REFLECTIONS IN THE MIRROR
AN INTROSPECTION OF THE KNCHR 2007-2008 EXPERIENCE

REFLECTIONS 10 YEARS AFTER THE 2007 POST-ELECTION VIOLENCE
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AN INTROSPECTION OF THE KNCHR 2007-2008 EXPERIENCE

REFLECTIONS 10 YEARS AFTER THE 2007 POST ELECTION VIOLENCE
WITNESS #47

“Kenya needs us to work together; Kenya needs us to move on.”

Kenya needs a great many things.

It needs PEV to unhappen:

Those who were killed need to undie, need to
crawl from their graves in solidarity.

Ashes need to burn backwards, float in air, gently unfuse
themselves from wooden church doors
and melted glass windows.

women need to guard their wombs, begin the process
of being unraped, erase their memories
as they become whole, unbirth those children
who were begotten from violence.

And those IDPs! They need to move,
redisplace themselves back to their original locations.

Retill their lands, watch the stones
jump magically back into houses.

The pangas need to flake off the blood,
replace themselves quietly,
claim back the rust that spotted them before.

Kenya is moving on.

Kenya is moving on.
The 2010 Constitution, has provided a paradigm shift where the ‘people are sovereign’ under Article 1, all state organs and persons must abide by the ‘Bill of Rights’ under Article 20, and finally, National Security that includes the protection not only of life and property, but also ‘human rights and freedoms’ of the people under Articles 238.

It’s against this background that the Kenya National Commission on Human Rights (KNCHR) sought to undertake a reflection study based on its set of experiences as an institution and as a National Human Rights Institution (NHRI) following the Kenya 2007-2008 post-election violence, and its efforts thereafter in seeking to pursue justice and accountability for victims and survivors of the violence.

KNCHR’s experience of more than ten (10) years in documenting and securing accountability for inter/national crimes is embedded on the advocacy for the realization of justice for victims and survivors through documentation, a legal redress, legislative reforms, institutional reforms and accountability for national, regional and international obligations. There is need to reflect and document the role played by KNCHR, lessons learnt and use the study to build the capacity of other NHRI.s.

Kenya, Reflections in the mirror – An Introspection of the KNCHR on the 2007-2008 experience: 10 years later is a compilation of these experiences. It is expected that this study will provide exclusive insights on KNCHR’s role in the documentation and preparation of the On the Brink of Precipice report, the documentation of inter/national crime cases, and the attempts to get justice through judicial and non-judicial processes and engagement with state and non-state actors. It is also expected that the case study will provide in-depth analysis on KNCHR’s engagement with victims, survivors and alleged perpetrators with a keen focus on human rights based approach methodologies.

The findings of the study aims to benefit other NHRI.s especially in the African continent by strengthening them to effectively implement their mandate while navigating the deeply polarized environments. The study would also enumerate the role that NHRI.s should play during the monitoring and documentation of the electoral process, and securing accountability for victims and survivors. The study shall further interrogate on what other
powers NHRIs have that would further secure and enhance the accountability for victims and survivors of post elections violence and the implementation of recommendations proposed.

Finally this introspection comes at a critical time as the Commission monitors and documents the 2017 General Election slated for Tuesday, 8th August 2018.

Kagiria Mbogori
Chairperson KNCHR.
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<th>Description</th>
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<tbody>
<tr>
<td>AG</td>
<td>Office of the Attorney General</td>
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<tr>
<td>AP</td>
<td>Administration Police Service</td>
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<td>CEDAW</td>
<td>Convention on Elimination of Discrimination against Women</td>
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<td>CHRIPS</td>
<td>Centre for Human Rights and Policy Studies</td>
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<tr>
<td>CIPEV</td>
<td>Commission of Inquiry on Post-Election Violence</td>
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<tr>
<td>CJPC</td>
<td>Catholic Justice and Peace Commission</td>
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<tr>
<td>CORD</td>
<td>Coalition for Reforms and Democracy</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>CSOs</td>
<td>Civil Society Organizations</td>
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<td>DCI</td>
<td>Directorate of Criminal Investigations</td>
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<td>DPP</td>
<td>Office of the Director of Public Prosecutions</td>
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<tr>
<td>ECK</td>
<td>Electoral Commission of Kenya</td>
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<td>FGD</td>
<td>Focus Group Discussion</td>
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<td>FIDA Kenya</td>
<td>International Federation of Women Lawyers - Kenya</td>
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<td>GANHRI</td>
<td>Global Alliance for National Human Rights Institutions</td>
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<tr>
<td>GSU</td>
<td>General Service Unit</td>
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<tr>
<td>HODs</td>
<td>Head of Departments</td>
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<td>HRDs</td>
<td>Human Rights Defenders</td>
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<td>HRW</td>
<td>Human Rights Watch</td>
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<td>ICC</td>
<td>International Criminal Court</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICERD</td>
<td>International Convention on Elimination of Racial Discrimination</td>
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<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<tr>
<td>ICG</td>
<td>International Crisis Group</td>
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<td>ICJ</td>
<td>International Commission of Jurists – Kenya Section</td>
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<tr>
<td>ICT</td>
<td>Information Communication Technology</td>
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<tr>
<td>IEBC</td>
<td>Independent Electoral and Boundaries Commission</td>
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<tr>
<td>IDPs</td>
<td>Internally Displaced Persons</td>
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<tr>
<td>IPOA</td>
<td>Independent Policing Oversight Authority</td>
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<tr>
<td>KDF</td>
<td>Kenya Defence Forces</td>
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<tr>
<td>KHRC</td>
<td>Kenya Human Rights Commission</td>
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<tr>
<td>KICC</td>
<td>Kenyatta International Convention Centre</td>
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<tr>
<td>KI Interview</td>
<td>Key Informant Interview</td>
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<td>KNCHR</td>
<td>Kenya National Commission on Human Rights</td>
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<td>KPTJ</td>
<td>Kenyans for Peace with Truth and Justice</td>
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<tr>
<td>KTJN</td>
<td>Kenya Transitional Justice Network</td>
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<tr>
<td>NARC</td>
<td>National Rainbow Coalition</td>
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<tr>
<td>NANHRI</td>
<td>Network of African National Human Rights Institutions</td>
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<tr>
<td>NCCK</td>
<td>National Council of Churches of Kenya</td>
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<tr>
<td>NCIC</td>
<td>National Cohesion and Integration Commission</td>
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<tr>
<td>NHRI(s)</td>
<td>National Human Rights Institutions</td>
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<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>MCA</td>
<td>Member of County Assembly</td>
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<td>MP</td>
<td>Member of Parliament</td>
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<tr>
<td>NGEC</td>
<td>National Gender and Equality Commission</td>
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<tr>
<td>NGO</td>
<td>Non-governmental Organization</td>
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<tr>
<td>NHRI</td>
<td>National Human Rights Institution</td>
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<tr>
<td>NPS</td>
<td>National Police Service</td>
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<tr>
<td>NPWJ</td>
<td>No Peace without Justice</td>
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<tr>
<td>NSVN</td>
<td>National Survivors and Victims Network</td>
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<tr>
<td>ODM</td>
<td>Orange Democratic Movement</td>
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<tr>
<td>OHCHR</td>
<td>Office of the High Commissioner for Human Rights</td>
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<tr>
<td>PEV</td>
<td>Post-Election Violence</td>
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<tr>
<td>PNU</td>
<td>Party of National Unity</td>
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<tr>
<td>SGBV</td>
<td>Sexual and Gender Based Violence</td>
</tr>
<tr>
<td>TJRC</td>
<td>Truth Justice and Reconciliation Commission</td>
</tr>
<tr>
<td>UNDEF</td>
<td>United Nations Democracy Fund</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
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<td>WPA</td>
<td>Witness Protection Agency</td>
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EXECUTIVE SUMMARY

This report is a compilation of best practices that would be useful for NHRIs while monitoring and documenting elections in their respective jurisdictions. The study provides exclusive insights and lessons learnt on the role of Kenya National Commission on Human Rights (KNCHR) during and in the documentation and preparation of the final report titled *On the Brink of Precipice: A Human Rights Account of the Post-2007 Election Violence (the KNCHR Report)*. Additionally, the study canvasses KNCHR’s experience and the resultant documentation of inter/national crime cases, the attempts to get justice through judicial and non-judicial processes. The study also provides an in-depth analysis on KNCHR’s engagement with the electoral process and experiences following the 2007 General Election. This reflection also provides an opportunity almost ten (10) years later for an honest introspection for the KNCHR.

The findings in this report are aimed at enhancing the capacity of other NHRIs in Africa in their critical role while navigating through highly politicised environments. It also more importantly gives recommendations on how to enhance the process so as to secure accountability for the victims and survivors of gross human rights violations.

The Commission mapped out and identified key persons to interview who in one way or another interacted with KNCHR during the 2007-2008 electioneering period and consequently contributed the role of KNCHR during the said period. Twenty (20) Key informants were identified and interviewed during the study. They comprised of the current and former commissioners and staff of KNCHR, religious leaders, inter/national human rights lawyers, scholars, human rights defenders, survivors and victims of human rights violations.

The key findings from the study include best practices for NHRIs in terms of establishing election monitoring systems, protection of data, documentation, publishing of the report, engagement with key stakeholders, and advocacy strategies for securing accountability. The report further reflects on the case study of KNCHR during the 2007/8 post-election violence and highlights what went wrong, what could be improved and what went bad in the documentation of the brink of the precipice report.
Some of the key recommendations that the study provides are that NHRI's must consistently speak out long before human rights violations begin occurring so as to demonstrate legitimacy and earn the confidence of would-be victims and survivors when human rights violations do occur so as to garner confidence and respect from the communities who will not hesitate to seek protection and remedy from the NHRI's when human rights violations occur. In order to undertake these, there needs to be investments in its personnel, monitors, technology and training. NHRI's must also put in place advocacy strategies towards securing accountability including specific naming the perpetrators in their respective reports.
Chapter 1

Introduction

The Kenya National Commission On Human Rights


2. KNCHR is accredited by the International Co-ordinating Committee of National Human Rights Institutions as a national human rights institution in line with the Paris Principles under category ‘A’ status. KNCHR is therefore expected to play a crucial role in promoting, advising and monitoring the effective implementation of international and regional human rights standards at the national level. These principles set out the status and functioning of all NHRIs and identified their competences as: (i) the competence to promote and protect human rights and freedoms; (ii) a broad mandate derived from the Constitution and other legislation; and (iii) responsibilities, which include an advisory role to government, private sector, parliament or any other competent body on issues related to legislation, general compliance and implementation of international human rights treaties, conventions and optional protocols’.

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1The United Nations General Assembly 48/134 of December 1993 endorsed the Paris Principles. In 1946, the Economic and Social Council considered the issue of national institutions and invited Member States to consider establishing information groups or local human rights committees. In 1978, the Commission on Human Rights organized a seminar that resulted in draft guidelines for the structure and functioning of institutions. The Commission on Human Rights and the General Assembly subsequently endorsed the guidelines. The Paris Principles were prepared at the international workshop on National Institutions for the Promotion and Protection of Human Rights held in Paris, and which were subsequently adopted by the UN Human Rights Commission by Resolution 1992/54 of 1992, and by the UN General Assembly in its Resolution 48/134 of 1993.
3. The functions of the Commission as spelt out in Section (8) of the Act are:

   a) To promote respect for human rights and develop a culture of human rights in the Republic;

   b) To promote the protection and observance of human rights in both public and private institutions;

   c) To monitor, investigate and report on the observance of human rights in all spheres of life in the Republic;

   d) To receive and investigate complaints about alleged abuses of human rights, except those relating to the violation of the principle of equality and freedom from discriminations under the Gender and Equality Commission, and take steps to secure appropriate redress where human rights have been violated;

   e) On its own initiative or on the basis of complaints to investigate or research a matter in respect of human rights, and make recommendations to improve the functioning of State organs;

   f) To act as the principal organ of the State in ensuring compliance with obligations under international and regional treaties and conventions relating to human rights except those that relate to the rights of special interest groups protected under the law relating to equality and non-discrimination;

   g) To formulate, implement and oversee programmes intended to raise public awareness of the rights and obligations of a citizen under the Constitution and any other written law;

   h) To work with the National Gender and Equality Commission and the Commission on Administrative Justice to ensure efficiency, effectiveness and complementarity in their activities and to establish mechanisms for referrals and collaboration.
Contextual Background

4. Kenyans voted on Thursday 27th December 2017, in an election overseen by the Electoral Commission of Kenya (ECK) led by its Chairperson, the late Samuel Kivuitu. The elections were turning out to be a two-horse race between the incumbent President Mwai Kibaki and Hon. Raila Odinga, Member of Parliament, Lang’ata constituency. The fiasco over the presidential results had been preceded by claims that rigging was taking place, Administration Police (AP) officers had been killed in several places, more APs had been deployed across the country, and ballot boxes had been found stuffed with marked ballot papers in favour of certain presidential candidates. The inordinate delay in announcing presidential count in strongholds of the incumbent Hon. Mwai Kibaki, raised suspicion among the leaders of Orange Democratic Movement (ODM) and their supporters that the numbers were being manipulated in his favour. By the end of day, Saturday, 29th December 2007, anxiety had intensified. The televised events of confusion and disagreement between ODM, PNU and ECK taking place at the tallying centre at KICC on Sunday 30th December further heightened the tensions in the country to an explosive point. On the evening of Sunday 30th December, Mr. Kivuitu announced Mwai Kibaki as the winner of the presidential poll through the state-owned media house, Kenya Broadcasting Corporation (KBC) and was immediately sworn in at State House for a second term of office². ODM refused to recognize the declaration by ECK on presidential polling results.

