



International Center for Policy and Conflict

ICPC 2010 Annual Report

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EXECUTIVE SUMMARY

This report covers International Center for Policy and Conflict (ICPC) engagement on transitional justice and human security processes and mechanisms in Kenya in the year 2010. It covers areas that were funded by HIVOS; Open Society Initiative for Eastern Africa (OSIEA); and URAIA (A basket fund from a group of donors. The Royal Netherlands Embassy (RNE) is funding ICPC for a period of 3years beginning September 2010- August 2013.

The Department of International Development (DFID-UK) and Norwegian Embassy (South Africa) supported specific activities on gender and transitional justice in Africa, a constituent project of the Transitional Justice Governance and Accountability in Africa (TJGAA). The project was implemented by ICPC in partnership with Center for Studies on Violence and Reconciliation (CSVR) South Africa, Zimbabwe Human Rights Lawyers, Zimbabwe (ZHRL), and Refugee Law Project (RLP), Uganda. This project also involved the African Transitional Justice Network.

The reporting period covering 1st January 2010 to December 2010 has seen ICPC grow and expand to an influential national, regional and global transitional justice, human rights, governance and human security institute. ICPC remains a crucial reference point to many actors including civil society, policymakers, media, and academia and donor community. It is regarded as 'Mother of Transitional Justice in Kenya". This has given the Center a strategic cutting edge and huge potential in defining and influencing transitional justice, governance, human security and development direction nationally, regionally and globally.

In the year 2010, ICPC engaged and carried out activities that focused on the implementation of the mediation agreements emanating from the Kenya National Dialogue and Reconciliation (KDR) framework of 2008 with a special interest on advocacy, monitoring and achievements. Key among these included: bringing about a better understanding of the purpose and transformative effect of the transitional justice processes; strengthening and consolidating civil society agenda on transitional justice; advocacy and lobbying for the establishment of an effective and credible Truth, Justice and Reconciliation process; providing leadership on advocacy and promotion of criminal accountability related to post-election violence on domestic and international crimes (including lobbying for effective, impartial and credible Special Tribunal for Kenya, engaging the International Criminal Court and monitoring domestic trials) as well as consolidating a framework for gender and transitional justice in Kenya.

The Center also influenced the constitution making process by defining and sharing a framework of a new constitution from a transitional justice perspective. The Center has been keen on monitoring the implementation of the new constitution with a bias on clauses touching on transitional justice with tremendous results.

Further activities and successes involved building and strengthening capacities of civil society organizations; victims empowerment and outreach; engagement with policymakers and communities on transitional justice mechanisms; developing, documenting and sharing information on transitional justice policy; profiling transitional justice and human security issues in the media (electronic and print); and intensifying international advocacy and information on Kenyan status on implementation of transitional justice mechanisms.

In the year 2010, ICPC acted as a major source of information related to transitional justice mechanisms for many local and global actors as well as created partnerships and collaboration initiatives on the same. ICPC achieved a major milestone in introducing transformative gender justice advocacy from a transitional justice perspective.

Further, ICPC continued to strengthen its regional initiatives partnering with human rights organizations from South Africa, Zimbabwe, Ghana, Sierra Leone and Uganda to implement the three year Department for International Development (DFID) funded project called Transitional Justice, Governance and Accountability in Africa (TJGAA). The project aims at strengthening the capacity of indigenous civil society organizations in Africa to engage more effectively with transitional justice both nationally and throughout the African Continent in a manner that promotes citizen participation, rule of law, gender justice and socio-economic rights. This project is expected to lay foundation on developing and drafting transitional justice policy for the African continent and infusing it {policy} into regional and continental human rights bodies and instruments.

ICPC has currently developed projects that address specific and various aspects of transitional justice- access to justice; human security; transformative gender justice; and capacity building. By coordinating and working closely with other institutions involved in similar work, the Center expects to maximize its resources and ensure that the initiatives complement the work of other organizations in the country and region. ICPC is also committed to developing new methodologies of obtaining solid information and analysis about the implementation—and obstacles to the implementation—of successful transitional justice processes.

CONTEXTUAL WORKING ENVIRONMENT IN THE YEAR 2010

Transitional justice is defined as a set of mechanisms arising following a period of conflict, civil strife or repression that are aimed at confronting and addressing past violations of human rights and humanitarian law. Its main objective is to end impunity and establish rule of law in the context of democratic governance.

Specifically, transitional justice is geared towards inter alia: addressing, and attempting to heal, divisions in society that arise as a result of human rights violations; bringing closure and healing the wounds of individuals and society, particularly through “truth telling;” providing justice to survivors and accountability for perpetrators; creating an accurate historical record for society; restoring the rule of law; reforming institutions to promote democratization and human rights; ensuring that human rights violations are not repeated; and promoting co-existence and sustainable peace.

In realizing these objectives, transitional or developing countries usually initiate mechanisms ranging from: research and documentation; prosecutions (formal justice); informal/traditional justice; truth commissions with varying combinations of amnesty (conditional and blanket) and lustration; reparations; memorialization; legal, policy and institutional reforms; and peace, conflict transformation and reconciliation among others.

The design and application of these mechanisms is complementary, considering the specific contexts of the country concerned as well as the demands of survivors and the aspirations of the citizenry and nation in general. The culture of impunity is highly pervasive and entrenched in the Kenya. Assessing the standards and definitions of international human rights instruments, impunity in Kenya is caused by five factors concerning government action:

- ❖ Failure to meet the obligation to investigate violations;
- ❖ Failure to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished;
- ❖ Failure to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered;
- ❖ Failure to ensure the inalienable right to know the truth about the causes and reasons for the violations; and
- ❖ Failure to take other necessary steps to prevent a recurrence of violations

Because of impunity, democracy and transitional justice have not been properly entrenched in the country in spite of the few milestones reached following the removal of the despotic Kenya African National Union (KANU) regime in 2002. The first ever democratic regime change in 2002

was more about removing a regressive regime that obstructed and blocked state transformation than transition. The reason then was removal of such a regime would create the necessary political environment to facilitate enactment of transformative agenda. The removal of KANU failed to deliver expected reforms due to political wrangles pitting the ruling coalition NARC members namely: National Alliance Party of Kenya (NAK)-largely former political opposition-against the Liberal Democratic Party (LDP)-breaks away disgruntled KANU. These wrangles culminated in the rejection of the new Constitution in referendum on November 2005, which set the stage for the disputed presidential elections in 2007 that degenerated into vicious violence, death, displacement and the destruction of property in Nairobi, Nyanza, Mombasa and Rift Valley provinces between December 2007 and February 2008.

In a bid to quell the spiraling chaos and to deal with the underlying causes of the post election violence, the mediation process chaired by Kofi Annan led to the ratification of the National Accord in February 2008 which obliged the two principals to fast track reforms under the four agenda items of the Kenya National Dialogue and Reconciliation (KNDR) agreements. Indeed, the final goal of the KNDR process is to achieve sustainable peace, stability and justice in Kenya through the rule of law and respect for human rights.

