



Kenya National Commission on Human Rights

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Nairobi, Tuesday, 14th March 2017

THE STATE OF HUMAN RIGHTS AND FREEDOMS IN THE REPUBLIC OF KENYA: STATEMENT BY KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

Your Excellency, The President of the Republic of Kenya;

The Kenya National Commission on Human Rights makes this address on the basis of its constitutional mandate as prescribed under Article 59 and within the general functions and powers under Article 252; and the statutory reporting obligations pursuant to the KNCHR Constitutive Act of 2011 (Revised 2012); with the specific mandate to promote a culture of human rights in Kenya.

The Commission's broad mandate is to enhance the promotion and protection of fundamental human rights and freedoms for everyone in Kenya. The Commission plays both a watchdog and advisory role with a vision of a society that upholds human rights for all. It monitors Government and private institutions, carries investigations on alleged human rights violations, and in appropriate cases, provides redress to those whose rights have been violated.

Its operations are guided by the United Nation's approved principles on establishment and functioning of independent national human rights institutions otherwise referred to as the *Paris Principles*.

It is in this respect that the Commission addresses Your Excellency in respect to the current state of Human Rights and Freedoms in the Country:

This *State of Human Rights* statement by the Commission comes ahead of your 4th *State of The Nation Address*. It is part of our deliberate efforts within our mandate to increase and create awareness on the human rights status in Kenya while endeavouring to hold governing apparatus accountable in the promotion and protection of human rights.

As a National Commission, we wish to commend the State for ratifying the key human rights treaties which in themselves have created a reporting obligation on Kenya with respect to implementation and domestication of the provisions of the various international instruments. On this score the Commission lauds the State for the timely manner in which it has continued to submit its reports to the UN treaty body mechanisms except in few instances when Kenya

has been late in submitting its response to the *Convention Against Torture* and the report on the implementation of the *International Covenant on Civil and Political Rights*.

From the onset, **Your Excellency**, our Commission calls on the State to expedite the process of meeting its obligations by submitting these two overdue reports.

In instances where the various Treaty Body Mechanisms have reviewed our Country, Kenya has received numerous recommendations aimed at improving the human rights situation on the ground. Notable among the recommendations received by Kenya is the need for our country to ratify the outstanding human rights conventions and the optional protocols.

The Commission draws the attention of the Government to the fact that it has not ratified eight (8) critical Conventions and Optional Protocols. Key among them are:

- i. The *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (the Kampala Convention);
- ii. The *Convention on Migrant Workers*;
- iii. The *International Convention on Enforced Disappearance*;
- iv. The *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* and
- v. The *Optional Protocol to the Convention on the Rights of Persons with Disabilities*.

Your Excellency;

The Commission wishes to acknowledge the several development initiatives that have been initiated by the Government. Key among these includes the LAPPSET Project, the Standard Gauge Railway and the improved road infrastructure that has opened up many parts of the country including marginalised areas like Marsabit County.

Your Excellency, in respect to such development projects, the Kenya National Commission on Human Rights wish to call upon the Government to ensure robust public participation that guarantees free prior consent before the project commencement.

The Commission further acknowledges and celebrates several Government initiatives like the *Huduma Centres* that have made it possible for most Kenyans to access multiple, effective and efficient public services under one roof. Indeed this is one of the national values that we must all strive to achieve.

In terms of initiatives to grow the Kenyan economy, the Commission notes the efforts that led to the U.S. Department of Transportation's Federal Aviation Administration (FAA) announcing in February 2017 that Kenya complies with international safety standards and has now been granted a Category 1 rating under the agency's International Aviation Safety Assessment program. This will enable our flagship airport, Jomo Kenyatta International Airport, to host direct flights from Kenya to North America. We have every hope that milestone will go a long way in boosting our tourism, trade and travel sectors.

Your Excellency, the Office of the Attorney General and our Commission are working on the *National Action Plan on Business and Human Rights* to further actualise provisions under Article 43 of the Constitution on the rights to health, education, water, food and employment.

