

RIGHTS AND FIGHTS

30 Years of the Kenya
Human Rights
Commission's
Impactful Legacy



Foreword by Prof. Makau Mutua
Co-Founder, the KHRC

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*Rights & Fights: 30 Years of the Kenya Human Rights Commission's
Impactful Legacy*



Kenya Human Rights Commission

2024

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For the compatriots

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List of Abbreviations

4Cs:	Citizens' Coalition for Constitution Change
CDK:	Committee for Democracy in Kenya
CGD:	Centre for Governance and Development
CKRC:	Constitution of Kenya Review Commission
CoE:	Committee of Experts
CFF:	Civic Freedoms Forum
CS-RG:	Civil Society Reference Group
DCI:	Directorate of Criminal Investigations
DC:	District of Columbia
DRC:	Democratic Republic of Congo
FIDA:	Federation of Women Lawyers in Kenya
FOI:	Freedom of Information Network
ICC:	International Criminal Court
ICJ:	International Commission of Jurists
ICNL:	International Centre for Not-for-Profit Law
IIEC:	Interim Independent Electoral Commission
IPOA:	Independent Policing Oversight Authority
IPPG:	Inter-Parties Parliamentary Group
IPRS:	Integrated Population Registration System
KANU:	Kenya African National Union
KEC:	Kenya Episcopal Conference
KHRC:	Kenya Human Rights Commission
KNCHR:	Kenya National Commission on Human Rights
KNDR:	Kenya National Dialogue and Reconciliation
KPTJ:	Kenyans for Peace with Truth and Justice
LGBTIQ:	Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex
LSK:	Law Society of Kenya
MCA:	Member of the County Assembly

MIDRIFT HURINET:	Midrift Human Rights Network
NCC:	National Constitutional Conference
NCCK:	National Council of Churches of Kenya
NCEC:	National Convention Executive Council
NCA:	National Convention Assembly
NCPC:	National Convention Planning Committee
NGO:	Non-Governmental Organization
NPS:	National Police Service
ODPP:	Office of the Director of Public Prosecutions
OSIEA:	Open Society Initiative for East Africa
PCK:	People's Commission of Kenya
PRWG-K:	Police Reforms Working Group-Kenya
TJRC:	Truth, Justice, and Reconciliation Commission
UNHCR:	United Nations High Commissioner for Refugees
US:	United States

Dedication



This book is dedicated to the unsung heroes and heroines who, over the past three decades, have generously devoted their time, passion, and commitment to the Kenya Human Rights Commission. We hold those who are no longer with us in our hearts. May their legacy continue to inspire. Rest in power.

Rights & Fights: 30 Years of the Kenya Human Rights Commission's Impactful Legacy is a celebration of the invaluable contributions you have all made in the pursuit of justice, human rights, and social and political change in Kenya. Your courage, selflessness, dedication, and persistence shaped our organisation and transformed the human rights landscape in Kenya for the better. We are forever in your debt.

For 30 years, you have been the bedrock of the KHRC, the driving force behind our mission to “root human dignity, freedoms, and social justice in Kenya and beyond.” Through every high and low, challenge and triumph, your firm sense of mission has been the guiding compass for the KHRC, even when others faltered. You have steadfastly defended justice, advocating for those whose voices have been silenced and marginalised. Your single-minded determination in the face of adversity has been a great source of inspiration for us all.

To the founders, board members, officials, and programme officers who have served the KHRC, your leadership and expertise have been crucial in shaping our organisation and amplifying our impact. As we reflect on three decades of the KHRC's legacy, we do so with immense gratitude and admiration for all those who have devoted their lives to the cause of human rights.

As we celebrate this milestone, we extend our heartfelt gratitude to the following individuals, listed in no particular order, for their invaluable contributions:

Founders of the Kenya Human Rights Commission (KHRC)/ Founding Board Members

1. Dr. Willy Mutunga – board vice chairperson (1992-1998)
2. Hon. Kiraitu Murungi – board member (1992)
3. Maina Kiai – executive director (1991-1998)
4. Prof. Makau Mutua – board chairperson (1992-2022)
5. Prof. Peter Kareithi – board member (1992)

Successive Board Members

1. Betty Murungi (vice chairperson)
2. Kathleen Openda
3. Dr. Godwin Murunga
4. Dr. Jacinta Muteshi
5. Hellena Githinji
6. John Githongo
7. Mumbi Mathangani
8. Mumina Konso
9. Muthoni Wanyeki (vice chairperson)
10. Mwambi Mwasaru (vice chairperson)
11. Njeri Kabeberi
12. Prof. Alamin Mazrui Ali Mazrui
13. Prof. Karuti Kanyinga
14. Tade Aina

Current Board Members

1. Davinder Lamba (chairperson)
2. Betty Okero (vice chairperson)
3. Maina Kiai
4. Fr. Gabriel Dolan
5. Kwamchetsi Makokha
6. Lorna Dias
7. Nerima Wako
8. Wanjiru Gikonyo
9. Davis Malombe (ex-officio and executive director)

Executive Directors

1. Maina Kiai (1991–1998)
2. Dr. Willy Mutunga (1998–2003)
3. Wanjiku Miano (2004–2006)

4. Mwambi Mwasaru (2006–2007)
5. Muthoni Wanyeki (2007–2011)
6. Atsango Chesoni (2011–2015)
7. George Kegoro (2015–2020)
8. Davis Malombe (2020 to date)

Deputy Executive Directors and Programme Heads

1. Wambui Kimathi (1997–2003)
2. Wanjiku Miano (2003)
3. Steve Ouma (2004–2007)
4. Dan Juma (2008–2010)
5. Tom Kagwe (2010–2011)
6. Davis Malombe (2011–2020)
7. Cornelius Oduor (2023 to date)

Directors of Finance and Administration

1. Beth Mwanthie (1998–2003)
2. Beatrice Kuria (2004–2011)
3. Judy Ngugi (2011–2013)
4. Peter Mbage (2014 to date)

Managers/Senior Programme Officers

a. Former

1. Dr. Osaaji Mumia (2004–2005)
2. Peter Kiama (2005–2006)
3. Nduta Kweheria (2007–2013)
4. Tom Kagwe (2006–2012)
5. George Morara (2012–2014)
6. Andrew Songa (2014–2018)
7. Esther Waweru (2014–2016)
8. Elizabeth Kariuki (2014–2019)

9. Audrey Wabwire (January 2015 – November 2015)
10. Kasiki Mudachi (2013-2017)
11. Diana Gichengo (2016-2021)
12. July Kingsland-Burns (2010-2016)
3. Benard Mugendi
4. Beryl Aidi
5. Brian Olang'
6. Brigitte Moraa
7. Carol Werunga
8. Caroline Okioga
9. Catherine Kamatu
10. Christine Alai
11. Christine Opiyo
12. Cynthia Mugo
13. Damaris Onyancha
14. Dan Juma
15. Daniel Miako
16. Daniel Nyakundi
17. Dr. Mutuma Ruteere
18. Edward Mgangha
19. Edward Murimi
20. Ekitela Lokale
21. Elphas Ojiambo
22. Faith Alube
23. Fred Njehu
24. Furaha Charo
25. Grace Mkenda (deceased)
26. Grace Were
27. Hellen Musalia
28. Ivy Munoko
29. James Mawira
30. James Nduko
31. Jamila Wahome
32. Japheth Kyalo (deceased)
33. Javas Bigambo
34. Josephine Gikuyu

b. Current Managers

1. Richard Mutioh (2016 to date)
2. Mary Kambo (2019 to date)
3. Annet Nerima (2021 to date)
4. Martha Ndururi (2021 to date)

Current officers and assistants (programmes and operations)

1. Adrian Kibe
2. Domnic Odipo
3. Duncan Kung'u
4. Ernest Cornel Oduor
5. Faith Kirui
6. Felix Okoth
7. Irine Soila
8. Martin Mavenjina
9. Mongare Gladys
10. Neliug Njuguna
11. Phyllis Mueni
12. Robert Waweru
13. Tatyana Njenga

Former officers and assistants (programmes and operations)

1. Aki Nasanga
2. Andrew Odete

- | | |
|---------------------------------|----------------------|
| 35. Kennedy Mwikya | 67. Samwel Oyomo |
| 36. Keresi Kitonga | 68. Sandra Oyombe |
| 37. Kevin Nyalwal | 69. Sofia Rajab |
| 38. Lilian Kantai | 70. Sylvia Kithinji |
| 39. Louiza Kabiru | 71. Sylvia Mbataru |
| 40. Lucas Wanyama | 72. Tabitha Nyambura |
| 41. Lucy Simiyu | 73. Victoria Ochanda |
| 42. Lumumba Odenda | 74. Virginia Munyua |
| 43. Lydia Mkanjumwa | 75. Vincent Korir |
| 44. Martin Mbugua | 76. Vincent Musebe |
| 45. Martin Pepela | 77. Wafula Buke |
| 46. Martin Wasike | 78. Wangeci Chege |
| 47. Mary Kimemia | 79. William Oluchina |
| 48. Maximilla Wekesa (deceased) | |
| 49. Medika Medi | |
| 50. Mikewa Ogada | |
| 51. Millicent Namusonge | |
| 52. Monicah Kareithi | |
| 53. Moses Gowi | |
| 54. Mugambi Kiai | |
| 55. Mukami Marete | |
| 56. Nancy Mwaura | |
| 57. Neolina Nabwire (deceased) | |
| 58. Njuguna Mutahi (deceased) | |
| 59. Pamela Muhoro | |
| 60. Paul Annan | |
| 61. Peter Kibiru | |
| 62. Prof. Emma Njoki Wamai | |
| 63. Prof. John Osogo Ambani | |
| 64. Raphael Juma Obonyo | |
| 65. Repher Anindo (deceased) | |
| 66. Roland Ebole | |

We also acknowledge the hundreds of interns who have served the KHRC in various capacities. We value the opportunity to nurture this exceptional group, many of whom have gone on to become outstanding leaders within the KHRC, civil society sector, and society at large.

This list is by no means exhaustive. The process of compiling this book has been a reminder, if one was necessary, that human rights work is at its best a collaborative effort that requires many hands. It does, as they say, take a village.

Therefore, I extend my heartfelt gratitude to all those colleagues who, although not mentioned by name in the list above, played significant roles, in ways big and small, in shaping the KHRC's story.

Your dedication to your respective dockets has been critical in driving the KHRC's multifaceted, multidisciplinary and transnational approach to human rights advocacy. Together you have left no stone unturned in the pursuit of a more just and equitable world. Your work has transcended activism; it represents the highest ideals of our Kenyan spirit and character.

This book is a token of our appreciation for your dedication and sacrifices over the years. May your legacy inspire future generations to continue the noble work of the unending pursuit of justice and human rights.

Finally, we salute the numerous partners, both state and non-state actors, at the county, national, regional, and international levels, who have over the years supported our work. Among the key contributors are the county-based Human Rights Networks (HURINETS) and various national organisations and coalitions. We also extend our gratitude to the outstanding service providers, including suppliers and consultants, whose exceptional support has significantly enhanced and complemented the efforts of our staff, board, and partners.

With deep respect and gratitude,



Executive Director

The Kenya Human Rights Commission

2024

Foreword



Rights and Fights: Power, Resources, and Powerlessness

I had mixed feelings when Davis Malombe, the Executive Director of the Kenya Human Rights Commission, asked me to write the Foreword to this thoughtful and critical reflection of the organisation's thirty-year anniversary. That is because I am as insider as you can get in an organisation. I cannot be objective. And I will not be. But for this flaw, I take comfort in the fact I have never met anyone who was objective about history. Any historical narrative anywhere. I am therefore in good company. Thus I acknowledge my biases upfront. I leave it to those who claim to be objective to write their own histories of the KHRC. We shall read them critically but with delight.

This is our story, and we tell it the way we know best. After all, this is a story about rights. About fights over rights. Which boils down to fights about power, fights against the state, fights against human cruelty in the public and private squares, fights about identity, and, ultimately, fights about power, resources, and powerlessness. The reason why civil society, especially NGOs, exists, is to be the cartilage between the state and the people. To prevent, or mitigate, the tyranny of the public authorities against the citizenry. It is a check and balance on the state and the power granted to it by the people to govern on their behalf. It tames public power and establishes the outer limits of state action. It seeks to demarcate the acceptable remit of public officials in exercising their authority. Without civil society, democracy is impossible.

The year was 1991, a season of great tumult and revolution in Africa and the world. The bipolar US-Soviet Union world order was collapsing fast, and with it the wreckage of the client states under it. The ogre of the one-party state, the military dictatorship, the kleptocracy, the kakistocracy – the state as the savage – had never come under so much stress since the age of decolonisation. Kenya, a bona fide one-party state under KANU's authoritarian rule, had a front-view seat to the gathering political clouds. Since the 1980s, those winds of change had gathered steam under pressure of political oppositionists, student leaders, an emerging civic space, the churches, and parts of the press. By the early 1990s, there was open rebellion in Kenya against the dictatorship. That is the vortex in which the KHRC was born as the first prototypical human rights NGO in Kenya.

The story of the figures behind the birth of the KHRC in the United States and Canada is well told here, and so I will not belabour it. Suffice it to note that those brothers – and they were all men for reasons I cannot defend – are icons of the struggle in my eyes. They were men of substance and ideological nobility. They were politically rotund as activists and catalysts for change. They had put their lives, families, and livelihoods on the line to oppose a decayed, decrepit, and bankrupt system and state. I salute them all. Of course, history is made by the people acting in society. But that course of history must be thought through and action combined with the labour of the intellect. Praxis, that process of twinning theory and practice, is what these brave men did. They refused to be armchair revolutionaries. They dared to dream and then enacted that dream. That's why we are where we are today as a country.

In Shakespeare's **Julius Caesar** Act IV Scene 3, Brutus utters these memorable lines:

There is a tide in the affairs of men.
Which, taken at the flood, leads on to fortune;
Omitted, all the voyage of their life
Is bound in shallows and in miseries.
On such a full sea are we now afloat;
And we must take the current when it serves,
Or lose our ventures.

In my view, the men who founded the KHRC faced such a predicament. But it was not only them. It has been the case for every single man and woman who has ever been part of the epic KHRC journey. Each one of the people in the KHRC family has had to make this fateful decision – do I join the fight, or do I cut and run, and tend only to my own narrow interests? I am glad to report that everyone – and I mean literally every person – who has ever been part of the KHRC, has made the nobler choice of putting society above self, of shouldering the burden of being brother and sister to the least among us. Even when there were difficulties, I cannot say it was because of a malignant intention. It was because of human frailties, which are part of our nature as fallible beings. We accept every misstep that we made, and it is those failures that have made us a formidable organisation because we have course-corrected and learnt from them to become better for it.

The fight for rights, which threatens deeply embedded social, political, and economic privileges and structures, is not for the chicken-hearted. Of course the rights discourse has its own very severe limitations because it is not – and cannot be – a full theory of liberation, of complete empowerment. It is necessarily a complementary tool in the box of the material for battle against powerlessness.

It cannot by itself overturn powerlessness to fundamentally transform society. But without it, society cannot be transformed either. We understood these theoretical challenges about the limitations of rights early on as we set up the KHRC. That is why we understood the KHRC fundamentally as a political project, not a rights exercise. We captured this critical character of the KHRC in our writings and public pronouncements. We fought with Western donors and funders about it, and we refused to bend to their will when they insisted we separate rights from politics. We told them that the KHRC was a Kenyan citizen and as such it could not stand aloof from the theatre of politics.

We argued to donors – and to more conservative elements within civil society in Kenya – that the KHRC was a political organisation with a political agenda because human rights is politics. We categorically said that we could not be non-partisan in the Kenyan political landscape. That is why in 2002 the KHRC took the bold – but the only credible – step to endorse the opposition against the Moi-KANU candidate Uhuru Kenyatta. KANU was, by theory and practice, an anti-democratic party, a political instrumentality that had suppressed, killed, maimed, impoverished, and persecuted Kenyans since coming to power in 1963. How could the KHRC make any other decision apart from publicly asking Kenyans to vote for the opposition that had campaigned on a democratic and human rights platform to rid Kenya of KANU and its kleptocracy? We told the protesting donors to cut our funding if they were so upset with our principled stand. They did not, and I believe we helped expand their ideological horizons on the politics of funding.

The KHRC stretched the envelope in other ways. We refused to bifurcate human rights into the stale ideological categories of the Cold War. Our view was, and remains, that human rights are one whole political, economic, social, and cultural schema. We do not recognise the distinctions and categories known as generations of rights. We have collapsed all those walls and treat all human rights as human rights. That is why the KHRC human rights include civil and political rights, economic and social rights, and community rights as collective entitlements such as peace, development, and peoples' rights. We were among the first NGOs in Kenya to fight for women's rights. We unapologetically have fought for the rights of sexual minorities and those with socially unpopular sexual orientations. We have not retreated from these clear-eyed positions, and we will never do so.

I need to say something about the class character of the KHRC. I do not want to pretend that the KHRC is what it is not. The KHRC is not, and has never been, a grassroots organisation. It was not conceived as such. The KHRC was established by highly educated Kenyans from the elite echelons of society. The founding directors lived at a great remove from our most marginalised citizens. But their ideological orientation – many having come from humble origins – was either left, or left of centre, and therefore sympathetic or empathetic to the vast majority of dispossessed Kenyans. They understood very well the material conditions of Kenya's worker and peasant classes.

Some had Marxist political orientations. But they had by dint of education and status become elites in Kenyan society. The vast majority of the staff of the KHRC were also university graduates. In a word, the KHRC is an elite organisation that works to reduce state tyranny and powerlessness. I have always argued that the KHRC should never mask or project itself as “the people.” It is not and has never been. That would be a lie and an injustice to the people it claims to represent.

I want to add that in spite of the elite status of the KHRC, it has devoted itself exclusively to the project of social democracy and the reduction of powerlessness across all sectors of society. In this regard, the KHRC is not different from well-funded human rights NGOs elsewhere in the Global South or Global North. The difference is the KHRC’s adherence to a progressive mandate and its internal culture of transparency, accountability, and self-criticism. Even so, the KHRC is not a democracy per se. But we believe in deliberative governance where every voice is heard and respected. We live by our mandate as we understand a progressive interpretation of the human rights corpus to dictate. We also believe in results and agility of action. The KHRC has however never tried to usurp the agency of those it represents, and sometimes speaks for. To the largest extent possible, the KHRC has tried to spawn grassroots organisations to assume agency for the destinies of their communities. We have never stolen the voices of others unless those voices were denied or muffled by the state or malevolent commercial interests. I would say perhaps our biggest success has been to catalyse – not empower – others to stand up for themselves.

For close to 30 years, I was privileged to serve as Chair of the KHRC Board of Directors, a position I assumed at the founding of the organisation on the choice of my fellow directors. We believed in collective leadership. There was never a lesser director among us. My honour was to work with the greatest executive directors of the organisation. They are leading icons in Kenya and globally. I salute them all. We accomplished many things. We even managed to buy and now own our own offices. Our next challenge is to become sustainable by weaning ourselves off donor funding, especially from external sources. That will be a tall order. But the KHRC needs to create domestic revenue streams to support itself so that whoever pays the piper does not have the possibility of calling the tune. I thank Executive Director Davis Malombe and the Board for asking me to write this Foreword. I cannot wait to celebrate the next 30 years. A luta continua!

Prof. Makau Mutua

Co-founder and former Chairman

The Kenya Human Rights Commission

Note from the Chair



When an organisation, or even an individual, sets out to publish a chronicle of their activities over the past 30 years, there is always a possibility that any such book will be prejudged to be an exercise in self-congratulation, and in blowing your own trumpet.

To guard against this, our approach was that although we have some of Kenya's finest writers in our team (i.e. board of directors and staff members) we would commission an outsider who had not had very much to do with the KHRC in the past, and who would then be free to choose his or her own way of telling our story. All we would offer would be guidance and support, when it came to identifying and arranging meetings with those who have for one reason or another, featured in the events surrounding the KHRC's work over the last 30 years.

Our story would then be told through a series of essays on specific thematic areas, as well as specific initiatives undertaken on the rough and rocky road to a better Kenya.

The writer we found suitable for this task was Brian Obara. He is a lawyer who took the unusual route of embarking on a career in journalism, upon graduation.

His assignment was to tell the story of the KHRC, from its inception to the present, while capturing every detail—both the triumphs and the challenges.

This collection of essays then, is a series of journalistic essays about the work of the KHRC over the last three decades told through the voices of the people who did the work and the beneficiaries of it.

I hope readers will agree with me that it was well worth the effort.

Davinder Lamba

Board Chair

The Kenya Human Rights Commission

Acknowledgements



*R*ights & Fights: 30 Years of the Kenya Human Rights Commission's Impactful Legacy has been a collaborative effort that wouldn't have been possible without the dedication and support of numerous individuals. We extend our heartfelt gratitude to everyone who played a role in bringing this project to fruition.

First and foremost, we express our deepest appreciation to Kwamchetsi Makokha, Davis Malombe, and Ernest Cornel Oduor, whose vision laid the foundation for this book. Recognising the importance of documenting the Kenya Human Rights Commission's work, they spearheaded the initial concept and ignited the spark that became *Rights & Fights*.

Ernest Cornel Oduor's dedication extended far beyond the initial spark. He served as the industrious coordinator, ensuring the book transitioned seamlessly from concept to completion. His leadership and organisational skills were essential in keeping this project on track.

The book's production process itself benefited from the invaluable guidance of a dedicated team: Davinder Lamba, Davis Malombe, Cornelius Oduor, Mary Kambo, Annet Nerima, and, once again, Ernest Cornel Oduor. Their collaborative efforts steered the project through crucial stages, ensuring every detail reflected the weight of the KHRC's legacy.

Bringing the story of the KHRC to life fell to the talented trio of Brian Obara, Wycliffe Muga, and Josephine Mayuya. Their combined expertise in writing and editing transformed a collection of stories into a compelling chronicle that reflects the essence of the KHRC's journey so far.

We also extend our sincere thanks to the various donors who have supported the KHRC over the years. Their unwavering support has provided the bedrock upon which the Commission's fight for justice has been built. Additionally, we acknowledge the past and present team members of the KHRC. Their dynamic advocacy on numerous human rights causes is the essence of *Rights & Fights*. Their countless actions, big and small, have left a lasting impact on Kenya's human rights landscape.

To you, our dear reader, we extend our heartfelt appreciation for picking up this book. We hope the stories ignite a similar passion for justice within you. As the book emphasises, an enlightened and vigilant citizenry remains our best ally in the pursuit of the human rights state we collectively dream of. May *Rights & Fights* inspire you to take up the mantle and join the ongoing struggle for a just and equitable Kenyan society.

In closing, we express our deepest gratitude to each individual who contributed to *Rights & Fights*.

Your dedication has illuminated the pages of the KHRC's history, ensuring that its legacy continues to shine brightly for years to come.



“

*... this book will unbury the past
and draw on valuable examples of
quests for justice, truth, and increased
civic freedoms that KHRC was an
intimate part of...”*

Introduction: A Legacy Forged in Justice



“Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it’s the only thing that ever has.”

— Margaret Mead

Birthing in exile in America by the visionary minds of Prof. Makau Mutua, Mr. Maina Kiai, Dr. Willy Mutunga, Hon. Kiraitu Murungi, and Prof. Peter Kareithi, the Kenya Human Rights Commission (KHRC) has persistently advocated, researched, and fought against human rights violations since its inception on April 9, 1992.

Over the years, the organisation has harnessed bold stances, pooled resources, and leveraged the knowledge, unique skills, diverse perspectives, and unwavering passion of its resolute team members to achieve impactful outcomes that often elude many peers working in the same programmatic areas.

This book aspires to exhaustively examine the KHRC’s lasting legacy, magnify its influence, and, hopefully, instil a sense of optimism in the current and future generations that the capacity to positively transform Kenya – despite prevailing challenges – always lies well within our grasp.

There is plenty to learn from the KHRC because it not only talks the talk but also walks the walk. Its presence, through Human Rights Networks (HURINETS), is as powerful at the grassroots as it is in courtrooms across the land, contributing to landmark legal precedents that have shaped key aspects of civic life in Kenya.



Through its efforts, the KHRC has significantly influenced how Kenyans exercise their voting rights, defined their rights as workers and landowners against formidable multinational forces, and, in an era marked by rapid technological advancements and their abuse by state actors, has been a reliable force in safeguarding the digital rights of every Kenyan.

This multifaceted and transnational approach demonstrates the KHRC's commitment to holistic and impactful human rights advocacy. It is also a nod to a plucky persistence in the face of great odds, underlining a remarkable dedication to important causes—a stark contrast to the tendency of many peers who often abandon crucial battles once they fade from the headlines.

The KHRC was critical in forcing a necessary reckoning with Kenya's colonial and authoritarian past. In a landmark achievement in June 2013, the KHRC, in collaboration with the Mau Mau War Veterans' Association, got the British government to acknowledge colonial-era atrocities, resulting in compensation for more than 5,000 torture victims and the establishment of a UK-funded Mau Mau Memorial Monument that now sits at Freedom Corner in Uhuru Park, Nairobi.

Given the undeniable nature of these achievements and their impact on the lived reality of Kenyans of all stripes, it is worth exploring why public opinion in Kenya has the view that civil society is somehow in retreat and its best days are behind it.

The short answer to this question is, it has always been thus. One of the remarkable aspects of the KHRC's extensive institutional memory lies in its firm embrace of the concept of the "pessimism of

the intellect and optimism of the will.” In other words, seeing the world as it really is, warts and all, but still forging ahead with courage, persistence, and conviction.

Therefore, the task of this book is to unpack the KHRC’s impactful legacy and remind ourselves that the will of a dedicated group of people resolved to bring about positive change can overcome tremendous odds if hope remains alive.



The Kenya Human Rights Commission stages a public demonstration in Nairobi on January 30, 2004, advocating the observance of human rights in the country. The KHRC team has consistently taken to the streets, fearlessly sparking and supporting numerous important protests. The KHRC's unwavering commitment to human rights for over three decades has made the NGO a powerful force in championing justice and equality in Kenya. Photo: The Standard Media Group.

In essence, this book has been crafted to commemorate and contemplate the significant accomplishments of the KHRC over the past three decades with the overarching goal of bridging the gap between Kenya’s historical struggles and the pressing contemporary societal challenges that persist today. The recollections of the KHRC stalwarts such as Prof. Makau Mutua, Maina Kiai, Dr. Willy Mutunga, Davis Malombe, Wanjiku Miano, Dr. Steve Ouma, Atsango Chesoni, Mwambi Mwasaru, Davinder Lamba and a host of others, will serve to cement this point.

This project, therefore, is not merely one of documentation but also an introspective venture. With a median age of 19, Kenya is a nation teeming with young people. Some may inadvertently take their constitutional rights for granted or ponder why some provisions (such as the right to protest and the integrity clause) are only spelt out on paper but are given short shrift in practice. This situation naturally begs the question: Why, after securing our freedom through hard-fought constitutional battles, are we struggling to keep it?

Dr. Martin Luther King Jr. famously said that “the arc of the moral universe is long, but it bends towards justice.” This has always served as a powerful message of hope for advocates of social justice. However, while inspiring, this quote might suggest that justice is an inevitable and irrepressible force, naturally correcting the world’s wrongs.

The reality, as we have all painfully learnt, is that justice does not manifest on its own. There is no inherent mechanism that automatically ensures justice prevails in Kenya or anywhere else. The blood-soaked and heart-wrenching conflicts in Sudan, the Democratic Republic of Congo (DRC), Ukraine, and Palestine are a painful reminder of this.

Bringing justice to bear is seldom easy because it often involves challenging those in power to do the right thing. Therefore, a useful postscript to MLK’s wise words is that it is only the dedicated efforts of committed individuals such as the KHRC team and its collaborators that ultimately bend the arc of the universe towards justice.

This book celebrates the courageous and selfless individuals who have fruitfully laboured in the pursuit of justice in Kenya. It honours those who have fought and continue to fight on the front lines for what is right. It spotlights key figures and chronicles the Kenya Human Rights Commission’s achievements, including landmark legal victories, influential street protests, and other impactful campaigns and initiatives that have left an indelible mark on the lives of millions of Kenyans.

The Kenya Human Rights Commission—a vanguard forging a legacy with numerous hard-won battles that have resonated through every decade since its founding, fostering a society where justice is not merely a word on paper but a lived reality for every Kenyan citizen.

This book seeks to counter some of the prevailing pessimism concerning the state of justice and democracy in Kenya. It aims to remind us, with the aid of the KHRC’s numerous achievements, of the timeless truth made famous by cultural anthropologist Margaret Mead: “Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it’s the only thing that ever has.”

Democracy is not a finished product; it is an ongoing process, constantly evolving and renewing itself through the efforts of organisations like the Kenya Human Rights Commission. This is the central thesis of *Rights & Fights* — casting democracy as a hard-fought battle for the soul of the nation itself; an unending struggle that will continue for as long as there is a country called Kenya.

Over the past three decades, the KHRC and its network of allies have been at the vanguard of this movement, illuminating the path forward. The aspiration of this book is to impart the invaluable spirit of unwavering vigilance to the next generation.

Courage has a remarkable tendency to spread like wildfire, once the spark has been lit by a few brave souls who chose to stand up rather than kneel down.

Here is to another 30 years of the KHRC continuing to champion the cause of justice and equality everywhere.



Former Chief Justice Dr. Willy Mutunga (second right), also the former Ford Foundation East Africa Representative, presents the Champion of Democracy Award plaque to the Kenya Human Rights Commission in December 2012. Receiving the award are Davis Malombe, then Deputy Executive Director (centre), and Atsango Chesoni, then Executive Director of the KHRC (second left). Also present to accept the award on behalf of the KHRC are Betty Murungi (right), then vice-Chair of the KHRC's Board of Directors, and Judy Ngugi (left), then Finance Director at the KHRC. The KHRC received the award alongside nine other entities for its visionary leadership, courage, commitment, and willingness to take risks to achieve enduring social change.

“

*....it accomplished this by
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a commitment to meticulously
documenting human rights
abuses...”*

Founding the KHRC: A History

“We conceived the idea of forming a human rights organisation in the US because we couldn’t form it in Nairobi due to the one-party dictatorship. It is Maina Kiai who had the foresight of knowing that the world was changing all around us.”

— Dr. Willy Mutunga, former Chief Justice of Kenya and the KHRC co-founder

In the grand sweep of history, a seemingly isolated incident frequently sets in motion a sequence of interlinked events. It’s a phenomenon poetically described as the Butterfly Effect. According to this metaphorical idea, the flutter of a butterfly’s wings in one corner of the world, such as Australia, might unleash a catastrophic hurricane in Haiti.

History turns on a dime. There are plenty of compelling examples of how the subtlest of actions can reshape the contours of global events.

For instance, the assassination of Archduke Franz Ferdinand of Austria-Hungary in 1914 is widely regarded as the prime catalyst for the First World War, an event that had plenty of geopolitical consequences for Africa.

Similarly, the forceful response of the apartheid government to the Soweto Uprising not only intensified anti-apartheid activism but also attracted worldwide attention and protests, ultimately playing a key role in the dismantling of apartheid.

The Soweto Uprising not only altered the course of South Africa’s destiny but also played an influential role in the birth and evolution of Kenya’s preeminent human rights organisation, the Kenya Human Rights Commission.

The KHRC co-founder Maina Kiai says it accomplished this by sowing the seeds of radical ideological fervour, inspiring a penchant for boisterous yet impactful protests and instilling a dedication to accurately documenting human rights abuses. But perhaps the most intriguing detail Kiai reveals is the hitherto obscure origin of the organisation’s name.

“We borrowed it from the Human Rights Commission, which was then an NGO in South Africa. I don’t believe the NGO exists any more,” he discloses.

At the time, Kiai was employed at TransAfrica Forum, an advocacy organisation headquartered in Washington, DC, which spearheaded efforts to raise awareness about the daily hardships faced by South Africa's black population under the apartheid regime.

"We regularly organised protests against apartheid at the South African embassy in Washington," Kiai recalls.

The Fall of the Berlin Wall

The year was 1990, and the air was thick with a yearning for revolution. From the fall of the Berlin Wall symbolising the end of the Cold War to the release of Nelson Mandela in South Africa, the world was witnessing rapid historic transformations. However, much to the frustration of Kiai and other politically conscious Kenyans, there appeared to be little prospect for a positive change in circumstances back home.

President Daniel arap Moi's autocratic grip choked the nation. His strongman tactics had forced numerous critics to seek refuge in exile in America and elsewhere. Dissidents who chose to stay in Kenya were often mopped up by officers from the notorious security apparatus who subjected them to arbitrary detention, torture, and other grave perils.

Thanks to the benefit of his own experiences back in Kenya and his time in the trenches of anti-apartheid activism, Kiai understood the importance of raising awareness from America's seat of power to direct international attention toward events back home. He put this insight to good use.

"In 1990, when Raila Odinga, Kenneth Matiba, and Charles Rubia were detained without trial for agitating for multi-party democracy, I led the first-ever demonstration at the Kenyan embassy in Washington," he reveals.

"That action, however, came with implications in terms of scrutiny from the Special Branch," he says, underscoring the risks involved in challenging the status quo, even from the perceived safety of America's capital.

Moi's infamous intelligence apparatus had every reason to be concerned. A spark had been lit. An act of defiance, thousands of miles away from Kenya, had sown the seeds of a revolutionary idea. Kiai and other exiled Kenyan intellectuals, including Kiraitu Murungi, Peter Kareithi, and Makau Mutua, started contemplating how they, as Kenyans living in the diaspora, could play a meaningful role in the struggle for democracy back home. Out of these intellectually charged discussions emerged the germinal idea that would eventually blossom into the Kenya Human Rights Commission.

“We began asking ourselves, ‘how can we as Kenyans abroad contribute to this struggle?’” Kiai recalls.

“Our thinking was, if Amnesty can work from London, and Human Rights Watch can work from New York, why can’t we work from DC as well?”

Securing the KHRC’s Legitimacy and Operational Effectiveness

At the behest of Kiai, and later Mutua, the group later welcomed the addition of Willy Mutunga—a figure who would eventually leave an indelible mark on the KHRC’s evolution and influence. Scattered across the expanse of North America, the five Kenyans found themselves woven together by the threads of fate. Mutua and Kiraitu were exiles while Kiai and Kareithi had gone to the US as students. Kareithi was a journalist who had sought refuge across the Atlantic after the publication he had worked for, *The Weekly Review*, metamorphosed into a mere mouthpiece of the KANU-Moi dictatorship; and his own startup, *The Financial Review*, was proscribed.

“Some of us, like myself and Kiraitu, were in exile, while Maina had just left school and Peter was similarly distanced from Kenya,” Mutua recalls.

“We felt compelled to act against a repressive one-party state that demonised human rights advocacy as a threat to national stability.”

Mutua remembers how the term “human rights” itself was weaponized by the Moi regime to discredit dissent:

“We were driven by the belief that Kenya was ensnared in a tyrannical grip—a one-party state with no room for a vibrant civil society. This was the force that bound us together. Human rights, in that era, were not just a concept but a battleground. Moi used the term to disparage and vilify those advocating political freedom,” he explains.

“We were labelled as agents of foreign ideologies bent on destabilising the country,” he notes wryly, “yet our goal was to establish a durable civil society framework for Kenya.”

Kiraitu, a former law lecturer at the University of Nairobi, was reading for a second Master of Laws degree at Harvard Law School. He and his law partner, Dr. Gibson Kamau Kuria, had fled from Nairobi where they faced detention without trial. Mutunga at the time was writing his doctoral thesis at Osgoode Hall Law School, in Toronto, Canada. Kiai, the youngest among them, took on the important role of turning their idea into a reality.

“The most pivotal person in the founding of the Kenya Human Rights Commission was Maina Kiai,” declares Mutunga.

“He handpicked the five of us. I got the call while pursuing my doctoral studies in Toronto. Maina laid out the audacious plan for me. We had already started a group in Toronto that we called the Committee for Democracy in Kenya (CDK) with Miguna Miguna and a number of other Kenyans, but I saw a lot of merit in Maina’s vision. It was a chance to fight on two fronts. So, I signed on.”

For Kiai, assembling the core team was just the first step. The next crucial step was securing the KHRC's legitimacy and operational effectiveness by officially registering it as a non-governmental organisation in the US. This was no small feat as he undertook the task without the luxury of hiring a lawyer.

“I registered the KHRC as a non-profit organisation in Washington, DC, on April 9, 1992, and obtained its tax-exempt status under section 501(c)(3) [of the Internal Revenue Code],” he recalls.

10 | 30 Years of the KHRC

Struggling to Secure Funding and Gain a Foothold

“Makau had spent his time in the US breaking the back of the Kenyan lobby in Washington that had vested interest in the Moi-KANU dictatorship. When we talk of international pressure against the Moi-KANU regime in the 1980s and early 1990s, we should not forget that the crucial spark to this pressure was the work of Kenyans abroad.”

Mutua recalls the early milestones notched up by the KHRC with a hint of nostalgia and humour.

“There had been other organisations, like FIDA and Kituo Cha Sheria, but none with the broad mandate we envisioned,” he says.

Mutua muses on the KHRC’s early groundbreaking reports authored in the US, including the infamous 1991 exposé, *The Fallen Angel* on the then newly appointed Attorney General Amos Wako.

“He was never an angel, but the title had a certain ring to it. He had certainly fallen,” Mutua chuckles.

“In those early years in the US, the KHRC laid the foundation for a resilient human rights movement in Kenya. We set out to challenge injustice wherever it manifested, and that spirit continues to guide us,” asserts Mutua.

Kiraitu’s tenure as the head of the KHRC would be brief. Following Moi’s decision to repeal the controversial Section 2A of the Constitution to pave the way for multi-party democracy, Kiraitu chose to return to Kenya and venture into politics.

“We requested him to gracefully step down from his position as the Executive Director of the KHRC, which he willingly did,” Kiai says.

Later, Kiraitu founded the Civil Liberties Union, an outfit that would eventually manifest itself in the establishment of the Centre for Governance and Development (CGD). Peter Kareithi’s engagement with the KHRC would also be short-lived.

With Kiraitu’s departure, Kiai stepped into the role.

“It was clear I was the only one with the energy and time to take up the post of Executive Director,” he emphasises.

Kiai remembers how daunting the transition felt.

“I was in my 20s and I had never run anything in my life at that point. But I had lots of guts, drive, and a dream to make something of the KHRC,” he says.

“After 2A was repealed, it was very clear to the KHRC that the anti-dictatorship movement was growing. I remember at some point while in Canada, I was thinking of seeking asylum but when the repeal of 2A happened, it was clear it was necessary to return home because the political space was opening. Everyone was coming back home. Makau, for example, got his passport and came back home in 1992,” Mutunga says.

Kiai, too, returned home to Kenya but with a nascent NGO in his briefcase—the fledgling Kenya Human Rights Commission. Kiai knew that much like a newborn, the KHRC required careful nurturing to truly thrive in Kenyan soil.

“The KHRC was a briefcase NGO when I came back to Kenya with it,” he says. “We had no resources or physical presence, just a structure on paper.”

Mutua extends significant praise to Kiai for his pioneering spirit. Returning to Kenya to set up the KHRC on home soil during such a repressive period in the country's history was a formidable undertaking.

“Much credit is due to Maina for taking that brave step and establishing the KHRC on the ground,” says Mutua.

“It was really remarkable for Maina to go back at that time when he could have easily opted for a more comfortable career as a paralegal in the US. Maina's decision was emblematic of his commitment to the cause,” asserts Mutua.

“It was incredibly tough; the KHRC was under constant scrutiny and attempts to delegitimise our work,” he continues.

The KHRC's international connections and the ability to amplify the voices of the oppressed quickly won it recognition.

“Despite the challenges,” Mutua reflects, “we were embraced both in Kenya and abroad, thanks to our strong international ties and the pressing need for human rights advocacy.”

Over time, support began to swell from prominent lawyers and human rights organisations, within Kenya and globally.

“Foundations and major law firms supported our cause,” Mutua notes.

Initially, the KHRC found a home at the offices of Kamau Kuria & Kiraitu Advocates in Nairobi's Chai House. In exchange for helping the law firm with some legal work, Kiai secured an office and a desk, as well as access to a phone.

“All I needed to do was handle a few case briefs here and there and keep them going,” he notes.

“Maina was given a sliver of space at the law firm. The KHRC had no money—nothing at all. We were fuelled solely by ambition, vision, and a relentless determination,” Mutua recounts.

Subsequently, the KHRC was hosted at Kituo Cha Sheria in South B, where Kiai was given a desk in the office of Willy Mutunga, then the acting Executive Director, while he was away pursuing his PhD. The arrangement was far from glamorous, but it served as a humble starting point.

With no income to speak of, Kiai initially relied on his savings to sustain the KHRC.

“In the beginning, it was very tough,” he recalls. “I was using my savings to push the KHRC along. It took about a year before we got any funding.”

During this period, the KHRC was still a far cry from the prominent NGO it would later become. Kiai acknowledges the key role played by his siblings Mugambi Kiai, Nkure Kiai, and Nduta Kiai,

who contributed their time and energy to the KHRC in its early days. Their unconditional support, he stresses, played a significant role in the organisation's ability to weather the challenges it faced in its infancy.

“People see this juggernaut called the KHRC today and think it was like that at the beginning. I assure you, it was not. Thank God for my siblings who volunteered their time and energy for free, even assisting with report writing and editing. They were a tremendous help,” Kiai says.

“Without them, there would be no KHRC.”

Establishing a New Norm

Through sheer perseverance, the KHRC began to take shape, eventually relocating to Gitanga Road in Valley Arcade. During this period, the KHRC received its inaugural seed grant.

When asked about the origins of the KHRC's initial backing, Mutua sets the record straight on a common misconception.

“There seems to be a general belief that our initial support came from the Ford Foundation,” he notes.

“While it's true that the Ford Foundation played a significant role later, the reality of our early support is a bit more nuanced.”

Mutua explains that the first real backing for the Commission came not from international donors but from Kenyan lawyers.

“Our initial support was largely in kind,” he says.

“Lawyers like Gibson Kamau Kuria provided crucial resources—office space, equipment, and so on. This kind of support was invaluable and came from within our own community,” he explains.

He acknowledges the Ford Foundation's eventual monetary contribution but distinguishes it from the foundational support.

“In terms of traditional grant funding, yes, it was the Ford Foundation that came in. But the initial backing was very much a local effort,” he says.

“It's an important distinction to make, as it brings out the community's role in our early days,” emphasises Mutua.

Nevertheless, the \$50,000 grant from the Ford Foundation was a significant milestone. It served as a crucial endorsement of the KHRC's mission and was an early sign of Kiai's exceptional fundraising abilities.

“Maina is a brilliant fundraiser,” Mutunga admits.

“He single-handedly raised funds for the Kenya Human Rights Commission in the early days, although we provided support as well. For example, it was evident to me that securing funding for the KHRC meant reaching out to Nordic countries and foundations dedicated to promoting democracy. We never went to USAID and the British Council.”

“The support from German and Dutch foundations, as well as their embassies, was of great help to the KHRC,” Mutunga continues. “This backing enabled the Commission to recruit staff and expand its impact within the growing movement.”

“Simultaneously, we recognised the imperative of championing a new constitution within the movement,” he explains.

“Our goal was to dismantle the entrenched dictatorship by establishing a new norm that allowed for political parties to organise freely and express themselves without constraint. This vision birthed the Model Constitution initiative, which we initiated in 1994.”

Casting about for a foolproof strategy to maximise the KHRC’s impact, Kiai drew from his experiences with the American anti-apartheid NGO.

“Our initial focus was on reports. That’s what we understood human rights groups to do—to document and write reports. Consequently, we produced a number of influential reports. The approach proved very effective,” he narrates.

By writing reports on topics such as the lack of academic freedom in local universities and cases of torture under the brutal Moi regime, they slowly began to draw attention to the grave injustices faced by all Kenyan citizens. One standout report, titled ‘Independence without Freedom: The Legitimization of Repressive Laws and Practices in Kenya (1994),’ was a seminal work that exposed the deeply rooted colonial structures that persisted in post-Independence Kenya.

“It provided irrefutable evidence that Kenya was still a colonial state in many ways, substantiating what Marxist thinkers had long claimed,” Kiai says.

“The power of these reports lay in their capacity to shine a spotlight on the injustices plaguing Kenya. They offered not just opinions but hard facts and evidence, making them invaluable tools for advocacy and activism.”

A Hotbed of Radical Activism

However, as the KHRC grew, it yearned to be more than an organisation that produced reports providing a revealing snapshot of the state of human rights in Kenya. To move the dial, it aspired to be a catalyst for change through the kind of spirited activism and advocacy that challenged the

status quo. To this end, the KHRC began recruiting individuals who shared its founders' passion for human rights and democracy, often drawing from the ranks of those who had experienced Moi-era repression first-hand.

“We started to get all these radical people under one roof at the KHRC,” Kiai recalls.

Gradually, yet steadily, the KHRC was beginning to earn its reputation as a hotbed of radical activism.

“In building this team, the KHRC prioritised the recruitment of individuals with radical thinking, who were unafraid to challenge the oppressive system they were up against,” he adds.

On the KHRC's board, Kiraitu and Kareithi's exit made way for Prof. Alamin Mazrui, Njeri Kabeberi, and Rose Waruinge, each contributing a unique background to the Commission. Prof. Mazrui had endured unjust detention in 1982, leading him to move to the US to take up a job at Ohio State University after failed attempts to return to Kenyatta University.

Kabeberi, a renowned activist, chaired the Release Political Prisoners Pressure Group and seamlessly joined the KHRC. When Waruinge departed, Mumbi Mathangani, a respected legal figure and founding member of FIDA Kenya, took her place, injecting new energy into the Commission with her legal expertise from the University of Nairobi and Harvard Law School.

Among its staff, the KHRC welcomed individuals like Wafula Buke, freshly liberated from the clutches of the Moi regime. In 1987, Buke, then chairperson of the students' union at the University of Nairobi, endured imprisonment and torture at the notorious Nyayo House torture chambers for advocating democratic reforms. They also welcomed Odenda Lumumba, who had been arrested for his activism. Another addition was Njuguna Mutahi, a journalist who had been arrested for his involvement with Mwakenya, a clandestine pro-democracy group.

Njuguna, the brother of the renowned author, satirist, and columnist Wahome Mutahi, applied his journalistic acumen to enhance the KHRC's research, writing, and documentation efforts. Buke led activism and campaigning, while Lumumba spearheaded the land rights project. While these advancements were commendable, Kiai acknowledges that the KHRC missed the mark on gender diversity in its early days.

“We were not particularly strong on gender at that time. We had one lady, Jane Thuo, whom we hired, but she left after about a year,” he admits.

Nevertheless, Kiai and his team were dedicated to shaping the KHRC into a powerhouse of radical thinkers who would challenge the powers that be. Naturally, there was a steep learning curve as they navigated the complexities of organising protests in Kenya. Earlier in 1993, without much funding, the KHRC organised its first protest, which was aimed at spotlighting the clashes in the Rift Valley.

“I Lost a Shoe in that March”

State-sponsored violence against perceived opposition members intensified in the period, prompting the KHRC to organise protests again. Their strategy had a religious touch, starting at Pumwani mosque and marching to All Saints Cathedral. This approach aimed to galvanise a broader base of supporters, including politicians and young activists.

However, these demonstrations were met with heavy-handed police responses, with tear gas and tense confrontations being the norm.

This was a stark contrast to Kiai's earlier experiences organising protests in Washington, DC.

“In the US, the police were there at protests but always on the outskirts. It was so peaceful. But, of course, our police do what they want,” he says.

“I lost a shoe in that march. And the next thing I knew, I ended up at All Saints. I did not protest from '93 until '95 because I was still figuring out how to protest in Kenya,” Kiai says.

The KHRC was fighting battles on many fronts. Davinder Lamba, the current chair of the KHRC board, recalls the Herculean effort of registering the KHRC in Kenya during the oppressive Moi era.

“The Moi government, in its infinite wisdom, had crafted the NGOs Coordination Act. This Act, along with its accompanying board, was their not-so-subtle attempt to control the activities of NGOs in Kenya. It was, to put it mildly, a draconian piece of legislation,” begins Lamba.

“Naturally, the NGO community wasn't about to take this lying down. We strategised around the issue.”

“The Act stipulated that a few of the council members had to be nominated by NGOs. That was our opening. The remaining seats were filled by government appointees. Willy Mutunga, then the KHRC vice chairperson, and I were fortunate enough to represent the NGO side.”

“However, registering the KHRC itself proved to be an uphill battle. A prominent figure, Prof. Jackson Ojwang, vehemently opposed the KHRC's application, arguing, rather dramatically I might add, that the KHRC represented nothing more than a political agenda masquerading as a human rights organisation. Mutunga, with admirable selflessness, recused himself from these deliberations,” Lamba recalls.

“Given my position as a director of the KHRC, I recused myself from the deliberations. I declared a conflict of interest, as one should in such circumstances,” Mutunga says.

He then goes on to recount the strategic manoeuvring that secured the KHRC's registration.

“Davinder and I found ourselves on the newly formed NGO council. The freshly minted NGOs Coordination Act stipulated a six-member board, half of whom were to be representatives from civil society,” Mutunga says.

“The KHRC’s registration application landed with a resounding thud,” he recalls.

“Opposition was fierce, but we employed some clever manoeuvring to navigate the situation.”

A Journey of Immense Sacrifice

“We had done our homework. We knew we could bank on the support of Davinder, John Barton from Oxfam, and Karen Twining of ActionAid. They understood that a functional NGO council, one that truly represented everyone, was paramount to all our work. That’s how, in 1994, we secured our registration,” Mutunga concludes with a triumphant glint in his eyes.

The Kenya Human Rights Commission was officially registered in Kenya on January 20, 1994. The NGOs Coordination Board listed the organisation’s founding trio as composed of Maina Kiai, Willy Mutunga, and Rose Waruinge, a distinguished advocate of the High Court of Kenya.



A copy of the Kenya Human Rights Commission’s certificate of registration, dated January 20, 1994. The NGO’s registration in Kenya represented a significant triumph as it happened despite staunch opposition from the oppressive Moi regime and its agents. The milestone was achieved through some deft sleight of hand by Dr. Willy Mutunga, a co-founder of the KHRC and former Chief Justice of Kenya, and Davinder Lamba, the current Chair of the KHRC board. The complete account of how they skillfully outmanoeuvred those who, for political reasons, were determined to oppose the KHRC’s registration in Kenya is told within the pages of this book.

“To see the KHRC evolve from an idea into what it is today is truly a dream come true,” says Mutua.

Today, the Kenya Human Rights Commission stands as a living embodiment of the unending fight for justice and equality in Kenya. The vision of the KHRC's founders and the kinetic efforts of its early members transformed the organisation from a briefcase NGO into a dynamic force for change in Kenya.

This doggedness continues to define the KHRC. From exposing human rights abuses and championing the rights of victims to challenging repressive regimes and defending democratic freedoms, the KHRC has maintained a robust and unwavering presence. The KHRC's founders and its staff (past and present) have every reason to take pride in this legacy.

It is evident that the KHRC's journey has been one of immense sacrifice and determination. Its kinship with the struggle against apartheid in South Africa was not just in name but in the shared belief in the power of human rights advocacy. The organisation's early struggles, as well as its later accomplishments, serve as a reminder of the power of civil society in advancing justice and accountability everywhere.



Willy Mutunga is escorted to court following his arrest on June 12, 1982. He was charged with possessing a 'seditious' leaflet titled 'J. M. Solidarity Day' and 'Don't Be Fooled: Reject these Nyayos.' After being forced into exile in Canada, Mutunga would go on to co-found the Kenya Human Rights Commission in 1991 alongside Prof. Makau Mutua, Prof. Peter Kareithi, Hon. Kiraitu Murungi, and Maina Kiai. The KHRC has played an indispensable role in advocating human rights and justice in Kenya for over three decades. Photo: The Standard Media Group.



The Kenyan Human Rights Commission Executive Director Willy Mutunga and Mazingira Institute Executive Director Davinder Lamba hold a press conference in Nairobi in January 1998. Despite facing severe opposition from the repressive Moi regime, Mutunga and Lamba were instrumental in the KHRC's registration in Kenya in 1994, a significant achievement that is documented in this book. Photo: The Standard Media Group



Board chairperson Prof. Makau Mutua engages with pupils from Laikipia Air Base Primary School during celebrations of the Kenya Human Rights Commission's 10th anniversary in April 2002. Over the past three decades, the KHRC has spearheaded numerous initiatives aimed at transforming Kenya into a human rights-focused state. The KHRC's efforts have included advocacy, education, and grassroots organising, all contributing to the promotion and protection of human rights across the country. Photo: The Standard Media Group



Maina Kiai (right) gathers his thoughts during a national forum on Human Rights Networks at the Kenyatta International Convention Centre (KICC) in August 2006. At the time, Maina was Chair of the Kenya National Commission on Human Rights (KNCHR), which was established at the urging of the Kenya Human Rights Commission (KHRC) and borrowed extensively from its staff and ideas. Photo: The Standard Media Group.

Restorative Justice: The KHRC's Role in the Mau Mau Reparations Case



“I am very grateful to the KHRC and to the people of Kenya who stood with us during this journey.”

— *Gitu wa Kahengeri, Secretary-General, Mau Mau War Veterans Association (MMWVA)*

In the heart of Nairobi’s Uhuru Park, stands a monument that bears witness to a long and painful struggle for justice. The sculpture portrays a male Mau Mau fighter receiving food from a female comrade at the height of the Mau Mau struggle in the 1950s.

However, there’s a deeper nuance to the simplicity of the artwork. The accompanying plaque explains the clandestine nature of the exchange: under the directives of their leadership, the fighters averted their gaze as the food changed hands. It was a precautionary measure to safeguard against potential betrayal under torture.

The Mau Mau Memorial Monument, in its solemn majesty, serves as a reminder of the atrocities committed during the colonial era in Kenya, and the indomitable spirit of those like Shujaa Gitu wa Kahengeri, the Secretary-General of the Mau Mau War Veterans Association (MMWVA), who sought redress.

Gitu’s story, and that of other Mau Mau veterans, offers a glimpse into the pluck and determination of those who fought for justice during a truly dark chapter of Kenya’s colonial history.

It also underscores the role played by the Kenya Human Rights Commission in the steady pursuit of recognition and just compensation for those who had valiantly risked their lives and safety in the noble struggle for Kenya’s emancipation from the shackles of colonialism.

To examine the real human toll of Britain’s colonial project, it’s necessary, with Gitu’s expert guidance, to cast our gaze back and unpack the exact historical context of Kenya’s colonial era.

As exhaustively detailed in Caroline Elkins' seminal book *Britain's Gulag: The Brutal End of Empire in Kenya* and in David Anderson's aptly titled *Histories of the Hanged, Britain's Dirty War in Kenya and the End of Empire*, British dominion over Kenya was an all-encompassing, pervasive, and cruel experiment in human depravity.

Pervasive Discrimination and Harsh Policies

It resulted in a litany of hardships for the local population that included oppression, land dispossession, forced labour, and the systematic denial of fundamental human rights. As a proud member of the Kenya Land and Freedom Army (popularly known as the Mau Mau), Gitu and his comrades in arms believed in the power of their movement to pressure the colonial government into addressing these injustices.

Their struggle was a fight against the pervasive discrimination and harsh policies imposed by the colonial rulers. One of the darkest periods during this time was the state of emergency declared in October 1952. The British colonial government unleashed a brutal campaign to crush the Mau Mau uprising, using detention camps, "emergency villages," and prisons as tools of suppression.

Gitu and his fellow comrades soon found themselves facing the wrath of the colonial regime. The British authorities established special police units such as the Haraka Police Unit, which operated with impunity, arresting, torturing, and detaining those suspected of Mau Mau affiliation. Gitu was soon caught in the unit's crosshairs and would come to experience the brutal reality of colonial justice firsthand.

Haraka police officers arrested him and several others, using absurd charges to secure convictions without due process. Gitu was among those who were detained at the Kileleshwa Police Station and held without trial for three agonising months. The conditions were deplorable, with overcrowded cells and inhumane treatment.

One fateful day, Gitu's life took an unexpected turn. He found himself sharing a railway wagon with his father, Kahengeri wa Gitu, who had been arrested separately and thrown into the same vehicle. It was a reunion in the direst of circumstances, but Gitu's father offered words of solace and hope. The younger Gitu had feared that they might be thrown into the sea to perish, but his father's steadfast spirit gave him the strength to face whatever lay ahead.

