

The current political altercation by Cabinet Ministers and Members of Parliament smacks of outright political sabotage to the reform agenda and possible accountability. Indeed, statements and conduct of section Cabinet Ministers and Members of Parliament meant to cause deliberate confusion, prolong, and obstruct implementation of the agreed reforms and accountability measures. This state of affairs is not by chance or coincidence, but a conscious joined enterprise to frustrate genuine and much desired reform agenda all geared towards self political and economic preservation.

It is unacceptable that President and the Prime Minister appear unable to mitigate the situation and that they appear held hostage by the pillars of impunity that is the bulwark of their support and survival.

The current situation of impunity, deteriorating access to essential commodities such as water and food, dwindling job opportunities, escalating insecurity, wanton environmental destruction and the total collapse of the rule of law are clear indicators that this country is fast moving to the status of a failed state. Indeed, Kenya is currently ranked 14<sup>th</sup> next to military junta ruled Burma in terms of countries considered as Failed States in the World according to US-based Fund for Peace Failed States Index 2009.

Kenya is awash with reports of various commissions of inquiries and the recommendations thereof are never implemented. This is putting paid the enormous tax payer's money and other resources expended in such commissions of inquiry.

The current debate being peddled by Parliamentarians is being conducted as though the choice before Kenya was whether to investigate and prosecute the suspects identified by the Waki Commission in Kenya or at the Hague. MPs claim they lack confidence in a national process, but fail to understand that Kenya has a responsibility under international law to bring criminals to justice regardless of whether or not Parliament obstructs the Special Tribunal enactment

Establishment of credible self contained Special Tribunal with high level of international participation would be a first important step in improving the capacity of the Kenyan judicial system and local trial of those most responsible for post-election violence will make such proceedings fully accessible to Kenyans and directly challenge the prevailing culture of impunity. The International Criminal Court retains jurisdiction at all times and if at any point the Kenyan government proves unwilling or unable to administer justice, the ICC reserves the right to step in; so the guarantee of justice is still there.

Sitting back and waiting for the International Criminal Court to intervene, is not the best option for the country. Kenyan authorities cannot wait for the International Criminal Court to end impunity for crimes committed within its borders. If the International Criminal Court were to intervene, it would only be able to prosecute prime suspects responsible for post election violence. This will leave an enormous impunity gap that will not serve the vicarious lessons much needed to stem such crimes.

The priority of the government of Kenya must be accountability on behalf of the victims. In a ruling at the High Court of Kenya at Nakuru Republic Versus Stephen Kiprotich Letting and Others, the judge indicted police for shoddy investigations (pg 34). It is therefore significance to observer short of establishing credible, impartial and effective Special Tribunal or International Criminal Court (ICC) referral to prosecute the post-election violence; the setting up of a Special Division of the Kenyan High Court for the trial of perpetrators of the post-election crimes there is still no credible indication that the Kenyan justice system presently has the capacity to try such crimes. Prosecuting rights abusers will require political will and legal reforms. The ICC statute favors national trials where possible. However, under the court's statute and other international standards, trials should be credible, independent, and impartial. They should adhere to international fair trial standards, and impose penalties that are appropriate given the gravity of the crime, namely imprisonment.

Given the ICC's jurisdiction over crimes in Kenya and Kenya's obligations as a party to the ICC, the ICC will determine whether a domestic trial is an adequate alternative to prosecution by the ICC itself. The ICC can retake a case if necessary. It is the ICC judges who decide if a national trial will be sufficient for their cases. National trials are not a route to impunity. Measures to ensure comprehensive witness protection and support, security, and outreach to the affected communities are other important components to national trials for serious crimes.

We unequivocally state that the jurisdiction of Local Tribunal on the one hand and the Truth, Justice and Reconciliation Commission on the other, are mutually exclusive. However, in the absence of the Local Tribunal, the International Criminal Court (ICC) can complement its jurisdiction. It is therefore a waste of time for anyone to suggest that the truth commission can be called upon to do prosecutorial work which is reserved for the local tribunal or the ICC.

Our position has been in favour of a local tribunal because of the high threshold required by ICC to come in, and the number of suspects that the ICC can try. We also root for a local tribunal for Kenyans to own the process that will punish both the financiers and their surrogates who committed the actual offences on the ground and bring an end to impunity.

We feel that the politicians and their cohorts whose guilty conscience makes them think that their names are in the Waki envelope are using any opportunity and resources to sabotage the likelihood of any credible local institution that will bring them to justice. This game of scorning and jeering accountability is manifest in the tag of war and indecisiveness of the cabinet.

We are therefore calling upon all Kenyans to move with commensurate haste to be proactive in demanding for justice and accountability. Kenyans must be more assertive in their demand for accountability and social justice and must know that the most sustainable reforms must emanate from them and they should not sit back and expect reforms from without.

We are also calling for deliberate concerted efforts between the media, civil society and private sector to proactively project, sustain and put demand on the full implementation of the agreed reforms and accountability measures.