The Quest for an Elusive Justice

A REPORT ON OBSERVATION OF

THE TRUTH, JUSTICE AND RECONCILIATION COMMISSION OF KENYA (TJRC-K)

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“Forgiving is not forgetting; it is actually remembering – remembering and not using your right to hit back. It is a second chance for a new beginning. And the remembering part is particularly important. Especially if you do not want to repeat what happened,”

Archbishop Desmond Tutu
Chairperson – South African and Truth Reconciliation Commission
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<td>Act Change Transform!</td>
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We would like to recognize, the CRECO members who participated in this project; Institute for Civic Education and Development (ICEDA), Ilimu Sheria Trust (ILISHE), Muungano Maendelelo Organization (MMO), Centre for Human Rights and Civic Education (CHRCE), St. Jude’s Counselling Centre, Pastoralist Community Development Organization (PACODEO), United Disabled Persons of Kenya (UDPK) and the Centre for Enhancing Democracy and Good Governance {CEDGG}.

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We recognise the monitors who observed various processes of the TJRC; you were our eyes and ears.

We appreciate Davis Malombe, for his commitment to editing the book and providing invaluable advice on very short notice.

We thank USAID through ACT! for the financial support, input to the report and the project at large.

To all Kenyans; who deserve to be heard, to get justice, reconciliation and true healing.

Never Again!

Kawive Wambua

Executive Secretary
Introduction
A) MANDATE AND OPERATIONS OF CRECO
The Constitution and Reform Education Consortium (CRECO) is a coalition of civil society organizations (CSOs) working on democracy, governance, legal and human rights issues. It was founded in 1998 and registered as Charitable Trust in 2005. Although, founded by legal and human rights NGOs, CRECO’s membership has evolved over the years. Currently, the coalition brings together CSOs working in different sectors but with a common aim of promoting constitutionalism and good governance in Kenya. CRECO has a total membership of 25 CSOs. Moreover, CRECO advances this mandate through partnership with other like-minded organizations and such civil society networks as Kenya Transitional Justice Network (KTJN), Kenyans for Peace with Truth and Justice (KPTJ) among others.

In December 2010, CRECO undertook an organizational assessment/strategic planning exercise. This culminated into a five year strategic plan with the three core thematic areas: Civic Engagement; Human Rights and Institutional Capacity Development. CRECO also changed its identity statement, vision, mission and core values as follows respectively; Vision: A just society and Mission: To promote constitutionalism, democratic governance and institutional development. CRECO will deliver this vision and mission through three strategies namely: civic engagement, institutional strengthening and human rights. Finally, in planning and executing its programmes and activities, and in its relations with partners and other players, CRECO will always be guided by the following fundamental values: Integrity, Accountability; Equity and equality; Professionalism, Innovation; Respect for diversity; and, Tolerance.

B) CRECO’S WORK TOWARDS CONSTITUTIONAL DEMOCRACY
CRECO began its work with country wide civic education targeted at citizens’ participation in the process of reviewing Kenya’s constitution. The climax of this was in the design and implementation of the National Civic Education Program (NCEP I) in the period 2000-2002. NCEP 1 served as a platform for creating a new cadre of leadership in Kenya. The “Moi Must Go!” campaign, an initiative of the program, was a major success. It is attributed to the massive triumph of the National Rainbow Coalition (NARC) in the 2002 general elections.

The NARC Government came to power through a reform agenda and platform which included a promise of delivering a new constitution in 100 days. The promise was never fulfilled due to a number of factors including an attempt to curtail public participation compounded by emerging power wrangles between the National Alliance for Change (NAC) and the Liberal Democratic Party wings of the NARC government in the
constitution review process. A draft Constitution presented by the Government was rejected by citizens during the 21st November 2005 Constitutional Referendum.

In the years 2006 – 2007, CRECO was involved in NCEP 2, a follow up program of NCEP 1. The purpose of the program was to champion for comprehensive governance reforms ahead of the 2007 elections. Through this program, CRECO spearheaded advocacy initiatives aimed at strengthening institutions that would guarantee free and fair elections come 2007. The reforms envisaged were not successful and this culminated in the chaos experienced during the 2007 elections. In the 2007 post-election period, CRECO among other CSOs under KPTJ campaigned for the inclusion of the Agenda 4 reforms in the political negotiations between the Party of National Unity (PNU) and Orange Democratic Movement (ODM). A key output of this advocacy was that a coalition government was formed and comprehensive reforms agreed and prioritized with clear timelines set for a realization of the same.

Subsequently, the Independent Review Commission (IREC) and the Commission for the Investigation of the Post-Election Violence (CIPEV) were set up. The Truth, Justice and Reconciliation Commission (TJRC) and National Cohesion and Integration Commission (NCIC) were also recommended as part of the complementarity mechanisms for addressing the long term underlying issues identified under Agenda 4 items of the negotiations. Meanwhile, CIPEV and IREC emphasized in their reports realized in 2008 that the country had to among others, have a new constitution to be the basis for comprehensive reforms.

In an effort to ensure that Kenyans got a new people-driven constitution, CRECO mobilized CSOs to create a national platform for advocacy on, and value addition to, the Constitutional Review Process. This initiative, called the “Katiba Sasa” campaign, was carried out for over one year and interfaced with the work of the Committee of Experts (CoE) - a technical team that was tasked to harmonize the views of Kenyans on the constitution. During the 2010 referendum period, CRECO with other HIVOs-funded partners, set up and rolled out a national ICT based monitoring platform – Uchaguzi – that monitored the referendum.

On another front, CRECO with six other partners in a network called Elections Observation Group (ELOG), carried out a comprehensive e-day observation of the voting process using the Parallel Vote Tabulation (PVT) methodology. The approval of
the new Constitution in the August 4, 2010 referendum was a key milestone in CRECO’s quest for constitutionalism and good governance in Kenya.
EXECUTIVE SUMMARY

CRECO with funding from USAID through ACT! Kenya sought to carry out monitoring around the TJRC process with the view to achieving the following objectives:

- Gauging the effectiveness of citizen participation in the TJRC’s process between January 2011 and April 2012
- Ascertaining the delivery of transitional justice to victims of atrocities through effective monitoring of the process.

To effectively achieve this, CRECO recruited and trained monitors in March 2011 who were sent to the regions armed with a tool to gather both qualitative and quantitative data on the above key issues. The two monitors based in each of the 8 regions sent feedback to the secretariat through the implementing CRECO membership who in turn validated the findings and submitted. The project covered Upper Eastern and North Eastern, Eastern, Western, Coast, Nyanza, Rift Valley, Central and Nairobi regions.

To complement this, CRECO undertook literature review on transitional justice mechanisms and truth-telling projects in other jurisdictions. Key to these are the Truth Commission in El Salvador; Truth and Reconciliation Commission of South Africa; The Gacaca Courts in Rwanda and the Liberian Truth Commission.

KEY FINDINGS

This section, which stipulates the key findings, speaks to the two key areas of our focus: a) the statement collection; and, b) the public hearings phase of the Commission. General recommendations constitute the last section.

a) Statement Collection Process

Statement taking is the pre-hearing phase of TJRC which began on September, 2010 and ended three months later. It is a process that was expected to be open, transparent and all involving. This together with investigations, research and other data collection tools helped to identify systemic atrocities, process and prepare ‘window’ cases for the hearings. By January 2011, the Commission had amazingly collected 29,900 statements and received 300 memoranda nationally.
CRECO wishes to isolate the following gaps as identified:

i. The recruitment of monitors was not done professionally and transparently. This led to situations of bias against or favourism to some communities and cases of both victims and perpetrators being hired, therefore compromising the objectivity of this process.

ii. Most monitors were not well trained on transitional justice and human rights issues, the mandate and operations of the Commission. This affected the quality and efficacy of statements taken.

iii. Statement takers were quite few and did not therefore reach out to all the affected areas in the country. There are many places, violations and crimes which were not covered in statement taking. Our reports indicate that in Nairobi for example, priority was accorded to PEV hot spots.

iv. There are cases whereby women and children did not participate effectively because it was assumed that if a husband or father is involved, he will obviously represent issues affecting the entire family.

v. In many situations, violations relating to youth, elderly and persons living with disabilities were left out. In Kisumu for instance, the 7th floor office which has no lifts is said to have disadvantaged many elderly people and persons with disabilities.

vi. The Commission did not have adequate mechanisms for witness protection and psycho-social support to victims during this process. Its dependence on the provincial administration is seen to have demobilized victims or publics who still view it as part of instruments and purveyors of impunity in Kenya.

vii. Finally, statement taking was a rushed process. Given the short period against the gaps and big number of statements collected, it is impossible to explain or justify how the Commission managed to strike a balance between the quality and quantity of the same.
b) Public Hearings

This critical phase was guided by the Hearing Procedure Rules which were published by the Commission in the Kenya Gazette Supplement dated 20th August, 2010. Three types and levels of hearings were carried out:

- Individual hearings that would focus on individual cases, and the experience of individuals with respect to violations within the mandate of the Commission.

- Institutional hearings that would focus on the role played by an institution or institutions with respect to violations within the mandate of the Commission.

- Thematic hearings would focus on types of violations and other broad themes within the mandate of the Commission.

The Commission began its hearings in North Eastern province through a launch that was held on Monday 11th April 2011 in Garissa town. The hearings continued throughout the region in Wajir, Mandera, Moyale, Marsabit and Isiolo. Later, these were spread to other regions in the country.

For starters, it is important to note that this process was determined by the quality and number of statements taken in the pre-hearing phase. Thus, the above gaps have a direct ripple effect to this phase of engagement.

