TODAY AND BEYOND: DETERMINING THE MOST APPROPRIATE FORUM FOR ENSURING JUSTICE FOR PERPETRATORS AND VICTIMS OF KENYA’S POST ELECTIONS VIOLENCE OF 2007 - A CRITIQUE

BY

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A THESIS SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF MASTER OF LAWS (LL.M.) OF THE UNIVERSITY OF NAIROBI

NAIROBI OCTOBER, 2010
DECLARATION

I, DANIEL OWINO KONYANGO, do hereby declare that this is my original work and that it has not been submitted for a degree in any other university.

Signed: [Signature]
DANIEL OWINO KONYANGO

This Thesis has been submitted for an examination with my approval as the University Supervisor.

Signed: [Signature]
PROF. F.D.P. SITUMA
ACKNOWLEDGEMENTS

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I am equally grateful to the other members of the Panel that examined my oral presentation of this thesis: Ms. Joy Asiema, the Reader for the Panel, and Mr. William Musyoka who chaired the Panel, for their useful observations and directions that added much value to the final version of the work.

To my two girls, Bunny and Jewell, thank you for the patience with which you bore my absence, on account of pursuing the LL.M. course.
DEDICATION

To my brother Boniface, who lost his 15 years work and investment to the post election violence in Naivasha in January 2008.

And to all victims of the post election violence.
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<tbody>
<tr>
<td>AG</td>
<td>Attorney General</td>
</tr>
<tr>
<td>CDF</td>
<td>Civilian Defense Forces</td>
</tr>
<tr>
<td>CIPEV</td>
<td>Commission of Inquiry into the Post-Election Violence</td>
</tr>
<tr>
<td>CREA W</td>
<td>Centre for Rights Education and Awareness</td>
</tr>
<tr>
<td>ECK</td>
<td>Electoral Commission of Kenya</td>
</tr>
<tr>
<td>FIDA (Kenya)</td>
<td>The Federation of Women Lawyers (Kenya Chapter)</td>
</tr>
<tr>
<td>FPLC</td>
<td>Forces Patriotiques pour la Libération du Congo</td>
</tr>
<tr>
<td></td>
<td>[Patriotic Forces for the Liberation of Congo]</td>
</tr>
<tr>
<td>GA</td>
<td>The General Assembly of the United Nations</td>
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<tr>
<td>HRW</td>
<td>Human Rights Watch</td>
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<tr>
<td>ICC</td>
<td>International Criminal Court</td>
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<tr>
<td>ICRC</td>
<td>International Committee of the Red Cross</td>
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<tr>
<td>ICTR</td>
<td>International Criminal Tribunal for Rwanda</td>
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<tr>
<td>ICTY</td>
<td>International Criminal Tribunal for the former Yugoslavia</td>
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<tr>
<td>ID</td>
<td>Investigations Division</td>
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<tr>
<td>IIEC</td>
<td>Interim Independent Electoral Commission</td>
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<tr>
<td>IMT</td>
<td>International Military Tribunal</td>
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<tr>
<td>IRRC</td>
<td>International Review of the Red Cross</td>
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<tr>
<td>JCCD</td>
<td>Jurisdiction, Complementarity and Co-operation Division</td>
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<tr>
<td>JEM</td>
<td>Justice and Equality Movement</td>
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<tr>
<td>KLR</td>
<td>Kenya Law Reports</td>
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<tr>
<td>KANU</td>
<td>Kenya African National Union</td>
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<tr>
<td>KNCHR</td>
<td>Kenya National Commission on Human Rights</td>
</tr>
<tr>
<td>MGS Haskanita</td>
<td>Haskanita Military Group Site</td>
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<tr>
<td>NARC</td>
<td>National Rainbow Coalition</td>
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<tr>
<td>ODM</td>
<td>Orange Democratic Movement</td>
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<td>OR</td>
<td>Ordinary Resolution</td>
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<tr>
<td>PD</td>
<td>Prosecution Division</td>
</tr>
<tr>
<td>PNU</td>
<td>Party of National Unity</td>
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<tr>
<td>RUF</td>
<td>Revolutionary United Front</td>
</tr>
<tr>
<td>SC</td>
<td>The Security Council of the United Nations</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
<td>TFV</td>
<td>Trust Fund for Victims</td>
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<tr>
<td>TJRC</td>
<td>Truth, Justice and Reconciliation Commission</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNFPA</td>
<td>United Nations Population Fund</td>
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<td>UNICEF</td>
<td>United Nations Children's Fund</td>
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<tr>
<td>UNIFEM</td>
<td>United Nations Development Fund for Women</td>
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<tr>
<td>UNTS</td>
<td>United Nations Treaty Series</td>
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