

5TH October 2017

Michael R. Sialai CBS
Clerk of the National Assembly
Parliament Buildings



J.M Nyegenye EBS
Clerk of the Senate & Secretary to the Parliamentary Service Commission
Parliament Buildings,

NAIROBI

Dear Sirs,

INVITATION TO A PUBLIC HEARING OF THE JOINT SITTINGS OF THE SELECT COMMITTEES OF THE NATIONAL ASSEMBLY AND THE SENATE ON ELECTION LAWS, 2017.

Thank you for your letter dated 2nd October 2017 inviting the Kenyan Section of the International Commission of Jurists (ICJ Kenya) to appear before the joint sitting of the National Assembly and Senate Committees on Election Laws.

Regrettably, this letter is to formally notify you that ICJ Kenya will neither appear nor present memorandum of views to the Committees due to various concerns outlined hereunder.

ICJ Kenya is extremely concerned at the timing, process and content of the amendment laws before the Joint Committee. We are of the considered opinion that the amendments are unconstitutional, not premised on good faith and do promote the rule of law in Kenya.

ICJ Kenya notes that through a Bi- Partisan Joint Parliamentary Committee process of the 11th Parliament, Kenya adopted various amendments to the election laws 2016. These amendments were aimed at enhancing the conduct of free and fair elections and more for the preparation of the August 2017 General elections. The election was held based on these amendments and the pre-existing legal framework. Noteworthy, the court annulled the Presidential elections because the election was not conducted in accordance with constitutional principles and relevant electoral laws.

Kenya is set to hold a fresh election in accordance within the provisions of Article 140(3). On this basis, ICJ Kenya is of the considered view that the election that began in August 2017 has not ended and a fresh election must be held within the same legal framework as the August 8th elections. The unilateral decision taken by Parliament to amend laws governing elections in the middle of an electoral process is in not well conceived or in good faith but an attempt to subvert the electoral architecture for short-term political gain.

A just and equitable society is possible

International Commission of Jurists - Kenyan Section, Vihiga Road, Off Othaya Rd, Kileleshwa • P.O. Box 59743-00200 Nairobi
Tel: +254 20 2084836/8, GSM: 0720 491549 / 0733 491549 • Email: info@icj-kenya.org, www.facebook.com/icj.kenya
Twitter: [#icjkenya](https://twitter.com/icjkenya), Website: www.icj-kenya.org • Dropping Zone: Box 101, 2nd Floor, Revlon Plaza, Tubman road

Chairman: Njonjo Mue Vice-Chair: Kelvin Mogeni Secretary: Patrick Ngunjiri Treasurer: Protas Saende
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Executive Director: Samwel Mohochi

In addition, the proposed amendments backtrack on the reforms that have been made to strengthen democracy and seek to legitimize illegalities and irregularities that the court found were not adhered to in the August 8 Presidential elections. ICJ Kenya further observes that the court did not find any fault with the existing legal framework save for the fact that the election management body did not comply with the law. In light of the foregoing, ICJ Kenya recommends that the proposed amendments should be withdrawn in totality to allow for a smooth running of the upcoming elections.

ICJ Kenya is fully committed to supporting Parliament promote constitutionalism, justice, democracy and the rule of law as has been the case previously. In this regard, ICJ Kenya is willing to engage in a process that comprehensively reviews the electoral framework upon finalization of the ongoing electoral process.

We thank you for your kind consideration and for choosing ICJ Kenya as a strategic partner.

Should you have any questions or require further clarification, please do not hesitate to contact me on samwel.mohochi@icj-kenya.org or info@icj-kenya.org.

Yours Sincerely,



Samwel Mohochi
EXECUTIVE DIRECTOR

CC. Chair Joint Parliamentary Select Committee