5. By Monday 31st December, violent streets protests and looting had taken place in many towns around the country as well as in the countryside. The media was proliferated with horrifying images of looting, burning and displaced people fleeing the violence. Hundreds of thousands of people were displaced, thousands killed and maimed, and millions worth of property looted and destroyed. The violence was both pre-meditated and well-organized, and thousands of Kenyans were killed, raped and injured. Indeed in the Rift Valley and Nairobi, large scale violence erupted to the dismay of many. Armed youths attacked members of certain ethnic groups supporting or sympathetic to Hon. Mwai Kibaki and PNU. Consequently, revenge attacks were committed by the Mungiki gang and other youth groups against

²Supra Note 12 KNCHR On the Brink of the Precipice Report 28
members of certain ethnic groups perceived to be supporters of Hon. Raila Odinga and ODM.

6. Following this outbreak of violence countrywide, KNCHR decided to immediately establish a PEV documentation project with the aim of identifying those responsible for the violence. It was considered that the scale of violence could actually reach the threshold of crimes against humanity. Unfortunately, KNCHR had only fundraised for the election monitoring project, which was at its natural end and for obvious reasons, it did not reflect the new reality on the ground. KNCHR therefore prioritised these investigations within the general work plan and rearranged its offices and officers to create a focus on the documentation work³.

7. KNCHR retained international consultants namely No Peace without Justice (NPWJ) to assist in setting up the documentation project which involved; (i) training the current election monitors and KNCHR staff to better capture the new violations beyond the election related violations; (ii) revision of tools to capture gross human rights violations; (iii) enhancement of security and safety of information collected; and (iv) security for those collecting the information in the field. NPWJ was also instrumental in the establishment of a nerve centre that was to act as a coordination and collection point⁴ for all information. KNCHR undertook a series of investigations and data collection exercises between February and June 2008. KNCHR also established an operations centre to provide logistical support and assistance to investigation teams in the field. The various teams fed this information into a professionally developed data collection and preservation system. KNCHR managed to collect about one thousand one hundred and two (1,102) statements and recorded about seven thousand five hundred (7,500) episodes of violence or incitement to violence. The teams collecting this data were diverse in both ethnicity and gender. Further information was gathered from diverse sources with both state and non-state actors providing information leading to further analysis⁵. These efforts culminated in the production of On the Brink of Precipice: A Human Rights Account of the Post-2007 Election Violence’, which is now the case study for

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³Supra Note 12 KNCHR On the Brink of the Precipice Report pg11
⁴KI Interviews
⁵Supra Note 12 KNCHR On the Brink of the Precipice Report pg 10
this evaluation. This Report undertook detailed and comprehensive documentation of serious human rights violations that took place during the 2007-2008 post-election violence including mapping the patterns of violations. It recorded names of perpetrators alleged to have caused the violence, and made recommendations on accountability measures to effectively address various human rights violations. The report also analysed the triggers of the post-election violence, and made policy, legal and other recommendations to deter future human rights violations.

8. The Commission made the following key findings;

a) That the violence was widespread and there were forcible evictions and mass displacement of people who were considered not indigenous to that particular regions. The violence was characterised by widespread or systematic ethnically-targeted killings of people, looting and destruction of property;

b) That there was organization and a method to the violence.

i. A strategy common throughout the theatres of conflict was the barricading of roads by young men intent on identifying, killing or otherwise injuring travelers from non-local communities.

ii. Further, the infrastructure of violence was financed and sustained mainly by local politicians and business people.

iii. Lastly, the media, and particularly the local language media stations, influenced or facilitated the influencing of communities to hate or attack other communities;

c) That sexual and Gender-based Violence (SGBV) that include: defilement, rape, gang rape, forced pregnancy, forcible circumcision, sodomy, penile amputation, deliberate transmission of HIV and other life threatening sexually transmitted diseases, occurred throughout the theatres of conflict;

d) That the violence was very similar to previous episodes of violence witnessed in Kenya specifically during 1992 and 1997;
e) That the government’s response to PEV was slow and ineffectual, and indeed the rule of law had virtually collapsed across large swaths of the country; and

f) That although the government provided or facilitated the provision of some relief support to IDPs, including food and tents, such support was inadequate.

9. KNCHR issued an advisory through the “On the Brink of the Precipice” report to various state actors on their obligations, which were aimed at restoring the rule of law. Specifically;

a) It advised the Attorney General (now the Office of the Attorney General) and the Kenya Police Force (now Kenya Police Service) to undertake further investigations against persons named in Annex 1 of the said Report.

b) KNCHR further highlighted the plight of special interest groups particularly the ethnic minorities who faced gross human rights violations based on their ethnicity and women.

c) Lastly, the Commission concluded that various governmental and non-governmental actors failed in their obligations. The police and media, for example, were called out for their acts of omission or commission in respect to their actions or lack of, and manner of the news coverage respectively.

d) KNCHR went further and brought the various atrocities to the attention of the Office of the Prosecutor of the International Criminal Court, therefore fulfilling the principle on cooperation.

e) The Commission also proposed legislative including the legislation on hate speech and constitutional reform. KNCHR issued a series of specific recommendations;

i. That the Attorney General of Kenya and/or the Kenya Police Force
should undertake investigations under Section 26 of the Constitution on the list of alleged perpetrators set out in Annex 1 of the Report;

ii. That the crimes allegedly committed by members of security forces should be investigated by a team of special investigators and prosecuted by a special prosecutor;

iii. That the Prosecutor of the ICC should open investigations in respect to the Republic of Kenya;

iv. That the recommendations arising from the Commissions established under the Kenya National Dialogue and Reconciliation initiative, including the Commission of Inquiry on 2007/8 Post-election Violence (CIPEV), should be implemented expeditiously; and

v. That internally Displaced Persons (IDPs) should be provided with reparations.

10. Following the above experience of the Kenya National Commission for Human Rights (KNCHR) during the 2007/8 general election and the resultant post-election violence, it commissioned a reflection study on its interventions then, with the objective of drawing lessons learnt for other National Human Rights Institutions wishing to borrow a leaf in their own contexts.

11. Three (3) key terms of reference were focused upon during the study with the following objectives;

a) To increase the understanding of NHRIs of what their role is in the monitoring and documentation of the electoral process;

b) To provide strategies that NHRIs can employ in securing accountability for inter/national crimes in a highly politicized environment; and

c) To enhance the advocacy strategies through providing an analysis of
lessons learnt in documenting violations and securing justice for victims and survivors of inter/national crimes.

Methodology And Scope Of The Study

12. The Commission adopted a qualitative method of data collection. The Commission mapped out and identified key persons to interview who in one way or another interacted with KNCHR during the 2007-2008 electioneering period and consequently contributed to the role of KNCHR during the said period. Twenty (20) Key informants were identified and interviewed during the study. They comprised of current and former commissioners and staff of KNCHR, religious leaders, international human rights lawyers, scholars, human rights defenders, survivors and victims of human rights violations.

13. Focus group discussions took place in seven (7) regions that were identified through the desktop review as mostly affected in the violation of human rights or the committal of inter/national crimes and also informed by the areas in which KNCHR had deployed the human rights monitors. These regions were identified due to their centrality and accessibility by participants invited who hailed from the neighbouring towns and regions (now counties). The regions were: Kisumu (now Kisumu County), Kakamega (now Kakamega County), Kericho (now Kericho County), Eldoret (now Uasin Gishu County), Nakuru (now Nakuru County), Nairobi (now Nairobi City County) and Mombasa (now Mombasa County). The focus group discussions had targeted one hundred and forty (140) participants comprising of human rights monitors employed by KNCHR during the study period, representatives from CSOs, NGOs, humanitarian agencies and security agents who worked either directly or interacted with KNCHR and/or victims and survivors of the post-election violence.

There were a total of one hundred and seventy one (171) participants in attendance for the all the FDGs in which Kisumu twenty six (26), Kakamega twenty two (22), Kericho twenty six (26), Eldoret twenty five (25), Nakuru twenty four (24), Nairobi twenty three (23) and Mombasa twenty five (25) respectively. The Commission then held internal reflection sessions with the staff and refined the reflection study in order to ensure that it accurately depicted these experiences from 2007 general election.
Establishment of an Election Monitoring System: Good Practices

14. To start with the NHRI requires a team to support its efforts in monitoring the whole electoral process. When recruiting, election monitors the NHRI should ensure that this process is done transparently and in a competitive fashion. Further it is prudent to recruit election monitors from the specific locations or areas who have direct experience in these specific zones. It is just as important to also get monitors from outside the region to ensure an objective balanced view of the issues. Monitors from the locality may sometimes not can be consistently balanced particularly in deeply ethically and politically divided communities. Further the NHRI should not demand strenuous academic qualifications on the monitors but stress on the need to recruit persons of high integrity, with basic education and that are politically neutral. Factors to consider include; familiarity with area of deployment and local language (residents given priority), minimum educational qualifications (possibly a diploma); appreciation of human rights; and commitment to the work.

15. Linked to the above point, it is good practice to establish an election hub capable of receiving daily reports and taking appropriate action. The NHRI should use this election hub to generate reports on hotspots (or areas in or have previously had violent conflict) on a regular basis. This information should be feed to the top echelons of the NHRI so that necessary decisions are made and action taken. If there is indication of
violence, the NHRI should raise these concerns with the authorities and lobby them to take appropriate steps. For the authorities to act on this information it needs to be credible and accurate. The authorities will have such confidence if they understand the election monitoring system of the NHRI has integrity and is capable of gathering accurate information.

16. The monitoring teams should be clustered into manageable groups and have team leaders who give them leadership on the ground. The team leader should be responsible to the regional coordinator and work closely with them to ensure monitors on the ground do not experience challenges and implement their tasks smoothly. Team leaders should be persons who have field experience in election monitoring and human rights. Regional coordinators should be highly mobile and well resourced. They should have capabilities of visiting their monitors in different geographical regions and gather requisite information for analysis including documentary evidence.

17. Election monitors would submit daily reports through their team leaders to the regional coordinators who compile them and send them to the election hub for analysis. The analysts compile this information and share it with the Commissioners for decision-making and further action. In case there is an emerging issue, for example, eruption of violence, the monitors should be capable of directly contacting their regional coordinator and a security official within the NHRI, to warn them of impending violence where there is a strong likelihood of violations occurring to accelerate decision-making.

18. The NHRI should from the outset, clearly understand on what it seeks to monitor and overall objectives. Connected to the above point, the NHRI should establish its own early warning mechanism to enable warning of impending violence. These warnings can also include threats or ongoing violence. It could involve threats to political actors, vulnerable groups who are ethnic minorities in their regions, police abuse of power, abuse of public resources in the electoral campaigns, etc. To start off, the NHRI requires a series of strong analytical reports on the electoral process before establishing and setting out to monitor the elections. At least one year before an election gets underway, the NHRI should undertake a full context specific
analysis of the country situation and seek to identify the most appropriate approach in monitoring the election. In undertaking the analysis, the NHRI has to consider the character of past elections – have they been violent? What have been the trends? Have they been free and fair? What have been the results of these past elections and their impact on the society? Do these societies continue to feel the impact of the previous elections?

