

**PCEA MINISTERS FRATERNAL MEETING: IMPLEMENTATION OF THE
NATIONAL ACCORD- KEY ISSUES AND CHALLENGES**

PCEA Guesthouse, South 'C, 21st May 2009,

Organized by Kenyans for Peace with Truth and Justice

**Report By
Anushka Sehmi**

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Preamble

The meeting began with brief welcome remarks by the moderator, who underscored the importance of allowing the church to remain relevant in the current political climate and to be aware of the pertinent issues highlighted in the National Accord. The meeting was supported by KPTJ, a coalition of legal, governance and human rights organizations and individuals who came together after the elections and during the violence to agitate for the restoration of peace, truth and justice in Kenya.

A. Summary of Presentations

1. Ndung'u Wainaina, International Centre for Policy and Conflict

Topic: Activating TJRC at the Grassroots

The church and civil society have interacted in the past to bring the country to where it is today, and as such the church gives the country necessary direction in many different ways. KPTJ is a coalition of civil society organizations and individuals and the church is also represented within this coalition. KPTJ aims to articulate the issues that led to the post- election violence and gives Kenyans a space to be heard. AfriCOG touches on governance issues in the country, such as corruption etc. and acts as the secretariat of KPTJ. Collectively KPTJ aims to provide leadership on issues of justice and accountability.

Transitional Justice and Truth, Justice & Reconciliation

The TJRC Bill was passed in October 2008; the Miscellaneous Provisions Act amends certain sections in the TJRC. The church will have to play a crucial role in the implementation of the TJRC. It is only a matter of weeks before the TJRC is set up and 15 finalists have been selected as potential commissioners. A final total of six commissioners will be appointed by the Panel of Eminent persons. One critical success of the TJRC will depend on the public awareness of the TJRC and whether or not the TJRC will be objective.

Genesis of Conflict in Kenya

- Centralized, corrupt and patronage political system
- Systemic and systematic corruption and abuse of power
- Political violence and derogation of fundamental rights and dignity
- IDP's and involuntarily disappeared
- Massive scale of torture and GBV
- Dispossession/ seizure of land and property occurred and plunder of public capital
- Structural inequalities and discrimination
- Serious breach of international humanitarian law (collateral damage) go unabated

What does it mean to have a peace settlement?

- Embrace peaceful democratic politics
- End impunity
- Address structural violence
- Inclusive, de-ethnicised policies
- Promulgate democratic, constitutional order
- People-centred social economic policy
- Have fair, effective and efficient justice for all
- Vested in people
- Adhere to international human rights laws
- Restructure the state (what happened in 2002 was not a re-structuring of the state, but a regime change)
- Commitment to address disappearances, discrimination and IDP's

What challenges face the peace process?

- Absence of political will
- Huge numbers of displaced people, even before the 2007 elections
- Absence of an enabling atmosphere to allow people to return back to their homes
- Systemic human rights violations and impunity
- Absence of justice and reparations
- Militias
- Drain in drafting of the new constitution
- Appeasement
- Legacy of violence

Is there a prospect for transitional justice in this country? There are various approaches to deal with human rights violations and the TJRC is just one of them. It provides victims with the opportunity to have access to the truth; reinforces possibility for sustainable peace; and is a parameter for breaking away from the past. The needs of victims have five key facets:

- Truth seeking (factual, objective, forensic truth)
- Personal account
- Reparations (can be material or symbolic)
- Restorative healing
- Memorials and memorialization.

Institutional reforms are also necessary, as people who have violated rights must be removed from public office. However, at the moment all reforms are taking place at the same time and as a result there is no coherence and massive resources are required to sustain the myriad of commissions that have been set up. The church has a very important role to play in the reconciliation process. Acknowledging the past is the key to building positive relations.

How do we balance all of these issues?

Does power sharing heal the wound? Does truth-seeking automatically lead to justice? Reconciliation does not simply mean to forgive and forget. Furthermore, the selection of the commissioners has to be transparent, and it is important to question the identity of the commissioners. The commission has powers to subpoena people who appear before it; it also has the ability to order searches. The government is expected to engage with the commission as well as undertake public engagement. The commission is expected to close-down in 2012, it is now up to the church as to how it will mobilise Kenyans to participate in this process. In conclusion, there are two forms of peace; negative peace (where issues have not been dealt with) and positive peace (where structural causes of the violence have been dealt with). Kenya is living under negative peace at the moment.

