



CHARTERHOUSE BANK LTD

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Our Ref: *CHB/KNCHR/CN1/06*

Wednesday, July 19, 2006.



The Chairman

Kenya National Commission On Human Rights
1st Floor, CVS Plaza, Lenana Road,
P.O. Box 74359 - 00200
NAIROBI.

ATTENTION: MAINA KIAI

Dear Sir,

RE: IN THE MATTER OF YOUR LETTER REF: KNCHR/COF/47 DATED 12th JULY 2006.

The vision of the Kenya National Commission on Human Rights (KNCHR) is to create a strong vibrant human rights culture founded on equality and social justice for all. The KNCHR prides itself of being possessed of eight core values:

1. Independence
2. Accessibility
3. Humility
4. Professionalism
5. Gender diversity equity and equality
6. Accountability
7. Participation
8. People centred approach.

By employing these core values, KNCHR seeks to upon receipt of a complaint conduct investigations and where necessary seek redress on behalf of an individual or group.

Having stated the above, we hereby acknowledge receipt of your letter Ref: KNCHR/COF/47 dated 1st July 2006 on which is appended the signature of Mr. Maina Kiai the Chairman of KNCHR.

We would like to start by pointing out that the directors of Charterhouse Bank to whom you have addressed individually the said letter are perturbed, stunned and greatly concerned especially by the contents of your last but one paragraph which states:

May we also add that should anything untoward compromise the safety and security of Mr. Odhiambo or Mr. Mwirigi, then suspicion will remain that those responsible are the owners of Charterhouse Bank, their agents and/or some elements within the police force.

Equally flabbergasting are the contents particularly those of your 2nd, 3rd, 4th, 5th, 11th, 12th and 13th paragraphs which state:

The events surrounding this issue are that in April 2004, when Mr. Odhiambo was employed as the Internal Auditor at Charterhouse Bank, he came across information touching on various economic crimes that included money laundering, tax evasion, violation of the Banking Act and the Central Bank of Kenya Act, being perpetrated by the owners and management of the bank.

He relayed this information to the Kenya Revenue Authority in the same month. In August 2004, this information was transmitted to then Minister for Finance Hon. David Mwiraria with a promise of strict confidentiality. Based on this information, Hon. Mwiraria through the Central Bank of Kenya constituted an Inter Agency Task Force chaired by the Kenya Anti-Corruption Commission to carry out a detailed investigation into the violations cited in that report.

During the course of the investigations by the task force, Mr. Odhiambo assisted the Task Force with additional information including the forensic audit on Charterhouse Bank. In August 2004 as the work of the task force was ongoing, Mr. Odhiambo was advised by his contacts within the Task Force to resign his job at Charterhouse Bank and in view of his cooperation, the Central Bank of Kenya offered him alternative employment in February 2005 in the Internal Audit Department.

His role in assisting the Task Force was regrettably leaked to the owners and the management of Charterhouse Bank around November 2004 and as a result he started receiving anonymous and threatening phone calls through his mobile phone. He also noticed several suspicious persons inquiring about where he lived. Owing to these inquiries, Mr. Odhiambo was forced to dispatch his family-his wife and two children- out of the country. Since then, he has been forced to move houses thrice.

Article 9 of the International Covenant on Civil and Political rights provides for the right of everyone to enjoy security of the person which right is also guaranteed by Section 70 of the Constitution of the Republic of Kenya. Every Kenyan is entitled to life, liberty, security of the person and the protection of law. Now that Messrs Odhiambo's and Mwirigi's personal safety has become a matter of national concern on account of the events that surround Charterhouse bank, it is our sincere belief that the police have a duty to ensure that their right to security of their persons is not infringed.

We further draw your attention to Section 392 of the Penal Code (Cap 63 Laws of Kenya) which imposes a duty on citizens to prevent commission of crimes by making it an offence to neglect to prevent a felony. It reads:

"Every person who, knowing that a person designs to commit or is committing a felony, fails to use all reasonable means to prevent the commission or completion thereof is guilty of a misdemeanour"

In our minds, the KNCHR is expected to be a credible, professional and ethical body holding custody of human rights protection and mandated to act impartially, fairly, legally and within the rules of natural justice. It is our fair assumption that your above quoted letter was a finding resulting from a complaint filed to and thoroughly investigated by the KNCHR.

