



International Center for Policy and Conflict

## Press Statement

### Adhere to Annan, ICC agreements; Enact Credible Tribunal to Stamp out Impunity

**Saturday July 4, 2009:** The **International Center for Policy and Conflict (ICPC)** while supporting the agreements reached between the government of Kenya and International Criminal Court yesterday, and the Dr. Kofi Annan unrelenting push for the enactment of the Special Tribunal for Kenya, we would like to observe that the government of Kenya commitment and will to prosecute the perpetrators of horrendous post election violence atrocities as well as carry out substantive reforms as agreed during mediation process is not only doubt but is in effect facing serious internal resistance. The constant government's promises on the enactment of the Tribunal and reform critical institutions are apparently overtaken by political rhetoric and succession politics with impunity prevailing over justice. ICPC is urging the ICC to keep pressure on the Kenya government and not to accept a watered down judicial process.

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 disturbed by what ICPC considers to be an act of arm-twisting Kenyans by a certain section of Members of Parliament in an attempt to either protect each other or defeat justice. 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. ICPC is insisting that nobody should be granted immunity.

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.

**Signed by**  
**Ndung'u Wainaina**  
**Executive Director**