



TRUTH, JUSTICE AND RECONCILIATION COMMISSION

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

24 JUNE 2011



TRUTH, JUSTICE AND RECONCILIATION COMMISSION-KENYA

NHIF Parking Complex, 5th Floor, P.O. Box 14641-00800, Nairobi, Kenya.
Phone: (254) 020-2347360-4

Hon. Kenneth Marende, EGH, MP
The Speaker
Kenya National Assembly,
Parliament Buildings,
P.O. Box 41842-00100
NAIROBI

LETTER OF TRANSMITTAL

By Gazette Notice No. 8737 of 22 July 2009, His Excellency the President of the Republic of Kenya, Hon. Mwai Kibaki (CGH, MP), appointed us, the undersigned, to be Commissioners of the Truth, Justice and Reconciliation Commission which is established under section 3(1) of the Truth, Justice and Reconciliation Act No. 6 of 2008 (as amended) with the objective of promoting peace, justice, national unity, healing, reconciliation and dignity among the people of Kenya.

Pursuant to section 20(3) of the Truth, Justice and Reconciliation Act, we have the honour to submit to the National Assembly this Progress Report together with the attached Request for Extension of the Life of the Commission.

Please accept, Honourable Speaker, the assurances of our highest consideration.

Tecla Namachanja Wanjala
(Ag. Chairperson)

.....

Gertrude Chawatama

.....

Berhanu Dinka

.....

Ahmed Sheikh Farah

.....

Tom Ojienda

.....

Margaret Shava

.....

Ronald Slye

.....

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 28th 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.

TABLE OF CONTENTS

LETTER OF TRANSMITTAL	ii
FOREWORD	iii
EXECUTIVE SUMMARY	iv
TABLE OF CONTENTS.....	vi
ABBREVIATIONS.....	viii
LIST OF TABLES, CHARTS AND TEXT BOXES	ix
LIST OF ANNEXURES.....	x
1 CONTEXTUAL BACKGROUND	2
1.1 Introduction	2
1.2 Organization of the Report	3
1.3 Composition of the Commission.....	3
1.4 Objectives and functions of the Commission	4
1.5 Setting up the Commission	6
1.5.1 Establishing the Secretariat.....	6
1.5.2 Development of internal policy and procedural documents	8
1.5.3 Conceptualization and interpretation of the Commission’s mandate.....	9
1.5.4 Informing the public of the Commission’s existence and the purpose of its work ...	9
2 EXECUTION OF COMMISSION’S OBJECTIVES AND FUNCTIONS: SIGNIFICANT ACHIEVEMENTS.....	10
2.1 Statement taking	11
2.2 Hearings.....	14
2.2.1 North Eastern and Upper Eastern hearings	15
2.2.2 Women’s hearings in North Eastern and Upper Eastern.....	19

2.2.3	Mt. Elgon hearings.....	21
2.3	Community dialogues.....	21
2.4	Report writing	23
3	DEPARTMENTAL ACTIVITIES.....	29
3.1	Civic Education and Outreach Unit.....	29
3.2	Research Unit.....	29
3.3	Investigations Unit.....	30
3.4	Legal Affairs Unit.....	30
3.5	Special Support Services Unit	31
3.6	Communications Unit.....	32
3.7	Finance and Administration Unit.....	33
4	CHALLENGES IN THE EXECUTION OF THE COMMISSION’S MANDATE.....	38
4.1	Loss of time.....	38
4.2	Financial and resource constraints	39
5	WAY FORWARD: EXTENSION OF TIME-FRAME	41
5.1	The importance of victims and witnesses narrating their experiences.....	42
5.2	The obligation to address the entirety of the Commission’s material and temporal mandate	44

