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Centre for Human Rights  
Faculty of Law

## PRESS STATEMENT

# CENTRE FOR HUMAN RIGHTS CONDEMNS THE RECENT SYSTEMATIC KILLINGS IN KENYA

8 July 2016

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The Centre for Human Rights, University of Pretoria, expresses its deepest condolences to the families of Willie Kimani, Josephat Mwenda and Joseph Muiruri who were killed in Kenya on or around 23 June 2016. On 23 June 2016, Willie Kimani, a Kenyan human rights lawyer working for International Justice Mission, and his client Josephat Mwenda, attended the hearing of a criminal case at Mavoko Law Courts in Machakos County, Kenya. Mr Mwenda, a motorcycle operator, was charged with overloading and possession of marijuana.

It appears that the charges against Mr Mwenda were proffered against him by police officers in an attempt to conceal unprofessional conduct by one officer who had allegedly shot Mr Mwenda unprovoked during a routine traffic inspection. Mr Mwenda had reported the alleged incident to the Independent Police Oversight Authority (IPOA) and the matter was under investigation. It appears that the fabricated charges were designed to intimidate Mr Mwenda into withdrawing the complaint. On the fateful day, Mr Kimani, his client and a taxi driver, Joseph Muiruri, who had picked them from court mysteriously disappeared. Their bodies were found several days later in River Ol-donyo Sabuk, stuffed in sacks with heads covered in polythene bags.

This unfortunate incident depicts the sad state of administration of justice and the rule of law in Kenya and many African countries. Indeed, this is not an isolated incident. The Kenya National Human Rights Commission (KNHRC) has reported that security forces carried out 25 extrajudicial killings between 2013 and 2015. Further, non-governmental watchdog Independent Medico-Legal Unit (IMLU) reported that the police killed 97 people in 2015 alone. The Centre notes the motto of the

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Kenya Police Service is ‘*Utumishi kwa Wote*’ (service to all). Ironically, the police, in many instances, have not been true to this motto and have instead turned into oppressors of those they are sworn to protect.

Kenya adopted a new constitutional order in 2010 with a comprehensive and transformative bill of rights that provides for the right to a fair trial and the sanctity of the right to life. The Constitution also brought the much needed police reforms such as unification of the different arms of the police force and establishment of a vetting mechanism. The creation of IPOA, an autonomous entity that receives and investigates complaints of misconduct against police officers, has been a positive step in ensuring professionalism in the police service.

The above extrajudicial killings are, however, a major setback for the police reform process and the constitutional protection of human rights. They manifest the intimidation that human rights advocates and defenders face in the pursuit of justice for all.

The Centre commends the Law Society of Kenya for the week-long peaceful protests and boycott of judicial proceedings across the country in solidarity with their slain colleague, his client and the taxi driver and indeed, all victims of police brutality in Kenya. The Centre adds its voice in calling for justice for the trio and accountability from the Inspector-General of Police and the Cabinet Secretary, Ministry of Interior and Coordination of the National Government.

The Centre acknowledges the efforts by the government of Kenya to bring the suspected officers to justice. We note that four suspected police officers have so far been arraigned in court and charged with the murder of the trio and that the Chief Government Pathologist has since conducted autopsies on the three bodies and released a report which reveals that they were tortured before they died. However, more needs to be done.

We note that Kenya has ratified regional and international human rights instruments, and it has also accepted the jurisdiction of the African Court on Human and Peoples’ Rights. Pursuant to this, it has the obligation to give effect to the right to life and the right to have one’s case heard, inculcated in articles 4 and 7 of the African Charter. In the *Beneficiaries of Norbert Zongo and others v Burkina Fasso* case, the African Court has found that mere legislative step is not sufficient to guarantee the rights in the Charter. It has indicated that a state has the duty to show due diligence by investigating and prosecuting perpetrators when the rights in the Charter are violated.

With this in view, the state of Kenya has to carry out its obligations under the African and international instruments, by taking practical steps to guarantee the rights in these instruments. Failure to do so is

a violation of the rights in the African Charter, as indicated by the African Court, and may lead to accountability on the part of the state, before the African Court.

The Centre therefore calls upon the government of Kenya to -

- i) ensure that justice is delivered efficiently and expeditiously to afford the families some degree of closure;
- ii) provide sufficient protection to witnesses in the case to avoid any form of intimidation;
- iii) investigate and ensure the prosecution of those responsible for the extrajudicial killings highlighted in the reports of KNHRC and IMLU above;
- iv) take appropriate measures to put an end to extrajudicial killings by the police in Kenya;
- v) ensure full implementation of the police reforms envisioned by the Constitution of Kenya, 2010; and
- vi) ensure a conducive working environment for human rights defenders.

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