

# **DIALOGUE REFERENCE GROUP**

**Securing Elections 2017**

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## **AIDE MEMOIR FROM THE DIALOGUE REFERENCE GROUP DURING A MEETING WITH THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC) WITH REGARD TO PREPARATIONS FOR THE FRESH PRESIDENTIAL ELECTIONS SCHEDULED FOR 26<sup>TH</sup> OCTOBER 2017**

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### **1.0. Preamble**

The Dialogue Reference Group of the Multi Sectoral Forum brings you warm greetings and appreciates this opportunity to consult with you regarding the preparations for the fresh presidential elections scheduled for 26<sup>th</sup> October 2017.

The Fresh Presidential Elections are to be held following the ruling by the Supreme Court of Kenya on 1<sup>st</sup> September 2017 which nullified the presidential election held on 8<sup>th</sup> August 2017.

We wish to reiterate our commitment to the building of a democratic society in Kenya that is premised on justice, unity, peace and liberty. Towards this goal, free and fair elections are essential as an acceptable channel of Kenyans to exercise their sovereignty.

### **2.0. Background**

As provided for in the Constitution of Kenya 2010, the Independent Electoral and Boundaries Commission (IEBC) is responsible for organizing and managing elections in the country. As such, you are wholly responsible for organizing the Fresh Presidential Elections and ensuring that they are conducted in strict adherence to the law.

Religious leaders note with concern that the Fresh Presidential Election will be held against a background of major divisions in the country along political and ethnic lines. We have keenly observed the developing political environment in the country, and are especially wary of its toxicity. The hostile campaigns and propaganda that permeate the national public space have been spurred by the perceived denting of the image and credibility of the IEBC due to the nullification of the presidential election of 8<sup>th</sup> August 2017. Despite this, we note the following salient facts:

- a) The IEBC organized the General Elections on 8<sup>th</sup> August 2017
- b) The Supreme Court ruled that the Presidential Election was marred by irregularities and illegalities, and thus nullified it
- c) The IEBC was ordered to organize Fresh Presidential Elections within 60 days
- d) The Supreme Court did not impute culpability on any IEBC Commissioner or staff
- e) The holding of the Fresh Presidential Elections is facing myriad challenges
- f) If the 60 days are exceeded, the country will have entered uncharted waters that will be at best be marked by contradictory interpretations of the Constitution and at worst collapse of law and order
- g) It is crucial for the stability of the nation and the entrenching if democratic elections as a means of Kenyans exercising their sovereignty that the Fresh Presidential Elections are credible, free and fair.

This context then provides that the Fresh Presidential Elections are facing five key risks:

- a) Lack of Elections Risk, where the IEBC fails to organize the Fresh Presidential Elections, plunging the country into an extra-constitution dispensation. This could be caused by two main factors:
  - a. IEBC Institutional failure, where perceived internal disputes impair the institution from organizing the fresh presidential elections
  - b. External aggravation, where sustained attacks and vilification of the IEBC and its staff incapacitate them from organizing credible elections
- b) Process / Systems Risk, where any or all processes related to the election are affected or impaired. These include but are not limited to appointment of officers; deployment of elections technology; acceptance of the counting, tallying and transmission systems; announcement of results; etc. The major factor here is the failure by the nation to have a common definition of “credible, free and fair elections”
- c) Unethical Campaigns, where intimidation, violence and misuse of public resources are employed to sway voters
- d) Security and Safety Risk, where violence is employed by police or civilian groups to intimidate voters and / or elections related institutions (IEBC and Judiciary)
- e) Rejection of Results Risk, which would perpetuate the current national paralysis in all sectors

### **3.0. Scenarios on the Fresh Presidential Elections**

Taking all these factors into consideration, we have identified the following as the possible scenarios in the period before and after the Fresh Presidential Elections:

