

COMMUNIQUÉ ON NATIONAL SECURITY UNDER THE CONSTITUTION OF KENYA
A CASE OF REGRESS OR PROGRESS?

HELD ON 18 AUGUST 2020

1. The Kenyan Section of the International Commission of Jurists (ICJ Kenya) and Strathmore University Law School (SLS) have partnered to host a series of weekly webinars dubbed, “Katiba@10 Series”.
2. The sixth in the series of these joint webinars was held on 18 August 2020 with the theme “National security under the Constitution of Kenya: A case of regress or progress?”
3. The panellists and participants were drawn from diverse fields representing various sectors including the government, civil society, academia and the legal fraternity.
4. The participants and the general public joined the webinar on our social media platforms and online streaming services including YouTube, Twitter, Facebook and WhatsApp.

WHEREFROM the panellists and participants acknowledged THAT:

- a) The Constitution of Kenya 2010 was adopted and intended in the long-term to address the long-standing issues in the country amongst them being security sector reforms;
- b) The Constitution recognises under Article 238 (1) that national security is intended to protect against internal and external threats to Kenya’s territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability, prosperity, and other national interests;
- c) Kenyans adopted the Constitution intending to foster a society that respects the rule of law and upholds human dignity;
- d) The Constitution provides an opportunity to address the challenges of accountability and transparency in the security sector, development and realisation of the aspirations of the people;
- e) For this reason, the Constitution created strong, independent, accountable government organs and public institutions;
- f) The Constitution recognises the people as the ultimate source of sovereign power and the basis of the exercise of state authority;
- g) The Constitution provides free exercise of democratic will to Kenyans.

Therefore, because of the foregoing, ICJ Kenya calls upon:

A. The Executive to:

- i. Adhere to the tenants of the Constitutional Principles on National Security;
- ii. Increase the budgetary allocation towards the reform agenda of national security organs;



- iii. Ensure that national security sector welfare concerns (housing, salaries, insurance) are well funded to ensure an improved standard of living;
- iv. Guarantee that the National Police Service Commission and the Independent Policing Oversight Authority are sufficiently resourced and capacitated to perform their oversight roles and mandate;
- v. Desist from the politicisation of national security organs particularly the National Police Service;
- vi. Play an active oversight role of the national security organs in the spirit of civilian authority and demand for accountability on matters of human rights violations occasioned by the actors;
- vii. Strengthen the oversight mechanisms for the National Intelligence Service and the Kenya Defence forces;
- viii. Operationalise the Victims Protection Act 17 of 2014 and related Fund;
- ix. Operationalise the National Coroners Service Act 18 of 2017;
- x. Invoke the parliamentary powers that allow for parliamentary consultation before the deployment of the military within the borders of Kenya.

B. To the Inspector General of Police:

- i. Publish and champion a clear reform vision for the National Police Service and ensure that the actions and decisions of the police are in line with this vision;
- ii. Revise the Police Standing Orders following new legislation, in particular on the use of force, arrest and detention, in line with the 5th and 6th Schedule of the National Police Service Act (NPS Act) and international human rights laws and standards;
- iii. Develop expertise and procure equipment to facilitate professional investigations into unnecessary or unlawful use of firearms, including for securing and examining potential crime scenes, ballistics and other forensic tests, autopsies and medical examinations;
- iv. Ensure copies of new laws are available at all police stations and that police officers are trained on their contents;
- v. Ensure use of firearms is only used when strictly unavoidable to protect human life in line with the 6th Schedule of the NPS Act and international human rights laws and standards;
- vi. Champion and operationalise psycho-social support programmes for all officers serving in the National Police Service.

C. To the National Police Service Commission:

- i. Ensure transparency in the recruitment, promotions and transfers of officers across Kenya.
- ii. Document disciplinary measures taken against rogue officers and recommend to the Inspector General appropriate action to be taken to ensure that rogue officers do not claw back at the reform agenda;
- iii. Ensure police supervisors and commanders receive adequate training on accountability to facilitate learning by junior officers on their responsibility to act by the Constitution and relevant laws and regulations;
- iv. Prioritise continuous education of police officers on the law and international human rights principles;
- v. Ensure fair and speedy disciplinary processes where police violate the Code of Conduct.

D. To the Independent Police Oversight Authority (IPOA) ;

- i. Proactively enhance public awareness on its mandate, complaints handling mechanisms and procedures for reporting to enhance their oversight role;
- ii. Ensure that every death or serious injury of a person who at the time of his death or injury, was in police custody or under the control of the police, or whose death or injury was in any way the result of police action or inaction, is adequately and impartially investigated by IPOA;



- iii. Fast track all investigations with respects to claims from the public against police officers;
- iv. Continuously offer psychosocial support to officers and investigators handling matters that are traumatic in nature.

E. To the Director of Public Prosecutions

- i. Expedite investigation and prosecution of police officers suspected of human rights violations, including extrajudicial executions;
- ii. Collaborate with the Directorate of Criminal Investigations, Independent Policing Oversight Authority and the Internal Affairs Unit on matters that are being investigated by all parties.

F. Civil Society Organisations to:

- i. Engage the public on matters of national security and empower them to stand for their constitutional rights;
- ii. Demand that the security sector respects all the principles and values under the Constitution of Kenya 2010;
- iii. Continue with ongoing discussions with the National Police Service to strengthen their capacity on areas of common interest that contribute to the envisioned reforms;
- iv. Engage in advocacy geared towards the criminalisation of enforced disappearances;
- v. Demand for the operationalisation of the National Coroners Service Act and the Victim Protection Act;
- vi. Engage State and Non- State actors on the use and abuse of the Security Amendment Act and the Computer Misuse and Cybercrimes Act.

G. The General Public to:

- i. Proactively empower themselves to understand and internalise their constitutional rights;
- ii. Demand for professional and accountable national security organs;
- iii. Appreciate that civilian authority supersedes police authority;
- iv. Demand for greater oversight on national security matters from their elected officials;
- v. Demand adherence to the Constitution and the principles of national security.

ICJ Kenya commits and undertakes to:

- i. Continue the discourse on national security;
- ii. Work with the social justice centers to enhance grassroots advocacy on matters of human rights concerns;
- iii. Support the National Police Service to actualise its reforms agenda;
- iv. Continue to demand for accountability from national security organs in instances of human rights violations;
- v. Lend its legal expertise to the formulation of policy, guidelines and laws geared towards the professionalisation of the national security organs;
- vi. Collaborate with other civil society organisations and like-minded institutions to support the implementation of the Constitution, empower citizens on their constitutional rights and guarantee.

Signed



Kelvin Mogeni
Chairman
ICJ Kenya