CRECO wishes to isolate the following gaps as identified by our monitors. That:

i. To begin with, this process was inordinately delayed. It was initially scheduled to begin in February 2011 but was later moved to March and finally kicked off in April 2011.

ii. The Commission failed to receive the requisite legitimacy and publicity for its work as the support from the key stakeholders (especially the general public, some victims, media and donors) waned following the credibility questions facing its chairperson.
iii. The Commission did not avail its calendar of events/ schedule of activities to local stakeholders on time. This together with arbitrary and untimely change of venues decimated public support and participation in many regions.

iv. Some of the venues or offices were not friendly to elderly, persons with disability among other disadvantaged groups in the society. For instance, in Murang’a Technical College whose entry had a big trench.

v. The centralization of hearings within the key municipal centres is said to have affected participation of victims and other stakeholders from rural areas and vast counties or districts in the country. For instance, holding the hearings for the vast Makueni and Machakos counties in Machakos town.

vi. There are many situations whereby the Commission failed to put in place adequate mechanisms for witnesses to attend and freely express themselves. For instance, whereby heavy presence of police officers led to intimidation of victims who wanted to testify against the state.

vii. There are situations whereby in-camera sessions were held in tents just a few minutes away from the main public venue. There are also allegations that in some regions like Kisumu, gate keeping by some local CSOs skewed victims’ participation.

viii. The Commission failed to create the expected platforms for both the victims and suspected perpetrators to directly engage each other for non-retributive truth telling. Related to this was the failure by many perpetrators to confess and show remorse for their egregious actions.

ix. The TJRC did not put in place mechanisms for immediate remedies or reparations. This is indicated by a case in Rift Valley whereby a victims came and left with a bullet still lodged in his head.

x. Moreover, the Commission did not develop and embrace a clear conceptual framework on reparations and it was now planning to deal with the emerging issues. There was an instance whereby one commissioner regarded their philanthropic gesture of giving out sanitary pads to girls as part of immediate reparations!
Moreover, the Commission did not deal effectively with the reconciliation component of its mandate. Some critics attribute some tensions experienced in Northern Kenya to the Commission’s work. This is partly due to the TJRC’s failure to develop a precise conceptual framework on the same and a tense working relationship with the National Cohesion and Integration Commission.

This exposes the Commission’s failure to strike cordial partnership and effective complementarity with other Commissions in the government save for the Kenya National Commission on Human Rights which helped in the identification and mobilization of women victims in different parts of Kenya.

Finally, there were incidents whereby only one Commissioner turned up for sittings contrary to the quorum threshold envisaged in the Act and other institutional frameworks.

**C) CONCLUSION AND RECOMMENDATIONS**

As per the above synopsis and detailed findings in this report, it is quite evident that although the Kenyan TJRC worked under very hard and very trying conditions. Due to these, it failed to accomplish the overall mandate to promote peace, justice, national unity, healing, and reconciliation among Kenyans. Indeed, the gaps identified in the statement taking and hearing phases of the Commission reveals that the Commission did not put in place proper mechanisms to establish an accurate, complete and historical record of human rights violations and economic crimes committed between December 12th, 1963 and February 28th, 2008.

Finally and pursuant to Section 5 of the Act constituting it, the Commission failed to among others: provide repentant perpetrators or participants in gross human rights violations with a forum to confess their actions as a way of bringing reconciliation; provide victims, perpetrators and the public with a platform for non-retributive truth telling; and facilitate the granting of conditional amnesty and providing victims of human rights abuses and corruption with a forum to be heard and restore their dignity.

CRECO wishes to observe that, in the establishment and operations of the Commission, Kenyans failed to learn lessons and avoid mistakes committed by the former Commissions of Inquiry in Kenya and truth commissions in the world. Pundits hold
that this could be part of the machinations by agents of impunity to ensure that just like in other transitional justice efforts, truth, justice and reconciliation remains elusive in Kenya.

*As we wait for the launch of the Commission’s report, CRECO wish to recommend as follows, that:*

i. Kenya and its people did not have a Truth, Justice and Reconciliation process as is generally envisaged the world over. All stakeholders must work together to establish a process that is above board and that is effective to realise justice, reconciliation and ultimately peace.

ii. The Commission’s report despite its gaps MUST be published, gazetted and publicized to allow for input from victims and members of the public. Kenyans should be given an opportunity to give final feedback/validate the report before it’s tabled in parliament.

iii. Kenyans should analyze and use the findings and recommendations of TJRC to demand new and more effective mechanisms for truth telling, if at all justice and reconciliation is to be attained.

iv. This report should therefore be used together with other official and unofficial sources (say by other Commissions, courts judgments and civil society) as the basis for furthering the agenda for truth, justice and reconciliation in Kenya.

v. The government and civil society should create a conducive environment for the perpetrators to show remorse and seek forgiveness in public for purposes of achieving reconciliation. Perpetrators who fail this test should face the full force of the law.

vi. The civil society especially the Kenya Transitional Justice Network and National Victims Network should advocate for increased resource allocation and state support for transitional justice related projects in Kenya.

vii. The government and civil society organizations responsible for transitional justice work in Kenya should consider providing counseling and trauma healing
centres for victims. These should be set up at strategic places to help in trauma healing.

viii. Moreover, there is a dire need to advocate for the adoption and implementation of a National Policy on Reparations. However, this should not stop stakeholders from utilizing the emerging opportunities to seek remedies for victims—for instance through court actions, memorialization, resettlement of IDPs.

ix. All stakeholders should use the Constitution of Kenya and the National Accord as the national transitional justice policy for Kenya. This should be used to conceptualize, prioritize, implement and complement the disparate TJ mechanisms.

x. Finally, we challenge and call upon all the stakeholders to establish mechanisms for managing the huge expectations of the victims/survivors.
The Detailed Report
1. TRANSITIONAL JUSTICE AND TRUTH COMMISSIONS

1.1 Understanding Transitional Justice Mechanisms

In close to three decades, there has been increasing attention and question of how countries and societies can come to terms with a history of war and violence, economic crimes and human rights violations. Transitional justice both as a concept and process has become one of the major mechanisms for responding to these questions and atrocities.

Transitional justice generally refers to a range of approaches, actions or policies put in place to ensure a political transition from this culture of impunity to societal stability and democracy. The process should therefore reconcile people and communities, provide them with a sense that justice is being done and will continue to be done, as well as renew the citizen’s trust in the institutions of governance and public service.

Transitional justice seems to have more prominence and momentum in the late 1980s and early 1990s, mainly in response to political changes in Latin America and Eastern Europe; and to demands in these regions for justice. However, the Nuremberg Trial of 1946-1949 is one of the first classical cases of how transitional justice as a concept emerged to be at the centre stage of discourse on democratization, nation building and state reconstruction.

The word *Nuremberg* stands for both the place and for the trials after World War II. While many in the twenty-first century tend to equate Nuremberg with trials about the Holocaust and the crimes against the Jews, the great majority of the International Military Tribunal and the Twelve Subsequent Trials dwelled primarily on the aggressive war conducted by Nazi Germany rather than the assault on the Jews and other non-Aryan minorities.

Some of the transitional mechanisms tried in Kenya and other developing countries includes criminal and judicial accountability; reparations and memorialization; vetting and lustration; Constitutional, policy and institutional reforms; truth and justice commissions among others. These are expected to complement each other.
1.2 Understanding Truth Commissions

Truth Commissions seem to be one of commonest mechanisms for dealing with the past atrocities\(^1\). Truth commissions are defined as ‘official, temporary, non-judicial, fact finding bodies that investigate a pattern of abuses of human rights or humanitarian law, usually committed over a period of time.'\(^2\) Towards this, Truth Commissions are expected to bear the following attributes or features, both in their formation and operations.

- i. Political context especially the room for reforms, justice and accountability;
- ii. Clarity of focus and mandate and timeframe in which tasks will be accomplished;
- iii. Soundness of the legal framework establishing and supporting the Commission;
- iv. Political will from the government to allow and encourage a serious enquiry into past;
- v. Support from the victims, civil society and international community;
- vi. Commission’s capacity to be independent and effective (both financially and operationally);
- vii. Mechanisms to support victims and witnesses;
- viii. Coordination with other transitional justice and reform processes;
- ix. Absence of ongoing conflict, other security threats and repressive acts;
- x. Level of or potential to implement the recommendations of the Commission’s report\(^3\).

Truth Commissions establish effective national mechanisms to establish a historical account about atrocities committed by both the state and non-state actors thus; most Commissions conclude their work with a final report containing findings and recommendations.

All victims of gross human rights violations and economic crimes have a right to truth and justice. The protection and promotion of these rights in this context is critical due to the following reasons:

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\(^1\) In more than 30 countries, truth commissions have been established


• Enables the direct victims to get a better understanding of the violations suffered, the reasons behind it, as well as the public acknowledgement and preservation of the same.
• Helps to correct any false accusations made against them in the course of the violations or crimes.
• Enables the family members, particularly of those killed or disappeared, to find out what happened to their loved-one and to establish their whereabouts.
• Enables the affected society to know the circumstances surrounding and reasons that led to violations and crimes being committed and to ensure a guarantee of non-repetition and effective remedies for the harm or damage suffered.
2. TRUTH, JUSTICE AND RECONCILIATION COMMISSION IN KENYA

2.1 Introduction
The need for a Truth, Justice, and Reconciliation Commission in Kenya, (TJRC), pre-dates independence starting with the contact that the indigenous people of what eventually became Kenya suffered in the hands of colonialists and the earlier slave traders. The problems continued through colonial regime into the three independent regimes of the country. Agitation for reparations ultimately led to the government acknowledging the need to form a commission that would be tasked to establish the reasons behind the historical injustices and the most viable interventions appropriate for the redress of the same.

This need to inquire into historical injustices, systematic human rights violations, economic crimes and illegal or irregular acquisition of land by previous governments was first acknowledged by the then incoming NARC government in 2003. The government appointed a Task Force on TJRC chaired by Professor Makau Mutua which recommended the creation of a TJRC before June 2004 with specific mandate, powers and functions. However its recommendations were ignored as the ruling elite became more entrenched in acts of impunity.

Following the violence that was triggered by the disputed presidential elections in December 2007, local and international pressure forced the Party of National Unity (PNU) and Orange Democratic Movement (ODM) to the negotiation table leading to the signing of the peace accord on 28th February 2008. The negotiations and accord were grounded on 4 agenda items:

- Agenda 1: Immediate action to stop violence and restore fundamental rights and liberties;
- Agenda 2: Immediate measures to address the humanitarian crisis, promote reconciliation, and healing;
- Agenda 3: How to overcome the political crisis/power sharing arrangements;
- Agenda 4: Address long term issues, including constitutional, legal and institutional reforms; land reforms; tackling youth unemployment, tackling poverty, inequity and regional development imbalances, consolidating national unity and cohesion, and addressing impunity, transparency and accountability.

