

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL & HUMAN RIGHTS DIVISION
CONSTITUTIONAL PETITION NO. OF 2024

**IN THE MATTER OF ARTICLES 1, 2, 3, 4, 11, 25 & 29 OF THE CONSTITUTION OF
KENYA, 2010**

-AND-

**IN THE MATTER OF THE TRUTH JUSTICE & RECONCILIATION ACT &
CONSEQUENT RECOMMENDATIONS**

-AND-

**IN THE MATTER OF PRINCIPLES 8, 18 & 22 OF THE UNITED NATIONS BASIC
PRINCIPLES AND GUIDELINES ON THE RIGHT TO A REMEDY AND
REPARATION FOR VICTIMS OF GROSS VIOLATIONS OF INTERNATIONAL
HUMAN RIGHTS LAW AND SERIOUS VIOLATIONS OF INTERNATIONAL
HUMANITARIAN LAW**

-BETWEEN-

BERNARD WACHIRA WAHEIRE.....	1ST PETITIONER
FLORENCE NYAGUTHI MURAGE.....	2ND PETITIONER
JOSEPH KAMONYE MANJE.....	3RD PETITIONER
PROF. NGOTHO KARIUKI.....	4TH PETITIONER
KENYA HUMAN RIGHTS COMMISSION.....	5TH PETITIONER
LAW SOCIETY OF KENYA.....	6TH PETITIONER

-VERSUS-

THE HONOURABLE ATTORNEY GENERAL.....	1ST RESPONDENT
CABINET SECRETARY, MINISTRY OF TOURISM, WILDLIFE & HERITAGE.....	2ND RESPONDENT
CABINET SECRETARY, MINISTRY OF INTERIOR & NATIONAL COORDINATION.....	3RD RESPONDENT

-AND-

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR).....	INTERESTED PARTY
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CERTIFICATE OF URGENCY

I, **ONDERI NYABUTI**, an advocate of the High Court of Kenya and Counsel having conduct of the instant petition at the Petitioners' behest, do **CERTIFY** that the Petition is Urgent and deserving of an expedited Hearing for the reasons that:

1. The Petition is instituted on behalf of hundreds of Survivors and Victims of torture; who were tortured at the hands of police officers at the infamous Nyayo Torture Chambers.
2. Following the Truth Justice & Reconciliation process spearheaded by the TJRC, the TJRC Report was finalized and submitted to the President; following which it was gazetted.
3. One of the TJRC's Recommendations was that the Nyayo Torture Chambers be converted into a National Monument for prosperity; in consultation with the victims of torture. Despite various state commitments on the same, the Respondents have failed/ neglected to effect the recommendation or actualize their commitments; to the detriment of the Petitioners, other victims/ survivors (or their estates) and to the detriment of the nation's heritage and history.
4. The 1st – 4th Petitioners, Survivors of Torture at Nyayo House, have the right to restorative justice and reparations. Such reparations include commemorations and memorials.
5. The Respondents have failed to honour the 1st – 4th Petitioners' rights, and on the basis of the impugned *Legal Notice No. 11. of 1991*, refused to convert the Nyayo Torture Chambers into a National Monument.
6. It is now 13 years since the TJRC Recommendations were made; and no action has been taken to effect the recommendation in question; despite it having a 1- year timeframe for implementation.

7. Without the expedited process of this Honourable Court, the 1st – 4th Petitioners; and any other victim/ survivor of the Nyayo Torture Chambers will continue to be deprived of their rights to reparation and restorative justice; contrary to the *United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.

DATED at **NAIROBI** this **4th** DAY OF **JUNE** 2024.



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---	-------------------------

PETITION

TO: **The High Court of Kenya at Nairobi**
 Milimani Law Courts,
 Constitutional & Human Rights Division,
 NAIROBI

The Petitioners, whose address of service is care of ***Kebris Law Advocates LLP, Hurlingham Plaza, 1st Floor, Suite B2, Argwings Kodhek Road, P.O. Box 2119 – 00606 NAIROBI*** info@kebrisadvocates.co.ke / onderi@kebrisadvocates.co.ke 0704624535

PETITION the High Court as follows:

A. INTRODUCTION

1. The history of our beloved Republic is incomplete without the accounts of injustices perpetrated against its people across different epochs; from our subjugation by colonial masters, to our fledgling days as a Republic under Autocratic and despotic Rule, to the nascent era characterized by the clamor for multi-partism and people-centered democracy.
2. At the heart of these eras were valiant heroes who spoke truth to power and gave their all; life and limb, so that we could enjoy the democracy that pervades our Social Contract now. To them we owe an eternal debt; one that is unquantifiable and priceless. We can only honour these valiant souls by ensuring that their fight and sacrifice was not in vain. We must give full effect to the extolation in the Preamble of the Constitution; to the effect that ***“We, the People of Kenya, HONOURING those who heroically struggled to bring freedom and justice to our land...”***
3. Following the darkest days of our Nation- the 2008 Post-Election Violence, the *National Accord and Reconciliation Act* was passed; after which the *Truth Justice and Reconciliation Act, No. 6 of 2008* (*‘TJR Act’*) was enacted. This Act established the Truth Justice and Reconciliation Commission (TJRC) and entrusted it with the

mandate to look into historical injustices committed on Kenyan soil and to make appropriate recommendations.

4. The TJRC traversed Kenya and took views/statements of over 40,000 victims, descendants of victims, members of the police and armed forces, etc.
5. The TJRC took reports of victims of the infamous '*Nyayo Torture Chambers/ Interrogation Rooms*' where persons deemed to have been political dissidents were tortured by police officers drawn from '*The Special Branch*' for days on end, in a bid to quell their calls for democracy during the autocratic Moi regime.
6. To formally seclude the torture Chambers from the eyes of the public and the international community, the (*then*) Minister for State, Jackson Harvester Angaine had on 1st February 1991 issued Legal Notice 11 of 1991 under the auspices of the Protected Areas (Amendment) Order, 1991, an instrument issued pursuant to *section 3 of the Protected Areas Act*. This Legal Notice declared as '**Protected Areas**'- '*Floors Nos. 24, 25 and 26 and Basement Floor excluding the car park of L.R No. 209/10467- Nairobi*' (*where Nyayo House presently stands*). These Torture & Interrogation Chambers would only be made public in 2003 after President Moi's rule came to an end.
7. The TJRC's mandate culminated in the preparation of a Report- the Truth Justice & Reconciliation Report, comprising several volumes, and making a number of recommendations.
8. One such recommendation, and which forms part of the basis for this Petition, is the recommendation that Nyayo House, where the infamous '*Nyayo Torture Cells/ Interrogation Rooms*' (*collectively referred to as the 'Nyayo Torture Chambers'*)

were; and still are, housed, be converted into a Memorial after consultations with victims of torture, within 12 months from the date of the Report.

9. The above notwithstanding, the recommendation has contemptuously been ignored/ neglected, to the detriment of the Kenyan people and the victims/ their descendants whose plight and lack of closure continues with each passing day.
10. This Petition challenges the constitutionality of *Legal Notice 11 of 1991*, by which terms - '*Floors Nos. 24, 25 and 26 and Basement Floor excluding the car park of L.R No. 209/10467-Nairobi*' (where Nyayo House presently stands) were declared as 'Protected Areas.'
11. This Petition further seeks redress for the failure to effect the Recommendation and the failure to make good Government commitments on the same. This is done on behalf of victims of the '*Nyayo Torture Chambers/ Interrogation Rooms*', their descendants/ Estates, the wider Public and the Nation as an integrated whole.

B. PARTIES

12. The 1st – 4th Petitioners are all Survivors of acts of Torture and illegal detention committed by the State at the infamous Nyayo Torture Chambers housed at Nyayo House. They institute these proceedings on their own behalf, on behalf of other Survivors/Victims of the same torture/ illegal detention, on behalf of the general public and on behalf of the great Republic of Kenya.
13. The 5th Petitioner is a Non-Governmental Organization that advances human rights, freedoms and social justice in Kenya and beyond. The 5th Petitioner is a duly registered entity with standing to institute these proceedings.

14. The 6th Petitioner is the Law Society of Kenya (LSK). LSK is a statutory body established under section 3 of the Law Society of Kenya Act; whose objectives include upholding the Constitution of Kenya, advancing the rule of law and the administration of justice, and assisting the members of public in Kenya in matters relating to or ancillary or incidental to the law
15. The 1st Respondent is the Hon. Attorney General (AG). The Office of the AG is established by Article 156 of the Constitution of Kenya. By dint of the same provision the AG is the principal legal advisor of the National Government; and the representative of the national government in proceedings of this nature. The 1st Respondent is enjoined in these proceedings in relation to both roles. ***[Service upon the 1st Respondent shall be effected through the Petitioner's Counsel's Chambers]***
16. The 2nd Respondent is the Cabinet Secretary for the time being in charge of matters of National Heritage. The 2nd Respondent is enjoined in these proceedings on account of her failure to implement the Recommendation contained in the TJRC Report, on the conversion of the Nyayo House into a National Monument/ Memorial, in honour of the victims of the *Nyayo Torture Chambers*. ***[Service upon the 2nd Respondent shall be effected through the Petitioner's Counsel's Chambers]***
17. The 3rd Respondent is the Cabinet Secretary for the time being in charge of matters pertaining to Interior and National Coordination. The 3rd Respondent is enjoined in these proceedings on account of the impugned Legal Notice No. 11 of 1991, by which terms 'Floors Nos. 24, 25 and 26 and Basement Floor excluding the car park of L.R No. 209/10467-Nairobi' (where Nyayo House presently stands) were declared a Protected Area under the auspices of the Protected Areas Act, Cap 204 Laws of Kenya; which the public could not access. The 3rd Respondent is also enjoined on account of the stated Legal Notice being antithetical to the TJRC Recommendation to convert the *Nyayo House Torture Chambers* into a National Monument/ Memorial, in honour of

the victims who were tortured/ killed there. *[Service upon the 3rd Respondent shall be effected through the Petitioner's Counsel's Chambers]*

18. The Interested Party is a Constitutional Commission established by Article 59 of the Constitution of Kenya, with the mandate to, *inter alia*, promote respect for human rights and develop a culture of human rights in the Republic. *[Service upon the 1st Interested Party shall be effected through the Petitioner's Counsel's Chambers]*

C. LEGAL FOUNDATION OF THE PETITION

19. Article 1 (1) of the Constitution decrees that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution. Pursuant to Sub-article (4) of this provision, this sovereign power is exercised at the national and county levels.
20. Article 2 of the Constitution asserts the supremacy of the Constitution and prohibits every person from claiming or exercising State authority except as authorized under this Constitution.
21. Article 3 of the Constitution binds every person to respect and defend the Constitution.
22. Article 4 of the Constitution decrees Kenya a multi-party democratic state founded on the national values set out at Article 10. These values included public participation, human rights, good governance, integrity, transparency and accountability.
23. Article 11 (2) of the Constitution provides that the State shall 'promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage.'

24. Articles 19 -23 of the Constitution cement the place of human rights as core entitlements of persons; not as ‘bequests’ from the State, but as inherent traits that are inseparable from the concept of humanity.

25. Pursuant to Article 29 (d) of the Constitution, every person is guaranteed of their safety and security and has a right not to be subjected to torture; whether physical or mental. By dint of Article 25, this Right cannot be limited.

26. Principle 8 of the *United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (***‘The UN Basic Principles hereafter’***) defines a ‘victim’ as:

“persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization”

27. By dint of Principle 18 of the *UN Basic Principles*, Reparation may take many forms including: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

28. Principle 22 of the *UN Basic Principles* describes ‘satisfaction’ as including:

- a. Effective measures aimed at the cessation of continuing violations;
- b. Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;
- c. The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;
- d. An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
- e. Public apology, including acknowledgement of the facts and acceptance of responsibility;
- f. Judicial and administrative sanctions against persons liable for the violations;
- g. Commemorations and tributes to the victims;**

D. FACTUAL BACKGROUND

- 29. Following the heavily disputed 2007 Presidential Polls, there was widespread violence and chaos across Kenya; which led to massive loss of life, destruction of property and displacement of persons.
- 30. Through a conciliation process spearheaded by eminent African personalities, a power sharing agreement was reached between the 2 opposing presidential candidates. Following the enactment of the Constitution of Kenya (Amendment) Act, 2008 and the National Accord and Reconciliation Act, 2008 a national process of reconciliation commenced. Four agenda were conceived by the Coalition Government that came into

power following the entry into force of the National Accord & Reconciliation Act. They were:

- i. Immediate Action to Stop Violence and Restore Fundamental Rights.
- ii. Addressing the Humanitarian Crisis, and Promoting Healing and Reconciliation
- iii. How to Overcome the Political Crisis (power sharing)
- iv. Tackling Long-term Issues.

31. The *Truth Justice & Reconciliation Act, No. 6 of 2008* ('the TJR Act') was enacted in 2008, with the mandate to promote peace, justice, national unity, healing and reconciliation, among the people of Kenya by:

- investigating and establishing a record of human rights violations by the State, since Kenya's independence in 1963 to 2008,
- explaining the causes of the violations; and
- recommending prosecution of perpetrators and reparations for victims.

32. The TJR Act established the *Truth Justice & Reconciliation Commission* ('the TJRC') as the body tasked with the execution of the objective of the Act. The TJRC was empowered to *inter alia*, take views of persons, victims, etc. and compile a Report on the instances of human right violations, and make Recommendations on the same.

33. Pursuant to *section 48 of the TJR Act*, the TJRC's report was to be submitted to the President; following which the TJRC would stand dissolved on the effluxion of 3 months therefrom.

34. The TJRC prepared its Report and submitted it to the President on *21st May 2013*, comprising 2210 pages in 4 Volumes. The Report was then gazetted and transmitted

to Parliament (the National Assembly) for its consideration in line with section 48 (4) of the TJR Act.

35. One of the Recommendations, which forms the substance of this Petition was the recommendation that the Nyayo House; wherein the Nyayo Torture Chambers were housed, be converted to a Memorial/ National Monument by the Minister (now, Cabinet Secretary) in charge of National Heritage & National Museums. This action was to be implemented within 12 months from the date of the Report; and in consultation with the victims of torture at the infamous torture chambers.

36. It should be recalled that by operation of Legal Notice No. 11 of 1991, 'Floors Nos. 24, 25 and 26 and Basement Floor excluding the car park of L.R No. 209/10467-Nairobi' (where Nyayo House presently stands), had been previously declared 'Protected Areas', ostensibly to sequester the torture chambers from the scrutiny of the public, and to insulate the horrors that were meted out therein from the press and international community.

37. Legal Notice No. 11 of 1991 was issued by (former) Minister for State, Office of the President, Jackson Angaine on 1st February 1991, under the auspices of the *Protected Areas (Amendment) Order, 1991*, an instrument issued pursuant to *section 3 of the Protected Areas Act*. By virtue of the *6th Schedule of the Protected Areas (Amendment) Order*, 'Floors Nos. 24, 25 and 26 and Basement Floor excluding the car park of L.R No. 209/10467-Nairobi' are, to date, 'protected areas.'

38. Additionally, by virtue of paragraph 2 (e) of the Protected Areas Order-

“The areas, places and premises described in the Schedules are declared to be protected areas for the purposes of the Act, and no person shall be in such protected areas without the permission of the prescribed authority or-

(e) in respect of the areas, places and premises described in the Sixth Schedule, the President or the Cabinet Secretary for the time being responsible for Home Affairs;”

39. In view of the above, no person may access the ‘*Nyayo Torture Chambers/ Interview Rooms*’ - i.e. *Floors Nos. 24, 25 and 26 and Basement Floor excluding the car park of L.R No. 209/10467-Nairobi*, without the authorization of either the President of the Republic of Kenya or the Cabinet Secretary in charge of Home Affairs; (Now, Interior & National Administration) notwithstanding the Recommendation that the said site be converted into a Memorial/ National Monument.

40. It is important to note that the Nyayo House Torture Chambers were first revealed to the public on 18th February 2003, after President Daniel Torotich Arap Moi exited from power. Moreover, prior to, and after, the exit of President Moi, there were attempts to destroy the Torture Chambers in a bid to cover up the atrocities that went on there, and sanitize them.

41. Upon the Torture Chambers being made public in 2003, the (*then*) Minister for Justice declared that the chambers would be converted into a National Monument of Shame. This commitment was reiterated, in June 2004, by the (*then*) Vice President, and in February 2007 by the (*then*) Minister for National Heritage.

42. On 5th December 2008, the 5th Petitioner wrote to the (*then*) Prime Minister informing him of further destruction of the Torture Chambers; notwithstanding the Chambers being the subject of the (*then*) ongoing TJRC process.

43. The Government thereafter reiterated its commitment to preserve the Torture Chambers and convert them into a National Monument of Shame, for prosperity.

44. Following the 5th Petitioner's letter dated 5th December 2008, the (*then*) Minister for Justice, National Cohesion and Constitutional Affairs, wrote to the (*then*) Permanent Secretary, Ministry for Provincial Administration & Internal Security on 19th December 2008 asking him to preserve the chambers.

45. On 26th March 2015, the Head of State (*then*) H.E. Uhuru Kenyatta addressed a Joint seating of the 2 Houses of Parliament in his annual State of the Nation Address. He made the following remarks:

“To this day, as a nation, we are still plagued by painful memories of unresolved murders, the existence of torture chambers and detentions without trial; events such as the Wagalla tragedy and violence against the proponents of expanding our democratic space; and all actions that have at times failed to recognise the civil and human rights of Kenya's citizens. These have shaken the nation, excluded some Kenyans from the full promise of citizenship and fractured our national fabric.

We have witnessed violence linked to elections which has left many Kenyans dead, maimed and dispossessed. In 2007-2008, this reached its most tragic expression with the post-election violence that left 1,300 Kenyans dead and more than 650,000 displaced from their homes across the country. Collectively, these incidents have disunited us and held our people hostage to this tragic history by providing the foundation and rationale for cynical and destructive politics of hate and division.

In an effort to confront this past, the Truth, Justice and Reconciliation Commission (TJRC) undertook an inquiry into past injustices. Their report is before this House, and I urge the hon. Members to process it without undue delay.

My fellow compatriots, the Government has made efforts to relieve the plight of victims, particularly those of the post-election violence of 2007/2008. While these efforts have been lauded internationally, most recently by the African Union (AU) report that recognised that Kenya has set a positive standard to be emulated, I

recognise that it is impossible to fully compensate for the loss of life and the magnitude of suffering.

Yesterday, I received the Report on the 2007/2008 Post Election Violence Related Cases from the Office of the Director of Public Prosecutions (DPP), a copy of which is annexed to my Report on National Values. In all, there were 6,000 reported cases and 4,575 files opened. It is the opinion of the DPP that there are challenges to obtaining successful prosecutions. These challenges range from inadequate evidence, inability to identify perpetrators, witnesses' fear of reprisals and the general lack of technical and forensic capacity at the time. Nonetheless, the Office of the DPP recognises there were victims and recommends that these cases be dealt with using restorative approaches.

We must indeed recall our options are not limited to retributive justice. There also exists the promise of restorative justice. In many ways, Kenyans and humanity overall, have benefited from restorative justice, an approach that is deeply rooted in our cultural and historical realities, particularly when such conflicts have a communal and political dimension.

