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PRESS RELEASE

URGENT: NEWS DESK & EDITORS

ICJ KENYA STATEMENT ON THE MISGUIDED BANNING OF PUBLIC DEMONSTRATIONS BY
CABINET SECRETARY FRED MATIANGI

The Kenyan Section of the International Commission of Jurists (ICJ Kenya) is extremely alarmed by media reports to the effects that the Cabinet Secretary, Ministry of Interior and Coordination of National Government Dr. Fred Matiangi has banned NASA related public rallies in Nairobi, Kisumu and Mombasa!

We wish to remind the C.S that, Kenya is a country governed by rule of law and the Citizenry have inalienable rights that cannot be arbitrarily derogated, Article 24 (1) of the Constitution of Kenya provides that A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. Further to this, Articles 37 and 38 of the Constitution provides that Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities as well as to make political choices, which includes the right to campaign for a political party or cause.

The Public Order Act as amended in 1997, 2012 and 2014 is a facilitative legislation in relation to actualizing the citizen's constitutional and political right to Assembly, demonstration, picketing and petition.

We sadly recall the unfortunate events of July 7, 1997, when pro-reform rallies were held throughout the country and 13 people were killed and subsequently in August 1997 where over 70 other Kenyans were killed in the coastal region giving rise to the IPPG process and resultant Public Order Act legislation that repealed colonial-era legislation used to restrict freedom of association and abolished the "permit regime". Kenyans do not require license from anyone to meet or demonstrate.

The jurisdiction regulating public assemblies as contained in the Public Order Act vests on the Officer Commanding Station (Police OCS) and the Cabinet Secretary has no jurisdiction whatsoever in the notification process.

The Reckless and hopeless attempt at derogating fundamental human rights of Kenyans in an arbitrary, unlawful and illegal attempt to introduce dictatorial directives.

Art 245 constitution provides 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; or
- (c) the employment, assignment, promotion, suspension or dismissal of any member of the National Police Service.

(5) Any direction given to the Inspector-General by the Cabinet secretary responsible for police services under clause (4), or any direction given to the Inspector-General by the Director of Public prosecutions under Article 157(4), shall be in writing.

In view of the foregoing, ICJ Kenya urges and demands;

- a) That all Law abiding Citizens of Kenya disregard such unlawful and illegal directions and enjoy their fundamental rights to the fullest, including turning out in large numbers to demonstrate in the NASA demonstrations in a peaceful and lawful manner.
- b) That the National Police Service continues facilitating NASA demonstrations by providing security and apprehend any criminal elements committing crimes within such demonstrations.
- c) The National Police Service disregards such unlawful orders and enforce the law strictly in conformity with the Constitution.

ICJ-Kenya reiterates that the Rule of Law remains a cornerstone of our constitutional democracy and reminds all political leaders that no one is above the law in Kenya and every one can be subject to legal consequences for undermining the core Constitutional order.

Signed



Samwel Mohochi
Executive Director