

PRESS STATEMENT

September 14, 2023

KENYA'S HUMAN RIGHTS SITUATION: DISTURBING CHRONICLES OF BROKEN PROMISES AND HUMAN RIGHTS VIOLATIONS

On September 13, 2022, Dr. William Samoei Ruto was sworn in as the fifth President of the Republic of Kenya. President Ruto assumed office with a solemn pledge to enhance the recognition, promotion, and enjoyment of human rights and fundamental freedoms for all Kenyans.

One year later, we gather here on September 14, 2023, to commemorate the first anniversary of President Ruto's tenure, an opportunity to reflect upon the journey our nation has travelled under his leadership.

One of the ways citizens measure government performance is through shining a light on the promises made in the party manifesto and policy pronouncements. We shall therefore dwell on how this government has performed against its initial promises. The key question being: To what extent has this government fulfilled its promises. In doing so we shall focus on the pledges on governance, with a specific focus on fundamental rights and administration of justice.

We note progress in the following areas:

- The appointment of a senior pathologist is indeed a positive development, indicating a commitment to improving the investigation of reportable deaths. However, the full implementation of the Coroner General's Office is imperative;
- The completion of the Human Resources instruments in readiness for appointment of the Coroner General;
- The government's commitment to resolving all judgments and orders against it within a 60-day timeframe is certainly commendable such as the appointment of Court of Appeal judges and facilitating the return of Miguna Miguna;
- The disbandment of the Special Service Unit (SSU) marked a significant step in the right direction.
- The establishment of a task force on police and prison reforms, under the capable leadership of retired Chief Justice David Maraga, represented a promising stride towards creating a dignified work environment for our law enforcement officers.
- Also, in a parallel move aimed at achieving financial independence for the National Police Service, the appointment of a Principal Administrative Secretary (PAS) as the accounting officer was a pivotal step in the right direction. This appointment aimed to ensure that the police could operate autonomously, free from undue influence from the President's Office.

Dismal Performance

However, data from our daily monitoring in the last 12 months demonstrate that the government has performed dismally with regard to democratic policing and protection of human rights and fundamental freedoms. Indeed the freedom of assembly, association, expression and media freedom has faced unprecedented threats.

In the past year, we have witnessed a wave of punitive policing during protests, extrajudicial executions, deaths in custody, deliberate torture of children, interference with investigative authorities, unconstitutional interference of the National Police Service (NPS) and other critical human rights violations.

Ending police abuse, especially against urban youth, through enhancing police oversight (IPOA and NPSC) and creating an ombudsman to monitor human rights violations.

To achieve this, the current government committed to ending extra-judicial executions, enforced disappearances and enhancing police oversight through bodies like the Independent Policing Oversight Authority (IPOA) and the National Police Service Commission (NPSC).

Unfortunately, our data reveals a troubling trend from October 1, 2022, to August 31, 2023. We documented 482 cases of torture and related violations (TRVs), more than double the cases documented in a similar period between the years 2021-2022.

This marks a staggering increase of 250 cases increase compared to the 232 violations reported in a similar period i.e. October 1, 2021, to September 30, 2022. Out of these 351 were torture, inhuman, degrading treatment or punishment, 128 were extrajudicial executions and three were enforced disappearances.

Shockingly, the majority of victims/survivors were young male adults aged 18-35 years, accounting for 314, while those aged 36-65 years constituted 121, 0-17 years comprised 44, and those over 65 accounted for 3 persons. Majority i.e. 415 being male and 67 female.

The significant increase in cases of torture and related violations (TRVs), from 232 in the previous year to 482 in the period from October 2022 to August 2023, indicates a failure to curb police abuse of power including excessive, unnecessary, illegal and disproportionate use of force and firearms. This alarming rise not only shows a lack of progress but also suggests that the situation has worsened.

Furthermore, the fact that the majority of victims/survivors are young adults aged 18-35 years (*accounting for 65%*) is particularly troubling. President Ruto's promise was aimed at protecting urban youth from police abuse, yet they continue to be disproportionately affected by these violations.

The data implies that President's efforts to address police abuse and protect urban youth have fallen short, as evidenced by the increase in TRVs and the demographic profile of the victims. This situation calls for a critical re-evaluation of the strategies and measures put in place to fulfil the promises made regarding police reform and youth protection.

Accountability, independence and Oversight

Additionally, IPOA's financial structuring and resources have not been prioritised during the Kenya Kwanza administration, undermining its effectiveness in accountability and justice for victims.

The promised ombudsman to monitor human rights violations has not been appointed, and cases of abuse have escalated, particularly during public order management.

