

Post-Election Violence and Governance in Kenya:
The Rise and Fall of the Truth, Justice, and Reconciliation Commission (TJRC)

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DECLARATION

This thesis is my authentic work not presented for a degree award at any other University.

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DEDICATION

This Thesis is Dedicated to The Memory of My Dear Departed Parents Who Finished Their Journey on This Earth – Mr. Harrison Luvanca Okoyana and Mrs. Esther Ayuma Luvanca
(RIEP, AMEN!)

Table of Contents

Declaration	ii
Dedication	iii
Abstract	ix
Acknowledgements	xiii
List of Figures, Maps, Pictures, and Tables	xiv
List of Abbreviations	xv
List of Political Parties and Institutions	xvii
Figure A: Global Location of Kenya (2013).....	xix
Map A: Devolved Counties Map of Kenya (2019)	xx
Table A: Kenya – The Basic Facts (2020).....	xxi
Table B: Distribution of Population by Ethnicity/Nationality in Kenya (2019)	xxii
Chapter 1 Post-Election Violence, Governance, the Truth, Justice, and Reconciliation Commission (TJRC) in Kenya.....	1
1.1 Post-Election Violence.....	1
1.2 Governance in Kenya.....	3
1.3 Ethnic Diversity in Kenya	4
1.4 Elections and Violence in Kenya	6
1.5 The Truth, Justice and Reconciliation Commission (TJRC) in Kenya	9
1.6 Motivation.....	10
1.7 Research Questions, Hypotheses, and Methodology.....	11
1.7.1 Research Questions	11
1.7.2 Hypotheses	11
1.7.3 Methodology.....	13
1.8 Theoretical Frameworks.....	14
1.8.1 Consociation.....	14
1.8.2 Political Decay	14
1.8.3 Horizontal Inequalities (HIs)	15

1.9	Synopsis of Thesis	16
Chapter 2	Literature Review, Chronology of Elections, and Violence in Kenya	
	21
2.1	Literature Review on Post-Election Violence.....	21
2.2	Chronology of Elections in Kenya	25
2.2.1	Independence Elections and Constitution Amendment.....	25
2.2.2	First Multiparty Elections in December (1992-1997)	26
2.2.3	Second Multiparty Elections in December (1997-2002)	27
2.2.4	Third Multiparty Elections in December (2002-2007)	28
2.2.5	Fourth Multiparty Elections in December (2007–2013)	29
2.2.6	Fifth Multiparty Elections under Reforms in March (2013-2017).....	30
2.2.7	Sixth Multiparty Elections in August (2017-2022)	31
2.3	Chronology of Violence in Kenya	33
2.3.1	Post-Election Violence of 2007/2008	36
2.3.2	Mediation by Eminent Persons in February 2008.....	38
2.3.3	Creation of Commission of Inquiry into Post-Election Violence (CIPEV).39	
2.3.4	Advent of Truth Justice and Reconciliation Commission (TJRC 2009-13)	41
2.3.5	Remembering Kenya Narratives (2010-2013)	45
2.3.6	The Media and Violence	48
2.4	Challenges and Prospects.....	50
Chapter 3	Conflict Causality Cycle, Hypotheses, Methodology, and	
	Theoretical Frameworks.....	53
3.1	Conflict Causality Cycle	53
3.2	Critical Point.....	53
3.3	Hypotheses	55
3.4	Methodology	56
3.5	Theoretical Frameworks.....	57
3.5.1	Consociation and Power-sharing.....	57

3.5.2	Political Decay Approach	60
3.5.3	Horizontal Inequalities Approach	61
3.6	Challenges and Prospects.....	62
Chapter 4	Origins of the Conflict, Ethnic Inequalities, and Governance Trajectory in Kenya	66
4.1	Overview of Politics of Conflict, Violence, and Security	66
4.1.1	Violence and Fragility.....	68
4.1.2	Violence and Governance	73
4.1.3	Conflict and Violence	75
4.2	Ethnic Conflict and Post-Election Violence in Kenya (PEV).....	84
4.2.1	Origins of Conflict and Violence in Kenya	85
4.2.2	Political Violence	90
4.3	Land and Ethnic Inequalities.....	91
4.4	Horizontal Inequalities	94
4.5	The Ndung’u Land Report.....	97
4.6	Democracy, Election System: Winner-takes-all	100
4.6.1	Concept of Democracy	100
4.6.2	Election System: Winner-takes-all	101
4.6.3	Ethnic Inequalities.....	102
4.6.4	Democracy and Ethnicity.....	113
4.7	Freedom and Civil Liberties	115
4.8	Ineffective Government: Corruption and Impunity	118
4.9	Challenges and Prospects.....	122
Chapter 5	African Truth Commissions	126
5.1	Truth and Reconciliation Commissions in Africa	126

5.1.1	Definitions.....	129
5.1.2	Aims.....	131
5.1.3	Obligation of the State.....	133
5.1.4	Impact Assessment	134
5.2	Five African Truth and Reconciliation Commissions	135
5.2.1	South Africa: Truth and Reconciliation Commission (1995-2002)	135
5.2.2	Morocco: Equity and Reconciliation Commission (2004-2006)	140
5.2.3	Sierra Leone: Truth and Reconciliation Commission (2002-2004)	142
5.2.4	Liberia: Truth and Reconciliation Commission (2006-2009).....	146
5.2.5	Ghana: National Reconciliation Commission (2002-2004)	151
5.3	Observations on African Truth Commissions	154
5.4	Challenges and Prospects.....	156
Chapter 6	Reform Proposal: Truth, Justice, and Reconciliation Commission (TJRC) in Kenya	159
6.1	Truth, Justice and Reconciliation Commission (2009–2013)	159
6.2	Background to Post-Election Violence (PEV) in Kenya.....	162
6.3	Dissenting Opinion on Land	164
6.4	Final Report Volume I: Tenure and Challenges	166
6.5.1	Volume IIA: Political History of State Violence and Violations	167
6.5.2	Volume IIB: Historical Injustices in Kenya	172
6.5.3	Volume IIC: Group Discriminations and Gross Violations	175
6.5.4	Children and Gross Human Rights Violations.....	177
6.5.5	Minority Groups and Indigenous People.....	179
6.6	Volume III: Ethnic Tensions, National Unity and Reconciliation.....	180
6.7	Volume IV: Findings and Recommendations for Reconciliation	183
6.8	Implementation and Monitoring Mechanism.....	185

6.9	Challenges and Prospects.....	186
Chapter 7	Analysis: Fate of TJRC Recommendations	192
7.1	Persistent Inequalities, Healing, and Reconciliation.....	192
7.2	Primary Findings and Outcomes.....	199
7.3	Recommendations.....	201
7.4	Gross Violation of Human Rights and Decay	203
7.5	Reparation Framework.....	204
7.6	Challenges and Prospects.....	206
Chapter 8	Conclusion and Outcomes	210
8.1	Reflections	210
8.2	Responses to the Research Questions	210
8.3	Validations of the Hypotheses.....	213
8.4	Inclusive Democracy and Zero Tolerance.....	218
8.5	Relevance of Theoretical Frameworks	221
8.6	Co-existence and National Cohesion	224
8.7	Recommendations.....	225
8.8	Policy Options.....	226
8.9	Challenges and Prospects.....	226
	Box 1: Post-Election Violence, Impact of TJRC on Kenya, and Key Outcomes.....	229
	Bibliography	236
	Cited Fieldwork Survey Narratives	278
	Appendices	280
	1. 120 Fieldwork Survey Narratives from Kenya from 31 July - 24 August 2019.....	280
	2. TJRC Final Report 2013 (Abridged Version) Paper 10	357

Post-Election Violence and Governance in Kenya:

The Rise and Fall of the Truth, Justice, and Reconciliation Commission Report (TJRC)

Abstract

This study explores how post-election conflict and violence in Kenya started, peaked, faded, and returned. The fate of the Truth Justice and Reconciliation Commission (TJRC) is also covered. The Commission was set up in 2008 to document past human rights injustices and malpractices that combine with other factors to trigger violence in multiparty presidential elections. It finished its mandate and submitted its final reports and recommendations.

However, the reports remain in limbo as the government is part of the problem. Colonialism discriminated, segregated, and exploited local citizens using divide and rule mechanism of administrative control that socialized Kenyans into a culture of conflict and violence. Independent Kenya inherited and adopted that extractive system from the British colonial oppressors. Kenya institutionalized it with nuanced cosmetic changes in the name of *Kenyanisation* (replacing foreigners with locals). This process created a new status quo bent on material wealth accumulation and exclusive hoarding of absolute power. Kenya started as a two-party democracy in 1963 based on a Westminster 'the winner-takes-all' or 'first-past-the-post' (FPTP) electoral system - where the winner locks out and marginalizes the opposition. Kenya is a multicultural society where 42 ethnicities from diverse backgrounds compete for their daily bread. This co-existence comes with calculative competition and cooperation for survival. Since some political stakeholders use negative ethnicity as a weapon of choice to settle scores, it creates a cycle of peace, conflict, and violence, depending on the level of inclusion or exclusion. The presidential contest is a close call with no clear winner. Hence, some selective coalitions use political power to choose winners and victimize losers.

Kenya started as a two-party state and absorbed the opposition for national unity, which made Kenya a one-party autocratic nation in 1963. Internal and external pressure brought back multiparty politics in 1991, which created state-sponsored ethnic clashes evolving into inter-ethnic violence, as observed in 1992, 1997, 2002, and exploded in 2007/8 as

tragic post-election violence (PEV). The state stands accused of orchestrating the horrendous violence as depicted by most narratives. The Waki Commission's (CIPEV 2008) total number of deaths was 1,133. This mayhem brutally murdered innocent Kenyans, destroyed priceless properties, haunting, and rendering approximately 350,000 as internally displaced persons (IDPs). Entrenched impunity in Kenya seen in the failure to implement the outcomes of the TJRC stems from the dire lack of political will. Most of the adversaries named by the reports as persons of interest are part of the status quo and their close allies. Severe conflict of interests killed the painstakingly sought truth, justice, and reconciliation outcomes, to protect these elite bargains.

This thesis has eight chapters, a bibliography, cited narratives, and two appendices. Appendix (1) covers 120 fieldwork survey narratives from Kenya (31 July – 24 August 2018). Appendix (2) reproduces an abridged version of the Truth, Justice and Reconciliation Commission as Paper 10.

Chapter 1 presents narratives on Post-Election Violence (PEV), Governance, and the Truth Commission in Kenya and lays the foundational synopsis for the thesis. It covers Kenya's post-election violence, governance, ethnic diversity, elections, the truth, justice, and reconciliation commission (TJRC). Amicable sharing of resources in Kenya can check negative ethnicity to mitigate violence. Three research questions, three logical hypotheses, and relevant methodology are included. Authentic fieldwork survey interview narratives are spread out in the thesis. This thesis adopts three theoretical approaches (Consociation, Political Decay, and Horizontal Inequalities [HIs]). Kenya highly requires a capacity to nurture and anchor sustainable peace for prosperity. Chapter 1 finishes with a synopsis of the whole study, and chapters 2-8 conclude with challenges and prospects.

Chapter 2 offers a review of post-election violence literature by tracing the chronology of elections and violence. It covers the pioneer elections (1963), autocratic single-party regime, constitution amendment, multiparty contests: first in December (1992-1997), second in December (1997-2002), third in December (2002-2007), fourth in December (2007-2013), fifth in March under reforms (2013-2017), and sixth in August (2017-2022). It also traces the chronology of the 2007/8 post-election violence in Kenya. The mediation by eminent persons in February 2008 ended this carnage, which created the Commission

of Inquiry into Post-Election Violence (CIPEV). It also examines the Truth, Justice, and Reconciliation Commission (TJRC 2009-2013) advent in Kenya. Remembering Kenya narratives (2010-2013), the media, and violence are also covered.

Chapter 3 further examines the three logical hypotheses, three theoretical frameworks, and the methodology used. It discusses the resource control allocation associated election system in Kenya as a conflict causality cycle towards the tipping point. Theoretical frameworks explain contextual issues and processes which should converge to reduce election violence. The outcome should promote pathways for mutual peaceful co-existence.

Chapter 4 explores the challenge of democracy in Kenya by tracing the origin of conflicts (history, present situation, and statistics). It broadly cross-examines violence, fragility, conflict, and governance. It discusses the origins of the conflict, post-election violence in Kenya (PEV), political dimensions, ethnic disparities, horizontal inequalities, and the Ndung'u Land Report. It analyses the zero-sum election system where 'the winner-takes-all' as 'first-past-the-post' (FPTP) outcome, which locks out losers. This system affects ethnic inequalities, ethnicity, freedom, and civil liberties as political decay outcomes manifested in ineffective government, corruption, and impunity, that hinder service delivery.

Chapter 5 examines the conceptual framework, proliferation of transition justice-seeking global truth, justice commissions - 5 African, Truth, and Reconciliation Commissions like South Africa, Morocco, Sierra Leone, Liberia, and Ghana. These experiences provide lessons for Kenya to address her past gross violations of human rights. Morocco excelled with prompt reparation payments as South Africa welcomed the amnesty addition.

Chapter 6 describes the rise and fate of Kenya's experience with the Truth, Justice, and Reconciliation Commission (TJRC). The Commission was created by an Act of Parliament to address 45 years of past injustices and describes TJRC's work in Kenya (2009-2013). The Final Report Volume I spell out the Commission's tenure and challenges. Volume IIA examines the political history of state violence, violations, and bodily integrity. Volume IIB covers historical injustices in Kenya. Volume IIC focuses on group discrimination, gender, and gross violation of human rights on children, minority groups, and indigenous people in Kenya. Volume III examines the politics of ethnic tensions, land issues, national unity,

healing, and reconciliation. Volume IV parades findings, recommendations, implementation, and the monitoring mechanism.

Chapter 7 analyzes the fate of TJRC recommendations by discussing persistence inequalities, healing, and reconciliation. It synthesizes the outcomes of primary findings, recommendations, gross decay, violation of human rights, and presents a reparation framework. In Kenya, successful governments have used silence, denial, and selective amnesia to suppress addressing agitations on fundamental issues - nurturing latent tension, hatred, and suspicion among individuals and communities. The resilience of TJRC illustrates its rise, completion, and delivery. However, the explicit state rejection of its final reports depicts its downfall. The government entrenches impunity with embedded rent-seeking conflicting interests as the oppressor hindering its close allies' prosecution.

Chapter 8 reviews the thesis with conclusion and outcomes. It answers research questions, validates the logical hypotheses, and re-evaluates theoretical frameworks' relevancy on corresponding outcomes, advocates for co-existence and national cohesion proposing recommendations for reforms and policy options. It also looks at the possibility of inclusive democracy and zero tolerance. More influential institutions and better governance practices are necessary to deter state capture and leverage elite bargains for sustainable peace to allow mutual co-existence and cohesive development. This thesis also calls for a paradigm shift, further studies, and more research in this field for holistic solutions.

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There are also many others; I would like to thank for their insightful comments, constructive criticisms, and encouragement in and out of Japan. Although I will not mention specific names on this occasion-all concerned parties are now - accorded the best of my gratitude for their respective contribution directly or indirectly. I am also grateful for the miracle of life, enabling the convergence of this plural cooperation.

Plural accolades go to the Graduate School of Global Studies, Doshisha University, for their hospitality, coordination, and management during my study and research period.

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My special thanks go to the proof-reader of this thesis for declining citation to avoid implicit or explicit actions or reactions touching on issues that should have potential ramifications in the short term or long run. I once again salute with an open heart all the extra efforts and corrective outcomes for adding value to this thesis.

Finally, I hope that this work will be an inspiration for future research, provoking fresh approaches and discussions beyond our destiny to make Kenya a better home to all the multi-ethnicities sharing that heritage as the land of opportunity and abundance.

List of Figures, Maps, Pictures, and Tables

Box 1: Post-Election Violence, Impact of the TJRC on Kenya and Key Outcomes... 229

Chart 4.1: Ethnic Group Distribution in Kenya 103

Figure A: Global Location of Kenya (2013) xix

Figure 3.1: Resource Control Election System in Kenya as (Conflict Causality Cycle) 54

Figure 4.1: OECD Fragility Framework Diagram 71

Figure 4.2: Violent Events by Type of Actor in Kenya (2014) 90

Figure 8.1: Resource Control Election System in Kenya as (Conflict Causality Cycle) 231

Map A: Devolved Counties Map of Kenya xx

Map 4.1: Violence is a Problem in 37 Countries 67

Map 4.2: Ethnicity Map of Kenya (2017) 104

Picture 4.1: The incumbent (Uhuru Kenyatta) and archrival (Raila Odinga) Handshake Politics as Elite Bargains..... 125

Picture 4.2: The Handshakes as Political Settlements 125

Table A: Kenya – The Basic Facts (2020) xxi

Table B: Table B: Distribution of Population by Ethnicity/Nationality in Kenya (2019)..... xxii

Table 4.1: Five Dimensions of Fragility 70

Table 4.2: Geo-Ethnic Composition 94

Table 4.3: Ethnic Percentage Shares of Kenyan Cabinet Positions 96

Table 4.4: Elections and Multi-Ethnic Coalitions (1963-2017) 105

Table 4.5: Results of Kenya’s 2013 County and Legislative Elections 106

Table 4.6: Exit Polls and Certified 2013 IEBC Results 107

Table 4.7: Kenya’s Presidential Elections (1963-2017) 109

Table 8.1: Fieldwork Interview Survey - Gender and Age Groups..... 230

Table 8.2: Fieldwork Interview Survey - Occupations 230

List of Abbreviations

ACLED	Armed Conflict Location and Event Data
ACHR	Advisory Council of Human Rights
ANC	Africa National Congress
AU	African Union
AUPEAP	African Union Panel of Eminent Personalities
AfriCOG	Africa Centre for Open Governance
BBC	British Broadcasting Corporation
BBI	Building Bridges Initiative
CIA	Central Investigation Agency
CCC	Conflict Causality Cycle
CDUM	Central Depository Unit Monitors
CIPEV	Commission of Inquiry into Post Election Violence
CL	Civil Liberties
CSO	Civil Society Organization
ECK	Electoral Commission of Kenya
ECOWAS	Economic Organization of West African States
ERCM	Equity and Reconciliation Commission of Morocco
FPTP	First-Past-the-Post
GCG	Grand Coalition Government
GDS	Geneva Declaration Secretariat
GEMA	Gikuyu Embu Meru Association
GPPP	Geneve Peacebuilding Platforms Paper
H1~3	Hypotheses 1~3
HIs	Horizontal Inequalities
HRW	Human Rights Report
ICC	International Criminal Court
ICG	International Crisis Group
ICRtoP	International Coalition for the Responsibility to Protect
ICTJ	International Commission for Transitional Justice
IDPs	Internally Displaced Persons
IER	Equite et Reconciliation

IPFAL	Ibrahim Prize for African Leaders
IPYF	Inter-Party Youth Forums
IPPIC	Inter-Party Peace and Ideology Committees
JCITCK	Judicial Commissions of Inquiry into Tribal Clashes in Kenya
JICA	Japan International Cooperation Agency
JOD	Journal of Democracy
KAMATUSA	Kalenjin Maasai Turkana and Samburu
KDF	Kenya Defense Forces
KES	Kenya Shilling
KIPPRA	Kenya Institute for Public Policy Research and Analysis
KNCHR	Kenya National Commission of Human Rights
KNDR	Kenya National Dialogue and Reconciliation
KNDRMP	Kenya National Dialogue and Reconciliation Monitoring Report
LAO	Limited Access Order
LTRC	Liberia Truth and Reconciliation Commission
NA	National Accord
NASA	National Super Alliance
NGOs	Non-Governmental Organizations
NRC	National Reconciliation Commission
NRCG	National Reconciliation Commission of Ghana
OAU	Organization of African Union
OECD	Organization of Economic Cooperation and Development
OHCHR	Office of the High Commissioner for Human Rights
PEAP	Panel of Eminent African Personalities
PEV	Post-Election Violence
PPLC	Political Party Liaison Committee
PPS	Parliamentary Presidential System
PR	Political Rights, Proportional Representations
RC	Reconciliation Council
RQ	Research Questions
SDGs	Sustainable Development Goals
SLDF	Sabot Land Defense Force
SLTRC	Sierra Leone Truth and Reconciliation Commission

SSA	Sub Saharan Africa
TA	Transparency International
TJR	Truth Justice and Reconciliation
TJRC	Truth Justice and Reconciliation Commission
TJRFRV3	Truth Justice and Reconciliation Commission Final Report Volume 3
TRCA	Truth Reconciliation Commission Act
UCDP/PRIO	Uppsala Conflict Data Program / Peace Research Institute Oslo
UCP	Ultimate Critical Point
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNHRCR	United Nations Human Rights Council Resolution
UNGA	United Nations General Assembly
UNICEF	United Nations Children Fund
V-DEM	Varieties of Democracy
WB	World Bank
WDR	World Development Report
WHO	World Health Organization
ZT	Zero Tolerance

List of Political Parties and Institutions

ANC	Amani National Congress
CORD	Coalition for Reforms and Democracy
EACC	Ethics and Anti-Corruption Commission
ECK	Election Commission of Kenya
GLK	Global Location of Kenya
FORD	Forum for Restoration of Democracy
IEBC	Independent Electoral and Boundaries Commission
IPOA	Independent Policing Oversight Authority
JP	Jubilee Party
KADU	Kenya African Democratic Union
KANU	Kenya African National Union

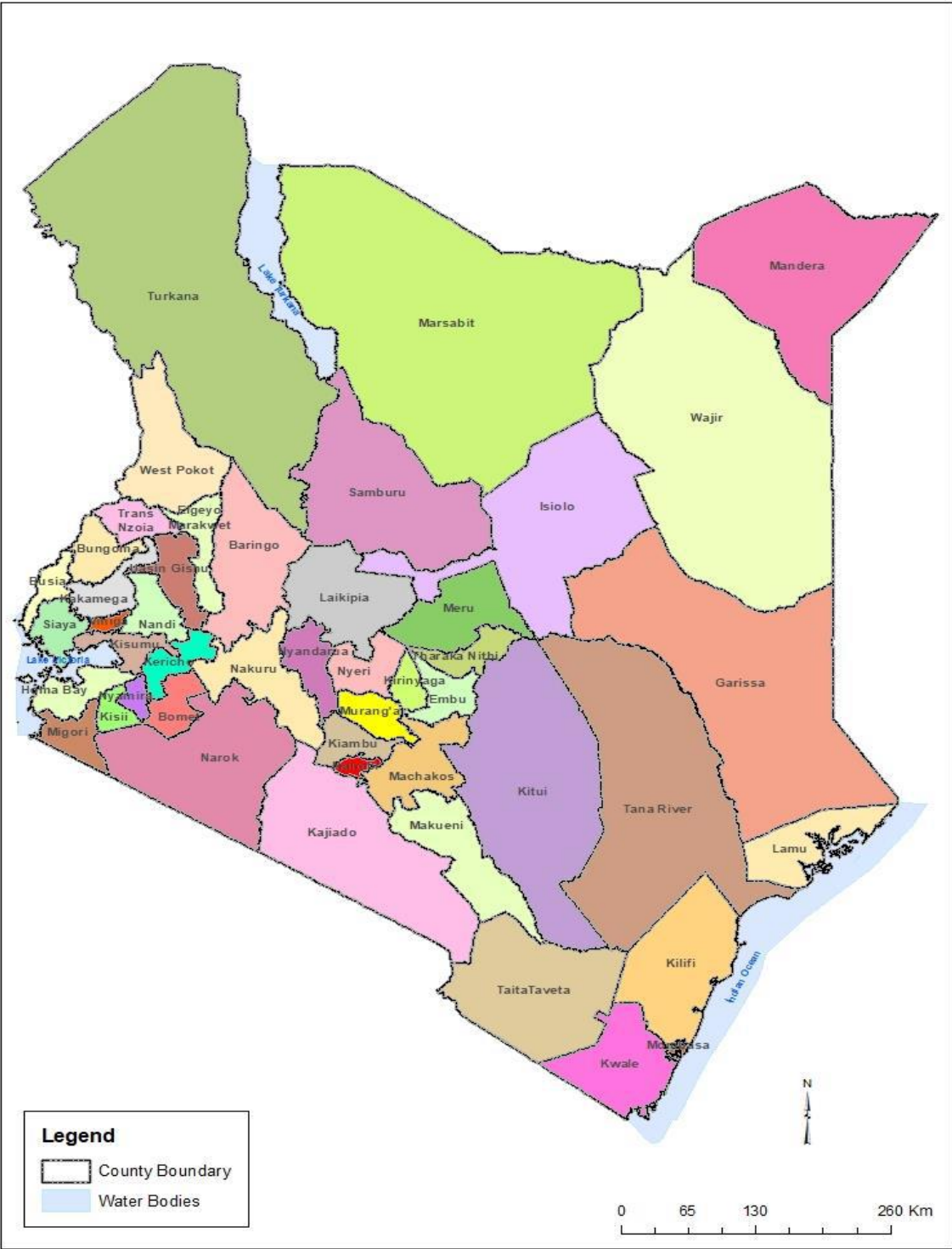
KAU	Kenya African Union
KNDRC	Kenya National Dialogue and Reconciliation Accord
NARC-K	National Rainbow Coalition - Kenya
NASA	National Super Alliance
NCIC	National Cohesion and Integration Commission Kenya
ODM	Orange Democratic Movement
PNU	Party of National Unity
SC	Supreme Court
TNA	The National Alliance
UDF	United Democratic Forum
WDM-K	Wiper Democratic Movement – Kenya

Figure A: Global Location of Kenya (2013)



Source: http://buzzkenya.com/wp-content/uploads/2013/05/kenya_globe.png

Map A: Devolved Counties Map of Kenya (2019)



Source: Kenya Population and Housing Census: Volume 1 (2019)

<http://www.knbs.or.ke>

Table A: Kenya – The Basic Facts (2020)

#	Item	Rate/Percentage/USD (\$)
1.	Gross Domestic Product (GDP)	194.4 Billion USD
2.	GDP per Capita	1830.59 USD
3.	GDP Growth Rate	1.01%
4.	Population : Growth : Fertility	47.01 Million : 2.31% : 3.57%
5.	Average Household : Life Expectancy	3.9 : 65.91
6.	Agriculture : Industry : Services	34.19% : 16.39% : 42.67%
7.	Budget Balance to GDP	-7.37%
8.	Government Expenditure Ratio	25.47%
9.	Inflation : Unemployment	5.1% : 9.31%
10.	National Debt	61.32%
11.	Trade Balance	-11.33 Billion USD
12.	Total Exports	6.05 Billion USD
13.	Total Imports	17.38 Billion USD
14.	Urbanization	27.03%

Sources: Kenya Statistics and Facts (2020)

<https://www.statista.com/topics/2562/kenya/> and

Kenya Housing and Population Census Volume IV (2019: 423-424)

<http://www.knbs.or.ke>

Table B: Distribution of Population by Ethnicity/Nationality in Kenya (2019)

Population Census from 24-31 August 2019			
#	Ethnicity/Nationality	Total	Ratio (%)
1.	Kikuyu	8,148,668	17.31
2.	Luhya	6,823,842	14.49
3.	Kalenjin	6,358,113	13.51
4.	Luo	5,066,966	10.77
5.	Kamba	4,663,910	9.91
6.	Kenyan Somali	2,780,502	5.91
7.	Kisii	2,703,235	5.74
8.	Miji Kenda	2,488,691	5.29
9.	Meru	1,975,869	4.20
10.	Maasai	1,189,522	2.53
11.	Turkana	1,016,174	2.16
12.	Kenyan Arabs	59,021	0.125
13.	Kenyan Asians	47,555	0.10
14.	Kenyan Europeans	1,738	0.004
15.	Other Kenyans	3,734,570	7.95
	Total	47,067,376	99.999

Source: Kenya Population and Housing Census Volume IV (2019: 423-424)

<http://www.knbs.or.ke>

Chapter 1 Post-Election Violence, Governance, the Truth, Justice, and Reconciliation Commission (TJRC) in Kenya

1.1 Post-Election Violence

On a cold winter morning in Northern Osaka, the unfolding events in the news on the television changed my perception of Kenya. The big unfolding event was on a Wednesday, 21 January 2009. Change you can believe in had come to the United States of America! The 44th President-elect Barrack Obama and the first African American with Kenyan roots ascended to the United States Presidency. The mood was hilarious globally, with all the headlines and pictures welcoming the miraculous transition. Kenyans at home, abroad, and the international community applauded and felt the same. Suddenly, a disturbing link was flashed on the screen reflecting a distressingly burning Kenya - his father's homeland engulfed in the politically maneuvered 2007/8 ethnic violence.

These were images of the infamous 2007-2008 Post-Election Violence (PEV) in a political correctness sense. African societies were not presidential in governance before the advance of colonialism and are now just lingering Western modernization replicas. Kenya can lead the pack in Africa by changing the electoral rules and regulations via abolishing the violence-prone presidential election to uphold peace, cohesion, and shared multi-ethnic heritage to leverage African Potentials. In Western media, this was seen as Africans settling scores in the old fashion way. Something revved in my mind. I had to find answers to - *why such an outcome surfaced in the first place and why at this very particular epoch when a "Kenyan-American" was making history? Why it persists, and what fuels it in that direction or process?* Professor Ali Mazrui was right by asserting that the status quo in Kenya was not ready for Raila Odinga (Luo) from Nyanza (Western Kenya) as a President-elect in the State House, Nairobi. While his kin as the Commander-in-Chief in the White House, Washington DC.

American Presidential elections are more civilized, liberal, and open. It shows more maturity and resilience expected of a developed, secular, and multi-racial society. Election manifestos are based on ideologies traversing both the racial, geopolitical, and socio-economic schism. These enabled the Democrats with Barrack Obama's Flagship Motto - *"change you can believe in"* - to carry the day. They were, bolstered with the universal belief in "hope" and "change." This hope and change were and are still in short supply in Kenya or were rendered worse than useless.

The presidential contest in Kenya was a crushing and brutal life or death campaign. Moreover, it wasn't open or liberal but based on ethnic tainted elite bargains and hell-bent violence mongers. They financially mobilized hooligans, licensed to intimidate and kill while spewing impunity laden fear and violence in a "winner-takes-all" exclusive political exercise. The presidential election triggered inter-ethnic confrontations in non-ancestral localities for daring to vote differently.

President-elect Barack Obama epitomized hope and continuity for all Kenyans who experienced these brutal tragedies. He emerged as the light and hope after the deadly conflict in his father's home country. Kenyans believed that after "change" had come to America, they could start believing in a local change at home, too. These hopes and dreams were sabotaged, scuttled, betrayed, and robbed. Kenyans at large are still faithful and hopeful to realize and achieve this change sooner than later.

As is the case elsewhere traversing the political divide, Kenya's leaders are in sync with their "handshakes" as elite bargains for political settlements. It aims to achieve unity or help end violence and pursue their myopic survival and selfish interests as coded messages. Therefore, elite bargains are the set of rules and agreements governing deals and pacts that the elites across the political divide promise to deliver on obligations made or implied. These obligatory outcomes are political settlements. The price and value attached to these commitments as agreements and settlements are the elite transaction costs. These "handshakes" serve as political tools of concealed bargains.

Building Bridges Initiative (BBI 2020) is a Presidential Taskforce Report on Building Bridges to a United Kenya: from blood ties to ideals. It asserts that Kenyans feel Kenyan when political competition and the use of ethnicity as an organizing tool are at rest between elections. Kenyans are extremely concerned about the poor values they express as a people and a leadership crisis at multiple levels suffocating in impunity and corruption. Kenyans are also tired and concerned with the interruptions that elections cause to the nation and economy. Kenyans abhor politics and their clandestine political maneuvers. Politics tries and is used to entrench itself in every facet of daily Kenyan lives. Kenyans yearn for more stable, predictable, and better democratic governance outcomes at national and county levels. These outcomes need to be inclusive of ethnic, religious, and regional diversity for national integration and cohesion, as the following section on governance will show.

1.2 Governance in Kenya

The increasing scale of violent global conflicts is not regional or territorial specific. The World Development Report (WDR 2017) confirms this. In the previous section, violence induced human suffering, displacement, and inconceivable humanitarian crises are evident. It dictates for resilient investment for inclusive, sustainable development to counter exclusions and inequalities while empowering more inclusive programs and institutions. Violent conflicts worsen infrastructure and production systems (Mueller and Tobias 2016). Hence, labor costs spiraled in Kenya by 70 percent (Ksoll, Rocco, and Morjaria 2009).

Inequalities per se may not necessarily lead to violent ethnic mobilization. It is the perception of inequality rather than the bias itself that leads to discontent and violence (Gurr 1970). However, cultural differences from ethnic hatred are generally insufficient explanation for the emergence of violent conflicts. Conflicts arise over vital issues on the distribution and execution of power, whether economic, political, or both (Cohen 1974).

Kenyans at large are very peaceful with each other unless otherwise provoked. The majority of my fieldwork narratives support this. Provocations more often take a political twist to address inequalities. The distribution of geopolitical and socio-economic power affects the distribution of shared public goods. After independence in Kenya, a bungled land adjudication program was meant to address and rectify colonial malpractices, and indulgences were captured and curtailed. Instead, it was turned into a cash cow by the status quo on its binge of acquiring selective lucrative resources for personal or regional gains. When political contestations join the spoil - "select elitist cartels" embark on an all-out brutal contest to capture, control, and hoard power. It leads to political decay, which entrenches corruption and impunity.

Kenya follows the Westminster system of governance. The "winner-takes-all" or the zero-sum, first-past-the-post (FPTP) outcomes are a bone of contention. Hence, the presidential election is a very close and volatile contest. The winner only needs 50 percent of the cast votes plus one vote and winning a mere 25 percent from 25 counties to continue with the process of "eating the National Cake" and a license to exclude and isolate the almost 50 percent losers from the Presidency. The *eating game* and a seat at the vital decision-making table to determine public goods distribution continue for ten years on two successive five-year-terms re-elections. A decade is far too long to wait in the cold for the poll losers!

It is quite baffling and absurd why the BBI report has left these percentages intact despite its name, splendor, and hope. It is no doubt and wonder that the stakeholder's composite elite bargains were still at work. Kenyans are anxiously waiting for a new political dispensation envisioned by the Building Bridges Initiative (BBI). However, it breeds confusion and optimism since it is laden with top-down promises to create a complete better Kenya void of ethnic differences, post-election violence, and related bloodshed.

This study wishes to recommend a proportional representation (PR) governance system. Kenyans will vote for parties. Winners and losers share power in coalitional consociation. It mitigates political expediency that breeds isolation and exclusion. To win the presidency with a mere 50 percent plus one vote is quite appalling! The president-elect should garner more than 80 percent and over 60 percent of the votes nationally and from more than 25 devolved counties, respectively.

Moreover, abolishing the violence-prone presidency resonates better with most Kenyans. Conversely, requiring the winning Party to elect a Prime Minister as a de jure Associate Head of a Coalition Government can be part of the solution. The risk of conflict and violence in a proportional representation is lower than in autocratic regimes. It will be elaborated further as outcomes and policy options in Chapter 8.

It is now imperative to consider Kenya's ethnic fabric composition to understand the trade-offs evidenced in inequalities and cohesion narratives.

1.3 Ethnic Diversity in Kenya

Kenya has over 40 notable ethnically diverse entities. Ethnic conflicts and tensions usually flare-up and peak during or after the presidential election. Kenya has a multiethnic setting with a diverse group mixture without any given ethnicity in clear dominance or leadership (Bangura 2006). The ethnic population of Kenya in percentages comprises of Kikuyu (22) as the largest, Luhya (14), Luo (13), Kalenjin (12), Kamba (11), Kisii and Meru (both 6), Other African (15) and (1) Non-African (Kanyinga 2007, Kimenyi 2013 and CIA 2017).

Kenya's 2019 Population Census is 47,067,376 or about 47.1 million (Kenya Population and Housing Census Volume I-IV 2019). The new figures in percentages show the following distributions: Kikuyu (17.31), Luhya (14.49), Kalenjin (13.51), Luo (10.77), Kamba (9.91), Kenyan Somali (5.91), Kisii (5.74), Miji Kenda (5.29), Meru (4.2), Maasai (2.53), Turkana

(2.16), Kenyan Arabs (0.125), Kenyan Asians (0.1), Kenyan Europeans (0.004), and Other Kenyans (7.95). See Table B: Distribution of Population by Ethnicity/Nationality in Kenya (2019), on page xxii.

Kikuyus and Kalenjins are the only ethnicities that have made selective winning coalitions despite the figures above (Kanyinga 2007). The five most populous ethnicities make the majority of the population despite their relatively equal sizes. Therefore, the Kikuyus seem big enough to make exclusive coalitions at the chagrin of those left out. And this outcome is the bone of contention and confrontation.

Ethnic structures determine countries. Kenya is classified with Ghana and India as three cases of concentrated multi-ethnic settings. This arrangement discriminates against ethnicities outside the winning coalition. Elites in each group collude to govern by creating exclusive coalitions. Electoral rules of first-past-the-post (FPTP) and the government's presidential system have reinforced such choices (Bangura 2006).

The political dynamics of inclusion and exclusion in Kenya have produced fluctuating and uneven public sector outcomes. During Jomo Kenyatta's reign (1963-78), the Gikuyu Embu Meru Alliance (GEMA) dominated the public sector. When Daniel arap Moi ruled from 1979-2002, the Kalenjin (fourth-largest ethnic group) became dominant.

Between 1963 and 1978, 29 percent of the cabinet posts were Kikuyu, but only 21 percent of the population. These fluctuating inequalities were evident in the civil service too. The Kalenjin dominance under Moi accounted for 21.6 percent and increased to 30 percent during multiparty rule (1994-2001). The Kikuyu share dropped to 20 percent, and it was only 10 percent between 1994 and 2001. Data on ambassadorial postings also indicated a corresponding Kikuyu and Kalenjin dominance with a change in the presidency. It makes the presidency a coveted exclusive power trophy. More discussions on the political dynamics of horizontal inequalities (HIs) and their ethnic share of cabinet secretaries are the subject of chapter 4.

"The problem is with the culture of impunity, and it is high time Kenyans exercise some level of integrity in the electoral process" (BY2, 31 July 2018: Fieldwork Narratives, Nairobi).

Moreover, as the above narrative depicts, I have concluded that achieving tenable and sustainable integrity is elusive as the rules and stake-holders decay in the game of power

control outcomes. Hence, this worsens governance outcomes entrenching the culture of impunity. Elections are power games that resurrect past differences and prejudices. Regional politicians and their sponsors prey and play the ethnic card, which works against national cohesion. It swiftly erodes law and order, creates mayhem, and turns violent. The outcome is a disastrous cycle of post-election violence and bloodshed. The following section on election and violence in Kenya will demonstrate the effects of governance and ethnic diversity.

1.4 Elections and Violence in Kenya

Elections are costly, conduits of corruption, ultra-violent, and extremely damaging. My argument is that the presidential election in Kenya is unnecessary evil and extractive. A locally approved open multi-party proportional representation (PR) system with a consensually mutual veto should better serve Kenyans. It can provide for peaceful coexistence in a power-sharing consociational coalition system with supportive transparent institutions to mitigate state capture. Outcomes can improve governance, leverage violence, and alleviate inequalities to create a tolerant multiethnic society where agreements and disagreements should be mutually binding.

Kenya has experienced violence before, during, and after elections since the reintroduction of multiparty democracy in 1991. Violence is an election weapon used to prevail on some sections of the electorate to influence voting trends. Violence takes various forms from verbal and non-verbal to physical assault, including torture, death, and property destruction. The elections in 1992, 1997, 2002, and 2007 in Kenya were violent. This violence injured, tortured, and killed citizens for daring to practice their democratic right to cast their votes differently in localities perceived as being non-ancestral. It is followed by an increasingly misplaced intolerance by ethnic leaders and their sponsors aside from their gullible grassroots support base. Presumed ancestral territorial enclaves breed violence, triggered by ethnic-based parties and aspirants who toss the ethnic card to mobilize their grassroots supporters and other hell-bent hooligans for violence.

In retrospect, the violence that occurred could not only have been predicted but most likely preventable. The foundation of this conflict outcome took place immediately after the 2007 disputed presidential election in Kenya. It had roots in a weak national Constitution that was *captured* and progressively lacked systematic healthy checks and balances between the executive, legislative and judicial branches of government. During the post-

independence era (1963-1992), amendments to the Constitution were systematically made to eliminate these balances in favor of strengthening presidential powers. The outcome of these broad powers effectively made the presidential office autocratic, empowering the president with “eternal” absolute power and the ability to wantonly use and abuse it with impunity, as exposed by the narrative below.

“The President has selfish interests and is surrounded by greedy people benefiting from the wealth that should be for all Kenyans. The President is not a leader in the first place” (AZ1, 31 July 2018: Fieldwork Narratives, Nairobi).

Kenya has been associated with conflict and violence in most of its brief history as a nation because of evil, if not poor, governance, as is evident above. The 2007 post-election violence in Kenya stands out as stroked ethnic salience peaked and exploded as never seen before from suspicion of the delayed announcement of disputed presidential results. Worse, leaders call the shots, and a mobilized gullible public blindly pursue those goals as sacred rights. Hence, the cycle of violence with its circus repeats itself.

Africa deserves more of Mo Ibrahim’s Governance Prizes for better leaders (Professor Calestous Juma 2015). However, the act of rewarding presidents with “peanuts” does not walk the talk. The dire lack of more recent Mo Ibrahim’s Governance Prize Awardees calls for penalizing decaying leaders for worse governance. It must be the open message sprayed on Presidential walls in Africa.

The politicization of ethnicity creates a *zero-sum* character: winners exclude losers from state power, generally seen as a source of accumulating power, wealth, and impunity. Ethnic coalitions appear and disappear because of elitist calculations of gains and losses in their interactions with other groups. These calculative associations require a *one-sum* equation as a remedy. It is where winners and losers should share power in a grand coalition based on the percentage of votes gained, as a stable representative arrangement. An urgent need for consistent re-education programs to remind all ethnicities in post-election Kenya that they are still Kenyans exists; however, it requires follow-up. It should root for forgiveness, reconciliation, and peaceful coexistence.

Therefore, this study calls for a comprehensive, holistic understanding of the power asymmetries in ethnic inequalities, institutions, and governance. It can mitigate politically motivated conflict and violence in Kenya. Moreover, leveraging the (TJRC) outcomes can

transform Kenya's Vision 2030 in sync with the United Nations Sustainable Development Goals (SDGs). These goals increase investments, nurture resilience, empower institutions that boost capacities that sustain inclusivity, partnerships, and accountability, contributing to peace (UNGA 2015). These contextual, thematic, and conceptual issues, alongside their historical outcomes, can help navigate Kenya towards these universal goals and beyond.

The 4 March 2013 elections were carried out under the new Independent Electoral and Boundaries Commission (IEBC), and a new referendum approved the 2010 Constitution that deterred extensive violence. Uhuru Kenyatta (Kikuyu) of Jubilee Alliance is a son of Kenya's first President - Jomo Kenyatta. Uhuru Kenyatta was declared the winner with 50.55 percent against Raila Odinga (Luo) of Orange Democratic Movement (ODM) with 43.7 percent. Raila Odinga is the son of the first vice president of Kenya - Oginga Odinga. Raila Odinga lodged and lost a petition with the newly created Supreme Court. The incumbent Mwai Kibaki (Kikuyu), was retiring after completing his maximum two-five-years-terms. President Kibaki's later half in office was controversial. Large-scale local multiple efforts by the interplay of constitutional and institutional reforms targeting some long-standing violence drivers proved successful in maintaining law and order.

The 8 August 2017 elections voted in the National Assembly members, the Senate, and devolved County governments. The Independent Electoral and Boundaries Commission (IEBC) announced the results (percentages in parentheses) that incumbent President Uhuru Kenyatta got re-elected with (54.2) and his archrival Raila Odinga (44.9). Odinga refused to concede defeat and choose the Supreme Court intervention. It found irregularities and promptly annulled the elections for a fresh re-run in 60 days on 17 October 2017. Cheeseman et al. (2019) argue that the elite cohesions as bargains hidden in "an established set of informal institutions through which elites have managed and to an extent shared power since independence determine outcomes away from the recently created formal constitutional changes."

Most election-related violence between 1992-2002 surfaced in the pre-election stage during voter registration, campaigns, and nominations. The 2007 violence was peculiar because of a stolen presidential election and a unilateral declaration of the incumbent, Mwai Kibaki (Kikuyu) of the Party of National Unity (PNU) as President on delayed and contested results. The Orange Democratic Party (ODM), led by Raila Odinga, opted out of a judicial contest aware of a captured, compromised fake Judiciary systematically weakened since independence in 1963. Moreover, notwithstanding previous presidential

candidates' attempt for justice in 1992 and 1997, contesting the election of Daniel arap Moi was unsuccessful. Hence, it further weakened the confidence in the Judiciary as a corrupt and co-opted decaying institution. Therefore, it is evident entrenching impunity in Kenya compromises governance.

The post-election violence in Kenya (PEV) of 2007/8 was horrific in the carnage, killing more than 1,000 and displaced more than 300,000 people in about two months. After the fourth multi-party general elections, the magnitude of the trauma and structural violence in Kenya took both Kenyans and the international community, alike, by surprise (Maupou 2008).

The following questions emerge from this section: *Is violence is predictable?, and Is conflict preventable?* The formation of a truth, justice, and reconciliation commission will be an attempt to answer these questions. Chapters 2, 3, 4, 6, and 7 will discuss post-election violence (PEV) in more detail.

1.5 The Truth, Justice and Reconciliation Commission (TJRC) in Kenya

The violence stopped with a negotiated political compromise at the end of February 2008. It created a power-sharing grand-coalition government as an outcome of elite bargains whose transaction costs enabled the creation of a Truth, Justice, and Reconciliation Commission (TJRC) as a political settlement. TJRC was tasked with addressing past injustices and gross human rights abuses since independence (1963) to the end of February 2008. The Commission's work started from about July/August 2009 and lasted up to May 2013.

The work of the Truth, Justice, and Reconciliation Commission (TJRC) was very challenging and corrosive. It exposed and faulted the role of political elites across the ethnic divide. Its long-awaited final reports remain in limbo because of conflicting interests and lack of concerted political will by its adversely mentioned stakeholders as implementers. Besides, most of the current status quo and their ilk also are in the same team. Therefore, the dilemma explains the impasse, fate, and demise of the reports.

The Kriegler Commission is also officially known as the independent review commission (IREC). It was an international commission of inquiry commissioned by the Kenyan Government in February 2008 to investigate into all aspects of the 2007 General elections,

with particular focus on the presidential election. It recommended that Kenya not hold multiple polls on the same day to lessen collateral damage. It has never been honored, in neither in policy recommendations nor in electoral reform outcomes. That never happened.

There seems to be a status quo maneuvered the vicious cycle of violence in Kenya. It's associated with multiparty contestability that must be dislodged and broken. Kenya can achieve sustainable development to ensure amicable (re)distribution of resources addressing persistent socio-economic inequalities to date. It could minimize inequalities and create a cohesive society. This study on the post-election violence and governance in Kenya also integrates the rise and fall of the truth, justice, and reconciliation commission (TJRC). It endeavors to find holistic solutions to help resolve these challenging outcomes. Chapter 6 and chapter 7 will meticulously discuss the recommendations of the TJRC as outcomes, respectively.

1.6 Motivation

This study aims to boost and bolster previous and contemporary studies on ethnic conflict and violence in competitive multiparty politics. Sharing of power and resources can relatively reduce friction and conflicts. Permitting a regional devolved composite governance system mitigates violence. Celebrating diversity as inclusivity stems and checks negative ethnicity.

Elite bargains and their composite geo-political and socio-economic manipulations work against better governance. This study wishes to suggest term limits for all elected and politically appointed officials in demystifying their political biases. Impunity and decay are outcomes of the political development process, lacking sufficient checks and balances. Fixed one-year participatory term-limits in public office without terminal benefits should be a timely solution to check against state capture.

I have lived almost half of my life in Kenya, observing her encounters with democracy. Hence, this is my motivation in the quest to nurture and anchor better governance practices. Sharing resources equitably can help resolve many of the real or imagined problems. Nonpartisan government corrects anomalies. Prompt and decisive state compensations can reduce inequalities. National endowments and synergies committed toward nurturing cohesive society promote equality based on mutual trust and respect. Sustainable better governance outcomes empower institutions to foster peaceful coexistence in a multiethnic

society. The transition towards national cohesion and a zero-tolerance society is tenable as Kenya industrializes further.

Commitment, coordination, and cooperation are the essential functions of institutions. They ensure that rules and resources generate the desired development outcomes as drivers of effectiveness (World Development Report 2017). Empowering these institutional core functions can deliver credible elections in Kenya. Stolen elections increase ethnic divisions, identities, and enclaves. These anomalies also merge to worsen inequalities.

Finally, I hope this study's endeavors be a holistic motivation to verify the truth behind the tenacious acts of unilateral and elusive shelving of the painstaking Truth, Justice, and Reconciliation Commission Reports (TJRC) by the government of Kenya. It is a bold statement displaying the entrenched impunity associated with state capture. The dire lack of political will to punish political and business associates and rivals also prevents leveraging truth, justice, and reconciliation outcomes to heal the nation.

1.7 Research Questions, Hypotheses, and Methodology

1.7.1 Research Questions

My research questions are integrated into political violence outcomes as an inquiry into the following intertwined issues:

1. *How can Kenya implement amicable national resource sharing with sustainable land reforms to minimize inequalities and violence?*
2. *What is the best holistic power-sharing electoral system for Kenya that is dynamic, fair, and stable?*
3. *Can Kenya adequately implement the Truth Commission's Final Reports, embrace and nurture strong institutions to achieve better governance for anchoring national cohesion and integrity?*

1.7.2 Hypotheses

This study focuses on the following logical hypotheses to empowering the transformation

to a tipping point. I believe there is a salient need to break the cycle by radical geo-political and socio-economic electoral reforms. The shelved TJRC final reports and their recommendations are still vital in anchoring this transformation process towards national healing for reconciliation. This study, therefore, adopts three hypotheses in pursuit of the above research questions.

1. State financial compensation for the landless can mitigate future post-election violence.

The land is an irregularly shared national resource. The inequalities in the ownership and exploitation of land, cause post-election violence. Sharing land amicably as a national resource should reduce the irregularities and inequality observed in persistent land exploitation and ownership conflicts. A guaranteed generic state financial compensation mechanism for the landless can resolve these conflicts and mitigate future post-election violence. It should amicably share land resources, reduce inequalities, and promote national cohesion. Chapters 3, 4, 6, 7, and 8 will further discuss hypothesis 1.

2. Abolishing presidential election and its grave contest can stem post-election violence.

It focuses on presidential election and violence. Eliminating presidential election and its volatile contestability can stem post-election violence. No provision exists for power-sharing in the winner-takes-all or fast-past-the-post (FPTP) electoral system in Kenya. It makes competition for the presidency brutal, volatile, and violent campaign causing outcomes of post-election violence (PEV). A better alternative should be electing parties and the victorious party choosing the Prime Minister, who forms a coalition (power-sharing consociation) government. Rival parties inclusive in the coalition government should reflect their national election outcome percentages as quotas in a new broad national proportional representative government. In turn, this should promote sustainable peace and stability for broader representation in a grand power-sharing consociation governance system. It can also mitigate corrosive elite inter-political agreements as elite bargains whose transaction costs promote impunity and decay. It should be the best holistic power-sharing electoral system for a multi-ethnic society in Kenya that is dynamic, fair, and stable. Consociational democracy is necessary for peace and reconciliation. Chapters 3, 4, 6, 7, and 8 will further discuss hypothesis 2.

3. *The Supreme Court should guarantee the implementation of TJRC outcomes within the stated time frame.*

Kenya has insufficient political will and capacity to implement the Truth Commission's outcomes. Integrity and transparency issues are wanting. Institutions responsible for better governance are ambivalent and compromised. The TJRC final reports were completed and duly delivered to President Uhuru Kenyatta in May 2013. They remain in limbo due to the government's conflicting political interests and horrid state apathy. It calls for broader debates on the Truth Justice Reconciliation Commission Reports (TJRC), implementations under more influential institutions, and integrity. The Truth Commission Final Reports require consistent and comprehensive judicial implementation and a monitoring mechanism. It can positively trigger reforms for better governance outcomes when disseminated under strengthened independent institutions. These processes can firmly nurture and anchor sustainable national cohesion, reconciliation, and prosperity. Kenya lacks consistent political will, strong independent institutions, and the capacity to sustain a robust implementation mechanism. The Supreme Court should liaise with the Parliament and ensure enough budgetary support is secured to roll out its enactment within the stated time frame regionally and nationally. Firmly implementing the recommendations of TJRC can ensure integrity, reconciliation, and sustainable national cohesion. Chapters 3, 4, 6, 7, and 8 will further discuss hypothesis 3.

This study wishes to reconfirm what has made the state renegade or delay the amicable sharing of national resources to finance compensations for the landless and internally displaced persons (IDPs). It should improve socioeconomic inequalities and anchor peaceful reconciliation. It will also examine the contemporary political system in Kenya vis-à-vis obstacles to peace and reconciliation. Finally, it will also help reconfirm what prevents Kenya from partial, gradual, and full implementation of the TJRC final reports' recommendations.

1.7.3 Methodology

Secondary and primary sources in and out of the print or media, in addition to fieldwork interview surveys, will be employed to harness the reality on the ground via relevant narratives to answer these research questions, respond to the challenges and vindicate the propositions raised by the logical hypotheses.

1.8 Theoretical Approaches

Three theories as theoretical frameworks for this study are adopted. These are *Consociation*, *Political Decay*, and *Horizontal Inequalities* (HIs) theoretical approaches.

1.8.1 Consociation

Consociation is an aspect of power-sharing suitable for managing conflict to anchor harmony in multiethnic societies contesting many aspects of their daily lives. It seeks holistic outcomes for universal peaceful co-existence in multiethnic and plural societies. Consociation is power-sharing democracy and the brainchild of the Arend Lijphart that gained fame in the late 1960s. John McGarry and Brendan O'Leary (2004) have now revised it as liberal consociation.

Power-sharing can reduce violence by altering incentives and increasing contestability. It shows the tradeoff associated with elite bargains, transaction costs, and political settlements to reign in power asymmetries. Four aspects of consociation are; grand coalition, proportionality, mutual veto, and devolved autonomy. Kenya tried the grand coalition (power-sharing) governance and devolved power but skipped the proportional representation and mutual veto. It's time to go full throttle with national proportionality to allow a right to exercise the mutual veto. It can welcome new national cohesion to nurture and negotiate formal elite bargains for better governance outcomes. The South African consociation model waived mutual veto to boost national cohesion, anchor peaceful co-existence, and promote national reconciliation.

1.8.2 Political Decay

Political development is the evolution of the state, the rule of law, and democratic accountability as one of the broader paradigms of human socio-economic development. Political institutions' changes require a contextual understanding of economic growth, social mobilization, and the power of ideas concerning justice and legitimacy. *Political decay* is, therefore, in many ways, a condition of political development as the old disintegrates to make room for the new one. However, the transformation can be extremely chaotic and violent, with no guarantee that political institutions will function well (Fukuyama 2015). Leaders must continuously be challenged, prosecuted, and replaced. It can reduce economic plunder that accompanies entrenched impunity as an outcome of political decay.

Weak leadership also hinders the accountability of the state on service providers. The first African Woman Nobel Peace Laureate from Kenya, Wangari Maathai (2010), points out that “from trappings to traps, leaders worsen when they get trapped” in office for too long. They decay in office, as evidenced when the Kibaki government performed above average during its first term but faced accusations of corruption and bad governance in its second term.

1.8.3 Horizontal Inequalities (HIs)

Stewart (2002) refers to the inequalities between culturally defined groups as *horizontal inequalities* (HIs). *Horizontal inequalities* differ from *vertical inequality* that parades individuals or households perpendicularly. This measures inequality over various individuals. However, severe horizontal inequalities do not cause extensive violence. Multi-ethnic societies tend to tilt toward violent conflicts along ethnic lines. It also builds-up on the perception of inequality that leads to discontent and violence rather than just inequality per se (Gurr 1970).

Anchoring democracy for better governance outcomes must be a continuous exercise leveraging and mitigating horizontal inequalities (HIs). HIs can have socio-economic, political, and cultural dimensions. These are embedded ownership of assets of production, access to a variety of social services, discriminations in the group distribution of political opportunities, and power, as well as in ranking and appreciation of multiethnic disparities.

These three paradigms will redefine the power plays and trade-offs associated with achieving lasting peace, reconciliation, and national cohesion in a multi-ethnic Kenya. Power-sharing consociational governance is inclusive. It equitably shares power and fairly allocates national resources across the ethnic divide. Political development, the state's evolution, and decay are indispensable to help mitigate state-capture and political decay. They are necessary for peace and reconciliation for better governance outcomes. Horizontal Inequalities (HIs) can address and streamline means and efforts to reduce perpendicular disparities across the ethnic divide essential for resilience, peace, and reconciliation.

These paradigms are Western and Eurocentric. However, there is a need to nurture and integrate authentic paradigm shifts towards more holistic, hybrid, and localized alternatives to realize African potentials.

Violence and related organized or random acts of civil-strife and hooliganism flared up in localities or regions with absolute inequalities. It was a direct outcome of the supposedly rigged and disputed presidential election. It was inflamed by negative political utterances from rogue politicians, their allies, and cartels in many multi-ethnic localities given the dire breakdown in law and order. The lack of a neutrally disciplined bureaucracy and the uniformed security supporting it influenced this predicament. More details about hypotheses, methodology, and theoretical frameworks are covered in chapter 3.

Moreover, these frameworks explain the contextual thematic issues, processes behind post-election violence (PEV) dilemmas, and their outcomes. They integrate with providing composite pathways to harmonize geopolitical and socioeconomic endeavors for mutual and peaceful coexistence.

1.9 Synopsis of Thesis

This thesis has eight chapters, a bibliography, cited narratives, and two appendices. Appendix (1) covers 120 fieldwork survey narratives from Kenya (31 July – 24 August 2018). Appendix (2) reproduces an abridged version of the Truth, Justice and Reconciliation Commission as Paper 10.

Chapter 1 presents narratives on Post-Election Violence (PEV), Governance, and the Truth Commission in Kenya and lays the foundation and synopsis for the thesis. It also covers Kenya's post-election violence, governance, ethnic diversity, elections, the truth, justice and reconciliation commission (TJRC), motivation, three research questions, three hypotheses, the methodology used, and three theoretical approaches. Chapter 1 finishes with a synopsis of the whole study, and chapters 2-8 conclude with challenges and prospects.

Chapter 2 offers a review of post-election violence literature by tracing the chronology of elections and violence. The pioneer elections (1963), autocratic single-party regime and Constitution amendment, first multi-party contest in December (1992-1997), second multi-party elections in December (1997-2002), third multi-party elections in December (2002-2007), fourth multi-party elections in December (2007-2013), fifth multi-party elections under reforms in March (2013-2017), and sixth multi-party elections in August

(2017-2022), are covered. It also traces the chronology of the 2007/8 post-election violence in Kenya. The mediation by eminent persons in February 2008 ended this carnage, which created the Commission of inquiry into post-election violence (CIPEV). It also examines the Truth, Justice, and Reconciliation Commission (TJRC 2009-2013) advent in Kenya. Remembering Kenya narratives (2010-2013), the media, and violence are also covered.

Chapter 3 further examines the three logical hypotheses, three theoretical frameworks, and the methodology. It discusses the cycle of violence and its critical point. Theoretical frameworks explain contextual issues and processes which should converge to reduce election violence. The outcome should promote pathways for mutual peaceful coexistence.

Chapter 4 explores the challenge of democracy in Kenya by tracing the origin of conflicts (history, present situation, and statistics). It broadly cross-examines violence, fragility, conflict, and governance. It discusses the origins of the conflict, post-election violence in Kenya (PEV), political dimensions, ethnic disparities, horizontal inequalities, and the Ndung'u Land Report. It analyses the zero-sum election system where 'the winner-takes-all' as 'first-past-the-post' (FPTP) outcome, locks out losers. This system affects ethnic inequalities, ethnicity, freedom, and civil liberties as political decay outcomes manifested in ineffective government, corruption, and impunity, hinder service delivery. This chapter also discusses hypotheses 1 and 2. It explores political power contests as they relate to the context of inequalities in sharing resources to lessen future violence.

Chapter 5 examines the conceptual framework using the global truth and justice commissions in Africa, discussing the proliferation of transitional justice-seeking commissions as African Peer Review outcomes. Truth Commissions in Africa and beyond have recently evolved into key avenues for transitional justice development as countries in the region emerge from conflicts or violence associated with despotic regimes. Truth Commissions have become antidotes to impunity prone autocratic regimes with no respect for universal human rights protection. It looks at definitions, aims, the obligation of the state, and impact assessment. It also discusses the five African Truth and Reconciliation Commissions (TRC). It starts with South Africa: Truth and Reconciliation Commission (1995-2002), Morocco: Equity and Reconciliation Commission (2004-2006), Sierra Leone:

Truth and Reconciliation Commission (2002-2004), Liberia: Truth and Reconciliation Commission (2006-2009), Ghana: National Reconciliation Commission (2002-2004). This chapter also discusses hypotheses 1 and 2. It illustrates how these countries emerged from conflicts and violence associated with autocratic regimes to better governance and development outcomes.

Chapter 6 describes the rise and the fate of Kenya's experience with the Truth, Justice, and Reconciliation Commission (TJRC) as a reform proposal. The Truth Commission was created by an Act of Parliament to address 45 years of past injustices as an antidote to impunity and reform proposal outcomes. It describes the TJRC in Kenya (2009-2013), exploring the background information and presenting a dissenting opinion on land after unilateral omission. Final Report Volume I narrate the mandate and challenges of the commission. Volume IIA examines the political history of state violence, violations, and bodily integrity. Volume IIB traces historical injustices in Kenya. Volume IIC focuses on group discrimination, gender, and gross violation of human rights in Kenya on children, minority groups, and indigenous people in Kenya. Volume III examines the politics of ethnic tensions, land issues, national unity, healing, and reconciliation. Volume IV parades findings, recommendations, implementation, and the monitoring mechanism. Chapter 6 also mulls over hypotheses 1-3 in outcomes and recommendations. It does so by tracing the record of human rights violations and discusses their solutions in Kenya.

Chapter 7 analyses the fate of the (TJRC) recommendations describing persistent inequalities, healing, and reconciliation. It presents outcomes of primary findings, recommendations, exposes the decay in gross violation of human rights, and offers reparation framework. In Kenya, successful governments have employed silence, denial, and selective amnesia to counter resistance in addressing raised fundamental issues. The nurtured latent tension, hatred, and suspicion among individuals and communities flare-up in violence. The state rejection of the commission's final reports killed its destiny. Hypothesis 3 is also broadly discussed in this chapter. It examines modes and means of empowering these outcomes for justice, reconciliation, and national cohesion.

Chapter 8 reviews the thesis with conclusion and outcomes. It answers research questions, validates the logical hypotheses, and re-evaluates theoretical frameworks' relevancy on corresponding outcomes, advocates for coexistence, and national cohesion, proposing recommendations for reforms and policy options. It also looks at the possibility of inclusive

democracy and zero tolerance. More influential institutions and better governance practices are necessary to deter state capture and leverage elite bargains for sustainable peace to allow mutual coexistence and cohesive development. This thesis also calls for a paradigm shift, further studies, and more research in this field for holistic solutions.

Moreover, it agitates for changing the rules of the game in leadership and governance to turn the tables against impunity. These can improve *governance* and reduce *violence* in a multi-ethnic setting. It proposes the phasing out the Eurocentric Presidency and its extractive, deceptive, and elective democracy for a peaceful and stable transition to a merit-based option as a viable realization of African potentials. Irreconcilable differences should pave the way for amicable, peaceful self-determination as equals under the broader devolved governance system. Chapter 8 also includes Box 1: Post-Election Violence, Governance, and the Impact of the TJRC on Kenya as critical outcomes. Kenya must open a new page and rewrite her history, remorseful of her past violations. It can secure a new identity and culture to support a modern civilization for a robust, cohesive, and multiethnic nation.

The Truth Justice and Reconciliation Commission (TJRC) reports and recommendations must be widely disseminated to the general public and instituted by a constitutionally regularized gradual Implementation Mechanism. Composite compensations must be paid in full, with national public verbal and written state apologies to concerned parties. All persons adversely mentioned by the Truth Reports should be constitutionally barred for life from holding public office and should face prosecution to redeem wealth and assets accrued illegally.

Elite bargains also imply elite cohesion, and their transaction costs are the contractual servicing expenses associated with - staying in the bus or getting crushed under it. These integrate as the main obstacles that divide Kenyans into ethnic lines. These elite bargains are also a powerful weapon used to dominate and hoard power. The fear of losing power entrenches the use of violence as a weapon for political expediency.

A single-one-year-term for life should stem the rot in Kenyan politics by mitigating state capture and elite bargains to anchor holistic peace and reconciliation for national healing. There must be zero incentives for leaders to cling on power or return to power. History has proved that this indulgence corrupts leadership. Abolishing the violence-prone presidential

election is indispensable for sustainable peace. The proportional representation (PR) system with a Prime Minister is a better alternative in multi-ethnic polities. Electing parties and the majority party selecting a Prime Minister as head of the government to form an inclusive national grand-coalition government erodes the grave contestability and violence associated with presidential ballots. Therefore, Kenya urgently requires an independent constitutionally institutionalized Supreme Court empowered with de jure superior powers to supervise, demand, and uphold better governance outcomes in a power-sharing consociation system.

Chapter 2 Literature Review, Chronology of Elections, and Violence in Kenya

2.1 Literature Review on Post-Election Violence

The literature on the post-election violence in Kenya is generous. This violence was a disastrous outcome of the impunity of the *status quo* and the state. Kenya has localized violence and employs it as a tool of choice to rig and steal elections. It was a product of systematic abuse of continuously weakened institutions. These processes were standardized over the years or were deliberately used to abuse the electoral system and procedures that finally bust and triggered the worst tragic post-election violence.¹

These multiple studies isolate at least three correlated forms of violence. These are spontaneous, arranged, or deliberate and government-sponsored. Their bottom line lies in unresolved historical injustices hinged on unfair land allocation and adjudication, human rights abuse, and the status quo's failure to implement impartial much-awaited socio-economic and political reforms. They all overlapped, cooperated, or contested in their shared and peculiar relationships. The presidential election disputes helped trigger violence as the worst in the history of Kenya.

Violence is an outcome of impunity within the ruling elites and their relationship with the state. It results from normalizing violence in the society and the outcome of consistently abused, weak, and decaying institutions. A persistent flawed electoral process evidenced in election theft pulled the final trigger for explosive outcomes.

¹ Check detailed reviews of the Commission of Inquiry on Post-Election Violence Report (CIPEV/ Waki Commission). 2008; KNCHR. 2008. *On the Brink of the Precipice: A Human Rights Account of Kenya's Post-2007 Election Violence*, Nairobi: KNCHR; IREC. 2008. *Report of the Independent Review Commission on the General Elections held in Kenya on the 27 December 2007*, Nairobi: Government Printers; International Crisis Group. 2008. *Kenya in Crisis*, Africa Report no. 137, 21 February 2008; Susanne Mueller. 2008. "The Political Economy of Kenya's Crisis," in *Journal of Eastern African Studies* 2(2); JCAS 2009. Essays in *Journal of Contemporary African Studies* 27(3); Jerome Lafargue, ed., 2009. *The General Elections in Kenya*, Dar es Salaam: Mkuki na Nyota; *The special issue*. 2008. "Election Fever: Kenya's Crisis," *Journal of Eastern African Studies* 2(2); Ben Rawlence and Chris Albin-Lackey. 2008. "Ballots to Bullets: Organized Political Violence and Kenya's Crises of Governance," New York: Human Rights Watch, <http://hrw.org/reports/2008/kenya0308/kenya0308webwcover.pdf>; Mbũgwa wa-Mũngai and George Gona, eds. 2010. *(Re)Membering Kenya, Vol 1: Identity, Culture, and Freedom*. Nairobi: Twaweza Communications and George Gona; Mbũgwa wa-Mũngai, eds. 2010. *(Re)membering Kenya Vol 2: Interrogating Marginalization and Governance*. Nairobi: Twaweza Communications; Jeffrey Steeves. 2016. The 2017 election in Kenya: reimagining the past or introducing the future?, *Commonwealth & Comparative Politics* 54(4): 478-497, DOI:10.1080/14662043.2016.1223375

Violence has been 'normalized' as a means of political struggle, attributable to the culture of impunity. Severing ties with impunity is paramount to absolve Kenya from this predicament. Restoring the legitimacy and credibility of the wantonly tainted Judiciary is part of the solution.²

There are plural causes of violence. They fall under three salient clusters. These are stratified ethnic cleavages, disputes arising over land sharing, and outcomes of political competition. The most commonly cited cause of violence in Kenya is ethnic cleavage. Kenya has 42 distinct ethnic groups with firmly established ethnic identifications (Kimenyi 1997). The tribe and kin groups are the most powerful levels of social identity (Collier 2001). Conflict over land rights often takes center stage as violence is directed towards ethnic minorities to expel them (Kanyinga 2000). An individual's decision to participate in violence comes from the generation of public or private goods whose production never benefits individuals (Tullock 1974). The gullible public is the expendable pawns.

Weak institutions are well cited and either co-opted or captured by the ruling elites as political expediency tools. Kenya's political elites across the ethnic divide comprise of "beholden to myopia and moral bankruptcy" without the will to "imagine a larger national interest" beyond its own (Mutua 2009: 3).

Violence and its prevalence in society is a concerted effort. It unifies powerful elites with weak law enforcement institutions and others. Mueller (2008: 567) posits that the diffusion of violence in society alongside the deliberate undermining of governance institutions and ethnicization of political parties eroded the governance system. Violence is encouraged by the status quo in Kenya since it depends on violence to generate votes. Therefore, a weakened state facilitates or sponsors militia groups. Anderson and Lochery (2008: 338) term this violence as "Kenyans have learned to live with" as "part of politics." Political analysts like Katumanga (2005: 505-520) explicitly show that militia groups are central to the "bandit economy" part of Kenya's upper and lower classes.

Kenyans are always peaceful in the absence of elections and their added political traumatic drama. Therefore, violence is more likely predictable and controllable. Violence stems from civic protests against predatory systems that benefit from resultant mayhem and disorder, that accommodate hoarding power in political decay outcomes.

² Waki Commission. 2008. "CIPEV," 462-467.

Therefore, elections in Africa are non-transitional and characterized by civilianised military regimes and “elected” dictators that render the competitive electoral process a façade (Adejumobi 2000: 59-73).

“Kenya needs transparent and fair elections to tame violence” (GT7, 31 August 2018: Narratives, Nairobi).

“Corruption - losers feel they lost unfairly” (HS8, 31 August 2018: Fieldwork Narratives, Nairobi).

“Elections must be conducted in a very open and transparent manner without stealing of votes” (DG82, 18 August 2018: Fieldwork Narratives, Nairobi).

These narratives depict the state of unchallenged anarchy associated with orchestrated political abuse and deception on citizens.

Professor Ali Mazrui’s article on the post-election crisis in Kenya: In search of solutions in Pambazuka News (Friday, 4 January 2008), championing voices of freedom and governance was very implicit. “The Kenya presidential elections of December 2007 are potentially the most damaging episode to national unity since the assassination of Tom Mboya in July 1969. Both the murder of Tom Mboya and the management of the recent presidential elections are widely interpreted as an attempt to monopolise the country's presidency ethnically. These are historic blows to national stability and major setbacks to the process of democratization. Hence, the murder of Tom Mboya and the 2007 elections unleashed widespread rioting and looting and made national institutions significantly more fragile than they were before.”

Sen aptly recognizes that “the art of constructing hatred takes the form of invoking the magical power of some allegedly predominant identity that drowns other affiliations, and in a conveniently aggressive form can also overpower any human sympathy or natural kindness that we may normally have. The result can be simple elemental violence or globally artful violence and terrorism. The imposition of singular and belligerent identities on gullible people foment violence championed by proficient artisans of terror” (Sen 2006: xv-2).

In all Kenyan communities, negative ethnicity (*ethnic hatred and bias*) is glorified as a savior and destroyer of enemies. Negative ethnicity is the divider of all and a savior of none since it promises the destruction of all communities. Once all communities are isolated from one another, the propagators of negative ethnicity are free to promote each salvation through others' destruction. And as all are antagonized and isolated from one another, there is hardly a fear that any communities will discover that others have been promised their destruction by the supposed saviors (Koigi wa Wamwere 2008: 162).

The state-orchestrated violence in Kenya. It abdicated its fundamental role of guarding and providing peace, tilting towards negative peace. The outcome nurtured interethnic animosities that service and keep unpopular government dominating politics in Kenya. The explosiveness of 2007/8 elections riding on negative ethnicity and perceptions of historical injustices were stage-managed by manipulative violence mongers rallying to conjure and enforce selective identity enclaves.

The legitimacy of post-election violence (PEV) is still debatable. It beckons and fuels the continued struggle for reforms not addressed by the ballot box - which quite often legitimizes stolen elections. Therefore, violence assumes a self-help governance dimension as the state abdicates its duty for impartial security provision.

The plethora of literature on post-election violence of 2007/8 in Kenya claims that the conflict was an impoverished populace's outcome. It was socioeconomic and geopolitical marginalization, inclusive and exclusive policies, the decay of leadership, and deteriorating institutions merging with the lopsided land adjudication and distribution before and after independence. These should be fused and integrated as the outcome of selfish elite bargains, transaction costs, and warped political settlements. Moreover, this empowers and entrenches the status quo to the benefits derived from political decay's spoils. Afore going literature also depicts and demonstrates systematic and persistent state disempowerment of Kenyans by successive rogue presidents and their elite cartels. This disempowerment has been explicitly staged and managed to coerce the citizenry in perverted recognition of the mediocrity in leadership.

It is imperative to amicably resolve the persistent historical injustices to reduce the inter-ethnic inequalities in resource distribution, especially land ownership and access to socio-economic services. National cohesive healing and reconciliations are paramount to repair the ruined inter-ethnic relations, restore sustainability in the economy, and reclaim Kenya's

lost regional and global reputation. The 2007/8 post-election violence in Kenya exposed the gap between contagious ethnic political interests and the goal of achieving national cohesion for better governance outcomes.

2.2 Chronology of Elections in Kenya

2.2.1 Independence Elections and Constitution Amendments

At independence in 1963, Kenya started as a two-party state with Kenya African National Union (KANU), which favored a centralized administration. Its rival - Kenya African Democratic Union (KADU), preferring devolved regional governance. KANU won the elections and formed the first bicameral independent government of Kenya with a lower house of representatives (HR) and senators' upper house as the Senate. Jomo Kenyatta became the first Prime Minister of Kenya on 1 June 1964 and the first president at full independence on 12 December 1963. The main opposition party, KADU, crossed the floor, integrating with KANU as a gesture of reconciliation and national cohesion to make Kenya a single-party state.

It lasted till 1966 when internal disagreements within KANU forced the formation of Kenya People's Union (KPU). KANU initiated and enacted the first constitutional amendment to counter this outcome. Subsequently, the Senate was abolished and integrated with the House of Representatives to form the National Assembly. The banishment of KPU, which corrupted Kenya into a one-party state, finally abandoned multi-party democracy. It was the genesis of political decay evidenced in gross misrule, nepotism, and outright impunity.

This projected outcome enabled KANU to win every seat in flawed elections from 1969-1988, institutionalizing life-presidency. It was Kenya's version of single-party consociation where plural KANU candidates made it out against each other. Jomo Kenyatta died in office on 22 August 1978, ushering in Daniel arap Moi as president. The early 1990s advent of multiparty contestability in Africa required direct presidential elections. These changes also brought negative ethnicity and state-sponsored ethnic skirmishes and violence blaming it on the proliferation of multiparty democracy.

Kenya has experienced violence before, within, and after elections. *Why is this so?* Perhaps, intended to keep electoral marginalization via thwarted participation to modify ethnic fabric and sustain and service the *status quo*. Multiple situations associated with negative

ethnicity show intimidations, robberies (looting and theft), abductions (hostages), arson, property destruction, physical torture and assault, voting or nomination obstruction, and murder.

The repealing of section 2A of Kenya's independence Constitution in 1991 opened the democratic space to many contestants. Kenya henceforth ceased its single party monopolistic domination and opened political participation space for plural contests.

Elections in Kenya have been violent since 1992, 1997, 2002, 2007, 2013, and 2017. Violence displaces, injures, and murders citizens besides destroying property for just practicing a fundamental democratic right of casting a vote differently in secondary localities. Over time, there has been a growing intolerance of both individuals and rival partners in perceived local ethnic strongholds anchoring political support. Locals refer to these outsiders as "*madoadoo*" or blemishes (Njogu 2009: 2).

Outsiders were targeted for attack destroying their humble abodes (homes), rendering them internally displaced persons (IDPs). The local citizenry term these flawed territorial enclaves (exclusiveness) as their ancestral inheritance. The main stakeholders in this rampage are partly hooligans or outlaws masquerading as supporters. Ethnic godfathers who are also political aspirants and spokespersons exploit these illegal groups or gangs. They prey on a hood of mostly unemployed gullible youth on hire to the highest bidder.

"The scheming by politicians, stealing of votes, ethnic differences, anger at extreme poverty and criminal gangs taking advantage of national unrest cause violence" (IR9, 1 August 2018: Fieldwork Narratives, Nairobi).

"Hostility to migrant communities, perceived election riggings, tribalism, ethnic animosity, incitement by powerful politicians converge to trigger violence" (JQ10, 2 August 2018: Fieldwork Narratives, Nairobi).

2.2.2 First Multiparty Elections in December 1992-1997

The 1992 elections in Kenya could have recreated Kenya as a new country since the incumbent was under challenge. Ethnic anxiety and tensions were high and toxic, occasionally turning violent in the pursuit of multiparty democracy seeking to terminate a 23 years old single-party rule (Njogu 2009: 5).

The general elections held on 29 December 1992 were the first multiparty elections expected to vote in a new president and government. Allegations of fraud and irregularities marred the results. These included pre-stuffing of ballot papers, destruction of opposition votes, and rigging overtones since, physically, the government structure was still that of a single party. Besides, citizens' value attitudes remained the same. These were also the first elections to have featured a ballot box for the post of President. Since 1964, the National Assembly elected the president. However, with the 1969 Constitutional amendment, the president was unanimous, declared the winner of non-held popular elections, parallel to parliamentary elections in 1969, 1974, 1979, 1983, and 1988 with a voter turnout of about 69.4 percent (Nohlen et al. 1999: 486).

The failure of fielding a single joint unified opposition candidate against the incumbent President Moi cost the opposition the election, and democracy was defeated. Moi won with a mere 24.5 percent of the popular vote. His closest rival, Kenneth Matiba, filed a petition with 20.6 percent but was dismissed by a biased judiciary, thus wasting the 20.6 percent votes. The election transformed into ethnic and regional gimmicks favoring the incumbent. The outcome was violence, causing murders, intimidations, and forced evictions of individuals or folks perceived as aiding the opposition. Violence erupted before the polling day in the Rift Valley and proximal mixed scheme localities.

"Politicians trigger violence. Citizens feel the loss of the national cake when their candidate fails. They believe in vote stealing" (KP11, 2 August 2018: Fieldwork Narratives, Nairobi).

Negative ethnicity stalked violence in the Coastal region. This stalked tensions, harassment, and burning of property pitying upcountry folks - Luhya, Kikuyu, and Kamba seen as "outsiders." Njogu (2009: 6) asserts that "the 1997 election violence at the Coast had three aims: First, the ruling single party Kenya African National Union (KANU) wanted to break the dominance of the unregistered Islamic Party of Kenya (IPK) which had denied it important votes in 1992. Secondly, it wanted to break the Swahili-Arab and Miji Kenda elite, and thirdly, it sought to disenfranchise upcountry folks in Mombasa and Kwale."

2.2.3 Second Multiparty Elections in December (1997–2002)

The ruling Kenya African National Union (KANU) won the second multiparty elections in Kenya held on 29 December 1997. The incumbent President Daniel arap Moi won the presidential election by 40.4 percent, and his closest rival, Mwai Kibaki, had 30.89 percent

of the popular votes (Nohlen et al. 1999: 488). Kibaki unsuccessfully petitioned the results. Incidences of violence minimized and thinned out since the incumbent had won the ballot.

2.2.4 Third Multiparty Elections in December (2002–2007)

The general elections held in Kenya on 27 December 2002 ended the long-standing exploitation and dominance of KANU in power since independence in 1963. Mwai Kibaki (Kikuyu) of the National Rainbow Coalition (NARC) was the president-elect with 61.3 percent of the popular votes. His party won majority seats in the National Assembly while his rival, Uhuru Kenyatta (Kikuyu) of KANU, got 30.2 percent. Violence was limited as the incumbent was retiring. Victory over KANU ushered in post-election stability and renewed hope for a new beginning. These expectations soon dried out, subsequently stalling freedom of association and expression under Mwai Kibaki (ECK 2002).

However, these elections took credit as the first genuinely free general elections held since independence in 1964. There were several by-elections in 1966 before KANU kicked off a *de facto* single-party rule in 1969.

The 2002 elections were also violent to some lesser extent. Various outcomes might have anchored this relatively peaceful election. First, the incumbent Kalenjin President Moi was retiring and relinquishing power to a Kikuyu Mwai Kibaki of the National Rainbow Coalition (NARC) – *an ad hoc* coalition of 14 opposition political parties. A pioneering formidable national support guaranteed National Rainbow Coalition (NARC) a sweet victory. Secondly, the public benefited immensely from civic education against violence from the Electoral Commission of Kenya (ECK), Non-governmental organizations (NGOs), and other Grassroots Based Organizations (GBOs). Despite these positive advances, the Central Depository Unit Monitors and the Media reported 116 and 209 deaths, respectively (CDUM 2002).

Raila Odinga threw his support to Mwai Kibaki in 2002, expecting the same support five years later for a smooth transition. Cracks and rifts surfaced in 2005 as Odinga questioned his government's role and opposed proposed reforms to the Constitution (Kagwanja 2008: 332). Odinga's split from NARC and alliance with William Ruto aided his presidential ambitions, but this aligned their supporters along Luo and Kalenjin ethnic lines.

“Tribalism and greed for power by our leaders lead to violence” (MN13, 2 August 2018: Fieldwork Narratives, Nairobi). Kenya has thus nurtured a crop of toxic political opportunists who play the ethnic card as violence mongers for political settlements.

2.2.5 Fourth Multiparty Elections in December (2007–2013)

The unfortunate 27 December 2007 general and presidential elections plunged Kenya into tragic post-election violence triggered by suspiciously delayed and disputed presidential outcomes. Incumbent Kikuyu Mwai Kibaki of the Party of National Unity (PNU) got 46.42 percent, and archrival Luo Raila Odinga of Orange Democratic Movement (ODM) garnered 44.07 percent. The ballot violent and marked by ethnic hostilities between their respective communities and their supporters. ODM had won 99 of the 208 seats. (Election Commission of Kenya, 2007).

The unilateral declaration of Mwai Kibaki as the winner and swiftly swearing him for a second term of five years at night on 30 December 2007 ignited the worst violence ever witnessed in independent Kenya. It shocked Kenya and the international community, permanently tarnishing the Kenyan image and pride as an island of peace. Odinga also claimed victory, which sparked civil unrest ensued. It killed 1,133 people and displaced about 350,000 persons (CIPEV 2008: 310).

The signing of the National Accord and Reconciliation Act ended this carnage. Raila Odinga was appointed Prime Minister, formed a power-sharing grand coalition (2008-2013). International observers warned that the Presidential elections were partly rigged (Kriegler Commission 2008: 115, KIPRA 2013: 72-73).

Perceived injustices and corruption of the electoral system are an immediate trigger of violence, even though other long-term causes exist. The systematic eruption of inter-ethnic violence at the grassroots level in all elections after the reintroduction of multiparty elections in 1992 is evident.

The dominance role of ethnicity and patronage in local politics entrench incumbent politicians playing the ethnic card on colonial-era injustices promising redress once elected by inciting violence to protect their power (Romero 2013: 1). Lack of a systematic amicable formula to share national wealth creates violence. Violence gets entrenched when politics get exclusively viewed as a zero-sum game with a centralized empowered presidency that

locks out losers (Mueller 2008: 200).

Informal traits of conflict in what Kagwanja terms as “entrenched legacy of ‘informal violence’ inherited from the Moi era” (2008: 384) join with politically nurtured ethnic tensions to swiftly turn violent.

2.2.6 Fifth Multiparty Elections under Reforms in March (2013-2017)

The 2013 general elections in Kenya were the first to be held under a new Constitution on 4 March 2013. Voters elected the president, members of the National Assembly, the new Senate or upper house, and County governors plus their deputies for the newly created devolved 47 counties. Members of County Assemblies (MCA) representing wards in the 47 counties were voted in. These elections held under the new Constitution approved in the 2010 referendum were also the first under the newly created Independent Electoral and Boundaries Commission (IEBC 2013).

“There was a huge turnout and violence was only limited to separatists at the Coast – Mombasa Republican Council” (The Guardian, 5 March 2013).

The presidential elections were a contest between a Kikuyu Uhuru Kenyatta of the National Alliance (TNA) and a Luo Raila Odinga of the Orange Democratic Party (ODM). The incumbent President Mwai Kibaki (Kikuyu) retired after serving two maximum five-year terms. Jubilee Alliance backed Kenyatta, and Odinga was supported by the Coalition for Reforms and Democracy (CORD). The IEBC declared Kenyatta, the winner with 50.51 percent eliminating chances for a second round as Odinga garnered 43.7 percent. Odinga unsuccessfully lodged a petition with the newly created Supreme Court (Daily Nation, 9 March 2013).

The majority of the efforts realized towards the 2013 elections were a sum of the previous endeavor for large-scale reforms that targeted some long-term violence drivers like the new 2010 Constitution. The success of the 2013 election in preventing violence resulted from progressive reforms. These reforms helped restore trust in political institutions, thereby providing an enabling environment to strengthen conflict averting institutions and their programs. The cooperation of plural stakeholders on information sharing was indispensable in preventing violence around 2013. Kenyans at large also avoided revisiting the 2007/8 post-election violence trauma. Peacebuilding and conflict management efforts

require bottom-up and local owned inclusivity to be successful.

The Geneva Peacebuilding Platform Paper No. 10 entitled '*Keeping the peace: Lessons learned from preventive action towards Kenya's 2013 elections*', found out that "successful conflict prevention around the 2013 election was based on the interplay between constitutional and institutional reforms, the pursuit of transitional justice, and a range of local initiatives. Information sharing and coordination of roles, players, and time were essential for maximizing the cumulative impact of different efforts and for capitalizing on the reforms of political institutions."

Kenyans had lost confidence in local institutions. Constitutional reform linked to electoral bodies and the judiciary was crucial to winning back that lost trust. The pursuit of transitional justice via the International Criminal Court (ICC) instilled discipline in politicians' conduct despite their concerted efforts to delegitimize the ICC. Local multiple holistic efforts mitigating conflict assisted in the deterrence of violent scenarios of the previous election. These include the early warning response mechanisms, District Peace Committees, light weaponry control schemes, and interethnic dialogue that advocated collaborative leadership (GPPP No.10 2013: 1).

2.2.7 Sixth Multiparty Elections in August (2017-2022)

The sixth multiparty elections were held in Kenya on 8 August 2017 to vote in members of the National Assembly, the Senate, and devolved County governments. IEBC announced the results showing percentages in parentheses show the reelection of the incumbent President Uhuru Kenyatta with (54.2) and his chief rival Odinga (44.9). Odinga refused to concede defeat and choose to contest them at Supreme Court. The Supreme Court found irregularities and promptly annulled the elections for a fresh re-run in 60 days, settling on 17 October (BBC News, 1 September 2017).

However, parliamentary and local elections results remained valid. The presidential re-election was rescheduled to 26 October 2017. However, Odinga later announced his decision to withdraw from the repeat election citing uneven playing ground (BBC News, 10 October 2017)

The murder of the head of information, communication, and technology official of IEBC and a murdered guard at the rural home of the Deputy President William Ruto, raised eyebrows

as a government ploy to rig the elections. These were few reported scattered cases of election-related violence (The Guardian, 2 August 2017).

Cheeseman et al. (2019: 223) argue, "Kenya's ability to come back from the brink of another electoral crisis perhaps had less to do with the formal constitutional changes introduced in 2010, and more with an established set of informal institutions through which elites have managed, and to an extent shared, power since independence."

The 2017 elections in Kenya were the second to occur under a new 2010 Constitution, devolving power away from the president through 47 newly created county governments. Besides, it was the first new political dispensation of a devolved elective process where politicians and voters had practical experience. The 2010 Constitution verified if it efficiently reduced the stakes of political contestability and prospects for political instability that haunted the 2007 post-election violence. Peace negotiators, international donors, political leaders, civil society groups, academics, and ordinary citizens, therefore, moved their focus on mitigation methods. It emerged that political violence in Kenya was rooted in communal narratives of injustice and the country's lopsided Constitution (Branch and Cheeseman 2008: 1-26), which invested excessive power on the president and fueling a conflict-ridden form of 'winner-takes-all politics' (Mueller 2008: 185).

