



DEFENDERS  
COALITION

DEFENDERS

SABASABA

NYAYO  
MUST GO!

SABASABA

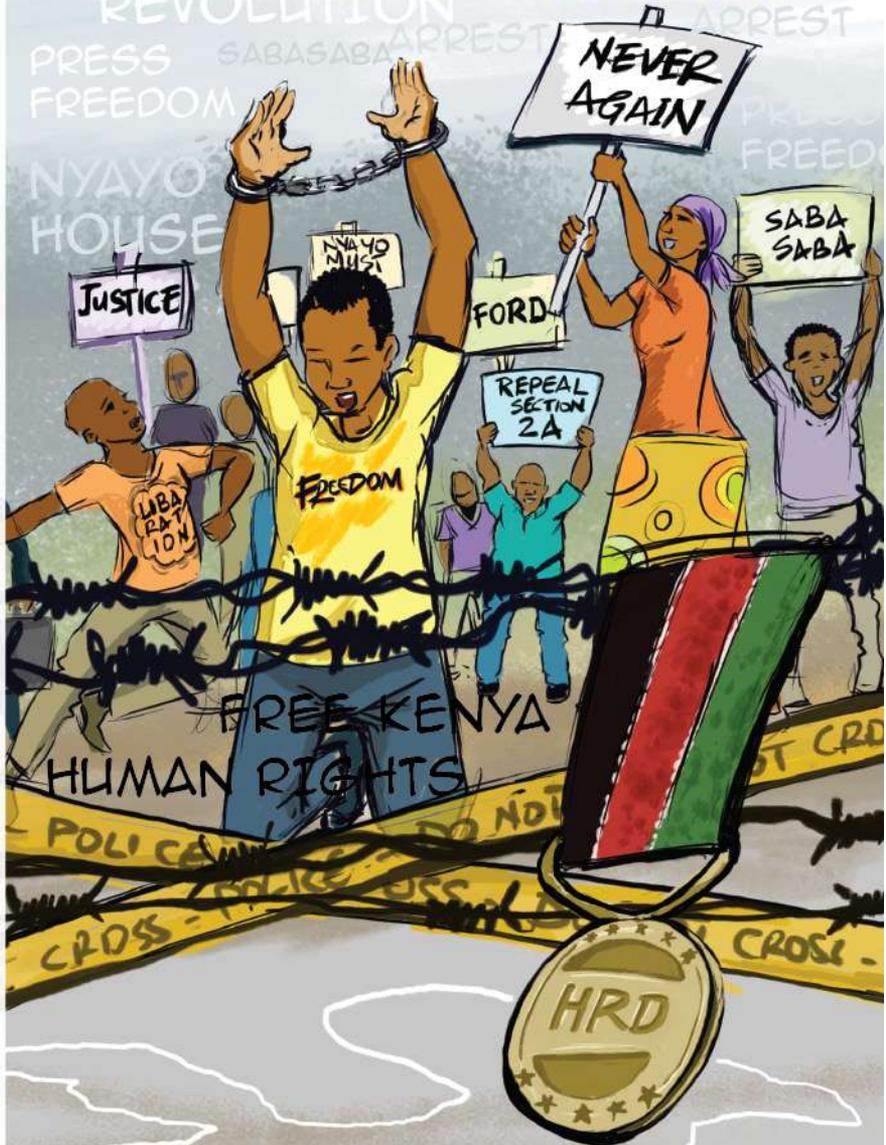
ARREST

REVOLUTION

PRESS  
FREEDOM

NYAYO  
HOUSE

# THE SITUATION OF VETERAN HUMAN RIGHTS DEFENDERS IN KENYA



BASELINE SURVEY



**BASELINE SURVEY ON  
THE SITUATION OF  
VETERAN HUMAN RIGHTS  
DEFENDERS IN KENYA**



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COALITION**

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Designed By Benjamin Luta

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## LIST OF ABBREVIATIONS & ACRONYMS

COVID-19	Coronavirus Disease 2019
FGDs	Focus Groups' Discussions
HRDs	Human Rights Defenders
KIIs	Key Informant Interviews
KNCHR	Kenya National Commission on Human Rights
MMR	Mixed Methods Research
NCHRD-K	National Coalition of Human Rights Defenders – Kenya
NPS	National Police Service
OHCHR	Office of the High Commissioner for Human Rights
PESTEL	Political, Economic, Social, Technological, Environmental & Legal
PIL	Public Interest Litigation
SJCs	Social Justice Centres
SJCWG	Social Justice Centres Working Group
UDHR	Universal Declaration of Human Rights
UN	United Nations

## GLOSSARY OF TERMS

**Buck-stopper:** This refers to someone who steps in to take responsibility in difficult situations or when matters threaten to go out of hand. It is the opposite of one who passes the buck.

**Connector:** This refers to someone who can be a link between two or more people. In this report it is used to mean a person who can link other HRDs to useful contacts, whether that is a person (s), or an organization(s).

**Influencer:** This refers to a person with the ability to impact the behaviour or opinion of other people.

## ACKNOWLEDGEMENT

In its existence of twelve years, the Defenders Coalition has continued to support the work of Human Rights Defenders(HRDs) in Kenya. It has held the hands of grassroot and national HRDs who have played a key role in the struggles for the liberation of Kenya through the different phases of growth of its democracy.

The Defenders Coalition would like to appreciate the sacrifices of all veterans to make our country better. We thank our veteran HRDs and the wider human rights defenders fraternity for remaining committed to the just cause and for willing to share their stories by taking part in the research. Our sincere gratitude to our researchers, Kepta Ombati, Tom Kagwe, Njoki Kamau and Tirop Kitur for their guidance in the formulation of this research and to Patrick Mutahi for his support in reviewing this project.

Our leadership in enhancing the safety, security and wellbeing of human rights defenders is guided by a committed team of Board of Trustees that provide invaluable guidance to our passionate staff. We thank the entire secretariat for their teamwork. Special recognition to Esban Muthoni who tirelessly ensured that the objectives of the project were met.

Our commitment to the safety and security of HRDs remains steadfast and it is our hope that through this research, we shall be a step ahead in ensuring that the operating environment for HRDs is improved. We appreciate the support of our partners led by the Ford Foundation for walking with us towards realizing our vision.

# FORWARD

FREEDOM

RULE OF LAW

PROSPERITY

TRUST

JUSTICE

LOVE

DIGNITY

EQUALITY

# FORWARD

Defending the promotion and protection of Human Rights is a collective aspiration that is oftentimes picked up by only a few passionate individuals that sacrifice personal comfort and at great risk to care for humanity. Since the founding of Defenders Coalition twelve years ago, the organization has continued to enhance the safety, security and wellbeing of human rights defenders (HRDs) in Kenya.

During the development of its current Strategic Plan 2020 – 2025, Defenders Coalition identified that the movement has grown in leaps and bounds, attracting new vibrant cadres that have continued to work with veteran HRDs to advance human rights. It was also observed that the veteran population of the movement is increasingly exiting the active advocacy space. The challenge is that their wealth of experiences has not been sufficiently harnessed to benefit the country and mentor the new generation of activists through conscious and deliberate programming plans.

The realisation of a democratic and human rights nation, while owed to the collective Kenyan people, there are those who have risen above and beyond and their names are synonymous with the struggles that have placed Kenya as a leading state globally in recognizing the rule of law, constitutionalism and human rights through supportive legal frameworks.

Defenders Coalition therefore set out to document the contribution of veteran HRDs to the human rights discourse and democratic practice in Kenya. The study was commissioned to assess not only their past roles but also how our veteran HRDs can continue supporting the human rights, good governance and access to justice agenda and to identify how equipped they are to respond to the rapidly changing human rights environment.

It has emerged that veteran human rights defenders remain a critical pillar in sustaining the many gains realized following their sustained efforts that not only birthed freer democratic space in Kenya but also a new Constitution (2010) that incorporated the Bill of Rights and Institutions to support the realization of fundamental rights and freedoms.

I am lucky to identify with some of these individuals who might have escaped our attention for a while.

The history of Kenya is rich in movements that have unwaveringly contributed to the struggle of independence, multipartyism, the constitution of Kenya 2010 and other sporadic and/regular social movements aimed at realising social justice.

However, the names of individuals or the persons whose role in these movements was unparalleled, is little known and acknowledged. This research is timely as it gives us the confidence that the names and sacrifices of these individuals will be known and that the experiences and memoirs, they had in their quest for social justice are documented.

This research is the foundation of deliberate actions towards the recognition and honouring of veteran HRDs in Kenya. Most importantly, it is my belief that the upcoming and current cadre can have a platform for exchanging and shaping ideas.

Through this research, and many others that will follow, it is my prayer that citizens in Kenya, both young and old, recognize that it's because of these individuals and many other Kenyans who raised a voice, who ferried secrets, who lived in deplorable conditions in exile that we can all enjoy the fundamental freedoms and rights that we do now. The sacrifices they made are many and we cannot exhaust them. All we need to do is create a platform for sharing and distilling the lessons.

To the veteran HRDs and the entire HRD community, your courage uplifts us all and to you we say thank you. For those of us who walk in your footsteps, we continue to carry this flame you lighted and ensure as long as human rights violations happen, it will never burn down, but instead set ablaze all violations and clear the path for the complete realisation of human rights in Kenya.



Kamau Ngugi,  
Executive Director  
Defenders Coalition



“When you deprive people of their right to live in dignity, to hope for a better future, to have control over their lives, when you deprive them of that choice, then you expect them to fight for these rights.”

– Queen Rania Al Abdullah of Jordan

# EXECUTIVE SUMMARY



## EXECUTIVE SUMMARY

This baseline survey sought to establish the situation of veteran HRDs in Kenya by conducting a nationwide mapping exercise. The study was guided by three core objectives

Map out veteran HRDs by identifying where they are and the work they are currently involved in

Identify available opportunities that veteran HRDs can leverage on

Identify and recommend organizations that the Defenders Coalition could partner with for the wellbeing of veteran HRDs.

The study makes three important contributions. First it makes a contribution to the body of knowledge by introducing and focusing attention on veteran HRDs as a theoretical concept, social phenomenon and distinct population sub-set with unique challenge, needs and views. Secondly, it provides insights into these unique challenges, needs and views of this sub-set based scientific research. Finally, it provides information and specific recommendations that could help key actors achieve more relevant and effective engagement with, and interventions in advancing the protection and wellbeing of, veteran HRDs. This research has also generated a database of veteran HRDs that can be a useful foundation to build on in better documenting and managing information on veteran HRDs in Kenya.

### Summary of the findings

**Gender distribution:** Majority of the respondents were men constituting just under 2/3 of the respondents.

**Age distribution:** Majority of the respondents were 41 years or more with most being within the age bracket of 41-50 years.

**Geographic distribution:** Most of the veteran HRDs reached out to are found in 11 out of the 47 counties of Kenya with the majority being in Nairobi and Kiambu.

**Length of service:** At least half of the veteran HRDs had served for 20 or more years.

**Current status in human rights engagement:** The overwhelming majority of veteran HRDs are still action and committed to continuing engagement as HRDs.

**Nature of engagement:** Nearly half of all veteran HRDs serve on a voluntary basis.

Occupation of part-time and seasonal employees within the human rights sector/movement: Most of the volunteer HRDs are either self-employed (30.77%) or in employment elsewhere (15.38%).

Primary spheres of operation: The primary sphere of operation of the largest percentage (45.65%) is at the national level.

Primary focus: The majority of veteran HRDs are involved in the protection and promotion of either the whole range of human rights or multiple issues advocacy rather than on single issue campaign

Main role in the human rights movement: Many veteran HRDs play multiple roles in the human rights movement. Key ones are as influencers<sup>1</sup> (58.70%) and mentors (56.52%).

State of the Nation: Majority of veteran HRDs (60%) believe that the country is much better post 2010. A significant percentage (45.84%) also indicate that their own circumstances are comparatively much better. This contrasts sharply with their views on the fortunes of their communities and that of their families with a majority believing that they are less better off.

Protection instruments: Survey results show that respondents have more faith in the international and domestic protection instruments than in the regional ones.

Protection institutions: Survey results show that non-State institutions have a better rating compared to State institutions in respect of performance in the protection of HRDs.

Among state institutions, the Courts of Law are rated highest while the Kenya Police are worst in protection of HRDs

Wellbeing of veteran HRDs: Results are mixed with regard to wellbeing of veteran HRDs. Most are doing well in their technological and mental wellbeing but struggling with in their economic, legal and political needs.

Comparative performance: In rating their performance against that of their non-HRD peers in 10 key areas over the past 10 years, survey findings show that veteran HRDs consider their performance in intellectual and technological wellbeing as well as in their status in their community and among peers. The worst areas comparatively are in preparedness for retirement as well as financial and economic performance.

Talent and competence to advance the cause for human rights in Kenya: The survey results show that veteran HRDs have 100% confidence in their abilities to be still resourceful to the cause for the advancement of human rights in Kenya. Top of the list among the most prevalent talents and competences is research and knowledge generation, public education and knowledge dissemination, community organizing and lobbying and advocacy.

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<sup>1</sup> Influencers refers those with significant power to impact public opinion or specific circles that are relevant to the human rights advocacy.

Preferred future roles and levels of engagement: Preferred future roles among veteran HRDs is: mentors, influencers, connectors and paid consultants. Majority would prefer to engage at the national and regional (East Africa) levels. However, the greatest expansion (in terms of the future compared to the past engagement) is those who would prefer working at the community level

Vision for a New Kenya: Majority of the veteran HRDs (76.60%) believe that the vision of Kenya as a nation founded on constitutional democracy, human rights and social justice is possible and attainable within their lifetime. Ninety-one (91.31%) are willing to commit their time and resources to achieve that vision.

Needed support/relevance of intervention: The survey findings show that the 5 areas of greatest needs for veteran HRDs are in business opportunities and income generating activities (91%), further education and professional growth (89%), a saving scheme for retirement (89%), social networking (89%) and in skills development (87%).