2. Kwamchetsi Makokha, KPTJ

Topic: Agenda 4: Implementation

Agenda items 1, 2 and 3 have not yet been dealt with completely or effectively and yet we find ourselves addressing Agenda Number Four. It is important to deal with reforms in context. How do we remodel society to achieve and just and achievable peace? There are six key items contained in Agenda 4.

- Constitutional and institutional reform
- Land issues and reform
- Poverty and inequality: why are some places more developed than others?
- Unemployment of the youth: the largest proportion of the population is under the age of 35.
- National cohesion
- Issues of transparency, accountability and impunity

We need a new constitution, our constitution is no longer a constitution, but has evolved into a mongrel. There is a conflict between the power structures of government. Is it possible to have a different approach to the constitutional review? Only review the contentious issues and pass the rest? Can we begin to do things that produce results? Can we just focus on the things that we don't agree on?

Institutional Reforms; as mentioned, in the Waki Report- women in this country were violated and had no access to justice during the post-election violence. Hospitals were not set up and gender recovery centres were not well equipped and slow. The police force is also in a dismal state and a complete overhaul is required. These are examples of certain things that must change. However, we see no repentance from the police force and the judiciary. Why doesn't the judiciary deliver justice? The police tend to think that they are above the law. There is a role for everybody in this country to play and we need to find a way to deal with people in a transparent manner.

Land: we must begin to speak out about land issues. Draft National Land Policy- we have to recognize who actually owns land in Kenya?

Poverty and Inequality: the government believes that we should tackle this problem according to the Vision 2030; however, the Kenyan people require accelerated actions.

Youth Unemployment: has to be tackled, the programs relating to 2030 are not enough. We need more imaginative ways to deal with these problems

National Cohesion: is about accepting ethnicities and respecting one another. We must deal with our perceptions of each other. National healing and reconciliation can only happen if we can re-settle displaced people and we will have to deal with Agendas 1, 2 and 3 first. If we don't deal with core issues, no reconciliation can take place.

Corruption: let the police deal with corruption and not bureaucratic committees to deal with these issues

3. Sam Mohochi, Independent Medico-Legal Unit (IMLU)

Topic: Security Sector Reform

The TJRC is shocking and horrifying in its admission in its preamble on the ineffectiveness of the judiciary to deliver on its mandate. Over 150 new police stations have been reconstructed and a lot of resources have gone into ensuring a security presence all over the country, however, Kenyans should appreciate the context in which we find ourselves. Security in this country is highly politicised and not accountable; furthermore, a lot of criminality and torture takes place within the police force. The accountability of the security forces should be to the people and not their appointing authority and in this respect we still harbour colonial notions. The Police Act was last reviewed in 1974 and the Prisons Act was last reviewed in 1969. The last properly constructed prison was in 1969; the overall prison capacity in Kenya is low and stands at 16,000. Pre-trial detention takes place for people who should be innocent until proven guilty. The current prison population stands at 47,000-50,000 for a capacity of 16,000. Following the 2002 elections, there was an attempt to reform the deficiencies within the criminal justice system. The outcome of this was this that a lot of resources were channelled to this purpose; however, in the end the strategic plan was shelved. KPTJ has been campaigning for the Freedom of Information Bill, in order to prevent issues like the Anglo-Leasing debacle. Do we really understand the consequences of the Mutual Assistance Bill/ Treaty, whereby we are being contracted to store terrorists/ pirates and kidnapers. Furthermore, we should be aware of transparency concerns within the security sector, for example, NCIS receives up to 6 billion shillings and the Auditor Controller General does not have the authority to look at the details of where the money has been spent

Police Reforms

There has been a wide expression of disgust by the Kenyan people on policing tactics in Kenya. Insecurity is an issue of concern in this country again, as well as police participation in crime. Penal and judicial reform is urgently required, furthermore, there are so many private security firms in this country and they operate without any regulatory

framework. Security is also a crucial issue for Kenya due to Kenya's proximity to Sudan and Somalia, leading to a high proliferation of small arms from Sudan and Somalia. As security is the cornerstone of development it is vital to address these concerns immediately.

