



A Society Free From Torture and Related Violations

March 21, 2023

PRESS STATEMENT

ATTN: NEWS EDITORS

A CALL TO RESPECT AND PROTECT THE FREEDOM OF ASSEMBLY AND ASSOCIATION

The Independent Medico-Legal Unit (IMLU) is dismayed and shocked by how the National Police Service (NPS) conducted itself during the Azimio la Umoja protests countrywide on March 20, 2023. It is questionable whether the amount of force, including lethal force applied, was commensurate to the threats to security and safety, especially where protesters were peaceably assembled.

Through our monitoring of public order management in 17 counties, we documented four deaths and one injury in circumstances that indicate police culpability;

We also recorded a total of 50 persons injured through civilian and police action; 40 in Nairobi and 10 in Kisumu. Four deceased were male and one is female. Three deaths in Nairobi and one in Kisumu County.

The fate of the protests was seemingly predetermined following police statements on Sunday, the 19th where the assemblies were declared 'illegal' and quickly followed by the deployment of a large contingent of heavily armed police, both uniformed and plain-clothed in order to stop the commencement of the protests. We condemn the acts of lawlessness and excessive use of force witnessed in Kibera, Nairobi CBD, and Kisumu. The violence and arbitrary arrests of civilians taking part in the protest were completely uncalled for. The brutality witnessed grossly contravenes Article 37 of the Constitution which provides for the right to protest peacefully and unarmed, to assemble, demonstrate, picket, and present petitions to public authorities.

The right is also guaranteed under regional and international human rights instruments ratified by Kenya, including, Article 11 of the African Charter on Human and Peoples Rights (Banjul Charter) and Article 21 of the International Covenant on Civil and Political Rights. Further,

spontaneous protests are not illegal, as stipulated by the African Commission Guidelines on the Freedom of Association and Assembly in Africa. The Guidelines operationalize the implementation of Article 11 of the Banjul Charter by State parties and all relevant stakeholders. Additional guidance is also provided on policing of Assemblies.

While police have a duty to maintain order, protesters must be allowed to freely and peacefully express themselves without fear of being shot at or harmed by the police. The security forces must respect the international law requirement not to use firearms except to defend themselves or others under imminent threat of death or serious injury

Even more concerning is the fact that there were incidences where civilians were smoked out of their homes in places like Gatwikira in Kibera and peaceful protesters were violently dispersed by the police through the use of teargas and water cannons.

While we unequivocally defend the right of citizens to express their freedom of assembly, association and expression, we note that the same must be exercised while remaining respectful of the rights of others.

We therefore strongly condemn incidents like the reported burning down of the UDA offices and looting of property in Kisumu, opportunistic crimes by non-demonstrators like the attack and robbing of civilians witnessed around Posta and Marsabit Plaza area on Ngong Road, stoning of police stations and government premises like the Kibera DC area, and looting of businesses in Soweto B in Kibera.

For clarity, one does not require the permission of the police to protest. Under the Public Order Act and other International Human Rights instruments, the rationale for notification is for the police to provide security for the protestors and must not be misconstrued as an obligation on those who wish to protest to seek 'permission' from the police. In itself, a lack of notification is not sufficient reason to characterize a protest as unlawful. We strongly condemn the inhuman actions of the police officers, whose conduct not only contravenes numerous constitutional and legal provisions but is a clear demonstration of the repressive nature of Kenya's National Police Service.

We, therefore, call on the National Police Service:

- 1. To respect the right of everyone to peacefully and unarmed- assemble, demonstrate, picket, and petition as guaranteed by Article 37;**
- 2. To respect the Constitution of Kenya, Regional and International Human Rights Standards on the exercise of fundamental human rights. Human rights are guaranteed to be exercised and are not mere declarations;**
- 3. To respect the tenets of human rights and Article 24 of the Kenyan Constitution, which are clear on the rationale for the limitation of rights and fundamental freedoms, that is, by the law and only to the extent that a limitation is reasonable and justifiable;**

4. **To investigate and initiate disciplinary action against the police officers who unlawfully and inhumanly arrested protestors who were peaceably assembled and violently flushed out non-protesting citizens from their houses in Gatwikira, Kibera.**
5. **To investigate all incidents of opportunistic crime that occurred including areas highlighted above and take the necessary legal action.**

We also urge the Independent Policing Oversight Authority to commence immediate investigations with the regard to:

1. **The legality of the use of lethal force and the deaths of four persons, in Kibera DC, Maseno, Kibera Laini Saba and Toi Market**
2. **Arbitrary arrests and harassment of innocent civilians**

Signed:

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