

PRESS RELEASE

Tuesday, May 17, 2016

**ON THE POLICE BRUTALITY AGAINST OPPOSITION PROTESTERS
DEMONSTRATING AGAINST THE INDEPENDENT ELECTORAL AND
BOUNDARIES COMMISSION (IEBC) ON 17TH MAY 2016 IN NAIROBI**

1. The Kenyan Section of the International Commission of Jurists (ICJ Kenya) condemns in the strongest terms possible the act of unwarranted police violence and brutality in dispersing members of the CORD fraternity while legally demonstrating at the IEBC offices in Nairobi on Monday 17th May 2016.
2. ICJ Kenya is deeply concerned that the Police used excessive force, including firing of live bullets and tear gas into the crowds. Many protestors and innocent bystanders and passersby were also beaten leaving many with serious injuries. This kind of violence displayed by the police on citizens exercising their democratic rights is unacceptable and a breach of the Constitution and the laws of Kenya. Kenya is a free society governed by respect for the Bill of Rights as enshrined in our Constitution and must remain the same.
3. Kenya has no place for such uncouth and barbaric acts as displayed by the Kenya Police reminiscent of the long gone dictatorial era.
4. Article 37 of the Constitution of Kenya guarantees citizens the right to assemble, demonstrate, picket, and present petitions to public authorities, peaceably and unarmed. While freedom of assembly and association is not an absolute right, it cannot “be limited except by law, and then only to the extent that the limitation is reasonable, justifiable in an open and democratic society” (Article 24, Constitution). Any limitation must be subject to a three part test; a limitation will

only be acceptable when ‘prescribed by law; when is necessary and proportionate; and when the limitation pursues a legitimate aim’ namely: the interests of national security or public safety; the prevention of disorder or crime; the protection of health or morals; or the protection of the rights and freedoms of others. This test has not been observed by police and authorities: the right to protest has been unduly restricted and violated.

5. ICJ Kenya maintains that freedom of expression, peaceful assembly and association are interrelated and interdependent rights, guaranteed under the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (CESCR) and African Charter on Human and Peoples Rights (Africa Charter). The African Commission on Human and Peoples’ Rights has also established a close relationship between the rights to freedom of expression, freedom of association and freedom of assembly, and has stated that the violation of the freedom of association and assembly carries an implicit violation of freedom of expression.
6. ICJ Kenya also strongly condemns the illegal and arbitrary arrests and detention of protesters some who were later released without charges. Arresting and charging peaceful protestors violates the fundamental human rights to freedom of assembly and freedom of expression, outlined in Article 37 of the Kenyan Constitution. Furthermore, such action seeks to intimidate and deter protestors on their right to protest.
7. ICJ Kenya affirms that protests have often inspired positive social change, advanced human rights and they continue to define and protect civic space. Public protests are a form of expression that will continue to encourage the development of an engaged and informed citizenry for a strong democracy. Effective realization of freedom of assembly and freedom of expression therefore strengthens democracy by enabling citizens’ direct participation in public affairs. Freedom of expression, and freedom of assembly and association provide individuals and

groups with space and platform to dissent and express grievances, to share views and opinions, to expose flaws in governance and to publicly demand accountability from the authorities.

In view of the foregoing we hereby demand;

- a) That the Kenya Police leadership speedily and effectively investigate cases of attacks on peaceful demonstrators with a view of bringing the perpetrators to account;
- b) The Inspector General should fast track the conclusion of the now stalled development of the Service Standing Orders with a clear direction on crowd control and accountability mechanisms for any excesses committed during crowd control;
- c) That the Independent Policing Oversight Authority (IPOA) and other responsible government authorities immediately open a thorough and impartial investigation against the Police to determine whether the force used was lawful and proportionate, and if not, ensure accountability for those responsible for use of excessive force. They should investigate all allegations of beatings, unlawful destruction of property, and arbitrary detention of some of the protesters. The investigation should also examine the circumstances in which water cannons were deployed, if live bullets were used and such as what warnings were given to protesters and operational instructions on use of live bullets;
- d) That the Ministry of Internal Security and Coordination of National Government take steps to ensure that human rights are upheld and protected, and that policing of protests in Kenya must be guided by the human rights principles of legality, necessity, proportionality and non- discrimination. In particular, police should comply at all times with the Kenyan Constitution and laws and international human rights law and standards on policing, in particular the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;

- e) That National Police Service respect the right to freedom of expression and association guaranteed by the Constitution of Kenya and in conformity with the International Covenant on Civil and Political Rights;
- f) That all the political parties, religious leaders, civil society and all stakeholders initiate genuine dialogue on the IEBC and the next general elections in order to avoid violence. Indeed, what is happening now promises a very dangerous pre and post-election period in Kenya.

SIGNED

17TH MAY 2016



Samwel Mohochi

EXECUTIVE DIRECTOR

ENDS