

3RD CIVIC SPACE PROTECTION SUMMIT

**1ST TO 2ND NOVEMBER 2023
SUMMIT REPORT**

*Taking Stock of Civic Space Achievements
and Challenges Thirteen Years After
Promulgation of the Constitution*

*Grand Royal Swiss Hotel
Kisumu County*



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Contents

Pg.1 Acronyms & Abbreviations

Pg.2 1.0 Background

Pg.4 2.0 Introduction

Pg.4 2.1 Opening Remarks

Pg.10 2.2 Guest Speakers

Pg.13 2.3 Key Note Address

Pg.17 3.0 Summit Proceedings

Pg.17 3.1 Overview of Civic Space Status

Pg.40 3.2 Review of Public Order Legislations

Pg.44 3.3 Public Order Management

Pg.48 3.4 Digital and Privacy Rights

Pg.50 3.5 Freedom of Association

Pg.55 3.6 Freedom of Media and Expression

Pg.60 3.7 Intergenerational Discussions on organising, protection, safety and welfare of human rights actors

Pg.69 4.0 Break-Out Session Reports

Pg.69 4.1 Public Order Management

Pg.74 4.2 Digital and Privacy Rights

Pg.78 4.3 Freedom of Association

Pg.81 4.4 Freedom of Media and Expression

Pg.84 5.0 Closing Remarks

Pg.86 Appendices

Pg.85 Appendix I: Power Point Presentations

Pg.85 Appendix II: Key Note Speech

Pg.85 Appendix III: Summit Concept Note



Acronyms & Abbreviations

- AI** Artificial Intelligence
- BBI** Building Bridges Initiative
- CBOs** Community-Based Organizations
- CFF** Civic Freedoms Forum
- CJ** Chief Justice
- CMCA** Computer Misuse and Cybercrimes Act
- CRECO** Constitution and Reform Education Consortium
- CS** Civil Society
- CSO** Civil Society Organization
- DCI** Directorate of Criminal Investigations
- EA** East Africa
- FGDs** Focus Group Discussions
- GALCK** Gay and Lesbian Coalition of Kenya
- HRD** Human Rights Defender
- ICC** International Criminal Court
- ICCPR** International Covenant on Civil and Political Rights
- IG** Inspector General
- IMLU** Independent Medico Legal Unit
- IPOA** Policing Oversight Authority
- KHRC** Kenya Human Rights Commission
- KIIs** Key Informant Interviews
- KK** Kenya Kwanza
- KNCHR** Kenya National Commission on Human Rights
- LGBTQ** Lesbian Gay Bisexual and Transgender Queers
- MUHURI** Muslim for Human Rights
- PBO** Public Benefit Organizations
- PIL** Public Interest Litigation
- SHGs** Self-Help Groups
- SJCWG/WHRD** Social Justice Center and Women Human Rights
- UDA** United Democratic Alliance
- UN** United Nations

1.0 Background



The Third Civic Space Protection Summit under the auspices of Civic Freedoms Forum (CFF) took place on the 1st and 2nd in Kisumu County at the Grand Royal Swiss Hotel. The Summit's theme was, "Taking Stock of Civic Space Achievements and Challenges Thirteen Years after Promulgation of the Constitution". The theme provided an opportunity for civil society actors to assess the milestones realized in human rights since 2010. The 3rd Summit also reflected on the resolutions of the 1st and 2nd summits to assess the status of implementation. Deliberations during the summit revolved around public order management; freedom of association; digital and privacy rights; and freedom of expression and the media. Specifically, the objectives of the summit were;

1. To provide a platform for civil society organizations to reflect on the status of civic space since the promulgation of the Constitution 2010.
2. The Summit will allow stakeholders to analyze the status of the implementation of state commitments on civic space.
3. To consolidate new commitments from duty bearers and build consensus on new advocacy priorities for the next 12 months.

The summit adopted open open-space approach with sub-thematic sessions running concurrently. After the main speeches by the chief guests H.E James Orengo Governor, Siaya County, and H.E Prof Peter Anyang Nyongo, Kisumu County Governor whose speech was read out by H.E Dr. Mathew Ochieng Owili Deputy Governor Kisumu County, the participants went into breakout sessions indifferent conference rooms where session facilitators led the discussion by breaking down the sub-theme and thereafter allowing the participants to contribute into the subject before finally build consensus on recommendations.

The facilitators prepared conference papers in advance and presented the same in the sessions that took one and a half hours and included intense plenary discussions. The break-out session's rapporteur documented deliberations that were then presented in the main conference.

The sessions were moderated and presented as shown below:

1. Public Order Management Session -Moderated by Joshua Changwony (CRECO) and Presented by Peter Kiama IMLU
2. Digital and Privacy Rights Session- Moderated by Stela Kitonga and presented by Winnie Masai-Inform Action, Justin Okara-Lawyers Hub
3. Freedom of Association Session - Moderated by Chris Mbiti and presented by Caroline Nyambura-NGO Coordination Board, Priscillah Mwanzia, State Department for Social Protection
4. Freedom of Media and Expression Session- Moderated by Martin Mavenjina and presented by Oloo Janak-Kenya Correspondence Association
5. Intergenerational Discussions on organizing, protection, safety and welfare of human rights actors Discussion -Moderated by Kamau Ngugi-Defenders Coalition and presented by Khelef Khalifa, MUHURI, Adrian Kibe-KHRC (LGBTQ Rights), Adrian Kibe KHRC (LGBTQ Rights) and SJCWG/WHRD Representatives.

2.0 Introduction



The summit started with prayers moderated by John Samuel Pamoja CBO (Kisumu County) which was followed by a recitation of the Kenyan National Anthem and the East African Union Anthem. The attendees of the summit then took turns to make individual introductions that highlighted the organizations and networks represented and their counties. The introductory session of the summit was moderated by John Owegi- Coordinator Civic Freedoms Forum (CCF).



2.1 Opening Remarks

**OPENING REMARKS BY PETER KIAMA,
Chairperson CFF Board**



The CFF board chairperson began his opening remarks by asking the congregation to rise and have a moment of silence for all the fallen comrades who have given their lives, broken their limbs in the struggle of fighting for civic spaces. He went ahead to thank everyone who was able to attend the annual civic space protection summit whose aim is to take stock of civil space achievements and challenges thirteen years after the promulgation of the constitution. In his remarks, he indicated that the annual summit provides an opportunity to reflect and celebrate the milestones of the struggles to safeguard our civil spaces.

The annual event is also an opportunity for solidarity of comrades especially in Kisumu county but also across the country, as we are aware the communities, our brothers and sisters, parents, and children have suffered this year during the demonstrations in March to July of 2023. A total of 51 deaths was recorded of people killed in 5 days by the police, an average of 10 people per day which is a record for the country. Since 2013 records show that people who have died in police hands have never been close to what the country has witnessed in 2023.

He highlighted that out of the 51 people who died 19 of them were from the county of Kisumu not counting Migori, Bondo, Busia, and other places around the region where people died. The summit was held for a purpose which is to stand with the fallen communities in solidarity.

He reiterated that as the summit marks 13 years after 2010, the summit's attendees must remember the reason for the adoption of the new constitution, most importantly the struggle to amend the new constitution. He reminded the attendees that the new constitution is one of the best in the world and a fact that contains all bills of rights and we are proud of it.

“We (Kenyans) made the constitution for ourselves by voting, fighting for it in different ways, and finally giving it to ourselves. We promised to defend it with all that we have and that is the reason we defend and fight for human rights”.

Peter Kiama, Chairperson CFF Board

In the remarks he reminded the attendees that citizens are expected to enjoy broad freedom including but not limited to freedom of association, expression, assembly, and the right to participate in public affairs, access to information, digital and privacy rights, among others. He emphasized that we must first appreciate the progress in the making because in such successes we give ourselves the motivation and momentum to move forward to the next phase of development. For instance, we do have independent commissions, and oversight agencies that we didn't have before and we have also seen efforts to strengthen the judiciary, the rule of law, openings in digital space, robust coordinated systems, police reforms, and many others.

It was highlighted that the devolved system of the government in Kenya is one of the strongest components of the constitution, the greatest promise we made to ourselves that we are going to devolve not only power but also resources to the counties and lower-level communities. The system was not only made for the government but also to ensure increased participation of citizens in governance and matters that concern them at their local levels. This is why the rights of public participation and access to information are critical at the county level. We must appreciate that some countries have made progress in the same area, particularly in the legislation and establishment of structures

that enhance public participation forces. However, we MUST also appreciate that Kenyans are yet to realize their full potential and fruits in the constitution. This has also led to voter apathy but also negative participation in public affairs.

In conclusion, he remarked that most Kenyans continue to deal with these challenges including historical injustices, police abuse of power and brutality, difficulty in accessing vital public information, intimidation, and interference in the media among other challenges. We also know Human Rights Defenders continue to suffer intimidation, deaths, prosecution, impurity of data, multiple charges, and lateness in trial reports. Since 2018 there have been several attempts to order the arrangement of the Constitution even today we are aware that the court is to amend the Constitution. Some of the questions we should ask ourselves are is our problem the constitution or the failure to implement it? Is there a political will to implement the Constitution?

OPENING REMARKS BY PRISCILLA MWANZIA
State Department Social Protection



Mrs. Priscilla Mwini gave her opening remarks on behalf of the director of the directorate of social development and started by expressing profound honor and deep gratitude to the organizers of the summit for bringing together a forum that explores the key issues of public order management, freedom of association, digital and privacy rights, freedom of expression and the media. She indicated that each of the summit's thematic areas is integral to the core

principles that underpin our democratic bill of rights and each plays a vital role in building our present and our future. The director of the Department of Social Development and his team understand that public order management should uphold the dignity and the rights of all individuals. In her remarks, she highlighted that the team also recognizes that freedom to associate is a cornerstone of civil society, and essential for mobilizing change and fostering social development. Digital and privacy rights underscore the importance of protecting our data and personal information in the technological world.

Freedom of expression and the media are two powerful tools for ensuring that there is visibility on the brutality and abuse of power that is ongoing in the nation. In her remarks, she emphasized that our presence at the summit is a statement to adhere to education and policy values to reflect our commitment to defending these principles even when we are faced with diversity and technological advancement change. In her conclusion, she retreated that the summit is a unique opportunity to engage in thoughtful and innovative discussions on how to proceed.

“We will explore the progress and obstacles that shape the civic space of the society. We encourage each of you to contribute your expertise, insights, and passion as we engage in this conversation. Our diversity of knowledge and experience is our greatest strength and it is through the collective wisdom of this assembly that we can forge a path toward progress. Let us take advantage of this forum to engage, learn, and build partnerships that will fire our collective mission”.....

Priscilla Mwini - State Department Social Protection

OPENING REMARKS BY MUTUMA NKANATA
Executive Director, NGOs Coordination Board



In the preamble of his remarks, he stated that civic spaces are growing in numbers by the day as demonstrated by the immense work that has been put in after the first meeting that was held in Nairobi and the current summit of the day. He remarked that all participants should remain strong in the protection of civic spaces. The theme of taking stock of Human Rights Achievements and Challenges thirteen years after the promulgation of the constitution perfectly reflects on this forum. He explained that in his honest view, he made a fair assessment of the thirteen years of implementation of the constitution of Kenya 2010, especially in review of the momentum course judgment including the donors in the regards to constitution of the freedom of participation but also other provisions to the bill of rights.

He highlighted that the NGO coordination board recognizes and acknowledges initiatives such as this summit that provide unique opportunities for the advancement of constitutionalism, good governance, and social justice. The board complies with the constitution in Article 36 which states that the board should cooperate with those who wish to register non-governmental organizations and should do so with the people of their choice who share similar values and aspirations in charity work. The board also abides by court orders in implementing this freedom. He explained that the mission of the board is to advance NGO practices in theory and practice, to maintain a high professional standard among the members, and to serve society, particularly where these

services can contribute to the public interest. To achieve this vision and mission we need to deliver quality service that results in member satisfaction.

In his conclusion, he indicated that three enabling goals were approved that will be important in achieving the strategic goals of the board. These enabling goals will help to sustain the RC beyond the inception stages, create expansion opportunities, and open the RC to sustainable input from other stakeholders either directly or indirectly. It is important to note that these issues focus on revenue generation and creation, since information is equally as important as any other resource, users of certain facilities will be required to pay for the usage of these facilities to enable smooth running, re-stocking, and regular updates of the material.



2.2 Guest Speakers

H.E JAMES ORENGO
Governor, Siaya County



“The Kenyan constitution is quite clear on what the visions of Kenyan had” The

county governor emphasized that when the constitution was being written it went through a very vigorous process and the people of Kenya set themselves to certain ideals which are the foundations of principles found in Article 6 and 7 of the constitution. If you go through the constitution it talks of “a new nation” but the fact that the proclamation of the constitution brought up a discussion before the late Hon. Mwai Kibaki proclaimed the constitution as to whether that proclamation should come together with another official proclamation that a second Republic of Kenya was being established.