Many thousands of Kenyans have reached out to reconcile with one another. My administration was forged from this reconciliation and is building on the efforts of the last government to advance the resettlement, reconciliation and relief to internally displaced persons, and I am committed to continuing these efforts as necessary.

Hon. Members, notwithstanding the recommendation of the Truth, Justice and Reconciliation Commission (RTJRC) Report, I have instructed the Treasury to establish a fund of Kshs10 billion over the next three years to be used for restorative justice.

This will provide a measure of relief and will underscore my Government's goodwill. I have also established a State Department dedicated to strategic initiatives in marginalized and at-risk regions and populations of our country. It is

my hope that these measures will go some way to bringing the nation together as we reach for the prosperity and security that is our common promise.

Fellow Kenyans, the time has come to bring closure to this painful past; the time has come to allow ourselves the full benefit of a cohesive, unified and confident Kenya, as we claim our future. My brothers and sisters, to move forward as one nation, I stand before you today on my own behalf, on behalf of my Government and all past governments to offer the sincere apology of the Government of the Republic of Kenya to all our compatriots for all past wrongs.

I seek your forgiveness and may God give us the grace to draw on the lessons of this history to unite as a people and together, embrace our future as one people and one nation.”

46. The apology by the (*then*) Head of State marked the first time that the government of Kenya acknowledged past injustices and issued an apology to the victims of the injustices.

47. The issuance of the apology was part of the Recommendations made by the TJRC on issuance of apologies as part of the Reparations recommended by the Commission.

48. With the issuance of the apology, the 1st, 2nd, 3rd & 4th Petitioners renewed their hopes that their quest for reparations and restorative justice would bear fruits. Equally, the Petitioners belief that their right to ‘commemorative reparations’ would be honoured. Sadly, almost a decade later, no step has been taken towards the conversion of the torture chambers into a national monument.

49. The Petitioners further plead that *Legal Notice 11 of 1991* not only frustrates the honouring of the State’s commitments on the conversion of the Torture Chambers but it also frustrates the implementation of the TJRC Recommendations, deprives victims

of their due reparations and closure, even where the courts have found in favour of the victims, and the Government has officially acknowledged the injustices that took place at the Nyayo House Torture Chambers/ Interview Rooms, and publicly apologized for the same.

50. Despite the TJRC Recommendation on the conversion of the site to a memorial; as a means of reparation/ satisfaction; within the meaning of the UN Principles highlighted (elsewhere) above, the Respondents have failed to/ neglected to do the same to the detriment of the Petitioners, the victims and their descendants/ their estates, the Nation's heritage and the Nation as a whole.

51. Despite the timeframe contained in the TJRC Recommendation mentioned above- i.e. 12 months from the date of the Report- May 2013, the Respondents have failed to/ neglected to do the same to the detriment of the Petitioner, the victims and their descendants/ their estates, the Nation's heritage and the Nation as a whole.

52. The Petitioners have made several attempts to engage the State and have the Nyayo Torture Chambers converted into a National Monument. On 13th March 2006, the 1st Petitioner wrote, under the aegis of the *Nyayo House Torture Survivors Association*, to H.E. the President asking that the commitment be honored.

53. On 17th September 2019, the 1st Petitioner wrote, under the aegis of the *Nyayo House Torture Survivors Association*, the Cabinet Secretary, Ministry of Interior and National Administration, asking that Legal Notice 11 of 1991 be revoked, and informing the CS of how the impugned Legal Notice had come into existence.

54. On 24th March 2023, the 1st Petitioner, under the aegis of the *Centre for Memory and Development*, wrote to the Cabinet Secretary, Ministry of Interior and National Administration, asking that Legal Notice 11 of 1991 be revoked, to pave way for the conversion of the Torture Chambers into a National monument.

55. The 4th Petitioner has severally written to the State asking that the pledge by the Government be honored and the Torture Chambers be converted into a national monument.

56. In spite of the Petitioners' efforts, and the Recommendation of the TJRC, the Respondents have willfully ignored and neglected to convert the torture Chambers into a National Monument, to the detriment of the Petitioners, other victims/ Survivors or their Estates, and to the detriment of the Nation as a whole.

57. It is instructive to note that more than 100 Petitions were instituted by the Survivors of the Nyayo House Torture Chambers, or by their Estates/Representatives where the victims had passed on. The Courts vindicated the vast majority of the Petitioners, allowed their petitions and, *inter alia*, granted them Orders of compensation.

E. CONSTITUTIONAL VIOLATIONS/ INFRINGEMENTS

58. The Petitioners posit that the Respondents' inaction to implement the TJRC Recommendation (to Convert the Nyayo House/ Torture Chambers into a Memorial/ National Monument) is antithetical to the national accord, the peacebuilding process and the objectives of the TJR Act.

59. The Petitioners further posit that, in so far as Legal Notice No. 11 of 1991, remains in force/operational, it is antithetical to the Rule of Law, our National Heritage, our national values/ principles of governance and our Culture.

60. The Petitioners further posit that pursuant to *paragraph 7 of the 6th Schedule of the Constitution of Kenya, 2010*, all laws in force (*including the Protected Areas Act & the Regulations/ Orders issued thereunder, e.g. Legal Notice 11 of 1991*) must be

‘construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution.’

61. The Petitioners thus plead that, in view of the documented, and accepted, human rights violations committed by the State at the afore-mentioned site (Nyayo House Torture Chambers & Interview Rooms) under the aegis of the Protected Areas Act, the Protected Areas (Amendment) Order- Legal Notice 11 of 1991, the continued stay in operation of the impugned Legal Notice constitutes a continuing violation of torture victims’ rights to dignity, to access (restorative) justice and reparations, the collective rights of persons/citizens to their National Heritage and culture and the Rule of Law.
62. The Petitioners further posit that the failure to lay before the National Assembly, the impugned legal instrument; to wit the *Protected Areas (Amendment) Order, 1991*, issued by (former) Minister for State, Jackson Angaine on 1st February 1991, otherwise referred to as Legal Notice 11 of 1991, rendered the said Instrument statutorily/constitutionally infirm.
63. The Petitioners thus plead that the impugned legal notice was/is of no legal effect.
64. In addition, the Petitioners impugn Legal Notice No. 11 of 1991 for the failure to consult the public prior to its issuance, and the failure to align it with the Constitution of Kenya in terms of *paragraph 7 of the 6th Schedule of the Constitution of Kenya, 2010*, once the Constitution took effect.
65. The Petitioners insist that, following the various declarations by the Government, that it would convert the Torture Chambers into a National Monument, the Respondents’ failure to do this amounted to a breach of the legitimate expectations of the Petitioners, other Survivors/ Victims and the General Public.

F. CONCLUSION

66. For the Grounds pleaded herein, as substantiated by the Petitioner's deposition(s) on record, and as canvassed by such arguments/submissions presented to this Honourable Court, **YOUR HUMBLE PETITIONERS PRAY THAT:**

- A. A **DECLARATION** be, and is hereby issued, that, by dint of the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* the 1st, 2nd, 3rd & 4th Petitioners are entitled to reparations for the torture that they were subjected to at the Nyayo Torture Chambers.
- B. A **DECLARATION** be, and is hereby issued, that Legal Notice 11 of 1991 is unconstitutional, null and void, in so far as it declares 'Floors Nos. 24, 25 and 26 and Basement Floor excluding the car park of L.R No. 209/10467-Nairobi' (where Nyayo House presently stands) as 'protected areas' within the meaning of the Protected Areas Act, Cap 204 Laws of Kenya.
- C. A **DECLARATION** be, and is hereby issued, that Legal Notice 11 of 1991 is unconstitutional, null and void on account of the failure to lay before the National Assembly, the impugned legal instrument in accordance with Section 3 (2) of the Protected Areas Act, Cap 204 Laws of Kenya.
- D. A **DECLARATION** be, and is hereby issued, that in failing to convert the Nyayo Torture Chambers (i.e. *Floors Nos. 24, 25 and 26 and Basement Floor excluding the car park of L.R No. 209/10467-Nairobi*) into a national Monument, the Respondents breached and violated the legitimate expectations of the Petitioners, other Victims/ Survivors or their respective estates, and the legitimate expectations of the General Public.

- E. A DECLARATION** be, and is hereby issued, that in failing to convert the Nyayo Torture Chambers (i.e. *Floors Nos. 24, 25 and 26 and Basement Floor excluding the car park of L.R No. 209/10467-Nairobi*) into a national Monument, the Respondents breached and violated the Petitioners' rights to their national and cultural heritage, rights guaranteed and protected by Article 11 of the Constitution.
- F. A DECLARATION** be, and is hereby issued, that the Nyayo Torture Chambers (i.e. *Floors Nos. 24, 25 and 26 and Basement Floor excluding the car park of L.R No. 209/10467-Nairobi*) are a national heritage site of historical significance.
- G. A DECLARATION** be, and is hereby issued, that the Respondents' failure to implement the TJRC Report infringes on the 1st – 4th Petitioners' rights to restorative justice and reparations.
- H. An order of CERTIORARI** be, and is hereby issued, calling into this Honourable Court for purposes of its being quashed, Legal Notice 11 of 1991, and by the same writ it be subsequently quashed, to the extent that it declares '*Floors Nos. 24, 25 and 26 and Basement Floor excluding the car park of L.R No. 209/10467-Nairobi*' (where Nyayo House presently stands) as 'protected areas' within the meaning of the Protected Areas Act, Cap 204 Laws of Kenya.
- I. Costs be borne by the Respondents.**

DATED at NAIROBI this 4th DAY OF JUNE 2024.



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Advocates for the Petitioners**

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REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL & HUMAN RIGHTS DIVISION
CONSTITUTIONAL PETITION NO. OF 2024

IN THE MATTER OF ARTICLES 1, 2, 3, 4, 11, 25 & 29 OF THE CONSTITUTION OF
KENYA, 2010

-AND-

IN THE MATTER OF THE TRUTH JUSTICE & RECONCILIATION ACT &
CONSEQUENT RECOMMENDATIONS

-AND-

IN THE MATTER OF PRINCIPLES 8, 18 & 22 OF THE UNITED NATIONS BASIC
PRINCIPLES AND GUIDELINES ON THE RIGHT TO A REMEDY AND
REPARATION FOR VICTIMS OF GROSS VIOLATIONS OF INTERNATIONAL
HUMAN RIGHTS LAW AND SERIOUS VIOLATIONS OF INTERNATIONAL
HUMANITARIAN LAW

-BETWEEN-

BERNARD WACHIRA WAHEIRE.....	1 ST PETITIONER
FLORENCE NYAGUTHI MURAGE.....	2 ND PETITIONER
JOSEPH KAMONYE MANJE.....	3 RD PETITIONER
PROF. NGOTHO KARIUKI.....	4 TH PETITIONER
KENYA HUMAN RIGHTS COMMISSION.....	5 TH PETITIONER
LAW SOCIETY OF KENYA.....	6 TH PETITIONER

-VERSUS-

THE HONOURABLE ATTORNEY GENERAL.....	1 ST RESPONDENT
CABINET SECRETARY, MINISTRY OF TOURISM, WILDLIFE & HERITAGE.....	2 ND RESPONDENT
CABINET SECRETARY, MINISTRY OF INTERIOR & NATIONAL COORDINATION.....	3 RD RESPONDENT

-AND-

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR).....	INTERESTED PARTY
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SUPPORTING AFFIDAVIT: BERNARD WACHIRA WAHEIRE
(In Support of Petition)

I, **BERNARD WACHIRA WAHEIRE**, of National ID No. 0237873, a resident of Nairobi and Kenyan National and of c/o P.O Box **2119 – 00606** do solemnly swear and state that:

1. Being an adult of sound mind and disposition I am competent to swear this Affidavit in support of our Petition.
2. I have the authority of the 2nd – 4th Petitioners to depone this Affidavit on their behalf.
3. I am a human rights activist, involved in among other causes, championing for the rights of the Survivors and Victims of the Nyayo Torture House Chambers. I do this through the *National Victims and Survivors Network* and the *Centre for Memory and Development*.
4. I adopt and reiterate all that is pleaded in our Petition as if the same was set out here in verbatim.
5. In 1986, I was arrested by police Officers from the Special Branch. The reasons for my arrest were baseless accusations of being a political dissident.
6. I was roughed up and hounded to the Nyayo House basement cells (*'The Nyayo House Torture Chambers'*) and tortured over 16 days to the point of being forced to confess to offences I did not commit- i.e.' *'taking an unlawful oath'* and *'neglect to prevent a felony.'* Thereafter I was charged in Chief Magistrates Criminal Case No 5864 of 1986, sentenced to prison for 4 years and only released from prison in 1989.
7. In 2003, I sued the State, *vide* Nairobi Miscellaneous Civil Case No. 1184 of 2003, seeking declarations on the violation of my rights and damages for the violation of my

rights while at the Nyayo Torture Chambers. The Court returned a verdict that my rights had been violated and awarded me KShs. 2,500,000. *I annex a true copy of the Judgement of Okwengu J and Dulu J dated 8th April 2020; which I mark as ‘WW-1’.*

8. I am aware that several other victims/ Survivors of the Nyayo Torture Chambers; in their hundreds, also petitioned the Courts for redress and their Petitions were successful.
9. The *Truth Justice and Reconciliation Act, No. 6 of 2008 (‘TJR Act’)* was enacted in 2008. This Act established the Truth Justice and Reconciliation Commission (TJRC) and entrusted it with the mandate to look into historical injustices committed on Kenyan soil and to make appropriate recommendations.
10. I am aware that the TJRC took views/statements of over 40,000 victims, descendants of victims, members of the police and armed forces, etc.; specifically, on the torture that was meted out to detainees at the Nyayo Torture Chambers.
11. For context, the Nyayo House Torture Chambers had *vide Legal Notice 11 of 1991* been formally secluded from the general public, under the auspices of the Protected Areas Act. By this Legal Notice, termed the *‘Protected Areas (Amendment) Order, 1991’*, the (then) Minister for State, Jackson Harvester Angaine had declared as **‘Protected Areas’- ‘Floors Nos. 24, 25 and 26 and Basement Floor** *excluding the car park of L.R No. 209/10467. I annex a true copy of Legal Notice No. 11 of 1991, dated 1st February 1991, and issued by Jackson Harvester Angaine; which I mark as Annexure ‘WW-2’*
12. The afore-mentioned Floors 24, 25 & 26 constituted the Interrogation Rooms/ Halls while the basement housed ‘dark, dingy and often waterlogged cells’ where detainees would be left to endure physical, mental and psychological torture for days on end in a bid to extract forced confessions from them. *[For purposes of our Petition my reference*

to the Nyayo House Torture Chambers encompasses both the Interrogation Rooms on the upper floors and the basement cells.]

13. I am aware that the TJRC delivered its Report to the President on 21st May 2013 and it was gazetted. The Report contained the TJRC's Recommendations on matters falling within its ambit.
14. One of the Recommendations, which forms part of the substance of this Petition, was the recommendation that the Nyayo Torture Chambers be converted to a Memorial/ National Monument by the Minister (now, Cabinet Secretary) in charge of National Heritage & National Museums. This action was to be implemented within 12 months from the date of the Report; and in consultation with the victims of torture at the infamous torture chambers.
15. The Nyayo House Torture Chambers were first revealed to the public on 18th February 2003, after President Daniel Torotich Arap Moi exited from power. I am aware that, prior to the exit of President Moi, there were attempts to destroy the Torture Chambers in a bid by the departing regime to cover up the atrocities that went on there. These attempts were made even after the exit of President Moi and were it not for the structural integrity of the entire Nyayo House, the destruction may have been successful.
16. On the Torture Chambers being made public in 2003, the (*then*) Minister for Justice declared that the chambers would be converted into a National Monument of Shame. This commitment was reiterated, in June 2004, by the (*then*) Vice President, and in February 2007 by the (*then*) Minister for National Heritage.
17. I have severally written to the relevant state officers reminding them of their commitment to convert the Nyayo Torture Chambers into a Memorial. I have equally reminded them of the TJRC recommendation on the same.

18. On 13th March 2006, I wrote to H.E. the President, Mwai Kibaki and called for personal audience where we could be heard. ***I annex a true copy of my letter dated 13th March 2006; which I mark as Annexure ‘WW-3’.***
19. On 17th September 2018, KHRC and myself wrote to the (then) Cabinet Secretary, Ministry of Interior and National Coordination, Dr. Fred Matiang’i beseeching him to have Legal Notice 11 of 1991 revoked, and informing him of the Instrument’s disdainful history. ***I annex a true copy of my letter dated 13th March 2006; which I mark as Annexure ‘WW-4’.***
20. For context, it is during the trial of ‘*The Mutugi 4*’ – the late George Anyona, Prof. Akong’o Oyugi, Prof. Ngogho Kariuki (*the 4th Petitioner herein*) and Augustine Njeru Kathangu, that the Accused persons informed the trial Court of the horrors that were visited upon them at the Torture Chambers. Their Defence teams then applied for the Court to visit the site in order to be able to make findings on their complaint.
21. On the very day that the Court was to visit the site, the Prosecution tabled before the Court Legal Notice 11 of 1991 designating the torture chambers as ‘protected areas’; thus dealing a fatal blow to the Mutugi 4’s application.
22. On 29th January 2019, I wrote to the (former) Rt Hon Prime Minister Raila Odinga calling for the Repeal of Legal notice 11 of 1991; and for the fulfillment of the pledge made by himself; in 2010, i.e. that the Nyayo Torture Chambers would be converted into a Memorial. ***I annex a true copy of my letter dated 29th January 2019; which I mark as Annexure ‘WW-5’.***
23. On 24th March 2023, I wrote to Prof. Kithure Kindiki, the CS- Ministry of Interior and National Administration calling for the repeal of Legal Notice No. 11 of 1991. This letter received no response from his office. ***I annex a true copy of my Letter dated 24th March 2023; which I mark as Annexure ‘WW-6’.***

24. Despite the Government's commitments and assurances; and the TJRC Recommendation, the State has neglected to convert the Nyayo Torture Chambers into a National Monument.

25. In order to access the Nyayo torture Chambers; for purposes of our commemoration, we have to write to the County Commissioner/ Area Police commander; who thereafter liaises with the National Intelligence Service before we can be granted or denied access.

I annex various correspondences with the County Commissioner/ Minister of Interior; which I mark as Annexure 'WW-7'.

26. As victims/ Survivors of the Nyayo Torture Chambers we have a right to reparations and closure.

27. The continued existence of *Legal Notice No. 11 of 1991* not only prolongs our quest for restorative and transitional justice, but it also seeks to erase/ sanitize an essential part of this Nation's Heritage.

