



International Center for Policy and Conflict

Immediate Press Release

Injustice, Impunity Trademarks of President Kibaki Regime

Nairobi, July 31, 2009. The **International Center for Policy and Conflict (ICPC)** reckons that the situation of impunity in Kenya is the result of negligent, deceitful and complacent conduct on the part of President and top government officials. Lack of accountability is hindering progress in the peace building process in Kenya. We are reiterating that perpetrators of post-election violations to be brought to justice. ICPC states clear that the President's statement yesterday was deliberately vague, misleading and non-committal on justice and accountability related to post-election violence crimes; and that impunity prevailed at the core governance in Kenya. Indeed, it confirmed the Kenyans fear on the reason behind appointment of the Truth Justice and Reconciliation Commission before settling the Special Tribunal issue.

An independent hybrid court acts as the only option to repudiate perpetrators from the realm of impunity. The court is by no means comparable to a truth commission. Truth commission and criminal accountability are not mutually exclusive. A combination of both is significantly necessary in order to promote holistic approach to determining truth and facilitating accountability, justice and reconciliation. It is erroneous to construe and present truth commission as substitute to mechanisms of criminal accountability.

Yesterday's statement by the President together with Prime Minister and their cabinet confirms that the cabinet is hub of impunity tradeoff while the Two Principals are the tap root of the impunity tree. The demands of victims and their relatives on justice are not mere wishes; they are supported by law. And until these demands for justice are fulfilled and accountability for violations, and including ongoing, is ensured, a truly new Kenya will not emerge, and indeed, the peace process could be jeopardized.

We observe that *de facto* impunity was further buttressed by the President and Cabinet as their collective decision to reject enactment of Special Tribunal reaffirms Kenyan state failure to prosecute for lack of ability and or will, for political reasons. The President chose to have the state support for the abuses and to protect high-ranking officials and responsible state institutions. This Presidential form of impunity leads to more human rights violations and undermines faith in the government as it sends a particularly negative signal to victims about state indifference and complicity in their suffering.

Government has an obligation to act and demonstrate to people that justice belongs to them since justice is the only underlying force that helps to nurture trust between state and people. And without such mutual trust and if people feel the state is not reliable, it will be difficult for the state to seek cooperation from people in its attempts to solve the problems and restore peace in public in a long run.

If Kenya cannot prosecute those bearing the greatest responsibility, as clearly indicated the cabinet position yesterday, we are calling for the application of the universal jurisdiction. Further, we are urging international community across the board to issue travel bans and take other stringent measures including freezing the accounts and properties of the masterminds of the post-election violence.

ICPC wants all sides of the post-election violence to live up to their commitments to tackle impunity and to cooperate with credible, competent, impartial and fully independent investigations. The victims of these violations and their families deserve no less. They have the right to know the truth and to a remedy, and they should be at the heart of everyone's concerns. Moreover, the parties to the peace process agreed that addressing the past is necessary for a sustainable peace. But, regrettably, too little progress has been made. The situation is no better when it comes to politically related crimes committed since the peace agreement; impunity prevails.

We strongly repudiate acts of commission or omission by those who have the responsibility to investigate and mete out punishment for those crimes but fail to do so, allowing the guilty to go unpunished, thus making the matter even more serious. ICPC further demands that the national authorities carry out their duty to prevent, investigate and mete out punishment for these crimes and to make good for their consequences.

Signed by

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