Model Human Rights Defenders Policy and Action Plan
Preface

The Kenya National Commission on Human Rights (KNCHR) is an independent Constitutional Commission established pursuant to Article 59 of the Constitution of Kenya (CoK) as one of the successor commissions to the Kenya national human rights and equality commission. The KNCHR is constituted and operationalized by the KNCHR Act No. 14 of 2011 with the core mandate of enhancing the protection and promotion of human rights in Kenya. The Commission is an autonomous institution whose operations are guided by the United Nation’s approved principles on establishment and functioning of independent national human rights institutions commonly referred to as the Paris Principles.

The Commission executes its mandate through a number of strategies including advocacy, strategic partnerships with both state and non-state actors, investigations, monitoring compliance with international human rights standards and practices among others. The Commission is legally mandated to issue advisories and help formulate policies aimed at assisting the government satisfy its commitments and obligations under international human rights instruments.

Globally, the place of HRDs in the human rights discourse cannot be gainsaid. HRDs play a critical role in not only exposing human rights violations in whichever form but also advocating and clamoring for the redress of such violations. They are the first point of call in exposing imminent and existing human rights abuses. HRDs work tirelessly at the local and national level in gathering and disseminating information on human rights violations, supporting victims of human rights violations where possible and pursuing & securing accountability for human rights violations.

Under international human rights instruments, HRDs have been universally recognized and guaranteed a catalogue of rights and protection that is essential to the effective execution of their functions. For instance, the Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms otherwise referred to as the Declaration on Human Rights...
Defenders reaffirms the rights of HRDs and calls for the support and protection of HRDs in the context of their work.

Despite this, HRDs have been subject and continue to be the subject of human rights violations perpetrated by state and non-state actors. Reports of targeted attacks against HRDs have been documented both at local and international levels. There is also a growing narrative of fear amongst the HRDs and shrinking advocacy space due to a number of restrictive and punitive legislations enacted. For this reason there is need for protection. The creation of a safe and enabling environment in which HRDs can work without fear is primary motivation behind the formulation and adoption of this Policy. The adoption of the National Policy and Action Plan on Human Rights is also in recognition of the fact that the promotion of human rights and fundamental freedoms, good governance, democracy and accountability largely depends on the support and protection given to HRDs. It is a strong message that the defence of human rights is a right in itself.

It is for this reason that the Kenya National Commission on Human Rights welcomes the adoption of this policy. It is our sincere hope that the policy will build momentum for increased support and protection of human rights in Kenya.

Kagwiria Mbogori
Chairperson
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Abbreviations

CBO’s  Community Based Organizations
CoK  Constitution of Kenya
HRD’s  Human Rights Defenders
IPOA  Independent Policing Oversight Authority
NGO’s  Non-Governmental Organizations
PBO’s  Public Benefit Organizations
PWDs  Persons with Disabilities
UDHR  Universal Declaration of Human Rights
Definition of Terms

**Human rights** are entitlements which are inherent in our nature and without which we cannot live as human beings. Human rights and fundamental freedoms allow us to develop fully and use our human qualities, our intelligence, our talents and our conscience and satisfy all our needs.

**Human rights defender** refers to individuals, groups and associations contributing to the effective elimination of all forms of abuses, violations of human rights and fundamental freedoms of people, individual(s) and also encompasses the elimination of all forms of torture, abuses and human rights violations against HRD’s. Defenders can be of any gender, of varying ages, from any part of the worlds and from all sorts of professional or other backgrounds.

**Policy** refers to the principle of action proposed by government, party, business or an individual and comprises of the general principles by which a government is guided in its management of public affairs. It further outlines what the government or an individual aims to achieve for a society.

**Arbitrary arrest** is the act of arresting of an individual without giving an explanation for the arrest or showing them an arrest warrant. The victims are usually held incommunicado, with their whereabouts concealed from their family, associates, public population and open trial courts.

**Unlawful detention** refers to the act of restraining or withholding either accidentally or by design a person or a thing and preventing the removal of such person or property. The persons may sometimes go for long periods without judicial review, while living in pitiful conditions in detention. It mostly occurs when police accost an individual for questioning.