Fearing the consequences of the violence for the future of Kenya and its impact on the region, the African Union (AU), the UK, the USA and the EU supported efforts by Kofi Annan, the former UN Secretary-General, and his colleagues on the AU Panel of Eminent African Personalities to mediate between the ODM and the PNU. Annan's intervention led to the signing in February 2008 of the Kenya National Dialogue and Reconciliation Accord. It led to a PNU-ODM coalition under which Kibaki retained the presidency, Odinga assumed the new post of prime minister and ministerial positions were equally shared.

The Accord acknowledged that to end Kenya's cycle of electoral violence and displacement, it would be necessary to address impunity for human rights violations, reform the police, tackle poverty and the inequitable distribution of resources and address historical injustices. Separate commissions investigated post-election violence and the conduct of the election, but the government had not acted on their recommendations by mid-2010. Efforts to establish a local mechanism to bring to justice those responsible for violence had failed, and the International Criminal Court was investigating the post-election violence.

The KNDR was negotiated under four agenda items: a) Agenda 1: immediate action to stop violence and restore fundamental rights and liberties; b) Agenda 2: immediate measures to address the humanitarian crisis, promote reconciliation and healing; c) Agenda 3: How to overcome the political crisis; d) agenda 4: addressing long term underlying issues including constitutional, legal and institutional reforms, tackling youth unemployment, poverty, inequities and regional imbalances; consolidating national unity and cohesion; and addressing

impunity, transparency and accountability. While all 4 Agendas items are equal in importance, the fourth agenda item seems more strategic for it lays down the mechanisms for long term reforms as well as justice and accountability institutions which are to be established to address impunity, poverty and to move the country towards democratic governance. So far, some progress has been made at the national level through the enactment of the new constitution, establishment of the devolved public funds, institutional reform initiatives and other frameworks as well as several national commissions. However, a number of challenges have arisen in the process.

First, lack of accountability on the part of state institutions to ensure democratic governance of public affairs has been a major problem in Kenya. Currently, there are obstacles to public participation which arise from a lack of information, and a regulatory framework that can enable citizens to participate effectively. It is clearly evident that at the local levels, the culture of impunity rule supreme as the citizens' remains oppressed and marginalized in decision making processes. Second, citizens lack the requisite information, skills and tools for monitoring and documenting human rights violations. Citizens have also been inept at organizing and engaging vibrantly and resiliently in the struggle to reconstruct the state and better their livelihoods. This creates a situation where the abuse of public resources and human rights violations continue unabated thus exposing the citizens to prolonged repression and deprivation.

Third, three years after the signing of the National Accord, the Kenyan state is yet to provide the requisite remedies to victims of gross violation of human rights and humanitarian laws. For instance, victims of the post-election violence are yet to be availed durable solutions or recourse to justice for the afflictions they have suffered. Most of them remain abandoned and neglected in different parts of the country. Fourth, some of the institutions mandated to deal with justice and accountability are either experiencing inadequate political support from the government or facing paralysis in the operations as in the cases of the Truth Justice and Reconciliation Commission. Failure to enact the special tribunal for Kenya and the subversive efforts by the Executive and Parliament aimed at frustrating the prosecution of post-elections violence suspects before the International Criminal Court further illustrate the governments disregard for accountability and justice.

Fifth, Kenya is yet to fully develop a culture of nationhood or national cohesiveness as tensions or divisions still persist among the citizens along the social, political, economic, ethnic, regional, religious, gender, disability, generational among other parochial and societal interests. Systemic discrimination and marginalization on grounds of gender, age, sexual orientation, HIV/AIDS, disability, social status, religion, among other grounds, continues to persist. This has denied the affected persons and groups opportunities their right to development-which comes with the

opportunities to participate meaningfully in and benefit fully from the social, cultural, political and economic affairs of the society. Finally, the new constitutional dispensation ushers values, principles and the establishment of institutions of good governance which will provide the basis for entrenching the much needed reform, justice and accountability programmes in Kenya. Thus the involvement of the citizens and civil society groups in the implementation process is critical. Collaboration and unity of purpose among these groups is necessary to ensure effective participation and intervention in the process of implementation. This has, however, not been realized in the face of collusive government efforts to maintain the status quo.

KEY INTERVENTIONS IN 2010

TRANSITIONAL JUSTICE PROGRAMME:

Realization of a credible, effective and victim centered truth seeking process;

TRUTH JUSTICE AND RECONCILIATION COMMISSION (TJRC)

During this period, the implementation of Truth Justice and Reconciliation Commission remained an important step towards ensuring accountability for the past human rights violations, land injustice, economic crimes, corruption and guarantees that the victims of those violations know the truth, obtain justice and are provided with full reparation. ICPC was at the forefront seeking to secure a Truth Justice and Reconciliation Commission that is credible and capable of achieving its vital objectives.

To this end, ICPC compiled reports showing the TJRC Chairman Amb. Bethuel Kiplagat's connection to past historical injustices that would be subject to the investigations of the TJRC. These reports asserted that the Chair, having been linked to the past atrocities, would be either a material party to or witness in the investigations of the Commission making the chair unsuitable to continue in his capacity as a commissioner of the Commission and therefore requesting his resignation. These reports were shared with the CSOS, TJRC, the media and international actors as part of ICPC's campaign to have a credible truth seeking process in Kenya. This also ignited a heated public debate on vetting of public officials in Kenya.

ICPC together with other Civil Society Organizations (CSOs), held a press conference on 31st January 2010 asking for the resignation of TJRC chairman Amb. Bethuel Kiplagat on the basis of evidence gathered on his credibility as the Chair of the commission. Their argument was based on the provisions of the Article 10 (6) (a) (b) (c) of the TJRC Act 2008 "10 (6) notwithstanding the provisions of subsection (5), no person shall be qualified for appointment as a commissioner unless such person -

(a) is of good character and integrity;

(b) has not in any way been involved, implicated, linked or associated with human rights violations of any kind or in any matter which is to be investigated under this Act; and

(c) Shall be impartial in the performance of the functions of the Commission under this Act and who will generally enjoy the confidence of the people of Kenya.”

On February 7, 2010, ICPC and CMD held a second press conference where they tabled evidence against the TJRC Chair vis-à-vis the provisions of the TJR Act 2008 concerning eligibility for serving in the Commission. This press conference exposed the fact that TJRC Chair has direct interest in a few matters that would be within the mandate of the TJRC to investigate. Later On February 9th 2010, International Center for Policy and Conflict together with other CSOs wrote a letter to Amb. Bethuel Kiplagat and copied it to all commissioners, affirming their support of the commission's work but which support was pegged on the Chairs' resignation. Attached to the letter were all the documents that held evidence against the TJRC Chair.