Gitu's father, an experienced freedom fighter and a veteran of the Second World War, understood the importance of perseverance and unity in the face of adversity. Their harrowing journey would take them from Nairobi to Mombasa, through treacherous conditions, but they held onto the belief that they would someday return home as victors. Their destination was Manda Island, specifically the

Takwa detention camp. This remote location, surrounded by the sea and a mangrove forest, would be their home for years. Among the fellow detainees were prominent leaders and freedom fighters who had laid the foundation for Kenya's independence struggle.

The detainee roster read like a roll call of courage under fire. Among them were Githae wa Kiguru, Solomon Memia, and Wagaca wa Githuku from Dagoretti; Thomas Nganda from Ruthimitu; Johana Karanja from Limuru; Karanja wa Kiraka from Kamandura; Mario from Ngarariga; Njuguna wa Tharau from Lari; Peter Gatabaki and Waira wa Kamau from Githunguri—each a titan in his own right.

From Nyeri were more luminaries of the struggle like Willy Jimmy Wambugu, Joshua Kiragu Kagotho, and Anderson Wamuthenya Kang'eri. Murang'a contributed its heroes, too, like Mburu wa Mugwira and Ng'ethe, to name but a few. Also among their ranks stood heavyweights like Mbiyu Koinange, Pio Gama Pinto, and Achieng Oneko, each a towering figure whose name would be forever etched into Kenya's independence history.

A Nightmarish Descent into Hell

Despite the isolation and hardship, the Mau Mau detainees maintained their unity and commitment to the cause of justice. Gitu's father, who was one of the older detainees, inspired others with his wisdom and strength of character. The detainees supported each other, shared news through barbed wire fences, and endured the challenges of a camp infested with mosquitoes and the hardships of having limited supplies.

It was a crisp day in 1960 when news reached the detention camp through the unforgiving barbed wire. Then British Prime Minister Harold Macmillan, while addressing the South African parliament, uttered words that would resonate across the African continent: A “wind of change” was blowing; in Kenya and other parts of Africa where the British had colonies. Gitu and his comrades, trapped behind the wire, saw a glimmer of hope in those words. The wind of change whispered promises of independence and dignity – promises they had sacrificed for.

Unfortunately, their colonial oppressors were not yet ready to loosen their grip. They clung to their “pipeline” rehabilitation programme; a torturous system designed to break the spirit of Mau Mau detainees. Thomas Askwith, the commissioner for community development, had conceived this brutal machinery, portraying it as a means to “cure” those afflicted with the “Mau Mau disease”. In reality, it was a method of torture, where hard labour, routine beatings, denial of medical care, and hunger were the daily fare.

The camps were a nightmarish descent into hell. Hard labour, often under the watchful eyes of merciless District Commissioners, District Officers, Chiefs, and “Home Guards”, was the order of the day. Terence Gavaghan, the chief rehabilitation officer with a rank equivalent to a district commissioner, ruled with an iron fist. His brutal methods left detainees with whip wounds, broken limbs, and shattered jaws from punches with weighted knuckle gloves.

Many never left those camps alive.

Hippo and Rhino Hide Whips; Weighted Knuckle Gloves

Gavaghan introduced the “special dilution technique”, a savage practice where detainees were brutally beaten until they confessed to alleged crimes. They were tortured with whips made from hippo and rhino hides, as well as tyre rubber whips, pick-axe handles, weighted knuckle gloves, and other crude weapons. They bore the scars from the beatings for the rest of their lives.

Gitu and his comrades endured the horrors of the camps. Despite the relentless beatings, he remained resolute in his commitment to the cause. When interrogators demanded his confession, Gitu stood firm, declaring, “I know nothing about the Mau Mau, so I have nothing to confess.” He knew the importance of resisting the oppressive colonial regime, even in the face of excruciating pain.

As he shares his story, Gitu recalls a day when he was lashed with whips made from hippo and rhino hides and tyre rubber. His interrogators wanted him to divulge Mau Mau secrets, but Gitu’s resolve never wavered. The scars on his body bear testimony to his defiance.

Transition from the Brutal Detention Camps to Civilian Life

After surviving the torments of Thiba camp, Gitu was transported to Baricho detention camp in Gatundu. There, a colonial officer who recognised him as the son of an old friend intervened, sparing him further suffering. Gitu was granted medical attention, and his family, friends, and fellow Mau Mau comrades were finally allowed to visit him.

He finally transitioned from the brutal detention camps to civilian life. Gitu returned to his family to find them malnourished and in dire straits. The women, children, and men in emergency villages, displaced from their farms, faced the daily struggle for survival under the oppressive watch of home guards and barbed wire.

After undergoing torment in detention camps, Mau Mau fighters like Gitu carried the fervent hope that independence would catapult them into better circumstances for themselves and their

families. This was not to be. Instead, the Mau Mau fighters, who had risked everything for the dream of an independent Kenya, were met with disillusionment. Many had toiled in the camps, endured torture, and lost years of their lives in detention but upon Kenya achieving independence in 1963, they found themselves marginalised and impoverished.

Ngũgĩ wa Thiong'o's Timeless Classic, 'A Grain of Wheat'

The post-Independence government, led by founding President Jomo Kenyatta, did little to honour the sacrifices of the Mau Mau veterans. As expertly depicted in Ngũgĩ wa Thiong'o's timeless classic, *A Grain of Wheat*, which is set against the backdrop of this critical period, the heroes who had fought for Kenya's freedom from white colonial rule were left without recognition or support, their voices cruelly silenced and suppressed by those who once collaborated with the colonialists.

"Our fathers fought bravely. But do you know the biggest weapon unleashed by the enemy against them? It was not the Maxim gun. It was the division among them. Why? Because a people united in faith are stronger than the bomb," writes Ngũgĩ. This bitter yet accurate meditation on being "betrayed by your own" sums up the harsh predicament that Gitu and his fellow Mau Mau veterans faced on the threshold of Kenya's independence from British rule.

The journey toward justice for the cruelty and torture they endured would be long and arduous. Despite this daunting reality, Gitu and his friends refused to surrender to despair. They continued their fight for justice and recognition, determined to secure a better future for themselves and their families. Concurrently, Gitu's path veered into politics, where he sought to champion the interests of his community. He served two terms as a Member of Parliament for Juja constituency (1969 and 1979) on a KANU ticket.

"While some of my colleagues ventured into business or farming, I remained committed to the struggle by entering politics," Gitu explains.

The 'Second Liberation'

Gitu remained true to his pledge of utilising politics solely as a conduit to keep the spirit of Kenya's liberation movement alive.

"I personally joined the 'Second Liberation' as a member of the Forum for Restoration of Democracy (FORD) under the leadership of Jaramogi Oginga Odinga," he narrates. "In this movement, we were joined by the Young Turks who included people such as Paul Muite, James

Orengo, Gitobu Imanyara, Shem Ochuodho, Kiraitu Murungi, Kivutha Kibwana, and Dr. Willy Mutunga.”

The struggle for freedom was deeply embedded in the spirit of these men and women. The names of Bishop Alexander Muge, Bishop Henry Okullu, Archbishop Raphael Ndingi Mwana’a Nzeki, Rev Timothy Njoya, Archbishop Manasses Kuria, and many others resonate profoundly with Gitu as he recounts how the Church and its leaders took a firm stand against the Moi dictatorship and its profound corruption.

In 2002, the winds of change finally swept away the long-ruling KANU regime. Gitu, alongside a group of fellow former freedom fighters, saw a glimmer of hope on the horizon. The dawn of a new era brought with it a golden opportunity.

“When KANU was removed from power through the 2002 multi-party elections, we as a group of freedom fighters approached the new Mwai Kibaki administration,” Gitu recounts.

Their mission was clear—to right the historical wrongs and pave the way for justice. At the heart of their struggle lay a deeply entrenched colonial law, dating back to 1950, that branded the Mau Mau movement a “dangerous association.” This draconian law had served as a sinister instrument to imprison, detain without trial, and subject countless Kenyans to a brutal regime during the 1950s emergency period.

A Glaring Stain on the Nation’s Conscience

Gitu and his fellow veterans knew that their battle had two fronts: the fight against the British colonial authorities’ inhumane treatment and the struggle against the very government they helped create—an independent government that failed to revoke the oppressive law.

For four decades, they bore the weight of being labelled “dangerous” in their land. For Gitu, the persistent presence of the oppressive colonial-era legislation was a glaring stain on the nation’s conscience. A year later, in 2003, a watershed moment came to pass. The Kibaki administration finally heeded their call.

“In 2003, the offensive law was removed from Kenyan law books,” Gitu proudly declares.

The clouds of injustice had begun to lift, revealing a glimmer of hope on the horizon—the birth of the Mau Mau War Veterans Association (MMWVA). Founded with a solemn oath to promote the welfare of surviving Mau Mau veterans, those who had supported their struggle, and the children of the Mau Mau, the MMWVA was an aptly named special purpose vehicle formed to right the wrongs of the past.

“The association was registered on October 23, 2003, and we got our registration certificate in November of that year,” Gitu recalls.

“It is a sad fact that it has taken 40 years for the government to finally agree to register this group that was not afraid of death in order to earn freedom for its countrymen,” then Vice President Moody Awori told the members of the association after handing over the certificate of registration to its leaders.



Vice President Moody Awori presents a certificate of registration to Ndungu Gicheru, chairperson of the Mau Mau War Veterans Association (MMWVA), at Uhuru Gardens on November 11, 2003. The Kenya Human Rights Commission was instrumental in securing official recognition for the MMWVA, which had operated in the shadows for decades due to a colonial-era prohibition. Justice Minister Kiraitu Murungi, a co-founder of the KHRC, is next to the VP. This milestone marked a significant step in acknowledging the contributions and struggles of the Mau Mau veterans. Photo: The Standard Media Group

Gitu was entrusted with a significant role by his fellow veterans. His time as a card-carrying member and official of MMWVA began with his election as the Deputy Secretary-General. However, fate had a more significant role in store for him.

“In the next election, I was elevated to Secretary-General,” he reminisces.

Under Gitu’s guidance as the Secretary-General of the MMWVA, the veterans initiated their pursuit of justice against the British government for its colonial-era transgressions.

However, he was in for a rude shock when he reached out to the Kenyan government for support with the case.



Members of the Mau Mau War Veterans Association (MMWVA) celebrate receiving their official registration certificate at Uhuru Gardens on November 11, 2003. Photo: The Standard Media Group.

Reaching Out to Dr. Willy Mutunga

“We approached the government at the time we were filing the case in the UK. Their response was that they could only give us moral support. At that time, I really wondered if this was the government of the country that we had sacrificed and fought for,” he says.

It was at this crucial juncture that Gitu and the MMWVA reached out to Dr. Willy Mutunga. His response embodied the commitment to human rights that the KHRC has consistently championed.

“He assured us of the Commission’s support in our case from beginning to end, and that is exactly what the KHRC did. They supported our travel to and stay in England and covered practically all the expenses associated with that case, for which we remain very grateful,” Gitu attests.

The MMWVA, Gitu says, also extends its gratitude to Prof. Makau Mutua, the then Chairperson of the KHRC board. Mutua vividly recalls how the NGO became deeply intertwined with the Mau Mau case.

“From our internal conversations, the KHRC had always been interested in centring the Mau Mau experience in our political history of liberation,” he adds.

Maina Kiai, the KHRC co-founder who helped the organisation establish itself in Kenya and secure its initial funding, also recalls the origins of the conversation about supporting the Mau Mau case starting in an informal setting:

“The thinking around that case started in my little house in Nyeri, with Makau and Willy. We just sat down and said we must do something about the Mau Mau issue. There was no money for the campaign, so we had to raise it ourselves.”

Then Executive Director, Dr. Muthoni Wanyeki recalls that the KHRC's support for the Mau Mau case was rooted in organisation's Survivors Network, which brought together victims of various human rights violations in Kenya's past.

“We helped create groupings of survivors so they could advocate for themselves for what forms of justice they wanted to pursue,” Wanyeki explains.

When Gitu wa Kahengeri, the driving force behind the movement, approached them seeking an institutional anchor for the project, Mutua took it on as a personal mission.

“I organised a fundraiser on June 2, 2006, which was attended by notable figures such as James Orengo and then Attorney General Amos Wako,” Mutua recounts.

“We managed to raise about \$7,000 (Sh500,000)* to help launch the suit in the UK.”



One of the invitation cards for the Mashujaa Dinner fundraiser organised by the KHRC on June 2, 2006.

This support marked the beginning of their case against the British government for torture and ill-treatment during the colonial era.

The case was not limited in scope. It aimed to get justice on behalf of more than 50,000 freedom fighters who were seeking compensation for the atrocities committed by the British colonial government. Gitu and his team carefully selected representatives from various regions in Kenya to present their case in Britain.

Unexpectedly, Gitu faced challenges within the freedom fighter community itself.

“The Mau Mau War Veterans Association convened and held 64 public meetings asking victims to join so that we could sue the British for torture and ill-treatment,” he explains.

“Many known and recognised freedom fighters refused to join the association and therefore were not part of the case in Britain.”

“We Represent the Forgotten People of Kenya”

With determination in their hearts and thanks to financial assistance provided by the KHRC, Gitu and his team left Kenya on June 22, 2009, to register their case. *Ndiku Mutua & Others – v – The Foreign and Commonwealth Office* Case No: HQ09X02666 of 2012, a test case on torture, was filed in the UK by the law firm, Leigh Day, on June 23, 2009.

There were five claimants in this case: Ndiku Mutua, Jane Muthoni Mara, Wambugu Nyingi, Paulo Nzili and Susan Ciong’ombe Ngondi. Susan Ngondi passed away whilst Ndiku Mutua withdrew for personal reasons. Many Kenyans living in Britain and others who were in the country for various reasons showed up to give moral support. Their legal team, including lawyers from Leigh Day Advocates, and prominent QCs Richard Hermer and Philippa Kaufman, presented a compelling case against the British government.

On June 24, 2009, five representatives of the MMWVA, including Gitu, made their way to the office of British Prime Minister Gordon Brown to present their petition for justice.

“We represent the forgotten people of Kenya whose cry for justice has become too deeply felt to remain unheard,” Gitu recalls saying.

The Mau Mau veterans’ journey to justice was fraught with obstacles. The British government, at the onset of the legal battle, attempted to block the case on the grounds of state succession and limitation. On the first ground, they argued that because Kenya had become independent in 1963, the responsibility for addressing colonial-era abuses should rest with the Kenyan government.

“The British argued that, in terms of the law of state succession, it was the government of Kenya that succeeded the colonial government and that therefore, we should be suing Kenya for colonial torture,” Wanyeki explains, still clearly surprised by the absurdity of their legal position.

The KHRC enlisted legal minds from across the Commonwealth to counter this argument, and Kenya's then-Attorney General, Githu Muigai, issued an opinion supporting their case.

On the issue of limitation, the British government contended that the claims were time-barred under the Limitation Act of 1980, arguing that they should have been filed much earlier. Githu and his fellow veterans refused to back down.

The KHRC also brought the matter to the attention of Moses Wetang'ula, then Kenyan Foreign Affairs Minister, who took a firm stance.

"The Government of Kenya does not accept liability for the torture of Kenyans by the British colonial regime. In no way can the Kenyan republic inherit the criminal acts and excesses of the British colony and the then British government," Wetang'ula declared.

He further promised the full support of the Kenyan government in the case and urged the British government to admit liability and move toward a settlement. The Mau Mau veterans, with their lawyers, insisted that the British colonial authorities were responsible for the atrocities they had suffered, not the Kenyan government, which did not exist at the time.

The KHRC's strategy wasn't confined to legal arguments. The organization also worked very hard to sway British public opinion and gain cross-party support in the UK Parliament.

"We did tonnes of press interviews," Wanyeki remembers.

Despite receiving support from various highly placed officials, the outlook for the case appeared less than promising. Notably, the KHRC's 'Annual Report and Financial Statements for 2010-2011' featured the following noteworthy tidbit:

"The Attorney General and the Minister for Foreign Affairs have lent the KHRC legal and political support in the period under review, including through the commissioning of its own expert opinion on state succession. Cross-party support from parliamentarians in both Houses of the United Kingdom (UK) has remained. However, indications from the Foreign and Commonwealth Office (FCO) demonstrate that the new British government has no intention of settling out of court."

Their persistence, and zeal, however, eventually paid off. On June 6, 2013, the British government, through then Foreign Secretary William Hague, issued a formal statement of "regret" in the British Parliament for the torture and ill-treatment that the Mau Mau freedom fighters suffered during the colonial period:

Hague addressed the Parliament, stating, "With permission, Mr. Speaker, I would like to make a statement on a legal settlement that the Government has reached concerning the claims of Kenyan citizens who lived through the Emergency Period and the Mau Mau insurgency from October 1952 to December 1963."

“I would like to make clear now and for the first time, on behalf of Her Majesty’s Government, that we understand the pain and grievance felt by those who were involved in the events of the Emergency in Kenya. The British government recognises that Kenyans were subject to torture and other forms of ill-treatment at the hands of the colonial administration. The British government sincerely regrets that these abuses took place, and that they marred Kenya’s progress towards independence. Torture and ill-treatment are abhorrent violations of human dignity which we unreservedly condemn,” he added.

“I can announce today that the government has now reached an agreement with Leigh Day, the solicitors acting on behalf of the Claimants, in full and final settlement of their clients’ claims,” he announced.

Moreover, the British government agreed to pay compensation to 5,228 Kenyan victims of torture and ill-treatment, totalling £19.9 million. This landmark decision was a historic victory for justice and spoke volumes of the fortitude of those who had fought for their rights.

“If You Thought the Struggle Was Over...”

In the aftermath of a long and strenuous legal battle, the British government finally allocated £90,000 for the Mau Mau memorial—a symbolic gesture intended to acknowledge colonial-era atrocities in Kenya. The money was handled by the KHRC on behalf of the Mau Mau Memorial Steering Committee comprising the Mau Mau War Veterans Association, the KHRC, Nairobi City County, the National Museums of Kenya and the British High Commission.

The committee was composed of representatives from various institutions. Gitu wa Kahengeri and Burugu Marete represented the Mau Mau War Veterans Association, while Thomas Howe and Nancy Muigai served on behalf of the British High Commission. The KHRC was well represented by Davis Malombe, Andrew Songa, Faith Alube, and Martin Mavunjina, with notable contributions from former members of the NGO, Atsango Chesoni and George Morara. Simon Gatheru represented the National Museums of Kenya while Festo Fadamula was from Nairobi City County. Diana Lee-Smith and Davinder Lamba, the designers, served as ex officio members. The National Museums of Kenya collaborated closely with the proposed National Heroes Council and Nairobi City County to ensure the memorial’s integrity was preserved for future generations.

It was meant to be a moment of triumph and reflection but there was a sting in the tail. Despite the British government’s financial contribution, its insistence on exerting undue influence over the memorial’s narrative plaques cast a shadow over the proceedings.

“If you thought the struggle was over at this point, it wasn’t,” says Davinder Lamba, the current Chairperson of the KHRC board.

The contentious issue revolved around the wording on the 10 plaques, which were slated to bear inscriptions in English, Kiswahili, and a Braille version positioned at a lower level to ensure accessibility through touch. However, each draft submitted to the committee for approval faced rigorous scrutiny from the British embassy.

“We had to agree about the narrative of the 10 plaques that would be engraved. But each time we produced a draft for the plaque for the committee’s approval, there would be all kinds of editorial opposition from the British embassy. All the plaques had to be sent to the Foreign Office for approval by the Foreign Secretary,” Lamba discloses.

Faith Alube, the current CEO of the Kenya Land Alliance, and former Programme Advisor for the Transitional Justice Programme at the KHRC, recalls the intense negotiations with the British High Commission over the wording of the memorial plaques.

“It took us two years to finalise the wording for the plaques. It was a highly political process. The British objected to certain words like ‘Mau Mau fighters’ and even ‘freedom’. They wanted to control the language on all the plaques,” she narrates.

“These discussions occurred under the British High Commissioner Dr. Christian Turner’s tenure. Ultimately, we managed to include terms like ‘Mau Mau’ and ‘freedom’, but tensions ran high throughout the negotiations. The meetings were characterised by a constant push and pull. The British would send a very senior political adviser, Thomas Howe, who was tasked with delivering their refusals,” she recalls.

Reenactment Scene between the Two Comrades

Despite these challenges, Lamba and his wife, architect Diana Lee-Smith, navigated the complexities with a clear resolve. Their winning design was chosen through a competition organised by the Board of Registration of Architects and Quantity Surveyors (BORAQS) because of how well it embodied the spirit of the memorial. Lamba was the project manager while Lee-Smith was the designer. Renowned artist Kevin Oduor joined forces with the pair to create a profound sculpture that encapsulates the essence of Kenya’s struggle for independence.

For extra authenticity, the scene depicted in the sculpture was re-enacted by two actual freedom fighters, thus lending a palpable sense of historical veracity to the artwork.

Lamba attributes the inspiration for the sculpture’s narrative to Gitu.

“As architects, we were stuck. Then Gitu gave us the solution by recalling how male and female fighters used to hand over food to each other in a basket during the struggle. We must thank Gitu for helping us solve that very difficult problem,” he explains.

“The initial reenactment scene between the two comrades was staged at the Mazingira Institute compound and then photographed for use by the artist. From those photographs, the artist produced the sculpture that now stands in Uhuru Park.”

Lamba also reveals a lesser-known challenge faced during the memorial’s creation.

“Another challenge that is not publicly known is that the money we received from the British was not enough to cover the execution of the memorial the way we had designed it, so the KHRC had to contribute additional funds,” he discloses.

There’s also the ongoing issue of maintenance.

“The other reality is that the memorial requires maintenance, yet the Nairobi County Government, led by the Governor, hasn’t committed to maintaining the memorial,” Lamba notes.

A Piece of History: The Mau Mau Memorial in Nairobi

Below are photos and text from the “Memorial to the Victims of Torture and Ill-Treatment During the Colonial Era (1952-1960)” pamphlet that was published on the occasion of the launch of the Mau Mau Memorial in Uhuru Park, Nairobi. This memorial celebrates the bravery and sacrifice of the Mau Mau fighters and the countless Kenyans who suffered during the Emergency Period.

MEMORIAL NARRATIVE



**Memorial to the Victims
of Torture and Ill-Treatment During the Colonial Era (1952–1960)**

MEMORIAL NARRATIVE

The narrative in Swahili and English is inscribed on granite stone plaques, displayed from the memorial entry to exit

The plaques consist of the

Opening (also in Braille), Recognition of Contributions, Kenya Land and Freedom Army (Mau Mau), State of Emergency, The Mau Mau Movement, Reconciliation and Commemoration Tree
The inscription above the exit gate is from the National Anthem, “Justice be our shield and defender”

The narrative is compiled by the Memorial Steering Committee:

Mau Mau War Veterans Association
British High Commission
Kenya Human Rights Commission
National Museums of Kenya
(Ministry of Sports, Culture and the Arts)
Nairobi City County

The narrative inscribed on the memorial's granite plaques tells a story of oppression, resistance, and the long struggle for justice. It acknowledges the atrocities committed by the British colonial administration, including torture, detention without trial, and killings. The memorial's existence serves as a reminder of the importance of acknowledging historical injustices and working towards a future built on truth and justice. As the inscription from the Kenyan National Anthem reminds us, "Justice be our shield and defender."

**MEMORIAL TO THE VICTIMS
OF TORTURE AND ILL-TREATMENT
DURING THE COLONIAL ERA (1952-1960)**

This memorial is a symbol of reconciliation between the British Government, the Mau Mau, and all those who suffered during the Emergency Period (1952-1960)

On 23rd June 2009, the Mau Mau War Veterans filed a case in the Royal Courts of Justice in London Following an out-of-court settlement, the British Foreign Secretary, William Hague, announced on 6th June 2013 that the British Government would support the establishment of this memorial as part of the settlement

This memorial was inaugurated on 12th September 2015

MEMORIAL NARRATIVE

The narrative in Swahili and English is inscribed on granite stone plaques, displayed from the memorial entry to exit

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National Museums of Kenya
(Ministry of Sports, Culture and the Arts)
Nairobi City County

RECOGNITION OF CONTRIBUTIONS

REDRESS FOR THE VICTIMS OF TORTURE AND ILL-TREATMENT

All the liberation heroes who took part in the struggle for Kenya's freedom

The many Mau Mau war veterans for their testimonies and perseverance

The Mau Mau War Veterans Association (MMWVA) and the British Government for the out-of-court settlement

The board and staff of the Kenya Human Rights Commission (KHRC) for supporting and partnering with MMWVA in seeking redress

Leigh Day & Co (UK) for representing the MMWVA at the Royal Court of Justice, overseeing the out-of-court settlement and payments to the Mau Mau victims of torture

The Government of Kenya, the Centre for Multi-Party Democracy, the Kenya National Archives and the National Museums of Kenya for support

The late Ndungu wa Gicheru, the former chairman of the Mau Mau War Veterans Association, Gitu Wa Kahengeri and the Mau Mau lead claimants for their commitment and perseverance

John Nottingham, a District Officer in the colonial administration and later Kenyan citizen, for speaking out against colonial-era torture

Lawyers Hon. Paul Muite and Hon. Gitobu Imanyara, Mbugua Mureithi, scholars, individuals and organizations who contributed towards the redress for Mau Mau victims of torture

**REALIZING THE MEMORIAL TO THE VICTIMS
OF TORTURE AND ILL-TREATMENT**

Memorial Steering Committee

The Mau Mau War Veterans Association (MMWVA)
British High Commission (BHC)
Kenya Human Rights Commission (KHRC)
National Museums of Kenya, Ministry of Sports, Culture and the Arts
Nairobi City County

Memorial Site

Nairobi City County for allocating the site at
Freedom Corner, Uhuru Park and surrounding works

Memorial Designers **Memorial Sculpture**

Dr. Diana Lee-Smith AA Dipl. MAAK(A) PhD Kevin Oduor
Davinder Lamba B.Arch. MES

RECONCILIATION

"The British Government understands the pain and grievance felt by those who were involved in the events of the emergency in Kenya. The British Government recognises that Kenyans were subjected to torture and other forms of ill-treatment at the hands of the colonial administration. The British Government sincerely regrets that these abuses took place. Torture and ill-treatment are abhorrent violations of human dignity which we unreservedly condemn

Although we should never forget history and indeed must always seek to learn from it, we should also look to the future, strengthening a relationship that will promote the security and prosperity of both our nations"

*British Foreign Secretary, William Hague,
6 June 2013*

"Mau Mau veterans believe that nations, tribes, and human beings are interdependent and that each one of them is a condition of the others' existence

Mau Mau veterans concur with the British Foreign Secretary's statement on the result of the out-of-court settlement agreement, and sincerely believe in reconciliation for a better future relationship with the British people and their Government"

*Shujaa Hon Dr. Gitu Wa Kahengeri, OGW,
Secretary General MMWVA,
6 June 2013*

**Kenya Land and Freedom Army
(Mau Mau)**

Men and women fighting in the armed struggle operated mainly from the Mount Kenya and Aberdare forests

Other women, who also formed part of the struggle, brought them food. They both looked away when the food, covered and in a Kiondo, was handed over

This was a policy of the Mau Mau movement, so that they could not identify each other later even in fear of torture and other forms of ill-treatment

At the inauguration of the memorial this sculpture was unveiled by

Hon. Dr. Willy Mutunga, D. Jur. SC, EBS
Chief Justice and President of the Supreme Court of Kenya

COMMEMORATION TREE

Mau Mau War Veterans Association (MMWVA) and H.E. Dr. Evans Odhiambo Kidero, Governor of Nairobi City County, planted this tree to commemorate the inauguration of the memorial

MTI WA UKUMBUSHO

Muungano wa Mashujaa wa Mau Mau (MMWVA) na Mheshimiwa Dkt. Evans Odhiambo Kidero, Gavana wa Kaunti ya Nairobi, waliupanda mti huu kwa ukumbusho wa uzinduzi wa mnara



Produced by Memorial Steering Committee. Photos by Mohinder Dhillon. Printed by Colourprint Ltd.

The Kind of Conviction that Makes the Impossible Possible

Today, the Mau Mau Memorial Monument in Uhuru Park stands as a powerful symbol, representing both remembrance and the hard-won fight for justice.

“The unveiling was incredibly moving,” Wanyeki remembers.

“Buses and buses of elderly people arrived, many of them who still had physical scars from what they had endured. Even our British solicitors and barristers were moved to tears.”

Gitu wa Kahengeri’s journey from the struggles of the independence movement to the fight for recognition and compensation for the Mau Mau veterans is a powerful illustration of the warrior spirit of those who seek justice against all odds.

Kiai is very proud of the achievement:

“The conclusion of the Mau Mau case was a huge achievement. It shows the commitment that the KHRC must [invest in] some of these battles for justice. It’s the kind of conviction that makes the impossible possible,” he says.

As he looks back on the long and arduous road that led to justice for the Mau Mau veterans, Gitu is proud of the role played by the Kenya Human Rights Commission.

“I am very grateful to the KHRC and to the people of Kenya who stood with us during this journey,” he says.

“We are now asking for more support from the government and the people of Kenya to build a museum in Uhuru Park to house our historical materials for posterity.”

Three Key Outcomes

Martin Mavenjina, the Senior Programme Advisor for Transitional Justice at the KHRC, reflects upon the organisation's triumphs in the Mau Mau case.

“We are proud that our support for Mau Mau veterans in their legal pursuit against Her Majesty's Government ultimately led to a consequential out-of-court settlement,” he says.

Mavenjina explains the core objectives that the KHRC pursued with the Mau Mau case: “The case was centred around three key outcomes: a public apology from Her Majesty's Government, reparations disbursed to over 5,000 Mau Mau veterans, and the erection of a commemorative monument that now graces Uhuru Park. The positive outcome of the Mau Mau case is one key transitional justice intervention that defines the KHRC.”

Reflecting on the prevailing scepticism during the time the case was being litigated in the UK courts, Mavenjina offers a well-reasoned observation: “Back then, very few thought that those who had participated in our liberation struggle would actually succeed in the suit against Her Majesty's Government, but the KHRC proved the doubters wrong.”

Despite notable strides, the KHRC remains steadfast in its pursuit of a clear apology from the British government, a matter far from settled, particularly considering the evasive, mush-mouthed verbiage employed by successive high-ranking British officials. This issue of a full-throated apology surfaced again during the November 2023 royal visit by King Charles III to Kenya. The KHRC Executive Director Davis Malombe conveyed in no uncertain terms what Kenyans and Mau Mau veterans expected to hear from the new British Monarch.

“Through our Executive Director, the KHRC issued a stern statement, urging the ceremonial head of the British government to deliver an unequivocal public apology,” Mavenjina asserts.

Substantive Progress Remains Elusive

Malombe's impassioned plea resonated with a call for unreserved contrition, rather than the tepid expressions of regret favoured by British officials.

"We call upon the King on behalf of the British government to issue an unconditional and unequivocal public apology (as opposed to the very cautious, self-preserving, and protective statements of regrets) for the brutal and inhuman treatment inflicted on Kenyan citizens during the entire colonial period (from 1895 to 1963) and thereafter, to date," he said at the time.

"To date, the British government is yet to meet this critical obligation save for the statements of regret. The maiden visit by the King provides an opportunity for this," he emphasised.

Mavenjina also laments that substantive progress remains elusive, with the British government offering mere expressions of regret.

The KHRC transformed the demand for justice into a robust campaign that captured the attention of local and international media.

"We were flooded with countless requests for media interviews. We even lost count of how many interviews we eventually did," Mavenjina says.

"Since our establishment, I don't think we have been as overwhelmed by requests for media interviews. Our argument was straightforward. King Charles must issue an unequivocal apology and has to follow through to ensure victims are compensated for serious human rights violations and environmental destruction by the British Army Training Unit Kenya (BATUK) based mainly in Nanyuki."

The campaign's success prompted a shift in the British High Commission's stance.

The Struggle for Justice Continues

"Following the campaign, the British High Commission is presently willing to have a conversation about reparations with the KHRC. Initially, they were not very cooperative but that has now changed. That is a significant result," Mavenjina says.

The struggle for justice continues, but Gitu and the Mau Mau veterans have shown that with determination, unity, and the support of organisations like the Kenya Human Rights Commission, justice can prevail. Their legacy serves as an inspiration to all who continue to fight for justice and equality in Kenya and around the world.

In the end, Gitu's story is not just about the fight for compensation; it is a tale of determination, unity, and the relentless pursuit of justice. It serves as a poignant reminder of the sacrifices made in

the name of freedom and the courage of those who bravely opposed colonial rule in Kenya. These profound themes are masterfully captured in Gitu's book, *The Betrayal of the Mau Mau Freedom Fighters*, a literary work supported by the Kenya Human Rights Commission.

“Besides the publication, we also helped register the Mau Mau Freedom Fighters Foundation and its accompanying website. The website is for posterity so that future generations can have a resource where they can find a detailed history of the violations and understand the role that Mau Mau played in the struggle for the freedoms that we all enjoy today,” Mavunjina says.

Within the book's pages, Gitu immortalises the struggles and triumphs of a generation of Kenyans that dared to defy a formidable empire at the height of its power. In trying times, it stands as an inspiring reminder to all Kenyans that change is not only conceivable but also attainable.



The Kenya Human Rights Commission's Board Chairperson Davinder Lamba and Diana Smith walk past a mock-up of the Mau Mau War Veterans Association (MMWVA) Secretary-General GITU WA KAHENGERI's memoir, 'The Betrayal of the Mau Mau Freedom Fighters,' on November 8, 2023, at an event hosted by the KHRG to mark the book's launch. The event also celebrated the launch of the Freedom Fighters Foundation and their new website. Photo: Ernest Cornel Oduor.

The KHRC's Pursuit of Justice for Nyayo House Torture Survivors



“We have faithfully and diligently supported former torture victims to memorialise what happened at Nyayo House.

Memorialisation is a key part of remembrance.”

— Davis Malombe, Executive Director, the KHRC

Few buildings in Kenya come freighted with the infamy of Nyayo House.

Situated in the heart of Nairobi, the imposing 27-storey structure, with its notorious three basement levels, stands as a grim monument to a bygone era of heavy-handed repression and authoritarian rule under President Daniel arap Moi.

The horrific experiences of those who endured torture within its walls offer a glimpse into the scale of suffering inflicted upon countless Kenyans by ruthless captors acting on directives from Moi's dreaded security apparatus.

The Nyayo House interrogators cultivated an atmosphere of terror and suspicion, compelling victims to falsely implicate one another on baseless charges. Their brutal and sadistic tactics paint a harrowing picture reminiscent of Robert Burns' famous poem about 'Man's inhumanity to man'.

While the number of victims is too extensive to list individually, it's important to point out a few cases that underscore the magnitude of the atrocities endured by countless Kenyans at Nyayo House.

It is also significant that many of those tortured make mention of a shadowy figure whom they later came to know as James Opiyo – apparently the torturer-in-chief. He is a man whose name will live in infamy just like the building he worked in, Nyayo House.

James Opiyo Gets to Work

In 1987, journalist Kamau Munene went through a horrifying ordeal involving psychological, physical, and mental torture, alongside the deeply distressing experience of sexual assault perpetrated by a female interrogator.

His account was one of several deeply moving but terrifying encounters with the jailers at Nyayo House published by the Kenya National Commission on Human Rights (KNCHR) when the KHRC co-founder Maina Kiai was Chairperson.

“It was the beginning of an endless journey of torture. I was continually tortured psychologically, physically, and mentally with all the crude methods one can think of. It was a very cold cement floor in the dungeons, very lonely, in fact, lonelier than a grave, horrifying and scary,” Munene recounts.

“Whenever they wanted to torture me, I would be blindfolded, guided to a VIP lift and whisked up to the 25th floor then walked to the 26th. This is where the torture took place.”

“My torturers would remove the blindfold, strip me naked and handcuff me before starting their game. ‘You dog, who are you compared to 23 million Kenyans? Even if you die, you are just a bitch!’ Machiri and Opiyo, who I came to know later, would shout at me while whipping me repeatedly.”

“In total, there were seven torturers who were armed with machine guns, batons and whips. Two would work on me until they got tired. A woman torturer would mainly be interested in working on my sex organ, which she would pierce with a sharp needle, and burn the tip and testicles with a smouldering cigarette while a man held my legs apart. This would continue for several hours every day until I passed out.”

Half-Submerged in a Waterlogged Cell

Njeru Kathangu, a former Member of Parliament for Runyenjes, found himself in the clutches of Nyayo House’s brutality in 1990. He suffered prolonged isolation, relentless interrogations, and physical violence.

“Between the time of entering the cell there was nothing – no food, nobody talked to me. There was no need for a short call. I guess it was July 13 when someone came and opened the cell door. I was blindfolded and led to the lift. Nobody was talking to me all the time. I was taken upstairs.

“It was bright and sunny. There were about 12 men and a woman sitting in a horseshoe formation. I was seated in the middle of the room in front of them. They started throwing words wildly and at random. This was an uncoordinated way of interrogating people. One of the questions from Opiyo was ‘Tell us, General, were you the person to become chief of general staff in your government?’

George Anyona says that you were recruited specifically for that’.

“After those wild statements, I got an opportunity to speak. I told them I was surprised that the Kenya police did not appreciate how difficult it was to overthrow dictators. This was the first time I was slapped by someone from behind me. He asked, ‘Who is a dictator here?’ I didn’t answer that.

“James Opiyo rose and walked to where I was sitting and pretended to slap me. I raised my hand to protect my face. The man behind me slapped me again. At that time Opiyo challenged me to stand and fight, saying that if I could not fight, I would be taken back to the cells. I stayed in the cells and was not given any food.

“The following day I was taken back to the interrogation room and given some pieces of paper stating that we were going to overthrow the government. They asked me to comment on them. I denied them and complained that I had not eaten since July 10 and demanded to be given food. I was given some bread and cigarettes to smoke.

“After that, I was taken down to a cell flooded with water. The water reached my ankles. After about two hours they introduced hot air in the cell. I started feeling dizzy and I fell into the water. While in that state I heard the sound of a woman in high heels walking back and forth and shuffling some papers. My body was very cold.

“In the morning, I was taken up again to a smaller, slightly darker room where I met Opiyo and another torturer known as Mr. Machiri. They challenged me saying that I was involved in covert activities intended to overthrow the government.”

“You Have a Wife and Children...”

“I denied being the architect of Saba Saba (events of July 7, 1990, that led to the killing of dozens of Kenyans by the police when they attended a pro-democracy rally at Kamukunji grounds in Nairobi) or having any potential to overthrow the government.”

“At this stage, Machiri walked out of the room and Opiyo told me. ‘Kathangu, you are an official of KANU and an army man. Why should you be involved with ex-detainees? Please assist us. Tell us about the other three people’. I declined to respond and Opiyo left the room.”

“Immediately after, a brown woman with a Kikuyu accent came to me and said, ‘Kathangu, you have not eaten. Why should you torture yourself? You have a wife and children and here you are protecting people who cannot assist you’.”

“I asked her, ‘Who are you? A policewoman?’”

“‘It does not matter,’ she replied, ‘I want to assist you.’ She started fondling me everywhere and telling me that she could assist me get out of the place if only I confessed to having been misled to overthrow the government.”

“She continued fondling me until I pushed her away. She raised the alarm and Opiyo came back. He gave me a blow on my head and I fell. He beat me with a wooden chair leg and rubber whip until I could no longer stand. He then summoned some people who came and dragged me downstairs.”

“Did Koigi Wamwere and Raila Odinga Ever Visit You?”

The torment inflicted by the Nyayo House jailers frequently extended far beyond their primary targets. Emma Ainea Weyula, the spouse of one of the Mwakenya suspects, vividly recalls the torment of being slapped and grilled about her husband’s purported activities.

A copy typist at the Ministry of Education, Weyula was apprehended alongside her husband on November 29, 1990, in Milimani estate, Bungoma Township. This occurred while she was recuperating from a caesarean operation just two months prior.

“I was arrested by a team of 14 Special Branch and CID men led by Superintendent Kasera, Inspector Clement Masinza and deputy DCIO Wang’ombe. There was no woman in the team. They thoroughly searched our house, slapped me and told me that my husband’s case was serious, and he might not come back. I was bundled into the back of a car and driven to the Bungoma Police Station a few minutes after they had driven off with my husband in a Land Rover. At the police station, we stood outside and they started interrogating me.”

Weyula languished in custody for 14 agonising days unable to know anything about the welfare of her young children.

“During the interrogation, they wanted to know more about my husband, Cornelius Mulumia, especially his activities in Mwakenya and other underground movements that I did not know about. They also wanted to know if I had any idea of the allegedly seditious documents they had taken from our house, and if Koigi Wamwere and Raila Odinga had ever visited us.”

“They later took the typewriter from my office at the Ministry of Education to compare with the characters of the machine that had typed the documents found in our house. The 14 days I stayed in custody felt as if it was 10 years. All this time my young children, a daughter aged five and a son aged three, were under the care of my neighbours.”

Some victims tragically did not survive the harrowing and brutal interrogation. Peter Njenga Karanja, a businessman, succumbed to internal bleeding and severe wounds inflicted during a relentless two-week interrogation.

A government-sanctioned inquest revealed horrifying details of criminal human rights abuses at Nyayo House, shedding light on the malnourished, anxious state of Karanja upon examination. Despite the inquest, the police officers responsible for Karanja's torture remained unidentified, and subsequent investigations were never pursued. Chief Magistrate Joseph Mango declared that Karanja died like a caged animal, a stark indictment of the inhumane treatment within Nyayo House.

In 1982, Wachira Waheire, then a student at the University of Nairobi, became an unwitting victim in one of the most turbulent chapters of Kenya's history.

"It all started when there was an attempted coup by some Kenya Air Force personnel," he recalls.

"As students, we were gripped by excitement, riding in Air Force Land Rovers and other vehicles."

This exuberance, however, did not go unnoticed. Informants, planted among the students, secretly recorded their activities.

The university soon closed, and students were sent to their rural localities and required to report weekly to the local authorities. A year later, when the university reopened, many believed the worst was over. However, underground leaflets like *Mpatanishi* and *Mzalendo* continued to circulate, and the shadow of surveillance took notice.

"Little did we know that we were still being watched," Waheire explains.

The crackdown on dissidents intensified.

"The special police were under pressure to unearth members of the movement," says Waheire.

This crackdown targeted a broad spectrum of society, from university lecturers to trade unionists.

"It was a widespread crackdown meant to instil fear in the Kenyan population."

Several of Waheire's classmates were arrested, setting off a chain reaction of forced confessions and further arrests.

"Once you were arrested, you were forced to mention your friends, and then they came for your friends," he says.

This pattern led many, including Waheire, to Nyayo House, where they were detained incommunicado.

On December 2, 1986, Waheire, then a sales executive, was arrested at his workplace. He endured a litany of horrors, including beatings, cigarette burns, and days confined in a waterlogged cell. For two gruelling weeks, Waheire and others were subjected to brutal torture and interrogation.

"I was asked whether I knew other colleagues like Mwandawiro Mghanga, Njuguna Mutonya, Njuguna Mutahi and David Murathe, among others. When I answered in the affirmative, I was told to accept that these colleagues had recruited me and had also given me copies of *Pambana* and

Mpatanishi. When I maintained that that was not true, I was subjected to further beatings and burns with smouldering cigarettes.”

“I was again half-submerged in the waterlogged cell for a further three days without food or drinking water. When I was removed from the cell I was taken upstairs to a room where Murathe was being held and asked to identify him as one of those who were administering the oath. I again refused to incriminate him and was taken back to a brightly lit cell in the basement.”

“One of the officers would appear in the cell every morning and tell me that I had little option but certain death if I did not cooperate by accepting that I was a member of Mwakenya. I survived on bread and tea for six days [then] I broke down and accepted that I had taken an oath.”

Mwakenya was a clandestine network formed in Kenya during the 1980s. It provided a platform for dissent against the oppressive Moi regime. Comprising intellectuals, activists, and students, Mwakenya sought to advocate political reform, human rights, and democratisation.

Operating covertly due to government crackdowns on dissent, its members utilised pamphlets, underground publications, and encrypted communication to disseminate their message and organise resistance. Some scholars, however, argue that the Moi security apparatus played up the threat of Mwakenya as a pretext to clamp down on any dissent.

Despite facing severe repression, Mwakenya challenged authoritarianism and fostered a culture of dissent, contributing to Kenya’s eventual transition to multiparty democracy in the 1990s.

“We were told by the guards that if we didn’t submit, we would be killed and it would be declared a suicide,” Waheire recounts. Some detainees were forced to confess under the threat of death.

Waheire found himself in court at 5:30 pm on December 17, 1986. He was swiftly convicted on his own guilty plea. His experience exemplified the ruthless and unlawful tactics utilised by the captors at Nyayo House.

“We had no opportunity to plead not guilty because we had been coached to plead guilty,” Waheire recalls. Those who refused were taken back to Nyayo House for further torture.

“Later on, we ended up at Kamiti [Prison] and later Kodiaga Prison for four and a half years,” he recounts.

Seared into Waheire’s memory are harrowing, endless days of solitary confinement, the cells teeming with inmates afflicted with mental illnesses, and the gruelling conditions where they were confined for 22 out of 24 hours.

The deprivation extended beyond physical confinement.

“We did not get adequate food or medical attention,” Waheire recalls.

His release, when it finally came, did not mark the end of his ordeal but merely a transition to a different kind of struggle. Reintegrating into society proved almost impossible due to the stigma attached to former political prisoners under the stifling rule of the Moi regime.

“The net effect is that you are so stigmatised by society,” he reflects.

The repercussions rippled through his family as well.

“Apart from us as the primary persons who went through the experience, there are other secondary people who suffered a lot, especially the family,” Waheire notes.

“The harassment and societal ostracism placed immense strain on familial bonds and livelihoods,” he adds, emphasising the broader impact of political persecution.

It was in 1999 that the quest for justice for survivors of torture truly began. Waheire recalls that era as particularly challenging.

“It was a very difficult time to engage in such things because Moi was still in power,” he says. But change was on the horizon.

The 2002 elections, which ended Moi’s long tenure and denied his designated successor, Uhuru Kenyatta, the presidency, ushered in a new era in Kenya’s political landscape. As the political power shifted, the space for activism widened. The newly elected government under President Mwai Kibaki provided a glimmer of hope.

Ever the conscience of the nation, the Kenya Human Rights Commission has been at the forefront of addressing the plight of Nyayo House torture survivors. In its role as a persistent advocate for a human rights state, the KHRC has not only played a major role in shedding light on the horrors that took place within Nyayo House but also undertaken various initiatives to seek justice, support victims, and ensure the preservation of the Nyayo House torture chambers as a haunting reminder of the nation’s past.

The KHRC, which had a hand in securing President Kibaki’s victory, perceived a window to pursue the matter of finally getting justice for Nyayo House torture victims in 2003 when the new National Rainbow Coalition (NARC) government took power. The KHRC seized the moment to seek sweeping justice reforms. Kiraitu Murungi, then Minister for Justice and Constitutional Affairs, spearheaded efforts to expose the torture chambers to the public. The Nyayo House torture chambers, long haunting symbols of repression, were opened to the public on February 18, 2003, marking a momentous moment in Kenya’s reckoning with its past.

The photos below, provided by the KHRC, offer a chilling glimpse into the grim reality faced by those who entered the torture chambers:





Channelling the ethos of “Never Again!” Murungi pledged to safeguard Nyayo House, declaring it “a monument bearing witness to our national shame”.

After the doors of the Nyayo House torture chambers were pried open, a significant annual initiative for the KHRC was organising a pilgrimage of remembrance for the victims. These visits were accompanied by candle-lit memorials, musical tributes, and advocacy for victims’ rights.

Typically occurring around February 18, survivors would also receive support in revisiting the chambers, fostering unity, and commemorating their shared experiences. The selection of this date is aligned with (Dedan) Kimathi Day. The revered Field Marshal of the Mau Mau uprising is one of the most prominently recognised victims of state-sanctioned torture in Kenya’s history.

“We have faithfully and diligently supported former torture victims to memorialise what happened at Nyayo House. Memorialisation is a key part of remembrance,” emphasises the KHRC Executive Director Davis Malombe. He adds that their efforts were aimed at not only remembering the past but also ensuring that the survivors remained unified in their quest for justice.

The KHRC also played a crucial role in the formation of the National Torture Victims and Survivors Network in 2009. Waheire was chosen to lead the group, which then evolved into an association, connecting those who endured atrocities at Nyayo House with other individuals who were detained and subjected to abuse in several other notorious locations across the country.

The Cases Set Crucial Legal Precedents

Though the opening up of the Nyayo torture chambers, a gesture made possible by the unrelenting advocacy of the KHRC and allies like Waheire and other torture survivors, initially appeared to signal a genuine desire for reform and transparency under the Kibaki administration, this commitment would soon be put to the test and its vulnerabilities exposed.

The Task Force on the Establishment of a Truth, Justice, and Reconciliation Commission (2002-03), led by Prof. Makau Mutua, was formed to gauge public opinion on the feasibility of such a body in Kenya. Despite its recommendations for a Truth Commission in the mould of the Truth and Reconciliation Commission (TRC) chaired by Archbishop Desmond Tutu of South Africa, the government’s initial promises faltered in the face of persistent political inertia, delaying the commission’s creation.

Assurances of justice from officials like Amos Wako, the Attorney General, proved hollow, and the victims were once again left in limbo. But Waheire and his allies were not deterred.

“Despite the broken promises, we pressed on with the data and evidence we had collected, collaborating with organisations like Citizens for Justice to push for justice,” Waheire recounts.

Test cases on torture were launched in 2003 as leverage against the government's slow response. Waheire and his colleagues found a steadfast ally in the KHRC. Together, they developed proposals and secured funding from the United Nations Victims Fund for Victims of Torture. Backed by the fund, the KHRC launched court proceedings on behalf of Nyayo House torture survivors. Legal luminaries such as Gitau Mwara, Rumba Kinuthia, and Ngugi Muhindi provided pro bono services.

“My case was one of the first to be initiated in 2003,” Waheire recalls. “But it took seven long years before it was concluded.”

The legal journey was arduous. For five years, Waheire was represented by a lawyer, but growing frustrations led him to take matters into his own hands.

“After years of navigating the corridors of justice, I felt something was amiss,” he explains. “I asked if I could prosecute the case myself. My lawyer agreed to guide me, but I would argue the case before the judge.”

Between 2008 and 2009, Waheire appeared in court for several rulings that set important judicial precedents.

“We managed to overcome one major obstacle: the statute of limitations on human rights abuses,” he says.

“I argued that human rights violations have no expiration date, and the judges concurred.”

The 2009 judgment found that the state had violated his rights under the constitution. During the ruling, judges George Dulu and Hannah Okwengu urged the Attorney General's office to take accountability for the actions of officers from the Special Branch Unit and the police force.

The court awarded Waheire damages of Ksh2.5 million (\$32,468).^{*1}

“The amount is very minimal compared to what we endured,” Waheire acknowledges, “but it's difficult to quantify suffering.”

Reflecting on the struggle, Waheire acknowledges the crucial support from the KHRC and the UN Fund.

“It was from that support that we were able to cover more ground,” he says.

By 2010, with a new constitution in place, the Judiciary began delivering more favourable judgments for the torture survivors.

From 2008 to 2013, these court interventions yielded landmark decisions that awarded significant sums to survivors as remedies for what they had endured. Njeru Kathangu received compensation amounting to Ksh5.2 million (\$67,533)*, while former MP and activist Koigi Wamwere was granted Ksh2.5 million (\$32,468)*.

¹ All dollar conversions in the text are based on the average exchange rates of the respective years. Where the year is not specified, current exchange rates are applied.

“We got very progressive court decisions. A substantial number of the torture survivors got remedies,” Malombe recalls. However, the battle extended beyond mere financial victories; the cases set crucial legal precedents that saw the Judiciary taking a firm stance against the use of torture as a tool to quell dissent. The judges unequivocally admonished the Executive for resorting to torture to suppress civic dissent.

Despite these achievements, challenges persist, as over Ksh600 million (\$4.7 million)* in court-awarded remedies await government disbursement. The KHRC is continuing its advocacy efforts, aimed at holding the government accountable for its obligations to the torture survivors. Waheire’s determination also remains unshaken.

Waheire’s quest for justice extended beyond personal reparations. Alongside the KHRC, he sought to convert the former Nyayo House torture chambers into a memorial.

“We believe that recognising and preserving these sites is crucial,” he asserts. “It serves as a safeguard against future abuses and a lesson for posterity.”

Efforts to memorialise the chambers have faced hurdles. The National Day of Torture commemorations are happening with increasing difficulty.

The reason? On February 1, 1991, former Minister of State Jackson Angaine published Legal Notice Number 11 of 1991, designating the torture chambers at Nyayo House in Nairobi as a protected area. With a single stroke of the pen, Nyayo House became a restricted zone, off-limits to the public.

For over a decade, the chambers remained shrouded in secrecy until they were opened to the public for the first time on February 18, 2003, following the end of Moi’s regime. Despite this brief moment of transparency, unrestricted access was grudgingly permitted until 2023.

“We had to notify county administrations and obtain authorisation, which has become more cumbersome over the years,” says Waheire.

In the aftermath of the 2007-08 post-election violence, the Truth, Justice and Reconciliation Commission (TJRC) was established to help heal the nation and address historical injustices. In 2011, the TJRC recommended that the chambers be opened to the public. This recommendation came with a one-year implementation timeframe, which was not met. Subsequent efforts to ensure continuous public access have similarly failed. Survivors and victims of Nyayo House torture have persistently sought unrestricted access to the chambers, but their numerous letters to the authorities have gone unanswered.

“Last year was the first time we couldn’t hold the commemoration due to these restrictions.”

The National Intelligence Service (NIS), which now controls the site, has added to the complexity.

“Their motivation seems to be to suppress reminders of past atrocities,” Waheire suggests.

“There’s a tendency in Kenya to urge people to forget the past and move on,” he adds.

On June 4, 2024, over 200 survivors, human rights defenders, the Law Society of Kenya, and the Kenya Human Rights Commission (KHRC) came together to sue the government, demanding access to the Nyayo House chambers. They called for the revocation of Legal Notice Number 11 of 1991 and insisted that the chambers be opened to the public without restrictions.

Furthermore, they proposed converting the chambers into a national monument to preserve a critical piece of Kenyan history. If the court rules in their favour, the chambers will finally become accessible to the public, serving as a powerful site for remembrance and education on the dangers of neglecting the rule of law and allowing a paranoid Executive to operate above the constitution.

“Alongside the KHRC team, we are working keenly to lift these restrictions to enable the transformation of the Nyayo House site into a monument,” Waheire affirms.

The KHRC Remains Steadfast in its Pursuit of Reparative Justice

The legacy of these historical struggles remains intertwined with present efforts to ensure that Kenya lives up to promises enshrined in the 2010 Constitution. To hold the nation and its leaders accountable, it is crucial to keep the past alive. Plans include holding the government accountable for non-payment of monetary remedies to victims of torture and consolidating all Nyayo House-related documentation into a virtual museum.

Waheire envisions a virtual museum that will transcend conventional tourism perspectives.

“I’ve proposed a joint project with the KHRC to create a digital museum,” he reveals.

“I’ve identified a specialist and even trained in Kigali’s Genocide Museum to serve as a guide.”

This innovative platform will seek to illuminate the historical atrocities linked to Nyayo House, fostering heightened public awareness, and preserving the historical record for future generations.

The KHRC has also made a notable impact through the creation of a case digest titled *Survival after Torture*. This exhaustive compilation explores all the legal dimensions of Nyayo House torture cases, providing in-depth insights, policy recommendations, and historical documentation of the struggle for justice.

Despite the hurdles and the government’s apparent inclination (expressed by a senior official in the security apparatus) to view Nyayo House as a potential “dark tourism” attraction, the KHRC remains committed to its pursuit of reparative justice. The organisation’s undertaking lies not in exploiting a painful past for economic gain but in ensuring that the legacy of Nyayo House becomes an ever-present reminder of the need for truth, justice, and remembrance.

The struggle continues. The KHRC, alongside survivors, is pressing forward by seeking justice and confronting historical injustices. Their goal is to ensure that Nyayo House continues to serve not only as a monument of shame but also as reminder of the perseverance of those who refuse to let the past be forgotten.

The KHRC's dedication to Nyayo House torture survivors speaks positively of a three-decade-long legacy marked by legal battles, memorialisation, and advocacy on behalf of those who need it the most.

Looking ahead, the KHRC is keen to see its work under this docket through to completion to ensure that the pain and perseverance of the Nyayo House survivors is honoured and that their sacrifices are never forgotten.

The TJRC and Kenya's Path to Reconciliation

“We always understood the KHRC as a citizen of Kenya and a political actor in the Kenyan political landscape.” — Prof. Makau Mutua, co-founder and former Chairperson, the KHRC

Viewed through the long lens of history, Kenya is a nation in perpetual flight from reconciling with its painful history.

