FOOTPRINTS OF IMPUNITY
COUNTING THE COST OF HUMAN RIGHTS VIOLATIONS
NYAYO HOUSE TORTURE CHAMBERS

Kenya National Commission on Human Rights
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The heinous human rights violations committed by public officers of the Kenyan government in 1982-1992 at Nyayo House is a stark and sad reminder of cost of impunity. Not only did the victims of Nyayo House experience irreparable losses that ranged from; death, loss of income, loss of employment, loss of education opportunities, broken familial relationships and ill health as result of physical and psychological torture visited upon them at Nyayo House, but also the Kenyan taxpayers have incurred the cost of this impunity by the government.

Pursuant to 126 suits filed by the victims of the Nyayo House against the government of Kenya, the victims were awarded Kshs. 372,524,686 as compensation. Given compensations made against the government is paid from the public coffers, Kenyan taxpayers have been penalised to pay Kshs. 372,524, 686 to the victims of Nyayo House, whereas the public officers that committed these violations have never been held personally responsible. This is just but one example of high cost of impunity that has to be borne by the Kenyan taxpayers. Perhaps in the comfort that reprieve for human rights violations is compensation, that is borne by taxpayers, do public officers flagrantly conduct acts of impunity, and abet culture of conspiracy and inaction towards human rights violations. Poignant examples of these are: human rights violations by police officers; incitement and hate speeches by public officers; grand corruption; economic crimes and subjecting Kenya to odious debts; land-grabbing; blatant failure to implement reports that call for redress of human right violations for example the Truth, Justice and Reconciliation Commission; and public officers being investigated for human rights violations and abuse of their offices ‘stepping aside’ rather than resigning from their positions.

In the course of conducting research on Cost of Impunity; Revisiting The Nyayo House, the victims of the Nyayo House strongly recommended to the Kenya National Commission on Human Rights (KNCHR) to ensure personal responsibility by public officers who act in contempt of rule of law and violate human rights- because the culture of impunity that prevailed under the old constitutional dispensation continues to thrives under the ‘new’ constitutional dispensation. It cannot be overemphasized that the prevailing culture of impunity in Kenya is unacceptable. Against this backdrop, KNCHR in line with its mandate will endeavour to ensure public officers are held personally responsible for acts of impunity. Best practices wherein public officers have been held personally responsible for human rights violations and conducts of impunity abound, for example in jurisdictions such as Sweden. In endeavouring for public officers to be held personally responsible for violating human rights violations and abetting impunity, KNCHR will not only be cohering with the provisions of the Constitution of Kenya 2010 but also international laws that are part of Kenyan laws.

Kagwiria Mbogori
Chairperson, KNCHR
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The Kenya National Commission on Human Rights (hereafter the Commission or KNCHR) is an independent National Human Rights Institution (NHRI) established under Article 59(1) as read with Article 59(4) of the Constitution of Kenya, 2010 and the Kenya National Commission on Human Rights Act No. 14 of 2011, revised in 2012. The Commission has two broad mandates. To advise and support state and non-state actors to discharge their obligation to respect, promote and fulfil human rights, and to play a watchdog role over the various government organs with respect to human rights in the Republic of Kenya. In order to fulfil its mandate, the Commission undertakes various programmatic initiatives that include research.

In 2016 the KNCHR commissioned research to achieve the following objectives: -

1. Document the cost of human rights violations especially where the same were occasioned by acts of impunity. To this end, the Commission sought follow up on whether the government compensated the Nyayo House victims1 as per the court orders.

2. Highlight the plight of torture victims as an example of the attitude of impunity by the state to victims of human rights violations. The Commission sought to establish whether all the Nyayo House victims were reached and how much they were compensated.

3. Make recommendations that would attach personal responsibility for public officers who act in contempt of the rule of law.

4. Generate interest for further investigation on the issue of cost of impunity, so as to determine;
   a) how much it costs the taxpayer to compensate the victims.
   b) the long term costs to the direct and indirect victims of human rights violations.
   c) public officers personal liable for the violation of human rights.

To this end, the study undertook the following activities: -

1. Document costs of violations (court judgements), interview victims to determine lost opportunity and what it has likely cost the economy.

2. Document the number of victims of the Nyayo House torture chambers who were given court awards and how much they were compensated.

3. Establish the cost of the compensation to the taxpayers.

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1 This report employs the definition of victim as per Section 2 of the Victim Protection Act No. 17 of 2014 that defines victim as ‘any natural person who suffers injury, loss or damage as a consequence of offence’ (accessible at www.kenyalaw.org) and the term as per its utilisation in the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Humanitarian Law and International Human Rights Law (accessible at www.ohchr.org). Although it is instructive to note that victims have often been referred to as Nyayo House torture chambers survivors to imply they survived the heinous ordeal at Nyayo House.
Methodology

This report has been compiled through desk review and analysis of existing relevant secondary materials, which included; Laws, Policies, standard Measures, court decisions and reports on the promotion and protection of human rights. The findings of this study are limited to the victims of the Nyayo house torture and cannot therefore be used to draw a generations with regard to other torture victims. However the findings demonstrate that gross human rights violations were committed then and the same can be committed to other victims as well.

This report is prepared by, and pursuant to the activities undertaken in October to November 2016. The report has four sections. Section one contextualizes the basis of suits filed by the Nyayo House victims by giving a background on Kenya’s political milieu and as well a synopsis of the victims’ rights and freedoms that were violated. Section two briefly discusses various forms of reparations, enumerates the victims of Nyayo House who sought reparation in form of compensation, and the compensation awarded to them. Section three highlights lost opportunities experienced by the victims of Nyayo House. Section four discusses fundamental matters for consideration by the KNCHR in the form of recommendations.
The Republic of Kenya had a multi-party democracy prior to the threshold of the two dark decades in 1982.

**Kenya’s Milieu During Dark Decades**

On 9th June 1982, Kenyan Parliament hastily passed the Constitution of Kenya Amendment No. 7 of 1982 under the Repealed Constitution of Kenya, transforming Kenya into a de jure one party state. This marked the beginning of heinous and systematic violations of fundamental rights and freedoms by the Kenya African National Union (KANU) government towards persons perceived to oppose or hold different views than KANU’s during the period between 1982 and 2002. The Repealed Constitution of Kenya that was in operation during this period guaranteed: protection to personal liberty, protection from torture or inhuman or degrading treatment, protection against arbitrary search, protection of law, protection of freedom of conscience, protection of freedom of expression and protection of freedom of assembly and association.

During the period, 1982-1992 at the height of its heinous and systematic human rights violations, Kenya was already a State Party to the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and People’s Rights (ACHPR), which guarantee these aforementioned fundamental rights and freedoms. ICCPR and ACHRP impose obligations on the State Parties to protect, respect and promote the rights and freedoms enshrined therein. Of significance is the prohibition of torture under Article 7 of ICCPR and Article 5 of ACHRP.

The United Nations Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment (UNCAT) is an elaborate human rights treaty dedicated to combating torture, inhuman and degrading treatment or punishment. It seeks to attain this by imposing obligations on State Parties to prevent these acts. Article 1 of UNCAT defines torture as, ‘… any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person, information or confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.’

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1. People against Torture, Never Again: Profiles in Courage p.4. (N.B publication date is not indicated by the author).
2. Section 72.
3. Section 74(1).
4. Section 76.
5. Section 77.
6. Section 78.
7. Section 79.
8. Section 80.
Although Kenya was not a State Party to UNCAT until 21st February 1997, the Kenyan government through its officials and agents in Special Branch Police committed acts that fit this definition of torture during the period of 1982 -1996, in flagrant violation of the Repealed Constitution’s Section 74, ICCPR’s Article 7, and ACHPR’s Article 5. During this dark decade, Kenya as part of the international community was bound by the international principle of *jus cogens*: meaning prohibition of torture is part of principles which form the norms of international laws that cannot be set aside. Even after Kenya became a State Party to UNCAT there were reported incidents of torture implicating the State security agencies. Although this report focuses on victims of Nyayo House, it also includes victims who were tortured at Nyati House because the latter sought relief in consolidate suits alongside the former. These Nyati House outlier cases are singled out in section two below.

## Decade of Fundamental Rights and Freedoms’ Dearth

The 1982 Constitutional Amendment gave impetus to growth of underground movements that were clamouring for an end to the then President Daniel Arap Moi’s despotic rule and the restoration of multi-party democracy. Notable underground movements were Muungano wa Wazalendo wa Kuikomboa Kenya (known as MwaKenya Movement) that used underground newsletters Mpatanishi (Arbiter), Pambana (Struggle), The Mwakenya Stand, and Kenya Democratic Plank; December Twelve Movement (DTM) that used Cheche Kenya leaflets and pamphlets, February Eighteen Movement, and Kenya Patriotic Front. The KANU government proscribed the publications of these underground movements.

The KANU government constructed Nyayo House using taxpayers’ money. Construction of Nyayo House commenced in 1979 and was completed in 1983. Although, there is no unequivocal information on whether the cells at the Nyayo House within its basement and at 24th, 25th and 26th floors were part of the 1971 original architectural plans of the building, regardless of the time they were constructed in the building, it is evident these cells were designed to be torture chambers. These cells and basement are referred to as Nyayo House torture chambers.

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14Ibid.
a) Violation of constitutional right enshrined in section 74(1) of repealed constitution

Moi’s single-party rule demanded incontrovertible allegiance. Anything short of this attracted heavy penalties. Persons suspected of: holding views other than KANU’s; being members and supporters of Mwakenya Movement or February Eighteen Movement or Kenya Patriotic Front or DTM; being in possession of the literature produced by Mwakenya Movement and DTM; publishing and being in possession of innocuous magazines such as Beyond, Nairobi Law Monthly and African Events which were considered seditious because they featured articles on human rights, constitutionalism and critiqued Moi’s administration; and being in communication with persons perceived to be members of the underground movements or a threat to government were hunted down, arrested and unlawfully incarcerated incommunicado at Nyayo House. At Nyayo House the victims were interrogated by around 8-12 government agents and/or Special Branch police officers who tortured and subjected them to a range of cruel, degrading and dehumanising acts.

The common accounts of the victims of Nyayo House were being arrested, often at odd hours, and held incommunicado at various police cells for days then taken to Nyayo House. At Nyayo House the victims would be: stripped naked; made to stand in cells filled with water at ankle length for days causing their toes to rot; made to do 50-100 sit-ups; safari ants being introduced in their cells; kept for days without food and water and being then forced fed; their genitalia being hit with whips, pricked with needles, burnt with cigarettes butts, metal rods forced into their rectums; pens forced into their urethra; and scrotum tied with rubber bands; beaten, kicked, slapped and hit with pieces of furniture; and tooth plucked out with pliers. The family members and friends of persons suspected to be members of underground movements were also arrested and subjected to these torturous acts at Nyayo House. This is a summary of some of the torturous acts that the victims were subjected to by the Special Branch Police/ government agents at Nyayo House and as well as Nyati House under the KANU government.

Violation on Constitutional Rights Enshrined in Section 72 of Repealed Constitution

At the time of arrest and thereafter, the victims were denied an opportunity to inform their family members, friends and colleagues of their whereabouts, and secure legal representation. In order to bring to an end to their torture at Nyayo House, majority of the victims signed self-incriminating statements they were forced to sign by the torturers. Given the victims lacked legal representation and had been threatened with death should they plead not guilty to the charges preferred against them, they pleaded guilty to those charges when they were arraigned in court, often at odd hours before 8.00am and after 5.00pm.
Some of the victims were remanded for months and subsequently released after the Attorney General entered *nolle prosequi*, effectively dropping charges preferred against the victims. Often the charges were different from the reasons they were being held and tortured in the first place, for example, some victims would be charged for being members of Mpatanishi that was assumed to be an organisation yet it was a publication. By the virtue that the victims did not have legal representatives to contest the charges, these defective charges were sustained and formed the premise for conviction and sentence meted on the victims.28

Once convicted and sentenced on their plea of guilty, the victims continued to endure inhuman and degrading treatment in prisons. The victims were often held in solitary confinement or in the same cells that held prisoners with mental disability, dressed in threadbare tattered clothes that exposed their nakedness, given tattered piece of clothing infested with lice and bedbugs to cover themselves with as blankets, and served poor diet that is unfit for human consumption.29

The victims who were released by the Special Branch Police/government agents from Nyayo House without any charges being preferred against them were sworn in writing not to disclose to anyone what happened to them. They were threatened with dire consequences should they disclose their ordeal to anyone.30 It is therefore not surprising that the number of victims of Nyayo House remains inconclusive to-date.

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28 ibid.
29 ibid.
30 ibid.
Reparations for Victims of Nyayo House

The United Nations Basic Principle and Guidelines on the Rights to Remedy and Reparation for Gross Violation of International Human Rights Law and Serious Violation of International Humanitarian Law\(^3\), provides a basic framework for reparation to victims of human rights violations. The Principle and Guidelines brings into scope UNCAT and ICCPR that Kenya is State Party to. Therefore, it stands to reason then the Principle and Guidelines provide a strong premise as a point of reference and comparison on reparations accorded to the victims of Nyayo House. The Principle and Guidelines catalogues various forms of reparations including, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

a) Restitution that seeks to restore victims of human rights violations to their state prior to the violations.

b) Compensation that provides for economically accessible damages such as physical or mental harm; lost opportunities like employment, education and social benefits; moral damages; and costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

c) Rehabilitation includes medical, psychological, legal and social services for victims of human rights violations.

d) Satisfaction includes: Public apology and acknowledgment of facts and acceptance of responsibility; verification of facts and full and public disclosure; commemorations and tributes to victims of human rights violations; inclusion of violations in human rights law and educational training at all levels; and effective measures aimed at cessation of continuing violations.

e) Guarantees of non-repetition that includes: Strengthening of independence of judiciary; protection of lawyers, human rights defenders and the media; and continues human rights education to law enforcement agencies.

So far, the form of reparation that victims of Nyayo House have overtly secured is in form of compensation and satisfaction.

\(^3\)http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx (Accessed on 2\(^{*}\) November 2016)
Satisfaction: Verification of Facts and Full Public Disclosure

The National Rainbow Coalition (NARC) party won the 2002 General Elections ushering in its leader Mwai Kibaki as the third President of the Republic of Kenya. NARC party comprised human rights stalwarts. As such the NARC government was perceived as pragmatic and reformists, as it had included human rights reform agenda in the Kibaki Administration. It is against this background, a promise of momentous dawn, that the Nyayo House victims documented and publicly disseminated accounts of their horrendous ordeal and sought relief for violation of their rights by Moi administration during the dark decade.

