

10th April 2014

Press Release

**STATEMENT ON THE ONGOING POLICE OPERATION ON INSECURITY
AND TERRORISM**

Good morning Ladies and Gentlemen,

1. We have convened this press conference to brief Kenyans about our concerns regarding the ongoing security operation dubbed (*Operation Rudisha Usalama*) aimed at addressing the rising insecurity in the country.
2. From the outset, the Kenya National Commission on Human Rights reiterates its deepest concern over the deteriorating security situation which continues to impact negatively on the enjoyment of human rights in Kenya. We join other Kenyans in expressing our heartfelt condolences and solidarity with the victims of recent terror attacks including the Likoni Church attack.
3. The Commission is alive to the immense challenges that the government faces in combating insecurity and violent crime that continues to abound. While supporting ongoing efforts by the state to combat crime especially terrorism, the commission maintains and insists that security policies and practices must be legal and consistent with human rights standards and principles in keeping with Article 238(2) b of the Constitution which provides that; "*national security shall be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms.*"
4. In the past week the Commission has received multiple complaints of violations by state security agencies in the ongoing police operation. The complaints include arbitrary arrests, extortion, theft and looting of homesteads, sexual harassment, arbitrary detentions, illegal renditions, torture, inhuman and degrading treatment.
5. Upon receipt of the complaints which have also been widely covered in the media, the Commission commenced investigations into the situation pursuant to its constitutional and statutory mandate. Article 59 (1)(d) (e) of the Constitution of Kenya mandates the Commission:

(d) to monitor, investigate and report on the observance of human rights in all spheres of life in the Republic, including observance by the national security organs;

(e) to receive and investigate complaints about alleged abuses of human rights and take steps to secure appropriate redress where human rights have been violated; Further, Section 8 (e) of the Kenya National Commission on Human Rights Act, 2011 mandates the KNCHR to; “on its own initiative or on the basis of complaints investigate or research matter in respect of human rights, and make recommendations to improve the functioning of State organs;”

6. On the 8th April 2014, the Commission deployed its officers to Kasarani stadium and Kasarani Police Station with a view to assessing the situation of the detainees and establishing the veracity of the complaints. However, our officers were denied access to the detainees on the basis that this was a security operation which had nothing to do with human rights.
7. Following that incident we raised our concerns with the Principal Secretary, Ministry of Interior and Coordination of National Government and clarified that the constitution and our enabling statute provides that we should access these places to enable the Commission fulfill its obligations.
8. Yesterday, 9th April 2014, at the invitation of the Inspector General of Police (IGP), David Kimaiyo, the Commission went to Kasarani stadium confident that we would gain access to carry out our investigations and make appropriate interventions. While there, we engaged with the IGP on our constitutional mandate and our interest in accessing the facility and he assured us in the presence of senior police officers that we would be able to access these facilities. To our dismay, our officers were again unable to gain full access which has greatly hindered our investigations into the situation.
9. Nonetheless, the Commission has through other means and sources obtained limited information from families of detainees and various Police Stations which establishes patterns of conduct by the Kenya Police that constitute serious violations of the Constitution and international human rights standards and principles. For instance, at Kasarani and Pangani Police Stations, scores of detainees are held under deplorable and inhuman conditions with little if any access to basic provisions including food, water and sanitation, an outright violation of the rights of arrested persons enshrined the constitution. The Commission has also established that men, women and children are being held in a common area which subjects them to great indignity in violation of Articles 28 and 29 of the Constitution. Further they have been held incommunicado without access to means of communicating with their next of kin or legal counsel in contravention of Article 49 of the Constitution. Many have been incarcerated beyond the 24 hour rule provided for in the Constitution without being presented to a competent authority.
10. The Commission has learnt that scores of people have been deported to Somalia in unclear circumstances. Given the state of lawlessness and events seriously disturbing public order in Somalia, the Commission is concerned that the Kenya government may be in breach of the principle of non-refoulement, which protects asylum seekers and refugees from being returned to places where their lives or freedoms could be threatened.

11. The Commission observes with great concern that there has been very little information availed to the families of the affected. At Kasarani Stadium and Kasarani Police Station for instance, the Commission met many relatives who complained that they have been desperately searching for their kin in numerous police stations for days with no success and with no assistance from the police.
12. In view of the foregoing, the Commission recommends the following;
 - The Commission be granted unconditional and unfettered access to all places where the detainees are being held to enable us fulfill our constitutional and statutory obligations.
 - The government sets up information centers to facilitate communication and contact between detained persons, their families and legal counsel.
 - The government ensures that the rights of those arrested and detained are respected, fulfilled and protected as provided for in Article 49 of the Constitution. This includes adequate food, social amenities, water, reasonable accommodation, separation by gender and age and access to advocates.
 - The Government should uphold the rights of asylum seekers and refugees in keeping with national and international obligations.
 - The Inspector General should unequivocally withdraw the blanket shoot to kill order and ensure that all police operations in the instant situation are conducted within the law.
13. The Commission acknowledges the anger and desperation of Kenyans arising from the spiraling insecurity especially the recent terror attacks. But we remind Kenyans that our country can only be secure if we appreciate our diversity and adhere to the rule of law. The distinction between policing work funded at tax-payers expense and organized crime lies in following due process and securing protection of the law for all suspects however little sympathy the public may have for the suspects. The government of Kenya must uphold human rights principles in its counter-terrorism strategies.
14. Indeed, Article 21 of the Constitution is clear that all government institutions have the duty to observe, protect, uphold and respect human rights. The police therefore are also custodians of the human rights of the people of Kenya, and should uphold them and conduct all police operations in accordance with the highest standards of human rights. To believe that depriving people of their individual rights and freedoms is necessary to maintain security is to put oneself on the same moral plane as the terrorists, for whom the end justifies the means. Any measures deployed in fighting insecurity particularly terrorism must be legal and appropriate. Combating terrorism through official terror only serves to foment further resentment, increase radicalization and fertilizes the breeding grounds of future terrorists
15. The KNCHR shall continue to discharge its constitutional duty of monitoring the protection of the rights of all persons living in Kenya. We have deployed our officers to the affected areas and are doing everything within our mandate and means to ensure justice for victims and accountability for the human rights violations. We call on those

whose acquaintances and/or relatives are still missing to contact the Commission to facilitate investigations.

Thank you

Signed:

**Kagwiria Mbogori
CHAIRPERSON**