



Workshop for Kenyan Human Rights Defenders

Maximising the Protection of HRDs

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East and Horn of Africa Human Rights Defenders Project

In cooperation with
Independent Medico-Legal Unit

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First they came for the Communists,
and I didn't speak up because I wasn't a Communist.

Then they came for the Jews,
and I didn't speak up because I wasn't a Jew.

Then they came for the trade unionists,
and I didn't speak up because I wasn't a trade unionist.

Then they came for the Catholics,
and I didn't speak up because I was a Protestant.

Then they came for me —
and by that time no one was left to speak up.

By Pastor Martin Niemöller

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Acronyms

ACHPR	African Commission on Human and Peoples' Rights
AIDS	Acquired Immuno-Deficiency Syndrome
CBOs	Community Based s
EHAHRDP	East and Horn of Africa Human Rights Defenders Project
EU	European Union
GALCK	Gay and Lesbian Coalition of Kenya
HIV	Human Immune Virus
HRD	Human Rights Defenders
ICCPR	International Covenant on Civil and Political Rights
IMLU	Independent Medico- Legal Unit
KACC	Kenya Anti Corruption Commission
KHRC	Kenya Human Rights Commission
KNCHR	Kenya National Commission on Human Rights
LGBTI	Lesbian Gay Bisexual Transsexual and Intersex
MHRD	Minority Human Right Defender
MOPA	Movement of Political Accountability
NACC	National AIDS Control Council
NGO	Non Governmental Organization
NHRI	National Human Rights Institutions
NPAP	National Policy and Plan of Action on Human Rights
OHCHR	Office of the High Commissioner for Human Rights
SR	Special Representative/Special Rapporteur
UNDHRD	United Nations Declaration on Human Rights Defenders
VCT	Voluntary Counseling and Testing
WHRD	Women Human Rights Defender

1 Introduction

Capacity building is one of the major focus areas of the East and Horn of Africa Human Rights Defenders Project, an organisation formed in 2005 with the aim of reducing the vulnerability of HRDs from the risk of persecution and by enhancing their capacity for self protection. Its mission is to maximize the protection of HRDs working in the sub-region and to enhance the awareness of their human rights work through linkages with national, regional and international like-minded entities. The organisation's objectives are;

- To protect and defend HRDs in the region;
- To build the capacity of HRDs in the region;
- To advocate and raise public awareness and profiles of HRDs in the region.

EHAHRDP is the Secretariat and implementing unit of the East and Horn of Africa Human Rights Defenders Network (EHAHRD-Net) that currently spans Djibouti, Eritrea, Ethiopia, Kenya, Somalia and Somaliland, Sudan including Southern Sudan, Tanzania, and Uganda. It seeks to serve the interests of its more than 57 members as well as other HRDs in the sub-region of the East and Horn of Africa.

Training human rights defenders on national level is directly informed by the Network's Plan of Action (2005) that stipulates the great need of capacity building among defenders to enhance their ability to protect themselves in their often dangerous working conditions as well as contribute to enhanced efficiency in their efforts to protect those whose rights have been violated.

The plan to conduct training for Human Rights Defenders in Kenya was conceived timely in light of the general elections scheduled for December 2007.



Participants at the Workshop for Kenyan Human Rights Defenders with H.E. Walter Lindner the German Ambassador (hind row)

The vulnerability of HRDs is proven by several incidents in the recent past where the Kenyan Government targeted media houses and media workers over critical stories published. The human rights movements' commendable involvement in bringing about the current Kenyan Government however, has proven to have side-effects. Key spokespersons of the human rights movement joined Government while others left the country in fear of suppression. The co-optation and subsequent muting of many human rights activist has weakened the formerly strong civil society. HRDs throughout the country lost vital allies in their struggle and the absence of coherence

further compromised the influence on decision-making bodies, rendering vocal activists vulnerable to abuse. It is for these and other reasons that the training was planned to equip Network members and other HRDs with skills that would enhance the efficiency of their work and ensure better individual protection through improved personal capacities and familiarity of handling crisis situations and threats. The training was designed to address the legal and political side of human rights work as well as the individual and emotional aspect of it that mostly becomes relevant in situations of intimidation, persecution and detention. This is confounded in the conviction that only a comprehensive strategy will effectively enhance HRDs' capacity to execute their work more efficiently which will translate into improved ability of self-protection.

The event furthermore intended to initiate a viable national coalition of human rights defenders in Kenya, which has so far been absent. It was argued that a strong and inclusive network of HRDs within the country will strengthen the voice of individual HRDs, provide protection in situations of immediate threat, be efficient in lobbying policy and decision makers and mutually reinforce their work by efficient coordination and cooperation on national level.

The presence of Kenyan Network members at this forum and possible new members at the workshop was to be used to elect a new country focal person for Kenya in a democratic fashion thereby creating a feeling of ownership and professional representation among the members of the coalition. The Country Focal Person is the Secretariat's contact person in Kenya reporting regularly on the situation of HRDs in the country and is consulted by the Secretariat in the programme planning and decision-making processes relevant to Kenya.

The specific objectives of this workshop were;

- To equip human rights defenders with skills in various fields that shall enable them to enhance the efficiency of their work and ensure better individual protection through improved personal capacities and familiarity of handling situations of crisis and threat,
- To create a viable national coalition of HRDs in Kenya that will strengthen the voice of individual HRDs, provide protection in situations of immediate threat,
- To explore the potential of enhanced networking and collaboration between defenders, their national coalition and the Kenya National Commission for Human Rights for better protection of human rights defenders and higher efficiency in human rights work.

One of EHAHRDP's priorities was to ensure an adequate regional and thematic distribution of participants. To this end, an assessment form was circulated within the human rights community seeking expression of interest in participating as well as providing information on the individual's/organization's area of work, personal and organizational challenges experienced in human rights work and the expectations towards the training. Participants were then carefully selected on basis of the information provided in the assessment form taking into consideration regional representation as well as considerations of gender and thematic areas of work.

With reference to the collaboration of EHAHRDP and IMLU, this has been a most successful partnership through which both sides have benefited and strengthened their ties and proven the value of networking.

EHAHRDP expresses its deep appreciation for the support rendered by the International Service for Human Rights, the Institute of International Education and the Embassy of the Federal Republic of Germany in Kenya.

2 Opening ceremony

The participants made a round of introductions while at the same time stating the names of their organizations and the work they do in connection with human rights.

■ Hassan Shire Sheikh – East and Horn of Africa Human Rights Defenders Project

Mr. Sheikh expressed his pleasure at being part of the important gathering of human rights defenders (HRDs) from Kenya during an historic election period. He stated that it was a particular honor to be in the company of so many talented, determined and courageous human rights defenders from all regions of the country.



Hassan Shire Sheikh during his opening remarks © EHAHRDP

He spoke in two capacities; one as a representative of the EHAHRD Network and secondly as a representative of Africa NGOs Forum at the African Commission on Human and Peoples' Rights.

Human rights defenders are men and women at the frontline of the human rights agenda in accordance with the Universal Declaration of Human Rights (UDHR), which states that all people should be “free from fear and want”. Mr. Sheikh pointed out that the last 25 years had seen the phenomenal growth of frontline HRDs in schools, neighborhoods, workplaces, cities and nations to educate, organize, mobilize, document, criticize, speak out, provide support and propose reforms - all in the name of human rights. He felt that the representation of all regions of Kenya at the Workshop was indicative of this growth.

“Although human rights should be one of the most cherished universally honored vocations on the planet, it was instead in many parts of the world, one of the most dangerous jobs anyone could do. Some have been arrested and killed for their work. The world has been slow to respond to this crisis and the fatal irony was that those who speak up for what governments have promised to do are often the first to pay the price for doing so,” he said.

The Chairperson recalled that in 1998 the UN finally adopted the important Human Rights Defenders Declaration¹, which unequivocally recognizes the right of every individual to promote and strive for the protection of human rights, nationally and internationally, and requires governments to take all necessary steps to ensure that HRDs can do their work in safety. The Declaration has since then been endorsed and backed up in numerous resolutions within the UN and other multilateral bodies.

He also observed that Networking has come to be recognized as very crucial to human rights works as it bridges ideological and geographical boundaries

¹ Full name of the Declaration: United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedom. <http://www.ohchr.org/english/issues/defenders/declaration.htm>

■ Samwel Mohochi - Independent Medico-Legal Unit

Mr. Samwel Mohochi, Executive Director of Independent Medico-Legal Unit (IMLU) welcomed participants and stressed the close cooperation with EHAHRDP in organizing this event. He pointed out the vast experience of the HRDs present at the workshop and encouraged them to actively address the challenges faced by those defending the rights of others. He gave an example of a defender in Kenya who had to cope with 14 cases all of which had been fabricated against him because of his work as a HRD. His challenges were however greater because he did not have the benefit of the backing of an organization. A second example was that of doctors who had been intimidated and threatened because of their human rights work. One doctor's house was raided a few years ago and his wife and children harassed by State agents.

It was these kinds of challenges that led to the establishment of the EHAHRD-Net in 2005, of which IMLU is a founding member, and focal point for Kenya.

■ Mary Simat - Maasai Women Organization for Education and Economic Development

As a woman leader, Mary gave a powerful testimony of the challenges minority women human rights defenders face in their daily work. Her organization deals with the issues of Female Genital Mutilation and Early and Forced Marriages of underage girls. The deeply ingrained culture of the Maasai posed a great challenge to the work her organization was undertaking. It was her opinion that many NGOs trying to combat the practice have failed because they are based in the urban center and collect money from donors without really going to the ground. She further faulted their strategies and pointed out the need to alter the approach in order to make it more inclusive and participatory.

She reiterated the fact that Maasai women are marginalized and a perusal of civil service will show that they are not to be found in positions that effect change. As an example, she gave a testimony of her personal experience: In 2002 she applied for the position of chief, which is part of the Provincial Administration of Kenya. She was called for an interview with 18 illiterate men. Although it was a written interview, none of the men had a pen; she did and wrote the answers. This was followed by an oral interview and she was interviewed for 30 minutes while the men were interviewed for only 3 minutes each. Being a former Inspector of schools, she was well prepared, passed the interview and received the letter of appointment from the Office of the President. In opposition to her appointment, a demonstration was held outside the office of the Member of Parliament and one of the male interviewees was given the job instead of her. She applauded the media for the comprehensive coverage they gave her story and stated that instead of discouraging her, the experience had made her more ambitious.

She identified strict donor funding guidelines as another challenge facing organizations working at the grassroots level. Information technology posed another challenge to grass root organizations due to their lack of access to IT facilities.



Mary Simat stressing a point during her presentation
© EHAHRDP

Maina Kiai - Chairperson, Kenya National Commission for Human Rights

As a well-known human rights defender, Mr. Maina Kiai was invited to give the key note address. He began narrating his background starting from what he called a “briefcase NGO” that is today’s leading national human rights organization, the Kenya Human Rights Commission, of which he was a founder and which has since grown to great heights. He furthermore contributed to the formation of IMLU which has since grown. He felt these achievements to be an encouragement for all those working in human rights defence.



Maina Kiai during his presentation © EHAHRDP

In order to understand the role of human rights defenders, one needs to understand what human rights work is. This requires looking at all the regional and international instruments. It was his opinion that human rights is “speaking the truth to power” as this is challenging power and limiting power. He cautioned the participants that this was not easy because once you challenge power, it will fight back. He stated that human rights work was not merely going to the street to demonstrate but also involves educating people to challenge power. Mr. Kiai requested participants to ask themselves whether they are constantly challenging power and keep upgrading and modifying the methods they used as human rights work was not static.

He reminded participants of the need to be credible and professional and asked them to verify every single source of information as human rights work was about increasing the base of evidence. To underscore his point, he stated that lawyers have a concept called *res ipsa loquitur* which means that the facts speak for themselves.

He stated that information and evidence is the weapon of HRDs all over the world as they are not fighting a war of guns.

He stated that the second tool is coalition building. He stated that there was need to build numbers and felt that one of the weaknesses of human rights activists is that they had so far been unable to build a constituency for human rights the way religion has done. “Although it is common to hear people say they support certain political parties and are loyal to them, we have not yet been able to get people to be loyal to the ideology of human rights”, he said.

Thirdly, HRDs need to be creative as there is a duty on them to stay at par as well as ahead of our people in order to identify ways to help them and remain relevant.

Maina advised the participants that the time had reached to look at corruption as a human rights issue and find answers to the question of how HRDs can hold all incoming politicians accountable for persecuting corrupt predecessors. Money retrieved would increase the Constituency Development Fund, raise the quality of education, improve health care services etc.

HRDs are at risk of losing their lives. The participants were challenged to seek ways of protecting themselves, those they work for, as well as those who work for them. There is need to address corruption within organizations as it is important that they are accountable and clean their houses before they speak out and judge others.

“As defenders, we need to ask why we do the work we do. If it is not a calling, we might as well go home and sleep. Our problems will not be solved by others in the global north. We have the human capacity to solve our own problems. Being at the frontline of the fight as human rights defenders is not only a responsibility but also a risk.”

He concluded by stating that “*We need to sow justice in order to harvest peace*” and declared the workshop officially opened.

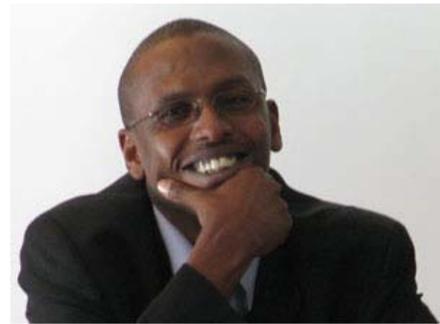
3 Presentations

3.1 Challenges faced by HRDs in Kenya

Samwel Mohochi² – Independent Medico-Legal Unit

Ahead of the workshop, participants were asked to fill a brief questionnaire to establish the challenges they face and ways of addressing these. Mr. Samwel Mohochi presented a synthesis of the responses.