In 2004, the Citizens for Justice developed list of the victims of Nyayo House and categorised them but placed a caveat that the list was not conclusive or exhaustive. The first category comprises 107 victims who were arrested, charged, convicted and served imprisonment terms. The second category comprised 32 victims who were arrested, confined, jailed and died during or after the Nyayo House ordeal. The third category comprises 13 victims who were detained without trial. The fourth category comprises 58 victims who were released without charge. The fifth category comprises 28 victims who were forced into exile. The sixth category comprises 4 victims who arrested, confined, charged in court but not convicted nor sentenced. Similarly, People against Torture developed profiles of 122 victims of Nyayo House torture chambers.

In the course of compilation of their profiles, the Nyayo House victims called for establishment of a Truth, Justice and Reconciliation Commission (TJRC) to address violation of their fundamental rights and freedoms, and injustices visited upon them during the two dark decades. On 3rd August 2009, the TJRC was established as per the terms of the Truth, Justice and Reconciliation Act, No. 6 of 2008. The TJRC was mandated to inquire into gross violation of human rights and historical injustice that occurred from 12th December 1963 to 28th February 2008. This brought into scope inquiry into atrocities committed at the Nyayo

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8 Friedrich Ebert Stiftung and Citizens for Justice, We lived to Tell, The Nyayo House Story p. 70.(N.B publication date is not indicated by the authors).
9 Supra Note 32 at p. 70-71.
The TJRC made the following findings in respect of Nyayo House:

1. Systematic use of torture was employed by the Special Branch Police during interrogations of detained persons in Nyayo House, Nyati House, police stations, prisons and other locations.

2. Nyayo House basement cells, and the 24th, 25th and 26th floors were used for interrogations and torture after the attempted coup of 1982, during the Mwakenya Movement crackdown, and the February Eighteen Movement crackdown, and that the state purposely designed and build these places for torture purposes.

3. The State established a taskforce for the specific purpose of interrogation and torture of suspects.

The Judiciary frequently cooperated with the prosecution and security forces in the confinement of violations by refusing bail and by admitting evidence obtained through torture. The Judiciary was also complicit in the violations to the extent they conducted trials beyond working hours.

The TJRC made the following recommendations in respect of Nyayo House torture chambers atrocities from the date of handing over reports of its findings to the President of the Republic of Kenya:

1. The President of the Republic of Kenya to offer a public apology to all victims of torture and unlawful detention and acknowledge the role of the State in the design and use of Nyayo House torture cells for torture purpose, within the timeline of 3 months.

2. The Nyayo House be converted into a memorial after consultation with victims of torture within 12 months by the Ministry responsible for National Heritage and National Museums.

3. Enactment of legislation and establishment of the office of independent inspector of Prisons and All Places of Detention with the function of inspecting prison conditions and investigating allegations of torture, within 12 months by the Parliament and Attorney General. TJRC also recommended that the Office be mandated to investigate all cases of death in custody and issue periodic reports to the public on the conditions of prisons in Kenya.

4. The prosecution of the members of the taskforce that was established for the purpose of interrogation and torture of suspects at Nyayo House, within 18 months by the Director of Public Prosecution.


6. Reparation for victims within 36 months of which an implementation mechanism was to be set up.

The findings and recommendations by the TJRC are critical in assessing whether Kenya has stemmed or eliminated culture of impunity that underpinned atrocities directed to the victims of Nyayo House torture chambers. This will be discussed in section three.
Satisfaction: Public Apology and Acknowledgment of Facts and Acceptance of Responsibility

In partial fulfilment of the recommendations by the TJRC, the fourth President of the Republic of Kenya Uhuru Kenyatta, during his state of nation address in Parliament on 26th March 2015 apologised to the victims of Nyayo House alongside other victims of human rights violations, and urged the Parliament to ‘process without undue delay’ the report of the TJRC. He indicated that he had instructed the Treasury to establish a reparation fund in the sum of Kshs. 10 billion that would be directed towards restorative justice for years 2016-2018. The President’s decree can be construed to mean the reparation fund is intended to be in addition to the reparation recommendations by the TJRC. The President decreed, ‘Notwithstanding the recommendation of the TJRC report, I have instructed the Treasury to establish a Fund of 10 billion shillings over the next three years to be used for restorative justice.

To-date the most tangible reparation that victims of Nyayo House torture chambers have secured for themselves is in form of compensation following suits they filed in court.

49 Supra Note 48 at. Para. 78.
50 Supra Note 48 at Para. 83.
51 Ibid.
The first cases for compensation were filed in 2003 by the victims of Nyayo House which set the pace of subsequent similar cases. In a bid to aid the court in awarding damages to the victims of Nyayo House, one of them James H. Gitau Mwara petitioned the court to preserve the Nyayo House torture chambers. Accordingly, the Court in James H. Gitau Mwara vs. Attorney General, Miscellaneous Application No. 56 of 2005 ordered the government to preserve the Nyayo House torture chambers so that future trial courts could take the best evidence at the scene of the torture. It is instructive to note that this order was made prior to the establishment and inquiry by TJRC which recommended Nyayo House torture chambers be preserved as a memorial. At the time of conducting this research in September-October 2016 the memorial had not yet been established. It is also worth noting that there was a surge of such cases after TJRC was established and the Constitution of Kenya, 2010 was promulgated on 27th August 2010.

The victims of Nyayo House torture chambers sued the government of Kenya enjoining the Attorney General as the legal representative of the government. In their petitions, the victims alleged violation of their fundamental rights and freedoms that were guaranteed under the Repealed Constitution, namely Section 72 on protection of rights to personal liberty, and Section 74(1) on freedom from torture, inhuman and degrading treatment or punishment. Accordingly, they sought a declaration that their fundamental rights and freedoms were violated by the government’s agents and officers and as such they should be compensated and awarded payment in form general damages and exemplary damages. So precisely, what is the difference between general and exemplary damages? The Black’s Law Dictionary defines, ‘the exemplary damages are punitive damages meant to punish the defendant and deter others.’ and ‘general damages are monetary recovery for damages and injuries (such as pain suffering, and inability to perform certain functions) that directly result from action or failure to take action of the defendant.’

Majority of petitioners who filed cases that were determined prior to the promulgation of the Constitution of Kenya, 2010 were awarded both general and exemplary damages where they claimed for such damages. In stark contrast, petitioners whose cases were finalised under the ‘new’ constitutional dispensation were not awarded exemplary damages, notwithstanding their claims for this damages. The Kenyan courts rationalised that given the change of regime and the promulgation of ‘new’ transformative Constitution, which has a high threshold for safeguard of fundamental rights and freedoms, there was no justification for imposing exemplary damages against the Kenyan government. Examples of such cases are, Benedict Munene Kariuki & 14 Others vs. Attorney General Petition No.722 of 2009, and Dominic Arony Amolo vs. Attorney General Miscellaneous Application No. 494 of 2003 where the court in awarding global damages.

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52James H. Gitau Mwara vs. Attorney General (unreported).
to the petitions noted that exemplary damages cannot be awarded in changed political circumstances. Although it is worth pointing out the exceptional case of Cornelius Akelo Onyango vs. Attorney General, Petition No. 233 of 200956 that was concluded in 2011 under the new constitutional dispensation and in which the petitioners were awarded both general and exemplary damages as prayed for.

This research revealed that 126 suits were filed against the government by victims of Nyayo House. For ease of reference these cases are categorised into three types in this report. The first type of cases are ones that were filed by victims who were tortured at Nyayo House and were compensated by the courts; these cases total up to 117. The second type are cases that were filed by the estate of the victims tortured at Nyayo House and were compensated by courts; these cases total up to 4. The third type are cases that were filed by victims were not tortured at Nyayo House but filed alongside the victims tortured at Nyayo House; these cases were consolidated with the ones of Nyayo House victims and total up to 5. These latter cases are highlighted by placing the mark (#) on the words other victims # in the sections below.

This report distinguishes cases in which the victims pleaded guilty to the charges preferred against them after being tortured and threatened with dire consequences should they enter a plea of not guilty when arraigned in court, by placing this mark (*) against the words plea of guilty * or pleaded guilty* in those cases.

56Unreported.
1. **Njuguna Githiru** was held and tortured at Nyayo House for eight (8) days in April 1989. Thereafter, he was released from Nyayo House without any charges being preferred against him. He filed a suit, Njuguna Githiru vs. Attorney General, Petition No.204 of 2013\(^{57}\) at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi, for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,000,000.

2. **Jaoko Noo Ooro** was held and tortured at various police stations and subsequently at Nyayo House for 14 days in April 1989. Thereafter, he was released from Nyayo House without any charges being preferred against him. He filed a suit, Jaoko Noo Ooro vs. Attorney General, Petition 133 of 2011\(^{58}\) at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi, for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 700,000.

3. **Philip Ngumo Gachoka** was held and tortured at various police stations and as well at Nyayo House for 22 days in August 1990. Thereafter, he was released from Nyayo House without any charges being preferred against him. He filed a suit, Philip Ngumo Gachoka vs. Attorney General, Petition 68 of 2011\(^{59}\) at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi, for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,100,000.

4. **Pius John Njogu Nguo** was held and tortured at Kamkunji Police Station and thereafter at Nyayo Torture for 23 days in July 1990. Thereafter, he was released from Nyayo House without any charges being preferred against him. He filed a suit, Pius John Njogu Nguo vs. Attorney General, Petition 36 of 2011\(^{60}\) at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi, for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 850,000.

5. **Samson Wendot Kimoi** was held incommunicado at Spring Valley Police Station and thereafter held and tortured at Nyayo House for 28 days in July 1990, after which he was released without any charges preferred against.
him. He filed a suit, Samson Wendot Kimoi vs. Attorney General, Petition 37 of 2010 at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi, for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,400,000.

6. **Susan Wangui Mirugi**, the wife of late Mirugi Kariuki filed a suit claiming psychological torture and trauma inflicted upon her and her children by the Moi government by virtue of being a spouse to a man who had been marked anti-government during the period 1986 -1990. During the period she was a nurse in a government hospital. Due to her husband’s activities, as a castigation she was transferred from Rift Valley to Central, her salary was held for six(6) months, she was ostracised by colleagues who had been warned to disassociate with her, and one of her children was denied admission in a public school because the father’s anti-government activities. On two occasions police officers arrested her husband and invaded their home during which the officers destroyed important documents such as birth certificates. The officers also carted away important documents. She filed a suit, Susan Wangui Mirugi vs. Attorney General, Petition 35 of 2010 at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi, for a declaration that her fundamental rights and freedoms were violated and to be compensated for those violations. She was awarded general damages in the sum of Kshs. 250,000.

7. **James Mwaura Mugo** was held and tortured at Nyayo House for 30 days in October 1986. Thereafter he was released without any charges being preferred against him. He filed a suit, James Mwaura Mugo vs. Attorney General, Petition 36 of 2010 at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi, for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 850,000.

8. **Koigi Wamwere** was held and tortured at Nyayo House for 11 days. Subsequently he was charged with the offence of treason and held in detention for 2 years and 2 months after which the Attorney General entered nolle prosequi, effectively dropping the charges preferred against him. He filed a suit Koigi Wamwere vs. Attorney General, Petition 737 of 2009, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. In the suit the petitioner also sought compensation for having been detained without trial in August 1975 to December 1978 and as well in

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61ibid.
62ibid.
63ibid.
64Koigi Wamwere vs. Attorney General [2012] eKLR.
August 1982 to December 1984. The petitioner was awarded a global award of Kshs. 2,500,000 but filed an appeal, Koigi Wamwere vs. Attorney General, Civil Appeal No. 86 of 2013 to have the award enhanced. Accordingly, the Court of Appeal enhanced the award to Kshs. 12,000,000.

9. **Haran Thungu Wakaba** was held and tortured at Nyayo House for 21 days in October-November 1990 and remanded for two and half (2 ½) years on charges of treason that subsequently the Attorney General entered a *nolle prosequi* on 24 June 1992, effectively dropping the charges preferred against him. He filed a suit, Harun Thungu Wakaba vs. Attorney General, Miscellaneous Application 1411 of 2004 at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 3,000,000.

10. **Samuel Kaberere Njenga** was held and tortured at Nyayo House for 14 days in November 1987. Thereafter he was released without any charges preferred against him. He filed a suit, Samuel Kaberere Njenga vs. Attorney General Constitutional Reference No. 1187 of 2003, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,500,000.

11. **Ali Cheptegei Saikwa** was held and tortured at Nyayo House for 34 days in September-October 1987. Thereafter, after 61 days of being held incommunicado he was charged with the offence of being a member of unlawful association, and sentenced to serve 3 years imprisonment. He filed a suit Ali Cheptegei Saikwa vs. Attorney General Miscellaneous. Application No. 35 of 2005 at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,500,000.

12. **James Mwangi Kariuki** was held and tortured at Nyayo House for 43 days in June-July 1986, during which he lost his memory and was given medical attention but continue to be confined in Nyayo House basement then released after 30 days with no charges preferred against him. He filed a suit James Mwangi Kariuki vs. Attorney General Miscellaneous. Application No. 36 of 2005 at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated

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67ibid.
68ibid.
69ibid.
for those violations. He was awarded general damages in the sum of Kshs. 2,200,000.

13. Paul Amina was held and tortured at Nyayo House for 8 days in August 1987 and subsequently detained at Kamiti Maximum Security Prison for 6 months. He filed a suit Paul Amina vs. Attorney General, Miscellaneous. Application. No. 37 of 2005\textsuperscript{70}, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,500,000.

14. Silvanus Okech Oduor was held and tortured at Nyayo House for 77 days in September-December 1986. He served 6 years of imprisonment at Kamiti Maximum Security Prison after being convicted on his plea of guilty\textsuperscript{*} for being a member of unlawful organisation. He filed a suit Silvanus Okech Oduor vs. Attorney General, Miscellaneous. Application. No. 1311 of 2004\textsuperscript{71}, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,500,000.

15. Edward Akongo Oyugi was held and tortured at Nyayo House for 2 ½ weeks in July 1990. He was charged with the offence of treason that was later reduced to a charge of sedition for which he was sentenced to serve 7 years imprisonment. He appealed against the sentence. He filed a suit against the government, Edward Akongo Oyugi vs. Attorney General, Miscellaneous. Application. No. 1309 of 2005\textsuperscript{72}, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,500,000.

16. Joe Njoroge was held and tortured at Nyayo House for several days in November-December 1990. He was charged with the offence of importing seditious material, 798 copies of magazine African Events and detained for 15 months at Kamiti Maximum Security Prison after which the Attorney General entered \textit{nolle prosequi}, effectively dropping the charges preferred against him. He filed a suit against the government, Joe Njoroge vs. Attorney General, Miscellaneous. Application. No. 1310 of 2005\textsuperscript{73}, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000.