Therefore, this created a 'perfect storm' as it integrated the history of political corruption and associated-election violence, bad governance evidenced in weak institutions, and close elections (Gĩthĩnji and Holmquist 2008: 344-358). The silver bullet out of this dilemma entails changing Kenya's political system to stem its decay and recurrence.

Handshake politics in Kenya are politics of convenience done out of formal institutional channels or apparatus. They serve multiple interests when the winners selectively reach out to losers in coded messages exemplified in their elite bargains. Kenyatta and Odinga initiated these veiled handshakes as building bridges initiative (BBI 2020). Building Bridges Initiative reflects elites' transaction costs in politics, economics, and beyond. *Elite bargains* are the secret negotiations of power asymmetries of inclusion and exclusions. Therefore, the associated transaction costs are the problems of sustaining cooperation in these interactions or agreements (World Development Report 2017: 19).

Kenyatta and Odinga initiated the Building Bridges Initiative (BBI) as an example of their elite bargains. Elite bargains are subjects of multiple works of literature. Consequently,

voters remain apprehensive of what lies ahead amid this short-term stabilization recess. A *political settlement* is the agreed power distribution between elites in what is also commonly termed as the “*elite bargains*” (OECD 2016: 59). Subsequently, *elite bargains* are the process through which these groups of people lumped together as elite actors and the organizations that support them coordinate and commit to one another to determine political settlements or outcomes. More details on these compositions and arrangements follow in Chapter 4.

Kenyatta and Odinga's agreement was a relief to many because it ended a dangerous period of instability. However, it did little to resolve the factors that gave rise to it. Odinga cannot erase his statements about Kenyatta's lack of legitimacy as president or the National Super Alliance's (NASA) decision to swear him in as the people's president. Similarly, Kenyatta cannot walk back his threats to the judiciary or how the security forces are used for partisan ends. Instead, these actions have further entrenched existing grievances and divisions, which means that it will be even harder to persuade voters that the next elections will be free and fair.³

“Election rigging originated from the founding father, Mzee Jomo Kenyatta. He took his people's land and spread his ethnicity all over the country to occupy other people's land. Elections provide a loophole for revenge. Free and fair elections can end violence. Rotating leadership among the different tribes can create inclusivity as Kenyans” (VE22, 5 August 2018: Fieldwork Narratives, Nairobi).

Kenyans are relatively peaceful in their daily lives in pursuit of a decent living but are stroked into violence when elections are on the calendar. This ethnic salience usurps and takes peace hostage and trades it for violence.

2.3 Chronology of Violence in Kenya

The attention on the violence's savagery with the primary explanations barred serious discussion of the real core causes of the post-election violence (PEV). The western press (Time Magazine 18 March 2008) simply informed their readers that Kenyan communities had sort of “*awakened ancient ethnic rivalries*” and were “*settling scores the old fashion way.*” As such, violence was not undoubtedly ancient and primordial or the result of a

³ Kanyinga and Odote. 2019. “Judicialisation of Politics”; Mutahi and Ruteere. 2019. “*Violence, Security and Policing,*” and Waddilove. 2019. “Support or Subvert?”

stolen or flawed election. Colonialism is culpable for socializing Kenyans into a culture of violence on the local level (Carotenuto and Shadle 2012: 6). The new *status quo* in Kenya inherited this socialization and benefits from it as a tool of choice.

What the popular narrative often failed to capture was the continuity with Kenya's violent colonial past. The post-election violence roots were not so deep as part of Kenyans' DNA, neither were they so shallow as to have germinated from a seed planted on 27 December. Instead, we must trace the roots-tangled as they are at least as far back the colonial epoch when public violence was employed to assert social and political power. The meanings and uses of public violence changed with the colonial encounter. It started from the racially charged settler society and colonial courts to suppress gendered and youthful defiance in schools and cities. Hence, Kenya's violence ought to be seen beyond her historiography and the usual discussions of violence as anti-colonial resistance and challenge the broader portrayal of violence in African colonial histories (Ibid: 2).

Kenya continues to experience a cycle of violence and negative peace during elections. It often stokes and raises political temperaments and tensions before, within, and after the process. Multiple challenges threaten national cohesion and integration, such as high insecurity, illegalities, corruption, and impunity. Citizens commit politically motivated murders during these conflicts, and insecurity bouts as exclusionary and inciting statements crowd the media and related public forums.

“Rigging of presidential election results causes violence and election commissions not living up to its role of not being partisan and interference by powerful politicians” (CX3, 31 July 2018: Fieldwork Narratives, Nairobi).

The democratic process in Kenya is a prisoner of the *status quo*. They periodically employ violence as a tool to achieve their goals in the guise of elections. Therefore, “an electoral process is an alternative to violence as it is a means of achieving governance. When an electoral process is perceived as unfair, unresponsive, or corrupt, its political legitimacy is, compromised, and stakeholders are motivated to go outside the established norms to achieve their objectives. Electoral conflict and violence become tactics [of equal importance] in the political competition” (Fischer 2002: 2).

Violence was used and debated by competing actors to assert control and establish legitimacy in many complementary and competing ways under broader struggles over

social and political authority. These complex and conflicting notions of legal and extra-judicial violence reveal an essential historical inquiry medium that sheds new light on colonial history and contemporary realities. While the violent struggle for social and political power over the last century of Kenyan history culminated in the election crisis of 2007/2008, (Carotenuto and Shadle 2012: 7-8) argue that to understand (and overcome) the contemporary culture of violence, one must begin in the colonial past.

The colonialists were terrible, to say the least. They ransacked, looted, and plundered, and used violence as a tool to divide and rule – this socialized future generations in that art. Learned habits are hard to discard, and independent Kenya did not strive to steer clear from that discourse. Independent Kenya inherited that art and perfected it in creating new elites with unquenchable binge on accumulating public goods as personal wealth with impunity. The advent of multi-party democracy transformed the haves and have-nots in precariously sustained inequality relations in the sharing and distributing public goods.

“Elections always provide a fertile ground stroking these inequalities to sustain a trapped decaying status quo creating an abyss cycle of violence” (PT120, 24 August 2018: Fieldwork Narratives, Nairobi).

“No blame goes for Colonialism. We are responsible for our actions and should work to make Kenya better than we found it” (EI109, 22 August 2018: Fieldwork Narratives, Nairobi).

Moreover, the tendency to blame Kenya’s woes on the colonialism narrative is no longer in vogue. The persistence and resilience of human capacity to create violence and destruction are, evidenced through the resulting narratives documenting them in memories of the victims. These episodes on violent outcomes tell varied dynamic stories depicting the process before, during, and after. This predicament is as old as humanity, and precedents worldwide occur in varying intensities. The narratives collected by *Twaweza Communications* (Njogu 2009: 1) convey another view of the story about the mayhem that engulfed Kenya in 2007-8 post-election violence after the disputed presidential results. This initiative was a bridging outcome that brought the media monitoring reflections and documentation of the traumatic violence accompanying the contested results. Its goal was to protect all Kenyans' constitutional rights for realizing a fair democratic nation.

Violence driven by narratives of the legal and rights issues aligns with history, justice, and memory as they interact with power and authority. Forced negative co-existence breeds violence as geopolitical, socioeconomic, and cultural systems clash. Going public with narratives affords them a voice to be heard to reach a broader audience to help reconcile and heal the nation out of this predicament.

“Joblessness and lack of integrity in public institutions like the IEBC cause violence” (DW4, 31 July 2018: Fieldwork Narratives, Nairobi).

Crime and security have existed in Kenya for decades. Organized crime is emerging as a particularly pressing concern in the recent past. Increasing violent criminality in every electoral cycle in Kenya comes from a history of political violence before, within, and after the elections. Politics of ethnicity has continuously worsened the problem of generating actively organized gangs forming along ethnic lines and claiming to safeguard their ethnic groups' interest. Hence, the spread of organized criminal gangs and hooligans threatened the country's already fraying social fabric ahead of the 2017 elections (National Cohesion and Integration Commission 2017: xii).

Healing the wounds narratives (Njogu 2009: 1) depict violence as going beyond the presidential ballot results. It exposes underlying long-term grievances on land, access to pasture, political propaganda, negative ethnicity, and impunity as the causes of previous political violence. There are many drawbacks, but the first past the post (FPTP) or the winner-take-all political system, high youth unemployment and poverty, excessive presidential powers infested presidency, and no straight winner contests are paramount. Therefore, on this backdrop, the presidency is a carrot to individuals and their ethnicities interested in looting national resources. A compromised Electoral Commission of Kenya (ECK) lacked the capacity and expertise to hold fair elections in 2007/8.

2.3.1 Post-Election Violence of 2007/2008

The 2007/8 Post-Election Violence (PEV) unfolded soon after the Electoral Commission of Kenya (ECK) hurriedly declared Mwai Kibaki the winner after two days delay. He was sworn in as president for the second and final term in office at State House (official residence of the president), at night on disputed results. “So hurriedly was the ceremony that,

reportedly those present, forgot to sing the National Anthem.”⁴ Random ethnic rioting and violence explicitly targeting the Kikuyus broke out countrywide. The Kenyan government reacted by suspending live television coverage for several days. Archrival opposition candidate Raila Odinga termed the elections as flawed and rigged as violence spread (ICG 2008: 9-12).

Therefore, Odinga sought solace in civil revolts to restore democracy. About 200 Kikuyus took refuge in a church in Kiambaa near Eldoret in the Rift Valley. An unruly local mob set the locked church on fire, which resulted in the death of about 33 people, who included children and women burnt alive inside the church. This outcome sparked counter-attacks in Naivasha, Nakuru, and Nairobi. Many other hooligans took advantage of the mayhem to stoke ethnic hatred with disastrous outcomes. Figures estimates are disputed; however, about 1,133 Kenyan lives were lost, displacing about 350,000 others, and about 1,916 others sought refuge in Uganda. Huge losses were evident in private and public spheres with personal trust and the economy nose-diving (CIPEV 2008: 308-310/351).

Towards the final days of January 2008, organized, agitated, and angry, Kikuyu youth under the “*Mungiki*” umbrella fought back in Naivasha, Nakuru, and parts of Nairobi in revenge as pre-emptive attacks. These reprisal attacks took an ethnic dimension targeting the Luo and Kalenjin communities, who had mostly voted for the opposition party. It was evident that potential attack warnings were given to the targeted communities in advance. Despite these impending attack warnings and quite irritatingly, national/regional/local leaders failed to calm their followers genuinely. It could have created an enabling medium for a national dialogue for peace. Evidence of double standards or lukewarm response and half-heartedness outcomes show that leaders’ neither vigorously and openly denounced nor forcefully and adequately addressed the issues that triggered the violence (CIPEV 2008: 121-127).

“Tribalism and opportunistic hooligans cause violence in Kenya. Unity or curfew to all can remedy it” (PK16, 2 August 2018: Fieldwork Narratives, Nairobi).

The Kibaki government was illegitimate. The Electoral Commission of Kenya (ECK), under duress, controversially declared a Kikuyu led government of Mwai Kibaki as the winner. The night ceremony of swearing in Mwai Kibaki by the Chief Justice was suspicious and

⁴ Wangari Maathai. 2009. *The Challenge for Africa*. New York: First Anchor Books Edition. 196.

mischievous. Therefore, the government took a hardline position and rejected mediatory efforts suggesting legal and constitutional redress for the impasse. Demonstrations by Raila Odinga's Orange Democratic Party (ODM) were banned. Several political elites equated the murder of voters with the rigging of votes. More accurate data and information on this post-election violence (PEV) are covered in chapters 4, 5, and 7.

2.3.2 Mediation by Eminent Persons in February 2008

The Secretary-General of the United Nations, Kofi Annan (now deceased), was also chairman of the Eminent Persons Committee (EPC) and, together with regional leaders, intervened to stop this tragic violence in Kenya. It created a Grand Coalition Government (GCG) with the position of a Prime Minister for Raila Odinga at the signing of the National Dialogue and Reconciliation Accord on 28 February 2008.

The key stakeholders in the violence from the ethnic divide were incorporated into the government to create peace. They agreed to bury the hatchet in the short term. Later, cracks emerged, and they regrouped in their quest to entrench impunity and sabotage the reform agenda. The coalition eventually collapsed in 2012. There was no open amnesty to perpetrators of violence, and senior politicians and their patronage were never arrested or prosecuted. Some of them are still part of the *status quo* to date. High profile cases forwarded to the International Criminal Court (ICC) at The Hague also collapsed without convictions due to insufficient or withheld evidence. Hence, it is business as usual for the *status quo!*

The African Union Panel of Eminent African Personalities (AUPEAP 2008) recognized that Africa's conflicts exceed interpretations of ethnic mistrust and deep-rooted hostilities. Focus and attention must be directed to their roots in colonial legacy and state formation process in ethno-regional diversity, property and income distribution, access to natural resources like land, population density, governance institutions, and accountability among leaders.

Kenya's future will depend on its ability to navigate the National Accord's great contradictions, evidenced in the Kenyan nation's deep structural problems. To mitigate violence in the short-term to allow negotiation, the power-sharing agreement and its likes entrench the critical culprits of violence and corruption in very high government levels. Indeed, the Accord worked by the carrot of joint access to state resources to lure opponents

into an agreement. This short-term diplomatic purchase of time also creates conditions, if not incentives, for future conflict.⁵ Hence, Klopp (2009: 144) argues that “these same resources can and will be used (corruptly) for the next round of conflict in the election scheduled for 2012 . . . since both parties include people guilty of corruption and violence, the grand coalition creates a common interest in perpetuating impunity and opposing the forces of accountability and transformation.”

“I feel we got independence too soon. Maybe we could have been more developed if we got independence later in the 1980s or the 1990s” (QJ17, 3 August 2018: Fieldwork Narratives, Nairobi). This narrative depicts the mood that greeted Kenya at independence.

Outcomes of the inclusive civil society-backed diplomatic pressures created Kenya’s National Dialogue and Reconciliation process, giving birth to the National Accord (NA) and Reconciliation Act (Accord). The Accord had a four-point agenda. First, taking immediate steps to stop violence and restore fundamental rights and liberties. Second, take immediate measures to address the massive humanitarian crisis of traumatized victims and the displaced to promote reconciliation, healing, and restoration. Third, develop a strategy to overcome the political crisis through readjusting constitutional and legal frameworks. Fourth and last was addressing long-term issues, including land reform, constitutional reform, unemployment, poverty, and inequality (Kenya National Dialogue and Reconciliation Monitoring Report (KNDRMP 2009).

2.3.3 Creation of Commission of Inquiry into Post-Election Violence (CIPEV)

The Akiwumi Commission of Inquiry into Tribal Clashes and Skirmishes (1998) preceded the Commission of Inquiry into Post-Election Violence (CIPEV). It was a Kenya government commission appointed on 1 July 1998. It lasted through several extensions till 31 July 1999. The Report was submitted to President Daniel arap Moi on 19 August 1999. It was tasked to investigate sporadic nationwide tribal clashes since 1991. It was to establish and determine implicit and explicit causes of the clashes, actions, and involvement of law enforcement officers, including the police during the clashes and their implications in mitigating future recurrences. The Commission recommended prosecution and full investigations on the perpetrators besides offering remedies to mitigate and eliminate

⁵ Denis, M. Tull and Andreas Mehler. 2005. “The Hidden Costs of Power-sharing: Reproducing Insurgent Violence in Africa.” *African Affairs* 104 (416/July): 375-398.

future reprisals. Clashes erupted and ended abruptly, leaving trails of devastation, suffering, and disruption unforeseen in Kenya. Veiled causes of the clashes include conflict over land, cattle rustling, political differences, ecological reasons, among others (CIPEV 2008: 39).

The Akiwumi Commission concluded that the clashes underlying causes are threefold. First, ambitions by Kalenjins to recover their nostalgic ancestral land lost in the colonial era misappropriations. Secondly, the desire to expel “foreigners,” ethnically profiled as “madoadoa” or “spot” or “blemishes” from their vicinity. These refer to other ethnicities, mainly the Kikuyu, Kisii, Luo, who are now permanently settled in the Rift Valley. Thirdly is political and ethnic loyalty (Ibid).

Moreover, the *Akiwumi Commission* concluded that the security forces alongside the provincial administration were negligent and unwilling to take firm and drastic action to prevent the clashes from arising or swiftly containing them. Local ethnic leaders and politicians were found guilty and instigated the clashes. Recommendations for investigating and prosecuting culpable persons were, reached to prevent future recurrences. However, the findings and recommendations were rejected by Rift Valley stakeholders in the government, which sealed its demise. High Court order in 2002 made the report public and relevant in the *Waki Commission Report* covering the 2007/8 Post-Election Violence (CIPEV 2008: 40).

Former United Nations Secretary-General the late Kofi Annan brokered a power-sharing deal that ended post-election violence. He also procured establishing the Kenya Commission of Inquiry into Post-Election Violence (CIPEV). Kenya’s Court of Appeal Justice Philip Waki was appointed chairman of the Commission, also known as *the Waki Commission*. It was an international commission of inquiry (three Kenyans and two foreigners) established by the Government of Kenya in February 2008 to investigate ethnic clashes after the disputed 2007 presidential election in Kenya. The Commission was an outcome of the Kenya National Dialogue and Reconciliation Accord (KNDRA) on 28 February 2008. Kofi Annan worked with a Panel of Eminent African Personalities (PEAP) to enact a related agreement known as Agenda 4 on 4 March 2008. It appealed for establishing various inquiry bodies to address justice and accountability, including ongoing issues of governance and the rule of law. *The Waki Commission* commenced its work on 23 May 2008 (CIPEV 2008: 1)

The CIPEV was mandated to investigate the facts and relevant circumstances on acts of violence following the 2007 presidential election. These included both actions or omissions of state security agencies in the transition of violence. It offered recommendations as solutions besides proposing appropriate legal, political, and administrative measures for justice for heinous crimes perpetrators. The Commission carried out its work in about four months, compiling a report of 529 pages released on 15 October 2008 to President Mwai Kibaki and Prime Minister Raila Odinga (CIPEV 2008: vii).

Waki Report made various findings. It recorded 3,561 injuries, 117,216 cases of property destruction, and 1,133 deaths (of which 405 by police gunshot wounds) resulting from post-election violence. It found evidence of state security agencies (the police) culpable of massive failures in predicting and defusing the violence and mentioning land grievances and hoarding power in a centralized presidency as the root cause of violence (CIPEV 2008: 410).

Waki Report issued outstanding recommendations to deal with the violence outcomes. It sought to establish a *Special Tribunal* to prosecute key persons of interest highly responsible for crimes against humanity linked to Kenya's 2007 general elections. These included: Fast-tracking enactment in 2008 of the *International Crimes Bill*, *Witness protection Act*, *Freedom of Information Bill* by Parliament to streamline, investigation, and prosecution of crimes against humanity. It also sought structured, comprehensive police reforms to integrate uniformed security agencies, a limited non-partisan term (6 months), and a *Police Reform Group* under the Justice secretariat to mandate and supervise the process of reforms. Finally, it sought to establish a permanent political oversight body alongside a non-partisan disciplinary *Police Conduct Authority* (CIPEV 2008: 472-478).

2.3.4 Advent of Truth Justice and Reconciliation Commission (TJRC 2009-2013)

Demands for Truth Justice and Reconciliation Commission (TJRC) started in the early 1990s with the reintroduction of multiparty democracy. However, it was not until 2002 that it got a big push when the National Rainbow Coalition (NARC) was elected (KHRC 2010: 68).

An act of Parliament formed the Truth, Justice, and Reconciliatory Commission (TJRC) in June/July 2008. It was tasked to end violence and investigate gross human rights injustice in Kenya against its citizens from independence (1963) to the Grand Coalition Government (GCG) formation in February 2008. It was enacted in October 2008.

There are different kinds of justice. Retributive justice is mostly western. The African understanding is overly restorative - not much to punish as to redress or restore balance knocked askew.⁶ A truth commission has been roughly defined as "an official investigative body that documents a pattern of past human rights abuses."⁷ Alternatively, a truth commission is "[An] officially sanctioned, temporary, non-judicial body . . . granted a relatively short period for statement taking, investigations, research, and public hearings before completing its work."⁸ Louis Bickford argues that truth commissions are part of the transitional justice strategy. They focus on the recent past and systematic and ongoing patterns of abuses, listen to victims' voices, are temporary, submit final reports, and are officially sanctioned by the state and other official parties.⁹ The mechanisms, procedures for retributive, social distributive, and restorative justice for continued fairness are affected.

The demand for a TJRC in Kenya started in the 1990s as a push by Kenyans to tame the repressive Kenya African National Union (KANU) Moi government focused on reforms and accountability. Mwai Kibaki became Kenya's third president on the National Rainbow Coalition (NARC) ticket in December 2002. NARC government, the civil society, and victim groups' dialogs created a task force in April 2003, mandated to establish the viability of a truth commission in Kenya.

The task force, comprised of mainly civil society stakeholders, published a report in October 2003 that recommended the formation of a TJRC by June 2004. It was mandated to deal with both human rights violations and the economic crimes committed between 12 December 1963 (Independence Day) and 31 December 2002 (the day NARC assumed leadership). However, between the June 2004 deadline and December 2007 (general election year), the government jumped ship on this transitional justice given internal political party turmoil between Kibaki led National Alliance for Change (NAC) and Odinga's Liberal Democratic Party (LDP). The failure to address the historical injustices and the NARC polarization lay behind the contested December 2007 presidential elections, which again saw Mwai Kibaki's Party for National Unity (PNU) against Raila Odinga's Orange Democratic Movement (ODM). The disputed election results led to post-election violence displacing

⁶ Desmond Tutu. 1996. "Recovering from Apartheid," in Tina Roseberg. *The New Yorker*, 18 November.

⁷ D. J. Hendy. 2005. "Is a Truth Commission the Solution in Post-Conflict Iraq?" *Ohio State Journal of Dispute Resolution* 20(2): 527-62.

⁸ United Nations (UN). 2006. "Rule of Law Tools for Post-Conflict States," New York and Geneva: United Nations.

<http://www.ohchr.org/Documents/Publications/RuleoflawTruthCommissionsen.pdf>

⁹ Louis Bickford. 2010. 'Unofficial truth projects (draft)': subsequently published at http://www.zarekom.org/uploads/documents/2010/11/i_182/f_10/f_105_0.pdf

663,921 people and more than 1,300 deaths, wanton destruction of property, and a polarized country.¹⁰

The just in time African Union (AU) intervention via the Kenya National Dialogue and Reconciliation (KNDR) process chaired by Kofi Annan ended the violence. It led to the signing of various agreements in February 2008. This outcome returned TJRC to the National Agenda through the agreement signed on 14 February 2008 and Agenda Item 4 of the KNDR. Agenda item 4 addressed long-term issues and solutions. These included constitutional, legal, and institutional reform; tackling poverty, inequality, and regional development imbalances; tackling unemployment, particularly among the youth; consolidating national cohesion and unity; undertaking land reform; and addressing transparency, accountability, and impunity.¹¹

The national accord signed between Mwai Kibaki (as President) and Raila Odinga (later as the Prime Minister) representing their respective parties on 28 February 2008, ended the carnage. It averted disaster and enabled power-sharing in a Grand Coalition Government (GCG) pact. Parliament adopted the TJRC Act on 23 November 2008, granted presidential assent five days later, and came into force on 9 March 2009. The recruitment of commissioners began in April 2009, finally sworn in office by July/August 2009. The Commission's work was very challenging under challenging circumstances given the complicity in the violation and crimes under investigation by the political elites across the ethnic divide.¹²

In Kenya, there has been no commitment by the government or the political elite to promote healing and reconciliation. The TJRC, initially crippled by internal disputes and litigation over its chairperson, Ambassador Bethuel Kiplagat, was accused by local stakeholders of aiding and abetting the very human rights abuses that the TJRC sought to investigate.¹³ These circumstances and processes are covered more comprehensively in chapter 5 and chapter 7, respectively.

¹⁰ Davis M. Malombe, "The politics of truth Commission in Africa: a case study of Kenya, in *Where Law Meets Reality-Forging African Transitional Justice*, Moses Chrispus Okello, Chris Dolan, Undine Whande, Nokukhanya Mncwabe, Levis Onegi and Stephen Oola, eds. Nairobi: Pambazuka Press.105.

¹¹ Ibid.

¹² Ibid.

¹³ Emmanuel Kisiangani. 2013. "Can Kenya's Truth, Justice and Reconciliation Commission Deliver? [analysis]," *Conflict Prevention and Risk Analysis*, Nairobi: Institute of Security Studies (ISS) in *All Africa Global Media*, 20 February.

Kenya's TJRC assumed a broad mandate that included investigating gross human rights violations and economic crimes. Hence, the TJRC faced logistical and operational challenges. In particular - the investigation of a complicated matter of economic crimes created serious methodological and timing problems - Kenya's historical injustices embedded in skewed socio-economic and political structures. Efforts to promote national unity must focus on addressing these underlying problems to promote a sense of fairness and inclusiveness in terms of governance and access to national resources. Therefore, short-term intervention such as the TJRC is limited in effecting broad structural changes in society and remains an insufficient tool to heal a country.¹⁴

The Truth, Justice and Reconciliation Commission (TJRC) Final Reports were delivered to President Uhuru Kenyatta in May 2013 for swift action. However, they were deferred and rendered captive for complicity issues. Chapter 5 offers more details about global truth commissions in Africa to pursue lasting peace, transitional justice, and reconciliation.

“Greed, corruption, and self-interest hinder the implementation of the TJRC final reports” (TG20, 5 August 2018: Field Narratives, Nairobi).

These final reports are in limbo - as is the precedent with other previous commission reports, implicating the direct interference by the *status quo*. Chapters 5 and 6 explore Truth Commission Reports from other African countries, including Kenya, respectively.

The big picture taking shape from conflict narratives shows the interpretation of violence as a historically located phenomenon authorized politically, socially, and culturally. A broad section of the political elites in pursuit of accumulating wealth and retention of power will converge within a social memory of events about the cause of given predicaments expressed in a discourse of difference and reinforced by a biased and partisan mass media to disrupt the lives of citizens (Njogu 2009: 5). Individual and collective memory is selective and changeable, which undergoes processes of suppression or forgetting. It is also shaped around silences and lies for fear of reprisals or to protect or perpetuate specific interests.

An alternative view of understanding violence that bedeviled Kenya captured in narratives about traumatic events depicts negative ethnicity, gross multiparty politics, bad

¹⁴ Ibid.

governance, and violent ethnic voting patterns.

2.3.5 Remembering Kenya Narratives (2010 and 2013)

The convening of the *(Re)membering Kenya Public Lecture Series* in 2008 grew out of the recognition of the fact that into the post-2007 General Election turmoil was subsumed a myriad of issues that needed discussion. Such debate was hardly forthcoming, and when it arrived, it garnered little in productive engagement between the interlocutors. Serious questions arose on Kenyan nationhood and often lack of it that required cooling in a structural sense. The assumption that Kenya was a bastion of peace was questioned during the lecture series presentations. It was out of the wanton destruction of churches (purported as safe havens), and other heinous crimes against Kenyans during and after the elections told a different story. Participants underscored the fact that Kenya had enjoyed a situation of *negative peace* for many years.

Negative peace is defined as the absence of direct violence or other forms of wide-scale violent human conflict: ceasefires, disarmament, prevention terrorism, state terrorism, and nonviolence. On the other hand, *positive peace* denotes life-enhancing cooperation and prevention of direct violence like peacebuilding, conflict transformation, reconciliation, and reconstruction towards harmony, justice, equity, etc. (Fischer and Galtung 2007).

The publication of *(Re)membering Kenya Volume 1* - edited by Mbũgwa wa-Mũngai and George Gona (2010), converged on questioning identity, culture, and freedom and their place in the making or unmaking of Kenya. It was a positive outcome as the narratives are now an essential, integral tool in critical debates via multiple discussions forums in public and academia in and out of Kenya. Therefore, these narratives are now fueling constructive debates towards better understanding other pertinent issues related to Kenyan nationhood's (dis)integration.

In *(Re)membering Kenya Volume 2: Interrogating Marginalization and Governance* edited by Goerge Gona and Mbũgwa wa-Mũngai (2013), focus on discourses oscillating between issues of identity and culture along with the struggles around the recognition of 'other Kenyans.' The latter feel excluded from 'new' Kenya. It also questions sexuality and the possibilities of continued manifestation of ethnicity in the military.

Remembering is re-thinking and re-organizing how things are done. It entails a juggling of priorities between peace and reconciliation, peace and justice, and seeking justice and reconciliation without jeopardizing peace, all of which are arduous exercises. Reconciling misconceptions about places, issues, and people is part of reconciliation too. New pathways need to be explained, past mistakes (individual and collective) acknowledged, and the vow “never again!” given earnest meaning. These narratives converge on urging Kenyans must be vigilant and guard against individuals and groups that have traditionally resisted change. Reconfiguring the Kenyan nation is a work in progress facing various constraints. Cultural constraints towards these goals hinder endeavors from finding sustainable peace after conflict (Ibid).

“Political and tribal instigation causes violence. Tribal tolerance and political maturity can resolve this” (RI18, 3 August 2018: Fieldwork Narratives, Nairobi). Promoting national social cohesion with integrity can help nurture tolerance and subsequently reduce political conflicts.

Kenya’s ethnocultural diversity and the distinct politicization of ethnicity led to the 2007/8 violence. Kinyanjui posits that political leaders perceive state power and institutions as tools to promote their interests or those of a select few amongst their ethnic groups. She describes the genesis of ethnic animosity arising from ‘othering others’ through the non-participating and exclusionary policies that the Kenyatta, Moi, and Kibaki regimes perpetuated. Post-colonial regimes have concentrated economic and political resources in those areas supporting the winning president, the ruling party, and the government (Kinyanjui 2013: 114-131).

Kinyanjui also suggests that a remedy to this negativity in Kenya’s social and political organizing lies in societal re-engineering and adopting an alternative socio-political organization mode. Social re-engineering comes from national passions caused by religion, class, individual, and or group interest. National passions like partly legitimizing the state, energize, and inspire its citizens to feel an emotional attachment towards it. Kenya needs to celebrate shared histories and experiences by honoring and eulogizing national heroes and heroines. It can be an alternative solution for inclusiveness and can ignite nationhood. Kinyanjui, therefore, concludes that there is a need for Kenyans to re-educate themselves on their civil duties and rights. They need more awareness about what political ideology is about and engage in issue-oriented politics voting in leadership people who are transparent and accountable to them, not individuals whose only claim to political leadership is the

ethnic pedigree. She advocates for official recognition of cultural plurality and its ideal form of consensus democracy. 'Power-sharing' with proportional representation can anchor positive peace (Ibid).

"Tribalism and hate speech from aspirants' trigger violence. Stopping tribalism and peaceful voting can contain violence" (SH19, 3 August 2018: Fieldwork Narratives, Nairobi).

"Post-conflict peacebuilding efforts have to go beyond mere public rhetoric. There is a lack of dilemma for prioritization of critical issues addressed in the outcomes. The state, and Kenyans at large in retrospect, seem to have been half-hearted. Reconciliation is also half-hearted; hence these half-hearted efforts towards post-conflict peacebuilding amount to living in denial like a situation of *negative peace* - a fertile ground to trigger more conflict" (Gona 2013: 206-227).

Questioning and identifying impunity's genesis is a key to social justice and reconciliation to mitigate potential conflict. It can liberate Kenyans from perpetual impunity ingrained in their consciousness. *Remembering Kenya* narratives, therefore, calls for a reconstruction of "the journey to the conflict" and to find the right trade-off between the right of remembrance and the duty of forgetfulness.¹⁵

The co-accused presidential and deputy presidential candidates - Uhuru Kenyatta and William Ruto, riding on nationalistic rhetoric accusing the ICC of discrimination against Africans, clinched the presidency in 2013 compromised first term elections (2013-2017). They have controversially been re-elected for their second term (2017-2022) despite presidential election cancellation by an emboldened Supreme Court for gross irregularities. Raila Odinga's led National Super Alliance (NASA) opposition coalition parties boycotted the re-run citing unfulfilled irreducible minimum electoral reform demands.

The *Uhuruto duo* (Uhuru and Ruto) are still in office (2017-2022) as the ICC contemplates how to bring up new charges against them. Internally displaced persons (IDPs) are victims of the 2007/8 post-election violence (PEV). These victims are still waiting for justice that has been delayed and denied - robbing them of compensation, healing, and reconciliation. *How long will that be?*

¹⁵ Ghassan Salamé to *al-Nahar*. 7 April 2004. Cited in Oren Barack. 2007. "Don't Mention the War? Politics of Remembrance and Forgetfulness in Post War Lebanon," *Middle East Journal* 61(1/Winter): 49.

Maupeu argues that “the extremely violent nature of the 2007/8 elections showed that electoral democracy is still very fragile. Politicians have embraced the values of this type of government with many ulterior motives. It is therefore difficult for them to propose, in good faith, a social contract that will sincerely question the source of its prosperity” (Maupeu 2008: 229).

2.3.6 The Media and Violence

The relationship between the media and violence is capricious. As the fourth estate, the media has a more significant and vital role to play in conveying a clear, unbiased message to the public, private and the state without fear and favor. *Twaweza Communications Report “Meddling with the message”* (2009) found that “certain sections of the Kenyan media were unethical and professional before, within and after the elections and may have contributed to ethical polarization and accentuated violence.” The media should remain neutral under press freedom and focused on realizing a positive vital space for citizen education, protecting their rights in the pursuit of national cohesion and integration.

The media can downplay stereotypes before and after the electoral conflicts to achieve national healing and reconciliation, minimizing divisions, and strengthening solidarity. Moreover, it can excel further as a mediator in providing a communication forum between the state and its citizenry. It can boost and promote better communication towards rapid reconciliation, healing, and mitigation in preventing future conflicts. It can do this by highlighting casualties' plurality with objective analyses to promote peace and ensure that justice prevails.

Media houses have a national duty to train their journalists on ethical conflict reporting professionally. They should demand an emphasis on converging issues as opposed to divergences. Journalists reporting on multicultural issues or their contradicting aspects should strive to avoid creating tragedies.

Marginalized minorities suffer more in violent conflicts and need a vocal voice. Archived records informing future generations as reflections and investigative challenges can enrich past tragedies like in 2007. A well-anchored media can help educate citizens and reduce inequalities arising from political competition, and often caution and criminalize errant leaders for their role in stoking and provoking animosities. Citizen education is part of democratic practice that benefits from diversity tolerance, human rights, equitable

resource sharing, gender equality, freedom of speech, and media. Cyber violence in online chat rooms gave the Kenyan story a global audience. The short mail service (SMS) sent to foreign hosted websites coordinating logistical support for some victims helped rescue them in dangerous situations (Mũngai and Gona 2010: 21).

Ushahidi (Swahili for 'testimony' or 'witness') is an open software system (OSS) website created solely for Kenya's disputed 2007 Presidential election but has gone global. It collected eye witness reports of violence sent via social messaging and email hosted on a google map (Clay 2010: 16). Megha Bahree reporting for the Forbes Magazine on 20 November 2008) pointed out that the Kennedy School of Government proved that the *Ushahidi* analysis was better overall at reporting acts of violence as they unfolded and had surpassed the mainstream media reports from Kenya by then.

Njogu (2010), cited in (Re)membering Kenya Volume 1 by (Mũngai and Gona 2010: 21), reveals that diaspora Kenyans in cyberspace used internet chat rooms and email to summon their folks in Kenya to mutilate the country directly. Hence, ethnic intolerance was a primary feature that controlled their interactions where even professional academics were not ashamed to partake, making no doubts about the type of identity being encouraged.

The predominantly male-dominant media produces narratives biased towards their political and gender orientations. These biases affect contents, context, and conveyance modes, which might spread or worsen the conflict. 3,060 Kenyans lost their lives via conflicts and insecurity between 2010 and 2014 (KNHRC 2014).

"The main cause of violence is certain tribes still believe that they will rule forever; hence no other tribes should rule. So long as every tribe is accepted as suitable to rule as the President of Kenya, the violence will stop" (UP21, 5 August 2018: Fieldwork Narratives, Nairobi).

These expectations and entitlements converge to worsen inequalities that undermine peaceful coexistence in political settlements.

2.4 Challenges and Prospects

Security stands out as a precondition for development. However, using governance to solve violence's first-order problem requires reaching and sustaining stable elite bargains, and it inevitably involves compromises, concessions, and trade-offs between development outcomes. The rent redistribution that accompanies the bargains necessary to maintain security can constrain development (North et al. 2013; Acemoglu et al. 2014). In precise cases, power-sharing arrangements between elites have helped avoid violent conflict *after elections*, but they have also shackled the economy (Lindemann 2011). Similarly, elite bargains that enshrine existing inequalities can ensure security in the short term, but they are not sustainable in the long term. Therefore, the mechanism about how governance can resolve trade-offs among growth, equity, and security constitutes a new frontier on the development research agenda to mitigate conflict and violence.

Violence is a behavior reinforced by social norms acting like a contagion and as an epidemic and contagious. Research reveals that violence behaves like an epidemic, sharing the same symptoms of clustering, spread, and transmission (Slutkin et al. 2015). Violence clusters occur in "hot spots" where people have been exposed to violence and can mimic epidemic spread across time or geographically across space with a transmission mechanism in which exposure correlates to risk as those exposed to violence are at increased risk of perpetuating it themselves (Spano, Rivera and Bolland 2010).

Treating *violence* with a health approach shifts the optimal point of intervention where prevention is viable and enables mitigation efforts to immediately intercept the contagion. It represents a paradigm shift in thinking about *violence* as a necessary condition, as only domestic law enforcement, political or international security problem, or as related only to underlying causes or under-development. This strategy is relevant for political or social violence contexts where community and individual resilience to violence become possible.¹⁶

Violence and fragility wreak destruction on human lives and societies, preventing people from fully achieving their potential. Violence obstructs development, stalls recovery from conflict, compounds the risks of *fragility*, and feeds devastating new violence cycles. Indeed, this fragile world could become more so in an exponential way, given that it will likely face more stresses from climate change, fragile cities, and the regionalization of violence and

¹⁶ OECD (Organisation for Economic Co-operation and Development). 2016. "Violence Today," *States of Fragility 2016: Understanding Violence*. Paris: OECD Publishing. 43.

conflict. Getting it wrong will not just leave the unsatisfactory *status quo* untouched. It could also make matters worse; hence this opportunity to alleviate the toll of *violence and fragility* must not be missed (OECD 2016: 29).

Post-election violence resulting from the anomalies seen in the 2007 election in Kenya involved many facets of society. It involved youth who had little opportunity for employment despite Kibaki's 2002 election promise of job creation. Many of the children reacted violently to the questionable announcement of Kibaki's victory (Cussac 2008). The *perennial* land disputes between Kalenjin and Kikuyu turned tragic, given the effect of *ethnic salience* with the *post-election violence*.

"Violence in Kenya occurred in poverty-stricken areas. I believe that leaders and selfish leaders' poor choices also play a big part in fueling the violence. The leaders we foolishly choose, exploit the poor to bring their selfish agendas to life and blame ethnicity or rather use ethnicity as a weapon to do the same" (WD23, 5 August 2019: Fieldwork Narratives, Nairobi).

The National Accord process that culminated in the Grand Coalition government institution also established the *Waki* and *Kriegler Commissions* to investigate the underlying causes of the post-election violence and the elections' mismanagement. *Waki* and *Kriegler* report' recommendations navigated the transition to the *National Accord's Agenda 4*, which mandated various reforms pertinent for attention to various inequalities, uplifting trust for greater national cohesion and integration. Amongst other initiatives, Agenda 4 mandated the time-bound promulgation of a *new Constitution* and reforms to the Judiciary, police, and electoral supervision, much of which is completed.¹⁷

The Constitution (2010) has departed from its predecessor by underscoring the sovereign and inalienable right of Kenyans to determine their form of *governance*, in reaction to domination from the top of the political class fueled actual or perceived inequalities and undermined trust and national cohesion. It reinstates the traditional separation of powers between the *Executive, Legislature, and Judiciary*. It extensively diminishes the president's capacity to use public appointments, including cabinet positions, for personal or narrow-minded gain. Key public appointments are, vetted by independently constituted committees approved by Parliament. The public is also encouraged to provide character

¹⁷ KIPPRA. 2013. 72-3

references for applicants.¹⁸

“Right now, the election systems are not the issue; the main issue is just governance, and as long as they have the rigging mentality, whichever system in use, it won’t work” (XC24, 5 August: Fieldwork Narratives, Nairobi).

Post-election violence was a state-sponsored project that caused civil strife as a scapegoat for competitive multiparty politics. Politicians across the ethnic divide and their *elite bargains* use the *ethnic card* as their *transaction costs* to usurp power to keep the leadership status quo. Continuous disputed and stolen elections adversely affect *conflict* and *violence* outcomes.

Election reforms curbing ethnic salience, promoting social cohesion and national unity are now more necessary than ever. Violent elections beckon alternative and appropriate system accommodative of plural interests or apathies. Moreover, systematic implementing and monitoring mechanism for the *Truth Justice and Reconciliation Commission (TJRC)* outcomes can anchor and nurture peaceful healing and nation cohesion in Kenya. Status quo elite cartels in Kenya are dead scared of losing power and facing imminent prosecution for their inhuman and grave wholesale de-empowerment criminalization of the citizenry. This politically sanctioned marginalization mitigates their open promulgation of the truth reports' findings and recommendations.

This chapter reviewed relevant literature on violence. As traced in the chronology of both elections and violence, the blame on state involvement is quite evident. In chapter 3, this study's perception will shift to address the recurring conflict causality cycle in search of its tipping point. This chapter will also explore hypotheses and methodology adopted to link theory with practice and rallying the theoretical frameworks.

¹⁸ Ibid.

Chapter 3 Conflict Causality Cycle, Hypotheses, Methodology, and Theoretical Frameworks

3.1 Conflict Causality Cycle

In chapter 2, the analysis of the twin chronologies of elections, violence, and associated underlying factors proved the causes of post-election violence. With that in mind, let us discuss the conflict causality cycle, integrating the hypotheses, methodology, and theoretical frameworks employed to clarify their causality in associative narratives.

Political greed and poor governance practices converge to cause pre-election or post-election violence. Violence revolves around a conflict causality cycle that exposes the desperate struggle and strives by the status quo and patronage across the ethnic divide to control resources associated with “winner-take-all” or the “first past the post” (FPTP) election system in Kenya. This disastrous occurrence is on display every five years at ballot time. Figure 3.1 depicts this vicious cycle of post-election violence, governance, truth justice, and reconciliation commission (TJRC), and the resource control associated election system in Kenya.

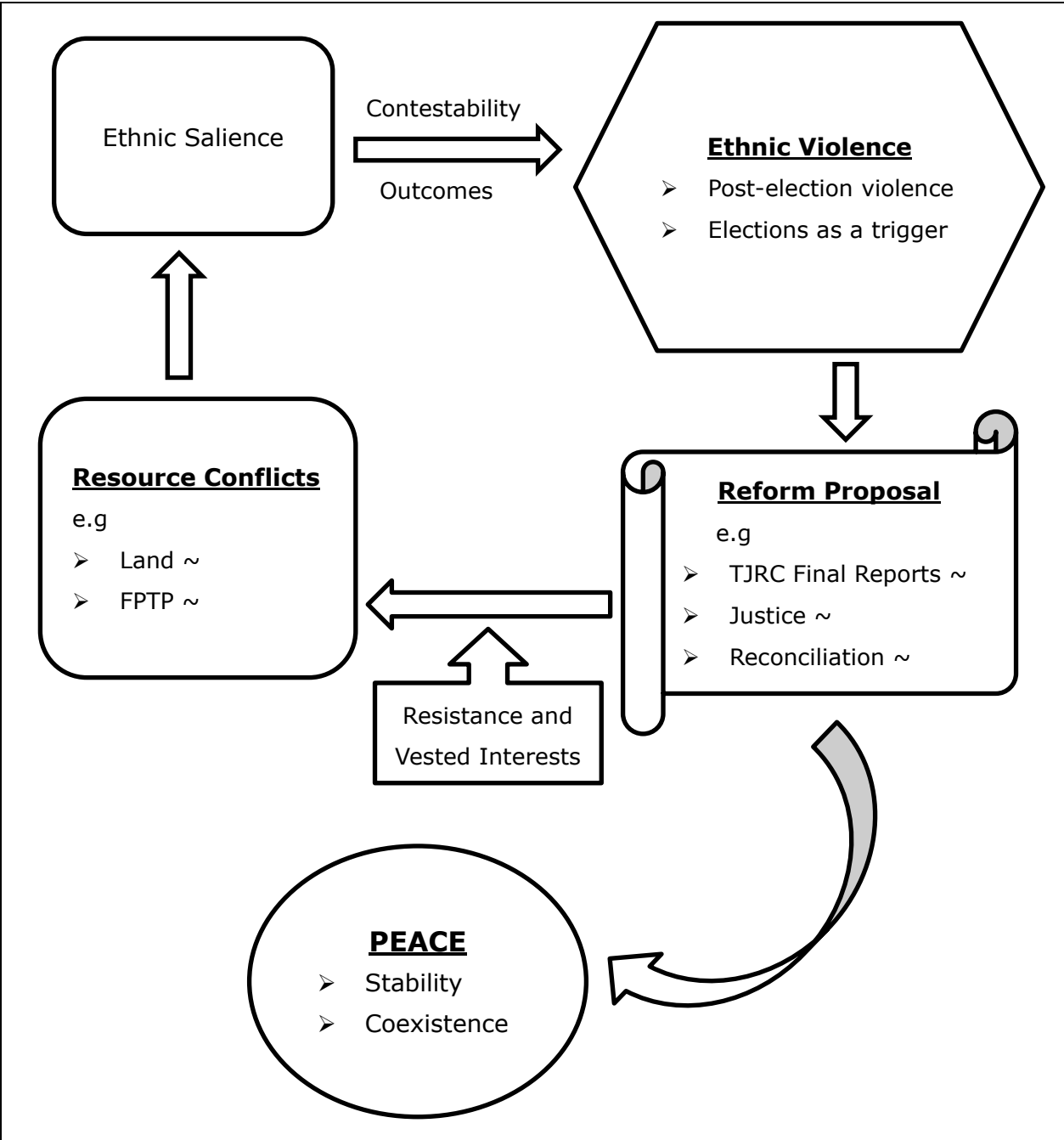
Ethnic salience peaks at election time and contributes to contestability outcomes in flawed elections. Elections are triggers of violence, especially in the presidential election, where the stakes are higher given its multi-ethnic nature of contest it takes. This zero-sum equation is the critical point (CP). Whoever wins by whatsoever mode or means locks out losers. Therefore, this denial, exclusion, and marginalization strokes, ethnic contempt resent, and dissent.

3.2 Critical Point

Proposal for electoral reforms come as solutions to improve contestability. They take the form of adopting the truth, justice and reconciliation commission final reports, justice from top courts, and healing for reconciliation. However, vested resistance and hidden vested interests hinder endeavors for resolving disputes and conflicts. Unequal distribution and allocation of resources create violence. The greedy “winner-takes-all” outcomes, denies inclusivity and hinders national cohesion. The conflict causality cycle (CCC) shown below in figure 3.1 starts again since this predicament remains intact.

The ultimate critical point (UCP) to deflate the cycle seeks permanent peace for sustainable stability and coexistence. A comprehensive broad-based power-sharing consociational electoral system is vital for collective harmony.

Figure 3.1: Resource Control Election System in Kenya as (Conflict Causality Cycle)



3.3 Hypotheses

There is a salient need to break the cycle by radical reforms. The now completed and shelved TJRC reports and their recommendations are indispensable in this process. This study adopts threefold logical hypotheses to navigate this transformation towards the tipping point. It could have the potential of empowering Kenyans to counter their explicit marginalization. It can also challenge the status quo and leadership that benefits from this exploitative hegemony.

Hypothesis 1 (H1):

State financial compensation for the landless can mitigate future post-election violence.

Equitable sharing of national resources reduces the irregularities and inequalities observed in land allocation conflicts. A guaranteed generic state compensation mechanism can resolve these conflicts and mitigate post-election violence. It can address inequality, which is necessary for peace and reconciliation. The government facilitated violence, which created internally displaced persons (IDPs). Hence, the same government must compensate these landless victims. It empowers them to assimilate and be absorbed in the broader economy to pursue their dreams as decent members of society.

Hypotheses 2 (H2):

Abolishing presidential election and its grave contest can stem post-election violence.

Eliminating the presidential election should be a solution to end the grave contest that can stem post-election violence. It can also mitigate corrosive elite inter-political agreements as elite bargains whose transaction costs help promote impunity and decay. Consociation democracy is necessary for peace and reconciliation. A proportional representation (PR) system can lower the risk associated with autocratic and majoritarian systems. Consociation is inclusive and accommodative of minority grievances. It can allow inter-group participation to spread geopolitical and socioeconomic benefits across the ethnic divide.

Hypotheses 3 (H3):

The Supreme Court should guarantee the implementation of TJRC outcomes within the stated time frame.

The Truth Commission Final Reports require consistent and comprehensive implementation mechanisms. When implemented under strengthened, independent institutions can positively trigger reforms for better governance practices. These processes can nurture and anchor sustainable national cohesion and integrity. Kenya lacks strong independent institutions and the capacity to sustain a reliable implementation mechanism. The Supreme Court must supervise the Parliament and ensure enough budgetary support is secured to roll out its enactment within the stated time frame regionally and nationally. The recommendations of TJRC should be constitutionally protected, adequately funded, and systematically implemented to ensure peace, reconciliation, and sustainable national cohesion.

3.4 Methodology

Methodology refers to a plan that describes how, when, where data is collected and analyzed (Parahoo 2014: 78). I used relevant statistics to explain ethnic inequalities and institutions in Kenya. The new Constitution of Kenya (2010) endeavors to streamline and accommodate issues raised on ethnicity, identity, and governance through reforms. Afro-barometer, JICA surveys, Truth Commission Reports, and other relevant sources were indispensable in supporting and anchoring these research outcomes.

I compiled and collected relevant secondary data from specified documents and corresponding databases. It was necessary to analyze them to understand ethnic inequalities and Kenya's institutions toward mitigating conflict and violence. This research also strived to generate first-hand raw data via fieldwork questionnaire interview narratives in Kenya. These sought and helped generate enough primary data to capture the correct and accurate picture of post-election violence triggers and causes. These included secondary data from national and international hard and soft publications, books, journals, the internet, and other multiple sources.

Moreover, my analysis of the rise and fall of the Truth, Justice and Reconciliation Commission (TJRC) also covers post-election violence and other related human rights

infringements. The state thrives in marginalizing and disempowering its citizens to alienate Kenyans. It does this to legitimize its rent-seeking and exploitive hegemony.

Kenya should create National Cohesive outcomes to embolden its Vision 2030. It is in line with the United Nations Sustainable Development Goals (SDGs Numbers 10 and 16): Reduced Inequalities and Peace, Justice, and Strong Institutions. Primary data relies on a randomly selected sample of about 120 interviewees aged over 18. These respondents' narratives appear in appendix 1 as fieldwork survey narratives from Kenya dated 31 July to 24 August 2018. These narratives correspondingly compare and challenge other parallel findings besides enriching this study as well.

Synopsis analyses of these interview survey fieldwork narratives are presented at the end of chapter 8. They appear in (BOX 1) as post-election violence, the impact of the TJRC on Kenya and, key outcomes. Other relevant narratives are blended and spread out throughout the thesis by respecting their authentic voices. Let's now focus on the theoretical frameworks to navigate the multiple narratives linking theory to practice.

3.5 Theoretical Frameworks

3.5.1 Consociation and Power-sharing

Consociation is one form of power-sharing democracy and the brainchild of the Dutch-American Arend Lijphart that gained fame in the late 1960s. Lijphart was referring to the political systems of Nordic countries, the Netherlands, and Belgium.¹⁹ John McGarry and Brendan O'Leary (2004) have revised it as liberal consociation. It is a liberal democratic consociation in a cross-community arrangement with an all-inclusive executive power-sharing government featuring inbuilt segmental plurality. Territorial self-governance is a significant aspect of a bottom-up structure.

Yusuf Bangura (2006: 18) posits that studies on ethnicity and institutional reforms have produced two competing frameworks for managing diversity. First, majoritarian reforms encourage vote pooling and moderation. Second, consociational or power-sharing

¹⁹ See Arend Lijphart. 1968. "Typologies of Democratic Systems", *Comparative Political Studies* 1(April): 3-44); Arend Lijphart.1968. *The Politics of Accommodation: Pluralism and Democracy in the Netherlands*. California: University of California Press; Arend Lijphart. 1977. *Democracy in Plural Societies*. New Haven, CT: Yale University Press.

arrangements accommodate ethnic divisions to support adversarial politics. This kind of reform seeks to promote plurality within the party systems by encouraging politicians to look for votes outside their traditional ethnic strongholds for ethnic or multiethnic coalitions implying that the government will be plural inclusive of all entities. The main electoral system advanced for the emergence of plural cross-ethnic parties is the alternative vote or 'preference vote' (Farrell 1997), which requires voters to rank candidates on the ballots using numbers 1, 2, 3, 4, and so on, preference in that order. If no candidate gets more than 50 percent of the votes on the first count, eliminating the last candidate and his/her second preference votes transferred to the remaining candidates. It goes on in case of less than 50 percent score until a winner emerges.

Preference voting empowers the voters allowing the electorate to credit candidates who advance non-core group/party issues. Candidates must adopt neutral positions as their ability to win depends on appealing to a wide range of concerns or issues, initially intended for homogeneous societies to elect candidates with the majority of the votes in a constituency.

David Horowitz (1985, 1990, 1991) has powerfully revived the alternative vote debates on ethnically plural societies' governance reforms. Horowitz comes out quite critical of the power-sharing system, which he believes gives too much power to elites or ethnic entrepreneurs, traps countries in primordial ethnic politics, and offers no incentives for politicians to invest in cross-ethnic alliances.

Consociation or power-sharing system accepts ethnic-based parties as given and seeks to promote plurality, not within the contending parties, but at the governmental level itself. The Caribbean Nobel Laureate Economist for 1979, Arthur Lewis, developed the first blocks for consociation theory. He was critical of the majoritarian and adversarial politics in multi-ethnic societies. He argued, 'to exclude the losing groups from participating in decision-making violates the primary meaning of democracy.' It is evident in his epic book *Politics in West Africa* (1965), coming out at the dawn of independence in Africa, condemned the one-party government system and the Westminster model of adversarial, zero-sum, or majority rule politics. Lewis, therefore, advocated for inclusive coalitions. Thus, teaming-up with parties that secured at least 20 percent of the votes, decentralization, federalism, and an electoral system of proportional representation as the single transferable vote promoting both proportional and sensitivity to others as a form of governance in West African societies (Lewis 1965; Premdas 1991). Moreover, a minimum of 1 percent for

coalition eligibility sounds inclusive and effective.

Nigerian political scientist Claude Ake in his *A Theory of Integration* (1967), further developed the idea of elite consensus. He favored consensual, power-sharing arrangements among the key elites of society but failed to advocate for democratic mechanisms to guide the creation of such a consensus.

Today's leading advocate of consociation is the Dutch political scientist Arend Lijphart (1977, 1985, 1990, and 1999). In Lijphart's scheme, a consociation has four key elements: a government of national unity, or a grand coalition, which should reflect all the key segments of society; proportional distribution of public sector jobs; a high degree of territorial autonomy – federalism or decentralization – for groups which opt for it; and a minority veto on the most critical issues. The flagship of this model is the electoral system of proportional representation (the list type). A country is divided into a single constituency or vast electoral districts that seek to ensure popular votes gained are proportional to the seats allocated in Parliament. The electorate votes for parties and not for individuals. The party draws up a list of ranked candidates corresponding to the number of seats filled. The seats are allocated proportional to each party's votes and are filled by candidates in descending order of preference.

Most electoral systems scholars would agree that there are more substantial incentives for small parties formed under proportionality than under plurality rules. The consociation model is inclusive rather than adversarial. It seeks to avoid winner-takes-all, majoritarian, or zero-sum arrangements in governance. It is the most popular policy instrument by international negotiators and peacemakers in contemporary war-torn societies (Bangura 2006). Lane and Errson (2000: 208-210) point out that Lijphart's subsequent writings in the 1990s adopted a much more assertive and undifferentiated argument line. Power-sharing is better than a majoritarian government, irrespective of the social structure. In practice, electoral reforms for moderation and plurality doesn't apply only to electoral systems.

Power-sharing can reduce violence by changing incentives and increasing contestability. Power-sharing mechanisms give multiple contending elites a stake in the decision-making process and can rebalance power in the governance arena (World Development Report 2017: 117-8).

Consociation theory can help review and redefine the debate on ethnic conflicts and violence in multicultural settings. It shows the tradeoff associated with elite bargains, transaction costs, and political settlements. It will also endeavor to broadly explain the challenges of power-sharing or grand coalitions for national cohesion and development. It is now vital to pursue a paradigm shift towards integrating and accepting African potentials. It should assist in solving conflicts and violence to sustain holistic and amicable consociation democracy.

3.5.2 Political Decay Approach

Political development is the evolution of the state, the rule of law, and democratic accountability as one of the broader paradigms of human socio-economic development. Changes in political institutions require understanding in the context of economic growth, social mobilization, and the power of ideas concerning justice and legitimacy (Fukuyama 2015: 462). In line with Samuel Huntington's definition, political institutions develop by becoming more complex, adaptable, autonomous, and coherent.²⁰ He further argues that they can also decay. Institutions are created to meet precise societal needs, like making war, dealing with economic conflicts, and regulating social behavior. However, as recurring patterns of behavior, institutions can also grow rigid and fail to adapt when circumstances of their origin change. Natural human sociability hangs on kin selection and reciprocal altruism—the preference for family and friends.

While current political order seeks to promote impersonal rule, elites in most societies tend to fall back on family and friends' networks, both as instruments for protecting their positions and as the beneficiaries of their efforts. When they succeed, elites "capture" the state, which reduces the latter's legitimacy and makes it less accountable to its entire population. Long periods of peace and prosperity often provide the conditions for spreading capture by elites, leading to a crisis, followed by an economic downturn or external political shocks. The conservatism of institutions often makes reform prohibitively tricky. This kind of political decay leads either to - slowly increasing corruption levels with correspondingly lower government effectiveness levels or violent populist reactions to perceived elite manipulation. Political decay is, therefore, in many ways, a condition of political development as the old disintegrates to make room for the new one. However, the transformation can be extremely chaotic and violent, with no guarantee that political

²⁰ Samuel, P. Huntington. 2006. *Political Order and Changing Societies*. With a new foreword by Francis Fukuyama. New Haven: Yale University Press. 12-24.

institutions continuously, peacefully, and adequately adapt to new conditions (Fukuyama 2015: 462).

Political Decay Approach also is supportive of what Wangari Maathai (2010) termed as “leaders getting trapped by power trappings and decaying in power” as the case with Mwai Kibaki’s troubled second term as President. It brought Kenya to its knees reeling from the post-election violence (PEV) from the flawed 2007/8 presidential election.

3.5.3 Horizontal Inequalities Approach (HIs)

Some countries can co-exist while managing stability and inclusivity as multiethnic societies. Most relatively peaceful countries like Kenya, known to be relatively ‘peaceful’ on the surface, have drifted into ethnic violence during elections. There are many triggers and causes of violence. However, they combine and escalate when negative ethnicity explodes as what happened in Kenya during the worst 2007/8 post-election violence (PEV). Kenya inherited and perfected a colonial legacy exploiting ethnic inequalities through systematic exclusion and deprivation. These triggers and causes integrate with other factors to create explosive reactions and counter-reactions from ethnic salience outcomes.

It is imperative to solve these negative peace tendencies to allow social cohesion to take root. Many scholars endeavor to explain the advent of ethnic conflict and violence in plural societies from different schools of thought using multi-disciplinary approaches. The theory of ‘*relative deprivation*’ stands out as one of the most salient narratives zeroing in on discussing and analyzing this advent of conflict and violence narratives. Ted Gurr is one of the scholars who comprehensively advanced this theory in his well-cited book: *Why Men Rebel* (Gurr 1970). The theory mainly posits that politically mobilized conflict and violence is an element of induced discontent. It is now modified as Horizontal Inequalities (HIs) by Stewart (2000 and 2002). Stewart avers that where there are social, economic, and political inequalities ‘coinciding with cultural differences, culture could become a powerful mobilizing agent that can lead to a range of political disturbances,’ including violent conflict and civil war (Stewart 2002: 3). Therefore, Stewart refers to the inequalities between culturally defined groups as *horizontal inequalities* (HIs) and differentiates this form of inequality from the ‘normal’ definition of inequality (Ibid). Stewart calls this latter type of inequality *vertical inequality* since it ‘lines individuals or households up vertically and measures inequality over the range of individuals’ (Ibid). It is imperative to highlight that the presence of severe horizontal inequalities does not necessarily produce extensive

violence *per se*. Still, it relatively makes multi-ethnic states more prone to the emergence of violent conflicts along ethnic lines.

The bottom line is that mutually beneficial inter-ethnic elite alliances are essential for explaining the *non-appearance* of ethnic group mobilization in countries with severe horizontal inequalities. Langer (2005) argues that the absence of horizontal political inequalities at the *elite* level significantly lessens the risk of violent group mobilization, even if there are stark socioeconomic horizontal inequalities at the mass level. Political elites and leaders lack the incentives to mobilize their constituents for violent conflict. Moreover, ethnic mobilization and violent conflicts seem more likely pronounced in political horizontal inequality and exclusion. The democratization process does not necessarily make countries more peaceful, as conventionally argued. However, it is an essential institutional change that frequently fosters political instability and violent group mobilization. The state and economic growth is another factor that can catalyze the processes whereby latent ethnic grievances become a source of violent group mobilization (Ibid).

Democracy is an evolving system. The zealous pursuit of the means and modes to improve the performance of democracy requires concerted efforts. Anchoring better governance outcomes should prevent the seeds of conflicts and violence from disrupting national cohesion.

3.6 Challenges and Prospects

Kenyan citizens from all ethnicities demand "justice" in various forms. However, the idea that justice needs to anchor and promote impartiality is insufficiently grounded. Political unrest is partly due to past injustices, the root of reconciliation assuming to be "righting the wrongs." The real problem is the lack of shared visions and values entailing forward-looking social justice strategies that promote public good and national unity instead of relying on sub-national loyalties. It divides the nation and weakens the state. There is no public trust in partisan and self-interested governments or inefficient state structures with often biased or unequal service delivery. While searching for the truth, there is also a need for a comprehensive master plan for a positive, impartial distributive justice and the rule of law that will treat all citizens equally.

The challenge is in making the populace believe that it is worthwhile to work together towards a shared national agenda rather than for narrow individualistic, personal, or

communal benefits. Emphasis must remove structural inequalities and positive peace, which requires both institutional reforms and new attitudes with a commitment to public ethics and a brave fight (zero-tolerance) against corruption. Achieving sustainable peace in building a robust and impartial nation requires a non-partisan government to serve and protect all its citizens from violence.

Peacebuilding or conflict aversion should embrace the base of the pyramid approach to empower them through ownership to reconstruct an impartial framework for social justice. It will foster a climate of interrelated understanding among ethnic, cultural, and religious divides from which violence has stemmed from the past redirect people's focus towards social justice and the shared public goods. Eventually, this should help improve and reduce the tendency to identify "the evil other," which has shaped various ethnicities and nations' consciousness, damaging peaceful coexistence in so many places.²¹

Opondo (2014: 62) critically interrogates the trajectory of politics in Kenya since its independence from the British Imperialists in 1963. He analyzes the ethnic praxis to find out its nature and impact on negative ethnicity. Underdevelopment, political marginalization, ethnic exclusion, flawed electoral process, and long-term historical land injustices merge and cause violence in Kenya. He suggests that the principle of upholding constitutionalism is paramount to prevent future political violence. The 2010 Constitution insists on devolved governance, truth, justice, gender, and ethnic parity in public sector appointments as a trustworthy electoral system to prevent future conflict and violence. *Is that enough?* Maybe or perhaps not.

National leaders must have high morals, ethical standards, and values as they work for the citizenry. High morals refined ethical standards and values should guide leaders in their leadership endeavors to their subjects. While at it, leaders should avoid nepotism, corruption, and negative ethnicity. Branch (2011) noted aptly that at independence in 1963, all Kenyans welcomed and celebrated self-governing from British colonial rule. Kenyans anticipated a bright future of prosperity and social justice. However, 57 years later, Kenyans dreams remain elusive because of a perverted citizenry marginalization by the state. The first five decades witnessed assassinations, riots, coup attempts, ethnic violence, moral and political decay, entrenched corruption, and impunity, to mention but a few aspects.

²¹ Sirkku Hellsten. 2009. Falling States and Ailing Leadership in African politics in the era of globalization: libertarian communitarianism and the Kenyan experience," *Journal of Global Ethics* (4)2: 147.

Change in Kenya is still possible with new leadership ethics.

“Ethnic marginalization over a long period may cause citizens to feel they don’t matter” (ZA26, 6 August 2018: Fieldwork Narratives, Nairobi).

Okoth (2008) has argued categorically that the concept of ethnicity is useful in social change globally in developing political cultures because of therein, petty divisions. There is a shift in Anglophone scholarship from using the term ‘tribe’ to ‘ethnic group’ transients the narrow Eurocentric bias. Anthropologists are guilty of using it. Hence, ‘tribe’ introduces impartially, a comparative qualitative distinction between ‘us’ and ‘them’ based on traditional and modern societies.

The dire poor governance, lack of strong institutions, and failure to respect those institutions nurtured an autocratic state in Kenya that suppressed popular citizen participation. It politicized ethnic violence in 1992, 1997, and 2007. It weakened political party politics, de-articulated ideology, and employed excessive coercion to enforce political obedience. It also bolstered personal rule with limited institutionalization of governance.²²

Negative ethnicity received a renewed impetus in Kenya after independence. Kenyatta’s regime perfected this scheme with power consolidation in 1964 via constitutional amendments. It embarked on *Kenyanisation* (localizing the workforce) of the economy but was mainly *Kikuyunisation* (bias for only the Kikuyu). Colleagues were systematically sidelined or coopted and assassinated. It was, aimed at manipulating the electoral process in favor of the incumbent. His Kalenjin successor simply copied it and substituted the Kikuyu status quo with the *Kalenjin* as the new ethnicity in the city.²³

Opondo (2014: 66) concludes that ethnicity is a perceived collective identity linked to language, origin, culture, and socio-political orientation. Pioneer African leaders in Kenya consolidated their power bases after independence with ethnic sourced support. It created exclusivist policies against the segregated citizenry. The 2007/8 violence resulted from historical injustices, land allocations by the Kenyatta regime, flawed election, lack of an institutional mechanism for conflict resolution, general poverty, and underdevelopment.

²² Odhiambo-Mbai. 2003. The rise and fall of autocratic state in Kenya: W. O. Oyugi, P. Wanyande and C.O. Mbai , eds., The politics of transition in Kenya: From KANU to NARC: 51-9.

²³ P. A. Opondo. 2014. “Ethnic politics and Post-election Violence of 2007/8,” *African Journal of History and Culture* 6 (4): 62.

Kenya has witnessed ethnic and political conflicts in 1992, 1997/8, 2007 that came after its return to multiparty politics, abused by political elites as a vehicle of worsening ethnic competition for power and resources.

These are some of the causes of post-election violence in Kenya from fieldwork narratives. "Low levels of education imply that the electorate does not understand that life should go on after the election. The incitement by political leaders ignites violence. Poverty makes some people have nothing to lose mentality, which during the chaos that follows, they seem to benefit from the chaos. Tribalism creates a sense of not belonging and stereotyping and isolating others. The struggle to own land seems like the sole opportunity for a successful life. The lack of economic opportunities, the rigging of elections, historical injustices long time being swept under the carpet merge and turn ugly. Nepotism by the elite thus creating an unequal distribution of national resources, failure of the government to stick to the rule of law, and corruption since resources that would help the poor in society are, hogged by the perceived winning class" (MQ117, 24 August 2018: Fieldwork Narratives, Nairobi).

Solutions to the above causes of post-election violence in Kenya can include most of the following observations from the field.

"There should be a provision of an education that promotes national cohesion and patriotism. Strict adherence to the rule of law, including the incarceration of leaders, who incite other citizens, can be helpful. Creating economic opportunities to uplift and engage all sections of society, leaving no one behind. Accelerating industrial development as opposed to reliance on land as a source of sustenance can create more wealth. Eliminating all forms of electoral fraud can deliver fair elections. Addressing all pending decades-old historical injustices is indispensable. All parties must adhere to the rule of law. Weaken the powers of the president and vest those powers in parliament or have a six-man presidency, which is rotational every two years. Rotating the presidency can ensure that no community feels left out of top leadership. Arrest corruption and promote nationalism" (MQ117, 24 August 2018: Fieldwork Narratives, Nairobi).

This chapter has clarified the conflict causality cycle identifying the tipping point for sustainable peace, exploring three hypotheses, and pursuing relevant theoretical frameworks. Chapter 4 will now shift the focus and discuss the origins of the conflict, ethnic inequalities, and the governance trajectory in interrogating politics of violence and security.

Chapter 4 Origins of the Conflict, Ethnic Inequalities, and Governance Trajectory in Kenya

4.1 Overview of Politics of Conflict, Violence, and Security

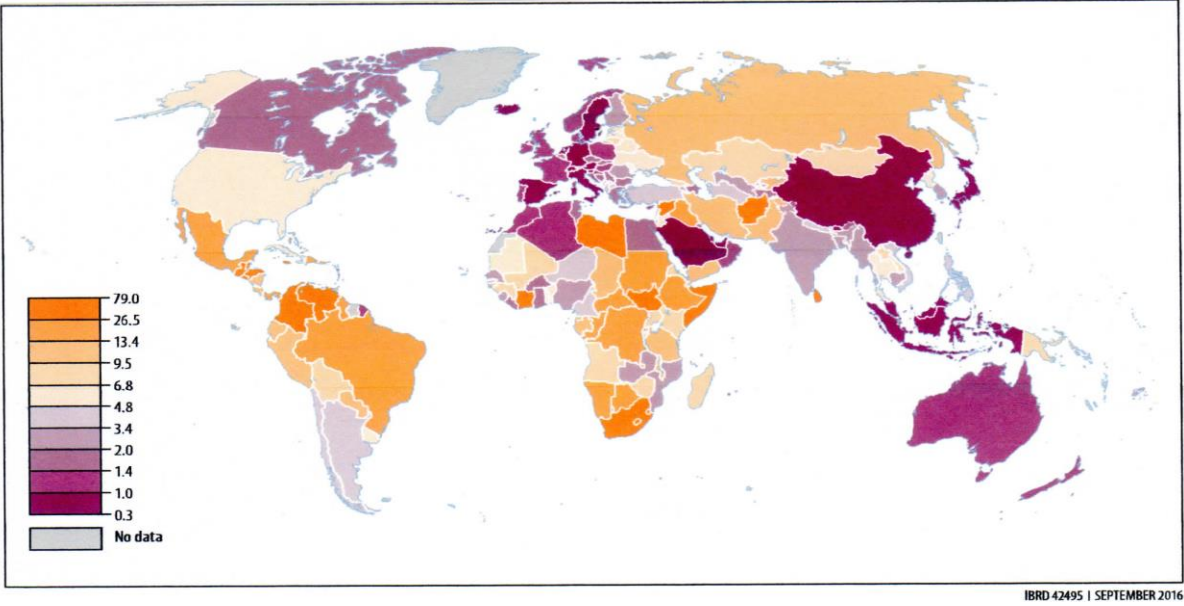
We learned in chapter 3 that the conflict causality cycle is breakable for peaceful outcomes. This chapter builds on those endeavors by identifying pathways out of violence by looking at the genesis of violence, inequalities, and governance trajectory in Kenya.

The World Development Report (2017) assumes that all countries share a set of development objectives: minimizing the threat of violence (security), promoting prosperity (growth), and ensuring that prosperity is shared (equity) while also protecting the sustainability of the development process for future generations. However, policies do not always translate into these development outcomes in conventional ways. The first condition that societies want to establish in the pursuit of development is security. People are safe from violence and the threat of violence. It is also a fundamental dimension of well-being and a first-order characteristic of development (UNDP 1994; Sen 1999).

In 2014, more than 1.4 billion people lived in countries affected by violence (OECD 2015: 31). Violence is a major problem in 37 countries (Map 4.1). The list includes fragile low-income states such as Afghanistan, Somalia, and South Sudan and rising economic giants such as Brazil, Mexico, and South Africa. More than 740,000 people die each year from armed violence. Remarkably, the majority of these deaths-about 490,000 -occur in countries not affected by ongoing wars (Geneva Declaration Secretariat 2015). Homicides claimed an average of 377,000 lives between 2007 and 2012. 2 Civil wars, rebellions, and other forms of political violence caused 101,400 fatalities in 2014 alone (UCDP/PRIIO 2015). The violence displaced about 57.7 million persons worldwide at the end of 2014 (UNHCR 2015). These figures regrettably illustrate that policies to achieve security are too often ineffective; indeed, specific policies and their poor implementation can cause or exacerbate the societal problems contributing to violence.

Map 4.1 Violence is a Problem in 37 Countries

Violent deaths per 100,000 residents per year (2008-2012)



Sources: WDR 2017 Team: based on World Bank 2011, Pennsylvania State University, Correlates of War Project (COW) 2015, and Geneva Declaration Secretariat 2015.

Note: Violent deaths comprise organized violence and homicide deaths.

Security, however, is not enough to achieve growth. In their quest for prosperity, countries require sustained improvements in efficiency and investment to spur economic growth. For sustainable development, governance needs to be responsive to all groups in society regardless of their circumstances. Power is certainly, distributed unequally in every society; hence promoting *governance for the bottom half* means promoting a process that equitably distributes development dividends.²⁴

The World Development Report (2017: 5) also identifies *commitment, coordination, and cooperation* as the three core functions of institutions needed to ensure that rules and resources yield the desired development outcomes. Policy effectiveness explains how well institutions perform these functions. *Commitment* supports consistent policies overtime to ensure delivery of promises. *Coordination* shapes the expectations to enable complementary action. *Cooperation* limits opportunistic behavior to prevent freeriding. Coordination and cooperation imply voluntary compliance. Thus, the preferred social action includes willing individuals. Under the guise of national security provisions, the state can

²⁴ Ibid.

impede these harmonies and create disunity that invites violence.

Security, governance, and power are tightly interlinked. *Security* of people is also a basic need defined as the freedom from violence and the threat of violence (coercion). Therefore, violence is the use of physical force intended to kill or harm or destroy.²⁵ Rather than representing discrete, opposed situations, security, and violence are on a continuum. Hence, the World Development Report (WDR 2017) measures security as a reduction in the incidence of violence. The threat of violence, however, is more difficult to quantify. Compounding the measurement challenge is the overlapping and coexistence of violence and security.

4.1.1 Violence and Fragility

Violence is one of the many factors that can contribute to fragility. However, it is not the only factor, and the presence of violence does not automatically mean that a context is fragile. *States of Fragility 2016* spotlights violence in all its forms to explore how violence can contribute to fragility and examine its solutions.²⁶ “Fragility, conflict, and violence are often interrelated and mutually reinforcing” (WBG 2019: 6).

Debates over typologies and classifications of violence reveal the challenge in addressing its scope WHO (2002) and Geneva Declaration Secretariat (2015). Violence manifests itself in multiple forms, modalities, and patterns, making it difficult to define. The World Health Organization’s generous definition of violence captures this range of characteristics. The intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either result in or has a high likelihood of resulting in injury, death, psychological harm, or deprivation. It takes the forms of self-directed violence, interpersonal violence, and collective violence. Political violence describes the use of force towards a political end perpetrated to advance a person or group's position defined by their political position in society.

Governments, state militaries, rebels, terrorist organizations, and militias engage in political violence, as well as actors who may adopt both political and criminal motives. Social violence refers to a broader manifestation of grievances, criminal behaviors, and

²⁵ World Development Report. 2017. “Governance and the Law,” 123.

²⁶ Organisation for Economic Co-operation and Development (OECD). 2016. *States of Fragility: Understanding Violence*. Paris: OECD Publishing. 21.

interpersonal violence in society. These include multiple types of crime, homicides, and interpersonal and self-directed violence. The Geneva Declaration Secretariat (2015) - in its Global Burden of Armed Violence series of reports, uses a “unified approach” to lethal violence. It covers conflict, criminal and interpersonal forms of violence, which permits the inclusion of global data on homicide, conflict, and other forms of violence from a large variety of sources, thus a picture of lethal violence in both conflict and non-conflict settings.

States of Fragility by the Organisation of Economic Cooperation and Development (OECD 2016: 22) describes fragility as the combination of exposure to risk and insufficient coping capacity of the state, system, and or communities to absorb or mitigate those risks. Fragility can lead to adverse outcomes, including violence, institutions' breakdown, displacement, humanitarian crises, or other emergencies.

The OECD's fragility framework provides a comprehensive picture of fragility around the world. The calculations reflect a systems-based conceptualization of fragility. Risks and capacities are measured in five dimensions: economic, environmental, political, security, and societal. Besides, capacities measured at the state level and incorporating the various formal and informal mechanisms societies can draw upon to cope with negative events and shocks. The choice of these dimensions and the decision to take a whole society approach to fragility are based on expert judgment. It is one of the important outcomes of the consultation process underlying the new OECD fragility framework.

OECD defines fragility as the combination of exposure to risk and insufficient coping capacity of the state, system, and or communities to manage, absorb, or mitigate those risks. Fragility leads to negative outcomes like violence, institutions' breakdown, displacement, humanitarian crises, and other emergencies. The new OECD fragility framework represents a major shift in the origin of fragility. It classifies fragility as a mix of risk and capacities over five different dimensions, as shown in (Table 4.1). Each of these dimensions measured by calculating the accumulation and combination of risks combined with the capacity of the state, system, and or communities required to manage, absorb or mitigate the consequences of those risks (OECD 2016: 22-23).

On the resulting OECD fragility framework diagram (Figure 4.1) below, contexts are identified as fragile (in light blue) or extremely fragile (in dark blue), based on a synthesis of results in the five dimensions of fragility (economic, environmental, political, security and societal). Countries' ordering provides an indication-rather than a precise measure of

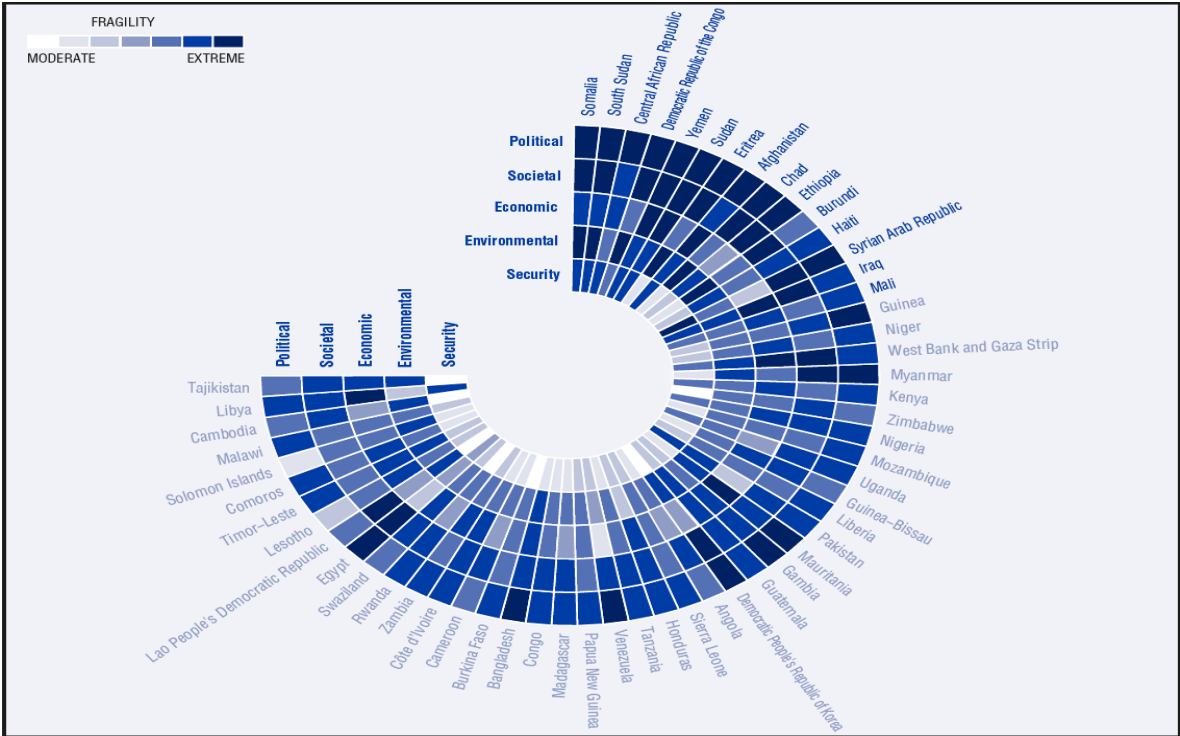
overall fragility (OECD 2016: 23).

Table 4.1 Five Dimensions of Fragility

Dimensions	Description
Economic	Vulnerability to risks stemming from weaknesses in economic foundations and human capital plus macroeconomic shocks, unequal growth, and high youth unemployment.
Environmental	Vulnerability to environmental, climatic, and health risks that affect citizens' lives and livelihoods. These include exposure to natural disasters, pollution, and disease epidemics.
Political Security	Vulnerability to risks inherent in political processes, events, or decisions; lack of political inclusiveness (including elites); transparency, corruption, and society's ability to accommodate change and avoid oppression.
Security	Vulnerability of overall security to violence, and crime, including both political and social violence.
Social	Vulnerability to risks affecting societal cohesion stems from both vertical and horizontal inequalities, including inequality among culturally defined or constructed groups and social cleavages.

Source: OECD *States of Fragility 2016*

Figure 4.1 The 2016 OECD Fragility Framework Diagram



Source: Statlink: <http://dx.doi.org/10.1787/888933441642>

Fragility is a major issue on the global agenda. As seen in the Stockholm Declaration (IDPS 2016), the international community is united as most recently, which endeavors to address it more effectively. Therefore, addressing violence as in all its complexity is a major part of delivering a better future for those left furthest behind. However, violence reduction is too rarely the primary aim of development cooperation instead of an advantageous by-product of other development programming. Perhaps most significantly, development packages often treat the symptoms of violence rather than root causes. Breaking these entrenched patterns requires a deeper understanding of the complexity of violence, a willingness to embrace measured risk, and the courage to try new approaches.

Violence is multidimensional, complex, and evolving. Even in post-conflict contexts, violence can simply change its form as settings, actors, and drivers change, challenging the international community’s best intervention efforts. Even towards democracy, political transitions can provoke violence, with competition over “who sits at the table” and “who gets what.” Armed agents who engage in political violence during wars or periods of domestic instability are highly likely to be involved in organized crime in peaceful periods, including racketeering, mercenary activity, and illicit trafficking. Violence increasingly

affects domestic political instability. Weak institutions or those with entrenched patronage systems can create vacuums in which elites can siphon off public resources with impunity while also perpetuating economic exclusion. Criminal networks and armed groups can also fill these vacuums. Members of excluded groups are more likely to engage in armed violence, particularly if they have recently lost power access. Conversely, rivalry for inclusion can also be a problem: the distribution of positions, authority, and resources among included elites can also drive domestic political instability.²⁷

Violence is a behavior reinforced by social norms that act as a contagion. Using the same approach that the World Health Organization (WHO) uses to stop epidemics - interrupt transmission, change behavior, change norms - policymakers can break the recurrent cycle of violence and stop its "transmission."²⁸

The state's monopoly over violence is a precondition for security. In traditional societies, when security was still in the hands of private individuals and groups, the credible threat of violence through retaliation served as a deterrent against violence, and it was the main determinant of order and security. The threat of revenge mostly helped reduce violence, but security was fragile, and the specter of violence always loomed (Bates 2001; North, Wallis, and Weingast 2009). Similar security arrangements based on deterrence persist widely in the developing world (Jacoby and Mansuri 2010).

Modern societies show a concentration of security arrangements in the hands of the state, which has a monopoly over the means of violence and coercion (Weber 1965; Mann 1984). At the core of the state's monopoly over violence is a collective agreement outcome among powerful actors - an elite bargain over the actual acceptability of when and who can use violence (Wallis 2016). In his 1965 essay *Politics as a Vocation*, Max Weber initially theorized that the monopoly over violence was a single agreement among powerful groups over the use of violence. John Wallis points out that using violence and coercion under this state's settlement typically enforces the agreement.

The monopoly over violence is an ideal that few states always attain in all places as the product of complex historical processes that unfold over decades, if not centuries. The elite bargains creating this monopoly are contested continuously, renegotiated, and reasserted

²⁷ Ibid., 15.

²⁸ WHO. 2002. *World Report on Violence and Health*, World Health Organization, Geneva. www.who.int/violence_injury_prevention/violence/world_report/en.

daily and everywhere. The capacity to enforce these bargains and deter groups tempted to defect or renege on them is uneven and discontinuous over time and space.

4.1.2 Violence and Governance

Violence affects governance by changing power and norms. Violence and security change the distribution of power among groups and consequently affect governance. That is how these groups interact within a set of rules, which themselves a function of the groups' relative power. Hence, as Tilly (1978: 62) notes, "Great shifts in the arrangement of power have ordinarily, produced-and have often depended on exceptional moments of collective violence."

The use of force by one group can strengthen or weaken-even annihilate-the power of other groups almost by definition. Assassinations, mass killings, coups, and revolutions do just that. New actors emerge and gain power from rebellions and wars. Historical and contemporary examples abound. Indirectly, individuals and groups can use violence and coercion to concentrate the proceeds of growth and development in their hands and increase their relative power by strengthening their patronage networks or gaining informational advantages (Levitsky and Way 2012). Moreover, violence also affects behavior norms and can shape new values and attitudes on violence itself, as both positive and negative. Violence also changes identities and beliefs, including migrations and household composition (Justino, Leavy, and Valli 2009).

The effects of violence on norms and attitudes can also be detrimental. The increased cooperation brought about by exposure to violence is mostly observable within groups rather than between groups. It leads to forms of parochialism or identity-based insularity (Bowles and Gintis 2011). In theory, this effect could generate more violence by reinforcing within-group cohesion based on distrust of others. Indeed, *violence* has the observed effect of hardening attitudes toward others while constructing more fixed identities (Grossman, Manekin, and Miodownik 2015).

These new norms and identities increase the support for elites who favor the continuation of violence to strengthen or extend their hold on power (Fearon and Laitin 2000; Fearon 2006). The power and resources that accrue to political elites who benefit from *violence* fuels more *violence* (Besley and Persson 2011). Therefore, violence affects norms, which in turn also affect violence. Violence and power are also correlated. These two-way

relationships highlight the broader point that violence can be persistent and self-sustaining. It tends to occur in interlinked episodes, with its intensity subsiding between cycles (World Bank 2011). Within-country and cross-country analysis of violent historical conflicts in Africa between 1400 and 1700 reveal that it is associated with more postcolonial violent conflict and lower levels of trust and a stronger sense of ethnic identity (Besley and Reynal-Querol 2014).

Governance can prevent conflicts from becoming violent. Social choices, political change, and development by itself are all inherently contentious and conflictual processes. The status quo benefits some society members; any change is likely to benefit others, and conflict ensues (Acemoglu and Robinson 2006). The World Bank Report (2017) defines *conflict* as an active disagreement or dispute that arises when two or more individuals or groups believe their policy choices, interests, preferences, or concerns are incompatible. Accordingly, conflict per se is not necessarily negative, and it can even be a constructive force for social change (Keen 1998). It is, in fact, an integral element of human interactions that always exist in all societies. Poverty, inequality, and other manifestations of the development process' unevenness generate tensions and distributive conflicts (Hirschman 1958; Knight 1992; Bardhan 2005). In addition to uneven development, three other broad sets of factors can also cause conflicts: identity and ideology, resources - land, water, extractives, and economic and other shocks. These factors tend to combine most of the time.

Modern governance is the product of past violence. Until the modern era, human societies' earliest records show that violence has been the norm (Pinker 2011). It was not until the state constrained the violence that development began to occur on a large scale (North, Wallis, and Weingast 2009). Even the countries that enjoy the highest per capita incomes and most peaceful societies worldwide, such as most of Europe, emerged from wars and violent contests for power (Tilly 1985, 1990). They were "fragile states" for most of their historical trajectory. How these countries made this transition from violence and underdevelopment to security and prosperity reveals exciting patterns. Commercial expansion in medieval Europe made *violence specialists* who were individuals or groups that procured resources for themselves primarily through violence and coercion to trade the provision of security for financial resources to finance their wars (Braudel 1966). They allowed the economic activity to flourish under their protection, founded states, and ceded some power and rights to business and other elites (Duby 1991; Bates 2001). Later, these rights gradually expanded and eventually conceded to the majority of the population

(Acemoglu and Robinson 2006). Therefore, constraints on unbridled power and other outcomes of these bargains between elites become laws. However, this failed to eradicate violence as more revenues to finance, increasing external wars increased. Emerging states channeled funds toward providing law and order, combating crime, and protecting property rights (Bates, Greif, and Singh 2002). Consequently, modern governance was born. Some scholars on contemporary states in Eastern Africa and Southeast Asia as well support this narrative.²⁹

Today, millions of people live under the rule of non-state armed groups, equivalents of the medieval violence specialists who gave rise to the western European states (Gambetta 1966; Weinstein 2007; Mampilly 2011; Ahmad 2015; Arjona, Kashir, and Mampilly 2015; Sanchez de la Sierra 2015).

