

STATEMENT ON THE ATTACKS BY THE NGO BOARD AGAINST THE KHRC

Through a document that was widely distributed in the media, the NGO Coordination Board accuses the Kenya Human Rights Commission, (KHRC) of serious financial and management impropriety, and also alleges that the KHRC's current auditors PWC, and its previous, PKF, have assisted the KHRC in covering the financial impropriety.

The document, an internal memorandum dated 4th November 2016, makes a number of recommendations to other public authorities including the Central Bank of Kenya which is advised to take steps to freeze the bank accounts of the KHRC; the Directorate of Criminal Investigation, which is requested to commence criminal investigations against the KHRC; and, the Kenya Revenue Authority, which is requested to commence measures to recover taxes that the KHRC purportedly owes the government. There is a further recommendation to the Institute of Certified Public Accountants, the authority that regulates the public accountancy profession, should commence investigations against the two audit firms, PWC and PKF.

After generating and distributing to the media this internal memorandum, the NGO Board, through an email to the KHRC, then purported to commence an inquiry into the same matters about which it has made findings and recommendations. The inquiry requires that the KHRC responds within 14 days to the various issues raised.

This is not the first time that the Board is publicly discrediting the KHRC. On 29th October 2015, the NGO Coordination Board announced that it would cancel the registration of 957 NGOs, among them the KHRC, because the concerned organisations had failed to account for funds and were supporting terrorism. In truth, the NGO Coordination Board had never communicated with the KHRC prior to the media publication. For the last one year, the Commission has unsuccessfully sought to meet with the Board, to understand the basis for the media statement but the Board declined to meet or to reply to correspondence.

In the end, the KHRC was compelled to commence legal action against the NGO Coordination Board, and in a final judgment, the High Court found that the failure by the NGO Coordination Board to give the Commission a hearing before arriving at a decision to cancel its registration was a violation of its constitutional rights and that this failure was compounded when the NGO board failed to furnish written reasons to the KHRC when the organization wrote asking for such reasons.

The NGO Coordination Board is acting in bad faith and its actions are oppressive because:

- (a) Through an internal processes that did not involve the KHRC, it has purported to made very adverse findings against the KHRC;
- (b) The purported findings against the KHRC are unfounded and manifestly false;
- (c) The NGO Coordination Board has widely distributed in the media those purported findings. The only reason for doing so is to smear the KHRC, something it also did in 2015;
- (d) The NGO Coordination Board has purported to commence an inquiry of KHRC which is now required to respond to a number of queries about which the Board has already purported to make findings which it has also shared with the media.

There are well-founded doubts that the NGO Coordination Board, as a legal entity, does not exist. To begin with, there is not a single board member in place and it is doubtful if it can make legally-binding decisions

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without board members. In 2012, Parliament enacted the Public Benefits Organisations Act, a statute which would repeal the NGO Coordination Act once in force. While there have been politically-engineered delays in bringing the Act into force, article 116 of the Constitution establishes a mechanism by which statutes, which are not otherwise brought into force, automatically become operational after a period provided for under the Constitution.

By application of the constitutional provisions, the Public Benefits Organisations Act is already in force a consequence of which is that the NGO Coordination Act, under which the board would derive its powers, is no longer in force.

George Kegoro
Executive Director, KHRC
Nairobi, 11th January 2017



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