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## International Center for Policy and Conflict

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To:

H.E. Mwai Kibaki  
President of Republic of Kenya  
Office of President  
Harambee Avenue  
Nairobi, Kenya

Rt Hon. Raila Odinga  
Prime Minister of Republic of Kenya  
Office of Prime Minister  
Harambee Avenue  
Nairobi, Kenya

Cc:

Dr. Willy Mutunga  
Chief Justice and President of Supreme Court of Kenya  
Judiciary  
Nairobi, Kenya

Hon. Kenneth Marende  
Speaker  
National Assembly of Kenya  
Parliament Building  
Nairobi, Kenya

Date: 29th August, 2012

Dear Sir,  
Establishment of National Police Service Commission and Appointment of Inspector General of Police

The above matters refers,

The International Center for Policy and Conflict is gravely perturbed by constitutional crisis where Kenya finds itself in relation to establishment of National Police Service Commission and appointment of Inspector General of Police. The country is in this constitutional cliff due to your consistent disregard of Constitution or refusal to exercise your constitutional mandate.



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For the last two years, your offices knew or ought to have known the constitutional deadline for the establishment of National Police Service Commission (NPSC) and appointments of the Inspector General of Police, two Deputies and Director of Criminal Investigation Department. Yet you failed to act appropriately.

We are further concerned by the utterances of the Prime Minister that the two of you have agreed on the composition of the members of the National Police Service Commission (NPSC) after the Parliament rejected the list of nominees you had earlier presented to it. The Commissioners must be individuals whose character and integrity is beyond reproach.

The entire process of recruiting Commissioners to the Commission has to be done afresh. Kenyans want recruitment process of Commissioners that observe the highest standards of professionalism, transparency, Integrity and participatory that adheres to the Constitution. Meanwhile the President is obliged by National Police Service Act to set up a Selection Panel to recruitment the Inspector General of Police.

The appointment of Commissioners to the NPSC and Inspector General of Police is a constitutional process that transcends the power of the two Principals. It is incumbent upon the Prime Minister to come clear on what he means by saying that the two of you have agreed on the people to serve in the Commission without following the necessary requirement procedure.

We point that in the past Courts have overturned decisions of the Executive for failing to respect the Constitution. The constitutional principle of public participation must be upheld.

Our understanding of the law particularly Article 254 of the Constitution and Section 9 of the National Police Service Act that was passed by Parliament last year became the law after the effluxion of time provided for by the Schedule of the Constitution.

Offices within the National Police Service can only be recruited in accordance with the rules set in the Constitution and National Police Service Act. Any other way will be not only illegal but unconstitutional going by the express dictates of the supreme law.

According to the Constitution and the National Police Service Act, the NPSC has legal authority of registration, vetting and lustration, and certification of current serving police officers and recruitment of the persons to serve in the reformed police institution

The National Police Service Act is eloquently clear and unequivocal on the mode of appointment of inspector General, the Director of Criminal Investigation and their respective deputies. The country cannot run in any other way other than within the confines of the law.



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Article 10 of the Constitution on National values enjoins the two of you to observe good governance, integrity, transparency, accountability and rule of law.

Your actions and or omission have put this country into a precarious situation of insecurity as confusion surrounding who is in lawful command of the police after the National Police Service Act became operational by operation of the Constitution.

Recall that the Commission of Inquiry into Post -Election Violence (CIPEV) was categorical in its findings (pages 424 and 425) on partiality and lack of independence of police force resulting to deterioration of 207/8 crisis. The Constitution and National Police Act has clearly provided the cure. On this case you jointly have failed to respect, uphold and protect the Constitution. The law enforcement agencies must be credible, impartial and independent.

We note that failure to establish a credible, impartial and independent NPSC and appointment of Inspector General of Police would be tantamount to white-washing police reforms and directly thwarting effective delivery of administration of criminal justice and re-establishment of rule of law in Kenya.

We therefore call upon your offices to uphold, respect and protect the Constitution and move with expediency to facilitate the carrying out of this important process to put to an end the crisis that already exists.

Thank you

Yours Sincerely

Ndung'u Wainaina  
Executive Director  
International Center for Policy and Conflict