CHAMPIONS OF RIGHTS

REPORT ON THE SITUATION OF HUMAN RIGHTS DEFENDERS (BUSIA, KWALE AND MARCABIT COUNTIES)

JANUARY 2015

KNCHR's mandate includes championing the protection and promotion of human rights in Kenya, acting as a watchdog over the Government in the area of human rights, and the provision of leadership in moving the country towards a human rights state. This mandate is delivered through the departmental programmes, which include Research and Compliance, Public Education and Training, Complaints and Investigations, Redress, Reforms and Accountability and Economic, Social and Cultural Rights in collaboration with the support units namely Finance and Administration, Public Affairs and Communication, Internal Audit, Procurement and Monitoring and Evaluation.

In addition to its head office in Nairobi, the Commission has four regional offices in Wajir, Kitale, Mombasa and Kisumu.

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FOREWORD AND ACKNOWLEDGEMENT

Human Rights Defenders (HRDs) play a key role in the protection of human rights in democratic societies. In 1998, Kofi Annan, former Secretary General of the United Nations, stated that “when the rights of human rights defenders are violated, all our rights are put in jeopardy and all of us are made less safe.” A decade and a half down the road, this statement still requires forceful endorsement, both in public discourse and in private practice. Notwithstanding the fundamental work of HRDs in the promotion and realization of democratic societies, they are often targeted, through campaigns that seek to criminalize them and de-legitimize their work, as well as threats and attacks by both the state and non-state actors.

It is these two realities combined that underscore the Kenya National Commission on Human Rights’ (KNCHR) resolute support for Human Rights Defenders in Kenya, and its decision to adopt the protection of HRDs as a working theme. We recognize that the fulfillment of KNCHR’s vision of a society that upholds human rights for all would not be possible without the efforts of HRDs across Kenya, who work both as professionals and volunteers, often at great personal expense and sacrifice. This is within a context where there are deliberate and calculated measures taken towards shrinking the space for human rights work. These moves include attempts to amend the Public Benefits Organizations Act (rejected in Parliament in December 2013) and the recent Security Laws (Amendment) Act 2014. The infringement of constitutionally guaranteed rights such as the right to freedom of association and assembly including through arrests, malicious prosecutions and punitive bail terms for HRDs, are just some examples that illustrate a deteriorating political environment in Kenya, this study seeks to assess and document the impact that this has had on HRDs, civil society and the broader society.

I would like to thank the many human rights defenders who, despite busy schedules, have made time to participate in the study. Their contribution is invaluable. This report would not have been possible without them.

I would also like to thank the Commission staff that have contributed to the production of this report. Lastly and most importantly, I gratefully acknowledge the financial support of the European Union and the Government of Kenya whose support has made possible this study and publication of this report.

Comm. Kagwiria Mbogori,
Chairperson
Kenya National Commission on Human Rights
ABBREVIATIONS

AIC – African Inland Church
CDF – Constituency Development Fund
CMK – Cortec Mining Kenya
EU – European Union
FGDs – Focused Group Discussions
GK – Government of Kenya
HRD – Human Rights defenders
KNCHR – Kenya National Commission on Human Rights
MUHURI – Muslim for human Rights
NGOs – Non-Governmental Organizations
NHRIs – National Human Rights Institutions
PWRC – Pacific Worldcat Resources Corps
REGABU – Rendille, Gabra and Burji
UN – United Nations
EXECUTIVE SUMMARY:
Objectives of the study:
In November 2014, the KNCHR undertook a mapping exercise of HRDs in the counties of Kwale, Busia and Marsabit. The objective and purpose of the mapping exercise was to better understand the situation of HRDs outside of Nairobi with a focus of identifying: the challenges that they face; the gaps in their existing capacities to conduct their work; and other needs, their perceptions on how these issues can be addressed; and the role of KNCHR’s and other relevant institutions in facilitating and promoting the work of HRDs.

Methodology:
The methodology was mainly based on primary research. KNCHR sent out 3 teams to the three counties where 60 HRDs participated. Qualitative data was collected through various methods of interviewing that included one on one interviews, focus group discussions (FGDs), and open forums. The use of online questionnaires was also incorporated in areas where geographical distance and lack of infrastructure would not allow travelling within the allocated time period.

Limitations:
The HRD is the target population in this study, thus the findings, recommendations and conclusion are limited to the area of study and may not necessarily be used to draw generalities outside the area of study.

Summary findings:
Data gathered from 60 participants interviewed in one on one discussions, focus groups and open forums revealed that HRDs in the three counties face persistent challenges that range from violations of their civil and political rights such as arbitrary arrests and surveillance of phones and online activity, to challenges that stem from their socio-economic status and inability to fund their activities as needed, to difficulties associated with operating in environments characterized by poor socio-economic development.

The exercise also revealed that the HRDs were not fully conversant with the
existing normative frameworks. This has the effect of limiting the work of HRDs. It is therefore necessary to train HRDs on protection issues.

