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Date 15TH August 2017

15-08-2017 PRESS STATEMENT

We have seen a notice of 14th August 2017 and a letter of 15th August 2017 both issued by the Executive Director (“the ED”) of the NGO Coordination Board (“the Board”) addressed to Kenya Human Rights Commission (“KHRC”) and African Centre for Open Governance (“Africog”) respectively.

Whether or not the Board has legitimate concerns about any NGO, it must be noted that the Board and the ED exist only by virtue of transitional clauses of the Public Benefits Organisations Act (No.18 of 2013) as read with Section 22 of the Interpretations and General Provisions Act (Cap 2). These keep operational provisions of the repealed NGO Coordination Act including Section 16(2) that requires firstly that the process of cancellation cannot commence before issuance of a notification of intended cancellation and secondly that any cancellation of registration becomes effective after a 14 day notice has been issued. Section 19 and Regulation 17(5), also preserved, provides for an appeal process where an NGO, aggrieved by cancellation, may continue to operate.

The purported cancellation of KHRC’s certificate by Mr. Fazul’s notice of 14th August 2017 without due process and without stipulating a 14 day period is an ineffectual “pronouncement” that has no force of law whatsoever.

As concerns Africog, which is self-described as “an independent non-profit organisation” it is registered as a company limited by guarantee under the Companies Act (Cap 406). This is public information freely available from the Registry of Companies in the office of the Registrar General. Mr Fazul therefore exercises no authority over Africog. He cannot direct Africog or its directors to do anything and his request and advice to the Directorate of Criminal Investigation and Central Bank of Kenya respectively are worthless.

Isaac Okero (President), Faith Waigwa (Vice-President)
Manthi Masika, Alex Gatundu, Alan Kosgey (General Membership Representatives)
Edwin Sifuna, Harriette Chiggai, Jemator Dorothy, (Nairobi Representatives)
Godfrey Kitiwa, Annet Nyukuri, David Njoroge, Jane Masai, (Upcountry Representatives)
Grace Okumu (Coast Representative)

The PBO Act is legislation intended to create an enabling environment in which civil society and charitable organizations should thrive for the public benefit. The existence of a vibrant independent civil society is a hallmark of a democratic and free nation. The government's failure since January 2013 to bring into operation the PBO Act, in defiance even of the express orders of the high court, is not in the public interest. It leaves in place the absence of a clear statutory framework which encourages oppressive expressions of impunity as demonstrated by Mr. Fazul.

This is not the first time he is doing this; his last attempt was quashed by the High Court. The timing of his actions, coming after the conclusion of a highly contested election process and against two organizations that have been vocal about concerns during this period, is extremely suspect and demonstrates bad faith.

In the exercise of its mandate to advance the rule of law the LSK shall take all steps necessary to protect the space that civil society must be allowed to operate in. The Acting Cabinet Secretary for the Ministry of Interior and Coordination of National Government and Security is asked to rescind Mr. Fazul's unlawful actions against KHRC and Africog and to censure him for his conduct.

The Acting Cabinet Secretary is further reminded that he is exposed to the consequences of contempt proceedings in High Court Constitutional Petition no. 351 of 2015 for the continued failure to bring into operation the PBO Act 2013.



**ISAAC E. N. OKERO,
LSK, PRESIDENT**

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