Our surprise is therefore based on your findings that "*... should anything untoward compromise the safety and the security of Mr. Odhiambo or Mr. Mwirigi, the suspicion will remain that those responsible are the owners of Charterhouse Bank, their agents and/or some elements within the police force.*"

This finding is ascertained and confirmed by your mighty signature as the Chairman of KNCHR. The KNCHR in its protection and defence of human rights and in its administration of justice is only mandated to act within the law, independently, impartially and without discrimination.

The rules of natural justice demand that no person be condemned unheard, or without being accorded a fair opportunity to defend themselves against any accusation levelled against them. The KNCHR has accused, condemned and scandalised us under none other than by its Chairman without giving us the opportunity to respond to any allegations and we are disturbed as to how the Chairman a lawyer of no mean distinction drew his conclusions without giving both parties a fair hearing.

It is our contention that the acts, the letter and the findings stated in the said letter are unreasonable, unfair, discriminatory, biased, scandalous and against the rules of natural justice as they are based on malicious rumours and allegations and are in violation of our fundamental rights for the following facts and reasons:

1. Charterhouse Bank is a financial institution, licensed, operating, controlled, supervised and regulated under the Banking Act and the Central Bank of Kenya Act.
2. The Central Bank of Kenya (CBK) as the regulator is mandated under the Banking Act to inspect, supervise, provide a remedy and advise or engage a professional to undertake any act or action that is required for a bank to be compliant.
3. The Central Bank of Kenya in performance of its duty brings to the notice of any commercial bank any violations if they are detected and the bank is given an opportunity to respond before the CBK takes any action.
4. Charterhouse Bank of its own volition and motivated by the need to be compliant with the Banking Act Cap 488 Laws of Kenya, the Central Bank Act of Kenya Cap 491 of the Laws of Kenya and the Prudential Guidelines sought to recruit an internal auditor to ensure that all the bank accounts, documents and operational procedures were in total compliance with the laws and more particularly the CBK Act and the Banking Act. Mr. Peter Odhiambo sought employment in Charterhouse Bank as an internal auditor and during the interview, he portrayed himself as being capable of undertaking the duties and functions of an internal auditor responsible for the bank's audit that is to say, all the documents transactions, operations and banking related business. He was supposed to ensure compliance and make recommendations to the management where necessary.

5. In essence, the custodians of the bank's documents at the Charterhouse Bank were the internal auditor Peter Odhiambo and the person in charge of the archives Joseph Maina Gachari.
6. From the time that Peter Odhiambo was employed, he at all times informed the management that he was up-to date with his audit, that he had audited and continued to audit all the bank books, documents, operations and transactions and everything was compliant with the Banking Act, the Central Bank of Kenya Act and the Prudential Guidelines. Even where an issue would be raised by the Central Bank Inspectors, it is Peter Odhiambo who would be the first person to respond before the matter came to the attention of the management or board.
7. If there were any or if there existed any violations or wrong doings at Charterhouse Bank, Peter Odhiambo either caused them or deliberately failed to rectify them or where he was not able to rectify, to bring them to the attention of the management or the board or to the Central Bank of Kenya Inspectors who have always been inspecting Charterhouse Bank from time to time as provided by the statutes.
8. Sometimes in the year 2003, the management of Charterhouse Bank became aware that its data and diskettes to the Clearing House were being tampered with to the detriment of the bank and its customers. This being a major security breach, the matter was reported to the Central Bank of Kenya, the Banking Fraud Investigations Department but no one was apprehended.
9. At the same time the bank discovered that its Back-up data and software were missing. This time a report was made at the Central Police Station but no action was taken. The management then called and interrogated Mr. Lameck Wangumba, who was in charge of the Information Technology and computer systems at the bank. From his response and behaviour, it became apparent that he knew and/or was responsible for the theft of the bank's back-up data and the software.
10. As soon as Mr. Wangumba knew that the police had been involved, he quickly left the bank just before Christmas of December 2003.

