

JOINT PRESS STATEMENT BY THE ARTICLE 59 COMMISSIONS AND THE NATIONAL COHESION AND INTEGRATION COMMISSION ON THE SITUATION IN TANA DELTA REGION

We, the Article 59 Constitutional Commissions (The Kenya National Commission on Human Rights, The Commission on Administrative Justice, and The National Gender and Equality Commission), together with The National Cohesion and Integration Commission, wish to express our deep concerns about the situation in Tana Delta Region where over 100 people including Police Officers have been killed in inter-tribal violence.

To this end, we wish to refer to the earlier statement issued by the Chairpersons' Forum of the Constitutional Commissions and Independent Offices on 31st August 2012 which expressed concerns at the increasing pattern of insecurity in various parts of the country. The Statement called upon the Executive to immediately restore security and order in the affected areas and take all appropriate measures to prevent further resurgence of violence in addition to providing humanitarian assistance and protection to the victims of the violence.

Despite the above statement and the assurances by the Executive on the action being taken to contain the situation, the country has continued to experience escalation of violence, particularly, in the Tana Delta Region. Indeed, we have noted that the various intervention actions by the Executive have been ineffective in averting and containing the situation. In addition, the National Police Service seems to have been overwhelmed and thus unwilling or unable to act decisively in the face of the conflict. Moreover, the situation has further been aggravated by the statements attributed to some leaders of the different communities which have tended to whip up communal sentiments instead of quelling the tensions and promoting peaceful co-existence.

As Commissions established to promote Human Rights and peaceful co-existence, protect the sovereignty of the people and to promote constitutionalism, we strongly believe that this state of affairs is unacceptable and constitute a violation of the rights to life and security of the person. In particular, we wish to state as follows:

- i. It is unacceptable for the Executive to fail to protect its citizens in spite of the explicit constitutional obligations and the massive resources allocated to the National Security Organs;
- ii. We believe the Executive has the capacity to deal with the situation decisively without exposing innocent citizens to further untold suffering and agony;
- iii. We fear the violence in Tana Delta Region could be a strategy of ensuring a particular outcome in the forthcoming elections in that Region, or part of a bigger ploy to lay grounds for postponing the forthcoming general elections;
- iv. It is not true that the Constitution has rendered the Police powerless to undertake their work effectively. On the contrary, the Constitution has strengthened the national security organs including the Police, but ensured they remain accountable to the people, who alone are sovereign;
- v. In view of the inability or unwillingness of the Police to prevent and contain the situation in the Tana Delta Region, we call upon the Executive, with the approval of the National Assembly in line with Article 241(3)(c) of the Constitution to move for limited deployment of the Kenya Defence Forces in the Region, and, to any other area as may soon be similarly affected, to restore peace and stability;
- vi. Apart from the foregoing, the Police should proceed with investigations to unearth the instigators and root causes of the violence, with a view to finding lasting solutions to the conflict including taking action against the perpetrators;
- vii. Specifically, the Police should investigate Hon. Yusuf Haji, the acting Minister for State for Provincial Administration and Internal Security, Hon. Dhadho Godana, the Assistant Minister for Livestock Development and any other person on their involvement in the conflict. Meantime, we urge that Hon. Haji be moved from the Security Docket and a different substantive holder be appointed.

- viii. We urge political leaders in the Region to provide leadership by desisting from any conduct or utterances that may further stoke tensions and conflict amongst their communities. Above all, we urge all citizens to remain faithful to the law and foster peaceful co-existence at all times to ensure national cohesion and development;
- ix. We reiterate that the Executive should put measures in place including effective early warning systems and appropriate interventions to prevent similar occurrences in other parts of the country as we approach the general elections scheduled for next year; and
- x. In line with our Constitutional Mandate, we have formed a Special Joint Probe Team to establish the causes of the conflict, arming of the various groups, manifestations of the violence, preparedness of the Police and other related facts. We believe that while it is important to quell the conflict in Tana Delta, it is paramount to stop emergence of similar conflicts elsewhere in the country.

COMMISSIONER OTIENDE AMOLLO, EBS
CHAIR OF THE COMMISSION ON ADMINISTRATIVE JUSTICE

COMMISSIONER DR. SAMUEL K. TOROREI
CHAIR OF THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

COMMISSIONER WINFRED LICHUMA
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Dated 12th September 2012