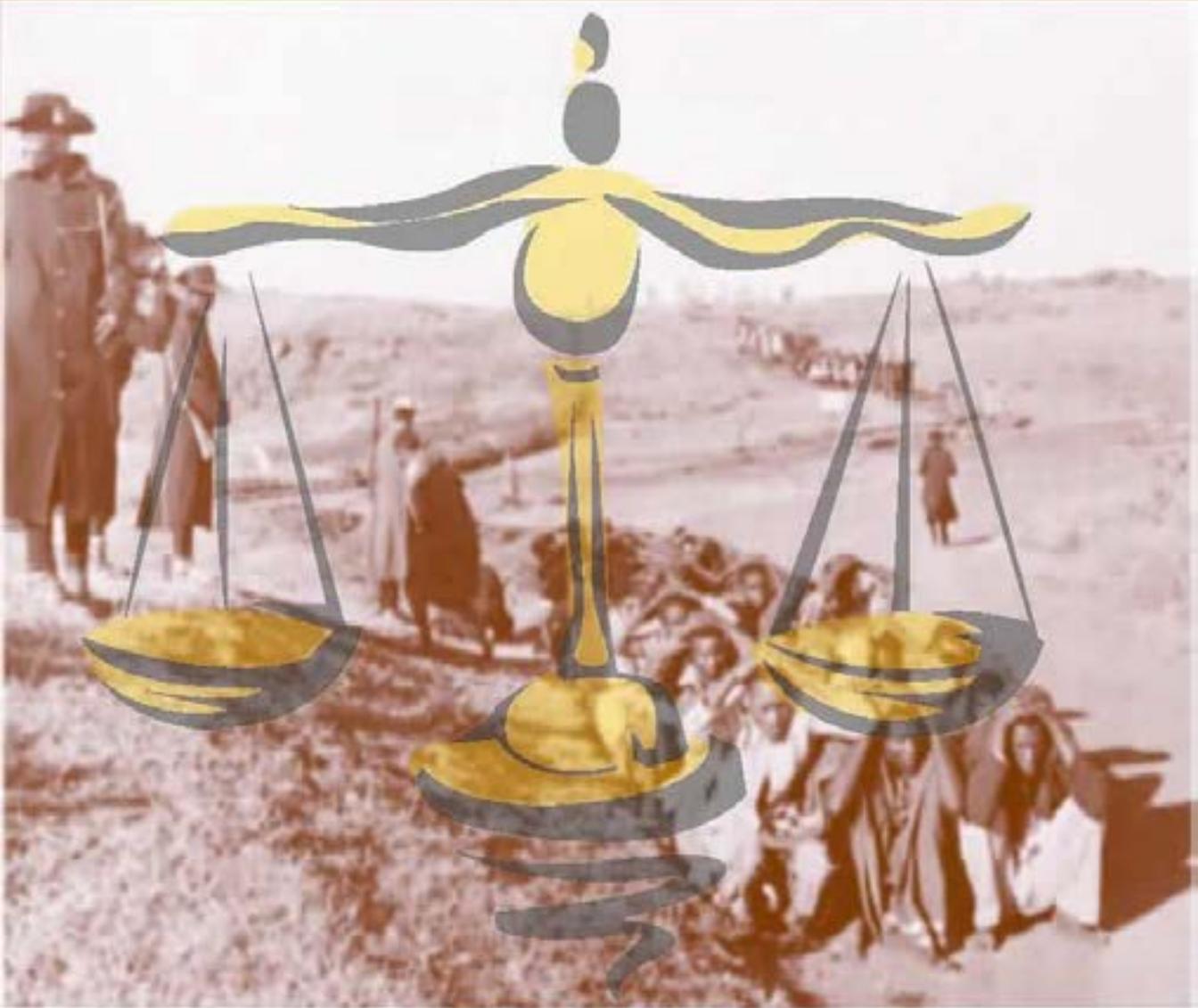


Justice Delayed...

A Status Report on Historical Injustices in Kenya



KENYA HUMAN RIGHTS
COMMISSION



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KENYA HUMAN RIGHTS COMMISSION

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This report was authored by Davis Malombe and edited by Tom Kagwe while Beryl Aidi oversaw its final production.

DEDICATION

This report is dedicated to Kenyans who have survived the gross human rights violations, gender injustices, land dispossessions, social and economic marginalization, and civil strife.

ACRONYMS

AG	Attorney General
AIDS	Acquired Immune Deficiency Syndrome
CIC	Commission on the Implementation of the Constitution
CRA	Commission on Revenue Allocation
EACC	Ethics and Anti-Corruption Commission
FEM	February Eighteenth Movement
FIDA-K	International Federation of Women Lawyers
FIDH	International Federation on Human Rights (FIDH)
HIV	Human Immuno deficiency Virus
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICPC	The International Centre for Policy and Conflict
IDMC	Internal Displacement Monitoring Centre (IDMC)
IDPs	Internally displaced Persons (IDPs)
JSC	Judicial Service Commission,
KDS	Kenya Demographic and Health Survey (KDHS)
KACC	Kenya Anti-Corruption Commission
KANU	Kenya African National Union
KLA	Kenya Land Alliance
KNDR	Kenya National Dialogue and Reconciliation
KNHREC	Kenya National Human Rights and Equality Commission

KPU	Kenya's Peoples Union
KTJN	Kenya Transitional Justice Network
NACC	National AIDS Control Council
NCEC	National Convention Executive Council
NCIC	National Cohesion and Integration Commission
NFD	Northern Frontier District
NLC	National Land Commission
NLP	National Land Policy
NRC	Norwegian Refugee Council
PEV	Post Election Violence
PLDAs	Persons Living with Disabilities
PLWHAs	Persons Living with Hiv and Aids
RPP	Release Political Prisoners
SGBV	Sexual and gender based violence
SID	Society for International Development
SLDF	Sabaot Land Defence Force
TJMAC	Transitional Justice Monitoring and Advocacy Centre
TJRC	Truth, Justice and Reconciliation Commission
UDHR	Universal Declaration on Human Rights
UNOCHA	United Nations Office Coordinating Humanitarian Affairs
YKA	Young Kikuyu Association

OVERVIEW

For many years, the Kenyan state has strived to institute effective transitional justice processes in order to address the past human rights violations and economic crimes but without much success. The Kenya Human Rights Commission (KHRC) in partnership with the victims and other civil society organizations have been engaged in this unrelenting search, for truth, justice, accountability and reconciliation through research, documentation and advocacy.

This status report documents both the root causes and manifestations of the past and contemporary human rights violations, gender injustices, land claims among other acts of impunity within the following framework:

- i. *Human Rights Obligations and Remedies in Transitional Justice*: This captures the major human rights instruments and institutions within the different reforms, justice and accountability mechanisms in the society.
- ii. *Envisaged Monitoring, Research and Engagement Process*: This underscores the introduction to this project, areas of focus and strategies of engagement.
- iii. *Key findings* detailing the patterns and nature of the injustices documented and actions taken.
- iv. *Recommendations*: proposes policy actions to both the government of Kenya and the civil society and other partners.
- v. *Appendices*: A compendium of the relevant documents for reference such as terms of reference for monitors and questionnaire for gathering data/information.