Disengagement category: For those who indicated no intention to continue in their role as HRDs, the key reasons include fatigue, disillusionment, unresolved grievances including male domination and internal contradictions preference to shift roles, strategies and spaces. Some say that being an HRD is a thankless job and does not provide opportunity for uplifting the welfare of defenders. However, for others the emergence of a new generation of young energetic youth committed to carry on the fight for rights is a cue for generational transition and change of roles.

# INTRODUCTION



A mapping exercise on veteran HRDs, by identifying where they are and the work they are currently involved in

# INTRODUCTION

This baseline survey was commissioned by the Defenders Coalition, which is the National Coalition of Human Rights Defenders-Kenya, a national organization incorporated in the Republic of Kenya as a Trust. Its mission is to strengthen the capacity of Human Rights Defenders (HRDs) to work effectively in the country and to reduce their vulnerability to the risk of persecution, through protection, capacity building, and advocacy for a favourable legal and policy environment. Established in 2007, Defenders Coalition is the only national organization that works primarily for the protection of HRDs.

The study is motivated by the observation that HRDs that exit formal employment at civil society organizations or state jobs after playing a critical role in advancing human rights, were like other seasoned activists, unable to advance their careers or personal economic wellbeing to sustain their life in retirement. The Defenders Coalition has documented increased demand by these groups of HRDs for psychological and mental health support and finances to meet basic livelihood demands for themselves and their dependents.

These HRDs are weighed down by community expectations for leadership when violations take place despite their diminishing capacity to respond. The Defenders Coalition is determined to tap from their passion, commitment and experience in human rights. They are a critical resource to continue promoting human rights at their communities, mentor the youth and other emerging human rights champions that need grounding and guardianship.

The Coronavirus Disease 2019 (COVID-19) pandemic whose first case in Kenya was established in in March 2020, has severely disrupted lives and caused massive unprecedented destruction all over the world. It is not clear how long this pandemic may last but whatever the case, its social, political and economic impact is likely to persist for long.

In Kenya, Covid-19 has already caused massive disruptions, death, hunger and grief for communities particularly persons living in rural and informal settlements and vulnerable populations. Government efforts to contain the pandemic have disrupted peoples' ways of socializing, movement, and their livelihoods. It also poses a serious challenge towards the respect, protection and promotion or fulfilment of human rights.

The Defenders Coalition therefore decided to take action before there is irreversible and permanent effects on the protection and wellbeing of veteran HRDs by conducting a mapping exercise to inform and articulate the situation of veteran HRDs.

## Purpose

The purpose of this research was to establish the situation of veteran HRDs in Kenya by conducting a nationwide mapping exercise.

## Scope of the work

The following were the main tasks:

To conduct a mapping exercise on veteran HRDs, by identifying where they are and the work they are currently involved in;

To identify available opportunities that veteran HRDs can leverage on;

To identify and recommend the organizations that Defenders Coalition could partner with for the wellbeing of veteran HRDs.

## Outcomes

The outcomes of this mapping exercise process were to be used to inform and articulate the situation of veteran HRD. They were also to provide a basis for further engagement with other stakeholders, to advance the cause for effective protection and improvement of the wellbeing of veteran HRDs in Kenya.

## 1.2 Context

The primary responsibility and duty to ensure the respect, protection and fulfilment of human rights and fundamental freedoms lies with the State. This is in accordance with the Universal Declaration of Human Rights (UDHR) of 1948. Therefore, when HRDs step in, they are in fact assisting the State to perform one of its most important and sacred duties. However, in reality, in Kenya and most other countries in the world, the State is the greatest violator and threat to human rights and fundamental freedoms.

The right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels is globally recognized and articulated in the United Nations Declaration on HRDs. This declaration was adopted by UN General Assembly resolution 53/144, on the 50th anniversary of the UDHR, on 9 December 1998. This was at a time when Kenya was in the middle of the struggle for a new democratic constitutional order to replace the incumbent one which had gestated autocracy, bad governance and a culture of human rights violations for most of the post-independence period. Many of the veteran HRDs were key in that struggle for the third liberation of Kenya, which we call the “Katiba Generation”. Some were also critical in the struggle for the second liberation, the “Section 2A/Multiparty/Pluralist Generation”. However, as this research found out, the situation of most of these HRDs is either worse or stagnated compared to the pre-Katiba period.

This research found that despite the passage of the Constitution of Kenya (2010) and the enormous efforts and resources poured into reforms, the situation has not improved that much. The situation is not only inimical to the protection and wellbeing of veteran HRDs but indeed to all HRDs and to the transformation of the country as a whole.

The rights and responsibilities of the HRDs and others are set out in 20 articles of the UN Declaration on Human Rights Defenders and these can be divided into three categories. These are:

1. Those dealing with the rights and protection that should be accorded to every human rights defender;
2. Those that outline the duties of the State; and,
3. The responsibilities for everyone else.

## 1.2.1 Rights and protection due to every human rights defender

The following are the rights and protection that should be accorded to every human rights defender<sup>2</sup>:

- *To promote human rights in their countries and globally*
- *Defend human rights whether individually or collectively with others*
- *Form associations and non-governmental organizations*
- *Meet or assemble peacefully*
- *To seek, receive, obtain information and hold information relating to human rights*
- *To develop and discuss new human rights ideas and principles and to advance their acceptance*
- *To submit to their government and any other such authorities' criticism and proposals for improving their functioning and to alert them on any threat on the realization of human rights*
- *To make complaints about official policies and acts relating to human rights and to have such complaints reviewed*
- *To offer or provide professionally qualified legal assistance or other advice and assistance in the defence of human rights*
- *To attend public hearings, proceedings and trials to assess their compliance with national law and international human rights obligations*
- *To communicate without any restrictions with non-governmental and inter-governmental organizations*
- *To benefit from an effective remedy*
- *To the lawful exercise of the occupation or profession of human rights defender*
- *To effective protection under national law when peaceful acting against human rights violations*
- *To solicit, receive and utilize resources for the purposes of protecting human rights*

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<sup>2</sup> For details see the United Nations Declaration of Human Rights Defenders at <https://www.ohchr.org/Documents/Issues/Defenders/Declaration/summaries/english.pdf>

## 1.2.2 State duties and responsibilities

The following are duties and responsibilities of the State to every human rights defender<sup>3</sup>:

- *To protect, promote and implement all human rights*
- *To ensure that all persons under its jurisdiction are able to enjoy all human rights and fundamental freedoms*
- *To adopt such legislative, administrative and other steps to ensure effective of rights and freedoms*
- *To provide effective remedy to persons who claim to have been victims of a human rights violation*
- *To conduct prompt and impartial investigation of alleged human rights violations*
- *To take all necessary measures to ensure the protection of everyone against violence, threats, retaliation, adverse discrimination, pressure or any arbitrary action as a result of their human rights work*
- *To promote public understanding of civil, political, economic, social and cultural rights*
- *To ensure and support the creating and development of independent national human rights institutions*
- *To promote and facilitate the teaching of human rights at all levels of formal education and professional training*

## 1.2.3 Responsibilities of everyone else

The following are responsibilities expected of everyone else<sup>4</sup>:

To promote human rights, safeguard democracy and its institutions and not to violate the human rights of others

Persons exercising professions that affect the rights of others, in particular police officers, lawyers and judges etc. have a responsibility in protecting these rights

## 1.3 Historical background and context

Since the founding of Kenya as a political entity in 1920<sup>5</sup> first as a British colony and later from 1963 as an independent country, Kenyans have waged numerous struggles for their emancipation. Some have been widely publicized – such as the fight against colonialism, the fight for the second liberation and the fight for a new social charter culminating in the promulgation of the Constitution of Kenya 2010 on August 27, 2010. However, many more struggles have been fragmented and waged in places ranging from informal settlements, to the shop floors in factories of urban centres, and from plantations owned by multinational companies (MNCs) to farms owned by peasant in the rural areas. The pastoralist communities, people living

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<sup>3</sup> Ibid

<sup>4</sup> Ibid

<sup>5</sup> Established on June 11, 1920.

with disabilities and the elderly, fisherfolks and the forest dwellers have continued waging everyday struggles for dignity. Feminists have challenged patriarchy and the youth against exploitation and exclusion. All these struggles are waged by human rights defenders.

Much has been documented about the struggles but little is documented about the agency<sup>6</sup>. The history of Kenya, including that of the people's struggles have almost always been misappropriated to glorify the ruling elite. However, all the changes that have taken place in the country have been waged from outside the corridors of power. They are conducted from the margins either by the masses or those who have sacrificed privilege to fight on the side of the people. The masses have been motivated by the suffering endured under the oppression of a predatory state and an exploitative economic system that supports a privileged local minority and international capitalist system. The rebels have been driven by idealism, ideology or indignation against injustice. Often there has been a confluence but in other times, the struggle has been riddled by contradictions. The people – women and men – who have stood up and taken the baton of the struggle over the last century have been given different names at different times. Freedom fighters during the colonial period; activists in the 1990s and today they are called activists and human rights defenders. Over the decades, these women and men have given up their privileges, liberties and lives in the fight for a just society and the freedom of all.

The struggle in Kenya over the last century can be categorized into three major epochs. The first one is the fight against colonialism and restoration of Kenya to its communities and people. The founding of the Kenyan state in 1920 immediately established a rights-duty relationship between the state and the people within a context characterized by internal contradictions, competing interests and contested legitimacy. First, the Kenyan state was an imposition in conflict with the natural evolution of the various pre-existing nations and communities. Secondly the new state promoted the interests of the minority white settler community at the expense of the African masses; and thirdly, the interests of the colonial metropole superseded those of the colony. The colonial government lacked legitimacy and therefore governed through coercion.

It also manufactured a small class of African middle class and imported labour to at once service their needs and also provide buffer between the unwanted colonial state and the subjugated masses. This arrangement resulted in a state and government at great odds with the free will of the majority of the people forced together within foreign imposed national boundaries and an economic and production system that was predatory, exploitative and oppressive.

Today's human rights defenders are heirs of a long lineage of women and men who have stood and fought for justice over the decades, often paying the price with

<sup>6</sup> Notable efforts include Mutunga (98), *Constitution-making from the middle: Civil society & transition politics in Kenya*, (92-97)

their own liberties and lives. Some of the earliest of these were those who led and participated in the resistance movement against colonial occupation. These include Mekatilili wa Menza of Giriama, Koitalel arap Samoei of the Nandi, Moraa Ng'iti of the Abagusii and Kimani wa Hinga, Kimathi Waciuri and the Mau Mau Movement in Central Kenya. That struggle reached its high point on December 12, 1964 with the formal declaration of independence<sup>7</sup>. The central issues then were land and freedom.<sup>8</sup>

The struggle for the second liberation commenced almost immediately, when the post-independence government of Mzee Jomo Kenyatta embarked on reconsolidating the colonial state under his rule. The early leaders in this group include politicians such as Jaramogi Oginga Odinga, Bildad Kaggia, Pio Gama Pinto, Achieng Oneko and JM Kariuki who fought for the restoration of civil and political liberties and for social justice. Some of them such as Pinto and JM paid with their lives. Others like Jaramogi and Kaggia were persecuted for most of their lifetime. This period lasted for the entire 14 years of Kenyatta's rule until his death in 1978.

The struggle continued for the next 24 years of Daniel Toroitich arap Moi's rule of 24 years which ended with his departure from power in 2002. The main achievement of the second transition was the repeal of section 2A in 1991<sup>9</sup> and a return of the country back to pluralist democracy.<sup>10</sup> During this period the likes of George Moseti Anyona, James Aggrey Bob Orenge, Koigi wa Wamwere, Jean Marie Seroney, Mwashengu wa Mwachofi and Martin Shikuku were vocal. Young Turks of the 1990s such as Paul Kibugi Muite, Gitobu Imanyara and Anyang Nyongo were also instrumental in the struggle for the repeal of section 2A and a return of the country to multiparty pluralist politics from 1991. This struggle was greatly enabled by KANU rebels such as Kenneth Stanley Njindo Matiba and Charles Rubia.

The group of early veterans also include Trade unionists such as Makhan Singh, Fred Kubai, Denis Akumu and Oyangi Mbaja who fought for workers' rights as well as for social justice and the freedom of all Kenyans. It also includes intellectuals and academics such as Ngũgĩ wa Thiong'o, Micere Mugo, Katama Mkangi, Apollo Njonjo, Willy Mutunga, Mukaru Ng'ang'a, Alamin Mazrui, Edward Oyugi and Chris Mulei. In this group are also students and student leaders such as Chelagat Mutai, Tito Adungosi, Mwandawiro Mghanga, Oduor Ong'wen, Tirop Kitur, Wafula Buke, Miguna Miguna and Onyango Oloo. Kichamu Akivaga was a notable Kenyan student leader at the University of Dar es Salaam who later was to team up with Kivutha Kibwana, Winnie Mitullah, Smokin Wanjala and Lawrence Murugu Mute to form the Center for Law and Research International (CLARION) which became a key part of the NCA/NCEC reform movement.

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7. *Self-government on June 1, 1963 and independence on December 12, 1964*

8. For detailed account see Rosberg and Nottingham (1966), *The myth of Mau Mau: Nationalism in Kenya*; Maina wa Kinyatti, *History of Resistance: 1884-2002*, (2019); and Ngugi wa Thiongo, (1981), *Detained: A writer's prison diary*.

9. December 17, 1991.

10. Holmquist and Ford (1998). *Kenyan Politics: Toward a Second Transition?*

Among the clergy were progressive religious leaders such as Bishop John Henry Okullu, Bishop Alexander Kipsang Muge, Rev. Dr. Timothy Njoya, Bishop (later Archbishop) David Gitari, Bishop (later Archbishop) Ndingi Mwana a’Nzeki and Sheikh Khalid Balala. Later these were joined by Bishop Prof. Zablon Nthamburi who was the Presiding Bishop of the Methodist Church in Kenya and Chairman of the National Council of Churches in Kenya (NCCK), Rev. Samuel Muchuga of Loresho PCEA in Nairobi, Fr. John Anthony Kaiser in Trans Mara, Fr. Ndikaru wa Teresia in Thika, Fr. Gabriel Dolan in Kitale and Fr. Richard Soi in Kericho. Bishop Nthamburi was the Convenor of the National Convention Planning Committee (NCPC), the predecessor of the NCA/NCEC while Rev. Njoya was the Chaplain of this Movement and later succeeded Prof. Kibwana as the Movement’s Co-convenor and Spokesperson. Rev. Muchuga was the other senior PCEA clergy active in the NCA/NCEC reform movement.