Indeed when completed, Kenya will be the first African country to have such an Action Plan in place.

Further, **Your Excellency**, The *National Policy and Action Plan on Human Rights* was developed and launched through close collaboration between the Commission and the Department of Justice. This is a milestone towards entrenchment of human rights principles in a national policy framework. The policy provides the basis and framework for coherence and coordination in the respect, protection and promotion of human rights in the country. The Commission calls on both the national government and county governments to commit resources towards the full implementation of this policy.

Your Excellency;

Further, the Commission takes cognizance of the steps that the Government has undertaken to establish social safety nets that promote the enjoyment of human rights; More specifically the Older Persons Cash Transfer, the Cash Transfer for Orphans and Vulnerable Children, the Hunger Safety Net Program, the Urban Food Subsidy Cash Transfer and the Persons with Severe Disability Cash Transfer.

Further the Commission acknowledges that the NHIF enhancement has increased the healthcare benefits. The new benefits includes: maternal health, free NHIF cover for the cash transfer beneficiaries, surgery, dialysis, CT scans and out-patient facility among others. Accept the thanks of grateful beneficiaries of these benefits.

KNCHR notes that this cash transfer programmes initiated by the Government continue to reach the most vulnerable members of the society and to this end the Commission urges for the expansion of this programme so that more persons in need are able to access these programmes and their benefits. This access must specifically target the arid and semi-arid areas where Kenyans are more marginalized. We look forward to enhanced efficiency and efficacy of these social protection programs.

The Commission further recognises the affirmative action that the Government has initiated in ensuring non-discrimination and equal opportunities for special interest groups. The Commission appreciates the spirit in the Presidential directive on the 30% access to Government Procurement Opportunities for women, the youth and persons with disabilities; and note that it continues benefitting groups that would ordinarily not have the capacity to access Government tenders. However, special attention, continuous monitoring, training and auditing of the actual beneficiaries must be done relentlessly to ensure that all the intended demographic benefits.

Your Excellency;

In your State of the Nation address of 2015, You made a public apology to the victims of past historical injustices and set up a **Ksh 10 billion** restorative justice fund. To date the fund is yet to be operationalized and this hiatus implementation is at the expense of thousands of survivors and victims who continue to suffer immense neglect and indeed feel traumatized.

As a Commission, we call upon **Your Excellency** to expedite and operationalize this fund by enactment of regulations to guide reparations for victims and survivors.

Similarly in your 2015 address, **Your Excellency** you directed Members of Parliament to table and discuss the Truth Justice and Reconciliation Commission (TJRC) report. The Commission notes that two (2) years later, the TJRC report is yet to see the light of day.

The Commission wishes to bring to your attention that the TJRC report was a culmination of extensive hearings around the country aimed at unearthing historical injustices and fostering reconciliation. Our Commission believes that failure to adopt the recommendations in the TJRC report continues to contribute towards the current wave of violence, insecurity and polarization, and may persist as long as historical injustices remain unaddressed.

We urge you **Your Excellency** to fully support a working mechanism between the Executive and the Legislature to facilitate the adoption and implementation of the Truth Justice and Reconciliation Commission report. We wish to bring to your attention that KNCHR and the Office of the Attorney General are working closely to develop guidelines to provide a framework for the implementation of the said report.

Your Excellency;

The past year has seen critical legislation in the advancement of Human Rights being passed by Parliament and assented to by yourself. Of note are *Access to Information Act* and *the Small Claims Court Act*. These are major milestones in the implementation of the right of access to information under Article 35 and access to justice under Articles 28 and 159 of our constitution.

As a Commission, We commit to closely monitor these legislations and the extent to which they facilitate the common *mwananchi* in accessing information and justice both at the national and county levels of governance.

Your Excellency;

In 2016, the much awaited Legal Aid Act was also assented into law and the Kenya National Commission on Human Rights notes that this Act gave effect to the access to justice for all, including the vulnerable groups, as provided for in Articles 47, 48 and 159 of the Kenya Constitution. As a Commission, We welcome this legislation and further call for the speedy enactment of the relevant regulations and the operationalization of the Legal Aid Board.