1. HUMAN RIGHTS OBLIGATIONS AND REMEDIES IN TRANSITIONAL JUSTICE

The KHRC is a non-governmental organization with the mission to entrench human rights and democratic values. The KHRC believes that transitional justice and pro-citizen reforms are pointers towards a democratic and human-rights centred state in Kenya. For the last ten years, the KHRC in partnership with other human rights organizations have been campaigning for victims centered, human rights-based and engendered transitional justice processes in the society.

Transitional justice according to Roht and Javier entails: “that set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression, and that are aimed directly at confronting and dealing with past violations of human rights and humanitarian law”.¹ Proponents assert that transitional justice offers such benefits as fostering public accountability, promoting reconciliation and psychological healing, fostering respect for human right and rule of law, and helping establish conditions for peaceful and democratically governed country.² The key transitional justice mechanisms applied in Kenya are: advocacy for pro-people legal, policy, institutional and constitutional reforms; prosecutions vide public interest litigations; effective reparations and lustration measures; reconciliation and peace building measures, memorialization, truth commissions, documentation among others.

Transitional justice and right to remedy have been one of the major obligations of state parties under customary international human rights and humanitarian laws.³ The right to a remedy for victims of violations of international human rights law is found in numerous international instruments: in particular article 8 of the Universal Declaration of Human Rights; 1 article 2 of the International Covenant on Civil and Political Rights; 2 article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination; article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and, article 39 of the Convention on the Rights of the Child.

Other provisions are found in article 3 of the Geneva Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV); article 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977; and articles 68 and 75 of the Rome Statute of the International Criminal Court (ICC). Finally, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law recognizes these laws in its preamble and provides a comprehensive framework for the realization of these rights.

¹ A Roht, M & Javier (2006: 2). *Transitional Justice in the Twenty-First Century*, Cambridge, UK: Cambridge University Press.

² Oskar N. Thomas, James Ron and Ronald Paris “State-Level Effects of Transitional Justice: What Do we know?” in *The International Journal of Transitional Justice*, Vol. 4, Issue 3, November 2010, 329-354; Oxford Journals (OUP), pp. 329

³ Despite the obligations to offer remedies, states are have a duty to minimize the human rights violations in the first place through the obligations to respect, protect and fulfill human rights. *The obligation to respect* requires the states parties to refrain from any measures that may deprive individuals of the enjoyment of their rights or their ability to satisfy those rights by their efforts. *The obligation to protect* requires the state to prevent violations of human rights by third parties. Finally the *obligation to fulfill* requires that states take measures to ensure that people under their jurisdiction can satisfy their basic needs.

A few citations on the provisions in these laws will suffice. First, the Universal Declaration on Human Rights (UDHR) provides thus: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”.⁴ Second, Article 2(3) of ICCPR provides that us each State Party to the present Covenant undertakes to: ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; and to ensure that the competent authorities shall enforce such remedies when granted.⁵

Third, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law provides an harmonized framework for safeguarding the remedies enshrined in other laws. Fourth, the United Nations went ahead to develop the following tools in order to help state and non-state actors to internalize and implement these provisions: 1) *Rule of Law Tools for Post Conflict States-Vetting: An Operational Framework*; 2) *Rule of Law Tools for Post Conflict States: Truth Commissions*; 3) *Rule of Law Tools for Post Conflict States: Reparations*; 4) *Rule of Law Tools for Post Conflict States: Maximizing the Legacy of Hybrid Courts*; 5) *Rule of Law Tools for Post Conflict States: Monitoring Legal Systems*; and, 6) *Rule of Law Tools for Post Conflict States: Prosecution Initiatives*.

Finally, and at the national level, both the previous Constitution (repealed in August 2010) and current Constitution (promulgated in August 2010) among other legal and policy frameworks have progressive provisions on the victims’ rights to remedies. Sections 70, 71, 72, 74, 76, 77, 79, 80 and 81 of the former Constitution enshrined the civil and political rights which formed the core basis for remedies by then. Sections 81, 83 and 84 of the former Constitution enshrined the provisions for remedies. Indeed Section 81(1) provided that:

Subject to subsection (6), if a person alleges that any of the provisions of sections 70 to 83 (inclusive) has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if another person alleges a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress. [FN: 6 of 1992, s. 10, 9 of 1997, s. 10.]

⁴ Article 8 of UDHR. The Universal Declaration of Human Rights (UDHR) is a declaration adopted by the United Nations General Assembly (10 December 1948 at Palais de Chaillot, Paris).

⁵ Office of the Higher Commissioner for Human Rights, International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 *entry into force* 23 March 1976, in accordance with Article 49.

Within the new Constitution of Kenya 2010 (COK 2010), Article 21(4) of the Bill of Rights obliges the State to enact and implement legislation to fulfill its international obligations in respect of human rights and fundamental freedoms. Article 22(1) provides that every person has a right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened. Section 22(2) read thus:

In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by-(a) a person acting on behalf of another person who cannot act in their own name; (b) a person acting as a member of, or in the interest of, group or class of persons; (c) a person acting in the public interest; or (d) an association acting in the interest of one or more its members.

Moreover, Section 59 of the Constitution empowers the Kenya National Human Rights and Equality Commission (KNHREC) to *inter alia*, promote the protection and observance of human rights; monitor, investigate and report on the observance of human rights, receive and investigate complaints about alleged abuse abuses of human rights and take appropriate steps to secure redress where human rights have been violated; and, on its own initiative or on the basis of complaints, investigate or research on a matter in respect of human rights and make recommendations among others.

In addition to this, Section 67(2)(d) and(e) of CoK 2010 empowers the National Land Commission(NLC) to among others: conduct research related to land and use of nature resources and make recommendations to appropriate authorities; and initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress.

The following legislative and institutional frameworks are equally instrumental in pursuing the agendas for truth, justice and reconciliation in Kenya: *First*, the Truth, Justice and Reconciliation Commission, TJRC (established by the Truth, Justice and Reconciliation, Act 2008). The TJRC was expected to investigate and recommend action over the gross human rights violations and economic crimes which took place between December 12, 1963 and February 28, 2008. However, this mandate may not be realized as expected due to the legal, operational and political challenges.⁶

Second, the National Cohesion and Integration Commission (established by the National Cohesion Commission Act (2008) is mandated to deal with injustices related to discriminatory ethnic relations in the country. *Last but not the least*, the International Crimes Act (2008) makes provision for the punishment of certain international crimes, namely genocide; crimes against humanity and war crimes and to enable Kenya cooperate with the International Criminal Court established by the Rome Statute in the performance of its functions.

⁶ See Davis M. Malombe, "The Politics of Truth Commissions in Africa: A Case Study of Kenya-March 2010"(Article to be co-published by the Pretoria University Law Press (PULP-South Africa) and the Refugee Law Project (Makerere University) under the title-*When Law Meets Reality: African Transitional Justice*. See also: Kenya Transitional Justice Network, "Civil Society Calls for Re-Engineering of the Truth Seeking Process in Kenya-31 January, 2011", pp.1-

2. MONITORING, RESEARCH AND ENGAGEMENT PROCESS

A. Introduction

For many years, the KHRC has been at the forefront in documenting and publicizing gross human rights violations in Kenya, and advocating for remedies within the aforementioned transitional justice processes. Following the signing of the National Accord under the Kenya National Dialogue and Reconciliation (KNDR) to end the Post Election Violence (PEV), the KHRC in partnership with other civil society organizations established the Kenya Transitional Justice Network (KTJN) with a view to strengthening the documentation of violations and engagement with the different truth, justice and reconciliation mechanism.

