



International Center for Policy and Conflict

Press Release

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TAKE DECISIVE ACTION TO STAMP OUT IMPUNITY IN KENYA

International Center for Policy and Conflict (ICPC) believes that **government of Kenya is unwilling or unable to bring to justice perpetrators of post-election violence atrocities** as a vital part of the struggle to eradicate widespread impunity in Kenya. The government had six months after the defeat of the Special Tribunal for Kenya Bills in February to hold meaningful consultations with Kenyans and come up with a new watertight legal framework for the enactment of a credible independent and impartial tribunal. Instead of doing so, it has waited until the last minute to seek extension of time allocated to enact the tribunal. It did the same thing last time with consequence of defeating of the Bills in Parliament.

Further, we are disturbed by what ICPC **considers to be an act of arm-twisting Kenyans by a certain section of Members of Parliament.** It is the responsibility of the National Assembly to ensure that national court or Special Tribunal can exercise jurisdiction over anyone suspected or accused of grave crimes under domestic and international laws, whatever the official capacity of the suspect or accused at the time of the alleged crime or any time thereafter be it head of state, member of government, member of parliament or other elected or those holding governmental capacity by enacting the prerequisite legal framework.

Dr. Kofi Annan **must not appear to tolerate impunity in Kenya** by conceding to the demands of government that is just buying time while pretending to be doing something, when in actual fact it has no intention of prosecuting those responsible for the post-election violence. We are urging Dr. Annan and the International Criminal Court to send a strong message to the government of Kenya that impunity will be unacceptable and will not be tolerated, in order to force it (government) to act without further delay.

If Kenya government was serious on prosecutions, it would have by now mobilized all resources at its disposal, to have the low and middle rank of perpetrators effectively and expeditiously prosecuted through domestic trials. Even the cases that have so far been instituted like Kiambaa Church burning the courts have dismissed them due to shoddy investigations by police (**Criminal Case NO. 34 of 2008, High Court of Kenya, Nakuru.**) Government of Kenya is notorious for rarely acting to bring the perpetrators of crimes to justice. The normal practice has been to wait until there is an outcry before ordering an official inquiry. Rarer still have been the occasions in which criminal charges have been brought against perpetrators after handing in of the inquiry report(s). This situation must now change.

ICPC is appealing to **all victims of human rights violations and other horrendous atrocities of post-election violence not to despair in their quest for justice but instead to work together, and in collaboration with the civil society, lead the vigil for justice campaign in order to heighten demand for accountability.** This would form a critical turning point in eradicating the toll of impunity in Kenya. We are reiterating that it is self defeating for anyone to assume that sustainable peace can be built on foundations of impunity. No lasting reconciliation without justice is possible. ICPC is urging all Kenyans and their international friends not to be discouraged, disappointed or succumb to acts of blackmail in

their support efforts to end the cycle of impunity in Kenya. We all have responsibility, stand up together to stamp out widespread impunity in Kenya.

We note that the **toll of impunity is the continuing suffering of victims, the continuing use of unlawful violence and the undermining of the rule of law in national affairs. It is in the interest of Kenya and its people to promote the rule of law by fighting impunity.** The toll of impunity is, simply, the continued repetition of the crime. Bringing perpetrators to justice does not only mean justice for the victims, it also satisfies the rightful claim of the community at large for accountability on the part of those who govern society and for the right to know the truth about serious crimes.

As to whether the Truth Justice and Reconciliation Commission (TJRC) would substitute the criminal prosecutions, ICPC would like to state the following: That Truth commission is distinct from courts of law and do not normally determine individual criminal liability or order criminal sanctions. A truth commission is not a substitute for justice in the form of full and fair prosecutions; it generally cannot subpoena witnesses or punish perjury; it is inherently vulnerable to politically imposed limitations and manipulation; its structure, mandate, resources, access to information, willingness or ability to take on sensitive cases –even the wording of the final report-is often determined by the political forces that created them.

On the role of international community in ensuring criminal accountability for both international and domestic crimes committed in Kenya, we state as follows: The international community as a whole has a legitimate interest in the prosecution of grave crimes under international law in order to deter the commission of such crimes in the future, to punish the commission of these crimes in the past and in order to contribute to the redress for victims. Indeed, each state has a duty to do so on behalf of the entire international community.

ICPC observes that **when one state fails to fulfill its duty to bring those responsible for grave crimes to justice, other states have a responsibility to act.** Just as international courts such as International Criminal Court(ICC) are under no obligation to respect decisions of the judicial, executive or legislative branch of government in a national jurisdiction aimed at shielding perpetrators of these crimes from justice by; amnesties, sham criminal procedures or any other schemes or decisions, no national court exercising extraterritorial jurisdiction over such crimes is under an obligation to respect such steps in other jurisdictions, that would frustrate international justice. Bringing perpetrators to justice who were shielded from justice in another national jurisdiction is fully consistent with the *ne bis in idem* principle (the prohibition of double jeopardy) that no one should be brought to trial or should be punished for the same crime twice in the same jurisdiction.

Thank you

Signed by

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