



Protection challenges of HRDs in Kenya

Report from Mission by EHAHRDP, October 2009

Introduction

The well entrenched culture of impunity in Kenya is proving difficult to overcome. The Kenyan government has so far largely failed to take the necessary measures to implement the recommendations of the Waki Commission amongst others, notably failing to pass a draft legislation which would have brought about the establishment of a constitutionally entrenched national Special Tribunal to hold those responsible for the 2007 election and post-election violence to account, and to concretely challenge this culture of impunity.

Calls for the authorities to hold the security forces, both the police and the military, to account for mass violations, notably widespread extrajudicial killings and the military intervention in the Mount Elgon region, have largely been ignored. The recent removal of Police Commissioner Ali from the head of the Kenyan Police Force after he was accused at different levels of involvement in the enforced disappearances and extra judicial killings is seen as a positive move nevertheless whether this will convert into concrete impact in terms of policy change is not yet clear.

Given this reality, the situation facing HRDs in Kenya, notably their security, is of grave concern. The killings of Oscar Kamau Kingara and Paul Oulu of the Oscar Foundation involved in investigations into extrajudicial killings and the failure of the authorities to carry out independent and effective investigations into the killings is a telling example of the environment in which defenders in Kenya currently work in.

As a result, the East and Horn of Africa Human Rights Defenders Project (EHAHRDP), that has been intricately involved in efforts to enhance the environment in which Kenyan defenders work in, sent a two person delegation to Nairobi from the 6th-12th October 2009 to meet with a range of actors involved in the protection of human rights defenders (HRDs) in order to carry out a brief assessment of the current situation facing defenders on the ground and in order to identify potential protection challenges/ gaps.

A brief overview of the findings is laid out below with key recommendations.

Positive developments/ factors

In the course of the mission EHAHRDP identified a range of positive developments and factors around the issue of human rights defenders' (HRDs) security and protection which can be built-on and re-enforced.

First and foremost, compared to the last fact-finding mission carried out to Kenya in January 2009, EHAHRDP encountered an increased level of awareness amongst HRDs, at both an individual and organizational level, of the need to pay greater attention to their own security and protection and to place it on their agenda. Several of the defenders EHAHRDP met with, for example, had received threats and as a result are currently taking basic precautions to enhance and monitor their security. Similarly, several organizations met with are in the process of drafting security plans, nominating trained focal point persons in charge of security issues within the organisation and holding in-organisation security meetings.

Security and protection mechanisms are also in place at the national level that if built on and re-enforced could play an important part in enhancing the protection and thereby the work of defenders in Kenya. First and foremost, the main HRD protection programme is currently being hosted by the Kenyan Human Rights Commission (KHRC) in collaboration with other actors outside of KHRC as a means of decentralising the process and of undermining the risks for those involved. Other organizations are also carrying out protection activities although on a more adhoc basis. Similarly international protection mechanisms have also intervened for specific cases of defenders at risk.

The national HRD Coalition, the only of such coalitions that has been formally established in the region, despite the challenges it has faced (discussed below), is by its very existence an important mechanism to ensure that the security and protection of defenders is given utmost attention by key actors. The Coalition was established in November 2007 as an outcome of workshop on the protection of HRDs organized by EHAHRDP in collaboration with the Independent-Medico Legal Unit (IMLU).¹ Coalition members were elected during the workshop from amongst the different regional and thematic groups of HRDs, which had been identified prior to the workshop, in order to ensure broad representation within the Coalition. Mr. Sam Mohochi, Executive Director of IMLU, was unanimously elected as the National Coalition Coordinator. It was registered as a trust in 2008. The support and attention of key stakeholders for the Coalition will help to ensure that it is strengthened and is fully functional. The decision to hold a meeting of members Coalition under the auspices of KHRC in the coming weeks that will help to identify potential means of reviving its work is welcomed.

¹ For more information on the establishment of the Coalition please visit <http://www.defenddefenders.org/documents/Kenya%20HRD%20workshop%20report%20FINAL.pdf>

Another positive factor identified is the willingness of the European Union (EU), and certain specific foreign missions in Kenya, to pay attention to the issue of HRDs protection and security. In fact, under the leadership of the Swedish Presidency, the EU has stepped-up efforts to implement the EU guidelines on the protection of HRDs. One of the key steps taken so far by the EU has been the establishment of HRD focal point persons within each EU mission.

