PRESS STATEMENT-FOR IMMEDIATE RELEASE

KNCHR’s Statement on The Right to Assembly (CoK, Article 37)

Our attention has been drawn to the statement by the Government Spokesperson Mr. Eric Kiraithe issued on 30th May 2016 on behalf of the National Security Advisory Committee (NSAC) directing that both CORD and the Prayer Beyond Boundaries Ministries (PBBM) meetings have been cancelled citing security concerns.

The Commission also takes note of the remarks made on 30th May 2016 and attributed to the Principal Secretary, Ministry of Interior and Coordination of National Government, Mr. Karanja Kibicho stating that CORD has a constitutional right to assemble and that the Government has no problem with the opposition opting to have a parallel arrangement elsewhere for the Madaraka day celebrations.

June 1st 2016 will mark the 53rd celebrations of Madaraka Day in Kenya. Self-rule is an affirmation of sovereign rule belonging to the People of Kenya to be exercised through the people directly or their elected representatives as per Article 1 of the Constitution. The assertion of self-rule is not without recognition of the struggles that the Kenyan people have staged in their quest for their freedoms, leading to removal of colonial and dictatorial regimes and the promulgation of the 2010 Constitution and its implementation.

The Commission reiterates the Constitutional provision relating to the Right to Assembly as spelt out in Article 37 of the Constitution. We note that CORD has complied with the law that regulates the right to assembly by duly notifying the Police of their intended rally. The Commission also notes that the Nairobi City County has duly approved the use of Uhuru Park by CORD, therefore clarifying and putting to rest the contested use of the Park by CORD and PBBM. The Commission has also learnt that the PBBM has voluntarily conceded and publicly stated that they do not intend to use Uhuru Park for their prayers. There is therefore, in our opinion, no contest that exists as to the utilization of Uhuru Park on 1st June 2016. There is no law that stops the right of assembly during a public holiday.

Based on the foregoing, the Commission finds no basis for the police to disapprove the CORD rally. The police have no authority over the administration of Uhuru Park which squarely falls under the Nairobi City County. The Commission reminds the police that it is their constitutional duty to facilitate the enjoyment of the right to assembly. Restriction should be the exception not the rule.

The Commission further takes issue with the unsubstantiated claims and allegations of treason accusing certain persons of working with two neighbouring countries to destabilize
our country. The Commission finds this accusations as utterly reckless and irresponsible. Allegations of treason are very grave as they touch the core of our National Security and Nationhood. This is the ultimate crime as spelt out in Article 3(2) of the Constitution.

The Government ought to have apprehended and prosecuted the treasonous elements and deployed immediate security measures to protect our Sovereignty from the belligerent neighboring countries before going public. Going public on these allegations before apprehending the culprits compromises investigations on the matter by alerting the alleged treasonous elements.

Based on the foregoing, the Commission;

- Advises the Government and particularly the National Police Service (NPS) to facilitate CORD, PBBM and any other persons who intend to exercise their right to assemble by providing security and ensuring that criminal elements do not disrupt the gatherings.

- Urges the National Police Service to adhere to Sixth Schedule of the NPS Act 2011 as well as the Universal Standard Minimum Rules on the Use of Force in the management of protests. Use of lethal and disproportionate force on unarmed protestors as witnessed in the recent protests is illegal and unacceptable. The Commission takes this opportunity to condole with the victims and families of the deceased and injured people in last week’s protests.

- Calls on The Cabinet Secretary for Interior and Coordination of National Government, Major General (Rtd) Joseph Nkaissery to desist forthwith from issuing operational directives to the Police contrary to Article 245(4) of the Constitution. Any directive must be in writing. The Commission is monitoring his conduct and shall be taking appropriate action against him, if he persists, for breach of the Constitution.

- Calls upon the Government to immediately arrest the treasonous elements and inform Kenyans of the neighbouring countries threatening our National Security. Without doing so, these allegations only serve to evoke fear and perceptions that they are geared towards justifying repression of civil liberties especially legitimate dissent.

- Urges the Nairobi City County to in future exercise due diligence in allocation of public spaces under its jurisdiction to avoid the confusion witnessed in the current situation.

Finally the Commission once again urges all Kenyans to exercise their Constitutional rights responsibly, within the law and in a manner that respects, upholds and defends the rights of others in line with Article 3(1) of the Constitution.

Signed

Kagwiria Mbogori  
Chairperson