To ensure more focused interventions, the KHRC, Kenya Land Alliance (KLA) and the International Federation of Women Lawyers (FIDA-Kenya), constituted themselves into the Human Rights, Land and Gender Justice sub-working groups of the Kenya Transitional Justice Network and initiated a joint monitoring training, documentation and advocacy project. The main objective of this initiative was to *ensure informed, timely and strategic engagement with the different transitional justice mechanisms*.

B. The Monitoring Process

Towards this, over 800 monitors were trained between July and October 2009. After this, about 100 community monitors or documentarists were engaged from January –December 2010 in order to strengthen the documentation and research of the violations and crimes for strategic and continuous engagements with the emerging transitional justice processes.

The core role of the community coordinators was to ensure that the community and victims groups document the injustices and engage strategically with the TJRC and other processes at the grassroots. The monitoring process was biased towards the following themes which coincide with the mandates of the three partner organizations:

(i) Human Rights Concerns

These concerns include but are not limited to torture, detentions and extra judicial killings; massacres; systemic marginalization, deprivation and discrimination of communities; internal displacement; insecurity and ethnic tensions; national disparities and poverty levels; and economic crimes and their implication to human rights.

(ii) Land Concerns

These include but are not limited to historical land injustices and dispossessions; illegal and irregular allocation of land otherwise referred to as land grabbing; irregular exploitation of land-based resources including oil and mining; evictions from land; and destruction of forests and environmental degradation among others.

(iii) Gender Concerns

First, and in specific terms, document and respond to the systemic sexual, gender based violence and injustices including but not limited to rape, sexual assault, Female Genital Mutilation (FGM), sodomy, forced pregnancy and forced marriage, domestic violence, discrimination against women in decision making processes especially at the positions of power at local and national levels; and dispossession of women or the violation of their property and land rights among others. Secondly capture the gender and women rights implications within the above mentioned human rights and land concerns e.g. how torture of the victims led to the violation of their spouses’ rights as women.

C. Preparing the Thematic Papers for Institutional Presentations

To compliment the above process, thematic and analytical research was to be done around human rights violations, gender injustices, historical land claims, economic crimes, economic injustices, internal displacements among others. At least ten (10) policy briefs were done:

- i. A Paper on Human Rights Violations and Patterns of impunity-KHRC;
- ii. A research paper on Internal Displacements and the state of IDPs in Kenya-KHRC;
- iii. A research on historical land injustices in Kenya- KLA;
- iv. A Paper on Historical Land Injustices: The Cases of the Coastal Strip, Maasai and Pokot Land Question - KLA;
- v. A research paper on Gender Based Injustices-FIDA-Kenya;
- vi. A Research Paper on Sexually Gender Based Violence- FIDA K;
- vii. Four others to be produced in collaboration with other partners working on security and economic crimes and economic justice matters.

These policy briefs together with the three position paper(s) from the monitors’ data (above) were to form a joint publication. Before the compilation of the final publication, the briefs and papers were used for engagement with the key duty bearers on truth and justice matters.

D. New Political Dynamics and Change of Partnership

Following the credibility and legitimacy crisis affecting the TJRC in January 2010, the KHRC and KLA suspended their engagements with TJRC while FIDA and a number of monitors and did not. This weakened the efficacy of the intended project and collaborations.

Moreover, most of the reports from monitors lacked quality. This could be attributed to the long time it took to facilitate them; the confusions brought by the disengagement with the TJRC and, the refocus on monitoring and monitoring the constitutional review process (especially from April to August 2010).

It is against this backdrop that this status report is mainly based on the literature reviewed by the KHRC from other sources-including the KHRC thematic reports and publications. It covers the core areas envisaged by the three partners, plus economic crimes, economic marginalization, insecurity and civil strifes among others.⁷

⁷ These were mainly derived from the core mandate of the Truth, Justice and Reconciliation Commission, National Land Policy among others.

3. KEY FINDINGS ON THE TARGETED VIOLATIONS AND CRIMES

- a) ***That systemic injustice (human rights violations and economic crimes) have been committed by both the colonial and post-independence regimes in Kenya.*** These are systemic in the sense that they follow a certain trends and pattern which are determined by the following factors or indicators: ⁸
 - i) *Identity of the victims targeted* is usually distinct categories of person/s in terms of: religion, ethnic group, social or political group, gender, profession, age-group.
 - ii) *Location of the violation*: a specific village or neighbourhood, prison, police station, military bases, secret detention centre, checkpoint and so on.
 - iii) *Methods*: perpetrators often use similar methods or forms to commit killings, torture, arrests, economic crimes among others.
 - iv) *Circumstances* surrounding the violations or crimes may be quite similar: before, during or after elections, political gatherings, demonstrations, riots and curfew.
 - v) *Identity of the alleged perpetrators*: whether they belong to a specific unit of the security forces, vigilante group or other armed (opposition) group, assigned to a specific checkpoint; and whether they have specific ranks.
 - vi) *Responses of the local authorities or leaders of opposition groups*: including statements, (lack of) investigation, nature of investigation among others.

- b) ***That the injustices include such categories as massacres; political assassinations and politically instigated killings of pro-democracy and human rights advocates; incidents of the extra-judicial killings; arbitrary arrests, detentions and torture; historical and contemporary land injustices and claims; internal displacements; gender based injustices; economic marginalization; economic crimes; insecurity and civil strives among others.***

The following case studies per category will be critical in showing their patterns and trends from the colonial to current regimes:

- i) "Massacres".
Massacres are generally defined as the deliberate and indiscriminate killing of a large number of people bringing about serious physical or mental harm to members of a group in whole or in part.⁹ Such violations can be classified as a crime under Genocide given how it is defined under the UN Convention on Prevention and Punishment of Crime of Genocide.

Genocide is thus defined as:

...Any of a number of acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group: killing members of the group; causing serious bodily or mental harm to members of the group;

⁸ The best way to identify patterns is by keeping records of all alleged cases in a systematic and accurate way. At regular intervals you could analyze the information about specific cases to identify the patterns listed above. You could add the findings to your situation report.
⁹ <http://www.en.wiktionary.org/wiki/massacre>

deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group, and forcibly transferring children of the group to another group.¹⁰

Massacres are reported to have taken place in North Eastern, Eastern, Central and Nyanza provinces where many innocent people have lost lives in the hands of both the police and fellow citizens.¹¹ These are *Holla Massacres (1959-Tana River); Kisumu town massacres(1969), Bulla Kartasi(1980-Garissa); Malka Mari(1981-Mandera); Wagalla(Wajir-1984);Bagalla(1998-Garissa);Elwak(2008-Mandera);Turbi(2005-2009-Marsabit);Mathira(2009-Nyeri);Isiolo(2009),among others*).