**Planned interventions:**
To address some of the issues highlighted above, and in line with the recommendations made by the United National Special Rapporteur on HRDs on the role of NHRI's in the protection of defenders, over the next two years the KNCHR is planning the following targeted interventions in the three counties:

- Capacity building and institutional strengthening through training HRDs, law enforcement agencies, and sensitizing the public on the important role played by the HRDs;

- Advocacy for a safer working environment for HRDs through advocating for an accountable police service and enhanced legal and policy measures concerning the work and protection of HRDs that draws from international practices;

- Strengthening custodial practices in prison facilities for better protection of HRDs through building the capacity of prisons officers on the role of HRDs and of prisons officers' obligations in how they interact with HRDs, and through monitoring of places of detention;

- Undertaking full and prompt investigations in cases of violations of the rights of HRDs and ensuring adequate redress;

- Supporting County Governments in the establishments of County Policing Authorities in ensuring that security issues that the HRDs face are acted upon through a County system that enhances community participation on matters of Security;

- Development of relevant manuals such as a self – representation manual to enable the HRDs to fully represent themselves while in Court as well as the development of guidelines on the use of force and firearms that would effectively provide a guiding framework for accountability within the National Police Service;

- Engagement in trial observation on HRDs cases as well as provision
of pro – bono lawyers to handle cases of HRDs when in conflict with the law as a direct result of their work.
I. INTRODUCTION

A) The normative and institutional architecture for the protection of HRDs

Human rights defenders (HRDs) play a crucial role in the promotion and protection of human rights in democratic societies all over the world. In recognition of this fact, the United Nations General Assembly in December 1998 unanimously adopted the 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 Freedoms, (henceforth 'the Declaration'), which remains the key international instrument for the recognition and protection of HRDs.

The Declaration is the first international instrument that acknowledges the defense of human rights as a right in itself that must be protected by states through legislative, administrative and any other steps as may be necessary. These measures include the protection of rights guaranteed in other legally-binding UN instruments, such as the right to freedom of expression, speech and assembly, and rights which are particularly relevant to HRDs, such as the right to participate in the formulation of human rights policies, the right to engage in advocacy for human rights, the right to complain about human rights violations, the right to assist victims of human rights violations, the right to receive funding and the right to unhindered access to international bodies.

For the purpose of this study, human rights defenders are defined according to Article 1 in the UN Declaration on HRDs as people who individually and in association with others, promote and strive for the protection and realization of human rights and fundamental freedoms. See UN General Assembly, 1998, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, accessed on 3 February 2015, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement

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 Freedoms.

1Id. Art. 2
2Id. Art. 5
3Id. Art. 8.2
4Id. Art. 7
The Declaration also states that state parties have a duty to protect HRDs against violence, retaliation and intimidation as a consequence of their human rights work. In the case of breach of this duty, states are mandated to carry out prompt and competent investigations and provide redress where necessary. Notably, the duty to protect is not limited to actions by the State, but extends to actions by non-state actors including corporations and private individuals.

It is against the background of the Declaration that institutional and normative architecture for the protection of HRDs has developed at international, regional and national levels. At the international level, the UN Special Rapporteur on HRDs was established in the year 2000, with the mandate to closely monitor the situation of HRDs around the world and to investigate individual cases. In practice the Rapporteur implements this mandate through writing urgent action letters or allegation letters, undertaking country visits to analyze the situation on the ground, participating in conferences and workshops, and production of annual reports examining trends in the situation of HRDs while highlighting the issues of major concern and making suitable recommendations thereon. Moreover, the Rapporteur also engages States and other stakeholders to adopt and implement the Declaration and other human rights instruments through recommending implementation strategies and conducting periodic follow-ups on these.

Regionally, various bodies have expressed formal support for the work of HRDs in various resolutions or declarations through the provision of special mandates relating to protection of HRDs and their work. In 2004, the African
Commission on Human and Peoples' Rights adopted the Resolution on the Protection of African Human Rights Defenders through which it created the post of a Special Rapporteur for Human Rights Defenders in Africa. Its mandate is similar to that of the UN Special Rapporteur, to the extent that it applies only to African continent.\textsuperscript{19}

While the Declaration sets out a commitment upon State Parties, it is not a legally binding instrument and its provisions are often breached. HRDs continue to live in distress as they are targeted and at risk of persecution by states or non-state actors. There is need to enhance the evolving protection mechanisms for HRDs at both international and regional levels.

\textbf{B) National Legal framework and the Role of KNCHR in the protection of HRDs}

The general international consensus that States have an obligation to ensure a safe and enabling environment for HRDs, has promoted the recognition and protection of the work of HRDs at national level. In this regard, the role of National Human Rights Institutions (NHRIs) has increasingly gained prominence in the protection of HRDs. Through a special report, The UN...
Special Rapporteur on HRDs underscored the role of NHRIs in the protection of HRDs through mechanisms such as the provision of complaints mechanisms and protection programmes, advocacy for a conducive environment for HRDs to operate in, promoting the interaction of HRDs with international and regional mechanisms, offering legal assistance, and strengthening the capacity of HRDs to do their work.

In Kenya, the Bill of Rights in the Constitution reflects international standards for the protection of HRDs by according relevant rights such as the rights of assembly, association and speech, rights of arrested persons and rights to a fair trial. The Constitution further protects HRDs through institutional mechanisms such as the establishment of 3 independent National Institutions that include the KNCHR, the office of the Ombudsman and the Gender Commission. The KNCHR is mandated to act as a watchdog over the government and to protect and promote the respect for human rights in the country. In light of its watchdog role, KNCHR monitors and ensures national compliance under international and regional instruments.