17. Kiongo Maina was held and tortured at Nyayo House for 26 days in March 1986. He was charged with the offence of being a member of unlawful organisation and sentenced to serve

\textsuperscript{70}ibid.
\textsuperscript{71}ibid.
\textsuperscript{72}ibid.
\textsuperscript{73}ibid.
5 years imprisonment on his plea of guilty.* He filed a suit against the government, Kiongo Maina vs. Attorney General, Miscellaneous. Application. No. 1312 of 2005, at High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000.

18. **Florence Nyaguthie Murage** was held and tortured at Nyayo House for several days in August 1990. She was charged with the offence of being in possession of seditious material and detained for 6 months after which the Attorney General entered *nolle prosequi*, effectively dropping the charges preferred against her. She filed a suit against the government, Florence Nyaguthie Murage vs. Attorney General, Miscellaneous. Application. No. 1313 of 2005, at the High Court of Kenya in Nairobi for a declaration that her fundamental rights and freedoms were violated and to be compensated for those violations. She was awarded general damages in the sum of Kshs. 1,500,000.

19. **Kamonye Manje** was held and tortured at Nyayo House for 13 days in March 1986. He was charged with the offence of being a member of unlawful organisation and sentenced on his plea of guilty* to serve 5 years imprisonment. The sentence was reduced on 3 ½ years on his appeal to High Court, and on further appealing to the court of appeal his conviction was quashed and the sentence set aside. He filed a suit against the government, Kamonye Manje vs. Attorney General, Miscellaneous. Application. No. 34 of 2005, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,500,000.

20. **Munene Kamau** was held and tortured at Nyayo House for several days in 1987. Thereafter he was released without any charges being preferred against him. He filed a suit against the government, Munene Kamau vs. Attorney General, Miscellaneous. Application. No. 1743 of 2004, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,000,000.

21. **Frederick Murage Gathuku** was held and tortured at Nyayo House for many days in August-September 1986. Thereafter he was released without any charges being preferred against him. He filed a suit against the government, Frederick Murage Gathuku vs. Attorney General, Miscellaneous. Application. No. 1741 of 2004, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,000,000.
and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,000,000.

22. Stephen Mulili Kituu was held and tortured at Nyayo House for 30 days in October-November 1989. He was charged with the offence of being a member of an unlawful organisation and sentenced to serve 4 years imprisonment on his plea of guilty. He filed a suit against the government, Stephen Mulili Kituu vs. Attorney General, Miscellaneous. Application. No. 1744 of 2004, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,500,000.

23. Wilson Nduati Njoroge was held and tortured at Nyayo House for 3 days and thereafter held for another 24 days at Muthaiga Police Station in June-July 1987. Thereafter he was released without any charges preferred against him. He filed a suit against the government, Wilson Nduati Njoroge vs. Attorney General, Miscellaneous. Application. No. 1742 of 2004, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,500,000.

24. Francis Nduthu Karanja was held and tortured at Nyayo House for 28 days in January 1987. He was subsequently charged with the offense of failing to prevent a felony. He filed a suit against the government, Francis Nduthu Karanja vs. Attorney General, Miscellaneous. Application. No. 1745 of 2004, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000.

25. James H. Gitau Mwara was held and tortured at Nyayo House for 14 days in October 1990. He was charged with the offence of treason and remanded for 2 ½ years at Kamiti Maximum Security Prison where he continued to be subjected to torture, inhuman and degrading treatment. He was released on 24th June 1992 after the Attorney General entered nolle prosequi, effectively dropping the charges preferred against him. He filed a suit against the government, James H. Gitau Mwara vs. Attorney General, Miscellaneous. Application. No. 56 of 2004, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,500,000.
26. **George Chitechi Osundwa** was held and tortured at Nyayo House for 7 days in March 1986. Thereafter he was released without any charges preferred against him. He filed a suit against the government, George Chitechi Osundwa vs. Attorney General, Miscellaneous. Application. No. 409 of 2004, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,500,000.

27. **Zachariah Kariuki Mwati** was held and tortured at Nyayo House for 16 days in December 1988. He was charged with the offences of being in possession of seditious material and being a member of unlawful organisation. He was sentenced on his plea of guilty to serve 4 years imprisonment. He filed a suit against the government, Zachariah Kariuki Mwati vs. Attorney General, Miscellaneous. Application. No. 1183 of 2003, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000.

28. **Jackson Maina Wangombe** was held and tortured at Nyayo House for 30 days in October 1988. He was charged with the offence of being a member of unlawful organisation and sentenced on his plea of guilty to serve 2 years imprisonment. He filed a suit against the government, Jackson Maina Wangombe vs. Attorney General, Miscellaneous. Application. No. 1182 of 2003, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000.

29. **Peter G. Kihara** was held and tortured at Nyayo House for 69 days in January-April 1986. He was charged with the offence of being in possession of seditious material and sentenced on his plea of guilty to serve 4 ½ years’ imprisonment. After he served his term, he was arrested again, held and tortured at Nyayo House for 14 days and released without any charges being preferred against him. He filed a suit against the government, Peter G. Kihara vs. Attorney General, Miscellaneous. Application. No. 1189 of 2003, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,500,000.

30. **Bernard Kihiu Matama** was held and tortured at Nyayo House for 8 days in October 1990 for allegedly being related to Rumba Kinutha, an advocate of the High Court of Kenya and critic of the then government. Thereafter he
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was released without any charges being preferred against him. He filed a suit against the government, Bernard Kihui Matama vs. Attorney General, Petition. No. 208 of 201387 at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 400,000.

31. **Joseph Ndumia Theuri** was held and tortured at Nyayo House for 14 days in October 1989 for allegedly being a member of Mwakenya Movement and released thereafter without any charges being preferred against him. He filed a suit against the government, Joseph Ndumia Theuri vs. Attorney General, Miscellaneous Application No. 729 of 200988, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,500,000.

32. **Edith Wairimu Kariuki** was held and tortured at Nyayo House for 5 days in March 1988 for allegedly being a follower of Koigi Wamwere-a dissent to the government of the day- and for distributing seditious publication Pambana and Mpanishi. She was thereafter released without any charges being preferred against her. She filed a suit against the government, Edith Wairimu Kariuki vs. Attorney General, Miscellaneous Application No. 41 of 201089, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that her fundamental rights and freedoms were violated and to be compensated for those violations. She was awarded general damages in the sum of Kshs. 2,000,000.

33. **David Munga Kibiyo** was held and tortured at Nyayo House for 19 days in July 1986 for allegedly being a member of Mwakenya Movement and released thereafter without any charges being preferred against him. He filed a suit against the government, David Munga Kibiyo vs. Attorney General, Miscellaneous Application No. 42 of 201090, at the Constitutional and Human Rights Division High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 500,000.

34. **Oduor Ong’wen** was held and tortured at Nyayo House for 14 days in April 1986. He was charged with the offence of sedition and sentenced on his plea of guilty* to serve 4 years imprisonment. He filed a suit against the government, Oduor Ong’wen vs. Attorney General, Miscellaneous Application No. 777

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87Bernard Kihui Matama vs. Attorney General (2015) eKLR.
89Ibid.
90Joseph Ndumia Theuri vs. Attorney General (2013) eKLR.
of 2008\textsuperscript{31}, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,500,000 and exemplary damages in the sum of Kshs. 2,000,000.

35. James Aggrey Akumu was held and tortured at Nyayo House for 22 days in April 1987. He was charged with the offences of being a member of Mwakenya Movement and failing to inform the government about Mwakenya Movement, and sentenced on his plea of guilty* to serve 3 ½ years imprisonment. He filed a suit against the government, James Aggrey Akumu vs. Attorney General, Miscellaneous Application No. 778 of 2008\textsuperscript{32}, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,500,000 and exemplary damages in the sum of Kshs. 2,000,000.

36. Wilson Awour Ang’onga was held and tortured at Nyayo House for 26 days in September-October 1989. He was charged with the offence of being a member of Mwakenya Movement and sentenced on his plea of guilty* to serve 4½ years imprisonment. He filed a suit against the government, Wilson Awour Ang’onga vs. Attorney General, Miscellaneous Application No. 779 of 2008\textsuperscript{33}, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,500,000 and exemplary damages in the sum of Kshs. 2,000,000.

37. Alogo Raila was held and tortured at Nyayo House for 26 days in October 1987-January 1988 and released thereafter without any charges being preferred against him. He filed a suit against the government, Alogo Raila vs. Attorney General, Miscellaneous Application No. 781 of 2008\textsuperscript{34}, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,500,000 and exemplary damages in the sum of Kshs 1,500,000.

38. Benjamin Adahi Muhehe was held in Kileleshwa for 59 days and thereafter incarcerated and tortured at Nyayo House for 9 days in April 1989. He was charged with the offence of being a member of Mwakenya Movement and detained for 3 months. He was sentenced on his plea of guilty* to serve 1 year imprisonment. He filed a
suit against the government, Benjamin Adahi Muhehe vs. Attorney General, Miscellaneous Application No. 782 of 2008\textsuperscript{95}, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,500,000 and exemplary damages in the sum of Kshs. 1,000,000.

39. Gabriel Kariuki Mung’ura was held and tortured at Nyayo House for 7 days in October 1988 on suspicion he had to be a member of that unlawful movement since he was the father of one Edward Koigi, a young university graduate who had earlier been detained and an uncle of Koigi Wa Wamwere, who was also facing criminal charges for offence of treason. The petitioner was released without any charges being preferred against him. He filed a suit against the government, Gabriel Kariuki Mung’ura vs. Attorney General, Miscellaneous Application No. 785 of 2008\textsuperscript{96}, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,500,000 and exemplary damages in the sum of Kshs. 2,000,000.

40. Edward Koigi Kariuki was held and tortured at Nyayo House for 10 days in August-September 1988. He was charged with the offence of planning to overthrow government and was sentenced on his plea of guilty\textsuperscript{*} to serve 7 years imprisonment. He filed a suit against the government, Edward Koigi Kariuki vs. Attorney General, Miscellaneous Application No. 786 of 2008\textsuperscript{97}, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,500,000 and exemplary damages in the sum of Kshs. 2,500,000.

41. Geoffrey Kuria Kariuki was held and tortured at Nyayo House for 14 days in October 1990 for allegedly being a member of Kenya Patriotic Front, an unlawful organisation. He was charged with the offence of treason and pleaded not guilty and thus remanded in solitary confinement for 2 ½ years at Kamiti Maximum Security Prison where he continued to be subjected to cruel and inhuman treatment. He was released on 19th January 1993 after the Attorney General entered \textit{nolle prosequi}, effectively dropping the charges preferred against him. He filed a suit against the government, Geoffrey Kuria Kariuki vs. Attorney General, Miscellaneous Application No. 787 of 2008\textsuperscript{98}, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 3,500,000 and exemplary damages in the sum of Kshs. 3,000,000.

\textsuperscript{95}ibid.  \textsuperscript{96}ibid.  \textsuperscript{97}ibid.  \textsuperscript{98}ibid.
42. **Milton Chege Kimani** was held and tortured at Nyayo House for 21 days in August-September 1988. He was charged with the offence of being a member of Kenya Patriotic Front, an unlawful organisation and was sentenced on his plea of guilty* to serve 7 years imprisonment. He filed a suit against the government, Milton Chege Kimani vs. Attorney General, Miscellaneous Application No. 788 of 2008\(^{100}\), at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 3,500,000 and exemplary damages in the sum of Kshs. 3,000,000.

43. **Gibson Maina Kimani** was held and tortured at Nyayo House for 16 days in August-September 1988 for allegedly being a member of Kenya Patriotic Front, an unlawful organisation. He was charged with the offence of being in possession of seditious material and was sentenced on his plea of guilty* to serve 7 years imprisonment. On appeal, his sentence was reduced to 5 years imprisonment. He filed a suit against the government, Gibson Maina Kimani vs. Attorney General, Miscellaneous Application No. 789 of 2008\(^{101}\), at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 3,500,000 and exemplary damages in the sum of Kshs. 3,000,000.

44. **Njuguna Mutonya** was held and tortured at Nyayo House for 10 days in April-May 1986 for allegedly being a member of Mwakenya Movement, an unlawful organisation. He was charged with the offence of being in possession of seditious publication and was sentenced on his plea of guilty* to serve 4 years imprisonment. He filed a suit against the government, Njuguna Mutonya vs. Attorney General, Miscellaneous Application No. 790 of 2008\(^{102}\), at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,500,000 and exemplary damages in the sum of Kshs. 2,000,000.

45. **Wanderi Muthigani** was held and tortured at Nyayo House for 7 days in May 1986 for allegedly being a member of Mwakenya Movement, an unlawful organisation. He was charged with the offence of being in possession of Pambana, seditious publication, and was sentenced on his plea of guilty* to serve 15 months imprisonment. He filed a suit against the government, Wanderi Muthigani vs. Attorney General, Miscellaneous Application No. 791 of 2008\(^{103}\), at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,500,000 and exemplary damages in the sum of Kshs. 2,000,000.

\(^{100}\)ibid.  
\(^{101}\)ibid.  
\(^{102}\)ibid.  
\(^{103}\)ibid.
for those violations. He was awarded general damages in the sum of Kshs. 2,000,000 and exemplary damages in the sum of Kshs. 1,500,000.

46. Peter Njuguna Ndingo was held and tortured at Nyayo House for 15 days in March-April 1986 for allegedly being a member of Mwakenya Movement, an unlawful organisation. He was charged with the offence of being in possession of seditious publication and was sentenced on his plea of guilty\(^*\) to serve 4 years imprisonment. He filed a suit against the government, Peter Njuguna Ndingo vs. Attorney General, Miscellaneous Application No. 793 of 2008\(^{103}\), at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,500,000 and exemplary damages in the sum of Kshs. 2,000,000.

47. George John Njenga Wainaina was held and tortured at Nyayo House for 54 days in April-July 1987 for allegedly being a member of Mwakenya Movement, an unlawful organisation and engaging in anti-government activities. He was released thereafter. He filed a suit against the government, George John Njenga Wainaina vs. Attorney General, Miscellaneous Application No. 794 of 2008\(^{104}\), at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000 and exemplary damages in the sum of Kshs. 2,000,000.

