

Gendered Risk

Challenges WHRDs Face in the Course of their Work



The National Coalition of Human Rights Defenders - Kenya

NCHRD-K

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Acronyms

CEDAW	Convention on Elimination of All forms of Discrimination against Women
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
NCHRD-K	National Coalition of Human Rights Defenders Kenya
NGOs	Non Governmental Organizations
UDHR	Universal Declaration of Human Rights
UN	United Nations
WHRDs	Women Human Rights Defenders

Abstract

Human rights defenders in Kenya face numerous challenges in the course of their work. This report focuses on the factors that negatively impact the work of Women Human Rights Defenders limiting their ability to accomplish their human rights work in Kenya. The report highlights the reasons why they face certain challenges in the promotion and protection of human rights in Kenya.

Women who defend the human rights of all or individuals of all genders who defend the rights of women are known as Women Human Rights Defenders (WHRDs). As recognized by several international bodies, Women Human Rights Defenders challenge traditional cultural norms and social structures which expose them to more risks in the society on a daily basis.

There has been growing awareness around the specific risks, discrimination and violations faced by HRDs and WHRDs in particular, both at the hands of state and non-state actors. Such risks include hostility, harassment, and repression toward WHRDs in specific ways related to their gender, ranging from verbal to sexual assault, by State actors as well as our own colleagues, neighbors, partners, and families and is often justified on the basis of social norms, custom, religion or tradition.

In December 2013, the UN General Assembly passed its [first resolution on Women Human Rights Defenders](#), which urges states to put in place concrete gender-sensitive policies and programs for the protection of Women Human Rights Defenders and to ensure their effective participation in the design and implementation of measures geared towards their protection.

However, despite the UN General Assembly passing its first resolution on Women Human Rights Defenders, WHRDs in Kenya are still targeted because of their gender and human rights activities. With Kenya being

a patriarchal society, Women Human Rights Defenders do not enjoy much support from the community. In addition to the types of violations they may suffer in line with those experienced by their male colleagues, Women Human Rights Defenders in Kenya are also subjected to specific attacks due to their gender, including gender-based violence.

NCHRD-K therefore carried out a survey of WHRDs to better understand the environment within which they are operating in by identifying the challenges they face in the course of their human rights work and attempt to understand the reason why they are facing these challenges. This report has been developed to offer insight into the working environment of WHRDs. The NCHRD-K hopes that the information contained herein will enable organisations working with Women Human Rights Defenders put in place requisite protection measures to ensure the safety of WHRDs as they conduct their human rights work. This is not a comprehensive report and the NCHRD-K encourages further research on the subject matter to build on the information contained herein.

Objectives

The main objectives of this report is to provide a starting point on;

- The understanding of the challenges faced by WHRDs in Kenya in the course of their human rights work.
- The reasons why WHRDs in Kenya face these challenges in the course of their human rights work.

Methodology

The information contained herein was collected through the dissemination of an open ended questionnaire was developed and distributed among Women Human Rights Defenders who were present during the Women Human Rights Defenders training convened by NCHRD-K and Office of the High Commissioner for Human Rights that took place on 10th to 16th July 2016. The NCHRD-K received a total of twenty (20) responses

representative of twenty (20) counties including Busia, West Pokot, Machakos, Isiolo, Meru, Trans Nzoia, Kilifi, Taita Taveta, Lamu, Homabay, Siaya, Kericho, Laikipia, Bungoma, Nairobi, Kirinyaga, Bomet, Vihiga, Mombasa and Muranga.

The NCHRD-K further carried out telephone interviews with 25 WHRDs from Busia, West pokot, Machakos, Lamu, Isiolo, Meru, Trans-Nzoia, Kilifi, Taita Taveta, Lamu, Homabay, Siaya, Kericho, Laikipia, Kiambu, Kitui, Bungoma, Nairobi, Kirinyaga, Bomet, Vihiga, Mombasa, Muranga, Elgeyo Marakwet, Kisumu, Kisii, Tharaka Nithi, Kajiado, Nyamira, Makueni, Nyeri, Homabay, Uasin Gishu, Kwale, Kirinyaga, Nakuru, Baringo, Migori and Narok Counties. The telephone interviews were guided using the same open-ended questionnaire.

The questionnaire asked two questions:

- Which challenges do you, as a woman human rights defender, face in the course of your human rights work?
- Why do you think you are facing these challenges as you carry out your human rights work?

The NCHRD-K has also relied on the report from the mapping session of the meetings held in December 10th 2014 during the formation of the WHRD network which comprised WHRDs from thirty three (33) Counties and the training convened on 10th to 16th July 2016 where the WHRDs shared their experiences.