Political elite-driven initiatives like the long-dead Building Bridges Initiative (BBI) and the seemingly similarly ill-fated bipartisan talks, are dual manifestations of a national allergy to taking a long look in the mirror and facing uncomfortable home truths. In the saga of Kenya's persistent avoidance of its historical reckoning, the Kenya Human Rights Commission has long been an unyielding protagonist in the pursuit of accountability.

In keeping with its aptitude for putting Kenya's metaphorical feet to the fire in the pursuit of truth and justice, the KHRC played an indispensable role in the early 2000s in a spirited effort to form a Kenyan Truth Commission. Under the leadership of Prof. Makau Mutua, the KHRC co-founder and then chairperson of the board, the organisation actively guided and shaped this process. The roots of the KHRC's strategic push for such a commission can be traced back to the dawn of the millennium.

By taking the unprecedented step of endorsing Mwai Kibaki's candidacy, the KHRC seized the opportunity to shape Kenya's future by addressing its tumultuous past. The political landscape, vividly depicted in the book *Eyes on the Prize* by Mutua and then Executive Director of the KHRC Dr. Willy Mutunga, reflected a nation grappling with the tension between the drive to “move on” and the necessity of confronting historical injustices.

For the KHRC, endorsing NARC was both a moral stance and an opportunity to advance their vision of Kenya as a state grounded in human rights.

“Our task was to first help them come together, and then to help them think through their role as a government in waiting,” says Mutua.

“Our perspective has always been that human rights is essentially politics by another name,” he affirms.

“As I make very clear in my published work, if you examine the schema of human rights, it’s fundamentally about organising political societies to deliver the highest number of freedoms to be enjoyed by the highest number of people. In other words, it’s about maximising freedoms and reducing powerlessness, acting as a lever for the powerless against the powerful,” explains Mutua.

“In political terms, the actualisation of the corpus of human rights, whether as contained in foundational texts like the ICCPR [The International Covenant on Civil and Political Rights], the ICESCR [International Covenant on Economic, Social and Cultural Rights], and the UDHR [Universal Declaration of Human Rights] and so on, are inherently political documents because they talk about how you organise a political society to reduce suffering and powerlessness.”

Mutua’s insights reflect a deep understanding of the intersection between human rights and political action.

“Our view has always been that human rights is about politics, how you organise a state around liberal principles, how you use power to create a fair society, reduce discrimination, and promote equity,” he explains.

“There is nothing in the human rights corpus that isn’t political. These documents emerged from political processes, especially post-World War II, which was fought against a government system, Nazism, rooted in discrimination.”

Mutua argues that from its inception, the KHRC was envisioned not just as a watchdog, but also as a political actor within Kenya.

“It would have been strange for us to stand by during political processes and become mere spectators,” he stresses.

“We always understood the KHRC as a citizen of Kenya and a political actor in the Kenyan political landscape.”

“Our purpose was to engage actively in the political space, to shape political discourse through shaming, naming, opposing, and advocating. During times of great political transition, like the 2002 elections, we felt it was our responsibility to make our choices known.”

The Kenyan political landscape was ripe for change, and the KHRC saw it as their duty to influence the direction of that change.

“You shape political discourse by levelling with Kenyans about the choices they have in front of them at a time of great and momentous political transition,” says Mutua.

“We had essentially an imperial presidency under President Moi with a long history of oppression going up against people in the opposition that were either progressives, left-of-centre, or socially liberal that had formed NARC [National Rainbow Coalition]. We felt that between Moi’s KANU and the opposition, it would have been irresponsible for us not to make our choices known. That’s why we publicly endorsed NARC,” he explains.

Before the election, the KHRC team established rapport with Kibaki and his inner circle.

“We met with Kibaki and the rest of the NARC team regularly,” Mutua reveals.

“Access was both ways. They had access to us, and we had access to them.”

Mutua recalls one crucial meeting at Kibaki’s Muthaiga home shortly before the 2002 elections.

“He called me and said I should go and meet him. This was days before the elections in late December. I was in Mombasa with my family when he called me back to Nairobi. So, I returned.”

Mutua was accompanied by Mutunga. They found Kibaki in a weakened state. He was laid up in his bed recovering from a car accident that occurred in early December. Despite his condition, they had a profitable discussion.

“We talked about several things. One of them was the establishment of a Truth Commission. We told him that this would allow him to clean up the Kenyan state and move past the punitive era of state officers, thus running a transparent government and fulfilling the hopes Kenyans had invested in him,” Mutua discloses.

Kibaki’s enthusiasm was palpable.

“He was very enthusiastic. He said, ‘Professor, once we get elected, I expect you to show us how to form a clean government’.”

Additionally, Kibaki tasked Mutua with providing a list of individuals to avoid due to their corruption and rights abuses, as well as recommendations for potential appointments.

These directives underscored Kibaki’s trust in the KHRC.

“Part of his confidence in giving the KHRC that mandate was obviously due to our endorsement of NARC and for standing up for them in the public space,” Mutua notes.

Another factor was the KHRC team’s perceived impartiality.

“We were not politicians. We were technocrats. We were not trying to vindicate some personal agenda.”

However, the collaboration was not without controversy.

“Many civil society actors were not happy with us for doing so because I think they had been sold some Kool-Aid by their funders that there is something called neutrality in the human rights

movement,” Mutua explains.

“They preached that you don’t endorse political parties, but we felt that that was a wrong understanding of the idea of non-partisanship. We felt that you cannot be non-partisan, especially with the choices confronting Kenyans.”

The KHRC’s stance was firm and unapologetic.

“We were very public about our endorsement of NARC. I remember going on many programmes and writing publicly about it,” Mutua recalls.

This open support was met with resistance from some donors.

“I remember some donors threatening us, saying that they would stop funding us because we were taking political sides.”

However, Mutua’s resolve was unshaken: “I told them to knock themselves out. Take their money and leave.”

Despite initial threats, the consequences were not as severe as anticipated.

“USAID, I think, was one of those that wanted to do that. And I think they may have done that in the beginning, but then they came back.”

When the Kibaki government took office, the KHRC was brimming with optimism.

“Immediately the Kibaki government was formed, we had high hopes for it,” Mutua recalls.

A Multifaceted Approach to Address the Nation’s Wounds

Upon Kibaki’s announcement of his cabinet, which notably included Kiraitu Murungi, the KHRC co-founder, as Minister for Justice and Constitutional Affairs, the KHRC’s initial response was positive.

“We thought it was a good cabinet in general. We thought we could work with them to vindicate those things that we thought were important.”

The KHRC then presented a comprehensive agenda to President Kibaki, setting the stage for a multifaceted approach to address the nation’s wounds. Constitutional reform and the establishment of a Truth Commission were key pillars of the push. In the subsequent months, the KHRC expertly steered the discourse, convening meetings with sector leaders and victims’ families, and full-throatedly advocating the commission’s creation.

The turning point came in 2003 when the KHRC, in collaboration with Transparency International (TI), orchestrated a national conference on March 30 and 31. Notably addressed by Kiraitu, this

event brought together victims and sector leaders, laying the groundwork for a task force entrusted with exploring the feasibility of establishing a Truth, Justice and Reconciliation Commission (TJRC).

However, the transition from collaboration to advocacy marked an important shift in the terms of engagement:

“Once they came into power, we realised that they were now the government. Our posture would have to be more of civil society,” Mutua explains.

This meant a balance of collaboration and critique:

“We would collaborate where collaboration was necessary, and we would criticise where criticism was called for.”

In the early days, the new government did embrace some of the KHRC's ideas. One notable achievement was the formation of the Kenya National Commission on Human Rights (KNCHR).

“We also influenced the drafting of the legislation that gave birth to the Kenya National Commission on Human Rights,” Mutua adds.

However, the birth of the KNCHR initially threw up an unexpected complication. According to Mutua, Attorney General Amos Wako sought to transfer the KHRC's name to the new government body.

“He wanted the name of the KHRC to be taken by the government body, but we were a registered organisation, so we owned the name.”

The compromise was to add ‘National’ to the commission's title. The confusion between the two entities persists.

“Nevertheless, the establishment of the KNCHR was a major early win for us,” says Mutua.

“We worked closely with Paul Muite, who was then the chair of the Parliamentary Committee on Legal Affairs and Justice, which was vetting the commissioners. We were able to influence that process,” Mutua notes.

The result was a commission populated by individuals with ties to the KHRC, including Maina Kiai as chairperson.

“If you look at the initial commissioners of the KNCHR, many had a background at the KHRC,” says Mutua.

This accomplishment was a significant part of the KHRC's legacy.

Meanwhile, true to Kibaki's promise, the KHRC was granted full autonomy in forming the Task Force to explore the establishment of a Truth, Justice and Reconciliation Commission for Kenya. Mutua was chosen to be the chairperson of the new Task Force.

“We had a free hand working with Kiraitu Murungi to form and expand the task force,” recalls Mutua.

The rest of the Task Force comprised notable Kenyans from civil society, religious institutions, and public office:

- Rev. (Dr.) Timothy Njoya, the Vice Chairperson
- Rev. Mutava Musyimi
- Bishop (Prof.) Zablon Nthamburi
- Rev. Patrick Rukenya
- Mr. John Githongo, Permanent Secretary for Ethics and Governance or his representative
- Mr. Kairichi Marimba
- Mr. Tirop Kitur
- Mr. Julius Sunkuli
- Ms. Raychelle Omamo
- Ms. Jane Kiragu
- Dr. Josephine Ojiambo
- Ms. Mumina Konso
- Mr. Davinder Lamba
- Dr. Amukowa Anangwe
- Ms. Zarina Patel
- Mr. Kibe Mungai
- Sheikh Ali Shee
- Ms. Roselyne Lagat-Korir, the Task Force Secretary

The Secretariat staff of the Task Force included:

- Ms. Jennifer Wanjiku Miano, a Senior Programme Officer seconded to the Task Force from the Kenya Human Rights Commission
- Mr. Ronoh Tuimising from the Office of the Attorney General
- Ms. Wanza Kioko, a consultant from CLARION.

Despite the relative freedom Mutua enjoyed in the process, there were still instances of push and pull. A key debate was whether to include economic and social rights violations alongside political ones. Mutua advocated a broader scope, aiming to extend the review back to the colonial period. Eventually, the final report predominantly covered the post-independence era.

The Ford Foundation provided the bulk of the financial support to enable the Task Force to hire relevant experts and to travel across the country.

Mutua recalls the intense pressure they faced from powerful figures in the previous regime.

“In the course of the Task Force process, former President Daniel Moi sent emissaries to me through the KANU members of the Task Force, principally through [Julius] Sunkuli and some lawyers,” he discloses.

The objective of these emissaries was clear: they wanted to strike a deal.

“It was not just him [Moi], but also Nicholas Biwott. Both of them wanted us to tell the public to drop the investigation. Biwott even offered a donation to make the issue disappear,” Mutua recounts.

Despite these offers, Mutua would not be swayed.

“None of that saw the light of day because we were after systemic change in Kenya’s political landscape,” he asserts.

Mutua also firmly rejected any private meetings with the emissaries.

“I told the intermediaries for Moi that if we were to meet, it would be in the KHRC boardroom. This was the only place suitable for discussing anything related to the Task Force. They declined that invitation,” he says.

Mutua treated any suggestion of private meetings in or outside Nairobi with a healthy dose of suspicion.

“Those were not people one could trust,” he stresses, adding, “We declined all attempts to compromise the Task Force and proceeded with our work.”

For Mutua, these encounters were early signs of resistance from Kenya’s political elite against the formation of a Truth Commission. Despite such machinations by powerful individuals seeking to derail the pursuit of justice and accountability in Kenya, the task force completed its work.

Although Dr. Amukowa Anangwe and Sunkuli, the two KANU members on the Task Force, refused to sign the report, the Task Force held a grand ceremony at the Hotel Intercontinental to present it to Justice Minister Kiraitu Murungi on August 26, 2003.

Among the Task Force’s 12 recommendations were the following four key proposals:

1. That the Government of Kenya establishes a Truth, Justice and Reconciliation Commission (TJRC).
2. That the President of the Republic of Kenya establishes a TJRC pursuant to the powers granted him by the Constitution.
3. That the TJRC have all the powers provided for, and contemplated, in the Commissions of Inquiry Act, Chapter 102 of the Laws of Kenya.
4. That a TJRC must be established immediately, and in any case, not later than June 2004.

The report also outlined a comprehensive framework for the commission's structure, functions, and composition. The composition of the TJRC was to reflect a diverse cross-section of Kenyan society, with commissioners appointed by the President in consultation with stakeholders.

High moral integrity and dedication to human rights were to be prerequisites for commissioners, who would operate independently and receive full state support. Empowered to set its own procedural rules and work schedule, the TJRC was expected to conduct its sessions in public, ensuring transparency and accessibility via radio and television broadcasts.

Crucially, the Task Force recommended that the TJRC possess the authority to summon individuals and compel their testimony, thus facilitating a comprehensive examination of Kenya's past and laying the groundwork for reconciliation.

The majority of the Task Force had high expectations when they delivered their report. But despite Mutua's best efforts, political machinations were afoot. The Task Force anticipated this scenario and sought to prevent it by drawing parallels with the approach taken by Nelson Mandela, perhaps the most revered figure in the long struggle for South African liberation and a global icon. Despite his immense power and global acclaim, Mandela willingly appeared before the South African Truth and Reconciliation Commission (TRC), chaired by Anglican Archbishop Desmond Tutu.

The TRC's significance was ground-breaking, providing a platform for marginalised voices, documenting a thorough account of human rights abuses during apartheid, and facilitating a degree of accountability and justice.

"It is important to state, however, without fear of contradiction, that the question of transitional justice is not a matter of theory or the concern of only academics and human rights advocates. It is a time-tested vehicle for national recovery and reconciliation. It is the one, and the only, option for banishing impunity from the national practice and psyche. No one, especially the head of state, or any other official, is above the law. Respect for the rule of law must start with the chief executive, for it is the head of state that is the embodiment of the sovereignty and legality of the state," the Task Force asserted in its report before invoking the South African example.

"In fact, successful transitions in other countries have dealt with the question of impunity for former officials, including heads of state, without fear or favour. In South Africa, for example, former President Nelson Mandela was subjected to sustained scrutiny by the courts on any number of matters. It is an undeniable fact that the unrivalled reverence, unprecedented, and iconic status that Mr. Mandela enjoys in the world today is largely attributable to the respect that he showed for the rule of law and the transitional processes that he set in motion."

"We expected that Kibaki would act swiftly on the report. We waited and waited," Mutua recalls.

The anticipated action never came. Instead, Kiraitu called Mutua with an unsettling update: “Professor, this is a hot potato.”

In the wake of this revelation, Mutua observed a troubling shift.

“At some point, we began to see a rapprochement between Kibaki and Moi. Moi, as I understand it, eventually visited Kibaki at State House, and that’s how our report was killed,” he explains.

The elite circles had united to quash any efforts to establish a Truth Commission, effectively silencing the pursuit of accountability in Kenya.

The repercussions were immediate.

“Shortly after that, the KHRC began to observe a rollback of the advancements that had been made,” Mutua notes.

The relationship between Maina Kiai’s team at the Kenyan National Commission on Human Rights and the government grew increasingly strained.

“The KHRC also became more estranged from the government due to some of the excesses of the Kibaki administration,” he observes.

This period marked a sharp decline in optimism in the Kibaki administration’s reform agenda.

“Shortly thereafter, the Anglo-Leasing scandal broke into the open,” Mutua says.

“The Anglo-Leasing scandal came to represent the eventual fracture in the relationship between the KHRC and the Kibaki administration.”

The bloom was off the rose.

Why didn’t Kibaki stay the course?

Mutua offers several theories.

“I think it was simply an attempt by Kibaki to make peace with the previous political elites, especially those from the Rift Valley,” he posits.

“Kibaki also reverted to his factory settings. Fundamentally, Kibaki had never in his political life proposed a transformative vision for the Kenyan state, and the Truth Commission would have advanced that agenda. I don’t think Kibaki was prepared for such radical change,” he concludes.

The KHRC team essentially made a bet that Kibaki’s proximity to political progressives within his circle would steer him toward a more reformist stance.

“What we were hoping for as we worked with them was that Kibaki had enough political progressives around him to push him towards a more reformist posture,” Mutua explains.

“But that did not happen,” he adds, ruefully.

The Imperative to Address Historical Grievances

The blood-soaked post-election violence from December 2007 to January 2008, ignited by dispute over President Kibaki's contested re-election, revived the imperative to address historical grievances, thrusting the TJRC back into the national discourse.

Aided by its inclusion in Agenda Number Four of the Kenyan National Dialogue process, the TJRC garnered renewed backing. In 2008, the TJRC Act was enacted, assimilating insights from the initial Task Force report and incorporating lessons from South Africa's Truth and Reconciliation Commission.

Betty Murungi, then Vice Chairperson of the KHRC, assumed a key role as the Vice Chairperson of the TJRC. The KHRC also played a crucial role in ensuring that victims' voices were heard, bringing the National Torture Survivors Network into the TJRC's fold, and conducting extensive research on issues of concern.

However, challenges emerged when Bethuel Kiplagat's suitability as TJRC Chairperson faced intense scrutiny, notably over his role in the 1984 Wagalla Massacre. He eventually resigned but, unfortunately, his involvement had already led to considerable disengagement, including by the KHRC, resulting in a significant erosion of trust. Post-Kiplagat, the TJRC regrouped and persevered in its mission.

The TJRC wrapped up its efforts with a panel of nine commissioners. Regrettably, three commissioners—from Canada, Zimbabwe, and Ethiopia—declined to endorse specific sections of the report, notably the segment addressing land issues, citing concerns about compromise. The absence of an Implementation Committee and the failure to adhere to legislative timelines served as additional obstacles, diminishing the overall impact of the TJRC's findings.

Frozen in Legislative Limbo

“The saga of TJRC, from the robust beginnings in 2002 to the setbacks and controversies surrounding figures like Kiplagat, underscores the delicate interplay between transitional justice, political interests, and the quest for accountability,” explains the current Executive Director of the KHRC, Davis Malombe.

The TJRC remains frozen in legislative limbo. This points to the persistent inability of Kenya's elite to reconcile the country's proclivity for political turbulence with the imperatives of justice and accountability. The final report of the TJRC, despite its flaws, contains valuable findings and recommendations. The KHRC continues to advocate their implementation.

The KHRC remains a tenacious actor in Kenya's quest for truth and justice. Though the memories of those in power may be fleeting and their grasp of history tenuous, the work of the KHRC and other civil society organisations keeps the flame of truth and justice alive, ensuring the past is not consigned to oblivion and that the path to a more just and equitable society remains open.

As Kenyans clamour for transformative change, the lessons learnt from the TJRC experience are invaluable. The importance of sustained advocacy, strategic partnerships, and a deep commitment to uncovering the truth cannot be overstated. Only by confronting the past and addressing historical injustices can Kenya truly move towards a future where justice and reconciliation prevail.

The KHRC's relentless pursuit of accountability and reconciliation in Kenya continues.

The Solai Dam Tragedy: A Fight for Accountability

“Should the [state] officers have acted on the information and taken the necessary action, the dam tragedy could have been avoided.” —

George Kegoro, former Executive Director, KHRC

The events of May 9, 2018, at Nakuru County’s Solai Farm, situated about 30 kilometres north of Nakuru Town, the County’s capital, were akin to a harrowing sequence straight out of a Hollywood disaster epic.

On that fateful evening, a dam on the expansive farm catastrophically collapsed, unleashing millions of gallons of water in a sudden, devastating deluge.

The disaster claimed the lives of at least 47 individuals and forced thousands from their homes.

The torrential water swept through the surrounding area, leaving a trail of destruction in its wake and marking a sombre chapter in the region’s history.



A semi-permanent house in Nyakinyua village, Solai, destroyed by floodwaters from the ill-fated dam that burst on the night of May 9, 2018. The Kenya Human Rights Commission's dogged pursuit of justice for the Solai community underscores its commitment to noble causes long after they fade from the headlines. Photo: Medika Medi.

For many victims of the Solai dam tragedy, life after the disaster is a stark and painful contrast to what came before, a difference as profound as day is from night. For victims like John Ngugi Mwangi, a resident of Energy Village in Nyadundo sub-location, the initial devastation of the dam breach has been followed by a slow-moving impact that has ravaged his family.

“The disaster claimed my wife, Virginia Wanjiru Ngugi, and left my two youngest children and me injured. It obliterated all our possessions, including our home and my rented shop,” Mwangi recounts, his voice tinged with raw sadness.

“That day, my family of nine was plunged into abject poverty, left physically ill, and emotionally shattered,” he continues.

Since that harrowing night, the family’s suffering has been profound and unrelenting.

“Many are the days we’ve slept hungry,” Mwangi recounts.

“Many are the days my last two children have missed school due to lack of fees and bus fare, walking miles to and from school, often missing lunch.”

The hardship the family has endured isn’t just physical. The tragedy has deeply scarred them emotionally.

“They’ve suffered immeasurable ridicule and frustration both in school and in the neighbourhood,” Mwangi shares.

“Twice, my second-youngest child has been saved from suicide attempts at Menengai Crater by compassionate strangers,” he adds, his voice strained with the weight of his grief.

The emotional and economic fallout from the disaster has driven some of Mwangi’s family members into the depths of drug addiction and prostitution.

“Our lives have been very pathetic since that fateful day,” Mwangi discloses.

In the Grip of a Whirlwind of Emotions

Some of the survivors were left so traumatised by their near-death experiences that they still struggled to articulate the horrors they endured, when, on the fourth anniversary of the tragedy, in 2022, the *Daily Nation* interviewed some of them.

James Karanja, 39, a survivor who lost an uncle in the disaster, chose not to revisit the painful memories.

“It is a day I never want to recall. In just one swoop, tens of people, including my uncle, lost their lives. We have tried to move on, but the bitter memories still linger,” he said.

Naomi Nyambura, who lost her husband, spoke of how the tragedy altered her life. “I’ve been living a nightmare ever since,” she said.

“Visiting his grave brings a sense of emptiness, but finding solace in our grown children, whom we raised together, brings me some comfort.”

The Kenya Human Rights Commission swiftly heeded the Solai community’s plea for justice, dispelling any doubts about its unshakable devotion to advocating for those in need, regardless of their location in Kenya or their social status.

Through a concerted effort, the KHRC, in collaboration with local allies Midrift Human Rights Network (MIDRIFT HURINET) and Freedom of Information (FOI), has vigorously pursued justice for the affected families.

The KHRC’s pursuit of justice, against a wealthy and well-connected adversary, exemplifies the core values and the unshakeable resolve at the heart of the organisation. In an era where the attention of some of its peers often shifts rapidly, chasing the next emerging issue, the KHRC’s dedication to the Solai case was rooted in a deep-seated principle of delivering justice rather than chasing the fleeting glory of being associated with the ‘issue of the day’.

Duty to Protect, Obligation to Redress

As Joseph Omondi, the Executive Director of MIDRIFT, recalls, the three partners were determined to work tenaciously to expose the wrongs and push for accountability for the Solai dam victims right from the start.

However, as they looked deeper into the tragedy, they encountered a wall of hostility from those who would rather the truth remained hidden. Prominent individuals, including politicians, and even the dam’s owner, Mansukh Patel, were hostile and tried to intimidate the community and the organisations involved.

“Some of the politicians were behind Patel from the start because the wealthy businessman funded their campaigns,” Omondi discloses.

Robert Njenga, Coordinator of Freedom of Information (FOI), also vividly recalls the early days of his collaboration with the KHRC and MIDRIFT with a palpable sense of purpose.

“I was the primary contact within the community,” Njenga explains.

His initial engagement began shortly after the tragedy when he reached out to George Kegoro, then Executive Director of the KHRC.

“We exchanged updates on the ground situation, and Kegoro felt that the KHRC needed to intensify its efforts,” Njenga adds.

This urgency led to the dispatch of a team from the KHRC, then under the direction of Malombe, to the affected areas.

The team’s visit was a fact-finding mission that sought to gauge the extent of the damage and its human toll.

“We first assessed the physical damage and identified the victims,” Njenga recalls.

The scope was harrowing: some victims were still in hospitals, others had already been buried, and many were grappling with severe psychological trauma. The KHRC team and local partners worked to document these impacts comprehensively, categorising victims into various groups based on their losses—ranging from physical injuries to destroyed businesses and agricultural damage.

Njenga and Omondi’s accounts paint a vivid picture of the KHRC’s scrupulous approach to documenting the aftermath of the Solai dam tragedy.

“Together with the KHRC, we categorised them into groups: those who had lost loved ones, those with physical injuries, those who had lost businesses, and those whose properties had been destroyed.”

The result was a report titled ‘Duty to Protect, Obligation to Redress the Legal Issues Arising from the Solai Dam Tragedy.’ This comprehensive review laid the foundation for further action.

“From this point, there arose a need for us to do a joint fact-finding mission so that we could establish more facts about the matter,” Omondi explains.

Subsequently, the three organisations collaborated on a ground-breaking report that laid bare the tragedy as a man-made disaster, resulting from corporate impunity and the negligent inaction of government agencies.

“We also conducted a quantity survey and a psychological damage assessment,” he notes.

“The quantity survey provided a detailed account of each financial loss, while the psychological report assessed the emotional impact and healing costs for victims.”

Both reports were crucial for historical record-keeping and future legal advocacy.

“Working with the KHRC and MIDRIFT, we strived to ensure that every aspect of the damage was documented and addressed,” he says.

The collaboration underscores the importance of a holistic approach to human rights advocacy which right from the outset, seamlessly integrates documentation with a commitment to justice and accountability.

During an event to release the ‘Damned Dam: Exposing Corporate and State Impunity in the Solai Tragedy’ report in Nakuru in May 2018, Kegoro admonished state officers, including those from

NEMA and WARMA, for their failure to act upon early warning information regarding imminent dangers that could have saved lives.

“Should the [state] officers have acted on the information and taken the necessary action, the dam tragedy could have been avoided,” he said.

The report brought to light several troubling revelations regarding the systemic failures that left the residents of Solai on their own, despite their diligent efforts to raise concerns about the condition of the dams on the vast farm.

“In a very worrying revelation, interviews with victims, some who work in the Estate, indicated that in the last few years, communities living in the surrounding villages had complained severally to the farm owners and the local leaders, through parents’ meetings and chiefs’ barazas, about visible cracks on the ill-fated dam but no meaningful actions had been taken by the company and state authorities,” reads the report.

The report also exposed the apparent negligence of the area Member of Parliament.

“Similarly, complaints had severally been made to their area Member of Parliament about blocked rivers by the farm owners but there was still no action taken.”

Given the entity’s weighty mandate, NEMA’s negligence, however, was arguably the most incomprehensible and disturbing aspect of the troubling “before picture” presented by the organisations.

“A meeting with two NEMA officials in the NEMA Nakuru office revealed that none of the dams at the Patel Coffee Estates were licensed. In fact, NEMA claimed to have been unaware of the existence of the dams until the tragedy struck,” the report reveals.

“Further, although the dams have been in existence for more than 15 years, NEMA had not conducted any Environmental Impact Assessment (EIA) and neither had audits of the dams been done.”

The Victims Were at the Forefront

The journey toward justice was fraught with challenges, but the KHRC, FOI and MIDRIFT were determined to stay the course. Recognising the trauma they endured, the organisations provided counselling and psychosocial support to the survivors. They sought to empower the community with knowledge and tools to detect and address such negligence in the future.

Later, after the initial reports were released, the collaboration among the three organisations began to coalesce around a campaign to pursue civil and criminal cases.

“The KHRC took the lead in terms of getting legal representation for the victims who appended their signatures to be part of the court case,” Omondi explains.

“It also ensured that the victims were at the forefront of this case, thus giving a face to the tragedy,” he adds.

“We applied to court to include additional victims in the criminal case,” recalls Njenga.

“At the same time, our documentation efforts were ongoing.”

“The case encountered unique challenges,” Njenga explains.

“At one point, it was withdrawn despite the availability of witnesses and without reasonable grounds.”

This led the partners to seek redress in a higher court. By 2019, the case was reopened under a different magistrate, and testimony from all witnesses was heard. As the accused began preparing their defence, the idea of an out-of-court settlement was proposed.

“The accused began to prepare their defence, and that’s when the idea of settlement was introduced,” Njenga recounts.

“It was the victims themselves who first proposed the settlement,” he clarifies.

“The accused were willing but hesitant to approach the victims directly.”

The victims’ initiative led to a negotiated settlement. On November 7, 2023, the KHRC issued a statement disclosing an out-of-court settlement in the criminal case involving nine individuals, including the owner of the dam and several workers, who faced manslaughter charges.

Families received Ksh1.2 million (\$8,584)* for each adult life lost and Ksh800,000 (\$5,722)* for every minor.

Despite reaching an agreement, the settlement has not been fully executed.

“Two families are still awaiting compensation,” Njenga notes.

“We had difficulty locating one family, and the other faced procedural hurdles,” Njenga explains, underscoring the persistent obstacles even in the final stages of the process.

“While the criminal case is nearing closure, with just these two outstanding issues, it represents a significant milestone in our pursuit of justice,” Njenga asserts.

One thing is certain: the quest for justice for the victims of the Solai Dam tragedy has been a convoluted saga that has demanded extraordinary perseverance from everyone involved. But it’s not over yet. The ongoing civil case marks yet another front in the pursuit of accountability.

The case—now involving 249 victims as opposed to the 48 in the criminal case—has faced its own set of challenges.

Claimants in the civil suit include those whose property was damaged or who suffered injuries – besides the loss of life. Initially, the case had encompassed 442 victims, but as it progressed, the number was refined to 249, focusing on those directly affected by the disaster.

To prevent such tragedies in the future, Omondi emphasises the importance of collaboration between human rights organisations and local communities. He underscores the need for knowledge sharing and the creation of communities of practice.

“We need to ensure the communities have a full appreciation of what the law says so they can detect and address these issues themselves,” he says.

The partnership between the KHRC and MIDRIFT has been fruitful in other ways too. MIDRIFT was established under the umbrella of the KHRC but later set out on its own. Recognising its capacity to bring about change, the KHRC has consistently supported MIDRIFT’s initiatives in Nakuru County and surrounding regions.

Omondi expresses his gratitude for the KHRC’s support and emphasises the importance of protecting those who advocate the rule of law, even when faced with threats.

In terms of institutional collaboration, FOI too has significantly benefited from its partnership with the KHRC. Njenga lauds the KHRC for its role in capacity building and rapid response, especially during times of hostility from the authorities.

“The KHRC has been helpful in facilitating fieldwork, despite government opposition,” he says.

The relationship between the victims and the local administration has been anything but cordial. The administration’s hostility—exemplified by the tear-gassing of meetings and arrests—is an indication of the continuing challenges faced by human rights advocates.

“The present Solai location chief, Charles Maina Kiragu, has at least twice used police officers from Solai Police Station to violently disperse meetings held by the Kenya Human Rights Commission and Solai Dam victims,” says Mwangi.

“We faced considerable resistance under the pretext of not having permits for gatherings, even though all we were trying to do was meet and communicate with the victims of the dam tragedy,” Njenga explains.

“I am grateful to the KHRC because their support has been very consistent, despite the challenges.”

As he looks to the future, Njenga, like Omondi, emphasises the need for continued vigilance and advocacy.

“We must remain steadfast in our commitment to fact-finding and accountability,” he asserts.

The fight for justice, he notes, is not merely a legal battle but a broader struggle against institutional neglect and bureaucratic inertia.

Speaking on behalf of the Solai community, Mwangi expresses gratitude to the Kenya Human Rights Commission, its partners, and the lawyers who stood with the victims throughout their quest for justice:

“I must extend my heartfelt thanks to the former Executive Director of the KHRC, George Kegoro. His initial support was key to forging a crucial alliance. I also want to acknowledge the current Executive Director, Davies Malombe, and the entire team at the KHRC, including our dedicated advocates, Haggai Chimei and Kelly Malenya,” Mwangi says.

Mwangi reserves special praise for one individual:

“I cannot conclude without applauding the exceptional contributions of Robert Njenga. His commitment to the Solai community has been extraordinary. Njenga has demonstrated unparalleled selflessness and humility, dedicating countless hours of unpaid service to both the victims and the Kenya Human Rights Commission from the very beginning. His diligence and compassion are admirable,” Mwangi adds.

The full arc of the Solai matter is illustrative of the iron will of human rights organisations like the KHRC, FOI and MIDRIFT, which are always consistent in their determination to ensure that justice prevails and that the voices of the marginalised are heard in the corridors of power no matter the immense influence of those they go up against.



Kelly Malenya (right, in suit), a High Court advocate from Chimei & Malenya Co. Advocates, speaks with victims in Nakuru. Retained by the Kenya Human Rights Commission, Malenya and his partner Haggai Chimei represented the victims of the Solai dam tragedy that claimed 47 lives and displaced thousands on May 9, 2018. Five years later, a court ruled that the dam owners and eight others had a case to answer. In November 2023, the KHRC helped negotiate a settlement awarding families Ksh1.2 million per adult victim and Ksh800,000 per minor as restitution. Photo: Ernest Cornel Oduor.

Beyond the Bottom Line: The KHRC's Labour Rights Campaign



“Many companies get a bit shaken when they receive a letter from the KHRC because it could mean they might end up in court or be otherwise exposed.” — Mary Kambo, Programme Manager for Economic & Social Justice at the KHRC

Countless farmers and workers in Kenya's horticulture sector toil day in and day out, nurturing the land with their sweat and dedication, only to see the fruits of their labour spirited away by unscrupulous intermediaries, and their right to a fair wage denied.

It's a quiet injustice that's part of a tale as old as agriculture itself, a story of acute poverty, desperation and want in the midst of earth's abundance. It is a situation in which, in the words of the Greek historian Thucydides, “The strong do what they can and the weak suffer what they must.”

In Kenya, where the main horticulture products are cut flowers, fruits, and vegetables, this prevailing situation points to a staggering lack of enlightened self-interest because the sector contributes about 1.45 per cent to the national GDP and in 2022 generated Ksh152.3 billion (\$1.3 billion) in earnings.

The year 2023 was an even more blockbuster one, with a reported increase of nine per cent in the first six months of the year, amounting to Ksh69.48 billion (\$588.8 million)*.

Only diaspora remittances were a bigger revenue earner.

These impressive figures point to an unsettling reality: the farmers are getting meagre earnings and watching in despair as the products of their labour are packaged and shipped off to foreign markets, fetching handsome profits for distant entities.

The Blood-soaked Roots of Corporate Greed and Exploitation

Through their visionary ‘Kenya Horticulture Project – A Fair Deal for Farmers and Workers,’ the Kenya Human Rights Commission and its partners have done their part to rewrite this story by challenging this age-old injustice. With the support of the Hivos Foundation, the KHRC has made huge strides in demanding accountability and transforming the horticulture sector.

Dr. Steve Ouma, former Deputy Executive Director of the KHRC, remembers the report that started it all.

“The KHRC published ‘Beauty and Agony. An Advocacy Research on the Working Conditions in the Flower Plantations’ in July 2001. We were building on a lot of research that had been done up to that point,” he explains.

‘Beauty and Agony,’ a title pregnant with metaphorical significance, became the cornerstone of Ouma’s dynamic approach at the KHRC. It is proof of his ability, as he puts it, “to meld moral outrage with historical materialism”, thus infusing the discourse with a nuanced understanding of structural inequality.

The report not only brought out the aesthetic allure of Kenya’s floral exports but also laid bare the blood-soaked roots of corporate greed and exploitation.

“The flower is an affirmation of beauty yet, in this instance, it was flowing with blood. This was the problem the KHRC was highlighting,” he elaborates.

A Troubling Trend within Kenya’s Flourishing Flower Industry

Anita Gacheri’s ordeal was illustrative of the anguish embedded within the flower industry. Her story began innocuously enough when she took up employment on a flower farm near Nairobi. Soon, however, her eyes began to itch and burn, especially after her colleagues sprayed chemicals in the greenhouse where she worked.

What began as discomfort escalated into blurred vision and, eventually, near-total blindness.

When Gacheri sought medical attention, her doctor’s report pointed to chemical exposure as the culprit, recommending protective goggles or a change in work environment. Yet, when she presented this report to her employer, it was met with indifference. Despite the warning signs, Gacheri soldiered on with her duties, only to suffer another bout of blindness a week later.

The company abruptly terminated her employment, citing her health issues. At the time of her dismissal, Gacheri, who was earning a meagre monthly wage of Ksh2,460 (\$32)*, received a paltry severance of Ksh3,345 (\$44)*.

Gacheri quickly found herself grappling with financial hardship on top of the loss of sight.

“I’m experiencing terrible problems,” she lamented in the report.

“Sometimes I can stay even without food, because I have no money. I can’t work,” she added, calling attention to the impact of her ordeal on her daily life, including falling four months behind on rent.

Gacheri’s story mirrored a troubling trend identified by the KHRC within Kenya’s flourishing flower industry at the time. Workers like Gacheri were routinely denied protective gear, summarily dismissed for falling ill, and subjected to abysmally low wages. At just 24 years old, Gacheri found her working life cut short.

According to the report, she was just one of many casualties of an industry rife with exploitation and disregard for human dignity.

Targeting the Flower Brokers in the Netherlands

Armed with the damning revelations in ‘Beauty and Agony,’ Ouma went on a transcontinental trip to the windswept plains of the Netherlands in pursuit of justice. Here, in the bustling halls of flower auctions, the KHRC wanted to understand how to confront the brokers who served as the gatekeepers of an industry rife with ethical violations. It was a calculated gambit to hold to account those complicit in perpetuating human rights abuses.

“We wanted to target the flower brokers in the Netherlands because they were the link to the market. The KHRC wanted to confront the ill-treatment of flower workers as a human rights issue, bringing in new methods of conducting social audits,” he explains.

In the Netherlands, Ouma forged strategic alliances with international partners like Women Working Worldwide (WWW) under the stewardship of Angela Hale, a formidable advocate for gender equality. The movement gained traction, amplifying the voices of women who bore the brunt of exploitation in Kenya’s flower farms.

The campaign reverberated far beyond the confines of boardrooms and auction houses. It revitalised agricultural unions and breathed new life into dormant institutions as well as reaffirmed the importance of collective bargaining in safeguarding workers’ rights. Moreover, it laid the groundwork for a paradigm shift in the KHRC’s approach in such campaigns.

The Kenya Horticulture Project has helped bring forth a world where the toil of farmers and workers is no longer in vain and where fair wages, ethical practices, and workers’ rights are upheld.

Mary Kambo, the Programme Manager for Economic & Social Justice at the KHRC, says this project is more than a dream, it's already a lived reality for countless farmers who are reaping the petals of progress emerging from the roots of reform within Kenya's horticulture industry.

The 'Women at Work' Campaign

The Women at Work campaign, funded by the Hivos Foundation, helped set the stage for the KHRC's current transformative work in the horticulture sector.

"In the Women at Work campaign, we were basically looking at the situation of labour rights within the flower farms. We had a particular inclination towards women's rights, so we were looking at issues of sexual harassment," Kambo recalls.

Sexual harassment had plagued the sector for decades and the KHRC was determined to make a difference. "The KHRC was able to support some of the flower companies to develop a model sexual harassment policy."

Wildfire Roses and Florensis were among the companies that collaborated with the KHRC on this pioneering initiative.

But the essence of the campaign was not just about policies; it was about empowering workers.

"We worked with them to begin by strengthening the capacity of managers around issues of sexual harassment, understanding what sexual harassment is," Kambo explains. Training workers and providing avenues for recourse were also essential components of the initiative.

The impact didn't stop at Kenya's borders. "The campaign was implemented in Kenya, Uganda, Rwanda, and Ethiopia. So there was a lot of cross-learning across those countries."

From Collecting Data to Taking Action

One of the most profound achievements during the KHRC's work on this campaign was a labour rights study that emerged organically from the interactions. In the process of data collection, workers from AfriOrganic Kenya Limited, a farm in Meru, raised numerous labour injustices, including the absence of work contracts, long working hours, and restrictions on joining trade unions. In the face of this information, the KHRC didn't just collect data; it took action.

"We wrote a memorandum raising the issues that we had picked from the workers on the ground and communicated with the management," Kambo says.

The power of the KHRC's voice in the matter was evident. "Many companies get a bit shaken when they receive a letter from the KHRC because it could mean they might end up in court or be otherwise exposed."

The company chose the path of change, and more than 400 workers received employment contracts for the first time.

"Workers were allowed to join the union of their choice," Kambo says.

But the impact extended far beyond these initial steps.

"Maternity leave was also granted to the seasonal workers. This was a turning point that brought fairness and dignity to the workplace," she says.

However, it was the Kenya Horticulture Project, initiated in 2014, that showcased the KHRC's extraordinary commitment to leveling the playing field for smallholder farmers in Meru.

Their primary horticultural produce, French beans, known as "*mishiri*" among the locals, had become a sought-after commodity in the United Kingdom. Beyond being a nutritional staple, especially during harsh UK winters, these beans also brought warmth to British plates. Consequently, they commanded a premium price in the market. Yet, the terms of trade were anything but fair.

"The farmers who were producing these beans in Meru were languishing in poverty," Kambo says. "Farmers were selling their beans to Flamingo Horticulture Kenya, which had its parent company in London, Flamingo UK."

The difference between what Kenyan farmers received and what their beans fetched in the UK was staggering.

"Smallholder farmers were contracted by Flamingo and provided with seeds to cultivate the specific produce."

The inequity lay in the fine print. Flamingo would dispatch a driver to gather the beans from the local farmers, carefully sorting them before delivering them to Flamingo's pack house.

The result?

"Out of the 2,000 kilogrammes that were collected from a farmer, only about 800 kilogrammes would be paid for," she reveals.

Putting an End to the Exploitation

The path the beans took from the farms of Meru to the shelves of British supermarkets was riddled with inequity. Flamingo Horticulture Kenya engaged in trade practices that left smallholder farmers on the brink of destitution. The buying price was shockingly low – a mere Ksh55 (\$0.42)*

per kilogramme – while these same beans would sell for more than Ksh500 (\$3.85)* per kilogramme in the UK. This stark contrast epitomised the exploitation of the Kenyan smallholder farmers.

“When the KHRC got on board, we started by doing a human rights impact assessment during which we found gross unfair trading practices,” Kambo recounts.

This marked the beginning of a transformative period that would empower the farmers and change their destinies.

Working in collaboration with Traidcraft Exchange (now Transform Trade), the KHRC focused on streamlining the entire supply chain. Farmers who had long been invisible in the global market were now brought to the forefront. The project’s achievements were nothing short of astounding.

“We were able to streamline the supply chain to a very great extent,” Kambo states.

The first remarkable change was levelling the playing field. For the first time, smallholder farmers could meet face-to-face with their British buyers, including retail giants like Marks & Spencer. This provided farmers with a newfound voice and bargaining power, shifting the imbalance of power that had long favoured corporations.

Arbitrary Cosmetic Standards

The KHRC also tackled the issue of stringent cosmetic requirements imposed on the beans that had contributed to high rejection rates.

“Most of the requirements were cosmetic. For example, initially, the UK required that the bean had to be not too long, not too short. It also had to have a particular hue of green,” Kambo points out.

With these requirements re-evaluated, the focus shifted to the quality of the beans, freeing the farmers from the burden of arbitrary cosmetic standards.

One of the project’s most significant achievements was negotiating an increase in the minimum buying price from Ksh55 (\$0.42)* to Ksh61 (\$0.47)* per kilogramme. While this increase may seem modest, it represented a critical shift for farmers who had previously struggled to predict their income due to high rejection rates.

Perhaps the most empowering change came when farmers were liberated from restrictive contracts with Flamingo. They could sell their beans to other buyers, breaking free from contracts that had long tied them to low-paying agreements.

More Than Just Economics

This newfound freedom allowed farmers to explore better market opportunities and negotiate for fairer prices.

The KHRC project was about more than just economics; it was about human rights and dignity. Kambo recalls taking a farmer and worker to the UK to witness first-hand the value of their produce on British shelves.

“Farmers got to see how the beans they had been producing were packaged and sold. That gave them a lot of power,” she says.

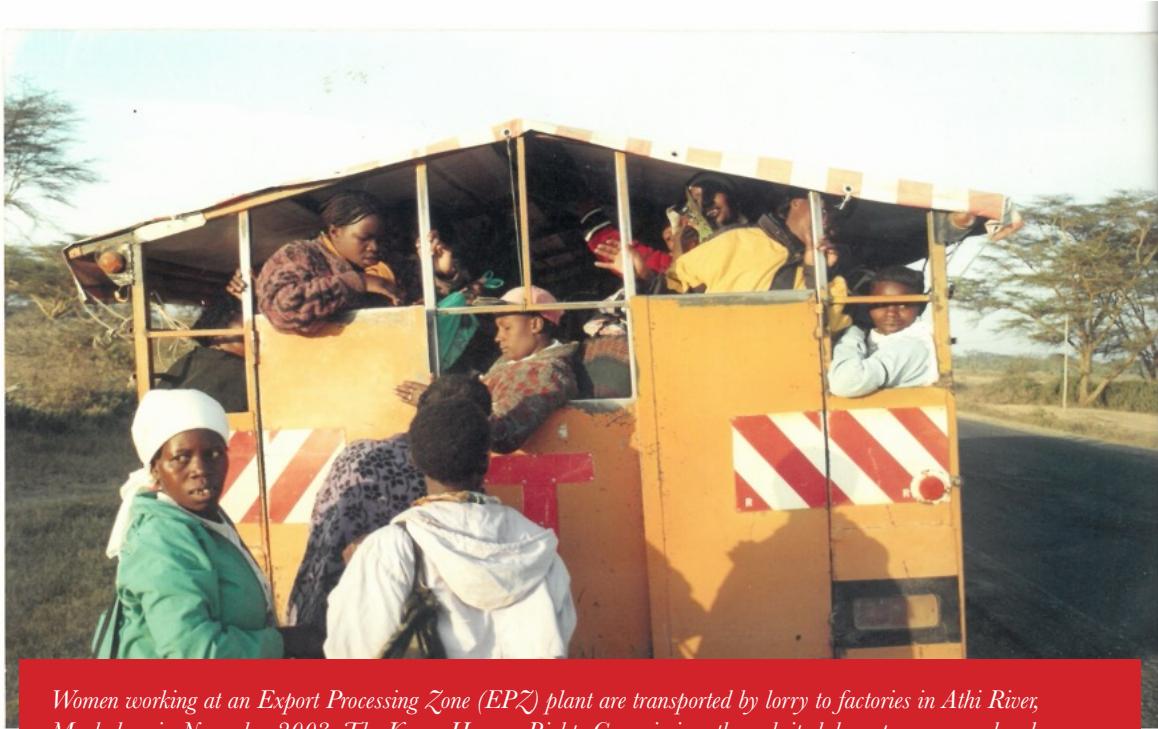
The profound impact of the KHRC's efforts became evident as farmers, emboldened by their newfound knowledge and independence, sometimes fetched prices as high as Ksh150 (\$1.15)* per kilogramme during peak demand periods. This shift was unprecedented and marked a huge victory against exploitation and injustice.

The KHRC also played a major role in strengthening policies and regulations governing the supply chain. It worked with the Horticulture Crops Directorate, the sector's regulator, to clarify the ownership of the beans, ensuring that farmers were no longer unfairly penalised for rejected beans once they left their farms.

The KHRC's quest for fairness for farmers and workers has demonstrated that faithful advocacy, partnership, and dogged commitment can uplift those who have long been marginalised and denied their rightful share of the fruits of their labour.

The pride in Kambo's eyes reflects her joy and sense of fulfilment, knowing that the farmers she and her team worked with now have the power to shape their destinies. This transformation is evidence of the incredible impact that the KHRC has had on the lives of Kenyan smallholder farmers. It shows how a change in economic circumstances can help spread the message of the importance of human rights and justice.

In the end, the story of the Kenya Horticulture Project serves as an inspiring reminder that positive change is possible, no matter how entrenched the inequalities. It is a story that encapsulates the sheer audacity of the KHRC, an organisation that is never afraid to dare to dream of a fairer and brighter future and put in the resources, human capital and time required to make it a reality.



Women working at an Export Processing Zone (EPZ) plant are transported by lorry to factories in Athi River, Machakos, in November 2003. The Kenya Human Rights Commission, through its labour programme, has been instrumental in improving conditions for workers in EPZ plants, flower farms, and horticultural plantations owned by Kakuzi and pineapple plantations owned by Del Monte. Their efforts have led to significant advancements in labour rights and working conditions, ensuring better treatment of and protection for the workers. Photo: The Standard Media Group

The KHRC's Role in Kenyan Elections: 1992-2022

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“We allocate substantial resources to our elections due to our low-trust societal dynamics. It’s worth noting that in Gambia, they employ marbles for voting, yet their elections are no less verifiable than ours.” — Davis Malombe, Executive Director, the KHRC

Kenya’s general elections have a peculiar habit of attracting untimely deaths. It’s a grim pattern that echoes throughout the country’s modern history: from the violent clashes of the Moi era; the epic post-election violence of 2007-2008; the horrific killing of Independent Electoral and Boundaries Commission ICT Manager Chris Msando in 2017; the heart-breaking death of six-month-old Samantha Pendo at the hands of the police the same year; and the murder of Embakasi East Returning Officer Daniel Musyoka right in the middle of the 2022 elections.

The Kenya Human Rights Commission has consistently strived to challenge and reshape the trajectory of this troubling trend. The KHRC’s ‘Killing the Vote’ report, released on August 14, 2017, succinctly summed up the state’s historical utilisation of violence during elections as follows:

“With Kenya’s return to multi-party politics in 1991, violence variously christened “ethnic clashes” or “land clashes” erupted in many parts of the country. Between 1991 and 1996, over 1,500 people died and almost 300,000 displaced in the Rift Valley and the Western provinces. In the run-up to the 1997 elections, fresh violence erupted at the coast killing over 100 people and displacing over 100,000, mostly pro-opposition residents originally from upcountry. By 1998, when violence broke out in the Rift Valley again, it had become a handy election tool and an instrument for the state to reassert its absolute dominance over every sector of Kenyan society.”

It’s no exaggeration to conclude that a key part of the KHRC’s core mission has been its push for transformative reforms aimed to improve Kenya’s democratic credentials. This ambition holds particular significance in Kenya, where elections are frequently so fiercely contested that they necessitate the deployment of a budget rivalling that of a small island nation’s GDP.



MPs James Orengo and Mukhisa Kituyi review copies of the newly launched Kenya Human Rights Commission report, 'Killing the Vote' in October 1998. The KHRC has consistently distinguished itself as a trailblazer by publishing groundbreaking reports on critical human rights issues affecting the lives and livelihoods of Kenyans. Over the years, the KHRC publications have set the standard for human rights advocacy in Kenya, shedding light on pressing concerns and prompting vital discussions and actions for change. Photo: The Standard Media Group

Kenya Has More Safety Features on Ballots Than on Money

Davis Malombe, the Executive Director of the KHRC, offers an anecdote with a keen insight into the allocation of these staggering funds:

“Former IEBC commissioner Justus Nyang’aya once told us that Kenya has more safety features on our ballots than on our money. That explains why Kenya has one of the most expensive elections on the planet, spending about Ksh2,000 per voter.”

“We allocate substantial resources to our elections due to our low-trust societal dynamics. It’s worth noting that in Gambia, they employ marbles for voting, yet their elections are no less verifiable than ours,” he observes.

Compounding Kenya’s dynamic is the fact that elections happen in an atmosphere poisoned by a culture of impunity among political leaders. In this climate, leaders persistently resort to the dark arts: using tactics such as threats, bribery, and manipulation in their relentless pursuit of power.

Over the past three decades, the KHRC has played a leading role in championing electoral reforms aimed at curbing and penalising such practices. Simultaneously, the KHRC has actively worked to broaden Kenya's democratic landscape by ensuring the inclusion of historically marginalised groups such as people with disabilities and the stateless, allowing them to participate in and benefit from democratic advancements.

An Eagle-Eyed View of the Electoral Process

Irene Soila, the Programme Advisor on Inclusion and Political Justice at the KHRC, explains that the organisation's work over the years has encompassed various activities to ensure vigilant monitoring of the electoral process, thus guaranteeing strict compliance with national laws, and the ability to validate the outcomes of elections.

"The KHRC's electoral governance docket takes an eagle-eyed view of the electoral process to make sure that we adhere to the laws of the country in terms of how we manage our elections, and also making sure that we can validate the outcomes of each election right up to each polling station," she explains.

"The KHRC plays a vital role in shaping Kenya's electoral landscape, working hand-in-hand with the electoral management body to ensure free, fair, and credible elections. We engage in the entire electoral process, from conceptualisation to outcome, in collaboration with the government and other stakeholders."

Electoral governance is not limited to election events but encompasses all stages, including community engagement, policy development, and addressing election petitions.

"The KHRC's goal from inception has been to bridge the gap between voters and the electoral management body, currently the Independent Electoral and Boundaries Commission (IEBC), to ensure citizens understand their rights and the electoral process."

It's slow and steady work. "An election is not an event, it is a process," she stresses.

"The job of the IEBC is to ensure that elections are done in a free, fair, and credible manner. Ours is to monitor them keenly as they do that and keep them honest."

Monitoring of this nature constitutes a major component of Kenya's electoral process. Since its inception, the KHRC has wielded considerable influence in this arena. To trace the full trajectory of electoral reform in Kenya, one must cast their gaze back to the momentous year of 1992 when the Kenya Human Rights Commission came into existence. This period marked Kenya's shift from authoritarian rule to a multi-party system, laying the groundwork for substantial political transformations.

Former Chief Justice Willy Mutunga paints a portrait of the eventful backdrop against which the KHRC emerged.

“The genesis of the Second Liberation was a confluence of bold acts and serious historical momentum. The Soviet Union collapsed in 1989 and the West, up till then supporters of the Moi dictatorship, changed their political and ideological stand. This change was articulated very well in Kenya by Ambassador Smith Hempstone in his book *The Rogue Ambassador*,” he explains.

The Pillars of Democracy Teetered Precariously

“Locally, change was ignited by the defiant spirit of the Mothers of the Political Prisoners, who rallied courageously at Uhuru Park. Meanwhile, figures like Kenneth Matiba and Charles Rubia, both champions of multipartyism, faced detention for their convictions, igniting a groundswell of dissent. All these factors pressurised Moi in 1991 to repeal the infamous Section 2A, thus ushering in a new era of political possibility,” he says.

“The impending 1992 election crackled with anticipation, drawing exiles like Makau Mutua, who reclaimed their passports to return home. The Law Society of Kenya (LSK) lent its formidable voice to the cause, aligning with countless Kenyans who had joined the fray for the Second Liberation. The Kenya Human Rights Commission was registered in the US amid these stirring circumstances, it represented hope and accountability in a nation on the cusp of transformation.”

Nevertheless, with Moi still in power, the pillars of democracy teetered precariously. Exploiting a fractured opposition and a polarised populace, Moi ruthlessly wielded the power of incumbency to snatch victory, cementing his grip on power despite mounting challenges and widespread discontent.

During the 1997 General Election, the KHRC focused on two initiatives. First, a joint media monitoring initiative with Article 19 and the International Centre against Censorship. The goal of this project was to assess the impartiality and independence of the Kenya Broadcasting Corporation’s coverage of different political parties’ issues and events, both in scope and substance.

The assessments from this monitoring effort were compiled into monthly reports that were disseminated to a wide audience in Kenya and abroad.

Second, was an initiative to monitor and document politically instigated violence during the 1997 General Election. The KHRC published and disseminated reports detailing the rights violated, perpetrators involved, and interventions required.

“The Immoral View that Flawed Elections Ought to be Accepted”

Channelling the ‘No Reforms, No Election’ clarion call of civil society at the time, Mutunga penned an op-ed for the *Daily Nation* on December 22, 1997, articulating his well-considered reasons for abstaining from voting.

“I am a registered voter in the Westlands constituency of Nairobi Province. It is clear to me that some Kenyans will vote in the general election scheduled for 29 December 1997 and also equally clear to me that other Kenyans will not vote for assorted reasons. I belong to the latter category, and I write in this column to share my views with Kenyans on both sides of this young divide. I am exercising my democratic right not to vote but have convinced myself that I have reasons for doing so,” he began.

“To express solidarity with the five million Kenyan youth who have been deliberately disenfranchised, I will not vote. Two of the five million youth happen to be my children who are aged 23 and 21, respectively. To express my solidarity with those Kenyans who will not vote because of security, natural calamities, and other involuntary and voluntary reasons, I will not vote.

“I will not vote because I believe that the general election is a quest for political power that totally ignores the socioeconomic and cultural problems of Kenyans. To express my resistance to the immoral view that flawed elections ought to be accepted because they express the ‘popular’ will of the Kenyan people, I will not vote.

