

UNIVERSITY OF NAIROBI

Institute for Diplomacy and International Studies

[IDIS]

The Contribution of Civil Society in the Promotion of Human Rights,

Case Study of Kenya 1992-2009

Shakila Jafarali Kassam

R50/71552/08

Supervisor:

Professor J. D. Olewe Nyunya

**A Research Project submitted in partial fulfilment of the award of The Degree of
Master of Arts in International Studies**

September 2010

University of NAIROBI Library



0372388 9

27.000100

0.1

K

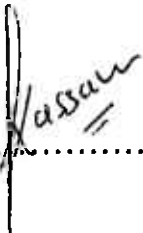
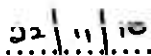
32.0

4.5

0.3

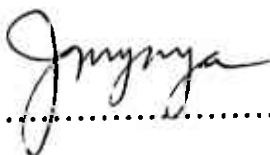
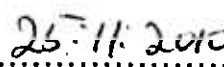
DECLARATION

I Shakila Jafarali Kassam, hereby declare that this research project is my original work and has not been presented for a degree in any other University.

Signed.......... Date..........

Shakila Jafarali Kassam

This project has been submitted for examination with my approval as University Supervisor.

Signed.......... Date..........

Professor, J. D. Olewe Nyunya

ACKNOWLEDGEMENTS

I am heartily thankful to my supervisor, Professor Olewe Nyunya, whose encouragement, guidance and support from the initial to the final level enabled me to develop an understanding of the subject. I am also grateful to the lecturers at the Institute of Diplomacy and International Studies (IDIS) including Professor Maria Nzomo, Mr. Gerishon Ikiara, Mr. Patrick Maluki, and Mr. Martin Nguru who assisted me in refining the problem statement.

I owe my deepest gratitude to my advisors, including colleagues and friends; Hassan Bodicha, Vincent Kimosop, Korir Kiptum, Luiza Kabiru of Kenya Human Rights Commission (KHRC), James Olela, Arthur Ahuya, Joan Chepkoech and lastly Alfa Romeo Issa who made available their support in a number of ways including spending long hours with me acting as a devils advocate to help me sharpen some of the formulations, and avoid inconsistencies in the manuscript. This thesis would not have been possible without constant support of the librarians within University of Nairobi (UoN), United States International University (USIU), KHRC, International Commission of Jurists (ICJ-K) namely Mr. Kamau and Mr. Mugo (UoN), Mr. Dickens and Mr. John (USIU), and Mr. Kogema Kevin of ICJ-K and Ms. Seraphine of (KHRC) whose friendly assistance and personal interest led to the availability of documents touching my area of study with a lot of ease. God Bless you Sera!

I would also like to show my gratitude to my family members including my mum, dad and siblings whose encouragement and support being a great source of inspiration allowed me to see the end of writing this thesis. Lastly, I offer my regards and blessings to all of those who supported me in any respect during the completion of the project.

ABSTRACT

The study sought to establish the contribution of civil society organization in the promotion of human rights in Kenya, 1992- 2009. The study applied various methods of data collection involving both primary and secondary data.

Human Rights are violated in Kenya, especially during the election times. Between 1992 and 2009, Kenya held four multi party elections. In all the said election periods, Kenya witnessed violations of human rights, where lives, properties are lost, women and children are raped, and yet others get displaced from their homes, violating their rights of having a livelihood and being independent in terms of providing their for their subsistence. Non state actors like Civil Society in Kenya are bodies mandated to promote human rights and ensure the state provides citizens with their basic rights.

With their role to advocate for rights, they are expected to teach the public on rights that are entitled to them and how they can achieve them. However, as the study reveals most CSO in Kenya do not have the interest of its citizens in the heart but are bodies that promote human rights based on the agenda of external actors including donors and International Non Governmental Organizations (INGO's), as the funding most CSOs receive is project based, making the CSO accountable to external actors and not the citizens.

Based on the evidence gathered and the analysis made, this study reached the following key conclusions in regard to the study objectives and hypotheses. That CSO are not consistent in promotion of human rights as most of their human rights promotion is based on external funding, so if there is no funding for promotion of required rights, the project is left half way and also

most CSO are faced by challenges such as poor leadership, and lack of resources for running their programmes.

most CSO are faced by challenges such as poor leadership, and lack of resources for running their programmes.

ABBREVIATIONS

AHRAJ: -	Africa Human Rights Access to Justice
AI: -	Amnesty International
ACHPR: -	African Commission on Human and People's Rights
CERD: -	Convention on Elimination of Racial Discrimination
CEDAW: -	Convention on Elimination of all forms Against Women
CAT: -	Convention against Torture
CRC: -	Convention on Rights of Child
CRPD: -	Conventions on Rights of Persons with Disabilities
CSO: -	Civil Soceity Organization
CIDA:-	Canadian International Development Agency
EAC: -	East African Community
EU: -	European Union
ECOWAS: -	Economic Community for West African States
EACICJI: -	Eastern Africa International Justice Initiative
FIDH: -	Federation of Human Rights
ECK: -	Electoral Commission of Kenya
FIDA: -	Federation of Women Lawyers
GA: -	General Assembly
GBM:-	Green Belt Movement
HRW: -	Human Rights Watch
ICCPR: -	The international Covenant on Civil and Political rights
ICRC: -	International Committee of the Red Cross

ICC:-	International Criminal Court
ICESCR: -	The international Covenant on Economic, social and Cultural rights
ICRMW: -	International Convention on the Protection of Rights of all Minorities
IR: -	International Relations
INGO: -	International Non Governmental Organization
ICRC: -	International Committee of the Red Cross
KANU: -	Kenya African National Union
KPTJ: -	Kenyans for Peace, with Truth and Justice
KHRC:-	Kenya Human Rights Commission
MFA: -	Ministry of Foreign Affairs
MNC: -	Multinational Corporations
NCA: -	National Convention Assembly
NCEC: -	National Convention on Executive Council
NARC:	National Rainbow Coalition
US: -	United States
NGO: -	Non Governmental Organization
OSCE: -	Organization of Security and Co-operation in Europe
OAS: -	Organization of American States
OAU: -	Organization of African Union
OHCHR: -	Office of the High Commissioner for Human Rights
SADC: -	Southern African Development Community
SIDA:-	Swedish International Development Agency
UNESCO: -	United Nations Educational Scientific and Cultural Organization
UDHR: -	Universal Declaration of Human Rights

USAID:- United States Agency for International Development

WB: - World Bank

LIST OF TABLES

Sample Size of Respondents.....21

Distribution by Age.....78

Distribution by level of education.....78

Distribution by working sector.....78

LIST OF FIGURES

Distribution by Gender.....79

Distribution by Working Sector.....80

Distribution by Level of Education.....80

Distribution by Awareness of Universal Declaration of Human Rights.....81

**Distribution by level of Awareness of the provisions
of Universal Declaration of Human Rights.....82**

Awareness about violations of human rights violations in Kenya85

Awareness on violations during electioneering periods.....87

Presence of Government and Non State Actors in Promotion of Human Rights90

Awareness about Human Rights Organizations93

Awareness of Funding.....93

Awareness of Role of Individual in promotion of Human Rights96

Awareness about CSO in promotion of human rights98

Legal Environment favorable towards CSOs106

Why human rights violations increase during elections.....107

Ways of Improving promotion of human rights.....108

Name of Organization.....110

TABLE OF CONTENTS

	Page
DECLARATION.....	ii
ACKNOWLEDGEMENTS.....	iii
ABSTRACT.....	iv
ABBREVIATIONS.....	vi
LIST OF TABLES.....	viii
LIST OF FIGURES.....	ix
 CHAPTER ONE: CONTRIBUTION OF CIVIL SOCIETY IN THE PROMOTION OF HUMAN RIGHTS	
Introduction	1
Statement of the Research Problem.....	4
Objectives of the Study	6
Justification of the Study	6
Literature Review.....	7
Conceptual Framework.....	16
Hypotheses.....	18
Methodology of the Study	18
Scope and Limitations of the Study.....	22
Chapter Outline	23

CHAPTER TWO: HUMAN RIGHTS VIOLATIONS DURING ELECTIONEERING YEARS: 1992, 1997, 2002 AND 2007 KENYA

Introduction25

Election and Violence.....25

Human Rights Violations in 1992.....33

Human Rights Violations in 1997.....35

Human Rights Violations in 2002.....38

Human Rights Violations in 2007.....41

Analysis of the reasons behind the violence during the electioneering periods in Kenya.....48

Conclusion.....49

CHAPTER THREE: ACTORS AND PLAYERS IN PROMOTION OF HUMAN RIGHTS

Introduction50

Actors in Promotion of human rights50

Human Rights Non- Governmental Organizations.....54

Types of Civil Society Organizations.....57

Donors as Actors in Promotion of Human Rights.....60

Case Studies62

Kenya Human Rights Commission.....62

Federation of Women Lawyers66

International Commission of Jurists.....68

Conclusion.....73

CHAPTER FOUR: DATA FINDINGS ANALYSIS AND PRESENTATION

Introduction75

SECTION ONE.....	76
Sample Characteristics of the Respondents.....	76
Distribution by Gender.....	79
Distribution by Working Sector.....	80
Distribution by level of Education.....	80
SECTION TWO	79
Awareness of Universal Declaration of Human Rights	81
Awareness of Provisions of Universal Declaration of Human Rights.....	82
Awareness of human rights violations in Kenya.....	85
Awareness on violations during electioneering periods.....	87
Violations during elections times.....	88
Presence of Government and Non State Actors in promotion of Human Rights.....	90
Awareness about Human Rights Organization.....	93
Awareness of Funding.....	94
Role of individual in the Promotion of human rights.....	96
Role of individual of how to promote human rights.....	97
Awareness about CSO s in promotion of human rights.....	98
Awareness of legal environment favaroble towards CSOs.....	106
Why human rights increase during elections.....	107
Ways of improving promotion of human rights by CSOs.....	108
SECTION THREE	
Distribution by Name of Organization.....	110
Challenges faced by HRNGO.....	111
Budget of organization of KHRC if 2008- 2009.....	112
Conclusion.....	119

CHAPTER FIVE: SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

Introduction.....	120
Summary	120
Conclusions.....	123
Recommendations	124
Suggestions for further research.....	126
BIBLIOGRAPHY	127
ANNEXES.....	133

CHAPTER ONE

CONTRIBUTION OF CIVIL SOCIETY IN THE PROMOTION OF HUMAN RIGHTS IN KENYA

Introduction

Human Rights are difficult to define. They are regarded as those fundamental and inalienable rights which are essential for a life as a human being.¹ The International human rights movement was strengthened when the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) on 10th December 1948. Drafted as 'common standard of achievement for all people's and nations', the Declaration for the first time in human history spelt out basic civil and political, economic, social, and cultural rights that all human being should enjoy.²

International Human rights law lays down obligations which states are bound to respect. By becoming parties to international treaties states assume obligations and duties under international law to respect, protect and to fulfill human rights. State and Civil Society/ Non Governmental Organization (NGO) ideally complement each other in promoting human rights. There are non governmental human rights organizations (HRNGO'S) which are defined as private organizations that devote significant resources to the promotion and protection of human rights that are independent of both government and political groups.³

HRNGO to have an impact it must have the following preconditions fulfilled; that is, it should provide reliable information to government, intergovernmental organizations,

¹ R.J Vincent, *Human Rights and International Relations*, (UK; Cambridge University Press, 1999) p. 3

² Malcom Shaw, *International Law*, 4th Edition, (United Kingdom, Cambridge University Press, 1997) p. 196

³ Laurie S. Wiseberg, "Protection of Human Rights Activist and NGO what can be done? *Human Rights Quarterly*, 13 (1991) p. 529.

academicians, as well as to the general public. For an NGO it is important to have access to government officials to make it aware of its views. Access here, may mean that the organization can call an official on the telephone to make him or her aware of new information; it may be put in written form, engage in official conversation in order to raise the matter at the ministerial level or cabinet level or at intergovernmental level.⁴

Human right abuses in Kenya are witnessed during elections and political contestations. The 1992 and 1997 elections for example, were marred by Human rights abuses and ethnic cleansing. Despite the potential for violence posed by the race between the two main contestants Kenya African National Union (KANU) and National Rainbow Coalition (NARC) for the presidency in 2002 the election campaign period was more peaceful than previous elections. However, this trend did not last long, during the 2007 elections, there were again fundamental human right violations such as the right to life, the right not to be forcibly evicted or displaced from one's home, the right to hold opinions without interference, the right to participate in public affairs and to vote in periodic elections, the right to property, the right to education, the prohibition not to engage in incitement to discrimination, the right to freedom of movement among others.⁵ The violence costed Kenya two hundred and sixty billion shillings (Kshs 260bn) approximately \$3.7 (three point seven) billion dollars.⁶

⁴ Henry J. Steiner, *Diverse Partners NGO in the Human Rights Movement*, the Report of a Retreat of Human Rights Program and Human Rights Internet 1990, p. 15

⁵ On *The Brink of the Precipice: A Human Rights Account of Kenya's Post 2007 Election Violence*. Kenya National Commission on Human Rights. (KNHCR), 2008. p. 5

⁶ Kenya Thabiti Task Force 2008, *Root Causes and Implications of the Post Election Violence of 2007*, (Nairobi; Kijabe Printing Press) pg ix

Kenya largely prevented the emergence of a vibrant Civil Society until 1992, when multipartyism forced it to permit independent citizen activity⁷, therefore, it was not until the 1990's that Civil Society and in particular Human Rights NGOs become a serious feature of the political landscape in East Africa. In which civil society groups came to exert unprecedented influence on states and intergovernmental institutions around the globe.⁸ For example, following the 1992 elections Kenya's churches, civil society organizations, and many professional organizations organized to bring attention to human right abuses, that took place in 1992 consequently a coalition of civil society organizations successfully observed the 1997 elections.

Political debate in the first half of 2002 focused on calls for a possible delay in the election date and even a term extension for President Moi and Parliament. Given the problem of political intimidation and political violence in Kenya's previous elections, civil society organizations were deeply concerned about the prospects for the 2002 elections and the uncertainties around President Moi's succession.⁹

Whilst after the Post Election violence Non Governmental Organizations amongst them Kenya Commission of Human Rights (KHRC) International Commission of Jurists (ICJ) Kenya Chapter and Federation of Women Lawyers (FIDA) provided leadership in researching and analyzing the human right impact of the crisis, also during the crisis they reportedly campaigned against the perpetrators of Post Election Violence (PEV),¹⁰ and that in the long run they will

⁷ Willy Mutunga, *Constitution Making from the Middle: Civil Society and Transition Politics in Kenya 1992- 1997* (Nairobi, SAREAT, Harare: MWENGO, 1999)

⁸ Henry J. Steiner et al, *International Human Rights in Context, Law, Politics and Morals* (Oxford: Oxford University Press, 2000) p. 938- 40)

⁹ Jackson S., *Social Constructivism*, (New York, Palgrave Publications, 2002) p. 161

¹⁰ Kenya Human Rights Institute, *Special Brief, Civil Society Responses to the Kenyan Crisis* February 2008. p. 5

play an important role in providing ideological, intellectual and technical leadership in support of the anticipated reform programs that are to be implemented to avert another crisis.¹¹

There have however been arguments that Non Governmental Organizations (Human Rights groups) were not even handed in their response to violence.¹² Others have suggested that the response was too slow and others feel that there was inadequate advocacy by the said NGO's during the crisis. There has been as mentioned above human rights violations and most of the intervention by the said NGOs was reactive rather than proactive. This therefore raises crucial issues such as to what extent do NGO promote human rights.

Statement of the Research Problem

International human rights standards serve as a guideline for Governments on how to treat their nationals. Authors all and sundry have argued that the growth of international human rights in Africa and Kenya in particular has its roots in donor/ western pressure.¹³

A number of authors assert that the Western World has in the past times applied economic and diplomatic pressure to respect fundamental human rights, normally this pressure some authors state is preceded and caused by the activities of transnational human rights network who constantly inform the international public about human rights violations in target countries which consequently lead donor/ western countries to put pressure on norm violating states to improve human rights situation in their countries.¹⁴

Examples of these transnational human rights network include Amnesty International, Human Rights Watch, International Commission of Jurists (ICJ), and the International

¹¹ ibid

¹² ibid

¹³ Jackson S., *Social Constructivism*, (New York, Palgrave Publications, 2002) p. 161

¹⁴ Ibid p. 16

Federation of Human Rights (FIHR) among others. These push states into giving attention to rights issues.¹⁵

International Non Governmental Organization affects domestic institutional change through the process of norm diffusion. It does this by two ways firstly by putting norm violating state on the international agenda in terms of moral consciousness raising this involves “shaming”, where norm violating states are denounced as pariah states which do not belong to the community of civilized nations.¹⁶ In doing so they remind liberal countries of their own identities as promoters of human rights, secondly they challenge norm violating governments by creating a transnational structural pressuring such regimes simultaneously “from above” and “from below.”¹⁷

A major effect of transnational network activities is to empower, strengthen and create domestic civil society to continue spreading the norms. Kenya Human Rights Commission (KHRC) in 1992 amongst other civil societies was created as an effect of such transnational network activity to monitor the human rights situation in Kenya; it was formed following the deteriorating human rights situation in the country. This organization during the time of its creation had strong international ties and foreign donor funding. Therefore, a Civil Society acts as a cartilage between the state and society, checking the arbitrariness of the state power, civil society also act to create the conditions for democracy.

Kenya entered the Multi Party era in 1992, and it was assumed that that the government would create an enabling environment for its citizens to freely exercise constitutionally

¹⁵ David Forsythe, *Human Rights in International Relations* (United Kingdom, Cambridge University Press, 1996) p. 27

¹⁶ Peter Baehr and el, *The Role of Human Rights in Foreign Policy Formulation* (3rd Edition) (New York; Palgrave Macmillan, 2004) p. 67

¹⁷ Ibid

guaranteed rights. What resulted however was the continuity in human rights violations. Also the evidence of violation of human rights portrayed itself during the post election violence (PEV) where 1,300 people died. Violation of fundamental human rights such as right to life, right to freedom of movement, the right to participate in public affairs amongst others was evident during the violence.

The political crises in 2007 together with human rights violations since the state became a multi party state, there have been consistent violations of human rights this therefore, presents unprecedented challenges to the work of these Non Governmental Organization bringing their very relevance to question. It is under this background that this study seeks to find out to what extent do human rights Civil Society Organization in Kenya promote human rights? This question will be answered by undertaking a critical analysis of the role of civil society in the promotion of human rights in Kenya between 1992 – 2009.

Objectives of the Study

- a) To identify ways and means by which NGO have contributed to the promotion of human rights
- b) To evaluate the level of consistency of Non Governmental Organization NGO in the promotion of Human Rights in Kenya
- c) To identify challenges facing NGO in the promotion of human rights

Justification of the Study

This study has both an academic and policy justification. The academic justification for the Study is that there is a lot of literature on the important role of the Civil Society in promoting

human rights within the state, and how it is a link to improved governance, some authors have even indicated the challenges faced by civil society in Africa in promoting human rights however, no critical analysis has so far been done on the contribution of civil society in the promotion of human rights in Kenya between 1992- 2009 with specific reference to Federation of Women Lawyers (FIDA), Kenya Human Rights Commission (KHRC) and International Commission of Jurists (ICJ). This study is meant to fill this gap. At the same time, of the available literature which acknowledges the role of the Civil Society in the Promotion of Human Rights, there is scarce information connecting the three CSO.

The policy justification for the study is that in examining the role of civil society in the promotion of human rights, existing policy positions will be brought to the fore and evaluated. This will equip policy makers with a critical understanding of the relationship between civil society and the state actor roles. This understanding will consequently inform future policy positions by all the actors.

Literature Review

This section seeks to review literature on Human Rights, Civil Society, Civil Society in Kenya, Challenges facing Civil Society in Africa in the promotion of human rights and finally the cause and impact of Post election violence in Kenya. This review offers a background on which the study stands.

Human Rights

The signing of the United Nations Charter was a significant step in bringing human rights more firmly within the spheres of international law. The atrocities committed during the second World War pointed to the need to create an organization that would work to 'save succeeding

generations from the scourge of war, reaffirming faith in fundamental human rights establishing conditions under which justice can be maintained and promote social progress and better standards of living.¹⁸

Human Rights defined in the Universal Declaration of Human Rights (UDHR) and other international instruments include a wide spectrum of rights, ranging from elementary conditions, for an existence worthy of human dignity to the right to be protected from various forms of discrimination, and the right to have atleast some basic share in the country's economic social and cultural developments.¹⁹ Therefore UN Charter and U.N. Declaration of Human Rights (1948) are the two documents that have laid foundations for human rights instruments that followed.

The International Human Rights regime, "International regimes are defined as principles, norms, rules and decisionmaking procedures around which actor expectations converge in a given issue area."²⁰ In International Relations, for example, use of the term *regime*- means "a manner, method or system of rule or government; a system or institution having widespread influence or prevalence", The French "*régime*" also refers to a system of legal rules or regulations This usage has become well established in international law.²¹

¹⁸See Preamble of the UN Charter

¹⁹ A.M Bolin Pennegard, "Overview of Human Rights – A Regime of the UN in Gundmundur Alfredsson, et al (ads), *International Human Rights Monitoring Mechanism : Essays in Honour of Jakob Th. Moller* (The Hague; Martinus Nijhoff Publisher, 2001) p. 23

²⁰ Stephen D. Krasner, "*Structural Causes and Regime Consequences: Regime as Intervening Variables*, *International Organization* 36 (Spring 1982 p. 189)

²¹ Joshua S. Goldstein, *International Relations*, fourth Edition. (New York, Addison Wesley Longman) p. 47

The International Human Rights regime therefore has impacted the formal policies and structures of many nation- states.²² In order to be part of the international human rights regime, countries are expected to fit a certain human rights profile, which includes partipating in human rights organizations, signing international and regional treaties and conventions, and developing domestic human rights law and policy.²³

International Organizations (IOs), including both governmental and non governmental serve as key networking mechanisms for the diffusion of world models/norm, where the local civil societies mobilize to create and sustain such movements.²⁴

Governmental agents and non governmental organizations have been taking turns leading the efforts to establish human rights as a major global political agenda. Since the 1970's it has been non governmental actors that are more aggressive in promoting human rights ideas and publicizing human rights violations. Governmental agencies tend to be more averse to commit to human rights causes because they are concerned about undermining state sovereignty, Non Governmental actors on the other hand, are less concerned about state sovereignty and therefore are more active and flexible in human rights activities.²⁵

Domestically, the level of education of a country's population influences the level of cognitive understanding of human rights issues. Citizens who are better educated may possess

²² David Jacobson, *Rights Across Borders: Immigration and the Decline of Citizenship*.(USA; Johns Hopkins University Press, 1996) p. 18

²³ Ramirez, Francisco et al., Dynamis of Citizen Development and the Political incorporation of Women" pp 59- 80 in *Public Rights . Public Rules : Constituting Citizens in the World Polity and National Policy*, edited by Connies L. McNeely. Garland Publications.

²⁴ Kiyoteru Tsutsui, *Global Civil Soceity and the International Human Rights Movement: Citizen Partipation in Human Rights International Nongovernemental Organizations*. 2004 p 587- 620

²⁵ ibid

the cultural capital needed to be aware of their rights, to recognize when these rights have not been met, and possess the tools needed to articulate demands and to organize for change.²⁶

Civil Society

Civil society as the realm of organized social life that is voluntary, self generating, self supporting, autonomous from the state, and bound by a legal border or set of shared rules.²⁷ It involves citizens acting collectively in a public sphere to express interests, passions, and ideas, exchange information, achieve mutual goals, make demands on the state and hold state officials' accountable. Traditional view of civil society / state relations is that civil society in its plurality is a rival to government power.²⁸

Diamond argues that there are four distinctive attributes of civil society that differentiate it from "society" in general: civil society is concerned with public rather than private ends; civil society relates to the state in some way but does not aim to win formal power or office in the state (seeks policy changes, relief, redress or accountability; thirdly, civil society encompasses pluralism and diversity (does not tolerate extremism, fundamentalist, revolutionary, or chauvinist ideology, and civil society allows partialness (no group monopolizes community interest).²⁹

There are two types of civil societies, firstly pre- colonial civil society and the modern civil society.³⁰ During the pre-colonial civil society that civil society denoted the complete obedience, dependence, union, and fealty to the state, this tradition stretched back to ancient

²⁶ Tarrow Norma Bernstein (ed), *Human Rights and Education*. (UK, Pergaman Press.) 1987 p. 16

²⁷ Larry Diamond, " *Rethinking Civil Society: Toward Democratic Consolidation,*" *Journal of Democracy* 5,3 (July 1994): pp 4-17,5

²⁸ Makau Mutua, *Kenya Quest for Democracy, Taming Leviathan*. (Kampala; Fountain Publishers) p. 80

²⁹ *ibid*

³⁰ Crawford Young, *The African Colonial States in Comparative Perspective* 22 (New Haven, Conn: Yale University Press, 1994) p 37

Greece, where “in order to be a member of civil society it was necessary to be a citizen – a member of the state and, thus obligated to act in accordance with its laws and without engaging in acts harmful to other citizens.”³¹ However, with modern civil society the state and the civil society work in different spheres.³² This trend of the modern civil society begun in the early nineteenth century where the civil society and the state become distinctly different.³³

Civil Society has an important role within the state. Civil Society brings in a form of reformist wave. This reformist wave sometimes is led by middle and professional class. This class tends to organize themselves into political parties or in non- governmental organization to demand change. For example, as a result of such pressure from Civil Society several of Africa’s fifty four (54) states have acquiesced to some form of democratic transition.³⁴

A Civil Society, in addition to acting as the cartilage between the state and society and checking the arbitrariness of the state power, civil society act to create the conditions for democracy. African renaissance is only possible with a strong civil society.³⁵

Leading African thinkers and practitioners of African politics, strongly believe that “ Civil society is a hitherto missing key to sustained political reform, legitimate states and governments, improved governance, viable state society and state economy relationships, and prevention of the kind political decay that undermined new African governments a generation ago.”³⁶

³¹ Ibid p. 36

³² John Keane, “Despotism and Democracy: The Origins and Development of the Distinction Between Civil Society and the State 1750- 1850,” in *Civil Society and the State*, ed. John Keane (London: Verso, 1988), 35- 36

³³ Ibid

³⁴ Ibid

³⁵ John W. Haberson, “*Civil Society and Political Renaissance in Africa*,” in Haberson et al., eds., *Civil Society and the State in Africa*, 1-2

³⁶ Ibid

Modern Political democracies are not possible without vibrant, free and activist civil societies.³⁷ In Africa, Civil Societies have arisen as response to the dysfunction and despotism of the post colonial state.³⁸

Civil Society in Kenya

Kenya has historically pursued repressive policy toward NGOs, although the Kibaki regime appeared to adopt a less abusive approach. The reason given for this is because state under the Kenyatta, Moi and Kibaki regimes viewed NGOs with suspicion and outright dread.

Civil society in Kenya owes its origins to three major sources: African communal traditions and values, early Christian missionaries, and British colonization during the 19th century.³⁹ Civil society organizations in Kenya have operations that are broad and diverse ranging from relief and social services to human rights. In 1990 the government of Kenya enacted the Non Government Organizations (NGOs) Coordination Act⁴⁰ (hereinafter referred to as the Act) to be a central reference point for registration of all NGOs (both local and international) operating in Kenya. Prior to this, NGOs in Kenya were registered in different legal regimes. These are operational agreements with the Kenyan Government through the Ministry of Culture and Social Services,⁴¹ legislation⁴² the Department of Social Services⁴³ and the Attorney General's Office, seeking registration as Societies⁴⁴ Companies Limited by Guarantee,⁴⁵ or

³⁷ Makau Mutua, *Civil Society and Democratization; Kenya's Quest for Democracy, Taming Leviathan.* (pp 18- 19)
³⁸ *ibid*

³⁹ S. Wojciech Sokolowski et al., *"Kenya" Global Civil Society.* Eds. Lester M. Salamon, S. Wojciech Sokolowski, and Associates, Vol. Two, Chap. 3, p. 95. John Hopkins Comparative Nonprofit Sector Project. 2004

⁴⁰ 6. No. 19 of 1990 of the Laws of Kenya

⁴¹ An example is Plan Kenya before its registration at the NGOs Coordination Board

⁴² An example, is the Kenya Red Cross Act CAP 256 of the Laws of Kenya

⁴³ Ministry of Gender and Youth

⁴⁴ The Societies Act CAP 108 of the Laws of Kenya

⁴⁵ Companies Act CAP 486 of the Laws of Kenya

Trusts.⁴⁶ Due to the multiple registration frameworks available for registration, NGOs in Kenya operate in diverse forms and operational structures, making consistent regulation difficult.

