eight Commissioners, with the support of the Chairperson, petitioned the Chief Justice pursuant to the TJR Act to establish a tribunal to inquire into whether the Chairperson should be removed from the Commission. The Chief Justice did not establish the tribunal for over six months. After the Commission applied to the High Court for an order of *mandamus* to compel him to respond, he announced the establishment a Tribunal on 29 October 2010. The Tribunal was thus established through a Gazette Notice dated 1 November

2010. Following the establishment of the Tribunal, the Chairperson stepped aside. The work of the Tribunal is currently stalled pursuant to an order of the High Court staying its proceedings until an application challenging its creation lodged in the High Court by Ambassador Kiplagat is determined.

The controversy surrounding the suitability of the Commission's Chairperson adversely affected and paralyzed the operations of the Commission for more than a year following its establishment. It diverted and distracted the attention and energy of the Commission from executing its core mandate. The failure to timely resolve the controversy surrounding the Chairperson refusal led to the resignation of Betty Murungi as the Vice-Chairperson and later as a Commissioner. Although the TJR Act requires the President to notify every vacancy in the Gazette within seven days, such a notice has not been given and the vacant position caused by Commissioner Murungi's resignation has not yet been filled.

With the stepping aside of the Chairperson and the resignation of the Vice-Chairperson, there are now seven active Commissioners which has affected the ability of the Commission to execute its mandate. For example, the Commission originally planned to have two or three panels of three Commissioners to conduct hearings. With only seven Commissioners the Commission has decided not to split into multiple panels. The reduced capacity means the Commission needs more time for its public hearings.

#### **4.2 Financial and resource constraints**

Perhaps the single greatest challenge that the Commission has faced since its inception is the lack of sufficient finances and resources to run its operations. The preliminary cost of fulfilling the Commission's mandate effectively and efficiently was estimated to be approximately \$27 million for the two-year operational period. This amount was less than the cost of the Peruvian truth commission and approximately half the cost of the South African commission. Since its establishment, the Commission has operated on a meager budget, the effect of which is that the operations of the Commission have suffered recurrent delays and limitations.

Initially, donors generally refused the Commission's appeal for funding. Potential donors conditioned their support for the Commission on the establishment of a Special Tribunal for Kenya as recommended by the Commission of Inquiry into the Post-Election Violence (CIPEV), a matter over which the Commission had no control. The donor community was also reluctant to support the Commission in view of the controversy that surrounded the suitability of the Chairperson.

During the Commission's first fiscal year, its finances were controlled and administered by MOJNCCA. The Commission could not control its finances as a matter of law until the hiring of the Secretary who is also the accounting authority. The Secretary was not hired until February 2010.

For 2010-2011 fiscal year, the Commission submitted to the Treasury a budget of Ksh 1.2bn but it was only allocated Ksh 190 million, or just under sixteen percent (16%) of its requested budget. As with most such allocations, the Ksh 190 million was transferred to the Commission in three quarterly installments, each of which was insufficient to service the Commission's growing portfolio of debts and pay staff salaries, much less finance mandate-related operations. As a

consequence, the Commission deferred the hiring of staff to August 2011 and froze all but the most essential mandate-related operations.

By the end of October 2010, the Commission had no finances at all to sustain its operations and had to seek monthly advances amounting to 44.2m from the Treasury for the months of November and December to pay staff salaries and continue statement taking. Similarly, in order to run its mandate operations, the Commission sought and received an advance of Ksh 80m from MOJNCCA. Although these advances kept the Commission going, they were temporary solutions to a chronic financial problem. The uncertain and ad hoc nature of these advances also meant that the Commission could not properly plan its activities, resulting in, among other things, inadequate civic education and other preparation for the Commission's statement taking and public hearings.

In December 2010 the Commission submitted a request to the Treasury for supplementary funding. Without the supplemental funding the Commission was unable to launch its public hearings in February 2011 as was initially planned. In April 2011, the Commission received Ksh 460m in response to its request. The Commission was thus able to launch and conduct hearings beginning of April 2011 in North Eastern, Upper Eastern and Mt. Elgon.

Thus, for the fiscal year 2010-2011, the Commission was eventually allocated a total of Ksh 650m against a proposed budget of Ksh 1.2bn. Both the lack of adequate funds in its first fiscal year, and the late allocation in its second fiscal year, placed enormous strains on the Commission's operations. In particular:

- i. The Commission's was unable to start its operations after the statutorily stipulated three month establishment. For the first six months of its existence, with no control over its limited funding, the Commission operated with neither a Secretary nor a functional Secretariat. The Commissioners performed most of the administrative and organizational work with the assistance of a 17 member support staff deployed to the Commission by MOJNCCA.
- ii. Although the Commission finally hired its Secretary in February 2010, it was unable to undertake any substantial hiring until the 2010-2011 fiscal year, which is when the Government indicated sufficient funds would be made available to the Commission. The operational Units of the Commission thus became functional only in September 2010 after directors and staff of the various Units were hired. These Units are still under-funded and under-staffed, a fact that undermines their capacity to efficiently function.
- iii. The Commission did not have adequate and appropriate office space until January 2011. The Commission had to delay hiring of needed staff near the end of 2011 as there was no place for them to work. As a result some who had applied for jobs with the Commission withdrew after receiving other employment.
- iv. The Commission has had recurrent delays in paying bills and salaries.
- v. The Commission had to cut short its provincial outreach and familiarization meetings after conducting such meetings in only two provinces.
- vi. The Commission was unable to have intensive training sessions for statement takers, especially in relation to trauma management and identification. Following the statement taking process, many statements takers were subject to trauma but the Commission could only organize two debriefing sessions for them; during the review meetings and at the end of

the official statement taking period. Moreover, during the statement taking process, many victims and witnesses were identified as been in need of counseling, but with limited financial and resource capacity, the Commission was limited in counseling it could provide.

- vii. The Commission's launch of public hearings was delayed, first for one year, then for additional two months. In accordance with its Work Plan, the Commission had intended to hold hearings beginning in April 2010. This Work Plan was revised to provide for a hearing period of 7 months beginning from February 2011 to August 2011. Due to lack of funds, the launch of the hearings was delayed until April 2011 when the Commission received an advance of Ksh 80m from MOJNCCA. The delay in commencing public hearings has adversely affected the Commission's hearing schedule which is now of necessity compressed, the negative consequences of which are further discussed below.
- viii. The delay in commencing hearings has in turn had an adverse 'ripple effect' on the general Work Plan of the Commission. The most far reaching impact is that the Commission will not be able to hold public hearings in some parts of the country, and will not be able to hold hearings on the breadth of issues within its mandate. In addition, the Commission will have to write its Final Report within the final one month of its life as opposed to the final three months as initially planned. This shortened time frame will inevitably affect the quality and effectiveness of the Commission's findings and recommendations.

## **5 WAY FORWARD: EXTENSION OF TIME-FRAME**

The Commission has continuously adopted strategies to mitigate the effects of the challenges it encountered since its establishment. Firstly, the Commission has taken measures to 'buy back' part of the lost time. The Commission has adopted a compressed schedule for its hearings. However, as will be discussed further below, this schedule has drastically reduced the number of victims and witnesses that the Commission will hear. It also means that the Commission will not be able to hold public hearings in all regions of the country as originally planned.

Secondly, the Commission has made huge strides in restoring its credibility. Through the weekly round-ups of the Commission's hearings on national television and intensified civic education and outreach campaigns, the understanding and appreciation of the Commission's mandate and work has significantly improved amongst the general public. Individuals and organizations who have important information for the Commission's research and investigations are increasingly coming forward to assist.

Thirdly, the Commission has re-established links with partners, collaborators and donors who originally were reluctant to work with the Commission, and has established links with new stakeholders. The Commission has established collaborations with several state agencies, including the Kenya National Commission for Human Rights (KNCHR), NCIC, and the Kenya Anti-Corruption Commission (KACC). These and other governmental and non-governmental agencies are now partnering with the Commission in the execution of its mandate. Several donor and technical assistance agencies, including GIZ, UNDP, and UN Women, are currently supporting the work of the Commission.

Finally, in a bid to mitigate the Commission's human resource limitations, the Commission has secured the services of independent consultants and service providers, sometimes at a reduced or even *pro bono* rate. The Commission has engaged the services of, amongst others, independent researchers, counselors, communications experts, and gender experts. The Commission has also received research interns from various universities including Georgetown University and Seattle University.

Although the Commission has taken the above measures to mitigate the effects of the challenges it has faced, it is now evident that despite these efforts, the Commission will be unable to complete its work in a satisfactory manner before its time-frame expires. The public support of the statement taking process and the public hearings demonstrates, on the one hand, that the Commission's work is viewed as a vital component in the country's quest for truth, justice, and reconciliation, and on the other, that the Commission has both the ability and good will to make a significant important contribution to the healing of the nation. That the Commission has managed to record significant achievements and progress in the execution of its work amidst the serious challenges it has encountered is a testament to the commitment of the Commissioners and staff, and to the important role the Commission has already and will continue to play during the transition to a more just democracy. For these reasons, it is imperative that the life of the Commission be extended in order to allow for the effective execution and delivery of its terms of reference.

Faced with the challenge of finishing its work in the limited time currently allocated, and in view of the challenges it has and will continue to face, the Commission grounds its strategic decisions on two important aspects of its work. Firstly, the importance of providing victims and other witnesses the opportunity to narrate their specific experiences and secondly, the obligation to touch upon the broad range of issues included within the Commission's enormous material and temporal mandate. Each of these aspects is discussed below.

## 5.1 The importance of victims and witnesses narrating their experiences

*Text box 6: 'Let TJRC visit Igembe and listen to our story'*

During the Shifta war of 1960s and early 1970s, Meru suffered .... More than 5,000 people died, and destruction of miraa plantations and stealing of livestock happened. In a gruesome torture, heel tendons were cut to prevent their escape. If any victims escaped, they were tracked down as far as Isiolo. Recapture assured victims of a slow, painful death. **Let TJRC visit Igembe and listen to our story.**

**John M Ng'onde & Teddy Kimathi, Meru  
Daily Nation, Wed April 27, 2011, p 14**

Following the hearings in North Eastern, Upper Eastern and Mt. Elgon, victims and witnesses of gross human rights violations in other parts of the country and the general public are increasingly calling upon the Commission to ensure that it holds similar hearings in their respective localities. Satisfying these demands will be impossible within the remaining period before the Commission's time-frame expires. Experience from the hearings conducted so far has shown that the Commission can only hear a maximum of six individuals per day during its individual hearings and often the number is substantially less than that (during two of the days of the recent hearings in Nairobi the Commission only heard one witness each day).

Moreover, the unforeseen reduction of the number of Commissioners from nine to seven has impacted negatively on the Commission's capacity to divide itself into smaller panels in order to increase its hearings capacity. In its current composition, the Commission can establish only two hearing panels that can operate concurrently. With nine Commissioners, the Commission could have had three such panels. This could have had two positive effects. Firstly, the Commission could have listened to a greater number of individuals. Secondly, with split panels, the Commission could have held its hearings in three concurrent venues and to as nearer to the victims and witnesses as possible and thus would have been more accessible to a greater number of Kenyans.

In developing its work plan, the Commission made a commitment to visit most if not all of the counties in the country. It would be faster to just visit and hold hearings in the major regional centers, but such an approach would significantly limit the number of individuals who could participate in the Commission's process and hearings. While in North Eastern and Upper Eastern, for example, the Commission held hearings in each county within the two regions, and was able to visit remote sites that are linked to historical injustices. This commitment to provide access to the more remote parts of a region means that each provincial visit will take approximately one month. When breaks are added to engage in stakeholder and other mandate activities within Nairobi, and when time is added to conduct thematic and institutional hearings, it is impossible for the Commission to complete its hearings before 3 November 2011, much less finish the hearings and write a thorough and complete report.

Given this scheduling reality, the Commission had two choices. First, the Commission could reduce its time in each province and only hold hearings in one major venue (probably the former provincial capital). In other words, the Commission would perform the thorough job it did in the northern region. This would result in far fewer people participating in the Commission's work, and would provide a narrow and limited window into the lived experience of historical injustices. In effect such a choice would privilege those in the major urban areas and discriminate against those in the more remote parts of the country. If the Commission were to adopt this choice, it would in fact be contributing to the marginalization of many parts of the country, and thus contributing to a historical injustice within our mandate.

Second, the Commission could continue with the original plan of reaching out to the remotest parts of the country and thus give voice to and provide participation for many Kenyans in the national effort to further truth, justice, reconciliation, and national healing. The Commission has chosen this second path and given preference to quality and thoroughness over quantity. In other words, without an extension, the Commission will hold hearings and in engage in other mandate related activities in some, but not all, regions of the country. Those regions that the Commission will visit will benefit from an extensive engagement. By choosing this path the Commission has decided to do an excellent job in some parts of the country rather than a poor job in all parts of the country. With the extension the Commission will be able to perform an excellent job in all parts of the country.

## **5.2 The obligation to address the entirety of the Commission's material and temporal mandate**

An important factor that has informed the Commission's conclusion that it will not be able to finalize its work within the two year statutory time-frame is the breadth and complexity of its mandate. The Commission has the widest substantive and temporal mandate of any truth commission ever formed. As indicated above under section 1.5.3, the Commission is charting a new path insofar as it is specifically mandated to inquire into historical injustices relating to violations of socio-economic rights. Truth commissions have traditionally focused on violations of civil and political rights even in cases where their mandate could be liberally interpreted to incorporate violations of socio-economic violations within the ambit of their inquiries. Owing to their nature, inquiry into violations of socio-economic rights is a relatively complex enterprise. While there is a sophisticated global jurisprudence with respect to civil and political rights, there is a dearth of jurisprudence with respect to socio-economic rights. The Commission may thus chart new ground in articulating and giving substantive content to socio-economic rights.

Beyond conducting a general inquiry into violations of socio-economic rights, the TJR Act specifically require the Commission to conduct investigations into several other related issues:

- (a) economic crimes including grand corruption and the exploitation of natural or public resources.
- (b) irregular and illegal acquisition of public land.
- (c) misuse of public institutions for political objectives
- (d) the reality or otherwise of perceived economic marginalization of communities.

The Commission's temporal mandate is similarly wide. It spans from 12 December 1963 to 28 February 2008, a period of approximately 45 years. The TJR Act allows the Commission to look at historical antecedents in order to understand violations during the mandate period. As the Commission has engaged in civic education and other outreach related activities, it has become clear that many Kenyans want the Commission to look at the pre-independence colonial period in order to better understand the historical injustices suffered since independence. This desire coincides with the view of the Commission that one cannot, for example, understand the maldistribution of land since independence without understanding the patterns of land ownership during the colonial period. The Commission thus must look to the pre-independence period in order to do justice to its expansive mandate. Very few truth commission have had to go as far back in their inquiry and search for truth as the TJRC.

Experience around the world has shown that, owing to the nature of their work, truth commissions require an average of between three to five years to successfully complete their work. It should come as no surprise, therefore, that the Kenyan truth commission with one of the broadest mandates ever created, would require more than the initial two year period to complete its work.

The Truth and Reconciliation Commission of South Africa, for instance, was established in 1995 to operate for a period of two years, which period was extended, initially to 1998 and then later to 2000. Yet the South African Commission had a narrower mandate that focused only on investigations of 'gross violations of human rights defined as killing, abduction, torture or severe ill-treatment and the attempt, conspiracy, incitement, instigation, command or procurement of such acts. Thus, in its Final Report, the South African Commission acknowledged its limited

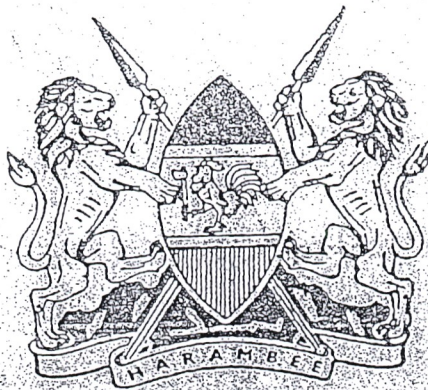
mandate observing that 'the Commission was restricted to examining only a fraction of the totality of human rights violations that emanated from the policy of apartheid ....' The South African Commission had an equally narrower temporal mandate compared to that of the TJRC. It focused on violations that occurred between 1960 to 1994, a period of 34 years, approximately 10 years less than that of TJRC. Yet, in terms of capacity it had a total of 17 commissioners and a staff of 300.

The Guatemalan Historical Clarification Commission, with a staff of about 200, took five years to complete its work after it received an extension of its time-frame. The few truth commissions that have completed their work within three years or less had the narrowest mandates both in terms of substance and time. The National Commission for Truth and Reconciliation in Chile completed its operations in one year but it focused only on violations that resulted in death or in disappearance that had occurred over a 17 year period. The Sierra Leonean Truth and Reconciliation Commission completed its work in two years. It was initially scheduled to complete its work within one year but its time-frame was extended. The mandate of the Sierra Leonean Commission was restricted to investigating 'violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone' which lasted for a period of about 9 years, from 1991 to 1999 when the Lome Peace Agreement was signed.

Although the examples of truth commissions mentioned above operated in different socio-political settings, they serve to demonstrate that even truth commissions with narrower mandates than that of TJRC – yet with larger capacities – had operating time-frames that were longer than that of the TJRC.

