PRESS STATEMENT:

Nairobi

27th June 2017

Status Update on the On-Going Monitoring of the August 8th 2017 General Election: 41 days to the General Election

In the spirit of Constitutionalism

The objects of Constitutional Commissions are clearly spelt out in Article 249 (1) of the Constitution as follows:

1. Protect the sovereignty of the people
2. Secure the observance by all State organs of democratic values and principles
3. Promote constitutionalism

The foregoing Constitutional objects as well as our respective statutory provisions form the backbone for the exercise of our mandates as the Kenya National Commission on Human Rights, the National Gender and Equality Commission, the Commission on Administrative Justice and the National Cohesion and Integration Commission.

We are happy to meet here today as Commissions to share with you the findings of our on-going work of monitoring campaigns ahead of the August 8th 2017 General Election. The right to vote or to be voted for, the right to gender equality and freedom from discrimination, the right to fair administrative action, the right to access information, the right to an election free from violence, hate speech and other critical rights as entrenched in the Constitution of Kenya must be safeguarded at all costs as we engage in all processes of the Electoral Cycle. The continued stability, progress and development of our Nation is anchored on the realization of
these fundamental rights and freedoms for all Kenyans. It is therefore our contention that Kenyans have every right to enjoy these rights at all times—including during the Election period—and we hope that the same will be not only be upheld but further strengthened after the August 8th 2017 General Election.

As Constitutional Commissions, we have been actively involved in monitoring the electoral process (both the Party Primaries and the On-going Campaigns) with the sole purpose of contributing to a free, fair, credible and peaceful General Election. We have deployed trained Election Monitors and our Staff Officers in all the 47 Counties to observe and document election violations that may negate efforts geared towards free and fair elections. The election Monitors are also documenting best practices.

A number of issues of concern that may compromise the integrity the upcoming poll have been identified from our respective monitoring efforts. We wish to point out some of these issues by making the following observations with a view that candidates and citizens will remain bound by our Constitution and the rule of law with only 41 days left to the General Election.

1. Violence
Cases of violence are still rampant affecting both civilians and candidates at large especially Women, Youth and Persons with Disabilities. We remain concerned about the segregation that is being witnessed especially on Independent candidates who are either attacked directly or through their campaign managers or supporters.

2. Security / Insecurity
We laud the efforts being employed by the security agents and agencies during rallies and other political gatherings. However, we ask the same Agencies to invest in intelligence gathering to identify new and emerging hotspot areas and regions. As we have witnessed through the work of our respective organizations, there are areas that we had noted as hotspots due to the high competition that existed during the Party Primaries and there are those we had not envisaged as hotspots but which are now emerging as areas of concern. Special attention must be directed to all hotspot areas to
ensure that pro-active measures are taken against all forms of electoral violence.

We submit that intelligence-gathering will play a critical role in complementing the work of security officers during polling day to avoid cases of voter intimidation or bribery. The security officers deployed during the polling day must ensure that they carry out effective crowd control within the confines of the law. It is our hope that the National Police Service has effected its pledge to train and sensitize security officers on crowd control measures. Ultimately, it is our contention that security cannot be realized without the joint efforts and understanding of both the officers and the citizens. We therefore take this opportunity to ask the citizens and the security officers to be joint custodians of our Nation’s security in line with the various laws governing the dispensation of security in our Country. Further we wish to state that any security deployment during this campaign period as well as during the polling day, must be done in a manner that ensures that every eligible Kenyan voter is free to exercise their right to vote in an environment that is free from fear or intimidation, whether the same is emanating from the State or non-state actors.

3. Inducements
Candidates are required to propagate their agenda and manifesto to voters and allow voters to make the final decision through the ballot. However, we have noted that some candidates have been giving out food items and branded items during their rallies. According to the Elections Offences Act, this is a malpractice during the campaign period. The Government has also been launching mega projects and settling IDPs and issuing title deeds during this period, acts that are expressly outlawed by the Election Offences Act.

The Leadership and Integrity Act further outlines the threshold of appointment and election of public officers, political class included, to ensure that only those who meet ethical standards are permitted to hold public offices. It is thus worrying that at this stage of campaigning, candidates
are openly disregarding and flaunting the law. The act of public service does not only commence when one has been elected into office, but rather, the same must be seen in actions prior to taking the oath of office and leadership.

4. Safety of the Media and Media Ethics
As a watchdog sector of society, the media has played a key role in ensuring that good governance prevails through their reporting. During this electioneering period, they continue to play a pivotal role in ensuring that Kenyans go to the polls through highlighting issues raised by all stakeholders. However, we have recorded instances where media have had to bear some brunt treatment as they continue to cover their work.

We continue to agitate for a safe working environment for members of our Fourth Estate to enable them share critical information that would safeguard the 2017 General Elections.

However, we also call upon the media to remain objective in their reporting and offer balanced coverage to critical issues and conversations by the candidates. We also urge the media to avoid highlighting matters that propagate war and hate speech.

5. The use of Public Resources and Participation of Public Officials in Political Activities
The Elections Offences Act outlaws the use of public resources for campaigns to include vehicles and varied public physical resources. It further prohibits public officers from participating in campaigns and also criminalizes launching of projects during the campaign period. It is unfortunate that despite the clear provisions of the law, the same seems to continue unabated and to the extent where it has been alleged that some State and public officers are openly participating in political activities.
6. Administrative injustices that may be meted out to any stakeholder in the electioneering process
Public institutions are supposed to provide public services in an efficient and expeditious manner without segregating individuals or any political outfits. Public institutions are there to serve all and sundry regardless of political affiliations. Any public institution or public servant who will discriminate the provision of public services on the basis of political persuasions must face the full sanction of the law.

