

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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Kenya: Statement on the conclusion of the mission led by Amnesty International's Secretary General

Irene Khan, Amnesty International's Secretary General, led a high level mission to Kenya from 8 to 12 June 2009.

The objectives of the mission were two-fold:

- To launch the first action of Amnesty International's new global campaign 'Demand Dignity', which aims to expose and combat the human rights abuses that make and keep people poor. Amnesty International launched its first report under the Demand Dignity campaign *The Unseen Majority: Nairobi's two million slum dwellers*. The report is covered in a separate press release attached to this statement.
- To meet with civil society and government officials to discuss and present Amnesty International's view on the broader human rights situation in Kenya, including the issues relating to post-electoral violence.

The delegation discussed the following issues with the Kenyan authorities:

- Impunity for human rights violations and crimes committed during the post-election violence of 2007-2008;
- Accountability for human rights violations by the police;
- Protection for human rights defenders;
- Judicial and police reforms.

Amnesty International's delegation met with the Prime Minister, Hon. Raila Odinga; the Vice President, Hon. Kalonzo Musyoka; the Deputy Prime Minister and Minister of Local Government, Hon. Musalia Mudavadi; the Minister for Internal Security and Provincial Administration, Hon. George Saitoti; the Minister of Justice and National Cohesion, Hon. Mutula Kilonzo; the Minister of Lands, Hon. James Orengo and the Minister for Housing, Hon. Soita Shitanda, and senior officials. The delegation also met with the Chair of the Kenyan National Commission for Human Rights, key local civil society organizations and diplomatic representatives.

Part I

Kenya: Up to two million people live in a human rights black hole in the heart of Nairobi – denied services, denied security, denied a say

(Nairobi) Amnesty International today released its first report into the dire conditions and gross human rights abuses endured in Nairobi's informal settlements. *The Unseen Majority: Nairobi's Two Million Slum Dwellers* describes how half of Nairobi's population live in informal settlements, but are crammed into only 5 per cent of the city's residential area and just 1 per cent of all land in the city.

The report is the first launched under the organization's groundbreaking new global campaign, 'Demand Dignity', which aims to expose and combat the human rights abuses that make and keep people poor. In Kenya, Amnesty International is mobilizing slum residents to 'demand dignity' and call

for their right to adequate housing. The campaign will amplify their voices and demand effective responses from Kenya's political leaders.

"Millions live in squalid conditions, suffering not only from the deprivation of basic services but discrimination, insecurity and marginalization," said Irene Khan, Amnesty International's Secretary General.

"Their voices are not being heard and they are not consulted or even informed about decisions that affect their lives. This is nothing short of a human rights scandal."

The report describes how the Kenyan government has failed to protect slum dwellers and how generations of neglect by politicians has allowed such informal settlements to swell, turning their residents into prisoners of poverty. Amnesty International believes that human rights are key to allowing people to break out of the poverty trap.

In the report, slum dwellers describe a life characterized by deprivation, rising food prices, lack of health and education facilities, harassment by the authorities and the constant threat of being forcibly evicted. According to victims, forced evictions are often conducted at night or in bad weather conditions and excessive force is often deployed. Inadequate notice, or often no notice at all, is given and people's belongings are destroyed along with their homes.

The report identifies up to 127,000 people at immediate risk of having their makeshift homes and informal businesses demolished under a government-led plan to clean up the Nairobi River Basin.

Despite a national housing policy adopted four years ago that promised the progressive realization of the right to housing, the government has failed to provide accessible, affordable housing. While a welcome initiative, the slum upgrading process has been too slow, under resourced and residents feel they have not been adequately consulted.

"Exploited by landlords, threatened by police, extorted by gangs: the slums of Nairobi are a human rights black hole where the residents are deprived of basic services, denied security and excluded from having a say in their future," said Ms Khan.

Amnesty International's report calls on the Kenyan government to:

- cease all forced evictions;
- adopt guidelines that comply with international human rights law to ensure security of tenure and protect people from arbitrary evictions;
- consult adequately with affected communities;
- improve the coordination among the government entities dealing with land and housing issues.

"The promise to deliver adequate housing and services to all those living in informal settlements and slums is long overdue," said Ms Khan.

Background

- Ms Khan met residents and activists in Soweto (Kibera) and Korogocho settlements. Amnesty International delegates also visited the Deep Sea settlement.
- Ms Khan launched a free SMS number (3221) enabling Kenyans to tell their government what living with dignity and housing rights mean to them
- Ms Khan and other Amnesty International delegates participated in a march of several hundred people from settlements all over Nairobi to demand their right to adequate housing
- The report contains first hand testimonies including the case of a woman who described how she had been made homeless twice, first by a forced eviction and second when her home was set on fire while she and other relatives were sleeping inside. The only item she was able to salvage was her identification card. Another woman described how her children were unable to go to primary school for a few weeks after they were forcibly evicted because their books, school materials and uniforms had been destroyed when their home was bulldozed. In one

case, a victim of forced evictions described how he and his neighbour's homes were set ablaze while they were at church.

Part II:

Kenya: Time is running out – Government must act urgently to end impunity and bring about essential reforms

Successive Kenyan governments have been good at establishing Commissions and Taskforces and poor at implementing their recommendations. We continue to see that same trend with this Government. What we see is a palpable lack of political will to take concrete and decisive action said Irene Khan Secretary General of Amnesty International.

Amnesty International welcomes the high level access and the frank and open dialogue with the Kenyan authorities, but we have found deep differences within the Government, both on the perception of the human rights situation in Kenya and on the extent and nature of reform needed.