Your Excellency;

Whereas these legislations provide for access to justice for all, the Commission wishes to raise concerns on the protection of women, children and other vulnerable groups. The concerns range from Sexual Gender Based Violence, to access to health care services by sexual minorities.

In terms of Gender parity, the KNCHR notes with concern that following the Supreme Court Advisory of 11th December 2012, Parliament had an obligation to enact a framework for the realization of the two thirds gender principle at the Senate and National Assembly by August 2016.

Your Excellency on this very important matter, we bring to your attention that despite the extensive research and work conducted around this framework, and the proposals tabled in Parliament, there was a glaring lack of political will to have this critical legislation passed. **Your Excellency**, Gender Equality is a key tenet of our Constitution enshrined under Article 27 and this right must be protected and promoted at all times. Indeed it is important to note that there are serious possibilities of a constitutional crisis post 2017 elections if the framework is not initiated.

Your Excellency;

On the pertinent issue of national security, the Commission notes the prevalence of extra judicial killings and enforced disappearances.

Evidence based work carried out by the Commission continue to establish a pattern of irregular conduct especially by sections of the National Police Service and Kenya Defence Forces amounting to grave violations of human rights. This is especially common against individuals and groups who are suspects of cases relating to terror or extreme violence in Nairobi, Wajir, Mandera, Garissa, Lamu, Tana-River, Kwale, Kilifi and Mombasa Counties.

In some parts of the country the counter-terrorism operations continue to be conducted by a combined contingent of Kenya Defence Forces (KDF), National Intelligence Service (NIS), Kenya Wildlife Services (KWS), County Commissioners, Deputy and Assistant County Commissioners, Chiefs and various units of the National Police Service including the Anti-Terrorism Police Unit (ATPU), Kenya Police Reservists (KPRs), Rapid Deployment Unit (RDU) of the Administration Police, Border Patrol Unit (BPU) and the General Service Unit (GSU).

The violations reported to KNCHR include arbitrary arrests, extortion, illegal detention, torture, killings and disappearances.

The Commission has received multiple narratives of suspects being rounded up and detained for long periods of time in extremely overcrowded, inhumane and degrading conditions. Many have reported being tortured while in detention and sustaining serious physical and psychological harm. Such incidents cause serious mental and economic hardships to the families of victims.

Our Commission calls upon **Your Excellency** to direct the security forces to strictly operate within the rule of law.

The Commission further urges the **Presidency** to work closely with Parliament to pass the *Prevention of Torture and Coroners Bills* into law without delay. The Commission calls for the immediate cessation of detention of civilians in military custody. We urge **Your Excellency** to rally recognition of, and support for, survivors and victims' families as a show of solidarity with the suffering they have endured.

Further **Your Excellency; the** Commission commends and lauds inter-agency efforts and preparations to ensure that elections are peaceful, free and fair. We urge the coordination of all security apparatus under Article 238 and call for the operationalization of the new Police Standing Orders.

Your Excellency;

On 9th December, 2003, the United Nations Convention against Corruption (UNCAC) was opened for signature in Merida, Mexico, and Kenya became the first country in the world to sign and ratify the same.

The enthusiasm with which Kenya signed this convention can be attributed to two main factors: First, that Kenyans were expressing a strong sense of confidence and optimism that the country had what it took to break the yoke of corruption that had seen its economic fortunes plummet to levels where it was registering negative figures of “economic growth”. Second, Kenya was acting in solidarity with the progressive nations of the world who had identified corruption as a serious threat to good global citizenship and the well-being of humanity.