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1. OHCHR Fact Sheet No. 29, ‘Human Rights Defenders: Protecting the Rights to Defend Human Rights’, pg. 6
2. Kenya Law Reform Commission
3. OHCHR Fact Sheet No. 29, ‘Human Rights Defenders: Protecting the Rights to Defend Human Rights’, pg. 11
on suspicious criminal activity among other reasons, thereby restraining the individual’s freedom to walk away.⁴

**Malicious prosecution** refers to the filing of a law suit for the purpose of harassing the defendant when there is no genuine basis for the suit.⁵

**Marginalization** is the process of making a group or class of people less important or relegated to a secondary position. It points to a social phenomenon of excluding a minority, subgroup or undesirables by ignoring their needs desires and expectations.⁶

**Abductions** refers to crime of taking away of a person by persuasion, by fraud or by open force or violence. It is distinguished from kidnapping which requires an element of force or threat of force.⁷

**Assassinations** is murder committed for hire either with or without provocation or cause of resentment being given to the murderer by the person upon whom the crime is committed i.e. the act of murder by sudden, stealth or secret attack while lying in waiting, for impersonal reasons.⁸

**Torture**⁹ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the

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⁴OHCHR Fact Sheet No. 29, ‘Human Rights Defenders: Protecting the Rights to Defend Human Rights’, pg. 11
⁵OHCHR Fact Sheet No. 29, ‘Human Rights Defenders: Protecting the Rights to Defend Human Rights’, pg. 12
⁶http://thelawdictionary.org/marginalization/ (Black’s online law Dictionary 2nd edition)
⁷http://definitions.uslegal.com/a/abduction/
⁸http://thelawdictionary.org/assassination/ (Black’s online law dictionary 2nd edition)
instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions.

**Emotional and psychological torture**

When the word torture is mentioned, more often than not would quickly think physical, with regards to inhuman treatment with regards to places of detention, correctional facilities or physical abuse. On the flip of the norm, emotional and psychological torture are invisible experiences a human being goes through based on an occurrence or event that the mind/brain is an able to deal with. Anything that affect ones psychological wellbeing affects their emotions too; from a psychological perspective, the aspect of torture may be referred to as abuse. However, questions may be raised on what amounts to this kind of torture.

One is said to be emotionally or psychologically tortured when they are subjected to, or treated in a manner that diminishes and or deprive them of dignity, self-worth, or subjected under anxiety or left in a state of limbo; **convicts on death roar are a perfect example of one going through emotional and psychological torture.** Threats of any kind, are subject to both emotional and psychological torture, situation of uncertainty, confinement, isolation, verbal assault, among others. Family conflict especially conflict between couples, would subject children to such facet of abuse/torture.
1. Introduction

1.1 Background

Human Rights Defenders (HRDs) have been involved in the protection and promotion of human rights spanning decades. In Kenya, their work is both difficult and risky. Several cases have been documented highlighting abductions, assassinations, physical assaults, harassment, unlawful detentions, prosecutions on trumped up charges among others by both state and non-state actors. It’s unfortunate that in the course of defending human rights, these violations have extended to affect negatively both the HRDs and their families. Respect for Human rights cannot be realized without HRDs. HRDs play a critical role in ensuring that human rights violations are noticed and addressed, questions are asked and voices raised in protest. This often results in exerting positive influence in the political, social, economic, environmental, legal and cultural fabric of national and regional agendas to promote human rights for all. It is therefore important that a coherent framework is put in place for the protection of the defenders.

The declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms known otherwise as the ‘Declaration on human rights defenders’ began its elaborations in 1984 and ended with the adoption of the text by the General Assembly in 1998. The need for the declaration arose out of deep concern that, in many countries, persons and organizations engaged in promoting and defending human rights and fundamental freedoms are often subjected to threats, harassment,
insecurity, arbitrary detention and extra-judicial executions. The declaration states that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels. It reaffirms rights that are instrumental to the defense of human rights, including, inter alia, freedom of association, freedom of peaceful assembly, freedom of opinion and expression, and the right to gain access to information, to provide legal aid and to develop and discuss new ideas in the area of human rights. Implementing the Declaration is a precondition for the creation of an environment that enables HRDs to carry out their work. In 2000, the UN took a positive step by establishing a specific mandate on HRDs known as the Special Rapporteur on HRDs to help monitor and press for the implementation of the Declaration.

