

KENYA HUMAN RIGHTS COMMISSION (KHRC) Advisory Opinion to the Kenya National Commission on Human Rights (KNCHR)

On Compliance and Implementation of the High Court Ruling in *Levi Munyeri & 2 Others v. Attorney General & 3 Others*

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Purpose: This advisory opinion provides KNCHR with a pathway to comply with the High Court ruling of December 4, 2025, affirming its constitutional mandate to design and oversee reparations for victims of human rights violations. It outlines foundational actions, institutional reforms, and strategic frameworks to embed reparations as a cornerstone of transformative justice and democratic renewal in Kenya.

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# **KHRC ADVISORY OPINION TO THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)**

## **On Compliance and Implementation of the High Court Ruling in *Levi Munyeri & 2 Others v. Attorney General & 3 Others***

**February 2026**

### **1.0 EXECUTIVE SUMMARY**

On December 4, 2025, the High Court of Kenya issued a landmark ruling affirming that the Kenya National Commission on Human Rights (KNCHR), as the National Human Rights Institution (NHRI) established under Article 59 of the Constitution, holds the constitutional and statutory mandate to design and oversee a framework for compensation and reparations for victims of human rights violations. The Court suspended the Presidential Panel of Experts (PoE), finding its creation lacked constitutional grounding, and directed that reparations be anchored in KNCHR's legitimate authority. This ruling offers Kenya an historic opportunity to confront impunity, restore dignity to victims, and embed reparations as a cornerstone of transformative justice and democratic renewal.

The Kenya Human Rights Commission (KHRC), as a leading civil society actor, has long advocated for independent, competent, and legally grounded mechanisms to address human rights violations. This advisory opinion builds on KHRC's public positions and provides KNCHR with a pathway to compliance that aligns with constitutional obligations and international best practices.

KNCHR has consistently demonstrated its capacity to convene credible inquiries that amplify victims' voices and shape national debates. Its inquiries into post-election violence (2008), extrajudicial killings (2010–2013), torture (2014), electoral violence (2017–2018), and gender-based violence (2020) established KNCHR as a custodian of evidence and a resilient institution capable of navigating political hostility while maintaining independence. This is the foundation upon which KNCHR should now build to advance transformative justice in Kenya.

The central recommendation of this advisory opinion is that KNCHR should invoke its quasi-judicial mandate to convene a Public Inquiry into victims of political violence and human rights violations during demonstrations and civic unrest from 2017 through July 2025. The Public Inquiry is the most legitimate, inclusive, and cost-effective mechanism for consolidating evidence, building a comprehensive national record, strengthening accountability, banishing impunity, and delivering reparations that meet constitutional and international thresholds.

Further, KNCHR must immediately establish a Reparations Unit, mobilize resources through the Restorative Justice Fund, and embed reparations into its long-term strategic plan to address historical injustices beyond the 2017–2025 temporal scope. By doing so, KNCHR can deliver victim-centered justice that is both restorative and transformative, positioning Kenya as a regional leader in reparative justice and democratic accountability.

To safeguard against elite bargains and executive interference that have undermined past commissions, KHRC advises that the Public Inquiry be twinned with a People's Truth Process

led by civil society. This parallel civic track, inspired by the Ufungamano Initiative, would capture grassroots testimonies and marginalized voices, embedding legitimacy and preventing the Inquiry from being perceived as elite-driven. By creating a dual evidentiary base—one constitutionally enforceable, the other socially mobilized—the twin process cushions against state capture while also serving as the bedrock for a broad-based coalition for democratic renewal.

## RECOMMENDATIONS

The central recommendation of this advisory opinion is for the Kenya National Commission on Human Rights (KNCHR) to invoke its quasi-judicial mandate under Article 59 of the Constitution and convene a **Public Inquiry** into victims of political violence and civic unrest. A Public Inquiry is the most legitimate, inclusive, and cost-effective mechanism for consolidating evidence, building a comprehensive national record, strengthening accountability, banishing impunity, and delivering reparations that meet constitutional and international thresholds. Importantly, an Inquiry will provide the country with a *verified national record of victims and the typology of harm done, thereby offering a credible and verifiable basis for reparations*. This is critical because the work will be undertaken at considerable public expense, and accountability for the use of public resources must be guaranteed.

Equally important, a Public Inquiry is the only viable option given KNCHR’s limited human resources, financial capacity, and time. A primary investigation conducted from scratch would demand extensive staffing, specialized investigative infrastructure, and years of work—resources KNCHR does not possess. By consolidating existing documentation from civil society, victims’ groups, and oversight bodies, the Inquiry avoids duplication, accelerates timelines, and ensures efficiency. Public hearings guarantee inclusivity and legitimacy by amplifying marginalized voices, while the Inquiry’s evidentiary foundation embeds reparations firmly within Kenya’s governance framework, lowers political tensions, restores trust in institutions, and positions KNCHR as the national convener of truth and accountability.

### Phased Implementation of Recommendations

While the Public Inquiry is the cornerstone recommendation, we consider it prudent to structure the broader set of actions into **two phases**.

- **Phase One** represents immediate actions necessitated by the High Court ruling and the urgent need to halt ongoing violent repression. These measures are designed to ensure compliance with the Court’s directive, stop abductions, enforced disappearances, and violent dispersal of public meetings, and establish credibility for KNCHR as custodian of reparative justice.
- **Phase Two** represents the systemic reforms required to guarantee non-repetition and embed reparations as a permanent pillar of democratic renewal. This phase also addresses the imperative to extend reparations beyond the narrow temporal scope of 2017–2025, ensuring justice across generations, non-discrimination and dismantling the machinery of violence.

## **Phase One: Immediate Actions (2026–2027)**

1. **Stop Ongoing Abuses** KNCHR must take urgent measures and monitoring mechanisms to halt abductions, enforced disappearances, and violent dispersal of public meetings. This demands immediate structured dialogue with the National Police Service. Immediate scrutiny must be placed on the National Police Service, that include the Independent Policing Oversight Authority, IPOA and the Ministry of interior to table the cessation of ongoing violations as a prerequisite for a credible reparations process.
2. **Convene a Public Inquiry:** KNCHR should invoke its quasi-judicial powers and the KNCHR Act to convene a Public Inquiry into victims of political violence and human rights violations during demonstrations and civic unrest since 2017 through July 2025. The Inquiry should hear from victims, survivors, civil society, state institutions, political actors, and experts, establishing a comprehensive evidentiary record as the foundation for reparations and strengthening public trust in KNCHR's role as custodian of human rights.
3. **Establish a Reparations Unit:** A dedicated Reparations Unit should be created to design and manage reparations. This unit will coordinate compensation, restitution, rehabilitation, and habilitation measures, while operationalizing financing through the Restorative Justice Fund.
4. **Multi-Stakeholder Forum:** KNCHR should convene a multi-stakeholder forum engaging victims' groups, grassroots movements, faith leaders, academia, donors, Parliament, and the Executive. This forum will build legitimacy, secure political buy-in, and shield the process from political resistance and sabotage.
5. **Tiered Financial Model:** KNCHR must adopt a tiered financial model to secure phased financing from Treasury and Parliament. Financial support should be tied to measurable progress and embed reparations into long-term budgetary planning to ensure that budgetary constraints do not become the reason that this process is shelved.
6. **Accountability for Public Resources:** Given the considerable public expense involved, KNCHR must ensure accountability for all resources mobilized. Parliamentary oversight and the Controller of Budget should be embedded into the reparations framework, guaranteeing transparency, independent audits, and public reporting to protect against misuse and reinforce public trust.

## **Phase Two: Expansive Justice and Institutional Reforms**

7. **Extend Justice Beyond the 2017–2025 Scope:** KNCHR should advocate for a comprehensive Public Inquiry that consolidates fragmented documentation from the *Parliamentary Select Committee to Investigate Ethnic Clashes in Kenya (Kiliku Report, 1992)*, the *Judicial Commission of Inquiry into Tribal Clashes in Kenya (Akiwumi Report, 1999)*, the *Commission of Inquiry into Post-Election Violence (Waki Report, 2008)*, the *Truth, Justice and Reconciliation Commission (TJRC Report, 2013)*, together with civil society archives, into a unified national record. Extending the temporal scope

is a **political imperative**: it ensures justice is not confined to one electoral cycle but addresses the historical continuum of political violence, honours victims across generations, and prevents selective accountability. Anchored in constitutional provisions and international norms, such an extension of the temporal scope would confront Kenya's entrenched impunity, embed non-discrimination, and restore dignity and secure justice for all victims without discrimination.

