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International Centre for Policy and Conflict

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Nothing will deter ICC Prosecutor from investigating and prosecuting military and police

Attempts by certain government officials to block investigations, deny of a crime and its cover-up against top security forces could constitute crime in itself, the International Center for Policy and Conflict warns today. International Criminal Court has given the Prosecutor green light to investigate and prosecute crimes under the jurisdiction of the Court beyond the post-lection violence. These include enforced disappearances and extrajudicial killings and Mt.Elgon mass killings.

We would like to inform these government officials and such other people with the same thinking that on May 31, 2004, the Appeals Chamber of the Special Court for Sierra Leone ("the Court"), a UN-backed hybrid criminal tribunal sitting in Freetown, Sierra Leone, ruled unanimously that Charles Taylor does not enjoy any immunity from prosecution by the Court though he was the serving Head of State of Liberia at the time criminal proceedings were initiated. This historic ruling by the Court is a significant contribution to the modern international law norm asserting that even the Heads of State and other high-ranking governmental officials are not absolved of criminal responsibility for serious international crimes.

It is therefore baseless and exhibition of a gross ignorance and misunderstanding of the Rome Statute of the International Criminal Court, which is domesticated locally under the International Crimes Act 2008 and existing jurisprudences to hear government officials saying that the Prosecutor of the International Criminal Court (ICC) would not be allowed to institute investigations against military or police in relation to Mt.Elgon and extrajudicial killings respectively.

The principle of state immunity is derived from the equality of sovereign states and therefore has no relevance to International Criminal Court which is not an organ of a state but derive its mandate from the international community. In this regard the principle is now established that the sovereign equality of states does not prevent a Head of State or such other government official from being prosecuted before an international criminal tribunal or court.

We are inviting anyone with doubt to observe that under Articles 25(Individual Criminal Responsibility), 26(Exclusion of jurisdiction over persons under eighteen; 27(Irrelevance of official capacity) and 28(Responsibility of Commanders and others superiors) of the Rome Statute of the International Criminal Court there is no immunity for those identified by the judges of the International Criminal Court as responsible for having planned, aided, financed and instigated crimes under the jurisdiction of the Court.

It is the responsibility of the Prosecutor to execute his work with efficiency while adhering to the mandate and rules of the Court. He will do his investigations, present his case containing crimes, evidence and name individual(s) to be charged to the ICC judges and the judges will decide.

These latest assertions coming from top government officials are yet another clear manifestations of still unwilling government to prosecute beneficiaries of impunity within its ranks and files. This makes it critical to prioritize witness protection. However we are concerned that the current amendments proposed to the Witness Protection Act 2006 still lack statutory firmness especially with board, funding and operational independence. We find it ridiculous that the Witness Protection Agency being established is firmly in control of government security agencies who are themselves accused of perpetrating serious crimes during post-election violence and extrajudicial killings

We have concerned in regard to post-election violence witnesses of direct interest to ICC; post-election violence witnesses not of direct interest to ICC but perhaps to future national proceedings; and witnesses to extra-judicial and mass killings who may become of interest to ICC in light of the extended time frame for investigations (2005 - 2009).

Thank you

Signed by

**Ndung'u Wainaina
Executive Director**