11. With this information and experience, the management became alert and discovered that although Lameck Wangumba had left he was in constant touch with Peter Odhiambo.
12. Sometimes in mid 2004, the bank received information that someone was stealing and removing documents from the bank. The management directed Peter Odhiambo to investigate, audit and to establish the extent of the theft and what documents had been stolen and whether it was true or not. He was required to put into place measures to ensure that confidential documents were not stolen or interfered with and if he had any difficulties, he was supposed to report and/or make recommendations to the management.
13. At all times, Peter Odhiambo confirmed to the management that he had perused and examined all the documents and transactions and that all were in compliance and that the allegations of theft and/or removal of documents from Charterhouse Bank was false.
14. Being the internal auditor, the bank's documents custodian and a member of the senior management team, the bank had no reason not to believe him.
15. However, the information about documents being stolen and removed from the bank increased. Whatever was stolen was allegedly being taken to the Central Bank of Kenya and to the Kenya Revenue Authority. The bank engaged the services of a private investigator who discovered that the documents were actually being stolen and removed from Charterhouse Bank by Peter Odhiambo and another officer called Chege from the foreign exchange department and were being delivered to certain people both at Kenya Revenue Authority, the Central Bank of Kenya and at various hotels within the city.
16. After receiving the Investigator's report, the bank called in the police and Peter Odhiambo left the bank in a huff when he discovered that the police had been called in respect of the stolen documents and he had been identified as the culprit.
17. The private investigator ascertained that Peter Odhiambo and Chege were frequent visitors at the Central Bank and the KRA offices.

18. On 31st August 2004, a contingent of officials from CBK accompanied by the Governor's son Mr. Silla Mullei, Mr. Melville Smith and others including officers from the Kenya Anti Corruption Commission (KACC) and police officers raided Charterhouse Bank demanding certain specific documents in respect of certain specific accounts running up to and approximately 260 accounts.
19. At the bank it was discovered that during the activities of these raids, the raiders were constantly receiving directions on their mobile phones which seemed unusual. The raiders were looking for specific documents which strangely enough were found to be missing as they had been stolen.
20. The management summoned one Joseph Maina Gachari being the person in charge of the bank's archives to explain why the documents that were being sought were not being made available. Mr. Gachari was ordered to ensure that the documents were found and handed over to the CBK team as they had requested.
21. Mr. Gachari informed the management that the documents that were being sought were among those that had been transferred temporarily to the bank's archives during the bank's expansion. He was directed to go to the archives and bring the documents and the management gave him until 1st November 2004 to produce all the documents. When asked why the documents had still not been availed, he said he was unable to locate them and suggested that Peter Odhiambo would know where the documents were since they were not in the archives and he was the only other person who had access to the archives. Given that Peter Odhiambo had already quit employment, Mr. Gachari was suspended from work but he never returned.
22. Immediately after Gachari was suspended, on 20th September 2004, in some rather inexplicable circumstances, the bank's archives caught fire and everything in the archives burnt down. It is instructive that the location of the archives was only known to Peter Odhiambo, Maina Gachari, the Managing Director and one other manager. The matter was reported to the police but the cause of fire was never established although arson was suspected.
23. From the description of the documents that had been stolen from the bank, it is the bank's view that this had been a calculated conspiracy to

remove account opening documents of certain accounts, files of certain clients and to pluck out vital documents from the files that could later be used as a weakness to portray Charterhouse Bank as being in violation of the "Know your Customer" which can only come about by way of missing documents.

24. After the raid, the investigation and the inspection, the bank was not able to produce the missing files nor any of the missing documents that were being demanded by the CBK team but we were to later learn that all the documents that were specifically being requested had been downloaded, plucked out discriminatively from various files and for these unfortunate events, the bank was found to be in violation and fined KShs. 1,000,000/-.
25. Up to this point in time, the bank management had put the unpleasant issues at the back of their minds and moved on and the bank continued with its normal operations and enhanced its security management systems or so they thought.
26. Unfortunately, towards the end of the year 2005, it was discovered that one James Muia a current employee of Charterhouse Bank was constantly being seen in the company of Peter Odhiambo and Maina Gachari. The bank management suspected that he might try to steal documents again from the bank, but decided not to sack him but to put him under surveillance since the Police Officers from the Central Police Station had informed the management that unless they had proof or caught him red handed with the documents, there was nothing that the police could do. He is still an employee of Charterhouse Bank even as we write to you.
27. From the beginning of the year, it was discovered that SUSPICIOUS activities were taking place between James Muia and yet another employee one David Okinda who was now in charge of the IT Systems. The management started investigating their activities and it was discovered that some accounts and data was being tampered with and that at certain times, there was a logging of the bank's data for inordinate periods of time and it was unclear why for example David Okinda would dwell on certain accounts for in excess of three hours. When the bank called in an expert, it was confirmed that there was external intrusion into the bank's system where data was being

tampered with and/or being transferred elsewhere and after he was discovered, Mr. Okinda left employment.