He pointed out that disappearances, death squad killings and politically motivated imprisonment, are still used against defenders in many countries around the world, particularly those experiencing armed conflict or severe civil unrest. In Kenya and many other countries, death threats are a common means of intimidation, often delivered to their offices, their homes or their relatives, while the police or judiciary take no effective action to investigate or punish those responsible. Particularly in Kenya, human rights defenders and whistleblowers have in the past been subjected to multiple criminal framed-up charges to burn them out or dissuade them and effectively bankrupt them as individuals ensuring they lose interest in the calling.



Sam Mohochi listening to a participant's contribution © EHAHRDP

He identified defenders working on human rights issues which have traditionally been neglected or marginalized from the mainstream agenda as often facing specific obstacles. This includes human rights defenders working on economic, social and cultural rights, sexual and reproductive rights and LGBTI rights. The rights they uphold may be especially contested or controversial, either because they challenge dominant social norms or because they are seen as threatening to the established political, religious or economic order.

He explained that the issues gathered from the participants' responses can be broadly categorized into two; i.e. security, and well being of defenders.

Challenges faced by HRDs:

a) Detention or Abduction

Human rights defenders are at risk of being detained or abducted in an effort to get them to refrain from their activities. Many have been tortured or otherwise ill-treated during captivity, often in an attempt to force them to confess to criminal activity or retract accusations of human rights violations.

Detention safeguards are often flouted and many may be held without charge. Others may have spurious charges brought against them, where the authorities seek to tarnish defenders' image and

² Samwel Mohochi is the Executive Director of the Independent Medico-Legal Unit and Kenya focal point of the East and Horn of Africa Human Rights Defenders Network.

reputation by portraying them as criminals, terrorists or delinquents. In some cases charges are clearly fabricated. In others, legitimate activities such as convening a demonstration or lodging an official complaint have been characterized as public order offences or acts of libel.

b) Harassment

Harassment of human rights defenders - through a range of means including surveillance, phone tapping and unjustified restrictions on travel - is often part of their daily life that it goes unreported. Harassment has often taken the form of attacks and raids on their offices or homes, often made to look like acts of common criminality. Defenders have had equipment and files confiscated, and their access to the internet and other communication facilities blocked, and their assets frozen.

c) Smear Campaigns

Smear campaigns and defamatory tactics are also used to de-legitimize the work of defenders, with the media often colluding in the dissemination of slanderous accusations and attacks on their personal integrity and political independence.

d) Bureaucratic Barriers

Bureaucratic barriers have also been applied in politically motivated ways to hamper the work of organizations working for the defense of human rights. All kinds of pretexts have been used to deny organizations legal registration, to restrict their meetings, to obstruct fact finding visits and even to force them to cease operating, whether directly or by preventing access to sources of funding.

e) Trauma and re-traumatization

Owing to the nature of work done by most human rights defenders they do witness misery, loss of life, desperation and this in itself has a psychological bearing on the defenders. Often they lack debriefing and counseling services and sink into depression and trauma. Lack of a proper framework to address this might have far reaching consequences on the defenders.

f) Right issues versus prevailing cultural attitudes and practices

Owing to the strongly entrenched cultural practices and ethnic stereotypes, defenders find themselves in a dilemma challenging status quo and are often branded as puppets of foreign masters. Defenders operating from such communities are ostracized and segregated for ordinary communal affairs.

g) Economic challenges

Defenders especially those who are not in gainful employment often operate from their own pockets bringing to light violations. These constraints at times hamper effective and efficient communication, transport, investigations and gathering of information thereby making them vulnerable. The defenders expose themselves at times in conflict zones where there is polarization of communities without adequate insurance on their person.

h) Lack of rapid response system and/or systematic support

Defenders operating in remote parts of the country where violations go unabated and with impunity often lack support from human rights organization owing to bureaucratic red tape. Whenever they are at risk they are alone without solidarity by organizations that are donor funded and that could be of help. This has dissuaded many upcoming defenders from continuing the struggle.

i) Capacity

Human rights defenders especially those that are not in main stream gainful employment in human rights lack exposure and opportunities to enable them be more professional and efficient in human rights violation documentation.

j) Want of right based approach

Defenders are not saviors and this has led to instances where human rights discourse has been monopolized by a few defenders thereby leading to a culture of dependence, which is unsustainable and beyond their control. Defenders have been unable to empower people and be accountable to them, and have often taken up human rights issues in a discriminatory manner, thereby losing credibility as defenders of rights while the funded organizations have at times failed to use the rights based approach shrouding human rights work in mystery thereby further disempowering the masses we need to preach the gospel that human rights are for all and we should be accountable to our constituency.

Specific challenges of Women Human Rights Defenders

There is sacrifice.

Women, who work as human rights defenders or in unions, are often called too late for meetings, and their family lives suffer. As a result they neglect their children, and husbands constantly threaten to divorce them.

There is fear.

Fear of social rejection, of the way people look at them and of aggression. Fear of what will happen to them if they become victims of violence where there is little provision for women in that situation, and fear of the generally negative interpretation of feminism in Africa.

There is culpability.

WHRDs often find themselves asking if it is really worth it. There's a strong internal dilemma in Africa that is contributing to the decline in participation in the women's movement.

Finally, it should be noted that while HRDs are exposed and vulnerable as individuals, when united, they can overcome most of the challenges. This is particularly so in the 21st century where HRDs are combating impunity. This mother of all violations requires a strong movement of defenders who have the capacity not only to work, mobilize at short notice and expose violations, but also a movement that is credible and accountable in the eyes of society. In the end, "together we shall overcome".

Plenary discussion

Participants were encouraged to pose questions and provide comments on the above mentioned presentation. A summary is provided below:

Participants called for individual HRDs to be recognized and to increasingly get international recognition. It was argued that any progressive democracies, even individuals are forming networks and it was noted that poor networking is one of the greatest challenges that HRDs face. One participant emphasized the need to take the debate of human rights as a totality without distinguishing and leaving certain rights areas out of the discussion. HRDs need to address also new emerging areas of the law like the rights of the lesbian, gay, bisexual, transgender and intersex community.

In relation to legal redress, one defender remarked that it takes too long to follow up on civil rights cases and this becomes an economical challenge. The long duration also makes the community to lose faith in the judicial system particularly when the culprits are easily set free. It is therefore necessary to have funds available to pursue cases. The situation also calls for regional

structures to strengthen HRDs' capacity and ability to do human rights work. Another participant stated, "I believe that frustrating human rights defenders is a strategy. We need to support each other to keep the morale up and in turn also to frustrate the authorities until they agree to serve us. For instance, although there is a general backlog, at times it is intentional, particularly in human rights cases."

In general, some of the problems that HRDs face in the course of their work were highlighted as follows;

- Legal jargon hampering access to justice;
- Lack of legal provisions for LGBTI activists;
- Enhanced communication between HRDs;
- Impact of culture on the work of HRDs;
- Inadequate framework or infrastructure to address the rights of children;
- Challenges in addressing cases of police brutality;
- Lack of support services in the remote areas of Kenya.

HRDs were encouraged not to be covered by the challenges but to continue working and advocating for the equitable distribution of infrastructure and services. The best way to make change is by choosing our leaders carefully and making them accountable to us for how they spend public funds.

Economic, social and cultural rights are as important as civil and political rights. In light of this, poverty has been recognized as a crime against humanity. That is why HRDs have to adopt the principle of universality of human rights which advocates for addressing human rights in a holistic manner. There is need to legitimize organizations because strong institutions and credibility facilitate fundraise and allow for skill sharing.

This workshop poses the opportunity to develop an Action Plan to agree on ways to create programmes and generate a schedule for capacity building activities for HRDs.

3.2 International and regional instruments for human rights defenders

Hassan Shire Sheikh³ - EHAHRDP/Net & Inmaculada Barcia⁴ - ISHR

It is after a long struggle, that the challenges faced by human rights defenders have been recognized and mechanisms for their protection been created on regional and international level.

One of these is the UN Declaration of Human Rights Defenders that stipulate the rights of every individual to "individually or in association with others, promotes and strives for the protection and realization of human rights and fundamental freedoms at the national and international levels."

The session intended to review some of the instruments as well as some of the mechanisms that have been adopted to support HRDs.

³ Hassan Shire Sheikh is the Executive Director of the East and Horn of Africa Human Rights Defenders Project and the Chairperson of EHARHD-Net.

⁴ Inmaculada Barcia is the Manager of the Regional and National Human Rights Defenders Programme at the International Service for Human Rights (<http://www.ishr.ch>).

The UN Declaration on Human Rights Defenders

Together with the participants, Ms Barcia tried to arrive at a definition of a human rights defender. The plenary agreed that HRDs can work individually or as members of an organization and fight for the protection and enhancement of human rights. Often they are the voice of the voiceless.



Inmaculada Barcia during an informal discussion © EHAHRDP

When asked whether members of governments can be HRDs, participants pointed out that those are often the perpetrators of human rights violations and in their official capacity they cannot challenge power. However, others stressed that being a human rights defender was a matter of choice and personal conviction meaning everyone can be a defender if fighting for the respect of human rights with non-violent means.

The UN Declaration on Human Rights Defenders in its Preamble, fourth paragraph, defines HRDs as "[I]ndividuals, groups and associations contributing to the elimination of all violations of human rights."

The definition includes an individual or a group of persons working to promote or protect human rights from all sorts of professional backgrounds including individuals defending human rights in a professional or non-professional context. It was pointed out that defenders can be of any gender or sexual orientation (LGBTI activists), however there is controversy in accepting LGBTI rights even among mainstream HRDs. In order to convince those opposed to LGBTI rights, activists are agitating for the recognition of the universality of human rights. Minimum Standards required of an HRD, is his/her acceptance of the universality of human rights and adherence to non-violent action.

The UN Declaration on Human Rights defenders was adopted by all of the members of the United Nations General Assembly in 1998. It was intended to protect human rights defenders from the violations they have been subjected to as a direct response to their human rights work. It is not a legally binding instrument but represents a strong commitment by States and specifies how existing human rights standards apply to HRDs by providing a framework to analyze the level of protection accorded to HRDs in a given country.

In addition, it specifies the responsibilities of the State and human rights defenders by going on to define the relationship between international and national law. Domestic law is the legal framework for the activities of HRDs but it also contains a safety clause that domestic law must be "consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms".

In summary, the Declaration considers HRDs as right holders and is an important instrument that can be used to lobby and advocate for the rights of defenders as it provides a framework to analyze the situation of HRDs in a given country.⁵

⁵ For more information on the UN Declaration on Human Rights Defenders see: Office of the United Nations High Commissioner for Human Rights (2004) Human Rights Defenders: Protecting the Right to Defend Human Rights. Fact Sheet No. 29. <http://www.ohchr.org/english/about/publications/docs/fs29.pdf>

Plenary discussion

In the plenary discussion, participants highlighted challenges currently faced despite the existence of the Declaration. One participant stated the long time government takes to register particular human rights organisations which is intended to frustrate their efforts. In response some have decided to use the cover of other already registered organizations. The final decision to register an organization is at the discretion of the Registrar who might cite public morality or policy to restrict registration. It is easier to register a CBO than an NGO. Some defenders are carrying out human rights work under the guise of carrying out development work. Another implication of restriction of registration is that one cannot have a bank account and therefore cannot receive funding to implement activities. In light of international standards, authorities must provide a reason for rejecting an application for registration and an avenue to appeal has to be available.

Access to funding was another issue of concern. Participants noted that funding is restricted either outright or subtly by restricting the activities defenders are allowed to implement, e.g., refusing NGOs to carry out election monitoring. Some governments impose taxation on funds received by HRDs whereas they should not do so. In Kenya the restriction is that as soon as funds arrive, the government will close the bank account. Defenders have therefore resorted to organizations as trusts, foundations etc. In North-Eastern Kenya some NGOs have been closed down for receiving funding from Arab countries under the guise of pushing the anti-terrorism agenda.

An area of concern were the stringent funding requirements of donors that particularly hamper small and young organizations to access funds. A revision of their policies to fit the realities on the ground is necessary for a felt impact especially among marginalized communities.

During the discussion participants criticized the double standards displayed by the UN. The facilitators pointed out that right now Africa and Asia form the majority in the UN General Assembly which is the right time to recognize that in order to push an agenda political work as well as technical human rights work has to be done. The existing mechanisms must be seen in perspective and adapted in accordance to local realities to be relevant and effective.

Available Mechanisms for HRDs

UN Special Representative on HRDs

Ms. Hina Jilani from Pakistan was the first Special Representative (SR) to the Secretary General of the United Nations. She has already served two consecutive mandates (2000-2006) and is not eligible for reappointment. The Special Representative is independent of any State, not a United Nations staff member and does not receive a salary.

The Special Representative's mandate, as set out in paragraph 3 of Commission on Human Rights resolution 2000/61, is to conduct the following main activities:

- To seek, receive, examine and respond to information on the situation and the rights of anyone, acting individually or in association with others, to promote and protect human rights and fundamental freedoms;
- To establish cooperation and conduct dialogue with Governments and other interested actors on the promotion and effective implementation of the Declaration;
- To recommend effective strategies better to protect human rights defenders and follow up on these recommendations.