“To challenge the hypocritical and paternalistic view that Kenyans need to vote every five years as an essential dose of democracy and as a guarantee of stability, I will not vote. I will not vote to support a conspiracy between political parties that view themselves as the only spokespersons of the Kenyan people.”

Having resolved not to vote and eloquently articulated his stance, Mutunga had little inkling that the subsequent election cycle would thrust him and the KHRC squarely into the heart of the action.

Actively Shaping the Discourse

As the year 2002 approached, the KHRC seized a moment pregnant with the potential for regime change, aiming to terminate the reign of despotism, pervasive corruption, and the entrenched abuses of power synonymous with the Moi era.

This determination led the KHRC to make a unique departure from its historical stance of abstaining from endorsing any political party or alliance in elections. The KHRC adopted a distinct approach to doing so with the publication of ‘Eyes on the Prize.’ This comprehensive document provided a thorough exposition of the reasons behind the KHRC’s endorsement of the Mwai Kibaki-led National Rainbow Alliance.

Consequently, the KHRC’s primary focus during the 2002 General Election was to ensure that the political transition set Kenya on a course toward democratic governance and political accountability. This was achieved through two key objectives.

The first was informing the political process by actively shaping the discourse on ‘Why and How to Bring about Regime Change in Kenya’, which it did through the publication of ‘Eyes on the Prize’, while the second was independently monitoring and publishing reports on human rights violations occurring during and immediately after the 2002 General Election, in collaboration with the Central Depository Unit (CDU) Trust and the organisations comprising its board of trustees.

Mutunga stood right at the epicentre of the political upheaval. In fact, it was Mutunga who on January 29, 2002, suggested the name National Alliance for Change (NAC) for the movement. NAC brought together opposition stalwarts such as Mwai Kibaki, Michael Wamalwa and Charity Ngilu.

“The KHRC and other civil society movements became the organic intellectuals of the Second Liberation, National Alliance for Change, and National Rainbow Coalition (NARC). It was clear to us that a united political opposition, fielding one presidential candidate, would defeat the ruling faction of the KANU dictatorship,” Mutunga reflects.

Three committees were formed to guide the new alliance on strategy, constitutional reforms, and coordination. Mutunga played a key role in the events that followed.

“I chaired the NAC for six months in 2002. We drafted critical policy documents and kept on trying to get the elusive one presidential candidate. At some point the political parties suggested names from the civil society which we did not take seriously because we knew that such a candidate would be a political slave of the Kenyan elite,” he discloses.

A Political Partnership that Lasted for a Few Hours

Despite being in the thick of things, the KHRC, with Mutunga as its proxy, maintained a clear-eyed view of all the protagonists who were now their allies in the effort to ensure Moi wouldn’t continue his rule in the guise of a successor.

“We had no illusion that the new political leadership would be simply a faction of the KANU dictatorship. Both Mwai Kibaki, Raila Odinga, and others who Raila brought to the struggle were political siblings of their parent, the KANU dictatorship,” Mutunga explains.

Mutunga was privy to all the political machinations as Kibaki and his allies edged out Simeon Nyachae’s attempts to be the single opposition candidate.

“Looking back, the unity of the opposition was finally possible after Kasarani and Kibaki’s political genius in forming the party that declared him, with blessings from Wamalwa Kijana and Charity Ngilu, (the two barons and a baroness who had been the drivers of NAC) the sole presidential candidate,” he explains.

“Therefore, when Kasarani happened, two critical political positions were not up for negotiation, the presidency and vice presidency. They had been taken by Kibaki and Wamalwa. ‘Kibaki Tosha’ was Raila’s great political reading of the situation. The Moi-KANU political orphans accepted Raila’s leadership as he betrayed his partnership with Simeon Nyachae of Ford People, a political partnership that lasted for a few hours,” he reveals.

This seminal moment birthed the National Rainbow Coalition (NARC). For the KHRC, this moment provided a front-row seat to witness how the sausage of political power is made. It made for an unseemly sight.

“The KHRC learnt great lessons from this experience in 2002 about the rule of elite factions in Kenya. At a personal level I learnt that these factions would never give us the norm of national unity, politics of issues, and provide any resistance against our recolonisation,” he notes.

Violating the Vote — A Report of the 2007 General Election

In 2005, the KHRC, in collaboration with the Kenya National Commission on Human Rights (KNCHR), organised joint observations during the referendum on the draft constitution. This initiative sought to enhance transparency and accountability, and expose statements by politicians inciting violence or hatred among various ethnic groups.

The blood-soaked 2007 General Election was a momentous period that tested the KHRC’s attachment to its core principles. From the onset, the commission planned an extensive monitoring and response effort, spanning the pre-election period, polling day, and the post-election aftermath. These phases were marred by human rights violations that ranged from the right to life to access to food, water, security, housing, and property ownership.

The KHRC’s objectives were clear: monitor and document the observance of human rights,

seek accountability and redress for violations, and campaign for the observance of human rights throughout the electoral process.

Four areas of focus emerged: monitoring political violence, violence against women and marginalised groups, hate speech and propaganda, and corruption and abuse of public resources. Across all eight provinces, the KHRC deployed 117 monitors, including 29 media correspondents, to cover 79 constituencies. On polling day, 156 observers, including the KHRC staff and international observers, were accredited to monitor three key aspects: the management of the voting process, compliance with electoral procedures, and other critical issues related to polling and counting.

The KHRC's findings, contained in 'Violating the Vote – A Report of the 2007 General Election' published on September 15, 2008, revealed a grim reality. Electoral violence was widespread, with reports of 1,133 confirmed casualties, attempted assassinations, displacement, disruption of political events, battery, arson, theft, and property destruction. Politicians were often implicated in inciting violence, with variations observed across provinces.

Violence against women and marginalised groups also reared its ugly head. Acts of rape, stripping, sexual harassment, and other forms of assault were perpetrated with the aim to intimidate women into withdrawing from political contests. Hate speech, disseminated through various channels, fuelled xenophobia, intolerance, and discrimination based on ethnicity and gender. Bribery and abuse of public resources further tainted the electoral landscape. Reports of monetary handouts, vote buying, gifts, and expedient provision of public services painted a disheartening picture. Public officials, contrary to the law, were often present at campaign events, misappropriating publicly owned resources.

The Quest for Transparency and Accountability

The culture of impunity loomed large during this turbulent period. Key laws governing elections were routinely violated, with little accountability. Responsibility was often shifted among institutions, fostering a sense of collective impunity. The KHRC's recommendations aimed to dismantle this culture by disbanding and reconstituting the Electoral Commission of Kenya (ECK), replacing the first-past-the-post electoral system with Mixed Member Proportional Representation (MMPR), and establishing a Police Service Commission and Civilian Police Oversight Board.

The battle against hate speech and discrimination called for the investigation and prosecution of hate speech sources, as well as the enactment of hate speech legislation. The KHRC also called for reforms to ensure fair representation of marginalised groups and stricter campaign financing regulations. In the quest for transparency and accountability, the KHRC advocated an independent national public broadcaster, the de-linking of the Kenya Broadcasting Corporation (KBC) from the state, and the enactment of the Freedom of Information Bill.

The KHRC's commendable efforts during the 2007 General Election were evidence of its commitment to democracy and human rights in Kenya. Its recommendations would pave the way for a fairer and more accountable electoral system in subsequent years.

The Democratic Paradox

The year 2013 was crucial in Kenya's democratic progression. The country held its first elections under the framework of the 2010 Constitution, which had received overwhelming support from citizens. Expectations were high for transformative change in the electoral system and processes. However, the reality was different. Long queues, malfunctioning biometric voter registration (BVR) systems, inept tallying, and other issues marred the elections.

The democratic paradox, a term coined by the KHRC after the 2013 elections, encapsulates Kenya's complex electoral landscape. On the surface, the nation boasts progressive legal and policy frameworks, yet in practice, these ideals often remain unattainable. Despite being held within the framework of a democratic and progressive Constitution, Kenya's elections have been fraught with inequalities and challenges.

"The finding was, and it is true, that we have such progressive legal and policy frameworks which cannot deliver in practice on the right elections. That's why we called it the democratic paradox," explains Davis Malombe, the KHRC executive director.

"We have the best laws and protocols, but very little aggressive practice," Malombe contends, as he holds a copy of 'The Democratic Paradox' report.

The KHRC has consistently championed the principles of leadership and integrity as enshrined in Chapter Six of the Constitution. The organisation has firmly rejected the election or appointment of individuals implicated in crimes, economic misconduct, human rights violations, or moral turpitude.

The Challenge Remains Finding 45,000 Honest Kenyans

While Maina Kiai's name is synonymous with one of Kenya's frequently cited election-related legal precedents, the co-founder and former Executive Director of the KHRC expresses a sense of unfulfilment.

In the landmark case of Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others [2017], the Court of Appeal sought to dispel the longstanding perception of electoral manipulation at the National Tallying Centre by emphasising the finality of results at the polling station.

“The lawyer who argued the case, my friend Willis Otieno, deserves more credit than me for the outcome of the case. That said, I am also not particularly proud that the case bears my name because it’s been consistently flouted. In 2017, they claimed they had no time to implement it. In 2022, they essentially ignored it,” Kiai laments.

“A crucial aspect is media involvement. They should have collaborated with civil society to ensure compliance. The challenge remains finding 45,000 honest Kenyans to transmit accurate results. We need honest individuals to send results without collusion. Relying on agents undermines the IEBC’s integrity,” Kiai asserts.

“The media should report results by polling station, not constituency. They have the capacity to gather this data faster than the IEBC. Yet, after every election since 2007, the tally abruptly halts. This speaks volumes.”

Hastily Declared Final Results

In 2017, the pre-election phase saw a reasonably adequate but flawed voter registration process, despite an independent audit and corrective actions to rectify errors. Though the voter list retained significant issues, the introduction of the Kenya Integrated Elections Management System (KIEMS) biometric system provided a safeguard against multiple voting. Heightened political competition and a surge in independent candidates characterised the race up and down the ballot.

During the August 8 elections, observers noted well-administered voting and counting processes, yet problems surfaced during the transmission and tabulation of results. Political tensions escalated as provisional results favoured incumbent President Uhuru Kenyatta, prompting allegations of fraud from opposition leader Raila Odinga. Despite delays and lack of transparency in the tallying process, the Independent Electoral and Boundaries Commission (IEBC) hastily declared the final results, sparking further controversy.

Following a Supreme Court judgment annulling the election results over procedural irregularities, Kenya faced an uncertain path to a fresh election. Despite efforts to address shortcomings, the refusal of leading candidates to engage constructively hindered progress.

Odinga’s subsequent withdrawal from and the opposition boycott of the October 26 fresh election resulted in low turnout and cancelled votes in opposition strongholds. President Kenyatta was declared the victor, but the elections left deep scars on Kenya’s democratic institutions and social fabric.

The Drama Unfolded against a Backdrop of Uncertainty

In a theatrical turn of events following months of political turbulence, President Uhuru Kenyatta and opposition leader Raila Odinga staged a surprising reconciliation on March 9, 2018, promptly dubbed ‘the handshake’.

While ostensibly a gesture of statesmanship transcending partisan discord, it also bore the hallmarks of elite scheming reminiscent of the Machiavellian manoeuvres witnessed first-hand by the KHRC in 2002. The political drama unfolded against a backdrop of uncertainty, leaving observers to ponder whether it was a genuine commitment to unity or merely a strategic play for personal gain—a recurring theme in Kenya’s political theatre.

The KHRC takes a holistic view of elections. In addition to electoral governance, the organisation focuses on inclusion and political justice, addressing issues like ending statelessness and ensuring the participation of minority groups. Soila acknowledges that statelessness, particularly in relation to communities like the Makonde and the Shona, has been a significant concern. The KHRC’s involvement in addressing statelessness within the electoral process underscores its commitment to inclusive governance.

Soila spotlights several essential ways in which the KHRC has been a cornerstone in shaping Kenya’s democratic evolution. These include its dedication to community education about the electoral process and empowering citizens to understand their roles and rights in elections.

Additionally, the KHRC’s documentation of election-related violations exposes irregularities and injustices. The KHRC’s collaboration with the electoral management body, the IEBC, meanwhile serves to address election-related concerns, ensuring accountability. The KHRC has also played a major role in facilitating discussions with political leaders to foster free and fair elections and reduce violence and instability during the elections period.

The Evolution of Democracy and Electoral Reforms

“The KHRC has over the years spearheaded various consortiums in collaboration with fellow civil society organisations, such as Kura Yangu, Sauti Yangu (My Vote, My Voice) and the Angaza Movement,” Soila explains.

The Angaza Movement emerged as a united front, comprising various civic and human rights organisations, with a shared mission to promote electoral integrity and bolster political accountability in the run-up to the 2022 elections. Kura Yangu, Sauti Yangu (KYSY) represented a collective effort by similar civil society organisations, coalescing to actively assist in Kenya’s preparations for the 2017 elections, all with the overarching goal of mitigating the perils associated with malfunctioning electoral systems and practices.

“These alliances are aimed at collectively amplifying our voices, uniting with like-minded partners, and collaborating on electoral issues in Kenya,” states Soila.

As we reflect on the evolution of democracy and electoral reforms in Kenya from 1992 to the present, it is evident that the Kenya Human Rights Commission has been essential in shaping the course of Kenya’s democratic path. Notwithstanding the challenges and setbacks, the pursuit of free, fair, and credible elections remains a fundamental goal for Kenya’s preeminent human rights organisation.

The KHRC steady efforts, in collaboration with like-minded civil society actors and active citizens, have yielded substantial tangible advancements in Kenya’s electoral processes. As the journey towards a fully realised democracy in Kenya continues, the invaluable lessons drawn from the past three decades of the KHRC’s steady but sure efforts in the trenches of democratic reform will undoubtedly illuminate the path toward a more promising democratic future.

Promoting Electoral Best Practices across East Africa

The KHRC has sought to export the insights gained from decades of championing free and fair elections in Kenya to the broader East African region, with a specific emphasis on Uganda and Tanzania.

“It’s not just about elections. It’s about standing in solidarity with our neighbours when they are going through repression,” explains Malombe, the Executive Director of the KHRC.

“In most cases, there is no real civic space to speak of since the president has all the power,” he explains.

The KHRC’s African Election Watch initiative was conceived as a response to these oppressive environments. It aims to provide a regional model of solidarity and support for countries facing electoral challenges.

The initiative’s inception was influenced by the tumultuous elections in Tanzania in October 2020 and Uganda in January 2021. During these elections, the KHRC, along with its local partners, faced immense hurdles in monitoring and supporting democratic processes due to state-imposed restrictions and violence.

“During the Tanzanian elections, when people faced threats from the government, it was hard for them to cross into Kenya. Similarly, in Uganda, the closeness of Museveni to the Kenyan government made it difficult for targeted individuals to seek refuge.”

“In Uganda, there were so many atrocities in the form of violence, killings, and disappearances,” Malombe recalls while speaking about the KHRC’s efforts to not only support civil society but also to campaign for justice for victims of state-sponsored violence.

The KHRC's strategy involves collaborating with national NGOs and leveraging their local connections to make a substantial impact.

"We work with national NGOs because they work with grassroots partners," Malombe notes.

This approach ensures that the KHRC's initiatives are deeply rooted in the local context, thus enhancing their effectiveness.

The broader vision of the KHRC includes becoming more muscular in regional election monitoring and human rights work.

"We are not just supporting free and fair elections; we are openly standing against oppressive governments," he declares.

This stance requires a delicate balance of providing solidarity while navigating the very serious risks involved.

"Using elections as a platform to challenge repressive governments in Africa is an important aspect of the KHRC's mission and one that necessitates both courage and strategic thinking," Malombe notes.

Despite the challenges, Malombe says the KHRC is setting forth as boldly in East Africa as it has always done in Kenya.

"We aim to develop a regional observatory programme to address these issues and secure justice for those living under repressive regimes," he asserts.

"Our goal is to support and stand in solidarity with all those fighting for democracy and human rights in Africa."

The KHRC's ambitious efforts to extend its electoral expertise beyond Kenya underscore a commitment to democratic principles across Africa. By addressing the oppressive environments in Uganda and Tanzania, the KHRC not only fosters best practices but also fortifies a regional defence against authoritarian encroachments.

This mission transcends mere election monitoring—it is a courageous stand against systemic repression. If the positive legacy in Kenya is anything to go by, the KHRC's regional model promises to cultivate a more robust democratic ethos across East Africa. If nothing else, the KHRC's courageous regional stance is a critical counterweight to escalating repression.



“

KHRC's tireless efforts during the 2007 General Election were evidence of its commitment to democracy and human rights in Kenya.”

The KHRC and the NGOs Coordination Board: A Clash

“The KHRC remains the premier human rights organisation in Kenya. It is once again experiencing threats from another anti-democratic regime that uses the NGOs Coordination Board to vilify, smear and lie about the organisation, its staff and board where I feel honoured to sit.”
— **Father Gabriel Dolan, Catholic Priest and Human Rights Activist**

“Once again, a country with no shortage of real problems, is preoccupied with the mundane. The only purpose seems to be harassment of NGOs, to divert attention from those problems.” — George Kegoro, former Executive Director, the

KHRC

On August 14, 2017, a letter addressed to the then KHRC board Chairperson Prof. Makau Mutua surfaced on the internet, sending shockwaves through the country. The letter, bearing the signature of Fazul Mohamed, the ethically flexible Executive Director of the NGOs Coordination Board, delivered the grim tidings of the KHRC's impending de-registration.

It cited a litany of alleged transgressions, ranging from operating illegal bank accounts to evading taxes and employing expatriates without valid permits. The allegations, which also accused the KHRC of concealing remuneration to its board members and making false declarations, painted a grim picture of Kenya's preeminent NGO. The following day, the Africa Centre for Open Governance (AfriCOG) found itself in the crosshairs, facing similar allegations. It was a coordinated assault on civil society organisations that dared to challenge the status quo.



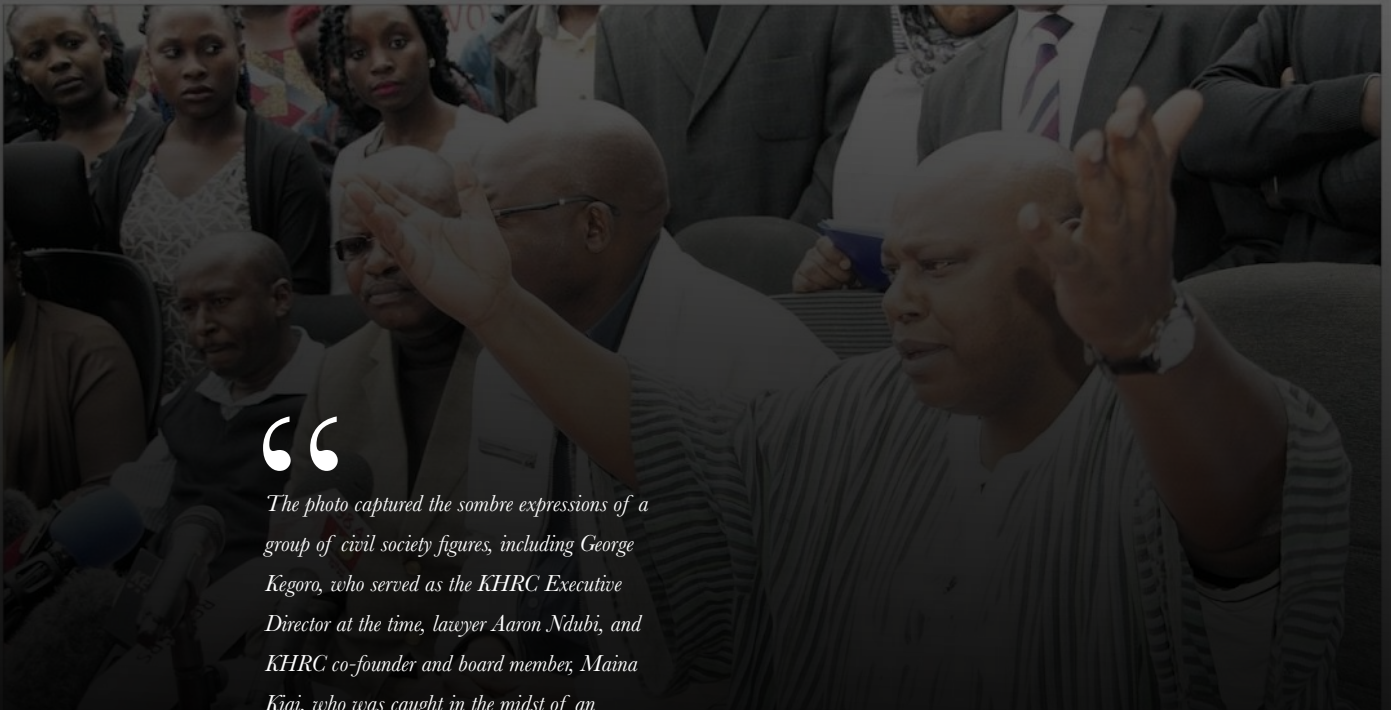
The ultimate tragedy is not the oppression and cruelty by the bad people but the silence over that by the good people

Martin Luther King, Jr
American leader

SILENCING NGOs SAY FAZUL IS BEING USED TO TARGET THEM USING A LAW THAT WAS REPEALED

State cracks down on civil society

NGO Board deregisters organisations critical of the government, including KHRC and Africog **PG 4-5**



“

The photo captured the sombre expressions of a group of civil society figures, including George Kegoro, who served as the KHRC Executive Director at the time, lawyer Aaron Ndubi, and KHRC co-founder and board member, Maina Kiai, who was caught in the midst of an impassioned gesture.”

Civil society leaders including Maina Kiai (L), George Kegoro and Aaron Ndubi at a press conference in Nairobi yesterday, when they accused the NGO Board of acting illegally / MONICAH MWANGI

VOICES

OKECH KENDO

100 | 30 Years of the KHRC

NEWS

NASA, IEBC lock horns on constituency

NEWS

11 governor race losers preparing to file election

NEWS

Governors' handover and swearing-in

“The KHRC didn’t Even Possess such a Colossal Sum of Money”

Sensationally, the NGOs Board also accused the KHRC of not providing a complete account of at least Ksh1.2 billion (\$11.6 million)* received from donors. For an organisation famed for its financial probity, this was puzzling.

“Kenya Human Rights Commission financial statements do not give a true and fair view of their financial position as of 4th October 2016 and subsequently it cannot be ascertained that the KES1.2 Billion received by the organisation during the same period is fully accounted for and whether the finances were utilised for the intended purpose in accordance with the Constitution of the Kenya Human Rights Commission, Financial Reporting Guidelines and the requirements of the NGOs Coordination Act 1990,” read a portion of the letter from the NGOs Board.

“I had a TV right in front of me that day, so it all started with a newsflash,” recalls Peter Mbage, the KHRC’s Director of Finance and Administration. “The KHRC was being accused of squandering Ksh1.2 billion (\$11.6 million)*. You can imagine my shock.”

“The KHRC didn’t even possess such a colossal sum of money in our accounts,” he asserts.

The truth, as he soon discovered, was sinister but with a clumsy touch, as seemed to be the style of the NGOs Board under Fazul.

“They’d taken our income for the last five years and summed it up,” Mbage explains.

The NGOs Board had cunningly manipulated the figures to paint a misleading picture of financial impropriety.

As an accountant with a history of error-free record-keeping and rigorous audits, Mbage was puzzled.

“We always file our returns. The financial documents were there, and the auditors had scrutinised them thoroughly,” he explains.

The timing of the assault was no coincidence. It was amid the hotly contested 2017 presidential election, a decisive moment in the country’s electoral history. Uhuru Kenyatta’s victory had been challenged by the opposition as KHRC as well as other NGOs were assembling evidence for the petition at the Supreme Court.

The KHRC, along with other civil society organisations, had been at the forefront of demanding transparency and accountability in the electoral process. The KHRC found itself thrust into the centre of the storm. There was an unmistakable sense that a reckoning with the powers that be was afoot.

Unbeknownst to the KHRC, it was about to go through an existential ordeal. What does it feel like when the full weight of the government is bearing down on you, and how do you muster the strength to withstand it?

The KHRC's actions in the subsequent months offer a template.

The NGOs Board wasted no time in calling upon the Kenya Revenue Authority (KRA), the Directorate of Criminal Investigations (DCI), and the Central Bank of Kenya (CBK) to take punitive actions against the KHRC and AfriCOG. It demanded the freezing of their accounts and (even more alarmingly) the arrest and prosecution of AfriCOG's directors and board members. It was a chilling message – dissent would not be tolerated.

On August 16, 2017, the situation escalated dramatically when KRA officers, accompanied by the police, descended upon AfriCOG's offices.

Armed with warrants that seemed at odds with the accompanying affidavits, they claimed to be acting under the direction of the NGOs Board. The raid landed with the force of a concussion grenade and raised concerns about the abuse of power by the Uhuru Kenyatta-William Ruto administration.

Fortunately, Dr. Fred Matiang'i, the then acting Cabinet Secretary for the Ministry of Interior and Coordination of National Government, intervened, calling off the raid as it was in progress. It was a small victory in a larger battle.

A Calculated Effort to Silence Dissent

But the harassment did not end. On August 20, Maina Kiai was detained for approximately two hours at the Jomo Kenyatta International Airport. He found himself caught in a Kafkaesque web of bureaucracy, forced to seek clearance from the Director of Immigration just to leave the country.

It became increasingly clear that the NGOs Board, under Fazul's leadership, had been weaponised against civil society organisations. Its actions seemed to be a calculated effort to silence dissent, stifle transparency, and undermine the very principles that these organisations stood for. It was a troubling development straight out of the pages of George Orwell's *1984*; an institution entrusted with oversight turning into an instrument of oppression.

"It was an incredibly challenging period," recalls Davis Malombe, the KHRC's Executive Director.

"Fazul singled us out together with AfriCOG, levelling all sorts of accusations against us," he says, adding, "all those allegations were, of course, lies."

Fortunately, this wasn't the KHRC's first tango with the NGOs Board.

“In 2015, Fazul had Gone After Muhuri”

In May 2015, the NGOs Board, seemingly in collusion with other state agencies, embarked on a campaign to dismantle several civil society organisations. The trigger for this onslaught was a Gazette Notice—No 2326, dated April 7, 2015—in which Muslims for Human Rights (MUHURI) and HAKI Africa were among five NGOs shockingly listed as “Terrorist Organisations”. This damning classification resulted in the freezing of their bank accounts, the suspension of their activities, and an alarming pressure campaign on their funders, aimed at choking their financial lifelines.

“In 2015, when Fazul had gone after MUHURI and the other organisations, things had moved very fast. Their accounts were frozen, and their insurance withdrawn in quick succession,” recalls Malombe.

“Back then, I was serving as the Acting Executive Director, so the responsibility weighed heavily on my shoulders.”

“Because MUHURI was a project that the KHRC had been involved in from the incubation stage, we were the first ones to respond in their defence,” he says.

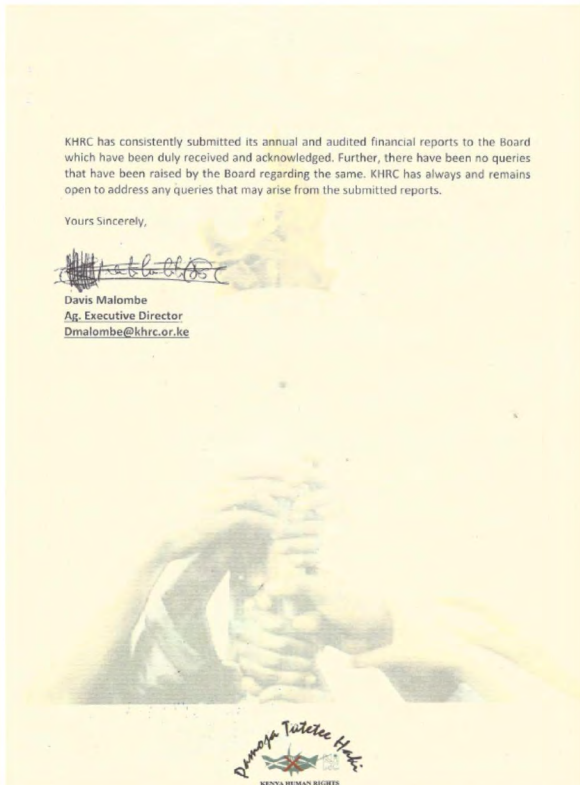
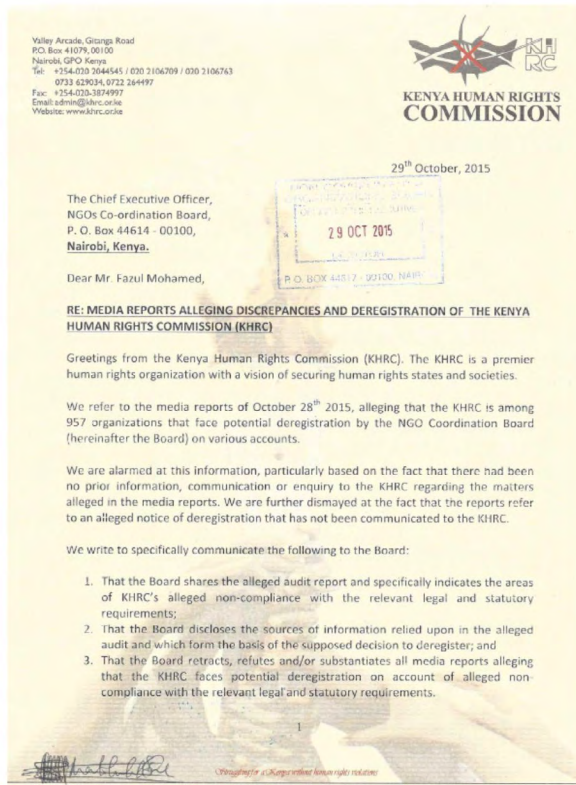
The realisation that their work had drawn them into a perilous battle with the state machinery was a defining moment for the nascent organisation. The profound shock and apprehension that accompanied their inclusion in such a list remains etched in the memory of Khelef Khalifa, board member of MUHURI and a prominent figure in Kenya’s human rights sphere.

“There was talk that we should approach some of the serving Cabinet Secretaries at the time such as Najib Balala to start a dialogue on how to get off the list of purported terror organisations,” he explains. However, his unwavering commitment to the principles of justice and accountability led him to a different stance.

“If we had not done anything wrong, then we shouldn’t make any attempt to talk to anybody,” he asserts. Instead, they chose the path of legal challenge, a choice rooted in their belief in the righteousness of their cause.

“In the end, we were the only organisation that went to court,” Khalifa says. The courtroom became their arena of truth, and the KHRC was by their side.

On May 28, 2015, the KHRC issued a statement expressing its deep concern over the decision of the NGOs Board to deregister MUHURI and the Agency for Peace and Development (APD). The KHRC took great exception to the Board’s actions such as “undue intimidation and interrogation” of staff and board members, alongside the confiscation of records and information, all under the pretext of investigating tax evasion.



“Glaring Discrepancies in Annual Returns and Audited Accounts”

It didn’t take long for the other shoe to drop. The NGOs Board released a media statement on the same day (October 29, 2015) with a litany of explosive claims against local NGOs. It rumbled like a seismic shockwave through Kenya’s civil society landscape. Within its damning contents lay a cascade of accusations levelled against local NGOs, none more arresting than the assertion that they could not account for Ksh23 billion (\$234 million)*.

“Following the recently released Annual NGO Sector Report, it is apparent that the NGO Sector received and injected KES 140 Billion into the Kenyan economy. It is also clear that out of the KES140 Billion; KES 23 Billion could not be accounted for; for the following reasons: 1. Misappropriation and embezzlement of donor funds; 2. Diversion of donor funds; 3. Money laundering; and 4. Terrorism Financing,” the statement read.

The NGOs Board, while officially announcing that it had “initiated the de-registration process of the non-compliant 957 NGOs”, pointed an accusatory finger directly at the KHRC. The allegations centred on grave financial irregularities, injecting an air of scandal and intrigue into the already contentious relationship between the regulatory body and the human rights organisation.

“The Board, following investigations, has discovered that other than operating 4 illegal bank accounts, KENYA HUMAN RIGHTS COMMISSION has been filing false reports with the Board with glaring discrepancies in its annual returns and audited accounts with a total income of KES.1,210,961,093,” its statement said.



NGOs CO-ORDINATION BOARD
THE PRESIDENCY
MINISTRY OF DEVOLUTION AND PLANNING

PRESS RELEASE

TO: ALL MEDIA HOUSES

Following the recently released Annual NGO Sector Report, it is apparent that the NGO Sector received and injected KES 140 Billion into the Kenyan economy. It is also clear that out of the KES 140 Billion; KES 23 Billion could not be accounted for; for the following reasons:

- 1.Misappropriation and embezzlement of donor funds;
- 2.Diversion of donor funds;
- 3.Money laundering; and
- 4.Terrorism Financing.

The Board has since carried out a forensic audit of the 10, 015 NGOs registered under the NGOs Act, 1990 and has established that a total of 957 NGOs have failed, refused, neglected and/or declined to account for the funds they received despite the numerous reminders issued to them by the Board.

In view of the foregoing, the Board has with immediate effect:

- 1.Initiated the de-registration process of the non-compliant 957 NGOs;

2.The Board has forwarded the list of all deregistered NGOs to Central Bank of Kenya and Kenya Bankers Association to freeze the bank accounts of the deregistered NGOs;

3.The Board has also forwarded the list of deregistered NGOs to the Financial Reporting Centre (FRC), and the Directorate of Criminal Investigations (DCI) for further investigations and possible prosecution.

Further to the foregoing, the Board has noted with a lot of concern, a very worrying trend of NGOs in conjunction with certain banks open operate and close bank accounts without the requisite approval of the NGOs Co-ordination Board. We wish to advise the banks that any NGO account opened or closed without a letter of authority from the Board is an illegal account and must therefore be immediately regularized and the Board has already written to the banks on the same.

The Board takes umbrage at organizations such as AFRICAN POPULATION AND HEALTH RESEARCH CENTRE - KENYA that have been over the years rendering two (2) different sets of accounts. For instance in the financial years December 31, 2010 - 2014, the NGO filed returns indicating an aggregate income of KES. 6.736 million to the NGOs Co-ordination Board while the very same organization filed to its donors audited accounts for the same financial years which is an aggregate of USD 58.723 million (both restricted and unrestricted income). This translates to KES. 5.872 billion.

According to the records held by the Board and which were reported by the organization in question indicate that the registered members of the organization are only 3, investigations have; however, revealed that there are a total of 16 directors.

Rendering false financial reports by NGOs is not limited to the aforementioned organization, the Board, following investigations has discovered that other than operating 4 illegal bank accounts, KENYA HUMAN RIGHTS COMMISSION has been filing false reports with the

1 | Page

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Board with glaring discrepancies in its annual returns and audited accounts with a total income of KES.1,210,961,093.

AFRICAN DEVELOPMENT SOLUTIONS (ADESO) with an income of KES. 9,735,222,041 remain grossly non-compliant. The variance between the reporting in annual returns and audited accounts totals KES. 2,266,032,735 which has not been accounted for.

The Board further puts on notice NGOs that have formed a habit of obtaining through false pretenses, goods and services from members of the public that they are known and have all been placed under investigations by the NGOs Board and other relevant law enforcement agencies. The directors of such NGOs will soon be arraigned in court.

NGOs CO-ORDINATION BOARD

Dated: 29th October 2015.

The gravity of these allegations hung like a thick black cloud in the air, casting a shadow of uncertainty over the integrity and fiscal stewardship of Kenya's nonprofit sector.

The KHRC, now under the stewardship of its new Executive Director George Kegoro, wrote to the NGOs Board, seeking clarification on the scandalous allegations levelled against it.

“Please be informed that hitherto, our legal team has made several deliberate visits to your offices precisely on Friday 30th October, Monday 2nd November, and Wednesday 4th November 2015 with a view of gaining written clarification in vain,” asserted Kegoro.



In his weekly column for the *Daily Nation*, Kegoro injected colourful commentary into the discourse:

“First, this is the first time that the carrying out of a ‘forensic audit’, which allegedly informed the decisions that are currently being implemented, is being disclosed to the public. A forensic audit of 10,000 entities spread around the country is a massive exercise, one that would take a large amount of time and would involve a significant financial outlay,” he wrote.

“Since no evidence in the public sphere exists as would suggest that such a process has recently taken place, it is more likely that it has not, and that the NGOs Board is not telling the truth.

“When, on Friday last week, two staff lawyers of the Kenya Human Rights Commission visited the NGOs Board for an explanation of the situation, to which the Commission had earlier written requesting an explanation, the officials with whom they spoke indicated that the board did not have any more information than the scanty details that had been published in the media.”

The Board’s ominous “Notice of Intended Cancellation of Registration Certificates” had set forth a timeline, stipulating that deregistration would ensue “fourteen (14) days after the date of this notice.” However, then Devolution Cabinet Secretary Anne Waiguru intervened to stay Fazul’s hand.

“We have had quite a number of complaints about timelines, thus prompting us to suspend the deregistration process to give the NGOs more time to comply,” Waiguru declared at the time.

Malombe, then serving as the Deputy Executive Director of the KHRC, surmises that Waiguru’s intervention had prevented Fazul from committing a catastrophic blunder.

“The Cabinet Secretary interrupted what was about to be a colossal policy mistake. The Board was in the process of deregistering 10 per cent of a 40-year-old sector based on factual errors and unsubstantiated allegations,” he asserts.

“Many of the 957 organisations were not given an opportunity to clarify the audit questions before they saw them in the mass media.”

Kegoro shared his concurrence in his weekly column:

“When announcing the postponement of the deadline for NGOs to account, both Waiguru and the board stated that insufficient opportunity to comply had been provided to the concerned NGOs and the extension was to allow these to do so, thus also now confirming that the media was the only means that the board had employed to deal with the NGOs it is supposed to regulate,” he observed.

“Thus, this is a case where the government has gone out of its way to make grave allegations, which have severe legal consequences, before completing basic investigative procedures which require hearing the side of the story of the entities accused of non-compliance,” he added.

Kegoro astutely drew parallels between the recent actions of the NGOs Board and its previous attempts to deregister MUHURI and other NGOs without concrete evidence.

“We have been here before. When in April, following the Garissa University terrorist attack, the Inspector General of Police announced a ban on 85 entities, for being associated with Al-Shabaab. Like the 959 NGOs, those in the Inspector General’s list were unaware of any proceedings against them, with media reports being the only source of information about their alleged association with Al-Shabaab,” he wrote.

“While, at one level, this latest listing of organisations is a meaningless act of mudslinging calculated to embarrass and damage reputations that organisations have striven to build, it is a display of rank incompetence at another. One imagines that there, in fact, exist organisations in the country that are out to harm the national interest by engaging in the acts that those listed by the NGOs Board are accused of. What the board regards as investigation seems to consist of media statements, an investigative method that is unlikely to unearth such organisations.

“Once again, a country with no shortage of real problems, is preoccupied with the mundane. The only purpose seems to be harassment of NGOs, to divert attention from those problems,” he concluded.

Yet, after the disconcerting but enlightening tango with the NGOs Board in 2015, when it reappeared on the scene in 2017, its modus operandi was unmistakable. By this juncture, beginning in January 2017, a coherent narrative had taken shape—a tale of a government operating in dubious sincerity, exploiting its authority to stifle civil society organisations under the guise of national security while ostensibly addressing allegations of financial impropriety.

Unqualified to Hold the CEO Position

In his characteristically eloquent and direct manner, Father Gabriel Dolan, a member of the KHRC board, dissected the core issue in his column for the *Daily Nation* on January 13, 2017. Addressing fresh allegations circulating on social media and echoed in the local press, Dolan confronted claims of inappropriate payments to the KHRC board members and alleged management irregularities, including a sensational accusation of collusion between the KHRC and its auditors.

“The KHRC remains the premier human rights organisation in Kenya. It is once again experiencing threats from another anti-democratic regime that uses the NGOs Coordination Board to vilify, smear and lie about the organisation, its staff and board where I feel honoured to sit,” he wrote.

“Thankfully, few take Fazul Mohamed seriously since the Commission of Administration for Justice revealed that he never graduated from Egerton University and as a result was unqualified to hold the CEO position. But that apparently does not matter to the Executive who advanced his docket to Internal Security even when CS Mwangi Kiunjuri tried to remove him from office.

Regretfully, the media, including this publication, still publish his disparaging, defamatory statements as if they come from a credible and reliable source.”

“Four board members of the KHRC are columnists with Nation Media Group but none were given the chance to show that we do not receive a single shilling in remuneration, allowances or by any other name for serving on the board. The joy of comradeship, working for change and holding institutions accountable is our reward,” he explained.

“Institutions resist change and find many ways to silence, buy or intimidate individuals and organisations whose demands for accountability, honesty and decency they resent.”

Casting his mind back, Malombe says the KHRC had, by that point, become all too accustomed to the NGOs Board’s smear-first, investigate-later tactics.

“When the NGOs Coordination Board came for us, we were very familiar with its tactics. We knew its intention was to completely demobilise and destabilise us,” he says.

Nevertheless, it took a personal toll on Malombe.

“I couldn’t even sleep those first few days because I knew what they had put MUHURI through and feared how messy it would get for the KHRC,” he reveals.

However, just as before, the KHRC upheld its commitment to formal dialogue with the NGOs Board, despite the latter’s persistent reliance on media sensationalism to prosecute its case. On August 15, 2017, the KHRC wrote to the NGOs Board, seeking clarification regarding the authenticity of a document doing the rounds on social media bearing the ominous title “Notice of Deregistration of the Kenya Human Rights Commission.”



15th August 2017

RE: ALLEGED DEREGISTRATION OF THE KENYA HUMAN RIGHTS COMMISSION

As the purported letter is copied to the Commissioner General of the Kenya Revenue Authority and the Governor of the Central Bank of Kenya, we are also copying this letter to the two offices.

Yours faithfully

KENYA HUMAN RIGHTS COMMISSION
Valley Arcade, Gilgata Road
P.O. Box 41079
00100, Nairobi GPO, Kenya
Tel: 020-884244/45/46/47/48/49

The Governor
Central Bank of Kenya
NAIROBI

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LSK President Isaac Okero minced no words in his rebuke, penning a pointed letter to the NGOs Board on August 15, 2017: “The purported cancellation of the KHRC’s certificate by Fazul’s notice of 14th August 2017 without due process and without stipulating a 14-day period is an ineffectual ‘pronouncement’ that has no force of law whatsoever.”

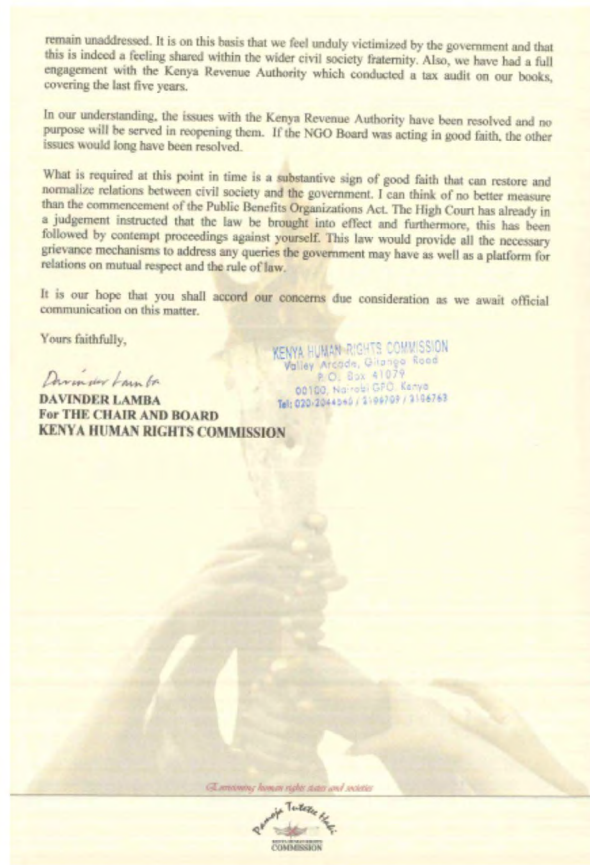
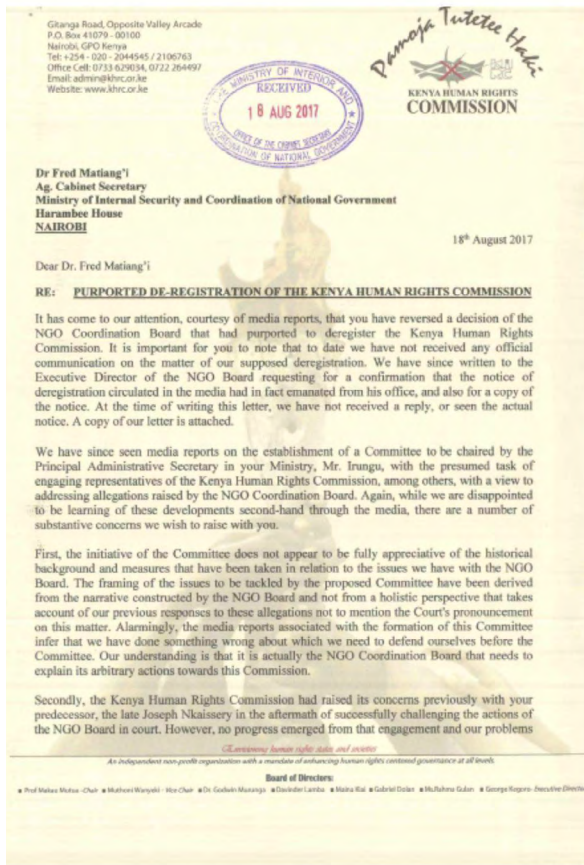
A Substantive Sign of Good Faith

The government once again intervened and pulled Fazul’s leash. This time, the figure at the centre of the action was the then acting Interior Cabinet Secretary, Dr. Fred Matiang’i. On August 16, 2017, Matiang’i halted the deregistration of the KHRC and AfriCOG, instructing his Permanent Secretary, Karanja Kibicho, to establish a special committee to collaborate with the respective NGO boards in conducting a thorough review of compliance and the contentious issues surrounding the two organisations.

“While the matter contains weighty and regulatory issues on the said organisations, my view is that before conclusive action such as deregistration, comprehensive and exhaustive engagement need to happen. This would include an opportunity for the two organisations and any stakeholders concerned to engage the NGOs Board and address the issues,” the letter stated.

It was a move that was reminiscent of Waiguru’s previous intervention two years earlier. Sensing a familiar pattern, Kegoro wasted no time in composing a letter to Matiang’i on August 18, 2017, seeking clarification, and offering guidance on the best way forward:

“What is required at this point in time is a substantive sign of good faith that can restore and normalise relations between civil society and the government. I can think of no better measure than the commencement of the Public Benefits Organizations Act. The High Court has already in a judgment instructed that the law be brought into effect and furthermore, this has been followed by contempt proceedings against yourself,” wrote Kegoro.



Despite this development, in a bid to pre-empt any future attempts by the NGOs Board to wield its favoured weapon of baseless accusations, the KHRC aimed to definitively clear its name. Mbage recounts the obstacles he encountered when he sought to challenge the NGOs Board to substantiate its sensational allegations against the KHRC. Evidently, the Board's stonewalling tactics were crafted to impede any efforts at clarification.

"Nobody could trace an important file, and later you learn it is in Fazul's office," Mbage reveals.

As the KHRC grappled with these unfounded accusations, more challenges arose. The Kenya Revenue Authority (KRA) entered the fray, targeting the organisation with a raid.

"A KRA van came here," Mbage says, pointing towards the main gate of the KHRC's compound. "They gave me a letter saying that they want to confiscate our financial books for the last four years."

The KHRC, however, refused to be bullied. Mbage, with his extensive accounting background, knew the importance of adhering to due process.

"Tax procedure says you have to give reasonable time. You can't just show up," he explains. A standoff ensued, and the KHRC stood its ground, demanding the law be followed.

After a two-week notice and a thorough audit, KRA left disappointed.

“They realised the KHRC had nothing to hide. They’ve never come back,” Mbage says.

Then, an unsettling revelation came to the KHRC’s attention:

“What we unearthed was rather sinister. Fazul would deliberately target organisations with vulnerabilities, then he would leverage the orders from the NGOs Board to extract money,” Malombe divulges.

“We uncovered numerous instances of NGOs negotiating with Fazul. He would drive a hard bargain, seeking a share of the funds in their accounts before he would relinquish control of a matter.”

But the KHRC refused to be entangled in Fazul’s messy affairs. The actions of the NGOs Board were a calculated effort to deter it from playing a substantial role in scrutinising the 2017 Kenyan elections.

“We knew we had to go to court,” says Malombe.

“We patiently assembled the evidence and presented our case in court. Ultimately, the High Court concurred with our stance. Justice Chacha Mwita ordered the NGOs Board to pay us Ksh2 million (\$20,367*) for wrongfully ordering the Central Bank to freeze our bank accounts.”

“We added that money to our reserves.”

Malombe sheds light on their strategic legal jiu-jitsu manoeuvre, which turned the Board’s attack on the KHRC into an opportunity for accountability.

“The most interesting thing is we took these cases against the NGOs Board as accountability questions. While others were running to negotiate with the NGOs Board, we took this as a violation of Article 47, which guarantees the right to fair administrative action. As a result, we got very good orders from the courts,” he elaborates.

“Looking back, we are very happy that we took this as an advocacy issue. After that, every time other NGOs were attacked, we were happy to advise them on how to deal with Fazul.”

“The Jubilee Regime Quakes when the KHRC Clears its Throat”

On February 26, 2018, Fazul stepped down prematurely as the head of the NGOs Board under a cloud of controversy over his academic qualifications.

“Egerton University, where he claims to be an alumnus, apparently kicked him out on academic grounds,” wrote Prof. Makau Mutua in his regular Sunday column at the time. In an incisive op-ed titled ‘No more doubt: Fazul Mohamed is the state’s hatchet man for Jubilee,’ Prof. Mutua sliced and diced Fazul and his cohorts, revealing their role as instruments of the state’s campaign to undermine the KHRC’s influence.

“Mr Mohamed appears to be a character right out of North Korea, the hermit kingdom. He’s the dream automaton for the dictator. The dictator wouldn’t be without foot mannequins like Mr Mohamed,” he wrote.

“I don’t exaggerate when I say the Jubilee regime quakes in its boots when the KHRC clears its throat. You can tell by the amount of Twitter and Facebook ink that State House propagandist Dennis Itumbi—and his 36 bloggers—devotes to attacking us. However, Mr Itumbi and Mr Mohamed are reading from the same script. That tells me they are carrying water for State House itself. Logic is merciless,” he opined.

“Fazul was obviously a tool of those in power, deployed to combat progressive groups,” agrees Malombe, who emerged from the Fazul-initiated witch-hunt with a profound insight into the role of regulators in Kenya.

“A regulator is supposed to be supportive and facilitative, not punitive and prohibitive,” he emphasises.

For Mbage, how things played out in the end had a lot to do with the fact that the KHRC “had its house in order.”

“Nothing helped as much as that,” he says.

“The KHRC’s exhaustive record-keeping and transparency had a big impact on repelling those that were determined to undermine its work.”

For Mbage, however, the battle is far from over for the KHRC as long as KRA continues to present a seemingly insurmountable bureaucratic quagmire. He touches upon the issue of the pending tax dispute and the intent behind it.

“The intent is not to solve it,” he observes. “It’s to have it hanging over your heads so that they can bring it back any time they want.”

The story of the NGOs Board’s crackdown on civil society in Kenya is a stark reminder of the challenges faced by organisations striving to defend human rights and democracy in a country where power often trumps the rule of law. The KHRC’s resilience in the face of adversity serves as compelling proof of the organisation’s willingness to stand up and fight for the principles it holds dear.

In these tumultuous times, characterised by the probing actions of would-be autocrats testing the limits of power, the KHRC’s fortitude under pressure offers a ray of hope that justice and democracy will ultimately prevail. In sum, it sends a powerful message about the firm backbone of civil society in Kenya and the importance of defending human rights in the face of adversity.



The Kenya Human Rights Commission team and their supporters, including Executive Director George Kegoro (second left), lawyer Harun Ndumbi (L), and human rights activist and KHRC co-founder Maina Kĩai (second right), sing in solidarity after addressing the media on August 15, 2017. They were responding to the illegal deregistration of the KHRC by the NGOs Coordination Board at the organisation's Nairobi headquarters. The KHRC vigorously defended its integrity in court, ultimately prevailing despite state-sponsored attempts to tarnish its reputation. The challenging episode underscores the KHRC's steadfast commitment to defending human rights in the face of serious governmental pressure. Photo: The Standard Media Group

Legal Advocacy: Litigation, Legal Aid, and the Battle of Wins and Losses

“We have a moral obligation to make sure that every human being has access to justice.” — Damaris Bonareri, former Senior Legal Officer, the KHRC

Legal aid, often the first glimmer of hope for individuals caught in the merciless jaws of injustice, is a space in which the KHRC has done some of its most impactful work. It is not an area for the weak of resolve.

The Kenya Human Rights Commission epitomises true allyship through its legal endeavours. With a commitment to legal aid and public interest litigation, the KHRC actively enters the battles of Kenyans, big or small, wielding the law as an instrument of hope and justice. In every hour of Kenya's need, the KHRC has stood as a formidable ally, ensuring that the rights and freedoms of every citizen are not just defended from a distance, but fought for in the trenches of legal warfare.

The Kenya Human Rights Commission operates under a powerful and inclusive creed on this legal front: no case is too insignificant or too monumental when it comes to defending the rights and freedoms of Kenyans. This ethos is clearly illustrated through the range and impact of the KHRC cases, spanning from landmark legal battles to vital community interventions.

Take, for instance, the transformative ‘Maina Kiai case’ (Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others, 2017). This important legal victory redefined Kenya’s electoral landscape. In this case, the KHRC played a crucial role in establishing that results announced at polling stations are final, not provisional. The judgment significantly curtailed the powers of the IEBC Chairperson, who, despite their considerable authority as the returning officer for the presidential election, could no longer alter results. This decision was a monumental step in strengthening the integrity and transparency of Kenya’s electoral process.

On the other end of the spectrum, consider the case of John Ndwiga from Meru County. In a situation reflective of the economic hardships wrought by the Covid-19 pandemic, Ndwiga faced

eviction after failing to pay two months' rent. Here, the KHRC's intervention was not in a courtroom but at the heart of a community dispute. Through effective mediation, the KHRC facilitated an agreement between Ndwiga and his landlord, allowing for the payment of rent arrears in manageable instalments. Though less headline-grabbing than the Maina Kiai case, this intervention was equally significant in its impact on an individual's life.

“More Than Three Thousand Clients”

Damaris Bonareri, who served as Senior Legal Officer, says the KHRC's work is guided by a fundamental belief in the dignity and rights of every Kenyan. Each case, big or small, is evidence of the KHRC's unwavering dedication to justice and equality.

Bonareri has a firm grasp of the role played by the KHRC in reshaping the legal landscape of Kenya through legal advocacy, litigation, legal aid, and the relentless battle for human rights, one case at a time.

Her expertise touched every corner of the organisation.

“I ran three departments,” she begins. “There's legal affairs, human rights monitoring and response, and refugee protection.” Her role is a demonstration of the versatility demanded by the complex fabric of human rights work.

In the legal affairs department, the KHRC has made huge strides in providing legal aid. “We have legal aid at the office and county-based legal aid clinics,” Bonareri explains.

“Over two years [before my departure from the KHRC], we served more than 3,000 clients.” Bonareri played a hands-on role in some of the cases.

“I did mediation for clients, wrote letters to various government offices, made phone calls, and even litigated on some of the issues that had to go to court,” she explains.

The power of the KHRC's efforts was underscored by a particular case where it secured Ksh13 million (\$100,775) for a wrongful dismissal. Such victories are not mere financial triumphs but profound reckonings of justice itself.

The scope of the KHRC's work extends beyond the office walls.

“County governments often reached out to us, asking us to provide legal aid,” Bonareri explains. Their impact is far-reaching, touching lives in the most vulnerable pockets of society. One such matter involved a grant from the United Nations Development Programme (UNDP), which enabled the KHRC to provide legal aid in the informal settlements of Nairobi, specifically addressing gender-based and sexual violence.

In a World Rife with Injustices...

Bonareri emphasises that the KHRC is actively involved in the Law Society of Kenya (LSK) Awareness Week, offering legal aid in partnership with the University of Nairobi.

The KHRC is also deeply committed to public interest litigation, employing it as a strategic tool to effect systemic change and uphold the rights of the marginalised. This approach transcends traditional legal advocacy, as the KHRC leverages the power of the courts to address broader societal issues and injustices that affect large segments of the Kenyan population.