B. Response and Inputs from the Plenary

- TJRC is seen as an activity and not a process
- This country doesn't have to have a stable political environment to carry out some of the issues that it has to.
- Criminalisation of poverty
- Role of politicians in the creation of militias.
- With regards to reform- 10 billion shillings have been committed to security sector reforms. Disconnect between community and the police. Donors and the international community should demand accountability.
- The Nairobi region of the PCEA church covers Tanzania and the Coast; it covers 1/5 of all PCEA regions. All contact persons are present at the meeting and can be approached for any further information. The knowledge the PCEA Ministers get trickles down to the congregations and can reach about one million people in a week.

C. Critical Questions Arising

- i. What is the exact timeframe for the TJRC and what happens if they require more time?
- ii. Have any Truth, Justice and Reconciliation Commissions ever delivered on their mandate, or are they all ineffectual (the former Yugoslavian TJRC was cited as an example)?
- iii. What is the link of the TJRC with victims who live in the rural areas and how can it be of use and relevance to victims in these vicinities?
- iv. Were the Agenda items meant to be an activity or a process?
- v. Reform: how should we expect these reforms to take place?
- vi. Lawmakers don't make laws. The parliamentarians keep engaging in diversions rather than doing their job.
- vii. How much does the public know about what is going on in our society in terms of literacy and formal education?
- viii. Where do you see Kenya with regards to employment in the 5-10 years? Is there another way for people to live their lives without owning land?
- ix. What are the PCEA ministers doing to encourage dialogue, what are the challenges and is there any way that KPTJ can help?

D). Emerging issues

1. The church must be actively engaged and aware of the many facets of the reform

agenda in order to educate and mobilize their congregations on the way forward with regards to Agenda 1, 2, 3 and 4.

2. Church leaders must undertake to remain abreast of all matters pertaining to the current reforms.

Conclusion

The church leaders gleaned vital information from the meeting and they were happy to work with us in the future so that they could better inform their congregations on the progress of the current reforms. All ministers expressed a keen interest in learning more about the reform process and it can be concluded that this meeting was of vital use to them in terms of enhancing their knowledge, and consequently the knowledge of their congregations.

Annexes

1. Programme

Kenyans for Peace, Truth and Justice (KPTJ)

Implementation of the National Accord: Key Issues and Challenges

VENUE: PCEA Guesthouse, South C.

TIME: 9.00-16:10 p.m.

DATE: THURSDAY MAY 21st, 2009

PROGRAMME

09:00-9:30 a.m.	Arrival, Registration and Tea <i>Regional Secretary</i>
09:30-10:00 a.m.	Devotion <i>Regional Chairman</i>
10:00-10:45 a.m.	Key Note Address <i>PCEA Secretary General</i>
10:45-11:30 a.m.	Who is KPTJ? Activating TJRC at the grassroots <i>Ndung'u Wainana</i>
11:30-12:00 p.m.	Agenda 4: Implementation <i>Kwamchetsi Makokha</i> <i>KPTJ</i>
12:00-12:45 p.m.	Security Sector Reform <i>Sam Mohochi</i>
12:45-01:00 p.m.	Plenary <i>All</i>
01:15-14:30 p.m.	Lunch
14:30-15:30 p.m.	Fraternal Plenary <i>Regional Secretary</i>

15:30-16:00 p.m.

**Way Forward
All**

16:00-16:10 p.m.

