



EMPOWERING KENYANS FOR NATIONAL LIBERATION

THE SIX-POINT PLAN OF ACTION

23rd August 2006

“NGUVU YA UMMA KWA UKOMBOZI WA TAIFA”

A. Towards a Human Rights State: A Vision for 2012

The Kenya Human Rights Commission (KHRC) is held in high esteem by Kenyans (and the world-at-large) in recognition of its demonstrated commitment to the struggle for the emancipation of Kenyans from oppression and the democratization of the Kenyan nation-state. While the KHRC realizes that Kenya transitioned from authoritarian rule to a more open form of political governance at the end of 2002, there are seemingly indomitable challenges standing in the way of real democratic transformation, and ultimately, the creation of a genuine human rights state in Kenya.

For the human rights state to become a reality, truly democratic institutions, deriving their legitimacy and authority from a democratic constitutional and legal order, must first be nurtured and insulated from manipulation by particularistic interests. A commitment to the notion of democratic citizenship must follow to guarantee that the conception of belonging of all people, in Kenya's political community, is based on equality, equity and the enjoyment of all human rights and democratic freedoms by all, as opposed to unsophisticated conceptions of citizenship based on ethnic affiliation, gender identity or economic status.

On the other hand, citizens aspiring to be members of the human rights state must be aware of, and ought to exercise, their right to hold their leadership, and the state, to account for its actions. Democratic citizens must recognize that they themselves have a moral and legal obligation to be good citizens who uphold the law and respect and promote the rights of all people. It must be understood that the human rights state may not be achieved in Kenya until the nation-state is underwritten by a just social and economic order that benefits all people, and emphasizes the elevation, from deprivation, of the disadvantaged and underprivileged sections of Kenyan society.

With 15 months to go before the next General Elections, scheduled for December 2007, Kenya is approaching a crossroads. There is the possibility of elevating into power, a new government, which is genuinely committed to pursuing the creation of a human rights state, or backtracking, and electing a government that may oversee the reversal of the democratic gains realized so far. To be sure, the KHRC appreciates that achieving democratic transformation in Kenya will not be easy and will take some time to become evident. Nevertheless, the election of a government, which is genuinely committed to pursuing democratic reforms, may very well create the conditions to accelerate the emergence of a human rights state after its term in office—the year 2012.

In order to choose the best possible leadership, which may usher a new democratic order in the post-2007 period, and hopefully, the emergence of the human rights state in 2012, Kenyans must exercise great caution in choosing their next set of leaders. But the KHRC sees no possibility of this occurring if the entire country does not begin to committedly embrace far-reaching democratic reforms in the medium term. Therefore, electoral choices must, of necessity, be informed by politicians' and political parties' demonstrated commitment to de-ethnicising politics; securing comprehensive constitutional reforms and transitional justice; upholding the independence of democratic institutions; promoting gender equality and equity and empowering the civic commons.

Recognizing these challenges, the KHRC has developed a roadmap that sets some of the initial steps, which if pursued, may create the necessary environment to support Kenyans in the quest for a human rights state in the short-term. It is a constructive, realistic plan which we urgently request all Kenyans to support.

B. The Six-Point Plan of Action

1. De-ethnicising Kenyan politics

Status quo: Since independence in 1963, the Kenyan state has been used by the political elite to advance parochial interests, usually on the basis of ethnic identity. As a result of the leadership's failure to adopt a liberal, and socially just, interpretation of the state—as an entity that serves all people—large sections of Kenyans society have, at various times, been denied their rightful claim to access national and state resources on the basis of their ethnicity. In response, Kenyan communities, and their respective political leaders, have tended to organize along ethnic lines in order to capture state power, and subsequently, “secure a piece of the national cake”. This tendency has inspired mistrust, and even hatred, among some of the elites of the country's ethnic communities in addition to eroding the possibilities for ideology-based politics. The result is a consistent record of the election to power of ethno-regional political parties, which are not committed to pursuing an issue-oriented approach to political mobilization and politics generally.

The way forward: The KHRC pledges its support for the Political Parties Bill 2006 with amendments that will explicitly set out far-reaching requirements aimed at transforming political parties into mass entities with a national appeal and outlook. On enactment, it is expected that the government will provide the necessary resources to enforce the provisions of the law. The KHRC also urgently appeals to the Kenya National Commission on Human Rights (KNCHR) to expedite the ongoing drafting of legislation to curb negative ethnicity as an instrument of political mobilization. The KHRC is prepared to bring its vast experience in this area to bear on this initiative by acting as the principal partner of the KNCHR in lobbying for the enactment of this legislation before the 2007 elections.