Structure of The Report

Part 1: This section seeks to answer the question ‘Why Focus on WHRDs?’ It highlights the reasons why the NCHRD-K elected to carry out this study and the vision of the study in addressing the challenges faced by WHRDs in Kenya.

Part 2: Gives a representation of the findings from the questionnaires shared out, as well as the reports from the convening's of WHRDs held in 2015 and 2016

Part 3: Provides the legal framework that ensures the protection of WHRDs and women in the realisation of human rights. It sets out international, regional and national frameworks for the protection of WHRDs not just as WHRDs but as women.

Part 4: Sums up the discussion contained in the full text through its conclusion and offers a set of recommendations for various actors in ensuring the safety and protection of WHRDs in the course of their human rights work.

Part 1: Why Focus on WHRDs?

According to Article 1 of the Declaration of Human Rights Defenders, a human rights defender is any person ‘who promotes and strives for the protection and realisation of human rights and fundamental freedoms’. A defender is therefore characterized by the activity of promoting and protecting human rights.

The Declaration applies to all human rights defenders, or anyone who, individually or in association with others, promotes and strives for the protection and realisation of human rights and fundamental freedoms. The Declaration only requires that, to be considered as such, a human rights defender must accept and respect two principles: the principle of universality and the principle of non-violence¹.

Women Human Rights Defenders are not specifically referred to in the Declaration but the description of HRDs above applies to WHRDs. The Special Rapporteur on the situation of Human Rights Defenders defines Women Human Rights Defenders as both female human rights defenders, and any other human rights defenders who work in the defense of women’s rights or on gender issues. The Declaration on Human Rights Defenders (HRDs) recognizes the important role of HRDs, including women defenders, and outlines relevant rights of all HRDs and obligations of States.²

Women Human Rights Defenders, who put themselves on the front line in the promotion and protection of human rights, are subject to the same types of risks faced by their male HRDs, but as women, they are also targeted for or exposed to gender-specific violence and violations that have gendered consequences.

¹ <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>

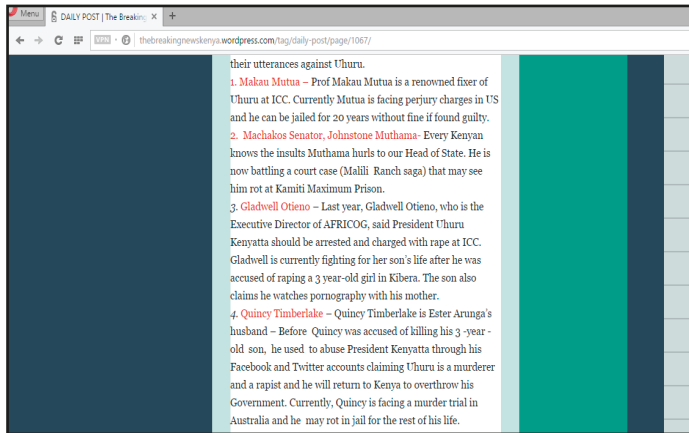
² Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya (20 December 2010, A/HRC/16/44)

Violations that have gendered consequences refers to violations that are experienced by both male and female defenders, but may have different consequences for WHRDs because different social and cultural norms govern the gender identity, sexuality, and gender role of women in different contexts. For instance, arbitrary arrest or detention of WHRDs adds an additional threat of sexual assault or violence when in custody. Another example may be the use of ‘compromising’ pictures of a WHRD to shame her publicly into stopping her work and discredit her work especially in societies where notions of modesty and shame would undoubtedly affect women in different ways than men.

Gender-based violence is defined as any act that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or in private life³. E.g sexual assault, rape and structural discrimination on the basis of gender, attacks against her home and family members. Gladwell Otieno

WHRD Gladwell Otieno, the Executive Director of Africa Center for Open Governance, a human rights organisation based in Nairobi County, has been at the fore front in advocating for justice for victims of the post-election violence and has been in support of the International Criminal Court prosecution of the Kenyan suspects who were deemed to hold the highest responsibility in the PEV. As a result of her advocacy work she faced numerous threats and in a final bid to intimidate and deter her, her son was targeted in 2014 and accused of allegedly raping a three year old girl.

