

Concerns Over Bid to Amend Kenya Rights Report

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Observers criticise bill that would allow legislators to water down measures aimed at bringing justice.

A bill that would allow Kenyan lawmakers to amend a critical human rights report has prompted widespread concern that the document's recommendations could be significantly diluted.

The Truth Justice and Reconciliation (Amendment) Act 2013, drawn up by Kenya's attorney general, Githu Muigai, was read in parliament on August 6.

It proposes changing the original 2008 law of the same name so that lawmakers would be able to revise the recommendations of Kenya's Truth, Justice and Reconciliation Commission, TJRC, which were released on May 21. It would also mean that the mechanism which the original law said must be put in place to monitor implementation of the report's provisions would now do so "in accordance with recommendations of the National Assembly".

Kenya's TJRC was established by an act of parliament in 2008 following an outbreak of mass violence after the disputed result of the December 2007 presidential election.

More than 1,100 people died and 3,500 others were injured in fighting along ethnic and political lines which brought Kenya's economy to its knees and forced approximately 600,000 people from their homes.

The commission was set up as part of a peace deal and eventual coalition agreement between the political foes. It had a mandate to investigate gross human rights violations and other long term injustices in Kenya between December 1963 and February 2008.

The final report recommends the investigation and prosecution of some members of Kenya's elite, including high-profile politicians and senior government officials.

But there are concerns that if the amendment is passed by parliament, such recommendations could be cast aside.

"The proposed amendment to the TJRC Act basically seeks to have parliament debate the report, which may essentially give MPs an opportunity to edit [or] alter its content or [lead to its] rejection," Patricia Nyaundi, secretary of the Kenya National Commission on Human Rights, said at a public event in Nairobi on August 9.

Kenyan president Uhuru Kenyatta and deputy president William Ruto are among those the report mentions in relation to the unrest that followed the 2007 election. Both leaders are facing trial at the International Criminal Court, ICC, in The Hague for orchestrating the violence.

Other high-profile figures are linked to abuses that include land grabs, extrajudicial killings, torture and political repression.

The report accuses Kenya's current cabinet secretary for mining, Najib Balala, of inciting and financing violence in Kenya's Coast region. The Senate member for Kisii, Chris Obure, is accused of inciting ethnic clashes that hit the Rift Valley region in 1991 and 1992 and the report recommends that his actions should be investigated.

Others implicated in the report include former and current parliamentarians, as well as former provincial commissioners, many of whom are alleged to have acquired land in an irregular or unlawful manner.

According to the commission, long-term grievances over access to land are the principal underlying cause of tension and ethnic conflict in Kenya.

Meanwhile, senior members of the Kenyan police and army are accused of human rights violations including massacres, "disappearances", torture and sexual violence.

The seriousness of the report's findings and its express recommendations for justice to be delivered on thousands of human rights violations has meant that efforts to dilute its impact have drawn strong opposition.

"The route taken by the [attorney general] creates the possibility of the entire report being rejected by parliament," Tom Ojienda, one of the TJRC commissioners and a former chairman of the East African Law Society, told IWPR. "[The report] deals with a very delicate balancing act between victims and their alleged perpetrators. Hence the need for it to be protected."

Others see the bill as an expression of the fears of those in power rather than of the will of the Kenyan people.

“The MPs’ move is ill-motivated and meant to dilute the report completely,” Albert Kimutai of the Kerio Centre for Community Development and Human Rights in Kenya’s Rift Valley province told IWPR. “It’s an attempt by those adversely mentioned to shield themselves either from prosecution, possible reparations for the victims, or repossession of any property illegally acquired.”

Since its release, the report has been the subject of heated political debate. Many high-profile figures named in the document – which extends to more than 2,000 pages – have sought to challenge the commission’s findings through the courts.

Meanwhile, those who suffered abuses worry that, if they become law, the amendments could curtail efforts to bring justice.

“We have had so many commissions come up with reports and recommendations which, if implemented, would have ended the country’s long-standing injustices, but unfortunately it’s never in the interest of our political leaders,” 67-year-old John Nderitu, who lives in the town of Eldoret in the Rift Valley, told IWPR.

“I gave my evidence [to the commission] on how I was uprooted and dispossessed of a parcel of land at Burnt Forest during the 1992 tribal clashes, and I have been optimistic that its recommendation would help most of us access justice,” he said. “If the MPs have their way in this report, then many of us who have hoped to get justice through its implementation will remain... suffering under the few very wicked individuals.”

Land rights remain an emotive issue in Kenya.

Marion Wamai has still not returned to the land which she lost in Uasin Gishu county in the Rift Valley during ethnic violence in 1992.

“Justice remains elusive as ever. We have been reduced to squatters in our own country,” she said.

The original Truth, Justice and Reconciliation Act 2008 laid out clear procedures for implementing the report’s recommendations. The law stated that the minister responsible for justice and constitutional affairs should table the report in parliament within 21 days of its publication.

That has yet to happen, although the report was officially published in the government gazette on June 7. (See **[Kenyan Authorities Urged to Implement Human Rights Report](#)**.)

According to the law, the recommendations made in the report should then be acted on by an implementation committee, which would publish a quarterly progress report.

The steps laid out under the TJRC 2008 Act were specifically designed to prevent the type of interference now envisaged in the amendments.

“The TJRC Act anticipated that implementation of the report would not be welcomed by some government forces, and thus set timelines that both the executive and legislature had to comply with,” Raphael Obonyo, of the United Nations Habitats Youth Advisory Board in Nairobi, told IWPR.

The idea behind the setting up of the TJRC was to identify mass human rights violations as a way of acknowledging past suffering and helping people move forward in a peaceful way.

Experts fear that creating ways of bypassing the report’s recommendations would be a huge backward step for work to address ethnic tensions and long-term grievances across Kenya.

“It would be dangerous not to implement the report, since some of the historical injustices persist to date and remain fertile ground for future conflicts,” Obonyo said.

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