On 3rd March 2010, ICPC and the Kenya Transitional Justice Network (KTJN) held a public forum at the Hilton Hotel to deliberate on the crisis of impunity facing Kenya in the context of Post Election Violence and with particular focus on the Truth Justice and Reconciliation Commission. The Forum was attended by 300 people and incorporated a wide range of victims including those afflicted in past episodes of violence and human rights abuses related to elections. Another public forum on combating impunity and advocating for a credible and impartial Truth Justice and Reconciliation Commission (TJRC) in Kenya was held between 29th April and 1st May 2010 at Royal Springs hotel in Nakuru.

These workshops cleared the air on the issues raised against TJRC and connected those issues with the impunity question in Kenya as well as the inter-linkages between TJRC and other transitional justice mechanisms i.e. local and international trials as well as the role of the victims and CSO's. Part of the results of these activities was that on March 29, 2010, Deputy Chair of the Commission, Betty Murungi quit the commission over controversies surrounding Chairman Bethuel Kiplagat. On 13th April 2010, TJRC chairman Bethuel Kiplagat lost the support of the entire commission, putting in jeopardy his tenure. The commissioners wrote to the Ministry of Justice to the effect that Mr. Kiplagat had agreed to step aside and asked Justice and Constitutional Affairs Minister Mutula Kilonzo to ask the Chief Justice to form a tribunal to investigate the chairman. However, Mr. Kiplagat soon thereafter went against his apparent decision to resign as the chair and in a press conference said that he was not going to step aside.

Participants of the TJRC workshop on 29th April and 1st May 2010 at Royal Springs hotel in Nakuru. Disturbed by the failure of the Truth, Justice and Reconciliation Commission (TJRC) to discharge its duties as a result of controversies surrounding the Chair, the Kenyan government began to threaten to disband the body. Justice, National Cohesion and Constitutional Affairs Minister, Mutula Kilonzo, under whose docket the TJRC falls, had asked the Parliamentary Committee on Legal Affairs to work on modalities of disbanding the Commission. However, there was little follow-up on the request by the committee.

On 2nd and 3rd September 2010 Civil Society Organizations under the umbrella of Kenya Transition and Justice Network (KTJN) convened by ICPC, held a two day National Dialogue forum on the truth, justice and reconciliation. This was necessitated by the need to re-evaluate the position of the TJRC in the face of the new constitutional dispensation. The speakers whom constituted; Njonjo Mue Head, ICTJ Kenya, Pheroze Nowrojee' (Senior Counsel), Tokunbo Ige (Senior Human Rights Adviser: UN Resident Coordinator's Office, Margaret Shava (Commissioner, TJRC Kenya) , Kawive Wambua (Executive Secretary, CRECO) Sheik Salah Abdi (Truth Be Told Network) , Tshupo Madligozi of Khulumani Support Group, South Africa, Christine Alai (Programme Associate, ICTJ Kenya Office), Esther Waweru (PO Legal Affairs, KHRC) ,and Paul Mwaura (Director of Programmes, ICPC Africa), talked of varied issues relating to the issues of human rights violations, the mandate of the TJRC, the processes of seeking for truth and justice among other issues.

There was consensus that the chairperson of the TJRC, ambassador Kiplagat was an impediment to the process of the search for truth, justice and reconciliation for the victims of various human rights atrocities committed in Kenya. Through deliberations, it was clear that he needs to step aside so that the people's faith and trust in the TJRC process can be restored.

As a follow-up to the successful National Dialogue forum, Kenya Transitional Justice Network (KTJN) through ICPC, ICTJ Kenya, KHRC, KLA, YOUTH CONGRESS, CRECO, ICJ-K, Kenya Muslim Youth Alliance, CJPC, AOSK-JP, KEJUDE, CMD and NCEC on September 9, 2010 petitioned the Chief Justice to set up a tribunal to investigate allegations against TJRC chairperson Mr. Bethwel Kiplagat. The petition demanded that the Chief justice set up the tribunal to investigate the TJRC Chair within 7 days of its issue. The Chief justice failed to act on the petition within the set time limit. Consequently, the Kenya Transitional Justice Network (KTJN) on 17th September, 2010 held a press conference outside Chief Justice Offices at High Court demanding answer over his failure to follow through. The move was meant to put more pressure on Chief Justice to act on the petition.

On 14th October 2010, ICPC wrote a letter to foreign TJRC commissioners; Justice Ms. Gertrude Chawatama – Zambia, Mr. Berhanu Dinka – Ethiopia and Professor Ronald Slye – United States of America expressing their dismay and disappointment in their continued stay as Commissioners in the discredited and poorly driven Truth Justice and Reconciliation Commission (TJRC) of Kenya. On 21st October Professor Syle resigned as a TJRC commissioner citing lack of support from government and the unresolved allegations against Chairman Bethuel Kiplagat. He said he had lost faith in the Commission's ability to fulfill even a small part of its mandate.

On 29th October 2010, Chief Justice Evan Gicheru appointed a five-person tribunal to investigate embattled TJRC boss Bethuel Kiplagat. The tribunal would report and give its recommendations within six months. It would be chaired by former Appeal Judge William Deverell, retired High court judges Onesmus Mutungi and Benjamin Kubo, state counsel Edwin Okello and Ms Perpetual Waitere. Mr Okello would be assisting counsel to the tribunal while Ms Waitere would be secretary. Their mandate was to inquire into claims that Mr Kiplagat's past conduct "erodes and compromises his legitimacy and credibility" as chair of the Truth, Justice and Reconciliation Commission. The conduct in question involved claims that the chairman's was in the past linked to or associated with "incidents considered to be gross abuses of human rights" and economic crimes to which he may be called as a witness in the course of the TJRC investigations.

The tribunal was also billed to inquire into Kiplagat's actions in office constituting misconduct, specifically, the allegations that the Chair falsely swore an affidavit to the effect that he knew not of his involvement in the aforementioned past incidences of historical injustice that would be part of the TJRC investigations, as a necessary prerequisite to his appointment as a commissioner of the same.

PROMOTING CRIMINAL ACCOUNTABILITY AND THE RULE OF LAW (SPECIAL TRIBUNAL FOR KENYA, ICC AND DOMESTIC TRIALS)

Criminal accountability is vital to fighting impunity as well as restoring justice and the rule of law in post conflict/post oppression situations, and thus is a major component of transitional justice. In the aftermath of the post poll chaos that engulfed large sections of the country in December 2007/Early 2008, the commission of inquiry into post election violence (CIPEV)[12] also referred to as the Waki Commission after its chair Justice Phillip Waki, was established on 23rd May, 2008 pursuant to the KNDR agreement on the establishment of the same signed on 4th March 2008.

The Commission was mandated to investigate the facts and circumstances surrounding the violence, the conduct of state security agencies in their handling of it, and to make recommendations concerning these matters and appropriate measures of redress. On 15th October, 2008, the Commission handed over its final report to the President and the Prime Minister, which recommended among other things the formation of a local tribunal to try those bearing the greatest responsibility of the violence.

The report also recommended that in the event the government failed to establish the local tribunal within the specified time, that commission would submit its report to the Prosecutor of the international criminal court. Another significant recommendation was the domestication of the Rome statute. The domestication of the Rome statute was done but the formation of a local tribunal has been elusive.

