



## **Preliminary Communication on the Human Rights Situation in Kisumu and Kisii Counties Post Anti-Government Protests**

**Nairobi 4 August 2023**, Amnesty International Kenya, Kenya Medical Association, and the Law Society of Kenya are deeply concerned over the cases of police use of excess force in Kisumu and Kisii Counties during the Azimio la Umoja anti-government protests.

We are deeply concerned to note that preliminary findings conclude that there was indeed the use of excessive force by the police meted against protestors during the 19-21 July 2023 protests. The preliminary findings indicate that excessive force on demonstrators has been consistent since the anti-government protests began on 20 March 2023.

Between 28-30 July 2023, Amnesty International Kenya, the Law Society of Kenya, and the Kenya Medical Association visited Kisumu and Kisii Counties. We are saddened to report that preliminary investigations confirm that at least ten people were killed, most suffering bullet wounds and a few cases of blunt-force trauma. At least One hundred and seven cases of police assault were attended to in various health facilities but with 47 of those being gunshot wounds.

Initial reports indicate that police shot indiscriminately at unarmed protestors, including those who had surrendered or were running away from the police. In one incident, an unarmed protestor, who served as an eyewitness in an arson incident, was shot and killed by a police officer. The state should assure the safety of families and victims who are yet to report violations out of fear of intimidation or re-victimisation at police stations.

Just like in the protests held between March and July, some victims were bystanders and were not involved. Nonetheless, we reiterate that Kenyans have a right to demonstrate, picket and present petitions without suppression and/or interference from the Police. We call upon the Policing Oversight Authority to urgently conclude investigations into the reported cases of the use of excess force by the police in Kisumu and Kisii Counties.

***“Victims and survivors of violent acts by police officers have a constitutional right to life and equal protection before the law. These violations must not go unresolved. Police officers found culpable of using excess force must face a court of law and answer to these charges alongside their commanding officers,” – said Irungu Houghton, Executive Director of Amnesty International Kenya.***

Initial findings revealed an alarming pattern of the police deploying reckless and indiscriminate tactics, including detaining protesters beyond the stipulated period of 24 hours use of archaic laws, especially those contained in the now outdated Public Order Act charge protesters.

***“We condemn the utter disregard of Constitutional provisions by the police on the rights of arrested persons as protected in Article 49. We demand that all investigating officers who arrested, held and presented accused persons beyond the statutory timelines be held accountable – said Eric Theuri, Chairperson Law Society of Kenya.”***

We are concerned that emergency service providers, including health workers and journalists, were sometimes attacked and/or prevented from accessing medical facilities.

***We strongly condemn attacks on medical facilities, including lobbing teargas in medical facilities, ambulances, and attacks on healthcare workers and journalists. We call on the state to develop guidelines on offering safe passage and protection for emergency service providers during protests. We cannot be a nation which attacks its doctors. – said Simon Kigodu, President of the Kenya Medical Association.***

***Reports on targeting Human Rights defenders and Social Justice Centers during protests are deeply saddening. Social Justice Centers belong to communities and are designed to serve and promote human rights. We call upon the police to substantively investigate cases of targeting, including the abduction of Human Rights defenders and guarantee the security of social justice centres and guarantee protection – said Irungu Houghton, Director of Amnesty International Kenya.***

We call on the newly announced dialogue teams of Azimio la Umoja and Kenya Kwanza representatives to revisit the unlawful use of excessive force by the National Police Service and agree on actions that hold those in police command responsible.

A separate parliamentary commission of inquiry should be formed to investigate the instructions given to police officers across the affected counties, the use of non-uniformed and non-commissioned officers, names and locations of police officers hurt or killed, any failure of police officers to inform IPOA of any fatal exchanges or use of weapons and ascertain whether there was any disciplinary action taken against officers who have violated their standing orders.

The Independent Policing Oversight Authority should urgently complete their investigations for the Office of the Director of Public Prosecutions to hold individual officers culpable and the commanding officers who gave them instructions. IPOA should facilitate securing Occurrence Book (OB) Numbers for victims and families who are yet to access this service.

The Inspector General of Police should issue a public assurance that his service will provide protection and guidelines on safe passage for emergency service providers,

journalists, and human rights defenders. During protests, his officers will desist from operating from ambulances or embedding themselves in the media corps.

We call for the immediate release of all persons who have remained in custody for more than 24 hours or have not been charged according to their rights. Arrests must be carried out legally and not as a tool to punish or intimidate people. All those arrested have the right to know the charges being referred, legal representation, medical assistance and bail or bond within 24 hours.

Lastly, we call on the National Cohesion and Integration Commission (NCIC), the Police, and the Office of the Director of Public Prosecutions (ODPP) to investigate and prosecute those citizens and elected leaders using social media to urge Kenyans to commit acts of violence, hatred, and discrimination.