KNCHR further implements its role through several initiatives that include: a Complaints and Investigations Department that receives and investigates complaints from HRDs; A Redress Department that takes steps to secure appropriate redress through efforts such as public interest litigation; stakeholder engagement with civil society for the development of appropriate referral mechanisms and establishment of relevant platforms for advocacy on HRDs in Kenya and at the regional and international level.

Although the Constitution lays out the necessary infrastructure for the protection of HRDs, the current political environment, seeks to claw back the space for human rights work through the enactment of repressive laws and judicial setbacks. HRDs therefore continue live in fear and are often a target for persecution by state and non-state actors. In light of this situation, KNCHR has recently embarked on structured programming around the protection of HRDs as a working theme. The initial phase of this initiative

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20 UN General Assembly, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya (A/HRC/22/47), 2013, accessed on 26 January 2015,
21 The Universal Periodic Review (UPR) process is one such platform
will focus on HRDs based outside of Nairobi for reasons outlined below.

C) HRDs beyond the boundaries of Nairobi

In as much as Kenya's Constitution has been hailed as one of the most progressive constitutions in promoting the respect for human rights within the African continent, its implementation depends largely on the work of local organizations and HRDs. The vulnerabilities of HRDs working in rural areas are exacerbated by the limited infrastructure for instance, existing networks are not strong, limited knowledge and inadequate resources.

It for these reasons that the KNCHR focused on HRDs based in rural areas. The mapping exercise was carried out in the counties of Busia, Kwale and Marsabit with the aim of better understanding the situation of HRDs in locations beyond Nairobi, the challenges that they face, the existing gaps in their capacity to conduct their work and other needs and their perceptions on how these issues can be addressed and the role that KNCHR's and other relevant institutions' can play. Finally, the mapping exercise was also used as an opportunity to bring HRDs together, get them to know each other better, exchange contact details and develop local networks as a means to enhance collaboration on both work and protection when and if needed.

D) Methodology:

The methodology was mainly based on primary research. KNCHR sent out 3 teams simultaneously in the three counties where 60 HRDs participated. Qualitative data was collected through various methods of interviewing that included one on one interviews, focus group discussions (FGDs), and open forums. The use of online questionnaires was also incorporated in areas where geographical distance and lack of infrastructure would not allow travelling within the allocated time period.

Due to time constraints the exercise may not have exhaustively identified the highly sensitive issues that HRDs may be facing. This is because methods of interview such as Focus Group Discussions, open forums and questionnaires may have limited the space for discussing more private or intimate issues and also posed a challenge in the mapping out of the extent of knowledge and
skills that HRDs have. However, these potential limitations needed to be balanced out against the need to reach out to a wide number of HRDs, and to cover as equally as possible the three counties. One on one interviews were used to nuance and contextualize the data gathered through the other methods.

This report is based on an analysis of the data gathered, backed up by secondary research where needed. The three counties are dealt with together under the relevant sections, except where significant differences arise: where that is the case, relevant issues will be referred to in relation to specific counties.
II. HRDs’ GENERAL KNOWLEDGE OF HUMAN RIGHTS AND AREAS OF WORK:

The first section of the interview sought to map out HRDs understanding of who they are and what they do, the extent to which this is informed by existing normative frameworks, their knowledge of other HRDs and organizations in their counties, and the degree of collaboration among HRDs and organizations if at all.

A) Participants' understanding of the definition of the term HRD:

Across the board, the understanding of the term HRD focused on HRDs as champions of the rights of victims of human rights violations and as advocates for justice in situation of human rights abuses. There was also widespread awareness that HRDs can be both individuals and institutions, and that victims of human rights violations must be supported and empowered regardless of socio-economic status, or other grounds for discrimination.

Overall, interviewees' understanding of the term HRD is based on personal experiences and their relationship to victims of human rights violations and communities affected, rather than on established normative documents. For example, no one mentioned or discussed the two criteria by which the United Nations Special Rapporteur on HRDs characterizes HRDs (non-violence and the universality of human rights).

Notably, most interviewees underscored that it is important for HRDs to be knowledgeable about the law and their rights; acquire or enhance their abilities to investigate, document and report on human rights violations; have writing and communication skills; and have the ability to engage in policy advocacy. These sentiments indicate the desire for a more professional and structured outlook of HRDs, where their human rights work can be carried out with sobriety.

B) Areas of work, forms and degree of local collaboration

Those interviewed highlighted a wide variety of areas of work illustrating that human rights work in these areas are specific to the local concerns i.e.
Different localities handled different thematic human rights concerns, specific to their context. This underscores the importance that any interventions such as enhancing technical knowledge ought to be specific to the concerns of a particular area, as opposed to a generalized training manual for all areas.

Thematic areas of work included gender equality and gender based violence, reproductive health, child rights and the rights of the girl child, devolution, land issues, environmental justice and corporate accountability, the right to education, the right to water, refugee rights and denial of the right to a national or identity card.