In Kenya Civil Society organization has played an important role from the 1980's onwards, as that state's inability to fulfill its function increased. These organizations sought to reverse social decay, fight corruption, provide social service and defend civil liberties.

Civil Society and Human Rights

There is an expression of dismay over the alienation of NGO's from the grassroots. Also Murungi, further attacks the elitist aristocratic nature of NGO leaderships. Murungi argues that NGOs are legitimized by whom they represent and what they do.⁴⁷

Sylvia Tamale, on the other hand, blames local NGO's for failure to address the complex interaction between law, sexuality and gender. Because of the socially constructive nature of politics in the Africa region and the domination of public space by a patriarchy in tradition and the Abrahamic faith NGOs have been reluctant to explore the disempowerment of women and girls through the lens of sexuality. Even though women are disproportionately ravaged by HIV/AIDS, civil society has been unwilling to link the crisis to marginalization and abuse women because of their gender.⁴⁸

There is a problematic relationship between local NGO's and external funders. Virtually all East African human rights NGOs are almost wholly funded by external, usually Western,

⁴⁶ Trustees Act CAP 167 of the Laws of Kenya

⁴⁷ Betty Murungi, Challenges facing Civil Society in East Africa in Makau Mutua (eds) *Human Rights Non-Governmental Organization (NGO) in East Africa, Political and Normative Tension*. (USA, University of Pennsylvania Press, 2009) p 5

⁴⁸ Athena D. Mutua ed., *Progressive Black Masculinities* (London: Routledge, 2006)

charities, governments, and institutions.⁴⁹ There is in addition to that near total dependence on foreign funds distorting the ideological vision of civil society and alienating it from the people on whose behalf it is supposed to struggle. Also, because of lopsided Western support, local NGOs have generally pursued neoliberal values over socioeconomic issues that matter most to East Africans.⁵⁰ Chidi Odinklu, argues that “human rights groups exist to please the international agencies that fund and support them.”⁵¹

The Post Election violence in Kenya

Some specialists observe that the phenomenon of post-election violence is not surprising as violence has marred previous multiparty elections in Kenya. They add that violence is a regularly used tool in contemporary Kenyan politics. What was surprising this time around, however, was the intensity of the violence, its wide geographical dispersal and the multiple forms it had taken.⁵²

Some authors argue that Post Election violence in Kenya was caused by reasons other than the election results alone. Some reasons attributed to Post Election violence include: improper conduct of the Electoral Commission of Kenya, incitement of the people by politicians; failures in the administrative and security systems; and idle and economically deprived youth.⁵³

Some authors point out that the intermittent election violence resulted in loss of about one thousand three hundred people (1,300 people), disruption of business and displacement of three

⁴⁹ Julius E. Nyang'oro, ed., *Civil Society and Democratic Development in Africa: Perspectives from Eastern and Southern Africa* (Harare: Mambo Press/Mwengo, 1999)

⁵⁰ Karuti Kanyinga, in Makau Mutua (eds) *Human Rights Non Governmental Organization (NGO) in East Africa, Political and Normative Tension* (USA, University of Pennsylvania Press, 2009) pg 285

⁵¹ Odinkalu, “*Why More Africans Don't Use the Human Rights Language,*” p 4.

⁵² Kenya Human Rights Institute, Special Brief, February, 2008.

⁵³ Kenya Thabiti Task Force 2008, *Root Causes and Implications of the Post Election Violence of 2007*, (Nairobi; Kijabe Printing Press) p ix

hundred and fifty thousand (350,000) people, led to the destruction of the economy, in terms of agriculture, tourism, and International Trade and social (local and international travel) activities, loss and destruction of public and private property and high inflation. All these consequently raising serious concerns about the future of Kenya.⁵⁴

A review carried out by Kenya Thabiti Task Force 2008, an initiative of Inter Religious Forum (IRF),⁵⁵ revealed that there is strong awareness among the public on the dynamics of hatred, animosity and conflict in society and the related feelings of inequality and lack of fair play that has characterized Kenya's post independence resource allocation and governance. The study therefore pointed out strong feelings that resources are not fairly distributed and some communities have been favoured in allocation of natural resources while others have been marginalized for a long time. Such rising levels of inequalities on the basis of income, gender, as well as regional and ethnic according to the report are serious human rights concerns that point to potential fissure, conflict and instability in Kenyan society.

⁵⁴ *On The Brink of the Precipice: A Human Rights Account of Kenya's Post 2007 Election Violence*. Kenya National Commission on Human Rights. (KNHCR), 2008. Pg 5

⁵⁵ Kenya Thabiti Task Force 2008, *Root Causes and Implications of the Post Election Violence of 2007*, (Nairobi; Kijabe Printing Press) p ix

Conceptual Framework

Pluralism will form the theoretical basis for the conduct of this research. Pluralist thinking is firmly rooted to the World Society Paradigm. Proponents of Pluralism include James Rosenau, John Burton and Richard Mansbach. Pluralism's central assumption according to John Burton, is that the old state system is becoming outdated as increasingly significant interactions took place between non state actors. Burton coined the phrase of the 'cobweb' model of world politics. The central message here was that the most important patterns in world politics were those created by trade, communication, ideology among others along with the more traditional focus on the political relations between states.⁵⁶

James Rosenau on the other hand, argues that world society encompasses a broader framework than inter- state relations, it comprises several layers of analysis simultaneously for instance human, the state, the transnational, the subnational and the interational system. Such kind lead to a new kind of paradigm or conceptual map.⁵⁷

Although James Rosenau and John Burton seem to support different strands of Pluralism, there seem to have been some consensus. Generally, Pluralism holds that the State that was once a kind of impermeable billiard ball has become penetratable through various channels.⁵⁸

Pluralism views the world as complex and begins by underlining the fact that States are no longer the only actors in the global process, thus there are now "a vast array of non – territoriality based actors such as governmental organization, non governmental organization,

⁵⁶ Burton J., *World Society* (Cambridge: Cambridge University Press, 1972) p. 54

⁵⁷ Keohane R. et al., *Transnational Relations and World Politics*, (Cambridge Mass, Harvard University Press, 1971) p. 32

⁵⁸ G. Stern, *the Structure of International Society*, (London; Printer Publishers, 2000) p. 25

multilateral enterprises, political parties, terrorist groups and above all individuals take up prominent role.⁵⁹ To Pluralists, the dignity of the Individual is an overriding goal of any transaction. Pluralism downplays the concept celebrated both in realism and positivism of the primacy of the state in International Relations.⁶⁰ Instead it sees many other actors in the International sphere, operating in a system of complex interdependence.⁶¹

The conceptual basis of the World Society paradigms revolves around the theory of human needs, which emphasizes the analysis of the human needs and interests.

Pluralism aims at the preservation of a free, peaceful, and abundant world society. Due to the emphasis on the place of individual in international relations, pluralism underscores the need to satisfy human needs and human dignity. Human needs rather than the state, become the primary unit of analysis.⁶²

The relevance of pluralism to the research problem derives from the primacy given to non state actors (Civil Society included). At the same time this theory does not consign state actors into oblivion as they are all linked up in a cobweb of interconnectedness thus enhancing its capacity to evaluate the role of both state and non-state actors, the latter being of concern in the research.

⁵⁹ Mc Doughal M.S. and Reisman W.M., International Law in Policy Oriented Perspective', in Mc Donald R. and Thomson M. eds. *The Structure and Process of International Law* (London: Martinus Nijhoff, 1986)

⁶⁰ Joshua S. Goldstein, *International Relations*, fourth Edition. (New York, Addison Wesley Longman) p. 47

⁶¹ Burton J., *World Society* (Cambridge: Cambridge University Press, 1972) p. 54

⁶² *ibid*

Hypotheses

- a) non governmental organization are consistent in promotion of human rights
- b) non governmental organizations do not have proper channels of promoting human rights
- c) non governmental organization face challenges while promoting human rights

Research Design and Methodology

This study will utilize both primary and secondary data collection methods. The specific issues that have been discussed below include firstly, the research design, what will be used and why it has been selected, and secondly, identification and the selection of the subjects for the Study.

Research design

Research design is a plan of action to be carried out in connection with the proposed research work. The design of this study will be based on survey research, in which data will be collected in order to fulfill the objectives of the study. The major consideration in designing the study include: determination of the subjects from whom the required data will be obtained and the data collection techniques that will be used for the data collection.

The choice of survey research as opposed to other research design is motivated by the following factors. First, survey research will provide a suitable instrument for collecting a large amount of data on similar data items over a short period of time. This will facilitate gaining insights into the situation as it were, within a short time without elaborate and often expensive preparations or long waiting.

Secondly, it will provide a practical framework for collecting data on the three selected case studies and thirdly, survey studies have a strong data reliability.

Target Population

Any scientific research targets a given population through which interview, questionnaires are distributed so as to target the desired or required data for analysis.⁶³ Thus in conducting a research study, researchers ideally would investigate all the individuals to whom they wish to generalize their findings. These individuals constitute a population, meaning that they make up the entire group of individuals having the characteristics that interests the researcher.⁶⁴

According to Gall et al a target population provides a solid foundation and first step upon which to build population validity of the study. Thus, the researcher will also consider the population characteristics such as age, gender, designation and education level of the respondents.

Sample and sampling technique

The sample will consist three (3) different categories of respondents firstly the General Population, secondly a survey of expert opinions including competent scholars, researchers, policy analysts in the field of International Law, Human Rights, Civil Society, Personnel from the Donor agencies, like USAID and Royal Netherlands Embassy (RNE) and finally the third category of respondents will include the three selected case studies ICJ, FIDA and KHRC.

⁶³ Barton, *Introduction to Scientific Research Method*, (New York: Griaef Publishers, 2001)

⁶⁴ Gall, Borg, *Educational Research: An Introduction*, (New York: White Plains, Longman, 2003)

The objective of targeting the general population is to find out the general perception of Kenyans towards the Civil Society Organization and also to find out whether the CSOs are deeply concerned about promotion of human rights. The objective of targeting the second category of respondents that of expert opinion is to find out whether the Civil Society are in line with their role of protecting human rights in accordance with International Law and whether they indeed use the funds as expected. The objective of targeting the third category of respondents is to find out the various challenges faced by the Civil Society Organization in promoting Human rights and also to find out ways and means NGOs use in promoting human rights.

General Population

Simple random sampling will be used to sample the general population, in each case each will be given an equal and independent chance of being selected. The researcher will use the Krcie and Morgan table in determining the sample size.⁶⁵

Head of Department and Expert Opinion

The purposive sampling method will be used for both the head of departments in the organization and expert opinion such as scholars in the area of International Law, Human Rights. In this case the researcher will make the selection based on practice experience of the respondents on areas of human rights rather than probability sampling. All the head of departments from the organization will be selected.

⁶⁵ A. Ogula: *A Handbook on Educational Research*, (Nairobi: New Kemit Publishers, 1998) p. 60

Sample size of respondents

	Population Size	Sample Size
General Population	140	30
Expert opinion (USAID, scholars, policy analysts)	30	25
Head of Department (Kenya Human Rights Commission)	10	10
Head of Department (International Commission of Jurists)	10	10
Head of Department (Federation of Women Lawyers)	10	10
Total	200	85

Data collection Instrument

In this study, questionnaires and interview schedules will be used. The questionnaires were used with general population since they are straightforward and less time consuming for respondents. The researcher also opted to use interview with the heads of departments and expert opinions since it will be more like guided discussion among participating members with the researcher acting as a facilitator. This way, the researcher will be able to gather as much information regarding the role of the 3 CSOs in promotion of human rights.

The Study will also use secondary data collection methods. Secondary data collection will involve reading and analyzing published works in form of books, journals, magazine, and periodicals. International Instruments such as conventions and charters will also be consulted. Publications from institutions such as Transparency International (TI), Kenya Human Rights Commission (KHRC), International Commission of Jurists (ICJ -Kenya Chapter), Kenya Federation of Women Lawyers (FIDA) and Kenya National Human Rights Commission

(KNHRC) will be reviewed. Both primary and secondary data will be analyzed to help justify the hypothesis thus fulfilling the objectives of the research. This approach will be both descriptive and analytical.

Scope and Limitations of the Study

While undertaking the research, Time and Resource will be a major constraint. There is lack of funding for the study. Secondly, time constraint as the respondents will be interviewed at their convenience. Third constraint is information on CSO is limited. Because of Limited time only three NGOs will be examined.

Chapter Outline

This Study is organized into five chapters.

Chapter One: Will entail Introduction, Problem Statement, Hypothesis, Objectives, Justification, Literature Review, Theoretical Framework and Methodology

Chapter Two: will do a detailed analysis of Human Rights Violations during the electioneering years of 1992, 1997, 2002 and 2007.

Title: Human Rights Violations during the Electioneering years

Chapter Three: Actors and Players in promotion of Human Rights- will discuss the role of civil society in promoting human rights. The role played by NGO will be assessed and the contributions, and limitations of Civil Society in the endeavor of Human Rights.

Title: Actors and Players in the promotion of human rights

Chapter Four: This chapter will also entail the critical analysis of the role of Civil Society in the Promotion of Human Rights.

Title: Data Analysis and Presentation

Chapter Five: Will entail the summary, conclusions and recommendations

Title: Summary, Recommendations and Conclusions

Conclusion

The chapter points out the statement of the problem that is despite the existence of civil society in Kenya, human rights have been violated and most of these violations are evident

during the electioneering periods. Some scholars have argued that CSO do not promote human rights adequately in their home ground as most are externally funded and promote human rights which are designed and required by donors, alienating them from grassroots problem consequently leaving problems unsolved as these CSOs become accountable to their donors instead of their constituents.

The objectives of the study therefore is to find out the ways and means CSO use in promoting human rights, the level of consistency in promotion of human rights and also to find out the challenges faced by CSO. A cross section of respondents will be used to assist in fulfilling the objectives and testing the hypotheses. Amongst them include public, experts and officials within the Case Studies.

CHAPTER TWO

HUMAN RIGHTS VIOLATIONS DURING ELECTIONEERING YEARS: 1992, 1997, 2002 AND 2007 IN KENYA

Introduction

This chapter will discuss on human rights violations during the electioneering years of 1992, 1997, 2002 and 2007. The four are multi party elections but were all characterized by fundamental human rights violations. Human Rights standards have been violated in all the elections. The chapter will analyse the causes behind the violations.

Election and Violence

In a democracy, elections are considered as one of the key ingredient that facilitates the participation of citizens in governance. Through elections, both at national and local levels, citizens determine their leaders. This is the essence of representational democracy, which Kenya has been participating since it secured independence from the British in 1963.⁶⁶

Authors have argued that one of the main indicators of democratic practice is the periodic holding of free and fair elections. The more competitive the election, the more refined is the democratic process. Elections usually offer a country's citizens the chance to participate in governance. This they do by retaining residual power over the government and, if possible,

⁶⁶ Winnie Mitullah, Morris Odhiambo, and Osogo Ambani, *Kenya's Democratization: Gains and Losses, Appraising the Post KANU State of Affairs* (Nairobi, Centre for Law and Research (CLARION), 2005) p. 55

exercise this power to reject an errant government or one that did not fulfill the promises made at an earlier general election.⁶⁷

Electoral processes are inherently conflict inducing and this appears to stem from the realisation that electoral processes introduce new uncertainties and increase the vulnerability of political elite. It has therefore been noted that one negative aspect of electoral processes in 'fragile states' is the accompaniment of voting with violence.⁶⁸ The Kenya Human Rights Commission (KHRC) has documented that over four thousand (4000) people have died due to political violence, which has at the same time displaced almost 600,000 people between 1991 and 2001.⁶⁹

The periodic outbreak of violence that has accompanied general elections in Kenya since the early nineties is a pointer to Kenya's inability to develop into a mature democracy that respects human rights of all.⁷⁰ The use of violence in Kenya began as the clamour for multiparty elections gained momentum in the early 1990's which was mostly during the reign of Former President Moi.⁷¹

Whilst the actors since Former President Moi left the political scene changed, the seeds of ethnic hate and violence have however, been sown and watered with blood for example, this was evident during the violence of 2007 and 2008 pre and post election and was also a

⁶⁷ Smokin Wanjala and Kivutha Kibwana eds, *Yearning for Democracy Kenya at the Dawn of a New Century*. (Nairobi, Claripress, 2000) p. 195

⁶⁸ Paul Collier, *War, Gun and Votes: Democracy in Dangerous Places*, USA, HarperCollins Publishers, 2009

⁶⁹ 'Kayas of deprivation, Kayas of blood: violence, ethnicity and the State in coastal Kenya' (1997); 'Killing the vote: State Sponsored violence and flawed elections in Kenya' (1998); 'Kayas revisited: a post-election balance sheet' (1998)

⁷⁰ Kenya Human Rights Commission *Biannual Human Rights Report, January – June 2008*, Special Edition on Post Election Violence. Volume 10 Number 1, (Kenya Human Rights Commission, Kenya, 2008) p. 25

⁷¹ Korwa Adar and Issac Munyae, *Human Rights Abuse in Kenya under Daniel Moi, 1978 – 2001*. African Studies Quarterly- The Online Journal for African Studies

culmination of the ethnic hatred nurtured over the two years following the referendum, with its strong foundation laid in the ethnic clashes of the early and mid nineties. ⁷²

This chapter will discuss the human rights violations during the four electioneering periods in Kenya in 1992, 1997, 2002, and 2007. Electoral violence in this chapter refers to any act or series of acts that causes, or is likely to cause harm or threat of harm to an individual or group of people leading to gross human rights violations such as violations of the Right to Life: Ethnic based killings, the right to property, freedom of movement and of residence, violence against women, violence against children, the right to Participate in Governance and elections, freedom of expression and Assembly. ⁷³

Electoral violence can occur before, during or after an election. Types of electoral violence include death, threats of violence, torture, arson, rape, sexual harassment, looting, threats and intimidation, hate speeches, destruction of property, property damage, eviction and displacement. ⁷⁴

Human Rights Standards

Since the Second World War the concept of human rights has become an international concern. The international protection of human rights has its antecedents in domestic efforts to secure legal protection of individuals against the arbitrary excesses of state powers.⁷⁵ The source of human rights principles is seen as the state.

⁷² Kenya Human Rights Commission *Biannual Human Rights Report, January – June 2008*, Special Edition on Post Election Violence. Volume 10 Number 1, (Kenya Human Rights Commission, Kenya, 2008) p. 37

⁷³ Central Depository Unit 2002.

⁷⁴ Ibid

⁷⁵ R. J Vicent, *Human Rights and Foreign Policy*, in M.d. Hill (ed) *Human Rights and Foreign Policy* (London: Macmillan Press, 1989) pp 54- 66 : 54

The content of the principle of respect for human rights in international law is expressed in three propositions. (1) All states have a duty to respect the fundamental rights and freedoms of all persons within their territories; (2) states have a duty not to permit discrimination by reason of sex, race, religion or language; and (3) states have a duty to promote universal respect for human rights and co-operate with each other to achieve this objective.⁷⁶ Human rights therefore are implemented by the state and matters basically and crucially within the domestic affairs of state. A citizen of a state based on the rule of law has the right to demand that state agencies observe voluntarily adopted international obligations which directly affect the individual's interest. Human rights treaties establish state obligations towards citizens, not just to other state parties.⁷⁷

Kenya has ratified the following international human rights conventions: International Covenant on Civil and Political Rights (ICCPR) ratified in 1976, International Covenant on Economic, Social and Cultural Rights, (ICESCR) ratified in 1976, Convention on the Elimination of All forms of Discrimination (CEDAW) ratified in 1984, Convention for the Elimination of Racial Discrimination CERD ratified in 2001, Convention on the Rights of the Child(CRC), ratified in 2000 and Convention Against Torture (CAT), ratified in 1997). Kenya has also ratified the African Charter on Human and People's Rights (1992) and the African Charter on the Rights and Welfare of the Child (ratified 2000).⁷⁸

⁷⁶ Grigorii Tunkin, *Theory of International Law*, (London; Harvard University Press, 1974)p. 81

⁷⁷ Rein Mullerson and el, *International in an Interdependent world*, ' 28 Columbia Journal of Transnational Law, 1990, pp 291, 300

⁷⁸ *On The Brink of the Precipice: A Human Rights Account of Kenya's Post 2007 Election Violence*. Kenya National Commission on Human Rights. (KNHCR), 2008. p. 5

Constitutionalism and the Rule of Law are the central features of any political democracy that respects human rights.⁷⁹ An independent Judiciary for example, is an essential guardian of the rule of law and is the linchpin of the schemes of checks and balances through which the separation of power is assured.⁸⁰ Otherwise there is no, other guarantee that the executive “The Government” will respect the rule of Law and act within established legal norms, processes and institutions.⁸¹

The Constitution on the other hand, is the fundamental and supreme law of the land, the real and living document that guides, defines and permits all actions by the state. No individual or official of the state is above the law or can act in defiance of the constitutional prescriptions. This is what separates a democratic state from undemocratic ones.⁸²

International treaties are not considered as part of Kenyan law therefore cannot be applied directly by the courts. This is because Kenya follows the dualist approach to treaty implementation. The following will look at the International and Domestic Provisions in Kenya on fundamental rights of the Person.

⁷⁹ Makau Mutua, *Justice under Siege: The Rule of Law and Judicial Subsistence in Kenya*. Human Rights Quarterly. Vol. 23, No 1 (Feb, 2001) p. 96

⁸⁰ Henry Steiner et al, *International Human Rights in Context: Law, Politics, Morals* pp 711-12 (1996)

⁸¹ *ibid*

⁸² Makau Mutua, *Justice Under Siege: The Rule of Law and the Judicial Subsistence in Kenya*. Human Rights Quarterly Vol. 23 No 1 (February, 2001) pp 96 – 118.

The Right to Life

The Kenyan Constitution and International Covenants guarantee Kenyans of Right to Life, The Right to Property, Freedom of movement and Residence, Violence against Women, Violence against children, the Right to Participate in Governance and Elections and Freedom of Assembly. For instance,

The Kenyan Constitution and International Covenants guarantee all Kenyans the right to life and security of the person. Section 71 (1) of the Constitution of Kenya provides that

“No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Kenya of which he has been convicted.”

The prohibition against deprivation of life is contained in all international human rights instruments to which Kenya is party amongst them include:

Article 3 of the Universal Declaration of Human Rights provides that

Everyone has the right to life, liberty and security of person.

Article 6(1) of the International Covenant of Civil and Political Rights (ICCPR) provides that:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 4 of the African Charter on Human and People’s rights provides as follows:

⁸³ Kenya Human Rights Commission *Biannual Human Rights Report, January – June 2008*, Special Edition on Post Election Violence. Volume 10 Number 1, (Kenya Human Rights Commission, Kenya, 2008) p. 37 y

'Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of that right.' Thus right to life is, under the law, inviolable except in execution of a death sentence passed by a court of competent jurisdiction.

The Right to Property

Section 70(c) of the Kenya Constitution contains the constitutional guarantee to the individual of the right to *'protection from the privacy of his home and other property and from deprivation of property without compensation'*

The UDHR provides that;

*'Everyone has the right to own property alone as well as in association with others' and No one shall be arbitrarily deprived of his property.*⁸⁴

The African Charter on Human and People's Rights⁸⁵ provides that the right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws'

Freedom of Movement and of Residence

The constitution of Kenya provides at Section 81(1) that,

No Citizen of Kenya shall be deprived of his freedom of movement, that is to say, the right to move freely throughout the Kenya, the right to reside in any part of Kenya, the right to enter Kenya, the right to leave Kenya and immunity from expulsion from Kenya.'

⁸⁴ Article 17 UDHR

⁸⁵ Article 14 of the African Charter on Human and People's Rights

This constitutional provision is in accordance with international legal provisions on freedom of movement.

Article 13 of the UDHR provides that;

(1) Everyone has the right of freedom of movement and residence within the borders of each state.

At Article 12(1) of the ICCPR it is provided that;

Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence'

The Right to Participate in Governance and Elections

The right of every citizen to participate in the governance of the country is recognized under all human rights instruments. It extends to all citizens, without discrimination on the basis of sex, colour, ethnic origin or political inclination.

Article 21 (1) of the UDHR provides that;

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.'

At Article 21 (3) it is provided that;

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be held by secret vote or by equivalent free voting procedures.'

The ICCPR provides at Article 25 that;

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

- a) To take part in the conduct of public affairs, directly or through freely chosen representatives,*
- b) To vote and be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;*

Article 2 (1) provides that

' Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

Human Rights Violations and the 1992 Elections

The violence initially broke out in November 1991 at Miteitei farm, a small settlement on the border between Western, Nyanza and Rift Valley provinces. It later spread to other parts of Rift Valley, Western and Nyanza provinces running up to the to 1992 general elections. The violence begun in late 1991, when the ruling party Kenya African National Union (KANU) , reluctantly agreed to repeal Section 2A of the Constitution. This consequently allowed the

formation of many parties besides KANU. In view of this most KANU politicians ‘predicted’ that the country would disintegrate along tribal lines, leading to anarchy and chaos.⁸⁶

Consequently, KANU MPs and other politicians allied to the party mostly from the Rift Valley Province began to call for the forceful removal of other ethnic groups from the province as they were viewed as opposition adherents. The targeted communities included the Luo, Kikuyu, Luhya, Gusii tribes in the Rift Valley Province.⁸⁷

There were four reasons for the violence according to Patrick Mutahi⁸⁸, firstly, it was to confirm the ‘prediction’ that multi-party politics would bring tribal animosity and chaos, secondly, it was to displace the non- Kalengin communities in Rift Valley so that the majimbo agenda could be successful. Majimbo is a Kenyan style of federal government, which calls for the division of the country into semi independent tribal states. According to Kamau G.K Majimboism is used by individuals who have lost confidence in winning elections.⁸⁹ Thirdly, it aimed at provoking a mass reaction in support of former President Moi and KANU among the Kalengin so that sub groups like Nandi and Kipsigis which were during that time the most populous, politically mobilized and economically developed would not join the opposition. Fourthly, the violence also ensured that KANU gained victories where it had slim chances of winning.⁹⁰

⁸⁶ Korwa Adar and Issac Munyae, *Human Rights Abuse in Kenya under Daniel Moi, 1978 – 2001*. African Studies Quarterly- The Online Journal for African Studies

⁸⁷ Patrick Mutahi in Mikewe Ogada (eds), *Electoral Reform in Africa, Challenges and Opportunities*. (Kenya Section of the International Commission of Jurists; Nairobi, 2009) p. 82

⁸⁸ Herve Maupeu and el, *Moi Succession, Elections 2002*.(Nairobi, TransAfricaPress, 2005) p. 69

⁸⁹ Kamau G.K, Majimboism, *Ethnic Cleansing and Constitutionalism in Kenya*. KHRC Thoughts on Democracy Series II, April, 1994.