The “rules of the game that result from the interaction between civilians and armed factions” created new, enduring realities on the ground, with profound implications for processes of state and nation-building in the aftermath of violence in *wartime institutions* (Justino 2016). The relative security of places such as Somaliland provides a compelling illustration of the sustainability of the governance arrangements that arise organically and without donor intervention from the bargains struck among armed rebels, business communities, and civilians (Bradbury 2008). These arrangements exemplify the significance of these ‘home-grown’ rules for the future governance of postwar countries and the puzzles they pose to the international development community (Weinstein 2004).

4.1.3 Conflict and Violence

Conflict and violence may be related but are not the same thing (World Development Report 2017). Conflicts, no matter what causes them, need not erupt into organized violence. Examples are numerous. At the micro-level, peaceful protests, strikes and lockouts, boycotts, and mass resignations are all examples of nonviolent manifestations of conflicts over any of these sets of drivers. At the country level, Australia, Botswana, and Norway all have oil or mineral wealth, and yet none has experienced significant violent conflict in generations. Singapore and Switzerland are ethnically, religiously, and linguistically diverse, but they enjoy some of the lowest violence levels anywhere. Belgium recently experienced

²⁹ See Weinstein, Jeremy M. 2005. “Resources and the Information Problem in Rebel Recruitment.” *Journal of Conflict Resolution* 49(4): 598–624 and Slater, Dan. 2010. *Ordering Power: Contentious Politics and Authoritarian Leviathans in Southeast Asia*. Cambridge, U.K.: Cambridge University Press.

an acute crisis between parties representing its two main ethnolinguistic groups, including 541 days without a central government, but no violence erupted. Why is this possible? It is because these countries have active institutions of governance. They make all the difference in whether and when conflict turns violent. Hence, institutions of governance can address conflicting interests and preferences without recourse to violence.³⁰

Researchers use various criteria to define conflict, including the nature of the conflict, the type of actors, number of deaths, and the parties' level of governance. The OECD *States of Fragility 2016 Report* on the understanding of violence endeavors to provide consistent data; however, results cited will depend on the different definitions of conflict used by the different researchers. International humanitarian law differentiates international armed conflicts between states using armed force from non-international armed conflict where hostilities reach "a minimum level of intensity" and parties show "a minimum" of organization.

The Uppsala University Conflict Data Program (UCDP) defines armed conflict as meeting a threshold of 25 battle deaths per calendar year; it can be state-based involving at least one state party, or non-state based. A variant is what the UCDP calls "one-sided violence," where a formal group deliberately kills at least 25 civilians in a year. The Armed Conflict Location and Event Data (ACLED) project use subnational data to analyze "political violence" or "civil conflict." It encompasses "diverse but recurrent forms of violence between individuals and groups," including "organized violent crime, gang warfare, terrorism, religious and sectarian rebellions, and spontaneous riots or violent protest over state failures such as poor or absent service delivery."

The Sustainable Development Goals (SDGs) recognize that violence and fragility are significant obstacles to development. Hence, the SDGs address fragility in several interlocking ways. Goal 16 on peace, justice, and strong institutions most specifically addresses many direct and indirect fragility manifestations, especially the security and political dimensions. However, each of the 17 goals either directly or indirectly addresses many risk factors and coping capacities of fragility (UNGA 2015).

Violent conflict is the result of governance failure. There are converging indications that organized violence to resolve a conflict is the outcome of a rational decision. When leaders

³⁰ Engerman and Sokoloff. 2002; Boix. 2003; Acemoglu and Robinson. 2006; North, Wallis, and Weingast. 2009.

go to war when they believe the expected benefits of war outweigh its expected costs (Tilly 1978; Fearon 1995). Young men join gangs and rebellions when this option is superior to the next best opportunity foregone (World Bank 2011). Institutions and norms shape behavior-including violent behavior. They create incentives for individuals and groups to use violence, or refrain from using it, from resolving conflicts by determining the expected gains from each option. These incentives differ in various institutional settings. For example, the existence of a credible threat of sanctions will discourage individuals from using violence. The absence of this deterrent will likely decrease the cost of the violent option. Violent conflict, then, is the outcome of governance institutions' failure to resolve a conflict, regardless of what factors or combinations of factors cause it. Three types of such governance failures can lead to violent conflicts: bargaining failures between individuals and groups, the unconstrained power of the state, and the exclusion of influential individuals and groups from the bargaining arena of making and implementing policies (Ibid).

These government failures are all well dramatized in the Kenyan reality as it relates to triggers of violence. These factors more often converge during electioneering processes and therefore explode in full-scale violence with ethnic salience. Marginalization fuels impunity.

Qualitative comparative and case study analyses of violent conflict in postcolonial Africa share the same finding that exclusionary elite bargains have led to civil war trajectories. In contrast, countries in which elites have initiated more inclusive bargains have succeeded in avoiding violent conflict. Elite coalitions depend on its groups' accessibility to state structures and resources. It determines their degree of inclusiveness or exclusiveness (Lindemann 2008, 2010).

Power-sharing reduces violence by changing incentives and increasing contestability. Power-sharing mechanisms give multiple contending elites a stake in the decision-making process and can rebalance power in the governance arena. Some form of power-sharing aimed at co-opting elites and constraining majority rule tries to end violence in nearly all conflicts within states over the last few decades. Power-sharing arrangements are quite relevant for societies divided along ethnic and religious identity lines such as in Bosnia and Herzegovina, Kenya, Lebanon, Northern Ireland, South Africa, including countries where the conflict is a legacy of opposing ideologies (World Development Report 2017: 118). Cross-country statistical analyses robustly associate power-sharing institutions with better

security outcomes (Gurr 1993; Linder and Bächtiger 2005). Executive power-sharing in broad multiparty coalitions, an executive-legislative balance of power, multiparty systems. And proportional representation electoral systems are all significantly correlated with less incidence and risk of internal conflict, and less vulnerability to domestic terrorism, after controlling for economic and population characteristics. Statistical and empirical evidence in favor of decentralized and federal governance institutions is not strong (Lijphart 2012).

Power-sharing also reduces violence by giving conflicting parties incentives to cooperate. Mechanisms of power-sharing manage conflict by encouraging cooperative behavior among rival factions. They give leadership elites incentives to collaborate, bargain and encourage conciliation and tolerance among their followers. They also help mitigate the effects of the exclusion of minorities by majorities, reducing the likelihood of the onset of identity-driven violent conflict. Where violence has already occurred, they give rebel factions incentives to lay down arms by offering them alternative avenues for contesting power in nonviolent ways, such as in Bosnia and Herzegovina, Liberia, and South Africa (Lijphart 2004; Norris 2008; Gates and Strøm 2013). It is also imperative to mention that constraining state power can also ensure security.

Hence, eliminating the presidential ballot should contain associated post-election brutality and violence. Therefore, abolishing the presidential election and its grave contest can be a solution to stem post-election violence in Kenya.

Cooperation is more likely when parties in a conflict can credibly commit to deals. Fighting parties are significantly more likely to cooperate and sign peace agreements to end wars if the deals contain specific assurances to share power (Walter 2002; Hartzell and Hoddie 2003). Power-sharing arrangements in peace agreements that cut fighting promoting motives and negativity with renewed violent conflict (Walter 2015). Given the lack of trust among warring factions, mechanisms that ensure the credible commitment of elites, both to one another and their followers, play a significant role in ensuring that, once reached, power-sharing arrangements can stop violence (Keefer 2012). Independent third-party mechanisms are the primary mechanisms for ensuring the credibility of commitments in general (Schelling 1960; Bates 2008b).

Power-sharing arrangements promote order, and security can fail under some conditions. Significant power asymmetries between contending factions make it easy for the stronger side to renege on its promises and hard for the weaker side to hold it to account for failing

to commit (Walter 2009). Power asymmetries rooted in governments' monopoly over-taxation of resources explain the likelihood of violent repression (Besley and Persson 2009). They also explain why some wars last longer than others (Fearon 2004). Conversely, power-sharing institutions can reduce violence when they constrain the power of ruling elites. Therefore, the more accountable a government is to a more significant percentage of the population, the easier it becomes to commit to sharing power credibly. The fewer incentives the sides will have to return to violence (Walter 2015; Gates and others 2016).

Redistribution of resources and wealth can reduce violence by changing incentives. Equitable resource allocations and sharing power affect security in similar ways. Indeed, they often go hand in hand: accessing power and decision-making centers opens the door to controlling resources and extracting rents. However, elites can also redistribute wealth without sharing power through a fiscal policy that transfers resources to groups that threaten to use violence to pursue their interests (Buono de Mesquita and others 2002; Acemoglu, Robinson, and Verdier 2004).

Budgets are tools to settle scores for distributive conflicts, and they reflect the bargains made among elites and between elites and citizens (Dorotinsky and Pradhan 2007). Redistributive mechanisms address conflicts driven by poverty and inequality, usually in combination with the three other drivers. They can address conflicts rooted in grievances about the lack of access or unequal access to land and natural resources, inequalities along identity fault lines (horizontal inequality), and economic or environmental shocks. Redistribution can also address conflicts stemming from the greed of groups coveting the state's natural and material resources and the rent extraction opportunities that access to these resources generates. *The World Development Report* (2017) finds that the traditional distinction in the literature between conflicts motivated by greed and conflicts motivated by grievance cuts across drivers and actors of the conflict. It does not find this distinction useful in concept or practice.³¹

Restitution and compensation can also reduce incentives to engage in violence. Governance institutions that recognize and redress grievances present a special case of redistribution. They reduce incentives to engage the state via violence by seeking to right past wrongs, which may help avoid repeated conflict (Walter 2015). These institutions include truth and reconciliation commissions such as in South Africa after apartheid; victim compensation

³¹ World Development Report. 2017. "Governance and Security," 122.

schemes such as in El Salvador; and an array of material and nonmaterial measures, including symbolic ones, intended to restore people's dignity. The latter should not be underestimated. Indeed, the desire to restore a sense of dignity and self-worth as citizens and human beings appears to have been an essential element of the set of factors that triggered the Arab Spring (Brownlee, Masoud, and Reynolds 2013).

Dispute settlement can assist reduce violence by changing preferences. Dispute resolution institutions are critical to security and development. They help reduce violence and protect property rights. Mechanisms of dispute resolution include mediation, conciliation, and negotiation, where parties try to reach mutually satisfactory, self-enforcing agreements on their own. These mechanisms also include litigation and arbitration. Disputants rely on a third party such as a judge or a jury for resolution and the credible commitment needed to enforce the resolution. These institutions can be informal, such as elder councils in a village, or formal, such as courts, ombudsmen, and peace negotiators. Institutions of dispute resolution seek to resolve conflicts over material resources, whether scarce or abundant, such as land, water, extractives, and movable assets. They also aim to resolve conflicts over violations of norms of socially acceptable behavior-usually codified into laws, including the use of violence and other types of offenses.³²

The uneven distribution of power among parties to a dispute stands in the way of reaching and enforcing mutually satisfactory bargains. There are strong narratives that powerful disputants have few incentives to make concessions to relinquish power and resources. They have many incentives to renege on agreements over time (Wagner 2000; Fearon 2004; Powell 2004, 2006; Walter 2015).

Solving disputes and enforcing contracts through the threat or use of force becomes the more rational strategy for a powerful actor because its benefits outweigh its costs, such as the risk of sanctions (Schelling 1960; Walter 2015). The existence of norms that exclude certain groups such as women and minorities from the bargaining arena reinforces power asymmetries and perpetuates inequitable and insecure outcomes (Platteau 2000).

State financial compensation in Kenya for the landless can mitigate future post-election violence. Financial compensation and land reforms can redistribute wealth, reduce inequalities, and deter future conflicts and violence. It should also promote the

³² Ibid.

empowerment of the populace challenging state oppression and impoverishment to improve leadership ethics.

Violence is multidimensional, complex, and evolving. Even in post-conflict contexts, violence can simply change its form as settings, actors, and drivers change. Its versatility in the face of shifting risk landscapes, and ranges of non-state actors, challenges the international community's best intervention efforts. Armed groups and militia groups, often operating as proxies of political elites, are responsible for an increasing proportion of armed violence. They often engage in criminal and social forms of violence, spreading fear and instability while consolidating their power in the process. In a recent report, UN University advised the UN to 'recognize the political power of criminal groups,' thus limiting organized crime in transitional political processes (Bosetti, Cockayne and de Boer 2016). The combining of these security risks and their continuity in one form or another challenge states and societies' coping capacity.

Violence is complex, and responses are based on broad narratives. Violence does not fit neatly into routine security frameworks or conflict narratives subjectively treated quite often within different entities. Hence, approaches that observe violence as "perpetrators versus victims" and "criminals versus innocent citizens" fall short of understanding the complexity of violence (Adams 2012). Violence is tremendously versatile, transforming itself according to changing circumstances and contexts. Responses to violence, then, can inadvertently compound it. Broad punitive measures can sweep up non-violent individuals or fail to account for social norms, motivations, and other factors. They can deepen marginalization, foster mistrust for the rule of law, or incite more violence as outcomes.

Political transitions, even towards democracy, can provoke violence. As states move to or away from democracy or devolution, the risk of different forms of violence also changes. Civil war violence often emerges from exclusive politics, where large sections of the population are disenfranchised or marginalized. The risk of overlapping forms of violence also may increase during transition. The political violence of the Arab Spring came with sexual and other forms of gender-based violence (SGBV) and gendered repression. In Tunisia, for example, women protesters became the victims of sexual harassment or rape at the hands of security forces (Johansson-Nogues 2013); in Egypt, politically motivated acts of sexual assault were witnessed in protest spaces (Tadros 2015; Amar 2013). Even where the trend is towards democracy, there may be an increased risk of domestic political instability (Choi and Raleigh 2014).

Moreover, both decentralization and power distribution across parliaments, judiciaries, and the military tend to increase the number and power of non-regime elites shaping government policy. They also lead to high levels of elite competition and fragmentation over access to state resources and power (Brancati 2011). In the redistribution of political power, incumbents and opponents have incentives to design forms of violence to assure access to power (Schedler 2006; Gandhi and Lust-Okar, 2009; Arriola and Johnson 2012).

Many agents in new democracies depend on violence to create cleavages in society, which elites can manipulate. The transition to democracy can thus dramatically increase the risk of violence, even while lowering the chance of interstate conflict. Research focusing only on conflict always ignores this. Drivers of violence do not disappear when conflict is over. Political violence has a cyclical nature of the factors that provoked it if they remain unaddressed. Recent research suggests that factors affecting and producing the likely onset of civil war also influence other forms of non-political violence such as social violence (Rivera 2016).

Armed agents who engage in political violence during wars or periods of domestic instability are highly likely to engage in organized crime in peaceful times, including racketeering, mercenary activity, and illicit trafficking. These patterns are evident across both Africa and Asia. Violent actors in conflicts reconstitute themselves in post-conflict periods to take economic and political advantage of fragile and new political environments (von Einsiedel et al. 2014; de Boer and Bosetti 2015).

Domestic political instability increasingly drives *violence*, where state legitimacy, authority, and capacity are the primary root causes of political violence. Domestic political factors are among the most challenging causes of violence to analyze and address effectively. Yet the evidence suggests that domestic political dynamics determine whether a society tips into political violence. These may include corruption, financing opportunities with external and internal shocks such as elections and demographic shifts (Clapham 1996; Englebort 2000). In addition to poor governance, breakdown of order (Reno 2011), and weak institutions (Sobek 2010; Hendrix 2010; Thies 2010), these factors interact and create linkages for collective armed violence. Politically motivated violent conflict has distinct and varied manifestations differentiated according to who fights, which political issues are contested, the vulnerability of governments and civilians, the feasibility of long-running conflict, and how likely conflict persists, recurs, and diffuse.

Weak state structures are a source of violence, potentially leading to a negative feedback loop between political fragility and violence. Weak institutions or those with entrenched patronage systems can create vacuums in which elites can siphon off public resources with impunity while also perpetuating economic exclusion. Criminal networks and armed groups can also fill these vacuums, exploiting local grievances while enabling other forms of social violence to spread. In fragile contexts, poor or unequal service provision may fuel unrest or violent crime, particularly when coupled with economic deprivation. Weak governance can also allow non-state actors to create parallel structures, increasing the risk of widespread criminality and related violence.³³

Parts of Africa and the Middle East have a “rentier political marketplace,” which is quite a challenge (de Waal 2014). In these contexts, violence, or its threat, is a means of political bargaining when the government or political elites do not monopolize the legitimate use of force.

The use of identity politics can incite and exploit sectarian divisions in fragile contexts where more clear distinctions of ethnicity, religion, or livelihood are often sources of political identity. As these identities are flexible, allegiances of convenience can form in a changing context, transfer long-standing grievances into new causes, and thereby serve as a driver of new forms of violence (Fearon and Laitin 2003; Collier and Hoeffler 2004).

Political inequalities drive violence. A persistent problem is a tension between “excluded” and “included” groups that have different access to and exercise of power, with consequences for government policies and related socio-economic inequalities (Stewart 2011). Exclusion along ethnic lines leads to limited representation in public offices (Bangura 2006), poorer levels of health and education; greater income inequalities (Stewart 2008); and limited public good provision (La Porta et al. 1999). It goes against the perceptions of state inclusion, favoritism, and nepotism. Communities with co-ethnics in power do not consistently have disproportionate access to powerful positions or public goods over other areas without such standing (Kasara 2007; Arriola 2009; Francois Rainer and Trebbi 2014). Therefore, the term “exclusion” argument can be quite difficult to prove given that members of excluded groups are more likely to engage in a civil war, particularly if they have recently lost access to power (Cederman, Wimmer and Min, 2010).

³³ OECD (Organisation for Economic Co-operation and Development). 2016. “Violence Today,” States of Fragility 2016: Understanding Violence, Paris: OECD Publishing. 43.

However, the terms of inclusion can also drive violence. Increasingly, the terms of inclusion within governments, that is, the distribution of positions, authority, and resources among the elites, trigger domestic political instability (Fischer 2008; Lindemann 2008) and violence. The extent to which the state is a non-neutral, politicized, and active agent in conflict is often underestimated. A focus on achieving stability through the inclusion of violent elites can reduce violence levels in the short term and increase incentives for violent competition in the longer term. However, new evidence suggests that women's active participation in peace processes has increased the likelihood that agreements are sustainable (UN Women 2015).

The terms of inclusion to mitigate future post-election violence can benefit from the national financial compensation fund to ease the burdens of the landless or internally displaced persons (IDPs). It should help reduce land ownership inequalities and enable the landless access and acquire decent basic life. Kenya can implement amicable national resource sharing with sustainable land reforms aimed at minimizing inequalities and violence. Since land is a major natural resource, using financial compensation to share it reasonably can be a solution to eradicate the root causes of violence emanating from the state of landlessness.

Post-election violence (PEV) in Kenya demonstrates national violent political competition and social havoc as a useful case study. It revealed frictions in national elite bargains and outcomes of their transaction costs as political settlements. Persistent stolen election outcomes in Kenya make peaceful coexistence transient. Ethnicity is the usual hostage of electoral violence, as the next section will expose.

4.2 Ethnic Conflict and Post-Election Violence in Kenya (PEV)

Ethnic tensions, clashes, and violence associated with pointing out "others" out of fear or victimizing them are unfortunately as old as civilization. Tracing the genesis of ethnic tension in Kenya to the cradle of history is beyond this thesis's scope. It is imperative to start with the British colonial period as a Kenyan entity came of age. It can clarify the continued presence and evolution of ethnic tension today. Therefore, a discussion of ethnic tension since independence involves both state and non-state actors, including the role of culture and negative ethnicity. There is a close relationship between ethnicity and politics evidenced in membership to political parties and politicians' elite bargains or coalitions. Ethnicity overwhelms any other factors in explaining this fraternity. The powerful and

explosive blending of ethnicity and politics in Kenya has triggered ethnic violence in its 57 years brief history as a nation.

To understand the origins of the conflict, a more in-depth analysis of the origin of ethnicity in Kenya and its relationship to politics, land, and violence is indispensable. First, ethnicity used violence to divide a local community by combining ethnic tension with land disputes. Second, ethnic tension over land and identity spills over into explicit violence. Third, organized militia groups harden tensions based upon land and ethnicity. Fourth, the role of politicians in abetting and influencing ethnic tensions, land disputes, mobilizing militia, and other violence affect the political dynamics of the region, and finally, the state intervention to combat militia groups and protect the local population results in further violations.³⁴

"Ethnic clashes arise from irregular land allocations discriminating against local communities. Kenyans are not intrinsically violent. Way of life developed and perpetuated through socio-political initiatives. Post-Election Violence (PEV) is associated with extended social justice. Change is not forthcoming. Some people rigged to keep their status quo. Historical injustice: Change is coming with new elections. Short tempers and emotional relations: Courts are impartial. Lost trust in law enforcement and judges. If unhappy, told to go to courts – but once outcome (nullified the elections), Uhuru was mad! It was objective and just verdict. Violence is negative - an injustice - as lesser evil/greater evil. Violence and destructions persist" (AY27, 7 August 2018: Fieldwork Narratives, Nairobi).

4.2.1 Origins of Conflicts and Violence in Kenya

Two closely related colonial-era policies: the creation of ethnically exclusive "native" reserve areas and the alienation of land to European settlers, have greatly influenced settlement patterns in Kenya.³⁵ The native reserves were ethnically exclusive, and field administrators worked hard to expel "non-native" trespassers from the native reserves (Okoth-Ogendo 1991, M'edard 1999). The creation of ethnically homogenous reserve areas suited both British administrators' normative belief that tribe and territory ought to coincide and the policy imperative with acquiring land for European settlers. By the end of

³⁴ Truth, Justice and Reconciliation Commission (TJRCFRV3). 2013. TJRC Final Reports Volumes III. *The Final Report of the Truth, Justice and Reconciliation Commission of Kenya May 2013*. Nairobi. (iv).

³⁵ The colonial government's land alienation decision differed in the "Ten-Mile Coastal Strip," acknowledging only the property rights of local Arab and Swahili landlords as the Sultanate of Zanzibar's subjects.

the colonial period, about half of the country's agricultural land belonged to Europeans (Okoth-Ogendo 1991, Sorrensen 1968).

Therefore, native reserves were created for unemployed Africans on European farms or in urban areas. These policies established a social norm that ethnicity is the primary aspect of identity that conferred residence rights (M'edard 1999). Also, both the impact of land alienation and the demand for arable land created by overcrowding on the reserves were distributed unevenly across ethnic groups.

At the beginning and after the 1992 and 1997 general elections, many prominent politicians from the Rift Valley and Coast organized ethnic clashes designed to expel persons seen as both "foreigners" and likely opposition voters. From 1991 to 1997, election-related ethnic clashes caused at least 2,000 deaths and displaced 400,000 people as internally displaced persons (IDPs), some still unable to return to their homes (Human Rights Watch 2002). These clashes were politically expedient for both national and local politicians. The violence helped bolster President Daniel arap Moi's flagship assertion that political liberalization would lead to chaos. The government and its allies became the terrorist.

Violence erupted after the delayed announcement of the results of the 2007 general elections in Kenya. Vote-rigging accusations were followed by mass demonstrations spreading violence across the country, killing over 1,300 people and displacing over 600,000 people. (Kenya Red Cross Annual Report 2008: 18). The leading candidates for the 2007 presidential election were Raila Odinga of the Orange Democratic Movement (ODM) and the incumbent president Mwai Kibaki of the Party of National Unity (PNU). Odinga was part of the Kibaki led coalition government elected in 2002 under the National Rainbow Coalition (NARC). However, the coalition collapsed in 2005, after disputes over his role in government. He also had irreconcilable differences in opinion over the proposed constitutional reforms.

While the NARC had crossed ethnic divisions, the expulsion of Odinga and other candidates representing the large Luo minority of Western Kenya and associated members of other ethnicities led to the creation of the Orange Democratic Movement (ODM). An outcome of this split was that Kibaki's Democratic Party (DP) evolved as representative of the Kikuyu of central Kenya. Odinga's split from the NARC, alliance with Kalenjin candidate William Ruto and later a presidential candidate, therefore relatively politicized ethnic groups and aligned supporters along ethnic lines (Kigwanja 2008: 332-4).

In the 2007 election, Odinga had campaigned to appeal to the votes of the poor and youth. Kibaki emphasized the economic success of the country. Odinga was ahead of Kibaki, though this lead was thinning out as the election approached. It is evident that observers consistently reported that voting and counting of results were done in an orderly way with a precise manipulation at the tallying stage (ICG 2008: 4-6).

The delay in announcing Presidential results on 29 December 2007 - two days after the election was interpreted as apparent rigging by ODM supporters - who attacked those perceived as Kibaki's supporters, primarily Kikuyu. Much of the violence was confined to slums around Nairobi and the Rift Valley with mixed populations of Luo, Kikuyu, Kalenjin, and other ethnic groups. Violence spread countrywide to various urban centers and followed ethnic cleavages. The police, who were expected to be impartial as law enforcers, were partly partisans. This violence lasted until 20 January, but more violence flared between 24 January and 28 February 2008, especially in the Rift Valley with armed gangs such as Mungiki and Kalenjin warriors perpetrating much of the violence (ICG 2008: 9-12).

Senior ethnic elites as politicians across the ethnic divide, including the current president of Kenya of Uhuru Kenyatta, and his assistant William Ruto allegedly actively supported the violence. The International Criminal Court (ICC) had high-profile cases against them. These stakeholders are the elite actors who managed their parties and supporters with a shared commitment to determine outcomes. These elite bargains' outcome was violence, and their transaction costs were loss of lives, ethnic displacement, and destruction of property. These outcomes also illustrate the effects of power asymmetries in Kenya.

Violent political competition and social violence in Kenya illustrates the phenomenon of multiple, interrelated, and networked forms of violence. Kenyans overwhelmingly approved a new constitution in 2010, paving the way for political devolution to redress regional inequalities and historical marginalization and, ultimately, reduce violent competition over the presidency. Kenya's post-election violence in late 2007 and early 2008 brought it to the brink of civil war and influenced the new constitution's design. However, violence has continued to flare up in many areas of the country, peaking in election years.³⁶

The sheer size of the 2007-2008 post-election violence in Kenya challenges the "prevailing assumption that democracy and peace are, ideally mutually reinforcing with elections

³⁶ OECD. 2017. 46.

serving as the connecting cord between them” (Omotala 2010: 57). The violence fad associated with elections in the third wave of democratization in Sub-Saharan Africa surprised many who “assumed incorrectly that most countries were heading down a one-way path to democracy and development” (Mueller 2008: 205)

Spatial variation in subnational politics broadly defined four main types of violence in Kenya: national political violence following ethnic and regional splits; subnational political violence and competition around county-level political offices; political violence associated with transnational Islamist groups; and social violence manifest in endemic crime and interpersonal violence that disproportionately affects poor urban neighborhoods.

The map in Figure 4.1 illustrates that communal violence, typically associated with mobilization along with ethnic and regional identities, is particularly prevalent in the far north, west, and central regions of the country. Political militia violence is highly centralized, with sporadic violence along the coast. Rebel violence, associated with a violent Islamist insurgency, is primarily concentrated in the eastern region, the coastal areas, and the Somali border area. Rioters and protesters clustered in the Nairobi area and central and western parts of the country. State forces’ activity dispersed throughout the country, but with a markedly lower profile in the far northwest and rural inland areas. National-level political violence hangs on competition to control the presidency. It corresponds to Kenya’s election cycles, peaking in the build-up to national elections every five years. In the 1990s, officials affiliated with the former ruling party played on long-existing ethnic and regional divisions to orchestrate violence designed to intimidate political opponents.³⁷

The Akiwumi Commission of Inquiry into Tribal Clashes (Akiwumi Commission) was a presidential commission of inquiry established to investigate so-called “tribal clashes” in the lead-up to the 1992 and 1997 elections. It detailed how the government helped provoke ethnic violence for political purposes and failed to prevent it from escalating into wider conflict (JCITCK 1999).

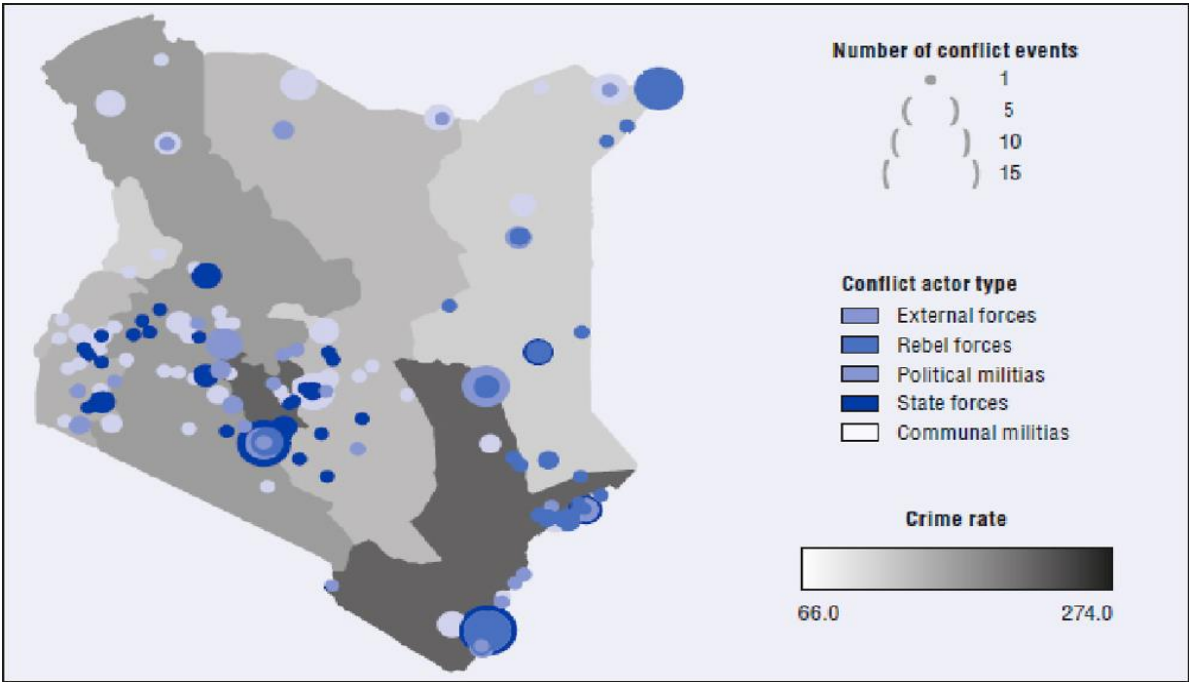
These cross-border ethnic skirmishes peaked in Kenya’s 2007-08 post-election violence, in which rival coalitions mobilized support from co-ethnic political constituencies. The widespread violence over the contested presidential result claimed more than a thousand deaths, displaced over half a million civilians with widespread sexual violence. According

³⁷ Ibid.

to a national, population-based, cluster survey of adults conducted in 2011, compared to pre-election, sexual violence incidents increased over 50-fold during that post-election violence period (1671.8 incidents per 100,000 population from 33.3 per 100,000 population). These incidents included a sharp increase in intimate partner sexual violence, opportunistic sexual violence, and especially politically motivated sexual violence designed to humiliate, terrorize and break ties to rival ethnic groups (Johnson et al., 2014). Moreover, much of the post-election violence was premeditated and mobilized by political and community leaders. Kenyan police implicated in approximately 40 percent of civilian deaths (ICRtoP n.d.). Evidence from the Commission to Investigate Post-Election Violence (CIPEV), also known as (*Waki Commission*), shows that police officers shot and killed about 405 out of the 1133 deaths representing 35.7 percent (CIPEV 2008: 311). The police also raped at least 26 percent of women during post-election violence (HRW 2011). When law enforcers abuse their power and murder, civilians illustrate that impunity becomes the law since the government becomes the terrorizer.

Perceived injustices of the electoral system and persistent corruption are seen as immediate triggers of violence, but understanding the causes of the conflict requires a more holistic approach. Regular flare-ups of violence between different ethnic groups, especially at the grassroots, have occurred in nearly every election since the reintroduction of multiparty elections in 1992. Dominant blame on ethnicity and patronage in Kenyan politics always surfaces, which gives incumbent politicians appeal to unaddressed historical, ethnic injustices dating to the colonial era. It is done "to rally voters in exchange for promised access to land or public services" (Romero 2013: 1), inciting violence to preserve their power. Since power was centralized in the presidency, "politics is viewed primarily as a winner-takes-all zero-sum ethnic game. The national economic cake is the prize. Various ethnic groups openly confess that it is their turn to 'eat'" (Mueller 2008: 200). Kagwanja's narrative shows that "an entrenched legacy of *informal* violence" from the Moi era that combined with ethnic divisions nurtured by politicians explain why ethnic tensions swiftly turned violent (Kagwanja 2008: 384).

Figure 4.2: Violent events by type of actor in Kenya (2014)



Sources: ACLED Data on Conflict and Violence (2015b), Kenya Police Service Data on Crime (2014), and Kenya Bureau of National Statistics Population Data (2009).

4.2.2 Political Violence

Political violence is rooted in competition over subnational political offices and access to economic rents associated with these offices. Kenya’s constitutional reforms in 2010 laid the groundwork for political devolution. Elections in March 2013 for new county governors, deputy governors, and assembly positions paved the way for devolved administration and governance. The political reforms meant partly to reduce the potential for political violence concentrated around control of the presidency. However, violence has since flared in the northern and coastal areas of Kenya. The number of conflict events in northern Kenya in 2013 (176) was nearly three times the number recorded (63) for 2007 (ACLED 2015b). Spikes of high-intensity violence in recent years have further reflected continued instability associated with the subnational political competition. In August 2012, violent clashes between Pokomo farmers and Orma herders in Tana River County killed 118 people and displaced more than 6,000 (HRW 2012), the worst violence after 2007-08 post-election violence.

Al-Shabab is a Somalia-based militant Islamist terrorist unit with affiliated groups in Kenya. Their attacks have increased since Kenyan military personnel were deployed to southern Somalia in late 2011. It represents increasing violence from the local, transnational insurgency. They have killed hundreds of people, mainly in the northeast of the country and the coastal areas. The Al-Shabaab gunmen killed 147 innocent students and faculty members in the 2 April 2015 siege of the Garissa University College campus.³⁸ It was the deadliest attack in Kenya since the bombing of the US Embassy in Nairobi in 1998. Al-Shabaab has successfully stoked deeply entrenched grievances among Kenya's ethnic Somali, Muslim, and coastal populations by localizing its transnational conflict in Kenya.

High levels of urban and social violence manifest in endemic criminal and interpersonal violence. Much of Nairobi's violence is concentrated in its densely populated informal settlements, where an estimated 60 percent of the city's poorest people live on just over 8 percent of its land area (UNEP 2009). Up to two-thirds of the population of these settlements and slums report that they do not feel safe in their localities (Goodfellow and Taylor 2009). The city's wealthier enclaves employ as many as 100, 000 private guards. In the poverty enclaves, criminal gangs and vigilante groups purporting to offer protection have become commonplace (Ruteere et al. 2013).

4.3 Land and Other Ethnic Inequalities

The end of colonial rule caused conflict over the most benefactors from the independence spoils. During the colonial rule and especially after World War II, vast tracks of arable land were alienated in Central, Coastal, and the Rift Valley for European settler agriculture, which created native reserves for labor exploitation and marginalization. It was the genesis for socioeconomic inequalities, as seen in chapters 1 and 2. The struggle for control of land and land-related resources increased as the push towards independence intensified.

This takes us back to the first research question: *How can Kenya implement amicable national resource sharing with sustainable land reforms?* It is accommodated in the first hypothesis asserting that *a state financial compensation for the landless can mitigate future post-election violence*. Kenya should create and sustain an amicable national resource sharing mechanism with land reforms to eradicate violence's root causes. The government should compensate the landless by redistributing wealth to reduce inequalities

³⁸ Daily Nation Online Edition. 2015. "147 students killed in cold-blooded raid on campus," 2 April.

and mitigate future violence.

In Kenya, the final colonial period's main political question was the allocation of land alienated to Europeans. Minority ethnic groups feared that in the absence of constitutional safeguards, all the land in native reserves and land claimed in alienated areas in both Rift Valley and Coast provinces would be taken over by "invaders" from larger ethnic groups with a higher propensity for arable land (Anderson 2005).

"At this current stage in our nation, the distribution of land resources is mostly based on how an individual knows another or family/relative who works in the Ministry of Lands" (DV30, 7 August 2018: Fieldwork Narratives, Nairobi). "The distribution of land in Kenya is unfair. political elites own most of the land" (FT32, 7 August 2018: Fieldwork Narratives, Nairobi).

The Kikuyu were and are still the most populous ethnic group in Kenya. Hence, ethnic minorities from the Coast and the Rift Valley provinces successfully negotiated for "*Uhuru na Majimbo*" or a federal constitutional system to reclaim the land snatched from them. Regional assemblies won the right to decide the new settlers in formerly alienated land. However, Kenya's first president, Jomo Kenyatta, an ethnic Kikuyu, swiftly undermined these federal arrangements (Bates 1989, Gertzel 1970). Kenyatta's government adopted a market-based land allocation scheme dubbed- the "willing buyer and willing seller policy." Some scholars and politicians saw it as a ploy of the rich versus the poor, and the Kikuyus against other ethnic groups (ole Kantai 2004, Leo 1984, Ley 1974, Njonjo 1978, Oucho 2002). The Kikuyu had a head start, were aided by the state via large land buying cooperatives, which raised the capital to buy land in their non-ancestral lands.

Most ethnic conflicts in Kenya hover around the disputes over land rights. Violence directed on members of minority ethnic groups in specific regions of the country was with the primary intent of expelling them from their non-ancestral localities. There is a consensus that the land issue in Kenya is the primary cause of ethnic clashes. Kanyinga (2000) observes that violence resulted from the elite's appropriation of land to fight those opposed to them by reactivating demands for territorial land claims in the Rift Valley and the Coast region.

Ethnicity and land were contentious issues under both Kikuyu President Jomo Kenyatta and his Kalenjin successor, Vice President Daniel arap Moi. These issues became more politically

salient with the introduction of multiparty politics after 22 years of single-party rule. The ruling Kenya African National Union (KANU) affiliated prominent politicians in both Rift Valley, and Coast provinces made several provocative statements calling for an ethnically exclusive form of federalism requiring Kenyans to return to their original “home” regions. In Rift Valley Counties, politicians called for the restoration of the area to members of the KAMATUSA - (Kalenjin, Maasai, Turkana, and Samburu) ethnic groups.³⁹ The KAMATUSA makes up slightly over 50 percent of the Rift valley counties.

According to the TJRC, the colonial land laws, policies, and practices had immediate and long-term effects, including permanent displacement. The colonial administration further created arbitrary, ethnic-specific boundaries, which generated a notion of exclusivity of land rights by specific communities in certain areas. It promoted inequality in land and related rights, as well as poverty and destitution. The TJRC confirmed that land has been and will remain one of the major causes of intra and inter-ethnic conflicts.⁴⁰

The advent of the multiparty state in Kenya expanded democratic contestability for the citizenry. However, ethnicity persisted, as evidenced by political parties' mobilization, state resources distribution, and adherence to justice. Achieving an egalitarian state was still elusive. Hence, a mix of these factors triggered Kenya's post-election violence in 2007/8 after a disputed presidential election.

Khamisi (2018: xi-xii) succinctly observes that each one of the Kenyan presidents – together with their families and cronies – amassed enormous personal wealth through means, which were not lucid or honest. They used their positions to snatch large pieces of public land, raided public coffers, built luxury mansions, bought expensive items, and banked their loot overseas away from prying eyes. To cover up their misdeeds and pull the wool over the Kenyans' eyes, they went everywhere, talking loudly about fighting corruption. Jomo Kenyatta described it as an “enemy” and planned to deal with it. Daniel arap Moi created institutions to fight it – all of which failed. Mwai Kibaki talked of “slaying the dragon.” Uhuru Kenyatta termed it “the foremost danger facing the country.” The more they talked, the faster the cancer spread, and the more difficult it became to curb it. In summary, they are violence benefactors who have contributed to worsening ethnic inequalities in Kenya.

³⁹ Kimuli, Kasara. 2016. Electoral geography and Conflict: Examining the redistricting through Violence in Kenya. Department of Political Science Working Paper, Columbia University. 7.

⁴⁰ Kituo Cha Sheria (Legal Advice Centre). 2014. Summary of the Truth, Justice and Reconciliation Commission (TJRC) Report. Nairobi. 46.

A marginalized and abused populace empowers state domination and political decay. It creates a master/servant relationship that reinforces stereotypes of inferiority complex. “Land distribution is unfair. There should be redistribution with growth and equitable land tenure system legislated constitutionally” (JP36, 8 August 2018: Fieldwork Narratives, Nairobi).

Plural narratives concur about this consequence and call for an urgent need for concrete sustainable solutions to alleviate this predicament. *Abolishing presidential election and its grave contests can stem post-election violence.* Eliminating presidential ballots can mitigate associated violence. Inclusive party-based proportional representation is inevitable.

4.4 Horizontal Inequalities

There are two crucial outstanding dimensions of Horizontal Inequalities (HIs) in Kenya. The first is political inequality, visible by differences in the relative political power and representation in the government of different ethnic groups. The second and equally significant is evident by the vast differences in levels of well-being and access to public services across the regions. Since ethnic groups are area-specific, their regional inequality implies ethnic inequality.⁴¹

Table 4.2 Geo-Ethnic Composition

Main Ethnicity	Percentage (%)	Regional (%)	Rift Valley (%)
Kikuyu	22	91.8 (Central)	21.2
Luhya	14	83.3 (Western)	11.2
Luo	13	53.4 (Nyanza)	2.3
Kalenjin	12	41.4 (Rift Valley)	41.4

Source: Kanyinga (2007) and CIA (2017)

The colonial history of Kenya is the root of the current political and socioeconomic HIs. These are outcomes from the British creation of political and administrative units along ethnic boundaries: Kikuyu-Central, Luhya-Western, Luo-Nyanza, and a mix of the Kalenjin and Masai in the Rift Valley. The British invested primarily in areas inhabited by settlers,

⁴¹ Ibid.

resulting in disproportionate infrastructure development. Central Counties and the Rift Valley got the lion's share given their large proportion of settlers. They had a higher infrastructure investment after independence than the rest of the country.⁴²

One of the most visible evidence for political HIs is probably demonstrated by the distribution of senior government positions, as seen by Kimenyi (2013). Since independence, successive leaders have tended to favor their ethnic groups for appointments to senior public positions. Table 4.3 below illustrates this point, with successive president's ethnicity making the majority. The disproportionate ethnic representation in the cabinet is also apparent with other senior positions as the Provincial Commissioners (County Commissioners), Permanent Secretaries, head of parastatals, to mention but a few aspects.

The number of cabinet secretaries in the latest Uhuru's Government is 22 as of November 2019. The fraternity of Gikuyu Embu and Meru (GEMA) scoop 31.8 percent with seven secretaries. The Kalenjin, Maasai, Turkana, Samburu/Sabot (KAMATUSA) share six secretaries and take 27.3 percent. Ethnic Somali and Luo with two secretaries each settle for about 9.1 percent, and the rest: Kamba, Kisii, Luhya, Gabra, and Swahili/Ethnic Arab with one secretary each make up 4.45 percent.⁴³ The partnership of GEMA and KAMATUSA takes up 59.1 percent of the key cabinet secretaries controlling a majority of the national budget.

"I think Kenyans are sycophants of their leaders" (MM39, 8 August 2018: Fieldwork Narratives, Nairobi). Educating the masses on their rights and choosing competent leaders" (HK86, 18 August 2018: Fieldwork Narratives, Nairobi). Civic education should be a concerted and continuous campaign to weed out violence peddling mediocre leaders.

Therefore, the emerging story evident from the above is that the president's ethnic group benefits disproportionately in high-level appointments and resource distribution.

⁴² Ibid., 156-7

⁴³ Cabinet Secretaries - <http://www.president.go.ke/cabinet-secretaries/>

Table 4.3 Ethnic Percentage Shares of Kenyan Cabinet Positions

Ethnicity	Jomo Kenyatta (Kikuyu)		Daniel arap Moi (Kalenjin)		Mwai Kibaki (Kikuyu)		Uhuru Kenyatta (Kikuyu)	
	1966	1978	1979	2001	2003	2005	2011	2013/2017
Kikuyu	28.6	28.6	30	4	16	18.1	19.5	33
Luhya	9.5	4.8	11	14	16	21.2	17.1	9.5
Luo	14.3	14.3	11	7	16	3.1	12.2	4.8
Kalenjin	4.8	4.8	11	17	7	6.1	9.8	9.5
Total	21	21	26	28	25	33	42	21

Sources: Stewart (2008b) plus author’s updates (2017)

Several factors contribute to *socioeconomic inequalities*, but *political inequalities* have a bigger impact. Political influence concentrated in some ethnic groups is often used to direct resources to their respective ethnic communities. This is what is termed as patronage. It was quite explicit during the Moi regime when most development projects were concentrated in the Rift Valley with Central Kenya and other parts of the country considered to be in opposition zones neglected. Hence, access to various public goods such as education, health, water, and other physical infrastructure projects tended to follow patterns of access to political power. Key ministries like internal security, finance, education, health, and foreign affairs take a large share of the national budget. These ministries are a monopoly of a clique of preferred ethnic elites from the president’s ethnicity.

However, it is essential to note that many existing inequalities are determined by various other factors, such as geography. In particular, the quality of agricultural land and (the amount of) rainfall affects land productivity and, consequently, affects incomes. As such, Kimenyi (2013) notes that differences in well-being across regions are partly due to geographical factors. Hence, inequalities don't need to be attributable to the political allocation of resources for the rise in intergroup conflicts. However, the systematic differences exist across regions, and ethnic groups create conditions to cause conflict. Therefore, the probability of conflict is real once these systematic inequalities exist.

Kenya shows significant regional inequalities reflected in the quality of life and access to public goods and services. It shows that ethnic inequalities arise due to the distinct ethnic enclaves. Hence, political inequalities may not necessarily explain socioeconomic inequalities but can worsen the inequalities. Nevertheless, the origin of the inequalities is not important in terms of the potential for inequalities to trigger conflict. What is important is how inequalities interact with the political process and institutions.⁴⁴

The land is one of the primary means of production in Kenya. It is highly unfairly distributed and the root cause of most ethnic clashes and violence. Marginalized gullible Kenyans are used as pawns in politically motivated violence. The section below solicits pathways out of this predicament.

4.5 The Ndung'u Land Report

President Kibaki's boldest decision was to form the Commission of Inquiry into Illegal and Irregular Allocation of Public Land, popularly known as the Ndung'u Commission, soon after taking office in 2003. The Commission mandated to inquire into the extra-legal allocation of public lands to individuals and corporate entities and to find ways of restoring those lands to the original owners. It came with a political embarrassment risk to a section of powerful and influential individuals, including Kenyatta, Moi, their families, and cronies. Kibaki was also shooting himself in the foot as one of the significant beneficiaries of land grabbing.⁴⁵

"The rich Kenyans have grabbed most of the arable land, leaving the poor virtually landless" (NL40, 9 August 2018: Fieldwork Narratives, Nairobi).

The report "indicted virtually every senior KANU leader, including Moi himself, his family, politicians, civil servants, and military officers. They profited from illegal land transactions, housing allocations, forest excisions, and demanded the revocation of most of these awards."⁴⁶ It is now so commonplace and locally referred to as a sickness dubbed "*landgrabbiosis*."

⁴⁴ Kimenyi. 2016. "The Politics of Identity," 162.

⁴⁵ Joe Khamisi. 2018. Kenya: Looters and Grabbers: 54 years of corruption and plunder by the elite, 1963-2017. Plano, TX: Jodey Book Publisher. 339-55.

⁴⁶ Charles Hornsby. 2012. Kenya: A History since Independence, I.B. Taurus. 707-708.

The report also names Raila Odinga's family as a beneficiary linked to the Kisumu molasses plant located on an illegally acquired pre-government owned 240 acres piece of land issued by Moi to Specter International Limited owned by the Odinga Family.⁴⁷ The land-grabbing consequences reflected in the many ethnic clashes, national wide maiming, killing of thousands of citizens. In some circles, a solution in sending an international peacekeeping force was on the cards. It was a big shame to Kenya as one of the countries contributing to the UN Peacekeeping forces.

Large scale land grabbing has distorted the social fabric of the nation. The Colonialists expropriated land in forced tribal internal displacements, post-independent Kenya followed suit with politically influenced ethnic clashes. British settlers first exploited Kenyans, and then the status quo inherited this plunder and exploitation. Kenyatta came out of detention broke, homeless and landless. Kenyatta joined the elite group of colonial farmers three years into the presidency, becoming one of the country's largest landowners. On his death-bed, he had accumulated over half a million acres of land countrywide. Moi was a village trader owner of a small land plot in his native Sacho in the Rift Valley. He followed the 'foot-prints' of his boss as a cabinet member and vice president in the 1960s and 1970s, emerging as part of the local elites benefitting from the plunder. Kibaki as the president of Kenya and on retirement ascended into the land-owning big league. As a Makerere returnee lecturer in 1961, Kibaki was a man of modest means when he became KANU's executive officer. On becoming the Minister of Finance Economic Planning in Kenyatta's cabinet in 1969, he joined the rush for land as his colleagues in the government. It continued during Moi as the vice president and president amassing about 30,000 acres in the highlands besides a vested interest in private companies by his retirement in 2013. Kibaki also received more land and a house as a retirement package. Kenyatta bought land for his young son Uhuru in the 1960s. What he later purchased or grabbed is unknown. Common knowledge is that the family land and wealth is scattered countrywide (Ibid).

Uhuru was not poor when he entered politics as a nominated MP in Moi's government in 2001. He became President in 2013, and his wealth was within the Kenyatta family name. Forbes rated him in 2017 as one of the wealthiest Africans. The Kenyatta's own the giant Brookside Dairy, Commercial Bank of Africa, Hotel Chain, and Media Houses. The abovementioned Commission of Inquiry into Illegally and Irregular allocation of Public Land, known as the Ndung'u Commission and the Truth Justice and Reconciliation Commission

⁴⁷ Khamisi. 2018. Kenya: Looters and Grabbers. 340.

(TJRC), and the Kroll and Associates confirm the severity of corruption, money laundering, land-grabbing in the country. These reports names family members and cronies of the four presidents and senior officials, politicians, prominent businesspersons, and even foreigners.⁴⁸ Hence, it's a taboo for Uhuru to shun and distance himself from any nuances towards implementing these outcomes.

Kenyans were shocked but not entirely surprised when the report rolled out in 2005. The report showed that the allocations were officially sanctioned on the seating president's orders or at the directives of prominent senior public officials and well-connected business folks and politicians. People given land title deeds for the illegally grabbed public property sold it exorbitantly for personal benefit.⁴⁹

Ndung'u Commission concluded that transactions in public utility land were illegal and should be nullified and reverted to deserving people. It recommended criminal prosecution and disciplinary action to culprits, but that never happened. Instead, measures to stem land grabbing became a Forest Act in 2005 and a national land policy in line with the Constitution to guide sound management of land allocation.

"The distribution of land resources is not fair as some families almost own half of Kenya" (OK41, 9 August 2018: Fieldwork Narratives, Nairobi).

The "have nots" are rendered squatters hence worsening the inequalities associated with land ownership and frictions. However, the Commission was ineffective in halting the continuation of land grabbing. It was only an advisory body starved of executive powers and political commitment.

⁴⁸ Ibid. xiii - xv.

⁴⁹ Republic of Kenya. 2004. Report of Commission of Inquiry into Illegal /Irregular Allocation of Public Land. Nairobi: Government Printer. 11.

4.6 Democracy, Election System: Winner-takes-all⁵⁰

4.6.1 The Concept of Democracy

Democracy is understood as an ideology, concept, or theory. It is an ideology as far as it entails a set of political ideas that detail the best possible form of social organization'. Its ideal implies that it requires faith in 'the people', to believe that ordinary people have an inalienable right to make decisions for themselves and be committed to the notion that all people are mostly equal-in forms of human governments well as social organizations (Mackenzie 1994).

Democracy is a mode of decision-making about collective binding rules and policies over which the people exercise control. The most common arrangement is where all collectivity members enjoy sufficient equal rights to participate in such decision making directly. Thus, realizing the highest conceivable degree, the principle of popular control, and equality in exercise (Beetham 1992: 40). In Africa, democratization is far less assured, with state weakness and crisis contributing to authoritarian resistance and democratic frailty almost everywhere. The newly notable exceptions are South Africa, Ghana, perhaps Kenya, and Botswana (Grugel et al. 2014: 18).

What is the real meaning of *democracy*? Michael Bratton, as one of the leading scholars in this field and the founder of *Afrobarometer* takes this meaning to the populace. ". . ." *what does democracy mean to you?* He cites opinionated Africans definition as follows: civil liberties (especially freedom of speech), governments by the people, voting and elections, peace and unity, equality and justice, and socioeconomic development. Moreover, 25 percent of respondents say, "don't know." Hence, the rest express unexpectedly liberal and procedural conceptions (Bratton 2010: 107). He posits that *democracy* as a disaggregated entity arises because it is an abstract concept that refers to ideal forms of government, which is easy, costless, and socially approved for citizens to associate themselves with it.

⁵⁰ This section also contains some extracts from a paper entitled "Post-Election Violence of 2007/8 and Governance Discourse in Kenya," that were presented by the author at the Inaugural Global Studies International Seminar on 18 November 2017 at Doshisha University, Graduate School of Global Studies in Kyoto, Japan.

Democracy, adopted from Greek, means the rule of the people. In modern usage, it depicts a governance system in which citizens exercise power directly or elect representatives from themselves to form an institution such as a parliament. Democracy is the rule of the majority. Western democracy evolved from pre-civilized Greek city-states and the vicinity.

Democracy spread and evolved into non-Western democracies in the emerging new civilization. Abraham Lincoln famously defined democracy as a government "of the people, by the people, and for the people." The composition of these people in question and their social contracts are debatable and depend on which side of the divide defines these relationships.

Dysfunctions arise when the elites employ inclusiveness and exclusiveness to divide and control the populace. These invite political decay seen in extractive democracy as tactics to hoard power as challenges to democratization in emerging plural societies. Moreover, attempts at cultivating trust fail when fear worsens any endeavors to invest in better governance as leadership decays.

Marxist discourse perceived the state as an instrument of domination as liberalism assumed the state to be an impartial moderator of conflicting interests in functionalism and modernization. Therefore, who is in charge of the state? African crisis is governance based on the crisis of the state. It is composed of political traditions that are bedeviled by severe transitional problems arising from the fact that the African state built upon autocratic foundations varying from one another (Mbembe 2000: 34).

Transitional challenges posed multiple problems addressed accordingly, given the rising tide of identity politics as reactions from an ethnically polarized administration. Therefore, a new political awakening was required to alleviate the state's alarming polarized trajectories for a new political identity (Ibid: 3).

4.6.2 Election System: Winner-takes-all

Elections and democracy are broadly manipulated, orchestrated, and systematically abused to spread fear and institutionalize impunity to allow the status quo hoard power and decide who sits or doesn't at the table of authority and influence. Elections are quite costly, disruptively violent, and increasingly exclusive, where the favored political elites across the ethnic divide engage in bargains for votes. They manipulate and play the ethnic card, use

the institutions and electorate as their transaction costs. The outcome is a semblance of democracy, which turns out authoritative if not flawed and autocratic in practice. Few exceptions have respect for institutions, with checks and balances for term limits. Separating and sharing power for inclusiveness breed and nurture integrity in better governance outcomes.

“Proportional Representation with a Parliamentary Prime Minister System of governance can serve Kenya better” (PJ42, 10 August 2018: Fieldwork Narratives, Nairobi).

The 2010 Constitution proposed it as one of the elections reforms, but it became a casualty of the ruling elite bargains.

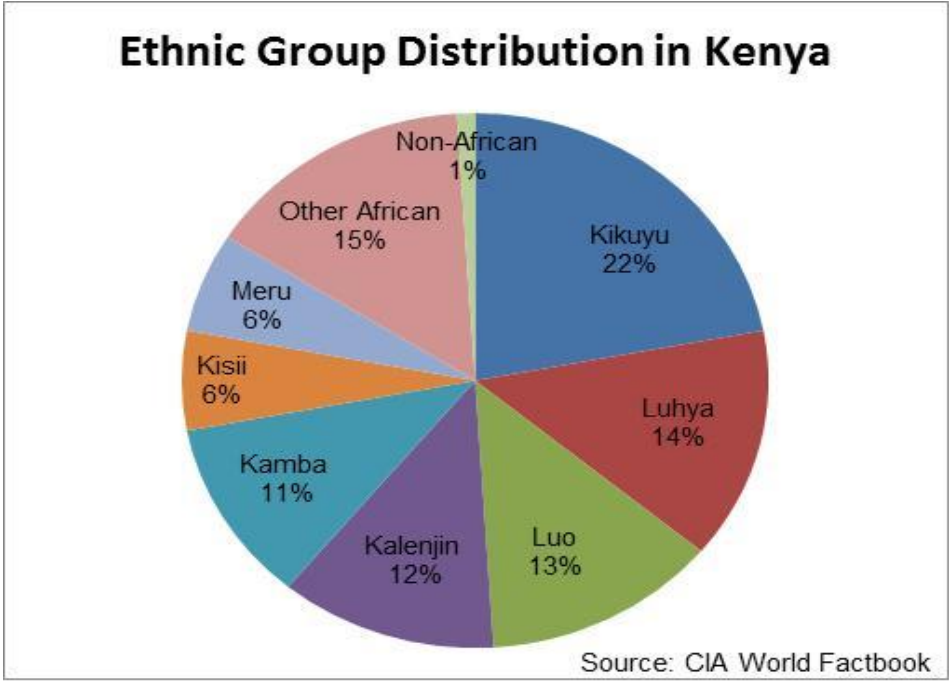
Therefore, this supports my second hypothesis that *abolishing presidential election and its grave contest can stem post-election violence*. The need for sustaining patronage that triggers negative ethnicity and inequalities will decrease.

4.6.3 Ethnic Inequalities

Kenya is a concentrated multiethnic society (Bangura 2006: 12). Some of the groups are sizeable to forge selective coalitions. The Kikuyu and the Kalenjin have managed to construct winning coalitions despite the relative equality of the main five ethnic groups. These are estimates in percentages (CIA 2017: 3). Forty-six million Kenyans comprise of *Kikuyu (22), Luhya (14), Luo (13), Kalenjin (12), Kamba (11), Kisii and Meru (6 each), Other Africans (15), and non-Africans as Asians, Europeans, and Arabs (1). Christians (83), Muslims (11), while atheists and others (6)*. (See Chart 4.1 and Map 4.2).

The 2019 Population Census of Kenya is 47,067,376 or about 47.1 million (Kenya Population and Housing Census Volume I-IV 2019: Table B). The new figures in percentages show the following distributions: Kikuyu (17.31), Luhya (14.49), Kalenjin (13.51), Luo (10.77), Kamba (9.91), Kenyan Somali (5.91), Kisii (5.74), Miji Kenda (5.29), Meru (4.2), Maasai (2.53), Turkana (2.16), Kenyan Arabs (0.125), Kenyan Asians (0.1), Kenyan Europeans (0.004), and Other Kenyans (7.95). See Table B: Distribution of Population by Ethnicity/Nationality in Kenya (2019) on page xxii, for more details.

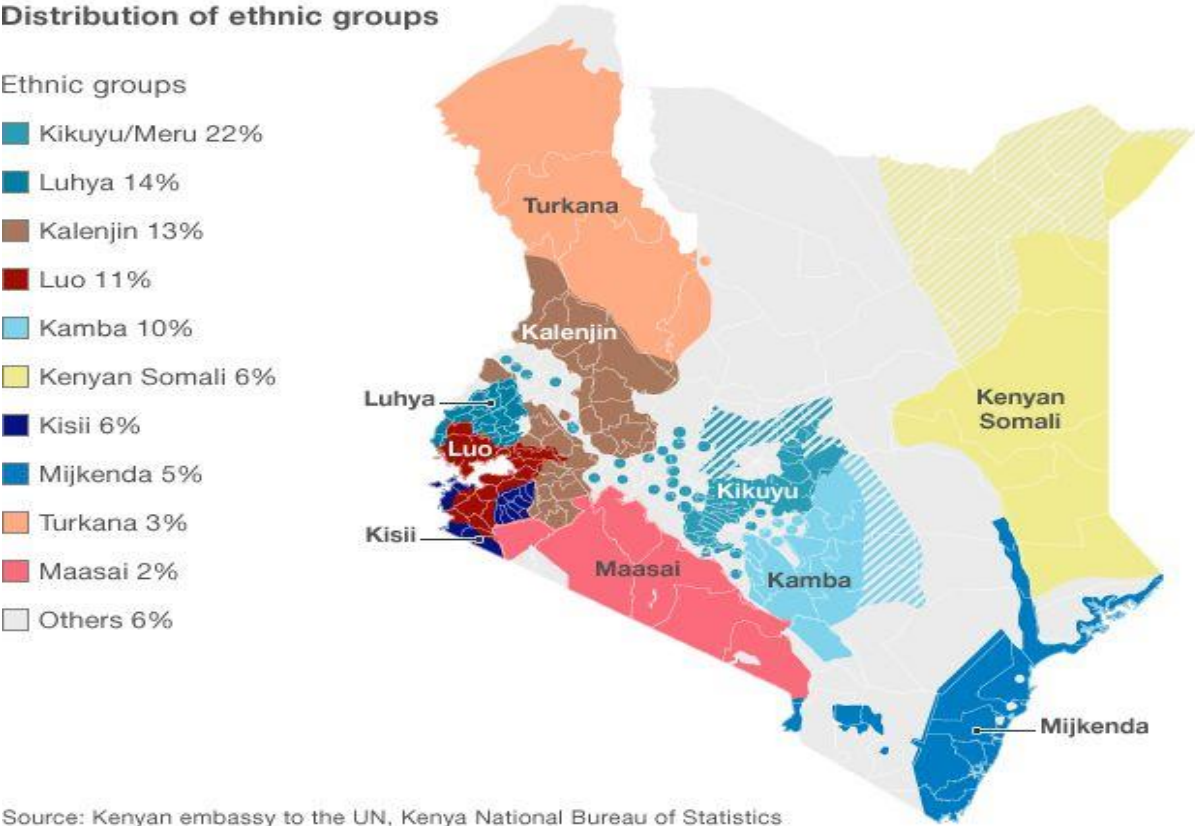
Chart 4.1: Ethnic Group Distribution in Kenya



Source: CIA World Factbook: May 2017

Elites across the ethnic divide play the ethnic card for co-ethnic exploitation to win elections, even if that creates conflicts and violence. These elites are merchants of fear and violence who leverage their elite bargains to ensure access and ascend to power. Elections are just a formality where they launder their ill-gained wealth to benefit from flawed elections. A simple majority ensures exclusive monopolistic possession of the power to plunder and marginalize the economy and losers, respectively. Hence, elections and democracy in most African countries are prisoners, and there is an urgent need for a reset button to end this frenzy comedy permanently. This process is rather slow, painful, and violent.

Map 4.2 Ethnicity Map of Kenya (2017)



Source: Kenyan embassy to the UN, Kenya National Bureau of Statistics

Latest Edition May 2017

Kenya gained its independence from Britain in 1963 adopted liberal democracy as an independent self-governing republic in 1964. Its experience with democracy has been abrasive and work in progress. Kenya debuted as multiparty democracy with plural expectations. Still, it drifted towards a single authoritative party. It eventually allowed multiparty democracy in 1992 via a constitutional review to address growing dissent and international pressure. Transparency and integrity issues in governance are still state mismanaged and violated with impunity.

Table 4.4 Elections and Multi-Ethnic Party Coalitions (1963–2017)

President	Elections	Party and main ethnic coalition	Impact on democracy/stability
Jomo Kenyatta	1963	KANU (Kikuyu and Luo)	Victory, relative stability
"	1969	KANU (Kikuyu and Kalenjin)	Authoritarianism
"	1974	KANU (Kikuyu, Kamba, Kalenjin)	Relative stability
Daniel arap Moi	1979	KANU (Kalenjin, Kikuyu, Luhya)	Legitimacy and relative stability
"	1983	KANU (Kalenjin)	Authoritarianism
"	1988	KANU (Kalenjin, Kikuyu, Maasai)	Opposition and resistance
"	1992	KANU (KAMATUSA)	Post-election violence and instability
"	1997	KANU (KAMATUSA)	Election violence and instability
Mwai Kibaki	2002	NARC (Kikuyu, Luo, Luhya)	Victory over KANU and post-election stability
Mwai Kibaki	2007	PNU (Kikuyu/Embu/Meru, Luhya, Kisii)	Post-election violence and instability
Uhuru Kenyatta	2012	TNA/JUBILEE Coalition (Kikuyu, Kalenjin)	Flawed election/for peace over democracy
Uhuru Kenyatta	2017	JUBILEE (Kikuyu, Kalenjin, Meru, Kisii)	August 2017/Disputed
Raila Odinga	2017	NASA (Luo, Luhya, Kamba, Coast, Nandi)	August 2017/Disputed

Sources: Adopted from (Kagwanja and Southall: 2009) with author's updates to 2017

It is imperative to look beyond 2007 to visualize the governance outcomes to gauge the impact of elections held under a new Constitution tasked to safeguard multiparty

democracy in a resilient and evolving liberal space.

Therefore, on 4 March 2013, about 12.3 million voters went to the polls in Kenya. After a protracted counting process with evident irregularities, the independent Electoral and Boundaries Commission (IEBC) declared the sitting deputy prime minister *Uhuru Kenyatta* of The National Alliance (TNA) and the Jubilee Coalition the victor in the presidential election. Kenyatta won with 50.07 percent of the vote, a bare sliver (Fewer than 9,000 votes out of 12.3 million) above the threshold of 50 percent plus one vote needed to avoid a runoff. In second place with 43.33 percent was Prime Minister Raila Odinga, leader of the Orange Democratic Movement (ODM) and the Coalition of Reforms and Democracy (CORD).

The two parties' fortunes reversed in the legislative elections, with both ODM winning 78 National Assembly Seats to TNA's 72. CORD also won more of the new governorships. In contrast, Jubilee won a larger share of seats in the new Senate and a larger share of the separately elected women county representatives to the National Assembly (Long et al. 2013: 140-55). The results of the County and Legislative Elections alongside the Exit Polls and certified IEBC results are depicted below in table 4.5 and 4.6, respectively.

Table 4.5 Results of Kenya's 2013 County and Legislative Elections

	Governor	Senator	National Assembly Seats	
	Counties	Senate	Single Member	Women County Representative
Orange Democratic Movement (CORD)	16	11	78	15
Wiper Democratic Movement (CORD)	4	4	19	6
The National Alliance (Jubilee)	8	11	72	14
United Republican Party (Jubilee)	10	9	63	10
Others (Nominated)	9	12	58	2
Total	47	47	290	47

Source: "Kenya's 2013 Elections" Journal of Democracy 2013 (24) 3: 142.

Table 4.6 Exit Polls and Certified 2013 IEBC Results

	Exit Poll (%)	IEBC (%)
Odinga	40.90 (37.4, 44.4)	43.31
Kenyatta	40.61 (37.1, 44.2)	50.7
Mudavadi	3.74 (2.6, 4.9)	3.93
Kenneth	1.67 (1.2, 2.1)	0.59
Ole Kiyapi	0.09 (0.0, 0.1)	0.33
Karua	0.69 (0.2, 1.2)	0.36
Muite	0.02 (0.0, 0.1)	0.10
Dida	0.43 (0.2, 0.7)	0.43
Refused to answer	11.84 (10.0, 13.7)	n/a
Rejected Votes	n/a	0.88
Turnout		85.91

Source: "Kenya's 2013 Elections" JOD 2013 24(3): 147

Note: Exit poll estimates show the candidate's mean values, with 95 percent confidence intervals in (parentheses).

The 2013 elections were the fifth general elections in Kenya since the reintroduction of multiparty politics in 1991. Still, they were the first to occur under a new Constitution passed in August 2010 with the support of 67 percent of voters. Moreover, these were also the first general elections since December 2007, when intense violence erupted after a disputed outcome, resulting in the death of over 1,100 Kenyans and the displacement of hundreds of thousands.

Technology hitch caused a 5-day delay between the election and the announcement of results. The 2013 election was peaceful because of the trust in the new 2010 constitutional reforms, elites across the ethnic divide incentives for avoiding violence, and the new hope for justice in the Supreme Court. For electoral democracy, violence prevention in 2013 was temporary, not reflective of a new institutional equilibrium. Peace is preferable to violence. However, peace by itself is not a fully democratic process. Democracy requires an efficient and trustworthy electoral administration. *Have we reformed that?*

Therefore, it is evident that Kenyans gained peace by overlooking significant faults in its democratic voting process besides sacrificing full electoral democracy. The stakes are high,

so there is hope for better outcomes in the August 2017 elections as a yardstick.

A considerable majority of Kenyans across the nation hope to recapture the democratic momentum that followed the 2002 national elections. It is achievable when the politicians and their supporters can nurture better and more trustworthy electoral alliances based on national ideologies. Large-scale failure in any aspect of administering an election breeds suspicion and discontent. There is a need to establish a peaceful and transparent electoral environment. Citizens must feel secure in their right to vote. The state and the citizen should be in an amicable binding social contract. Finally, these conditions, along with other factors fulfilled in 2013, should not result from a single peaceful contest but a long-term commitment to democratic politics and principles.

General elections in Kenya reflect the British system as a Westminster majoritarian democracy where the winner takes all. Flawed elections promote impunity and affect the delivery of public goods. Unilaterally monopolized power in a plural society polarizes the electorate and divides it into winners and losers. It weakens institutions and breeds political exploitation and corruption from the tyranny of numbers. Table 4.7 shows the chronology of Kenya's Presidential elections from 1997 to 2017.

Table: 4.7 Kenya's Presidential Elections 1997-2017

Candidates	Parties	Votes	Ratios (%)	Total Votes	Turnout (%)	Date
Daniel arap Moi	KANU	2,500,856	40.6	9,063,390	65.43	29 Dec 1997
Mwai Kibaki	Democratic	1,911,743	31.0			
Mwai Kibaki	NARC	3,647,277	61.3	10,498,122	57.2	27 Dec 2002
Uhuru Kenyatta	KANU	1,835,890	30.2			
Mwai Kibaki	PNU	4,584,721	46.42	14,296,180	91.6	27 Dec 2007
Raila Odinga	ODM/CORD	4,352,993	44.07			
Uhuru Kenyatta	TNA/JUBILEE	6,173,433	50.07	14,352,533	85.91	4 Mar 2013
Raila Odinga	ODM/CORD	5,340,546	43.7			
Uhuru Kenyatta	JUBILEE	8,203,290	54.27	19,611,423	75.51	8 Aug 2017*
Raila Odinga	ODM/NASA	6,762,224	44.74			
Uhuru Kenyatta	JUBILEE	7,483,895	98.3	10,498,122	57.2	26 Oct 2017**
Raila Odinga	ODM/NASA	73,228	1.0			

*Supreme Court canceled Presidential Election.

**Raila Odinga's ODM/NASA boycotted this Presidential re-election citing uncorrected irreducible minimum flaws.

Sources: Election Commission of Kenya (ECK 1997, 2002, 2007) and the Independent Electoral and Boundaries Commission of Kenya (IEBC 2013 and 2017).

The presidential election in August 2017, as expected, was a betrayal, riddled with irregularities. The incumbent Uhuru Kenyatta got 8,203,290 votes (54.27 percent), and Odinga garnered 6,762,224 votes (44.74 percent). The Supreme Court canceled the results for a rerun after sixty days. Odinga boycotted it, citing an uneven playing ground. Uhuru went ahead and won the Presidency unilaterally on 26 October 2017 with 7,483,895 votes (98.3 percent). The Independent Elections and Boundaries Commission (IEBC 2017) reported that the turnout was about 57.2 percent.

This omission builds frustration and mistrust, leads to ethnic conflicts and violence. It also destroys national cohesion and promotes struggles towards self-determination for neglected and marginalized regions.

Why are these percentages this low? It is because of the status quo manipulative power plays. Therefore, a slight majority is enough to exclude outsiders and establish political dynasties and monopolies. Political manipulations are responsible for creating negative ethnicity (*ethnic hatred and bias*). It is often used as a weapon to instill fear and mistrust in inter-ethnic relations to destroy the social fabric for political mileage. Consensus power-sharing governance discourse must be, geared to integrity to build trust for open government and better governance.

With multiple political parties, negative ethnicity and tribalism play the ethnic card and trigger ethnic civil strife and violence, especially during and after the elections.⁵¹

The internet age is with us to stay, and so is its scary side. Scary times beckon alert challenges. The internet was touted as a game-changer in neutralizing and taming negative democracy. However, it is now part of the problem employed in distorting democracy as well as promoting authoritarianism. *Should we be optimistic or pessimistic? The issue now is to be or not?* Solving this predicament calls for apprehensiveness and readiness to safeguard liberal democracy from the effects of data analytics and social psychological manipulations. These veiled campaigns propagate ultra-rightist agendas.

In Kenya, the proliferation of mobile phones and related technology is a tremendous gain, but most of these gadgets are manipulative in spreading lies or rumors. The reality of “post-truth” and “fake news” is the new currency in town.

⁵¹ GJ85, 18 August 2018: Fieldwork Narratives, Nairobi.

Kenya's electoral democracy is a form of first-past-the-post (FPTP). Based on the first-past-the-post (FPTP) system, the majoritarian system may deprive both the rich and poor minorities of the chance to be politically represented, and this exclusion also applies to relatively small parliamentary left parties. The FPTP system may excite fear in the defeated. A political party that has succeeded in securing a parliamentary majority often monopolizes influential government posts and penalizes those who have voted for a 'wrong' party. In many African countries, including Kenya, election-related violence embraces a zero-sum situation manifested in the case of a presidential election, which is fought in a large, single nationwide constituency (Mine 2016: 222-223).

National regimes design, manipulate, and strategically implement a social policy consistent with preserving existing power relations. Political institutions work to protect their support base of the government of the day. Possible loss of power and authority arising from uncontrolled democratic change and development is closely coordinated and guarded, as evidenced in authoritarianism. It creates more democratic despotism emergence from authoritarian inclinations in evolving democratic regimes. The state is calculative in its national building endeavors cushioned to protect its core interests to retain political power within the ruling elites. Political transition discourse in Kenya illustrates a similar scenario. It was reflected in the ruling party KANU anointing its successor in 'Project Uhuru' in the early 1990s (Aseka 2004: 2).

However, Kenya had made progress in welcoming back multiparty democracy with the National Rainbow Coalition's birth. It is how 'Program Kibaki' stepped into the limelight. Moreover, it is worth noting that both 'Program Kibaki' and 'Project Uhuru' are from the same Kikuyu ethnicity in Central Kenya: Kiambu and Nyeri, respectively.

How do we get out of this bottomless pit? Going the Swiss way could be the silver bullet. Demanding a lifetime single one-year term for the President and his Deputy with no reelection option can stem the rot in African democracy to anchor indigenous power-sharing consensus coalitions.

Democracy should pave the way for meritocracy to eliminate costly elections in multiethnic societies in Africa and beyond. To reign in conflicting interests, spouses, siblings, family, and relatives must also be legally banned from appointive and electable positions. These can assist check the wanton abuse of power associated with entrenched impunity and corruptive tendencies. African leaders need to be continuously 'challenged' and 'reminded'

when their 'eating time' is over. Prosecuting errant presidents for their abuses and failures in and out of office, the Korean style is the golden bullet.⁵²

Ossome (2018) argues that the ethnicization of the state's bureaucratic apparatuses and the civil society minimizes the liberal state's ability to stabilize society. Her study illustrates that ethnicity's politicization is a central locus of political expression in Kenya's democratization trajectory.⁵³

There is a need to anchor and deepen the acceptance of consensus democracy. A search for holistic local hybrid solutions to ethnic inequality in Kenya must continue to delegate and share power across the multiple stakeholders, build trust networks, and nurture open government for better governance outcomes.

Electoral reforms are necessary to protect the fragile democracy in Kenya. How do we do this? Limit the term public leaders stay in office. A one-year fixed-term and you ship out can be the savior. Electoral reforms are necessary to legalize and constitutionalize it. It should change the requirement that civil servants resign before seeking electable posts. It creates inequality and breeds conflict, bitterness, and vengeance in the event of an election defeat. The solution is to allow losers to revert to their previous jobs for stability and reconciliation.

Winners and losers should embrace each other as participants in national development. Achieving this noble call of duty and service to the nation should be the final goal towards sustainable national cohesion.

Kenya demands a Parliamentary Prime Minister System for fairer representation. However, it must deal with corruption with a death penalty.⁵⁴ This narrative reflects strong sentiments of an abused citizenry frustrated with institutionalized impunity and disregard of integrity. Kenya has tried both systems with mixed outcomes. I strongly think that Kenya needs a new hybrid governance system with independent checks and balances on the status quo. It can mitigate state capture and decay. There is a need for selfless leaders

⁵² David Muroi. 2018. "Ethnic Inequality, Institutions and Governance Trajectory in Kenya," *Online Journal of Global Studies* 9(3): 72.
https://global-studies.doshisha.ac.jp/research_bk/journal/journal.html

⁵³ Lyn Ossome. 2018. *Gender, Ethnicity, and Violence in Kenya's Transition to Democracy: States of Violence*. Maryland: Lexington Books, 18.

⁵⁴ KM63, 15 August 2018: Fieldwork Narratives, Nairobi.

and a culture to support a new value system.

“Feelings of supremacy among different ethnic leaders need to be watered down for lasting national unity” (TF46, 10 August 2018: Fieldwork Narratives, Nairobi).

In the Swiss consensus democracy model, the president goes back to his/her old job after his/her one-year term expires. It is practical and guaranteed. *What is holding Kenya back?*

These challenges are correctable through open and fair democratic elections on the way to an indigenous consensus democracy. Once institutions mature and are professionally administered, then democratic elections can be an excellent remedy for hybrid networks and multi-level better governance. Pronounced disruptive political manipulation fuels lopsided and polarized institutions beckoning the questions - *Why must there be elections anyway? Whose needs do elections serve? Or Why do we need faulty democracy? Can a meritocratic system of governance be a solution?* This thesis argues that institutions comprising the Judiciary, Parliament, and Presidency where public officials are elected and appointed or otherwise from a favored or preferred ethnicity are compromised and flawed. It breeds ethnic hatred and violence. These coalitions strive for permanency in sustaining their tight-knit closed, elitist *status quo*, capturing, diverting, and controlling public resources as their cash cows. Continuous electoral reforms to embrace these changes are indispensable to find common ground for sustainable integrity. Moreover, this will open new avenues for future research.

4.6.4 Democracy and Ethnicity

The problem of ethnicity derives from the devastating effects of peripheral capitalism, not addressed even after decolonization. In the colonial order establishment, the colonial state was exclusivist and brutal to its African subjects. The colonial state was a legal, institutional complex framed and set in motion particular-political identities (Mamdani 2001: 20).

It culminated in creating an alien nation to serve African interests, which its successor, a variant of the same oppressive state machine, was inept at addressing these interests. *Democracy* implies a government system that seeks to empower liberty, equality, and fraternity in the process of nurturing better governance outcomes. Post-independence regimes in Kenya have grossly undermined this fraternity as envisioned in the French interpretation. The journey towards one united national community, coupled with the

absence of a leader in our independence history to lead us along that road with commitment and integrity, is progressive but deceptive. It signifies the need for an amicable resolution of differences in identity politics in governance whose social expression should elevate social justice to national priority and institutionalizing consensus building.

Nations fail economically because of extractive institutions. These institutions keep developing countries poor and prevent them from embarking on a path to economic growth. This true today in Africa, in Zimbabwe and Sierra Leone; in South America, in Colombia and Argentina; in Asia, North Korea, and Uzbekistan; in Egypt in the Middle East (Acemoglu and Robinson 2013: 343-99). These countries differ in histories, languages, and cultures but share similar extractive institutions. The basis of these institutions are elites, who design economic institutions to enrich themselves and perpetuate their power at the expense of a vast majority of their populace, creating a sustainable vicious circle vested in impoverishing their citizens. As Mamdani (2001) already mentioned and is reflected here, the British colonial authorities built extractive institutions in the first place, and the post-independence African politicians were only too happy to take up the baton themselves.

Moreover, extractive political institutions lead to extractive economic institutions, which enrich a few at the masses' expense. The benefactors' money laundering activities built private armies and mercenaries, buy their judges and rig their elections to remain in power with an interest in defending the system. It supports the old-adage - *unlimited power corrupts absolutely*.

Ibrahim Prize for African Development (IPFAL) is an award established in 2006 by a Sudanese-British telecom billionaire Mo Ibrahim for African leadership achievement. It carries a prize of US \$5 million awarded to recognize African leaders who have governed well and left office following the Constitution. On 2 March 2015, Namibia's outgoing president *Hilifikepunye Pohamba* (2005-2015) was, awarded this prize. Previous award recipients include former presidents Pedro Pile of Capo Verde (2011), *Festus Mogae* of Botswana (2008), and *Joachim Chissano* of Mozambique (2007). The award has gone unclaimed for four years since its inception due to a lack of qualified candidates (JOD 2015: 26-2: 186).

Unless a punitive prize that penalizes worse performers is adopted, contagious cynical leaders will remain unqualified as they continue to be captive as they decay in office.

4.7 Freedom and Civil Liberties

Freedom in the world is an evaluation of political rights and civil liberties in the world that Freedom House has provided on an annual basis for more than forty years. Established in New York in 1941, Freedom House is a nonprofit organization that monitors political rights and civil liberties globally. Surveys assess a country's freedom. It examines its record in two areas: A country grants its citizens *Political Rights* (PR) when it permits them to form political parties representing a significant range of voter choice. Leaders openly compete for electable positions of power in the government. And, a country upholds its citizens' *Civil Liberties* (CL) when it respects and protects their religious, ethnic, economic, linguistic, and other rights, including gender and family rights, personal freedoms, and freedom of the press, belief, and association. The survey rates each country on a seven-point scale for both political rights and civil liberties (One representing the freest and seven the least free) and then divides the world into three broad categories: Free (1.0 to 2.5); Partly Free: (3.0 to 5.0); and Not Free (5.0 to 7.0). Freedom House also assigns upward or downward "trend arrows" to countries that saw general positive or negative trends during the year that were not significant enough to result in a ratings change for Political Rights or Civil Liberties from the previous year (Puddington 2015: 122).

These experts' and scholars' rating teams assess both governments' conduct and reflect on individuals' real-world rights and freedoms enjoyed from actions by both state and non-state actors. Thus, a country with a benign government facing violent forces (such as terrorist movements or insurgencies) hostile to an open society will be, graded on their on-the-ground conditions that determine whether the population can exercise its freedoms. The survey enables scholars and policymakers to assess global change direction annually and examine trends in freedom over time and on a comparative basis across regions with different political and economic systems. The electoral-democracy designation reflects a judgment about the last major election(s). More details are available at www.freedomhouse.com (Ibid).

Democracies face many problems of their own, but their biggest mistake would be to accept the proposition that they are impotent in the face of strongmen for whom bullying and lies become major currencies of political exchange. Kenya is ranked at 4.0 both for its Political Rights (PR) and Civil Liberties (CL) while its freedom rating is "Partly Free" compared with Japan, which is ranked at 1.0 for both (PR) and (CL)-its freedom rating is "Free"(Ibid).

Steven Radelet (JOD 2010: 87-101) positively argued that “the rise of more democratic and accountable governments” is one of the critical factors that has provided the basis for the sustainability and expansion of Africa’s initial development successes. Hence, democracy and development are complementary. However, his data shows a strong positive relationship between democratic governance and economic performance in seventeen emerging African countries. Moreover, deep ethnic divisions in other African countries are undeletable, but there is a trend to accommodate them via human rights-respecting institutions.

The rule of the law and democratic accountability are two different ways of constraining power. The rule of law should ideally bind all political community members to the same set of general rules. In its constitutional form, it should also specify how power is legally allocated among competing sets of bodies or political actors so that no one actor can make decisions for the whole community without the consent of at least some of the others. Democratic accountability, by contrast, binds sovereigns to respect the wishes of as broad a-number-of their citizens as possible, usually through the elections (Fukushima 2015: 125).

A key component of state strength is the ability to exert authority over a territory and its population. Many developing countries were born out of international agreements, often with arbitrarily defined borders based on colonial partition and with little to hold them together beyond guarantees by the international community. They exist *de jure*, but unlike European states, in which power over a territory and its population generally come first, and sovereignty and international recognition followed. The states in many developing countries have yet to achieve the internal consent or territorial reach necessary to exert authority over the entire dominion (Jackson and Rosberg 1986: 1-31).

Support for non-Western democracy is becoming more protracted, widespread, and determined. The recent trend from the poor performance of Western democracy and the rise of non-western powers via globalization create curiosity to explore new forms of democracy, and economic modernity arrived long after liberation in the West. In other parts, they have taken root without centuries of liberalism. The failure of external interventions in conflicts during the last decade has led to plural counter-arguments that Western democratic templates are bad fits for fragile states. Afghanistan and Iraq are illustrative cases. When rising powers (Brazil, India, Indonesia, and South Africa) are challenging liberal norms, democracy must demonstrate a capacity to adapt and incorporate ideas from

both Western and non-Western sources (Young 2015: 140-141).

Therefore, Young concludes that the calls for non-Western democracy are loud and passionate but seldom make precise exactly what non-Western models would and should look like. There is a need now to tacitly redefine and clarify what precisely the non-Western model of democracy should take. It is still a work in progress to attain that pinnacle (Ibid).

Elections are among the most well-established mechanisms available to citizens to strengthen accountability and responsiveness to their demands. When practical, they can help improve the level and quality of public goods and services provided by the state by selecting and sanctioning leaders based on their performance in providing these goods.⁵⁵

This effect can be particularly strong at the local level, where voters might be better able to coordinate and shape local politicians' incentives to deliver - including by curbing corrupt behavior. For example, evidence from Kenya suggests that multiparty elections successfully constrained leaders' ability to divert public resources for partisan goals.⁵⁶

However, elections alone are an insufficient mechanism to produce responsive and accountable governments. Although they have become the most common mechanism to elect authorities worldwide, elections are increasingly unfair with a limited instrument of control. Hence, electoral democracies are spreading, but the integrity of elections is declining.⁵⁷

A political organization can serve as a complementary mechanism to represent and articulate citizens' collective interests, aggregate their preferences, and channel their demands in the policy-making process. For example, through parties, a political organization can help solve citizens' coordination problems and integrate different groups into the political process, encouraging a compromised culture. According to the evidence, *programmatic parties*-those organized around a clear agenda of policy priorities-are associated with a higher likelihood of adopting and successfully implementing public sector reforms. However, ordinary citizens and marginalized groups sometimes find political parties unwilling to represent and articulate their demands, acting instead as "gatekeepers"

⁵⁵ See Khameni and others. 2016.

⁵⁶ Burgess and others. 2015.

⁵⁷ WDR 2017 Team, based on Center for Systemic Peace, Polity IV (database), various years (for number of electoral democracies), and Bishop and Hoeffler 2014 (for free and fair elections).

to protect existing power structures' hidden interests. It may help explain citizens' disenchantment with political parties, which rank globally as the least trusted political institution.⁵⁸

Social organization can also help solve collective action problems by mobilizing citizens around specific issues. This mobilization can bring new demands and interests into the bargaining space, reshaping actors' preferences and expanding the policy arena's boundaries around previously neglected issues. Actors in civil society and the media can play a crucial role in fostering transparency and more widely disseminating information. Increasing the availability of reliable information-such as generating evidence on the performance of public officials and increasing the accessibility of that information-such as strengthening the independence of media outlets or aligning the targeting and timing of information with the political process-can be fundamental first steps toward promoting greater accountability and government responsiveness (Khameni et al. 2016).

"The 'democracy prescription' for Kenya is not working. There is a need for new diagnoses to the country's ailment of 'bad' leadership and 'poor' governance. The people of Kenya deserve a lasting remedy. It includes; professionalizing political parties and building programmatic political parties rooted in ideology rather than ethnicity, coalition building, and inter-party dialogue must involve political inclusion of marginalized groups. Establishing inter-party youth forums, political party liaison committees (PPLC) in each of the 47 counties can improve communication between party leadership, and the IEBC and a leadership and campaign academy can equip candidates with the necessary skills to run their campaigns with integrity, hold credible, transparent and peaceful elections. Electoral process reform should include civic and voter education and capacity-building of the electoral management body. At the same time, election observation should have a focus on building public confidence in the electoral process and helping to deter fraud, intimidation, and violence" (PJ42, 10 August 2018: Fieldwork Narratives, Nairobi).

4.8 Ineffective Government: Corruption and Impunity

The Kenyan state has historically been described as undemocratic and characterized by a 'backward political culture' (Muigai 1995: 51-95). Over the years, the postcolonial state refined and sharpened the art of oppression and control bequeathed by the colonial state.

⁵⁸ See, Keefer (2011, 2013); Cruz and Keefer. 2013.

The national Constitution was, purposely, amended over 30 times between independence and 1995. It was explicitly for consolidating the powers of the presidency via those of the state. During most of the 1970s, 1980s, and 1990s, the incumbent presidents' personal rule promoted repression, abuses of human rights, ethnicity, nepotism, patronage, and widespread corruption (Mbai 2003).