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

LIST OF TABLES, CHARTS AND TEXT BOXES

Table 1	Summary of TJRC significant achievements and challenges
Table 2	Summary of departmental significant achievements and challenges
Chart 1	TJRC organizational structure
Chart 2	TJRC inter-departmental synergies
Chart 3	TJRC workplan
Chart 4	Total statements by province
Chart 5	Total statements by gender
Chart 6	Total statements by violations
Text Box 1	Excerpts from testimonies in North Eastern and Upper Eastern
Text Box 2	I call for justice: A poem narrated by students of Garissa High School during the launch of the TJRC hearings
Text Box 3	The animal which is only found in Northern Kenya
Text Box 4	Comments by an independent observer on the women's hearings
Text Box 5	Implementation of the Report of the Commission
Text Box 6	Let TJRC visit Igembe and listen to our story

LIST OF ANNEXURES

Annexure 1	Gazette Notice dated 22 July 2009 – Appointment of Commissioners
Annexure 2	Employment Policy
Annexure 3	Staff Code of Conduct and Confidentiality Agreement
Annexure 4	Statement Form
Annexure 5	Hearing Procedure Rules
Annexure 6	Reconciliation Policy
Annexure 7	Gender Policy
Annexure 8	Gazette Notice dated 21 October 2010 – Establishment of Tribunal
Annexure 9	Revised Recurrent Expenditure Estimates 2010/2011
Annexure 10	Proposed Hearing Schedule

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 for 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 12th December, 1963 and 28th 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 12th December, 1963 and the 28th 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 12th December, 1963 and 28th 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

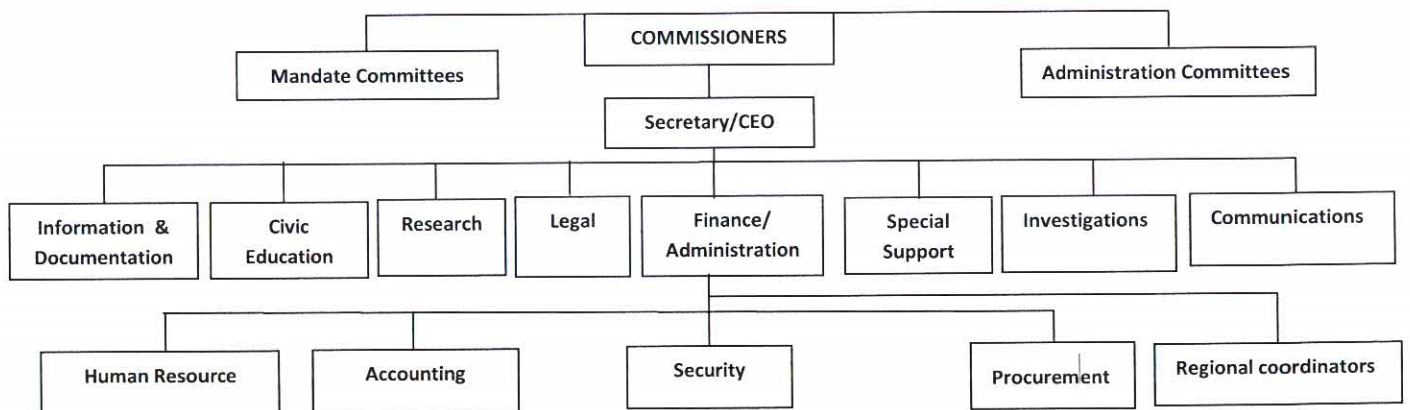
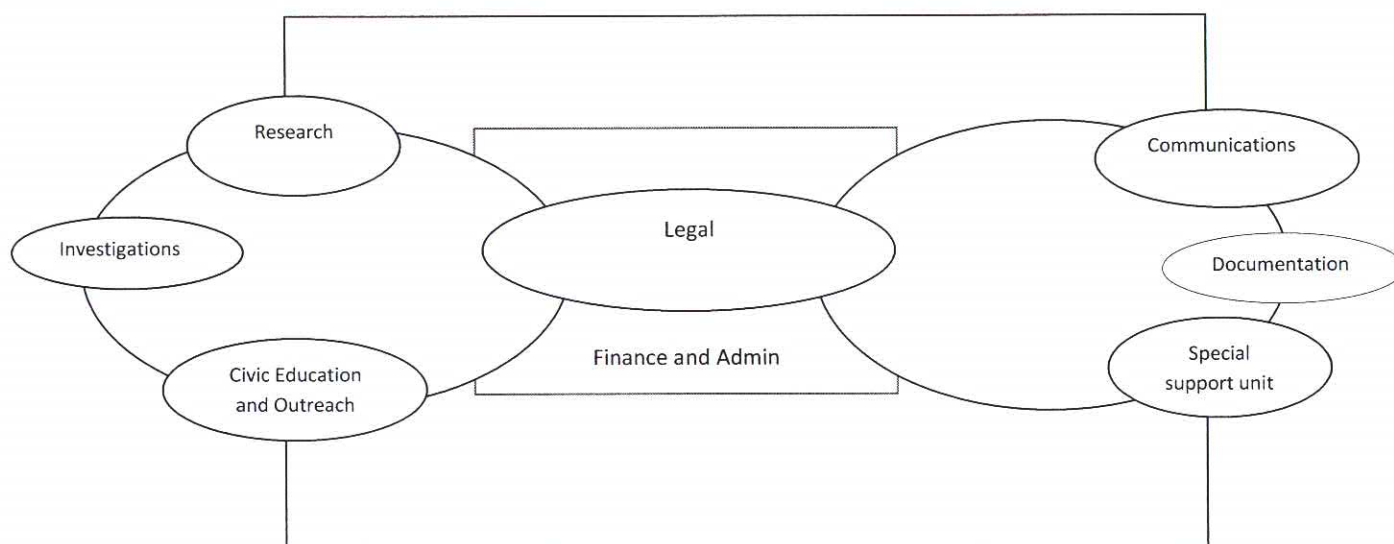