⁹⁰ Kajwanja P., Politics of Marionettes, in M Rutten, A. Mazrui, F Grignon (eds), *Out of the Count, the 1997 General elections and Prospects of democracy in Kenya*. Kampala: Fountain Publishers, 2001

Violations of the Right to Life: Ethnic based Killings

The most serious ethnic cleansing took place during the 1992 elections. Local KANU politicians instigated intimidation of 'opposition tribes' as early as in October 1991. In Political rallies politicians advocated for a federal system of government and argued that Rift Valley was for the Maasai and Kalenjins(Former President Moi's ethnic group, and KANU his party). Therefore supporters of the opposition parties were to leave the province.⁹¹

Clashes that followed these rallies were financed, armed and organized by a trained militia. According to the Parliamentary Select Committee that investigated the clashes, the militia had paid 1,000 Kshs for every person killed, 500 for every permanent house burnt.⁹² During the 1992 elections some two thousand (2,000) people were killed and 20,000 made homeless. The fighting continued in early 1993. Altogether about 300,000 Kikuyu and Luo farmers were displaced.⁹³

During the 1992 elections there was open use of violence in killing, intimidation and displacement of communities perceived as opposition supporters.

Human Rights Violations and the 1997 Elections

The 1997 elections were experienced in the traditional KANU violence zones for instance Western, Nyanza, and Rift Valley and this time Coast was also included. The main motive behind this violence was to silence dissent within the party. For instance the non Pokot were evicted from West Pokot, whilst the Non Maasai were intimidated and chased out of Transmara

⁹¹ Cowen M and Kanyinga K., 'The 1997 Elections in Kenya: The Politics of Communitality and Locality' in Cowen, M and Laakso (eds) *Multiparty Elections in Africa*. (Oxford; James Currey) Pp 128- 171

⁹² Daily Nation 7 August 1998

⁹³ Human Rights Watch (HRW). *Divide and Rule: State Sponsored Ethnic Violence in Kenya*. New York: HRW 1993

Gucha Districts. Also the Marakwet, who had started to criticize the government, suffered the brunt of violence through cattle rustling along the Marakwet/W. Pokot border.⁹⁴

The Coast violence in 1997 was similar to the 1991/ 1992 violence. The Coast violence had three main objectives firstly, KANU wanted to break the dominance of the unregistered Islamic Party of Kenya (IPK), which had denied it substantial vote in 1992, secondly it wanted to break the alliance of the Swahili-Arab and Mijikenda elite that was proving to be politically dangerous for the ruling party in 1997. Thirdly, the violence was to disenfranchise up country people in Mombasa and Kwale, effectively undermining the electoral demographics of the IPK and the opposition.⁹⁵

This consequently ensured that KANU got two victories. Apart from increasing its parliamentary seats from one seat in 1992 to two in 1997, it also ensured the demise of IPK. Former President Moi's votes increased from 34% in 1992 to 42% in 1997. Voter turn out was however a paltry 56.3 percent.⁹⁶

Violations of the Right to Life: Ethnic based Killings

In 1997 ethnic cleansing was conducted in the Coast Province in the Likoni and Kwale areas south of Mombasa. The purpose of the ethnic cleansing was to displace potential opposition voters. From mid August to early November there were a series of violent attacks targeting the 'upcountry people', Luo, Kikuyu and Kamba ethnic groups, who had migrated to the area due to the lucrative tourism industry as well as the government's settlement scheme. In

⁹⁴ Korwa Adar and Issac Munyae, *Human Rights Abuse in Kenya under Daniel Moi, 1978 – 2001*. African Studies Quarterly- The Online Journal for African Studies

⁹⁵ Herve Maupeu and el, *Moi Succession, Elections 2002*.(Nairobi, TransAfricaPress, 2005) p. 69

⁹⁶ ibid

the attacks more than a hundred (100) people were killed, an unknown number of men beaten, women and girls raped, while tens of shops, kiosks, bars and houses were looted and burned.⁹⁷

About one hundred thousand (100,000) people left Mombasa for the election period as the election day was between Christmas and New Year holidays, and due to the violence those intending to return ended up spending their holiday season with their relatives in the upcountry areas. Consequently, the final voters turnout in Likoni constituency was only thirty seven (37%) percent.⁹⁸ Some authors have argued that the main motive of the cleansing was the President's desire to ensure his victory by getting at least the threshold of 25 per cent of votes in Coast Province as according to the presidential Elections Act, to be elected the winning candidate had to get at least 25% of the votes in five of the country's eight provinces.⁹⁹

Local KANU leaders recruited Hutu refugees, other expatriates and locals to the ranks of the raiders, while the majority of them came from the indigenous local Digo ethnic group. The Digo recruits were unemployed school drop outs whose grievances were connected to their Muslim identity and the general feeling of marginalization among the Muslim community. In spite of being the majority, the Digo felt excluded from the economic development in the area.

100

According to the interviews carried out by Kenya Human Rights Commission, most of the young recruits were first contacted by their friends. They were given a small amount of money and taken to a training camp in nearby forest, where a group of ex servicemen provided

⁹⁷ FIDH (1997), *An Uneven Playing Field*: FIDH Report on Mission to Kenya 22nd September – 1st October 1997, Report No 250/2, November 1997.

⁹⁸ The Nation Election '97 Website: Results

⁹⁹ Liisa Laakso, *Insights into Electoral Violence in Africa*, in Matthias Basedau et al *Votes, Money and Violence: Political Parties and Elections in Sub-Saharan Africa* (eds) (South Africa; University of KwaZulu-Natal Press) p. 235

¹⁰⁰ KHRC (Kenya Human Rights Commission) (1998) *Kayas of Deprivation, Kayas of Blood: Violence, Ethnicity and the State in Coastal Kenya*. Nairobi:KHRC

them with basic training. The youth were told their mission was to introduce Majimbo and to get rid of the 'upcountry people' in the area. They were told that the government and the president backed the mission, because the 'upcountry people' were supporters of the opposition. After the polls the recruits would be rewarded with generous payments.¹⁰¹

In the attacks most of them were Luo. The raiders were offered 20,000 Ksh for each Luo they killed and Kshs 10,000 for each Kikuyu.¹⁰² Rift Valley, too witnessed ethnic violence just before and after the 1997 elections for example in the predominantly Kikuyu Laikipia. Unlike in 1992, this time smallholders organized counter attacks and violence spread to Nakuru, too. By February 1998, about two hundred people died and many more injured.¹⁰³

Human Rights Violations and the 2002 Elections

Before the 2002 elections, reports on serious tensions appeared again. About twenty (20) people died in violent election campaigning¹⁰⁴ this particularly was in the Rift Valley where militias armed with crude weapons were again active. The youths destroyed makeshift homes and stalls of people across the country without interference of the police. Thousands were forced to flee during the looting.

Mungiki leaders (a united people become active) the mysterious and violent anti-Western religious sect was inspired by the Kikuyu Mau Mau rebellion against the British colonial rule in the 1950s and had emerged as part of the youth protest mobilization during the

¹⁰¹ Ibid p 21-25

¹⁰² FIDH (1997) Unlevel playing field: FIDH Report on Mission to Kenya 22nd September – 1st October 1997, Report No. 250/2, November 1997.

¹⁰³ Liisa Laakso, Insights into Electoral Violence in Africa, in Matthias Basedau et al Votes, Money and Violence; Political Parties and Elections in Sub-Saharan Africa (eds) (South Africa; University of KwaZulu-Natal Press) p. 235

¹⁰⁴ European Union Election Observation Mission, 2002 Kenya General Elections, 27 December 2002 Final Report p. 23

late 1980s.¹⁰⁵ Mungiki warned that there would be violence if voters elected any other than Kenyatta. Carrying crude weapons they paraded through the streets of Nairobi.

The 2002 general elections violence was not in a large scale as previously witnessed. There was a decrease in the use of vigilantes and 'traditional warriors'. Although in the beginning of the year 2002, there were fears of an eruption of violence.

Central depository Unit's (CDU) a public trust which was incorporated on 7th August, 2001 was a coalition of six Kenyan NGO's which had previously been involved in monitoring political and electoral violence. These NGOs were the League of Women Voters, the Centre for Governance and Development, the Kenya Human Rights Commission, The Tawasal Foundation, the Centre for Conflict Resolution, and the National Council of Churches in Kenya. The mission of the CDU was to provide a centre with capacity to receive, analyze, compile and disseminate information relating to electoral violence to all stakeholders and other potential users of this information in order that the information may be used to prevent, reduce and eliminate electoral violence.¹⁰⁶

Reasons behind reduced violence in 2002 General Elections was:- First former President Daniel Arap Moi, who had been barred by the constitution for running for another term, relinquished power voluntarily to Mwai Kibaki who had won the elections under the banner of the National Rainbow Coalition (NARC). Mwai Kibaki won the presidential elections with

¹⁰⁵ Joseph K' Amolo, African Charter Information Service. February 3 2003 [http: allafrica.com](http://allafrica.com)

¹⁰⁶ Liisa Laakso, *Insights into Electoral Violence in Africa, in Matthias Basedau et al Votes, Money and Violence; Political Parties and Elections in Sub-Saharan Africa (eds)* (South Africa; University of KwaZulu- Natal Press) p. 235

62.3% of votes. Many people had feared that Moi would not hand over to an opposition candidate leading to violence.¹⁰⁷

Secondly, the 2002 elections were a challenge to KANU as it provided a different, unfamiliar electoral field that made the use of centrally organized state sponsored violence unattractive. KANU politicians had a two way battle, for their own political survival and for the survival of KANU as a party. This left them with little time to organize for violence. This was further reinforced by the opposition uniting and nominating a single presidential candidate. Thus increasing their electoral appeal over KANU.¹⁰⁸

Thirdly, there were intense campaigns over the media and other forums by the, media, and other forums such as ECK, CBO, NGO, churches and politicians on the need to have violence free elections. This greatly helped the electorate to shun electorate violence.¹⁰⁹

Fourthly, the experience of the last two elections, as far as violence was concerned, was still fresh in people's minds. It was an ugly experience that they wanted to put behind. They could only do this by playing their role in having violence free elections.¹¹⁰

Information collected by CDU showed that 325 lives were lost due to electoral violence from January to December 2002. The number of deaths reported by CDU monitors was 116.¹¹¹

¹⁰⁷ Patrick Mutahi in Mikewe Ogada (eds), *Electoral Reform in Africa, Challenges and Oppurtunities*. (Kenya Section of the International Commission of Jurists; Nairobi, 2009) p. 82

¹⁰⁸ ibid

¹⁰⁹ ibid

¹¹⁰ ibid

¹¹¹ ibid

Human Rights Violations in the 2007 Elections

On the 27th of December 2007 the people of Kenya turned out in large numbers to vote in the 10th General Elections. The casting of the ballots was peaceful in most parts of the country. However, delays in the announcement of the results of the presidential election led to rise in tension and anxiety. By 29th December 2007, street demonstrations were witnessed in various towns especially those where the opposition party Orange Democratic Movement (ODM) had the majority of support. The demonstrations expressed fear that the delay in announcing the results was a gimmick to have the results manipulated. When the results were not announced by 30th December, 2007 the demonstrations increased.¹¹²

The following day, on Sunday 31st December 2007, the Electoral Commission of Kenya (ECK) announced that the incumbent had won the elections the same day, there erupted in many parts of the country what appeared to be a combination of both spontaneous and planned or targeted violence which led to death of one thousand three hundred (1300) people.¹¹³

The general elections of the year 2007 was characterized by violations of fundamental human rights such as the right to life, the right to hold opinions without interference, the right to vote, right of freedom of movement, the right to participate in public affairs. These resulted in election violence which witnessed communal riots, killings, massive internal displacements, rape and wanton destruction of property around the country all of which escalated into Kenya's worst human rights crisis. The official death toll was over one thousand (1,000) people. Kenya descended into a state of near anarchy.

¹¹² Kenya Thabiti Task Force 2008, *Root Causes and Implications of the Post Election Violence of 2007*,(Nairobi; Kijabe Printing Press) pg ix

¹¹³ Ibid p.i

Therefore at a point when Kenyans required the most protection, the Government of Kenya retrogressed in the fulfilment of its obligations under various human rights conventions, including the International Covenant on Civil and Political rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on Elimination of Racial Discrimination (ICERD), Convention on the Rights of the Child (CRC) and Convention on Elimination of Discrimination Against Women (CEDAW).

Violation of the Right to Life: Ethnic Based Killings

Media reports following the announcement of the presidential election results the first day of the New Year in 2008 sat least one hundred (100) people had been killed in the violence that followed the results. ¹¹⁴On the second day of the year, the media again reported that one hundred and eighty three (183) people had been killed the day before in the post election violence. Forcing many to flee their homes and seek protection in various police stations in the country. Over seventy thousand had been displaced by the second day of violence. Vigilante groups torched houses and barricaded roads to deny access to certain ethnic groups.

The death toll had been high in the Rift Valley in the first two days of the year due to the reported of atleast fifty (50) in the Kiambaa Assemblies of God Church. ¹¹⁵ On the fifth day of the year (i.e. January 2008), media reports indicated the death toll in Eldoret had gone upto 113 ¹¹⁶ and that the mortuary at the Moi Teaching and Referral Hospital was unable to cope with the high numbers as it had a capacity of only 54. As a result, bodies started piling up to the door and

¹¹⁴ The Daily Nation January 1 2008

¹¹⁵ The Daily Nation January 3 2008. The report, quoting church was set ablaze was atleast 50.

¹¹⁶ The Standard January 5th 2008

spilling outside the mortuary. Other reports indicated that over 25 people had been killed in Homa Bay District. ¹¹⁷

By the first week of the year, the police were putting the death toll at 486¹¹⁸, with 255,686 internally displaced. The highest number of deaths was from the Rift Valley, with 233, followed by Nyanza with 91 and Nairobi with 65. Western Province had 63 while the reports indicated that 34 with 65. Western Province had 63 while the reports indicated that 34 deaths had occurred at the Coast. ¹¹⁹

The deaths related to the violence continued in the month of February. Towards the end of January, ¹²⁰ there were revenge attacks by members of the Kikuyu community in Naivasha and Nakuru. The revenge killings targeted the Kalenjin, Luo and Luhya communities and were alleged to have been executed by members of the outlawed Mungiki sect. About 19 people were burned to death in a house in Naivasha.

The volatile environment was later aggravated by the killings of two newly elected members of Parliament, Mellitus Mugabe Were of Embakasi and Ainamoi MP David Kimutai Too.¹²¹ Killings of innocent Kenyans continued into March and, in some cases well into April. Media reports in March indicated that 12 people, among them 4 children¹²² were killed in a militia raid. Such killings indicated that there was near breakdown of law and order that followed the disputed election results, and of the inability of the state to protect its citizen.

¹¹⁷ The People Daily January 4 2008

¹¹⁸ The Daily Nation January 8 2008. See also The Kenya Red Cross Kenya: Electoral Violence 7 January 2008 Kenya Red Cross

¹¹⁹ The Daily Nation January 8 2008

¹²⁰ The Daily Nation January 25 2008. The Standard

¹²¹ The Daily Nation February 1 2008

¹²² The Daily Nation March 3 2008

During the Post Election Violence, there were killings by police of people going about their businesses or expressing their democratic rights in demonstrations. On January 1st 2008 ¹²³It was reported that three people among them a high school teacher, were shot dead in Bungoma Town during the street protests against the presidential results announced by the ECK. Under such circumstances the line between those shooting during demonstrations and those shot while engaging in criminal activities was very blurred. The Post Election violence left over 1,000 people dead, scores injured and over 300,000 people displaced. Property worth over billions of shillings was destroyed in various parts of the country. ¹²⁴The fact that the violence continued until April 2008, was a pointer to the possible massive loss of life far above the officially available figures.

The Right to Property

The Post election violence witnessed massive violation of the right to life, respect for other rights is bound to be non-existent. The violence in the post election period saw the destruction of property that has ever been witnessed in the country. As part of the violent eviction of the so-called strangers from the Rift Valley, Nyanza and Western Kenya, thousands of homes were burnt, businesses looted and the premises burnt to the ground, livestock driven away, grains burnt in granaries and food crops in the fields.

Constitution of Kenya and international law instruments clearly and explicitly guarantee the individuals right to the protection of his (her) property, with Kenya's criminal law expressly prohibiting destruction of property and providing severe sanctions and penalties for deliberate and unlawful destruction of property.

¹²³ The Daily Nation January 1 2008

¹²⁴ Kenya Human Rights Commission *Biannual Human Rights Report, January – June 2008*, Special Edition on Post Election Violence. Volume 10 Number 1, (Kenya Human Rights Commission, Kenya, 2008) p. 37

The deliberate deprivation of property or the destruction of property is thus not only prohibited under the law but it is also gross violation of the rights guaranteed under the Constitution of Kenya, as well as under regional and international human rights conventions. Despite these clearly spelt legal provisions meant to safeguard the right to property during the post election violence period. Over 64,832 homes were destroyed between January and March 2008, with 52,611 set ablaze in Uasin Gishu alone.¹²⁵

Some of these homes were torched with owners inside who got burned beyond recognition. Post Election Violence seemed intended not only to destroy the lives of those targeted, but also to deprive survivors of any means of earning a livelihood by destroying their economic mainstay, and thus rendering them destitute.

Freedom of Movement and of Residence

During the post election period, not only was the fundamental right to life and integrity of the person violated with impunity, but all other rights that are hallmark of democracy were trampled with. For example, the blocking of roads, consequently hindering movement, the violent eviction of people from areas they occupied for all their lives and the demand that certain ethnic communities leave certain parts of the country were indicative of the total disregard for the rights guaranteed both under the Kenyan constitution and International Law.

The violent expulsion of members of the Kisii and Kikuyu communities from their habitual areas of residence in the Rift Valley, Nyanza and Western Kenya, and the retaliatory expulsion of members of the Luo, Luhya, and Kalenjin communities from Central Province and Naivasha and Nakuru in the Rift Valley Province were clearly in violation of the right to

¹²⁵ CIPEV, Chapter Eight

freedom of movement and residence. Threatened with violence and death in the areas, usually their ancestral homes, due to the danger of being subjected to physical violence.

Violence against Women

Women may not have played a major role as perpetrators of violence they bore the brunt of it. They were subjected to the gross violations of the right to life, property and the right to reside anywhere in the country. They were also subjected to horrifying acts of sexual violence.

These acts of sexual violence were perpetrated by both strangers and neighbours as well as by state security agents who were legally expected to protect victims of violence. During the period, the media carried almost daily reports of incidents of sexual violence against women. On January 2 2008, it was reported that at least 19 women and girls from various city estates, mainly the densely populated and low income settlements in Nairobi such as Kibera, Mathare, Dandora, Kawangware had been admitted in Nairobi Women Hospital after gang rapes.¹²⁶ By the 3rd day of the year, the number of rape victims admitted at the hospital had reportedly risen to 35,¹²⁷ while another report about a week later put the figure of rapes in just one week at 1,200.¹²⁸

Over and above suffering the indignity and violation of the heinous crime of rape, the post election violence also exposed women to yet another form of indignity and violation: loss of

¹²⁶ Daily Nation January 2 2008

¹²⁷ The Daily Nation January 3 2008

¹²⁸ The Standard, January 10 2008

home and spouses. Many women were abandoned by their husbands after their rape ordeal and were forced to live in IDP camps.¹²⁹

The Right to Participate in Governance and Elections

The right of every citizen to participate in the governance of the country is recognized under all human rights instruments. It extends to all citizens, without discrimination on the basis of sex, colour, ethnic origin or political inclination.

The right to take part in the governance of the country through periodic elections, to vote for a person of one's choice, to hold political opinions, are all crucial aspects of the human rights guaranteed to all. Yet in the last four years elections held in Kenya, these rights have been infringed with impunity.

The tallying of the 2007 presidential elections raised concerns as to the legitimacy of the vote outcome. It was on this ground that ODM rejected the results and called for mass action. Election monitors, among them the European Union Observer Mission, declared the presidential outcome flawed, as did the local domestic observer team.¹³⁰ The verdict of the Kriegler Commission, appointed to inquire into the elections and the tallying process, was that it was flawed and that it was impossible to tell who won the elections.¹³¹

¹²⁹ Kenya Human Rights Commission *Biannual Human Rights Report, January – June 2008*, Special Edition on Post Election Violence. Volume 10 Number 1, (Kenya Human Rights Commission, Kenya, 2008) p. 22

¹³⁰ The Kenya Elections Domestic Observation Forum (KEDOF)

¹³¹ The Kriegler Report, Independent Review Commission Enquiring into the 2007 Election (Kriegler Commission) IREC, page 10

Analysis of the reasons behind the Violence during electioneering periods in Kenya

The trend of violence in the past years is attributed to land question, as Jomo Kenyatta has during his time come up with a policy of willing buyer and willing seller, leading to outsiders buying land in Rift Valley, these outsiders include Meru, Embu, Kikuyu, Kisii and Luo. Moi before Kenyatta passed away worked closely with the Kikuyu community and allowed them to acquire land in Rift Valley, where the white settlers had left the land for Kalenjin and Maasai communities who were the original settlers in the area. In 1980 Moi fell out with the Kikuyu community as he wanted to rectify the structure left by Kenyatta so as to benefit the Kalenjin community.

In view of this Moi became unpopular with the Kikuyu community including other non Maasai and Kalenjin community like the Luo and Kisii who wanted to vote Moi out during the 1992 elections. This did not go down well with the KAMATUSA group in KANU, who then decided to use intimidation, forced expulsion so as to teach the non KAMATUSA a lesson, this consequently denied the opposition critical votes needed to attain the twenty five percent (25%) requirement.

The ethnic ideology was at once invoked and politicized in 2007, when the Electoral Commission of Kenya (ECK) announced that the incumbent Kibaki had won the elections. The same day, there erupted in many parts of the country. Kisii Kikuyu were required to leave their habitual areas of residence in Rift Valley Province, Nyanza and Western and Luo, Luhya and Kalenjin communities were told to leave the Central Province leading to deliberate deprivation of property, forceful evictions. All this is in violation of International Human Rights and is prohibited under the law.

Conclusion

In conclusion it can be said that elections in Kenya are characterized by ethnic based killings. This was evident in 1992 and 1997 by KANU the party in power. Most KANU politicians instigated intimidation of opposition tribes (the non KAMATUSA). 2002 was relatively peaceful because Moi was barred by the constitution to run for another term. Also Civil Society groups worked together to monitor election related violence under the Central Depository Unit (CDU) with a view to prevent, reduce electoral violence.

In 2007, however, again ethnicity was used to ignite violence for example, certain ethnic communities were required to leave Rift Valley Province, Nyanza and Western Kenya like the Kisii, Kikuyu were required to leave their habitual areas of residence. On the other hand, Luo, Luhya and Kalenjin communities were told to leave the Central Province leading to deliberate deprivation of property, forceful evictions. All this is in violation of International Human Rights and is prohibited under the laws of Kenya.

The violence experienced in 1992, 1997, 2002 and 2007 is related to ethnicity which is mostly based on the distribution of resources like land. Politicians therefore have during the years sown the seeds of ethnic hate whenever elections approach, due to the uncertainty surrounding electoral practices most politicians use ethnic violence as a tool to ignite violence and continue to stay in power.

Also NGO monitored electoral violence in the run up to the 2002 elections having learned a lesson from the past two elections where human rights had been violated. However, in the run upto 2007 elections most CSO did not do the same, leading to violation of human rights once again.

CHAPTER THREE

ACTORS AND PLAYERS IN PROMOTION OF HUMAN RIGHTS

Introduction

This chapter will discuss the different actors in promotion of human rights. Some of these include Sub State Actors, Transnational Actors and Intergovernmental Organizations. The chapter will emphasize on Human Rights International Non Governmental Organizations and Local Human Rights Non Governmental Organization (HRNGO) including civil society organizations. The chapter will then look into three case studies highlighting their ways and means of promoting human rights.

Actors in promotion of human rights

According to most Classic handbooks on international relations, relations between nations have been strictly relations among states.¹³² Traditionally, it is states that oversee and promote bilateral negotiations in the field of peace and security, trade and economic relations and human rights. A state is an important actor in the promotion of human rights, as human rights are implemented by the state.¹³³

A citizen of a state based on the rule of law has the right to demand that state agencies observe voluntarily adopted international obligations which directly affect an individual's interest. Human rights treaties establish state obligations to citizens, not just to other parties to the international agreements. A state government answers to no higher authority; it exercises sovereignty over its territory that of making and enforcing laws, of collecting taxes and

¹³² Han J Morgenthau, *Politics Among Nations: The Struggle for Power and Peace* (New York: Alfred A.Knof. 5th edition 1973)

¹³³ Tunkin, G.I, *Theory of International Law*. (Cambridge, MA: Harvard University Press, 1974.)

so forth.¹³⁴

States may be the most important actors in international relations and in promoting human rights, for example, Kenya is a party to the International Convention on Civil and Political Rights, International Convention on Economic and Social and Cultural Rights (ECOSOC) both ratified in 1976 amongst others, there are however, writers who regard the high incidence of non-compliance with human rights norms as evidence of state practice that argues against the existence of a struggle of human rights principles in international law.¹³⁵ Therefore, despite the existence of International Law of Human Rights and its enforcement mechanisms for instance Charters, treaties, conventions there have been massive violation of human rights in Kenya.

Internationally recognized human right represents a good first approximation of the guarantee necessary for a life of dignity in the contemporary world. In all countries the unchecked power of the modern state threatens individuals, families, groups, and communities alike making a state to become a predator that can devour and imperil human freedom.¹³⁶ In view of this, there exist other actors whose activities have important repercussions for states and human rights states these are non state actors. are strongly conditioned, constrained, and influenced by a variety of actors that are called non state actors¹³⁷ whose activities have important repercussions for states and human rights. like Sub- State Actors, transnational actors and Intergovernmental Organizations.

¹³⁴ Peter Bahaer, *Human Rights in Foreign Policy*, (New York: Longman, 2001) p.12

¹³⁵ J.S. Watson, ' *Legal Theory, Efficiency and Validity in the Development of Human Rights Norms in International Law*, ' *University of Illinois Law Reform*, 1979 p. 609

¹³⁶ Makau Mutua, *Human Rights: A Political and Cultural Critique*, 2002 p. 22

¹³⁷ Joshua S. Goldstein, *International Relations*, 4th Edition, (New York ; Longman, 2001) p. 15

Sub state actors these are groups within states that influence states foreign policy for example, the American Automobile Industry and Tobacco Industry have always had a keen interest in the American Economic policy, specifically in aspects relating to selling cars and cigarettes abroad. These industries through lobbying with the government want to ensure that imports of competing products are reduced from abroad protecting their local industries. Thereby protecting the Economic and Social Rights of their citizens. These sub state actors therefore politically mobilize themselves by way of lobbying with the government in order to influence any policy that affects them.

Transnational Actors on the other hand are actors who operate below the state and across the state borders. Multinational Corporations (MNC) are examples of transnational actors. MNC's control greater resources and operate internationally with greater efficiency. MNC's also provide poor states with the much needed foreign investment and tax revenues.¹³⁸ Multinational corporations also play an important role in the promotion of human rights. For example, times have passed when multinationals limited themselves to the assertion that they were 'obeying the law of the land' where they would have important foreign investments and would mostly make human rights a matter of politics to be left to the states. More and more of major companies take pride in the attention on human rights considerations, making them an aspect of their public relations activities.¹³⁹

Another type of transnational actor are the nongovernmental organizations (NGOs) The Canadian human rights expert Laurie Wiseberg therefore has developed the following definition of non – governmental human rights organizations: ' A private organization which devotes

¹³⁸ Ibid

¹³⁹ Ibid p. 115

significant resources to the promotion and protection of human rights, which is independent of both governmental and political groups that seek direct political power, and which itself does not seek such power. This definition covers HRNGOs of many different types and sizes, large and small, well endowed and poor, professional and less professional.¹⁴⁰

Human rights international nongovernmental organizations are defined as those international nongovernmental organizations that are concerned with the promotion and protection of human rights in the long term. Human rights here refer to civil, political, economic, social and cultural rights of human beings. Nongovernmental status requires that the organizations are composed largely of independent citizens and are free of direct government influence. To be considered international, an organization must have members from two or more countries.