³ UN Convention on the Elimination of All Forms of Discrimination and Violence against Women



An example of the violence WHRDs are faced with to deter their human rights work ⁴

WHRDs defending reproductive, sexual, or other gender-related rights – early marriage, beading or anti female genital mutilation may also be more vulnerable to certain types of risks because of the work that they do and the issues that they raise especially doing so in a patriarchal society where they threaten to challenge established norms of gender identity, gender roles, or sexuality. Due to this, WHRDs are subjected to stigmatization and ostracism by community leaders, faith-based groups, families and communities who consider them to be threatening religion, honour or culture through their work. This is the case of Anne Resiano⁵

WHRD Anne Resiano, the head teacher at Ewaso Primary School, Laikipia County, has been receiving threats from members of the community for highlighting the abuse of power exercised by a male individuals within the community in which she resides. Anne Resiano has been instrumental in advocating for the rights of the girl child and against beading and other harmful cultural practices in a primarily patriarchal and pastoralist community in Laikipia County. Most recently

⁴ The Daily Post, Is UHURU chosen? MUTHAMA, MAKAU, GLADWELL, QUINCY are gnashing their teeth! September 14, 2014 <https://thebreakingnewskenya.wordpress.com/tag/daily-post/page/1067/> as accessed on 24th October 2016

⁵ <http://www.nation.co.ke/news/Parents-reject-teacher-for-exposing-child-pregnancy/1056-3218900-yxpqsr/index.html> as accessed on October 24, 2016

she brought to the fore front a case is that of a male teacher who sexually assaulted and impregnated an underage girl, a student at Ewaso primary School. As a result of her advocacy work has been harassed, threatened and physically assaulted.

Despite the glaring and unique challenges faced by WHRDs, there is a lack of gender specific protection measures available to WHRDs who come under risk for their human rights work thus contributing to a culture of impunity for these violations against Women Human Rights Defenders.

Part 2: Research Findings and Discussions

Challenges facing WHRDs in the Course of their Work

In response to the question that sought to identify the challenges faced by WHRDs in the course of their human rights work, there were varying responses from the respondents, which included harassment, stigmatization and discrimination, threats, gender stereotypes, torture, suspicion, detention, arbitrary arrest, cultural barriers, financial limitations, rape, insecurity, negligence in collection and management of evidence, delayed court process, lack of cooperation from security agents or community and limitation of freedom of assembly. This is represented in *Figure 1*.

Harassment

30% of the Women Human Rights Defenders indicated harassment from both state and non-state actors. A WHRDs stated that in following up on a defilement case stated that the family of the defiled child wanted to seek justice and accepted her assistance in collection of evidence. They agreed on a day to follow up on the case and when on the day the family and the community elders decided that the matter will be resolved in accordance to customary laws. This left her vulnerable to harassment and verbal abuse by community members.

Stigmatization

40% of the respondents pointed to stigmatization to be a major challenge to their human rights work. The stigmatization is not only brought about by the gender aspect but also by the fact that there are WHRDs has not gone through the right of passage within the community she is carrying out her human rights work. This was illustrated by a WHRD who indicated that she is looked down upon when she is carrying out her work of rescuing victims and is fearful of being kidnapped as she has not gone through the customary rite of passage. She also stated that when she gives advice to community members the information is represented negatively.

Threats and Insults

26% of the WHRDs indicated threats as a major challenge to their human rights work. One WHRD in response highlighted a specific incident narrating that in April 2015 as she was following up on a defilement case the alleged perpetrator approached her and insulted her “*wewe ni malaya na kazi yako ni kunusa nusa mambo ya watu ndio uende ukarepoti polisi wnye unapiganga umalaya na hao*” (you are a prostitute and your job is to interfere in other people’s business and go report to the police officers who you sleep with). She reported the incident to the police who summoned the perpetrator and gave him a stern warning. The matter has since been concluded and the individual was found guilty and jailed.

Others

4% stating other challenges including psychological torture, defamation, denial of information, assault, limited finance, arbitrary arrest, discrimination, negligence and delay of court process, abduction, suspicion, detention, destruction of property, insecurity, lack of cooperation from state and non-state actors, lack of accountability and denial of freedom of assembly.