At the regional level, the Special Rapporteur on HRDs was established by the African Commission on Human and Peoples’ Rights with the adoption of Resolution 69 at the 35th Ordinary Session. This was upon recognizing the crucial contribution of the work of HRDs in promoting human rights, democracy and the rule of law in Africa borne out of serious concern about the persistence of violations targeting individuals and members of their families, groups or organizations working to promote and protect human and peoples’ rights and by the growing risks faced by HRDs in Africa; and having noted with deep concern that impunity for threats, attacks and acts of intimidation against HRDs persists and that this impacts negatively on the work and safety of HRDs. The mandate calls for the Special Rapporteur to among others raise awareness and promote the implementation of the UN Declaration on Human Rights Defenders in Africa.

In Kenya, HRDs have contributed immensely to protection and promotion of human rights. However, this is done against a background of ongoing, often brutal repression of HRDs. This demonstrates yet another stark reminder that

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12Declaration on the right and responsibility of Individuals, Groups and Organs of Society to promote and protect universally recognized human rights and fundamental freedoms.
HRDs working within conditions of violence and abuse, are often the first targets of repression. Defenders and their family and community members continue to be victims of assassinations, disappearances, arbitrary detention, death threats and different forms of harassment. Furthermore, vilification campaigns and negative propaganda defame and criminalize defenders as dissident elements of society. This misconception, more deliberate than not— exacerbates violations and crimes against HRDs as well as their families and associates.

In recent years, state security agencies have been allegedly involved in serious human rights violations including extra judicial killings, and arbitrary detention and torture. The linkage to terrorism and the freezing of bank accounts of some of the most highly respected Kenyan human rights organizations, has cast a dark shadow on the fight for human rights by members of the civil society. Laws and regulations set in place that infringe on the rights of individuals and agencies are used to target HRDs, whether as an individual or agency. The proposed amendments to the Public Benefit Organizations Act (2013) in Kenya, demonstrates how legislations can work against HRDs. Such laws set in place sections that affect the registration, management, operation and financing of organizations that are involved in the protection of human rights. In the face of such legislations, HRDs around the world are forced to work without legal protection, or worse, to terminate their activities and, in some cases, even to flee their country. Such practices and restrictive laws have been applied to control defenders selectively and intrusively, and to deny legal status to NGOs critical of government policies. This is evident from the directive issued by the government that shifted the NGO board to the Ministry of Interior and coordination of national government. The interpretation of this move is a confirmation of the state control on the instruments that should safeguard the protection of human rights and the role of HRDs.

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13Reference to KNCHR documentation and legal support provided to MUHURI and HAKI AFRICA
14Reference
15Ibid
A great number of HRDs in Kenya, have been subject to violations of their human rights. They have been the target of executions, torture, beatings, arbitrary arrest and detention, death threats, harassment and defamation, as well as restrictions on their freedoms of movement, expression, association and assembly. They have also been the victims of false accusations and unfair trial and conviction.\textsuperscript{16} Violations most commonly target either HRDs themselves or the organizations and mechanisms through which they work and occasionally, they target members of defenders’ families, as a means of applying pressure to the defender.

The aim of this proposed policy framework is to provide a safe operational environment for HRDs. The idea is to enable the state to be in a better position to strengthen progress to enhance current and future protection for HRDs and their families and to create or reinforce a conducive environment, including preventing criminalization for their activities. This is in line with the state obligations to respect, protect and fulfill the rights of citizens. To this end, it is the responsibility of both the state and non-state actors as important stakeholders to protect HRDs as they carry out their work. The advancement of human rights and democracy is necessary for global stability and can be achieved only through the local, often heroic, efforts of individuals who speak out against injustice and oppression.

