Press Statement:

For Immediate Release

10th July 2017

Political Interference with the Independence of the Judiciary and Independent Constitutional Institutions

The Kenya National Commission on Human Rights and the National Gender and Equality Commission join the country in mourning the sudden demise of the Cabinet Secretary of Interior and Co-ordination of National Government the late Major General (Rtd) Joseph Nkaissery. We take this opportunity to send condolences to his family, friends and relatives. His passion to ensure the safety and security for all Kenyans and securing the country’s borders were an indication of a man committed to patriotism and the development of the Country. The Commissions have lost a committed public servant who always opened his doors to the Commissions whenever we had security concerns to raise with him. May his Soul rest in eternal peace.

The reason for our engagement with you today is to register our deep concern on the utterances attributed to the President and the Deputy President during their political rally in Baringo County on the 9th of July 2017. Similar utterances have also been raised by the Principals of the opposition coalition, NASA.

The remarks by the political actors in the ongoing campaign period that have threatened the decisions that the Judiciary made concerning the printing of ballot papers as well as the decision by the Independent Electoral and Boundaries Commission to challenge the said decision at the Court of Appeal fall below the letter and spirit of the Constitution of Kenya. As Commissions, we view these utterances as veiled threats to the Judiciary and the Independent Electoral and Boundaries Commission whose effect is nothing but the emergence of excesses of Kenya’s political class.

The Commissions reiterate that the Constitution of Kenya 2010 secures the separation of powers among the various arms of Government. It promotes the independence of the three arms of the government by clearly outlining their respective functions under Chapter 9. Under Article 129, the Executive’s authority is derived from the people. This therefore means that the executive authority must defer to the sovereignty of the people and respond to the national values and accountability mechanisms throughout the Constitution as provided for under Article 10. It should not be lost that under this Article all Kenyans including the political class must respect the rule of law.
Further the 2010 Constitution, under Articles 160 and 249, have laid down elaborate mechanisms to guarantee judicial independence as well as the independence of Commission and Independent offices in the execution of their mandates. We celebrate that Kenya now has a more reformed judiciary that is independent, robust and functional. We also further note and celebrate the fact that one of the objects of the Commissions and Independent Offices is to protect the sovereignty of the people.

It is therefore harmful to see anyone going out of his or her way to threaten the principle of separation of powers as espoused in our Constitution. The political class must respect the independent action by our Courts of Law as well as officials who hold constitutional offices such as the Independent Electoral and Boundaries Commission.

On the same note, the latest spat by the Executive directed to IEBC further seems to have forgotten that aggrieved parties have the right to approach the court and seek redress. The courts therefore in granting the orders on the ballot printing tender are well within the framework of the law.

As Commissions, we commit to advise that the role of the Courts as impartial arbiters of disputes, interpreters of the law and defenders of the Constitution require that they be completely separate in authority and function.

Our political actors must now be aware that the Judiciary, Constitutional Commissions and Independent Offices are no longer appendages of the State or powerful political interests as was the case in the old Constitutional dispensation. The judicial independence must therefore not suffer from the excesses of the political class and pressure must not be exerted on the Judiciary or in the independence of IEBC, both of whom are legally bound to participate in court processes.

We are at a critical stage of the electioneering period, one that can make or break the realization of a free, fair and most of all credible and peaceful elections in Kenya come August the 8th. To threaten the Judiciary will only serve to lower confidence levels in the upcoming polls. It is imperative that we allow the course of justice to prevail on condition that the same is informed by the rule of Law. Finally we urge all political actors to exercise sobriety during this campaign period and to conduct themselves within the confines of the rule of law.

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Chairperson, National Gender and Equality Commission

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