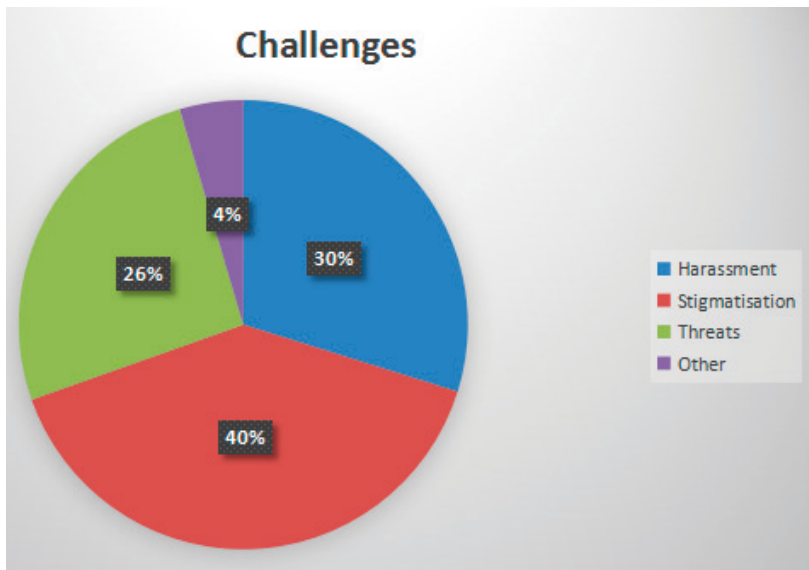


Fig 1

Reasons why WHRDs face these Challenges

The second question in the questionnaire sought to understand why the WHRDs faced the challenges they identified. In understanding the reasons, it would then enable one to put in place measures to address the causes of the challenges. In response, 37% of the respondents stated that social ignorance was the greatest reason for the challenges WHRDs face in the course of their human rights work. After which culture and gender stereotype were provided for at 23% each followed by corruption at 12%. Other reasons which made up 5% were lack of support, lack of finances, technology, and lack of capacity, corruption, and duplication of activities, competition among HRDs, language barrier, mistrust, fear and lack of pro bono lawyers.

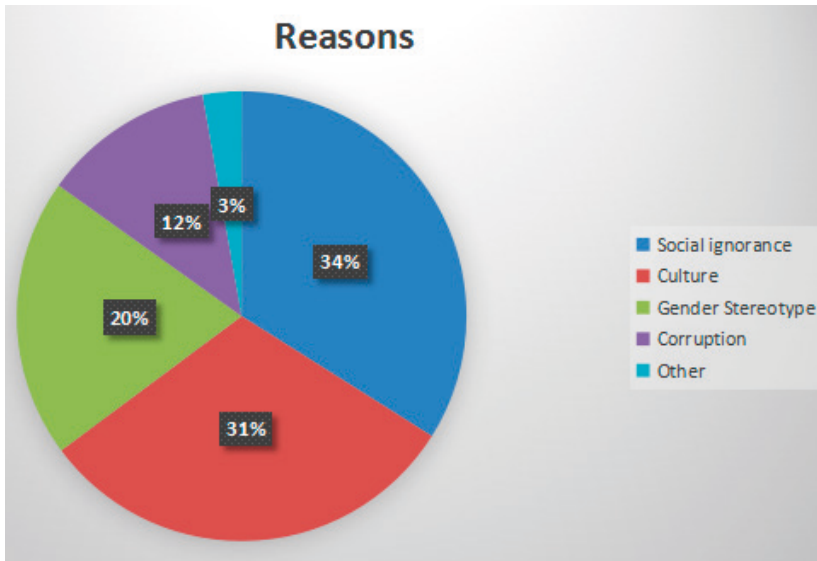


Fig. 2

Social Ignorance

Social Ignorance was the recorded as one of the reasons because 34% of the women acknowledged that for some of the challenges they were facing , if only the society was aware of the changes in society then it wouldn't be hard for them to work. In a specific instance a woman dealing with LGBTI issues stated that most people from her region it takes a lot of convincing for them to acknowledge the SOGIE community. Most people from the society still view SOGIE persons as those behind sodomy and rape and therefore have avoided being part of sessions that address LGBTI issues. For another woman she acknowledged that some men never attended meetings organized by women because they believe that the issues being discussed are just women issues. And since they ignore these discussions at times they frustrate the efforts of women in making changes in the society.

Culture

31% of the women feel that culture is also a reason for the challenge because after a woman has identified a certain issue that may require involvement of police or having the victim go to court, to avoid shame and to solve the issue as per culture, the victims' family may decide to have elders of the community and the perpetrators solve the issue as per traditional requirements, which may mean that the victims' family maybe paid off to withdraw the case. With such cultures its only possesses the challenge of a woman being harassed and stigmatized for doing what she was legally supposed to do.

Gender Stereotypes

For 20% of the women and as per the African culture, it is unlikely that a woman is able to address certain concerns in a community and is listened to. Most times she is seen as a “wayward woman who has no business in poking her affairs into other people’s business”. A woman who has decided to defend the rights of another woman in communities is at times harassed or threatened by the perpetrator who may at times be a man in authority and the community will support his actions. One of the ladies gave a story of an instance where she was assisting a child who was to be married off to an old man who was a banker. The man threatened her a number of times for trying to stop him from marrying the girl and he only stopped because the chief intervened.