**Vote of Thanks
Rev. Otieno Agola**

2. List of Participants

NO	Name	Organization
1	Rev. Elias Otieno Agola	PCEA
2	Rev. Muikeli	PCEA
3	Rev. Kagiru	PCEA
4	Rev. Ngari Hiuhu	PCEA
5	Rev. Kenya Kimani	PCEA
6	Rev. Hiram Mundia	PCEA
7	Rev. Joseph M. Wanjao	PCEA
8	Rev. Lucy N. Njihia	PCEA
9	Rev. Anaui Nduwamungai	PCEA
10	Rev. H.M Muraya	PCEA
11	Rev. Winnie Kanyi	PCEA
12	Rev. Edward Muriungi	PCEA
13	Rev. Thegu Mutahi	PCEA
14	Rev. Nelly Fiosy Kahua	PCEA
15	Rev. Philip Ole Ikayo	PCEA
16	Rev. Johnathan Lilan	PCEA
17	Rev. Peter K. Ndungu	PCEA
18	Rev. Cymu W. Kimanyi	PCEA
19	Rev. M. John Njua	PCEA
20	Rev. E. Nkoitiko	PCEA
21	Rev. Shem Githinji	PCEA
22	Rev. Ayub M. Kabutha	PCEA
23	Rev. John M. Melinda	PCEA
24	Rev. Wilfred M. Kabengi	PCEA
25	Rev. Justin M. Njapi	PCEA
26	Rev. Mathew Mustes	PCEA
27	Rev. Peter K. Mwaura	PCEA
28	Rev. Simon Kamande	PCEA
29	Rev. John Mambo	PCEA
30	Rev. Silas M. Babu	PCEA
31	Rev. James N. Kahanya	PCEA
32	Rev. Joanes O. Sianga	PCEA
33	Rev. John Muriithi	PCEA
34	Rev. Francis Gatua	PCEA
35	Rev. L. Gioko	PCEA
36	Samuel Mohochi	IMLU/KPTJ
37	Rosemary Tollo	KPTJ
38	Ndungu Wainana	ICPC/ KPTJ

39	Anushka Sehmi	KPTJ
40	Peter T.Kinyanfu	PCEA
41	Rev. Moses Maata	PCEA
42	Rev. Jane Kariuki	PCEA
43	Rev. Michael Kimani	PCEA
44	Rev. Robert Wathenya	PCEA
45	Rev. Kenneth Maina	PCEA
46	Rev. Peris Mugo	PCEA
47	Kwamchetsi Makokha	KPTJ
48	Rev. S.M Kariuki	PCEA
49	Rev N. Githinji	PCEA
50	Rev. Esther Wainaina	PCEA
51	Judy Wanjiru	PCEA
52	Rev. Patrick Muthugu	PCEA

3. Ndung'u Wainaina: Presentation

PROSPECTS FOR TRANSITIONAL JUSTICE, TRUTH, JUSTICE AND RECONCILIATION (TJR)

Ndung'u Wainaina
Executive Director, International Centre for Policy and Conflict (ICPC)¹

FAULT LINES BETWEEN QUEST FOR JUSTICE AND CULTURE OF IMPUNITY

- Freedom from discrimination- by gender, race, ethnicity, national origin or religion
- Freedom from want- to enjoy a decent standard of living
- Freedom to develop and realize one's human potential
- Freedom from fear- of threats to personal security, from torture, arbitrary arrest and other violent acts
- Freedom from injustice and violations of the rule of law
- Freedom from thought and speech and to participate in decision-making and form associations
- Freedom to obtain decent work without exploitation

GENESIS OF CONFLICT IN KENYA

- Centralized, corrupt and patronage political system
- Systemic and systematic corruption and abuse of power
- Political violence and derogation of fundamental human rights and human dignity
- People internally displaced and involuntarily disappeared
- Massive scale of torture, maiming and gender based violence
- Dispossession/seizure of land and property occurred and plunder of public capital
- Structural inequalities and discrimination
- Serious breach of international humanitarian law (collateral damage) go unabated

COMPREHENSIVE PEACE SETTLEMENT (Salient Features)

- Formal end of a long formal and informal gross violations of human rights
- Embracing of peaceful democratic politics
- Ending impunity gap

¹ The International Centre for Policy and Conflict is registered in Kenya under the Trustee (Perpetual Succession) Act as non-government, non-profit organization fostering democratic, peaceful, secure and just societies in the Great Lakes and Horn of Africa by engendering principles of justice, accountability, the rule of law and sustainable human security. These goals are accomplished through research, documentation, capacity building and technical assistance, networking, dialogue, information sharing and advocacy. The Center's core programmes are: *Transitional Justice; Conflict Resolution and Peacebuilding; Capacity Building and Technical Assistance; Gender Justice; and Human Security and Displacement.*