Corruption and nepotism pose a significant challenge to good governance. Corruption harms the accountability power that citizens can exercise on the state and other goods and services providers. Kenya is ranked 139th by Transparency International (TA), scoring 27 percent (0 as the most corrupt). Tanzania, Uganda, and Ethiopia perform better than Kenya in this respect. Kenya is particularly weak in punishing corrupt individuals, given her frail impunity infested institutions. Bureaucracy destroys accountability that the state exercises on service providers.

Horowitz provides an in-depth analysis of ethnicity and institutions in a wide range of countries and singles out ethnicity as an important institution responsible for many outcomes observed in those societies.⁵⁹ Ethnically diverse societies are prone to corruption and poor governance, conflict, and slow economic growth.

Jonyo (2003: 166) aptly infers that "the elites from the President's ethnic group are assured of plum jobs from which huge kickbacks are drawn and lucrative government contracts won. Moreover, these elites can borrow big loans from state-owned banks and other friendly banks without the threat of penalties for defaulting on the repayment, since they enjoy protection against drastic recovery mechanisms."

Sub-Saharan Africa (SSA) is home to multiple distinct ethnic groups with multiple languages, cultures, and traditions. Recognizing heterogeneity in Africa is a positive step to celebrate that diversity.

Impunity in Kenya relates to corruption.⁶⁰ Kenya has made a tradition to investigate corruption through expensive public inquiry commissions whose findings never see the light. The Kenya Human Rights Commission (KHRC) concludes that . . . "most of these '

⁵⁹ D.L. Horowitz. 1985. *Ethnic Groups in Conflict*. Berkeley, CA: University of California Press.

⁶⁰ Migai Akech. 2011. "Abuse of Power and Corruption in Kenya: Will the New Constitution Enhance Government Accountability?" In *Indiana Journal of Global Legal Studies* 18 Iss. (1): Article 15.

truths seeking' mechanisms in Kenya have produced reports which are either not fully acted upon (if implemented at all) or are never made public."⁶¹ They, therefore, become the conduits for cover-up and entrenchment of the culture of impunity.

The Supreme Court should guarantee the implementation of TJRC outcomes within the stated time frame. Truth commission final reports deserve consistent and comprehensive judicial implementation and monitoring mechanisms to anchor their national healing outcomes, cohesion, and reconciliation. State entrenched corruption and impunity prevent the holistic promulgation of the truth commission reports from realizing the desired goals.

Corrupt, scheming ministry officials irregularly issue tenders to obligated friendly parties known in Kenya as '*tender-prenuers*' through inflated contracts and consultancy fees. It is a common occurrence in public offices in Kenya. Procurement and tendering processes are routinely violated, costs of projects are deliberately inflated, and 'kick-backs' are so common that citizens must part with "*chai*" (bribe) for simple bureaucratic tasks, including accessing essential services like health and education.⁶²

Corruption is "indubitably the biggest impediment to Kenya's economic development and general prosperity, and the main cause of abject poverty engulfing over 50 percent of Kenyans."⁶³ Therefore, this is all about greed. From the teacher who pockets examination fees, to the notorious traffic police officer who stashes away millions from kickbacks to the civil servant who demands money to process a document, to the Member of Parliament (MP) who is, compromised, to move a motion in Parliament, greed is the driving force.⁶⁴

Small-scale and large-scale corruption cases are rampant in Kenya. It is a contagious multi-sector vice created in an environment and a culture that promotes unethical practices.⁶⁵

Therefore, institutionalized violence, manipulation of ethnicity for political and economic gain with concomitant marginalization and inequality in access to resources, and state

⁶¹ Kenya Human Rights Commission. 2011. *Lest We Forget: the faces of impunity in Kenya*. Nairobi: KHRC, 3.

⁶² Maira Martini. 2012. "Kenya: Overview of Corruption and Anti-Corruption, Anti-Corruption Resource Center, Transparency International 348 (18 October).

⁶³ Okombo-Okoth, Duncan. 2011. *Challenging the Rulers: A Leadership Model for Good Governance*, African Books Collective. 14.

⁶⁴ Joe Khamisi. 2014. "Dash Before Dusk: A Slave Descendant's Journey in Freedom," Nairobi: Kenway Publications. 254.

⁶⁵ Douglas Kimemia. (nd). "Corruption culture in Kenya (AJESD). Docx, Academia.ed. Online, Virginia Commonwealth Education. 6.

institutions' breakdown became the state's defining characteristics. The repeated failure to stem the ethnic-based political violence, to evade purging official impunity, and to hold perpetrators of human rights abuses to account, created a climate of impunity that often led to cycles of violence (Kimathi 2010).

Khamisi (2018) on looters and grabbers in Kenya notes that corruption and bribery were a way of life under Kenya's four regimes. Neither Jomo Kenyatta nor Daniel arap Moi nor Mwai Kibaki nor Uhuru Kenyatta managed to extinguish the overwhelming fire of graft. In most cases, they encouraged and unwittingly participated in them to promote an acquisitive and unquenched society in the name of democracy.

The failure to prosecute past impunity has repeatedly denied the country a deterrent against future corruption. While the New Constitutional order provides vast opportunities against impunity and corruption, success against abuse of power and corruption requires that statutory orders be aligned with the Constitution's values and principles; an imperative recognized by those resisting the (timely) implementation of the Constitution and related reforms.⁶⁶

The persistence of impunity and corruption worsens inequalities.⁶⁷ Luis Franceschi argues that impunity is under siege in Kenya, and accountability will ultimately win. The more Kenyan leaders focus on ethnicity, the slower social change will come, and the more its democracy will suffer. Hence, negative ethnicity is not the way, no matter how appealing it may look at first sight.⁶⁸

Extractive institutions make nations fail economically, ensuring that they remain poor and prevent them from embarking on a path towards economic growth. They persist because of a vicious circle that victimizes their citizens despite disparities in their intensity.⁶⁹

⁶⁶ Akech. 2011. "Abuse of Power and Corruption ..."

⁶⁷ John Githongo. 2006. Inequality, Ethnicity and the Fight against Corruption in Africa: a Kenyan perspective. *Economic Affairs* 26(4): 19-23.

⁶⁸ Luis Franceschi. 2017. "Impunity is under siege in Kenya and accountability will ultimately win," Daily Nation Online Edition, 25 August.
<http://www.nation.co.ke/oped/blogs/dot9/franceschi/2274464-4070590-packou/index.html>

⁶⁹ D. Acemoglu, D. and J. A. Robinson. 2013. Why Nations Fail? The Origin of Power, Prosperity and Poverty. London: Profile books Paperback Edition. 398-9.

FU6 (2018) notes that “colonialism created an unfair distribution of resources. The ‘divide and rule’ policy bred an un-tolerant political culture in post-independence Kenya”.⁷⁰

However, Kenya, as an independent country, exploits, benefits from this and therefore failed to correct the colonialism anomaly. On fieldwork visit to Kenya, something very peculiar and amusing has become part and parcel of the urban landscape, just like you can find the traffic signs on most roads. At the University of Nairobi, I saw a sign reading, “This is a Corruption Free Zone.” It shows a new low in sensitizing corruption in public institutions, yet the vice survives on.

4.9 Challenges and Prospects

Challenges to ethnic tension are multiple. They require holistic approaches to address their root causes, covering long-standing land grievances and economic and political marginalization. An impartial government benefitting from the spoils of history is a liability to its citizens. Colonial injustices created ethnic clashes through divide and rule policies. Post-independence Kenya anchored that practice with increased human rights violations and historical injustices abetting violence. Ethnic politicians need sound retraining on positive ethnicity to build a cohesive nation to maximize diversity for peaceful coexistence.

There is a lack of political will in addressing long-standing inequalities in land resources. It, therefore, mostly triggers violence when ethnic salience peaks during the elections.

Global trends reveal that civic space has shrunk in the past few years after its continual expansion over the past decades. Many governments are changing the institutional environment in which citizens engage, establish legal barriers to restrict media and civic society organizations' functioning and reduce their autonomy from the state.⁷¹

Public deliberation-paces and processes that allow group-based discussion and weighing alternative preferences can also help level the policy arena's playing field. Citizens' participation in local governance can help improve the quality of deliberation and the legitimacy of decisions by clarifying local constituencies' needs and demands. However, participatory approaches to development sometimes fail to consider the possibility of *civil society failures*. In weakly institutionalized environments, the poor are less likely to

⁷⁰ FU6, 31 July 2018: Fieldwork Narratives, Nairobi.

⁷¹ World Development Report (WDR) 2017 team, using data from V-Dem (database, 2016).

participate, and local elites can capture participatory mechanisms (Devarajan and Kanbur 2012; Mansuri and Rao 2013).

In 1998, the view that democracy was in decline was sharply contested. It had peaked in early 2000, and that there were no reverse waves that Samuel P. Huntington had discerned after previous periods of democratic expansion.⁷² Today, the overall number of democracies has fallen slightly further, but the signs that the world is in a democratic recession, as noted by Larry Diamond, are correct.⁷³

Authoritarian temptations appear to be fueling the malaise of democracy from resurgent authoritarianism in the west and elsewhere (Larry Diamond et al. 2016). Authoritarianism, therefore, refers to the growing international assertiveness of leading authoritarian regimes like China, Russia, Iran, and the extraordinary determination and lavish resources they have been devoting to build up both their military strength and especially their “soft power” in their hybrid shared effort aimed at weakening democracy worldwide. Democracy appears to be the biggest threat to their power base. It is bait and very tempting to the developing world.

Most citizens and political leaders in newer democracies do not share liberal democratic principles. They may not have solid foundations in their national history, makes the task of defending them at home more difficult (Plattner 2017). Plattner further states that unreasonable demands on voters and governments that threaten to erode liberal rights and freedoms will help diminish liberal democracy. Liberal democracy will regain its former health only if voters are convinced of its intrinsic merits and superiority to all possible alternatives. It is hard to achieve.

Democracy requires the sort of political inclusion and public accountability that only liberal institutions can secure. Without the fully-functioning constitutional fundamentals embodied in elections, human rights, protections, free press, institutional oversight, and the rule of law, the popular government will never be stable. More deprived and excluded sectors of society will look outside democracy for solutions to pressing problems.⁷⁴

⁷² Samuel P. Huntington. 1991. *The Third Wave: Democratization in the Late Twentieth Century*. Oklahoma: Norman Press.

⁷³ Larry Diamond. 2015. “Facing to the Democratic Recession,” in the *Journal of Democracy* (26 January): 141-55.

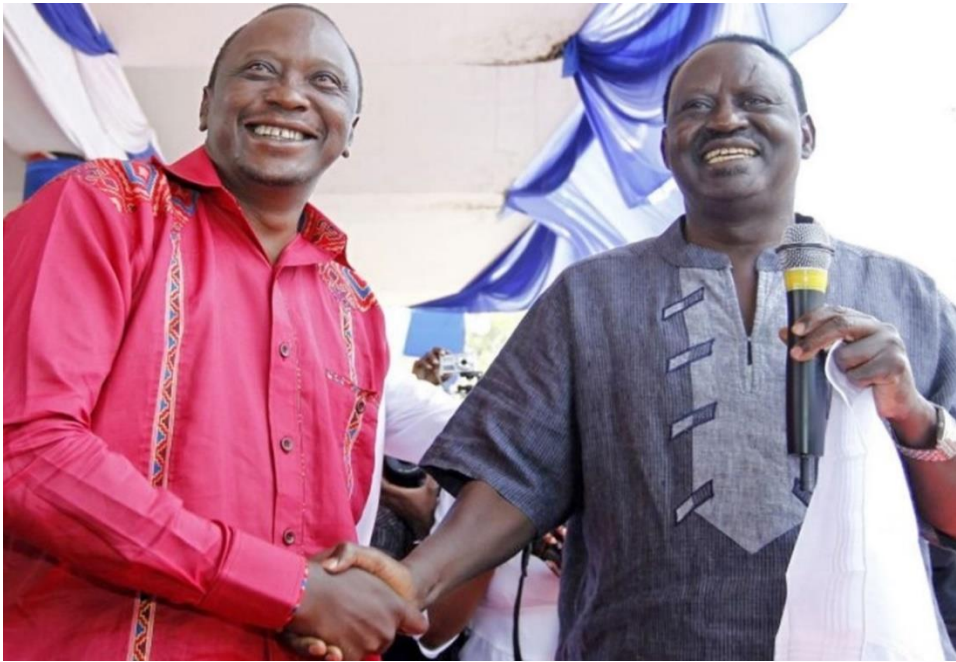
⁷⁴ Michael C. Davis. 2017. “Strengthening Constitutionalism in Asia,” in the *Journal of Democracy* 28(4).

Political rivals also happen to be a second or third generation, political rival families, as picture 4.1 shows. Political family rivalries in Kenya define the local ethnic fabric. It creates more problems than it solves, given the elite bargains and their transaction costs contributing to increased conflict and violence. Blood politics is, therefore, an obstacle to free democracy in Kenya. It must change to achieve progress. These faces should and must not define liberal democracy in Kenya. These handshakes represent their horizontal and vertical inclusions as obstacles to better governance. As is evident from these handshakes (Pictures 4.1 and 4.2) below, there are more hidden agendas behind these broad smiles in political settlements. These two are the late first President Jomo Kenyatta's and former Vice President Jaramogi Oginga Odinga's sons. Their continued presence on the Kenyan political scene worsens political decay under a besieged democracy. *How long will this comedy continue?*

Kenya's post-independence history was, doctored for personal rule exploiting powerless political institutions and employing ethnic mobilization as a tool for political expediency, legitimacy, and survival. The twin art of national building and national cohesion was never followed up apart from lip-service approaches to remain politically correct. These have bred ethnic intolerances, which ignite past differences and converge to trigger a cycle of violence in election years.

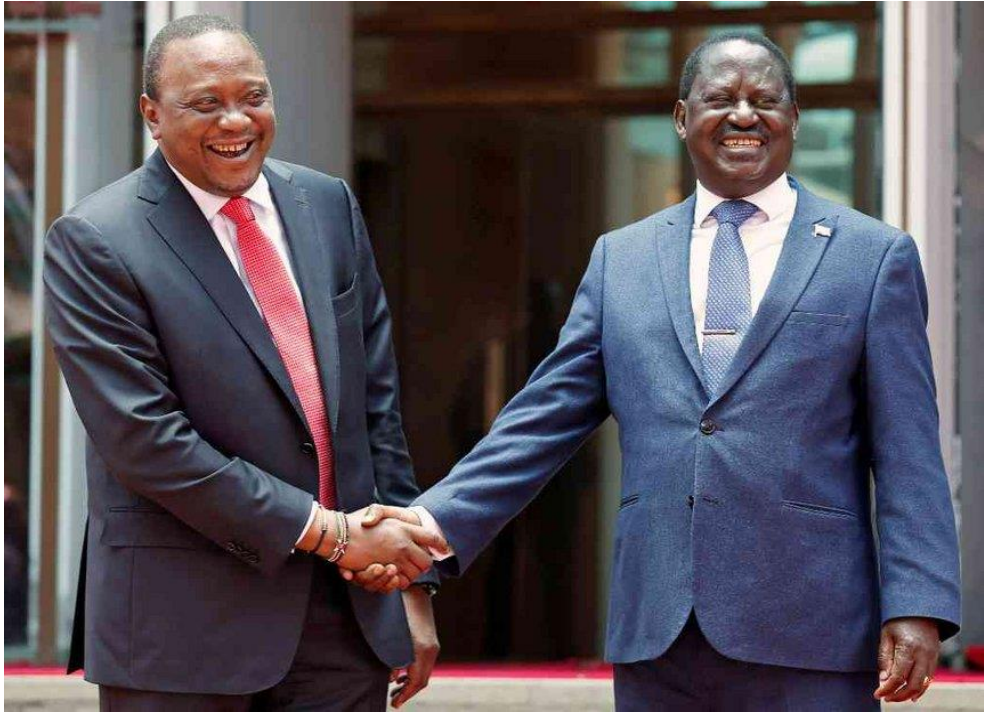
Chapter 4 has discussed the origins of violence, cases of inequalities, and the forms of governance trajectory in Kenya as they relate or ravel with conflict and security politics. Violence continues to be used as a political tool to entrench marginalization following the colonial divide and conquer policies. Reforming the abusive electoral system, including abolishing a violent-prone presidential ballot, should be the better option. Following up on this, chapter 5 leverages the advent of transitional justice in global truth justice commissions to bridge the gap between autocratic regimes and human rights abuses. Five Peer representative African truth-seeking commissions sought to restore justice, catalyze, and trigger better outcomes to nurture national reconciliatory healing and cohesion reforms.

Picture 4.1: Incumbent and Rival's Handshake Politics as Elite Bargains



Source: The Daily Nation - President Uhuru Kenyatta and Presidential Candidate Raila Odinga

Picture 4.2: The Handshakes as Political Settlements



Source: Reuters 2018 - President Uhuru and Presidential Candidate Raila (Former Prime Minister)

Chapter 5 African Truth Commissions

This section focuses on the advent of Global and African Truth Commissions as antidotes to autocratic regimes. Truth commissions champion anchoring the process of transitional justice to assist affected countries learn from the world's best practices in dealing with their past human rights abuses and related citizenry marginalization. Internationally supported truth commission interventions have proved useful in opening-up most countries leveraging international scrutiny and justice to allow healing and reconciliation for national cohesion to take root.

The outcomes have been mixed, generating non-existent databases, policies, recommendations, and reforms for future generations. The existence of an International Criminal Court (ICC) has been critical as a deterrent institution to handle international human rights crimes hitherto impossible to sanction. Truth commissions face many challenges in promulgating their reports; however, they are becoming necessary avenues to nurture and develop strong institutions in Africa and beyond. Let us now focus on narratives interrogating the African challenges in sensitizing and promoting universal human rights.

The five strongest⁷⁵ Global Truth Commissions are as follows: (1) The South Africa; *Truth and Reconciliation Commission (1995-2002)*, (2) Guatemala; *Commission for Historical Clarification (1997-1999)*, (3) Peru; *Truth and Reconciliation Commission (2001-2003)*, (4) Timor-Leste; *Commission for Reception Truth and Reconciliation (2002-2005)*, and (5) Morocco; *Equity and Reconciliation Commission (2004-2006)*. However, for illustrative purposes and proximity, I will elaborate on the African cases: South Africa's *TRC*, Morocco's *ERC*, Sierra Leone's *TRC*, Liberia's *TRC*, and Ghana's *NRC*. These will serve as peer references on *the Truth, Justice Reconciliation Commission of Kenya (TJRC 2009-2013)*, covered separately in chapters 6 and 7.

5.1 Truth and Reconciliation Commissions in Africa

Truth commissions have for the last quarter of a century in Africa and beyond evolved into a key item in the transitional justice development as these countries emerged from conflicts or violence associated with despotic regimes. The term 'truth commission' here includes

⁷⁵ Hayner. 2011. "Unspeakable truths", Chapter 4.

truth, justice, and reconciliation commissions (TRC).⁷⁶ Truth and reconciliation commissions (TRCs) have also emerged as an international norm and an essential element of national reconciliation, democratization, and post-conflict development.⁷⁷

There are different kinds of justice. Retributive justice is mostly Western. The African understanding is far more restorative-not so much to punish as to redress or restore a skewed balance.⁷⁸ An African Charter of Human Rights conceived in 1979 became the African Charter on Human and People's Rights in 1986, created by the Organization of African Unity (OAU) - the predecessor of the current African Union (AU), with a consensus majority.⁷⁹

Richard Carver - the former director of Human Rights Watch, notes the Charter's importance for two reasons. First, it enshrined the idea that protection of human rights is an international responsibility and that criticism of human rights abuse is not interference but a responsibility. Secondly, the African Charter espouses for the first time a specifically African concept of human rights. In the past African governments resisted much criticism of their human rights record because, they claimed, the dominant standard of human rights was Western and did not fit the African situation. Human rights advocates in Africa argued that the West favored atomized individuals' rights, whereas Africa stressed collective rights.⁸⁰

When Kenyans agreed to negotiations to end the intensifying post-election violence (PEV) in 2008, they set out a list of core issues to be included on the Agenda for the talks. Among the specific elements included from the start was forming a Truth, Justice, and Reconciliation Commission.⁸¹ When the time came to turn to that issue, a first request from the parties was to receive a copy of Pricilla Hayner's book "Unspeakable Truths," which had been initially published in 2001 and now in its second edition (Hayner 2011). It was a

⁷⁶ D.M. Malombe. 2012. "The politics of truth commissions in Africa: a case study of Kenya," in *Where Law Meets Reality -Forging African Transitional Justice*, by Okello, M.C., Dolan, C., Whande, U., Mncwabe, N., L. Onegi and Oola, S. Eds., Oxford: Pambazuka Press. 119.

⁷⁷ Michal Ben-Joseph Hirsch, Megan MacKenzie and Mohamed Sesay. 2012. "Measuring the impact of truth and reconciliation commissions: Placing the global 'success' of TRCs in local perspective," *Cooperation and Conflict* 47 (3): 386-403.

⁷⁸ Desmond Tutu, in Tina Roseberg. 1996. "Recovering from Apartheid," *The New Yorker*, November 18.

⁷⁹ Perry, J. and Sayndee, T. D. 2015. *African Truth Commissions and Transitional Justice*, Lanham: Lexington Books. xi.

⁸⁰ Carver, R. 1990. "Called to Account: How African Governments Investigate Human Rights Violations," *African Affairs* 89: 391-92.

⁸¹ Kofi Annan. 2011. *A Forward to Pricilla B. Hayner's, "Unspeakable truths, Transitional Justice and the Challenge of Truth Commissions."* Second Edition, New York: Routledge.

reasonable request for Hayner's book - "Unspeakable Truths" - which not only sets out the reasoning behind these exercises - why undertake an inquiry into the truth? What should be expected? Why the numerous practical issues in establishing and running such a body? What is the real human impact of opening-up such painful chapters of the past? During Kofi Annan's ten-year tenure as the United Nations Secretary-General, they often confronted the challenges of political transitions after horrendous rights abuses. He watched as the South African Truth and Reconciliation Commission unfolded with fascination and later found Ghana his home country, taking a similar path.

The United Nations was, involved as an adviser to truth commissions in countries such as Sierra Leone, Timor-Leste, El Salvador, and Guatemala. Hayner's unspeakable truths second edition book (2011) captures the voice of those who have closely struggled with these crucial processes, particularly with the still misconceptions about the role and impact of truth commissions. The updated analysis presented on truth, justice, the International Criminal Court (ICC), and perpetrators' naming will correct these misunderstandings.

Kofi Annan showed that Hayner's (2011) book sets out the contradictions and successes of an extensive range of experiences. National healing can be a slow and painful process. However, ultimately confirms that the truth is painful and burying the past is much less likely to lead a country to a healthy future. Kofi Annan commends this book to all those hoping to understand the difficulties of justice after transitional justice, and especially truth-seeking exercises, continuously improved.⁸²

In her preface, Hayner points out that as truth commissions multiplied and transitional justice took shape as a separate field of work and study. Since the late 1990s, institutions responded, and particularly new ones emerged (Hayner 2010: xv). The often-cited International Center for Transitional Justice (ICTJ) is the most prominent transitional justice provider, and Hayner is one of its co-founders from 2001-2010. The ICTJ has assisted most truth commissions since 2001 with comparative information. It often brings practitioners from one country to share their experiences with similar exercises elsewhere.⁸³

The ICTJ networks with many regional-level organizations generally provide expertise on transitional justice or specific technical areas. The ready availability of this comparative

⁸² Ibid.

⁸³ P.B. Hayner. 2010. *Unspeakable truths, Transitional Justice and the Challenge of Truth Commissions*. New York: Second Edition, Routledge. xv.

information and international assistance is the most significant change in the transitional justice field since 2001. In the past decade, most previous commissions received intensive training, advice, policy guidance, and other input from experts with experience from other global commissions with an awareness of potential pitfalls. Each national process and commission must take its own decisions and craft, its unique model. Other experiences and exposures provide much to be learned but little can or should be exactly copied or imported.⁸⁴

To remember or to forget is the real issue. One must remember, but one must also sometimes very much want to forget. Remembering is not easy, but forgetting may be impossible. By remembering, one can begin to recover as with the El Salvador case. By telling their story and learning every last detail about what happened and who was responsible, they were able to put the past behind them, as the South African case shows.⁸⁵

What Does the Truth Bring? More often, digging into the truth and giving victims a chance to speak offers a healing or “cathartic” experience. Besides, this turns out to be a questionable assumption, at least in some cases. It might be true even with less scientific evidence. The state paid significant reparations to thousands of victims or families of those killed or disappeared, pursued some prosecutions, and initiated judicial reforms from the recommendations by Truth Commissions in only Argentina, Chile, and Morocco.⁸⁶

5.1.1 Definitions

The first often cited definition of a truth commission suggested in 1994 has some limitations. However, it is modified slightly for clarity. Hayner defined a truth commission as (1) focused on the past; (2) set up to investigate a pattern of abuses over a while, rather than a specific event; (3) a temporary body, to conclude with a public report; and (4) officially authorized or empowered by the state.⁸⁷ Mark Freeman - a legal analyst critical to Hayner’s definition for its simplicity and missing key elements. He offers a detailed version with qualifiers that the definition should also explicitly state that: (1) truth commission focuses on severe acts of violence or repression; (2) the acts occurred during recent periods of abusive rule or armed conflict; (3) these commissions describe the causes, and consequences of the violations; (4) they investigate violations that occurred in the sponsoring state, (5) the

⁸⁴ Ibid; xvi.

⁸⁵ Ibid.

⁸⁶ Ibid., 5.

⁸⁷ Ibid., 11. Priscilla B. Hayner, “Fifteen Truth Commissions.”

commissions themselves are state-based; (6) these bodies are “victim-centered,” and finally; (7) they operate relatively independently from the state.⁸⁸ Hence, Freeman suggests that a *truth commission* is an ad hoc, autonomous, and victim-centered commission of inquiry. It is set up in and authorized by a state for the primary purposes of investigating and reporting on the principal causes and consequences of broad and relatively recent patterns of severe violence or repression that occurred in the state during specific periods of abusive rule and conflict. It makes recommendations for their redress and future prevention.”⁸⁹ Thus, this proposed definition omits one critical element: investigating abuse patterns, not just the causes and consequences.

Truth commissions are ‘official, temporary, non-judicial, fact-finding bodies that investigate a pattern of abuses of human rights or humanitarian law, usually committed over a while.’⁹⁰ Ruti Teitel states that the truth commission has, therefore, emerged “as impunity’s antidote and amnesty’s analogue.”⁹¹ It must be comprehensive with a holistic approach to include prosecutions, ‘truth-seeking,’ reparations, and institutional reform. It ensures that the appropriate recognition of both experiences and the dignity of victims of various human rights abuses, which consequently affirm victims as rights-bearing citizens and strengthen the relationship between citizens and the state, promotes and entrenches the rule of law.⁹²

Why is a Truth Commission necessary? . . . “to harness political forces, to have an inquiry with significant powers, and to get the many truths which are still missing.” It was an answer Hayner received from a Brazilian woman who had lost a family member during the dictatorship in Brazil.⁹³

⁸⁸ Mark Freeman. 2006. *Truth Commissions and Procedural Fairness*. New York: Cambridge University Press, 14-22.

⁸⁹ *Ibid.*, 18.

⁹⁰ D. Orentlicher. 2005. “Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity,” *Addendum to the Report of Independent Expert to Update the Set of Principles to Combat Impunity*, Geneva, Office of the United Nations High Commissioner for Human Rights: 6.

⁹¹ Ruti G. Teitel. 2000. *Transitional Justice*. New York: Oxford University Press, 79.

⁹² James Gondi. 2012. “Bridging the Impunity Gap in Kenya Requires a Holistic Approach to Transitional Justice [Analysis].” *Africa News Service*, 20 July 2012. Global Issues in Context, link.galegroup.com/apps/doc/A296997709/GIC?u=jpdubs&xid=31882ed9.

⁹³ Hayner, P. B. 2011. “Unspeakable truths,” 19.

5.1.2 Aims

Truth Commissions have become the most prominent government initiative to respond to past abuses and the starting point from which other accountability measures, reparations, and reforms may be developed. They are tasked to discover, clarify, and formally acknowledge past abuses, to address the needs of victims, to “counter impunity” and advance individual accountability; to outline institutional responsibility and recommend reforms; to promote reconciliation and reduce conflict over the past.⁹⁴

(1) *Sanctioned fact-finding is the first most straightforward objective of a truth commission.* It establishes an accurate record of a country’s past, clarifies uncertain events, and lifts the lid of silence and denial from a contentious and painful period of history. The vast number of interviews with victims, typical of these commissions, allows a detailed accounting of violence patterns over time and across regions, literally recording a hidden history. The detailed breadth of information collected by a truth commission is usually of a kind and quality far better than what is available in any previous historical account, resulting in a well-documented report on often-disputed events. Some truth commissions have also resolved several vital cases, beyond outlining general patterns, even naming perpetrators or the high placed intellectual authors of major unsolved crimes. The official and public recognition of past abuses served to effectively de-silence a topic that might otherwise be spoken of only in hushed tones. These were long considered too dangerous for general conversations, rarely reported honestly in the press, and certainly out of bounds for the official history taught in schools. Therefore – this reclaims a country’s history and opens it for public review.⁹⁵

Firm denial may be most vigorous. The repressive government depended on the active or passive support of the public or the public's specific sectors to carry out its policies and maintain power. South Africa’s anti-apartheid activists insist that it was impossible not to know that torture and killing were commonplace under apartheid, but some South Africans chose to ignore the truth.⁹⁶ Hence, the commission’s principal contribution was simply to remove the possibility of continued denial. Michael Ignatieff (1966) notes that “the past is an argument and the function of truth commissions, like the function of honest historians, is simply to purify the arguments, to narrow the range of permissible lies.”⁹⁷ In South

⁹⁴ Ibid; 20.

⁹⁵ Ibid.

⁹⁶ Ibid; 20.

⁹⁷ Michael Ignatieff. 1966. “Articles of Faith”, *Index on Censorship* 25(5): 110-113.

Africa, victims already know the state forces' evidence of abuses, as they were victims and witnesses to these abuses themselves. Limited time and resources also limit the number of cases that need a full investigation. Unless the state acknowledges with apologies and compensations, the truth-healing process is hard to materialize.⁹⁸

(2) *Truth Commissions* often have a separate and distinct aim of healing, respecting, and responding to victims' and survivors' needs. Therapists who worked with torture victims in South Africa saw a marked increase in the public understanding and appreciation of victims' needs.⁹⁹

(3) *Truth Commission* may be directed to help counter impunity, and typically will make clear recommendations to advance criminal accountability as victim-centered. Trials may result from enough evidence and political will to provide some sense of accounting. Recommendations for other sanctions without full trial remove abusers from the security forces to curb further harm.¹⁰⁰

(4) *Truth Commissions* are well situated to elevate the institutional responsibility for abuses and outline the reforms needed to prevent further abuses. They typically focus on the military, police, and judicial system; however, their strong recommendations generally remain weak.¹⁰¹

(5) *Truth Commissions* may be mandated to "promote reconciliation" but may struggle in the process. Conventional wisdom holds that the future depends on the past: one must confront the legacy of past horrors, or there will be no foundation for building a new society. Bury your sins, and they will reemerge later and seek eternal forgiveness. Governments must also tread with care as truth-telling also increases tensions.¹⁰²

Proponents of Truth-seeking also assert that forgiveness and reconciliation will result from airing the full truth. The general public - casual observers assume that reconciliation is an integral or even the fundamental purpose of creating a Truth Commission, but this is not true.¹⁰³

⁹⁸ Hayner. 2011. "Unspeakable truths," 21.

⁹⁹ Ibid; 22.

¹⁰⁰ Ibid.

¹⁰¹ Ibid; 23.

¹⁰² Ibid.

¹⁰³ Ibid.

5.1.3 Obligation of the state

The state has a general obligation to investigate and publicize the truth about past abuses. It is emphasized by international courts, restated in policy papers, passed in the United Nations' resolutions, and other international governmental institutions. The first clear legal ruling on this was by the Inter-American Court of Human Rights in the Valasquez Rodriguez case of 1988, which confirmed the state's duty to investigate the fate of the disappeared and disclose information to relatives.¹⁰⁴

Around 2005, the United Nations Independent Expert on Impunity summarized the International law and state practice approved by the UN Commission on Human Rights. It states that "(e)very people have the inalienable right to know the truth about the circumstances in which violations took place, and in the event of death or disappearance, the victims' fate."¹⁰⁵

Societies may benefit from *truth commissions* and clarify that any decision to establish such a *commission* or to define its terms and composition "should" be based on broad public consultation in which the views of victims and survivors especially are sought."¹⁰⁶

States must preserve and ensure access to any archives about past violations, whether they set-up a commission or not.¹⁰⁷ *The right to the truth expert paper report* commissioned by the United Nations Office of the High Commissioner for Human Rights released in 2006 outlines a right that is "recognized in several international treaties and instruments as well as by local, regional, and international jurisprudence and plural resolutions of intergovernmental bodies at the universal and regional levels.¹⁰⁸ It concludes that victims have a right to the complete truth about the events that transpired, their specific circumstances, and who participated in them, including knowing the circumstances in which the violations took place, besides their reasons. The right to the truth also has a unique dimension: to know the fate and whereabouts of the victim.¹⁰⁹ In October 2009,

¹⁰⁴ Pricilla B. Hayner. 2000. "Past Truths Present Dangers: The role of Official truth Seeking in Conflict Resolutions and Prevention," in *International Conflict Resolution after the Cold War*, ed. Paul C. Stern and Daniel Druckman. Washington DC: National Academy Press.

¹⁰⁵ Report of the independent expert to update the set of principles to combat impunity, Diane Orentlicher: Addendum, "UN Doc. 2005. E/CN.4/2005/102/Add.1, 8 February, Principles 2 and 4.

¹⁰⁶ *Ibid*; Principle 6.

¹⁰⁷ *Ibid*; Principle 5.

¹⁰⁸ "Study on the Right to the Truth: Report of the Office of the United Nations High Commissioner for Human Rights," UN Doc. E/CN.4/2006/91, February 8, 2006, para.55.

¹⁰⁹ *Ibid*; para 59.

several consensus resolutions by the UN Human Rights Council enacted reiterating the right to the truth.¹¹⁰ Quite often, truth commission advocates cite this right in pushing their respective governments to set up a broadly focused and well-empowered truth commission.

5.1.4 Impact Assessments

Numerous writers have questioned truth commissions sweeping claims and assumptions. Thus, Erin Daly believes it is unrealistic to expect that one accepted truth will emerge from a truth commission process in some contexts. She indicates that in deeply divided populations, even on underlying issues like between Israel and Palestine and perhaps Iraq. The Serbs refusal to accept well-founded reports of abuse by their forces is a case in point. The unvarnished truth is unlikely to reconcile the competing points of view and the people who hold them.¹¹¹

Transitional justice researcher Nevin (2013) argues that transitional justice mechanisms can contribute to the process of social learning ultimately required in facilitating intergroup reconciliation in divided societies by bringing together former enemies to challenge and potentially transform the nature of their relations. Nevin illustrates that transitional justice interventions provide truth and justice for past human rights abuses. However, it also helps promote contact, dialogue, and the amelioration of structural and material inequalities between former antagonists. It applies to the social learning model in South Africa and Northern Ireland.¹¹²

Political scientist David Mendeloff has objected to the idea that truth commissions necessarily promote peace to prevent further violence. He cites eight primary claims made about peace-promoting effects of truth-telling, (1) encourages social healing and reconciliation, (2) promotes justice, (3) allows for the establishment of an official historical record, (4) serves a public education function, (5) aids institutional reforms, (6) helps promote democracy, and (7) preempts as well as (8) deters future atrocities.¹¹³ He further

¹¹⁰ Resolutions adopted by the Human Rights Council. 2009. Right to the Truth, "UN Doc. A/HRC/RES/12/12, October 12.

¹¹¹ Erin Daly. 2008. "Truth Skepticism: An inquiry into the Value of Truth in Times of Transition," *International Journal of Transitional Justice* (2): 23-41.

¹¹² Nevin T. Aiken. 2013. *Identity, Reconciliation and Transitional Justice-Overcoming Intractability in Divided Societies*, Abingdon: Routledge. Chapter 2.

¹¹³ David Mendeloff. 2004. "Truth-Seeking, Truth-Telling, and Post conflict Peace building: Curb the Enthusiasm?" *International Studies Review* (6): 355-380.

outlines seventeen core assumptions that he finds throughout the literature, like the assumption that personal healing promotes national healing; truth-telling promotes reconciliation, and forgetting, suppressing, or distorting the past leads to war.¹¹⁴ He, therefore, concludes that many of these claims are “flawed or highly contentious” and that truth-telling advocates “claim far more about the power of truth-telling than logic or evidence dictates.”¹¹⁵

Michal Ben-Josef Hirsch et al. (2012) agree that a more nuanced, ethical, and impartial assessment mechanism must continue to understand the impacts on TRCs better. They further observe an imbalance between advocacy, attention, and generalized research on TRCs and assessment mechanisms. Thus, truth commissions are promoted and implemented globally despite their limited knowledge about their effects.¹¹⁶

The New York Times International Edition on Monday 25 September (2017: 3) carried out a whole page advert on the *truth, as shown below, and validates the truth's complexity.*

“The truth is hard, hidden, must be pursued, hard to hear, rarely simple, isn’t so obvious, necessary, can’t be glossed over, has no agenda, can’t be manufactured, doesn’t take sides, isn’t red or blue, hard to accept, pulls no punches, powerful, under attack, worthy defending, requires taking a stand and is more important now than ever.”

Therefore, the genuine truth is eternal justice, dissolves fear, and lies. It facilitates anchoring positive forgiveness and leads to universal reconciliation. Let’s now explore the Five African experiences with the truth and reconciliation commissions to demonstrate these challenges.

5.2 Five African Truth and Reconciliation Commissions

5.2.1 South Africa: Truth and Reconciliation Commission (1995-2002)

After forty-five years of apartheid in South Africa, and thirty-odd years of some level of armed resistance against the apartheid state by the armed wing of the African National

¹¹⁴ Ibid; 355.

¹¹⁵ Ibid.

¹¹⁶ Michal Ben-Joseph Hirsch, Megan MacKenzie and Mohamed Sesay. 2012. “Measuring the impact of truth and reconciliation commissions: Placing the global ‘success’ of TRCs in local perspective,” *Cooperation and Conflict* 47 (3): 400.

Congress (ANC) and others, the country had suffered massacres, killings, torture, lengthy imprisonment of activists, severe economic and social discrimination against its majority African population (Hayner 2011: 27).

The highest number of deaths took place in the conflict between the ANC and the government-backed Inkatha Freedom Party, particularly in the eastern region of the country that is now KwaZulu-Natal.¹¹⁷ The idea for a truth commission surfaced in 1992. Still, it was not until after Nelson Mandela was, elected president in April 1994 that serious discussions began about what form a national truth commission would take. Kader Asmal, a leading ANC member, was the first to argue for the importance of truth in a key public lecture at the University of Western Cape in 1992.¹¹⁸ The most contentious issue during the negotiations toward an interim Constitution in late 1993 was whether an amnesty would be granted to wrongdoers, as the government and military insisted. In finalizing negotiations, the parties agreed to a "post-amble" to the Constitution stated - "amnesty shall be granted in respect of acts, omissions, and offenses associated with political objectives and committed to the course of the conflicts of the past, "this amnesty was linked later linked to a truth-seeking process."¹¹⁹

After considerable input from the civil society, including two international countries, and after hundreds of hours of hearings, the South African Parliament passed the Promotion of National Unity and Reconciliation Act in mid-1995. Seventeen commissioners were appointed, with Archbishop Desmond Tutu as chair after a public nomination and selection process. The commission commenced its work in December 1995, and its first hearings and investigations deferred to April 1996 due to several months of the setting up process.¹²⁰ The commission's empowering Act provided the most complex and sophisticated mandate for any truth commissions to date, with carefully balanced powers and an extensive investigatory reach. Written in precise legal language on over twenty single-spaced pages, the Act gave the commission the power to grant individualized amnesty, search premises, seize evidence, subpoena witnesses, and run a sophisticated witness-protection program. The Commission commenced its work with three hundred staff, a budget of about US \$ 18 million per year for two and a half years, and four large offices

¹¹⁷ Ibid; 27.

¹¹⁸ Kader Asmal. 1992. "Victims, Survivors and Citizens: Human Rights, Reconciliation," *South African Journal on Human Rights* 8(4): 491-511.

¹¹⁹ Hayner. 2011. "Unspeakable truths," 26.

¹²⁰ Ibid.

around the country, dwarfing previous truth commissions in its grand size and reach.¹²¹ The National Unity and Reconciliation Act designated the commission to work in three interconnected committees. The Human Rights Violations Committee was responsible for collecting statements from victims and witnesses and recording the extent of gross human rights violations. The Amnesty Committee processed and decided individual applications for amnesty. The Reparations and Rehabilitation Committee tasked with designing and putting forward recommendations for a reparation program.¹²² The commission took testimony from over 21,000 victims and witnesses; 2,000 among them also appeared in public hearings. Media coverage of the most recent revelations was intense, with daily coverage by most newspapers, radio, and television. The four hours live broadcast on national radio daily, and the *Truth Commission Special Report* television shows on Sunday evenings were the most-watched news show in the country.¹²³

The commission also held special hearings focused on the religious community, the legal community, business and labor, the health sector, the media, prisons, and the armed forces. Other hearings focused on chemical and biological weapons usage against opponents of the apartheid government, compulsory military service, political party policies, and violence on youth and women. Specific individual involvement was addressed, starting with Winnie Madikizela Mandela, who insisted that her hearings be held in public and not private sessions as earlier planned by the commission. The two weeks of intensive investigation into her criminal acts' involvement sparked several police investigations into her involvement and effectively ended her pursuit of a prominent political post.¹²⁴

The commission was biased towards reconciliation despite its failure to use strong powers at its disposal; hence was partly criticized for its failure to pursue the truth. It employed its subpoena and search and seizure powers only a handful of times. It was to avoid upsetting various parties, hence delaying issuing decisions or search orders against key individuals or institutions, like on the South African Defence Force's headquarters and the ANC, both of which were either slow or resistant to turn over the requested information, respectively. Human rights organizations criticized the commission for not issuing a subpoena against the minister of home affairs and Inkatha Freedom Party's President Mangosuthu Buthelezi, a decision based mainly on the commission's fear of a possible

¹²¹ Ibid; 27-28.

¹²² Ibid; 28.

¹²³ Ibid.

¹²⁴ Ibid.

violent reaction.¹²⁵

The most significant innovation of the commission, and the most controversial of its powers, was its ability to grant individual amnesty for politically motivated crimes committed between 1960 and April 1994. It received 7,115 applications for amnesty. It required applicants to appear in a public hearing to answer questions from the commission, from legal counsel representing victims or their families, directly from victims themselves. It was for the gross violations of human rights, in contrast to politically motivated crimes against property or gun-running. Just below 25 percent of the applications pertained to such gross violations, requiring a hearing. Ultimately, the Amnesty Committee denied 4,500 applications for amnesty after administrative review, mostly because they lacked a political objective. It was because more than half of these applicants were already in prison, serving what was determined as non-political common crimes.¹²⁶ Hence, some suggest, the actual number of credible applications was about 2,500.¹²⁷ Amnesty was only granted to those who fully confessed to their involvement in past crimes shown as politically motivated. Apart from a few high-level trials and convictions, some were also acquittals, making many former perpetrators take the risk of wait and see, especially political leaders of the apartheid regime and senior army officers.

Ultimately, 1,167 people received amnesty by the TRC, and another 145 got partial amnesty. Despite the difficulties and frustration, candid and significant information emerged from the amnesty process that contributed to the broader goal of revealing the truth.¹²⁸ The report was considered in Parliament formerly. Several months later, with ANC expressing serious reservations and after days of debate and comment, the government made no commitment to implement the commissions' numerous recommendations.

The intensity and time required for all amnesty applications to be individually processed were unforeseen. Analyst Jeremy Sarkin (2004) notes that public amnesty hearings "were heard on 2,548 incidents, which took place on 1,888 days at 267 venues around the country, using 1,538 interpreters who interpreted for 11,680 hours."¹²⁹ The Amnesty Committee held hearings for another two and a half years after the release of the commission's 1998

¹²⁵ Hayner. 2011. "Unspeakable truths," 28.

¹²⁶ Ibid; 29.

¹²⁷ Jeremy Sarkin. 2004. "Carrots and Sticks: The TRC and the South African Amnesty Process." Antwerp: Intersentia, 115.

¹²⁸ Ibid; 272.

¹²⁹ Ibid; 108.

report, finally concluding in 2001 while collaborating a list of victims eligible for reparations and implementing the same program. The sixth and seventh volumes of the commission's report were concluded in March 2002 and released in 2003. It was over six years after the commission began due to delaying lawsuits by the ANC or the Inkatha Freedom Party, respectively.

A crucial weakness of the commission was that it did not focus sufficiently on the policies of apartheid, the beneficiaries of apartheid, and the political economy of apartheid. It also failed to demonstrate sufficiently to those who had benefitted from the apartheid and the economic, social, political, and legal consequences of colonial and apartheid policies. This legacy will continue to haunt South Africa for decades.¹³⁰ Mahmood Mamdani, a Ugandan scholar at Cape Town University, then argued that the TRC produced a 'diminished truth' in that it allowed the beneficiaries of apartheid to escape scrutiny, and by adopting the Latin American analogy, the TRC obscured the link between conquest and dispossession, between racialized power and privilege, between perpetrator and beneficiary.¹³¹ Therefore, the TRC's failure to examine the influence of apartheid policies allowed the nation's collective shame to fall entirely on the 'trigger-pullers.'¹³²

The lack of political commitment to make the suggested reforms and reparations was confirmed in the years that followed. Many were disappointed with the government's stance toward apartheid-era crimes. Two months after releasing the commission's final volumes, President Mbeki used his constitutional power to pardon thirty-three convicted prisoners, mostly ANC and Pan-African Congress members who had tried but failed to obtain amnesty through the commission's process. Later, the government proposed an expanded amnesty program, but a lawsuit from victims and civil society blocked it. Hence, the impact of the TRC on reconciliation on race relations is contested and racially divided. It makes dealing with decades of abuse would take a long time beyond speaking the truth.¹³³

South African TRC established the importance of public participation in the decision-making process that established a truth commission.¹³⁴

¹³⁰ Yasmine Louise Sooka. 2009. "The Politics of Transitional Justice," in *Peace versus Justice - The Dilemma of Transitional justice in Africa* by Chandra Lekha Sriram and Suren Pillay (eds.), Scottsville: University of KwaZulu-Natal Press, 21-38.

¹³¹ M. Mamdani. 2001. 'A diminished truth,' in W. James and L. van deVijver eds., *After the TRC: Reflections on truth and reconciliation in South Africa*. Athens: Ohio University Press: 60-63.

¹³² Sooka. 2009. "The Politics of Transitional Justice," 33.

¹³³ Hayner. 2011. "Unspeakable truths," 29-30.

¹³⁴ See *Truth and Reconciliation Commission of South Africa Report 6(6)*.

An essential feature of the South Africa Commission was its openness and transparency. The public hearings held by the TRC ensured that South Africans realized the atrocities committed during the apartheid era. It exposed the apartheid-era regime beyond doubt on its responsibility to commit crimes against humanity to preserve the white privilege and power.¹³⁵ Post Mandela, South Africa chose reconciliation instead of revenge. It illustrates how to embrace magnanimous to forgive racial profiling crimes against humanity in South Africa as a lesson to other societies still in conflict confrontations.

5.2.2 Morocco: Equity and Reconciliation Commission (2004-2006)

The first truth commission in the Arab world created in a constitutional monarchy, under the sanction of a new king who was effectively uncovering the signed rights activist. Some opponents - who "disappeared" for nearly two decades - were kept in secret detention centers, alive but unknown to anyone outside; others imprisoned and killed. Morocco also repressed independence advocates of Western Sahara after conflict broke out in 1975. As late as 1989, King Mohammad VI vehemently denied the existence of political prisoners, but in response to internal and international pressure, in 1990, he began to ease these practices. He appointed an Advisory Council on Human Rights (CCDH) to investigate human rights abuse reports and make recommendations to bring Moroccan law and practice into line with international standards. Within a few years, Morocco released almost insignificant abuses under the reign of his father and grandfather.¹³⁶ Many observers were doubtful whether Morocco represented a real "transition," as the government and power structures did not change - only the king changed.¹³⁷ However, the state's repressive policies had begun to ease several years earlier, thus opening the path to a firmer change in policy and practice.

King Hassan II ruled Morocco for almost forty years - referred to as "years of lead" - leading a harsh repression policy that included the imprisonment, torture, and forced exile of political opponents, 300 - "disappeared" persons. He ratified several international human rights conventions.¹³⁸ After King Hassan's II death in 1979, his son, King Mohammad VI, strengthened these efforts and was more open to addressing past abuses. He set up an

¹³⁵ T. Rosenberg.1999. Forward, in M. Meredith, "Coming to terms: South Africa's search for truth," New York: Public Affairs.

¹³⁶ Hayner. 2011. "Unspeakable truths," 42.

¹³⁷ Holger Albrecht and Oliver Schlumberger. (2004). "Waiting for Godot': Regime Change without Democratization in the Arab World," *International Political Science Review* (25): 371-392.

¹³⁸ Hayner. 2011. "Unspeakable truths," 42-43.

Independent Arbitration Panel in 1999, operating under the auspices of the CCDH, to determine compensation to the families of the missing. This panel awarded an equivalent of nearly US\$ 100 million to close to 7,000 recipients, both direct victims and their families. This panel made a significant advance but also blamed for inconsistencies and lack of transparency. A short deadline missed by many thousands of applicants locked them out, raising a call for an additional program for reparations.¹³⁹

National human rights groups began lobbying for a truth commission in 1999, with considerable efforts and preparation, including a major national conference that brought together a wide range of official and unofficial actors as well as international experts. In 2003, the CCDH finally recommended to the King the creation of a truth commission. Subsequently, the King approved the commission. Some of its commissioners were nominated from human rights organizations. Hence, the Equity and Reconciliation Commission (Instance Equite et Reconciliation - IER) was inaugurated in January 2004.¹⁴⁰

Its seventeen members included a woman. It comprised of former political prisoners, prominent civil rights advocates, academics, and others. Its chair, Driss Benzekri, had been a political prisoner for seventeen years in the 1970s and 1980s and was among Morocco's most prominent human rights advocates. The commission spent its first months drafting its mandate, made official by a royal decree, or *Dahir*, in April 2004 and mandated to investigate forty-three years of events, from independence in 1956 to the founding of the Independent Arbitration Panel in 1999.¹⁴¹

It was, agreed that the commission should not play a role in criminal prosecutions with invoked individual responsibility. Public authorities were obliged to cooperate despite its lack of *subpoena* or search and seizure powers. The commission's final report noted a lack of cooperation from some security agencies and former officials.¹⁴² It worked for twenty months, with a staff of over three hundred persons called for written 13,000 submissions from victims in its first months, handling over 20,000 cases transferred from the Independent Arbitration Panel. Its hearings were well attended and broadcasted throughout the Arab world on Al-Jazeera television – a first in the region. It completed its work in 2005, with a copy to the King, and promulgated in January 2006. However, as of

¹³⁹ Ibid; 43.

¹⁴⁰ Opgenhaffen and Mark Freeman. 2005. "Transitional Justice in Morocco: A Progress Report," International Center for Transitional Justice, November.

¹⁴¹ Hayner. 2011. "Unspeakable truths," 43.

¹⁴² Ibid.

2009, most proposed reforms had stalled. The commission recommended extensive individual and communal reparations and a public apology by the prime minister. No apology yet, but Morocco stands out in the speed and efficiency with which the state implemented the commission's recommendations for reparations. Eighteen months after that, about US \$85 million was, distributed to 9,000 individual victims or family members, and community-based reparations were in advanced development.¹⁴³

5.2.3 Sierra Leone: Truth and Reconciliation Commission (2002-2004)

Sierra Leone emerged from its civil war in 2002 and embarked on reestablishing a democracy. In this civil war (1991 to 2002), tens of thousands died, and more than 2 million were, displaced, which is about one-third of the population.¹⁴⁴ A trademark lasting feature of the rebels and their infamous child soldiers was the purposeful hacking off the victims' hands or feet. The effects of this calamity are still evident to date. The Sierra Leone Truth Commission set out from this background to answer two seemingly simple but profound questions: *Why Sierra Leone? What went wrong?*¹⁴⁵ Many things fell apart.

An agreement for a Truth and Reconciliation Commission was included in the Lomé peace accord that ended the Sierra Leone civil war in July 1999 and signed into law through the Truth and Reconciliation Act in February 2000.¹⁴⁶ Plans for the commission were slowed after fighting between the rebels and the government reignited in early 2000. When peace became more secure with the rebel forces' advanced disarmament, preparations for the truth commission began again in late 2001. A public nomination process resulted in over sixty nominations for commissioners; a representative selection panel chose four. The UN High Commissioner for Human Rights selected three international members. Commissioners inaugurated in July 2002 allowed three months for preparation, and formally launched operations in October. The Truth Reconciliation Commission Act called on the commission to undertake research, receive statements, and hold public sessions to establish an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone. The response

¹⁴³ Ibid; 44.

¹⁴⁴ BBC News Africa, Sierra Leone, Country profile, <http://www.bbc.com/news/world-africa-14094194>

¹⁴⁵ Perry, J. and Sayndee, T. D. 2015. Chapter Three: The Truth and Reconciliation Commission of Sierra Leone, in *African Truth Commissions and Transitional Justice*, Lanham: Lexington Books.

¹⁴⁶ See: Priscilla Hayner. 2007. "The Sierra Leone Truth and Reconciliation Commission: Reviewing the First Year," International Center for Transitional Justice, January 2004. Also Priscilla Hayner, *Negotiating Peace in Sierra Leone: Confronting the Justice Challenge*, Center for Humanitarian Dialogue and International Center for Transitional Justice, December.

to victims' needs, the promotion of healing and reconciliation to prevent a repetition of the violations and abuses suffered from 1991 until the signing of the Lomé Peace Agreement Addressing impunity.¹⁴⁷

The commission extended the period that it covered to January 2002 to cover the continued conflict.¹⁴⁸ The Act calls on the commission to give special attention to victims of sexual abuse and children who were victims or perpetrators. It also refers to the possible use of paramount chiefs or other traditional or religious leaders in undertaking its work. The TRC Act declared that the commission to be administratively managed as a project of the UN Office of the High Commissioner for Human Rights (OHCHR). It helped with fundraising and administrative support, but its independence in taking operational decisions raised some questions, not considered as the most advantageous administrative structure in the end.¹⁴⁹

The Truth and Reconciliation Commission's operating budget totaled less than the US \$ 5 million, reduced from an initial plan that projected almost US \$ 10 million. Limited funds, as well as a tight timeline, narrowed its reach, reducing its period of statement-taking and public hearings to four months, and limited its staff size. Therefore, it trained staff of national human rights organizations to help take statements and extend its reach.¹⁵⁰

An early study in the commissions' work showed that the ex-combatants from all sides of the conflict generally supported the commissions' work, thus becoming more supportive as they learned more about it.¹⁵¹

The commission received a total of 7,706 statements. Over 10 percent of them came directly from the perpetrators, admitting to the details of most of their acts.¹⁵² The commission hosted public hearing across the country lasting five months, with more than 450 witnesses giving testimony in thousands of hours. Traditional leaders performed "reconciliation ceremonies" at the end of some 'week-long' hearings outside of Freetown. These ceremonies sometimes brought victims and perpetrators together. In a few cases,

¹⁴⁷ Truth and Reconciliation Act of Sierra Leone. 2000. Article 6 (1).

¹⁴⁸ Witness to the Truth: Report of the Sierra Leone Truth and Reconciliation Commission. 2004. chap. 1, para. 71.

¹⁴⁹ Hayner. 2011. "Unspeakable truths," 58.

¹⁵⁰ Ibid; 59.

¹⁵¹ Post-conflict Reintegration Initiative for Development and Empowerment (PRIDE). 2002. "Ex-Combatants Views of the Truth and Reconciliation Commission and Special Court in Sierra Leone," September 12.

¹⁵² Hayner. 2011. "Unspeakable truths," 59.

the guilty were ritually cleansed and reaccepted into the community. Then-President Ahmad Tejan Kabbah testified in Freetown's closing hearing; however, he refused to apologize for state forces' abuses.¹⁵³ However, in various commissions events, the main political parties and representatives of the military and the police apologized in public for their various roles before and during the conflict.¹⁵⁴

Further political violence led the government to request the United Nations to create a hybrid tribunal comprising international and national judges, prosecutors, and staff. It happened in early 2000, after signing the TRC Act into law, and ten months after signing the Lomé Peace Agreement.

This Special Court for Sierra Leone was established in 2002 via an agreement between the United Nations and the Sierra Leone government mandated to prosecute those "bearing the greatest responsibility" for crimes after November 1996. The time covered by the Special Court and by the truth commission thus overlapped by several years, as did the subject matter of interest, but no provisions governed their relationship. There was a concern that the commission's information, including from perpetrators, might be accessed by the Special Court and could have a chilling effect on the commission's work. It was resolved by taking clear statements from both bodies and respecting confidentiality granted by the commission. The court declined a later request by the commission that indicated detainees held by a Special Court, allowed to participate in the commission's public hearings.¹⁵⁵

The four-volume commission report, a one-hour video summary, and a "child-friendly" version were concluded in 2004. The video version was produced by a Witness, an NGO based in New York, and collaborating with UNICEF. The report found that "the central cause of the war was endemic greed, corruption, and nepotism" and that "Government accountability was non-existent" over many years.¹⁵⁶

Sierra Leone hoped to escape the problem that has been common to other commissions: That of government failing to act on the recommendations of the final report. The TRC committed the government to fulfill the commission's recommendations and set out specific follow-up procedures to track and implement. The president was to appoint a follow-up

¹⁵³ Riveting public hearings transcript included as appendix 3 of the final report.

¹⁵⁴ Hayner. 2011. "Unspeakable truths", 59.

¹⁵⁵ Hayner. 2011: Chapter 9.

¹⁵⁶ Witness to Truth, vol.2, chap. 2, paras.13, 15.

committee. This committee included national and international members, tasked with submitting quarterly public reports on implementing the recommendations. The government was also required to submit quarterly public reports on its actions to fulfill the recommendation.¹⁵⁷ These mechanisms and procedures failed to be implemented.¹⁵⁸

The government prepared a white paper assessing the report and its wide-ranging recommendations, but it provided little commitment to implementing the recommendations, criticized as weak. Civil society then drafted an omnibus bill that would address aspects that required legislative action. The draft bill presented to Parliament in late 2005 failed to receive attention from the legislators. Nevertheless, the government made slow progress in implementation. In 2006, the UN Peace-building Commission in New York selected Sierra Leone as one of its first countries of special focus, and the UN Peacebuilding Fund committed US \$ 3 million for a reparations program, explicitly citing the truth commission recommendations as to the incentive for the program.¹⁵⁹

The elections in September 2007 of a new President of Sierra Leone of Mr. Ernest Bai Koroma, raised hopes. In his campaigns and inaugural speech, he committed to the recommendations of the TRC over the next years, but generally with cautious reference to the commission. These included judicial and security-sector reform and initiatives on the rights of children and women. The new Constitutional Review Commission also outlined several reforms suggested by the TRC. In late 2008, Four years after the truth commission had reported, its "imperative" recommendations were described as "suspended in a partial state of implementation."¹⁶⁰

Meanwhile, an important critique of the truth commission emerged through an ethnographic study of this commission, specifically, how local communities responded to public hearings. Anthropologist Roselind Shaw suggested that the truth commissions run counter to the local understandings of healing and reconciliation. In some parts of Sierra Leone, "social forgetting is a cornerstone of the established process of reintegration and healing," and the insistence on publicly speaking about the past was disrupting local practices of reconciliation. Hence, she suggests that future truth commissions might design

¹⁵⁷ Truth and Reconciliation Act of Sierra Leone. 2000. Article 18.

¹⁵⁸ Hayner. 2011. "Unspeakable truths," 60.

¹⁵⁹ See Mohamed Suma Cristián Correa. 2009. "Report and Proposal for the Implementations of Reparations of Sierra Leone", International Center for Transitional Justice, December.

¹⁶⁰ Muhamed Suma. 2008. "The Sierra Leone Truth and Reconciliation Commission", presented at the Transitional Justice Training Workshop, December 17, El Fasher, Darfur, Sudan, 11.

their operations to fit more closely with existing grassroots practices.¹⁶¹ After an armed conflict or civil war ends, both parties have to be investigated as evidenced in Sierra Leone, Liberia, El Salvador, Guatemala, and South Africa.

The Sierra Leone Commission was directed to look into the "role of external actors" in the war.¹⁶² Its detailed findings hold Liberian President Charles Taylor to be "primarily responsible for initiating the conflict." However, it also concludes that the war cannot be mainly blamed on outsiders, given the fact that Sierra Leoneans committed the "overwhelming majority of atrocities against themselves."¹⁶³ It also documents how the war worsened because the country was "abandoned by the international community," except for an underfunded regional peacekeeping force.¹⁶⁴

5.2.4 Liberia: Truth and Reconciliation Commission (2006-2009)

After Ethiopia, Liberia is Africa's oldest republic, established in 1847 by imposed former slaves from the early 1800s. In the 1990s, Liberia had a long-running, ruinous civil war and was involved in a rebellion with neighboring Sierra Leone. Although founded by freed American and Caribbean slaves, indigenous Africans are the majority, with the slaves' descendants comprising about 5 percent of its population of about 3.2 million. Liberia's two civil conflicts, which displaced thousands more, killed about a quarter a million people. Big programmes are underway to address the shortage of electricity and running water. Corruption is rife, and unemployment and illiteracy are endemic. The struggle left the country in economic ruin and overrun with weapons.¹⁶⁵

After fourteen years of civil war gap, a *Comprehensive Peace Agreement* signed in August 2003 brought Liberia back to peace. The peace agreement between the government of Liberia and two rebel groups included provisions for a *Truth and Reconciliation Commission* "to provide a forum that will address issues of impunity, as well as an opportunity for both the victims and perpetrators of human rights violations to share their experiences."¹⁶⁶

¹⁶¹ Refer to Roselind Shaw. 2005. "Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone," United States Institute of Peace, Special Report 130, February.

¹⁶² Truth and Reconciliation Commission Act of Sierra Leone. 2000.

¹⁶³ Witness to Truth: Report of Sierra Leone Truth and Reconciliation Commission. 2004. vol.2, chap. 2, 34, 84.

¹⁶⁴ Ibid., vol.2, chap. 2, 84.

¹⁶⁵ BBC News Africa, Liberia, Country profile <http://www.bbc.com/news/world-africa-13729504>

¹⁶⁶ See Pricilla Hayner. 2007. *Negotiating Peace in Liberia: Preserving the Possibility for Justice*. Geneva and New York: Centre for Humanitarian. Dialogue and the International Center for Transitional Justice.

The first set of commissioners was appointed by the head of state of the transitional government with little consultation, and long before an Act was passed that set out the commission's terms resulting in strong objections and then a complicated process by which these members agreed to be, vetted by a selection panel. This panel was established with representatives of political parties, civil society, a human rights representative from the United Nations, and the ambassador of ECOWAS as chair. The panel received over 150 nominations from the public.¹⁶⁷

Extensive civil society's involvement in drafting the legislation led to the final signing of the commission into law in June 2005, retaining only two original appointees in the final nine membership.¹⁶⁸ The commissioners inaugurated in February 2006, selecting a chair from among them, one of the lawyers and a member with the most influential civil society human rights background, Jerome Verdier. Other members included three religious leaders, a security specialist, a nurse, and a journalist.¹⁶⁹ Newly elected President Ellen Johnson Sirleaf spoke at the commission's formal launching, and her government-provided strong financial support to the process throughout, providing most of its US \$ 7.5 million budget. Other donors included the United Nations Development Programme, the European Union, the Open Society Institute of West Africa, Denmark, Sweden, and the United States.¹⁷⁰

The Truth Reconciliation Commission Act (TRCA) granted the commission powers of *subpoena*. It's a written legal order summoning a witness or requiring evidence submitted to a court or similar deliberative body indicating that a special magistrate would be, appointed to handle the commission's affairs, as needed, and directed it to look into economic crimes as well as human rights abuses. It had a limited power to recommend amnesty, which could not apply to crimes against humanity and international humanitarian law violations. Its operations were troubled throughout much of its tenure. Initially supportive, the donor community was concerned about the significant time lost in operational planning and senior staff hiring. Inter-relations among the commissioners were difficult, with their significant differences often spilled out into the public press. There were accusations of warmongering and sabotage among the commissioners.¹⁷¹

¹⁶⁷ Ibid.

¹⁶⁸ Hayner. 2011. "Unspeakable truths," 66.

¹⁶⁹ More details to suffice by Aaron C. Sleh, Samuel G. Toe, and Aaron B. Weah. 2009. *Impunity under Attack: The Evolution and Imperatives of the Liberian Truth Commission* (Monrovia, Liberia, and Silver Spring, MD: Civic Initiative, 2008).

¹⁷⁰ See Truth and Reconciliation Commission Consolidated Final Report (Liberia), vol.2, 40 June 2009.

¹⁷¹ Ibid; 325.

Once public hearings began, there were accusations of giving a voice to serious crimes suspects while asking a few probing questions. In live broadcasts on the radio, prominent war abuses suspects denied any wrongdoings, with exceptions like a former rebel known as General Butt Naked, turned a Priest, claimed in a public hearing to “have personally killed twenty thousand people.”¹⁷² The first truth commission was to arrange a formal partnership with an organization overseas to receive statements from the diaspora. It worked with Human Rights Advocates, a non-profit organization based in Minneapolis, Minnesota, home to a sizeable Liberian community. This project trained American *pro bono* lawyers in several states supporting statement-taking, ultimately receiving more than 1,600 statements from the United States, the United Kingdom, and a refugee settlement in Ghana. It also organized many public hearings in the United States, with commissioners from Liberia and published separate reports from the Liberia Commission, which included research requested by the commission, eventually incorporating some sections into the truth commission’s final report.¹⁷³

The *Commission* took statements from 20,560 Liberians, including those overseas. With the assistance of the California non-profit organization–Benetech, the commission was able to code and register the vast majority of these stories, which accounted for 93,322 reported victims and 163,615 violations (for example, over 58,000 forced displacements, 28,000 killings, 6,000 rapes). The report includes long lists of massacre sites and quite a good number of them showing several hundred persons killed. As much as the country had been inaccessible during the conflict, much of this information was simply unknown previously.¹⁷⁴

The *Commission’s* final report was politically explosive. The TRC Act gave powers to make recommendations of a near-mandatory nature, and it used this to make sweeping recommendations across many areas of public and political life. The most controversial by far was in the area of individual accountability, where it named 150 individuals to be, prosecuted, and another several dozen persons barred from public office for thirty years. President Johnson Sirleaf and many other prominent members of the political class, most of them known for their central involvement in the war, plus a further three dozen people were, determined by the commission for pardon, based on their cooperation with the commission and seen to have expressed remorse - including the infamous General Butt Naked. The report captured headlines for weeks after its initial release in June 2009. The

¹⁷² Hayner. 2011. “Unspeakable truths,” 67.

¹⁷³ The advocates for Human Rights, A House with Two Rooms, 2009. Final Report of the Truth and Reconciliation Commission of Liberia Diaspora Project St.Paul, MN: DRI Press.

¹⁷⁴ Hayner. 2011. “Unspeakable truths,” 67-8.

June version was unedited, while the December version with substantive changes and names recommended for prosecution raised some concerns. A group of former warlords named for persecution gathered to denounce the report, implicitly threatening to retake arms. The report and its recommendations for accountability were “intended to destabilize the country” and would bring another round of chaos,” they warned.¹⁷⁵ These nine former warlords were particularly striking in that they represented four different former fighting factions who rarely agreed or collaborated.

The President made minimal but somewhat supportive remarks. The “binding” nature questions on the constitutionality of the recommendations’ were raised, filing legal challenges in court as soon as tabling the bill to retroactively amend the TRC Act. Local and foreign commentators attacked the report for “moral confusion” and charged that the lists of names seemed to be “utterly arbitrary.”¹⁷⁶ The international diplomatic, including the United Nations, did not side with the report vividly uncomfortable with the politically sensitive recommendations. On the other hand, the Liberian public was mostly supportive, some reportedly, quite enthusiastically, welcoming a glimpse of accountability in a sea of grave historic impunity.¹⁷⁷

However, the uproar over the names, and the dilemma of the proposed vetting of publicly elected officials, robbed attention from a much broader array of recommendations, including reparations, apologies, memorials, and “changing the political culture,” as well as other conclusions and findings in the lengthy report. In January 2010, weeks after the submission of the final edited version of the commission’s report, the president announced an intention for national public consultations on the report and its recommendations. She also announced that her candidacy for re-election, implicitly sidelining this specific aspect of the commissions.¹⁷⁸

Finally, and most recently, the Liberian truth commission has been the most controversial in how it names the perpetrators. Its 2009 final report named 116 “most notorious perpetrators” recommended persecution by a new, hybrid court special tribunal (for which it provided a detailed proposal) and another 44 to be locally prosecuted. It also provided a

¹⁷⁵ Unpublished Report by the International Center for Transitional Justice, Monrovia, Feb. 2010 on file with Hayner.

¹⁷⁶ Johnny Steinberg. 2010. “Liberia’s Experiment with Transitional Justice,” *African Affairs* 109(434): 135-144.

¹⁷⁷ Ibid.

¹⁷⁸ Hayner. 2011. “Unspeakable truths,” 68.

separate list of 26 persons responsible for large-scale economic crimes. An additional 49 were named and recommended to be barred from political office for thirty years: the incumbent president, Ellen Johnson Sirleaf. She had been lauded internationally for being the first female African president and making significant governance and reforms progress. She appeared before the commission to admit early involvement in the war. The commission's confidential report showed that her involvement in the war was more extensive than her admission.¹⁷⁹

The report also named members of the Supreme Court. It recommended that those elected serve out their terms to save the cost of new elections but barred from re-elections while swiftly replacing those in appointive positions. It exempted 38 persons from prosecution without recommending amnesty since they had cooperated with the TRC process showing remorse, including one who openly admitted to killing thousands.¹⁸⁰ The commission described its decision not to publish these names as a requirement of its empowering Act, which called on the commission to counter impunity and to report on its findings fully. The commission was criticized for vagueness. Its list of names lacked specificity on the acts each person committed. This vagueness was explained that files were available for prosecutors to obtain further details.¹⁸¹

The Liberian public, however, were not focused on such details. They were rather enthusiastically welcomed the official report that finally "named and shamed" many whom they considered being widely known perpetrators, according to analyst *Aaron Weah*, who describes a fascinating public engagement with the commission findings.

"This is a feeling held very dear by ordinary Liberians. The list (of perpetrators in the commission's report) has engendered a certain degree of intimacy: it's carried in individual wallets, posted in houses along with calendars, making it a permanent feature in ordinary households; and it's also carried in taxi cabs," resulting in ongoing public debates on accountability and the possibility of prosecution.¹⁸²

Many West African conflicts are interlinked, with funds, arms, and fighting forces crossing borders quickly. The Liberian commission report outlines with some clarity the role of other

¹⁷⁹ Johny Steinberg. 2010. "Liberia's Experiment with Transitional Justice," *African Affairs*, 109, no.434: 135-144.

¹⁸⁰ Hayner. 2011. "Unspeakable truths," 138.

¹⁸¹ *Ibid*; 139. (Hayner's correspondence with TRC chair Jerome Verdier, January 10.)

¹⁸² Aaron Weah. 2010. "Hopes and Uncertainties: Liberia's Journey to End Impunity,"

countries; Côte d'Ivoire, Burkina Faso, and Libya, in fueling and indirectly aiding the fourteen-year civil war.¹⁸³ However, the commission gives greater emphasis to failing to the role of the United States in allowing or supporting abusive governments throughout Liberia's history, as well as failing to intervene to stop the recent civil war, tracking this "special relationship" between the United States and Liberia back to independence in the mid-1880s. The United States, the report says, "alternatively supported, exploited, welcomed, and abandoned Liberia and Liberians. While the relationship over time has been complex, during several key periods, the United States' actions and omissions have led to disastrous results for Liberians."¹⁸⁴

5.2.5 Ghana: National Reconciliation Commission (2002-2004)

Ghana enjoys being a pioneer in remarkable ways. The first European gold and slave traders in sub-Saharan Africa arrived in Ghana. It was also the first country in Africa to achieve independence from Britain. Its population is about 25.5 million. Despite being rich in mineral resources and endowed with a sound education system and an efficient civil service, Ghana was victim to corruption and mismanagement soon after independence.¹⁸⁵

Meredith Wain (2003) agrees that it seems clear that truth commissions are here to stay. With that in mind, at the very least, *the National Reconciliation Commission of Ghana* can serve as an instructional example for the design of future commissions. At best, it will serve to promote individual healing and the reconciliation of the nation.¹⁸⁶

Ghana suffered four military coups in thirty-five years after achieving independence in 1957. Each coup led to significant human rights violations and periods of military rule.¹⁸⁷ *Jerry Rawlings* was responsible for two of these coups and the most abusive regimes. However, Rawlings led a gradual return to democracy in the early 1990s. A new Constitution approved in 1992 included a broad amnesty for past crimes, so well entrenched that was later seen as virtually impossible to overturn. National elections returned Rawlings to power, remaining head of state until 2000.¹⁸⁸

¹⁸³ Final Report of the Truth and Reconciliation Commission of Liberia. 2009. (2):308-312.

¹⁸⁴ Ibid; 303.

¹⁸⁵ BBC Ghana profile, BBC News Africa, <http://www.bbc.com/news/world-africa-13433790>

¹⁸⁶ Meredith Wain. 2003. "Ghana's National Reconciliation Commission," *Peace Magazine* 19(2): 18.

¹⁸⁷ Hayner. 2011. "Unspeakable truths," 56.

¹⁸⁸ Ibid.

The first post-Rawlings government, led by President John Kufuor, addressed the legacy of human rights abuses almost immediately (Hayner 2010: 56). A National Reconciliation Commission was inaugurated to address past human rights abuses' legacy as there was no criminal prosecution chance. This commission was, proposed, and it took national and international consultations to shape its mandate. Initially, the time of investigation coverage was, clouded in considerable controversy, legislation passed that directed the commission to focus on the periods of unconstitutional government, but opened the investigation to all abuses between March 1957 and January 1993, including the era of democratic government. The periods of unconstitutional rule were from February 1966 to August 1969, January 1972 to September 1997, and December 1981 to January 1993. The commission treated all statements equally regardless of civilian, military, or otherwise.¹⁸⁹

Nine commissioners were inaugurated in May 2002. They set up four regional offices in addition to the headquarters in Accra. The commission received over 4200 statements from victims, surprising the skeptics, who had argued that a small number of human rights violations in Ghana did not justify a truth commission. Public hearings began in January 2003, bringing the commission ever more attention, airing the hearings on television and radio, with testimony from 1886 victims or witnesses and 79 alleged perpetrators. In-camera hearings were, permitted on request, and approximately forty cases were, allowed where a public appearance could threaten national security or risk the petitioner's security. Most of the victims named their perpetrators in the public hearings. The commission invited all those accused to appear before it to cross-examine their accusers and represented by legal counsel of their choice.¹⁹⁰ There were sometimes aggressive questioning of victims by their accused former perpetrators, who sort of admitted their crimes or asked for forgiveness, but most of them denied the allegations.¹⁹¹

In early 2004, the former president Jerry Rawlings appeared to appear before the commission came under *subpoena*. The interrogations were about two pieces of evidence believed to be in his possession—a video recording of executions and a recorded confession of someone convicted for murdering three high court judges and an army officer. Rawlings did acknowledge once custody of the material but denied knowledge of its current location. The commission was criticized for asking him very few questions. Other unexpected

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

¹⁹¹ Nahla Valji. 2006. "Ghana's National Reconciliation Commission: A Comparative Assessment," International Centre for Transitional Justice and the Centre for the Study of Violence and Reconciliation, 13 September.

challenges involved a witness dying of a heart attack while testifying in a hearing. The commission instituted a system to screen blood pressure before witnesses could take a stand and kept an ambulance on stand-by.¹⁹²

The commission's projected US \$5 million budget had to be reduced to \$3 million due to limited financial support, especially from projected international sources. In comparison, the Ghanaian government provided \$2 million, the balance from foreign governments and foundations. These included financial support from the Open Society Initiative for West Africa, The US Agency for International Development, the South African High Commission in Ghana, and others.¹⁹³ Despite these efforts, some of the under-represented experiences included incidences of rape, and public flogging was under-reported because of the stigma associated with these events.

The commission was initially given one year from the start of the hearings to complete its work. It received an additional period to finish its report within a six months extension. Finally, it concluded its mission in July 2004. It submitted the five-volume final reports to the president in October, which were released to the public in April 2005 together with the government's response. In the white paper, the government accepted the report in its entirety, offered an apology to all those who suffered, and called on national institutions to review the report and begin implementing its recommendations.¹⁹⁴

The report outlines specific recommendations for reparations to victims, including financial reparations ranging from US \$120-3500, depending on the harm done; symbolic measures such as apologies and memorials; and health and education benefits, pensions, and restitution of confiscated property. It further emphasized women as a primary beneficiary group of reparations, given the economic and physical damages they suffered.¹⁹⁵

The NRC also intentionally recommended relatively small amounts in financial reparations, hoping that this would lead to the government's rapid implementation. Indeed, the government implemented a reparation program within a year, allocating \$1.5 million to compensate 2,500 victims. Some two thousand Ghanaians received between US \$213 -

¹⁹² Hayner. 2011. "Unspeakable truths," 56-57.

¹⁹³ Ibid.

¹⁹⁴ Hayner. 2011. "Unspeakable truths," 57.

¹⁹⁵ See Mensa-Bonsu. 2007. "Gender, Justice and Reconciliation: Lessons from Ghana's NRC", Paper presented at Workshop of Coexistence International and Ghana Centre for Democratic Development, June 7: 17.

3300. However, there was confusion in the criteria for inclusion and for determining amounts awarded. Furthermore, most non-financial and symbolic aspects of the recommendations were not implemented.¹⁹⁶

The commission held the military responsible for 66 percent of the documented human rights violations and recommended significant military, prison, and police reforms. However, these recommendations were never prioritized. The non-governmental Ghanaian Centre for Democratic Development noted a lack of political will to implement further reforms. The minister of justice cited other government priorities.¹⁹⁷

A national referendum was suggested by the report on the amnesty provisions entrenched in the Constitution, but proactive measures toward criminal accountability seemed remote. Even the election of John Atta Mills – a former Rawlings era vice president in December 2008, failed to improve things.¹⁹⁸

The hands of President-elect John Atta Mills were tied, as he did not want to disturb the status quo. The culprits and their elite network cartels capture the state and sabotage every effort to bring justice. Truth commissions' outcomes require independent and permanent secretariats protected by law to seek and uphold justice as-long-as it takes. They require protection by the highest courts, national assemblies, and regional devolved units throughout the country. It is essential to enlist the highly resented International Criminal Court (ICC) to pursue justice as a deterrent agent for domestic compromises.

5.3 Observations on African Truth Commissions

The realities dealt with peer truth commissions in Africa differ in latitudes from the Kenyan predicament. The South African investigated racial segregation instigated human rights abuses, which compromised an amnesty provision to accommodate reconciliation. The African National Congress (ANC) led government tapped presidential decrees to pardon their perpetrators selectively.

The Moroccan case was a pioneering success in the Arab World and Africa for its equity reconciliatory reparation payments to victims of tortures and disappearances in the

¹⁹⁶ Abena Ampofoa Asare. 2008. "The Ghanaian National Reconciliation Commission: Reparations in Global Age," *The Global South* 2(2) Fall: 31-53.

¹⁹⁷ Nahla, Valji .2006. "Ghana's National Reconciliation Commission," 26.

¹⁹⁸ Hayner. 2011. "Unspeakable truths," 57.

Kingdom. The enthusiasm thinned as many other reform proposals were discarded. However, Morocco's invasion and occupation of the Western Sahara and involvement with *Polisario* were regrettably not covered.

Liberian experience tells of American abandonment, civil/military strife, and regional interferences. Public shaming of perpetrators took the central stage. It recommended against a maligned status quo from running for office, including President Ellen Johnson Sirleaf. There was no consideration for this. Hence, she was not only reelected but also became a Nobel Peace Prize laureate. It might have been the resilience of international bargains for amnesty that pulled Liberia together, restoring peace for better governance. So far, the magic of unity is still biding.

Sierra Leone, Ghana, and partly Liberia suffered military coups, which worsened human rights abuses against civilians. They have steadily changed into a civilian rule. As remnants or offshoots of military regimes or status quo, the incumbent government lacked the enthusiastic political will to honor their respective truth commissions' outcomes fully.

Ghana is on record for honoring reparations of little amounts with ambiguous methodology before terminating the whole process. The truth commission outcomes can be said to have strengthened their governance endeavors. The anchoring of civilian rule can be proof of their accommodative cohesion and reconciliation overtures. Post-Rawlings leadership chose reconciliation and stability, sparing prosecuting adversaries protected by an entrenched Constitution.

The Sierra Leone case espoused reconciliation and re-acceptance via forgiveness and healing rituals for perpetrators. It came after one of the worst cases of amputations ever seen in a prolonged civil war ended. The international community, including its neighbors, abandoned Sierra Leone. Lack of post-conflict public presidential apology was a setback, but it was acceptable when concerned institutional leaders asked for forgiveness. Rebuilding trust is a continuous process as the scars and wounds heal. It has left many victims in eternal trauma as amputees.

West African cases depict cross-border civil wars over the control and exploitation of mineral resources, especially in Liberia, Sierra Leon, and partly Ghana. Kenyan disputes differ mainly as internal ethnic clashes on the distribution of resources and control of power in a zero-sum presidency contest.

The lack of political will to thoroughly follow up and roll out complete implementation and monitoring of the recommendations bedevils all these commissions. However, it shows levels of publicity and acceptance of the outlays through Parliament and national debates. Notwithstanding, they are thinly spreading the outcomes with mixed results. Kenya is an appalling case of sanctioned state capture and censor. Outcomes of the meticulous truth commission experience in Kenya are in limbo and shelved. Chapters 6 and 7 are elaborative on this.

5.4 Challenges and Prospects

Truth Commissions emerged as an antidote to impunity and a substitute to amnesty (Teitel 2000: 77). Independent and capable truth commissions are now indispensable parts of transitional justice endeavors around the world. Eight or more truth commissions have been held in sub-Saharan Africa.

The South African Truth and Reconciliation Commission (TRC) championed openness and transparency. Its epoch emphasis on truth recovery to allow healing and reconciliation over revenge broke new ground. South Africa chose to address its past conflicts by establishing a Truth and Reconciliation Commission of South Africa (TRC) to avoid a war tribunal or complete immunity. The TRC is a constituent of an African potential for conflict resolution. TRC's case shows how an informal official space for people's engagement and their commitments to, a form of productive deviance.¹⁹⁹

Morocco was a pioneer in the Arab world to hold a truth commission. It succeeded in reparation payments with speed and efficiency following the recommendations of the Equity and Reconciliation Commission of Morocco (ERCM). It created a new form of restorative justice as reconciliatory based on Islamic ethics (Amnesty International "Morocco" 2010: 4-101). Since most of the proposed reforms stalled or failed to be, implemented begs a work in progress follow-up by the relevant stakeholders.

Sierra Leone Truth Commission and Reconciliation Commission (SLTRC) addressed civil war and the re-establishment of democracy. There was support from both ex-combatants and across the conflict divide. The government was committed to acting on the final report.

¹⁹⁹ Toshihiro Abe. 2016. "Creating Space for Productive Deviance: The Latent Function of the Truth and Reconciliation Commission of South Africa" in *What Colonialism Ignored 'African Potentials' for Resolving Conflicts in Southern Africa* edited by Sam Moyo and Yoichi Mine. Bamenda: Langaa RPCIG. 195-6.

Historical atrocities committed by locals and their abandonment by the international authorities stand out. The scars and wounds of the atrocities cannot heal by the truth and reconciliation alone. There is a need for holistic, sustainable support for both the victims and aggressors to avoid sliding back to anarchy.

Liberia's Truth and Reconciliation Commission (LTRC) came out of comprehensive peace talks under International pressure to end the civil war in 2003 in Accra, Ghana. The US failed Liberia by allowing impunity regimes, failed to intervene, supported, exploited, welcomed, and abandoned Liberia. At the Accra peace talks, despite the proximity, the Sierra Leone Truth Commission and Reconciliation Commission (SLTRC), which was more relevant to Liberia, was ignored (Hayner 2007: 17). The Amnesty for truth idea might have emerged from the South African experience. Liberia's TRC gave a concrete platform for successors, even the International Criminal Court, for spillover cases during the civil war involving war crimes and genocide. Since some form of peace was achieved despite flawed elections, the LTRC might have succeeded in nurturing coexistence enabling conflict resolution in Liberia. Prospects depend on anchoring this process by integrating the various stakeholders in and out of Liberia to harmonize these outcomes.

The National Reconciliation Commission of Ghana (NRCG) addressed the atrocities and other human rights violations associated with its first revolution in West Africa. Ghana was a pioneer in gold discovery, the slave trade, and Britain's independence in 1957. Corruption, mismanagement, and military coups spoiled this precedence. NRC of Ghana recommended paltry financial reparations and reneged on most non-financial and symbolic aspects of the recommendations. The colonial government committed human rights abuses that were belittled by the military government. The commissions' non-retributive retaliation process enabled the military regime to address its past misdeeds. It was a pioneering way to deal basically with the victims in an individualized process at that time (Perry and Sayndee 2015: 48). The outcomes were mixed as expectations always exceeded reality due to country-specific historical, political, and economic realities.

A revisit to assess progress and damage conducted by local civil society stakeholders and external observers is, recommended. It can be done through a joint reconnaissance program tasked with bridging and narrowing the reality and expectations gap. Truth commissions came of age in Latin American states like Chile, Guatemala, and Argentina to redress impunity under dictatorial regimes. Many parallel investigation commissions on human rights violations exist. The South Africa TRC is, credited with a double invention of

promoting reconciliation and emphasis on countrywide public hearings from the perspective of international and transitional justice. Other subsequent sister truth commissions in Africa have always embraced these double inventions. It now forms part of an African potential for conflict resolution, as previously seen (Abe 2016: 195). The concept of reconciliation is a catalyst for social change.²⁰⁰

The dire lack of political will and half-hearted ambivalent commitments mitigate further actions. The negative attitude adopted by an implementing government adversely associated with the tragedies in the findings also jeopardizes the whole program and process. The right to the truth that is meticulously sought is more often sacrificed. On this backdrop and before drawing any conclusions, let us consider the experience of the truth, justice, and reconciliation commission in Kenya (2009-2013) in chapter 6. It will focus on the reform proposal as subsequently established after the worst post-election violence in 2007/8.

²⁰⁰ See: Doxtader, E. 2009. *With Faith in the Works of Words: The Beginning of Reconciliation in South Africa, 1885-1995*, Claremont: David Philip; Gutman, A., and Thomson, D. 2004. *Why Deliberative Democracy?* Princeton, N.J.: Princeton University Press and Schaap, A. 2005. *Political Reconciliation*. New York: Routledge.

Chapter 6 Reform Proposal: Truth, Justice, and Reconciliation Commission (TJRC) in Kenya

6.1 Truth, Justice and Reconciliation Commission (TJRC 2009-2013)

While reminiscing on sister truth commissions in Africa in the previous discussions, this chapter will examine the Kenyan challenges. State-sanctioned abuse and violation of human rights in Kenya from independence in 1963 to the end of February 2008. The official signing of the national accord ended the worst ever post-election violence in the short history of independent Kenya. It gave the hitherto multiethnic marginalized populace a voice to document and catalyze pathways for demanding relevant reforms to address national healing, reconciliation, and cohesion. The right to know the truth is a declaration in sync with the universal resolution of the United Nations Human Rights Council (UNHRC 2009).

Africa's Centre for Open Governance (AfriCOG) places the quest for truth and justice in Kenya to be as old as a century. Since colonial times, successful regimes in Kenya have appointed various commissions of inquiry to investigate many issues considered public interest matters. Kenya has appointed 31 commissions of inquiry, counting from the Native Labour Commission of 1913 to the Kiruki Commission of 2006.²⁰¹

The AfriCOG report, investigating the efficacy of the commissions of inquiry in Kenya, found their creation was for varying reasons. These reasons include responses to pressures to appease the public, re-examine national policies, and exit political strategies. AfroCOG also reveals a common thread running through most of these commission reports – 'the failure or lack of enthusiasm by the Government in implementing their recommendations.'²⁰²

"I think prominent people in the current government were implicated and would lose political capital if the report is released to the public. The president and his deputy were also taken to the Hague about post-election violence" (WC49, 12 August 2018: Fieldwork Narratives, Nairobi).

²⁰¹ Africa's Centre for Open Governance (AfriCOG). 2008. *Commissions of Inquiry in Kenya: Seekers of Truth or Safety Valves*, Nairobi: AfriCOG.

²⁰² Ibid.

