

JOINT PRESS STATEMENT BY CIVIL SOCIETY ORGANISATIONS

RECRUITMENT OF COMMISSIONERS TO THE ETHICS AND ANTI-CORRUPTION COMMISSION

Nairobi, Kenya, Thursday, 12th January 2012: We, members of the civil society engaged in the promotion of good governance, are disappointed with the process of recruitment of Commissioners to the Ethics and Anti-Corruption Commission (EACC). The process is highly flawed and stands no chance of giving Kenya a credible Ethics and Anti-Corruption Commission. The recruitment should therefore be immediately terminated and a new one commenced without further delay.

We consider the vote on the report of the Parliamentary Committee on Justice and Legal Affairs that divided Parliament right through the middle as a vote of no confidence in the process and the candidates so nominated. Important issues were raised in Parliament such as the failure or omission by the executive to give reasons for the rejection of the highest scoring candidates, issues of ethnicity and the lack of demonstrable interest in anti-corruption and governance issues. Any commissioners (or Commission) appointed with such issues hanging over their credibility will suffer a crisis of confidence that will be difficult to overcome.

We also note that the President and the Prime Minister forwarded the names of their choice to Parliament for approval one week outside the legal deadline without invoking the provisions of Section 6 (18) of the EACC Act that governs the procedure for extension of time. This omission, though a technicality that should not be given pre-eminence over substance, opens the process to legal challenges and may prove a significant hurdle to the legality of the process. The Ethics and Anti-Corruption Commission Act provides that the executive through a gazette notice should seek for not more than 21 days extension in case of delays.

We further note that it is impossible to have a strong and credible EACC without revisiting the law establishing it with a view to strengthening it. Parliament in enacting the EACC Act in August 2011 was clearly driven by considerations inimical to the fight against corruption and went to great lengths in ensuring a weak legal framework for a Commission with responsibility for a critically important chapter in the Constitution that is also a key pillar in the re-birth of our nation. A commission such as is ~~established under the current law and such as the recruitment process is likely to deal a fatal blow to~~ the aspirations of Kenyans as espoused under Article 10 (National Values and Principles of Governance) and Chapter Six (Leadership and Integrity) of the Constitution.

The recruitment process and the continued vacancy in the EACC, confirms our assessment that Parliament erred in enacting the EACC law providing for the removal of the directorate of the KACC without envisioning a smooth transition in the interim. A section of the civil society had urged the executive not to assent the Bill into law without a clear transition roadmap. This was ignored. As a result, the work of the commission is in limbo and the fight against corruption has been dealt a significant blow.

Successive anti-corruption commission officials have been accused of incompetence, bias and reluctance to tackle corruption head-on; these perceptions have eroded public confidence in this all-important institution. The war against corruption must be led by individuals who believe in and practice the ideals of the Constitution, have an unimpeachable reform record and are true advocates of integrity. Further, such individuals must be appointed in a credible process that inspires public confidence in the outcome.

We therefore recommend to the executive and Parliament to re-start this process and imbue it with the confidence and integrity it warrants. We recommend a fresh recruitment of the commissioners, starting from re-advertising the positions, the setting up of a new selection panel and allowing transparency and integrity to guide the process that will result in the selection of the most suitable candidates to form the commission.

Finally it would be important to understand why such high standards are required of this process and the candidates appointed. The commissioners are required to vet the current staff of the EACC. The EACC is the lead agency in the fight against corruption. It is envisaged to play a critical role in the vetting of public appointments and nominees for electoral positions. It is at the centre of national efforts to re-create our ethical fabric and transform Kenya from an endemically corrupt nation to a bastion of transparency and integrity. It will be ill-equipped for these roles if the integrity of its commissioners and the process of their appointment is in doubt.

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