1.2 Policy Statement

This policy recognizes and reaffirms the critical role of HRDs in the promotion and protection of human rights in Kenya and the need for the state to fulfill its mandate to provide a safe and secure legislative and operating environment.

\textsuperscript{16}OHCHR Fact Sheet No. 29, ‘Human Rights Defenders: Protecting the Rights to Defend Human Rights’ pg. 10
1.3 Policy Framework

1.3.1 Overall goal
To provide a framework for the recognition, protection and support of HRDs in the context of their work.

1.3.2 Objectives
1. To recognize, promote, respect and protect human rights and fundamental freedoms of all HRDs by both the state and non-state actors.
2. To ensure state compliance in local and international obligations towards the protection of human dimension commitments to HRDs.
3. To put in place legal framework to support and defend the work of HRD’s and institutions.
4. To put in place sensitization and capacity building programs of both State and non-state actors on the role of HRD’s.
1.4 Guiding Principles

1. Participation and Inclusivity
2. Transparency & Accountability
3. Equality and Non-Discrimination
4. Rule of law.

1.5 Legal Framework

**Constitution of Kenya**

The Bill of Rights in the CoK provides an elaborate framework for protection of HRDS. Among the specific provisions include:

- Article 2 (1): The Constitution is the Supreme Law of the Republic binds all persons and State Organs at both levels of government.

- Article 2(6): Recognizes that all treaties and conventions ratified by Kenya shall form part of the Kenyan law under the Constitution.
- Article 10: On National Values and Principles.
- Article 21 (1): Recognizes the fundamental duty of the State and State Organs to observe, respect, promote and protect fundamental rights in the Bill of Rights.
- Article 26: The Right to Life
- Article 27: Equality and Freedom from Discrimination.
- Article 28: Human Dignity.
- Article 29: Freedom and Security of the Person.
- Article 31: Privacy.
- Article 33: Freedom of Expression.
- Article 34: Freedom of the Media.
- Article 35: Access to Information.
- Article 37: Assembly, Demonstration, Picketing and Petition.
- Article 38: Political Rights.
- Article 47: Fair Administrative Action.
- Article 49: Rights of Arrested Persons.
- Article 50: Fair hearing.
- Article 51: Rights of persons detained, held in custody or imprisoned.
- Article 73: Responsibilities of leadership

Nationally, there are other applicable laws including but not limited to:

- Access to Information Act 2016
- Prevention of Torture Act 2017
- Legal Aid Act 2017
- Witness Protection Act No. 2 of 2010
International and regional laws/Instruments

There are various international and regional human rights instruments that are applicable to the work of HRDs that provide impetus for this policy. They include:

At the international level;

- The Universal Declaration on Human Rights (UDHR).
- International Convention on Civil and Political Rights (ICCPR).
- Convention on Discrimination against Women (CEDAW).
- The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms
- Special procedures – Special Rapporteur on the situation of HRDs that supports the implementation of the 1998 Declaration on Human Rights Defenders and gathers information about the situations of HRDs globally
UPR recommendations

- Ensure that human rights and fundamental freedoms enshrined in its Constitution are protected in the fight against terrorism and the national security plan and actions; pay particular attention to safeguarding the rights and safety of minorities and marginalized groups, as well as HRDs, refugees and stateless persons; address root causes of insecurity and radicalization and point out the need for a comprehensive counter radicalization strategy.

- Ensure that attacks against HRDs are properly investigated and their perpetrators are prosecuted.

- Implement fully the Public Benefits Organisations (PBO) Act, 2013 and safeguard rights and space for civil society, in line with the Kenyan Constitution.

- Review all new legislation to ensure consistency with International Human Rights Law and the Constitution, consulting broadly to build a national consensus and protect the role of an active civil society.

- Implement the 2013 PBO Act, and ensure that any PBO Act amendments are undertaken in consultation with civil society.

- Repeal or amend any laws which may constrain or limit a vibrant civil society, in line with international human rights obligations and Kenya’s Constitution.