28. From the year 2004 to-date, and at all material times, the bank considered all the unfortunate incidents as activities of some disloyal and greedy employees who were *doing* all this for their own personal gain and it never occurred to us they were doing it to injure the bank.
29. From 2nd April 2006, the bank started being portrayed negatively in the media and on 24th May 2006 certain copies of letters were delivered by courier to Charterhouse Bank. The letters turned out to have been sent by anonymous people who had circulated the said letters to various people including our bank. They were letters that had been removed from our archives and/or stolen from the government registry.
30. The bank's management looked at the letters and decided that it was proper that the matter be reported to the police and that the original set handed over for investigations.
31. The Managing Director Mr. Sanjay Shah personally reported the matter to the police and was subsequently asked to record a police statement.
32. Upon further perusal of the said numerous letters a rather serious discovery was made which made it very clear that what the bank was facing was a well calculated, planned and a deliberate conspiracy to bring Charterhouse Bank down.
33. Following were the letters:-
 - (i) A letter dated November 2004 written by Titus Mwirigi stating that before the task force was established, certain documents had been gathered from Charterhouse Bank prior to the establishment of the task force and then the documents were made available to a particular member. It is indicated that the source was one Joseph Maina Gachari.
 - (ii) A document titled "Memorandum of Meetings in support of Fee Note. Under the subject Consultancy Contract: Titus MWirigi and CBK", This confirms that on 21st October, there was a meeting at CBK with various heads of department from CBK, KACG, Judiciary, Ethics & Governance and some consultants.

We found some of the revelations uncanny because in our view such a gathering was uncommon especially since KACC is supposed to conduct its business independent of any other arm of the government as it is also expected to investigate them. Further, the CBK in performance of its duties and information gathered are all supposed to be confidential and can only be used for the purpose of the Banking Act. There is also the mention of consultants. Consultants have no statutory powers. The most disturbing issue is that in this purported investigation into Charterhouse Bank, the Judiciary was also incorporated.

34. The documents confirm that on the 30th, October a meeting with Charterhouse Bank employees for purposes of obtaining documents for the task force was held and included Titus Mwirigi, Maina Gachari, Peter Odhiambo and Joseph Chege.
35. On 1st November 2004 a meeting at KACC to debrief former employees of Charterhouse Bank and to assist in preparing for a visit to the bank by KACC was held and included Titus Mwirigi and Peter Odhiambo.
36. On 5th November, working sessions with the Heads of Department from CBK, Judiciary and Ethics & Governance were held at the Tamarind Restaurant.
37. On 11th November, a meeting was held at KACC offices to review the final draft and interim report.
38. On 11th November, a meeting at KACC with Mr. Lameck to decode computer data on behalf of Kenya Revenue Authority (KRA) was held.
39. On 18th November, a meeting between Peter Odhiambo and Task Force Chairman was held to discuss latest information and to submit a report on the developments at Charterhouse Bank.
40. The next document is titled "Confidential Schedule of Meetings" among others, item 4 records the meeting as having been held between the governor, the deputy governor, Melville Smith, Peter Odhiambo, Titus Mwirigi, item 6 was a meeting between the governor, deputy governor, Melville Smith, Director BFID, Maina Gachari, Peter Odhiambo, Lameck and Titus Mwirigi.

41. You will note that the persons mentioned Peter Odhiambo, Maina Gachari, Lameck Wangumba, Joseph Chege and Titus Mwirigi contracted as consultants by CBK were meeting in various hotels in the city including Tamarind Restaurant, Hotel Boulevard, Kengeles Restaurant, ABC Place and the Gazebo in Upperhill.
42. The most significant issue is item No. 15 where it is stated that Mr. Lameck, Mr. Ng'eno and Titus Mwirigi met for the purpose of programming, installing and recalling of data stolen from Charterhouse Bank.

From the foregoing paragraphs, any reasonable person will come to the conclusion that the above activities were clearly orchestrated and planned to bring down Charterhouse Bank.

We are aware of the importance and need for a whistle blower but a whistle blower is in our view a person who passes genuine information to the authorities for investigation and not a person who is hired from the onset to create violations. The acts of stealing the documents by an employee of Charterhouse Bank in order to assist in the creation of a violation so that the bank can be raided to discover the violations so as to criminalize the bank and the people associated with the bank is unconscionable, unethical, immoral inhuman and inconsistent with all rules of civilized behaviour, all laws and human rights principles.