**ANNEXURE 1**

Gazette Notice dated 22<sup>nd</sup> July 2009 – **Appointment of Commissioners.**



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GAZETTE NOTICE No. 8737

## THE TRUTH, JUSTICE AND RECONCILIATION COMMISSION ACT

(No. 6 of 2008)

### APPOINTMENT OF COMMISSIONERS

PURSUANT to section 10 of the Truth, Justice and Reconciliation Commission Act (No. 6 of 2008), I, Mwai Kibaki, President and Commander-in-Chief of the Armed Forces of the Republic of Kenya, appoint—

Amb. Beduel A. Kaplagat—(Chairman);  
Betty Murungi (Ms.);  
Tom Ojenda;  
Margaret Wambui Ngugi Shava (Ms.);  
Tecla Namachanja (Ms.);  
Maj. Gen. (Rtd.) Ahmed Sheikh Farah;

### International Experts:

Gertrude Chawatama (Ms.)—Zambia;  
Berhanu Dinka—Ethiopia;  
Ronald Slye—United States of America;

to be Commissioners of the Truth, Justice and Reconciliation Commission, for a period of two (2) years.

Dated the 22nd July, 2009.

MWAI KIBAKI,  
President.

GAZETTE NOTICE No. 8738

## NATIONAL ANTI-CORRUPTION CAMPAIGN STEERING COMMITTEE

### APPOINTMENT OF COMMITTEE MEMBERS

IT IS notified that His Excellency, Mwai Kibaki, President and Commander-in-Chief of the Armed Forces of the Republic of Kenya, has established a Committee to be known as the National Anti-Corruption Campaign Steering Committee (hereinafter referred to as "the Committee") comprising of the following—

Eliud Wabukala (Archbishop)—(Chairperson);  
Rose Arungu-Olende (Ms)—(Vice-Chairperson);  
Francis Ng'ang'a;  
Adan Wachu;

Joseph M. Kaniku (Bishop);  
Shashikant K. Raval;  
Rhoda Wanja Thairu (Dr.);  
Hassan Sheikh Ali;  
John Murithi;  
Kimariyo Arap Segor;  
Kamla Sikand (Mrs.);  
Mohamed Ahmed Hillow;  
Sophia Lepuchiri (Ms.);  
Lucas Mboya;  
Dabar Abdi Maalim (Dr.);  
Joy Asiema (Ms.);  
Ibrahim Omondi (Rev.);  
Fatima Awale (Ms.);  
Alex Kimuyu Kyule;  
The Permanent Secretary, Ministry of Justice, National Cohesion and Constitutional Affairs;  
The Permanent Secretary, Ministry of Youth Affairs and Sports;  
The Permanent Secretary, Ministry of Information and Communication;  
The Managing Director, Kenya Broadcasting Corporation;  
The Director, Kenya Anti-Corruption Commission; and  
The Director, National Anti-Corruption Steering Committee.

2. The members of the Committee shall hold office for a period of two (2) years.
3. The functions of the Committee shall be to undertake nationwide public education, sensitization and awareness creation campaigns aimed at effecting fundamental changes in the attitudes, behaviour, practices and culture of Kenyans towards corruption.
4. The Committee shall perform its functions under paragraph 3 through—
  - (a) establishing a framework for the nationwide campaign against corruption;
  - (b) sensitizing the public and encouraging them to participate in the fight against corruption;
  - (c) identifying strategic stakeholders and developing a mechanism for their effective participation in the campaign against corruption;
  - (d) mobilizing stakeholders across all sectors and the general public to evolve a strong anti-corruption culture and participate in the fight against corruption.

**ANNEXURE 2**  
Employment Policy



**THE TRUTH, JUSTICE & RECONCILIATION COMMISSION-KENYA**

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**EMPLOYMENT POLICY**

2009

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## SECTION 1

### 1.0 INTRODUCTION

The TJRC came into existence following the enactment of the TJRC Act No. 6 of 2008 which provides for the establishment, powers and functions of the Commission and for connected purposes. The Commission shall exist for three years during which time it shall engage employees to undertake specific tasks set out in the Commission's organogram. The tasks of the Commission can only be accomplished with defined policies and guidelines that will define the role of the various structures within the Commission.

In this staff engagement policy we have defined the role of the Commission, the Secretary, and other employees as they relate to themselves and to the environment at the workplace.

### 1.1 PURPOSE

This manual applies to all staff and is designed to acquaint the staff with the Commission and provide them with information about working conditions, benefits, and policies affecting their employment. The purpose of this manual is to state the rights and responsibilities of the employer, the Commission, and the employee. This shall be the basic policy document to define the relationship between the employer and the employee, and will guide employer – employee relations. It is used in combination with the specific job descriptions, individual letters of hire, and other written documents and policies. This manual is written in the context of local employment practices in Kenya and is particularly useful to employees who need to understand their obligation to the Commission and the Commission's obligation to them.

The information contained in this manual applies to all employees of the Commission. Following the policies described in this manual is considered a condition of continued employment. However, nothing in this manual alters an employee's status. The manual is an integral part of the employment contract between the Commission and any of its employees. The employee is responsible for reading, understanding, and complying with the provisions of this manual.

### 1.2 THE TRUTH, JUSTICE & RECONCILIATION COMMISSION

The Truth, Justice & Reconciliation Commission (TJRC) was established by the TJRC Act No. 6 of 2008 as an immediate measure to prevent the reoccurrence of the 2007 post poll violence that almost destroyed the very fabric of the Kenyan society.

#### Objectives

The main objective of the TJRC is to promote peace, justice, national unity, healing, and reconciliation among the people of Kenya by:-

- a) Establishing an accurate, complete and historical record of violations and abuses of human rights and economic rights inflicted on persons by the State, public institutions and holders of public office, both serving and retired, between 12<sup>th</sup> December, 1963 and 28<sup>th</sup> February, 2008, including the;

- i) Antecedents, circumstances, factors and context of such violations;
  - ii) Perspectives of the victims; and
  - iii) Motives and perspectives of the persons responsible for commission of the violations;

by conducting investigations and holding hearings.
- b) Establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights and economic rights which were committed during the period between the 12<sup>th</sup> December, 1963 and the 28<sup>th</sup> February, 2008, including the;
  - i) Antecedents, circumstances, factors and context of such violations;
  - ii) Perspectives of the victims and the motives; and
  - iii) Perspectives of the persons responsible for commission of the violations, by conducting investigations and holding hearings.
- c) Investigating gross human rights violations and violations of international human rights law and abuses which occurred, including massacres, sexual violations, murder and extrajudicial killings and determining those responsible for the commission of the violations and abuses.
- d) Recommending the prosecution of the perpetrators of gross human rights violations.
- e) Determining ways and means of redress for victims of gross human rights violations.
- f) Facilitating the granting of conditional amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with gross human rights violations and economic crimes and complying with the requirements of the TJRC Act.
- g) Providing victims, perpetrators and the general public with a platform for non-retributive truth telling that charts a new moral vision and seeks to create a value-based society for all Kenyans.
- h) Providing victims of human rights abuses and corruption with a forum to be heard and restore their dignity.
- i) Providing repentant perpetrators or participants in gross human rights violations with a forum to confess their actions as a way of bringing reconciliation.
- j) Compiling a report providing as comprehensive an account as possible of the activities and findings of the Commission under paragraphs (a), (b) and (f), with recommendations on measures to prevent the future occurrence of such violations.
- k) Investigating and making recommendations concerning any other matter with a view to promoting or achieving justice, national unity and reconciliation within the context of the TJRC Act.

## Functions

The functions of the TJRC are to:-

- a) Investigate gross violations and abuses of human rights including abductions, disappearances, detentions, torture, sexual violations, murder, extrajudicial killings, ill treatment and expropriation of property suffered by any person between 12<sup>th</sup> December, 1963 and 28<sup>th</sup> February, 2008.
- b) Investigate the context in which and causes and circumstances under which the violations and abuses occurred and identify the individuals, public institutions, bodies, organisations, public office holders, the State, State actors, or persons purporting to have acted on behalf of any public body responsible for or involved in the violations and abuses.
- c) Identify and specify the victims of the violations and abuses and make appropriate recommendations for redress.
- d) Investigate and determine whether or not the violations and abuses were deliberately planned and executed by the State or by any person referred to in paragraph (k) (ii).
- e) Conduct investigations relevant to its work and/ or seek the assistance of the police and any public or private institution, body or person for the purpose of an investigation.
- f) Identify any persons who should be prosecuted for being responsible or involved in human rights and economic rights violations and abuses.
- g) Investigate economic crimes.
- h) Investigate and provide redress in respect of crimes of a sexual nature against female victims.
- i) Educate and engage the public and give sufficient publicity to its work so as to encourage the public to contribute positively to the achievement of the objectives of the Commission.
- j) Investigate any other matter that it considers requires investigation in order to promote and achieve national reconciliation.
- k) Make recommendations with regard to;
  - i) The policy that should be followed or measures that should be taken with regard to granting of reparation to victims or the taking of other measures aimed at rehabilitating and restoring the human and civil dignity of victims;
  - ii) The prosecution of persons responsible for or involved in human rights and economic rights violations and abuses.
- l) Make recommendations with regard to the creation of institutions conducive to a stable and fair society and the institutional, administrative and legislative measures that should be taken or introduced in order to prevent the violation of human rights.

- m) Consider the reports of the relevant Commissions of Inquiry and make recommendations on the implementation of such reports.
- n) Investigate economic crimes including grand corruption and the exploitation of natural or public resources and the action, if any, taken in respect thereof.
- o) Inquire into the irregular and illegal acquisition of public land and make recommendations on the repossession of such land or the determination of cases related thereto.
- p) Inquire into and establish the reality or otherwise of perceived economic marginalisation of communities and make recommendations on how to address the marginalisation.
- q) Inquire into the misuse of public institutions for political objectives.
- r) Inquire into acts of State repression including torture, cruelty and degrading treatment for political objectives.
- s) Inquire into the causes of ethnic tensions and make recommendations on the promotion of healing, reconciliation and co-existence among ethnic communities; and
- t) Investigate into the whereabouts of victims and restore the human and civil dignity of such victims by granting them the opportunity to relate their own accounts of the violations of which they are victims, and recommend reparation measures in respect of victims.

### **Values**

- Integrity;
- Team work;
- Transparency and Accountability;
- Competence and Professionalism;

## **SECTION 2**

### **2.0 DEFINITION OF EMPLOYEE STATUS**

#### **2.1 “EMPLOYEE” DEFINED**

An “employee” of the Commission is a person who regularly works for the Commission on a wage or salary basis and has a letter of appointment from the Commission designating him/her as an employee. The term employee for purposes of this Manual does not include part time or temporary employees.

#### **2.2. RECRUITMENT**

Recruitment to the Commission must:-

- a) be through a competitive process

- b) reflect diversity and be representative of all communities in Kenya
- c) reflect an open-door policy in terms of employment save where special skills are needed
- d) be sensitive to gender balance and equity

### **2.2.1 Established Positions**

The following procedure shall apply in filling the positions:-

- 2.2.1.1 The Secretary shall place an approved advertisement for the position in any one of the local newspapers of national circulation. The applicants shall be given at least two weeks from the date of the advertisement to respond to the advertisement.
- 2.2.1.2 At the expiry of the response period, Secretary shall summarize the curriculum vitae of the applicants.
- 2.2.1.3 The Secretary or any other Officer authorized by him shall shortlist qualified candidates.
- 2.2.1.4 All shortlisted candidates will be invited for an interview in which technical competencies as well as other competencies shall be assessed.

### **2.2.2 Temporary Positions**

For temporary positions that last at least 3 months the following procedure shall apply:-

- 2.2.2.1 The Secretary or any officer authorized by the Commission shall place an approved advertisement for the position in any one of the local newspapers of national circulation. The applicants shall be given at least two weeks from the date of the advertisement to respond to the advertisement.
- 2.2.2.2 At the expiry of the response period, the Secretary shall summarize the curriculum vitae of the applicants.
- 2.2.2.3 The Secretary or any other Officer authorized by him shall shortlist qualified candidates.
- 2.2.2.4 The Commission will interview and recruit qualified candidates from the shortlist.

## **2.3 RESPONSIBILITIES OF EMPLOYEES**

In accepting appointment by the Commission, with its terms and conditions, employees attest their intention to abide by the Commission's policies and procedures and accept the responsibilities set forth in this manual and in their respective letters of employment.

## **2.4 INFORMATION TO BE SUPPLIED BY EMPLOYEES**

On appointment, staff members shall be responsible for supplying documents and data required for records of their personal information for administrative purpose. Such

documents include copies of identity cards, NSSF card, NHIF card, PIN card and Bank details and any other documents and data that may be demanded. Staff members shall be responsible for promptly notifying the Secretary in writing of any subsequent changes in the information previously supplied.

## SECTION 3

### 3.0 EMPLOYMENT POLICIES

#### 3.1 EMPLOYMENT AT WILL

Employment with the Commission is at will and can be terminated by either the employee or employer at any time subject to either party giving requisite notice or payments in lieu of notice.

#### 3.2 NON-DISCRIMINATION

TJRC is an equal opportunity employer and does not discriminate directly or indirectly on the grounds of race, colour, religion, sex, age, disability language, political opinion, nationality, pregnancy, marital status, ethnic or social origin, or HIV status. The Commission will make reasonable accommodations for qualified individuals with known disabilities.

The Commission does not discriminate in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of employment with the Commission.

It is not discrimination to:-

- Take affirmative action measures consistent with the promotion of equality or the elimination of discrimination in the workplace;
- Distinguish, exclude or prefer any person on the basis of an inherent requirement of a job;
- Employ a citizen in accordance with the National Employment Policy; or
- Restrict access to limited categories of employment where it is necessary in the interest of State security.

#### 3.3 NON-DISCLOSURE/CONFIDENTIALITY

The protection of confidential information is of **utmost importance** to the interests of the Commission. Employees **will not**:-

- Disclose to unauthorized persons any matter relating to official business of the Commission.
- Use information acquired by virtue of their employment with the Commission for private gain.

Such confidential information includes, but is not limited to;

- Witness statements,
- Statements by victims,
- Statements by perpetrators,
- Internal communications,
- Personnel/payroll records.

All employees are required to sign a **non-disclosure/confidentiality agreement** as a condition of employment. Employees who improperly use or disclose confidential

information will be subject to disciplinary action, including termination of employment and/or legal action.

### **3.4 EMPLOYEE ORIENTATION**

All employees of the Commission will be taken through an orientation exercise. Orientation is a formal welcoming process that is designed to acquaint the employee with the Commission and its related organs, make the said employee feel comfortable, informed about the Commission, and prepared for his/her position.

### **3.5 OFFICE HOURS**

Office hours are from 8.00 a.m. to 5.00 p.m. Monday through Friday except for holidays (See Section 6.7, Holidays). The standard workweek is 40 hours of work (see Section 5.3, Overtime).

#### **a. Lunch Periods**

Employees are allowed a one-hour lunch break. Lunch breaks are generally taken between the hours of 1.00 p.m. and 2:00 p.m. these times may however vary depending on the nature of the job.

#### **b. Brief Time Off**

If employees have unexpected personal business to take care of, they must notify their immediate supervisors and discuss time away from work and make alternative provisions as necessary. If the business requires that the employee is away for one day or more then an "Emergency Leave" form must be filled and duly signed by the supervisor. Personal business should be conducted on the employee's personal time.

### **3.6 PERSONAL FILES**

A Personal File is maintained for every employee. Employee file may contain documents with information regarding but not limited to the following:

- Employment application submitted at the time of application inclusive of copies of academic certificates;
- Letter of offer of employment;
- Updated C.V;
- Acknowledgment of receipt of staff manual;
- Confidentiality Agreement;
- Correspondence related to employment;
- Disciplinary documentation, if any;
- Completed performance appraisal(s);
- Leave and sick leave status reports;
- Loan agreements, if any;
- Notes from your exit interview, if any, at the conclusion of your employment with the Commission.

### **3.7 PERSONAL DATA CHANGES**

It is the responsibility of each employee to promptly notify their supervisor and the Secretary of any changes in their personal data such as:

- Mailing address;
- Telephone numbers;
- Email addresses;
- Banking details;
- Names and number of dependants; and
- Individuals to be contacted in the event of an emergency.

An employee's personnel data should be accurate and current at all times.

### **3.8 EMPLOYEE PERFORMANCE REVIEW AND PLANNING SESSIONS**

Supervisors will conduct annual performance reviews and planning sessions with all employees. Supervisors are encouraged to conduct informal performance reviews and planning sessions more often in order to get feedback on progress, guide employees and demystify the review process.

#### **3.8.1 Performance Evaluations**

Performance reviews and planning sessions are designed for the supervisor and the employee to discuss the employee's current job tasks. The supervisor should encourage and recognize positive attributes. The employee and the immediate supervisor will complete written evaluations.

### **3.9 EXTERNAL CONSULTANCY/EMPLOYMENT**

Since the Commission's effort is to maintain focus and high performance, employees may not engage in any outside occupation, politics or employment without the prior written approval of the Commission through its Secretary. This includes services rendered as a consultant, agent, officer, director or trustee for an outside agency, institution or government. It does not, however, extend to posts in religious or social organisations such as churches or assignments connected to the Commission's research activities.

Employees shall not engage in activities that directly compete with the Commission's beliefs and practices at any level of its operations. Should an employee engage in or have interests in an organization whose activities compete directly with those of the Commission, that employee shall be duly informed and be requested to relinquish the position that is held with the organization or relinquish their position with the Commission.

#### **3.10 INTERNAL CONSULTANCIES/PART-TIME WORK**

Due to expertise of an employee, the Commission may from time to time request an employee to assist in internal consultancies or part-time activities which are not part of the employee's substantive duties. In such cases the employee will be paid an amount equivalent to half what external consultants or part-time employees receive for the same assignment. If such consultancies take place after 5.00 p.m. or on non-working days

then employees will be paid at the same rate as external consultants or part-time employees.