8. **Institutionalize Reparations:** Reparations must be embedded into KNCHR's governance structures, strategic plans, and annual work programmes. Internal guidelines should link every documented violation to a reparative pathway, while consolidation of statutory funds into a single National Reparations Fund ensures sustainability.
9. **Merge Existing Reparations Funds:** KNCHR should advocate for merging the Humanitarian Fund (IDP Act, 2012), Restorative Justice Fund (PFM Act, 2012), and Victim Protection Fund (Victim Protection Act, 2014) into one National Reparations Fund to enhance credibility, efficiency, and sustainability.
10. **Collaborate with Other Commissions and Government Agencies:** Structured collaboration with NGEAC and IPOA should be pursued to embed inclusivity and strengthen accountability. Joint investigations and evidence-sharing protocols will ensure gendered harms and police abuses are systematically documented and integrated into reparations. This collaboration situates the Public Inquiry within a wider accountability ecosystem, disperses political risk, and enhances transparency, protecting institutional independence while resonating with victims and the public.
11. **Place the National Police Service under Special Scrutiny:** The Public Inquiry must subject the police to special scrutiny, pursuing both individual accountability and collective responsibility. Punitive measures, symbolic remedies such as formal apologies, and structural guarantees of non-repetition should be demanded to restore public trust. The Service should demonstrate a documented pursuit of a cultural shift in its policing practices that including periodic reporting and messaging to the public.
12. **Twin the KNCHR process with a People's Truth Process:** KNCHR should complement the Public Inquiry with a parallel People's Truth Process led by civil society. While the Public Inquiry provides constitutional authority, subpoena powers, and enforceability, the People's Truth Process embeds grassroots legitimacy, inclusivity, and civic mobilization. By convening hearings in communities most affected by violence enables victims, youth, women, and marginalized groups become active participants in shaping justice. This dual track prevents state capture, builds resilience against elite bargains. Together, they ensure reparations are credible, inclusive, and transformative, advancing accountability, strengthening the rule of law and contribute to Kenya's democratic renewal.
13. **Build Legal Risk Mitigation and Enforcement Capacity:** KNCHR should embed litigation contingency planning, evidence management, digital forensics, and data protection into the reparations framework, safeguarding constitutional accountability.

- 14. Develop Monitoring, Evaluation, and Political Economy Anchoring:** A monitoring and evaluation mechanism with clear indicators, public reporting benchmarks, and independent audits must be institutionalized. Simultaneously, the Public Inquiry should be embedded within a broader reform strategy through coalition building, parliamentary engagement, and communications planning to protect institutional independence.

## 2.0 BACKGROUND AND HISTORICAL CONTEXT

Kenya's political history is marked by the deliberate use of violence as a tool for acquiring, contesting, and consolidating power. From colonial repression of Mau Mau fighters to post-independence authoritarianism, coercion has functioned not as an aberration but as a strategy of political organization—consolidating authority, intimidating opponents, and mobilizing ethnic constituencies (Murunga & Nasong'o 2007, p. 112).

The reintroduction of multiparty politics in 1992 intensified these dynamics. Electoral competition was repeatedly accompanied by orchestrated ethnic clashes, displacement, and targeted killings. The Parliamentary Select Committee to Investigate Ethnic Clashes in Kenya (Kiliku Commission Report, 1992) and the Judicial Commission of Inquiry into Tribal Clashes in Kenya (Akiwumi Commission Report, 1999) documented these abuses but were shelved under executive pressure. The Commission of Inquiry into Post-Election Violence (Waki Commission Report, 2008) produced the most detailed record, with over 1,000 deaths and mass displacement, yet its recommendations were diluted through elite bargains (Southall 2010, p. 89). Similarly, the Truth, Justice and Reconciliation Commission of Kenya (TJRC Report, 2013) generated extensive documentation but was undermined by political interference and selective implementation.

Across successive electoral cycles—1992, 1997, 2007, 2013, 2017, and 2022—violence has been deployed as a management tool to shape competition and force post-election settlements. Each cycle has ended in elite bargains that prioritized stability over accountability, entrenching impunity. The National Accord and Reconciliation Act (2008) exemplified this pattern: violence was defused but accountability deferred. Later commissions were sidelined, victims remained unrepaired, and the 2022 elections produced elite realignments that muted calls for justice.

The 2023 demonstrations following the contested 2022 elections further revealed this culture. Mass protests against economic hardship and alleged electoral manipulation escalated into violent confrontations with security agencies. The National Dialogue Committee (NADCO Report, 2023) sought to defuse tensions through reform proposals but ultimately reproduced the familiar pattern of elite settlements—stability without accountability.

Violence has also been outsourced to informal gangs and militia networks, such as Mungiki in the 1990s and 2000s, or more recent urban gangs. This outsourcing allowed elites to evade direct accountability while embedding coercion into everyday governance. State institutions—including the police, judiciary, and parliament—have oscillated between complicity and

resistance, often diluting reports or stalling implementation (KNCHR 2014, p. 22). Corporations, particularly in telecommunications, have also enabled repression through surveillance and intimidation, contravening constitutional guarantees of dignity, privacy, and free expression, and breaching obligations under international law such as the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights.

The eruption of Gen-Z protests in June 2024 disrupted this cycle. Mobilized by frustrations over economic precarity, corruption, and exclusion, young Kenyans organized decentralized, digitally coordinated protests. The state's response was swift and violent—abductions, disappearances, extrajudicial killings, and suppression of civic freedoms—echoing Moi-era tactics (Murunga & Nasong'o 2007, p. 115). The aftermath continued into 2026, underscoring the fragility of democratic institutions and the persistence of impunity.

Against this backdrop, the High Court's 2025 ruling in *Levi Munyeri & Others v. Attorney General & Others* is transformative. By affirming KNCHR's constitutional mandate under Article 59, the Court opened the door for a transitional justice process that can break Kenya's entrenched cycle of violence and impunity. The proposed Public Inquiry must therefore be framed not as another elite bargain but as a people's democratic project. By embedding victim-centered reparations, naming perpetrators, recovering assets, and linking reparations to guarantees of non-recurrence, the Inquiry can dismantle the instrumentalization of violence, delegitimize elite bargains, and restore dignity to victims.

This moment demands transformative justice—not merely compensating victims but dismantling structures of violence, embedding guarantees of non-repetition, and renewing the social contract. Reparations, grounded in a Public Inquiry and extended across history, become the cornerstone of a new political culture—one that banishes impunity, honours dignity, and anchors Kenya's democratic renewal in truth and accountability. Crucially, the temporal scope cannot be limited to 2017–2025; justice must extend across generations of victims.

## **2.1 Kenya's Policing Culture**

Kenya's policing regime has remained central to violent political repression. Despite constitutional reforms in 2010 that renamed the “force” into the Kenya National Police Service to signal accountability and a shift to the republican tradition of policing, the institution continues to operate as the coercive arm of the regime—shielding elites, suppressing dissent, and violently policing civic freedoms. KNCHR and KHRC reports have consistently documented extra-judicial killings, enforced disappearances, and torture, particularly targeting urban youth in informal settlements (KNCHR 2014, p. 22; KNCHR 2025, p. 14; KHRC 2026, p. 3). Oversight bodies such as the Independent Policing Oversight Authority (IPOA) remain underfunded and politically constrained, leaving most cases unresolved.

The police must therefore be singled out for special scrutiny within the Public Inquiry. Accountability must be pursued at both individual and collective levels. This requires naming officers responsible for violations while interrogating the institutional culture that has normalized repression. Beyond punitive measures, the Inquiry should demand symbolic remedies, including a formal apology and binding commitments to reform. Such measures

would signal a decisive break from authoritarian policing traditions, restore public trust, and honour the republican vision of the Constitution.

## 2.2 Transitional Justice as a Clean Break

The High Court’s ruling provides an opportunity to embed transitional justice as a permanent governance pillar. Anchored in victim-centered reparations and systemic reforms, a Public Inquiry can dismantle the instrumentalization of violence, delegitimize elite bargains, and restore dignity to victims. By embedding guarantees of non-recurrence, KNCHR can shift Kenya’s political culture from coercion to accountability, strengthen institutions, and consolidate democracy.