However, this failure kick started processes that resulted to the International Criminal Court as a means of securing criminal accountability for crimes committed in the violent post election skirmishes. By 26th November 2009, the Chief Prosecutor for the ICC had filled a request for authorization of an investigation into the situation in the Republic of Kenya in relation to the post-election violence of 2007-2008 with the Pre-Trial Chamber. The request was accompanied by approximately 1500 pages of supporting material. In his request, the prosecutor relied on several reports from various bodies on the PEV including the Waki Report.

On 8th January 2010, ICPC together with Haki Focus and some members of parliament, organised a press conference and expressed their disappointment at the attempts to delay the pre-trial chambers decision on Kenya's post election violence case. An international lawyer's organization had filed an objection to the case with the international criminal court. The conference also raised the red flag over alleged plot to intimidate potential witnesses of poll chaos through the death threats especially on North Rift, a matter which would later generate a lot of concern among the ICC, the media, civil society and international community.

A few weeks later, from 21st -22nd January 2010, International Center for policy and Conflict held a public victims forum in Nakuru to consolidate the victims views in regard to post election violence and criminal accountability. The consolidation was done after a vigorous session on training on the composition, purpose and value of ICC and Special Tribunal for Kenya. The forum which brought together about 35 victims from different parts of Rift Valley saw the victims sign and submit; a memorandum to the International Criminal Court- (ICC) on the handling of post election violence by the Kenya government. This was submitted to International Criminal Court through the International Center for Policy and Conflict (ICPC).

During the reporting period ICPC continued to monitor the ICC process in relation to Kenyan situation and on March 25th 2010, ICPC through a press statement expressed its disappointment with Justice and Constitutional Affairs Minister Mutula Kilonzo who had been consistently and deliberately issuing confusing statements regarding ICC's role. More specifically, Mutula had alleged that the ICC had started investigation, a claim which which brought confusion amongst Kenyans and particularly the victims of post-election violence.

On 31 March 2010, Pre-Trial Chamber II, by majority, granted the Prosecutor's request to commence investigations into the possible international crimes committed in Kenya during the post-election violence. The ruling availed at the time the only legitimate avenue through which any of the crimes committed in the aftermath of the disputed 2007 general elections would be investigated and possibly prosecuted. The ICC process was therefore the sole legitimate mechanism through which accountability for the post - election crimes could be secured.

After the prosecutor was allowed to initiate investigations in Kenya, ICPC organized a meeting between The Prosecutor Moreno Ocampo and victims on the 8th of May 2010 at Kasarani Hotel in Nairobi. The prosecutor was able to meet about 25 victims of the post election violence to explain to them what to expect from the process. In addition to this ICPC organized a meeting of 12 Human rights defenders sampled in the hot spots of provinces with the office of the prosecutor to map out which areas they will visit to carry out investigations.

ICPC further organized a victims forum in Nyanza and Western provinces on the 12th and 14th May 2010. Most of these victims were victims of police brutality who had being neglected by the government and ICPC wanted to consolidate their voice so that they can seek reparations from the state. In the meeting, the victims were enlightened on the ICC process and local tribunal and its relationship with TJRC as well as what to expect from all the processes. The meeting resulted in the victims sending a memorandum to ICC citing their expectations.

In follow-up to the ICC Review conference held in Kampala Uganda between 31st may and 11th June 2010, the International Center for Transitional Justice in collaboration with ICPC and KPTJ established the ICC Outreach Network. The various organizations that form up the network meet once in a month to discuss the developments in relation to ICC as well as share ideas and coordinate advocacy strategies.

After the prosecutor's application to the pre trial chamber for summons to appear, the network carried out public forums around the country to sensitize people about the developments in the court and what to expect next. ICPC was tasked to hold a forum in Kisumu which it held on 17th December 2010. The forum brought together victims and human rights defenders from the region and helped provide clarity regarding the operations of the ICC as well as counterbalance the expectations raised regarding the trial process and its impact.

ICPC conducted a workshop with human rights defenders drawn from Central and North Rift valley and Western and Nyanza provinces of Kenya in Nairobi on the 13th of October 2010. During the workshop, participants were taken through the different stages of the ICC trial process and their implications. The participants were also educated on the need for a credible local tribunal and what it would mean for criminal accountability in Kenya.

On the 15th November 2010, the ICC Chief prosecutor in a live press briefing announced that he would be seeking indictments against six individuals who his investigations had found to be most responsible for the crimes against humanity committed during the post-election violence. These individuals were invariably:

- 1) William Samoei Ruto who is the current MP for Eldoret North and the suspended Minister of Higher Education, Science and Technology;
- 2) Henry Kiprono Kosgey who is currently MP Tinderet Constituency and a suspended Minister of Industrialization and;
- 3) Joshua Arap Sang a broadcast journalist at Kass FM which broadcasts in Kalenjin language.

(These three constitute the suspects under the first case concerning allegations of crimes against humanity committed as part of an organizational policy)

4) Francis Kirimi Muthaura, the current Head of the Public Service and Secretary to the Cabinet and Chairman of the National Security Advisory Committee.

5) Mohamed Hussein Ali, formerly the Commissioner of the Kenya Police Force during the PEV and now the Chief Executive of the Postal Corporation of Kenya.

(The Prosecution considers the two to have authorized the Police to use of excessive force against ODM supporters and facilitated attacks against ODM supporters.)

6) Uhuru Muigai Kenyatta, currently the Deputy Prime Minister, Minister of Finance and MP for Gatundu South constituency. He is considered to have helped to mobilize the Mungiki criminal organization to attack ODM supporters during the post-election violence.

(These three constitute the suspects under the second case concerning allegations of crimes against humanity committed by government)

On the day of this announcement ICPC held a media luncheon at The Hilton Hotel for on-air journalists to take them through the developments in the ICC process as well as discuss with them ways of spreading the message using their programs.

Following the announcement of the six intended suspects for prosecution by the Chief Prosecutor, one segment of the coalition government has been actively conducting diplomatic visits seeking to secure support for a collective pull-out from ICC among African states. When this initiative failed, this section of the government continued its shuttle diplomacy, this time with an aim of having the case by the ICC deferred.

On the 9th and 10th of December 2010, ICPC organized a workshop with human rights defenders and victims whereby participants were taken through steps of the ICC investigation and trial procedure, victim participation in the ICC trial and pre-trial processes as well as justice and reparations. After the workshop, ICPC was able to facilitate one of the human rights groups to hold a public forum with community leaders in Naivasha to disseminate the implications of the ongoing ICC processes, the ICC procedures and provide realistic expectations regarding the ongoing investigations and possible prosecutions.

With regard to the shuttle diplomacy by the government to seek a deferral from the United Nations Security Council, ICPC facilitated two peaceful processions for victims in Naivasha and Nakuru as well as Eldoret on the 18th of January 2011 and 3rd February 2011, respectively. This was done together with our network organizations at the grassroots who included the Centre for Enhancing Democracy and Good Governance in Nakuru and Centre for Human Rights and Democracy. During these processions, One million signatures campaign in support of the ICC was launched in those areas. The campaign was to collect signatures in line with the new constitution to compel parliament to stop amendments to the international crimes act, withdrawing Kenya from the Rome statute.