We would want to state here that by a letter written by Dr. Mullei dated 1st March 2005, the bank was punished for the various findings stated herein and from that date the bank cannot be punished or continue to be harassed after it has already been punished. Even in your realm a person cannot be punished twice for the same crime.

Further, it is now apparent and it is confirmed from the evidence that documents were stolen and removed from Charterhouse Bank with a view to create violations. The duty to correct all the violations of missing documents as stated in the said letter of 1st March 2005 was that of the Charterhouse Bank internal auditor and archivist Mr. Peter Odhiambo and Joseph Maina Gachari respectively.

It is common practice that documents relating to accounts might be misplaced or may have fallen off the files and it is the duty of the auditor and the archivist to detect and inform the account holder by asking them to provide copies of the documents or new ones. Under normal circumstances, this would not be an issue that would be brought to the attention of the Managing Director.

When the raid was conducted at Charterhouse the Managing Director wrote complaining to the Minister and the Minister was kind enough to convene a meeting in his office between CBK and Charterhouse Bank and after the issues were discussed, the animosity subsided.

Charterhouse is one of the most well managed banks and has nothing to hide. That is the reason that Charterhouse Bank has not sacked James Muia, because it wants to see what he is up to. Had we been malicious as Odhiambo and Mwirigi would have you believe, Muia would have been summarily dismissed but he is still working at Charterhouse as we write this letter to you.

Mr. Chairman, we would want to thank you because despite all that has happened in the last two years, no one has brought to our notice any allegations of impropriety. No matter how off the mark you may be and no matter how incorrect the information provided to you may be, you are the first person to ask for a response and although this is directed to the Commissioner of Police and copied to us, we find that we should present to you the sequence of events as they have occurred and the way that they are.

It may come as a surprise to you as the Chairman of KNHRC that since the matter erupted in the media, we have written consistently to the persons responsible, the governor and the minister seeking for an opportunity to tell our side of the story and correct the deliberate misinformation as demanded by fair play but his has been in vain.

After the adverse media publicity which started around 30th March 2006, inspectors from CBK were sent to Charterhouse Bank on 6th April 2006 and another contingent of inspectors were sent on the 18th of April. They conducted their inspection and concluded the inspection towards the end of May 2006 resulting in a CBK report dated 21st June 2006 requiring the management to respond to issues raised therein by 4th July 2006.

However just as the management was preparing to respond to comply with the 4th July 2006 deadline, the following day after the report was delivered, Charterhouse Bank was placed under statutory management on 23rd June 2006 and a statutory manager took over the management, control and conduct of the business of the bank.

Mr. Kiai, as a human rights crusader conversant with principles of equity, was that right and or fair?

Simultaneously, the banks' customers' information which was either stolen and removed from the bank by the bank's employees at a fee of US\$ 300 a day paid for by the CBK, or information collected by the said CBK Inspectors, all of which should have been confidential and in the custody of the Central Bank was passed to unauthorized individuals where it was released to the media and tabled in parliament. We sincerely believe that the Central Bank of Kenya under Section 32(2)(b) is prohibited from disseminating information to unauthorized persons.

From all the information available, it is clear that Charterhouse Bank data and software were stolen on the instigation of CBK and KRA and the said banks data was installed at CBK and KRA more particularly at the behest of Mr. Nduati without authority or justification.

KRA and Central Bank are professional and ethical bodies which are not expected to be involved in clandestine activities outside what the statutes authorize them or be used and/or abused by persons with personal vendettas. They cannot be involved in activities of pirating, counterfeiting and/or stealing from the institutions they are supposed to regulate so as to find fault in them. There is a defined and proper way to get the information that they stole legally without committing the offences that they have committed.

Charterhouse Bank has noticed that all its large account holders are now being investigated at the behest of Mr. Nduati with the view of finding violations or faults against them which is unethical.

It is clear from the adverse and inexorable campaign in the media and elsewhere that there is a concerted effort to publish and disseminate false and misleading information against Charterhouse Bank and the Nakumatt chain of supermarkets on allegations of tax evasion.

In our view, if Nakumatt is genuinely found to be evading payment of taxes, it behoves the KRA to enforce collection and it is not the duty of Charterhouse Bank to compel Nakumatt to pay taxes. There should not be a blanket condemnation and someone must come out and categorically state what customs taxes have not been paid, what VAT taxes have not been remitted what corporate taxes, PAYE and withholding taxes have not been paid. All we have now are allegations hyped up by a hostile media and to which we have been denied a chance to respond to and where our attempts have been given a black out.