For instance whilst dealing with human rights International and National NGOs play a role of great importance.¹⁴¹ Implementation of binding treaties in the field of human rights would not be possible were it not for the activities of NGOs. These NGOs are single minded in their pursuit of the promotion and protection of human rights and continuously remind governments of the obligations States have voluntarily taken upon themselves.¹⁴²

Another actor in International relations is Intergovernmental Organization (IGO's), Members of IGO's include national governments. Examples of IGO is the United Nations (UN) and its agencies. For example, it is the delegates to the United Nations Commission of Human Rights who drafted the language of UDHR of 1948. UDHR was the first international agreement

¹⁴⁰ Laurie S. Wiseberg, "Protection of Human Rights Activist and NGO what can be done? Human Rights Quarterly, 13 (1991) p. 529.

¹⁴¹ Peter Baehr, *Role of Human Rights in Foreign Policy*, (New York: Longman, 2001) p.12

¹⁴² Ibid p 115

on the rights of human kind. The UDHR was documented immediately after World War ii. After the world had experienced one of the deadliest wars in human history.

Armed opposition groups that include the Palestinian Liberation Organization (PLO) various Kurdish groups, guerilla groups such as those operating in Algeria, Columbia, Mexico, Congo, Angola, Northern Ireland and elsewhere, including Al'Qu'aida network have important repercussions for states and for human rights. Some of these organizations refer to themselves as 'liberation movements' or 'freedom fighters', whereas their opponents see them as 'rebels' or even terrorists'.¹⁴³ Another actor which strongly conditions, constrains, and influences a state armed opposition groups including the Palestine Liberation Organization (PLO).

This chapter's main focus is how HRINGO and HRNGO as an actor in international relation promote human rights .

Human rights international nongovernmental organizations as defined above are those international nongovernmental organizations that are concerned with the promotion and protection of human rights in the long term.

Human Rights International Non governmental factors have been the engine of global expansion of human rights in the post World War II era.¹⁴⁴ Among these HRINGO are international nongovernmental groups such as Amnesty International (AI) and Human rights Watch (HRW) which have played key roles in the formative years of global human rights by

¹⁴³ Ibid

¹⁴⁴ Laurie S. Wiseberg, "Protection of Human Rights Activist and NGO what can be done? Human Rights Quarterly, 13 (1991) p. 529.

promoting international human rights instruments and publicizing gross human rights violations.

145

HRINGO promote human right in two ways firstly by monitoring and providing human rights situation of a target country and secondly by actively promoting global human rights models to local populations. Therefore, the Human Rights networks main goal is to reframe the domestic and International image of a human right norm violating country through moral conscioussness raising in the target country. ¹⁴⁶

With regard to Kenya, the transnational human rights including both Amnesty International (AI) and Human Rights Watch (HRW) network continuously provided new information on the deteriorating Kenyan Human Rights situation as from 1984. As that is the time when Kenya become a target of the international human rights community, that was two years after the unsuccessful coup attempt by air force officers when the internal security situation was marked by open repression. ¹⁴⁷

These HRINGO's informed the international public of hundreds of killings and human rights abuses in Kenya, having two major consequences between 1989/1990, first the donor community which had been previously quiet about the human rights situation in Kenya become more critical of the Kenyan government's human rights record. Second, the domestic playing field become increasingly inseparable from the international arena therefore domestic and international mobilization reinforced each other in critical ways.

¹⁴⁵ Kiyoteru Tsutsui, *Global Civil Society and the International Human Rights Movement: Citizen Partipation in Human Rights International Nongovernmental Organizations*. 2004 p 587- 620

¹⁴⁶ Jackson S., *Social Constructivism*, (New York, Palgrave Publications, 2002) p. 161

¹⁴⁷ Ibid p.

Between 1984- 1990 the transnational network both AI and HRW associated the country with issues like corruption, torture, and insecurity instead of stability and economic development.¹⁴⁸ Leading to suspension of aid by the donor community. This decision was heralded by a four hundred (400) page report that was earlier published by Human Rights Watch detailing the Human Rights situation in Kenya.¹⁴⁹

In view of this the Kenyan government between 1989 and 1991 modified its previously oppressive stunt with a consistent mix of isolated measures of liberalization and oppression. Some of the liberalizing measures included in December 1990¹⁵⁰ was the reinstatement of tenure for judges as in August 1988 new amendments to the constitution removed tenure for judges, and also the reintroduction of multipartyism in December 1991.¹⁵¹

With reintroduction of Multipartyism, Kenya was forced to permit independent citizen activity.¹⁵² Leading to the creation of Civil Society Organizations (CSO). The creation of Civil Society in Kenya was a response to the violations of basic individual rights by the state, and mirrored reporting and advocacy in the Kenya by INGOs such as AI and HRW. Therefore globally, the last two decades or so have seen an unprecedented growth in the number and activities on non- governmental organization (NGO's) or Civil Society organizations (CSO's),

¹⁴⁸ Alison Brysk, *From Above and Below: Social Movements, the International System and Human Rights in Argentina*. Comparative Political Studies 26(3) 259- 285

¹⁴⁹ Human Rights Watch World Report 1991. Events of 1990. New York: Human Rights Watch

¹⁵⁰ Gathii, James Thuo, *The Dream of Judicial Security of Tenure and the Reality of Executive Involvement in Kenya's Judicial Process*. Nairobi : kenya human rights commission.

¹⁵¹ Micheal Chege, *The Return of Multiparty Politics. In Beyond Capitalism vs Socialism in Kenya and Tanzania*. Edited by J.D. Barkan, CO: Lynne Rienner Publishers, pp. 47-74

¹⁵² Willy Mutunga, *Constitution Making from the Middle: Civil Society and Transition Politics in Kenya 1992- 1997* (Nairobi, SAREAT, Harare: Mwengo 1999)

the so called 'Third Sector' (The public and private sectors being the first and second respectively)¹⁵³

Civil society, or NGO movement, as understood in the modern sense, is very recent phenomenon. Even recent is the presence of human rights NGOs, a specialized sector of civil society. Which according to Wiseberg definition above A private organization which devotes significant resources to the promotion and protection of human rights, which is independent of both governmental and political groups.¹⁵⁴

Civil Society therefore contribute in the promotion of Human Rights. Civil Society encompass a wide range of voluntary civic and social organizations which are not under the control of the government and not in existence for the purpose of making profit. The London School of Economics Centre for Civil Society's working definition is that Civil society refers to the arena of uncoerced collective action around shared interests, purposes and values. Civil societies are often populated by organizations such as registered charities, development non-governmental organizations, community groups, women's organizations, faith-based organizations, professional associations, trade unions, self-help groups, social movements, business associations, coalitions and advocacy groups.

There are two types of civil societies organizations formal and informal, formal CSO's comprise of visible, legally consummated, recognized organizations and institutions. These organizations are actively engaged with the state either through collaboration/collaborators or as opponents. It includes foreign and indigenous NGOs, business associations, independent trade

¹⁵³ Wanjala S. Nasong'o, *The Human Rights Sector in Kenya, Key issues and Challenges*(Nairobi; Kenya Human Rights Institute (KHRI), 2009) P. 7

¹⁵⁴ Laurie S. Wiseberg, "Protection of Human Rights Activist and NGO what can be done? Human Rights Quarterly, 13 (1991) p. 529.

unions and established community organizations.¹⁵⁵ Informal Civil Society in contrast is made up of less defined and less visible rules and alliances based on kinship, caste, class and gender, which operate within and outside the household easily identifiable by insiders but often invisible to outsiders. Community organizations for example, usually begin at the informal end of the spectrum, but can evolve into a formal civil society as their organizational capacity grows and they gain access to external resources and legal recognition.¹⁵⁶

Most of the authors argue that the fertile ground for the emergence of civil society is authoritarian, repressive nature of regimes. As the most vocal opponents of authoritarian regimes in African countries have been voluntary and associational groups such as churches, organized labour, professional associations and grassroots movements.¹⁵⁷ From this mix of civil actors, opposition groups have emerged against authoritarian regimes for example, clergy rile against incumbent governments, lawyers challenge illegal state actions, grassroots movement pursue independent actions in development activities, and others evolve into oppositional pressure groups and eventually fully fledged opposition parties.¹⁵⁸ This kind of involvement by Civil Societies is what Samuel Huntington calls the “third wave” of democratization.¹⁵⁹ CSOs are therefore seen as cutting edge in building a democratic order.¹⁶⁰

¹⁵⁵ Solomon Owuoché and Fred Jonyo, *Political Parties and Civil Society in Governance and Development, A Synthesis*, (Nairobi; Birds Printers and Equipment Ltd) p. 73

¹⁵⁶ Davies and Hossain N., 1997, *Livelihood Adaptation, Public Action and Civil Society: A Review of the Literature*; IDS Working Paper 57, Brighton IDS.

¹⁵⁷ Micheal Bratton, *Beyond the State: Civil Society and Associational Life in Africa*, World Politics 41(3) : 407- 30

¹⁵⁸ Stephen N. Ndegwa, *The Two Faces of Civil Society, NGOs and Politics in Africa*, (America, Kumarian Press, 1996) p. 2

¹⁵⁹ Samuel Huntington, *Democracy's Third Wave*. *Journal of Democracy* 2(2): 12- 34

¹⁶⁰ Diamond Larry, Juan and Seymour M., eds 1988 *Democracy in Developing Countries*. Vol.2 Africa, Boulder Colo: Lynne Rienner p. 26

Authors argue that Civil Society bring about change, change here means creating a new dispensation in political arena, tantamount to paradigm shift according to Kuhn. Kuhn argues that paradigm shifts occur when older paradigms are replaced in whole or in part by incompatible new ones. Paradigm shifts occur when existing institutions (political community) cease to adequately meet problems posed by an environment. This change driven by civil society is unheard of in Africa. This change according to Alioune Sall,¹⁶¹ is instead being driven by political society and especially political parties not the civil society as is expected.

The Civil Society according to Sall, is faced by challenges thereby not being able to bring the expected 'change' stated by Kuhn. Some of the challenges stated are firstly, CSO's are young as after independence such cso were not given the opportunity to develop themselves. Most of these CSO's only become active in the 1990's following the liberalization of the political and development space, secondly, many of the CSOs in Africa have a very loose structure and thirdly, the CSOs exhibit weak organizational capabilities. It cannot totally be ruled out that CSO's have been in the initiation of many social and political movements leading to change in Africa.

For example, the 1966 and 1968 student's movement in Senegal forced the Senegal Government to open up space for dialogue. The movement influenced the establishment of the position of Prime Minister which had earlier been scapped from the institutional architecture of the country in 1962.

Secondly, the trade union movement/ strike in Mali, which was supported by the students movement led to a military coup toppling a regime that was in place for 22 years. The pressure

¹⁶¹ Alioune Sall, Reflections on Civil Society Driven Change: An Overview, in *Discourses on Civil Society in Kenya*, African Research and Resources Forum (ARRF), p. 1

from these trade unions eventually led to multiparty elections which brought Alpha Oumar Konare to power.

The changes as illustrated above were triggered by CSOs (student's movement, workers trade unions,), despite an existence of a state party. However, these political parties/ identities could not express themselves freely, consequently leading to dissenting voices identifying other channels, than political parties to defend their interests. From the above it is true that NGOs may not drive change but are triggered by them.

Donors as Actors in Promotion of Human Rights

According to Godwin and Nasong'o donors are also central actors in democratizing process, particularly in Sub Saharan Africa (SSA). They argue that bilateral and multilateral agencies provide development assistance. They provide financial assistance not only to governments but also to Non Governmental Organizations (NGO). Donors are therefore propelled into the international stage as central actors in the democratic process.

No consensus exists as to donors' motivation for democracy promotion. From a liberal internationalist perspective, a strong normative pre-occupation with democracy and human rights emerged at the end of the Cold War. Where the new international context allowed states to accord greater weight to their concerns about domestic governance, which had long existed but was overshadowed by super-power rivalry.

From a more realist perspective donors respond to their own wider economic or geopolitical interests when formulating foreign policy therefore democratization could be, for instance, a convenient tool for replacing old school autocrats who resisted economic reform with

more market friendly regimes. Donors sometimes explicitly link political liberalization with economic liberalization and free elections with free markets.

Donors in order to influence democratization most commonly communicate their opinions and preference, through means such as publications and policy statements. Often they offer specific advice to governments and also to other actors like NGOs, euphemistically referring to this as 'policy dialogue'.

By promoting dialogue donors influence agendas and therefore outcomes, making more probable certain reforms, but also discouraging or even preventing other changes or results. For example, Between 1992 and 2002, President Moi and KANU remained in power , legitimated by deeply flawed multiparty elections held in 1992 and 1997.

Both times donors took strong measures to make sure that, regardless of such egregious practices elections would be held as scheduled, that all major parties would participate and that, and once endorsed by the international observers, election results would be contested only through judicial channels however, between elections donors virtually withdrew from the political arena.

This focus away from politics allowed the regime to act with relative impunity on a number of issues. As a result, donors wound up helping to keep Moi and his party in power. Donors , therefore, periodically played important roles, sometimes furthering democratization and at other times preventing it from entering a phase where change would be more radical and unpredictable.

In order to examine Western states intervention in African countries political system, Evans ¹⁶² describes ways by which by ways in which donors promote democratization. He states there are four types of roles that states play in examining Western states intervention in African countries political systems. These include: custodian, demiurge, midwifery and husbandry. As custodian, the state acts as a kind of regulator and protective security force, assuring certain basic rules are set and followed.

Demiurge (named after a deity that created material things) plays a more active role in ensuring basic common goods, recognizing that no other actor is able to produce them and acts as a substitute for them. Midwifery implies a less proactive role, limiting intervention to facilitation, be it in the emergence of new actors, working with other or encouraging them to work together. Finally husbandry is similar to midwifery, but implies a more aggressive approach in bringing actors together sometimes through cajoling and arm twisting.

This typology does not justly characterize every role that donors play, yet it does help map out the changing patterns and results of donor intervention, including at times a role inimical to democratization

Under this background, this chapter will discuss contributions of three key civil societies in the promotion of human rights in Kenya.

The Kenya Human Rights Commission (KHRC)

The Kenya Human Rights Commission was founded in the United States in 1991 by a group of five (5) Kenyans resident in North America Makau Mutua, Maina Kiai, Kiraitu

¹⁶² Evans P., *Embedded Autonomy: States and Industrial Transformation*, (Princeton, NJ: Princeton University Press.)pp. 13-14

Murungi, Willy Mutunga and Peter Kareithi. Both Makau and Kiraitu were in exile. Maina and Peter were students in the US. This group of five (5) Kenyans were resident in North America, leading to establishing offices, both in the USA and NAIROBI. It was established in the USA because during the time of its formation the political environment in Kenya did not favor NGO. Kenya at that time was a state skilled at repression under the cloak of the law had largely prevented the emergence of a vibrant Civil Society until 1992 when multi party forced it to permit independent citizen activity following the repeal of Section 2A.¹⁶³

KHRC was thus registered in Kenya under the Non Governmental Organization Coordination Act in 1994 making it a national Non-Government Organisation (NGO). The KHRC has an observer status with the African Commission on Human and People's Rights (ACHPR), Federation of Human Rights (FIDH) and is a member of other national networks which are influential such as the Kenyans for Peace, with Truth and Justice (KPTJ).

KHRC is committed to the realization of human rights ideals in Kenya by strengthening the human rights movement. KHRC supports social, political, economic, and cultural change aimed at enhancing respect for the rule of law, the development of a society aware of its rights and comes to their defence wherever threatened or attacked.

KHRC has five strategic objectives which include reducing human rights violations in Kenya, Strengthen the human rights movement in Kenya, Hold state, institutions and individuals

¹⁶³ Willy Mutunga, *Constitution Making from the Middle: Civil Society and Transition Politics in Kenya. 1992-1997* (Nairobi: SAREAT, Harare: MWENGO, 1999)

accountable for human rights violations, raise awareness of human rights in Kenya, and place Kenya on a truly democratic trajectory.¹⁶⁴

The vision of KHRC is to work towards a Kenya that respects, promotes, and protects all human rights. The mission of KHRC is to protect, promote, and enhance the enjoyment of all human rights for all individuals and groups. It does this through monitoring, research, and documentation of human rights violations. It organizes activist events and undertakes public awareness campaigns on human rights. KHRC Vision is therefore achieved by two pronged strategy first by facilitating and supporting individual, communities and groups to claim and defend their rights and secondly by holding states and non state actors accountable for the protection and promotion of human rights for all Kenyans.

To achieve the vision and mission, KHRC has two departments Administration and Programmes. Within the programmes, there is Research and Advocacy and Civic Action sections, and is tasked with realizing the following five strategic objectives first, Civic action for human rights, secondly, accountability and human rights centred governance, thirdly, Leadership in learning and innovation in human rights and democratic development in Kenya, fourthly, Mainstreaming equality, non discrimination and respect for diversity and Organizational sustainability of KHRC.¹⁶⁵

When dealing with the above objectives KHRC considers five pre- conditions these include: bankability, relevance , sufficiency, feasibility and synergy. a) Bankability is capacity of projects to deliver on Goal of the Year, b) relevance, ability of the projects to repond to the root causes of the problems of the state, c) sufficiency whether these projects are able to lead to a

¹⁶⁴ Human Rights as Politics, A Kenyan Human Rights Publication, 2003

¹⁶⁵ Pamoja Tutetee Haki, Kenya Human Rights Commission, About Us,

transformed State, d) feasibility , the achievability of the plan within one year e) synergy – inter-linkages between the two teams in Programmes Department and timeliness – ability of projects to deliver when they are required the most.

In its formative years (1991 – 1997) the KHRC focused on monitoring, documenting and publicizing human rights violations. In this phase, the Commission established itself as a vibrant advocate for civil and political rights in Kenya, through direct action protests and offering support for redress to victims and survivors of human rights violations. The Commission therefore linked itself to human rights struggles with the need for reforms in political leadership and institutions.

In 1998, the Commission developed its first strategic plan called Vision 2012 expanded its advocacy strategy which spelt out its direction from 1998 – 2003. This strategic plan gave prominence to Economic and Social (ECOSOC) rights. The shift consequently led to the Commission working closer with communities to build capacities to those affected by human rights violations and to advocate for their rights. By laying a framework for community partnerships and further sharpening the previous years' niche of civil and political rights, the KHRC developed institutional systems of programming, finance and performance management.

In 2003, after a decade of experience in defense of human rights created a new Strategic Plan which covered the period 2004 – 2008. Through this plan, KHRC wanted to root human rights in communities. Therefore, the Commission focused its strategies and actions at enhancing community driven human rights advocacy through building the capacities of citizens to deal with their immediate human rights concerns. This phase thus saw the Commission engage in

emerging issues around trade, business, investment, natural resources and sexual and reproductive rights.

This led to the creation of the current strategic plan covering the years 2008 – 2012, the thrust of the Commission 's work during this time focused on actions that would lead to accountable and human right centered governance at all levels of Kenyan society. Strategies elaborated in this plan all point to the need to grow an extensive and powerful nation-wide constituency that champions change and accountable governance.

In this strategic plan, the KHRC plan reflects a renewed emphasis on rooting human rights in local communities and recognizes the relationship between governance and human rights in politics. The plan also reflects a continuity of building on past experiences and developing a new focus on building and strengthening communities. It also aims at nurturing a leadership capable of challenging local power structures to expand space for people to claim their rights. The KHRC works with various partners locally, nationally and internationally to emphasize the success of their approach.

FEDERATION OF WOMEN LAWYERS KENYA (FIDA)

FEDERATION OF WOMEN LAWYERS AND ADVOCACY PROGRAMME

FIDA –K is a women rights activist body. Its most renowned and public function has been to offer legal assistance to poor women in the country through their legal clinics. The Vision of the organization is: ‘ A just socociety that is free from all forms of discrimination against women”. While its mission is To ensure that women are free from all forms of injustices based on gender, sex, class, ethnic, origin, physical disability, and religious beliefs.

The organization is guided by six (6) values which allows it to achieve its objectives these include firstly, Women centred - putting women first, secondly, professionalism - professionalism in relationships and dealings with clients, ensuring client confidentiality and excellence, thirdly, empowerment - empowering women, staff, the membership and stakeholders, fourthly, integrity - conducting all business with utmost honesty, integrity, transparency and accountability and fifthly, Teamwork - a firm belief in mutual respect for each individual and teamwork, sixthly, Learning organization - learning from experience and through innovation, always seeking to improve.

FIDA-K 's main objective include firstly, to provide legal advise and legal representation to women¹⁶⁶, also known as Access to Justice¹⁶⁶ to Women. Secondly, to monitor women rights, for example, FIDA K started this program in 2002 where FIDA-K provides community based monitors in order to document violations of women's human rights. The monitors through the timely submission of reports allow for constant monitoring of women rights. Thirdly, to Intensify the struggle for participation and involvement by women in the government machinery leading to recognition of women as partners in the development process, fourthly, pressure the government to be responsive to women needs, for example, FIDA KENYA was extensively consulted before the establishment of the Family Court, was also consulted to give their expertise opinion on domestic violence legislation, and it has been involved in evaluating the implementation by the government on Convention on the Elimination of All forms of discrimination against women (CEDAW) fifthly, Monitoring elections, FIDA Kenya monitored the 1992 and 1997 General Elections. It was also among the leading organizations that played a crucial role in ensuring free and fair elections in 2002 elections during.

¹⁶⁶ Federation of Women Lawyers- Kenya, Staking our Claim, the 2002 FIDA Kenya Annual Report on the Legal Status of Women. (The Women's Rights Monitoring and Advocacy Programme (FIDA), 2002) p. iii

FIDA-K participated in the 2002 elections through the ‘Engendering the Political Process Programme’ (EPP), a programme that was jointly implemented by Women’s Political Alliance – Kenya (WPA-K). Women’s Political Alliance – Kenya (WPA-K) formed in 2000, consisted of umbrella network of gender based organization with the goal of promoting the participation of women in political and economic governance in Kenya, so as to ensure gender equity in the development process.¹⁶⁷ It consisted of League of Women Voters in Kenya, National Council of Women in Kenya, Federation of Women’s Groups, Federation of Women Lawyers in Kenya (FIDA), Friends of Esther and Deborah (FREDA) and Collaborative Centre for Gender and Development.

Therefore from the above objectives FIDA Kenya was established to, improve the legal status of women, increase women access to justice in Kenya and to enhance public awareness on women’s rights issues.

International Commission of Jurists (ICJ)

International Commission of Jurists (ICJ) was established in 1959, ICJ Kenya is a non governmental, non partisan and non-profit membership organization. Head quartered in Geneva. ICJ Kenya is autonomous from ICJ Geneva.¹⁶⁸ In accordance with the general mandate for national sections as defined by Article 4 of the ICJ Statute, ICJ has 300 members who are dedicated to the legal protection of human rights in Kenya and the African region. A member based organization consisting mainly of legal practitioners whose focus is the protection of human rights.

¹⁶⁷ FIDA KENYA, 2002 Election Monitoring Report, 2004 p. 6

¹⁶⁸ Mikewa Ogada eds, *Electoral Reform in Africa Challenges and Opportunities*, Kenya Section of the International Commission of Jurists, 2009 p. 1

The Vision of ICJ is to have a just, free and equitable society. While its mission is to seek to promote the legal protection of human rights, rule of law, and democracy in Kenya and the greater African continent through research-based advocacy and litigation. In this regard, ICJ Kenya strives to invoke international legal standards and comparative best practices.¹⁶⁹

There are nine (9) Core values that ICJ Kenya subscribes to these include: First, Impartiality ICJ Kenya is non-partisan in promotion and protection of human rights, the rule of law and democracy, It therefore employs an impartial approach in reform processes. Second Respectfulness, ICJ Kenya respects human dignity and fundamental freedoms, third Equity, ICJ Kenya strives to ensure fairness and justice for all, fourth Probity, ICJ Kenya exercises honesty, integrity, and decency in its work, fifth Credibility, ICJ-Kenya has been in existence since 1959 and therefore has a reputation for stability, sixthly Professionalism ICJ Kenya, strives to uphold the highest professional standards in service delivery, seventhly Responsiveness, ICJ Kenya strives to be receptive and accessible to its stakeholder. steadfastness, ICJ Kenya strives to remain focused, persistent, committed in the promotion and legal protection of human rights, rule of law and democracy. Flexibility and adaptability ICJ Kenya's approach is conscious and adaptable to the changing environment and context.

Objectives of ICJ-K include, Policy research and Advocacy, Judicial reform programme, human rights education, and International Cooperation.

Policy, Research and Advocacy Programme

This programme focuses on research, policy, legal analysis and advocacy for legislative reforms to enhance and promote protection of human rights, the rule of law and democracy.

¹⁶⁹ Impact Report 2009, *Celebrating 50 years of Promoting and Protecting Human Rights, Democracy and the Rule of Law*, ICJ-K p. 7

Some of the programmes under this being carried out by ICJ-Kenya include Freedom of Information Legislation and repealing of oppressive laws that take away the citizens's rights to information. Secondly the programme has also been involved in monitoring the implementation of proposals under Agenda Item No. 4 which include the establishment of a comprehensive Truth Justice and Reconciliation Commission (TJRC) as agreed by the Kofi Annan led National Dialogue and Reconciliation team as well as monitoring the Constitutional Review.

The program undertakes lobbying and advocacy including public education. Some of the areas of intervention include carrying out advocacy for the enactment of a freedom of information law in Kenya. The objective of the freedom of information campaign is to support the enactment of freedom of information legislation that seeks to promote transparency and accountability in Kenya, secondly, creation of awareness on Human Rights, rule of law, and democracy issues, thirdly, support for a free and independent media in Kenya, monitoring of the implementation of recommendations under Agenda item 4, policy and legislative interventions, and parliamentary strengthening programmes.¹⁷⁰

The Judicial Reform Programme, is to advocate for a Judiciary that is independent, effective, and accessible to all Kenyans as an institution of social equity and legal protection of human rights. Areas of intervention in this programme includes advocacy for constitutional and legislative reforms to promote the independence and efficiency of the judiciary, capacity building of the judicial officers.

Human Rights Education Programme, the objective of this program is to impart legal and human rights awareness to the Kenyan citizenry. This is being done through paralegal extension

¹⁷⁰ Ibid p. 9

projects based in rural areas. This access to paralegal and the legal services consequently leads to legal empowerment of rural communities as well as access to justice goals. These paralegals provide basic legal advisory services as volunteers and remain an important dispute resolution constacts for uncomplicated cases. These extentional networks are operational in Kwale, Transmara, Taita-Taveta, Laikipia, Meru and Kitui districts.ICJ-Kenya has about over 400 community paralegals trained.

Areas of intervention for the said programme include Human Rights education and capacitation, creation of awareness on Human Rights issues, human rights protection and support and policy.¹⁷¹

International Cooperation, this programme seeks to improve international ties and cooperation as a way of improving access to justice and the legal protection of human rights in Africa in accordance with International standards. To achieve this aims and ojectives the programme has adopted a two prong appach Africa Human Rights Access to Justice (AHRAJ) and Eastern Africa International Justice Initiative (EACICJI), AHRAJ which has been running for since 2001, is a regional initiative that seeks to promote and strengthen the legal protection and enforcement of human rights in countries within Eastern, Western, and Southern Africa through cooperation and complimentary activities with partner NGO's. areas of intervention under AHRAJ focuses on strenghting domestication of international human rights standards in four thematic areas; Labour rights, Health Rights, Women's Rights, and the right to fai trial.

Eastern Africa International Justice Initiative (EACICJI), seeks to transform the International Criminal Court (ICC) into an effective tool to be used in the struggle against

¹⁷¹ Ibid p. 9

impunity for the gravest crimes committed in violation of international law in the region. The initiative focuses on seven (7) countries Kenya, Uganda, Tanzania, Sudan, Rwanda, Democratic Republic of Congo (D.R.C) and the Central African Republic (C.A.R).

