

THE OBSERVATORY - PRESS RELEASE

KENYA: Looking at the 2017 elections, is civil society beyond the brink?

Preliminary findings of a fact-finding mission on the situation on human rights defenders and NGOs

Geneva-Nairobi-Paris, October 28, 2016 – “The Kenyan authorities have the responsibility to protect civil society organisations and defenders, rather than harass them”, said the Observatory for the Protection of Human Rights Defenders (a joint OMCT-FIDH partnership), following a fact-finding mission to Kenya. In the context of the upcoming elections, high levels of police violence and patterns of criminalisation, especially during peaceful demonstrations and counter-terrorism actions, are two of the main concerns identified by the mission. In addition, civil society has been for too long waiting for an adequate legal framework ensuring an enabling environment, free from abuse and arbitrariness.

The delegation, who conducted a fact-finding mission to Kenya from October 24 to 28, met with several representatives of the Kenyan civil society, ranging from international to grassroots organisations, from the capital and other regions of the country. The delegates also met with several national authorities such as the Kenyan National Commission on Human Rights, the Parliamentary Caucus on Human Rights, the National Police Service, the Independent Policing Oversight Authority, the Office of the Director of Public Prosecutions and the Judiciary, as well as with the diplomatic community in Nairobi.

The three mission delegates highlighted three major areas of concern that severely undermine the very existence of an enabling environment for human rights defenders to freely and legitimately operate.

First, the high levels of police violence often experienced and reported by human rights defenders, especially when trying to hold accountable public officials for the violations committed, put at risk their physical and psychological integrity. These acts of violence include acts of torture, enforced disappearances and extra-judicial killings, including under the guise of combating criminality through “security” and “counter-terrorism” operations.

“The killing of Willie Kimani, Kenyan human rights lawyer, last June, is only the tip of the iceberg of a worrisome pattern of extrajudicial killings, which appear to be increasing and which aim at silencing dissenting voices and perpetuating police and other security forces’ impunity. We urge the competent national authorities to end the widespread impunity for such cases and ensure speedy investigations and prosecutions in order to hold perpetrators to account”, declared Peter Zangl, Representative of the World Organisation Against Torture (OMCT) to the European Union, who led the mission.

Second, the increasing pattern of criminalisation and intimidation of human rights defenders, including those participating in legal and peaceful demonstrations, through trumped-up charges, episodes of frequent arrests, detentions in police stations and long legal processes, represent a serious concern for the delegation, since they are used as a mean to exhaust defenders and paralyse their work. Moreover, the unreasonable use of force in managing

public protests call into question the prevailing standards in crowd control and their actual use by the police.

“We call for sustained police reforms that transpose into reality the constitutional fundamental rights to freedom of expression, peaceful and unarmed assembly and association of all Kenyan citizens. In regards to the constitutional right to bail, a transparent and proportionate implementation of the bail and bond policy is urgently needed in order to ensure that it is not used as a form of punishment against human rights defenders to repress social protest”, said Benson Olugbuo, Executive Director of CLEEN Foundation, who was a delegate of the mission.

Third, the delays in the commencement of the Public Benefit Organisations Act 2013 (PBO Act), which streamlines regulation of NGOs, has left the door open for abuses and administrative harassment of civil society organisations (CSOs). As a result, CSOs continue to operate within a hostile environment, characterized by threats of arbitrary de-registrations and asset freezes, continuous attacks and smearing campaigns. It is worrying and a reason of real concern that the past two years have witnessed various failed attempts to restrict such legislation through draconian amendments, aiming at undermining its significant improvements.

“We welcome the long awaited operationalization of the PBO Act, which represents a positive step for opening the space for civil society work in Kenya. However, we urge the Kenyan authorities to ensure that the regulations and bodies that will be created, as well as possible proposed further amendments, will not seek to restrict the rights guaranteed by the Act”, highlighted Chiara Cosentino, OMCT Human Rights Officer, who was also a delegate of the mission.

The Observatory calls upon the Kenyan authorities, especially in view of the upcoming elections, to publicly recognise the legitimate and crucial role of civil society and human rights defenders as pillars of every democracy and watchdogs of the rule of law, and to protect them in all circumstances from any kind of harassment.

A mission report will be issued in the coming months and will present detailed conclusions and recommendations to the Kenyan authorities, the United Nations, the African Union, the East African Community, the European Union and other international stakeholders.

The Observatory for the Protection of Human Rights Defenders (the Observatory) was created in 1997 by the World Organisation Against Torture (OMCT) and FIDH. The objective of this programme is to intervene to prevent or remedy situations of repression against human rights defenders. OMCT and FIDH are both members of ProtectDefenders.eu, the European Union Human Rights Defenders Mechanism implemented by international civil society.

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