Nairobi, Wednesday, 7th February, 2018

ADVISORY STATEMENT:

CALLING DUTY BEARERS TO ACTION ON THE PROTECTION AND PROMOTION OF HUMAN RIGHTS

PRESENTED TO:

i. CABINET SECRETARY, MINISTRY OF INTERIOR & COORDINATION OF NATIONAL GOVERNMENT;

ii. INSPECTOR GENERAL OF POLICE AND

iii. OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTION.
A. INTRODUCTION

1. The Kenya National Commission on Human Rights (KNCHR) is a Constitutional body established under Article 59 of the Constitution of Kenya and Section 3 of the Kenya National Commission on Human Rights Act No 14 of 2011 (revised) 2012. It has the core mandate to develop a culture of human rights through the promotion and protection of rights and fundamental freedoms in the Republic of Kenya.

2. The Commission is mandated to monitor State and non-State actors to ensure that they comply with both national and international laws and policies as well as human rights standards in all their undertakings. The Commission is further mandated to investigate and research matters in respect of human rights and make recommendations to improve the functioning of state organs. In addition, KNCHR has further been bestowed the mandate to give advisories to the Kenyan government on issues of human rights.

3. **It is on this premise that the Kenya National Commission on Human Rights submits this Advisory to the specific duty bearers listed above based on the current state of the Nation in so far as the flagrant violations of human rights are concerned.**

B. BLATANT DISREGARD OF RULE OF LAW BY STATE OFFICERS

4. The Commission is concerned by the occurrences of the past one week that has witnessed a rise in the brazen disregard of the rule of law, the barefaced threats to the Bill of Rights and the Nation’s democratic principles that are enshrined and protected in the Constitution of Kenya 2010. The Commission is raising a red alert that we are rapidly retrogressing to the dark painful eras of our past as a country. As the main Commission charged with the responsibility of protecting promoting and monitoring human rights in the country, the Kenya National Commission on Human Rights from the onset strongly condemns the current cases of deliberate contempt of court orders and illegal and arbitrary arrests that are off-tandum with the Kenyan law and set practices and standards.

5. The Kenyan Constitution which is our Supreme Law of the land outlays mandatory provisions on the respect and enjoyment of fundamental human rights and freedoms by all.
Specifically Article 2 of our Constitution is a stark reminder that the Constitution is the Supreme law of the Republic of Kenya and as such it binds all persons and all state organs at both National and County level. No person may claim or exercise state authority except as authorized by the Constitution.

Article 10 similarly binds all State organs, State and Public officers in upholding the national values and principles of governance which include among others, “the rule of law, democracy, human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized”.

Any state or public organ or officer acting contrary to these provisions is in contravention and action MUST be taken against them.

6. The Commission is particularly concerned that the rights and freedoms that our national fathers fought so hard to protect, and are now enshrined in our Constitution, are rapidly being disregarded and violated. As custodians of the Bill of Rights, the Commission wishes to categorically state that rights such as;

“the right to life, right to human dignity, freedom from arbitrary arrest, freedom from detention without trial, freedom from torture, inhumane and degrading treatment, freedom of expression, freedom of the media, access to information, freedom of association, freedom of demonstration and assembly” among others are inherent rights which automatically accrue to every Kenyan without discrimination and as such cannot be denied or be suspended by any person or organ unless under provisions stipulated by the Constitution.

The right from torture, cruel, inhumane treatment or degrading treatment or punishment, the right to fair trial and right to an order of habeas corpus is non-derogable and therefore cannot be suspended under any circumstances by any person or organ.

C. OUR RECOMMENDATIONS TO THE DUTY BEARERS

Based on the prevailing state of the nation, the Commission hereby invokes its mandate pursuant to Article 59 of the Constitution, Section 8 of the KNCHR Act and Section 12 of the Prevention of Torture Act to issue the following recommendations for immediate action and compliance;
TO THE INSPECTOR GENERAL

i. To immediately comply with the provisions of the Constitution and other enabling provisions of the law specifically, Article 244 of the Constitution that obligates the National Police Service to comply with constitutional standards of human rights and fundamental freedoms;

ii. To direct all officers of the national police service to strictly comply with the provisions of Article 49 on the rights of arrested persons and the same must be discharged equally to all Kenyans without discrimination on any ground and

iii. To immediately cease any arbitrary arrests and torture of any person(s) and ensure due process of the law is followed on any person suspected of any criminal or outlawed activity.

TO THE CABINET SECRETARY, MINISTRY OF INTERIOR & COORDINATION OF NATIONAL GOVERNMENT

i. To strictly operate within the confines of the law and immediately desist from undertaking and issuing unconstitutional orders with utter disregard of the law. We further call, once again, for the immediate compliance of the court order to switch on the air waves of ALL media houses and

ii. To immediately operationalize the Public Benefit Organizations Act as directed by the High Court on 31st October 2016

TO THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

i. To seize its functions under Article 157 of the Constitution and direct the Inspector General of Police to investigate any allegations of criminal conduct within the strict confines of the law. In addition this office is the sole organ that institutes criminal proceedings against civilians and being officers of the court must effectively facilitate the respect and rule of law in all such proceedings and

ii. The Commission further utilizes this Advisory to raise a concern over the lacuna in law on what happens in the event the Director of Public Prosecutions vacates office as in the current situation. We call for an urgent review of the Office of the Director of Public

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1 The National Police Service Commission Act(No. 30 of 2011); National Police Service Act(No 35 of 2011); The Kenya Defence Forces Act
Prosecutions Act, 2013 to ensure that the gap is addressed by bestowing the requisite powers to the deputy Director of Public Prosecutions to discharge the responsibilities of the Director.

D. CONCLUSION

7. The Kenya National Commission on Human Rights reiterates that the ensuing political environment exacerbates the violation of human rights with the poor, women, children, youth, elderly and persons living with disabilities bearing the brunt.

8. The Commission monitoring reports of 6th February, 2018 indicate a surge of civilian unrests, protests and demonstrations in Kisumu and Migori. Specifically the Commission is in receipt of a death report of one (1) person following demonstrations and protests in Ahero and destruction and looting of property. The Commission is undertaking investigations on the same.

9. This current findings points to a society that is deeply polarized and rooted on ethnic and political divides. If immediate and appropriate action is not undertaken by the duty bearers, the situation will exacerbate.

10. The Commission wishes to remind all duty bearers that the cost of human rights violations is extremely high, a cost that as a country struggling to meet the basic economic and social rights of the common Mwananchi cannot afford to incur. The duty bearers must therefore remain true to the tenets of the Constitution and be in the frontline to defend it in its entirety.

11. The Commission therefore calls for the immediate compliance to the Bill of Rights, rule of law and constitutionality in its entirety for the future of our beloved Nation.

12. The Commission reminds all the duty bearers and political actors from both divides that Democracy is not Anarchy and it must be guided by the rule of law, constitutionalism and respect for human rights.

SIGNED BY:

[Signature]

KAGWIRIA MBOGORI
CHAIRPERSON
KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

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