Part 3: Legal Framework for the Protection of WHRDs

Human rights are enshrined in the Universal Declaration on Human Rights (UDHR), and subsequently in conventions and treaties such as: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) which reinforce and safeguard the human rights principles which are the cornerstone in the protection of Women Human Rights Defenders. The same are echoed in various regional instruments primarily the African Charter on Human and Peoples Rights and at national level within Kenyan Constitution 2010.

National Protection Mechanisms

The realisation of human rights entail both rights and obligations where States assume obligations and duties under international law to respect, to protect and to fulfil human rights⁶. The State is therefore duty bound to prevent human rights violations by taking legal, judicial, administrative and all other measures to ensure the full enjoyment by defenders, including WHRDs, of their rights. When a violation, perpetrated by State and non-state actors, occurs against WHRDs, the State should take necessary action when by carrying out credible investigations on alleged violations and holding the perpetrators to account. In addition, the State

⁶ Article 2 of The United Nations Declaration on human rights defenders establishes that States “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.”

should also refrain from violating human rights and using official tools and resources to harass and attack WHRDs.

The Constitution of Kenya 2010

Kenya promulgated a new Constitution in August 2010 beginning its transition into a new dispensation that would realise good governance, characterized by democracy, public participation, accountability, equity, equality and adherence to the rule of law. The Constitution made leaps and bounds in the Recognition of the equal rights of women and men which is imperative towards achieving full empowerment of women. Articles highlighted below are critical in safeguarding the well-being and security of WHRDs as well as equality and non-discrimination as they carry out their human rights work.

The Constitution further provides for national values and principles of governance⁷ which stipulate *human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized*. This simply provides that for Kenya to realise good governance the aforementioned principles are binding to all State organs, state officers, public officers and all persons, and must be adhered to. Therefore women, including WHRDs, are equal to their male counterparts and should not be discriminated against on the basis of their gender. In all actions, the dignity of women should be upheld keeping them safe from degrading treatment. Women and WHRDs should be included in development and decision making processes and ensure women participation in all national endeavours.

The bill of rights⁸ offers protection to WHRDs safeguarding the *right to life* stipulating that this right can only be limited to the extent allowed by the constitution or other written law. Therefore no individual aggrieved by the legitimate actions of a WHRD can elect to limit her right to life. WHRDs, In the course of their work report on violations where you find

⁷ The Constitution of Kenya 2010 Article 10 (2)(b)

⁸ The Constitution of Kenya Chapter 4

that more often than not the perpetrators of these violations are men who make threats to their lives leaving them vulnerable to the risk of loss of life.

*Equality and non-discrimination*⁹ is the cornerstone of the protection of WHRDs in the course of their work. However, WHRDs are discriminated against because of their gender. This is predominantly the case in patriarchal communities where women are seen as the lesser sex and should not speak or express themselves¹⁰ in any manner contrary to the cultural or religious dictates. WHRDs who are vocal about the human rights violations prevalent in those communities are seen assaulted¹¹, their reputations tarnished, disowned by their families or communities, harassed, insulted and threatened. When they face such challenges, they should be avenues of redress available to them which is safeguarded in Article 48 which provides for *access to justice*.

WHRDs are faced with unique challenges within the judicial process as such the provided for with *rights of arrested persons*¹², the *right to a fair hearing*¹³ and the *rights of a detained person*¹⁴ all seek to offer protection to a WHRD from gender based violence and violations that have gendered consequences.

Sexual Offences Act¹⁵

Violence against women... shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women...¹⁶ WHRDs are prone to sexual

⁹ The Constitution of Kenya Article 27

¹⁰ Violation of their freedom of expression provided for in Article 33 of the Constitution of Kenya

¹¹ Violation of Security of the Person Article 29 of the Constitution of Kenya Article 49

¹² Article 49

¹³ Article 50

¹⁴ Article 51

¹⁵ CAP 62A (No. 3 of 2006)

¹⁶ Art. 3 a, Council of Europe Convention on preventing and combating violence against women and domestic violence

violence which, unlawful sexual acts, are recognised under the Sexual Offences Act providing for their definition, prevention and protection and punishment. It prohibits all manner of sexual offences including rape, attempted rape, sexual harassment and sexual exploitation.

This act takes cognisance a broader range of sexual offences as compared to the Penal Code that does not sufficiently address SGBV which is prevalent within the Kenyan society. SGBV, for instance, is only inferred by virtue of interpreting the vice as an assault as provided for under section 250¹⁷ and 251¹⁸. There is no specific offence such as wife battery/ husband battery. The inadequacies for addressing SGBV present challenges to the fight against the vices.

