1st November 2017,

To all media houses,

To the Editor,

PRESS STATEMENT ON PUBLIC ORDER MANAGEMENT IN THE AUGUST AND OCTOBER 2017 GENERAL ELECTIONS

The Independent Medico-Legal Unit (IMLU) has been monitoring public order management by the National Police Service (NPS) in 19 counties identified as potential hotspots since 1st June 2017. We noted commendable preparatory measures put in place by the Service to ensure safety and security during the General Election. Some of the commendable efforts included:

a) The mapping of security situation and beefing up deployment in areas considered potential hot spots;

b) Delegation of security preparedness to County Police Commanders to contextualize the security assessments, prevention and response mechanisms; and

c) Joint preparation by the various security agencies as recommended by the Waki Commission.

What went wrong!

However, following the announcement of the Presidential election results on Friday night, 11th August 2017, we recorded grievous violations of human rights committed by members of the NPS in an unfortunate turn of events that led to excessive and unnecessary use of force, including lethal force by the police, leading
force, including lethal force by the police, leading to maiming and killings in various parts of the country.

In both the August and October public order management responses by the police, it is evident that they responded with indiscriminate use of force in most instances observed, with no chance for other models of policing, especially in opposition strongholds. Other modes of policing like open dialogue and reaching to local leadership to de-escalate the situation were isolated and not common. In fact these rare instances indicated personal initiatives by individual officers and didn’t seem to have been the policy adopted by the Service. Even where local policing initiatives like Nyumba Kumi were existent with clearly established leadership, the police responses treated everyone as suspect, destroying and delegitimizing existing partnerships in policing.

The coordination expected after all the assurances given prior to the August and October elections has been put into question, with residents in many neighborhoods in opposition strongholds hailing the local police for their restraint and blaming ‘strangers’ for the excessive use of force.

Whereas we recognize that such ‘strangers’ would have comprised officers sent from other counties to beef up security, there is clearly a legitimate need to examine the command structure in situations where the local Officer Commanding Police Station or County Commander receives extra or specialized officers to beef up capacity. Is the local police boss in charge in such situations, or do the surge officers receive instructions from their unit bosses or are they on their own?

THE DEAD ALSO SPEAK!!!

We recorded a total of 23 deaths following the August elections, and conducted post mortems on 12 of them where we received consent from next of kin. The post mortem findings raise a clear case for an independent inquiry on the circumstances under which the police used lethal force, to establish the justiciability of such force and or take legal action on the police command and, or individuals responsible.

Eleven out of the twelve people died of gunshot wounds, according to our independent post mortem examination reports. The twelve who ranged between 6 months and 36
years, were shot in Nairobi, Kisumu and Siaya Counties. A 6 month old girl died from severe head injury, secondary to blunt force trauma after she sustained two fractures on the skull which led to bleeding on the surface of the brain.

The report further revealed that out of the eleven, three (3) had multiple gunshot wounds, two (2) had two gunshot wounds and six (6) had single bullet wounds.

On the anatomy distribution of the bullet wounds; seven (7) were on the chest, two (2) on the upper limbs (hands, shoulders); one (1) on the head, one (1) on the back, one on the
buttocks and one (1) on the thigh. Nairobi County recorded the highest number of cases with ten (10) Kisumu County followed with (2) and Siaya County with one case. From the P23 forms received from the police requesting for a post mortem to be done, four cases were recorded by Ruaraka Police Station, four by DCI Starehe Police Station, two by DCI Kisumu West Police Station, one by Dandora Police Station and the other by Siaya Police Station.

Going by the PM report, there is no clear demonstration that police were shooting to defend their lives or the lives of others. In the two cases where police indicated in P23 form that they were shooting to save their lives from attackers, the supposed attackers were both shot from the back, indicating little chances of them being killed while confronting the police with machetes.

One of them had multiple gunshot wounds (distant and high velocity) to the chest and both lower limbs. The second victim had two (2) gunshot wounds on the left upper back with two (2) exit wounds parallel to each other mid upper chest. The two cases are indicative of executions, and not meant to immobilize the alleged attackers. This contradicts the narrative by the police that the second victim was charging at them with a machete.