Apart from the United Nations Convention against Corruption, Kenya has now established a number of legal and institutional mechanisms to fight corruption, key among these being: The Constitution of Kenya 2010 - specifically at Article 10 (1) which states that all state and public officers will be bound by national values and principles of good governance, integrity, transparency and accountability in discharging their duties; the Office of the Auditor General; the Controller of Budget, the Ethics and Anti-Corruption Commission; the Office of the Director of Public Prosecutions; the Anti-Corruption Court, which is a specialized Division of the High Court; and a number of Parliamentary Committees which are supposed to offer effective oversight against corruption by either exposing or facilitating the prosecuting all those accused of corruption under the recently enacted Anti-Bribery Act 2017.

Your Excellency;

Despite this robust framework, corruption in Kenya has continued to thrive occasioned by lack of effective prosecution of corruption cases. As a result, colossal sums of money are irregularly withdrawn from national and county government coffers and end up in private and individuals hands. Resources meant for development are, thus diverted. This has serious consequences on critical reforms and the development agenda for Kenya. Corruption and human rights are interlinked, in that there is a cause and effect relationship: where corruption prevails, human rights abuses and violations will follow.

Your Excellency;

From the eyes of an outsider, Kenya might appear to be experiencing an outbreak of industrial actions by employees in various sectors of the country's social and economic life, especially during this year when the country is headed for the general elections. Far too many strikes and other industrial actions have occurred in the country, much to the detriment of service delivery and realisation of human rights for a majority of Kenyans.

The three months doctors' strike, has affected the ordinary Kenyans who cannot afford healthcare in private health facilities and have been forced to bear devastating pain and suffering, deprivation of human dignity and even deaths.

Similarly in the education sector, industrial actions have led to deficient teaching caused by the educators.

Many of the industrial actions the country is witnessing may have been avoided had responsible line Ministries been more responsive and proactive. The Country's leadership and management of institutions and various sectors must always lead the way in ensuring that they address grievances and other issues as soon as they arise. All parties in labour-related conflicts must always engage constructively and in utmost good faith, knowing that any escalation of conflicts leads to a direct deprivation of services to Kenyans; and thus a violation of the rights of citizens.

Your Excellency;

The Commission believes that effective planning, keen allocation and use of resources actions to prevent environmental degradation and a state of preparedness on the part of duty bearers, would alleviate and mitigate suffering caused by natural disasters

Your Excellency;

The Commission wishes to emphasize the important contribution made by Civil Society Organizations to the development and progress of our nation and calls for support and protection of the sector.

In this respect that the Commission urges **Your Excellency** to protect and defend the civic space occupied by CSOs as this will ultimately harness the Country's democratic gains.

The KNCHR is unequivocal in calling for the immediate operationalization of the Public Benefit Organization Act.

Your Excellency;

In the same vain, we call for the protection of media freedoms and the rights of journalists in Kenya.

The Commission would like to re-emphasize that journalists and the media as a whole have a duty to inform the public and the public has a right to receive information. As such members of the *fourth estate* require an enabling and secure environment to optimally enjoy their rights and freedoms in the course of their duties. This environment should and can only be provided by the State as the principal duty bearer. The freedom being exercised by the media is clearly stipulated in Article 21, Article 33, Article 34, Article 35 and Article 36.

Kenya National Commission on Human Rights strongly condemns any attempt to limit the rights of journalists and the media in our country.

Your Excellency;

Last but not least, the Commission calls on the Government Ministries, departments and agencies to offer effective linkages with the constitutional Commissions and the independent offices that influence policy, legislation and the public accountability. On the other hand, though there has been marked improvement in understanding human rights in Government, cooperation is still not optimal. Implementation of Sessional Paper No.3 of 2014; *Policy on Human Rights* requires State cooperation, coordination and communication.

Chapter 15 institutions must be properly resourced as mandated by the Constitution of Kenya, their reports debated in parliament and recommended adopted by the respective line Ministries, Departments and Agencies both the county and national levels.

Finally, Your Excellency;

We give you assurances of remaining seized of our mandate under the law and pledge to fulfil the duties for which we were established.

We Thank You, Your Excellency

We Thank the People of Kenya

Ms Kagwiria Mbogori

Chairperson

Kenya National Commission on Human Rights