48. James Mwangi Kahiri was held and tortured at Nyayo House for 14 days in November-December 1986 for allegedly failing to prevent publication and distribution of Mpatanishi, a seditious publication. He was charged with the offence of failing to prevent publication and distribution of Mpatanishi, a seditious publication and was sentenced on his plea of guilty\(^*\) to serve 15 months imprisonment. He filed a suit against the government, James Mwangi Kahiri vs. Attorney General, Miscellaneous Application No. 795 of 2008\(^{105}\), at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000 and exemplary damages in the sum of Kshs. 1,500,000.

49. Bernard Wanjohi Kinga was held and tortured at Nyayo House for 17 days in June-July 1986 for allegedly being a member of Mwakenya Movement, an unlawful organisation. He was released thereafter without any charges preferred against him. He filed a suit against the government, Bernard Wanjohi Kinga vs. Attorney General, Miscellaneous Application No. 796 of 2008\(^{106}\), at the High Court of Kenya

\(^{103}\)ibid.
\(^{104}\)ibid.
\(^{105}\)ibid.
\(^{106}\)ibid.
in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,500,000 and exemplary damages in the sum of Kshs. 1,000,000.

50. **Francis Chege Kahiga** was held and tortured at Nyayo House for 18 days in December 1986 to compel him to disclose ‘what he knew about Mwakenya Movement, an unlawful organisation. He was charged with the offences of taking an unlawful oath and failing to prevent a felony. He was sentenced to serve 5 ½ years imprisonment on his own plea of guilty. He filed a suit against the government, Francis Chege Kahiga vs. Attorney General, Miscellaneous Application No. 797 of 2008\(^\text{107}\), at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 3,000,000 and exemplary damages in the sum of Kshs. 3,000,000.

51. **George Kwanyah Odidi** was held and tortured at Nyayo House for 54 days in February-April 1987 allegedly for being in communication with one Osumba who was based in London where he had undertaken his undergraduate studies. He was thereafter released with no charges being preferred against him but was placed under supervision of his local police station where he was required to report after every 2 weeks. He filed a suit against the government, Andrew Muindi Naulika vs. Attorney General, Miscellaneous Application No. 798 of 2008\(^\text{108}\), at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000 and exemplary damages in the sum of Kshs. 1,000,000.

52. **Andrew Muindi Naulika** was held and tortured at Nyayo House for 19 days in February-March 1991 allegedly for being involved in the activities of February Eighteen Movement, an unlawful organisation. He was thereafter released with no charges being preferred against him but was placed under supervision of his local police station where he was required to report after every 2 weeks. He filed a suit against the government, Andrew Muindi Naulika vs. Attorney General, Miscellaneous Application No. 799 of 2008\(^\text{109}\), at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 3,500,000 and exemplary damages in the sum of Kshs. 3,000,000.

53. **Robert Wafula Buke** was held and tortured at Nyayo House for 15 days in November 1987 allegedly for being involved in anti-government activities. He was charged for the offences of espionage against the government of Kenya and engaging in acts...
prejudicial to the interest of Kenya. He was sentenced to serve 5 years imprisonment on his plea of guilty*. He filed a suit against the government, Robert Wafula Buke vs. Attorney General, Miscellaneous Application No. 800 of 2008110, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 3,500,000 and exemplary damages in the sum of Kshs. 3,000,000.

54. Philip Wanjau Kahiu was held and tortured at various police stations and as well at Nyayo House for many days in 1989 for allegedly for being a member of Kenya Patriotic Front, an unlawful organisation. He was also tortured for allegedly harboring guerilla and transporting firearms. He was released from Nyayo House after no charges were preferred against him. He filed a suit against the government, Philip Wanjau Kahiu vs. Attorney General, Miscellaneous Application No. 801 of 2008111, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,500,000 and exemplary damages in the sum of Kshs. 2,000,000.

55. Jennifer Muthoni Njoroge was held and tortured at Nyayo House for 7 days in November 1990 to compel her to disclose the whereabouts of her husband, who allegedly had escape to Uganda to avoid being a witness against Koigi Wamwere and other persons that had been charged with the offence of treason. She was released from Nyayo House after no charges were preferred against her. She filed a suit against the government, Jennifer Muthoni Njoroge vs. Republic, Petition. No. 340 of 2009112, at the High Court of Kenya in Nairobi for a declaration that her fundamental rights and freedoms were violated and to be compensated for those violations. She was awarded general damages in the sum of Kshs. 1,500,000.

56. Njoroge King’ori was held and tortured at Nyayo House for 22 days in October 1990 for allegedly working with Koigi Wamwere Rumba Kinuthia and Mirugi Kariuki to overthrow the Government of Kenya and other persons that had been charged with the offence of treason. He was released from Nyayo House after no charges were preferred against him. He filed a suit against the government, Njoroge King’ori vs. Republic, Petition. No. 341 of 2009113, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,500,000.

110ibid.
111ibid.
113ibid.
57. **Thomas Kanyi King’ori** was held and tortured at Nyayo House for 18 days in November 1990 to compel him to disclose the whereabouts of his brother, Njoroge King’ori (of Njoroge King’ori vs. Attorney General, Petition. No. 341 of 2009), and as well of Koigi Wamwere, Rumba Kinuthia and Mirugi Kariuki. Thomas was released from Nyayo House after no charges were preferred against him. He filed a suit against the government, Thomas Kanyi King’ori vs. Republic, Petition No. 342 of 2009\(^{114}\) at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000.

58. **James Mwangi Kariithi** was held and tortured at Nyayo House for 19 days in October-November 1990. He was thereafter released from Nyayo House after no charges were preferred against him. He filed a suit against the government, James Mwangi Kariithi vs. Republic, Petition No. 343 of 2009\(^{115}\), at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000.

59. **Josphat Munene Warui** was held and tortured at Nyayo House for 83 days in March-June 1984 allegedly for being a member of Mwakenya Movement, an unlawful organisation. He was thereafter released from Nyayo House after no charges were preferred against him. He filed a suit against the government, Josphat Munene Warui vs. Republic, Petition No. 344 of 2009\(^{116}\), at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 6,000,000.

60. **James Muruga Wamburu** was held and tortured at Nyayo House for 14 days in August-September 1988 allegedly for being associated with Mwakenya Movement, an unlawful organisation. He was thereafter released from Nyayo House after no charges were preferred against him. He filed a suit against the government, James Muruga Wamburu vs. Republic, Petition No. 345 of 2009\(^{117}\), at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000.

61. **Gacheche wa Miano** was held and tortured at Nyayo House for 70 days in April-June 1986 allegedly for being associated with Mwakenya Movement, an unlawful organisation. He was thereafter released from Nyayo House after no charges were preferred against him. He filed a suit against the government, Gacheche wa Miano vs.
62. **Odindo Opiata** was held and tortured at Nyayo House for 14 days in March-April 1986 allegedly for being associated with Mwakenya Movement, an unlawful organisation. He was charged with the offence of being in possession of seditious publication and was sentenced to serve 4 years imprisonment on his plea of guilty.* He filed a suit against the government, Odindo Opiata vs. Republic, Petition No. 347 of 2009119, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,750,000.

63. **Kimani wa Nyoike** was held and tortured at Nyayo House for 28 days in September-October 1988 on allegation of being a member of Mwakenya Movement, an unlawful organisation. He was charged with the offence of concealing a felony and was sentenced to serve 20 months imprisonment on his plea of guilty.* He filed a suit against the government, Kimani wa Nyoike vs. Republic, Petition No. 348 of 2009120, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,750,000.

64. **Charles Kuria Wamwere** was held and tortured at Nyayo House for 11 days in September 1990 on allegation of being a member of Mwakenya Movement, an unlawful organisation. He was charged with the offence of being a member of unlawful organisation and was sentenced to serve 4 years imprisonment on his plea of guilty.* He filed a suit against the government, Charles Kuria Wamwere vs. Republic, Petition No. 348 of 2009121, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,500,000.

65. **Kimunya Kamana** was held and tortured at Nyayo House for 30 days in January 1987 on allegation of being a member of Mwakenya Movement, an unlawful organisation. He was charged with the offence of being a member of unlawful organisation and was sentenced to serve 4 years imprisonment on his plea of guilty.* He filed a suit against the government, Kimunya Kamana vs. Republic, Petition No. 350 of 2009122, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,500,000.

118ibid.
119ibid.
120ibid.
121ibid.
122ibid.
compensated for those violations. He was awarded general damages in the sum of Kshs. 3,000,000.

66. **Maurice Justice Adongo** was held and tortured at Nyayo House for 78 days on diverse dates in 1982 and again in 1986 on allegation of being a member of Mwakenya Movement, an unlawful organisation. He was charged with the offence of being in possession of seditious publication and was sentenced to serve 15 months imprisonment on his plea of guilty.* He filed a suit against the government, Maurice Justice Adongo vs. Attorney General, Petition No. 240 of 2009[123], at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 4,000,000.

67. **Hezbon Ombwayo Odiero** was held and tortured at various police stations and as well at Nyayo House for 2 years and 8 months as from August 1982 on allegation of trying to overthrow the government. Given he was a military officer at the material time he was tried at court martial and his services terminated. He filed a suit against the government enjoining Minister for State for Provincial Administration & Internal Security, Ministry of Defence, the Attorney General and the Ministry of Home Affairs as respondents, Hezbon Ombwayo Odiero vs. Minister for State for Provincial Administration & Internal Security & 3 Others, Petition No.9 of 2012[124], at the High Court of Kenya in Kisumu: he sought a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 5,000,000.

68. **Paul Kamau Waweru** was held and tortured at various cells in police station as well Nyayo House for 31 days in March–May 1987 allegedly for being a member of Mwakenya Movement. He was thereafter released without any charge being preferred against him. He filed a suit against the government, Paul Kamau Waweru vs. Attorney General, Petition No. 183 of 2011[125], at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000.

69. **James Omwenga Achira** was held and tortured at Nyayo House for 42 days in December 1986-January 1987 allegedly for being a member of Mwakenya Movement. He was charged with the offence of being a member of unlawful organisation and sentenced to serve 2 years imprisonment on his plea of guilty.* He filed a suit against the

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[125]Paul Kamau Waweru & Another vs. Attorney General (2014) eKLR.
government, James Omwenga Achira vs. Attorney General, Petition No. 242 of 2009\textsuperscript{126}, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,500,000.

70. **Gitobu Imanyara**'s fundamental rights and freedoms were violated by the government between the period 1982 and 1992. In 1982 Gitobu was victimised for providing legal services to military officers who had been charged with offences of mutiny and treason following attempted coup in 1982. Gitobu was charged and sentenced to serve for 5 years for allegedly holding onto of his client’s money during which he was denied bail and the right to secure legal representation in violation of his constitutional rights enshrined Section 72 of the Repealed Constitution. When he successfully appealed against this charges, upon the State’s instigation he was struck off the roll of advocates and his family evicted from their home that he had bought from government’s corporation, Housing Finance Corporation of Kenya. In July 1990 Gitobu was held and tortured at Nyayo House for 10 days for his advocacy work that called for integration of democracy, rule of law and constitutionalism in Kenya. After he was released from Nyayo House, he was detained in Kamiti Maximum Security Prison under deplorable conditions and subjected to inhuman and cruel treatment for several days. Once again, in 1991 he was held incommunicado for many days at Jomo Kenyatta International Airport police cells and charged with the offence of sedition, on account on articles he published in his magazine the Nairobi Law Monthly. During his trial for the offence of sedition he was denied bail and remanded at Kamiti Maximum Security Prison for several days under deplorable conditions and subjected to cruel and inhuman treatment. He filed a suit against the government, Gitobu Imanyara vs. Attorney General, Petition No. 78 of 2010\textsuperscript{127}, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government during the period 1982 and 1992 and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 15,000,000.

71. **Wachira Weheire** was held and tortured by Nyayo House for 16 days in December 1986. He was charged with the offences of failing to prevent a felony and being a member of an unlawful organisation. He was sentenced to serve 4 years and 18 months imprisonment on his plea of guilty.\textsuperscript{*} He filed a suit against the government, Wachira Weheire vs. Attorney General, Petition No. 1184

\textsuperscript{126}James Omwenga Achira & Another vs. Attorney General [2012] eKLR.

\textsuperscript{127}Gitobu Imanyara & 2 Others vs. Attorney General [2013] eKLR. (Petition No. 78 of 2009 consolidated with Petition No. 80 of 2010 and Petition No. 81 of 2010).
of 2003\textsuperscript{128}, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,500,000.

72. Odungi Randa Ong’ombe was held and tortured at Nyayo House for 17 days in December 1986 for allegedly being a member of Mwakenya Movement. He was charged with the offence of being a member of an unlawful organisation and sentenced to serve 4 years imprisonment on his plea of guilty.\textsuperscript{*} He filed a suit against the government, Odungi Randa Ong’ombe vs. Attorney General, Petition No. 780 of 2008\textsuperscript{129}, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000.

73. Said Fondo Kalume was held and tortured at Nyayo House for 69 days in November 1989-March 1990 for holding views that were at variance with those of KANU government. At the time of his arrest, the police took away Kshs. 940,000 that he was going to pay his farm workers. He filed a suit against the government, Said Fondo Kalume vs. Attorney General, Petition No. 780 of 2008\textsuperscript{130}, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000.

74. Alex J Wagunya Kaggiri was held and tortured at Nyayo House for 17 days in September-October 1988 for being a member of Kenya Patriotic Front and being in possession of seditious material. Thereafter he was released without any charges preferred against him. He filed a suit against the government, Alex J Wagunya Kaggiri vs. Attorney General, Petition No. 1 of 2010\textsuperscript{131}, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded global damages in the sum of Kshs. 2,000,000.

75. David Njunguna Wanyoike was held and tortured at Nyayo House for 29 days in October-November 1986 for allegedly being in possession of seditious material. He was charged with the offence of failure to prevent felony and sentenced on his plea of guilty.\textsuperscript{*} He filed a suit against the government, David Njunguna Wanyoike vs. Attorney General, Petition No. 729 of 2006\textsuperscript{132}, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded global damages in the sum of Kshs. 2,000,000.

\textsuperscript{128}Wachira Weheire vs. Attorney General [2010] eKLR.
\textsuperscript{129}Odungi Randa Ong’ombe vs. Attorney General [2012] eKLR.
\textsuperscript{130}Said Fondo Kalume vs. Attorney General [2013] eKLR.
\textsuperscript{131}Alex J Wagunya Kaggiri vs. Attorney General [2013] eKLR.
\textsuperscript{132}David Njunguna Wanyoike vs. Attorney General [2012] eKLR.
for those violations. He was awarded global damages in the sum of Kshs. 2,000,000.