Lawyers included Gibson Kamau Kuria, John Khaminwa, Imanyara, Pheroze Nowrojee, Nancy Baraza, Orengo, Muite, Gupta Ng’anga Thiong’o, Mbugua Mureithi and progressive judges such as Justices Saeed Cockar and Madan. The Media on the other hand produced independent and radical publishers and journalists such as Imanyara of the Nairobi Law Monthly, Pius Nyamora of Society, Wahome Mutahi of the Nation, Vidyarthi Sudhir of Colourprint, Bedan Mbugua of the People Weekly and journalist Al Amin Kimathi of Nairobi Law Monthly. Hillary Ng’weno and the Weekly Review though not exactly radical also played an important role in investigative journalism of the time.

The underground organizing gave rise to the December Twelve Movement (DTM) and Mwakenya<sup>11</sup> and publications such as Pambana. Lawyers Wanyiri Kihoro and Mirugi Kariuki were arrested and detained in 1986 for alleged connections with Mwakenya.<sup>12</sup> While many revolutionaries and progressives like Pinto, JM Kariuki and Adungosi were killed, others like Raila, Mutunga, Anyona, Mwandawiro, Ong’wen were detained. Yet others such as Makau Mutua, Miguna Miguna, Ngugi, Micere, Shadrack Guto were exiled. Others such as environmentalists Wangari Muta Maathai and Davinder “Simba” Lamba stayed on and waged battle in various fronts from within the country despite state hostility and repression.<sup>13</sup> One of the most iconic group of human rights defenders during this period was the Mothers of political prisoners.

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11. *Muongano wa Wazalendo wa Kenya or Union of Patriotic Kenyans, an underground leftist movement formed in the 1980s to fight for the restoration of democracy in Kenya.*

12. *Mutua, (2001). Justice under siege: The rule of law and judicial subservience in Kenya, Human Rights Quarterly, 23, p 102 and Africa Watch, supra note 2, p 128*

13. *The list here is only indicative and not exhaustive. There is an ongoing process to research, document and produce a comprehensive roll of honour of the liberation heroes under the Mashujaa Heritage collective.*

Their public resistance for 11 months from the end of February 1992 at the Freedom Corner,<sup>14</sup> captured the anger of a long-suffering nation, inspired wider public opposition to Moi autocracy and ultimately forced Moi to release the remaining political prisoners in Kenya. It also gave birth to the Release Political Prisoners (RPP) movement which was key in this campaign.<sup>15</sup>

The fight for the third liberation and transition, the Katiba revolt, was consolidated under the National Convention Planning Committee (NCPC) in 1996 and later, from early 1997, by its successor the National Convention Assembly (NCA) and its executive organ, the National Convention Executive Council (NCEC).<sup>16</sup> The critical groundwork was done by many organizations and green formations as well as individuals culminating in the birth of the NCA Movement at the First Plenary Session held at the Limuru Conference Center in April 3-6, 1997. This in turn led to the popular nationwide revolt of the later 1990s. Key among the drivers of this change were KHRC, ICJ-Kenya chapter, LSK, 4Cs, CGD, CLARION, RPP, 5Cs, Abantu for Africa, YAA, NYM, Bunge la Mwananchi, students and student organizations and movements as well as progressive trade unionists. Other key actors during this period include professional bodies such as LSK and APSEA and women organizations and movements such as NCWK, ECWD and FIDA. These were later joined by COVAW, NWPC, CREAM and CMD-Kenya. This resulted in a convergence of different generations of freedom fighters, organizing nationwide across class, religion, race, ethnicity, gender and geographies.

Conscious art/art for social justice and liberation included 5Cs, RPP and veteran HRDs such as Kangara wa Njambi, Karimi Nduthu, Muthoni Kamau, Njoki Kamau, Sophie Dowllar, Ann Wairimu, Freddy Ooko, Ooko Mswaki, Tony Mboyo, Ndungi Githuku, Cyprian Nyamwamu and Tirop Kitur. This art for social justice and liberation can be seen as a continuation of earlier work by earlier trail blazers such as Ngũgĩ wa Thiong'o and Ngugi wa Mirii especially at the Kamiriithu Community Education and Cultural Center. The open-air theatre at Kamiriithu, in present day Kiambu County had become a powerful space for community organizing and education, mass public consciousness and resistance to injustices using theatre and culture, so much so that it was razed to the ground during an armed attack by Moi's police in 1982.<sup>17</sup> Grassroots organizing was driven by YAA, NYM, Bunge la Mwananchi, students and student organizations; women movements such as the Green Belt Movement (GBM). Later, the Yellow Movement, CRECO and Partnership for Change picked the mantle and carried the struggle forward. The period between 1990 and 2010 is arguably the golden years of civil society and social movements organizing.

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14. Freedom Corner is located at one corner of Uhuru Park, right across Nyayo House on Uhuru Highway, which housed the infamous Moi torture chambers at the basement, and in which many real and imagined state enemies were subjected to torture during the Moi era

15. Wangari Maathai and Njeri Kabeberi were key in the consolidation of RPP

16. Holmquist and Ford (1998). *Kenyan Politics: Toward a Second Transition?*

17. This was on Friday March 12, 1982. For detailed account see Ngugi wa Thiongo, (1981). *Detained: A writer's prison diary.*

Over the years the organizing issues have evolved and varied. For instance the fight for independence, what might be called the struggle for the first liberation, was organized around Land and freedom. The struggle for the second liberation was organized around restoration of democracy. Key were the restoration of political rights. In spite the repeal of section 2A in 1991 and return to multiparty politics this did not lead to any meaningful social and economic transformation in Kenya. this then was the seed for the emergence of the third liberation which was organized around the demand for a compactly new and radically different social charter and contract for Kenya. this was achieved in 2010.

The social and economic conditions of majority of Kenyans have not improved due to resistance by the ruling elite to the political, economic and social transformation envisaged by the Constitution of Kenya 2010. Instead, the country is beset by massive economic inequalities and great social stress. This has given rise to the emergence of social justice movement led by social justice centres and other grassroots networks rooted in communities and consolidating a new struggle around economic liberation/freedom and social justice. This might well be the fourth liberation. Most of the veteran human rights defenders still alive and interviewed in this report participated in the second and third liberation struggles.

## 1.4 Kenya's Human rights and Good Governance commitments

Today Kenya, at least in theory, is committed to the following; constitutional democracy, rule of law, fundamental rights and freedoms, constrained government power and clean and accountable government (referring to absence of corruption and prevalence of open government, order and security and regulatory enforcement, justice (inclusive of civil justice, criminal justice, ecological justice, social justice) and international human rights law.<sup>18</sup> Kenya has an extensive framework of international, regional and municipal legal normative, legislative. key among these are the international treaties and covenants, regional covenants and conventions, Constitution of Kenya, 2010, legislations, regulations and public policy.

The preamble of the Constitution of Kenya 2010 is very clear that the purpose of the social contract is to protect and promote the wellbeing of the individual, family, community and the nation based on human rights, equality, freedom, democracy, social justice and the rule of law. This summarizes the long and protracted struggle for a new social contract and a new society in Kenya lasting 20 years.

The preamble captures the vision and spirit of the Constitution. The Preamble of

<sup>18</sup> *Constitution of Kenya, 2010*

a national Constitution is also the expression of the collective aspirations of the society to which it relates. The preamble of the Constitution of Kenya 2010 outlines this vision, spirit and aspirations thus;

**RESPECTFUL** of the environment, which is our heritage, and determined to sustain it for the benefit of future generations:

**COMMITTED** to nurturing and protecting the well-being of the individual, the family, communities and the nation:

**RECOGNISING** the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law:

**EXERCISING** our sovereign and inalienable right to determine the form of governance of our country and having participated fully in the making of this Constitution:

**ADOPT, ENACT** and give this Constitution to ourselves and to our future generations.

The Constitution recognizes the international laws including the human rights instruments to which Kenya is a signatory are part of the Kenyan law under Article 2(5) and (6).<sup>19</sup> Conversely any law, customs or traditions that is inconsistent with the constitution is null and void to the extent of that inconsistency. The constitution is binding upon all state institutions and to all individuals.

Kenya is one of the 193 signatories to the Universal Declaration on Human Rights. It is a party state to 8 out of the 18 key International instruments (consisting of 9 binding treaties and 9 alternative protocols).<sup>20</sup> This commitment and obligation is secured under Article 2(5) & (6) which entrenches international law in the Constitution. This article provides that the general rules of international law shall form part of the law of Kenya and that any treaty or convention ratified by Kenya shall form part of the law of Kenya.<sup>21</sup> Consequently all the 9 international human rights covenants that Kenya has ratified are part of the country's national laws. And so are the ratified regional instruments. The state is required to enact and implement legislation to fulfil its international obligations in respect of human rights and fundamental freedoms [Art 21 (4)].<sup>22</sup>

The international law is significant for at least two key reasons. First, it provides the normative human rights standards against which a country's domestic laws can be measured to determine the extent to which they protect and promote human rights. Secondly, it provides a basis for legal redress in the event the local mechanisms fail. This can be through referrals, accountability and/or litigation.

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19. *Constitution of Kenya, 2010*

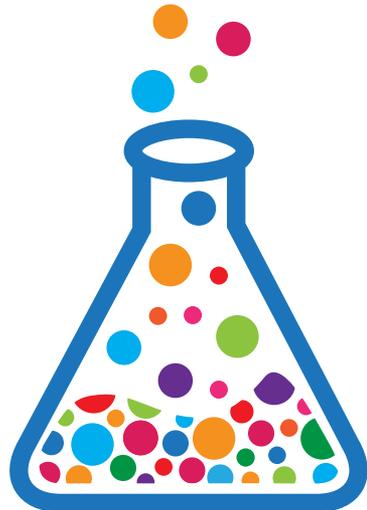
20. *OHCHR: Kenya-Ratification of International Human Rights Treaties*

21. *Constitution of Kenya, 2010*

22. *Ibid*

# RESEARCH METHODOLOGY

In this context and by description, a veteran HRD is anyone who has been involved in the human rights protection and promotion consistently for 10 years or more.



# RESEARCH METHODOLOGY

## 2.1 Overall approach

The research adopted the Mixed Methods' Research (MMR) approach as the overall framework. This combines both the positivist and phenomenological research approaches. This choice of the MMR approach was based on the need to capture both breadth and depth of information and/or findings. Key to the positivist approach is objectivity, neutrality, measurement and validity of results. This approach is concerned with confirmability, consistency, dependability and generalization.<sup>23</sup>

On the other hand, phenomenology utilises the researcher's perception and experience and avoids generalisation based on already existing theory. It is however useful in the development of theory. Accordingly, it focuses on data collection, analysis, and conclusion-making in regards to strength as well as nature of association among study variables based on empirical evidence.<sup>24</sup>

The approach also takes into consideration the following key factors: relevance, effectiveness, efficiency and sustainability. Further, it permits design of the research to yield reliable, consistent and accurate results.

## 2.2 Research design

The primary design of this research was a cross-sectional, correlational survey. This was deemed suitable due to purpose, scope, period for gathering data and nature of information to be collected.<sup>25</sup> The overall research was to collect large amount of data from a large population for statistical analysis and interpretation. The scope was more of breadth rather than depth.

A cross-sectional survey facilitates the capture of the characteristics of a large study population over a point in time and, where appropriate, the quantitative testing of the research hypotheses.<sup>26</sup> This research design is suitable for facilitate gathering of descriptive data for statistical analysis for objective inferences and conclusions

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23. Patton, 2002

24. Saunders et al., 2007

25. Cooper and Schindler, 2011

26. Saunders et al., 2007

## 2.3 Study population

The study population were veteran HRDs in Kenya, denoted by length of service of activity as an HRD rather than biological age. In this context and by description, a veteran HRD is anyone who has been involved in the human rights protection and promotion consistently for 10 years or more. They are considered to have done the human rights advocacy on a consistent basis for 10 or more years. The underlying assumption is that this corresponds with accumulation of experience as well as knowledge and skills in service. It should however be noted that this criterion is open to debate and may not capture the circumstantial or accidental HRDs. However, there is no data base of the veteran HRDs in Kenya and so the total number is unknown.

## 2.4 Data collection

The research collected and utilised both primary and secondary data. The primary data was collected through semi-structured questionnaires for respondents and through interview guides for Key Informant Interviews (KIIs). Focus Groups' Discussions (FGDs) were convened for more in-depth insights to findings, clarifications and probing for more information on key questions or emergent issues. The questionnaire was divided into various parts containing open and close-ended questions derived from relevant previous studies, theory and the researchers' perspectives.

The key parts of the questionnaire were the respondents' profile to capture the veteran HRDs biodata, the state of the nation to get perceptions on the social and economic operating context, HRDs protection, wellbeing, required support and recommendations on what could be done to improve the protection and wellbeing of veteran HRDs in Kenya.

Quantitative data was collected to facilitate comparison and generalisation to the broader population. This data was collected through questionnaires which were sent to respondents through e-mail and follow ups made. Physical interviews conducted where possible, taking into consideration the COVID-19 pandemic safety protocols and measures.

The study also collected qualitative data in order to obtain more information and depth. The flexibility permitted the researchers to pick up further information that was considered useful in interpreting and clarifying the quantitative data collected.

