



Kenya National Commission on Human Rights

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KNCHR POSITION ON THE WAKI REPORT

The Kenya National Commission on Human Rights has over the last two weeks been carefully and closely following the debate on the Waki report. KNCHR is perturbed by twist and turns and the political ping pong by politicians and political parties in an attempt to discredit the Waki report and subvert justice. The debate within the political class aimed at the non implementation of the Waki report is morally fraudulent and a shameless and treasonable attempt to perpetuate impunity. As a nation we must therefore be firm and be prepared to take the necessary steps and make the necessary sacrifices to end impunity and to put the country back on the path of a constitutional democracy.

In this regard, KNCHR reiterates its support for the Waki report and its recommendations and renews its call for the total and expeditious implementation of the recommendations. As a public body established to promote and protect human rights in Kenya, KNCHR stands for full accountability, from all individuals and institutions that may have provoked or orchestrated violence against Kenyans. We therefore join other Kenyans in making demands for justice for victims through investigation and prosecution of all persons, regardless of their official position, for all acts of commission of violence whether direct or indirect, for acts of omission as well as dereliction of official duty. We further demand for speedy implementation of all the structural reforms proposed by the report with regard to the security sector agencies and especially the Kenya Police.

We have noted with concern that some key parties to the National Accord & Reconciliation Agreement have elected to be barriers to Kenya's search for truth by purportedly rejecting the Waki Report. More particularly, we strongly castigate political actors and parties who opted to renege on commitments made under the Kenya National Dialogue & Reconciliation Process mediated by H.E Kofi Annan. In opting to reject the Waki report in its totality contravenes the commitments of 1st February 2008 to agenda item 3 to which all parties affixed their signatures and seeks *"a solution towards resolving the political crisis arising from the disputed presidential election"*

results as well as the ensuing violence in Kenya". We therefore urge the ODM parliamentary group and all other political actors to rethink their position and embrace the drive towards the full implementation of the Waki report.

No individual or entity was on trial before the Commission of Inquiry on Post Election Violence (CIPEV) and we find the moves by some politicians presumptive since the proceedings in question were not those of a court of law that would determine the actual guilt of anyone with finality. In response to this targeted onslaught on the Waki Report, we reiterate that for anyone implicated by CIPEV, this in no way affects the presumption of innocence in their favour. No one has been condemned unheard and all those fingered in the report will have their day before the Special Tribunal proposed with all the necessary guarantees for a fair hearing. KNCHR therefore calls upon all Kenyans to refrain from innuendos that negate the presumption of innocence for those who may be called to accountability.

KNCHR wishes to note that we conducted lengthy investigations whose findings are not dissimilar to those contained in the Waki Report, KNCHR has continuously spoken against Kenya's perverse culture where exposure of inappropriate conduct in public life typically brings little more than fleeting embarrassment against powerful public officials.

We are unable to fathom why some politicians and especially the ODM parliamentary group should be so intent on blocking the fight against impunity by reneging on recommendations that provide for enquiry and follow up on allegations for acts of commission and omission and reform of the institutions that failed Kenyans. Is ODM PG and some PNU politicians telling those who supported them and those who did not that no action should be taken against those in senior levels within government, security agencies or politicians responsible for acts of omission and commission that precipitated the violence? KNCHR equally believes that the ambiguous and shifting positions taken by politicians and political parties are a betrayal to the people of Kenya and a characteristic of inept leadership in steering the process forward.

We remind Kenyans that the last line of defence for democracy is a vigilant, politically aware and informed citizenry ready to challenge those who abuse power. Avoiding a reckoning and instead opting for the easy path, the language of "forgive and forget" would set an extremely bad precedent and

KNCHR demands that those in power MUST not be allowed to trade their immunity in return for peace. Indeed Kenyans must stand tall against those who propagate fear that nation's search for justice will lead to chaos and disintegration. Justice can never be cowed and our prospects for peace are only made possible through justice.

We can only conclude that perhaps the politicians are suffering from amnesia; that there was no severe humanitarian crisis in the country, that no armed raiders attacked helpless civilians, that no women were raped, that the police did not shoot or rape anybody, that no homes were torched, that there are no homeless Kenyans living in camps or squatting with relatives and that no livelihoods were destroyed. In a nutshell, by rejecting the report, we understand the politicians to be telling Kenyans that:

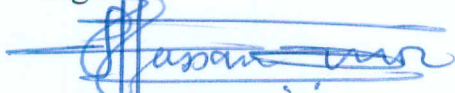
- a) They do not want national catharsis, healing of the nation or a clean break from the past.
- b) They support the lack of national morality in politics and does not believe in the culture of humanity
- c) They would prefer to reinforce Kenya's culture of impunity by hiding the concealed painful truth of the post Election violence
- d) They are against justice, reparation, restoration and retribution through prosecuting the perpetrators under due process of law over the most outrageous violations and crimes
- e) They desire to renege on its earlier commitment to create a culture of accountability and human rights centered governance.
- f) The post election violence did not encompass serious offences or constitute attacks on the most fundamental aspects of human dignity.
- g) The violence was an isolated event, not large scale, that there was no massive infringements of human dignity or a broader practice of misconduct by anyone
- h) There was no complicity, connivance or toleration of the violence by people in positions of leadership and authority

We remind the political class that time is ticking; an agreement for the Special Tribunal MUST be signed within 60 days of presentation of the report to the President and the Tribunal created by law within 45 days thereof. The threat by politicians or any other party that they will not allow their members to be extradited for trial outside Kenya in case of default is laughable.

Kenya's obligations under the Rome Treaty are more than clear after signing the treaty in 1999 and ratifying in 2005. This means that **any incriminated acts** committed in Kenya after 2005 fall within the ICC's jurisdiction. Politicians cannot therefore shield themselves or the persons concerned from criminal responsibility for crimes within the jurisdiction of the Rome Statute. Kenyans MUST appreciate the prevailing mood in the world today informed by this solidarity among nations which places an obligation for Kenya to prosecute persons accused of serious international crimes as an essential interest of the international community as a whole. If politicians wish to sabotage this process, then the futility of their endeavour is amazing in its naivety. Being a state party to the Rome Statute the ICC Prosecutor could intervene if we have neither the desire nor the means to initiate and conduct proceedings.

We therefore remind all parliamentarians that the first and best option for justice is for Kenya to try its own. If parliamentarians don't wish Kenya to meet its obligations, then the ICC Prosecutor may supplant our national jurisdiction and investigate crimes that fall within the competence of the ICC. We are putting all parliamentarians on notice that unless they speedily enact the ICC Crimes Bill 2008 and the enabling legislation to set up the proposed Special Tribunal, our national sovereignty risks encroachment under the doctrine of complementarity where the ICC could take the place of our national courts as a Court of last resort.

Signed



HASSAN OMAR HASSAN
VICE CHAIRMAN, KNCHR
11th November 2008