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Under the agenda item number 4, the Kenya National Dialogue and Reconciliation Team agreed to set up among others, a TJRC to examine among other things, historical injustices that may have precipitated the post-election violence. The enactment of the Truth, Justice and Reconciliation Act was delayed due to substantive inherent legal loopholes in the initial Bill and subsequent amendments were made to address these issues\(^5\). The issues ranged from financial independence of the commission from the Executive, inconsistencies with the international law and practice, witness protection and limitations to the issues it would address. These problems were largely due to lack of participation by stakeholders, especially the civil society groups, in the drafting process, leaving the development of the law to the Ministry of Justice, National Cohesion and Constitutional Affairs. Parliament henceforth enacted the *Truth Justice and Reconciliation Act 2008* in October 2008(Act no. 6 of 2008) which, among other things, provided for investigation of violations committed during the period between 12\(^{th}\) December, 1963 and February 28\(^{th}\), 2008.

The selection of Commissioners began in April 2008. The Commissioners were appointed on July 22\(^{nd}\), 2008 and finally sworn in August 3\(^{rd}\), the same year. The Commission was granted 3 months for setting up and was therefore expected to start rolling out its mandates as from in November, 3\(^{rd}\) 2008. It was chaired by Mr. Bethwel Kiplagat, a former diplomat and permanent secretary, but was hit by a credibility crisis (on the basis of his complicity in TJR related issues) that saw it malfunction for a long time. In the process, the Vice-chairperson Ms Betty Kaari Murungi resigned in April 19\(^{th}\), 2010\(^6\).

TJRCK’s chairperson, Ambassador Kiplagat faced mounting public pressure to resign. Questions were raised about his ability to lead the TJRC since he was in government when a number of atrocities that the commission was supposed to investigate were committed. Among the issues that the public wanted cleared included the Wagalla massacre of 1984, the circumstances surrounding the death of one-time Cabinet Minister Robert Ouko and the alleged involvement in illegal and irregular acquisition of public land.

\(^5\) CRECO submitted a memoranda to Parliament critiquing the legislation and making recommendations
\(^6\) Commissioner Ronald Slye followed suit but rescinded the resignation upon the stepping aside of the then chairperson.
Following the outcry, the 8 commissioners submitted a formal legal petition to the Chief Justice in April 16, 2010 requesting that a tribunal be set up to look into the suitability of the chairperson. Kiplagat bowed to the public pressure and stepped aside in November 2010. He later went to court and challenged the capacity of the tribunal to investigate him. Through a court ruling, he was cleared of any wrong doing in March 2012, a verdict that the other commissioners vehemently opposed.

A group of victims related to Wagalla massacres and other sympathizers also held a demonstration outside TJRC’s offices at the National Hospital Insurance Fund building to express their anger against the ruling. They vowed to stay put to block any bid by Kiplagat to access the offices, accusing him of being party to the 1984 killings in the North Eastern province of members of the Degodia clan.

Amidst all the confusion, Amb. Bethuel Kiplagat finally found his way back as chairman of the Commission after newly appointed Justice Minister, Eugene Wamalwa brokered a deal with commissioners.7 This move was questionable to members of the public as it was a crucial time when the commission was writing its report and it was perceived to be a move to tamper with the findings. This indeed was a major impediment to scoring the set objectives and his return has been seen by many as evidence of the wider scheme by the forces of impunity to scuttle the transitional justice agenda in Kenya.

It will be noted that even though the credibility crisis affected the work of the commission and generally took away the goodwill that such a commission should enjoy, the commission continued with activities. The Commissioners who carried on with the activities were8:

1. Tecla Namachanja Wanjala - Ag. Chair
2. Judge Gertrude Chawatama - Commissioner
3. Margaret Shava- Commissioner
4. Major General Ahmed Farah - Commissioner
5. Ambassador Berhanu Dinka - Commissioner
6. Prof. Tom Ojienda - Commissioner
7. Prof. Ronald Slye – Commissioner

7 Kenyans are not privy to this deal. The said minister was hardly a week in office when he did this.
8 The 2nd, 5th and 7th Commissioners were international. The rest were Kenyans as expected in the Act. This was to ensure effective balance and expertise as the country moved slowly from the post-election crisis.
2.2 Objectives of TJRC

2.2.1 Objectives regarding the gross violations of human rights:

- To establish an accurate, complete and historical record of violations and abuses of human rights, committed between 12 December 1963 and 28 February 2008, such as:
  - Abductions, disappearances, detentions, torture, murder, massacres, extra-judicial killings, crimes of sexual nature against female victims and expropriation of property suffered by any person.
- To investigate the gross violations of international human rights law and determine those responsible for their commission.
- To investigate and provide redress of crimes of sexual nature against female victims.
- To investigate the context, causes and circumstances under which the gross violations of human rights occurred.
- To identify actors who purported to have acted on behalf of any public body responsible for the gross violations of human rights, and persons who should be prosecuted for being responsible.
- To identify and specify the victims of the gross violations of human rights and their whereabouts.
- To facilitate the granting of conditional amnesty to persons who make full disclosure of all the relevant facts, relating to the gross violations of human rights and economic crimes, and who comply with the requirements of the TJRC Act.

2.2.2 Objectives regarding economic crimes, public land and so on:

- To investigate economic crimes including grand corruption and the exploitation of natural resources and the action taken, if any.
- To inquire into the irregular and illegal allocation of public land, in terms of repossession or determination of cases.
- To inquire into and establish the reality or otherwise of perceived economic marginalization of communities.
- To inquire into misuse of public institutions for political objectives.
• To educate and engage the public and give sufficient publicity to the work of the Commission\(^9\).

2.2.3 Objectives regarding recommendations:

*To make recommendations as to the gross violations of human rights, in terms of:*

• Reparation and rehabilitation policy or measures aimed at granting reparations and restoring the civil and human dignity of the victims.
• Prevention of violations and abuses of human rights through institutional, administrative and legislative measures.
• Granting of conditional amnesty to persons who make full disclosure.
• Prosecution of perpetrators or persons involved.
• Promotion of healing, reconciliation and coexistence among ethnic communities.

*To make recommendations as to:*

• The reforms and other measures needed to achieve the object of the Commission, and address any specific concern and actions to be taken.
• A mechanism or framework and an institutional arrangement in that connection, for the implementation of the recommendations of the Commission.
• The implementation of the reports of the relevant commissions of inquiry.
• Repossession or determination of cases relating to public land acquired through irregular and illegal allocation.
• Addressing the real or perceived economic marginalization of communities.

2.2.4 Mandate of the TJRC.

The TJRC’s mandate directed it to investigate, analyze, and report upon all of the following that occurred between 12 December 1963 and 28 February 2008:

• Gross violations and abuses of human rights including abductions, disappearances, detentions, torture, sexual violations, murder, extrajudicial, killings, ill-treatment and expropriation of, property;
• Economic crimes including grand, corruption and exploitation of natural or public resources;
• The irregular and illegal acquisition of public land;

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\(^9\) This applies also to gross human rights violations
• The marginalization of communities;
• Ethnic violence and tensions; crimes of a sexual nature against female victims;
• Investigate the context in which and causes and circumstances under which the violations and abuses occurred;
• Inquire into investigate and provide redress in respect of;
• Educate and engage the public on issues around its work.

2.2.5 Input of the Commission.

• Investigate all of the violations listed above identify 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.
• Identify and specify the victims of the violations and abuses and make appropriate recommendations for redress, including reparations.
• Create a historical record of violations of human rights abuses.
• Identify and recommend prosecutions of any person responsible or involved in serious violations of human rights, including socio-economic rights.
• Make recommendations for systemic and institutional reform to ensure that such violations do not occur in the future.

2.2.6 Work plan of the Commission.

• Hold hearings around the country;
• Listen to testimony from victims, perpetrators, witnesses, and the general public;
• Provide victims of human rights violations with a platform to be heard and to restore their dignity;
• Provide repentant perpetrators with a forum to confess their actions in order to foster reconciliation;
• Receive applications for amnesty and reparations;
• Recommend the granting of amnesty for acts that do not qualify as a gross violation of human rights;
• Recommend prosecutions;
• Recommend reparations for victims

2.2.7 Implementation of the TJRC Process involved the following;

• Setting up of commission;
• Provincial outreach and familiarization campaigns;
• Victims would be asked to volunteer information by recording statements and filling questionnaires;
• Victims, witnesses, and perpetrators would be called upon to testify in public or private hearings;
• Hearings would be public, but private in appropriate cases (for instance in cases of sexual violence where a victim requests privacy);
• Victims and alleged perpetrators could appear with or without legal representation at hearings.

The Commission would summon any individual who may have any information relevant to its work.
3.0 MONITORING THE PROCESS

3.1 Overview
CRECO with funding from USAID through Pact Kenya sought to carry out monitoring around the TJR process with the view to achieving the following objectives;

i. Gauging the effectiveness of citizen participation in the TJRC’s process between January 2011 and April 2012

ii. Ascertaining the delivery of transitional justice to victims of atrocities through effective monitoring of the process.

To effectively achieve this CRECO, recruited and trained monitors in March 2011 who were sent to the regions armed with a tool to gather both qualitative and quantitative data on the above key issues. The two monitors based in each of the 8 regions sent feedback to the secretariat through the implementing CRECO membership who in turn validated the findings and submitted to CRECO secretariats.

Various tools were developed to enhance the achievement of objectives. One of the ways of ascertaining the achievement of the same was to carry out a baseline survey\textsuperscript{10} of the TJRC process to establish the perceptions of the public on the process. The baseline survey was carried out between August and September and we established that most members of members of the public had a basic understanding of the process having heard about it through Radio and TV.

The baseline indicated that most people knew about the TJRC after learning of the wrangles that be-deviled the former TJRC chair Bethuel Kiplagat who resigned in November 2010 owing to public pressure over alleged involvement in some of the atrocities being investigated by the Commission. He was reinstated following a court ruling in his favour in March 2012 and an arbitration done by the Minister for Justice and National Cohesion Hon Eugene Wamalwa who had just been appointed. Both the Minister and Commissioners are yet to provide substantive reasons and grounds of which the truce was reached.

