7th August 2017

To all media houses,

To the Editor,

PRESS RELEASE

RE: IMLU’S STATUS REPORT ON PUBLIC ORDER POLICING DURING THE 2017 GENERAL ELECTIONS

The Independent Medico-Legal Unit (IMLU) would like to note the critical importance of public order policing in the electoral process. This is an area that Kenya has scored poorly as indicated in various reports; chiefly the October 2008 Commission of Inquiry on Post-Election Violence (Waki Report) and the Independent Policing Oversight Authority 2017 report on police conduct during the 2016 the opposition led anti-IEBC protests. These reports among others indict the National Police Service for failure to conduct themselves professionally as required with regard to public order policing during elections. Our case work for the period 2013 clearly demonstrate a police service that continues to score low not only in their professional conduct with regard to the use of lethal force but also in professionally addressing complaints of human rights violations from members of the public.

It is for these reasons that we have endeavored to put in place mechanisms to:

a) Support the National Police Service to embrace professionalism and adhere to the rule of law in public order policing. In this regard we have partnered with the office of the Inspector General to train 180 police officers in 6 counties on community policing, and advocated for clear guidelines to be issued to all police officers on the expected conduct;

b) We have deployed 29 monitors in 19 counties (40 constituencies) for the period 1st June-31st August 2017 to monitor public order policing during the electioneering period, and complied an interim report for the month of June and July. These counties are: Nairobi, Kisumu, Mombasa, Nakuru, Uasin Gishu, Narok, Kisii, Homa Bay, Isiolo, Turkana, Bungoma, Kakamega, Kiambu, Kilifi, Lamu, Kirinyaga, Migori, Baringo, Siaya and Trans Nzoia.

The main focus of this exercise are:

1 The following constituencies: Kibera, Mathare, Ruaraka, Embakasi, Dagoretti, Kamulu, Saboti, Mwea East, Kimilili, Kanduyi, Mbita, Homabay Town, Rangwe, Turbo, Isiolo South, Isiolo North, Narok North, Nyakite, Rongo, Uriri, Migori, Nakuru Town East, Kuresi North, Kilifi North, Kisumu Central, Nyando, Ugwu, Baringo Central, Baringo South, Mogotio, Eldama Ravine, Kikuyu, Kabete, Kiambu, Malindi, Butere, Kihisero, Navalcholo, Turkana Central, Lamu East
a) Police deployment and b) how police deal with potential violence/actual violent incidents. Some of the questions the monitors seek to answer are: do police preempt violence? Do they watch as violence happens? Do they practice restrain before using violence to stop any incidences of violence? Is the police use of lethal force done in accordance with the law? This monitoring is also taking cognizance of the various recommendations, in the Waki Report. Key among them, the need for police preparedness, a clear chain of command, coordination among security agencies, clear guidelines on policing, adequate resourcing of security agencies during elections, among others.

**Summary of Preliminary Findings**

**a) National level preparations**

- We have witnessed purposeful effort in police preparedness including several meetings convened for all county commanders and all formations at national level by the IGP. The leeway given to County Commanders to prepare county specific security plans;

- The release of a police security plan (though we have not availed a full copy of the plan yet) and awareness creation on police preparedness through various platforms including community forums and mainstream media;

- More purposeful dialogue between the police and relevant agencies including the Chief Justice, Director Public Prosecution, Attorney General, National Cohesion and Integration Commission (NCIC), Registrar of Political Parties, Peace Building and Disaster Response, Independent Policing Oversight Authority (IPOA) and the National Police Service on how to enhance coordination. For instance the launch of the Elections Security Arrangement Programme in May 2017.

**b) Police deployment:**

- Although no IMLU monitor has assessed the deployment plan from the County Commanders, in most counties there were adequate number of police officers deployed during the presentation of clearance papers with the IEBC. Most of the officers deployed were said to have been drawn from the Administration Police Service and the Kenya Police Service. There were also officers from the General Service Unit (GSU) and Kenya Prisons Services in areas like in Bungoma and Trans Nzoia, as well as plains clothes officers in Nairobi, Kiambu and Kisumu. The monitors’ reports indicate that the officers were very professional and interactive with members of the public;

- Police were also present and actively participated in peace meetings, community debates and peace caravans in Nairobi, Bungoma, Migori, Isiolo and Nakuru Counties. In attendance during these functions were County Commissioners, Deputy County Commissioners, OCPDs, OCSs and officers from the DCI. They urged community members to refrain from violence and alert security agents of any tensions and violence in the community. However this does not seem to be norm in all the 20 counties, suggesting individual officers taking initiative at their level;
• We have witnessed enhanced coordination between the Kenya Police Service and the Administration Police Service in their operations at county level during this period, with a clear chain of command;