28. I depose this Affidavit in support of our Petition of an even date; which Petition is merited and should be allowed.

29. All that is deposed to herein is true to the best of my knowledge and understanding.

SWORN At NAIROBI

By the said

BERNARD WACHIRA WAHEIRE

]

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]

]

DEPONENT

This 4th day of JUNE 2024]

BEFORE ME

COMMISSIONER FOR OATHS



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KENYA

This is the Exhibit Marked " WW-1
Referred to in the annexed Affidavit Declaration
of D. WACHIRA WAHEIRE

Sworn / Declared before me this 4th day of

Wachira Weheire v Attorney-General JUNE 20 24 at NRB

(2010) AHRLR 185 (KeHC 2010)


Commissioner for Oaths

Wachira Weheire v the Hon Attorney-General

High Court, Nairobi, Miscellaneous Civil Case 1184 of 2003, 8 April 2010

Judges: Okwengu, Dulu

Responsibility of state for arbitrary detention and torture committed by previous regime

State responsibility (no statute of limitation for seeking redress for human rights violations, 31, 41)

Personal liberty and security (arbitrary arrest and detention, 45, 54)

Torture (failure of state to respond, medical reports 46, 47, 54)

Cruel, inhuman or degrading treatment (47, 54)

Evidence (balance of probability, 48)

[1.] Before us is an originating summons dated 6 October 2003 in which the plaintiff is Wachira Waheire and the defendant is the Attorney-General.

[2.] The originating summons is said to have been brought under section 84(1),(2) and (6) of the Constitution, and rules nine and 11 of the Constitution of Kenya (Protection of Fundamental Rights and Freedoms of the Individual) Practice and Procedure Rules 2001, as read together with Chapter five of the Constitution (namely section 70 to 83) and order XXXVI of the Civil Procedure Rules, and section 3A of the Civil Procedure Act (Cap 21). The orders sought are as follows:

(1) A declaration that the plaintiff's fundamental rights and freedoms under section 70, 72(3 & 5), 74(1) 77, 78(1), 79(1), 80(1), and 82(3) have been and were contravened and grossly violated by police officers and other government servants, agents, employees and institutions in 1986 and on diverse dates thereafter.

(2) A declaration that the plaintiff is entitled to the payment of damages an compensation for violations an contraventions of his fundamental rights and freedoms under the aforementioned provisions of the constitution.

(3) General damages, exemplary damages on an aggravated scale under section 84(2) of the Constitution of Kenya for the unconstitutional conduct by government servants and agents.

(4) Any further orders, writs, directions, as this Honourable Court may consider appropriate.

(5) Costs of the suit, with interest at court rates.

[3.] The originating summons was accompanied by a supporting affidavit sworn by the plaintiff on 6 October 2003. It was deponed in the said affidavit, *inter alia*, that on 2 December 1986 the applicant who was a commercial officer with Associated Battery Manufacturers (EA) Ltd Nairobi, was arrested without a warrant in breach of section 72(3) and (5) of the Constitution.

[4.] The plaintiff swore that while at Nyayo house he was interrogated while naked for lengthy sessions, while hungry, thirsty and without sleep, and held *Incommunicado* in a dark cell. That he was frequently assaulted by Special Branch officers using slaps, kicks, whips, tyre strips, broken table, chair legs, as well as hose pipes, and placed naked in water logged cells, and that he was threatened with death and forced to confess to false charges in breach of section 74(1) of the Constitution.

[5.] The plaintiff further averred that he was arraigned in court on 17 December 1986 on charges of taking an illegal oath and failure to prevent a felony to which he pleaded guilty; that the court failed in its constitutional and mandatory statutory duties in that it failed to notice that the plaintiff was not a free agent, and allowed the same officers who had tortured the plaintiff to stay in court thus psychologically forcing the plaintiff to plead guilty, and failing to enquire about his unlawful and inordinate incarceration for 16 days.

[6.] The plaintiff also deponed that his appeal No 469 of 1987 was summarily rejected in breach of the provisions of section 77 of the Constitution; and that he was taken to Industrial Area Prison where he underwent severe mental and psychological torture. He was later transferred to Kamiti Maximum Prison and then further transferred to Kodiaga Maximum Security Prison Kisumu, (then notorious for high prisoner mortality rate), where he was subjected to hard labour thus aggravating his mental and psychological suffering.

[7.] In a supplementary affidavit sworn by the plaintiff on 11 August 2009 and filed on 21 August 2009, with leave of the court, the plaintiff reiterated the same facts that he had sworn in the earlier affidavit, but provided annexures in support of his averments. The annexures included a charge sheet and proceedings in respect of Chief Magistrate's criminal case No 5864 of 1986, which confirmed that the plaintiff was charged before the Chief Magistrate on 17 December 1986 with two counts. The first count was that of taking an unlawful oath, contrary to section 61(b) of the Penal Code Cap 63 of the Laws of Kenya. And the second count was that the neglect to

prevent a felony contrary to section 392 of the Penal Code cape 63 Laws of Kenya as read with section 36 of the same code. The plaintiff who was unrepresented was convicted on his own plea of guilt, and sentenced to four years imprisonment on count one, and 18 months on count two.

[8.] Also annexed to the supplementary affidavit, is the plaintiff's letter of appointment with Associated Batteries Manufactures East Africa Limited and correspondences showing his progression. Newspaper reports reporting the plaintiff's arrest and conviction, as well as medical reports from a doctor and counselling psychologists which showed that the plaintiff suffered physical and psychological trauma, were also annexed.

[9.] The plaintiff filed two sets of written submissions. The first submission were filed on 28 February 2008 by which time no reply to the originating summons had been filed by the Attorney-General, and the plaintiff assumed that the matter was proceeding *ex parte*. The second set of submission was filed by the plaintiff on 5 November 2008. In the submissions, the plaintiff recapped the facts leading to his claim. He explained that as result of this arrest and imprisonment, he suffered physical and psychological trauma. In addition, the plaintiff claimed that he lost his employment, and his reputation was also ruined, as a result of which he was not able to secure formal employment. It was the contention of the plaintiff that the Police Act (Cap 84) and the Criminal Procedure Code (Cap 75) do not allow the subjection of any individual to degrading or inhuman treatment.

[10.] The plaintiff urged the court to take judicial notice of the fact that there existed a torture chamber at Nyayo House, as the existence of the torture chamber was documented in many publications including Amnesty International, index AFR/32/17/87 of July 1987 entitled 'Kenya torture political detention and unfair trials' and another one entitled 'We lived to tell the Nyayo House stories', both of which captured the plaintiff's story. The plaintiff further referred to the High Court of Kenya at Nyeri criminal case No 12 of 2006, *Republic v Amos Karugu Karatu* in which the existence of the Nyayo House Torture Chambers was acknowledged.

[11.] The plaintiff cited the case of *Felix Njagi Marete v Attorney-General* [1987] KLR 690, where Shields J in awarding damages for contravention of section 74(1) of the Constitution stated:

The Constitution is not a toothless bulldog nor is it a collection of pious platitudes. It has teeth and in particular these are found in section 84. Both section 74 and 84 are similar to the provisions of other Commonwealth constitutions. It might be thought that the newly independent states who in their constitutions enacted such provisions were eager to uphold the dignity of the human person and to provide remedies against those who wield power.

[12.] The plaintiff also cited the case of *Dominic Arony Amolov Attorney-General* HC misc application No 494 of 2003, contending

that in that case, the High Court asserted that claims under the Fundamental Rights and Freedom in the Constitution, cannot be interpreted subject to the restrictions imposed by the Limitation of Actions Act Cap 22, and that under section 84(1) of the Constitution, the High Court can grant redress to a party in a manner specified in section 84(2) of the Constitution if there exist proof of violation of section 70 to 83. The plaintiff further pointed out that the rules under the Legal Notice No 133 of 2001 Constitution of Kenya (protections of fundamental rights and freedoms of the individual, practice and procedure rules), do not place any limitations on the citizen's rights to institute a suit of the nature before the court.

[13.] The plaintiff relied also on HCCC No 3829 of 1994, *James Njau Wambururu v Attorney-General*, in which the High Court considered article 4 of the Convention against Torture and other Cruel, Inhuman and Degrading Treatment, and article 5 of the African Charter on Human and Peoples' Rights, and expressed the view that the state has a duty in its legal system to ensure that victims of acts of torture obtain redress and adequate compensation as contemplated by article 14, and further confirmed that the constitution of Kenya recognises the dignity of all persons and entitles any victim of breach of fundamental rights to damages.

[14.] In his first set of submissions the plaintiff asked the Court to award him general damages of Kshs 3 million and exemplary damages of Kshs 2 million, while in the second set of submissions the plaintiff asked the court to award him general damages of Kshs 4 500 000, special damages for loss of income Kshs 1 902 600 and exemplary damages, Kshs 2 million. The plaintiff further urged the Court to consider awarding moral damages arising from gross violation of international human rights law and international humanitarian law by the government and its agents.

[15.] In response to the originating motion, the defendant filed grounds of opposition and written submissions. Both documents were filed on 6 November 2009. Briefly, the defendant pointed out that the plaintiff failed to fully disclose the facts of the matter. This was because the identity of the policemen who arrested him was not disclosed. Nor did the plaintiff offer any evidence that he was tortured at Nyayo House torture chamber, or disclose the name of the Chief Magistrate before whom he was arraigned, or cite the criminal case number. It was contended that the allegations made by the plaintiff were therefore oppressive to the defendant and not capable of being respondent to.

[16.] Further, it was maintained that the matters complained of by the plaintiff could be adequately adjudicated upon by the Truth, Justice and Reconciliation Commission Act 2008, Parliament was concerned that some of the transgression against our country and its people, could not be properly addressed by our judicial institutions

due to procedural and other hindrances. But that the nation must address the past in order to prepare for the future, by building a democratic society based on the rule of law and desirous to give the people of Kenya a fresh start, where justice is accorded to the victims of injustice, and past transgressions are adequately addressed. It was argued that the Court could not make informal decisions without the very important facts left out by the plaintiff. It was noted that there was a grave danger that the Court could award damages to imposters whose rights were never violated.

[17.] The plaintiff's claim was further objected to on the grounds that there was inordinate delay and acquiescence. It was noted that the plaintiff's claim was stale having been made after 17 years. It was further submitted that the plaintiff having been arraigned in court, he ought to have invoked the provisions of section 84 of the Constitution which gave him the right to raise issues regarding the violation of his rights. It was noted that the High Court to which the plaintiff appealed against his sentence had the jurisdiction to consider the alleged breaches but the same was not brought to it.

[18.] It was contended that the plaintiff was circumventing the inordinate delay and the limitation period by filing a constitutional reference instead of a normal suit commenced by a way of plaint. It was emphasised that the plaintiff's complaints, if at all, were tortuous in nature and that under section 3 of the Public Authorities Limitations Act (Cap 39) such proceedings could not have commenced after the lapse of 12 months. It was also emphasised that there were no facts provided that would establish that the plaintiff was detained for more than 16 days before being arraigned in court contrary to the provisions of section 72 of the Constitution. It was noted that the plaintiff had remedies for his alleged claim under the law of tort but he slept on his rights and was caught up by the limitation period.

[19.] The defendant relied on Chaudhuri and Chaturvedi's commenting on *Law of Fundamental rights*, 4th edition, for submission that delay, laches and acquiescence has the effect of rendering the application fatal if the subject matter is such that if a suit was filed the same would have been barred by the law of limitation and therefore such an application should be dismissed on the ground of delay.

[20.] It was pointed out that under the Public Authorities Limitation Act Cap 39 Laws of Kenya the limitation period for all torts committed by the state was 12 months. Reference was further made to Constitutional Application No 128 of 2006 in the matter of *Lt Col Peter Ngari Kagume & Others v Attorney-General*, where Nyamu J (as he then was), considering a similar suit stated:

The petitioner had all the time to file their claim under the ordinary law and the jurisdiction of the court but they never did and are now counting on the Constitution. None of the petitioners has given any explanation as to the delay for 24 years. In my view the petitioners are

guilty of inordinate delay and in the absence of any explanation on the delay; this instant petition is a gross abuse of the court process ... In view of the specified time limitation in other jurisdictions the court is in a position to determine what a reasonable period would be for an applicant to file a constitutional application to enforce his or her violated fundamental rights. I do not wish to give a specific time frame but in my mind, there can be no justification for the petitioners delay for 24 years. A person whose constitutional rights have been infringed should have some zeal and motivation to enforce his or her rights. In litigation of any kind, time is essential as evidence may be lost or destroyed and that is possibly the wisdom of time limitation in filing cases.

[21.] It was further noted that the plaintiff was convicted on his own plea of guilty and therefore the plaintiff acquiesced to the magistrate's decision by appealing against the decision, instead of challenging the constitutionality of the proceedings.

[22.] It was submitted that the plaintiff failed to disclose sufficient facts upon which his claim could be anchored. It was noted that allegations made against the Kenya police, were not clearly spelt out as required by law, as there was no clear disclosure of the police officers who arrested the plaintiff and tortured him. It was pointed out that the plaintiff had not annexed any tangible documents as proof of his allegation that he was taken to the Nyayo House Torture Chambers and tortured. It was noted that the plaintiff's allegations of torture could only be proved by a medical report. It was contended that the medical documents annexed by the plaintiff to his affidavit were hearsay documents and ought to be struck out as offending the provisions of Order XVIII rule 3(1) of the Civil Procedure Rules.

[23.] It was further submitted that the plaintiff had not demonstrated that his constitutional rights under section 70 to 83 of the Constitution had been violated. It was argued that the enjoyment of the plaintiff's rights was subject to limitation under section 70 of the Constitution. It was maintained that the plaintiff had not offered any evidence to the effect that the defendant had hindered the enjoyment of his fundamental rights contrary to section 80 of the Constitution nor had the plaintiff demonstrated that he was discriminated against. It was submitted that the state being a signatory to the charter of human rights does not condone torture and that any police officer who in the course of conducting investigations tortured a suspect was liable to very serious punishment. It was further submitted that although the essence of section 72(3) and (5) of the Constitution was to provide protection of rights to personal liberty, that fundamental right was not absolute and could be taken away by the state, if the enjoyment of that right by an individual prejudices the rights and freedom of others.

[24.] It was pointed out that the plaintiff pleaded guilty before the Chief Magistrate and therefore his arrest could not be termed as having been done in bad faith. It was argued that the seriousness of the charge that the plaintiff was facing justified interference with his

freedom. It was submitted that the plaintiff was tried by a court of competent jurisdiction and that the High Court having dismissed his appeal, the High Court was *functus officio*. It was maintained that the charge against the plaintiff were within the provisions of the law and that the plaintiff's arguments were contrary to the provisions of section 82(8) and (9) of the constitution. The court was urged to dismiss the plaintiff's case as he had not demonstrated the violation of any rights.

[25.] In his oral submissions before the Court, Mr Obwayo who appeared for the Attorney-General reiterated the written submission. Mr Obwayo took exceptions to some of the annexures to the plaintiff's supplementary affidavit sworn in support of his originating summons. Mr Obwayo pointed out that the annexure WW6A and 6B which were newspaper report, regarding Mwakeyna trials were not of any evidential value, and that annexure WW7A, B and C which were the medical reports, were not properly produced in accordance with the evidence act, and that annexure WW8A and B which were the publication on the Nyayo House Torture story and the Hansard report from the National Assembly, were not properly produced as they were not prepared by the plaintiff.

[26.] Mr Obwayo reiterated that the plaintiff was guilty of non-disclosure as the issue of his arrest and torture was not properly brought out in his affidavit. Mr Obwayo further reiterated that the plaintiff was guilty of inordinate delay in bringing this suit. He noted that the plaintiff's appeal to the High Court was dismissed 13 years ago and that the plaintiff ought to have filed his suit immediately upon his release on 17 August 1989. He urged the Court to find that the plaintiff's claim was time barred and dismiss it. He further urged the Court find that there were reasonable and probable grounds for the arrest of the plaintiff. And that there were no facts in support of alleged violations of the plaintiff's rights.

[27.] We have considered the applications, the documents filed, the written and oral submissions of both parties, as well as the authorities cited to us.

[28.] In our view, the following issues stand out for determination.

- (1) Whether the plaintiff's claim as pleaded is statute barred.
- (2) Whether the plaintiff has disclosed or failed to disclose sufficient facts upon which his claim can be anchored.
- (3) Whether the plaintiff's claim should be defeated on grounds of inordinate delay and acquiescence.
- (4) Whether the plaintiff's claim should be referred to the Truth Justice and Reconciliation Commission established under section 3(1) of the Truth Justice and Reconciliation Act 2008.
- (5) Whether the plaintiff has established to the required standard the unlawful violation of his fundamental rights and freedom contrary to section 70 to 82 of the Constitution of Kenya.
- (6) What damages if any is the plaintiff entitled to.

[29.] On the issue of limitation, it was maintained by the defendant that the proceedings before this Court were statute barred. The defendant relied on section 3 of the Public Authorities Limitation Act (Cap 39) which limits the period for filing tortious claims against public authorities to 12 months. The defendant also relied on the case of *Lt Col Peter Ngari Kagume and Others v Attorney-General Nairobi HCC Application No 128 of 2006*.

[30.] We note that the plaintiff's proceedings have been brought under section 84 of the Constitution and the rules made thereunder. Neither section 84 of the Constitution, nor LN 133 of 2001, The Constitution of Kenya (Protection of Fundamental Rights and Freedoms of the Individual) Practice and Procedure Rules, provide for any limitation period for bringing actions to enforce fundamental rights. We have considered the case of *Lt Col Peter Ngari & Others v Attorney-General* (supra), which was relied upon by the defendant. We note that the judge did not say that there was a limitation period for filing proceedings to enforce constitutional rights, though he found no justification for the delay in that particular case.

[31.] We find that, although there is need to bring proceedings to court as early as possible in order that reliable evidence can be brought to court for proper adjudication, there is no limitation period for seeking redress for violation of the fundamental rights and freedoms of the individual under the Constitution of Kenya. Indeed, section 3 of the Constitution provides that the Constitution shall have the force of law throughout Kenya, and if any other law is inconsistent with the Constitution, the Constitution shall prevail. In our view, the provisions of the Public Authorities Limitations Act limiting the period for initiating actions against public authorities is inconsistent with the Constitution, to the extent that it limits a party's rights to seek redress for contravention of his fundamental rights. The Public Authorities Limitations Act cannot override the Constitution and it cannot therefore be used to curtail rights provided under the Constitution. We therefore find and hold that the plaintiff's claim arising from violation of his constitutional rights is not statute barred.

[32.] The second issue that we wish to deal with is whether the plaintiff has disclosed or failed to disclose sufficient facts upon which his claim can be anchored. There is no doubt that a person who comes to this Court under section 84 of the Constitution alleging contravention of his fundamental rights, is required to be candid with regard to the alleged contraventions, the sections contravened, as well as facts supporting the contravention. This was clearly reiterated in *Matibav Attorney-General* misc applications No 666 of 1990, as follows:

An applicant in an application under section 84(1) of the Constitution is obliged to state his complaint, the provisions of the Constitution he considers has been infringed in relation to him and the manner in which he believes they have been infringed. Those allegations are the ones

which if pleaded with particularly invoke the jurisdiction of the court under the section. It is not enough to allege infringement without particularising the details and manner of infringement.

[33.] In our present case, the plaintiff moved this Court by way of originating summons under section 84 of the Constitution as read with rules nine and 11 of the Constitution of Kenya (protection of fundamental rights and freedom of the individual) practice and procedure rules 2001. Rule 11 provides for the procedure to be followed as that laid down under Order XXXVI of the Civil Procedure Rules. Order XXXVI rules 9 and 10(1) of the Civil Procedure Rules, provides as follows:

9. On the hearing of the summons, if the parties do not agree to the correctness and sufficiency of the facts set forth in the summons and affidavit, the judge may order the summons to be supported by such further evidence as he may deem necessary, and may give such directions as he may think just for the trial of any issues arising thereupon, and may make any amendments necessary to make the summons accord with existing facts, and to raise the matter in issue between the parties.