- ii) *Unresolved political assassinations and politically instigated killings of pro-democracy and human rights advocates.*¹² During the Colonial era, Koitalel Arap Samoei was among the first Kenyans to be assassinated in 1905 for leading a 12 year protest against the construction of the railway. Others were the many people who lost their lives during the Mau Mau crackdown in the 1950s. In February 18, 1957, Field Marshal Dedan Kimathi was arrested and finally executed by the British government.

The most prominent assassinations from 1963 to date are the murders of Pio Gama Pinto(1965), Tom Mboya(1969), J.M Kariuki(1975), Tito Adungosi(1987), Dr. Robert Ouko(1990), Bishop Alexander Muge (1990), Karimi Nduthu(1996), Solomon Muruli(1997), Fr. John Kaiser(2000), Oscar Kingara and Paul Oulu(both in 2009) among others. Other prominent leaders and academia who died in politically controversial circumstances includes but not limited to Argwings Kodhek(1969), Ronald Ngala(1972), Maluki Kitili Mwendwa(1985), Masinde Muliro(1992), Tony Ndilinge(1999), Dr. Chrispus Mbai(2003).¹³

- iii) Closely related to the above violations are the many *incidents of the extra-judicial executions* by the state in the under the guise of security swoops, crackdowns and operations where many innocent people are either arrested or executed by police and sometimes with the support of the military. The arbitrary killings of the people in the pretext that they belong to such suspected and organized criminal groups as *Mungiki*, *matatu* touts, *Sabaot Land Defence Forces (SLDF)*, highway robbers are phenomenal from 2003 to date.

- iv) *Arbitrary arrests, detentions and torture* have been one of the major tactics of either suppressing political dissent or punishing the suspected law breakers for the last 100 years in Kenya.¹⁴ Barsirian Samoei (the son of Koitalel Arap Samoei)

¹⁰ UN Convention on Prevention and Punishment of the Crime of Genocide (1948)- <http://www.un.org/millennium/law/iv-1.htm>

¹¹ For instance the Mathira massacre were executed by the suspected members of the *Mungiki* sect.

¹² The KHRC has also captured this in the documentary *Unturned Stones-2010*(episode 1 on political killings and assassinations).

¹³ Tito Adungosi, Solomon Muruli and Paul Oulo were student leaders at the University of Nairobi by the time they met their deaths. Dr. Mbai was a senior lecturer at the University of Nairobi. The KHRC is conducting a related study whose goal is to document the different violations to the academia by the state and the implications to the victims' and survivors' livelihoods and the reform processes in Kenya from independence to date. The final report will be out in May 2011.

¹⁴ The KHRC has documented these cases in the publication: *Surviving after Torture: A Case Digest in the Struggle for Justice by the Torture Survivors in Kenya (2010)*. The KHRC has also captured this in the documentary *Unturned Stones-2010*(episode 3 on arrests, torture and detentions of pro-democracy advocates).

was detained from 1922-1964 for leading the resistance against the colonial government within the Nandi community. He has since become the longest political detainee in Kenya’s history. Mekatilili wa Menza, the Giriama woman who led the struggle against the colonial rule in 1913-1914 was finally arrested and transferred to Kismayu.

In 1922, Harry Thuku, the leader of the Young Kikuyu Association (YKA) was arrested for leading the first violent urban protest in Nairobi. Among his supporters 22 were arrested and 27 were wounded while he was transferred to Kismayu.¹⁵ During the final phases of the struggle for independence from 1950-1960, many freedom fighters (commonly referred to as the Mau Mau), hundreds of thousands of people were arrested, tortured and detained by the British Government.¹⁶

During the post independence era, the following cases are clearly evident during the Kenyatta regime: the military expeditions which orchestrated the violent suppression of the ‘shifta’ wars against the secession of the then Northern Frontier District (NFD); the 1969-1972 crackdown of the leaders and members of the Kenya’s Peoples Union (KPU) and the detention of the independent minded politicians and academia in the 1970s.¹⁷

The Moi era (1978-2002) is notorious for the detentions and tortures of the pro-democracy activists at the former Nyayo House Torture Chambers, Turkoman Carpet House, Nyati House, Kamiti and Naivasha Maximum prisons among other security operation centres. The key victims were the 1982 Airforce mutineers, the Mwakenya members (1982-1995), the February Eighteenth Movement (FEM from 1995), the Pro-democracy activists under the National Convention Executive Council (NCEC) and the Release Political Prisoners (RPP) lobby groups (1992-2002).

The Kibaki regime (2002 to date), which came to power on the platform of justice and reforms, has been equally abated arbitrary arrests and trial of the human rights advocates. These have ironically persisted to date including during the day the New Constitution was being promulgated in August 27, 2010, where at least 10 people were arrested for protesting against the invitation of the Sudanese President, Omar Al Bashir.¹⁸ This was action by the police violated the Bill of Rights which provides for rights to picket and demonstrate.¹⁹

¹⁵ The deportations exposed the targets to new, difficulty and distressful environments and circumstances.

¹⁶ The reports by the Kenya Human Rights Commission (among other sources) through the statements taken to support the reparations suit in Britain attest to this.

¹⁷ The latter entailed such politicians as Joseph Martin Shikuku, Jean Marie Seroney, Chelagat Mutai, George Mosei Anyona, Mashengu wa Mwachofi and the politically motivated criminal conviction of the former Nakuru MP, Mark Mwithaga. Ngugi wa Thion’go, the academia who used to undertake political mobilization through his ‘Moving Theatre’ was one of the scholars targeted.

¹⁸ President Al Bashir’s presence was seen to be an affront to the government’s international human rights obligations under Articles 2(6) and 132(1) (c) (iii) of the New Constitution. President Al Bashir has been indicted by the International Criminal Court (ICC) for genocide in Darfur. Kenya is a signatory to the Rome Statute establishing the ICC and hence we had the obligation to arrest him.

¹⁹ Indeed Article 37 of the New Constitution provides thus: Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities

Moreover, the security operations exacerbating the extra-judicial executions above have also been characterized by arrests and torture mostly targeting the youths in different parts of the country. Finally, the Kibaki regime is known for the extra-ordinary renditions of its Kenyan citizens suspected to be involved in terrorism for trial in other countries. For instance, the renditions to the Guantanamo Bay in Cuba and the current case of Al Amin Kimathi in Uganda have subjected the Kenyan citizens to tortuous and unjust trial processes.

v) *Historical and contemporary land injustices and claims.*

While land and land-based resources remains the single most important economic factor in Kenya, its mismanagement and maladministration has led to massive human rights violations throughout history. The Sessional Paper on the National Land Policy defines historical land injustices as thus:

...grievances which stretch back to colonial land administration practices and laws that resulted in mass disinheritance of communities of their land, and which grievances have not been sufficiently resolved to date. Sources of these grievances include land adjudication and registration laws and processes, and treaties and agreements between local communities and the British. The grievances remain unresolved because successive post independence governments have failed to address them in a holistic manner.²⁰

The statistic and cases below bear evidence to the manifestations of these injustices. In Kenya, 75% of the population is directly dependent on land yet land distribution is skewed in many ways. 17.2% of Kenyan total landmass of 587,900 square kilometers carries 80% of the population while the remaining over 80% carries only 20% of the total population, which is mainly made up of pastoralists. About 13% of the population has no land at all.²¹

A report from our monitors and policy documents indicates that the historical land injustices are currently manifested in the society by *inter alia*: the systematic breakdown in land administration and land delivery procedures; illegal and irregular allocation of public land (land grabbing); endemic evictions and internal displacements; skewed access and distribution of benefits accruing from the exploitation of the land based resources such as minerals etc; and, inadequate participation by communities in the governance and management of land and natural resources.