In case of a violation of HRDs' rights, one can send a communication to the UN and African mechanisms at the same time. It is not treaty based and the prior exhaustion of domestic mechanisms is not required.

The SR can take up cases of human rights violations committed against HRDs. Sources of information include state authorities, NGOs, UN agencies, the media, individual HRDs, etc.

Essential information of any submission made to the SR includes the identity of victim(s); his/her status as human rights defender; description of the violation; perpetrators; action taken by the authorities and the link between the violation and the human rights work of the victim.⁶

Once the SR receives information, it is determined whether it falls within the mandate; determining the reliability of the source and the probable validity of the allegation and then contact the government concerned through “urgent action” or “allegation” letters.

“Urgent action” letters are used to communicate to the government information about a violation that is allegedly ongoing or about to occur. The objective is to ensure that State authorities are informed quickly so that they can intervene to end or prevent the violation. Some situations in which they are issued include arbitrary detention and instances where death threats are issued against a HRD.

“Allegation” letters are used to communicate information about a violation that has already occurred and whose effects can no longer be changed. Their objective is to ensure that the authorities are informed and take action to investigate and prosecute those responsible for the violation. Examples of instances when they are issued include killing and police brutality on HRDs.

The SR can send joint letters with other UN Special Rapporteurs whose mandate is involved in that particular case. In most serious and urgent cases, contact with the State authorities may be made within a few hours from the receipt of information. If insufficient information is sent to the SR, the process may take up to several days.

The Special Representative is also mandated to conduct official visits to all States for an independent and impartial assessment of the situation of HRDs in the country. The objective of the visits is to identify problems and obstacles, and make recommendations on how these problems could be resolved. The SR however needs State cooperation as he/she can only undertake a visit following an invitation by the State authorities. It is important to point out that certain States have issued a standing invitation to all special procedures. Where this is not the case, the SR will request an invitation to the State authorities. The duration of the visit is usually between 5 and 10 days. During the visit the SR meets with heads of State and governments, relevant ministries, NHRIs, UN agencies, the media, NGOs and individual HRDs. They then report to the Commission on Human Rights.

The SR is available to receive information from defenders, and uses this information to identify concerns to be raised with States. The SR regularly attends national, regional and international human rights events, which provide opportunities for contact with defenders from around the world.

It also maintains regular contacts with States. On a multilateral basis at the annual sessions of the UN Commission on Human Rights and the UN General Assembly, where the SR presents her reports and responds to their questions. On a bilateral basis in specific meetings and in writing to raise specific issues of concern, such as individual cases. The SR submits annual reports to the Commission on Human Rights (CHR) and the UN General Assembly.⁷

Reports on country visits and on communications sent are submitted separately to the CHR. All reports include recommendations for States and other relevant actors.

⁶ Further information on how to make a submission to the SR can be found via the website of the Office of the High Commissioner for Human Rights <http://www.ohchr.org> or in the Fact Sheet No. 29 “Human Rights Defenders: Protecting the Right to Defend Human Rights” : <http://www.ohchr.org/english/about/publications/docs/fs29.pdf>

⁷ Previous reports by the SR can be found via <http://www2.ohchr.org/english/issues/defenders/annual.htm>

Regional Protection Mechanisms for HRDs

The following regional mechanisms are to be utilised for a protection of HRDs:

- Inter-American Commission on Human Rights (IACHR): Human Rights Defenders Unit (since 2001)
- African Commission on Human and Peoples' Rights (ACHPR): Special Rapporteur on human rights defenders (since 2004)
- European Union (EU): Guidelines on human rights defenders (since 2004)

In 2004, the African Commission for Human and Peoples' Rights (ACHPR) created the mandate of the Special Rapporteur on Human Rights Defenders. This is the first regional protection mechanism created for HRDs in Africa. The current Special Rapporteur is Ms. Reine Alapini-Gansou, a lawyer from Benin who was appointed in 2006.

The Special Rapporteur is mandated to seek, receive and act upon information on the situation of HRDs in Africa; cooperate with member States, National Human Rights Institutions (NHRIs), NGOs, international and regional organisations and protection mechanisms; develop and recommend effective strategies for the protection of HRDs and raise awareness and promote implementation of the UN Declaration on HRDs in Africa.

Similarly to the UN Special Representative on HRDs, the Special Rapporteur can send urgent appeals regarding human rights violations against HRDs and undertake country visits to assess the situation of HRDs in a specific country.

The SR encourages submission of cases to the African Commission and complaints may be received both from individuals and organizations. The author of the complaint need not be related to the victim. All complaints must be written and addressed to the Secretary or Chairman of the ACHPR. It is important to note that there is no special format to submit complaints. However, following the guidelines provided by the UN Special Representative is advisable to facilitate the work of the ACHPR's Special Rapporteur in assessing cases.⁸

Main challenges are that once a report is published, the ACHPR does not have a follow up mechanism and responsibilities lies with NGOs to persuade their governments to implement the recommendations. Secondly, the Special Rapporteur has been unable to comprehensively do her work because of limited resources.

3.3 Terrorism and the War on Terror: A Challenge to Human Rights Defenders

David Copeman - Amnesty International

By definition, terror is either an emotion or a tactic (terrorism) and as such one cannot be said to have "a war on terror", yet this has become a common justification for human rights abuses.

AI's campaigns on Guantanamo Bay seeks to achieve its closure and the disclosure of the rest of about 775 detainees held since Jan 2002 of whom 430 from 35 nationalities were still being held in late 2006, including Kenyan Abdul Malik. Some of the campaign successes include the fact that Guantánamo has been condemned internationally. Courts have been instrumental in

⁸ See footnote 5.

challenging the status of detainees in Guantanamo Bay which was initially created to operate outside the rule of law.

Another feature of the “war against terror” has been secret renditions where detainees in at least 10 countries have been taken into custody before being transferred to Guantánamo Bay, without any judicial process. The objective of the campaign is to “End illegal detention” and bring about accountability for rendition and secret detention in Europe. Some of the campaign successes are that President Bush has finally admitted that in the 'war on terror', the USA has been resorting to secret detentions and enforced disappearance, which is a crime under international law.

It is the position of many HRDs that terrorism should not be allowed to flourish but methodology and mechanisms of dealing with terrorism and terror suspects must be questioned. New legislation passed in light of the 'war on terror' has restricted civil liberties, limited rights to freedom of association and speech, freedom from incommunicado detention and fair trials. There has also been the resurrection of antiquated or disused legislation accompanied by change in police and security agency policies granting them increased powers. This has diminished oversight and accountability. Finally, a confidential US Memorandum saw the redefinition of torture to equate it to “severe pain, equal to organ failure or death”.



David Copeman listening to participants' comments © EHAHRDP

Kenya's legislation on terrorism is marked by a vague and broad definition of "terrorism" and "terrorist" granting the executive extensive powers to stop, search and seize, detain and arrest suspected terrorists. It allows for incommunicado detention and the denial of the right to legal representation during interrogation and making detention the rule and bail the exception. Under the Bill, the State is immune from prosecution or civil suits. It curtails freedoms of association and expression.

The rationale of the War on Terror has been used as a justification for human rights abuses in the following conflicts;

- China against the Uighur people
- Russia in its conflict in Chechnya
- The Pakistani Government crackdown on democratic movements
- The Saudi Arabian, Yemen and Egyptian Government's torture of detainees
- Crackdown on an Islamic movement in the south of the Philippines
- Renditions in East Africa and Western Europe
- Detention of Oromo and Ogaden people in Ethiopia
- Israel's invasion of Lebanon in 2006, following the abduction of Israeli soldiers

It also has been involved to justify human rights abuses by security forces in Algeria, Jordan, Kuwait, Malaysia, Bangladesh, Australia, India and many other countries.

There is the danger of the rights of a group being denied due to the allegation that they support terrorism. Such groups include muslims in the USA and UK who have been accused of terrorism and “non-nationals” as well as ethnic minorities in Kenya. This discrimination also can extend to those who speak out in defence of the discriminated, similar to the McCarthyism during the Cold War.

Case Study: Abdi Mohammed Abdillahi

He is a Kenyan citizen of Somali ethnic origin arrested in north-eastern Kenya, on the Somalia border January 2007, fleeing Mogadishu. He was detained without charge in various Kenyan police stations. On 27 January flown to Mogadishu in Kenyan Police custody, handed over and then flown on to Ethiopia. A number of those transferred were questioned by the US FBI. He is now detained incommunicado in Ethiopia and until recently, the Kenyan government had denied rendering any Kenyan citizens, in spite of flight records. A habeas corpus application in a Nairobi court on behalf of Abdi and others clearly demonstrates that he was transferred to Somalia on 27 January 2007. On 14 October, Kenyan President Kibaki was reported as saying he did not know the names of Kenyan Muslims who had been deported to Somalia. On 19 August, Abdi's brother Farah was abducted, after speaking out about his brother's detention.

The War on Terror rhetoric has been used to challenge key principles of human rights, such as the prohibition on torture.

The confidential memorandum, signed by President Bush on 7 February 2002, stated that “as a matter of policy” detainees would be treated humanely, “including those who are not legally entitled to such treatment”, and an approach to detainees that was “consistent with” the Geneva Conventions, but only to the extent that “military necessity” allowed it.

The War on Terror error uses framing which is a process of selective influence over the individual's perception of the meanings attributed to words or phrases. Framing defines the packaging of an element of rhetoric in such a way as to encourage certain interpretations and to discourage others. In politics, framings are metaphors that are used to justify a particular view point i.e. the US Government as a strict father, protecting but practising tough love, or the Government as a nurturing mother, helping everyone and treating people equally.

The War on Terror implies that it can be won through the use of force, requires patriotism and sacrifice, invokes war-powers, to oppose tactics or strategy is disloyal and demands approval for military funding and gives support for a strong and unilateral leader, who leads a militarized hierarchy.

The War on Terror poses particular challenges to HRDs such as:

- Being smeared as pro-terrorist, losing popular support and legitimacy ('either you are with us, or you are with the terrorists');
- Being caught in anti-terror laws or policing for speaking out;
- The fear of the unknown and potentially supporting someone who may be a criminal;
- Lack of knowledge and the difficulty doing research and working in an area that intersects with intelligence agencies, treason, propaganda by governments and oppositions.

Possible solutions to these challenges are:

- Condemn terrorism to avoid accusation of disloyalty/pro-terror sentiments i.e. “Counter terror with justice”.
- Uphold innocence until proven guilty – in even unpopular cases.

- Focus on Values -Who are we, what are we losing. Example: the recent conflict over confirming an attorney-general who didn't consider waterboarding torture.
- Individuals – rehumanize the dehumanized. The faceless must have a face. Example: David Hicks, Abdi Mohammed Abdillahi
- The law and the court are often the best method to uphold rights. Legal assistance for those charged with terrorism, to ensure that the matters come before a court, allowing for judicial testing and oversight.
- Solidarity between activists, lawyers, HRDs: an attack on one lawyer or judge, or activist for defending the rights of those linked to terrorism must be countered quickly.

Plenary discussion

In the subsequent discussion, participants were encouraged to give their views on the 'war on terror' and its effects on their work.

One participant pointed out that by redefining terror, the USA has also redefined democracy and governance. If it has compromised on human rights and yet it is one of the greatest sponsors of the UN where does that leave HRDs?

Governments have to be held accountable throughout because they seem compromise on their own standards as a result of pressure from the US. One participant wondered why the Kenyan government addresses terrorism the way it does despite having an anti-terrorism police unit Kenya also feels it lacks capacity to deal with terrorism. This gives room for external control by the US government and allows interrogations by the FBI. "We also need to realize that Kenya is a secondary target of terrorism and not a primary one."

Another participant cautioned that until 'terror', 'terrorism' and 'terrorist' are clearly defined, the so called war against terror will continue. There is a threat that this merely becomes a war on Islam. Kenyan HRDs have to be watchful and not allow the planned Bill to compromise human rights standards as enshrined in the Constitution, such as the the right to life and own property. The government should apply the rule of law and existing justice mechanisms to deal with terrorism and as such the Bill should not pass.

One HRD pointed out that the Terroism Bill is a draft but in North Eastern Kenya it is already a law. People are made to carry their identification documents at all times and sometimes their fingerprints are taken. "We need to all read the Suppression of Terrorism Bill and disseminate it. You will all be so shocked at the impunity with which the government will be allowed to act "as a matter of urgency" and then seek legal cover later on." she added.

Another lamented the truckloads of people being detained and deported daily and yet they are not documented. Some of them are innocent refugees seeking asylum. HRDs should form the bridge between policy and the practice on the ground. The recent refolement of refugees is against international human rights standards.

One participant stated that the UN Human Rights Council is currently dominated by African and Asian governments. Therefore not all negative resolutions can be accredited to the USA. It is necessary for HRDs to adopt strategies to hold governments accountable.

"As a human rights defender I see a lack of goodwill from our leaders to enact laws that allow people to enjoy their rights. [...] We need to sit down as Kenyans and redefine certain concepts such as the meaning of democracy. Let us start by holding the duy bearers accountable and letting them know what we want and expect of them."

3.4 Risk Assessment and Security Management for Human Rights Defenders

Sophie Roudil - Protection International⁹

Protection International is a partner organization to Peace Brigades International which provides strategic accompaniments to human rights defenders in the field. It is based on the principle of non-violence and neither interferes in the activities of the HRD nor denounces the state actors. In Guatemala, it accompanies HRDs and their families for up to 20 hours a day. This has enabled the NGOs to carry out their work in a secure manner in accordance with their needs.



