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**International Centre for Policy and Conflict**

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**Press Statement  
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## **Priority effective witness and victim protection** *Government of Kenya Must Avoid Undermining ICC at all cost*

Notwithstanding the fact that International Criminal Court Pre-Trial Chambers judges gave the Court's Prosecutor Moreno Ocampo authorization to open official investigations into the Kenya Situation, the official investigations' of the Court has not begun due to procedural requirements.

This means that potential witnesses' and victims' security and safety is still under the primary responsibility of the government of Kenya until such a time that ICC starts its official investigations and conducts thorough identification and vetting of its witnesses. However, it is always the duty of the government to ensure witnesses/victims are protected. The International Center for Policy and Conflict (ICPC) has said today.

There is need to understand that International Criminal Court (ICC) would be interested with a very small number of witnesses. And therefore nobody should panic. We would add that the success of the Court would be dependent on the ability of many victims to participate and collaborate with Court without fear. Also effective, unequivocal and full cooperation of the government of Kenya must be guaranteed not only with the word of mouth but by action. The government of Kenya must avoid at all cost engaging in activities that would undermine or appear to fight the International Criminal Court locally and internationally. Specifically, we hope it's {government} participation in the forth coming ICC Review Conference in Kampala Uganda in June 2010 would not be used to antagonize the Court.

Justice suffers immensely without a proper protection of witnesses and victims. It is essential therefore at this moment to state that despite the belatedly government's efforts to enact and operationalize witness protection mechanism; it is going to take time before it is set up and properly tested to prove its competence. In this regard, the elaborate and tested International Criminal Court witness protection process remains the most viable route.

No efforts should be spared in ensuring that those who are threatening, harassing and intimidating victims or would be witnesses are arrested and prosecuted. We would like to remind the Internal Security Minister Prof George Saitoti that Government of Kenya has an obligation under International Crimes Act 2008 to protect potential witnesses, victims and or their representatives including their lawyers. Threatening or intimidating victims or potential witnesses is a serious criminal offence that attracts punitive legal punishment.

ICPC notes that since the Act was operationalized on 1st January 2009, many cases of threats and intimidation directed at victims or potential witnesses have been reported but the Ministry has never taken any tangible remedial measures. ICPC is keenly monitoring how the Ministry of Internal Security is going to facilitate the work of ICC and also handling threats and intimidation cases being reported.

We will keep pressurizing the government of Kenya to undertake it's primarily responsibility of safeguarding and guaranteeing the security and safety of its citizens including the potential witnesses and victims of human rights violations.

It significance to observe that since the Witness and Victim Protection Law was enacted in 2006. Little progress was made to operationalize this law despite the fact the there were potential witness and victim who deserve protection. This is attributable to lack of political will to see justice flourish. Therefore, the justice has continued to

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suffer and lacks fairness even as human rights violations and corruption continue to go unpunished. To be an accountable and cohesive nation, government of Kenya and state institutions must deliver protection to would witnesses and justice to all citizens.

It has taken five years for the Ministry of Justice, Attorney General and Parliament to even consider establishing a witness protection mechanism. And this is only after the post-election violence; and pressure to provide victims and witnesses with necessary protection. This casts further doubts to the genuineness of the government in setting up an effective and truly independent witness protection agency.

Impunity will continue to prevail if witnesses and victims don't feel confident enough to complain or testify. However, many cases are reported where police officers refuse to take up complaints, destroy evidence or threaten people who are trying to denounce a crime. All in all, a partial police force, fear of reprisals and no effective protection of witnesses and victims leads to a general failure of justice and a lack of fair trials.

It should also be considered that protecting witnesses and victims also means making sure that their complaints are taken up, which implies deep changes in the police culture. Effective witness protection is a necessary step to address the culture of impunity and human rights violations. The population should be able to trust and respect the members of law-enforcement institutions, so that the witnesses' protection can be truly efficient.

**Thank you**

**Signed by**

**Ndung'u Wainaina  
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