



Kenya National Commission on Human Rights

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‘Still bent on Living Large’

Press release on demands for salary increase by recently elected state officers

The Kenya National Commission on Human Rights (KNCHR) once again expresses its concern regarding the ongoing agitation for salary increase by recently elected state officers. We further condemn the apparent bullying and threats to the Salaries and Remuneration Commission (SRC) which is constitutionally mandated to set and regulate salaries and benefits for State and Public Officers.

As a constitutional commission, KNCHR is obligated under Article 249 of the Constitution to among others; protect the sovereignty of the people, secure the observance by all state organs of democratic values and principles and promote constitutionalism.

An excessive wage bill such as ours seriously inhibits the full realization of economic, social, and cultural rights by diverting scarce public resources away from pro-poor expenditure such as water, sanitation, health and education.

In May 2012, KNCHR wrote a memorandum to the SRC urging it to apply human rights principles in reviewing the salaries of different categories of workers inter alia:

- Faithful application of the principle of equal remuneration for work of equal value to address inequalities
- Aim to reduce the gap between the lowest and the highest paid state/public officers to acceptable levels
- Ensure that the review process is done in a transparent and accountable manner
- Ensure participation of all key stakeholders including the taxpayers
- Ensure that vulnerable and marginalized groups are accorded special attention.

The KNCHR views the work of the SRC as an important opportunity towards redressing injustices in salary disparities as well as rebuilding trust and confidence in the public service. One of the key considerations in setting the salaries is the need to ensure that the total public compensation bill is fiscally sustainable – CoK, Article 230 (5) (a). Currently the public wage bill stands at Kshs. 458 billion accounting for approximately 12% of our Gross

Domestic Product (GDP) which is way above the internationally accepted standard of 7% and accounts for almost half of the revenue collected by Government.

This situation is unsustainable and invariably contributes to the spiraling inequality gap in the country which is reputed to be amongst the highest in the world. The 2013 UNDP Human Development Report ranks Kenya among the most unequal societies in the world. Kenya ranked 146 in the list of inequality out of the total 186 countries surveyed – making it the 42nd most unequal country in the world. The report says up to 60 per cent of Kenyans live in poor conditions with no access to quality education and health services, while a further 23 per cent are on the borderline of poverty.

Given the basic minimum wage of the lowest paid civil servant of Ksh. 8910, a public officer being paid Ksh. 1 million earns 112 times more than the lowest paid. According to a recent survey conducted by SRC, Kenya ranks alarmingly high in respect of disparities between the highest and the lowest paid public officers. Kenya stands at 169% as compared to Rwanda 72%, South Africa 27 % and United Kingdom 9%. Moreover, certain cadres of the public service particularly Members of Parliament and other top management in the public sector including permanent secretaries, judges, parastatal executives and members of various commissions have for a long time been over-compensated in relation to other public servants.

For a select few, the public service has become one of the best places to work in Kenya, both in terms of remuneration and conditions of work. In addition to very high salaries and at great expense to the taxpayer, they enjoy privileged lifestyles, such as access to exclusive facilities and inexpensive loans. For a long time for example, Members of Parliament and Judges were exempted from paying taxes on allowances and other benefits. This situation which confers privileged status to some sections of the public service constitutes unfair discrimination and is unjust. Discrimination in respect of employment and occupation is a violation of human rights and is prohibited under international law and under Art.27 of the Kenya Constitution.

Perhaps the most fundamental problem with the way remuneration for the privileged few have been determined in the past is that of conflict of interest. The case of the Parliamentary Service Commission (PSC) which determined MPs and parliamentary staff remuneration comes to mind. The PSC is chaired by the Speaker, deputized by the Leader of Government Business and has eight other members who are all sitting MPs. Effectively, MPs acted as the judge and jury in deciding their own pay. This is against the rules of natural justice and severely compromises the good governance principles of transparency and accountability by an institution that should be the custodian of such principles. It is inevitable that wherever such an arrangement exists, where beneficiaries preside over decisions relating to their earnings, self-interest will prevail.

