

13th March 2017

**PRESS STATEMENT ON THE KHRC's INITIATIVE CHALLENGING LEGALITY OF THE
CONTEMPT OF COURT ACT No 46 OF 2016**

KHRC has moved to court challenging the constitutionality of certain provisions of the Contempt of Court Act stating that several provisions of the Act are inconsistent with the Constitution 2010. KHRC states that the Act robs of the judiciary of its inherent jurisdiction to ensure compliance with its orders by limiting the range of options the court can opt for. KHRC further states that the letter and spirit of the Act is an affront to Human Rights and Fundamental freedoms of the many Kenyans who are affected by disobedience of court orders.

The **Contempt of Court Act No. 46 of 2016** was passed and assented to by the president on 23rd December, 2016. It gained the force of law on 13th January, 2017. The long title of the Act describes the Contempt of Court Act as an Act of parliament to define and **limit the powers of courts in** punishing for contempt of court and for connected purposes. KHRC states that the title of the Act not only limits the power of court to punish for contempt but also whittles down the authority of the court and renders the court helpless and hapless in the face of defiance of court orders by the public officer.

The Contempt of Court Act requires state organs, government department, ministry or public officers to be given 30 days' notice before contempt proceedings are commenced. KHRC states that this proviso seeks to shield public officers from their legal obligations.

The requirement of issuance of 30 days' notice before institution of court proceedings (contempt proceedings) is an affront on the right to a fair hearing and an unnecessary stricture to the right to access to justice. KHRC further argues that this provision of the Act is discriminatory as it does not require such notice to be given to ordinary persons.

KHRC is aware of the many large sum of judgment against government and governments departments and organizations that remain unsatisfied. KHRC receives concerns from many Kenyans and non-Kenyans who hold decrees that government departments have declined to satisfy or public officers have vowed never to satisfy due to impunity and corruption. It is KHRC's position that the Contempt of Court Act seeks to reverse the gains made under the Constitution and the jurisprudence synthesized over time offering guidance on how public institutions should remain accountable, responsible, democratic, and transparent and should operate within the rule of law while observing human rights. The Act is retrogressive to the extent that it promotes impunity and arbitrariness in public governance and amongst public officers, thus violating Article 10 of the constitution on good governance as a national value.

KHRC maintains that the entire scheme of the Contempt of Court Act is inconsistent with the constitution and it requires drastic amendments and or repeal.