## 3.0 KENYA’S REPARATIONS FRAMEWORK

### 3.1 Legal Framework for Reparations in Kenya: Constitutional Foundations and Case Law

Kenya’s reparations framework is firmly established in constitutional provisions, statutory instruments, and case law. Over the past decade, jurisprudence has progressively clarified reparations as enforceable rights rather than discretionary acts.

In *Coalition on Violence Against Women v. Attorney General (2013)*, the High Court ordered reparations for survivors of post-election sexual violence, affirming the state’s duty to provide compensation and rehabilitation (High Court of Kenya 2013, p. 17). In *Mitu Bell Welfare Society v. Kenya Airports Authority (2021)*, the Supreme Court recognized the right to housing and ordered compensation for victims of forced evictions, embedding socio-economic rights within the constitutional guarantee of dignity (Supreme Court of Kenya 2021, p. 45). *The Mau Mau Veterans’ Petitions (2013–2015)*, though litigated against the UK government, demonstrated the transformative potential of reparations by combining financial compensation with symbolic remedies such as apologies (High Court of Justice 2013, p. 41).

The watershed moment came with *Levi Munyeri & 2 Others v. Attorney General & 3 Others (2025)*, where the High Court invalidated the Presidential Panel of Experts and affirmed KNCHR as the legitimate institution to design and oversee reparations. This ruling consolidated KNCHR’s authority and underscored that reparations must be delivered through independent, legally established institutions (High Court of Kenya 2025, p. 28).

Despite these advances, Kenya’s reparations landscape remains fragmented, delivered piecemeal through court rulings, ad hoc settlements, and disparate statutory instruments. The absence of a unified policy has led to selective justice and weak implementation. A key recommendation is to merge existing funds—including the Restorative Justice Fund, the Victim Protection Fund, and the IDP Humanitarian Fund—into a single **National Reparations Fund** to consolidate statutory mechanisms, ensure predictable financing, and embed reparations into long-term budgetary planning.

#### 3.1.1 Constitutional Foundations

The Constitution of Kenya (2010) provides a robust foundation for reparations:

- Article 21 obligates the state to “observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights.”
- Articles 22 and 23 empower individuals to institute proceedings for enforcement of rights and authorize courts to grant relief, including compensation and restitution.
- Article 40 protects property rights, often invoked in restitution claims.
- Article 59 establishes KNCHR’s mandate to promote and protect human rights, investigate violations, and recommend remedies, providing the constitutional basis for its quasi-judicial powers.

Together, these provisions create a constitutional imperative for reparations, situating KNCHR as custodian of victim-centered justice.

### 3.1.2 Statutory Instruments

The Kenya National Commission on Human Rights Act (2011) operationalizes Article 59 by granting KNCHR powers to summon witnesses, compel production of documents, and issue recommendations. The Public Finance Management Act (2012) establishes the Restorative Justice Fund, a statutory mechanism for financing reparations. Other relevant statutes include:

- Victim Protection Act (2014): Provides restitution, compensation, rehabilitation, and victim participation in justice processes (Victim Protection Act 2014, p. 12).
- Sexual Offences Act (2006): Includes provisions for compensation and support for survivors of sexual and gender-based violence.
- Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (2012): Provides reparative measures for displacement, including resettlement and livelihood restoration (IDP Act 2012, p. 8).

Kenya currently has three statutory funds—the Victim Protection Fund, the Humanitarian Fund for Internally Displaced Persons, and the Restorative Justice Fund. While well-intentioned, their coexistence has produced overlapping mandates, weak coordination, and inconsistent financing. Victims often fall between statutory categories, and under-resourcing has left reparations vulnerable to political manipulation (KNCHR 2014, p. 22).

### 3.1.3 Case Law

Kenya’s jurisprudence has progressively clarified reparations as enforceable rights:

1. *Coalition on Violence Against Women v. Attorney General (2013)*: High Court ordered reparations for survivors of post-election sexual violence (High Court of Kenya 2013, p. 17).
2. *Mitu Bell Welfare Society v. Kenya Airports Authority (2021)*: Supreme Court recognized housing rights and ordered compensation for forced evictions (Supreme Court of Kenya 2021, p. 45).

3. *Mau Mau Veterans' Petitions (2013–2015)*: Demonstrated the importance of combining material and symbolic remedies (High Court of Justice 2013, p. 41).
4. *Levi Munyeri & 2 Others v. Attorney General & 3 Others (2025)*: Affirmed KNCHR's mandate as the institution charged with designing and securing reparations for victims of human rights violations (High Court of Kenya 2025, p. 28).

Together, these cases demonstrate that reparations in Kenya must be comprehensive, inclusive, and victim-centered, structured around rigorous harm assessment and combining material and symbolic remedies.

### **3.2 International Legal and Normative Framework**

Kenya's reparations framework is reinforced by international and regional obligations:

- *United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation (2005)*: Establish five core forms of reparations—restitution, compensation, rehabilitation, satisfaction, and guarantees of non-recurrence (UN 2005, p. 12).
- *African Charter on Human and Peoples' Rights (1981)*: Article 7(1)(a) obligates states to provide effective remedies (African Charter 1981, p. 7).
- *African Union Transitional Justice Policy (2019)*: Encourages member states to adopt comprehensive reparations programs that combine material and symbolic measures, ensure inclusivity, and embed sustainability (AU TJP 2019, p. 44).

These instruments require reparations to be comprehensive, inclusive, sustainable, and transformative—embedding guarantees of non-recurrence and dismantling structures of violence and impunity.

### **3.3 Mandate and Institutional Role of KNCHR**

#### **3.3.1 KNCHR's Authority in Implementing Reparations**

KNCHR derives its authority from Article 59 of the Constitution and the KNCHR Act. Its powers include investigating violations, issuing binding recommendations, monitoring compliance, and advising Parliament and the Executive on policy reforms.

#### **3.3.2 KNCHR's Quasi-Judicial Mandate**

The KNCHR Act (2011) grants quasi-judicial powers:

- Section 8: Functions of the Commission, including investigation and redress.
- Section 25: Powers in inquiries, including summoning witnesses and compelling documents.
- Section 26: Enforcement of decisions, making KNCHR's determinations binding unless overturned by a court.

- Section 27: Complaints and redress mechanisms, allowing victims to lodge complaints directly.

KNCHR has historically exercised these powers in inquiries into post-election violence (2007–2008), police brutality, and labour rights violations in Marereni Salt mines. These precedents demonstrate its capacity to consolidate evidence and recommend reparations.

### 3.3.3 KNCHR’s Progressive Legacy

KNCHR’s progressive legacy is rooted in its consistent use of quasi-judicial and investigative powers to document violations, shape accountability mechanisms, and advance rights-based reforms. Over the years, the Commission has conducted landmark inquiries that illustrate its credibility and capacity to consolidate evidence and recommend reparations.

During the *Post-Election Violence (2007–2008)*, KNCHR documented widespread violations—including killings, sexual violence, and forced displacement—laying the groundwork for accountability mechanisms such as the Commission of *Inquiry into Post-Election Violence* that informed the Waki Report (KNCHR 2008, p. 34). Its police brutality investigations (2014–2025) consistently exposed excessive use of force, producing reports that informed reforms in policing and accountability (KNCHR 2014, p. 22; KNCHR 2025, p. 14). In the *Marereni Salt Inquiry (2011)*, KNCHR examined labour rights violations and environmental abuses in salt mining operations, demonstrating its ability to address both civil and socio-economic rights (KNCHR 2011, p. 19).

KNCHR’s progressive legacy extends beyond documenting political violence to tackling grand corruption. In 2006, together with Transparency International – Kenya, KNCHR released the “*Mabenzi Report*” (*Living Large: Counting the Cost of Official Extravagance in Kenya*), which exposed how the government spent \$12 million on luxury vehicles, including 57 Mercedes-Benz cars, between 2003–2004. By framing corruption as a violation of socio-economic rights, KNCHR expanded its mandate to economic governance, reinforcing its credibility as custodian of accountability. Alongside inquiries into post-election violence (2007–2008), police brutality (2014–2025), and labour rights in Marereni Salt mines (2011), the Mabenzi Report demonstrated KNCHR’s ability to confront both political and economic impunity, embedding justice into Kenya’s governance culture.