### **3.11 DISCIPLINARY PROCESS**

The Commission holds each employee to certain work rules, ethics, and standards of conduct (see Section 4). When an employee deviates from these rules, ethics, and standards, the Commission expects the employee's supervisor to take corrective action. The usual sequence of corrective actions includes:

#### ***Verbal / Oral Warning***

Generally, an employee will receive a verbal warning from his/her supervisor for unacceptable performance or behaviour.

#### ***Written Warning***

If unacceptable performance or conduct continues, the next step may be a written warning. The employee will be given the opportunity to review the written warning and discuss its content with his/her supervisor. A copy of the written warning will be placed in the employee's personal file.

#### ***Final Written Warning***

If performance does not improve thereafter, a final written warning may be issued by the supervisor or the Secretary to the Commission. A final written warning is a serious action in which the employee is informed that termination will occur if improvement in performance or conduct is not achieved immediately.

#### ***Suspension with Half Pay***

An employee may be suspended with half pay for a serious infraction. A serious infraction would include any of the matters listed under 3.12.2 but which are deemed to be of lesser gravity. See 4.0

#### ***Termination / Discharge***

Termination will occur when an employee has been given the opportunity to meet performance and behaviour demands, and in the Secretary's assessment, has failed to do so.

### **3.12 EMPLOYMENT TERMINATION**

Termination of employment is an inevitable part of the employment cycle in any organization and many of the reasons for termination are routine. Below are a few examples:

- Resignation – voluntary employment termination initiated by an employee.
- Termination – involuntary employment termination initiated by the Commission.
- Health reasons
- Death

### **3.12.1 Resignation or Voluntary Termination of Employment**

Employment may be terminated by either the employee or the Commission giving the other party one month's notice.

Upon resignation or termination, the employee will clear with the Commission after which the Secretary will provide a Certificate of Service. The Certificate of Service states the employee's job title, length of service and general job responsibilities.

In line with the Employments Act, 2007 the Commission is not bound to give an employee a testimonial, reference or certificate relating to the character or performance of that employee.

Employee's benefits will be affected by employment termination in the following manner:

#### **3.12.1.1 Terminal Benefits**

For termination, resignation, disablement or death, the following payments will be due to or from the employee (or estate), if applicable;

- a) In regards to Resignation, the employee will pay the Commission an amount equivalent to the outstanding notice period;
- b) In regard to termination, the Commission will pay the employee an amount equivalent to the outstanding notice period;
- c) The Commission will pay salary through the last day of employment;
- d) Employee will pay liabilities, taxes or excess salary;
- e) The employee must deliver to the Commission, when collecting final payment, all documents attesting to the employee's association with the Commission inclusive of Staff Identification Card, and any Commission's equipment in the employee's possession. Failure to surrender these documents or items will result in non-payment until such time as documents or items are surrendered.

After handing over these documents and items, the Secretary will prepare a Certificate of Service that states the employee's job title, length of service and general job responsibilities.

In the event of death of an employee, the final payment will be paid to the recognized next of kin or heir or beneficiary of the employee's estate. Sufficient documentation must be presented in order for the final payment to be provided to the next of kin or heir or beneficiary. In the event that none of the recognized next of kin or heir or beneficiary is available the Commission will surrender the employee's terminal dues to the office of the Public Trustee within a few months of the death of the employee.

#### **3.12.2 Summary Dismissal**

Any of the following matters may amount to gross misconduct and may justify the summary dismissal of an employee. But the enumeration of such matters shall not preclude the Commission or an employee from respectively alleging or disputing whether the facts giving rise to the same constitute justifiable or lawful grounds for the summary dismissal:

- a. If, without leave or other lawful cause, an employee absents him/herself from the place proper and appointed for the performance of his/her work;

- b. If, during office hours, by becoming intoxicated, an employee renders himself/herself unwilling or incapable of properly performing his/her work;
- c. If the employee wilfully neglects to perform any work which it is his/her duty to have performed, or if he carelessly and improperly performs any work which from its nature it was his/her duty, under his/her contract to have performed carefully and properly;
- d. If an employee uses abusive or insulting language, or behaves in a manner insulting, to his employer or to a person placed in authority over him/her by the Commission;
- e. If an employee knowingly fails, or refuses to obey a lawful and proper command which it was within the scope of his/her duty to obey, issued by the Commission or a person placed in authority over him/her by the Commission;
- f. If, in the lawful exercise of any power of arrest given by or under any written law, an employee is arrested for a cognizable offence punishable by imprisonment and is not within ten days either released on bail or on bond or otherwise lawfully set at liberty;
- g. If an employee commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the substantial detriment of the Commission or the Commission's property;
- h. If the employee intentionally violates policy, procedure, rules, regulations of the Commission or engages in misconduct that is extremely serious in nature.

In instances of dismissal, a letter to the employee from the Secretary providing the reasons for dismissal and the date of dismissal will be given. For dismissal with cause from the Commission, the following payments will be due to or from the employee, whichever is applicable:

- a) Payment of salary through the last day of employment (date of dismissal);
- b) Deductions of advances, sales, liabilities or excess salary payments;
- c) The employee must deliver to the Commission, when collecting final payment, all documents attesting to the employee's association with the Commission and any Commission equipment, passwords etc in the employee's possession while at the Commission's office.

### **3.12.3 Termination**

Termination will normally result from either wrongful acts or omissions by the employee that are less serious compared to those that would result in summary dismissal. But acts or omissions that result into termination are considered serious enough not to warrant further warnings. Terminations may also result from a bi-annual Performance Appraisal in which "Poor" is reported as the final overall rating.

## **3.13 HEALTH AND SAFETY**

### **Obligations of the Commission**

The Commission will provide information to employees about workplace health and safety in a comprehensive Health and Safety Manual. Some of the health and safety issues are also disseminated through regular internal communication such as:

- Training sessions
- Counselling sessions
- Committee meetings
- Memorandums
- Other written communications
- Emails

Each employee is expected to obey safety rules and exercise caution and common sense in all work activities. Employees must immediately report any unsafe conditions to their supervisor. Employees who violate safety standards, cause hazardous or dangerous situations, or fail to report, or where appropriate, remedy such situations, may be subject to disciplinary action. In the case of an accident that results in injury, regardless of how insignificant the injury may appear, employees should notify their supervisor (See Section 3.15, Employee Requiring Medical Attention).

In line with Work Injury Benefit Act, 2007 the Commission shall obtain and maintain an insurance policy, with a competent insurer in respect to any liability that the Commission may incur under the Work Injury Benefits Act, (WIBA) 2007 to any of its employees.

An employee who is involved in an accident which results in disablement or death while on duty is entitled to compensation as outlined in the Work Injury Benefits Act, 2007. However, if such accident occurs due to the employee's negligence, deliberate or wilful misconduct compensation will not be considered.

### **3.14 HEALTH-RELATED ISSUES**

Employees who become aware of any health-related issue should notify their supervisor and the Secretary of their health status. A written note from a doctor is required at the time or shortly after notice has been given.

Sick leave may be granted on a case-by-case basis. If the need arises for sick leave, employees should notify their supervisor and the Secretary.

#### **3.14.1 Occupational Diseases**

In line with the Work Injury Benefits Act, 2007

An employee will be subject to compensation as guided by WIBA 2007 if he contracts a disease or any other disease that arises out of and in the course of his/her employment with the Commission. Disablement due to the disease is also considered for compensation. Commencement of an Occupational Disease is considered to have taken place on the date which a medical practitioner diagnoses the disease for the first time or an earlier date that the medical practitioner may determine.

#### **3.14.2 HIV/AIDS Policy in the workplace**

The Commission adopts a non-discriminatory and humanitarian approach in handling and managing HIV/AIDS in the workplace. Specifically, the Commission will:

- Foster a spirit of understanding and compassion for HIV-infected and affected staff and ensure that they face no stigma or discrimination as a result of their status or state, and assure them equal opportunities and treatment at the work place in the execution of their duties.
- Raise awareness on HIV/AIDS and encourage its prevention among staff by providing adequate educational and informational materials and promoting the availability of confidential counselling and other support services to staff and their families.
- Not require pre-employment HIV/AIDS testing as a condition for employment. HIV/AIDS screening for purposes of insurance coverage will be done only when required by insurers, and only with the consent of the employee. However, it is in the interest of staff to test themselves because knowledge of one's status will assure that the best possible options are provided for the affected individuals: All medical information, including an individual's HIV status, will be treated with utmost confidentiality. Employees shall not be obligated in any way to inform the Commission of their HIV status. Should the Commission obtain the results of any such testing, those results will not be used by the Commission in any way that will infringe on the rights and privileges of the individual concerned.
- Encourage and support staff that opts for voluntary counselling and testing (VCT) by availing time off for such. The Commission will not require the staff to declare the outcomes from these tests.
- Treat HIV/AIDS like any other serious illness such as cancer or malaria. Normal medical benefits and related limitations will apply. Normal sick leave policy will also apply. In the event that an individual's medical condition — as judged by a qualified, registered medical practitioner — deteriorates to the point of preventing the performance of the duties for which the staff member was employed, the provisions of the Commission's policy on termination for disability or on medical grounds will apply.

### **3.14.3 Work Place Safety & Health**

In line with Occupational Safety & Health Act, 2007 the Commission shall not dismiss, disadvantage or discriminate an employee in respect to employment with the Commission or alter the employees position to a lower grade by reason that the

- Employee raises a complaint about a matter the employee considers not to be safe or is a health risk
- Employee is a member of a safety and health committee
- Employee exercises any of his functions as a member of the Safety and Health Committee

### **3.14.4 Obligations of the Employee on Safety and Health**

Every employee will be expected to exercise necessary safety at the work place by:

- Ensuring his own safety and health and that of other persons who may be affected by his acts or omissions at the workplace;
- Co-operating with the Commission or any other person in the discharge of any duty or requirement imposed by the Commission;
- At all times wearing or using any protective equipment or clothing provided by the Commission for the purpose of preventing risks to his safety and health;
- Complying with the safety and health procedures, requirements, and instructions given by a person having authority over him /her for his/her own or any other person's safety;

- Reporting to the supervisor, any situation which he has reason to believe would present a hazard and which he cannot correct;
- Reporting to his supervisor any accident or injury that arises in the course of or in connection with his work;
- Under any relevant statutory provision, co-operating with the Commission's Secretary or other person to enable any duty or requirement imposed on the Commission to be performed or complied with.

An employee who wilfully interferes with or misuses any means, appliance, convenience or other thing provided by the Commission or done in the interests of safety, health and welfare commits an offence and shall be liable to disciplinary action taken by the Commission.

### **3.15 EMPLOYEE REQUIRING MEDICAL ATTENTION**

In the event that an employee requires medical attention, whether because of injury or illness while at work, the employee will be given permission to see a doctor and a family member will be informed. If an emergency arises requiring immediate medical expertise to evaluate the injury/illness of an employee on-site, the Commission will be responsible for transportation charges.

### **3.16 BUILDING SECURITY**

All employees who are issued keys to the offices are responsible for their safekeeping. The last employee, or a designated employee, who leaves the office at the end of the business day assumes the responsibility to ensure that all doors are securely locked, the alarm system when operational is armed, and all appliances and lights are turned off with exception of the lights normally left on for security purposes.

### **3.17 PERSONAL EFFECTS**

All employees are solely responsible for their own personal effects that may occasionally be brought to the office. The Commission assumes no risk for any loss or damage to personal property.

### **3.18 SUPPLIES, EXPENDITURES, OBLIGATING THE COMMISSION**

Only authorized persons may purchase supplies in the name of the Commission. No employee whose regular duties do not include purchasing shall incur any expense on behalf of the Commission or bind the Commission by any promise or representation without written approval of the Secretary.

### **3.19 EXPENSE REIMBURSEMENT**

Reimbursement may be made in cash or by cheque depending on the amount as may be agreed on from time to time.

### **3.20 PARKING**

Employees must park their cars in areas indicated and provided by the Commission where possible. Where such parking facilities are used it is done at owners risk and the Commission will not be liable for any loss or damage that may happen while the vehicle is parked.

### **3.21 VISITORS IN THE WORKPLACE**

To provide for the safety and security of employees, visitors, and facilities at the Commission's offices, only authorized visitors are allowed in the workplace. All visitors must enter through the main reception area, sign-in, and sign-out at the front desk/or the gate and receive a 'Visitor' badge to wear while in premises. It is courteous to show the visitor out as far as the reception at the end of the visit.

## SECTION 4

### 4.0 STANDARDS OF CONDUCT

The work rules and standards of conduct for the Commission are important and the Commission regards them seriously. All employees are urged to become familiar with these actions or omissions which may constitute infractions. The following list is **not** exhaustive but includes examples of infraction:

- Theft or inappropriate removal or possession of Commission's property;
- Falsification of timekeeping records;
- Working under the influence of alcohol or illegal drugs (See Section 4.5, Substance Abuse);
- Possession, distribution, sale, transfer, or use of alcohol or illegal drugs in the workplace (See Section 4.5, Substance Abuse);
- Fighting or threatening violence in the workplace;
- Boisterous or disruptive activity in the workplace;
- Negligence or improper conduct leading to damage of Commission's, other employees' or client's properties;
- Insubordination or other disrespectful conduct;
- Violation of safety or health rules;
- Smoking in the workplace;
- Sexual or other unlawful or unwelcome harassment (See Section 4.2, Harassment, Including Sexual Harassment);
- Excessive absenteeism or any absence without notice (See also, Section 4.1 Absence without Notice);
- Unauthorized use of Commission equipment (See Section 4.3, Telephone Use);
- Using Commission equipment for purposes other than Commission business (i.e. playing games on computers, surfing offensive or social networking sites on the Internet, sending offensive messages to colleagues via email etc);
- Unauthorized disclosure of business "secrets" or confidential information;
- Violation of personnel policies; and
- Unsatisfactory performance or conduct.

### 4.1 ABSENCE WITHOUT NOTICE

When employees are unable to work owing to illness or accident, they should notify their supervisors. This will allow the Commission to arrange for temporary coverage of duties if need be. If the employee does not report to work and the Commission is not notified of their whereabouts, it will be assumed after two consecutive days of absence that the employee has resigned. If an employee becomes ill while at work or must leave the office for some other reason before the end of the workday, the supervisor must be informed of the situation and the Administrative Assistant attached to the section notified for information.

### 4.2 HARASSMENT, INCLUDING SEXUAL HARASSMENT

**General principle:** Human rights in the Commission are governed by the universal principles of human rights and a right to self dignity and, in particular, by the constitution, laws and regulations currently in force in Kenya.

**Policy:** It is the policy of the Commission to maintain a work environment that is efficient, effective, equitable, respects the dignity of the individual, and is free of all forms of discrimination, intimidation and harassment based on ethnic, social or political background, colour, size, nationality, religion, age, gender, disability, marital status, sexual preferences or any other trait protected by law.

This policy applies to all areas of employment including recruitment, training, promotion, compensation and benefits. Employees may not discriminate against or harass other employees, applicants, customers, vendors or visitors. This policy applies to all employees as well as persons who are not employees of the Commission but have business contact with the Commission employees.

The objective of the 'no-harassment' policy is to create a positive working environment that is free of hostile, offensive, intimidating or harassing conduct that unreasonably interferes with an employee's work on account of any type of harassment as described below. All complaints of harassment, intimidation or discrimination will be addressed immediately they are received.

#### **4.2.1 Harassment:**

- Is a form of discrimination that includes a wide range of conduct and causes another person to feel offended, humiliated, intimidated, insulted or ridiculed;
- Is behaviour that is unwelcome, unreciprocated, uninvited and usually, but not always, repeated;
- Is the exertion of power by one person over another;
- May be based on misunderstanding or may be a deliberate act, and often it contains a subjective perspective; or
- May cause damaging stereotypes to be maintained, and is a breach of proper standards of conduct and professional behaviour.

#### **4.2.2 Intimidatory harassment**

Involves the thoughtless or intentional use of physical or organizational power to coerce a person into performing a particular action or to instil in the person a feeling of humiliation or intimidation. Intimidatory harassment should not be confused with legitimate comment or advice (including relevant negative comment or feedback) from a supervisor or colleague on work performance or work-related behaviour delivered in a reasonable manner.

Within the policy statement of terms and conditions for employment of national, regional and international staff, discrimination in employment refers to the inequitable and inconsistent application of the terms and conditions of employment such as job application, etc within the respective staff groups. Harassment, intimidation and discrimination can arise from a broad range of physical or verbal behaviour, a one-time incident or a series of incidents that include, but are **not** limited to, the following:

- Physical or mental abuse;
- Racial insults;
- Ethnic comments;

- Religious comments;
- Gender-related comments and put downs;
- Unwelcome sexual advances or touching;
- Sexual comments or repeating sexual jokes;
- Requests for sexual favours used as a condition for employment or affecting any personnel decision such as hiring or compensation; or
- Display of sexually explicit or otherwise offensive posters, calendars or materials that are inappropriate for display in the workplace.

Such harassment or similar unacceptable behaviour that could become a condition for employment or a basis for personnel decisions, or that creates a hostile environment is specifically prohibited.

#### **4.2.3 Sexual harassment:**

Due to the seriousness with which the Commission treats this misconduct, this Manual provides a detailed discussion of its character and the procedure for dealing with it.

All employees must be allowed to work in an environment free of unsolicited and unwelcome sexual overtures. Sexual harassment does not refer to occasional compliments or other generally acceptable social behaviour. It refers to behaviour that is not welcome, is personally offensive, undermines or weakens morale, and that therefore unreasonably interferes with the work effectiveness of its victim and their co-workers. It also includes harassment of a person by another person of the same gender.