19. Before deployment, NHRI monitors should undertake training which usually involves capacitation around many components of documentation such as networking and building rapport, empathy, interviewing strategies, enhancement ability to recognize and prevent re-traumatization of survivors, and management of expectations\(^6\) data collection, data analysis and data reporting such as witness statement tools, survivors and victim’s complaints form, and the use of standard words in the forms. The team should be equipped and trained with the actual tools they will use for recording written, audio and video materials in the field. The team training should be across rank and file from senior management, staff, field officers and consultants\(^7\). Field officers should be provided with tape recorders, video cameras and other appropriate digital gadgets to enable ease in gathering and safeguarding of evidence while in the field. They should also be trained on how to geo tag, time tag photos, tag evidence in the field and use evidence bags to safeguard evidence in the field. They should also remember to seek consent before taking statements and photos of survivors and victims’ so as to adhere to the ‘Do No Harm’ principle\(^8\).

20. The statement tool that NHRIs develop should be a key data collection device agreed upon in advance and having benefitted from a reconnaissance visit and risk analysis assessment. The tool should have the ability to collect different data from interviews such as name, address, contacts, occupation, gender, nationality, ethnicity, etc. of interviewees. It should also contain date of event, language, relief sought, details of statement taker, handwritten statement/facts of the case and conclusion\(^9\). The tool should more importantly be capable of identifying and categorizing different

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\(^7\) KI Interview
\(^8\) KI Interview
\(^9\) KI Interview
kinds of perpetrators such as those bear greatest responsibility for violations in a particular locality. These different categories of represented in a 3-tier system for grouping perpetrators: remote perpetrator, intermediary and executioners of actual violations. Further during collection of evidence, NHRIs should ensure their documentation teams speak to wide range of actors—survivors and victims, civil society religious leaders, government administrators, etc. They should also seek to cover a wide range of places so as to fully understand the conflict and where possible identify trends and patterns that could be indicative of the commissioning of international crimes\textsuperscript{10}.

**Protection Of Data Before Deployment: Good Practices**

21. In order to protect information that is to be collected, NHRIs must establish a security system that protects various component s of the work. Protection of data collected in the field from physical and cyber hacking are usually the biggest concerns for NHRIs. It is prudent to start with enhancing security measures at the office where the information hub or nerve centre is located using personal guards, CCTV cameras around the building, staff access codes to regulate access to the office, establishment of admission procedure ‘filter’ to determine who gains access to parts of the office including members of the public, etc\textsuperscript{11}.

22. NHRIs should establish security protocols or modes of data protection that contemplate the manner of responding to security breaches i.e. ranging from hacking of the server in which instance sensitive information is accessed by unauthorized third parties, loss of recording material containing sensitive information, leakage of draft reports, threats from perpetrators towards NHRI staff, etc. For every particular incident, the NHRI should have a laid out framework to respond in a manner that it protects it sources of information from further harm, it protects its own credibility and salvages the situation.

\textsuperscript{10}Supra Note 12 KNCHR On the Brink of the Precipice Report pg11. Areas covered by KNCHR were Nairobi, South Rift, Central Rift, North Rift, Nyanza, Western and Coast provinces. In Nairobi, KNCHR visited Kibera, Makina, Mathare, Huruma, Dandora, Fuata Nyayo, Korogocho and Kariobangi. In the South Rift, it visited Kipkelion, Sotik, Chebliat, Londiani and Bureti. In the North Rift, it visited Eldoret (Yamumbi, Burnt Forest, Munyala, Langas), Uasin Gishu (Kapsabet Town, Korgema farm, Nyakio farm, Cherengany, Baringo and Cheptiret). In Central Rift, it visited Nakuru, Naivasha, Kuresoi and Molo. It also visited Nyanza and Western more specifically, Mount Elgon in Bungoma, Kakamega and Kisumu. At the Coast, KNCHR visited Changamwe amongst other regions.

\textsuperscript{11}KI Interviews
23. Direct monitoring: security procedures are incorporated into general work appraisals; as well as in meetings before and after field missions, work reports, meeting agendas, etc.

   a) Indirect monitoring: asking NHRI staff about their views on security protocols before, during and after field investigations can enable one gauge if they appreciate and observe the procedures; and

   b) Retrospective monitoring: the NHRI can review security incidences as they arise. This should be done in a manner that avoids blame games and in a non-retributive environment so as to avoid concealment by staff who feel responsible for any shortcomings.

24. NHRIs should also seek to vet their staff on a regular basis especially when carrying out such sensitive documentation action. This is because staff do get unduly influenced or compromised by powerful forces outside the institution. One key measure the NHRI should take is to ensure its recruitment process is of high integrity and that it is able to recruit NHRI officers who deeply commit to human rights and accountability. Further the NHRI has to put in place protection measures for staff so that they are not easily exposed to these forces. It should regularly affirm its staff undertaking critical work in line with the NHRI mandate in order to bolster their confidence. Lastly it can then undertake regular review of their employment benefits and professional growth which contributes to staff members feeling that the work they do is valued. These measures combine and regular vetting would ensure material collected in the field is in safe hands with NHRI staff.

25. In the event of a breach caused by staff member/s, there should be a clearly laid down disciplinary process over and above criminal prosecutions against the particular staff and other persons who worked in cahoots with that particular staff member. The following steps can be observed\(^\text{12}\).

   a) Immediately inform people in the NHRI;

   b) Assess the quantity and sensitivity of information lost or stolen according

\(^{12}\text{Ibid pg 182}\)
to whether it puts at risk the people directly affected by the information, third parties or the organization and why. This assessment should be carried out for every type of information lost or stolen;

c) Discreetly inform those affected and discuss appropriate steps they should take to protect themselves and those related to them;

d) Assess informing the Police; and

e) Where necessary, set in motion any other necessary steps you required to avoid further damage given the lost information.

26. Some good practices developed over time to avoid surveillance, NHRI staff should consider;

a) Avoiding discussion of sensitive findings over the mobile phone and conversations: No phone call or conversation is secure. As such always assume you are being listened to and therefore avoid conversations that would result in leaks of sensitive information. Do not keep information such as sensitive names and numbers in your phone's memory. Keep them separate. In countries where it is legal, given the circumstance, acquire disposable sim cards that are unregistered. Further if a few NHRIIs could have their own unregistered sim cards that they can use between key officers, this would be prudent and enables reduced chances of interception of sensitive and critical information;

b) Care around the computer and internet security: Do not to use a computer with delicate information for non-essential email browsing. It is good practice to keep a separate computer to receive general emails and that does not contain any data files. Further always lock laptops including using passphrases particularly when in the field. Regularly backup your information using external hardware which is explained in a later section of this chapter. Purchase laptops from trusted sources, flatten the computer (i.e. reformat the hard drive) and reinstall trusted software. Only allow trusted technicians who the NHRI has vetted to
install software and regularly service the computer to ensure it is no bugged. The same goes for your Internet service provider whom you procure should also be vetted and well trusted ISP (Internet Service Provider). Install reliable anti-viruses, a VPN (virtual private network), a good firewall to keep out hackers, switching off your desktop when not in use, and switching off your internet at the end of the day when you leave the office; and

c) Using of dead drop emails: dead drop through email can be effective if the email is kept confidential. Here and for extremely sensitive information use a single email address set up and used by a closed group of people who leave the emails in draft form and therefore not sent out. It therefore doesn’t go through the various nodes and therefore leaving digital footprints. Encrypt all your emails particularly sensitive email.

Documentation, Analysis and Report Writing

27. Essentially the NHRI should seek to gather and document relevant information in sufficient quantities to enable official investigators determine forms of liability and possible perpetrators. Official investigators will be in a better position to undertake their own investigation based on the NHRI’s findings. It still does help if the NHRI intervention as a first responder is clinical and thorough. The NHRI should be ready to document different types of information which constitutes documentary, physical and testimonial information. In seeking to gather this information the rule of thumb is; (i) ‘collect what might get lost’ or collect if absolutely necessary; and (ii) ‘collect, assess and preserve’. Essentially you should continuously assess the information collected throughout the exercise into the report writing process.

28. When planning field investigations and documentation processes, testimonial evidence is one of the most critical exercises that are undertaken when collecting

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13To protect you when you access public Wi-Fi hot spots specifically when in the field http://www.techhive.com/article/3158192/privacy/how-and-why-you-should-use-a-vpn-any-time-you-hop-on-the-internet.html
information on human rights violations. Testimonial evidence consists of various types of evidence and the NHRI must intently prepare to collect all the different versions of evidence i.e.

a) factual witnesses;
   i. direct and indirect witness testimony;
   ii. overview witnesses e.g. NGOs, local administrators, doctors, community leaders, etc.;
   iii. insider or linkage witnesses; and
   iv. confidential sources who provide leads to sources such as insider witnesses.

b) Expert witness;

c) Media evidence – both testimonial and documentary; and

d) Suspect testimony.

29. The documentation exercise must seek to record the hundreds of individual crimes which make up the crime bases. In this regard, the NHRI should make a good attempt to reveal the types of crimes, quality of crimes, quantity of crimes, geographical area, time frame of the crimes, number of victims, specific locality of crime sites, and information about the direct perpetrators of these crimes[^14]. The NHRI should make a good attempt to gather information about those who may be responsible for violations at all levels of the triangle i.e. mid-level and remote perpetrators. As such, gathering of information would require an analysis of several incidences and therefore those most responsible for those incidences. The documentation should also analyse the network of individuals that set-in motion the attacks and therefore commissioned the said international crime/s. The investigation of the leadership structure, also referred to as the search for linkage evidence, is also key and need to be established. In investigating international crimes committed, the NHRI should focus on those alleged to be the most responsible for a particular set of crime and not necessarily for all the crimes- a mistake that was usually made by the media when reporting.

[^14]: Some experts such as Manuel Guzman and Bert Verstappen (Supra Note 60), p 11, use ‘evaluation’ and ‘analysis’ interchangeably.
30. Once the information hub is established and running, and data begins streaming in from field investigators, it is good practice to establish teams of competent individuals working within the hub to compile, analyse, synthesize and verify data from the different regions. Analysis is the evaluation of information received. With respect to documentation of human rights violations, analysis may have several objects: to verify witness account of incidents; to identify and classify the nature of violations; to clarify aspects of information received, especially where there is conflicting information on particular aspects; to identify perpetrators, survivors and victims; and to establish the existence of connections between violations or patterns of the violations. When analyzing and verifying information provided, the analyst seeks to establish consistency in the narrative. It is often necessary for the analyst to verify or corroborate primary sources of information – testimonies of victims, survivors, witness or state official – by comparing with information from secondary sources which include reports of various kinds (including those about incidents or those that analyse primary information), newspaper articles and books. Broadly, the standards of verification should not necessarily reach the level required for purposes of prosecution. According to OHCHR Manual on Human Rights Monitoring, an analyst seeks to ‘develop at least a prima facie analysis based upon the degree of relevance, veracity, reliability, and probity of the information which has been

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15 Some experts such as Manuel Guzman and Bert Verstappen (Supra Note 60), p 11 use ‘evaluation’ and ‘analysis’ interchangeably.
16 Supra Note 62 pg 13
collected\textsuperscript{17}. Ultimately, the standards of verification and level of evidence sought depends on the purpose for which the documentation will be used.

**Publishing and Publicising the Report**

31. It is important that the NHRI\textapos;s leadership at the Commissioners level must all agree to the entire content and layout of the report. This means that all must read it individually and then discuss the report in a common meeting to appreciate the details, content, recommendations and potential impact of the said publication. Once agreed upon, the entire leadership should all sign off on the report. A communication strategy should also be developed and agreed upon which will be relied upon once the report is published and disseminated.

32. NHRI\textapos;s should publish, publicize and widely disseminate their reports once completed. NHRI\textapos;s should not expect these reports to be received with open arms, especially by the political class. In fact, they should expect a fallout from the issuance of their report particularly if it targets those most responsible who would usually be the elite of the society occupying powerful positions in society such as the political positions or security agencies. Even in such circumstances NHRI\textapos;s are urged to strive to speak truth to power. It should also give leadership to human rights and social justice issues particularly in highly polarized societies where these two subject matters are a major concern. The NHRI needs to build a big profile around the work it does and focus on the bigger questions that affect the country. It should take its leadership role within the human rights, social justice and rule of law sphere seriously. Citizens expect a neutral and sane voice within the political sphere and hope the NHRI can play this vital role of being the voice of reason\textsuperscript{18}.