This is because if you read the constitution carefully the character of the state acclamation is well set up without a doubt. Article 1 of the Constitution states that Sovereignty and what the people constitute and how they are going to govern themselves. The Bill of Rights Article 19 also talks about the Bill of Rights becoming an integral part of democracy in Kenya. The character of the state that comes up when you go through Articles 1 & 2 and the Bill of Rights should be able to give a vision of what/how Kenya should be. When it comes to issues of security the constitution states that even in pursuit of the protection of the constitution the security organ of the state must comply with the constitution and provide the protection of the government and its people according to the rule of law and democracy.

However, if you read the back of the law today does it reflect on the vision that is there in the constitution? Before we even go to the behaviour of the state are the laws that we have been making over the years reflecting on the type of state that we want to establish in Kenya looking at the Constitution 2010? When you look at the character of leadership, the laws whether they are in line with the constitution, the institutions are they the people who are benefiting? The senior Advocate of the High Court responded to these questions by stating that we as a republic are in a really bad place. For example, when amendments to the law were being made in the penal code there were dialogues and forums with massive suggestions on what should be changed in the constitution. The law of treason was borrowed from the principle that the Sovereign is Supreme like in England and it doesn't talk about what is considered treason in Kenya.

“Looking at the laws we have been making over the years, do they align with the vision that is there in the promulgated constitution 2010? That is the question we are struggling with today”....

H.E James Orenge. Governor Siaya County

Looking at the brutality of what is in the penal code, it is in the Public Order Act, Chiefs Authority Act, and many other registrations only proves that the character of the state has not changed and the way the character of the state acts when it feels threatened. If you look at what used to happen during demonstrations during the late Hon. Jomo Kenyatta era is not the same as the brutality that is happening now even though he was considered as a “villain” of the state. Another major discussion that came up during the questioning of the penal code during the amendment of the law is subversive activities in Kenya. The law is a cultural law that was enacted during the precolonial period and has never been changed. Looking at Kenya from democratic principles and what a democratic should be the Nation still has a lot of work to do.

The question on police brutality during the current demonstration was very questionable in terms of methods used, assault weapons used, and snipers’ involvement instead of the police protecting its citizens. That type of conduct demonstrates that as a nation we are in an oppressive state, it contradicts the conduct of being free in a democratic country.

In Kenya leadership tends to be transactional even during the making of the constitution it was only transactional. No one believed in exercising what the “document” stated even though the leaders abide by the laws like other countries did. The leaders were only trying to learn from the best and this clearly shows that sometimes constitution-making can be a vehicle for the enthronement of world leadership and when that happens people are only holding on to the past and fail to come up with new/better ways to empower the nation. The county governor ended his speech by saying “Vigilance is still required to not

immerse ourselves completely in a dictatorship”. He went ahead to urge those fighting for the Civil Space to continue with the fight and believe in what they are fighting for. Without vigilance from the civil society the state conduct the “one step ahead two steps back” conduct will forever apply in Kenya.” There can never be truly a reform without a reform movement” Hon. James Orengo concluded.



2.3 Key Note Address

H.E PROF PETER ANYANG NYONGO,
Kisumu County Governor

READ OUT BY H.E DR. MATHEW OCHIENG OWILI
Deputy Governor Kisumu County



In his remarks read out by H.E Dr. Mathew Ochieng Owili (Deputy Governor Kisumu) the Governor expressed appreciations to Civic Freedom Forum for convening the discussions on the civic space achievements and challenges thirteen years after the promulgation of the 2010 constitution. He intimated that

they including the distinguished H.E. Governor James Orengo are in familiar territory after having been in the trenches for many years and bear the scars of fighting for the democratic and political space for the Second Liberation.

In his speech, he indicated that the Civic Society movement in Kenya has gone through hell, especially during the Nyayo era¹. Many were detained. Hundreds were arrested and tortured. Others died under mysterious circumstances. We all know of comrades who fled the country for their safety. One of the victims of the onslaught on the civic society movement was former MP Koigi wa Wamwere. He led the summit participants through One Minute's silence for Monica Wangu who passed on at the prime age of 92 mother to former MP Koigi wa Wamwere.

In his preamble, he lauded the presence of civic society actors, members of Independent commissions, lawmakers, Judiciary associations, Human Rights warriors, and policymakers as the largest gathering of civic society players in Kenya in recent times. He mentioned that the 2010 constitution brought hope and gave us some breathing space, the path remains littered with thorns and boulders. These distractors can only be navigated through commitment, bravery, and unity of purpose. In the civil society movement, you cannot succeed without being a brother or a sister's keeper. In the speech, he quoted the popular words of the Anti-Nazi cleric Martin Niemoller during World War II.

“First, they came for the Socialists, and I did not speak out, because I was not a Socialist. Then they came for the Trade Unionists, and I did not speak out, because I was not a Trade Unionist. Then they came for the Jews, and I did not speak out, because I was not a Jew. Then they came for me, and there was no one left to speak for me.”...

Anti-Nazi cleric Martin Niemoller

He emphasized that the Kenyan civil society has played a critical role in holding

¹ The political period from 1978 to the 2000s, that defined the rule of former Kenyan president Daniel Torotich Arap Moi.

the State to account and in promoting a human rights-based approach to governance. We have tried our best under very harsh circumstances but there is no turning back on the push for more democratic space. The Civic Society must fight for a bigger space from the government because as former US President Barack Obama's top aide- Ben Rhodes once said- Where civil society is welcomed, communities are safer, more secure, and more prosperous. Put another way, one would say that in an environment where a Civil Society thrives, operates with transparency and accountability. Some thinkers have argued that a vibrant civil society often challenges those in power with hard evidence, especially regarding corruption to make them earn respect.

In the speech, he reminded the Civil Society Organizations to invest in research before taking the war to the governments. He mentioned an example of how the government used brutal force in handling the recent countrywide protests against the high cost of life. Many of our people were shot or beaten to death by police. It was the civil society activists who gathered the hard evidence of police involvement and shared the same with the media and Human Rights organizations. The evidence was compelling and the denials by police were a shame.

“ We hear the curse of fighting for the political space for the second liberation is the civic space shrinking, is it static or is it expanding? What have we done with the expanded space?...”

H.E Dr Mathew Ochieng Owili, Deputy Governo- Kisumu County

The Governor highlighted the signs that the Kenya Kwanza government is already showing traits of a dictatorship, barely one year into power. They are no longer hiding their intention of killing the opposition and making unilateral and unpopular decisions on issues that have serious economic, security, and social impacts on the people. This he said calls for a strong and independent civic society and media to salvage the situation. The summit was reminded that as we reflect on the journey since the promulgation of the Constitution in 2010,

it was important to note that any government may not want a powerful civil society and will always seek to stir conflicts in civil society groups.

They can weaken the movements by identifying and tapping good ideas and poaching good brains from civil societies. He underscored the need to become more innovative in times of such turbulence by remaining relevant and effective in influencing public policy.

He reiterated that civil society must not always be on the warpath with the government. Civil society should make the State at all levels more accountable, responsive, inclusive, and effective. CSOs should encourage dialogue and discussions. In Kisumu, we work very well with civil society, especially on accountability issues and Public Participation. In his conclusion he urged civil societies to sincerely look at the challenges facing the movement- both from within and in the government and to come up with strong and implementable resolutions to force the state to free the democratic space.

3.0 *Summit Proceedings*



The preamble of the summit sessions was plenary presentations that highlighted an overview of the civic space in Kenya and a review of Public Order legislation in Kenya.



3.1 Overview of Civic Space Status

PRESENTATION BY PATRICK OCHIENG
Consultant



Presented a report synthesis on the status of the civic space in Kenya since the promulgation of the Kenyan Constitution 2010. As a preamble, the consultant highlighted the methodology used to collect the data. He indicated that the processes entailed conducting a review of civic space literature, Key Informant Interviews (KIIs) with targeted stakeholders, and Focus Group Discussions (FGDs) with purposively sampled respondents and discussants that included Public Benefit Organizations /NGOs, Faith Based Organizations, Media, Trade Union, Constitutional Commission, State Actors and Non-State Actors.

The majority of the stakeholders interviewed 56.5% were PBO/NGOs, 7.4% as Faith-Based Organizations, 5.8% as Media, 7.4% as Trade Unions, 3.7% as State Actors, 14.8% as Non-State Actors, 3.7% as for Profit while 3.7% were Community Groups and Movements.No respondent identified as a member of a Constitutional Commission but the State Actors were well represented.

During the presentation, a reflection on our Constitutional Framework and Civic Space was shared. It emerged that 48% of the respondents strongly agree that the Constitution of Kenya is very strong on national values, 37% agree, 4% disagree and 11% strongly disagree. 41% strongly agree while a similar % agree respectively that the Constitution sets high integrity standards; only 11% disagree while 7% strongly disagree with this prognosis. It was also observed that the Majority 49% agree while 37% agree strongly that the Constitution

supports civic action and enables people to take charge of their political, social, and economic affairs; only a paltry 7% respectively disagree and disagree strongly with this position. Additionally, it was highlighted that on whether the Constitution supports the exercise of rights and freedoms 41% agree strongly a similar % only agree; with 7% disagreeing and 11% disagreeing strongly. As to whether the Constitution opens the operational and civic space for CSOs 30% strongly agree, 41% agree, 25% disagree and 4% of the respondents strongly disagree.

It was indicated that despite the strong constitutional foundation, Kenya's democracy remains wobbly. Political organizing is ethnic and is essentially about "Mtu Wetu"² in a two-party system that nurtures ethnic cocoons or ethnic boxes that determine what comes to pass in our civic and democratic space. The electoral system produces mixed results for example in the last election the UDA regime garnered 6.5 million votes against an opposition that also garnered 6 million votes from a possible 21 million voters. The nature of our democracy is challenged by the fact that a majority of voters do not turn up, the 2022 winner had a very small margin and so the paradox that the fate of the majority is being determined by a minority taints our democracy. This challenges the legitimacy of the current regime in addition to a disputed result that ended at the Supreme Court at which the language of the Judges was unprecedented.

“The Kenyan Constitution protects public spaces and the right of people to assemble but the impunity that thrives within government is an impediment to the rights of the people”....

Patrick Ochieng

During the presentation, it was indicated that even with a robust Bill of Rights in the Constitution that guarantees freedoms of assembly, expression, and association these freedoms roundly get smothered by a government that

² Mtu Wetu- Common ethnic idea of "mtu wetu" is a negative parameter for electing a leader from some ethnic group or clan that has denied the country and county a noble chance for quality leadership

is sponsoring state-driven backlash on sexual minorities through powerful individuals organizing weekly demonstrations against LGBTQ, or visible labeling and narratives that present its critics and opposition as devils or “shetani” as the government poses as a Christian communion or through open corruption and an executive that seems to be controlling the other two arms of government i.e. the Legislature and the Judiciary. There is selective application of the law and those deemed to be against the government are targeted for attacks. Police killer squads that hitherto the regime had promised to root out seem to be back given the example of businessman Rai³ who was abducted in broad daylight and nothing has been done to investigate the matter. The Leadership and Integrity Chapter ‘imekojolewa’⁴. The country is in the hands of murderers, rapists and thieves. The quality of leadership is so wanting that constitutionalism cannot be guaranteed including implementation of the Bill of Rights.



³ Prominent businessman Jaswant Singh Rai. Chairman of the Rai Group - a conglomerate with interests in the sugar, real estate

⁴ Imekojoewa derogatory slang reference indicative of trashed or thrown out



3.1.1 Perceptions on State of Civic Space in Kenya

During the presentation, it was indicated that in open civic space, the state both enables and safeguards the enjoyment of civic space for all people. The levels of fear should be low as citizens are free to form associations, demonstrate in public places, and receive and impart information without restrictions in law or practice. In this context, it emerged that 30% agree that Kenya's civic space is open, 15% somewhat agree, 11% somewhat disagree and a majority 41% disagree.

It was also highlighted that in narrowed civic space the state allows individuals and civil society organizations to exercise their rights to freedom of association, peaceful assembly, and expression, violations of these rights also take place. It emerged that the majority 52% agree that the civic space is narrowed, 22% somewhat agree, 11% somewhat disagree and 15% disagree. Whereas an Obstructed Civic Space the space is heavily contested by power holders, who impose a combination of legal and practical constraints on the full enjoyment of fundamental rights. Although civil society organizations exist, state authorities undermine them). It was observed that a majority 82% perceive the civic space in Kenya to be obstructed. 7% somewhat agree, 4% somewhat disagree and 7% disagree.

In a repressed civic space, the space is significantly constrained. Active individuals and civil society members who criticize power holders risk surveillance, harassment, intimidation, imprisonment, injury, and death. It was indicated that 56% find the civic space repressed, 30% somewhat agree with this and 1% disagree, the rest 3% somewhat disagree. Whereas in a closed civic space, there is complete closure - in law and practice - of civic space.