At Charterhouse Bank, we wonder, if for instance an account holder has violated any law, whether it is the account holder who should face the full force of the law or whether his activities must *interfere* with other account holders deposits and rights.

The KNHCR has made various strong statements in respect to the Goldenberg matter and it is a matter of fact that after the massive theft of colossal amounts of money that took place at the CBK, the CBK as an institution was not interfered with but only the persons responsible for the fraud were arrested and charged in court i.e. the governor, deputy governor and some officers. The said stolen funds passed through Kenya Commercial Bank and National Bank of Kenya so why was action only taken against the individuals responsible and there was no clamour to shut down National Bank or Kenya Commercial Bank?

Charterhouse Bank has no liquidity problem, it is in compliance with the Banking Act, the Central Bank of Kenya Act and the Prudential Guidelines. The placing of the bank under statutory management is contrary to the *law* and raises serious human *rights* issues. This is because ordinary Kenyans who are depositors and/or creditors are not able to transact their business causing them suffering and denying them a decent livelihood.

Corporate entities *with* deposits in Charterhouse and who transact Banking business at Charterhouse Bank have been denied access to their deposits. They have also been denied withdrawals and most cannot even pay wages and salaries to a large number of Kenyans who in turn are not *able* to pay their debts or meet their obligations like paying school fees, house rents, put food on the table etc. Don't these issues touch on fundamental human rights?

In view of the fact that the statutory manager is not conducting any banking business, no profit or income will be generated which will result in the statutory manager taking money from the depositors deposits to *meet* the daily and monthly expenses of the bank to the detriment of the innocent depositors for whose interests the CBK is supposed to protect.

The statutory manager has also started sending employees on leave and with a view of spending the depositors money has engaged her friends from Price Waterhouse Coopers to come and re-audit the bank at a fee of over KShs. 5,000,000/- from the depositors money and this is happening *immediately* after the conclusion of a CBK inspection and audit exercise, which is suspect, unconscionable and what to us appears to be a deliberate *effort* to run the bank down and thus legitimize its ultimate closure.

You may also have noticed a current and intensive campaign by notable personalities, government officials and being aware that CBK was paying Charterhouse Bank employees US\$ 300 to steal documents from the Bank which led to the irregular placing of Charterhouse Bank under statutory management, *without* any legal basis or reason and the freezing of all banking business, it is clear to us that there is a move to interfere with private businesses and it demonstrates a well calculated and clear intention of hurting Nakumatt as well.

As the chairman of KNHRC you will note that when we felt that our rights and those of our depositors and creditors were being violated, as law abiding citizens, we sought justice from the courts but to our disappointment even as we go to court, we are aware that when this conspiracy against Charterhouse Bank was being orchestrated, it is clearly indicated that the judiciary was present as evidenced by the meeting schedule aforementioned. The results are obvious.

Mr. Chairman, the bank's documents were stolen in the year 2004. No senior member of Charterhouse Bank has ever made any attempt to contact our former employees - never. Why should you then allege that we are responsible for their safety? After they stole the documents and despite having received US\$ 300 a day for those acts, all of them were rewarded with jobs at Central Bank of Kenya, what interest would we have in them two years later? What is it that they have done now that we are not aware of, that they want to preempt by making false allegations? Can't you see you have been duped and are being used?

In our view, and in reference to Section 392 of the PenalCode, it would be most appropriate for a proper police report to be made so that proper investigations can be conducted and the truth can be established and the culprits arrested and charged before a court of law. For the first time in the history of this country we believe that we have a Police Commissioner who is free of political manipulation. As you are aware, the law provides for punishment for a person who gives false information to a person employed in a public office.

It has become exceedingly obvious that there is a concerted effort being orchestrated by some high powered individuals against Charterhouse Bank and Nakumatt. These individuals have successfully enlisted the support of certain personalities in the media houses, some few members of parliament and some individuals from the civil society movement in a campaign to bring Charterhouse Bank down and the Nakumatt business.

We would not be further from the truth if we assumed that the allegations of the individuals whose security is purported to be at risk are just another attempt to include you in this adverse campaign against us so as to give it credence because it is obvious that you have a platform.