Through public interest litigation, the KHRC not only seeks to provide remedies for specific legal grievances but also aims to create lasting legal precedents that benefit the wider community. This method of legal action has been helpful in challenging and reshaping policies, laws, and practices that are discriminatory or detrimental to public welfare.

In a world rife with injustices, the KHRC's litigation team, under Bonareri's leadership, filed over a hundred cases in the span of just a few years. The impact they've had in a relatively brief period is awe-inspiring.

"We did a lot of public interest litigation," she emphasises. "I filed cases not only in Kenya but also at the East African Court of Justice (EACJ)," Bonareri explains.

The African Court on Human and Peoples' Rights (AfCHPR) has also been a battleground for the KHRC's tenacious legal advocacy, although a technicality kept them from a breakthrough. "We had filed one case just a day after the deadline," she chuckles.

In the quest to protect the digital rights of Kenyans from companies operating locally but based in jurisdictions abroad, the KHRC's legal forays have extended even further, reaching the courts of London, Scotland, and the European Court of Human Rights. For the KHRC, these are not mere legal battles but affirmations of the universality of human rights.

"Digital rights are an important new frontier," Bonareri explains. "Especially in light of the increasing scrutiny of social media posts by law enforcement."

The KHRC has made bold steps in initiating litigation against social media platforms.

"There's a gap in social media accountability," Bonareri points out. "The platforms place accountability on users, making it difficult to hold them accountable." The KHRC's current efforts are aimed at shifting this balance to ensure platform accountability.

The KHRC's legal crusade is far-reaching, touching on critical issues such as land rights, elections, natural resources, police brutality, civic space, and public finance management. The organisation's commitment doesn't end there; it actively engages in broader coalitions across the globe, advising, supporting, and litigating human rights issues.

Four Elderly Women

Furthermore, the KHRC's work within the National Council on the Administration of Justice (NCAJ) committees, including the criminal and civil justice committees, has been helpful in addressing bottlenecks and obstacles in the justice system.

“The KHRC sees the challenges that ordinary citizens face in accessing justice,” explains Bonareri.

“We actively raised these issues, resulting in positive developments like the small claims court and specialised courts for sexual and gender-based violence cases.”

Bonareri recounts one of the most heart-wrenching cases the KHRC has ever handled under the umbrella of urgent response—the case of the Marani women. In October 2021, four elderly women in Marani, Kisii County, were accused of witchcraft and burnt alive by members of their community.

Bonareri details their response to this horrific incident.

“We held a press conference on October 21. We brought one of the ladies whose mother was burnt to Nairobi,” she explains. Their goal was to give a voice to the victims and bring the perpetrators to justice.

However, the challenges they faced were immense. Women's rights organisations were initially hesitant to get involved, citing funding constraints. The KHRC provided support and advocacy for the families of the victims. It organised the funerals for three of the women and supported funeral expenses, not just as practical assistance but also as statements of solidarity.

The house the KHRC had built for one of the victims was quickly burnt down. The hostility and resistance from the local community, fuelled by superstitions and male family members seeking to take control of the victims' land, presented immense obstacles.

Advocacy efforts included lobbying for the appointment of a competent prosecutor and engaging senior advocates such as John Khaminwa and Harun Ndubi. The KHRC brought allies such as Federation of Women Lawyers in Kenya (FIDA), the Kenya National Commission on Human Rights (KNCHR), and other organisations on board to provide legal support.

Witness protection was needed to ensure the safety of family members left behind, and who faced hostility and threats from the community. The children were transferred to new schools, and behavioural change programmes were initiated to address deeply ingrained beliefs and superstitions.

Notwithstanding the challenges, Bonareri is satisfied with the advocacy work in the Marani women's case. The urgent response was not just about providing immediate assistance; it was about pursuing justice and systemic change.



“

The photo captured the sombre expressions of a group of civil society figures, including George Kegoro, who served as the KHRC Executive Director at the time, lawyer Aaron Ndubi, and KHRC co-founder and board member, Maina Kiai, who was caught in the midst of an impassioned gesture.”

Armed with Righteous Indignation

A widow, armed with righteous indignation and the hope of a favourable judgment, sought the KHRC's help to approach court only to find that her battle had just begun.

“A widow filed a case; she got a good judgment protecting her property. But the entire village, from the pastor to the relatives, the chief—everyone—frustrated her,” Bonareri explains.

In the world where the KHRC litigates, justice is not a linear path but a maze of obstacles and setbacks. For example, the widow, after prevailing in court, planted maize that was secretly harvested at night; and the trees she had planted within her compound were cut down. She was driven to the brink of despair, her hard-fought court victory crumbling right before her eyes.

Bonareri points out how the KHRC uses these stories as institutional barometers to identify the offices that are truly working in the service of Kenyans. It is through these tales of hardship, that the KHRC has been able to unearth the truth about the justice system's efficacy.

“Somebody will tell you, ‘I went to Children's Services, and they did this. I need your help’,” she says. It is in these distress calls that the KHRC finds its purpose, its reason to fight.

The KHRC's legal aid efforts cover every corner of Kenya through a hotline. These calls are not mere statistics but lifelines for those who have been wronged.

Through walk-ins, phone calls, and emails, the KHRC builds a network of stories that serves as a mirror to the stark realities of society. It is in these voices from the margins that the KHRC finds its resolve to keep pursuing justice.

“The issues we receive mostly are on land rights, gender-based violence (GBV), family issues, police brutality, and labour issues,” Bonareri says.

Labour Rights in the Kingdom

One such case involved three individuals confronted by labour rights issues while working in Saudi Arabia. The government's failure to protect its citizens prompted the KHRC to investigate, but it encountered a web of bureaucratic entanglements involving multiple government agencies.

Bonareri explains, “For somebody to leave the country to work, the work contract has to be attested to by a labour officer.” This revelation raised fundamental questions about how Kenyan citizens left the country without the necessary approvals.

The KHRC's pursuit of justice led it to contact an NGO in Lebanon, where Kenyan expatriates were facing mistreatment. “The problem is that when Kenyans go to report, the people working

at the embassy are Lebanese, not Kenyans.” This disturbing pattern of discrimination and abuse demonstrated the urgent need for the KHRC’s intervention.

Beyond Kenya’s borders, the KHRC’s work extends to addressing labour rights issues resulting from international corporations operating in the country. Companies in industries such as mining, agriculture, forestry, and tea farming have been implicated in labour rights violations. “It’s like they don’t factor that they are working with human beings from the very beginning.”

The KHRC’s legal aid work extends beyond labour rights issues to confront injustices perpetrated by security agencies. It has invested efforts to mediate cases involving wrongful dismissal, non-payment of wages, and even extreme cases of physical harm.

One harrowing incident involved a man who arrived at the KHRC office in critical condition due to mistreatment at a security agency.

“We called ambulances from the county government, but they were asking for Ksh14,000 (\$109)* for fuel,” Bonareri recounts.

Complex Legal Landscapes

Exploitative practices, including long working hours, lack of breaks, and unjust dismissals, have left workers in precarious positions. Workers are often sacked after being incapacitated due to illness or injury. These stories are a grim reminder of the harsh realities vulnerable labourers face.

While the KHRC strives to mediate as many cases as possible, resource limitations often pose obstacles. Bonareri explains, “The KHRC doesn’t have enough funding or enough human resources to pursue every single case.” This compels the organisation to prioritise cases that have the potential to create lasting impact.

Despite facing formidable challenges, including resource limitations and complex legal landscapes, the KHRC has persevered, driven by a steadfast commitment to upholding human rights.

“We have a moral obligation to make sure that every human being has access to justice,” Bonareri adds.

In a world where human rights violations persist, the KHRC’s fight for justice is an enduring vanguard of advocacy, litigation, and legal aid. It’s a battle that will continue, one case at a time, until justice prevails for all.

Litigation as a tool for putting the brakes on government impunity

On July 4, 2023, the Kenya Human Rights Commission, in coalition with Katiba Institute, Transparency International Kenya, and other key civil society organisations, took a bold stand against what they deemed an overreach by the Kenyan government. They filed Constitutional Petition No. E228 of 2023, challenging the Finance Act of 2023—a legislative piece that had ignited a firestorm of controversy due to its stringent tax measures and questionable public engagement process.

The Finance Act of 2023, passed by the National Assembly on June 14, 2023, proposed a slew of fiscal reforms, most notably a significant increase in the Value Added Tax (VAT) on fuel products and the introduction of a new three per cent housing levy. These changes were met with widespread condemnation from various quarters, including ordinary citizens, business leaders, and advocacy groups. The new law was criticised not only for its potentially regressive financial impact but also for the perceived lack of genuine public consultation.

The KHRC and its allies argued that the Finance Act contravened constitutional principles of fairness and public participation. They asserted that the National Assembly's process in approving the Act was deeply flawed, failing to adequately engage with stakeholders and incorporate their feedback. The new tax measures were punitive, particularly in a climate of economic hardship where many Kenyans were already struggling with high living costs and stagnant wages.

As the case progressed, the courts faced the monumental task of balancing the need for governmental fiscal policy flexibility with the imperative of upholding constitutional rights and democratic principles.

On November 28, 2023, the High Court delivered a mixed verdict. The court struck down the housing levy as unconstitutional, a significant victory for the petitioners. However, other elements of the Finance Act, including the VAT increase, were upheld, affirming Parliament's authority to impose taxes but acknowledging that public participation had been insufficient.

This partial triumph for the KHRC showcased a crucial aspect of their role in Kenya's democratic landscape. By taking legal action against the Finance Act, the KHRC reinforced its commitment to ensuring that legislative processes adhere to constitutional standards. The courts' response demonstrated an essential check on the powers of the Executive and the Legislature, underscoring the importance of civic engagement and the rule of law in shaping public policy.

Public interest cases brought by civil society organisations are the butt of jokes in government, but the KHRC's Constitutional Petition No. E228 of 2023 was a clear barometer of the nation's sentiment. A government recognising this might have reconsidered its stance and engaged more constructively with the concerns raised.

Instead, the government brought forth even more onerous tax proposals in the Finance Bill, 2024. This set the stage for heightened public discontent, which sparked nationwide youth-led protests and a broader backlash against perceived governmental overreach.

Initially dismissed as digital busybodies by government officials—addicted to iPhones, Uber rides, and Kentucky Fried Chicken—the youthful protesters, predominantly Gen Z and millennials, took to the streets twice a week on alternating days (Tuesdays and Thursdays). Their persistent ‘maandamanos’ culminated in a massive demonstration on June 25, with protests occurring in over half of Kenya’s 47 counties and massive numbers converging in Nairobi.

This throng led to an unprecedented event in Kenya’s history: the breach of Parliament. The incident demonstrated how institutions, even in a rule-of-law state, can easily lose public support if grievances are ignored. The protesters’ primary demand was unequivocal: the complete rejection of the Finance Bill, 2024. The overzealous response by the security forces resulted in the deaths of over 50 young Kenyans, with many more abducted and held incommunicado for several days without justification.

In response to mounting public pressure, President William Ruto was compelled to withdraw the Finance Bill, 2024 and overhaul his Cabinet—a dramatic move that underscored the power of public dissent and the importance of responsive governance. The KHRC’s role in this sequence of events wasn’t lost to keen observers. By challenging the Finance Act, 2023, the KHRC had not only defended constitutional principles but also helped catalyse a broader dialogue on governance, transparency, and accountability.

The continuing scrutiny of the Executive’s handling of the public purse endorses the KHRC’s vigilance in holding power to account.. Their actions have demonstrated the crucial role that civil society and the courts play in safeguarding democratic values and ensuring that government actions align with constitutional principles.

As Kenya grapples with the implications of these legal and political developments, the KHRC’s current and past public interest litigation is a reminder of the essential role that judicial oversight and civil society play in upholding democracy. In this way, the quest for justice, driven by organisations like the KHRC, continues to be a cornerstone of Kenya’s democratic evolution, shaping the future of responsible governance and public trust in the nation’s institutions.

The KHRC and Del Monte: A Case Study in Corporate Accountability



“Human rights monitors cannot be morticians who count the bodies and tell us how many are dead. Instead, we must envision them as defenders of rights, safeguarding them while they are still alive.” — Dr. Steve Ouma, former Deputy Executive Director, the KHRC

John Steinbeck’s classic novel, *The Grapes of Wrath*, explores themes of workers used, misused, and crushed underfoot by the capitalist machine. Del Monte Limited, the Kenyan food processing powerhouse headquartered in Thika, is a company that has over the decades come to represent a bitter and uncanny continuation of this fictive world right on our doorstep.

Indeed, Del Monte has evolved to epitomise the very notion of bittersweet. On one hand, it boasts almost unrivalled supremacy in the global pineapple industry, single-handedly elevating Kenya to a top-five position among pineapple exporters worldwide. Conversely, the company has a chequered and well-documented history of lax labour standards and ruthless measures taken against trespassers on its vast 10,000-acre (40 km²) pineapple plantation, tragically culminating in multiple fatalities at the hands of its security personnel.

Commencing with the landmark release of the report titled ‘Exposing the Soft Belly of the Multinational Beast: The Struggle for Workers Rights at Del Monte’ on August 5, 2002, the Kenya Human Rights Commission, in collaboration with grassroots organisations and various stakeholders, has done more than most to tame the worst excesses of the global food processing titan.

The report laid bare the harsh reality of life within Del Monte’s operations. It not only shed light on the abuses faced by workers but also sparked a dialogue between Del Monte and civil society. By blending technical expertise with moral authority, the KHRC was able to transcend traditional advocacy methods and impose a new culture of corporate accountability.



An aerial view of Del Monte's pineapple plantation in Thika, captured on May 2, 2019. This book unpacks how Del Monte's sprawling dominion in the global pineapple trade masks a troubling reality. Its 10,000-acre (40 km²) plantation bears witness to grave injustices, including lax labour standards and the use of brutal force against trespassers. Since publishing 'Exposing the Soft Underbelly of the Multinational Beast: The Struggle for Workers' Rights at Del Monte' on August 5, 2002, the Kenya Human Rights Commission has collaborated with grassroots allies to blunt Del Monte's corporate impunity and secure justice for those silenced by its power. Photo: The Standard Media Group

Death by Company Policy: The Tragic Story of Peter Mutiso Komolo

The influential report, authored by Dr. Willy Mutunga and Dr. Steve Ouma from the KHRC, alongside Francesco Gesualdi of Centro Nuovo Modello di Sviluppo (CNMS - Italian for 'The New Development Model Centre'), exposed the human toll of Del Monte's unethical practices in excruciating detail. It was among the first to show how the fragrant scent of Del Monte's pineapples was masking human rights violations that were taking place with the connivance of its management. None more so than the story of Peter Mutiso Komolo, worker number 30501 in Del Monte's culture department since October 24, 1990.

According to the groundbreaking KHRC report, Mutiso's tragic fate was sealed by a glaring distinction: he was a 'seasonal' employee and not on permanent contract terms. This distinction, as cruel as it was, denied him access to first aid at Del Monte's clinic, access that could have saved his life.

Mutiso had been living with his brother Musau Munyoki, who was a permanent employee at the company, in Block NV70. On an ordinary Monday morning in August 1999, Mutiso reported for duty at the Del Monte plantation to harvest pineapples. However, in mid-morning, his health took a troubling turn. He began to experience an unusual fever and facial swelling.

His immediate supervisor allowed him to visit the company clinic, where Mutiso received some paracetamol and was advised to return to work for the remainder of the day. He did.

The following day, Mutiso's condition worsened. Despite having completed the prescribed dosage of medicine, he still felt unable to work. He stayed home, hoping to improve, but did not. At 10.30 am on that fateful Wednesday, Mutiso, assisted by his brother Musau, arrived at the company clinic in a dire state. However, they were met with a shocking response.

The company nurse inquired about Mutiso's employment status, and upon discovering that he was a seasonal worker, declared that the company's policy only provided for first aid for seasonal employees while on duty. This stark policy underscored the company's systemic disregard for the welfare of its seasonal workforce.

Musau pleaded with the nurse to provide first aid, but the nurse stood firm, adhering to the company policy that absolved it of responsibility for an employee's illness when not on duty. Frustrated and desperate, Musau left the clinic to find alternative means of help.

Musau's attempts to secure transportation from the security personnel at Del Monte were unsuccessful. Staff cited company policy as the reason for their refusal to transport Mutiso to Kilimambogo Hospital, just 15 kilometres away. Tragically, at around 11.15 am, Mutiso succumbed to his illness. Musau reported the death to the security personnel, who, realising the gravity of the situation, finally released vehicles to assist the distressed family.

One vehicle was dispatched to seek a permit to transport Mutiso's body to the mortuary, while statements were obtained from Mutiso's fellow employees. The foreman, supervisor, company nurse, and company doctor all confirmed Mutiso's passing. The body was then taken to the welfare department, where a vehicle was promptly provided to transport it to Matuu Nursing Home, some 50 kilometres from the Del Monte plantation in Ndula.

Mutiso's untimely death is but one entry in the catalogue of Del Monte's many transgressions against its workers. Unyielding in its pursuit of justice, the KHRC made arrangements for a postmortem examination on Mutiso, despite resistance from the nursing home's officials.

The results showed he had died of severe malaria. Dr. S K Muli, who conducted the postmortem, observed that "...there was a very high degree of negligence in concerns late medical attention accorded to the deceased." Mutiso was given the wrong medication for malaria. The company nurse who filled the prescription claimed that she was acting under Del Monte's prescribed medical guidance.

Mutiso's story ignited a spark in the hearts of those who had been following the case closely, including Father Alex Zanotelli, a Catholic priest in Nairobi. When the postmortem report exposed the company's grave errors, Father Zanotelli met with Mutunga, the then Executive Director of the

KHRC, and Maina Kiai, the Advocacy Programme Officer. Together, they created a robust and impactful campaign against Del Monte's anti-worker policies

Enter Dr. Steve Ouma

Dr. Steve Ouma's journey into the heart of social justice was more serendipitous than scripted. Perched in the cosy confines of Shalom House's Baraza Cafe, nestled along the serene lanes of St. Daniel Comboni Rd in Ngong, Ouma casts his mind back on the meandering path that brought him to the doorstep of the Kenya Human Rights Commission, where he played a major role in reshaping its approach to socioeconomic rights.

"I didn't get into the KHRC through an interview," he begins.

Ouma's path to activism was unconventional, fuelled by a deep-seated curiosity about the economic and legal dynamics shaping Kenya's social fabric.

"I was working with a Catholic priest in Korogocho slums, where I was born and brought up," he reveals.

His foray into economic anthropology led him to the outskirts of Nairobi, where he witnessed first-hand the encroachment of urbanisation on rural landscapes.

"I saw peasants being denied ownership of their means of production and then being forced to sell their labour," he recalls.

It was during this period that he stumbled upon the plight of small-scale farmers in Thika, where Del Monte's vast plantations loomed large over the local community.

"In Thika, I quickly realised Del Monte was mistreating the small farmers," he explains.

"I talked to the priest whom I worked with in Korogocho and told him that there was a problem."

This problem was not merely an economic one but a human rights issue of profound significance. Driven by a Marxist lens of analysis, Ouma embarked on a mission to uncover the concealed realities of life on Del Monte's plantations. His investigations culminated in a damning report titled 'The Benevolent Condominium', which exposed the exploitative practices underlying the facade of benevolence perpetuated by multinational corporations like Del Monte.

“Hit where it Hurts the Most”

The report caught the attention of Mutunga, then at the helm of the KHRC, who saw in Ouma a kindred spirit with a keen understanding of socio economic rights. Mutunga brought Ouma on board at the KHRC and thus began a spirited campaign in solidarity with the Del Monte workers, a grassroots movement spearheaded by Ouma and fuelled by a potent blend of activism and advocacy.

“We must hit where it hurts the most,” Ouma recalls Mutunga saying, as he outlined a strategy that would target Del Monte’s corporate image and market reputation.

The campaign faced numerous hurdles, from attempts at bribery to legal manoeuvring by Del Monte’s legal team.

“They tried bribing me. Initially, they offered me a car,” Ouma recalls. “Then, they dangled the prospect of land. Coming from humble beginnings in Korogocho, the offer of a luxury Prado was quite unexpected.”

Yet Ouma wasn’t even slightly tempted. He attributes his stand to the lessons imparted by Mutunga, who instilled in him a sense of moral obligation to the workers of Del Monte whose voices had long been silenced by the machinery of corporate power.

“I am deeply indebted to Willy Mutunga. His teachings on ethics and integrity have guided me,” he says.

Ouma’s arrival at the KHRC marked a turning point in the organisation’s approach to advocacy. He brought with him a vision rooted in historical materialism—a framework that challenged conventional notions of human rights and emphasised the importance of community empowerment

“Rooting Human Rights in Communities”

Ouma recognised the inherent biases embedded within traditional human rights discourse, where the notion of the ‘human’ often excluded marginalised voices. Informed by the insights of prominent scholars from within the ranks of the KHRC such as Prof. Makau Mutua, whose work, *Human Rights: A Political and Cultural Critique* he found deeply illuminating, and Mutunga and Alamin Mazrui, authors of *Rights Integration in an Institutional Context: The Experience of the Kenya Human Rights Commission*, Ouma’s mission was to reimagine the essence of human rights from a distant, abstract notion dictated from above into a potent political instrument deeply rooted in the lived experiences of communities.

Central to Ouma’s approach was the idea of ‘rooting human rights in communities’. No longer content with the traditional model of reactive advocacy, where monitors merely documented violations after the fact, Ouma envisioned a proactive movement that empowered communities to

define and claim their rights. This shift away from a victimhood model towards one of solidarity laid the groundwork for a new era of activism at the KHRC—one driven by the people themselves.

Recognising that workers' rights are human rights, the KHRC had been monitoring the violations of workers' rights in the Thika region since the mid-1990s. As a focal point of these violations, Del Monte drew the Commission's attention through its Monitoring and Research Programme. When the workers of Del Monte sought the Commission's assistance in 1999, it marked the beginning of a concerted effort to fight for workers' rights.

In response, the KHRC formed a coalition known as the Solidarity Committee, bringing together various civil society organisations to bolster the efforts of trade union activists at Del Monte and Thika labour offices. Their message was clear: workers' rights were not solely the responsibility of trade unions. The coalition, drawing on international human rights principles, aimed to provide expertise and advocacy support to domestic trade unions, creating a united front against Del Monte's injustices.

The survivors of Del Monte, led by individuals such as Henry Kinuthia, continued to push for justice. Kinuthia, a former worker who suffered severe injuries due to a workplace accident, faced prolonged pain and suffering. The compensation awarded to him was meagre, and he remained physically and mentally scarred. This was, however, not an isolated case; it is emblematic of the ongoing struggles faced by survivors of Del Monte's violations.

“It All Started with Water”

The KHRC's Del Monte campaign is notable for one other achievement, it led to one of the first and longest-running of the KHRC's Human Rights Networks (HURINETS): The Ndula Resource Centre. A seemingly inconspicuous dot on the map, the village of Ndula has borne the brunt of Del Monte's excesses over the years. Ouma recalls the events that led to the formation of the Ndula Network with a clarity that belies the passage of time.

“It all started with water,” he says.

“Del Monte was drawing water from the wells near Ndula to fuel its operations. Meanwhile, the residents of Ndula relied on those same wells for their daily needs.”

The disparity was stark, and Ouma wasted no time challenging the status quo.

“Our question was simple: who has the right over water, pineapples or people?” he demands.

It was a question that cut to the core of corporate responsibility and community welfare. For Ouma, there was no ambiguity—the needs of the people must come first. Armed with this conviction and a sense of duty, the KHRC rallied the people of Ndula to secure clean drinking water for the residents.

“I remember the day we launched the water project,” Ouma recalls. “It was a turning point, not just for Ndula, but for the entire human rights movement in Kenya.”

But securing clean water was only the first step in a much larger struggle.

“I asked the people of Ndula, ‘Is this enough?’” he narrates. “And they said, ‘No’. So we formed a network—a committee tasked with safeguarding their rights.”

Thus, Ndula Network was born—a grassroots movement empowered to advocate the rights of its members. While the network deliberately eschews formal titles, one of their number, Swaleh Githinji has consistently stood out over the years for his thirst for knowledge and passion for justice.

“Swaleh emerged as a leader,” Ouma says. “He may have been young and inexperienced, but he was eager to learn. And learn he did.”

Under Githinji’s guidance, Ndula Network flourished, becoming a formidable force in the fight for corporate accountability.

“Human Rights Monitors Cannot Be Morticians”

Subsequently, the partnership between the KHRC and Ndula served as a blueprint for future collaborations:

“Our approach shifted,” Ouma explains.

“No longer were we content to simply have partners that monitor and report violations. We empowered them to become defenders of rights, active agents of change in their communities.”

“We realised that to truly effect change, we needed to bridge the gap between knowledge and action,” he reflects.

“Human rights monitors cannot be morticians who count the bodies and tell us how many are dead. Instead, we must envision them as defenders of rights, safeguarding them while they are still alive,” Ouma explains.

Githinji possesses an in-depth understanding of the KHRC’s extensive and impactful advocacy on behalf of Del Monte’s workforce. Having also worked on the campaign to address the plight of workers and the community at the neighbouring Kakuzi PLC, Githinji boasts a wealth of knowledge on what has worked and what has fallen short.

He points out that although the two corporate giants share a geographical footprint, they stand worlds apart in their approach to labour rights and community engagement.

“For Del Monte, you find that after the first campaign, it learnt its lessons,” Githinji says.

“It has taken a different path. It responded to public pressure and sought to improve its relationship with the community by investing a substantial portion of its profits in local initiatives.”

The Chasm between the two Companies

The disparities between the two corporations are glaring, from employee salaries and working conditions to access to clean water and basic amenities. Del Monte now appears to prioritise the well-being of its employees, while Kakuzi's workforce faces harsh conditions.

“Seasonal workers at Kakuzi receive approximately Ksh702 (\$5.4)* per day while seasonal labourers at Del Monte earn double that amount, at Ksh1,500 (\$11.6)* per day,” he reveals.

Meanwhile, security guards at Kakuzi earn Ksh21,000 (\$162.8)* per month compared to a minimum of Ksh50,000 (\$387.6)* for their counterparts at Del Monte. Drivers at Kakuzi receive a monthly wage of Ksh20,000 (\$155)*, whereas those at Del Monte enjoy a minimum of Ksh40,000 (\$310)*.

Del Monte provides buses for all its employees and has made it mandatory for them to utilise this service. In contrast, Kakuzi workers must trek many kilometres to reach their workplace.

“Safety and well-being of workers is another area of divergence, as Kakuzi fails to furnish personal protective equipment (PPE) to all its employees, limiting the provision of PPE to those working in chemical spray departments. Conversely, Del Monte enforces strict adherence to PPE usage, making it an imperative requirement. Failure to comply results in restrictions on bus access and office entry,” Githinji says.

The chasm between the two companies becomes even more pronounced in terms of employee living conditions. Del Monte ensures that all staff houses are connected to electricity and the workers have access to clean, treated water. In contrast, only Kakuzi's managers enjoy access to electricity in their houses. Del Monte further elevates employee welfare by providing toilets, drinking water, and daily servings of sweetened porridge to all staff, including those engaged in farm labour, all of which are complimentary.

Githinji believes that besides the pressure for better working conditions from the KHRC and other well-meaning actors, the gulf in the treatment and compensation of workers between Del Monte and Kakuzi comes down to one factor; the percentage of local ownership.

“Kakuzi has local shareholders. In fact, only 51 per cent is owned by Camellia, the UK parent company. The rest are local shareholders. So, you find that the Del Monte campaign bore more fruit because of the fact that there are no local vested interests,” he explains.

“Del Monte, with its predominantly foreign ownership, finds itself at an advantage when it comes to responding to advocacy for labour rights. In contrast, Kakuzi's significant local shareholders, often entrenched in political circles, pose a formidable challenge in the pursuit of justice. So, you find that Kakuzi has a lot of political impunity.”

The second differentiating factor, says Githinji, is location. “Kakuzi's inaccessible location [because

of poor infrastructure] shields it from scrutiny, allowing it to operate with relative obscurity,” he points out.

Although there has been noticeable progress in Del Monte’s treatment of its workforce, there is substantial evidence suggesting that the company has not fully rectified its disregard for human rights.

In December 2023, multiple media reports indicated that the police were investigating four suspected killings on the Del Monte pineapple farm after bodies were retrieved from a nearby river on Christmas Eve and Christmas Day. This followed multiple reports of assaults and killings by security guards at Del Monte’s sprawling farm.

This reinforces the importance and necessity of the Kenya Human Rights Commission and its advocacy efforts. These incidents bring to light the role that human rights organisations such as the KHRC play in protecting the rights and lives of individuals within communities where powerful corporate actors hold sway.

As it has demonstrated over the decades, the KHRC’s advocacy, fearlessness, and grit are essential for ensuring transparency and accountability in such cases. Without the KHRC’s intervention, diligent investigative work, and legal advocacy, these incidents would remain concealed and unaddressed, perpetuating a culture of impunity.

The events on the Del Monte farm underscore the primacy of organisations like the Kenya Human Rights Commission, emphasising the essential role they play in advocating justice, accountability, and the protection of human rights in all communities, no matter how far-flung.

Land Rights Struggles: The KHRC's Work with the Ngaaie and Nguluku



“It’s about ensuring that communities are not taken advantage of.” — Mary Kambo, Programme Manager, Economic and Social Justice, the KHRC

Land is an emotive subject and conjures a myriad deeply rooted emotions and historical issues that resonate profoundly with most Kenyans, cutting across diverse cultural and social backgrounds. Few things are as dear to the hearts and minds of Kenyans. It is mentioned twice in the National Anthem and is referenced a remarkable 104 times in the Kenyan Constitution, reflecting the central role land plays in the country’s legal and social framework.

The historical context of land issues in Kenya is illustrated by the formation of the Mau Mau, officially known as the Kenya Land and Freedom Army (KLFA). This movement emerged as a direct response to the deep-seated land grievances and inequities experienced during the colonial era. The Mau Mau struggle and the Dini ya Msambwa movement in western Kenya – which caught the attention of the British around the same time – as well as the 1913-1914 rebellion at the Coast led by Mekatilili Wa Menza, were fundamentally a fight for land rights and freedom, symbolising the intense and often tumultuous relationship between the Kenyan people and their land.

This historical context underscores how land is not just a natural resource in Kenya, but a symbol of independence, identity, and justice.

Precariousness of Land Ownership and Tenure

But it cuts deeper than that. Land is a source of livelihood for the majority of Kenyans, particularly in rural areas. Agriculture remains the backbone of Kenya’s economy, with small-scale farmers depending on their plots of land to feed their families and generate income.

The precariousness of land ownership and tenure in many regions has made securing land rights – in very literal, flesh-and-blood terms – a matter of life and death. As any casual consumer of local news will tell you, disputes over land ownership and boundaries can easily escalate to communal violence, leading to fatalities with a mid-to-high body count depending on the type of armaments at hand, and the intensity of the feud.

In Kenya, the evolution of land governance and its associated challenges can be traced through three distinct eras. The first era was marked by colonial conquests, where land was primarily seized to establish colonial dominance and allocate parcels to incoming settlers, among other purposes. Meanwhile, the post-colonial era was characterised by land appropriations conducted by the new political elite.

The escalating global demand for land and natural resources has led to the third and most recent phase: corporations acquiring land for various activities, including mining, large infrastructure projects, oil exploration, extensive irrigation schemes and climate change mitigation measures.

A Tidal Wave of Displacement

This contemporary form of land acquisition, with its far-reaching implications for tenure security and community livelihoods, has been the focus of several interventions carried out by the Kenya Human Rights Commission. Foremost among these interventions are the efforts focused on the communities inhabiting the Ngaaie Hills in Kitui County and the Nguluku area in Kwale County, respectively. Bound by a common thread of struggle, the story of the two communities is one of a people's undying spirit in the face of colossal forces of exploitation and neglect. The two land rights campaigns also speak to the KHRC's capacity to hold its own against formidable adversaries.

“The Ngaaie Hills community, residing in Kitui County, lived harmoniously until Athi River Mining came to town,” says Mary Kambo, Programme Manager for Economic and Social Justice at the KHRC.

“This was land they had known as home for generations, only to face being uprooted by the prospect of limestone mining.”

The onset of Athi River Mining's operations in Ngaaie Hills brought with it a tidal wave of displacement and insufficient compensation.

“The community members were displaced, and the compensation they received was insultingly meagre,” Kambo remarks.

“They were being offered just Ksh150,000 (\$1,154) per acre – a sum that belittled the true value of their ancestral land.”

The plight of the community did not go unnoticed. Embodying the role of David against a corporate Goliath, the KHRC stepped in.

“We supported the community to file a petition at the Environment and Land Court in Machakos County,” Kambo recalls. The legal battle, although prolonged due to the Covid-19 pandemic, eventually bore fruit.

“By November [2022], more than a hundred people were fully compensated by Athi River Mining. They were paid the true value of their land,” she states.

“Unfortunately, we Lost the Case”

Parallel to the Ngaaiie saga, is the tale of residents of Nguluku in Kwale County. Here the community grappled with Base Titanium, another mining giant. The pattern was eerily similar: undervaluation of land and the exploitation of a community bereft of ownership documents.

“They offered the same rate, Ksh150,000 (\$1,154)* per acre, just like in Ngaaiie Hills,” Kambo reveals.

“Some families accepted the money, but many stood their ground, refusing to be bulldozed by corporate might.”

The KHRC’s intervention in Nguluku mirrored its efforts in Ngaaiie.

“We went to court, supporting these families to get better terms of compensation,” Kambo recounts.

However, unlike Ngaaiie, the outcome in Nguluku was less favourable.

“Unfortunately, we lost the case,” she admits. “The court was not convinced that Base Titanium had any liability.”

George Jaramba, the Coordinator of the Kwale Human Rights Network, a long-time collaborator with the KHRC, holds reservations about the KHRC’s approach in handling the Nguluku matter.

“The Nguluku case concluded in 2021, but unfortunately, the judgement wasn’t in favour of the community despite the historical injustices they had suffered at the hands of Base Titanium,” he says.

“I played a role in this particular case because I was essentially the KHRC’s man on the ground. I was therefore also expected to work closely with the lawyer the KHRC had chosen on the best evidence we could use to showcase the plight of the Nguluku community when taking this matter to court,” he explains.

“I advised the lawyer that took up the case that we needed to bring on board an expert on environmental issues to undertake a survey and also come up with a report that would be admissible

in court. Unfortunately, we ended up going to court without any expert opinion on mining or environmental issues.”

“As a result, we didn’t have a good case to make. We didn’t have intensive research to show the court that would convince it about the case the community had against the company,” he laments.

“But that was only half the problem.”

“The court process also took too long, and that gave the company the opportunity to start convincing some of the petitioners to leave the case. Many petitioners withdrew. Out of about 22 or 23 petitioners at the start, only I think about 13 remained at the conclusion of the case,” Jaramba discloses.

“Those instances of withdrawal also affected the case because it was mentioned in the judgement. The court insinuated that the petitioners were not before the court voluntarily and that a hidden hand was moving them.”

“The disappointing judgement was a teachable moment for the KHRC and the Kwale Human Rights Network in terms of proper community engagements and how to mount a stronger case in the future on those issues,” he concludes.

Furaha Charo, the former Programme Advisor for Land, Environment, and Natural Resource Justice at the KHRC, witnessed first-hand the tactics deployed by Base Titanium to weaken the court case.

“I remember personally trying to talk to members of the community against the withdrawal because I felt that they were giving up on their rights. But it seemed like my efforts were falling on deaf ears because most of them had already made up their minds on the withdrawal,” she explains.

A Testament to the Power of Communal Resolve

The KHRC team soon learnt why it was such an uphill struggle to keep the community members in the case.

“We got to know that the community was being fed obvious lies about the possible repercussions of the case. For instance, to instil fear, the company had told the community that they would have to individually pay millions of shillings if they lost the case. This caused fear among some in the community because they were afraid of being auctioned,” Charo says.

“We kept assuring them that what they were hearing were lies and that we had a very elaborate strategy in place, in terms of advocacy and litigation, but many of them had already made up their minds that they were withdrawing.”

Contrasting it with the success of the Ngaaie Hills case, Charo feels that the divisions in the Nguluku community were the main undoing of the case.

“The Ngaaie Hills community was fully united even when, at some point, the company [Athi River Mining] went into their area and tried to put up beacons. The community’s pushback against this was very strong. They stood up for their land. They were also very persistent and consistent in their advocacy compared to the community in Nguluku, who you could see were divided and were not speaking with one voice even in the meetings you attended with them,” she reveals.

However, despite these challenges, the KHRC remains committed to the community in Kwale. The organisation’s work has extended beyond the courtroom, encompassing advocacy, media engagement, and sustained pressure at various governmental levels.

“We engaged the county assembly, the governor’s office, and the media to keep these issues alive and kicking,” Kambo says, emphasising the KHRC’s multifaceted approach.

For Kambo, the story of the residents of Ngaaie and Nguluku is not just a tale of legal battles and advocacy; it’s proof of the power of communal resolve and the critical role of organisations like the KHRC in championing the rights of the marginalised.

“It’s about ensuring that communities are not taken advantage of,” she declares.

Ensuring Responsible Stewardship of Extractive Resources

The stories of Ngaaie and Nguluku, though distinct, converge on a common path of struggle for land rights, dignity, and fair compensation. They are emblematic of the larger battles fought across Kenya and, indeed, the world, where indigenous and local communities often find themselves pitted against the might of corporate and governmental forces.

Through its membership in the Haki Madini Kenya (HMK) community-centred coalition, the KHRC is playing a crucial role in ensuring responsible stewardship of extractive resources. The decade-old coalition brings together communities in and around mining areas, civil society organisations, faith-based organisations, and individuals engaged in the extractive industry in Kenya. In mid-November 2023, the KHRC leveraged its convening power to host the National Mining Conference in Nairobi under the auspices of the Haki Madini coalition.

“The KHRC was chosen to host Haki Madini around April 2023. One of our objectives was to revamp the coalition because it had been dormant since the Covid-19 period. The KHRC was able to pull in many partners to come on board,” Charo says.

“The gathering attracted development partners, government officials, and numerous practitioners from the mining space. One of the key outcomes of that meeting was increased visibility for the Haki

Madini coalition and its revitalisation. The event was a huge success and received a lot of positive media coverage.”

“Because Haki Madini is the only coalition working on issues of mining in Kenya at the moment, the meeting provided a space for different actors—government, community, development partners, researchers—to have a conversation around the topical issues within the extractive sector,” she adds.

To stay abreast of the sector’s trends, the Haki Madini coalition has developed its 2024-2028 strategic plan. This plan, the second of its kind, builds on the gains made through the first strategic plan for the period 2016-2019. The theme of the current strategic plan is ‘Amplifying community voices in the extractives sector.’ It aims to underscore the benefits and gains that the mining sector brings to the people of Kenya.

For communities like the ones in Ngaaie Hills and the far-flung Nguluku area in Kwale, the KHRC’s vigilance isn’t just reassuring; it’s an essential pillar in their ongoing pursuit of justice and acknowledgement.

Through decisive actions and strategic foresight, the KHRC is reshaping the narrative on how communities can benefit from the extractive sector and paving the way for a future defined by increased justice and equity. While the KHRC’s advocacy efforts on this front may not always make headlines, there’s no doubt that the organisation’s profound impact on communities throughout Kenya is illuminating a path toward a fairer, more inclusive world for all.

Fighting for Political Integrity: The Role of KHRC and Its Allies



“Our overarching goal was to redirect focus to Chapter Six of the Constitution, highlighting the integrity—or lack thereof—of those seeking public office.” — Annet Nerima, Programme Manager, Inclusion and Political Justice, Kenya Human Rights Commission

“It is totally false to suggest, as we are apt to do, that Nigerians are fundamentally different from any other people in the world. Nigerians are corrupt because the system under which they live today makes corruption easy and profitable; they will cease to be corrupt when corruption is made difficult and inconvenient.” — Chinua Achebe, excerpt from *The Trouble with Nigeria* (1983)

Chinua Achebe’s discerning analysis of Nigeria’s challenges in the 1980s still resonates with astonishing relevance. Replace the date and the country, and Achebe’s profound insights could easily be applied to Kenya today. Such is the force of his penetrating insight that the power and precision of Achebe’s words remain undiminished, as they encapsulate the prevailing challenges faced by Kenya and its people.

Kenya’s political landscape has long grappled with significant challenges related to integrity and accountability, issues that have, in turn, fuelled a culture of impunity within the country. These intertwined problems have cast a shadow over Kenya’s governance and development, hindering progress and perpetuating a cycle of mismanagement and impunity.

In the annals of Kenya’s legal history, few cases have captured the zeitgeist of the nation’s democratic aspirations quite like the landmark 2012 High Court petition seeking to bar then-

presidential candidate Uhuru Kenyatta and his running mate, William Ruto, from contesting the 2013 presidential election. The stakes were high. Beyond determining the successor to Mwai Kibaki as Kenya's fourth president, the consequential election would mark the dawn of a new era—the inaugural administration under the 2010 Constitution.

A Seismic Legal Battle

The case was an epic legal battle pitting the imperatives of constitutional integrity against political expediency. The petitioners, led by the Kenya Human Rights Commission and Kenyan Section of The International Commission of Jurists and International Center for Policy and Conflict (ICPC) invoked the leadership and integrity provisions of Chapter Six of the Constitution to combat the looming spectre of impunity and ethical decay.

At the heart of their legal argument lay the ominous shadow of impending trials at the International Criminal Court (ICC) in The Hague. Here, Kenyatta and Ruto stood as central figures among the “Ocampo Six” indicted by then ICC Chief Prosecutor Luis Moreno Ocampo as bearing the greatest responsibility for the wave of death and devastation that engulfed Kenya in the aftermath of the 2007 presidential election.

As the post-election violence continued to cast a long shadow over the nation's conscience, the soul of the nation was on trial before the High Court, and the KHRC, ever a dogged advocate of justice and accountability, was a chief protagonist.

With the ICC trials looming on the horizon, the KHRC and four other petitioners from civil society painted a vivid picture of a constitutional crisis. They underlined the irreconcilable dissonance between the demands of public office and the grim reality of formal criminal accusation. As the curtains rose on the judicial drama at the High Court in early 2013, the KHRC was in its element; its gaze firmly fixed on the fighting for ideals enshrined in the constitution.

It is a role that suits the KHRC well. Since its founding in 1992, the Commission has always exhibited an unshakable resolve in defence of the rule of law. From time to time, this has meant marshalling a formidable array of legal talent and advocacy expertise to keep the nation firmly within constitutional guardrails.

The Hallowed Tenets of Chapter Six of the Constitution

It is something the KHRC was built for, doubly so when an election is on the horizon. This was on full display during the High Court petition seeking to bar Kenyatta and Ruto from the presidential ballot. In their impassioned plea before the court, the KHRC's legal team invoked the hallowed tenets of Chapter Six of the Constitution, which puts a premium on ethical conduct and moral rectitude in the corridors of power.

They argued that the election of candidates embroiled in ICC proceedings would constitute a grave affront to the Constitution, undermining the very fabric of democratic governance and eroding public trust in the sanctity of the electoral process.

Mindful of the profound implications of its decision on the nation's democratic experiment, would the High Court live up to the sacrosanct principles enshrined in Kenya's Constitution or bow to the stark realities of political pragmatism? As the nation held its breath, anticipating a profound legal reckoning within the hallowed halls of the High Court, instead of confronting the profound questions of legal interpretation and fidelity to the Constitution, the court evaded its responsibility, saying it had no jurisdiction over the eligibility question.

Justice Msagha Mbogholi stated that the court was not empowered to adjudicate on the eligibility of presidential candidates. Instead, he emphasised that such a weighty decision fell squarely within the purview of the Supreme Court.

"We were urged to make a declaration whose ultimate aim will result in the determination of a question whether the third and fourth respondents are qualified to offer their candidature to the office of the president or deputy president, respectively. This is an issue which is within the exclusive jurisdiction of the Supreme Court," Mbogholi said.

"We Were up against Extremely Powerful Forces"

"We were up against extremely powerful forces," recalls Atsango Chesoni, former Executive Director of the KHRC.

"Contrary to popular belief, the High Court never reached a verdict on that matter," she clarifies. "The judges opted to consolidate various challenges, some seemingly orchestrated to muddy the waters."

"During that period, the Supreme Court unexpectedly claimed jurisdiction over challenges related to presidential candidates. The Supreme Court retroactively altered its rules from the time we initially filed the case until the High Court judges rendered their judgment," she recounts.

“At the eleventh hour, we were informed that we were in the wrong court and lacked jurisdiction to pursue the matter. Yet, simultaneously, we were reprimanded for raising the issue at all.”

In a statement released on February 16, 2013, the KHRC unequivocally stated its rejection of “the election and appointment of any individual credibly implicated in and accused of any crimes and misconduct, including crimes against humanity, economic crimes, gross human rights violations, moral turpitude or violations of any provisions of the Constitution with regard to leadership and integrity.”

The KHRC also strongly disagreed with the High Court ruling on the petition, particularly on the question of the interpretation and enforcement of the leadership and integrity provisions of Chapter Six of the Constitution.

“Oddly enough, the High Court proceeded to comment on the issue,” Atsango notes.

“If a court determines it lacks jurisdiction, the matter should conclude there. However, they proceeded to award costs to Kenyatta and Ruto, citing the numerous litigations they faced. It was nonsensical.”

“You can’t award costs when a matter remains undecided,” she asserts.

“Receiving costs because of facing litigation? How is that relevant? It was a flawed decision that later came back to haunt us.”

A Staggering Ksh96 Million Legal Bill

The repercussions were swift.

“Three years into my tenure, we were confronted with the threat of a staggering Ksh96 million (\$1.1 million)* legal bill,” Atsango recalls.

“It was an attempt to enforce the judgment as to costs from the case aimed at barring Kenyatta and Ruto from the 2013 ballot under Chapter Six of the Constitution.”

However, the KHRC ultimately prevailed on appeal.

For the KHRC, the legal battle before the High Court was not merely a quest for legal victory but a reaffirmation of its commitment to expanding the embrace of democratic ideals in Kenya, including the constitutional requirement to keep individuals with questionable ethics off the ballot no matter the position for which they are vying. Undaunted by the 2013 setback, the KHRC has continued to back initiatives aimed at exposing and sidelining politicians with questionable integrity from the political landscape.

Annet Nerima, the Programme Manager responsible for Inclusion and Political Justice at the Kenya Human Rights Commission, takes the work of advancing transparency, accountability, and

public participation in the management of public resources in Kenya with the urgency and seriousness it deserves. She was one of the driving forces behind a groundbreaking initiative in the lead-up to Kenya's 2022 General Election.

“Our overarching goal was to redirect focus to Chapter Six of the Constitution, by focusing attention on the integrity—or lack thereof—of those seeking public office,” Nerima explains.

Thus, the National Integrity Alliance was born. It saw the KHRC joining forces with esteemed civil society organisations such as Mzalendo Trust, Transparency International (TI), The Institute for Social Accountability (TISA), and Inuka Kenya Ni Sisi! Together, they launched a concerted effort to scrutinise all aspiring candidates with the aim of safeguarding citizens from entrusting their future to leaders of dubious integrity.

Nerima vividly recalls how the National Integrity Alliance (NIA) identified and campaigned against politicians deemed to lack integrity. The KHRC's involvement intensified during the election year when the members of the National Integrity Alliance sought the organisation's assistance. Their collaborative efforts birthed the iconic Red Card Campaign—a symbol of citizens' refusal to accept leaders of questionable integrity.

After careful vetting, the KHRC and its allies under the National Integrity Alliance set out to name and red-card aspirants tainted by allegations of corruption and malpractice. Consequently, the Ethics and Anti-Corruption Commission (EACC) blacklisted 241 individuals deemed unfit to hold office, an unprecedented move that reshaped Kenya's political landscape.

Rooted in the constitutional principles of leadership and integrity, the campaign's objectives were as noble as they were ambitious—to empower citizens, influence legislation, and hold leaders accountable to the highest ethical standards.

“Anyone not cleared is not ethically fit to hold public office,” declared the campaign's foundational premise.

The Red Card Campaign's Journey

“The Red Card Campaign was a game-changer,” Nerima explains. “It was our way of saying ‘enough is enough’ to politicians who prioritised self-interest over the welfare of the people.”

“Partners such as Sheila Masinde from TI and Wanjiru Gikonyo from TISA played key roles in amplifying the campaign's message,” she recalls. “Through numerous media appearances, they effectively conveyed the urgency and significance of our mission.”

The Red Card Campaign's journey over the years is one of triumphs and tribulations, victories and setbacks, as it navigates the murky waters of electoral politics in Kenya. With each election cycle, the campaign evolves, refining its strategies and expanding its reach. In 2017, some 20 individuals

faced the red card – a symbolic gesture signalling their unsuitability for public office – but by 2022, the number had swelled to 25 — a sign of the campaign’s growing influence and the urgency of its mission.

“We came up with a list of 25 individuals who we believe had questionable integrity,” Nerima recalls.

“We called it the Red Card list,” she explains. “It was our way of signalling to voters that these were individuals who did not deserve their trust or their votes.”

The campaign’s impact was profound, reaching across mainstream media with calculated precision.

“We were everywhere,” Nerima says. “From TV interviews to newspaper headlines, we made sure that our message was heard loud and clear.”

The KHRC, with its characteristically fearless approach, refused to shirk the responsibility of holding leaders to account.

But it was not all smooth sailing. As the Red Card Campaign echoed through the political landscape, the KHRC faced challenges and sceptics within the coalition itself. Nerima says that behind the scenes, the KHRC’s firm belief in facing impunity head-on clashed with a desire among some of its partners to avoid confrontation. The KHRC’s courage during this period echoes a recurring theme—a firm commitment to standing strong for what is right.

Besides the Red Card Campaign, the KHRC pursued other means of integrating integrity conversations into the election agenda, including influencing major stakeholders such as the Independent Electoral and Boundaries Commission (IEBC) and even supporting the presidential debate financially and technically.

The impact of the campaign was profound. In the months leading up to the election, several of the individuals named on the Red Card list withdrew their candidacy, unwilling to face the scrutiny of an informed electorate.

“It was a victory for democracy because the voters had the information they needed to make informed choices at the ballot box,” Nerima declares.

Nairobi Governor Mike Sonko

Another one of the Red Card Campaign’s notable victories was the concerted effort to keep former Nairobi Governor Mike Sonko, who has a history of ethical transgressions and corruption scandals, off the ballot. The KHRC, along with its partners, pursued the case relentlessly, ultimately securing Sonko’s ban from vying for the Mombasa gubernatorial seat.

“We can authoritatively say that we contributed to the Mike Sonko case because it was filed in Mombasa by our partner, Haki Yetu. As National Integrity Alliance we were also able to jump on it and make sure that we pursue it to the end. Eventually, Sonko was banned from vying,” Nerima recalls proudly.

Through public interest litigation and legislative advocacy, the KHRC seeks to hold electoral vetting institutions accountable and ensure compliance with Chapter Six of the Constitution—a bulwark against the erosion of democratic norms and values.

In this vein, another challenge the KHRC took on involved navigating the finger-pointing between the Independent Electoral and Boundaries Commission (IEBC) and the Ethics and Anti-Corruption Commission (EACC) regarding who should prevent candidates with integrity issues from vying.

“We also filed a case on who, between the IEBC and the EACC, has the last say on blacklisting individuals with questionable integrity because the two bodies like to pass around blame,” Nerima explains.

Shaped the Leadership and Integrity Narrative

In the aftermath of the 2022 General Election, the KHRC’s legacy shines bright. Out of the 25 individuals red-carded, 48 per cent were not elected to office—a marked improvement from previous years. Moreover, the campaign’s ripple effect extends far beyond the electoral arena, shaping public discourse and influencing media narratives.

“The Red Card Campaign shaped the leadership and integrity narrative,” attests the campaign’s report card, which stressed the importance of its role in elevating ethical considerations in political discourse. Through mainstream and social media engagements, the KHRC and its allies amplified the voices of citizens demanding accountability and transparency in governance.

“The decrease in the percentage of red-carded individuals being elected to office is a positive change,” affirms the campaign’s progress report.

Despite setbacks in certain cases, the KHRC is determined to learn from mistakes and forge ahead. One of the lessons is to get off the blocks early next time around in terms of blowing the whistle on candidates with integrity issues.

“That was a key lesson for us. We hope that next time around we can start early,” Nerima says.

“Our work is far from over, but as long as there are individuals and organisations willing to stand up and fight for what is right, I am confident that change is possible.”

The Battle is Far from Over

The Red Card Campaign is more than a list—it shows the KHRC's commitment to ensuring leaders with questionable integrity do not get into public office. Initially conceived as a mechanism to name and shame, it has evolved into a catalyst for broader conversations on political accountability and integrity.

The campaign has become a symbol of citizens reclaiming their agency, holding leaders to account, and demanding a political landscape built on integrity. It also highlights the KHRC's commitment to a future where integrity is not a choice but a non-negotiable requirement for leadership in Kenya.

The battle is far from over, as the KHRC continues to wage war against impunity and corruption, one red card at a time. Nerima recalls the decisive moments in the Red Card Campaign.

“It was about courage,” she explains. “We stood our ground, unafraid to confront those who sought to water down our message. We were a coalition, and we refused to compromise our principles.”

Nerima shifts her focus to the broader implications of the KHRC's work on public finance accountability. The KHRC's involvement in coalitions such as Okoa Uchumi reflects its commitment to prudent management of public debt and public finance management in general.

Advocating Transparency and Accountability

Nerima challenges the government's promises of fiscal responsibility and stresses the significant impact of debt mismanagement on governance and development.

“We believe there's been mismanagement in this country,” she laments. “This government, for example, has spent and borrowed more than Ksh1.8 trillion (\$13.9 billion)* in just a year. Why?”

Nerima then segues into the KHRC's involvement in pushing for transparency and accountability in the Finance Bill, 2023. She describes how they mobilised the public, engaged the media, and initiated public interest litigation to challenge the government's fiscal decisions.

“We needed a multifaceted approach,” Nerima emphasises. “We couldn't just submit a memorandum and hope for change. We had to take to the streets, engage the media, and pursue legal avenues to make an impact.”

Nerima explains that the KHRC has embarked on an initiative to work closely with independent institutions, including the Commission on Revenue Allocation, the Auditor General, the Public Service Commission, and the Independent Electoral and Boundaries Commission. By strengthening their capacity and collaboration, the KHRC aims to foster a culture of accountability and integrity within these organisations.

Every Kenyan deserves to enjoy the benefits of prudent public finance management, and the KHRC is committed to holding those in power to account.

“It’s about ensuring that public resources are used for the benefit of all Kenyans,” she declares.

The KHRC is determined to promote integrity, transparency, accountability, and public participation in the management of public resources. In the face of adversity and serious pushback, the organisation has worked with partners and collaborators to remind Kenyans of the better angels of their nature to ensure a brighter, more accountable future for their nation.

KHRC’s Bold Constitutional Challenge

The KHRC approaches this mission with great agility. Following youth-led, nationwide protests advocating accountability and good governance—ignited by their defiant but well-founded opposition to the punitive taxation proposals in the Finance Bill, 2024—President William Ruto was forced to take decisive action. On July 11, 2024, Ruto dismissed his Cabinet Secretaries and Attorney General, sparing only the Prime Cabinet Secretary and Foreign and Diaspora CS Musalia Mudavadi.

After a period of what he called “reflection and broad consultation”, President Ruto nominated a new slate of Cabinet Secretaries, branding it a “broad-based government” that included members of the parliamentary minority, a few holdovers from the previous Cabinet, and a sprinkling of new faces. Despite the public outcry over clear issues of integrity, accountability, and competence, 19 of the 20 nominees were swiftly approved by Parliament on August 8, 2024, following a perfunctory vetting process. Kenyans were far from pleased.

True to its longstanding role as a constitutional watchdog, the KHRC promptly filed a petition before the High Court of Kenya in Nairobi on August 9, 2024. The petition argued that the nomination, vetting, and appointment processes failed to adhere to the standards set by the Constitution and relevant laws. The KHRC is the lead petitioner in the case, with renowned pro-accountability activist Wanjiru Gikonyo serving as the second petitioner. The petition is supported by an affidavit sworn by Davis Malombe, the Executive Director of the KHRC.

Central to the petition are concerns about the lack of accountability and transparency in the vetting process conducted by the National Assembly, as well as integrity issues surrounding some of the nominees. The petition brings out how these failures threaten the foundational principles of the Constitution, particularly those relating to public participation, transparency, integrity and accountability that are crucial to good governance. The KHRC argues that the vetting process for the Cabinet Secretary nominees was flawed owing to inadequate public participation and the rejection of a significant number of public memoranda on procedural grounds.

