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## International Center for Policy and Conflict

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The Director of Public Prosecutions

19<sup>th</sup> Flr, NSSF Building

Bishops Road Nairobi

P. O .Box 307 01- 0100,

GPO, Nairobi.

DATE: Wednesday 19<sup>th</sup> September, 2012

Dear Sir;

**RE: PETITION FOR URGENT THOROUGH, IMPARTIAL AND INDEPENDENT INVESTIGATIONS AND PROSECUTION OF THE VIOLENCE AND SERIOUS CRIMES AT THE TANA RIVER DELTA**

International Center for Policy and Conflict (ICPC) is a human rights public policy research, advocacy and education Institute. The Center focuses on promoting and strengthening respect for human rights and democratic rule of law; and addressing human security and inclusive development as well as education and training.

This petition is premised on Article 34 of the Constitution of Kenya 2010 which guarantees the right to present petitions to public authorities such as your office.

We wish to draw your attention to the ongoing clashes at the Tana River Delta in Tana River County. It is reported that there have been a total of 117 deaths including civilians and police officers. This number is bound to rise owing to the recently discovered mass graves and unrelenting violence. Additionally, the reports of missing people suggest enforced disappearances.

We observe that this violence is not sporadic and from the face of it, has every element of being well organized, widespread and targeting civilian population. ICPC is of the opinion that atrocities committed in Tana River could meet the threshold of Crimes against Humanity and henceforth within the jurisdiction of the International Criminal Court (ICC). We hesitate to draw your attention to Section



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6 of the International Crimes Act as read with Article 7 of the Rome Statute to which Kenya is a party to.

We appreciate that it is the primary responsibility of the government to protect its citizens. Further, we are alive to the fact that the primary duty to bring perpetrators of crimes rests with the State's justice system. The international community steps in to protect the innocent civilians whenever it is apparent that there is laxity of the state or government.

ICPC notes that your office has adequate legal and institutional structures, authority, credibility and willingness to effectively establish and conduct a thorough, impartial and independent investigation into Tana River Delta mass atrocities without fail not just in relation to the mass graves but also the macabre deaths of innocent people and police officers. It is time for your office and government of Kenya to send a message to the world that there will no longer be impunity for mass atrocities.

We recall that shoddy investigations by police and wrong characterization of crimes committed during post-election violence have led to denial of justice to the victims and lack of accountability for the perpetrators.

Victims, residents of Tana River County and Kenyan public deserve truth and accountability from its government, especially in the case of potential serious crimes. The victims have the fundamental rights to see that their abusers are prosecuted and held accountable for their crimes.

ICPC therefore humbly seeks to move your discretionary Constitutional power as per Article 157 (4) to direct the Inspector General of Police ( the current Commissioner of Police ) to investigate the possibility of International Crimes having been committed in the Tana River Delta to prevent any further deterioration of the situation and the possible commission of international crimes . This will go a long way in demonstrating the complementarity principle and the commitment of the Kenyan government to protect its people.

We are apprehensive that the police are likely, just as it happened after the post election violence in 2007/2008, to treat this matter casually with the attendant consequences of widening the already deplorable impunity gap in Kenya in relation to post poll violence.

Thank You in Advance.



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Signed,

Ndung'u Wainaina,

Executive Director,

International Center for Policy and Conflict