The establishment of the SRC was thus aimed at eliminating this conflict of interest and ensuring fairness and objectivity in determination of remuneration and benefits for public officers. Under Article 230(4) (a), the powers of the SRC include to set and regularly review the remuneration and benefits of all state officers.

It is in exercise of the above powers that the SRC undertook countrywide public forums to allow for public participation in the setting of the new pay for their leaders, the result of which is being disputed today. In seeking to be elected to the respective offices the legislators were well aware of the ongoing review of salaries which were to become effective once they assumed office. The rationalization as stipulated in the Gazette Notice Vol.CXV –No.33 published on 28th February 2013 applies to all state officers and is therefore not discriminatory as alleged. Indeed, the SRC is in the process of reviewing salaries for other sectors in the public service.

While unveiling the new salaries structure for state officers, the SRC revealed that the government will save up to Ksh500 million monthly. In five years this savings will amount to Kshs. 30 billion which if deployed effectively and efficiently, will significantly contribute to development and the realization of the social-economic rights conferred by Article 43 of the Constitution. Using the right to education as an example: the Ministry of Education Science and Technology’s annual spending per primary school child is about Ksh.4,400. If the Kshs. 30 billion was to be allocated to primary education, it would be enough to see 852,272 poor children through eight years of school. If the money was allocated to tarmacking of roads at the estimated cost of Kshs. 20 million per kilometer, the amount would deliver 1,500kms of tarmacked roads which would open up and link most marginalized areas such as northern Kenya to the rest of the country.

The KNCHR is encouraged that since his election, the president has been consistent in speaking about the need to prioritize things that matter to most Kenyans including maternal health, education, resettlement of IDPs, insecurity and creating employment. During the official opening of parliament last Tuesday he called for prudent management of public finances with respect the current huge public wage bill. As the president aptly stated: *“Today recurrent expenditure is reaching unsustainable levels, squeezing out resources meant for development”*. We are with the president in this regard and urge him to remain steadfast and not to be swayed by the ongoing scheme by politicians.

The KNCHR supports and encourages further measures aimed at securing more resources towards improving the living standards of the majority poor and reducing the cost of living which is currently at an all time high. The KNCHR wishes to remind the recently elected state officers and indeed all public workers that leadership is a sacrifice and a calling for service towards citizens. Moreover, let us not forget that our economy is presently overstretched and overburdened with a debilitating public debt of Kshs 1.8 trillion.

The vicious attacks on the SRC and the threats to disband it are unfortunate and unwarranted given that the SRC is an independent Constitutional Commission that is not subject to direction or control by any person or authority. We urge all politicians of goodwill to reject the proposed petition by the MP for Igembe South to disband the SRC. We must respect our institutions even in those instances when we do not agree with their decisions. There can be no rule of law in a society where leaders especially those who are supposed to be custodians of the law are not themselves subject to the law. When for instance politicians seek to circumvent the law with relative impunity, they lose legitimacy as leaders thereby

impinging the efficacy of the law. A leadership system that does not itself follow the law encourages citizens' disobedience of the law.

We urge those agitating for salary increment to be patient and focus on enacting policies and programmes that will improve our economy. As the economy grows, the SRC shall, in keeping with the law, review the salaries for all accordingly. Acceding to the current demands will inevitably open a can of worms from other public sectors which will only serve to further destabilize the ailing economy. We must all resolve to dedicate our energy to the service of all Kenyans putting national good above any partisan or personal interests.

In conclusion, KNCHR calls upon all Kenyans to continue being vigilant and demand accountability from their leaders and resist any efforts to roll back the gains realized by the new Constitution. An attack on the SRC or any other constitutional body is an attack on the constitutional order, the sovereignty of the people and must not be condoned.

Thank you

Anne Ngugi Munyiva
Acting Chairperson, KNCHR