The Truth, Justice and Reconciliation Commission (TJRC) was established by an Act of Parliament (*Truth Justice and Reconciliation Commission Act no. 6 of 2008*) to investigate the gross human rights violations and other historical injustices in Kenya between 12 December 1963 and 28 February 2008. It also followed the period of severe post-election violence (PEV) in late 2007 and early 2008. Why was the TJRC necessary? It was part of the accountability component of Agenda Four (4) of the National Accord signed in 2008 to address the cause and effects of historical injustices and gross violation of human rights hence contribute towards national unity, reconciliation, and healing. Therefore, the TJRC was born from the aspiration for reform and political reconciliation after post-election violence. Part of the commitments to peace mediated by the Panel of Eminent African Personalities, chaired by Kofi Annan, the TJRC was intended to help Kenya achieve lasting peace by addressing "deep-seated and long-standing divisions within Kenyan society."²⁰³

The commission pursued multiple goals and objectives in its work. The truth was sought through the provision of accurate, complete, and historical record of human rights violations and historical injustices. Justice is sought through restorative criminal and social justice. Peace is pursued through National Unity, Healing and Reconciliation (national and individual), and the restoration of victims and perpetrators' human dignity. Establishing a truth commission in Kenya was debated in Kenya for some years before its final creation. After serving his second and final five years, President Daniel arap Moi proceeded to retirement at the end of December 2002. It was after decades of repressive policies that also included targeted assassinations. Shortly after taking office, President Mwai Kibaki appointed a task force to consider Kenya's truth commission. After nationwide public hearings, the task force submitted a report, which recommended establishing a *Truth, Justice, and Reconciliation Commission* as soon as possible. It suggested that its mandate should go back to independence in 1963 and cover corruption and economic crimes.²⁰⁴

Other political developments soon took priority, however, and the proposed commission stagnated. Why? Because of the long-term internal simmering civil strife and upheavals that culminated into post-election violence (PEV) at the end of President Mwai Kibaki's first term and re-election outlays. Kenya was, engulfed in intensifying violence for two months after disputed presidential elections in December 2007. These witnessed political differences were swiftly evolving into ethnically targeted attacks. Many believed that the

²⁰³ Kenya National Dialogue and Reconciliation. 2008. Statement of Principles on Long-Term issues and Solutions, with Matrix of Implementation Agenda [Agenda 4], May 23: Preamble.

²⁰⁴ Report of the Task Force on the Establishment of a Truth, Justice and Reconciliation Commission. 2003. Nairobi, Kenya. 26 August.

violence was state-sponsored, with arms and militias organized for political mileage. Former UN Secretary-General Kofi Annan, together with a panel of Eminent African Personalities, mediated the talks; hence the two major political parties agreed from the onset that there would be a truth commission. A framework of principles and powers for such a Truth, Justice, and Reconciliation Commission (TJRC) was agreed upon during the talks' final agenda in March 2008.²⁰⁵ The parties also agreed to a Commission for the Investigation of Post-Election Violence, which would be established swiftly and work for three or four months, focusing on the most recent events and could make recommendations to the following truth commission.

The draft legislation to establish the TJRC put forward by the Ministry of Justice was criticized by rights advocates for confusing language concerning amnesty. It had the power to recommend amnesty but failed to clarify which crimes were omittable and the strength of the commission's operational independence.²⁰⁶ The slightly revised legislation was approved in 2009 despite spirited resistance by the Members of Parliament disinterested in accounting for past crimes. Nine commissioners comprising six national and three international commissioners were appointed under a tight, restricting consultative time constraint. Shortlisted candidates were considered by a Parliamentary committee and forwarded to the president to officially appoint the final members. The African Union's Panel of Eminent African Personalities nominated the three international members. Ambassador *Bethuel Kiplagat* - a long-term career diplomat and Permanent Secretary in the Ministry of Foreign Affairs - served in senior positions in the Moi government up to 1991. His appointment to chair the Commission attracted much criticism. The Commissions' initial budget was US \$ 28 million and projected to last between 2-2.5 years. It employed a permanent workforce of 200 and 300 temporary staff covering about 45 years of gross human rights violations.

The commission was inaugurated in 2009 and kicked off its three-month preparatory period. It got a two-year mandate to complete its work, covering economic crimes from June 1963 at independence through February 28, 2008. The Commission (and the Kenyan public) defined "economic crimes" to include general violations of socio-economic rights and the illegal acquisition of (public and private) land in its mandate. Hayner's correspondence with Commissioner Ronald Syle in January 2010 (Hayner 2010: 74) recognizes an opportunity

²⁰⁵ See, "Kenyan National Dialogue and Reconciliation: Truth, Justice, and Reconciliation Commission (TJRC)." 2008. "Agreement between Parties," 4 March.

²⁰⁶ Human Rights Watch. 2008. "Kenya: Proposed Truth Commission Bill Seriously Flawed," 13 May.

to address human rights violations more holistically beyond the classic violation of bodily integrity.

Meanwhile, the Kenyan political class was overtaken by the likelihood that the International Criminal Court (ICC) could engage Kenya concerning post-election violence. It prompted the government cabinet to release a statement in favor of the TJRC as an alternative route, perhaps with prosecutorial powers through expanded membership and mandate. In response, as one of its first acts, the commission rejected with a statement any suggestion that it could replace criminal justice. It forced the government to swiftly backtrack, which was expected, accepting that the commission's mandate was, fixed.²⁰⁷ The ICC and the TJRC carried on their works simultaneously.

6.2 Background to Post-election Violence (PEV) in Kenya

As previously seen and discussed, presidential and parliamentary elections in Kenya were, accompanied by protracted political violence and skirmishes now known as (post-election violence or PEV). Candidates across the political divide declared victory that started accusations of electoral fraud. Tensions became riots, fighting, acts of rape, assault, and counter assaults led to bloodshed. "Over 1,100 Kenyans lost their lives, and more than 600,000 became internally displaced persons (IDPs) from their land during this crisis. The Kenya National Dialogue and Reconciliation process that followed the violence resulted in adopting several political settlements. These including the establishment of a Truth, Justice, and Reconciliation Commission (TJRC Agreement) endorsed by Parliament, creating the Truth, Justice, and Reconciliation Act (TJR Act), thereby establishing an official body to inquire into historical injustices and propose sustainable solutions as redress for victims".²⁰⁸

Abolishing presidential election and its grave contest can stem post-election violence. The presidential ballot is prone to disruptive destructions, murders, and violence. The elimination of this zero-sum first-past-the-post outcome presidency in Kenya can save lives, properties, and promote peaceful national coexistence for inclusive governance.

The TJRC initially received a two-year mandate, "extended thrice and its final report delivered to the President on May 21, 2013, three weeks beyond its official schedule".²⁰⁹

²⁰⁷ Daily Nation (Kenya). 2009. "TRJC Mandate Will Not Be Extended," Says Mutula," 12 August.

²⁰⁸ See www.dialoguekenya.org/index.php/agreements.html and http://kenyalaw.org/KenyaGazette/view_gazette.php?title-3224

²⁰⁹ See www.statehousekenya.go.ke/news/may2013/2013210503.htm

The TJRC's operations were carried out in a highly charged political atmosphere. Kenyans were debating a draft Constitution (passed in 2010),²¹⁰ as the commissioners were writing their final report and involved in electoral campaigns ahead of the general elections held in March 2013. Intra-commission wrangles revolving around the refusal to resign by its flawed chairperson, the late Ambassador *Bethuel Kiplagat*, and the International Criminal Court indictment of senior government officials and politicians meant that the truth-seeking process significantly ignored in the national discourse. The TRJC's refusal to release its final report before the 2013 elections cast further doubts on its credibility and the overall truth-seeking endeavor.²¹¹

The Final Report takes a *safari* (journey) of almost 2000 pages and strives to comply with an ambitious investigative mandate, a journey into several decades of human rights violations, and formulating robust recommendations to prevent a recurrence of crimes. "It appends lists of persons adversely mentioned in the Report while recommending further investigation or prosecution where warranted."²¹²

The TJRC benefited from the plural years of previous experience and reflections on truth-seeking readily available in academic literature, expert reports, and the work of several proceeding truth commissions.²¹³

The chemistry between *Ambassador Bethuel Kiplagat* and the *TJRC* process was not neutral. At the root of many negative assessments of the commission's work, this polarization rested on the conflicting interests reflected in his conduct. It was an impediment to respect in work ahead of the TJRC. Archbishop Desmond Tutu led calls for his resignation, citing aptitude concerns. Court orders preventing his access to the commission's offices, allegations, and counter-allegations, really embarrassed the TJRC. The commission earned the notorious distinction of casting doubt on its chairperson's integrity in its final report. His performance throughout most of the commission's mandate turned the process into a farce. It is, evidenced in a part of the TJRC Report, which reported:

²¹⁰ Committee of Experts, Draft Constitution. 2010.

www.kenyaconsulatela.com/2.0/constitution.pdf

²¹¹ C.N. Gitari. 2014. Lessons to Be Learned: An Analysis of the Final Report of Kenya's Truth, Justice and Reconciliation Commission, ictj briefing (Nairobi) May.

²¹² TJRC Kenya. 2013. Final Report of the Truth, Justice, and Reconciliation Commission, Volume IV.

²¹³ TJRC Kenya. 2013. Final Report of the Truth, Justice, and Reconciliation Commission, Volume I-Chapter 2, 40.

“When the Commissioners paid a courtesy visit to the Kenya Defence Forces (KDF), a presentation [on the Wagalla Massacre] had been prepared for us. Ambassador *Bethuel Kiplagat* (the TJRC Chairman) then left the room with the officer in charge to have a private conversation, which canceled the presentation.”²¹⁴

Gitari argues that *Kiplagat* did profound damage by denying an essential national truth-seeking process a fundamental ingredient for its success: credibility. The International Center for Transitional Justice’s (ICTJ) experience shows that “while there is no magic recipe for a successful truth commission, the reputable composition and unimpeachable conduct of commissioners are necessary conditions sine qua non.”²¹⁵

Ambassador *Bethuel Kiplagat* passed on in the morning of Friday, 14 July 2017, aged 80.²¹⁶ The “peacemaker” hailed from the Rift Valley, a region with the lion’s share of inequality in land distribution, ethnic violence that maimed thousands in (1992, 1997, and 2007), sexual violence, and extensive forcible displacement of people of the internally displaced people (IDPs). Despite the troubled tenure at the helm of TJRC, the late Ambassador Bethuel Kiplagat, albeit with uneasiness, called on Kenya’s Government to implement the report’s recommendations. *When will that be?*

“The government has those who have benefitted from injustices as such are not comfortable with full implementation and thus not possible to achieve its intended purpose” (YA51, 12 August 2018: Fieldwork Narratives, Nairobi).

6.3 Dissenting Opinion on Land

Controversy arose concerning the chapter covering the land. Three international commissioners (the late Ambassador Berhanu Dinka, Justice Gertrude Chawatama, and Professor Ronald Slye) protested in an unofficial dissenting opinion. It charged that government officials from the Office of the President had meddled in the commission’s affairs, immediately after submitting its Final Report.²¹⁷ They stated that the Kenyan Commissioners had been coerced into giving an advance copy to the president and were

²¹⁴ TJRC Report. 2013. Volume IIA, 317.

www.tjrckenyia.org/images/documents/TJRC_report_Volume_2A.pdf

²¹⁵ Gitari. 2014. “Lessons to Be Learned”, 3.

²¹⁶ Daily Nation (Kenya). 2017. Saturday, 15 July.

²¹⁷ Gertrude Chawatama, Berhanu Dinka, and Ronald C. Slye. 2013. *International Commission Dissent: Statement by Commissioners, The Final Report of the Truth, Justice & Reconciliation Commission of Kenya* <http://digitalcommons.law.seattleu.edu/tjrc/8>.

required to alter paragraphs in Volume IIB, the Chapter on Land, to diminish allegations of illegal conduct against former President Jomo Kenyatta and his family.²¹⁸

Since these alleged alterations took place after the legal tenure of the TJRC had ended, and without the consent of all the commissioners, they breached the TJRC mandate. It eroded the credibility of the full report.²¹⁹

President Uhuru Kenyatta is guilty of accepting a modified and incomplete report on 21 May 2013 with omissions and excluding the 3 May 2013 Dissent Statement issued by these three international commissioners mentioned above (TJRC/8 2013: 2).

“The political class amassed land grabbed land and has preyed on the electorate meddling in unfair settlements of communities hitherto more alien to the places” (ZB52, 13 August 2018: Fieldwork Narratives, Nairobi).

The TJRC Report covers the aspirations of thousands of victims who participated in the TJRC process. The TJRC was a hybrid commission composed of (6) National and (3) International commissioners. Its operations lasted almost four years, receiving 42,465 recorded statements from Kenyans seeking an audience to redress human rights injustices committed against them. It also received 1,529 Memoranda holding sessions in all regions and received testimony by more than 680 individuals besides accommodating special hearings for women.²²⁰

The TJRC Commissioners were given less than two hours-notice to hand over the Final Report to the President on Tuesday, 21 May 2013. The final product was the outcome of the commissioners' four long, devoted, and challenging years of their lives. The notice was so abrupt that only one commissioner attended the handover (TJRC/8 2013: 1).

²¹⁸ Ibid.

²¹⁹ Nzau Musau. 2013. “How TJRC Land Chapter was Censored,” The Star, 4 June. The Kenyan commissioners deny that they were, forced to alter parts of the report. They have explained that such alterations were, undertaken in the day-to-day writing of the report, a position not shared by the international commissioners.

²²⁰ Naughton Elena. 2014. Kenya: Case Study, 6: In “Challenging the Conventional Truth-Can Truth Commissions Strengthen Peace Processes?” Ministry of Foreign Affairs of Finland/ICTJ/Kofi Annan Foundation Joint Publication. www.ictj.org/publication/challenging-conventional-can-truth-commissions-strengthen-peace-processes

6.4 Final Report: Volume I: Tenure and Challenges

The TJRC Volume I Report²²¹ succinctly narrates an account of the commission's tenure and challenges in four chapters spread over 253 pages in addition to 10 appendices covering Personal Profiles of the Commissioners to Aide Memoire. This volume provides an account of how the Commission started, how it interpreted its mandate, conducted its work, and its challenges in carrying out its mandate. Moreover, it lacked the independence to access and control its finances. The credibility of its chair and his flamboyant impunity gimmicks clouded and eroded the integrity of the commission. However, the struggle passionately progressed. It also explained the antecedents and nature of the commission, commissioners' interpretation of their mandate, the methodology, and the organizational difficulties that the TJRC faced versus its Chair–Ambassador Kiplagat's suitability.

The Commission, like its predecessors worldwide, encountered elaborately narrated multiple challenges threatening its very existence and took a double physical and emotional toll on the commissioners and the staff. They met these challenges with courage, conviction, and commitment. The success of this commission lies in its resilience. The reports documentation will positively “contribute to the truth, justice, national unity, and reconciliation in Kenya. Therefore, volume I presented the aggregated composite picture dotted with political and financial neglect, internal strife, and litigation.”²²²

From its inception, the commission suffered from a “lack of sufficient funds and resources to credibly carry out its operations.”²²³ The TJR Act required the establishment of the Truth, Justice, and Reconciliation Fund to receive monies allocated by parliament and “any grants, gifts, donations or bequests.”²²⁴ It fell short of demand concerning covering the commission's operational needs. Hence, “the TJRC operated without a secretary or secretariat during its first fiscal year and was under Kenya's Ministry of Justice until July 2010. The initial funding was about 650 million Kenya shillings from a budget of 1.2 billion.”²²⁵ During its second fiscal year, the “TJRC once more received only half of its

²²¹ Truth, Justice and Reconciliation Commission. 2013. The Final Report of the Truth, Justice & Reconciliation Commission of Kenya, <http://digitalcommons.law.seattleu.edu/tjrc/1>.

²²² Gitari, C. N. 2014. Lessons to Be Learned: An Analysis of the Final Report of Kenya's Truth, Justice and Reconciliation Commission, ictj briefing (Nairobi) May.

²²³ TJRC Kenya. 2013. Final Report of the Truth, Justice, and Reconciliation Commission, Volume I-Chapter 4, 123-54.

²²⁴ TJR Act, Section 43 and 44.

²²⁵ See TJRC Kenya, Report of the Truth, Justice, and Reconciliation Commission, Volume I, Chapter 1 (30): 44-48.

proposed budget.”²²⁶

The commission postponed the hiring of staff and limited essential mandate-related operations. “The commissioners had to, sometimes, loan *the* TJRC money to fill these gaps or the Kenya government belatedly provided supplementary funding or deployed support staff from government ministries. This act by itself undermined the financial and operational independence indispensable for a truth-seeking body for efficacy and transparency. Thus, these challenges and frustrations, among others, translated into delays requiring the TJRC’s provision for extensions to finish its work.” The ambiguity of the signed accords was also to blame for this paltry budget mess. “The accords signed during the National Dialogue did not require specific funding commitments. Instead, the parties just casually encouraged strong financial support to the Commission”.²²⁷

The Kenyan Government was expected to finance a higher percentage of the Commission’s budget, but the TJRC Act did not require dedicating a support source. Hence, this created a dire financial situation as the commission complained of operating on a paltry budget throughout its lifespan. The Report indicates an over-ambitious mandate by the commission and focuses on the 45-year era, as stated in the legislation (1963-2008). It adopted a structural emphasis on specific historical periods with spasm occurrences of violence. It had a flexible inquiry span on incidents and issues that predated its mandated period of inquiry.²²⁸

“The TJRC Report has enabled citizens to know what ought to be done to avoid violence in Kenya” (DF56, 13 August 2018: Fieldwork Narratives, Nairobi).

6.5.1 Volume IIA: Political History of State Violence and Violations

Volume IIA consists of six chapters covering 783 pages focused on the significant violations of bodily integrity rights committed during the Commission’s mandate period. These six chapters trace; Historical Context with a general overview; History of Security Agencies focusing on Colonial Roots of the Police and Military Forces; The Shifta War; Unlawful Killings and Enforced Disappearances (massacres, extra-judicial killings, and political assassinations); Unlawful Detention, Torture and ill-Treatment; and Sexual Violence. As

²²⁶ TJRC Final Report. 2013. Volume I, 146.

²²⁷ Kenyan National Dialogue, Truth, Justice and Reconciliation Commission: March 4, 2008.

²²⁸ Gitari. 2014. “Lessons to Be Learned,”4.

much of this volume focuses on violations directly committed by the state, "it also includes descriptions of killings, severe violent injury, sexual violence, detention, and other similar violations committed by non-state actors."²²⁹

It is the core of the report. It also documents the composite accounts of the dynamics and factors that nurtured and promoted Kenya's violations and injustices. It exposes significant violations of the right to bodily integrity committed in the period under inquiry. For analytical purposes, this period under inquiry covers four distinct eras, in line with the four political administrations responsible then: the British colonial era (1895-1963), the presidencies of Jomo Kenyatta (1963-1978), Daniel arap Moi (1978-2002), Mwai Kibaki (2002-2008). During all these four eras, the government committed numerous gross violations of human rights. These "included torture, political assassinations, arbitrary arrest and detention, illegal and irregular acquisition of land, economic crimes, grand corruption, extrajudicial execution, sexual violence, looting and burning of property, and enforced disappearances."²³⁰

Uhuru seems to have asked for forgiveness – *but how sincere was that, and was he forgiven, and was it followed up?* "The same problems persist like increasing impunity, violence, and corruption. Unless the TJRC report is, implemented whole-heartedly, there will be no impact to address. Kenya never dismantled the colonial legacy. The Kenyatta mafia and their forceful blood initiations for hoarding power in Central Kenya enslaved other Kenyans. Power conservation and struggle destroyed all credible institutions, centralized power instilling fear, instigated unconstitutional changes, and the roadside sacking of other leaders who voiced contestability" (EG57, 13 August 2018: Fieldwork Narratives, Nairobi).

The Report documents state violations against the Shifta War in Northern Frontier District (North-East Kenya) from December 1964 to 1968. "Its residents were interred in camps where many suffered serious human rights violations and death since; the military implemented, scorched-earth policy, which destroyed about 70 to 90 percent of livestock (camels and sheep) impoverishing affected nomadic communities."²³¹

²²⁹ Truth, Justice and Reconciliation Commission, "TJRC Final Report - Volume IIA". 2013. *The Final Report of the Truth Justice and Reconciliation Commission of Kenya (2013)*. 2.
<http://digitalcommons.law.seattleu.edu/tjrc/2>

²³⁰ Gitari. 2014. "Lessons to Be Learned," 4.

²³¹ Ibid.

It documents sexual violations by the military and police personnel against women in the northern part of Kenya. However, it notes that “cultural norms prevented the commission from obtaining a full account of these crimes. Communities in affected villages such as Isiolo, Mandera, and Garrisa, continue to suffer post-traumatic stress due to violations perpetrated during the Shifta war. Hundreds of people died due to indiscriminate killings and other violations,” lack of treatment and some victims, were permanently displaced.²³² The commission made an excellent attempt to uncover the command structure of military and police formations accused of various atrocities. However, “it failed to consistently uncover the entire command structure, in this conflict and others elsewhere as documented in the report. Most officers named in the massacres on the ground were unilaterally taking orders from their superiors who should have been named as well.”²³³

The Report identifies several pre-independence massacres, such as the Kedong Massacre, the Giriama Massacre, the Kolowa Massacre (Pokot), the Lari Massacre (colonial collaborators), and Bulla Karatasi Massacre. It also notes the collective punishment that the government and security agencies meted out against communities in the North Eastern Province during the *Wagalla Massacre*. “Hundreds of men and women in these regions were massacred or sexually violated.” Documentation in this part of the report importantly notes that in October 1992, “President Moi acknowledged these violations had occurred and promised action, including the establishment of a *Wagalla Trust Fund* for victims. It was never created but credited as an important finding of the commission that warrants a serious explanation from the state requiring further dialogue for reparations.”²³⁴

On political assassinations, the commission, like other inquiries, struggled to shed new light. The TJRC noted that it had found new evidence in some cases but insufficient enough to warrant prosecutions. It recommends that the government-held information on these political assassinations be, made public through the National Archives, issuing a public apology from the Office of the President, establish public memorials, and allow for more investigations and prosecutions. “Several incidents of extrajudicial executions were highlighted for further inquiry: The killings by security forces in Mt. Elgon, extrajudicial executions of suspected *Mungiki group*, and illegal use of firearms during the 2007 to 2008 post-election violence.” The Commission recommends “expedited police reform, ratification

²³² TJRC Report, Volume IIA. 2013. Chapter 3, The Shifta War, 136.

²³³ See comments of Hon. Major General Nkaissery, National Assembly, Parliamentary Debate, November 28, 2013, www.parliament.go.ke/plone/national-assembly/business/hansard/thursday-28th-november-2013-at-9.00a.m

²³⁴ Gitari. 2014. “Lessons to Be Learned,” 5.

of the International Convention for the Protection of All Persons from Enforced Disappearance, as well as reparations for families, including an apology from the president and heads of security forces for recorded incidents of gross human rights violations. Finally, the commission recommends a special prosecutor appointed to investigate the death of the well-known cleric Father Anthony Kaiser.”²³⁵

The Commission found that most massacres were, left undocumented and unprosecuted and resulted from a lack of security control and impunity for perpetrators. “State security agencies, particularly the Kenya Police and the Kenya Army, were the main perpetrators of violations against bodily integrity in Kenya, including massacres, enforced disappearances, torture and ill-treatment, and sexual violence.”²³⁶ Recommendations on massacres focused on an official apology from the president as reparations for victims, barring from office the perpetrators involved in atrocities, the release of government-held information on massacres, and redress for historic marginalization in areas of massacres.

“The Kenyan jails human rights violations record is pathetic and should have been not only mentioned but investigated as well. The Prison Department is frequently mentioned in Kenya as responsible for serious violations but is not mentioned by the commission.”²³⁷

The Kenya Army was responsible for alleged crimes and atrocities, notwithstanding the lack of institutional reforms. Recommending appropriate review as steps to bolster full confidence by the state and its citizens would have been in line with constitutional order and law rule. The commission’s investigatory strategy success in Northern and Western Kenya resulted from meticulous documenting of massacres there.²³⁸

The commission’s report was less effective in addressing the extrajudicial executions. It was despite its credible access to human rights reports, such as the Philip Alston Report on Extrajudicial Executions²³⁹ and the Report of the Kenya National Commission on Human Rights.²⁴⁰ Hence, it failed in explaining the inconsistencies in its methodology and

²³⁵ Ibid.

²³⁶ TJRC Report, Volume IIA. 2013. Chapter 2 History of Security Agencies: Focus on Colonial Roots of the Police and Military Forces, 33.

²³⁷ Gitari. 2014. “Lessons to Be Learned,” 5.

²³⁸ TJRC Report Volume I. 2013. Methodology and Process (Chapter 3).

²³⁹ UN Human Rights Council. 2009. 11th Session, Report of the Special Rapporteur on extrajudicial, summary of arbitrary executions. New York: Official Record A/HRC/11/2Add.6. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/134/39/PDF/G0913439.pdf?OpenElement>

²⁴⁰ Kenya National Commission on Human Rights. 2008. “The Cry of Blood: Report on Extrajudicial Killings and Disappearances.”

outcomes.

Extrajudicial executions, especially by parties belonging or associated with the state, are difficult to investigate. "Most important information is in the hands of the guilty status quo. Effective investigations into state-sponsored or associated extrajudicial executions demand a mindset change in authorities, commitment to transparency, and a high resource allocation level with investigative sophistication. The commission faced challenges mostly in all these areas."²⁴¹

The state's traditional response has been to flatly deny these allegations and attack the credibility and legitimacy of those making the allegations, rather than investigate those allegations. The Commission recommended the provision of "reparations to families of victims of extrajudicial killings and enforced disappearances (TJRC Report "Abridged Version" 2013: Paper 10). The Commission addressed illegal detentions during the previous regimes by recommending enactment of legislation prohibiting torture and degrading treatment."²⁴² It further recommends creating an Office of the Independent Inspector of Prisons and All Places of Detention. The President issue public apologies for atrocities committed by various regimes from Kenyatta (Jomo) to Kibaki eras.

An important finding made by the Commission is that in situations of conflict, women are specific targets of violence, "particularly sexual violence which is often accompanied by other forms of violations." The Commission documented "atrocities committed against women during the following selected conflicts: Mau Mau War; Mount Elgon conflict and the 2007/2008 Post-Election Violence."²⁴³ On sexual violence, the commission recommends "the creation of Gender-Based Violence Recovery Centers in all counties with appointed Special Rapporteur and the formulation of a Code of Conduct and Ethics for National Police Service. It could hinder progressive reforms and overlap, duplicate, and complicate that of the Kenya National Commission for Human Rights, also mandated with ensuring human

www.ediec.org/fileadm/user_upload/Kenia/KNCHR_REPORT_ON_POLICE.pdf

²⁴¹ Gitari. 2014. "Lessons to Be Learned," 6.

²⁴² Kenya acceded to the Convention Against Torture in 1997 but has failed to enact legislation criminalizing torture. The Prevention of Torture Bill 2011 is yet to be tabled in Parliament. See Concluding observations on the second periodic report of Kenya, adopted by the Committee at its fiftieth session 5: 31 May 2013.

www.ohrcr.org/en/countries/AfricaRegion/Pages/KEIndex.aspx & <http://daccess-dds-ny-un.org/doc/UNDOC/GEN/G13/450/11/PDF/G1345011.pdf?OpenElement>

²⁴³ Truth, Justice and Reconciliation Commission, "TJRC Report (Abridged Version)". 2013. *The Final Report of the Truth Justice and Reconciliation Commission of Kenya*. Paper 10.

<http://digitalcommons.law.seattleu.edu/tjrc/10>

rights compliance in detention facilities and prisons.”²⁴⁴

Under Section 6(c) of the TJR Law, the Commission was “required to identify victims of human rights violations of various periods for reparations purposes but failed to do so as the mandate seemed to require.”²⁴⁵ The Commission also failed to identify a whole spectrum of victims of violations. They ranged from “sexual violence to enforced disappearance to extrajudicial execution but identified victims from other massacres like the *Wagalla* and *Turbi* Massacres.”²⁴⁶ These limitations could be attributable to outcomes of inadequate funding and the myriad problems that plagued its tenure.

6.5.2 Volume IIB: Historical Injustices in Kenya

This volume focuses on some of the unique parts of the Commission’s mandate concerning Historical Injustices in Kenya. It has three chapters in 449 pages in addition to two appendices on selected Corrupt Practices and Their Impact on Human Rights and the List of Persons Adversely Mentioned in Grand Corruption Scandals. These three chapters cover Land and Conflict, Economic Marginalization and Violation of Socio-economic Rights and Economic Crimes and Grand Corruption. This version was submitted to President Uhuru Kenyatta on May 22, 2013, “with the alterations demanded by the Office of the President as described in the dissenting opinion issued by the three international commissioners.”²⁴⁷

The Chapter on Land and Conflict offers a detailed chronology of historical land injustices in Kenya, divided into two phases: 1) the colonial era and 2) the post-independence era, which is further subdivided into three regimes (Kenyatta, Moi, and Kibaki). The report observes that “injustices regarding communal land acquired through agreements, like the Anglo-Masai Agreements, and those that established reserves. It also analyzes land acquisition, coercive measures, forced eviction, and displacement by multinational companies. The narrative exposes state policies, laws, and practices that had immediate and long-term negative effects on Kenyan communities, including causing permanent displacement. Land distribution policies and adjudication in Independent Kenya in the 1960s almost exclusively benefitted government officials, which marked the genesis of

²⁴⁴ Gitari. 2014. “Lessons to Be Learned,” 6.

²⁴⁵ TJR Act, Section 6C: “The functions of the commission are to identify and specify the victims of the violations and abuses and make appropriate recommendations for redress.”

²⁴⁶ TJRC Report IIA. 2013. Chapter 4 Unlawful Killings and Enforced Disappearances. 552.

²⁴⁷ 2B Truth, Justice and Reconciliation Commission, 3 The Final Report of the Truth, Justice and Reconciliation Commission of Kenya .2013.

resentment and distrust toward the state among ethnic communities that rightly felt short-changed.”²⁴⁸

For most Kenyans, “land is the basic, and in most cases, the only economic resource from which they eke out a livelihood. The ability to access, own, use, and control land have a profound impact on their ability to feed and provide for their families and to establish their socio-economic and political standing in society. However, tensions and structural conflicts related to land have simmered in all parts of Kenya throughout the years of independence. In recent years, many land-related problems have degenerated into social unrest and violence.”²⁴⁹ Politicians often “exploit the real or perceived land injustices, especially around election time, for personal gain. The dangerous mix of land-related claims with political aspirations of specific groups or individuals remains a tinderbox that could ignite at any time. Hence, the commission found that the ‘willing-buyer, willing-seller’ land tenure approach was grossly abused and is one of the significant factors causing disinheritance and landlessness, especially in the face of rising human populations.”²⁵⁰

Negative ethnicity is evident even in the settlement of internally displaced persons; those resettled often come from ethnic communities able to access political power. Despite its mandated consideration of previous relevant commissions of inquiry reports via recommendations on appropriate implementations of such reports reflecting their tenure changed political and legal environment, the Commission was non-committal in recommending them.

Marginalization was “deliberately used as a political tool to penalize recalcitrant politicians by punishing their ethnic group or region. The TJR Act mandated the commission to ‘inquire into and establish the reality of communities’ perceived economic marginalization. And make recommendations to address this marginalization.’ Hence, many Kenyans were detained without trial or subjected to torture and other physical integrity violations. The government’s exclusionary economic policies and practices in the distribution of public jobs and services inflicted suffering on vast sections of society at different historical moments are evident.”²⁵¹ In terms of its mandate, the commission identified several regions as economically marginalized in the post-independence era: North Eastern (including upper Eastern) Province; Nyanza; North Rift Valley; Coast; and Western Province.

²⁴⁸ Gitari. (2014) “Lessons to Be Learned,” 7.

²⁴⁹ “TJRC Report (Abridged Version).” 2013. Paper 10.

²⁵⁰ Ibid.

²⁵¹ Ibid.

"The '*Ndung'u and the Kriegler Reports*' cover land resources and general elections with later emphasizing on the presidential election, respectively. The land adjudication in the Rift Valley on the willing buyer and the willing seller was flawed from the beginning and served as the genesis of persistent land problems in Kenya. The Devonshire White Paper of 1963 and related Sessional Papers also depict this. Large cooperative land buying companies got preferential loans buying large tracts of land in the Rift Valley, which they later subdivided and allocated to their members, almost always from one ethnicity. These brought resentment and insecurity like the Mpeketoni uprising at the Coast. These were politically instigated post-election violence in a hitherto peaceful area like Lamu. These attacks and tensions between locals and non-locals with the Al Shabaab collusion triggered off more violence forcing non-muslims to flee and counter-attacks" (FH58, 14 August 2018: Fieldwork Narratives, Nairobi).

State compensation for the landless can mitigate future post-election violence. Inequalities in ownership and exploitation of land combine and trigger violence. The state can use the national budget allocations to guarantee a generic national compensation scheme for the landless to reduce socio-economic inequalities and prevent their spillover causality for political violence.

The TJRC Report also covered grand corruption and economic crimes. "The fight against corruption is central to the struggle for human rights. Corruption has always greased the wheels of exploitation and injustice, which characterize our world. Hence, corruption is not just a crime that provides an undeserved benefit to a private individual (often enormously large). Corruption is a crime that lessens the availability and access to the fundamental needs of human life food, education, health care, shelter, etc. Therefore, the crime of corruption is directly related to the violations of socio-economic rights."²⁵² The marginalized minorities and the poor are more exploited and are less able to defend themselves as their vulnerability makes them easy victims of corruption.

Kenya's post-independence history has been marred by "successive cases of huge scandals. In appreciation of grand corruption's magnitude and scale, the commission resorted to documented cases of grand corruption from as early as the Ken Ren scandal in the 1970s up to the IEBC's procurement of biometric voter registration kits in 2013. In the last two decades, the media and civil society exposed numerous multi-million-dollar financial scams

²⁵² Ibid.

in Kenya, including the following: Goldenberg Scandal; Charter House Bank Scandal; and Anglo Leasing Scandal,"²⁵³ to mention but a few. Chapter three on Grand Corruption and Economic Crimes "demonstrated the linkages between these crimes and the worsening of human rights, with the huge cost that Kenya is paying through corruption and economic crimes."²⁵⁴

6.5.3 Volume IIC: Group Discrimination and Gross Violations

TJRC Final Report Volume IIC puts together three chapters of 383 pages that focus on the issues and narratives of groups of people that are provided special protection under domestic and international law because of a history of discrimination and oppression.

"These include; Gender and Gross Violation of Human Rights Focusing on Women (plus two appendices on Women Memorandums and Women and State Repression-Mothers Demanding release of their Sons); Children and Gross Violations of Human Rights; Minority Groups, Indigenous People and Gross Violation of Human Rights plus an appendix on Report of the Presidential Special Action Committee."²⁵⁵

Women, children, and minority and indigenous people were examined.²⁵⁶ It exposes women's specific burdens after human rights violations suffered by either in-person or spouse or close relative. The commission found that Kenyan women have suffered atrocities just because of their gender. Women targeted for violation was a way of harming their community. Moreover, most women felt abandoned by the state, perceived as unwilling to address their grievances.²⁵⁷

The quotation below captures this despair and frustration by interrogating gender as representing the asymmetrical gender relations in Kenya.

"Is it a crime to be born a woman? What I have gone through is likely to affect my daughter. Will there be justice for women and the girl child in this country? That is my biggest

²⁵³ Ibid.

²⁵⁴ For more details see 2B TJRC, "The Final Report~ (May 2013)," Chapter 3.

²⁵⁵ 2C Truth, Justice and Reconciliation Commission. 2013. The Final Report of the Truth, Justice & Reconciliation Commission of Kenya <http://digitalcommons.law.seattleu.edu/tjrc/5>.

²⁵⁶ Ibid.

²⁵⁷ TJRC Report. 2013. Volume IIC Chapter 3 on Minority Groups, Indigenous People and Gross Violations of Human Rights, 151.

concern."²⁵⁸

Men and women experience violations of human rights and injustices differently. The commission adopted policies building on the provisions of the human rights act (THR) Act. It ensured that women's experiences and violations were appropriately and comprehensively covered both in its work and this Report. "These policies and measures related to the commission's statement-taking process, hearings, focus group discussions, and other activities undertaken by the commission. It held separate hearings for women to encourage women to speak about their own experiences - framed as conversations with women".²⁵⁹

Female commissioners and staff presided over these dialogues, designed to be safe spaces where women could freely talk about specific violations. These hearings were conducted nationwide, with a total of 1,000 women in attendance. Thus, an average of 60 women in each hearing. The commission's chapter on gender deliberately focuses on the "various injustices that women faced during the mandate period. Even though Kenya's population comprises mostly women, they have traditionally been relegated to a subordinate status by patriarchal cultural norms and practices. Harmful traditional practices in Kenya include, among others, preference for male children, early or forced marriages, wife-beating, female genital mutilations, and widow inheritance. These norms were standard and sanctioned by law in the greater period covered by the commission's mandate. The findings show that women were the subject of systematic discrimination and gender-based persecution throughout the mandate period."²⁶⁰

A government task force led by eminent jurist *Makau Mutua* had previously recommended forming a truth-seeking body after the 2002 elections. The commission strove to learn from the Makau Mutua Task Force process findings from the experiences of "women were at home with women issues among other women." Hence, the commission received credit for creating this space for "women's experiences in the truth-seeking process."²⁶¹

²⁵⁸ TJRC/Hansard. 2011. Women's Hearing/Kitui/2 Dec/8.

²⁵⁹ "TJRC Report (Abridged Version)." 2013. Paper 10.

²⁶⁰ Ibid.

²⁶¹ See Report of the Task Force on the Establishment of a Truth, Justice and Reconciliation Commission,
<http://s3.marsgroupkenya.org/media/documents/2008/03/2530fca5826ag18db99428822663dc29.pdf>

An important finding by the commission was that in situations of conflict, “women are specific targets of violence, particularly sexual violence, and includes other forms of violations.” The Commission has documented atrocities committed against women during the following three selected conflicts: Mau Mau War, Mount Elgon, and the 2007/2008 Violence”.²⁶² Also, conflicts always result in the forced displacement of populations. The commission’s hearings revealed that the state’s response to internally displaced women’s plight and needs was less than satisfactory. Generally, the state’s response fell short of its rights instruments.

Given the importance of the issues and the severe violations women have faced over time, the commission’s engagement on gender issues was positive. However, the TJRC, based on its mandate, “failed to provide data on various categories of violations that women have suffered or to give recommendations stemming from the hearings targeted at improving human rights guarantees for women.”²⁶³

It is a tragic predicament that women have suffered terrible atrocities just because of their gender. The commission documented these atrocities “for historical purposes, and a bold statement to political leaders, and policymakers that achieving a just and fair Kenya also depends on the initiatives they will take to heal the soul of the Kenyan woman. At present, most women feel abandoned by the state. In recent years, many reforms to ensure women’s empowerment are in place, but more needs to be done to make these reforms substantive and real to improve women’s lives. There is a need for special attention to the most vulnerable among women: women in rural and slum areas, internally displaced and refugee women, HIV/Aids, and women belonging to minority and indigenous groups.”²⁶⁴

6.5.4 Children and Gross Human Rights Violation

The commission investigated violations suffered by children and youth who make half of the Kenyan population today and made significant efforts to accommodate their safe hearings and operations. The commission “gathered about 2,000 statements from children and organized two thematic hearing sessions allowing for testimony in camera. The commission stressed the vulnerability of children as both direct and indirect targets of grave violations besides recognizing their rights to participate.”²⁶⁵

²⁶² “TJRC Report (Abridged Version)”. 2013. Paper 10.

²⁶³ Gitari. 2014. “Lessons to Be Learned,” 7.

²⁶⁴ “TJRC Report (Abridged Version)”. 2013. Paper 10.

²⁶⁵ Gitari. 2014. “Lessons to Be Learned,” 8.

Children occupy a special place to understand the impact of gross human rights violations and historical injustices. Children are also the future of the country, and their community's experiences, of their peers, of officials, and other people in authority have profound impacts on their future. It also includes trust issues with those in authority. The global experience illustrates that abuse victims are more likely to be abusers of others as they become adults. The commission heard "horrific and heart-rending stories of abuse, violence, and other gross violations of the rights of children, and their anger plus their gravitation towards revenge. Therefore, the children's chapter provides a cautionary tale for the future of the nation. Hence, the roots of tomorrow's conflicts and violations are partly found in the treatment of our children today."²⁶⁶

After considering children's economic status, including levels of education, health, and child labor – and emphasizing the acute challenges facing children with disabilities – the chapter also analyses the impact of past conflicts on children. On Post Elections Violence (PEV), "the report extensively documents instances of killing and maiming, sexual violence, and forced recruitment, yet fails to name the *Turbi* massacre as an attack against schools."²⁶⁷

The difference between gross violations of human rights and violations of socioeconomic rights becomes problematic, especially when considering the specific safeguards to which children have a right according to the Convention on the Rights of the child. The report fails "to emphasize the perverse effects that state institutions' collapse has on children's lives in Kenya. For example, as drafted, the alarming problem of street children in Kenya appears to be primarily a consequence of conflict rather than poverty, loss of parents, and domestic violence."²⁶⁸

Moreover, it is not strongly emphasized and hence not addressed in the recommendations. Hence, "most cases of sexual violence against children are linked to socioeconomic status (with an inverse correlation), and perpetrated by individuals who should protect the victims from harm, including family and community members, and state agents."²⁶⁹ This problem is more evident due to the lack of statistical data documenting the commission's findings concerning violations against children.

²⁶⁶ "TJRC Report (Abridged Version)". 2013. Paper 10.

²⁶⁷ TJRC Report, Volume IIA. 2013. Chapter 1, Historical Context: General Overview, 25, and Volume IIA, Chapter 4, Unlawful Killings and Enforced Disappearances, 375.

²⁶⁸ Gitari. 2014. "Lessons to Be Learned," 8.

²⁶⁹ TJRC Report, Volume IIC. 2013. 175, par 42.

6.5.5 Minority Groups and Indigenous People

Testimony before the commission indicates the rights of minorities and indigenous people were violated repeatedly since independence making the problem systemic. Many oppressive laws sanctioned the collective punishment of minority and indigenous communities. "The law victimized communities in northern Kenya, where a significant number of minority groups and indigenous people live. The ant-stock theft law, for instance, legalized the collective punishment of a certain community for the offenses of individuals. Witness testimony before the commission showed minorities and indigenous peoples routinely had their collective identity marginalized. The National data classification of the minorities as: 'others' creates deep-seated feelings of exclusion among these groups. The minorities in Kenya comprise of the *Munyoyoya, Nubians, Suba, Waata, Ogiek, Saboat, Kuria, Kona, Bajun, Hara, Saakuye, Burji, Isaak, and Sengwen* whose existence was effectively denied by the state and unknown to the majority of Kenyans. Yet their right to identity is essential, as it is associated with several others, such as the right to language and culture. The forced displacement of pastoralists and hunter-gatherers from their ancestral lands worsened their marginalization. It also deepened their poverty, which created conflict with neighbors."²⁷⁰

The small population size that characterizes minorities and indigenous groups has denied them influence and left them out of policy and decision-making – even where decisions directly affect them. During the mandate period, minority groups and indigenous people were "unable to access justice at many levels frustrating their efforts to protect other rights. Minority and indigenous women suffered multiple forms of discrimination. They bore the brunt of inter-ethnic conflicts and insecurity and had difficulty accessing social services and goods from education to health services."²⁷¹

The 2010 Constitution strives for an efficient legal framework for the rights of minorities and indigenous people but "requires more legislative mechanisms to achieve its goals."²⁷²

²⁷⁰ "TJRC Report (Abridged Version)". 2013. Paper 10.

²⁷¹ Ibid.

²⁷² Ibid.

6.6 Volume III: Ethnic Tensions, National Unity and Reconciliation

The Third Volume of the Report (III) focuses on national unity and reconciliation in Kenya. It comprises 153 pages covering three chapters with two appendices: National Cohesion and Integration Commission (NCIC) Study on Ethnic Composition of the Public Sector in Kenya and NCIC Study on Ethnic Diversity of Universities in Kenya. The Commission was mandated to “inquire into the causes of ethnic tension, Land and Politics – with a case study of Mount Elgon Politics, and Healing and Reconciliation. It was designated to make recommendations on promoting healing, reconciliation, and coexistence among ethnic communities.”^{273 274}

The report derives much of its understanding “from a wide variety of historical injustices committed during the period under investigation, combined with a discussion of ethnicity and ethnic tensions, national unity, and reconciliation.”²⁷⁵

This critical chapter in this volume addresses ethnic tensions from all over the country. It “documents their causes and effects, including their drivers and root causes, government policies undermining cohesion and unity (for example, stereotyping and excluding certain groups from the political affairs of the state). TJRC seeks to make a causal link between heightened ethnicity and politics, land, and violence.”²⁷⁶

In addition to holding such hearings, the Commission also organized a thematic hearing on ethnic tension and violence on February 2, 2012, in Nairobi. It received presentations by experts and relevant institutions such as the National Cohesion and Integration Commission (NCIC). Through its research and hearings, TJRC identified “several causes and drivers of ethnic tension in the country. The roots of most of these causes are traceable to colonial administration practices”.²⁷⁷

The British Colonial government pursued a policy of divide and rule to consolidate and control the African population preventing local resistances. It created ethnically defined administrative boundaries focusing on developing infrastructure and social services in its

²⁷³ 3 Truth, Justice and Reconciliation Commission. 2013. The Final Report of the Truth, Justice and Reconciliation Commission of Kenya <http://digitalcommons.law.seattleu.edu/tjrc/6>.

²⁷⁴ TJR Act, No. 6. 2008. Section 6 (s).

²⁷⁵ Gitari. 2014. “Lessons to Be Learned,” 8.

²⁷⁶ Ibid.

²⁷⁷ “TJRC Report (Abridged Version)”. 2013. Paper 10.

productive areas. Colonial displacement and inequality led to forced migration, and this created tensions in non-ancestral locations. The resulting inequality remained mostly unaddressed by independent Kenya.²⁷⁸

Independence came with glorified ethnicity and disunity. Local elites lacked the political will or commitment to creating a multiethnic democratic new cohesive nation and worsened ethnic relations. The year 2007 was a tipping point when long-standing grievances erupted into unprecedented violence²⁷⁹. Elites in independent Kenya bent on amassing wealth failed to dismantle the extractive system they inherited and instead established themselves as the new oppressors.

There are multiple causes of ethnic tension in Kenya's post-independence period; however, the following stand out of the pack.²⁸⁰

Aspects of Insider/Outsider tension dynamics: "Ethnic tension and violence occur when communities assert a superior claim over territory at the expense of or to the exclusion of others. The issue of names and their meanings causes tensions at the Coast and in the Rift Valley. The peculiar issue that intricately tied the notion of insiders and outsiders relate to names of places. In the former North Eastern Province, the Government has institutionalized the disparate treatment of Kenyans based on ethnicity by requiring that Kenyans of Somali origin carry a special pass. Negative perceptions and stereotypes are a major cause of ethnic tension in the country. Certain communities categorized and portrayed in broad, often negative terms that generalize certain traits and apply them blindly and broadly. Kikuyu are stereotyped as thieves, Maasai are stereotyped as primitive, and the Somali are stereotyped as terrorists or (*Al Shabab.*)"²⁸¹

Professor Makau Mutua (2020) balances the equation on ethnic tensions and violence. He argues that "It's easy to scapegoat a racial, ethnic, or religious group for the failures of society. But the opposite is also true - a racial group can benefit from racialized narratives and myths. The problem is that many people from within and without the group believe these myths. Kenya's 2010 Constitution, which was built on the tenets of equality, anti-discrimination, and equal protection, will be (irrelevant) if we continued to believe in - and

²⁷⁸ Ibid.

²⁷⁹ Ibid.

²⁸⁰ Ibid.

²⁸¹ TJRC Report, Volume III. 2013. 9-15.

practice – these (stereotype) myths.”²⁸² Author’s emphasis in parentheses.

The Commission found that “some stereotypes are from traditional cultural beliefs and practices. Men from communities that do not practice male circumcision have always been stigmatized and regarded as lazier or weaker men, incapable of or unsuitable to take the country's political leadership. The perception that ethnic representation in the government directly brings economic and other benefits or gains to the represented community is pervasive in Kenya. Intense competition for such representation increases the likelihood of violence during elections. The government's failure to deal with land-related injustices that members of the Sabot community suffered since the colonial period led to the emergence of the Sabot Land Defence Force (SLDF) in the Mount Elgon region. The SLDF and the Kenya Police and Army were responsible for gross violations of human rights, including killings, enforced disappearances, torture, and sexual violence.”²⁸³

The commission is non-committal on basic recommendations on the issue of ethnicity in Kenya or mitigating ethnic tension. It hinges recommendations based on the Mount Elgon case study.”²⁸⁴

Some probable recommendations for resolving ethnic tensions implied in the TJRC Report and explicit in the new 2010 Constitution are ethnic inclusion in public offices at the national and county level. It fosters civic engagement and dialogue among ethnic groups at the national and county level and equitable distribution of resources among various regions.²⁸⁵ “The presidency, county government, political parties, the Public Service, and Parliament are specific organs of the state identified by the commission as capable of playing a key role in managing ethnic tension and fostering national cohesion.”²⁸⁶

Prospective academic theories are progressive and spontaneous, focusing on a conspiracy

²⁸² Makau Mutua. 2020. “Busting for good, the myth of ethnic exceptionalism in Kenya,” in the Daily Nation (Kenya) Online Opinion, Monday 29 June. <https://www.nation.co.ke/kenya/blogs-opinion/opinion/busting-for-good-the-myth-of-ethnic-exceptionalism-in-kenya-1288734>

²⁸³ “TJRC Report (Abridged Version).” 2013. Paper 10.

²⁸⁴ TJRC Report, Volume IV. 2013. Chapter 1, Findings and Recommendations, 57-59.

²⁸⁵ See, NCIC Study on Ethnic Composition of Public Service in Kenya, Volume III, Appendix 1, Article 232 on principles of public service, Article 201 on principles of public finance which includes equitable development and Article 131 on the role of the President in fostering national cohesion, Article 174 on the role of devolution in fostering cohesion, Article 91 and the role of political parties in promoting cohesion, etc.

²⁸⁶ Gitari. 2014. “Lessons to Be Learned,” 9.

of aggravated issues of land resources. There are forceful evictions in the Rift Valley where the cycle of violence repeats itself as in 1992, 2002, and 2013.

“Illegal gangs like the *Mungiki* – a Kikuyu Mafia youth unleashed violence in retaliation to their kith and kin evictions in the Rift Valley. These gangs were like self-help ethnic-based security providers out for manipulative hires. Solutions include - the control of erstwhile-organized criminals and a necessity to control the resurgence of gangs. Research shows that there exist about 66 outlawed groups. The number has been increasing in the 1990s to about 100 groups in 15 counties. These are, unfortunately, affiliated to politicians as their tool of choice to cause disturbances. High unemployment among the youth makes them targets for cheap hire for political mileage of rival politicians who use them to settle political and cultural scores. They get hired to rough up rival politicians and disrupt their meetings on demand. Election management is lacking. The decisive politics for 2022 should strive to ensure credible elections to diffuse and reduce tensions. Dispensation of the Constitution is required. It will help create alternative solutions to conflicts as the Kriegler Report cites the Supreme Court. Swiftly nullifying flawed elections on-demand restores trust and credibility. The New 2010 Constitution is conflict-solving friendly by outlining the necessary steps and avenues to free and fair contestability. Registration of National Political Parties, Multi-stakeholders approach involving the Police, Public, and non-governmental organizations must ensure transparent party nominations supervised by credible Independent Elections and Boundaries Committee” (FH58, 14 August 2018: Fieldwork Narratives, Nairobi).

6.7 Volume VI: Findings and Recommendations for Reconciliation

The Final Volume of the Report (VI) catalogs the Commission's findings and recommendations presented in three chapters of 195 pages with two appendices.²⁸⁷ It includes the Commission's Findings and Recommendations, Implementing and Monitoring Mechanism, and the Reparation Framework. The two appendices provide a List of Adversely Mentioned Persons and Recommendations of TJRC. It also includes the List of Adversely Mentioned Persons in Official/Public Reports Relating to Politically Instigated Ethnic Violence/Clashes, respectively.

Kenya has remained a nation where communities stand divided along ethnic and regional

²⁸⁷ Truth, Justice and Reconciliation Commission Report. 2013. Volume IV
<http://digitalcommons.law.seattleu.edu/tjrc/7>.

lines, suspicious and distrustful of one another for decades. Within which feelings of inter-community distrust, even hatred, have festered mainly because many issues at the core of nation-building have primarily remained unresolved. These issues include “conflicts over land, inequality and regional imbalances, and impunity combined with a lack of transparency and accountability hence eroded a sense of belonging, nationhood and public trust in political and governance institutions.”²⁸⁸

Since independence, successive governments have employed silence, denial, and selective amnesia whenever individuals and agencies have raised the need to address these fundamental issues. “Painful memories inherited across generations, consequently resulting in turn to inherited grudges for past violations and historical injustices by the present generations. The scale and impact of human rights violations and historical injustices remain under-acknowledged and insufficiently addressed to date.”²⁸⁹

The Commission endeavors to contribute to the process of reconciliation, therefore clarified that “meaningful reconciliation is not an event but rather a long process. At the individual level, the decision to reconcile is a personal one, aimed at setting up the stage and establishing the basis for the beginning of a reconciliation process.”²⁹⁰

Reconciliation and Trauma Healing Workshops and Strategy Formulation were conducted in selected places nationwide by the commission as part of its reconciliation activities. It discovered that “memories from inherited painful inter-generation grudges for past violations, historical injustices meted against ancestors, the scale and impact of human rights violations and historical injustices have never thoroughly been acknowledged nor sufficiently addressed.”²⁹¹

The commission found that the views of victims on reconciliation are varied. “There are those who willingly forgave their perpetrators without meeting them. Besides, some simply wanted to know why the perpetrators targeted them. However, others were unwilling to forgive and wanted to see their perpetrators prosecuted for the wrongs they committed. Adversely mentioned persons alternatively, were largely unwilling to acknowledge any responsibility for events that resulted in unspeakable atrocities.”²⁹²

²⁸⁸ “TJRC Report (Abridged Version).” 2013. Paper 10.

²⁸⁹ Ibid.

²⁹⁰ Ibid.

²⁹¹ Ibid.

²⁹² Ibid.

6.8 Implementation and Monitoring Mechanism

Past experiences of global truth commissions show that a significant challenge lies in implementing and monitoring the recommendations contained in the reports of these commissions. Mostly, the life of these commissions ends at the point of submission of their final reports. Secondary actors tasked with foreseeing the monitoring and implementation processes never pursue the recommendations because of state capture and budgetary constraints.

The work of previous plural commissions of inquiry in Kenya attests to this. "This severely limits the impact of the reports and betrays public trust and expectations. The TJR Act empowered the commission to recommend an implementation mechanism to ensure the delivery and adoption of its recommendations. The government is expressly obligated under the TJR Act to create the implementation and monitoring mechanism for dissemination accessibility to all Kenyans as stipulated by the Report to be fully budgeted and honor payments of compensations and reparations."²⁹³

The establishment of a Committee for monitoring the implementation of the Truth, Justice, and Reconciliation Commission recommendations, as stipulated by legislation, is now a pipe dream. The reports have never been tabled or commissioned. The state owns and controls the program and its processes, and as is always the case, adversaries never prosecute their ilk for fear or more retaliation. It is crucial for the Supreme Court, together with the Parliament, to work out an independent alliance as a committee for monitoring the implementation mechanism. Hence, *the Supreme Court should guarantee the implementation of TJRC outcomes within the stated time frame.*

Unfortunately, the reality on the ground gives a different story. It led to the demise of the TJRC as hope thinned out with state capture. The Report is in limbo and victimized by conflicting political elite bargains and their transaction costs wrapped in political settlements. It is now evident that this is a long walk to justice, a raw state display of impunity and violence against its citizens. Kenya needs a new savior and guardian of the truth more urgently than ever before.

²⁹³ Ibid.

The government has been cautious in following this implementation and monitoring mechanism because of patronage and a guilty status quo. Hence, the obligatory stabilization and reconciliation process has already been sabotaged and stalled.

6.9 Challenges and Prospects

The difficulties surrounding the TJRC process and its final reports reflect the political leadership's reluctance to account for its dark past. Political neglect, the selfish and irresponsible behavior of its chairperson, and financial troubles compounded the challenges inherent in implementing an unwieldy and over-ambitious legal mandate. The TJRC report reflects many of the weaknesses of the country's truth-seeking process. It also provides an essential foundation for examining Kenya's past, and most importantly, it makes recommendations that, if heeded, could help create a more robust republic, with the rule of law and respect for citizens' rights.²⁹⁴ It takes noble notice that the local human rights and transitional justice groups were relieved that the commission managed to present a somewhat wide-ranging Final Report of 2,000 pages.²⁹⁵ While this may indicate the process's low expectations, it suggests interest and a degree of hope. Moreover, "the voices of the victims are demanding accountability from the state for past atrocities is admirable."²⁹⁶

The Kenya case is also an instance of a truth-seeking project disconnected from the moral signaling with which truth commissions are typically associated. Hence, as ownership of the TJRC shifted away from prominent human rights organizations, the TJRC increasingly became a technical exercise consisting of the public hearing, witness statements, lawsuits, and report chapters, divorced from popular civil society organizations (CSO) political debate and interests. Thus, despite individual TJRC staff's concerted efforts and some significant technical achievements in terms of data collected and opportunities for selected witnesses to tell 'their stories,' *politically*, the TJRC process is widely considered unsuccessful.²⁹⁷

There is no denying that truth commissions' objectives are noble and worthy and that

²⁹⁴ Gitari. 2014. "Lessons to Be Learned," 10.

²⁹⁵ See, Goerge Kegoro. 2013. "Despite low public expectations, report shouldn't be a waste," Daily Nation Online Editorial, May 25 www.nation.co.ke/ped/Opinion/At-least-Kiplagat-team-provided-for-reparations/-/44808/1862942/-/sbu307/-/index.html

²⁹⁶ Gitari. 2014. "Lessons to Be Learned," 10.

²⁹⁷ Bosire and Lynch. 2014. Kenya's Search for Truth and Justice: The Role of Civil Society, *The International Journal of Transitional Justice* (8): 276.

“healing and reconciliation are important processes for communities recovering from atrocities. However, continual effort must be made to understand the meaning or process of healing and reconciliation for specific communities and the impacts and long-term legacies of specific commissions.”²⁹⁸

The TJRC Report is now shelved and battling with several serious challenges. These include “the government’s reluctance to publish it as well as facing several court cases seeking orders from the High Court to expunge aspects of the report adversely mentioning petitioners, and to bar the Attorney General from tabling the report before Parliament, or block its implementation altogether.”²⁹⁹ Other perpetrators, as petitioners, want it banned entirely.

The intention of the National Assembly (Parliament) poses a severe challenge, presumably vested with the document to make alterations. In December 2013, the House debated and passed an amendment to the TJR Act, giving the National Assembly the power to “determine how the commission’s recommendations.”³⁰⁰ Initially, the bill was to replace the “Minister for Justice and Legal Affairs” with the “Attorney General” in the report to be in line with the current political order and facilitate implementation. However, the amendment opened the door for several other amendment proposals, including altering sections 49 and 50 for the National Assembly to “consider the report.” If the National Assembly were to succeed in amending the report, Kenya would hold the first country’s unfortunate distinction to alter an official truth report after its public issuance.³⁰¹ The TJR Act obligated the government, and this alone remains unbinding. The Abandonment and abdicating from it illustrates how entrenched impunity work and control governance in Kenya.

The opinion is divided on the real impact of these amendments. On the one hand, they seem to cure the TJR Act’s weakness, the proposed implementation mechanism outside of state machinery. On the other hand, “these amendments fail to bring clarity to the implementation process and now leave it to the discretion of the National Assembly. There is fear that these amendments are motivated by intentions to alter the report to delete the

²⁹⁸ Michal Ben-Joseph Hirsch, Megan MacKenzie and Mohamed Sesay. 2012. “Measuring the impact of truth and reconciliation commissions: Placing the global ‘success’ of TRCs in local perspective,” *Cooperation and Conflict* 47(3): 400.

²⁹⁹ Most of the petitioners apart from Hon Criticos are from the same ethnicity.

³⁰⁰ The TJR Act gave the commission the power to determine the mechanism or framework for implementing its substantive recommendations and obligated the government to follow.

³⁰¹ Gitari. 2014. “Lessons to Be Learned,” 10.

names of adversely mentioned persons.”³⁰²

Moreover, the National Assembly can conspire to interfere with justice. Hence, a sober call to the civil society to be agile and vigilant in engaging the state and the National Assembly to discuss and consent on an efficient and accountable implementation process. The Attorney General should also be engaged and always reminded to uphold justice in ensuring that the monitoring and implementation processes effectively stay on course. Unfortunately, a “captured and co-opted” Attorney General makes that endeavor a hard bargain to achieve since the inclination towards protecting ulterior peer interests becomes salient.

Deputy President William Ruto campaigning in Mandera - a border town in North-Eastern Kenya between Ethiopia and Somali - asserted that implementing the TJRC Report will open old wounds.³⁰³ Christopher Gitari is the Director of the International Centre for Transitional Justice (ICTJ) in Nairobi and a High Court Advocate. He pointed out that DP William Ruto’s remarks on the Truth Justice and Reconciliation Commission Report have “confirmed our worst fears that the Uhuru Kenyatta administration has rejected it and will not bother addressing historical injustices. DP Ruto speaking at a political rally in Mariakani, Kilifi County”, also said, “the Jubilee government would not implement the TJRC Report because it will divide Kenyans.”³⁰⁴

Many Kenyans yearn for the day the report is, adopted by the National Assembly (Parliament) and its recommendations implemented. Gitari’s comments obliterate this hope. The main opposition party, the National Super Alliance (NASA) led by resilient politician Raila Odinga, has said that it will implement the Report if elected. Mr. Odinga pledged The Stanley Hotel, Nairobi, on July 13, when he addressed victims of historical injustices who had urged him to adopt their demands for reparations in his manifesto.³⁰⁵ What is evident is that Kenyans are now demanding courageous leadership to deal with historical injustices to secure sustainable peace. Gitari (2014), therefore, concludes that “the TJRC Report is a partly fair reflection of the mandate and the commission itself. It has many imperfections but also many merits. Its recommendations, if heeded, could help create a stronger Kenya, with the rule of law and respect for citizens’ rights.”

³⁰² See, Institute for War and Peace Reporting. 2013. “Concerns Over Bid to Amend Kenya Rights Report,” 16 August. <http://iwpr.net/report-news/concerns-over-bid-amend-kenya-rights-report>

³⁰³ See Daily Nation. 2017. “Attempt to bury TJRC’s report on historical injustices callous,” Monday 24 July. <http://www.nation.co.ke/oped/Opinion/Attempt-to-bury-TJRC-s-report-on-historical-injustices-callous/440808-4030498-8j9kfmz/index.html>

³⁰⁴ Ibid.

³⁰⁵ Ibid.

In a nutshell, the report provides findings on several vital issues. The TJRC Report identifies various constitutional, legislative, and transitional institutional reform or judicial reforms since the commission was established. The Report also makes bold recommendations on the release of government-held information related to massacres and killings. It allows non-state actors to act on such recommendations if the government fails to provide such information as required under Article 35 of the Constitution, which deals with the right of access to information. It also “proposes a robust reparation framework and makes follow-up on reparations for victims a possibility, specifically recommends apologies from the state as a first step toward the acknowledgment of victims’ suffering.”³⁰⁶

The International Center for Transitional Justice (ICTJ) paper also criticizes the Report. It observes that the TJRC came short on its conclusions and recommendations on ethnicity and inter-ethnic conflict. Given that Ethnic tensions caused some of the worst violence ever experienced in Kenya, which includes the bloodshed that followed the 2007/8 presidential election disputes as post-election violence.³⁰⁷

Kenyan authorities must discuss the recommendations and do their utmost to implement them while explaining, in detail, their reasons for any failure or otherwise. Well-meaning public officers and non-state actors would do well to read the report and lift those implementable findings and recommendations and support discourse on those recommendations that appear complex and politically unpopular. The whole Kenyan society “need to holistically discuss these recommendations and use them as a platform to build a stronger society.”³⁰⁸ Since most Kenyans have not read the report, its impact would be more significantly beneficial with the immediate accessibility to the “*Abridged Version*,”³⁰⁹ written in accessible language, produced, and disseminated throughout the country.³¹⁰

Schools in Kenya should adopt it as part of their educational curriculum to educate and empower future generations about where we started, our problems and tribulations, and our destination, stressing that we have not yet arrived! This Report stands as an official record of the state’s complicity in serial human rights violations as a state whose frequently

³⁰⁶ Gitari. 2014. “Lessons to Be Learned,” 11.

³⁰⁷ ICTJ Paper. 2014. “Kenya TJRC Final Report Deserves Serious Analysis and Action,” <https://www.ictj.org/news/ictj-kenya-tjrc-final-report-deserves-serious-analysis-and-action>

³⁰⁸ Gitari. 2014. “Lessons to Be Learned”, 11.

³⁰⁹ It is in existence but not circulated. See, Truth, Justice and Reconciliation Commission, “TJRC Report (Abridged Version)”. 2013. *The Final Report of the Truth Justice and Reconciliation Commission of Kenya* 10. <http://digitalcommons.law.seattleu.edu/tjrc/10>

³¹⁰ Gitari. 2014 “Lessons to Be Learned,” 12.

exposed corrupted institutions disregard citizens' fundamental human rights.³¹¹

While the Report does not fully (and almost certainly could not) respond to the TJRC's broad mandate, "it recognizes and explains some of the commission's shortcomings. Challenges, particularly regarding the deeper analysis of key violations, need redress by further investigation. However, none of these weaknesses should affect the serious consideration that the report deserves."³¹²

Malombe (2012) argues that in the future, we should ensure that all the legal and operational frameworks relating to truth commissions and other transitional justice interventions are above board. Operationally, commissions should have adequate funding and extremely competent, committed, and credible commissioners and staff. Commissioners and senior staff must be appointed on merit and dismissed over any past questionable practices.³¹³

There is also a need for common ground in what pundits' call the 'justice balance' approach in the entire truth-telling project. Oslen et al. (2010) infer that a justice balance approach assumes that truth commissions on their own tend not to achieve human rights from the imbalances they introduce. Truth commissions per se tend to emphasize either accountability or impunity. Accountability alone can jeopardize stability, a crucial factor for the transition from authoritarian rule. Meanwhile, impunity fails to create the legal framework, political, and moral environment necessary to deter future human rights violations.³¹⁴

It is imperative to argue that Kenya missed the opportunity to learn from and build on the trial and error experience of previous truth commissions in Africa and elsewhere. Kenya's political system is wholly responsible for gross human rights violations and economic crimes, which have stalked the country before and after independence. However, the TJRC Report indeed can navigate us out of this murky situation for a truth-seeking and forgiving nation. Are we ready to embark on this new *Safari*?! The answer is Yes, No, or both.

³¹¹ K. Murphy, D. Wray and C. Ramirez-Barat. 2015. Learning From Our Past: An Exploration of Truth, Justice, and Reconciliation in Kenya. ICTJ Publication, <https://www.ictj.org/publication/learning-our-past-exploration-truth-justice-and-reconciliation-kenya>

³¹² Ibid., 12.

³¹³ D. M. Malombe. 2012. "The Politics of truth commissions in Africa: a case study of Kenya." 119.

³¹⁴ T. D. Oslen., Payne, L. A., Reiter, A. G., and WiebelhausBrahm. 2010. 'When truth commissions improve human rights', *The International Journal of Transitional Justice* 4(3): 469.

However, conducting a TJRC the way Kenya did show impunity on display. The government used *Ambassador Kiplagat* to control and frustrate the operation and work of the Commission. Hence, this has both delayed and denied justice for the victims, notwithstanding the documented truth unearthed. Kenyans are willing to turn a new chapter and build on what we know as we continue searching for real reconciliation for sustainable justice. The government in power is not ready. *The question again is, how do we make the state apologize, offer redress, nurture trust with its citizens, and offer reparations while the affected generations are still alive?*

Future Commissions should seek more excellent ways of protecting the reports by designative charters to hand the final reports for monitoring and implementation not to the sitting President(s) but the current Senate/National Assembly Speakers and Governors of the devolved governance system. President(s) in office, by default, may suffer from conflicting interests and elite bargains. These tend to converge, further triggering more repression and marginalization as conduits to cling on to power.

I readily agree with Brown and Sriram (2012: 244) with their argument that "*the big fish won't fry themselves.*" The ruling elites and their cartels across the political divide know too well that going after their business or political partners adversely mentioned by the reports is suicidal based on their elite bargains. Despite its numerous challenges, the truth commission finished its work and deserves a judicially guaranteed systematic implementation and monitoring mechanism. The ruling elites and their sponsors in Kenya are criminally culpable and guilty of marginalizing the citizenry in perpetual oppressive enclaves to continue with their "eating." They swiftly deserve to be "*tried and fried*" for meddling and dismantling the truth.

Chapter 6 has demonstrated Kenya's scuttled reform proposal hindering a systematic implementation and monitoring mechanism. The peer experience in Africa shows varying levels of the promulgation of the commissions' findings. In Kenya, these outcomes are paralyzed and denied, demonstrating entrenched impunity. Therefore, chapter 7 analyzes the fate of the recommendations made by TJRC in Kenya.

Chapter 7 Analysis: The Fate of TJRC Recommendations

This chapter envisions the concerted efforts of the TJRC experience in Kenya, as seen in chapter 6 in addressing multiple injustices. It then allows us to evaluate the findings' outcomes as recommendations in assessing the rise and fall of the truth, justice, and reconciliation commission in Kenya. This application will interrogate the pertinent of reconciliation and national cohesion expectations related to the right to know the truth for the new Kenyan Dream. The quotation below by a TJRC witness dynamically demonstrates this visionary hope.

"We must work from the basis that Kenya is a garment of many colours, which is beautiful because each colour is present. We cannot be one colour because we would be dull. Some colours cannot run over others because we would be ugly. We must all stay in place and be bright. That is an ideal situation where Kenya ought to be." **TJRC witness**³¹⁵

7.1 Persistent Inequalities, Healing, and Reconciliation³¹⁶

The following message was part of the speech given by the Duke of Edinburg to the citizen of a new African nation on the eve of Independence Day in Kenya (TJRC Final Report Volume IIA 2013: 1):

*"Tomorrow, a new volume will be opened, and an independent Kenya will start to write a new story. The pages of this new volume are still blank and empty; the story that is to be written on them is still in the hands and minds of all the people of Kenya."*³¹⁷

Independence Day on 12 December 1963 brought jubilation and celebrations across the entire country. Immediately, Kenyans began to write the country's story. Almost 50 years later, Kenya's story is a success and a sad story. It is a success story because, despite the many challenges that have bedeviled the country, Kenyans have made considerable strides

³¹⁵ TJRC/Hansard. 2012. Thematic Hearing on Ethnic Testimony and Violence/ Nairobi/" February/35.

³¹⁶ Relies on Chapter 3 of TJRC Final Report. 2013. "Healing and Reconciliation."

³¹⁷ Daily Nation (Kenya). 1963. 13 December.

in achieving the goals set forth at independence, chief amongst which is the eradication of poverty, diseases, and illiteracy. It is a sad story because of being burdened by ghastly accounts of gross violations of human rights and historical injustices. This sad part of Kenya's story is that the Truth, Justice, and Reconciliation Commission was tasked to examine and document.³¹⁸

Kenya's history is associated with tragic episodes of gross violations of human rights. Most of these atrocities were committed between 1963 and 2002, during which the Kenya African National Union (KANU) was at the helm of power. KANU, the independence party, and under the leadership of President Jomo Kenyatta and later President Daniel arap Moi, created an authoritarian, oppressive, and corrupt state. It created a traumatized nation of thousands of individuals living with physical and psychological wounds in a country with no time or space for their experiences and stories.

For decades, Kenya has remained a nation where communities stand divided along ethnic and regional lines, suspicious and distrustful of one another. Over the decades, feelings of inter-community distrust, even hatred, have festered mainly because many issues at the core of nation-building have primarily remained unresolved. These issues include conflicts over land, inequality and regional imbalances, and impunity combined with a lack of transparency and accountability. These issues have eroded a sense of belonging, nationhood, and public trust in political and governance institutions.³¹⁹

Land problems have created an impoverished landless class that is politically exploited and marginalized. Solutions lie in requiring the state, as the guardian of fundamental livelihood rights, to use its budgetary outlays *to offer financial compensation for the landless to prevent future post-election violence*. It should amicably share land resources, check inequalities, and provide a guaranteed essential lifeline to the exploited and marginalized landless Kenyans.

³¹⁸ TJRC. 2013. Final Report Volume IIA, Chapter 1.

³¹⁹ Truth, Justice and Reconciliation Commission, "TJRC Report (Abridged Version)". 2013. The Final Report of the Truth Justice and Reconciliation Commission of Kenya, Paper 10.

The Truth, Justice, and Reconciliation Commission (TJRC) was established and mandated to 'promote peace, justice, national unity, healing, and reconciliation among Kenya's people after the 2007/8 post-election violence. 'The question that starkly confronted it was how *can healing, reconciliation, and national unity be fostered to mobilize all Kenyans towards a common vision, and future - composed of a shared national identity, common values, and aspirations as captured in the words of the National Anthem?* Chapter three of the *TJRC Final Report III* (2013) vividly synthesizes Kenyans' feelings concerning the critical issue of national unity, healing, and reconciliation.

The *National Anthem* of Kenya shown below is, observed in all public institutions, and most Kenyans can sing it because it was part of the civic education in schools and must be sung on demand. In Kenya, singing this *National Anthem* starts on Mondays when raising the National Flag as the school week begins, and when lowering the flag on Fridays as the school weekends. Some public institutions, like police stations, observe this ritual twice a day. The general public in the vicinity must stand still and observe the ritual of face physical disciplinary action and arrest for de-respect.

A testimony by a Somali Elder in Garissa below reflects the frustrations faced by the state exclusion and marginalization of his community, notwithstanding their fundamental human rights as Kenyan citizens.

"Before we started the session, the National Anthem was sung. I want to tell you that we have never been part of the National Anthem. The National Anthem talks of justice, fellowship, awareness, good life, abundance, etc. These things have never been experienced in this region. In totality, I can say that we have never been part of this country."³²⁰

³²⁰ TJRC/Hansard. 2011. Public Hearing/Garissa/14 April/3 and TJRC. 2013. Final Report IIB Chapter One, 55.

National Anthem³²¹

Kiswahili	English
<i>Ee Mungu nguvu yetu</i>	<i>O God of all creation</i>
<i>Ilete baraka kwetu</i>	<i>Bless this our land and nation</i>
<i>Haki iwe ngao na mlinzi</i>	<i>Justice be our shield and defender</i>
<i>Natukae na undugu</i>	<i>May we dwell in unity</i>
<i>Amani na Uhuru</i>	<i>Peace and liberty</i>
<i>Raha tupate na ustawi.</i>	<i>Plenty be found within our borders.</i>
<i>Amkeni ndugu zetu</i>	<i>Let one and all arise</i>
<i>Tufanye sote bidii</i>	<i>With hearts both strong and true</i>
<i>Nasi tujitoe kwa nguvu</i>	<i>Service be our earnest endeavour</i>
<i>Nchi yetu ya Kenya</i>	<i>And our homeland of Kenya</i>
<i>Tunayoipenda</i>	<i>Heritage of splendour</i>
<i>Tuwe tayari kuilinda</i>	<i>Firm may we stand to defend.</i>
<i>Natujenge taifa letu</i>	<i>Let all with one accord</i>
<i>Ee, ndio wajibu wetu</i>	<i>In common bond united</i>
<i>Kenya istahili heshima</i>	<i>Build this our nation together</i>
<i>Tuongane mikono</i>	<i>And the glory of Kenya</i>
<i>Pamoja kazini</i>	<i>The fruit of our labour</i>
<i>Kila siku tuwe na shukrani</i>	<i>Fill every heart with thanksgiving</i>

As captured in the National Anthem's words, this common vision and future of a shared national identity and common values and aspirations remain a pipe dream for most Kenyans.

Archbishop Tutu's memoir of his time as chair of the South Africa Truth and Reconciliation Commission hinges in "*No Future without Forgiveness.*" It documents his insistence on the need to discover a "third way" - in the healing of the national psyche and his powerful belief that "we can indeed transcend the conflicts of the past, we can hold hands as we

³²¹ The National Anthem of Kenya. 2010. "New 2010 Constitution," Nairobi: Government of Kenya. 161.

realize our common humanity." He argues that true reconciliation cannot be achieved by denying the past, nor is it easy to reconcile when a nation "looks the beast in the eye." Therefore, Tutu presents a bold spirituality that recognizes the horrors people can inflict upon one another and yet retain a sense of idealism about reconciliation (Tutu 1999). The Nobel Peace laureate also discusses his experiences as an encouraging message to the people of Bosnia, Kosovo, Sierra Leone, Angola, Burundi, and others that come after South Africa. Their problems cease to be described as intractable again (Tutu 2000).

Governance measurement analysis in African countries supports the assertion that TRCs positively affect governance, especially with public participation in government and improving human rights practices. These findings build on existing evidence that TRCs are effective mechanisms to improve governance practices of transitional states.³²² Applying the lessons of past commissions to Kenya's TJRC suggests that the TJRC should make every effort to complement the ICC's efforts in Kenya. Engage local populations in carrying out its mandate, and draft realistic, coherent recommendations on reparations and reforms to prioritize reconciliation among ethnic groups for future stability (Moller 2011: 21).

While reconciliation can be promoted through specific reconciliation policies or activities, it can also be possible from multiple and multi-stage political, social, and economic processes and reform outcomes in transitional societies. It can include transitional justice processes, which can contribute to reconciliation via their outcomes and, more importantly, discourse and participation processes. However, if seen to lack legitimacy or impartiality, transitional justice efforts can, in some cases, foster divisions instead of overcoming them. Reconciliation can also take on a negative connotation when visualized as a substitute for accountability (Seils 2017: 16).

Plural literature demonstrates that post-conflict nation-building has become inseparable from the perceived need to come to terms with the past's divisive legacy to generate solidarity or otherwise conditions for peaceful co-existence. Hence, the transition itself

³²² James L. Gibson. 2009. On Legitimacy Theory and the Effectiveness of Truth Commissions, *72 Law and Contemporary Problems* (Spring): 123-141.

implies a liminal period's symbolic inauguration marking the passage from old to new and providing a delimited space for negotiation (Wilson 2001). The 'reconciliation paradigm' (Short 2005:268) thus recognizes the importance of memory along with its potentially disruptive power, meaning that calls for remembrance in the cause of reconciliation are, in effect, paradoxically also calls for its containment (Shaw 2007).

Since independence, successive governments have employed silence, denial, and selective amnesia whenever individuals and agencies have raised the need to address these fundamental issues. Painful memories inherited forward make present generations continue to hold grudges for violations and historical injustices meted against their forefathers and mothers. To date, the scale and impact of human rights violations and historical injustices neither been fully acknowledged nor sufficiently addressed (TJRC "Abridged Report" Paper 10 2013).

The Commission also agreed that meaningful reconciliation is not an event, but rather a long process. "At the individual level, the decision to reconcile is a personal one, aimed at setting the stage and establishing the basis for the beginning of a reconciliation process. Accordingly, the Commission worked towards ensuring that its activities and its result would substantially contribute to the process of reconciliation. As part of its reconciliation activities, the Commission conducted reconciliation workshops across the country. It also conducted Workshops on Trauma Healing and Strategy Formulation in selected places in the country" (Ibid).

The Commission found that the views of victims on reconciliation are varied. "Some willingly forgave their perpetrators and did not even need to meet them. Some simply wanted to know why atrocities were committed against them. On the other hand, some were unwilling to forgive and wanted to see their perpetrators prosecuted for the wrongs they committed. Adversely mentioned persons, on the other hand, were largely unwilling to acknowledge any responsibility for events that resulted in unspeakable atrocities" (Ibid).

One of the most anticipated parts of a truth commission report is always cataloging the commission's outcomes and recommendations. The Truth, Justice, and Reconciliation Act (TJR Act) required the Truth, Justice and Reconciliation Commission (the Commission) to make findings in respect of gross violations of human rights inflicted on persons by the State, public institutions, and holders of public office, both serving and retired, between 12 December 1963 and 28 February 2008. The Act stipulated that such findings must include the Commission's conclusions: the antecedents, circumstances, factors, and context of such violations; the causes, nature, and extent thereof; and perpetrator responsibility and motives.³²³ The Act further required the Commission to summarize its findings in this Report.³²⁴

These findings summarize the primary outcomes of the Commission as required by section 48 of the TJR Act based upon the totality of its investigations and research. These include the detailed analysis of the statements it received, the investigations it carried out, conclusions drawn from its open and closed hearings, and the study of many multiple primary source documents and materials.

The Commission submitted a report of its work to the President at the end of its operations on 21 May 2013. It was considered incomplete as a result of omissions and a dissenting statement. A serious [immediate and potential] challenge to the report is the National Assembly's intention, presently vested with the document, to revise it. In December 2013, the House debated and passed an amendment to the TJR Act, giving the National Assembly the power to determine how the commission's recommendations would be implemented. Initially, the bill's purpose was to replace the "Minister for Justice and Legal Affairs" with the "Attorney General" in the report in line with the current political order and facilitate implementation. However, the amendment opened the door for several other amendment proposals, including altering sections 49 and 50, effectively allowing the National Assembly to "consider the report." If the National Assembly were to succeed in amending the report, Kenya would hold the unfortunate distinction of being the first country to alter an official

³²³ TJR Act, sec 5(a)-(c) and (j).

³²⁴ TJR Act, sec 48(2) (a).

truth report after its public issuance (ICTJ Briefing-Kenya 2014).

The TJRC final reports have taken the feared course way as victims of state capture and mutilation. Most governments are good at instituting the required commissions, knowingly confident that it remains lip service. Kenya is no exception in flouting and controlling these outcomes in their best ulterior interests. It calls for third independent alliances besides the state and citizens. This third alliance should be in the form of an empowered and independent Supreme Court in liaison with the Bicameral Parliamentary speakers and devolved regional governors working in cohorts to put checks on the executive and their elite bargains. Therefore, *the Supreme Court should guarantee the implementation of TJRC outcomes within the stipulated time frame*. TJRC reports require sustainable financial support, sufficient public familiarization, and deliberations to allow for their smooth promulgation. Outcomes of the truth commissions also require a systematic implementation mechanism to anchor sustainable peace, reconciliation, and national healing.

Healing and reconciliation require political leadership. This process's entrusting to faith-based and other civil society entities at the grassroots alone are not sufficient. The government should provide national direction, especially by making clear policies on reconciliation followed by a commitment to implement them. There is a need for inter-community dialogue facilitated by the communities under conflict (TJRC Final Report III 2013: 109).

7.2 Primary Findings and Outcomes³²⁵

The Commission finds that between 1895 and 1963, the British Colonial administration in Kenya was responsible for unspeakable and horrific gross violations of human rights. To establish its authority in Kenya, the colonial government employed violence on the local population on an unprecedented scale. Such violence included massacres, torture, ill-

³²⁵ For more details see: TJRC Final Report IV. 2013. Chapter 1, on Findings and Recommendations on Specific Violations and Injustices.

treatment, and various forms of sexual violence. The Commission also finds that the British Colonial administration adopted a divide and rule approach locally that created a negative dynamic of ethnicity, the consequences of which affect us today. Simultaneously, the Colonial administration alienated large amounts of the highly productive land from the local population. It removed communities from their ancestral lands (TJRC Final Report Volume IV: 7).

“Kenya has been independent for 55 years. We cannot keep blaming the colonialists for poor governance” (NL40, 9 August 2018: Fieldwork Narratives, Nairobi).

The Commission finds that between 1963 and 1978, President Jomo Kenyatta presided over a government that was responsible for numerous gross violations of human rights. These violations included: in the context of the Shifta War, killings, torture, collective punishment, and denial of basic needs (food, water, and health care); political assassinations of Pio Gama Pinto, Tom Mboya, and J.M. Kariuki; arbitrary detention of political opponents and activists; and illegal and irregular acquisition of land by the highest government officials and their political allies (TJRC Final Report Volume IV: 7).

The Commission finds that between 1978 and 2002, President Daniel arap Moi presided over a government that was responsible for numerous gross violations of human rights. These violations included massacres, unlawful detentions, systematic and widespread torture and ill-treatment of political and human rights activists; assassinations, including that of Dr. Robert Ouko; illegal and irregular allocations of land; and economic crimes and grand corruption (Ibid).

The Commission finds that between 2002 and 2008, President Mwai Kibaki presided over a government that was responsible for numerous gross violations of human rights. These violations included unlawful detentions, extrajudicial killings, economic crimes, and grand corruption (TJRC Final Report Volume IV: 8).

The Commission finds that state security agencies, particularly the Kenya Police and the Kenya Army, have been the main perpetrators of bodily integrity violations of human rights

in Kenya, including massacres, enforced disappearances, torture and ill-treatment, and sexual violence (Ibid).

7.3 Recommendations

Kenya's Truth, Justice and Reconciliation Commission (TJRC) presented its four-volume long-delayed final report to President Uhuru Kenyatta on 3 May 2013. The Commission synthesized and interpreted information gathered over the past four years regarding gross human rights violations and historical injustices in Kenya. The Report presents damning indictments of the governments led by each of Kenya's first three Presidents, Jomo Kenyatta, the current President Uhuru Kenyatta's father, Daniel arap Moi, and Mwai Kibaki. It finds individuals and organizations in each of these administrations responsible for assassinations, mass human rights violations against groups and political opponents, as well as wide-scale corruption and economic crimes (Lanegran 2015: 41).

State-sanctioned systematic discrimination against women and girls is documented further (TJRC Final Report 2013, Volume I: vii). It recommends the prosecution of 32 named individuals; an additional 33 people should be banned from holding public office; the government should begin investigations into allegations against a further 229 individuals and 12 businesses.³²⁶

Many current officials are, implicated. Notably, President Uhuru Kenyatta and his Deputy, William Ruto, who was facing prosecution by the International Criminal Court, are among those accused of planning and financing the post-election violence (PEV) that followed the disputed 2007/8 presidential election. Their cases collapsed for insufficient evidence choreographed by the lack of state cooperation. However, the change of personnel at ICC in 2018 has mulled a revival of these cases. Kenyans are resiliently hoping and waiting for justice, and how long it will take is still unclear.

³²⁶ Kenya Truth, Justice and Reconciliation Commission. 2013. "Final Report" Volume IV, Appendix One.

The Commission recommends that the President, within six months of the issuance of this Report, offer a public and unconditional apology to the people of Kenya for all injustices and gross violations of human rights committed during the mandate period (TJRC Final Report Volume IV: 9).

The Commission recommends that State security agencies, particularly the Kenya Police, Kenya Defense Forces, and the National Intelligence Service, apologize for gross violations of human rights. Their predecessor agencies committed these between 12 December 1963 and 28 February 2008, primarily acts of extra-judicial killings, arbitrary and prolonged detention, torture, and sexual violence. The report is in limbo amid tampering with its integrity allegations. There is no minimal action undertaken or rendered almost six years later (Ibid).

The Commission recommends that the Kenyan Government initiate negotiations with the British government to seek compensation for victims of atrocities and injustices committed during the colonial period by colonial administration agents. The time limit for this was within 12 months of the issuance of this Report. It is already time-barred by now. The Commission recommends that the British government offer public and unconditional apology to Kenyans for all injustices and gross violations of human rights committed by the colonial administration between 1895 and 1963. The Commission recommends that the Judiciary apologizes to the people of Kenya for failing to address impunity effectively and perform its role of deterrence to prevent the perpetration of gross human rights violations during the period between 12 December 1963 and 28 February 2008 (Ibid).

The Commission recommends the creation of a National Human Rights Day on 10 December, to coincide with the International Human Rights Day to promote respect for human rights in Kenya. That too remains on paper, as is the fate of other recommendations (Ibid).

The Commission recommends that the judiciary 'fast-tracks' the establishment of the International Crimes Division of the High Court, which shall be responsible for the trial of some of the cases referred to the Director of Public Prosecutions for investigations and

prosecution(TJRC Final Report Volume IV: 9).

The Commission recommends the 'fast-tracking' of enacting human rights-related laws as envisaged by Kenya's Constitution, including on the freedom of the media, fair hearing, and rights of detained persons held in custody (TJRC Final Report 2013, Volume IV: 10).

The Commission recommends that the government make a declaration in Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the African Court's Establishment. It allows individual victims of human rights violations who have exhausted local remedies to access the African Court directly (Ibid).

The Commission recommends the Ministry of Justice swiftly expand the national legal aid scheme to cover the entire country. It sounds promising but still a stopped work project (TJRC Final Report Volume IV: 10).

7.4 Gross Violations of Human Rights and Decay

The Commission finds that the following factors encouraged the perpetuation of gross violations of human rights and decay during the mandate period: The failure of the first government in independent Kenya (led by President Jomo Kenyatta) to dismantle the repressive state structures established by the colonial government. The use of and subsequent enhancement of repressive laws, policies, and practices initially employed by the colonial government by the first two post-independence governments (President Jomo Kenyatta's and President Daniel arap Moi's administrations). The creation of a *de jure* one-party state by President Moi's government, resulting in severe repression of political dissent and intimidation and control of the media. Repression of political speech and the media allowed many violations to occur with little public scrutiny, much less accountability. It led to the consolidation of immense powers in the Presidency with deliberate erosion of both the Judiciary and the Legislature's independence. The failure lies squarely on the state for its inability to investigate and punish gross violations of human rights (TJRC Final Report 2013 Volume IV: 1-59). These are power plays of political decay.