The petition relies on several key provisions of the Constitution, particularly those related to sovereignty, the rule of law, and integrity in public office. Article 1 of the Constitution establishes that all sovereign power belongs to the people of Kenya and that this power must be exercised in accordance with the Constitution. This principle underpins the entire petition, as the petitioners argue that the vetting and appointment processes did not adhere to the constitutional requirements, thereby violating the sovereignty of the people.

Article 10 of the Constitution enumerates the national values and principles of governance, including the rule of law, democracy, transparency, and accountability. The petitioners contend that these principles were not upheld in the vetting process, as the public was not given sufficient opportunity to participate meaningfully, and the criteria for rejecting public memoranda were not transparent. The petition also invokes Article 73, which requires that state officers exercise their authority in a manner consistent with the purposes and objects of the Constitution. The integrity concerns raised in the petition are directly related to this provision, as the petitioners argue that some of the nominees do not meet the ethical standards for occupying public office under Chapter 6 of the Constitution.

Furthermore, the KHRC raised concerns about the integrity of some of the nominees, pointing to ongoing investigations and unresolved issues that should have disqualified them from consideration. By bringing these issues to court, the KHRC seeks to ensure that the appointments are made in full compliance with the Constitution, thereby protecting the integrity of Kenya's governance structures. Malombe's affidavit in support of the petition provides crucial evidence of the procedural flaws in the vetting process and the ethical concerns surrounding some of the nominees. His involvement underscores the KHRC's determination to ensure that the Constitution is not just a document of lofty ideals but a living framework that guides the governance of Kenya in a manner that respects the rights and dignity of every citizen.

Gikonyo, a formidable presence on the KHRC board, has dedicated her career to empowering citizens and promoting government accountability. Her participation in the petition underscores the importance of citizen involvement in defending the Constitution and holding public officials to account. Gikonyo's work has consistently focused on empowering citizens to actively participate in governance processes. She has been a vocal advocate for greater transparency in government, particularly in how public resources are managed and how public officials are held to account.

"The Constitution belongs to the people of Kenya," Gikonyo insists, her words carrying the weight of a deeply held conviction.

"It is the duty of every citizen to defend it against any form of violation or erosion."

For Gikonyo, the petition is not merely about rectifying appointments; it is about reaffirming the hard-won principles of governance that emerged from Kenya's second liberation.

"We are beneficiaries of the second liberation, which ended authoritarian rule under Moi," she reflects.

"Our political and civic leaders fought for one of the most progressive constitutions on the continent, but now we need a third and final liberation—to end the entrenched political culture of corruption. That starts by appointing people of integrity to state office."

Her critique of the current administration and Kenya's Parliament is both pointed and unrelenting.

"How dare the Speaker of the National Assembly not even interrogate the substantive issues of the appointees?" Gikonyo demands.

"In a time of economic hardship, how is it possible for Cabinet Secretaries to amass wealth at such an alarming rate? The committee of Parliament short-changed Kenyans and abused the will of the people," she asserts.

The current is not just a matter of present concerns—it is about safeguarding the future. "We need a social standard where we shun those who have benefited from public office under suspicion. Even if cases are dismissed on technicalities, unresolved issues should disqualify individuals from public office. This case is a significant one, and we count on the courage of the courts and the people of Kenya to uphold the Constitution and protect our nation from the existential threat posed by corruption."

Gikonyo also says that her involvement in the case is a solemn tribute to the lives lost during the youth-led protests that were violently suppressed by the state.

"It's to say we will continue the struggle."

Gikonyo's thoughts align with the determination of a generation of Kenyans committed to the long, arduous task of holding power to account—a task she and the KHRC believe is crucial for the future of the nation.

On August 9, 2024, in response to the petitioners' prayers, Justice Bahati Mwamuye issued a conservatory order mandating the Attorney General and the National Assembly to collect and preserve all documents related to the nomination, vetting, and appointment of Cabinet Secretaries.

The order stated in part: "Pending the inter partes hearing and determination of the Application dated 08/08/2024, a conservatory order be and is hereby issued requiring the 2nd Respondent and any other State or Public Office or Agency involved in or which participated in the nomination, vetting, and appointment of the Cabinet Secretaries sworn into office on 08/08/2024 to collate and preserve all documents and records related to the nomination, vetting, and appointment processes of the Cabinet Secretaries sworn into office on 08/08/2024."

The KHRC has once again taken a bold stand in defence of the 2010 Constitution. The petition in the High Court is a powerful reminder that the Constitution is not merely a set of guidelines but the supreme law of the land, binding on all persons and institutions. It is a call to action for all Kenyans to remain vigilant in defending their Constitution and to demand that those who hold public office do so with integrity and in full compliance with the law. The KHRC's efforts in this case represent a broader commitment to ensuring that Kenya's governance remains transparent, accountable, and true to the principles enshrined in the Constitution.

As the High Court considers this petition, it is not just the fate of the Cabinet Secretary nominees that hangs in the balance but the integrity of Kenya's constitutional democracy. The outcome of this case will have far-reaching implications for how power is exercised in Kenya and whether the principles of the 2010 Constitution continue to guide the governance of the nation.

Unmasking Injustices: The KHRC and Ndula Resource Centre's Fearless Battle against Kakuzi PLC



“The KHRC will continue to hold Kakuzi to account on behalf of the communities involved. We want justice, whichever way it comes.” — Mary Kambo, Programme Manager for Economic & Social Justice, the KHRC

Hell hath no fury quite like a corporate entity that is not used to playing by the rules when its sins are laid bare before the whole world.

For such unscrupulous actors, you can expect neither contrition nor remorse. Just retribution clothed in the form of a Strategic Lawsuit against Public Participation, commonly known as a SLAPP suit, a favourite tool of the heavily lawyered. Such lawsuits (which use flimsy grounds such as defamation, copyright infringement, or harassment) are designed not necessarily to win in court but rather to intimidate and financially exhaust any opponents, activists or whistleblowers who dare to criticise or expose corporate wrongdoing.

In the face of such intimidating legal manoeuvres, even the most well-meaning human rights activists might sometimes make a hasty retreat because they fear the overwhelming legal firepower wielded by well-funded corporate juggernauts. Fortunately, the Kenya Human Rights Commission is made of sterner stuff and doesn't back away from going toe-to-toe with such behemoths in the pursuit of its mission as a steadfast guardian of justice, particularly within the communities that need it most.

A Corporation that's Become a Law unto Itself

The KHRC has waged a spirited battle to bring the Kenyan horticulture powerhouse Kakuzi PLC to account for a long list of serious transgressions, including historical displacement, environmental violations, and shocking allegations of violence, encompassing not only assaults and rapes but also killings, all reportedly committed by Kakuzi guards against the communities residing adjacent to its sprawling 16,000-hectare (39,537-acre) farm in Murang'a County.

Owned by a UK-based parent company, Camellia PLC, Kakuzi's mainstay is the cultivation of avocados, pineapples, and macadamia nuts, alongside ventures in forestry, livestock farming, and real estate development. With its headquarters in Thika, Kenya, Kakuzi has carved a niche for itself, especially in the avocado sector. Its products have won acclaim in both local and international markets, notably in Europe. However, over the years, Kakuzi has also come to epitomise the classic trope of a corporation that's become a law unto itself.

Beneath the surface of agricultural success lies a web of controversies that cast a shadow over Kakuzi's operations and turn it into a poster child for capitalism run amok. The company has been embroiled in allegations of human rights abuses and environmental degradation. These allegations are not just minor blemishes but serious accusations that have sparked protests and demands for more ethical and sustainable practices.

Mary Kambo, the Programme Manager for Economic & Social Justice at the KHRC, has been at the forefront of this battle, working with collaborators from Ndula Resource Centre (NRC), a community-based organisation that has been campaigning to have Kakuzi's violations addressed since 2003.

Kambo is the personification of the single-mindedness, resolve and persistence that the KHRC team brings to the pursuit of justice.

The Kakuzi story is rooted in historical land injustices that have festered for decades. Eleven local communities, whose forefathers once thrived on what is now the Kakuzi estate, found themselves pushed out by the ever-expanding company. Kakuzi's relentless acquisition of land came at the expense of these impoverished communities.

"These were unskilled labourers, the backbone of the company," Kambo explains. "They depended on Kakuzi for their livelihoods, but as they toiled, their ancestral lands were slipping away."

Squatting on Soil that Once Belonged to their Forefathers

As time passed, the situation worsened. Some were forcibly moved to unproductive, hilly terrains, while Kakuzi seized their fertile, productive land. This left communities squatting on the very soil that once belonged to their forefathers, trapped in a cycle of poverty.

Desperation led some to trespass onto Kakuzi's now legally claimed territory, mainly for grazing. Young men who dared to graze animals in these areas became victims of terror and brutality at the hands of Kakuzi's security guards. Accused of trespassing, their livestock were often confiscated, and they were forced to pay hefty fines for their release.

Kakuzi's abuses are a tale of human carnage. The sheer scale of the impact makes it impossible to fully convey the depth and lurid intimacy of each violation of human rights endured by residents over the decades. However, it is essential to share the experiences of three community members whose traumas have been documented by the KHRC and Ndula Resource Centre over the years.

Female workers faced particular vulnerabilities, including sexual harassment from male managers and supervisors while labouring in the avocado fields.

"Women workers suffer a lot here. If we had other options, we would not be here," one female worker on the avocado farm laments.

Regrettably, employment prospects in the region are scarce, with limited options for livelihoods. Kakuzi is the largest employer in the vicinity, making the communities heavily reliant on the company for their survival.

The resident community was confronted by another deeply troubling issue: Kakuzi's adamant refusal to allow community members to traverse its property using motorised transport. Children are forced to brave fields infested with snakes and other dangers, setting out on treacherous journeys as early as five o'clock in the morning just to attend school. Meanwhile, women in dire need of urgent hospital care during childbirth had to be transported across the rugged terrain on stretchers, resulting in the tragic loss of lives for mothers and unborn children.

"The blood of women and the children who have lost lives [...] shall haunt the company. Kakuzi treats wildlife better than human beings," says a woman from one of the affected communities.

For many communities in the area, firewood is their primary source of domestic fuel. Yet, those the guards find gathering firewood face the dreadful prospect of physical assault or rape.

"Kakuzi has for far too long had its say and way in how it treats local communities—with impunity," says Joseph, a community member who allegedly suffered arrest and assault at the hands of Kakuzi guards in late April 2019.



Kennedy Musyoki displays a deep laceration allegedly inflicted by security guards at the expansive Kakuzi plantation in Kirima, Gatanga, Murang'a County, in October 2020. Photo: The Standard Media Group

The Journey towards Justice

Swaleh Githinji, a fearless and vocal advocate for the rights of his community and the labourers, has played a central role in this saga. Beginning in the early 2000s, when local authorities showed little willingness to address the community's grievances, particularly concerning the brutality of security guards employed by Kakuzi, Githinji and his fellow activists at Ndula Resource Centre jumped into the fray. Frustrated by the lack of progress, they sought alternative avenues to make their voices heard.

"In 2017," Githinji narrates, "we hosted the United Nations Business and Human Rights Working Group from Geneva. They came and they had a meeting with the victims of brutality in Kakuzi." These interactions marked the initial steps toward international intervention.

The culmination of these efforts came in 2019 when the KHRC brought in UK law firm Leigh Day to mount a legal battle against Kakuzi. The law firm's investigative missions in 2019 and 2020 looked into the allegations of brutality, providing crucial insights into the situation on the ground.



Victims who alleged human rights abuses by Kakuzi Limited gather in Kinyangi village, Gatanga, Murang'a County, in October 2020. Photo: The Standard Media Group

The journey towards justice was fraught with challenges, including the outbreak of the Covid-19 pandemic. Travel restrictions threatened to disrupt the investigations, placing an onerous responsibility on Ndula Resource Centre to keep things moving. But their determination knew no bounds. Collaborating closely with the KHRC, they persisted in their mission. By uniting other victims, they registered a total of 89 claimants with 99 cases, each seeking reparation for the injustices suffered at the hands of Kakuzi's security guards, ranging from assaults to rape and even murder.

Kakuzi, a corporate giant with powerful political connections in Kenya, did not yield easily. It attempted to sway public opinion by mobilising its influence.

“We Received Calls from very Powerful State Operatives”

“Kakuzi is powerful, extremely powerful,” Kambo notes. “Its web of connections with the Kenyan political elite made this battle all the more daunting.

“The entire process was laced with threats,” she reveals. Githinji and fellow activists at Ndula Resource Centre were arrested and subjected to unrelenting interrogation by the authorities at the urging of Kakuzi.

“We received calls from very powerful state operatives,” Kambo continues. “Have you thought about the implications of the kind of campaign you’re doing against Kakuzi?” they questioned.”

Githinji says local authorities, including the Directorate of Criminal Investigations (DCI) and the Kenyan police, played a critical role in Kakuzi’s intimidation tactics that targeted him and other activists associated with Ndula Resource Centre.

“The local police were very keen on preferring serious criminal charges against me and others from Ndula Network because of what was happening in Kakuzi between 2019 and 2021,” Githinji explains.

Githinji recalls the intense harassment faced by him and fellow activists, including David Ndambuki and John Kihara, prominent workers’ rights advocates in their own right.

“Kakuzi went on a desperate offensive, using the DCI in Gatanga, the DCI in Nairobi, the DCI in Murang’a, to harass us,” he narrates.

“The DCI was very clear with me,” Githinji remembers.

“They accused me of three things: coaching witnesses, fabricating documents used in the UK case, and economic sabotage.”

The gravity of these accusations cannot be overstated. Economic sabotage, in particular, carried severe consequences.

“According to the Penal Code, it carries a weight as heavy as treason in Kenya,” Githinji remarks

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Kakuzi’s Achilles’ Heel—the Market

The turning point came when the KHRC and its partners exposed Kakuzi’s Achilles’ heel—the market.

With the help of media outlets like *The Guardian* and *The Sunday Times*, the campaign gained massive publicity, leading to market boycotts of Kakuzi’s produce in Europe.

“If there was one campaign that got a lot of publicity it was the Kakuzi campaign,” Githinji

recalls. The campaign quickly garnered global attention as the world rallied against Kakuzi's actions.

Because of the effectiveness of the campaign during this tumultuous period, Kakuzi's avocado exports came to a screeching halt, severely impacting the company's bottom line. Githinji was accused of contributing to this situation, adding to the severity of the trumped-up charges that the authorities were threatening him with. Kakuzi, despite all its huffing and puffing, failed to substantiate the claims, leading to the criminal charges being dropped.

Only then did Kakuzi's parent company, Camellia, come to the negotiating table. The possibility of an out-of-court settlement quickly emerged, a route chosen to expedite justice and avoid a long, costly legal battle.

But the case wasn't just about getting a large settlement sum on behalf of the communities. The KHRC team pushed for individual compensation for those directly harmed, recognising that communal reparations alone would not suffice.

As Kambo recounts, "Camellia didn't willingly accept a massive compensation payout. They even questioned the ability of such seemingly impoverished communities to manage such sums. But we knew that individual justice was essential."



Programmes Manager Mary Kambo (left, seated) and Davis Malombe (second right, seated) of the Kenya Human Rights Commission with residents from 13 communities bordering Kakuzi Limited in Murang'a County in November 2020. Collaborating closely with Ndula Resource Centre, the KHRC waged a monumental legal battle against Kakuzi on behalf of victims affected by a range of crimes committed by Kakuzi and its agents. Photo: The Standard Media Group

A Significant Victory

In the end, in February 2021, the UK lawsuit yielded compensation in the sum of Ksh752 million (\$6.9 million)* for the victims, a significant victory for the campaign. It was a hard-won fight, and it bore witness to the indomitable spirit of the communities and the human rights organisations that stood by their side. A brighter future beckoned for the communities once oppressed by Kakuzi.

But there was a sting in the tail. Kambo reveals how Kakuzi, in a desperate bid to silence its critics, wielded the weapon of a SLAPP suit against the KHRC and Ndula Resource Centre.

“In March 2021, we were sued by Kakuzi,” she states. It was a defamation claim, but they saw it for what it was—a SLAPP suit, a corporation’s weapon of choice to muzzle its detractors.

“The SLAPP suit was an end product,” says Githinji, who was tasked with providing evidence to counter Kakuzi’s claims.

“After the claim had been settled, they had to come up with a way to permanently silence both the KHRC and Ndula,” Githinji explains. In his telling, the settlement announcement, coupled with a joint press release by the KHRC and Ndula on February 14, 2021, further enraged Kakuzi. The company viewed the press statement as belittling and disparaging the settlement.

“Our legal team was able to counter the suit at the High Court, and it was dismissed,” Githinji proudly notes. However, Kakuzi’s refusal to pay the suit’s costs has left the matter unresolved.

All said, the partnership between the KHRC and Ndula Resource Centre has proven useful in shedding light on the injustices faced by the community. It’s been a long, hard slog. It has demonstrated the KHRC’s strong commitment to championing the rights of the marginalised and oppressed in Kenya.

“It all began way back in 2003 when we initially engaged the Kenya Human Rights Commission staff to collaborate with us in addressing the controversies and challenges surrounding the Kakuzi company,” Githinji remembers.

Kambo and Githinji emphasise that, in the spirit of sustained advocacy, the KHRC and Ndula Resource Centre did not confront the challenge posed by Kakuzi in isolation. Indeed, their success in the Kakuzi campaign was the result of collaborative efforts with several dependable partners.

Good Friends in Foreign Places

“The success of the Kakuzi campaign is attributed to the advocacy efforts that have spanned many years, both locally and globally, with the involvement of Ndula, the KHRC, Centre for Research on Multinational Corporations (SOMO) from the Netherlands, Ethical Trading Initiative (ETI) of Britain, and other partners,” Githinji explains.

SOMO, the Centre for Research on Multinational Corporations, based in Amsterdam, has partnered with numerous organisations worldwide to investigate multinational corporations and their impacts on people and the environment.

Meanwhile, the Ethical Trading Initiative (ETI), headquartered in the UK, has played an important role in ensuring labour standards compliance in the global supply chains of member companies, making their support invaluable in the Kakuzi campaign.

A significant aspect of this collaboration has been the capacity building initiatives facilitated by the KHRC.

“I must honestly acknowledge that the level of capacity building that we have received from the KHRC is first class,” Githinji commends.

These newfound skills have had a ripple effect in the community, enabling members to understand and assert their rights more effectively. Another important aspect of their partnership is media publicity.

“The KHRC introduced us to a network of media professionals and assisted us in effectively presenting our stories for maximum impact. This increased visibility has allowed the communities to amplify their struggles, harnessing the power of public awareness to champion their rights,” Githinji explains.



Murang'a-based journalists protest against assault on their colleagues by Kakuzi security guards in September 2016. The Kenya Human Rights Commission has collaborated closely with local stakeholders to hold Kakuzi Plc to account and prevent further human rights abuses against residents. Through advocacy and strategic partnerships, the KHRC continues to champion justice and uphold human rights standards, ensuring the safety and dignity of affected communities in Murang'a and beyond. Photo: The Standard Media Group



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*“The implications of the victory against Kakuzi
extended far beyond monetary compensation.”*

Githinji also emphasized the benefits of the KHRC's exchange initiative, which enables organisations within its Human Rights Networks (HURINETS) to share valuable ideas and experiences.

"The KHRC has ensured that our network can interact with other networks, learning from their best practices and sharing our own. This process of mutual learning and experience-sharing has been central to strengthening Ndula's role in advancing human rights within the community," he says.

"All these things have really helped boost Ndula as an organisation and the communities' capacity to know, claim, and defend their rights because that is our function—to know, claim, and defend our rights. Ndula has been fluent in human rights."

A Change of Behaviour and Attitude

The implications of the victory against Kakuzi extended far beyond monetary compensation.

"The biggest qualitative outcome is a change in behaviour and attitude," Githinji points out.

This transformation occurred not only within Kakuzi but also in the hearts and minds of the local communities. Instances of Kakuzi's security guards assaulting community members virtually disappeared, marking a significant shift in behaviour and practice.

Moreover, the campaign led to tangible improvements in workers' rights. Before the UK campaign, Kakuzi had shown little regard for union demands and collective bargaining. Within a year, workers' salaries nearly doubled, a historic accomplishment that signalled positive change.

"The fact that we now also have a mechanism we can use to demand improvement and even better practices is a major outcome," Githinji explains.

Beyond labour rights, the campaign yielded victories in community infrastructure and access. Kakuzi agreed to open three roads that significantly improved socioeconomic conditions in the area. The roads facilitated the movement of goods and services, ensuring safer routes for schoolchildren and enhancing overall community well-being.

Githinji lists a range of additional outcomes, from designating areas for firewood collection to supporting local schools by employing teachers and upgrading their infrastructure. The company also organised medical camps for the community and donated tree saplings to be planted to improve the environment.

However, while Kakuzi's actions after the London settlement appear to paint the company as responsible and socially accountable, Githinji is careful to distinguish between these corporate social responsibility (CSR) efforts and true corporate social accountability (CSA). The latter would entail addressing the core issues that led to the campaign and leaving grassroots development to the government rather than filling that void to appear benevolent.

“Corporate accountability would mean Kakuzi surrendering unconditionally all the land it took away from the community, including public land. Corporate accountability would mean Kakuzi opening up all the access roads as they were before it came in, for use by the community and to be maintained by the County Government of Murang’a,” he emphasises.

Unlike the litany of abuses that the KHRC and Ndula Resource Centre were able to get addressed in a foreign jurisdiction with Leigh Day’s help, the land question can only be fully resolved using local mechanisms. Unfortunately, this is an area where Kakuzi, in a very literal sense, hasn’t been willing to yield any ground.

The persistent misuse of legal proceedings by influential corporations such as Kakuzi, particularly in matters pertaining to land, has been a source of profound frustration for the KHRC. Furaha Charo, former Programme Advisor for Land, Environment, and Natural Resource Justice at the KHRC, laments that these tactics are often used to buy time and safeguard corporate interests.

“Land,” she explains, “is the linchpin of their business operations, making it worth any expenditure to protect.”

“When the communities file petitions at the National Land Commission, the companies quickly go to court as a stalling technique. This manoeuvre effectively freezes the process, causing communities to lose precious time. In some cases, there are multiple parallel suits with communities unable to afford legal representation,” Charo explains.

“The financial muscle of these corporations allows them to engage in protracted litigation, further delaying justice. They employ big law firms on retainer, allocating substantial budgets to safeguard their interests.”

Historical Land Injustices are Deeply Entrenched

The current stalemate over the land issue in the Kakuzi campaign epitomises these challenges.

The struggle for justice can indeed be gruelling. Charo explains that the communities the KHRC works with sometimes experience fatigue during prolonged legal battles. Yet, in a world often dominated by quick fixes, the KHRC pursues sustained efforts, because justice often cannot be achieved overnight. Therefore, the battle endures, as the KHRC, Ndula Resource Centre, and the affected communities remain resolute in their determination to surmount these challenges and attain justice.

“It’s not a fight that can end in a quick fashion. Historical land injustices are deeply entrenched, and the road to justice is long and tedious,” Charo emphasises.

“For the KHRC, this underscores the necessity of consistency, patience, and the importance of

fundraising to support these endeavours,” she adds.

In the meantime, for Githinji, the issues of a public apology and a memorial monument also remain unaddressed by the CSR activities touted by Kakuzi.

“Ninety per cent of all the issues that led to the campaign have not been resolved to date,” he says.

The Kakuzi saga, far from complete as it is, is also emblematic of a larger issue in global corporate practices, where the pursuit of profit often overshadows ethical considerations. Kakuzi’s story is a reminder of the need for corporations to balance their business goals with their social and environmental responsibilities.

Kakuzi’s ability to navigate these disputes, often due to its significant political and economic influence, raises questions about the extent to which corporate entities can operate with relative impunity, even in the face of allegations that tarnish their reputation.

The story of Kakuzi is a stark reminder that power and privilege can sometimes shield corporations from the accountability that society expects, leaving those impacted by their actions to call for justice and reform.

But they are not alone. In Kambo’s words, “The KHRC will continue to hold Kakuzi to account on behalf of the communities involved. We want justice, whichever way it comes.”

The KHRC’s relentless efforts over the years, which culminated in the London settlement, have shown that justice can be served, bringing hope to communities that had long suffered in silence. The Kakuzi story is a compelling case study of how to successfully defy the prevailing status quo.

As Kenya wrestles with the resurgence of impunity at various levels of public life, it serves as a moving reminder that even amid the most formidable battles, the flame of justice burns bright.

The KHRC's Advocacy for Freedom of Expression and Assembly



“We all need free speech. Free speech is indeed a tool of the powerful, but it is also crucially the language of the powerless.” — Chimamanda Ngozi Adichie, author and public speaker

“We weren’t thinking of ourselves as activists. We were just people who saw that what was happening was wrong and wanted to do something about it.” — Davinder Lamba, Board Chairperson, the KHRC

What does it take to keep the light of democracy burning? The bedrock of any democratic society is freedom of expression. It enables citizens to freely voice their opinions, exchange ideas, and engage in open discourse about their lives and their society.

From this fertile ground of diverse perspectives, a thousand flowers bloom a free press and academic freedom, freedom of religion and assembly, artistic creativity and all the boundless innovations that spring from the unshackled mind. Freedom of expression is the lubricant that oils the delicate machinery of democracy. It is the fuel that keeps the light of democracy burning.

However, tyranny also comes in many villainous guises, all bent on silencing the truth. Within this perpetual struggle, truth always has a fighting chance as long as there is freedom of expression.

Two striking examples of how the master’s tools can dismantle the master’s house are found in the bold actions of Senegal’s visionary leader, Léopold Sédar Senghor, who wielded French against France, and Ghana’s Kwame Nkrumah, who adeptly and eloquently turned English into a weapon against the British Empire.

To this distinguished pantheon, with their pertinent literary works in tow, we can include Ngũgĩ wa Thiong'o and Micere Githae Mugo (authors of *The Trial of Dedan Kimathi*), Wole Soyinka (renowned for *The Man Died*), Koigi wa Wamwere (known for *My Conscience on Trial*), Wahome Mutahi (famous for *The Jail Bugs*), and a host of others who, in the post-Independence era, courageously confronted power with truth, often at great personal peril.

As Chimamanda Ngozi Adichie, the celebrated Nigerian writer and public speaker, aptly put it: “We all need free speech. Free speech is indeed a tool of the powerful, but it is also crucially the language of the powerless.” These words underscore the need for perpetual vigilance in safeguarding the realm of civic engagement.

Few understand this better than the Kenya Human Rights Commission. For three decades, the KHRC has vigilantly guarded Kenya's civic space, courageously resisting attempts to erode the hard-won progress in securing freedom of expression and other fundamental rights.

For those whose political consciousness extends only as far back as the Moi era—a period often deemed ‘the darkest chapter in Kenya's history’ by some in the local press—it may come as a surprise to discover that Kenya's longest-serving President didn't invent the playbook for silencing dissent. Instead, it's a deeply entrenched issue with roots that trace back to Kenya's colonial past and later to the nascent regime of founding President Jomo Kenyatta.

Irrefutable Evidence that Kenya Was Still a Colonial State

In line with its commitment to foster a greater collective understanding of the past to better inform the future, the KHRC has since its inception in the early 1990s made great efforts through various impactful and thoroughly researched reports and publications to unearth this history and secure its place in public discourse. ‘Independence without Freedom: The Legitimization of Repressive Laws and Practices in Kenya’ is a prime example of this proud tradition. Published in 1994, coinciding with the KHRC's official registration in Kenya, the report starkly exposed the deeply rooted colonial structures embedded within post-Independence Kenya.

Maina Kiai, co-founder of the KHRC and a former Executive Director, lauds the lasting impact of the report: “It provided irrefutable evidence that Kenya was still a colonial state in many ways.”

Few Kenyan NGOs possess the capacity to delve into the past and deliver such penetrating insights on the critical role of freedom of expression in the functioning of a healthy state. It's just one of the many ways in which the KHRC stands apart from its counterparts.

This distinction stems largely from the KHRC's deep institutional memory. To truly grasp this depth, one need look no further than the life story of Davinder “Simba” Lamba, currently

Chairperson of the Board at the KHRC while concurrently serving as the Executive Director of the organisation he founded, Mazingira Institute.

In 1969, a mere six years after Kenya's declaration of independence, Lamba found himself thrust into the spotlight. He was suspended from the University College, Nairobi (now the University of Nairobi) for daring to organise a protest against the cancellation of a public lecture by opposition luminary and former Vice President Jaramogi Oginga Odinga. Also suspended were his fellow students and comrades in arms, including Awori wa Kataka, William Kantai, Apollo Njonjo, and M Oyugi. Lamba admits that at that point, they didn't self-identify as activists, but rather as citizens with a profound commitment to justice.

The Injustice of that Moment Sparked a Flame

"We weren't thinking of ourselves as activists. We were just people who saw that what was happening was wrong and wanted to do something about it," he explains.

"There was a lot of opposition to the suspensions by the student body. The protests that followed were not organised by anybody but rather represented a genuine disapproval of the university's decision. However, the protests were ruthlessly dispersed by officers acting under the instructions of the white police officer who was commanding Central Police Station at the time."

The injustice of that moment sparked a flame within Lamba, propelling his activism in the years that followed, including his collaboration with the KHRC and other civil society actors in the arduous but ultimately successful campaign for constitutional reform in Kenya. Together with its partners, the KHRC has relentlessly advocated, both in the streets and in court, to secure the unencumbered enjoyment of these rights for all Kenyans. These efforts culminated in Kenya's current Constitution, which, in Article 33, unequivocally guarantees freedom of expression.

Every Kenyan has the right to seek, receive, or impart information or ideas, indulge in artistic creativity, and enjoy academic and scientific freedom. However, mindful of Kenya's fraught history with ethnic violence, the Constitution also outlines exceptions to this right, such as prohibiting propaganda for war, incitement to violence, hate speech, and advocacy of hatred based on ethnicity or discrimination. Moreover, to balance freedom of expression with responsibility, the provision mandates that the exercise of this right must respect the rights and reputation of others.

Freedom of expression goes hand in hand with the right to peaceful assembly, which is guaranteed under Article 37 of the Constitution which affirms: "Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities."

“In our ongoing efforts to uphold freedom of expression, the KHRC has spearheaded campaigns centred around various key themes,” says Martin Mavenjina, Senior Programme Advisor for Transitional Justice at the organisation.

“First, we’ve been advocating for the full realisation of the right to expression as enshrined in our Constitution. The KHRC has been of great assistance in orchestrating peaceful demonstrations to amplify this while shedding light on issues such as police brutality and corruption.”

Towards a Protected and Expanded Civic Space

“Take, for instance, the massive protest we organised at Uhuru Park a few years ago around allegations implicating former Devolution Cabinet Secretary Anne Waiguru in the Ksh791 million (\$8 million)* National Youth Service scandal. Despite facing tear gas from the police, we pressed on. Following the protest, I personally donned a suit and tie and headed to the police station to ensure the unconditional release of our arrested colleagues,” he asserts.

“Last year alone, we successfully secured the release of over 80 human rights defenders following various protests.

“Unfortunately, the state has resorted to restricting citizens’ enjoyment of these rights through legislation like the Public Order Management Act,” Mavenjina explains.

“With publications such as ‘Towards a Protected and Expanded Civic Space in Kenya and Beyond,’ in 2016, we’ve aimed to shed light on laws that we believe curtail Kenyans’ rights.”

This 2016 strategy paper was co-published by the KHRC and the International Centre for Not-for-Profit Law (ICNL), Kenyans for Peace with Truth and Justice (KPTJ), and the Civil Society Reference Group (CS-RG). It emerged from the deliberations of a National Civil Society Leaders meeting on May 17, 2016.

During this meeting, the Civic Space Protection Platform in Kenya was formed, with a mandate to support the creation, reclamation, and preservation of civic spaces in Kenya and beyond. Later, the National Coalition of Defenders-Kenya, which was incubated at the KHRC in the aftermath of the 2007 post-election violence, joined the convening team as a co-convenor.

“Because we are living in the age of heavy social media discourse where many Kenyans exercise their right to expression virtually, we’ve been very thorough in identifying laws that encroach upon online freedoms. Utilising relevant publications that are always available on our website, we have managed to successfully engage the government with key recommendations,” Mavenjina explains.

“The Governance and Human Rights Landscape is Rather Bleak at Present”

In the aftermath of the hotly contested 2017 presidential election, the government shut down several privately owned TV stations to stifle media coverage of opposition leader Raila Odinga's purported swearing-in. The decision drew sharp criticism from civil society, including the KHRC.

“We organised a protest against media censorship and pursued the matter in court, where we obtained a favourable decision. It was a firm reminder to the government that even media houses have rights, and it's illegal to shut down their signals without due process,” Mavenjina says.

Looking ahead, he acknowledges the daunting task the KHRC faces in reining in the abuses of power.

“Unfortunately, the governance and human rights landscape in Kenya is rather bleak at present. This means the KHRC and other organisations must work harder than ever to deliver justice for victims of human rights violations and ensure that everyone within our borders enjoys the rights and freedoms guaranteed in the Constitution,” Mavenjina states.

“With Kenya facing such precarious circumstances, the KHRC must remain vigilant, dynamic, and highly responsive. Otherwise, the hard-earned gains we've made could be swiftly erased,” he warns.

“The KHRC has undoubtedly made significant strides in expanding civic space in Kenya, but now is not the time to rest on our laurels.”

The KHRC's established track record of rising to the challenge and defending the rights of Kenyans offers a sliver of solace in these uncertain times.

From the Model Constitution to the Present Day: The Role of the Kenya Human Rights Commission in Shaping the 2010 Constitution



**“The KHRC was the fulcrum upon which the wheels of change turned in the struggle for constitutional reform.” —
Kepta Ombati, veteran human rights defender**

The rollercoaster ride of Kenya’s pursuit of a new constitution, marked by highs, lows, setbacks, false starts, near-misses, and eventual triumph, underscores the wisdom captured in Vladimir Lenin’s famous quote: “There are decades where nothing happens, and there are weeks when decades happen.”

With its myriad plot twists and cast of colourful and unforgettable characters, the tale of how Kenya finally secured its 2010 Constitution is a story that needs little embellishment to be ripe for the silver screen.

The central role played by the Kenya Human Rights Commission and its collaborators in Kenya’s constitutional journey would rightfully claim a substantial portion of the story arc.

Kenya’s constitutional reform journey can be traced back to the early 1980s. However, substantial strides towards democratic reform didn’t materialise until 1991, when President Daniel Moi was pressurised into repealing Section 2A of the former constitution.

That change resulted from a confluence of sociopolitical currents. Primarily, democratisation efforts post-1980s sparked clamour for political pluralism, challenging the single-party system. Economic stagnation and social discontent further fuelled this drive, with citizens demanding greater political freedoms to address systemic issues.

With the end of the Cold War and the fall of the Berlin Wall, international pressure mounted as global norms favoured multiparty democracy, further nudging Moi to align with the exigencies of the New World Order. Additionally, civil society activism and internal dissent within the ruling party,

embodied in the outspokenness of former Cabinet ministers Charles Rubia and Kenneth Matiba as well the agitation of others such as Martin Shikuku, Kimani wa Nyoike, and Masinde Muliro outside the KANU fold, underscored the need for constitutional reform. Ultimately, the convergence of these factors compelled Moi to respond, ushering in a transformative era of political pluralism. However, Kenya still faced daunting challenges on its path to comprehensive constitutional reform.

The Fulcrum upon which the Wheels of Change Turned

Kepta Ombati is a veteran human rights defender whose determination and indomitable spirit have been woven into the fabric of the nation's struggle for constitutional reform. Through the haze of battles fought in the streets, the courts, and the corridors of power, Ombati stands as a profile in dedication to a cause that has touched the lives of every Kenyan.

"I've spent the majority of my adult life in all sorts of struggles for this country," Ombati reflects.

The journey began in the 1990s, a time when Kenya stood on the precipice of change. Ombati, along with a cadre of like-minded individuals, was a pioneering figure in the fight for democratic reform and the empowerment of the nation's youth.

"The two key struggles were for constitutional reform and instilling consciousness among the youth," Ombati recalls.

"I got involved with the KHRC as part of the constitutional reform project. I think that this is perhaps the most important of the KHRC's contributions to change in Kenya. The KHRC was the fulcrum upon which the wheels of change turned in the struggle for constitutional reform."

"The KHRC has made many contributions while organising different movements and rights groups but I think perhaps the most impactful is the role it has played in creating the groundswell that made constitutional reform possible in Kenya starting in the early 1990s," he emphasises.

The inception of the National Convention Assembly (NCA) in 1992, initiated by civil society and the political opposition, represented a transformative moment in Kenya's history.

Led by the National Convention Executive Council (NCEC), the NCA orchestrated a series of impactful public demonstrations, which effectively heightened public consciousness and mounted pressure for an all-encompassing constitutional overhaul. Faith-based organisations, including the National Council of Churches of Kenya (NCCK) and the Kenya Episcopal Conference (KEC), also rallied behind the demand for transformation.

In 1995, Kenya stood at a momentous juncture in its pursuit of constitutional reform. After President Moi's promise, voiced on New Year's Eve, to usher in a parliamentary-led review, the

KHRC, in close collaboration with the Law Society of Kenya (LSK), the International Commission of Jurists (ICJ), and other civil society allies, assumed the formidable task of crafting a ‘Proposed Model Constitution.’

Envisioning Life under a Different Constitution

President Moi’s promise of comprehensive constitutional reform proved to be nothing more than lip service. In reaction to this lack of progress, the NCA underwent a transformation, emerging as a more assertive force known as the Citizens’ Coalition for Constitutional Change (4Cs). Former Chief Justice Dr. Willy Mutunga recalls the precise moment when the name ‘4Cs’ was coined:

“Kivutha Kibwana must be credited with this formulation. He proposed the formulation and everybody in the Steering Committee clapped. He also suggested an acronym, CCCC, which Davinder Lamba elegantly improved to the 4Cs,” he narrates.

“There was so much applause for Kibwana and Davinder that when [Dr. Chris] Mulei and I suggested SISI as a Kiswahili equivalent for the 4Cs, nobody heard us. When the applause subsided, this suggestion of a Kiswahili equivalent was accepted but Kenya Tuitakayo (The Kenya we Want) was rightly preferred and consequently adopted.”

This new entity proved doggedly determined in its pursuit of a new Constitution. Maina Kiai, co-founder and Executive Director of the KHRC at the time, recollects the genesis of what would come to be known as the Model Constitution, shedding light on the strategic reasoning behind its inception.

“We decided to come together with the Law Society and the ICJ as partners,” he recalls.

“When we released it, it was called the Proposal for a Model Constitution. We didn’t label it as a Model Constitution outright. Our intention was to prompt reflection and stimulate public discourse on the potential for a superior constitutional framework than the one Kenya possessed at the time.”

Amid President Moi’s attempts to stifle public expectations regarding constitutional alternatives, the KHRC and its partners sought to challenge the status quo and invigorate the populace with a vision of change.

“One of our primary objectives was to illustrate the feasibility of envisioning life under a different constitution,” Kiai explains.

“One of our key objectives was that we wanted to show that it’s possible to imagine living under a different constitution because all Moi was doing at the time was trying to dull the public’s imagination about such a possibility. We wanted people to understand what a new constitution would mean.”

“Therefore, we thought this would be a good tool as well to use in educating people around what a ‘katiba’ – the Swahili term for constitution – should look like and why the one we had then was bad,” he adds.

The 4Cs took great care to ensure the Model Constitution reached a wide audience. To enhance the accessibility of its ideas, the Model Constitution wasn't just limited to English.

"The 4Cs inherited printed copies of the Model Constitution, its summary and highlights and translation in 10 local languages, specifically Kiswahili, Kikuyu, Dholuo, Luyia, Kikamba, Somali, Kimeru, Kimaasai, Kipsigis and Kisii. Friedrich-Ebert-Stiftung funded the printing of the materials," Mutunga discloses.

Seizing Control of the Conversation on Constitutional Reform

"This project, however, had a radical component that aimed at inheriting the Mau Mau Movement. It called for fashioning the constitution-making project as a mass movement with community roots all over the country. Radical restructuring of the status quo was the mission of this component," he explains.

Navigating the drafting of the Model Constitution, which was guided by the research conducted by a young law lecturer at the University of Nairobi named Kanyi Kimondo, was a delicate balancing act. However, Mutunga maintains that it was not only imperative but also aligned with significant historical precedents.

"Thus, for example, [at] the Lancaster House conference in London that led to Kenya's Independence Constitution, KANU produced a document that was to become the basis of discussion by all the parties. Also, the constitutional conference in the United States only started moving after the Virginia delegates produced the Virginia Plan," he notes.

"The KHRC knew only too well that such a procedure would be open to attack by certain vested interests that supported the status quo or by Kenyans who saw such a procedure as imposing a constitution on others. There would be allegations that the Model Constitution would be an imposition, an elitist project and an abandonment of the traditional lawyer-drafted constitutions. The KHRC wanted the drafting project to be multi-disciplinary. It wanted the language of the draft constitution as simple and jargon-free as possible so that it could be discussed by as many Kenyans as possible," he elaborates.

Kiai meanwhile explains that another crucial reason behind their drafting of the Model Constitution was to assertively seize control of the conversation on constitutional reform and push it forward with vigour and purpose.

"The thing you must remember about that time is we did not want to only be reactive. We wanted to be proactive and set the agenda of shepherding a new constitution," he emphasises.

Disagreement on the Strategy

But the road to reform was fraught with obstacles and challenges, chief among them being the fractured nature of the opposition and the nascent state of civil society.

“The opposition was deeply fragmented and weakened, despite its electoral success in 1992,” Ombati reflects.

“More critically,” he continues, “there was a great animosity between civil society and the political class, a divide that threatened to undermine our collective aspirations for change.”

The genesis of this discord can be traced back to the immediate aftermath of the 1992 elections, a crucial moment in Kenya’s history.

“The fallout was occasioned by a disagreement on the strategy to be adopted in the quest for the Second Liberation of the country,” Ombati explains.

For civil society, represented by the likes of the KHRC, the imperative was clear: reforms before elections. But for the opposition politicians, the calculus was different – a gambit to first seize power, then effect change from within.

“But of course, they were beaten,” Ombati laments.

As President Moi reclaimed his mantle of power, a pall of hopelessness descended upon the nation, eclipsing the flickering flames of optimism that had briefly illuminated Kenya’s political landscape.

“Moi and KANU had completely reneged on their promise and commitment to reforms. They were re-consolidating the authoritarian state in spite of the minimal changes that had opened up the country a bit with the repeal of Section 2A,” Ombati recalls.

The Need to Transcend the Hallowed Halls of Academia, and NGO Boardrooms

“I joined the movement first as a member of the steering committee of the Citizens Coalition for Constitutional Change, popularly known as the 4Cs, which took over the agenda of popularising the Model Constitution,” Ombati says.

“I was interfacing with the KHRC leadership, chiefly Maina Kiai, Willy Mutunga, Betty Murungi, and Wambui Kimathi,” says Ombati, listing the distinguished company that he was keeping in the campaign to chip away at the old order and pave the way for a new era.

The 4Cs embarked on a mission to expand the discourse beyond the confines of the legal and academic torchbearers who were leading the charge.

“The likes of Willy Mutunga, Makau Mutua, Gibson Kamau Kuria, John Khaminwa, and Paul Muite, were all important voices from the legal realm,” Ombati notes.

“But the influence of the constitutional reform agenda needed to transcend the hallowed halls of academia, legal chambers, and NGO boardrooms.”

Thus, the 4Cs embarked on democratising knowledge, ensuring that the constitutional dialogue was accessible to all.

“We found ways of taking the message to the masses so that ordinary people could access it,” Ombati affirms.

“4Cs started educating people about the need for a new constitution using the mediums of song, dance, and theatre. It was going on across the country and there was a lot of energy around it,” Kiai explains.

The theatrical dimension of the 4Cs initiative is where 5Cs – a theatre troupe dedicated to advocacy, lobbying, and activism through participatory theatre – enters the scene.

“They were a creative vehicle for civil education and social change,” says Ombati, “transforming complex ideas into palatable narratives and engaging hearts and minds in the pursuit of a more humane constitutional dispensation.”

The Turning Point

The culmination of this collaborative effort was the National Convention Planning Committee (NCPC)—a convergence of disparate voices united by a common purpose.

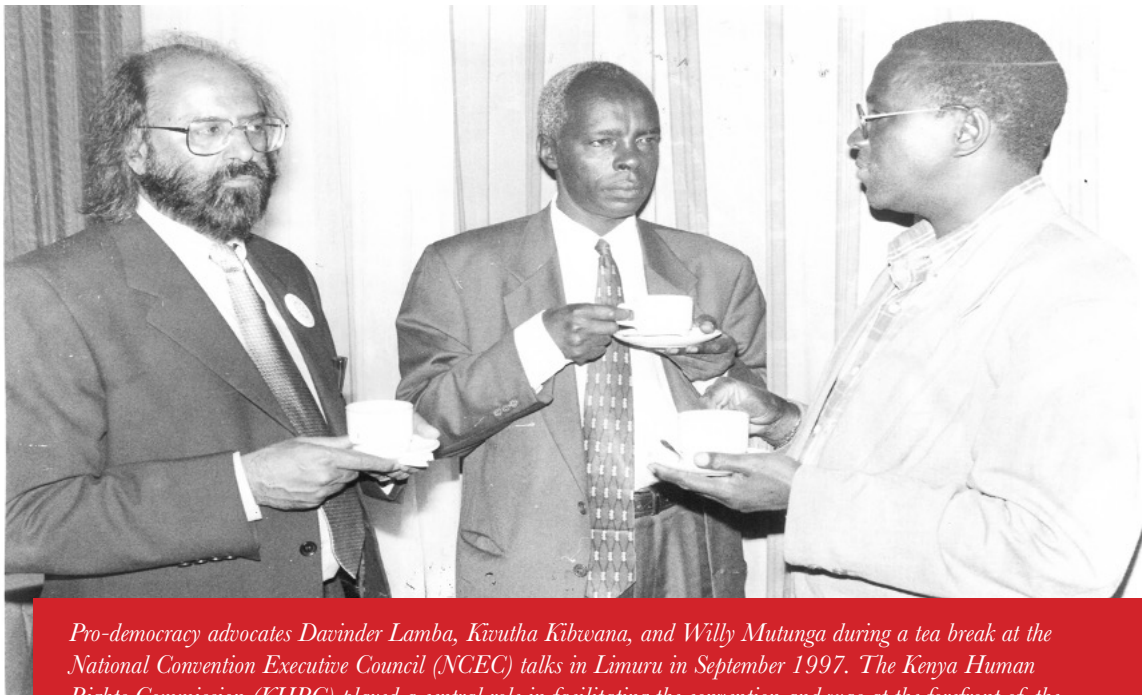
“That was the turning point,” Ombati states.

“The NCPC brought different struggles from across demographic, generational, and socioeconomic strata into one movement, beginning with the convention at Limuru. That is what generated the momentum.”

“We convened a national convention in Limuru in 1997. That’s where the National Convention Assembly was established with its executive wing called the National Constitutional Conference (NCC),” Kiai explains.

In Limuru, the KHRC’s then leadership alongside luminaries such as Prof. Kivutha Kibwana, Davinder Lamba, and John Munuve, marshalled the forces of like-minded members of civil society and others from the political field to form a unified front in the quest for constitutional reform.

As the deliberations unfolded, the question of strategy going forward loomed large and produced divergent opinions.



Pro-democracy advocates Davinder Lamba, Kivutha Kibwana, and Willy Mutunga during a tea break at the National Convention Executive Council (NCEC) talks in Limuru in September 1997. The Kenya Human Rights Commission (KHRC) played a central role in facilitating the convention and was at the forefront of the consequential street protests that ensued. Photo: The Standard Media Group.

A Programme of Mass Action

“Some of the voices were pushing for the language of civil disobedience,” Kiai recalls, “but I pushed back and said we are not disobeying, we are engaging in ‘mass action’ to propel us forward.”

In that defining moment, the term ‘mass action’ was birthed into Kenyan parlance.

“The popular use of the term mass action, at least in Kenya, started from Limuru in ’97. I’m not saying I created it; I actually borrowed it from the NCC’s strategy in the early ’90s in South Africa,” explains Kiai, demonstrating the interconnectedness of global movements for justice.

Following the historic convention at Limuru, a programme of mass action was initiated. It was an act of profound defiance against the forces of oppression.

“After the Limuru convention, we embarked on a programme of mass action, a strategic manoeuvre that yielded two crucial outcomes,” says Ombati, who was later chosen as the Chief Executive of the NCC.

“First, it provided a platform for ordinary citizens to reclaim their agency, fostering a sense of empowerment and ownership over the national discourse. Second, it served as a formidable force, shattering the resistance of Moi and KANU, clearing the path for substantive constitutional reform,” he explains.

“From 1997 there was a sustained confrontation between the people and the Moi regime. The battle was for the soul of the Republic. The fight was between those who wanted to break from the past and those who were benefiting from the status quo.

“Regrettably, our official records offer scant insight into this key period of Kenya’s history,” Ombati laments.

In the midst of the swirling currents of political upheaval, the KHRC was right in the eye of the storm. Kiai was leading the NGO’s efforts on the mass action front as it and like-minded actors tried to alter the nation’s democratic destiny.

“There Were Probably about Fifty of Us at the First Protest.”

“We agreed we were going to do mass action every Saturday starting (if memory serves) March 31,” says Kiai.

“We asked the MPs to go and marshal their people and they did. We didn’t even have a slogan but one eventually emerged after a couple of weeks. We were basically calling for a new *Katiba*. There were probably about 50 of us at the first protest.”

The path to reform was no bed of roses, as Kiai recounts.

“We were beaten,” he says.

Undeterred, Kiai and his comrades regrouped.

“We licked our wounds and went and held a press conference in which we announced that we would be coming back the next week,” Kiai recounts.

The following week bore witness to a swelling tide of dissent.

“The next week we were now 150 gathered at the Central Park behind Serena,” he reveals.

“Again, we were beaten. It was the first time I had ever seen Mwai Kibaki [later to be Kenya’s third President] at a protest. He took in some serious amount of the tear gas that was tossed at us by the cops. I never saw Kibaki at the protests again. I think that was his first and last protest,” says Kiai, a wry smile tugging at the corners of his lips.

“At this point, more and more people were coming out and the police were making it harder and harder for the protests to proceed,” he reflects.

There was a steady solidarity of key figures who demonstrated courage and commitment in the face of menacing state machinery:

“Some stalwarts who never missed any of the protests were James Orengo, Raila Odinga, Paul Muite, and one of my personal heroes, the Rev. Timothy Njoya.”

Kiai's admiration for Reverend Njoya is palpable and well-founded.

"After Limuru, I was tasked with reaching out to religious leaders to gauge their interest in joining our mass actions. I had discussions with a few of them, although I won't divulge their identities as it might embarrass them. Many of them agreed with the notion of a new constitution," he explains.

"I made a case for their involvement in the protests, emphasising the symbolic impact of their presence up front, clad in their priestly garb. I pointed out that having religious leaders lead the charge could potentially massively reduce the risk of violence and death," he recalls.

"One of them hesitated, expressing concern over the dangers involved, including the possibility of fatalities."

"He cautioned me, 'Maina, these things can be very dangerous, people can die'," remembers Kiai.

"In response, I quipped half-seriously, 'You know, Reverend, for you, death means going straight to heaven!'"

A Formidable Gathering of between 4,000 and 5,000 Strong

"I was taken aback by their hesitation. I had assumed that, as men of the cloth, they would show more courage than the rest of us, especially given the reassurance of meeting their maker if the worst were to happen," Kiai says.

"Reverend Njoya was the only one who wholeheartedly agreed to join us."

As the months progressed, the protests swelled in size, reaching a crescendo in June, with a formidable gathering of between 4,000 and 5,000 strong showing up per protest. The KHRC was learning important lessons on the art of organising.

"We made our fair share of missteps along the way. I quickly realised the importance of discerning not just who was organising, but how they were orchestrating our movements," says Kiai.

One such teachable instance was the ill-fated plan to convene at the Holy Family Basilica—a decision that Kiai recognised as a potential death trap, with its confining walls offering little escape in the event of a tear gas onslaught.

"We adapted and evolved, learning to scout out safer venues," he explains.

With each protest came a wealth of insights, from assigning vigilant marshals to thwart potential disruptions to identifying and neutralising agent provocateurs. These strategies, honed by experience, would serve the KHRC well in the future.

"It was a steep learning curve but the lessons we learnt about organising protests were undeniably worthwhile," Kiai states.

“The Tide Had Turned”

By the time the historic Saba Saba rally happened on July 7, 1990, the movement had amassed an unstoppable force, drawing strength from its growing ranks.

However, in the midst of the growing momentum, tragedy of a man-made variety struck. Kiai recounts the chilling episode when Moi’s presidential guards unleashed a brutal assault on Reverend Njoya outside the All Saints Cathedral—an act of violence that reverberated across the globe, casting a stark light on the regime’s egregious abuses.

“The world watched in horror as the guardians of the state inflicted unspeakable harm upon a man of the cloth within the sacred confines of a church,” Kiai says.

In the aftermath of this transgression, a seismic shift occurred—a turning point marked by Moi’s newfound vulnerability.

“The tide had turned,” Kiai asserts. As Moi sought to quell the rising dissent, tentative overtures were extended to the politicians aligned with the constitutional reform movement—signalling the regime’s recognition of its waning grip on the situation.

Kiai is candid about the strategic miscalculations that the KHRC and its civil society counterparts made.

“We made a big blunder,” he admits.

“Instead of grasping the intricate dynamics of ego at play, we took an uncompromising stance. We condemned the MPs who engaged with the Moi regime.”

Reflecting on the missed opportunity for dialogue, Kiai offers a rueful assessment of their approach.

“What we should have done is encourage their engagement and sought a seat at the table ourselves. It would have provided us with some leverage in steering the process forward.”

In hindsight, Kiai recognises the oversight in their strategic planning.

“We hadn’t fully considered the pathway to achieving a new constitution. We operated under the assumption that Moi and his cohorts would be compelled to engage with us. We failed to account for the inflated egos of the politicians involved.”

“Every Saturday, the City Would Come to a Standstill”

“Every Saturday, the city would come to a standstill. Shops shuttered their doors, and the streets lay deserted.” As the protests spread across the country, their rallying cry – ‘no reforms, no elections’ – echoed from Bungoma to Kisumu to Mombasa.

Despite their impassioned efforts, Kiai concedes that the protests yielded only partial success.

Tensions were running high. By talking to Moi, the politicians were in all likelihood manoeuvring to defuse the escalating situation.

“While some reforms were achieved, they fell short of our aspirations,” he acknowledges.

Yash Pal Ghai, the renowned Kenyan academic and constitutional lawyer, offers a dissenting perspective. He believes Kiai, Mutunga and others in the movement spearheaded by the KHRC deserve significant credit for the substantial strides in Kenya’s often tumultuous journey toward genuine constitutional reform.

“The 4Cs did achieve a measure of success; it can take much credit for the abolition of the one-party system. The 4Cs showed the potential of pressures that can be generated from below, from the realm of civil society on the barricades of the state. It helped to demonstrate the deep roots of discontent with the arbitrariness, corruption, and tyranny of the Moi regime,” he writes in the foreword to a new edition of Mutunga’s *Constitution-making from the Middle*, published by Strathmore University Press.

“It showed the ability of the people to understand the nature of their oppression. It pushed the frontiers of the right to protest and to criticise the Government further than has ever been done since independence. It showed the possibilities of political action outside the framework of political parties, churches and professional associations – and also demonstrated the limits of that framework.”

“It generated a number of ideas for the organisation of public power that could release the Kenya Constitution from its time warp of the 1960s. It seems to have powered the imagination of the people; that is a great achievement and a great promise for the future,” he concludes.

Prof. Yash Pal Ghai’s Return to Kenya after Years Spent in Exile

Ghai played a key role in the movement. The esteemed figure in constitutional law narrates the sequence of events that led to his return to Kenya after years spent in exile.

“The movement that Willy [Mutunga] set in motion no doubt was responsible, indirectly, for an invitation to me by Moi a year or so later to return home and chair the process for the making of a new democratic constitution. My instinct was to stay away until further progress towards justice and democracy had been made,” he shares.

“Willy was the first person I called to tell him the news and seek his advice. Somewhat to my surprise, he told me that I should return home and see for myself whether the situation was propitious for democratic reform.”

“I did take on Moi’s offer, after considerable consultation with friends (though several leaders of civil society, some my good friends, tried their best to undermine my work) and after changing the basis of the process, so that all Kenyans were united around it. The process, both in the Constitution of Kenya Review Commission (CKRC) and the National Constitutional Conference (NCC/Bomas), benefited greatly from analysis and recommendations by members of civil society, on which I relied greatly,” he reminisces.