\textsuperscript{10} The results of the baseline are already out. The name of the publication is \textit{Truth be Told: Report of Baseline Survey on Public Perception on Truth Justice and Reconciliation Process In Kenya.}
To complement this, CRECO undertook a literature review on transitional justice mechanisms and truth-telling projects in other jurisdictions. Key to these are the Truth Commission in El Salvador; Truth and Reconciliation Commission of South Africa; The Gacaca Courts in Rwanda and the Liberian Truth Commission.

Our findings below will cover the two major processes executed by the Commission: The statement collective process (pre-hearing period) and the actual public hearings. In each stage, we have presented both the general issues and the specific issues per region.

### 3.2 Statement Collection Process (Pre-Hearing Period)

According to the Truth, Justice and Reconciliation Commission Act, 2008 the commission is mandated to provide necessary information and education to communities on the process. Statement collection was a task expected to be open, transparent and all involving. To allow for public participation in the hearings, we believe necessary steps should have been taken to ensure that information was available on schedules and flexibility was enhanced while taking into concern various needs of not just victims, perpetrators and members of public and other interested stakeholders.

Statement taking began on September, 2010 and ended three months later. By January 2011, the Commission had collected 29,900 statements and received 300 memoranda nationally. This was dismissed by the Civil Society and a part of the donor world with most of the stakeholders expressing doubt on the quality of the statements which were seen to be too many compared to the period it took to collect them.

#### a) General Findings and Observations

The process of recruitment and quality of outputs realized from statement stakers remains questionable owing to the following reasons adduced by our monitors. First, we found that the recruitment of statement takers was not done transparently and that some statement takers were victims who were expected to testify in the hearings. This may not be illegal according to the TJRC Act 2008 which is silent about engagement of victims in the process. In some extreme instances there were statement takers who were even alleged perpetrators.

In fact, in other similar process it was established that victims have always led the processes yet it has been hardest to implement the recommendations of those commissions. Liberia is a good example where current state officers have been
conspicuously mentioned by the report and even barred from holding public offices yet they continue to do so. This would have been a case in point for the Kenyan commission to learn from. Given the Kenyan political scenario, it would have made sense to maintain neutrality for credibility purposes.

Second, recruitment was said to have been biased in some regions thus compromising chances for reconciliation (a key milestone for the commission). For instance reports received from Upper Eastern, confirms that majority of statement takers were drawn from one community which led to biased statement recording as the statement takers concentrated on victims from their community.

Third, statement takers did not reach out to all the victims and areas affected by the violations and economic crimes in question. It is not clearly known which criteria the commission used to map the areas in which statements were recorded in most regions since many people complained of not being reached yet they had serious issues they wanted addressed. This was observed in Western, Nyanza, Coast and North Eastern regions as well as parts of the central Rift Valley.

Fourth; the level of ignorance exhibited by both the statement takers and victims on TJRC issues and process. Our observation in Upper Eastern & North Eastern Region, Eastern, Western, Coast, Nyanza, Rift Valley, Central and Nairobi regions covers matters ranging from the untrained statement takers, lack of awareness and understanding of the TJRC mandate.

Fifth; lack of mechanisms to ensure participation of women and children. Reports received from our monitors indicates that many women and children did not participate in the statement taking process as it was assumed that if the husband/father had recorded a statement, it was representative of all the members of his family.

Finally; the lack of mechanisms to protect victims. Our monitors found that since the Commission did not put adequate measures to protect victims in this phase, they remained exposed to threats and among security risks from perpetrators.
b) Specific Findings per Region

i) Upper Eastern and North Eastern Region
The following specific gaps were found in this region. First, there were allegations that some of the statement takers were perpetrators who feared prosecution. One of the statement takers is said to have ran away with the identity card of a victim who gave his statement. There are fears that some of them had connections with the public administration which most victims associated with injustices perpetrated by the government.

Second; lack of information on the work and schedule of the Commission mostly attributed to poor road network and high level of illiteracy in the region. A case in point is the Marsabit County which has 7 districts and is inhabited by Gabra, Borana, Burji, and Rendille among other marginalized communities. Moreover, the County has poor infrastructure and its population is highly illiterate and does not have access to newspapers and the like.

Third, TJRC was accused of recruiting statement takers from specific communities which brought a lot of animosity between communities. Moreover, statement taking was also done at the household level which meant those who were not visited could not give their statements.

Fourth, this process failed to ensure effective and equal participation of all the affected or interested groups and communities in the region. While it was expected that the TJRC process would be all inclusive, statement taking was ethnically imbalanced.

Perhaps because mapping out was not done with a clear understanding of ethnic and socio-economic issues in the area, statement takers were drawn mainly from the Borana clan and these tended to attend to only people of their own clan. As a result of this 50% of those who testified were from the Borana clan.¹¹

Finally; lack of protection and other administrative support to the process. While we found in Isiolo that one of the statement takers feared for her life as the TJRC had not endeavored

¹¹ From CRECO’s other work monitoring violence in the Country; we have observed that there is increasing tension among the ethnic communities as we approach the elections. TJRC was meant to sow seeds of reconciliation but in Marsabit/Moyale may have fanned the existing tension
to provide witness protection, in Moyale, the statement taking exercise was postponed for two days and statement forms were not available.

ii) **Eastern Region.**
This is one of the regions where the commission conducted what it referred to as a ‘brief window for statement taking and memoranda collection for a period of 14 to 30 days.’ This took place before and partly during the hearings in the region and the commission indicated that it was occasioned by public demand for the same. The following gaps were noted in this region:

*First, was inadequate dissemination of information on the activities of TJRC.* Our team observed that the statement takers were not available to share information on what was happening even when some victims were ready to record statements. Like in other regions, the TJRC Calendar was not shared promptly.

Many interested parties were calling CRECO and the Centre for Human Rights Civic Education (CHRCE), the implementing member seeking to confirm whether the exercise was actually taking place or it was just a rumor. This prompted CRECO to seek clarification from the commission.

*Second and related to the above is that people here did not understand or feel secure with the TJRC Process.* This is partly because the Commission failed to put in place mechanisms to support victims, especially the psycho-social help.

iii) **Western Region.**
In this region, statement taking was publicized through the local media and the public administration. However, the following complaints and gaps were noted: that the recruitment of statement takers was not transparent; that persons living with disabilities and the youth were left out; and that TJRC calendar of activities and events was not available.

iv) **Coast Region**
In the Coast region, the following gaps were noted. *First,* everything was rushed and the statement takers began their work late with little or no resources. *Moreover,* the criteria of statement taking were not established and it was also reported that the TJRC was not sharing its schedule on time.
Third, most people were not aware of the formation and operations of the TJRC and others had little confidence in the TJRC process because of the Kiplagat wrangles, 75% of those interviewed said they did not know anything on the TJRC. Fourth, and generally, victims found it hard to testify as they feared victimization from perpetrators. Finally, when statement takers were interviewed by monitors they could not divulge information because of the oath of secrecy they took.

v) Nyanza Region

Our monitors based in the region captured the following gaps: First, was lack of disability friendly services in the Commission. It was observed that people with disabilities were not catered for especially at the TJRC regional offices in Nyanza. This was indicated by the fact that the regional coordinator’s office was located on 7th floor of a building in Kisumu town which does not have lifts and can only be accessed by staircases.

Second; the shortage and quality of statement takers in the region. Despite the large number of statements that needed to be taken, the whole of Nyanza was served by 5 statement takers. Only 12 memoranda were registered in Kisumu County. Clustering of hearings was poorly done and it was unfair to expect people from Mbita to come for hearing in Kisumu town without catering for their accommodation and transport refund.

Moreover, the Commission trained statement takers who would be able to collect statements from children victims but this did not happen. The commission attributed this to the fact that the commission does not have enough resources and what the commission refers to as disengagement by the Civil Society. Finally; gate-keeping by intermediaries. There were cases in Nyanza whereby unless you were associated to certain organizations, you would not be allowed to present.

vi) Rift Valley Region

It was reported that a total of 8,377 statements and 161 memoranda were collected were in Rift-valley Province. The Region reported the following challenges in statement taking: First, is the skewed manner in which the statement takers were recruited and trained. In most cases, the recruitment process was not open and transparent and the commission relied on existing victim networks to recruit statement takers e.g. National IDP network.

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12 According to the CRECO Baseline survey report on TJRC
13 CRECO monitors who were engaged at the regional level to monitor the process and give feedback.
14 Transport was provided for some people coming to the public hearings but it was insufficient.
Our monitors observed that in Nakuru, statement takers did not know how to do their work and were further trained by the CJPC using a Kenya Human Rights Commission (KHRC) manual. They were also poorly trained on human rights issues and the quality of training that was given to them was low. The CJPC also took upon itself to give civic education to the citizens.

Second, was the failure by the Commission to give all victims equal opportunities to engage with the statement taking process. It was reported that Naivasha\(^{15}\) and Njoro were hardly touched during the statement taking process despite the injustices that were committed there. There were testimonies from victims who were willing and ready to testify before the commission. In other places, the Commission was blamed for not mapping out areas to be targeted thus missing out on many areas. This led to massive marginalization of CSO’s and communities in statement taking.

Third, inadequate civic and public education by the Commission. In many places, the Commission was guilty of not sharing its schedule on time and doing a good job in public education. People therefore didn’t understand the TJRC Mission and mandate. Moreover, many were not aware that corruption and economic based crimes were to be addressed. Thus, many downplayed corruption and few or no statements were given on the same.

Fourth, was subjecting victims to ‘Commissions fatigue’. Critics are oblivious of TJRC with some querying its importance when other processes like the ICC process and the Kibunija-led NCIC were on-going. Again, the fact that reports by previous commissions have not been acted upon seemed to inform the perception of the respondents on TJRC.

Fifth, mistrust owing to the involvement of state and non-state actors associated with atrocities being investigated. The involvement of the Provincial administration in the process was said to have discouraged most victims who associate it with most atrocities committed or for failure to prevent the same.

In Baringo, some of the statement takers were not trustworthy and reliable were the same who had been hired by the government to undermine the Endoorois community.

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\(^{15}\) CRECO through its members CEDGG and NADISGO held a Community Dialogue Forum in Naivasha post TJRC Hearings and participants reported that most were not aware of the Statement Taking and Public Hearings. The few who heard and participated appeared to have been directly targeted by TJRC through Churches, Mosques, IDP Camps and Trade Unions.
in the area. Some of the statement takers are reported to have threatened CSO observers.