Mr. Chairman, as a custodian of the only organ that is supposed to protect human rights, we would request that you do not join in a vilification and odious campaign whose origins and cause you are not privy to, that is aimed at destroying and or violating the human rights of some people whose rights you should also be protecting.

The KNHRC which you chair is the custodian of human rights and entitlements for all, which include individual human rights as enshrined in the constitution. We know you are a long time crusader of human rights, impartiality, fairness, ethics, rule of law and natural justice.

From the facts enumerated above, our simple question to you is, given that the CBK recruited employees at Charterhouse Bank and paid them US\$ 300 per day to steal documents, software and manipulate data and were later rewarded with jobs at the Central Bank of Kenya for a job well done which has now enabled CBK to illegally take over Charterhouse Bank and which has also allowed them to freeze all manner of business, what further damage can they cause now that they are in charge, what other information can they manufacture, manipulate and or plant in Charterhouse Bank to help them achieve their goal of closing it down?

Charterhouse Bank is the first bank in history to be placed under statutory management even though it has a strong liquidity base, but it is this strong liquidity base that they are trying to destroy so that they can now claim to close Charterhouse Bank for lack of adequate liquidity. The prolonged closure and dilly dallying and chasing away the banks bona fide depositors and creditors are all meant to discredit the bank, wear the customers down and force them to seek services elsewhere and therefore simplify their task of the intended closure of the bank. That is the kind of campaign that you are being dragged into.

If all these protracted activities by CBK and others against Charterhouse Bank and its depositors and creditors, the witch-hunt, the malicious vilification and adversity are all happening in broad daylight in a country that espouses democratic principles, we are left to wonder if these are not fundamental human rights issues, then what are human rights?

All the directors of the bank that you have named in your letter are firstly husbands, fathers, sons, brothers etc. they are human beings who cherish family values and good morals and are entitled to protection of their human rights too. What evidence could you have to make you put their names on paper as people who are threatening the lives of others? Is it that casual to accuse an innocent person of threatening another's life? Most of the directors do not even know the people that you are talking about and Mr. Chairman how do you find it so easy to make allegations such as you have made? We know there is no evidence since we have never threatened or ever wanted to harm anyone, so how did you decide that those you named deserve protection and we do not? They stole data, got good jobs with CBK and have been working there for almost two years and all of a sudden we are now threatening their lives? Please open up your eyes.

And now that you have made your accusations, since you are the custodian of observance that human rights are not infringed, tell us Mr. Chairman, where do we now go for recourse? Who will hear our side of the story? After the accusations, who will protect us and our families since we believe that this is part of the ploy to destroy the bank and then come after the directors, where do we now turn for justice and protection of our own human rights?

Despite your having written to the Commissioner of Police and circulated the said letter to all the directors of Charterhouse, on Tuesday the 18th July 2006, you appeared on television commenting on the plight of whistle blowers while in the same breadth you were defending your organization from allegations of misuse of funds. You stated that your organization is audited by the Controller and Auditor General. Your other comment was in the form of praise for Peter Odhiambo for having been awarded a job at CBK on the purported whistle blowing against Charterhouse Bank.

We wish to express out disappointment because on various occasions when you have appeared on Television talking on the need for protection of human rights, justice and fairness, you made us believe that you are a fair and impartial person who adheres to the rule of law, we saw a person who would make a suitable candidate for appointment as a judge. But from your current utterances on the electronic media and from the contents of your letter, it is clear that a person who passes judgment and condemns others on the basis of rumours and allegations without according the other side an opportunity to defend themselves would not be competent to arbitrate where fairness, impartiality, rules of natural justice and the rule of law are mandatory in order to determine issues.

As a lawyer who has read section 392 of the Penal Code and we would like to confirm to you that we have been reporting these matters to the police since the year 2003 to-date. We have unfailingly been reporting that some employees of Charterhouse Bank were stealing documents from the bank. This is criminal and we believe that you are quite conversant with the laws that criminalize theft whether by servant or otherwise. A criminal act remains a criminal act no matter who the perpetrator is.

By reporting the matter to the police, we did the correct thing. If you had taken the trouble to ask us, or even sought an explanation from us, after hearing both sides of the story, we would have helped you to make a well founded opinion and we are sorry that you did not find it necessary to talk to us.

Again as the Chairman of KNHCR and as a lawyer who has been involved in crusading for fairness, respect for human rights et ai, we sincerely believe that you know that a whistle blower is a person who out of a genuine concern and in the public interest, reports any illegal activities or wrong doings of his own free will, without inducement or promises and without malice or ill-will.

