

Tuesday January 30<sup>th</sup> 2018

**PRESS RELEASE**

**URGENT: NEWS DESKS AND EDITORS**

**BREACH OF CONSTITUTIONAL RIGHTS AND FREEDOMS WITH THE SWITCH OFF  
OF RADIO SPECTRUM OF TELEVISION STATIONS BY THE COMMUNICATION  
AUTHORITY OF KENYA**

The Kenyan Section of the International Commission of Jurists (ICJ Kenya) condemns in the strongest terms possible, the shutdown of Television Stations by the Communication Authority of Kenya and the Kenya Police Service by switching off the radio spectrum of licensed media houses. The shutdown was as a consequence of the stations intention to air the swearing of Hon. Raila Odinga and Hon. Kalonzo Musyoka as the people's President and Deputy President respectively at Uhuru Park, Nairobi.

The act of shutting down the stations contravenes Chapter four on the Bill of Rights in the Constitution of Kenya. Article 33 provides for the freedom of expression and provides that every person has the right to freedom of expression, which includes, freedom to seek, receive or impart information or ideas.

Article 34 provides for the freedom of the media and states that freedom and independence of electronic print and all other types of media is guaranteed. The State shall not exercise control over or interfere with any person engaged in broadcasting, the production or circulation of any publication or the dissemination of information by any medium nor penalise any person for any opinion or the content of any broadcast, publication or dissemination. Broadcasting and other electronic media have freedom of establishment and are independent of control by government.

The actions by the Communications authority and Kenya Police Service further contravene the provisions of Section 5B of the Kenya Information and Communications Act 2013

Section 5B. Of the Kenya Information and Communications Act 2013 provides;

*(1) The Authority shall, in undertaking its functions under this Act comply functions under this Act comply with the provisions of Article 34 (1) and (2) of the Constitution.*

*(2) Subject to Article, 24 of the Constitution, the right to freedom of the media and freedom of expression may be limited for the purposes, in the manner and to the extent set out in this Act and any other written law.*

*(3) A limitation of a freedom under subsection (2) shall be limited only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.*

*(4) The right to freedom of expression shall not extend to*

*(a) the spread of propaganda for war;*

*(b) incitement to violence;*

*(c) the spread of hate speech; or*

*(d) advocacy of hatred that*

*(i) constitutes ethnic incitement, vilification of others persons or community or incitement to cause harm; or*

*(ii) is based on any ground of discrimination specified or contemplated in Article 27(4).*

*(5) The Authority may make regulations for the better carrying out of the provisions of this section.*

The switching off of radio spectrum of major broadcasting houses in Kenya by the Communications Authority of Kenya and Kenya Police Service without legal basis is arbitrary, unreasonable, criminal and unjustifiable in an open and democratic society and contravenes the dictates of the Constitution on fair administrative action. Every person has the right to administrative action that is lawful, reasonable and procedurally fair. If a right or fundamental freedom has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

Kenya is a democratic society, governed by the Rule of Law and no one is above the law. In the absence of laws there would be anarchy in any setting. The Rights and Freedoms as enshrined in the Constitution are to be respected, safe guarded and upheld. The shutting down of television has nothing to do with democracy, morals or objectivity. Freedom of expression and unrestricted access to information are fundamental to the workings of a democracy and should be upheld at all time. The State has a duty to ensure that the Rule of Law is upheld, that human rights are respected and safeguarded as they are the guarantee of a well-functioning democracy.

We therefore demand that

1. The Communication Authority of Kenya gives a written explanation that led to the shutting down of the television stations without following the due procedure;
2. The Communications Authority forthwith compensate all the media houses affected for commercial monetary losses incurred following the criminal conduct.
3. The Independent Policing Oversight authority forthwith investigate the Role of the Kenya Police Service and appropriate action be taken upon individual police officers involved in the disabling of the radio frequencies and senior officers that ordered such operation.
4. to desists forthwith from further interference with the functioning of the media houses; and
5. A written apology for interfering with the activities of the TV stations

Signed



**Kelvin Mogeni**

**Chairman, ICJ Kenya Council**