



ACTING ON COMMISSION REPORTS: REQUIRED IMMEDIATE ACTIONS ON THE TJRC BILL

The **International Center for Policy and Conflict** would like to welcome the groundbreaking report by the Commission of Inquiry into Post-Election Violence (CIPEV).

The Commission, led by Justice Philip Waki, has demonstrated courage and commitment in its determination to investigate the horrific crimes, gross human rights violations and grave acts of impunity that followed the bungled 2007 presidential election in Kenya.

Its recommendations also provide a solid basis for establishing a credible and effective Truth Justice and Reconciliation Commission. ICPC expects that the proposed Special Tribunal for Kenya shall be independent in conducting investigations and prosecutions, in order to deliver impartial, credible and fair justice.

ICPC urges Kenyans to be vigilant and demand that the government implement the recommendations from both the Independent Review Commission and CIPEV reports. In so doing, their inclusion and consultation as citizens in enacting the Truth Justice and Reconciliation Commission Bill is non-negotiable.

In view of the serious recommendations in the Waki Commission's report with regard to how Kenya should deal with impunity, we strongly recommend that the Truth Justice and Reconciliation Commission Bill, which is awaiting substantive debate in Parliament, be amended to fix the following 10 problems in it:

1. remove conditional amnesty which is not applicable and enforceable in Kenya;
2. empower the TJRC to make recommendations for the removal of or barring from public office persons found to be responsible for a human rights violation, an economic transgression or an act of corruption;
3. create a strong and independent commission with far-reaching powers to achieve justice, in a holistic sense, of for all citizens, establish and renew civic trust, reconcile people and communities without causing further divisions in the society, and prevent future abuses;
4. obliging the TJRC to complete its final report at the end of the operational period with an implementation strategy and submit the report to the President and Prime Minister as well as to the Panel of Eminent Persons;
5. allow the TJRC to make concrete recommendations necessary for institutional, administrative, legislative, constitutional and/ or other measures to prevent recurrence;
6. provide for and empower the Commission to recommend reparations to individual and communities bearing gender perspective in mind;
7. strive for gender equity by requiring that at least one third of all staff in all bodies and departments to be women and thoroughly investigate gender-based violence;
8. ensure only Commissioners and staff of high integrity and credibility are appointed to serve in the Commission;
9. expand the Selection Committee to 13 persons to allow for greater representation from civil society and government; and

10. Ensure the TJRC shall establish bodies or committees, including Truth Seeking, Victim Support & Reparation, Gender, and Outreach & Reconciliation, in order to achieve its set objectives.

Additionally, the indictment of Kenya's entire state infrastructure, including 'the highest level of authority' by the Waki Commission is a testimony of failed political leadership and a recognition that public institutions lack legitimacy.

We note that human rights violations and impunity persist largely because the accountability systems are gravely defective. We further note, and agree with the CIPEV findings, that lack of political accountability and transparency in public life, persistent failure to investigate and punish officers who commit human rights violations, and deliberate obstruction of justice have been and remain the hallmark of impunity. All perpetrators -- both those bearing the greatest responsibility and those most responsible -- must face the consequences for their actions regardless of their social status.

It is offensive that even after the grave events following the 2007 General Election, government functionaries and departments continue with "business as usual" attitude. ICPC is challenging President Mwai Kibaki and Right Honorable Prime Minister Raila Odinga not to avoid taking tough decisions.

All Kenyans need acknowledge that sustainable peace can only be achieved by confronting and destroying the entire infrastructure of impunity that is responsible for past and current injustices.

We appreciate that Kenya is facing a strained transition to full-fledged democracy. The state has a moral and political responsibility, however, to bring to justice those responsible for horrendous acts of impunity and grave human rights violations as the kingpins or foot soldiers. Only the fearless resolve of Kenyans (with international assistance) can bring many of these individuals and institutions to justice. Decisive action is required to end the culture of impunity through a fair, credible and effective mechanism of holding perpetrators accountable. The proposed Special Tribunal and the overhaul of state institutions are important starting points.

Survivors of post-election violence, together with victims, have a right to appropriate remedy against human rights violations they suffered.

ICPC calls upon the Ministry of Justice, National Cohesion and Constitutional Affairs, the Attorney General, and National Assembly to hasten the process of enacting a more robust and properly conceptualized domestic law dealing with Crimes Against International Humanitarian Law and Other Serious International Crimes and establishing the Special Tribunal.

The International Crimes Bill has been pending in Kenya's Parliament for long time. The government should prioritize this legislation and pay special attention to this crucial Bill.

The objective of the Bill is to punish the most serious international crimes. Such a law would give Kenyan courts the authority to hear, to try and to prosecute such crimes when they occur. This will strengthen Kenya's national criminal justice system, contribute to an effective international criminal justice regime, and generally bring its national law to international standards.

Signed:

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