Other factors and indicators include: gross disparities in land ownership, gender and transgenerational discrimination in succession, transfer of land and the exclusion of women in land decision making processes; lack of capacity to gain

²⁰ Government of Kenya, *Sessional Paper No. 3 on the National Land Policy, August 2009*, Section 178.

²¹ According to a Report of the International Workshop on Land and Economic, Social and Cultural Rights organized by the Kenya Human Rights Commission and the Swedish NGO Foundation at the Panafric Hotel, Nairobi, Kenya 6th – 8th October, 2004 entitled: "Secure Land Tenure as a Means to the Realization of Economic, Social and Cultural Rights : Planting the Seeds of Reforms in Kenya" p. 12

access to clearly defined, enforceable and transferable property rights; lack of progressive and accessible land information system; a general deterioration in land productivity in the large farm sector; and inadequate environmental management and conflicts over land and land based resources.

Based on the above, our research and monitoring concludes that the following vulnerable groups are the most affected and violations: ‘squatters’ or landless poor, unemployed, women, children, youth, the aged, subsistent farmers, pastoralists, hunters and gatherers, minorities communities, forest dwellers, persons with disabilities, persons living with HIV/AIDS, orphans, people living in slums, informal settlements and streets among others. Most of these groups have also been recognized and redress measures proposed in the National Land Policy (NLP) vide Sessional Paper No. 3 of 2009.²²

vi) *Internal Displacements*²³

The phenomena of internal displacement has bedeviled the Kenya’s political history, stretching from the colonial dispossession of communities to pave way for the settler agricultural economy to the post independence upsurge of the Internally displaced persons(IDPs) owing to human and natural factors. According to the International treaties and the Draft National Policy on IDPs:

Internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or man-made disasters, and who have not crossed an internationally recognized State border.²⁴

Our research points that the IDPs problem became public issue following the politically instigated violence which has taken a centre stage from 1991 to 2008. Reports by the KHRC indicates that the 1991-1997 election related clashes displaced more than 600,000 people in the Coast, Rift Valley, Nyanza and Western provinces.²⁵

Further reports by the KHRC and the International Federation on Human Rights (FIDH), note that this number had reduced to close to 360,000 IDPs in Kenya by May 2004.²⁶ Other sources indicate that the figure had risen to about 450,000 by 2006.²⁷ This led Kenya to be ranked 7th amongst countries with high numbers

²² See Republic of Kenya, Ministry of Lands, Sessional Paper No. 3 of 2009(August 2009), Section 3.6, pp. 40-47
²³ The KHRC and the National Network for the IDPs in Kenya have been involved in the research and monitoring of this issue for the last 13 years as captured in the publication below. The latest information on the progress on protection and policy recommendations can be found in: “Status Report on the Support to IDPs-2008-2010”. The initial report was issued in December 2010 and the final edition will be published in February 2011. See also the 2010 the documentary and publication entitled *abandoned and forgotten; and Out in the Cold: The Fate of the Internally Displaced Persons in Kenya (2008-2009)* respectively.
²⁴ Refer to Article 1 of the Guiding Principles on Internal Displacement (1998); Article 1 of the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons (2006); See also the definition/ glossary of terms section of the Draft National Policy on IDPs, February 2011 edition.
²⁵ KHRC, 1998. *Killing the Vote: State-Sponsored Violence and Flawed Elections in Kenya*, Nairobi: KHRC; Kenya Human Rights Commission (KHRC), 1998. *Kayas of Violence, Kayas of Blood: Violence, Ethnicity and the State in Coastal Kenya*.
²⁶ FIDH and KHRC, 2007. *Massive Internal Displacements in Kenya due to politically instigated clashes* Nairobi: KHRC/FIDH p. 17
²⁷ Internal Displacement Monitoring Centre (IDMC). 2007. *I am a Refugee in my Own Country: Conflict Induced Internal Displacement in Kenya*. Geneva: IDMC/NRC.

of IDPs in Africa. Other reports by the United Nations Office Coordinating Humanitarian Affairs (UNOCHA) indicate that at the end of 2007, there were still 380,000 IDPs from clashes that had been experienced in the 1990s.

However, it is the December 2007 to February 2008 post election violence (PEV) which created the biggest number of IDPs and within a short time-frame of two months. Official reports indicate that PEV led to destruction of property, loss of lives, 663,921 people displaced and about 78,254 houses destroyed country wide. An additional 640 households fled into Uganda. A total of 350,000 IDPs sought refuge in 118 camps whereas about 331,921 IDPs were integrated within the communities across the country. The table below summarized those statistics²⁸.

Our research monitoring reveals that the State and non-state actors are yet to implement concrete immediate actions to ensure the realization of the IDPs' rights to human dignity, food, water, clothing, security, housing, education, land and property, justice among other fundamental rights and freedoms. There are no frameworks to protect the inherently vulnerable groups like women, children, the aged, sick, and persons with disabilities among others. Finally, there are no mechanisms to foster durable solutions through voluntary, dignified and safe return, relocation and/ or resettlement.

vii) *Gender-based Injustices*

Gender based injustices are the human rights violations which are targeted to an individual or group of persons due to their gender. *Gender* refers to the socially constructed roles played by women and men that are ascribed to them on the basis of their sex. The discourse or outcome of gender injustices is basically an anti-thesis of *gender justice* both from its respective feminist and human rights postulations thus:

- *Gender justice* are the emancipatory projects that advance women's rights though legal change, or promote women's interests in social and economic policy.²⁹
- *Gender justice* as the protection and promotion of civil, political, economic and social rights on the basis of gender equality. This perspective necessitates taking a gender perspective on the rights themselves, as well as the assessment of access and obstacles to the enjoyment of these rights for both women, men, girls and boys and adopting gender-sensitive strategies for protecting and promoting them.³⁰

²⁸ See Government of Kenya; Ministry of State for Special Programmes; "IDPs Status Brief as at 3rd March 2010" and "IDPs Status Brief as at 30th July 2010".

²⁹ ANNE MARIE GOETZ, "Gender Justice, Citizenship and Entitlements Core Concepts, Central Debates and New Directions for Research" in Maitrayee Mukhopadhyay and Navsharan Singh (eds), *Gender Justice, Citizenship and Development* (Zubaan/ Kali for Women and International Development Research Centre; New Delhi, 2007).

³⁰ World Bank (2006) *Gender, Justice, and Truth Commissions*; Pam Spees (2004) *Gender justice and accountability in peace support operations closing the gaps. A Policy Briefing Paper by International Alert*. Pam Spees (2004) *Gender justice and accountability in peace support operations closing the gaps. A Policy Briefing Paper by International Alert*.