- Respect the Constitution’s provisions on human rights in its amendments to the Public Benefit Organizations Act and amendments to media laws.
- Ensure that NGOs and HRDs can freely conduct their activities
- Ensure that laws enacted to regulate NGOs will not undermine their independence or unduly restrict their activities in the defence of human rights

**Grand Bay declarations, 1999-**

Notes that the adoption of the UN Declaration on the Protection of HRDs by the 54th Session of the UN Commission on Human Rights marks a significant turning point and calls on African governments to take appropriate steps to implement the Declaration in Africa.

**At the regional level;**

- Maputo Protocol on the Rights of Women.
- Kigali Declaration, 2003 – Article 28 Recognizes the important role of civil society organizations (CSOs)
in general and HRDs in particular, in the promotion and protection of human rights in Africa, calls upon Member States and regional institutions to protect them and encourage the participation of CSOs in decision-making processes with the aim of consolidating participatory democracy and sustainable development, and underscores the need for CSOs to be independent and transparent

1.6 Conceptual Framework

HRDs work is a universally recognized right. They have a right to defend human rights. They play a vital role towards democracy and good governance. States have obligations under international law to protection of HRDs by ensuring that there is a safe enabling environment that enhances human rights work and guarantees the enjoyment of human rights by all.

1.7 Justification for a Policy Framework

HRDs in Kenya like in many other developing countries experience serious challenges in their work. These challenges exist within the political, economic and social contexts. In many accounts, HRDs have disappeared without trace, killed or imprisoned. HRDs are still subjected to multiple criminal framed up charges aimed at dissuading them and freezing their operations, this is done to ensure they lose interest in this critical calling. The state which comprises of the 3 arms of government i.e. the judiciary, executive and legislature have not necessarily taken comprehensive measures to
investigate and punish those culpable. This therefore is the background that informs the need for this proposed policy.

This policy seeks to provide a framework for the protection of HRDs. The challenges they face require effective measures to enhance their enjoyment of human rights and the constituency they represent. In a broad sense the policy, addresses the following:

1. Ensure HRDs conduct their work in a conducive environment
2. Enjoyment of rights in the Bill of Rights
3. Fighting for the rights of marginalized groups and communities
4. Guarantee and protect welfare of HRDs and their families
5. Protection of women HRDs and journalists
2. Policy Concerns and Actions

This section identifies the key concerns relating to operational environment of HRDs to be addressed by the policy and spells out specific actions for each of the concerns. Broadly, the concerns have been clustered as follows: Physical Integrity, liberty, Security and Dignity of HRDs, and; Safe enabling Environment conducive to human rights work

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<th>Theme</th>
<th>Specific Policy concerns</th>
<th>Policy Action</th>
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| Physical Integrity, Liberty, Security and Dignity of HRDs | Protection from attacks, threats and other forms of abuse | I. Independent investigations of violations spearheaded by KNCHR and IPOA. Appropriate legal action taken against perpetrators.  
II. Strengthening KNCHR through increased budgetary allocation and non-interference by any of the arms of Government  
III. Sustained public education/sensitization on human rights and the work of HRDs |
| | Protection from criminalization, arbitrary arrests, detention and abuse of judicial power | I. Independent investigations of violations against HRDs spearheaded by the National Human Rights Institution  
II. Decentralization and strengthening of existing commissions and independent Offices e.g. KNCHR, NGEC, CAJ, IPOA,  
III. Strengthened collaboration between state and civil society organizations  
IV. Psycho-social support  
V. Proper coordination among institutions in the chain of Justice  
VI. Strengthening court users committees – more funding for regular meetings and follow-up on issues |
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<td>I. Strengthening NGEC and CAJ</td>
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<td>II. Implementation of laws on stigma and discrimination</td>
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<td>III. Sustained civic education</td>
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<td>IV. Better collaboration and coordination among state institutions responsible for addressing marginalization</td>
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<td><strong>Safe and enabling environment conducive to human rights work</strong></td>
<td>I. Sustained civic education, expanded human rights education</td>
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<td>in schools, universities, colleges and teacher training</td>
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<td></td>
<td>II. Refresher training for teachers on Human rights</td>
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<td>III. Consistent implementation of UPR recommendations</td>
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<td>IV. Training of Police and other enforcement agencies under both National and County Governments</td>
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<td><strong>Realization of freedoms contained in the Bill of Rights</strong> (Freedom of peaceful assembly, Freedom of association, Freedom of opinion and expression)</td>
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<td><strong>Right to access and communicate with international bodies</strong></td>
<td>I. Increased collaboration and coordination between state institutions and CSO (state to facilitate CSOs/HRDs to engage in international spaces</td>
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<td>II. Building capacity of HRDs to engage with international human rights bodies – spearheaded by KNCHR and other actors. The capacity building should also include enabling HRDs to conduct research on and document violations</td>
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2.1 Implementation