The Penal Code¹⁹

The Constitution of Kenya provides for human rights and fundamental freedoms. The criminal actions that result in the violation of those rights and freedoms can be found in the Penal Code which provides for criminal acts and their punishment. Within their human rights work, WHRDs have complained of assault, threats and intimidation that take on varying forms. These are criminalised under various sections in the Penal Code for which their punishments are also provided for. The Penal code criminalises offences against the person including murder, the threat to kill and various crimes forms of assault. However, it is important to note the Penal Code can also be used to criminalise the legitimate work of WHRDs for instance in limiting their freedom to assemble by threatening to charge them with rioting after proclamation contrary to section 83 of the Penal Code.

¹⁷ Any person who unlawfully assaults another is guilty of a misdemeanour and, if the assault is not committed in circumstances for which a greater punishment is provided for in this code, is liable for imprisonment for one year.

¹⁸ Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable for imprisonment for five years.

¹⁹ The Penal Code Cap 63 Laws of Kenya

Legal Framework for the Protection Mechanisms

The Constitution of Kenya provides that the general rules of international law shall form part of the law of Kenya and in addition, any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.²⁰ Therefore the international laws that Kenya is a signatory to form part of the Kenyan law and can thus be applied in the same way as any existing substantive laws in Kenya.

International Legal Framework

At the international level, these will include the UDHR, ICCPR, ICESCR and the Convention on Elimination of All forms of Discrimination against Women (CEDAW). These have corresponding treaty bodies which are committees of independent experts that monitor implementation of the core international human rights treaty. Each State party to a treaty has an obligation to take steps to ensure that everyone in the State can enjoy the rights set out in the treaty.²¹

Treaty bodies that would be concerned in one way or another with the situation of WHRDs would be the Human rights committee that monitors implementation of the International Covenant on Civil and Political Rights (1966) and its optional protocols; the committee on Economic, social and cultural rights (CESCR) that monitors implementation of the International Covenant on Economic, Social and Cultural Rights (1966); the Committee on the Elimination of discrimination against women (CEDAW) that monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women (1979) and its optional protocol (1999).

Although not an urgent protection mechanism, working with these treaty bodies can contribute to the development of an enabling environment for WHRDs and provide legitimacy to their work. The discrimination faced

²⁰ The Constitution of Kenya Article. 2 (5) and (6)

²¹ Monitoring the core international human rights treaties, as accessed on 28 October 2016 from <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>

by WHRDs involve the violations of the civil political economic social and cultural rights primarily because of their gender, therefore reporting on the situation of WHRDs to the various committees will amplify the voices of the WHRDs in different platforms and encourage response from the Committees. For example, in a report examining Mexico, the Committee on the Elimination of Discrimination against Women urged the government “to take concrete, adequate and effective measures to prevent, investigate, prosecute and punish attacks and other forms of abuse perpetrated against Women Human Rights Defenders and journalists as well as take effective measures to combat impunity”²².

The UN Declaration on HRDs

Recognition of the vital role of human rights defenders and the violations that many of them face convinced the United Nations that special efforts were needed to protect both defenders and their activities. On 9 December 1998, by its resolution 53/144, the General Assembly of the United Nations adopted 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 (commonly known as the “Declaration on human rights defenders”).

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

The declaration on human rights defenders recognizes the following rights:

²² Committee on the Elimination of Discrimination against Women, (CEDAW/C/MEX/CO/7-8), 7 August 2012, para. 25.

- To seek the protection and realization of human rights at the national and international levels;
- To conduct human rights work individually and in association with others;
- To form associations and non-governmental organizations;
- To meet or assemble peacefully;
- To seek, obtain, receive and hold information relating to human rights;
- To develop and discuss new human rights ideas and principles and to advocate their acceptance;
- To submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may impede the realization of human rights;
- To make complaints about official policies and acts relating to human rights and to have such complaints reviewed;
- To offer and provide professionally qualified legal assistance or other advice and assistance in defence of human rights;
- To attend public hearings, proceedings and trials in order to assess their compliance with national law and international human rights obligations;
- To unhindered access to and communication with non-governmental and intergovernmental organizations;
- To benefit from an effective remedy;
- To the lawful exercise of the occupation or profession of human rights defender;
- To effective protection under national law in reacting against or opposing, through peaceful means, acts or omissions attributable to the State that result in violations of human rights;
- To solicit, receive and utilize resources for the purpose of protecting human rights (including the receipt of funds from abroad).²³

²³ Source: Fact Sheet 29 - Human Rights Defenders: Protecting the Right to Defend Human Rights, pages 20 and 21. Available at: <http://www.ohchr.org/Documents/Publications/FactSheet29en.pdf>.