The Inter-Parties Parliamentary Group

Though the toll of the struggle weighed heavily on the KHRC and its allies in civil society, they were bruised but undeterred in their pursuit.

To take things off the boil, Moi orchestrated the formation of the Inter-Parties Parliamentary Group (IPPG) to lead reforms preceding the 1997 General Election.

Wanjiku Miano, the fearless former Executive Director of the Kenya Human Rights Commission, possesses a peerless memory of those heady days.

“The IPPG was a negotiated deal aimed at repealing oppressive laws, including the Public Order Act and the Chiefs Act. These were essential steps towards ensuring free and fair elections,” she explains

“The IPPG negotiations were crucial.”

“They set the stage for what would become a powerful moment in the pursuit of a new constitution. It was then that people began to realise the importance of their voice in shaping the future of the nation,” she continues.

The IPPG’s reforms, however, fell short of delivering the comprehensive changes that were desperately needed. It wasn’t until December 1999 that civil society organisations and faith-based groups came together to form the Ufungamano Initiative, a movement dedicated to pushing for a ‘people-driven’ constitutional review process. Under the umbrella of Ufungamano, the People’s Commission of Kenya (PCK) was established with the crucial task of spearheading this grassroots-driven constitutional review process.

The KHRC and its fellow civil society organisations remained steadfast in their conviction that involving the ordinary Kenyan, who came to be affectionately known as ‘Wanjiku’, was paramount in shaping a new constitution. They encountered criticism from Parliament and certain factions within civil society itself, all of whom questioned their unconventional approach.

However, state unresponsiveness persisted. The turning point arrived in 2002 when the Rainbow Alliance, a coalition supported by the KHRC, successfully ousted KANU from power. This marked a historic victory, albeit one that would invite controversy for the KHRC.

An Unavoidable Necessity

“The KHRC became quite controversial at the time because NGOs are expected to remain nonpartisan. However, human rights work is inherently political because it involves speaking truth to power,” Miano asserts.

It’s a position affirmed by Davis Malombe, the Executive Director of the KHRC: “Politics is existential,” he emphasises.

“We have had a situation where we are working with people on justice issues and then when it comes to elections, they treat you as an enemy. They tell you that politics is their private space. They insist on choosing the corrupt leaders that they want but then when things go wrong, they want civil society to step back in to rescue them from the same government they voted for,” Malombe laments.

“It needs to be a subject for political education [as the KHRC used to do] to enable people to see the link between elections, politics, and the social and economic well-being of the country and the people.”

The involvement of the KHRC in politics, though unconventional for an NGO, was an unavoidable necessity at the start of the millennium. The issues at hand were pressing – restrictions on freedom of expression, political repression, extrajudicial killings, torture and human rights abuse, ethnic violence and political clashes, illegal land acquisitions, suppression of civil society, security sector brutality and endemic corruption.

These were problems that couldn’t be solved by staying on the sidelines.

“When you’re speaking against human rights violations, you are necessarily standing up against very powerful interests,” Miano explains. “Human rights work was political then, and it remains political today.”

The KHRC’s role in the formation of the National Rainbow Alliance underlines the organisation’s commitment to driving change.

“It was an inevitable choice for the KHRC to be involved in the birth of the Rainbow Alliance. We realised that to reform Kenya, we needed to first change the political landscape,” Miano says.

The alliance brought together various stakeholders, including the human rights movement, politicians from the opposition, and others.

A Unique Period when the Government Seemed Receptive

The transition from Moi to Kibaki marked a significant shift in Kenyan politics. Civil society luminaries, once staunch critics of the government, began crossing over to work within the government.

This shift allowed for the adoption of numerous reforms advocated by human rights organisations.

Key areas of focus, such as ethics and anti-corruption, transitional justice, gender equality, and land reforms, were embraced by the incoming Kibaki administration. The Kenya National Land Alliance, an offshoot of the KHRC, continued the fight for land reforms.

“All these initiatives were aligned with the core goals of human rights organisations,” Miano observes.

“It was a unique period when the government seemed receptive.”

The early years of Kibaki’s rule brought hope of comprehensive reforms, including constitutional change. Civil society organisations like the KHRC actively participated in the constitutional reform process, ensuring that the human rights and governance agenda was not sidelined. However, as time passed, it became evident that some reforms were too sensitive for the government to pursue.

The establishment of a Truth, Justice, and Reconciliation Commission (TJRC), recommended by the task force led by Prof. Makau Mutua, was one such reform.

“The window of opportunity to work with the government slowly began to close,” Miano reflects. “The government developed cold feet on matters that could potentially ruffle feathers.”

“No Politician is Reliable”

Kibaki’s hesitation may have stemmed from his previous role in Moi’s government, where, as a former Vice President, he might have been implicated in governmental excesses.

“Kibaki’s advisors were wary that the TJRC might bring his involvement in past violations to light,” she adds. Moreover, several individuals identified by the task force had some sway in the Kibaki regime.

Ghai points out that Kibaki’s abrupt shift was a stark reminder of the dangers inherent in placing trust in politicians.

“Soon after becoming President, Kibaki abandoned civil society and its values, and showed every sign of opportunism and ethnicity – thus disregarding the submissions emanating largely from civil society to the CKRC, which had been made by his party and friends when in opposition,” he writes.

“We learnt that no politician is reliable; that an executive president, relying on ethnicity, excluding the large majority of other communities from the potential benefits of state, is inimical to national unity. I also learnt that not all civil society leaders are immune to the temptations of public office or ethnic loyalty.”

The government’s reluctance to follow through with the TJRC and other reforms was also influenced by concerns that it could disrupt the relatively peaceful environment after Kibaki’s victory.

“People were hopeful that Kibaki’s government would bring change and maintain peace,” Miano notes. “They didn’t want to jeopardise that by pursuing contentious reforms.”

Kibaki also pursued a patchwork of initiatives and commissions in an attempt to address historical injustices. It is from this that the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land (which came to be known as the ‘Ndung’u Commission’, named after the chairman, Paul Ndung’u the Judicial Commission of Inquiry into the Goldenberg Affair as well as the Kenya National Commission on Human Rights (KNCHR) were born.

However, despite these efforts, Kibaki’s piecemeal reforms ultimately faltered. This was mirrored by his endeavours to sway Kenyans towards a ‘yes’ vote for a proposed constitution on November 21, 2005, which ended in a resounding defeat: 58 per cent voted against it.

The majority of Kenyans rejected the draft for various reasons. Many felt that the proposed constitution failed to adequately address key issues such as land ownership, Executive powers, and equitable distribution of resources. Concerns about potential loopholes that could perpetuate corruption and weaken democratic institutions also influenced voters.

Additionally, ethnic tensions and mistrust towards political elites fuelled scepticism about the sincerity of the proposed reforms. The lack of sufficient public awareness and consultation also eroded confidence in the process. Ultimately, Kenyans voted ‘no’ as a collective expression of dissatisfaction and a demand for more inclusive and transparent constitutional reform.

The fissures from the referendum would be widened by the General Election two years down the line.

Kenya Perilously Close to the Brink of a Catastrophic Collapse

In 2007, a deeply divided nation headed to the polls, where the electoral contest between Kibaki and his former ally, Raila Odinga, set the stage for potential turmoil. The fiercely contested presidential election erupted into a dispute that, in the end, ignited a wave of post-election violence. This wave of violence pushed Kenya perilously close to the brink of a catastrophic collapse in January 2008. The violence threatened Kenya’s unity and stability, prompting international and local pressure for reconciliation.

The Kenya National Dialogue and Reconciliation (KNDR) initiative, mediated by the Panel of African Eminent Personalities, helped to address the crisis. It led to the signing of the National Accord and Reconciliation Act in 2008, allowing for the formation of the Grand Coalition Government with Kibaki as President and Raila Odinga as Prime Minister. Four agenda items emerged from the KNDR, which underscored the need for constitutional, legal, institutional, and political reforms.

Reading the tea leaves correctly, the KHRC and other civil society organisations continued pushing for comprehensive constitutional reform. After sustained lobbying by the KHRC and other stakeholders, in 2008 two crucial laws were enacted – the Constitution of Kenya (Amendment) Act, 2008, and the Constitution of Kenya Review Act, 2008. These laws laid the groundwork for drafting a new constitution.

Ghai, widely acknowledged as central to the writing of the current Kenyan Constitution, offers a vivid recollection of the dynamics during that period.

“This led to the intervention by Annan and other Eminent Africans – among the initiatives they pursued was the revival of the search for a new constitution, drawing on the work of the CKRC, Bomas and the Wako Draft. They supported what they called the ‘Ghai’ draft, meaning one that was approved by Bomas, which they considered responded more to the needs of Kenyans, of social justice, equity, and nation building,” he explains.

The Enactment of the New Constitution

A Committee of Experts (CoE) was established, successfully leading the drafting process.

“A committee of experts (including three from outside Kenya) was mandated to draft a constitution to be submitted to Parliament and put to a referendum, subject to some possibility of changes by Parliament. This effectively passed the authority of making the constitution to parliamentarians, though the CoE did assert itself on several points, drawing principally upon the Bomas Draft – but conceding to politicians on a presidential system,” he notes.

On August 4, 2010, Kenya held a national referendum to approve the new constitution, a historic moment in the nation’s journey towards democracy and human rights. The Interim Independent Electoral Commission (IIEC) conducted the referendum.

The enactment of the new Constitution marked a turning point in Kenya’s history, and the KHRC had every reason to celebrate because the draft contained several key chapters that were initially conceived in the Model Constitution drawn up in the Moi era as an act of constitutional imagination.

“One of the greatest triumphs was the entrenching of human rights,” Miano emphasises, drawing attention to the enshrining of human rights in Chapter Four of the Constitution. The depth and breadth of these provisions were carefully conceptualised to ensure that they would serve as a robust framework for justice.

“The law now requires that the provisions of the Constitution be interpreted in a maximalist way,” Miano explains. “This approach aims to enhance and expand the scope of freedoms, setting a high standard for the protection of human rights.”



“

The KHRC has always sought to empower communities to advocate for their rights, organising around their specific needs and issues.”

Another offspring of the Model Constitution, Miano points out, is the 2010 Constitution's treatment of socioeconomic rights. Unlike some countries where such rights are considered "directive principles of state policy" dependent on available resources, Kenya's constitution recognises them as entitlements to be granted as a matter of right.

"This provision empowers citizens to hold the state accountable for their socioeconomic well-being. This is what has spurred the numerous public interest litigation cases brought by the likes of Okiya Omtatah and others," she states.

"The test and the challenge right now are to create a cultural constitution," says Miano, emphasising the need for a continuous commitment to ensuring that these rights are upheld. Public interest claims are a means to push the boundaries of interpretation and secure the full scope of these rights.

Ghai concurs.

"I did read the Model Constitution some months into our phase of drafting the constitution for discussion by the NCC, and found it full of progressive ideas and a clear vision of the kind of Kenya that we had already adopted, based to a considerable extent on what the experts and ordinary Kenyans had told us."

"Its approach was constructive and peaceful. It produced a draft constitution, which offered fresh perspectives on the role and organisation of the state. It received considerable sympathy and support from the foreign community, uneasy with the Moi regime, but unsure how to deal with it. Therefore, I would say that the Model Constitution was not wasted – quite apart from being the first draft in the long history leading to 2010. It had many similarities with the CKRC and Bomas drafts," he elaborates.

Of Leaders with Poor Track Records Being Rewarded with Power

Another nugget inspired by the Model Constitution is Chapter Six of the Constitution, which deals with leadership and integrity. Miano acknowledges that while this provision has faced challenges and may still be aspirational, it represents a step in the right direction.

"Chapter Six, for all its implementation shortcomings, seeks to address the issue of leaders with poor track records being rewarded with power, an issue that has plagued Kenya for years," she says.

Miano insists that the Model Constitution can also claim credit for the Chapters on Land and Devolution in the 2010 Constitution. Devolution was an agenda pushed by governance and human rights advocates, including the KHRC. The inclusion of devolution in the Constitution was a significant achievement, even though challenges remain in terms of implementation at the devolved levels.

“The KHRC has always sought to empower communities to advocate their rights by organising around their specific needs and issues,” says Miano.

In the ongoing struggle against challenges like executive impunity and the disregard for the right to assembly and protest, Mutunga sees the 2010 Constitution as the main starting point for broader engagement.

“As we continue to breathe life into Article 37, particularly, and indeed, the entire Constitution, we confront ongoing challenges. The Constitution has created numerous arenas of struggle, offering the human rights movement significant political opportunities to mobilise mass movements,” he elaborates.

“The story is about the potential and limits of the role of civil society in promoting fundamental political and constitutional change,” says Yash Pal Ghai.

Much like Mutunga, Ghai supports renewed engagement with the people.

“There is also a renewed awareness that democracy must transcend the intrigues of political parties and the drama of parliamentary politics. It must engage the people. It must recognise and safeguard normative democratic values of dialogue, tolerance, pluralism, probity, and fairness. These values can scarcely be achieved without a vibrant and vigilant civil society,” he adds.

The story of Kenya’s 2010 Constitution is a testament to the power of civil society, with the KHRC at the forefront, in advocating comprehensive constitutional reform that ultimately brought about a new era of democracy and human rights in the nation. Kenya’s winding but ultimately triumphant constitutional journey from the early 1990s to the historic 2010 referendum exemplifies the determination of the Kenyan people to shape their own destiny.

Ending Statelessness in Kenya: The KHRC's Advocacy for Citizenship



“Our mission is to empower individuals who lack Kenyan citizenship to attain it, while also facilitating the unfettered enjoyment of citizenship rights for those already recognised as Kenyan citizens” — Robert Waweru, Programme Advisor, Citizenship and Statelessness, the KHRC

December 12, 1963. Kenya is emerging from the long shadow of British colonial rule. After years of sometimes violent struggle to liberate their land from the grip of white minority rule, Kenyans finally have a nation to call their own. It's a moment of profound patriotic pride, with jubilant celebrations lasting through the night.

The end of British rule, while a significant milestone in the nation's history, inadvertently planted the seeds of disenfranchisement, leaving Kenya to grapple with a complex legacy that put numerous communities within its borders in a state of limbo.

There were those within Kenya who would find that in the new, independent nation, they were, effectively, stateless.

For the past three decades, the Kenya Human Rights Commission has focused on confronting the haunting spectre of statelessness prevalent among communities such as the Somali, Nubi, Makonde, Shona, and Pemba.

An Issue Frequently Relegated to the Back Burner

Challenging statelessness has manifested on multiple fronts, each community presenting its own unique challenges. These communities, despite their long-standing presence in Kenya, have been mere spectators in the nation's democratic processes, their voices muted, and their existence barely acknowledged. The journey has been fraught with complexities, both of the political and social variety, yet the Commission's firm commitment has slowly but surely led to significant strides in addressing this deep-rooted challenge.

Robert Waweru, the Programme Advisor for Citizenship and Statelessness, says: “Our mission is to empower individuals who lack Kenyan citizenship to attain it, while also facilitating the unfettered enjoyment of citizenship rights for those already recognised as Kenyan citizens,” he explains.

Statelessness, though frequently relegated to the back burner, serves as a reminder of the challenges faced by post-colonial African nations like Kenya. It is a problem deeply rooted in colonial statecraft and, in many ways, can be traced back to the original sin of colonial legacies, epitomised by the Berlin Conference (which ran from November 15, 1884, to February 26, 1885) at which the scramble for and partition of Africa was concluded.

“The roots of statelessness in Kenya trace back to a dark chapter in our history that is often overlooked. In 1915, the colonial government enacted the Native Registration Ordinance, setting in motion a series of events that would haunt generations to come. By 1920, the infamous Kipande, a form of identification, had been issued to Kenyan tribes. This legislation laid the foundation for a statelessness crisis that would endure for decades,” Waweru explains

Consider, for instance, the case of the Shona community, who initially arrived in Kenya as Christian missionaries during the 1960s. Armed with Rhodesian passports and classified as British subjects, they found themselves trapped in bureaucratic hell in the wake of Kenya’s Independence.

A brief two-year window for Kenyan citizenship registration passed many by, leaving them stateless.

The Right to Nationality is not Explicitly Guaranteed

Running parallel to the Shona’s plight is that of the Nubian community. Despite their deep roots in Kenya, Nubians have consistently grappled with the denial of citizenship, finding themselves trapped in an unrelenting cycle of legal and social exclusion. They are not alone. According to United Nations High Commissioner for Refugees (UNHCR) data, there are an estimated 18,500 stateless people currently living in Kenya. They include people of Somali, Makonde, Pemba, Burundian, Congolese, Indian, and Rwandan descent.

In multiple African countries, the right to nationality is not explicitly guaranteed, spawning widespread statelessness. This critical issue exacerbates and fuels underlying tensions throughout the continent, as evidenced by historical events.

For instance, in 1983, Nigeria’s expulsion of two million undocumented West African migrants—half of them from Ghana—crystallised this exclusion and intolerance. The ‘Ghana must go’ bags, large blue and red checked bags used by the migrants to carry their belongings, became a lasting symbol of this ordeal. Four decades after this event, the emotional repercussion still lingers in the region.

Similarly, the Horn of Africa witnessed severe consequences of statelessness during the 1998 war between Ethiopia and Eritrea. Ethiopia, the continent's second-most populous country, arrested and expelled 70,000 people and revoked the citizenship of an additional 50,000+, primarily based on their assumed ethnicity.

Statelessness is both invisible and profoundly alienating. Stateless individuals are deprived of the right to vote or hold public office. Their children frequently encounter educational obstacles, and face restrictions in travelling, property ownership, and securing employment. Furthermore, they are at a heightened risk of various human rights abuses.

Kenya is far from immune. While the country has made significant strides in addressing statelessness, the situation remains highly challenging for the Somali community. Descendants of a historically cross-border community originally residing in the far north of Kenya and more recent migrants and refugees who have fled instability and violence in Somalia constitute this group. The spillover of violence from Somalia into Kenya, marked by numerous terrorist attacks attributed to the extremist group al Shabaab or involving individuals of Somali descent, has unfortunately led to a growing trend of indiscriminate targeting of the Somali community during security crackdowns.

A Seismic Shift in Perspective

For the KHRC, the story begins with a seminal publication, 'Foreigners at Home: The Dilemma of Citizenship in Northern Kenya', which paragraph-by-paragraph presented an exhaustive catalogue of the plight of Somalis in Kenya. First published in February 2009, this ground-breaking work by Adam H Adam and James Maende served as the cornerstone for the KHRC's foray into the complex terrain of statelessness in Kenya.

'Foreigners at Home' was more than just a report; it was a seismic shift in perspective. It exposed the punitive conditions Somalis faced, treated as enemies of the people, and subjected to onerous bureaucratic processes. It quickly became an authoritative point of reference that drew attention to the violations suffered by the people of Northern Kenya.

"It was our first truly well-received work. Many leaders and members of the Somali community used to come to our offices to pick up copies. It was the first document to expose the violations that people in Northern Kenya were subjected to," remembers Executive Director Davis Malombe.

The Constitution of Kenya, promulgated with great fanfare in 2010, ushered in a new era of hope for stateless individuals. It provided the framework for addressing statelessness comprehensively. In 2011, the Kenya Citizenship and Immigration Act was passed, with provisions for the recognition and grant of citizenship to stateless individuals within five years.

Waweru acknowledges, “That was very ambitious.”

The challenges of implementation were immense, and the timeline proved to be overly optimistic. Extending the timeframe was necessary. But why the rush to resolve a complex issue within a strict time frame?

“Citizenship is, of course, a very sensitive issue for the government so the thinking was we know the exact number of stateless people in Kenya and could address their plight within five years.

“We’re trying to make the lawmakers understand that the law will have to be revised to give more stateless people a shot at citizenship.”

Forging Strategic Alliances

Beyond the legal and bureaucratic hurdles, the essence of the KHRC’s work from the beginning has always been centred on the people caught in the cruel limbo of statelessness.

“It’s about the people. It’s about those who have called Kenya home for decades yet have been denied the sense of belonging they rightfully deserve,” Waweru adds.

“For many years, we have comprehensively documented the lives and histories of stateless communities,” explains Irene Soila, Programme Advisor for Political Inclusion and Justice at the Kenya Human Rights Commission.

“This extensive documentation has been vital in bringing to light the struggles faced by these often overlooked and invisible citizens,” she says.

The KHRC’s strategy has focused on forging strategic alliances and advocacy. Through collaboration with the county and national governments, the KHRC has successfully elevated the issue of statelessness to prominence in political discourse.

The effects of ‘Foreigners at Home’ rippled beyond its initial focus. It laid the groundwork for the KHRC’s exploration of other marginalised communities, a journey that extended from the Nubian community and reached far beyond, encompassing the Makonde, Shona, and Pemba communities.

A Journey towards Hope and Recognition

In 2016 the KHRC undertook the ‘Trekking against Statelessness’ march. This arduous journey, uniting the Makonde and other communities, symbolised their deep desire for acknowledgement.

“We trekked from Kwale County all the way to Nairobi in 2016,” Soila says. “It was a journey towards hope and recognition for all stateless communities in Kenya.”

Diana Gichengo, formerly the Programme Manager for Identity and Inclusion at the KHRC, recounts the organisation's central role in addressing the plight of the Makonde community.

“It all began in 2014,” she narrates. “UNHCR was researching the Makonde and discovered the KHRC’s prior work – a publication titled ‘Foreigners at Home’ and a documentary, *Aliens No More*.”

This shared mission started a partnership, leading the organisation to collaborate with UNHCR in gathering data on the Makonde’s plight.

“We went house to house,” she says, “witnessing first-hand the daily struggles of a stateless existence.”

Gichengo’s own encounter with the importance of identity cards came to light while on a work trip to Mandera. Reflecting on her swift acquisition of an ID as a young adult, she contrasted it with the struggles of those rendered stateless in communities across Kenya. Her recollections of this trip lit a fire under her that was a constant reminder of the disparities in the ease of obtaining identity documents and the profound impact bureaucratic hurdles have on thousands of stateless people in Kenya.

The lack of documentation always casts a long shadow that denies people basic rights and opportunities that some Kenyans take for granted, including education, healthcare and the very right to call Kenya home. All these seemed out of reach for the Makonde.

A Multipronged Approach

The legal landscape presented an additional hurdle.

“The law demanded proof of residence in Kenya since 1963,” Gichengo explains. “But how could they prove this when they had no documents?”

Undeterred, the KHRC, alongside the Makonde, embarked on a multi-pronged approach. First, they turned to Parliament, with a petition and a compelling narrative.

“The Makonde knew how to tell their story,” Gichengo remembers. “One young woman recounted how she couldn’t take the ferry due to the lack of ID, forcing her to drop out of school.”

When the Makonde shared their experiences with Members of Parliament, the response was swift and unequivocal.

“The MPs were furious,” Gichengo reveals, “demanding immediate action from the Cabinet.”

Even within the government, the tide began to turn. The Director of the National Registration Bureau, overwhelmed by the gravity of the situation, wept openly. Yet, bureaucratic hurdles persisted.

“They accepted the reality of the problem,” Gichengo says, “but progress remained frustratingly slow.”

The ‘Trekking against Statelessness’ Campaign

The Makonde more and more realised that Nairobi was not paying sufficient heed to their plight. So, they came up with a bold proposal.

“They insisted on coming to Nairobi themselves,” Gichengo states, “to tell their story directly to the government.”

However, funds were scarce. The solution? The ‘Trekking against Statelessness’ campaign was born.

“In May 2016,” Gichengo says, “we offered to walk alongside them every step of the way.”

Time, however, was not a luxury they possessed. The deadline for stateless individuals to register under the Kenya Citizenship and Immigration Act loomed large—August 2016. Alarming, not a single Makonde had been registered. The initial plan envisioned a 60-day trek, but pragmatism prevailed.

“The chosen route traversed a wildlife corridor,” Gichengo explains, “so for safety reasons, we humanely reduced it to five days.”

Despite the adjustment, challenges remained. As the trek gained momentum, it caught the attention of the then Coast Regional Coordinator Nelson Marwa, who was not entirely receptive to the Makonde’s message. Midway through the journey, the trek was halted. But the Makonde, emboldened by their cause, refused to be silenced.

The community leader, Thomas Nguli, reminded Marwa of their numerous visits to his office and the unfulfilled promises of assistance. His words, laced with quiet dignity, resonated deeply.

Nguli used a powerful analogy, comparing the government to a parent who repeatedly promises a child candy but never delivers.

“What should the child call such a parent?” he challenged, leaving Marwa speechless.

The trek continued, its message resonating across the nation. By the time they reached Nairobi, their numbers had swelled into the thousands, with ordinary Kenyans and activists joining the cause.

Finally, they Stood before President Uhuru Kenyatta

“By Day Four when we arrived in Nairobi we were in the thousands because many other Kenyans and activists had been touched by the cause and joined us along the way. We were met by Joseph ole Nkaissery, the then Cabinet Secretary for Internal Security and Coordination of National Government, who said he had been sent by the President,” Gichengo narrates.

The Cabinet Secretary assured them of the President's commitment and then took them to State House to present their petition.

Finally, they stood before President Uhuru Kenyatta. Gichengo clearly remembers the moment. The Makonde had a petition outlining a six-month timeline for their registration. However, they never got to present it and for a very good reason.

Instead, President Kenyatta, moved by the Makonde's determination, issued a direct order.

"He said the Makonde would be registered and receive their IDs within six weeks," Gichengo recounts.

"He also offered a heartfelt apology, acknowledging the injustice they had faced."

Together, the Makonde and the KHRC had achieved the seemingly impossible.

"The deadline was extended, the law gazetted, and the Makonde finally received their IDs. It was a victory not just for them but also for other stateless people in Kenya who took solace in the moment," Gichengo says.

The Nexus between Statelessness and Electoral Politics

Meanwhile, in the heart of Kikuyu Constituency, Kiambu County, the Shona community, who initially arrived in Kenya as missionaries, garnered such immense affection from the local community that their journey to Kenyan citizenship was facilitated by the area MP, Kimani Ichung'wah, and the MCA for Kinoo Ward, Samuel Kimani Wanjiku.

"Acceptance by the local community and the politicians was a crucial starting point. It paved the way for political resolutions that were then seamlessly approved by the County Assembly," Waweru explains.

The Pemba community in Kwale and Kilifi counties, though a smaller group, confronted similar challenges in securing support at the local and county levels. The KHRC played a similarly important role in navigating the intricate dance between community dynamics and local politics, ensuring a harmonious balance.

The nexus between statelessness and electoral politics revealed itself in the pursuit of ID cards. The potential voting bloc that stateless communities represented became a bargaining chip for politicians. The path to resolution has been fraught with complexities that are still playing out. The distribution of ID cards has become entangled in bureaucratic inefficiencies. The Ministry of Interior's missteps with ID serial numbers have underscored the fragility of the progress.

Waweru unpacks the intricacies of the challenge of the faulty incorporation of newly issued IDs into the Integrated Population Registration System (IPRS).

“Imagine going to the bank, and your ID, proof of your very identity, is rejected. That’s the reality for many who have been issued IDs without proper IPRS integration,” he explains.

A Gentle Nudge from the International Community

Waweru does not dwell on the setbacks. He recounts the success in resolving the IPRS issue.

“We raised the issue, wrote countless letters, and collaborated with organisations like the UN refugee agency, which provided technical expertise and funding,” he says. The UNHCR’s role, as Waweru explains, was crucial.

“It’s not work that the KHRC does alone. It’s a partnership. They are the ones putting pressure on the government. And within a week, the problem was addressed,” he discloses.

“Sometimes, a gentle nudge from the international community can be the catalyst for change.”

This sentiment lies at the core of the KHRC’s approach and is proof of the power of collaboration in tackling complex human rights issues. However this pressure, Waweru clarifies, is not applied in isolation.

“We, civil society, are the rough riders,” he admits. “These partnerships are the backbone of our efforts, but we are willing to engage in public demonstrations, to make the issue visible,” he reiterates.

This, coupled with UNHCR’s diplomatic approach and the commitment of community leaders, paints a vivid picture of the multifaceted nature of their work.

Updating IDs for those who received them before the IPRS integration process was streamlined is still a work in progress.

“It’s a work in progress,” he acknowledges, “but we are not giving up.”

His determination echoes the spirit of the countless communities the KHRC works with.

“The community members themselves sacrifice a lot. They travel long distances, often using their own money, to attend meetings and advocate their rights.”

“This Work Requires a Lot of Money”

The battle against statelessness is not confined to grassroots efforts. Parliamentary lobbying also plays a role.

“We are working on advocating the amendment of section 10 of the Kenya Citizenship and Immigration Act,” Waweru explains.



“

The issue of ID distribution has become entangled in bureaucratic inefficiencies.”

This involves engaging with Members of Parliament through the Citizenship Caucus, a loose but effective network pushing for legislative changes. The power dynamics of Kenyan politics come to light as Waweru describes the impact of MPs in influencing citizenship decisions.

“All these communities that have been given Kenyan citizenship are also beneficiaries of the work that a lot of MPs have done in this regard. You can see this in the efforts of Kilifi North MP Owen Baya on behalf of the Pemba, and Kikuyu MP Kimani Ichung’wah’s support for the Shona community’s successful quest for citizenship,” he explains.

The battle against statelessness comes at a cost. “This work requires a lot of money to fund essential activities like field visits and meetings, and also acquiring documents such as IDs and birth certificates, which are crucial for stateless individuals seeking citizenship.”

Recent attempts to raise fees related to acquiring certain documentation make an already expensive process even more inaccessible for many.

The fight against statelessness in Kenya is a story that transcends the walls of the KHRC’s office, one reminds us that even the most complex challenges can be overcome through collective action and steadfast commitment to human rights.

The stories of the Somali, Nubian, Makonde, Shona, and Pemba communities are not isolated incidents but part of the complex picture of the state of human rights in Kenya. Through comprehensive documentation and unwavering advocacy, the KHRC has worked to spotlight these stories, bringing them to the forefront of public consciousness.

Statelessness is not just a legal conundrum; it is an inherently human rights ordeal. The exhaustive documentation undertaken by the KHRC attests that the battle for identity and the pursuit of a place to belong lies at the core of the statelessness predicament.



Rosemary Mwangi (centre), Assistant County Commissioner of Kinoo, Kiambu County, proudly presents a birth certificate to a member of the Shona community during a special ceremony in July 2019. The event was a big step towards the recognition and inclusion of the Shona, who originally arrived in Kenya as missionaries. The ceremony, made possible through the efforts of the Kenya Human Rights Commission, marked a significant chapter in their integration into the Kenyan national fabric. It underscored the KHRC's commitment to addressing historical injustices and promoting equality. The occasion highlights the KHRC's steady progress towards ensuring that all stateless communities in Kenya are acknowledged and officially recognised. Photo: Moses Gorwi.



Women from the Pemba community celebrated their newly granted Kenyan citizenship with a traditional dance on December 15, 2022. The dedicated efforts of the Kenya Human Rights Commission and partners like the United Nations High Commissioner for Refugees (UNHCR) played a crucial role in securing citizenship for the Pemba and other stateless communities, marking a significant step towards inclusion and recognition in Kenya. Photo: Moses Gorwi.

Extrajudicial Executions in Kenya: The Missing Voices Coalition



“We cannot afford to become complacent. The fight for justice for victims of extrajudicial killings is ongoing, and we must remain vigilant in our pursuit of truth and accountability.” — Martin Mavenjina, Senior Programme Advisor for Transitional Justice, the KHRC

Carilton Maina had a bright future ahead of him. Raised in the sprawling Kibera, one of Kenya’s largest slums, his unbreakable will had helped him forge a golden destiny for himself out of little more than dross.

Maina’s academic star shone brightly, earning him accolades and a coveted scholarship to Leeds University in the UK. Yet, like many driven by ambition but tethered to their roots, Maina returned home to Kibera over the Christmas holidays in December 2018, eager to reconnect with family and friends.

Sunday, December 23, began like any other evening, its mundane facade giving nothing away of the impending tragedy. Maina, accompanied by friends, had just finished watching a football match when they encountered two police officers. What happened next remains shrouded in controversy. Words were exchanged, tensions flared, and Maina, perhaps sensing danger, fled from the officers. In the narrow streets of Laini Saba, mere steps from his grandmother’s home, Maina’s flight to safety was abruptly halted by a hail of bullets.

The news of Maina’s sudden death reverberated through the community of Kibera and beyond. Soon, it dominated conversations on social media platforms, and his face was splashed across the front pages of newspapers in the days that followed. The 23-year-old’s tragic demise was a stark reminder for Kenyans of the pervasive issue of extrajudicial killing or execution (EJE) that has haunted the nation for decades.

Primarily manifested in questionable shootings by police officers, extrajudicial killing refers to the deliberate killing of individuals outside of any legal framework. This grim practice encompasses deaths resulting from torture or ill-treatment in prison or detention, as well as those stemming from enforced disappearances and excessive use of force by law enforcement officials.

Acutely aware of how nimbly the mechanisms of justice can evade accountability, the Kenya Human Rights Commission swiftly intervened in the early days following Maina's murder to demand justice by putting the Independent Policing Oversight Authority (IPOA) on the spot.

"We are shocked and saddened by the wanton killing of Carilton Maina. We call upon @IPOA_KE to expeditiously investigate the killings in an independent manner. Our police service must stop its practice of extrajudicial executions targeting young men. #EnoughIsEnough," conveyed a tweet from the official Twitter account of the KHRC, posted just three days after Maina's killing.

Due to the sustained pressure by the KHRC and its collaborators, in a rare turn of events, police constable Emmanuel Ambunya Oyombe was charged with the murder of Carilton Maina four months later, in April 2020.

Just One of Many

For many, it was a watershed moment, a tangible result of the power of sustained advocacy to address police brutality and expedite the wheels of justice.

Maina's case, unfortunately, is just one of many.

In 2019, merely a year after Maina's tragic murder, the KHRC and its partners documented 145 cases of police killings. The following year, in 2020, that number rose to 158, with an additional 10 individuals disappearing while in police custody. Fast forward to 2021, and the number soared even higher, to a staggering 219 cases of police killings documented, marking the highest incidence of police killings and enforced disappearances yet recorded.

The victims of extrajudicial killings in Kenya transcend mere mortality statistics. They are singular flesh and bone human beings with names, stories, and dreams like the rest of us. We honour their memory by mentioning their names: Oscar King'ara and John Paul Oulu, co-founders of the Oscar Foundation Free Legal Aid Clinic, were documenting cases of police brutality when they were shot dead by members of a police death squad in Nairobi in 2009.

In 2016, lawyer Willie Kimani, his client Josephat Mwenda, and taxi driver Joseph Muiruri were abducted and murdered by police officers. Kimani was advocating for Mwenda in a case against police brutality. Siblings Benson Njiru Ndwiga and Emmanuel Mutura Ndwiga, aged 22 and 19, respectively, met their death in police custody in August 2021, allegedly after violating a Covid-19 curfew.

These are just a handful of cases whose stories briefly grabbed national headlines, capturing the fleeting attention of the nation. There are countless more whose names remain unknown and lost in the shadow of injustice.

Each Soul Unjustly Taken is a Tragedy unto Itself

Extrajudicial killings cast a long shadow. Take the tragic case of the two brothers, Benson and Emmanuel, from the serene village of Kianjokoma in Embu County, killed by police officers at the peak of the Covid-19 pandemic.

Like Carilton Maina, they were on the cusp of adulthood. The pain inflicted by their untimely deaths echoes far beyond newspaper headlines. Each of them embodied the hopes and dreams of their families. Consider the substantial investment made in their education – from primary school to university. Above all, think about the profound love lavished upon them, only to be replaced by a numbing emptiness when their light was abruptly extinguished.

Each soul unjustly taken is a tragedy unto itself. It encompasses the shattered dreams and unfulfilled potential of those whose lives are unjustly cut short, the erosion of trust in institutions meant to protect, and the scars left upon countless families, communities, and the collective conscience of a nation.

Each life lost in such a manner is a reminder of the urgent need for justice and accountability in safeguarding every individual's right to life and dignity. This is a cause the KHRC has championed since its inception in the 1990s, steadfastly advocating transparency, accountability, and the rule of law to prevent such tragedies and hold perpetrators to account.

In the early '90s, at the peak of Moi-era despotism, the KHRC co-founder Maina Kiai collaborated closely with Wafula Buke, who led the KHRC's activism and campaigning efforts, to orchestrate the organisation's first-ever protest against extrajudicial killings.

At that time, police killings and other human rights abuses were rampant. Buke and Kiai, recognising the need for a shift in strategy, transitioned from confrontations with the police to more symbolic gestures. One innovative approach involved forming a single file, with activists solemnly carrying the coffins of the deceased.

"We formed a solemn procession, with each of us carrying the coffin of a deceased victim," Kiai recounted.

This unconventional method sought to alter the narrative and had a profound impact, even tugging at the hearts of some police officers. Witnessing the coffins during the demonstrations, some officers were moved to tears. This showed the power of symbolic gestures in the fight against extrajudicial killings.

A Powerful Collaboration with Like-Minded Partners

The KHRC has kept up that spirit. As the Senior Programme Advisor for Transitional Justice, Martin Mavenjina is at the forefront of the Missing Voices Coalition – a groundbreaking initiative started by the KHRC and its collaborators to form a common front in the campaign to address extrajudicial executions in Kenya.

Founded in 2018 through a collaboration with like-minded partners such as Amnesty International, Kituo Cha Sheria, HAKI Africa, Muslims for Human Rights (MUHURI), Peace Brigades International (PBI), Code for Africa, the Heinrich Böll Foundation, the Kenyan Section of the International Commission of Jurists (ICJ-Kenya), the Defenders Coalition, Human Rights Watch (HRW), International Justice Mission (IJM), Protection International Kenya, the Social Justice Centre, and the International Centre for Transitional Justice (ICTJ), the Missing Voices Coalition is confirmation of the KHRC's quest to ending extrajudicial killings in Kenya.

Led by Mavenjina, the KHRC team has helped to breathe life into the Missing Voices Coalition, fostering an environment where, year in, year out, shared objectives converge for the singular purpose of addressing extrajudicial executions. The collaboration has not only fostered a robust digital platform but has also become a dynamic force that transcends the virtual realm, reaching into the heart of communities and instigating a ripple effect of change.

Over the years, the coalition has become a formidable force, publishing a series of influential reports that have echoed far beyond the borders of Kenya. These reports, thoroughly researched and documented, have served as a wake-up call to both local authorities and international bodies.

“Our reports have been persuasive in shaping policy decisions and informing key stakeholders about the true state of human rights in Kenya,” Mavenjina notes.

Indeed, the impact of the reports extends far beyond the realm of academia and policy making. They have become a powerful tool for advocacy, catalysing action, and holding perpetrators to account for their crimes.

“Our work has helped bring rogue police officers to justice,” Mavenjina explains. “It has provided a voice for the voiceless and a glimmer of hope for those who have long been forgotten.”

“Our reports have served as crucial resources for parliamentary committees and embassies, providing invaluable insight into the state of human rights in our nation,” he says.

The most remarkable aspect of the Missing Voices Coalition is its ability to humanise the statistics.

“Each name on our platform represents a life lost, a family shattered, a community in mourning,” Mavenjina explains.

“Through our work, we strive to honour their memory and ensure that their voices are heard.”

The Missing Voices Coalition’s impact has registered far beyond the walls of the KHRC, reaching into the highest echelons of power in Kenya and beyond.

“Our Documentation Has Provided Crucial Leads”

Moreover, the data and findings from these reports helped investigative agencies such as the Office of the Director of Public Prosecutions (ODPP) and the Directorate of Criminal Investigations (DCI) to pursue justice against rogue police officers.

Additionally, the coalition’s reports have directly influenced the investigative efforts of the Independent Policing Oversight Authority (IPOA).

The fight against enforced disappearances and extrajudicial executions is far from over. Despite the progress made, challenges remain. In light of the coalition’s recent report, one of the key hurdles is the hesitation of witnesses and families to engage the criminal justice system, where cases can last almost a decade in some instances. Human Rights Defenders (HRDs) also have to be alive to threats from security agencies, impeding their pursuit of justice.

The Independent Policing Oversight Authority (IPOA) also grapples with a backlog, leading families to abandon cases. Inadequate protection services and low trust hinder witnesses from reporting incidents. Kenya’s lack of a law explicitly criminalising enforced disappearance complicates justice-seeking efforts. Meanwhile, emerging trends, like the targeting of new groups such as *boda boda* operators, require adaptive documentation strategies. Police attacks on IPOA, portraying themselves as persecuted victims, are undermining public support for accountability.

The Mission is Far from Over

As of July 2024, the Kenya National Commission on Human Rights (KNCHR) reported at least 50 deaths, 403 injuries, and 59 abductions during nationwide demonstrations. Initially triggered by punitive clauses in the Finance Bill, 2024, the protests later evolved into a broader demand for financial prudence and governmental accountability. The KNCHR has called for the immediate and unconditional release of all individuals illegally detained during the demonstrations.

“Those found culpable, whether civilian or security agents, should be charged. In addition, the Commission shall also pursue command responsibility for all documented instances of police brutality and excesses,” stated the KNCHR.

In early July 2024, following the resignation of the immediate former Inspector-General of the National Police Service, Japhet Koome, the Civic Freedoms Forum (CFF) and the Police Reforms

Working Group-Kenya (PRWG-K) –an alliance of national and grassroots organisations committed to professional, accountable, and human rights-compliant policing, of which the KHRC is a proud member – issued a call for the competitive recruitment of the next police Inspector-General. This, they argue, should break the cycle of “cops leading cops,” which has resulted in the coverup of on-duty crimes, and potentially lead to the appointment of a civilian Inspector-General who is beyond reproach, professional, and committed to respecting human rights.

“These protests were marked by several cases of human rights violations by the National Police Service (NPS), including extrajudicial killings, abductions, torture and other ill-treatment, and arbitrary arrests. In November 2022, following his nomination, the PRWG-K submitted a detailed memorandum opposing the appointment of Japhet Koome, citing concerns about his integrity and accountability during his time as Nairobi County Commander. These concerns were ignored, and Parliament proceeded to appoint him based on the nomination of President William Ruto,” the statement read.

“The Maraga National Taskforce on Police Welfare and Reforms, whose report has been submitted to the President, recommends the reinstatement of competitive recruitment processes for the IG, Directors of Internal Affairs and Criminal Investigations, and Deputy Inspector Generals of KPS and AP. We call on His Excellency Dr. William Samoei Ruto to act on this recommendation and competitively recruit the next IG and restore NPSC’s role in recruiting all senior police officers. As provided for under Article 245 (2a and b), the appointment of a progressive Inspector-General who will exercise independent command over the National Police Service and perform any other functions prescribed by national legislation remains in the public interest. The appointee must meet the key qualifications enshrined in section 11 of the National Police Service Act,” they added.

“In line with these key qualifications, we urge the President to strongly consider competitively appointing a civilian to head the National Police Service.”

The fight against extrajudicial killings in Kenya is far from over, but the KHRC and its many collaborators are determined to fight on. With each report, each advocacy campaign, and each voice raised in protest, the KHRC and its partners continue to push forward, inching ever closer to a future where all manifestations of police abuse of power will become relics of the past.

Even though the road ahead seems littered with landmines, Mavenjina has a rousing message:

“We cannot afford to become complacent. The fight for justice for victims of extrajudicial killings is ongoing, and we must remain vigilant in our pursuit of truth and accountability.”



I STOPPED VOTING WHEN MY BROTHER WAS KILLED BY POLICE DURING ELECTIONS PERIOD

“

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Shattering the Silence: The KHRC's Advocacy for LGBTQ+ Rights in Kenya



“Our gay compatriots – and gay and lesbian rights – are here to stay. Homophobes can take this to the bank – gay and lesbian Kenyans are a political and social fact of life. Their power and influence can only increase.” — Prof. Makau Mutua, co-founder and former Chairperson, the KHRC

“I am because WE are and since we are, therefore, I am,” said Prof. John Samuel Mbiti, the Kenyan-born Christian philosopher and writer, considered the father of modern African theology. It’s a simple yet deeply profound statement that encapsulates the essence of “Ubuntu” by affirming our shared humanity. Mbiti’s words serve as a soothing balm, a timely reminder that regardless of race, tribe, gender, political affiliation, or sexual orientation, we are first and foremost human beings and inseparable from the collective fabric of humanity.

But it’s one thing to believe in the mystical oneness of all human beings and another to practise it. This challenge is further complicated by six million years of human evolution, during which time a psychological binary was deeply ingrained within us; we naturally and instinctively gravitate towards trusting the groups we belong to (in-groups), while simultaneously harbouring suspicion towards those we perceive as outside our groups (out-groups).

It’s from this inherent psychological inclination that prejudices of all sorts spring, fuelling biases, divisions, and bone-deep enmities that have transformed lush countryside into smoking battlefields; reduced elegant skyscrapers to rubble; and enslaved entire nations to a rapacious tribal elite.

“The heart is deceitful above all things, And desperately wicked; Who can know it?” warns the Bible in Jeremiah 17:9-10. It’s a psychological insight that, all evidence considered, is difficult to dispute.

“

I am not a woman, yet I support women's rights. I am not a child, yet I support children's rights. I am not disabled, yet I support the rights of persons with disabilities. I am not a criminal suspect, yet I support the rights of suspects. I am not a prisoner, yet I support the rights of prisoners. I don't choose which rights to protect, and which to neglect.”

The Last Socially Acceptable Prejudice

However, bigotry often adheres to a perplexing hierarchy. To harbour hatred towards someone based on their race is to be labelled a racist; to exhibit disdain for their ethnicity is to be deemed a tribalist. Similarly, to display bigotry towards individuals based on their sexual orientation is to be branded a homophobe.

Yet, in today's society, it's glaringly apparent, even with just a cursory glance at social media, that people are more cautious about being associated with racism or tribalism than they are with homophobia.

Despite strides made in combating discrimination and promoting inclusivity, homophobia stubbornly persists as the last socially acceptable prejudice in many Kenyan and global circles. It's a phenomenon that defies the very essence of Ubuntu.

For Mbiti's wise words to ring universally true, we must wholeheartedly affirm each other's humanity without exceptions. Otherwise, we are mirroring the inhumanity of the bigoted British colonists who prohibited Kenyans from moving freely in Nairobi after dusk before 1963 and the hypocrisy of the Bible-thumping white slave owners in America's South who stubbornly clung to their slaves for 400 years.

If we dig deep enough into our history, we will find that the victories we celebrate today against the racism that engulfed the world not too long ago were only possible through the courage of individuals who dared to oppose the prevailing tide of unreason.

It has always been thus. Change only comes when true believers uphold their intrinsic right to speak, to associate, and to defend causes that are, for the moment, unpopular. Rooted in this spirit that human rights are universal and indivisible, the Kenya Human Rights Commission has consistently championed the rights of marginalised communities in Kenya, including the LGBTQ+ community.

The Rights and Dignity of all Individuals

One of the distinguishing characteristics of the KHRC since its inception in Washington, DC in the 1990s has been its steadfast refusal to yield to the sway of the prevailing public opinion.

Embracing the wisdom encapsulated in the adage that "he who marries the spirit of the age will find himself widowed in the next", the KHRC has always charted its own course and remained true to its founding principles.

It's this dedication to evidence-based advocacy, due process, and standing firm against discrimination and injustice that has given the KHRC the moral and intellectual backbone to challenge the status

quo and advocate for the rights and dignity of all individuals, regardless of sexual orientation or gender identity.

“We shouldn’t oppose discrimination against women while supporting the persecution of certain ethnic groups. This is the point – we shouldn’t oppose one wrong while supporting another. That’s why I and the KHRC work to promote and protect all rights, including sexual orientation,” articulated co-founder Prof. Makau Mutua, in his weekly column for the *Sunday Nation* edition of December 23, 2012.

“Our gay compatriots – and gay and lesbian rights – are here to stay. Homophobes can take this to the bank – gay and lesbian Kenyans are a political and social fact of life. Their power and influence can only increase. Slowly, more gay Kenyans will “come out of the closet” and proudly proclaim their sexual identities. This is the arc of history, and it’s unstoppable.”

Transformative Social Campaigns

Powered by this unwavering resolve, the KHRC has worked alongside other NGOs and grassroots organisations pushing for LGBTQ+ advocacy in Kenya, amplifying their voices and supporting their initiatives. At the heart of the KHRC’s mission lies a deep understanding that the struggle for LGBTQ+ rights is not merely a matter of preference or opinion, but a fundamental human rights issue.

“I am not a woman, yet I support women’s rights. I am not a child, yet I support children’s rights. I am not disabled, yet I support the rights of persons with disabilities. I am not a criminal suspect, yet I support the rights of suspects. I am not a prisoner, yet I support the rights of prisoners. I don’t choose which rights to protect, and which to neglect,” Mutua states.

“The theory of anti-subordination, which must guide all who believe in human dignity and human rights, dictates that we oppose all forms of powerlessness and oppression.”

Through collaborative efforts with allies dedicated to LGBTQ+ rights advocacy, the KHRC has sought to dismantle systemic barriers, challenge discriminatory laws, and foster a more inclusive and equitable society for all Kenyans. From groundbreaking legal battles to transformative social campaigns, the KHRC’s legacy of solidarity with the LGBTQ+ community has left an indelible mark on the landscape of human rights in Kenya.

It’s a decades-long struggle marked by the courage of largely uncelebrated individuals who have persistently asserted the humanity of the queer community in Kenya, often at great personal peril. Eric Gitari is one such individual. A human rights activist with a passion for shaping a more inclusive and just Kenya, Gitari has been a prominent figure on the front lines of LGBTQ+ advocacy for

decades. His contribution to the ongoing fight to expand LGBTQ+ rights in Kenya is as compelling as it is courageous.

Gitari's path to the KHRC, the epicentre of Kenya's human rights movement, was rooted in his commitment to social justice. His introduction to the KHRC came through his work with the Centre for Rights Education and Awareness (CREAW-Kenya), where he served as a liaison for a roundtable discussion led by Mutua, then Chairman of the KHRC, on the decriminalisation of homosexuality in Kenya.

"I had been active in the queer movement for a long time," he recounts.

Born with both Female and Male Genitalia

Then Gitari's activities intersected with the KHRC's groundbreaking efforts in LGBTQ+ advocacy again, this time due to his involvement in the Richard Muasya case. Born with both female and male genitalia, Muasya's lawsuit against the Attorney General of Kenya was a plea for recognition and dignity. It unfolded against a backdrop of legal complexities and societal prejudices. Muasya had been deprived of a birth certificate, hence, other essential identity documents, robbing him of the opportunity for education. Throughout his life, he struggled with the ramifications of his ambiguous gender, navigating a maze of discrimination, stigma, and myriad other hurdles. Eventually, these challenges led him down a dark path that culminated in his imprisonment on a robbery with violence charge.

The crux of Muasya's legal battle lay in the fundamental question of identity and the recognition of intersex individuals within the framework of Kenyan law. At its core, the case underscored the need for a nuanced understanding of gender beyond binary classifications, challenging antiquated notions enshrined in statutes and legal precedents.

With the support of the KHRC and other NGOs, Muasya's quest for justice gained momentum, culminating in a landmark ruling on December 2, 2010. In a watershed moment, the court acknowledged Muasya's condition as intersex, recognising the inherent dignity and rights of individuals like him. Despite the prevailing societal stigma and legal ambiguities, the ruling affirmed the principle of equality before the law, charting a new course for intersex rights in Kenya.

Gitari's involvement in LGBTQ rights advocacy extended beyond conventional boundaries, encompassing endeavours such as translating the Yogyakarta Principles into Kiswahili and English, thereby fostering accessibility to crucial human rights discourse.

The Yogyakarta Principles is a landmark document addressing human rights from the point of view of sexual orientation and gender identity. Crafted as the culmination of an international gathering

of human rights organisations convened in Yogyakarta, Indonesia, in November 2006, it serves as a foundational framework for championing equality and dignity for all individuals, regardless of sexual orientation or gender identity.

Extensive Background in the Queer Movement

Later, by sheer chance, a Programme Associate position opened up in the KHRC's LGBTQ+ Programme. Gitari seized the moment.

"I promptly submitted my application," he says.

Gitari was a shoo-in. His extensive background in the queer movement, coupled with his legal expertise, positioned him as the perfect candidate.

"This was the first time the KHRC was running the programme. I was sort of inventing the wheel," Gitari reflects on his early days at the Kenya Human Rights Commission.

Gitari's initiation into the KHRC was swift and intense. It was marked by the immediate challenge of organising the International Day against Homophobia, Biphobia, Intersexphobia, and Transphobia—a highly significant event on the calendar that was to be held at the National Museums of Kenya just seven days after his appointment into the role.

"The event was a huge success," he says.

Yet, with success came scrutiny and backlash. Threats of arrest loomed ominously over the KHRC team that organised the event.

"Because of the huge attendance, it was reported in the media and caused a huge backlash," Gitari recalls.

"Leaders from the Christian evangelical and Muslim community called a press conference and demanded that we be arrested."

Despite facing threats of arrest and backlash from religious leaders, Gitari and the then Executive Director, Muthoni Wanyeki, stood firm in their commitment to supporting LGBTQ+ rights within the bounds of the law.

"It was a menacing but empty threat in the end. We were on the right side of the law," Gitari says.

Bolstered by the resounding success of the event, the KHRC amplified its advocacy on behalf of the LGBTQ+ community, with Gitari assuming a prominent role at the vanguard. It marked the genesis of a campaign that would reshape the landscape of LGBTQ+ advocacy in Kenya. Teaming up closely with organisations such as the Gay and Lesbian Coalition of Kenya (GALCK) (now

GALCK+), Gitari led the charge on initiatives focused on legal empowerment and civic education within the queer community.

“We provided mentorship and bolstered GALCK’s legal capabilities,” he explains.

Advocating LGBTQ+-Inclusive Constitutional Provisions

Meanwhile, Gitari’s innovative civic education programme at the KHRC provided a platform for LGBTQ+ individuals to engage in constitutional discourse, empowering them with the knowledge to advocate their rights effectively.

“We organised events every Saturday and Sunday at the KHRC office just to go through the draft constitution to enlighten the queer community about its potential and why they should support it.”

“We were telling queers that if you vote for this constitution, we are going to litigate and make sure that sexual orientation is interpreted as a protected ground,” Gitari adds, recalling the major role played by the KHRC in advocating LGBTQ-inclusive constitutional provisions—a watershed moment in Kenya’s human rights history.

“The Constitution was very inclusive,” he affirms while unpacking, as only a lawyer can, the transformative potential of constitutional reform in advancing LGBTQ+ rights.

Venturing beyond the confines of Nairobi, Gitari and his boss Esther Waweru, the then Programme Officer for Legal Affairs at the KHRC, spearheaded an expedition across 10 locations in Kenya, conducting civic education and documenting violations faced by LGBTQ+ individuals. This pioneering initiative not only catalysed public discourse but also contributed to the successful promulgation of the 2010 Constitution, which embodied principles of inclusivity and equality.

Their efforts bore fruit with the publication of ‘Outlawed Amongst Us,’ a seminal work that shed light on LGBTQ+ rights in Kenya and illuminated the struggles, triumphs, and lived experiences of the queer community across the nation—proof of the power of research and documentation in effecting social change.

‘Outlawed Amongst Us’ was published in January 2011. It was the first publication that spoke about LGBTQ rights in Kenya.

“We are Routinely Abused, Subjected to Hate Speech”

Embedded within the report were the voices of those who have long been silenced—the testimonies of individuals who have endured unimaginable hardship simply for being who they are.

Through their research methodology, which involved extensive interviews and focus group discussions across Kenya, the KHRC team provided a platform for LGBTQ+ voices to be heard and seen not as statistics or numbers, but as individuals with hopes, dreams, and aspirations.

“We are routinely abused, subjected to hate speech, and denied our basic rights,” one survivor recounted, echoing the sentiments of countless others.

The KHRC report amplified these voices, transforming them from whispers in the dark into powerful calls for justice and equality. It also illuminated a harsh reality: the LGBTQ+ community in Kenya endured relentless hardships, from routine harassment by state officials to brutal physical assaults and even rape by police, vigilantes, and organised criminals.

“I was in my house with my partner when persons claiming to be police officers banged on my door demanding entry. As I was trying to open the door, they forced themselves in without identifying themselves and proceeded to search the house without a warrant,” said one victim of police brutality.

Furthermore, the report shed light on the pervasive presence of blackmail, extortion, and threats of exposure that haunt the lives of LGBTQ+ individuals. It also underscored how the insidious stigma and discrimination perpetuated by family, society, and religious institutions compounded their daily struggle for survival.

“I send my ex-wife Ksh100,000 (\$1,127)* every month for her silence and child maintenance. If she spoke, my father would strip me of my inheritance,” said one respondent.

