

POLICE COMMISSIONER MUST RESIGN TO SAVE KENYA FROM FURTHER BUTCHERY BY THE POLICE

The announcement by the Minister for Internal Security that police will no longer use live ammunition while dealing with situations of public order has come too late for the 82 Kenyans that the police acknowledge they have killed since riots began following the disputed results in the presidential elections.

The Kenyans for Peace with Truth and Justice note that this is not the first time that the police have been accused of the excessive use of force during the watch of the current Commissioner, Hussein Ali. In November 2005 the UN Special Rapporteur on Extrajudicial Executions wrote to express concern over the excessive use of force by the police to quell resistance to the enactment of a new Constitution. At the time, police had killed 5 protestors in Kisumu and shot at least 35 others who were hospitalized. The UN Rapporteur noted that the “allegations (were) of particular concern to the extent that they suggest a pattern of lethal force used by police at political rallies...”

At the time the Commissioner of Police Hussein Ali cleared the police asserting that live ammunition was only used at a police post by police against a mob that tried to rescue a man under police custody. The response by the Commissioner would suggest that he understood the use of live ammunition against civilians to be exceptional and that in all other cases, police must use rubber bullets and other non-violent means to maintain public order.

We note with concern the use of live ammunition in relation to the riots that broke out in several parts of Kenya has been unwarranted, irresponsible, indiscriminate, and constitutes a criminal offence against the police force. The collective outrage against the death, by police numbers, of 82 people must result in the holding accountable all the police officers against whom evidence of the use of live ammunition. Further, to prevent Hussein Ali from presiding over the slaughter of more Kenyans, he must resign with immediate effect and be subjected to a prosecution, like his police officers. Further, one of the issues in respect of which a public inquiry must be held in the fullness of time, is the very large number of civilian deaths in the hands of the police in the context of the current political crisis.

We note that most of those killed were attempting to exercise the right to collectively express their dissatisfaction over the disputed election results. Freedom of assembly is a fundamental right protected by the Constitution of Kenya. This right of Kenyans to assemble for purposes of expressing political opinions was one at great expense to the Kenyan public. Hussein Ali was still in the army and may have missed out on the *saba saba, nane nane, tisa tisa, and kunmi kumi* struggles which defined the parameters of the freedom of assembly for all times. Kenyans have paid a heavy political price to earn respect for the freedom of assembly. That high price forms part of the proud heritage of sacrifices made by this generation to secure the freedom of all Kenyans. Kenyans will not allow the Commissioner of Police, or any other individual in the government to return the

country to the one-party era, during which public meetings were an offence punishable summarily by the police, using whatever force they could muster.

Kenya is a signatory to several international instruments that define the scope of use of firearms by the police and other law enforcement agents while performing their duties. For example, Kenya is a signatory to the International Covenant on Civil and Political Rights (Article 6) provides that every individual has the right to life and security of the person, that this right shall be protected by law and that none shall be arbitrarily deprived of his or her life. The U.N. Basic Principles on the Use of Firearms by Law Enforcement Officials explain that to disperse violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and to the minimum extent necessary (Article 14); intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (Article 9); furthermore, a clear warning of the intention to use firearms must be provided (Article 10). Additionally, Article 7 of the Basic Principles states that the abusive use of firearms by law enforcement officials must be punished as a criminal offence. Indeed, these rules are entailed by the legal duty to respect the right to life recognized in Article 6(1) of the International Covenant on Civil and Political Rights.