Sophie Roudil during her presentation © EHAHRDP

Protection International carries out capacity building on security for HRDs. She explained that the training at hand should ideally take 8 days. Its content is informed by the research they carry out on various security issues that affect HRDs. Currently they are in the process of looking into the psychosocial effects of the work done by human rights defender.

Most human rights defenders are usually too busy carrying out their work to think about their security concerns and risks. This is why Protection International go around the world building the capacity to HRDs with their main objective being to transfer capacity and ensure the sustainability of protection. The organization is currently working on setting up protection desks in different regions of the world to ensure autonomy and security of all HRDs.¹⁰

Ms Roudil commenced her presentation by pointing out that HRDs do not face equal risk in their work as their risks are determined by the dynamic nature of the context in which they work. The participants were advised that when drawing up a security plan, it is important for HRDs to take into account and keep updating their analysis. They also needed to know the different stakeholders and their different interests and the impact the work they do would have on their interests.

The participants discussed targeted threats and therefore were in consensus that threats are intentions to harm HRDs because of the work they do. It has physical, psychological and emotional effects and may make them stop their work as may be the intention of the source of the threat. Vulnerability was described as the danger that HRDs face which is relative and changes over time. The capacity to handle danger and risk is determined by the strengths and resources available to a HRD. These may include communication facilities like telephones as well as capacity building on security issues. The participants were cautioned that the same phone can be an asset but also expose HRDs to and the people they work with to risks when stolen and all contacts or sensitive information winds up in the hands of the wrong person.

However, vulnerabilities and capacity are within the control of a HRD and can therefore be worked upon because threats are external elements. Although something may appear to pose a threat, it may not actually end up being a threat depending on the capacity of the HRD.

⁹ Sophie Roudil is a Training Officer with Protection International (formerly Peace Brigades International) and conducts security training for human rights defenders throughout Africa.

¹⁰ Information, education and communication material relevant to human rights defenders can be accessed via Protection International's website: <http://www.protectionline.org>.

Security Incidents

Security incidence can be intentional and non- intentional. An example of the second category is the general breakdown of electricity in the area where we work. As long as our work has impact, we are likely to have faced a security incidence at one time or another. Any HRD who thinks otherwise may be lacking the capacity to recognize the risk. For example, where there is surveillance, it may be important to develop counter surveillance which will then inform the strategy to deal with the “enemy”. Some steps to take include:

- Register the incident: the register must be shared by all member of the office and should capture all minor as well as major occurrences;
- Analyze them;
- React to them: there is need to adapt strategies and effect changes after every threat.

Threats assessment: understanding threats in depth

The five steps to assessing a threat are:

- 1) To establish the facts surrounding the threat(s): this must be factual and data collected without any attempt at interpretation;
- 2) To establish whether there is a pattern of threats over time;
- 3) To establish the objective of the threat;
- 4) To establish who is making the threat;
- 5) To make a reasonable conclusion about whether or not the threat can be put into action.

Preventing and Reacting to Threats

The definition of an attack is that it is a threat put to action. It is however noteworthy that an attack is not necessarily preceded by threats but could be preceded by a security incidence. The creation of national, regional and international networks can go a long way in reducing the risk of attack to HRDs. Persuading a potential aggressor to change his cause of action can take the form of taking the story to the media, putting the case in the network of NGOs as well as holding a meeting with the potential aggressor in the presence of other observers. The means of persuasion will depend on the situational analysis that had been carried initially.

Plenary discussion

Participants subsequently discussed the relevance of the presented information to their work. One pointed out that the content of the session was not easily applicable to the realities of human rights work that is marked by very limited financial, technical and human resources. “Many CBOs will fail [to implement a security strategy] as they are not known and are always forced to take these risks daily and yet when one foreigner is present when a security incident occurs, they are the only ones identified.”

However, another participant responded that this information can be localized to be applicable to the needs of local HRDs. “We face a lot of harassment and although we have not applied all the rules given to us, we can modify them to fit our situation.” Also, the creation of a mailing list to send out alerts was suggested. A website for HRD Coalition was identified as an effective tool to share information pertinent to the security of defenders.

The facilitator pointed out the importance of identification documents and informed HRDs about Front Line, a human rights defenders organization based in Dublin, Ireland that registers all human rights workers, their localities and contact details, issues them an ID Card that can be presented to various stakeholders.¹¹

Incorporating insurance into all donor proposals is another way of ensuring a better protection of staff members.

Participants commended the importance of the session but regretted the short time that could be allocated to it. Requests were made to organize a full training course on security management to allow defenders to comprehend the issues in greater depth and target the training to the needs of local organization.

3.5 Women Human Rights Defenders

Inmaculada Barcia - International Service for Human Rights

Ms Barcia introduced participants to the concept of women human rights defenders (WHRD). In 2003, the Special Representative on HRDs of the UN, Ms. Hina Jilani saw the need to pay special attention to the work of women HRDs and started a global campaign. The aim of the campaign is to help people visualize the specific risks that women HRDs face because of their work. The campaign has also incorporated defenders of the lesbian, gay, bisexual, transgender and intersex community (LGBTI). The main thrust is that while men and women face similar issue, women face greater risks based on their gender and as a result of gender stereotyping and socialization. One of the aims of the campaign is to document the violations WHRDs face. To effectively address these challenges, these violations need to start being named as sometimes legal provisions are absent. Documentation will help to deal with the issue and establish effective protective mechanisms.

Ms Barcia later provided examples of violations faced by WHRDs:

- Attacks on the life and the mental health of women HRDs: Women being targeted for community work such as educating girls in Afghanistan; torture, cruel and degrading treatment of eligibility groups; domestic violence for “shaming the family” by being a HRD;
- Physical deprivation of liberty e.g. of female journalists in Iran;
- Detention, arbitrary arrests, incarceration of women and LGBTI activists to facilities for psychologically disturbed persons;
- Sexuality bashing, i.e. insulting women by calling them names for the work they do such as “un-African, ungodly, bad mothers, prostitutes”;
- Invasion of privacy and harassment of family members to make WHRDS stop their human rights work;

¹¹ More information on this process can be obtained via Front Line’s website <http://www.frontlinedefenders.org>.

¹² For more information on Woman Human Rights Defenders and the work of ISHR, refer to their website <http://www.ishr.ch>. Information on the ongoing campaign on WHRDs can be found via <http://www.defendingwomen-defendingrights.org>.

- Legal provision and practices that can stop women activists like customary law and religious laws that run parallel to the formal legal system, e.g. Shari'a courts and Maslaha (elders courts);
- Violations of freedom of association, assembly and expression;
- Violation of freedom of movement e.g. the requirement that women ask permission to attend conferences from male members of family
- Non- recognition of violations against women

3.6 Minority Human Rights Defenders: Challenges within the Human Rights Movement

George Ogembo - CEMIRIDE¹³

The Centre for Minority Rights Development (CEMIRIDE) was established in 2000 to strengthen capacities of minorities and indigenous communities in Kenya and Africa. It is an advocacy organization dealing with the recognition of minority ethnic groups and indigenous groups such as ethnic, linguistic or religious minorities. To achieve its objectives, CEMIRIDE has a wide network of grassroots human rights defenders in areas where the minority and indigenous communities and groups habitually reside.

According to the International Convention on Civil and Political Rights, Article 27 the definition of a minority is the following:

‘A group of citizens of a state, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law’.

Defenders working to protect minority groups have the following major roles:

- Exposing, monitoring and documenting human rights violations in marginalized areas
- Forging new frontiers that have largely been misunderstood or ignored by the Kenyan legal systems and administrative policies
- Seeking legal and psychological remedies and support for these vulnerable groups
- Civic education: encouraging understanding and free debate on the government policies, laws and actions among minority groups

However, in their work to achieve recognition and equal rights for minority groups, defenders face repeated challenges such as intimidation, harassment and the obstruction of peaceful



George Ogembo during his presentation © EHAHRDP

¹³ George Ogembo is the Associate Justice & Equality Officer of the Centre for Minority Rights Development CEMIRIDE (<http://www.cemiride.info>)

protests. Activists protesting the eviction processes, illegal allocation of ancestral lands, mining activities and other investment activities have been baton-charged detained and even fired upon.

MHRDs working on economic, social and cultural rights in remote areas also face special challenges as their work is less visible. An atmosphere of impunity sometimes makes it impossible to continue human rights work without risking their lives and the lives of loved ones. In many instances, grave violations result in activists having to stop or radically curtail their human rights activities.

Other drawbacks experienced by MHRDs have been the lack of clear understanding of the rights and freedoms of the minority group under focus. This is also because the policy and legislative frameworks do not recognize the specific rights that accrue to indigenous communities such as the communal type of land ownership. There is a great need to build the capacity of these individuals or groups to become more effective in their lobbying and advocacy work.

Vulnerabilities of MHRDs are compounded by poor infrastructure and geographical isolation. As a result, their opportunities for networking and exchange of good practices and solutions with other national and international MHRDs are greatly hampered. The network is very vital in forging a common platform in respect to issues at hand, organizing urgent intervention process, joint advocacy strategies as well as provision of material and financial assistance necessary for their maximum output.

Investment initiatives in marginalized areas have catalyzed the violations of the rights of MHRDs. The fact that majority of valuable resources all over the world lie in areas inhabited by Indigenous People and minority communities is not in doubt. It is further not in doubt that the indiscriminate exploitation of these resources has brought serious effects on the livelihoods of the people and environment, majority of the cases leading to catastrophic results. MHRDs who have been in the forefront in opposing this wanton exploitation have received threats, physical assaults, arbitrary arrests and detention et al as a result of their activities perceived to be a threat to the entrenched interests of both the state and non state actors

The women defending minority rights have faced extreme difficulties especially as a result of cultural beliefs that do not recognize women as leaders and decision makers in their respective communities. They have been confined to silent participants in development and decision making processes as their opinion is hardly sought or considered Their work is mostly viewed as a threat to, and disruptive of, cultural, religious and societal norms. All the stakeholders, especially the KNCHR should pay particular attention to giving visibility and legitimacy to minority and indigenous women MHRDs highlighting the specific risks they face in their work

The level of risk faced by the MHRDs is higher due to the vulnerabilities of these groups to various risk factors in their areas of operation. Example, they face the risk of common criminal attacks always carried out or perceived as 'ordinary' criminal incidences.

Majority of the MHRDs have suffered from abuse, threats and intimidation in the hands of both state and non-state actors when they expose various manifestations of human rights violations against the interests of their communities or groups. However, the majority of these complaints have not been investigated nor measures actively taken by the state to ensure the safety of the MHRDs and to guarantee that such acts are not repeated. According to Amnesty International¹⁴, when a state fails to investigate such incidents and to provide human rights defenders with adequate protection against further abuses, the state not only creates an environment where human rights defenders are regarded as legitimate targets by state and non-state actors, it also undermines efforts to enforce the accountability of state agents, thereby facilitating an entrenched culture of impunity for human rights violations

In summary, MHRDs are still at a higher risk despite the fact that the Kenyan legal system prohibits direct attack on the defenders if the same system fails to punish those who threaten or attack defenders.

Recommendations

Suffice is to note that protection of MHRD and other Human Rights Defenders in general is a shared responsibility of states, National Human Rights Institutions (NHRIs), regional and the International Community at large. Both these institutions can effectively co-operate and join efforts in constructing an effective network for defence and protection of human rights defenders. The co-operation can function to widen and guarantee the space for the independent operation of the human rights defenders. Not only is the State obliged to allow space for democratic dissent and legitimate human rights activity, it is also required to protect human rights defenders when their rights are violated by other forces. This requires State agencies such as the police, the armed forces and the judiciary to be educated on the need for the protection of rights of HRDs and the limits of their coercive powers. The civil society as a watchdog of the government, should be at the forefront in bringing to the public eye and the relevant institutions various unlawful acts and incidences which are calculated to deter the free operations of the HRDs. The National Human Rights Institutions, by virtue of the powers and responsibilities bestowed upon them by an Act of Parliament, ought to play a vital pivotal role in advocating for due accountability of the government institutions and laws principally aimed at curbing abuse, intimidation and other serious violation of the rights of HRDs which are calculated to deter them from pursuing their noble goal in the society.

The following are other recommendations for effective protection of the rights and freedoms of MHRDs

- The National Human Rights Institutions (NHRIs), local and international civil societies for minorities and indigenous communities and groups and the state should endeavour to publicly promote the understanding regarding the activities of MHRDs.
- The institutions charged with the responsibilities of enforcing the rights of HRDs, such as the Police force, should be decentralized and further strengthened
- Legal recognition of the traditional systems of conflict resolution would assist the MHRDs on conflict resolutions in minority and indigenous communities an avenue to anchor their efforts and acquire legitimacy. This effort would also act as a motivating factor as it would deepen public legitimacy to these institutions and easy access to expertise and a valuable social network
- Formal guarantees of human rights protection to the HRDs. HRDs can only fulfil their mandates if they have secure and enabling environment, legal, policy and administrative guarantees. Adoption of new mechanisms and specific guidelines on the protection of HRDs who suffer and are at the risk of persecution. The KNCHR in close collaboration with the relevant State Institutions should draft and adopt National Guidelines on Human Rights Defenders.
- Closer monitoring of policies and legislations should be effected. This is important to expose and propose for nullification or amendment of any legislation that unreasonably affects the operations and independence of civil society and other HRDs. Encouraging closer consultation between the legislature and civil society in the legislative process and assisting inclusive political decision-making process would assist in strengthening the protection of Human Rights Defenders

- Better and effective security should be guaranteed to the MHRDs in their areas of operations to cope with the latter's increasing security challenges in their work. Apart from deploying more security personnel in the marginalized areas, they ought to be effectively trained on the strategies for protection of Human Rights Defenders

3.7 Sexual Minority Defenders

Judith Ngunjiri – Gay and Lesbian Coalition of Kenya¹⁵

Kenyan society is marked by homophobia allowing for discrimination and all forms of violence against the LGBTI community. This homophobia is encouraged both by the law that does not specifically protect LGBTI individuals, as well as by social and religious leaders. They wield influence in facing society's attitudes. In the past, most of these leaders have actually made hate



Judith Ngunjiri listening to participant's comments

© EHAHRDP

speeches targeting LGBTI individuals. The reasons given are based on untrue myths and a stereotype such as that homosexuality is 'un-African', 'un-Christian', 'unnatural'. Those stereotypes are based on lack of awareness of issues affecting LGBTI individuals.