CONSTITUTIONAL, ELECTORAL AND INSTITUTIONAL REFORMS IN KENYA

Launch of vetting and lustration campaign in Kenya

This campaign was launched on the 29th July 2010 at Hilton hotel in Nairobi. The aim of this campaign is to secure within the laws of Kenya an effective system of vetting and approving individuals to hold public office based on the principles of ethics, integrity and selfless public service. This initiative is particularly important as it assists and facilitates the implementation of the new constitution which provides for vetting of existing public officers particularly the judicial and security officers among others.

In preparation for the constitutional reform and implementation battle ahead both at national and county level ICPC researched, compiled and published a fact sheet on vetting and lustration. This fact sheet was shared with the Ministry of Justice and Constitutional Affairs as well as the Kenya Anti-Corruption Commission, both of whom responded to the effect that the fact sheet could be considered as a tool in the preparation of the vetting law for Kenya.

In the Month of July 2010, ICPC conducted a research on the past commissions of inquiry looking to quantify the evidence of the culture of impunity in Kenya in preparation for its advocacy initiatives against the culture of impunity and in favor of comprehensive vetting of local and national leaders.

ICPC also undertook and completed a critique of the Anti-Corruption and Economic Crimes Act and the Public Officers Ethics Act which looked at the strengths and weaknesses of the two pieces of legislation in order to resolve the same in the design of the legislation on ethics and integrity under the new constitution. This critique and its recommendations will be disseminated to the Commission on the Implementation of the Constitution (CIC), the Constitution Implementation Oversight Committee (CIOOC), and the State Law office, the Kenya Law Reform Commission (KLRC) and the Ministry of Justice and Constitutional Affairs- all which are crucial partners in generation of Bills implementing the new constitution. It will be necessary to share the same at a round table with the above mentioned organizations since their roles are intertwined and complement each other, as well as other key players like the Parliamentary Reform Caucus which is essential for lobbying purposes.

Tracking, analyzing and reporting on Implementation of transitional justice mechanisms

ICPC has been monitoring and compiling the performance of the government in implementation of the 2008 mediation agreements a social audit report which was released through a media briefing on 1st December 2010 as an agenda setting for review of progress made by the coalition government since 2007/8 violence on reforms led by the Chief Mediator Dr. Koffi Annan between 2-3rd December 2010 in Nairobi. This also acted a reminder to the government and the public that there is more than a new constitution that was agreed on during the mediation agreements. The audit was widely carried by both print and electronic media.

Constitution review and implementation

ICPC undertook to monitor the constitution review process seeking to ensure transparency in the process of designing the constitution and propriety in its implementation. On 14th January 2010, ICPC through a press release called upon the chair of African Union Panel of Eminent Persons and his team of negotiators to urgently intervene to avert imminent collapse of the Constitutional Review in Kenya. ICPC warned that the process had been reduced into political battle front for 2012 elections and to extension succession politics with President and the prime minister not able to show political statesmanship by pre-empting the imminent constitutional negotiation impasse. ICPC also urged Kenyans to be extremely vigilant to ensure that the attorney general does not in any way introduce, insert and or remove provision or certain

articles of proposed constitution as he publishes it. The proposed constitution prepared by the Committee of Experts (CoE) was finally approved by Parliament on 1st April 2010 and presented to the Attorney General of Kenya on 7th April of the same year. The Proposed Constitution of Kenya (PCK) was officially published on May 6, 2010 however, on 5th May 2010 it was discovered that the some versions of the PCK issued by the government printers had an alteration that bore significant implications. Whereas in the original approved draft, Article 24 (1) (d) read: "The need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others," the amended version read: "The need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice national security, the rights and fundamental freedoms of others."

ICPC issued a press statement calling upon the president and the prime minister to publicly name the public officials involved in the alteration of the proposed constitution and warned that these people were extremely dangerous and posed threat to National stability and cohesion. The Attorney General (AG) however distanced himself from the alterations and instead blamed the government printer. He also revealed that he had been approached by the National Security Intelligence Services (NSIS) to make changes on section 5 of the same article but declined saying it went beyond his editorial responsibility.

On 16th July 2010 ICPC held a press conference to release a summary statement on the Proposed Constitution Analysis Report; Blueprint for the Rebirth of the Kenyan Nation-state. Through this report ICPC analyzed the constitution from a transitional justice perspective and looked at what it has in store for Kenyans as citizens and as individuals. This report sought to give the public an understanding of what they would be demanding or rejecting at the oncoming referendum.

On July 31st 2010, ICPC held a two day workshop in Nakuru with representatives from diverse sectors of entire Rift Valley on post-referendum scenarios and interventions. The workshop concluded with a sworn communiqué in which the participants stated their determination to pursue sustainable peace and cohesion of the people of Rift Valley and Kenya as whole.

On 4th August 2010, Kenyans went into a referendum to vote for a new constitution. On the same day from 2:00 pm to 4:00 pm, ICPC Executive Director was a guest in a live T.V Show in Citizen T.V analyzing the results as they came in from different part of Kenya. The results were officially announced by IIEC Chairman Isaac Hassan on August 6th, this was followed by a press briefing by President Kibaki and Prime Minister Raila Odinga and Vice President Kalonzo Musyoka acknowledging the results of the referendum.

On 15th August 2010, The Interim Independent Electoral Commission (IIEC) published the official results of the just-concluded 2010 Constitutional referendum. In a Gazette Notice released on 15th August, IIEC final results indicated that 6,092,593 Kenyans voted for the Proposed Constitution. This represents 66.9 per cent of the votes cast. On the other hand, other 2,795,059 people, representing 30.6 per cent voted to reject the new law.

ICPC through its press statement welcomed the move by Kenyans of voting for a new constitution and stated that it marked the birth of the second republic. However, ICPC was quick to state that the new constitution needed life and teeth installed into it by the people of Kenya. Ushering of the new constitution dispensation in Kenya was not an end in itself. It means an end that must not be treated as a stand-alone project.

On August 27th 2010, in compliance with the Constitution of Kenya Review Act, 2008 and the Constitution of Kenya (Amendment) Act, 2008, His Excellency President Mwai Kibaki promulgated the new Constitution. Soon thereafter, the government came under pressure to delay the writing of laws on the new constitution until a key commission is established.

Since its promulgation, the new constitution has faced several challenges to its lawful and procedural implementation. The most significant challenge has come from the Executive with certain key members seeking to proceed with the implementation in a manner contrary to the express constitutional prescriptions. The Minister of Justice and Constitutional Affairs was the first to begin this troubling trend by seeking to unilaterally spearhead the process of drafting the required legislation under the Fifth Schedule of the constitution. This was clearly illegal as the constitution clearly entrusts the Commission for the Implementation of the Constitution (CIC), the Kenya Law Reform Commission (KLRC) and the Attorney General (AG) with this mandate.