To be more effective the initiative has partnered with various NGOs, MPs, Judicial Officers, and influential jurists in the target countries to ensure further and more effective reach. The EAICJI seeks to carry out rigorous advocacy campaigns and capacity building initiatives to ensure effective functioning of the ICC in Eastern Africa. Some of the areas of intervention include: establish strong regional networks to support the ICC, advocacy and engagement for the ratification and implementation of the Rome Statute, establish mechanisms for victims and witness protection, create a momentum through debate for ratification domestication and full implementation of the Rome Statute in the target countries; considering the different levels each country has reached in regards to the obligation under the statute.

Enhancement of the use of legal expertise through programme/ projects in order to effectively demand and monitor legal reform. Secondly, is to devise programmes that build the capacity of key governance institutions through training and legal services in order to improve access to justice; ensure analytical and constitutional information is available for the media and other users; and Thirdly to Strengthen linkages between ICJ Kenya, ICJ family and other identified national, regional and international stakeholders and partners.

Conclusion

A state is an important actor in the promotion of human rights, as human rights are implemented by the state. There however, exists other actors whose activities have important repercussions for states and human rights, they are known as non state actors some of these NSA include transnational actors for instance HRINGO and HRNGO.

HRINGO are as those international nongovernmental organizations that are concerned with the promotion and protection of human rights in the long term. Human Rights International Non governmental factors have been the engine of global expansion of human rights in the post World War II era. Among these HRINGO are international nongovernmental groups such as Amnesty International (AI) and Human rights Watch (HRW) which have played key roles in the formative years of global human rights by promoting international human rights instruments and publicizing gross human rights violations. NGO or Civil soceity, movement, as understood in the modern sense, is recent phenomenon. Even recent is the presence of human rights NGOs, a specialized sector of civil soceity. Which according to Wiseberg definition above is A private organization which devotes significant resources to the promotion and protection of human rights, which is independent of both governmental and political groups.

Ground for the emergence of civil soceity is authoritarian, repressive nature of regimes and bring about change. Although these CSO are faced by challenges such as their young age, loose structure for example failure of their founders of these organizatin and of CSO leadership to build a sucessor cadre directly affecting their sustainabilty as upon death oe departure of their leaders successions and transitions have become trying periods for the organizations, some of

these CSO have weak organizational capabilities leading them to have weak strategies and methodologies while promoting huamn rights.

The three key civil societies in the promotion of human rights in Kenya include Kenya Human Rights Commission (KHRC), Federation of Women Lawyers Kenya (FIDA) and International Commission of Jurists (ICJ). Most emerged after 1992.

CHAPTER FOUR

DATA FINDINGS, ANALYSIS AND PRESENTATION

Introduction

This chapter discusses the findings, analysis, interpretation and presentation of the research. The study sought to investigate the ways and means by which NGO's have contributed in the promotion of human rights, to evaluate the level of consistency of NGO in the promotion of rights in Kenya, and to establish the challenges facing NGO in the promotion of human rights.

The population of interest entailed the general public, Expert opinion including donors, policy analysts, scholars while the third category of respondents included head of departments of the three case studies Kenya Human Rights Commission (KHRC), International Commission of Jurists (ICJ) and Federation of Women Lawyers (FIDA-K). The sample size comprised of ninety (90) respondents, thirty (30) of which comprised the general public, twenty five (25) comprised the experts while thirty (30) comprised those working at the case studies other five (5) were spoilt. A total of one hundred (100) questionnaire were distributed of which eighty five (85) of them responded indicating a respond rate of eighty five percent (85%).

The chapter is divided into three sections. The first section discusses the sample characteristics of the respondents, while the second one provides an analysis into the general perception of Kenyans and experts towards CSOs and their level of consistency in the promotion of human rights, while the third provides the challenges faced by the case studies in the promotion of human rights. The following are the results of the questions analyzed and expressed through various analytical tools that include bar and pie charts as well as tables.

Table 4.2 Sample Characteristics of the Respondents

Sample Characteristics

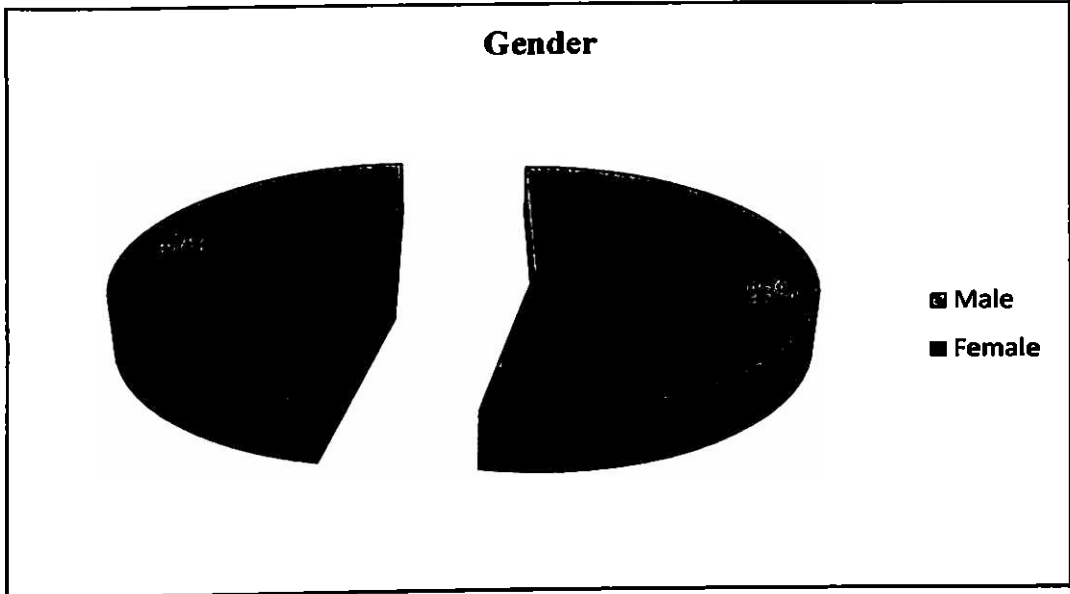
This section discusses the Sample Characteristics of the respondents. The sample consisted of 46% female and 53% male respectively. Of whom 26% of respondents were aged between 26-33 years, followed by 23% who were aged between 34-41 years, while about 13% were aged 50 years and above. 50% of the respondents were University graduates followed by 26% who were at college level, while another 10% were at Secondary level. 26% of the respondents come from Nairobi, while 20% were from Central province with 16% coming from Eastern Province. 36.7% of the respondents were from the private sector, followed by 30% from the public sector, and 10% from the Civil Society. The same data is represented in the table below:

Age	Male	Female
Under 18 years	0	0
18 – 25 years	0	9
26 – 33 years	21	11
34 – 41 years	12	10
42 – 49 years	6	9
Over 55 years	9	3
Level of Education		
Primary Level	6	0
Secondary Level	3	5
College Level	13	12
University Level	27	18
None	1	5
Area of Residence		
Central Highlands	9	9
Coastal	4	5
Eastern	3	12
Lake Basin	6	6
Nairobi	17	7
Rift Valley	9	0
Southern	3	0
Working Sector		

Civil Society	3	6
Private Sector	13	20
Public Sector	20	8
NGO	9	0
Other	3	8

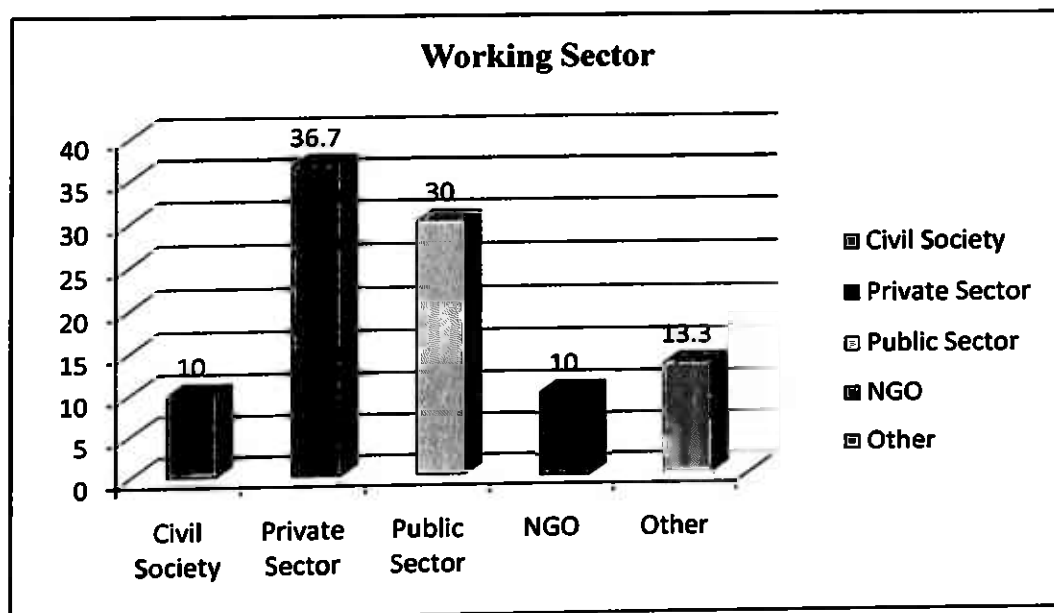
Source; Author Survey, 2010

Distribution by Gender



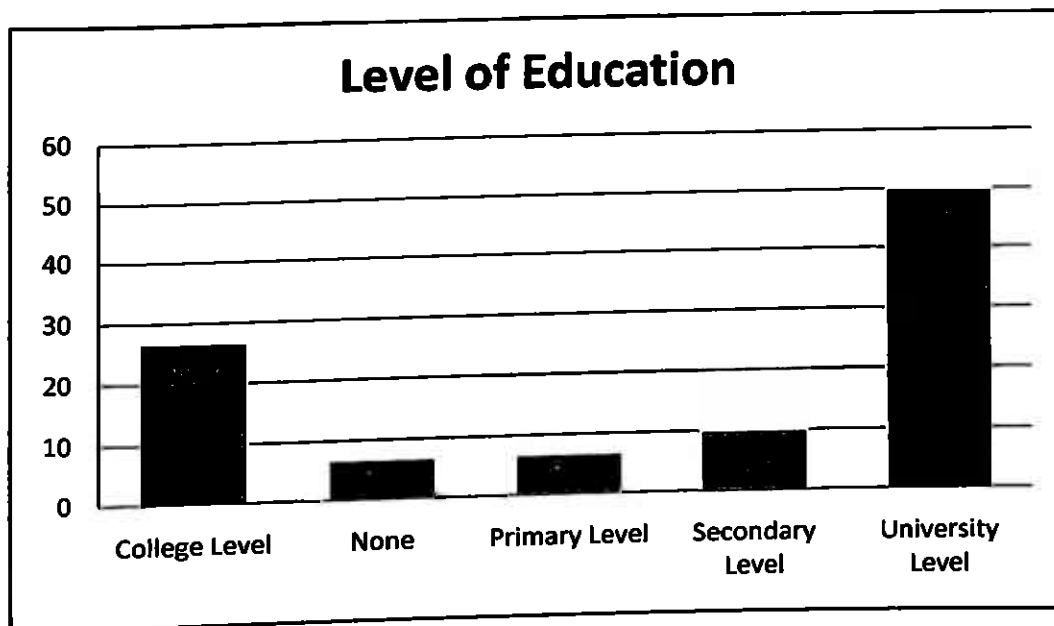
Source; Author Survey, 2010

Distribution by Working Sector



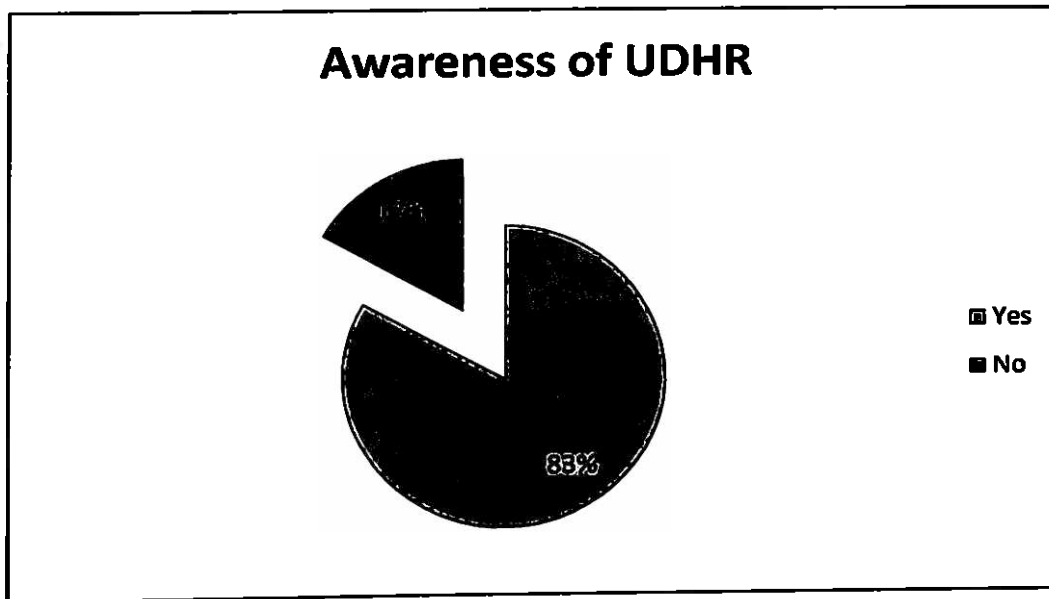
Source; Author Survey, 2010

Distribution by Level of Education



Source; Author Survey, 2010

Distribution by Level of Awareness of UDHR



Source; Author Survey, 2010

From the pie chart above, 83% of the respondents were aware of the Universal Declaration of Human Rights (UDHR) while 17% were not, implying a high level of awareness of UDHR amongst the public, the reason for the high level of awareness according to experts is attributed to the existence of human rights organizations in Kenya since 1990.

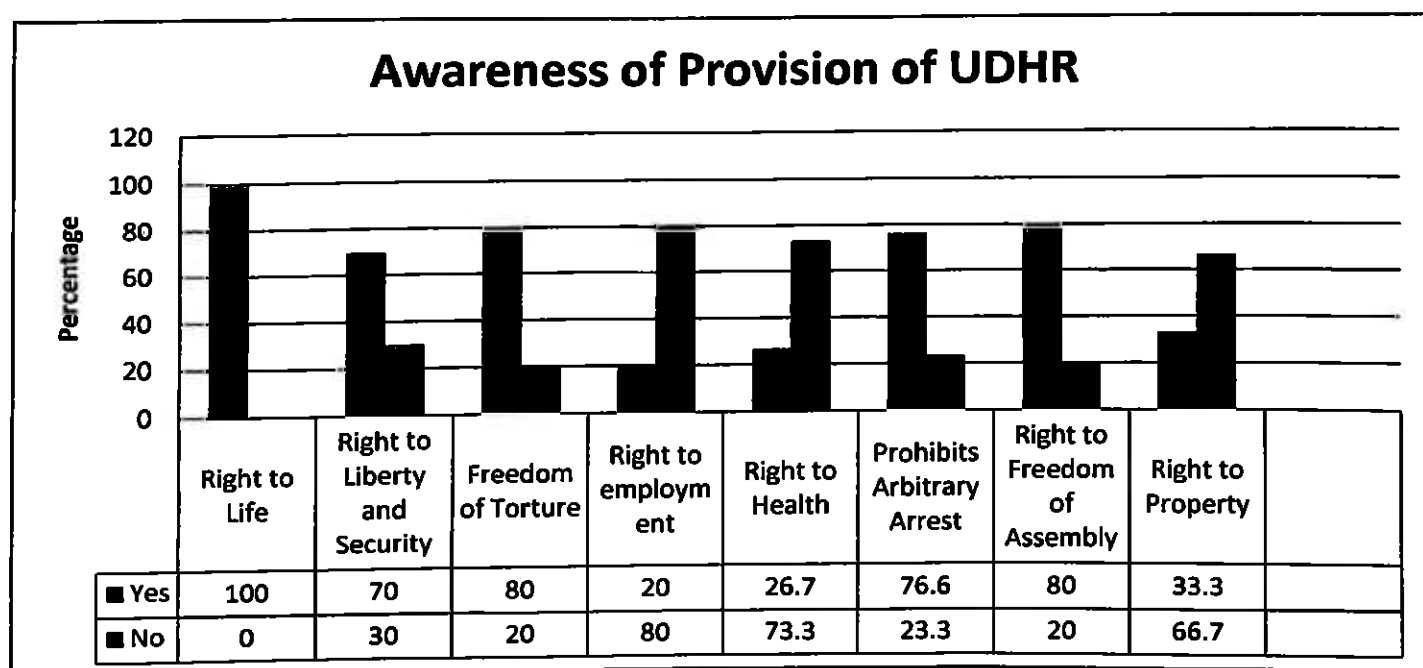
Their purpose of existence for the last two decades has been to promote liberal democracy principles¹⁷² as a cursory review of human rights NGOs in East Africa places them squarely in the struggle for the liberal democratic state.¹⁷³ In other words, the main human rights NGOs in East Africa have sought to promote basic civil and political rights, and especially political participation rights, such as right to speak, assemble, publish, and anti discrimination norms. These rights are central to an open democratic process, particularly a free and fair elections, which is the essential cornerstone of political democracy.

¹⁷² Makau Mutua, *Human Rights NGOs in East Africa, Political and Normative Tensions*, (Kampala; Fountain Publishers; 2009) p. 20

¹⁷³ Chidi Anselm Odinkalu, 'Why More Africans Don't use the Human Rights Language,' Human Rights Dialogue (Winter 2000):4

The mandate of local HRNGO is therefore promotion of liberal democratic principles, this mandate according to experts has trickled down from International Non Governmental Organizations (INGO) like Amnesty International (AI) and Human Rights Watch (HRW), for example according to a respondent International Commission of Jurists (ICJ) and FIDA are literal offsprings of their counterparts in the industrial democracies of the West and are consequently deeply influenced by their mandates that of promotion of human dignity by observing Universal Declaration of Human Rights (UDHR) local HRNGO therefore spread the same mandate. In view of this, most local human rights organizations therefore continue with that mandate, this explains the high level of awareness of UDHR amongst Kenyans.

Distribution by Awareness of Provision of UDHR



Source; Author Survey, 2010

From the above graph out of the eight questions asked in the survey, the level of awareness present of the provisions of the declaration was 76.6% and above. The provisions that

the respondents were highly aware about included Right to Life, Freedom from Torture and the Right to Freedom of Assembly, however, the provisions in the UDHR which the respondents were 73.3. and above least aware about include Right to employment, Right to Health and right to property. Respondents also mentioned other provisions which are included in the UDHR but were however not mentioned in the questionnaire some of the rights they stated include right to freedom of thought, conscience and religion; everyone has a right to education, and right of Nationality.

This implies that most respondents are aware of First-generation human rights¹⁷⁴ which deal essentially with liberty and participation in political life which are fundamentally civil and political in nature, and serve to protect the individual from excesses of the state. First-generation rights include, among other things, freedom of speech, the right to a fair trial, freedom of religion, and voting rights. The respondent's level of awareness on the second generation of rights was low; the second generation of rights is fundamentally social, economic, and cultural in nature.¹⁷⁵ They ensure different members of the citizenry equal conditions and treatment. The second generation of rights include the right to be employed, right to housing and health care, as well as social security and unemployment benefits. Both first-generation rights and second generation rights are covered in the Universal Declaration of Human Rights.

The low level of awareness of the public on ECOSOC rights according to experts is attributed to many people not understanding the idea of economic, social and cultural rights (ECOSOC). As public do not understand what ECOSOC rights are and how are they provided.

¹⁷⁴ Three Generations of Human Rights, <http://en.wikipedia.org>

¹⁷⁵ ibid

This it was said can be attributed to lack of advocacy on ECOSOC rights by HRNGO. The what¹⁷⁶ and “the how” of economic, social and cultural rights is therefore not known by the public.

Training on “the what”, or the substance of rights will focus on what social and economic rights are, whether or not they are fulfilled in the locality, how they are or are not protected by law, and what the government is doing or not doing to protect or fulfil these rights. Training on “the how”, or advocacy processes, focuses on how to plan a local campaign and build constituencies, how to use local and national media, and how to build democratic mechanisms into campaigns in order to increase their legitimacy and ensure that they are truly representative of the people they claim to represent. According to expert opinion “The how” and “the what” should always be considered together in the local context, in order to make trainings relevant and practicable for local communities.¹⁷⁶

Some scholars however argue that little focus on ecosoc rights has come at a cost for developing countries like Kenya for example, the murder and mayhem of the ethnic clashes in the 1990’s were inextricably bound up with the land question in the country. Human right reporting at that time focused mainly on grim statistics of the so called body counts cataloguing the violations of civil and political rights, without analysis of the context or addressing seriously violations of ecosoc rights. Similarly, the near collapse of the Kenyan state after the disputed elections in December 2007 was a result of deep seated economic and social grievance that manifested in genocidal ethnic violence.¹⁷⁷

¹⁷⁶ Interview, Opiata Odindo, Executive Director, Hakijamii Trust, Kenya. *The Experience of Hakijamii Trust “Reconstructing Rights and Development Methods for Community Empowerment.”*

¹⁷⁷ Makuu Mutua. *Human Rights NGOs in East Africa, Political and Normative Tensions*, (Kampala: Fountain Publishers; 2009)p. 21

Distribution by Violation of Human Rights in Kenya



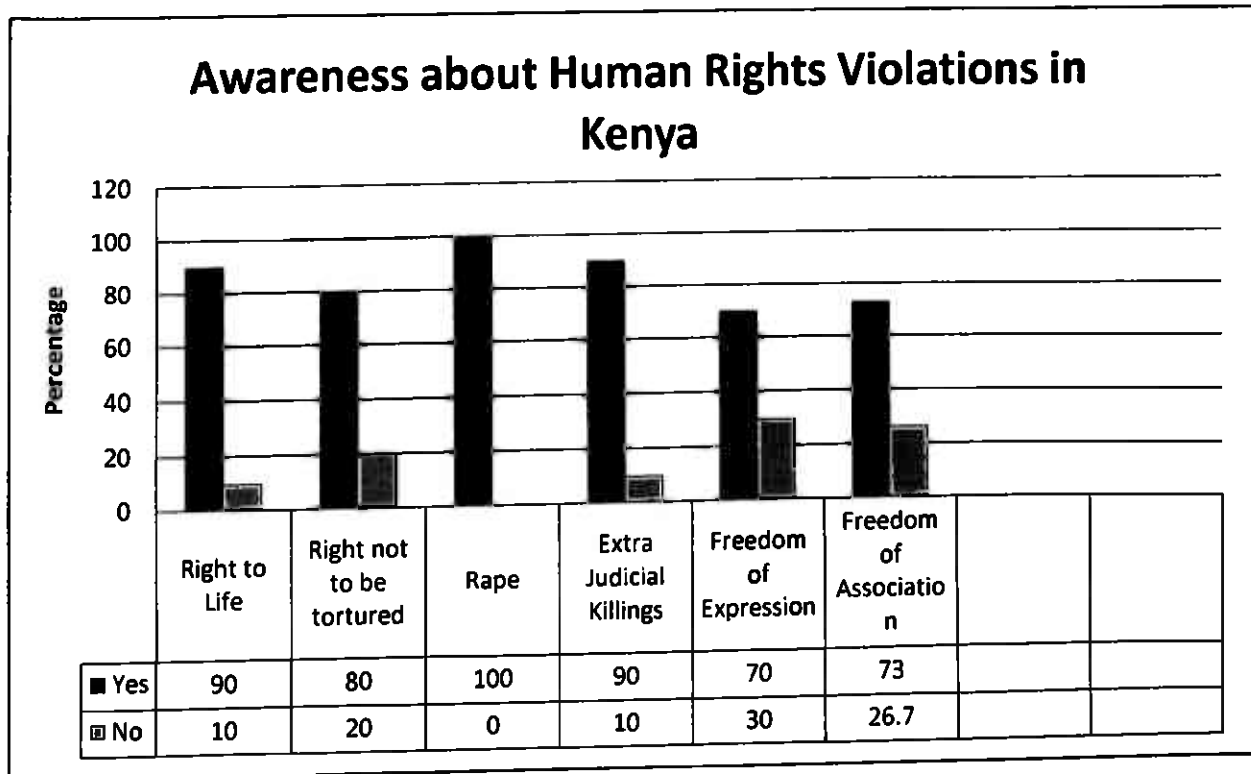
Source; Author Survey, 2010

From the pie chart above most of the respondents stated that human rights have been violated in Kenya. This high level of awareness is attributed to the now near-universal consensus that all individuals are entitled to certain basic rights under any circumstances.¹⁷⁸ Protection of human rights means that people receive some degree of decent, humane treatment violating human rights means denying individuals their fundamental moral entitlements. Kenyan Constitution Chapter V,¹⁷⁹ clearly stipulates protection of fundamental rights and freedoms of the individual however, the findings state that despite the provision of protection of rights in the constitution human rights are still being violated in Kenya this could be attributed to visible signposts including creation of displaced persons, victims of murder, torture, rape.

¹⁷⁸ Michelle Maiese, *What it Means to Violate Human Rights*, http://www.beyondintractability.org/essay/human_rights_violations/, July, 2003.

¹⁷⁹ Constitution of Kenya.