10(1).Where, on an originating summons under this order, it appears to the court at any stage of the proceedings that the proceedings should for any reason be continued as if the cause had been begun by filing a plaint, it may order the proceedings to continue as if the cause had been so begun and may, in particular, order that any affidavits filed shall stand as pleadings, with or without liberty to any of the parties to add to, or to apply for particular of, those affidavits.

[34.] It is apparent from the above provisions that the issue of sufficiency of facts set out in the summons and supporting affidavits, was a preliminary issue which ought to have been raised before the hearing of the originating summons, and directions of the court sought. In this case, the parties appeared before the court by way of affidavit and submissions. At no time did the defendant complain about the correctness or sufficiency of the facts, or seek the court's direction in that regard. It is therefore rather late for the defendant to complain about the sufficiency of facts at this stage. Secondly, the plaintiff filed an affidavit in support of the originating summons in which he deposed to facts in support of his claim. The plaintiff did with leave of the court file a supplementary affidavit on 12 August 2009 in which he again deposed to the facts in support of this claim, and also annexed documents in support of his claim.

[35.] The matters deposed to by the plaintiff in the two affidavits included the fact that he was arrested on 2 December 1986 while at his place of work at Associated Battery Manufacturers EA Limited, the fact that his house was unlawfully searched, the fact that he was locked up at Jogoo Road Police Station and later taken to Nyayo House Basement where he was held for sixteen days and subjected to various acts of physical, mental and psychological torture. The fact that he was subsequently arraigned in the Chief Magistrate's Court at Nairobi on 17 December 1986, charged and convicted on his own plea of guilty, the fact that the plaintiff's appeal to the High Court was

summarily rejected, and the fact that the plaintiff was subsequently held at various prisons whose names have been disclosed.

[36.] The plaintiff further identified in his affidavit the various sections of the Constitution which were contravened in regard to his fundamental rights. The defendant's complaint that the plaintiff did not state the names of the police officers who arrested him was true. However, that complaint had really no substance as the plaintiff gave sufficient particulars of his arrest, confinement and arraignment in court, which was sufficient to enable the defendant to identify the officers who were involved in the investigation and arrest of the plaintiff. In our view, even without taking into account the various annexures which were questioned by the defendant, the facts deposed to by the plaintiff a sufficient base for the plaintiff's claim regarding the infringement of his rights under the Constitution.

[37.] We note that as admitted by the plaintiff, the alleged contraventions occurred in the year 1986, and that the plaintiff was arraigned in the criminal court in the same year, when he was tried and convicted. Nevertheless, the plaintiff did not raise the issue of the contravention of his constitutional rights as provided under section 84(3) of the Constitution in the Chief Magistrate's Court, or in the High Court during the appeal as provided under rule 10 of the Constitution of Kenya (Protection of Fundamental Rights and Freedoms of the Individual) Practice and Procedure Rules. The question is, should the plaintiff be barred from raising his claim because of this failure?

[38.] Section 84(3) of the Constitution provides as follows:

If in proceedings in a subordinate court a question arises as to the contravention of any of the provisions of sections 70 to 83 (inclusive), the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to High Court unless, in his opinion, the raising of the question is merely frivolous and vexatious.

[39.] In our view, although the issue of the contravention of the plaintiff's constitutional rights could have been raised before the trial magistrate, and referred to the High Court for determination, this was not mandatory. The plaintiff's complaints included violations of his fundamental rights and freedoms, otherwise than in the course of the proceedings before the subordinate court. The plaintiff had therefore the alternative of filing an application directly to the High Court (as he eventually did), under rule 9 of the Constitution of Kenya (Protection of Fundamental Rights and Freedoms of the Individual) Practice and Procedure Rules 2001 which provides:

Where contravention of fundamental rights and freedom is alleged otherwise than in the course of proceedings in a subordinate court or the High Court, an application shall be made directly to the High Court.

[40.] Of greater concern is the fact that the plaintiff lodged his claim before this Court after a period of about 16 years from the time his cause of action arose. As observed earlier, although there is no

time limitation for claims regarding violation of fundamental rights and freedoms of the individual, the need to bring proceedings to court as early as possible cannot be overemphasised. We have considered whether the plaintiff's delay in bringing his action was inordinate such as to vitiate his claim. The plaintiff has explained that he was confined in prison until August 1989 when he was released and that upon his release, he could not immediately lodge his claim until after the year 2002, when elections were held and there was change in the government.

[41.] We have considered this explanation. The elections held in the year 2002 and the consequent wave of change in this country are a historical fact. The explanation given by the plaintiff is therefore not unreasonable. In coming to this conclusion, we bear in mind many cases which came up after the change, such as *Dominic Arony Amolo v The Attorney-General (supra)* in which the plaintiff's claim filed in the year 2003 which was more than 20 year after the cause of action arose, was allowed. We are therefore not persuaded that the plaintiff's claim should be defeated because of the delay in filing his claim.

[42.] As regards the issue as to whether the plaintiff's claim should be referred to the Truth, Justic and Reconciliation Commission established under section 3(1) of the Truth Justice and Reconciliation Act, 2008, we find no basis for this. The plaintiff has come to this court seeking redress for specific violation of his fundamental rights under the supreme law of this land. Nothing has been laid before this court to show that there is any hindrance, procedural or otherwise, to this Court addressing the violations complained of. This court not only has powers to deal with the issue of violation of constitutional rights, but is also under a responsibility to uphold the Constitution of Kenya. There is therefore no reason why the court should abdicate this responsibility to an inferior tribunal.

[43.] We note that the defendant did not file any affidavit in response to the affidavits filed by the plaintiff. Thus, the facts deponed to by the plaintiff under oath stood unchallenged.

[44.] Section 72(1) and 3(a) & (b) of the Constitution states as follows:

72(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases:

(a) In execution of the sentence or order of a court whether established for Kenya or some other country, in respect of a criminal offence of which he as been convicted.

...

(3) A person who is arrested or detained:

(a) for the purpose of bringing him before a court in execution of the order of a court; or

(b) upon reasonable suspicion of his having committed, or being about to commit a criminal offence and who is not released, shall be brought

before a court of law as soon as a reasonably practicable, and where he is not brought before a court within 24 hours of his arrest or from commencement of his detention, or within 14 days of his arrest or detention where he is arrested or detained upon reasonable suspicion of his having committed or about to commit an offence punishable by death, the burden of proving that the person arrested or detained has been brought before a court as soon as is reasonably practicable shall rest upon any person alleging that the provisions of the subsection have been complied with.

[45.] The plaintiff's arrest, confinement and arraignment in court are clearly confirmed by the charge sheet and the proceedings in respect of Nairobi Chief Magistrate Criminal Case No 5684 of 1986 which were annexures WW1(a) and (b) to the plaintiff's supplementary affidavit. It is evident that the plaintiff was arrested on 2 December 1986 and produced in court on 17 December 1986. No explanation appears to have been given to the Criminal court, nor has any explanation been offered to this Court, for the delay in producing the plaintiff in court. The charges for which the plaintiff was arraigned in court were no doubt serious and carried a maximum penalty of ten years. Nevertheless, this did not provide any justification for the police to hold the plaintiff for a period of 16 days. We find that there was violation of the plaintiff's right to personal liberty as the plaintiff should have been produced in court within 24 hours as provided under section 72(3)(b) of the Constitution.

[46.] As regards the presence of the Nyayo House Torture Chamber, the plaintiff has stated under oath that he was held at Nyayo House basement where he was tortured. The plaintiff has given specific details of how the torture was carried out. The fact that the defendant has not attempted to deny these allegations under oath can only be an indication that the allegations are true. We therefore have no reason to doubt the plaintiff's assertions. Section 74(1) of the Constitution states: 'No person shall be subject to torture or to inhuman or degrading punishment or to any other treatment.'

[47.] The acts that the plaintiff was subjected to of being kept hungry and without sleep for several days, being physically assaulted by being kicked, whipped and burned with cigarettes, pricked with pins, hose piped and placed naked in water-logged cells, were all cruel and degrading treatment and therefore a violation of section 74(1) of the Constitution. The extent of the plaintiff's torture could only have been determined through medical evidence. No evidence of medical examination done around the time of the incidence complained of was however produced. Nonetheless, the medical reports annexed by the plaintiff as annexure WW7(A), 7(B) and 7(C) provided consistency to the evidence of the plaintiff that he was physically, psychologically and mentally tortured, and that he continues to suffer the consequences of the torture.

[48.] We are satisfied that the plaintiff has established on a balance of probability that his rights to personal liberty under section 72 was

violated when he was held at Nyayo House for more than 24 hours contrary to section 72(3)(b). We are also satisfied that the plaintiff was subjected to torture, inhuman and degrading contrary to section 74(1) of the Constitution, during his confinement at Nyayo House.

[49.] We have considered the plaintiff's claim that his house was unlawfully searched contrary to section 76 of the Constitution. However, it is apparent that the search of the plaintiff's house was related to the criminal charge with which the plaintiff was subsequently arraigned in court. The plaintiff's right to protection against arbitrary search or entry as provided under section 76(1) of the Constitution was not absolute but was subject to subsection (2) which allows such search in the interest of defence, public safety and public order or maintenance of public security. We therefore find that the search at the plaintiff's house was justified and his rights were not violated in that regard.

[50.] As regards the plaintiff's complaints regarding breach of his constitutional rights during the trial before the Chief Magistrate's Court, section 77 of the Constitution states as follows:

- (1) If a person is charged with a criminal offence, then unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.
- (2) Every person who is charged with a criminal offence:
 - (a) Shall be presumed innocent until he is proved or has pleaded guilty
 - (b) Shall be informed as soon as reasonably practicable in a language that he understands and in detail of the nature of the offence with which he is charged.
 - (c) Shall be given adequate time and facilities for the preparation of his defence.
 - (d) Shall be permitted to defend himself before the court in person or by a legal representative of his own choice.
 - (e) Shall be afforded facilities to examine in person or by his legal representative, the witness called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions those applying to witnesses called by the prosecution; and
 - (f) Shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge.

[51.] The record of proceedings of the Chief Magistrate's Court which were annexed to the plaintiff's affidavit, showed that the above provisions were complied with, and that the plaintiff who was allowed to represent himself in person, pleaded guilty to the charge. The plaintiff having pleaded guilty to the charges put to him, the Chief Magistrate had no way of knowing that the plaintiff was not a free agent, or that the plaintiff had been forced to plead guilty. The Chief Magistrate could only have known this if the same was brought

to his attention by the plaintiff. This, the plaintiff failed to do. We concur with the defendant's submission that the plaintiff relinquished his rights by submitting to a plea of guilty and further acquiesced in the Chief Magistrate's decision by appealing from that decision instead of challenging the constitutionality of the proceedings. We therefore find no substance in the plaintiff's allegation that his constitutional rights under section 77 were breached either in the Chief Magistrate's Court or in the High Court during the hearing of his criminal appeal.

[52.] As regards the imprisonment and confinement of the plaintiff at Industrial Area Prison, Kamiti Medium Prison and Kodiaga Maximum Prison, it is evident that the plaintiff was held in these institutions pursuant to his conviction and imprisonment, following his criminal trial. His confinement in prison was in accordance with section 72(1)(a) of the Constitution and therefore lawful. We reject the plaintiff's allegations that his imprisonment and confinement at the various prison institutions contravened his fundamental rights under the Constitution.

[53.] We have further considered the plaintiff's allegations that his rights to protection of freedom of assembly and association under section 80(1) and protection from discrimination under section 82(3) of the Constitution were violated. We have however found no evidence in support of these allegations.

[54.] We come to the conclusion that the plaintiff's constitutional rights to personal liberty under section 72 of the Constitution was violated when he was held at the Nyayo House Basement for a period of 16 days, and that the plaintiff's rights to protection against torture, degrading and inhuman treatment under section 74 of the Constitution were also violated when he was subjected to physical, mental and psychological torture during his 16 days confinement at Nyayo House. Our next task is to consider what damages if any the plaintiff is entitled to.

[55.] We find that the plaintiff was arrested and held by police officers, and that he suffered the violation of his fundamental rights as the hands of the officers of the government. The government must therefore take responsibility for the action. As already stated, this court has the responsibility of upholding the supreme law of this land. In the case of the plaintiff, this court will do this by ensuring appropriate redress for the violation of the constitutional rights of the plaintiff through monetary compensation. Therefore an award of damages would be appropriate.

[56.] The plaintiff relied on the case of *Dominic Arony Amolo v Attorney-General* (supra), where a sum of Kshs 2.5 million was awarded in the year 2005, for similar violations; *Dr Odhiambo Oiel v Attorney-General*, HCCC (Kisumu) No 366 of 1995, where a sum of

Kshs 12 million was awarded, including exemplary damages of Kshs 4 million; the case of *James Njau Wambururu v Attorney-General* (*supra*), where Kshs 800 000 was awarded; and *Rumba Kinuthia v Attorney-General*, HC Msic App No 1408 of 2004, where a sum of Kshs 1.5 million was awarded in 2008. No submissions were made by the defendant on the issue of quantum of damages.

[57.] Having considered the authorities which were cited to us, we wish to distinguish the case of *Dr Odhiambo Oel v Attorney-General* (*supra*). In that case, the plaintiff sought general and special damages for unlawful arrest, malicious prosecution, false imprisonment, loss and damage arising from severe physical, psychological and mental torture. The damages awarded to the plaintiff included Kshs 4.5 million in respect of malicious prosecution and special damages of Kshs 3 977 675 in respect of medical expenses, loss of salary and loss of pension all of which were proved. We have taken into account the circumstances of the plaintiff which include the fact that the plaintiff lost his job and that his social standing and reputation was adversely affected by the violation of his fundamental rights and freedom, and that he also suffered physical, mental and psychological torture.

[58.] We note that the plaintiff did not specifically plead or prove any special damages. We are therefore of the view that a global award of Ksh 2.5 million would be sufficient compensation to the plaintiff for the violations suffered by him and the consequent loss. In the light of the acknowledged change in the government, and the attempts at dealing with human rights violation, we find it inappropriate to award exemplary or aggravated damages.

[59.] In conclusion, we give judgment for the plaintiff and declare:

- (i) That his fundamental rights and freedom under section 70, 72(3) and (5) and 74(1) of the Constitution were contravened and violated by police officers and other government servants or agents in the year 1986.
- (ii) We declare that the plaintiff is entitled to damages for the violation and contravention of this fundamental rights and freedoms under the Constitution.
- (iii) We award the plaintiff general damages of Kshs 2.5 million.
- (iv) We further award the plaintiff costs of the suit and interest on the judgment sum from the date of this judgment.

(Legislative Supplement No. 5)

LEGAL NOTICE No. 11 1

THE PROTECTED AREAS ACT

(Cap. 204)

IN EXERCISE of the powers conferred by section 3 (1) of the Protected Areas Act, the Minister of State responsible for internal security makes the following Order—

THE PROTECTED AREAS (AMENDMENT) ORDER, 1991

1. This Order may be cited as the Protected Areas (Amendment) Order, 1991.

2. The Protected Areas Order is amended by inserting the following new entry at the end of the Sixth Schedule—

(45) Floors Nos. 24, 25 and 26 and Basement Floor
excluding the car park off L.R. No. 209/10467—Nairobi.

Made on the 1st February, 1991.

A. H. ANGAIKE

Minister of State

This is the Exhibit Marked * WW-2
Referred to in the annexed Affidavit Declaration
of B. WACHIRA WARERE

Sworn / Declared before me this 4th day of

JUNE 20 24 at NRB

Commissioner for Oaths

NYAYO HOUSE TORTURE SURVIVORS ASSOCIATION

P.O. BOX 12026 - 00400

TEL: 0722 316146, 0722 986671, 0722-408028-

EMAIL: nyayotorturedus@yahoo.com

13th March 2006

HIS EXCELLENCY
PRESIDENT AND COMMANDER IN CHIEF
OF THE ARMED FORCES
REPUBLIC OF KENYA
C/O STATE HOUSE
NAIROBI
P.O. BOX
NAIROBI

Your Excellency,

RE: NYAYO HOUSE TORTURE MONUMENT OF SHAME

We the survivors of the infamous torture chambers humbly request for an opportunity to address you on the following concerns:

1. Three years ago, your Administration made a bold move and opened up a hitherto state secret, the Nyayo House Torture cells during which occasion all Kenyans and the world at large saw the levels that the Moi regime had sunk to as it engaged in deplorable human rights violation as a shield for massive corruption.
2. The Government during the opening occasion apologized to us the victims and survivors and promised to address and redress the sufferings we had gone through.
3. The Government further promised to convert the torture facility into a National Monument of shame as a clear testimony and commitment that it would not condone impunity and would not resort to torture to silence its perceived critics as its predecessor had done.

This is the Exhibit Marked - WW-3
Referred to in the annexed Affidavit Declaration
of WACHIA WACHEKE

Sworn / Declared before me this 4th day of

JUNE 2024 at NRB

Commissioner for Oath

50

4. Thereafter parliament in a rare move of unity did recognize and indeed admitted that gross and terrible human rights violations had taken place against innocent Kenyans under the KANU and Moi regime and went ahead to pass with amendment the "Koigi motion" seeking to compensate Kenyans who had not only been subjected to cruel torture and detention but also had their human rights as enshrined in the constitution blatantly violated. We note that the Government did not follow up with the House committee as had been passed in the amended motion.
5. During the 3rd Anniversary to commemorate the opening of the chambers, we the survivors were shocked and dumbfounded to find that the Torture cells have been so neglected and had ostensibly been converted into a rubbish dump and private car park for the National State Intelligence Service. Yet just across the street the Ministry of Local Government was very busy refurbishing the Nyayo "Rungu" monument at enormous taxpayers expense Kshs. 3.5 million to be precise. It struck us as a major contradiction that your Government was keen to remember what the majority of Kenyans should rather forget and was keen to forget what it should always remember bearing in mind that Kenyans overwhelmingly voted for NARC and forced KANU to go on indefinite leave!
6. Your Excellency we also believe that the socio-economic and political benefits that would accrue with the creation of the National Nyayo House Torture Monument of shame far out weigh the costs. Infact Mr. President we know of many donors willing to put their money in the project if only your office gave the blessings for the project to commence.
7. Your Excellency, we have not forgotten that your Government presented to Kenyans as one of its achievements, the opening of the Torture Chambers within 100 days of its existence. Now it is three years down the line, what should we say?
8. It has also not escaped our notice that the Office of Government Public Communications consistently used the images of our suffering in the Nyayo House Torture chambers to draw a comparison between NARC and KANU eras prior to during and after the National Referendum on the proposed New constitution. We considered this to be insensitive to our plight and even contemplated legal action but better judgement convinced us to try dialogue first with your Government over the matter.
9. Your Excellency, we understand that your office has been reluctant to give consent towards a declaration that the Nyayo House Torture Chambers become a "National Heritage Site" which is a key pre-requisite to starting the process of conversion of the same into a National Monument.

We the survivors are therefore kindly requesting you to grant us an audience at your earliest opportunity so that we can receive first hand your personal reassurance that our hopes for the above project will not be dashed and that the promise by our government will be fulfilled after all.

We look forward to your most favourable reply.

