

Civil Society Joint Press Statement

Kenyan Government attempts to undermine its legal obligation to bring post-election violence criminals to justice

Introduction

WE, the undersigned organizations, state that the decision to establish both the Commission of Inquiry into Post-election Violence (CIPEV) and, subsequently, the Special Tribunal for Kenya marks an important break from the pattern of impunity of the past in Kenya, which has seen perpetrators of politically inspired violence, killings and other gross violations of human rights able to escape accountability for their crimes over many years. Thousands of Kenyans from across the country's different confessional and political groups have been victims of politically motivated killings, violence and enforced displacement.

The perpetrators continue to benefit from virtually total impunity due to the inaction of successive governments, including the current Coalition Government, in the face of demands for truth and justice made by the families of the killed, maimed and displaced. Indeed, the Kenya Cabinet decision of July 30th, 2009 specifically block the possibility of bringing to justice those responsible for political killings, maiming and other gross abuses committed, let alone obtaining the truth and the degree of closure that it can help provide.

We are stating upfront that the current politically motivated attempt by certain key cabinet ministers and their Parliamentarians' supporters to obstruct wheels of justice is an incredible and reprehensible abuse of public office. It amounts to political dishonesty and hypocrisy, disregard for the rule of law and brutal subversion of justice. By trivializing and politicizing through distorting facts about the renewed efforts towards establishment of Special Tribunal for Kenya rallying support to silence cry for justice, this new alliance of impunity in Parliament clearly shows guilt consciousness and contempt for victims.

We express deep concerns about the silence and inactiveness of President Mwai Kibaki in the face of the renewed efforts to enact the Special Tribunal for Kenya. While the Prime Minister Raila Odinga has declared openly his support for the new Bills, the President's silence creates the regrettable impression of tacit approval of human rights violations and to extents the events of leading and during post-election violence. His government has shown little political will to hold accountable those alleged to have committed post-election violence crimes. We state that calls for an end to impunity for perpetrators of human rights violations in Kenya and for those responsible to be brought to justice are not an exercise in futility. It is an international obligation that Kenyan government must respect and uphold.

The organizations undersigned reminds the Kenyan government and international community that those crimes remain unpunished and appeals for sustained pressure on the Government of Kenya to ensure that justice and reparation are eventually offered to the victims. Almost two years after the killings, maiming, raping and enforced displacement took place, most of the victims are still demanding justice, but they are not being heard. This is not about politics but rather the victims and their families have a right to see those responsible for committing horrendous crimes are brought to book. The government has shown little political will to hold accountable those alleged to have committed these crimes.

We note that despite the efforts of the human rights community, the Government of Kenya top officials and Parliamentarians seem to be colluding in denying justice to the victims. This attitude reopens the victims' wounds every day. Kenyan National Assembly must assume a historical and moral proportion in ensuring and guaranteeing justice for the post-election violence victims.

We are disturbed that people bestowed with public office and responsibility, and expected to act with clarity of mind, vision and purpose for the future of the country, due to blind political considerations

have has no feelings and sense of injustice done to victims of gross human rights violations. These people are dangerous and pose the single biggest threat to the future sustainable peace, justice and stability of Kenya. By acting irresponsibly, Members of Parliament opposing the formation of Tribunal, fail to recognize their failure to protect and promote human rights of Kenyan citizenry. Parliament has to be committed to implementing the National Accord and abiding by the Constitution of Kenya.

Special Tribunal for Kenya and the Its Bills

The CIPEV and the Special Tribunal for Kenya mark an important break from the pattern of impunity that has so long persisted in Kenya. These instruments working and accompanied other justice and reforms measures gain the credibility and represent a shift towards greater respect for the rule of law in Kenya. It is increasingly urgent that the Kenyan government puts in place complementary measures that address the legacy of other past, grave human rights abuses, as well as robust systems to address ongoing violations.

We are dismayed that the Kenyan government would even contemplate weakening Tribunal legislations and thereby undermining global efforts to ensure that those accused of the most egregious crimes under international law, wherever committed, are brought to justice. This brings in question the commitment of the Kenyan government to the exercise of universal jurisdiction over international crimes, and its resolve to ensure reparation to victims of such crimes. It is a travesty of justice by Kenyan government and Parliamentarians. We are concerned with rare cooperation against justice.

For avoidance of doubt and confronting lies, distortions and misinformation being spread by Parliamentarians opposed to the ending impunity; and to confirm that the Tribunal being envisioned by the New Bills have nothing to do with 'fixing or someone; And that is in conformity with international standards;

In summary the new Tribunal Bills meets the following international requirements/standards:

- i. Constitutional safeguards and insulation from any form of interference is guaranteed
- ii. Upholds principle of complementarity between international Criminal court and Special Tribunal for Kenya
- iii. For tribunal to win confidence and trust of victims it has upheld the principles of credibility, impartiality and independent investigations and prosecutions;
- iv. It has guaranteed international standard of fair trials
- v. It upheld appropriate penalties in event of convictions recommend under international law in regard to the gravity of crime.
- vi. The criminal jurisdiction ensure that as wide crimes and perpetrators are prosecuted
- vii. Its must have financial and political independence; and it only recognizes individual criminal responsibility
- viii. Public officer under investigations stand suspended from public office (including cabinet office)
- ix. A strong effective victims and witness protection mechanisms is provided for within the Tribunal. This is the practice of the International Criminal Court

Conclusion

We are encouraged that international community has stated its determination to imposing targeted travel sanctions against particular Members of Parliament (MPs) and their supporters obstructing the path of the enactment of the Special Tribunal. It should collectively expand and tighten those sanctions to include financial sanctions and freezing of properties. We are urging the concerned governments to match their words of condemnation and threats with tangible actions. We are calling upon the African Union and Untied Nations to strongly condemn Kenyan government for its failure to deliver justice to the victims of the post-election violence in contravention of its international obligations.

The African Union and United Nations as two international bodies that played critical role in resolving the political crisis, they have a duty to ensure that the recommendations of Commission of Inquiry into Post-Election Violence (CIPEV) are implemented in order to address the deprivation of justice to victims, and preempt commitment of atrocious crimes in the future.