These precedents highlight KNCHR’s role as more than a monitoring body. They show its capacity to conduct credible inquiries, consolidate fragmented documentation, and recommend reparations measures that embed justice into Kenya’s governance culture. This moment therefore provides KNCHR with an opportunity to build on its legacy—framing reparations not simply as compensation, but as a transformative justice project that restores dignity to victims, dismantles impunity, and makes accountability a permanent feature of Kenya’s democratic renewal.

## 3.4 Institutional Assessment

KNCHR possesses significant strengths: quasi-judicial powers, regional offices, complaint-handling mechanisms, and experience in documenting violations. It collaborates with government agencies, civil society, UN bodies, and regional networks such as NANHRI.

Challenges include funding constraints, limited staff, and reliance on executive and judicial enforcement. Despite these challenges, KNCHR has opportunities to leverage the High Court’s affirmation of its mandate, expand partnerships, and institutionalize a national reparations framework. Its independence, credibility, and legacy uniquely position it to lead Kenya’s reparations agenda.

#### **4.0 APPROACHES TO REPARATIONS: COMPARATIVE LESSONS AND BEST PRACTICES**

Reparations are a cornerstone of transitional justice, designed to restore dignity, provide redress, and rebuild trust between victims and the state. The High Court’s ruling in *Levi Munyeri & 2 Others v. Attorney General & 3 Others (2025)* placed the Kenya National Commission on Human Rights (KNCHR) at the centre of implementing compensation for victims of demonstrations and public protests. Yet Kenya’s reparations discourse cannot be confined to this ruling alone. Comparative experiences from *South Africa, Morocco, Sierra Leone, Rwanda, Argentina, Chile, Colombia, and Kenya’s own Truth, Justice and Reconciliation Commission (TJRC)* offer valuable lessons for KNCHR as it crafts a victim-centered, sustainable, and legitimate reparations framework.

The ruling in *Levi Munyeri* provides KNCHR with a constitutional anchor to deliver reparations for victims of demonstrations and protests. Yet comparative experiences show that reparations must be more than financial payouts—they must be inclusive, victim-centered, symbolic, and sustainable. By drawing lessons from these jurisdictions, KNCHR can initiate a process that not only complies with judicial directives but also institutionalizes reparations as a cornerstone of Kenya’s democratic renewal.

South Africa’s *Truth and Reconciliation Commission (TRC)* demonstrated that reparations must go beyond monetary compensation. Symbolic measures—such as public apologies, memorials, and truth-telling—were essential in acknowledging victims’ suffering and restoring dignity (Boraine 2000, p. 274). Morocco’s *Equity and Reconciliation Commission (IER)* emphasized inclusivity by ensuring diverse victim groups were represented and sustainability by embedding reparations within long-term institutional reforms (Skaar 2012, p. 147). Sierra Leone’s reparations program highlighted tailoring reparations to victims’ actual needs, providing healthcare, education, and livelihood support, and ensuring participatory design (Scharf 2004, p. 46). Rwanda embedded reparations within reconciliation processes after the 1994 genocide, prioritizing memorialization, psychosocial support, and community rebuilding, linking reparations to guarantees of non-recurrence through governance reforms (Hayner 2011, p. 92).

Kenya’s own *Truth, Justice and Reconciliation Commission (TJRC)* recommended reparations for historical injustices, including political violence, land dispossession, and state repression. However, implementation has been weak, leaving victims without meaningful redress. The TJRC’s findings remain a critical resource for KNCHR, offering a comprehensive record of violations and recommendations for reparations (TJRC 2013, p. 89). Reviving and operationalizing TJRC recommendations by integrating them into current frameworks would

extend justice beyond the temporal scope of the *Levi Munyeri* ruling and address historical injustices that continue to shape Kenya's political and social landscape.

The *Mau Mau Veterans' litigation against the UK government* provides a particularly important lesson on assessing harm and structuring reparations. In *Mutua & Others v. The Foreign and Commonwealth Office (2013)*, the UK government agreed to compensate Mau Mau survivors of torture and issue an official apology. The case demonstrated that reparations must be both material and symbolic: survivors received financial compensation, but the apology and recognition of harm were equally significant in restoring dignity (High Court of Justice 2013, p. 41). It also underscored the importance of detailed documentation—medical evidence, survivor testimonies, and historical records were central to establishing liability and quantifying reparations.

Kenyan jurisprudence reinforces this approach. In *Coalition on Violence Against Women v. Attorney General (2013)*, the High Court ordered reparations for survivors of post-election sexual violence, affirming the state's duty to provide compensation and rehabilitation (High Court of Kenya 2013, p. 17). In *Mitu Bell Welfare Society v. Kenya Airports Authority (2021)*, the Supreme Court recognized the right to housing and ordered compensation for victims of forced evictions, embedding socio-economic rights within reparations (Supreme Court of Kenya 2021, p. 45). These cases illustrate that reparations must address both immediate harm and long-term needs, including livelihood restoration, psychosocial support, and guarantees of non-recurrence.

Other global experiences reinforce these lessons. In Argentina, memorials for the disappeared and official apologies complemented compensation, while prosecutions of perpetrators reinforced legitimacy (Hayner 2011, p. 92). In Chile, survivors of Pinochet's dictatorship received medical care, psychosocial rehabilitation, and pensions, recognizing torture survivors as rights holders rather than passive beneficiaries (Teitel 2000, p. 119). Colombia's *Victims' Law (2011)* imposed liability on corporations complicit in paramilitary violence, requiring asset restitution and financial contributions (Uprimny & Saffon 2009, p. 23). These examples highlight the importance of combining material, symbolic, and institutional remedies, and extending accountability beyond the state to private actors.

Taken together, these comparative experiences highlight four key principles for KNCHR:

- Reparations must combine financial compensation with symbolic recognition to restore dignity.
- They must be inclusive, ensuring diverse victim groups are represented and benefit.
- They must be victim-centered, engaging victims directly in shaping programs to meet their actual needs.
- They must be sustainable and institutionalized, embedded within long-term policy frameworks and revisiting past findings such as the TJRC to ensure continuity.

#### **4.1 Embedding Individual and Collective Responsibility**

To guarantee non-recurrence, reparations in Kenya must be grounded not only in state responsibility but also in accountability of perpetrators in their individual and collective capacities. Transitional justice frameworks globally show that when responsibility is diffused solely to the state, perpetrators—whether political elites, police commanders, or corporate actors—escape consequences (Teitel 2000, p. 119). KNCHR should ensure that sources of funds and accountability mechanisms extend beyond government agencies to encompass officials, companies and their executives, politicians, party operatives, and militia leaders in their personal capacities.

This requires a dual track: financial liability through fines, asset recovery, and mandatory contributions to the National Reparations Fund (Boraine 2000, p. 274); and symbolic responsibility through public apologies, acknowledgment of wrongdoing, and participation in memorialization projects (Hayner 2011, p. 92). Collective responsibility must also be embedded, with political parties, security agencies, and corporations held accountable as institutions, institutionalizing contributions to reparations and embedding accountability into organizational cultures (Skaar 2012, p. 145).

#### **4.2 Comparative Case Studies on Individual and Collective Responsibility**

South Africa provides a critical example of addressing corporate complicity. *The Truth and Reconciliation Commission (TRC)* explicitly recognized the role of corporations and business elites in sustaining apartheid. While the state bore primary responsibility, the TRC recommended that companies profiting from racial segregation contribute financially to reparations through wealth taxes and corporate levies (Boraine 2000, p. 274). Although implementation was partial, the case illustrated how transitional justice can extend liability to private actors, embedding accountability into economic structures.

In Sierra Leone, the *Special Court for Sierra Leone* prosecuted individuals “who bear the greatest responsibility” for atrocities during the civil war, including political leaders and militia commanders. Asset seizures and fines were directed toward victim support, demonstrating how punitive measures can be combined with reparations (Scharf 2004, p. 46).

Morocco’s Equity and Reconciliation Commission (IER) acknowledged the responsibility of state security agencies and political institutions in widespread abuses during the “Years of Lead.” Reparations were funded not only by the state but also through institutional reforms requiring implicated agencies to contribute to memorialization and guarantees of non-recurrence (Skaar 2012, p. 147).