The Commission finds that the state has covered-up or downplayed violations committed against its citizens in most cases, especially those committed by state security agencies. During the entire mandate period (1963-2008), the state demonstrated no genuine commitment to investigate and punish atrocities and violations committed by its agents against innocent citizens. (TJRC Final Report Volume IV: 10) The state derives its power from its marginalized populace. Hence an empowered citizenry is an enemy of the ruling elites and their cartels. It will deprive them of their "eating."

7.5 Reparation Framework

The TJR Act required the Commission to make recommendations with due regard to the policy. Measures to grant reparation to victims to rehabilitate and restore their human and civil dignity must be taken. The Commission recommended establishing a reparation fund to compensate victims of gross violation of human rights and historical injustices. The Reparation Framework recommended by the Commission sets out the categories of victims who would access the fund and the criteria for such access. The Commission recognized that meaningful reconciliation is not an event. Instead, a long process and that the decision to reconcile is a personal decision, aimed at setting the stage and establishing the basis for the beginning of a reconciliation process (TJRC Abridged Report 2013: Paper 10, TJRC Final Report 2013 Volume IV: Chapter 3).

The State is responsible for reparations given that state agents committed violations or because the state failed to protect its citizens. Reparations for restitution and restoration to the original position before the violation occurred. Reparation for compensation covering money for damage suffered. Rehabilitation fund covering medical care and psychological service vouchers provided to victims demonstrating need under the implementing committee guidelines. Reparations for satisfactory to include official declarations restoring dignity and reputation, public apology, commemoration and tributes, and guarantees of Non-repetition: Prevention of re-occurrence of violations includes structural measures that will prevent re-occurrence of the violations (Ibid).

Financing Reparations Fund must be budgeted annually from the Consolidated Fund. Assets recovered through proceedings of the Ethics and Anti-Corruption Commission, and the Courts must fund reparations during the Implementation Committee's lifetime. Victims' Reparations Fund should be used to compensate victims, both individually and communally, for Rehabilitating, Memorialization, and Exhumation (the identification and reburial of victims). The Reparations Fund must conform to gender sensitivity and perspectives. Implementation at the county and national levels must involve various government actors and consultations with victims at all levels. The government should commit an initial 500 million Kenyan Shillings (Kes) to the Reparations Fund. The Implementation Committee should conduct outreach activities and register the most vulnerable victims. Adjudication of claims of the most vulnerable should be expedited. These victims should be reparation in the forms of compensation in standardized ten-year annual pensions and rehabilitation for medical care and psychosocial support (Kituo Cha Sheria 2013).

It is imperative that "the 'TJRC' findings require implementation and those who were, affected compensated" (ON67, 16 August 2018: Fieldwork Narratives, Nairobi).

Abolishing presidential election and its grave contest can stem post-election violence. Opting for power-sharing proportional representation should be a better alternative. Outcomes of the truth commission can boost and promote national healings and reconciliations when peace is guaranteed. Power-sharing consociational democracy accommodates multiethnic societies in inclusively mutual coalitions to nurture better governance.

Kenya requires strong institutions like an emboldened Supreme Court and a Chief Justice that can judicially order the immediate promulgation of the Final Reports to the Public. A high-profile case in point is the *Akiwumu Commission of Inquiry into Tribal Clashes Report*. It was in limbo since mid-1999, frozen by the Moi regime. However, the High Court (the Supreme Court's predecessor) ordered its public release in 2002. It is now about time the Supreme Court issue that order to avoid accusations as partaking in the "eating" or having "oil" that cannot "fry the big fish."

7.6 Challenges and Prospects

While acknowledging that there had been many efforts towards national unity, healing, and reconciliation, the Commission sought information from the people who appeared before it on the possible reasons why such efforts have been unsuccessful in bringing cohesion and integration among Kenyans. The following were some of the main challenges that such persons highlighted. However, the lack of political will was and is the main outstanding obstacle. Promoting national unity and reconciliation requires strong political support. Such strong political support and leadership have not been available in Kenya, even in the aftermath of the 2007/8 post-election violence (PEV). Post-election violence ended in January 2009, about a year after signing the National Accord.³²⁷

The Kenya National Dialogue and Reconciliation Monitoring Project (KNDRMP) observed that healing and reconciliation are yet to occur. Political leaders have not been at the core of healing and reconciliation initiatives. The two principals will have to provide leadership and direction; the two principals should constitute groups to mobilize national cohesion from the national level to the grassroots.³²⁸

The KNDR Monitoring Project had similar concerns noting that the Truth, Justice and Reconciliation Commission (TJRC) and the National Cohesion and Integration Commission (NCIC) have continued their efforts to inquire into human rights violations to prevent future violence, respectively. *However, without political support for the work of these commissions, their impact on ethnic relations and deterrence capacity for future dissonance remains uncertain.*³²⁹

In a nutshell, although there is a clear need for healing and reconciliation in Kenya, the political leadership has never really, genuinely committed to pursuing these goals. On the contrary, political leaders have often undermined reconciliation and peacebuilding efforts

³²⁷ TJRC Final Report Vol. III. 2013. 117.

³²⁸ KNDR Monitoring Project. 2009. Project context and summary findings, 6 January.

³²⁹ KNDR Monitoring Project Progress in implementation of the constitution and preparedness for 2012: *First draft review report* (January), 8-9.

because of vested and other interests.³³⁰ Healing and reconciliation require political leadership. It cannot be, left to faith-based and other civil society agents at the grassroots. The government should provide strong leadership in national direction, especially by making clear policies on reconciliation followed by a [solid coherent] commitment to implement [at the earliest possible time] those recommended policies.³³¹

To make this reconciliation sustainable, it is necessary to build confidence among the various parties to the conflict by working together towards interdependence by reconstructing the community's social, economic, and cultural life and building a shared common future. Confidence will help to open channels for dialogue about the past, without obstruction from negative emotions. Embracing the past and the future is vital in shaping the present.³³²

On a positive note, the Kenyan TJRC did eventually issue a commendable report. The commission staff worked in challenging and uncertain circumstances, at times without pay, to press for a solution to their Chairman's problem, creatively seeking allies and demonstrate what the truth commission could achieve for Kenyans. Their work was facilitated and buoyed by a second factor-Kenyans' willingness to participate in the truth-seeking project. Even when the truth commission's fate was far from certain, over 30,000 individuals submitted statements concerning crimes in Kenya's past, which is the most significant number of statements received to date by any truth commission.³³³

The opinion is, divided on the real impact of these amendments. On the one hand, they seem to cure the TJR Act's weakness; the proposed implementation mechanism was outside of state machinery. On the other hand, these amendments fail to clarify the implementation process and now leave it at the National Assembly's discretion. It is also feared that these amendments are motivated by intentions to alter the report to erase the

³³⁰ TJRC Hansard. 2012. Thematic Hearing/Ethnicity/2 February, 25-26.

³³¹ TJRC Final Report Vol. III, 122.

³³² N. M. Chicuecue. 1997. "Reconciliation: The role of truth commissions and alternative ways of healing," in *Development in Practice* 7(4): 484.
Truth, Justice and Reconciliation Commission Kenya. 2011. "Progress Report to the National Assembly," (24 June), iii.

names of adversely mentioned persons.³³⁴

It is now up to the civil society stakeholders on behalf of the citizenry and relevant lobby groups to continually engage with the National Assembly to discuss and agree on a practical and accountable implementation mechanism. Moreover, the civil society will also need to engage with the Supreme Court and liaise with the Attorney General to ensure that the implementation and monitoring mechanism for the outcomes remain relevant and on schedule.

Gilbert Keith Chesterton (1874-1936) was a sharp, witty, energetic English writer, thinker, and philosopher. His writings are animated with refined broader, and more profound observations blended with ironic humor. He eloquently infers that the whole, modern world has divided itself into Conservatives and Progressives. The business of Progressives is to go on making mistakes. The conservatives' cup of tea is to prevent mistakes from being corrected. At some point, a revolutionist might reflect and repent his revolution, while the traditionalist is already defending it as part of his tradition. Hence, two significant personality types emerge from this discourse: the advanced person rushing us into ruin and the retrospective person who then admires the ruins.³³⁵

Therefore, transitional justice and reconciliation is a trade-off among these personalities. The process and purpose of seeking redress for human rights violations should not stop with the commission report but be a versatile continuous effort in boosting the war to end impunity to restore human dignity and better governance outcomes.

(Re)membering Kenya Volume 1 (Gona 2010: 243), concurs that "in the face of increasing public disillusionment arising from the slow pace of reforms in Kenya the TJRC has an uphill task. It has to reassure citizens that it's not merely another one of the many commissions whose reports have been made public even after much hard work. Besides, it has a great responsibility to reassure the public that there is the possibility, through its work, for a new beginning, a renewed vigor, a new re-engineered culture of responsibility, accountability, and fairness where impunity will be a thing of the past."

³³⁴ Institute for War and Peace Reporting. 2013. "Concerns Over Bid to Amend Kenya Rights Report," August 16, <http://iwpr.net/report-news/concerns-over-bid-amend-kenya-rights-report>.

³³⁵ G. K. Chesterton. 1924. "The Blunders of Our Parties," *Illustrated London News*, April 19. 313.

“Lack of political goodwill from the political leadership and fear that the land the political leaders, grabbed maybe, taken away, in case of redistribution prevents the implementation of the TJRC reports. The long-term impact of the TJRC will be a change in the voting system and electoral rules, reconciliation and national healing from post-election violence, promotion of national cohesion, and healing. In contrast, short-term impact lies in addressing injustices inherited from the colonial masters where a few capitalists have grabbed everything” (NR118, 24 August 2018: Fieldwork Narratives, Nairobi).

Failure to adequately address inequalities and embrace holistic reconciliations, nurture positive election reforms, and systematically implement the TJRC recommendations will mean continuous decaying . . . or a creation of a sequel, if not a new follow-up truth justice and reconciliation commission II.

This chapter demonstrated how the Uhuru Kenyatta government had curtailed the truth commission’s final reports’ promulgation. It fears to criminalize itself and its close allies. It is also guilty of the systematic impoverishing of Kenyans by presiding over an abusive rent-seeking regime.

Chapter 8 will now revisit the whole thesis and synthesize these findings to verify and validate the research questions and hypotheses, respectively. Finally, in conclusion, I will also argue that institutions like the truth commissions were vital for Africa and relevant for Kenya in giving the marginalized citizenry a voice for justice. They have sensitized and contributed to anchoring transitional justice for better governance outcomes. The TJRC sought accountability of persons bearing the most significant responsibility for crimes against humanity, from the dawn of independence in 1963 to the end of 2007/8 post-election violence in Kenya.

8.1 Reflections

This study endeavored to explore the genesis of post-election conflict and violence in Kenya, how it peaks, fades, and returns. It also traces Kenya's dalliance with democracy and governance as it relates to political settlements. The advent and fate of the Truth Justice and Reconciliation Commission (TJRC) are also meticulously interrogated. The Commission was set-up to document past human rights injustices and malpractices combined with other factors to trigger violence in multiparty presidential elections. The painstakingly completed final reports and recommendations remain in limbo. The government is guilty and part of the problem. Colonialism was bad. The Independent Republic of Kenya has wasted more than half a century perfecting neocolonialism elite extractive patronage networks that virtually shame colonialism with their copycat antiques. Kenyans were, socialized into a culture of conflict and violence. These create and exacerbate a cycle of violence in multiparty political contests featuring plural ethnic stakeholders in precarious coalitions. It calls for pragmatic consociation outcomes to mitigate violence and nurture respect for Intra and intergroup equality to achieve national cohesion with a consistent right to know the truth.

8.2 Responses to the Research Questions

This study adopted three overarching research questions to help navigate multiple narratives through this ordeal, predicament, and *safari* (Swahili for journey).

The first research question: *How can Kenya implement amicable national resource sharing with sustainable land reforms to minimize inequalities and violence?* The answer is positive since the national elites across the ethnic divide benefit from the rents these resources generate and do not commit whole-heartedly to sharing them equitably. Land reforms are lopsided, favoring the elites and their patronage or cleavages—this fuels and stalks hatred based on who is included and excluded. Politicians play the ethnic card to monopolize and cling on power irrespective of the transaction costs involved. This study's limitation lies in the fact that post-election violence is still a censored topic in Kenya, given its benefactors are still wielding power, and the general public is still living in veiled fear. The Truth

Commission Final Reports were, shelved and very few Kenyans know their fate. It was not easy getting the permit and carrying out narrative interviews. Besides, the narratives touched on trauma as the wounds from this violence are far from healed. I have changed my narrative sources' names for privacy considerations, and given the repercussions, this can generate. The final truth commission reports online domestic portals in Kenya have all been closed-down and censored.

Healing and reconciliation as a process had stalled when urgently needed to catalyze national cohesion. Hence, Kenya is not out of the woods yet! We cannot rule out another wave of violence breaking out as the countdown and realignments towards the 2022 elections start. God should save Kenyans from the Kenyan government!

To break from this vicious cycle requires a change in the way we relate as Kenyans. Reforming the electoral process to embrace inclusive power-sharing consociation democracy can stem the rot in politics. Multiple narratives show the unfair distribution of land resources takes a toll on worsening horizontal inequalities. Choosing electoral reforms for peaceful coexistence can be the tipping point. *National financial compensation for the landless can mitigate future post-election violence.* Redistributing and sharing land resources amicably promotes national cohesion and development. Many interview survey narratives also support it.

The second research question: *What is the best holistic power-sharing electoral system for Kenya that is dynamic, fair, and stable?* Research findings show that the answer lies in embracing the liberal democratic power-sharing consociation governance model. Kenya tried both one-party consociation and multiparty coalition government. As seen earlier, it has met mixed, violent, and mild outcomes.

The zero-sum politics of winner-takes-all is at the root of the problem. The presidential election is always a 'close-call,' stolen, and violence-prone. Opting out of a corrosive presidential ballot for an open and inclusive liberal democratic system under a Parliamentary Prime Minister backed by Proportional Representation in the grand-national coalition can be the solution for a multi-ethnic society in Kenya (See Box 1). To avoid power trappings and political decay, instituting term limits and retirements are indispensable.

A fixed one-year term and reverting-back to previous occupations or proceeding to retirement, once anchored, should be the golden bullet. The Swiss have made this feasible,

and Kenya should follow suit. Errant and toxic leaders in or out of power deserve strict jail terms as a precedent to fight impunity. Korea shames impunity and corruption and has jailed four of its toxic presidents in and out of office.

Democracy in Africa is under siege by a foray of elitist cartel bargains. A new non-violent and peace friendly system is increasingly becoming necessary. Peaceful elections in Kenya were possible whenever socio-political differences were, prevented from becoming salient. My findings show that a sustainable solution sought must be part of the tipping point out of the vicious cycle of violence. When political leaders refrain from negative ethnicity by promoting inter-ethnic peaceful coexistence and national cohesion can create a need for a shared destiny embracing a less violent society. Peace is universal, and peace allows amicable coexistence for sustainable statehood. African societies are dysfunctional presidential replicas benefiting from orchestrating rent-seeking violence to stay afloat artificially. Thus, *abolishing the presidential election and its grave contest can stem post-election violence* to nurture sustainable peace.

The third research question: *Can Kenya adequately implement the Truth Commission's Final Reports, embrace and nurture strong institutions to achieve better governance for anchoring national cohesion and integrity?* My findings show that Kenya can make this happen. However, the current status quo is part of the problem, and this prevents it from wholeheartedly pursuing reforms like implementing the outcomes of the Truth Commission Reports. There is a need for an independent committee to oversee its implementation to address the reforms recommended. There is a strong desire to hold Kenyan leaders accountable for their good and bad deeds. Justice must be, pursued to correct their arrogance and wanton abuse of power. Sensitive recommendations require a comprehensive examination for systematic implementation to minimize risks and maximize returns. To nurture strong institutions, Kenya requires newer electoral reforms to anchor a better governance system. The new system should be constitutionally protected to empower national cohesion and integrity.

Kenya must ban the presidential election and the presidency to achieve sustainable peace, reconciliation, cohesion, and prosperity. All lives matter and are precious too. Life is also short. However, periodically using presidential election violence to destroy and make it short is obnoxious and unethical.

Sharing power and protecting the minorities in a holistic indigenous governance discourse embedded in more influential institutions can help Kenya leapfrog away from instigated violence. The first-past-the-post (FPTP) democratic system in Kenya is highly exclusive, flawed, and captured. Laboring on finding a practical, inclusive power-sharing alternative is inevitable. Taming elite bargains and state capture should be the ultimate exit pathways to convert violence into amicable, peaceful coexistence. A sequel to the truth commission-to sensitize a New Kenya ready to bury the hatchet of violence for sustainable peace should be urgently sought.

One model that integrates elite bargains, peace agreements, and political settlements is the 'limited access order.'³³⁶ A Limited Access Order (LAO) is defined as a system in which the state uses its control over the political and economic system to create 'rents.' It influences access to certain political privileges and economic opportunities (political positions, import licenses, state procurement contracts, registration of parties, etc.). The violence problem is managed through the distribution of rents between powerful elites by limiting access orders. These powerful elites can challenge state authority to gain their loyalty and forge a stable coalition (North and Weingast 2009: 30).

The 2007/8 post-election violence in Kenya stabilized when the distribution of political positions and business opportunities, and other benefits reflected the arranged agreement on the distribution of power in the grand coalition government. Building on this capacity with a mutual veto can reduce associated power asymmetries in these plural polities.

Resolving Kenya's (2008) and Zimbabwe's (2009) crises included temporal sharing of executive power. However, this was also an invitation to "eat" with the devil since the culprits who had stolen the elections were also allowed to remain president in an elite political settlement with previously excluded political enemies from other ethnicities (Cheeseman and Blessing-Miles 2010).

8.3 Validations of the Hypotheses

This study adopted three logical hypotheses based on plausible causality and correlation of post-election violence, governance, and truth commission outcomes as responses to three similar research questions mentioned above, for establishing a rational explanation

³³⁶ D. W. North and Weingast. B. 2009. *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*. New York: Cambridge University Press.

to the reality of the state-of-affairs on the ground.

The first hypothesis: *State financial compensation for the landless can mitigate future post-election violence.* The land is a very thorny issue across the ethnic divide in Kenya. The limited arable land exerts immense pressure between the pastoralist communal ownership versus the private-owned peasant/large scale farmers. The colonial land displacements created the varied composition of migrant or native landless classes. Independence was to change this phenomenon as the British settlers exited the scene. The chronology of elections and violence, the Ndung'u Land Commission Report, and the truth commission related findings expose a bungled land adjudication policy by the Kenyatta regime, which worsened the situation. An emerging class of political elite was on a property accumulation binge that poked fun at the colonial malpractices. Successive regimes, after that, vigorously pursued the same scheme.

This study has shown with clarity and faulted "the willing buyer and willing seller policy." It was a Kenyatta government's policy funded by the British government to compensate former British settlers for their loss of land at independence. The proceeds were also to finance land adjudication aimed to redistribute and solve the land problems in Kenya. The Kikuyu had a head start accessing state financing credit to buy expansive tracts of land in non-ancestral localities displacing and marginalizing the locals. Ordinary Kikuyus displaced from their ancestral lands by the Kenyatta family were dispersed nationwide, particularly in the Rift Valley, Trans Nzoia, Coastal region, etc.

As previously seen, inequalities in land ownership and exploitation under rent-seeking administration merged with other factors and triggered post-election violence. The state partly used the reintroduction of multiparty politics as a weapon to settle scores for political mileage. Myopic ethnic leaders in their enclaves used the ethnic card to stroke animosities. It caused the 2007-2008 post-election violence as the worst ethnic conflict ever seen in Kenya's history.

State financial compensation for the landless can mitigate future post-election violence. A concerted effort by the government in sharing national land resources amicably can reduce the irregularities and socio-economic disparities observed in persistent land exploitation and ownership conflicts. The state can use guaranteed generic budget outlays as a financial compensation mechanism for the landless to resolve these conflicts and mitigate future post-election violence. Moreover, evidence-based discussions in chapters 3-7, together

with fieldwork interview survey narratives (Box 1 and appendix 1), confirm that Kenya's land resources are unequally allocated and a bone of contention that triggers violence via ethnic salience. The scuttled Truth Commission outcomes and the Ndung'u Land Report are clear on this with reliable, lasting solutions. Hence, causality exists linking landlessness and violence to state compensation since the state bungled the land adjudication program and created the landlessness situation.

The second hypothesis: *Abolishing presidential election and its grave contest can stem post-election violence.* African countries were not presidential oriented but were co-opted into western democratic governance that was not compatible with a plural polity. The relationship between citizens and the state is a precarious top-down system. It is also one-way, autocratic ferocious, disempowerment, and marginalization set-up. The multiethnic polity makes the presidential ballot a battle of accumulations and brutal 'win or die' close calls. The winner-takes-all zero-sum contest implies no casualties taken or zero power-sharing provisions. The twin-*Commission of Inquiry into Post-Election Violence* (CIPEV or the Waki Commission) and the *Kriegler Inquiry Commission into all aspects of the 2007/8 general elections focussing on the presidential election* - all point to the over-concentration of powers in the presidency generating too many malpractices a fertile ground for violence. With the no checks and balances provision, political decay is a guaranteed outcome. Constitutional changes realized brought negligible changes in governance.

Multiparty politics were created and implanted on the older single party template of governance. The government's use of the multiparty excuse to spread fear and violence is unacceptable, but the reality on the ground. A better alternative that is less volatile and violent under the power-sharing coalition is indispensable. Banning the rent-seeking presidency and electing parties with victorious parties forming a coalition government of national unity with proportional representations, devolved regionality, and a mutual veto can be a remedy. South Africa is a case in point of a working consociation democracy in a plural polity minus mutual veto. Kenya can go the same way and agree to eliminate the presidency and introduce a mutual veto to safeguard and protect against the marginalization of the minority.

There will be no need to steal elections with no presidential ballot. Kenya's single-seat parliamentary contests have little disputes compared to the presidency. Presidential campaigns are exceedingly extravagant in the financing, hanging on money laundering, burdening the already struggling economy. The combined control of state coffers and the

state security organs are instrumental in the partisan use of excessive violence against its citizenry to keep the status quo in office. All elections in Kenya have been stolen apart from Kibaki's (2002) election when the incumbent was retiring. It means the presidency itself is a fraud, as most interview fieldwork survey narratives illustrate. Hence, restructuring governance to eliminate the presidency can help solve this fraud and mitigate violence.

It is also quite an appalling outcome from Kenya. In a short span of 57 years after independence, it has produced four presidents: three of them (Jomo Kenyatta, Mwai Kibaki, and Uhuru Kenyatta) from the same ethnicity (Kikuyu). Keeping the presidency in that state is tantamount to accepting political decay and institutionalizing violence.

Therefore, based on what is slowly turning into hereditary presidential families, one ethnicity is synonymous with the presidency. It shows that this tendency is a significant setback to democracy in Kenya. Consequently, *the best holistic power-sharing electoral system for Kenya that is dynamic, fair, and stable* is a liberal democratic power-sharing consociation governance model. Opting out of the presidential election for an open and inclusive liberal democratic system under a Parliamentary Prime Minister backed by Proportional Representation in a grand-national coalition, empowering minorities with a mutual veto can be the ultimate solution to mitigate marginalization and violence in Kenya. Hence, it is demonstrable that the presidential election is violent prone and banning it can stem the violence.

The third hypothesis is: *The Supreme Court should guarantee the implementation of the Truth, Justice, and Reconciliation Commission outcomes within the stated time frame.* Africa's Centre for Open Governance (AfriCOG 2008), in chapter 6, demonstrates with clarity that the quest for truth and justice in Kenya is as old as a century. Since the colonial era, successive regimes have appointed various commissions of inquiry to interrogate many public interest issues. The government's failure and dire lack of passion for implementing the final reports' outcomes is a blatant display of the official state arrogance and embedded impunity. The state simply monopolizes the right to launch investigations, seize the results, and dismantle the whole process as if nothing happened.

This study has further reconfirmed the fears mentioned by AfriCOG as a Kenyan reality that must be dislodged to restore sanity in the pursuit of justice and the right to know the uncensored truth. Moreover, 'the-winner-takes-all' the first past the post (FPTP) electoral system dispensation in Kenya has no equality in votes and wastes all defeated candidates'

votes fostering unequal representations.

The findings also suggest dynamic changes in fast-tracking the implementing and monitoring mechanism to an empowered Supreme Council and Regional Governors of the devolved government system closer to affected localities. The National Assembly and the Senate, through their spokespersons, should ensure enough funding for the victims is provided for by the National Budget to run the Implementing and Monitoring Mechanism efficiently within the stated time frame. If need be, a non-governmental complaint investigating institution as the official Ombudsperson should be legally appended to implement and monitor mechanisms to check and strengthen its operations.

Interview survey outcome narratives pointed to conflicting and ambivalent interests by government institutions and officials bestowed with rolling out the reform masterplan as recommended by the commission reports. The government cannot sign its arrest warrant, especially if the security dockets are cowed and co-opted. The solution lies in nurturing and anchoring strong institutions like the Supreme Court encouraged to investigate and prosecute the Presidency (Executive) and adversely mentioned persons irrespective of their socioeconomic or political standings. When "*the big fish won't fry themselves*," as argued by (Brown and Sriram 2012), the Supreme Court should "*deep fry*" them the way South Korea swiftly investigates and jails its leaders in or out of office. This way, the right to the truth will have prevailed, and the message against impunity will be loud and clear.

Therefore, I argue that *the Supreme Court should guarantee the implementation of Truth, Justice, and Reconciliation Commission outcomes within the stated time frame*. I believe the current Supreme Court as an outcome of the 2010 Constitution dispensation is much stronger than the High Court during the Moi era in 2002. The High Court is credited to have ordered the promulgation of *the Akiwumu Commission Report of Inquiry into Tribal Clashes* (1999) that had been frozen by the Moi regime. This order was swiftly carried out as the report in question was released and disseminated. The *Waki Commission* is also known as *the Commission of Inquiry on Post-Election Violence (CIPEV 2008)* - it was an international commission of inquiry inaugurated by the Government of Kenya from February 2008 interrogating Kenya's clashes after the disputed 2007/8 presidential elections. *The Waki Report* relies substantially on the *Akiwumu Report*.

Hence, the Supreme Court should pursue Uhuru Kenyatta and promulgate the *Truth Commission's Final Reports* the same way the High Court dealt with a defiant Daniel arap Moi in 2002. The Supreme Court canceled the flawed 2017 presidential election. Therefore, initiating a concerted Court Order to release the *Truth Commission's Final Reports* is within its powers. Thus, let Kenyans live with the right to know the truth guaranteed by the United Nations Human Rights Council Resolution (UNHRCR 2009). Post-election violence should have been both predictable and preventable, going by the outcomes from these sister commissions mentioned above.

Therefore, Kenya has the capacity and competence to implement the Final Reports of the Truth Commission adequately. It can embrace and nurture strong institutions to achieve better governance for anchoring national cohesion and integrity so long as it can "Deep fry" its leaders and associates as proficient agents of violence.

Based on the response to the above third research question, which is positive and associated discussions in chapters 1-7, hypothesis 3 is validated to some extent. Despite the completion of the Final Reports, their outcomes are frozen and in limbo. Hence, this study argues that the truth commission process strengthened the institutional and restorative channels for redressing human rights abuses. And with time and concerted efforts, the Supreme Court, Ombudspersons, Civil Society, and the citizenry should rise to the occasion and "*deep fry the big fish*" in Kenya.

8.4 Inclusive Democracy and Zero Tolerance

Post-election violence in Kenya was stage-managed and triggered or caused by a convergence of plural factors. It calls for the abandonment of "winner-takes-it-all" politics for all-inclusive governance favoring Prime Minister Proportional Representations to help end the blatant abuse of power and inequalities. Zero tolerance can mitigate impunity once adopted and protected by law to stem the rot in public service delivery and poor governance. Kenya is a developing economy where anchoring the necessary details of zero tolerance faces numerous challenges. Zero tolerance is well anchored in developed liberal economies with stable, independent institutions to sustain and regulate its operation. Kenya does not have the sophistication, capacity, and orientation to embrace it now. However, the journey towards that destination must be fast-tracked to commence immediately.

Inclusive democracy sounds chic and lofty. Multiethnicities like Kenya, getting all the stakeholders aboard assumes that there will be a consortium of harmony for managing the state's affairs. Reality has shown that this is not only impractical but also expensive and hinders better governance delivery. The resultant expanded elite bargains worsen their associated transaction costs in this socioeconomic and political contestability. There is a limited guarantee that this inclusion will translate into improved governance. However, policy and service delivery in the art of amicable sharing of public goods is subject to improvement when stakeholders are assured of seats at the governing table of governance.

Kenya should embrace morally sound political parties capable of walking the national ideological manifesto focused on national and cross-ethnic composition for national cohesion. It will be imperative to move towards a proportional representative system to weed out radical elite politicians for credible nationalistic leaders. National parties must lockout violence peddling corrupt leaders from their ranks. The interests of the underprivileged, marginalized, landless, internally displaced (IDPs), and other minorities must be protected by a veto to safeguard and sustain their endeavors.

Violence in Kenya must be contained to allow for mutual national cohesive coexistence for sustainable contestability. It calls for a concerted effort to eliminate negative ethnic politics, demystifying political leadership, prosecuting and banning errant politicians, and their patronage from current and future political engagements. *Why pay political kingpins on a violent prowl?* Prioritizing the abolishment of violent extractive politics must be fast-tracked in electoral reforms.

The 2002 election is credited as the sole credible presidential election in Kenya. The incumbent Moi was retiring, and Kibaki represented new dawn. Kenyans dreamt about the future assuming and hoping all was possible since the 'tyrant' and its autocratic era was finally ending. Celebrations were short-lived because the 'Moi template or ghost' was still very much alive. Kibaki, who was a product of previous autocratic regimes, turned out as a cosmetic change. In the disputed 2007/8 presidential ballot, he bled Kenya, which caused the worst ever post-election violence ever seen in her history. Its scars and wounds are far from healed.

The pace of reforms to allow democratic consolidation since the repeal of section 2A of the previous Constitution has not only been snail-paced, compromised, but also obstructed. Moi, after 1992 remained starkly high-handed and stern in curtailing civil liberties. It

buoyed his government in manipulating economic policies for political expediency. External pressure from the Bretton Woods fraternity compelled Moi to embrace austerity measures that worsened poverty and widened inequalities. He reacted by entrenching ethnic and dissenting suspicions while anchoring old hatreds and creating new conflicts. It culminated in the Moi era ethnic clashes under his reign. It stamped a noticeable climax in Kenya's electoral contests, evidenced in a pattern of ethnic violence accompanying elections at the voting time, also known as ethnic salience.

With Moi in retirement, Kenyans dream of a new awakening with integrity as the Kibaki administration evolved brought disappointing outcomes (Murunga and Nason'go 2006). The media was censored, tolerating high corruption. Kibaki's unilateral announcement as the 'winner' of the 2007/8 presidential ballot sparked the worst post-election violence and mayhem.

The 2007/8 post-election violence ended with a negotiated peace deal culminating in a grand coalition government. Kibaki and Raila agreed to share power, but this inclusivity bloated state coffers. It was short-lived as elite bargains changed, and transaction costs increased. A new 2010 Constitution changed the course of future elections with reforms decentralizing power, among other reforms. The power vested in the presidency did not change much, given predatory elite bargains and precarious political settlements. Election violence did reduce, but election fraud persisted. This process converges with other factors to trigger more violence. Negative ethnicity and negative peace flourished with re-elected 'toxic' and myopic leaders as Kenyans cried foul of democratic injustice in its election system.

The rise of the Truth Justice and Reconciliation Commission as an antidote to fight impunity is commendable. It was, mandated to investigate the plural crimes against humanity in Kenya from independence until the signing of a peace accord that ended this violence at the end of February 2008.

The advent of Uhuru Kenyatta and William Ruto, also known as "*Uhuruto*," was embroiled in crimes against humanity. They were victorious in the presidential election, even though the International Criminal Court (ICC) had indicted them. It illustrates how the electoral system is compromised, despite current reforms. The Supreme Court has ruled both in favor (2013) and against (2017) the status quo in presidential election disputes. However,

the political arena or space is far from level.³³⁷

The post-election violence (PEV) of 2007/8 was highly predictable and preventable. However, the government chose to sacrifice some sections of its citizenry in settling scores, blaming it on the advent of competitive political contestability. It has thrown the TJRC Final Reports as truth outcomes into controversy since most of the *status-quo* and their patronage are adversely mentioned and highly implicated as part of the problem. It explains why the government is very reluctant to roll out the full report for public discussion and adoption. It is a matter of self-preservation despite overwhelming evidence.

The Uhuru government's inability and obstructive tendencies represent a government-orchestrated official denial and responsible for the Truth Justice and Reconciliation Commission Final Reports' downfall. Justice, as unfairness, is the daily reality on the ground in Kenya.

Consequently, it is beyond *the Supreme Court to guarantee the implementation of TJRC outcomes within the stated time frame*. Hence, Kenya lacks consistent political will, strong independent institutions, and the capacity to sustain a robust implementation and monitoring mechanism. Human rights violation victims wait for justice in Kenya, which is unfortunately blocked by their government.

Criminal accountability for Post-Election Violence (PEV) in Kenya follows Brown and Sriram (2012: 244) timely assertion; "*the big fish won't fry themselves,*" which is in tandem with the *Nairobi Consensus* that the government is in business with its allies. It cannot prosecute them as they have entrenched transaction costs embedded in peculiar political settlements of crony capitalism.

8.5 Relevance of Theoretical Frameworks

Consociation is one aspect of power-sharing. It can positively navigate the multi-ethnic society in Kenya away from conflict and violence-based politics when well practically engaged. It can somehow reign in or bring relevant stakeholders on board, ensuring a united, peaceful, cohesive new nation. Politicians bent on negative ethnicity must have a "use by date" to weed out both the vice and their sponsors. Ballot democracy is violence-

³³⁷ See: Daily Nation (Kenya). 2017. Online Edition, 1 September.

prone in multicultural societies. Streamlining deceptive democracy can promote better governance and institutions to nurture the corresponding culture to sustain it. Politics should be a participatory vocational duty on a part-time basis to check political decay and impunity. Establishing single-one-year terms in public offices can encourage more multiple professional participation. Once done, resumption of previous positions can allow a smooth transition from political duties to the previous public, private professions, or businesses or if past the mandatory age, proceeding to retirement.

These should ensure politicians do not decay in office and harmonize horizontal inequalities for a better cohesive national building. All these changes must be, localized to allow 'home-grown' solutions to domestic power plays. Nurturing a supportive culture and creating relevant institutions empowering better governance can put Kenya on a robust and sustainable growth mechanism towards sustainable socio-economic and geo-political development. If equitably shared, Kenya has modest resources, can spur economic development, political consensus, and social tolerance. Better governance should alleviate weakened institutions empowering them to support electoral reforms. These reforms should ensure that credible and violence-free elections can take root in Kenya.

The four aspects of consociation are a *grand coalition, proportionality, mutual veto, and devolved autonomy*. Kenya has experienced two of them apart from the proportionality in representations and mutual veto. Incorporating grand coalition, proportionality in representations, and mutual veto should boost democratic consociation in Kenya. It remains to be seen how far and elastic can the electoral reforms go or last. Abolishing the presidency should be fast-tracked to allow the rest to fall in place for "the change Kenyans can believe in" to come home.

Therefore, the consociation theory has evolved from passive expressive nature to the current diagnostic level. It can alleviate conflict and violence in societies with multiple ethnicities to ensure credible contestability. There is a tendency of coalition politics colluding to exclude broader interethnic parties in Kenya. They tilt toward compromised outcomes in peculiar consociation conduits. More often than not, these conduits are not condoned and therefore benefit from violence to settle socioeconomic and political scores. It can get better when institutionalized impunity and corruption are penalized and therefore controlled.

The power-sharing consociation model is inclusive rather than adversarial. It seeks to avoid winner-takes-all, majoritarian, or zero-sum arrangements in governance (Bangura 2006).

Liberal consociation favors parliamentary systems, proportional preferential electoral systems, qualified decision-making procedures, strong human and minority rights, and independent representative constitutional court (McGarry and O'Leary 2004). Kenya should agitate for a supreme independent representative constitutional court to protect and safeguard the holistic freedom and rights, of human rights abuse victims, for compensation and reparations.

The political decay approach is quite relevant and applicable to the Kenyan tragedy. Political development is the evolution of the state, the rule of law, and democratic accountability as one of the broader paradigms of human socio-economic development. Changes in political institutions require understanding in the context of economic growth, social mobilization, and the power of ideas concerning justice and legitimacy (Fukuyama 2015: 462). These changes have been captured, co-opted, and monopolized. Sanctioning remedies can be progressive changes to the rules of the game and its players. The effect of political families and their elite counterparts across the ethnic divide continuously fuel this decline and decay. Scheaffer Okore in the Online Daily Nation Saturday 27 July 2019, candidly observes that:

“One of the most controversial goods that Kenyans keep extending their shelf life by preserving the appearance while knowing its rotten - just like the meat - is our leaders. We are consistent in using the tribe as an active chemical ingredient to cleanse leaders whose wealth sources are public theft. Their integrity is in the red, their character is tainted, and their priorities are personal. We then knowingly accept these rotten individuals as our leaders. What's the difference between this and changing the wrapping foil and draining the seeping liquids from rotten meat?”³³⁸

It is what the pioneer African Woman Nobel Peace Prize Laureate Wangari Maathai (2010: 114-116) cautioned in the candid observation: “. . . leaders get trapped by power trappings and decay in power.” The post-election violence in 2007/8 was also attributed to this phenomenon.

³³⁸ See: Scheaffer Okore in the Daily Nation (Kenya). 2019. Online Edition, 27 July. <https://www.nation.co.ke/oped/opinion/A-country-is-as-rotten-as-its-leaders/440808-5212760-wl4veoz/index.html>

The horizontal inequalities approach is also in sync with the Kenyan situation as it endeavors to strike a balance in a multi-ethnic society to co-exist with competing and conflicting variables. This association can be passively peaceful but actively volatile as elections complicate the assumed balances or imbalances. As already seen, many triggers and causes of violence exist, but they combine and escalate when negative ethnicity explodes as what happened in Kenya during the worst 2007/8 post-election violence (PEV). Kenya inherited and perfected a colonial legacy that exploited ethnic inequalities through systematic exclusion and deprivation. Most triggers and causes integrate with other factors to create explosive reactions and counter-reactions from ethnic salience outcomes.

Democratization in multi-ethnic societies comes with accompaniments. It does not necessarily guarantee peaceful coexistence as conventionally stipulated. Stewart (2002) refers to the inequalities between culturally defined groups as *horizontal inequalities* (HIs). He argues that "social, economic and political inequalities 'coincide with cultural differences', where culture could become a powerful mobilizing agent that can lead to a range of political disturbances, violent conflict, and civil war." However, HIs are a means and not an end towards violence but relatively make multi-ethnic states more prone to the emergence of violent conflicts along ethnic lines. Kenya resembles this scenario and can benefit by altering and managing these cultural inequalities as positive diversities for national cohesion to reap economic returns under a stable and efficient governance system.

Democracy is evolving, and better local composite alternatives should be continuously sought as innovations to anchor national cohesion. Abolishing decaying segments should deter capture or abuse and mitigate exploitation. Adopting an applied version of power-sharing in a consociation framework favoring minority mutual ethnic veto in multiethnic Kenya can solve latent violent election violence. Abolishing the presidency and its supercharged electoral system is indispensable for peaceful co-existence and harmony.

8.6 Co-existence and National Cohesion

Kenya needs to implement most of the previous commission reports to stem the status quo's impunity culture to manipulate and exploit the citizenry. Impunity is the second name of Kenya's political elites, best manifested during elections (Njogu 2011: xii). Schools and vocational training institutions, including civil society, require adequate funding to sustain robust curriculums on Co-existence and National Cohesion. These units are tasked with providing civic education and training of the next generations in the art and benefits of

peace and national development where everyone counts. The state is bound to its citizens by a social contract. Concerted efforts and resources must be made and secured toward realizing a mutual co-existence for national cohesion outcomes.

“Kenyans are peaceful people but were exposed to violence in the pre-colonial era. Subsequently, the Kenyatta regime (1963-1978) was peaceful, but with succession issues, Shifta wars, competitive multi-party politics, the ethnic card became a weapon. Violence is negative: Leads to loss of life, destruction, intolerance, and disunity. Politicians derisiveness – use the ethnic card as a secret weapon for success, teaching reactions in violence. Kenya should cultivate a new brotherhood nurturing mutual cohesiveness aimed at reconciliation for nationalistic politicians. To move forward, Kenya needs the goodwill of everyone” (FH58, 14 August 2018: Fieldwork Narratives, Nairobi).

Kenyans deserve a better alternative deal, even if it means investigating, prosecuting, and jailing leaders in and out of office. South Korea has jailed four presidents in and out of the office to clean its act and eliminate impunity. It’s an excellent precedence to emulate for better governance and integrity outcomes. Selfish and corrosive elite bargains, together with high transaction costs, curtail amicable political settlements.

8.7 Recommendations

This study recommends whole-heartedly holistic adoption of the truth justice and reconciliation commission reports over a specified span. This should address or redress past violations and present violations of human rights besides associated abuses. It can heal the wounds, offer reconciliation with reparations to address trauma and loss of dignity by victims, and allow perpetrators to ask for forgiveness and amnesty. The state must come to terms with offering public apologies as-long-as it takes to win the respect and trust of its citizens.

Recycling of inept politicians must stop with immediate effect. Making the government reflect quotas in ethnic diversity and gender balance should take precedent in all public appointments with negotiated outcomes when disparities arise. Kenyans must nurture and protect the right to agree to disagree on facts and celebrate its diversity in a new light. Men have caused most violence. Gender equality in socioeconomic and political representation at all levels should be constitutionally guaranteed.

Keeping Kenyans apprehensive and guessing about the truth, justice and reconciliation build resentment and worsen national cohesion. A newer refurbished truth justice and reconciliation commission must be established with amnesty and prosecuting powers to deliver the overdue justice sought by affected Kenyans. Otherwise, this deadlock spells doom on truth-seeking and reconciliation expectations.

Narratives about 'elite capture' are commonplace. However, a paradigm shift towards the 'capture of elites' is inevitable. "Elites are required to act increasingly within structures where power and legitimacy depend on delivering growth, services and representation and opportunities to pursue their exclusive interests are constrained" (Cheng, Goodhand and Meehan 2018: 84).

8.8 Policy Options

Establishing Peace Building Committees national wide can anchor, alleviate, and mitigate violence. National Parties Doctrines' and ideologies based on facts honoring all Memorandum of understanding (MOUs) entered with a significant penalty on defaulters. National branches for all political parties must be established, in all counties and devolved units, coordinating Inter-party peace and ideology committees (IPPIC) to ensure mutual respect for all. The redefinition of open leadership and new ethical standards to shape and nurture Inter-party peace and ideology committees (IPPIC) must be constitutional, protected, and respected. It can stop the vicious cycle of electing and rewarding political criminals at the expense of worsening inequalities and political decay.

I have argued consistently that adopting the Swiss political system is the silver bullet, if not the golden bullet. The President and the Deputy President (if not abolished) should be required by law to interchange and serve only a single one-year term with no reelection option to stem the arrogance and decay in African democracy. The incumbency's benefit ceases to factor when the electoral field is leveled. Therefore, it fosters transparent multiple contestability.

8.9 Challenges and Prospects

Kenya is not yet out of the woods. However, it can build on the efforts put in place after the 2007/8 violence to promote peace and stability. With time, national cohesion will take root for a new dawn. Politics in post-independence Kenya was a function of a repressive

imperialistic leaning presidency. Abolishing the presidency can stem from conflict and violence that stalks its contest. Kenyans strive to coexist peacefully in between elections and can sacrifice the presidency to spur progress.

“Colonialism and post-independence Kenya have both been disappointing. That is to be expected of any colonial legacy. Still, the post-independence outcomes have been marked by inept leadership, deep corruption, an ignorant and gullible electorate” (OS119, 24 August 2018: Fieldwork Narratives, Nairobi). It is, therefore, imperative that Kenya cannot indefinitely blame colonialism forever.

The 2010 constitutional changes broadly dispersed powers to multiple centers in a devolved county system of governance. However, it retained a presidential system with inbuilt subtle limits on executive power. The devolved governance stands accused of also devolving political decay (impunity and corruption). The effect on achieving lasting peace is still far-fetched since the triggers and causes of violence are still very much in place. More, electoral reforms anchoring accountability in a broader power-sharing governance system are more urgently needed now than ever. Running multiparty platforms using the old single party templates makes transparent governance difficult. It should change in due course. The return of multiparty politics in Kenya was applauded to mark the demise of the *ancien régime* and the dawn of a *nouvelle génération*. It was a false start as the old guard simply rebranded, regrouped, and normalized their act on multiparty platforms.

The hope of multiple victims of violence and human rights abuses entrusted in the truth commission’s final reports were thwarted as their outcomes and implementation in whole or piecemeal remain in limbo. There is a need to revive fresh dialogue and debate on a newer truth-seeking, justice and reconciliation commission as a sequel to the former whose outcomes and recommendations are barred by a culpable status quo in power.

Charity begins at home. These rogue culpable leaders-at all levels-must face the full wrath of justice. Justice must be sustained and elevated to support a zero-tolerance society. It can inject the undersupplied and overdue vital dose of sanity and integrity in Kenyan politics.

The 2007/8 post-election violence (PEV) was an aggregate sum of historical injustice from among others. It was triggered by arbitrary land allocations by the Kenyatta/Moi/Kibaki regimes, stolen elections, captured anti-conflict resolution mechanism that keeps a

decaying status quo afloat, and impoverished gullible civic/public apathy. The TJRC process temporarily restored peace. However, shelving its outcomes shows the severity of entrenched impunity in Kenya. Therefore, Kenya requires a brand-new car, bolstered infrastructure, and a qualified driver to take charge in its ultimate journey towards and beyond its promised destiny following better rules and regulations.

Violence peddling archaic elites need constant challenges and reminders when their “eating time” or “seating time” at the governance table expires. The introduction of professional political qualification licenses for politicians with annual renewal examinations should be part of the electoral reforms to sink sanity in politics. It requires accountable and predictable scheduled workloads filed monthly for modest benefits or allowances to share and reflect the hard times facing ordinary Kenyans.

Academic research and knowledge impede policy outcomes adding value to intellectual dialogues influencing the bargains for accommodative political settlements. A clash of intellectual theorization arises between theory and practice. Initiating means and models to bridge this divide is the subject of future research. There is a dire need for developing a new paradigm shift to streamline the search for holistic means and models on how governments can initiate their trials on mediocrity to reduce or eliminate the rot and decay in politics or get vetted out of office or both.

BOX 1:
Post-Election Violence, Impact of the TJRC on Kenya, and Key Outcomes

The 2007 post-election violence was terrible and horrific in Kenya's 55 years history since independence. It was, halted via a negotiated political compromise.

Kenya is a multi-ethnic nation, which experiences conflict and violence, as is the case in other developing nations, especially in election years.

The Truth, Justice and Reconciliation Commission (TJRC) was created by an Act of Parliament (TJRC Act No.6 of 2008) to investigate the gross human rights violations and other historical injustices in Kenya between 12th December 1963 to 28th February 2008, including the period of severe post-election violence. It was part of the accountability component of Agenda Four (4) of the National Accord signed in 2008 to address the cause and effects of historical injustices and gross violations of human rights.

This interview is part of fulfillment for my Ph.D. thesis research requirements on post-election violence, governance, and the impact of the truth commission reports on Kenya based on interview narratives of relevant stakeholders as well as ordinary people. The interviews were conducted in July/August 2018 in Nairobi (Kenya) and its environs. I asked ten questions: discreet, challenging, and open-ended with the freedom to respond as appropriate.

Objectives

The research aims to:

- Sufficiently reflect on the past and draw precise lessons for the future.
- Generate new information and knowledge towards solutions to end violence.
- Stimulate and influence more research in this field towards national cohesion.

Methodology

- ✧ This interview employs a nationally representative snowball sampling technique

- All respondents are randomly selected.
- The sample is relatively 'nationally' represented with key and ordinary stakeholders.
- Every adult Kenyan thus has an equal chance of being selected and included in the survey.
- Face-to-face interviews in English or an alternative language the respondent chooses.
- Open-ended standard questionnaire allowing objective responses.
- A sample size of 120 adults in and around Nairobi city.
- Fieldwork for Nairobi (Kenya), conducted from 31 July to 24 August 2018.

Survey Demographics

Table 8.1 Fieldwork Interview Survey - Gender and Age Groups

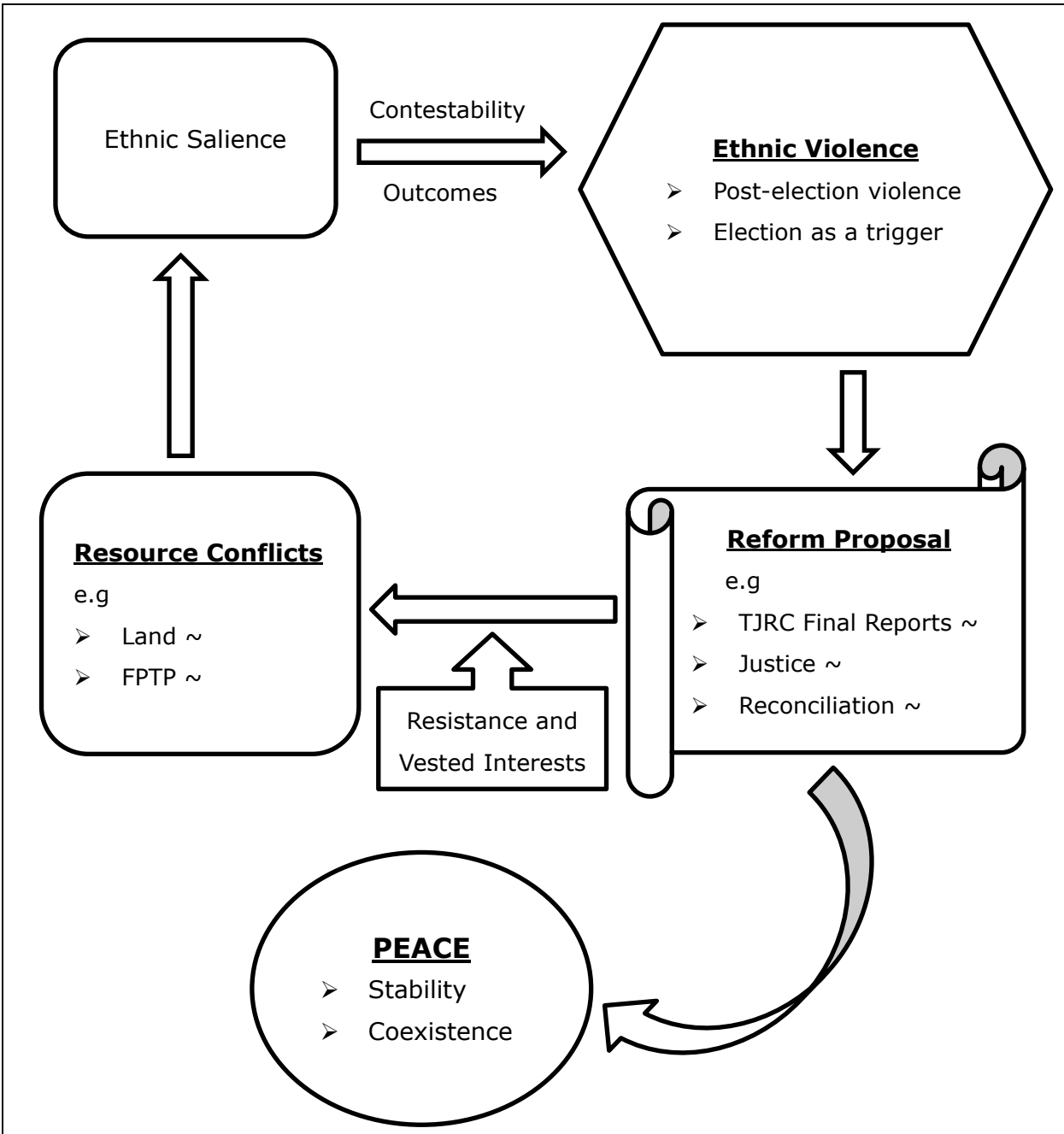
Gender	Numbers (120)	Percentage (100%)
Male	82	68.4
Female	38	31.6
Age	#	%
18-19	3	2.5
20-29	43	35.83
30-39	37	30.83
40-49	18	15
50-59	10	8.33
60-69	6	5
70-79	3	2.5

Table 8.2 Fieldwork Interview Survey - Occupations

Occupations	Numbers (120)	Percentage (100%)
Students	17	14.16
Jobseekers	4	3.33
Volunteers	2	1.66
Self-employed	10	8.33
Employed	82	68.33
Retired	5	4.16

Sources: Tables 8.1 and 8.2: Author's calculations based on Fieldwork Survey Data

Figure 8.1: Resource Control Election System in Kenya as (Conflict Causality Cycle)



Key Finding Outcomes

Responses to question 1:

Can you share your personal experience(s) with me about the Post-election violence?

Words that capture this scenario are that it was **traumatic, scary, and sad**. Neighbors turned against neighbors. It brought back flashbacks and bad memories. ("Please do not take me back there!") Kenya needs serious healing and reconciliation for national cohesion to take root.

Responses to question 2:

What do you think causes Post-election violence in Kenya?

Many factors cause Post-election violence in Kenya, but most narratives repeatedly mentioned: **Tribalism, including negative ethnicity, Poor Governance, Corruption, Greed, Poverty, and the Culture of Impunity incessant flawed elections.**

Responses to question 3:

What do you think are the solutions to Post-election violence in Kenya?

Solutions to post-election violence overwhelmingly rallied on having: **Transparent and Fair Electoral System, Neutral Institutions (Electoral Body), National Cohesion, Tribal Tolerance, Political Maturity, Rotational Leadership, Civic Education, and Ideological based Multi-party Democracy allowing Contestability.**

Responses to question 4:

How (What) do you think about the distribution of land resources in Kenya?

Most narratives on the distribution of land resources in Kenya centered on: **Unequal Distribution and Redistribution of Land hinged on Political Correctness.** It is what triggers land-based conflict and violence all the time. The Ndung'u Report is very relevant to this but remains shelved (Land Policy in 2009).

Responses to question 5:

Do you think that Kenyans are intrinsically violent? Why is that positive or negative?

The majority of Kenyans think uniformly that they are **NOT intrinsically violent** but are actually - **provoked**. Kenyans are relatively **peaceful people. It's the bad ethnically based politics that unleashed evil and violent traits**. That is quite positive as it mitigates sliding into a full-fledged civil war. It also fosters coexistence and national cohesion. Violence during election time (Ethnic salience) is an indicator of undying socioeconomic and political issues on land injustices, marginalization, and disenfranchisement.

Responses to question 6:

I think there are two kinds of election systems. The most commonly used is First past the post (FPTP) like in Kenya, and Proportional Representation (PR) are the main forms of democracy for electing individuals or voting for parties. What do you think is the best system for Kenya? Does Kenya need a Presidential System or Parliamentary Prime Minister System of governance?

Most narratives concur that Kenya's best governance system to sufficiently address its multi-ethnic structure is **the Proportional Representation Parliamentary System requiring the Prime Minister to share power with the President**. The current scenario where the winner takes it all (FPTP) is selfish and exclusive as it denies the losers a seat at the political governance table on sharing the national cake. And this creates conflict and violence to fight flawed elections. Proportional Representation with a Parliamentary System of governance can also serve Kenya better. Kenya has tried both systems with mixed results. Meritocracy, as a hybrid system, can be the Golden Bullet. The status quo views public office as a means to wealth, and the gullible locals back it. No amount of reform can change the culture of theft. Kenya must nurture a value system to infuse accountability and integrity in its electoral system.

Responses to question 7:

Have you heard about the Truth, Justice, and Reconciliation Commission (TJRC) Reports? What aspects (issues) or outcomes (findings and recommendations) do you remember?

Many Kenyans have **heard about the Truth Reports, but most of them have never read them adequately**. Many remember that the findings and outcomes are never implemented. Some remember that it recommended that the five elections should not be held on the same day, but that is not the case. Lack of adequate exposure to the reports inhibits its memory or remembering its recommendations per se.

Responses to question 8:

The Truth Commission's Final Reports (2008-2013) were submitted to President Uhuru Kenyatta on 13 May 2013 by the Truth, Justice, and Reconciliation Commission's (TJRC) Chairman - the late Ambassador Bethuel Kiplagat. They have not yet, been fully implemented. What do you think prevents the Government of Kenya from implementing these outcomes as recommended?

Most narratives unanimously mentioned that **Kenya's Government could not implement the outcomes recommended by the Truth Reports, given the lack of political goodwill from the political elites** implicated by the Report itself. There is a clash of conflict of interests and scared of the truth.

Responses to question 9:

What are the short-term and long-term impacts of the (TJRC) Final Reports on Kenya?

The short-term and long-term impacts of the Truth Reports are that **it will create awareness and hopefully allow for a positive change in the long run. Reparations are recommended for the victims, and prosecution for the offenders. Corruption is to continue in the short term and be, forgotten in the long-term**. The report should be implemented honoring all its recommendations as it seeks lasting justice for victims for cohesive national co-existence in Kenya. There is a healing desire and need for gradual reconciliation. The process is either 'captured' or discarded.

Responses to question 10:

What do you think about the colonial legacy and post-independence outcomes in Kenya?

Thoughts on the colonial legacy and post-independence outcomes in Kenya **tag most problems bedeviling Kenya to have emerged from the colonial era.** However, **independent Kenya did not do much to alleviate them.** Kenya inherited both negative and positive aspects of the legacy but selectively exploited them to benefit a new status quo and their elite bargains. **Power conservation and struggles destroyed credible institutions.** Kenya is still struggling with poor leadership, suffering from negative ethnicity, corruption, and impunity. Colonial legacy enlightened a few Kenyans who used that enlightenment as an entitlement to marginalize the country and monopolize power. Kenyans must continuously demand better governance and persecution of bad leaders. Kenya abandoned national building opting for elitists binge in amassing stolen wealth and resources with impunity.

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- BY2, 31 July 2018: Fieldwork Narratives, Nairobi.
- CX3, 31 July 2018: Fieldwork Narratives, Nairobi.
- DW4, 31 July 2018: Fieldwork Narratives, Nairobi.
- FU6, 31 July 2018: Fieldwork Narratives, Nairobi.
- IR9, 1 August 2018: Fieldwork Narratives, Nairobi.
- JQ10, 2 August 2018: Fieldwork Narratives, Nairobi.
- KP11, 2 August 2018: Fieldwork Narratives, Nairobi.
- MN13, 2 August 2018: Fieldwork Narratives, Nairobi.
- NM14, 2 August 2018: Fieldwork Narratives, Nairobi.
- PK16, 2 August 2018: Fieldwork Narratives, Nairobi.
- QJ17, 3 August 2018: Fieldwork Narratives, Nairobi.
- RI18, 3 August 2018: Fieldwork Narratives, Nairobi.
- SH19, 3 August 2018: Fieldwork Narratives, Nairobi.
- TG20, 5 August 2018: Fieldwork Narratives, Nairobi.
- UP21, 5 August 2018: Fieldwork Narratives, Nairobi.
- WD23, 5 August 2018: Fieldwork Narratives, Nairobi.
- ZA26, 6 August 2018: Fieldwork Narratives, Nairobi.
- DV30, 7 August 2018: Fieldwork Narratives, Nairobi.
- FT32, 7 August 2018: Fieldwork Narratives, Nairobi.
- JP36, 8 August 2018: Fieldwork Narratives, Nairobi.
- MM39, 8 August 2018: Fieldwork Narratives, Nairobi.
- NL40, 9 August 2018: Fieldwork Narratives, Nairobi.
- NL40, 9 August 2018: Fieldwork Narratives, Nairobi.

OK41, 9 August 2018: Fieldwork Narratives, Nairobi.
PJ42, 10 August 2018: Fieldwork Narratives, Nairobi.
TF46, 10 August 2018: Fieldwork Narratives, Nairobi.
A51, 12 August 2018: Fieldwork Narratives, Nairobi.
WC49, 12 August 2018: Fieldwork Narratives, Nairobi.
DF56, 13 August 2018: Fieldwork Narratives, Nairobi.
ZB52, 13 August 2018: Fieldwork Narratives, Nairobi.
ZB52, 13 August 2018: Fieldwork Narratives, Nairobi.
FH58, 14 August 2018: Fieldwork Narratives, Nairobi.
KM63, 15 August 2018: Fieldwork Narratives, Nairobi.
ON67, 16 August 2018: Fieldwork Narratives, Nairobi.
GJ85, 18 August 2018: Fieldwork Narratives, Nairobi.
DG82, 18 August 2018: Fieldwork Narratives, Nairobi.
HK86, 18 August 2018: Fieldwork Narratives, Nairobi.
EI109, 22 August 2018: Fieldwork Narratives, Nairobi.
NR118, 24 August 2018: Fieldwork Narratives, Nairobi.
MQ117, 24 August 2018: Fieldwork Narratives, Nairobi.
PT120, 24 August 2018: Fieldwork Narratives, Nairobi.
OS119, 24 August 2018: Fieldwork Narratives, Nairobi.

Appendices

1. 120 Fieldwork Survey Narratives from Kenya: 31 July – 24 August 2018

Interview Questions

David MURONI, Ph.D. Candidate
Graduate School of Global Studies
Doshisha University, Kyoto - Japan
Visiting Kenya on Fieldwork Research
Email: angalia@outlook.com

1. Introduction

I am in the process of writing my doctorate thesis on: The 2007 post-election violence, governance, and the impact of the 2009 Truth, Justice, and Reconciliation Commission on Kenya.

As you can remember, the violence was terrible and horrific in Kenya's 55 years history since independence. It was, halted through a negotiated political compromise. Kenya is also a multi-ethnic nation, which experiences conflict and violence, as is the case in other developing nations, especially in election years.

The Truth, Justice and Reconciliation Commission (TJRC) was born by an Act of Parliament (TJRC Act No. 6 of 2008) to investigate the gross human rights violations and other historical injustices in Kenya between 12th December 1963 to 28th February 2008, including the period of severe post-election violence. It was part of the accountability component of Agenda Four (4) of the National Accord signed in 2008 to address the cause and effects of historical injustices and gross violations of human rights.

This interview is part of fulfillment for my Ph.D. thesis research requirements on post-election violence, governance, and the impact of the truth commission reports on Kenya based on interview narratives of relevant key stakeholders as well as ordinary people. The interviews will be conducted in August 2018.

This research aims to sufficiently reflect on the past and draw precise lessons for the future. Hence, I want the interviewees to be as honest and critical as possible. Please feel free when narrating everything on your mind. I will use your real name(s) or false name(s) in the final publication on request. Our conversation may be digital, recorded with your consent. The voice data will only be,

used for research and not disclosed to any third party.

2. Questions

In the interview, please kindly answer the following questions 1-10. You are not under any obligation, whatsoever, to answer questions you find difficult. Pre-written answers are quite welcome to discuss the issues more in-depth based on these answers. I will briefly present my views on the theme and welcome your views and contributions. I will then also ask these specific questions.

Question: 1. Can you share your personal experience(s) with me about the Post-election violence?

Question: 2. What do you think causes Post-election violence in Kenya?

Question: 3. What do you think are the solutions to Post-election violence in Kenya?

Question: 4. How (What) do you think about the distribution of land resources in Kenya?

Question: 5. Do you think that Kenyans are intrinsically violent?
Why is that positive or negative?

Question: 6. I think there are two kinds of election systems. The most commonly used is: First past the post (FPTP) like in Kenya and Proportional Representation (PR) are the main forms of democracy for electing individuals or voting for parties. What do you think is best for Kenya? Does Kenya need a Presidential System or Parliamentary Prime Minister System of governance?

Question: 7. Have you heard about the Truth, Justice, and Reconciliation Commission (TJRC) Reports? What aspects (issues) or outcomes (findings and recommendations) do you remember?

Question: 8. The Truth Commission's Final Reports (2008-2013) were submitted to President Uhuru Kenyatta on 13th May 2013 by the Truth, Justice, and Reconciliation Commission's (TJRC) Chairman - the late Ambassador Bethuel Kiplagat. They have not yet, been fully implemented. What do you think prevents the Government of Kenya from implementing these outcomes as recommended?

Question: 9. What are the short-term and long-term impacts of the (TJRC) Final Reports on Kenya?

Question: 10. What do you think about the colonial legacy and post-independence outcomes in Kenya?

Ahsante Sana / Thank you very much!

Fieldwork Questionnaire Narratives in Kenya July/Aug 2018

#	Title	Name	31 July	Gender	Location	Profession	Age
1.	Mr.	AZ1		Male	Nairobi	Customer Service	20s

1. It was the worst period in my life, not because I lost a job, and it has taken me about seven months to get another job. It was caused by tribalism.
2. Leadership is not willing to be, defeated during the election. Tribalism, corruption, and Greed.
3. No community should think they are powerful than others. Preach peace all the time. Let those spreading propaganda about other communities stop it. Let us understand we need this country badly and work towards eradicating tribalism.
4. It is very poorly distributed, and a permanent solution must be adopted. No one should own so much, yet others have so little or nothing.
5. A few people are violent, but generally, Kenya is a peaceful country. Negatively it slowed down the economic growth drastically.
6. None of the above, Kenya needs "better" leadership, not systems. Any leader that will put Kenya as a country at heart will save us.
7. I have heard about it, but it has never solved anything that I, as a Kenyan, can't remember
8. The President has selfish interests, surrounded by greedy people who are beneficiaries of the wealth that should be for all Kenyans. The President is not a leader in the first place.
9. Maybe God to intervene. Land should be, redistributed again for us to live in peace.
10. That is where the problem began. Those who came to power stole everything and made Kenya a slave country.

#	Title	Name	31 July	Gender	Location	Profession	Age
2.	Ms.	BY2		Female	Nairobi	Customer Service	39

1. In light of the above question, the post-election violence we experienced first-hand as neighbors turned against neighbors. Communities became destroyed, churches were burned, major roads were barricaded, mass looting of stores/business premises and schools were shut down in a manner nearing a state of emergency.
2. (a) First and foremost, post-election violence in Kenya is caused by poverty.
 (b) Again, it could be captured across the country that electoral violence has resulted from impunity culture.
 (c) Over and above, weak penalties or punishment for violators of the electoral process is another

cause.

3. (a) The problem of poverty and unemployment could be addressed by the government's pragmatic steps towards national economic stability.
(b) The problem of a culture of impunity, it is high time Kenyans exercise some level of integrity in the electoral process.
(c) Moreover, penalties and punishment should be administered as they are intended to achieve correction.
4. Land resources are unevenly distributed; this is because three-quarters of the population lives on one-fifth of all agricultural land classified as high potential. Problems of poor water management, soil erosion, declining soil fertility and expansion of agriculture into marginal areas limit farm yield and compound land = related conflicts.
5. Kenyans are indeed intrinsically violent. It is negative. It can be said that the violence erupts due to the high affinity towards political figures and pledges of allegiance towards them. The negative effect of this is that it polarizes the country to dangerous levels.
6. Kenya only needs a Presidential System and not a Parliamentary Prime Minister System of governance. It is because, under the presidential system, the structural framework of duties on various state offices is well outlined, unlike the Prime Minister System of governance, which results in an overlap of duties in the system of governance, giving rise to laxity in-office performance of duties.
7. Yes, outcomes remembered includes, (a) The Ministry of Education to develop a peace education curriculum for use in schools. (b) District Peace Committees be funded adequately and be publicized. (c) Comprehensive and sustained community dialogues are carried in areas with perennial ethnic tension and violence.
8. (a) Poor uncoordinated implementation by committees as a result of the absence of public awareness of the implementation process at each stage. (b) Inadequate allocation of the reparations funds. It ranges from no funds allocated for restitution, compensation, rehabilitation, plus structural measures that will prevent the re-occurrence of the violations.
9. Short term impact of the TJRC Final Report includes compensation in terms of money for damage suffered.
Long-term impact includes Rehabilitation for medical care and psychological support.
10. The colonial legacy left a great deal of impunity to the colonial era Kenyans. It is influenced by the fact that locals were, displaced from their native land and were not compensated. Post-independence outcomes also led to the "royals" saving for themselves huge chunks of national resources, a practice copied from the colonial masters.

#	Title	Name 31 July	Gender	Location	Profession	Age
3.	Ms.	CX3	Female	Nairobi	Just Retired	60s

1. It was spontaneous violence that affected the less fortunate members of the society directly or indirectly as it generated looting and destruction of property.
2. The rigging of Presidential elections results, the Electoral Commission of Kenya (IBEC) not living up to its non-partisan role and interference by powerful politicians.
3. Having elections free of political interferences is a solution. Having intensive voter or civic education programs preparing candidates for foreseeing losses in the election.
4. Not reasonably, done, as the rich will always have a say while the poor remain poor with little or no land to call their own.
5. Kenyans are a peaceful people and, without being provoked, are peaceful.
6. First Past, the Post kind of election is the best for Kenya as it gives people room to exercise a fair election. Hence, Kenya needs a Presidential System.
7. Yes, I have heard as it investigates analyses and reports on human rights abuses, etc. The two principals, conflicting parties, signed an Accord through the efforts of AU, under the Chairmanship of the late Mr. Kofi Annan.
8. The corrupt and selfish leaders who have looted public funds have become stumbling blocks. Lack of integrity in high levels of authority prevents this.
9. The impact, either way, can only be, felt for the rule of law.
10. It makes us know that Kenya was once a weaker country. Kenyans were treated as very, inferior and governance became more autocratic.

#	Title	Name 31 July	Gender	Location	Profession	Age
4.	Ms.	DW4	Female	Nairobi	Information Staff	29

1. Traumatic.
2. Joblessness. Lack of integrity in public institutions like the IEBC.
3. A Judiciary was free of public interference. People of integrity leading public institutions.
4. It is unfairly distributed.
5. No.
6. Presidential System, for people to exercise their collective free will.
7. A number-of-leaders were faulted. The sitting President was required to apologize to the victims on behalf of Kenyans.
8. Poor leadership, lack of integrity, and selfishness.
9. I do not think there is any impact because it was not implemented.

10. Encourages us to ensure there is justice and the rule of law is respected.

#	Title	Name	31 July	Gender	Location	Profession	Age
5.	Mr.	EV5		Male	Nairobi	Customer service	30s

1. I was not affected physically, just emotionally and economically.
2. Election Commission of Kenya (ECK) now the Independent Elections and Boundaries Commission of Kenya (IEBC).
3. Reconciliations. Credible-free and fair elections. Arrest hate-speech leaders who spread negative ethnicity.
4. The government should ensure every Kenyan has land to avoid squatters.
5. Yes, it is positive because, for example, it is oppressive. We could have gone backward.
6. Presidential system.
7. I remember them arresting the people giving hate speech.
8. Corruption.
9. It should be made a mighty power to curb the big fish.
10. No much change and worse has happened, like being an internally displaced person (IDPs) in my own country.

#	Title	Name	31 July	Gender	Location	Profession	Age
6.	Ms.	FU6		Female	Nairobi	Cabin Attendant	30s

1. Actually - I lacked food supplies since shops were closed down due to the chaos.
2. Corrupt systems cause Post-election violence.
3. I think leaders should just conceal if they lose seats. Hold free veritable, and transparent elections.
4. It's is mostly in favor of the politically correct families who hold vast tracks of land.
5. Kenyans are not violent but are actually - provoked into it.
6. The presidential system is better.
7. Yes, I do. Unjust land distributions. Political violence – Wangalla Massacre. Political assassinations.
8. It will disrupt the current political structures of privilege, political power, and patronage against the very people holding power if it is implemented.
9. Sheds some light on the distribution of resources. Help Kenyan society to be better organized. Help the healing process.
10. Created divide and rule policy. Unfair distribution of resources. It created the un-tolerant political culture.

#	Title	Name 31 July	Gender	Location	Profession	Age
7.	Ms.	GT7	Female	Nairobi	Salesperson	30s

1. I was personally displaced from Kibera together with my family in 2007/8.
2. The electoral injustice results from riggings.
3. Transparent and fair electoral systems.
4. Unfair – some families hold too much while others have little or none.
5. No. violence is spontaneous.
6. Presidential system.
7. Yes. There is a need to investigate the historical injustices.
8. Government officials are involved.
9. -.
10. -.

#	Title	Name 31 July	Gender	Location	Profession	Age
8.	Ms.	HS8	Female	Nairobi	Ground Staff	30s

1. I was in a relatively peaceful place at that time. The negative thing I experienced was the hike in the price of food.
2. Corruption. Losers feel they lost unfairly.
3. Securing safe digital kits. Non-partisan IEBC Officials. Civic education on the dangers of PEV.
4. Very unfair.
5. No, Kenyans are generally peaceful. Positive because PEV can be controlled.
6. We can try a different system of governance since the presidential system is problematic.
7. No, I have not.
8. Bribery. These are the very culprits the reports targeted, so they would not implement it.
9. -.
10. We are a young democracy. We have a long way to go.

#	Title	Name 1 August	Gender	Location	Profession	Age
9.	Ms.	IR9	Female	Nairobi	Customer Service	46

1. The post-election violence was traumatizing, scary, and sad. As I drove from Siaya to Kisumu
2. the airport on 30th December 2007. My only weapon was my orange regalia from head to toe to identify as an ODM member. Some of the youth stopped us with burning tyres in the middle of

the road. They held pangas and stopping us, wanting to know our identities. Fortunately, our driver spoke in Dholuo, and this saved us. My family ran out of food, and the shops in Siaya run short of supplies. Arriving in Nairobi, an empty dead city was a place air-hissing ironically insecure. As the people from Kibera ran around Woodley throwing stones at the houses, shattering windows. Flights were fully booked from Kisumu as people panicked. There were chaos and confusion, airlifting my family from Kisumu to Nairobi on 2 January. We were fortunate, no death.

3. Causes due to post-election violence are probably due to scheming by selfish politicians and the stealing of votes. Ethnic differences, per some an expression of anger at extreme poverty, others were caused by criminal gangs taking advantage of the national unrest.
4. Solutions would be justice in the distribution of power, resources in the country. Harmony must be preached, amongst the various tribes, understanding that we are one nation.
5. Currently, the distribution of land resources is unjust, with a few politicians amassing vast chunks of land all over the country, denying the people the opportunity to purchase land in their respective home areas.
6. Kenyans are peaceful; this is positive because it takes a long while to be negatively influenced to be violent.
7. A parliamentary government system would be advisable, allowing strengthening political parties, respecting voters' will with open nominations, which are credible.
8. According to a Daily Nation newspaper, the President is guilty of not honoring most recommendations of the TJRC.
9. Based on local dailies, Kenya's Government chose not to implement the TJRC reports because they (leaders) were part of the political injustices.
10. It will create awareness and hopefully allow for a positive change in the long run.
11. The colonial legacy was ideal for the colonialists and negatively impacted the locals due to the land resources division.

#	Title	Name 2 August	Gender	Location	Profession	Age
10.	Mr.	JQ10	Male	Nairobi	Computer Operator	30s

1. Fear. Every-time an election year approaches because of the innocent people, including children, died. Bloodshed and people were displaced from their homes.
2. Hostility to the migrant communities. Perceived election riggings, tribalism, ethnic hatred, incitement by powerful politicians.
3. Hate speech monitoring, peace messaging, community dialogue, and reconciliation.
4. Corruption caused by weak governance has led to unequal land distribution and poor resource management. Lack of transparency undermining social stability, investment, and growth.

5. No – Influence from hate speech by politicians and tribalism.
6. A parliamentary Prime Minister of Governance. Because no man or party should have all that power.
7. Parliament should investigate human rights violations and historical injustices.
8. Individuals linked to various violations are politically influential and implicated in the report itself. Therefore, keep on pushing hearing dates of cases in court.
9. Short term: Recommend for prosecution, reparation for victims, identify specific victims of violations and provide victims with a platform for non-retribution truth-telling.
10. The colonial military expedition led to genocide and forced migration of people who met colonial forces with force, for example, the Agikuyu and Nandi. Income inequality and poverty.

#	Title	Name	2 Aug	Gender	Location	Profession	Age
11.	Mr.	KP11		Male	Nairobi	Technician	37

1. It was hard to communicate due to the hike in the cost of airtime. Was stopped on a human roadblock in Kisumu when violence broke out due to the appointment of Kalonzo as the vice president.
2. Politicians trigger violence. Citizens feel the loss of the national cake when their candidate fails. Believe in vote stealing.
3. Transparent elections. Un-compromised or un-influenced election body.
4. It is so unfair. Only targets a few.
5. No! Circumstances always influence it.
6. Presidential System but with transparency.
7. Review of land ownership. Equality in sharing of National resources.
8. Fear to reveal the truth to the public. The big fish are mentioned in the report. The fear of returning stolen wealth.
9. -.
10. The post-independence regime borrowed a lot from the colonial legacy.

#	Title	Name	2 August	Gender	Location	Profession	Age
12.	Ms.	LO12		Female	Nairobi	Student	25

1. The Post-election Violence made Kenyans forget about each other's 'brotherhood' and brought tribalism, which affected our country to date where we live in a tribal country.
2. Tribalism and greed for power by our leaders causes violence
3. Our elected leaders should stop being tribal during their campaigning season and concentrate on

improving the national situation.

4. I think it should be free and transparent, not favoring the country's rich and wealthy people.
5. Yes, because many people quickly follow what their leaders tell them, forgetting that the person next to you is more resourceful than the one at a distance.
6. The Presidential System helps Kenyans to elect the person or a leader they need. It also gives them freedom of choice.
7. I know about the commission but have not heard of the reports.
8. The leaders from above - the President and the Deputy President.
9. Never heard about them.
10. I think the ruling system is the same up to date. Three known prominent families rule Kenya.

#	Title	Name 2 August	Gender	Location	Profession	Age
13.	Mr.	MN13	Male	Nairobi	Technician	28

1. I experienced it. It's the divide and rule mode, tribalism, etc.
2. Parties, Ethics, and interest in people who conceal past evils cause violence.
3. People must be allowed freedom of choice to choose leaders.
4. The land was given to one or two tribes.
5. No inciters.
6. Electing performers and not parties.
7. No use of force.
8. There is no truth. No implementation.
9. -.
10. The colonial legacy is repeated here. They imposed people on others.

#	Title	Name 2 August	Gender	Location	Profession	Age
14.	Ms.	NM14	Female	Nairobi	Counselor	30s

1. It was a horrible experience for Kenyans.
2. It was, brought about by the polarization of tribes by political leaders.
3. Integration of tribes to curb tribal incitements. It is nurturing the younger generations without tribal prejudices.
4. It is not equal nor fair, which means it has a lot of room for improvement.
5. No, they are not intrinsically violent. It is positive, which means there is room for eradicating violence.
6. I think the presidential system is excellent. It needs more time and proper follow-up of the

already existing policies.

7. I have heard about TJRC reports, but I do not remember any recommendations.
8. Political games and power plays are things that prevent its implementation.
9. If implemented, it will make gigantic steps in the bringing of lasting peace in our country.
10. The colonial legacy is not a thing to be, remembered with any fondness; the post-independence has much space for improvement.

#	Title	Name 2 August	Gender	Location	Profession	Age
15.	Ms.	OL15	Female	Nairobi	Therapist	30s

1. No. I was not affected personally in my area physically or economically, but I was gripped by emotions by what I heard and saw.
2. Ignorance and tribalism. Which contributes to poverty.
3. Voter education and public awareness. The means of the power of your vote in electing the right leaders.
4. There is no equal opportunity for the distribution of resources.
5. No. It's positive. But people are usually instigated or incited by our leaders.
6. The parliamentary Prime Minister System of governance is the best for Kenya because our politics has not yet matured.
7. I have not gone through the report as I don't know where to get them.
8. I think the report touches the lives of most of our leaders in government resisting the implementation of it.
9. No comment as I have not read the report.
10. The governance of running the country was good, but the governance of the people was horrible. Outcomes of post-independence are that leadership was handed to some people who were not capable of governance, ruining the nation's state.

#	Title	Name 2 August	Gender	Location	Profession	Age
16.	Mr.	PK16	Male	Nairobi	-	29

1. It was a tough time where people were too afraid that even one's neighbor might turn against them.
2. Tribalism and opportunistic hooligans cause violence.
3. Unity and at worse curfew to all.
4. Not general citizens do not feel that their needs are, met in such a case of crude oil found in Turkana, but the price of petrol keeps on escalating despite its local oil resources.

5. Kenyans are not violent, but circumstances tend to push them in that direction.
6. -.
7. Never heard about it.
8. The leaders find it hard to harm their colleague leaders, and as such - No implementation is done.
9. -.
10. The colonialists brought formal structures and also brought out in Kenyans – innovation and equality.

#	Title	Name	3 August	Gender	Location	Profession	Age
17.	Mr.	QJ17		Male	Nairobi	<i>Jul Kali Artisan</i>	25

1. Ever since it brought divisions among communities, it was hard to find basic needs for home use.
2. Tribalism.
3. By preaching Peace and Love from 'Above.'
4. An area that needs to be addressed.
5. No, I do not think so, influence from 'Above.'
6. Presidential System.
7. -.
8. -.
9. -.
10. I feel we got it too soon. Maybe we could have been more developed if we got the independence later in the 1980s or the 1990s.

#	Title	Name	3 August	Gender	Location	Profession	Age
18.	Mr.	RI18		Male	Nairobi	Job-seeking	34

1. We lost many friends through the senseless killings; also, many people lost property and land.
2. Political and tribal instigation.
3. Tribal tolerance and political maturity.
4. There is unequal land distribution because the rich have more land, and they are unwilling to share.
5. Kenyans are not violent. Coexistence is possible without instigation.
6. I think a parliamentary Prime Minister System of governance is better because it will remove the "this is our tribe's turn to eat" mentality.
7. I have heard about it but have not read the report.
8. Every government that comes to power has its agenda and may use that time's discontent to

ascend power. So, the culprits, once in power, buried the report.

9. I have not read the report, so I cannot comment on it.
10. We are still the same because it's only three families that are ruling in Kenya. It's like a monarch.

#	Title	Name	3 August	Gender	Location	Profession	Age
19	Mr.	SH19		Male	Nairobi	-	30s

1. Yes. It was terrible.
2. Tribalism and hate speech from the aspirants.
3. Stop tribalism and vote peaceful.
4. The land is being distributed unfairly since those in big offices usually take vast land portions.
5. No, because they usually vote peacefully, and after that, those who have to give final results usually mislead them after voting.
6. In my view, voting for parties is the best since it gives Kenyans a chance to make their own choices. Kenyans need the Presidential System.
7. Yes. I remember the report barred the President and his deputy from public office.
8. Corruption between the bribed TJRC members who don't observe rules they have implemented.
9. They usually give us a false report since it is on the government side.
10. It underdeveloped the country, and more people were unemployed.

#	Title	Name	5 August	Gender	Location	Profession	Age
20.	Ms.	TG20		Female	Nairobi	Retiree	60s

1. Innocent children were exposed to violence, fear, and tension amongst ourselves.
2. Corruption and social media influence.
3. Preaching peace, love, and unity. Enhancing civic and voter education. Regulating hate speech amongst leaders.
4. Land allocation and title deeds should be issued based on the approval of the physical development plans. Reducing poor planning.
5. No. Leaders just need to reduce negativity (negative ethnicity) in rallies and preach peace and unity to enhance development.
6. Kenya needs both the Proportional Representation System and the Presidential System of governance.
7. Yes – it allowed Kenyans to understand the circumstances and design its future.
8. Greed, Corruption, and Self-interest.
9. It helps in fighting corruption. It's time-consuming finding and exposing the truth.

10. It enhanced economic growth, infrastructures, and education growth.

#	Title	Name	5 August	Gender	Location	Profession	Age
21.	Mr.	UP21		Male	Nairobi	Retiree	60s

1. Yes. My observation is that the violence was caused by too much tribalism. Certain tribes felt that they were the only tribes to rule while the tribe should serve them.
2. The leading cause is certain tribes still believe that they will rule forever; hence no other tribes should rule.
3. So long as every tribe is, accepted as suitable to rule as the President of Kenya, the violence will stop.
4. There are certain tribes in the Rift Valley and at the Coast who did not have land and lived on communal land, but rich people have grabbed the land.
5. Many Kenyan tribes are peaceful, but very few are violent.
6. The Presidential type is just fine.
7. I have heard about the (TJRC) Reports but have never seen it work in Kenya.
8. Corruption is what is preventing it. The rich people are involved, so they bribe the people not to implement it.
9. Corruption is going to continue in the short-term, and it will be forgotten in the long term.
10. Colonial masters discriminated against Africans. Independent Kenya Government discriminates against other tribes.

#	Title	Name	5 August	Gender	Location	Profession	Age
22.	Mr.	VE22		Male	Nairobi	Administrator	36

1. It was the worst period of the country since independence caused by greedy politicians and corrupt politicians.
2. Elections rigging originated from the founding father, Mzee Jomo Kenyatta. He took his people's land and spread them all over the country to occupy other people's land. The Kalenjin led by Ruto found a loophole for revenge.
3. Free and fair election. The leadership should be rotated in different tribes to enable everyone to feel like part of the country.
4. Very unfairly distributed to the ruling communities only.
5. No, they are not. Otherwise, there would be a civil war by now.
6. Anyone can do as-long-as the systems in the institution's work.
7. It was a joke as The government corrupts them.

8. Those supposedly accused are in the government.
9. No progress.
10. The colonial leaders left the land to President Kenyatta, and he ran the country with tribalism, which is the pillar of our politics and will not end in-the-near future.

#	Title	Name	5 August	Gender	Location	Profession	Age
23.	Ms.	WD23		Female	Nairobi	Clerk	25

1. My experiences were so many. It was the longest four days of my life. My family and I experienced road-blocks threats of being killed if we did not pay, and every night, we heard gunshots from a distance. It was my first experience of trauma, and I would never wish it on anyone.
2. The gap between the rich and the poor. In Kenya, violence occurred mainly in poverty-stricken areas. I believe that leaders and selfish leaders' poor choices also play a big part in fueling the violence. The leaders we foolishly elect-use the poor to bring their selfish agendas to life and blame ethnicity or instead use ethnicity as a weapon to do the same.
3. Educating the masses on the consequences of their actions and giving them education on politics and how much of a game it is. Getting leaders who actually - care (i.e., A new, utterly new crop from the current leaders). Reducing the poverty gap.
4. It is pathetic 10 percent of the population owns 90 percent of the land, and 90 percent is fighting over the remaining 10 percent.
5. No, they are not. It is a positive thing because we don't fight unless influenced. However, this boils down to individual upbringing. People are different.
6. The difference is the same. The leaders will be fighting for the Prime Minister Position and influencing the poor by bribing them to kill to put them in power. We can just remain with the Presidential System but choose differently, choose a good leader.
7. Yes. I do not remember any recommendations as solutions. I do recognize that suspects were taken to The Hague because of the findings. And, I remember witnesses who helped legitimize the report disappearing during The Hague proceedings or changing their story altogether because they feared for their lives.
8. The President and Deputy President were suspects in the findings. It does not make sense to give them the mandate to implement a report that could ruin them.
9. Short term: Suspects were taken to The Hague. Long term: I don't know.
10. I think colonialism played a big part in the division where the colonial masters took part in dividing the wealth to Kenyans, causing the poverty gap. Also, Kenya has a lot of wealth, and therefore just like all other wealthy African countries, the Western World will always make sure the countries are at war to take their wealth.

#	Title	Name	5 August	Gender	Location	Profession	Age
24.	Ms.		XC24	Female	Nairobi	Singer	28

1. It was a time where, for once, I did not feel safe at home. There were lots of uncertainties, and one never knew what to expect. I faced many near-death experiences even though I was in my hometown, where we thought we would be safer than Nairobi.
2. Election rigging and tribalism.
3. When politicians stop rigging elections and we finally have a free and fair electoral process.
4. Very few people own most of Kenya's resources, and most of them didn't even earn them in legitimate ways.
5. No. All the violence has external triggers, which could be prevented in advance.
6. Right now, the election systems are not the issue. The issue is just governance, and as-long-as they have the rigging mentality, whichever system is used, it won't work.
7. The TJRC doesn't work the way it should, so people ignore their findings.
8. Corruption. All these reports are just for the show; hence I don't think the government plans on doing anything about it.
9. No impact.
10. After colonial resources were left to the families, which are now in power, and not distributed equally. The colonialists left the country more divided than it was before.

