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**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

**Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association;  
the Special Rapporteur on the promotion and protection of the right to freedom of opinion and  
expression; and the Special Rapporteur on the situation of human rights defenders**

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 24/5, 16/4, and 16/5.

In this connection, we would like to bring to the attention of your Excellency's Government our analysis of the **Statute Law (Miscellaneous Amendments) Bill, 2013 (the "Bill")**, presented to the Parliament on 30 October 2013.

According to information received, the Kenyan Parliament is examining this Bill, that aims at amending, among others, the Public Benefits Organizations Act, 2013 ("PBO Act"), which regulates all associations carrying out "public benefit activities" and the National Youth Council Act, 2009 (the "Council Act"), which regulates activities undertaken by youth groups and other associations.

*Amendments to the PBO Act:*

The Bill introduces unclear provisions that unduly limit the rights to freedom of association, expression and opinion. Section 10 (2) of the Bill requires public benefits organizations to have "an entry in the register" that "shall be a conclusive evidence of the authority to operate throughout Kenya" and section 10A confers to the Public Benefit Organizations Regulatory Authority (the "Authority"), which is defined in section 34 (2) as "a body corporate with perpetual succession and a common seal", the discretionary power to impose "from time to time [...] terms and conditions for the grant of certificates of registration, permits of operation and public benefits organization status". Other unclear provisions include section 11 (2) that grants permits to operate in Kenya to those organizations that do "not

intend to directly implement any activities or programmes in Kenya or operate from Kenya to implement any activities or programmes in another country”.

Additionally, the Bill unduly restricts the access of associations to funding. Section 27A (1) requires that “[a]ny funding of a public benefit organization shall be made through the federation and not by an individual member organization”. Moreover, 27A (2) prohibits public benefits organizations from receiving more than 15% of their total funding from external donors. Likewise, 27A (5) provides that regulations “shall establish percentage ceilings of funding to public benefits organizations by overseas development assistance”. In addition, according to section 27A (3), the Cabinet Secretary is given the discretion to decide if there are “legitimate and compelling reasons for increasing the amount” that public benefits organizations can receive from “external donor”.

Furthermore, the Bill imposes an undue State interference to the right to freedom of association, including associations being entitled to privacy. Section 42 (1) confers to the members of the Authority (the “Board of Authority”), among others, the capacity “to register and de-register public benefits organizations”; to “interpret the national policy on national public benefits organizations”; and “to institute inquiries to determine if the activities of a public benefits organization do not comply with this Act or with any other law”. Additionally, section 68 (c) grants the Board of Authority with the discretion to consider and recommend applications for “entry permits” of prospective public benefit organizations’ employees. Furthermore, section 35 (1) (a) of the Bill stipulates that the Chairperson of the Board of Authority, is no longer appointed by the Cabinet Secretary, but by the President..

#### *Amendments to the Council Act*

The Bill limits the independence of the National Youth Council (the “Council”) to the benefit of the Youth Advisory Board, (the “Board”) whose members are nominated by the Cabinet Secretary and unduly interferes with the activities of the civil society related to youth. According to Section 17 (1) (a), the function of the “Board” is to “receive and approve the plans, reports, financial statements and the budget of Council”. Furthermore, in Section 16 (2) (d), youth representation is removed from the Board whose members are individuals nominated by “the Kenya Private Sector Alliance; the Kenya National Council for People with Disabilities working in the youth sector; Non-Governmental Organization working in the youth sector; the Public Universities; [and] the National Agency for the Campaign Against Drug Abuse”.

We are concerned that the aforementioned key provisions in the Bill lack clarity and may be opened up to interpretations that would unduly limit the rights to freedom of association, expression and opinion. We are also concerned that such provisions would have profound consequences for civil society organizations in Kenya, including for those involved in human rights work, and could deter individuals from expressing dissenting

views. In this connection, we are concerned that various sections of the Bill, e.g. 7A (2), 10A, and of the PBO Act, e.g. 8 (2) (f), include vague provisions that provide broad discretion to the Public Benefit Organizations Regulatory Authority in considering the registration of public benefits organizations. We are further concerned that the insertion of section 27A, subsections: (1), might create a significant administrative barrier to accessing funding and compromise the independence of public benefits organizations; (2 and 5) set ceilings that unduly restrict foreign funding for civil society organizations; in addition section 2 and 5 refer to “external donors” and “overseas development assistance” without specifying the difference and rendering the interconnections between these 2 sections unclear; and (3) does not set guidelines for the Cabinet Secretary’s decision-making process. Additionally, we are concerned that section 35 (1) (a) denotes a closer Presidential oversight of the Board of Authority that could result in an undue interference in civil society affairs. Moreover, we are concerned that section 68 (c) imposes additional and unnecessary burden on civil society organizations, which are required to apply in writing to the Board of Authority for the issuance of an entry permit to prospect employees, in addition to the Principal Immigration Officer. With regards to the amendments to the Council Act, we are concerned that the Bill diminishes the role of the Council and removes youth representation from the Board.

In this connection, we would like to draw the attention of your Excellency’s Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

Regarding the impact of the mentioned legislative amendments on the environment in which human rights organizations and defenders work, we would like to refer Your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 13 (b) and (c) which stipulate that everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedom, through peaceful means, in accordance with article 3 of the Declaration.

In connection to article 13 of the Declaration, Human Rights Council Resolution 22/6 calls upon States to ensure “(a) that reporting requirements placed on individuals, groups and organs of society do not inhibit functional autonomy”; and (b) “that they do not discriminatorily impose restrictions on potential sources of funding aimed at supporting the work of human rights defenders in accordance with the Declaration (...), other than those ordinarily laid down for any other activity unrelated to human rights within the country to ensure transparency and accountability, and that no law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding thereto”. (A/HRC/RES/22/6, OPs 8 and 9)

We would also like to refer to resolution 22/6, which explicitly indicates that domestic law and administrative provisions, and their application, should facilitate the work of human rights defenders, including by avoiding their criminalization or stigmatization, or by any impediments, obstructions or restrictions of their work. It is recognized in the resolution that there is an urgent need to address, and take concrete steps to prevent and stop the use of legislation to hinder or unduly limit the ability of human rights defenders to exercise their work, including by reviewing and, where necessary, amending relevant legislation and its implementation in order to ensure compliance with international human rights law. Moreover, the urgent need to create a safe and enabling environment in which human rights defenders can operate free from hindrance and insecurity, at the national level and in all sectors of society is underlined, including by extending support to local human rights defenders. (A/HRC/RES/22/6, PPs 10-13).

We would also like to refer to article 19 of the International Covenant on Civil and Political Rights (ICCPR), which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” and to article 22, which provides that “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”.

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

Moreover, as it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. To what extent are the facts related to the restrictions and undue interference imposed by the Statute Law (Miscellaneous Amendments) Bill, 2013 accurate?

2. Please explain how its provisions are in accordance with Kenya's obligations under international human rights law, particularly with regard to the rights to freedom of association and freedom of expression.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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of association

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