Factually speaking, studies have been done in Africa that show that homosexuality did in fact exist in Africa, and specifically in Kenya, even before the advent of colonialism. In addition, more and more religious discourse is being shaped by the realization that LGBTI rights should be approached in much the same way as the discourse on religious attitudes towards women has developed positively over time.

The Constitution of Kenya offers protection from discrimination on various grounds, such as, race, sex, tribe and religion. However, it does not offer protection for discrimination on the basis of sexual orientation. This means that discriminative laws that target Lesbian Gay Bisexual Transgender and Intersex (LGBTI) individuals go unchallenged.

The Penal Code of Kenya, in Section 162, criminalizes 'carnal knowledge against the order of nature', the penalty for which is 14 years imprisonment. Section 165 of the Penal Code criminalizes 'indecent act between males', the penalty for which is 5 years' imprisonment. These provisions target same-sex sexual acts and are obviously discriminative.

In addition, some existing laws, though offering protection for all, are not effective for LGBTI individuals.

One of the major challenges is discrimination on the basis of sexual orientation. Discrimination against LGBTI is rampant and takes many forms other than legalities. There is social and religious discrimination where LGBTI individuals are ostracized and excluded because of their sexual orientation. It has also been reported that LGBTI have lost their jobs and homes due to their sexuality.

LGBTI individuals in Kenya face physical, sexual and other violence fueled by homophobia. Moreover, most times, the victims do not come forward to the police and other authorities because they do not want their sexual orientations to be revealed to the public. This in turn

¹⁵ Judy Ngunjiri is a member of Minority Women in Action and a member of the steering committee of the Gay and Lesbian Coalition of Kenya.

encourages blackmail against LGBTI individuals, where they receive threats of their orientation being revealed to family, friends, and business associates.

The situation is worsened by the fact that there is little or no information available about LGBTI emotional, psychological, physical and sexual health. Many LGBTIs are not aware they can contract HIV/AIDS from a person of the same sex.

The Need for Sexual Minority Organizations

In light of all of the above, it is clear that the LGBTI community is in need of defense to advocate for their rights. Mainstream human rights and sexual health organizations have in the past shied away from LGBTI issues. Thus it was necessary for sexual minority organizations to be formed.

In May 2006 the Gay and Lesbian Coalition of Kenya (GALCK) was formed. It comprises four active member organizations: Minority Women in Action, GayKenya, IshtarMSM (Men who have Sex with Men), and TOMIK (The Other Man in Kenya).¹⁶ The mission of GALCK is: 'To promote the recognition, acceptance and defend the interests and rights of LGBTI organizations and their members.'

In December, 2006 GALCK participated in the Nairobi commemoration of the International World AIDS day. GALCK had a stand where volunteers handed out brochures on safer sex for MSM and WSW. Members were also engaged in discussions with members of the public on LGBTI rights.

In January, 2007, GALCK participated in the World Social Forum, which was held in Nairobi. GALCK created a safe space for the LGBTI community, a tent called 'The Q-Spot'. GALCK members once more engaged with the public on issues of LGBTI rights and various workshops were held. This received a lot of media coverage, and for the first time, the issue of homosexuality was brought into public discourse.

In September, 2007, GALCK co-hosted a conference with Kenya Human Rights Commission. It was called 'Changing Faces, Changing Spaces'. It brought together LGBTI activists from Eastern Africa, donors and mainstream human rights and sexual health organizations. It was an opportunity for all three groups to evaluate their experiences with one another in the past. It also aimed at strategizing on a way forward for all three groups.

Universality of Rights

The Universal Declaration of Human Rights of 10th December 1948 reads: "*Article 1* All men are free and equal and born with dignity and rights. They are endowed with reason and conscience and should treat each other in the spirit of brotherhood. *Article 2* Every man shall benefit from the rights and freedoms laid down in this declaration, regardless of any distinction, be it race, colour, sex, language, religion, political conviction, national or social origin, be it ownership or any other circumstances. (...) *Article 3* Every man has the right to live, to freedom and safety of the person."

¹⁶ Minority Women in Action (MWA) is the only exclusively LGBTI women's organization. It advocates for the rights of LGBTI women, as well as providing social support them. Through film club and regular meetings, MWA provides a forum for women to share their experiences as sexual minorities, educates them on their rights and form important networks. GayKenya owns a website (<http://www.gaykenya.com>) and thus provides a platform for the LGBTI community to interact online, and also advocate for gay rights. Ishtar MSM deals with sexual health matters, in particular with HIV/AIDS and also deals with male commercial sex workers and their rights. TOMIK works from a legal and political perspective towards achieving LGBTI rights.

Thus every human being is entitled to fundamental rights including: the right to life, the right to privacy, personal liberty, freedom of expression and conscience, freedom of assembly and association and freedom from discrimination.

In considering whether human rights are indeed universal, one is faced, on one hand, with the individualistic view of man as an autonomous being whose greatest need is to be free from interference by the state. While, on the other hand, there is the communitarian view that society is envisaged as more than the sum of its individual members. An objection to the universality of human rights in the past has been that human rights as laid out in the international covenants ignore the traditions, the religions, and the socio-cultural patterns of developing countries. This objection is often voiced by authoritarian powers to rationalize human rights abuses. The argument is that in most African societies, community or group rights take precedence over individual rights. The limiting of human rights is portrayed as the sacrifice of the few for the benefit of the many. However, it is neither just nor moral that some societies deny certain individuals or a specific group of people their rights based on this static view. Human rights are not static, they do in fact evolve over time, just as culture is not static and continues to evolve.

Religion is also sometimes used as a basis for objecting to the universal application of rights. However, religion can not be fairly used to sanction oppression. Oppression and repression prevent change, and development is about change. A case in point is protection from discrimination. It is a basic human rights principle.

Mainstream Human Rights Movement and the LGBTI Movement: The importance of partnerships

Most mainstream human rights organizations choose not to engage with LGBTI issues due to various reasons including: homophobia and fear of loss of financial support from religious donor organizations. However, more and more mainstream rights organizations are realizing the importance of including LGBTI as a vulnerable group and including them in their strategies of fighting against oppression and human rights abuses.

The LGBTI community is part of a broader social justice movement. There is a need to connect LGBTI issues with other forms of oppression. For example, discrimination, though it may be on different grounds for different groups, is suffered by many vulnerable groups. It is essential to work together to achieve equal rights for all. Partnership will yield more influence in pushing for social, legal and political change.

The mainstream human rights organizations are the caretakers of society and must carry out that duty without prejudice. This also includes sexual health organizations. Safer sex campaigns are not targeted towards MSM, and WSW are mostly ignored. Many WSW do not in fact know that they are still at risk of acquiring HIV/AIDS even though they sleep with women. The concept of sexual health as a human right must also be embraced by rights organizations as it is an important and neglected part of the lives of sexual minorities.

In conclusion, advocating for the universality of human rights is not the same as advocating for uniformity. The differences that exist between different cultures can not be ignored. They must however reflect our common universal humanity. LGBTI rights are human rights. Moreover, human rights must be applied universally, and that includes to LGBTI individuals as well.

Plenary discussion

In the plenary discussion, participants were encouraged to share their view on the struggle of minority defenders and the potential cooperation with mainstream organizations.

One member of the audience requested clarification on how LGBTI defenders operate despite the criminalization of lesbianism and homosexuality in the Penal Code. A member of GALCK explained that one of the major focus of their work was to have those discriminatory sections of the law repealed. Besides, it is important to understand that the LGBTI movement is not only about sex but social equality.

Another participant requested to know what makes a group a minority, what is meant when people say pastoralists are a minority. The respondent pointed to the definition given by Mr. Ogembo in his presentation on minority rights defenders. Participants also pointed out the stark marginalization of North Eastern Kenya where pastoralists live in terms of infrastructure, access to social services and political representation. “These are historical injustices and we need to develop affirmative action to take everyone to the same level. All these issues need to be made part of the national, regional and international agenda [of the national coalition of human rights defenders]”.

3.8 Emerging Laws and Jurisprudence on Human Rights: The Role of Human Rights Defenders

Monica Mbaru - International Commission of Jurists

The Universal Declaration of Human Rights (UDHR) sets the preamble within which human rights are set and subsequent treaties, conventions, and laws written by members of the United Nations (UN) set the same through Bill of Rights as constitutional safeguards. These human rights, though spread in different treaties, compound in every human being by virtue of their indivisibility, interdependence and connection. Thus, provisions in the International Covenant on Civil and Political Rights (ICCPR), the International Covenant of Economic, Social and Cultural Rights, among others, should be viewed in their political action of states other than a separation of human rights. Therefore the defense of human rights and the work of human rights defenders, should and do revolve around human rights without distinction.

African states upon feeling that the ICCPR was not African enough went ahead to formulate the African Charter on Human and People’s Rights to protect group rights. Has this translated to us protecting our brothers and sisters? No, as the same instruments are used to violate the rights of men and women, HRDs, LGBTIs, among others. We will only enjoy these rights once they have been domesticated and made into laws that can be litigated. To date very few people are actually able to litigate matters in regional courts.

The African Commission has expanded the space for HRDs by making particular decisions relating to the nature of their work and the scope of state compliance to the African Charter in respect of their rights. Lawyers while undertaking their work, they are human rights defenders and should be accorded all the necessary state support by being given adequate information to conduct their defense and effectively be able to represent their clients before the African Commission. That denial of access to legal counsel is a serious violation of the work of human rights defenders



Monica Mbaru during her presentation © EHAHRDP

When looking at the Kenyan Constitution, the enforcement mechanisms are still very weak and it contains provisions for capital punishment. The link between the normative regional and international human rights and the practical application on the ground remains very weak. Nigeria is the only African country that has domesticated the African Charter. There, Ken Saro Wiwa’s

case was determined post-humously. It is HRDs' responsibility to keep advocating for the domestication of human rights principles.

The UN Declaration on HRDs is not, in itself, a legally binding instrument. However, it contains a series of principles and rights that are based on human rights standards enshrined in other international instruments that are legally binding such as the ICCPR. Moreover, the Declaration was adopted by consensus by the General Assembly and therefore represents a very strong commitment by states to its implementation. States are increasingly considering adopting the Declaration as binding national legislation.

It is saddening that human right violations have become a cliché and regarded as normal. HRDs need to work towards a strengthening of institutions to ensure their proper working in cases of violations.

HRDs are charged with the responsibility of being vigilant and keeping the human rights momentum going. A network of HRDs will be good for facilitating rapid response mechanisms.

■ The Role of National Law

Articles 3 and 4 of the UN Declaration for HRDs outline the relationship of the Declaration of national and international law with a view to assuring the application of the highest possible legal standards of human rights.

Based on the principles stated above, all states have the responsibility to ensure that all persons under its jurisdiction are able to enjoy all social, economic, political and other rights and freedoms in practice; and to adopt legislative, administrative and other steps as may be necessary to ensure effective implementation of rights and freedoms.

E.g. the Kenya Session paper that seeks to regulate non-governmental organisations (NGOs) was passed, seeking to control instead of protecting, seeking to regulate instead of facilitating and moreover even seeking to prevent most of their activities. This control is not what is envisaged under the guidelines set out in the HRD Declaration.

As the UN Declaration on HRDs creates a responsibility for *everyone* to promote human rights, states should take the initiative to create a conducive environment for the work of HRDs. This can be achieved by;

- (a) Creation of a special unit dedicated to the protection of HRDs, which would be authorized to approach and question the State, and also to reply to them. Kenya currently has the Kenya National Commission for Human Rights, however this is not as autonomous as it needs to be;
- (b) Recognize the crucial role of human rights defenders in the implementation of the UDHR and other instruments on human rights, as well as in the prevention of conflicts, the strengthening of the rule of law and democracy. This is not just limited to the Judiciary but affects also the Executive accountable to the people and a Legislature that is representative of the peoples' needs;
- (c) Guarantee the physical and psychological integrity of human rights defenders in any circumstances and ensure that they be able to carry out their work without any hindrances.

It is therefore state responsibility to comply with provisions of international human rights law especially the provisions of the Declaration on Human Rights Defenders, in particular its Article 1;

“...everyone has the right, individually or in association with others, to promote the protection and realization of human rights and fundamental freedoms at the national and international levels ... the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination,

pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration”.

Plenary discussion

The presenter was asked how far the Government of Kenya has gone in ratifying instruments and their current status of domestication. Ms Mbaru emphasized that human rights work is a continuous process and requires consistent follow up as well as research into emerging areas of the law. At the moment there is no updated list on this issue. However, she points out “Even when ratified, some loopholes still remain, for instance under CEDAW we created the Sexual Offences Act but section 38 exposes victims to legal action should the case against the perpetrator fails. The United Nations Human Rights Council has a website which lists all the conventions. Kenya will be due for the Universal Periodic Review next year and some members of the Coalition need to be trained on how to participate in the review.

