



Kenya National Commission on Human Rights

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STATEMENT ON GAZETTEMENT OF CIVIL SOCIETY ORGANISATIONS

INTRODUCTION

1. The Kenya National Commission on Human Rights (KNCHR) is mandated by Article 59 of the Constitution of the Republic of Kenya and section 8 (a) of the KNCHR Act No. 14 of 2011 to among other things promote respect for human rights and develop a culture of human rights in the republic. The Commission is further mandated to promote the protection and observance of human rights in public and private institutions (section 8 (b)) of the said Act.
2. The Commission's attention is drawn to the recent publication by the Inspector General of Police (IGP) of Gazette Notice Number 2326 of 7th April 2015 containing a list of 5 terrorist organizations and 85 entities suspected to be associated with Al-Shabaab. The KNCHR observes that this action was taken following the devastating terrorist attack on Garissa University College in which 147 lives were lost and scores injured.
3. KNCHR condemns in the strongest possible terms terrorism and associated acts and reiterates its condolences to the families of the affected civilians and security officers. KNCHR affirms its support of legitimate government efforts in combating terrorism in all its manifestations.

RULE OF LAW

4. KNCHR is cognizant of the fact that terrorism presents the greatest threat to the realization of human rights, development and national cohesion locally and globally. The Commission further appreciates the urgency with which the State is required to contain the threat posed by terrorism. However, efforts to contain terrorism must be undertaken within the confines of the rule of law which is a fundamental pillar in any democratic society.
5. While the Commission appreciates the need to beef up the number of security officers ostensibly to boost efforts to counter terrorism, KNCHR notes that the presidential directive to the IGP to admit the 10,000 police recruits to Kiganjo contrary to an existing court order is illegal, contemptuous and flies in the face of constitutionalism and the rule of law.
6. It is KNCHR's considered view that the Executive must be at the forefront in the observance of the Constitution and the respect for the rule of law. The Executive must further observe and respect the principle of separation of powers. Disobedience of a court order contravenes this principle and is a dangerous trend that is likely to contribute to anarchy and self-help. KNCHR advises that any action taken in compliance with the presidential directive is *ultra vires*, illegal *ab initio* and subject to challenge in court.
7. We note with great concern that the published gazette notice purports to condemn legitimate Human Rights Defenders namely Haki Africa and MUHURI without affording them adequate opportunity to be heard. KNCHR further notes that in addition to denying these organizations adequate time to respond to the allegations, the State proceeded to freeze their bank accounts thus halting their operations. The listing of the two organizations particularly at a time when the country is engulfed with heavy emotions following the Garissa terrorist attack is bound to negatively impact on the image and credibility of the two organizations who have been at the forefront in protection and promotion of human rights especially in the coastal region. The Commission

acknowledges the commendable work of the two organizations particularly in pursuing accountability for human rights violations in the context of counter-terrorism. The two organizations have recently been working closely with the government in its efforts to stem radicalization of youth in the coastal region and fostering intra/inter religious dialogue. The Commission is still following up on the recent break-in of the offices of MUHURI, in which vital information was taken away.

8. The Commission views the actions by the State as offending the provisions of Article 47 (1) of the Constitution on the right to fair administrative action and section 3 (1) and (2) of the Prevention of Terrorism Act No. 30 of 2012 which obligate the IGP to provide reasonable notice before recommending the declaration of individuals or institutions as specified entities. The Commission is of the considered view that publishing the two organizations in a Gazette notice amounts to condemning them unheard and therefore unconstitutional and abuse of the stipulated law. The law cited by the Gazette notice does not confer the IGP the authority to publish the gazette notice. This authority vests in the Cabinet Secretary as per Section 3(3) of the Prevention of Terrorism Act. Further requiring that the organizations demonstrate why they should not be classified as specified entities, amounts to shifting the burden of proof which squarely lies on the state.