76. **Mwangi Mathenge** was held and tortured at various police stations and as well at Nyayo House for 36 days in December 1986-February 1987 for his views that were at variance with the ones of KANU government. He was charged with the offence of taking unlawful oath and sentenced on his plea of guilty to serve imprisonment for 2½ years. He filed a suit against the government, Mwangi Mathenge vs. Attorney General, Petition No. 240 of 2009133, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded global damages in the sum of Kshs. 2,000,000.

77. **Herman Marine Nderi** was held and tortured at Nyayo House for 28 days in December 1985-January 1986 for allegedly taking oath to overthrow the then government. He was charged with the offence of taking an oath to overthrow the government and sentenced to serve 4½ years imprisonment on his plea of guilty.* He filed a suit against the government, Herman Marine vs. Attorney General, Petition No. 115 of 2011134, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded damages in the sum of Kshs. 7,907,011 being total sum for: Kshs. 107,011 for special damages, Kshs. 3,500,000 for general damages for malicious prosecution, Kshs. 3,000,000 for exemplary damages, Kshs. 800,000 for pain suffering, and Kshs. 500,000 for loss of earnings.

78. **Gitari Cyrus Muraguri** was held and tortured at Nyayo House for 5 weeks in February-March 1989 on allegations he belonged to Mwakenya Movement, an unlawful organisation. He was arraigned in court on charges of being a member of unlawful organisation and held remand but subsequently the Attorney General entered *nolle prosequi*, effectively dropping the charges preferred against him. He filed a suit against the government, Gitari Cyrus Muraguri vs. Attorney General, Petition No. 1185 of 2003135, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded damages in the sum of Kshs. 7,907,011 being total sum for: Kshs. 107,011 for special damages, Kshs. 3,500,000 for general damages for malicious prosecution, Kshs. 3,000,000 for exemplary damages, Kshs. 800,000 for pain suffering, and Kshs. 500,000 for loss of earnings.

79. **Pitalis Owenyo Justus Agutu** was held and tortured at Nyayo House for 14 days in December 1986 for allegedly a member of proscribed organisation Mwakenya Movement. He was charged with the offence of sedition and sentenced to serve 4 years imprisonment on his plea of guilty.* He filed a suit against the government,

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133Mwangi Mathenge vs. Attorney General [2012] eKLR.
134Herman Marine Nderi vs. Attorney General [2012] eKLR.
135Gitari Cyrus Muraguri vs. Attorney General [2011] eKLR.
Pitalis Owenyo Justus Agutu vs. Attorney General, Petition No. 784 of 2008\textsuperscript{136}, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded global damages in the sum of Kshs. 2,500,000.

80. **Stanley Waweru Kariuki** was held and tortured at Nyayo House for 27 days in September-October 1988 for allegedly being a bandit and member of underground movement. He was arraigned in court at 6.00 pm and charged with the offences of being in possession of seditious material and being a member of unlawful society. He was sentenced to serve 5 years imprisonment on his plea of guilty.\textsuperscript{*} He filed a suit against the government, Stanley Waweru Kariuki vs. Attorney General, Petition No. 1376 of 2003\textsuperscript{137}, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded global damages in the sum of Kshs. 3,500,000.

81. **Simon Maina Waweru** was held and tortured at Nyayo House for 61 days in May-June 1986 for allegedly being a bandit and member of underground movement. He was thereafter released without charges being preferred against him. He filed a suit against the government, Simon Maina Waweru vs. Attorney General, Petition No. 1377 of 2003\textsuperscript{138}, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded global damages in the sum of Kshs. 3,000,000.

82. **Simon Njaaga Mbote** was held and tortured at Nyayo House for 17 days in May-February 1989 for allegedly generating a document on Mwakenya Movement, a proscribed organisation. He was thereafter released without charges being preferred against him. He filed a suit against the government, Simon Njaaga Mbote vs. Attorney General, Petition No. 46 of 2010\textsuperscript{139}, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded global damages in the sum of Kshs. 1,000,000.

83. **Benson Thiru Karanja** was held and tortured at Nyayo House for 22 days in November-December 1987 for allegedly being a member of Mwakenya Movement. He was thereafter released without charges being preferred against him. He filed a suit against the

\textsuperscript{136}Pitalis Owenyo Justus Agutu vs. Attorney General [2012] eKLR.
\textsuperscript{137}Stanley Waweru Kariuki vs. Attorney General [2013] eKLR.
\textsuperscript{138}Simon Maina Waweru vs. Attorney General [2014] eKLR.
\textsuperscript{139}Simon Njaaga Mbote vs. Attorney General [2012] eKLR.
government, Benson Thiru Karanja vs. Attorney General, Petition No. 237 of 2010\textsuperscript{140}, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded global damages in the sum of Kshs. 1,000,000.

84. Karige Kihoro was held and tortured at Nyayo House for 5 months and 7 days in February-August 1986 for allegedly for being a member of Mwakenya Movement and being in possession of sedition publication, Mpatanishi. He was thereafter released without charges being preferred against him. He filed a suit against the government, Karige Kihoro vs. Attorney General, Petition No. 721 of 2009\textsuperscript{141}, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. In his sought he also sought declaration that his fundamental rights and freedoms were violated when he was unlawfully incarcerated for 21 days in 1969 and unlawfully incarcerated for 17 days in 1975 by the Jomo Kenyatta’s government. He was awarded global damages in the sum of Kshs. 5,000,000.

85. John Murethii Kiagayu was held and tortured at Nyayo House for 48 days in June-July 1987 for allegedly for being a member of Mwakenya Movement. He was charged with the offence of being a member of an unlawful society and sentenced to serve 3 years imprisonment on his plea of guilty.\textsuperscript{*} He filed a suit against the government, John Murethii Kiagayu vs. Attorney General, Petition No. 141 of 2011\textsuperscript{142}, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded global damages in the sum of Kshs. 2,500,000.

86. Abuya Abuya was held and tortured at Nyayo House for 4 days in January 1987 to compel him to provide information on Mwakenya Movement and Pambana and Mpatanish, proscribed publications. He was thereafter released without charges being preferred against him. He filed a suit against the government, Abuya Abuya vs. Attorney General, Petition No. 184 of 2013\textsuperscript{143}, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded global damages in the sum of Kshs. 1,000,000.

\textsuperscript{140}Benson Thiru Karanja vs. Attorney General [2012] eKLR.
\textsuperscript{141}Karige Kihoro vs. Attorney General [2013] eKLR.
\textsuperscript{142}John Murethii Kiagayu vs. Attorney General [2013] eKLR.
\textsuperscript{143}Abuya Abuya vs. Attorney General [2014] eKLR.
87. **Michael Danson Mahugu** was held and tortured at Nyayo House for 34 days in February-March 1987 for allegedly being a member of Mwakenya Movement. He was charged with the offence of being a member of an unlawful organisation, Mwakenya Movement and was sentenced to serve 4 years imprisonment on his plea of guilty. He filed a suit against the government, Michael Danson Mahugu vs. Attorney General, Miscellaneous Civil Case No.1375 of 2003, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded global damages in the sum of Kshs. 2,000,000.

88. **Shem Ogola Oketch** was held and tortured at Nyayo House for 39 days in October-November 1986 for allegedly being a member of Mwakenya Movement. He was arraigned in court at 5.00 pm and charged with the offence of taking unlawful oath. He was sentenced to serve 3 years imprisonment on his plea of guilty. He filed a suit against the government, Shem Ogola Oketch vs. Attorney General, Miscellaneous Civil Case No. 1363 of 2003, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,500,000.

89. **Samuel Kaberere Njenga** was held and tortured at Nyayo House for 14 days in for his views that were perceived as anti-government. He was arraigned in court and bonded to keep peace for 1 year. He filed a suit against the government, Samuel Kaberere Njenga vs. Attorney General, Miscellaneous Civil Case No. 1187 of 2003, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,500,000.

90. **Jilan Sabila Labo** was held and tortured at Nyayo House for 14 days in October 1987 to compel him to confess his relationship with one Ali Sakwa who was allegedly associated with the Mwakenya Movement. He was thereafter released without charges being preferred against him. He filed a suit against the government, Jilan Sabila Labo vs. Attorney General, Miscellaneous Civil Case No. 398 of 2013, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,200,000.

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144Michael Danson Mahugu vs. Attorney General [2012] eKLR.
145Shem Ogola Oketch vs. Attorney General [2014] eKLR.
146Samuel Kaberere Njenga vs. Attorney General [2014] eKLR.
147Jilan Sabila Labo vs. Attorney General [2014] eKLR.
91. Mugo Theuri was held and tortured at Nyayo House for 49 days in September-October 1986 on suspicion that as a journalist he had information on Pambana, Mwakenya Movement and anti-government activities. He was charged with the offences of taking of taking unlawful oath and failing to prevent felony, and sentenced to serve 4 years imprisonment on his plea of guilty.* He filed a suit against the government, Mugo Theuri vs. Attorney General, Miscellaneous Civil Case No. 565 of 2005, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded global damages in the sum of Kshs. 2,000,000.

92. Dr. Odhiambo Olel was held and tortured at Nyayo House for 17 days in on suspicion he was a member of Mwakenya Movement. He was charged with the offence of being a member of unlawful organisation and was sentenced to serve 5 years imprisonment. He appealed against the sentence at the Court of Appeal that quashed the conviction and set aside the sentence. He filed a suit against the government, Dr. Odhiambo Olel vs. Attorney General, Miscellaneous Civil Case No. 366 of 1995, at the High Court of Kenya in Kisumu for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded damages in the sum of Kshs. 12,477,675 being total sum of these: Kshs. 1,547,435 for special damages (medical expenses), Kshs. 930,240 for loss of salary, Kshs. 1,500,000 for loss of pension, Kshs. 4,500,000 for general damages for malicious prosecution and Kshs. 4,000,000 for exemplary damages.

93. Rumba Kinuthia was held and tortured at Nyayo House for 14 days in October 1990 on suspicion of being a member of Mwakenya Movement and anti-government activities. He was charged with the offence of being a member of unlawful organisation and detained at Kamiti Maximum Security Prison in solitary confinement. Subsequently, the Attorney General entered a *nolle prosequi*, effectively dropping the charges preferred against him. He filed a suit against the government, Rumba Kinuthia vs. Attorney General, Miscellaneous Civil Case No. 1408 of 2004, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded global damages in the sum of Kshs. 1,500,000.

94. Benedict Munene Kariuki was held and tortured at Nyayo House for 11 days in June 1986 on suspicion of being a member of Mwakenya Movement. He was charged with the
offence of being a member of unlawful organisation and sentenced to serve 5 years imprisonment on his plea of guilty. He filed a suit against the government, Benedict Munene Kariuki vs. Attorney General, Petition No. 722 of 2009, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000.

95. **David Odhiambo Dimba** was held and tortured at Nyayo House for 14 days in November 1991 on suspicion of being a member of Mwakenya Movement. He was thereafter released without charges being preferred against him. He filed a suit against the government, David Odhiambo Dimba vs. Attorney General, Petition No. 723 of 2009, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000.

96. **Watson Wahinya Boore** was held and tortured at Nyayo House for 72 days in September 1982-March 1983 on suspicion of being a member of Mwakenya Movement. He was charged with the offence of sedition and sentenced to serve 7 years imprisonment on his plea of guilty. He filed a suit against the government, Watson Wahinya Boore vs. Attorney General, Petition No. 725 of 2009, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000.

97. **Maina Wa Kungu** was held and tortured at Nyayo House for 6 days in September 1988 to compel him to disclose his relationship with Koigi Wamwere, Kimani wa Nyori, and Wanyi Kihoro (persons who had been marked as anti-government by the then government) as and on suspicion he was a member of DTM. He was released from Nyayo House without ant charges preferred against him. He filed a suit against the government, Maina Wa Kungu vs. Attorney General, Petition No. 726 of 2009, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000.
98. Chris Kamuyu was held and tortured at Nyayo House for 23 days in October 1990 on suspicion of being a member of Mwakenya Movement. He was charged with the offence of being a member of unlawful organisation and sentenced to imprisonment on his plea of guilty.* He filed a suit against the government, Chris Kamuyu vs. Attorney General, Petition No. 727 of 2009\textsuperscript{155}, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000.

99. Patrick Ouma Onyango was held and tortured at Nyayo House for 56 days in May 1986 on suspicion of being a member of Mwakenya Movement. Thereafter he was detained without trial for many days at Kamiti Maximum Security Prison where he continued to be subjected to inhuman and cruel treatment. He filed a suit against the government, Patrick Ouma Onyango vs. Attorney General, Petition No. 727 of 2009\textsuperscript{156}, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000.

100. Emma Ainea Wayula was held and tortured at Nyayo House for 14 days in November-December 1990 because of her husband’s alleged involvement with Mwakenya Movement. She was thereafter released without charges being preferred against her. She filed a suit against the government, Emma Ainea Wayula vs. Attorney General, Petition No. 727 of 2009\textsuperscript{157}, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that her fundamental rights and freedoms were violated by the government and to be compensated for those violations. She was awarded general damages in the sum of Kshs. 2,000,000.

101. Isaac Ngotho Mwangi was held and tortured at Nyayo House for 8 days in July 1990 to compel him to disclose information on multi-party and Kenneth Matiba, who was on the forefront in advocating for an end to Kenya’s single party rule. He was thereafter released without charges being preferred against her. He filed a suit against the government, Isaac Ngotho Mwangi vs. Attorney General, Petition No. 730 of 2009\textsuperscript{158}, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000.

\textsuperscript{155}ibid.
\textsuperscript{156}ibid.
\textsuperscript{157}ibid.
\textsuperscript{158}ibid.
102. Odenda Richard Lumumba was held and tortured at Nyayo House for 7 days in April 1986. He was charged and sentenced to serve 4 years imprisonment on his plea of guilty.* He was thereafter released without charges being preferred against him. He filed a suit against the government, Odenda Richard Lumumba vs. Attorney General, Petition No. 731 of 2009159, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000.

103. John Kiriamiti was held and tortured at Nyayo House for 60 days in November-February 1987 suspicion of being a member of Mwakenya Movement. He was charged with the offence of being a member of unlawful organisation and sentenced to serve 7 years imprisonment. On appeal his sentence was reduced to 6 months imprisonment. He filed a suit against the government, John Kiriamiti vs. Attorney General, Petition No. 733 of 2009160, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000.

104. Washington Gichuki Mwangi was held and tortured at Nyayo House for 29 days in April-May 1987 on suspicion of being a member of Mwakenya Movement. He was thereafter released without charges being preferred against him. He filed a suit against the government, Washington Gichuki Mwangi vs. Attorney General, Petition No. 734 of 2009161, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000.