The implementation of this policy shall involve all relevant stakeholders who are either directly or indirectly involved in work on HRDs. Through stakeholder consultation, the policy will identify key stakeholders, resources and roles bound to timelines to achieve the objectives of the policy. This implementation guideline will be annexed to this policy upon finalization.

2.2 Investigations

Where rights of individuals or corporations are infringed on, the most important and initial step to seeking redress is to undertake investigations with the aim of bringing to justice perpetrators. Reference is to be made to Article 47 (1) of the Constitution which provides for the manner in which investigations need to be carried out i.e. In a procedurally fair manner, efficient and expeditious, going hand in hand with natural justice / as established in Article 50 of the CoK.

Both state and non-state actors with the mandate, play a crucial in undertaking independent, thorough and impartial investigations following the rules of natural justice. Upon the conclusion of the investigations and facts have been established, the due process of the law shall follow in holding perpetrators accountable.
2.3 Protection

Upon where a human rights defender level of threat has been verified and is at high risk. Protection should be offered by either a state or non-state actor. However, one of the objectives of this policy is to create an enabling environment for HRDs to work in, without living in fear or fleeing the country. Therefore all measures can be considered to reduce the levels of threat in order to avoid going into protective custody and instead allow a peaceful co-existence between the defender and other actors.\textsuperscript{17} In light of the threatening environments surrounding defenders, availability and accessibility of psycho social support for HRDs plays a crucial in ensuring that both mental and physical capacities are catered for. Security management training will also be useful for HRDs and their families.

2.4 Legislative & Policy Frameworks

The rights of individuals are continuously put under threat where they are considered to challenge given interests. Globalization, the proximity of poverty, conflict and weak rule of law, and the rapid appearance of new forms of modern technology and global connectivity\textsuperscript{18} are factors that contribute to increased violations. New and evolving forms of threats by both the state and non-state actors are being used against defenders to curtail the environment under which they work in. It was noted that the government had the ability to tap into phone calls as a result of technology so there was need to create legislation to regulate the government from such deeds.

\textsuperscript{17}This approach to reducing the levels of threat to a defender has proved effective, following interventions by the KNCHR.
There is therefore need to put in place adequate legislative and policy frameworks for the protection of HRDs in light of judicial processes. There is also need for the state to review archaic legislation to ensure consistency and conformity with the CoK and amendments were to be made on laws that contradict with the CoK. Lastly there is further need to identify reasonableness/ necessity in actions taken by the government to limit certain rights and whether those grounds are appropriate.

2.5 Public Education & Sensitization

There is need to raise awareness and sensitize stakeholders and the general public on the role of HRDs and in the process change the perception towards HRD’s and hence will enable the public to back up protection of the HRD’S. This is to allow a better and conducive working environment for HRDs. Reports have demonstrated that where the public does not understand the work of human rights defender, there exists a lot of hostility that sometimes result to threats being made and the defender having to flee.\(^1\)\(^9\) There is need to build the capacity of all actors on the role of HRDs, the impact of their work in safeguarding human rights. In other occasions, defenders are more likely to receive punitive sentences or bail/ bond applications as a result of malicious prosecutions or other factors by both the state and non-state actor’s.\(^2\)\(^0\)

Uniformity as well as capacity building on Judicial redress in relation to bail, bond and sentencing and on HRDs will provide avenues to better address concerns revolving the due process. The media play a crucial role in bringing to fore

\(^1\)\(^9\)Reports based on interviews from human rights defenders by KNCHR.

