

THE OBSERVATORY - PRESS RELEASE

KENYA: High Court orders the commencement of the PBO Act without further delays, 1,000 days after its signing into law

Geneva-Paris, November 4, 2016 – “A week after a fact-finding mission to Kenya, we welcome the High Court ruling on the long awaited commencement of the 2013 Public Benefit Organisations Act (PBO Act), which civil society has been waiting for almost four years”, said the Observatory for the Protection of Human Rights Defenders today.

On October 31, 2016, Justice J. Onguto of the High Court ruled that the Cabinet Secretary of the Ministry of Devolution and Planning, Mr. Mwangi Kiunjuri, had 14 days to set and gazette the date of entry into force of the PBO Act¹ 2013. Justice Onguto further declared that the delayed gazetting of the Act for more than 1,000 days since its signing into law on January 14, 2013, was “an abuse of discretion”, which should be exercised in public interest, and deemed it “unconstitutional”.

The Plaintiff, Trusted Society of Human Rights Alliance, brought a judicial review action against the Minister, following his failure to implement the PBO Act, as well as his attempt to restrict freedom of association through the appointment of a governmental taskforce in 2015 which proposed draconian amendments to the already adopted legislation. The Court also declared unlawful those amendments, since, although they were defeated thanks to the advocacy work of the Kenyan civil society, they were made before the coming into force of the law and would therefore infringe on the principle of separation of powers.

“Last week, Kenyan civil society organisations stressed to the Observatory’s mission that the delay in the implementation of the PBO Act has for too long left the door open for abuses against them. For the past four years, despite the adoption of a legal framework conducive to human rights work, NGOs have continued to operate under the threat of arbitrary de-registrations and asset freezes, continuous attacks and smearing campaigns”, declared Gerald Staberock, OMCT Secretary General.

The Observatory welcomes the Kenyan High Court ruling which at last ordered the entry into force of the 2013 PBO Act. This should allow for a more open space for civil society work in Kenya, with clear straightforward criteria regarding NGOs’ registration, enhanced accountability, set timelines for processing applications, as well as tax incentives and benefits for organisations conducting “public benefit activities”.

“The Kenyan government still has a long way to go to make the PBO Act a tool that effectively facilitate NGO work. The Cabinet Secretary of the Ministry of Devolution and Planning should first of all implement the High Court ruling by immediately operationalising the PBO Act. Secondly, the Kenyan authorities should ensure that the rights guaranteed by the Act will not be restricted by any subsequent legislation or regulation”, said FIDH President, Dimitris Christopoulos.

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¹ The PBO Act is available on: <http://pboact.or.ke/resources/documents/category/3-legislation>