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Signed,

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**KENYA MEDICAL ASSOCIATION, LAW SOCIETY OF KENYA AND AMNESTY  
INTERNATIONAL KENYA JOINT MISSION REPORT ON THE PROTESTS IN KISUMU  
AND KISII COUNTIES, 19-21 JULY  
4 AUGUST 2023**

**Mission Purpose and Methodology**

Amnesty International Kenya, Kenya Medical Association and the Law Society of Kenya undertook a rapid situational assessment mission to investigate claims of the use of excessive force by police officers during the three days of *maandamano* protests between 19-21 July 2023. We sought to document testimonies from diverse stakeholders and make some early recommendations that can interrupt the cycle of violence Kenya has experienced since March 2023.

This joint report documents the testimonies of survivors, doctors, journalists, state officers and human rights defenders based in Kisumu and Kisii on the recent violence over 19-21 July 2023. Over thirty testimonies were collected during a joint rapid mission on 28-30 July 2023 to Kisumu town, Nyando, Nyalenda and Kisii town. We attempted to speak to all duty-bearers, but some declined or were unavailable to meet with the mission team.

We have intentionally not referenced those interviewed, as a number of them requested anonymity. These are preliminary findings and recommendations pending a more detailed, comprehensive investigation.

**Context for the violence over 19-21 July**

The violence witnessed on 19-21 July must be seen in the broader context of protests organized by the Azimio la Umoja Coalition over three months from March to July 2023. At least nine nation-wide protests have been held across three cycles of *maandamano* protests. The protest demands have ranged from an end to the cost of living, governance, results of the last elections and the recently passed Finance Act.

Article 37 of the Constitution of Kenya provides all the right to assembly, demonstration, picketing and petition. Every person has the right, peaceably and unarmed, to assemble, demonstrate, picket, and present petitions to public authorities. Under international and national law, the National Police Service is obligated to facilitate assembly and only use necessary force proportionate to the threat faced and reasonable. Lastly, the Kenya Kwanza administration's campaign promise was an independent national police service that would not resort to extrajudicial killings, secret police squads and human rights abuses.

Human Rights Watch and Amnesty International Kenya documented on 31 May that the police killed at least 12 people. They include children between 7 months and 4 years who died from suffocation by tear gases thrown into their houses. Following the 7 July “Saba Saba” protests, the three-day protests were particularly violent in Kisumu County. This protest was condemned by Azimio la Umoja Coalition, with some alleging that the threshold for internationally defined crimes against humanity and genocide had been breached. On the other hand, Kenya Kwanza Alliance and Government leaders have commended the police for ‘exercising restraint and using proportionate force’. This Kisii-Kisumu mission sought to establish the facts of what happened, assess the legal, medical, and human rights situation, and offer preliminary recommendations for rapid redress.

### **Preliminary Findings**

Led by the Kisumu Governor, the County Government supported peaceful demonstrations that were initially peaceful. Eyewitnesses have argued that bouts of violence would erupt after the peaceful march was over and allege possible infiltration of peaceful protests by violent gangs and possible interference by some politicians. The deployment of tear gas and live bullets to disperse crowds was another accelerator.

Several patients and eyewitnesses told the mission that the tear gas canisters seemed to ignite fires, and several people – both protestors and bystanders - were targeted in their homes, assaulted and killed. Notably, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) require law enforcement officers first to deploy non-violent means of de-escalation.

Collectively across the three cycles of protests, at least 24 people were killed, and 41 people experienced serious injuries following altercations with the National Police Service across the Nyanza and Western counties. Eleven police officers received medical treatment.

At the time of the mission, the team found 16 survivors recovering in hospitals and 11 bodies in morgues in Kisumu. Eyewitnesses state that two brothers were removed from their Nyalenda home and beaten up by police. Both brothers have subsequently died since the mission.

Most deaths were recorded in Kondole and Nyamasaria. Most victims were between the ages of 17-38 and overwhelmingly male. The cause of death has been attributed to the use of live and rubber bullets at close range. Some of the victims were picked from their homes by the police, especially in the Nyamasaria area in Kisumu. They include a minor (17), hospitalized with nine bullet wounds. Doctors confirm that some have severe injuries to their genitals.

107 cases of people assaulted by police officers were attended to in Jaramogi Teaching and Referral Hospital and other health facilities across Kisumu. Forty-seven of those were treated with gunshot wounds. The mission noted cases of survivors who had been shot once but had more than 9 bullet wounds from a single gun. Future investigation is required

to establish the veracity of concerns by doctors and survivors that non-standardized bullets and teargas were used. While the violence in Kisii resulted in far fewer deaths and injuries, the 7 July protests led to the deaths of three people, with two dying from fatal shootings by police officers. A woman with a bullet lodged in her breast survived.

The mission confirms that most bullet exit wounds were on the body's ventral aspect, leading doctors to conclude that most victims were running away and/or had surrendered. First responders noted that some victims' families were not allowed to see or photograph bullets extracted from the bodies of their loved ones. Concerns over police tampering with evidence were high. One elderly father used his bare hands to find the bullet lodged in his son's open skull.

Eyewitnesses described to the mission team the circumstances under police officers shot six people during the protests. One of the cases was a businesswoman shot in her chest while watching the protests from her shop. They also describe concerns that the protestors were infiltrated by sponsored violent gangs who used pangas and arrows to harass protestors.

