Press release

24th December 2016

Securing the 2017 General Elections


The Commission is concerned by the unfolding events in the country, particularly at a time when Kenya is preparing to go for the General Election scheduled for August 2017.

During celebrations to mark this year’s Jamhuri Day, President Uhuru Kenyatta publicly alleged that some foreign powers are channelling money to civil society organizations to try and influence the outcome of the next general elections. Subsequently, the Leader of Majority in the National Assembly, the Hon Adan Duale, accused the IEBC of working with the International Foundation for Electoral Systems (IFES) to assist CORD in rigging next year’s elections. On 19th December 2016, Mr. Fazul Mahamed, of the NGO Coordination Board, issued a statement purportedly terminating the Kenya Electoral Assistance Program coordinated by IFES on the basis that IFES was not registered and was therefore carrying out its activities in the country illegally. He advised the Central Bank of Kenya (CBK) to freeze all its bank accounts and also advised the immigration authorities to investigate the working status of Mr Michael Yard, the IFES Director.

On Tuesday 13th December 2016, Kenyans witnessed a show down in parliament pitting the Jubilee and CORD legislators following the controversial proposed amendments to the Electoral Laws aimed at introducing manual voter identification and transmission of results in the event of technological failure during the 2017 elections. We understand that CORD is opposed to the manual system citing fears of possible rigging and insists that the elections be managed solely through the electronic system. The Tuesday sitting ended acrimoniously with the CORD legislators managing to stall the proposed amendments. The amendments were however passed on Thursday 22nd December 2016 during a special sitting which was boycotted by the CORD legislators. CORD has accused the Jubilee Coalition of unilaterally bulldozing the amendments contrary to the spirit of the jointly negotiated electoral reforms by the Joint Parliamentary Select Committee. CORD has consequently called for a resumption of countrywide mass
action beginning January 4th 2017, a move that is likely to throw the country into a possible crisis similar to the one that was witnessed earlier in the year.

The Commission is also concerned by the unusually heavy deployment of security forces within the precincts of Parliament during the two parliamentary special sittings and the reported harassment of CORD legislators by the police. This goes against the principles of separation of powers and the principles of national security and policing as provided for in the Constitution. Further, the Commission is concerned by the switching off of live parliamentary broadcasting and mobile phone network during the parliamentary sessions which amounts to a violation of freedom of expression, information and public participation in legislative processes. The Commission also notes with grave concern the attack on Justice George Odunga by the Hon. Adan Duale who accused the judge of tribalism and partisanship.

**In light of the foregoing, the Commission wishes to state as follows;**

1. **On the Controversial Amendment to the Electoral laws**

The Commission calls on the Senate to suspend debate on the controversial amendments to allow for the building of a broader consensus on the same. In the event that the Senate passes the bill, we join the Catholic Bishops in calling on H.E. President Uhuru Kenyatta not to sign into law the controversial bill. Again, in the spirit of what has already been suggested by the Catholic Bishops and the IEBC, we urge President Uhuru to immediately call for dialogue involving all stakeholders with a view to building consensus on the disputed issues. We propose that the matter be referred back to the bipartisan Joint Parliamentary Select Committee which should also be broadened to include other key stakeholders and actors. We urge all actors and Kenyans to embrace dialogue and desist from utterances and actions that could polarize the country further.

2. **On the Attacks on the Judiciary**

The Commission joins the Chief Justice, the Law Society of Kenya (LSK) and other actors in strongly condemning the unwarranted attack on Justice Odunga by the Leader of Majority, Hon. Aden Duale, which is an affront on the independence of the Judiciary. The Judiciary remains the last bastion in safeguarding the Constitution and the rule of law in our Country. Attacks on the Judiciary by especially the Executive or the Legislature offends the constitutional principle of separation of powers between the three arms of government. We warn Hon Adan Duale and the political class who threaten the judiciary, that they risk facing sanctions for violating the leadership and integrity requirements of Chapter Six of the Constitution.

