



Kenya National Commission on Human Rights

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Press Release

Excessive Use of Force by the Kenya Police in the Ongoing Protests against the IEBC Commissioners

The Kenya National Commission on Human Rights (the Commission) is deeply concerned by the excessive use of force deployed by the security agencies in the ongoing protests organized by the Coalition for Reforms and Democracy (CORD) seeking removal of commissioners of the Independent Electoral and Boundaries Commission (IEBC).

The Commission is particularly dismayed by the gory scenes witnessed yesterday in Kisumu, Nairobi, Kisii and Machakos where demonstrators who had already been subdued were subjected to gruesome violence by the police resulting in serious bodily harm. The Commission has just received a report that one of the victims has succumbed to the injuries.

The actions by the security agencies constitute serious violations of human rights, the Constitution and the rule of law and amounts to claw back of our democratic gains.

Article 37 of the Constitution provides that; *“Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket and to present petitions to the public authorities”*

Article 29 provides that *“Every person has the right to freedom and security of the person, which includes the right not to be (c) subjected to any form of violence from either public or private sources; (d) subjected to torture in any manner, whether physical or psychological; (f) treated or punished in a cruel, inhuman or degrading manner”*.

These rights are also enshrined in various regional and international human rights instruments which Kenya has ratified including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), United Nations Convention Against Torture (UNCAT) and the African Charter on Human and People's Rights (ACHPR).

The Commission is greatly concerned that this conduct by the police is occurring despite the massive investments that Kenyans continues to make towards reforming the security agencies. When police disobey the law with such corrosive impunity, they lose legitimacy as law enforcers and alienate themselves from the very public they are mandated to serve.

The Commission has commenced investigations into the excesses by the police with a view to seeking accountability for the culprits and redress for the victims. We urge the victims and any witnesses to report to the Commission to facilitate the investigations.

In the meantime we urge that the officers who were commanding the operations yesterday in Kisumu, Nairobi, Kisii and Machakos be held accountable for the violations on the basis of the principle of command responsibility.

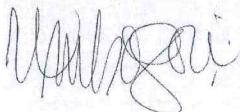
The Commission is further concerned by the worrying trend of public pronouncements made by the Cabinet Secretary for Interior and Coordination of National Government, Joseph Nkaissery purporting to issue operational directives to the police in performance of their work contrary to the constitution and the law. We urge the cabinet secretary to desist from this habit and adhere to the principles and values of the Constitution that bind all state officers.

Article 245 (4) of the Constitution states that *"The Cabinet secretary responsible for police services may lawfully give a direction to the Inspector-General with respect to any **matter of policy** for the National Police Service, but no person may give a direction to the Inspector-General with respect to- (a) the investigation of any particular offence or offences; (b) the enforcement of the law against any particular person or persons;"*

The intention of this provision was to insulate the police from political, illegal and extra-legal interference in performance of their work. The new constitutional dispensation obligates the police to operate only within the law which is the *sine qua non* of democratic policing. The government has an obligation to facilitate the rights of protesters through provision of security to ensure law and order. Even in those instances where the state may limit the right, "freedom should be the rule, and restrictions the exception". Where protests turn violent, the police must be able to isolate the criminal elements from the rest of protesters. Use of force by security forces during protests should be a last resort and must be necessary and proportionate. The use of brute and indiscriminate force is counterproductive as it violates the rights of the innocent, creates anarchy and disrupts business like it happened yesterday in Nairobi and other towns.

Finally we urge members of the CORD Coalition, their supporters and members of the public to always exercise their rights within the rule of law since rights also come with responsibility.

Signed:



Kagwiria Mbogori
CHAIRPERSON