- Addressing structural violence
- Inclusive, de-ethnicised policy based political order
- Promulgate democratic constitutional order
- Embrace people centered socio-economic policy i.e. equality and equitable opportunities for all
- Fair, effective, efficient and accessible justice for all
- Proclamation of sovereignty vested in the people
- Reiterating to adhere with international human rights and humanitarian laws and principles
- Restructuring the state rather than mere regime change
- Commitment to address the issue of destruction, disappearance, displacement and discrimination
- Execute bold and comprehensive transitional justice policy

RECONCILIATION

- Peacebuilding is a process or series of processes that seek to establish peace and prevent violence from continuing or re-emerging by addressing the root causes and the consequences of the conflict
- Peacebuilding strategies: building institutions, community development, socio-economic development, social reconstruction, reconciliation, victim empowerment, mechanisms to address the past and transitional justice, and building effective governance.
- Reconciliation is a component of Peacebuilding
- Reconciliation moves from the premise that relationships require attention to build peace
- Reconciliation is the process addressing conflictual and fractured relationships and includes different activities.
- Reconciliation is a necessary process following conflict. However, it is a voluntary act and cannot be imposed. It involves five interwoven and related strands:
 - Developing a shared vision of an interdependent and fair society
 - Acknowledging and dealing with the past
 - Building positive relationships
 - Significant cultural and attitudinal change
 - Equity: substantial social, economic and political change.
- Reconciliation is also a process filled with 'paradox' e.g. build relationships but deliver justice or tensions between the strands
- Essentially the process of reconciliation is how we engage with and deal with these paradoxes.

CHALLENGES OF THE PEACE PROCESS

- Absence of political will to address the past violations
- Un-clarified fate of those who were forcibly disappeared
- Absence of enabling atmosphere for the dignified return of displaced persons

- Ongoing systemic and systematic impunity gap
- Non-observance of international obligations
- Absence of justice and just compensation to victims
- Emergence of violent militia armed groups and state impunity
- Delaying in drafting the new democratic constitution
- Politics of appeasement and deception
- Embracing the legacy of violence
- Erosion on the respect and observance of human rights

PROSPECTS FOR TRANSITIONAL JUSTICE

- Applicable after/during transition from autocratic/totalitarian/dictatorial regime to democratic order and open society
- Instrumental in uncovering truth to establish faith in new institutions and sustained reconciliation
- Crucial for restoration of damaged relationships between citizens and the state
- Significant tool for prevention of future atrocities and light and shade of democracy
- Blanket amnesty unacceptable for heinous crimes/monsters of rights violation
- Not eye-for-an-eye: rather rules of democratic games

WHY TRANSITIONAL JUSTICE

- Transitional Justice- integrated, comprehensive and context appropriate approaches to address accountability or massive violations of human rights that both provides redress to victims (truth, accountability and reparations) and creates or enhances opportunities for the transformation of the political systems, conflicts and other conditions that may have been at the root of the abuses.
- Recognizes two goals in dealing with a legacy of systemic or massive abuses of the past but still reinforce- and not derail- the political transformations (bend backward to move forward) that were underway changes were popularly called “transitions to democracy”; hence transitional justice or “justice in times of transition.”
- Desire/demand to rebuild social trust, repair fractured society, and build democratic state
- Address concerns on human rights violations
- Concerns reconciliation and healing
- Concerns on needs of victims
- Find answers to transitional justice issues

TRANSITIONAL JUSTICE MECHANISMS

- Pillars: Truth-seeking (factual/objective/forensic); Personal/Narrative; social/dialogical (result of debate, sharing, discussion by group or society) and Restorative/ healing (result of knowledge, acknowledgment), prosecutorial

- accountability; institutional reforms (legal and constitutional change, administrative change, vetting/lustration); reparations; memorials and memorialization.
- Domestic/ home-grown (context-based): best option but question of credibility remains high
 - International: tedious and expensive for an impoverished and delicate country
 - Hybrid: appropriate for international legitimacy and local ownership

DIFFICULTIES AND DILEMMA

- Highly sensitive as well as sensational political issue
- Sequencing and timing
- Massive resources requirement
- Expensive, time-consuming, risky and a Herculean task
- Absence of independence, integrity and professionalism of concerned citizens
- Deficiency of credibility, courage and conviction in a polarized society
- Giant violators turned as glorious victors and peacemakers?
- Battle fatigue syndrome among citizens/victims/families (eroding social enthusiasm)

CRITICAL BALANCING ACT

- Does power sharing heal the wound?
- Does truth-seeking auto-lead to reconciliation?
- Is peace more important than justice?
- Are reparations more important than anything else?
- Does reconciliation mean ‘forget and forgive’?
- It is easy to convert the victors as violators?
- What if there is obvious threat for ‘back to war’?