Chart 2: Inter-departmental synergies



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.

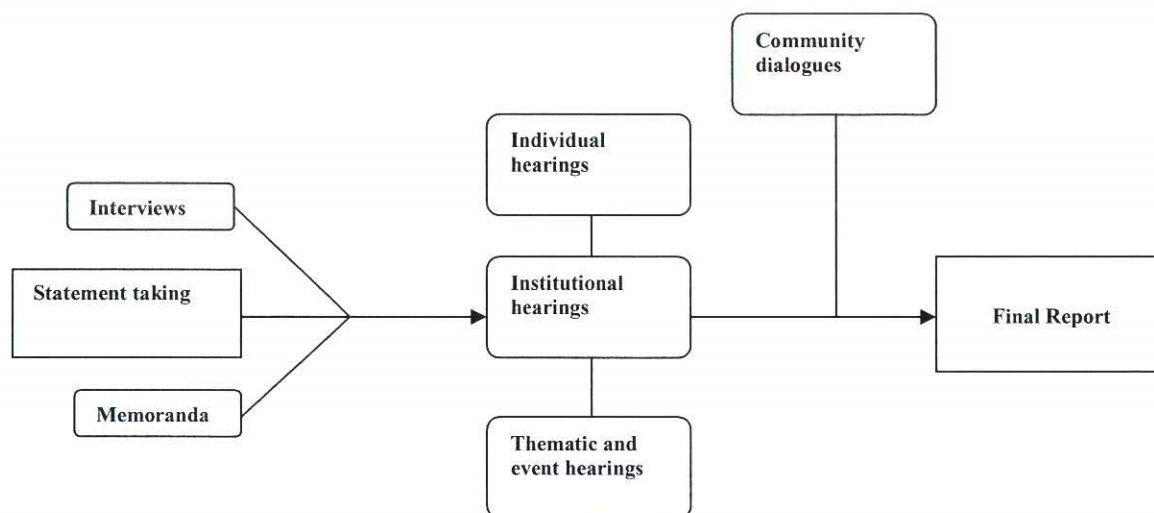
Due to financial constraints, the Commission did not hold similar meetings in other provinces. Instead, it ran a radio campaign on all major radio stations in the country. Through vernacular radio stations, the Commission was able to reach out to people in the rural areas. The campaign was also run on 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.

