
KNCHR argues that (i) the proposed amendments to the TJRC Act will put at risk the implementation of the commission’s recommendations and, as a consequence, (ii) contravene (a) national and (b) international State obligations protecting and fulfilling the rights of victims.

(i) The most important consequence of the proposed amendments is that the implementation of the report will depend on the considerations and recommendations of the Parliament. This means that the Commission’s recommendations are not of mandatory nature and its implementation is subject to the considerations of a political body different from the TJRC and outside of the truth-seeking process.

(ii) This contravenes:
   a. The Mandatory Nature of Commission’s Recommendations stated in the TJRC Principal Act. As mentioned by the TJRC in its report: “Recommendations contained in this Report are, in Parliament’s wisdom, of mandatory application and must be complied with by all constitutional, legislative and administrative institutions and bodies so as to achieve the object and purpose of the TJR Act expressed in the Preamble and the relevant sections therein. This is clearly stipulated under Section 50(2) of the TJR Act which states that: All recommendations shall be implemented, and where the implementation of any recommendation has not been complied with, the National Assembly shall require the Minister to furnish it with reasons for non-implementation”.
   b. International agreements and best practices regarding:
      i. Governments’ obligations to “disseminate, implement, and monitor implementation of, the recommendations of non-judicial mechanisms such as truth and reconciliation commissions.” (UN Human Rights Council, Resolution 9/11; and Office Of The High Commissioner For Human Rights, Right To The Truth, Human Rights Resolution 2005/66).
ii. Importance of the principle of independence guiding Truth Commissions, which “must have full autonomy to control its resources, conduct its investigation, build alliances and propose policy”.

### Problematic Proposed Amendments and the Retrogressive Aspect

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<tr>
<th>Principal Act -</th>
<th>Amendment</th>
<th>Retrogressive Aspect</th>
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<tbody>
<tr>
<td>48 (4) The Minister shall table the report in Parliament within twenty one days after its publication</td>
<td>Inserting the words “for consideration” immediately after the word &quot;Parliament&quot; appearing in subsection (4).</td>
<td>There is no clear definition about the scope and time of this consideration by parliament; which could result in the (i) complete rejection of the report by the parliament and/or (ii) indefinite delay of the implementation of the same.</td>
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<td>49 (1) The Minister shall, upon the publication of the report of the Commission, operationalise the implementation mechanism or arrangement in accordance with the recommendations of the Commission under section 48 (2) (f) to monitor the implementation of the report in accordance with recommendations of the National Assembly...</td>
<td>(1) The Minister shall, upon the consideration of the report of the Commission by the National Assembly, set in motion a mechanism to monitor the implementation of the report in accordance with recommendations of the National Assembly... (3) Implementation of the report of the Commission shall commence immediately after consideration of the report by the National Assembly.</td>
<td>The implementation of the report will depend on the considerations and recommendations of the National Assembly. This means that the Commission’s recommendations implementation is subject to the considerations of a political body different from the TJRC and outside of the truth-seeking process. In addition, there is no clear definition about the scope and time of this consideration and its effect in the implementation mechanism.</td>
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(3) Implementation of the report of the Commission shall commence within six months upon publication.

Anne M. Kyalo-Ngugi
Ag. Chairperson