The working methodologies of most HRDs include- advocacy, awareness raising, sensitization and engaging the community and stakeholders, civic education, social audit and budget tracking, complaints filing, investigations or referrals and follow-up, paralegal activity and training. In responding to questions regarding their work, HRDs in Busia focused primarily on methodologies in their answers, while their Marsabit counterparts mentioned almost exclusively areas of work. Kwale HRDs paid equal attention to both. This may suggest that HRDs in Marsabit may have less awareness on the existing variety of human rights work methodologies and how those relate to their thematic areas of work.

In terms of knowledge of other organizations and individual HRDs operating in the region, it is worth noting that few among those interviewed were able to name HRDs who operate on their own individual capacity while it is highly likely that there are HRDs in that situation. This may point out to a limited awareness among HRDs on the vulnerabilities stemming from not having an institutional affiliation, and the need to recognize and reach out to individual HRDs in the counties, in order to embed them in established networks.

Although a good number of participants highlighted various forms of local collaboration, such as case referrals, holding meetings and/or conducting activities together and information and knowledge sharing, this was by no means widespread across the all the counties, as respondents had varied
perceptions and opinions on the degree and forms of collaboration. This indicated the need for more structured efforts in order to fully integrate individuals and organizations into existing networks.

In some FGDs, poor collaboration and synergy at the local level was mentioned as an impediment to the work of HRDs. For instance, very few respondents in Marsabit considered that local organizations effectively collaborate with one another. In fact, the majority of respondents indicated that there is no local collaboration at all. This indicates that networks in Marsabit are comparatively less developed.

In all counties, none of the respondents mentioned collaboration on issues that are specific to the protection of local HRDs. This is a matter that requires attention given that the local networks are often the first line of defense for HRDs at risk. This indicates that further efforts are needed to develop local networks as protection mechanisms through, for example, structured conversations on what is already happening to that end, and how that can be enhanced with the active input of both local organizations and other stakeholders.
III. RIGHTS VIOLATION AND PROTECTION

This section of the interview sought to map out the challenges that HRDs face in the course of their work and their responses to these challenges, their knowledge of protection mechanisms, as well as perceptions on the responsiveness of such mechanisms and suggestions of how they can be improved.

A) An analysis of HRDs' working environment

Those interviewed mentioned a wide range of challenges that they face in their work. Broadly, these fall into three categories: violations of civil and political rights, challenges stemming from HRDs' socio-economic status and the socio-economic status of their specific localities, and socio-cultural issues that impede the work of HRDs as outlined below:

1) Violations of civil and political rights:

The political environments under which the HRDs operate within the County greatly contribute to the challenges that highly impact on their civil and political rights. HRDs are often exposed to arbitrary arrests and trumped-up charges that progress to violations of their rights to a fair trial leading to convictions. This is further compounded by the fact that some HRDs lack self-representation skills for the court process, which makes them more vulnerable to the court proceedings and determines the outcome of their cases. The arbitrary arrests are more experienced in cases where HRDs demand accountability from the duty-bearers who use and misuse of state machineries to inculcate fear by threatening and intimidating HRDs. Forms of such threats include receiving threatening phone calls and messages which when reported, are seldom acted upon by relevant authorities.

The nature of the work of HRDs often interferes with their right to privacy. HRDs find themselves in situations where they are constantly monitored in order to curtail their work. With ongoing technological advances, it is a common occurrence that email accounts are hacked, phone conversations are tapped and social media accounts such as Facebook and Twitter are hacked as well as physical surveillance of their homes and personal space. This interference greatly affects both the individual and institutional growth of...
HRDs, as they cannot meaningfully engage in any activity as they are constantly in fear and controlled by undue influences.

There is a campaign to profile HRDs at the local levels as enemies of development and thus by extension enemies of the Government. This profiling takes the form of criminalization campaigns by the local actors. The profiling and targeting of HRDs makes it difficult for them to function normally and thus affecting their work of defending rights. Further, the criminalization extends to other spheres such as in denying the information that they require in pursuing a human rights violation. The denial of this information may in the long run have counter-productive effects, as response may not be provided in time for victims of human rights violations.

The HRDs who work at the grassroots levels are more vulnerable as they often have to confront powerful individuals and institutions at the local level. Such powerful persons have all that they require at their disposal to intimidate HRDs who in the other hand can only rely on the rule of law. Such situations often results to impunity where powerful persons are able to get away with a lack of accountability and human rights violations. Further, there is a feeling that some of the networks created at the local levels may have been compromised by such powerful people and create an enabling environment for impunity as opposed to demanding for accountability for human rights violations.

2) Socio-economic challenges:

The social and economic contexts under which the HRDs are operating greatly undermines their ability to defend the rights which they seek to promote as well as to defend their own rights in the course of their work. To begin with the, the communities that the defenders work in do not necessarily recognize the genuine efforts of HRDs to benefit the communities, thus may not receive the required support to deliver on their duties. This challenges discourses on accountability for human rights violations with the same community.

22This raises special challenges in Marsabit, where there is not a single practicing lawyer in the county.
The HRDs that work at the grassroots levels have serious challenges with resources required for the delivery of their duties. The challenge of resources extends further to personal lives where some HRDs can barely provide for immediate needs for their own families. This makes it very difficult to focus on defending rights when their own rights are violated at the very basic levels. The resource issues are further experienced when faced with legal cases that need financial commitments as well as inability to self-represent in court. All these have a bearing on the extent to which HRDs would deliver on their mandate.

