

## **IS KENYA GOING DOWN A SLIPPERY SLOPE?**

### **PRESS STATEMENT ON THE MONDAY PROTESTS, DESTRUCTION OF PROPERTY, HUMAN RIGHTS VIOLATIONS, AND CONDUCT OF THE NATIONAL POLICE SERVICE**

**29<sup>TH</sup> MARCH 2023**

On 27 March 2023, the Kenyan Section of the International Commission of Jurists (ICJ Kenya) continued to monitor and document the activities that unfolded during the Monday Protests.

The Protests were the second in the series of protests the Azimio La Umoja Coalition called for.

As a body of jurists, we are concerned that the protests are becoming a basis for continued clawing back against our constitutional and legal imperatives, violation, and derogation of the fundamental rights and freedoms entrenched in our Constitution of Kenya, 2010.

ICJ Kenya is further concerned the events of 20 March 2023 and 27 March 2023 can potentially take the country on a dangerous path with glaring ramifications to human rights, democracy, and the rule of law. The protests closely mirror the events of the Post-Election violence in 2007, where political incitement led to atrocity crimes that resulted in mass killing, sexual and gender-based violence, grave injuries, and internal displacement of the masses and triggered the jurisdiction of the International Criminal Court (ICC).

Whereas Article 37 of the Constitution of Kenya guarantees every person the right to peacefully assemble, demonstrate, picket, and present petitions to public authorities, we observed government interference through the security agencies<sup>1</sup>. For example, the demonstrators were deliberately policed ostensibly to 'protect and contain' in select areas of Nairobi and Kisumu.

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1. Constitution of Kenya 2010, Article 37

We reiterate that the Constitution of Kenya under Article 2(5) recognises international law as part of Kenyan law. Article 11 of the African Charter on Human and Peoples Rights<sup>2</sup>, Article 20(1) of the Universal Declaration of Human Rights<sup>3</sup>, and Article 21 of the International Covenant on Civil and Political Rights<sup>4</sup> recognise that every person has a right to a peaceful assembly.

ICJ Kenya is also alarmed by the statements of Prof. Kithure Kindiki, Cabinet Secretary, Ministry of Interior and National Coordination, that he would present to Parliament proposals to amend provisions within the Public Order Management Act; some are outrightly unlawful. We posit that any changes to legal and policy frameworks that react to the protests in public order management must not overreach the letter and spirit of the Constitution, which legitimises peaceful assembly and does not create barriers to the realisation of the right.

In some instances, citizens abused their rights to demonstrate by engaging in the wanton destruction of private property, including religious infrastructure. The National Police Service failed to do enough to protect such property. ICJ Kenya reminds the state that Article 40 (1) of the Constitution of Kenya 2010 provides that “every person has a right, either individually or in association with, to acquire and own property (a) of any description and (b) in any part of Kenya.” The destruction of property across the country was noted, particularly in Kibera, Mathare, Mukuru Kwa Njenga, Northlands, Spectre East Africa International, and Kisumu, amongst other spotlighted areas.

ICJ Kenya restates that Articles 33 and 34 of the Constitution of Kenya 2010 provide freedom of expression and media freedoms as fundamental human rights that should be jealously guarded, promoted, and protected. As a body of jurists, we noted with great concern that Journalists exercising their legitimate role and mandate were viciously attacked, threatened, robbed, arrested, and sometimes coerced by National Police Service (NPS) personnel to delete footage of the mass demonstrations. We wish to reiterate that the media must inform the public about the current situation in the country in a balanced, fair, and objective manner. Any attempt to gag the role of the media should be condemned and considered a gross violation of media freedoms.

Further, ICJ Kenya was dismayed by the action and inaction of the National Police Service (NPS) during the events that unfolded during the protests. In some areas within the country, the NPS was documented to lobby tear gas into peaceful crowds. Additionally, and of grave concern, were the acts of omission and inaction by the NPS to respond to the looting and vandalism in Northlands and other areas in the country.