The County Governments of Kisumu and Kisii waived all hospital and morgue fees for victims and survivors of protests. Community Health Volunteers (CHVs) must be encouraged to persuade those injured and fearing police harassment to seek treatment from the nearest public facilities.

The nature of the arbitrary police arrests described to the team poses a significant challenge to the criminal justice system. The courts are legally obligated to dismiss or further probe all cases of suspects presented to the courts after the statutory period of 24 hours or who have been tortured. Suspects charged with unlawful assembly while peacefully protesting should not be denied their constitutional rights under Article 37.

The Office of the Director of Public Prosecutions must ensure fair trials in accordance with Kenyan laws, and the Independent Policing Oversight Authority must move to secure evidence and bring cases to court swiftly. Furthermore, they must investigate fears that people arrested during demonstrations may still be in police custody and are yet to be presented before a court of law.

Access to medical facilities was blocked for patients needing life-saving care and healthcare workers. As a mitigation measure, medical facilities had to organize security for healthcare workers quickly. Doctors told the team that blocking access to medical facilities prevented the health personnel from performing surgery on victims. They suspect many victims were forced to find expensive private healthcare or stay home.

Amnesty International, the Law Society of Kenya and the Kenya Medical Association are deeply concerned by the obstruction and attack of emergency service providers, including healthcare providers and medical facilities. It resulted in doctors working 48-hour shifts

to cater for the high numbers of affected people. Medical personnel were obstructed from accessing the hospital premises by both protestors and police. In at least one instance, police officers encroached on hospitals and threw tear gas into the compound while chasing people. One ambulance was attacked, its windows shattered, and the driver was injured during the demonstrations. There is an urgent need for psychological support and debriefing for medical staff.

The three membership associations equally condemn the targeting of journalists and human rights defenders. At least four journalists were attacked in Kisumu. A human rights defender was abducted, held without access to a lawyer, threatened and then abandoned by persons suspected to be police officers after a national outcry.

The Nyando Social Justice Center was torched to the ground by persons, eyewitnesses claim, are police officers. The cause of the fire is yet to be conclusively determined by the local police station, but preliminary findings confirm that tear gas canisters were thrown into the facility and bullet cartridges were found on the premises. The Centre has lost records of sexual and gender-based violence cases they were following, computer equipment, money, furniture and their offices.

At this stage, Amnesty International Kenya, the Law Society of Kenya, and the Kenya Medical Association cannot conclusively pronounce whether the crimes committed in Nyanza meet the threshold of genocide and crimes against humanity.

Under the Convention on Prevention and Punishment of the Crime of Genocide, the physical element (killing, causing serious bodily harm, or deliberately seeking to physically destroy in whole or in part a community group) and the mental element (the intent to destroy) **must** be present for the crime of genocide to have occurred.

Additionally, the Rome Statute of the International Criminal Court provides that the physical (murder; extermination, enslavement, deportation or forcible transfer of population, Imprisonment, torture, grave forms of sexual violence, persecution, enforced disappearance of persons, the crime of apartheid, other inhumane acts) and the contextual element (Widespread and systematic) and the mental element (Knowledge of the attack) **must** be proven for Crimes Against Humanity to have occurred.

Having noted this, the terrifying and shocking events of 19-21 July do require further investigation, legal analysis and determination by independent state agencies, human rights organisations, and the international community.

## **Recommendations**

Based on these preliminary findings, Amnesty International Kenya, the Kenya Medical Association and the Law Society of Kenya recommend the following;

1. The newly announced dialogue teams of Azimio la Umoja and Kenya Kwanza representatives revisit the unlawful use of excessive force by the National Police Service and agree on actions that hold those in police command responsible.
2. The establishment of a separate parliamentary commission of inquiry to investigate the instructions given to police officers across the affected counties, the use of non-uniformed and non-commissioned officers, names and locations of police officers hurt or killed, any failure of police officers to inform IPOA of any fatal exchanges or use of weapons and ascertain whether there was any disciplinary action taken against officers who have violated their standing orders.
3. The Independent Policing Oversight Authority urgently completes its investigations for the Office of the Director of Public Prosecutions to hold individual officers culpable and the commanding officers who gave them instructions.
4. The Police Inspector General immediately issued a circular/signal that stops the increasing use of non-uniformed officers to effect arbitrary arrests of peaceful protestors contrary to the Criminal Procedure Code and Police Standing Orders. For transparency and accountability, police officers must be identifiable by uniform or number badges to avoid abuse of power and other violations.
5. A public reassurance by the Police Inspector General that his service will provide protection and guidelines on safe passage for emergency service providers, journalists and human rights defenders, and his officers will desist from operating from ambulances or embedding themselves in the media corps during protests.
6. The immediate release of all persons who have remained in custody for more than 24 hours or have not been charged according to their rights. Arrests must be carried out legally and not as a tool to punish or intimidate people. All those arrested have the right to know the charges being referred, legal representation, medical assistance and bail or bond within 24 hours.
7. Lastly, we call on the National Cohesion and Integration Commission (NCIC), the Police, and the Office of the Director of Public Prosecutions (ODPP) to investigate and prosecute those citizens and elected leaders using social media to urge Kenyans to commit acts of violence, hatred, and discrimination.

**Ends.**