ICPC strongly objected to these actions which were intended to usurp the powers of the citizenry in the implementation and enforcement of the constitution. ICPC stated that all the exercise of drafting bills must stop until the organs constitutionally mandated with that function are up to place. On 17th September 2010, ICPC together with Law Society of Kenya - Nakuru Branch, filed a petition before the High Court of Kenya in Nakuru, in the matter of the alleged contravention on the sovereignty of the people of Kenya enshrined under Article 1 of the constitution.

The Judge of the High Court in Nakuru ruled that the matters claimed in the suit were of immense significance and referred the case to the now retired Chief Justice who appointed a three Judge tribunal to consider the matter. Though the tribunal has yet to determine the matter, the concerns raised by the case, coupled with requests from ICPC and other CSO's to

CIC asking it to ignore the disavow the Bills created by the Minister of Justice, have seen the withdrawal of the unilaterally drafted Bills by the Minister.

The Commission for the Implementation of the Constitution was finally set-up in January 2011. Its establishment had been delayed first by political lethargy and latter wrangles over the findings of the Interim Independent Boundaries Review Commission. The CIC's function is to coordinate with the Attorney General and KLRC to prepare the legislation required to implement the constitution under the Fifth Schedule and have it tabled in Parliament, as well as work with each constitutional commission to ensure that the letter and spirit of the constitution is respected.

The commission will also be required to report regularly to the Constitutional Implementation Oversight Committee on progress in implementing the constitution, and any impediments arising in the process as well as prepare a progress report every 6 months to be submitted to the president and the parliamentary select committee. So far, the CIC has been firm in resisting undue influence in the process of implementation and has sought to apply the spirit and letter of the new constitution in the conduct of its activities.

HUMAN SECURITY AND CONFLICT RESOLUTION PROGRAMME

Creating and strengthening national and regional partnership on a human security and conflict resolution remains critical particularly in the light of the volatility of the Great Lakes region of Democratic Republic of Congo, Sudan, Somalia, Rwanda, Uganda and Kenya.

On 5th May 2010, ICPC wrote a letter to the President Mwai Kibaki, Prime Minister Raila Odinga, the Foreign Affairs Minister Moses Wetang'ula, the Minister for Justice, National Cohesion and Constitutional Affairs Mutula Kilonzo, Lands Minister James Orengo and Attorney General Amos Wako in regard to the then upcoming inauguration of president Omar al-Bashir of Sudan scheduled for May 27, 2010, expressing its concern over the possibility of any senior member of the coalition government attending the said inauguration. In its letter ICPC stated that attending the inauguration would send a terrible message to the victims of international crimes not only in Darfur, but globally, that their suffering is being disregarded. Attendance also signaled that government's lack of commitment to the ICC success.

In Kenya prior to the referendum on the proposed constitution ICPC organized a two day meeting on 29th July 2010, in the Rift valley province commonly rocked by violence in earlier general elections in an attempt to pre - empty the possibility of violence, through the local leadership, CSOs and opinion leaders. ICPC was also critical in advocacy through print and electronic media for peaceful and democratic elections in Rwanda, Sudan referendum of 2011, the East African common protocol and the question of an integrated security question.

GENDER IN TRANSITION PROGRAMME

A country's transition does provide a unique opportunity to promote gender equality and justice for the future. Essential to this end is ensuring that women and men participate as equal partners in post-conflict reconstruction; in interim political arrangements and processes leading to elections; in legislative, judicial, constitutional and electoral reform commissions and institutions; and rehabilitation. Women can only be equal beneficiaries if all aspects of gender equality are included in transitional justice processes.

In many cases this is usually not reflected. Women tend to be neglected in such processes. Their problems are looked at from a very narrow concept and many recommendations do not include them in policy design and development. This continues to play a major role in hindering women development and participation in post transitional societies.

The main objective of the gender in transition program is to advocate and monitor gender equality and women human rights are fully incorporated into the national and regional development processes. During the year 2010, ICPC held two regional gender conferences whose main aim was to interrogate gender injustices and strategize how to seize the opportunities brought about by the transition moment in the country.

Between March and April 2010, ICPC contracted two researchers to carry out a research on Internally Displaced Persons (IDPs) and highlight the different impact of conflict to both men and women and their views in regard to the justice question. The research focused on IDP camps in Rift-Valley province. Among the camps visited were; Giwa camp in Rongai, Pipeline camp in Nakuru, Ebenezer camp in Kikopey, Vumilia camp in Naivasha and Mawingu camp in Ol-Kalao which is the largest IDP camp in Kenya.

The researchers, with the aid of the leaders of the camps, were able to identify and interview 33 men and 44 women from across the various camps. Those interviewed were among those most adversely affected by the post-election violence. The research findings and a documentary presented to the media and is also available at the ICPC secretariat.

In March 2010 ICPC in collaboration with the Centre for Studies on Violence and Reconciliation (CSV) embarked on the process of developing a gender and transitional justice policy brief for Kenya, to be discussed and adopted by the Kenya working group on transitional justice and other organizations with interest in gender and transitional justice in Kenya. Two researchers were selected from the Kenya working group on transitional justice - Davis Malombe and Grace Kimani of Kenya Human Rights Commission (KHRC) and the Federation of Women Lawyers Kenya (FIDA-Kenya) respectively - on the basis of their competence of understanding the discourse of gender and transitional justice. They were tasked to research and compile a draft

policy brief on gender and transitional justice for Kenya in consultation with the working group on transitional justice. A consultative forum on gender and transitional justice was held on the 19th - 20th April 2010 and brought together organizations working on gender and transitional issues in Kenya for discussion and enrichment of a gender and transitional justice policy for Kenya. The researchers made presentations at the forum and received valuable input from the various participants. It was agreed at the meeting that the recommendations of the draft policy would be first implemented within the organizations represented by the participants, 30 organizations were represented. The draft policy entitled: Gender and Transitional Justice in Kenya; A Policy framework for Engendered Engagements was completed on May 2010 and is awaiting publication in the year 2011.

Regional gender conference

Between 4th and 5th October 2010, ICPC held a regional gender conference dubbed "the Gender Agenda in the Reform Process; moving away from a minimalist concept, raising the bar". This conference was timely as it happened after the passage of the new constitution which provides a platform to fight for equality in social, economic and political aspects.

The conference sought to shift gear from a narrow focus of gendered issues to ensure maximum and effective participation of women in social, political and economic spheres. Among the presenters and participants in the conference included gender activists, politicians, lawyers, women in the private sector and women in the civil society. The participants were taken through how they could position themselves to influence 1)the constitutional implementation process 2) the truth seeking process 3) the criminal accountability issues related to post election violence 4)the electoral process.

The participants committed to implementing the measures and recommendations made in the conference regarding gender justice notions in their various organizations. A framework for engagement is at its final stages for publication and use in 2011 and beyond.