Colombia’s *Victims’ Law* (2011) recognized the role of corporations and paramilitary groups in land dispossession and violence. Companies complicit in financing paramilitary groups were required to contribute to reparations through asset restitution and financial liability (Uprimny & Saffon 2009, p. 23). This case illustrates how transitional justice can impose both individual and collective responsibility, ensuring that economic beneficiaries of violence are held accountable alongside political and military actors.

## **5.0 COMPLIANCE WITH THE HIGH COURT RULING**

KNCHR's compliance with the High Court ruling requires three elements: a comprehensive record of victims and injuries supported by verifiable evidence; a reparations policy, procedures, and regulations; and the administrative and financial capacity to deliver reparations. To achieve this, KNCHR should:

a. Adopt a pathway for establishing a comprehensive record of victims, injuries, and supporting evidence. b. Prepare documentation communicating the constitutional, statutory, and policy framework guiding reparations. c. Put in place the administrative mechanism to deliver reparations. d. Ensure access to an adequately resourced Restorative Justice Fund.

KNCHR should issue an internal directive affirming its mandate to lead the National Reparations Framework in line with the High Court ruling, establish a dedicated Reparations Unit/Secretariat to coordinate compliance, and initiate consultations with the Presidential Panel of Experts (PoE) to clarify roles and coordination mechanisms.

Given its powers under *Article 59 of the Constitution and Sections 25–27 of the Kenya National Commission on Human Rights Act (2011)*, KNCHR should invoke its quasi-judicial mandate to convene a Public Inquiry into victims of political violence and human rights violations during demonstrations and civic unrest since 2017 through July 7, 2025. The Inquiry will hear from victims, survivors, civil society, state institutions, political actors, and experts, and construct a comprehensive record of violations to establish the factual basis for reparations and strengthen accountability.

## 5.1 WHY A PUBLIC INQUIRY?

A just reparations process requires a comprehensive national record of victims, injuries, and verifiable evidence. A Public Inquiry is the only viable mechanism for KNCHR to construct such a record in a timely, cost-effective, and credible manner.

- *Capacity Constraints:* KNCHR's staffing and resource limitations make a nationwide investigation impractical. A Public Inquiry consolidates documentation already produced by civil society, grassroots movements, and Gen Z actors, avoiding duplication and reducing costs. Within months, a verified national record can be established.
- *Comprehensive Record Building:* The Inquiry enables KNCHR to document victims, identify injury patterns, assess damages to businesses and livelihoods, and capture both individual testimonies and community impacts. This record becomes the evidentiary foundation for reparations, policy reforms, and guarantees of non-recurrence.
- *Triangulation and Verification:* Evidence from civil society, victims' groups, police, and state institutions can be cross-checked. KNCHR's subpoena powers allow access to specialists, classified information, and expert witnesses, strengthening credibility and guarding against false claims or politicization.

- *Legitimacy and Inclusivity*: Public hearings give victims a platform to be heard, ensuring inclusivity across gender, age, region, and social status, and reinforcing trust in KNCHR’s independence.
- *Efficiency and Cost-Effectiveness*: Consolidating existing documentation and supplementing it with subpoenaed evidence allows KNCHR to deliver credible results quickly without building investigative capacity from scratch.
- *Strategic Leverage*: The Inquiry positions KNCHR as a national convenor of truth and accountability, leveraging partnerships with civil society, academia, international agencies, and victims’ groups.
- *Political Stability and National Healing*: Reparations grounded in a Public Inquiry can lower political tensions, heal wounds, and restore trust as Kenya enters a new electoral cycle.

A Public Inquiry transforms fragmented documentation into a unified national narrative, embeds reparations into Kenya’s governance framework, and ensures elections proceed with dignity and stability. It is not simply an option—it is the only viable pathway for KNCHR to fulfill its reparations mandate credibly, cost-effectively, and at scale.

## **5.2 Compliance with the High Court Ruling and Its Implications for Broader Reparations Beyond the 2017–2025 Temporal Scope**

The High Court’s decision in *Levi Munyeri & 2 Others v. Attorney General & 3 Others (2025)* represents a pivotal moment in Kenya’s constitutional and transitional justice landscape. KNCHR now bears responsibility for compliance, but the ruling’s temporal scope—limited to 2017–2025—raises pressing questions about victims of earlier violence.

### **5.2.1 Extending Justice Beyond 2017–2025**

Kenya’s history of impunity demands that reparations extend beyond this narrow window. Limiting justice risks reproducing exclusion and selective recognition. From the assassinations of dissenting voices in the 1960s and 1970s, to torture at Nyayo House in the 1980s, to ethnic clashes in the 1990s, and the post-election violence of 2007–2008, victims have repeatedly been denied justice. Each cycle produced commissions—Kiliku (1992), Akiwumi (1999), Waki (2008), and the Truth, Justice and Reconciliation Commission (2013)—whose findings were shelved or diluted under elite bargains (Murunga & Nasong’o 2007, p. 112; Southall 2010, p. 89).

Extending reparations is a matter of non-discrimination. Justice cannot be segmented by timeframe, privileging recent victims while excluding earlier ones. National healing requires securing justice for all victims across generations, unifying fragmented narratives, and embedding guarantees of non-recurrence into governance.

International law reinforces this imperative. The United Nations Basic Principles on the Right to a Remedy and Reparation (2005) demand restitution, compensation, rehabilitation, satisfaction, and guarantees of non-recurrence (UN 2005, p. 12). The African Union

Transitional Justice Policy (2019) calls for comprehensive reparations programs (Section 25) and institutional reforms to guarantee non-recurrence (Section 27).

The *Mau Mau reparations case* provides precedent: survivors of colonial torture received compensation and an official apology decades later, demonstrating that limitation of action does not apply to gross human rights violations (High Court of Justice 2013, p. 41). This principle underscores that victims of Nyayo House torture, the displaced of the 1990s, and survivors of 2007–2008 remain entitled to recognition and repair regardless of time.

Extending justice beyond 2017–2025 would:

- Unify victim narratives across generations.
- Expose patterns of regime policing and political violence.
- Strengthen KNCHR’s legitimacy as custodian of a long-term reparations agenda.
- Advance national healing by embedding reparations as a transformative justice project rooted in dignity, equality, and accountability.

## **6.0 TWINNING WITH A PEOPLE’S TRUTH PROCESS**

While a Public Inquiry under KNCHR’s mandate provides constitutional authority and enforceability, its transformative potential is magnified when twinned with a People’s Truth Process led by civil society. This dual track ensures reparations are legally grounded and socially resonant, preventing state capture and embedding grassroots legitimacy. Together, the Inquiry and the People’s Truth Process create a multi-layered evidentiary base that advances accountability, strengthens the rule of law, and deepens Kenya’s democratic renewal.

### **Lessons from the Ufungamano Initiative on Constitutional Reform**

Kenya’s history demonstrates the power of parallel civic processes. In 1999, when the state attempted to monopolize constitutional reform, civil society convened the Ufungamano Initiative, a people-driven constitutional review process. Though eventually merged with the official review, Ufungamano forced inclusivity, expanded legitimacy, and ensured citizen voices shaped the constitutional debate (Mutua, 2008, p. 77).

A People’s Truth Process, inspired by Ufungamano, would serve as a parallel civic inquiry into political violence and human rights violations. It would capture grassroots testimonies, marginalized voices, and community narratives often excluded from state processes. By mobilizing victims, youth, women, and marginalized groups, it would embed legitimacy in the reparations process and prevent the Inquiry from being perceived as elite-driven.

*Expanding Participation and Legitimacy* : The People’s Truth Process would convene hearings in communities most affected by violence—informal settlements, marginalized counties, and rural areas—using participatory methods such as community dialogues, storytelling, and memorialization. This inclusivity ensures reparations are not only legally defensible but

socially legitimate. Victims would see themselves as active participants in shaping justice (KHRC, 2003, p. 56).

By embedding grassroots legitimacy, the People’s Truth Process strengthens KNCHR’s bargaining power with the executive and Parliament. It creates a constituency of victims and civil society actors who can mobilize public opinion, ensuring reparations are not diluted by political compromise.

*Preventing State Capture* : Kenya’s commissions of inquiry have often been undermined by executive interference and elite bargains. A People’s Truth Process acts as a safeguard against capture. By producing its own record, it ensures victims’ voices cannot be silenced or excluded. It complements the Public Inquiry, creating resilience against attempts to dilute findings or stall implementation (Southall, 2010, p. 89).

