

President Reinforcing Impunity While Deliberately Undermining Reconciliation

By Ndung'u Wainaina

The International Center for Policy and Conflict is seriously concerned about the deteriorating culture of impunity in Kenya. We are specifically disturbed that the President of the Republic of Kenya can have the audacity to contemptuously act in such an inappropriate and gross abuse of public trust, in relation to the Kenya Anti Corruption Commission. Notwithstanding retired Justice Aaron Ringera frivolous self-defence, the crux of the matter is that the Kenya Anti-Corruption Commission's last stroll of integrity and legitimacy was shattered forever. The retired judge missed the whole point and instead chose to justify his irredeemable and illegitimate re-appointment. He failed to appreciate that the fact that his personal reputation and credibility as man of letters, as he claims to be, was put squarely at jeopardy by the very office that re-appointed him.

The President's arrogance of political power and the attendant rising impunity associated with the Presidency has to be challenged, legally and politically, vigorously. We all recall the speech that the President made in his inauguration ceremony on December 31st, 2002. By virtually failing to live faithfully and execute the promises thereof smacks betrayal to Kenyans. The disregard of that policy statement is a living testimony of political dishonesty, which has turned too costly for Kenya and her people. Is this what cutting a Mugumo tree with a razor blade meant? The latest developments in Kenya clearly indicate that the culture of impunity is highly entrenched at the top most of the political ladder. It sends a clear signal that the President is not only deliberately sidestepping the implementation of the agreed reforms but is determined to maintain a highly corrupt patronage governance system in Kenya with or without criticism.

The President's continued disregard for public opinion severely undermines the basis for social reconstruction and sets a precedent for future crises. Major changes have to be advocated for and must be enacted in order to bring the desired reforms including transforming the imperial presidency dictatorship, rather than promoting impunity and undermining the implementation of justice and accountability. The present controversy is not only a self-serving attempt by the President but also a step forward in creating a hindrance in the process of expanding the rule of law.

We do not believe that the President and his key allies have had any genuine interest in supporting the full implementation of the National Accord reforms, including satisfactory address of endemic impunity in Kenya. We strongly object to the President's continued daring affront and attack on the Kenyan people's conscience and dignity. The President is reinforcing impunity while deliberately undermining national reconciliation. There should be no single measure of effort that should be spared, locally and internationally, in decisively pushing for the agreed reforms.

We observe that only about two months ago the President disregarded the Truth Justice and Reconciliation Act 2008 while appointing the Truth Commission's Commissioners. And on July 30th, 2009 the President led his cabinet in endorsing impunity by refusing to support the establishment of the Special Tribunal for Kenya to try perpetrators of post-election violence horrendous crimes. It is regrettable that the President disdains essential reforms instead of charting a course towards a Kenyan society based on respect for human rights and the rule of law.

The systematic violation and undermining of the reforms agreed as set out under Agenda Four (4) of the mediation process, is an incredible regression as far as the institutionalization of democracy and promotion of genuine national reconciliation is concerned. So long as the President and senior

political leaders do not have a culture of respecting people's opinion, democratizing and healing the country becomes a rather difficult task.

Finally, we observe that the trademarks of the corrupt and destructive KANUISM legacy remain outstanding in President Kibaki's regime. Perhaps Hon. Joseph Kamotho had a point when he said KANU would rule for a hundred years! It is that legacy that rejected the Special Tribunal for Kenya and it is set to attack and kill the Truth Commission. It is disheartening, disappointing and disgusting over the continued retention of Mr. Amos Wako as the Attorney General even more, when account is taken of the impunity his office has given to the perpetrators of gross human rights violations and corruption in Kenya.

The State Law Office under the tutelage of the current Attorney General is the custodian of the rule of law and justice enforcement. He is enjoined by the law to ensure that nobody regardless of the status enjoy impunity and scorn the rule of law. If at any given time, President Mwai Kibaki was committed to ending impunity in Kenya, he should have had suspended the Attorney General and set up a tribunal to investigate his inability to advise the government appropriately and his dismal performance. On the contrary, his services were still unmatched and had to be retained.

The architect and beneficiaries of impunity need not worry under the current regime and most likely in the next if Kenyans do not take a very drastic political decision. But Kenyans be frightened for your dear motherland and its future. Individual criminal responsibility or mismanagement of public affairs by a single person regardless his or her ethnicity, race or social status must be seen with lens of that person. It has nothing to do with collectivity. We, Kenyans, have to liberate ourselves from the yoke of impunity.

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