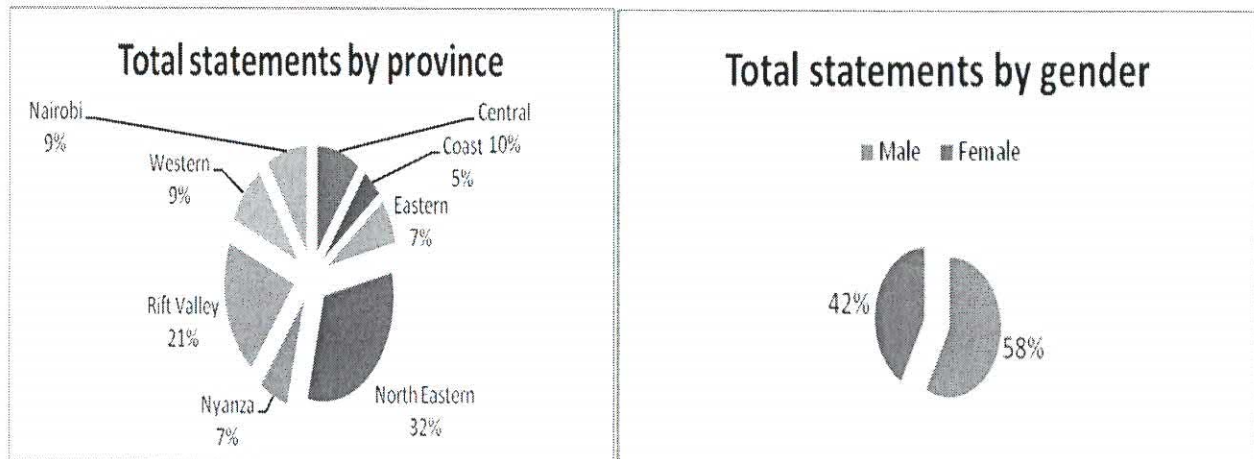
By 31 April 2011, the Commission had collected a total of 27,301 individual statements. This volume of individual statements is the largest ever in the history of truth commissions. The sheer volume of statements collected by the Commission is remarkable especially in light – as discussed below – of 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.

