

Kenyan CSOs demand the Unconditional removal of MUHURI and Haki Africa from the terrorism list

on 14 April 2015.

We the Civil Society Organisations express our deepest condolences to all affected by the heinous terrorist attack at the Garissa University College on 2nd April 2015. We strongly condemn this act and the despicable attempts to cultivate religious and ethnic tensions within Kenyan society. As we come to terms with the loss of such young and promising lives, we must recall that Kenya's true strength lies in its ethnic, cultural and religious diversity coupled with a determination to live in peace and unity as one indivisible sovereign nation.

The Kenyan human rights community is extremely concerned about the decision to freeze the accounts of two human rights organisations, Haki Africa and Muslims for Human Rights (MUHURI), in the aftermath of the terrorist attack in Garissa.

According to Gazette Notice 2326 of 7th April 2015, the Inspector General has listed five organizations under a list titled, "List of Terrorist Organizations". These are Al-Shabaab, Mombasa Republican Council, Al-Qaida, ISIS (Islamic State of Iraq and Syria) and Boko Haram. The same Gazette notice contains a longer list titled, "List of Entities Suspected to be Associated with Al-Shabaab."

This list has 85 entities which appear to be companies, business organizations and individuals. MUHURI and Haki Africa have been listed here.

As peer human rights organizations, we have worked closely with both MUHURI and Haki Africa in our attempt to counter violent extremism and improve security at the Coast. Both organizations work openly and peacefully and have advocated for constitutional means of ensuring countering terrorism while also observing human rights. Their work is respected nationally and internationally. Notably, the Executive Director of Haki Africa, Hussein Khalid, was one of two Kenyan civil society leaders who was invited to and participated in the White House Summit in DC on Countering Violent Extremism in February 2015. We therefore do not see a justification for the inclusion of these two organizations in this list.

We note that the Prevention of Terrorism Act, on which the notice in the Gazette is purported to be based, confers on the Inspector General and the Cabinet Secretary, the power to make a "specified entity order" against an entity involved in terrorism. The Act also provides that "Before making a recommendation ... the Inspector-General shall afford the affected entity an opportunity to demonstrate why it should not be declared as a specified entity."

We are concerned about the procedure that has been used by the Inspector General. First, although the law clearly provides that the Inspector-General shall afford the affected entity an opportunity to demonstrate why it should not be declared as a specified entity, the two organisations have had no contact with the Inspector-General and have learnt about this process from reading the Kenya Gazette.

The failure to give the organisation's notice or to allow them an opportunity to defend themselves is inherently prejudicial and offends all notions of fairness.

Secondly, as indicated above, the Gazette Notice has two lists, the first containing five entities listed as terrorist organizations, and the second with 85 entities listed as entities suspected to be "associated with Al-Shabaab." Because the list is long and the organizations whose names form the list appear unrelated, we are concerned that the list is a meaningless attempt to bring under one label different organizations, many of which may be innocent, as terrorist organizations.

While we support the Government's effort to also counter violent extremism, particularly in the wake of the killing of 147 Kenyans, mostly university students from Garissa University College, we consider the listing of MUHURI and Haki Africa to be an unthinking reaction to intimidate not only the two organizations but all civil society. Such reactions have continued, the latest being the demands by a group of Kenyan legislators and the Deputy President to close down Daadab refugee camp, disregarding Kenya's obligations under regional and international law and blaming violent extremism on asylum-seekers and refugees.

We emphasize that, without due regard to the standards and procedures outlined in law requiring material grounds for claims of terrorism-related activities and affording the affected individuals and organisations reasonable opportunity to demonstrate why they should not be declared specified entities, any action taken is of dubious legality and unfair, and devalues the government's efforts to fight terrorism.

Counter-terrorism can only succeed if both civil society and the Government work together to counter violent extremism. Continuous antagonism of civil society will only aggravate the situation. We wish to express our solidarity with our peer human rights organisations and reaffirm our commitment to countering violent extremism through rule of law.

We therefore demand:

Unconditional removal of MUHURI and Haki Africa from the terrorism list and the immediate lifting of any freezing or restriction of the activities of these organisations;

That the Government adheres to Article 47 of the Constitution of Kenya which provides for the right to "administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair." In particular Article 47 (2) which provides that: "if a right or fundamental freedom of a person has been or is likely to be adversely affected

by administrative action, the person has the right to be given written reasons for the action.”

That the Government upholds Article 27(4) in the Bill of Rights and desists from profiling individuals of Muslim or Somali descent;

That the Government fulfills its obligation to protect its citizens by enhancing its security presence in vulnerable parts of the Country and assures all citizens and residents of Kenya of their safety. In this regard the Government should address root causes of insecurity, including inequality and other grievances in vulnerable parts of the country;

That the Government acknowledges the important role played by civil society in promoting tolerance in the struggle against violent extremism and ensure an enabling environment in which human rights defenders and civil society can operate free from hindrance and insecurity.

14th April 2015, Nairobi |

Kenya Human Rights Commission (KHRC)

The Kenya Section of International Commission of Jurists (ICJ Kenya)

Kamau Ngugi, Executive Director National Coalition of Human Rights Defenders (NCHRD-K)

Kenyans for Peace with Truth and Justice (KPTJ)

Constitution & Reform Education Consortium (CRECO)

ARTICLE 19 Eastern Africa

Human Rights Watch

Freedom House

Mazingira Institute

UHAI - the East African Sexual Health and Rights Initiative

Lorna Dias, Executive Coordinator, Gay and Lesbian Coalition of Kenya, the (GALCK)

Commonwealth Human Rights Initiative (CHRI)

FIDH, within the framework of the Observatory for the Protection of Human Rights Defenders

OMCT, within the framework of the Observatory for the Protection of Human Rights Defenders

Coalition for Constitution Implementation (CCI)