Yours faithfully,



Wachira Waheire
Secretary



Fredrick Murage Gathuku
Chairman

- c.c.
- 1) The Vice President and Minister for Home Affairs
 - 2) Minister, Justice and Constitutional Affairs
 - 3) Chairman, Kenya National Commission on Human Rights

Center for Memory and Development

Uniafric House 2nd floor, Suite 269, Koinange Street P.O. Box 529006-00200, Nairobi

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PROUD MEMBER OF THE
International Coalition of
SITES of CONSCIENCE

NATIONAL VICTIMS AND SURVIVORS NETWORK

17-09-2018

Dr Fred Matiangi,

Cabinet Secretary

Interior Ministry,

Office of the President

Harambee House

Nairobi

This is the Exhibit Marked "WW-4"
Referred to in the annexed Affidavit Declaration
of B. WACHIRA WARERE

Sworn /Declared before me this 4th day of

JUNE 2024 at NRB


Commissioner for Oaths

Dear Sir,

RE: REPEAL OF LEGAL NOTICE NO 11 of 1991

Greetings from the Centre for Memory and Development (CEMED), the Kenya Human Rights Commission (KHRC) and the National Victims and Survivors Network (NVSN).

The Above subject refers,

During the 1980s and early 1990s there was the dreaded Special Branch police within the then Directorate of State Intelligence (DSI), the precursor of the National Security Intelligence Service (NSIS). Under the Special Branch, there was a privileged squad of police officers who were specifically recruited and trained to carry out political assignments including heinous torture.

The squad established their national operational centre at the Nyayo House building and utilized the basement, 24th, 25th and 26th floors of the building for incommunicado detention, interrogations and torture of hundreds of Kenyans who included, ordinary men and women, members of the academia, clergy, politicians, lawyers, business people etc,

The first attempt to expose the torture activities of the special Branch Police came in 1991 during the trial of the 'The Mutugi's 4' comprising of the late George Anyona, Professor Akong'o Oyugi, Professor Ngotho Kariuki and Augustine Njeru Kathangu when the accused persons told the court of the secret torture chambers and actually applied to the court to visit the site.

On the day the Court was to make the site visit, the prosecution preempted the visit by producing a gazette Legal Notice No 11 (copy attached) that amended the Schedule of the Protected areas Act and thus effectively barring the court from visiting the torture chambers.

The truth and reality of the torture facility at the building came to light in 2003 when the National Rainbow Coalition came to power after the 2002 general elections when the government opened up the torture chambers to the public and promised to establish a monument at the site.

Since then, the government has expressed the need to preserve the former Nyayo house torture chambers for posterity as can be attested by the attached correspondence as follows:-

1. Letter from the former Prime Minister dd. 22nd December 2008
2. Letter from the PS, Ministry of Justice, National Cohesion and Constitutional affairs dd 19th December 2008
3. Copy of Court Order dd 6th February 2009
4. Petition from the Kenya Human Rights Commission dd 5th December 2008

We are therefore humbly requesting you to consider repealing the Legal Notice No 11 of 1991 (copy of which is also attached) in order to pave way for a process that will help the advocacy and eventual refurbishment and establishment of a monument/space for remembrance and learning for posterity.

The former torture Chambers are currently in a sorry state of neglect and are used as a dumpsite for obsolete furniture and equipment.

We anticipate a positive response from you.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Wachira Waheire', with a stylized flourish at the end.

1. Wachira Waheire, Secretary/CEO, CEMED

2. Davis Malombe, Deputy Executive Officer, KHRC

Center for Memory and Development

Uniafric House 2nd floor, Suite 269, Koinange Street P.O. Box 529006-00200, Nairobi

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PROUD MEMBER OF THE
International Coalition of
SITES of CONSCIENCE

Our Ref: CEMED/01/23

29.01.2019

RT. HON RAILA AMOLO ODINGA
HIGH REPRESENTATIVE FOR INFRASTRUCTURE DEVELOPMENT IN AFRICA
CAPITOL HILL BUILDING, NAIROBI

This is the Exhibit Marked "vw-5"
Referred to in the annexed Affidavit Declaration
of B. WACHIRA WATHEIRE

Sworn / Declared before me this 4th day of

JUNE 20 24 at NRB


Commissioner for Oaths

Dear Sir,

RE: KEEPING THE NYAYO HOUSE TORTURE MEMORY ALIVE

As you are probably aware, the former torture chambers at the Nyayo House building in Nairobi is yet to be converted into a National Monument and still remains inaccessible to the survivors, families, friends, relatives and Kenyans in general.

This is despite your declaration as the Prime Minister of the Republic of Kenya while touring the facility in 2010 and the recommendations made in the report of the Truth, Justice and Reconciliation Commission regarding the conversion of the former torture Chambers into a monument in 2013.

We have since established that there exists in our statute books a piece of legislation called Protected Areas (Amendment) Order through Legal Notice No. 11 of 1990 dated 1st February 1991 which amended the Protected areas Act (CAP204) by inserting at its Schedule an illegal holding area listed as: Nyayo House Basement and Floors 24,25 and 26 on L.R. No209/10467- Nairobi which places were and are not a Police Station as defined by CAP 204 of the

Protected Areas Act (Copy attached). The order was actually a belated attempt at justifying illegal detention and torture of many Kenyans at the time.

We are therefore appealing to you to utilize your good office to have the said Legal Notice No 11 of 1991 repealed and to help us realize our dreams of having a Memorial site of remembrance and learning of our country's past at the former Nyayo House Torture facility.

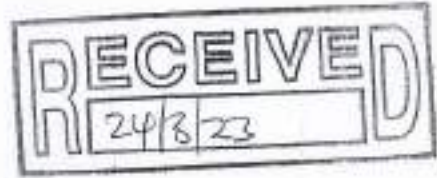
We look forward to your favorable action.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Wachira Waheire', with a stylized flourish at the end.

Wachira Waheire

Secretary/ CEO



Center for Memory and Development

Uniafric House 2nd floor, Suite 269, Koinange Street P.O. Box 529006-0200, Nairobi

Mobile no. +254 789772151, Email: cedev@gmail.com

This is the Exhibit Marked "WW-6"
Referred to in the annexed Affidavit Declaration
of B. WACHIRA WATHERE

Our Ref. CMD/2/2023

Sworn / Declared before me this 14th day of
JUNE 20 24 at NAB

24.03.2023

PROF. KITHURE KINDIKI, CABINET SECRETARY,
MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION,
OFFICE OF THE PRESIDENT, HARAMBEE HOUSE
NAIROBI-KENYA

[Signature]
Commissioner for Court

RE: REVOCATION OF LEGAL NOTICE NO.11 OF 1991 (COPY ATTACHED)

Kindly receive our many greetings from us and our hope that you are well and safe.

As you are probably aware, the former Torture Chambers at the Nyayo House building in Nairobi is yet to be converted into a National Monument since a declaration of intent was made by government in 2003.

This is the 18th anniversary since the former torture chambers were exposed to the public in February 2003.

The site still remains in-accessible to the survivors, families, friends, relatives and Kenyans in general.

This is notwithstanding a recommendation made in the Report of the Truth, Justice and Reconciliation Commission regarding the conversion of the former torture Chambers into a Monument in 2013.

The TJRC Report and the recommendations there-in have now been gazetted by Government.

Chair: Prof. Ngatho Wa Kariuki, Secretary: Wachira Wathore, Treasurer: Jacqueline Mutere, Paddy Onyango HSC Member,
Dr. Emma Njoki: Member

Page 1

We have since established that there exists in our statute books a piece of legislation known as the Protected Areas (Amendment) Order through Legal Notice No. 11 of 1990 dated 1st February 1991 which amended the Protected areas Act (CAP 204) by inserting at its Schedule an illegal torture area listed as: "Nyayo House Basement and Floors 24, 25 and 26 on L.R. No.209/10467 - Nairobi" which places were and are not a Police Station as defined by CAP 204 of The Protected Areas Act.

The Notice was actually a belated attempt at justifying and shielding the illegal detention and torture of many innocent Kenyans at the time.

We are therefore appealing to you to utilize your good office to have the said Legal Notice No 11 of 1991 revoked so that you can pave the way for the establishment of a Memorial site/ Museum for Remembrance and learning of our country's past at the former Nyayo House Torture facility.

We also trust that your action will further entrench and cement the human rights legacy of H.E the President and the Government.

Sincerely



Wachira Waheire Secretary/CEO

CC- CHAIR, KENYA NATIONAL COMMISSION ON HUMAN RIGHTS
CVS PLAZA, OFF LENANA ROAD, NAIROBI

Center for Memory and Development

Uniafric House 2nd floor, Suite 269, Koinange Street P.O. Box 529006-00200, Nairobi

Mobile: +254-789772151, Email: ccmedev@gmail.com

NATIONAL VICTIMS AND SURVIVORS NETWORK

CONTACT PERSON: WACHIRA WAHEIRE.CO-ORDINATOR. MOBILE NO +254-722316146

Our ref CMD/1/21

Wednesday, February 10, 2021

The County Commissioner

Nairobi County

Dear Sir/Madam



This is the Exhibit Marked - WW-7
Referred to in the annexed Affidavit Declaration
of B. WACHIRA WAHEIRE

Sworn/Declared before me this 4th day of

JUNE 2024 at NRB

[Signature]
Commissioner for Oaths

Re: A visit to the Basement Former Nyayo House Torture Chambers

The above subject refers.

The Centre for Memory and Development in partnership with the Kenya National Commission on Human Rights (KNCHR) and the Kenya Human Rights Commission (KHRC) would like to notify your office that there is a planned visit to the above mentioned site on Thursday, 18th February; Time 10.30 am

This is for purposes of commemorating the 18th anniversary of the opening of the former torture chambers to the members of the public.

The visit is part of an advocacy effort to urge the government to fulfill its outstanding promise and commitment to establish a memorial/monument and also to follow up on

the implementation of a similar recommendation as contained at Volume 4, Page 31 in the Report of the Truth, Justice and Reconciliation Commission (TJRC) which has now been Gazetted by government.

We also wish to verify whether a preservation order issued by the High Court sitting in Nairobi on February 16, 2009 is still intact.

Due to the Covid-19 pandemic we have limited the number of visitors to 30 persons who will be required to observe strict Ministry of Health Guidelines and Protocols.

It is our hope that your office will facilitate a timely opening as it has done in the past to allow for an organized access to the basement cells.

We take this opportunity to thank your office for the co-operation it has continuously extended to us in this regard.

Sincerely



Wachira Waheire

Secretary/ CEO

Cc.

CEO, Kenya National Commission on Human Rights-KNCHR

Ag Deputy Executive Director, Kenya Human Rights Commission-KHRC



OFFICE OF THE PRESIDENT
MINISTRY OF INTERIOR AND CO-ORDINATION OF NATIONAL GOVERNMENT
STATE DEPARTMENT FOR INTERIOR AND CITIZEN SERVICES

Telegrams.....
Telephone: Nairobi 316845, 341666
When replying please quote

COUNTY COMMISSIONER
NAIROBI COUNTY
P.O. BOX 30124-00100
NAIROBI

REF NO. PW 11/13/ VOL. VII(54)

18th February, 2021

The Director
National Intelligence Services
NYAYO HOUSE

**RE: AUTHORITY TO ACCESS NYAYO HOUSE BASEMENT (FORMER
TORTURE CHAMBERS)**

Authority is hereby granted for the bearers of this letter to access the above as they commemorate the 18th anniversary since opening of the Chambers to the public.


JANE KATUSE
FOR: COUNTY COMMISSIONER
NAIROBI COUNTY

CC: Mr. Michael Njau
CIPU COMMANDER

Center for Victims of Torture
Uniafric House 2nd floor, Suite 269, Kileleshwa Street P.O. Box 529006-00200, Nairobi
Mobile 0789772151, Email: info@cvot.org

Our Ref. CMD/7/22

Friday, November 18, 2022

The Nairobi, County Commissioner

Dear Sir / Madam,



Re: Postponement of the visit to the Former Nyayo House Torture Chambers

The above subject refers.

Further to our letter Ref. CMD/6/22 dated Monday, November 9, 2022, we wish to notify your office that due to unavoidable logistical circumstances, the planned visit by the Ethiopian delegation comprising of victim's representatives has been postponed to Tuesday 6th December, 2022.

Thanking you in advance for the continued support and cooperation.

Sincerely,

Wachira Waheire - Secretary

The Secret: Prof. Ngũgĩ wa Thiong'o, Chair, Waheire, Secretary, Nairobi County Council
Dr. Muki Wamari - Member, Nairobi County Council



Center for Memory and Development

Uniafric House 2nd floor, Suite 269, Koinange Street P.O. Box 529006-00200, Nairobi
Mobile: 0789772151, Email: cemedev@gmail.com

Our Ref. CMD/6/22

Wednesday, November 9 2022

The Nairobi, County Commissioner

Dear Sir / Madam,

Re: A visit to the Former Nyayo House Torture Chambers on Tuesday, November 21 2022 Time 10.30 am- 12.00pm

The above subject refers.

The Centre for Memory and Development and the National Victims and Survivors Network (NVSN) in partnership with the Kenya Human Rights Commission (KHRC) would like to notify your office that there is a planned guided visit by a delegation of about fifteen (15) representatives of victims and survivors from Jigjiga, Ogaden Region, Ethiopia and Kenya accompanied by two (2) Officials from Conciliation Resources - United Kingdom to the above site on Tuesday, November 22nd 2022 between 10.30am and 12pm.

The purpose of the visit is offer the Ethiopians an opportunity to learn from the Kenyan truth-seeking process undertaken by our Truth, Justice and Reconciliation Commission especially how Kenyan victims and survivors effectively engaged with the TJRC during its public hearings at the Nyayo House Basement in 2011.

The Report of the Kenya Truth, Justice and Reconciliation Commission (TJRC) was presented to the President in May 2013 and in the National Assembly for debate. It is now officially gazetted by the Kenyan government.

It is our hope that your office will facilitate as it has done in the past a timely opening of the former torture chambers to allow for an organized access to the basement cells.

Sincerely,

Wachira Waheire - Secretary

Board Members: Prof. Ngũtho Karuki-Chair, Wachira Waheire-Secretary, Jacqueline Mutere-Treasurer, Dr. E. Njoki Wemae-Member, Paddy Duma Onyango-Member

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL & HUMAN RIGHTS DIVISION
CONSTITUTIONAL PETITION NO. OF 2024

**IN THE MATTER OF ARTICLES 1, 2, 3, 4, 11, 25 & 29 OF THE CONSTITUTION OF
KENYA, 2010**

-AND-

**IN THE MATTER OF THE TRUTH JUSTICE & RECONCILIATION ACT &
CONSEQUENT RECOMMENDATIONS**

-AND-

**IN THE MATTER OF PRINCIPLES 8, 18 & 22 OF THE UNITED NATIONS BASIC
PRINCIPLES AND GUIDELINES ON THE RIGHT TO A REMEDY AND
REPARATION FOR VICTIMS OF GROSS VIOLATIONS OF INTERNATIONAL
HUMAN RIGHTS LAW AND SERIOUS VIOLATIONS OF INTERNATIONAL
HUMANITARIAN LAW**

-BETWEEN-

BERNARD WACHIRA WAHEIRE.....	1ST PETITIONER
FLORENCE NYAGUTHI MURAGE.....	2ND PETITIONER
JOSEPH KAMONYE MANJE.....	3RD PETITIONER
PROF. NGOTHO KARIUKI.....	4TH PETITIONER
KENYA HUMAN RIGHTS COMMISSION.....	5TH PETITIONER
LAW SOCIETY OF KENYA.....	6TH PETITIONER

-VERSUS-

THE HONOURABLE ATTORNEY GENERAL.....	1ST RESPONDENT
CABINET SECRETARY, MINISTRY OF TOURISM, WILDLIFE & HERITAGE.....	2ND RESPONDENT
CABINET SECRETARY, MINISTRY OF INTERIOR & NATIONAL COORDINATION.....	3RD RESPONDENT

-AND-

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR).....	INTERESTED PARTY
---	-------------------------

SUPPORTING AFFIDAVIT: DAVIS MULANDI MALOMBE
(In Support of Petition)

I, **DAVIS MALOMBE**, of P.O Box 41079-00100, **NAIROBI** do solemnly swear and state that:

1. Being an adult of sound mind and disposition I am competent to swear this Affidavit in support of our Petition.
2. I am the 5th Petitioner's Executive Director. I have the authority of the KHRC to depone this Affidavit on its behalf. ***I annex a true copy of the KHRC's resolution authorizing me to depone this affidavit; which I mark as Annexure 'DM-1'.***
3. I adopt and reiterate all that is pleaded in our Petition as if the same was set out and pleaded herein verbatim.
4. KHRC is a Non- Governmental Organization (NGO) that pursues; among other causes, social justice and human- centered governance.
5. The KHRC has; over the years, supported Survivors and Victims of the Nyayo Torture Chambers.
6. KHRC has equally researched on, and compiled data and case studies on torture at the hands of the State. For example, the KHRC published the '*Surviving After Torture: A Case Digest on the Struggle for Justice by Torture Survivors in Kenya*'¹ documenting case studies of Nyayo House torture survivors quests for justice.
7. KHRC has also been involved in pursuing transitional justice for the Nyayo House Torture Survivors and Victims.
8. I am aware that the government first made public the Nyayo Torture chambers in 2003; after which it made commitments to convert the chambers into a national memorial for prosperity and to ensure that such human rights violations are never committed on our soil.