\textsuperscript{17}OHCHR Manual on Human Rights Monitoring, Chapter VII, available at http://www1.umn.edu/humanrts/monitoring/chapter7.html#E
\textsuperscript{18}KNCHR It\textapos;s Hard to be Good The Work, the Wins and Challenges of the Kenya National Commission on Human Rights, July 2003-August 2011 pg. 35 Interview with KII and FGDs. Also KNCHR, Living Large: Counting the Cost of Official Extravagance in Kenya, 2006. Interview with GK and It\textapos;s Hard to be Good The Work, the Wins and Challenges of the Kenya National Commission on Human Rights, July 2003-August 2011 pg. 35 Interview with KII, exemplified this, where the Commission detailed the extravagant expenditure by NARC government between the years 2003, when they took office, to September of 2004. It reported that the government had used a total of Kshs. 878 million shillings in the purchase of luxury cars largely for personal use by government officials. In naming and shaming errant public officers, the Commission drew attention to the stark contrast between the lavish lifestyles of senior state officers and poor people and, thereby influenced changes in government expenditure.
33. The NHRI should not hesitate to issue bold and courageous reports despite the political backlash which is inevitable. The political elite can usually identify when an independent agency lacks the courage to do something bold and will exploit this to a great effect and to the detriment of that institution. It will exploit the fear and lack of courage all in a bid to ensure that the institution is completely silenced. As such members of the public will ultimately lose faith in this institution making it vulnerable as it will not have any real supporters for its cause. If such an institution was to be expunged from existence, nobody would raise their voice to save it. The NHRI must not hesitate to build a big profile and ensure its credibility is solid. It should protect its credibility and enhance respect for itself by openly, boldly and strategically being the voice of the people and the voice of reason.

Strategic Engagement With Civil Society, Survivors and Victim Groups, And Communities Throughout

34. In the aftermath of gross human rights violations, civil society organizations particularly those with peace building, humanitarian and human rights mandates usually set out to undertake their own documentation for advocacy purposes with the State\(^\text{19}\). Civil society and other actors will want, in good faith, to mitigate and obviate the violence on the survivors and victims. They will seek to work with the authorities of the impending attacks or those that have occurred, organise emergency rescue missions and reach out to warring groups to stop the violence. They may also play a vital role in addressing humanitarian needs of displaced persons, survivors and victims in general. Challenges usually emerge in the aftermath of the violations when documentation commences. It is not uncharacteristic that these documentation of human rights violations activities are uncoordinated and disorganized. The civil society actors might, at different times and in different ways engage with victims usually in a haphazard and rudderless manner without a clearly thought out set of objectives in mind. Without a clear coordination amongst themselves with the NHRI or other credible state agency, survivors and victims’ become susceptible to re-victimization. Survivors and victims will no doubt remonstrate about the interviews

\(^{19}\text{Supra Note 12 KNCHR On the Brink of the Precipice Report pg 96}\)
and feeling over-researched and with no accompanying benefit or tangible result in the form of reparations or prosecutions\textsuperscript{20}. The lack of a clear documentation process by civil society may result in a breach of the ‘Do No Harm’ principle. NHRIs should therefore engage civil society organizations and help them think through their documentation process all in a bid to ensure a harmonious approach in their engagement with survivors and victims’ that builds on and collaborates each other’s work rather than approaches that result in more harm to the survivors and victims. NHRIs can establish coordinating frameworks or mechanism that ensure the ‘Do No Harm’ principle is not breached and that documentation programs build on each other and achieve a shared set of objectives.

35. Following the publication of the report, one key element NHRIs should remember is that theirs report are critical not only to state agencies but also to the general public. It should therefore publish, circulate and publicize its report widely. At the time of issuance of reports, NHRIs sometime feel that issuance of the report to state actors is most critical. This can be true. However, in the event that the state is partisan or reluctant to hold individual actors to account, then the NHRI must turn to organized groups and citizens as alternatives who can then bring pressure to bear on the reluctant state. It is therefore critical for NHRIs to avail their reports to citizens in a format that is most accessible and easy to understand. This could be issuance of popular versions of the report or an analysis of key findings and recommendations, including what role they citizens can play. NHRIs can go further, especially those operating in ethnically diverse societies to avail those popular versions on the respective local languages to ensure better understanding. The NHRI should also ensure that both the long and short version of the reports are electronically available in user friendly versions and for a long period including speaking about them on radio or television. In essence the report is a good advocacy tool to cultivate greater stakeholder support which is useful in pushing through the critical findings and recommendations.

Naming Names: An Advocacy Strategy And Accompanying Considerations

36. In considering naming names, NHRI should move from a premise that the country's they are dealing with have a past littered with serious human rights violations and as such the violations witnessed are not the first. Moreover, despite these atrocities, no serious efforts have ever been made by past governments to punish perpetrators of violence or address the plight of survivors and victims. Impunity therefore is the order of the day. Given this state of affairs, the NHRI should consider publicly naming those responsible for the violations as a deterrent measure. They should ensure to go into great lengths to ensure that they observe a fundamental rule of natural justice—that is no one should be condemned without an opportunity to be heard first. One serious consideration when naming names is that is must accord all to the rules of natural justice. Further that by naming persons will not result in a disclosure of evidence. There must be caution in that the premature disclosure of such evidence and those it relates may expose them to possible sabotage or other adulteration before investigators have an opportunity to assess the entire evidence in entirety. The information the NHRI will gather will most likely be against powerful individuals in politics, government, business, security, private sector and elsewhere whose capacity for interference with the evidence can neither be assumed nor dismissed.

37. To overcome hurdles on fair hearing and rules of natural justice, the NHRI should issue out letters to those adversely mentioned to appear before the NHRI and respond to specific allegations. Courts have held that even where the investigations are not in the form of a hearing, and a party is likely or has been mentioned adversely s/he must be given the opportunity to adduce additional material of probative value which may deter the administrative body (the NHRI) from making that finding. Moreover there are instances when the NHRI will feel that allowing the person/s to be named to confront his/her accuser, this would result in divulgence of sensitive information which could be contaminated and the NHRI can

21Miscellaneous_Civil_Appeal_86_of_2009 http://kenyalaw.org/caselaw/cases/view/68319
argue that it will not divulge such information as a matter of public interest. Even though the courts in both cases found that the NHRI did not strictly comply with the rules of natural justice, the strictures of the rule MAY require the NHRI to reveal its sources and as such would have to compromise the security of various witnesses. From the court’s perspective, this outcome outweighs that of complying fully with the rules of natural justice. Hence the critical lesson learnt include;

a) To ensure that the NHRI has mandate to undertake such investigations through its constitutive Act;

b) Secondly, that it receives credible information from credible sources, and verifies this information using other corroborative sources;

c) Where possible, it should seek clarification from persons adversely mentioned (whilst protecting its sources) and it should clearly indicate that the person adversely mentioned is not guilty and should be given an opportunity to adduce evidence to the contrary both before the official investigators and an impartial tribunal; and

d) Finally, it should state that it undertakes this investigation in utmost good faith.

One lesson learnt is to ensure that the NHRI has mandate to undertake the investigation through it constitutive Act. Secondly, that it receives credible information from credible sources, and verifies this information using other corroborative sources. Where possible, it should seek clarification from persons adversely mentioned (whilst protecting its sources) and it should clearly indicate that the person adversely mentioned is not guilty and should be given opportunity to adduce evidence to the contrary before both official investigators and an impartial tribunal. Finally, it should state that it undertakes this investigation in utmost good faith.

\[\text{In the } \text{Ruto vs KNCHR, on the issue of Natural Justice, the court said that the applicant was not confronted with accusations and allegations made against him and required to respond. This is against natural justice. However, the Court noted that the circumstances prevailing at the time were such that allowed the application of natural justice to be suspended. It would have been risky for the Commission to divulge information obtained from witnesses to the applicant. Some matters can be kept secret in public interest.}\]
Prosecutorial Policy: Priority Advocacy Strategy In The Face Of a Recalcitrant Prosecutor

39. It is unrealistic to expect that all crimes committed during the post-election violence would have been tried and perpetrators convicted. However, what Kenyans did not expect was the colossal failure to get convictions against the numerous identified violations. Particularly, there has been no prosecution targeting persons deemed most responsible for the violence. NHRIs should therefore think through their advocacy strategies that demand the Director of Public Prosecutions or the Office of the Prosecutor of the International Criminal Court (ICC) issue a clear prosecutorial strategy in the aftermath of gross human rights violations and/or international crimes.

   a) The strategy should prioritize holding to account those most responsible for the violations, and restoration of citizenry’s faith in the rule of law. It is unrealistic to expect that all crimes committed during a specific conflict will be tried in a court, or to expect that every perpetrator will be held criminally responsible for the offences they committed. Some cases will most likely never be tried, some due to lack of resources and for other reasons.

   b) A proper selection process is therefore important which should be transparent and made known to those concerned through outreach.\(^\text{23}\) In the Kenyan situation, with over six thousand (6,000) reported cases and more thousands unreported cases, there is no evidence to suggest that a clear prioritization strategy was ever issued or observed. According to a June 2008 news report, the late Hon. George Saitoti, as Minister for Interior, “ordered police to speed up investigations and prosecutions of the remaining cases, and particularly those linked to capital and serious offences” and “directed that the cases be ranked according to their gravity so that suspects can be charged more quickly.”\(^\text{24}\) In situations as those faced by Kenya with thousands of cases and no clear strategy on the way forward, a prosecutorial policy can act as ‘a focalizing’ tool.

\(^\text{23}\)Siri Frigaard in Criteria for Prioritizing and Selecting Core International Crimes Cases
i.e. a framework for giving concrete and systematic direction to manage the investigations and eventual prosecutions.\(^{25}\)

40. Within the prosecutorial policy, there would be a prioritization strategy that emerges from the decision to classify and organize cases in a manner that defines the order in which serious crimes should be prosecuted and trialed.

a) A clear prioritization strategy can be useful in maximizing the impact of the criminal justice system especially, if prosecution targets structures and networks that made it possible for mass crimes to occur especially at such a large scale.\(^{26}\)

b) The prioritization strategy can adopt a ‘readiness to proceed’ or ‘low hanging fruit’ tactic. This means that the investigation teams prioritize easy cases that can easily move towards trial and possibly conviction. This approach fails to identify the overall patterns of violations or appreciate the gravity or seriousness of the crimes committed. Further, if evidence is only available against one group as compared to others, it can generate a perception of bias among the general population.\(^{27}\)

c) A good practice would be a prosecutorial policy that prioritizes the ‘most serious violations’, ‘most responsible perpetrators’ for particular violations, and ‘structure crimes’;

i. Prioritizing the ‘most serious violations’ means the focus would be on violations of loss of life and/or violations of personal integrity;

ii. The term “most responsible” has been commonly defined as encompassing individuals who are in senior leadership positions or a position of influence to plan, order or incite serious crimes; and

iii. When focusing on ‘structure crimes’, the focus emphasizes patterns of violations, helps discover chains of command, links between

\(^{25}\)Pablo De Grief Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Human Rights Council Twenty-seventh session Promotion and protection of all human rights, civil, political, economic, social and cultural rights including the right to development A/HRC/27/56 27 Aug 2014 pg. 9

\(^{26}\)Ibid pg. 9

\(^{27}\)Ibid pg. 10
armed actors and other groups, as well as financial and other support. The idea is to target those enabling connections that could contribute to the dismantlement of the whole criminal set-up.

41. This strategy can be backed up by data collected and transformed into graphical representation consisting of the period and areas where the most serious or gravest violations occurred.

a) Faced with a universe of cases, a mapping exercise is critical to understand the scale and nature of alleged crimes. This exercise would enable the prosecution agencies to advance a case theory or hypothesis. It is not the Commission’s role to come up with case theories or hypothesis. However, analysing of data based on information collected from the ground will result in efficiencies time and resource wise when official investigations are undertaken. This is because the official investigations will be targeted and built on good analysis.

b) In undertaking a mapping exercise, one seeks to juxtapose event and number of violations. A chronological line can therefore be drawn between gravest crimes and periods. Further, the same data;

i. on gravest crimes, they can be plotted against perpetrator groups that identify those that committed most crimes;

ii. Additionally, the gravest crimes can be plotted against geographical region to give indication of areas of focus;

iii. The geographic coordinates can be plotted against the gravest crime to also give information on patterns and areas with the highest incidences of violations. A resulting pattern analysis is therefore possible and indicates the regions and periods of gravest crime, and their correlation with the armed conflict. This can inform the prioritization strategy.

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28Ibid pg. 12, 13 and 14
30Xabier Agirre Aranburu Gravity of crimes and responsibility of the suspect Criteria for Prioritizing and Selecting Core International Crimes Cases pg. 155
42. On issuing its findings, the NHRI should lobby the services to establish a prosecutorial policy that has a prioritization strategy based on information collected and analysed. The prioritization strategy should be flexible, organic and adaptable to a dynamic political context. The investigation teams lead by the public prosecutor, based on the information gathered, must undertake their official investigations into possible international crimes and ultimately make their independent decision based on their own case theories, and prosecute guided by their prosecutorial policy. It should not be lost on the NHRI or prosecutorial agencies that this approach is heavily dependent on political will. Rigorous attempts to resist accountability should therefore not be surprising if those in power and accused of involvement in violations.