Regional Legal Framework

The provisions within the international bill of rights are echoed in the African Charter on Human and People's rights (The Banjul charter) which encompasses civil and political rights, economic, social and cultural rights and group rights within one instrument. The Banjul Charter, under Part 1 provides for rights and duties which safeguard the life²⁴, dignity²⁵ and security of the person²⁶, access to justice and equal protection before the law²⁷ and against non-discrimination²⁸. The instrument further provides for the freedoms to assembly²⁹, association³⁰, information and expression³¹ and participation³² which allows WHRDs the space to engage at various levels.

These are critical provisions that will contribute towards a conducive working environment for WHRDs across the continent. These provisions are also set forth in the Protocol to the African Charter on Human Rights on the Rights of Women in Africa also known as the Maputo Protocol provides for Elimination of Discrimination Against Women³³ which was drafted to specifically address the issues of discrimination against women reiterating Article 18 (3) which sets out the States duty to ensure the elimination of every discrimination against women and ensure the protection of the rights of women and the child.

Special Rapporteurs on the Situation of HRDs

The Special procedure specific to HRDs are found at both international and regional level establishing the Special Rapporteurs on the Situation of

²⁴ African Charter of Human and Peoples Rights Article 4

²⁵ African Charter of Human and Peoples Rights Article 5

²⁶ African Charter of Human and Peoples Rights Article 6

²⁷ African Charter of Human and Peoples Rights Article 7

²⁸ African Charter of Human and Peoples Rights Article 2

²⁹ African Charter of Human and Peoples Rights Article 11

³⁰ African Charter of Human and Peoples Rights Article 10

³¹ African Charter of Human and Peoples Rights Article 9

³² African Charter of Human and Peoples Rights Article 13

³³ African Charter of Human and Peoples Rights Article 2

HRD at the UN and at the ACHPR. The mandate on the situation of human rights defenders at the UN was established in 2000 by the Commission on Human Rights (as a Special Procedure) to support implementation of the 1998 Declaration on human rights defenders. To achieve this the Special Rapporteur can:

- seek, receive, examine and respond to information on the situation of human rights defenders;
- establish cooperation and conduct dialogue with governments and other interested actors on the promotion and effective implementation of the Declaration;
- recommend effective strategies better to protect human rights defenders and follow up on these recommendations;
- integrate a gender perspective throughout her work

In the fulfillment of the mandate, the mandate holder:

- Presents annual reports to the Human Rights Council and the General Assembly on particular topics or situations of special importance regarding the promotion and protection of the rights of human rights defenders
- Undertakes country visits
- Take up individual cases of concern with Governments³⁴

The Special Rapporteur on Human Rights Defenders was established by the African Commission on Human and Peoples' Rights with the adoption of Resolution 69 at the 35th Ordinary Session in 2004. The mandate calls for the Special Rapporteur to:

1. seek, receive, examine and act upon information on the situation of human rights defenders in Africa;
2. submit reports at every ordinary session of the African Commission;
3. cooperate and engage in dialogue with Member States, National Human Rights Institutions, relevant intergovernmental bodies,

³⁴ <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Mandate.aspx>

- international and regional mechanisms of protection of human rights defenders and other stake holders;
4. develop and recommend effective strategies to better protect human rights defenders and follow up on his/her recommendations; and
 5. raise awareness and promote the implementation of the UN Declaration on Human Rights Defenders in Africa.³⁵

The situation of WHRDs is of concern in the realisation of human rights in various countries and has thus remained an agenda with the UN Special Rapporteur on the situation of HRDs. In the January 2007 report to the UN Human Rights Council, the UN Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani observed that since the establishment of her mandate, she has acted on 449 cases of violations against Women Human Rights Defenders from complaints received concerning 1,314 defenders. Of these, 43 cases pertained to Women Human Rights Defenders who were killed, and there are numerous cases from all regions, of sexual violence and death threats against Women Human Rights Defenders. Importantly, these figures are marked in a context of non-recognition for the work of Women Human Rights Defenders as well as the non-acknowledgement of the acts against Women Human Rights Defenders as human rights violations³⁶.