3. **On the attacks on the civic space**

The Commission views the latest attack on IFES as part of an ongoing campaign by the state and the political class aimed at restricting the civic space especially targeted on CSOs that are perceived to be critical of the government. Since last year we have
witnessed similar attacks on Muslims for Human Rights (MUHURI), HAKI Africa, the Kenya Human Rights Commission and the Africa Centre for Open Governance (AFRICOG) among others. IFES is legally registered in Kenya by the Registrar of Companies and has been operating in Kenya since 2002. Fazul Mahamed’s attack on IFES is therefore a flagrant misrepresentation of facts and smacks of severe mischief, recklessness and ill-will. The Commission notes that Fazul Mahamed was recently declared unfit to hold public office following investigations by the Commission for Administrative Justice (CAJ) for abuse of office and misconduct. CAJ also established that Fazul was irregularly appointed to office having lied about his academic qualifications. The Commission finds it disturbing that Fazul continues to occupy public office and wonders on whose behest he continues issuing illegal and arbitrary pronouncements. The Commission is concerned by the recent transfer of the function of regulation of NGOs from the Ministry of Devolution and Planning to that of Interior and Coordination of National Government. We note that this was curiously done after the Minister for Devolution and Planning, the Hon. Mwangi Kiunjuri suspended Mr Fazul Mahamed to facilitate investigations on reported misconduct and abuse of office. The Commission views this move as part of the scheme of intensified securitization of the governance and human rights sectors and an affront on the country’s civic space. We nevertheless call on CS Hon. Joseph Nkaissery to forthwith dismiss Mr. Fazul Mahamed in line with the recommendations of the CAJ Report and to operationalize the PBO Act as recently ordered by the High Court.

The Paris Principles relating to the status of National Human Rights Institutions (NHRIs) require NHRIs to develop relations with Non-Governmental Organizations devoted to promoting and protecting human rights. We call on the government to henceforth desist from harassment and intimidation of civil society organizations and/or attempting to muzzle their civic/voter education initiatives. Civic education is very critical in any electoral process as it equips voters with the requisite knowledge for a meaningful engagement with the electoral process so as to help them (voters) make informed choices and better enjoy their political rights as provided for under Article 38 of the Constitution of Kenya (2010).


The COK 2010, Article 239 (3) (c), clearly states that in performing their functions and exercising their powers, the National Security Organs and every member of the National Security Organ shall NOT: “Prejudice a political interest or political cause that is legitimate under the COK 2010”. However, the recent trend in the deployments of National Security Organs, and particularly, the National Police Service, raise legitimate concerns as the same have been done in a manner that totally disregards this principle. We have, for instance, in the recent past witnessed situations where police were deployed to violently break up peaceful protests and assemblies in complete violation of Article 37 of the COK 2010.
Article 238 (2) (a) and (b) clearly states that national security is subject to the authority of the Constitution and Parliament and that national security shall be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms. National Security Organs are also subject to Article 239 (5) that stipulates that they are subordinate to civilian control. However, over the last couple of years (with the latest scenario taking place in the course of this week) we have witnessed—and especially whenever we have a contentious issue up for debate in Parliament—the massive deployment of security forces within the precincts of Parliament in a manner likely to lead us to conclude that the National Security Organs are out to fully subjugate Parliament and Parliamentarians to their authority in express contravention of the foregoing principles.

The Commission, and in line with efforts aimed at making Article 37 of our Constitution and the Sixth Schedule of the National Police Service Act operational, will continue working with the National Police Service to develop Guidelines on Policing Peaceful Assemblies as well as Guidelines on the Use of Force by the Police. Similarly, and as we prepare for the next General Election in August 2017, we urge the National Security Organs to align their operations to the COK 2010 and to work in a manner that promotes democratic policing and call upon them to shun the current trend that is increasingly entrenching a disturbing practice of regime policing.

5. Gagging of the Media and Curtailment of Freedom of Expression.

Subject to the limitations spelled out in Article 33 (2), the freedom and independence of electronic, print and all other types of media is guaranteed under Article 34 of the COK 2010. The State is called upon to expressly refrain from exercising control over or interfering with any person engaged in broadcasting, the production or circulation of any publication or the dissemination of information by any medium; or penalizing any person for any opinion or view or the content of any broadcast, publication or dissemination. However, contrary to this provisions, we are concerned that the Speaker of the National Assembly ordered for a temporary switching off of the live coverage of the proceedings in Parliament thereby denying Kenyans an opportunity to follow the same. We hold the view that Kenyans have the full rights to be informed about the transaction of parliamentary business by their elected representatives no matter how unpalatable the same might turn out to be.

We call upon the Hon. Justin Muturi, Speaker of the National Assembly, in the spirit of safeguarding the Freedom of the Media and the Freedom of Expression, to exercise caution and avoid issuing orders that are in contravention to the provisions of the Constitution. However, when it comes to the right to exercise Freedom of Expression, and as already noted, we are fully aware that this right must only be exercised within the confines of the law so that:

1. It does not extend to or advocate hate speech

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2. It's enjoyed in a manner that respects the rights and reputation of others.

We are therefore deeply concerned about the currently charged political rhetoric in the country, and which rhetoric clearly borders on prying into the prohibited grounds of Freedom of Expression. We want to assure Kenyans that as we approach the General Election in August 2017, we will work closely with the National Cohesion and Integration Commission as well as other relevant agencies and institutions to ensure that appropriate action is taken against all hate-mongers, and that this will be the case regardless of whether these are, politicians or private citizens.

Thank you

George Morara
Commission Vice-Chairperson