



Kenya National Commission on Human Rights

1st Floor, CVS Plaza, Lenana Road, P.O. Box 74359 - 00200, Nairobi - Kenya.

Tel: 254-20-2717908/2717928/2717256/2712664, Fax: 254-20-2716160

Email: haki@knchr.org

ADVISORY TO HIS EXCELLENCY THE PRESIDENT ON DIRECTIVE ISSUED ON 2ND APRIL 2015 RELATING TO POLICE RECRUITMENT.

A. Introduction

1. The Kenya National Commission on Human Rights (KNCHR) is an independent national human rights institution (NHRI) established under Kenyan Constitution¹ and in line with the Paris Principles². The National Commission's mandate is to promote the respect, protection and observance of human rights in the Republic of Kenya. In line with this mandate, KNCHR reviews legislation and policy to ensure its compliance with the Constitution of Kenya (CoK), 2010³ and with regional and international human rights standards and principles⁴.
2. On the 2nd April 2015 following the Terrorist attack at Garissa University His Excellency the President issued a statement in which he directed the Inspector General to proceed with the recruitment of the 10000 officers.

We understand this directive to refer the recruitments exercise that has been declared irregular by the court vide its Judgment in HCCC Petition 390 of 2014 (Nairobi). We have attached a copy of the judgement for ease of reference.

¹Article 59 of the Constitution of Kenya and the Kenya National Commission on Human Rights Act 2011

²GA Resolution 48/134 of 20 December 1993.

³ Article 19

⁴ Article 2 (6)

B. KEY CONCERNS

3. The courts ruled in favor of fresh recruitments due to massive corruption, irregularities and blatant violation of the Constitution that had marred the recruitments. In particular the court received evidence and found that
 - a. That the Sub County Committees across the 36 recruitment centers nationwide contravened the Constitution and the National Police Service Act.
 - b. The National Service Commission lacks the authority to mandate the sub County recruitment committees to conduct the process which made it illegal and void of integrity
 - c. The recruitment exercise was carried out in violation of articles 10, 73, 232 and 246 of the Constitution. The Government failed to observe the principles of transparency and accountability in the recruitment exercise because it did not develop guidelines to govern the recruitment process. If the guidelines existed, they were never made public and were enacted without public participation.
 - d. It was unclear which criteria the Commission used to recruit in the absence of guidelines
2. We welcome the strong statement by Your Excellency during the state of the Nation Address on corruption and the immediate measures that have been taken against those adversely mentioned.
3. As stated in the statement Corruption is a vice and it has the effect of regressing on the development aspirations that the Nation has.
4. In our report titled “A ***COUNTRY UNDER SIEGE: THE STATE OF SECURITY IN KENYA AN OCCASIONAL REPORT 2010- 2014***” , we highlighted how corruption has compromised security (Copy attached).
5. We are apprehensive that the directive has the effect of sanitizing a process and individuals who have been adjudged as being corrupt.

6. The directive also is contrary to an express judgement by a court of law. It amounts to avoidance of a judicial order.
7. We consider this a serious breach of the rule of law.
8. Chapter one of the Constitution of the Republic of Kenya affirms the sovereignty of the people⁵ Constitutional supremacy⁶ and obligates everyone to respect, uphold and defend the Constitution. The Constitution grants a robust Bill of Rights, creates various institutions, and provides guiding principles and national values to deliver the promise of the new Constitution.
9. Article 159 of the Constitution gives authority to the judiciary to decide cases. Judicial authority is derived from the people of Kenya. The role of the judiciary in the promotion and protection of Human Rights is overemphasized. In the configuration of government, the judiciary naturally plays the role of the custodian of the rule of law and respect for human Rights. The directive that 10,000 police officers whose recruitment was nullified by the courts report to the police training college is a violation to the Constitution.

C. RECOMMENDATIONS

10. In view of the foregoing and noting that the suspension of the Rule of law will not mitigate against the threat of terrorism.
11. Confident that the training of police officers whose recruitment was marred with irregularities and corruption will not resolve the insecurity challenges that the country is faced with we make the following recommendations, THAT
 - a. Your Excellency consider rescinding the directive
 - b. The NPSC be directed to proceed with fresh recruitments that are in accordance with the law.

⁵ Article 1

⁶ Article 2 (1)

- c. The process of establishing a special unit that will respond to terror attacks be expedited.
- d. The Ministry of Interior and National Coordination urgently initiate a consultative national process for the formulation of a comprehensive security strategy and policy.
- e. We observe that for terrorists there is honor in death; we urge for interventions therefore that focus on prevention rather than response to terrorist attacks. These include;
 - i. taking measures to seal our borders
 - ii. Investing in Community policing and the County Policing authorities
 - iii. Desist from approaches that alienate the communities