CIVIL SOCIETY AND TRANSITIONAL JUSTICE

- In the post-conflict environment, civil society frequently is a prime advocate of right to truth, accountability/justice and reparations in the past
- Civil society has often been a powerful critic of the government’s manner of pursuit of transitional justice- pushing for execution of bold and comprehensive transitional justice processes (part of nation-building and state-building)
- In the midst of civil war or under government repression, civil society commonly suffers. However, many courageous groups refuse to be cowed
- Central pillar (vanguard) of transitional justice processes/institutions

ADDRESSING THE IMPUNITY GAP THROUGH TJR

TJR exalt values such as –truth, reconciliation, nation-building, healing and moving forward- useful tool to rebuild divided society.

WHAT TRUTH JUSTICE RECONCILIATION COMMISSION?

- **Selection:** non-partisan; appointed through open and transparent process; selecting respected and fair-minded individuals of high moral standing; selection process allowing a range of groups to nominate commissioners based on integrity and respect for the rule of law, not their partisan;
- **Identity:** mandate and its investigative authority must convey legitimacy, credibility and capacity; and motivation and convey an unimpeachable commitment allowing the investigation to conclusive facts;
- **Independence:** ideally should be institutionally independent and sufficiently funded
- **Mandate:** sufficiently expansive mandate but its conclusions should not be pre-determined. A balance between too broad a mission and one that can be reasonably accomplished over a relatively limited time period is critical, although some key issues may be usefully highlighted against a broader historical backdrop. Abuses beyond the specific mandate might be linked to the main subject of truth-seeking to complete the bigger picture. The Commission mission should be flexible enough allowing new information to inform the direction of the TJRC while focused enough, whether by time period or types of abuses under investigation, to ensure that the TJRC can draw meaningful conclusions and recommendations from its work. Commissions generally have a mandate to explore causes and consequences of abuses and make findings and recommendations
- **Powers:** an effective investigation entailing the power to subpoena witnesses and documents and to protect individuals and information, in aid of its mandate to seek the truth; and no generalized offer or expectation of immunity in exchange for truth, but rather a robust investigative power which should utilize all available avenues for seeking information while respecting the rights and security of witnesses. **Note:** quantitatively and qualitatively investigation central for the process-taking of statements, conducting of many interviews and hearings, and research. Focus recently on the question of whether a TJRC should wield the power to grant ‘use immunity’ to compel the testimony of an individual who invokes right against self-incrimination, by making that person’s testimony (or evidence derived from it) unavailable as evidence against him in a criminal case. This issue requires careful scrutiny. South Africa, some important information was secured in a select number of cases through the power to subpoena individuals and to compel answers under guarantees of use immunity. The individualized use of this type of immunity is limited and strategic cases may be one form of an investigative tool but, on balance, should not be necessary. If this

power is wielded by partisan commissioners or used to further a political agenda, its use- and results – could undermine the commission’s credibility and the greater cause of truth and accountability.

- **Safeguards:** Safeguards are required to protect national security-related information but not to cover up politically embarrassing facts or other information about wrongful conduct that pose no national security risk. Commission’s default should be openness and transparency, but it should have the ability to review information and hold hearings privately where strictly necessary to protect the security of individuals and to avoid real national security risks. The legitimacy and the credibility of commission will have an enormous bearing on whether it will be trusted to confront hard truths or fall back upon exaggerated claims of security needs.
- **Cooperation:** Government agencies must be encouraged and, where necessary, pressed into cooperation with the TJRC. This requires political will at the highest level of government. TJRC should gather information developed from diverse sources and engage in through review and analysis of that information, especially in the light information gathered during the cause of the commission’s investigation. The commission should consider that will happen to the information it has gathered over the course of its mandate once its business has concluded.
- **Public engagement, comprehensive and accessible reports;** Through public hearings out reach efforts and ultimately an accessible report, TJRC must aim to spark public interest and debate. It should provide a well documented basis for its findings and recommendations for any further investigations, reforms preventive and remedial measures. This will public and informed public officials to engage the issues in a new light and to use the report as a valuable tool for education, making policy and drawing lessons for the future.
- **Relationship to other accountability policies;** TJRC is initiated as means to sidestep accountability rather than to deepen it will fail on many levels, but perhaps most importantly will result in increased skepticism about government capacity and commitment to hold institutions and individuals accountable in the future.