Distribution by Level of Awareness of Human Rights Violations in Kenya



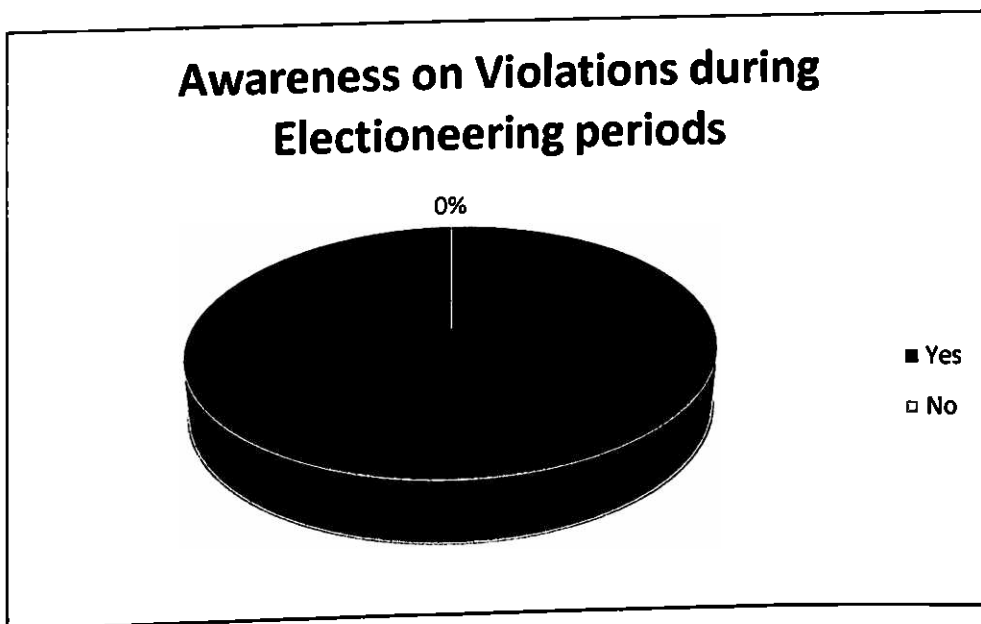
Source; Author Survey, 2010

From the chart above, the level of awareness of specific rights violated was 70% and above, most said that rape, right to life, extrajudicial killing, freedom of expression and freedom of association are the most common human rights abuses. Most said that right to life is violated because there have been deaths taking place especially during election period, for example during the 2007 election about one thousand five hundred (1500) people died. Others said that right not to be tortured has been violated as during KANU's day's politicians, lawyers, students, and all those who raised a voice against the government were either jailed or tortured. Freedom of Expression has also been violated as the press have been muzzled for example, the passing by

parliament of a media Bill silencing the media and its signing into law by President Kibaki in January 2007 is a case in point. Rape also is common in Kenya for example, an eighty year (80) old woman was gang raped by ten (10) men, one month old baby girl was defiled by her father and the oldest case was a one hundred and five (105) year old woman raped by 24 year old. Respondents said that this violation does not know of age.¹⁸⁰

This means Kenya is not genuinely dedicating itself to its obligation under the Kenya Constitution and international covenants to protect the fundamental rights and freedoms of the Kenyan citizens

Distribution by Awareness on Violations During Electioneering Periods



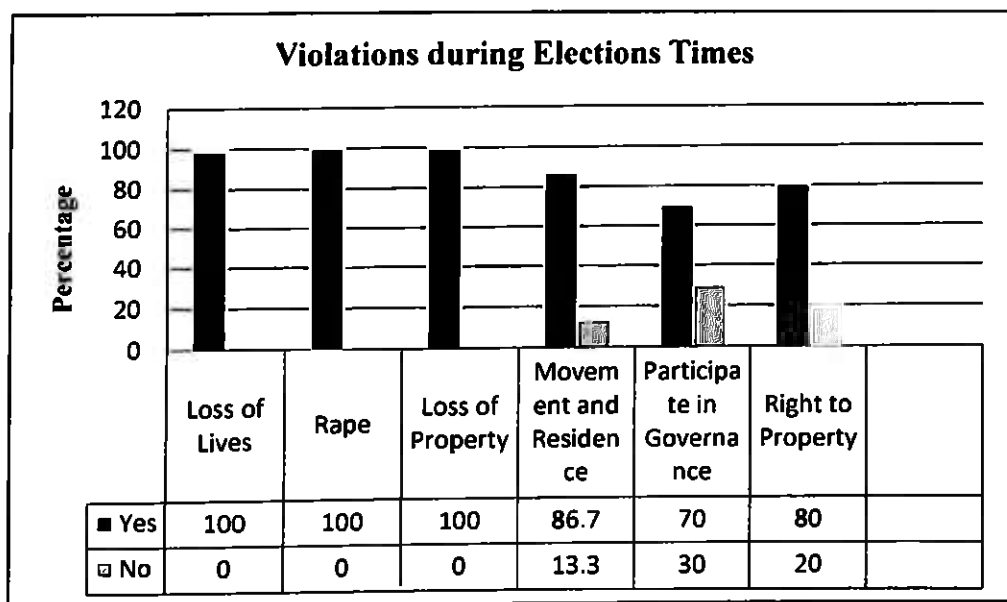
Source; Author Survey, 2010

According to the pie chart above 30 (100%) of the respondents stated that human rights violations escalate during the electioneering periods because violence is a regularly used tool in

¹⁸⁰ Capital FM. Worrying Trend of gang rapes in kenya, news, 27th May, 2010. 2000 hours

contemporary Kenyan politics. The violence therefore leads to human rights violations such as murder, displacement and rigging. According to experts the phenomenon of post-election violence in 2007 was not surprising as violence has marred previous multiparty elections in Kenya however what was surprising this time around, was the intensity of the violence, its wide geographical dispersal and the multiple forms it had taken.¹⁸¹

Distribution by Violations During Elections Times



Source; Author Survey, 2010

From the chart above, the level of awareness of specific rights violated during election times was 70% and above, most said that loss of lives, rape, loss of property, movement and residence, right to property and participation in governance are the most common violations during the elections times.

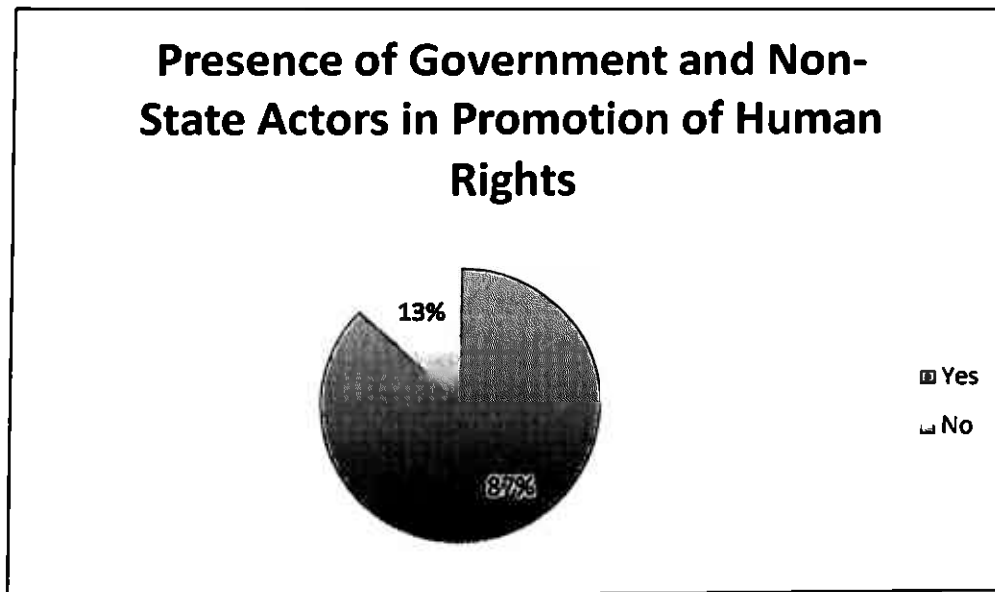
¹⁸¹ Kenya Human Rights Institute, *Special Brief, Civil Society Responses to the Kenyan Crisis* February 2008. p. 5

The post-election violence of 2007 for example, was characterized by communal riots, killings, massive internal displacements, rape and wanton destruction of property around the country, all of which have escalated into Kenya's worst human rights crisis. By mid-February, the violence had petered out although the country remained tense.

Official death toll stood at about 1,000 people. At least 300,000 people had been displaced from their homes and are living in squalid makeshift camps around the country while others have fled to neighboring Uganda.

The lives and livelihoods of hundreds of thousands of individuals was severely disrupted as property and economies worth well over 260 billion Kenya shillings (approximately 3.7 billion USD) had been lost through looting, wanton destruction and sabotage. Gangs of young men also took advantage of the situation and effectively paralyzed the country's road network by barricading roads, harassing, robbing and assaulting motorists and travelers. The situation also disrupted the flow of goods from Kenya to the neighboring countries of Uganda, South Sudan and Rwanda.

Distribution by Presence of Government and Non State Actors in Promotion of Human Rights



Source; Author Survey, 2010

According to the pie chart above 87% percent of the respondents think that there is a strong presence of Government and Nonstate actors' efforts in promoting human rights, while 13% think that there is no strong presence of Government and Nonstate actor's efforts in promoting human rights. This could be attributed to the changing picture of promotion of human rights in Kenya between Moi and Kibaki regimes.

Some respondents said that, The Kenya Government established the Kenya National Commission on Human Rights (the Commission) which is an autonomous National Human Rights Institution established by an Act of Parliament in 2002. Its core mandate is to act as a watchdog over the Government in order to further the protection and promotion of human rights in Kenya. Many countries have similar bodies. The experts also said that the United Nations encourages Governments to create National Human Rights Institutions as a strategy towards better protection and promotion of human rights.

Other respondents also said that Kenya is attempting to abide by International Human Rights Standards by submitting reports for example. According to the International Covenant on Economic, Social and Cultural Rights, which entered into force 3rd January 1976, Part IV ¹⁸², the States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein. In view of this Kenya submitted 'Kenya state report for the first substantial period as required by International Covenant on Economic, Social and Cultural Rights (ICESCR) in June 2008. The fact that Kenya is making a submission is in itself illustrates that the government now realizes the importance of state reportings as a means of international supervision, monitoring and accountability for the enforcement and compliance with human rights obligation.

Most respondents feel that Kenya has improved its human rights situation as Kenya has ratified a number of international conventions on human rights law as indicated in the table below. Table 1: Some Human Rights Instruments Ratified by Kenya

Human Rights Instrument	Date of Ratification
1. Covenant on Economic, Social and Cultural Rights	January 3, 1976
2. Covenant on Civil and Political Rights	March 23, 1976
3. Convention on the Elimination of all forms of Discrimination Against Women	April 8, 1984
4. Convention on the Rights of the Child	September 2, 1990
5. Convention Against Torture and other Cruel and Inhuman Treatment	March 23, 1997
6. Convention on Elimination of all Forms of Racial Discrimination	October 13, 2001

Source: United Nations High Commission for Human Rights
<http://www.unhchr.ch/pdf/report.pdf>

¹⁸² International Covenant on Economic and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16th December 1966

On the side of Non State Actors (NSA) most respondents said that CSOs have provided the intellectual leadership in the campaign for a new constitution in Kenya since the early 1990's.¹⁸³ In an ambitious project aimed at reconstructing the state through constitution making, the Citizens, Coalition for Constitutional Change (4Cs) took leadership of the project for constitutional change and incorporated into its coalition women's organization, youth groups, church groups and trade unions. The 4C's brought together many groups, including Law Society of Kenya, the International Commission of Jurists (ICJ), FIDA Kenya, the National Convention Assembly (NCA), the National Convention Executive Council (NCEC) to form a social movement for constitutional reform. This movement was instrumental in the formation of the Ufungamano Initiative, a civil society citizen effort for a new constitution.¹⁸⁴ There is therefore no doubt that CSOs came together most times risking life in the 1980 and 1990s to campaign against torture, corruption, impunity and lack of academic freedom and democratic governance.

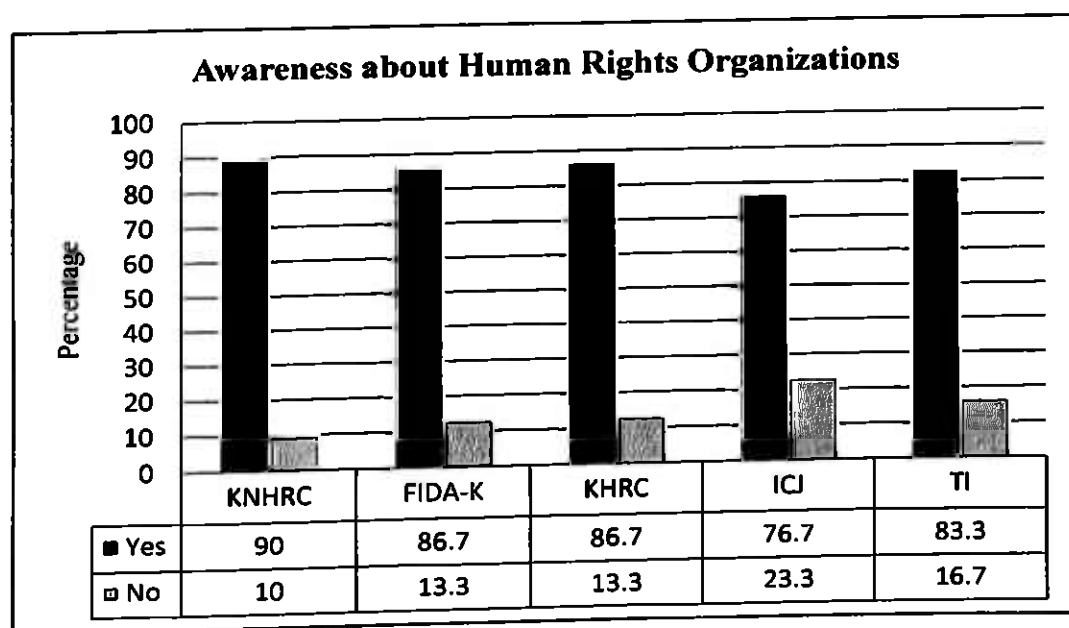
Other respondents said that GBM, a citizen's environmental group with over 100,000 members, expanded its advocacy and embraced a broad area of rights in early 1990. GBM was led by Wangari Maathai, the core business is to plant trees; however, its large membership enabled civic education on a variety of citizens rights and its members are among the most enlightened on human rights issues. The movement worked with the Public Law Institute (PLI) another public interest group, to bring a case against KANU, the ruling party, and the government, to cease the irregular acquisition of public land to erect party headquarters in historic Uhuru Park.

¹⁸³ Willy Mutunga, *Constitution Making from the Middle: Civil Society and Transition Politics in Kenya 1992-1997* (Nairobi: SAREAT; Harare: MWENGO, 1999).

¹⁸⁴ *ibid*

In December 2002 general election campaigns many civil society groups threw their energies and resources behind what they perceived to have been the democratic alternative to KANU and openly supported the opposition forces. In October 2002, the Kenya Human Rights Commission, publicly endorsed the National Alliance Party of Kenya (NAK). Others like FIDA, its members, employees and elected officials, volunteered their time and resources to run the National Rainbow Coalition (NARC) campaigns and training sessions under the guise of lobbying and advocacy. Citizens groups like the NCEC become members of the political coalition and eventual ruling party NARC.

Distribution by Awareness about Human Rights Organization

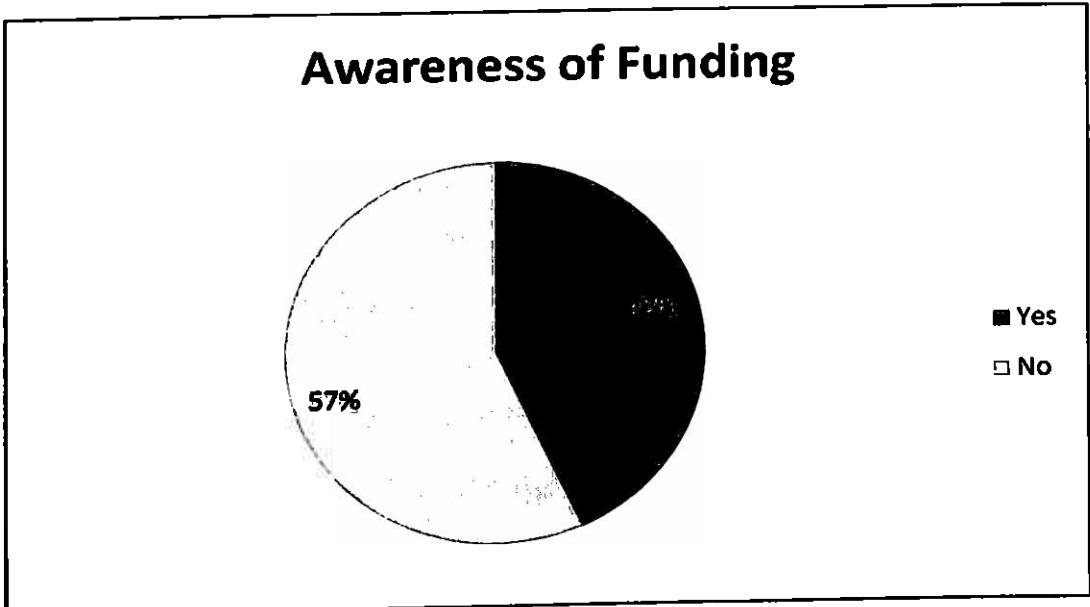


Source; Author Survey, 2010

From the chart above, the level of awareness of specific organizations which promote human rights was 76.7% and above. The organizations that respondents were 90% aware about was the Kenya National Human Rights Commission, followed by 86.7% awareness was on FIDA -K and Kenya Human rights commission, and the organization whose awareness was the

least included International Court of Justice (ICJ). Others that were not asked in the questionnaire but the respondents were highly aware about include Green Belt Movement, Undugu Society, Hakijamii Trust. This implies that the public are highly aware about the CSOs. This could be attributed most respondents who were interviewed and administered questionnaires were working for private sector and were university graduates.

Distribution by Awareness of Funding



Source; Author Survey, 2010

The pie chart above states that 57% of the respondents were not aware about the funding of the human rights organizations while 43% were aware about it. Most who said they were aware were the experts citing Bilateral Development Organizations of industrialized states such as the United States Agency for International Development (USAID), Swedish International Development Agency (SIDA) and their British DFID, Canadian International Development

Agency (CIDA), German, Norwegian and Danish to support development and democratization whilst most of the public however, were not aware of who is funding the human rights organizations. This therefore implies that the public is unaware about the central actors in the promotion of human rights in Kenya

Most of the experts interviewed said that these donor organizations have their agendas which is to construct the nature of the African state and its institutions. Few are concerned with its citizens and the building of citizenship and most have calculated formal interests in foreign governments. Donors influence democratization most commonly by communicating their opinions and preference, through means such as publications and policy statements. Often they offer specific advice to governments and also to other actors like NGOs, euphemistically referring to this as 'policy dialogue'.

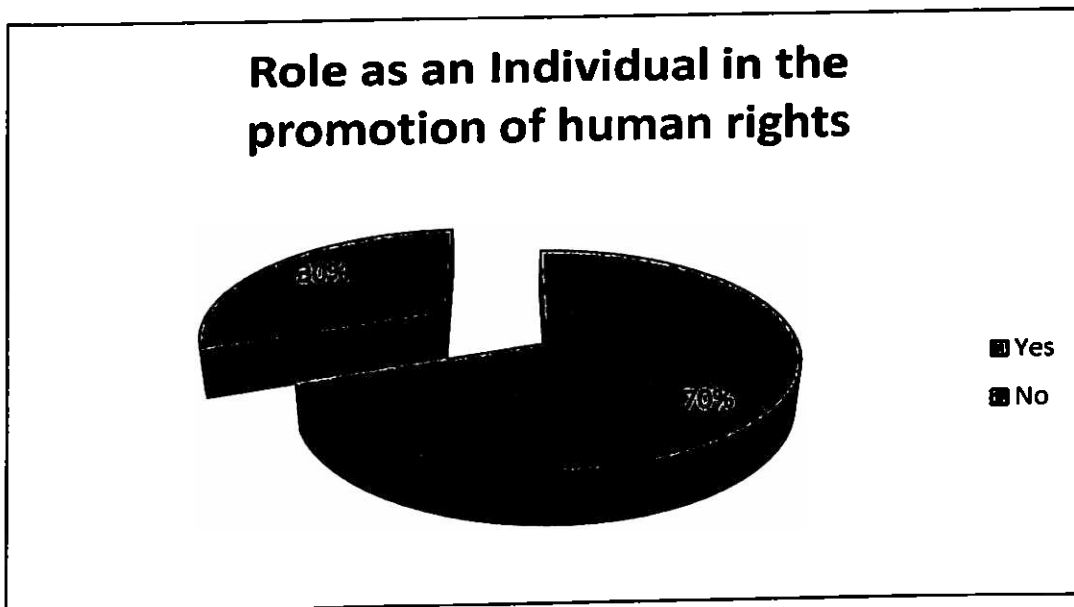
By promoting dialogue donors influence agendas and therefore outcomes, making more probable certain reforms, but also discouraging or even preventing other changes or results. For example, Between 1992 and 2002, President Moi and KANU remained in power, legitimated by deeply flawed multiparty elections held in 1992 and 1997. Both times donors took strong measures to make sure that, regardless of such egregious practices elections would be held as scheduled, that all major parties would participate and that, and once endorsed by the international observers, election results would be contested only through judicial channels however, between elections donors virtually withdrew from the political arena.

This focus away from politics allowed the Moi regime to act with relative impunity on a number of issues. As a result, donors wound up helping to keep Moi and his party in power. Donors, therefore, periodically played important roles, sometimes furthering democratization

and at other times preventing it from entering a phase where change would be more radical and unpredictable.

Therefore, these financial sources have their own priorities and agendas and thus tend to be quite capricious in terms of commitment on the long term posing a challenge to HRNGO who heavily rely on donor funding from international sources. This kind of dependence according to experts leads to many of the organizations having to disrupt the running of their programs disabling taking advocacy work to the next level.

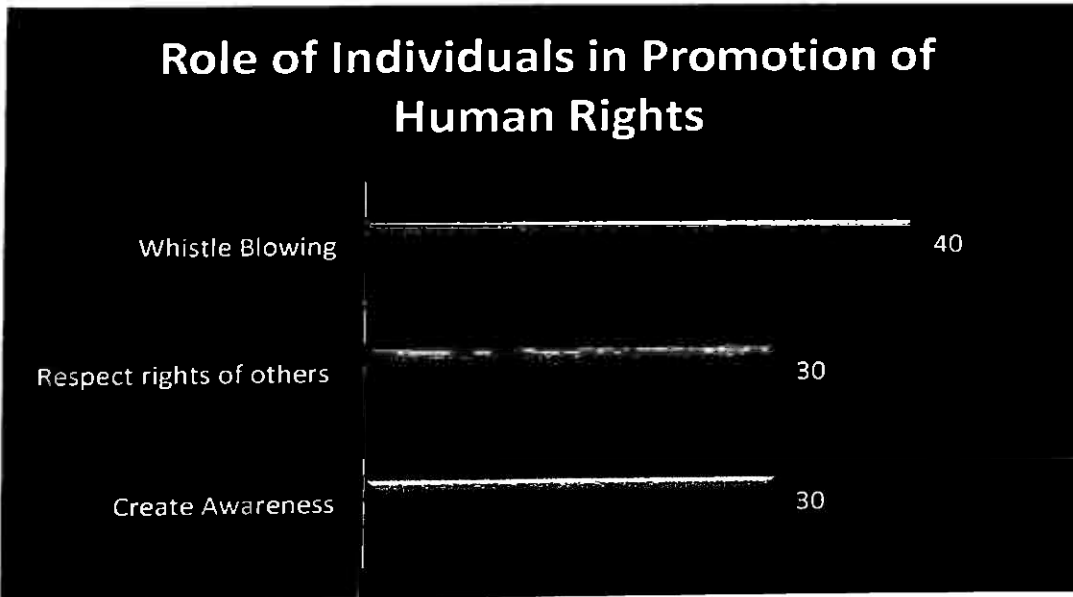
Distribution by Role as an Individual in the Promotion of human Rights



Source; Author Survey, 2010

According to the pie chart above 70% of the respondents said that they have a role as individuals in promoting human rights while 30% said that they don't have a role as individuals in promoting human rights. This implies that the public and experts feel that role of promoting human rights does not only lie with government but also with individuals.

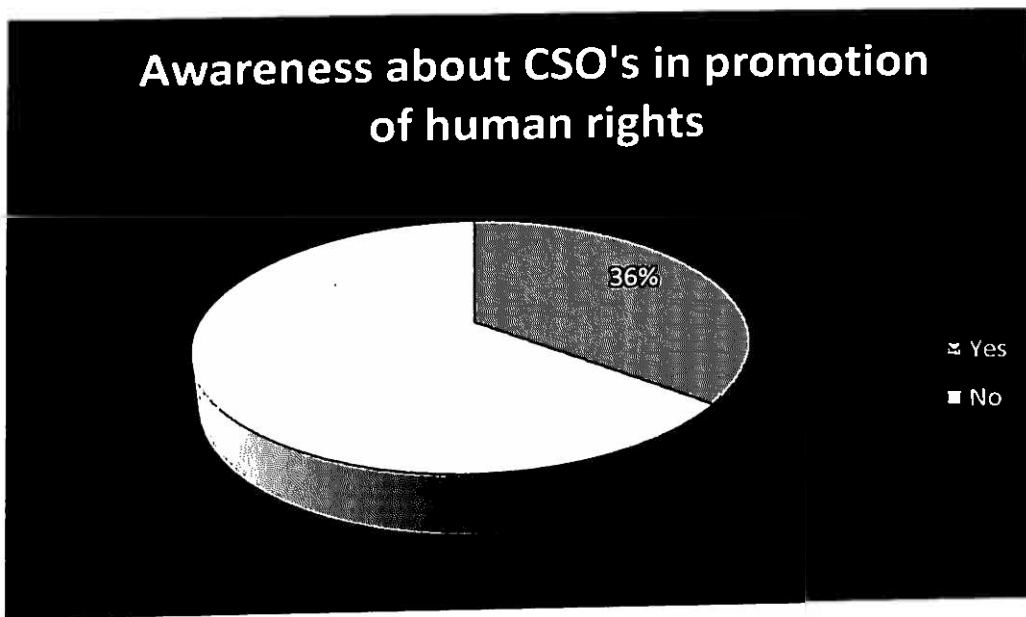
Distribution by Role of Individuals in Promotion of Human Rights



Source; Author Survey, 2010

According to the bar chart above 40% of the respondents said that whistle blowing is a way they can promote human rights violation of human rights, while 30% state that their role as individuals is to respect the right of others, whiel another 30% stated that they have a role in creating awareness.

Distribution by Awareness about CSO's in promotion of human rights



Source; Author Survey, 2010

According to the pie chart above 64% of the experts said that CSOs do not promote human rights, while 36% said that CSOs effectively promote human rights. This implies that both the public and experts feel that CSOs do not promote human rights adequately. Some of the reasons cited by both public and experts include:

Respondents interviewed stated that formation of HRO in the country is not an organic process derived from concrete local struggles, but is externally driven hence its inability to respond concretely to the realities on the ground.

As discussed above respondents stated that there is less advocacy on 'what' and 'how' of the ECOSOC rights, yet the lack of advocacy of the said is the source of many of the problems that Kenya faces today, for example, the murder and mayhem of the so called ethnic clashes in the 1990's were inextricably bound up with the land question in the country. The interventions of

Human Rights organization including (KHRC) at that time was fact-finding missions in the conflict-hit areas as well as peace building initiatives. Kenya Human right reporting at that time focused mainly on grim statistics the so called body counts catalogeung the violations of civil and political rights, without analyzing the context or addressing seriously violations of ecosoc rights. Yet ECOSOC rights like

Preamble

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Article 1 (2), *In no case may a people be deprived of its own means of subsistence,*

Article 2 (2) *The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

The above stated ECOSOC rights have been violated. Lack of finding a permanent solution through advocating to locals ‘what’ are ECOSOC rights and ‘how’ can they be achieved from the government and Non State Actors as they are important actors in promotion of human rights consequently led to yet another genocidal ethnic violence after the 2007 disputed elections.

Secondly, most respondents including the experts said that Human Rights Organization lack strategies and methodologies of implementing theoretical needs of international human rights standards into practice. For example, UDHR are international standards of human rights, however, the strategies and methodologies adopted by HRO for implementing these rights are contradictory bringing out the difficulty of implementing UDHR especially the ECOSOC rights amidst dire economic circumstances.

For example, the strategy employed by HRNGO to promote ICCPR is for the most part, that governments and other people generally refrain from interfering with individuals freedoms and liberty while the focus of second generation of rights on the other hand, is to require the state to act robustly to ensure the actualization of these rights. This therefore indicates that HRO have contradictory strategies and methodologies to push for realizsation of ICCPR and ECOSOC rights yet they are all within UDHR.

In other words political and civil rights are not difficult to institute. For most part, they require governments and other people generally, to leave an individual alone. While economic and social rights require that the state be robustly involved in actualizing them. Experts therefore point out that the Kenyan government and those of African in general where industrialization is in its embryonic state be called to provide social security and economic welfare for millions of their largely unemployed citizens is unattainable. Yet at the same time,

According to article 16 and 17 of ECOSOC rights,

The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein

Kenya made a submission of the report in 2008, indicating that the government realises the importance of state reporting as a means of international accountability for the enforcement and compliance with human rights obligations.

While according to Article 18 of the ECOSOC

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Specialized agencies in this case are HRO, In view of this, most CSO including KHRC, ICJ and FIDA in the report following the report in 2008, made a parallel report blaming the government of poverty, inequality, corruption which pose greatest challenges to the realization of ecosoc rights in Kenya. Therefore, under Article 18 of ECOSOC rights, as specialized agencies they report on high level of poverty, corruption by the state, instead of working together as partners to realize the actualization of ECOSOC rights, as Kenya is a developing country and is need of support from NSA to realize international standards.