105. Charles Kangara Njoroge was held and tortured at Nyayo House for 30 days in March 1986 allegedly for failure to prevent commission of felony. Thereafter, he was detained without trial for many days at Kamiti Maximum Security Prison where he continued to be subjected to inhuman and cruel treatment. He filed a suit against the government, Charles Kangara Njoroge vs. Attorney General, Petition No. 735 of 2009162, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000.

159ibid.
160ibid.
161ibid.
162ibid.
106. **Richard Khaemba Wekesa** was held and tortured at Nyayo House for 12 days in March-April 1986 because of his alleged association with former Libyan Ambassador to Kenya, Mr. Wani Ali Wese Ilaly and for receiving payment to prepare reports on leading politicians such as Charles Njonjo, Charles Rubia and Jaramogi Oginga Odinga. He was arraigned in court at 6.30 pm and charged and sentenced to serve 10 years imprisonment on his plea of guilty.*On appeal his sentence was reduced to 18 months. He filed a suit against the government, Richard Khaemba Wekesa vs. Attorney General, Petition No. 736 of 2009163, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000.

107. **Cornelius Akelo Onyango** was held and tortured at Nyayo House for 38 days in March-May 1986. He was charged with the offence of sedition and sentenced to serve 4 years imprisonment on his plea of guilty.*He filed a suit against the government, Cornelius Akelo Onyango vs. Attorney General, Petition No. 736 of 2009163, at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000.

108. **Joseph Mwaura Kinuthia** was held and tortured at Nyayo House for 14 days in October 1990 to compel him to confess that Koigi Wamwere, Rumba Kinuthia, late Mirugi Kariuki and 4 other persons were allegedly involved in anti-government subversive activities. Thereafter, he was arraigned in court at 6.45 am and charged with the offence of treason which he entered a plea of not guilty. Joseph was remanded at Kamiti Maximum Security Prison for 2 ½ years in solitary confinement, where he was subjected to torture, inhuman and cruel treatment. On 19th January 1993, the Attorney General entered *nolle prosequi*, effectively dropping the charges preferred against him. He filed a suit against the government, Joseph Mwaura Kinuthia vs. Attorney General, Petition No. 234 of 2009165, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000 and exemplary damages in the sum of Kshs. 2,000,000.

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163ibid.
165ibid.
109. Mary W. Mwaura (wife to Joseph Mwaura Kinuthia) was held and tortured at Nyayo House for 14 days in October 1990 to compel her to confess that Koigi Wamwere, Rumba Kinuthia, late Mirugi Kariuki and 4 other persons were involved in anti-government subversive activities. Thereafter, she was arraigned in court at 6.45 am and charged with the offence of misprision of treason which she entered a plea of not guilty. Mary was remanded at Kamiti Maximum Security Prison for 2 months in solitary confinement, where she was subjected to torture, inhuman and cruel treatment. On 22nd November 1990, the Attorney General entered *nolle prosequi*, effectively dropping the charges preferred against her. She filed a suit against the government, Mary W. Mwaura vs. Attorney General, Petition No. 235 of 2009, at the High Court of Kenya in Nairobi for a declaration that her fundamental rights and freedoms were violated by the government and to be compensated for those violations. She was awarded general damages in the sum of Kshs. 1,500,000 and exemplary damages in the sum of Kshs. 1,000,000.

110. Christine M. Patrick was held and tortured at Nyayo House for 4 days in October 1989 to compel her to confess that she and her husband were members of Mwakenya Movement. Thereafter, she was released from Nyayo House without any charges being preferred against her. She filed a suit against the government, Christine M. Patrick (Kituu) vs. Attorney General, Petition No. 236 of 2009, at the High Court of Kenya in Nairobi for a declaration that her fundamental rights and freedoms were violated by the government and to be compensated for those violations. She was awarded general damages in the sum of Kshs. 1,000,000 and exemplary damages in the sum of Kshs. 500,000.

111. James Keffa Ng’anga was held and tortured at Nyayo House for 9 days in October 1990 on suspicion that together with Koigi Wamwere they possessed firearms and thus to disclose information on this. Thereafter, he was released from Nyayo House without any charges being preferred against him. He filed a suit against the government, James Keffa Ng’anga vs. Attorney General, Petition No. 237 of 2009, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,000,000 and exemplary damages in the sum of Kshs. 500,000.

112. Edward Waruiru Muhia was held and tortured at Nyayo House for a few days in September 1986 on suspicion he was a member of Mwakenya Movement. Thereafter, he was released from Nyayo House without any charges being preferred against him. He filed a suit against the government, Edward Waruiru Muhia vs. Attorney General, Petition No. 238 of 2009, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,000,000 and exemplary damages in the sum of Kshs. 500,000.

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166He was a Nyayo House victim and sued the government Joseph Mwaura Kinuthia vs. Attorney General, Petition No. 234 of 2009(Unreported) See ibid.
167Supra Note 163.
168Supra Note 163.
Waruiru Muhia vs. Attorney General, Petition No. 238 of 2009170, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 1,000,000 and exemplary damages in the sum of Kshs. 500,000.

113. Fredrick Kareithi Rungurua was held and tortured at Nyayo House for 10 days in June 1986 on suspicion he was a member of Mwakenya Movement. Thereafter, he was arraigned in court at 6.00 pm and charged with the offence of sedition. He was sentenced to serve 3 years imprisonment on his plea of guilty.* He filed a suit against the government, Fredrick Kareithi Rungurua vs. Attorney General, Petition No. 239 of 2009171, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,500,000 and exemplary damages in the sum of Kshs. 2,000,000.

114. Kangethe Mungai was held and tortured at Nyayo House for 15 days in June 1986. Thereafter, he was charged with the offences of sabotage and belonging to an underground organisation. He was sentenced to serve 12 ½ years imprisonment on his plea of guilty.* He filed a suit against the government, Kangethe Mungai vs. Attorney General, Petition No. 241 of 2009172, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 3,500,000 and exemplary damages in the sum of Kshs. 3,000,000.

115. Joshua Njoroge Kihara was held and tortured at Nyayo House for 14 days in June 1986 on suspicion of being a member of Mwakenya Movement. Thereafter, he was charged with the offences of being a member of unlawful organisation and sentenced to serve 5 years imprisonment on his plea of guilty.* He filed a suit against the government, Joshua Njoroge Kihara vs. Attorney General, Petition No. 243 of 2009173, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,500,000 and exemplary damages in the sum of Kshs. 2,000,000.

116. Dominic Arony Amoly was held and tortured at Nyayo House for several days in 1982 on allegations he had participated in the failed coup of August 1982. He filed a suit against the government, Dominic Arony Amoly vs. Attorney General, Miscellaneous

170Supra Note 163.  
171Supra Note 163.  
172Supra Note 163.  
173Supra Note 163.
Application No. 494 of 2003\textsuperscript{174}, at the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded global damages in the sum of Kshs. 2,500,000.

\textbf{117. Miguna Miguna} was held and tortured at Nyayo House for several days on suspicion he was engaging in anti-government activities. He filed a suit against the government, Miguna Miguna vs. Attorney General, Petition No. 16 of 2010\textsuperscript{175}, at the Constitutional and Human Rights Division of High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded global damages in the sum of Kshs. 1,500,000.

\textbf{Compensation to the estate of victims tortured at Nyayo House}

The family members of deceased persons who were tortured at Nyayo House filed suits in their capacity as estate of these victims, against the government for human rights violation visited upon their loved ones at Nyayo House. These cases are:

1. \textbf{Malik Mohammed Kipsang} filed a suit in his capacity as the administrator of the estate of William Chemutso Kipsang, deceased who was his father, against the government, Malik Mohammed Kipsang vs. Attorney General, Petition No. 338 of 2011\textsuperscript{176}, at the Constitutional and Human Rights Division of High Court of Kenya in Nairobi. The deceased had been arrested and held for 35 days in various police stations and thereafter at Nyayo House where he was tortured to compel him to disclose his knowledge on Mwakenya Movement, an organisation which was proscribed; the acts of torture resulted into William Chemutso Kipsang’s death. In his suit, Malik sought for a declaration that his father’s fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded as the legal representative of deceased general damages in the sum of Kshs. 3,000,000 for violation of deceased’s fundamental rights under section 72(3) of the Repealed Constitution.

\textsuperscript{174}Dominic Arony Amoly vs. Attorney General (Unreported).
\textsuperscript{175}Miguna Miguna vs. Attorney General (Unreported).
\textsuperscript{176}Malik Mohammed Kipsang vs. Attorney General (2014) eKLR.
2. **Joan Akinyi Kabaselleh** and **Judith Odago Ayoo** and **George Omore Kabaselleh** filed a suit in their capacity as the administrators of the estate of Hajulas Nyapanji Kabaselleh, Joan Akinyi Kabaselleh & 2 others vs. Attorney General, Petition No. 41 of 2014\(^{177}\), at the High Court of Kenya in Nairobi. The 1st and 2nd petitioners and the 3rd petitioner being widows and son of the Hajulas Nyapanji Kabaselleh, respectively sought claim for violation of the rights of deceased by the KANU government. The deceased had been held and tortured for 36 days at Nyayo House torture chambers. The court awarded the petitioners as the legal representatives of deceased general damages in the sum of Kshs. 800,000 for violation of deceased’s fundamental rights under section 72(3) of the Repealed Constitution.

3. **Virginia Njeri Kamangara** and **Esther Wanjia** filed a suit in their capacity administrators of the estate of John Kamangara Maina, Virginia Njeri Kamangara & another vs. Attorney General, Petition No. 179 of 2012\(^{178}\), at the Constitutional and Human Rights Division of High Court of Kenya in Nairobi. The 1st and 2nd petitioners being the widows and daughter of the John Kamangara Maina, respectively sought claim for violation of the rights of deceased by the KANU government. The deceased had been held and tortured for 61 days at Nyayo House torture chambers. The court awarded the petitioners as the legal representatives of deceased general damages in the sum of Kshs. 500,000 for violation of deceased’s fundamental rights under section 72(3) of the Repealed Constitution.

4. **Grace Wanjiru Miano** and **Antony Macharia Miano** filed a suit in their capacity administrators of the estate of Joseph Karuiru Miano, Grace Wanjiru Miano & another vs. Attorney General, Petition No. 226 of 2013\(^{179}\), at the Constitutional and Human Rights Division of High Court of Kenya in Nairobi. The 1st petitioner being the widow of John Kamangara Maina, sought claim for violation of the rights of deceased by the KANU government. The deceased had been held and tortured for 26 days at Nyayo House torture chambers in December 1986-January 1987 for allegedly taking oath and holding political views that were incongruent to those of the KANU government’s one party policy and ideology. The court awarded the petitioners as legal representatives of the deceased general damages in the sum of Kshs. 1,500,000 for violation of deceased’s fundamental rights under sections 72 and 74 of the Repealed Constitution.

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\(^{177}\)Joan Akinyi Kabaselleh & 2 others vs. Attorney General (2014) eKLR.

\(^{178}\)Virginia Njeri Kamangara & another vs. Attorney General (2014) eKLR.

\(^{179}\)Grace Wanjiru Miano & another vs. Attorney General (2014) eKLR.
Compensation to torture victims not held at Nyayo House

As indicated above some victims of torture who were not held at Nyayo House but nonetheless tortured by government agents/officials on similar grounds as those of Nyayo House victims, filed suits against the government. Their suits were consolidated with those of Nyayo House victims. The court declared these victims’ fundamental rights and freedoms guaranteed in Sections 72 and 74(1) under the Repealed Constitutions were violated and awarded them damages. These cases are:-

1. **Dick Joel Omondi** was held and tortured at various police stations on suspicion he was a member of Mwakenya Movement. He filed a suit against the government Dick Joel Omondi vs. Attorney General, Petition No. 192 of 2012 at the Constitutional and Human Rights Division in the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded global award in the sum of Kshs. 250,000.

2. **John Michuki Maina** was held and tortured at Nyati House for several days in July 2001 thereafter released without any charge being preferred against him. He filed a suit against the government, John Michuki Maina vs. Attorney General, Petition No. 80 of 2010 at the Constitutional and Human Rights Division in the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government during the period 1990-2002 and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 10,000,000.

3. **Njehu Gatabaki** was unlawful detained at various police stations and Government of Kenya prisons for several days intermittently during the period of 1990 to 2002 because of his advocacy work as a journalist. During the period he was unlawfully detained he was subjected to torture and inhuman and cruel treatments. He filed a suit against the government, Njehu Gatabaki vs. Attorney General, Petition No. 180 of 2011, at the Constitutional and Human Rights Division of High Court in Nairobi for a declaration that his fundamental rights and freedoms were violated and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 800,000.

4. **Bedan Mbugua** was unlawful detained at various police stations and Government of Kenya prisons for several days intermittently during the period of 1994 to 1998 for his advocacy work as a journalist for the Beyond and the People Magazines. During the period he was unlawfully detained he was subjected to inhuman and cruel treatment, and tortured.

\[184\] John Michuki Maina & Another vs. Attorney General (2014) eKLR.

\[182\] Supra Note 126.
by Special Branch Police. He filed a suit against the government, Bedan Mbugua vs. Attorney General, Petition No. 81 of 2010\textsuperscript{183}, at the Constitutional and Human Rights Division of High Court in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government during the period 1994-1998 and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 7,000,000.

5. **Njoroge Njathi** was held and tortured at Turkoman Carpet House in Nairobi and as well at General Service Unit Training School in Nairobi for more than 2 months in August 1982. He filed a suit against the government, Njoroge Njathi vs. Attorney General, Petition No. 732 of 2009,\textsuperscript{184} at the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi for a declaration that his fundamental rights and freedoms were violated by the government and to be compensated for those violations. He was awarded general damages in the sum of Kshs. 2,000,000.

Pursuant to the court orders for compensations to Nyayo House victims and other victims\# the government of Kenya has had to pay Kshs. 372,524,686 to the victims. Section 21 of the Government Proceedings Act, Chapter 40 of Laws of Kenya as read together with Section 32 of this Act provides that damages payable by government is drawn from the Consolidated Fund. Article 206 of the Constitution of Kenya 2010 establishes the Consolidated Fund and stipulates the Fund holds all monies raised and received by the national or on behalf of the national government. One of the means the national government raises revenue is through taxation as mandated by the Income Tax Act Chapter 470 of Laws of Kenya. This government’s mandate of collection of revenue is carried out by the Kenya Revenue Authority that is established under the Section 3 of the Kenya Revenue Authority (KRA) Act, Chapter 469 of Laws of Kenya. Section 5 of the KRA Act stipulates one of the functions of the Authority is to collect and receive all revenue that includes taxes remitted by people of Kenya.