The primary target respondents were veteran HRDs in Kenya. The research adopted a census survey in order to cover the veteran HRDs it could reach in their diversity. The aim was to be as representative as possible in terms of gender,

regional distribution, cultural communities' inclusivity, and socio-economic status and education levels. The sampling method also aimed to minimize selection bias. The research also collected data from other stakeholders (individuals and representatives of various organisations) that work or have worked with veteran HRDs in the past. The researchers clarified the purpose of the study and reiterated commitment to confidentiality and ethical research to all participants.

Secondary sources of data included published reports and other relevant extant literature. This data collection method was chosen purposely to permit collection of information that addresses pertinent questions relating to the study and relevant to the context.

# RESEARCH FINDINGS



The findings show that both funding and frontline protection agencies are key to effective protection of HRDs... it suggests that all formal funding is from the international community. Conversely, it reveals a gap in formal support from local, regional and continental sources.

# RESEARCH FINDINGS

## 3.1 Respondents Profile

**Respondents:** A total of 176 questionnaire were sent out based on a purposive sampling of the HRDs from a recently created database. Out of these, we got 58 responses. This is a response rate of 32.95%. This is just about one out of every three prospective respondents. All the respondents who participated in the survey confirmed that they are HRDs.

The response rate represented just about one out of every three prospective participants. This does beg the question why such a low response rate? Some of the possible reasons might be limitation in the methodology. The main method of data collection was through electronic questionnaires. It could therefore be that some of the veteran HRDs who did not participate in the study were excluded due to lack of access to information technology services. If this is true then it could imply a bias based on methodology in that the report may reflect the data of only those veteran HRDs who are connected. Another reason may be security and safety. Given the nature of their work, security and safety is a major concern for HRDs. A recent study by the Defenders Coalition confirms that security and safety is a major concern for HRDs.<sup>27</sup> This may therefore naturally tend to suppress participation particularly for the HRDs who may have prioritised security and safety over the study needs. A third reason may be self-censorship. From the FGDs it emerged that many veteran HRDs feel frustrated, bitter and disconnected. Distress can arise out of the perceived gap between the actual and ideal self.<sup>28</sup> It is therefore possible that some might have declined participation out of this sense of frustration, alienation or simply as a projection of protest. This question however merits further investigation.

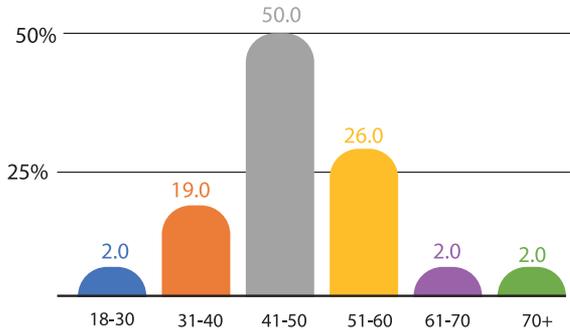
**Gender distribution:** Majority of the respondents were men constituting 60.71%. Women were 35.71% while gender-non-conforming HRDs made up the remaining 3.57%. This seem to confirm and reinforce the perception that the face of HRDs is masculine. This particularly emerged within the FGD with the young HRDs. This however contrasts with some previous studies in which majority respondents were women. In the Defenders Coalition Perception survey on the Impact of communication surveillance on human rights defenders in Kenya, for instance, the gender distribution among the respondents was 71.4% in favour of female as opposed to 28.6 for male HRDs.<sup>29</sup>

27. Defenders Coalition (2020). *Perception survey: Impact of communication surveillance on human rights defenders in Kenya*

28. For details see the self-discrepancy theory; See for instance Stangor, Jhangiani and Tarry (2014). *Principles of social psychology*

29. The view is aptly captured in the words of one of the participants as follows; "My view of veteran HRDs is male. It is a male world. The face of a veteran HRD is male; we don't know where veteran women HRDS are." FGD with Young HRDs conducted on July 2, 2021.

Figure 1: Age Distribution of Respondents



(Source: Survey Data, 2021)

**Age distribution:** Majority of the respondents were 41 years or more, constituting 78.18% of the sample. However, within this group, almost two out of every three are those within the age bracket of 41-50 years who make up 49.09% of the entire sample population. That is, one out of every two veteran HRDs. This is followed by the 51-60 years cohort who make up 25.45% while those under 40 years constituted 21.82%. Those above 61 years were 3.64%. Figure 1 below demonstrates this finding:

The age distribution findings fairly reflect what might be expected given the focus of the study and the target study population. However, there is also a possibility that the methodology might have disadvantaged older HRDs due to technological gap or retirement. In a study on the digital gap between young and elderly people, Paul and Stegbauer found that elderly people have a diminished role in research on information needs and internet usage patterns.<sup>30</sup> And according to psychologists, retirement may trigger social isolation and decreased social connections and that all social species including people fare poorly when isolated.<sup>31</sup> This may be further exacerbated by the rural-urban digital divide and information asymmetry. It is also noteworthy that without a reliable database of veteran HRDs, it is a challenge to determine the true demographic spread. This may be further compounded by the definitional and conceptual challenges of who is in fact a HRD.

**Geographic distribution:** The veteran HRDs that we reached out to for this survey are based in 11 out of the 47 counties of Kenya. That is 23.40% of the counties. The majority of the respondents are based in Nairobi. The distribution is heavily

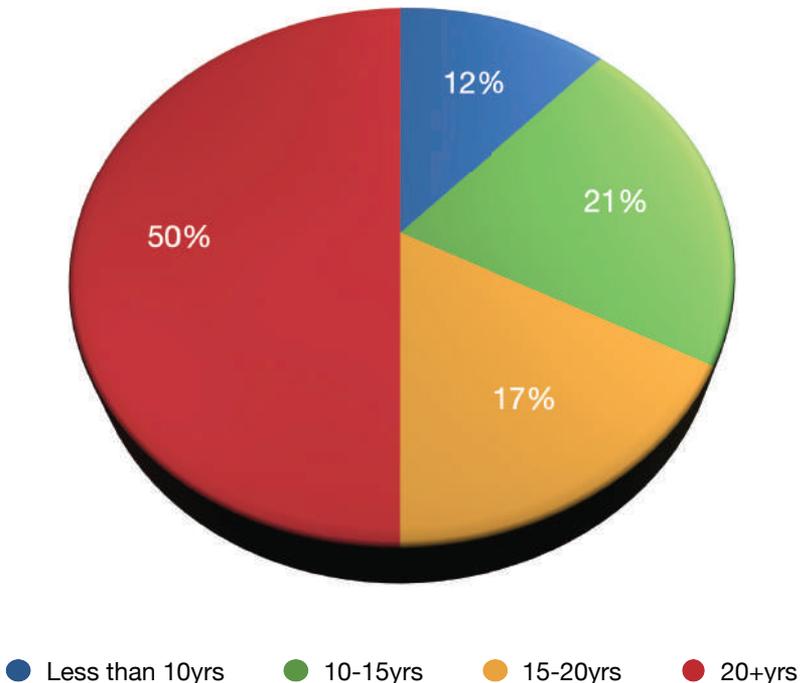
<sup>30</sup> Paul and Stegbauer (2005), *Is the digital divide between young and elderly people increasing?* First Monday, 10(10), available at <https://firstmonday.org/ojs/index.php/fm/article/download/1286/1206?inline=1> downloaded on October 12, 2021

<sup>31</sup> Cacioppo and Hawley (2009). *Perceived social isolation and cognition*; and Rosenthal and Moore (2018), *The psychology of retirement*

skewed towards Nairobi as they make up more than half of the respondents (55.56%) of all the respondents. Majority of the HRDs outside of Nairobi are based in Kiambu (7.41%). This is followed by a band 6 counties consisting of Mombasa, Taita-Taveta, Uasin Gishu, Nakuru, Kisumu and Migori at 3.70% each. The counties of Nyandarua, Kajiado, Vihiga and Siaya had 1.85% each. It would be useful to conduct further research to determine the reasons for these variances. Some of the possible causes could be digital inequalities, prevalence in rights abuses, civic awareness as well as concentration of human rights defenders in particular areas. More granular investigation is also recommended with particular focus on geographic distribution at the county, ward and community levels.

Length of service: At least half of the respondents had been HRDs for 20 years or more. This is followed by those who had served for between 10-15 years who make up 20.69% closely followed by those who have served for between 15-20 years (17.24%). The balance of 12.07% are those who have served for less than 10 years, which in this research constitute an outlier group.

Figure 2: HRDs Length of Service

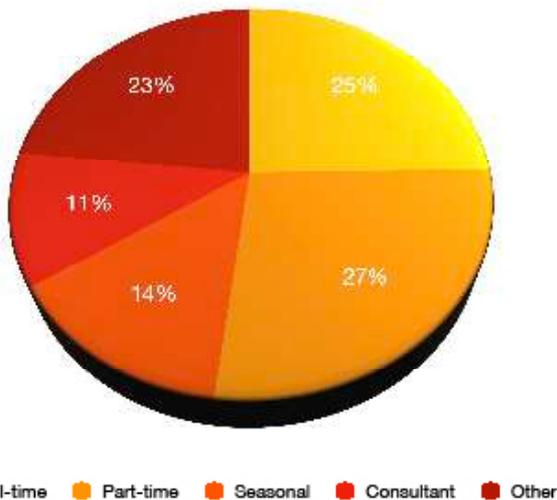


(Source: Survey Data, 2021)

**Current status in human rights engagement:** The research found that the overwhelming majority of veteran HRDs are still action (94.83%) while 5.17 % are no longer actively engaged as HRDs. This confirms the commitment and resilience of HRDs. It is even more remarkable given that Kenyan history does not recognize veteran HRDs and their contributions even though it is their struggle and sacrifices that brought change to this country.<sup>32</sup> The veteran HRDs have done incredible work at both the national and community levels but the work is not documented.<sup>33</sup> Further, there is a dearth of information especially on veteran women HRDs. This not only denies us the opportunity to recognize and appreciate their work and contribution, but indeed, also the opportunity to learn from them. However, veteran HRDs have not been well treated by the government and society despite their great contributions.<sup>34</sup>

**Nature of engagement:** Nearly half (49.09%) of all veteran HRDs serve on a voluntary basis. Majority are part time volunteers (27.27%) closely followed by full time volunteers (25.00%). On the other hand 13.64% are seasonal volunteers while 11.36% are volunteer consultants. About a third (34.55%) are paid professionals or employees. Of those who are employed, majority (64.29%) are in full time employment within the human rights sector/movement while 7.14% are part-time employees. Independent consultants make up 14.29%. However, there is a significant percentage (22.73%) that did not specify their roles clearly.

Figure 3: Nature of Engagement of HRDs



(Source: Survey Data, 2021)

32. FGD with Young HRDs conducted on July 2, 2021.

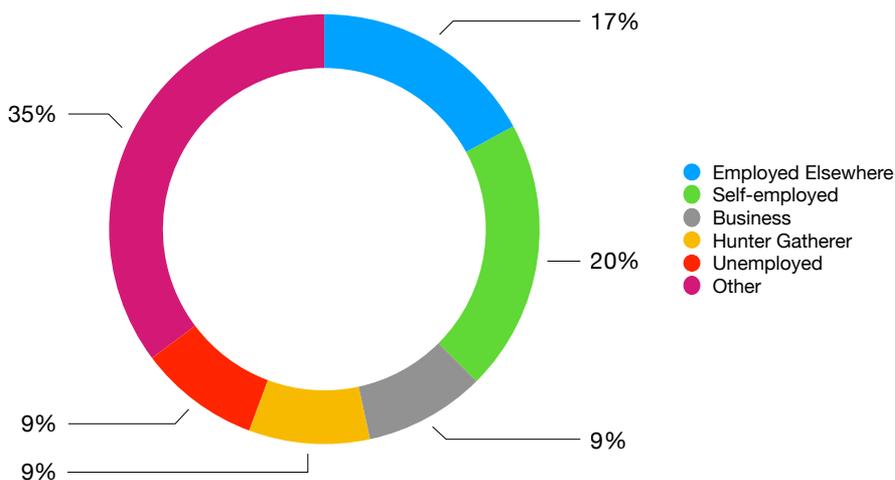
33. Notable efforts include Mutunga (1998), *Constitution-making from the middle: Civil society and transition politics in Kenya, 1992-1997*

34. *Ibid*

These findings confirm the rich diversity of HRDs. It however also shows that majority of the HRDs are volunteers. Without institutional protection or support this represents a major challenge with regards to effective response to the protection and wellbeing of non-institutional and volunteer HRDs. The threat could however be converted into an opportunity for mass movement building or community mutual support.

**Occupation of part-time and seasonal employees within the human rights sector/movement:** Most in this category are either self-employed (30.77%) or in employment elsewhere (15.38%). There is a small minority spread out in business and farming at 7.69% each while a similar percentage are unemployed. Nearly a third (30.77%) of the respondents could not categorize themselves or clearly define their occupation outside of human rights. The complementary engagements of HRDs could represent frontiers for expanding human rights work and movement building.

Figure 4: Occupation of HRDs



(Source: Survey Data, 2021)

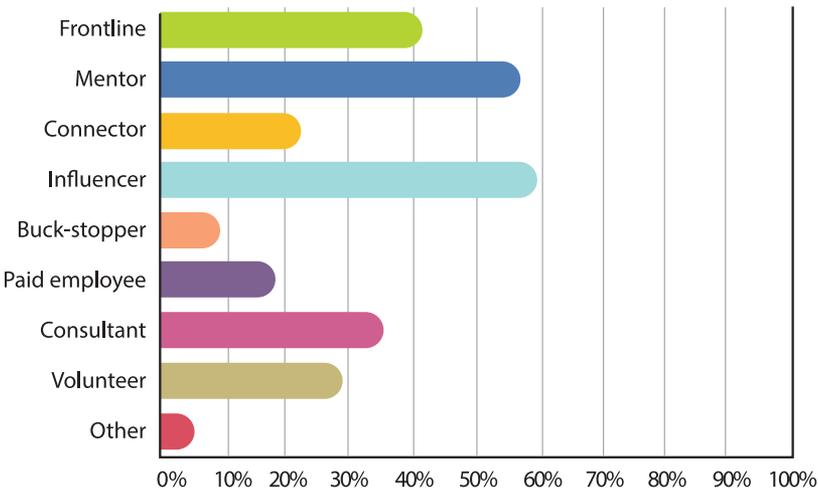
**Other occupation of part time volunteers:** Majority of the part time volunteers are either employed elsewhere (40.54%) or self-employed (29.73%). A minority are doing business (5.41%) or are farmers or hunter-gatherers at 2.70% each while 8.11% are unemployed. 10.81% did not indicate what they do. As observed above, this could represent frontiers for expanding human rights work and movement building.