**Sixth; lack of safe spaces and forums for women and children to express themselves.** In Uasin Gishu, the Foundation for Women Rights in Kenya (FWRK) managed to mobilize 200 women to participate in the statement taking process. Even after being educated by FWRK that gender based violations were part of the TJRC mandate, many women did not give statements on sexual and gender based offences because they didn’t feel comfortable giving their statements to young statement takers most of whom were male.

In some cases, many women and children did not participate in the statement taking process as it was assumed that if the husband/father had recorded a statement, it was representative of all the members of his family. Interestingly, in hearings meant for women only, there were more male participants thus questioning the utility of such hearings.

**Seventh; the shortage of statement takers.** The number of statement takers was very low and they could not cater for all the victims thus some had to go back home without recording statements. Some women who had matters to attend to at their home were forced to leave without recording their statements as the queue was very long. This made them give up easily. Even then, the time allocated for statement taking was too short and not everyone who wanted to record a statement was able to do so.

**vii) Central Region.**

Our observation on the Statement Taking process in this region was as follows:

*First*, that, people did not understand TJRC’s mandate.

*Second*, that the hiring of statement takers was not transparent and CSOs were not involved in the process.

*Third*, that the training given to statement takers was wanting. It was observed that some of the statement takers who were hired didn’t understand social justice and human rights issues.

*Fourth*, there was minimal support from the key stakeholders. The NCCK and the Catholic Church at some point withdrew their support for the process because the process lacked credibility.

*Finally, victims were not adequately informed and involved.* There was poor mapping out of areas such that very few victims were reached during statement taking. In Majengo,
Mjini and Muranga the Muslim Community was not aware of the TJRC Process and neither did it know who was in charge of statement taking which meant they had to contact the commissioners to give them the statement takers’ contacts. In Murang’a which is predominantly Christian, Muslims were left out and as such commissioners were urged to involve all communities in the process. According to the KMYA, healing and reconciliation was not taking place.

viii) Nairobi Region
It was reported here that some of the statement takers were victims who were also expected to testify before the commission. Three major gaps were identified in Nairobi: That statement taking was not done in the whole of Nairobi but only in the hotspots of the 2007/2008 Post Election Violence; that the period allocated for statement taking was too short and apparently some of the statement takers recruited to work in Nairobi also took statements in Central province; and, that there was no clear timetable or schedule for the exercise thus most people missed out.

3.3. Public Hearings

a) Introduction
The Hearing Procedure Rules of the Truth, Justice and Reconciliation Commission were published in the Kenya Gazette Supplement dated 20th August, 2010. The rules outlined various guidelines to be followed during the hearings began in April 2011.

The rules envisaged three types and levels of hearings:

i. *Individual hearings* that would focus on individual cases, and the experience of individuals with respect to violations within the mandate of the Commission.

ii. *Institutional hearings* that would focus on the role played by an institution or institutions with respect to violations within the mandate of the Commission.

iii. *Thematic hearings* would focus on types of violations and other broad themes within the mandate of the Commission.

The rules further outlined the conduct of hearings, access to information and sites, protection and assistance, anonymity and personal confidentiality, application for amnesty, reparation. The rules touched on media coverage, the evidentiary standards among others.
Moreover, it important to note this process was determined by the quality and number of statements taken in the pre-hearing phase. As indicated elsewhere, civil society and development partners questioned the capacity of the Commission to collect 29,900 statements and receive 303 written memoranda country wide in three months given the institutional and political challenges it was facing.

Notwithstanding this, the Commission began its hearings North Eastern province through a launch that was held on Monday 11th April 2011 in Garissa town. The hearings continued throughout the region in Wajir, Mandera, Moyale, Marsabit and Isiolo. Later, these were spread to other regions in the country. This came with a number of challenges as captured below.

b) General Findings and Observations

First, the poor quality of statements taken returned to haunt the hearings. Our monitors filed reports to the effect that in some areas, victims were grouped together thus affecting the quality of testimonies. Moreover, the question of statements was used to block participation of genuine victims/witnesses willing to participate.

Second, is the failure to enhance timely information and public participation in the process. As reported by our monitors, the TJRC hearings scheduled for February 2011 were pushed to the March 2011 and then to April 2011. The commission was being clandestine about its work with little involvement of the public as required by law. Since onset of the process, there was laxity by the commission to properly sensitize members of the public on the TJRC mandate, objectives and its operations as envisaged in the TJRC Act 2008. This was witnessed during the public hearings when the witnesses gave accounts on issues that were clearly out of the TJRC mandate.

Finally, just like most Kenyans were not aware that hearings on sexual and gender based offences were part of the TJRC mandate, many were not aware that corruption and economic based crimes were to be addressed. Many downplayed corruption and few or no statements were given on the same.

Third, were inaccessible venues to general public and persons with disabilities for hearings. Most of the venues were not accessible to many and there was no earlier communication. This made it difficult for the public to participate. They were also
changed at random without due notification. Additionally they were not disability friendly.

Fourth, and related to above is poor involvement of and coverage from the media. CRECO posits that most of the reporters did not seem interested in covering, publicizing and critiquing the hearings. This may be partly attributed to the legitimacy crisis facing the Commission and the lack of capacity by the media on the TJRC and Transitional Justice issues and processes.

Fifth, is the inability by the Commission to foster local reconciliation after some hearings. Two weeks after the commission wound up its activities in Isiolo, clashes were experienced raising questions as to whether TJRC was effective in executing the national healing and reconciliation component of its mandate. In some cases, the process left more chaos than it did peace especially in areas where most statement takers were drawn from same community thereby sidelining the other communities. This bred animosity as a result of which one statement taker from North-Horr constituency in Marsabit county committed suicide.

Fifth, there was lack of safe and enabling environment for victims to appear and express themselves. Our monitors attribute this macabre situation this to the unnecessary presence of security officers which remained psychologically intimidating to many victims and participants in almost all the regions.

Sixth, there were cases of inadequate participation or quorum of Commissioners in some sittings. A case in point was in Kajiado, where only one commissioner, Judge Gertrude Chawatama presided over the public hearings on 9th November 2011, and in Embu, when Commissioner Margret Shava arrived at the hearings at 12 noon, Judge Chawatama joined the hearings at 2.05 pm.

Seventh, was lack of psychosocial support as envisaged in the TJRC Act. The TJRC had an agreement with the Red Cross who were supposed to provide psychosocial help. This group later disengaged leaving two psychologists to fill the gap and provide psychosocial support. These two in our analysis were obviously overwhelmed having to cater for the TJRC Commissioners, staff and those testifying during the hearings.

Finally, are ineffective mechanisms for witness protection. Victims/witness protection was lacking in almost all the areas even ‘in camera hearings’ the vulnerability of the victims was obvious as such meetings were carried out in an open tent just a few metres from
the main public venue. This exposed the victims/witnesses to a lot of danger, a case in point being Kericho.

c) Regional Findings and Observations
This section deals with the data and information gathered by the monitors in the 8 regions. The key findings of this are shared below:

i) Upper Eastern & North Eastern Regions

- CRECO managed to monitor hearings in Garissa, Marsabit and Isiolo of the 7 sessions held by the commission in this region.
- The TJRC hearings finally kicked off on 12th May 2011 after being postponed for three months.
- It was observed that hearings for women victims were held in camera. This was as provided in the law. That a staff from the secretariat on interviewing members of public in Marsabit town reported lack of knowledge on the event taking place.
- Some victims were turned away and denied a chance to testify even after recording of statements e.g. in Isiolo where three people were denied a chance to testify before the Commission.
- One of the TJRC Commissioners was accused by a former Garissa DC’s lawyer of being biased because of emotional involvement with one of the victims
- Contrary to the expectation that victims, perpetrators and the public would engage together especially in a reconciliation-focused process, only victims were involved in the process as the perpetrators and the public were left out of the process.
- Later on, key witnesses and perceived perpetrators in the Wagalla massacre testified in a special session in Nairobi. This, it was observed was an indication that reconciliation and healing would be hard to be achieved.
- In Marsabit, information dissemination was not properly done; people got wind of the hearings long after the TJRC commissioners had left the area. Moreover, residents were not aware of the TJRC’s work and mandate.
- In terms of accessibility, it was reported that the venue for the hearings in Marsabit was 6km away from the town and therefore not accessible to people who did not have transport.
- There security provided for the commissioners was very obvious and intimidating; creating distance between the public and the commissioners. Some of the security men were reminiscent of the military men who committed massacres in the area.
• The Pastoral Centre/hall in Marsabit where hearings were conducted was too small for the numerous participants. As no civic education was conducted, many of the people in the area had a little understanding of the TJRC Process and the mandate of the commission.

• Further, the structures for psychosocial support that were supposed to have been put up were not functional. There was hardly any visible help for those with trauma. It is presumed that as a result, one of the statement takers committed suicide even before the date of the hearings.

• Due to the ethnically-biased hiring and mapping during the statement taking process, victims from many communities within the region missed out in the next phases of engagement. As a result of this, 50% of those who testified were from the Borana clan.

• In Marsabit, victims complained that the following issues were not addressed by the Commission: The Forole massacres, Turbi massacres (not sufficiently), tortures at Balesa, the plane crash that occurred in 1st April 2006, the Kokai massacre and economic marginalization.

ii) Lower Eastern Region

• Monitoring here was carried out in Embu, Machakos, Kitui and Kajiado. Even though Kajiado is in Rift Valley, it was grouped within the Eastern Region in the TJRC criteria.

• Testimonies in Kajiado were mainly group testimonies based in injustices committed against the Maasai community.

• There were at least four commissioners attending to hearings in this region. However not all commissioners attended all hearings and timing for joining hearings for each commissioner was staggered such that while some commissioner was there in the morning, the rest would join later.

• Some of the key individuals who testified before the commission included Rev. Dr. David Gitari (in Embu), former Assistant, Hon. Kalembe Ndile (in Machakos) and Rev. Njuguna (in Kajiado). Rev Njuguna represented IDPs living in Kitengela area. Most of these IDPs were uprooted from Eldoret during the Election Violence, 2007/8.