ADVOCACY THROUGH THE MEDIA

The Media is one of the most trusted mechanisms for disseminating information with the widest reach of any other communication apparatus in Kenya, making strategic partnership and engagement with the media an indispensable avenue for advocacy and information sharing. ICPC has consistently made efforts to push the transition justice, human security and legal and institutional reforms agenda through shared and published statements in print and electronic media, exclusive interviews and call-ins by the media for information sharing on critical; national and international issues.

Most articles on transitional justice concerns issued by ICPC have been published in: The Standard Newspaper; Daily Nation Newspaper; Nairobi Star and The People Daily. Press statements sent to the editors of different media houses are also posted on the ICPC website. www.icpcafrica.org.

Furthermore, during the reporting period ICPC Executive Director Ndung'u Wainaina, held frequent interviews and talk shows on implementation of transitional justice mechanisms for Kenya with several Television and radio stations; which included K24, Capital FM, KBC, NTV, GBS, BBC, Citizen TV, KTN, Milele FM, Hot 96, Kameme FM, Radio Jambo, Kiss TV, and Radio Umoja

LESSONS LEARNT AND CHALLENGES

That the government is not committed to the full implementation of the National Accord particularly the agreements concerning judicial and non judicial criminal accountability. Actions such as the establishment of the TJRC which was poorly constituted, the failure to form a special tribunal to try the suspects of post election violence 2007/8, the disregard for the living conditions of IDP's to date, the set up of a pitiable witness protection mechanism through the Witness Protection Act and the laxity in implementing the new constitution and other reforms exemplify the paltry political will towards establishing impacting criminal accountability.

That there is insufficient capacity among state and non state actors as well as inadequate materials on the transitional justice discourse in Kenya.

That the importance of transitional justice has not been fully appreciated in Kenya despite its facets having been introduced in Kenya after the mediation agreements in 2008. This is more so particularly on the area of gender and transitional justice. The support for transitional justice programmes in Kenya and the region remains insufficient vis-à-vis the magnitude and significance of their contribution to restoring public confidence in state institutions and securing good governance.

That the ongoing implementation of the new constitution will be critical to achieving most of the significant reform obligations under the KNDR agreements. However, the proper implementation of the constitution faces the real threat of frustration from politically motivated state officers seeking to secure personal interests. Moreover, there have been profound delays in the establishment of key commissions and constitutional offices such as the Independent Electoral and Boundaries Commission, the Chief Justice and the Inspector General of the Police.

The challenges facing the TJRC have escalated to such an extent that it is inconceivable that it will be able to complete its mandate in the time remaining as provided under the Truth Justice

and Reconciliation Act. These challenges have left the reconstitution of the commission anew under the new constitutional regime the most prudent way of realizing and realizing effective truth seeking in the country.

The lack of consistency of civil society organizations in pushing for the proper implementation of the KNDR and other reform obligations has failed to provide the much needed voice of reason to counter political rhetoric and misinformation. In this regard, ICPC takes note of the fact that a good number of organizations took a back-seat and were hesitant for quite some time in confronting the credibility issues surrounding former TJCR chair Bethuel Kiplagat.

The media coverage of important national issues continues to be superficial with an emphasis on the sensational, especially where politics is concerned. There is a profound need for informed and in-depth analysis of political activities in light of their overall implication on governance and the development of the country. This needs to be championed from outside newsrooms, engaging select media personalities but with a long time strategy of shifting the overall media agenda from sensational to issue-based reporting.

The ICPC offices have been twice broken into with documents and computers being stolen on both occasions. This shows a tendency toward espionage and sabotage of the activities of human rights and public advocacy organizations.

KEY RESULT AREAS

- ❖ ICPC was able to consolidate victims of post election violence, create awareness on various criminal accountability mechanisms thus empowering them to be informed voices in the transitional justice process, particularly the ICC and special tribunal if established as well as a credible TJRC. Through educational forums the victims of post election violence were empowered to understand and engage with the transitional justice mechanisms particularly the criminal accountability i.e. the ICC process in which their memorandum was consolidated and forwarded to ICC, this informed the decision of the ICC judges as reflected in their final ruling on Kenyan case, therefore influencing not only the Kenya process but also international issues on criminal accountability. This way ICPC was also able to link the International Criminal Court (ICC) with the main beneficiaries of its process in Kenya i.e. the victims of 2007/8 post election violence.
- ❖ ICPC has continued to create more understanding of transitional justice mechanisms to citizens, victims, policy makers, the media and the international community. Through various media approaches, the ICPC has been able to influence opinions on issues surrounding the transitional justice process thus creating a deeper understanding in the public sphere on governance and reform matters and facilitating debate on the same at policy, institutional and public level.

- ❖ ICPC as an organization remained a point of reference for researchers, the media, international organizations and policy makers on transitional justice mechanisms for Kenya and the region. Through its monitoring of the implementation of transitional justice mechanisms for Kenya ICPC was able to provide vital information sought by the media, development partners, international bodies such as Amnesty International, Human Rights Watch, Kofi Annan Foundation, International Criminal Court and various international scholars who visited our offices from time to time.
- ❖ Through trainings and educational forums, ICPC has strengthened both community human rights and victims groups to enable them to understand the transitional justice mechanisms, their role as victims and human rights defenders as well as the engagement strategies available to them.
- ❖ During the reporting period ICPC was able to push for public accountability through the push for resignation of TJRC Chair on account of involvement in past human rights violation e.g. illegal public land acquisition. ICPC influenced the establishment of a tribunal to investigate the TJRC Chair Bethel Kiplagat through a joint advocacy initiatives with CSO's such as Haki Focus, Kenya Human rights commission (KHRC), Kenyans for Justice and Development (KEJUDE)
- ❖ ICPC was able to advocate for the passage of a new constitution for Kenya through civic education and information dissemination via the print and broadcast media. After its promulgation, ICPC has brought matters concerning the implementation of the constitution to the forefront thereby creating meaningful debate on the developments surrounding the implementation process. Through advocacy initiatives such as public interest litigation, ICPC has assisted in securing a modicum of accountability and transparency in the constitution implementation process.
- ❖ The ICPC was able to unearth a deepened analysis and discourse of the link between gender and transitional justice in Kenya. Through strategic engagement with stakeholders, ICPC has cut a niche for the Kenya working group on transitional justice and CSVN as leaders on gender and transitional justice discourse in Kenya. The ICPC and CSVN project enabled the development of a draft policy brief on Engendering TJ which is the first of its kind in the Kenyan history. This might have a big impact when finalized and printed as a reference document on the subject of gender and TJ.
- ❖ ICPC has engaged in legal and institutional reform through strategic partnership with state agencies undertaking reform initiatives in various fields of governance. ICPC developed and disseminated a fact sheet on vetting as well as a draft policy framework on vetting and lustration to the chairperson of the Kenya Law Reform Commission, the chairperson of the Interim Independent Electoral Commission and the Minister of Justice and Constitutional Affairs, all of whom acknowledged receipt of the document

and promised to factor the matters raised therein in the design of constitutional and institutional legislation.