2. Entrenching the constitution-making process in the current constitution

Status quo: There can be no doubt that the movement for a democratic constitutional and legal order in Kenya is irreversible. The current political order is still authoritarian and Kenyans have demonstrated their commitment to reform it by their resolute agitation for a democratic constitution that empowers them to take charge of their lives and livelihoods. As matters stand, the constitution-making process has been hijacked by the political elite who seek only to pursue constitutional reforms that will guarantee their ascendance to, or continued hold onto, state power. There is no commitment to the rule of law and the spirit of constitutionalism.

The way forward: The KHRC reiterates its conviction that the enactment of a democratic constitution, which safeguards and promotes all human rights for all people, by placing clear limits on state power, is a critical indicator of the right conditions for the growth of the human rights state. The completion of the constitution-making process is the most urgent national priority and the KHRC appeals to all Kenyans to join it in demanding that the political leadership entrenches the process in the current constitution within the shortest time possible. This entails developing legislation, with appropriate benchmarks and timelines, which may be applied to amend the current constitution. Surely, this is the only way to guarantee that the state, whether before or after the 2007 elections, will be bound legally to finalize the constitution-making process.

3. Implementation of Transitional Justice

Status quo: For democratic transformation to be achieved in Kenya, the implementation of transitional justice and the enactment of a democratic constitution must be pursued simultaneously. For too long now,

human rights violators have enjoyed the luxury of impunity for the atrocities and crimes they have committed against Kenyans. Since independence, Kenyans have been frustrated, deceived and increasingly impoverished by selfish, callous leaders and people in positions of authority who have looted and mismanaged the national economy with impunity.

Similarly, the rights of Kenyans to hold dissident political beliefs and to be free from torture and other forms of cruel and degrading treatment have been violated routinely with impunity. The end result is a vicious and seemingly uncontrollable cycle of impunity in which violators are emboldened to continue to commit human rights violations, economic crimes and other injustices against Kenyans simply because they are aware that the state will not pursue them. Indeed, some of these people are shamelessly continuing to rule, or seek positions of political leadership.

The way forward: The KHRC calls on all Kenyans to support its “Campaign against Impunity” which aims to pressurise the state to act against the perpetrators of past and ongoing human rights violations and economic crimes. Towards this end, the state must implement, fully, the recommendations of the Task Force on the Establishment of a Truth, Justice and Reconciliation Commission (TJRC), which proposed the establishment of a commission to investigate gross human rights violations and economic crimes, which have taken place in independent Kenya.

The KHRC intends to re-engage the Ministry of Justice and Constitutional Affairs in order to discuss the future of the proposed TJRC. Besides the TJRC, the KHRC intends to pursue different legal strategies, which are expected to culminate in comprehensive implementation of the recommendations of various commissions of inquiries, which have probed human rights violations and economic crimes—the Goldenberg scandal, irregular and illegal land allocations (the Ndung’u Commission Report) and state-sponsored ethnic violence (the Akiwumi Commission Report) among others.

4. Preserving the independence of democratic institutions

Status quo: In recent months, the autonomy and efficacy of checks-and-balance institutions have come under sustained attack. Created as independent statutory organs, these institutions should operate freely without being subjected to any kind of political interference, which may compromise their ability to limit the possible excesses of the political leadership, by monitoring, auditing, advising and holding it to account for its policies and actions. Today, the legitimacy and authority of public servants working in institutions as diverse as the KNCHR, the Electoral Commission of Kenya (ECK), the Kenya Anti-Corruption Commission (KACC), the Central Bank of Kenya (CBK) and the Office of the Controller and Auditor-General is being undermined by senior political figures affiliated to the ruling party and government. Indeed, the actions of the current regime are undermining an important pillar of Kenyan democracy and constricting the democratic space.

The way forward: The KHRC takes this opportunity to assert to the government that checks-and-balance institutions must enjoy complete independence from political interference. The president must also dutifully exercise his powers to appoint distinguished people, of high integrity, to lead independent institutions. The KHRC commends all the Kenyans—the media, civil society, religious organizations, the legal fraternity and parliamentarians—who have risen to defend democratic institutions in recent months. This level of vigilance must be maintained and enhanced further for it is fundamental to the idea of democratic citizenship, and ultimately, the human rights state. The KHRC stands in solidarity with all the officers of these institutions who have defended these institutions from the intolerance and sustained onslaught of the current regime.

5. Realizing gender equality and equity in Kenyan society

Status quo: The fundamental idea in human rights is the equality of all people. It follows that each person’s human rights must be respected, protected and promoted by all people and the state. In Kenya, women

continue to endure discrimination on the simple basis of their gender. This situation is best exemplified by the low level of women's representation and participation in all spheres of society resulting in an unacceptable degree of exclusion from leadership positions, in particular, national leadership. For instance, there are only 18 women in the National Assembly which has 222 members. Equally, women are poorly represented in leadership positions in civil society and religious organizations, the private sector and the legal profession among other important areas. A human rights state has not a chance of emerging in this context in which the rights of the majority of people, women, are not dutifully observed, protected and promoted.