In line with (Employment Act, 2007: 6. (3) (a) and (b))

The School will ensure that;

- Every employee is entitled to employment that is free of sexual harassment;
- No employee is subjected to sexual harassment;
- It takes such disciplinary measures as deemed appropriate against any person who subjects any employee to sexual harassment;
- It explains how complaints of sexual harassment may be brought to the attention of the management;
- It does not disclose the name of a complainant or the circumstances related to the complaint to any person except where disclosure is necessary for the purpose of investigating the complaint or taking disciplinary measures in relation thereto.

Sexual harassment may include such conduct as:

- Offensive flirtation, suggestive remarks, sex-oriented verbal 'kidding', repeated jokes, innuendos, lewd comments, or abuse;
- Offensive, unwanted physical contact such as patting, pinching or repeated brushing against another's body, sexual assault or rape;
- Demands of sexual favours accompanied by implied or overt promises of preferential treatment in employment, such as offering employment benefits or favourable assignments, reviews, etc, in exchange of sexual favours;
- Denial or threats to deny employment benefits to someone who rejects sexual advances;
- Unwanted sexual advances, propositions, flirtation or repeated unwanted requests for or efforts to make social contact;

- Verbal conduct of a sexual or gender-based nature such as using sexually degrading, vulgar or discriminatory language to describe an individual, making sexually suggestive comments about an individual's body, discussing sexual activity, or making derogatory, sexual, gender-related or discriminatory comments, taunts, jokes or epithets;
- Non-verbal conduct of a sexual or gender-based nature such as whistling; unwelcome staring; leering; displaying sexually suggestive, gender-based or discrimination-based objects, pictures, posters or cartoons; sending sexual, derogatory, obscene or discriminatory letters, email messages, sms messages, voicemail messages, gifts, notes or invitations;
- Retaliation or threats of retaliation for protesting about sexual harassment or gender-based conduct or for making a complaint about such behaviour.

Where any of the above actions occur in conjunction with one or more of the following:

- Submission to such conduct is made an express or implied term or condition of employment, promotion or other favours.
- Submission to or rejection of such conduct is used as a basis of employment decisions; or
- Such conduct has the purpose or effect of unreasonably interfering with work performance or creating an intimidating, hostile or offensive working environment.

The target of this policy is prevention of unwelcome conduct. Employees should be aware of any conduct directed at them that they may construe as unwelcome. In some situations, a person may not realize that his or her behaviour is inappropriate or undesirable. Employees who consider any person's behaviour as inconsistent with these guidelines are encouraged to inform the perpetrator of the inappropriateness of the behaviour. This may be done verbally or in writing, but in either case, the complainant needs to be assertive, stating the behaviour that is considered unacceptable and requesting that it be stopped. Persons so told should comply immediately and graciously with such requests.

#### **4.2.4 Responsibility of employees and supervisors**

Every staff member is responsible for creating a work environment that is free of harassment, intimidation and discrimination.

#### **4.2.5 Responsibility of every employee**

Employees have the responsibility of taking assertive action if they feel they are being subjected to harassment, regardless of who the alleged offender is or the nature of the harassment by:-

- Making the offensiveness of the unwelcome conduct immediately known to the offender and by reporting it to the supervisor or any other party as per the reporting procedures;
- Adhering to policy guidelines;
- Maintaining a professional working relationship with all other employees and external clients;

- Treating other employees and external clients with respect and adopting non-judgmental values.

#### **4.2.6 Role of supervisors and managers**

Supervisors and managers have a key role in this effort by ensuring that any incident of unacceptable behaviour, including sexual harassment or intimidation, is promptly dealt with, and that corrective action is taken.

Managers and supervisors bear added responsibility in the process by;

- Setting a good example;
- Clearly communicating to all their staff the policy outlined here;
- Enhancing a positive working environment in which harassment does not occur;
- Ensuring prompt attention and complete adherence to policy.

#### **4.2.7 Reporting**

Any Commission employee or non-Commission employee working as part of a subcontracted service team who is the subject of, or who has knowledge of, or who witnesses any harassment or discrimination should immediately bring such information to the attention of any one or more of the following persons:

- His or her immediate supervisor (where the offender is the immediate supervisor, then the employee should report to the next higher level);
- Manager/ Unit Head; or
- The Secretary to the Commission; or
- Commissioner, or
- The Deputy Chairperson to the Commission, or
- The Chairman of the Commission,

The Commission will continue its practice of promptly investigating concerns regarding harassment and discrimination and, where appropriate, take prompt corrective action. The Secretary will handle reports of such alleged misconduct with sensitivity and with concern for confidentiality, reputation and privacy of employees as far as is practicable. Neither the employee against whom the complaint is made nor any other employee may at any time before, in the course of, or after the investigation take any kind of retaliatory action against an employee who has made or intends to make a good-faith complaint about harassment or discrimination prohibited by this policy.

#### **4.2.8 Documentation**

All complaints made will be fully documented, respecting privacy. The key information concerning the offensive acts to be included in the documentation includes:

- Description of the specific act;
- The time and date of the act;
- The circumstances surrounding the offensive act;
- The manner and location of the incident;
- Whether, and under what circumstances, the complainant made it clear to the alleged offender that the disputed behaviour was unwelcome;
- Witnesses to the offence or persons to whom the offence was mentioned; and

- Other information relevant to the case.

If the alleged offender is the immediate supervisor, the written complaint should be presented to the next higher level supervisor, with a copy to the Secretary.

#### **4.2.9 Investigation**

The Secretary or the person to whom the complaint is made, will bring the alleged offence to the attention of the Chairman, who will use his discretion to determine the next course of action depending on the gravity of the matter. If in the Chairman's opinion the matter requires further investigation prior to a decision being made, the following steps will be taken:

- An investigation panel of 5(five) will be appointed comprising at least two women and two men drawn from the Staff Housing and Welfare Committee or the pool of general staff of the Commission.
- One of the panel members will be designated as the panel chair;
- The panel will develop the terms of reference for the investigation and determine the reporting back time;
- The panel will advise the Chairman on the immediate action to be taken on the alleged offender pending the investigation; and
- The panel will advise the alleged offender that she or he is to have no contact whatsoever with the complainant, either directly or by proxy while the investigations continue or at any time before the conclusion of the complaint.

Once the panel is constituted, the Chairman will:

- Inform the complainant of the receipt of the complaint and of the activation of the investigation process;
- Forward a written version of the complaint to the alleged offender requesting him or her to provide a response within seven days of the Chairman's communication;
- Instruct the investigation panel to schedule a meeting to discuss the complaint, the logistics of the investigation process, the people involved, the timing of the investigation, and the reporting.

The panel will conduct an investigation on a strictly confidential basis.

#### **4.2.10 Hearing of the parties**

The panel will:

- Schedule meetings and consider all available information from the written complaint, the response from the alleged offender and statements from various witnesses or other relevant sources;
- Assess the reliability of the information, the evidence provided and the existence of any previous complaints against the same offender that may indicate a pattern;
- Hold interviews with the complainant, the alleged offender and other witnesses;
- Decide if there is a case and recommend appropriate action in writing to the Chairman; and
- Submit its recommendations no later than six weeks after presentation of the complaint.

#### **4.2.11 Conclusion**

The Chairman will review all the written information and evidence provided and may take any of the following actions:

- Close the case, if the facts as established by the investigation panel do not support misconduct. In this event, the complainant and the alleged offender will be informed of the decision and will receive a copy of the findings of the panel within 15 working days from the date of receipt thereof by the Chairman;
- Transmit appropriate details from the panel's report. In this event the alleged offender will be given five working days to submit his or her comments; and
- Submit the report of the investigation and comments of the alleged offender, together with the panel's recommendations to the Secretary, or any other authorized person to administer disciplinary action.

#### **4.2.12 Disciplinary measures**

Any of the following measures may be taken, depending on the severity of the offence:

- The offender may be required to provide a private apology or a written public apology;
- The offender may receive a verbal warning and professional counselling;
- The Chairman may give a written warning to the offender with a copy for his or her personal file;
- The offender's contract may be terminated; or
- The offender may be dismissed summarily.

#### **4.2.13 Follow-up action**

- Counselling will be available to the complainant if requested
- Any staff member who believes that he or she was unjustly treated by the investigation may follow the grievance resolution procedure to seek resolution of his or her concern
- The Secretary will carry out a follow-up enquiry with the complainant six months after the case is decided, regardless of the outcome. The enquiry should ascertain whether the complainant has been subjected to retaliation by the alleged offender or any other staff member in the workplace, then take appropriate action.

### **4.3 TELEPHONE USE**

The Commission's telephones are intended for use in conducting the Commission's business. Personal usage during business hours is discouraged except for extreme emergencies. All personal telephone calls should be kept brief to avoid congestion on the telephone line.

### **4.4 PUBLIC IMAGE**

A professional appearance is important anytime that you come in contact with clients (consultants, informers, victims, etc). Employees should be well groomed and dressed appropriately for the Commission's business and for their positions. Appropriate guideline is provided for "casual days." Consult your supervisor if you have any questions about appropriate attire.

#### 4.5 SUBSTANCE ABUSE

The Commission is committed to providing a safe and productive workplace for its employees. In keeping with this commitment, the following rules regarding alcohol and drugs of dependence have been established for all staff members.

- The manufacture, distribution, possession, sale, or purchase of controlled substances of abuse on the Commission's property or in the course of duty is prohibited;
- Being under the influence of illegal drugs, alcohol, or substances of abuse on the Commission's property or in the course of duty is prohibited;
- Working while under the influence of prescription drugs that impair performance is prohibited;
- So that there is no question about what these rules signify, please note the following definitions:

**Commission's property:** Property owned or leased by the Commission for use by employees.

**Drug:** Any chemical substance that produces physical, mental, emotional, or behavioural change in the user.

**Drug paraphernalia:** Equipment, a product, or material that is used or intended for use in concealing an illegal drug, or otherwise introducing into the human body an illegal drug or controlled substance.

**Under the influence:** A state of not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of an alcoholic beverage, drug, or substance of abuse.

Consistent with the rules listed above, any of the following actions constitutes a violation of the Commission's policy on drugs and may subject an employee to disciplinary action.

Using, selling, purchasing, transferring, manufacturing, or storing an illegal drug or drug paraphernalia, or attempting to or assisting another to do so, while in the course of employment.

Working or reporting to work, conducting Commission's business or being on Commission's property while under the influence of an illegal drug or alcohol, or in an impaired condition.

#### 4.6 TOBACCO PRODUCTS

The use of tobacco products is not permitted anywhere on the Commission's premises except in authorized and designated locations. Employees must follow all rules posted in designated smoking areas and adhere to all policies associated with this policy (See Sections 3.5, office hours and 3.13, Health and Safety).

#### 4.7 INTERNET USE

Commission employees are allowed use of the Internet and e-mail when necessary to serve our customers and conduct the Commission's business. Employees may use the Internet when appropriate to access information needed to conduct business of the Commission. Employees may use e-mail when appropriate for the Commission's business correspondence. Use of the Internet must not disrupt operations of the

Commission's computer network and must not interfere with an employee's productivity. Employees are responsible for using the Internet in a manner that is ethical and lawful. Internet messages are public and not private. The Commission reserves the right to access and monitor all files and messages on its systems. (See a separate Computer Use Policy)

### **Political Activity**

All employees are subject to the provisions of the Public Officers Ethics Act, and are by reason thereof required not to engage in any political activity.

## SECTION 5

### 5.0 COMPENSATION POLICIES AND PRACTICES

#### 5.1 DESCRIPTION OF SALARIES

The Commission aims at paying all its employees competitively. All salaries are stated and paid in Kenya Shillings. The Commission may carry out periodic cost of living assessments to cater for drastic changes.

#### 5.2 WAGE AND SALARY ADMINISTRATION

(Employment Act, 2007; 17. (1))

Subject to the Employment Act, the Commission shall pay the entire amount of the wages earned by or payable to an employee in respect of work done by the employee in pursuance of a contract of service directly in the currency of Kenya;

- In cash;
- Into an account at a bank, or building society, designated by the employee;
- By cheque, postal order or money order in favour of the employee; or
- In the absence of an employee, any other person duly authorised by the employee in writing to receive the wages on behalf of the employee.

(Employment Act, 2007; 20. (1), (2))

The Commission will ensure that each employee receives an itemised pay statement on or before the time at which any payment of wages or salary is made to its employee. The pay statement shall contain particulars of:

- The gross amount of the wages or salary of the employee;
- The amounts of any variable and subject to any statutory deductions from that gross amount and the purposes for which they are made;
- Where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment.

This section shall not apply to a casual employee or an employee engaged on piece rate or task rate terms or for any period not exceeding six months

#### 5.3 SALARY ADVANCES

(Employment Act, 2007; 17. (9))

The Commission may advance to an employee a sum equivalent to one month's basic pay or in exceptional cases, a sum equivalent to two months' basic pay. For an employee to get a salary advance the following conditions must be fulfilled:-

- There must be an emergency or a situation that could not be reasonably fore planned;
- The repayment period must be within 12 months for permanent employees or the period of contract for temporary employees.

## **5.4. ALLOWANCES**

There are situations where the Commission will compensate staff for extra duties or circumstances that warrant such compensations. Allowances may be payable to members of staff as appropriate and at such rates as are determined by the Commission from time to time. The following allowances may be paid as shown hereunder:

### **5.4.1 Acting/Special Duty Allowance**

Acting Allowance will be paid at the rate of 15% of the employees basic pay if the employee acts in a job grade that is above his or her own. This allowance will be paid if the said employee meets the basic requirements for the higher job grade.

Special Duty Allowances will be paid at the rate of 10% of employee's basic pay if the employee acts in a job grade higher than his or her own and the said employee does not meet the basic requirements for the higher job.

Provided that the appointments to act and in respect of acting special duty allowance is given in writing by the Chairman and lasts for a period of at least 30 days and approved by the Staff Affairs Committee.

### **5.4.2 Responsibility Allowance**

Responsibility Allowance may be paid at the rate of 10% of Basic Salary if the employee has an additional responsibility over and above the normal responsibilities associated with the employee's substantive job. This allowance shall be paid upon authorization of the Chairman.

### **5.4.3 Subsistence Allowance (Per Diem)**

Daily Subsistence Allowance will be paid to members of staff who travel on Commission business within Kenya. The subsistence allowance is used for hotel accommodation, meals and contingencies where such expenses are not paid directly by the Commission.

### **5.4.4 Mileage Allowance**

Mileage Allowance shall be paid for travel undertaken within Kenya on Commission business and with approval of the Chairman. Mileage Allowances shall be paid at Automobile Association of Kenya (AAK) Rates as fixed from time to time. This should be in respect of officers using their own or spouse's vehicle only.

Provided that for travel to points served by regular air route the reimbursement shall be limited to the equivalent of the economy return air fare or mileage allowance whichever is cheaper.

### **5.4.5 Daily Subsistence Allowance outside Kenya**

Travel and Subsistence Allowance outside the country shall be payable at GOK Rates as per the Office of the President Circular on subsistence allowance as reviewed from time to time. Justification should be availed where there is need to enhance the per diem beyond the authorised rate.

#### **5.4.6 Quarter Per Diem**

Where an officer travels outside the Country on official duty and the trip is fully sponsored by sources other than the Commission, the officer shall be paid a Quarter Per Diem of the Subsistence Allowance applicable in the foreign Country.

#### **5.4.7 Relocation Allowance**

On the first appointment an employee may be reimbursed his or her relocation expenses at the discretion of the Chairman provided that;

- (a) The employee's previous job station was outside Nairobi.
- (b) The employee produces valid receipts in support of his/her claim

#### **5.4.8 Meal Allowance**

Full time positions at the Commission are considered to be salaried, rather than paid on an hourly or daily basis. From time to time, employees' may be expected to work longer than a 40 hour week, either after working hours during the week or on weekends. In such cases a Meal Allowance equivalent to quarter Per Diem entitlement may be paid subject to approval by the Chairman (or in his absence an officer dully authorised by him to act on his behalf) and subject to a maximum of 7 days in any month.

### **5.5 PAYDAYS**

All employees will be paid once per month on or around the 26<sup>th</sup> of every month. At the discretion of the Chairman, pay day may be adjusted by one or two days to accommodate anticipated crowding at local banks or holidays. In the event that a regularly scheduled payday falls on a weekend or holiday, employees will receive pay on the preceding working day. All salaries are paid directly on staff accounts in their respective banks.

### **5.6 PAYROLL DEDUCTIONS**

All employees are obligated to pay taxes and other statutory levies established by the Government and to contribute to a pension fund approved by the Commission in accordance with the Laws of Kenya. The Commission will deduct taxes and contributions monthly and remit them to the appropriate departments, along with the Commission's contribution to the pension fund on behalf of all permanent employees. The Commission will deduct 5% of the basic salary from all full time employees entitled to membership of the pension fund. The Commission will add its contribution of 15% of the employee's basic salary and the total 20% will be paid to the fund every month.

It is the duty of the employee to know the entitlements and benefits of the fund. If the employee leaves employment of the Commission, the pension benefits contributed by the Commission will carry over to the employee's next employer or to the employees appointed annuity fund or if the employee attains the minimum retirement age of 50. 100% of employer's contribution shall revert to the employee after a vesting period of 1 year of employment. Employees who leave before the end of one year with receive 10% of employer's contribution.

In line with the Employment Act, 2007; 19. (1)  
The Commission will deduct from the wages of its employees:

- A reasonable amount for any damage done to, or loss of, any Commission property occasioned by the wilful default of the employee;
- An amount not exceeding one day's salary in respect of each working day which the employee, without leave or other lawful cause, absents himself from work of the employer or other place proper and appointed for the performance of his work;
- An amount equal to the amount of any shortage of money arising through the negligence or dishonesty of the employee.
- Any amount paid to the employee in error as wages in excess of the amount of wages due to him;
- Any amount the deduction of which is authorised by any written law for the time being in force, collective agreement, wage determination, court order or arbitration award;
- Any amount in which the Commission has no direct or indirect beneficial interest, and which the employee has requested the employer in writing to deduct from his wages;
- An amount due and payable by the employee by way of repayment or part repayment of a loan of money made to him by the Commission.
- Any other deductions that may be lawfully stipulated by legislation.