Criminal Accountability Of Organized Criminal Gangs Especially In Divided Societies: A Case Study Of Kenya Currently And During The 2007/8 PEV Period

43. One experience worth noting was the activation of organized criminal gangs into organized criminal networks to commit inter/national crimes during the 2007 post-election violence. Organized criminal gangs usually arise because of youth unemployment and other genuine societal problems. For example, the Mungiki gang arose from massive internal displacements that occurred previously in the elections of 1992 and 1997. They were taken over by politicians in 2005 and 2007 resulting in serious human rights violations. A recent study by Centre for Human Rights and Policy Studies (CHRIPS) indicated the increasing number of gangs now being used by politicians to threaten opponents during elections. Organized criminal gangs that eventually cause violence were also used in the 2007 elections to undertake ballot-stuffing, organise impersonation of absentee voters, vote buying and/or bribery and zoning of strongholds to ensure only the majority party was represented during polling, and thereby ensure counting is deliberately flawed.

Most of these organized criminal gangs were ethnic in nature and were activated during the post-election violence for political purposes. For example, the report *On the Brink*

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31Ibid pg. 150
32Supra note 29 IREC Report pg 24
of the Precipice notes that an indicator that the violence was planned and organised is the fact that much of the violence was perpetrated by organised illegal gangs.\footnote{Supra Note 12 KNCHR On the Brink of the Precipice Report Pg.157}

It goes on to state that in the Central Rift Region, youths suspected to have been members of the banned Mungiki sect in Naivasha on 27 January 2007\footnote{Standard newspaper of 19 January 2008 by Nation Team} burnt business premises belonging to ODM-supporters. The property of Luos and Kalenjins was looted and anything that remained was burnt. In one ghastly incident, the organised gangs set on fire a house where nineteen (19) people were burnt to death alive.\footnote{Supra Note 12 KNCHR On the Brink of the Precipice Report pg. 147}

Organized criminal gangs such as Siafu and Bukhungu, which are predominantly Luyha gangs were supported by local politicians in Kibera area (now Kibra Constituency in Nairobi City County). The Nubian community on its part had Jeshi Darajani. In Mathare (in Nairobi), violence particularly against the Kikuyu was undertaken by a group known as Taliban and another known as the Huruma Youth Group. In Kibera, particularly in Laini Saba and Soweto as well as in Mathare, Kariobangi and Dandora (all in Nairobi), the Mungiki engaged in violent attacks on non-Kikuyu people.\footnote{Supra Note 12 KNCHR On the Brink of the Precipice Report pg. 148}

Most violence perpetrated during the PEV period was by organized criminal.\footnote{Supra Note 12 KNCHR On the Brink of the Precipice Report Pg. 44 and 45}

The levels of involvement of illegal gangs in the violence as well as the scale of mobilisation suggested sophisticated levels of planning and organisation of the violence in Nairobi that evidently used the pre-existing infrastructure of violence, which was easily recalled during the post-election violence.\footnote{Supra Note 12 KNCHR On the Brink of the Precipice Report pg. 45}

44. Political leaders rely on organized criminal gangs to intimidate opponents, cause violence, act as body guards during campaign rallies, zone the country, and support the rigging of election through ballot stuffing among other things. According to a study by the National Crimes Research Centre (NCRC) on organized criminal gangs, there exists about forty six (46) organized criminal gangs in Kenya made up mostly of young men (61%), with many of them focused on illicit drug trade, extortion, armed robbery, and theft of vehicles and livestock. These gangs are concentrated in urban areas and have low levels of education – mostly not beyond primary schooling.\footnote{National Crime Research Center (2012) Summary Of A Study On Organized Criminal Gangs In Kenya pg.28 and 27 and FGD Kisumu}
The study also showed that these gangs received funding from politicians in exchange for their support. Further, supporters of the gang or their members were more frequently elected into politics.\(^{40}\) The NHRI\#s must closely study the way organized gangs are formed and how they are ‘instrumentalized’ by politicians. The National Crimes Research Centre further found that gangs operate in hierarchal structures and the mutating characteristic is now prominent among them.\(^{41}\) Further, there existed a nexus and a symbiotic relationship between police and organized criminal gangs. Over the past three years and as late as 2016, gangs thought to be involved or inspired by political actors have emerged in counties that experienced post-election violence such as Kisumu, Mombasa and Nairobi City. Notable gangs in Kisumu County are *China Squad*, which is reportedly affiliated to the Jubilee Alliance Party, while the American Marines is associated with the Coalition for Reforms and Democracy (CORD) coalition (now known as NASA). In Mombasa County, several gangs with juveniles in their ranks are in operation, and include *Wakali Kwanza, Wakali Wao, Spanish Spatter, Gaza, ‘Army’, ‘Navy’ and ‘Air Force’*. These gangs are reportedly paid by politicians, but also extort money from residents. They also allegedly offer ‘security’ services to political actors and parties. Many of these gangs are involved in ordinary crimes, including murders, violent robbery, theft, and sexual violence, and they target homes, business and social events such as weddings and funerals.\(^{42}\)

45. Given the continued existence of these gangs and the propensity of politicians to use them to cause violence, there is urgent need for;

- a) NHRI\#s to establish measures and develop appropriate skills to study their activities and lobby against political actors supporting their existence.

- b) NHRI leadership should draw the attention of appropriate security organs about this particular state of affairs, and the need to hold top leadership of these gangs to account.

\(^{40}\)Ibid pg. 33  
\(^{41}\)Ibid pg. 37  
c) To enable accountability against organized criminal gangs involved in mass atrocities amounting to international crime, and knowing the possibility that the State will not act against these gangs, NHRIs must simultaneously, take the next step of documenting the activities of these gangs.

d) Beforehand, the NHRI must strive to understand the structure of these gangs, their membership, the manner they are organized and how they are activated. This is critical in supporting prosecutions of its leadership both domestically and internationally. Reporting on these criminal gangs can be undertaken in the normal cause of fulfilment of the NHRIs’ mandate and not necessarily when conflict arises. It is preferable to report on their activities and modus operandi before conflict has arisen and the gangs are fully mobilized. The goal of monitoring and reporting would be to analyze, beyond the formal (de jure) view of the structure, to its real (de facto) functioning. Elements of organized criminal networks or gangs to study and analyse include:\(^{43}\)

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**Criminal Justice Reform Measures**

46. The NHRI should advocate critical justice and reform measures to enable more efficiency in investigation and prosecution of offences. It is unusual to expect a NHRI to lead such actions. When violence breaks, police can sometimes be the first responders. However, when they arrive at the scene, they usually are there to quell the violence and not take evidence. Here we witness a situation where crime occurs in the presence of a police officer who has no instruction to apprehend the suspect, take him/her into custody and investigate him/her further for prosecution. It is also not clear what other police officers in a crime scene should do if they witness their own partners committing heinous crimes such as extrajudicial executions, rape or violent robbery. Victims of crimes, once displaced, are usually expected to return to a police station within the jurisdiction where the offence occurred. This is usually

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quite a daunting task since the victims are hundreds of miles from their scene of the crime and cannot return to report the incident as they may put themselves in harm’s way. NHRI should also push for criminal justice reform that enhances and not retards access to justice. Other measures include making it easier for victims of rape to get the medical P3 forms signed by doctors. Critical reform measures worth thinking about include domesticating the Rome Statute on International Crime and make it easier to prosecute those most responsible for international crimes. Also criminalization of dangerous speech, advocating police and judicial reform etc.

Prosecution Of Dangerous Speech

47. People with influence and standing in divided communities tend to foster inflammatory and dangerous speech in order to exploit divisions between ethnic groups so as to bolster support from their own communities to the point of catalysing mass violence during election periods. The objective is to undermine the vote and influence the electoral results.\(^\text{44}\) In divided societies one finds that dangerous speech is usually based on ethnicity and religious affiliation. Further that in rapidly urbanizing societies, dangerous speech is found online and comes in reaction to events that transpire or are witnessed offline. Further online hate speech disseminators largely identify themselves with a real or fake name and use language widely understood in that context.\(^\text{45}\) NHRI should advocate for the prosecution of dangerous speech (inflammatory speech that call groups to violence). Dangerous speech can be prosecuted as a direct act in an international crime if it does result in crimes being committed that fit the bill (see page 47). Instigating, inducing or soliciting are forms of liability particularly where the perpetrator physically perpetrates this act with the intent/awareness of a likelihood it would result in a crime. The NHRI should analyse whether the instigation was a factor that substantially contributed to the commission of the crime by other(s) and that the accused intended or was aware of the substantial


likelihood that a crime would be committed in the execution of that instigation. In doing so, it should look towards having key actors that incite communities to violence prosecuted.

48. Given the difficulty of establishing a connection between those who incite and the violence, the Benesch dangerous speech framework proposes that NHRI's look out for key variables to determine action against those who propagate dangerous speech47. Per Benesch and based on her framework, the NHRI can advocate for the prosecution of propagators of dangerous speech based on these five (5) key variables:

a) The existence of a powerful speaker with a high degree of influence over the audience;

b) The existence of a target audience that the speaker has a focus on. This would be an audience that has grievances and fear that the speaker is cultivating;

c) The existence of a social or historical context that is propitious for violence and has experienced previous episodes of violence, for any of a variety of reasons, such as the existence of unresolved past injustices;

d) The existence in the speech on a call to violence or a call to action that is understood as a call to violence; and

e) The existence of a means of dissemination of the statements that is under use and is influential in itself, for example because it is the sole or primary source of news for the relevant audience or because it reaches a large audience with great efficiency.

By following this framework the NHRI will be in a position to distinguish free speech that is political rhetoric from dangerous speech. Note that not all variables must be present for speech to qualify as dangerous speech.

This study went around the seven (7) identified counties holding focused groups discussions and key informant interviews that informed the findings of this chapter on the KNCHR’s experience in the 2007/8 PostElection Violence experience.

**Standing Tall When All Is Falling – What Went Well**

49. **Quick response:** Although the KNCHR was caught unprepared when the violence broke out it was among the first to respond. It is also worth noting that this was a relatively young NHRI (established 4 years earlier in 2003) and generally understaffed. This was possible because its monitors were on the ground as the violence broke out and were able to alert the Secretariat to emerging issues. The Secretariat and the Commissioners convened quickly to analyse the situation and develop a plan that included safety and evacuation of monitors, redeployment to document Human Rights Violations, stopping the escalation of violence. In the field the KNCHR is lauded for not only documenting Human Rights Violations but also
playing the role of mediator, facilitating safe passage of victims, survivors and even bodies, connecting the same to humanitarian assistance and even giving psychosocial support to witnesses.

50. **Commendable teamwork and passionate, committed staff:** For many of the former and current staff interviewed who were present in 2007/8 this was a factor that was highly rated. With the exception of some tension caused by perceptions of bias by a few staff and commissioners, leakage and loss of crucial information, generally it was felt that KNCHR at that time was a strong cohesive unit made up of individuals with a great passion for their country and the Human Rights. A key contribution to this was that most of the staff were young and idealistic (almost to the point of being reckless about personal safety sometimes), and some had been part of the struggle for the second liberation.

51. **Strong and consistent leadership:** It was noted that the PEV erupted when there was transition in leadership at the level of the Commissioners; the then chair, Maina Kiai was on the cusp of completing his term and had started the process of handing over. Nevertheless, he remained available to provide leadership for the Commission during the eruption of violence and initial stages of developing the report, subsequently Florence Jaoko as the Chair and Hassan Omar Hassan were mentioned as picking up where Maina left off in ensuring the report was completed and shared. Although the Commissioners themselves struggled with the challenge that some of them were perceived to be partisan, in the end the On The Brink report was developed, completed and shared. In addition the secretariat itself was commended as rising to the occasion and self-driving to respond to the crisis.

52. **Technical capacity:** It was observed that core staff of the KNCHR had strong technical skills and generally investment was made in capacity building for all. Election monitors were trained before deployment and access to supervisors who were KNCHR staff provided an opportunity for mentor learning. When PEV happened, monitors were recalled and trained further. Trainings included understanding the electoral process, monitoring elections, applying gendered lens, monitoring human rights violations and Personal Security management. FIDA - K and No Peace Without Justice were mentioned as partners who provided additional capacity building.
53. **Strong partnership and networks:** The Commission’s investment in establishing strong partnerships and networks was evidenced during the electoral period more so during PEV. Examples given included:

a) Civil society and experts providing technical support and capacity building, advisory and moral support;

b) Development partners – flexibility in realigning budgets and sourcing additional funding to respond to the crisis. Supporting mediation initiatives and providing additional security for staff, witnesses; and

c) Police and national administration to help secure and evacuate stranded colleagues.