*Creating a Dual Evidentiary Base*: The Public Inquiry provides constitutional authority, subpoena powers, and enforceability. The People’s Truth Process provides grassroots legitimacy, inclusivity, and civic mobilization. Together, they create a dual evidentiary base: one legally defensible, the other socially resonant. This combination ensures reparations are credible, inclusive, and transformative.

*Advancing Accountability and the Rule of Law*: By naming perpetrators, institutions, and complicit corporations, the Public Inquiry embeds accountability into reparations. The People’s Truth Process amplifies these findings through public pressure, ensuring perpetrators cannot hide behind elite bargains. Together, they shift reparations from charity to responsibility, dismantling impunity, and strengthening deterrence. This advances the rule of law by demonstrating that violations will be documented, acknowledged, and repaired through both institutional and civic mechanisms (African Union, 2019, p. 45).

Twinning the Public Inquiry with a People’s Truth Process is politically transformative. It breaks Kenya’s cycle of failed commissions by combining institutional authority with grassroots legitimacy. It ensures reparations are not only delivered but embedded in Kenya’s governance culture, advancing accountability, strengthening the rule of law, and guaranteeing non-recurrence. For KNCHR, this twin track positions the Commission as custodian of a national democratic project of transformative justice—restoring dignity, dismantling impunity, and achieving national

## **7.0 RISKS AND MITIGATION MEASURES**

The proposed Public Inquiry carries significant risks, but these are not insurmountable. With strong constitutional grounding, robust witness protection, resource mobilization, and inclusive participation, KNCHR can transform the Inquiry into a credible, victim-centered process. Below we identify specific risks and recommend desirable mitigation measures and strategies.

### **1. Political Interference and Elite Capture**

- *Risk*: Public inquiries in Kenya have historically been undermined by political elites seeking to control narratives or stall implementation.

- *Mitigation:* Anchor the Inquiry in KNCHR’s constitutional and quasi-judicial mandate under Article 59 and the KNCHR Act. Establish clear Terms of Reference approved by Parliament and gazetted. Build broad coalitions with civil society, victims’ groups, and international partners to resist elite capture.

## **2. Security Risks and Intimidation of Witnesses**

- *Risk:* Victims and whistleblowers may face threats or reprisals.
- *Mitigation:* Provide robust witness protection under the Victim Protection Act, including anonymity, secure venues, and psychosocial support. Partner with civil society to create safe spaces and sanction intimidation.

## **3. Institutional Capacity Constraints**

- *Risk:* Limited staffing and funding could delay or weaken credibility.
- *Mitigation:* Establish a dedicated Reparations Unit. Mobilize resources through the Restorative Justice Fund and donor partnerships. Outsource documentation tasks to civil society and academia.

## **4. Public Distrust and Fatigue**

- *Risk:* Citizens may view the Inquiry as “just another commission.”
- *Mitigation:* Ensure transparency through public hearings, regular updates, and accessible communication. Emphasize KNCHR’s binding quasi-judicial powers and incorporate symbolic measures such as memorialization and apologies.

## **5. Corporate Resistance and Non-Disclosure**

- *Risk:* Corporations implicated in surveillance or complicity may resist disclosure.
- *Mitigation:* Use subpoena powers to compel disclosure. Engage regulators such as the Communications Authority. Frame accountability as part of democratic renewal and investor confidence.

## **6. Fragmentation of Evidence and Narratives**

- *Risk:* Documentation is scattered across NGOs, grassroots movements, and past commissions.
- *Mitigation:* Adopt triangulation—harvesting existing documentation, verifying multi-source evidence, and integrating testimonies into a unified national archive.

## **7. Exclusion from Temporal Scope**

- *Risk:* Limiting reparations to 2017–2025 risks excluding earlier victims documented in Kiliku, Waki, and TJRC reports.
- *Mitigation:* Consolidate past documentation into a unified record. Advocate for a follow-up national Public Inquiry to address historical injustices (TJRC Report, 2013, p. 210).

## **8. Electoral Cycle Volatility**

- *Risk:* Unresolved grievances could inflame tensions during elections.
- *Mitigation:* Fast-track the Inquiry to deliver interim findings before elections. Frame reparations as stabilizing measures and engage political parties while safeguarding independence.

## **9. Risk of Civil Society Marginalization**

- *Risk:* Victims' voices may be silenced if civil society is sidelined.
- *Mitigation:* Twin the Public Inquiry with a People's Truth Process. Convene community hearings in marginalized regions to embed inclusivity (Mutua, 2008, p. 77).

## **10. Risk of Perpetrator Impunity**

- *Risk:* Elites, state institutions, and corporations may escape accountability.
- *Mitigation:* Name perpetrators and institutions in the Inquiry report. Impose fines, asset recovery, and corporate contributions to the National Reparations Fund (African Union, 2019, p. 45).

## **11. Risk of Resource Constraints**

- *Risk:* Reliance on parliamentary appropriations risks underfunding.
- *Mitigation:* Merge statutory funds—the Humanitarian Fund, Restorative Justice Fund, and Victim Protection Fund—into a National Reparations Fund. Supplement with donor support and asset recovery (Republic of Kenya, 2014, p. 12).

## **12. Risk of Exclusion of Marginalized Groups**

- *Risk:* Women, youth, and marginalized communities risk exclusion.
- *Mitigation:* Disaggregate indicators by gender, age, and region. Embed the mandate of the National Gender and Equality Commission (NGEC). Prioritize psychosocial rehabilitation, education, and livelihood restoration (KHRC, 2003, p. 56).

## **13. Risk of Repression or Intimidation**

- *Risk:* Victims and civil society actors may face harassment or reprisals.
- *Mitigation:* Establish witness protection under the Victim Protection Act. Partner with civil society for safe spaces. Decentralize hearings and publicize protective measures (Coalition on Violence Against Women v. Attorney General, 2013, p. 56).

## **14. Risk of Profiteering by Political Actors**

- *Risk:* Elites may instrumentalize reparations for electoral gain.
- *Mitigation:* Anchor delivery in KNCHR's independent mandate. Ensure transparent criteria for victim registration and compensation. Publicize disaggregated data and enable civic oversight (Murunga & Nasong'o, 2007, p. 112).

## 8.0 RECOMMENDATIONS

The central recommendation of this advisory opinion is for the Kenya National Commission on Human Rights (KNCHR) to invoke its quasi-judicial mandate under Article 59 of the Constitution and convene a **Public Inquiry** into victims of political violence and civic unrest. A Public Inquiry is the most legitimate, inclusive, and cost-effective mechanism for consolidating evidence, building a comprehensive national record, strengthening accountability, banishing impunity, and delivering reparations that meet constitutional and international thresholds. Importantly, an Inquiry will provide the country with a *verified national record of victims and the typology of harm done, thereby offering a credible and verifiable basis for reparations*. This is critical because the work will be undertaken at considerable public expense, and accountability for the use of public resources must be guaranteed.

Equally important, a Public Inquiry is the only viable option given KNCHR's limited human resources, financial capacity, and time. A primary investigation conducted from scratch would demand extensive staffing, specialized investigative infrastructure, and years of work—resources KNCHR does not possess. By consolidating existing documentation from civil society, victims' groups, and oversight bodies, the Inquiry avoids duplication, accelerates timelines, and ensures efficiency. Public hearings guarantee inclusivity and legitimacy by amplifying marginalized voices, while the Inquiry's evidentiary foundation embeds reparations firmly within Kenya's governance framework, lowers political tensions, restores trust in institutions, and positions KNCHR as the national convenor of truth and accountability.

### **Phased Implementation of Recommendations**

While the Public Inquiry is the cornerstone recommendation, we consider it prudent to structure the broader set of actions into **two phases**.

- **Phase One** represents immediate actions necessitated by the High Court ruling and the urgent need to halt ongoing violent repression. These measures are designed to ensure compliance with the Court's directive, stop abductions, enforced disappearances, and violent dispersal of public meetings, and establish credibility for KNCHR as custodian of reparative justice.
- **Phase Two** represents the systemic reforms required to guarantee non-repetition and embed reparations as a permanent pillar of democratic renewal. This phase also addresses the imperative to extend reparations beyond the narrow temporal scope of 2017–2025, ensuring justice across generations, non-discrimination and dismantling the machinery of violence.