<b>Option</b>	<b>Facilitative Measures</b>	<b>Implications on the Nation</b>	<b>Remedial Measures</b>	<b>Role of Faith Leaders</b>
1. Elections with NASA	Agreement on contentious issues between IEBC, NASA, Jubilee and other stakeholders	Elections are held peacefully and the nation is able to move on	Clarification of the contentious issues and identification of viable solutions	<ul style="list-style-type: none"> <li>- Overtly and Covertly encourage the main political formations to engage in joint talks with IEBC to resolve issues touching on the Fresh Presidential Elections</li> <li>- Regularly communicate to congregants the realities of the coming Fresh Presidential Elections</li> </ul>
2. Elections without NASA	IEBC ignores or does not adequately address concerns raised by NASA, goes ahead to organize the Fresh Presidential Elections State deploys security agents to enforce the holding of the elections	<ul style="list-style-type: none"> <li>- Continuous civic unrest until the next elections, with strong possibility of violence</li> <li>- Possibility of amendments of the Constitution of Kenya that would reverse some of the gains made over the last two decades</li> </ul>	<ul style="list-style-type: none"> <li>- Need to address the issues raised by the Judiciary, NASA and Jubilee as regards the elections</li> <li>- The issues need to be resolved with all parties on board</li> </ul>	<ul style="list-style-type: none"> <li>- Promote joint talks by all parties</li> <li>- Provide mediation where necessary</li> <li>- Promote a clear understanding of “credible, free and fair elections”</li> </ul>
3. No Elections by 1 <sup>st</sup> November 2017	IEBC is unable to organize the elections or the conditions in the country don't allow the elections to be held	<ul style="list-style-type: none"> <li>- President Uhuru remains in office until other elections are held (literal reading of Article 142 of the Constitution)</li> <li>- High Court is petitioned to interpret the Constitution and prescribes an alternative management of</li> </ul>	<ul style="list-style-type: none"> <li>- All efforts must be put into holding the elections within the 60 days provided for</li> </ul>	<ul style="list-style-type: none"> <li>- Promote holding of the Fresh Presidential Elections</li> <li>- Promote joint talks by all parties</li> </ul>

Option	Facilitative Measures	Implications on the Nation	Remedial Measures	Role of Faith Leaders
		presidential power - Political arrangement is made that facilitates formation of a coalition government		
4. Military Intervention if Elections not held	Uncertainty and intensified agitation in the country leads to a military take over and suspension of the Constitution	- Installation of President Uhuru or another civilian as head of the military government - Installation of Rt Hon Raila Odinga as head of the military government - Installation of a military leader as head of the government - The main implication is that the route back to Constitutional dispensation is not certain or clear	- All must be done to ensure that respect for the Constitution is maintained	- Promote holding of the Fresh Presidential Elections - Promote joint talks by all parties

It is our considered position that the Commission must mobilize the nation with a view to ensuring that Scenario 1 is achieved. Failure to do so has very grave consequences for this nation and future generations.

#### **4.0. Recommendations Regarding Preparations for the Fresh Presidential Elections**

It is against this background that we make the following recommendations for your consideration as you continue with the preparations for the 26<sup>th</sup> October 2017 Fresh Presidential Elections:

a) Internal Review of the 8<sup>th</sup> August Presidential Election

We encourage that the IEBC Commissioners and management undertake an internal review to identify factors that could have led to the irregularities that caused the presidential election to be nullified. This will facilitate development and deployment of mitigation measures to avoid the same in the Fresh Presidential Elections

b) Address the Issues Raised by the Supreme Court

From an external perspective, we note that the ruling by the Supreme Court identified specific irregularities and illegalities that need to be addressed for Kenyans to be confident that the Fresh Presidential Elections will be credible, free and fair. These include:

(i) Status of Commissioners, Secretariat, Returning Officers and Presiding Officers

We urge you to put measures in place to end the seeming divisions amongst the Commissioners and within the Secretariat. Further, there is need for the Commission to be clear on the administrative action being taken on the Polling and Returning Officers who failed to adhere to the law and regulations.

(ii) Electoral Materials

We urge you to follow the public accountability and transparency in the procurement of electoral materials, including ballots, results forms, ballot boxes and KIEMS gadgets. Endeavour, to the greatest humanly possible extent, to facilitate public participation in the process.