Expressions and statements that commend law enforcement violations and issuance of shoot-to-kill orders worsen an already critical situation. The contradictory rhetoric surrounding police reforms amplifies violations and confuses the nation's progress on accountability.

Chances of accountability have dimmed as a result of police refusal to record complaints from victims of police abuse, and failure to report all injuries and deaths to IPOA as required by law. The denial of Occurrence Book numbers, P3 Forms, and the lack of investigations into police misconduct contribute to a lack of accountability and impunity.

Establishing a Special Tribunal for Gross Human Rights Violations and Enforced Disappearances.

The disbandment of the Special Service Unit (SSU) marked a significant step in the right direction. However, it is disheartening to note that cases against its members have not advanced as expected, particularly in the wake of the resurgence of similar units during protests (men in black). This raises serious concerns about accountability and the efficacy of the measures taken.

Furthermore, the decision to transfer the responsibility for addressing enforced disappearances back to the Independent Policing Oversight Authority (IPOA) is a disappointing development.

While IPOA plays a vital role in police oversight, its mandate does not extend to covering all perpetrators, including those from the military, Kenya Forest Service, and Kenya Wildlife Service, especially where the latter are not operating under police command. This limitation in its jurisdiction undermines its ability to comprehensively address enforced disappearances and other gross human rights violations perpetrated by various agencies. The retreat by the President is indeed a betrayal of his promise to deal decisively with this malaise.

Ensuring Compliance with Court Rulings

The government's commitment adhering to all judgments and orders against it within a 60-day timeframe is certainly commendable. Yet, despite some notable progress, such as the appointment of Court of Appeal judges and facilitating the return of Miguna Miguna, there are critical areas where significant action is still needed.

The non-operationalisation of key legislations, namely the Public Benefits Organisation (PBO) Act and the establishment of the County Policing Authority, remains a source of concern. These legislative measures are essential for enhancing governance and accountability at both

national and local levels, and enabling the non-profit to be more effective in serving the national development agenda.

Equally troubling are instances of government disregard for court rulings, exemplified by the implementation of fuel prices EPRA, despite existing judgments. Such actions undermine the rule of law and erode confidence in the justice system.

Granting Financial Independence to the Police

The establishment of a task force on police and prison reforms, under the capable leadership of retired Chief Justice David Maraga, represented a promising stride towards creating a dignified work environment for our law enforcement officers. However, it is disheartening to note that, despite its appointment nine months ago, the task force has yet to deliver its much-anticipated report. This delay leaves critical reform efforts hanging in the balance.

Also, in a parallel move aimed at achieving financial independence for the National Police Service, the appointment of a Principal Administrative Secretary (PAS) as the accounting officer was a pivotal step in the right direction. This appointment aimed to ensure that the police could operate autonomously, free from undue influence from the President's Office.

In conclusion, the aforementioned findings highlight substantial deficiencies in fulfilling governance and human rights commitments laid out in the Kenya Kwanza Manifesto launched on July 1, 2022. We demand that the President prioritises the protection and enjoyment of fundamental human rights. Freedom from Torture and related violations is not a privilege but an inherent right that must serve as a guiding principle for all governance endeavours.

We call upon the President to:

- 1. Recognise and support investigative and oversight institutions including the Kenya National Commission on Human Rights (KNCHR) and IPOA;**
- 2. Establish the Coroner General's Office which plays a pivotal role in independently investigating reportable deaths to ensure a fair and thorough investigation;**
- 3. Establish a special tribunal to investigate and adjudicate cases of gross human rights violations including extrajudicial executions, enforced disappearances, torture and inhuman treatment;**
- 4. Ratify and domesticate the International Convention for the Protection of All Persons from Enforced Disappearances;**
- 5. Operationalise the PBO Act and the County Policing Authorities to facilitate effective participation of citizens and non-profit sector in development, and security governance;**

- 6. Enhance opportunities for reparations for victims of violations by establishing the Victim Protections Fund;**
- 7. Put in place constitutional and statutory provisions to ensure the financial independence of the National Police Service;**
- 8. Expedite the delivery of the report of the 'Maraga' Taskforce on Police and Prisons Reform for renewed momentum in police and penal reforms.**

To the victims/ survivors and families of human rights violations, we extend our deepest sympathies and unwavering support. Your courage in the face of adversity inspires us to advocate tirelessly for justice and reform. We believe in a future where the rule of law prevails, and every citizen can live free from fear and oppression. Together, we will continue to raise our voices, demand accountability, reparations and work tirelessly to ensure that justice is not just a hope but a reality.

To the government, you must take immediate decisive action to end torture. In light of the statistics, we foresee a resurgence of the dark days when torture was employed as a tool for repression, oppression and infringement of fundamental freedoms.

Signed

Peter Kiama

Executive Director

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