Thirdly, there is alienation of NGOs from grassroots. This is attributed to the elitist, aristocratic nature of NGO leadership. Legitimacy is a multifaceted concept that encompasses morality, knowledge, performance and politics. Human rights NGO need to cultivate legitimacy

in all these contexts. Micheal Edwards has written that legitimacy is generally understood as the rights to be and do something in society- a sense that an organization is lawful, admissible, and justified in its chosen course of action.¹⁸⁵ There are four categories of legitimacy of civil society that have been identified by researchers in the field: Legal, moral, Knowledge./expertise/performance and political.¹⁸⁶

Legal legitimacy, refers to the organizations compliance with legal requirements such as constitutions and by laws. This base of legitimacy means that civil society organizations comply with statutory requirements such as establishing boards of directors and adhering to auditing and reporting procedures. Moral legitimacy are based on a groups ability to speak for the 'people' and to effectively represent their values.¹⁸⁷ For example, the campaigns to halt the politically instigated massacres prior to the 1992 and 1997 elections in Kenya were the moral responsibility of every human rights organization.

Knowledge/ Expertise/ Performance legitimacy, Knowledge and expertise is an important base of legitimacy, for all human rights NGOs. Donors are particularly fixated to this base of legitimacy. They want to know that the NGO has the expertise to undertake the proposed program work. Donors therefore tend to support human rights NGOs led by academicians and lawyers. This assures the donor that it will receive a useful and competent report at the end of the reporting periods. Political legitimacy, is the most important base of legitimacy for example, where the state is non-existent, or has failed, or is illegitimate, then civil society organizations

¹⁸⁵ Micheal Edwards, *NGO Rights and Responsibilities: A New Deal for Global Governance* (London: Foreign Policy Centre, 2000)

¹⁸⁶ L. David Brown, *Civil Society Legitimacy: A Discussion Guide*, in *Practice Research Engagement for Civil Society in a Globalizing World*, ed L. Brown Hauser Center for NonProfit Organizations and CIVICUS: World Alliance for Citizen Participation (Cambridge, Mass: Hauser Center, 2001)63- 80

¹⁸⁷ Mutunga, *Constitution Making From the Middle, Civil Society and Transition Politics in Kenya 1992-1997* (Nairobi: SAREAT; Harare: MWENGO, 1999).

involved in governance and human rights must fill the void left by the state. Citizens will confer political legitimacy on groups that perform tasks that the state is either unable or unwilling to undertake. Other forms of legitimacy arises from the internal processes of participation of the membership of NGO and the extent to which these groups are transparent and accountable to the people they represent. Organizations with this type of legitimacy are often credible NGOs in society.

Economic and social rights call for “reasonable” program to ensure that individuals do not fall below a certain threshold. HRO in Kenya have adopted the threshold developed by the United Nations in terms of the amount of American dollars spent per day. Most respondents said that this should be calibrated to reflect living costs at the National, regional and local levels. As a poor person in Nairobi Laini Saba, Mukuru Kayaba, and Mathare Area 4 is different as he has access to resources due to being near the capital city while the poor in Kondele in Kisumu, Kaibichbich in Pokot, Kaya Bombo in Kwale, and Lokichar in Turkana is different as his needs are different from the poor in the capital city.

HRO are therefore incapable or reluctant to conceptualize the differentials in the relative deprivation of the urban poor and the rural poor. This kind of trend some experts said could be a consequence of the elitist nature of their own orientation; or their investment in status quo, they are blinded by their own location in the big cities in the country. Bringing their Legal, moral, Knowledge,/expertise/performance and political legitimacy in question.

Fourthly, their promotion of human rights is adhoc and lacking strategic direction, the 2007 political crisis has presented unprecedented challenges to the work of human rights groups, bringing their very relevance into question The reaction from human rights groups to the crisis

has so far been ad hoc and lacking in strategic direction. Arguments have even been advanced that the seeming disarray in the human rights movement, and its problematic response, may push it towards irrelevance. Genuinely confronting this disturbing scenario presupposes the admission that institutional failure is a problem in many human rights groups, not simply a crisis in public institutions. Clearly, some human rights groups have been unable to remain neutral and non-partisan in the run-up to the past two multiparty elections, a fact which points to some level of institutional failure and partly explains the lack of strategic direction within the human rights movement. Success for human rights groups has generally remained in the realm of unidimensional, uncomplicated project-based initiatives. Situations which call for multi-dimensional and interdisciplinary approaches appear to be too complicated for most human rights groups. Not sufficiently attentive to the early signals of trouble? There seems also to be a problem of sustaining human rights advocacy in times of crisis. While the advocacy efforts of human rights groups during the violent elections of 1992 and 1997 were commendable, their response this time around perceived as less vigorous.

Fifthly, experts said that causes of conflict in view of violations are not analyzed and its causes are not addressed by CSOs whose role here would be to find a long lasting solution to the land problem to highlight the circumstances under which ECOSOC rights are violated and also investigating or campaigning against such abuses.

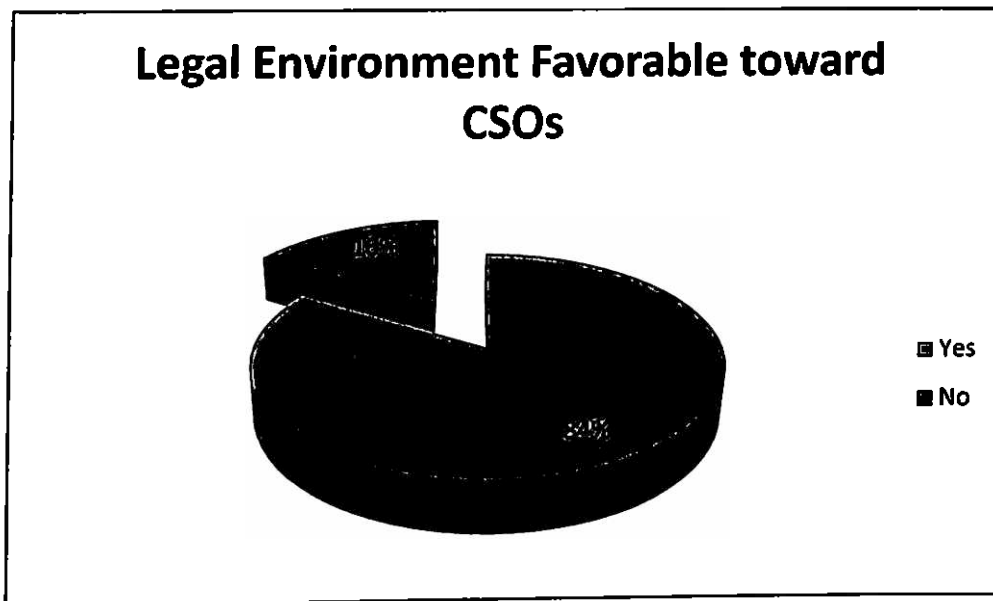
Kenya Human Rights official said that causes of human rights violations is still inadequate in Kenya as there still exists lack of monitoring tool to monitor rights. Monitoring tools help the government to act on the causes of the human rights violations. It can also help

the international community to monitor violations of ECOSOC rights and find solutions to problems that the government has been unable to solve.

The current monitoring tool used by KHRC is the 'trickle up' empowerment. The idea here is to empower communities to frame their issues select their approaches and have them pushed by right catechists from below. Previously, KHRC used the trickle down model where KHRC empowered a selected groups of rural elite and expected that to percolate to the empowerment to communities. The 2001 evaluation of the organization KHRC showed that this model led to the creation of community gate keeper' who commercialized rights advancement. In view of this, KHRC has now adopted the trickle up model having borrowed this practise from India.

The human rights monitoring is being faced by three challenges in Kenya, the first is to do with the information use. The question here is monitoring for what? Information generated from this activity is put into a publication. And although action is taken on some violations, there is little evidence that the documented abuses are ever acted upon. Besides, the violated have to wait until this publication is done for them to access justice. The second in the design toll itself, according to Consultant report, KHRC officials cannot even describe the 'tool' itself. The third challenge of monitoring of rights is the balance between rights monitoring, and defence. The consultant report got the impression that the role of human rights defenders was more pronounced compared to that of monitoring. As a result there is more rights arbitration and documentation of patterns of violations. While it a good thing, it is limted, that is , it deals with violations of all rights, but not to lobby government to act on these causes.

Distribution by the awareness of legal environment favorable towards CSOs



Source; Author Survey, 2010

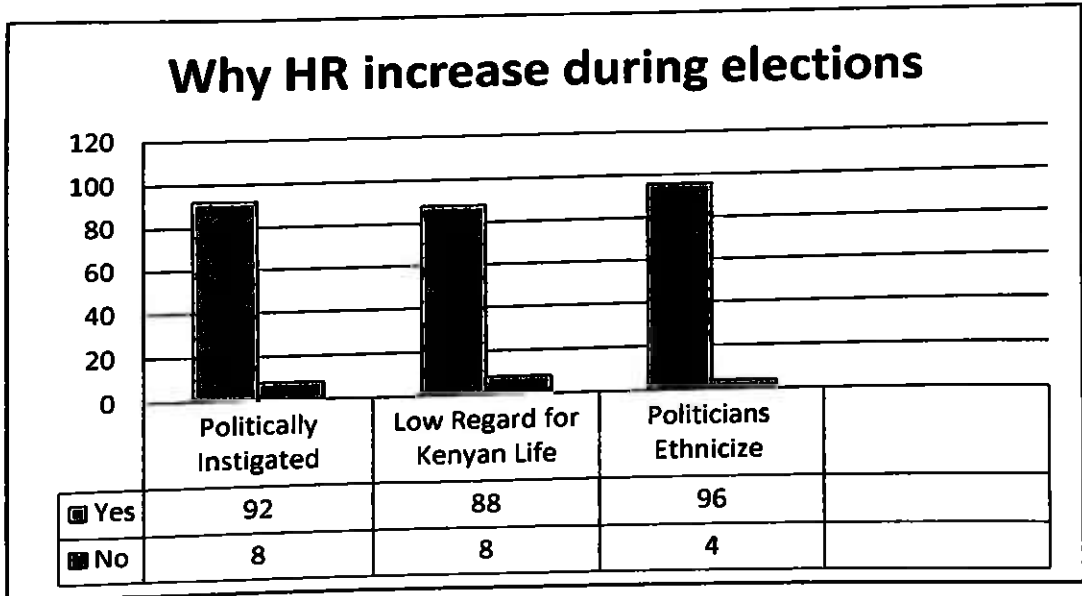
From the pie chart above 84% of the experts said that the legal environment is good towards CSO while another 16% said that is not good.

The government has allowed the establishment of HRNGO for example, in the eighties there existed tension between NGO and the State due to the burgeoning NGO sector as the government saw the springing up many NGOs as way of losing sight of the main challenges of development in the country and duplication of efforts. Therefore the government at that time insisted on NGO coordination and control. NGOs were registered under Societies Act, and

were placed under the Ministry of Culture and Social Services. Many also operated under the Companies Act, the Trustee Act, or with other protocol arrangement with the Ministry of Foreign Affairs (MFA) or Ministry of Planning. Moreover their priviledges and services were administered by scattered agencies, such as the immigration and customs departments, this situation made it difficult for NGOs to perceive themselves as one community, and they remained unorganized and inarticulate.

However, in 1992 the government introduced the NGO legislation which provided a single law that would govern the whole sector, rather than the varied legal regimes under which NGOs previolsy operated. It thus gave them a recognized legal status, with a standard legal definition as corporate bodies. It also established an executive directorate called the NGO bureau, which would oversee the administration of the NGO sector, including registraiton and coordination. This consequently opened space for Non State Actors to air their views without state interference.

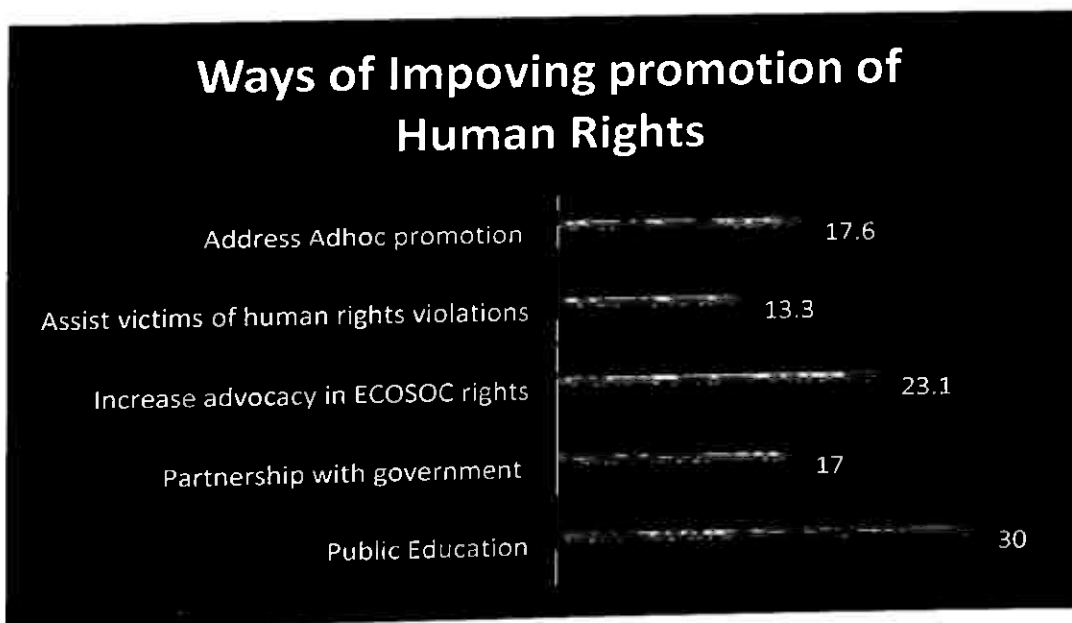
Distribution by Why human rights increase during election period.



Source: Author Survey, 2010

From the bar chart above human rights violations increase during electioneering periods because 96% of the experts think that politicians ethnicise the whole process of elections, 88% of the experts think that the politicians have low regard for Kenyan life violence is politically instigated, while 92% state that they are politically instigated.

Distribution by ways of improving promotion of human rights



Source; Author Survey, 2010

The bar chart above states that 30% of the respondents said public education on human rights needs to be done especially at the grassroots level, 23.1 % of the respondents said that the NGOs need to increase advocacy in Economic Social and Cultural rights (ECOSOC) rights, another 17.6% said NGOs promoting human rights lack focus in promotion of human rights, and therefore need to address ad hoc promotion of human rights, 17% also said that NGOs need to partner with the government as as much as NGOs emphasize their distance and

independence from national government they at the same time it is the actions and activities of these governments that are the cause and purpose of their existence, without government there would be no NGOs.

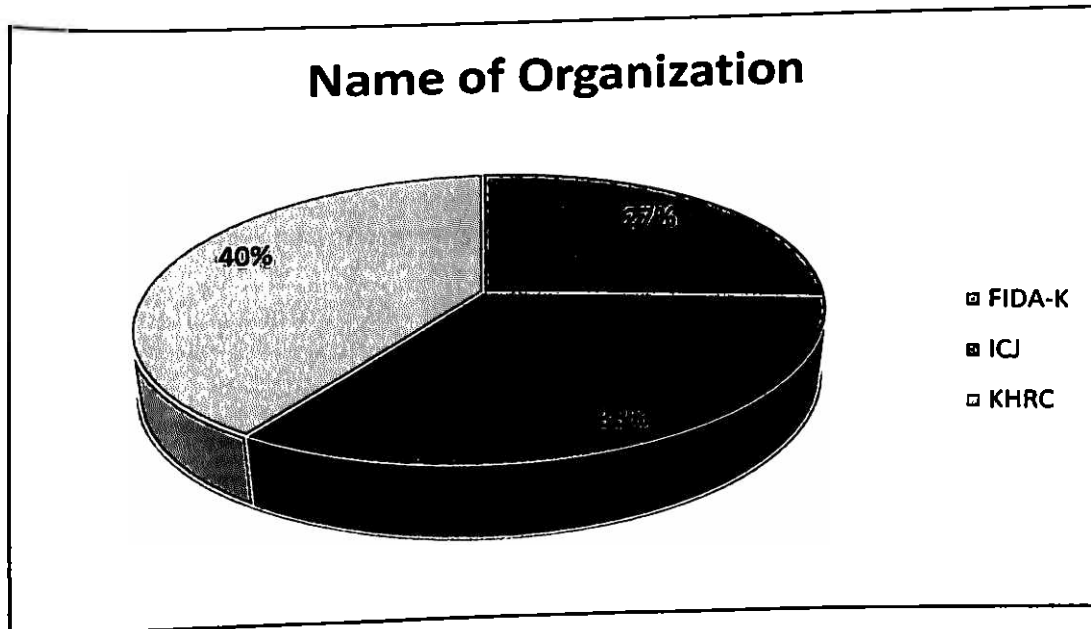
Provide reliable information to the government is a preconditioned to be fulfilled for any NGO to have an impact. NGO must have access to the government officials to make them aware of their views. Access can mean that the organization can call an official on the telephone to make him or her aware of new information, put in written form engage in a formal and informal conversation in order to raise the matter at the ministerial or cabinet level or at intergovernmental meetings.

Assist victims of human rights violations, There is concern that human rights groups have been unable to fraternize freely with the victims of human rights violations. Perhaps human rights groups have alienated themselves and their interventions from the people who need them most. In fact, it can be argued that the human rights movement is guilty of operating within a self-delineated comfort zone that tempts it to intellectualize the problem of violence instead of offering concrete, practical and realistic interventions for advocacy. There may be a social class issue here that has not been addressed hence the "distance" between human rights groups and the intended beneficiaries of their work.

As the recurrent political crisis has presented unprecedented challenges to the work of human rights groups, bringing their very relevance into question.

The Third section of the chapter deals with responses from the Civil Society Organizations Case Studies

Distribution by Name of Organization



Source; Author Survey, 2010

From the above pie chart 40% of the respondents were from Kenya Human Rights Commission, 33% were from International Commission of Justists (ICJ) while 27% were from Federation of Women Lawyers (FIDA-K).

Officials from Kenya Human Rights Commission said that objective of KHRC include reducing human rights violations in Kenya, Strengthen the human rights movement in Kenya, Hold state, institutions and individuals accountable for human rights violations, raise awareness of human rights in Kenya, and place Kenya on a truly democratic trajectory, objectives of ICJ K include Policy research and Advocacy, Judicial reform programme, human rights education, and International Cooperation while the objectives of FIDA K include firstly, to provide legal advise

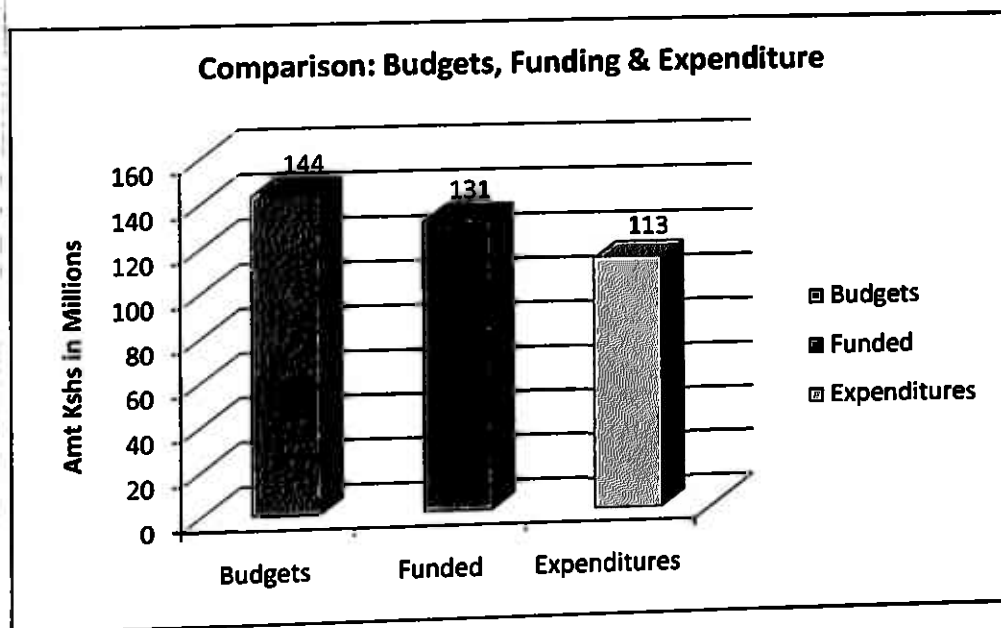
and legal representation to women¹⁸⁸, also known as Access to Justice to Women. Secondly, to monitor women rights, Thirdly, to Intensify the struggle for participation and involvement by women in the government machinery, fourthly, pressure the government to be responsive to women needs, fifthly, Monitoring elections. FIDA Kenya monitored the 1992 and 1997 General Elections.

Most of the respondents from the three case studies said that the objectives of the organizations are progressively being achieved. However, the organizations face challenges in order to realize some of the objectives most highlighted the following challenges:

Dependence on foreign donors, respondents from KHRC said that most HRO in Kenya depend on donor finances such as DANIDA, Finnish, Ford, citing the example of KHRC, KHRC End Year Core Donors' Reports, 1st March 2008 to 31st March 2009, the total budget for the year was one hundred and forty four million shillings (Kshs. 144m), of which one hundred and thirty one million shillings(Kshs 131m) was funded and comprised 91% of the budget as illustrated below:

¹⁸⁸ Federation of Women Lawyers- Kenya, Staking our Claim, the 2002 FIDA Kenya Annual Report on the Legal Status of Women. (The Women's Rights Monitoring and Advocacy Programme (FIDA), 2002) p. iii

Distribution by Budget of Organization of KHRC of 2008- 2009



Source; Author Survey, 2010

Such fundings have an effect on organizational workings of HRO, as such HRO tend to adjust their programmes and organizations to the interest of donors.¹⁸⁹ For example, Kenya lacks a supportive climate that enables Lesbians Gay Bisexual Transgender and Intersex groups to organise, mobilise and fundraise for activism. Moreover, the space to dialogue and act around issues of sexuality is currently very constrained and rife with cultural, religious and political (LGBTI) fundamentalism which suppresses freedom of expression in the region.¹⁹⁰ Accordingly, the Commission has now made the commitment to focus on sexuality and reproductive rights as top priority, particularly the rights of those who are invisible within the public sphere due to victimization and/or stigmatization.¹⁹¹

¹⁸⁹ Christopher Sabatini, *Whom Do International Donors Support in the Name of Civil Society, Development in Practise*, Vol 12 No.1 February, 2002 pp. 7-19

¹⁹⁰ Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) project. <http://www.khrc.or.ke/?e=25>

¹⁹¹ *ibid*

Donor organisations and activists working on LGBTI issues include Ford Foundation, Novib amongst others.¹⁹² LGBTI grantmakers tend to support national advocacy efforts, direct service and public education in the Global South and East. According to the End Year Core Donors Report April 2009, 23% of the total grant received during the period between 1st March 2008 to 31st March, 2009 come from the Ford Foundation, while another 8% was given by Novib, a Dutch affiliate of the international Oxfam organization. It is an association dedicated to establishing a fair world with no poverty in it. Because of the proportion of the funding towards the organizations budget, KHRC, gives top priority to sexuality and reproductive rights at the expense of historical injustices which are left untouched.¹⁹³ The realities on the ground facing kenyans include its inability to confront deep-seated grievances and historical injustices , one being landownership issues, where communities that have had greater access to presidential power are the beneficiaries of favoritism leading to inequality along individual, regional and ethnic lines also there have been serious human rights violations, committed both by state agencies and by powerful people, that have for too long been swept under the rug. All this consequently plays a role in intensifying post election crisis leading to violation of right to life.¹⁹⁴

KHRC, giving top priority to sexuality and reproductive rights at the expense addressing historical injustices and realities on the ground only proves to the fact that these international donor agencies create organizational distortions that distract CSOs from their primary constituency, whose focus is the poor. As the funds are tied to conditions such as assistance reporting, organizational development, among others which distract NGOs from their original

¹⁹² Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Grantmaking in the Global South and East, Calender Year 2005, http://www.siyanda.org/docs/LGBTI_global_gaze_compressed.pdf

¹⁹³ Maina Kiai, The Crisis in Kenya, *Journal of Democracy*, Vol. 19, No. 3, July 2008, pp. 162- 168. (John Hopkins Universitu Press)

¹⁹⁴ *ibid*

mission. With such tendency there is a risk that groups become more accountable to international donors what Edward and Hulem term as 'upward accountability' rather than to their base what they term 'downward accountability'.¹⁹⁵

Most of the respondents stated that the human rights discourse in Kenya and East Africa is episodic as most documentation on human rights is in the form of bringing violations to attention following an episode / incident. For example, in 2004, due to escalating incidence of rape, where violent crime of robbery and car jacking takes place someone would be raped. Stories of children attacked and raped appeared in the newspaper daily.¹⁹⁶ Sickened by what had become a norm there was a concerted call among human rights organizations especially FIDA-K, for a law providing for so-called 'chemical castration' of rapists. This solution according to the respondents is justifiable according to the Hammurabian sense of justice of 'an eye for an eye and tooth for a tooth' but it does not address the problem, the critical question to address the problem remains: what are the socio-economic contexts and cultural milieus that inform the perpetration of such heinous acts? What social forces drive a man to rape a woman, a toddler, or to commit incest? Unless these fundamental questions are systematically and objectively addressed through social scientific research, it is highly unlikely that the evil of rape as well as the issues of polygamy, bigamy and gender discrimination can be effectively dealt with beyond the palliatives of counselling of victims and provision of legal assistance the way FIDA-K do.¹⁹⁷

¹⁹⁵ Edwards, et al, *'Too close for comfort? The impact of official aid on non-governmental organizations'*, *World Development* 24 (6): 961- 973

¹⁹⁶ Katherine Arms, *Chemical Castration touted for Kenya rapists*, United Press International- October 29, 2004.

¹⁹⁷ Wanjala S. Nasong'o, *The Human Rights Sector in Kenya. Key issues and Challenges*, Occasional Paper No. 2, Kenya Human Rights Institute, 2009.

Some state that such episodic approach may be a result of lack of continuity in funding as most NGOs involved in development adopt project financing mode whose work hardly features “emancipatory” issues (for example. land reform or empowering under previledge groups) but instead focus on “modernization” projects such as family planning and chemical castration.¹⁹⁸ This leads to a situation in which donors finance NGOs “for what they do- implement projects- rather than what they can be politically pluralizing entities”.¹⁹⁹

Good leadership remains a challenge to Civil Socceity Organizations, well endowed NGO is transformed into an activist organization is whether the organizations leadership often very personalized chooses to commit its resources to a progressive political agenda.²⁰⁰ According to Jackson and Rosberg “personal rule”²⁰¹ refers to a system of governance under which the ruler determines the issues, rules, and often the outcomes of political relations. Although this model was developed and has been widely applied with regard to the African state, it has been discussed in relation to organizations in Civil Society as the role played by leaders is important in determining the political direction taken by civil society organizations.²⁰²

Most respondents interviewed stated that NGO’s organizational power derives from increased development resources which is dependent on and resides primarily in the NGO leadership. The choice of whether to turn this organizational power to oppose a repressive state is soley in the hands of organizational leaders. The willingness of leadership of HRO to use

¹⁹⁸ Alan Fowler, The Role of NGOs in Changing State- Society Relations: Perspectives from Eastern and Southern Africa” Development Policy Review 9(1): 53-84

¹⁹⁹ Stephen N. Ndegwa, *The Two Faces of Civil Socceity, NGOs and Politics in Africa*, (USA: Kumarian Press, 1996) p 16

²⁰⁰ Stephen N. Ndegwa, *The Two Faces of Civil Socceity, NGOs and Politics in Africa*, (USA: Kumarian Press, 1996) p 16

²⁰¹ Robert Jackson and Rosberg Carl, *Personal Rule in Black Africa; Prince, Autocrat, Prophet, Tyrant.*(Berkeley: University of California Press, 1982) pp 17-22

²⁰² Ibid- p. 12

organizational resources against the repressive state means turning the leverage drawn from resources (for example, aid donors, lobbying points and grassroots network to the effort of undermining the monolithic state. The political will stems from a fairly arbitrary element of personal leadership within civil society organization.