While gender injustices affected both men and women, it is the latter who are the most affected due to their vulnerability; and patriarchy in the society. Thus women are victims of both the above mentioned human rights violations and the gender specific injustices which therefore frustrates the realization of their full human potential and development³¹. The following statistics and cases illustrate the specific violations targeted to women.

First, is on the governance of land-based resources, where women have witnessed more afflictions when it comes to historical land injustices. It is always noted that less than 5% of women have land titles in their names, yet women constitute about 50.5% of the population and carry out 80% of productive activities on land.³² It is on this basis that the National Gender and Development Policy observe that:

Indeed, in Kenya, over 80% of women live in rural areas where the majority is engaged in the farming of food and cash crops, livestock keeping and in agro-based, income generating activities. In many areas of the country, male migration to urban areas and large-scale farms in search of paid employment has left women in charge of the management of small-scale farming activities. It is estimated that women constitute over 70% of all employees in the agricultural sector.³³

In its provisions on the “Contemporary Manifestations and Impacts of the Land Question in Kenya” the National Land Policy captures the following gender-based indicators: gross disparities in land ownership, gender and trans-generational discrimination in succession, transfer of land and the exclusion of women in land decision making processes; and lack of capacity to gain access to clearly defined, enforceable and transferable property rights.³⁴ These according to the policy have had the following implications to women’s land rights: disinheritance of women and vulnerable members of society, and biased decisions by land management and dispute resolution institutions; landlessness and the squatter phenomena.³⁵

Second and related to the historical land injustices is the phenomena of internal displacement which has resulted to massive loss of lives, land, property and other means of livelihoods owing to both human and natural factors. While the Kenyan State has tried to respond to violations meted to IDPs, there is an absence of gender-disaggregated data and durable solutions to ensure adequate protection and assistance to all IDPs, including women.³⁶

³¹ Other violations to women integrated in other categories of injustices can be found within the Land and IDPs sections above.
³² According to a Report of the International Workshop on Land and Economic, Social and Cultural Rights organized by the Kenya Human Rights Commission and the Swedish NGO Foundation at the Panafic Hotel, Nairobi, Kenya 6th – 8th October, 2004 entitled: “Secure Land Tenure as a Means to the Realization of Economic, Social and Cultural Rights : Planting the Seeds of Reforms in Kenya” p. 12
³³ Government of Kenya (GoK) (2000) “National Gender and Development Policy,” Nairobi: Ministry of Gender, Sports, Culture and Social Services, GoK, page 8.
³⁴ Government of Kenya, “Sessional Paper 3, 2009: The National Land Policy”; Section 2.3 Para 24(c and d). For other manifestations, see 24(a, b,e and f).
³⁵ Government of Kenya, “Sessional Paper 3, 2009: The National Land Policy”; Section 23, Para 25(f and g). For other impacts see Para 25(a-k).
³⁶ According to a report by the Kenya Human Rights Commission entitled *Out in the Cold: The Fate of the Internally Displaced Persons in Kenya (2008-2009)*, women and child IDPs have and still face many land and livelihood injustices both in the transit camps and self help/ settlement camps.

Principles 18 and 22 of the UN Guiding Principles on IDPs brings the direct connection between land/ property rights verses women's rights of IDPs in all phases of displacements. Article 18(1-2) provides for safe access to such land-based resources as essential food and potable water; basic shelter and housing; among other services. Sub-article 3 engenders these entitlements by declaring that special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies. Article 22 protects property rights (most of which is land-based) against destruction and arbitrary and illegal appropriation, occupation or use.

Third, is on gender and employment opportunities. Reports indicate that while most of the poor have been denied political, economic and social opportunities, it is worse for women who bear the brunt of this denial. The 2004 SID study catalogued the dimensions of gender on employment and inequality as follows:

- *Employment*: men not only have higher incomes from paid employment, they also have better jobs. Women comprise a smaller proportion both in the formal and informal sector. As of 1999, the proportion of men in formal sector jobs was 71.9% compared to only 28% for women. In the public service, women dominate lower grade jobs compared to men.
- *Urban employment*: There is a glaring bias of female unemployment, especially in the age group 15 to 39 years. For instance, there are about 73,000 unemployed young men, but about 274,000 unemployed young women among those aged 20-24 years. For those aged 25-29, people out of colleges and universities, there were about 33,000 unemployed young men but about 165,000 unemployed young women.

Fourth, is the participation of women in elective and appointive positions in the society. Within elective positions for instance, of the 222 Members of the current Parliament, only 22 are women, an increase from 18 in the previous Parliament. Women's participation in the Judiciary is also skewed, with the majority occupying the bottom tiers of the judiciary, even after the judicial purge of 2003.

Fifth, is the subjection of women to sexual and gender based violence (SGBV). While both women and men have been subjected to SGBV, this more prevalent among women due to their very vulnerable nature. According to the 2008-9 Kenya Demographic and Health Survey (KDHS), 39% of married, divorced or separated women aged 15-49 years reported being physically or sexually violated by their husbands or partners.

Moreover, about 32% reported having been violated in the year before the survey. Rural women are more likely to be victims of physical and sexual violence. The survey further revealed that 15% of married women are sexually violated. Just over 27% of women reported that they were circumcised.

Sixth is the subjection of women to repugnant and harmful practices, discriminatory and unequal power relations between men and women, and economic dependence which often put women and girls at a disadvantage. Such includes forced and early marriages, polygamy, widow inheritance and ritual cleansing which have continued unabated in parts of Kenya especially the North Eastern, Western and Nyanza Provinces.

Finally and related to the above is the susceptibility and burden to HIV/AIDS.³⁷ To begin with, an Assessment conducted by National AIDS Control Council (NACC) in 2006 reveals that that female household heads are more likely to be affected by HIV and AIDS than male-headed household. Women are most vulnerable in the HIV pandemic and constitute the greater number of new infections. Consequently women and girls vastly outnumber the men and boys among people living with HIV and AIDS (PLWHAs). Of the estimated 1.3 millions adults over the age of 15 living with HIV and AIDS in Kenya, nearly three quarters are women. HIV prevalence rate in Kenya is higher among the married couples than the single and this can be attributed to patriarchy.

On the burden to shoulder to HIV and AIDs related cases, the NACC survey revealed that 87% of the households with PLWHAs required the assistance of a caregiver with only 13% of them indicating that they did not require the assistance of a caregiver. The responsibility for care giving falls primarily on a woman in the family. The survey findings revealed further that majority of the caregivers had to abandon their normal daily responsibilities in order to spend time with the infected person.

In addition to taking care of the sick family member, the caregivers have also to take care of the welfare of the other family members. Unequal sharing of responsibility reduces time in which women, the main caregivers PLWAhs can participate in the income generating activities to cover increased medical costs. It also means that households often have to reduce spending on essentials such as food, housing, clothing and other necessities. The combination unequal sharing of responsibilities and resulting restrictions on women’s participation in paid work means the cost associated with HIV and AIDS forces many households to sell assets to cover the costs associated with HIV and AIDS.

viii) *Economic Marginalization*

This entails systematic exclusion of the underprivileged or disadvantaged persons, groups and regions in the society from either decision making processes or access to public resources contrary to the New Constitution of Kenya and international human rights treaties. In most cases, these are calculated to subject the affected persons to poverty and deprivation among other violations. A few cases will suffice.

