

56TH ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES RIGHTS

STATEMENT BY THE KENYAN SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ KENYA) & THE INDEPENDENT MEDICO-LEGAL UNIT (IMLU)

Madam Chair,

ICJ Kenya and IMLU wish to bring to the attention of the Commission a number of prevailing concerns with respect to the human rights situation in Kenya:

1. We are concerned that the state continues to perpetrate torture and other forms of cruel, inhuman and degrading treatment within the criminal justice system, especially in the context of the fight against organized crime, terrorism and general law enforcement. Poverty has become the new face of torture in Kenya, with 80% of victims coming from poor socio-economic backgrounds, and attracting minimal visibility. On the other hand, we are concerned that law enforcement agencies including the police and municipal authorities rank as the main perpetrators. Thirdly, we are worried by the emerging trend where torture and ill-treatment is increasingly taking place outside official places of detention.

We take great exception to the unwillingness by the Kenya government to hold perpetrators of torture to account which has resulted in victims being denied access to justice and reparations. We note with concern that Kenya is yet to enact a comprehensive legislation on the Prevention and Prohibition of Torture despite being a state party to the Convention Against Torture, the African Charter on Human and peoples' Rights and constitutional guarantees the safeguards the freedom from acts of torture and other forms of cruel, inhuman and degrading treatment.

We call upon the Commission to urge Kenya to fast track the enactment of the Prevention of Torture Bill 2014 in compliance with its national, regional and international obligations.

We further call upon the Commission to urge Kenya to ensure timely investigations and prosecutions of all reported cases of torture and guarantee the security and safety of victims and witnesses.

2. We are concerned about the continuous harassment, intimidation and arbitrary arrest of human rights defenders in Kenya. We are particularly note the recent decision to freeze the accounts of two leading human rights organizations, *Haki Africa and Muslims for Human Rights (MUHURI)*, in the aftermath of the terrorist attack at the Garissa University College on 2nd April 2015. According to Gazette Notice 2326 of 7th April 2015, the Inspector General of Kenya listed five organizations under a list titled, "*List of Terrorist Organizations.*" These are Al-Shabaab, Mombasa Republican Council, Al-Qaida, ISIS (Islamic State of Iraq and

Syria) and Boko Haram. The same Gazette notice contains a longer list titles, “*List of Entities Suspected to be Associated with Al-Shabaab.*” This list has 85 entities which appear to be companies, business organizations and individuals. *MUHURI* and *Haki Africa* have been listed here. We emphasize that, without due regard to the standards and procedures outlined in law requiring material grounds for claims of terrorism-related activities and affording the affected individuals and organizations reasonable opportunity to demonstrate why they should not be declared specified entities, any action taken is of dubious legality and unfair, and devalues the government’s efforts to fight terrorism.

We call upon the Commission to urge the Kenyan government to adhere to Article 47 of the Constitution of Kenya which provides for the right to “administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.” In particular Article 47 (2) which provides that: “if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.”

3. We are concerned about the continued misuse of firearms in Kenya with over 65% of the gun shot related deaths being caused by law enforcement officers. We are further concerned that in spite of this high number of gun related deaths, Kenya lacks an inadequate system to undertake forensic documentation and investigation.

We call upon the Commission to urge Kenya to appraise the current death investigation system to allow a professional and independent process through enactment of the National Coroner’s Bill 2015. We further call upon the Commission to develop guidelines on the prompt, impartial and independent investigation of violent and suspicious deaths in Africa.

Thank you