

Joint Press Statement
October 13, 2009

ICC Pressure; Kenyan Government Cannot Afford To Remain Intransigent

We, Undersigned Members of Parliament and Civil Society Organizations;

Noting that the legitimacy of any government is drawn from its population and that the corpulent Coalition Government's acts and deeds contravene the popular will of the Kenyan population it purports to serve;

Recognizing that Kenyans have decided that perpetrators of the Post Election Violence most heinous crimes must be prosecuted;

Reiterating that it is not optional to the President, the Prime Minister and Cabinet Ministers; neither is it a choice between the International Criminal Court (ICC) and the Special Tribunal for Kenya. Rather, it is the two courts acting in complementarity to end the impunity gap.

Aware that the Rome Statute of the International Criminal Court underlines the fact that; "(...) the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation" and proceeds by recalling that "it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.

Recalling that Kenya ratified the Rome Statute of the International Criminal Court in 2005 giving the Court jurisdiction over Kenya;

Recognizing that on July 3rd 2009, the Chief Prosecutor signed an agreement with Kenyan government delegation requesting information on steps taken by the national authorities to investigate and prosecute those most responsible for crimes against humanity and other gross human rights violations committed in Kenya in connection or related to 2007 post-election violence.

Observing that the two parties agreed that should national proceedings fail the Kenyan government would make referral of the Kenya Situation to the International Criminal Court;

Observing that the Kenyan government is unlikely to refer Kenya situation to the International Criminal Court; and that the Coalition Government may attempt to play politics with the ICC;

Aware of the possibility that certain individuals within the Government of Kenya might want to frustrate or block the Chief Prosecutor of the International Criminal Court should he act on his own motion upon authorization by the ICC Pre-Trial Chambers judges; '

Observe and Urge the following;

1. The Cabinet and the Government of Kenya cannot afford to remain intransigent. The Government of Kenya should review its ill-advised decision and immediately work towards the establishment of a Special Tribunal that meet international standards. In doing so, the Government would have acted in accordance with the will and expectations of Kenyans to prosecute perpetrators of post-election violence.

2. There must be bold and decisive action against the culture of impunity in Kenya. The establishment of the Special Tribunal is a necessary measure for ensuring adherence to the rule of law and accountability for individuals.
3. Kenya being a signatory of the Rome Statute has a mandatory obligation and duty to prosecute perpetrators of crimes against humanity. The country must in the first instance act to ensure that it has an effective and credible institution to deal with offences under the statute. Further it must cooperate fully with the ICC.
4. We are reiterating that in Kenya we must have both the International Criminal Court (ICC) and a local mechanism, the Special Tribunal so as to close the impunity gap. The ICC shall not overshadow a credible national judicial mechanism but rather shall complement it. Indeed justice is and will essentially be delivered through the effective domestic justice setting.
5. Kenyans must support the establishment of a special tribunal. For the victims the Bill offers not only justice but also reparations in the form of compensation. The Bill also makes provision for the delivery of quick justice. In addition the Bill also guarantees protection to witnesses.

Members of Parliament

1. Hon. Gitobu Imanyara
2. Hon. Dr. Bonny Khalwale
3. Hon. Danson Mungata
4. Hon. Dr. Eseli Simiyu
5. Hon. David Ngugi

Civil Society and Professional Bodies

1. International Center for Policy and Conflict (ICPC)
2. Law Society of Kenya (LSK)
3. Federation of Women Lawyers-Kenya(FIDA-K)
4. Haki Focus