**Primary spheres of operation:** The primary sphere of operation of the largest percentage (45.65%) is at the national level. Those at the community and the regional level (meaning, the East African Region) constitute 13.04% each while those operating at the global level constitute 10.87%. The focus on the national level may be a reflection of the nationalist inclination of majority of the veteran HRDs. It however could also be response to a past in which political and economic power and the locus of oppression and repression were concentrated at the center. However, with devolution under the Constitution of Kenya 2010, the focus might shift significantly towards the counties and communities.<sup>35</sup>

Primary focus of veteran HRD's work: 93.33% of veteran HRDs are involved in the protection and promotion of either the whole range of human rights or multiple issues advocacy rather than on single issue campaign constituting. Only 2.22% focus on single issue advocacy.

**Main role in the human rights movement:** Many veteran HRDs play multiple roles in the human rights movement. Key among these is as influencers<sup>36</sup> (58.70%) and mentors (56.52%). A significant percentage (41.30%) are still actively in the frontline. This is followed by consultants (34.78%) and those who are connectors<sup>37</sup> (21.74%). However, only 17.39% are in paid employment as their main role while 28.26% are volunteers. These offer a wide range of opportunities for engagement with veteran HRDs.

Figure 5: Main Role in the Human Rights Movement



35. FGD with veteran HRDs conducted on July 5, 2021.

36. Influencers refers those with significant power to impact public opinion or specific circles that are relevant to human rights advocacy.

37. Connectors refer to people who are able to act as links or create useful linkages between HRDs and other actors and stakeholders e.g. legislators and policy-makers, regulators and oversight agencies, service providers, international community, solidarity and development partners etc.

Majority of veteran HRDs participate in the roles above full time (56.52%) while 41.30% are in it part-time. 2.17% are indeterminate in terms of what role they play. This may call for flexibility to permit different categories of veteran HRDs to optimize on their roles, time and resourcefulness while doing human rights work.

**State of the Nation:** Survey results show that a majority of veteran HRDs (60%) believe that the country is much better post 2010 and 45.84% indicate that their own circumstances are comparatively much better. This contrasts sharply with their views on the fortunes of their communities (36%) and that of their families (29.17%). 36% believe that the country is worse off while only 4% believe that the overall state of the nation remains unchanged. The level of dissatisfaction with the state of the community (32.00%) and family (37.50%) fairly mirrors that of the outlook on the state of the nation (36.00%). Fewer veteran HRDs are equally dissatisfied with personal status at 29.17%.

Most veteran HRDs see significant change post-2010 on most parameters. Detentions are, for example, out of the way while there is greater space compared to the pre-2010 era. The State is one that does human rights-speak, appropriates human rights language and makes appearances to mask its hidden tendencies of oppression that shrinks the civic space considerably. The veteran HRDs cannot benefit from State opportunities be they tenders or jobs because of stigma associated with activism. Secondly, communities can hardly feel the mega projects as many have no money in their pockets, have lost jobs and businesses, and, families feeling the impact of huge taxes and high cost of living.<sup>38</sup>

## 3.2 HRDS Protection

**Protection instruments:** Survey results show that respondents have more faith in the international and domestic protection instruments than in the regional ones. While a majority of the respondents believe that the international instruments (73%) and the national laws (82%) have served the HRDs protection needs well, only 40% gives approval for the regional instruments. The key international protection instrument cited is the UN Declaration on Human Rights Defenders of 1998 while at the domestic level it is the Constitution of Kenya, 2010. The key regional instruments are the Grand Bay Declaration, 1999, the Kigali Declaration, 2003 and the Resolution on the Protection of African Human Defenders, 2004

These findings might be a reflection of the great relative value and legitimacy of international instruments and the national laws. International instruments provide normative values while national laws are more accessible. Regional instruments have challenges in implementation due to weak mechanisms for implementation. They also lack visibility and there is relative lack of even basic public awareness of their existence even among HRDs. It could also be a question of perception on the demand side.<sup>39</sup>

<sup>38</sup>. Interview with a key informant (Patrick Ochieng) on July 8, 2021

<sup>39</sup>. FGD with veteran HRDs conducted on July 5, 2021.

Regional instruments are in the firm hands of African political leaders and in all instances where action was required, they have often looked the other way such as in the wake of electoral injustices in several countries. This may also be a reflection of the challenges of human rights protection and protection within the context of illiberal and anti-rights regional regimes. It is worsened by conversion of regional co-operation arrangements into transboundary clubs for the ruling elite that strengthen and fuel impunity. National laws have worked in Kenya because of a steadfast judiciary and a vigilant Kenyan community that is using Public Interest Litigation (PIL) much more regularly. International instruments are cemented in the country's constitution, making it possible to influence our praxis.<sup>40</sup>

**Protection institutions:** Two types of institutions were surveyed: State institutions and non-State institutions. Survey results show that non-State institutions have a better rating compared to State institutions. State institutions have 45.24% positive rating and 54.77% negative rating. However only 14.29% indicate that these institutions have done well enough while 30.95% believe that the performance of these institutions has been just somewhat good. Non-State institutions on the other hand had 79.07% positive rating against a negative rating of 20.93%. Cumulatively, 34.89% indicate that non-State institutions have performed either well enough (32.56%) or exceptionally well (2.33%) while 44.19% believe that they have done just somewhat well.

**Defenders Coalition:** Survey results show that Defenders Coalition is rated well above the average for both the state and non-state institutions. Defenders Coalition received 86.05% positive rating compared to 13.96% negative rating. This is nearly 7 percentage higher positive rating than the average for other non-state institutions and nearly 41 percentage higher than the average for state institutions. Survey results show that 32.56% of the respondents believe that Defenders Coalition had performed exceptionally well compared to 2.33% average for other non-state institutions. This is a 30.23% percentage difference. The high rating can be attributed to its mandate. Defenders Coalition is mandated to champion the safety, security and wellbeing of Human Rights Defenders.<sup>41</sup>

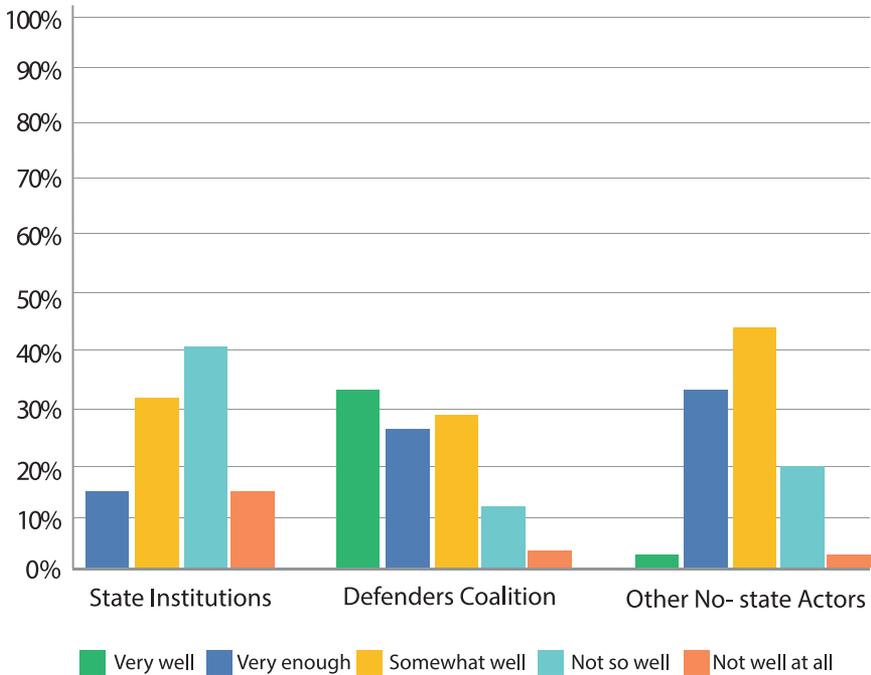
**Quality of protection:** the survey sought to find the rating of the quality of protection offered by the key state institutions mandated with HRDs protection and to compare it with the rating of the quality of services provided by other human rights organizations and the Defenders Coalition. The State institutions surveyed are the Chapter 15 Constitutional Commissions and Independent Offices, the National Police Service and the Courts of Law of Kenya.

Survey results show that the Courts of Law rate highest amongst state institutions in terms of quality of protection services rendered while the National Police Service (NPS) is rated poorest. While a majority of the respondents (52.27%) indicated that the protection services provided by the Courts of Law are average, 34.09%

40. Interview with a key informant (Patrick Ochieng) on July 8, 2021

41. Defenders Coalition Annual Report (2020), Defenders Coalition Strategic Plan (2020) and the National Coalition of Human Rights Defenders Strategic Plan (2015)

Figure 6: Quality of Protection



(Source: Survey Data, 2021)

rated them as either above average or excellent. For comparison, a majority of the respondents (86.66%) rated the NPS as either below average or poor while only 13.33% rated them as either average or above average.

Established under article 244 of the CoK, 2010, a core mandate of the National Police Service is to comply with constitutional standards of human rights and fundamental freedoms. However, in practice, NPS remains the most consistent and pervasive perpetrator of human rights violations in Kenya.<sup>42</sup> In spite of the transformation envisaged by the Constitution, the Kenya Police has not changed much and is responsible for gravest and most widespread and systematic human rights violations in Kenya. They are also the greatest threat to HRDs and human rights protection.

42. *Violations by the Kenya Police are widely documented. The most recent reports include the Human Rights Watch (2021). World Report 2021 in which they cite violations ranging from extrajudicial killings to violent enforcement of COVID-19 containment measures in 2020. The report further documents that out of the 2,000 cases of police killings reported to the Independent Police Oversight Authority (IPOA), the agency has managed to investigate and prosecute only 6 cases successfully. One of the most chilling attack on HRDs is the kidnapping and killing of HRD Willie Kimani on June 23, 2016. Kimani, a lawyer with the International Justice Mission (IJM) based in Nairobi was killed along with his client, motor cycle rider Josephat Mwenda and their hired taxi driver Joseph Muiruri, simply for representing his client in a court case. The three were abducted right outside the court where Mwenda had been arraigned with trumped up charges filed by the police in retaliation to a complaint that Mwenda had filed against a policeman for harassment.*

The Courts of Law (34.09%) also compare more favourably against both the Constitutional Commissions and Independent Offices at 15.56% and 8.89% respectively. The positive rating for the Courts of Law is more than double that of the Constitutional Commissions and more than 4 times that of the Independent Offices. The favourable ratings may however be linked with some high-profile judgements by the Superior courts in recent times. One of these judgements is the High Court ruling on May 13, 2021 against the Constitution of Kenya (Amendment) Bill 2020 popularly known as the Building Bridges Initiative which was an attempt to amend the Constitution of Kenya through an unconstitutional process. Earlier on September 20, 2017, in another landmark ruling, the Supreme Court of Kenya had nullified the Presidential election results of 2017 on grounds of contravention of the constitution and applicable law. The net effect of these progressive rulings was to assert the independence of the Judiciary, a cause that veteran HRDs have fought for over the years. HRDs have however pointed out that these are exceptions against a background in which courts are more routinely used as instruments of oppression against HRDs.<sup>43</sup>

The survey results show that the quality of protection offered by human rights organizations is rated much higher than that provided by State institutions with 50% of the respondents rating it as either excellent (6.82%) or above average (43.18%). While a significant number (38.64%) consider the quality-of-service average, only 11.36% regard it as either below average or poor. Both the Courts of Law and human rights organizations received exceptional rating at 6.82% and 2.27% showing that the rating of the human rights organizations is 3 times more favourable than that of the Courts of Law. Similarly, cumulatively, the positive rating of the human rights organizations (50%) is nearly 16% higher than that of the Courts of Law (34.09%).

Cumulatively the positive rating of Defenders Coalition is 60% compared to the average of 50% for the non-State institutions. With 28.89% exceptional rating for Defenders Coalition, this is more than 4 times that of the average of 6.82% for other human rights organizations.

**Responsiveness to protection needs:** The survey sought to determine how responsive the following key institutions have been to the protection needs of HRDs in Kenya: the Kenya National Commission on Human Rights (KNCHR), the NPS, Courts of Law, Defenders Coalition and other human rights organizations. Survey results show that the most responsive of these has been Defenders Coalition (66.67%), followed by other human rights organizations and the Courts of Law at 44.44% each. The NPS is the least responsive at 6.67% while the KNCHR comes in at 34.89%.

**Overall satisfaction with various actors:** The survey sought to establish the overall rating of respondents with the protection services rendered by the following institutions; Constitutional Commissions and Independent State Offices,

*43. FGD with Young HRDs conducted on July 2, 2021*

Courts of Law, The NPS, Defenders Coalition, human rights organizations, Faith based Organizations (FBOs), the media, the community, HRDs' networks and peer HRDs. Results show that the respondents were most satisfied with peer support (84.09%) and HRDs' networks (83.72%). This is followed by the Courts of Law (77.78%), Defenders Coalition (73.81%) and human rights organizations (71.11%). The worst rated is the NPS at 8.89% while the FBOs are the worst rated among non-State actors at 31%. The media is better rated at 53.49% than the Constitutional Commissions and Independent State Offices at 40%.

However, Defenders Coalition has the strongest endorsement among those who are most satisfied with a 33.33% score, followed by HRDs' networks at 18.60%. This is followed by the peer HRDs' support at 11.36% and the Courts of Law at 11.11%. The Defenders Coalition rating is nearly 5 times higher than that of other human rights organizations at an average of 6.67%.

