



International Center for Policy and Conflict

ICPC Press Statement on United Nations Human Rights Council Review on Kenya: Enact Accountability Mechanisms to End Impunity

NAIROBI, June 2, 2009: The **International Center for Policy and Conflict (ICPC)** and **civil society Working Group on Transitional Justice (TJWG)** urges the United Nations Human Rights Council to take tough action against the deteriorating human rights situation in Kenya. It is the responsibility of the Human Rights Council to address violations, promote and protect human rights, develop and enforce international human rights law, review the human rights records of member States, and work to prevent abuses.

While Kenya is a party to various human rights treaties and has engaged with the UN Human rights bodies under those treaties, there remains a deeply alarming divide between formal recognition of human rights and their substantive implementation. It is ridiculous for government of Kenya to invoke sovereignty infringement while the government have signed and ratified certain international conventions that place a mandatory obligation on the part of the government to act in case of breach or derogation of such conventions or treaties. It is ICPC expectations that the government of Kenya would provide specific time bound measures on how to remedy the deplorable human rights situation in Kenya and to seek assistance from United Nations to facilitate full implementation of the proposed security sector reforms and setting up prosecutorial accountability mechanisms.

We deplore the negative attitude of government of Kenya towards several suggestions for an independent, international investigation into the grave human rights violations. The ICPC underlines the need for thorough and credible investigation and monitoring of the alleged violations of human rights and international humanitarian law, in order to end the culture of impunity and guarantee that law and order is maintained within confines of the due process and the rule of law.

ICPC and TJWG are gravely concerned by the widening human rights crisis and growing culture of impunity that cripples Kenya. The biggest threat to security and political stability in Kenya is the prevailing culture of impunity and resistance to accountability by the top government of Kenya officials. The periodic cycles of extreme violence that Kenya has undergone can not be broken unless the government demonstrates that perpetrators of human rights violations will be held accountable.

While the President has been issuing statements stating government of Kenya commitment to reforms, the government as a whole has generally been in denial about killings by security forces and other grave human rights violations. This leaves both the people of Kenya and the international community with the sense that, human rights policies have not changed fundamentally. To dispel this sense the government should publicly acknowledge the State's responsibility for human rights atrocities. And the government must begin to prosecute those who bear individual criminal responsibility for killings in order to end impunity.

It is crucial for Kenya to meaningfully reform the security sector and in order to regain the trust of the population. While Kenyans rightly distrust the current security apparatus, they desperately want the presence of disciplined and accountable security service. What is needed is real security sector reform that is not purely technical but that reflects the concerns and interests that can only be discovered and clarified in the course of meaningful political dialogue.

We urge government of Kenya to put an end to impunity and to fully cooperate in the implementation of relevant reports and agreed reforms (including CIPEV and UN Special Rapporteur) with time bound deadlines. ICPC reminds the top Kenya political leadership of its collective and individual responsibility to protect its citizens and to guarantee respect for human rights.

Failure by the government of Kenya to acknowledge and accept the human rights challenges it faces, and that state institutions are in need of radical reforms in putting to an end impunity and violations of human rights, compels Kenyans and the international community to strengthen partnerships to combat impunity and establish justice and the rule of law, thus setting solid foundation for sustainable human rights, security and development.

ICPC Recommendations

1. The President should issue an executive order to end extrajudicial executions and other human rights abuses against the civilian population by the security forces. These instructions should specifically be reflected in internal regulations, orders, training, and other practices with security sector so as to prevent abuses from recurring in the future.
2. Police officers and other law enforcement agencies should be instructed that; they must obey international human rights and humanitarian law and that they have the obligation to disobey manifestly illegal orders and will otherwise be prosecuted individually on any violation they commit. Commanding officers should be instructed that they are criminally responsible when they knew or had reason to know that their subordinates were going to commit crimes and did not take all reasonable and necessary measures to prevent and punish those crimes.
3. The Government should effectively investigate the range of serious allegations of human rights abuses that have been made regarding the conduct of its security forces and provide a detailed, public response, acknowledging abuses and identifying errors. All members of the security forces implicated in human rights and humanitarian law violations must be suspended from duty, investigated, and prosecuted.
4. The Government should begin the effort to end impunity by investigating and prosecuting top political and security officials for their individual actions as well as for the actions of subordinates for which they have command responsibility.
5. We want to reiterate that all militia groups and vigilantes, which has committed unspeakable atrocities, must be disbanded and demobilized but the exercise must not be done through application of scorch earth policy.
6. Donors should continue to provide assistance to increase the effectiveness of the security sector. It should be accompanied, however, by efforts to provide human rights training, ensure effective monitoring, promote respect for human rights and respond to violations. Security sector reforms need to be premised on a system of democratic accountability and regularized command and control.

Signed by
Ndung'u Wainaina
Executive Director, ICPC and Convenor, TJWG