Given the courts rendered judgements for the Kenyan government to pay damages as compensation to the Nyayo House victims and other victims\# that total up to Kshs. 372,524,686, it can be deduced that the Kenyan taxpayers have incurred cost to the tune of Kshs. 372,524,686 to compensate Nyayo House victims and other victims. Ironically, these taxpayers include the victims who have to bear on a daily basis irreparable losses as a result of Nyayo House atrocities. These losses are discussed in the next section as intimated by the victims during key informant interviews conducted in the course of this research and as deponed by the victims in their petitions against the government.

\textsuperscript{183}Supra Note 126.
\textsuperscript{184}Benedict Munene Kariuki & 14 Others vs. Attorney General (Unreported).
The Irreparable Lost Opportunities Borne by the Victims

The collective cost of damages awarded to the Nyayo House victims and other victims is negligible when compared to the lost opportunities and injury borne by the victims. Mumbi, J in Koigi Wamwere v. Attorney General, rightly stated, 'Accepting that the award of damages is not an exact science, and knowing that no monetary sum can really erase the scarring of the soul and the deprivation of dignity that some of these violations of rights entailed…'

The government agents/servants that instigated torture, cruel and inhuman treatment comprehended the irreparable damage they were inflicting upon the victims. One victim recounted during key informant interview for this research, ‘During my sojourn at the Nyayo House Torture Chambers, my Chief Torturer kept saying “Paddy, when we are through with you, you will never be the same again” with the benefit of hindsight, he was right. I suffer from what psychologists call ‘abreaction’ When driving for instance I sometimes relapse to the Nyayo House experience REAL TIME, perhaps because of a sound on the road; I sweat feel pain just as when I was there all over again.’

The diabolical acts of torture that the victims of Nyayo House and other victims were subjected to remains a painful monolith in their lives. It is uncontested when it is considered that the victims could not secure reparation for loss of time and opportunities during the period they were detained and as well served imprisonment, following conviction and sentence imposed on them that were premised on their own plea of guilty. Given it is common knowledge that the victims pleaded guilty to charges preferred against them after having been tortured- and the victims contested such imprisonments as violation of their rights and invited the courts to compensate them- the claims should have been sustained: the victims should have been compensated for lost time and opportunities while in detention and imprisonment. However, the courts found that the sentences imposed on the victims under the old constitutional dispensation (aforementioned cases in section III marked with pleaded guilty *) were lawfully served.

Loss of lives

Family members and friends of victims who were subjected to torture at Nyayo House and Nyati House still mourn the death of their loved ones. To-dated these victims’ families members and friends contend with this irreparable loss which cannot be quantified and restituted. The court in Malik Mohammed Kipsang vs. Attorney General in granting award to the petitioner rightly noted, ‘where a life is lost in the hands of agents of the State, no amount in damages, however high, will ever adequately heal the wounds of the deceased’s survivors.’

185Supra Note 3 and Supra Note 32. Also see cases in section III (ii) above.
Breakdown of Family Relationships and Marriage

Most the victims of the Nyayo House torture chambers upon release from the detention or completing their imprisonment terms found it untenable to continue living under Moi’s despotic rule where they would have to remain under high surveillance, thus they went into exile.186 The victims escaped by foot at border into Uganda and United Republic of Tanzania. The victims often escaped without telling their family members and friends: according to the victims, this was aimed at protecting their family members and friends from being harassed by the police to disclose the victims’ whereabouts.187 But this strategy was counter-productive.

Family members of the suspected Mwakenya Movement were harassed and under constant surveillance by the police.188 It was not uncommon for the police to barge into victims’ home and ransack the house, oblivious of the impact such conduct would have on victims’ children who watched in terror,189 or the impact on the victims’ children who were left unattended following the arrest of their ‘suspect’ parents.190 Albeit the victims’ precaution to escape without notifying their family members, their family members were arrested and tortured in a bid to compel them to disclose Mwakenya Movement suspects’ whereabouts or on suspicion they too were also its members.191 Victims’ family members and friends developed coping mechanisms to survive by the day: some feigned stoicism lest they were suspected of working with Mwakenya Movement suspects and be rounded up as well;192 some out of fear ostracised the victims, and eventually terminated their relationships with victims.193 But these coping mechanisms were ephemeral as the victims’ family members developed stress-related infirmities such as hyper-tension, high-blood pressure which they contend with to-date. In some cases, wives of the victims who were expectant had miscarriage upon receiving news their husbands were in the ‘hands’ of Special Branch police.194

Upon being released from detention and completing their imprisonment, the victims returned to empty nest having been deserted by fiancé195, fiancée196 or spouse.197 During the material period, 1980s and 1990s separation, divorce and single parenting was stigmatised and as such the victims had to bear stigma associated with these. One victim who was a key informant interviewee poignantly recounted, ‘I lost the woman I was to wed. My family now is still young yet I am aging. I have to think and work harder to secure their future in my absence. My Mama succumbed to hypertension when I was detained. Classical case of those affected indirectly. I always opine that “detention in freedom is more devastating than the actual incarceration.” Most homes and families have been devastated as a result of unlawful detentions who is survivor.’

Torture had severe impact on the victims. It

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186Supra Note 129.
187Supra Note 3.
188See for example, Andrew Muindu Naulika vs. Attorney General. Even after the petitioner was placed on surveillance on suspicion he was being involved in activities of February Eighteen Movement his family and friends’ movements were being monitored and they would be harassed.
189See for example, Susan Wangui Mirugi vs. Attorney General [2013]eKLR as consolidated with Jaako Noi Ooro vs. Attorney General [2013]eKLR.
190Supra Note 156.
191Supra Note 164.
192Supra Note 169.
193See for example, Florence Nyaguthie Murage vs. Attorney General, the petitioner’s boyfriend left her following his incarceration.
194The East Africa Standard, The Unsung Hero: A Man Saves his Torture, Would You Do the Same?
195See for example, Robert Wafula Buke vs. Attorney General. The petitioner’s first wife left him during detention and when he remarried and was sentenced to serve imprisonment the second wife left him.
caused them to be constantly apprehensive, suspicious, irritable and forgetful which made it difficult for their family members and friends to relate to them 'normally as in the old days.' As a result and ruefully, to-date some victims continue to have strained relationships with their family members and friends.198 Given Kenyan communities are communal in nature, loss of relationships is grave. It cannot be quantified. The torture also made some victims to have erectile dysfunction thus unable to sire children and were as a result left by their spouses.199 Also as a result of the Nyayo House ordeal some victims have become reclusive while others are claustrophobic.200

**Loss of Employment and Income**

Most of victims were arrested, detained and imprisoned in the prime of their youth as such they lost income they would have earned during the time they were in detention, remand or prison.201 The victims who were employed lost their jobs and all accruing benefits as their employers terminated their services, after they were arrested202 or detained203 or sentenced to serve imprisonment.204 Although, while awarding damages the courts compensated the victims for loss of income, this is inadequate when consideration is given to the psychological and physical health impairments the victims have to bear which affects their productivity. For example, one of the victim’s brain motor

198Supra Note 141.
199Supra Note 192.
200Supra Note 192.
201Supra Note 163.
202Supra Note 144.
203See for example, Paul Amina vs. Attorney General, the petitioner lost his job as a journalist when he was detained. Also Florence Nyaguthie Murage vs. Attorney General, the petitioner was interdicted from her job following her incarceration.
204See for example, Ali Cheptegei Saikwa vs. Attorney General, the petitioner lost employment and terminal benefits upon being sentenced to serve 3 years imprisonment. Also see, Wilson Mduati Njoroge vs. Attorney General, the petitioner lost his job and benefits of 33 years of employment. Also see, James Aggrey Akumu Joel vs. Attorney General, the petitioner lost his job and benefits of 20 years as a Revenue Officer following his imprisonment.

is severely injured as a result of torture he was subjected to and thus cannot secure an employment in the field of engineering, which was his profession prior to his Nyayo House ordeal.205 Victims who had businesses lost them as the businesses collapsed during their detention206 or arrest.207 One of key informant interviewees intimated, 'I lost almost 3 years at Nyayo House and in Kamiti Maximum Security Prison and my law practice crumbled.'

Victims also found it challenging to get back into employment. A mere disclosure to potential employer that one had been to police cells or prison was sufficient for them to be denied employment.208

To contextualise how grave the loss of employment opportunities and income is, it is critical to understand Kenya’s mindset in so far as a man’s ability to provide is concerned. The true measure of a man’s masculinity is premised on his ability to provide for himself and his family. Inability to do this, attracts social penalties of stigmatisation, scorn, deep sense of shame and loss of respect among peers and family members. This is particularly grave when a man has to rely on his spouse for provision. The Nyayo House victims had to contend with these social penalties. Hence, in a society wherein a man’s measure of masculinity is largely measured by their ability to provide, this loss had a severe impact on victims and their family members. In effect, the male victims felt emasculated as they had to rely on their wives which was not the norm in those days. In addition to this, the victims’ children dropped out of school because of lack of school fees209

205Supra Note 131.
206Supra Note 133.
207Supra Note 132.
208Supra Note 3 at p. 59.
209See for example Mwangi Mathenge vs. Attorney General. 2 of petitioners’ children dropped out of schools for lack of fees. Also see Supra Note 178.
the victims’ family members died because they could not afford medical treatment, and the victims’ family standard of living changed drastically to the point of being rendered destitute.

**Loss of Education**

Victims who were students were expelled by their institutions once the institutions seized information that they had been arrested on suspicion they were members of underground movement or had engaged in anti-government activities. Thus the victims were unable to complete their education. Others lost opportunities to be students.

**Poor Health**

The common accounts of the victims to-date is, they contend with post-trauma stress disorder, ulcers, amnesia, bouts of clinical depression, high blood pressure, severe headaches, asthma, nightmares, sleeping disorders, chronic back pains as often the Special Branch Police /government agents kicked and steppend on the victims’ backs, and poor eye sight because of being held for long in pitch dark cells. A number of victims suffer from erectile dysfunction. Victims also had to seek specialised treatment after their ordeal at Nyayo House and continue to be under specialised treatment and medication to manage their poor health accruing from Nyayo House ordeal.

**Cost to Kenyan Economy**

Following advocacy by the victims of Nyayo House and other victims, Kenya’s poor human record became known worldwide in 1990s. During his foreign trips, the then President Daniel Arap Moi had to contend with angry protestors holding placards that condemned his rule and flagrant violation of human rights. One of such protests that stands out was organised by exiles in Canada outside the Kenyan Embassy in 1991. In retaliation, Moi recalled Kenya’s High Commissioner to Canada, Peter Maragia Nyaweya. These protests gave impetus to parallel advocacy by exile community and human rights activists that called for aid and foreign assistance to Kenya to be tied to human rights and combating corruption. As a result of such advocacy the World Bank and International Monetary Fund cut off aid to Kenya. The dark decade of 1982-1992 was not conducive for economic growth. It was occasioned by reduced investor confidence, reduction of aid and rampant corruption. The impact of the plummeted economy was heavily felt by the middle and lower class citizens who struggled immensely to make ends meet. According to one of the key informant interviewees, these atrocities costed Kenyan economy approximately Kshs. 200 billion.

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1. Supra Note 135.
2. Supra Note 177.
3. See for example, Samuel Kaberere Njenga vs. Attorney General. The petitioner was a third year student at University of Nairobi when he was expelled by the institution after he was arrested. Also see Robert Wahula Buke vs. Attorney General. The petitioner was unable to complete his degree course at the University of Nairobi following his arrest, detention and sentence.
4. Supra Note 190.
5. See for example, Jackson Maima Wangome vs. Attorney General. The petitioner had to be operated at Kijabe Hospital after he was tortured for 30 days at Nyayo House for injuries sustained.
6. Supra Note 32 at p. 59-60 also see for example, Wilson Nduati Njoroge v. Attorney General, the petitioner had to seek specialised treatment in United States. Also see, Gitari Cyrus Muraguri vs. Attorney General, the petitioner had to have 2 brain surgeries because of blood clots that developed as a result of his Nyayo House ordeal.
7. Supra Note 32 at p. 52.
8. Ibid.
The diabolical acts that the victims of Nyayo House and other victims experienced still remains a difficult subject matter and deeply emotional one. KNCHR may want to consider the following matters in respect of this subject matter, as it fulfills its mandate.

**Pursue the Implementation of Other Forms of Reparations**

A cursory glance at the court cases filed by the Nyayo House victims and other victims illuminate that the Kenyan courts comprehended the difficulties in adducing evidence against government in cases of torture. Hence, the courts in line with Articles 22(3) (b) and 22(3) (d) of the Constitution of Kenya 2010 on the enforcement of the Bill of Rights had latitude towards procedural technicalities on victims’ cases and awarded them damages, upon declaring the victims’ fundamental rights and freedoms had been violated. Example of such cases are wherein the victims did not proffer details on violation of their rights to fair trial under Section 72 of the Repealed Constitution, or details of specific dates of arrest and torture. While this is commendable, it has engendered notion among state attorneys at the Office of Attorney General and Department of Justice that the victims are insincere persons and opportunists who filed suits against the government persons as a cash-cow. Thus state attorneys in the course of defending the government in Nyayo House and other victims’ cases advanced this notion to persuade the courts to dismiss the suits, and in some cases did not respond to the victims’ claim by way of affidavit as required by the law. Interestingly, in the course of this research this ‘cash-cow’ notion featured as the reason as to why there were inordinate and unjustifiable delay in compensating the victims as ordered by the courts.

Throughout the research, the victims emphasised on the need to consider other forms of reparation because compensation, ‘counts for nothing’ in comparison to the losses they have experienced. In the victims’ view the negligible nature of compensation is magnified considering the protracted procedures the Nyayo House victims and other victims have to undergo to execute courts’ judgements of compensation. For instance, Nyayo House victims who were petitioners in Benedict Kariuki & 14 Others vs. Attorney General intimated they received compensation from the Kenyan government after 3 years of aggressive advocacy from the date the court rendered its judgement. Another example is the case of Harun Wakaba whose estate filed a suit in 2014, the Estate of Harun Wakaba vs. Attorney General Miscellaneous Application No. 439 of 2014 to compel the Attorney General to comply with court judgement that

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219See for example, Edward Aiton Ogilvi vs. Attorney General. The petitioner did not demonstrate whether he was convicted on his own plea and did not proceed court proceedings to prove he was charged for offence of sedition after he was tortured at Nyayo House.
220Supra Note 153, Supra Note 154 and the case Munene Kamau vs. Attorney General wherein the petitioner did not specific dates he was arrested and tortured, but was nonetheless awarded Kshs. 1,000,000.
221Supra Note 150.
222Supra Note 65.
223Ibid.
was rendered in 2010, where the deceased had been awarded general damages as a victim of Nyayo House. Ruefully, the Estate of Wakaba suit was dismissed due to procedural technicality and therefore these victims have to continue pursuing the Kenyan government to compensate them as Wakaba’s estate.