¹ '*Surviving After Torture: A Case Digest on the Struggle for Justice by Torture Survivors in Kenya*', Kenya Human Rights Commission, 2009, ISBN No: 9966-941-62-2

9. Sadly, the commitments by the Government have never been acted on; to the detriment of the Nyayo House Torture survivors; and to the detriment of Nation's heritage.
10. Independent of the State's commitments, the Truth Justice and Reconciliation Commission recommended that the Nyayo Torture Chambers be converted into a national memorial within 1 year of its submission of its Report. This recommendation has never been implemented; notwithstanding the submission and gazettelement of the TJRC Report in 2013.
11. The KHRC has severally written to state actors asking for the honouring of the state's commitments and the TJRC Recommendation; to no avail.
12. In spite of the government's commitments and the TJRC Recommendations; there have been attempts by the State to destroy the Nyayo Torture Chambers and sanitize the evil and inhumane acts that were carried out there.
13. On 5th December 2008, KHRC wrote to the (*then*) Prime Minister documenting the destruction that was being undertaken by the state at the Chambers; in spite of the ongoing transitional justice process. ***I annex a true copy of the KRC Letter dated 5th December 2008; which I mark as Annexure 'DM-2'***
14. The (*then*) Prime Minister wrote back to KHRC acknowledging KHRC's concern and pledging that the Chambers would be preserved. ***I annex a true copy of the Letter of the (then) Prime Minister dated 22nd December 2008; which I mark as Annexure 'DM-3'.***
15. In answer to KHRC's letter dated 8th December 2008, the Minister of Justice, National Cohesion and Constitutional Affairs wrote to the Permanent Secretary, Ministry of Provincial Administration and Internal Security, asking the PS to take appropriate measures to preserve the Nyayo Torture Chambers in the interests of posterity and for historical purposes. ***I annex a true copy of the letter of the (then) Minister of Justice, National Cohesion and Constitutional Affairs dated 8th December 2008; which I mark as Annexure 'DM-4'.***

16. On 8th May 2009, KHRC wrote to the Provincial Commissioner (PC) Nairobi, seeking a visit to document the status of the Nyayo Torture Chambers and ensure compliance with a Court order issued by the High Court in *Milimani Civil Case (Constitutional Reference) No. 56 of 2005 (OS)*. ***I annex a true copy of the KHRC letter date 8th May 2009; which I mark as Annexure ‘DM-5’.***
17. The reason for seeking permission for accessing the Nyayo Torture Chambers lies in *Legal Notice No. 9 of 1991*; by which terms ‘Floors Nos. 24, 25 and 26 and Basement Floor excluding the car park of L.R No. 209/10467-Nairobi’ (where Nyayo House presently stands), had been previously declared ‘Protected Areas’
18. To date, in order for the Survivors/ Victims to visit the Nyayo Torture Chambers for purposes of their commemoration, or any other persons, one has to write to the / County Commissioner/ Police I/c Nairobi to seek permission; who then liaises with the National Intelligence Service before access is either granted or denied.
19. We have severally tried to engage the State, through the office of the Cabinet Secretary, Ministry of Interior and National Coordination.
20. On 11th April 2023, I wrote to the 3rd Respondent following up on previous correspondence seeking the revocation Legal Notice 11 of 1991, and conversion of the torture chambers into a monument. ***I annex a true copy of my letter dated 11th April 2023; which I mark as Annexure ‘DM-6’***
21. None of our efforts have borne fruit; and the state commitments of the conversion of the Nyayo Torture Chambers have been disregarded.
22. I am aware of the *United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. These Basic Principles provide that Reparation may take many forms including: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
23. Principle 22 of the *UN Basic Principles* describes ‘satisfaction’ as including:
- a. Effective measures aimed at the cessation of continuing violations;

- b. Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;
 - c. The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;
 - d. An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
 - e. Public apology, including acknowledgement of the facts and acceptance of responsibility;
 - f. Judicial and administrative sanctions against persons liable for the violations;
 - g. **Commemorations and tributes to the victims;**
24. Through the TJR process, victims/ survivors were engaged in verification and finding on the injustices / torture that was meted out by the state at the Torture Chambers. Judicial reliefs have since vindicated the victims and affirmed the veracity of their grievances.
25. The state, through the (*then*) President- Uhuru Kenyatta, has also formally admitted the wrongdoings of the state and apologized for them. ***I annex a true copy of the Excerpt of the Official Hansard of the National Assembly dated 26th March 2015; which I mark as Annexure 'DM-7'.***
26. Commemorations and tributes constitute a crucial form of reparations; one that the 1st – 4th Petitioners; and thousands of other victims/ survivors have been arbitrarily deprived of by the Respondents.
27. The 1st - 4th Petitioners legitimate expectation that the torture chambers would be converted into a national memorial; in line with the state commitments and the TJRC Recommendation on the same; were violated.

28. I swear this Affidavit in support of the Petition.

29. All that is stated herein is true to the best of my knowledge and understanding.

SWORN At NAIROBI

By the said

DAVIS MALOMBE

This **4TH** day of **JUNE** 2024

BEFORE ME



DRAWN & FILED BY:

Kebris Law Advocates LLP,

Hurlingham Plaza, 1st Floor, Suite B2,

Argwings Kodhek Road,

P.O. Box 2119 – 00606

NAIROBI

info@kebrisadvocates.co.ke / onderi@kebrisadvocates.co.ke

0704624535

TO BE SERVED UPON:

1. **The Hon. Attorney General,**

AG's Chambers,

Sheria House,

Harambee Avenue, Central Business District, Nairobi

P.O. Box 40112 – 00100

NAIROBI

communications@ag.go.ke

2. **CS, Ministry of Tourism, Wildlife &**

National Heritage,

State Department for Tourism,
Tourism Fund Building, 10th Floor.
P.O Box 30027-00100

NAIROBI

ps@tourism.go.ke

**3. CS, Ministry of Interior and Coordination
Of National Government,**

State Department of Interior,
Harambee House, Harambee Avenue,
Central Business District, Nairobi City,
P.O Box 30510,00100

NAIROBI.

ps.interior@kenya.go.ke / ps.pais@kenya.go.ke +254-20-2227411

4. Kenya National Commission on Human Rights,

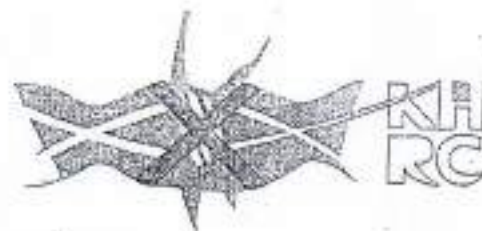
CVS Plaza, 1st Floor,
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NAIROBI

254-020-3969000

haki@knchr.org

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20100 Nairobi-GPO,
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Davinder Lamba
L. Muthoni Wanyeki - Executive Director



KENYA HUMAN RIGHTS COMMISSION

Raila A Odinga
Prime Minister of the Republic of Kenya
Treasury Building
Nairobi

December, 5 2008.

Dear Prime Minister,

Re: Petition over the Destruction of Nyayo House Torture Chambers

Following a fact-finding and solidarity visit organised by torture survivors and human rights organisations to the Nyayo House Torture Chambers on Friday December, 5 2008; we wish to bring to your attention the following issues of public interest.

In addition to the failed demolition by the Moi-Kanu regime in 2002, new efforts have been directed at 'renovations' that are not aimed at preserving the chambers but are destructive in nature.

So far,

- Two of the basement cells have had their heavy sound-proofed steel doors removed;
- One of the doors has had the glass peep-hole removed;
- The red fire fighting hose pipe has been removed;
- The lift that connected the basement and the interrogation rooms on the 24th floor has been removed;
- All the switches in the control room have been tampered with;
- Fluorescent lighting system has been installed;
- One toilet and bathroom equipment have been removed;
- There is an attempt to remove the temperature vents.

We are concerned that this destruction is being done in disregard of the on-going transitional justice process in Kenya.

Once the Truth, Justice and Reconciliation Commission is operationalised, the chambers will be one of the subjects of investigation and it is therefore important that they remain intact as this will provide a basis for the establishment of truth and dispensation of justice as envisaged within International Human Rights Law.

Exhibit Marked "DM-1"
and is in the annexed Affidavit Declaration
DAVIS M. MACHOMBE
Declared before me this 4th day of
JUNE 20 2008 at NRB
[Signature]
Commissioner for Oaths

We are worried that this destruction of evidence epitomizes other cases across the country. We are therefore requesting your office to take appropriate measures to assist in ensuring that there is no further destruction of evidence. And we take note that continued destruction of evidence at the chambers will jeopardize the cases pending in court.

It is on record that the Minister for Justice and Constitutional Affairs promised in February 2003 that the chambers would be converted into a National Monument of Shame. In June 2004, the then Vice-President reiterated the commitment. The same promises were repeated by the then Minister for National Heritage in February 2007 but to no avail.

This is despite the fact that the Government has undertaken a memorialisation initiative through the establishment of monuments and the development of a Heroes and Heroines policy and corner.

We therefore wish to also request your office to convene an urgent meeting between you, the Ministers of Justice, National Cohesion and Constitutional Affairs; Internal Security and Provincial Administration; and National Heritage on the one hand and the Kenya National Commission on Human Rights, the National Museum of Kenya; Nyayo House torture survivors and human rights organizations.

We would be grateful if such a meeting would be held at your convenience but before December, 17 2008.

We look forward to your favorable response. For further information, do not hesitate to contact the undersigned and/ or Davis M Malombe.

Sincerely,



L. Muthoni Wanyeki, for the human rights organisations
Executive Director



Wachira Wabwire, for the Torture Survivors/Victims
Survivors Coordinator

c.c

Martha Karua

Ministers of Justice, National Cohesion and Constitutional Affairs

Amos Wako

Attorney General, Republic of Kenya

Prof George Saitoti,

Minister of State for Internal Security and Provincial Administration

William Ole Ntimama

Minister of State for National Heritage

The Chairperson,

Kenya National Commission on Human Rights

The Director

National Museums of Kenya

List of Human Rights Organisations

Independent Medico-Legal Unit (IMLU)

National Victims Network (NVN)

Muslim Human Rights Forum (MHF)

National IDPs Network (NIN)

Release Political Prisoners (RPP)

International Centre for Policy and Conflict (ICPC)

People Against Torture (PAT)

Amnesty International Kenya (AI-Kenya)

Citizens for Justice (CfJ)

Mulika Communications (MC)

Constitution of Kenya Education Consortium (CRECO)



REPUBLIC OF KENYA

The Prime Minister

Ref. No. OPM1/08/03

Date: 22nd December, 2008

Ms. Muthoni L. Wanyeki
Executive Director
Kenya Human Rights Commission
Valley Arcade, Gitanga Road
P.O. Box 41079 - 00100
NAIROBI

This is the Exhibit Marked " DM-2 "
Referred to in the annexed Affidavit/Declaration
of DAVIS M. MALOMBE

Sworn/Declared before me this 4th day of
JUNE 2024 at NRB

Commissioner for Oaths

Dear Muthoni,

PETITION OVER THE DESTRUCTION OF NYAYO HOUSE TORTURE CHAMBERS

I acknowledge receipt of your letter dated 5th December, 2008 in which you petitioned the destruction of the Nyayo House Torture Chambers.

I thank you and your team for the efforts you put into finding the facts about what is going on at the former torture chambers in the Nyayo House. I am disheartened to hear about the deplorable destruction that is going on at Nyayo House Torture Chambers.

I concur with you that, the Chambers must be reserved at all costs. We endeavour to find justice in the Country through the establishment of truth and dispensation of justice as envisaged within the International Human Rights Law.

Let me assure you that, my office will do everything possible to ensure that the Chambers are preserved.

RT. HON. RAILA A. ODINGA, EGH, MP.

Unity is Strength

Treasury Building, 14th Floor,
Harambee Avenue,
P.O. Box 74434-00200, Nairobi

Telephone: +254-20-2252299
Fax: +254-20-2211205
E-MAIL: pm@primeminister.go.ke



MINISTRY OF JUSTICE, NATIONAL COHESION AND CONSTITUTIONAL AFFAIRS
OFFICE OF THE PERMANENT SECRETARY

Telegram: "JUSTICE", Nairobi
Telephone: Nairobi 2224029/55/82
When replying please quote

CO-OPERATIVE BANK HOUSE
HAILE SELASSIE AVENUE
P.O. BOX 56057 - 00100
NAIROBI, KENYA

Ref. No. **MOJCA/INTO/4/26 Vol.V(16)**
and date

19th December 2008

Mr. Francis T. Kimemia
Permanent Secretary
Ministry of State for Provincial Administration & Internal Security
Harambee House
NAIROBI

Dear *Francis*,

**PETITION OVER THE DESTRUCTION OF NYAYO HOUSE
TORTURE CHAMBERS**

Please refer to a letter from Kenya Human Rights Commission dated 5th December 2008, addressed to the Prime Minister and copied to our Minister.

In our view, the letter raises some genuine concerns especially in the light of current efforts towards truth, justice and reconciliation. Besides, it may also be in the interest of our posterity, to preserve such facilities for historical reasons. We trust that your office will take appropriate steps to preserve the same.

Yours

Amina C. Mohamed
Amb. Amina C. Mohamed
PERMANENT SECRETARY

Copy to: The Prime Minister
Office of the Prime Minister
Treasury Building
Nairobi

This is the Exhibit Marked - DM-3
Referred to in the annexed Affidavit/Declaration
of DAVIS M. MUKOMBE

Sworn / Declared before me this 4th day of
JUNE 2024 at NRA

[Signature]
Commissioner for Oaths

Valley Arcade, Gilgata Road
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00100 Nairobi-GPO,
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Mwangi Mwangi
Davidson Lumbwa
L. Muthoni Wanyai - Executive Director



KENYA HUMAN RIGHTS COMMISSION

Friday, May 8 2009

The Provincial Commissioner
Nairobi Area

Dear Sir

Re: Visit to the Former Nyayo House Torture Chambers-Friday, May 15 2009; 2:00-3:30pm

The above subject refers.

The Nyayo House Torture survivors in partnership with the Kenya Human Rights Commission (KHRC) and the Kenya National Commission on Human Rights (KNCHR) would like to notify your office that there is a planned visit to the above on Friday, May 15 2009 between 2:00 and 3:30pm.

The purpose of the visit is to verify that a preservation order issued by the High Court sitting in Nairobi on February 16, 2009 has been complied with.

It is our hope that your office will facilitate a timely opening of the former torture chambers to allow for an organized access to the basement cells.

We take this opportunity to thank your office for the cooperation they have given us in the past.

For further information, do not hesitate to contact the undersigned and/ or Davis Malombe.

Sincerely


Tom Kagwe,
Ag. Programmes Coordinator and Deputy Executive Director.

This is the Exhibit Marked - DM-4
Referred to in the annexed Affidavit Declaration
of DAVIS M. MALOMBE
Sworn / Declared before me this 4th day of
JUNE 2024 at NRB

Commissioner for Oaths

Cc

Njonjo Mue

Head of Advocacy Programme, Kenya National Commission on Human Rights

Mr. Odipo

Care Taker-Nyayo House

Wachira Waheire ✓

National Coordinator, Nyayo House Torture Survivors Association

Enclosed Copies.

1. A letter from the Prime Minister of the Republic of Kenya
2. A Letter from the Permanent Secretary, Ministry of Justice, National Cohesion and Constitutional Affairs
3. A Court Order

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC CIVIL CASE (CONSTITUTIONAL REFERENCE)
NO. 56 OF 2005 (O.S)

IN THE MATTER OF THE CONSTITUTION OF KENYA
AND
IN THE MATTER OF S.84 OF THE CONSTITUTION OF KENYA

(Enforcement of Fundamental Rights & Freedoms)

JAMES H GITAU MWARA.....PLANTIFF/APPLICANT
VERSUS
THE ATTORNEY GENERAL.....DEFENDANT/RESPONDENT
IN CHAMBERS ON 16TH FEBRUARY, 2009 BEFORE THE HONOURABLE MR.
JUSTICE NYAMU

ORDER


THIS MATTER coming up for mention: AND UPON HEARING counsel for the
Applicant and counsel for the Respondent:

IT IS ORDERED:

1. THAT this matter be mentioned on 15th July, 2009 at 9.00 am for further orders.
2. THAT status quo of the building to remain in the meantime.
3. THAT there be liberty to apply.

GIVEN under my Hand and the Seal of the Court at NAIROBI this 16th February, 2009.

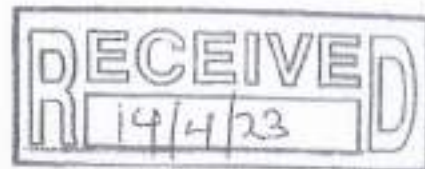
ISSUED at NAIROBI this 16th February, 2009.


DEPUTY REGISTRAR
HIGH COURT OF KENYA, NAIROBI



Center for Memory and Development
Uniafric House 2nd floor,
Suite 269, Koinange Street
P.O. Box 529006-00200, Nairobi
Mobile 0789772151,
Email: cemedev@gmail.com

Prof Kithure Kindiki,
Cabinet Secretary,
Ministry of Interior and Administration of National Government,
Nairobi.



11th April 2023.

Dear Prof Kindiki,

RE: COURTESY CALL AND FOLLOW UP ON REVOCATION OF LEGAL NOTICE NO. 11 OF 1991:

Receive warm greetings from the Kenya Human Rights Commission (KHRC).

The Kenya Human Rights Commission (KHRC) is a premier and flagship Non-Governmental Organization (NGO) in Africa committed to enhancing human rights centred governance at all levels with a vision to secure human rights states and societies.

The Centre for Memory and Development was established to help realize one of the vital recommendation in the final report of the Kenya Truth, Justice and Reconciliation Commission. The Center's mission is to advance peace, tolerance of diversity, and national development through constructive memory work.

We write to you in regard to the above captioned refer to request for a courtesy call and also to follow up on a letter regarding the revocation of Legal Notice No.11 of 1991 that was delivered to your office on the 24th of March 2023 on our behalf by the Center for Memory and Development. As you are probably aware, the former Torture Chambers at the Nyayo House building in Nairobi is yet to be converted into a National Monument since a declaration was made by the government in 2003. The site still remains in-accessible to the survivors, families, friends, relatives and Kenyans in general

To this end, we would like request for a meeting with you on the **18th of April 2023**. Kindly confirm your availability for this meeting with Martin Mavenjina on mmavenjina@khrc.or.ke or call him on +254704450288. We take this opportunity to thank your office for the cooperation it has continuously extended to us in this regard.

Yours Sincerely,

Wachira Waheire
Secretary
NVSN.

This is the Exhibit Marked - PM-5
Referred to in the annexed Affidavit/Declaration
of DAVIS M. MALOMBE

Sworn/Declared before me this 14th day of

JUNE 2024 at NRB

Commissioner for Oaths

Davis Malombe
Executive Director
KHRC



OFFICE OF THE PRESIDENT

**MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION
STATE DEPARTMENT FOR INTERNAL SECURITY AND
NATIONAL ADMINISTRATION**

Telegraphic address: "Rais"
Telephone: Nairobi 2227411
When replying please quote

P. O. Box 30510 – 00100
Nairobi

MOINA/SEC./8/22/3

Date: 20TH APRIL 2023

Ref.....

Mr. Davis Malombe
Executive Director
Kenya Human Rights Commission
NAIROBI

**REF: COURTESY CALL AND FOLLOWUP ON REVOCATION OF
LEGAL NOTICE NO.11 OF 1991**

We belatedly acknowledge receipt of your letter dated 11th April 2023.

You are requested to consider an alternative date for the appointment with the Principal Secretary/State Department for Internal Security & National Administration during the month of May 2023, preferably on **10th May, 2023 at 10.00a.m.**

ANNE R. NGÉTICH, EBS
FOR: PRINCIPAL SECRETARY
INTERNAL SECURITY & NATIONAL ADMINISTRATION

PARLIAMENT OF KENYA
JOINT SITTING OF THE NATIONAL
ASSEMBLY AND THE SENATE
THE HANSARD

Eleventh Parliament – Third Session

*(Special Sitting of Parliament convened via Kenya Gazette Notices
 Nos. 1978 and 1980 of 20th March, 2015)*

Thursday, 26th March, 2015

*Parliament met at twenty five minutes past three o'clock
 in the National Assembly Chamber
 at Parliament Buildings*

ARRIVAL OF HIS EXCELLENCY THE PRESIDENT

*[His Excellency the President (Hon. Uhuru Kenyatta) escorted by the
 Speaker of the Senate (Hon. Ethuro) and the Speaker of the National
 Assembly (Hon. Muturi) entered the Chamber at twenty five minutes
 past three o'clock accompanied by the Maces of both Houses]*

[His Excellency the President (Hon. Uhuru Kenyatta) took the Chair]

(The two Maces were placed on the Table)

(The National Anthem was played)

PRAYERS

COMMUNICATION FROM THE CHAIR

CONVENING OF SPECIAL SITTING OF PARLIAMENT
 FOR ANNUAL STATE OF THE NATION ADDRESS BY
 HIS EXCELLENCY THE PRESIDENT

The Speaker of the National Assembly (Hon. Muturi): Your Excellency, Hon. Uhuru Kenyatta, President of the Republic of Kenya and Commander-in-Chief of the Kenya Defence Forces, the hon. Speaker of the Senate, hon. Ekwe Ethuro, hon. Members of Parliament, Article 132(1)(b) of the Constitution of Kenya requires the President to address a Special Sitting of the Parliament of Kenya once every year and at any other time. Further, Article 132(1)(c) requires the President to, among others:-

This is the Exhibit Marked - DM-6
 Referred to in the annexed Affidavit/Declaration
 of DAVIS M. MALOMBE

Sworn / Declared before me this 4th day of

JUNE 2024 at NRB


 Commissioner for Oaths

"once every year-

(i) report, in an address to the nation, on all the measures taken and the progress achieved in the realisation of the national values, referred to in Article 10; and,

(iii) submit a report for debate to the National Assembly on the progress made in fulfilling the international obligations of the Republic."