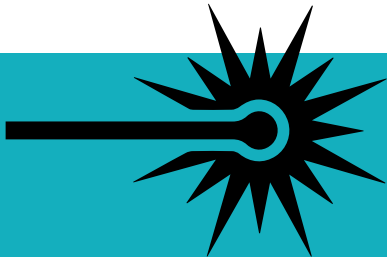
An atmosphere of fear and violence prevails, where state and powerful non-state actors are routinely allowed to imprison, seriously injure, and kill people

with impunity for attempting to exercise their rights to associate, peacefully assemble, and express themselves. It was shared that 52% feel the civic space is closed, while 19% somewhat agree, 4% somewhat disagree and 22% disagree.

It was generally observed civil society should understand itself, what it can do, and its limitations. Human rights and constitutional values which help in the achievement of this ambition are not respected by this regime. People are losing hope, there is no accountability in police stations, rule of law is being eroded. The regime's language is anti-human rights and anti-social justice and is mostly about ethnic mobilization and shareholding. Institutions with the mandate to act have been weakened IPOA, KNCHR, etc. are a shadow of what they were intended to be.

They have no resources, have staff with low morale, are complicit, and only issue statements. Most appointees to these institutions are cronies of the regime and are very unprogressive. There is a tendency for actors in civil society to be unwilling to build synergies and work in silos as attempts to find synergies flop because of individualism. This behavior limits the CSO's capacity to voice concerns around civic space.

It was indicated that while the past regimes especially Kenyatta 1 and Moi were openly totalitarian, their totalitarianism was classical. The two regimes detained their critics, jailed them even ostracized them no matter what their station in life. Academic and press freedom were curtailed, as were political rights and association. The regimes that followed were not classical in their totalitarianism but were totalitarian. Inverted totalitarianism that Hedges describes as subtle, uses different tools, appropriates human rights language and rhetoric but does the same thing if not worse.



3.1.2 Impact of UDA Regime on Civic Space from August 2022

It was indicated that since its election to office in August 2022, the Kenya Kwanza regime carried out initial actions to ensure independence of the police budget, appointment of the six Court of Appeal Judges hitherto stopped by the former regime from assuming office, commitment to increase the judiciary budget, banning of the Special Service Unit of the Directorate of Criminal Investigations (DCI), and promise to appoint a task force to investigate all extra-judicial executions to exonerate the regime from taking blame for the initial restricted civic space. These actions are hailed and 54% of the total number of respondents agreed with this analysis compared to 46% who disagreed. It was also shared that when respondents were asked for an opinion on subsequent events by the security agencies and other state machinery and whether the behavior had wiped out any pretenses as to whether the current regime is committed to open civic space and is slowly sliding into a police state, 85% felt this to be accurate while 15% felt otherwise. On the view that the regime has clamped down on freedom of assembly, association, expression, and free press amongst others a majority of respondents 96% agreed while only 4% had a contrary opinion.

It emerged that several human rights organizations have reported abuse by security agencies during peaceful demonstrations since August 2022". Asked to reflect on this statement 89% agreed with this conclusion while 11% disagreed. The Media Council of Kenya and other media stakeholders have also reported cases of abuse of power by state officers, independent agencies and the police concerning handling the press had a unanimous acceptance as true by all the respondents.

It was pointed out that while Kenya scores very highly on ratifying international

instruments the regime in office lacks the political will to implement these treaties hence the gap between the treaties and their implementation. The Constitutional bodies responsible for monitoring human rights and protecting our constitutionality are underfunded and populated by cronies and sycophants. The impunity of some of these individuals in power was responsible for giving the ICC witnesses away in 2008. Torture for example is prohibited but is still widely used in Kenya. The President has decided to send police officers to Haiti without following the constitution.

The implementation of the constitution is very poor with this regime probably scoring 30%. The values and principles chapter remains unimplemented, both this regime and its predecessor seem to be anti-constitution, the former brought BBI to subvert the Constitution, and the current regime has come to office on the foundation of lies and narratives such as Hustler that are not anchored in the constitution. The constitution which sets the bar on leadership, entrenches the Bill of Rights and access to information but is abused when laws are introduced that are retrogressive. Use of the Public Order Act that outlaws protests or the penal code that criminalizes dissent or the new community groups registration law amounts to clawing back the gains in the constitution. KNCHR and other constitutional bodies look designed to fail. Since it is starved of resources it can't execute, its appointees are beholden to their appointing authority. It was pointed out that IPOA is completely demobilized as it cannot access police stations to get arms movement and operational orders.



3.1.3 State of Freedom of Association

During the presentation it was emphasized that since its election to office in

August 2022, the Kenya Kwanza regime carried out initial actions to ensure the independence of the police budget, the appointment of the six Court of Appeal Judges hitherto stopped by the former regime from assuming office, commitment to increase the judiciary budget, banning of the Special Service Unit of the Directorate of Criminal Investigations (DCI), and promise to appoint a task force to investigate all extra-judicial executions to exonerate the regime from taking blame for the initial restricted civic space. These actions are hailed and 54% of the total number of respondents agreed with this analysis compared to 46% who disagreed. Asked for an opinion on subsequent events by the security agencies and other state machinery and whether the behavior had wiped out any pretenses as to whether the current regime is committed to open civic space and is slowly sliding into a police state, 85% felt this to be accurate while 15% felt otherwise.

On the view that the regime has clamped down on freedom of assembly, association, expression, and free press amongst others a majority of respondents 96% agreed while only 4% had a contrary opinion. Several human rights organizations have reported abuse by security agencies during peaceful demonstrations since August 2022". Asked to reflect on this statement 89% agreed with this conclusion while 11% disagreed. The Media Council of Kenya and other media stakeholders have also reported cases of abuse of power by state officers, independent agencies and the police with respect to handling the press had a unanimous acceptance as true by all the respondents.

While Kenya scores very highly on ratifying international instruments the regime in office lacks the political will to implement these treaties hence the gap between the treaties and their implementation. The Constitutional bodies responsible for monitoring human rights and protecting our constitutionality are underfunded and populated by cronies and sycophants. The impunity of some of these individuals in power was responsible for giving the ICC witnesses away in 2008. Torture for example is prohibited but is still widely used in Kenya. The President has decided to send police officers to Haiti without following the constitution.

It was indicated that 41% of respondents were prevented from forming and registering an association, 11% said maybe, and 48% a majority were not aware of any that they know with such an experience. It also emerged that; 33% were subjected to unreasonable delays when trying to register or form an organization; 30% may be and 37% were not aware. Additionally, 52% were hindered or disabled from enjoyment of freedom of association on account of a new law; 15% just thought maybe and 33% did not know of any such account.

“We received letters from the provincial administration as a CBO to explain why we are doing human rights meaning that their intention was to limit us by suggesting CBOs should not touch the work of rights. That undermines civic space”.....

CSO Respondent

It was highlighted that 59% of respondents were categorical that CSOs have been deregistered or interfered with by the authority of the government, 15% just maybe while 33% did not recall any such occurrence. There is a perception that CSOs are particularly targeted for their activism or work of democracy, human rights, governance, or accountability; 70% confirmed this to be true while 19% thought just maybe and 11% had no such evidence.

“The current regime is hostile to the work of HR defenders especially those at the grassroots just like its predecessor”.....

CSO Respondent

During the presentation it was indicated that the civic space has been infiltrated, and its advocacy, activism, or independence subverted by the state or any of its arms through overt or covert means; 74% evidenced this, 11% just thought maybe and 15% lacked such evidence. CSOs have been prevented from maintaining a bank account; 59% objected to such a possibility but 30% had such evidence while 11% thought may be. The CSOs have also undergone unnecessary fiscal

audits; 48% denied any such event compared to 41% who had such evidence and 11% who thought may be. The CSOs have also been prevented or restricted from receiving foreign funding; 48% evidenced this while 8% thought maybe and 44% did not know of any such incident.

Some of the institutions and activists that have undergone transgressions include GALCK, MUHURI, HAKI AFRICA, Eric Omondi while fighting against the cost of living, CSOs involved in demonstrations, and Churches. The types of mistreatments have included Extra judicial killings, Forced disappearances, Repression of NGOs, individuals, and institutions, Freezing of accounts, Frustrations by government systems leading to the departure of some, denying groups registration for the use of the words social justice, attempts to restrict foreign funding, police harassment of human rights-centered NGOs/ labeling, police harassment of picketers and Calculated victimization. The main instruments used were the Community Groups Registration Act which violates the constitution and the NGO board refusing to register LGBTQ organizations leading to Court action.

Since its election to office, the Kenya Kwanza Government has not shifted its public posturing with regard to the CSOs, and its public statements and narratives remain negative according to 76% of the respondents who spoke to the survey. Only 24% feel the Government has shifted its posturing and narratives towards CSOs.

“The call by Kenya Kwanza that civil society aligns its agenda with that of KK Manifesto is one bad sign. What befalls those that do not follow this through?”

CSO Respondent

Use of legal instrumentalism such as restrictions imposed on the organizing of community groups is now subject to the Community Groups Registration Act one of the many pieces in the toolbox of this administration’s instruments for controlling society.

The government has softened its position on the PBO Act that promises to make things better for CSOs – for example on how CSOs are registered, how they are taxed, how they are supervised/regulated, and how they are required to report on their activities. Only 25% think this statement is true, 75% say this is false and 5% are not sure.

The Government personnel at the Ministry of Interior and the NGO Coordination Board have noticeably shifted their public statements towards CSOs and appreciate the role of the sector. Only 15% of the respondents think this is true, 75% believe this to be false while 10% are not sure. The number of attacks on civil society organizations and activists (physical attacks, raids on offices, legal harassment) has declined since the new government took office. 25% say this is true but 65% bill this to be false. 10% is not sure.

The current regime is no different from the last one only the current one is more honest and classical about its totalitarian methods and bolder in its attitude towards alternative thought and its approach to freedoms of expression and assembly. There have been progressive judgments by the Courts on freedom of association since the election of the new government. Only 30% of the respondents agree with this statement. 70% say this is false. CSOs cannot organize to do human rights work without freedoms, Art 37 on rights to associate, picket, and demonstrate. Current regime is intimidating actors.



3.1.5 Freedom of Peaceful Assembly

70% of the respondents have either participated in a public protest or been caught up in or impacted directly or indirectly by a protest organized by others

compared to 30% who have not. On whether the government facilitated the exercise of protests and demonstrations 19% of the respondents agreed while 67% somewhat agreed. 15% somewhat disagree. The regime's public face of impunity is more grotesque and is thus worse some examples are arrests of demonstrators, intimidation of HRDs, and crushing of dissent all these were there before but the present regime seems to be going back to brute force and verbal attacks

On whether the organizers of gatherings have been required to obtain prior approval for demonstrations 82% agree while 11% somewhat agree. 7% disagree with this position. The constitution protects civic space but laws are being proposed that limit protests, and give OCS power to refuse notifications. The regime is using regulations to shrink civic space

On whether notice is required, despite organizers adhering to the notice period not being respected by authorities 89% agree with this position. 4% somewhat agree while 7% disagree. On whether requests to demonstrate have been as a matter of routine roundly denied without sufficient reasons or cause, 78% are in agreement, 19% somewhat agree and 3% disagree. Institutions are abusing their authority and are being weaponized against citizens police are the worst example

On whether unwarranted restrictions have been imposed including outlawing demonstrations altogether and preventing protests from reaching the city centre, 96% answer in the affirmative while 3% somewhat agree and 1% disagree. State machinery is used to disperse opposition demos and the 2023 police actions have led to deaths, arrests, and injuries. For example, in the cost of living demos, HRDs stayed in custody for the weekend. The Protests are stopped like Saba Saba⁵ march which led to arrests brutalization and detention for four days followed by malicious charges that have the effect of a shrinking democratic space. When lawyers went to check on the detainees the police teargassed them at the station.

⁵ Saba Saba Day is remembered as the day in when nation-wide protests took place. On 7 July 1990, Kenyans took to the streets to demand free elections.

On the causes of violence, 96% of the respondents believe that security forces used excessive force to disperse protesters - water cannons, tear gas, rubber bullets, or live ammunition against protestors against 4% who felt this to be false.

Before 2023 the commanders used to engage, but now the new commander has gone back to the colonial practices. 96% felt that security forces made arbitrary or illegal arrests against 4% who felt otherwise. 85%, on the other hand, felt that security forces discriminated against opposition groups who organized protests in sharp contrast to groups seen as supportive of the ruling party against 5% who felt otherwise with about 10% not answering this question. 100% of the respondents felt the authorities have a poor track record of policing protests in ways that provoke violence between police and protestors or between rival groups of protestors and have not refrained from using excessive force.