Provided that the total amount deducted from an employee's pay shall not be more than two thirds (2/3) of the sum of his/her basic pay and house allowance.

## **SECTION 6**

### **6.0 BENEFITS AND SERVICES**

The Commission offers a benefits program for its regular full-time employees.

#### **6.1 HEALTH INSURANCE**

##### ***Eligibility Criteria***

The Commission provides contributory health insurance coverage to employees and their dependants.

Each employee is entitled to a maximum number of dependants that will be determined from time to time depending on the annual budgetary provision. For the purpose of this cover the Commission may divide employees into two or more categories with different covers depending on employee basic salary bracket.

#### **6.2 BEREAVEMENT**

Employees of the Commission may join any Society or SACCO identified by the Commission for the purpose of running a bereavement scheme. Such Societies run contributory benevolent funds that help in the event of the death of the member or spouse or child of the member.

The employee may also request a 'Compassionate Advance' (See 5.3 Salary Advance) to be repaid over the following 12 months in the event of the death of a member of the nuclear family or parent or sibling.

### **6.3 HOLIDAY / LEAVE POLICY**

#### **6.3.1 General Leave Rules**

Since the life of the Commission is only 3 years, in the interest of expediting the Commission's tasks and responsibilities, the provisions for annual leave will be dispensed with during the life of the Commission. This will, however, not affect the employees' entitlements to leave in various other circumstances.

#### **6.3.2 Public Holiday Schedule**

Annual holidays will be guided by the schedule as stipulated by the Secretary who will cause a list of official public holidays to be publicized to all staff at the beginning of the year. This list may be modified by the Chairman. The Commission's activities may be suspended for a few days around Christmas and New Year festive seasons. The Commission will observe the following paid holidays and any other day that may by law be declared a public holiday by the Government of Kenya.

New Year's Day	January 1
Idd Ul Fitri	Ungazetted
Good Friday	
Easter Monday	
Labour Day	May 1
Madaraka Day	June 1
Moi Day	October 10
Kenyatta Day	October 20
Jamuhuri Day	December 12
Christmas Day	December 25
Boxing Day	December 26

#### **6.3.3 Sick Leave**

Employees are eligible for 30 days sick leave per year. Time spent on seeing a doctor or other medical appointments that cannot be scheduled during non-work hours shall be charged to sick leave. An employee who has been absent from work for more than five consecutive days on account of sickness shall submit a record of sickness from a doctor. The maximum sick leave period authorized by a doctor from a recognized health facility, is three (3) months with full pay. During these three months, the employee can return to his/her position any time.

However, if the medical leave exceeds three months, the employee may be allowed another three (3) months sick leave on half-pay after which period the employer may terminate the services on the employee on medical grounds.

#### **6.3.4 Maternity Leave**

In line with the Employment Act, 2007; 29. (1), (2), (3)

All female employees will be entitled to 90 calendar days maternity leave with full pay.

A female employee shall apply for maternity leave not less than seven days from the expected date of confinement (delivery). A shorter period may be acceptable in case of an emergency.

A female employee who applies for maternity leave shall, if required by the Commission, produce a certificate as to her medical condition from a qualified medical practitioner or midwife.

### **6.3.5 Paternity Leave**

A male employee shall be entitled to 10 working days paternity leave with full pay provided that the employee attaches documentary proof of paternity at the time of application for leave. If not applied for within 3 months of birth of child the paternity leave shall be forfeited.

### **6.3.6 Compassionate Leave**

Staff may be given compassionate leave following the death or severe illness of a relative in the employee's immediate family. The length of the leave will not typically exceed five days including the day of and the day after the burial. The Chairman or his designate grants all compassionate leave. Immediate family is defined as parents and parents-in-law, grandparents, brother, sister, spouse or child. Compassionate leave time is fully paid. Where additional leave is required, the Chairman or his designate may agree to grant unpaid leave.

### **6.3.7 Leave without Pay**

Full time employees are eligible for leave without pay for a maximum period of 15 days in any given calendar year. Prior approval must be obtained in writing from the Chairman or his designate. Employee benefits and accruals of holiday time shall be suspended during the leave without pay period.

### **6.3.8 Leave Application Procedures**

Staff wishing to take leave must complete the standard Leave Application Form obtainable from the supervisor or the Secretary to the Commission. This needs to be done at least 5 working days in advance.

- i. Section A: Fill in your name, department and the days requested.
- ii. Section B: To be filled by the Secretary to verify that the applicant has the leave days requested.
- iii. Sign the form; an unsigned form does not constitute a valid application.
- iv. Submit the form to your immediate supervisor whose endorsement constitutes permission to take one's leave.
- v. Submit the form to the Secretary for approval and on-ward transmission to the Chairman for authorization.
- vi. The Secretary will write to you granting the leave with any corrections as necessary.

### 6.3.9 Handover Report

**The Rationale:** A handover report is aimed at giving ones supervisor a sense of the things that need to be done while the incumbent is away. The report forms a section of the Leave Application form. Where applicable a detailed report should be handed to the supervisor.

- i. It is imperative that the supervisor receives and signs off the hand over report from the supervisee. That way responsibility is passed from one to another.
- ii. In the spirit of ensuring the smooth running of the Commission's business it is imperative that any one going on leave for five or more days prepares a proper handover report and submits it as part of the application to their immediate supervisor.
- iii. It should be noted that no leave for five days and more will be granted without the submission of a proper Handover report.
- iv. Ensure that whoever you have assigned responsibility gets a copy of your application and initials on your copy.
- v. On return from leave there should be a debriefing from the supervisor or whoever takes over the responsibilities.

### 6.4 TRAINING AND PROFESSIONAL DEVELOPMENT POLICY

The Commission recognizes that the skills and knowledge of its employees are critical to the success of the Commission. From time to time the Commission may recommend and pay for employees to obtain training, such as seminars or short courses, related to their positions. The Commission encourages its employees who are interested in job specific training to research such trainings and request for approval from their immediate supervisor, the Secretary and the Chairman before signing up for the seminar or course.

#### **Procedure:**

Staff are recommended for these short courses on the basis that the training needs have been identified in a given department. Staff should fill out a training application form and ensure that the following guidelines are complied with:

1. The employee completes the application form;
2. The immediate supervisor and Secretary signs the application forms on condition that the training is directly job-related, beneficial to the work of the department or the Commission; and there are sufficient funds in the department training budget.
3. The Chairman decides whether or not the application should be approved.

### 6.5 TRANSPORT

In accordance with the Government transport policy in force employees going on official duty may be allowed to use vehicles allocated for use by the Commission. Request for transport while on official duties must be made to the designated Transport Officer at least four (4) hours before departure time.

## SECTION 7

### 7.0 EMPLOYEE COMMUNICATION

#### 7.1 STAFF MEETINGS

Annual staff retreats may be held in the year. These informative meetings allow employees to be informed on recent Commission activities, and for the purposes of stock taking. The Commissioners and other senior employees will meet at least twice a month or as frequently as need arises.

#### 7.2 E-MAILS

From time to time staff will get communication via e-mail on the Commission's computer network. It is the employee's responsibility to read all the information posted on their e-mails.

#### 7.3 PROCEDURE FOR HANDLING COMPLAINTS

Under normal working conditions, an employee who has a job-related problem, question or complaint should first discuss it with his/her immediate supervisor. At this level, employees usually reach the simplest, quickest, and most satisfactory solution. If the employee and supervisor do not solve the problem, the employees may contact the Secretary to the Commission.

#### 7.4 GRIEVANCE HANDLING PROCEDURES

A grievance is any situation, action, or omission that is perceived to be unfair, uncalled for or malicious towards an employee or a colleague. The grievance maybe real or imagined, however, it affects employee work output and must be resolved. The Commission recognizes that grievances may arise within the work environment and if it does arise, then the affected staff should follow the following grievance solving procedure.

**Step One: Discuss the problem with your immediate superior.**

**Step Two: File a grievance in writing to your immediate supervisor**

If the outcome of your discussion is unsatisfactory to you then file a grievance in writing to your immediate supervisor. Outline your grievance clearly.

**Step Three: Discuss the reply with your immediate supervisor**

1. Wait for your supervisor to invite you to discuss the grievance. Be ready for the discussion at any time within a 7-day period from the time of receipt of your grievance in writing.
2. After the discussion, request a written reply, from the supervisor detailing how the grievance is to be resolved.

#### **Step Four: Unresolved Grievance**

1. Should the matter not be resolved through discussion with your supervisor, you may submit your original memo (with the written reply if one is available) to the Secretary to the Commission.
2. Allow 7 days for an opportunity to meet the Secretary and the person who is the cause of your grievance.

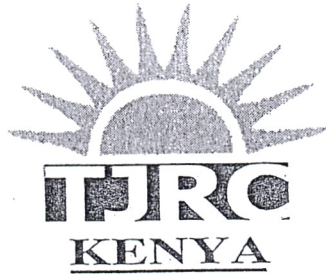
#### **Step Five: Further options**

In case the Secretary does not satisfactorily solve the problem, the complainant may write a letter to the Chairman for his intervention.  
The Chairman will then make a final ruling on the matter.

### **8.0 CONCLUSION OF THE STAFF MANUAL**

In conclusion, we hope that this manual has served to acquaint you with some of the Commission's Personnel practices. We intend for the Manual to be a reference book. From time to time Memoranda may originate from the offices of the Chairman, the Secretary or other government departments whose policies directly affect our operations. Please use them to update and redefine elements of this Manual. Other documents may be helpful in acquainting you with the Commission as well. **It is important that you have signed and returned the 'Acknowledgment of Receipt' Page of this Manual.** Please contact your supervisor or the Secretary if you have questions.

**ANNEXURE 2**  
Employment Policy



## KENYA TRUTH, JUSTICE AND RECONCILIATION COMMISSION

### Staff Code of Conduct and Confidentiality Agreement

#### INTRODUCTION

The Truth Justice and Reconciliation Act, 2008 establishes the Truth Justice and Reconciliation Commission (TJRC) and governs the processes of the Commission.

The Commission acknowledges that its employees must safeguard the confidentiality of information received at the Commission and uphold the highest standards of professionalism and integrity. The TJRC Act establishes protections to ensure respect and dignity for all witnesses that share information with the Commission. This Code of Conduct demonstrates the Commission's commitment confidentiality and integrity and makes it clear to all that any abuse of confidentiality and breaches of integrity shall not be tolerated.

As an employee, the TJRC requires you as a member of staff, abide by this Code of Conduct and Confidentiality Agreement.

Accordingly:

1. You must be aware of the utmost importance of respecting the confidentiality of the work you will be doing. You shall in no way, **either during the continuance of your employment or any time thereafter**, reveal any information that you will access in the course of your work. Such information can include, but is not limited to, the names of the victims and witnesses or perpetrators and the specific details of their statements, pictures, reports and documents of the Commission that you access. Such information will only be used as applicable to your specific role as a member of staff of the Commission.
2. In the course of your employment, if you interact with a witness, you shall deal with them with compassion and respect for their dignity.
  - a. You shall deal with them equally and shall not discriminate directly or indirectly against anyone on any ground including race, sex, pregnancy, marital status, health status, ethnic or

social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth ;

- b. You shall allow them to communicate in the language of their choice;
  - c. You shall not act in any way to cause harm, either physical or psychological, to the witness. This includes, but is not limited to, laughing or expressing disbelief at information given by a witness, hurrying them up or expressing impatience as they offer their statement, challenging or questioning their statement or requesting to see evidence of physical injury.
  - d. If a witness requests, or you sense their discomfort in giving you their statement, you will immediately arrange for them to have their statement taken by a different statement taking officer with whom they would be more comfortable (whether of a different sex, or age, or other characteristic).
3. You shall not reveal or otherwise discuss with anyone outside of the Commission information regarding the internal operations and activities of the Commission;
  4. If during the course of your employment you become aware of any breach of this Code of Conduct and Confidentiality Agreement, or a breach of any other policies of the Commission, you are required to bring such a breach to the immediate attention of the Director of Finance & Administration or Chief Executive Officer.
  5. Whenever requested, or upon termination of employment, you will promptly deliver to the Commission all property of the Commission including but not limited to mobile phones, digital recorder, cameras, lap-top computer, handwritten notes, all keys, identity card, statement taking forms which came into your possession in the course of your employment, and you will not retain copies or notes and extracts of such documents or such materials.
  6. You shall not engage in other employment or activities in addition to your employment with the Commission that may result in a conflict of interest (including the reasonable perception of a conflict of interest) with your job in the Commission. You shall disclose to the Director of Finance and Administration or the Chief Executive Officer, any other employment or activities related to or on behalf of other organizations immediately.
  7. You shall not give press or other media interviews, on or off the record, without express written authority from the Director of Media and Communications, or the Chief Executive Officer.
  8. If you are found to be in violation of this code of conduct and confidentiality agreement, you shall be subject to disciplinary action, up to and including summary dismissal and you may also be subject to civil and/or criminal penalties for violations of applicable laws including but not limited to, the Witness Protection Act.

**ANNEXURE 4**

Statement Form

**TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)**

S/No.

08676



**STATEMENT FORM**

**STATEMENT**

concerning

**GROSS VIOLATIONS OF HUMAN RIGHTS**

The aim of this **STATEMENT FORM** is to gather as much information as possible about the gross violations of human rights (GVHR) suffered by individuals in various contexts in Kenya between 12 December 1963 and 28 February 2008. In terms of section 6 of the Truth, Justice and Reconciliation Commission Act (2008), gross human rights violations are:

1. Violations of fundamental human rights, *including* acts of torture, extra judicial killings, abduction and severe ill-treatment (cruel treatment) of any person; imprisonment or other severe deprivation of physical liberty (prolonged imprisonment);
2. Rape or any other form of sexual violence, including defilement, sodomy.
3. Enforced disappearance of persons, including arrest, detention or abduction of persons by state agents, or with the authorization, support of the State;
4. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious or gender
5. Economic Crimes, including fraudulent or unlawful acquisition, disposal, mortgaging, charging or damage of public property; tax evasion; offences related to tenders and improper procurement;
6. illegal and irregular acquisition of public land; exploitation of natural or public resources
7. Economic crimes especially grand corruption, including bribery; fraud; embezzlement or misappropriation of public funds; abuse of office; breach of trust
8. Economic marginalisation of communities; Multiple and *systematic* violations of the right to education, health, property (land)
9. Crimes against humanity
10. Any attempt, conspiracy, incitement, instigation, command, procurement to commit an act referred to in (1) and (3) above, and was advised, planned, directed, commanded or ordered, by any person acting with a *political motive*.

If you have experienced or have knowledge of *Gross Violations of Human Rights* committed between 12 December 1963 and 28 February 2008, please complete this statement. Thank you for sharing your painful experience with the TJRC. Your contribution will help our country come to terms with the past.

*TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)*

**OBJECTIVES OF THE TJRC:**

The objectives of the Truth, Justice and Reconciliation Commission are:

- Establish a complete historical record of gross human rights violations and past injustices, including causes, nature and extent
- to restore the dignity of victims/survivors by providing a forum to tell their stories and recommending ways and means of redress for them
- provide a forum for perpetrators to tell their stories and to create possibilities for national reconciliation
- Recommend prosecutions of perpetrators as well as amnesty in appropriate cases

**IMPORTANT THINGS TO NOTE:**

- You are entitled to legal representation at your own cost, both while completing this statement and/or when testifying in a possible public hearing. If you require legal aid contact the secretariat for information on organisations that offer legal aid.
- If you make a false statement willingly and knowingly you could be prosecuted.
- If you complete this statement by yourself, please post (or hand deliver) to the TJRC Offices in Nairobi:
- Please attach copies of additional documents (for example, copy of ID, newspaper clippings, doctor's reports, etc.). Do not surrender original documents except at the request of the Commission.
- Please put your initials (sign) at the bottom of every page of your statement.
- By submitting this statement to the TJRC, your name may appear in the final report of the Commission; perpetrators may be informed of any allegations you make; and your medical, legal and other records may be made available to the Commission.
- Experience shows that some people, especially women, testify about violations of human rights that happened to family members or friends, but they are less willing to speak of their own suffering. Please don't forget to tell us what happened to you yourself if you were the victim of a gross human rights abuse.
- The Commission is concerned and is committed to the security of all persons that give statements. Kindly communicate to the commission your concerns on security at the earliest possible opportunity.

**Declaration**

I, ..... solemnly declare that the information I am about to give the Truth, Justice and Reconciliation Commission, is true and correct to the best of my knowledge, information and belief.

*Signature / Finger Print / Mark Date*

*Witness signature (can be Statement Taker, or any other person)*

**TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)**

Would you be prepared to testify during one of the Commission's hearings? YES / NO [circle]

If yes, would you prefer to appear in a public or private (in camera) hearing? PUBLIC / PRIVATE [circle]

Do you feel you would be endangered by giving testimony at a hearing? YES / NO [circle]

Do you have any disability? YES / NO

If yes, describe? .....

Which language would you prefer to use at the hearing? .....

**Details of the person HELPING to fill in the statement**

Please fill in this section if somebody is helping you to make the statement.

Full name of person helping: .....

Relationship to Statement Giver (eg neighbour, friend, relative, Statement Taker):  
.....

Address: .....

Signature of helper: ..... Date: .....