One of the key informant interviewees candidly and ruefully stated, ‘Government has not taken proactive measures to reach out to the victims. The compensation for torture awards take between 2 and 3 years or even longer because it is not a priority item on the government’s budget. Torture victims are paid grudgingly with available left-overs.’ This position is true considering the defensive views of a senior state attorney at the Office of Attorney General and Department of Justice who justified delays in paying compensation to the Nyayo House victims and other victims#. The attorney stated, ‘It should be understood that the Government financial year runs from July- June and by which time it already has earmarked activities for its budget which often does not include compensation to successfully plaintiffs that have sued the government. Thus such plaintiffs have to wait till the next financial year or the one thereafter to receive compensation.’

Also, understandably some of the victims that were invited to take part in this research shied away from key informant interview: the subject matter remains a painful and difficult one when examined from the premise of compensation. This underscores the need for other forms of reparations to be pursued with a view to implement them. It is critical when it is considered that not all Nyayo House victims who filed suits were awarded compensation. For example, Joseph Migere Onoo vs. Attorney General, Petition 424 of 2013.224 The court dismissed this petition because the petitioner did not adduce uncontroverted evidence in court to advance his claims of having been tortured including being tortured a few hours at Nyayo House.

It is vital to note that a vast majority of the Nyayo House victims and other victims# filed suits against government without legal representation. It is because Kenya did not have a legislation or a cogent national framework on legal aid that would have secured the victims legal representation, at the time they filed their suits. Therefore, the quality of petitions filed by the Nyayo House victims and other victims# were rather anaemic in terms of evidentiary value of alleged facts of human rights violations. It is therefore not surprising that the victims’ experiences as deponed in their petitions were collective and devoid of addressing their individual violations adequately: the victims emerged as statistics and hence the compensation were grossly inadequate. The courts noted this shortcoming. In the case of Njuguna Githiru vs. Attorney General225, the presiding judge noted, ‘While this Court has been lenient in the past because of the nature of the claims, it is becoming increasingly difficult not to see the prejudice the drafting of pleadings is causing to the Parties including the Petitioners themselves.’

Further, the need to consider implementing other forms of reparation is underscored as it is apparent the curtain has been drawn on compensation to the victims of Nyayo House and other victims.# Kenyan courts are no longer entertaining suits from such victims on the premise of inordinate delay. Cases in point

224 Joseph Migere Onoo vs. Attorney General (2015) eKLR.
225 Ibid.
are Wamahiu Kihoro Wambugu vs. Attorney General, Petition No. 468 of 2014,226 in which the petitioner filed the suit after 28 years from date of alleged human rights violations, and Maurice Oketch Owiti vs. Attorney General, Petition No. 227 of 2014227 in which the petitioner filed the suit 27 years from the date of alleged human rights violations. These petitions were dismissed by the courts on the principle of inordinate delay.

Although the Nyayo House victims and other victims’ petitions were sustained, it is primarily because the State through the Attorney General did not respond to the allegations by these victims. Such cases include, Rumba Kinuthia vs. Attorney General,228 Harun Thungu Wakaba vs. Attorney General,229 Gitari Cyrus Muraguri vs. Attorney General,230 and Cornelius Akelo Onyango vs. Attorney General.231 The common trend in these Nyayo House cases were the failure by Attorney General to comply with Rule 16 of the Constitution of Kenya (Supervisory Jurisdiction an Protection of Fundamental Rights and Freedoms of the individual) High Court Practice and Procedure Rules, 2006 states that the “Attorney General … shall within fourteen days of service of the Petition, respond by way of a replying Affidavit and if any document is relied upon, it shall be annexed to the replying Affidavit” The Rule required the Attorney General to file a replying affidavit, and thus rebut the evidence by the petitioners of alleged torture. In the absence of the affidavits the court admitted the claims of the petitioners and awarded them damages. What underlies the non-appearance by the government or failure to file defence should be a matter of concern to KNCHR, in future similar cases.

Against this aforementioned background then, KNCHR should explore the following forms of reparation for the Nyayo House victims and other victims:

1. Follow up with relevant government agency to ensure that Reparation Fund is established and implemented within the time frame of 3 years as decreed by the President of the Republic of Kenya.

2. Endeavour to secure rehabilitation that includes medical, psychological, legal and social services for the victims.

3. Endeavor to secure satisfaction in the form of commemorations and tributes to the victims.

At the time of conducting this research, the Nyayo House basement and cells where the human rights violations took place were yet to be established either as a museum or memorial as anticipated when they were opened to the members of public in 2003. The intention of having museum and memorial is to serve as a reminder of the dark past that Kenya should never revert to in terms of human rights violations. It is also critical to have a museum or memorial when it is considered that there is scarce information in the public on these heinous human rights violations that took place during the Nyayo era-lest we forget. This form of reparation is also imperative in Kenya’s current ‘new’ constitutional dispensation where

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226Wamahiu Kihoro Wambugu vs. Attorney General [2016]eKLR.
227Maurice Oketch Owiti vs. Attorney General [2016] eKLR.
228Supra Note 149.
229Supra Note 65.
230Supra Note 134.
231Supra Note 163.
there is deep concern on threats and actual human rights violations in the discourses of terrorism and national security vs. human rights.

4. Support inclusion of violations in human rights law and educational training at all levels; and effective measures aimed at cessation of continuing violations.

This form of reparation is fundamental in view of Articles 19(1) (2), Articles 20(1) and 21 of the Constitution of Kenya as read together with Article 10 of the Constitution of Kenya 2010, which impose an obligation on state officers to uphold the Bill of Rights.

5. Advocate for guarantees of non-repetition that includes: strengthening of independence of judiciary; protection of lawyers, human rights defenders and the media; and continuous human rights education to law enforcement agencies.

Fortunately, the Judiciary has strived and continues to assert its independence. This is demonstrable, for instance, in the case, Jennifer Muthoni Njoroge & 10 Others vs. Republic, wherein Lenaola, J stated emphatically, ‘As the new Constitutional dawn continues to unravel its mysteries, one lesson is clear; the Kenyan Courts may have failed the people in the past but today it can be said with …the supremacy of the Constitution rather than any organ of government is what guides the Courts and especially the High Court in executing its mandate under Article 165 of the Constitution, 2010. The Judiciary must therefore never slumber and should not fall into the obvious ignoring of the past.” The need for KNCHR to support Judiciary’s independence as guaranteed in the Constitution cannot be gainsaid. It is because independence of judiciary is the vanguard for respect, protection and promotion of fundamental rights and freedoms. Given KNCHR’s role janus-faced role on one hand as government’s advisor and on the other hand as government’s watchdog, it can be on the forefront in securing Judiciary’s independence.

Protection of human rights defenders, the media and lawyers is increasingly under a huge threat. The need for KNCHR to advocate for their protection cannot be gainsaid. Supremely, KNCHR’s advocacy for protection of human rights defenders, the media and lawyers dovetails with KNCHR’s mandate as a human rights watchdog.

Personal Responsibility for Public Officers

One of objectives that informed this study is KNCHR seeking recommendations to attach personal responsibility for public officers who act in contempt of rule of law. This recommendation will be explored in the context of this research.

The government agents and officials who committed acts of torture, cruel and inhuman
and degrading treatment alongside other human rights violations are known to most of the Nyayo House victims and other victims. The Nyayo House victims averred in their petitions that the acts of torture were conducted by police officers known as James Opiyo, C.N. Mungai, and Mr. Miriti, which was not controverted by the State. The defence attorney from the Office of Attorney General and Department of Justice in these suits issued counterclaims that the Nyayo House victims should have sued the persons who tortured them rather than the government through the Attorney General as its legal representative. The Nyayo House victims and other victims did not sue person who tortured them because of the challenges that emerge around cases of torture. Notable two challenges which the Kenyan courts have acknowledged so far are:-

First, in cases of human rights violations such as torture the victims tend to seek legal recourse when they are certain they will get relief, which is often after a passage of time in a new political or constitutional dispensation. By then there is possibility that public officers who committed torture are dead which would mean then that victims of torture cannot seek recourse against the torturers; and thus the victims are only left with the option of suing the government.

Second, the victims would face immense difficulties in effecting service of the filed petitions against the public officers that have violated their fundamental rights and freedoms. To say the least, it would be herculean. Musinga J, noted in Gitari Cyrus Muraguri vs. Attorney General234 the challenge victims would have to contend with in suing public officers in their personal capacity ‘…in this case, I think it is

naïve on the part of the respondent to expect the plaintiff to have asked his tormenters for their particulars when he was undergoing such an ordeal. In the circumstances under which the arrest and detention was done I doubt whether the plaintiff would have known the identity of the police officers who manhandled him.’ Similarly, Lenaola, J in Jennifer Muthoni Njoroge & 10 Others vs. Republic aptly articulated this difficulty, ‘One James Opiyo has been named as the leader of the of the torture squad at Nyayo House at the material times. Would it be expected that the Petitioners should politely call Opiyo and ask him to call his juniors to testify of their actions? Obviously not.’

By its definition, torture is usually committed by public officers. In jurisdictions where torture is committed there is tacit state policy to sanction it. As we have established above, the TJRC found the police culpable and Judiciary was implicated in the human rights violations committed at Nyayo House because of the manner in which it conducted the cases brought against the victims during the two dark decades.235 So far, the prevailing domestic jurisprudence has been for victims of torture to sue the state.

In support of this jurisprudence the Kenyan Judiciary has acknowledged that given the State has an obligation to not to commit torture and has all resources in its arsenal to prevent acts of torture, the State has to be effectively deterred. Lenaola, J in Bernard Kihiu Matama vs. Attorney General236, stated “It is true that the State today cannot shut its eyes for the failings of the past. It must pay the price for its historical faults. I must also agree with the Petitioners submission that the instant

234Supra Note 134.
235Supra Note 42.
236Supra Note 86.
petition should be approached in the context of transitional injustices especially now that there is a new dispensation under Constitution 2010. Time is ripe for addressing past injustices that included gross violations of fundamental rights and freedoms as witnessed in the past.” By the same token, Lenaola, J observed, in Jennifer Muthoni Njoroge & 10 Others vs. Republic “… it is quite obvious to me that as a lesson for the future, the State must today pay the price for its failings in the past.”

In the face of the aforementioned can public officers who act in impunity be held personally responsible? The Constitution of Kenya, 2010 is transformative. It provides a cogent framework under which State officials and all persons are bound to uphold the Bill of Rights. Article 20(1) of the Constitution stipulates, ‘The Bill of Rights applies to all law and binds all State organs and all persons.’ Also, Article 23(3) of the Constitution stipulates one of relief available to persons instituting proceedings for enforcement of their rights is compensation. Therefore, persons whose rights have been violated can invoke these constitutional provision for public officers who act in impunity to be held personally responsible pay compensations for their acts, rather than have the compensation paid by the State. This could be an effective deterrence for impunity by public officers and also incentive for the officers to uphold the rule of law. This argument and premise is plausible when it is considered that whenever the government is sued for human rights violation by state officers/public officers, and victims are awarded damages that the compensation is drawn from the Consolidated Fund. Given the Consolidated Fund is drawn from taxpayers’ monies, then it stands to reason that the citizens who sue for human rights violations are ‘paying themselves compensations.’ This is rather absurd.

Nyayo House victims perceive that compensation is not an adequate reparation considering the cost of compensation is paid by the State and public officers who tortured them are technically absolved from personal responsibility. One of the key interviewees who is a victim of Nyayo House stated emphatically, ‘Most Nyayo House torturers are still alive and are walking around as free men. They and their masters should be rounded up and flown to International Criminal Court to face charges of crimes against humanity, torture, cruel and inhuman treatment. No one should be spared, Moi included.’

Already, there are indications that it is possible to attach personal responsibility to current public officers and former public officers for their conducts while in office. The case of Otieno Mak’ Onyango vs. Attorney General and Daniel T. Arap Moi sets the precedent of this possibility. The facts of this case is similar to the Nyayo House cases. The petitioner who was a journalist had been held for many days and tortured at the General Service Unit because of articles he published on the failed coup of 1982. He filed suit against the Attorney General and the former president Daniel T. Arap Moi seeking compensation. Appellate judge Rawal J, (as she then was) stated in Obiter dictum, ‘Let me put it on record that this court, or in that respect any court, shall not hesitate to hold the ex-President personally liable for any misuse, excess or abuse of power to the detriment of any person.’

Therefore, in the exercise of its mandate KNCHR can ensure public and state officers

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237Supra Note 231.

238Otieno Mak’ Onyango vs. Attorney General and Daniel T. Arap Moi[2012] eKLR.
who act in impunity including violate the Bill of Rights are held personally responsible. This is ostensible in view of the transformative constitution that emphatically imposes an obligation on all state officers and all persons to uphold the Bill of Rights. Further, the Constitution and Kenya’s legal framework has established offices that are valve and refuge to state officers and public officers to escape from coercion into violating the Bill of Rights: there is no justification for any state officer and public officer to act in impunity.

The study has demonstrated that there is a high cost that is paid for impunity. This cost is not borne only by the tax payer but the victims and survivors. The exposition of the experience of victims of Nyayo House shows that the consequences of the violation still, reverberate decades after the violation. There could be untold stories and experiences that might not have been captured at the time. To be more precise the cost of impunity whether committed decades ago or now will continue to be felt. The courts have executed their mandate and shown that the victims or survivors human rights were violated and entitled to compensation. KNCHR feels that steps need to be taken to deter would be violators from blatantly breaching the bill of rights. It is for this reason that costs of these infractions must be borne by the individual violators. Article 10 (1) provides the legal basis for this statement. Actions that can be taken include orders to make financial compensation, decrees against the individual, orders barring the individual from holding public office.

The victims of Nyayo House and other victims have sought reparation in form of compensation. Kenyan courts awarded them compensation which cost the taxpayers Kshs. 372,524, 686. While this may seem astronomical from taxpayers’ perspective, it is negligible when compared to the lost opportunities borne by the victims. It is therefore critical that other forms of reparations for the Nyayo victims and other victims are implemented and for the public officers and state officers who act in hold contempt of the rule of law and violated human rights to be held personally responsible. Fortunately, the Constitution of Kenya, 2010 is transformative and makes it possible to have such level of accountability.