In addition, Article 240(7) of the Constitution requires the President to report to Parliament annually on the state of the security of the Republic.

In this regard, hon. Members, following a request from His Excellency the President and pursuant to Article 132 (1)(b) and (c) (i) and (iii) of the Constitution and the provisions of Standing Order No.22 (1) and (2) of the National Assembly Standing Orders, by Gazette Notice No.1978, which was published in a Special Issue of the Kenya Gazette on 20th March, 2015, I gave notice of this Special Sitting to the Members of the National Assembly.

Similarly, pursuant to Article 132(1)(b) and (c)(i) and (iii) of the Constitution and the provisions of Standing Order No. 22(1) and (2) of the Senate Standing Orders, by Gazette Notice No.1980, which was published in a Special Issue of the Kenya Gazette on the 24th March, 2015, the Speaker of the Senate gave notice of this Special Sitting to the Senators. Accordingly, hon. Members, this Special Sitting is properly convened.

It is now my singular honour and privilege to invite His Excellency the President of the Republic of Kenya to address this Special Sitting of Parliament.

I thank you.

(Applause)

PRESIDENTIAL ADDRESS

EXPOSITION OF PUBLIC POLICY

His Excellency the President (Hon. Uhuru Kenyatta): The Deputy President of the Republic of Kenya, Speakers of Parliament, Members of Parliament, fellow Kenyans, ladies and gentlemen, today, for the second time and in line with my constitutional obligation, I address this Special Sitting of Parliament, to outline the State of the nation in relation to our values and principles of governance, as elaborated in Article 10; the state of the nation's security, as provided for in Article 240; and our status in fulfilling our international treaty obligations, under Article 132 of our Constitution.

Hon. Members, as we approach my second anniversary as the President, I am pleased to report that the state of our nation is strong. Our economy is growing robustly. Our nation is secure and our place in the community of nations is respected.

In the year under review, we, as a nation, have continued to deepen our democracy and the rule of law. Public participation in governance has grown at all levels, while institutional measures to secure the basic rights and freedoms of our people continue to take root. The year has been laced with robust debates, and sometimes even strong differences of opinion between and within various levels and arms of Government. This is a profound reaffirmation of our democratic ideals. Nonetheless, exercising these

rights and privileges demands from each one of us, particularly us, leaders, to remain conscious of our patriotic duty to nurture a united nation.

Fellow Kenyans, in 2014, Kenya rebased its economy and is now the ninth largest economy on the African continent, with a Gross Domestic Product (GDP) of US\$53.3 billion with GDP per capita at US\$1,246. Kenya has attained middle income status. We are also one of the African economies that can boast a diversified and broad-based balanced economy.

Today, Kenya is one of the fastest growing economies in the world. Despite sluggish global growth, our economy is steadily expanding at 6 per cent, consolidating our position as the largest non-mineral driven economy in Sub-Saharan Africa. We are also making significant progress in the oil, gas and minerals sectors. Following the establishment of a dedicated Ministry of Mining, our royalties have sharply increased from Kshs21 million in 2012 to an expected Kshs1.2 billion this financial year. This ongoing economic transformation is drawing attention globally.

(Applause)

Last month, a prominent international publication singled out Kenya as one of seven outstanding emerging markets worth investing in. Earlier this month, of the 57 fastest-growing economies ranked by Bloomberg, Kenya was the third fastest growing economy behind China and the Philippines.

(Applause)

Additionally, Ernst and Young's Attractiveness Survey for Africa for 2014 placed Kenya among the three top investment destinations in Sub-Saharan Africa and the most preferred in East and Central Africa. A combination of the Government's pro-growth economic policies, a growing middle class and an educated and skilled workforce has steered Kenya into the ranks of the top emerging market destinations for investment.

Inflation has been contained at single digits, capping the prices of basic goods for Kenyans. Interest rates are falling allowing Kenyans to access credit for their businesses, homes and farms. The exchange rate is stable and the public debt sustainable, reflecting my administration's sound fiscal and monetary policy management. Furthermore, the implementation of programmes and projects that drive our growth are proceeding apace.

We have made significant progress in the energy sector. Since March 2013, we have added 514.9 megawatts to our national grid to make available a total of 2,125 megawatts. This represents a 31 per cent growth in total generation capacity. A substantial component of the new additional capacity is the geothermal, a clean energy source that increases our resilience to the volatility associated with weather and oil prices. Kenya is now the world's eighth largest geothermal producer with a steam power capacity of 579 megawatts. Notably, our power generation mix is overwhelmingly green, positioning us amongst global leaders when it comes to the nexus between climate change and sustainable development. This is especially appropriate given our hosting of the United Nations Environment Programme (UNEP), the world's leading environmental

agency. I call upon all Kenyans to embrace the promise of green energy for sustainable development.

Hon. Members, greater supply of electricity has translated into an average reduction in consumer bills by 25 per cent in the period between August 2014 and February 2015. Costs of electricity to industry have also fallen, making the country a more competitive location for the manufacturing sector.

The total number of users connected to electricity grew by over 41 per cent between March 2013 and today, raising the customer base to 3,150,000 Kenyans. This translates to an increase in the national electrification rate from 26 per cent to 37 per cent. In the last three months of this year alone, we have connected 385,000 Kenyans and are targeting to record one million by the end of December 2015, more than double the connections last year.

Across the country, businesses, large and small, are expanding, creating employment and prosperity. As Government meets its end of the bargain in providing cheaper power, it is my expectation that businesses will pass on these savings to the Kenyan consumer.

Ladies and gentlemen, when I took office, I pledged to connect all public primary schools to electricity within two years. At the time, only 8,200 schools out of 21,500 primary schools had been connected. As I speak today, a total of 18,424 schools have been connected.

(Applause)

The remaining 3,076 schools will be done by the end of next month. In the last two years, more primary schools have been connected to electricity than have been since Independence.

(Applause)

The provision of power further accelerates the already rapid penetration of internet connectivity, linking our people to knowledge and far-off opportunities. A total of Kshs1.2 billion has been transferred to 21,458 schools for construction of Information and Communications Technology (ICT) hardware storage rooms and more than 2,500 teachers have undergone ICT training. This action will provide a qualified workforce that guarantees the swift rollout of our laptop project.

(Applause)

We continue to implement free primary school education which offers a ladder for our children to obtain employable skills and allow them to become active citizens. To extend this fundamental promise of opportunity to all, the Government scrapped examination fees and capped school fees for secondary schools. We have also increased budgetary allocation from Kshs30 billion in 2013/2014 to Kshs40 billion this year with the objective of rolling out free and compulsory primary and secondary school education in the next five years.

(Applause)

Kenya has migrated 70 per cent of the areas previously covered by analogue television to digital television broadcast. Our target is to migrate the remaining 30 per cent by the end of this month. Digital television has made possible high quality television, enabled more television channels, driven down the barriers to entry and created more entrepreneurial and employment opportunities from the creation of local content. In line with this endeavour, we are extending television broadcasting to parts of this country which did not enjoy such services previously.

In spite of this positive development, there are sustained and persistent claims that the Government's insistence on maintaining the agreed and court-endorsed migration has rolled back Kenya's democratic gains. Nothing could be further from the truth. All Kenyans should know that digital migration will unleash the full potential of this medium, expanding the scope of available information to the benefit of our democracy. The misrepresentation to the contrary is irresponsible. It seeks to insulate entrenched interests and close the door to the many Kenyans who will benefit from an open arena. We, as Government, are willing to work with all stakeholders in the endeavour to grow a vibrant and prosperous broadcasting sector. This experience underscores the importance of each sector of our society appreciating its cardinal responsibility to this country and its people.

Kenyans should be proud of our global leadership in mobile money transactions. In 2014, Kenyans exceeded Kshs2.1trillion mobile money transactions. In all, Kenyans made almost 50 per cent of global mobile money transactions. These startling statistics, coupled with the total number of mobile phones, exceeding one for every citizen, means that Kenya is at the global frontier of mobile technology.

Hon. Members, Ladies and Gentlemen, the construction of the Standard Gauge Railway (SGR) is progressing according to plan. Close to half of the 609 kilometres track is excavated and ready for sleepers. On completion, the new railway will dramatically reduce cargo transport costs by a further 60 per cent, and decongest our roads, leading to greater road safety. The development of the SGR is an addition to the substantial expansion and modernization taking place at the port of Mombasa, and that has led to a reduction in freight time by more than 75 per cent. Further gains will be realized with the imminent completion of Berth No.19 and the soon to commence Berth No.20 and 21.

Fellow Kenyans, for the last century, the current narrow-gauge railway has driven our economy. The SGR will revolutionize our economy and position it to take full advantage of the opportunities of the 21st Century.

The Lamu Port-South Sudan-Ethiopia Transport (LAPSSET) Project is another significant investment by our nation. Just like the Kenya-Uganda railway became the artery of the East African economy, so will LAPSSET create a new economic and social reality.

In addition to opening up the northern part of Kenya to trade and investment, it will contribute to securing what have been fragile, volatile and insecure parts of our country. In doing this, LAPSSET will transform the lives of millions of our compatriots, while creating an enabling environment for northern Kenya to contribute strongly to national prosperity.

Furthermore, LAPSET will deepen regional integration and Africa's interconnectivity and trade. Recognizing its value, the African Union, at its January 2015 Summit, included LAPSET in its Presidential Infrastructure Champion Initiative. The administrative infrastructure for this project is complete, and I will, in the next few days, break ground for the construction of the initial three berths of the Lamu Port.

(Applause)

To facilitate the expansion of the desired road network, my Government has resorted to an innovative model. The annuity-financing model unlocks infrastructural financing. This approach is expected to reduce our construction costs by half and guarantee us an additional 10,000 kilometres of tarmacked roads within the next five years.

Hon. Members, following the fire disaster of August 2013 at the Jomo Kenyatta International Airport (JKIA), which at the time seemed to spell doom, we have recovered splendidly. Within ten days, all flights had resumed. By November 2013, we had constructed and finalized a new arrivals hall, and by October 2014, we had completed Terminal 1A, which currently carries 80 per cent of all business at JKIA. In addition, last year, we commenced construction of a new terminal that I expect to commission in the next few days. This upgrade has placed JKIA in the top league, internationally.

Ladies and Gentlemen, even as we pay close attention to infrastructure, my administration has also trained its attention on improving service provision to our people. In the last year, we have sharply accelerated the quality and breadth of public services. Under the Huduma Kenya Programme we are delivering more than 35 services under one roof in 23 counties. By the end of this financial year, we will have rolled out an additional 23 centres, bringing the total to 41 Huduma Centres. This pioneering programme has attracted numerous commendations, including the 2015 winner of the African Association of Public Administration and Management gold medal on Innovative Management in Africa. A number of countries, both in Africa and beyond, are working with our people to replicate this model.

Hon. Members, earlier this month, I launched the Integrated Population Register System (IPRS), the single source of truth on population identity. The system which has been tested for more than a year now, is a comprehensive database of all registered persons residing in Kenya, both citizens and foreigners. The value of the IPRS to planning, service delivery, business processing and security, is revolutionary to not only Government, but to the banking, telecoms, insurance and other sectors of our economy.

On this same platform, the e-Citizen Government Services Portal is progressively migrating services online. These include the renewal of driving licenses, business-name searches and registration of marriages, passport applications, and official land searches in Nairobi. Other services will be coming on stream in the near future.

To attract greater domestic and international investment, my administration, in collaboration with the private sector, has made a concerted effort to improve the business regulatory environment. These efforts, added to the opportunities in our economy and region, are leading to strong growth in foreign and domestic direct investment, and therefore, to jobs and growth.

In line with my administration's commitment to improve health care, we have invested Kshs38 billion shillings to roll out the Managed Equipment Services Programme. To effect this, five global suppliers have assessed 94 hospitals in the 47 counties, plus the four national referral hospitals to deliver the necessary equipment starting in May this year. This capacity is the most sophisticated in the region, enabling access to world-class diagnosis and treatment. Our emphasis is on early detection and prevention, so as to avoid the high costs associated with treatment occasioned by late detection. In these hospitals, the equipment purchased will allow for treatment of diseases such as cancer, while providing advanced dialysis, and intensive care facilities in all counties of our country.

With the provision of free maternal hospital services, maternal health has greatly improved. Deliveries in our public health facilities now average 80 per cent. As a result, maternal mortality has decreased from 488 to 360 deaths per 100,000 live births. We have opened many clinics in slum areas such as Mathare in Nairobi through which many Kenyans daily access medical care. Our efforts in this sector are complemented by the initiatives of the First Lady who I commend for the Beyond Zero campaign, which keeps growing from strength to strength in improving maternal and child health across the country.

Hon. Members, all these endeavours are geared towards the Jubilee Government's commitment to roll out universal health care for all Kenyans. In this respect, I wish to thank the Government of Japan and all our development partners who have been extending support for this initiative. Beginning April this year, the new agreed national health insurance fund rates will be in force, allowing for in and out-patient treatment. To this end, I encourage all Kenyans to enroll with the NHIF and this will ensure that our objective of universal healthcare will be realised.

To promote social justice and inclusivity, my Government is assisting 35,000 self-help groups and continues the promotion of social security to the aged citizens and other vulnerable groups in our society.

The Older Persons Cash Transfer Programme covers 164,000 households, cushioning them against life threatening risks such as sickness, poor health and injuries. In addition, the Government continues to fund the Orphaned and Vulnerable Children (OVC) Cash Transfer Programme which currently covers 252,000 households and 27,000 persons with severe disabilities. We have also launched the health insurance subsidy programme to cover 12,000 households. This programme which benefits the poor has 30,000 principal beneficiaries registered by the National Health Insurance Fund (NHIF). The Government has also established the President's Secondary School Bursary Scheme which benefits 13,050 orphans and vulnerable children. Overall, close to 500,000 households are benefiting from the Kshs25 billion invested in these programmes.

We have made significant progress also in land reform. The reorganization and clean up and of the Nairobi and Mombasa land registries is complete. We have launched a new National Land Titling Centre, which has processed close to 400,000 new title deeds, which have been issued. In digitizing the process of land ownership, the Nairobi Registry is now complete with citizens able to conduct searches and payments of land rents on line. The digitising of the remaining 13 land registries will be complete by June 2015. We are clearly on track in fulfilling our Jubilee manifesto pledge of issuing three million new title deeds by 2017.

Fellow Kenyans, in the realm of international relations, for the first time in our history as a nation, we have launched a foreign and diaspora policy clarifying our strategic objectives and values that drive our engagement with the rest of the world and Kenyans abroad, respectively. Next week, we will be holding a diaspora conference to elaborate the role of Kenyans abroad in contributing to the national aspirations for broad and inclusive development.

At the bilateral level, we continue to strengthen our relations with friendly nations. I have travelled to China, the United States, Japan and across Africa seeking new partnerships and strengthening our strategic partnerships. We have also opened a number of diplomatic missions and signed a range of bilateral agreements. These efforts leverage large investment opportunities such as the SGR, the Power Africa Initiative as well as opening new trade and investment opportunities for Kenya.

Kenya remains a champion of economic integration. I had the privilege to chair the East African Community last year. During that period, the region deepened its integration and concluded a range of instruments to enhance close economic, political and infrastructural development ties. The biggest success has been the initiation and implementation of a single customs territory to facilitate cross border trade within the region. As a result, it now takes three days for goods to transit from Mombasa to Kampala, and four days to Kigali down from 18 days and 20 days, respectively.

Another key achievement is the elimination of work permit fees, the launching of the single tourist visa, travel within the region by identity card, one stop border posts, establishing the one area network and thereby reducing the cost of cross border communication in East Africa. These measures strengthen the stability, resilience and economic opportunities in our region.

We also remain a vital actor in the search for sustainable peace and security in both Somalia and South Sudan and our working with our neighbours and allies to stabilize the Great Lakes Region.

At the continental level, Kenya is an anchor State in championing the African agenda. In the aftermath of the Ebola epidemic, Kenya was amongst the first responders contributing US\$1 million and hundreds of brave highly qualified medical staff, some of whom are still on the ground battling Ebola. We also took leadership role in negotiations with the European Union that led to a successful conclusion of the European Union partnership agreement.

Hon. Members, internationally, we have hosted several high profile events reflecting the growing stature of Nairobi as a global diplomatic hub where major debates and decisions are made. Later this year, we will host the World Trade Organizations Ministerial Conference and have offered to host the Sixth Tokyo International Conference for Africa's Development in 2016. Kenya remains a champion of a rule based multilateral system that upholds the equality of States. To this end, we continue to lobby for the reform of the United Nations system to reflect the diplomatic imperatives of our age.

Hon. Members, we continue with the robust implementation of our Constitution. In this respect, Parliament, under its legislative agenda, has passed more than two dozen laws. It is my trust that all fifth-year Schedule V legislation, and the outstanding fourth-year legislation will be processed in time for the August deadline.

Our strong commitment to devolution remains manifest. My administration has ensured and funded counties progressively, increasing from Kshs190 billion in the first financial year, to Kshs226 billion in the current financial year, and projecting Kshs258 billion in the next financial year, all these well beyond the 15 per cent minimum provided for in the Constitution, demonstrating my continued belief in the value of devolution.

We have also established inter-governmental mechanisms to support devolution through enhanced consultation, cooperation and partnership with the counties. As a sign of the growing understanding and partnership between national and county governments, I am pleased to report that IBEC, under the Chairmanship of the Deputy President, concluded an early and harmonious settlement of the Division of Revenue negotiations.

As the chair of the Intergovernmental Summit, I am continuously engaged with the county governments to ensure the success of the devolution dream. In my travels across the country, I have taken pride in the varied projects being undertaken by county governments.

I am, however, concerned by the numerous disruptions of the devolution agenda by political conflicts in a number of counties. This month, I reluctantly established a Commission to inquire into the affairs of Makueni County. We have also witnessed intense contestation between leaders in a number of other counties. In Narok, Embu, Mandera, Marsabit and Tana River, among others, ethnicity is being used to exclude, divide and manipulate the people. This trend, unless halted, has the potential to derail the devolution agenda. The aspiration of the Kenyan people was for grassroots development not for ethnic balkanization.