**1. DETAILS OF STATEMENT GIVER**

Surname: ..... Title: .....  
(for example, Mr., Ms., Mrs., Dr., Prof.)

First Names: .....

Other names: .....  
(for example, clan names, code names, pseudonyms, nicknames, aliases)

Identification: National ID, Passport or Driving Licence, Refugee ID Number:  
.....

Date of birth: (age)..... Sex: Male / Female [circle]

Citizenship: .....

Contact Address:

**TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)**

**Postal Address: (P.O Box and Postal Code)**

.....

**Physical address [Estate/Village]**

**Province:**

**Location:**

**District:**

**Sub-Location:**

**Mobile or Telephone No:**

**Email:**

What is the best and easiest way the TJRC can contact you in future?

*(Could be the same address as above or could be a friend or relative with whom there is regular contact)*

**Name of Contact person: (if relevant)** .....

Contact address: .....

**Contact telephone** (include code if landline): .....

**2. WHOSE STORY ARE YOU GOING TO TELL THE COMMISSION?**

Are you going to tell the Commission about what happened to **you**? **YES / NO** [circle]. If NO, indicate your relationship with the victim(s).

.....

Give reason(s) why victim cannot record his/her own statement [eg she is dead; very old; displaced; sick etc]

.....

**3. DETAILS OF VICTIM(S)** (If statement giver is the Victim, there is no need to repeat details here)

If statement is on behalf of a family or group, provide details of the head of family/group then list the rest in the space provided.

**Surname:** ..... **Title:** .....

*(for example, Mr., Ms., Mrs., Dr., Prof.)*

**First Name(s):** .....

**Identification:** *National ID, Passport or Driving Licence:* .....

**Date of birth:** (age)..... **Sex:** Male Female [Circle]

**Relationship to maker of statement:** ..... (eg son, mother, aunt, mother)

**TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)**

Occupation at time of violation: .....

Contact Address:

Postal Address: (P.O Box and Postal Code)

.....  
Physical address [Estate/Village)

Province:

Location:

District:

Sub-Location:

Mobile or Telephone No (of victim):

Email:

LIST more victims if any:

**4. PLEASE PROVIDE SPECIFIC DETAIL ON VIOLATIONS**

In this section, provide all the relevant information needed by the TJRC concerning the specific gross human rights violations. The Commission may use information to make findings, so provide as much verifiable detail as possible when responding to questions

Please mark the boxes below relating to which violation(s) were suffered, and then turn to the sections that follow and answer the questions with as much detail as you can.

The table below provides a list and brief description of the different types of gross human rights violations as defined by the Act. You are requested to:

- indicate which categories are relevant to your experience by marking a cross (X) in the appropriate box. If you have experienced more than one type or category of violation please indicate this by putting a cross (X) in the appropriate boxes.
- If your experience does not fit exactly into any one of the types/categories of violations listed below, please use the ADDITIONAL PAGES at the end of this form to write down your story.

**5.1 GROSS VIOLATIONS (Mark with an X)**

**LIST OF CIVIL AND POLITICAL RIGHTS:**

<p><b>Extra Judicial Killing/Murder</b> The person died as a result of a violation(s) (for example, shot by police at a political funeral, died as a result of torture in detention).</p>	
<p><b>Serious Injury or Severe Ill-Treatment</b> Does not result in death. Examples include bombings, shootings, stabbings, burnings, sexual abuse, attempted killings. These may have occurred in demonstrations, political conflict between groups, armed combat, castration etc.</p>	

## TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)

<p><b>Torture</b> Systematic and intentional abuse with a particular purpose, for example, to get information, intimidation, or punishment. This happens in captivity or custody by the state or other groups. The person, however, survived the ordeal.</p>	
<p><b>Abduction or Disappearance by state agents</b> There is evidence that someone was taken away forcibly and illegally, or the person vanished mysteriously and was never seen again.</p>	
<p><b>Prolonged detention/severe deprivation of liberty</b>  This relates to unlawful detentions: detention without trial, deprivation of liberty beyond legal sanction</p>	
<p><b>Rape and other sexual violence, including defilement and sodomy</b></p>	
<p><b>Violations related to Administration of Justice</b>  Including discrimination, denial of access, prolonged legal process, lost files</p>	
<p><b>Persecution/ Discriminatory denial of basic rights</b>  Against any group or collectivity on political, racial, national, ethnic, cultural, religious or gender</p>	
<b>LIST OF SOCIO-ECONOMIC RIGHTS</b>	
<p><b>Economic Crimes</b>  Including fraudulent or unlawful acquisition, disposal, mortgaging, charging or damage of public property (including money); tax evasion; serious offences related to tenders and improper procurement</p>	
<p><b>Grand corruption</b>  Including bribery; fraud; embezzlement or misappropriation of public funds; abuse of office; breach of trust; offences related to procurement and tendering</p>	
<p><b>Multiple and systematic violations of the right to property (land)</b>  Including forced removal (evictions), title violations, non-compensation, illegal and irregular acquisition/allocation of land</p>	
<p><b>Multiple and systematic violations of the right to education</b>  Including systematic discrimination as well as legal, policy and administrative obstacles</p>	

**TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)**

<b>Multiple and systematic violations of the right to health</b> Including failure to access emergency services; allocation of resources and distribution of centres	
<b>Employment</b> Systematic discrimination in access to employment, discriminatory use of minimum requirement in recruitment	

**5.2 EVENT(S)/INCIDENT(S) (VIOLATIONS OF CIVIL AND POLITICAL RIGHTS)**

In this part, the Commission would like to obtain the following information with respect to specific violations and incidents related to Civil and Political Rights:

What happened? Who was affected and How? When did it happen? Where did it happen? Who did it? Why did it happen, how did it happen? Were there any witnesses? Do you have any documentation?

To whom did it happen?

**Name of Victim(s):**

.....

**VIOLATION 1** (from the list of CPRs above):

.....

When did it happen? Date and time of violation:

.....

Where did it happen? Place/location of violation (give as much detail as possible including town, area, building as is relevant):

.....

.....

Please describe how violation occurred (e.g. how the person was killed or tortured. Include details of what weapon or implements used).

.....

## TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)

.....  
.....  
.....  
.....

Reason for violation?

.....  
.....

Was there any investigation, inquiry, post-mortem or inquest, court case, intervention by elders? Etc If yes, what was the outcome? *(for example, did a doctor examine the victim or, body? Did you find out how the person was killed, tortured etc? Did you go to court to find out what happened? Was anybody found responsible for the death?)*

.....  
.....

Did this violation affect other people you know? Members of the community? If yes, please provide list here.

.....  
.....

### CONTEXT, CAUSES AND CIRCUMSTANCES

Describe briefly the situation at the time of each incident (of alleged violations).

.....

*(for example, Shifta War (1964-1967); Wagalla massacre (1984); Burnt Forest violence (1993); Mt Elgon violence (police operation, SLDF attack etc); there was a demonstration, political rally during , police disarmament, floods, strike or stay-away; Kikambala evictions (1997), elections (1992); voting day; natural disaster, stay-away; boycott; march; political rally; existing laws etc.)*

If violations arose out of an inter-ethnic conflict, what were the causes?

.....  
.....  
.....

**TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)**

**PERPETRATOR(S)**

Is the perpetrator(s) known? **Known / Unknown** [Circle]

Can you identify the perpetrator(s) in any way? Give names, rank and title, and physical description:  
*(for example; Mr. Mrefu, OCS Milimani; four masked men; a big man with a scar called Jichopevu; Mr Soja, a warden at Shimo La Tewa prison etc)*

.....  
.....  
.....

Do you think they were state agents/officials or private citizens? **State agent / private citizen** [circle]

.....

How do you know who he was/who they were? *(for example. I saw them; my neighbour told me; there was a court case; they drove a government ca, I know the registration number; I saw him wearing the same shirt two days later; he threatened me or bragged about his actions a week after the event )*

.....  
.....

Can you specify who did what? Who was in charge? Who gave orders, if any? Who was with him/her/them? *(for example, Mr. Mwenyenguvu commanded the torturers, Mrefu tied my hands, Mlawatu operated the power switch)*

.....  
.....  
.....  
.....

Where and when did you last see the perpetrator(s)?

.....

Do you know where the perpetrator(s) live?

.....

Would you like to meet the perpetrator(s)? .....

**TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)**

**WITNESSES**

Is there anyone else who knows what happened to you or the alleged victim either **before, during** or **after** the violation?

If yes; please answer the following questions as fully as possible.

Name.....

Contact Address and Telephone Number:

What did each of the witnesses see, hear or do? (e.g. *he/she was at the scene, she heard screams from the adjoining room, Mwendapole witnessed the event, Daktari treated me when I went to hospital; Nguvuyetu rescued me from etc*)

.....  
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.....

**VIOLATION 2** (from the list of CPRs above):

.....

When did it happen? Date and time of violation:

.....

Where did it happen? Place/location of violation (give as much detail as possible including town, area, building as is relevant):

.....

.....

**TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)**

Please describe how violation occurred (e.g. how the person was killed or tortured. Include details of what weapon or implements used).

.....  
.....  
.....  
.....  
.....

Reason for violation?

.....  
.....

Was there any investigation, inquiry, post-mortem or inquest, court case, intervention by elders? Etc If yes, what was the outcome? (for example, did a doctor examine the victim or, body? Did you find out how the person was killed, tortured etc? Did you go to court to find out what happened? Was anybody found responsible for the death?)

.....  
.....

Did this violation affect other people you know? Members of the community? If yes, please provide list here.

.....  
.....

**CONTEXT, CAUSES AND CIRCUMSTANCES**

Describe briefly the situation at the time of each incident (of alleged violations).

.....

*(for example, Shifta War (1964-1967); Wagalla massacre(1984); Burnt Forest violence (1993); Mt Elgon violence (police operation, SLDF attack etc); there was a demonstration, political rally during , police disarmament, floods, strike or stay-away; Kikambala evictions (1997), elections (1992); voting day; natural disaster, stay-away; boycott; march; political rally; existing laws etc.)*

If violations arose out of a an inter-ethnic conflict, what were the causes?

.....

**TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)**

.....  
**PERPETRATOR(S)**

Is the perpetrator(s) known? **Known / Unknown** [Circle]

Can you identify the perpetrator(s) in any way? Give names, rank and title, and physical description:  
*(for example; Mr. Mrefu, OCS Milimani; four masked men; a big man with a scar called Jichopevu; Mr Soja, a warden at Shimo La Tewa prison etc)*

.....  
.....

Do you think they were state agents/officials or private citizens? **State agent / private citizen** [circle]

.....

How do you know who he was/who they were? *(for example. I saw them; my neighbour told me; there was a court case; they drove a government ca, I know the registration number; I saw him wearing the same shirt two days later; he threatened me or bragged about his actions a week after the event )*

.....  
.....

Can you specify who did what? Who was in charge? Who gave orders, if any? Who was with him/her/them? *(for example, Mr. Mwenyenguvu commanded the torturers, Mrefu tied my hands, Mlawatu operated the power switch)*

.....  
.....  
.....  
.....

Where and when did you last see the perpetrator(s)?

.....

Do you know where the perpetrator(s) live?

.....

Would you like to meet the perpetrator(s)? .....

**TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)**

**WITNESSES**

Is there anyone else who knows what happened to you or the alleged victim either **before, during** or **after** the violation?

If yes; please answer the following questions as fully as possible.

Name.....

Contact Address and Telephone Number:

What did each of the witnesses see, hear or do? (e.g. *he/she was at the scene, she heard screams from the adjoining room, Mwendapole witnessed the event, Daktari treated me when I went to hospital; Nguvuyetu rescued me from etc*)

.....

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**TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)**

**5.3 VIOLATIONS OF SOCIO-ECONOMIC RIGHTS**

In this part, the Commission would like to obtain the following information with respect to specific violations and incidents related to Socio-Economic Rights: (Land; grand corruption; economic crimes; education; health; access to employment):

**VIOLATION 1 (from list of SERs above)**

.....

**Name of Victim:** .....

When did it happen? Date and time of violation?

.....

Where did the violation happen? Place/location of violation (give as much detail as possible including village, Estate, town, area, building):

.....

.....

Please describe how violation occurred (*eg were forcibly evicted/removed by armed youth; Mr Mkonomrefu, the CDF manager used CDF money allocated for clinic to build his own house; children constantly fall ill in the filthy and congested camps and were denied treatment because we don't have money*)

.....

.....

.....

Reason for violation? (*eg Mpenda Vitu said the land was his; they said we don't belong there; Mkubwa wanted to employ his own people; we had no ability of questioning the use of LATF or CDF money*)

.....

.....

.....

Is it a continuing violation? (*Eg you are still a squatter, an IDP, yet to get justice; the stolen money is yet to be recovered; still cannot access health facilities for emergency treatment*):

.....

.....

.....



**TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)**

.....  
.....  
How do you know he was/who they were? *(for example. I saw them; my neighbour told me; there was a court case in which he was named)*  
.....  
.....  
.....

Do you think they were state agents/officials or private citizens? **State Agents / Private Citizens** [circle]  
.....  
.....  
.....

.....  
Can you specify who did what? Who was in charge? Who gave orders, if any? Who was with him/her/them? *(for example, Mr. Mwenyenguvu led the eviction exercise; a band of youths burnt our houses and destroyed our crops; Mrs Mlakit, Chief or Kata Ndogo was present )*  
.....  
.....  
.....

Where and when did you last see the perpetrator(s)? .....

Do you know where the perpetrator(s) live or operate from?  
.....

Would you like to meet the perpetrator(s)? .....

**WITNESSES**

Is there anyone else who knows what happened to you or the alleged victim either **before, during** or **after** the violation?

**TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)**

If yes; please answer the following questions as fully as possible.

Name.....

Contact Address and Telephone Number:  
.....

What did each of the witness see, hear or do?.....  
.....  
.....

**VIOLATION 2 (from list of SERs above)**

.....  
**Name of Victim:** .....

When did it happen? Date and time of violation?  
.....

Where did the violation happen? Place/location of violation (give as much detail as possible including village, Estate, town, area, building):  
.....  
.....

.....  
Please describe how violation occurred (*eg were forcibly evicted/removed by armed youth; Mr Mkonomrefu, the CDF manager used CDF money allocated for clinic to build his own house; children constantly fall ill in the filthy and congested camps and were denied treatment because we don't have money*)  
.....  
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.....  
Reason for violation? (*eg Mpenda Vitu said the land was his; they said we don't belong there; Mkubwa wanted to employ his own people; we had no ability of questioning the use of LATF or CDF money*)  
.....  
.....  
.....

## TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)

Is it a continuing violation? (*Eg you are still a squatter, an IDP, yet to get justice; the stolen money is yet to be recovered; still cannot access health facilities for emergency treatment*):

.....  
.....  
.....

Was there any investigation, inquiry, court case, intervention by elders? ETC If yes, what was the outcome? (*for example, was the matter reported to Anti Corruption Commission, Department of Lands, police? Did you go to court over ownership of the land? Was the alleged discrimination reported to the Education Officer (Division, District or Provincial?) Was anyone ever arrested, prosecuted, convicted?*)

.....  
.....  
.....

Did this violation affect other people you know? Members of the community? (*note that violations relating to land, education, health, grand corruption, systematic discrimination tend to affect communities and groups of people rather than individuals strictly*) If YES, please provide list of other victims you know indicating relationship with you.

.....  
.....  
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.....

## CONTEXT, CAUSES AND CIRCUMSTANCES

Describe briefly the situation at the time of each incident (of alleged violations)  
(*for example, Shifita War; Company XY acquiring land; XX Settlement Scheme; I went to the public office to process XX document for my daughter; Structural Adjustment Program; Airport/Airtrip expansion; Burnt Forest violence (1993); Mt Elgon violence (police operation, SLDF attack etc); floods; Kikambala evictions (1997), elections (1992); natural disaster*)

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**TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)**

**PERPETRATOR(S)**

Is the perpetrator(s) known? **Known / Unknown** [Circle]

Can you identify the perpetrator(s) in any way? Give names, rank and title, and physical description (for example, Mr. Mrefu, a well known businessman in YY; Mlawatu, Treasurer, CDF Committee;

.....  
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.....

How do you know he was/who they were? (for example. I saw them; my neighbour told me; there was a court case in which he was named)

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Do you think they were state agents/officials or private citizens? **State Agents / Private Citizens** [circle]

.....  
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.....

Can you specify who did what? Who was in charge? Who gave orders, if any? Who was with him/her/them? (for example, Mr. Mwenyenguvu led the eviction exercise; a band of youths burnt our houses and destroyed our crops; Mrs Mlakit, Chief or Kata Ndogo was present )

.....  
.....  
.....  
.....

Where and when did you last see the perpetrator(s)? .....

.....

**TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)**

Do you know where the perpetrator(s) live or operate from?

.....

Would you like to meet the perpetrator(s)? .....

**WITNESSES**

Is there anyone else who knows what happened to you or the alleged victim either **before, during** or **after** the violation?

If yes; please answer the following questions as fully as possible.

Name.....

Contact Address and Telephone Number:

.....

.....

What did each of the witness see, hear or do?.....

.....

.....

**6. CONSEQUENCES OF THE EXPERIENCES**

The following questions are specific to the victim who experienced the violation.

6.1 What was the harm suffered? (E.g. *if the violation(s) caused permanent physical injury, please describe the injury, details of loss; we lost a bread winner; there is high mortality rate; majority of youth are uneducated and unemployed, we have no clinics, no roads*)

.....

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6.2 Were any steps taken to address the harm suffered ( *e.g.what treatment did the victim get for the injury?*) If you suffered physical injury, do you still require medical treatment?

.....

