THE NATIONAL VICTIMS AND SURVIVORS NETWORK

The Clerk
Kenya National Assembly
Parliament Building
Parliament Road
P.O. Box 41842 – 00100
Nairobi, Kenya

Dear Sir,


We, the undersigned,

Citizens of Kenya who are victims and survivors of diverse forms of human rights violations and historical injustices including, but not limited to, massacres, sexual violations, murder and extrajudicial killings, abductions, disappearances, detentions, ill-treatment and expropriation of property, economic marginalization, and acts of state repression including torture, cruelty and degrading treatment, and collectively known as the National Victims and Survivors Network;

RECALLING that the history of independent Kenya has been mired in gross violations of human rights of which we have been direct victims;

COGNISANT of the fact that following the tragic political violence that engulfed Kenya in the aftermath of the disputed 2007 elections, the people of Kenya embarked upon comprehensive reforms aimed at ensuring Kenya transitioned into a peaceful, prosperous, stable, inclusive and democratic country where such violence did not reoccur;

RECALLING that one of the measures adopted to address long-term issues that had contributed to the violence was the setting up of the Truth, Justice and Reconciliation Commission with a mandate to promote peace, justice, national unity, healing, and reconciliation among the people of Kenya by *inter alia* inquiring into gross violations of human and historical injustices that occurred in Kenya from 12 December 1963 and 28 February 2008.

RECALLING FURTHER that after the TJRC recorded over 40,000 statements and memoranda and held public hearing across the country it finished its work and handed over its final report to President Uhuru Kenyatta on 21 May 2013;

NOTING that according to the Truth, Justice and Reconciliation Commission Act, the Minister was to table the TJRC Report in Parliament and operationalize the implementation mechanism in accordance with the recommendations of the Commission under section 48 (2) (f) of the Act to monitor the implementation of the recommendations of the Commission and to facilitate their implementation;

NOTING FURTHER that according to Section 49(3) of the TJRC Act, the implementation of the report of the Commission should have commenced within six months upon its publication.

AWARE that in December 2013, the National Assembly passed the Truth, Justice and Reconciliation (Amendment) Act amending the TJRC Act so as to provide inter alia that the TJRC Report would be tabled before the National Assembly ‘for consideration’ and that implementation of the report of the Commission shall commence immediately after consideration of the report by the National Assembly;

DISMAYED by the fact that since then the TJRC report has never been tabled for consideration by the National Assembly as a result of which the implementation of the report has been inordinately delayed;

CONSCIOUS of the fact that all victims and survivors of gross human rights violations which were investigated by the TJRC continue to suffer from their violations as a result of the long delay in implementing the TJRC report;

CONCERNED that the delay in implementing the TJRC report continues to deny the victims and survivors closure upon a dark chapter in their lives and, in turn, also continues to deny our country the full benefits of healing and

reconciliation that are a prerequisite to the building of a cohesive and united nation;

ENCOURAGED by President Uhuru Kenyatta’s State of the Nation address delivered to Parliament on 26 March 2015 during which he acknowledged that Kenya was “still plagued by painful memories of unresolved murders, the existence of torture chambers and detentions without trial; events such as the Wagalla tragedy; and violence against the proponents of expanding our democratic space; and all actions that have at times failed to recognise the civil and human rights of Kenya’s citizens [and which] have shaken the nation, excluded some Kenyans from the full promise of citizenship, and fractured our national fabric.”

INSPIRED by the President’s apology on his own behalf and on behalf of all past and present governments to all victims of past wrongs;

SUPPORTIVE of the President’s plea to the National Assembly to process the TJRC Report without undue delay;

DRAW the attention of the House to the following:

I. That the search for truth and justice for gross human rights violations and historical injustices in Kenya has a long history. It dates back to at least August 26, 2003 when Prof. Makau Mutua who chaired the Task

Force on the Establishment of a Truth, Justice and Reconciliation Commission, presented the report of the Task Force to the then Minister of Justice, Hon. Kiraitu Murungi indicating that over 90% of Kenyans were in favour of the establishment of a truth commission and that one should be set up by June 2004.

II. That although the Makau Mutua report was not immediately implemented, the search for truth, justice and reconciliation was agreed to be a top priority in addressing the root causes of the post-election violence that rocked Kenya in 2007/2008. This was signified by the signing of the agreement of General Principles and Parameters for the Establishment of a Truth, Justice and Reconciliation Commission by the parties to the Kenya National Dialogue and Reconciliation on 4 March 2008.¹


IV. That in terms of the TJRC Act, the Truth Commission was inaugurated on 3rd August 2009 and handed over its final report to the President on 21st May 2013. During its lifetime, the TJRC recorded over 40,000 statements and memoranda and held hearings across the country.

V. That we as victims have continuously and robustly engaged with all efforts to establish the truth in order to find justice with the hope of leading to reconciliation over gross human rights violations and historical injustice which we have suffered, including taking part in the TJRC process as victims and witnesses.

VI. That although TJRC process endured some critical challenges such as the controversy over its Chair, Amb. Bethuel Kiplagat, the final report of the Commission is of a high quality and captures important truths concerning past abuses in Kenya. It also contains an important and well thought out chapter on reparations that recommends how the state should go about repairing the harm caused to victims of gross human rights violations and restoring their dignity, and establishes priorities among violations, distinguishes between individual and community reparations, identifies sources of funding.

that are sustainable, and offers a consultative and robust process for implementation. As such, the final report’s implementation is key to ensuring victims’ needs are met and Kenya’s transition to a more cohesive society is completed.