### **Other institutions that have done a good job in HRDs protection in Kenya<sup>44</sup>:**

Respondents singled out the following as among other institutions whose work has greatly contributed to HRDs protection in Kenya: Amnesty International and other international human rights organizations, PRWG, IMLU, PBI, Frontline Defenders, Missing Voices, Kituo cha Sheria, Social Justice Centres and the Social Justice Centres Working Groups; UN agencies such as OHCHR and the Special Rapporteurs; friendly Embassies based in Kenya; democracy, governance, human rights and social justice foundations and agencies; development partners especially bilateral and human rights INGOs and foundations; other defenders organizations such as IBJ and community advocacy organizations. Others are the World March of Women, hospitals and organizations such as KPMDU, Kisumu Residents Voices, Community Initiative Action Group-Kenya, Ujamaa Center and KELIN. Others also cited HRD families, individual clergy, politicians and private citizens of goodwill.

The findings show that both funding and frontline protection agencies are key to effective protection of HRDs. However, again it suggests that all formal funding is from the international community (embassies, development agencies, foundations). Conversely, it reveals a gap in formal support from local, regional and continental sources (foundations, agencies etc.). This raises the question on whether there are any opportunities for partnership with local, regional or continental foundations and agencies. That in turn begs the question on whether there are any such foundations and agencies and or a culture of human rights and social justice philanthropy or solidarity support and if the answer is affirmative then why the gap? The study findings however suggest that "informal" support and solidarity from HRD families and some clergy and politicians constitute a critical part of the local HRDs protection mechanism. It suggests opportunity for further growth and development. A fundamental question is how can these wide range of actors be better organized to improve the functioning and effectiveness of the mechanism (both formal and informal) for HRDs protection in Kenya.

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<sup>44</sup> In this context a good job represents a contribution that has made significant positive difference in the protection of human rights defenders

### 3.3 HRDs Wellbeing

Wellbeing of veteran HRDs: Based on the standard Political, Economic, Social, Technological, Environmental and Legal (PESTEL) framework of analysis, the survey sought to determine how well the veteran HRDs are doing in the following areas of their lives: Political (civil and political freedoms), Economic (economic progression; employment, business, income), Social (social progress; health, education, nutrition, family wellbeing), Technological (availability and affordability; access and use of modern technology for improved productivity and ease of life), Environmental (healthy and clean living and working ecology), Legal (human rights, rule of law, constitutionalism and access to justice and mental health).

The survey results are mixed. Majority report doing well or very well in their technological (57.78%) and mental (52.38%) wellbeing but only just managing in their economic (60%), legal (52.27%) and political (51.11%) wellbeing.

**Political wellbeing:** Access and benefit from political and civil rights and liberties; political and civic participation. The survey results show that less than half (44.44%) are doing well or very well while the majority are just managing (51.11%) or doing badly (4.44%). Another finding of this study is that pursuing politics is not a priority for most of the veteran HRDs. With only 37.78% indicating interest in support to pursue interest in politics, this is the least priority among the 10 areas. This could suggest that HRDs are not motivated by potential political careers or that they are generally averse to competitive politics ab initio. Alternatively, it could suggest disillusionment in or alienation from politics over time. Either way, this may further suggest that most of the veteran HRDs do not consider competitive politics as a viable vehicle for pursuing or advancing their struggles.

**Economic wellbeing:** With reference to economic progression; employment, business, and income opportunities, survey results show that a majority of the respondents (60%) are just managing while only 22.22% are either doing well or very well. On the other end, 17.77% report doing either badly or very badly.

**Social wellbeing:** In terms of social progress; health, education, nutrition, family wellbeing, the survey results show that as many of the respondents are just managing as those who are, cumulatively, either doing well or doing very well (44.44%). More than 10% are however either doing either badly or very badly.

**Technological wellbeing:** With reference to availability and affordability, access and use of modern technology for improved productivity and ease of life, this is the one area in which veteran HRDs seem to be doing exceptionally well. 57.78% are either doing well or very well, and 6.67% are doing badly while 35.67% report just managing.

**Environmental wellbeing:** In terms of access to and prevalence of healthy and clean living and working ecology, survey results show that more veteran HRDs are happier with their environmental wellbeing than those who are just managing (40%). However, more than 10% report doing either badly or very badly.

**Legal wellbeing (access to justice):** With reference to access to and enjoyment of human rights, rule of law, constitutionalism and justice, the survey results show that only 36.37% are either doing well or doing very well. Majority are either just managing (52.27%), doing badly (6.82%) or very badly (4.55%). This may suggest a correlation between legal wellbeing and wellbeing in other areas especially in financial, economic, political and social dimensions.

**Mental health:** While the survey results show that a slight majority of all veteran HRDs are doing either doing well or very well (cumulatively at 52.38%), while it is notable that nearly as many (47.61%) reported this as an area where they are struggling in. It should however be borne in mind that issues of mental health in Kenya are constrained by low public awareness and high prevalence of stigma. With this in mind, it should be noted that the problem may be greater than suggested by these study findings. It is possible that many HRDs may share this low public awareness, widespread ignorance and or fear of stigma thus under-reporting prevalence of the challenge.<sup>45</sup> Some suggest that the cause of the mental health challenge lies a context characterized by “a lot of violence, bitterness, revenge, hatred and brutality in activism given the many comrades...killed in the line of duty.”<sup>46</sup> A conversation that considers alternative approaches to tackling these issues could be explored and the input of the veteran HRDs could be helpful in determining solutions.

**Personal resources:** The survey sought to find how the veteran HRDs are doing with the following seven sets of personal resources, financial resources, other material resources, human rights networks, intellectual resources, organizational resources, peer support networks and community support. The survey results show that veteran HRDs are doing well with their human rights networks (52.27%), intellectual resources (61.37%), peer support networks (51.11%), community support (55.55%) and family (73.81%). The greatest areas of challenge are financial resources in which only 15.91% report doing well followed by other/non-financial material resources in which only 32.56% report doing well. As many veteran HRDs seem to be either doing well or very well (cumulatively at 40.91%) as those just managing in the area of organizational resources.

**Financial resources:** The survey findings show that a majority of the respondents (63.64%) are just managing to stay afloat in this area while more than 20% are doing

<sup>45</sup> FGD with Veteran HRDs conducted on July 5, 2021.

<sup>46</sup> Interview with key informant (Patrick Ochieng) on July 8, 2021

either badly or very badly. Comparatively, the survey findings show that this is the second worst area of performance for veteran HRDs relative to their non-HRD peers (after preparedness for retirement). With only 22.22% of the respondents indicating that they were doing well compared to their non-HRD peers, the majority report that they are either just managing (53.33%), doing badly (17.78%) or very badly (6.67%). The results show that more veteran HRDs (75.55%) perceive themselves faring worse of relative to their non-HRD peers than in absolute terms (63.64%). That is a difference of more than 11%. It is therefore not surprising that income generating activities (91%), further education and professional growth (89%) and saving scheme for retirement (89%) are the top 3 areas of greatest need for veteran HRDs.

**Other Material Resources:** While survey findings show a more positive outlook for veteran HRDs in this area (32.56%) than in the financial resources, it should be noted that the majority are either struggling (55.81%) or doing badly 11.63%. Given the near identical scores in the overall outlook, this may mean that the material conditions of the veteran HRDs is firmly inter-linked with their financial status. In other words, this may suggest a narrow asset base which does not extend beyond financial position. This seems to confirm another finding in this study that majority of veteran HRDs are struggling with the consequences of delayed investment, or perhaps even outright divestment, in self-development. It can however also be seen as a projection of the life of self-sacrifice which the study found is prevalent among HRDs. In some cases, it could also be a reflection of ideological position in many HRDs eschewing materialism and wealth creation or accumulation as a legitimate goal.

**Human Rights Networks:** On this subject, although the overall outlook is positive with survey results showing that the majority of the respondents are either doing well (45.45%) or doing very well (6.82%), a significant number are either struggling (40.91%) or doing badly (6.82%). That is over 47% of the respondents.

This suggests that either the human rights networks do not provide sufficient safety nets for HRDs later in life, or that they are unable to do so due to (self) isolation of the HRDs or possibly through an interaction of both. All the three possibilities are plausible.

Given the diminished availability of resources for most human rights networks, greater fragmentation, increased demands on the networks due to new challenges and the many challenges faced by veteran HRDs due to delayed investment in self-development, it is plausible that a large number are left vulnerable. The study found that interaction between veteran and younger HRDs is almost purely accidental. This happens only when either attend each other's activities but there is no deliberate link or connection between them. The study further found out that

there is a big inter-generational gap between older and younger women HRDs. This suggests there could be a disconnect that may weaken solidarity and mutual support across and even within the genders

**Intellectual Resources:** The survey findings show that a majority of the respondents are comfortable in this area. Cumulatively, over 61.37% are either doing well or very well with a strong 54.55% doing well and 6.82% doing very well. This could suggest excess or idle capacity given that it does not translate into better outcomes for most of the veteran HRDs. However, the difference between these high intellectual resources and low financial and economic outcomes could also be a function of predilection to philanthropy. As other findings in this study show, HRDs have a high propensity to commit an inordinate amount of their time and resources to voluntary work to the struggle and a low propensity to commit to wealth creation, marketization or commercialization of their work. They may also have a difficult time penetrating a hostile market in conflict with their own ideological persuasions or simply due to negative profiling.

**Organizational Resources:** The survey findings show that there are as many veteran HRDs struggling in this area (40.91%) as those either doing well or very well (also cumulatively 40.91%). Notably another 18.18% report doing either badly or very badly. This suggests a disconnection from both the old organizational bases and the new formations. This could also explain the paradox between the findings of high sustained commitment and diminished visibility for veteran HRDs. If that is so, then it means that the commitment and passion may be largely latent.

Peer Support Networks (informal networks of friends, comrades and colleagues): This is another area of positive outlook with the majority (51.11%) reporting a positive rating of either doing well or very well as opposed to either just managing (35.54%) or doing badly (13.33%). Though positive, the results however show that there is really not a big difference between the within peer support and the without/across/universal network support. This might be an indication that the factors driving or undermining universal support might be at play in the within peer support networks as well. However, the positive outlook may also suggest that this base may represent a growth opportunity for strengthening protection and wellbeing of HRDs as it commands organic legitimacy and ownership among them

Community Support: With a score of 55.55%, the survey findings show that this is one of the strongest support base for veteran HRDs. However, with 44.45% reporting either just managing (35.56%) or doing badly (8.89%), this suggests that it is an area of significant challenge.

With a majority (nearly 70%) having been more involved more at the national, regional or global levels, as opposed to only 13.04% who were community-focused in the past, this rating is impressive. It could mean that the communities appreciated

the work the HRDs did at those other levels away from their own immediate communities. However, the fact that over 44% of veteran HRDs struggle to find acceptance in or support from communities that they have spent a great deal of their lives and resources fighting for, represent a significant challenge in making communities a reliable frontier of defence for HRDs in Kenya. Our understanding of this phenomenon could however be enhanced by a study targeting the communities themselves. It is also noteworthy that another finding in this study show an increased interest in veteran HRDs who plan or would like to be more community-focused going forward. The study found that going forward 36.96% of the respondents would prefer engagement at the community level.

**Family:** With a cumulative positive score of 73.81%, the findings suggest that this is outrightly the strongest support base for veteran HRDs. 19.05% report this as an area of struggle and only 7.14% report that they are doing badly in getting family support.

Family support may represent a firm foundation for growth for the movement and an invaluable opportunity for strengthening protection and wellbeing of HRDs. However, according to participants in one of the FGDs, most veteran HRDs and their families live in poverty and misery owing directly to the great sacrifices they made over the years in the struggle. In addition, a lot of veteran HRDs face so much pressure and elevated expectations from their families as well as the general public. They are expected to be superhuman.<sup>47</sup> This could suggest underlying tensions if not contradictory findings in the self-assessment by veteran HRDs and the actual reality or that perceived by others. Conversely, it could mean that the changes may have forged greater solidarity within families beyond the comprehension of those outside of it. More granular investigation may be useful in this area as the family is core to the protection and wellbeing of HRDs as well as to the organic growth of the movement.

**Comparative performance:** The survey sought to find how veteran HRDs rate their own performance when compared to their non-HRD peers in the following 10 key areas over the past 10 years: Economic wellbeing, social wellbeing, technological wellbeing, financial wellbeing, intellectual wellbeing, self-development, status in their community, status among their peers, self-actualization and preparedness for retirement. The survey findings show that a majority of the respondents rate their comparative performance positively in the following areas: intellectual wellbeing (62.22%), technological wellbeing (57.77%), status in their community (53.34%) and status among peers (51.11%). The worst areas comparatively are in preparedness for retirement (15.91), financial (22.22%) and economic (33.33%) performance.

**Economic wellbeing:** The survey findings show that this is the third worst area of performance for veteran HRDs. With only 33.33% of the respondents indicating

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<sup>47</sup> FGD with Young HRDs conducted on July 2, 2021

that they were doing well compared to their non-HRD peers. The majority report that they are either just managing (44.44%), doing badly (13.33%) or very badly (8.89%). It is noteworthy that there are over 2% doing worse in the bottom rung in economic wellbeing than in financial wellbeing. Like in the case of material condition, economic wellbeing mirrors financial fortunes. This suggests that the economic wellbeing of the veteran HRDs is a function of their material conditions which is firmly inter-linked with their financial status.

**Social wellbeing:** The survey findings show that more veteran HRDs have a positive outlook (46.67%), than those who are just coping (40%) or those faring worse off (13.33%). This is clearly also an area that may require attention given the close relationship between human rights protection and social wellbeing. This also seem to confirm the widely held view that HRDs more often than not face hostility even from the society they fight for and often feel misunderstood and alienated because of their work.