• Most of the reports from the 20 counties which comprise both opposition and ruling party strongholds indicate a good level of distribution of officers in the campaigns;

c) Liaison and communication:

• Minimal cooperation between the police and the political leadership in managing crowds during the political rallies to ensure there is shared responsibility between the political mobilisers, their supporters and the police in ensuring peaceful campaigns, leaving the police overwhelmed and the political actors and supporters chucking responsibility for preventing violence;

• Accusations and counter accusations between police, KDF and political party leaders especially the opposition regarding security preparations and measures being put in place. This has led to high levels of suspicion within the opposition and numerous complaints of bias and suspicious conduct, even where the police and KDF have been making preparations in good faith;

• Lack of coherent plan among the police to embrace community policing—the public mainly remain objects of policing instead of partners in security and safety on their neighborhoods with incidences where innocent persons have been victims of police violence in police responses, in situations where they (public) were not party to the incidences.

d) Respect to the rule of law – Some incidents of human rights violations and excessive use of force or firearms were witnessed, for example:

• Two bodyguards in plainclothes from APS unit and attached to the Bungoma County Deputy Governor, opened fire killing a woman, Alice Mudua Kayemba aka Kadogo. The two police officers involved were later identified, arrested and disarmed with investigations ongoing by the police hence awaiting the direction from the director of public prosecutions (DPP).

• In Kisumu County, 1st June 2017 at around 1:00 pm there were skirmishes involving rowdy youth. Police officers from Awasi and Ahero Police stations responded by engaging in running battles with the youths and raiding the nearby estates and shops where innocent civilians had gathered. The officers arbitrarily beat up and arrested any youth who was found around that area and threw teargas canisters in the markets. The arrested youths were allegedly not taken to court but were forced to pay Ksh. 5000/- to the OCS of Ahero police station before they were released. The total number of arrested youths was 15 but none of them was taken to court.

• Allegations of police involvement in perpetuating criminal activity, a good example being the raid at NASA tallying centre in Westlands, Nairobi on the night of 4th August, which NASA associated with the National Police Service and gave names of five suspected police officers.
d) Police response to incidences of violence

• Generally, police officers have been responsive and conducted themselves in a professional manner except for a few instances such as in Nairobi, Migori and Endeavour in Trans Nzoia County where the police assigned were unable to control the crowds and had to call for reinforcement. In only few cases, did the police fail to respond. These were related to a rally in Mbita where there were no police at a rally where chaos erupted between supporters of different MCA aspirants, and in Migori where one person was stabbed to death following a clash between candidates for the Member of Parliament position.

• Monitors reported witnessing police bosses telling their officers that perpetrators of torture and violence will be held individually responsible for their actions. Thus, officers have become very careful in the way they respond to any incidences despite the fact that in some instances, members of the public from the opposition side were seen deliberately provoking the officers e.g. in Baba Dogo and Utalii Wards in Ruaraka Constituency, Nairobi County.

Our Recommendations

a) We recognize the critical role of police to secure the political environment and therefore reiterate the need for the government to respect the independence of the police service. We also remind the Inspector General that he has a key responsibility of unambiguously and unequivocally protecting and defending his officers from any undue influence by any political actor.

b) While we recognize the purposefulness of the National Police Service in preparation for securing the electoral environment, we do expect each and every officer to operate within the rule of law as provided for under the Constitution, the NPS Act and the Service Standing Orders.

c) There is need for the police to openly and consistently communicate to critical stakeholders to avoid speculation and suspicions on their preparedness and we remind them that this a constitutional obligation and not a favor.

d) All complaints of police misconduct MUST expeditiously investigated by IPOA and the IAU. These include the alleged raid at the NASA tallying centre and the appointment of the officers to be used in favor of political parties.

e) Going by the reports on police deployment and response to incidents of violence especially in the Nairobi case where 50 police officers were deployed but did not seem adequate, it is clear that there is still need to enhance cooperation between the police, the public and political players since police numbers may not be enough to prevent violence. Arrangements where organizers also take a level of responsibility for law and order at among their supporters is critical.
f) The police and any other ancillary forces should desist from posturing, behaving, acting or communicating in a manner that is intimidating or scaring voters from exercising their democratic right to vote and peaceably assemble and express their opinions.

Signed:

[Signature]

Peter Kiama,

Executive Director.