ICJ itself is running a litigation fund that supports access to justice, labor rights and women rights covering sub-Saharan Africa. Other than litigation CPJ trains human rights activists to be able to document and deal with human rights violations.

3.9 Psychosocial Aspects of Human Rights Work

Dinah Kituyi - Independent Medico-Legal Unit¹⁷

Ms Kituyi commenced her presentation by specifying which kind of clients Independent Medico-Legal Unit (IMLU) receives. Among them are:

- Victims and survivors of torture and their families and relatives;
- Communities afflicted by torture;
- Refugees;
- Victims of domestic violence;
- Persons who have been sexually assaulted

Torture can have a traumatic effect on a person. It is the person’s experience of the event that makes them traumatic. Traumatic experience involves a sense of danger and threat to one’s life and involves intense feelings of fear, helplessness and horror. Traumatized persons tend to have nightmares, flash backs, concentration difficulties, memory loss, shaking and headaches. They also feel angry, frightened, irritable and often can resort to drinking and spiritual questioning.

The response to traumatic experiences vary from person to person. Very common are:

- a) Avoidance:
 - avoiding to think about it;
 - avoiding going to the place where it happened;

¹⁷ Ms Dinah Kituyi is the Programme Officer for Counselling at the Independent Medico-Legal Unit. IMLU is the focal point of the East and Horn of Africa Human Rights Defenders Network for Kenya. (<http://www.imlu.org>)

- refusing to talk about the event;
- suppressing the feeling of the event and use drugs to suppress it.

b) Re-Experiencing as a part of the person's memory:

- event tends to keep coming back in their minds;
- experiencing nightmares and flash backs;
- full memory resurfaces with time.

Effects of caring for, listening to, reading about, taking statement, accompanying and working with traumatized persons can impact on human rights defenders. This is known as vicarious or secondary trauma.

Principles of Self Care for Human Rights Defenders



Dinah Kituyi © IMLU

To effectively assist traumatized victims, human rights defenders must take care of their own mental health. To do so, a balanced lifestyle is necessary. One's energy should be spread into a variety of activities, e.g. work, family, social, spiritual and hobbies. Healthy eating and regular exercising support a strong mind. The defender needs to draw a boundary between work and his/her personal life. Body and mind need to be given time to recover. Doctors recommend a minimum of 40 min per day devoted to relaxation, this may involve meditation, exercise, walks, etc. Creative activities such as music, dance, pottery, gardening and others support recreation.

It is equally important to maintain connections with others such as professional groups, peers, sports groups, family or friends who can render support in handling challenging situations.

If a defender has experienced trauma, it is vital to recognize this experience. If not resolved, the effects of the defender's traumatization will impact on the work he/she does to help others.

It is crucial for defenders to develop professional skills in handling trauma cases. Supervision, peer consultation, debriefings within the organization, regular staff development, case conferences and the opportunity to talk about one's experiences.

Plenary discussion

One participant requested to be informed about the stand of the Kenya Association of Counselors on LGBTI issues. Ms Kituyi elaborated that counselors deal with issue that clients present and do not focus on their sexuality. Counseling seeks to empower individuals to deal with their lives better. Where families are involved, family therapy is recommended. When counseling, one has to be a counselor and not a HRD and vice versa. Mixing the two relationships is very dangerous for all involved.

The difficulties of LGBTI defenders' work were highlighted and the wide range of opposition they face was emphasized. The facilitator underlined the great importance of solidarity among LGBTI defenders in the execution of their work and recommended to seek professional help to

deal with stigmatization and traumatising. Both group and/or individual therapy were mentioned as a support mechanism.

Another participant remarked on how difficult it is to identify when one is traumatized. It is for that reason, that organizations should put in place psychosocial support for their staff particularly taking into account the work they do and the effect it has on them. At times this can even be informal.

It was mentioned that even judicial officers undergo a lot of trauma in their work which may negatively impact on their work to create sound jurisprudence. In response, Ms Kituyi mentioned the lack of capacity in providing adequate services; “All we have done so far is to create awareness and at the moment we have no capacity to help them in any other way.”

3.10 Kenya National Commission for Human Rights: Roles, Priorities, Opportunities & Needs for Cooperation

Njonjo Mue - Kenya National Commission for Human Rights¹⁸

Background

KNCHR was established by an Act of Parliament with the same name in 2002 and actively began its work as a Commission on 29th July 2003 with the appointment of Commissioners. Before then there was a Standing Committee on Human rights that was appointed by former President Moi in 1996. The Committee lacked statutory basis, independence from the executive arm of the Government; staff lacked security of tenure as they were part-time staff was part-time and some of who were seconded from Ministries to the Committee. Despite the challenges that the Standing Committee faced, it had successes which included development of the Bill that led to the establishment of the KNCHR Act. Many of the problems that the Standing Committee had were addressed by the KNCHR Act.



Njonjo Mue during his presentation © EHAHRDP

Roles of the Commission

National Human Rights Institutions (NHRIs) are a result of “Paris Principles” that were adopted by the General Assembly of the United Nations and the Commission on Human Rights in 1993 and 1992 respectively.

The UN defines NHRIs as bodies established by governments under their national Constitution, by law or decree, to protect and promote human rights and categorises them into three main types including: human rights commissions; ombudsmen; and specialised institutions that focus on the rights of specific vulnerable groups such as refugees, minorities, women, children or indigenous peoples. Human Rights Commissions are bodies with a mandate relating to a broad spectrum of rights including investigation of complaints on human rights violations, review of legislation and government policy to ensure compliance with human rights standards and education on human rights issues.

¹⁸ Mr. Njonjo Mue works with the Advocacy Unit of the Kenya National Commission for Human Rights (KNCHR). More information on their work can be obtained via its website <http://www.knchr.org>.

The main roles of KNCHR in fighting for human rights are as follows

- Reducing systemic human rights violations;
- Providing leadership in framing and informing human rights discourse;
- Increasing opportunities for realisation of economic, social and cultural rights;
- Establishing human rights educational systems;
- Establishing institutional capacity to deliver effectively / efficiently on human rights.

The Commission's activities

KNCHR has continued to promote political accountability through monitoring of the 2005 referendum and by elections. The commission witnessed incidents of hate speech and incitement of violence, misuse of Government resources. A report titled "Behaving badly" was written and all personalities sited were forwarded to the Attorney General for prosecution which to this day has not been carried out.

Promoting accountability in the use of public resources is very fundamental. The argument is that misused funds could have been used to carry out other activities which are important to nation building. A report called "Living large" was produced with Transparency International Kenya highlighting the misuse of Government resources in the purchase of luxury cars by different Government ministries and parastatals. This led to the Minister of Finance recalling a large number of cars which were eventually auctioned off.

Profiling corruption as a human rights issue is one of the major activities of the Commission. Corruption has been seen to be an economic problem and not a human rights issue. KNCHR has repeatedly highlighted that this is indeed a human rights problem because those disappearing funds could have been used for the good of the people and the welfare of the society. The Commission has also lobbied other NHRIs to embrace corruption as a human rights issue. These efforts led to the Nairobi Declaration¹⁹ which was adopted by a majority of African countries at the African National Human Rights Institutions Conference that was held in Ghana in June 2006.

KNCHR's National Integration Programme seeks the intervention and prevention of ethnic based violence by facilitating national integration. This project is aimed at encouraging nationhood and encouraging Kenyans to have a sense of belonging valuing each other regardless of tribe. The Commission also prepared a bill on hate speech with the aim of a national policy that carries strict penalties against anyone who conducts hate speech.

KNCHR has found it necessary to push for the Government to embrace measures of transitional justice and establish a Truth and Justice Reconciliation Commission to address past human rights injustices. The Commission has contacted consultants to finalise a manual for such a commission which is to be used as an advocacy tool.

One of the mandates of the Commission is to monitor violations and catalysing reforms in the penal institutions. This includes visiting places of detention and ensure that prisons are being run well and prison officials respect the rights of prisoners. KNCHR has been able to form good relations with prison officials and conducts human rights trainings for officers.

The Commission had also supported the formation of the Court Users Committees which brings together all the criminal justice actors with the aim to work towards an improvement of service delivery to the people.

¹⁹

The Commission also monitors violations by the police force and advocates for a reform of the force. It is a known fact that most of the human rights violations against individuals by a state are carried out by law enforcement agents. KNCHR in addition to visiting and inspecting police stations has investigated cases of violations, empowering citizens to know their rights through vigorous human rights education and production of a booklet, training of Police officers on human rights and handling cases of extra-judicial killings and disappearances of persons that are reported to the Commission.

KNCHR has continuously advises the Government on including human rights principles into policy and legislation. This is considered one of the most difficult tasks with Parliamentarians being the only people who can amend legislation. However, they have a reputation of being difficult and unwilling to pass any motions in Parliament that will negatively affect them even if it is for the greater good of Kenyans.

The Commission through its complaints and redress programme offers legal advice and other support on human rights violations by providing free legal advice to members of the public. The commission also has powers to sit as a tribunal. This tribunal consists of Commissioners who sit as a court and decide on matters that have been recommended by the redress programme of the Commission. The tribunal's decisions are enforceable by the High Court.

KNHRC furthermore propagates the spread of the human rights based approach to development based on the principles of inclusion and participation of the people who the project affects while taking issues of non-discrimination and equality to be part of achieving their overall outcome. This development initiative also demands that there is accountability and transparency throughout the whole project. Through training and capacity building of public officials, the Commission contributes to the growth of human rights within different Ministries and public officials.

■ Priorities of the Commission

Taking into consideration the history of Kenya, KNCHR places emphasis on the following pertinent issues:

Accountability: This is a very fundamental and important component in the defence of human rights. KNCHR is on a mission to make a nation that accepts accountability as part and parcel of the democratization process. Anyone who is in a position of authority should be able to be transparent in regards to their transactions and be able to report back to the people of Kenya.

National Integration: The current political climate has brought out issues of polarisation according to ethnic/geographical origin. Some individuals foster division through hate speech defaming what they call "the other".

The Commission seeks to establish a sense of nationalism as Kenyans that overrides the ethnic affiliation of individuals. It further aims at creating an environment where reconciliation over past wrongs is taking place and solutions to conflicts are found. It is the Commission's belief that a Truth, Justice and Reconciliation Commission would be able to address the challenges Kenya is facing in this regard.

Opportunities and needs of KNCHR working with other human rights defenders: The Commission appreciates the need for concerted efforts among human rights defenders in the promotion of universal standards of human rights. Solidarity among all defenders is key to exercise effective pressure of human rights violators. KNCHR is very keen to partner with organizations who command specific expertise in relevant fields and join them in trainings and campaigns. Mr Mue admitted that there remains untapped potential in the effective collaboration with NGOs.

A meeting like the HRD workshop brings together defenders from every corner of Kenya representing their diverse constituencies. The Commission encourages defenders to report human rights violations. Its two regional offices in Wajir and Kapenguria are intended to investigate and/or take any other suitable measure.

With the world moving away from a sole focus on civil and political rights the struggle for the respect for economic, social and cultural rights has become important. KNHRC intends strengthen its collaborative efforts with other human rights defenders by using the human rights based approach.

On matters of accountability, it is essential that human rights defenders are accountable and hold this as fundamental to their work. It is not feasible for defenders to continuously fight the war if they themselves do not live up the standards they are propagating.

It is also important for human rights defenders to take into account their personal security. The State during the Moi regime was known for using all forms of intimidation on human rights defenders. Precautions must be taken that defenders do not put themselves unnecessarily in harms way. The KNCHR has pressed the Kenyan Government to ensure the implementation of the UN Declaration on Human Rights Defenders so they can safely execute their legitimate work.

Plenary discussion

One participants challenged Mr Mue on the Commission's failure to protect the rights of children. However, the resource person cautioned defenders to have realistic expectations towards what KNCHR is able to do "The Commission is 3 and half years old. Kenyans have a lot of expectation toward the Commission. Always, these expectations outweigh its capacity to meet them when considering that it is at the tail-end of a failing system and might not always be able to react when and as it is expected to."

Mr Mue further decried the limited funding received by KNCHR which limits its ability to engage effectively with all the challenges faced in today's Kenya.

One of the minority defenders sought guidance on KNCHR's position on LGBTI rights. Mr Mue explained that the Commission agreed as a matter of priority to understand the issues around LGBTI. A meeting with representatives from the Gay and Lesbian Coalition of Kenya (GALCK) was held to learn and devise a strategy of engagement. He further encouraged defenders to get engaged with the Commission and hold it accountable to its mandate "We need "faces" in order to keep expanding the boundaries of human rights. We are not perfect and there is greater need to engage. The constitution poses a challenge because it does not offer sexual orientation as a ground for discrimination and we therefore need to work on the framework."

Participants furthermore demanded explanations on the Commission's take of the situation in the North Eastern part of the country. During security operation after banditry attacks, security personnel violate the right of the citizens. A question was posed whether the KNCHR has solutions to human rights violations using traditional justice instead of the slow and ineffective formal justice system. solutions for violations committed under the Traditional Justice systems that operate more than the formal justice system?

In reference to KNCHR's fight against corruption and discrimination, Mr. Mue was asked how to work against the inequitable distribution of resources in the different regions of Kenya. In his response he mentioned the Movement for Political Accountability initiated by the Commission which serves as a forum for HRDs to hold leaders accountable.