• Some of the atrocities reported included: Land injustices especially in Kajiado and Kibwezi/Machakos; rape and defilement cases; destruction of property among others.
• There was poor participation by public as result of poor publicity with most victims being reached through their cell phones. Publicity was limited to what had been carried out in the print media and the internet.

• The Commission failed to take the hearings closer to the victims/witnesses. For instance, hearings in the vast Kitui were conducted in Kitui town while both Machakos and Makueni counties were combined with Machakos being the venue.

iii) Western Region

A number of positive developments were noted:

• The commissioners conducted the hearings and they were present during all the sessions.

• Commissioners interacted with victims and witnesses well, treating them with great respect and understanding and according them ample time to narrate their stories without interruptions or being cut short.

• In some instances there was enough time for a few victims to testify while in most instances little time was given e.g. Bungoma, 8.30am- 3 pm only 2 victims testified.

• Moreover, victims were given the requisite emotional support with more time being given for ventilation and consolation.

• That the Kenya National Commission on Human Rights assisted the TJRC in thematic mobilization especially targeting women victims. This happened in both Western and Nyanza. TJRC acknowledged that this was of a tremendous help.

• Finally, the language used was simple and easy to understand. There were translations for everybody present to follow the proceedings.

However, the following gaps were noted:

• The youth were conspicuously lacking in the hearings despite the fact that some doubled as victims as well as perpetrators.

• Children, especially in Teso were also not accorded a hearing. In fact in most regions that the commission has so far visited children have not been heard. The Commission failed to put measures to ensure effective participation of the victims from the Mosop and Soy clans in Mt Elgon who suffered in the hands of Sabaot Land Defence Force and the resultant military operations. Our monitors observed that the two clans were afraid of opening old wounds.
• And during the hearings some unknown people who were alleged to be a section of perpetrators 07/08 violence disrupted the hearing session.
• Some areas in Mt. Elgon area were left out during the hearings; statements were not taken directly by TJRC despite the area having many casualties of the post election violence i.e. Kaptama, Kapsokwony, Cheptais and Chepsiro.

iv) Nyanza Region

• Each session per venue took unique number of days depending on the issues at hand and the area of coverage. In Kisumu for example, the hearings took five days from 14th July to 19th July, 2011.
• This could be explained by the fact that Luo Nyanza is vast with all the hearings concentrated into one central venue, Kisumu town.
• This raised complaints from the victims who felt shortchanged; most of them felt that the hearings should have been taken nearer to their places of abode. The commission provided some transport to victims from outside Kisumu town however many were not privy to this. CRECO observed people coming from as far away as Mbita (about 150 kilometres distance)
• Cases heard here were majorly political and socio-economic; marginalization of the Muslim community and the Kuria, PEV, Kisumu Massacre- which happened in 1969 and is commonly referred to as ‘The 1969 New Nyanza Provincial Hospital Massacre’ and the land issues in Migori and Kuria districts.
• There were mixed feelings from the victims where some felt that perpetrators should face justice.
• As some victims supported The Hague (ICC) process others like Mr. Benson Orina Ndege (of the Naivasha killings during the PEV 2007/8) felt that they should be compensated and given other remedies that could assist them to recover lost property and time.
• Hon. Shakir Shabir, the Kisumu Town MP testified regarding the PEV and how at one point he was arrested and locked up by the police.

16 CJPC having realized the gap; had its Commissioners in the area trained as statement takers and managed to deliver some statements and memoranda to the TJRC.
• The Kenya National Commission on Human Rights assisted the TJRC in thematic mobilization especially targeting women victims. This happened in both Western and Nyanza. TJRC acknowledged that this was of a tremendous help.

**However:**

• Systematic gate keeping was witnessed in Kisumu with local networks dictating who would participate in the hearings. Our monitors observe that a well known activist was used to influence those who made testimonies in Kisumu.

• The centralisation of hearings in Kisumu, Kisii and Kuria towns limited accessibility by victims and stakeholders based in rural areas. Some victims were even stranded in towns for lack of transport facilitation.

• Moreover, some of these venues were said to be inaccessible and disability unfriendly.

• With a total of more than 3,500 statements being recorded in the region, less than 60 were heard. The commission has overtime attributed this to limitation in time and resources. However, the Commission is yet to explain how it will manage expectations and reparations for all.

• Some hearings were designed along ethnic lines - that Luo hearings were held in Kisumu, Kisii hearings in Kisii and the Migori hearings in Kuria. This arrangement may bring issues during the post hearings session with regard to how the Commission managed local healing and reconciliation.

• Related to this is failure by the Commission to strengthen partnership and complementarity with such related transitional justice processes as the cohesion and integration issues under NCIC.

• Ineffective communication and public relations strategies led to poor mobilization and participation of the public to the hearings.

**v) Rift Valley Region**

• The level of preparedness for the hearings was notably high. The venues were accessible and conducive. This is positive since it shows that the commission has been improving in terms of preparedness.

• On disability, special arrangements were made for persons with disabilities in all venues especially the use of sign language. Language translators were also present and this aided communication between the commission and the victims/witnesses.

• Unlike in the other regions, Rift Valley experienced more public turnout. In Kericho and Nakuru, there were more than 400 participants in the public hearings while in
Narok; the venue is reported to have been fully filled by at least 200 participants. In all venues, tents had to be erected outside and hearings transmitted through IT.

- In the venues monitored, only one politician is reported to have participated i.e. William Ole Ntimama presenting the case for the Maasai Community especially regarding land injustices meted on them by the colonialists and subsequent independent governments.

- Some of the atrocities addressed included: Land injustices; Child labour and sexual exploitation of girls and women; Displacement as a result of the cyclic politically instigated violence; internal displacements; forceful evictions; arbitrary arrests and police brutality, and violation of workers’ rights.

- CRECO monitors noticed that the process was influenced by the politicians e.g. in Kericho a close ally of a known politician made presentation on behalf of the Kipsigis community. The Ndorobo community complained that whoever made the presentation on their behalf was not even known to them.

- Psycho-social support and immediate remedies remained elusive as evidenced by the TJRC’s failure to immediately ameliorate the situation of a victim from the region who appeared before the Commission with a bullet still lodged in his head.

- Moreover, there was no counselling services offered.

- In Kericho the process was dismissed as too elitists as ordinary Kenyans were left out especially in giving testimonies. In Narok there was last minute change of venues and dates of the hearings.

- While the print media advertisement indicated that the hearings would take place on 30th September, the hearings began a day before the scheduled date i.e. 29th September 2011. This inconvenienced organizations planning to monitor the hearings and also members of the public who wanted to participate.

- There was total lack of witness protection as the hearings meant to be in camera were carried out in an open tent just a few metres from the main public venue. This exposed the witnesses to great danger especially for hearings held in Kericho.

- The heavy presence of police officers and security for Commissioners scared victims and other interested groups who may have wanted to testify on police excesses.

- Many victims did not seem to understand the mandate of the TJRC especially in regard to the period which its investigations would cover. This can be attributed to the fact that the commission didn’t conducted significant civic education if any on the process.

- Interestingly, in hearings meant for women only, there were more male participants thus questioning the utility of such hearings.
vi) Central Region.

- Language used was understandable and was majorly enhanced by present interpreters.
- The venue for scheduled hearings kept on changing without adequate notice. Some hearings started very late a case in point being in Nyeri where the participants had to wait until eleven o’clock in the morning for the hearings to commence having been there from 8.am. This limited public participation.
- Representation by persons with disabilities was lacking due to choice of venues and facilities that were not disability friendly.
- Specifically, the facility at Muranga technical primary school was unsuitable to the elderly and persons with disability because there was a deep trench at the entrance and every person accessing the room had to jump over while entering the room
- In one venue, there were no IEC materials for participants save for a few brochures by CRECO monitors.
- Although there were translation services during the public hearings the four counsellors struggled to engage victims as they could not speak the local language.
- There was a general lack of victim preparedness- they were called a day or two before the hearings.
- The Commissioners did not attend all the scheduled sittings as there were cases whereby only one commissioner managed hearings contrary to the provision of the TJRC Act. This could be attributed to the commission’s crash programme where more than one hearing took place simultaneously.
- There was confusion on the venue of the hearings in Nyeri which were the first ones in the region. Participants, including the Commissioners were not sure of the exact venue which delayed the hearings for up to 2 hours. Hearings began at eleven o’clock am as opposed to the planned time of nine o’clock.
- Participation by the public indicated poor publicity and/or lack of interest by the public. Members of public present for example in Nyeri hearings were relatives and friends to the victims and the TJRC staff.
- This was the only departure from the traditional set up in all other hearings were the commissioners had a reserved elevated position resembling that of a Court of Law.
- In most of the hearings (90%) there was no disability representation.
- There was clearly no indication of security for victims after testifying as indicated by concerns raised by a group of participants. The TJRC staff’s response to the issues was negative.
• Victims who recorded statements but failed to secure an opportunity to testify laid the blame squarely on the statement takers. There was need to establish the criteria used to identify those who were to testify and why others were denied opportunity to do so.

vii) Coast Region
• On preparation before the hearings, it was reported that the schedule was not availed for public information on time. Moreover, the other source was newspapers which most of the people do not read and was also in piecemeal i.e. was availed for only regions being visited.
• Many victims were prevented from testifying. For instance, a former police officer with information on the Wagalla massacre was barred from the hearing venue.
• The process appeared to be more Government than public, characterized by the presence of heavily armed security personnel during the hearings.
• Very important issues were addressed and treated casually. While all land issues were lumped together, the Commission failed to carry out investigations so as to deepen its understanding of the underlying issues. It will be interesting to see what kind of recommendations the commission will come up with and if these will stand the requisite threshold in law.
• The commission seemed confused, overwhelmed, apathetic, and non-committal to the whole process. It seemed like the commission was just out to deliver on its terms of Reference and get over with it.

viii) Nairobi Region
Through the thematic and institutional hearings, the Commission sought to investigate the context, causes and circumstances under which specific violations occurred and to unveil their systematic character and motives while seeking to unveil the ways in which these violations reflected a pattern or systematic character of discrimination and exclusion.