³⁷ This dimension is also captured in Davis Malombe and Grace Maingi, in the paper, “Gender and Transitional Justice in Kenya: A Policy Framework for Engendered Engagements”, yet to be published by the International Centre for Policy and Conflict (ICPC) for the Kenya Transitional Justice Network (KTJN).

First, is the lack of access to equitable opportunities for youth and persons with disabilities where women form the greatest population. According to Kenya Census 2009, the youthful population between the age of 15-24 years is disaggregated as 4,066,888(51.2%) and 3,877, 758(48.8%) for females and males respectively. The persons with disabilities are constituted as follows: 647,689(3.4%) and 682, 623(3.5%) for males and females respectively.³⁸

Second, are the increasing levels of poverty and inequality in the society. According to a seminal report by Society for International Development, *Pulling Apart: Facts and Figures on Inequality in Kenya*,³⁹ there is now a gulf between the poor and the rich, a gap that makes Kenya the third most unequal State in Africa. For us, however, the issue of inequality is not just about the statistics on the income gap between the rich and poor, but rather the effects of this on the wellbeing, autonomy and dignity of individuals and groups. Moreover, this divide entails differences in access to basic social goods and service such as education, health, access and enjoyment of political rights and freedoms.

Moreover, inequality in Kenya is also not confined to income and wealth, but also between groups. In this respect, gender inequality remains a key challenge, with serious implications on equal well being, autonomy and dignity of men and women. More specifically, gender inequality is manifest in differential treatment and outcomes that deny women the full enjoyment of the social, political, economic and cultural rights and development.

Fourth, distribution of wealth and opportunities in Kenya does augur well for such disadvantaged groups and regions as women, youth, PLWHAs, Persons Living with Disabilities(PLDAs), the aged, semi-literate, pastoralists, Northern Kenya, minorities among other segments in the society.

Finally, sometimes there are attempts by the ruling governments to punitively sabotage the core economic activities for regions or communities seen to be in the opposition or unsupportive of the governments in power. For instance, the initiatives by the then Moi-KANU regime to frustrate the cotton, fish, dairy, tea and coffee industries in Luo Nyanza, Central Nyanza and Upper Eastern. This may also justify the systematic marginalization of Northern Kenya by the Kenyatta government after independence following the unsuccessful attempts by the region to secede to Somalia during the aforementioned 'shifta' wars.⁴⁰

³⁸ These are integral for two reasons: 1) Women form the majority of among the youth and persons with disabilities; 2) These two group form part of the most marginalized and disadvantaged groups in the society. For details find: *Kenya Census 2009: Kenya 2009 Population and Housing Census Highlights*; Government of Kenya/ Kenya National Bureau of Statistics, 2010; ochure. indd 4 and 5

³⁹ See www.sidint.org.

⁴⁰ Then referred to as the Northern Frontier District(NFD), currently North Eastern province and the adjacent districts which includes Lamu, Isiolo and Marsabit, wanted to break way and join Somalia for the residents thought their interests were not addressed by the post-independence government.

ix) *Corruption and other Economic Crimes*

Corruption generally refers to the conduct or act by any person that adversely affect their honest and impartial exercise of their functions as public officers. The *(Kenya) Anti-Corruption and Economic Crimes Act (2003)* provides a descriptive definition of corruption to cover such crimes as abuse of public office, breach of trust, conflict of interest, misappropriation and embezzlement of public funds, theft and plunder of public resources and any offence involving dishonesty, in connection with any other tax, rate or impost levied under any Act or dishonesty relating to elections of any persons to public office.

Corruption according to a recent report by the KHRC persists thus occasioning massive human rights violations due to the mismanagement of public resources meant for the realization of economic, social and cultural rights. Moreover, civil and political rights are violated when architects of graft connive to suppress the anti-corruption campaigners and crusaders. Finally, the report concludes that concrete measures to deal with the culprits mentioned in a dozen of official reports⁴¹.

x) *Insecurity and civil strifes*

These are basically the general manifestations of the government’s failure to initiate the requisite frameworks to deal with the above acts of impunity and bad governance. For instance insecurity manifested in conflicts over the land based resources have been caused by the government’s inability to deal with the historical land injustices.

That while there are numerous legal and institutional frameworks meant to respond to these, they are to address the injustices and offer durable solutions or remedies. These includes the Kenya Anti-Corruption Commission, Truth, Justice and Reconciliation Commission, Kenya National Commission on Human Rights, National Cohesion and Integration Commission, Gender and Development Commission, Kenya Police Service, Judiciary, thematic Ministries and the state institutions envisaged in the Constitution of Kenya (2010).

⁴¹ See “Lest we Forget: The Faces of Impunity in Kenya” (unpublished report by KHRC, March 2011). The report compiles a list of those recommended for further investigation, criminal proceedings in official reports into gross and systemic human rights violations as well as grand corruption. It therefore a product of the review done in more than 20 official reports related to the past human rights violations and economic crimes in Kenya.

4. RECOMMENDATIONS

A. To the Commission on the Implementation of the Constitution (CIC)

We urge this Commission to fast-track the implementation of the Constitution for it postulates solutions to the above problems through the following provisions:

First, the sovereignty of the people and the supremacy of the Constitution in the governance processes at all levels in the society;

Second, national values and principles of good governance geared towards ensuring the respect for human rights, equality, and rule of law, equity, social justice, participation, inclusiveness, and non-discrimination, protection of the marginalized, devolution, integrity, transparency, accountability and sustainable development in the management of public affairs;

Third, a progressive Bill of Rights enshrining human rights in its entire gamut(all the civil and political rights, economic, social and cultural rights), proscription of discrimination in all basis and protection of such vulnerable and disadvantaged groups such as the children, persons with disabilities, youth, minorities, and marginalized groups and older members of the society;

Fourth, safeguards on land and environmental rights through for equitable access to land, security of land rights, sustainable and productive management of land resources, sound conservation and protection of ecologically sensitive areas, transparent and cost effective administration of land, elimination of gender discrimination in land and property rights, and encouragement local initiatives for communities to settle land disputes;

Fifth, standards on leadership, integrity and public service to ensure transparent, accountable, fair, equitable and judicious management of public affairs and resources;

Sixth, a civilian based as opposed impunity driven national security organs mandated to protect any threats to the country's territorial integrity and sovereignty, its people, their rights, freedoms, prosperity, peace, stability and prosperity, and other national interests;

Seventh, a reformed judiciary to foster independent, impartial and expeditious access to justice and rule of law for all;

Eight, a vibrant political parties and parliament in order to safeguard effective representation and bolster the nascent democracy in Kenya;

Ninth, a checked executive and devolved government in order to ensure efficient, accountable and equitable governance of the political and economic affairs of the state at all levels;

Finally, the creation of Constitutional Commissions such as the National Land Commission (NLC), Kenya National Human Rights and Equality Commission (KNHREC), Judicial Service Commission, Commission on Revenue Allocation(CRA), Kenya Anti-Corruption and Ethics and Anti-corruption Commission(EACC), Police Service Commission,

Parliamentary Service Commission, the Auditor General, Controller of Budget, the Attorney General(AG) and Director of Public Prosecutions(DPP) to ensure that the above gains are enforced, and attendant injustices resolved.