Some regions have very poor infrastructure that makes it difficult to travel to remote areas and document human rights violations. This was the case in Marsabit, where local human rights initiatives are underfunded notwithstanding the hardship environment in which to operate. As such, running a programme across the county requires a lot of resources, which are often not available, and even when they are, the poor infrastructure can still make the task the simplest of tasks close to impossible ones. This poor infrastructure limits the outreach of some critical national institutions that may provide redress in situations of human rights violations such as the police, the judiciary among others.

There were allegations of discriminatory practices at the local level that target HRDs on the basis that they have access to donor money and thus should not access the locally available opportunities. Which include access to the local employment, access to the local funds such as the CDF for bursaries among others. All these clearly violate the principle of Non-Discrimination and Equality as provided in Article 10 of the Constitution.

3) Socio-cultural issues:
The social context under which the HRDs operate goes hand in hand with the cultural contexts that often hinder the extent to which the HRDs deliver on their mandates. These socio-cultural issues if not well handled at the local level can lead to complete alienation of certain groups from enjoying the rights. These issues include discrimination against women and girls and the harmful traditional practices such as Female Genital Mutilation. These are
practices that majorly contribute to human rights violations but are considered by certain sections of the populations as legitimate and thus those who speak against them are considered as enemies of the community.

There is a pattern of exclusion of special interest groups like women, youth and people with disabilities from decision-making processes even in cases where the decisions being made are those that affect their welfare. In some cases HRDs constitute some of these special interest groups thus increase their vulnerability. The exclusion of this group is a challenge as it leads to inability to provide for them, as they say, “nothing for us, without us”

The allegations of Corruption and possible collusion between security agencies and the provincial administration, and perpetrators of human rights violations, especially in the extractive industries sector undermine the efforts to address human rights issues that arise in the sector. The targeting of HRDs for vilification by those in authority hampers the work of the HRDs.

The perpetual ethnic clashes and insecurity that is experienced in different parts of the country continue to undermine the work of HRDs. For instance in Marsabit, political and clan/tribal interests undermine the work of HRDs. Cooperation by the community members or the authorities is usually determined by whether or not the respective HRD's ethnicity corresponds to that of the ethnic group in authority. A HRD from a specific clan will find it difficult to work in an area where his/her clan is not the majority especially during clashes and this has an effect on the legitimacy of the work of the HRD with the Community.

B) Role of state and non-state actors to the work of HRDs
Respondents reported the following as being sources of support: family and friends, other HRDs and organizations in the area and beyond (for example MUHURI, Haki Africa, Cradle, the Kenya Human Rights Commission, KNCHR, Kwale Human Rights Network, the Law Society of Kenya), the judiciary, Security Agents (including the Police) the Provincial Administration and village elders.
The following were reported as being sources of threats: The Security Agents (e.g. the police), the County Government, members of the Provincial Administration, drug barons, hired gangs/goons, community gatekeepers, corporations and multinationals. State institutions at various levels, as well as members of local communities can be both a threat and support to HRDs.

C) Responses to threats and challenges:
A vast majority of respondents report violations to the police station or other relevant authorities and this signifies the important role played by the Police in protecting the rights of Human Rights Defenders.
Networks are also utilised as protection mechanisms. When the threat escalates the local organisations have the option of seeking the support of National CSOs.

Some HRDs consider scaling down work or going into hiding as a viable method of dealing with threats and attacks – this can deter the threats, but it raises economic problems when the move is not sustained financially by anyone. When the threats do not come from the community, linking up with community members can also be effective as a protection strategy. Finally, a small number of HRDs mentioned diplomacy – developing relationships with local politicians and government officials, especially in those cases where elected leaders had served previously as leaders in local organizations.

D) Awareness and perceptions of relevant instruments and protection mechanisms
The respondents demonstrated limited knowledge of relevant instruments and protection mechanisms. The vast majority were only able to name the Constitution of Kenya. Few respondents mentioned general human rights instruments, like the Universal Declaration on Human Rights, the Convention against Torture, the International Convention on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights. Others named specific rights that related to their work, such as the right to freedom of assembly and association, the right to freedom of speech or the right to life, but without connecting these with the relevant
instruments. Finally, some recognized the larger and well-known organizations as protection mechanisms.

A number of the respondents approach human rights work without reference to existing normative frameworks relating to HRDs. The survey established that there is need to translate the norms into legal obligations. More importantly, the lack of awareness on protection mechanisms also means that HRDs work with limited options when considering the best responses to situations of risk. Given that the HRDs are not aware of the various protection mechanisms they are therefore not able to access the protections provided.

A number of HRDs felt that the available mechanism for protection were inadequate, slow to respond, and “cosmetic.” Some HRDs felt that the more established NGOs were effective as national protection mechanisms and expressed appreciation for the results of previous interactions, especially in terms of having gained a better understanding of human rights work, and having received help to run their activities more speedily and smoothly; however, few commented on specific protection measures.