\(^2\)\(^0\)Legal support provided to human rights defenders by the KNCHR has demonstrated this as a hindrance and the lack of awareness regarding the roles of human rights defenders.
the work of HRDs and highlighting trends. They are key in educating all actors to better understand the positive impact of work HRDs are involved in. This relationship aids in also promoting the protection for HRDs by exposing actors who threaten individual or corporations.

2.6 Confronting Marginalization & Stigmatization

This policy is aimed at ensuring that Gender dynamics are incorporated. There is need to ensure inclusion and non-discrimination of HRDs in all spheres. Reference is made to Article 56 of the COK 2010 which provides that the state put up affirmative programs / action in protecting marginalized groups, if read holistically, the ten groups can be used to refer to HRD’s. The state must at all times uphold the rule of law. Furthermore support should be provided to marginalized groups and involve them in decision making, eradicating practices that marginalize HRDs. Both the state and non-state actors should refrain from profiling and marginalizing HRDs through smear campaigns. In the protection and promotion of human rights, women defenders as well as persons with disabilities are most disadvantaged due to their vulnerabilities. Therefore, there is need to pay more attention to vulnerable groups who work in this arena to promote their work and build an enabling environment.
2.7 Resources and Budgeting

In line with the principle of maximal application of resources to further the realization of human rights, there should be increased budgetary allocation to human rights institutions toward promotion and protection of the rights of human rights defenders. Further to this, the state can work on modalities to diversify sources of funding for the work of HRDs. Corporations and other private entities should have tax incentives if they are funding HRD organizations. In addition, the State should get rid of legislations attempting to limit the funding of NGO's.

On their part, human rights institutions should commit to establishing and enhancing partnerships and collaborations with HRDs in the discharge of their work. The envisaged partnerships can be done at two levels— with individual HRDs or at the organizational level.

2.8 Monitoring and Evaluation

The Kenya National Commission on Human Rights, being the constitutional human rights institution shall be responsible for coordination, Implementation monitoring, evaluation, and reporting all aspects of this policy.
## 3. Implementation Plan