In her report in 2010, UN Special Rapporteur on the situation of HRDs Margaret Sekaggya, states that Women Human Rights Defenders often face further stigmatization by virtue of their sex or the gender- or sexuality-based rights they advocate. As noted above, such work can be perceived as challenging established socio-cultural norms, tradition or perceptions about the role and status of women in society. As a result of this, women defenders often find themselves and their work subjected to stigmatization by both State and non-State actors. A common accusation directed in particular at those working on women's rights, gender issues, and Lesbian, Gay, Bisexual and transgender (LGBT) rights, is the assertion that these defenders are somehow advocating or attempting to import "foreign" or "Western" values which contradict national or

³⁵ <http://www.achpr.org/mechanisms/human-rights-defenders/>

³⁶ Report of the Special Rapporteur on the Situation of human rights defenders, Hina Jilani (24 January 2007, A/HRC/4/37, para 100, 102, 103

regional culture. State agents or representatives are often alleged to be responsible for such stigmatization.³⁷

In 2015, Michel Forst, UN Special Rapporteur on the situation of HRDs highlights the gendered aspect of many of the attacks against them, including ‘particularly virulent harassment, defamation and stigmatisation campaigns on the Internet, in which their respectability and credibility’ as defenders, women, mothers or citizens was attacked. The Special Rapporteur also indicates that he believes efforts to increase protection for defenders has been undermined by a lack of understanding of how ‘different types and sources of discrimination intersect with and reinforce, on another.’ He notes that the international human rights system has yet to ‘systematically incorporate an intersectional approach’ in its work, undermining its effectiveness, and promises to focus on this issue more deeply in a later report³⁸.

As all three mandate holders have reiterated on various occasions, female human rights defenders are subject to particular risks to which their male counterparts are not so greatly exposed, foremost among these being the risk of rape, sexual abuse, and other forms of sexual violence and harassment.

³⁷ Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya (20 December 2010, A/HRC/16/44) pg 11—17

³⁸ Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst (30 July 2015, A/70/217)

Part 5: Conclusion and Recommendations

Conclusion

The valuable work of human rights defenders, including Women Human Rights Defenders, is critical in the advancement of civil, political, economic, social and cultural rights and the right to development and the increasing threats to the Women Human Rights Defenders in Kenya. there is ongoing intimidation, by state and non-state agencies, of the work of Women Human Rights Defenders' through threats on the life of the WHRDs dealing with extra judicial executions issues and harmful cultural practices, which threatens to limit the space for WHRDs. Women Human Rights Defenders are exposed to threats of sexual and gender-based harassment and assault which is used as a tool to undermine their human rights work and threatens to limit the space for WHRDs.

That due to lack of policies and structures that favour WHRDs and specifically young WHRDs, lack of experience and mentorship, increased gender inequality and discrimination of these young WHRDs are dissuaded from engaging in human rights work. That WHRDs are met with slow, if any, state response in addressing issues of gender based violence due to lack of requisite equipment and untrained staff in medical facilities, untrained officers at the gender desks who cannot respond to gender issues and lack of access to lawyers to support their work through legal representations. This is especially witnessed in Northern region of Kenya.

Recommendations

To the State:

1. Develop legislation that supports and safeguards the work of Women Human Rights Defenders espoused in a model legislative framework on the protection of human rights defenders which is in compliance with international and regional set standards;
2. Acknowledge publicly the important and legitimate role of Women Human Rights Defenders in the promotion and protection of human rights, democracy, the rule of law and development as an essential component of ensuring their protection, including by publicly condemning violence and discrimination against Women Human Rights Defenders and promptly bring to justice through impartial investigations the perpetrators of these violations;
3. Take all measures necessary to ensure their protection and to integrate a gender perspective into their efforts to create a safe and enabling environment for the defense of human right;
4. Implement the Universal Periodic review recommendations, accepted during Kenya's review in January 2015, on ensuring a conducive environment for human rights defenders and protection of women and other marginalized groups from discrimination.

To Funding Agencies of Human Rights Work:

1. Support a coordinated mechanisms for holistic (legal, medical, psychosocial, physical) support to Women Human Rights Defenders at the national and grassroots level

To WHRDs:

1. Develop solidarity mechanisms for regional, national and grassroots WHRDs for learning and lessons sharing through a

common communication strategy for women HRD messaging that ensures accuracy, balance and clarity to relevant stakeholders of their work interventions disseminated through online and offline platforms;

2. To enhance capacity of WHRDs on digital and physical security so that they can carry out their work in a safe and secure manner;
3. To enhance collaboration or partnerships with key actors in the judicial process to ensure their issues find place in the mainstream system, including Court Users Committees, community policing committees and with the police;

To National CSOs:

1. Put in place gender sensitive rapid response mechanisms for WHRDs at risk so as to ensure readily available legal, medical and psychosocial support for WHRDs as well as pre-emptive strategies that will ensure that WHRDs do their work in a safe and secure manner.
2. Support the work of WHRDs and work closely with them at the community and grassroots level to carry out advocacy on issues of concern within the various counties and lobbying of policy makers at national and county level to ensure a conducive policy environments for HRD.



The National Coalition of Human Rights Defenders - Kenya

NCHRD-K