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**TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)**

6.3 Any other harm suffered e.g. psychological, emotional, change of behaviour etc (eg *I am constantly depressed; I need constant counselling; he is depressed all the time; she feels like dying; I am always angry; I hate going near that place; etc.*)

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6.4 Describe any other effects of the violation(s) (e.g. *displacement; we depend on aid from well wishers; I lost a limb and now depend on my son; I cannot have children*)

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6.5 Please explain how the victim coped with the suffering/these effects: (for example, *did somebody help you deal with the pain of the event? Did you see a therapist or your priest, or a traditional healer? community justice and conflict resolution?*)

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6.6 Did the violation affect relationships with friends, family, partner or children? (for example, *we are no longer on talking terms with our neighbours; we don't mix with outsiders anymore; I have lost contact with them; my marriage broke down; my son is in jail, we are squatters, business collapse; farming etc.*)

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## TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)

6.7 How did the violation affect the health, education, accommodation, finances of the victim's family and what is the current status?

6.9.1 Health *(for example, since the death of my daughter, we have been suffering from depression; I was sick but after treatment, I recovered fully.)*

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6.9.2 Education *(for example, since my husband died, my son had to leave school to earn money; our school was burnt but we are reconstructing it; the displaced teachers refused to return nothing has changed.)*

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6.9.3 Accommodation *(for example, since my son died, we are living in this shack; we are still squatters; some have been resettled)*

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.....

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6.9.4 Finances

*(for example, before I was imprisoned/tortured/lost my land, I was able to work and take care of my family, now I can't; I lost my farm; my business premises burnt down; I am now disabled and cannot be engaged in gainful employment)*

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# TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)

## 7. EXPECTATIONS

An important part of the TJRC's proposals to the government will be about reparations including symbolic acts (targeting individuals and communities) which will help us remember the past, honour the dead, acknowledge the victims and their families and further the cause of reconciliation.

Please give us your opinion on what should be done:

7.1 For individuals: *(for example compensation; prosecution identification of perpetrators; exhumation and burial; apology; medals; certificates; street names; memorials; grave stones; counseling etc.)*

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7.2 For the Community: *(for example, a peace park; build a school; exhumation and proper burial of the dead; special ceremony; annual religious service; recovery of stolen funds; affirmative action etc.)*

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7.3 For the Nation: *(for example, monuments; recovery of stolen funds; prosecution; apology; legal and institutional reforms; national day of remembrance, etc.)*

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## 8. PREVIOUS INTERVENTIONS

Have you already made one or more statements about this incident? YES NO [circle]

**TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)**

If yes, please specify:

<b>To WHOM statement was made?</b>  <i>(for example, police, NGO, church, elders)</i>	<b>WHEN?</b>  <i>(for example 1993)</i>	<b>CONTACT details / person</b>  <i>(for example, the Chief, DO, Mrs Haki tel.....)</i>	<b>Action taken</b>  <i>(for example court case filed)</i>

What legal action did you, the victim or representatives take? Please give dates and the name of the lawyers, court case details etc *(for example, did you report to the authorities? was there a court case about the violation? Did you sue the perpetrators for damages? Did you lay charges against the perpetrators?)*

.....

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.....

What was the result?

.....

.....

If no action was taken, why? *(eg I did not have money to file a case; the Chief refused to act; Mwenyenguvu threatened me if I did anything)*

.....

.....

**TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)**

**9. DOCUMENTS**

Do you have any documents that will help the Commission understand the situation and experience you have described? **YES NO** [Circle]

*(for example, Doctor's Certificate, Membership card, Diary, Newspaper clippings, Legal Documents, Post-Mortem report, Hospital records, Police records, Court records, Title Deeds, Allotment Letters, Receipts etc).*

Type of Document	Doc. No/ Title No/Serial No/Ref No.	Attached YES/NO	Where is this document at the moment? If not attached	other comments
<i>(for example) Land Title deed/Allotment Letter</i>		<i>No</i>	<i>At home</i>	<i>can be availed on request</i>

**TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)**

**CHECK LIST FOR STATEMENT TAKER**

This page is to help check that the statement has been completed as fully as possible.

	YES/NO	OTHER COMMENTS
Were all the questions either asked or considered?		
Is the DECLARATION signed?		
Is the RELEASE FORM signed?		
Are all the relevant pages (including the additional pages used) initialled?		
Are relevant DOCUMENTS (at section 9) attached?		

***FOR OFFICIAL USE ONLY***

*To be completed by ALL Statement Takers*

**Full Name of Statement Taker:**.....

**Signature of Statement Taker:** .....

**Date of Interview:** ...../...../..... (day / month / year )

**Name of Victim:** .....

**Place and Town of Interview:** .....

**Language of Interview:** .....

**TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)**

**ADDITIONAL COMMENTS/OBSERVATIONS BY STATEMENT TAKER:**

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TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)



RELEASE FORM:

Records and Documentation

I, ..... (name of person giving permission

hereby grant permission for the Investigation Unit of the Truth, Justice and Reconciliation Commission to obtain copies of all documents, including medico-legal records related to my case/the case of.....(name of victim) who is ..... (relationship to victim, for example, myself, my son, my daughter) for the purposes of ongoing investigation being conducted by the Truth, Justice and Reconciliation Commission.

Yours faithfully,

Signature: .....Date: .....

**ANNEXURE 5**

Hearing Proceeding Rules

and shall be headed by a Chairman, which shall be responsible to the Committee for:

- (a) General administration of the Committee's Secretariat;
- (b) Preparing reports on behalf of the Committee
- (c) Implementing and assisting the Committee to carry out its functions; and
- (d) Undertaking any other functions incidental to the foregoing.

The Technical Implementation Committee will comprise of personnel drawn from public and private practice as may be deemed appropriate.

This notice supersedes Gazette Notice No. 2431 of 2005 on the Establishment of Performance Contracting Steering Committee and Gazette Notice No. 3171 of 2007 on the Establishment of a National Performance Management Steering Committee.

Dated the 22nd March, 2011.

R. A. ODINGA,  
Prime Minister.

GAZETTE NOTICE NO. 3930

THE TRUTH, JUSTICE AND RECONCILIATION ACT

(No. 6 of 2008)

THE TRUTH JUSTICE AND RECONCILIATION (HEARING PROCEDURE) RULES

PURSUANT to section 29 of the Truth, Justice and Reconciliation Act, 2008, the Truth Justice and Reconciliation Commission makes the following Rules to govern the procedure at its hearings:

1. These Rules may be cited as the Truth, Justice and Reconciliation (Hearing Procedure) Rules.
2. These Rules shall come into force on the date of publication in the Gazette.

3. In the Rules, unless the Context otherwise requires—

“Act” means the Truth, Justice and Reconciliation Act, 2008;

“Commission counsel” means counsel appointed by the Commissioners to assist the Commissioners;

“Commission offices” means the headquarters of the Commission located in Nairobi and any other office that the Commission may designate as its office either generally or for a particular purpose;

“Commission staff” means staff hired by the Commission or with the authority of the Commission are performing functions of the Commission;

“document” means any record made or stored in physical or electronic form and include written, electronic, audiotape, videotape, digital reproductions, photography, maps, graphs, microfiche or any other data and information recorded or shared by means of any device;

“interested person” includes participant, party or witness

“participant” means any person or organization who is given the right by the Commission to participate in hearings held by the Commission;

“person” means a natural person;

“witness” means all persons and organizations giving evidence or testifying before the TJRC, including survivors, victims, experts and perpetrators;

“organization” means any group, institution, government or agency or other representative entity that is not a natural person;

“party” means a person granted full or partial standing as a party by the Commissioners.

4. The Commission shall conduct the following types of hearings—

- (a) individual hearings, which shall focus on individual cases, and the experience of individuals relating to violations being investigated by the Commission.

(b) institutional hearings, which shall focus on the role played by an institution or institutions relating to violations being investigated by the Commission.

(c) thematic hearings, which shall focus on types of violations and other broad themes relating to the mandate of the Commission.

5. (1) Subject to the Act, the conduct of and the procedure to be followed during the hearings shall be under the control and discretion of the Commission.

(2) The Commission shall sit on such days, at such times and venue, as it may determine and shall conduct its hearings in accordance with these rules.

6. (1) The languages of the Commission shall be Kiswahili or English.

(2) The Commission shall, taking into account all the circumstances, provide competent interpreters for spoken or sign language, as the case may be, for parties or witnesses appearing before it.

7. (1) Any person or organization wishing to participate in the hearings shall make an application in the prescribed form to the Commission at least fourteen days before the date of the hearing they wish to participate in:

Provided that the Commission may where the circumstances of any particular case demand, allow an application to be made within a shorter time limit.

(2) The Commission may upon scrutiny of statements and questionnaires completed by the public, invite persons or organizations to participate in its hearings.

(3) The Commission may summon any person, including a serving or retired officer, whether adversely mentioned or not, to appear in person and testify, produce any document, thing or information relevant to the Commission's mandate.

(4) The Commission shall determine any special conditions under which a person or organization may participate in its hearings and the parts of the hearings that a person or organization may participate in.

(5) The Commission shall set the priority for participation based on—

(a) whether the person or organization is directly and substantially affected by the matters covered by the Commission's mandate; or

(b) the relevance of the testimony in relation to the mandate of the Commission.

(6) The Commission may in the interests of justice revoke the right of a person or organization to participate in its hearings.

8. (1) A witness shall give his evidence or testimony under oath or upon affirmation unless otherwise directed by the Commission.

9. (1) The Commission shall ensure that it preserves the integrity of witnesses at its hearings and maintains its standing as a non-judicial, non-retributive and non-adversarial form to foster truth, justice, healing and national reconciliation.

(2) The witnesses who are to testify before the Commission may be accompanied by a friend or family member of their choice during the proceedings, subject to reasonable limitations imposed by the Commission.

(3) The Commission may request witnesses and other participants to advise the Commission on the names and particulars of any other persons whom they believe have relevant information relating to the mandate of the Commission.

10. (1) The hearings of the Commission shall be conducted by a hearing panel and the Chairperson and Vice-Chairperson shall determine the composition of each hearing panel.

(2) A hearing panel shall consist of not less than three Commissioners, of whom one shall be an international Commissioner, and not less than one third of the composition of each panel shall be of either gender:

Provided that the Chairperson and Vice-Chairperson, may constitute a hearing panel whose composition differs from that

specified herein as long as the other Commissioners and all witnesses appearing before the panel are informed in writing of the reason for such deviation.

11. (1) Any interested person may, at least seven days prior to a hearing, request a member of the hearing panel to disqualify himself from the hearing and set forth the reasons for the request, and provide supporting documents, where applicable.

(2) Upon receipt of a request for disqualification, the Chairman shall establish a panel of three Commissioners to consider the request, but the panel shall not include the Commissioner who is the subject of the request, and shall include at least one international Commissioner and a Commissioner of the other gender.

(3) In the case of a request for disqualification of the Chairman, the Vice-Chairperson shall constitute the panel to determine such a request.

(4) When determining whether to grant a request for disqualification, the panel constituted under paragraph (3) shall consider the interests and comfort of witnesses appearing before the Commission, and actual and perceived conflicts of interest, and shall be guided by a commitment to fairness and impartiality.

(5) The decision of the panel determining requests for disqualifications shall be final.

12. (1) The Commission may examine and consider any source or type of information it considers relevant to its inquiries.

(2) The Commission may make site visits to any location to ascertain and clarify any fact, issue or other matter arising out of its processes.

(3) The Commission shall have access to any site of relevance to its work, and collect information from such sites, subject to the negotiation for permission under the Protected Areas Act.

(4) The Commission may request the assistance of the police and other Government officials to facilitate its work and enforce its powers under this provision.

13. (1) The Commission shall arrange with the relevant Government agencies for protection for persons placed in danger by reason of their testimony (whether already given or not), or other interaction with the Commission.

(2) Any individual or representative of an individual or organization may make an application in writing to the Commission for protection.

(3) A person who requires protection may present himself to the Commission offices and make a request for protection, setting forth the reasons for such request, to an officer of the Commission.

(4) The Commission shall make arrangements to address any concerns of witnesses arising out of their testimony, including the need to receive counselling before or after their testimony, or both before or after giving their testimony.

14. (1) Upon application, and in accordance with section 25(2) of the Act, the Commission may order that no person shall publish the identity for any witness.

(2) For the purposes of the hearing, an order under paragraph (1) may include the right of any person to have his identity disclosed only by way of non-identifying initials, and, if the Commission so orders, the right to testify before the Commission *in camera*, together with any other privacy measures which the Commission may grant.

(3) In making such a determination under paragraph (2), the Commission shall consider the reasonable privacy and security concerns of such a person, as well as the need for the Commission's proceedings to be public and transparency.

(4) The media shall ensure that any reports relating to a person granted personal confidentiality or allowed to testify anonymously, avoid references that might reveal the identity of the person.

(5) No photographic or other reproduction of a person granted the right to testify anonymously shall be made by any person or organization other than the Commission, except with the express written permission of such person.

(6) The Commissioners and staff shall not disclose the identity of protected witnesses or information included in a personal

confidentiality order, and any disclosure shall cause disciplinary or termination proceedings against that Commissioner or staff member.

(7) Proceedings under paragraph (6) shall not be a bar to criminal or civil proceedings against the offending Commissioner or staff member.

(8) Any person who testifies anonymously shall take an oath or make affirmation to tell the truth using the non-identifying initials given for the purpose of their testimony and such an oath shall be regarded as equivalent to an oath given using that person's full and proper name.

(9) Any participant or witness may apply to the Commission to have financial or personal information which is not relevant to the subject matter of the hearing removed from documents proposed to be introduced into evidence.

(10) When determining whether to remove such information, the Commission shall balance the legitimate privacy and personal interests of the applicant against the general principle that Commission proceedings shall be public and transparent.

15. (1) A person may apply to the Commission to be considered for amnesty in accordance with Part III of the Act.

(2) An application for amnesty shall—

(a) be in writing;

(b) state the violation for which the amnesty is sought;

(c) state the reasons why the applicant believes he or she should be considered for amnesty; and

(d) state any other relevant information that the applicant may wish to bring to the attention of the Commission regarding the application for amnesty.

(3) The Commission may request an applicant to provide additional information where it considers it necessary.

16. (1) A person may apply to the Commission to be considered for reparation in accordance with Part IV of the Act on such terms as prescribed by the Commission.

(2) An application for reparation shall—

(a) be in writing; and

(b) state the violation for which the reparation is sought.

17. (1) The Commission may convene public and private consultations to hear submissions relating to any matter raised at any phase of the public or *in camera* hearings.

(2) The participants in the consultations under paragraph (1) shall include any persons whom the Commission considers may contribute to the process.

(3) The Commission may invite or grant leave to a person, organization or state agency to submit, in writing or orally, any observations on any issue it considers desirable for the proper understanding or a particular issue the discovery of truth, the fulfillment of justice, or in the furtherance of national unity or reconciliation.

18. (1) The hearings of the Commission shall be open for media coverage, including live television coverage, except in respect of hearings the Commission decides to hold *in camera*.

(2) The media may contact the Commission to make prior arrangements for coverage.

(3) The Commission may bar the media from the testimony of a witness granted confidentiality status, taking into account the reasonable interests of the witness, the public and the general principle that the Commission's proceedings shall be public and transparent.

(4) Whenever the Commission decides to proceed *in camera*, or issue an order forbidding publication, disclosure or broadcasting of its proceedings, it shall issue an order in writing to all media outlets which have been permitted to cover proceedings under this Rule.

(5) Media representatives shall abide by these Rules relating to confidentiality.

(6) The Commission shall deal with a breach of the rules relating to confidentiality as it sees fit, which may include exclusion from part of or an entire hearing, or exclusion from some or all future hearings.

19. (1) The Commission shall not be bound by the provisions of the Evidence Act but shall be guided by the ordinary rules of evidence and procedure, including the rules of natural justice.

(2) The Commission may recommend the prosecution of any person in any matter which in its view should be handled by the courts, and in so doing shall be guided by existing statutes and support the recommendation with evidence showing that there are reasonable grounds to believe that a crime was committed by that person.

20. (1) The Commission shall call and examine witnesses during a hearing.

(2) When examining the witnesses, the Commission shall—

(a) consider the need to preserve the integrity of the witnesses and their testimony;

(b) be sensitive to the concerns of the victims; and

(c) maintain the non judicial, non adversarial, and national reconciliatory nature of the process of the Commission.

(3) Subject to compliance with rule 7(1), interested parties, including adversely mentioned persons or their representatives, shall at the individual, thematic and institutional hearings have a right of reply.

(4) Cross examination of the victims or witnesses for the victim shall be limited to hearings relating to applications for amnesty or requests for reparation.

(5) The cross examination under paragraph (4) shall, in any case, be limited to the actual interest of the person or organization requesting for amnesty or being requested for reparations.

(6) The Commission shall not allow the cross examination of witnesses in circumstances other than those set out in paragraph (4).

(7) Notwithstanding paragraph (4), the Commission may, suspend or limit the cross examination during a hearing, if it has reasons to believe that—

(a) a person is conducting the cross examination in bad faith;

(b) the witness being cross examined is being unduly stressed or otherwise suffering harm as a result of the cross examination; or

(c) it is prudent and in the interest of truth, justice and reconciliation to limit or suspend the cross examination.

21. (1) A participant or witness shall provide the Commission with any documents which he intends to submit as an exhibit or otherwise refer to during the hearings not less than seven days before the hearing.

(2) The Commission may make copies of any relevant documents produced by a witness.

(3) The Commission shall inform any person adversely mentioned in a document submitted as evidence to the Commission for the purpose of a hearing and allow the person reasonable time to study and respond on the document before the hearing.