The Commission began its thematic and institutional hearings on 13th December 2011, at the Kenyatta International Conference Centre (KICC). Our observation was that while the hearings were taking place in Nairobi, children were brought from as far as Nyeri, Nyakach, Naivasha and Mombasa instead of having dealt with them during the regional hearings. This denied many children the opportunity to engage with TJRC at

17 The police officer had retired and was living in the Coast Region but had worked in North Eastern during the time of the Wagalla Massacre.
local levels. The process used to identify children to participate in the thematic hearings was also not child friendly and contributed to some children feeling further victimized.\textsuperscript{18}

\subsection*{3.4. TJRC's Thematic Hearings}

The Commission began its thematic hearings on Access to Justice at the NHIF in April 2012 with a panel comprising Commissioners Margaret Shava, Amb. Berhanu Dinka, and Prof. Ronald Slye, presided over by Judge Gertrude Chawatama. At institutional and thematic hearings, the Commission invited input from experts, government institutions, civil society and faith based organizations on specific areas within its mandate.

Other thematic hearings were on political assassinations, torture, internal displacement, insecurity, police excesses, disability, children, women’s’ rights among others. Schedules for these hearings were not shared on time and this limited public participation. Most of the people did not know when and where the thematic hearings would take place. Many people learned of the hearings long when already they had taken place this was through news by media.

\section*{4.0 COMPARATIVE ANALYSIS}

\subsection*{4.1. The El Salvadorian Truth Commission}

Under UN auspices, from 1989 through early 1992, the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN), a Salvadoran guerrilla rebel group, negotiated peace agreements to end the 11-year old civil war, an agreement that provided for the establishment of a Truth Commission.

In interpreting its Mandate, the Commission first had to decide on the applicable law for evaluating these serious acts of violence. It concluded that the International Covenant on Civil and Political Rights and the American Convention on Human Rights, both of which had been ratified by El Salvador, were the governing instruments for international human rights law and applied to the acts of the Government and the FMLN, which had assumed governmental powers in parts of the country. In particular,

\textsuperscript{18} CRECO monitors reported that some children were identified to give testimony at Regional level (many did not get to speak but just stayed at the hotel) from this group one or two were shortlisted to attend the Thematic Hearing in Nairobi and still did not get a chance to speak.
these parts of Article 4 of the Covenant were applicable: the right to life, the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment and the right not to be held in slavery or any form of servitude.

In evaluating and implementing its Mandate regarding its procedures and methodology, the Commission made the following decisions: a) investigated individual cases or acts, which outraged Salvadoran society and/or international opinion as well as series of individual cases with similar characteristics revealing a pattern of violence or ill-treatment, which also outraged Salvadoran society. b) Its sources would be confidential. c) It interviewed people and received reports from governments and international bodies. d) It took all possible steps to ensure the reliability of the evidence used to arrive at a finding; to verify, substantiate and review all statements of facts by checking them against a large number of sources whose veracity had been established and by not basing any finding on a single source or witness or only on a secondary source. e) It named perpetrators of human rights violations. f) Its report specified the degree of certainty for each finding: (a) “overwhelming evidence” indicated “conclusive or highly convincing evidence;” (b) “substantial evidence” indicated “very solid evidence;” and (c) “sufficient evidence” indicated “more evidence to support the . . . findings.”

The El Salvadorian report included names of the alleged perpetrators and the Commission was empowered to remove members of the military who were named in the report. The report was also critical of the military, paramilitary, intelligence and security forces, and those who allowed the abuses or covered them up, including the judiciary. The commission also recommended the removal of Supreme Court justices because they were considered to be corrupt and inefficient.

4.2 Truth and Reconciliation Commission of South Africa (TRCSA)

The Truth and Reconciliation Commission, South Africa (TRCSA), a court like body, was established by the new South African government in 1995 to help heal the country and bring about a reconciliation of its people by uncovering the truth about human rights violations that had occurred during the period of apartheid. Its emphasis was on gathering evidence and uncovering information—from both victims and perpetrators.

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The Commission was borne of a spirit of public participation, as the new government solicited the opinions of South Africans and the international community regarding the issue of granting amnesty as well as the issue of accountability in respect to past violations and reparations for victims. Civil society, including human rights lawyers, the religious community, and victims, formed a coalition of more than 50 organizations that participated in a public dialogue on the merits of a truth commission, this enhanced citizens’ trust and full participation. This doesn’t apply to the Kenyan truth, justice and reconciliation process where many SCO’s decided to keep off after the commission was marred with a lot of integrity and position wrangles.

The commission was tasked with investigating human rights abuses committed from 1960 to 1994, including the circumstances, factors, and context of such violations; allowing victims the opportunity to tell their story; granting amnesty; constructing an impartial historical record of the past; and drafting a reparations policy. In order to achieve these objectives, the Act established three committees: the Human Rights Violations Committee, the Reparations and Rehabilitation Committee, and the Amnesty Committee.

The primary focus of the commission was on victims unlike TJRCK’s whose attention deviated to commissions internal power dynamics (position wrangles). TRCSA received more than 22,000 statements from victims and held public hearings at which victims gave testimony about gross violations of human rights, defined in the Act as torture, killings, disappearances and abductions, and severe ill treatment suffered at the hands of the apartheid state. South Africa’s version of restorative justice emphasized reconciliation between perpetrators and victims built ideally on a perpetrator’s repentance and a victim’s forgiveness.

Although the TRCSA’s task was not officially framed in religious terms, the dominant role of Chairman Archbishop Desmond Tutu meant that his theological view of reconciliation often trumped other views. This was aided by the large number of commissioners who came from the faith community. Crucial for the success of the TRCSA was the choice of the commissioners. The selection procedure was democratic and transparent, as the South African people were allowed to suggest candidates. This is contrary to Kenya’s case where the appointment of the commissioners were basically dictated by political connections and hence immediately after the appointment of the members of the Commission the integrity and credibility of its Chair came under attack from some of the most important sections of the public, CSOs, and other crucial
stakeholders. The negative impact of the non-cooperation policy of these critical stakeholders was immediate and visible.

The South African TRC had a very elaborate and all inclusive statement taking process whereas in Kenya the statement collection did not include all the victims as many have cried out for having been ignored. There was lack of appropriate measures for the privacy and protection of victims and witnesses. TJRCK statement taking process was not as effective and comprehensive as it were to be, it didn’t have well set up mechanisms for publicity and outreach; it didn’t engage the public consistently and constantly as required.

TRCSA had in place survivor support structures (psychological) that complemented its own concerns to provide direct emotional support for victims who endured the anguish of re-living traumas through their testimony before the Commission. This again paints a different picture in the case of TJRCK which didn’t recognize the need for an integrated victim aid and empowerment.20

In the longer term, the Truth and Reconciliation Commission of South Africa, and all the evidence it collected and placed on the public record, continue to offer a valuable contribution towards building up a new “human rights culture” in the new South Africa. The setup of the TRCSA offered several advantages. First, many believed that the amnesty provision was the key negotiating plank without which a relatively peaceful settlement would not have been possible, the TRCSA had asked for anyone involved in gross human rights violations which included “the killing, abduction, torture or severe ill-treatment of any person,” to step forward and confess.

Additionally, as part of the recommendations, the truth and the true nature of South Africa’s apartheid system was brought to the public knowledge, thus the creation of a national memory. The truth created allowed many families to finally discover what happened to their loved ones and in some cases find their remains and give them a proper burial. This closure, it is hoped, enabled reconciliation.

At the same time as South Africans went to the polls to elect their first democratic government in 1994, Rwandans 2,000 miles to the north were perpetrating the fastest genocide in recorded history. Beginning in April 1994, Hutus massacred 800,000 Tutsis

20 Truth and Reconciliation Commission of South Africa Report.
over one hundred days in an effort to thwart the power-sharing arrangement mandated by the Arusha Peace Accord of 1993. The Tutsi-led Rwandan Patriotic Front eventually defeated the Hutu-led interim government and ended the genocide.

4.3. The Gacaca Courts in Rwanda

In stark contrast to South African’s experiment with restorative justice, Rwandans asked for United Nations assistance to establish a structure for retributive justice. Archbishop Tutu had urged Rwandans to forego punishment in favour of pardon fearing that “justice with ashes” would be the outcome of the Rwandan effort to punish the perpetrators of the genocide. Instead, the UN Security Council established the International Criminal Tribunal for Rwanda (ICTR) in 1994 to prosecute the masterminds of the genocide.

Political and cultural factors in large part explain Rwanda's initial preference for prosecution of the genocidaires. Having vanquished the interim Hutu government, the Rwandan Patriotic Front was under no pressure to compromise. In addition, the religious-redemptive model of forgiveness and reconciliation was significantly discredited by the degree to which church leaders were implicated in the genocide.

However, by 1999 the government “recognized that some measured use of the restorative justice approach might indeed better serve the country’s needs. A traditional method of conflict resolution -- Gacaca -- was resurrected to deal with the situation. Practical considerations played a major role in Rwanda’s turn to restorative justice. First, it quickly became clear that the ICTR was unlikely to try more than a hundred of the most prominent suspects.

Meanwhile over 100,000 people accused of human rights crimes languished in Rwandan prisons. It was simply impossible for the country’s decimated justice system to try the huge number of suspects. Authorities admitted that at the present rate of prosecutions, Rwandan courts would take 150 years to try all the suspects. Consequently, in early 2001, the government passed a law establishing the Gacaca system of a hierarchically organized network of about 11,000 community courts that would try lower level crimes.

The traditional system of Gacaca existed from the pre-colonial times into the 1990s. It was used alongside the formal judicial system at the local level, especially in settling family disputes and minor offenses between neighbours. Intended primarily to restore
social order, traditional Gacaca meted out punishments with the intention of restoring harmony between the community and those responsible for discord. Now resurrected to deal with crimes more serious than those for which it was originally intended, Gacaca began on a national level in November 2002 and most cells began work in 2003.

Gacaca encompasses three important features of relevance to broader experiments of reconciliatory justice. First, Gacaca rewards those who confess their crimes with the halving of prison sentences. As a result, 60,238 prisoners have confessed to participating in the genocide. Second, Gacaca law highlights apologies. Part of the procedure of the traditional Gacaca system, apology has been maintained in the new variant as an important ingredient to promote reconciliation. Third, reparations to victims are a cornerstone of Gacaca. Those found guilty must contribute to a compensation fund and/or perform community service. Klaas de Jonge of Penal Reform International applauds this form of direct reparations as it will contribute something tangible to improve victims’ lives21.