The way forward: The KHRC declares its solidarity with all people who are working to build the emerging national movement for gender mainstreaming. The KHRC challenges civil society organizations to lead by example and make gender mainstreaming a central priority in their internal governance and programmatic interventions in the run-up to the December 2007 General Elections and thereafter. To realize effective and sustainable macro-level, gender mainstreaming interventions, the KHRC urgently appeals to the state to equip the Commission for Gender and Development with the necessary resources and capacity required by its committed leadership and staff. While commending its leadership so far, the KHRC challenges the Commission to lead more from the front by rallying the gender mainstreaming movement to develop and lobby for gender development legislation.

The Commission must also organize to convince the government to commit the necessary resources required for the holistic enforcement of the Sexual Offences Act, which was conceived to protect women and men from sexual violence. Greater emphasis must be placed on the act's provisions which relate to the prevention of, and public education on sexual violence in addition to the welfare and protection of affected people. Similarly, the newly launched Youth Empowerment Initiative must devise measurable gender mainstreaming indicators to ensure incorporation of all young women and men in its empowerment strategy.

6. Empowering the civic commons

Status quo: Kenya has made some important strides in the empowerment of citizens to have a real influence in the making of decisions that affect their lives. The right of the people to choose how they wish to be governed has been unconditionally upheld in the last four years, at both the December 2002 General Elections and the November 2005 Referendum on the Proposed, New Constitution. Generally, both processes were deemed to have been a step in the right direction. The implementation of the Constituency Development Fund (CDF) Act has also empowered many more Kenyans to participate in governance, thereby enhancing some aspects of human rights. However, the recent electoral malpractices that characterized the July 2006 by-elections in five parliamentary constituencies signals a reversal of the fundamental duty of the state to facilitate free and fair elections.

The way forward: Kenyans must continue to agitate for their own empowerment. They can be supported, but they must marshal the necessary commitment to empower themselves. Kenyans must act in support of human rights, democracy and development as much as the state has the primary responsibility to facilitate their enjoyment.

Kenyans must therefore reject political manipulation during the electoral process, and exercise vigilance and keen interest in the management of devolved public fund initiatives such as the CDF. Through its Devolved Public Funds Accountability Initiative, the KHRC continues to support the human rights-based approach to development which promotes grassroots participation and integrity in governance. In September this year, the KHRC will release the findings of a national scientific survey on the impact of the CDF on human rights, which will form the basis of subsequent lobbying activities aimed at securing the adoption of recommendations that are designed to infuse the human rights-based approach in the administration of the CDF.

The KHRC urgently appeals to the ECK to make arrangements for continuous voter registration in the 15 month run-up to the December 2007 General Elections. The Office of the President must act to ensure that all Kenyans of age, who are eligible to vote, get National Identity Cards promptly. On their part, Kenyans must register as voters at the earliest possible time to ensure that they participate in the general elections. To fail to do so in large numbers is to subvert the democratic process, and subsequently, the quest for the human rights state. Through research and advocacy activities planned over the next six months, the KHRC expects to support this process in the marginalized northern regions of Kenya in which the rightful claim of hundreds of thousands of Kenyans to access official national identity documents is routinely restricted.

C. Towards 2012: Organizing for the emergence of the human rights state

The KHRC's Six-Point Plan of Action is an outline which details some aspects of its planned strategic intervention in the democratization process in the short-term, that is, before the December 2007 General Elections. The plan is a part of a larger strategy—the Vision 2012—which aims to realize the emergence of measurable indicators of a truly human rights-based state in Kenya by that year in which the values, principles, the very essence, of rights and democratic practice are implanted in the philosophy of the state and the consciousness, outlook and lifestyles of the people themselves. To achieve this great dream, the KHRC realizes that it must vigorously work to empower and support Kenyans and state institutions to appreciate, prioritize and genuinely pursue forms of governance that safeguard the humanity, dignity, economic welfare and the rights of all people.

The KHRC expects to continue working with its partners at the local, national and international levels on the ongoing and future initiatives related to the Six-Point Plan. The KHRC intends to periodically hold sessions with various stakeholders including the media, member organizations of the human rights fraternity, state institutions and its countrywide network of community-based human rights advocacy initiatives to legitimate and sharpen the focus of its strategy. All of the concerns addressed in the plan share an equal measure of importance, and the KHRC will endeavour to mobilize sufficient resources to execute its interventions. Finally, the KHRC makes an impassioned plea to all Kenyans of good faith to support it to realize the Vision 2012 by acting purposefully and devotedly to expand the democratic space and respect for human rights in the period before, and after, the December 2007 General Elections.

Pamoja Tutee Haki!