54. **The Brink of the Precipice:** The report is highly considered as a seminal report on the PEV 2007/2008. Experts and Civil Society largely hold it in high regard and make reference to it. The Waki Commission relied on The Brink as a foundation for their work. The report provides a foundation not just for investigation for criminal justice processes but also redress and reparative processes such as the Internally Displaced Persons policy, Truth Justice and Reconciliation Commission, Reparations Policy among others. The staff involved in developing the report are very proud of it and even current staff who were not part of the process think it was a great success. A majority of the stakeholders thought that naming of perpetrators was the right move then and it is a practice that should be retained with the caveat that alleged perpetrators are accorded an opportunity to respond to charges and the context is assessed. The process of writing the report was also quite consultative which added to the credibility of the report.

It was clear that the youth members of the team were willing to participate in the work but did not appreciate the magnitude and importance of the assignment. They were unprepared to handle sensitive cases, and manage the expectations of victims. There had been no proper briefing on how data collectors would engage with victims, and the lack of psychosocial support for victims and staff further complicated the situation.

**KII Respondent**
On Shaky Ground - What Could Be Improved

55. Experience and capacity of some of the field monitors, data clerks: This was mentioned in relation to those recruited temporarily for elections monitoring and human rights violations documentation during the PEV. Whereas capacity building was provided, it was mentioned by several KIIIs that some temporary staff struggled and this could have resulted in distorted, poor quality and lost data, unsuitable conduct with victims and survivors. The real challenge was the standard used in the process of hiring monitors. The quality of this process is sometimes directly related to the quality of output expected from the field. Low quality output is an indication of poor hiring practice. The process of hiring should at least set out some minimum thresholds like passion for human rights, ability to be objective in highly polarized environments, courageous and ability to be trained and retain knowledge.

56. Provision of psychosocial support for staff: The level of trauma visited on the staff of the Commission was very high. This affected those in the field, those analysing data in the office and even those who fell in neither category as they were concerned about their colleagues and generally PEV was traumatic for all. Though not initially planned for it became a necessity and was provided for and has not only become a practice but has been institutionalised in KNCHR. The staff in 2008, were debriefed by professionals and some even had additional personal psycho-social treatment. KNCHR now does regular debriefing, has a psychologist on staff and facilitates additional individual support as part of its staff medical scheme. However, the thankless nature of human rights work can adversely affect the psyche of staff over a long period of time, therefore in addition to the professional psycho-social support; the work environment must also be conducive to curtail that through strengthening social cohesion, staff motivation and responsive human resource management.

57. Imprest system and its possible impact of coherence on field investigation teams:
One major observation made was possible conduct of monitors in the field: Having analysed the imprest system in government, which is a great motivator to getting civil servants get into the field as often as possible it is also the Achilles Heel when in a situation of gathering sensitive information. The greatest weakness to this system is that monitoring teams can decide their own sleeping quarters and
therefore splitting the team at night - when they need to be together. Further, there is a temptation to get the cheapest sleeping quarters money can buy in order to save on imprest/per diem. While in regular field exercises, this is not disagreeable, when undertaking extremely sensitive investigations, this practice could result in not only leakages but also compromises. Teams must stick together when undertaking these exercises and must seek sleeping quarters that offer agreeable security of a standard that the KNCHR must determine. It is even easier to enter confidential MOUs with reputable hotels that will safeguard the interest of KNCHR staff - this being one way of encouraging good practices.

58. Managing the politics around on the brink: Most stakeholders felt that more could have been done around the timing of the report, responding to early warning signs especially coming out stronger before the elections. It was largely recognised that working in a political context is challenging however it is necessary for the Commission to be a political creature. Furthermore, it was suggested that failure to follow up the report aggressively could be attributed to the politicisation of the report. KNCHR should have also engaged in more public outreach on the report to strengthen public demand for justice.

59. Responding to early warning signs: The PEV was not unexpected but was shocking due to its scale. Most of the respondents agreed that there were signs and as already mentioned more robust response before the election could have reduced the scale of violence. Furthermore, based on the assessments an early risk assessment and plan could have helped the commission respond better. For example, the election monitoring tools were not adequate for the PEV work. The Commission had to enhance the capacity of the documentation team by using all staff members of the Commission upon deciding to document human rights violations. It also deployed a new team of investigators to cover the documentation alongside election monitors. Decisions on where to deploy investigators were based on reports from the hotline number, media reports, and the mapping of hotspots.

60. Documenting for prosecution: It is important to note that the Report, although not admitted as evidence, was of such quality as to be considered by the Prosecutor as evidence to support the view that crimes against humanity had occurred and
a network of perpetrators, identifiable from the Report, had been named. The weakness is therefore the way the Report was authored and ensuring that it’s sources are made available to be used as evidence in the appropriate forum. When the NHRIs go into the field, it may be a good idea that its lawyers can double up as commissioners for oath. Here they can swear affidavits and lock in witnesses as efficiently as possible. They should therefore be equipped with laptops, printers, stamps and cameras. They should understand evidentiary rules of procedures and know how to get data gathered into evidence. Essentially the NHRI can leverage on the lawyers within its rank and file so that when they go into the field they are always ‘prosecution ready’. They should support their legal staff to be well trained criminal lawyers with grounding in domestic and international criminal law. This way there is possibility that whenever field investigators are deployed, gathering evidence becomes very easy. This can be coupled with establishing MOUs with credible criminal attorneys who can provide field investigation teams such support at the spur of the moment and at subsidized cost. In the end field investigation teams have to be prosecution ready.

61. Dissemination of the On The Brink: From the various stakeholders especially the FGDS it was felt the On The Brink of the Precipice was not disseminated widely. In all the FGDs less than 5% of the participants had seen the report and even less has read it. This could have created additional pressure for justice from the public. This critique was made of subsequent reports from the Commission. However among those who had read the report; it was felt that it was a useful tool for advocacy on issues raised in the report and documentation of what happened. There were also perceptions that there were several versions of the report including doctored ones – on this it was recommended that more awareness creation on the process of developing the report would have helped allay any fears of doctoring.

Learning The Hard Way - What Went Awry

62. Insider Betrayal and its legacy on the Commission: It is also alleged, that some politicians got wind that they would be ultimately named by the Commission for
participating in violence. They then pressurized staff of the Commission including Commissioners to either have their names expunged or include others named in the Report. It is not clear to what degree the Commission staff and former commissioner resisted this pressure. What is abundantly clear is that a former staffer (name withheld) was most likely involved in a process of undermining the investigation process. It is alleged that he not only compromised the KNCHR system but also CIPEV and ICC witness protection mechanism. He engaged, as part of a criminal network, in identifying and compromising witnesses who had crucial evidence. The KNCHR has not gotten into a mode to reflect on these events at an official level and deal with this haunting betrayal by a staffer and close colleague. The effect of this has been that KNCHR staff cannot trust each other. The resort has been to adopt a silo approach - resulting in asymmetry of information and thereby ineffectiveness. In the long run, the continued vetting of staff particularly those with access to information is one solution.

63. Failure to secure data: In addition to the high-level betrayal, there were also field monitors who fed wrong data or lost data (intentionally and accidentally) – those who were proven to have committed offences intentionally were sacked. It is also possible that at least one Commissioner may have been compromised. The result of these data breaches were;

   a) Exposure of witnesses, some of whom have since died under unclear circumstances or disappeared;

   b) Leaked versions used to dent the credibility of the KNCHR and its report (though not successfully);

   c) Intimidation of staff and commissioners; and

   d) Loss of some data crucial for the pursuit of justice.

64. Personal security of Monitors and staff: As has already been mentioned the break out of violence and the ensuing work documenting human rights violations resulted in staff finding themselves at the epicentre of violence. It is also worth noting that there were also a few incidents during the monitoring of elections however no
lives were lost and KNCHR had put in place reasonable measures and responded immediately to help staff. Some staff found themselves facing verbal and physical assaults and intimidation during the writing of the report and after it was released. Some staff had to be relocated for their own safety and even their families were also affected.

65. Follow up on the report and justice for victims: Despite all the work, sweat and tears that went into developing On The Brink, almost all respondents are disappointed that KNCHR did not succeed in holding perpetrators accountable for human rights violations during PEV. KNCHR lacks enforcement powers; its mandate is to make recommendations to the various authorities and therefore justice was reliant on other agencies such as the Police, ODPP and the courts. However, these authorities were busy negotiating to end the violence and who later concluded that reconciliation was more important than retribution. In addition, the pervasive culture of impunity in Kenya and the lack of political will to pursue justice frustrated these efforts including international actors like the ICC who also failed to this end. To add insult to injury some alleged perpetrators even sued KNCHR for having included their names in the Report, and the Commission had to defend itself in at least three cases William Ruto, Uhuru Kenyatta and Stanley Githunguri.

The “On the Brink of the Precipice” report looks credible and I think that one can conclude that the methodology was sound. We will however never know whether the content was sufficient. CIPEV had very little time to conduct their investigations, and systematically test the findings and assertions made by KNCHR. This was the reason for recommending further investigations...... The Report however did not and cannot replace or displace criminal investigations. The purpose of public reports is to give a broad indication of issues, and where to look for evidence, and it rests on relevant bodies to take action.

KII Respondent
**Concluding Observations**

66. KNCHR ‘On the Brink of the Precipice’ Report is one of the most noteworthy reports of our generation for what it boldly reports on. Its impact continues to reverberate through time. So potent was its effect that it triggered deep reflection amongst the political class about their own role in the conduct of elections; their own role in making communities carry arms against one another and about their own responsibility for the thousands of persons displaced, maimed or killed following their own irresponsible utterances or actions.

67. The report continues to reverberate due to key reform measures instituted in Kenya because of this Report. Kenya now boasts of a new Constitution in August 2010, a more independent judiciary, National Police Service (not force) and parliaments (Senate and National Assembly). Partly as a result of the KNCHR report, Kenya now has a National Cohesion and Integration Commission (NCIC) that has a mandate of prosecuting hate speech. Kenya also legislated the International Crimes Act following KNCHR advocacy efforts using its Report before CIPEV and ICC. KNCHR report was strategic in influencing partnerships with the Kenya Transitional Justice Network (KTJN) and the Office of the Attorney General in the ongoing push for reparations. Lastly, the Commission continues to highlight atrocities committed by the police and has been involved in the establishment of a police vetting process meant to weed out bad elements from the National Police Service.

68. With solid political will, the many instances of human rights violations highlighted in
the report which were ordinary crimes should have been prosecuted as such. This would be notwithstanding conversations around prosecuting them as international crimes through the formation of a special tribunal within Kenya.

a) The ODPP ought to have proposed a prosecutorial policy with a prioritization strategy looking into those crimes they may have considered ‘the most heinous’. Whatever approach taken KNCHR should have pushed a little harder to have the ODPP take such an approach.

b) With the benefit of hindsight, good practice would be for KNCHR push for the creation of a special prosecutor with investigative powers under Article 157(12) of the Constitution accompanied by relevant legislation that would lay down requirements for the composition of the office. This would leave the ODPP to concentrate on day to day prosecutorial work and have the special investigator deal with post-election violence cases. These cases would have gone before a special division of the High Court before judges who would essentially be part of the ordinary court system but would be decentralized in select regions that suffered the greatest human rights violations.

c) The second approach complimentary to this approach would be, after prosecuting direct perpetrators, would be to prosecute under the Penal Code, those most responsible for crimes in select geographical areas – charged as co-conspirators to the crime. No real legal obstacle would have stood in the way for such an approach. NHRIs should insist on both approaches so as to guarantee non-repetition of human rights violations which manifests in environments that harbour impunity such as in the Republic of Kenya.

**Recommendations**

69. NHRIs should heavily invest in training and re-training its diverse and professionally qualified staff and Commissioners on modern, efficient and advanced approaches of
documenting and investigating gross human rights violations to ensure effectiveness in fulfilling its accountability mandates. Staff recruited by NHRIs should be persons of high moral integrity and should be vetted regularly particularly when electoral monitoring and documentations processes are at their zenith.