Rwanda’s experiments with transitional justice have much to teach us about the strengths and weakness of these structures. International and domestic, retributive and restorative structures are being deployed to address the atrocities of the crimes against humanity. However, in Kenya’s case, there is no nationally acclaimed traditional method of justice resolution thus we wholly depend on the formal judicial mechanisms to resolve the conflict that led to the 2008 post-election violence.

4.4. The Liberian Truth and Reconciliation Commission (LTRC)
From 1979 until 2003, the Liberian people suffered a coup d’État, military rule and two civil wars that resulted in archaic violations of human rights and mass displacement. The Liberian Truth and Reconciliation Commission (LTRC) was negotiated and agreed upon in the August 2003 Accra Comprehensive Peace Agreement and was enacted into law by the National Transitional Legislative Assembly in 2005.

The LTRC was established to ‘promote national peace, security, unity and reconciliation,’ and to make it possible to hold perpetrators accountable for gross violations of human rights and humanitarian law that occurred in Liberia between January 1979 and October 2003. The LTRC has been considered very unique because of

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21 Despite the great achievements and innovation of Gacaca, it has also been criticized on various aspects including for being one sided with more focus on Hutus as perpetrators (victimisation); people “confessing” just to avoid prison regardless of whether guilty or not.
its systematic inclusion of the Diaspora in the internal process. The Commission divided Liberia into eight operational zones and established a regional office in each of them. Each Commissioner has oversight responsibilities over one of the eight zones, in addition to some thematic and operational areas.

Liberian civil society, in particular the Transitional Justice Working Group (a coalition of non-governmental organizations) had a fundamental role in the consultations leading to the drafting of the TRC Act. During the commission’s work several local civil society organizations supported the Commission as partners, helping the implementation of its activities in areas such as women’s and children’s participation and protection, counseling, outreach, etc. Before the beginning of the public hearings in January 2008, the Commission’s operations focused on outreach and statement-taking.

At the beginning of outreach program process the Commission lacked effective information, education and communication strategy especially in the interior of Liberia. The communities in the interior of Liberia lacked understanding of the LTRC process but this was quickly rectified by the formation of County Coordinating Committees, comprising of LTRC county coordinators, local officials, NGOs and civil society organizations, which were established in each county to carry out outreach activities. Several public awareness activities were organized in the counties, including community meetings, training seminars, radio interviews, and distribution of visual materials. The same lack of effective information and education was evident in the TJRCK process which unfortunately was not corrected by the commission until the end of statement taking and hearing process (The TJRC failed to explain clearly its mandate and policies to the Kenyan public).

The LTRC also adopted specific mechanisms and procedures to address the experiences of women and children, paying particular attention to gender-based violations and to the issue of child soldiers, providing opportunities for them to relate their experiences, addressing their concerns and recommending measures for their rehabilitation. It established a Committee on Gender, including the United Nations Mission in Liberia (UNMIL), the United Nations Development Fund for Women (UNIFEM), women’s NGOs and the Ministry of Gender. Gender issues were included in the training for statement-takers. In December 2006 the LTRC began a series of four nationwide “zonal” workshops and 15 town hall meetings, intended to discuss women’s participation in the LTRC process. This is contrary to the TJRCK process which didn’t give any special
attention to women and children who happened who happen to be the most adversely affected by the post-election violence.

In its recommendations, the LTRC called for the establishment of a National Palava Hut Forum as a complementary tool for justice and national reconciliation was really outstanding. The Palava Hut process is a dispute resolution mechanism that has traditionally been used in Liberia in the case of conflict between two groups. The TRC suggested that reparations shall apply to communities and individuals and that general amnesty should be granted for children. Others may be recommended not to be prosecuted if they admit their wrongs and express remorse. Further recommendations concern institutional reform which the TRC thinks must be implemented to promote “good governance” and human rights.

When countries are attempting to overcome a violent past, it is better to deal with the past through thorough and elaborate investigations, in-depth truth recovery, justice, and total support for victims and survivors of violence than to ignore it. It’s sad to note that with the shallow investigations, partial truth recovery and total lack of support to witnesses and victims TJRCK will not achieve its main objective of promotion of peace, justice, national unity, healing, reconciliation and dignity among people of Kenya.

5.5. VERDICT AND WAY FORWARD

As per the above synopsis and detailed findings in this report, it is quite evident that although the Kenyan TJRC worked under very hard and very trying conditions, unfortunately, it failed to accomplish the overall mandate to promote peace, justice, national unity, healing, and reconciliation among Kenyans. Indeed, the gaps identified in the statement taking and hearing phases of the Commission reveals that the Commission did not put in place proper mechanisms to establish an accurate, complete and historical record of human rights violations and economic crimes committed between December 12th 1963 and February 28th 2008.

Finally and pursuant to Section 5 of the Act constituting it, the Commission failed to among others: provide repentant perpetrators or participants in gross human rights violations with a forum to confess their actions as a way of bringing reconciliation; provide victims, perpetrators and the public with a platform for non-retributive truth telling; and facilitate the granting of conditional amnesty and providing victims of human rights abuses and corruption with a forum to be heard and restore their dignity.
CRECO wishes to observe that, in the establishment and operations of the Commission, Kenyans failed to learn lessons and avoid mistakes committed by the former Commissions of Inquiry in Kenya and truth commissions in the world. Pundits hold that this could be part of the machinations by agents of impunity to ensure that just like in other transitional justice efforts, truth, justice and reconciliation remains elusive in Kenya.

As we wait for the launch of the Commission’s report, CRECO wish to recommend as follows:

i. Kenya and its people did not have a Truth, Justice and Reconciliation process as is generally envisaged the world over. All stakeholders must work together to establish a process that is above board and that is effective to realise justice, reconciliation and ultimately peace.

ii. The Commission’s report despite its gaps MUST be published, gazetted and publicized to allow for input from victims and members of the public. Kenyans should be given an opportunity to give final feedback/validate the report before it’s tabled in parliament.

iii. Kenyans should analyze and use the findings and recommendations of TJRC to demand new and more effective mechanisms for truth telling, if at all justice and reconciliation is to be attained.

This report should therefore be used together with other official and unofficial sources (say by other Commissions, courts judgments and civil society) as the basis for advancing and furthering the agenda for truth, justice and reconciliation in Kenya.

iv. The government and civil society should create a conducive environment for the perpetrators to show remorse and seek forgiveness in public for purposes of achieving reconciliation. Perpetrators who fail this test should face the full force of the law.

v. The civil society especially the Kenya Transitional Justice Network and National Victims Network should advocate for increased resource allocation and state support for transitional justice related projects in Kenya.
vi. The government and civil society organizations responsible for transitional justice work in Kenya should consider providing counselling and trauma healing centres for victims. These should be set up at strategic places to help in trauma healing.

vii. Moreover, there is a dire need to advocate for the adoption and implementation of a National Policy on Reparations. However, this should not stop stakeholders from utilizing the emerging opportunities to seek remedies for victims-for instance through court actions, memorialisation and resettlement of IDPs.

viii. All stakeholders should use the Constitution of Kenya and the National Accord as the national transitional justice policy for Kenya. This should be used to conceptualize, prioritize, implement and complement the disparate TJ mechanisms.

ix. Finally, we challenge and call upon all the stakeholders to establish mechanisms for managing huge expectations from victims.
6.0 ANNEXES

6.1 CRECO Monitors and Implementing Members

6.1.1 Monitors

<table>
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<tr>
<th>NO.</th>
<th>NAME</th>
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<tr>
<td>1</td>
<td>Bernedetta Mumbua</td>
<td>MMO</td>
<td>Nairobi</td>
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</tr>
<tr>
<td>2</td>
<td>Juliet Otieno</td>
<td>MMO</td>
<td>Nairobi</td>
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</tbody>
</table>

6.1.2 CRECO Implementing Members

1. Centre for Human Rights & Civic Education (CHRCE)

P.O. Box 681,
Mwingi, Kenya.
Telephone: +254-734-815347/+254-724-663685
Email: chrcemgi@yahoo.com
Website: www.chrce.org

2. Centre for Democracy & Good Governance (CEDGG)

Off Kanu Street, Free Hold Estate, next to Coolshade Restaurant.
P.O. Box 15801-20100,
Nakuru, Kenya.
Telephone: +254-51–2210845/+254-720-880185
Email: cedgg@wananchi.com
Website: www.cedgg.org

3. Ilimu Sheria (Ilishe) Trust

Hongera Street, off Tom Mboya Street-Opposite Mombasa Polytechnic.
P.O. Box 88333,
Mombasa, Kenya.
**Telephone:** +254-41-2491172
**Email:** ilishe@wananchi.com
**Website:** www.ilishetrust.org

4. **Institute for Civic Education & Development in Africa (ICEDA)**

   Behind Tom Mboya Labour Collage next to Yellow House off Ring Road.
   P.O. Box 2903-40100,
   Kisumu, Kenya.
   **Telephone:** +254-733-940969/+254-721-912401
   **Email:** iceda1971@yahoo.com
   **Website:** www.icedatrust.org

5. **Muungano Maendeleo Organization**

   Angare Community Welfare, FQ32 Kaloleni.
   P.O. Box 14550 – 00800
   Nairobi, Kenya.
   **Tel:** +254-724-529257

6. **Pastoralists Community Development Organization (PACODEO)**

   Marsabit Catholic Church Compound.
   P.O. Box 28,
   Marsabit, Kenya.
   **Email:** pacdeo@gmail.com
   **Telephone:** +254-710-140590

7. **St. Judes Counselling Centre (JCC)**

   Milimani Estate,
   P.O. Box 1100 -40100,
   Kisumu, Kenya.
   **Telephone:**+254-722 – 760235/+254-714-599291
   **Email:** lenaomondi07@yahoo.com

8. **United Disabled Persons of Kenya (UDPK)**

   Orthopaedic Centre, off Waiyaki Way
   P.O. Box 14114,
   Nairobi, Kenya.
   **Telephone:** +254-20–4446065/4443830
Email: udpk.kenya@gmail.com

6.2 TJRCK Guidelines for Hearings

6.3 TJRCK Guide on compiling Memoranda

6.4 TJRCK General Standard Operating Procedure during Hearings
Where...."Mercy and truth have met together; Justice and peace have kissed each other," (Psalms 85:10)