Peter Odhiambo was a senior officer of Charterhouse Bank who together with others were employed by Charterhouse Bank to perform the duties that make a bank compliant with the relevant laws. It was the duty of Peter Odhiambo to audit this process at a salary of over KShs. 100,000.00 per month. He was thus running his internal audit department without much supervision and or interference.

We are not sure whether you are aware that he was being induced by certain other individuals to steal the banks documents at a lucrative fee of US\$ 300 a day. Surely, working for these people at a rate of US\$ 300 a day for 20 days, in a month he would make a side earning of approximately KShs. 400,000/- per month on top of his salary and with a further incentive of a job at CBK after perfecting the stealing, this would be hard to pass up. Is this whistle blowing in your opinion?

Our records show that Mr. Titus Mwirigi who was also contracted under a similar fee of US\$ 300 per day is given as Odhiambo's referee in his employment records. Are these people what you term as whistle blowers and for whom you are actually asking the state to further provide for them?

Further, since all the four purported whistle blowers are all former employees of Charterhouse Bank, it cannot be humanly possible that the whistle blowers who attract attention are all found or are from this bank.

There is clear evidence that these people committed a crime for a fee and/or reward and we have continued to report these matters to the police. It is also clear from your letter that you are well conversant with the full details and information pertaining to the directors and shareholders of Charterhouse Bank. It is therefore obvious that it is the directors whose lives are purportedly in danger and not those of the persons that you mention in your letter. A person who steals documents for money is also capable of killing for money.

By a copy of this letter, we the directors and shareholders of Charterhouse Bank request that the Commissioner of Police do provide us with adequate security as it is obvious that our lives may be in danger given the magnitude of the conspiracy against us which seems to be snow-bailing.

You were here when the commission probing the Goldenberg Scandal was taking place and where Mr. David Munyankei testified. Your praises for the CBK cannot be genuine as it is the Central Bank that sacked Munyankei the CBK never reinstated him. But ironically instead, they can contract Peter Odhiambo and company at US\$ 300 each per day and with promises of plum lucrative jobs at the CBK once the job is done.

As a human rights activist and the Chairman of KNHCR, is this discrimination, is it fair, or what is it in your opinion? In our view this boils down to abuse of office and acts done for personal gain.

We sincerely hope that in respect of the property belonging to Charterhouse Bank which was stolen by these people i.e. data, software, files, documents etc. the full force of the law will be brought to bear on the perpetrators of the theft and so that we can recover our property.

As we come to the conclusion of this letter, we cannot belabour the profundity of our pain at the remote possibility that you may just have been recruited by these people who we believe have been stealing documents from our bank and are now using your organization to legitimize their illegal acts, by seeking protection to make something illegal look good in the eyes of the public who will be arguing that if your organization has sanctioned their acts, then surely the other side is necessarily guilty.

We believe that civil societies exist for public good and should never be used to injure or hurt innocent people without justification or reason. They exist for the good of humankind, a/l humankind.

We are therefore unable to demand any apology from you or your organization but we hope that once you have read the facts stated herein, your conscience and the objects of your commission will guide you towards the truth, and like Jesus said, the truth shall set you free.

We write to you this letter being reminded of the words of the Late Honourable Elijah Mwangale during the J M Commission of inquiry who said that the hyena who spoke to the rock commented that *'even if you don't respond, I have told you and I know you have heard me'*.

Yours faithfully,

For the **Directors & Shareholders**



S.SH~
DIRECTOR

CC: Major General Hussein Ali, EBS
Commissioner of Police

Hon. Martha Karua, EGH, MP
Minister for Justice & Constitutional Affairs

Hon. Amos Kimunya, EGH, MP
Minister for Finance

Hon. John Michuki EGH, MP
Minister of State in the Office of the President

Hon. Amos S. Wako, EGH, EBS, SC, MP
Attorney General of the Republic of Kenya

Mrs. Jacinta Mwatela
Governor of the Central Bank of Kenya

Justice Aaron Ringera
Director, Kenya Anti-Corruption Commission

Mr. Michael Waweru
Commissioner General, Kenya Revenue Authority

Ms. Rose Detho
Statutory Manager, Charterhouse Bank

Mr. Keriako Tobiko
Director of Public Prosecutions

Director
Criminal Investigations Department

The Directors of Charterhouse Bank.