

PRESS RELEASE

Tuesday, 31st May, 2016

**AN ELECTION'S CREDIBILITY LIES IN IT NOT ONLY BEING FAIR, BUT IN
BEING SEEN TO BE FAIR, THAT IS WHY THE IEBC MUST BE REFORMED**

The Kenyan Section of the International Commission of Jurists, (ICJ Kenya) wishes to add its voice regarding the suitability of the Independent Election and Boundaries Commission (IEBC) to conduct the 2017 General Election.

In line with its mandate to promote the Rule of Law and Democracy in Kenya and in Africa, ICJ Kenya contends that the conduct of free, fair and credible elections by an Elections Management Body (EMB) is central to the survival of any democratic state. Therefore, for Kenya to claim to be a genuine democracy where authority of the government is derived solely from the consent of the governed, the holding and participation in periodic free, fair and credible elections as guaranteed by the Constitution and international law, is vital.

Thus an EMB must inspire public confidence. Additionally, the EMB must be independent; free from interference by other government institutions, and political interests. It must be competent, impartial in its decision making, uphold integrity, professionalism, transparency and accountability in delivery of its mandate.

All this is geared towards demonstrating an EMB's ability to run a credible election. A credible election is not one that half of the voters or political parties consider fair — it is one that all or almost all do. An electoral commission that has been rejected by parties that represent half the country's voters is not able to do what the constitution requires it to do — run a credible election.

The Independent Elections and Boundaries Commission (IEBC) is currently faced with challenges regarding its credibility, independence and capacity to deliver credible, free and fair elections in Kenya. IEBC has failed to inspire confidence in its independence in dealing with political parties. This has led to protests in various parts of the country calling for the removal and/or resignation of IEBC commissioners with some leading to the tragic loss of life.

The conviction and imprisonment by a British Court of two directors of Smith and Ouzman Company for bribing Kenyan election officials, including IEBC Chair Mr. Ahmed Isaak Hassan, commonly known as the ***Chickengate scandal***, has cast doubts on the integrity of IEBC as an institution and its commissioners to manage elections in Kenya. As the judge who convicted Smith and Ouzman and its directors pointed out:

“Ultimately it is the people of the country [i.e. Kenya] who are affected, beyond the financial cost, but also to the extent to that the integrity of, and confidence in, the electoral...systems were undermined. The consequences of which could be catastrophic, in the past leading to violence and loss of life.”

The continued holding of public office by persons named in the scandal is also an affront to the national values under Article 10 of the Constitution of Kenya and undermines the constitutional principles of leadership and integrity as contained in Chapter Six of the Constitution. This therefore points to an urgent need for those implicated in this scandal to vacate office and allow for investigations in order to restore public confidence and credibility to the institution.

Secondly, the report of the Auditor General dated June 6, 2014 on the procurement of Electronic Voter Devices for use in the 2013 elections exposed serious gaps in the procurement processes such as lack of integrity and contravention of the Public Procurement and Disposal Act by IEBC and its officials. Other unresolved questions persist surrounding the management of the 2013 elections including the existence of multiple voter registers, failures surrounding the adoption and use of technology in the elections, and cast reasonable doubt on IEBC’s capacity and integrity in management of the 2017 elections.

Further, the low voter turnout reported in the recent voter registration exercise is symptomatic of Voter apathy and expressed in numerous public opinion polls that further demonstrate a lack of public confidence. Public confidence in the IEBC remains central in guaranteeing legitimacy in the electoral process and ultimately the government elected following a credible election; IEBC’s perceived bias against sections of the political divide also undermines its impartiality and its independence in the administration of elections in Kenya.

From the foregoing, ICJ Kenya is of the view that as currently constituted, the IEBC is heavily tainted and fails to inspire public confidence in its ability to deliver transparent, credible, free and fair elections in 2017. If the current challenges facing IEBC are not urgently addressed, Kenya risks a repeat of the violence that engulfed the country following the 2007/2008 post-election violence resulting from lack of independence and lack of public confidence in the Elections Management Body to deliver credible free and fair elections.

ICJ Kenya therefore urges the following:-

- That investigations into the chickengate scandal that implicates the Chair of the IEBC and the Commission as an institution be concluded expeditiously and appropriate action be taken against any and all officials who may be found culpable;
- That the current IEBC commissioners respectably and voluntarily vacate office to allow for a new team of commissioners to be appointed and restore public confidence in the IEBC ahead of the 2017 elections;
- That in the public interest, and for the sake of the country, relevant political actors; political parties and the Executive should pursue constructive dialogue with a view to creating the necessary political consensus on the appointment of a credible team of new commissioners that can then be formalized through the existing constitutional and legal framework.

SIGNED

3st May 2016



Njonjo Mue

CHAIR

ICJ KENYA COUNCIL

ENDS