<p>Truth</p> <ul style="list-style-type: none"> • <i>Acknowledgement</i> • <i>Transparency</i> • <i>Accountability</i> • <i>Clarity</i> <p>Justice</p> <ul style="list-style-type: none"> • <i>Prosecution</i> • <i>Investigation</i> 	<p>R E C O N C</p>
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<ul style="list-style-type: none"> • <i>Sanction</i> • <i>Social Justice</i> <p>Reparation</p> <ul style="list-style-type: none"> • <i>Restitution</i> • <i>Compensation</i> • <i>Rehabilitation</i> <p>Legal and institutional reforms</p> <ul style="list-style-type: none"> • <i>Vetting and lustration</i> • <i>Constitutional change</i> • <i>Administrative change</i> <p>Note: Addressing social-economic injustice and land reforms are also key elements</p> <p>Peace</p> <ul style="list-style-type: none"> • Positive (cessation of hostilities; address structural /root causes) <p>With impunity = negative Ending impunity = positive</p>	I L I A T I O N
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BUILDING BLOCKS

- Various Committees’ Investigation Reports- Political assassination (JM Kariuki, Robert Ouko etc), Kiliku Report, Akwumi Report
- Makau Mutua Taskforce
- Goldenburg Commission of Inquiry: Kroll Report
- Njonjo and Ndungu Reports
- NCCK and LSK Reports
- KNCHR Reports
- Human Rights Groups’ Reports
- CIPEV Report
- IREC Report
- Prof. Alston Report
- TJR Act 2008
- Among many others

TRUTH JUSTICE AND RECONCILIATION (TJR) ACT 2008

- First published on April 10th, 2008- with very limited public consultations
- Passed on 23rd October 2008; Operationalized on March 9th, 2009
- Mandate- gross human rights violations, economic crimes and corruption, land crimes, political violence, displacement, extra-judicial killings, marginalization, discrimination, gender-based violence, etc.

- Temporal mandate- 12th December, 1993 to 8th February, 2008, but can make reference to certain pre-independence relevant to its terms of reference
- Composition: 9 Commissioners (six nationals, three internationals); chairperson-National (appointed by the President among the nationals)
- Time-Frame- 3 months(preparatory, establishment, setting-up and outreach); 2 years with possibility of six-months extension (dependent on progress) (hearings, investigations, research, statement taking etc. and compiling report); and three months (closed down).

TJR CHALLENGES

- Presuppose in transitional moment (not the case)
- Sufficient political will and support from key political leadership
- Political uncertainty and highly polarized/divided society
- Personality of character of the top political leadership in rallying the country towards the process
- Massive public participation
- Ability to build on the vibrant democratic transition
- Existence of vibrant civil society and media
- International community interest and support to the process
- Weaknesses in the TJR Act (amnesty, reparation, poor public engagement, lack of fair procedures and best practices etc)
- Broad mandate
- Culture of impunity and ongoing gross human rights violations
- Commissions' fatigue and non-implementation of the Commissions' reports
- 2012 politics
- Uncoordinated and incoherent transitional justice policy (massive reforms underway not organized in terms of sequencing and timing.)
- Managing expectations

CONCLUSION

- Transitional justice (TJ) would provide a historic bridge between the past of a deeply divided society characterized by conflict and untold suffering.
- TJ would explore a future founded on the recognition of human rights, democracy and peaceful co-existence
- TJ would prevent a repetition of gross violation of human rights and humanitarian law in future.
- TJ would help break the cycle of the culture of impunity to stabilize the nation-building and peace process.
- TJ is for understanding but not for vengeance; for reparation but not for retaliation, for 'ubuntu' but not for victimization.