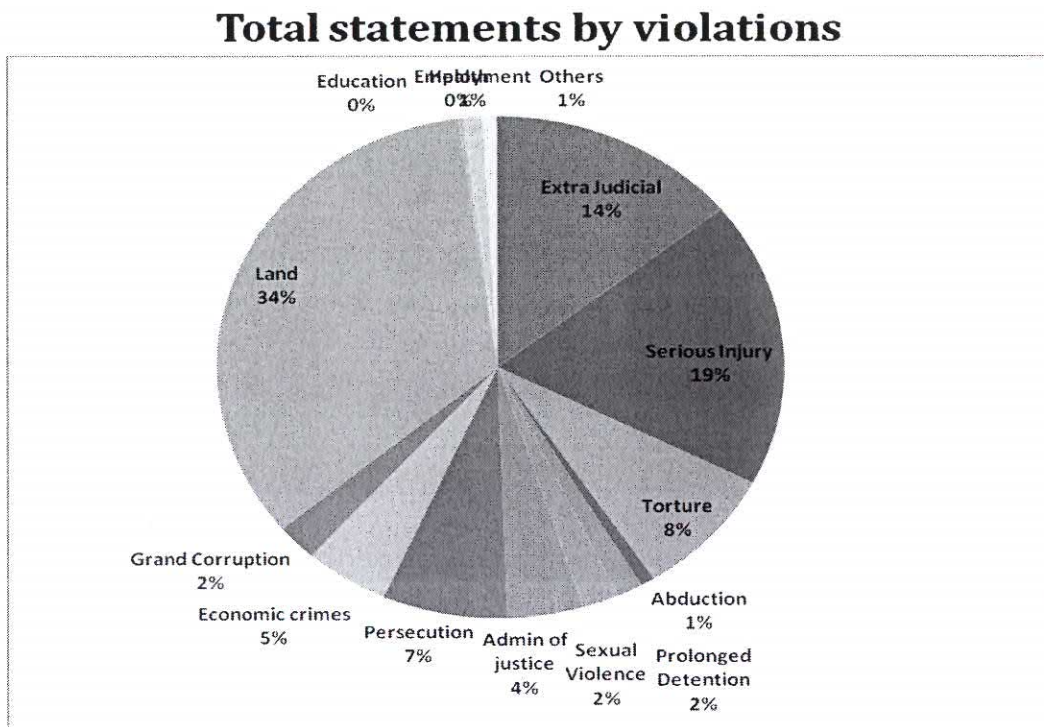
Chart 4: Total statements by province

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



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 Shifta 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	Establishment phase	Establishing the secretariat	Establishing the secretariat
		<ul style="list-style-type: none"> -established a functioning Secretariat with eight harmonized operational units. -established operational and mandate Committees composed of several Commissioners to provide policy guidance to the Secretariat 	<ul style="list-style-type: none"> -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 -lack of adequate and appropriate office space until January 2011 -recurrent delays in paying bills and salaries due to financial constraints
	Development of internal policy and procedural documents	<ul style="list-style-type: none"> -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. 	<ul style="list-style-type: none"> -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
	Conceptualization and interpretation of the Commission's mandate	<ul style="list-style-type: none"> -developed a conceptual framework that demarcates the scope of the Commission's work. -developed an analytical framework for case selection that has formed the basis for 	<ul style="list-style-type: none"> -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>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"> -conducted outreach and civic education meetings in Coast and Nairobi provinces -conducted outreach and civic education meetings with a wide range of thematic groups including prisoners -ran a radio campaign on all major radio stations including in vernacular and region-specific radio stations -Commissioners appeared on radio and television talk shows as guests -Commissioners made presentations to various events hosted by different professional associations and organizations -conducted training of targeted professional groups such as journalists and lawyers 	<p>statement taking process kicked off.</p> <ul style="list-style-type: none"> -lack of adequate funds to carry out outreach and familiarization meetings throughout the country -lack of adequate funds and resources to counter initial misconceptions and misinformation about the Commission's mandate and work -loss of time and diversion of public attention and distraction of Commission's work occasioned by the controversy around the suitability of the Chairperson
2	Operational phase	Statement taking	<ul style="list-style-type: none"> -prepared user-friendly 'statement forms' for collecting statements -conducted training workshops for statement takers -deployed 304 statement takers across the country including to prison facilities to collect statement for a period of 5 months 	<ul style="list-style-type: none"> -lack of financial capacity to carry out intensive training for statement taking process, especially in trauma identification and management

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

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

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

4	<p>Legal Affairs</p>	<p>-Map out areas identified as scenes of gross human rights violations for the Commission's site visits.</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>-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</p> <p>-lack of adequate staff</p>
5	<p>Special Support Unit</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>-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>Communications</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	Finance and Administration	<p>website</p> <ul style="list-style-type: none"> -provides logistical and administrative support to the Commission -coordinates the preparation and management of the Commission's budget and finances. 	<ul style="list-style-type: none"> - 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. 	<ul style="list-style-type: none"> -lack of adequate funds and resources to ensure efficient and smooth running of the administrative operations of the Commission -lack of adequate staff
---	-----------------------------------	--	--	--

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 TJRC 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. Re-capture 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.