70. NHRIs should invest in technology and sophisticated modes of monitoring elections, documenting violations and securing sensitive data to enable easier ability to secure accountability. This is in response to the increased appetite on witness interference and evidence tampering methods now employed by rogue individuals to defeat cause of justice and accountability measures. NHRIs should also establish secure information management systems that are constantly updated, and train staff on good practices in safe storage of confidential information. It should further limit the number of people handling sensitive information within the Commission to reduce the chances of leakage of information.48

71. NHRIs should establish early warning mechanisms that would give indication of threats to electoral violence and commissioning of international crimes. Further the electoral monitoring system should be one that seeks to understand the ‘root causes of conflict’ during elections and establish programs that support the long-term resolution of such triggers of conflict particularly during elections.

72. NHRIs should have a coordinated approach when monitoring elections or in the aftermath of documenting gross human rights violations. This coordinated approach would be working in partnership with agencies that have primary mandates that are critical to support during elections such as the Electoral Management Body (EMB), the police, the prosecutor’s office, civil society, religious organisations, etc. This would enable the country to better secure the elections and enable efficiencies when seeking accountability for election offences or international crimes.

73. NHRIs should not hesitate naming adversely named persons or suspected perpetrators particularly in contexts where there is de facto impunity. NHRIs should however ensure due process considerations and the rules of natural justice are adhered to. Further NHRIs are therefore better placed to exercise their powers

48See detailed annex on Security
when they have clear powers to punish failure to honour summons and procure cooperation of adversely named persons. Further on issuing its findings, the KNCHR can provide lobby prosecution services to establish a prosecutorial policy that has a prioritization strategy which focuses on a select group of cases which when prosecuted will communicate that justice, accountability and the rule of law reign supreme in the society. The prioritization strategy should be flexible, organic and adaptable to a dynamic political context.

74. NHRIIs must take cognisance of their socio-political environment as they prepare to issue findings and recommendations. They should strive to identify existing opportunities that they could make use of that heighten the possibilities of the implementation of their recommendations. NHRIIs should also widely disseminate their Reports after the electoral monitoring and documentation process in a manner that is effective given the socio-political environment.

75. NHRIIs must look to diversifying their resource base so as to ensure that they remain financially independent. NHRIIs must establish grants office that seeks out for grants from different sources – sources that will also not seek to dictate to them on how they should implement their mandate.

76. NHRIIs should also not hesitate to work with civil society and the private sector in the implementation of actions that still hold state and none state actors accountable.

Finally, NHRIIs should continuously strive for accountability at all times and at all levels of society despite and inspite of the numerous handles. Their mandate is designed specifically to ensure that where human rights are violated, they these rights must not only be restored even in election related situations but accountability and reparations must follow. This is a critical and fundamental role that must continuously be promoted and protected by all NHRIIs in Africa.
## Annex 1: List of Key Informant Interviewees

<table>
<thead>
<tr>
<th>Name</th>
<th>Date of Interview</th>
<th>Occupation 2007-2008</th>
<th>Occupation 2016-2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kagwiria Mbogori</td>
<td>November 16, 2016</td>
<td>Head of Advisory Unit, United Nations Mission in Liberia (UNMIL)</td>
<td>Chairperson, KNCHR</td>
</tr>
<tr>
<td>George Morara Monyoncho</td>
<td>November 23, 2016</td>
<td>Freelance Human Rights Defender</td>
<td>Vice Chairperson, KNCHR</td>
</tr>
<tr>
<td>Suzanne Shatikha Chivusia</td>
<td>November 16, 2016</td>
<td>Election Observer, Sudan</td>
<td>Commissioner, KNCHR</td>
</tr>
<tr>
<td>Patricia Nyaundi</td>
<td>November 16, 2016</td>
<td>Senior Programme Officer FIDA</td>
<td>Commission Secretary, KNCHR</td>
</tr>
<tr>
<td>Evelyne Samba</td>
<td>November 16, 2016</td>
<td>Head of Programmes and Policy, Action Aid International Kenya</td>
<td>Deputy Commission Secretary, KNCHR</td>
</tr>
<tr>
<td>Stephen Otieno</td>
<td>November 16, 2016</td>
<td>IT Department</td>
<td>IT Department</td>
</tr>
<tr>
<td>Carol Abong</td>
<td>November 18, 2016</td>
<td>Deputy Secretary, KNCHR Secretariat</td>
<td>Senior Policy Officer, Dutch Embassy</td>
</tr>
<tr>
<td>Edward Kamau</td>
<td>November 18, 2016</td>
<td>Administrative Officer</td>
<td>Administrative Officer</td>
</tr>
<tr>
<td>Belinda Okoth Ochiel</td>
<td>December 16, 2016</td>
<td>Principal Human Rights Officer at KNCHR, Media and Communications Department</td>
<td>Commissioner, National Cohesion and Integration Commission (NCIC) FORD FOUNDATION</td>
</tr>
<tr>
<td>Lawrence Mute</td>
<td>December 16, 2016</td>
<td>Commissioner, KNCHR</td>
<td>Lecturer, University of Nairobi, and</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Commissioner, African Commission for Human and People’s Rights (ACHPR)</td>
</tr>
<tr>
<td>Name</td>
<td>Date</td>
<td>Position</td>
<td>Organization</td>
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<td>--------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Kamau Ngugi</td>
<td>2007 - 2008</td>
<td>Consultant with KNCHR</td>
<td>National Coordinator of the National Coalition of Human Rights Defenders (NCHRD)</td>
</tr>
<tr>
<td>Mohammed Hamisi</td>
<td>February 7, 2017</td>
<td>Human Rights Practitioner, Muslim for Human Rights and Programs Officer, Peace and Security for Development program funded by Danida</td>
<td>Freelance consultant</td>
</tr>
<tr>
<td>Kamanda Mucheke</td>
<td>March 6, 2017</td>
<td>Senior Human Rights Officer- Reforms and Accountability department (now known as Campaigns and Advocacy Department)</td>
<td>Principal Human Rights Officer, Complaints and Investigations Department, KNCHR</td>
</tr>
<tr>
<td>Veronica Mwangi</td>
<td>March 6, 2017</td>
<td>Data analyst</td>
<td>Senior Human Rights Officer, Complaints and Investigations Department, KNCHR</td>
</tr>
<tr>
<td>Victor Kamau</td>
<td>March 8, 2017</td>
<td>Head of the Complaints and Investigations Department, KNCHR</td>
<td>Principal Human Rights Officer, Redress Department, KNCHR</td>
</tr>
<tr>
<td>George Kegoro</td>
<td>March 13, 2017</td>
<td>Executive Director, Kenyan Section of the International Commission of Jurists (ICJ-Kenya) and Secretary to the CIPEV (2008)</td>
<td>Executive Director, Kenya Human Right Commission (KHRC)</td>
</tr>
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</table>
ANNEX 2: STUDY TOOLS

I. FGD Guide for CSOs and Victims

I would like us to reflect on the documentation and securing accountability for international violation of human rights, in particular, reflecting on the experiences of the KNCHR in the post 2007 election period and their documentation and preparation of the *On the Brink of Precipice* report, the documentation of international crime cases, and the attempts to get justice through judicial and non-judicial processes and engagement with state and non-state actors.

1. Please tell me about yourself and what you do?
2. What do you recall about post 2007 election period?
   
   A. What did you like?
   B. What didn’t you like?

3. What can you recall about the monitoring, reporting and documentation of the violations of human rights done by KNCHR in the post 2007 election period?

   A. What is your broadest opinion regarding the monitoring, reporting and documentation of the violations of human rights, if any? [Moderator: Probe on the leadership at KNCHR, the tools developed for data collection, the processes of data collection, expertise of those involved, language used during data collection, criteria of identification of victims, survivors and informants, gender sensitivity among others]

   I. In your opinion, what more is required of KNCHR to improve her ability to undertake her mandate?

   B. [CSOs] What roles have KNCHR played in the monitoring of elections, if any?
I. What have been the key highlights of the monitoring of elections? Why do you say so?

II. What is your view about the role KNCHR has played in the monitoring of elections since 2007? [Moderator: Probe on the approach to monitoring - is it electoral cycle approach or not? Do they have capacity to monitor? What challenges have been met during monitoring of elections? How have they responded to the challenges?...]

III. In your opinion, what more is required of KNCHR to improve her ability in monitoring elections?

4. What can you recall about the monitoring, reporting and documentation of the violations of human rights done by KNCHR in the post 2007 election period?

   A. What is your broadest opinion regarding the monitoring, reporting and documentation of the violations of human rights, if any? [Moderator: Probe on the leadership at KNCHR, the tools developed for data collection, the processes of data collection, expertise of those involved, language used during data collection, criteria of identification of victims, survivors and informants, gender sensitivity among others]

   B. b. If you may recall, how helpful was the monitoring, reporting and documentation of the violations of human rights during the 2007 post-election period by the KNCHR?

      I. In what other ways would it have helped?

   C. [CSOs] In your opinion, how did the process of monitoring, reporting and documentation affect KNCHR and her staff during the period and after the documentation period? [Moderator: Probe on how it affected politically, socially, operationally, legally etc.]

      I. Why do you think this was the case?

      II. Based on these experiences, what would you recommend for future processes?
D. What would you say was the main objective of KNCHR’s monitoring, reporting and documentation of the violations of human rights during 2007/2008 period? [Moderator: Probe whether for prosecution purposes- international or local, just for inquest, etc.]

   I. How do you think the objective you have stated above affected the processes and procedures used by KNCHR’s monitoring, reporting and documentation of the violations of human rights during 2007/2008 period?

E. Some people have stated that this process was a success others have denied. What is your opinion?

   I. [Moderator: If saying the process was a success, ask] Why do you say the process was a success?
       a) What measures were taken by KNCHR to ensure the process was a success, if any?

   II. [Moderator: If saying the process was not a success, ask] Why do you say the process was not a success?
       a) In order to make the process successful, what would you advice KNCHR to change in the whole process for future success? Why?

   III. Given a chance, what additional measures, if any, would you advice KNCHR to take to ensure optimal results?

F. [VICTIMS REPS] Describe to me how you were affected by the post-election violence of 2007/2008.

   I. What assistance did KNCHR provide to you or other victims and survivors you may know of, if any?
       a) How sufficient were the assistance from KNCHR? Why do you say so?
       b) What more would you have wished them to do for the victims and survivors?
II. [ALL] What were the security and safety measures put in place for victims and survivors of the violations, if any?
   a) Who put in place the security and safety measures?
   b) In your considered opinion, were these measures sufficient?
   c) What more could be done to ensure the security and safety of victims and survivors?

G. What challenges were experienced/ could be experienced in putting together security and safety measures for victims and survivors?
   I. Why is this so?
   II. What could be done to deal with these challenges?

H. If you were given a chance to advice KNCHR on engaging with victims and survivors whose rights have been violated as it were in 2007/2008, what would be your advice to them?

5. [CSOs] Reflecting on the report ‘On the Brink of Precipice’, describe to me the process involved in its development, if you may be aware? [Moderator: Probe on who was involved and why? How the report was written and why? How was decision made on what content to include or exclude? What was the process/procedure for content analysis? Etc.]

A. Did you ever read the report?
   I. [Moderator: If Respondent states that they did not read the report, ask] Why did you not read the report?

B. In your considered opinion, was the report comprehensive or not?
   I. [Moderator: If Respondent states that the report was comprehensive, ask] Why did you find the report comprehensive?
   II. [Moderator: If Respondent states that the report was incomprehensive, ask] Why did you find the report incomprehensive?
      a) What could have been done to improve the comprehensiveness
III. There have been arguments both for and against naming names in such reports. What is your position on this? Why?

IV. How were government institutions, international and local NGOs and CSOs involved in the process of developing the report?
   a) Which organizations would you say were so much involved, if any? Why do you think so? [Moderator: Probe if their organizations was involved and why so?]
   b) In terms of involving other institutions and organizations during the process of developing such reports, which ones do you think would profit such a process more?
      i. Why do you say so?
      ii. Were such institutions involved when KNCHR was developing their report in the 2007/2008 period? Why?
   c) Which organizations would you say were so much involved than others, if any? Why?
   d) Would you consider the involvement of these organizations a success in such exercise or not?
   e) What lessons can we learn from involving other organizations in such an exercise?

V. How, if at all, has your organization used the report generated by KNCHR?
   a) How has the report affected your work since, if at all?
   b) And, how has the report affected your continued engagement with KNCHR, if at all?