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2. African Charter on Human and Peoples Rights, Article 11 [https://au.int/sites/default/files/treaties/36390-treaty-0011\\_-\\_african\\_charter\\_on\\_human\\_and\\_peoples\\_rights\\_e.pdf](https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf)

3. Universal Declaration of Human Rights, Article 20(1) <https://www.ohchr.org/en/human-rights/universal-declaration/translations/english>

4. International Covenant on Civil and Political Rights, Article 21 [https://treaties.un.org/doc/treaties/1976/03/19760323%2006-17%20am/ch\\_iv\\_04.pdf](https://treaties.un.org/doc/treaties/1976/03/19760323%2006-17%20am/ch_iv_04.pdf)

We wish to remind the Inspector General of Police of his mandate under Article 245 of the Constitution of Kenya and the National Police Service Act to exercise independent command of the National Police Service and duty to all Kenyans under the “Utumishi Kwa Wote” banner and, therefore, cannot be seen and perceived as partisan in restoring law and order in the country.

ICJ Kenya is also deeply concerned about emerging reports of loss of lives and serious injuries during the protests and growing ethnic profiling, hate speech, and incitement across various public and social media platforms.

We reiterate our call to the political class to steer the country away from this potential brink, adopt a unified path, and desist from the public’s incitement that further polarises the country.

Based on the above, ICJ Kenya opines that the political class should embrace a mediation mechanism to foster and promote dialogue to address divergent political positions. The Mechanism composition should be multifaceted, inclusive of religious groups, eminent personalities, the private sector, and civil society.

Further, ICJ Kenya makes the following specific recommendations:

## **I. To the President and the Presidency**

Recall and adhere to the Oath of Office - Be faithful and bear true allegiance to the Republic of Kenya and obey, preserve, protect, and defend the Constitution, and protect and uphold the dignity of the people of Kenya.

## **II. To the National Police Service (NPS)**

- a. Collaborate with ODPP and other actors within the justice sector to initiate timely and credible investigations and prosecution of individuals responsible for reported incidences of killing, arson, destruction of property, ethnic profiling, hate speech, incitement, and other crimes committed in connection with the protests.
- b. Adhere to the guidelines on freedom of association and assembly in line with the letter and spirit of the Constitution ;
- c. Act with professionalism, restraint, and respect for human rights at all times.
- d. Take reasonable steps to protect the rights of peaceful protestors.
- e. Ensure law and order in the country impartially;
- f. Protect and respect the freedom of the media

### **III. Independent Policing Oversight Authority**

Initiate timely and credible investigations into the conduct of the police during the protests and pursue prosecutions against police officers, including commanders, responsible for committing or permitting the commission of crimes against civilians.

### **IV) Azimio La Umoja Coalition**

- a. Promote the spirit of unity within the country and call on other political factions aligned to the coalition to desist from utterances that could fuel insurgency;
- b. Organise people-centered protests with clear route plans and security measures for the safety and well-being of all parties to the protest.
- c. Meaningfully articulate the social and economic electoral justice concerns and provide options to address the high cost of living, unemployment, inequality, and poverty.

### **V) Kenya Kwanza Coalition**

- a. Adopt robust and meaningful measures to improve the enjoyment of critical social and economic rights, currently undermined by the high cost of living, unemployment, inequality, and poverty. These issues are among the root causes of the frequent violent protests that are being experienced in Kenya;
- b. Promote the spirit of unity within the country and call on other political factions aligned to the coalition to cease utterances that could fuel insurgency;
- c. Engage with the Ministry of Interior and Coordination of National Government and the Inspector General of Police to take stock of the security plans and their adherence to human rights standards in Public Order Management.

### **VI) To the Citizenry**

- a. Exercise their right to protest peacefully as prescribed in the Constitution 2010;
- b. Report all illegal activities undertaken under the pretext of mass demonstration to the National Police Service;
- c. Refrain from engaging in hate speech, criminal conduct, and inciteful discourse that is likely to heighten tension and foster discontentment within the society;
- d. Refrain from bearing arms (stones, machetes, crude weapons) that could instill fear within the society, thus deviating from the peaceable provision of the Constitution;
- e. Protect the rights of every citizen to own property and, as such, desist from vandalising and looting property during the protest.



## VII) International Community

- a. Publicly affirm that Kenya should abide by the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- b. The African Union weighs in and publicly affirms its commitment to ensuring that Africa achieves Aspiration 4 of Agenda 2063, which aspires for “A peaceful and secure Africa” through mechanisms that promote a dialogue-centered approach to conflict prevention and resolution.<sup>5</sup>

As we conclude, we acknowledge that our country faces challenging political and economic issues. However, the past political violence and impunity culture should not be allowed to take root. Our Constitution’s rule of law must remain supreme as the avenue to resolve our differences.

Signed,



**Mr. Protas Saende**  
**ICJ Kenya Chairman**

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5. <https://au.int/agenda2063/overview>