People were killed by police but police have refused to take responsibility or even record statements or do body counts and investigate the deaths. IPOA has lost the battle

On barriers that groups face when organizing peaceful assemblies 96% believe that the arrest of protesters and trumped charges is a major barrier. In a similar statistic, 96% find police and civilian violence a major barrier while 70% feel it is biased media coverage that focuses on the outcome of violence rather than the exercise of the right to protest, 89% disproportionate use of force, and 82% the selective treatment of different protest themes.

96% of the respondents share the opinion that the state interferes with media houses, CSOs, academics, or activists' right to freely express themselves. An example is when tax measures were passed without public participation, which is roundly ignored as the regime continues to create more inequality. It was pointed out that Kenya is retrogressing, there is no clarity for citizens on which agency exactly is in charge of access to information. The Ombudsman cannot be available to all citizens and many do not know this office and how to access it.



3.1.7 State of Freedom of Expression

During the presentation it was highlighted that the state of affairs of freedom of expression since the Kenya Kwanza regime took over the majority of the respondents agree that journalists, bloggers or activists experience interference, harassment, and/or physical attacks compared to only 4% that think this to be untrue. There is more surveillance and sabotage with frequent network shutdowns that cannot be explained. 89% agree that attacks that have been reported were all instigated and perpetrated by the state or by non-state actors who were acting at the behest of the state against 11% who felt this is not the case. The government has retained bloggers who push their narratives making official communication and propaganda to enjoy similar profiles

While 67% agree that media and civil society have been practicing self-censorship and the two avoid certain topics or causes for fear of negative repercussions only 33% think otherwise and disagree. The majority of the respondents 85% believe there have been attempts to curtail expression for excluded or disadvantaged groups with 15% disagreeing. 89% agree that people have been unable to access government information in law and practice and while 7% disagree about 5% did not answer this question. 89% of the respondents believe people or journalists who express critical opinions in public have been the targets of the legal system compared to 11% who disagree. 70% agree that freedom of expression on the internet and social media is restricted while 30% disagree. 89% were in agreement that there are new concerns about online privacy and state surveillance compared to 11% who disagreed. There are new cyber laws that are detrimental to online growth and are punitive for users of the digital space e.g. the 2019 Cyber Crimes Act that seeks to license films.

70% of the respondents agree that since its election to office, the Kenya Kwanza

Government has not shifted its public posturing about media and journalists and its public statements have not moved from negative to positive media narratives. 30% have a contrary view. According to 82% of the respondents, the claim that there is a reduction in the number of attacks directed at journalists and media houses is false. Only 18% believe this statement to be true. The majority 59% confirm as false the view that public vilification and attacks against online activists, social media users, and bloggers is on a decline since the Kenya Kwanza regime took power. 23% believe this view to be false while 18% are not sure.

An overwhelming majority 82% deny the media landscape is more liberal, decriminalization of any form of speech, greater legal protections for whistleblowers, and improved/new access to information rules now exist after the entry of the new regime. Only 12% affirm this to be true while 6% are not sure. 82% of the respondents object to the claim the new regime has made it easier for people to freely express their views or access public information, 9% believe this to be true just as a similar percentage say they are not sure. 47% confirm that freedom of expression has been curtailed as a result of one's gender or sexual orientation, with 29% disagreeing and 24% unsure.

The visible gagging of the media was witnessed at Shakahola⁶ when the media was chased from the scene and barred from covering the event. The fight against terrorism in the northern part of Kenya is blacked out from Kenyan media and no reports are allowed by NCTC and the anti-terror police unit so the only news Kenyans get of this campaign and attacks are occasional clips from Aljazeera and other international networks. The recklessness of state officers and verbal attacks against journalists are impacting negatively on the security of journalists who are now vulnerable to attacks by political supporters.

The World Coin saga at KICC where youth were mobilized to give their biometrics in exchange for money without proper procedure was an example of lapses in data protection. The government could not explain this issue and it is unknown what the company was going to do with the data, which some fear

⁶ Shakahola Forest incident refers to a religious cult in the Shakahola forest led by Paul Nthenge Mackenzie of Good News International Ministries associated with the death of approximately 429 persons at coast region of Kenya.

was going to be used to make robots. It was surprising that a foreign company could come and collect data without government knowledge.

Since Kenya Kwanza took over power the state of individual activists, journalists, and human rights defenders has become worse (89%), better (7%), and not sure (4%). The judiciary which looked a little independent seems to be losing this identity after accepting the offers by this regime to swear in judges rejected by the last administration and promises of independent funding, which now seemingly appears to be a favor that should be returned. The delivery of justice is taking a beating as more and more litigants are subjected to rulings that appear compromised.

The ODPP, Judiciary, and Independent offices are not independent anymore. ODPP has dropped many cases touching on prominent individuals for example Didimus Baraza who shot a person has had his case dropped like many others. The President has declared himself the judge, jury, etc., and is micro-managing through executive orders the delivery of services and the enjoyment of rights by his recent pronouncement of “mambo ni matatu” he has effectively suspended the constitution and it is his thinking that will now run the state.

The judiciary is intimidated by the executive. The state is regulating CSOs and limiting their ability to have the posturing to do PIL and other actions. The state is actively interfering with judicial processes especially when the state makes illegal decisions that are taken for litigation by the people they aggrieve placing Courts in the cross hairs of a rogue executive. Court operations are now subject to political influence and people are losing trust in our Courts, cases are being dropped. The president has made a proposition to be judge, jury, and executioner and soon mob justice and anarchy will flow as the only option (Mambo ni ma tatu). It is unlikely that anyone will go to court in the 2027 elections should there be a dispute. Any dispute will be determined in the streets. Petitions were very few this last election.

The case of Yasin Moyo who was shot by police on their balcony has not been concluded to date, compared to Floyd’s case where the perpetrator is already

serving a jail sentence. Only influential people are having their day in court. The 2018 Kianjokoma case in Meru has not been concluded despite the police officer attending court since 2018. This compares unfavorably with the election petitions that are concluded within a month. Makadara is one of the Courts where the police shop to harass youths from informal settlements with trumped charges like possession of bhang. In this court, it is nearly impossible to get a release order.

The Court system is working at cross purposes in a country that still has unlawful assembly in its laws. The Judiciary is not functioning as expected, started out strong but has lost its ballast. PIL was strong under CJ Maraga and Willy but since KK took over their rhetoric against PIL has been loud. Even earned Okiya a spat with the President on a public podium in Busia when the President appealed to the people to advise Okiya to stop going to Court. The controversy around the Finance Bill which became law following a Court decision that seemed to whitewash the glaring illegalities was a new low

Respondents confirm that the most prevalent abuses are verbal threats (93%), followed by physical attacks (85%), enforced disappearances (74%), assassination of activists (33%), profiling of certain journalists and HRDs as opposition to Kenya Kwanza (4%) and killings (4%). The media has no freedom, the press is barred from covering some events. Police delete posts/videos that we record especially where their transgressions are concerned in our work as citizen journalists, they confiscate cameras, and phones to erase the misdeeds that we capture on camera. Censorship on social media is rampant due to state intimidation. For abuses that took place against civil society, the claim that authorities have opened investigations and/or inquests is agreeable and true for only 19% of the respondents, the majority 59% find this claim false and 22% are not sure. As to whether the state has provided special measures after the attack 74% deny and find this false while 19% are not sure a paltry 7% believe this to be true.

Most respondents 85% bill as false the claim that the State has assisted excluded or disadvantaged groups whenever abuses occur in comparison to 11% who are

not sure and 4% who claim this is true. Respondents 81% deny that the state has successfully concluded prosecutions against civil society, 11% are not sure and 8% claim this is the case. As to whether Courts have provided a reliable and independent means of recourse for activists 67% say this is false with 30% saying they are not sure and 3% claiming this is true.

The IG in fact suggested that protesters were not killed and bodies were hired by politicians to make these claims. There is zero intention to hold police accountable. The IG has stifled the internal affairs unit that made oversight easier. All pending abuse cases in Court have stalled because the IG has instructed Commanders not to cooperate with IPOA

70% of CSOs feel less protected compared to 30% who feel more protected. In the past police respected HRDs and protected them, today they don't care. Within the sector HRDs are involved only when things are important for NGOs but when HRDs are in trouble the protection groups do not act swiftly, they take too long to verify a comrade at risk by gatekeepers. There is too much bureaucracy horizontally. In comparison, this regime is the worst although all have problems and look the same.

“It is easy to be disappeared by this regime even from lawful custody to Athi River. Goons come in the name of the police and target HRDs even before the demonstration. They arrive on horseback and surround the HRD before arrest”.....

HRD Respondent

The president's mambo ni ma tatu remark is scary and intimidating. Even after Human rights organizations castigated the president, the president sneered at the criticism by LSK while in Mumias for ticking him off. There is a clause in the CBO registration law that requires CBOs to merge if they come from one area. This is a limitation of civic space. One CBO was refused registration in Kayole South and they were told all self-help groups should come together to be registered 35% believe there is a discernible increase in the numbers of

investigations, prosecutions brought, and/or convictions in cases concerning attacks on activists, CSOs, protestors or journalists compared to 65% who feel the cases have reduced. 94% feel the protections for human rights defenders, civil society activists, or journalists have improved compared to 6% who do not agree.



3.1.8 Recommendations on Civic Space

In conclusion of the presentation the following recommendations were made:

Recommendations: CSOs

- Must start working as a team and stop competition or the ego trips, it is unhelpful that in the Kianjokoma case IMLU, Haki Africa and Amnesty all sent officers to the family instead of maximizing the resources to get the best results
- CSOs must continue organizing but must retool and connect with the

grassroots movements so that its power comes from below and is driven by peoples issues not just donor requirements and reporting, there is a need for greater honesty of intention and embrace openness to win public trust

- Citizens should step up PIL to veto bad laws that are passed to limit the enjoyment of civic and democratic space
- Civil Society must stop being reactive as champions of constitutional implementation
- The civil society must start engaging with party politics as proto-parties to influence the options available for Kenyans instead of lamenting about the dearth of leadership
- CSOs must acknowledge that times have changed while the sector seems stuck in its former glory in a situation where the state is constantly reinventing itself while the sector remains standing with its rusty rifles in a fight whose arena has gone online
- CSOs must shun approaches that do not work and will never work again and embrace new tactics
- CSOs doing protection of HRDs should make the process simpler

Recommendations: Duty Bearers

- The country must deal with its dysfunctional police service if the reality of a failed state is to be avoided and bring back strategies such as Police vetting
- The Judiciary should establish Special Courts to deal with police abuse of its power and officers who have suppressed protest should be held to account
- Duty bearers should respect and have fidelity to the constitution. 'Tekeleza

katiba'

- There is an urgent need to strengthen independent state organs and oversight bodies
- The IG Koome should resign
- Institutions overseeing the police have failed in their responsibility and are very weak
- There is need for a special police unit to police the police similar to what obtains in the military
- There is an urgent need to reduce the firepower for police who are sent to manage demonstrations at which only light weapons are appropriate
- Police should stop intimidating citizens
- Police in Kenya must be trained on how to de-escalate situations
- There is need for a human rights course for the police
- Police stations need to be made open and without walls to enhance transparency
- The President and the Public Service Commission should stop the practice of employing public officers on considerations other than meritocracy and excellence
- There is a need to rethink the whole question of democracy and deal with the institutional and attitudinal barriers that sustain the two-party system and its first-past-the-post electoral framework
- Studious efforts must be employed to break the matrimony between

the legislature and the executive and the claims that the executive has compromised parliamentarians through bribery should be investigated and punished

Recommendations: Development Partners

- The US and UK have emboldened police impunity by funding the totally dysfunctional police service despite their lack of accountability and public show of impunity including the claim that opposition politicians hired dead bodies following the killings of protesters by police without any condemnation
- The US Embassy which has exhibited a very partisan approach to its dealings with KK and appears to prop its unpopular policies including those that impinge on civic space should be called out



3.2 Review of Public Order Legislations

PRESENTATION BY JEREMY OUMA
ARTICLE 19 East Africa



The preamble of the presentation gave a historical perspective of public order legislation in Kenya. It was explained that during the Moi regime, the right to protest was illegal. The Saba Saba milestone of 7th July 1990; - kick-starting the pro-democracy movement. The key leaders were arrested before the planned rally, but Kenyans still showed up, -39 people died, 69 were injured and more than 5000 were arrested. In 1997, the Moi regime, under pressure from a coalition of pro-reform political parties, faith-based organizations, and CSOs, agreed in Parliament to loosen some of the harsher restrictions on the freedom of association, assembly, and protest.

The Chief's Act was partially repealed and Sections of the Public Order required a permit to exercise the right to assembly instead of a notification. The right has been exercised extensively by labor movements. The 2010 Constitution- Article 37- provides for the right to peaceable and unarmed to assemble, to demonstrate, to picket, and to present petitions to public authorities.

