

# 2011

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**KENYA TRANSITIONAL JUSTICE NETWORK: POSITION ON TRUTH**

**JUSTICE AND RECONCILIATION COMMISSION**

## **1. Background**

The Kenya Transitional Justice Network (K-TJN) is a loose and national coalition of civil society organizations (CSOs) and victims' groups (VGs) which have been advocating for a victims and justice-centered Truth, Justice and Reconciliation Commission among other progressive transitional justice (TJ) and good governance mechanisms in Kenya for the last fifteen years. During these years, most of the interventions on TJ have been undertaken through varying individual and collective actions of our partners.

The K-TJN, the precursor to the Multi-Sectoral Task Force on TJRC was formed in March 2009 with a view to ensuring that there are meaningful and purposeful consulted efforts achievement of sustainable peace built within premise of sustainability of justice and accountability in Kenya especially after the post-elections violence occasioned by the disputed presidential elections in December 2009. The formation of a credible and effective TJRC happens to be part of the network's areas of interest under Agenda No. 4. Agenda 4 emerged out of the former United Nations Secretary-General Kofi Annan led National Dialogue and Reconciliation Process in February 2009 may be viewed as the TJ matrix or programme for Kenya. While we welcome the formation of the TJRC, we feel very much obliged to raise the following issues in regards to its composition and envisaged operations.

### **2. Key concerns by the civil society organizations and victims' groups**

- a) That the TJRC is a very unique process unlike any other commission formed in the past. It is expected to have real impact on Kenyan society's socio-political and economic sphere. In this regard, the Commission should urgently, exhaustively and satisfactorily addresses the serious questions raised against the current chair of the Commission. Specifically, all concerns that victims have raised relating to role of the Chair to some of the crimes subject to the work of the TJRC. The objectivity, impartiality, credibility and the legitimacy of the TJRC is on the trial.
- b) The centrality of victims in the TJRC process is apparently irrelevant considering the disregard the Commission has rendered the grave complains flowing from segments of victims. We are seeking unequivocal position of the Commission in word and action on the role and protection of the Victims in the process the Court Case outcome notwithstanding. The Network would be extremely reluctant to engage with a Commission that appears to depend on government to get its legitimacy. We loathe state-centric Truth Commission.
- c) That the repugnant clauses inherent in the current Act are either amended or safeguard measures put in place. Critical to these are the limiting provisions on reparations; prohibited access to the protection areas; reveal application of the Official Secrets Act (Article 51 is immaterial); Indemnity Act (operational in Northern Kenya from 1967-1997) among others.
- d) That there is a clear mechanism(s) guaranteeing the financial and institutional independence of the Commission. Currently, the Commission seems to be operating at the mercy if not the whims of the government and development partners.

- e) That the Commission initiates modalities to ensure that its work and operations are in complimentarity and synergy with other transitional justice mechanisms. This sequencing and synergizing approach would ensure systematic and consistent implementation of national reforms and response to issues of public interest.
- f) That the Commission is apparently oblivion to the political environment. We are disturbed that the Commission is proceeding without deep reflection of the fluid political environment and disregarding the fundamental issue of sustainable political will.
- g) That the vanguard role of the civil society cannot be gainsaid. In this regard we are seeking a clear policy statement on the modality and relationship with the civil society. The Commission must not only facilitate national ownership of the TJRC by Kenyans but has an obligation to ensure this is chivvied as much as possible.

### **3. Terms of Engagement**

*First*, the Network finds it unnecessary and act of betray to continue engaging without logical resolution and closure of the above mentioned grave matters.

*Second*, the CSOs and VGs in Kenya will engage the Commission upon the conclusion of the above but within the frameworks of strategic support, mutual solidarity and continous accountability. This means:

- a) *Strategic support* will involve assisting and partnering with the Commission within the limits of the technical and professional expertise available. It also entails moral and political support in areas of mutual interest.
- b) *Pragmatic solidarity* entails standing with the commission when its mandate and operations under threats and/ or attacks.
- c) *Institutional accountability* entails monitoring and engaging the Commission to ensure that its work is within the provisions of the Act, expectations of the victims and other principles and obligations of the truth commissions in the world.

*Finally*, we will disengage with the Commission until these issues are properly resolved.

*Adopted and signed by the following members of the K-TJN on this 18<sup>th</sup> Day of September 2009.*