B. To the Government of Kenya

First, to ensure the finalization and/ or the implementation of the respective draft and existing legal and policy frameworks meant to address the above injustices such as the National Land Policy, Disability Act, Anti-Corruption and Economic Crimes Act (2003), Public Officers Ethics Act (2003), National Cohesion and Integration Act, Draft IDPs Policy, Draft Human Rights, pending Gender Bills(Matrimonial Property Bill and Marriage Bill), Affirmative Action Bill, Equality Bill, Police Oversight Bill, Anti-Torture Bill among others envisaged in the New Constitution.

Second, bolster the capacity of the existing state institutions through legal and administrative reforms and better allocation and management of resources. For instance, the National Cohesion and Integration Commission(NCIC), Kenya National Commission on Human Rights(KNCHR), Kenya Anti-Corruption Commission(KAAC), the Judicial Service Commission(JSC) among others.⁴²

Third, and in regards to the embattled Truth, Justice and Reconciliation Commission (TJRC), the government should reconstitute it to enable more credibility, legitimacy, technical, financial and operational capacity and autonomy. Reconstitution of the TJRC should be the best option as opposed to the six month extension of its mandate after the two years expire in November 2011.

The new truth commission should have a focused and restricted mandate on human rights issues. It should leave either leave or collaborate on land, anti-corruption, and justice and reconciliation issues to the NLC, KAAC, judiciary and National Cohesion and Integration Commission (NCIC) respectively.

C. To the Civil Society, Development Organizations and other Partners

The civil society and other non-state actors should provide technical support, and sustain monitoring and evaluation in the resolution of the injustices and implementation of the recommendations above.

D. Conclusion

If the above information could be utilized, institutions refurbished and laws and polices enacted and enforced, the society envisioned in the Constitution of Kenya will be realized. The preamble to the Constitution sums this vision as follows: “RECOGNIZING the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law.

⁴² The Controller of Budget and the sectoral/ thematic Parliamentary Committees mandated to monitor the management of public resources within the line ministries.

APPENDICES

Appendix A: Key Result Areas/ Terms of Reference for the community coordinators / monitors

i) *Documentation-Investigation, Data Collection and Compilation*

- Ensure that all the victims and affected communities falling within the assigned thematic areas or violation and crimes are identified. A schedule will be attached highlighting the areas, number and types of cases (victims and violations) assigned and expected.
- Ensure that the victims fill in and provide their information and data within or along the documentation tool and other guideline provided (the what, when, where, how and by whom)) for presentation to the Commission during its hearings in their regions.
- Ensure that all the cases-violations and crimes documented are systemic and widespread (in terms of causes, patterns and manifestations).
- Ensure that all the victims of the cases above have recommendations responding to the root causes and effects of the violations and crimes.
- Organize photocopies of documentary evidence available (ORIGINAL COPIES TO BE LEFT WITH WITNESSES).
- Provide additional information to the national researchers who will be contracted by the working group to undertake thematic researches.

ii) *Preparation and Protection of Victims*

- Ensure that all the affected communities and victims are mobilized and aware of the work of the TJRC prior to its sittings or hearings of the Commission.
- Find out whether any of the victims and/or witnesses are under any form of threat and require protection before, during or after presentation to the Commission.
- Find out whether any of the victims and/or witnesses have any contentions with any of the Commissioners prior to the Commission's sitting for hearings in the region.
- Liaise with the TJRC during its awareness creation forums on the ground. The working group will ensure that the links between the coordinating team and TJRC group on the ground is enhanced.
- Keep track on the TJRC process so as to ensure accountability in its engagements.

Signed by: _____

On behalf of Kenya Human Rights Commission (KHRC)

Signed by: _____

On behalf of the **Kenya Land Alliance (KLA)**

Signed by: _____

On behalf of the **Federation of Women Lawyers (FIDA –Kenya)**

Signed by: _____ **Community Coordinator.**

Number and Type of Victims and Cases Assigned

District/s Assigned	Violations/ Crimes to be documented	Number of Cases/ victims expected

Appendix B: Ten Major Guiding Points in Organizing Information and Data for Presentation to the KHRC, FIDA-K and KLA

Serial No. of the Form: KHRC-FIDA-KENYA-KLA _____

1. Details of the Community Coordinator:

Name: _____

Locations: Village _____

Location _____ District _____

Province _____

Postal Address: _____ Postal Code _____

Mobile No: _____ Email Address _____

2. Details of the Victims affected (This can capture either the personal or communal details for group victims)

For Personal Details

Names: Last Name _____ Middle Name _____

First Name _____ Age: _____

Sex: Male Female (tick one)

Locations: Village _____ Location _____ District _____

Province _____ Postal Address: _____ Postal _____

Code: _____ Mobile No: _____ Email Address: _____

Indicate whether the victims is primary or secondary victim (tick one). Primary victims are those directly harmed by the violation or crime while secondary victims are those affected as a result of their close relatively being direct targets.

For Group or Communal Details

Names of the Victims: Last Name _____

Middle Name _____ First Name _____

Ages: Lowest _____ Highest _____

Sex: No. of Men _____ Women _____ and Children _____

Locations: Village/s _____ Location/s _____

District/s _____

_____ Province/s _____

Postal Address, Emails and Mobile Numbers of the leaders _____

_____ (write as many as possible).

Indicate whether the victims are primary or secondary victims (tick one). Primary victims are those directly harmed by the violation or crime while secondary victims are those affected as a result of their close relatively being direct targets.

3. **Category and nature of the injustice committed:**
4. **When, where and how the violations and crimes were committed** (if possible specify the day(s), month(s), year(s) and place(s) and mechanisms used. Provide more information on the place(s) in terms of the geographical and administrative location).
5. **Why the violations and crimes were committed?** (Accusations or basis used to justify or carry out the violations and crimes).

6. **Who do you believe was responsible and why do you believe that?** (Indicate whether it was a state or non-state actor; their personal and official details- names, profiles among other positions in the society).
7. **Injustice and harm suffered** (Give a detailed description of the violations and crimes committed; and afflictions/loss suffered to the victim/s or the society).
 - Actual violations and crimes
 - Harm and loss suffered
 - Specify if the harm was aggravated by the fact of your gender (e.g. in cases where spouses were detained, how the detention increased your gender roles and how you coped with that).
8. **Actions taken to resolve or deal with the injustice and harm suffered (responses by victims, state and non-state actors possibly with gains and challenges realized):**
9. **What are your expectations and recommendations towards resolving the injustices and harm(s) suffered by the victim (s) and/ or society?** (This could be immediate and long term measures to deal with the effects and root causes of the injustices-for instance calls for prosecution, lustration, reparations, forgiveness, apology, reconciliation, policy reforms etc):
10. **Other Important Details:**
 - Provide evidence if available (both documentary/official and unofficial to show the culpability of the perpetrators).
 - Ensure testimonies compliment and support the above information and evidence.
 - Can the allegation of the violation be independently corroborated?
 - Demonstrate how these injustices are systemic by indicating the patterns of the related violations and crimes to other victims or other places within the country.