An effort to ensure wider dissemination of KNCHR's publications among human rights defenders for knowledge gain and joint action in the defense of human rights was agreed.

Participants furthermore sought clarification on the powers of the KNCHR Tribunals and whether their decisions were legally binding. Mr Mue explained that the tribunal has the powers of a court. Once a decision is passed, it is for the party to take the ruling and file for an Execution Order in the court.

Members of the plenary criticized what they called selectiveness in KNCHR's work of human rights protection. One participant pointed out that reports need to mention violations that the police face in the hands of criminals. Not doing so increases tension in society through biased reporting. Mr Mue admitted the difficulties in responding to the case of Mungiki, a criminal gang with no standards of engagement. The police however is held accountable by laws and code of conduct. "However, we have come out to ask the government to provide them [police] with protection, life insurance and support for their families."

4 National Coalition of Human Rights Defenders: Benefits and Potentials

■ Hassan Shire Sheikh - Benefits and Potentials of National HRD Coalition

The need to have a network of human rights defenders has been recognized again and again as the best way to raise a platform for discussing the issues faced by HRDs in Africa. The current events in the East and Horn of Africa region reaffirm this need.

The 1998 Johannesburg Declaration on Human Rights Defenders called on all HRDs to have a network to facilitate their work. However, networks have in the past collapsed because they lacked human and financial support to sustain their work. At present there are five Africa-wide sub-regional HRDs Networks with various degrees of development to defend the rights of those who defend others.

The East and Horn of Africa Human Rights Defenders Network is the result of a set of recommendations put forward by the first and exploratory stage of the African Human Rights Defenders Project which identified the most pressing and unmet needs of human rights defenders in the region of the East and Horn of Africa, especially regarding personal security and effectiveness.

The first stage was carried out through field trips in March - May 2004 to Africa which involved extensive consultations with a wide range of human rights defenders as well as several public officers. This early stage was conducted by the Centre for Refugee Studies at York University in Canada and received its initial funding from the International Development Research Centre (IDRC), Amnesty International Canada, and Inter Pares.

The later set up of the Network structure and its mandate is derived from the following four key unmet needs identified in the first stage of the project:

- The most significant is the insufficient collaboration among the human-rights organizations, especially among neighboring countries. As a result, when repressive regimes force advocates to flee their countries, the latter frequently have to leave the region to find safety and go to Europe or the Americas. This means a loss of experienced human rights defenders.
- The effectiveness of human rights defenders as well as their vulnerability is greatly limited by resource constraints. In particular, they need access to good information, i.e. computers and internet, communication resources, and links to donors.

- The specialized expertise required to be a human rights defender includes knowledge development and skill training, especially in human rights instruments and mechanisms as well as crisis management, particularly under repressive regimes.
- At times, the efforts of local and national human rights defenders need to be supplemented by those of the wider international community, especially when attacks on local human rights defenders are involved. There may be a need for systemic protocols for such support

The East and Horn of Africa Human Rights Defenders Network (EHAHRD-Net) was founded in 2005 to strengthen the work of human rights defenders in the sub-region by reducing their vulnerability to the risk of persecution and by enhancing their capacity for effectiveness in defending human rights. It focuses on Somalia (together with Somaliland), Djibouti, Eritrea, Ethiopia, Sudan, Kenya, Uganda, and Tanzania. Much of this region has experienced massive human rights abuses going back many years, in the context of single-party and military dictatorships, struggles for democracy, civil wars, and in the extreme case of Somalia, the collapse of the state.

Having thoroughly analyzed the challenges of human rights defenders and previous attempts of creating a viable network among them, the East and Horn of Africa Human Rights Defenders Project was created as the Secretariat and implementation unit of the Network. In each of the above mentioned countries, EHAHRD-Net has a number of members who among themselves have elected a focal point who is the centre of all communication and action with the Secretariat. This is a highly flexible and democratic structure which however calls for commitment from the focal points to fulfill their tasks.

EHAHRDP as the Secretariat of the Network has since been able to consolidate itself and effectively carry out activities of the Network benefiting its members as well as other HRDs. It



Group representatives working on the Memorandum of Understanding of the National Coalition
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currently runs three programmes, i.e. advocacy, protection and capacity building.

As a regional network of human rights defenders, EHAHRD-Net has realized the importance of strong national coalitions of human rights defenders that bundle the potential of national actors, address local challenges and successfully intersect with other national coalitions in the region in the attempt to positively influence the regional and international framework shaping their work as human rights defenders. It is for this reason, that EHAHRD-Net has chosen this event to initiate discussion on a national coalition of Kenyan human rights defenders that brings together defenders from all areas of the country and all areas of human rights work working towards greater respect of their rights.

This forum has been created for Kenyan HRDs to discuss the feasibility of a national coalition, decide on priority issues to be addressed and develop effective modes of engagement with each other that live up to the ideal of non-discrimination and universality of human rights.

Participants were then encouraged to engage in a discussion on the probability of a national coalition. The idea was well received and time was devoted to create regional and interest-based groups that came together to formulate concrete action plans that ought to be addressed in the coalition's overall strategy.

To ensure the relevance of the coalitions work, regional and special interest groups were formed and their representatives chosen:

- Western - Caleb Twenya
- Eastern - Mary Simat
- Northern - Habiba Isaac Barrow
- South - Steve Muli
- Central - Ignatius Yambasa
- LGBTI - Poulina Kimani
- Indigenous peoples - Jane Muriwasi

From challenges identified within their specific groups, recommendations were drawn in how to address these. Working committees were formed to draw up relevant documents such as the Coalition's Plan of Action, Memorandum of Understanding and Trust Deed under which the Coalition is to be registered (see Annex).

The National Advisory Committee constituted by the above mentioned representatives unanimously agreed to Mr. Samwel Mohochi, Executive Director of the Independent Medico-Legal Unit as the National Coordinator and henceforth a continuation of his position of EHAHRD-Net focal point for Kenya. Mr. Mohochi urged them and all participants to continue to invite more people to the Coalition and promised that with concerted efforts the challenges identified were to be addressed.

5 Closing remarks

Walter Linder - Ambassador of the Federal Republic of Germany

The workshop was officially closed by H.E. Walter Lindner, Ambassador of the Federal Republic of Germany who expressed his pleasure to have been able to support the workshop in light of its commendable outcomes.

Mr. Lindner described himself as a human rights defender trying to achieve change towards the respect of human rights within his working sphere. He pointed out the deploring human rights situation in many parts of Africa, including Kenya, highlighting the living conditions in informal settlements such as Kibera. The Ambassador underlined the importance of the advancement of all human rights including social, economic and cultural rights and encouraged all defenders present to continue their important work. "I am keen to see human rights in theory as well as in practice and that is why we agreed to fund this workshop as human rights defenders like you who see the reality of human rights on the ground. I am glad we could contribute to the success of this human rights defenders workshop."

Mr. Lindner then handed over the certificates of attendance to the participants and declared the workshop officially closed.



H.E. Walter Lindner handing over Certificates of Attendance © EHAHRDP

ANNEX I: Participants, Resource Persons, Coordination Team

Participants

Name	Organisation	Position
Catherine Olando	Migori Human Rights Network	Member
Caleb Ochanda Twenya	Migori Human Rights Network	General Secretary
Onditi Joseph	Migori Paralegal Network	Coordinator
Dr. Mohammad Said	Kenya Medical Association	Council Member
Nehemiah Mukubwa	Mwatikho National Rehabilitation Centre for Victims of Torture	
John Tharuba Kariuki	Nucleus Children's Trust	Executive Director
Claire Orenge	Rural Women & Child Rights Abuse Awareness Centre	Programme Assistant
Micheal Odhiambo Ngaji	Migori Human Rights Network	Organizing Secretary
Marina Bwile	CLEAR Mombasa	Resident Advocate
Diana Nyawanda	Nyawanda & CO. Advocates	Advocate
Steven Muli	Mombasa Human Rights Network M-HURINET	Chairperson
Jane Naini Meriwas	Yiaku Peoples Association	Programme Officer
Brian Asin	Kenya Female Advisory Organisation	Programme Assistant
Habiba Issack Barrow	Habiba International Women & Youth Affairs	Chairperson
Ignatius Yambasa Kembu	Kenya Human Rights Commission/Teachers Association for Human Rights	
Fatma Abdulkadir	Horn of Africa Development Initiative	Founder and Executive Director
Jane Aoko Olando	People and Human Rights Watch	Executive Director

David Koros	Centre Against Torture	Programme Coordinator
Lawrence Bisera	Catholic Justice & Peace Commission	Commissioner
Richard Tuta	Centre for Human Right and Civic Education (CHRCE)	Programme Officer
Patrick Kanuri Kaara	Observation Hill Secondary School	Principal
Rashid Mohamed Diis	Action for Sustainable Change	Programme Officer
George Maina Njeru	St. Martin CSA	Assistant Coordinator
Joseph Kimaiyo Towett	Hunter - Gatherer Network	Secretary General
Mary Simat	Maasai Women Development Organization	Executive Director
Rene Rimas	Nkaanyauk Women Group Assosiation	Coordinator
Ishmael Omumbwa	Mombasa LGBTI	Facilitator
Fatma Milgou	Maasai Women Development Organization	Youth Leader
Abjafa Khalif	Wagalla Centre for Peace and Human Rights	
Mbugua Kaba	People Against Torture	
Tabitha W. Njoroge	Women in Law & Development in Africa (WILDAF)	Programme Officer
Edgar Lumbasio	Christian Partners Development Agency (CPDA)	Communications Coordinator
Judith Ngunjiri	Minority Women in Action-Gay and Lesbian Coalition of Kenya	Member of Steering Committee
Faith Mwende	Centre for Rights Education & Awareness (CREAW)	Project Officer
Joan Chausiku Kariuki	Youth Alive Kenya	Legal Officer
Rita Kijala Shako	Kenya Chapter of the International Commission of Jurists	Program Officer
Nicholas Oraga	Federation of Women Lawyers, Kenya	Executive Director

Joseph Nandwa	Undugu Society of Kenya- USK	L & A Officer
Stephen K. Kabucho	E.K.Kimani & Company Advocates	Advocate
Alice Muhonji Kirambi	Christian Partners' Development (CPDA)	
Luzau Basambombo	Telsquels Magazine in Africa	Journalist
SR. Mary Wangari Sebastian	Association of Sisterhoods of Kenya Justice & Peace Commission (AOSK-JPC)	Programme Officer
Okello Opolo	Okello Opolo & Company Advocates	Advocate
Richard Mugisha	Open Society Initiative for East Africa	
Peter Mwamachi	Student Association for Legal Aid & Research	Secretary General
Dennis Mutava	Network for Adolescent & Youth Africa (NAYA)	Country Program Coordinator
Ndolo Asasa Esq	Youth Agenda	
Lourence Misedah	Ishtar	
Victor Bwire	KNCHR	Human Rights Officer
Stella Njogu	Independent Medico Legal Unit (IMLU)	Intern
Pouline Kimani	Minority Women in Action - Gay and Lesbian Coalition of Kenya	Official Steering Committee

Resource Persons

Name	Organisation	Position
Hassan Shire Sheikh	East and Horn of Africa Human Rights Defenders Project	Chairperson
Samwel Mohochi	Independent Medico-Legal Unit	Executive Director
David Copeman	Amnesty International, Africa Regional Office	Campaigner East Africa
Monica Mbaru	International Commission of Jurists, Kenya	Programme Officer

Inmaculada Barcia	International Service for Human Rights	Manager, Regional and National Human Rights Defenders Programme
Njonjo Mue	Kenya National Commission for Human Rights	Advocacy Unit
Sophie Roudil	Protection International	Training Officer
Judith Ngunjiri	Minority Women in Action/Gay and Lesbian Coalition of Kenya	Member of Steering Committee
Dinah Kituyi	Independent Medico-Legal Unit	Program Officer - Rehabilitation & Documentation
George Ogembo	Centre for Minority Rights Development (CEMIRIDE)	Associate Justice & Equality Officer

Coordination team

Name	Organisation	Position
Nora Rehmer	East and Horn of Africa Human Rights Defenders Project	Programme Officer
Vincent Kodongo	Independent Medico-Legal Unit	Legal and Training Officer
Kadzo Kallama	Independent Medico-Legal Unit	Intern

Annex II: Agenda**SUNDAY, November 25, 2007**

6:00 pm - 7:00 pm	Arrivals & Registration
7:00 pm	Dinner

MONDAY, November 26, 2007

9:00 am - 10:00 am	<p>Opening ceremony</p> <p><i>Opening remarks</i> Hassan Shire Sheikh (EHAHRDP) & Sam Mohochi (IMLU)</p>
	<p><i>Keynote address</i> Maina Kiai Chairperson of the Kenya National Commission for Human Rights</p>

10:00 am – 10:30 am	Morning Break
10:30 am – 11:00 am	Ground rules/practicalities
11: 00 am - 11:30 pm	Synthesis of the challenges faced by HRDs in Kenya Sam Mohochi (IMLU)
11:30 am – 12:30	Discussion in the Plenary
12:30 pm – 1:30 pm	Lunch Break
1:30 pm – 2:30 pm	International and Regional Instruments for Human Rights Defenders Hassan Shire Sheikh (EHAHRDP/Net) Inmaculada Barcia (ISHR)
2:30 pm – 3:00 pm	Plenary Discussion
3:00 pm – 3:30 pm	Afternoon Break
3:30 pm – 4:30 pm	Global Trends in Human Rights: Potential for National Responses by Human Rights Defenders David Copeman – Amnesty International
4:30 pm – 5:00 pm	Plenary Discussion
6:30 pm	Cocktail Dinner