22. A member of staff of the Commission may interview any person who has information or documentary evidence relating to the subject matter of a hearing, and may recommend to the Commission that such person be given the right to participate or testify at a hearing.

23. (1) All participants and their representatives shall abide by these Rules.

(2) The Commission shall deal with a breach of these Rules as it considers fit, including, but not limited to, revoking the right of participation, and imposing restrictions on the further participation in or attendance at (including exclusion from) the hearing by any participant, representative, individual, organization or members of the media.

(3) The Commission may cite for contempt any person or organization refusing to fully comply with a summons to appear, or to produce information, or otherwise obstructs the work of the Commission in any manner.

(4) The Commission may request the assistance of the police and other Government agencies and officials, including the judiciary, in enforcing relevant sanctions against any persons conducting themselves contrary to the provisions of these Rules.

24. The Truth Justice and Reconciliation (Hearing Procedure) Rules published on the 20th August, 2010 are revoked.

Made on the 6th April, 2011.

T. N. WANJALA,  
Acting Chairperson,  
Truth, Justice and Reconciliation Commission.

**ANNEXURE 6**  
Reconciliation Policy



## TRUTH, JUSTICE AND RECONCILIATION COMMISSION

### POLICY ON RECONCILIATION

**WHEREAS**, the objectives and mandate of the Truth, Justice and Reconciliation Commission (TJRC), are set out in sections 5 and 6 of the Truth, Justice and Reconciliation Act no 6 of 2008 (TJR Act) respectively; and

**WHEREAS**, section 5 of the TJRC Act identifies national unity, healing and reconciliation as two of the five objectives and goals to be pursued by the TJRC; and

**WHEREAS**, section 6 of the TJRC Act grants the TJRC all powers necessary to fulfill its mandate; and

**WHEREAS**, the TJRC is mandated specifically by section 6 (s) to inquire into the causes of ethnic tensions and make recommendations on the promotion of healing, reconciliation and co-existence among ethnic communities; and

**WHEREAS**, TJRC is required to provide space to both victims and perpetrators of gross violations of human rights to tell their stories; and

**WHEREAS**, section 42 read together with sections 2, 5(2), 6(2) empower the Commission to investigate, receive information and propose policies, measures and ways to the government by which identified victims of gross human rights violations can be redressed; and

**WHEREAS**, the TJRC is required to create an accurate and complete historical record of gross violations of human rights;

**WHEREAS**, the TJRC will make recommendations in relation to memorialization;

#### THE TJRC HEREBY DECLARES:

1. The limited peace and harmony, justice and unity among Kenyans are attributable in part to the gross violations of human rights including tortures, assassinations, detentions, marginalization and other serious socio-economic violations suffered by sections of the Kenyan population.
2. Reconciliation, national unity and healing are critical components of the mandate and three of the five key goals of the work of the Commission. As suggested by the name of the Commission, reconciliation is one of three key tasks assigned to the TJRC.
3. The objectives of reconciliation, national unity and healing are integrated in various activities of the TJRC, including statement taking, hearings, community dialogues, amnesty process and the final report. Therefore, the work of the Reconciliation Committee cuts across several units, and committees.
4. The TJRC understands reconciliation as a complex term that includes several relationships, levels and actors. In the English language, 'reconciliation' can connote:

understanding, bringing together, reunion, compromise or squaring off. The various levels or 'types' of reconciliation include: intra-personal reconciliation; inter-personal reconciliation; inter-community reconciliation; and national reconciliation.

- 4.1 Intra-personal reconciliation refers to the situation where an individual arrives at an accommodation with their situation and circumstances after the violation. For a victim, knowing the truth can bring closure, and in some cases, the understanding that they find themselves with a new situation that they have to cope with and move forward (e.g. disability brought about by a violation).
- 4.2 Interpersonal reconciliation relates to reconciliation between specific victims and perpetrators. Knowing the truth about who did what, the whereabouts of bodies etc can be a critical first step to reconciliation.
- 4.3 In a context where inter-ethnic rancour and disharmony triggered by the struggles for power, resources, identity etc has underpinned or facilitated some gross violations of human rights, the mending of social relations is an important goal for the TJRC. Communities includes ethnic, religious groups and other groups. The TJRC will facilitate dialogues and other activities that commence the process of inter-community reconciliation.
- 4.4 Healing is closely linked to reconciliation. The idea of healing invokes the idea of remedy, restoration, repair, mending. National healing will entail attending to and restoring social relations in communities and inter-ethnic relations. At a personal level, healing will take various dimensions, but begins with acknowledgement, restoration of dignity (reparations, apology).
5. Reconciliation is both a goal and a process. As a goal, it is a long term goal. The TJRC should not be expected to reconcile Kenyans at the end of its term: it will initiate dialogue and lay the groundwork, together with other relevant bodies (eg NCIC) for long term processes of reconciliation. As a process, rather than an event, it will occur in various sites and activities. It will involve numerous actors, and the TJRC is but one of these.
6. Informed by comparative experience and our own context, the TJRC places emphasis on the conceptual and practical links between reconciliation & national healing and justice, which includes redistributive justice, retributive justice and reparative justice. The goal of reconciliation at various levels will remain elusive unless those who have suffered are restored and repaired; unless those who were excluded are included in meaningful ways; and unless those in dire want as a result of marginalization are materially enabled to move forward.
7. The TJRC recognises the complex relationship between reconciliation, national healing and truth. While closure for victims and the ability to address violations of the past and prevent repetition of gross violations begins with knowing the truth about past events, truth telling may open wounds in ways that slow or impede reconciliation and healing especially at a personal level. The TJRC will engage with this paradox constructively in various activities.
8. The notion of truth is complex, and includes versions or types of truth: personal or narrative truth (personal versions of truth by witnesses, including victims and perpetrators); factual or forensic truth (the product of investigations, verification and corroboration); social truth (the product of dialogue, interaction, discussion and debate; and healing and restorative truth.
9. To achieve the goal of reconciliation, the TJRC puts emphasis on facilitating and/or recommend the following things
  - a. Dialogues and spaces for exchanges by and around individuals, communities and institutions

- b. Truth discovery through confessions and other means in order to establish an accurate and complete historical record
- c. Public acknowledgement violations and responsibility coupled with contrition and apologies, by individuals but also institutional and national leaders
- d. Forgiveness (inter-personal; inter-community; state-community; state-individuals)
- e. Ensuring accountability of individuals and institutions through: reparations (including restitution, compensation, memorialization); and prosecutions
- f. Restoring dignity of victims, through public acknowledgement, reparations and prosecutions.
- g. Institutional reforms

**ANNEXURE 7**

Gender Policy



## KENYA TRUTH, JUSTICE AND RECONCILIATION COMMISSION

### GENDER POLICY

#### 1. INTRODUCTION

The Gender Policy of the Truth Justice and Reconciliation Commission (TJRC hereinafter referred to as 'the Commission') seeks to ensure realization of the objectives and functions of the Commission as provided for in the TJRC Act ( Sections 5 and 6 respectively).

Specifically, the policy takes cognizance of the Commission's mandate to inquire into sexual violence and gender-based torture. The policy is grounded on the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the UN Security Council Resolutions 1325, 1820, 1882, 1888 and 1889 on Women, Peace and Security and sexual violence in conflict. It is also informed by the Constitution of Kenya which provides for equality and freedom from discrimination<sup>1</sup> and human dignity for every person<sup>2</sup>, the National Policy on Gender and Development and the long-term country development blueprint, Kenya Vision 2030.

The policy recognizes the different roles of women and men in the Kenyan context and how these differences impact on their experience of conflict as well as their perspectives on peace, justice, reconciliation and restitution. Gender roles and unequal gender relations must therefore be taken into consideration by the Commission and ensure that it is not gender blind in the execution of its mandate.

The policy is designed to ensure gender-responsiveness of the Commission in the implementation of its work and to promote gender equality to contribute to the full realization of the objectives of the Commission.

Specific Objectives of the policy:

1. **Leadership and Accountability** – The constitutive Act of the TJRC recognises and provides for gender equality (references) with Commissioners mandated and accountable for its implementation;
2. **Institutionalisation and Capacity Building** – Commissioners' and staff capacities on gender shall be enhanced to ensure effective support for and implementation of this

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<sup>1</sup> Art 27 (1)

<sup>2</sup> Art 28

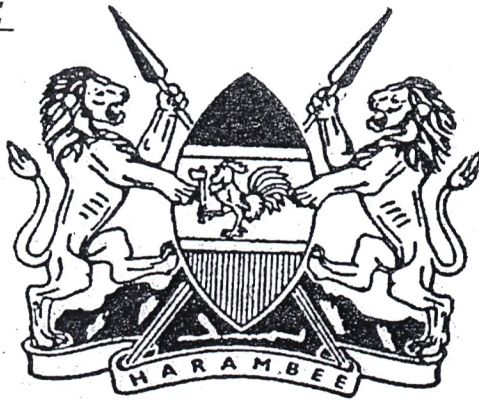
policy. This will include ensuring a designated staff role responsible for co-ordinating implementation of this Policy;

3. **Operational** - Gender analysis will be conducted for all interventions in order to be responsive to the needs and priorities of both women and men and there shall be development of standards and guidelines to ensure gender responsive plans of action including indicators, in all the units, in the execution of the Commission's mandate;

These objectives will be realised as detailed in the attached action plan (Annex 1).

**ANNEXURE 8**

Gazette Notice dated 21<sup>st</sup> October 2010 – **Establishment of Tribunal**



# THE KENYA GAZETTE

Published by Authority of the Republic of Kenya

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Vol. CXII—No. 111

NAIROBI, 1st November, 2010

Price Sh. 50

GAZETTE NOTICE No. 13203

## THE TRUTH, JUSTICE AND RECONCILIATION ACT

(No. 6 of 2008)

APPOINTMENT OF MEMBERS OF A TRIBUNAL TO INVESTIGATE THE CONDUCT OF THE CHAIRMAN OF THE TRUTH, JUSTICE AND RECONCILIATION COMMISSION, AMBASSADOR BETHWELL KIPLAGAT

WHEREAS the question has arisen that the conduct of the Chairman of the Truth, Justice and Reconciliation Commission, Ambassador Bethwell Kiplagat, ought to be investigated;

NOW THEREFORE, in exercise of the powers conferred by section 17 (2) of the Truth, Justice and Reconciliation Act (No. 6 of 2008), the Chief Justice of the Republic of Kenya appoints—

Justice (Rtd.) William Shirley Deverell,  
Justice (Rtd.) Benjamin Patrick Kubo,  
Justice (Rtd.) Prof. Onesmus K. Mutungi,

to be members of the tribunal to investigate the conduct of the Chairman of the Truth, Justice and Reconciliation Commission, Ambassador Bethwell Kiplagat.

Justice (Rtd.) William Shirley Deverell, shall be the Chairman of the tribunal and its mandate shall be:

(a) To investigate the conduct of the Chairman of the Truth, Justice and Reconciliation Commission, Ambassador Bethwell Kiplagat including, but not limited to, the allegations that the said Chairman's past conduct erodes and compromises his legitimacy and credibility to chair the Commission; his past is riddled with unethical practices and absence of integrity; he has been involved in, linked to or associated with incidents considered to be abuse of human rights; is likely to be a witness in the same matters that the Commission is mandated to investigate.

(b) To make a report and its recommendations thereon to me expeditiously and in any case not later than six (6) months from the date of this Notice.

The Tribunal shall have all the powers necessary for the proper execution of its mandate, including the power to—

- (a) Determine the times and venue of its meetings; and
- (b) To regulate its own procedure.

Dated the 21st October, 2010.

J. E. GICHERU,  
*Chief Justice.*

GAZETTE NOTICE No. 13204

## THE TRUTH, JUSTICE AND RECONCILIATION ACT

(No. 6 of 2008)

APPOINTMENT OF MEMBERS OF A TRIBUNAL TO INVESTIGATE THE CONDUCT OF THE CHAIRMAN OF THE TRUTH, JUSTICE AND RECONCILIATION COMMISSION, AMBASSADOR BETHWELL KIPLAGAT

IN EXERCISE of the powers conferred by section 17 (2) of the Truth, Justice and Reconciliation Act (No. 6 of 2008), the Chief Justice of the Republic of Kenya appoints—

EDWIN OBUYA OKELLO

as counsel to assist the tribunal appointed to investigate the conduct of Chairman of the Truth, Justice and Reconciliation Commission, Ambassador Bethwell Kiplagat; and

PERPETUAL WANGECI WAITERE

as secretary to the said tribunal.

Dated the 21st October, 2010.

J. E. GICHERU,  
*Chief Justice.*

**ANNEXURE 9**

Revised Recurrent Expenditure Estimates 2010/2011

VOTE R 17 MINISTRY OF JUSTICE, NATIONAL COHESION AND CONSTITUTIONAL AFFAIRS ...(Cont'd)

II. REVISED RECURRENT EXPENDITURE ESTIMATES 2010/2011

II. Heads and Items under which this Vote will be accounted for by the Ministry of Justice, National Cohesion and Constitutional Affairs

HEAD	SUB HEAD	ITEM	TITLE	FINANCIAL YEAR 2010/2011		
				Printed Estimates	Revised Estimates	Amount of Increase or Decrease
				KShs.	KShs.	KShs.
902			<b>170 General Administration and ...Cont'd.. Planning</b>			
	0237		<b>902 Directorate of Legal Affairs</b>			
			<b>0237 National Cohesion</b>			
		2210600	Rentals of Produced Assets	6,040,800	7,040,800	1,000,000
		2210700	Training Expenses	1,360,000	1,960,000	600,000
		2210800	Hospitality Supplies and Services	2,450,000	6,250,000	3,800,000
		2211000	Specialised Materials and Supplies	105,400	605,400	500,000
		2211100	Office and General Supplies and Services	4,550,000	6,850,000	2,300,000
		2211200	Fuel Oil and Lubricants	1,080,000	2,080,000	1,000,000
		2211300	Other Operating Expenses	890,000	4,390,000	3,500,000
		2220200	Routine Maintenance - Other Assets	120,000	620,000	500,000
		3111000	Purchase of Office Furniture and General Equipment	800,442	4,700,442	3,900,000
		3111400	Research, Feasibility Studies, Project Preparation and Design, Project Supervision	1,333,600	13,633,600	12,300,000
			<b>Change in Net Expenditure Sub-Head ..0237 KShs</b>			<b>46,300,000</b>
	0395		<b>0395 National Values Board</b>			
		2630100	Current Grants to Government Agencies and other Levels of Government		8,300,000	8,300,000
			<b>Change in Net Expenditure Sub-Head ..0395 KShs</b>			<b>8,300,000</b>
			<b>Change in Net Expenditure Head .. ... 902 KShs</b>			<b>112,590,000</b>
			<b>Change in Net Expenditure Sub-Vote ... 170 KShs</b>			<b>323,284,760</b>
035			<b>171 Legal Affairs</b>			
	0000		<b>035 Truth,Justice and Reconciliation Commission</b>			
			<b>0000 Headquarters</b>			
		2630100	Current Grants to Government Agencies and other Levels of Government	190,000,000	650,000,000	460,000,000
			<b>Change in Net Expenditure Sub-Head ..0000 KShs</b>			<b>460,000,000</b>
			<b>Change in Net Expenditure Head .. ... 035 KShs</b>			<b>460,000,000</b>
037			<b>037 National Cohesion and Integration Commission</b>			
	0000		<b>0000 Headquarters</b>			
		2630100	Current Grants to Government Agencies and other Levels of Government	119,135,000	169,135,000	50,000,000
			<b>Change in Net Expenditure Sub-Head ..0000 KShs</b>			<b>50,000,000</b>
			<b>Change in Net Expenditure Head .. ... 037 KShs</b>			<b>50,000,000</b>
276			<b>276 Commission for Implementation of the Constitution(CIC)</b>			
	0000		<b>0000 Headquarters</b>			
		2630100	Current Grants to Government Agencies and other Levels of Government		262,000,000	262,000,000
			<b>Change in Net Expenditure Sub-Head ..0000 KShs</b>			<b>262,000,000</b>
			<b>Change in Net Expenditure Head .. ... 276 KShs</b>			<b>262,000,000</b>

2011 - HEARING SHCHEDULE

Date	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE
1	BUSIA			KITALE	SATURDAY	MURANGA	MACHAKOS	NEW YEARS DAY	TANA RIVER	THEMATIC: PWDS	SUNDAY		SATURDAY
2	SATURDAY			KITALE	SUNDAY	MURANGA	MACHAKOS			THEMATIC: PWDS	THEMATIC: EXTRA		SATURDAY
3	SUNDAY									SATURDAY	THEMATIC: EXTRA		SUNDAY
4	BUSIA									SUNDAY	JUDICIAL KILLINGS		
5	BUSIA									THEMATIC: PWDS	JUDICIAL KILLINGS		
6	BUNGOMA									THEMATIC: PWDS	JUDICIAL KILLINGS		
7	ELGON									THEMATIC: PWDS	JUDICIAL KILLINGS		
8	BUNGOMA									THEMATIC: PWDS	JUDICIAL KILLINGS		
9	BUNGOMA									THEMATIC: PWDS	JUDICIAL KILLINGS		
10	KERICHIO									THEMATIC: PWDS	JUDICIAL KILLINGS		
11	KERICHIO									THEMATIC: PWDS	JUDICIAL KILLINGS		
12	ELDORET									THEMATIC: PWDS	JUDICIAL KILLINGS		
13	ELDORET									THEMATIC: PWDS	JUDICIAL KILLINGS		
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30	ELDORET									THEMATIC: PWDS	JUDICIAL KILLINGS		
31	ELDORET									THEMATIC: PWDS	JUDICIAL KILLINGS		