SHRINKING DEMOCRATIC SPACE

9. The democratic space the country currently enjoys is as a result of a long and arduous struggle by Kenyans including civil society organizations and individual human rights defenders. The Commission has observed with great concern the ongoing systematic campaign by the state and its operatives aimed at muzzling voices critical of government policies and practices. This includes negative propaganda and legislative efforts such as amendments to security laws, Public Benefits Organizations Act and Media laws whose net effect would be to constrict the democratic space which was so gallantly fought for.
10. The issuance of the gazette notice comes hot on the heels of the foregoing systematic campaign against civil society organizations speaking against the State and leaves one

wondering whether the naming of the two vibrant human rights organizations is not a continuation of the same.

11. The actions of the IGP amounts to whipping up of public emotions or anger, profiling and is a dangerous trend that could incite the public against credible human rights defenders and particular ethnic groups.

CORRUPTION AND INSECURITY

12. KNCHR observes that the said gazette notice merely camouflages the real issues surrounding Kenya's war against terror key among them corruption. KNCHR notes that the recruitment of police officers was suspended by the Court on the basis that the process was riddled with corruption.
13. The Executive's directive therefore sanitizes a *prima facie* illegal process and runs contrary to recent actions by the President to rid his administration of corruption. His actions further amounts to discrimination it accords preference to only those who are able to corrupt their way through the police service. This offends Article 27 of the Constitution. The implementation of the directive will adversely affect professionalism and contravene the provisions of Article 10 of the Constitution that sets out national values and principles of governance.
14. Additionally following revelations by the police that terror networks have managed to recruit Kenyan citizens into their cells, the Executive cannot underestimate the capacity of these networks to exploit such flawed processes by sponsoring individuals to infiltrate the police service.

EFFECTIVE POLICING

15. Whereas KNCHR appreciates that there could be a justification for additional security personnel, priority should be given to interrogating factors that could be contributing to spiraling insecurity in the country such as poor coordination between the Kenya Defence Forces, the National Intelligence Services and the National Police Service, porous

borders, proliferation of illegal arms, poor resourcing of police officers, lack of responsive training, corruption within the security services, deployment of huge numbers of security officers to non-core policing duties, among others.

16. KNCHR believes that there are adequate administrative mechanisms that can be exploited to boost the personnel needs of the security services without compromising standards. For instance, KNCHR notes that the IGP is mandated to utilize other services within his command such as the Kenya Wildlife Service, Kenya Prison Service, Kenya Forests Service, for effective management of security in the country. KNCHR is thus of the opinion that the recruitment of the 10,000 police officers may not be the priority.

RECOMMENDATIONS

Pursuant to its Constitutional mandate to promote the observance of human rights in all spheres of life in the Republic including observance by the national security organs under Article 59 (2) (d), KNCHR recommends:

- i. That the government fast-tracks and prioritizes the implementation of the Report of the Taskforce on Police Reforms (Ransley Report) and in particular address itself to training and deployment practices such as posting indisciplined officers to hardship areas. It is the Commission's considered opinion that disgruntled and demotivated officers will in no way enhance efforts towards combating terrorism.
- ii. That the National Security Organs must prioritize investment in the reorganization and re-arrangement of security services to ensure proper coordination and prompt preventive response to possible acts of terror.
- iii. The Executive and all public officers are bound by Article 10 of the Constitution and **MUST** promote the rule of law including by respecting judicial orders. In this regard, the IGP **MUST** desist from implementing the directive to admit the 10,000 recruits in the police training college. Implementing this directive perpetuates impunity that

threatens the sanctity of the Kenyan Constitution in particular Article 238 which stipulates the principles of national security.

- iv. That security officers implicated in aiding or abetting terrorism should face the full force of the law.
- v. That the State in furtherance of its obligation to promote, respect and fulfill human rights, which by extension requires the presence of a vibrant civil society, ceases the continued criminalization of legitimate civil society organizations.
- vi. KNCHR shall continue to discharge its constitutional duty of monitoring the protection of the rights of all persons living in Kenya. The Commission acknowledges the anger and desperation of Kenyans arising from the spiraling insecurity especially the recent terror attacks. We remind Kenyans that our security and collective destiny lies in following the rule of law. The alternative to this can only be anarchy!

‘A society that does not live by the rule of law dies’

Signed
Comm. Kagwiria Mbogori
Chairperson
KNCHR