6. What would you consider as the key challenges faced by KNCHR during the monitoring, reporting and documentation of violation of human rights in the post 2007 election period? [Moderator: Probe on leadership, political, legal, social, economic, etc.]
A. Of the challenges you have mentioned, what would you consider as having been the main challenge? Why?
   I. Describe to me how this challenge might have affected the work of KNCHR in monitoring, reporting and documenting the violations of human rights during 2007/2008 period.
   II. If you may be aware, how did KNCHR react to these challenges?
   III. What would you recommend for the future in dealing with this challenge?

B. Looking back, what would KNCHR do differently, if at all, to deal with these challenges you have mentioned?

C. Looking forward, what level of preparation is required for KNCHR to successfully undertake such assignments in the future?

7. Finally, what would be your recommendations for the success in such assignment of monitoring, reporting and documentation of violation of human rights by KNCHR in the future?

   A. Do you have any other information to add regarding what we have been discussing?

Thank You
II. Respondent Interview Guide for KNCHR Staff

I would like us to reflect on the documentation and securing accountability for international violation of human rights, in particular, reflecting on the experiences of the KNCHR in the post 2007 election period and their documentation and preparation of the On the Brink of Precipice report, the documentation of international crime cases, and the attempts to get justice through judicial and non-judicial processes and engagement with state and non-state actors.

1. Please tell me about yourself and what you do?
2. What do you recall about post 2007 election period?
   A. What did you like?
   B. What didn’t you like?

3. In your perspective, what is the role/mandate of KNCHR? [Moderator: Put focus on monitoring, reporting and documentation of the violations of human rights]

   A. Reflecting on the broad context of the role/mandate of KNCHR as you have explained and putting into focus the structure and operations of KNCHR as it were in 2007, what would have been the ideal situation to allow KNCHR to perform her mandate effectively? [Moderator: Probe on expertise, administration, leadership and organization structure, powers and privileges, legal framework, relationship with other government and non-governmental institutions, etc.]

   B. What changes have been undertaken since 2007 to improve KNCHR’s ability to effectively perform on her mandate?
      I. In your opinion, what more is required of KNCHR to improve her ability to undertake her mandate?

   C. What roles have KNCHR played in the monitoring of elections, if any?
      I. What have been the key highlights of the monitoring of elections?
Why do you say so?

II. What is your view about the role KNCHR has played in the monitoring of elections since 2007? [Moderator: Probe on the approach to monitoring- is it electoral cycle approach or not? Do they have capacity to monitor? What challenges have been met during monitoring of elections? How have they responded to the challenges?]

III. In your opinion, what more is required of KNCHR to improve her ability in monitoring elections?

4. What can you recall about the monitoring, reporting and documentation of the violations of human rights done by KNCHR in the post 2007 election period?

A. What is your broadest opinion regarding the monitoring, reporting and documentation of the violations of human rights, if any? [Moderator: Probe on the leadership at KNCHR, the tools developed for data collection, the processes of data collection, expertise of those involved, language used during data collection, criteria of identification of victims, survivors and informants, gender sensitivity among others]

B. If you may recall, how helpful was the monitoring, reporting and documentation of the violations of human rights during the 2007 post-election period by the KNCHR?
   I. In what other ways would it have helped?

C. In your opinion, how did the process of monitoring, reporting and documentation affect KNCHR and her staff during the period and after the documentation period? [Moderator: Probe on how it affected politically, socially, operationally, legally etc.]
   I. Why do you think this was the case?
   II. Based on these experiences, what would you recommend for future processes?
D. What would you say was the main objective of KNCHR’s monitoring, reporting and documentation of the violations of human rights during 2007/2008 period? [Moderator: Probe whether for prosecution purposes- international or local, just for inquest, etc.]

E. Some people have stated that this process was a success others have denied. What is your opinion?

I. [Moderator: If saying the process was a success, ask] Why do you say the process was a success?
   a) What measures were taken by KNCHR to ensure the process was a success, if any?

II. [Moderator: If saying the process was not a success, ask] Why do you say the process was not a success?
   a) In order to make the process successful, what would you advice KNCHR to change in the whole process for future success? Why?

III. Given a chance, what additional measures, if any, would you advice KNCHR to take to ensure optimal results?

IV. Beyond the report, how did KNCHR engage with the victims and survivors whose rights were violated, if at all?
   a) What were the engagements in the aftermath of their experiences in 2007/2008?
   b) Do you find the engagement between KNCHR and the victims and survivors whose rights were violated sufficient or not? Why do you say so? [Moderator: Probe on during and in the aftermath of post-election violence]
   c) In your opinion, what lessons can be learned on how KNCHR engaged with the victims whose rights were violated? [Moderator: Probe on during and in the aftermath of post-election violence]
V. If you were given a chance to advice KNCHR on engaging with victims and survivors whose rights have been violated as it were in 2007/2008, what would be your advice to them?

5. Quite a large amount of data and information goes into generating such reports. What were the data protocols put in place during 2007/2008 period on collecting, receiving, storing and sharing the data and information to ensure data and information security?

A. Would you say that the data protocols were sufficient or not?
   I. [Moderator: If saying the data protocol was sufficient, ask] Why do you say the protocols were sufficient?
      a) What measures were taken by KNCHR to ensure the protocols were sufficient, if any?
   II. [Moderator: If saying the data protocol was insufficient, ask] Why do you say so?
      a) In order to enhance data and information security, what would you advice KNCHR to change in the whole process for the future? Why?
   III. Given a chance, what additional measures would you advice KNCHR to take to ensure data and information security, if any?

B. Employees engaged in such processes are also at risk. What were the security and safety measures taken by KNCHR for their staff?
   I. In your considered opinion, were these measures sufficient?
   II. What more could be done to ensure the security and safety of staff involved in such assignment?

C. Apart from the security and safety measures put in place for KNCHR staff, if any, what were the security and safety measures put in place for victims and survivors of the violations?
   I. In your considered opinion, were these measures sufficient?
II. What more could be done to ensure the security and safety of victims and survivors?

D. What challenges were experienced/ could be experienced in putting together security and safety measures for staff, victims and survivors?
   I. Why is this so?
   II. What could be done to deal with these challenges?

6. Reflecting on the report ‘On the Brink of Precipice’, describe to me the process involved in its development, if you may be aware? [Moderator: Probe on who was involved and why? How the report was written and why? How was decision made on what content to include or exclude? What was the process/ procedure for content analysis? Etc.]

A. Did you ever read the report?
   I. [Moderator: If Respondent states that they did not read the report, ask] Why did you not read the report?

B. In your considered opinion, was the report comprehensive or not?
   I. [Moderator: If Respondent states that the report was comprehensive, ask] Why did you find the report comprehensive?
   II. [Moderator: If Respondent states that the report was incomprehensive, ask] Why did you find the report incomprehensive?
      a) What could have been done to improve the comprehensiveness of the report?

III. There have been arguments both for and against naming names in such reports. What is your position on this? Why?

IV. How were government institutions, international and local NGOs and CSOs involved in the process of developing the report?
   a) Which organizations would you say were so much involved, if any? Why do you think so?
   b) In terms of involving other institutions and organizations during
the process of developing such reports, which ones do you think would profit such a process more?

i.  Why do you say so?

ii. Were such institutions involved when KNCHR was developing their report in the 2007/2008 period? Why?

c)  Which organizations would you say were so much involved than others, if any? Why?

d)  Would you consider the involvement of these organizations a success in such exercise or not?

e)  What lessons can we learn from involving other organizations in such an exercise?

V.  What were the key challenges experienced during the generation of this report?

a)  What could have been done differently to avert such challenges, if any?

b)  Why were these measures not put in place then, if you know?

7.  Let us turn our focus to discuss advocacy, lobbying, dissemination and engagement with other actors about the report. In your opinion, what strategies were undertaken in advocating, lobbying, disseminating and engaging with other actors?

A.  Were these strategies successful or not? Why do you say so?

B.  In terms of follow-up on the report and its recommendations, what did KNCHR do to ensure that the recommendations of their report is implemented by the various actors?

C.  What feedback, if any, have KNHCR received from the different quotas in response to the report?

   I.  How has KNHCR responded to these feedback?
D. What lessons has KNHCR learned out of the experiences on advocacy, lobbying, dissemination and engagement with other actors about the report?

8. What would you consider as the key challenges faced by KNCHR during the monitoring, reporting and documentation of violation of human rights in the post 2007 election period? [Moderator: Probe on leadership, political, legal, social, economic, etc.]

A. Of the challenges you have mentioned, what would you consider as having been the main challenge? Why?
   I. Describe to me how this challenge might have affected the work of KNCHR in monitoring, reporting and documenting the violations of human rights during 2007/2008 period.
   II. If you may be aware, how did KNCHR react to these challenges?
   III. What would you recommend for the future in dealing with this challenge?

B. Looking back, what would KNCHR do differently, if at all, to deal with these challenges you have mentioned?

C. Looking forward, what level of preparation is required for KNHCR to successfully undertake such assignments in the future?

9. Finally, what would be your recommendations for the success in such assignment of monitoring, reporting and documentation of violation of human rights by KNCHR in the future?

A. Do you have any other information to add regarding what we have been discussing?

Thank You
III. Respondent Interview Guide for Victims and Survivors

I would like us to reflect on the documentation and securing accountability for international violation of human rights, in particular, reflecting on the experiences of the KNCHR in the post 2007 election period and their documentation and preparation of the *On the Brink of Precipice* report, the documentation of international crime cases, and the attempts to get justice through judicial and non-judicial processes and engagement with state and non-state actors.

1. Please tell me about yourself and what you do?
2. What do you recall about post 2007 election period?
   A. What did you like?
   B. What didn’t you like?

3. What can you recall about the monitoring, reporting and documentation of the violations of human rights done by KNCHR in the post 2007 election period?
   A. What is your broadest opinion regarding the monitoring, reporting and documentation of the violations of human rights, if any? [Moderator: Probe on the leadership at KNCHR, the tools developed for data collection, the processes of data collection, expertise of those involved, language used during data collection, criteria of identification of victims, survivors and informants, gender sensitivity among others]

   B. If you may recall, how helpful was the monitoring, reporting and documentation of the violations of human rights during the 2007 post-election period by the KNCHR?
      I. In what other ways would it have helped?

   C. What would you say was the main objective of KNCHR’s monitoring, reporting and documentation of the violations of human rights during 2007/2008 period? [Moderator: Probe whether for prosecution purposes- international or local, just for inquest, etc.]
I. How do you think the objective you have stated above affected the processes and procedures used by KNCHR’s monitoring, reporting and documentation of the violations of human rights during 2007/2008 period?

D. Some people have stated that this process was a success others have denied. What is your opinion?

I. [Moderator: If saying the process was a success, ask] Why do you say the process was a success?
   a) What measures were taken by KNCHR to ensure the process was a success, if any?

II. [Moderator: If saying the process was not a success, ask] Why do you say the process was not a success?
   a) In order to make the process successful, what would you advice KNCHR to change in the whole process for future success? Why?

III. Given a chance, what additional measures, if any, would you advice KNCHR to take to ensure optimal results?

IV. If you were given a chance to advice KNCHR on engaging with victims and survivors whose rights have been violated as it were in 2007/2008, what would be your advice to them?

E. Describe to me how you were affected by the post-election violence of 2007/2008.

I. What assistance did KNCHR provide to you or other victims and survivors you may know of, if any?
   a) How sufficient were the assistance from KNCHR? Why do you say so?
   b) What more would you have wished them to do for the victims and survivors?

II. What were the security and safety measures put in place for victims and survivors of the violations, if any?
   a) Who put in place the security and safety measures?
a) In your considered opinion, were these measures sufficient?
b) What more could be done to ensure the security and safety of victims and survivors?

F. What challenges were experienced/ could be experienced in putting together security and safety measures for victims and survivors?
   I. Why is this so?
   II. What could be done to deal with these challenges?

4. What would you consider as the key challenges faced by KNCHR during the monitoring, reporting and documentation of violation of human rights in the post 2007 election period? (Moderator: Probe on leadership, political, legal, social, economic, etc.)

   A. Of the challenges you have mentioned, what would you consider as having been the main challenge? Why?
      I. Describe to me how this challenge might have affected the work of KNCHR in monitoring, reporting and documenting the violations of human rights during 2007/2008 period.
      II. If you may be aware, how did KNCHR react to these challenges?
      III. What would you recommend for the future in dealing with this challenge?

   B. Looking back, what would KNCHR do differently, if at all, to deal with these challenges you have mentioned?
   C. Looking forward, what level of preparation is required for KNHCR to successfully undertake such assignments in the future?

5. Finally, what would be your recommendations for the success in such assignment of monitoring, reporting and documentation of violation of human rights by KNCHR in the future?

   A. Do you have any other information to add regarding what we have been discussing?

Thank You