### **Phase One: Immediate Actions (2026–2027)**

1. *Stop Ongoing Abuses*: KNCHR must take urgent measures and monitoring mechanisms to halt abductions, enforced disappearances, and violent dispersal of public meetings. This demands immediate structured dialogue with the National Police Service Immediate

scrutiny must be placed on the National Police Service, that include the Independent Policing Oversight Authority, IPOA and the Ministry of interior to table the cessation of ongoing violations as a prerequisite for a credible reparations process.

2. *Convene a Public Inquiry:* KNCHR should invoke its quasi-judicial powers under Article 59 and the KNCHR Act to convene a Public Inquiry into victims of political violence and human rights violations during demonstrations and public protests since 2017 through July 7, 2025. The Inquiry should hear from victims, survivors, civil society, state institutions, political actors, and experts. It would construct a comprehensive record of violations, establish a factual basis for reparations, and strengthen accountability. Invoking a Public Inquiry will provide the evidentiary foundation for reparations and reinforce public trust in KNCHR's role as custodian of human rights. KNCHR should also initiate the design of a Public Inquiry framework, including procedural rules, stakeholder mapping, and resource mobilization. A draft term of reference is annexed.
3. *Establish a Reparations Unit:* KNCHR should establish a dedicated Reparations Unit to lead the design and management of the Public Inquiry, consolidate evidence into a national database, and coordinate victim-centered programs such as compensation, restitution, rehabilitation, and guarantees of non-recurrence. This Unit would operationalize financing mechanisms like the Restorative Justice Fund, advocate for consolidation of existing funds into a single National Reparations Fund, and monitor compliance with judicial directives.
4. *Convene a Multi-Stakeholder Forum:* KNCHR should convene a multi-stakeholder forum to build legitimacy, mobilize support, and ensure collaboration across sectors. This forum would communicate the vision of reparations as a cornerstone of democratic renewal, engage victims' groups, civil society, faith leaders, academia, donors, and oversight bodies, and secure political buy-in from Parliament and the Executive.
5. *Tiered Financial Model:* KNCHR must adopt a tiered financial model to secure phased financing from Treasury and Parliament. Financial support should be tied to measurable progress and embed reparations into long-term budgetary planning to ensure that budgetary constraints do not become the reason that this process is shelved.
6. *Accountability for Public Resources:* Given the considerable public expense involved, KNCHR must ensure accountability for all resources mobilized. Parliamentary oversight and the Controller of Budget should be embedded into the reparations framework, guaranteeing transparency, independent audits, and public reporting to protect against misuse and reinforce public trust.

### **Phase Two: Expansive Justice and Institutional Reforms**

7. *Extend Justice Beyond the 2017–2025 Scope:* KNCHR should advocate for a comprehensive Public Inquiry that consolidates fragmented documentation from the *Parliamentary Select Committee to Investigate Ethnic Clashes in Kenya (Kiliku Report, 1992)*, the *Judicial Commission of Inquiry into Tribal Clashes in Kenya (Akiwumi Report, 1999)*, the *Commission of Inquiry into Post-Election Violence (Waki Report, 2008)*, the

*Truth, Justice and Reconciliation Commission (TJRC Report, 2013)*, together with civil society archives, into a unified national record. Extending the temporal scope is a **political imperative**: it ensures justice is not confined to one electoral cycle but addresses the historical continuum of political violence, honours victims across generations, and prevents selective accountability. Anchored in constitutional provisions and international norms, such an extension of the temporal scope would confront Kenya's entrenched impunity, embed non-discrimination, and restore dignity and secure justice for all victims without discrimination.

8. *KNCHR should institutionalize reparations within its governance and operational models*: KNCHR should embed guarantees of non-recurrence into governance structures and integrate the reparations framework into its procedures, planning, and fundraising activities. This means mainstreaming reparations into strategic plans and annual work programmes, adopting internal guidelines that link every documented violation to a reparative pathway, aligning fundraising strategies with reparations delivery, and embedding structural reforms into policy advocacy and legislative oversight.

9. *Advocate for the merger of all the merge all reparations funds into One National Reparations Fund*: Kenya currently has three statutory funds relevant to reparations—the Humanitarian Fund under the IDP Act (2012), the Restorative Justice Fund under the Public Finance Management Act (2012), and the Victim Protection Fund under the Victim Protection Act (2014). Fragmentation has led to duplication, selective justice, and weak implementation. Merging these funds into a single National Reparations Fund would consolidate resources, harmonize mandates, and create a unified framework for victim-centered justice. Anchored in KNCHR's constitutional authority under Article 59, such a fund would be insulated from executive interference and grounded in quasi-judicial legitimacy.

10. *Collaborate with constitutional commissions and oversight agencies*: KNCHR should pursue structured collaboration with the National Gender and Equality Commission (NGEC) and the Independent Policing Oversight Authority (IPOA). Such collaboration embeds inclusivity and strengthens accountability by ensuring gendered harms and police abuses are systematically documented and integrated into the reparations framework. Joint investigations, evidence-sharing protocols, and thematic task forces would enhance legitimacy and reduce duplication. This collaboration situates the Public Inquiry within a wider accountability ecosystem, disperses political risk, and ensures reparations resonate with victims and the public. It also operationalizes Sections 19 and 27 of the AU Transitional Justice Policy, which emphasize accountability and institutional reform as guarantees of non-recurrence.

11. *Special scrutiny of the police service*: The Public Inquiry should single out the Kenya National Police Service for special scrutiny, recognizing its entrenched role in sustaining political violence and impunity. The Inquiry must combine individual accountability for officers with collective responsibility for institutional culture. Symbolic remedies, including a formal apology and acknowledgment of repression, should accompany substantive reforms such as strengthened oversight and genuine accountability. This would dismantle one of the most entrenched pillars of impunity and restore public trust in law enforcement.

12. *Twin the KNCHR process with a People’s Truth Process:* KNCHR should complement the Public Inquiry with a parallel People’s Truth Process led by civil society, inspired by the Ufungamano Initiative. While the Public Inquiry provides constitutional authority, subpoena powers, and enforceability, the People’s Truth Process embeds grassroots legitimacy, inclusivity, and civic mobilization. Hearings convened in communities most affected by violence—informal settlements, marginalized counties, and rural areas—through participatory methods such as community dialogues, storytelling, and memorialization will ensure victims, youth, women, and marginalized groups are active participants in shaping justice. This dual track prevents state capture, creates resilience against elite bargains, and produces a multi-layered evidentiary base: one legally defensible, the other socially resonant. Together, the Inquiry and the People’s Truth Process advance accountability, strengthen the rule of law, and guarantee non-recurrence.

13. *Build legal risk mitigation and enforcement capacity:* KNCHR should embed litigation contingency planning, evidence management, digital forensics, and data protection into its reparations framework. These measures should be anchored in a court compliance roadmap and operationalized through the Reparations Unit to safeguard constitutional accountability.

14. *Develop monitoring, evaluation, and political economy anchoring mechanisms:* KNCHR should institutionalize monitoring and evaluation with clear indicators, public reporting benchmarks, independent audits, and periodic reviews. Simultaneously, the Public Inquiry should be embedded within a broader political economy and reform strategy through stakeholder mapping, coalition-building, engagement with Parliament and Treasury, and a communications plan to protect institutional independence.

## **9.0 CONCLUSION**

The High Court ruling provides KNCHR with a historic mandate to anchor reparations within Kenya’s democratic renewal project. By leveraging its quasi-judicial powers, partnerships, and institutional experience, KNCHR can deliver victim-centered justice that is both restorative and transformative. This is not only a legal directive but also a moral imperative to acknowledge past violations, restore trust, and build a future grounded in justice and accountability.

This Advisory Opinion elevates reparations into a transformative justice project that confronts Kenya’s culture of impunity, consolidates fragmented documentation into a unified national record, and embeds accountability into governance. It signals to victims that their dignity will be restored, to perpetrators that impunity will be dismantled, and to the nation that democratic renewal is possible.

By implementing this roadmap, KNCHR can transform reparations into a cornerstone of Kenya’s democratic future—anchoring justice, healing, and accountability within the nation’s governance culture.