I, therefore, call on all leaders at the county level to be guided by these aspirations and not their own narrow self-interests. We must all remember that Kenya is one indivisible nation and that every Kenyan has a right to live, work and participate in all activities in any part of our country as guaranteed by our Constitution. In this regard, the National Cohesion and Integration Commission must take seriously its mandate to promote and protect the values of cohesion and devolution. Fellow Kenyans, I have since taking office underscored the value of harnessing the capabilities of all Kenyans. Only by doing this can we unleash the full potential of our nation and create the Kenya of our dreams. In this respect, my Government has put special emphasis on the setting up of mechanisms and institutions to guarantee inclusivity.

Today, we celebrate nearly two years of the Jubilee Government's implementation of the Public Procurement and Disposal Act Regulations passed in 2013 that provides access to 30 per cent of Government procurement to women, youth and persons with disabilities.

(Applause)

This has translated concretely into a total of Kshs9.4 billion worth of contracts to these groups in the first two quarters of this financial year. By the end of the year, these groups will have provided Government with goods and services amounting to some Kshs30 billion. As I have repeatedly emphasized, all procuring agencies and entities must fully comply with this law. In addition, we have also disbursed Kshs5.3 billion to the Uwezo Fund and our efforts have been lauded at the just concluded 59th Session of the Commission on the Status of Women as an innovative showcase of gender responsive

budgeting and cited as a model that could be exported to other countries in Africa and, indeed, the Commonwealth.

The youth have continued to prove their capability to drive our growth and progress. I have been delighted by the vibrancy of their innovation, energy and commitment. From the innovators at i-Hub, Nai-Hub and the 16 technology hubs, to Equity Bank's Wings to Fly, Kenya's youth are proving repeatedly that they are holding the present and future of our nation in their hands. Kenya is becoming a start up nation. In the last year, we have witnessed a growth of homegrown technological innovation of cutting edge global standards. Herein lies an unprecedented opportunity to leverage relevant technology to respond to our needs, drive our economy, job market and improve service delivery. I call upon all Government Ministries and agencies and the private sector to explore these homegrown innovations and to support these young innovators before turning to solutions from abroad.

The National Youth Service (NYS) has become a significant driver of our transformation agenda. Working alongside communities, the NYS youth have become change agents that catalyze improved living standards for the less fortunate particularly in the informal settlements such as demonstrated in Kibera. Similar efforts are underway in Mathare, Korogocho, Mukuru Kwa Njenga and Kiandutu in Thika and will be rolled out across the country. Beyond the cities, the NYS is also engaged in hard risk regions of the country and for the first time, through the efforts of this institution, Lodwar should soon have access to water on a sustainable basis reflecting my Government's commitment to drive development across the country.

I encourage all young Kenyans to take full advantage of all Government programmes laid out to facilitate their productive integration into national economic life.

In 2013, I appointed a task force to review the operations of parastatals with the aim of reforming them to be more efficient in their pursuit of our national development goals and to align their mandate to the Constitution. The task force has made recommendations to transform our parastatals. The legal framework to guide the envisioned reforms has undergone the requisite stakeholder consultations. Several pieces of proposed legislation including an overarching law on Government owned entities that align these institutions to our national development imperatives, will shortly be forwarded to Parliament for consideration.

Yesterday, I issued, as part of the parastatal reform programme, the *Mwongozo* Code of governance for State corporations and I directed that all vacant positions in the boards now be filled. I will personally oversee all appointed and currently serving board members formally sign on to the Code. This will address governance and management challenges in our parastatals.

Fellow Kenyans, ladies and gentlemen, I have outlined a number of initiatives that demonstrate the work that the Jubilee Government has done to drive the transformation of Kenya. This progress notwithstanding, our country today is faced with a number of daunting challenges that slow our progress, obscure our achievements and chip away at the legitimacy of the state. The most pressing of these challenges are insecurity, disunity and corruption. In the last year, security has improved and I salute the service and sacrifice of our brave men and women in uniform who risk their lives to protect our way of life.

(Applause)

They are confronting, on our behalf, a range of security threats, most of them being global terrorism as manifested in the threat of *Al Shabaab* who continue to operate largely from Somalia.

The Kenya Defence Forces within the ambit of the African Union Mission in Somalia (AMISOM) continues to dismantle the capability of *Al Shabaab*. However, these terrorist groups still poses a significant threat to Kenya especially in light of the long porous border with Somalia. We are also faced with the sharp growth of radicalization and violent extremism, threats associated with the youth who have returned from Somalia. Other international crimes that threaten us include poaching, human trafficking, drug and narcotic trafficking as well as cyber crime.

In addition to these international crimes, most of which feed into the funding and resourcing of terrorism and its agents, we are also faced with the challenge of ethnic and inter-communal conflicts, sexual and gender based violence, contraband and smuggling of goods— It is a serious matter.

(Laughter)

While we have a decline in traffic related crimes, there is need for focused attention to reduce our road carnage and the threats associated with the proliferation of small arms and light weapons.

To counter these challenges, the Government implemented a number of strategies including the setting up of an inter-agency coordination unit, the enhancement of security vigilance and community sensitization. We continue to provide resources for the modernization of our security agencies. This year, we increased the police operational fleet by 1,200 vehicles bringing it to about a total of 2400 vehicles made available to the police in the last two years, more than has ever been provided since Independence.

(Applause)

We have created a single command structure in counties that has improved command and control. We have also gone a long way to improving our investigative capacity by establishing a forensic laboratory which will be equipped in the coming financial year. The improvement of our Immigration Department is self-evident. The management of our entry and exit points, which have been vulnerable, is improving steadily. In the next fortnight, Kenyans will be able to apply for their passports online and visitors will make online visa applications.

(Applause)

Although, we have faced a delay in the recruitment of 10,000 police officers following a court process, we are determined to complete this recruitment before the end of this financial year. This is in line with my administration's plan to increase the force by 10,000 recruits annually. Further, legislative and policy initiatives over the last few months, including an overhaul of our security framework through the Security Laws

(Amendment) Act 2014, and the adoption of a national counter-radicalisation strategy, have transformed the legal and policy landscape. We now have a robust and far-reaching legal framework to counter the current threats relating to terrorism. This will go a long way in safeguarding the lives and property of Kenyans and our visitors. In this respect, I wish to express my gratitude to this House for passing this significant legislation.

(Applause)

These efforts have led to an increased tempo in operations. We are detecting, disrupting and preventing attacks on our people and territory. The recent appointment of new leadership in key strategic and operational positions in a number of security organs offers an opportunity to inject new ideas and drive that are much needed for the capacity and morale of our personnel. It is imperative that the synergy and improving performance emerging from the security sector be sustained.

The on-going police vetting process has taken too long and is now having a negative impact on the overall reform agenda in the police. It is leading to low morale, affecting command and control and, therefore, our ability to provide security. For these reasons, I call upon this House to urgently reflect on a more effective way to vet, in line with the objectives and spirit of the police reform process.

(Applause)

The state of the national economy, our public safety and security, and our international standing depend fundamentally on our ability to secure this nation on a sustainable basis. Our vigilance and efforts must, therefore, remain strong. It is for this reason that I have put every security organ on high alert and ensured substantial additional resources to this sector. I, in turn, expect a corresponding commitment by these agencies to secure this nation. I also call upon every Kenyan to take up their civic duty to cooperate with the security actors in the effort to secure our motherland.

Fellow Kenyans, hon. Members, drawing on our history and recognising the dangers of disunity, our Constitution in Article 10, spells out the value of national unity, inclusiveness and cohesion as fundamental to our national character. As heirs to a great freedom-fighting tradition, bearing the sacred trust of past, present and future generations, we are called to observe and realise these values. We are grateful for the contribution of our forefathers who fought for our Independence, many paying the ultimate price, and for those who have led our nation for the last half-century.

In that time, our economy has grown; we have been an island of peace; a haven for refugees and our nationhood has acquired ever-deeper and stronger roots. Our experience as a people over this time, however, is also laced with moments of pain and suffering. We started our existence as a nation seeking to establish our sovereignty and territorial integrity. In the course of this struggle, lives were lost, property was destroyed and civilians have suffered.

To this day, as a nation, we are still plagued by painful memories of unresolved murders, the existence of torture chambers and detentions without trial; events such as the Wagalla tragedy and violence against the proponents of expanding our democratic space; and all actions that have at times failed to recognise the civil and human rights of

Kenya's citizens. These have shaken the nation, excluded some Kenyans from the full promise of citizenship and fractured our national fabric.

We have witnessed violence linked to elections which has left many Kenyans dead, maimed and dispossessed. In 2007-2008, this reached its most tragic expression with the post-election violence that left 1,300 Kenyans dead and more than 650,000 displaced from their homes across the country. Collectively, these incidents have disunited us and held our people hostage to this tragic history by providing the foundation and rationale for cynical and destructive politics of hate and division.

In an effort to confront this past, the Truth, Justice and Reconciliation Commission (TJRC) undertook an inquiry into past injustices. Their report is before this House, and I urge the hon. Members to process it without undue delay.

My fellow compatriots, the Government has made efforts to relieve the plight of victims, particularly those of the post-election violence of 2007/2008. While these efforts have been lauded internationally, most recently by the African Union (AU) report that recognised that Kenya has set a positive standard to be emulated, I recognise that it is impossible to fully compensate for the loss of life and the magnitude of suffering.

Yesterday, I received the Report on the 2007/2008 Post Election Violence Related Cases from the Office of the Director of Public Prosecutions (DPP), a copy of which is annexed to my Report on National Values. In all, there were 6,000 reported cases and 4,575 files opened. It is the opinion of the DPP that there are challenges to obtaining successful prosecutions. These challenges range from inadequate evidence, inability to identify perpetrators, witnesses' fear of reprisals and the general lack of technical and forensic capacity at the time. Nonetheless, the Office of the DPP recognises there were victims and recommends that these cases be dealt with using restorative approaches.

(Applause)

We must indeed recall our options are not limited to retributive justice. There also exists the promise of restorative justice. In many ways, Kenyans and humanity overall, have benefited from restorative justice, an approach that is deeply rooted in our cultural and historical realities, particularly when such conflicts have a communal and political dimension.

Many thousands of Kenyans have reached out to reconcile with one another. My administration was forged from this reconciliation and is building on the efforts of the last government to advance the resettlement, reconciliation and relief to internally displaced persons, and I am committed to continuing these efforts as necessary.

(Applause)

Hon. Members, notwithstanding the recommendation of the Truth, Justice and Reconciliation Commission (RTJRC) Report, I have instructed the Treasury to establish a fund of Kshs10 billion over the next three years to be used for restorative justice.

(Applause)

This will provide a measure of relief and will underscore my Government's goodwill. I have also established a State Department dedicated to strategic initiatives in marginalised and at-risk regions and populations of our country. It is my hope that these measures will go some way to bringing the nation together as we reach for the prosperity and security that is our common promise.

Fellow Kenyans, the time has come to bring closure to this painful past; the time has come to allow ourselves the full benefit of a cohesive, unified and confident Kenya, as we claim our future. My brothers and sisters, to move forward as one nation, I stand before you today on my own behalf, on behalf of my Government and all past governments to offer the sincere apology of the Government of the Republic of Kenya to all our compatriots for all past wrongs.

(Applause)

I seek your forgiveness and may God give us the grace to draw on the lessons of this history to unite as a people and together, embrace our future as one people and one nation.

((Hon. Members and Senators applauded the President while standing in their places))

Asante; asante sana! Wow; thank you!

In moving forward to complete the noble work of building our nation, we are reminded of the fundamental principles upon which our prosperity will be built. Our national anthem calls us to reflect on the power of peace; to recall the supreme value of freedom; to believe, once more, in the beauty of service and brotherhood; to aspire each day to the dignity that results from hard work and to contend for the hope that justice will bring.

Fellow Kenyans, hon. Members, ladies and gentlemen, there is no doubt that Kenya is firmly on the path of transformation. However, my administration and this nation are confronted by both the reality and perception of pervasive corruption. As I have stated previously, and as warrants emphasis, corruption is the greatest threat to our security, fundamental rights and social-economic transformation. I share in the frustration of Kenyans at the slow pace and lack of results from the mechanisms created to help us tackle this monster.

When I spoke to the Nation on the eve of the new year, I assured Kenyans that in 2015, my administration will deal firmly with corruption. I have continuously engaged with all institutions charged with the responsibility to deal with corruption and firmly expressed my expectations and, indeed, the people's desire that their respective mandates are executed robustly, urgently and without fear or favour. I pledged my administration's full support as well as my own personal support to any actions that will reverse the course of this cancer eating at the soul of our motherland.

However, rather than unite against this common enemy of our people, these institutions have elected to be mired in personal and institutional conflicts that have chipped away at their legitimacy and brought disrepute to the State.

(Applause)

From the Commission charged with the responsibility in the fight against corruption, Parliament's premier oversight committee, the corridors of justice and the security organs charged with the safety of this nation, Kenyans are witness to the betrayal of their trust.

Hon. Members, when our Treasury was processing our first sovereign bond, the country was forced to settle a foreign court judgment to pay shadowy entities Kshs1.4 billion. When I addressed the nation on this matter, I pledged that my Government would do everything in its power to ensure that we recover all that was due to the Republic. From that moment, I took a personal interest and asked to be briefed on a regular basis of the progress on Anglo Leasing related investigations.

My administration also supported the investigating authorities in obtaining support from a number of friendly foreign governments. These investigations bore fruit. However, obstacles have appeared, threatening the prosecution of the perpetrators. The Ethics and Anti Corruption Commission (EACC) is now embroiled in infighting and finger-pointing, a state of affairs likely to cripple the investigative capacity of the institution with the likely outcome of subverting the course of justice.

(Applause)

From reports---

Hon. Members: Fire them! Fire them!

His Excellency the President (Hon. Uhuru Kenyatta): I do not fire; *kazi ni yenu yu kuwatoa. Watoeni ninyi!*

(Applause and laughter)

From reports I have received, I strongly believe that this is a further attempt to subvert the successful prosecution of the Anglo Leasing cases.

As I have indicated, constitutional office holders, State officers and every public servant are bound by the values enshrined in our Constitution. They are required to uphold the highest standards of personal integrity in the discharge of their official functions. In view of the oath of office that I took as the President of the Republic, let it be known that today, I draw the line. No one will stand between Kenyans and what is right in the fight against corruption and other monstrous economic crimes.

(Applause)

I have asked the Attorney-General of the Republic to liaise with the Council on Administration of Justice to focus on co-ordination within the Governance, Justice, Law and Order Sector (GJLOS). The Council must ensure the efficient and speedy processing of corruption-related cases, including hearing such cases on a daily basis.

(Applause)

I direct the Attorney General to review the legislative and policy framework to ensure the effective discharge of constitutional imperatives related to integrity.

Three weeks ago, I issued Executive Order Number Six on Ethics and Integrity in the Public Service. In it, I directed any civil servant to get in touch with my office should they receive any pressure to engage in unethical or illegal conduct regardless of the status of the person pressuring them to do so. I want to reiterate this personal commitment which is also provided for in our Constitution.

Honourable Members, the latest report I have received from the Ethics and Anti-Corruption Commission (EACC) contains a catalogue of allegations of high-level corruption touching on all arms and levels of Government. It is the view of the Chief Executive Officer (CEO) of the Ethics and Anti-Corruption Commission that the institution, and especially its Secretariat, is under siege because of the nature of the cases they are currently investigating. I know that Parliament is seized of this matter and urge it to deal with it expeditiously.

(Applause)

Today, however, and for the sake of transparency, I take the extra-ordinary step of attaching the afore-mentioned confidential Report from the CEO of the Ethics and Anti-Corruption Commission as an annex to my annual report on Values to Parliament. As a consequence, I also hereby direct that all officials of the national and county governments that are adversely mentioned in this Report, whether you are a Cabinet Secretary, Principal Secretary, or Chief Executive of a state institution, to immediately step aside, pending conclusion of the investigations of the allegations against them.

((Hon. Members and Senators applauded the President while standing in their places))

I equally expect that the other arms of Government; namely, the Legislature and the Judiciary will also do the same.

(Applause)

Further, the investigating authority must ensure that the Director of Public Prosecutions has received the subject files without delay. I also want to caution that this should not be an open-ended process. Justice must be expeditious, as justice delayed is justice denied. Therefore, the exercise should and must be concluded within the next 60 days.

(Applause)

Let me reiterate that it is not my place to determine the guilt or otherwise of any of the people mentioned in the said Report. However, the time has come to send a strong signal to the country that we will not accept anything less than the highest standard of integrity from those that hold high office.

Hon. Members: Yes! Yes!

(Applause)

His Excellency the President (Hon. Uhuru Kenyatta): Fellow Kenyans, hon. Members, ladies and gentlemen, in view of Parliament's oversight role and its representation of the people, I would be remiss not to express the disquiet caused by recent events that cast aspersions on Parliament.

Hon. Members: Yes! Yes!

His Excellency the President (Hon. Uhuru Kenyatta): As a previous Member, I urge you, hon. Members, to take all measures to urgently restore the dignity and integrity of Parliament. This is essential for an institution whose effective performance is a cornerstone of our democracy.

The war on corruption will not be won unless all arms and levels of Government play their role and uphold the highest levels of integrity and act decisively against any perpetrator of corruption.

Fellow Kenyans, there is no challenge, no obstacle that is too great for us to overcome. An indomitable Kenyan spirit has seen this nation secure its freedom and grow from small beginnings to become a vibrant democratic and multicultural society that is on an unstoppable path towards even greater progress and prosperity, as well as standing bold and strong in the face of seemingly insurmountable challenges.

My administration will continue to personify this indomitable Kenyan spirit. Our commitment to Kenya remains the same: to bring about fundamental positive change in all areas of our national life, in a sustainable and irreversible manner, across the length and breadth of the entire country, without regard to gender, age, religion, colour or ethnicity.

Our beloved nation is well on the path to greater heights. Through our collective effort, our democracy is growing and maturing while our fundamental rights and freedoms are entrenched and safe. The social, economic, and political gains that have been made are cemented and are also irreversible. While a lot of hard work still remains to be done, we, fellow Kenyans, have a lot to be proud of and a lot to be grateful for.

Hon. Speakers, ladies and gentlemen, the state of our nation is strong. Let the love for our country be our guiding light in all that we do. May God bless you all and bless Kenya. *Asanteni.*

(Applause)

Asante. It is now my pleasure to submit to Parliament the Annual Report on the State of National Security and the Report on Measures Taken and Progress Achieved in the Realisation of the National Values; and to the National Assembly, the Report on the Progress made in fulfilling our international obligations.

I thank you, honourable Members. Thank you for your attention.

(His Excellency the President (Mr. Uhuru Kenyatta) handed over the reports to the Speakers of the two Houses of Parliament.)

(Applause)

ADJOURNMENT

The Speaker of the Senate (Hon. Ethuro): Your Excellency, Sir, unfortunately, we have come to the end of this Special Sitting of Parliament. The Senate stands adjourned until Tuesday 31st March, 2015 at 9.00 a.m. in the Senate Chamber.

The Speaker of the National Assembly (Hon. Muturi): Your Excellency Sir, the National Assembly stands adjourned until Tuesday 31st March, 2015 at 2.30 p.m.

**DEPARTURE OF HIS EXCELLENCY
THE PRESIDENT**

*(Hon. Members of and Senators rose in their places
while His Excellency the President left the Chamber)*

Parliament rose at 4.40 p.m.