Neglect of HRDs also calls to question the role and responsibility of government in provision of social security not only to veteran HRDs but to the general public. Defenders Coalition and other human rights organizations may want to take this up as an advocacy issue. However, they could also consider initiating a special scheme for HRDs. It is noted that many HRDs are not affiliated to organizations and may therefore not be served by any existing institutional arrangement. Proposals on possible interventions include establishing a solidarity fund, launching a co-operative movement to establishing settlement schemes for HRDs.<sup>48</sup>

**Technological wellbeing:** The survey results show that veteran HRDs are also doing comparatively well in this area. 53.33% are doing well and 4.44% doing exceptionally well. About 11% are either doing badly or very badly. This data is in sharp contrast with the perception among young HRDs that veteran HRDs are lagging in areas such as use of social media and risk falling further behind.<sup>49</sup> It might be useful to conduct a further study to find the make-up of this technological wellbeing. It might be useful for instance to determine what kinds of technologies the veteran HRDs have access to and how or for what they use them. It could also be interesting to conduct a comparative study along these lines vis-à-vis the younger HRDs or and non-HRD peers.

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*48. Testimony 1: Veteran HRDs were failed by their organizations. We joined the movement right after school. We therefore did not have opportunity to advance our studies or build professional careers. Then when opportunities for employment came, we were overlooked and organizations employed people with papers at our expense. Testimony 2: We had people like Councillor Njoroge Wanguthi. He was an elected and popular political leader but we prevailed upon him to boycott elections for the cause. He did so sacrificing his opportunity for personal political progress and possible prosperity. He died frustrated and miserable.*

*49. FGD with Young HRDs conducted on July 2, 2021*

**Financial wellbeing:** The survey findings show that this is the second worst area of performance for veteran HRDs. With only 22.22% of the respondents indicating that they were doing well compared to their non-HRD peers, the majority report that they are either just managing (53.33%), doing badly (17.78%) or very badly (6.67%).

**Intellectual wellbeing:** Unlike the preparedness for retirement, financial and economic performance, this is the one area where veteran HRDs seem to be thriving relative to their peers. With only 2.22% reporting duress, the majority (62.22%) are doing well with 57.78% reporting doing very well and 4.44% doing exceptionally well. This suggests a strong correlation between intellectual resource and the sense of intellectual wellbeing. It is noteworthy that only 2.22% of the respondents perceive themselves as doing comparatively badly relative to their non-HRD peers as opposed to none in absolute terms. The survey findings show that a majority of the respondents are comfortable in this area both in absolute and relative terms. The underlying reasons for the high scores in intellectual wellbeing and low financial and economic wellbeing can be inferred from the section on intellectual resources.

**Status in community:** The survey results show that veteran HRDs are also doing comparatively well regards to their status in their communities with 46.67% reporting that they are doing well and another 6.67% doing exceptionally well. This is significant because it seems to contradict the prevalent view of human rights work as a high risk, low reward occupation characterized by low levels of social appreciation and high incidences of social ostracism by members of the community.

**Status among peers:**<sup>50</sup> Status in community is closely followed by status among peers. 46.67% report that they are doing well and another 6.67% doing exceptionally well in this area. However, 2.22% report doing very badly. The finding reflects the same contradictions as in the case of the HRDs status within their communities highlighted above.

**Self-development:** The survey results show that 47.72% are either doing well or exceptionally well in this area. However, a majority are either just coping (34.09%) or faring worse off (18.19%). This suggests that this is another area of significant challenges for veteran HRDs.

Self-development is a critical pathway to self-actualization which, from FGDs, is conceptualized in its broadest sense rather than in the limited sense of achievement

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<sup>50</sup> Peers may refer to different groups based on age, studies, profession or social circle. Each of these groups may have varying significance for different HRD in any given time or for the same HRD over time.

of material success.<sup>51</sup> This way, it should be understood as a variable along the intrinsic-extrinsic satisfaction continuum for different HRDs

**Self-actualization:**<sup>52</sup> In the footsteps of self-development, is self-actualization. The survey results show that this area is even of greater challenge for veteran HRDs. Even though a slightly less number (17.78%) report faring badly or very badly than for self-development, cumulatively those either just coping or faring worse are 57.78% compared to 52.28% for self-development. Consequently, only 42.22% report satisfaction in their comparative performance with regard to self-actualization. In addition, there are many that report satisfaction in their comparative performance in this area as those who rate themselves as merely coping at 40% each. Only 2.22% rate themselves as doing exceptionally well. This is almost at par with self-development at 2.27%. The results are consistent with what might be expected given the close relationship between self-development and self-actualization.

**Preparedness for retirement:** The survey findings show that this is the worst area of performance for veteran HRDs. With only 15.91% reporting positive rating for preparedness for retirement, the majority report that they are either just managing (43.18%), doing badly (31.82%) or very badly (9.09%).

This might be explained by the fact that unlike non-HRD peers, HRDs entry into the sector was driven purely by passion. They therefore, in most cases, did not have any structured advice or guidance on this aspect of personal planning. These HRDs did not enter the sector as a profession and therefore did not prepare like other professional sectors.<sup>53</sup>

HRDs work in an environment without regular income, as most are devotees and many veteran HRDs did their vocation when the sector had no formal schemes for employment, retention, training or retirement within mostly short-term project frameworks. There was a particular tendency for veteran HRDs while in their prime to scoff at suggestions that they should own property as this would compromise them from pursuing the liberation mission. This perception stood in the way of personal development and future planning. The HRD sector does not have solid human resource management plans. HRDs could hardly draw a line between their public and private lives and thus family and personal growth often was dimmed in the face of activism.

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<sup>51</sup> FGD with Veteran HRDs conducted on July 5, 2021.

<sup>52</sup> This term is used to refer to self fulfilment in a broad sense rather than in the strict sense of Maslow's conception of self-actualization based solely on material needs.

<sup>53</sup> Ibid.

**Needed support/relevance of intervention:** The survey sought to establish whether veteran HRDs do require any kind of support and if so what kind they might really need. The following 10 were listed: Healthcare for self, healthcare for family, mental health and psychosocial support, social networking, skills redevelopment, job opportunities, business opportunities/income generating activities, pursuing interest in politics, continuing work as a HRD and saving scheme for my retirement. The survey findings show that the five areas of greatest needs for veteran HRDs are in business opportunities and income generating activities (91%), further education and professional growth (89%), a saving scheme for retirement (89%), social networking (89%) and in skills development (87%).

There is a gap between the will or desire and practical implementation in most of the past attempts at intervention. That is why many past efforts in this regard have yielded little tangible outcomes. It might be therefore useful to conduct skills inventory to determine the skills that veteran HRDs have and the gaps/needs for better targeting of support/interventions and or linking HRDs to relevant opportunities in professional, personal development and growth or in business.

This will require recognition and support of HRDs within their competencies. There are those who are cut out for formal work, business or other activities. Providing standard blanket solutions may be sub-optimal. Support should be appropriately matched with the interest and competence of different categories of HRDs.<sup>54</sup> The duality of veteran HRDs as skilled professionals, experienced practitioners, artists etc. calls for a database that documents their expertise in a portal such that those who need service providers and human resources can check through it regularly.

Perhaps, a savings and credit cooperative society that takes deposits and loans and a special purpose vehicle for social enterprise may be strategic to address these needs.<sup>55</sup> It might also be useful to study institutional arrangements within the human rights sector to determine the extent to which organizations provide for needs such as pension schemes, savings and credit schemes etc. It is also necessary to find alternatives for those excluded from existing institutional arrangements.

Further, there is need to reflect more on the question of ideological struggles. Sound advice is required to break the possibilities of cycles of sacrifice and disillusionment across generations of HRDs.

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<sup>54</sup>. *Ibid.*

<sup>55</sup>. *Interview with key informant (Patrick Ochieng) on July 8, 2021*

## 3.4 Future Prospects

**Talent and competence to advance the cause for human rights in Kenya:** The survey sought to establish whether veteran HRDs any talent and competencies to advance the cause for human rights in Kenya. The survey results show that veteran HRDs have 100% confidence in their abilities to be still resourceful to the cause for the advance of human rights in Kenya. Top of the list among the most prevalent talents and competences is research and knowledge generation and public education and knowledge dissemination at 18.60% each. These is followed by community organizing and lobbying and advocacy at 16.28% each. These are followed by leadership at 6.98% and then activism and management at 4.65% each.

First, these findings reveal a highly fragmented field. Secondly, it also suggests gaps in critical areas such as project management, information technology and related services, security, safety and wellness, and monitoring, evaluation and learning (all with a zero score) and for policy analysis, counselling and psychosocial support, entrepreneurship and business development; and training and capacity development (each with a score of less than 3%). Since the findings do not reveal the reasons, and since this could be out of lack of interest or opportunity to develop those competences, further investigation might be useful to shed light and provide information for more targeted intervention. These findings should also be regarded as a basis for further development of a more robust talents, skills and competences inventory.<sup>56</sup>

**Plans going forward:** Majority of the respondents (95.83%) indicated that they plan to continue as HRDs while a small number (4.17%) indicated otherwise. This suggests that a majority of the veteran HRDs remain a huge resource for the human rights movement. Younger HRDs recognize the value of the veteran HRDs. They see the need to connect and learn from veteran HRDs. Key among the benefits are mentorship, inspiration, wisdom, learning curve, skills and knowledge transfer and political education.

**Preferred future roles:** For those indicated that they plan to continue as HRDs, the following are top five preferred roles; mentors (46.67%), influencer (44.44%), connector (35.56%), paid consultant (35.56%) and all-round volunteer (20%). This seems to confirm the reflections of one FGD in which it was observed that veteran HRDs have not retired, only their roles have changed. Also, roles change with circumstances.<sup>57</sup>

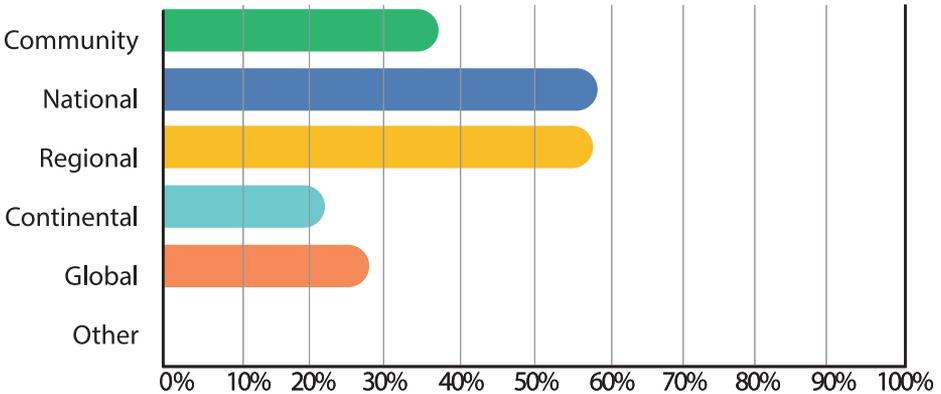
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<sup>56</sup>. This is also a key recommendation of the Veteran HRDs FGD conducted on July 5, 2021.

<sup>57</sup>. FGD with Veteran HRDs conducted on July 5, 2021.

**Preferred level of engagement:** For those who plan to continue as HRDs, majority would prefer to engage at the national and regional (East Africa) levels at 56.52% each. This is followed by those who would prefer engagement at the

Figure 7: Preferred Level of Engagement



(Source: Survey Data, 2021)

community level (36.96%) while 21% would prefer engagement at the continental level (Africa) and 28.21% at the global level.

This suggests that more veteran HRDs may be committed to engagement at the community level now than in the past. While the reasons for this massive shift are not clear, it should be noted that veteran HRDs regard the situation at the grassroots as being not as good as may have been expected.<sup>58</sup>

**Reasons for disengagement:** For those who indicated no intention to continue in their role as HRDs, the following are their reasons: fatigue, disillusionment, unresolved grievances including male domination and internal contradictions. While the level of attrition is incredibly small, given the heavy toll of human rights work, it is nevertheless important to address these areas of need. This is because many other HRDs might be enduring or working through the pain barrier and in spite of their plans or desire for self-development.

Others HRDS prefer play other roles or continue engagement through different strategies and spaces. Some say that being a HRD is a thankless job and does not provide opportunity for uplifting the welfare of defenders.<sup>59</sup> For others, the

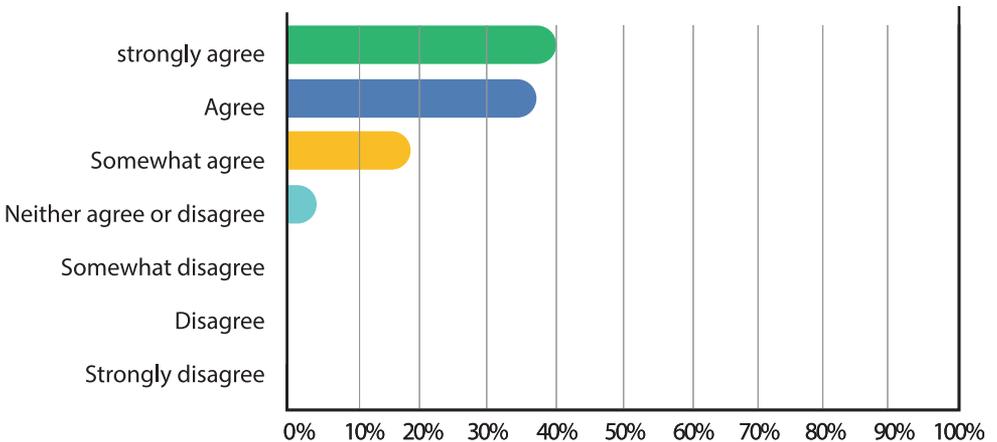
<sup>58</sup>. *Ibid*

<sup>59</sup>. *This may be put in context by this elaboration by one of the respondent; "It does not provide opportunity for the uplifting of the welfare of the HRD."*

emergence of a new generation of young energetic youth committed to carry on the fight for rights is a cue for generational transition and change of roles. These respondents would like to continue in other roles such as mentorship and buck-stopping even as the young take over in the frontline of activism.