- ❖ Through the analysis of Corruption and Economic Crimes Act and the Public Officers Ethics Act, ICPC came up with a draft bill on Ethics and Integrity that merged the two pieces of legislation and created effective legal mechanisms to ensure integrity and accountability in the conduct of affairs by State and public officers in accordance with the letter and spirit of the new constitution. We anticipate that the draft legislation will set the pace for the enforcement of standards of professionalism, transparency and accountability in tandem with the new Constitutional dispensation. ICPC also managed to critique the bill forming the Independent Electoral and Boundaries Commission and shared the same with the chairman of the Interim Independent Electoral Commission. This, we hope, will influence the process of coming up with an effective and efficient elections management body, where vetting of political aspirants will be enforced as well as influence the establishment for a vetting law in Kenya.
- ❖ Out of the lessons learnt and the ever expanding mandate of ICPC in Kenya, the region and the world, ICPC was able to restructure its programmes as follows: Transitional Justice and governance, Sustainable development and human security, Access to justice rights and freedoms for all, Gender Equity and equality, Capacity Building, partnerships and information sharing, Communication and public affairs., Finance and administration

KEY HORIZONTAL LINKAGES ESTABLISHED/STRENGTHENED IN THE IMPLEMENTATION PERIOD

Victims Advocacy League

This is a coalition of victims consolidated at regional level to engage with the ongoing transitional justice mechanisms and the future. From the League ICPC was able to organize different workshop around TJ and also convey the first meeting ever between the ICC Chief prosecutor and the victims of Post Election Violence. They come from North, Central and South Rift Valley, Nyanza Province, Central Province, Western Province, Nairobi Province and Coast province.

Grassroots Community Advocacy Group

ICPC through its interventions to mobilizing of victims it also created a sense of partnership with grassroots community advocacy groups. These includes: Center for Human Rights and Democracy (CHRD) in Eldoret, Community Development and Civic Rights Initiative (CDRI) in Nandi Hills, Kericho Human Rights Center (KHRC) Kericho, Center for Enhancing Democracy and good governance(CEDGG) Nakuru, Center Against Torture (C.A.T) Eldoret, Muslims for Human Rights (MUHURI) Mombasa, Warreng Youth Initiative, Marakwet Women Rights Center, Nandi

Human Rights Watch, Center for community Dialogue and Development, South Rift Youth Network, South Rift Human Rights Advocacy, Mwatiko Anti-Torture Group, ASN Upendo Village among others.

Kenya Transitional Justice Network (KTJN)

Through an initiative formed by ICPC in 2008 a Multi-Sectoral Task Force on TJRC, ICPC formed a KTJN to deal with issues facing the current TJRC commission. The organizations under this network are ICPC, ICTJ Kenya[16], KHRC[17], KLA[18], YOUTH CONGRESS, CRECO[19], ICJ-K[20], Kenya Muslim Youth Alliance, CJPC[21], AOSK-JP[22], KEJUDE[23],and CMD [24]

International Links

Further, ICPC continued to strengthen its regional initiatives partnering with human rights organizations from South Africa, Zimbabwe, Ghana, Sierra Leone and Uganda to implement the three year Department for International Development (DFID) funded project called Transitional Justice, Governance and Accountability in Africa (TJGAA).

Resource center

Year 2010, ICPC acted as a major source of information related to transition Justice Mechanisms for many local, global actors and shaping of opinion through influencing the media to understand and consistently highlight the ongoing transitional justice mechanisms for Kenya. Also ICPC engaged with International community, Scholars, researchers and Organizations who see ICPC as a reference point for consultation on ongoing transitional justice mechanisms for Kenya.

OPERATIONAL CHALLENGES

- ❖ There is a demand for more engagement especially with regard to community mobilization and public interest litigation against comparatively limited resources.
- ❖ The increase in staff with the development and enhancement of operational activities has created a need for wider office space.
- ❖ Delay in the disbursement of funds by some of our development partners has resulted in the delay and or postponement of some of the planned activities.
- ❖ Break-ins into the ICPC offices during the past operational year where the aim of the intrusions was the theft of data by the security agencies
- ❖ Slow internet speeds sometimes hamper office research and communications. Fast and effective internet services are expensive and therefore unsustainable in the face of available resources.

KEY RECOMMENDATIONS

- ❖ The concerns regarding human security in Kenya and the Great Lakes region will need greater advocacy in light of the ongoing economic and political turmoil and restructuring taking place in the continent and around the world. The emerging trends in the global community will be of significant importance in devising engagements to realize effective human security in all its dimensions for the region.
- ❖ In the face of developing challenges surrounding the transitional justice and reform agenda for the country and the need for strategic and effective engagement, there will be a need for closer cooperation and collaboration between ICPC and its development partners toward expedient implementation of programmatic activities. More funds will need to be raised to secure wide and meaningful interventions by the organization on both mapped activities as well as urgent and unplanned developments. There is and continues to be a need to engage in public interest litigations to secure the proper implementation of the new constitution in light of the lack of political will to secure substantive reform by most in political authority. The new constitution by virtue of Article 3, 22 and 258 provides legal standing and mandate to all citizens to protect the constitution and the Bill of Rights through initiating court action. This avenue will be instrumental in creating and effecting sound and progressive judicial interpretation of constitutional provisions and government actions.
- ❖ Need for unity, collaboration and consistency by the civil society in engaging with the ongoing transitional justice mechanisms for Kenya as a critical step in ensuring transparency and accountability in the conduct of affairs by the government. Advocacy efforts by CSOs, policy makers, media and trade unions, professional groups need to be harmonized to secure substantive push for reforms.
- ❖ In light of the altered and devolved government structures established under the new constitution as well as the upcoming general elections in 2012, there will be a need for harmonized efforts between CSO's, the media, the private sector and relevant state agencies toward the conduct of aggressive and urgent civic and voter education.
- ❖ There is an increased need for media engagement through press releases, training of media personnel (especially from local language radio) and partnership with editors and media owners as well as state regulatory agencies concerning transitional justice, the new constitutional order, the rights and duties of citizens and the role of the respective groups in ensuring meaningful and effective reforms in the conduct of governance.
- ❖ The truth seeking process in Kenya is facing considerable jeopardy considering the fundamental flaws and constraints attending the TJRC. There will be a need to strategize and effect means of reviving the process under the new constitutional order through a

new and revamped truth commission that is conceptually, institutionally and operationally sound.

- ❖ Advocacy toward effectively securing the reform of the following key institutions will be of considerable importance to securing the foundations of good governance and constitutionalism: the Judiciary, the security sector, the elections management system and institutions of public oversight of government affairs (constitutional commissions and independent offices).
- ❖ There will be a significant need to commence discourse with duty bearers as well as the public on the realization of socio-economic and cultural rights under the new constitution as well as the need for effective harmonization and application of public and devolved funds. These areas are relatively novel to the Kenyan context and will need informed and well strategized approaches that are relevant to the political and socio-economic circumstances of the various regions of the country.