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## 9.0 ANNEXES

### **ANNEX I: DRAFT TERMS OF REFERENCE FOR THE PUBLIC INQUIRY**

**Public Inquiry into Political Violence and Human Rights Violations during Demonstration and Civic Unrest (2017–July 2025)** Convened by the Kenya National Commission on Human Rights (KNCHR)

#### **1. Legal Basis**

- Established under Article 59 of the Constitution of Kenya (2010) and sections 25-27 of the KNCHR Act.
- Anchored in the High Court ruling in *Levi Munyeri & 2 Others v. Attorney General & 3 Others (2025)*, which affirmed KNCHR’s mandate to design and oversee reparations.
- Guided by international and regional standards, including the UN Basic Principles on the Right to Remedy and Reparations and the African Charter on Human and Peoples’ Rights.
- Reinforced by Kenya’s obligations under the ICCPR and CEDAW, ensuring compliance with international human rights law.

#### **1. Objectives**

- To investigate, document, and verify human rights violations arising from demonstrations and civic unrest between 2017 and July 2025.
- To create a comprehensive national database of victims, damages, and violations that supports reparations and accountability.
- To develop and implement reparations programs that include compensation, restitution, rehabilitation, psychosocial support, and guarantees of non-recurrence.
- To recommend prosecutions and other accountability measures for perpetrators, ensuring justice is delivered.
- To provide recommendations for institutional reforms that dismantle impunity and embed guarantees of non-repetition.
- To position Kenya as a regional leader in transitional justice by embedding reparations as a cornerstone of governance reform.
- To recommend a mechanism for consolidating past inquiries—including Kiliku, Akiwumi, Waki, TJRC, and other civil society archives—into a unified national record, thereby extending reparative justice to victims outside the temporal scope of 2017–July 2025 and ensuring historical injustices are comprehensively addressed.

#### **3. Scope of Inquiry**

- a. Temporal Scope: January 2017 – July 2025.
- b. Substantive Scope:

- Protest-related violations (killings, torture, abductions, enforced disappearances, injuries, arbitrary arrests, and unlawful detentions).
- Sexual and gender-based violence linked to political unrest.
- Forced evictions, displacement, and damage to property during civic unrest and electoral cycles.
- Violations of freedom of assembly, association, and expression.
- Roles of state and non-state actors, including corporations, in perpetrating or enabling violations.
- Structural drivers of impunity, including policing culture, elite bargains, and systemic failures of accountability.

#### **4. Structure and Composition**

- KNCHR Commissioners
- Secretariat: Dedicated staff within KNCHR's Reparations Unit.
- Advisory Panel: Representatives from the Law Society of Kenya, civil society, academia, professional experts in medicine, data analysts, forensics experts amongst others, victims' groups, and international partners.
- Legal Counsel as secretary to be appointed by KNCHR
- Security and protection committee to be composed of security experts and HRD protection organizations.

#### **5. Methodology**

- a. Public Hearings: Victim-centered, inclusive, and accessible forums. This should include regional hearings.
- b. Evidence Collection: This shall be done through.
  - (i). Memoranda by groups and individuals, individual testimony by victims, and interested citizens, and expert testimony.
  - (ii). Collection and analysis of documentation by groups and individuals, expert reports, and archival materials. This includes verifiable digital material in text, photos, voice recordings or film footage by citizens, news media and other interested parties.
- c. Confidential Sessions: For survivors of sexual violence and other sensitive cases.
- d. Comparative Review: Integration of lessons from TJRC, South Africa, Morocco, and Sierra Leone.

#### **7. Outputs**

- *Final Report*: Comprehensive documentation of violations, findings, and recommendations. The report shall carry a comprehensive record of victims, types of injuries and recommended mode of reparation.

- *Reparations Recommendations:* Victim-centered proposals for restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.
- *A plan of action* that includes proposed administrative structure and timeline for the delivery of reparations.
- *Institutional Reform Proposals:* Recommendations for policing, judicial accountability, and civic education.
- *Public Archive:* Accessible record to preserve collective memory and prevent denial.

**8. Timeline:** The proposed timeline is 6 months. An extension can be mandated if required.

- Phase I (2months): Establishment, stakeholder consultations, and preliminary hearings.
- Phase II (3 months): Regional hearings, evidence collection, and interim reporting.
- Phase III (1 month): Drafting and publication of final report, dissemination, and follow-up.

## **9. Funding and Resources**

- Domestic: Treasury allocations and activation of the Restorative Justice Fund.
- International: Donor support through a Reparations Trust Fund.

## **10. Guiding Principles**

- Victim-Centered: Prioritizing survivors' voices and needs.
- Inclusivity: Ensuring participation across gender, age, region, and social status.
- Transparency: Public communication and accessible documentation.
- Sustainability: Embedding reparations and reforms into long-term governance.

## ANNEX II: MEMORANDUM

**To:** Kenya National Commission on Human Rights (KNCHR) **From:** Kenya Human Rights Commission (KHRC)

**Subject:** Case for Convening a Public Inquiry into Victims of Political Violence during Demonstrations and Civic Unrest. (2017–July 2025)

### 1. Purpose

This memorandum sets out the case for KNCHR to invoke its quasi-judicial mandate under Article 59 of the Constitution and the KNCHR Act to convene a **Public Inquiry** into political violence during demonstrations and civic unrest between 2017 and July 2025. The Inquiry is the only viable mechanism to establish a comprehensive evidentiary record, verify claims, and provide the factual foundation for reparations as directed by the High Court in *Levi Munyeri & 2 Others v. Attorney General & 3 Others (2025)*.

### 2. Rationale

#### a) Capacity Constraints

KNCHR's current staffing and investigative capacity are insufficient to conduct a nationwide investigation at the required scale. A Public Inquiry allows KNCHR to **outsource and harvest information** from civil society organizations, grassroots movements (including the Gen-Z movement), academic institutions, and international partners who have already invested in documenting violations. This approach consolidates existing evidence and avoids duplication.

#### b) Comprehensive Record-Building

The Inquiry provides the only feasible mechanism to establish a **complete record** of:

- The number of victims.
- Types and patterns of injury.
- Damages to businesses and livelihoods.
- Regional variations in violations.

Such a record is indispensable for designing reparations that are legally enforceable, victim-centered, and credible.

#### c) Triangulation and Verification

The Inquiry enables **triangulation of evidence**:

- Victims and civil society present documentation.
- Police and state institutions respond to allegations, including contesting false claims.
- KNCHR subpoenas specialists, classified information, and expert witnesses.

This multi-source verification strengthens legitimacy and ensures that reparations are based on tested, credible evidence.

#### **d) Legitimacy and Inclusivity**

Public hearings provide victims and survivors with a platform to be heard, reinforcing **victim-centered justice**. Inclusivity across gender, age, region, and social status ensures that reparations are socially legitimate and nationally representative.

#### **e) Timeliness and Efficiency**

Given the urgency of reparations, a Public Inquiry is the only mechanism that can deliver results within a **reasonable timeframe**. It consolidates existing documentation, supplements it with subpoenaed evidence, and produces a comprehensive report without requiring KNCHR to build investigative capacity from scratch.

### **3. Strategic Benefits**

- **Legal Compliance:** Aligns with the High Court ruling affirming KNCHR’s reparations mandate.
- **Institutional Credibility:** Positions KNCHR as the national convenor of truth and accountability.
- **Partnerships:** Leverages civil society, academia, and international agencies.
- **Sustainability:** Embeds reparations into KNCHR’s long-term strategic plan.

### **4. Proposed Outputs**

- **Final Report:** Comprehensive documentation of violations, findings, and recommendations.
- **Reparations Framework:** Victim-centered proposals for restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.
- **Institutional Reform Recommendations:** Proposals for policing, judicial accountability, and civic education.
- **Public Archive:** Accessible record to preserve collective memory and prevent denial.

## **Annex III: Stakeholder Mapping**

### **1. State Institutions**

- KNCHR (lead agency, quasi-judicial powers)
- Judiciary (oversight, enforcement of remedies)
- Treasury (budget allocation, Restorative Justice Fund)
- Parliament (annual reporting, legislative support)

### **2. Civil Society**

- Kenya Human Rights Commission (advocacy, monitoring)
- Grassroots movements (victim representation)
- Faith-based organizations (community healing)

### **3. International Partners**

- UNDP, OHCHR (technical support, funding)
- NANHRI (regional collaboration)
- Donor agencies (trust fund contributions)

### **4. Victims and Survivors**

- Protest victims (2017–2025)
- Families and friends.
- Survivors of sexual violence
- Communities affected by forced evictions and political violence