For Immediate release

11th December, 2014

STATEMENT ON THE SECURITY LAWS (AMENDMENT) BILL (2014)

We, the undersigned organizations, wish to express our deep concern with the provisions of the Security Laws (Amendment) Bill, 2014, which the government hastily published on December 10, 2014.

Contrary to the Memorandum attached to the Bill, the proposed changes are not minor. They are momentous and seek to amend the Bill of Rights through the back door. Any changes to the Bill of Rights require a referendum as per Article 255. The proposed Security Laws (Amendment) Bill 2014 makes major amendments to at least 22 laws and impact on several others including the laws relating to County Government.

The proposed amendments are unconstitutional and risk clawing back on the gains made under the 2010 Constitution. They contravene international and Pan-African instruments of human rights to which Kenya is a party. The amendments appear to be calculated to undermine the various accountability mechanisms created by numerous laws passed since 2010. Kenyan authorities need to be careful not to infringe the rights protected by the Constitution in the guise of dealing with security challenges.

In particular, we are greatly concerned by the actions of the Government to use the proposed Security Laws Bill (2014), to amend a number of substantive provisions of various laws in violation of the letter and spirit of the Constitution (2010). The parliament has been requested to fast track the passage of the said bill which effectively closes the window for any participation, scrutiny and input from both the parliament and the public.

Additionally, the said process does not comply with the principles outlined in Article 10 of the Constitution which requires public participation. These values are further encompassed in Article 238 (1) and (2) (a) and (b) of the Constitution which provides that, the national security of Kenya shall be promoted and guaranteed subject to the
authority of the constitution and parliament. Further, that the national security shall be pursued in compliance with the law and utmost respect for the rule of law, democracy, human rights and fundamental freedoms.

The proposed Bill is unconstitutional in that it;

- Suppresses the freedom of expression, right to information, media freedom, rights of the arrested persons, right to privacy, freedom of association, assembly, demonstration and picketing.
- Withdraws judicial safeguards against stop search and detention.
- Withdraws safeguards against undue detention for accused persons and allows for detention without trial.
- Enhances executive control and oversight over independent and constitutional offices including NFSC, KNCHR, IPOA, ODPP, IGP among others.
- Creates multiple regimes governing the regulation of the media and State control over media content
- Creates disproportionate sanctions that are not justifiable in a just and democratic society
- Wrongfully seeks to classify Public Benefit Organizations

It is our view that the security challenges can best be dealt with by restarting the stalled security sector reforms in order to enhance accountability, transparency and efficiency. Security sector reforms have continued to face challenges, and there has been a worrying trend of the authorities not confronting the wider sectoral concerns, and instead passing the buck. The passage of a new law will not solve Kenya’s security conundrum as there are over 30 existing laws related to security that have not been adequately implemented.

WHILE we support the government effort to stamp out terrorism and runaway insecurity, it is our considered opinion that such efforts must uphold the Constitution. To this end we recommend;

- The immediate withdrawal of the said bill from parliament.
- The separation of major from minor amendments proposed in the Bill.
- Compliance with values and principles stipulated under Article 10 and 118 of the Constitution on public participation.
- The subsequent bill or bills should therefore be made accessible and in a simple language to Kenyans with reasonable timelines to allow public participation.
- That any amendment proposed on any provision in the bills of rights should be subjected to a referendum in line with the Constitution
- That the Senate safeguards the rights and interests of Kenyans
Parliament should be guided by provisions of Article 94 (1) of the Constitution which reaffirms that the legislative authority of the Republic is derived from the people and is thus exercised by Parliament on their behalf and for their benefit. Thus any legislation passed by Parliament should be in the national interest. Article 1 of the Constitution of Kenya vests all sovereign power in the people of Kenya and provides that this power is delegated to state organs, including Parliament which is required to perform their functions in accordance with the Constitution.

It is thus not in doubt that the proposals to make these amendments are an affront to the letter and spirit of the Constitution.

Signed

Kenya National Commission on Human Rights

ARTICLE 19

Kenya Human Rights Commission (KHRC)

Independent Medico-Legal Unit (IMLU)

Constitution and Reform Education Consortium (CRECO)

UHAI - EASHRI

National Coalition for Human Rights Defenders-Kenya (NCHRD-K)

Human Rights Watch

Legal Resources Foundation

Katiba Institute

The Gay and Lesbian Coalition of Kenya (GALCK)

The Bill seeks to amend the following Laws;