The applicable legal framework highlighted during the presentation included National frameworks that entailed Article 37, of the C.O.K, The Public Order Act, 1950, The Penal Code: Chapter IX of the code provides for Unlawful assembly, Riots offenses against public tranquility- Sections 81, 82, 83. This included The National Police Service Act and The Kenya Police Service Standing Orders. The regional and international frameworks highlighted in the session included Article 11 of the ACHPR- which does not mention 'peaceful', Article 21 of the ICCPR, African Commission Guidelines on the Freedom of Association and Assembly in Africa, Guidelines on Policing Assemblies in Africa, 2017 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990 and UN Code of Conduct for Law Enforcement Officials, 1979.

It was also pointed out that according to ARTICLE 19, 2021 Research key findings obstruction of the notification process; police assume that the intent is to seek permission, often taken in circles as officers of different ranks avoid the responsibility of receiving notice. Other challenges include the obstruction of unregistered groups and spontaneous protests and the forceful disruption of protests. It was also highlighted that injuries as a result of police actions and use of live ammunition, female protesters: harassment and intimidation, including sexual assault, labeling of female protestors, and accountability for police harms are some of the key challenges observed. Perceptions of differential treatment by the State, stigmatization of protestors and arbitrary arrest, punitive bail, and vindictive prosecution still pose challenges to public order.

It was highlighted that in 2023 Kenya is still facing the same challenges. The Police still interpret notification to mean permission and continue to deem protests as illegal for the absence of notification. There are still pre-emptive arrests and the use of tear gas/chemical water/ live bullets- in confrontations with protestors. The attacks on observers and journalists; to prevent documentation of protests and police action are still a common practice.

During the presentation, it was recommended that civil society actors should ensure continued advocacy towards legal reform and practice changes. There is a need to highlight the purpose and importance of this right- to dispel the

negative perceptions by conducting civic education and awareness raising on the State's obligations under Article 37 of the Constitution, the right to protest, its place in the democratic process, and available claim mechanisms. CS actors should institute strategic public interest litigation on a constitutional interpretation of the right to protest to enforce upholding of the constitutional right and enforcement of the law. Engagement with the UN Human Rights Council's Universal Periodic Review (UPR) process, the African Commission on Human and Peoples' Rights, and other mechanisms to bring attention to the Kenyan government's violations of the right to protest and failure to honor past commitments. CS actors should seek knowledge on redress pathways for survivors of violence at protests and disseminate the information to people subjected to police violence during protests.

The state actors were recommended to implement the 2010 Constitution and adhere to Kenya's international obligations regarding the right to protest. The state should amend or repeal the Public Order Act to ensure that public order management upholds the right to protest, particularly provisions under Section 5 of the Act that still require mandatory notification without clarity on acknowledgment and criminalize spontaneous protests. State actors should ensure training for officers in policing protests.

The Independent Policing Oversight Authority (IPOA) and the Office of the Director of Public Prosecutions should investigate, discipline, and prosecute officers responsible for excessive and disproportionate use of force against protesters. The state actors should create a safe and enabling environment for the right to protest and hold police officers accountable personally and individually for the use of excessive or unnecessary force during protests. Suspend officers allegedly responsible for violations pending investigation and prosecution and ensure adequate resourcing and political support for accountability mechanisms, particularly the IPOA.

The judiciary should uphold a progressive interpretation of the right to protest, drawing from the spirit and substance of the right in the Kenyan Constitution and in international and regional legal frameworks and guidelines.

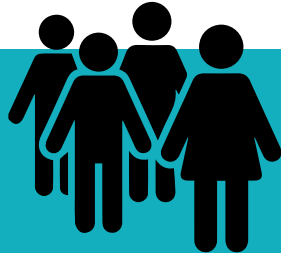
Article 19 is already focusing its #FreeToProtest Campaign on working towards the amendments to the Public Order Act (Section 5) and Chapter IX of the Penal Code on Unlawful assembly, Riots, and other Offences against Public Tranquillity. Sustained engagements with the police; to ensure a more enabling environment for the exercise of the right to protest. Better reporting on the right to protest to influence change in stigma around the right.

During the presentation proposed amendments to the legal framework were highlighted. It was pointed out that the exercise of the freedom of assembly is hampered by provisions of the colonial Public Order Act of 1950 which are inconsistent with the letter and spirit of the constitution and international human rights norms. Similarly, the provisions of Chapter IX of the Penal Code on Unlawful assembly, Riots, and other Offences against Public Tranquillity, particularly the provisions that give security officers far-reaching discretionary powers, that may be abused, to issue a proclamation on protestors to disperse, failing which protestors face up to life imprisonment. It is upon this background that Article 19, urges that the provisions of the Public Order Act and the Penal Code concerning the Freedom of Assembly are reviewed for compliance with the human rights norms.

Additionally, amendments to the Public Order Act were also pointed out. The provisions of section 5: To ensure clarity on the rank of the Officer who is to be regarded as the ‘regulating officer’ as provided for in the Act; Abolish the mandatory notification requirements and/or make it compulsory for the regulating officer to acknowledge receipt of the notification; Provide that the failure to comply with prior-notification requirements should not lead to an assembly being deemed, ‘unlawful’, without consideration of other factors on its conduct and To provide for a notification exemption for spontaneous protests were recommended.

The Amendments to the Penal Code were also highlighted. It was shared that a review of Chapter IX of the Penal Code on Unlawful assembly, Riots, and other Offences against Public Tranquillity. We are concerned about The definitions of an unlawful assembly under Section 78 of the Act. The provisions

give security officers far-reaching discretionary powers that may be abused, to issue a proclamation on protestors to disperse, failing which protestors face life imprisonment under Sections 81, 82, 83.



3.3 Public Order Management

*BREAK OUT DISCUSSION 1: MODERATED BY JOSHUA CHANGWONY
AND PRESENTED BY PETER KIAMA IMLU*

Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.....

Article 37

Peter Kiama. Chairman CFF started by recognizing the sectors represented in the breakout session. The CS actors included practitioners in advocating for child rights, widows and orphans, the elderly, land and environmental, governance and human rights, and Security governance.

He reiterated that the problem we are facing is the character of the state. He stated that we have the Constitution, the laws, and the policy to defend the right to protest. He underscored the need to open the door for dialogues with state actors. He asked the CSO to avoid fragmentation e.g during the Sabasaba protest we divided and labeled the protesters as either the Azimio or the civil society protesters. During the session, he pointed out that Article 37 protects the right to assembly, association, expression, picketing, and petition.



“Kenyans must speak up to help inform government’s improvement of our democratic spaces”

Joshua Changwony. Executive Director, CRECO.

During the session, it was highlighted that KNCHR’s mandate is to protect protests and other rights. Kenya Kwanza government committed to security sector reforms whereas data on the last 1 year of Kenya Kwanza regimes as monitored by IMLU indicates that in 22 protests an average of 1 person died in each protest in Kenya. Key incidences highlighted included the Wajir county power blackouts where 2 people were killed the police killings, 7 killed on 21st July 2022, 51 Kenyans were killed during national protests, and over 300 were either injured or killed most of them not active in the protest. The expressway damage during the protests was costed at 700 million, the figure did not tally with what was in the ground.

“We need to have a serious conversation with the government about Article 37. We need police accountability, not transfers for errant officers”...

Mercy Odondo



It was shared in the session that the civic space is repressed. Surveillance by the county government on the sector members is on the high and the civil society sector has moved from competition to mistrust. The Community Registration Act is a threat to CBOs and community organizers. The constitutional architecture-two-thirds gender and its implementation challenges have led to systematic abuse of legal processes. There is a use of democracy and order to silence the opposition. There are evictions followed by consultations. Some of the additional challenges to public order highlighted included the divisions within the sector including the closing spaces of organizing and information gaps. The sector actors must create space for political education.

It was emphasized that the CS actors should organize advocacy where people are ready for advocacy e.g., in informal settlements. Work where there is a need. It was indicated that misplaced anger- post-election violence, attack on villagers and nurses and ambulances, horizontal violence, gangs, goon ships, and ignorance should be addressed conclusively by engaging duty bearers.

“Actors within Kenya’s civic space should work as a unit and not competitively in their role of safeguarding human rights”

Happy Olal. National Coordinator SGC

It was reiterated that demonstration is our constitutional right in the constitution and in the bill of rights.

It was recommended that we should avoid autocratic legalism since not everything can be sorted in court. There are all the other tools like street protests. The CS sector was reminded to invest in protecting civic space by expanding and protecting civic and democratic spaces. Opportunities for participation at county and ward levels including public participation must be promoted. There is an urgent need to mobilize numbers to move this civic space agenda while addressing challenges in evidence collection, trust deficit, and hoarding information. The sector must enhance coordination, build synergies, and work as a team.

Joint lobbying for funding. It was highlighted that the government was sponsoring divisions and disorganizations within the sector. This was evidenced by retrogressive tags of the sector such as the evil society, busybodies, jobless, and agents of foreign masters.

It was highlighted that Article 37 must guide the work of the sector. It was reiterated that CS actors should devolve the networks close to the people/communities, identify policies and laws to support our advocacy, support PIL, champion stronger laws, create rapid response teams for HRDS, stop the transfer of police who violate rights, and advocate for multilateralism – international solidarity.



3.4 Digital and Privacy Rights

**BREAK OUT DISCUSSION 2: MODERATED BY STELA KITIONGA
AND PRESENTED BY WINNIE Masai-Inform Action,
JUSTIN OKARA-Lawyers Hub**



In the presentation, Winnie Masai canvassed the topic of Digital Rights including but not limited to the definition of digital rights, and the categories of digital rights which include Freedom of Expression, Data Protection, and Privacy Rights.

It was highlighted that while we derive many benefits from emerging digital technologies, they also bring about new challenges including the lack of a comprehensive framework to protect digital rights and personal data; amendments or developments meant to govern the digital space are often abused to further restrict the civic space; increasing inequalities as evidenced by the growing digital divide, typically existing between those in urban areas and those in rural areas; between the educated and the uneducated; between socioeconomic groups.

During the session participants were also taken through the legal framework governing digital rights which includes the constitution of Kenya in Articles 31 and 35 as well as the Data Protection Act 2019, ATI Act,

“Critical information infrastructure in the Kenyan context has seen potential vulnerabilities, threats, and subsequent effects related to data protection and privacy rights”

Jeremy Ouma, Article 19 EA

CMCA, and regional and international frameworks such as the ICCPR among others. Justin Okara, a data protection expert, canvassed Data Protection and Critical Information Infrastructure. He highlighted the data protection legal framework in Kenya, the principles of data protection as well as the rights of a data subject. The concept of critical information infrastructure in the Kenyan context was canvassed, highlighting the potential vulnerabilities, possible threats, and subsequent effects related to data protection and privacy rights. E.g. Cambridge Analytica

The emerging issues in the digital rights space discussed included the balance between data protection and privacy rights, the emergence of Artificial Intelligence (AI), and the potential impact on rights as well as content moderation practices.

Panelists also highlighted the opportunities and best practices to harness the power of emerging digital technologies for good. Opportunities identified included the participation of civil society in the strengthening/development of new and/or existing frameworks governing digital rights, opportunities for digital activism where civil society can use the internet, and emerging digital technologies for various forms of activism.



3.5 Freedom of Association

BREAK OUT DISCUSSION 3: MODERATED BY CHRIS MBITI AND PRESENTED BY CAROLINE NYAMBURA-NGO Coordination Board, PRISCILLA MWANZIA, State Department for Social Protection

During the session the State Department of Social Protection Programs were highlighted. It was indicated that the directorate's core business is to mobilize, register, and manage community groups, firmly upholding the fundamental right of association. Citizens have the inalienable right to form, join, and register groups and associations without any hindrance. These groups include Community-Based Organizations (CBOs), Self-Help Groups (SHGs), Refugees Integrated Groups, and Special Interest Groups. For Special Interest Groups, a minimum of 5 members must be present, and normal groups require a minimum registration of 10 members.

It was indicated that refugees have the right to register groups for social and economic inclusion, provided that all members are adults with a common purpose. The department must provide comprehensive training on creating a group constitution. After obtaining a certificate, refugees are free to associate and conduct business activities like Kenyans, without any interference. Discussions revealed that raising children effectively requires parents to follow structured guidelines to ensure the best possible outcome. The Persons with Disabilities program empowers and enrolls individuals with disability in a cash transfer program, aimed at significantly improving their quality of life.

It was also explained that Social Risk and Impact Management is a new program, fully supported by the World Bank, designed to address all social issues affecting a community to ensure successful program implementation.

For instance, in the case of a dam, all necessary measures are taken to mitigate any negative impact on the community.

The Community Groups Registration Act was enforced in July 2022 after thorough sensitization and public participation in ten counties. All the concerned parties are obliged to register with the new regulations within the specified transition period of one year. Noncompliance will result in de-registration....