#	Title	Name	5 August	Gender	Location	Profession	Age
25.	Ms.		YB25	Female	Nairobi	Businessperson	40s

1. It was traumatizing as we never knew if we were safe or not. Houses were burnt, people slaughtered, while others were burnt in churches and houses.
2. Negative ethnicity.
3. It is not reasonably divided; hence there are so many problems in acquiring title deeds.
4. No.
5. -
6. -
7. -
8. Corruption.
9. None.
10. -

#	Title	Name 6 August	Gender	Location	Profession	Age
26.	Mr.	ZA26	Male	Nairobi	Self-employed	39

1. It was a very stressful time with unrest and violence.
2. Voter illiteracy and ethnic manipulation by politicians.
3. More ethnic inclusion and less marginalization of voters in the rural areas.
4. It is biased and is mostly used to push political agendas.
5. They aren't, but because of that, they tend to be manipulated by politicians.
6. FPTP is the best for Kenya. And it needs a Presidential system.
7. Yes, I have. I can remember the current President and Deputy President were found guilty.
8. In my opinion, it will implicate either the President or his political allies.
9. Ethnic marginalization over a long period. It may cause the citizens to feel like they don't matter.
10. Those benefiting were colluders with the colonialists and those involved in the independence process.

#	Title	Name 7 August	Gender	Location	Profession	Age
27.	Dr.	AY27	Male	Nairobi	Senior Lecturer	55

1. Yes, I can. I had a harrowing experience on the eve of my sabbatical leave on the way to Michigan State University as a six-month visiting scholar. We could hear gunshots after the results. I voted in the nearest voting station on the 31st December 2007 and left on the 1st of January 2008 at 11:30. But I had to take my car to the other side of the city to my cousin in Karura Forest. To Kariobangi North, Mathare market to Thika road– there were twigs and bonfires on the road, "Do you want to die" Do you want to be killed," I was being asked. I made a U-turn to Kariobangi alone. There were no vehicles – apart from burned or burning ones. Past, Pangani - I was on the lookout with boulders here and there. I managed to take the car but had to come back on foot via town. Tense Kikuyus vs. the rest on irreconcilable differences resulted in many innocent deaths. It was a miracle how I made it back and then to the airport! Personal view: It may not be known, but many Kenyans were traumatized and require national healing. Even at the University of Nairobi – the so-called Senior Common Room. There are two TVs, and seating arrangements are coded accordingly. ODM vs. PNU. No talking politics with Kikuyus. It left trauma. Selective compensation if you are politically correct. Non-coalition members left out. Even in the villages: ethnic divide and class divide with the youth barricading the roads and harassing anyone who drives. My brother was arrested for no other reason other than being in the wrong area.

2. Underlying entrenched social injustices are seen across Kenyan institutions. Unequal access to public resources in the government in Kenya at any given time. Resource allocation and custody, access to public resources, employment, grabbing of public resources, and grand corruption. Ethnic power-parity is where the President favors a specific group - who dominate others in looting and grabbing tenders. In the disciplined forces – many are sidelined during recruitment, ethnic commercial business politics. To make it, one must loot or steal mentality. Even this mentality is seen in the invasions of academic institutions. Universities under-financed while politically correct tertiary institutions were getting the giant's shares to allow it to be “Looted” or shared. Persistent discrimination in public employment or training via centralized institutions are politically biased, like in the Medical Training College (MTC), Kenya Ports Authority (KPA), Central Investigation Department (CID), Treasury, etc. Kenyans never had credible elections. The 2002 Kibaki election was the first and only credible election with a regime change. Kenya has never developed a culture for fair elections. It perfected the art of cheating. The 2017 elections looked peaceful but economically retracting. Non-credible election, tallying itself was a fake. Announcements brought fear and trauma because of a culture of theft. The status quo is the benefactor and protects it.
3. Solution 1: Culture of theft – Think of how to bring about the culture of social justice. Equal and fair access to resources and shared privileges. Chancellor, Advisors to the President: Privileges that go with that image. The positions are pampered, as the haves and have-nots feel unprivileged. It influences policy for national development planning, roads, hospitals, (provision of essential goods is unfairly made) with outright favoritism. Strangers are controlling our lives. Justice minded leaders, sectarian interests, our turn “to eat” vicious cycle. 2: We need credible, conducted elections. Develop a culture of credible elections. Electoral Board Members: Chilobe/Chebukati/Akombe - must deliver a clear vision and not being, used to manipulate the results. Questionable Anti-corruption professionals. Fair access to national resources, the impartiality of state apparatus. They were problems associated with counting, tallying, and collating. Africans perfected the art of corruption. ICC is too civilized for Africans. Passports can't protect victims as they are left on their own. Once threatened and the case crumples.
4. Internal security (security institution) carries out assassinations. Land resources (vague) distribution and grabbing of public land. Public land - National Parks, Research Farms, and gazette forests problems. Government land was given to individuals. Ethnic clashes arise from land allocations.
5. Not intrinsically violent. Way of life developed and perpetuated through socio-political initiatives. Post-election violence (PEV) is associated with extended social injustices. Change is not forthcoming. Some people have rigged their way in to keep the status quo. Historical injustice: Change is coming with new elections. Short tempers and emotional relations: courts are

compromised. Loose trust in law enforcement, and the judges are corrupt. If unhappy, told to go to courts – but once the outcome (got Nullified), Uhuru was mad! Objective and just verdict. Violence is negative. Bringing injustice to an end is lesser evil/ greater evil. It persists and beckons /coups/violence and destruction.

6. Works well in other contexts they are used. Presidential System: Monster incumbent – checks (few) look at cases of African Systems. Legitimizes despots. Lesser control Dictators – Uganda, Ruanda, Cameroun, injustice. Voting colleges like the US. Checks and balances. Cultural.

Constitution – the culture of poverty. Money buys votes and impunity like in the statement '*Mta do nini*' which means "We are the Boss" - What will you do? More devolution and a stronger Senate can be solutions. Failed to develop a cohesion culture that respects human values.

7. Noted but not read. It tainted its credibility. First impression: sanitize and pacify historical injustices. The TJRC underpinned to cover the justify the truth. South African (No justice). Truth (Know) – Justice (victims and perpetrators) Truth and justice are compromised. It is a miscarriage, vindicated and shelved. No results. Forget and move on. Historical injustices and recurrent issues - remain unresolved as politics of betrayal and collaborations.
8. The influential figures behind these injustices are obstacles. They are not sorry or impartial, and the impunity continues. People can permanently live in injustice and ruled forever. They thrive under these many virtues. Amnesty provisions can help out.
9. The document exists –legal documentation. Positive.
10. Colonial legacy: Acknowledge legacy near broken; preserved cleverly through negotiating independence. Kenya got so-called political negotiation. Not a revolution. It preserved the colonial legacy in the interest of the colonial masters. Lancaster negotiations sponsored apartheid. Compare with the US 1773 Declaration of Independence. Americans cut complete links with the UK and is not a Commonwealth Member. They understood the philosophy of liberty. National leaders fully conscious of freedom: Independence – possible obstacles: Lack of understanding of different freedom levels. Hierarchy; primary/secondary – The African case. Needs to respond to basic freedoms, economic, health, food, and physical security. Basic-fundamental freedom is Economic Freedom. It is followed by; 2. Political. 3. Cultural. 4. Sexual, and 5. Religious. Any person who confuses these rankings-Individual and society choose luxury/basics as Political Freedom. Colonization gave way to political freedom without economic freedom, which was and is Neocolonialism. We need to rethink independence and freedom.

#	Title	Name	7 August	Gender	Location	Profession	Age
28.	Mr.	BX28		Male	Nairobi	Sports Player	23

1. It was a horrific experience. I saw people being evicted from their homes and their properties destroyed. The police sent to quell the violence further fueled the violence by teargassing innocent people.
2. Inability to accept the outcomes of a process, whether they are in our favor or not.
3. Ability to accept outcomes.
4. It's unfair
5. No.
6. The best, we need a Presidential system.
7. Yes. Compensation of victims of historical injustices.
8. They fear they might open-up old wounds and face a backlash from the affected communities, which will affect that government's support by the said communities.
9. -.
10. -.

#	Title	Name	7 August	Gender	Location	Profession	Age
29.	Mr.	CW29		Male	Nairobi	Student	26

1. It found me in Kisumu, one of the hot zones, a stronghold of the opposition where looting and rioting was the order of the day.
2. The fact that people felt injustices with tabulation and announcement of the presidential election results.
3. Lack of transparency and integrity on the electoral commission body.
4. It just looks ok to me.
5. No. Positive.
6. Presidential System.
7. Yes. None.
8. Ignorance and lack of integrity.
9. -.
10. -.

#	Title	Name	7 August	Gender	Location	Profession	Age
30.	Mr.	DV30		Male	Nairobi	Sports Player	22

1. During that sad day-they came to the building where we were and started asking which tribe one was and when they confirmed s/he was from Nyanza, they moved on searching where a Kikuyu and Kamba lived, eventually moving to kill them.
2. As a millennial, my view and the most proven fact is that politicians gathered some sections of the people, mostly the youth, to cause tribal war.
3. The best solution for us to stop post-election violence is to come together as a people, and when one individual thinks of such kind of thoughts – we contact the proper authorities to deal with them.
4. The distribution of land resources reflects familiarity or having networks in the Ministry of Lands.
5. No. It's because only one individual (Politician) instigate acts of violence.
6. Presidential System. It brings a sense of authority and stability to a nation.
7. I heard that politicians were the main drivers of post-election violence.
8. Past experiences show that implementation does not help. The Parliamentarians would not concentrate on it that much.
9. The impacts won't matter either now or in the future unless the TJRC outcomes are implemented.
10. The colonial legacy has made Kenya come out of the traditional nature and to make tremendous strides. I think the post-independence outcomes made us democratic.

#	Title	Name	7 August	Gender	Location	Profession	Age
31.	Mr.	EU31		Male	Nairobi	Sports Player	22

1. Yes.
2. Tribal oriented leadership system.
3. Education on election benefits.
4. Just 40 percent.
5. No. It is just a lack of enough knowledge of elections and its benefits.
6. Presidential System.
7. No.
8. Fear by those in the government to be convicted.
9. Short term lies.
10. The legacy was good until we started the greed affair.

#	Title	Name	7 August	Gender	Location	Profession	Age
32	Mr.	FT32		Male	Nairobi	Sports Player	23

1. N/A.
2. Tribalism. Election rigging. Ethnic politicking. Political incitements.
3. Election Reforms.
4. It is unfair since the political elites own most of the land.
5. No, they are not violent since all election violence are sponsored for political gains.
6. N/A.
7. N/A.
8. Suspects were meddling with witnesses. Those to be prosecuted are the ones in power.
9. Short term – justice is served to victims: long term- end of political injustices.
10. N/A.

#	Title	Name	7 August	Gender	Location	Profession	Age
33.	Mr.	GS33		Male	Nairobi	Sports Player	27

1. Yes.
2. The negative influence of our leaders.
3. Honest leadership and Transparency.
4. Capitalism. The poor are selling to the rich. Intelligent individuals during the independence era got the largest share.
5. No. Every human stroked can turn violent.
6. The Presidential System is just fine. Those in charge of governance are the problem. It just happens that we cannot see that.
7. I know nothing about TJRC. I just know it was a post-election reporting 2013.
8. The rich protect the rich. Those in power will always protect themselves.
9. N/A.
10. Distribution of power resources and planning of the country after this has heavily affected us. It was selfish and individualistic.

#	Title	Name	7 August	Gender	Location	Profession	Age
34.	Mr.	HR34		Male	Nairobi	Receptionist	21

1. It happened when I was still young (10 years old) when the whole country was full of riots.
2. Bad politics.
3. All citizens should be educated on how to fight tribalism.
4. They should be distributed equally and fairly, according to how one owns it.
5. -.
6. The Presidential System is right because it involves elections and voting of different parties to be free to vote on whoever and whichever party s/he likes.
7. No. Because most of the time, I was in school.
8. N/A.
9. N/A.
10. Kenya now can depend on its own in everything, including leadership.

#	Title	Name	8 August	Gender	Location	Profession	Age
35.	Mr.	IQ35		Male	Nairobi	Businessperson	37

1. Yes. It was one of the most dreadful experiences in my life. The fear of the unknown, the tribal suspicions, and hatred was evident in parts of Nairobi where I was. Close friends were adversely affected.
2. Political machinations.
3. Education. The role of politics should be taught and encouraged from the lower levels to the highest education levels. Constitutional review.
4. Skewed negativity. From independence, those in power have taken advantage of the larger populace to enrich themselves with these resources.
5. No, they aren't. Very few African tribes are/were warlike.
6. Proportional Representation is the best. While both governance systems have merits and demerits, the Prime Minister System should be better.
7. I have heard snippets. The issues/outcomes have not been relayed to the public because of political and social fears that may result (I stand corrected, though).
8. The political bigwigs mentioned have a lot to lose if implemented. The government may not be sincere in its handling of the report.
9. National healing is necessary the way the Rwandese did
10. The colonial legacy brought modernity but left a lot of division and strife among Kenyan tribes.

Loss of land and life significantly impacted how we live now. Post-independence, the collaborators benefitted at the expense of the rest even to the present day.

#	Title	Name	8 August	Gender	Location	Profession	Age
36.	Dr.	JP36		Male	Nairobi	Senior Lecturer	47

1. It was a violent period, characterized by death and destruction of property. Essential goods were not available. I could not communicate with anyone due to the unavailability of mobile airtime. Farming was impossible, as goods could not reach the markets.
2. The election violence was caused by political incitement by different leaders, incompetent and biased Election Commission, and negative ethnicity among Kenyans.
3. (i). Constraining Political leaders from inciting their supporters. (ii) Fair, Effective and Transparent Electoral Management (iii) Monitoring and punishing hate speech in FM stations and Social Media.
4. Kenya needs a fair and legal land redistribution system for development.
5. Kenyans are peaceful people. They were incited and unemployed youth hired to cause violence on behalf of political leaders.
6. Whichever system would be beautiful, critical is fairness, transparency, equity, participation, inclusiveness, and a better governance system.
7. The TJRC is a critical document, which has captured historical injustices. The land question remains the best, specific problem, which requires objective management.
8. The government has had crowded agendas occasioned by prolonged electoral competition, which polarized the country. It has made it difficult for the report to be implemented.
9. It will restore confidence among Kenyans that injustices could be, addressed.
10. They led to unfair ownership of resources in which the state power is abused for the personal acquisition of resources.

#	Title	Name	8 August	Gender	Location	Profession	Age
37.	Mr.	KO37		Male	Nairobi	Ground Staff	30s

1. PEV was caused by inciters who targeted other tribes to divide the country for political mileage. Most Kenyans lost their lives aimlessly. More so, the ones from disadvantaged and low-income families suffer more.
2. Incitement (Primitive incitement). Historical injustices. Lack of adequate resources.
3. Adopt a presidential system where the president is ceremonial or even elected by parliament.
4. We are still lagging-behind considering the technical 'know-how' most Kenyans are equipped in digitalization. Our systems are still manual - yet we can automate it.

5. To some extent, yes. It's very harmful as it puts our investors at risk, and at times properties are destroyed, which have taken many years of hard work to put up.
6. Kenya needs a parliamentary system of governance. Either system can work if the right personnel is managing the elections.
7. Yes. All suspects found guilty in the murder of Kenyans must be denied government positions.
8. Corruption. Most of the report's contents touch on the ruling class who have contributed immensely to the situation we find ourselves today - looting of land and other mega corruption deals.
9. The short term was to bring unity to the country, and the long term is for all the communities to live in peace and harmony.
10. The colonialists left the country more divided, but post-independence administrators have left it even worse. We are not free from ignorance, poverty, and, importantly, corruption.

#	Title	Name	8 August	Gender	Location	Profession	Age
38.	Mr.	LN38		Male	Nairobi	Businessperson	30s

1. I was in secondary school – people got misplaced, lost property, and classmates never came back.
2. Bad politics.
3. Political tolerance and Good governance are necessary.
4. Selfish and personal agendas drive the former and current crop of influential persons in our society.
5. No. We have never plunged into civil war. We do not have a violent past. It is positive because no matter our differences, we always find a solution before it's too late.
6. What we need is to find our own or hybrid system that works for us as a country. A system that works for us, not necessarily any of the above.
7. Yes. Mostly land issues. Ethnic hatred among people who lived together.
8. If they implement the TJRC findings, most influential persons are implicated and cause a lot of uncertainty because of tribal inclinations.
9. Short-term: That we know to some extent what happened in 2007/8. Long term: Not to repeat what happened.
10. We, as Kenyans and Africans, feel like we are in a world where we did not participate in creating but are supposed to follow laws and systems foreign to us. We had no part or said in matters of governance, family, religion, politics, among others. Rule as trying to do the best we can, we can do better.

#	Title	Name	8 August	Gender	Location	Profession	Age
39.	Mr.	MM39		Male	Nairobi	Cell Company staff	40s

1. I was not directly involved, but the whole experience was disturbing.
2. Ethnicity and tribalism.
3. God. Proper leadership.
4. OK.
5. I think Kenyans are sycophant of their leaders.
6. Presidential (Dictator).
7. Yes. I lost hope in the Judicial System in Kenya.
8. (1) Power – the leaders use power to protect themselves. (2). Selfish leaders.
9. Short term: The leaders use power to protect themselves—long term: More Government cover-ups.
10. Tribalism and corruption were born since and after independence, and this has been so up to date.

#	Title	Name	9 August	Gender	Location	Profession	Age
40.	Prof.	NL40		Male	Nairobi	Professor	70s

1. I was, marooned in Western Kenya for ten days. It was risky and dangerous to travel back to Nairobi as the Great Rift Valley was on fire.
2. The ruling coalition PNU stole the election. And the opposition partly ODM reacted to the theft.
3. Ideologically based multiparty democracy. As it is, our political parties are tribal outfits.
4. The wealthy Kenyans have grabbed most of the arable land, leaving the poor virtually landless.
5. Kenyans, like other people, are not intrinsically violent. It is the bad, ethnically based politics that unleashed evil and violent traits.
6. Maybe proportional representation should be more suitable for Kenya. I do not think it makes a difference whether we have a presidential or parliamentary system. We have tried both-of-them.
7. The recommendations of the commission were never implemented.
8. The people who are supposed to implement the recommendations have themselves been adversely mentioned.
9. I do not know because the exercise did not amount to much.
10. Kenya has been independent for 55 years. We cannot keep blaming the colonialists for poor governance.

#	Title	Name	9 August	Gender	Location	Profession	Age
41.	Mr.	OK41		Male	Nairobi	Student	22

1. Just scary. I did not lose a family member-but I know people who did. The economy affected us much.
2. Tribalism. Unfair elections.
3. As in previous elections, when leaders disrupt the country, they should just be ignored.
4. Unfair. Some families own almost half of Kenya.
5. Nope. Greedy leaders make people fight.
6. Parliamentary Prime Minister System. I think it is the best. It brings some Reconciliation between the two parties in the rivalry.
7. -.
8. Tribalism, Selfishness, lack of integrity. Fear by those leaders in the office.
9. -.
10. Both negative and positive. Independence gave people freedom, and it gave some people the freedom to steal and be corrupt.

#	Title	Name	10 August	Gender	Location	Profession	Age
42.	Ms.	PJ42		Female	Nairobi	Volunteer	37

1. Over 1,133 individuals were, killed, and 600,000 people were, displaced, rendered homeless during the 2007-8 post-election violence. It was the worst experience of political violence in the country's history that affected everyone in one way or another: socially, economically, politically, etc.
2. Historical and political dimensions: Ethnic composition and competitive politics. Electoral politics: Unclear results are not credible. A system where the winner "takes all." A precedent of violence proving effective.
3. The "democracy prescription" for Kenya is not working. There is a need for a new diagnosis of the country's ailment of leadership and governance. The people of Kenya deserve a lasting remedy.

Professionalizing Political Parties: Build programmatic political parties rooted in ideology rather than ethnicity. Coalition building and inter-party dialogue must involve the political inclusion of marginalized groups. They are establishing Inter-Party Youth Forums. Political party liaison committees (PPLC) in each of the 47 counties can improve communication between party leadership and the IEBC, and a Leadership and Campaign Academy can equip candidates with

the necessary skills to run.

Hold Credible, Transparent, and Peaceful Elections: Electoral process, Civic and Voter Education, Capacity-Building of Electoral Management Body.

Election Observation: Focus on building public confidence in the electoral process and deterring fraud, intimidation, and violence.

Hate speech monitoring: Counter dangerous speech, cited as a critical contributor to the 2007/8 violence.

Preventing and Mitigating Conflict: Early Warning Early Response.

Peace Messaging: Focus on imploring Kenyans to maintain peace, calm, and unity before, during, and after the elections.

Dialogue among all electoral stakeholders and Reconciliation: Focused on reducing tensions and improving relationships between previously polarized ethnic communities.

Capacitating Local Peace Structures: Development of Kenya's peace infrastructure, for example, strengthening the conflict management capacity of the National Steering Committee (NSC) on Peacebuilding and Conflict Management, establishing District Peace Building Committees (DPC) at the local level tasked with "emphasizing dialogue, promoting mutual understanding, building trust and creating constructive problem solving and joint action to prevent violence. "Pact strengthening the capacity of local organizations to undertake conflict mitigation activities like peace meetings."

Deterring Spoilers: Identify potential spoilers as individuals' intent to exploit local tensions and block reconciliation efforts to pursue their own political or economic interests.

4. Land resources in Kenya have become a source of conflict, for it's not well or equally distributed. Our history of land dispossession or land grabbing, coupled with a skewed distribution of its resources, has left Kenyans with a complex and challenging land problem.
5. Favorable. Violence during and around election time is an indicator of undying socioeconomic and political issues such as land injustices, marginalization, and disenfranchisement.
6. Proportional Representation – with a Parliamentary Prime Minister System of governance can suffice.
7. Yes. The 2007-8 trajectory of ethnic hatred – which led to 1,133 deaths and 600,000 people rendered homeless – underscores the use of disputed elections to bring underlying issues to the fore. More young people in Kenya than any other demographic cohort are mostly disenfranchised, making them vulnerable to being recruited as perpetrators of violence. Widespread unemployment of 22 percent is also a contributory factor to young people joining campaign teams as vigilantes, militia, or agents.
8. All issues were set out in the 2013 Truth Justice and Reconciliation Report (TJRC), written in response to the post-election violence of 2007-8. Its recommendations have never been

implemented. I think it's due to more in-depth issues underlying socioeconomic and political issues such as historical injustices, land inequality, marginalization, and disenfranchisement that go way back to 1963.

9. In the short term, the institutions mandated to ensure peaceful electioneering must actively discourage violence. For example, the National Cohesion and Integration Commission (NCIC) must fulfill its mandate. The commission is a statutory body established against a reconciliation pact's backdrop agreed after the 2007/8 post-election violence. It aims to support sustainable, peaceful coexistence among Kenyans.

The Independent Electoral and Boundaries Commission Board (IEBC) has a crucial role in mitigating political violence by conducting free and fair elections. The commission is legal mandated to conduct primary elections for political parties. In my opinion, the commission should play an advisory and logistical role to ensure free, fair, and peaceful elections.

10. The effects of colonial legacy are both negative and positive. Kenya has made tremendous progress since the country achieved political independence in 1963. It has been in the political, social, and economic fields. At independence, Kenya lacked the necessary capital to undertake major development projects. The government was faced with devising ways to bring about rapid social and economic development to solve three major problems: poverty, disease, and ignorance. Over the past 55 years, Kenya has experienced numerous negative aspects as Lack of infrastructure, Energy Dependence, Inexperienced Leadership, Lack of National Identity, Political Challenges – conflicts, and a new problem seen in the Culture of Impunity.

#	Title	Name	10 August	Gender	Location	Profession	Age
43.	Ms.	QI43		Female	Nairobi	Project Coordinator	35

1. Yes. Traumatic.
2. Power disputes among the leaders. Uncertainty on who won the elections (2007) as even the ECK Chairman said it was hard to tell who won.
3. Preaching unity among the Kenyan citizens, regardless of who their leader is. Clearly outlining guidelines that will help the country go through an election period without communities turning on each other, for example, sharing of powers among those who won the elections and those who lose.
4. It is uneven. For example, some own large tracks of land, and there are those without any.
5. No. Most Kenyans are dragged into violence by their leaders. They tend to follow almost everything their leaders request of them without thinking of the impact.
6. Presidential System. With this, every Kenyan has the right to vote for a leader of their choice. Unlike with the Parliamentary Prime Minister System, the leader is elected by a small number of

people in the parliament who represent their interests and influence their choice and do not represent the citizens' will.

7. Historical land injustices like Restitution of land, including conversion of public land from community land. Formal recognition of specific areas as community land. Socio-economic measures like communities or groups victims should have a say in using funds meant for social-economical reparation guided by non-discrimination.
8. Unavailability of the required resources like funds to facilitate the socio-economic measures outlined in the TJRC Report or even the land itself.
9. TJRC Report aims at easing the tension among Kenyans during the election period in Kenya. The report can shield the country from violent horrors again after an election.
10. I think the colonial legacy played a significant part in what happened during the 2007 election. People in power choose to install their leaders (President) instead of following the people's will the same as it happened during the colonial era.

#	Title	Name	10 August	Gender	Location	Profession	Age
44.	Dr.	RH44		Male	Nairobi	Senior Lecturer	52

1. Violence – Multiparty – Ethnic – Violence between 1992-2018, 1992, 1997, 2002, 2007, 2013, 2017. Inquire reasons for differences between 2007 and 2017, whether violence impacted them.
2. Causes arise from the trade-off between politics and the allocation of resources.
3. Resolve issues involving politics and resources amicably.
4. It was not done fairly.
5. No, they are always instigated and incited.
6. I would give analyses of 1992 and 1997 – where Moi was in a must-win situation. 2002-Moi not contesting and free for all. KANU was humbled, which led to civil strives. NARC defeated KANU. In 2013, there was no incumbent running. Other factors led to sporadic clashes. In 2011, the ICC and TJRC influence – via seeking the truth and justice. There was no incumbent and no fighting. Leave it out of the analysis.
7. Yes. But not necessary.
8. Not necessary. The 2013 Peace Accord, International Criminal Court (ICC), and the Truth Justice and Reconciliation Commission (TJRC). There was hope for justice, truth, and reconciliation. The fear of ICC and TJRC Reports helped to prevent clashes and violence.
9. Analysis of the report touching on the short term: 2013 peace outcomes. Long term: The dissent on Land issues with Zambian, Ethiopian, and American Commissioners refrained from signing. Strive to build an open society in the politics of transition in Kenya for National cohesion, reconciliation, and healing.

10. Colonial legacy focused on group discussions. The structure of the Kenyan state depicts a cycle of violence prompted by the politics of exclusion.

#	Title	Name	10 August	Gender	Location	Profession	Age
45.	Mr.	SG45		Male	Nairobi	Student	26

1. Wasn't that much affected, though, from social media and news outlets, it nearly brought the country to a standstill, creating tension even in supposedly safe "heaven."
2. Illiteracy, tribalism, and corruption.
3. Proper and timely delivery of political education and information. Affirmation of national unity by all. Free and fair conduction of credible elections.
4. Being a capitalist state, work for your own. What is needed is a proper means of management of title deeds and clear boundaries to be established.
5. The majority of Kenyans are not intrinsically violent. That is what makes Kenya a peaceful nation.
6. No correct response.
7. No correct response as I am unfamiliar with these reports.
8. Laxity in government's implementation ability. Unqualified personnel in the office.
9. Short-term: Restored some semblance of peace. Long term: Hopefully, a fully united Kenya with a neutral justice system.
10. Kenya never moved away from being colonized.

#	Title	Name	10 August	Gender	Location	Profession	Age
46.	Ms.	TF46		Female	Nairobi	Student	22

1. It was a time of horror.
2. There are feelings of supremacy among different ethnic leaders. We need to water this down for lasting national unity.
3. It is unfairly distributed since major cities and towns have benefited from getting better high standard materials and resources.
4. No. since in every city you find different groups' living together.
5. Presidential system.
6. -.
7. To avoid conflict because it may favor aside.
8. -.
9. -
10. -.

#	Title	Name 11 August	Gender	Location	Profession	Age
47.	Ms.	UE47	Female	Nairobi	Student	22

1. I believe politicians mainly cause it.
2. Tribalism. Unfair elections.
3. All tribes should be engaged in the Presidential elections.
4. It is entirely corrupted.
5. Yes.
6. -.
7. No.
8. -.
9. -.
10. -.

#	Title	Name 11 August	Gender	Location	Profession	Age
48.	Ms.	VD48	Female	Nairobi	Student	23

1. Families lost their loved ones due to violence.
2. The greed of politicians overbearing. Tribalism.
3. Unity. Peace. Love. Despite our ethnic or racial backgrounds.
4. It is unjust and only favors individuals with wealth and power.
5. Yes – it is harmful because innocent people are the ones who suffer most.
6. Parliamentary Prime Minister System of governance will suffice.
7. I have never heard of it.
8. They are putting the interest of the heart first.
9. -.
10. -.

#	Title	Name	12 August	Gender	Location	Profession	Age
49.	Mr.	WC49		Male	Thika	Salesperson	29

1. I was living in Nakuru in 2007, and the scenes I witnessed alarming incidences. How we got to that point as a nation still puzzles me to date.
2. (a) Land: as-long-as people feel others owe them in terms of land allocations, they are willing to do anything to own the land. (b) Fair redistribution of land can help rectify that.
3. The land is unfairly distributed in Kenya.
4. I think that Kenyans are passionate and that passion can sometimes be, used negatively.
5. I think what Kenya needs to put a cap on election spending. As-long-as elections are a costly affair, the wealthy capitalists will continue manipulating the electoral system. Leaders who mean well will continue being locked out.
6. Yes. I remember some recommendations on allocating land to squatters and land compensation to internally displaced people (IDPs).
7. I think prominent people in the current government were implicated and would lose political capital if the report is released to the public. The president and his deputy were taken to The Hague about accusations of Post-election violence.
8. Releasing the report for implementation can have an impact on the public. Unfortunately, in Kenya, implementation is quite a challenge. And that impedes the positive impacts of the reports.
9. -
10. I think we inherited a legacy of corruption and selfishness and divide and rule techniques that we need to work hard to end. Failure to which Kenya will continue repeating past errors.

#	Title	Name	12 August	Gender	Location	Profession	Age
50.	Mr.	XZ50		Male	Nairobi	Businessperson	26

1. Yes. The worst ever experienced. I lost friends and colleagues and would not wish we go back there.
2. Tribalism by politicians. Political interests where some politicians feel they are the ones to be in power.
3. Fight and end corruption to have institutions work independently. Solve the issues of tribalism.
4. It has been politicized and not serving the interest of Kenyans.
5. Kenyans are not violent. Politicians use voters to achieve their political interests, and once that is achieved, they purport to unite us.

6. Presidential.
7. Equal distribution of resources.
8. They will not serve the interest of politicians.
9. -.
10. Should we have had the interest of Kenyans first, we would have achieved quite more? Politicians messed us up through corruption.

#	Title	Name	12 August	Gender	Location	Profession	Age
51.	Mr.	YA51		Male	Nairobi	Businessperson	30

1. It was a sad moment caused by the belief that one tribe cannot descend into power, and another believes they are more superior. It divided the nation, and the effect has caused a division that will take time to amend.
2. Tribalism – ideology difference. Nepotism – past historical injustices. Hate against a specific community/tribe.
3. Accepting the past wrongs and agreeing to deal with the consequence. Promoting Nationalism among Kenyans. Addressing the past injustices and looking for lasting solutions.
4. Resources and in the process of fair distribution. But more need to be done, especially in zones that are still backward.
5. We are peaceful, but tribalism causes us to be violent. It is harmful because we allow our tribe to dictate our reactions towards each other.
6. The parliamentary system is better. It gives people a sense of unity and thus suitable for the country.
7. Yes. The first issues and recommendations speak the truth about what the country needs to do and the harsh reality we need to face to move forward.
8. The government harbors people who benefitted from the injustices and is uncomfortable with full implementation. It undermines the intended purpose of the Truth Commission.
9. Short term – it will start changing Kenyans' perception towards each other; in the long term, it will make a better Kenya for all and generations to come.
10. The differences need to be addressed to rectify the wrongs Kenya did for the Nation to move forward.

#	Title	Name 13 August	Gender	Location	Profession	Age
52.	Mr.	ZB52	Male	Nairobi	Businessperson	30s

1. It was an abnormal occurrence that destabilized our socio-ethnic and economic fabric to the core. Intertribal trust was lost, the cost of living skyrocketed, and death occurred. It was hopeless.
2. Politicians exploit vulnerabilities in society to their advantage.
3. Truth, Justice, and Reconciliation, as contained in TJRC Reports' ensure justice to all.
4. Political class amassed land, grabbed land, and has preyed on the electorate.
5. Kenyans are intrinsically peaceful, and ethnic profiling instigated the violence. It is a good thing to be peaceful.
6. None. A system is as good as its people. Kenya needs political maturity.
7. Unfair settlement of non-local communities.
8. The reports implicate so many members of the sitting government.
9. The short-term effect will be painful for the persons who got to lose illegal acquisitions. In long-run, Kenya wins.
10. The British should have stayed longer. We did not understand the system of governance, and it deteriorated. 'Home-guards' and collaborators had a field day amassing wealth and making the rest destitute.

#	Title	Name 13 August	Gender	Location	Profession	Age
53.	Mr.	AC53	Female	Nairobi	Vendor	26

1. N/A.
2. Tribalism.
3. Love amongst us. Intermarriages. Respect and cohesion.
4. Land resource distribution in Kenya is not fair. Some counties are more resourced than others; examples are Narok versus Mombasa.
5. No!! Incitement from leaders in our society.
6. N/A.
7. N/A.
8. N/A.
9. N/A.
10. Brought about democracy, population increment, people got educated. Kenya's economy has risen or grown. I can confidently say that we are heading somewhere.

#	Title	Name	13 August	Gender	Location	Profession	Age
54.	Mr.	BD54		Male	Nairobi	Salesperson	50s

1. Very disturbing and disappointing, especially with our political class. It revealed the immaturity of the opposition politics/politicians.
2. Tribal/Ethnic interests as fueled by the political class. The desire for political power and what goes with it. Immaturity in political development.
3. Civic education. Delinking politics from access to national wealth. Make the government and power ethnic-free environments.
4. Colonially distributed before and ethnically after independence.
5. No. They can choose to end violence, and it will hold.
6. FPTP. Presidential.
7. No.
8. A nation cannot live by always going back into the past. We must move forward despite lies in the past.
9. No comment.
10. The impact of the former on the latter has been well documented. Some will have a lasting impact. But Kenya is better in a community of nations globally.

#	Title	Name	13 August	Gender	Location	Profession	Age
55.	Ms.	CE55		Female	Nairobi	student	22

1. N/A.
2. Tribalism.
3. Love thy neighbor.
4. Land distribution in Kenya is fair.
5. No.
6. Presidential System.
7. N/A.
8. N/A.
9. N/A.
10. More Kenyans are learned.

#	Title	Name 13 August	Gender	Location	Profession	Age
56.	Mr.	DF56	Male	Nairobi	Student	20

1. Yes. Traumatic and very disturbing.
2. Differences between the politicians. Different views on the final results after the election among Kenyans.
3. Educating people on the effects of violence. Those who are involved should be punished.
4. Not fair. Only a few benefits and the Internally Displaced People (IDPs) end up being homeless.
5. No.
6. Proportional Representation and Parliamentary Prime Minister System of governance.
7. No.
8. Some of the outcomes are not favorable to the government.
9. The TJRC Report has enabled people to know what should be done to avoid violence in Kenya.
10. There is no difference because those who took over became or started colonizing Kenyans but indirectly.

#	Title	Name 13 August	Gender	Location	Profession	Age
57.	Dr.	EG57	Male	Nairobi	Consultant	54

1. It was terrible and traumatic.
2. Tribalism, nepotism, corrupt leaders, corruption, impunity, and political meddling.
3. The Kriegler report addresses this very clearly. Suggested several electoral reforms for the 2013 elections, dispute resolutions - Biometric was one of them, but that also had its downside as the outcomes showed later. Eliminate corruption, impunity, and political interference
4. Land distribution is unfair. The Ndung'u Report is very appropriate but shelved. (Land policy in 2009). It covers all the issues as pertain land resource allocation in Kenya. Large land buying companies bought out or grabbed communal pastoral lands. Community land Law 2016 addresses the allocation of title deeds but not yet implemented. The Ndung'u findings on absentee landlords. Advisors: Ms. Ann Waiguru, Mr. Oparanya, and Prof. Ryan.
5. No, they are not. Positive – Kenyans should turn that heat on errand politicians or leaders.
6. Contentious – open the seats. Inclusivity and implementing court orders. The Proportional Representation and Parliamentary Prime Minister system of governance.
7. Yes, I have. Uhuru asked for forgiveness – but how sincere was that, and was he forgiven, or was it followed up?

8. Protectionism and patronage. Integration and national cohesion – Ole Keparo Report 2012. Commission of Integration and Cohesion (CIC) reports covering this.
9. Short term: Delivered but not implemented. We are still with the same problems. Impunity is increasing, violence and corruption. Long term: Unless implemented wholeheartedly, there will be no impact worthy talking about.
10. The colonial legacy was never dismantled. Kenyatta mafia and their forceful blood initiations to hoard power in Central Kenya enslaved other Kenyans. Power conservation and struggle destroyed all credible institutions, centralized power instilling fear and unconstitutional changes, the roadside sacking of other leaders who voice contestability.

	Title	Name 14 August	Gender	Location	Profession	Age
58.	Mr.	FH58	Male	Nairobi	Project Officer	26

1. Yes, I was a high school student in Mombasa. I was not much affected and lived in a Cosmopolitan area – Changamwe. There was a secure ODM stronghold – Kisumu Ndogo (Small Kisumu). Prior cases of votes being bought and pitying Mr. Balala as an ODM Pentagon Member Vs. Mr. Ali Taib. Balala was stumping the ground for Raila.
2. Prospective: Academic theories. Progress – spontaneous. A conspiracy of aggravated issues of land resources. Forceful evictions in the Rift Valley where the cycle of violence repeats itself. 1992, 2002, 2013. Illegal gangs like the Mungiki – a Kikuyu Mafia youth violence mongers in retaliation to their kith and kin evictions in the Rift Valley. These gangs were like self-help ethnic-based security providers out for manipulative hires.
3. Solutions: Control of erstwhile organized criminals. Control of resurgence of gangs. Research shows that there exist 66 outlawed groups. The number has been increasing in the 1990s to about 100 groups in 15 counties. These are, unfortunately, affiliated to politicians as their tool of choice to cause disturbances. High unemployment among the youth makes them targets for cheap hire for political mileage of rival politicians who use them to settle political and cultural scores. They are even hired to rough up rival politicians and disrupt their meetings on demand. Election management is lacking. The decisive politics of 2022 should strive to ensure credible elections to diffuse and reduce tensions. Dispensation of the Constitution is required. It will help create alternative solutions to conflicts as the Kriegler Report cites the Supreme Court. When the need arises, flawed elections should be swiftly nullified to restore trust and credibility. The New 2010 Constitution is conflict solving friendly by outlining necessary steps and avenues to free and fair contestability. Registration of National Political Parties, Multi-stakeholders approach involving the Police, Public, and non-governmental organizations to ensure transparent party

nominations supervised by the Independent Elections and Boundaries Committee (IEBC).

4. Land issue. The Ndung'u Report: Kriegler Reports cover land resources. The land adjudication in the Rift Valley on the willing buyer and the willing seller was flawed from the beginning and served as the genesis of persistent land problems in Kenya. It is also reflected in the Devonshire White Paper of 1963 and related to Sessional Papers. Large cooperative land buying companies got preferential loans buying large tracts of land in the Rift valley, which they later subdivided and allocated to their members almost, always from one ethnicity. These brought resentment and insecurity like the Mpeketoni uprising on the Coast. These were politically instigated post-election violence in a hitherto peaceful area like Lamu. These attacks and tensions between locals and non-locals on collusion with the Al Shabaab triggered more violence, forcing non-muslims to flee and counter-attacks.
5. Kenyans are peaceful people but were, exposed to violence in the pre-colonial era. Subsequently, the Kenyatta regime (1963-1978) was peaceful, but with succession issues, Shifta wars, competitive multi-party politics, the ethnic card became a weapon. Violence is negative: Leads to loss of life, destruction, intolerance, and disunity. Politicians derisiveness – use the ethnic card as a secret weapon for success, inculcating reactions in violence. Pastoral communities, Saboat Defence Forces, made the incumbent MP Kapodi contest the General Elections from jail. A lorry ferrying jembe sticks (Personal view) developed a culture of arrogance: students now burn schools, participate in illegal demonstrations as hooligans taking advantage of a chaotic situation. It can be contained via peace clubs to cultivate a peaceful culture for peaceful resolution of conflicts. The Rwandese experiment with "Itolerero" after the Genocide is illustrative. The role of the African Union as a den of Dictators with their non-intervention approach does explain why reforms are indispensable to contain conflict. The UN Eminent Personalities Initiatives helps bring peace as Kenya's conflict showed after the PEV in 2007/8. The case of South-Sudan Conflict is also a case in point. The Dinka vs. the Nuer. Control of resources or share resources. Kiir is the President of South Sudan with five vice Presidents for inclusivity. Transition issues with the incumbent are not very easy plus the role of the party. In Tanzania, the "Undugu" of brotherhood (CCM) allows Christians and Muslims to co-exist, strengthening each other. Post-election reconciliation process – Zanzibar and Mainland reconcile and co-exist modestly with no entrenched animosity. In Kenya, we have 41 ethnicities vs. 1 ethnicity. Kenya should cultivate a new brotherhood to nurture modest cohesiveness for reconciliation for nationalistic politicians. To move forward, Kenya needs the goodwill of everyone.
6. Personally - at independence, Kenya was meant to be a devolved federal (KADU) with the Prime Minister as the head of state. KANU won, and that was, shelved. A parliamentary system with checks and balances on the executive can be most appropriate. The current Presidential system at 50 + 1 vote taking the day is flawed as it locks out the 49 percent.

7. Yes, the issue of atrocities, seek forgiveness, and reached out for forgiveness.
8. Parliament (wide) implementation of the TJRC Reports. Parliament should be, allowed to debate freely and gradually implement the report. Lack of political will, inadequate political environment, and maybe the "Handshake" as form goodwill of an elite bargain can break the ice.
9. Impact: Created awareness. Addressed contentious issues brought out. It is a platform for all counties to raise their issues and present optimism. Recognizing human injustices and recommending redress, compensation, and reconciliation and championing respect for Kenya's cultural diversity. Recognizing all ethnicities in Kenya, irrespective of origin, descent, race, and religion are equal. Improve the sharing of public goods, improving gender balance—long term: Cohesive national co-existing society.
10. Colonial legacy. Foreign policy – look at today's protesters! Being clobbered, arrested on loitering charges in a free country, rising terrorism, a requirement for the Identity Card. Foreign policy: Intervention – develop local solutions and strengthen the local capacities—foreign envoys to observe the litmus test. Put sanctions on South Sudan. In Political Science, we have Autocratic/Liberal/Totalitarian regimes. Good elections must be open and credible. Kenya's election experiences are autocratic. Separation of power is indispensable. Minorities should have a veto card to safeguard their interests, vis-à-vis their numerically populous others.

#	Title	Name	15 August	Gender	Location	Profession	Age
59.	Ms.	GI59		Female	Nairobi	Librarian	29

1. We were all affected in one way or another. I lost friends and my fellow Kenyans.
2. Vote rigging. Lack of transparency in the electoral process.
3. Training programs in civic education. Dialogue among electoral stakeholders.
4. Not equally distributed and up to date, women are sidelined on the land issues.
5. Negative. We have been a peaceful nation since independence.
6. FPTP Presidential system.
7. Yes. The President had only made a public apology to Kenyans on behalf of the government and the previous one.
8. Afraid of the truth.
9. It must be implemented with all recommendations honored and victims compensated.
10. It has negative and positive sides, but Kenya is now developed compared to colonial times.

#	Title	Name	15 August	Gender	Location	Profession	Age
60.	Ms.	HJ60		Female	Nairobi	Vegetable Vendor	50

1. Yes. My business was complete, destroyed, and lost friends and my fellow Kenyans. Women and children were, affected most.
2. Weak electoral systems and tribalism.
3. Well, set electoral systems. Transparent elections.
4. Not equally distributed.
5. No – they are usually brainwashed by politicians.
6. Presidential system.
7. Yes. Land issues.
8. The outcomes go back to the colonial injustices, which affected many Kenyans.
9. Justice needs to prevail.
10. Kenya has moved on and developed now.

#	Title	Name	15 August	Gender	Location	Profession	Age
61.	Ms.	IK61		Female	Nairobi	Salesperson	40s

1. Yes. I saw a person with an arrow through his body!
2. People should know that politics and tribalism are toxic.
3. Education, intermarriage, and exposure to life.
4. Unfair.
5. No. sooner, they resettle and forget.
6. I am for voting for individuals, the Presidential system.
7. Yes, resettling those affected.
8. Because some members who are in power hinder it.
9. -.
10. They divide people where they settled, thus making it continue after independence, and it still stays.

#	Title	Name	15 August	Gender	Location	Profession	Age
62.	Mr.	JL62		Male	Nairobi	Driver	40

1. Lost relatives at Sango. Displacement of relatives in Uasin Gishu.
2. Unequal distribution of resources, tribalism, and nepotism causes violence.
3. Equal treatment for all Kenyan citizens. Equal opportunities for all. Upholding human rights across the board.
4. Unfavorable to the low-income earners. Illegal rights and access are based on one's income, legal representation, due diligence.
5. No, underlying and deep-seated concerns not addressed have contributed to the violence-inequality and unfairness of rights.
6. Proportional Representation. Prime Minister system.
7. Land issues, Wangalla Massacre, and (Human rights). It was never implemented.
8. The hard truth behind the report and its far-reaching consequences.
9. Short term: social, political, and economic tensions due to the truth and its implementation. Long term: healing and desire for gradual reconciliation.
10. We have to shake off that tag and embrace our diverse cultures and entrench them in our nationhood.

#	Title	Name	15 August	Gender	Location	Profession	Age
63.	Mr.	KM63		Male	Nairobi	Valuator	30s

1. Scary, but it affected a relative.
2. Tribalism.
3. Equitable resource sharing. Inclusivity of all tribes in the government.
4. Land resources have not been evenly distributed. Some own large tracts of land; others are landless.
5. Yes. It is negative because chaos erupts frequently.
6. Kenya needs a Parliamentary Prime Minister System.
7. Yes, but unaware of its contents.
8. Perhaps some recommendations affect them directly.
9. -.
10. -.

#	Title	Name	15 August	Gender	Location	Profession	Age
64.	Ms.	LP64		Female	Nairobi	Secretary	30s

1. I remember when the results were announced, I was in Buru Buru at that time. My mother asked me to hurry back home immediately. We used to live in Uhuru estate Phase 4 at that time, and after reaching home, a few minutes later, the chaos erupted. I could hear screams and gunshots from inside the house, but we could not tell where they were coming from. We were never directly affected, but the neighborhood surrounding us was affected, for example, in Kiambu.
2. Honestly, tribalism has a big part to play. Politicians and the mind games they play on their diehard followers.
3. Elections could play a significant role. It eradicates the blind faith people have in leaders and opens their eyes to the truth. Thus, they do not follow any leaders blindly. They learn to view every other person as their equal. Religion: Religious leaders need to preach peace and love to all people. Intermarriages: I feel like these could end tribalism, which is a significant cause of post-election violence.
4. It is not equal. The majority of the people in power are corrupt. They steal, grab, and misuse the resources put in their hands to manage. Unequal distribution of resources will end when corruption ends, and that might never happen.
5. Not really. I think that hate and hatred is something you learn. Just like violence – No one is born hating people; they learn to do that.
6. I think the former is way better. The *Majimbo* (Devolved) system has brought a lot of evil with it. Mainly corruption and even more misuse of power.
7. No, I haven't.
8. -.
9. -.
10. I think that Kenya still has what we call "*Ukoloni Mamboleo*" or (Neo-colonialism). It is where we, as Kenyans, are still colonizing each other in one way or another. Therefore, colonialism never really left us.

#	Title	Name	15 August	Gender	Location	Profession	Age
65.	Mr.	MQ65		Male	Nairobi	Quantity Surveyor	70s

1. I was not personally involved, but I was requested by my sister's son, who has a business and home in Naivasha, to keep him and his family in prayers. He said lorry loads of "Mungiki" gangsters had been ferried to that town and were murdering people from the Kisii, Luo, Kalenjin, and Luhya tribes. One man had lost his wife and all his children.
2. It is caused by our political leaders who whip on the tribal emotions of their ethnic groups, especially on sensing defeat at the ballot box. They incite their kith and kin to fight persons from other tribes, especially in the country's Rift Valley and dominant ethnics.
3. Long term – educating Kenyans to accept one another and know how living and existing together is good and vital for all. It can be done at family, school, college, religious, and professional levels. Short term – The government must be resolute in punishing inciters through arrests and taking them to law courts and having the guilty ones punished with imprisonment or fines in public awareness
4. Land that is acquired wrongfully or illegally should be returned to where it belonged. Culprits should be named and shamed and made to pay for their crimes, including paying for their wrongs.
5. No, I do not think Kenyans are intrinsically violent. It is positive.
6. Due to our tribal and ethnic setup, I believe the Proportional Representation System (PR) or form of democracy would have been the most suitable or workable and fair form of democracy. A Parliamentary system with a Prime Minister system of governance would serve us best.
7. Yes, I have. It tackled the historical imbalances and injustices over land matters, employment opportunities for working-class Kenyans and also recommended how these imbalances and injustices could be addressed as recommended.
8. Implementation of the TJRC recommendations cannot occur because those who can implement them also have 'dirty hands.' They are the same people who have been the beneficiaries of these in-balances and injustices.
9. Nothing comes out of 'them' as they cannot be, implemented but end up gathering dust in the places where they are kept.
10. The colonial system was one of "divide-and rule" that encouraged disunity among the tribes and privileged positions for those in power. Our current rulers have retained this, and it protects their privileged status. For instance, they have retained the much-hated provincial administration. It serves the interests of very imperialistic public servants at both the central and county levels, which have meant untenable public wage bills for Kenyans.

#	Title	Name	15 August	Gender	Location	Profession	Age
66.	Prof.	NR66		Male	Nairobi	Professor	60s

1. Yes, I can. But very traumatic.
2. Ethnic differences and incitements, especially by politicians, cause violence.
3. Downplaying ethnic differences and inculcating the attitudes of fairness and love in the nation.
4. It has not been fair as some people have nothing and are mere squatters.
5. No, because generally, Kenyans are peace-loving. They only become violent when provoked or incited.
6. Perhaps Kenya needs a Prime Minister system of governance because the other system has had problems during elections.
7. I have heard about the commission and the role it plays but no insights about its reports.
8. Lack of sincerity from those in charge.
9. Short term impact could be that of arousing emotions and bitterness. Long term impact is that of a more responsible and peaceful nation.
10. The colonial legacy, in my view, has not been the cause of our problems. We need to scrutinize our system more to identify where our challenges emanate from.

#	Title	Name	16 August	Gender	Location	Profession	Age
67.	Ms.	ON67		Female	Nairobi	Hotelier	30s

1. Yes, my entire family was affected. We lost property and our farm.
2. Tribalism. Winner takes all kind of politics (Winner-takes-all).
3. Setting out sound electoral systems and educating the general public about credible elections.
4. Very unfair, and women have been sidelined.
5. No, they are not. Corrupt politicians usually manipulate Kenyans into violence.
6. Proportional Representation and the Presidential System can do.
7. Yes, land injustices.
8. That there are people or so many issues and injustices that go back to the colonial regime.
9. The findings need to be implemented and those who were affected compensated.
10. It is like a two-faced coin; in general, it affected our leadership, and resources were looted.

#	Title	Name	16 August	Gender	Location	Profession	Age
68.	Mr.	PO68		Male	Nairobi	Businessperson	35

1. Very horrific and traumatic.
2. Tribalism.
3. Electoral reforms. Acceptable to all players before the elections.
4. It is poorly distributed. Discrimination and inequality towards the poor.
5. No. Frustration and hopelessness because of poor leadership and corruption.
6. FPTP.
7. Giving back land to communities who originally owned them.
8. The leaders themselves are implicated in these injustices.
9. Only honest and genuine dialogue can help.
10. Both leaderships are selfish, pressing down the ordinary "mwananchi" citizen.

#	Title	Name	16 August	Gender	Location	Profession	Age
69.	Mr.	QS69		Male	Nairobi	Student	20

1. No. I did not experience, just saw its effects on TV, newspapers and heard from the radio.
2. A mindset that other tribes cannot produce a President! A mindset that when my tribe is in the presidency, we are safe.
3. Public education to reprogram tribal mentality and monopoly on the Presidency. Remove or do away with the imperial Presidency.
4. It is skewed towards the tribe(s) controlling the presidency.
5. No. Only when incited by politicians.
6. Presidential System is terrible. Parliamentary System is the Best.
7. Yes. Land issues – correct historical injustices relating to Grabbing of Community Land.
8. The Report findings touch Big names in the present leadership and past leaders.
9. Will address many issues that keep surfacing during the election.
10. Set bad examples of the imperial presidency.

#	Title	Name	16 August	Gender	Location	Profession	Age
70.	Ms.	RT70		Female	Nairobi	Farmer	45

1. Yes.
2. Tribalism. Corruption in Kenyan bodies responsible for free and fair elections.
3. Fighting against tribalism and holding free and fair elections.
4. Owning land in Kenya is, determined by the amount of money one owns.
5. No, they are not. It is positive since Kenyans are not violent.
6. Presidential system.
7. Fighting corruption.
8. Mostly is corruption since the significant people in Kenya are "Untouchables."
9. It helps Kenya fight corruption.
10. -.

#	Title	Name	16 August	Gender	Location	Profession	Age
71.	Mr.	SU71		Male	Nairobi	Lab Technician	45

1. I was not involved because I was in a calm part.
2. Our political leaders.
3. Leaders unite people and a sound election system to be set.
4. Very unfair.
5. As an ordinary citizen, I do not think they are. I think our leaders make us tribal by incitement in their communities.
6. Presidential System is better.
7. I heard that historical injustices would be solved.
8. Because they are very selfish since members of the government own almost everything in Kenya.
9. Nothing.
10. It is so bad and hurts our economy.

#	Title	Name	16 August	Gender	Location	Profession	Age
72.	Mr.	TV72		Male	Nairobi	-	30

1. It was the worst experience ever witnessed since independence. Many people were, killed like animals. I was a victim in my own home country. Never again do I want such an incident to occur

here in our country. I was not safe in my own house ever.

2. This violence is because the election is usually rigged, and people divide themselves into tribal regions.
3. The only solution is to have elections free and fair without corruption. Any party should not compromise the Independent Election and Boundaries Board Commission (IEBC).
4. The distribution of land resources is not equal as some have vast land, while others have none.
5. I do not think Kenyans are not that violent; they are, incited by their leaders on tribal lines.
6. Neither the Presidential nor Parliamentary Prime Minister System of governance can work in Kenya if the corruption is not eliminated, and no system can work.
7. Yes, I have heard about the TJRC - but I do not know what their findings were.
8. They do not implement these outcomes as recommended because the same people in government are the same people mentioned in the report or maybe their relatives, friends, or tribal men.
9. I do not know the short or long-term impact of the TJRC Final reports on Kenya.
10. The colonialists divided the country to their gain and left it in a shamble.

#	Title	Name 16 August	Gender	Location	Profession	Age
73.	Mr.	UX73	Male	Nairobi	Businessperson	37

1. I lost a childhood friend. Close friends and acquaintances were, affected especially in their childhood homes.
2. Political machinations and psychological manipulation by politicians, tribalism (negative)
3. Civic education of the masses. Strict laws regarding incitement by politicians. Demystifying "tribes."
4. It is unfair. Very few people own about 99 percent of arable land.
5. No, they are not. Only politicians cause violence.
6. Parliamentary Prime Minister System.
7. Uneven distribution of land was a significant issue. But - I don't remember the recommendations.
8. Because implementation would mean the very people who lead the country will be directly affected by their families.
9. None.
10. They are directly related. The handover was never implemented properly. We were, handed from the colonialist to another local oppressor.

#	Title	Name 16 August	Gender	Location	Profession	Age
74.	Ms.	VW74	Female	Nairobi	Student	21

1. It was the most frustrating experience ever. I cannot believe that I lost my friend.
2. It is tribalism and political difference among our leaders. The leaders, therefore, influence Kenyans or "*wananchi*." I think the leaders should put their political differences aside to make Kenya one and peaceful nation.
3. It minimizes disputes and differences within the people of Kenya.
4. No, I don't think so. Kenya is a peaceful country because our fore-fathers and its founders struggled for independence together.
5. Presidential system.
6. I think its main aim is to investigate the gross human rights violation. Kenyans are now able to exercise their rights.
7. No idea.
8. No idea.
9. -
10. The colonials left a legacy as people still do what they used to do.

#	Title	Name 16 August	Gender	Location	Profession	Age
75.	Ms.	WB75	Female	Nairobi	Salesperson	36

1. It still haunts me, so I better not talk about it.
2. Election rigging. We need election reforms as a solution.
3. The rich have it all and continue grabbing.
4. -
5. Parliamentary Prime Minister of governance.
6. There is nothing positive they have done that I can remember.
7. The Government is a victim, and it will never be able to publish anything they are accused of.
8. None.
9. -.
10. I have no idea.

#	Title	Name	16 August	Gender	Location	Profession	Age
75.	Ms.	WB75		Female	Nairobi	Salesperson	36

1. Yes, I can.
2. Tribalism incited by politicians.
3. Leaders ought to be at the forefront of uniting Kenyans despite their political differences.
4. It is quite unequally distributed. The few wealthy own more while the majority poor own less.
5. No, they are not intrinsically violent. Politicians use tribalism to incite Kenyans, which is a bad thing because it is in their favor.
6. Not sure.
7. Political Kingpins of before will always remain free despite the commission reports. Why?
8. Not very useful due to corruption.
9. Ensures accountability and helps stop injustices and crimes.
10. Nothing to say.

#	Title	Name	18 August	Gender	Location	Profession	Age
77.	Mr.	YA77		Male	Nairobi	Self-employed	31

1. It happens before and after politicians use incitement speech during their campaign time or period.
2. Corruption, incitement, and tribalism.
3. Unity among all Kenyans.
4. The system that is, used just by the corrupt officials is not favorable.
5. Yes, negative.
6. Parliamentary Prime Minister System of governance.
7. Those in power do not want to implement the report after receiving it.
8. Among the mentioned people in the report are in the government and may make others remember past deeds.
9. Collecting the committee report, the sitting government puts the report under the desk and forgets.
10. Both regimes look the same. Freedom of speech and movement improved after independence.

#	Title	Name 18 August	Gender	Location	Profession	Age
78.	Mr.	ZY78	Male	Nairobi	Freelance Driver	37

1. It was horrible and something I would not like to live to see happening again.
2. I think political indifferences and again incitement from leaders' remarks.
3. It was not fairly done. I think it is high time that something is done to eliminate landless people in their own country.
4. The bottom line of this is the leaders who are to blame. Honestly, Kenyans are very friendly to other Kenyans.
5. I think we need a system that would accommodate all in case someone loses on the other side.
6. I think the report is misguided since its outcome. We have not seen it in the public domain and action taken.
7. I think somebody is sleeping on the job somewhere and mistrust among the government officials itself.
8. Failure to act on the report means somebody is guilty somewhere and does not want its findings out. Governance discourse in Kenya is outdated.
9. -.
10. I think we are still tied in tribal settings even after so many years of independence.

#	Title	Name 18 August	Gender	Location	Profession	Age
79.	Ms.	AD79	Female	Nairobi	Nurse	38

1. Yes. It was traumatic.
2. Tribalism and gross discrimination.
3. It is not fair.
4. No.
5. Presidential system.
6. Gross Violation of Human Rights.
7. Corruption and nepotism.
8. N/A.
9. N/A
10. N/A

#	Title	Name 18 August	Gender	Location	Profession	Age
80.	Mr.	BE80	Male	Nairobi	Businessperson	26

1. It caused a lot of trauma, tensions, and being evicted from the place of residence.
2. An unfair electoral process produces frustrations among citizens and urges them to take the law into their own hands. Solution: Fair and credible electoral system.
3. The resources are unfairly distributed.
4. Yes. It is both positive and negative. Positive is that it gives people a chance to express themselves because they cannot express themselves or are, prevented from expressing themselves. It is negative because it leads to loss of life and property.
5. Yes, Kenya needs a Presidential System instead of a Parliamentary Prime minister System.
6. Yes, I have heard about (TJRC), but the findings and recommendations are not always implemented.
7. Some of the individuals adversely mentioned or implicated in the final reports may still be active in the government, impacting their image.
8. Nothing that I am aware of.
9. -.
10. Kenya is still under neo-colonialism, and foreigners still control the country in some other ways.

#	Title	Name 18 August	Gender	Location	Profession	Age
81.	Mr.	CF81	Male	Nairobi	-	27

1. No experience.
2. Tribalism and Poverty. Solution: Tolerance and appreciation of ethnic variety. Wealth creation.
3. The land is grabbed and is owned by the powerful elites.
4. No. It is positive because most of our issues are economically driven. One who can get suitable employment or business and self-sustaining will not be busy engaging in violence.
5. The presidential system works well. We need to limit the method of electing the President and empower other institutions to check on him/her.
6. No.
7. I believe some of his friends and business partners are implicated in them. He cannot risk political or business suicide to implement the report.
8. I do not think they would make an impact as there is no political will to implement them.
9. -.

10. The ruling elite inherited the colonial way of ruling, inequitable distribution of resources, and keeping power at any cost. The only way to change is for Kenyans to shift the mindset from tribal alliances to national unity.

#	Title	Name 18 August	Gender	Location	Profession	Age
82.	Ms.	DG82	Female	Nairobi	Tailor	30s

1. Yes. I experienced a lot of violence and killings.
2. Votes were, stolen, and there was no transparency in the electoral system.
3. Elections must be conducted in a very open and transparent manner. No stealing of votes or elections
4. Unfair distribution and women have been neglected.
5. Kenyans are peaceful but tribal politics and politicians.
6. Proportional Representation (PR) and the Presidential System is the best for Kenya.
7. No.
8. No.
9. -.
10. Kenya is far much better now we have developed a lot.

#	Title	Name 18 August	Gender	Location	Profession	Age
83.	Mr.	EH83	Male	Nairobi	Shoemaker	30s

1. Yes – a lot of impunity.
2. Lack of transparency in the electoral process.
3. The electoral process to be managed transparently.
4. In some regions, it's well distributed, but in most areas, No.
5. Kenyans are very peaceful, but they get violent when politically charged or incited, especially during and after elections.
6. PR Presidential System is the best.
7. Yes, the report has never been, implemented and we do not know its contents.
8. Deeper issues are affecting Kenyans that are in the report that can cause conflicts if not solved well.
9. It should be, shared, and recommendations implemented to benefit all.
10. It falls under positive and negative. But I think they would have stayed longer. We would be more developed than other African countries.

#	Title	Name 18 August	Gender	Location	Profession	Age
84.	Ms.	FI84	Female	Nairobi	Customer Service	46

1. I have none.
2. Tribalism and poverty. Poor people being deceived into fighting along ethnic lines (Divide and conquer).
3. Regional integration for tribe-less youth with a unified culture.
4. Inequalities – the rich getting richer.
5. No, they are triggered and lied to through political propaganda. Four years of peace show we are peaceful, and violence is triggered once every five years.
6. -.
7. Almost none. People in power control this system.
8. Bribery and corruption.
9. -.
10. Jomo Kenyatta initiated corruption and tribalism.

#	Title	Name 18 August	Gender	Location	Profession	Age
85.	Ms.	GJ85	Female	Nairobi	Retiree	60s

1. The cost of living rose. As a student, by then I was, affected academically.
2. Tribalism. Existence of multiple political parties.
3. I think there should be a few, even one political party. I am advocating for free and fair elections.
4. In Kenya, land problems are issues that are difficult to address because of land grabbers. Some people own big pieces of land others are squatters.
5. Yes.
6. Parliamentary Prime Minister System of governance at least the unsatisfied politician can have a government position for their people's interests.
7. Yes, I have but not read the recommendations.
8. Conflict of interest.
9. Short-term: the rise in the cost of living. Long term: Death and displacement of people from their places.
10. -

#	Title	Name	18 August	Gender	Location	Profession	Age
86.	Ms.	HK86		Female	Nairobi	Vendor	30s

1. The cost of living rises as the cost of food was hiked.
2. Tribalism. Kenyan's mentality to have their own in the position tags development instead of being based on someone's virtues.
3. Educating the masses on their rights and choosing competent leaders.
4. There is unequal distribution.
5. Yes. It is negative since Kenyans take everything based on their feelings rather than engaging the mind.
6. N/A.
7. Yes.
8. -.
9. Short term-economic crisis. Long term-Displacement of people.
10. During the colonial period, leadership was hereditary. It made post-independent Kenyans want their own as a president, MCA, etc.

#	Title	Name	18 August	Gender	Location	Profession	Age
87.	Mr.	IL87		Male	Nairobi	Customer Service	37

1. Yes.
2. Incitement by leaders and politicians.
3. For now, it is a fair electoral process. With time or years to come, it will be inexistent due to intermarriages among tribes.
4. The land was unfairly distributed from colonial times. There is too much corruption on land issues.
5. No, they are not. They only turn violent when incited.
6. The presidential system is just ok.
7. Heard about it, but I remember none.
8. Mostly because it does not favor individuals in the government.
9. I have no idea.
10. No difference. Just that the players, in this case, are different.

#	Title	Name	18 August	Gender	Location	Profession	Age
88.	Mr.	JM88		Male	Nairobi	Electrician	30s

1. Yes –it was the worst experience I have ever had.
2. Ethnic hatred and tribalism.
3. Professional politics, where once elected, can only be in the office for one term. Awareness creation and effectiveness of IEBC.
4. The land is not equally distributed; the rich have more and make “*Wanjiku*” have no say on what belongs to them.
5. Not at all. Tribalism and incitements during elections usually cause violence and other aspects.
6. Presidential System is the best, but it must be thoroughly checked.
7. Yes. Land injustices that go back to colonial days.
8. There are very deep core issues that, if not handled, can cause violence and even tribal clashes. Past injustices haven’t been resolved yet.
9. The long-term impact is implementation can bring healing and reconciliation. And if not, the wound of many affected people will never heal.
10. I wish the colonial system would have lasted for some time. Kenya would be one of the most developed countries. On the other hand, we have made progress.

#	Title	Name	18 August	Gender	Location	Profession	Age
89.	Mr.	KN89		Male	Nairobi	Staff	19

1. Our house help was killed in Eldoret.
2. Political leaders and ethnic clashes. Measures should be taken against political radicalization. Peace Mission.
3. Mostly beneficial to the affluent.
4. No. They are instigated to violence by political leaders.
5. Proportional representation (PR) and the Presidential System.
6. N/A.
7. Some findings may be biased.
8. N/A.
9. -.
10. They gave us a Constitution. It is the principal justice keeper as of now.

#	Title	Name	18 August	Gender	Location	Profession	Age
90.	Mr.	LO90		Male	Nairobi	Architecture	49

1. Yes, it was horrible.
2. Kura Kuibwa – Stealing the votes, Tribalism. Unequal distribution of resources. Fair and credible elections. Equal distribution of resources.
3. Not fair.
4. No. Kenyans are peaceful.
5. Presidential System.
6. No, I haven't heard.
7. They don't want the public to know the truth.
8. I don't know.
9. -.
10. It is better with a colonial legacy.

#	Title	Name	August 18	Gender	Location	Profession	Age
91.	Mr.	MP91		Male	Nairobi	Tour Guide	30

1. I was among the victim of 2007 Post-election violence in Kenya at Naivasha, and I learned that we should take our neighbor as your brother and sister without nepotism.
2. Tribalism. Only when we stop corruption in Kenya. Elections must be organized directly, and all tribes represented on the IEBC board.
3. No, because it is not fair.
4. -.
5. On my side, we have tried for the Presidential System and no changes. Maybe we can try Parliamentary Prime Minister System, but only if we can finish corruption and change our laws on corruption with a death sentence.
6. -.
7. Twice per term of the election in Kenya.
- 8.
9. -.
10. -.

#	Title	Name	18 August	Gender	Location	Profession	Age
92.	Mr.	NQ92		Male	Nairobi	Volunteer	27

1. The experience I have is through watching the TV about the violence that was going on in the country. It was a very saddening state-of-affairs.
2. I think that some leaders incite "wananchi" (citizens) against each other. Suddenly, a person you have considered your brother throughout your life starts seeing you as your enemy. I believe Kenyans should not let these politicians influence them in this manner, even if they give them money.
3. The distribution of land is uneven in Kenya.
4. Kenyans are not violent. The only problem comes where sometimes it seems that they can do anything for money. They are at the mercy of the highest bidder and can even turn against family and relationship just to get the cash. So, I think it is neither positive nor negative.
5. I feel the First Past the Post (FPTP) is appropriate for Kenya, and we only need the Presidential System.
6. I have heard about the TJRC, but since the reports have not yet been published. I have no other comments about them.
7. I have no idea why the Government of Kenya feels the need not to publish the reports.
8. No comment here.
9. -.
10. Kenya is still struggling with poor leadership even after 53 years after gaining independence.

#	Title	Name	18 August	Gender	Location	Profession	Age
93.	Mr.	OR93		Male	Nairobi	Freelance Driver	37

1. It was horrible, and something I would not live to see happening again.
2. I think political indifferences and again incitement from leaders' remarks.
3. It was not done fairly. I think it's time for reforms to end this predicament.
4. The bottom line of this is the leaders who are to blame. Honestly, Kenyans are very friendly to others.
5. I think we need a system that would accommodate all in case someone loses on the other side
6. I think the report is misguided since its outcome. We have not seen in public domain and action taken.
7. I think somebody is sleeping on the job somewhere and mistrust among the government officials

itself.

8. Failure to act on the report means somebody is guilty somewhere and does not want its findings out. Governance discourse in Kenya is outdated.
9. -.
10. I think we are still tied in tribal settings even after so many years of independence.

#	Title	Name	18 August	Gender	Location	Profession	Age
94.	Ms.		PS94	Female	Thika	Teacher	48

1. Yes, it was traumatic.
2. Tribalism. Unity
3. It is not fair.
4. No. Because we have different ethnic groups.
5. Presidential system.
6. Gross Violation of Human Rights.
7. Corruption and Favoritism.
8. N/A.
9. -.
10. N/A.

#	Title	Name	18 August	Gender	Location	Profession	Age
95.	Mr.		QT95	Male	Nairobi	Businessperson	26

1. It caused a lot of trauma, tensions, and the victims evicted from the place of residence.
2. An unfair electoral process that produces frustrations among the citizen, and urge them, to take the law into their own hands. The solution is to have a fair and credible electoral system.
3. The resources are unfairly distributed.
4. Yes. It is both positive and negative. Lively, it gives people a chance to express themselves because they cannot express themselves or are, prevented from expressing themselves. It is negative because it leads to loss of life and property.
5. Yes, Kenya needs a Presidential System instead of a Parliamentary Prime minister System.
6. Yes, I have heard about (TJRC), but the findings and recommendations are not always implemented.
7. Some of the individuals mentioned or implicated in the final reports may still serve in the government, affecting their image.

8. Nothing that I am aware of.
9. -.
10. Kenya is still under neo-colonialism, and foreigners still control the country in some other ways.

#	Title	Name 18 August	Gender	Location	Profession	Age
96.	Mr.	RU96	Male	Nairobi	-	27

1. No experience.
2. Tribalism and Poverty. Solution: Tolerance and appreciation of ethnic variety. Wealth creation.
3. The land is grabbed and owned by the powerful elite.
4. No. It is positive because most of our issues are economically driven. One who can get suitable employment or business and sustain himself won't be busy engaging in violence.
5. The presidential system works well. We need to limit the President's process and empower other institutions to check on him/her.
6. No.
7. I believe some of his friends and business partners are implicated in them. He cannot risk political or business suicide to implement the report.
8. I do not think they would make an impact as there is no political will to implement them.
9. -.
10. The ruling elite inherited the colonial way of ruling, inequitable distribution of resources, and keeping power at any cost. The only way to change is for Kenyans to shift the mindset from tribal alliances to national unity.

#	Title	Name 18 August	Gender	Location	Profession	Age
97.	Mr.	SV97	Male	Nairobi	Architecture	49

1. Yes, it was horrible.
2. "*Kura Kuibwa*" – Stealing the votes, Tribalism. Unequal distribution of resources. Fair and credible elections. Equal distribution of resources.
3. Not fair.
4. No. Kenyans are peaceful.
5. Presidential System.
6. No, I have not heard about it.
7. They don't want the public to know the truth.
8. I don't know.

9. -.

10. It is better with a colonial legacy.

#	Title	Name	18 August	Gender	Location	Profession	Age
98.	Mr.	TW98		Male	Nairobi	Hustler	37

1. It was devastating.

2. Tribalism and hate speech. Criminalize both to build national cohesion.

3. Ethnically biased and unfair.

4. Politicians incited Kenyans during and after the 2007/8 elections. So that is positive.

5. Proportional Representation and the Presidential System.

6. Yes.

7. Fear of ethnic violence and tribal clashes.

8. I do not know.

9. -.

10. The multi-party system has brought negative ethnicity and tribal politics in Kenya.

#	Title	Name	18 August	Gender	Location	Profession	Age
99.	Mr.	UX99		Male	Nairobi	Tour Guide	30

1. I was among the victims of the 2007 Post-election violence in Kenya at Naivasha. I learned to take your neighbor as your brother and sister and no nepotism.

2. Tribalism. Only when we stop corruption in Kenya. Elections must be, run directly, and all IEBC must be run with all tribes represented.

3. No. Because it is not fair.

4. -.

5. On my side, we have tried for the Presidential System and no changes. Maybe we can try Parliamentary Prime Minister System, but only if we can finish corruption and change our laws on corruption with a death sentence.

6. -.

7. Twice per term of the election in Kenya.

8. It affects those in leadership.

9. -.

10. -.

#	Title	Name	19 August	Gender	Location	Profession	Age
100.	Ms.	VX100		Female	Nairobi	Student	19

1. Yes.
2. Ethnicity and inequality.
3. Equality and an improved all-inclusive government.
4. The privileged are the most advantaged as compared to the poor.
5. No. It is positive because it makes a less volatile society.
6. FPTP. Parliamentary System of governance.
7. Yes.
8. -.
9. -.
10. Colonialism was a foreign ideology deposited on Kenyans rather post-colonial despite our short-coming.

#	Title	Name	20 August	Gender	Location	Profession	Age
101.	Mr.	YW101		Male	Nairobi	Student	22

1. It was a terrifying experience. Most of my friends and family members lost their lives and were, displaced.
2. The ethnic differences and the feeling of not being well represented politically.
3. Creating political positions accommodates the many aspiring leaders from different communities and ethnic groups to solve violence.
4. Most landowners in Kenya acquire them through dubious means and are the "well-connected" individuals politically.
5. They are intrinsically violent. It is harmful because once politicians influence them, violence erupts.
6. I think proportional representation is the best for Kenya, and the Presidential System should be maintained.
7. I have heard of the report but unaware of the aspects and outcomes.
8. I think most of those in the government will be the most affected by the reports' recommendations.
9. As mentioned above, with the contents of the report.
10. It is a source of ethnic hatred and differences in Kenya.

#	Title	Name 20 August	Gender	Location	Profession	Age
102.	Mr.	XA102	Male	Nairobi	Nurse	25

1. It was mostly terrifying since it was hard to fathom what is yet to come. The days were long, filled with anxiety, all hoping that we would not be, harmed. It was traumatic.
2. The main reason would be ethnic diversity and their affiliations to the related political parties. Also, election malpractices are a big reason.
3. Transparency in the election process would be a great way to start. Also, power-sharing means among the two best candidates would be a great way to curb post-election violence.
4. Land resources in Kenya are mostly unevenly distributed.
5. No, they are not unless provoked. It is negative since our politicians mostly promote their followers to gain popularity, which leads to conflict.
6. Proportional Representation would be the best as it enhances equality between the marginalized and popular parties. It needs a Presidential System of governance.
7. No. N/A.
8. N/A.
9. N/A.
10. I think the colonial legacy was better than Post-independence Kenya as this enhanced stabilization of the economy and agricultural productivity was high compared to the current situation.

#	Title	Name 20 August	Gender	Location	Profession	Age
103.	Mr.	YB103	Male	Nairobi	Computer Operator	40

1. Yes. (Traumatic).
2. Electoral malpractices and tribalism.
3. Fair elections and zero tribalism.
4. It depends on how much money you have.
5. Negative. Kenyans are not instrumentally violent, as they are only used to achieve specific personal goals.
6. Presidential System.
7. Yes. Reconciliation and building ethnic bridges.
8. Top leadership.
9. Short term: Peace unity and economic prowess. Long term: Election credibility.

10. Kenya could have made more strides developmentally if the colonial period continued for a while.

#	Title	Name	20 August	Gender	Location	Profession	Age
104.	Ms.	ZC104		Female	Nairobi	Student	25

1. I do not want to be reminded of the experience incident. It makes my heart sink. Please ask another question. "I was shot – an innocent woman!"
2. Tribal politics. Unclear election results that make it not credible.
3. Precise election results that are credible. Sharing of power to avoid winner-takes-all.
4. Not equally distributed due to injustices that go back to the colonial rule.
5. Positive – for post-election violence of 2007/8. Many top officials were involved in stoking ethnic hatred and direct or indirect incitement.
6. Proportional Representation and Parliamentary Prime Minister Systems of governance are better.
7. Yes. All I know to date is that they have not been implemented as the reports have many more deep-seated issues.
8. The truth about injustices meted on Kenyans and their beneficiaries. Victims of historical biases.
9. These are unresolved issues since 1963.
10. TJRC Final Reports need to be implemented for the general public good.
11. Kenya has made progress since its independence in political and economic as well as social sectors. Negative – colonial regime left us with inexperienced leaders.

#	Title	Name	20 August	Gender	Location	Profession	Age
105.	Mr.	AE105		Male	Nairobi	Student	23

1. It was a terrifying experience with many fear as the country seemed unstable from political and ethnic instances.
2. Greedy politicians believe that they must be in power to loot government funds. They may influence ethnic divisions to achieve their goals.
3. Acceptance of ethnic diversity and eradication of poverty.
4. It is unfairly, distributed with those in power being the primary beneficiaries.
5. Kenyans are not intrinsically violent. The country has recovered from previous violence, and forgiveness was shown in 2001, 1992, and 1996.
6. A presidential system allows the more substantial ethnic a bigger say in choosing the president.
7. I am not aware of the report findings and recommendations.
8. The main hindrance is impunity exercised by those in power and financial influence.

9. I am not aware.

10. Ethnicity, impunity, and corruption are driving the country backward.

#	Title	Name 22 August	Gender	Location	Profession	Age
106.	Ms.	BF106	Female	Nairobi	Fruit Vendor	59

1. There was no violence in our area, so I only saw it on TV.
2. The leaders are the ones who cause people to go against each other. Preach National Cohesion.
3. The top leaders use the excuse that the land is from their fathers, which does not explain the vast land areas they own.
4. No, they are not. Even now, after elections, Kenyans coexist and intermarry in harmony.
5. I think FPTP is better. I prefer the Presidential system because if we use the Prime Minister, people will be taxed more for him to be paid.
6. No.
7. N/A.
8. N/A.
9. N/A.
10. I think that more still needs to be done in terms of the election.

#	Title	Name 22 August	Gender	Location	Profession	Age
107.	Mr.	CG107	Male	Nairobi	Director	48

1. Yes, indirectly through family members affected. My sister lived in a hot spot in Kisumu for 12 years and had to be evicted and evacuated to Nairobi, then Gilgil. Every day this happened via plane as the roads were impassable. In Nairobi, Laini Saba (Kemri) was a hot spot too. There was a build-up of tension in the Slum areas, with men running wild depicting rural-urban and class differences. The police responded with bullets – worsening the already out of control situation. In Laini Saba – the Mungiki fighting area. International Commission of Jurists convened to support Kofi Annan’s initiative for peace. The commission of inquiry was set up supervised by George Kigoro (CEO) to prepare ICC cases. I was an intern with the International Commission for Transitional Justice (ICTJ) then. I helped in the drafting of the TJRC Act. I engaged with other stakeholders (Kathaura Kinoti (Past Chairman of ICTJ), Gad Awonda of Kenya National Chamber of Human Rights (KNCHR), and the Ministry of Justice (Minister Martha Karua) in drafting the Act.
2. Kenyans feel that elections are not accountable, credible, free, and fair. It is a big challenge. Elections do not translate into likable results. It is the same old story of votes ‘being stolen!’ How

governance is practiced in Kenya is also wanting. And the same comedy of a vicious cycle every five years. Hatred builds up, instigations and incitements explode as violence. Politics of exclusion means no development. Promotes marginalization, exclusion, and trigger more violence. It becomes a 'fire-ball' in the hands of erstwhile politicians out to settle scores for political mileage. They approach and hire militias or hooligans, given the abundant supply of disgruntled jobless youth as they seek votes. However, once they achieve their goals, they fail to influence change as they savor their comfort zones' power and privileges, as they decay while stuck in power. Part of the expectations: Key issues hinge on historical injustices remain unresolved, which triggers more violence and alienations, which promote socio-economic and political exclusions as locals clamor for their native ancestral land. Rift Valley and Luo Nyanza are part of the mainstream, while Northeast and the Coast are socio-economically neglected. Lastly is security and the manner-in-which it is used to control violence. It increases violence. The armed personnel uses live bullets on unarmed citizens to control violence, and the reaction is more violent.

3. Better governance can maintain and restore peace. Ensure that resources are fairly and equally distributed. The manner-in-which Kenya is governed is also flawed. The Presidency is the center of power compared with a Parliamentary System where power is shared and delegated, with sound checks and balances. The latter might be better to serve our multiple interests to anchor good governance. There is a need for reforms in the Security Sector to provide a safe environment and room for dialog to allow contestability with impartiality. Multiparty state: Article 4 of the Constitution is very clear on a multiparty society. Take a step back to serve all citizens equally and fairly. Create more opportunities to benefit economically, marginalized areas for better economic governance.
4. Land resources are not fairly distributed since independence. Individuals have grabbed arable land comprising about (16-20 percent). Both Colonial and Neocolonial: Common man's land resource is quite restrained and unproductive shared by squatters. It makes land a rich source of conflict and the reason for poverty. There is a need to rethink our land redistribution policy and invest more in the agricultural sector, supporting most populace. To improve output, modern agricultural technology is indispensable. Redistribution can go further than what Zimbabwe or South Africa did to be sustainable and convert more land for Agribusiness. The Ndung'u Report cites the "willing buyer and willing seller" as the root cause of Kenya's land problems. The Land adjudication and redistribution under McKenzie was scuttled with insider dealings that benefitted the Kenyatta's and their cronies. Land was given to Kikuyus and big land buying cooperatives. They bought out Pastoral communities' land – the communal Masailand and former settlers' land in the Rift Valley for redistribution under the Lancaster System. This displaced many local Kalenjins and dispersed many Kikuyus who came to settle in as outsiders supported by the government. Hence, this is a persistent problem that needs a permanent holistic solution.

5. No, I don't think they are. Corruption, violence, and nepotism cause violence. Understanding violence does not bring change. A political dialog is necessary, as violence is destructive.
6. (i) The First Past the Post (FPTP) devolved at the County level. Members of Parliament (MP) level. Presidential System in Kenya (50 percent +1 vote) is authoritarian as it locks out 49 percent losers. Reaping some benefits, 20 percent in the Moi Era was ethnic. (ii) It is not about elections but its integrity: Peace cannot be achieved if the quality of elections is poor. The status quo or those in power view public office, as a means, to wealth and the gullible locals back it. No amount of reform can change the culture of theft. We must nurture a value system to infuse accountability and integrity in our electoral system. Article 10 of the Constitution on Electoral Law is very candid on this legislation focusing on a Value System. The (50 percent + 1 vote and 49 percent left out) is a continuous violence recipe. It not only excludes but also corrupts the insiders.
7. Yes. Findings and outcomes. Various reparations and recommendations for compensations and Police reforms. The political elite must promote and make civic education compulsory to educate the masses about their rights and their part in the social contract with the leaders they elect. These can fight and weed out leaders who are corrupt or incompetent or both.
8. Adversely mentioned, leaders and their cronies who are still in power impede the implementation of the report.
9. Short term: The reports are very detailed documentation of human rights injustices, influencing culture by discouraging misconduct. It leaves a legacy on the President. It has reshaped the politics in Kenya by reflecting its past conduct and illuminating the future. The long-term impact remains to be seen when it is well debated and implemented as recommended.
10. Colonial legacy is both positive and negative. Education: Global community, healthcare, and governance.

Negative: Due to the (Divide and rule policy Sessional Paper Number 10) resulted in huge disparities and inequalities, loss of land-means of production, economic division, and exploitation. Has to be looked upon in both ways as Post-independence Kenya has to reckon with these impacts. Equitable distribution of resources is necessary for equitable development. Security Sector: Inherited legacies of the past linger on with a local status quo. Spirit and some modalities change some aspects. Perfected the art of impunity as the New generation has blown it out of proportions to ultimate realities. They are getting the (Ruto 2023) Presidential election bid ambition moving. A fake and vague value system must change. Electing hooligans, thugs, and bandits or violence mongers as new leaders – in the likes of the "Sonko" generation of new emerging leadership promotes violence. Reinforcing that salvation is a suicidal future. A better system is needed, not of land grabbers. Promote and safeguard the Constitution. Continuous civic education to empower the public by implanting it in peoples' heads can question and challenge leaders by demanding better governance. This is Economic constipation edging towards - Build Operate and

Transfer (BOT).

#	Title	Name 22 August	Gender	Location	Profession	Age
108.	Mr.	DH108	Male	Nairobi	Quantity Surveyor	28

1. During this period, I was upcountry in Kakamega County, where I was not directly affected by the violence. However, on my way back to Nairobi, I saw the destruction after the violence.
2. I think the main issues arise from issues to do with historical land injustices.
3. We must deal with these injustices in a fair and just manner.
4. As it stands, resource distribution is concentrated to an elite few, with the remaining vast majority left to fight/acquire the remaining few portions.
5. Kenyans are not violent. However, politicians have found ways to use contentious issues to fuel hate and incite violence.
6. A Presidential system will not work in Kenya because resources will be taken from the rest of the country and concentrate on a few.
7. -.
8. There is an adverse mention of high-profile personalities in the report who use their influence to have the report's findings rubbished.
9. -.
10. -.

#	Title	Name 22 August	Gender	Location	Profession	Age
109.	Ms.	EI109	Female	Nairobi	Retiree	60s

1. No movements to get supplies with family separate – some in Nairobi and others upcountry.
2. Mistrust of the leadership. Uncertainty how polls are conducted and tribal ill feelings cause violence.
3. Civic education is necessary. Equal representation and distribution of opportunities can be solutions.
4. Land ownership needs to be respected and the estates to be left for the production of food.
5. No. They react when faced with situations they feel are unfair.
6. Dispersal of power and spreading it out to many stakeholders in a Parliamentary system is better.
7. Yes. Land issues stick out. I know about torture and detention without trial and extra-judicial killings.
8. The culprits the implementers at ransom, and some implementers are involved directly.

9. Short-term – cooling of tempers and stopped hostility. Long-term –allow better governance for a rich country.
10. No blame goes for Colonialism. We are responsible for our actions and should work to make Kenya better than we found it.

#	Title	Name 22 August	Gender	Location	Profession	Age
110.	Mr.	FJ110	Male	Nairobi	Matatu Owner	38

1. Extremely violent.
2. Tribalism. Unity
3. Ethnically biased.
4. No. reason is corruption.
5. Presidential and democracy.
6. Bad governance
7. Corruption.
8. Impunity.
9. -.
10. Divide and rule. Nothing changed.

#	Title	Name 22 August	Gender	Location	Profession	Age
111.	Mr.	GK111	Male	Nairobi	Civil Servant	54

1. It was a terrible time. Since I lived in the clashes' epicenter, my family was displaced and had to seek refuge in a church for three weeks. I lost a lot of money and property. It is still traumatic.
2. Negative ethnicity and high-octane politics with poor governance lead to a lack of high national ideals and corruption.
3. Stable party structures, more influential courts, independent and trustworthy police service, and a duly constituted election body.
4. The land is not adequately distributed. It is also commoditized. People sell land to get rich, not for production.
5. No. In normal times, Kenyans do not fight. However, at election time they are, mobilized ethnically.
6. A mix of two seemed to serve Kenyans better.
7. None because the report was incorrectly released and doctored as well.
8. No one is sure that the report reflects the facts that were investigated and unearthed.

9. None. I think the process must be repeated for integrity purposes.
10. We should have continued with the institutions we inherited for a little while longer. They were well structured and devoid of discrimination/nepotism.

#	Title	Name 23 August	Gender	Location	Profession	Age
112.	Mr.	HL112	Male	Nairobi	Security Guard	31

1. Post-election violence happens during and after elections when politicians use hate speech before and after their campaigns.
2. Tribalism, incitement, and corruption.
3. Unity among the people of the entire nation.
4. Through the system that has been used just by the corrupt officials is not quite well.
5. Yes, negative.
6. A Parliamentary Prime Minister System of governance is better.
7. Nothing, because the authority doesn't care to implement the report after receiving it
8. Some of the mentioned people in the report are in the government and may make others remember evil deeds done to them by past regimes.
9. After collecting the reports, the sitting government is guilty of hiding them.
10. Both regimes are not transparent, even with freedom of speech in post-independence Kenya.