Most HRDs had suggestions for how existing relationships between them and relevant institutions should be improved. Targeted and region specific trainings for HRDs has been suggested as the best place to begin, so that HRDs can take the earliest opportunity to become familiar and engage with existing mechanisms. Other suggestions included strengthening of networking and referral systems, enhancement of partnerships between the state and HRDs including by creating linkages between HRDs and county and the national government, the development of a law aiming specifically to protect HRDs, the development of a manual for HRDs, vetting and provision of identification badges or documents for HRDs, the provision of legal support, and assistance in funding activities undertaken by HRDs.
IV. EXISTING CAPACITIES AND GAPS:
This section sought to map out previous training programmes that HRDs in the three counties have undertaken and how this has influenced their ability to carry out their work, the remaining gaps in the skills and knowledge required for their work, and their suggestions for interventions required in that sense.

The vast majority of respondents have not received any training specific to the protection needs of HRDs. However, most have received training relevant to human rights work in general. Thematically, these cover issues such as women's rights and gender based violence, child protection, land rights, civic education, media freedom training, disaster management, conflict mapping and peace promotion, and security sector reforms. Methodology-wise, previous trainings cover issues such as basic lobbying and advocacy skills, how to work with the media, investigating and documenting human rights violations, and paralegal training.

Whilst these skills are vital to HRDs they fall short to the kind of skills that many of the respondents considered needful to carry out their work effectively and in conditions of safety. These included risk and security management, national, regional and international protection mechanisms, campaigning and advocacy skills, fundraising and resource mobilization, information and communication skills, monitoring and evaluation, legal skills, referral management skills, and policy making.
V. PLANNED INTERVENTIONS IN THE THREE COUNTIES

In response to the issues highlighted above, and in line with the recommendations made by the United National Special Rapporteur on HRDs on the role of NHRI's in the protection of defenders, KNCHR shall over the next two years roll out the following targeted interventions in the three counties as well as at the national level:

- **Capacity building and institutional strengthening:** HRDs will receive training in security, relevant instruments and protection mechanisms including the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to promote and protect Universally recognised Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders)\(^{23}\) effective advocacy skills and resource mobilisation, and how to use the court system; additionally, law enforcement agencies will also be trained and public sensitization activities will be undertaken.

- **Advocacy for a safer working environment for HRDs** through advocating for an accountable police service and enhanced legal and policy measures concerning the work and protection of HRDs;

- **Strengthening custodial practices in prison facilities** for better protection of HRDs through building the capacity of prisons officers on the role of HRDs and of prisons officers’ obligations in how they interact with HRDs, and through monitoring of places of detention;

- **Undertaking full and prompt investigations** in cases of violations of the rights of HRDs and ensuring adequate redress.

- **Advocacy for the establishment of the County Policing Authorities** in ensuring that security issues that the HRDs face are acted upon through a County system that enhances community participation on matters of Security.

- **Development of the relevant manuals such as a self – representation**

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manual to enable the HRDs to fully represent themselves while in Court as well as the development of guidelines on the use of force and firearms that would effectively provide a guiding framework for accountability within the National Police Service.

- Engagement in trial observation on HRDs cases as well as provision of pro – bono lawyers to handle cases of HRDs when in conflict with the law as a direct result of their work.
VI. RECOMMENDATIONS

a) To the National and County Government
   • Enact legislation that ensures conducive and facilitative work environment for HRDs
   • Desist from arbitrary arrests and harassment of HRDs
   • Sensitize various organs of Government on the importance of the work of HRDs and encouraging the nurturing of a collaborative and mutually reinforcing relationship between HRDs and state and public officers.
   • Guarantee an enabling environment for the work of HRDs.
   • Establish avenues that facilitate engagement with HRDs.

b) Donors and Development Partners
   • Provide technical and material support to HRDs working at community level so that they can feed into national processes.
   • Pay special attention to support the building of networks so as to enhance protection to individual HRDs.

c) To the Established Civil Society Organizations
   • Maintain strong linkages with HRDs working at grassroots with special focus on information sharing, capacity building and support of the local agenda.
   • Forge strong linkages so as to enhance protection of HRDs.

d) Kenya National Commission on Human Rights
   • Disseminate widely the UN Declaration on the Rights of HRDs.
   • Encourage respect for the right of HRDs by state actors
VII. CONCLUSION

Despite tremendous challenges faced in carrying out their work, HRDs in the three counties have continued to promote and protect human rights locally. They have done this through monitoring, documenting and reporting human rights violations, advocating for better policies, fighting corruption, and educating and engaging the public on human rights. In addition to the difficulties stemming from working with limited resources and hostile environments HRDs' work often puts them at risk of various forms of persecution such as isolation by members of their community, invasion of their privacy, arbitrary arrests and malicious prosecution.

It is clear from the foregoing that the need and importance of HRDs at the local level cannot be underestimated in the promotion and protection of human rights at the national level. This therefore requires that all possible measures be taken to ensure that local HRDs are able to carry out their work effectively and in conditions of safety. KNCHR will address some of the emerging issues through targeted and regional specific interventions that will aim at enhancing a better legal and policy environment for the work of HRDs.