Pricilla Mwanzia –State Department for Social Protection

The Economic Inclusion program is focused on the most vulnerable people, providing them with the opportunity to learn how to manage their finances and start their businesses. This program is currently being implemented in five counties: Makueni, Muraga, Marsabit, Kisumu, and Isiolo, to promote economic growth and development in these areas. The State Department takes a strong stance in guaranteeing community groups the freedom to associate by issuing them with registration certificates. These certificates must be renewed annually, and any non-compliance for four consecutive years can lead to forceful dissolution of the group. In such cases, the group’s name can be taken over by another organization. Groups that fail to renew their certificates are completely dissolved without any leniency.

On the other hand, groups are allowed to voluntarily dissolve once they have achieved the intended objectives. The Directorate has an unwavering obligation to monitor these groups’ activities and provide them with technical support and guidance. In case of a change of mandate, the Directorate demands immediate updates; otherwise, it takes decisive action by counseling their certificate and deregistering the group. The State Department’s unyielding efforts create a conducive environment for community groups to operate transparently, promoting social and social inclusion.

During the session, a comprehensive update was provided regarding the

enactment of the Community Groups Act. The Act was enacted in July 2022 following an extensive public participation process. The public participation process involved consultations with stakeholders from various sectors aimed at ensuring that the Act was well-informed, inclusive, and met the needs of the communities it was designed to serve. After an exhaustive public participation process, the Act was enacted in July 2022. The directorate responsible for group registrations paused the registration process for three months to develop materials that comply with the Act's provisions. Now, the registration process runs seamlessly.

Sensitization programs have been conducted in ten counties to ensure the effective implementation of the Act. These programs aimed to educate officers and stakeholders on the Act's provisions, objectives, and expected outcomes. Initially, officers were the first to undergo the sensitization due to limited financial resources. Currently, the remaining counties are undergoing online/virtual sensitization programs. The Act requires the formation of Social Development committees at both county and sub-county levels.



However, the process is still pending the allocation of resources. Once the resources are available, the process will begin, and the role of the committees in the implementation of the Act will be clarified.

The Community Groups Act mandates the directorate to create a comprehensive set of 12 regulations that cover a broad range of areas, including registration, cancellation, resource mobilization, conflict management, and formation of social development committees. However, the team has only managed to develop 5 regulations so far. It was mentioned that the team has been working

tirelessly on the basic regulations and has reviewed the registration and renewal fees. They have successfully drafted five basic regulations, which they have shared with the legal team for review before public participation. Additionally, the team is making efforts to create a braille copy of the Act to ensure that it is accessible to everyone. The online registration process was launched in September 2023, and officers and groups are currently being sensitized about it to ensure that the process runs smoothly.

During the question and answer session, it was highlighted that the responsibility of registering community groups falls under the jurisdiction of the National government. Specifically, the Ministry of Labour and Social Protection is responsible for the registration process. The government has taken a commendable step towards inclusivity by developing a Braille version of the Act to ensure that visually impaired individuals can also access the information.

It's worth noting that the name of a group should not hinder its registration, as long as it's not offensive and not an individual name. To assist community groups in complying with the Act, they will be sensitized using a sample constitution provided as a guideline in the Act. The Kenyan constitution outlines the requirements a group must meet to be registered as a community group, such as having a minimum number of members and a constitution. However, the registration fees have been revised upwards, which may be a challenge for small community groups. To ensure that complaints related to community groups are handled promptly and effectively, the offices responsible for handling complaints are located at the DCCs and ACCs offices, and complaints should be lodged at these offices. This is crucial to ensure that any grievances are addressed promptly and effectively.

“Equality knows no exceptions. In the realm of human rights, every voice matters including that of gender and sexually diverse persons”....

Adrian Kibe. LGBTQ Rights, KHRC

During the session NGO Coordination Board- Caroline Nyambura gave a brief on the Coordination Board mandate. It was highlighted that in accordance with the NGO Coordination Act of 1990, the board is a regulator of NGOs registered under the same. It is a state corporation, it began operations in 1992 and is currently under the Ministry of Interior. The Act has been overtaken by events but is still in force due to the delay in operationalization of the PBO Act.



The promulgation of the 2010 constitution required alignment with the 1990 Act and that is why the PBO Act is far better in terms of compliance with the 2010 constitution. The challenge of operating in a law that has been repealed but the law that should take over has not been operationalized. In the context of the sector, the Act is not able to regulate the sector effectively.

The role of the NGO Coordination Board includes registering NGOs- maintaining the register of NGOs, facilitating and Coordinating NGOs operating in Kenya both nationally and internationally, and receiving annual reports. The board advises and updates the government on the roles of NGOs and their contribution to their economy. There is a big challenge in unpacking the role of the board. It was explained that it took about 7years to come to the enactment of the PBO Act over ten years ago.

There have been efforts towards drafting regulations for the PBO Act by the Civil society actors and the NGO board. The PBO Act required the NGO Board to transition to the PBO Authority, the board conducted a transitional study to establish what it was required to do, and the preparations expected to be put in place to facilitate the transition. The Kenya Kwanza government made a different promise to Kenyans by having the PBO Act as part of their Manifesto

and being among the list of items to be actualized within the first 100 days. Still waiting before the end of the year as promised during the 2023 NGOs week. The board felt the need to relook at some of the previous reports and act on some of the things that might have been overtaken by events as we await the government's promise. It emerged that the PBO Act should be operationalized before the end of the year. The Board advised that organizations to align their activities to the Kenya Kwanza manifesto was not in good faith.

The key recommendations during the session included ensuring compliance with self-regulation as the CSOs await the enactment of the PBO Act. There is a need to have a social protection office on neutral ground where the police presence is not a must to avoid the fear of the community group members who fear the police. It might discourage to access the services.



3.6 Freedom of Media and Expression

*BREAK OUT DISCUSSION 4: **MODERATED BY MARTIN MAVENJINA**
AND PRESENTED BY OLOO Janak-Kenya Correspondence Association*

During this session Collins Kodhek, Convener Social Justice Centre Working Group - Western Chapter and the moderator for the session, welcomed participants to the breakout session 4 on Freedom of Media and Expression. The key presenter Janak Oloo, the Chair of the Kenya Correspondence Association gave a preamble to his presentation that highlighted the struggle for the Constitution and legal protection of media freedom in Kenya. Media freedom environment after the promulgation of the Constitution 2010.



The current environment and continuing threats to press freedom.
Media sector capacity and response towards sustaining press freedom.

It was highlighted that the freedom of expression and media is provided for under Articles 33&34 of the Constitution of Kenya 2010 respectively. Constitutional protection of press freedom in Kenya has been realized through a long and painful struggle. However, there remain significant threats to press freedom.

“Increased biases within the media based on politics, ethnicity and corruption erodes the ethical foundations among which media is supposed to operate”....

Alvin Momanyi, Advocate CRECO

The threats discussed included the government and its agencies, the state security apparatus, political class, both in the ruling party and the opposition, policy and regulatory bodies, structure of media ownership, effects technological developments, COVID 19 and the slump in the economy, increase of corruption and influence and power of the corporate sector. The growing power of the political and the connected business elite in the countries also posed a danger to media freedom was also underscored.

Within the media sector, there are also significant challenges. These include

increasing partisan reporting, often driven by political, ethnic, and corruption influences, which undermine the ethical foundations upon which the media is supposed to operate. There are increasing questions about the quality of media content due to, among others, the increasing capacity gaps among journalists and editorial management.

Recommendations:

Media outlets need to review their production and operational models to cut out non-core expenditures and be more innovative to survive.

Journalists should prepare to gradually transition from the permanent employment model to producing content for sale to media houses at competitive rates.

Journalists must leverage technology to survive, change the mode and content of their stories, and seek opportunities beyond national boundaries, including setting up their online media, which must be made as credible as possible.

The Ministry of ICT has recently (October 2023) set up a Task Force to consider reforms in the digital sector and it is expected to gather views from the public and the media to formulate policies and legislation that could respond to the changing environment.

Alliance building with the civil society sector to push for the protection of press freedom and other civil liberties as part of civic space protection.



Self-audit in newsrooms on the skill sets available and those that are needed in the face of the ongoing lay-offs.

Re-examining the legal, policy, and regulatory regime to protect media

independence and enhance press freedom and freedom of expression. This includes strengthening the Media Council of Kenya and shielding it from government control.

Adequately compensated journalists through the development of acceptable pay scales to retain them in the newsroom as the key resource for media operations. The need for continuous training of journalists to prepare them for the evolving technological environment as part of promoting public confidence in the media and also help them build capacity on emerging complex subjects. Sustained demand and advocacy for action against those who attack journalists including the prosecution of the offenders for instance the police. Sustained defense of the constitutional guarantees of press freedom under Article 34 and working with the CSO and other actors to protect all civil liberties.

A call to the International Community to support efforts at protecting press freedom by speaking out against attacks on the media and offering other forms of support towards the protection of media freedom.

The CSO sector needs to support the media in advocacy for improving the policy and legal environment affecting the media sector. Media and the CSO sectors must build and nurture a sustained engagement and collaboration; regular consultative meetings, joint activities - research conferences, preparation of policy papers and briefs, etc.

During the presentation, questions were asked on how journalists contributed to the shrinking of civic and media space, the concern of internal censorship by editors and how it affects freedom of expression and media, biased coverage by editors, and concerns about the need to pay journalists to cover a story and how this menace can be solved. In the response, it was highlighted that the media is not a saint. Ethnicity and the issue of media ownership is a real threat. The major media outlets, with multiple channels, radio, TV, print, and even online media, are owned by a small powerful clique with political connections. The Nation Media Group, Royal Media Services, Standard Media Group, and Mediamax are owned by powerful business and political players whose interests

often conflict with the practice and tenets of press freedom. They compromise in the face of political and business interests and intimidation. They control more than 70 percent of the media consumers – readership, listener-ship, and viewership. Many media houses are also struggling to meet running costs and even pay salaries to their staff with the effect that many experienced journalists are leaving the media sector.



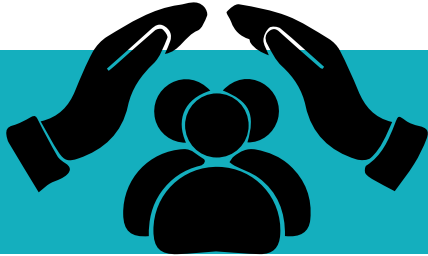
This is attributed to dwindling revenue arising from among others, the effects of technology which has seen most consumers shift to social media for information. There are those editors who are aligned with a political class or are paid to cover a story undermining the media’s role in helping enhance or protect the civic space. Within the media sector, there are also significant challenges.

These include increasing partisan reporting, often driven by political, ethnic, and corruption influences, which undermine the ethical foundations upon which the media is supposed to operate. There are increasing questions about the quality of media content due to, among others, the increasing capacity gaps among journalists and editorial management.

It was highlighted that the complaints mechanism within the media sector includes Editors/Bureau Chief, Media Complaints Commission and the reporting time is on a rolling basis. The CS actors were advised not to go to the “big media houses” first as they have huge demand. Lower expectations and approach the community-based media first. Understand the niche of those journalists too and get to know which journalist is interested in which type of story.

Conclusion:

Despite the challenges the media sector faces, it has immense capacity and potential to influence change and enhance the civic space, acting with civil society and other progressive actors. The media's capacity to investigate key public issues and concerns including corruption, human rights abuses, and bad governance among others has reduced and continues to face challenges. Efforts must be made both internally and with other progressive actors, including the Civil Society Organisations to support media freedom.



3.7 Intergenerational Discussions on Organizing, Protection, Safety & Welfare of Human Rights Actors

PLENARY DISCUSSIONS: MODERATED BY KAMAU NGUGI-Defenders Coalition AND PRESENTED BY KHELEF KHALIFA, MUHURI, ADRIAN KIBE-KHRC (LGBTQ Rights), ADRIAN KIBE KHRC (LGBTQ Rights) and SJCWG/ WHRD Representatives



The plenary discussion session began with a word of prayer and a solidarity song. The moderator Kamau Ngugi started the session by explaining who human rights defenders are and the type of work they do. The defenders coalition's main concern is the safety, protection, and welfare of human rights defenders because they believe that these are the people who stand up for the rights of the members of the community.

He also reminded the congregation to acknowledge that some of the conversations and mechanisms that are available such as the National Coalition are not well known to the community and he was very pleased with the discussions held on the previous day. Kamau asked everyone to reflect on what the guest speaker Hon. James Orengo Siaya county governor had question we are struggling with today "Looking at the "laws" that we have been struggling with over the years, do they align with the vision that is there in the promulgated constitution 2010?" As a human rights defender and a lawyer by profession Hon. James Orengo has always been part of the team that understands the struggles of human rights defenders especially in the streets.

The panelists during the session included Khelef Khalifa - Board member of the Muslim for Human Rights (MUHURI), Adrian Kibe - Program assistant Kenya Human Rights Commission (LGBTQ rights), and Millicent Mchiwa -Social Justice Center and Women Human Rights Defender Representative.