**Vision for a New Kenya:** The survey sought to establish whether veteran HRDs still believe in the possibility of attaining a new Kenyan nation founded on constitutionalism, the rule of law, human rights and social justice within their lifetime. Findings show that a majority of the veteran HRDs (76.60%) believe that the vision of Kenya as a nation founded on constitutional democracy, human rights and social justice is possible and attainable within their lifetime. Ninety-one (91.31%) are willing to commit their time and resources to achieve that vision.

Figure 8: Vision for a New Kenya



(Source: Survey Data, 2021)

# RECOMMENDATIONS

HRDs must keep the faith but also maintain high self-discipline with regards to their security and wellbeing even as they fight for other people

# RECOMMENDATIONS

## 4.1 Recommendations to HRDs (Veterans and Younger/Upcoming)

1. Keep the spirit high and sustain the fight against all forms of human rights violations and injustices
2. Encourage, promote and build solidarity and mutual support at all times. HRDs should interface with each other regularly, discourage/stop unproductive competition and antagonism within the Movement and build unity of purpose
3. Veteran HRDs and young/upcoming HRDs should listen to each other more and stay engaged in constructive partnerships
4. Join co-operative schemes such as the HURI SACCO, the HURI Housing Scheme and health clubs
5. Keep the faith but also maintain high self-discipline with regards to their security and wellbeing even as they fight for other people
6. Integrate human rights issues with sustainable development initiatives. They should engage in self-development.
7. Form a representative body for better representation and engagement with other actors
8. Document their work and contributions for posterity.

## 4.2 Recommendations to Defenders Coalition

1. Engage more actively with veteran HRDs through annual or bi-annual get-together and re-connection sessions which should include group counselling sessions
2. Invest in mental and socio-economic support of HRDs
3. Establish a veterans' association, SACCO, endowment or benevolent fund that veterans could contribute to and benefit from for self-development and in old age
4. Strategize and fund-raise separately for veteran HRDs and engage them in appropriately tailored/suitable/responsive programmes even after 'retiring'
5. Devolve or decentralize to the counties or lower levels and involve veteran HRDs in community organizing and development and as mechanism for collective protection at the grassroots
6. Create more enabling spaces for veteran HRDs to mentor the new generation HRDs as well as promote inter-generational learning
7. Establish an institute for leadership development, mentorship and well-being of veteran HRDs

8. Build the capacity of the county veteran HRDs networks to strengthen them, reduce their vulnerability and enhance their work
9. Appropriately categorise and support veteran HRDs in dire need
10. Establish specific projects dealing with veteran women HRDs
11. Publish a catalogue of HRDs who have influenced Kenya's trajectory to democracy and its history
12. Have a special day to celebrate veteran HRDs and their contribution to the struggle

### **4.3 Recommendations to Other Non-State Actors (NGOs, FBOs, CBOs and Media)**

1. Deliberately document and share contribution of veteran HRDs
2. Continue supporting the work of veterans HRDs and to be their voices when targeted/under attack
3. Create community awareness for citizens to appreciate the work done by HRDs



Encourage, promote and build solidarity and mutual support at all times. HRDs should interface with each other regularly, stop unproductive competition and antagonism within the Movement and build unity of purpose

# CHALLENGES & LIMITATIONS

Many HRDs, including the veterans do not want to be vulnerable or show vulnerability on some of the issues they face.

# CHALLENGES & LIMITATIONS

The study was limited by a number of challenges. The following are some of the key challenges and limitations that the study faced and that may have impacted the findings:

**Difficulties in settling on the right set of questions:** This is especially given the social and security sensitivities, limited pre-tests of the data collection tools due to time constraint; and the challenge of striking the optimum balance between the appeal for depth/granular information and the potential risk for high respondent attrition

**Difficulties in getting responses from interviewees:** Given the sensitivity of the research, some interviewees may have chosen not to provide information they considered too sensitive. Others may have done so out of security concerns. Many HRDs, including the veterans do not want to be vulnerable or show vulnerability on some of the issues they face.

**Time limitation:** Some aspects of this study required more probing but this was not possible due to time limitation.

**Population sample:** There is no known comprehensive data base of veteran HRDs. This study therefore had to start constructing the database from scratch. This was time-consuming and took away a significant part of the time available for research. However, the benefit is that now there is a reliable foundational data base to build on.

**COVID-19 pandemic:** This study was commissioned in the middle of the disruptions caused by the COVID-19 pandemic. This resulted in restrictions on movement and physical gatherings. It meant that the researchers could not access administrative information locked up in office and not publicly available through other digital formats and platforms. We estimate that a significant amount of data on veteran HRDs exist in analogic formats and archives within various organizations.

# CONCLUSION

The five areas of greatest need for veteran HRDs; access to business opportunities and income generating activities, further education and professional growth, saving scheme for retirement, social networking and skills development.

# CONCLUSION

The main purpose of this study was to establish the situation of veteran HRDs in Kenya by conducting a nationwide mapping exercise. This was motivated by the observation that most HRDs that exit formal employment at civil society organizations or state jobs after playing a critical role in advancing human rights, were like other seasoned activists, unable to advance their careers or personal economic wellbeing to sustain their life in retirement despite the energy and commitment to serve the community. This is reflected in documented increased demand by these groups of HRDs for psychological and mental health support, and finances to meet basic livelihood demands for themselves and their dependents.

The study set out to do this by undertaking three main tasks. First, it conducted a mapping exercise on veteran HRDs, by identifying where they are and the work, they are currently involved in. Second, the study sought to identify available opportunities that veteran HRDs can leverage on and third was identifying and recommending organizations that the Defenders Coalition could partner with for the wellbeing of veteran HRDs. To do this, the research adopted the Mixed Methods' Research approach as the overall framework.

The study identified the following as the five areas of greatest need for veteran HRDs; access to business opportunities and income generating activities, further education and professional growth, saving scheme for retirement, social networking and skills development.

The research was structured as a baseline because this is the first time that this kind of study has been conducted in Kenya. Indeed the research found no precedent anywhere else. The findings on limited geographic distribution and gender disparity raise questions about equity and inclusivity but also offers a research and development agenda for the human rights movement going forward. A fundamental question, for instance, is whether the geographic distribution of veteran HRDs is a consequence of the prevalence of violations or merely a reflection of skewedness in resource distribution advantaging some regions over others. Similarly, findings on gender disparity raises the question on whether it is a reflection of greater propensity for men to take up the challenges of human rights protection, the consequence of patriarchy or the limitation of our tools in framing and appreciating the different array of HRDs and different manifestations of human

rights work. Ultimately what should be done to ensure equity and inclusivity and is this best achieved through social engineering or through the gradual process of organic social evolution and movement building?

Second, the study has identified opportunities that veteran HRDs – and other actors – can leverage on. The most important finding in this regard is that the vast majority of HRDs still believe in and are committed to the vision of a new Kenyan nation founded on constitutionalism, the rule of law, human rights and social justice within their lifetime. This is significant because it has been the driving force across generations of HRDs. It might be taken for granted, but given the many reversals that have followed major milestones/landmark achievements in the long course of the struggle, the toll and disillusionment could wear down even the most optimistic or stoic. However, this finding suggests that in spite of their diminished fortunes, the veteran HRDs have spines of steel and the resilience to sustain the struggle even in periods of adversity. It is even more significant given the changes of the majority of the veteran HRDs at the personal level.

The call by young/upcoming HRDs for greater and better structured engagement is another important opportunity. This can be utilized to establish a more meaningful inter-generational engagement and solidarity. This could contribute to addressing fragmentation that characterize the current struggles. It could also fuse experience and accumulated knowledge and history of the veteran HRDs with the energy, drive and zeal of the new generation to present a more formidable front towards the envisaged new Kenya. This solidarity could be important in rejuvenating and giving a new purpose and relevance to the veteran HRDs.

The study also found that young HRDs appreciate the resourcefulness of veteran HRDs. They see the benefit of learning from them and the mentorship. However, they also have skills and perspectives that they believe could be useful to the veteran HRDs. These include information technology, insights into the new struggles and challenges that young people face as well as new forms of organizing. Inter-generational engagement would therefore be of mutual benefit.

Research findings provide information that can make a significant contribution to strengthening HRD protection over the lifecycle of a defender. Extant literature fails to appreciate the changing protection needs of an HRD over their lifecycle. This study suggests that the existing toolkit that assumes the same needs for all HRDs is unlikely to address the needs of veteran HRDs. It is therefore necessary to update the theoretical frameworks underlying HRDs protection mechanism to address the gaps. The lifecycle of an HRD consist of entry, maturity, veteran and decline stages and the protection needs will change over time driven by different factors. These factors include philosophical motivation, risk appetite, energy levels, social commitments, experience and accumulated knowledge stock, evolving

networks and support systems as well as the tension between the perceived ideal and actual self-development

A key aspect relevant to wellbeing of HRDs is the tension between the perceived ideal and actual self-development. The study findings show that there are many veteran HRDs who are disillusioned, bitter and frustrated because of the gap between their idealised and actual self-development. While this is a problem that is not necessarily unique to veteran HRDs, it is amplified given the disproportionate sacrifices and great risks that defenders take up on causes that have no direct benefit at a personal level. They also have no clear connection to individual and professional advancement for the vast majority of the HRDs.

This problem may be compounded by perceived or actual slow or lack of social change and progress altogether. The study found that the disillusionment, bitterness and frustration among veteran HRDs arise out of perceived little social dividends. This raises questions on the enormous sacrifices made. HRDs are almost always driven by a strong sense of right and wrong; and of justice and injustice; and a belief in the civic agency. The reward is the achievement of justice and enjoyment of rights. Lack of movement in this direction is a source of frustration.

The study has documented a wide range of organizations and individuals that have played a significant role in supporting veteran HRDs in the past. These represent the immediate opportunity for strengthening collaboration and partnership for more effective support. This represents an opportunity for local resource mobilization, diversification of the support base and organic development of support systems for the protection and wellbeing of veteran HRDs.

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# ANNEX I – KEY INFORMANT INTERVIEW GUIDE

1. Have you had engagement with veteran human rights defenders (HRDs) in Kenya?
2. Your experience?
3. How would you compare the pre and post-2010 (Katiba) operating environment in Kenya?
4. Main challenges facing veteran HRDs or in working with them?
5. Opportunities for veteran HRDs or building on their work?
6. Your thoughts on HRDs protection in Kenya?
7. On their (HRDs) wellbeing?
8. Your recommendations or final thoughts?

Thank you for participating in this survey and for your invaluable input.

– End –

## ANNEX II – DISCUSSION GUIDE FOR FGDs

1. Survey results show that a majority of veteran HRDs (60%) believe that the country is much better post 2010 and a significant percentage (46%) indicate that their own circumstances are much better. This contrasts sharply with their views on the fortunes of their communities (36%) and that of their families (29%). What could be the explanation for these sharp variances?
2. While a majority of the veteran HRDs believe that the international instruments (73%) and the national laws (82%) have served the HRDs protection needs well, only 40% gives approval for the regional instruments. What explains this difference?
3. A significant percentage (40%) of veteran HRDs believe that they are doing badly compared to their non-HRD peers with regard to preparedness for retirement... any reflections on this? How can the situation be improved?
4. The 5 greatest areas of need for veteran HRDs are in business opportunities and income generating activities (91%), further education and professional growth (89%), saving scheme for retirement (89%), social networking (89%) and in skills development (87%). In which practical ways can each of these needs be addressed?
5. A total of 64.45% of respondents indicate that mental health and psychosocial support is needed. However only 26.67% feel that it is an area of great concern. What are your thoughts on this?
6. A majority of veteran HRDs (77%) believe that the vision of Kenya as a nation founded on constitutional democracy, human rights and social justice is possible and attainable within their lifetime. Ninety-one per cent (91%) are willing to commit their time and resource to achieve that vision. In which practical and strategic ways can this goodwill be converted into progress for the country?

## ANNEX III – DISCUSSION GUIDE FOR YOUNG HRDs FGD

1. What are your views about veteran HRDs and their situation/circumstances in Kenya?
2. Are there any useful contributions that these veteran HRDs can make today in the struggle in Kenya?
3. How would describe relationship between younger/upcoming HRDs and the veteran HRDs? In which ways can this relationship be improved or strengthened?
4. What are the challenges that might be undermining solidarity and effective working relationship between veteran HRDs support younger/upcoming HRDs?
5. Are there any role models among veteran HRDs in Kenya? What qualities or contributions are worth building on?
6. How best/In which specific ways can veteran HRDs support younger/upcoming HRDs to become more effective in their work or struggles?

## ANNEX IV – KEY INFORMANTS

1. Rev. Dr. Timothy Murere Njoya
2. Prof. Makau Mutua
3. Khelef Khalifa
4. Patrick Ochieng
5. Salima Njoki
6. Cyprian Nyamwamu
7. Mwambi Mwasaru
8. Azimio Maina
9. Peter Kiama
10. Hassan Abdile
11. Gitau Wanguthi
12. Esther Waikuru
13. Dr. Wambua Kituku
14. Anne Wanjiku
15. Munga Gathogo
16. Muthoni kamau
17. Salome Nduta
18. Dr. Steve Ouma
19. Fr. Gabriel Dolan

# ANNEX V – FOCUS GROUP DISCUSSIONS

## FGD WITH FEMALE HRDs

1. Salome Nduta
2. Naomi Barasa
3. Muthoni Kamau
4. Esther Waikuru
5. Anne Wanjiku
6. Njoki Kamau

## FGD WITH MALE HRDs

1. Odhiambo Oyoko
2. Njuki Githethwa
3. Patrick Ochieng
4. Tirop Kitur
5. Esban Muthoni
6. Kepta Ombati

## FGD WITH YOUNG HRDs

1. Winny Obure
2. Editar Ochieng
3. Maryanne Kasina
4. James Alamans
5. Tom Kagwe
6. Esban Muthoni
7. Kepta Ombati

## FGD WITH MASHUJAA WELFARE

1. Otieno Ombok
2. Esban Muthoni







DEFENDERS  
COALITION

**SAFETY, SECURITY, WELLBEING OF HRDS**

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