

19 October 2017

## STEP BACK FROM THE BRINK !

### AN OPEN LETTER TO PRESIDENT UHURU KENYATTA AND RT. HON RAILA ODINGA

Dear Mr. President and Rt. Hon. Odinga,

The Kenyan Section of the International Commission of Jurists (ICJ Kenya) wishes to directly raise concern with Your Excellency President Uhuru Kenyatta and Your Excellency Rt. Hon. Raila Odinga on the stand-off around the proposed fresh presidential election to be held on the 26<sup>th</sup> of October 2017.

The 26<sup>th</sup> of October 2017 is slowly yet surely approaching. The Independent Electoral and Boundaries Commission (IEBC) has re-stated that it is ready to hold the election on this date. Paradoxically even as it asserts this, Commissioner Dr. Roselyn Akombe has not only resigned from office but fled the country fearing for her life. Her family too had earlier fled the country following incessant threats which have not been investigated. Dr. Akombe's resignation letter casts doubt on the ability of the IEBC to hold a free, fair and credible election next week.

In statement to the nation shortly after Dr. Akombe's resignation, the Chairman of the IEBC Wafula Chebukati, partly agrees with this assertion citing the hostile political environment as one key reason free and fair elections might not be possible. Both commissioners also cite hostilities and divisions within the Commission. That a majority of commissioners have a pre-disposed position during Commission plenary meetings is a clear indication that the Commission as a whole has lost its independence. Dr. Akombe, who was Chairperson of the Elections Operations Committee – a critical IEBC organ - had this to say:

*The commission has become party to the current crisis. They are keen to have elections in spite of the fact that IEBC staff and Kenyans in affected counties lives might be lost.*

The Chairman had this to say:

*That the country faces a dilemma between operational preparedness and the political environment for credible elections.*

The Chairman states in clear terms that there does not exist a conducive environment in which to hold free and fair elections. The Chairman also insinuates

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that Raila Odinga's withdrawal casts doubt as to whether President Uhuru's eventual win will be viewed as legitimate and unify the country.

The political, economic and social stability of Kenya beyond the 26<sup>th</sup> of October is in serious doubt. We have already witnessed hundreds of General Service Unit police officers allegedly being deployed to NASA strongholds with the idea of securing the presidential election. We are also aware that NASA, through you, Rt. Hon. Odinga, has called for nationwide protests on the 26<sup>th</sup> of October 2017. We are equally aware that you, Mr. President have vowed that the election will go on even in those circumstances.

As you, our political leaders, continue with this game of brinkmanship, an increasingly worried and anxious nation ponders, "*What happens when an unstoppable force encounters an immovable obstacle?*" We do not have an answer, but from past experience, we know that innocent people suffer.

Given the above and recalling that Kenya has already lost tens of lives, including children, at the hands of police, ICJ Kenya wishes to pose to you Mr. President and you Hon. Odinga the following questions:

*Is this not an opportune time to step back from the brink and reflect on whether the 26<sup>th</sup> of October 2017 will yield the desired results that the nation you lead desperately hopes for?*

*Are free and fair elections possible in an environment that is filled with fear, violence, intimidation and improper influence?*

*Are free and fair elections possible for those voters who wish to participate yet reside in opposition strongholds, given the hostile political climate they face? Will their safety be guaranteed after they vote, given the hostile political environment? Will they not be subjected to profiling and forceful displacement from the hostile communities that identify with the grave legitimate issues raised by you Hon. Odinga?*

*Will we not witness revenge attacks targeting members of other communities residing in Jubilee-dominated areas as we witnessed in the 2007 post election violence?*

*Will we, therefore, have any semblance of a united country after the 26<sup>th</sup> of October 2017? Or will we be a nation at war with itself?*

*Recalling that the police were responsible for more than 400 lives lost during the*

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*post-election violence of 2007-8, will we not see more young lives lost during protests at the hands of an even more vicious and unaccountable police force? Have we not lost enough lives and suffered sufficient injuries to warrant your realization that this country faces a grave risk of being lost on your watch?*

*Have we really learnt lessons from the 2007-8 post-election violence that political compromise is most critical before rather than after a flawed election in order to safeguard life and limb? To put it more graphically, will you have the presence of mind to reach a compromise now and sign a document with pen and ink, or are you determined to wait and sign the said document with pens dripping with the blood of innocent Kenyans?*

In view of the forgoing, understanding that Kenya is constitutionally obligated to hold a fresh presidential election within 60 days of the Supreme Court decision of 1<sup>st</sup> September 2017, but given the fact that we do not believe a conducive environment currently exists to hold the fresh presidential election on 26<sup>th</sup> of October 2017 and that innocent voters' lives will be lost if we proceed in this manner, we the ICJ Kenya advise as follows:

1. That the Chairman of the IEBC, as National Returning Officer, urgently return to the Supreme Court and seek further instructions on how to proceed, given the hostile and volatile political environment, the resignation of a key member of the Commission who has fled the country fearing for her life, the fact that a majority of IEBC Commissioners are allegedly operating under duress and the attacks on IEBC Staff who now fear for their lives if they are to proceed with the court order as currently issued.
2. That the IEBC chair pray the Supreme Court to vacate the orders issued on 1<sup>st</sup> September 2017 and issue further appropriate orders following submissions from all parties to ensure free, fair, credible and peaceful elections in a conducive environment, which does not exist at this time.
3. That you, Mr. President Kenyatta and you, Hon. Odinga use this moment to broker a political solution and urgently consider the need to heal the divisions that are threatening to tear this country apart. For, even with an election victory guaranteed on the 26<sup>th</sup> of October 2017 in the environment that exists at present, you, Mr. President will be unable to be accepted as Head of State in large parts of the country and therefore will be unable to fulfill the constitutional demands of your role which include being a symbol of national unity. The inability to play this critical role means that the presidency will become a divisive institution and risk ultimately losing its legitimacy.
4. In our considered opinion, immediate political solutions to the crisis confronting our nation include:

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- a. In the short term, an agreement be urgently sought on both sides on how to ensure that a conducive peaceable political environment is restored within the shortest time possible to enable the country to carry out a free, fair, credible and peaceful fresh presidential election. This is not a call for a coalition, caretaker or transitional government because for a government to enjoy legitimacy, it must be elected by the Kenyan people in a free, fair, credible and peaceful election. It is, rather, a common-sense proposal to enable our country to step back from the brink of the precipice.
  - b. In the medium term, a solution be sought, including the possible establishment of a Peoples Conference led by a decision-making organ whose mandate will include allowing you, Mr. President, and you, Hon. Raila, and other stakeholders to explore and find just and peaceful ways out of the current political impasse and address its root causes through constitutional means.
5. That in the unfortunate event that our counsel falls on deaf ears and the planned fresh presidential election does go ahead on the 26<sup>th</sup> of October 2017, we urge Kenyans to vote peacefully and those who wish to protest to do so peacefully and not interfere with voters wishing to exercise their constitutional right to vote.

In conclusion, Mr. President and Rt. Hon. Raila, we take this opportunity to remind you that our country faces great peril at this moment and in the coming days. But times of great peril can also be times of great opportunity for any nation. The key variable is whether its leaders are content to remain mere politicians pursuing short-term partisan interests or they summon up the courage to rise up and answer the call of the moment and make critical decisions that will save their republic, guarantee them a place in the hearts of their people, and etch their name permanently in the history of their nation. That time, Your Excellencies, is now.

Yours sincerely,



Njonjo Mue  
Chairman



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