Plenary presentation by Khelef Khalifa - a Board Member MUHURI started with a brief history of MUHURI. He highlighted that MUHURI was founded in 1997 in Mombasa, Kenya, by a group of human rights activists, lawyers, and journalists who were concerned about the increasing human rights abuses and violations in the country, particularly against the Muslim community.

The founders of MUHURI believed that there was a need for a local organization that could advocate for the rights of Muslims and other marginalized groups and hold the government accountable for its actions. Over the years, MUHURI has grown to become one of the most prominent human rights organizations in Kenya, with a strong presence in the coastal region. The organization has been

involved in many high-profile cases, including the fight against police brutality and extrajudicial killings, land rights issues, and electoral violence. MUHURI has also played a key role in providing legal aid and support to victims of human rights violations, as well as in raising awareness about human rights issues through advocacy and education campaigns. MUHURI with more than sixteen years of service is currently working in 7 counties and community centers with over 1000 cases solved.

It was highlighted that their core values as an organization include; Promoting human rights, democracy, and the rule of law through research, advocacy, and legal action. The organization has a unique focus on the Muslim community, a strong grassroots presence, legal expertise, strategic advocacy, and a fearless approach to addressing human rights abuses. It also promotes and defends all Human Rights as accountable, responsive, and Professional. We do this in a manner that is consistent with the values in the Constitution of Kenya.

During the presentation, Khelef Khalifa gave his personal experience with police brutality where he almost lost his life one night when the police raided his home in the middle of the night. He also narrated how coming from Wajir to Wilson airport he was asked to provide identity documents on arrival with a police officer. Khelef was the only one asked to identify himself out of all the other passengers who were on board with him on the plane.

In his understanding, he was being profiled for coming from the northern part of the country and had to ask if Somalis are not identified as Kenyans. Due to these personal experiences and others that he didn't narrate he started a group together with two other people that instilled issues on human rights such as corruption, and police brutality among other issues. Khelef Khalid urges human rights defenders to stand up and defend themselves and not to be afraid.

During the presentation by Adrian Kibe - Program assistant KHRC (LGBTQ Rights), he stated that there is the criminalization of same-sex conduct from the BEL code that is Section 132 to 135, and because of this, the LGBTI community is very afraid to talk about such conversations because they are taboo to the

community. Because of this mentality people are not open to learning more about them, when we do not learn about the minority group we are ignorant and this ignorance carries with us even as HRDs. So because of the current context, we saw the Supreme Court decide on the freedom of association and they were able to register the National Gay, lesbian Human Rights Commission and it sparked a conversation where it was a legal win for the LGBTI community. However, the group did not have time to celebrate the win because the win was “hijacked” by the opposition and people protested on the streets that it was wrong.

In the midst of all that, there has been a lot of misinformation/ propaganda that is being fed to the public for instance the issues of; people being paid to be LGBTI, recruiting people to join the LGBTI group including children, and that they are lobbying for gay marriage. Adrian stated that all his information is false the minority group is neither recruiting children nor lobbying for gay marriages and no one is being paid to identify as LGBTI. For all organizations dealing with LGBTI rights one thing stands, adults, people who have attained the legal age of 18, and people who can make decisions legally on their own.

What happens when there is a situation where there is a public who is not informed or is afraid of having these conversations and an opposition that keeps feeding lies?

“We experience and we see fear in the public. People are afraid because they think we are coming for your children, family values and beliefs”

quotes Adrian Kibe - Program assistant KHRC (LGBTQ Rights)

He went ahead to explain that the fear is not one-sided that even the LGBTI persons are afraid because when the society is scared they see them as a threat and that means there is an escalation in violence, in dignified treatment, people being rendered homeless, families rejecting their children. This a reality that not many of us are open to speak and be honest about. On the issue of marriage,

Adrian emphasized once more that the community is not lobbying for gay marriage. When you speak to a lot of LGBTI members one thing that they say is that

“We just want to live like everyone else and not be questioned, not be harassed, no be bullied. We are only asking for fair and dignified treatment.”

Adrian Kibe - Program assistant KHRC (LGBTQ Rights)

He went ahead to state how difficult it is as an LGBTI human rights defender to do his job because in all spaces he goes he has to always educate, inform, and get comfortable with people so that they can ask him questions openly when it comes to the “difficult conversation”. Being in a Civil rights space is very intentional to Adrian Kibe because there is a need to separate human rights. For example when someone is attacked whether a man or a woman you don’t question where they are from or what they do, it’s quite simple they are human beings and they are deserving of human rights and that is why we fight for them.

During the Presentation by Millicent Mchiwa Social Justice Center women group and Women Human Rights Defender Representative. (SJCWG/WHRD) it was stated that women human rights defenders (WHRDs) are all women and girls working on any human rights issue (“women defenders” and “girl defenders”), and people of all genders who work to promote women’s rights and rights related to gender equality. It also includes any civil society actors who may not self-identify as human rights defenders or those who work in non-traditional human rights fields (journalists, health workers, environmental activists, peacebuilders, private actors, development and humanitarian actors, etc.).

Many other terms may be employed by individuals to identify themselves and their work in these areas for a variety of reasons, including those related to the context and/or languages in which they work where translations may

vary. Although restrictions of and attacks on civic space affect all defenders, WHRDs are specifically targeted and face additional and specific obstacles, risks, violations, and impacts, which are shaped by; who they are (women, girls, LGBTI people, etc.), who they identify with or are part of (such as the feminist movement), and/or what they are working to advance (such as the human rights of LGBTI people).

Human rights challenges faced include gender-based discrimination, gender-specific threats, gender-specific violence, targeting of family members and loved ones, hostility by the general population and authorities, harmful anti-gender narratives and defamation campaigns and exclusion, marginalization, under-recognition, and under-funding. The others include barriers to accessing decision-making spaces and platforms, stigmatization and ostracism by community leaders, faith-based groups, families, and communities, and gender-specific challenges and violence online and in digital spaces.

During the session, the WHRD representative urged that HRDs should always stand up for themselves and fight for what they believe in despite the challenges that they all face as human rights defenders. She went ahead to briefly touch on environmental issues affecting the world such as the use of plastics and improper disposal of plastics for example in water bodies and the environment in general causing pollution. The passionate woman human rights representative ended her presentation by encouraging women to keep going and while articulating issues to always look at both sides and gather as much information so that when stepping out even the perpetrators will have no option but to respect HRD stand.



3.7.1 Questions and Answers Session

Some of the questions asked to the panel members during the discussions were;

1. What drives human rights defenders to continue doing what they do?
2. What are the protective measures that human rights defenders should take?
3. As HRDs stand for the rights of others who are standing up for them, especially on matters of mental health?
4. Is there a way to consider each other as allies rather than different organizing groups so to sharpen contradictions and move as one? For example, is LGBTI protecting themselves from their fellow human rights defenders in terms of safety & welfare because of different beliefs and upbringing?
5. How do we handle children who participate in demonstrations and how do we deal with educational gaps on children taking part in riots to keep them safe?
6. Are people with disabilities (PWDs) recognized in the LGBTI communities and are their rights being fought for?
7. What rehabilitation measures are being taken since the majority of the people believe members of the LGBTI sexual orientation are all about mental health and should undergo therapy?
8. Can we find a level ground for investing in ourselves for example investing in businesses to generate income once being a Human Rights Defender is not considered as an “actual job”?

Responses during the session included:

1. You must have a passion and you must believe in what you are doing. Human rights defender. Fighting for human rights is not an ordinary work, it takes risks and therefore you should stand up and fight for the greater good as long as you believe in what you are fighting for.
2. Some of the measures human rights defenders can take are; peaceful demonstrations and not inviting trouble, knowing your rights, not engaging with police officers who do not have service numbers always asking for their service numbers.
3. Because Kenyan law only states that everyone has a right to participate in demonstrations without limiting/ ruling children participating in demonstrations, therefore it is the responsibility of a guardian/parent not to allow children to take part in demonstrations.
4. In the case of rehabilitation measures rehabilitation/therapy has been marked by various international instruments as conversion therapy. A report highlighted by the former Kenya Lesbian Coalition states that one of the effects of conversion therapy is mental harm experienced by people who have undergone the therapy most times end up being suicidal.
5. Matters affecting PWDs who are considered inter-sexual is a conversation people are not willing to candidly talk about.
6. On the question of how to be allies a good start will be educating yourselves individually, especially as HRDs, and acknowledging LGBTI persons as people deserving dignity, equal treatment, and human rights and not an



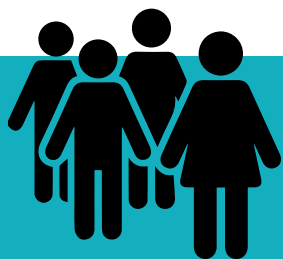
abomination to society.

7. Reaching out to the LGBTI community and having discussions on how they can be helped in terms of defending their rights.
8. To answer the question of who stands for HRDs in terms of mental health first people can start by being honest with themselves on how much an individual can handle. Also, a space where therapy and psychiatric care are offered to human rights defenders when struggling with mental health issues and traumas.

4.0 *Break-Out Session Reports*



The second day of the summit entailed the presentation of reports from the breakout sessions. Below is a summary of the breakout session reports:



4.1 **Public Order Management**

PRESENTATION BY HAPPY OLAL
Social Justice Centers Working Group



The public order management under Article 37 in the Kenyan Constitution states that every person has the right to peaceably and unarmed to assemble, demonstrate, to picket and to present petitions to public authority. So the breakout session contest was there is power to protest. A few examples were given like the Mount Kenya women protesting about the issue of illicit brew in the areas of Central Kenya and the government had to respond, protests in Uhuru Park, Mau forest, and Karura forest that helped to save forestation, protest on elections and many other examples.

The breakout session was previously presented by Peter Kiama - Chairperson CFF who started by recognizing various sectors present in the breakout room which consisted of child rights organizations, widows and orphans rights, elderly rights, land and environmental rights, security governance, and human rights. He went ahead to outline the objectives of CFF whose main objective is to address the fragmentation within the civil society. The discussion went ahead with a quote from Hon. James Orengo who previously brought up an issue on one of the problems being faced is the character of the state despite having the constitutional laws and policies to defend our rights. HRDs were urged to look at it from a different perspective, begin dialogues, and stop fragmentation. An example is the SABASABA/Azimio Nairobi protests.

Article 37 protects the following freedoms and rights; assembly associations,

and expression picketing petitions under two conditions that is peaceful and unarmed. Mr Kiama also discussed the principles of human rights which are inherently interdependent and indivisible. He gave an example of fragmentation on how the government deals with people in that people who provide water, school supplies, and hospital supplies the government brands as a good organization but those dealing with governance you are branded as “jobless communities”, “busybodies”, “puppets of the west”, and many other tag names.

There was also a discussion on how the Kenya Kwanza government has mismanaged protests in the last year where among the 22 protests an average of one person had died in the 22 protests. Statistics show that between 7th and 21st July 2022, 51 Kenyans were killed during the protests. Some individuals are currently jailed in claims of damaging the expressway “flowers” that allegedly cost 700 million. And because of the silent handshake, the individuals are likely to spend a lifetime in prison.

The media coverage was also biased in terms of branding protesters as “Azimio Protestants” yet in the real sense, the high cost of living and high taxes are affecting all Kenyans. The media is urged to acknowledge Article 19 is a right and no one should be criminalized because of that right. Amid all the deaths, no police officer has been held accountable for the death. The inspector general who is supposed to protect Kenyans went ahead to accuse Azimio protestants of going to morgues to hire dead bodies and called the media to cover a false narrative about people who died during protests.



4.1.1 Challenges to Public Order Management

The following challenges were presented;

- The civic space is still repressed a lot of work needs to be done.
- Surveillance issues in terms of people working in the county government are surveying people working on governance issues.
- The sector has moved from competition to mistrust among each other
- The Community Registration Act is a serious threat to community-based organizations and community organizers.
- Systematic abuse of legal processes where the law favors the government it is used against HRDs but when the law favors HRDs it is overlooked.
- Use of democracy and order to silence the opposition.
- The sector is divided. There was a divided opinion on whether HRDs should accept or deny the review of the Public Order Management Act.
- Information gap where people are keeping information to themselves.
- Not investing in evidence collection therefore so many potential cases are being lost.
- HRDs are not action-oriented yet marginalized communities are still suffering.
- Public interest litigation especially in the Western and Nyanza regions has to be taken to Nairobi.

- Lack of Civic education and political education.



4.1.2 Recommendations on Public Order Management

The following recommendations were highlighted:

- Invest in protecting civic and democratic spaces.
- Look for opportunities for participation at County and ward levels including public participation.
- Need for numbers to move an agenda as one.
- Address challenges in evidence collection.
- Stop hoarding information and trust one another.
- Enhance coordination, build synergies, and work as a team.
- Have a joint lobby for funding for joint calls for proposals.
- Be aware of government-sponsoring divisions and disorganization within the sector.
- Fight tags through media and social media i.e. “busybodies”, “evil society” etc.