The availability of training instruments for the protection of defenders, such as those offered by the Protection Desk Uganda (PDU) a project under the East and Horn of Africa Human Rights Defenders Project, is also an important factor and is already having a positive impact on the ground amongst defenders and human rights organizations that have so far had access to the trainings. Staff from PDU are carrying out a follow-up training and mission to Kenya as of the 20th October 2009 which will seek to find solutions to the challenges currently facing individual organizations in their drafting and implementation of security plans. The mission will also include a meeting with the directors of the organizations involved in order to ensure their full support for these initiatives. PDU will also be training a new group of organizations.

General protection and security challenges

The challenges surrounding the protection and security of defenders in Kenya continue to be significant.

First and foremost, the risks currently facing human rights defenders (HRDs) are highly complex: identifying where the threats to defenders emanate from, or are likely to emanate from, whether state/ non state actors or actors whose status is rather ambiguous, is difficult at this point as is identifying which defenders are at greater risk of being targeted.

To a large extent the risks facing defenders have not been mitigated since the Oscar Foundation killings largely as a result of a failure by the State to put in place mechanisms or policies to mitigate these risks and due to ongoing high levels of impunity and lack of accountability, notably for violations against HRDs. Although interviews pointed to the removal of Commissioner Ali as a positive step, many questioned whether this will lead to concrete improvements on the ground.

The diversity of the protection needs of defenders also poses a challenge: some require immediate legal aid/ others protection, some require in-country relocation/ others relocation further afield, some have short term protection needs others longer-term ones. This evidently renders protection efforts highly complex endeavours and it is at times difficult to ensure that channels are available to match every individual's needs.

In spite of an increased awareness around the need for enhanced security and protection of defenders and despite initial efforts, abovementioned, at both an individual and organizational level to enhance organizational security and protection, the issue still does not appear to be

given the priority it requires. Human rights organizations are not collaborating or coordinating their efforts around these issues as thoroughly and systematically as would be necessary. Information sharing is haphazard, which might also be due to a strategic decision that secrecy is a protective mechanism in itself, yet appears more often than not to be linked to an ongoing reluctance amongst organizations to cooperate. The apparent failure of the bigger mainstream organisations to interact with more grassroots organizations risks undermining the security and protection of these smaller organizations. In fact, individual defenders, i.e. working on their own or for non mainstream organizations, are often at greater risk and have lesser protection channels to rely on (notably for financial reasons). Yet, even amongst the bigger organizations, and notably between civil society organizations and the Kenya National Human Rights Commission (KNHRC), collaboration is lacking. This lack of cooperation and collaboration evidently leads to a range of challenges notably rendering it harder to identify the protection needs of certain groups who might not have as ready access to available protection mechanisms and also undermining what is often seen as the protective effect of information sharing and trend analysis. It also appears that defenders are increasingly resorting to self-censorship as a means of enhancing their protection and security.

The National HRD Coalition that was initially established in November 2007 is currently largely inactive. The Coalition has faced several challenges since its initiation. These are primarily capacity challenges : notably human capacity given that coalition members have full time positions elsewhere and that those working outside of Nairobi have proven reluctant to get involved which has left the burden of the work on the shoulders of trustees in Nairobi and most notably the national coordinator -but also in terms of skills (programming/ management and fundraising) given that shortly after the establishment of the Coalition it was faced with a new, very challenging context and the protection of defenders became a much more taxing endeavour. Significant efforts to revamp the Coalition – defining its objectives/ programs and possibly also the make-up of the Coalition trustees is evidently required.

Recommendations

- Human rights organisations involved as well as the donor community in Kenya should seek to re-enforce the national HRD coalition
- KHRC and Coalition members should make use of the forthcoming meeting of Coalition members to set an agenda aimed at strengthening the coalition notably by mapping out clear objectives, defining key programs (protection/ advocacy), electing a new national coordinator and possibly a new set of trustees(potentially with experience in HRD protection) according to outcomes of discussions and defining relationship with current protection programme under KHRC
- The large representation of the national HRD coalition should be used to make sure groups currently not accessing or within the reach of protection mechanisms are included

- Information channels amongst human rights organizations and with the EU missions on the ground should be re-enforced

The Protection programme

EHAHRDP sought to use this visit to assess the current work of the protection programme that is currently hosted by KHRC, with which it has been working, and identify some of the gaps/challenges that it faces.