TUESDAY, November 27, 2007

9:00 am – 11:00 am	Risk Assessment and Security Management for HRDs Sophie Roudil (Peace Brigades International)
11:00 am – 11:30 am	Morning Break
11:30 am – 12:30 pm	<i>Continuation</i>
12:30 pm – 1:30 pm	Lunch Break
1:30 pm – 2:00 pm	Women Human Rights Defenders Inmaculada Barcia (International Service for Human Rights)
2:00 pm – 3:00 pm	Plenary Discussion
3:00 pm – 3:30 pm	Afternoon Break
3:30 pm – 4:30 pm	Minority Human Rights Defenders George Ogembo (CEMIRIDE) Judith Wangu (GALCK)
4:30 pm – 5:00 pm	Plenary Discussion
7:00 pm	Dinner

WEDNESDAY, November 28, 2007

9:00 am – 10:30 am	A national coalition of Human Rights Defenders: Benefits and Potentials Hassan Shire Sheikh (EHAHRDP)
10.30 am – 11.00 am	Morning Break
11:00 am – 11:30 am	Working groups
11:30 am – 12:30 pm	Reports & Plenary Discussion
12:30 pm – 1:30 pm	Lunch
1:30 pm – 2:00 pm	Emerging laws and jurisprudence on human rights: the role of human rights defenders Monica Mbaru (International Commission of Jurists)
2:00 pm – 3:00 pm	Plenary Discussion
3:00 pm – 3:30 pm	Afternoon Break
3:30 pm – 4:00 pm	Psychosocial aspects of human rights work: how to deal with it as a defender and as an organization Dinah Kituyi (IMLU)
4:00 pm – 5:00 pm	Plenary Discussion
6:30 pm	Dinner

THURSDAY, November 29, 2007

9:00 am – 10:00 am	Kenya National Commission for Human Rights: roles, priorities, opportunities & needs for cooperation Mburu Gitu (Kenya National Commission for Human Rights)
10:00 am – 10:30 am	Plenary Discussion
10.30 am – 11.00 am	Morning Break
11:00 am – 12:00 am	Closing remarks H.E. Walter Lindner (Ambassador of the Federal Republic of Germany in Kenya)
12:00 pm – 01:00 pm	Plenary Discussion
1:00 pm – 2:00 pm	Lunch & Departure

Annex III: Declaration

DECLARATION OF THE NATIONAL COALITION OF KENYAN HUMAN RIGHTS DEFENDERS

We, the Human Rights Defenders from Kenya meeting at the Workshop for Kenyan Human Rights Defenders organised by the East and Horn of Africa Human Rights Defenders Project in collaboration with Independent Medico-Legal Unit, held at the Lenana Mount Hotel, Nairobi from 26 to 29 November 2007;

Adopting the definition of Human Rights Defenders contained in the United Nations Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect universally recognised Human Rights and Fundamental Freedoms;

Recalling that Human Rights Defenders are men and women working for the promotion and protection of nationally, regionally and internationally recognised human rights, including those working on civil and political rights as well as economic, social and cultural rights through peaceful means;

Taking into consideration the significant role that Human Rights Defenders, including Women Human Rights Defenders, play in the promotion and consolidation of peace, human rights, good governance, democracy and rule of law;

Deeply concerned about the great personal risks and dangers Human Rights Defenders face, including harassment, cruel and degrading punishments, torture, intimidation, death threats, imprisonment, abductions, arbitrary arrests, malicious prosecutions, extrajudicial killings and detention in unauthorised detention centres;

Deeply concerned that Human Rights Defenders are, at times, subjected to public statements that dehumanize and demoralise them, including political persecution, vilification and constant surveillance;

Deeply concerned about the social and cultural environment in which women operate as Human Rights Defenders and the specific risks that they face, including social stigmatisation, sexual harassment, gender discrimination, pressure exerted upon women human rights defenders by traditional practices, non-state actors, perpetrators of violence against women, and patriarchal society;

Mindful of the lack or insufficiency of national mechanisms for the effective protection of Human Rights Defenders and the lack of recognition by Government of Kenya of the existence of the United Nations Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect universally recognised Human Rights and Fundamental Freedoms, 9 December 1998(UN Declaration on Human Rights Defenders);

Recognising the existence of international and regional instruments for the protection of Human Rights Defenders, including the UN Declaration on Human Rights Defenders, the European Union Guidelines on Human Rights Defenders and the African Commission on Human and

Peoples' Rights (African Commission) Resolution on the Protection of Human Rights Defenders, the Entebbe Declaration and Plan of Action of East and Horn of Africa Human Rights Defenders Network and other regional and international instruments;

Emphasising the important role that the UN Special Representative of the Secretary General on Human Rights Defenders and the African Commission Special Rapporteur on Human Rights Defenders in Africa play in the effective protection of Human Rights Defenders;

Recognising the importance of solidarity among Human Rights Defenders, networking and network building at national, sub-regional levels and with the international community as a vital source of protection for individual Human Rights Defenders;

CALL UPON:

The Government of Kenya and the Kenyan National Commission of Human Rights to recognise the legitimacy and important role Human Rights Defenders play in the promotion and consolidation of peace, human rights, good governance, democracy and rule of law;

The Government of Kenya to ensure that national legislation and administrative regulations regarding non-governmental and civil society based organisations are in conformity with the principles enshrined in the UN Declaration on Human Rights Defenders and support the role of Human Rights Defenders;

The Government of Kenya to cooperate with the UN Special Representative of the Secretary General on Human Rights Defenders and the African Commission Special Rapporteur on Human Rights Defenders in Africa to develop a climate of respect for the work of Human Rights Defenders;

The United Nations and the African Commission special mechanisms for the protection of Human Rights Defenders to pay particular attention to the situation of Human Rights Defenders in Kenya and support their effort in the promotion and protection of human rights;

The East African Community, Inter-Governmental Authority on Development (IGAD), the African Union and the international community to engage in dialogue with relevant stakeholders with a view to protecting Human Rights Defenders;

The European Union to operationalize and give full effect to the European Union Guidelines on Human Rights Defenders of June 2004, in particular in providing adequate resources to Human Rights Defenders in Kenya to enable them to carry out their human rights work;

The international community, inter-governmental organisations and UN specialised agencies working in Kenya to include in their strategies and programmes, the promotion of human rights and support for Human Rights Defenders;

The Human Rights Defenders in Kenya to support and participate actively in the success of the work of the Network;

AND RESOLVE TO:

Stand in solidarity and demonstrate unflinching support for Human Rights Defenders, in particular those facing political and legal repression, and other forms of violations;

Support the regional and international special mechanisms for the protection of Human Rights Defenders;

Disseminate this Declaration and implement the Action Plan of the National Coalition of Kenyan Human Rights Defenders;

Firmly pledge to be part of the East and Horn of Africa Human Rights Defenders Network.

Adopted on 29 November 2007,

Nairobi, Kenya

Annex IV: Memorandum of Understanding

THE REPUBLIC OF KENYA

IN A MATTER OF A MEMORANDUM OF UNDERSTANDING FOR THE FORMATION OF THE NATIONAL COALITION OF HUMAN RIGHTS DEFENDERS

MEMORANDUM OF UNDERSTANDING

THIS memorandum of understanding is made this 29th day of November, 2007.

AMONGST the undersigned Kenyan Human Rights Defenders. (Hereinafter called 'Delegates')

WHEREAS;

1. The Delegates are desirous of forming themselves into a National coalition for purposes of having a nation in which the human rights of every citizen as stipulated in the Universal Declaration of Human Right are respected and upheld.
2. The Delegates are desirous of having a mission to maximise the protection of Human Rights Defenders working Kenya and to enhance the awareness of human rights work through linkages with national, regional and international like-minded entities.

3. The Delegates are desirous of having the following objectives; to protect and defend themselves, build their capacity, advocate, raise public awareness and their profiles in Kenya.

NOW THIS MEMORANDUM witnesseth as follows;

1. The General Assembly of delegates hereby agree to create a national coalition for human rights defenders to be known as such.
2. That the delegates hereby ratify the creation and election of a national Advisory committee of nine members drawn from six regions namely eastern, western, central, northern eastern, northern western and southern plus three members representing special interest groups.
3. That the advisory council shall serve in office for a term not exceeding two calendar years and such members shall be eligible for re-election in a national general assembly of human rights defenders.
4. That the delegates hereby mandate the Advisory council to create a charitable trust with the following objectives
 - a. To seek the protection and realization of human rights at the national and international levels;
 - b) To conduct human rights work individually and in association with others;
 - c) To form associations and non-governmental organizations;
 - d) To meet or assemble peacefully;
 - e) To seek, obtain, receive and hold information relating to human rights;
 - f) To develop and discuss new human rights ideas and principles and to advocate their acceptance;
 - g) To submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may impede the realization of human rights;
 - h) To make complaints about official policies and acts relating to human rights and to have such complaints reviewed;
 - i) To offer and provide professionally qualified legal assistance or other advice and assistance in defense of trust with the following objectives;
 - j) human rights;
 - k) To attend public hearings, proceedings and trials in order to assess their compliance with national law and international human rights obligations;

- l) To unhindered access to and communication with non-governmental and intergovernmental organizations;
- m) To benefit from an effective remedy;
- n) To the lawful exercise of the occupation or profession of human rights defender;
- o) To effective protection under national law in reacting against or opposing, through peaceful means, acts or omissions attributable to the State that result in violations of human rights;
- p) To solicit, receive and utilize resources for the purpose of protecting human rights (including the receipt of funds from abroad).

Or such other charitable purposes of a public character established solely for the purposes of protection and defense of human rights defenders in Kenya as the Trustees may from time to time in their absolute discretion deem fit

- 4. That the delegates mandate the advisory council to forthwith formulate a code of ethics and a system of enlisting /registration of more coalition members.
- 5. That the delegates authorize the advisory council to arbitrate and resolve disputes and conflicts arising among human right defenders within the geographic regions or special interest groups.

The following delegates hereby agree to be bound by this Memorandum of Understanding on the date herein above mentioned.

Name	Region	Signature

WITNESS;

Name:

Signature:

Address:

Profession:

Drawn By;

The Advisory Council.

Annex V: Plan of Action

Plan of Action of the National Coalition of Kenyan Human Rights Defenders for the Protection of Human Rights Defenders

Introduction

We,

The Human Rights Defenders and resource persons from various non-governmental organizations, meeting at the Workshop for Kenyan Human Rights Defenders organized by the East and Horn of Africa Human Rights Defenders Project and Independent Medico-Legal Unit, held at the Lenana Mount Hotel, Nairobi from 26 to 29 November 2006 adopt this action plan, in conjunction with the Declaration of the National Coalition of Kenyan Human Rights Defenders.

The Situation of Human Rights Defenders in Kenya

Having analyzed the situation faced by Human Rights Defenders in Kenya, we recognize and express concerns for the following:

Concerns relating to the capacity of Human Rights Defenders

- Insufficient training, skills and knowledge in the understanding and use of existing regional and international mechanisms
- Weak national human rights networks
- Lack of adequate financial and other resources
- Inadequate access to information
- Lack of recognition of the work of Women Human Rights Defenders
- Inadequate numbers of Women Human Rights Defenders at the policy and decision making levels of human rights organisations

Concerns relating to the legal environment

- Lack of national legislation that complies with international and regional standards on the protection of Human Rights Defenders
- Unwillingness of the Government of Kenya to implement legal decisions when they have lost a human rights case in the courts
- Repeated arrests, harassment and other human rights violations by government authorities
- Malicious prosecutions

- Impunity and lack of redress for human rights violations experienced by Human Rights Defenders

Concerns relating to the political environment

- Lack of recognition of the particular experiences faced by Women Human Rights Defenders
- Lack of awareness and acceptance of issues relating to sexual minorities and other marginalised groups
- Insufficient freedom of expression, government control of media
- Lack of community awareness of the value of Human Rights Defenders
- Persistence of harmful traditional practices affecting women's rights
- Harassment, intimidation and inadequate facilitation of the Kenya National Commission of Human Rights

Concerns relating to the psychosocial environment

- Human Rights Defenders are at high risk for direct trauma, vicarious traumatisation, and burnout
- Lack of institutionalized psychosocial support for Human Rights Defenders at all levels
- Lack of space and resources to deal with the trauma and fear experienced by Human Rights Defenders at all levels

Action Plan

This Plan of Action aims to define strategies to respond to the difficult situations faced by Kenyan Human Rights Defenders, and agree to carry out the following strategies and actions to enhance their capacity to conduct human rights work and to improve their protection.

- Capacity buildings for the training of trainers (TOT) and Human Rights Defenders building on: information, communication technology (ICT); women rights; child rights; investigation, monitoring and documentation; fundraising; regional and international human rights standards and security of HRDs
- Human Rights Educations targeting communities; government agencies and policy makers
- Strengthening the networks constituting the National Coalition of Kenyan Human Rights Defenders
- Resource mobilization
- Regular national and regional forums for Human Rights Defenders
- Development of a code of ethics for Human Rights Defenders
- Developments of rapid response mechanisms for Human Rights Defenders at risk
- Setting up resource centres
- Translation of resource materials for HRDs into national and local languages
- Lobbying and advocacy for reform of laws and policy on issues affecting HRDs

- Engaging the existing social community and religious systems in mainstreaming gender and issues of sexual orientation.
- Provision of legal and rehabilitative support (physiological and medical treatment) to HRDs
- Information sharing on issues affecting HRDs

East and Horn of Africa Human Rights Defenders Project

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