Two other victims aged 16 and 18 years old were shot at close range, this is according to eye witnesses. This conflicted police report that the two might have been murdered as their bodies had multiple injuries. The bodies were found on 12\textsuperscript{th} August 2017 at 10:30am. The two, one a form 2 student, had gone to assist one of the victim’s mother close down her grocery business in Kasabuni village of Baba Dogo Ward when they were accosted by police officers in anti-riot gear. The two surrendered but were shot dead. This happened on 11\textsuperscript{th} August 2017 at 8.00 pm. The PM report revealed that one of the victims died from multiple gunshot wounds to the chest and abdomen and the other from a single gunshot wound to the head both from a high velocity rifle and from a distance. The two are clear cases of execution by police, aimed at vulnerable parts of the body.
In Kisumu, a 30 year old man was riding on a motorbike when anti-riot police officers shot at him. He was rushed to the hospital but passed on while receiving treatment at the hospital. The victim died from a penetrating gunshot wound to the chest (high velocity and distant), another case indicative of execution that calls for proper investigations.

**OCTOBER 26TH ELECTIONS: THE TREND CONTINUES...**

We also witnessed police use of excessive and indiscriminate force including lethal force, torture and ill-treatment prior to, during and after the 26th October presidential elections especially in areas where opposition supporters heeded their leaders’ call for a boycott and demonstrations occurred for several days, i.e. Nairobi, Kisumu, Migori, and Homabay and Bungoma counties. Again the same pattern repeated itself where preliminary findings fail to clearly point to justification for the brutality meted on the people by police officers.

In total, IMLU recorded 64 cases of excessive use of force by the police with 34 people being shot, 28 suffering torture and beatings, and 2 suffering injuries after inhaling teargas. Out of the 34 who were shot, 13 succumbed to their injuries between 25th and 28th October 2017. Fifty one (51) of those who were shot, tortured and assaulted by police are currently recuperating in different hospitalists in Nairobi, Kisumu, Homa Bay and Migori Counties.
These cases of executions are contrary to the Sixth Schedule of the National Police Service Act, 2011 which provides for the legal provision for the use of force and firearms by police officers. Under Section 2, firearms may only be used when less extreme means are inadequate and for the following purposes— (a) saving or protecting the life of the officer or other person; or (b) in self-defense or in defense of other person against imminent threat of life or serious injury. Any use of firearm, with no injury, shall immediately be reported to the officer’s superior. Moreover, any use of firearms that leads to death, serious injury and other grave consequences shall be reported by the officer in charge or another direct superior of the person who caused the death or injury, to the Independent Police Oversight Authority who shall investigate the case.

The police actions further contravene Chapter 58 of the National Police Service Standing Orders on public order management, where the police service has an obligation to promote the rights of all Kenyans by protecting their rights and fundamental freedoms of expression, association and assembly, demonstration, picketing and petition. Additionally, in Section (2) police officers shall conduct themselves in a manner that respects the rights and fundamental freedoms of people in all circumstances. The police commanders have a duty to ensure that a police officer under his or her command behaves in accordance with the standards set out in the Orders.

We therefore;

1. Call upon the IPOA and the Internal Affairs Unit (IAU) to expedite investigations into the apparent summary execution of these innocent Kenyans and forward the report to the Director of Public Prosecution’s (DPP) office for prosecution of the officers found culpable.

2. Call upon the National Police Service Commission to institute disciplinary actions against Police Officers involved and in particular, the officers with command responsible over the operations in these areas;

3. The NPS provide to IPOA audit reports on the manner in which firearms were used reference to the cases above or any relevant information for investigations.
4. Appeal to all eye witnesses and anybody else with evidence on these killings to come forward and present their information to IPOA;

5. The Witness Protection Agency and the Office of the DPP to issue public assurance for personal safety and security to all potential witnesses and family members, some who have gone into hiding for fear of their lives; and

6. We commend all police officers who have embraced the ongoing reforms and urge those officers with information on this killings to liaise with IPOA to ensure that we rid the force of those not willing to change.

We continue to firmly believe that failure to hold the officers individually responsible and accountable will only continue to undermine the ongoing reforms under the central command of the Inspector General, and entrench a culture of impunity within the National Police Service.

We also urge the Inspector General of Police to consider convening a national stakeholder consultation under the auspices of the police reforms directorate, to critically examine what has gone wrong and to provide a new impetus to the police reforms agenda.

Signed

Peter Kiama

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