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Commission of Kenya

10-12-2010

Civil Society Response to Chief Justice

Truth, Justice, and Reconciliation Commission

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Monday, October 12 2010

To



KENYA HUMAN RIGHTS COMMISSION
"struggling for a Kenya without human rights violations"



**THE KENYAN SECTION OF THE INTERNATIONAL
COMMISSION OF JURISTS**
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Your Ref: C.J. 54/1

To
Justice Evans Gicheru,
The Chief Justice of the Republic of Kenya,
High Court,
Nairobi.

Dear Sir,

**RE: YOUR RESPONSE ON THE PUBLIC PETITION TO INSTITUTE A TRIBUNAL TO
INVESTIGATE THE CONDUCT OF AMB. BETHWEL KIPLAGAT, CHAIRPERSON OF
THE TRUTH, JUSTICE AND RECONCILIATION COMMISSION (TJRC)**

Reference is made to the subject above. We as the representatives of the Kenya Transitional Justice Network (KTJN) appreciate your prompt response to the petition brought before you on 9th September, 2010 seeking your immediate action to institute a tribunal against the Truth Justice and Reconciliation Commission (TJRC) Chair Mr. Bethuel Kiplagat. In your very brief response, you indicated that the communication on the position of this matter has already been made to the Truth, Justice and Reconciliation Commission (TJRC)'s secretary in response to the petition dated 16th April 2010. We here wish to raise a number of objections to your response.

To begin with, our petition was not a follow up to the one of the Truth Justice and Reconciliation Commission dated 16th April 2010. Ours was an independent petition having been developed by a segment of citizens and organizations, who attended the National Dialogue Forum held at the KICC between 1st and 4th September, 2010. Therefore, we request that you provide an urgent and substantive response to our petition for the concerns and demands raised touch on critical issues regarding the reform agenda. Note further, that the political context and legal references in our petition have been enhanced by the need for administrative actions, respect for human rights; competence and integrity in the management of public affairs.

The KTJN had hoped and still expects that you would forthwith set up a tribunal to investigate the conduct of the Chair of the TJRC as you are required to under the Truth Justice and Reconciliation Act. The confusion surrounding the current state of affairs at the Truth Justice and Reconciliation process stems largely from the seeming disregard by all the players concerned, of the vital place that this process occupies in the much needed social and political reform of this nation under Agenda Item Number 4 of the National Dialogue and Reconciliation. We wish to remind you that the quintessential cause for the establishment of the TJRC was to collate an accurate and complete record of the various historical injustices that have been inflicted on this nation and its people by public and private institutions and persons. Without seriously addressing our past, we cannot move confidently into the future.

Indeed the new constitutional dispensation was intended to anchor the Agenda 4 reform initiatives, which include the Truth Justice and Reconciliation Process. This process must thus be viewed through the constitutional lens and must secure the national values and principles under Article 10 of the Constitution of Kenya 2010, which requires State organs, State officers, public officers and all persons to observe the national values and principles whenever any of them –

- a) applies or interprets the Constitution
- b) enacts, **applies or interprets any law; or**
- c) makes or implements public policy decisions

Of note is Sub-article (2) (c) which includes within the national values and principles:

- Good governance
- Integrity
- Transparency; and
- Accountability.

In light of the foregoing, the KTJN avers in its petition that there exists sufficient prima facie evidence to lay a basis for the establishment of a tribunal to investigate Amb. Bethuel Kiplagat. This is because in swearing as he did an affidavit before the TJRC Selection Panel to the effect that he had not in any way been involved, implicated, linked, or associated with human rights violations of any kind or in any matter which is to be investigated by the TJRC as a necessary step leading up to his appointment as a commissioner in pursuant to Section 10 (6) (b) of the Truth Justice and Reconciliation TJR Act, an affidavit that has now demonstrably been shown to have been false, Amb. Kiplagat perjured himself and obtained a job that he was not entitled to. This conduct is particularly insidious considering the purpose and intent for which the TJRC was created as set out in the preamble of its constituting statute.

KTJN avers that since he took up office at the Chairperson on the TJRC, Amb. Kiplagat has conducted himself in a manner that has brought the TJRC into disrepute when on 12th April 2010, he signed a letter indicating his intention to step down while a tribunal investigated his conduct only to recant and thereby embarrass his fellow commissioners who had called a press conference to announce their join decision.

The Truth Justice and Reconciliation process is far too important to be held hostage by a single individual. There can be no justice in the legitimization of his continued illegal stay in office through the inertia of yourself as the principal duty-bearer. We wish to remind you that once a petition is made to you for the establishment of a tribunal to investigate any Commissioner of the TJRC, you are required to do so under Section 17 (2) (a) of the TJR Act. The KTJN, victims of historical injustices and the Kenyan public therefore expect you to act substantively on our petition without further delay.

Sincerely,

L. Muthoni Wanyeki,
Executive Director, Kenya Human Rights Commission

Ndung'u Wainaina,
Executive Director, International Centre for Policy and Conflict

George Kegoro
Executive Director, International Commission for Jurists

For and on Behalf of the Kenya Transitional Justice Network

CC.

- 1) **Hon. Mwai Kibaki**, President of the Republic of Kenya. C/O Francis Muthaura, Head of Civil Service and Secretary to the Cabinet;
- 2) **Hon. Raila Odinga**, Prime Minister of the Republic of Kenya;
- 3) **Hon. Amos Wako**, Attorney General of the Republic of Kenya;
- 4) **Hon. Mutula Kilonzo**, Minister for Justice, National Cohesion and Constitutional Affairs;
- 5) **Hon. Abdikadir Mohammed**, Chair, Constitutional Implementation Oversight Committee;
- 6) **Florence Jaoko**, Chair, Kenya National Commission on Human Rights on Behalf of the Selection Panel.
- 7) **Patricia Nyaundi**, Secretary, Truth, Justice and Reconciliation Commission.