The protection programme is at present largely unknown by defenders outside a very small circle of organizations that has either directly or indirectly been involved with the programme. Although maintaining certain levels of secrecy is key to the effectiveness of the programme's work and to undermine attempts by individuals to use the system for their own ends, ensuring that it or at least a focal point person within the programme, is known to a wider range of defenders is important. The programme also faces capacity challenges, notably given the potential increase in number of cases of defenders at risk. In fact if another surge in number of defenders requiring support takes place it is unlikely that it will be able to respond in a timely and effective manner. The programme may have particular difficulties in reaching out to more marginalized /less organized groups or defenders working in more remote areas. The programme also currently has only a limited number of channels that it can turn to as a means of protection/ support for defenders which given the diverse needs of defenders can undermine its effectiveness. Furthermore, current responses do at times fail to take into account the extent of the protection need, for example when the family of the defender in question also finds themselves at risk. The current inaction of the National HRD Coalition, that was initially set-up to deal with issues around HRDs rights, is clearly also an obstacle to the effectiveness of the programme's work.

Recommendations

- Ensure the nomination of a full time protection officer- initially to be hosted by KHRC– with the possibility of transferring the position and role to the National Coalition
- Ensure mechanisms are put in place to protect the nominated Protection Officer
- Re-enforce/ strengthen the decentralized system being used by protection programme notably by nominating more assessors
- Ensure regular interaction between the programme Protection Officer and designated protection/security officers within individual HR organizations
- Protection Officer should regularly interact with EU missions and especially with HRD Focal points within the missions notably to offer trend analysis
- Ensure regular interaction between HRD coalition members and the organisation in charge of coordinating the protection programme)

- Set up internship / scholarship agreements within the region and further afield for HRDs at risk who require short/medium-term protection
- Identify potential partners/ organisations in other African countries with which to liaise with outside East Africa on protection issues
- Fundraise and set-up a basket fund under the protection programme

Security management within organizations

Despite efforts to enhance organizational security these are still limited. The level of implementation of security plans and policies is unequal. Human, financial and capacity constraints as well as a failure to prioritise the issue appear to be the main reasons for this. Several defenders mentioned that their own organisation found it challenging to adapt a security plan which required significant human and financial resources to the context in which they worked in/ the set-up of their organization. Furthermore as of yet there are currently no clear proof that the mechanisms that have been established so far are effective. It also appears that there are at times internal obstacles within organizations to the effective implementation of security plans with one defender mentioning that there is mistrust within their organisation which would prevent members of the organisation sharing their security concerns with their designated colleagues.

Recommendations

- Support (logistically and financially) the establishment of a Protection Desk Kenya (PD-Kenya) under the auspices of PDU/EHAHRDP
- Ensure that in-organisation security assessment and trainings are held for a wider range of organizations
- Ensure an increasing number of organizations draft relevant security plans
- Ensure that security funds/components are included into all proposals
- Nominate a security focal point persons within each organisation – ensuring that the focal point person receives adequate training and is given the time to brief rest of organisation
- Ensure sharing of information between focal points and with protection officer under KHRC as means of amongst other things analysing trends
- Share information between organisations about adoption of security plan – National Coalition once re-enforced can serve as a channel through which to pass this info

Key stakeholders

The EU under the Swedish Presidency has made significant attempts to work on these issues. Nevertheless, the interaction between the EU and human rights organizations specifically on the issue of HRDs rights has not been formalized and tends to take place on an ad-hoc/informal basis. Very few defenders are aware of the EU structures in place for these ends or of the HRD focal point persons within missions.

Recommendations

- Finalise efforts to set-up HRD focal point person in each EU mission
- Support the establishment of a full time Protection Officer, initially under the KHRC
- Ensure that the nominated protection officer at KHRC is the main point of call of EU
- Support efforts to re-enforce the national HRD coalition based on needs identified following forthcoming meeting
- Ensure that the names/contact details of EU HRD focal point persons are made available to the Protection Officer
- Efforts to implement EU guidelines activities initiated by the Swedish embassy are stepped-up (trial monitoring...)
- Regular meetings between HRDs and EU missions on issue of HRDs are organised
- Ensure interaction with a range of actors/ different organizations notably via the National Coalition