The Accord and the establishment of the Coalition Government presented a window of opportunity to break the persistent culture of impunity and bring about much needed constitutional, legal and institutional reform. Political discord and divisions within the government are strangling the opportunity for change.

“Time is running out and the government must act urgently to build consensus on fundamental human rights issues,” said Khan.

Six months after the Waki Commission published its report there has been no concrete action to tackle impunity for widespread and serious human rights violations committed by the police and security forces including in the context of post-electoral violence. Instead the government has expended its energy in refuting the report of the UN Special Rapporteur on EJs. In light of the extensive research and documentation by reputable national and international organizations of longstanding and widespread human rights concerns, including unlawful killings, EJS, torture, ill-treatment and other abuses, the denial entrenches and reinforces the culture of impunity.

Government Ministers assured Amnesty International of their commitment to reform, the first step in any change process is to acknowledge the problem.

All parts of the government have acknowledged that constitutional amendments and new laws will be necessary to bring about police and judicial reform. It is therefore imperative on the government collectively as well as political leaders within the government individually to bring about the necessary consensus to ensure such constitutional and legislative changes.

- **Tackle urgently impunity for human rights abuses committed during the post-elections violence**

The Amnesty International delegation was assured by the government that a new proposed law will be introduced shortly to establish the Special Tribunal.

“Simply re-introducing a new law is not enough. Both sides of the government must work together with unity of purpose to build the necessary political consensus and support for the tribunal,” said Khan.

Amnesty International believes the redrafted law should be informed by wide consultations with civil society and the public. The proposed tribunal must be consistent with international law, and must be independent of political or other interference.

Waiting for the International Criminal Court (ICC) to intervene would be an abdication of responsibility by the Kenyan government and Parliament. Under the Rome Statute of the ICC – to which Kenya is a

party – state parties are under an obligation to establish local processes that are complementary to the ICC process. As such, the process of establishing a local judicial tribunal must not be seen as a polar opposite to the ICC process but as a test of this government's readiness to fight impunity.

- **Institute fundamental judicial, police and security sector reform**

Root and branch reform of the police and security forces was long overdue, even before the post-electoral violence created a new urgency. The current taskforce on police reform should lead to implementation and should not be an exercise in window dressing to delay or avoid change.

The government must act decisively and urgent when it receives the Taskforce's recommendations to make the police and security forces more effective and accountable. An independent police complaints commission must be an essential element of the reform.

"Forward-looking reforms will not be credible unless concrete measures are taken to address past impunity," said Khan.

Amnesty International calls on the Kenyan authorities to establish, without delay, an independent and impartial public inquiry into human rights abuses committed by armed groups as well as the Kenyan police and security personnel in the Mount Elgon region and the operations against the Mungiki, as well as human rights abuses by armed groups. The inquiry should identify persons responsible for human rights violations and bring them to justice.

Such an inquiry also needs to look into past cases of human rights violations.

- **Truth, justice and reconciliation process must not allow impunity**

"The truth, justice and reconciliation process cannot, and should not, be a substitute to judicial processes to establish individual criminal responsibility for past human rights abuses. It must be accompanied by prosecution for crimes and the necessary judicial reform that allows this to take place," said Khan.

Amnesty International believes there should be no amnesty or pardons arising from the process. The proposed legislative amendment that is currently in Parliament to remove provisions allowing for amnesties and pardons is a welcome development. The government must work to ensure its adoption. However, the Act lacks an effective and comprehensive witness protection programme. This must be rectified urgently if the process is to be meaningful.

The ongoing process of appointing Commissioners of the Truth, Justice and Reconciliation Commission (TJRC) must be made open and transparent to ensure the independence and impartiality of the TJRC is fully respected.

- **Protect Human rights defenders**

In the last year, human rights defenders have been the subject of killings, targeted threats and intimidation. A number of them complained to the Amnesty International delegation that their space to organize is being restricted by the authorities. Their legitimacy is being questioned and their security jeopardized by hostile statements from police and government representatives that suggests that criticism of the police on unlawful killings and extra-judicial executions amounts to support of banned groups. This is unacceptable.

"The Kenyan authorities must unequivocally acknowledge the legitimate role of human rights defenders to carry out their work and ensure their safety," said Khan.

On 5 March, Oscar Kamau Kingara and Paul Oulu who both worked with the Oscar Foundation Free Legal Aid Clinic (the Oscar Foundation) were killed execution-style in the middle of Nairobi by two unknown gunmen. The FBI offered to provide support to the authorities in investigating these killings. This offer was not accepted. Almost four months later, there is a shameful lack of progress in police investigations and no indication that the perpetrators will be apprehended and brought to justice.

Amnesty International calls on Kenyan authorities to ensure thorough, impartial and independent investigations into the killings and to identify and prosecute the alleged perpetrators.

Amnesty International concluded that Kenyan political leaders across the board must rise above partisan and vested political interests to ensure that respect for human rights and accountability for past human rights violations form a key part of the socio-political and economic process.

“Kenya must not miss this opportunity to fight impunity for human rights abuses committed during the post-election violence of 2007-2008 otherwise it will be storing serious problems for the future. This Coalition Government has a chance to prove - if it is willing to take it – that power-sharing is not just a matter of politics but a real opportunity to bring about change for the benefit of the Kenyan people,” said Khan.

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For more information please call Amnesty International's press office in London, UK, on +44 20 7413 5566 or email: press@amnesty.org

International Secretariat, Amnesty International, 1 Easton St., London WC1X 0DW, UK

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