A number of respondents argued that the leadership structures of most of the HRO are highly questionable as they are heavily ethnicized are politically alligned and suffer from 'warped leadership' replete with emblezement of funds. By the very nature of their origin, mandate, and support, HROs and NGOs generally "have become hostages of the dynamics and forces of the same system they purport to change and have become part and parcel of the same system."²⁰³

Most respondents gave the example of importance of leadership within the Civil Society Organization by illustrating the example of Green Belt Movement (GBM) and Undugu Society of Kenya. GBM was able to pursue more forth right political challenges against the state due to unfettered personal drive of Wangari Maathai its founder and coordinator. The political decision to challenge the undemocratic state is made because of the personal initiative of its leadership. GBM challenged the Kenya government on specific issues related to the environment as well as on general issues related to governance, such as human rights as plans to convert public parks in Nairobi to underground parking, pivate plots or office complexes. For instance, Jevanjee Gardens which was a gift to the city of Nairobi from a prominent Asian Business Family was a favorite spot for lunchtime relaxation and for street preachers. The said plot was to be allocated to unamed private developer for the construction of a shopping mall. GBM was against the construction basing its stand of environmental shortsighted ness of the plans..

²⁰³ Interview 2010

The initiatives including the Uhuru Park saga, required writing numerous letters to government officials, issuing press statements, instituting civil suits or lobbying private developers and financiers both local and international. Much of this was pursued by Maathai. Since, such public protests or advocacy efforts were invariably perceived as outright challenges to the state and Moi regime and had suffered official harassment for its antigovernment stands, such as its close association with oppositional politics. State harassment was directed to both Maathai who was once arrested and beaten unconscious for opposing the single-party state.²⁰⁴

Undugu Society on the other hand is an example of an NGO that was heavily ethnicized and politically aligned, demonstrating that CSOs were not necessarily at the forefront of challenging the repressive state in Africa. It suggests that certain actors in civil society do not seek to oppose the repressive state but instead seek accommodation with it. Undugu Society of Kenya whose core mandate is sensitization of community to the object poverty of many slum dwellers and to stimulate actors such as the government to intervene.

Undugu's board constituted of persons connected with government, Ezra Mbogori, Amos Wako and A.B.N. Wandera, Vice Chair and former Ministry of Culture and Social Services official. Therefore, persons connected with government, reinforced the inherited colonial structures which reinforced the class structure with the ruling elite imposing their power on majority of the urban dwellers. Deepened the gap between the haves and havenots" classes have been created which determine the level of access to competitive resources like land and public services. The 'haves' had to access land in the urban areas while the 'havenots' could only squat on public land, especially in Nairobi. This created a structure which justified provision of services for the haves, a

²⁰⁴ Ibid- p. 102

situation worsened by the high level of poverty among these "havenots" who could not even access whatever available land or services

Undugu participated in general improvement in the welfare of the community in Kitui Pumwani Program (KPP) which served three village slum in 1978 community including – kitui, Kanuku and Kinyago all situated in the Majengo Pumwani area of the eastlands of nairobi by offering materials and technical assistance to build durable houses so as to do away with paper, polyethylene structures. Undugu was however, not in a position to address the main source of insecurity that was Land tenure. For slum dwellers land remained the core issue and they saw it as one essential prerequisite to permanently elevate themselves out of urban poverty.

Slum dwellers felt that their situation would greatly be improved if they could acquire land-city plots with tenure, where they could build rental houses and their own permanent dwellings or rural land where they could individually or collectively start farming activities. Undugu 's board could categorically refuse to engage in the political maneuvers that might lead to such land grants or even to guarantees of tenure for the land the villagers now occupy.

Conclusion

The findings in the chapter point out that CSOs do not promote human rights adequately. Some of the reasons cited include poor leadership in organizations. Leadership in CSO is highly ethnicized, politically aligned becoming hostages of the same system they purport to change. For example, in 2007 crisis there was the perception that human rights groups were divided along ethnic and political lines.

That funding is a major challenge in promotion of human rights in Kenya, - the sector heavily relies on donor funding from international sources. These financial sources have their own priorities and agendas and tend to be capricious on commitments on the long term. The consequence is that many of the organizations have to quite often disrupt the running of their programs and discontinue some projects.

Inadequate monitoring tools to monitor human rights violations at the grassroots is another challenge faced by CSO's. This consequently leads to episodic promotion of human rights without analysing the situations in which they occur.

CHAPTER FIVE

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

Introduction

This study aimed to establish The Contribution of Civil Society in the Promotion of Human Rights, Case Study of Kenya 1992-2009. The three previous chapters presented findings on the specific objectives of the study. By using different methods of study, key informant interviews and case studies the study reached various conclusions in relation to its objectives.

The current chapter presents a summary of the key findings and conclusions as well as recommendations of the study. It begins by giving a summary of the key findings of the study; then proceeds to outline the conclusions and recommendations. Finally, the chapter presents suggestions on areas for further study on the issue of civil society promoting human rights.

5.1.1 Summary

The key findings are summarized as follows:

Inadequate promotion of Economic Social and Cultural Rights

The study established that there is inadequate promotion of Economic and Social Rights. HRNGO argue that Civil and Political rights are important plainly because the right to life is superior to that to holidays with pay. Establishing the right to life requires legislation against murder. Establishing the right to holidays with pay requires not only the provision of employment which is beyond the some of the World's most advanced industrial societies. By the standards of what is very important and what can be achieved now so called Economic and Social

Rights to not qualify. Human Rights are concerned with what must be honoured now not with what it might be nice to provide for some other day.²⁰⁵

International Human Rights Standards are important but need to be geared towards the domestic problem in the nation

International Human Rights Standards both the ICCPR and ESCR are important, but these are not immediately relevant unless they are used to strengthen an argument about local situations. It is therefore important that human rights groups implement human rights standards taking into consideration the realities of the people on the ground.

Donors have a far greater influence on human rights organizations than should be the case.

African Civil Society is highly dependent on donors. This influence therefore extends to how NGOs network, develop advocacy strategies and form identity and political consciousness. It also determines whether NGOs can become sustainable. Finally it distorts their vision for human rights agency and social transformation as it is the payer of the piper who calls the tune.

Delink between communities, human rights sectors and government circles in the promotion of rights

The Civil Societies need to work together with the government as CSOs have made it a habit of criticizing the government of not being able to promote human rights. There is difficulty in promoting Economic and social rights, in view of this the CSOs need to join hands together so as to enable the broader goal of promoting human rights. They should in view of this allow the local

²⁰⁵ Cranston Human Rights, Real and Supposed in Rapheal, Political Theory and the Right of Man pp. 50- 3

population to join hands with the government. There is need for some reasoned discourse amongst all concerned parties in the promotion of human rights.

Most african human rights organization are modelled after northern watchdog groups. they are located in urban areas, most are run by secretariats with governing boards that set policy , most lack membership base

Human Rights groups cannot be legitimate unless they resolve the problem of alienation and disconnection from the people they serve, their constituencies. The indigenusness of these groups, which is critical for their effectiveness and relevance, must be undergirded by moral, political, material, and ideological support from their constituents. There is need for them to open real and effective offices in rural areas with the staff and leadership drawn from these communities.

Alienation from both potential and actual victims

Problem of alienation can be addressed through the transformation of human rights NGOs into membership organizations, the criteria for the membership organizations must be strict and narrow. Otherwise tribalists, chauvanists, misogynists and anti democrats can hijack human rights. In the absence of a membership base, there is no constituency driven obligation or framework for popularizing the language or objectives of the group.

Conclusions

In response to the research hypotheses, this study reached three important conclusions as follows.

a) Non Governmental Organization are consistent in promotion of human rights

From the findings most said that CSO do not promote human rights adequately as most of the CSO are funded by external sources that consequently set the agendas for CSO in Kenya. From the findings therefore, excessive donor support for human rights organization distorts their vision, plays havoc with their loyalty and retards creativity. Most tend to report requirements arising under grant contracts. The raison etre of the African human rights movement is to fulfill such contracts rather than to service a social obligation or constituency. Therefore local human rights groups exist to please the international agencies that fund or support them. Local problems therefore are defined as potential pots of project cash not as human rights experiences to be resolved in just terms. Therefore, there is no doubt that pathological donor- donee relationships distorts NGOs mandates, confuse priorities and undermines creation of a viable legitimate human rights movement.

b) Non Governmental Organizations do not have proper channels of promoting human rights.

This has been attributed to inadequate strategies and methodologies of promoting the UDHR. There appears to be dichotomization of both ICCPR and ESCR yet both are UDHR. The strategy of promoting ICCPR is in contrast with strategy of promoting ESCR, in view of this advocacy of rights is hampered and further its implementation which is what African countries are need of.

- c) Non governmental organization face challenges while promoting human rights. HRNGOs are faced by challenges such as poor leadership. inadequate funds leading them to promoting human rights in an episodic manner.

Recommendations

The recommendations given here are a result of the researchers own analysis and observations, as well as the views expressed by those who took part in the study as respondents

1. Self criticism by NGOs will build their effectiveness and credibility – HRNGOs are not democratic institutions, HRNGOs in Kenya are self appointed, unelected usually individual driven or run by individual or elitist group that determines the agenda and priorities of the organization. HRNGOs therefore need to be accountable and transparent
2. NGOs should cultivate links with universities. Academics to be put on boards of directors where they could help develop vision, mandate, policies, of the organization, scholars in the region could create synergies between the academy and the NGO movement. For example, the relationships between universities and NGOs, particularly in the human and civil rights fields, have been critical for their vibrancy in the United States. Some of the most renowned human rights scholars in the United States either sit on the boards of leading NGOs or are regularly consulted by them. This relationship between the academy and civil society are critical because they provide the human rights movement with intellectual leadership, help it define its goals which are often complicated, and assist in unpacking the complex normative edifice of the human rights corpus. A human rights

movement without intellectual direction and guidance is rudderless and will ultimately be of very limited utility to the region.

3. It was sensible initially to mimic the scripts of INGOs when the movement in the region was at its infancy. But more than a decade later, NGOs in the region should be locally conceptualized to address conditions germane to the region. INGO were by design meant to investigate human rights violations in the third world. Since they are not resident in the region INGOs engage in human rights tourism and use a standard approach in all countries. As such their mandates are crafted as a boilerplate, a blue print that could be applied anywhere. In contrast, domestic NGOs should re-examine local demands and conditions. That is why NGOs in East Africa should re-examine their mandates to make sure that they are not trapped in biases that are external to the region.
4. Reduce reliance on external funding, most Human Rights NGOs are losing their credibility and legitimacy because of virtually relying on external support. This kind of dependence on foreign donors tends to extend to matters of intellectual and ideological direction, moral support and political orientation. Therefore independence, sustainability and legitimacy of African NGOs is questionable. Such kind of dependence leads to unequal, exploitative relationships in which they become conduits or legitimizers of the agenda of the INGO at the expense of their constituents. There is therefore need for better donor- donee relationship. But such ethics are not possible unless the parties engage in systematic, open, regular and candid conversations. The NGOs need to expand their support base.

Suggestions for further research

The area of donor donee relationship is a new research frontier. In order to strengthen knowledge dissemination especially to the wider public study in this area would be viable.

Bibliography

- Baehr Peter. and el, *The Role of Human Rights in Foreign Policy Formulation* (3rd edition) (New York; Palgrave Macmillan, 2004)
- Burton J., *World Society* (Cambridge: Cambridge University Press. 1972)
- Bernstein Tarrow Norma (ed), *Human Rights and Education*. (UK, Pergaman Press.) 1987
- Cowen M and Kanyinga K., 'The 1997 Elections in Kenya: The Politics of Commuality and Locality' in Cowen, M and Laakso (eds) *Multiparty Elections in Africa*. (Oxford; James Currey)
- Donnelly Jack , *International Human Rights*. (USA; West view Press, 1998)
- Forsythe David, *Human Rights in International Relations*.(United Kingdom; Cambridge University Press, 2000)
- Francisco Ramirez, et al., Dynamis of Citizen Development and the Political incorporation of Women" pp 59- 80 in *Public Rights. Public Rules: Constituting Citizens in the World Polity and National Policy*, edited by Connies L. McNeely. Garland Publications.
- Grigoriï Tunkin, *Theory of International Law*, (London; Harvard University Press, 1974)
- Haberson John W., "Civil Society and Political Renaissance in Africa," in Haberson et al., eds., *Civil Society and the State in Africa*, 1-2
- Herve Maupeu and el, *Moi Succession, Elections 2002*.(Nairobi. TransAfricaPress, 2005)
- Jacobson David, *Rights Across Borders: Immigration and the Decline of Citizenship*.(USA; Johns Hopkins University Press, 1996)
- Jackson S., *Social Constructivism*, (New York, Palgrave Publications, 2002)
- Kayas of deprivation, Kayas of blood: violence, ethnicity and the State in coastal Kenya' (1997); Killing the vote: State Sponsored violence and flawed elections in Kenya' (1998); 'Kayas revisited: a post-election balance sheet' (1998)
- Kenya Human Rights Commission *Biannual Human Rights Report, January – June 2008*, Special Edition on Post Election Violence. Volume 10 Number 1, (Kenya Human Rights Commission, Kenya, 2008)

- G. Stern, *the Structure of International Society*. (London; Printer Publishers, 2000)
- Goldstein Joshua S., *International Relations*, fourth Edition. (New York, Addison Wesley Longman)
- Keane John, "Despotism and Democracy: The Origins and Development of the Distinction Between Civil Society and the State 1750- 1850," in *Civil Society and the State*, ed. John Keane (London: Verso, 1988)
- Krasner Stephen D., "Structural Causes and Regime Consequences: Regime as Intervening Variables," *International Organization* 36 (Spring 1982)
- Karuti Kanyinga, in Makau Mutua (eds) *Human Rights Non Governmental Organization (NGO) in East Africa, Political and Normative Tension* (USA, University of Pennsylvania Press, 2009)
- Kajwanja P., *Politics of Marionettes*, in M Rutten, A. Mazrui, F Grignon (eds), *Out of the Court, the 1997 General elections and Prospects of democracy in Kenya*. Kampala: Fountain Publishers, 2001
- Liisa Laakso, *Insights into Electoral Violence in Africa*, in Matthias Basedau et al *Votes, Money and Violence; Political Parties and Elections in Sub- Saharan Africa* (eds) (South Africa; University of KwaZulu- Natal Press, 2007)
- Mitullah Winnie, Morris Odhiambo, and Osogo Ambani, *Kenya's Democratization: Gains and Losses, Appraising the Post KANU State of Affairs* (Nairobi, Centre for Law and Research (CLARION), 2005)
- Mutua Makau, *Kenya Quest for Democracy, Taming Leviathan*. (Kampala; Fountain Publishers)
- Mutu Athena D. a ed., *Progressive Black Masculinities* (London: Routledge, 2006)
- Mutunga Willy, *Constitution Making from the Middle: Civil Society and Transition Politics in Kenya 1992- 1997* (Nairobi, SAREAT, Harare: MWENGO, 1999)
- Murungi Betty, *Challenges facing Civil Society in East Africa* in Makau Mutua (eds) *Human Rights Non- Governmental Organization (NGO) in East Africa, Political and Normative Tension*. (USA, University of Pennsylvania Press, 2009)
- Mc Doughal M.S. and Reisman W.M., *International Law in Policy Oriented Perspective*, in Mc Donald R. and Thomson M. eds. *The Structure and Process of International Law* (London: Martinus Nijhoff, 1986)

- Nyang'oro, Julius E. ed., *Civil Society and Democratic Development in Africa: Perspectives from Eastern and Southern Africa* (Harare: Mambo Press/Mwengo, 1999)
- Paul Collier, *War, Gun and Votes: Democracy in Dangerous Places*. USA, HarperCollins Publishers, 2009
- Pennegard A.M Bolin, "Overview of Human Rights – A Regime of the UN in Gundmundur Alfredsson, et al (ads), *International Human Rights Monitoring Mechanism : Essays in Honour of Jakob Th. Moller* (The Hague; Martinus Nijhoff Publisher, 2001)
- R. J Vicent, *Human Rights and Foreign Policy*, in M.d. Hill (ed) *Human Rights and Foreign Policy* (London; Macmillan Press, 1989)
- Ramirez, Francisco et al., *Dynamis of Citizen Development and the Poltical incorporation of Women*" pp 59- 80 in *Public Rights. Public Rules: Constituting Citizens in the World Polity and National Policy*, edited by Connies L. McNeely. Garland Publications
- Shaw Malcom, *International Law*, 4th Edition, (United Kingdom, Cambridge University Press, 1997)
- Sokolowski S. Wojciech et al., "Kenya" *Global Civil Society*. Eds. Lester M. Salamon, S. Wojciech Sokolowski, and Associates, Vol. Two, Chap. 3, p. 95. John Hopkins Comparative Nonprofit Sector Project. 2004
- Smokin Wanjala and Kivutha Kibwana eds, *Yearning for Democracy Kenya at the Dawn of a New Century*. (Nairobi, Claripress, 2000)
- Tsutsui Kiyoteru, *Global Civil Socceity and the International Human Rights Movement: Citizen Partipation in Human Rights International Nongovernemental Organization*, 2004
- Vincent R.J, *Human Rights and International Relations*, (UK; Cambridge University Press, 1999)
- Young Crawford, *The African Colonial States in Comparative Perspective* 22 (New Haven, Conn: Yale University Press, 1994)

Publications

Diamond Larry, “ *Rethinking Civil Society: Toward Democratic Consolidation,*” *Journal of Democracy* 5,3 (July 1994)

On The Brink of the Precipice: A Human Rights Account of Kenya’s Post 2007 Election Violence. Kenya National Commission on Human Rights. (KNHCR), 2008.

Kenya Thabiti Task Force 2008, *Root Causes and Implications of the Post Election Violence of 2007*, (Nairobi; Kijabe Printing Press)

Kenya Human Rights Institute, Special Brief, *Civil Society Responses to the Kenyan Crisis* February 2008.

J.S Watson, *Legal Theory Efficacy and Validity in the Development of Human Rights Norms in Internatioanl Law,*’University of Illinois Law Forum, 1979

Patrick Mutahi in Mikewe Ogada (eds), *Electoral Reform in Africa, Challenges and Oppurtunities*. (Kenya Section of the International Commission of Jurists; Nairobi, 2009)

R. Houser, ‘ A First World View’, in *Human Rights and American Foreign Policy*. (eds D.P. Kommers and G. Loescher, Notre Dame, 1979

Steiner Henry J., *Diverse Partners NGO in the Human Rights Movement, the Report of a Retreat of Human Rights Program and Human Rights Internet* 1990,

Wiseberg Laurie S., “Protection of Human Rights Activist and NGO what can be done? *Human Rights Quarterly*, 13 (1991)

Journals

European Union Election Observation Mission, 2002 Kenya General Elections, 27 December 2002 Final Report

FIDH (1997), *An Unlevel Playing Field: FIDH Report on Mission to Kenya* 22nd September – 1st October 1997, Report No 250/2, November 1997.

Henry Steiner et al, *International Human Rights in Context: Law, Politics, Morals* (1996)

Human Rights Watch (HRW), *Divide and Rule: State Sponsored Ethnic Violence in Kenya*. New York: HRW 1993

Joseph K’ Amolo, African Charter Information Service. February 3 2003 [http: allafrica.com](http://allafrica.com)

Kenya Thabiti Task Force 2008, *Root Causes and Implications of the Post Election Violence of 2007*, (Nairobi; Kijabe Printing Press) pg ix

Kamau G.K, *Majimboism, ethnic cleansing and constitutionalism in Kenya*. KHRC Thoughts on Democracy Series II, April, 1994.

Korwa Adar and Issac Munyae, *Human Rights Abuse in Kenya under Daniel Moi, 1978 – 2001*. African Studies Quarterly- The Online Journal for African Studies Central Depository Unit 2002.

Makau Mutua, *Justice under Siege: The Rule of Law and Judicial Subservience in Kenya*. Human Rights Quarterly. Vol. 23, No 1 (Feb, 2001)

Rein Mullerson and el, *International in an Interdependent world*, ‘ 28 Columbia Journal of Transnational Law, 1990,

The Kenya Elections Domestic Observation Forum (KEDOF)

The Kriegler Report, Independent Review Commission Enquiring into the 2007 Election (Kriegler Commission) IREC, page 10

Treaties and Charters

UN Charter

African Charter on Human and People’s Rights

Universal Declaration of Human Rights

Newspaper

The Nation Election ’97 Website: Results

Daily Nation 7 August 1998

The People Daily January 4 2008

The Daily Nation January 8 2008. See also The Kenya Red Cross Kenya: Electoral Violence 7 January 2008 Kenya Red Cross

The Daily Nation January 8 2008

The Daily Nation January 25 2008. The Standard

The Daily Nation February 1 2008

The Daily Nation March 3 2008

APPENDICES

A. Unstructured Interview Schedules for Expert Opinion

1. What are some of the efforts you are aware about made by the government to address promote human rights in Kenya?
2. What are some of the efforts you are aware about made by non state actors to address promote human rights in Kenya?
3. Do you think Civil Socity Organizations (CSO's) effectively promote human rights?
4. Do you think the legal environment in Kenya is favourable towards CSO's?
5. Have these CSO's been consistent while promoting human rights from 1992- 2009?
6. Do you think human rights violations increase during electioneering periods?
7. Which types of violations increase during election periods?
8. Are there any success stories that CSO have achieved in the promotion of Human Rights in Kenya?
9. According to you suggest how can CSOs effectively promote human rights?

B. Unstructured Interview Schedules for Case Studies

1. What is the name of your organization?
2. What are the main objectives of your organization?
3. Has your organization achieved the above mentioned objectives?
4. What are some of the challenges being faced in your organization?
5. In your opinion tick the most common human rights violations in Kenya?
6. Are human rights violations increased during the electioneering periods?
7. The types of human rights violations increase during election periods?
8. Why according to you do such violations increase?
9. What are some of the challenges faced by your organization, when sourcing for funds?

- Scarce resources
- Competition
- Abidity with donor rules

Other please specify.....

10. Do you think the government is doing enough to promote human rights?

Yes

No

11. State reasons for your answer above

Questionnaire

My name is Shakila Kassam. I am a student at University of Nairobi (UoN) pursuing a Masters Degree at Institute of Diplomacy and International Studies (IDIS), the course is titled International Studies. Part of the course involves undertaking a research project. The title of my research is Contribution of Civil Society in the promotion of Human Rights, Case of Kenya (1992- 2009). I have therefore come up with this questionnaire to assist me achieve the objectives of the Study.

Your participation will be treated anonymously and your information will be treated with utmost confidentiality.

The Questionnaire is divided into three sections, the first section is for the general public, the second section is for Expert opinion (USAID, scholars, policy analysts) the third section targets those working in the following three Non Governmental Organizations (NGO) Federation of Women Lawyer (FIDA-K), International Commission of Jurists (ICJ-K) and Kenya Human Rights Commission (KHRC)

Section I (Personal Data)

1. Please indicate your Occupation/Position in the organization

2. Please indicate who you work for

Governmental Ministries/ Department
Non Governmental Organization
Civil Society
Private Sector
Other

3. Please indicate your age

Under 18 years
18 – 25 years
26 – 35 years
36 – 45 years
46 – 55 years
Over 55 years

4. Please indicate gender

Male
Female

5. Please indicate your permanent area of residence

Coastal Region
Central Highlands
Rift Valley

- Eastern
- Northern
- Lake Basin
- Southern

6. Level of formal Education

- Primary Level
- Secondary Level
- College Level
- University Level

Section Two

1. Are you aware of the Universal Declaration of Human Rights (UDHR) of 1948

- Yes No

If Yes, Kindly tick the key human rights provisions in it that you are aware of:

- Right to Life
- Liberty and Security of Person
- Freedom from Slavery and Servitude
- Freedom from Torture
- Right to Employment
- Right to health
- Prohibits Arbitrary Arrest
- Right to freedom of Assembly
- Right to property
- Other please specify.....

2. Have Human Rights been violated in Kenya

- Yes No

If yes kindly tick the most common violations that you are aware of

- Right to life
- Torture
- Rape
- Extra Judicial Killings
- Freedom of Expression
- Freedom of Association

Other please specify

3. Do you think that human rights are mostly violated during electioneering periods
Yes No

4. If yes, kindly tick the most common violations during the electioneering periods that you are aware of

- Increase in loss of lives
- Increase in rape
- Increase in displacement of persons
- Increase in loss of property
- Freedom of movement and residence curtailed
- Freedom of expression curtailed
- The Right to participate in governance and election
- Right to property
- Others please specify.....

5. According to you, have any efforts been made by the government / non state actors to address promote human rights in Kenya
Yes No

If yes, list some of the efforts that you are aware of

6. Are you aware of organizations that promote Human Rights in Kenya, kindly tick those that you are aware of

- Kenya National Commission of Human Rights (KNHRC)
- Federation of Women Lawyers- Kenya (FIDA-K)
- Kenya Human Rights Commission (KHRC)
- International Commission of Jurists (ICJ)
- Transparency International
- Others please specify.....

ii) What can these organizations do, to better their work,

7. Are you aware of who is funding them

8. Do you have a role as an individual in the promotion of human rights
Yes No

If yes, how can you as an individual promote human rights?

Section Three

1. Do you think Civil Society Organizations (CSO's) effectively promote human rights?

Yes

No

If yes, state why?

If no, state why?

2. Do you think the legal environment in Kenya is favorable towards CSO's?

Yes

No

i) If yes, tick the possible reasons why you think the legal environment is favorable?

They have freedom of expression

Their input finds its way in policy making

Registration of CSOs is easy

State does not restrict CSOs from carrying out their activities

Other please specify

ii) If No, tick the possible reasons why you think the legal environment is not favorable

Hostile Relations and suspicion

Lack autonomy and liberty

Strong Presidency

3. Are human rights violations increased during electioneering periods?

Yes

No

i. If yes, please tick which types of violations increase during election periods?

Increase in loss of lives

- Increase in rape
- Increase in displacement of persons
- Increase in loss of property
- Freedom of movement and residence curtailed
- Freedom of expression curtailed
- The Right to participate in governance and election
- Right to property
- Others please specify.....

ii Why according to you do such human violations increase?

- a) Politically instigated
- b) Occasioned by state agencies
- c) Poor election management
- d) Low regard for Kenyan life
- e) Politicians Ethnicize

4. Are there any success stories that CSO have achieved in the promotion of Human Rights in Kenya?

5. According to you suggest how can CSOs effectively promote human rights

Section Three

1. What is the name of your organization?

- Federation of Women Lawyers- Kenya (FIDA-K)
- Kenya Human Rights Commission (KHRC)
- International Commission of Jurists (ICJ)

2. What are the main objectives of your organization?

3. Has your organization achieved the above mentioned objectives?

4. What are some of the challenges being faced in your organization?

5. In your opinion tick the most common human rights violations in Kenya?

- Right to life
- Torture
- Rape
- Extra Judicial Killings
- Freedom of Expression
- Freedom of Association

Others please specify

6. Are human rights violations increased during the electioneering periods?

Yes

No

ii) If yes, please tick the types of violations increased during election periods?

- Increase in loss of lives
- Increase in rape
- Increase in displacement of persons
- Increase in loss of property
- Freedom of movement and residence curtailed
- Freedom of expression curtailed
- The Right to participate in governance and election
- Right to property
- Others please specify

iii) Why according to you do such violations increase?

- a) Politically instigated
 - b) Occassioned by state agencies
 - c) Poor election management
 - d) Low regard for Kenyan life
 - e) Politicians Ethnicize
 - Others please specify
-
-

7. What are some of the challenges faced by your organization, when sourcing for funds?

Scarce resources

Competition

Abidity with donor rules

Other please specify.....

8. Do you think the government is doing enough to promote human rights?

Yes

No

If yes kindly tick the possible reasons for your choice

Formed KNHRC

Establishment commissions

Signing of UN Charters

Formation of NGOs and CSO

Others please specify

If No, kindly tick the possible reason for your choice

Violations are occassioned by state agencies

Lack of political will

Low regard for Kenyan life

Focus on less contraversial issues

Others please specify