

# CONTEXTUALIZING THE SHRINKING SPACE OF CIVIL SOCIETY IN KENYA

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# Presentation Overview

## 1. Examining the landscape 2014 – 2018

- ❑ De-registration of 510 CSOs
- ❑ Outright refusal to register CSOs – National Gay and Lesbian Human Rights Commission
- ❑ Intimidation and raids - AFRICOG
- ❑ Failure to operationalize the PBO Act and non-compliance with court orders
- ❑ Shift in regulation of the NGO docket – Ministry of Interior & Security

## 2. Recommendations and way forward

# Full List of All 510 Deregistered NGOs

By Ken / Wednesday, 17 Dec 2014 06:25AM / 0 Comments / Tags: NGO

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Cert_Number	NAME OF NGO
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**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CONSTITUTION & JUDICIAL REVIEW DIVISION**

**PETITION NO 440 OF 2013**

**ERIC GITARI.....PETITIONER**

**VERSUS**

**NON- GOVERNMENTAL ORGANISATIONS**

**CO-ORDINATION BOARD.....1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**AUDREY MBUGUA ITHIBU.....1<sup>ST</sup> INTERESTED PARTY**

**DANIEL KANDIE.....2<sup>ND</sup> INTERESTED PARTY**

**KENYA CHRISTIAN**

**PROFESSIONALS FORUM.....3<sup>RD</sup> INTERESTED PARTY**

**KATIBA INSTITUTE.....AMICUS CURIAE**

# REFUSAL TO REGISTER NGOS

- In its decision to reverse the ruling of the NGO board, the three-judge High Court panel composed of Justice Mumbi Ngugi, Justice George Odunga, and Justice Isaac Lenaola ruled that the NGO board's decision violated article 36 of Kenya's constitution, which states that "Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind."
- The judges further ruled that conceptions of morality cannot serve as a justification to limit fundamental rights.



**Decision**  
**2017**

**POLICE, KRA RAID AFRICOG OFFICE**

INTERIOR CS CALLS OFF GOVT OFFICERS WHO HAD STAGNATED

13:06:44

UN, Amnesty condemn NGO board over AfricOG, KHRC attack

# LACK OF OPERATIONALIZATION OF THE PBO ACT, 2013



# PBO ACT 2013

- ▶ The PBO Act 2013 is a law seeking to provide a more enabling environment for NGOs, with clear criteria regarding NGOs' registration, enhanced accountability, set timelines for processing applications, as well as tax incentives and benefits for organizations conducting “public benefit activities”.
- ▶ It was passed by the Parliament in 2012 and signed into law by the then President Mwai Kibaki on January 14, 2013, but by 2017 not been operationalized yet under the Kenyatta administration, while several attempts have been made to introduce new restrictive amendments prior to its official commencement.



# SNEAKY AMENDMENTS

- The Statute Law (Miscellaneous Amendments) Bill, which was introduced in Parliament on October 30, 2013 was seriously undermining the spirit and letter of the Public Benefit Organisation (PBO) Act, 2013 and was likely to jeopardize the ability of civil society organisations to carry out their activities effectively, independently and free from governmental interference.
- prohibit NGOs from receiving more than 15 % of their funding from external donors;
- prohibit PBOs from receiving their funding directly from donors and would have rather imposed that all funds be channelled through a new « Public Benefits Organisation (PBO) Federation »
- alter the composition of the PBO Regulatory Authority's governance body in favour of the executive;
- Award the Authority discretionary powers.

# SHIFT IN REGULATION – MINISTRY OF INTERIOR AND SECURITY

- ▶ In a directive dated October 28 2017, just a week after Devolution CS Mwangi Kiunjuri sent NGO Coordination Board Executive Director Fazul Mohamed on compulsory leave, President Uhuru ordered the transfer of the sector to the Interior ministry.
- ▶ Therefore, CS could not set and gazette the date of entry into force of the Public Benefit Organizations Act 2013 as was directed by court.
- ▶ Inspired by Pakistan which in June 2015 moved the NGOs to operate under Ministry of Interior instead of Economic Affairs Division

# MORE RECENTLY...

- 1. Global Gag Rule and the implications on HIV and SRHR programs
- 2. Division and loyalty of media houses – who supports who?
- 3. Judiciary budget cuts – What does that mean for its independence?
- 4. Lack of meaningful involvement of communities in decision making – Biometrics? DTG?

# SAFEGUARDING OUR SPACE

- 1. Compliance: Tax returns, NHIF, NSSF, employment regulations, registration etc
- 2. Litigate
- 3. Use the media to illustrate the levels of arbitrary and punitive measures
- 4. Need for donors to set aside emergency funding

# REST IN PEACE: A MOMENT OF SILENCE

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**Whereabouts of Mr. Willie Kimani, Advocate**



The Law Society of Kenya (LSK) has received information that its member **Mr. Willie Kimani,**