- Identify laws and policies that support our advocacy.
- There is a need to devolve some of these networks close to the people in our communities.
- Common position on national interest matters.
- There is a need to bring community members on board they must be part and parcel when organizing action plans.
- Support public interest litigation.
- Create rapid response teams for Human Rights Defenders.
- Stop the transfer of police officers who violate our rights from one country to another.



4.2 Digital and Privacy Rights

PRESENTATIONS BY JEREMY OUMA

Article 19 EA

The session was moderated by Stella Kitonga and had two panelists Winnie Masai - Inform Action and Justin Okara- Lawyers Hub previously during the breakout discussion. The discussion was held around Digital rights data protection and privacy rights. Digital Rights are rights that allow you to express yourself and to associate with information in digital platforms in the digital age. There was discussion about how digital technology has advantages but also many challenges that are emerging due to technology. Access to information and

digital rights gained momentum following the promulgation of the Constitution of Kenya, 2010 (COK, 2010), with the centrality of each gaining unprecedented public attention following the enactment of respective statute laws.

The enactment of the Access to Information Act, 2016, the Statute Law (Miscellaneous Amendment) Act No. 18 of 2018, and later Data Protection Act, of 2019 were thought as likely to safeguard the right to access information and privacy. Among other things, the Statute Law (Miscellaneous Amendment) Act, of 2018 established the National Integrated Identity Management System (NIIMS) intended to be the only source of personal information for all Kenyans as well as foreigners resident in Kenya. A section of the public raised concern and filed a suit at the High Court, expressing strong reservations about the security of their data.

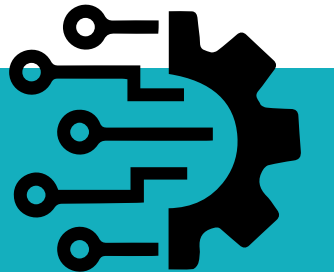
Some of the legal frameworks involved in digital rights include the Constitution Article 31 and Article 35, the Data Protection Act 2019, the Access to Information Act, and the Computer Misuse and Cybercrime Act.



Potential opportunities for enhancing and advancing digital rights in Kenya include:

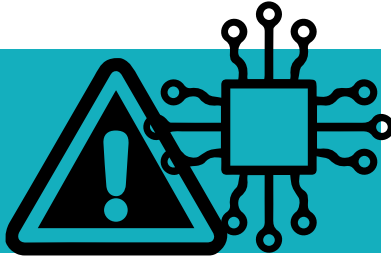
- Technology Spread and Increased Adoption of ICT in Work and Social Places
- Increased Participation of Private Entities

- Litigation on Digital Rights
- Digital Safety and Digital Literacy
- Comprehensive Regulatory Framework



4.2.1 Emerging Issues in the Digital Rights Spaces

Kenyans have to be wary of surveillance technologies. The state is getting more and more power to surveil. And these surveillance technologies affect freedom of expression. If you know that every move is being followed, it has a chilling effect on what you can say online. How much can you question the government? How much can you question leadership in general? How much can you participate in political discourse? We are getting to a point where it is very hard to stay anonymous in Kenya because most Internet use is through mobile phones and these are connected to a number that is registered. And then transactions are done online via phones, including government transactions and they are all tied to the same number. That is having a very indirect but huge effect on freedom of expression.



4.2.2 Main Challenges in the Digital Rights Spaces

We need to reflect on the changes that society is going through with digitization and how it shifts power. The state, which already had power over citizens, is gaining more control and people don't seem to realize this. There is no pushback to ensure that, as the state gathers more data on people and more power over people, there are safeguards to protect us from misuse of that power. The methods for information and data control - will grow more sophisticated and may get to a point when it is too late to return to a time where human rights are upheld. It's urgent for the human rights community to learn about the digital world, and to understand how it can be used for control and pushback.

There is also a need for civil society to create more awareness among citizens, especially young people, about digital rights. There has also been a tendency to adopt things that were developed in other countries. But there is also a need to have some homegrown solutions where we also think about the issues. Here, mobile technology matters most. So, for example, if you talk about digital safety, for us it has a lot to do with mobile phones.



What is being done to protect freedom of expression and digital rights in Kenya?

Quite a few organizations are working in the area of freedom of expression and digital rights. And we have been successful in a sense. For example, before the elections, there was a lot of advocacy about trying to make the greater society understand the Internet and the elections and how the two interact. When election-related cases were going to court, you could see that there was a really good understanding in the judiciary about the Internet and digital rights. However, it is still an uphill task. In terms of reacting, we are really good. For example, we have been successful in challenging the arrests of bloggers. But it was in reaction to one such arrest that we applied a legal strategy of questioning the constitutionality of the arrest. So civil society needs to be more proactive, for example by studying all the laws that hinder freedom of expression and either presenting them to parliament for repeal or taking them to court for interpretation.



4.3 Freedom of Association

PRESENTATIONS BY CHRIS MBITI

The freedom of association breakout session was previously moderated by Chris Mbiti together with two panelists Caroline Nyambura- NGO Coordination Board and Priscilla Mwanzia - State Department of Social Protection. The session started by being taken through the new law on Community Groups Registration Act which was enacted in July 2022. Through the introduction, the moderator realized that the majority of the members registered as NGOs under

the NGO coordination board.

The Community Group Registration Act is about the small self-help groups and CBOs about their welfare. Some key issues that came up were the registration of special interest groups including the refugees. The fact that refugees are being registered, it's part of ensuring inclusion and part of encouraging social development and improving the economy of these groups. Most refugees are in refugee camps and do not have documents that is why the act allows them to register a minimum of five members, unlike other groups where the minimum membership is 10%

These groups are taken through processes enrolled in the social protection service where they are given a monthly cash transfer to a number of them to get to understand how to manage as little as 2000 shillings for 12 months during which they are guided and talked to about investing in businesses. Most of these people are recruited from needy families who can maybe stand out and help after which they are given money (around Ksh 30,000) to begin small businesses to support the members of their groups. Another key element that was discussed was that the Community Registration Group Act also deals with issues to do with parenting, sensitizing and taking parents through effective parenting measures.

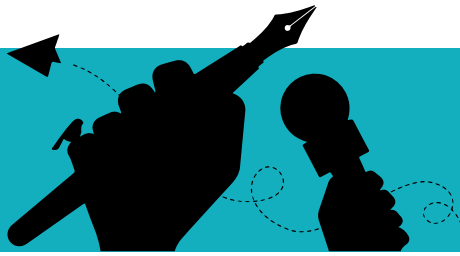
A question on if the act has gone through the process without involving the public was raised but the audience was informed that the act had gone through a "thorough" public participation. However, there were disagreements on how thorough the public participation was done only in 10 counties out of 47. This means that all the other 37 counties are not aware of the act. The 10 counties that have allegedly participated in the public participation were also not specifically mentioned. Therefore it poses a challenge to everyone to get to know deeper on what is happening around us. There was also a question on how people with challenges such as the visually impaired are being catered for. There was a response on how one of the regulations of the act being developed is that they are doing a braille version of the act so that we are all able to access the information as community groups.

There is an inclusion program that is currently taking place in 5 counties that is Makueni, Muran'ga, Marsabit, Kisumu, and Isiolo to promote economic growth. Money has been allocated to individuals/groups from these counties to begin small businesses. However, through the process, 12 counties were to be regulated but due to limited resources there is a wait on the government to give resources and a legal team is also still working on some of the regulations that might be implemented.

There was also a concern about the frustrations of groups during registration for example a guy from the Nubian community was turned down for registration because of the name "Nubian" because it sounded tribal. A response was given that as long as one is registering a group the name doesn't matter, all that matters is the group has membership. As long as the group is not registered as an individual group people are allowed to register. Another issue that came up was the process of registration in that where are the community groups supposed to go. These groups are all located in the DC office. The same issues and concerns should be reported in the DC office.

There was a question on what will happen to the groups that are already registered but the Act states clearly that all groups will be registered afresh and given a new certificate. The CBOs and Self-help groups that are currently registered under the social services should also register afresh and renewal should be renewed within 4 years or else they will be unregistered.

Caroline Nyambura took the group through the journey of the PBO Act however the NGO coordination board is operating under a law that has been repealed but the predecessor the PBO Act is still not operational. So while waiting for the law to be operational before the end of 2023 groups are encouraged to comply with the regulations. The question of whether the Act allows LGBTQ to register groups was raised and a response was given that the Act allows the minority group to register their CBOs and self-help groups.



4.4 Freedom of Media and Expression

PRESENTATIONS BY ALVIN MOMANYI

Constitution and Reform Education Consortium (CRECO)/ Lawyer

Introductory remarks were made by Collins Kodhek the convenor of the social justice center working group western chapter who welcomed the participants for the breakout session. He briefly outlined the topics for discussion which included the evolution that has occurred in the space whether media space has shrunk and what are the emerging trends. Janak Oloo- Kenya Correspondence Association Chair took over the discussion on the freedom of media and expression.

The presentation mainly covered areas on the struggle for the constitution and legal protection of media freedom in Kenya, the media freedom environment after the promulgation of the constitution, the current environment and continuing threats to press freedom, media sector capacity and response towards sustaining press freedom, media CSOs collaboration and partnership.

Basically, freedom of expression and media is provided for under Articles 33 and 34 of the Constitution. Despite the promulgation of the constitution, there remain significant threats to press freedom. This emerges from the government and its agencies including state security operators, the political class both in the ruling and opposition parties, policy and regulatory bodies, the structure of media ownership, effects of technological developments, COVID-19 and the slump in the economy, increase of corruption, etc.



4.4.1 Main Challenges facing Freedom of Media and Expression

The following challenges were presented;

- Partisan reporting often driven by political ethnic and corruption influences which undermines the foundation upon which media is supposed to operate.
- Increasing questions around the quality of media content.
- Increasing capacity gaps among journalists and editorial management.



4.4.2 Recommendations on Freedom of Media and Expression

The following recommendations were made;

- Media outlets need to review their production and operational models to cut out on non-co expenditures and be more innovative.
- Journalists should prepare to gradually transition from the permanent employment model to producing content for sale to media houses at competitive rates.
- Journalists must leverage technology to survive, change the mode and content of their stories, and seek opportunities beyond national boundaries

including setting up their online media which must be made as credible as possible.

- The industry and the government should work on moralities for setting up a media sustainability fund whose management must be open and transparent with the media stakeholders.
- Recruitment of more women into journalism to ensure the industry provides equal opportunities and spaces for both men and women.
- Sustained defense of the constitutional guarantees of press freedom under Article 34 and working with CSOs and other actors to protect all civil liberties.
- There is a need for continuous training of journalists to prepare them for the evolving technological environment as part of promoting public confidence in the media and also help them build capacity on emerging complex subjects.

5.0 **Closing Remarks**



The closing remarks were presented by Chris Mbiti-Board member CFF who concurred with a number of recommendations and conclusions. First, the civil society sector is divided we are not our brother's keeper. There are county-based CSOs and National CSOs and information is not being shared within the sector and act like competitors. The civic space is being threatened and shrinking and there are questions about what is being done about it. As a sector, we should be able to follow up on all recommendations mentioned during the discussion and not just sit and wait to attend the next meeting without any action being taken from the previous summit.

As CFF a report of the two-day summit will be published or shared with everyone to remind themselves of the discussions, key findings, and recommendations that were presented during the summit. Then the CFF members will review what were the findings and recommendations and convene the state actors and key stakeholders who have been pointed out in some of these reports for example independent commissions like the National Human Rights Commission, the police themselves, the media, etc. CFF will also look at a work plan and come up

with options on what can be done as a platform to take the recommendations forward. This will strengthen the working relations with the CSO's County-based networks because these are the people who are working at the grassroots and they know what is happening at the grassroots.

The CFF platform has committed itself to strengthening the coordination and consolidation of what is happening in the counties through publishing a Civic Space Monitor and seeing what the citizens of Kenya have to say about civic space issues in this country. Mr Chris Mbiti however brought to attention something that we missed and should be included in the next summit a final resolution, a press conference, and inviting the communities to know what is happening. An invitation should be extended to community members within the region where plenary discussions are held and take part in it.

A special thank you was given to those who traveled from different counties to attend the 3rd Civic Space Protection Summit in Kisumu County and the session was closed with a strong civil society song and human rights defenders anthem for a closing prayer.

Appendices

Appendix I: Power Point Presentations



CFF Consolidated
Index.pptx



Freedom of
Assembly Presentatio

Appendix II: Key Note Speech



Hon Nyongo Speech
Civic Space Summit 2

Appendix III: Summit Concept Note



Concept Note - Civic
Space Protection Sum

