

Coast Civil Society Network for Peace Statement on the Truth, Justice and Reconciliation Commission

We, the **Coast Civil Society Network for Peace** wish to state that we have very serious reservations about the capacity of the Truth, Justice and Reconciliation Commission to carry out its work successfully for the following reasons.....

1. For starters, we are concerned about the moral credibility of the Chairman and some Commissioners of the TJRC. Some members have been linked to past human rights abuses. The Chairman served the previous repressive Kanu regime with distinction and is on record as having defended some of its atrocities. Several prominent victims of past human rights violations and organised groups have raised issue with the composition of the Kenyan Commission. Some have even gone to Court. The Report of the Parliamentary Committee which approved the final shortlist from which the President chose the Truth Commissioners is not a public document. It is not available for example on Parliament's website. The proceedings of the Selection Panel which gave Parliament names to look at were not conducted in public, nor have they been made, public. We want to state very clearly that the success of any Truth Commission hinges on the credibility of the Commissioners. Technical ability and Peace building experience is not enough. Moral authority cannot and should not be ignored. All the Commissioners must be beyond moral reproach.
2. There is a contradiction between the TRJC Act of 2008 and the Indemnity Act Cap.44 of 1972. The Indemnity Act clearly restricts the taking of legal proceedings in respect of certain acts and matters done in certain areas between the 25th December, 1963 and 1st December 1967. These areas include North Eastern Province, and the Isiolo, Marsabit, Tana River and Lamu districts. This contradicts the work of the TJRC commission which has been tasked with establishing an accurate, complete and historical record of violation and abuses of human rights and economic rights in the whole country between 12th December, 1963 and 28th February, 2008. This legal contradiction must be addressed before the TRJC Hearings commence.
3. Further to (2) above, Section 3(i) of the Indemnity Act also protects public officers or members of the armed forces from violations committed within the same areas in Kenya. This contradicts the TRJC Act which under section 5(a) can investigate or hold to account the State, Public institutions, and holders of Public office (both serving and retired) for human and economic rights violations committed anywhere in Kenya. This legal contradiction must also be addressed.
4. Another reservation about the TJRC concerns its capacity to address economic crimes. Out of the staffing positions advertised so far, there appears to be no room for experts in assets recovery, fraud, land matters or reparations. Most of

the vacancies on offer are for lawyers, logisticians and ICT experts. Truth Commissions are established to reconceive society, yet that is not possible without addressing the redistribution of wealth, land and property and recovering stolen assets. In Kenya, there is a clear link between grand corruption and poverty. Those few privileged Kenyans who looted public coffers must now be held accountable.

5. The TJRC Act does not guarantee a comprehensive protection programme for victims and witnesses. This will hinder the process of truth recovery considering the fact that the Kenyan process is being implemented in a hostile environment. Truth Commissions are normally part of a transitional justice agenda and occur in countries recovering from conflict or where major reforms have taken place. In Kenya, no substantial transition has taken place and the main perpetrators still hold powerful positions within Government.

We therefore demand;

- a. That the Chairman and Commissioners whose moral authority has been called into question resign with immediate effect because Kenyans have lost confidence in them.
- b. The repeal of the Indemnity Act Cap.44 of 1972, Laws of Kenya, to allow for the TRJC process to proceed unhindered.
- c. That the TRJC guarantee restorative justice for victims. The state must be reconciled with victims by gestures of reparations. This includes compensation, restitution, and rehabilitation. If they cannot compensate victims, what is the value of them telling their story?
- d. That any amnesty for economic crimes must be based on asset recovery of ill gotten wealth.
- e. That the TRJC Act is amended to guarantee a comprehensive protection programme for victims and witnesses.
- f. The establishment of a Special Tribunal that will compliment the work of the Commission by prosecuting perpetrators of human and economic rights as identified by the Commission.

Statement signed by the following Network members;

1. Phyllis Muema: Kenya Community Support Centre.
2. Ghaniya Sheban: Kenya Muslim National Advisory Council.
3. Marcelino Waithaka: Mombasa Catholic Justice & Peace Commission.
4. Lucy Chesa: Tunaweza Disabled.
5. Charity Chahasi: Tunaweza Disabled.

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| 6. Saumu Ali: | Tunaweza Disabled. |
| 7. Joseph Katana: | Changamwe Umbrella of CBOs. |
| 8. Octavian Rewona: | Coastal Aid Kenya. |
| 9. Binti Ali Kiza: | Sauti Ya Kinamama. |
| 10. Agnes Mailu: | Solidarity with Girls in Distress. |
| 11. Walid Ahmed Ali: | Lamu Youth Alliance. |
| 12. Samuel Kingi: | National Council Churches of Kenya. |
| 13. Hassan Greeve: | PREPARED Society. |
| 14. Andrew Mwangura: | Seafarers' Assistance Program. |
| 15. Evans Gachie: | Coast Citizens Council. |
| 16. Wakio Ndau: | Kaya Ecological & Cultural. |
| 17. Shamsan Nagib: | Minda Trust. |
| 18. Harold Mwatua: | Kilifi Greentown. |