(iii) KIEMS, Servers and transmission related infrastructure and processes

Transmission of the results was cited by the Supreme Court as a key shortcoming in the 8<sup>th</sup> August elections. Openness in this regard, including

granting access to agents and observers in a manner that doesn't compromise security will go a long way in building public confidence.

(iv) Accountability and Verifiability of results

We urge you to put in place a system that will facilitate the Fresh Presidential Elections to meet the standard set in Article 81 (e)(v) of the Constitution of Kenya 2010 which requires that elections be “administered in an impartial, neutral, efficient, accurate and accountable manner”

(v) Security and Safety of voters

We urge you to work with the security agencies to ensure the security and safety of voters during the polling process. This is especially important considering the risk that in some areas attempts may be made to prevent voting from happening.

(vi) Enforcement of law with regard to campaigns

We urge you to courageously apply the law relating to elections especially Article 81 (e)(ii) of the Constitution of Kenya 2010 which requires that elections be “free from violence, intimidation, improper influence or corruption”. The Commission should take note of and deal with incidences of intimidation and improper influence by the candidates and their supporters.

(vii) Logistics and Internal Operations

The ruling by the Supreme Court noted that some of the results forms used in the 8<sup>th</sup> August elections did not meet the required standards. We urge you to assess the operations and establish how such forms came into the system, who was responsible for their introduction, and who failed to supply the Polling and Returning Officers with the correct forms if that was the case. Then take the necessary measures to ensure that the correct materials will be provided to the staff for the Fresh Presidential Elections.

c) Public Communication for Trust Building

Religious leaders strongly recommend that the IEBC consistently communicates to the public what they are going to do differently so that the irregularities of 8<sup>th</sup> August 2017 are not repeated. This is critical for building public trust in the process. Of great importance is driving public understanding of what credible, free and fair elections means.

- d) Multi Sectoral Elections Conference  
Religious leaders notify the IEBC that we are organizing a Multi Sectoral Elections Conference where stakeholders will engage the electoral process and input on the preparations being made by the IEBC. It will be important for the IEBC to attend the Conference.
  
- e) Focus on Organizing the Elections  
Religious leaders challenge the IEBC Commissioners and Management to wholeheartedly focus on organizing credible, free and fair Fresh Presidential Elections. Do not allow yourselves to be diverted by the sideshows being perpetrated by political actors.

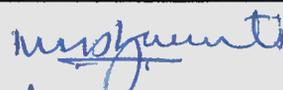
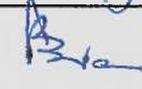
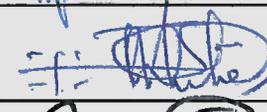
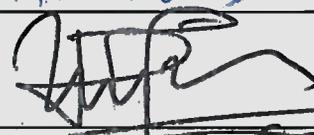
## **5.0. Conclusion**

We would now like to hear your views on our analysis as well as your input on the issues. Do take to heart that now and in future, you will be judged harshly should you fail to execute your Constitutional mandate effectively.

On our part, we will continue to pray for the Commission as you execute your mandate.

Signed for and on behalf of the Dialogue Reference Group, which the executive arm of the Multi Sectoral Forum, on this 29<sup>th</sup> day of September 2017 at Windsor Hotel, Nairobi.

Signed on this 29<sup>th</sup> day of September 2017 at Windsor Hotel, Nairobi.

Institution	Name	Signature
Evangelical Alliance of Kenya	Connie W. Kimbi (Rev.)	
Hindu Council of Kenya	S.B. Vaema	
Kenya Conference of Catholic Bishops	+ Gabriel Orotich	+ Gabriel Orotich
National Council of Churches of Kenya	Rev Canon Peter Kipanya	
National Muslim Leaders Forum	Abdalla Kamwene	
Organisation of African Instituted Churches	Rev. Fr. Joseph Muta	
Seventh Day Adventist	Dr. FRANCIS KURIA	
Supreme Council of Kenya Muslims	ADAM WACHU	