#	Title	Name 23 August	Gender	Location	Profession	Age
113.	Mr.	IM113	Male	Nairobi	Security Guard	27

1. It happened during and after elections because of negative ethnicity.
2. Tribalism, incitement, and corruption cause violence.
3. National unity is the solution.
4. Unfair distribution of land resources is the cause of violence.
5. Yes, negative.
6. A Parliamentary Prime Minister System of governance is better.
7. No.
8. Those mentioned by the report are still in power.
9. The report, once received, is confiscated and put away from public scrutiny.
10. It influenced post-colonial outcomes.

#	Title	Name 23 August	Gender	Location	Profession	Age
114.	Mr.	JN114	Male	Nairobi	Security Guard	48

1. Traumatic as it always happens during and after disputed Presidential elections.
2. Negative ethnicity and corruption.
3. Civic education focusing on peaceful coexistence and harmony.
4. Biased land redistribution.
5. Yes, negative.
6. A Parliamentary Prime Minister System of governance.
7. No.
8. Conflicting interests.
9. Shelving it and forgetting about it hence no impact.
10. The colonial legacy was terrible, but we have failed to correct those anomalies after independence.

#	Title	Name 24 August	Gender	Location	Profession	Age
115.	Mr.	KO115	Male	Nairobi	Security Guard	28

1. The election was not fairly conducted, and there was a lot of corruption among the officials conducting the election.
2. Corruption and favoritism.
3. Practice justice and unity.
4. The land distribution has been allocated through corruption and favoritism.
5. Yes: Negative: It affects the economy of Kenya and the destruction of properties.
6. The seat will bring temporariness among the government.
7. -
8. -
9. -
10. -

#	Title	Name 24 August	Gender	Location	Profession	Age
116.	Mr.	LP116	Male	Nairobi	Security Guard	48

1. It was a horrible experience that no one wants to re-visit.
2. Hate speech, negative ethnicity, and corruption.
3. National cohesion and civic education.
4. Illegitimate redistribution of land resources breeds hatred.
5. Yes. Negative. Tribal fights over land resources arise.
6. No. The money to be allocated to the Prime Minister should be allocated to the citizens
7. -.
8. -.
9. -.
10. -.

#	Title	Name 24 August	Gender	Location	Profession	Age
117.	Dr.	MQ117	Male	Njoro	Associate Lecturer	53

1. I was not directly affected by post-election violence. However, I was anxious about my relatives' and friends' safety who resided in areas where the conflict was happening/happened. I had to move my child from a boarding school in an area hit by clashes on schooling. It was out of fear of what could happen to my child. There was the financial implication for that transfer.
2. Post-election violence in Kenya is caused by:
 - Low levels of education meaning that the electorate does not understand that life should go on after the election
 - Incitement by political leaders
 - Poverty: Some people have nothing to lose, and during the chaos that follows, they can benefit from the chaos
 - Tribalism creates a sense of not belonging and stereotyping others.
 - Land which is seen as the sole opportunity for a successful life
 - Lack of economic opportunities
 - Rigging of elections
 - Historical injustices which have for long been swept under the carpet
 - Nepotism by the elite thus creating an unequal distribution of national resources
 - Failure of the government to stick to the rule of law

- Corruption: The perceived winning class hogs resources that would help the poor in society
3. Solutions to Post-election violence in Kenya can include:
 - Provide an education that promotes national cohesion and patriotism
Strict adherence to the rule of law, including the incarceration of leaders who incite citizens
 - Create economic opportunities that uplift all sections of society so that no community feels left out
 - Accelerate industrial development as opposed to reliance on land as a source of sustenance.
 - Eliminate all forms of electoral fraud.
 - Address any historical injustices that have remained unaddressed over the decades
Adhere to the rule of law.
 - Weaken the powers of the president and vest those powers in parliament or have a six-man presidency, which is rotational every two years.
 - Rotational presidency so that no community feels left out of top leadership
 - Arrest corruption and promote nationalism
 4. I think the distribution of land resources in Kenya is unfair: Land in Kenya should mostly be considered a national resource. Those with huge chunks of land should be encouraged to surrender unused land to the state. The land can be, used for conservation or agricultural production to assure food security.
 5. I do not think so. Most Kenyans are religious. Religion advocates for peace and most are for peace.
 6. Proportional representation is attractive to me. A parliamentary- Prime minister System would be better, in my opinion.
 7. Yes, I have. That all past land, related injustices should be dispensed with that past political murders /assassinations must be solved for the nation to heal.
 8. I think some of the things that may have been written in the reports touch on the current ruling class, and thus there is a need to hide the truth. For example, land grabbing in Kenya has not been done by the common man but by the elites. Correcting it means owning up and some discomfort.
 9. Short term: There will be a suspicion that will not die down whenever the reports are mentioned
Long term: The Kenya community will continue to be fragmented on national matters so long as the truth does not come out and appropriate reparations made
 10. Colonialists did not leave behind a united nation, and this hounds the state to date. However,

colonialist in the distribution of development programs were fairer. The outcome of the omission of colonial rule is that the nation remains divided.

#	Title	Name	24 August	Gender	Location	Profession	Age
118.	Mr.	NR118		Male	Nairobi	HR Officer	53

1. It was a bad experience. Some of the people were killed in my village - particularly Kikuyus who had settled in western Kenya. Many roadblocks were erected on various roads. One could not travel from Nairobi to western or vice versa without a police escort, organized several days after the violence erupted. I was unable to travel to Busia in western Kenya to pick my family who had traveled there due to the 'road-blocks.' Shops and buildings were burnt, and we had a shortage of foodstuffs, fuel, and even communication was difficult since there were no scratch cards for mobile communication.
2. The violence was spontaneous. The ODM party, competing for power with Kibaki's party (PNU), felt they had been robbed of their well-deserved win or, as they put it, stolen election. There were deep-seated grievances that included nepotism, tribalism by the Kikuyu ruling class, the rising cost of living, unemployment, cronyism, corruption, etc.
3. Having a fair playing field when it comes to conducting elections is positive. Streamlining the voters register by observing strict voting rules and securing the data and servers from tampering and manipulation. Fair distribution of employment opportunities, addressing the land issues in Kenya, and ensuring landowners have title deeds. We should have a referendum to decide on election rules and regulations.
4. It is unfairly distributed. The majority of Kenyans are crowded in some places, and the land is highly fragmented, particularly in western Kenya, due to the high population. A few rich people and the ruling class have grabbed most of the land. The land tenure should also change from communal in some places to the individual, and land titles be issued.
5. It depends on where someone comes from. The Luhya are generally peaceful, whereas the Nandi are hostile. The Kikuyu are un-accommodative to other tribes. So, we cannot say that Kenyans are intrinsically violent. Majorities are peaceful, and that is positive since it fosters coexistence and national cohesion.
6. Kenya requires a parliamentary system with a president and prime minister. The current scenario is the winner takes it all and ends up forming government with his point men and cronies excluding all others from the national cake. The losing party has no say in the country's political affairs, and they are often subdued in their role as the opposition.
7. Yes, I have heard about TJRC. I remember their recommendation that the five elections should

not be held on the same day. We need to review election rules, reduce constituencies, review electoral boundaries, review land tenure, etc.

8. Lack of political goodwill from the political leadership, fear that the land the political leaders grabbed maybe, taken away in case of redistribution.
9. Long term will change the voting system and electoral rules, reconciliation and national healing from post-election violence, Promotion of national cohesion, and healing. In contrast, the short term will be addressing injustices inherited from the colonial masters where a few capitalists have grabbed everything.
10. Most of the problems bedeviling the country have a basis from the colonial times or era. The land problem started when the settlers pushed the locals from the fertile lands, e.g., the Kenya highlands. The colonialists also introduced local enclaves where the natives were confined and introduced African reserves, *kipande* (Identity cards), and the current discrimination in the distribution of resources where we have the haves and have nots. The ruling class still dominates the political arena up to today, and the majority of Kenyans who were misplaced do not have title deeds up to now.

#	Title	Name	24 August	Gender	Location	Profession	Age
119.	Mr.	OS119		Male	Houston TX US	Civil Servant	54

1. I do not have any first-hand experience as I was not in Kenya during the time
2. A variety of factors but primarily a very fragmented population divided primarily by tribe; lack of well-established institutions (Institutions that can offer stability in times of crises like the Police force, the electoral commission are not indeed, independent and are open to political manipulation). There are also very few if any, neutral arbiter(s) that can mediate internal conflicts in the country
3. The entrenchment of strong, independent institutions, free from political manipulation and staffed by competent individuals, ensures integrity.
4. Corruption has been rife in the distribution of land resources since the dawn of independence. The political elite has been at the forefront of this land corruption. The passage of time has not improved the situation and has only made it worse.
5. I don't believe Kenyans are intrinsically violent. Still, many are easily manipulated by political rhetoric. This manipulation is caused by a-number-of factors that include poverty, lack of education, and strong tribal sentiments in political decision-making processes.
6. The winner-takes-all (FPTP) system has been the root of the political turmoil in Kenya. The parliamentary system has the potential to lessen the violence and promote stronger national

cohesion

7. I am vaguely familiar with the TJRC reports.
8. Probably the fear that the implementation of the provisions will negatively impact the government in power
9. -.
10. Both have been disappointing. That is to be expected of any colonial legacy but, the post-independence outcome has been marked by inept leadership, deep-rooted corruption, and an uninformed and unenlightened electorate.

#	Title	Name	24 August	Gender	Location	Profession	Age
120.	Mr.	PT120		Male	Nairobi	Student	37

1. It was sad and traumatic but took place when I was out of the country.
2. Negative ethnicity preyed on by erratic and toxic "terrorists" as politicians on gullible citizens inflaming animosities based on socio-economic and geopolitical inequalities. Bad governance and decaying leaders, state-led conspiracy, flawed electoral process, warped democracy in winner-takes-it all outcomes, and outrageous competition for public goods.
3. Standardize the playground for contestability to allow amicable coexistence in a multiethnic arena. Utilize diversity as a political resource to check on negative ethnicity. Strengthen institutions legally fight negative ethnicity by disqualifying negative ethnicity practitioners by withdrawing funding and outlawing their political activities. Educate civilians about their legal options and human rights. If the presidency is the problem and the process of electing one is violence-prone – then calling for a national referendum to abolish that office one and for all to allow for the adoption of a merit-based system. Establishing veto-empowered, constitutionally protected independent institutions can supervise and punish the presidency or executive as a legal power broker. Proportional representation safeguarding minority rights is also practical. Implementing the truth commission final reports and other earlier reports on violence and social order holistically and whole-heartedly can be the silver bullet.
4. The sharing and distribution of public and physical resources are lopsided. Independence did not solve inequalities. It was a tool used to bolster new exploiters. Looters or plunderers of public goods and resources have institutionalized impunity. Politicians and their ilk are overcompensated with light output - if any. They consume more than they ever put in as merchants of plunder. Withdrawing all their remunerations to bare participation mere minimal could help restore sanity in their ranks. Resources can be redistributed fairly under better governance and strong institutions. The current status quo cannot reform itself to achieve that threshold.
5. No. Kenyans are very peaceful and quite gullible to negative ethnicity propagated by corrupt leaders with no national appeal. Kenyans DNA is not, violence inbuilt. Hell-bent and toxic politicians with exclusionism biases create and manage violence while exploiting the public to

advance their decaying politics. It is positive as a temporary truce and peaceful co-existing returns after the elections. It is negative given the loss of life, destruction of lives, and properties. The associated trauma leads to mistrust of the government and its institutions as agents or conduits of violence.

6. Parliamentary Prime Minister System can save Kenya from this predicament. Kenya has tried both systems with mixed results. Parliamentary Prime Minister System was short-lived, short-changed, captured, and discarded. The 2010 Draft Constitution advocated for it but was, thrown under the bus. Abolishing the Presidency or having an appointed "ceremonial figure" in an executive presidency can remove the violence associated with an elective process that stalks the whole exercise. Electing parties can stem the rot in and decay in Kenyan politics. Proportional Representation (PR) with veto-power can help bolster multi-party governance in Kenya. Trimming the surplus politicians and their terms in office can deliver a slim and efficient government.
7. Yes. Recommendations based on hard evidence against violence, electoral reforms (not holding all the six elections in one day), better governance, corruption, impunity and reducing inequalities, etc., call for immediate implementation to show that progress is underway.
8. The government of the day is implicated in most of the findings and outcomes. Therefore, the government is an obstacle to reforms, and wholeheartedly lacks the ability and capacity to implement the outcomes. The impartiality of government officials and their associated business entities adversely mentioned by the reports are a significant stumbling block in its holistic adoption.
9. Short term: Kenyans are in the 'know' of the human rights abuse and crimes committed by their government. Long term: There is an abundance of information documenting all the atrocities and related ills for the younger and future generations to avoid similar tragedies. It should be, made a teaching material for schools to fight impunity for national harmony and cohesion.
10. The colonialists were terrible, to say the least. They ransacked, looted, plundered, and used violence as a tool to divide and rule. It socialized future generations in that art. Learned habits are hard to discard, and independent Kenya did not strive to steer clear from that discourse. Independent Kenya inherited that art and perfected it in creating new elites with unquenchable binge on accumulating public goods as personal wealth with impunity. The advent of multi-party democracy transformed the haves and have-nots in precariously sustained inequality relations in the sharing and distribution of public goods. Elections always provide a fertile ground stroking these inequalities to sustain a trapped decaying status quo creating an abys cycle of violence.

Appendices

2. Truth, Justice, and Reconciliation Commission Final Report 2013 (Abridged Version), Paper 10. digitalcommons.law.seattleu.edu/tjrc/10

Seattle University School of Law
Seattle University School of Law Digital Commons

The Final Report of the Truth Justice and
Reconciliation Commission of Kenya (2013)

Law School Archives

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TJRC Report (Abridged Version)

Truth, Justice and Reconciliation Commission

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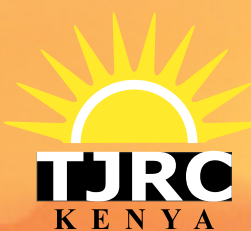


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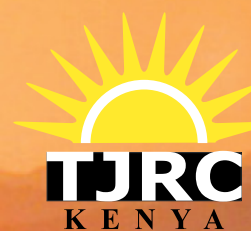
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TRUTH, JUSTICE AND RECONCILIATION COMMISSION

Promoting Peace, Justice, National Unity, Dignity, Healing and Reconciliation Among The People of Kenya



REPORT OF THE TRUTH, JUSTICE AND RECONCILIATION COMMISSION

ABRIDGED VERSION

INTRODUCTION

The Truth, Justice and Reconciliation Commission (TJRC or the Commission) was established in the wake of the tragic events of the 2007/2008 Post-Election Violence (PEV).

The Commission has produced its Report as the culmination of a process that lasted four years and took the Commission to all regions of the country.

The violence, bloodshed and destruction of the PEV shocked Kenyans into the realisation that their nation, long considered an island of peace and tranquillity, remained deeply divided since independence from British colonial rule in December 1963. It prompted a fresh opportunity for the country to examine the negative practices of the past four and half decades that contributed to a state that still holds sway in Kenya: normalization and institutionalization of gross violation of human rights, abuse of power and misuse of public office.

In the aftermath of the 2007/2008 PEV, the Kenya National Dialogue and Reconciliation (KNDR) process resulted in the adoption of among others, the Agreement on the Principles of Partnership of the Coalition Government (Coalition Agreement) on the basis of which, the National Assembly enacted the National Accord and Reconciliation Act on 18 March 2008. The National Accord paved the way for the establishment of a coalition government with a President, Prime Minister and two Deputy Prime Ministers.

As part of the KNDR process, an agreement for the establishment of a truth, justice and reconciliation commission (TJRC Agreement) was also adopted. Pursuant to the TJRC Agreement, the National Assembly enacted the Truth, Justice and Reconciliation Act (TJR Act) on 23 October 2008. The Act received Presidential Assent on 28 November 2008 and came into operation on 17 March 2009.

In terms of the TJR Act, the Commission was inaugurated on 3 August 2009. The broad mandate of the Commission was to inquire into gross violation of human rights and historical injustices that occurred in Kenya from 12 December 1963 when Kenya became independent to 28 February 2008 when the Coalition Agreement was signed.

METHODOLOGY AND PROCESS

The work of the Commission was structured into four mutual and overlapping phases: statement-taking, research and investigations, hearings and report writing. Civic education was conducted alongside these activities.

Statement taking: The Commission designed a Statement Form to capture information from witnesses. The Statement Form was designed to ensure the gathering of as much information as possible about gross violations of human rights. The Commission undertook an initial statement taking exercise in Mt Elgon in May and June 2010. This was a pilot project which the Commission used to get feedback from victims and other witnesses about the statement-taking methodology, including the Statement Form. The nation-wide statement taking exercise was officially launched on 9 September 2010 and lasted five months. It was anticipated that some individuals would be unwilling or unable to record statements during the formal statement taking exercise and so the Commission, continued to record and receive statements and memoranda at its offices and during individual and thematic hearings.

A special Children's Statement-Taking Form was also prepared in consultation with child protection agencies and was pre-tested in October 2011 to assess its suitability and effectiveness in taking statements from children. The draft was subsequently revised to incorporate insights from the pre-testing exercise. Statement takers were then guided on the use of the Children's Statement Form before they were deployed to take statements from children for a period of one month. A total of 996 statements were collected from children: 500 from boys and 496 from girls. On the basis of these statements, the Commission subsequently organised a thematic hearing for children in December 2011, details of which are discussed later in this Chapter.

Research and investigations:

The Commission established an Investigation Department which was responsible for identifying and interviewing witnesses whose individual stories would contribute to the historical narrative of gross violations of human rights in the country. The role of the Department also extended to the collection and analysis of relevant documentary and other forms of evidence. Investigations were conducted in three main phases: before, during and after the hearings.

Hearings: The Commission started its hearings in mid-April 2011 in Garissa and concluded at the beginning of April 2012 in Nairobi. The Commission conducted three kinds of hearings: individual hearings, women's hearings and thematic hearings.

Individual hearings focused on the experience of individuals in relation to gross violation of human rights. Testimony was heard from individuals whose rights had been violated, as well as from those who either had knowledge of or allegedly participated in acts that resulted in the violations.

Women's hearings were exclusively attended by women. The hearings were framed as 'conversations with women'. They were designed to and were safe spaces where women could freely talk about violations that were specific to them, thematic hearings that focused on specific violations, events, or groups of victims.

Thematic hearings were meant to elicit public testimony on specific themes that are of particular importance in Kenya's pursuit for truth, justice and reconciliation. The Commission held a total of 14 thematic hearings focusing on diverse subjects.

Report writing: The final product of the Commission is a Report which was compiled in terms of section 5(j) and 48(2) of the TJR Act. These sections essentially tasked the Commission to compile a report providing as comprehensive as possible an account of its activities and findings together with recommendations on measures to prevent the future occurrence of violations. Details of the Report are provided below.

THE REPORT

The Report is structured into four volumes:

Volume I provides an account of how the Commission was formed, how it interpreted its mandate and conducted its work, and the challenges it faced in carrying out its mandate.

Volume II is further divided into three sub-volumes. **Volume IIA** focuses on the major violations of bodily integrity rights that were committed during the Commission's mandate period. These are: unlawful killings and enforced disappearances (that is, massacres, extra-judicial killings, and political assassinations); unlawful detentions, torture and ill-treatment; and sexual violence. While much of this volume is focused on violations directly committed by the state, it also includes descriptions of killings, severe injury and violence, sexual violence, detention, and other similar violations committed by non-state actors.

Volume IIB focuses on some of the unique parts of the Commission's mandate concerning historical injustices in Kenya. The volume has three chapters: land and conflict; economic marginalization and violation of socio-economic rights; and economic crimes and grand corruption.

Volume IIC focuses on the stories and narratives of groups of people that are provided special protection under domestic and international law because of a history of discrimination and oppression. These are: women, children and minority and indigenous people. Historically members of these groups were not recognized as having the same rights as others. The Commission established a Special Support Unit that focused on, among other things, ensuring that the Commission's activities adequately addressed and were accessible to historically vulnerable groups. The Commission also held thematic hearings that focused not only on the plight and rights of the aforementioned three groups but also the experiences of persons with disabilities (PWDs). Indeed, the Commission did put into place specific procedures in its statement

taking exercise and public hearings to accommodate persons with disabilities. The experiences of PWDs are reflected across the various Chapters of this Volume.

Volume III focuses on issues relating to national unity and reconciliation in Kenya. The Commission was mandated to inquire into the causes of ethnic tension and make recommendations on the promotion of healing, reconciliation and coexistence among ethnic communities.

The final volume of the Report - **Volume IV** - provides a catalogue of the findings and recommendations of the Commission. Included in this volume is the Commission's recommendation relating to the implementation mechanism and reparation framework.

THEMATIC OVERVIEWS

Political History: A general outline

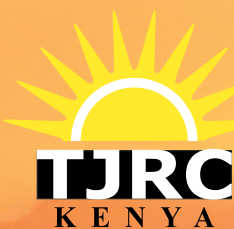
In order to contextualise gross violations of human rights and historical injustices that occurred during the mandate period, the Commission divided the political history of Kenya into four distinct epochs. These epochs correspond with the four political administrations that governed the country prior to and during the Commission's mandate period:

- British colonial era (1895 to 1963);
- President Jomo Kenyatta's era (1963 to 1978);
- President Daniel arap Moi's era (1978 to 2002); and
- President Mwai Kibaki's era (2002 to 2008).

A review of the colonial period by the Commission revealed a litany of offences and atrocities committed by the British administration against the people now known as Kenyans. These violations included massacres, torture, arbitrary detention, and sexual violence, most of which were committed, initially, when the British government forced its authority on the local population, and later, when it violently sought to quash the Mau Mau rebellion. From 1952 onwards, the British administration established detention camps in which suspected members of Mau Mau and/or their sympathisers were tortured and ill-treated. Others were detained in restricted villages where they were used as forced labour under harsh and inhuman or degrading conditions. The colonial government was also responsible for massive displacement of thousands of people from their lands. More than 2 million hectares of land were taken away from the original inhabitants. This displacement created the conflicts over land that remain the cause and driver of conflict and ethnic tension in Kenya today.

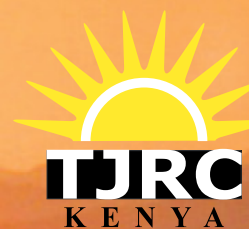
On 12 December 1963, Kenya gained independence from British rule. Independence came with high expectations and hopes. It signaled an end to practices that had been institutionalised under British rule; the end of racial segregation, detention camps, torture, massacres, unlawful killings and similar practices that had been institutionalised under colonialism. To the citizens of a new free nation, independence meant the return to lands from which they had been forcibly evicted and of which they had been dispossessed in order to pave the way for British settlers. It was supposed to be the beginning of political and economic emancipation; the start of respect for the rule of law, human rights and dignity and the laying down of the foundations and tenets of democracy. Many envisioned a newly invigorated, united nation.

These expectations never materialized. President Kenyatta made no substantial changes to the structure of the state. Nor did he commit to or put in place mechanisms to redress the land problems that had been created by the colonial administration. Instead, President Kenyatta embarked on consolidating his power. Under his administration, any political dissent was met with quick rebuke and reprisals in effect forcing the populace into a silence of fear. Reprisals included harassment, various forms of intimidation, attacks on the person, detention and even assassination. Many fled into exile for fear of their lives and to avoid the heavy hand of the Kenyatta administration. It was also during President Kenyatta's administration that Kenya waged a war in northern Kenya to quash a desire by residents of this region to secede to Somalia. This war has come to be popularly known as the 'Shifta War'. State security agencies committed various forms of atrocities during the Shifta War and the Commission has dedicated a chapter in this Report



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that documents those atrocities.

Under President Moi the status quo remained for a couple of years before becoming notably worse after the coup attempt of 1 August 1982. In the aftermath of the coup, members of the Kenya Air Force were rounded up and transported to prison facilities and other locations where they were tortured and subjected to inhuman and degrading treatment.

Thereafter, President Moi stepped up measures aimed at controlling the state and further consolidating his power. He filled government positions with loyalists, mainly from his own Kalenjin community. His government, which had in June 1982, amended the constitution to make Kenya a de jure one party state, removed security of tenure for constitutional office holders such as judges. The patterns of violence that started under Kenyatta continued under President Moi's administration. Notably, members of state security agencies routinely committed atrocities against a people they had sworn to protect. Security operations, particularly in Northern Kenya often resulted in the massacres of innocent citizens. Almost without exception, security operations entailed the following atrocities: torture and ill-treatment, rape and sexual violence, looting of property and burning of houses. These systematic attacks against civilians have all of the attributes of a crime against humanity.

When movements arose to advocate for opening up of the democratic space and respect for human rights, President Moi's government unleashed a reign of terror. Between 1986 and 1997, hundreds of individuals were detained and tortured because they were suspected to be members of illegal organizations. The infamous Nyayo House torture chambers were designed and built during this period specifically for the purpose of terrorizing those who were critical of, or perceived to be critical of, the established regime.

In 1991, in response to local and international pressure prompted by the end of the Cold War, President Moi yielded to demands for a multi-party state. However, with the advent of multi-party politics, elections began to be identified with violence. Ethnicity became an even more potent tool for political organising and access to state resources. Like his predecessor, President Moi lacked the commitment to address grievances related to land. Instead, irregular and illegal allocation of land became rampant during his era in power.

In December 2002, KANU was dislodged from power by NARC under the leadership of President Mwai Kibaki. As a political party, NARC came to power on a platform that promised to curb and ultimately eliminate the political transgressions and human rights violations that had become so common during the 39 years of KANU's rule. NARC also pledged to address and rectify historical injustices. True to its commitment and in response to concerted calls by political activists and civil society organisations (CSOs) in the first few months of attaining power, the NARC government initiated numerous legislative and institutional reforms and a range of activities aimed at redressing past injustices.

However, it was not long before autocratic tendencies and KANU-like practices began to emerge in the Kibaki administration. An informal clique of powerful individuals who were keen on promoting narrow and regional interests formed around the President. Like President Moi before him, President Kibaki purged the public service of his predecessor's nominees and filled it with people from his Kikuyu community and the larger GEMA community. The administration paid lip service to the struggle against corruption. In 2005, all pretensions by the Kibaki administration that it was pursuing reforms and a transitional agenda faded after the rejection of the Proposed New Constitution of Kenya in 2005 by the majority of Kenyans.

The period leading up to the 2007 General Election was characterised by intense violent activities by militia groups, especially the Mungiki sect and Sabaot Land Defence Force (SLDF). The government responded to the violence with excessive force. In effect, the General Elections of 27 December 2007 were conducted in a volatile environment in which violence had been normalised and ethnic relations had become poisoned. Fertile ground had been prepared for the eruption of violence. Therefore, when the results of the Presidential Election were disputed, and both PNU and ODM claimed victory, violence erupted.

The scale of the post-election violence (PEV) was unprecedented.

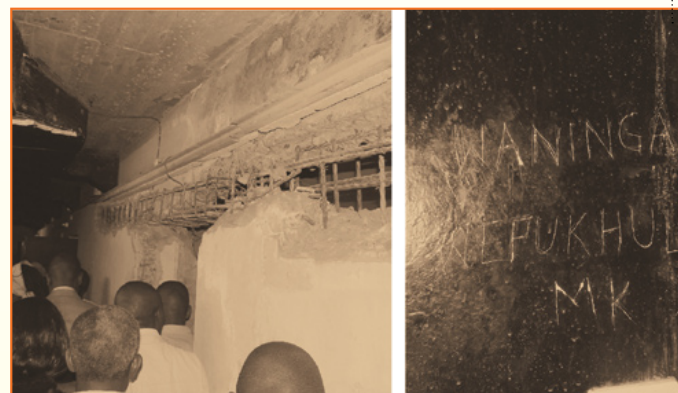
It lasted for a period of two months and substantially affected all but two provinces in the country. It is estimated that 1,133 people were killed, thousands assaulted and raped, hundreds of thousands more displaced from their homes, and property worth billions of shillings destroyed. It was one of the darkest episodes in Kenya's post-independence history

Security Agencies: The police and the military

The police and the military forces are at the centre of Kenya's history of gross violations of human rights. While other agencies of the state were responsible for historical injustices and gross violations of human rights during the mandate period, security agencies were both primarily responsible for many of the acts of commission documented in this Report, as well as the acts of omission (the failure to provide security) that allowed many of the violations committed by non-state actors to occur.

Across the country, the Commission heard horrendous accounts of atrocities committed against innocent citizens by the police and the military. The history of security operations conducted by these two institutions, either jointly or severally, is dominated by tales of brutal use of force, unlawful killings (sometimes on a large scale), rape and sexual violence, and burning and looting of property. In security operations, the police and the military often employed collective punishment: the indiscriminate rounding up of individuals in a specific area, then brutally punishing them, all with the expectation that this would yield the desired results of increased security. Thus, since independence, the police and the military in Kenya have been viewed and invariably described as rogue institutions; they are still feared and seen as perennial violators of human rights rather than protectors of the same.

NYAYO HOUSE TORTURE VICTIMS NAME ON WALL



In this regard, the Commission sought to trace the origins of practices employed by security agencies during security operations. What emerged is that the practices adopted by the police and military forces in independent Kenya are starkly similar to those employed by the same forces during the colonial period. In essence, Independent Kenya inherited a police force that was deeply and historically troubled. From the 1890s right through to the late 1950s and early 1960s, the Kenya police force clearly structured itself around the policing needs of a small and politically powerful elite and racial minority. Kenya's police force was from the outset built to cater to these privileged few. When, however, the Kenya Police Force did encounter African populations it was with a force and devastating violence. Throughout the temporal period of the Commission's mandate this resort to brutality by the security agencies never changed. The police force remained a law unto itself. The Kenya Police Force of today largely resembles the Kenya Police Force of the colonial period: narrow in outlook, unclear in mission and violent in tendency.

The history of the military paints a similarly grim picture. During the colonial period, and especially during the emergency period, the military was engaged in the screening and interrogating of people in order to extract information from them concerning Mau Mau. It is from these twin processes of screening and interrogation that the most astonishing evidence of widespread and institutionalized torture has emerged. The military would continue to use similar brutal tactics way into the post-independence era and as recently as March 2008 during Operation Okoa Maisha in Mt. Elgon.

Shifita war

The Shifita War, waged between 1964 to 1967, represents a period in Kenya's history during which systematic and widespread violation of human rights (including mass killings) of Kenyan citizens occurred. Officially, the death toll stands at 2,000. Unofficial estimates place the death toll at 7,000. The Shifita War acts as a bridge from the violations committed by the colonial power prior to independence and the violations committed by the newly independent government. The War arose out of a long history of political unrest in Northern Kenya where ethnic groups resisted centralised colonial rule. After independence state security agents alongside military personnel were deployed in what was called the Northern Frontier District to quell the continuing resistance.

Witness testimonies before the Commission brought to the surface the long history of violation of human rights and related activities in Northern Kenya. From the colonial days, Northern Kenya had been administered differently from the rest of the country. Travel and movement restrictions were imposed and administrators were given extraordinary powers to arrest and detain members of what the state referred to as 'hostile tribes'.

The Commission did not get much information about the war itself because of the secrecy around military operations and the government's reluctance to provide the information in its possession. However, individuals and communities affected by the war submitted memoranda and information to the Commission which enabled it to set out the broad characteristics of the war. The Commission established that the Shifita War was characterised by unimaginable brutality committed by state security agents, mainly the Kenya Army. Mass killings featured prominently in the witness testimonies and narratives. Pastoralist communities lost almost 90 percent of their livestock through heavy handed strategies in which livestock were shot dead or confiscated. Many residents of the region trace the high levels of poverty experienced by communities of Northern Kenya to the excesses of the Shifita War.

Women narrated horrible stories of rape and other forms of sexual violence and the military and police were reported as major perpetrators. The Commission also received testimony pointing to the fact that women were held as sexual slaves by state security agencies during the War. As a result of the War, some communities fled to Somalia to escape the violence and only returned decades later, in 2000.

As part of the Shifita War, the Kenyan government established restricted or protected villages in which residents of Northern Kenya were essentially detained and their movement severely restricted. This villagisation programme was eerily reminiscent of the detention camps created during the colonial period. The conditions in these villages were squalid and diseases such as dysentery and tuberculosis were common.

The signing of a Memorandum of Understanding in Arusha, Tanzania on 28 October 1967 between the governments of Kenya and Somalia marked the formal end of the war. Witnesses complained that they had no idea what was decided during the bilateral negotiations between the Somali and Kenyan governments as the contents of the agreement were never revealed to the people of the Northern Kenya, including the citizens residing in the north.

The Commission found that the Kenyan government made a deliberate effort to cover up abuses committed in connection with the Shifita War, and enacted the Indemnity Act in order to protect government officials for accountability for wrongful acts committed during the conflict. As such, the Commission has recommended the repeal of the Indemnity Act within nine months of the issuance of its Report. The Commission has also recommended that the Arusha Agreement be made public and be widely disseminated in Northern Kenya. Further, the Commission has recommended reparation for victims of Shifita War and the establishment of a public memorial to commemorate the victims of the War.



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REPORT OF THE TRUTH, JUSTICE AND RECONCILIATION COMMISSION

Massacres

The history of massacres in Kenya predates colonialism in Kenya. There were inter and intra-ethnic killings, as illustrated by the Maasai wars of the 1800s. This was the context in which the colonialists entered the scene and opened fresh horizons for mass violence.

The Commission studied the history of massacres in Kenya to identify broad trends and patterns of mass violence that have recurred throughout Kenya's history. The first properly documented massacre in Kenya's colonial past was the Kedong Massacre of 26 November 1895. Other massacres include those committed in the context of the Giriama Rebellion of 1912-1914, and the Kollowa Massacre of 24 April 1950. Other massacres were committed during the Mau Mau uprising between 1952 and 1959. In this regard, the Lari and Hola Massacres stand out. In all these massacres, the colonial state was present and was always unapologetic. Indeed, the colonial state always tried to minimise, cover up or flatly deny the occurrence of such mass killings.

At independence, the country was blood-drenched with a history of massacres and entered its future with historical baggage that was to affect future events. The Commission's research, investigations and hearings revealed that most massacres in Kenya have occurred in Northern Kenya and have always occurred in the context of what the state refers to as security operations. The Commission has documented the following massacres committed by state security agents: Bulla Karatasi Massacre; Wagalla Massacre; Malka Mari Massacre; and Lotiriri Massacre. To date, no government official has been prosecuted or otherwise publicly held to account for these atrocities. The Commission also focused on a few massacres committed by non-state actors: Turbi Massacre, Murkutwa Massacre, and Loteteleit Massacre. The primary findings of the Commission in relation to the

Bulla Karatasi Massacre:

The Commission found that the security operation conducted in Garissa in November 1980 resulted in the massacre of hundreds of civilians. Numerous other atrocities were committed by state security agents including torture, brutal beatings, rape and sexual violence, burning of houses and looting of property. The Commission found that the atrocities committed during the security operation qualified as crimes against humanity. Moreover, the Commission found that the North Eastern Provincial Security Committee (chaired by Benson Kaaria), Garissa District Committee and the Minister for Internal Security (G.G. Kariuki) at the time of the security operations bear responsibility for the operation and the ensuing atrocities.

Wagalla Massacre:

The Commission found that the security operation conducted in Wagalla, Wajir, in February 1984 resulted in the massacre of hundreds of civilians. Numerous other atrocities were committed by state security agents including torture, brutal beatings, rape and sexual violence, burning of houses and looting of property. The Commission found that the atrocities committed during the security operation qualified as crime against humanity. The Commission was unable to determine the precise number of persons killed in the massacre but found that a large number died, possibly close to

a thousand. As such, the official figure of 57 given by the state grossly underestimated the number of people killed at Wagalla and is an example of the generally thoughtless manner in which the state has traditionally treated massacres committed by its own agents. In relation to responsibility and accountability, the Commission found that the Wajir District Security Committee, North Eastern Provincial Security Committee, and Kenya Intelligence Committee bear various levels of responsibility for the operation and the ensuing massacre and atrocities.

I could not even get water to give the children. I left them under a tree and went back, only to find that the father was among the people who were killed by the police. I witnessed his body been put in a car. They threw the dead body into the river. Men were in the field while women and children at home. The women were raped, girls were crying for help and no one could help them.

Witness to Bulla Karatasi Massacre

During that short period that we stood there, what I saw and what has remained very distinctly in mind today is a pile of bodies to my right and two naked people carrying yet another body to put on the pile.

Witness to Wagalla Massacre

Malka Mari Massacre:

The Commission found that the 1981 security operation in Malka Mari, Mandera, resulted in the massacre of hundreds of individuals. During the security operation, women were raped and were subsequently shunned in the community. Others suffered serious injuries. The Commission found that the state has maintained an official silence over the massacre.

Lotiriri Massacre:

The Commission found that the security operation conducted in West Pokot District, between 22 February and 22 May 1984 by state security agents (mainly the Kenya Army) resulted in the massacre of

individuals. Numerous other atrocities were committed during the security operation including torture and sexual violence.

The Commission has recommended the provision of reparation for families of victims of massacres and the establishment of memorials at the site of such massacres.

The Commission has also recommended that individuals identified as been responsible for planning, authorizing and implementing of security operations that resulted in massacres be further investigated to determine any criminal culpability on their part, if any, and that they should not hold public office in Kenya's new constitutional dispensation.

Political Assassinations

I remember that Mr. Shikuku had warned us before we went to State House [to present the Report of the Parliamentary Select Committee on the disappearance and death of JM Kariuki] because he refused to join us to go there. Even Mr. Seroney did not join us. He has told us: 'It is better that you go a few of you because you may never return and if you do not return, we will tackle this issue outside here before we are also picked ... On the day of voting for the Report, Hon. Masinde Muliro who was a cabinet minister, and Hon. Peter Kibisu, who was an assistant minister, voted for the adoption of the report. In the evening or at around 6 pm, they had lost their positions in the Government.

TJRC witness

Kenya has lost some of its best and brightest to political assassination: Pio Gama Pinto, Tom Mboya, Josiah Mwangi Kariuki (popularly known as JM Kariuki), Robert Ouko, Father Antony Kaiser, Bishop Alexander Muge, and many others. A number of these deaths have been the subject of high profile investigations; in some cases they have been subject to repeated investigations. Yet despite all of the investigations in these and other similar cases, the uncertainty concerning who was responsible for the killings and why specific individuals were killed is often as unclear as it was on the day the body was found. Given the failures of past investigations, the Commission was fully aware that solving any of the mysteries surrounding these deaths would be difficult and challenging.

Nevertheless, the Commission gathered information, undertook research and investigations, and solicited testimony to understand the context in which such

killings took place; the circumstances and thus probable causes of such killings; the impact of such killings, particularly on the family and friends of the victim; and the failure of investigations to solve the mystery of why a person was killed and who was responsible. The Commission's work in relation to political assassinations confirms that the state was complicit in the assassination of Pio Gama Pinto, Tom Mboya, and Josiah Mwangi Kariuki, Robert Ouko

Pio Gama Pinto:

The Commission found that the assassination of Pio Gama Pinto was motivated by ideological differences that were at the heart of the global Cold War but also mirrored in domestic Kenyan politics. The Commission further found that the arrest and prosecution of Kisilu, Chege Thuo, and a third unidentified man who disappeared, was used to divert attention away from the true motive and the more responsible perpetrators of Pinto's assassination. Finally,

Tom Mboya:

The Commission found that Tom Mboya was assassinated for his political beliefs and the perception that he posed a threat to the political establishment. The Commission did not receive any credible evidence refuting the involvement of Nahashon Isaac Njenga Njoroge in the assassination, but did receive sufficient evidence to find that Njoroge did not act alone. The Commission found that the circumstances surrounding the assassination – including the political rivalries he provoked and the failure of the government to investigate fully the assassination – point to the involvement of government officials in the killing and subsequent cover up.

Josiah Mwangi Kariuki:

The Commission found that JM Kariuki was assassinated for political reasons. Based on evidence, the Commission found that state officials, including members of the police and the Special Branch, were directly involved in the assassination of JM Kariuki. The Commission further found that government officials were involved in the cover up of the assassination and that President Kenyatta

deliberately interfered in independent investigation undertaken by the Parliamentary Select Committee by, among other things, directly removing two names from the report because they worked in the Office of the President.

Robert Ouko:

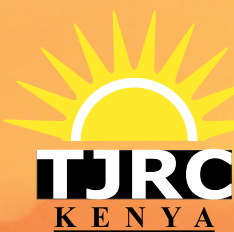
The Commission found that Robert Ouko was assassinated and that government officials were involved in his assassination and in the subsequent cover up. The Commission further found that individuals connected to the assassination of Ouko have died in mysterious circumstances and that the failure of the government to undertake credible investigations into these deaths is part of the official cover up.

Crispin Odhiambo Mbai:

The Commission found that Crispin Odhiambo Mbai was assassinated because of his political views related to his chairing of the Devolution Committee of the National Constitutional Conference. The Commission further found that the state is either unable or unwilling to engage in a process that would shed light on the death of Dr. Mbai.

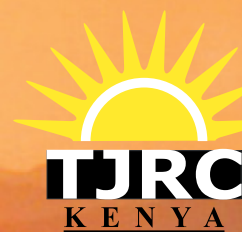
Extrajudicial killings and enforced disappearances

The Commission found that throughout the mandate period, there was a common trend or pattern of state-sanctioned killings and disappearances. The use of excessive and disproportionate force by the Kenyan police force has been a common theme running through Kenya's history. The Commission found that during the mandate period, it was common for the police to summarily execute individuals who were suspected criminals or members of proscribed criminal gangs such as Mungiki and SLDF. Importantly, the Commission found that police killings and enforced



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disappearances of members of Mungiki and SLDF could amount to crimes against humanity. Moreover, the Commission found that whenever the state has been faced with allegations of extra-judicial killings and/or disappearances, its traditional response has been to blatantly deny these allegations and attack the credibility and legitimacy of those making the allegations, rather than investigate those allegations.

The Commission has, amongst others, recommended the provision of reparation to families of victims of extra-judicial killings and enforced disappearances.

Detention, torture and ill-treatment

In many ways, and despite the many challenges that it continues to face, Kenya is a country whose democratic and political space is relatively wide and dynamic. At least from 2003, the state has more often than not respected citizens' freedom of expression, assembly and the right to association. However, it was not always this way. The freedom that Kenyans enjoy today is the result of many years of activism and struggle against dictatorship and state repression or violence. It is a freedom that came at a high price for many men and women who dared criticize or oppose Jomo Kenyatta's and Daniel Arap Moi's political administrations. Many of them were detained without trial, tortured, and subjected to inhuman and degrading treatment. Their families were equally subjected to untold sorrows by state operatives. Many others succumbed to torture or were killed after undergoing torture.

Research and investigations conducted by the Commission coupled with the testimonies it received, shows that widespread and systematic use of torture occurred in the following contexts:

- during the Shifita War;
- in the aftermath of the 1982 attempted coup;
- between 1982 and 1991 purposely to quell dissenting political voices and as part of the crackdown on Mwakenya;
- between 1993 to 1997 as part of the crackdown on the February Eighteenth Revolutionary Army (FERA);
- in 1997 following a raid on a police station in Likoni; and
- most recently in 2008 during Operation Okoa Maisha, a security operation to flush out members of the Sabaot Land Defence Force (SLDF) in the Mount Elgon region.

On the basis of its research, investigations and hearings, the Commission has made, amongst others, the following findings:

- systematic use of torture was employed by the Special Branch during interrogations of detained persons in Nyayo House, Nyati House, police stations, prisons, and other locations.
- Nyayo House basement cells and the 24th, 25th and 26th floors were used for interrogations and torture after the attempted coup of 1982, during the Mwakenya crackdown, and the FERA/M crackdown, and that the state purposely designed and built these places for torture purposes.
- the State established a task force for the specific purpose of interrogation and torture of suspects. The Commission has recommended the prosecution of the members of the this task force.
- the Judiciary frequently cooperated with the prosecution and security forces in the commitment of violations by refusing bail and by admitting evidence obtained through torture. The judiciary was also complicit in these violations to the extent that they conducted trials beyond working hours.

To prevent the recurrence of torture, the Commission has recommended the enactment of legislation prohibiting all forms of torture and other forms of cruel, inhuman or degrading treatment or punishment committed both by state and non-state actors. The Commission has also made the following recommendations:

- that the President offer a public apology to all victims of torture

and unlawful detention and acknowledge the role of the state in the design and use of the Nyayo House torture cells for torture purposes

- that Nyayo House be converted into a memorial after consultation with victims of torture
- the establishment of the Office of the Independent Inspector of Prisons and All Places of Detention. This office shall be charged with the function of inspecting prison conditions and investigating allegations of torture. The Office shall also be mandated to investigate all cases of death in custody. The office shall issue periodic reports to the public on the condition of prisons in Kenya and other matters under its mandate.

The Commission has also recommended the provision of reparation for victims of unlawful detention, torture and ill-treatment as per the framework described in the Chapter on Reparation Framework.

Sexual violence

Sexual violence is a crime that intimately impacts the victim both physically and psychologically. It uses the victim's own sexual anatomy to dominate, suppress and control. For a long time, women and girls were believed to be the main, if not the only, victims of sexual violence. Over time, there has been acknowledgement that men and boys are also victims of sexual violence.

The Commission received hundreds of statements from women, men and children outlining serious sexual violations perpetrated by individuals and groups of people including ordinary citizens and state officials. A total of 1,104 statements from adults were received in regard to

sexual violations, representing a victim count of 2,646 women and 346 men. The Commission acknowledges that due to shame and stigma associated with sexual violence, many victims of sexual violence did not report sexual violence to the Commission.

Recognizing that sexual offences are ordinarily complex to investigate, the Commission adopted specific measures to ensure that sexual offences were effectively and sensitively investigated. Firstly, investigators who had previous experience in investigating sexual offences and who had undergone training on the same, including on the Sexual Offences Act, were recruited. Secondly, a set of guidelines outlining the approach to be taken in investigating sexual violence was prepared. The overall goal of the guidelines was to ensure that survivors of sexual violence were treated with dignity.

In acknowledgement of the stigma, shame and embarrassment associated with sexual violence, the Commission offered victims of sexual violence the option of testifying either in camera or in public. The idea was to provide victims of sexual violence with not only a platform to be heard, but also a safe environment in which they could share their experiences freely. The Commission also engaged the services of counsellors to offer psycho-social support before, during and after the hearings to enable the victims not only to narrate their experiences but also to cope with what they had experienced.

The primary findings of the Commission in relation to sexual violence include the following:

- sexual violence was committed throughout the mandate period, and included gang rapes, sodomy, defilement, sexual slavery, and other forms of sexual violence. The Commission found that sexual violence increased during times of conflict.
- sexual violence against women was rampant during forceful evictions conducted by the state and/or its agents. In one particular case, the Commission received about 30 statements from women who were raped in Kitui during an eviction referred

to as 'Kavamba Operation'.

- there is sufficient evidence implicating British soldiers for the rape and sexual violation of women in Samburu and Laikipia between the 1908s and early 2000. The Kenyan government has neither committed to nor shown any political will to investigate allegations of rape and sexual violence committed by British soldiers stationed in Kenya for military training.
- State security agents are responsible for the majority of cases of sexual violence committed during conflict in Kenya.

In addition to recommending the provision of reparation for victims and survivors of sexual violence, the Commission has recommended the establishment of a gender violence recovery center in every county. Moreover, the Commission has recommended the setting up of the Office of the Special Rapporteur on Sexual Violence as initially recommended by the Commission of Inquiry into the Post Election Violence.

Land and conflict

For the majority of Kenyans, land is the basic, and in most cases, the only economic resource from which they eke out a livelihood. The ability to access, own, use and control land has a profound impact on their ability to feed and provide for their families and to establish their socio-economic and political standing in society. However, tensions and structural conflicts related to land have simmered in all parts of Kenya throughout the years of independence. In recent years, many land related problems have degenerated into social unrest and violence.

Illegal acquisition of large tracts of land from indigenous communities during the colonial period rendered many communities at the Coast and in mainland Kenya landless. While affected communities expected redress through re-settlement, restoration of their land and compensation from the Kenyatta and subsequent post-independence administrations, the government, instead alienated more land from already affected communities for the benefit of politically privileged ethnic communities and the political elite. This led to deeply held resentments against specific ethnic communities

who benefited from resettlement at the expense of those who believe they are the rightful owners of the land.

The Commission confirmed that land has been and remains one of the major causes of intra and inter-ethnic conflicts in the country. However, addressing historical and post-independence land injustices has not been genuinely prioritized by successive governments despite the critical importance of land to the country's economic development. There has never been any sustained effort to address land injustices that have occurred since colonial times.

The Akiwumi Commission of Inquiry established in 1998 to look into the ethnic clashes related to the 1997 General

Election vividly demonstrated how the skewed land allocation and ownership has fuelled ethnic tension and led to violent conflicts throughout Kenya and particularly in the Rift Valley and Coast regions. During the mandate period, land-related grievances led to the emergence of militia groups in some parts of the country. The stated aims of these militia groups often relates to the reclamation of lands, and the removal by violent means, of current occupants who they claim rendered them squatters. The Sabaot, for example, took up arms in 2006 in the Mount Elgon region to reclaim what they consider to be their land.

Politicians often exploit the real or perceived land injustices especially around election time, for personal gain. The dangerous mix of land-related claims with political aspirations of specific groups or individuals remains a tinderbox that could ignite at any time.

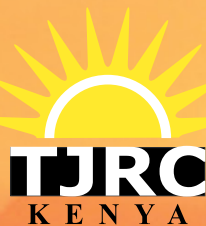
The Commission found that the 'willing-buyer, willing-seller' land tenure approach was grossly abused and is one of the major factors causing disinheritance and landlessness, especially in the face of rising human populations.

"Have you ever had your genitals tied and forced to make you diarrhoea? I told him that has never happened to me and he told me "You are a very young person. Do you have any children?" I told him no, I was still a young boy. So, he told me: "If you have ever had any children, then there is no hope of you ever having children."

TJRC Witness

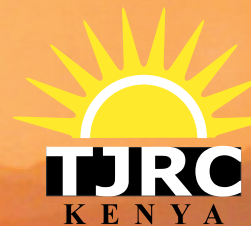
Before we started the session, the National Anthem was sung. I want to tell you that we have never been part of the National Anthem. The National Anthem talks of justice, fellowship, awareness, good life, abundance, among other things. These things have never been experienced in this region [Northern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

TJRC witness



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The unresolved land injustices have led to discriminatory and exclusionary practices that work against nationhood. The increasing feeling among the long-disadvantaged pastoral communities and the Kalenjin in particular (both herders and farmers) that they should fight at all cost to reclaim their 'stolen' land from the rich 'foreign' (non-Kalenjin) settlers is one example. Although no attempt was made by President Moi's government to revoke the land settlements of President Kenyatta's regime, it became increasingly difficult for 'non-indigenous' people to buy land north of Nakuru. Non-Kalenjin individuals and groups who bought parcels of land in Kalenjin-dominated areas found it hard to get them demarcated or obtain title deeds.

Negative ethnicity appears to be reflected even in the settlement of internally displaced persons; those who get resettled often come from communities able to access political power.

The litany of historical injustices relating to land involves a complex variety of permutations. Almost every type of public land was affected: from forest land, to water catchments, public school playgrounds, road reserves, research farms, public trust lands and land owned by public corporations and private individuals. Perpetrators of the injustices were equally varied and include holders of public office and government leaders at every level, the political and economic elite, church organisations, individuals and communities. Those who held sway usurped the institutions of government to their bidding including the legislature, the executive and the judiciary.

Officials who were supposed act as custodians of public land under the public trust doctrine, became the facilitators of illegal allocation, increasing landlessness and land scarcity. The practice of land grabbing in many cases resulted in violence, as squatters resisted eviction from government land that was often subsequently lost to land grabbers. State corporations became conduits for 'get-rich-schemes' in which public lands were transferred to individuals and then quickly bought off at exorbitant prices by state corporations.

Economic marginalisation and violation of socio-economic rights

The TJRC Act mandated the Commission to 'inquire into and establish the reality or otherwise of perceived economic marginalisation of communities and make recommendations on how to address the marginalisation'.

Evidence shows that while the majority of Kenyans may not have been detained without trial or subjected to torture and other physical integrity violations, government's exclusionary economic policies and practices in the distribution of public jobs and services inflicted suffering on huge sections of society at different historical moments. As the Commission traveled the country receiving statements and conducting public hearings, the pervasiveness of socio-economic violations was evident.

In terms of its mandate, the Commission identified a number of regions as economically marginalised in the post-independence era:

- North Eastern (including Upper Eastern) Province;
- Nyanza;
- North Rift;
- Coast;
- Western Province.

Although poverty was found to be prevalent all over the country it was disproportionately so in these marginalised areas. By definition the Commission noted that marginalisation involves direct and indirect discrimination in the distribution of social goods and services. The economically marginalised also tend to be marginalised culturally, socially and politically. The Commission found that in almost all cases, the state played a direct role in increasing or decreasing inequality in communities.

The Commission experienced a challenge in getting reliable and quality data, particularly on state funding of social programmes and

infrastructure over the years in regions identified as marginalised. In making its assessment the Commission used a number of indicators of marginalisation including physical infrastructure, employment (especially in the public sector), education, health, housing, access to land, water, sanitation and food security.

Although Central, Nairobi, South Rift Valley and Lower Eastern provinces were not profiled as economically marginalized regions, this does not mean that poverty is not evident in these regions. In fact, some residents of these regions also considered themselves marginalised at one time or another.

Other examples of marginalisation include narratives from within specific regions based on local rather than national forces. In Nyanza, the Kuria blamed their plight on the Luo and the Abagusii, while in Nyandarua the residents considered themselves marginalised by their neighbours within the region. In the Western region, Bungoma and Vihiga were seen as beneficiaries of the limited social goods through co-option of individuals by the Moi regime. Co-option of leaders from the region often camouflaged the reality of marginalisation giving the sense of political inclusion that did not necessarily translate to economic inclusion.

Marginalisation has been used deliberately as a political tool to punish recalcitrant politicians by punishing their ethnic group or religion.

The 1966 fallout between Jomo Kenyatta and Jaramogi Oginga Odinga was the beginning of the disintegration of the Kikuyu-Luo alliance, which was at the core of KANU at independence. It marked the start of the marginalisation of Nyanza and the first blatant use of negative ethnicity at a political level. Later similar disagreements between Raila Odinga and Mwai Kibaki led to the blacklisting of Luo Nyanza both in terms of access to capital development and appointments to public positions. Testimony before the Commission suggested that Nyanza had been in the economic and political cold for all but 10 years since independence. This isolation increased poverty and left various social and economic problems unaddressed.

In the case of North Eastern Province, employment, land, infrastructure, poverty, education and the institutional framework and capacity were the key indicators of the marginalisation of the region. One of the greatest impediments to development of the region is the lack of land registries in the region. As for infrastructure, which includes public utilities and is a major determinant of development and progress, the

region has no tarmac road except the Isiolo-Moyale road, which is still under construction. The region has the highest rural population living under the poverty line at 70 percent, compared to 32 percent for Central province. Lack of food security is compounded by the erratic and low rainfall and declining pastures and other resources. This in turn creates conflict over these resources, further depleting the limited resources and the livestock. The paucity of schools and their relatively prohibitive cost in an area of widespread poverty has affected access to the limited education opportunities. School enrolment stands at about 18 percent for primary schools and 4.5 percent for secondary schools compared to the national average of about 88 percent and 22 percent for primary and secondary schools respectively. Service delivery for health, water and sanitation were also way below the national average figures.

The face of marginalisation was found to be different in diverse regions. The relatively fertile land and security of Western province tended to underplay the indicators and perceptions of marginalisation. While marginalisation has

not reached the extent of that in North Eastern or Nyanza, Western was found to be forgotten in the development agenda with cash crops and related industries (cotton, sugarcane, rice and fisheries) completely ignored or badly mismanaged when compared to those of other regions.

The North Rift Valley region was found to have been marginalised from colonial times through to the present. Insecurity, a harsh climate and regular inter ethnic and cross border conflict make the region difficult to live in. Absence of security personnel has led to a localised small arms race as groups accumulate arms to protect themselves. Successive governments maintained the same closed area policies as the colonialists preventing interaction with the rest of the country effectively marginalising the region. Indicators for education, health, infrastructure, water, housing and sanitation were dismal compared to the rest of the country. Only one hospital serves the six districts of Turkana.

Landlessness is the major indicator of marginalisation at the Coast; land is the most intractable of the problems because of its historical origins. The original local inhabitants were dispossessed of their land, first by the colonialists, and later by fraudulent transactions that again ignored the original owners of the land. This left most of the land in the 10-mile Coastal Strip in the hands of absentee landlords. After independence, the dispossession of the local people was confirmed and certified instead of being rectified, which led to a palpable sense of a conspiracy against coastal communities orchestrated by people from up-country.

Hearings of the Commission were dominated by this problem. The most affected areas were Taita Taveta, Lamu, Malindi and Tana River counties. The Coast lags behind in terms of almost all indicators from infrastructure to health, education, housing, water and sanitation. The region also exhibits gender marginalisation attributed to religious and cultural dynamics of the locale. Rural areas are served by dilapidated road networks compared to Mombasa, Kilifi, Malindi and Kwale.

Grand corruption and economic crimes

The fight against corruption is central to the struggle for human rights. Corruption has always greased the wheels of exploitation and injustice which characterize our world. As such, corruption is not just a crime that provides an undeserved benefit to a private individual (often an enormously large such benefit), it is a crime that lessens the availability and access to the fundamental needs of human life: food, education, health care, shelter, etc. In other words, the crime of corruption is directly related to the violations of socio-economic rights.

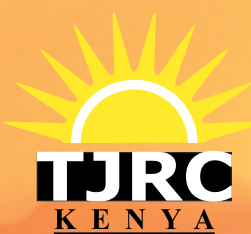
While corruption violates the rights of all those affected by it, it has a disproportionate impact on people who belong to vulnerable groups. Examples of these are minorities, indigenous people, persons with disabilities, persons living with HIV/AIDS, refugees, prisoners, the poor, women and children. They are more exploited and less able to defend themselves. Their vulnerability makes them easy victims of corruption.

Kenya's post-independence history has been marred by successive cases of huge scandals. In order to appreciate the magnitude and scale of grand corruption in Kenya, the Commission resorted to documented cases of grand corruption from as early as the KenRen scandal in the 1970s up to the IEBC's procurement of biometric voter registration kits in 2013. In the last two decades, the media and civil society exposed numerous multimillion dollar financial scams in Kenya including the following: Ken Ren Scandal; Goldenberg Scandal; Charter House Bank Scandal; and Anglo Leasing Scandal.

In its Chapter on Grand Corruption and Economic Crimes, the TJRC has

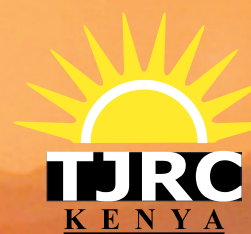
As we travel to Kenya, we face the strict burden of proof that we are, indeed, Kenyans. If the four of us were to travel in the same vehicle, the presumption would be that the rest are all Kenyans, but I am a foreigner. So, at the numerous roadblocks which are lined up all the way from here to Isiolo where Kenya starts, I have to produce my identity card, in default of which I would face severe consequences. This scenario does not stop in Isiolo. In our own country, I feel the indignity of being stopped at a public office and being subjected to security and other checks simply because from my looks, I am a dangerous person or a terrorist. This is the kind of pain we have been living in since Kenya attained its independence

TJRC witness



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demonstrated the linkages between these crimes and the enjoyment of human rights and the huge cost that Kenya is paying through corruption and economic crimes.

Women

Men and women experience violations of human rights and injustices differently. Building on the provisions of the TJR Act, the Commission adopted policies and took measures that ensured that the experiences of and violations suffered by women were appropriately and comprehensively covered both in its work and this Report. These policies and measures related to the Commission's statement-taking process, hearings, focus group discussions, and other activities undertaken by the Commission.

Perhaps most importantly, the Commission held separate hearings for women in order to encourage women to speak about their own experiences. The women's hearings were framed as 'conversations with women'. They were presided over by female Commissioners and staff, and were thus designed to be safe spaces where women could freely talk about violations that were specific to them. The women's hearings were conducted in all regions of the country. In total, over 1000 women attended the women's hearings across the country, with an average of 60 women in each hearing.

The Commission's chapter on gender deliberately focuses on the various injustices that women faced during the mandate period. Although women have always constituted half of Kenya's population, they have been traditionally relegated to a subordinate status by patriarchal cultural norms and practices. Harmful traditional practices in Kenya include, amongst others, preference for male children, early or forced marriages, wife beating, female genital mutilation and widow inheritance. These norms were standard and sanctioned by law in the greater period covered by the Commission's mandate. As such the Commission has found that women were the subject of systematic discrimination and/or gender-based persecution throughout the mandate period.

An important finding made by the Commission is that in situations of conflict women are specific targets of violence, particularly sexual violence which is often accompanied by other forms of violations. The Commission has documented atrocities committed against women during the following three selected conflicts: Mau Mau War; Mount Elgon conflict and the 2007/2008 Post-Election Violence.

Conflicts always result in the forced displacement of populations. The Commission's hearings revealed that the state's response to the plight and needs of internally displaced women was less than satisfactory. Generally, the state's response fell short of its obligations as stipulated in relevant human rights instruments.

Although most women who testified before the Commission were victims of displacement occasioned by the 2007/2008 PEV, many of them had been victims of prior evictions and displacement. During the PEV, women suffered violations during flight to the camps or to places where they hoped they would find refuge. On resettlement of IDPs under Operation Rudi Nyumbani, the Commission's hearings revealed that the corruption and mismanagement which marred the entire process had a particularly devastating impact on women. A considerable number of displaced women told the Commission that they received neither the start-up capital nor the payment in lieu of housing.

Kenyan refugee women in Uganda face a peculiar problem. During their women's hearings, it became evident that many women found themselves in a dilemma as to whether they should return to Kenya or not. While some women were willing to return, their husbands were not. As such, they could not return to Kenya without straining or breaking their marriages. The general feeling among the Kenyan refugees in Uganda is that of a people who have been neglected

and abandoned by their government.

Kenyan women were also victims of state repression during the mandate period. As primary victims of state repression, scores of women, especially politicians, academics or human rights activists, were targets of state violence both during Presidents' Kenyatta and Moi's administrations. A number of female members of parliament who were vocal in their opposition to repressive rule would be subjected to trumped-up charges, detained, or even tortured. The vast majority of women were however secondary victims of state repression. Many women were widowed after their husbands were killed in security operations or died in police custody after undergoing torture. Some were subsequently thrown into destitution since husbands are the main breadwinners

in many households in Kenya. Those whose husbands or sons were detained faced similar fate

In summary, women have suffered terrible atrocities just because of their sex and gender. The Commission has documented these atrocities not only for historical purposes, but also as a bold statement to political leaders and policy makers that achieving a just and fair Kenya partly depends on the initiatives they will take to heal the soul of the Kenyan woman. At present, the vast majority of women feel abandoned by the state. Although in recent years many reforms have taken place to ensure women's empowerment, much more still needs to be done for these reforms to make substantive and real contributions in the lives of women. There is need for special attention to the most vulnerable among women: women in rural and slum areas, internally displaced and refugee women, women with disabilities, women living with HIV/Aids and women belonging to minority and indigenous groups.

Children

Children occupy a special place in any effort to understand the impact of gross human rights violations and historical injustices. Children are, on the one hand, some of the most vulnerable people in a community and as such are less able to defend themselves against those who would do them harm, and are more likely to suffer both short- and long-term effects from gross violations of human rights. At the same time, children are the future of the country. Their experiences of their community, of their peers, of officials, and of other people in authority have profound impacts on their future, including how they trust, or don't trust, those in authority. In addition, experience throughout the world confirms that children who are themselves the victims of abuse are more likely themselves to be abusers of others when they become adults. Some, as the Commission discovered, were both victims and perpetrators while still under the age of eighteen; being forced, for example, to join a militia and then committing violations as a member of that militia.

Thus, while the mandate of the Commission did not have a child-specific focus, the Commission made deliberate efforts to facilitate participation of children and young people in its proceedings and to ensure that their interests and views both as direct and indirect witnesses and victims of human rights violations were captured. The Commission designed child-friendly processes to promote the participation and protection of children. Most notably, the Commission held a thematic hearing in Nairobi that included an opportunity for children to testify in their own words in an environment that was safe and supportive.

The Commission heard horrific and heart-rending stories of abuse,

violence, and other gross violations of the rights of children. The Commission also heard the anger of some of these children – some going so far as to say they wanted to kill the people who had abused them. As such, the Children's Chapter provides a cautionary tale for the future of the nation. The roots of tomorrow's conflicts and violations are found in part in the treatment of our children today.

Minority groups and indigenous people

Testimony before the Commission clearly indicated that the rights of minorities and indigenous people have been violated repeatedly since independence. The problem is systemic.

Many oppressive laws sanctioned the collective punishment of minority and indigenous communities. While the laws were supposed to apply across the country, in practice they only applied to communities in northern Kenya where a significant number of minority groups and indigenous people are to be found. The anti-stock theft law, for instance, legalised the collective punishment of a community for the offences of individual members of that community.

Witness testimony before the Commission showed minorities and indigenous peoples routinely had their collective identity marginalised. National data classified them as 'others' creating deep-seated feelings of exclusion among groups such as the Munyoyoya, Nubians, Suba, Waata, Ogiek, Sabao, Kuria, Kona, Bajuni, Hara, Saakuye, Burji, Isaak and Sengwen whose existence was effectively denied by the state and unknown to the majority of Kenyans. Yet the right to identity is important as it is associated with several others, such as the right to culture.

The forced displacement of pastoralists and hunter-gatherers from their ancestral lands further increased their marginalisation, deepened their poverty and created conflict with neighbours. For instance, the Endorois were brutally evicted from the trust land they inhabited around Lake Bogoria when the government declared the area a game reserve. They were displaced, lost property and denied access to traditional cultural and religious areas.

The small population size that characterises minorities and indigenous groups, has denied them influence and left them out of policy and decision making – even where decisions directly affect them. During the mandate period, minority groups and indigenous people were unable to access justice at many levels frustrating their efforts to protect other rights. Minority and indigenous women

suffered multiple forms of discrimination. They bore the brunt of inter-ethnic conflicts and insecurity and had difficulty accessing social services and goods from education to health services.

The 2010 constitution has several provisions aimed at securing an efficient legal framework for the protection and promotion of the rights of minorities and indigenous people. However, it needs statutory and institutional mechanisms for the realisation of these objectives.

Ethnic tension

The Chapter on Ethnic Tension documents the main causes and effects of ethnic tension in Kenya and is based mainly on testimonies that the Commission heard during its hearings countrywide. In addition to holding such hearings, the Commission also organized a thematic hearing on ethnic tension and violence on 2 February 2012 in Nairobi, received presentations by experts and relevant institutions such as the National Cohesion and Integration Commission (NCIC).

Through its research and hearings, TJRC identified several causes and drivers of ethnic tension in the country. The roots of most of these causes are traceable to the practices of colonial administration.

Is it a crime to be born a woman? What I have gone through is likely to affect my daughter. Will there be justice for women and the girl child in this country? That is my biggest concern.

TJRC Witness

My daughter has three children but she still does not have an ID Card although she has a waiting letter. All our Somali children in Naivasha do not have ID cards but they have all grown up here. There is even a 50-year-old woman who has not been given an ID card. We are not at a border such that they can say we crossed from another country. This is open discrimination.

TJRC witness

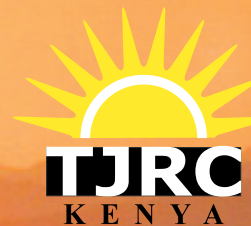
I would like to tell the Government to help us children because we did not vote or were not voted for. Therefore, we did not have any issues. The adults are the ones who had issues.

TJRC child witness



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Firstly, the Colonial government pursued a policy of 'divide and rule' in order to consolidate their hold on the country, and to lessen the possibility that the African population would resist colonial rule. To that end, they magnified the differences between the various communities and regions, and stereotyped each community in a manner that would sow suspicion, hatred and create a sense of 'otherness'.

Secondly, the Colonial government created ethnically defined administrative boundaries. In determining such boundaries, little serious thought, if any, was given to historical inter-ethnic interactions and relations. Thirdly, the colonial government focused on developing infrastructure and social services in productive areas of the country (the so called 'white highlands') at the expense of the rest of the country. The resulting inequality remained largely unaddressed in the policies and practices of independent Kenya. The preferential treatment given to some areas of the country because of their clear productivity thus led to differential treatment of ethnic communities that were patterned around the ethnic enclaves created by the colonial government.

Fourthly, the colonial land policy, particularly in the so-called 'white highlands' contributed enormously to regional and ethnic marginalisation from the economy. Colonial land policies resulted in displacement, the creation of 'native reserves', as well as the movement of masses of people from areas of their habitual residence to completely different regions and settling them on lands that traditionally belonged to other communities.

Thus, Kenya entered the era of independence with a heightened sense of ethnicity that continued to divide rather than unite the country. However, the ruling elite in independent Kenya did not have the political will or commitment to create a truly democratic and prosperous Kenya for all its citizens. The result was the worsening of ethnic relations such that by 2007, long standing grievances erupted into unprecedented violence.

In the post-independence period, causes of ethnic tension include the following:

- Insider/Outsider dynamics: Ethnic tension and violence occur when communities assert a superior claim over a territory at the expense of or to the exclusion of others. Such superior claims are based on the assumption that ownership or occupation at some point in the past created an exclusive claim for such ownership or occupation in the present. Such exclusive claims to territory inevitably create classes of 'insiders' and 'outsiders'. This perception of people as outsiders as opposed to fellow citizens often leads to increased tension based on ethnicity which, in turn, creates the potential for ethnic violence.
- Of names and their meaning: In Coast and Rift Valley alike, a prickly issue that is intricately tied to the notion of insiders and outsiders, relates to names of places. In particular, local communities in these two regions are aggrieved that places occupied by those they consider outsiders have been given 'outside names'.
- State sanctions of outside/insider notions: The designation of a community as 'other' or as an outsider has sometimes found support in state policy. In the northern region of the country, particularly in those areas that made up the former North Eastern Province, the Government has institutionalised the disparate treatment of Kenyans based on ethnicity by requiring that Kenyans of Somali origin carry a special pass.
- Negative perceptions and stereotypes: Negative perceptions and stereotypes are a major cause of ethnic tension in the country. Certain communities have been labelled, portraying them in broad, often negative terms that generalise certain traits and apply them to all individuals belonging to the described community, regardless of how individuals perceive themselves. For example, the Kikuyu are sometimes described as thieves, the Maasai as primitive, the Somali as terrorists.
- Culture and stereotypes: While the Colonial government played an important role in cultivating ethnic stereotypes, the

We must work from the basis that Kenya is a garment of many colours, which is beautiful because each colour is present. We cannot be one colour because we would be dull. Some colours cannot run over others because we would be ugly. We must all stay in place and be bright. That is an ideal situation of where Kenya ought to be.

TJRC witness

are represented - even in the highest offices of the land - the perception that they do leads to intense competition for such representation, and thus increases the likelihood of violence during elections.

To demonstrate the complicated mix of land, ethnicity, politics and violence, the Commission includes an analysis of ethnic violence in the Mt. Elgon region. While the history of violence in Mt. Elgon is unique, many aspects of the causes of violence and its impact are typical in many other parts of the country. The Commission found that the emergence of SLDF in the Mt. Elgon region was precipitated largely by government failure to fully address land-related injustices that members of Sabao community have suffered since the colonial period. The Commission found that both the SLDF and the Kenya Police and Army were responsible for gross violations of human rights including killings, enforced disappearances, torture and sexual violence.

Reconciliation

For decades, Kenya has remained a nation in which communities stand divided along ethnic and regional lines suspicious and distrustful of one another. Over the decades feelings of inter-communities distrust, even hatred, have festered mainly because a myriad of issues which are at the core of nation building have largely remained unresolved. These issues include conflicts over land, inequality and regional imbalances, and impunity combined with a lack of transparency and accountability. These issues have eroded a sense of belonging, nationhood, and public trust in political and governance institutions.

Since independence, successive governments have employed silence, denial and selective amnesia whenever individuals and agencies have raised the need to address these fundamental issues. Painful memories have been passed from one generation to another and as a consequence, present generations continue to hold grudges for violations and historical injustices meted against their forefathers and mothers. Until now, the scale and impact of human rights violations and historical injustices have neither been fully acknowledged nor sufficiently addressed.

In its work, the Commission recognised that meaningful reconciliation is not an event, but rather a long process. At the individual level, the decision to reconcile is a personal one, aimed at setting the stage and establishing the basis for the beginning of a reconciliation process. Accordingly, the Commission worked towards ensuring that its activities in the course of its life and the result of its work would substantially contribute to the process of reconciliation.

As part of its reconciliation activities, the Commission conducted reconciliation workshops across the country. It also conducted Workshops on Trauma Healing and Strategy Formulation in selected places in the country. Painful memories have been passed from one generation to another, and as a consequence, present generations continue to hold grudges for violations and historical injustices meted against their forefathers and mothers. Until now,

Commission also received evidence that some stereotypes are drawn from and driven by traditional cultural beliefs and practices. For instance, the Commission heard that men from communities that do not practice male circumcision have always been stigmatised and regarded as lesser or weaker men, and therefore, incapable of or unsuitable to take political leadership of the country.

- Ethnicity and access to public office: The perception that ethnic representation in government results in direct economic and other benefits to the represented community, is pervasive in Kenya. While the Commission acquired evidence that such benefits do not necessarily accrue to those communities who

the scale and impact of human rights violations and historical injustices have neither been fully acknowledged nor sufficiently addressed.

The Commission found that the views of victims on reconciliation are varied. There are those who willingly forgave their perpetrators and did not even need to meet them. There are those who simply wanted to know why atrocities were committed against them. But there are also those who were unwilling to forgive and wanted to see their perpetrators prosecuted for the wrongs they committed. Adversely mentioned persons, on the other hand, were largely unwilling to acknowledge any responsibility for events that resulted in unspeakable atrocities.

Implementation mechanism

Past experiences with the work of truth commissions and commissions of inquiry around the world have shown that a major challenge lies in the implementation of the recommendations contained in the reports of these commissions. More often than not, the life of these commissions ends at the point of submission of their final report, leaving the implementation to other actors who often do not follow through with the recommendations. This challenge has also characterized the work of many commissions of inquiry in Kenya in the past.

The consequences of this challenge have been to limit the impact of the work of these commissions and to contribute to public fatigue and disappointment about such commissions after expectations were raised. The drafters of the TJR Act must have had this challenge in mind when they empowered the Commission to recommend an implementation mechanism to ensure its recommendations were duly and timely implemented, and to monitor progress in that implementation. The government is expressly obligated under the TJR Act to create the implementation mechanism as set out in this Report.

The Commission recognised that meaningful reconciliation is not an event, but rather a long process and that the decision to reconcile is a personal decision, aimed at setting the stage and establishing the basis for the beginning of a reconciliation process.

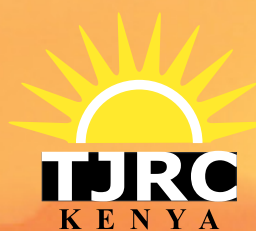
The Commission was sensitive to balancing a number of important objectives in its recommendation for an implementation mechanism. First, it is imperative that the Commission's Report, the result of close to four years of work, be widely disseminated and accessible to the Kenyan public, and in particular to the thousands of Kenyans who directly participated in and contributed to the Commission's work.

Second, it is imperative that the Commission's recommendations, including but not limited to recommendations related to reparations, be fully implemented. Third, given the importance of many of the recommendations of the Commission, including the recommendations related to reparations, the Commission realized that the implementation mechanism would need to be independent of those bodies to which such recommendations are directed in order to monitor them effectively. In addition, the Commission was concerned that the implementation mechanism be sufficiently resourced in terms of time and staff to ensure effective monitoring and that its recommendations were in fact implemented.

Based upon these and other considerations, the Commission decided to recommend the establishment of a Committee for the Implementation of the Recommendations of the Truth, Justice and Reconciliation Commission (the "Implementation Committee"). The Implementation Committee shall be established by legislation.

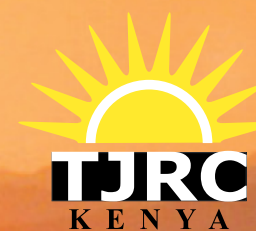
Reparation Framework

The TJR Act required the Commission to make recommendations with regard to the policy that should be followed or measures that should be taken with regard to the granting of reparation to victims or the taking of other measures aimed at rehabilitating and restoring the human and civil dignity of victims. In this regard, the Commission has recommended the establishment of a reparation fund that shall be used to compensate victims of gross violation of human rights and historical injustices. The Reparation Framework recommended by the Commission sets out the categories of victims who would access the fund and the criteria for such access.



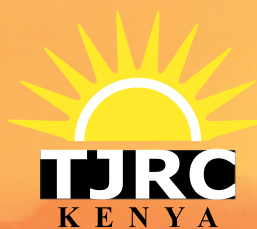
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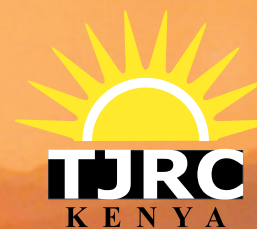
Annex: Recommendations and Implementation Matrix

	Theme/Subject	Recommendations	Responsibility for implementation	Timeline
1	Atrocities committed during colonial era	Acknowledgment and apology	British government	
		Negotiation for compensation from the British government	Kenyan government and British government	12 months
2	Shifita War	Acknowledgment and apology	President and Chief of Defence Forces	6 months
		Repeal of Indemnity Act	Attorney General and Parliament	9 months
		Publication and dissemination of the 1967 Arusha Agreement between Kenya and Somalia	Ministry of Foreign Affairs/Office of the President	9 months
		Establishment of a public memorial	Implementation Mechanism/Ministry responsible for National Heritage/National Museum	24 months
3	Massacres	Acknowledgment and apology	President, Inspector General of Police and Chief of Defence Forces	6 months
		Reparation for victims and survivors	Implementation Mechanism	36 months
		Release of all minutes of the relevant District Security Committees, Provincial Security Committee, Kenya Intelligence Committee and National Security Council	President/Office of the President	6 months
		Establishment of memorials at the sites of massacres	Implementation mechanism/Ministry responsible for National Heritage/National Museum	24 months
		Return of Father Adrian Joseph Janito for purposes of giving testimony on Bubisa Massacre	Catholic Church	
4	Political assassinations	Acknowledgment and apology	President	6 months
		Release of all reports and materials of all previous investigations of political assassinations	President/Office of the President	6 months
		Further investigations relating to the assassination of JM Kariuki, Robert Ouko, Crispin Odhiambo-Mbai and Father Antony Kaiser	Director of Public Prosecutions	18 months
		Further investigation of the assassination of Father Antony Kaiser	Director of Public Prosecutions to appoint independent investigator(s)	18 months
		Establishment of public memorials	Implementation Mechanism/ministry responsible for national heritage/National Museum	24 months
5	Extra-judicial killings	Acknowledgment and apology	President, Inspector General of Police and Chief of Defence Forces	6 months
		Ratification of International Convention for the Protection of All Persons from Enforced Disappearance	Ministry of Foreign Affairs	24 months
		Fast-tracking of reforms in the Police Service, including introduction of new standard operating procedures on the use of force	Inspector General of Police and Police Service Commission	
		Establishment of a fully equipped modern national forensic laboratory	Ministry responsible for internal security and other relevant ministries/institutions	36 months
		Establishment of fully equipped modern forensic laboratories in each county	Ministry responsible for internal security and other relevant ministries/institutions	36 months
		Abolition of the death penalty and commuting of all death penalties to life imprisonment	Attorney General and Parliament	24 months
		Reparation for victims and survivors	Implementation mechanism	36 months
6	Unlawful detention, torture and ill-treatment	Acknowledgment and apology	President	3 months
		Enactment of legislation prohibiting torture	Attorney General and Parliament	12 months
		Legislation on and establishment of the Office of the Independent Inspector of Prisons and All Places of Detention	Attorney General and Parliament	12 months
		Prosecution of individuals involved in torture and ill-treatment	Director of Public Prosecutions	18 months
		Designation of Nyayo House as memorial for victims of detention and torture	Implementation mechanism/Ministry responsible for National Heritage/National Museum	12 months
		Reparation for victims and survivors	Implementation mechanism	36 months
7	Sexual violence	Acknowledgment and apology	President, Inspector General of Police and Chief of Defence Forces, and British government	6 months
		Negotiation for compensation (in relation to victims and survivors of sexual violence committed by British soldiers in Laikipia and Samburu)	Kenyan government and British government	
		Establishment of one-stop gender recovery centers for provision of comprehensive services to victims and survivors of sexual violence, including medical, counseling and legal services	Relevant government ministries, departments and bodies including: Ministry of Health; Ministry of Justice; Director of Public Prosecutions; Police Service; NGEC; etc.	
		Legislation on and establishment of the Office of the Special Rapporteur on Sexual Violence	Attorney General and Parliament	12 months
		Fast-tracking of the establishment of a sexual offenders registry	Chief Registrar of the Judiciary	12 months
		Reparation for victims and survivors	Implementation Mechanism	36 months
8	Access to justice	Fast-tracking of the establishment of the International Crimes Division of the High Court	Chief Justice	12 months
		Fast-tracking of establishment of a nationwide legal aid system	Ministry of Justice/National Legal Aid (And Awareness) Programme in Kenya (NALEAP)	18 months
		Declaration under article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights	Ministry of Foreign Affairs	12 months
		Issuance of a public report on the progress of investigations and prosecution of 2007/2008 post-election related violence	Director of Public Prosecutions	3 months (and in 3 months intervals thereafter)

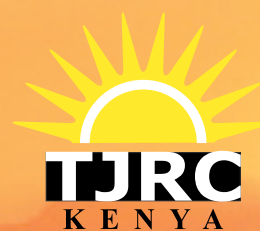


TRUTH, JUSTICE AND RECONCILIATION COMMISSION

Promoting Peace, Justice, National Unity, Dignity, Healing and Reconciliation Among The People of Kenya

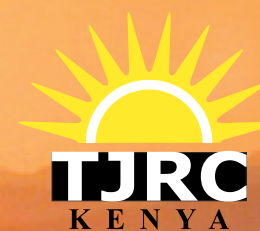


	Theme/Subject	Recommendations	Responsibility for implementation	Timeline
		Fast-tracking of enactment of human rights related laws as envisaged by the Constitution of Kenya: <ul style="list-style-type: none"> ▪ Legislation on freedom of the media (section 34) ▪ Legislation on fair hearing (section 50) ▪ Legislation on the rights of persons detained, held in custody or detained (section 51) 		
9	Women	Acknowledgment and apology Stepping up of measures to raise awareness about harmful cultural practices Enactment of relevant laws (e.g. marriage; matrimonial property; family protection/domestic violence) Adoption and implementation of a Plan of Action to increase and improve maternal health facilities and measures to reduce delivery at home	President Equality and Gender Commission Attorney General and Parliament Ministry of Health	3 months 18 months 12 months
10	Children	Acknowledgment and apology Psychosocial counseling for children victims of atrocities Reparation for children victims of atrocities and injustices Reorganization of Borstal institutions to fall under the Department of Children's Services Adequate funding of the Department of Children's Services Robust plan for Integration of children with disabilities in mainstream educational facilities	President Implementation Mechanism and relevant government departments/institutions Implementation Mechanism Office of the President Ministry of Finance Ministry of Education	6 months 36 months 12 months Continuous 12 months
11	Minority groups and indigenous people	Acknowledgment and apology Implementation of decisions relating to minority/indigenous communities: <ul style="list-style-type: none"> ▪ Decision of the African Commission on Human and Peoples' Rights in Communication No. 276/2003 <i>Center for Minority Rights Development (Kenya) & Minority Rights Group International (on behalf of Endorois Welfare Council) v Kenya</i> ▪ Decision of the African Committee of Experts on the Rights and Welfare of the Child in Communication No. 002/09 <i>IHRDA & OSJI (on behalf of children of Nubian descent in Kenya) v Kenya</i> ▪ Decision of the High Court of Kenya in <i>Charles Lekuyen Nabori & 9 Others v Attorney General and 3 Others</i> [Petition No. 466 of 2006, High Court at Nairobi] Ratification of relevant treaties: <ul style="list-style-type: none"> ▪ ILO Convention 169 ▪ Convention on the Prevention and Punishment of the Crime of Genocide ▪ Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ▪ Convention Against Discrimination in Education ▪ Statelessness Conventions Fast-tracking of legislation on as envisaged by section 100 of the Constitution of Kenya Review of all legislation to eliminate <i>de jure</i> and <i>de facto</i> discrimination against minority/indigenous communities Development and implementation of a plan on data collection on minority and indigenous communities	President Various relevant ministries and institutions Ministry of Foreign Affairs Attorney General, Constitutional Implementation Committee, and National Gender and Equality Commission Kenya Law Reform Commission and National Gender and Equality Commission Kenya Bureau of Statistics and Ministry of National Planning	6 months 12 months 24 months 6 months
		Implementation of the recommendations of the Presidential Special Action Committee to Address Specific Concerns of the Muslim Community in Regard to Alleged Harassment and/or Discrimination in the Application/Enforcement of the Law	Relevant ministries and institutions	
12	Economic marginalization and violations of socio-economic rights	Formulation, adoption and implementation of a policy on the economic development of marginalized regions identified by the Commission Focus: <ul style="list-style-type: none"> ▪ Roads and infrastructure ▪ Health ▪ Education ▪ Water Collective reparation for communities in marginalized regions identified by the Commission	Relevant Ministries and institutions including Ministry for Finance, Ministry of Health, Ministry of Education, Commission on Revenue Allocation, etc. Implementation mechanism and relevant state ministries and institutions	12 months 36 months



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	Theme/Subject	Recommendations	Responsibility for implementation	Timeline
13	Land	Further investigations of alleged illegal or irregular acquisition of land	National Land Commission	
		Survey, demarcation and registration of public land		
		Adjudication and registration of land at the Coast and other areas where this has not been done	National Land Commission	
		Development and maintenance of a computerized inventory of all land	Ministry of Lands and National Land Commission	
		Reparation for historical land injustices	Implementation Mechanism and National Land Commission	36 months
14	Economic Crimes and Grand Corruption	Harmonization of the various laws relating to combating economic crimes and grand corruption	Attorney General and Parliament	18 months
		Domestic criminalization of certain offences stipulated in the UN Convention Against Corruption	Attorney General and Parliament	18 months
		Expansion of the Ethics and Anti-Corruption Commission (from 3 to 9 commissioners)	Attorney General and Parliament	18 months
		Fast-tracking of investigations of corruption cases which have remained unresolved for many years	EACC	18 months
		Clarification of 'integrity test'	EACC	6 months
15	Ethnic tension and reconciliation	National Reconciliation Conference/Day	President/Implementation Mechanism/NCIC/NSC	6 months
		Investigation and prosecution of all adversely mentioned persons in official reports on political instigated ethnic violence or clashes	Director of Public Prosecutions	
		Audit of institutions and mechanism involved in peacebuilding, reconciliation and early warning with a view to harmonizing their activities and adopting a coordinated approach.	Joint Task Force of the NCIC, NSC and CSOs/CBOs	6 months
		Comprehensive and sustained nation-wide community dialogues	NCIC and National Steering Committee on Peacebuilding and Conflict Management (NSC)	Continuous
16	Mt. Elgon conflict	Acknowledgment and apology	President/Inspector General of Police/Chief of Defence Forces	6 months
		Establishment of a counseling and healing center	Implementation Mechanism and relevant government ministries/institutions	12 months
		Establishment of a memorial for victims and survivors	Implementation mechanism/Ministry responsible for National Heritage/National Museum	36 months
		Reparation for victims and survivors	Implementation Mechanism	36 months
		Exhumation and reburial	Implementation Mechanism and relevant government ministry/institution	36 months
		Prosecution of individuals alleged to have been involved in the planning, financing and instigating violence and other atrocities	Director of Public Prosecutions	18 months
		Prosecution of army commander in charge of <i>Operation Okoa Maisha</i>	Director of Public Prosecutions	18 months
17	Forced displacement	Facilitation and resettlement of Kenyan refugees in Uganda who are willing to return to Kenya	Relevant Government Ministry/Department responsible for matters relating to internal displacement.	18 months
		Fast-tracking of the operationalisation of the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, No. 56 of 2012	Relevant Government Ministry/Department responsible for matters relating to internal displacement.	6 months
		Audit and registration of all IDPs who did not benefit from <i>Operation Rudi Nyumbani</i> with a particular focus on integrated IDPs	Implementation Mechanism and National Consultative Coordination Committee on Internally Displaced Persons	12 months
		Reparation for IDPs and refugees	Implementation Mechanism	36 months
		Ratification of the African Union Convention for the Protection and Assistance of Internally Displaced Persons	Ministry of Foreign Affairs	24 months
18	Reports of commissions of inquiry	Release of reports of previous commission of inquiries and related bodies: <ul style="list-style-type: none"> ▪ Report of the Commission of Inquiry into the 1992 Raid on Bishop Gitari's House in Kirinyaga ▪ Report of the Commission of Inquiry into the Conduct of the Artur Brothers and their Associates ('Kiruki Report') ▪ Report of the Presidential Action Committee to Address Specific Concerns of the Muslim Community in Regard to Harrassment and/or Discrimination in the Application and Enforcement of the Law ('Sharawe Report') 	President	6 months