It is hoped that KNCHR's efforts, as well as those of other stakeholders and organizations concerned with the work and protection of Human Rights Defenders in Kenya, will, in the long term lead to an environment where all HRDs will be free to carry out their work without fear of persecution and reprisals. This will go a long way in the promotion of the rule of law and upholding of human rights in the country.
APPENDIX I:

PROFILE OF COUNTIES BUSIA COUNTY

Busia County is situated in the former Western Province in the Republic of Kenya. It has seven sub-counties: Matayos, Funyula, Butula, Nambale, Teso South, Teso North and Bunyala. According to the 2009 census, the total population of the county is 743,946. It is likely that this figure has since increased.

Agriculture, fishing and trade are the main economic activities in the county. Being the entry point between Kenya and Uganda, Busia is a thriving trade centre for livestock, agricultural products and manufactured goods. Busia's climate is conducive for agriculture. Small-scale crops that are grown within the county include maize, beans, sweet potatoes, millet, cassava, cotton and sugar cane. Fishing is also a major economic activity in Busia, thanks to the nearby Lake Victoria that supports a huge population of fish.

The County has a total of six police stations namely: Busia Police Station, Funyula Police Station, Malaba Police Station, Sio Port Police Station, Adungosi Police Station, and Port Victoria Police Station. Additionally, there are several police posts and police patrol bases in the county. There is only one prison in the county (Busia GK Prison), with a capacity to host about 500 prisoners. On average the prison usually plays host to slightly over 500 prisoners.

HRDs in the county who are especially vocal do not enjoy a cordial relationship with either the county or the national government. For example, county government officials have denied audience to HRDs when they sought opportunities to raise questions concerning the manner in which the county is being run, and, in the past, on several occasions peaceful demonstrations were violently disrupted by police officers, and protesters were harassed. Despite the strained environment, however, HRDs have continued to work and make their presence felt in the county.
KWALE COUNTY

Kwale County is located in south coast of Kenya, and it borders the Republic of Tanzania to the South West, Taita Taveta to the West, Kilifi to the North, Mombasa to the North East and the Indian Ocean to the East. It covers a total surface area of 8,270.2 square km. According to the last population census conducted in 2009, the county has a total population of 649,031.

The main economic activities in the county are tourism, mining, agriculture and the extractive industry. The county has several on-going mining activities such as exploitation of limestone at Waa and Titanium at Nguluku and Mrima by Coast Calcium Limited and Base Titanium Limited respectively. Two other companies, Pacific Wildcat Resources Corps (PWRC) and Cortec Mining Kenya (CMK) have found large deposits of a rare mineral at Mrima Hills sparking a race for exploitation. The companies have extended operations to other areas of the county that are rich in the mineral. Milli Glass Limited, Kenya Breweries Glass Limited and Eastern Chemicals are also exploiting silica sand in the county. This thriving extractive industry has also led to gross human rights violations: high poverty levels combined with low literacy has led to some members of local communities being cheated into accepting handouts which in turn has created divisions within the communities. Many community members have been evicted off their ancestral land without due compensation. There have also been allegations of widespread corruption and collusion between companies and the county government and security agencies.

Kwale County has five Police Divisions and two medium GK prisons (male and female) with a combined holding capacity of three hundred inmates. There are no reports so far of the incarceration of any HRD in any of the facilities, but cases of harassment by the police have been reported especially after the killing of a fourteen-year-old girl in Kinango sub-county. The killing led to two police officers being charged with murder in Mombasa and HRDs have reported aggressions and in some instances eviction from the police stations while following up complaints not necessarily relating to the killing of the fourteen year old girl.
MARSABIT COUNTY
Marsabit County borders Ethiopia to the North and North East, Wajir County to the East, Isiolo County to the South East, Samburu County to the South and South West and Lake Turkana to the West and North West in the former Eastern Province is vast, with an area spawning 70,961.3Km2. It is the largest county in Kenya with an estimated population of 310,000. The inhabitants in this county are mainly the Borana, Gabra, Rendille, Samburu, Burji and a host of other smaller communities. Religion-wise, close to forty percent of the people living in Marsabit are Christians, thirty two percent Muslims while twenty eight percent adhere to other religions. Nearly all the communities in the county traverse the national border with Ethiopia thus making Marsabit a truly trans-border county. The county comprises four constituencies (Saku, North Horr, Laisamis and Moyale). Administratively it has seven districts. Approximately, 40,000 students are currently in the county's 126 primary schools while 1100 are attending high school.

The county's economy revolves almost entirely around livestock rearing. Almost each household keeps livestock and facets of the livestock industry impact on all other economic and social segments. Marsabit National Park and Mount Marsabit Tropical Rainforest help sustain the tourism sector. Natural resources include Lake Turkana (about 85% of this lake is within Marsabit County) and South Lake National Reserve that also borders Sibiloi National Park. The county also has a mineral potential in minerals such as copper, beryl, nepheline, nickel, asbestos, graphite, tourmaline, garnet, iron ore, magnetite, rare earth, talc, chromite, gold and salt among others.

Marsabit County is often marked by ethnic/inter-clan clashes. Early in 2014, deadly clashes between the Borana and the REGABU (Rendile, Gabra and Burji) led to over one hundred deaths with over one hundred thousand more people being displaced.

