

For Immediate Release
Contact: 020 2219757

A JOINT PRESS STATEMENT FOLLOWING A TRUTH JUSTICE AND RECONCILIATION FORUM ORGANISED BY CONCERNED THE CIVIL SOCIETY ORGANIZATIONS

Confronting Crisis of Impunity and Ensuring a credible Truth Commission

The government must realize that sustainable peace will not come from any action that sanctions impunity at the expense of victims' rights to truth and justice; human rights and governance organizations have stated today.

This statement had been issue jointly today following the resolutions passed yesterday in a public forum hosted by Center for Multiparty Democracy(CMD), International Center for Policy and Conflict(ICPC)and the Kenyan Chapter of the International Commission of Jurists(ICJ-Kenya).

The theme of the Public forum was: **Confronting Crisis of Impunity and Ensuring Credible Truth Justice and Reconciliation Commission.**

“We stand united as a country to defend a process that seeks to truly uncover the truth about past atrocities, ensure justice and promote genuine reconciliation for all Kenyans. The TJRC is meant to be Victims-centered but the current process is not. The hallmark of an open society is that we do not conceal information that reflects poorly on us – we expose it to the light of day, so that wrongdoers can be held accountable and future abuses prevented,” the Human Rights Groups said

The Human rights further stated, “A successful truth commission any where in the world is evaluated under three parameters: the credibility and integrity of process leading to and during its formation and operations; the solidness of the product; and the impact of the process and the product. The process which feeds information into the report of the Commission, which is the basis for the impact of the report, must not be flawed. If we have a flawed process, we will have a flawed report which means that we will not have the correct impact after the commission finishes its work despite having spent Billions of shillings of tax payers’ money”.

“The truth of the matter is that any person who has an interest in the outcome of the work of a truth commission has no business being in that commission and therefore, the personalities in the TJRC that have an interest in the commission even at the basic level of being exonerated by the commission have no business being there,” they added.

The issue of personalities in the commission is not only a legal issue but also a moral one. We cannot forget that this process is about victims, and if even one (1) victim he or she is not comfortable appearing before the leadership of the TJRC then the leadership cannot be part of the process.

Victims have refused to appear before the Commission until Amb. Bethuel Kiplagat steps down. As such, his continued stay in the commission is untenable to the TJR Act 2008, objective and mandate of the TJRC. It is not acceptable that one individual can derail and block a process that belongs to the nation. It appears that he is determined to prove to Kenyans that it is either his way or no commission at all. Further, it clear manifests that Amb Kiplagat has something he is hiding from or protecting, which raises more integrity and credibility questions about his fitness to chair the Commission.

“The TJRC is a much a moral process as it is a legal process-one’s legal competence does not automatically grant competence and it is a parameter that cannot be substantively determined by a court. And even if we accept the proposition that the court can determine the ability of the leadership of the

commission, the leadership should step down as we await the determination of the court process to determine its competence, is in itself contradictory,” they further argued.

Amb Kiplagat has categorically stated that this matter should be dealt with by court of law. Should the court decide that he should remain in office, and victims and witnesses refuse to appear before the TJRC to give evidence, as victims have continued to say, what will the nation have gained?

The current crisis of impunity within Truth Justice and Reconciliation Commission exists against a backdrop of pervasive human rights violations, weak institutional mechanisms to protect human rights and a systemic crisis of impunity for perpetrators that has continued for years.

We as united members of civil society, therefore ask Amb Kiplagat to step down as chairman of the Truth Justice and Reconciliation Commission immediately and with dignity.

Signed by:

- 1. Victims’ Rights Advocacy League (VRAL)**
- 2. Center for Multiparty Democracy (CMD),**
- 3. International Center for Policy and Conflict (ICPC)**
- 4. Kenyan Chapter of the International Commission of Jurists (ICJ-Kenya)**
- 5. Kenya Human Rights Commission (KHRC)**
- 6. Kenya for Peace with Truth and Justice(KPTJ)**
- 7. National Convention Executive Council (NCEC)**
- 8. Citizens Coalition for Constitutional Change (4Cs)**
- 9. Haki Focus**
- 10. Release Political Prisoners (RPP)**
- 11. Center for law and Research International (CLARION)**
- 12. Mars Group/Partnership for Change**
- 13. Constitutional Reforms and Education Consortium (CRECO)**
- 14. Kenyans for Justice and Development (KJD)**
- 15. Many individual Victims, members of public and political parties.**

Background information

The real problems behind the TJRC process in Kenya originate from lack of proper understanding of the purpose of the TJRC and contextualizing the political conditions under which the TJRC was being established. Kenya is not in a transition moment but rather on continuity. We are establishing a truth commission under the same repressive constitutional and legal regime; in the entire infrastructure of impunity responsible for the human rights violations and corruption is still intact; and we failed to understand the significance of timing and sequencing of the processes. We do not seem to acknowledge that TJRC is not a stand alone process. It lacks clarity on its relationship with other transitional justice processes is very central.

In 2003 the NARC regime established the Prof. Makau Mutua task force on a Truth, justice and reconciliation process. The Makau Mutua task force returned a verdict on 26th August, 2003 that 90% of Kenyans wanted a Truth, justice and reconciliation process that would offer Kenyans an opportunity to deal with an ugly past of impunity evidenced in the reported case of egregious human rights violations and economic plunder under the watch of the previous administrations; and to offer Kenyans an opportunities to reconcile and build democratic institutions of governance under the rule of law.

When the report was received by the President, it was shelved with abandon and would have remained stuck in the shelves to date but the ogre of the 2007/8 post election violence thrust the question of impunity in Kenya to the fore once again; it now had been confirmed beyond doubt that it is because impunity had remained intact that the post election violence was perpetrated without fear for consequences on the part of the perpetrators. The agenda of attacking the culture of impunity was once again returned to the table under Agenda Item Number 4 of the National Dialogue and Reconciliation Agreement (the National Accord) where it was scheduled for address.

Under the National Accord framework there are various transitional justice mechanisms that Kenya opted for to deal with impunity and give herself a chance to undertake state reconstruction. They include but not limited to prosecutions, legal policy and constitutional reforms and the truth commission. The Prosecutions were to be undertaken through the International Criminal Court (ICC) process as well as through the establishment of the a Special Tribunal for Kenya as was recommended in The Commission of inquiry into the Post election violence (CIPEV) (commonly known as the Waki) report¹. While the ICC process seems to be on track and continues to invite cautious optimism in Kenya, the Special tribunal mechanism seems to have been trapped in the murky waters of politics for now.

¹ CIPEV pages 473- paragraphs 6-13