VII. That the TJRC report was tabled in the National Assembly on 24 July 2013 yet, the implementation of the TJRC’s recommendations is yet to commence. This is because in December 2013, the National Assembly amended the TJRC Act making the commencement of the implementation process subject to the tabling of the TJRC report ‘for consideration’ in The National Assembly but to date no such tabling and no such consideration has been done.

VIII. That the National Assembly’s inability to prioritise, debate and act on the TJRC report is a source of great frustration for thousands of Kenyans still nursing injuries – physical, emotional and psychological – from the dark years of our history.

IX. That during the two year delay in implementing the recommendations of the TJRC a number of victims have died from injuries resulting from the gross human rights violations that they suffered, without obtaining justice and many more are suffering from life-threatening conditions and that time is therefore of the essence in implementing the TJRC report.

X. That the lack of action on the TJRC report by the National Assembly has resulted in a lack of a policy framework for the implementation of the recommendations of the TJRC and undermined the efforts of the victims to bring closure to their suffering and restart their lives. It has also undermined the search for healing and reconciliation of our nation and its transition to a prosperous, peaceful, stable and inclusive democracy.

XI. That the delayed action on the recommendations of the TJRC report has also meant that Kenya has not learned the lessons identified in the Report, including how harsh, discriminatory and unconstitutional police and military action in the name of national security leads to more victimization and radicalization.

XII. That during his State of the Nation Address delivered to Parliament on 26th March 2015, President Uhuru Kenyatta acknowledged that our experience as a nation was “laced with moments of pain and suffering” and that “To this day, we are still plagued by painful memories of unresolved murders, the existence of torture chambers and detentions without trial; events such as the Wagalla tragedy; and violence against the proponents of expanding our democratic space;

and all actions that have at times failed to recognise the civil and human rights of Kenya’s citizens. These have shaken the nation, excluded some Kenyans from the full promise of citizenship, and fractured our national fabric. We have been witness to violence linked to elections, which has left many Kenyans dead, maimed and dispossessed. In 2007-2008, this reached its most tragic expression with the post-election violence that left 1,300 Kenyans dead and more than 650,000 displaced from their homes across the country.”

XIII. That the President stated that “the time has come to bring closure to this painful past. .... The time has come to allow ourselves the full benefit of a cohesive, unified and confident Kenya, as we claim our future.” He went on to state “I stand before you today on my own behalf, that of my government and all past governments, to offer the sincere apology of the Government of the Republic of Kenya to all our compatriots for all past wrongs.”

XIV. That recognizing that an apology was necessary but not sufficient, the President also announced the setting up of a fund of KSh. 10 billion for restorative justice and that we as victims and survivors acknowledge and appreciate the actions of the President as an important first step to the process of healing and reconciliation.

XV. That however, in the absence of the National Assembly exercising its responsibility and mandate to process the TJRC report, the

President’s directives risk being carried out in a policy and legislative vacuum.

XVI. That this is the most likely reason that the President himself during his speech of 26th March 2015 urged The National Assembly to “process the report of the TJRC without undue delay.”

THAT we the victims and survivors of gross human rights violations and historical injustices have on various occasions urged the National Assembly to adopt the TJRC Report so that process of implementation may commence without undue delay but the National Assembly has failed to act on the report in accordance with the law.

THAT the issues in respect of which this petition is made are not pending before any court of law, or constitutional or legal body.

HEREFORE, your humble petitioners Pray that The National Assembly –

1. THAT The National Assembly adopt the report of the Truth, Justice and Reconciliation Commission that has been pending before the House since 24th July 2013 without further delay;

2. THAT while The National Assembly should debate the TJRC report pursuant to the Truth, Justice and Reconciliation (Amendment) Act, 2013, it should not reopen or amend the report as this was a report of an independent Commission that was established as part of a broader process undertaken by Kenyans to address historical injustices and contribute to national healing and reconciliation;

3. THAT in addition to adopting the TJRC report, The National Assembly should also pass all the necessary legislation in order to anchor the implementation process in/ law and protect it from illegitimate manipulation.

4. THAT The National Assembly approves the necessary budgetary allocations for the immediate and effective implementation of the report including its recommendations on reparations for victims.

5. THAT The National Assembly directs the Minister responsible to establish a mechanism to monitor the implementation of the report pursuant to Section 49 of the Truth Justice and Reconciliation Commission Act, 2008.

6. THAT The National Assembly establishes a select committee of the House tasked with monitoring the effective implementation of the TJRC Report and promoting national healing and reconciliation.

And your PETITIONERS will ever PRAY.

Signature:

Rosemary Kariuki; For and on Behalf of the National Victims and Survivors Network; P.O. Box 45339 - 00100 Nairobi, Kenya; ID No. 3495736

Signature:

Okodoi Maskini; For and on Behalf of the National Victims and Survivors Network; P.O. Box P.O Box 912 - 50400; ID No. 13528968

Signature:

Wachira Waheire; For and on Behalf of the National Victims and Survivors Network; P.O. Box 529006 – 00200 Nairobi, Kenya; ID No. 0237873

SIGNED FURTHER by the individual victims and survivors whose names, addresses, ID numbers and signatures are attached to this Petition.