22 Relating to extreme poverty, recent interventions include the HSNP spearheaded by the Government with support from the DFID, which aims at creating resilience among the county’s poorest in face of cyclic droughts.

23 Sessional Paper number 10 of 1965 recommended that the government needed to invest where investments were likely to yield the highest returns. This has marked government policy in the Northern Frontier Districts throughout subsequent decades, leading to the current situation.
Over 90% of the residents of Marsabit are said to live below poverty line\textsuperscript{24}, in large part due to the historic marginalization of the county. Marsabit is one of The Northern Frontier Districts which, since 1965\textsuperscript{25}, have received less investment by the central government in infrastructure and key sectors of the economy, leading to chronic underdevelopment. For example, the health sector is poorly developed with only two district hospitals in the county, the Marsabit and Moyale district hospitals, and the Laisamis health centre and the AIC Gatab Hospital in Loiyangalani. Given the vastness of the county, the existing infrastructure is insufficient to adequately address citizens' health rights.
APPENDIX II:

INTERVIEW QUESTIONNAIRE

General
1. What is your understanding of the term Human Rights Defender (HRD)?
2. What are some of the activities that you engage in as a HRD working in this county and at the grassroots level?
3. Who are the other HRDs (individual or organizations) that you know of in your area? What human rights issues do they work on?
4. Do HRDs/organizations in this region collaborate with each other? If yes, how?

Rights Violations and Protection
5. Do you face any threats and challenges in your work as a HRD in the community? If yes, can you describe them? **5WsH** (who, when (including how often), where, what, why, how?)
6. Are there any HRDs in your region that are particularly vulnerable? If yes, what specific challenges do they face?
7. What do you do when faced by threats or persecuted because of your work?
8. Are you aware of national, regional, international protection mechanisms for HRDs? If yes, which ones?
9. How responsive/supportive are these mechanisms to your work?
10. How can these mechanisms be improved (local, national, regional, international?)
11. Are you aware of any laws that protect you as a Human Rights Defender at the national, regional and international level? Can you identify any gaps in these laws?
12. Which local state agencies/individuals are supportive of the work of HRDs at the local level?

Training and Skills
13. Have you received any training on human rights and your rights and needs as a HRD including security measures? If yes, please explain?
14. What are some of the skills, knowledge and capacities you require to be effective in your work as an HRD? Of the skills and capacities identified, what gaps do you have either as an individual or as a group working in this county?
15. Is there anything else that you would like to add that you feel we have not covered in this interview?
APPENDIX III:
List Of Organizations Interviewed For The Mapping Exercise And This Project

Kwale County
1. Msambweni Human Rights Watch
2. Romoc- Role Model Club
3. Kwale Human Rights Network
4. Asili Natural Resources Consortium
5. Tushirikiane Tiwi Youth Group
6. Lungalunga Human Rights Watch
7. Active Citizen Initiative-kenya
8. Lamukani CBO
9. Wema Women Group
10. Kedoh
11. Ubuni Self Help Group

Marsabit County
12. Hodi- Horn Of Africa Development Initiatives
13. Elele
14. Ordhofa

Busia County
15. Kengele Forum
16. Apab Network
17. CPJ Network
18. Reep
19. Clan
20. Kenya Alliance For The Advancement Of Chilrens Rights
21. Aphia Plus
22. ICS
23. Compassionate International
24. Child Welfare Society
25. Local Paralegal Network
26. Bunge La Mwananchi
27. Siweca
28. Catholic Justice And Peace Commission

The Commission has not included the name of individual HRDs due to privacy and security reasons.
APPENDIX IV:
Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

Resolution adopted by the General Assembly
[On the report of the Third Committee (A/53/625/Add.2)]

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Reaffirming also the importance of the Universal Declaration of Human Rights and the International Covenants on Human Rights as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

Stressing that all members of the international community shall fulfill, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the particular importance of achieving international cooperation to fulfil this obligation according to the Charter,

Acknowledging the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of
racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

**Recognizing** the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

**Reiterating** that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of those rights and freedoms,

**Stressing** that the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State,

**Recognizing** the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels,

**Declares:**

**Article 1**
Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

**Article 2**
Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees
required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

**Article 3**

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

**Article 4**

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the International instruments and commitments applicable in this field.

**Article 5**

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

To meet or assemble peacefully;
To form, join and participate in non-governmental organizations,

Associations or groups;
To communicate with non-governmental or intergovernmental organizations.

**Article 6**

*The Kenya National Commission on Human Rights*
Everyone has the right, individually and in association with others:
To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or Administrative systems;
As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

**Article 7**
Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

**Article 8**
Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs. This includes, *inter alia*, the right, individually and in association with others, 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 hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

**Article 9**
In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration; everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of
the violation of those rights.

To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

To the same end, everyone has the right, individually and in association with others, \textit{inter alia}:

To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;
To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any
territory under its jurisdiction.

**Article 10**
No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

**Article 11**
Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

**Article 12**
Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

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.

In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

**Article 13**
Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

**Article 14**
The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

Such measures shall include, *inter alia*:
The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments; Full and equal access to international documents in the field of human rights, including the periodic reports by the State to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.

The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.

**Article 15**
The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

**Article 16**
Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, *inter alia*, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.

**Article 17**
In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

**Article 18**
Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.

Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.

Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.
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