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| 1. Protection from intimidation, threats, attacks, and other forms of abuses | • To create an enabling environment for independent investigations on intimidations, threats, attacks and abuses of HRDs | • Conduct Independent investigations into instances of intimidation, threats, attacks and abuses of HRDs  
• Analyze and appraise the vulnerability of HRDs for purposes of coming up with a mechanism for redress and protection of HRDs  
• Put in place a protection mechanism that addresses intimidations, threats, attacks and abuses to HRDs  
• Expose and holding Perpetrators accountable for HRDs violations  
• Put in place legislative and strengthen policy framework for the protection of HRDs  
• Enforcement of existing legislation to ensure accountability  
• Raise awareness, sensitize and build capacity of stakeholders, HRDs and the general public on the role, protection and promotion of HRDs work  
• Build the capacity of HRDs on the rule of law and general HRDs work through mentorships & apprenticeships | • Advocacy, training, capacity building, creation and review of legislation, setting up systems (investigation etc), incorporate existing initiatives to avoid duplication  
• Restorative justice, ADRs, negotiation and mediation. | • The Security Agencies, DPP, Independent Commissions, (e.g. IPOA, WPA, KNCHR, CAJ, NGEC) KEPHRA, KEWOPA, Religious Leaders.  
• CSOs, Business entities and Private individuals and communities  
• Development partners, Embassies and Research Institutions.  
• Treaty body mechanism, Special Rapporteurs and mandate holders  
• Media  
• (Come up with a multi investigation agency composed of representatives from identified institutions) | Two years from adoption |
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| 2. Protection from criminalization, arbitrary arrest, unlawful detention and abuse of judicial power (Protection from unlawful arrest, prosecution and detention) | • To laterally apply Judicial redress in relation to bail, bond and sentencing of HRDs.  
   • To put in place policy and legislation to promote, fulfill and protect the rights of HRDs in light of Judicial processes.  
   • To enhance the knowledge of state and non-state actors on new and existing legislation that protects HRD’s.  
   • To ensure availability and accessibility of psycho social support for HRDs | • Capacity building and sensitization of stakeholders and HRDs on existing legislation and policy concerning HRD’s for example the Bail and Bond Policy Guidelines, the model HRD Policy.  
   • There is need for the state to review archaic legislation to ensure consistency and conformity with the CoK, other subsidiary legislations and regional/international treaties that Kenya has ratified.  
   • There is need to fast track (review) the penal code in order to ensure uniformity in sentencing.  
   • There is need to structure and charter bail and bond terms.  
   • Application of the Law should not be selective to HRD’s and in case a state official applies them, he/she should be punished  
   • The Judiciary needs to uphold and safeguard its independence. | • The Security Agencies, DPP, IPOA, WPA, KNCHR, CAJ, KEPHRA, Religious Leaders.  
   • CSOs, Business entities and Private individuals and communities  
   • Development partners, Embassies and Research Institutions.  
   • Treaty body mechanism, Special Rapporteurs and mandate holders  
   • Media |
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| 3. Confronting marginalization and stigmatization of HRDs | • To ensure inclusion and non-discrimination of HRDs in all spheres.  
• To provide support to HRDs and involve them in decision making  
• To allocate resource and provide tax incentives to HR organizations  
• To get rid of legislations that limit the work HRDs | • Establish and strengthen Psycho-social support mechanisms for HRDs.  
• The state should refrain from profiling and marginalizing HRDs through smear campaigns.  
• Put in place measures to eradicate practices that marginalize HRDs by ensuring that they are included in decision making processes.  
• Advocate for recognition, respect, protection and promotion of HRDs work | • The Security Agencies, DPP, IPOA, WPA, KNCHR, CAJ, KEPHRA, KEWOPA, Religious Leaders.  
• CSOs, Business entities and Private individuals and communities  
• Development partners, Embassies and Research Institutions.  
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| 4. Making the realization of Freedoms contained in the Bill of Rights a reality. | • To Respect, protect, promote and fulfill freedoms of HRDs contained in the Bill of Rights | • Aggressive advocacy against violations on HRDs  
• Engaging judicial process in cases of violations against HRDs e.g. private prosecutions, constitutional petitions, CUCs & judicial officers on fair trial [Article 25 (b)]  
• Engagement with law makers for amendment/repeal of draconian laws. Advocacy for legislation to create an enabling environment  
• Engagement with the police and AG on the existing legal framework for execution of court orders (e.g. Habeas Corpus)  
• Consistent engagement with the media on highlighting human rights violations and the critical role of HRDs  
• Engagement with judiciary to ensure PIL cases are conducted and determined in line with the principles of natural justice  
• Educate the public and HRDs on their limited and unlimited rights | • Public, HRDs, PBOs, NGO Coordination board, Media, Judicial officers, AG, Security agents and International AND REGIONAL mechanisms |
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<td>• Engagement with regional and international mechanisms</td>
<td>• Security management training of HRDs and their families</td>
<td>• Engage with Parliament and stakeholders to decriminalize criminal defamation</td>
<td>• Engage Parliament and stakeholders for the enactment of FOI law, data protection</td>
<td>• Engage with Parliament, Media, to ensure an effective self-regulatory framework in line with the Constitution</td>
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| 5. Right to access and communicate with international bodies | • Engagement with regional and international mechanisms without fear of reprisals | • Enhance the capacity of HRDs and State actors on regional and international instruments  
• Monitoring by HRDs of State implementation of regional and international laws  
• Enhance the capacity of HRD on advocacy, networking and resource mobilization.  
• Reporting violations to the international mechanisms e.g. Special Rapporteurs | • HRDS, CSOs, INGOs, Chapter 15 commissions, Police service, KDF, Office of AG, DPP, Judiciary, County government, Media, LSK, Private legal practice, NGO council & board, relevant departments existing in the UN mechanisms, ACHPR and court, Ministry of interior coordination, Donors |