7. Right to access information
During the electioneering period we shall be keen to ensure that the right to access information is not infringed upon and citizens who require any information, save that which is exempted by law, are granted the same. This right is applicable to all spheres of Government including National and County governments, State Organs, Commissions and Independent Offices and State Corporations.

8. Voter Education and Election Materials
Voter education must be designed and delivered in a responsive and accessible manner for all Special Interest Groups across the country. We expect that provisions will be made to include voting materials adapted for use by Persons with Disabilities including visual impairment. Additionally, we call for measures to ensure Persons with Disability and older members of society, the sick and expecting and lactating mothers are adequately facilitated to participate in the forthcoming General Elections. We urge our Youth to refrain from being used by political opponents to cause chaos.

9. Participation of Special Interest Groups in the General Elections
Every adult Kenyan has an equal right to participate in the upcoming August 2017 General Elections either as a voter or a candidate pursuant to meeting the prescribed qualifications. In order to crystallize the spirit and letter of the
Constitution of Kenya 2010 on Gender Equality and non-discrimination in political representation, we urge voters to elect candidates in the special interest group’s category i.e. Women, Youth, Persons with Disabilities and those from ethnic minorities and marginalized groups. We wish to reiterate that the Country still does not have a mechanism for ensuring compliance with the two thirds gender principle. The only sure way of avoiding a constitutional crisis is for Kenyans voting as many women in the National Assembly, the Senate and County Assemblies in the forthcoming General Elections. The gubernatorial seats are no exception, we must break the male dominance at this level.

10. Political Party Lists

We expect that Political Parties have fully complied with the Constitutional Article 90 on Elections Act and the recent nominations and party regulations published by IEBC in submitting names of members who would qualify for nominations in the National Assembly, Senate and County Assemblies to represent special interest groups. We expect IEBC will immediately publish all the lists received from Political Parties to facilitate dispute resolution within the 10 days provided by the law. After dispute resolution, we expect that IEBC will gazette the final party list which shall be closed for the term of the incoming Parliament and County Assemblies. The special seats are reserved for the Special Interest Groups and only bona fide members should be nominated. The National Gender and Equality Commission will monitor this process keenly and will use all legal means available to ensure fair representation of the target groups.

11. Preparedness by the Independent Electoral and Boundaries Commission

Further to the recent Court of Appeal ruling on the role of Returning Officers, we call upon IEBC to put in place effective measures in ensuring that all returning and Presiding Officers are properly trained and held to strict individual accountability. We also call upon the IEBC to gazette the final list of 2017 candidates for the elective posts disaggregated by gender and age. In addition, we call on the IEBC to gazette the final list of the voter register and make it accessible to all Kenyans in line with the Elections Act.
12. Enforcement of the Electoral Code of Conduct

We shall back the efforts by the Independent and Electoral Boundaries Commission in enforcing the electoral code of conduct signed by candidates and Political Parties during the entire campaign season and on polling day. We condemn any form of violence directed at any person including the Special Interest Groups as either voters or candidates and remind duty bearers to ‘keep the promise’ and denounce electoral gender-based violence and take measures to prevent and respond to such incidences.

13. Electoral Disputes

We reiterate our commitment to see a free, fair, credible and peaceful General Elections presided over by the Independent Electoral and Boundaries Commission. We expect the rule of law and Constitutionalism to prevail throughout the electioneering process and emerging disputes to be processed within the specified legal framework and timelines. We further recognize the role and place of the judiciary in resolving all electoral disputes and we urge all parties, candidates and individuals to use this judicial forum for redress and not public dialogue. We wish to remind the political actors that the Judiciary and the Office of the Director of Public Prosecutions have trained special officers to handle election matters effectively and efficiently.

14. Hate speech and Incitement to violence

The Constitution 2010 and the National Cohesion and Integration Act outlaws Hate Speech and incitement to violence. However the Commission has noted with great concern the increase of hate speech and incitement to violence cases in political rallies and the social media platforms during the electioneering period despite the arraignment in court of several politicians. This is likely to negate the gains we have made as a Country since the establishment of the NCIC.

The NCIC in partnership with other law enforcement agencies shall continue to monitor political rallies and social media platforms with a view of identifying hate mongers. Persons found to engage in hate speech and incitement to violence shall face the full force of the law. Kenyans are
encouraged to maintain peace during the electioneering process in order for the country to conduct transparent, free, fair and credible elections.

Whereas the Commission is discharging its mandate, we urge all political parties to reign on their members especially those propagating hate speech.

Conclusion

Ultimately, the forthcoming General Election is meant to provide Kenyans with an opportunity to elect leaders who will help the Country realize, among other aspirations: the spurring of equitable economic opportunities for all Kenyans; the creation of employment opportunities, particularly for our Youth; the fostering of national cohesion and integration; the creation of inclusive political space for women, youth and persons with disability and the running of the governance affairs of our country in line with the provisions of our Constitution. The upcoming elections must never provide an opportunity for anybody to conduct dangerous ethnic campaigns; propagate hate speech or violate fundamental rights and freedoms of the Kenyan people.

We thank you.

Signed:

Comm. Kagwiria Mbogori, Chairperson – KNCHR

Comm. Winfred Lichuma, Chairperson, NGEC

Comm. Dr. Regina Mwatha, Chairperson, CAJ

Hon. Francis Ole Kaparo, Chairperson, NCIC