Lacking in Strategic Focus

With a keen focus on advocacy and strategic intervention, the KHRC laid bare the failings of the prevailing approaches to addressing LGBTQ+ rights violations.

“Our interventions have been reactionary and lacking in strategic focus,” lamented the report, while stressing the urgent need for a paradigm shift in human rights advocacy.

However, the report was not merely to serve as a documentation of suffering; it was a rallying cry for change.

“As the KHRC, we recommended decriminalisation,” says Gitari as he lists a series of other groundbreaking proposals to advance LGBTQ+ rights in the report.

“We were very clear that the government should initiate decriminalisation efforts in parliament,” he adds.

“The criminalisation of homosexuality is wrong in principle,” the KHRC report declared and called for the repeal of Penal Code sections criminalising consensual same-sex acts and ambiguous provisions used to detain LGBTQ+ individuals, emphasising the need for direct language in all laws.

“The vague language in the Penal Code has been misused,” noted the report.

Additionally, the KHRC championed comprehensive equality legislation, police and prison reforms, and equal access to reproductive health services. The report also urged the integration of international human rights principles, representation in key commissions, and the establishment of a Sexual Minorities Department. Furthermore, the KHRC emphasised the importance of educational reforms and civic education measures to combat discrimination and promote tolerance.

The Risks Inherent in Challenging Entrenched Norms

As his appreciation of the harsh reality faced by the LGBTQ+ community in Kenya deepened, a grander vision began to crystallise in Gitari’s mind—an aspiration to establish an organisation dedicated to actualising the recommendations outlined in the KHRC report. It would mark the beginning of a transformative chapter in his life and Kenya’s human rights landscape.

“I initially sought to register the National Gay and Lesbian Human Rights Commission (NGLHRC) as early as 2012 when I left my job at the KHRC, but the NGOs Coordination Board refused to reserve our name,” Gitari recalls.

Undeterred by the frustration and bureaucratic hurdles that met his efforts, Gitari persevered, making countless trips to the NGOs Coordination Board to secure registration.

“I met the legal officer of the NGOs Board who told me I was not the first one to try to register an NGO with ‘gay’ and ‘lesbian’ in the name,” he narrates.

“They didn’t want those words in the name; they thought they would be legitimising such relationships in Kenya where they are criminalised,” he explains.

Gitari refused to be silenced. Armed with a firm resolve and the support of his legal counsel, Sande Ligunya of Ligunya Sande & Associates, Gitari took the NGOs Coordination Board to court in 2013, challenging its refusal to register the organisation. Little did he know that the legal battle would span a decade.

“We faced plenty of challenges,” he reflects. “Initially, no one believed that it would be possible for anyone to do queer work in Kenya using the legal or human rights approach.”

Indeed, the path to progress was fraught with scepticism and doubt. Gitari and his allies faced a chorus of voices urging caution, warning of the risks inherent in challenging entrenched norms and laws.

“We were telling people, ‘let’s go to court’,” Gitari recounts.

“And people were like, ‘the court is not guaranteed. You’re going to lose in court and will set the movement years back’.”

Yet, undeterred by the naysayers, Gitari and his comrades pressed on, driven by an unwavering belief in the power of justice to effect change.

“We had very quiet hearings,” Gitari recalls. “I used to be in court alone, just me and my lawyer for the different mentions.”

A Watershed Moment in Kenya’s LGBTQ+ Rights Struggle

“Eventually, we won the case at the High Court on April 27, 2015, through a unanimous decision of Justices Isaac Lenaola, Mumbi Ngugi, and George Odunga,” Gitari recalls.

The victory, a landmark moment in Kenya’s LGBTQ+ rights struggle, sent ripples of hope and inspiration throughout the community. The three-judge bench had been empanelled by then Chief Justice Willy Mutunga. Gitari had the foresight to press on with the case while Mutunga was still the Chief Justice.

However, as with any battle for justice, the road was fraught with challenges and setbacks. The NGOs Coordination Board wasted no time in appealing the High Court’s decision, plunging Gitari and his allies into a protracted legal tussle.

“We have studied the law, the NGO Act, the Constitution and the ruling of the three-judge bench and realised there are errors in the judgment,” said Fazul Mohamed, the Board’s then Executive Director and CEO.

“The case took 10 years to get completed,” Gitari says.

“The KHRC came on board as an interested party early on in the case.”

“They not only provided space for us to hold our litigation strategy meetings but essentially incubated us from 2012 and grew us into the organisation we are today,” he adds.

“The KHRC being my former employer, and having established a very good working relationship with the colleagues and the institution generally, it was easy for me to go back and request assistance in this regard.”

In Uncharted Terrain

For Gitari, the KHRC was more than just a host providing his unregistered NGO with legal cover; it was a lifeline, a guiding force that propelled his advocacy efforts to new heights.

“I felt we needed to have a mainstream human rights organisation to provide us not only with cover but also wings upon which we could fly,” he reflects.

“We were in uncharted terrain,” he admits. “I didn’t have any experience in managing an NGO or running its finances. There were a lot of things that I was learning on the go. Mine was just passion. I was just responding to a call to do something good for my community.”

With the KHRC’s support, Gitari and his team navigated the legal, financial, and administrative challenges that plague many NGOs in their infancy, laying the foundation for a formidable organisation dedicated to LGBTQ+ rights in Kenya.

The triumph in 2015, albeit fleeting given the quick appeal by the NGOs Board, came at a price.

“While we were getting more and more public and more visible in the media, it meant that we were also heightening the scrutiny on us and creating insecurity for others and ourselves,” Gitari explains.

Threats of violence and intimidation became an ever-present reality as Gitari and his comrades pressed forward in their quest for justice.

As early as 2013 when the case was filed, Gitari received a threatening phone call asking him to withdraw the case or face the wrath of God.

“But God did not destroy us, of course, and we are still here.”

Even Higher Stakes

Around the same time, another fight was brewing with even higher stakes for Kenya’s LGBTQ+. Lorna Dias, the Executive Coordinator of GALCK+ and a board member of the KHRC, was at the heart of this fight together with Gitari and others in the movement. The genesis of this particular struggle traces back to the arduous task of reviving GALCK, a cornerstone of the LGBTQ+ movement in Kenya.

Reflecting on the uphill journey, Dias acknowledges, “It took 10 years to get back on our feet.”

A climate of uncertainty and fear prevailed around the LGBTQ+ community in Kenya in the form of various types of ill-treatment on the basis of their sexual orientation as had been captured in the groundbreaking report by the KHRC. This now included the walls of bureaucracy closing in on the community, resulting in cases of visas being denied on patently discriminatory grounds.

This prompted GALCK+ to confront the looming threat. The crescendo of this action arrived in the crafting of a movement-based decriminalisation petition, a delicate composition of legal arguments and human narratives.

“We had to put a human face on how this law was impacting individuals and their families,” Dias explains.

Two petitions emerged—Petition 150 of 2016 and Petition 234 of 2016. Parties that filed the petitions at the High Court included NGLHRC, GALCK and the Nyanza, Rift Valley and Western Kenya Network (NYARWEK) together with other partners. The cases weren’t just about challenging laws (chiefly sections 162(a) & (c) and section 165 of the Penal Code); they were an eloquent declaration of the profound impact of such colonial laws on flesh and blood human beings. The diverse ensemble of petitioners, including gay men, a lesbian woman, a parent of a gay man, and a priest who witnessed human rights violations against LGBTQ+ persons in his community, reflected the kaleidoscope of Kenyans targeted by oppressive laws.

“The KHRC Has Clout and We Needed Clout”

Seven interested parties joined the case in support of the petitioners. The first six interested parties were individuals who advocate the rights of LGBTQ+ persons and men who have sex with men (MSM). The seventh interested party, the Kenya Legal and Ethical Issues Network on HIV & Aids (KELIN), was an organisation that works to promote access to equitable healthcare and HIV services for all Kenyans. The Attorney General opposed the petitioners’ case on behalf of the State, while three interested parties, namely the Kenya Christian Professional Forum, Irungu Kang’ata and the Ummah Foundation, supported the State’s case.

The petitioners in the second case made a strategic decision to include the KHRC as petitioner number eight. The decision to involve the KHRC, with its historical clout in such fights, was Dias’s idea: “The KHRC has clout and we needed clout.”

The petitioners, both individuals and institutions alike, presented a united front in asking the court to declare sections 162 and 165 of the Penal Code unconstitutional and invalid. The cases were later merged and as the legal battle ensued, GALCK fortified its Emergency Security Response Mechanism to shield the community from potential backlash. This robust mechanism, proof of GALCK’s forward thinking and commitment to the cause, ensured that the harmonious anthem of resistance would continue, even in the face of adversity.

However, despite the petitioners’ best efforts, on May 24, 2019, three High Court judges, Roselyne Aburili, Chacha Mwita and John Mavito, gave a unanimous judgment that the law that criminalises same-sex sexual conduct was not in violation of the Constitution of Kenya.

“In our view, decriminalising same-sex sex on grounds that it is consensual and is done in private between adults would contradict the express provisions of Article 45(2). The petitioners’ argument

that they are not seeking to be allowed to enter into same-sex marriage is, in our view, immaterial given that if allowed, it will lead to same-sex persons living together as couples. Such relationships, whether in private or not, formal or not, would be in violation of the tenor and spirit of the Constitution.”

Resolve to Persist Despite Setbacks

The judgment, though devastating, did not stifle the movement’s forward march in its fight to end discrimination against members of the LGBTQ+ community. Dias was stoic.

“I thought it is what it is. This is what has happened. We are moving forward no matter what it takes,” she reflects.

Indeed, the struggle for LGBTQ+ rights in Kenya is not for the faint of heart. As Dias aptly notes: “The movement is based on the resolve to persist despite setbacks and evolving challenges.”

The LGBTQ+ movement pressed forward, this time its gaze fixed firmly on the NGOs Board case, which had ascended to the appellate stage of the judicial system. To the profound delight of members, the scales of justice tipped in their favour. The Court of Appeal’s decision not only marked a significant step forward for human rights in Kenya but also served up a sharp rebuke to those who habitually weaponised religious texts to justify their bigotry. Nonetheless, per Gitari’s recollection, the courtroom witnessed some tense moments on the day of the decision.

“As the Court of Appeal delivered all five judgment opinions, the atmosphere was charged. The first four opinions presented were split, with two in dissent and two in favour,” he remembers.

Justices Daniel Musinga and Roselyn Nambuye agreed with the view of the NGOs Board on the matter, with the former asserting that the High Court lacked the jurisdiction to hear the case in the first place.

“To the extent that the respondent did not follow the NGO Act, to appeal the case before the board, the High Court ought to have ordered that it followed the procedure. To that extent the court had no jurisdiction to hear the case,” declared Justice Musinga.

Justice Nambuye was of the view that it was the work of Kenyans and Parliament to decide whether they would legalise homosexuality and same-sex marriages through a referendum and legislative process.

“The Judicial pronouncement which accorded non-discrimination has not crystallised that right. It ought to be through the Constitution or legislation that one can claim a right. It ought to be through a referendum or legislation. None can be conferred by judicial pronouncement. This is merely an aspirational right,” she said.

Justices Martha Koome (now Chief Justice) and Asike Makhandia adopted a loftier and more humanistic interpretation of Kenya's Constitution and scripture.

“Detesting gays and lesbians is outright discrimination. The Board did not present any evidence that evils like corruption and others are brought by LGBT. The institution of marriage is not threatened by this group. It is an institution that one enters out of choice. This is stereotyping people and expecting that the same size fits all. If people are sinners God will deal for him. No one can judge them for Him,” ruled Justice Koome.

“All human beings must be respected irrespective of their orientation or sexual lives. The only test is whether those acts violate any law. In the society of Kenya, there is a need for tolerance. The first respondent's rights were violated for declining to register the organisation,” ruled Justice Makhandia.

**“It is Impossible for the Country to Close its Eyes as if it Does
Not Have these People”**

At this point, everything hung in the balance. In line with the rules of the court, only the Presiding Judge, Justice Philip Waki, could break the tie.

“A pin-drop silence enveloped the courtroom. It was very tense,” recalls Gitari.

Justice Waki decisively sided with Koome and Makhandia. To seal the fate of NGLHRC's registration, he invoked a biblical verse, John 8:7, where Jesus challenges those without sin to cast the first stone at a woman caught in adultery.

“The issue of persons who are LGBT is rarely discussed in public. It cannot be doubted that it is an emotive issue. It is impossible for the country to close its eyes as if it does not have these people,” ruled Justice Waki.

Gitari's heart raced with elation as Justice Waki intoned every word.

“We must, therefore, as a nation look at ourselves in the mirror; that the people in the Legislature, media, and Executive openly discuss the fate of these people. I will not be the first to throw and hurt the LGBT,” Waki declared.

Gitari was overjoyed.

“When his opinion began with quoting the book of John, ‘Let him who is without sin among you be the first to throw a stone at her,’ I wept. I was so happy that there was a good Christian on the bench who knew God's justice for the downtrodden,” he says.

“Justices Waki and Koome approached the issue from a religious perspective, reaching the same conclusion that Kenyan society should not pass judgment on us, for we are all sinners in the eyes of the Lord. On that day, I felt God's will for justice and mercy for the LGBTQ+ community in our

nation. It brought me closer to God, healing old wounds from the Catholic guilt and evangelical hate that have burdened me for so long,” Gitari says, speaking to the weight that such advocacy inevitably has on those who carry the torch.

In a statement of appreciation, Njeri Gateru, the Executive Director of NGLHRC, praised the decision, affirming that the judges had upheld Kenya’s progressive Constitution.

“The judges have upheld the constitutional right for like-minded individuals to convene and organise officially. This freedom, enshrined in our Constitution, is not only a victory for our organisation but also a triumph for human rights as a whole,” she remarked.

A Resounding Declaration that Echoed across the Corridors of Justice

Unsurprisingly, shortly after the Court of Appeal granted the NGLHRC the long-awaited right to be registered, the NGOs Board announced its intention to appeal the decision at the Supreme Court, Kenya’s highest judicial authority.

“My Lady, I urge this court to stay the orders as I appeal the decision,” implored Harrison Kinyanjui, the lawyer on record for the NGOs Board.

The commitment of activists pushing for the expansion of LGBTQ+ rights in Kenya would soon be richly rewarded. On a crisp September morning in 2023, in a resounding declaration that echoed across the corridors of justice, the Supreme Court’s gavel gave the final word on the Kenyan queer community’s decade-long quest to register the National Gay and Lesbian Human Rights Commission. In a landmark ruling, the Supreme Court delivered a resounding rejection of the NGOs Board’s stance, affirming the inherent rights of the NGLHRC to formal recognition.

As religious organisations voiced their vehement disapproval, claiming that the Supreme Court judges had “gone against God” by reaffirming their decision, the NGLHRC’s jubilation was palpable.

“Today’s decision is not just a victory for NGLHRC or the LGBTIQ+ community but for the enduring principles of freedom of association and assembly encapsulated in Article 36 of the Kenyan Constitution 13 years after its promulgation,” it declared

The KHRC, meanwhile, issued a thunderous statement welcoming the judgment:

“The NGOs Board was wrong all those years and will remain so. While we celebrate this victory, the journey towards a truly inclusive society is far from over. LGBTQ+ individuals still confront violence and discrimination, serving as a stark reminder that the fight for equality endures.”

Asserting its firm commitment to the cause of human rights, the KHRC declared that it “will not stop defending everyone’s rights, regardless of their sexual orientation or gender identity. We will keep pushing until LGBTQ+ persons can enjoy all their rights, free from discrimination and violence.”

“The Government...Shall Not Obey the Court Orders”

While the decision served as a validation of the unswerving zeal of the NGLHRC and its collaborators in the struggle for LGBTQ+ freedoms, it also brought to the fore a challenge that organisations like the KHRC have grappled with since their inception: Executive impunity.

“Though we won the case, and the Supreme Court reaffirmed our right to be registered, the government said it shall not obey the court orders,” Gitari laments.

Despite that setback, he remains undeterred, fuelled by a sense of purpose and a belief in the power of collective action.

“As long as we remain united in our pursuit of justice, there is no limit to what we can achieve,” he affirms.

“There has been a lot of growth in terms of the numbers of people who are out. More people are courageous, and they’re living authentic lives. And for me, that is a huge reason to celebrate.”

“We Shouldn’t Just be Written Off”

A SJD (Doctor of Juridical Science) candidate at Harvard Law School at the time he was providing his recollections for this book, Gitari’s reflections on the journey thus far are suffused with a quiet optimism.

“I just want to inspire other people to know that they don’t have to be afraid to be who they are in their own country. That our grandfathers and mothers fought for this country of ours. And we shouldn’t just be written off as if we are not citizens, just because we have love or sex differently,” he emphasises.

Change, as Dias observes, often provokes resistance, and in Kenya, this has coalesced into a movement that fervently opposes gender rights, sexual and reproductive health, and the LGBTQ+ community. The seemingly benign moniker, the Kenya Christian Professionals Forum, conceals an agenda antithetical to professionalism, instead focusing on stifling conversations about LGBTQ+ issues and restricting women’s autonomy over their reproductive health.

“They give themselves all manner of good names,” Dias notes, pointing to the irony that the forum’s discussions have little to do with professionalism and more to do with suppressing progressive conversations.

This begs the question, amid the adversarial currents it has to contend with, what’s the LGBTQ+ community in Kenya’s theory of persuasion going forward?

Dias breaks down the lie of the land.

“Kenya, like many nations, grapples with a spectrum of beliefs ranging from entrenched bigotry to unwavering allyship for the LGBTQ+ community. There will always be diehard bigots, homophobes and the narrow-minded. Our approach is to work with those who are progressive and who aren’t afraid to be progressive,” she says.

“The approach isn’t confrontational; instead, it’s a nuanced engagement with minds on the precipice of change.”

Dias explains why she discerns that a quiet revolution is taking shape in the form of a profound shift in generational worldviews, implying that the seeds of transformation may be sown within the evolving mindset of the youth. The diehards, she predicts, will eventually be nudged aside as a collective awakening unfolds.

“I Have Learnt to Cultivate Patience”

In this intricate dance with societal currents, the KHRC positions itself as a guide for the unsure, a meeting point for those inclined towards progressivism and treating all humans as deserving of equal rights no matter their sexuality. Dias’s strategy subtly revolves around patience because she recognises that the evolution of minds is a gradual process.

“Minds change, but it takes a lot of time,” Dias reflects, emphasising the need for steadfastness and endurance in the face of deeply ingrained prejudices.

In a world often demanding instant gratification, Dias advocates a slower, more deliberate approach to change. It’s a lesson she has internalised over the years, cultivating a reservoir of patience crucial for the longevity of the LGBTQ+ advocacy movement.

“The thing that I have had to cultivate and the thing that I try as much as possible to cultivate in those around me is patience. I didn’t use to have any. But I have learnt to cultivate patience. Because this whole journey with the movement since 2013 has been one of severe character development around patience,” she admits.

Dias also emphasises the need for diversity within LGBTQ+ advocacy itself.

“We need all colours. We need all types of people,” she insists, recognising the indispensability of every hue in the rainbow of advocacy.

“From the radicals forging ahead with audacious innovation to the measured voices advocating caution. We have to be committed to being inclusive and diverse ourselves.”

“We receive divergent views and then we build some sort of consensus around those divergent views on what is strategically prudent,” Dias explains, encapsulating the collaborative ethos that defines the LGBTQ+ movement in Kenya.

Through the lens of Kenya's LGBTQ community's promising though incomplete battle for greater freedoms, we catch a glimpse of a brighter tomorrow, where equality and justice reign, and where every voice is heard and every human right is respected. It's a vision of inclusivity and dignity for all human beings (regardless of sexual orientation or gender identity) that the Kenya Human Rights Commission is committed to and will continue championing fearlessly.

The KHRC and the Covid-19 Pandemic: A Study in Leadership



“There was no guidebook or formula, but we had to act.” —

Davis Malombe, Executive Director, the KHRC

The emergence of the Covid-19 pandemic at the tail end of 2019 plunged the entire world into uncharted territory. The swiftly spreading, once-in-a-century viral infection, for which there was no known cure, compelled nations worldwide to take unprecedented measures to protect their populations from its rapid spread.

The early days of the pandemic bore an uncanny resemblance to a Hollywood horror film come to life. The news cycle was inundated with videos of hospitals in China, Italy, Spain, and America struggling to cope with the high number of patients, and stories of shortages of body bags abounded.

The internet, riddled with doomsday theories and an abundance of conspiratorial speculations at the best of times, came to a raging boil. Viable solutions for how the world could pull itself from the precipice of imminent doom were scarce to non-existent.

Here in Kenya, a significant turning point occurred on March 15, 2020, when President Uhuru Kenyatta made a noteworthy announcement. He suspended the arrival of planes from “Covid-19-infected countries,” including the United States.

The Tumultuous Waves of the Covid-19 Pandemic

As the world grappled with the unprecedented challenges imposed by the Covid-19 pandemic, the Kenya Human Rights Commission found itself at the intersection of human rights advocacy and a public health crisis. The shift to remote work, intended to curb the spread of the virus, brought forth a unique set of challenges and opportunities for the organisation.

The KHRC found itself navigating uncharted waters, determined to stay afloat while offering a lifeline to those affected by the crisis.

“When many other employees were being affected, ours were not. We tried as much as possible to maintain the same number and to support them throughout that whole period when everything was shut down,” says Martha Ndururi, the Human Resources and Administration Manager at the KHRC.

Ndururi describes how the KHRC took a proactive stance in adopting a digital transformation well before the pandemic’s onset.

“In 2019, the IT team had somehow started the process of moving everyone to the Google platform,” she recalls.

The pandemic forced businesses worldwide to shutter their doors, but the KHRC, with its digital infrastructure, stood defiant. The strategic shift in the preceding year laid the groundwork for the Commission’s resilience during the crisis. This feat, as Ndururi points out, was no overnight accomplishment but the culmination of careful planning and execution.

“We didn’t know Covid was coming in 2020,” she says, “but I think that for me was a significant achievement in that we were able to continue running even when everything was shut down.”

Continuity was crucial, especially for a human rights organisation committed to assisting marginalised communities.

However, the transition to the digital realm was not the whole story.

“We also tried to help staff set up offices in their homes,” Ndururi explains. This involved more than just virtual meetings; it meant maintaining a presence on the ground, utilising applications like Zoom, and engaging with communities in far-flung places such as Kwale, Taita Taveta and Lodwar.

The adaptability of the KHRC’s staff was remarkable, and their efforts ensured that the important work would continue.

Early Days of the Pandemic

“In terms of programming, we did very interesting work. We ended up being a lot more impactful,” reflects Executive Director Davis Malombe.

The operational backbone of the KHRC went beyond technology; it was a complex web of interdependent departments, each playing a crucial role.

“You can’t implement without the admin side of it,” Ndururi emphasises. While some staff had the flexibility to work remotely, the Procurement, Finance, and HR teams had to remain in Nairobi, ever vigilant, ensuring that the Commission’s mission moved forward unhindered.

Ndururi recalls the early days of the pandemic when Zoom and Google Meet became familiar companions.

“We would hold weekly meetings with all staff just to know where they were and what they were undertaking,” she recounts. As time went by and the team adapted to the new norm, the meetings evolved to bi-weekly and then monthly. The human spirit’s perseverance revealed itself as life continued within the confines of a screen.

Simultaneously, the KHRC grappled with the impact of the pandemic on its operations. Negotiations with donors for flexibility in the usage of funds allowed the KHRC to allocate resources to staff welfare, including providing insurance to cushion employees in the event of infection. The virtual shift also necessitated additional funding for operational expenses, securing the organisation’s institutional stability in the face of unforeseen challenges.

“We enhanced the medical cover to allow for testing,” Ndururi mentions.

The Commission recognised the need for accessible testing, especially when staff members and their families faced infection. The KHRC thus provided a costfree testing point, a move that eased the financial burden on staff.

Response to Human Rights Violations: Swift and Comprehensive

The juxtaposition of enforced lockdowns and the organisation’s commitment to its mission spurred innovative approaches to human rights work. The KHRC, despite physical limitations, intensified its efforts, responding to the escalating human rights violations resulting from the implementation of Covid-19 containment measures in Kenya.

The KHRC’s response to the human rights violations spurred by the pandemic was swift and comprehensive. Collaborating with other advocacy groups, the organisation focused on monitoring and documenting the infringements that accompanied the enforcement of Covid-19 measures.

“Our constituencies were being impacted very negatively. For example, workers faced layoffs and challenges accessing medical care,” recalls the KHRC Executive Director.

Negotiating with donors to redirect funds to welfare support exemplifies the KHRC’s adaptability. The organisation ventured into unfamiliar territory, providing humanitarian aid to communities it had hitherto solely engaged with for advocacy purposes. The Commission orchestrated a digital fund, an innovation aimed at supporting vulnerable communities in informal settlements like Korogocho in Nairobi.

“We came up with a fund to raise money to support those communities,” notes Malombe.

“We opened a paybill number and approached the public to support with whatever they could,” Ndururi shares, explaining how the KHRC engaged the public in aiding families in informal settlements. The fund not only showcased the organisation’s agility but also its commitment to addressing the evolving needs of the communities it served.

Relief Food and Cash Transfers

The ability to adapt swiftly and efficiently, whether by moving operations online or extending support to staff, allowed the KHRC to maintain its mission of serving communities. Ndururi speaks passionately of this achievement, “We could still impact the community and be a credit to our beneficiaries.” Even when faced with the impossible, the Commission’s determination shone through.

Ndururi recounts their collaboration with a network of partners to provide relief during the Covid-19 crisis. Referring to assistance to the flower farm workers in Naivasha who were severely impacted by the pandemic’s economic ripples, Ndururi says it became a lifeline for many families.

“For the Covid-19 support, the KHRC partnered with Hivos Foundation, The African Women’s Development and Communication Network (FEMNET), Haki Mashinani, Ufadhili Trust, and Kenya Flower Council,” she explains. Their collective efforts resulted in the distribution of relief food to 5,000 workers and cash transfers to 2,500 workers who lost jobs, primarily in Naivasha.

Even amid the pandemic, the KHRC demonstrated remarkable adaptability in its continued efforts to champion human rights, exemplified by its interventions on behalf of the communities in Ngaaie Hills in Kitui County and Nguluku in Kwale County.

The Ngaaie Hills community, historically tranquil, faced an existential threat with the advent of Athi River Mining, which sought to exploit the area’s limestone. This prospect of displacement and the derisory compensation offered – just Ksh150,000 (\$1,154)* per acre – brought turmoil to the community.

Mary Kambo, Programme Manager for Economic and Social Justice at the KHRC, played a pole role in championing the community’s cause. In an unprecedented legal battle, prolonged by the pandemic’s outbreak, the KHRC supported the community’s fight in the Environment and Land Court in Machakos County. By November 2022, this legal endeavour led to the full compensation of over a hundred people, marking a significant victory.

Wanton Impunity and Exclusion

As the Covid-19 pandemic swept across the globe, Kenya found itself grappling not only with a health crisis but also with profound social and economic disruptions. The KHRC, renowned for its advocacy and monitoring, undertook a comprehensive initiative to document the effects of Covid-19 and government responses on vulnerable populations. Covering 27 of Kenya’s 47 counties, the KHRC’s grassroots partners extensively chronicled a litany of human rights abuses and societal upheavals.

“Our monitoring was grounded in Kenya’s constitutional principles and international human rights standards,” the KHRC emphasised in its report, demonstrating a commitment to holding both state and non-state actors to account amid the crisis.

The KHRC’s findings captured in the report ‘Wanton Impunity and Exclusion: A Report Based on Human Rights Violations amid Covid-19 in Kenya’ painted a stark picture of unpreparedness and inconsistent responses at all levels of government.

“There was a lack of political and technical capacity to effectively manage the crisis,” noted the report, underscoring the failures in decision-making that exacerbated vulnerabilities among marginalised communities.

One of the most contentious issues was the heavy-handed approach of security agencies in enforcing pandemic regulations. Allegations of excessive use of force, bribery, and arbitrary arrests also underscored a troubling trend.

“State agencies must be held accountable for any violations,” urged the KHRC, pointing to the need for independent investigations and reforms within the security sector.

In terms of governance and inclusion, the KHRC’s assessment revealed significant gaps in decision-making processes related to Covid-19.

“Most county coordination teams lacked civil society and public representation,” the report lamented, citing a lack of transparency and public engagement in crucial decisions.

The economic fallout was equally devastating, particularly for sectors like tourism and informal labour.

“Business closures and job losses were rampant,” the KHRC observed, noting the disproportionate impact on vulnerable groups like women, children, and persons with disabilities.

Amid these challenges, the KHRC’s recommendations were clear and urgent. From prioritising mental health support to advocating inclusive decision-making processes, the Commission outlined a roadmap for recovery that prioritised human rights and social justice.

As the pandemic unfolded, it became increasingly clear that Kenya’s response was a litmus test for its commitment to democratic values and human dignity. The KHRC therefore emphasised the urgent need for principled governance and a steadfast commitment to protecting the most vulnerable.

“This is not just a health emergency but a human rights imperative,” the NGO underscored.

Furthermore, the KHRC called for sustained efforts to safeguard rights in future crises, even those as unprecedented as a once-in-a-century pandemic.

“We must ensure that the lessons learnt are not forgotten,” the report stressed.

No Guidebook or Formula

The KHRC's engagement went beyond reports, remote work and digital initiatives. As quarantine measures and evictions took grip in places such as Kariobangi, the Commission stepped into action, documenting effects, and intervening in court on behalf of affected communities.

Two harrowing concerns emerged—gender-based violence cases and police excesses. The KHRC swiftly created a WhatsApp platform where Human Rights Networks could report these incidents. For months, the Commission worked closely with these networks, using the information they provided to influence change and address pressing issues.

“There was no guidebook or formula, but we had to act,” remarks the KHRC Executive Director. This showed the NGO's ability to find opportunities and develop strategies in the face of emerging complexities.

The KHRC's adaptability, resourcefulness and grassroots impact through the Covid-19 demonstrates the unwavering spirit of its staff and the organisation's dedication to the cause of human rights. In a world shaken by the pandemic's tremors, the KHRC stood tall, ensuring that its mission to defend human rights continued undaunted.

The KHRC's Role in Incubating Radical NGOs in Kenya



“The KHRC has become synonymous with resilience, solidarity, and unwavering commitment to the cause of human rights.” — Kamau Ngugi, Executive Director, National Coalition of Human Rights Defenders (Defenders Coalition)

The Kenya Human Rights Commission not only claims the distinction of a distinguished track record but transcends it, standing head and shoulders above its counterparts.

However, no organisation is an island. It is Kenya's essential human rights NGO but it operates within a dynamic, challenging, and at times hostile environment that is as likely to nurture an NGO to fruition as it is to smother it in its crib.

Having weathered the storms of financial challenges and political scrutiny for over three decades, the KHRC has proven to be a steadfast advocate for human rights in Kenya, carving out a place for itself as a stalwart guardian of justice and a cradle of radical activism.

Through its work, the KHRC has not only been a standard bearer for human rights advocacy but has also stood out as a nurturing ground for various organisations that have dared to challenge oppressive regimes and confront societal injustices. The work of the KHRC and its partners is critically important to the growth of a vibrant civil society in Kenya, and the country's ability to realise the rights of its citizens and residents.

The Protective Canopy of the KHRC

Emerging from the crucible of the Moi era – where registering any human rights groups meant encountering formidable obstacles – the KHRC had learnt first-hand how to make lemonade out of

lemons. Drawing from this instructive history, the KHRC adopted a unique approach – it became the cradle for other organisations, providing them not just with hosting support but also with financial and institutional cover.

In this way, the KHRC became a haven for groups with radical agendas that sought to address pressing issues facing the nation. The hosting was not merely logistical; it was a manifestation of the KHRC's commitment to being a caretaker of public space and exemplified its multi-sectoral approach to human rights work.

Under the protective canopy of the KHRC, since the 1990s, a diverse array of ambitious NGOs found sanctuary and prospered. From campaigns for the release of political prisoners to mass action for constitutional reform, the KHRC became a home for those deemed too radical to be officially recognised.

Among the notable organisations sheltered by the KHRC were Release Political Prisoners (RPP), which kept up the pressure to free prisoners of conscience, and lobbied for improved prison conditions and the repeal of repressive laws; the National Constitutional Conference (NCC) and its scion, the National Conference Executive Council (NCEC), which was doing important work on constitutional reform; the Constitution and Reform Education Consortium (CRECO); Citizens Coalition for Constitutional Change (4Cs); Warembo Na Katiba, a group of women who played a key role in advocating the adoption of the new Constitution in 2010; the National Coalition of Human Rights Defenders (NCHRD-K) and Muslims for Human Rights (MUHURI). These found refuge within the KHRC's walls, fostering a shared DNA of activism.

Most of these NGOs eventually evolved into vibrant and independent institutions.

“The KHRC played a major role in the establishment of the organisation,” remembers Khelef Khalifa, the Chairman of MUHURI. Muslims for Human Rights (MUHURI) traces its inception back to 1997 during the turbulent period of the “Kaya Bombo clashes,” when the southern part of the Coast region was rocked with violence fuelled by allegations that local politicians incited indigenous communities to expel non-locals. Within the climate of overreach by the security apparatus, the KHRC swiftly sprung up as a mentor and ally for those courageous enough to challenge the prevailing status quo.

“They were taking a very big risk,” Khalifa says, recalling the KHRC's boldness in nurturing nascent human rights organisations like MUHURI. This risk wasn't just financial; it was existential. By providing a sanctuary for radical voices like MUHURI, the organisation was defying an oppressive regime that was not shy to wield coercive state power to suppress dissent in all its forms.

However, assuming the role of caretaker presented unforeseen challenges. In a notable instance, the KHRC became embroiled in a legal dispute when one of the NGOs it was hosting faced internal

strife. Following an irregular election and the announcement of new leadership for the hosted NGO, disagreements arose among its members, culminating in legal action against the KHRC. Such incidents bring out the delicate balance between providing a platform for radical initiatives and shouldering the responsibility for their actions.

The KHRC's influence transcends institutional backing; it also serves as an ideological mentor.

“Every action that MUHURI took was in line with the KHRC's overall strategy of promoting human rights and the rule of law,” underscores Khalifa.

Bulwark against Injustice

This alignment was not coincidental, it was further evidence of the KHRC's ideological clarity and commitment to imbuing these principles in its partners.

“The KHRC has played a major, major role,” Khalifa states, acknowledging the profound impact of the KHRC's guidance on his understanding of human rights. This mentorship was vital in shaping the leadership and strategic direction of MUHURI and other organisations.

The bond between the KHRC and MUHURI transcends mere incubation and collaboration; it is proof positive of their shared mission and commitment.

“Because we are kindred spirits, over the years, there's been a lot of overlap between the KHRC and MUHURI,” Khalifa says.

“Maina Kiai, Dr. Willy Mutunga, and Father Gabriel Dolan are some of the prominent figures who have served on both organisations' boards. In fact, Dr. Mutunga, the former Chief Justice of Kenya, now chairs MUHURI's board. This has solidified the long-standing connection between these two entities,” he explains.

“The KHRC's role as a hosting organisation cannot be overstated,” affirms Kamau Ngugi, the Executive Director of the National Coalition of Human Rights Defenders.

“It has served as a bulwark against injustice in Kenya by providing legal cover and institutional support to numerous NGOs and grassroots movements, amplifying their voices and bolstering their efforts to promote human rights,” he explains.

The National Coalition of Human Rights Defenders – Kenya (NCHRD-K), commonly referred to as the Defenders Coalition, emerged from the crucible of political upheaval and violence in Kenya.

“The Defenders Coalition was born out of necessity,” Ngugi points out.

Foresight played a crucial role. What would later blossom into the Defenders Coalition took root in November 2007 during a crucial gathering convened as part of a regional initiative led by the Eastern

Horn of Africa Human Rights Defenders Network (EHAHRD). The meeting brought together many stakeholders deeply entrenched in human rights work in the region.

“Back then, a diverse group of individuals and organisations convened at the Lenana Mount Hotel (now the Swiss Lenana Mount Hotel) to address the pressing challenges faced by human rights defenders. Against the backdrop of looming elections in Kenya and escalating tensions, the need for decisive action became paramount,” Ngugi explains.

“The coalition crafted a comprehensive plan of action, centred on mitigating the risks encountered by those dedicated to the cause of human rights.”

A Time of Great Peril

The timing of these deliberations could not have been more critical. A month later, following the fiercely contested 2007 presidential election, Kenya was thrust into an orgy of inter-ethnic violence that engulfed various regions and catapulted the nation into the worst crisis in its history. Human rights defenders suddenly found themselves in the crosshairs of violence and persecution.

“Human rights defenders who were documenting violations became targets of attacks,” Ngugi recounts.

“So the Defenders Coalition needed to move very fast from just being an idea of protection, training, and offering psychosocial support to human rights defenders to a much more organised platform.”

Amid this chaos, the KHRC stood firm as a steadfast ally to the Defenders Coalition, providing physical and legal sanctuary. This support allowed the fledgling organisation to carry out its crucial work, safeguarding those who were putting their lives on the line to defend human rights during a period of clear and present danger. Ngugi acknowledges the crucial role that the KHRC played, stating:

“Since the Defenders Coalition was not yet registered, its initial base of operations was within the Kenya Human Rights Commission. During this period, the KHRC staff played a crucial role, ensuring the safety of human rights defenders at risk by providing secure accommodation.”

“They became the first secretariat of the National Coalition of Human Rights Defenders,” Ngugi says.

“Their support was crucial in facilitating the initial work of our organisation and laying the foundation for our continued efforts in defending human rights.”

Recognising the imminent dangers faced by human rights defenders, the KHRC took proactive measures to provide the needed support.

“It was a time of great peril,” Ngugi recalls.

“The staff of the Kenya Human Rights Commission were seconded to respond to the challenges that human rights defenders had been engaged in, documenting violations that took place during the 2007 post-election violence.”

The invaluable documentation amassed by these defenders attracted the attention of international bodies, including the Office of the Prosecutor at the International Criminal Court (ICC). This newfound attention also brought peril, as those involved became targets for arrest and persecution. In this period of uncertainty, the KHRC's Protection Programme steadily stood out as a lifeline for the nascent Defenders Coalition.

“The KHRC, through the Protection Programme, was a critical anchor for the Defenders Coalition,” Ngugi emphasises.

“The office of the Prosecutor of the ICC was engaged in Kenya, resulting in high-level politicians and leaders being taken to The Hague to answer serious charges.”

Providing Safe Havens

Through the KHRC's innovative programmes and dedication, the Defenders Coalition provided crucial support and resources to human rights defenders facing imminent danger. Ngugi elaborates on the multifaceted nature of the KHRC's interventions, particularly its role in providing secure housing and social support to those in need.

“They ensured that those in danger were securely housed in alternative spaces and provided social support to human rights defenders facing various challenges,” he explains. “Additionally, they initiated training programmes on security management, equipping defenders with the skills needed to mitigate risks.”

The KHRC's support extended beyond providing physical protection.

“The staff were not only supportive in providing safe havens but also in offering legal guidance and advocacy support. They became our mentors and allies in the fight for justice for the victims.”

“The board of the Kenya Human Rights Commission and the senior staff in management were thought leaders who facilitated actionable programmes to offer intervention when human rights defenders were at risk,” he says.

However, all successful incubations come to a happy end. Beginning in 2010 the Defenders Coalition started the process of exiting the KHRC's legal cover to stand on its own:

“Between 2010 and 2011 we diligently undertook the task of transitioning the organisation from its initial affiliation with the Kenya Human Rights Commission to its current status as a cornerstone of the Defenders Coalition,” Ngugi says.

But absence makes the heart grow fonder. Ngugi speaks highly of the ties that bind the KHRC and the Defenders Coalition. For him, the KHRC’s decision to host the fledgling Defenders Coalition in the midst of the turmoil of 2007-2010 demonstrated a remarkable commitment to the cause of human rights.

Ngugi is grateful for the KHRC’s willingness to embrace the risks associated with supporting human rights defenders, acknowledging that not all organisations were willing to take on such a daunting task.

“The board of the Human Rights Commission accepted to host the Defenders Coalition when other organisations had declined, citing concerns about the risks involved, but the KHRC recognised the importance of standing with human rights defenders in their time of need,” he says.

The symbiotic relationship between the KHRC and the Defenders Coalition has blossomed over the years, evolving into a partnership characterised by mutual support and shared goals. Ngugi likens their connection to that of Siamese twins, highlighting the integral role played by each organisation in advancing human rights in Kenya.

“When the KHRC leads advocacy efforts, particularly in the promotion and protection of human rights, the Defenders Coalition serves as its main anchor,” he explains.

“Our work in enhancing the safety and security of human rights defenders complements the KHRC’s broader advocacy initiatives.”

Guardians of Justice

Despite their distinct missions and strategic plans, the KHRC and the Defenders Coalition share a common vision and unwavering commitment to justice. Ngugi speaks of the trust that exists between the two organisations, rooted in their shared values and dedication to building a better society.

“We may have different goals, but we are all working towards the same objective,” Ngugi emphasises.

“Our partnership is founded on a deep sense of trust and mutual respect, knowing that we can rely on each other to uphold the principles of good governance, justice, and non-discrimination.”

As guardians of justice in Kenya, the KHRC and the Defenders Coalition are united in their mission to defend human rights and hold perpetrators to account. Their partnership is as steady as the centre of a flame, serving as a guiding light to human rights defenders across the nation.

The KHRC's courageous actions during the tumultuous 2007 post-election period, including its support and mentorship for the Defenders Coalition, demonstrates its peerless commitment to justice. It's a fact that Ngugi readily acknowledge;

"Our partnership with the KHRC has been truly transformative," he declares.

"With their mentorship and guidance, we've evolved from a fledgling organisation into a formidable force."

Over the years, the KHRC's legacy as a nurturing ground for like-minded NGOs and human rights-centred organisations seeking to make a meaningful impact has only grown stronger. Its commitment to fostering a new generation of human rights advocates has also not wavered, even in the face of serious adversity in the form of state intimidation.

As Ngugi aptly puts it, "The KHRC has become synonymous with resilience, solidarity, and unwavering commitment to the cause of human rights."

Legacy Etched Not Just in Laws

The KHRC's dedication to the cause of human rights has consistently transcended national boundaries, providing a hospitable environment for international NGOs, such as Amnesty International and the International Federation of Human Rights (FIDH). Operating under the protective mantle of the KHRC, these organisations exemplified a shared commitment to advancing the global human rights agenda.

Reflecting on the evolution of MUHURI and its relationship with the KHRC, Khalifa notes, "We are very much indebted to the KHRC."

This gratitude isn't just for the financial and logistical support but for the courage and vision the KHRC instilled in them, he explains. "The KHRC is the reason we survived from September 1997 to today," Khalifa states.

As the KHRC enters its fourth decade, its legacy is etched not just in the laws it has helped reform or the injustices it has challenged, but in the lives it has touched and the movements it has birthed.

Khalifa's words, imbued with respect and gratitude as they are, offer a window into the KHRC's impactful legacy—one defined by an true commitment to justice, fearless advocacy, and the nurturing of a human rights culture in Kenya.

In this spirit, the entities listed below have, over the years, received invaluable support from the KHRC, whether through fiscal hosting, physical hosting, or a combination of both.

- * **Fiscal Hosting:** Horticultural Ethical Business Initiative (HEBI), Constitution of Kenya Education Reform Consortium (CRECO), Citizens Coalition for Constitutional Change (4Cs), National Convention Executive Council (NCEC), Legal Resources Foundation (LRF), Muslims for Human Rights (MUHURI), Release Political Prisoners (RPP), People Against Torture (PAT), Centre for Human Rights and Civic Education (CHRCE, Mwingi), Amnesty International Kenya, National Gay and Lesbian Human Rights Commission (NGLHRC), Taskforce on Truth, Justice, and Reconciliation, Workers Rights Watch, Civil Society Reference Group (CSRG), Africa Elections Watch (AEW), Kenya Transitional Justice Network, Ndula Resource Centre, Independent Medico-Legal Unit (IMLU), Bunge la Mwananchi.
- * **Fiscal and Physical Hosting:** Litigation Fund Against Torture (LIFAT), Defenders Coalition, Waremba na Yes, Kura Yangu, Sauti Yangu, Covid Response Civic Society Caucus, Tanzanian Elections Watch.
- * **Current Incubation:** Physical Hosting: International Federation for Human Rights (Kenya office).
- * **Current Incubation:** Fiscal and Physical Hosting: Haki Madini Kenya, Journalists for Justice (JfJ), GESR Center for Development, The Angaza Movement, Elimu Bora Working Group, Coalition for Action and Solidarity Tent (CAST), Statelessness and Citizenship Caucus-Kenya, Eastern African Nationality Network, Human Rights Sacco (HURI SACCO).

The Future of the KHRC: Strategies and Goals

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**“We’ve got to start organising the way Kenyans did in the Fifties when they demanded independence from the British.”
— Dr. Willy Mutunga, former Chief Justice of Kenya and co-founder of the KHRC**

“If you don’t fight corruption in Kenya, you don’t have a future here.” — Gitu wa Kahengeri, Secretary-General, Mau Mau War Veterans Association

It takes a lot of clear-headed, determined, and self-opinionated individuals to make an idea like the Kenya Human Rights Commission work for as long as it has.

One of the ways the KHRC has sustained its incredible momentum over the years is by finding a formula that can accommodate diverse viewpoints and interests under one overarching umbrella. However, as any conversation with current and former staff, board members, and partners quickly reveals, maintaining unity and coherence within such a ‘big tent’ setup has not always been a walk in the park.

“The KHRC takes very bold and controversial political decisions on matters of public interest which in some circumstances can create internal and sectoral contestations,” explains Executive Director Davis Malombe.

As the KHRC commemorates three decades of impactful advocacy in Kenya (and the broader region) while simultaneously seeking to map out an equally purposeful path forward, discussions with various past and present insiders reveal a robust and occasionally raucous ongoing debate regarding the optimal trajectory for Kenya’s premier NGO.

The subjects under intense scrutiny encompass a broad spectrum spanning from the KHRC’s oft-discussed internal bureaucracy to its grassroots strategy and support for partners, its involvement in national politics and the quest for a sustainable funding model within a constricting donor landscape.

Forced to Deepen its Resource Mobilisation Capabilities

Contrary to the assumption that the KHRC is always flush with funds, there have been times when managing its programmes and operations has been a significant struggle.

“In 1998, the KHRC faced such severe financial constraints that we had to downsize our staff for the first time,” he recalls.

A decade later, the KHRC underwent a job evaluation that led to cutting down the administration staff—mainly the administration officer and two assistants—and replacing them with outsourced services.

“Between 2010 and 2012, we faced enormous operational challenges that forced us to slow down on staff pension contributions and programming,” Malombe explains.

These difficulties were partly due to the lapse in many of the KHRC’s general grants, attributable to shifts in donor priorities, which began to focus more on trade and business, project funding models, and transitioning Kenya from countries of interest, especially after the adoption of the 2010 Constitution.

However, amid these institutional challenges, there were moments of great fortune, a situation that George Kegoro, the former Executive Director of the KHRC, often described using the biblical story from Genesis 41:29-32 as the ‘years of great plenty followed by severe famine’ funding cycle.

“It is inspiring to see how these difficulties have forced the KHRC to deepen its resource mobilisation capabilities in the subsequent years,” explains Malombe.

“It is critical for organisations to have strategic fundraising plans spanning 10 years plus because the short-term interventions are bedevilled with unexpected exposures.”

Peter Mbage, Director of Finance and Administration, adds: “We have good donors, but funding has been a challenge over the years.”

“Legacy of Rebellion and Resistance”

Martha Ndururi, the Human Resources and Administration Manager, explains how funding issues and the Covid-19 pandemic created the perfect storm that halved the KHRC’s team numbers.

“During the Covid-19 period, we experienced staff exits, leading to a leaner team. However, we made the deliberate decision to maintain this reduced number and only fill positions where necessary,” Ndururi explains.

“Despite having fewer staff, we still face numerous operational demands within a context of reduced funding and pressure from beneficiaries.

“To address these challenges, we’ve prioritised capacity building for our existing staff,” she adds.

The KHRC has since inception consistently sought individuals with a strong rebellious streak.

“One of the things we must acknowledge is that the KHRC is built upon the radical spirit of the Kenyans who liberated the country from colonialism in the 1960s,” asserts Malombe.

“That legacy of rebellion and resistance is ingrained in the KHRC’s DNA, providing the organisation with the intellectual impetus to continue advocating the transformation of Kenya into a human rights state.”

Malombe attributes the KHRC’s success over the last three decades in part to its fearless, progressive, and activist character. In an era where issues quickly fade from public memory as soon as they drop from media headlines, the KHRC embodies sheer staying power.

“We are extremely tenacious and resilient. Whether addressing statelessness or advocating workers’ rights, we choose an agenda and remain dedicated to it for as long as it takes,” Malombe explains.

However, the KHRC also values other qualities in its recruits.

“When it comes to our staff, we are highly selective and maintain stringent standards,” Malombe explains.

“We subject candidates to a thorough yet transparent selection process, posing strategic and insightful questions to assess their aptitude.”

“We attract individuals with the highest intellectual and political acumen. This commitment to excellence sets the KHRC apart,” he adds.

The KHRC’s impressive track record of achievements over the years is further underscored by its members’ steady rise to prominent roles within Kenya and on the global stage. For example, Mutuma Ruteere, a former KHRC member, served as the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, and Related Intolerance.

Muthoni Wanyeki transitioned to become the Africa Director at the Open Society Foundation, where she advances human rights initiatives across the continent. Dr. Willy Mutunga, a former Executive Director and founder of the KHRC, went on to become the East Africa Regional Director at the Ford Foundation and later the Chief Justice of Kenya.

George Morara advanced to Vice Chairperson of the Kenya National Commission on Human Rights (KNCHR), continuing his dedication to human rights in Kenya. Maina Kiai, a founding Chairperson of KNCHR, later served as the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association. Betty Murungi took on the role of Vice Chairperson of Kenya’s Truth, Justice, and Reconciliation Commission (TJRC), working to address historical injustices in the country.

Meanwhile, Tom Kagwe served as a Commissioner at the Independent Policing Oversight Authority (IPOA), focusing on police accountability. George Kegoro joined the Open Society Initiative for East Africa (OSIEA) as Director, supporting governance and human rights efforts. Wambui Kimathi became a Commissioner at KNCHR, furthering the mission of human rights. Andrew Songa contributed to global human rights advocacy with the International Federation for Human Rights (FiDH), while Audrey Wabwire continued her work in human rights at Human Rights Watch.

Esther Waweru joined Equality Now to champion gender equality and women's rights. Elphas Ojiambo represented human rights interests at the Swedish Embassy, and Carol Werunga focused on urgent human rights issues with the Urgent Action Fund Africa. Diana Gichengo worked with Amnesty International Kenya before joining The Institute for Social Accountability (TISA).

Mukami Marete contributed to the East Africa Sexual Health and Rights Initiative (UHA), supporting sexual health and rights, while Sylvia Githinji joined Civicus to tackle global civil society challenges. Lastly, James Mawira took a role at the International Criminal Court (ICC), advancing international justice. Each of these individuals continues to uphold and extend the KHRC's mission through their impactful work.

Though often lauded for its relative stability over the years, the KHRC has at times faced significant governance crises during top management transitions. One of the most historic upheavals occurred on the night of May 31, 2006, when the then Executive Director left unexpectedly. The position remained vacant for a year, during which a board member stepped in as interim ED, leading to substantial tensions between staff and the board, and fuelling concerns among various stakeholders.

“While the KHRC has proven remarkably resilient, such transitions have tested our resolve. The episode in 2006 was particularly tumultuous because it created a governance vacuum that strained our internal dynamics,” says Malombe.

Other periods of instability have included the office of Executive Director operating with an acting holder from May to November 2015 and from July 2020 to October 2021. The roles of Deputy Executive Director, Director of Programmes, and Director of Finance and Administration have encountered similar challenges.

Despite these trials, the KHRC's robust foundations have remained intact. Malombe readily acknowledges the lesson learnt:

“Our experiences have underscored the importance of succession planning. The most effective transition we've seen was in 2011, when the incoming ED worked alongside the outgoing one for a month before taking over. This collaborative approach ensured a smoother handover and a more seamless changeover,” he explains.

A Reputation for Being Overly Bureaucratic

For an organisation that makes much of its radical and activist roots, the KHRC has also earned a reputation for being overly bureaucratic compared to its counterparts. Malombe offers no apologies for this bureaucratic slant.

“Some may argue that we lean too heavily on bureaucracy. However, as a sizable organisation dealing with substantial funds and complex issues, a conservative operational framework is crucial to avoiding chaos,” he asserts.

“I’ve learnt that institutions that are excessively flexible operationally are susceptible to ethical pitfalls,” he warns.

One challenge confronting the KHRC and other human rights organisations in Kenya is the risk of over-professionalising the field of human rights.

“Despite the KHRC’s roots in academia and its tradition of employing well-informed and educated staff, there’s a danger of becoming overly focused on paper qualifications,” cautions Mwambi Mwasaru, a former Executive Director of the Commission.

“The more the KHRC becomes professionalised, the more it risks losing its potential to effect meaningful societal transformation. It’s a perilous trap to fall into, as it fosters a mindset where individuals see themselves as mere professionals tasked with churning out reports to please directors, the board, and donors.”

Prof. Makau Mutua, a co-founder of the KHRC and former chair of the NGO’s board, agrees.

“We must recognise that the state will always pose challenges to good governance. Therefore, the KHRC must remain the crucial link between the state and the people to prevent what I term tyranny. We should avoid becoming so professionally detached that we become mere armchair activists,” he cautions.

“While other individuals may serve as public intellectuals, civil society groups must focus on mobilising the public, especially at the grassroots level,” he adds.

Atsango Chesoni, an advocate of the High Court of Kenya and former Executive Director of the KHRC, voices a similar concern.

“The motivation for my generation to pursue such work was not financial. It’s crucial to recruit individuals who are true believers in the cause, especially as the powers that be become increasingly adept at co-opting and neutralising civil society in Kenya,” she emphasises.

Even as the KHRC remains steadfast in its ambition “to root human dignity, freedoms and social justice in Kenya and beyond”, Atsango and Lorna Dias, a current board member, share a common

concern: that the KHRC must avoid drinking too much of its own Kool-Aid and buying into the hype that it is the prime mover in Kenya's civic space without which no meaningful lobbying can take place.

"I'm not among those who believe that civil society organisations (CSOs) hold the key to all societal change," asserts Atsango.

"My engagement with institutions like the KHRC has been purely pragmatic. Ultimately, what matters to me is fostering a democratic culture in Kenya and liberating the nation from all forms of dictatorship."

Meanwhile, Dias emphasises the need for the KHRC to embrace its core strengths and utilise soft power.

"The KHRC's true power lies in its ability to unite like-minded organisations and leverage this collective influence to foster collaboration," she notes.

"Rather than assuming a position of dominance, the KHRC should approach partnerships with humility, asking, 'How can we support you?' rather than 'How can you support us?' It's about managing egos."

"The KHRC must strive to be a sanctuary where individuals feel empowered, not a force that imposes its will," Dias advises.

"By lending credibility and support to existing initiatives rather than usurping them, the KHRC can truly amplify its impact."

Dr. Willy Mutunga, former Chief Justice of Kenya and co-founder of the KHRC, urges the NGO to pay careful attention to this matter. He argues that the next phase of the KHRC's mission requires a closer connection with the people.

Risk of Being Overtaken

"We must recognise that while Kenya boasts a progressive constitution, for which the KHRC played an important role, our work is far from over. It's time to advocate its full implementation by mobilising the people to demand their material needs: food security, education, healthcare, water—essentially the achievements Governor Kibwana is known for in Makueni," asserts Mutunga.

"If the KHRC directs its efforts towards Article 43 of the Kenyan Constitution, which outlines economic and social rights, they can build a movement around it because those are the kind of things that ordinary people, who are currently talking about the 'Njaa or Hunger Revolution', are going to be listening to."

Mutunga underscores the global dimensions of this next chapter while advocating local action.

“Our national leaders must be vigorously lobbied to actualise these goals, as they’ve been swayed by the IMF, World Bank, and other formidable foreign interests,” he adds.

“The KHRC must engage in this space; otherwise, it risks being overtaken by the burgeoning social justice centres in rural and urban areas, where grassroots activism is thriving. The social justice centres are in Korogocho, Githurai, and Mathare, not Kileleshwa and Lavington,” he explains.

“These centres embrace human rights activism as being akin to missionary work, actively engaging with the people on the ground, the same way pastors and imams do. Their message is growing more and more powerful.”

“There’s nothing inherently wrong with being a middle-class NGO, but bridges must be built with the grassroots.”

After years of tenancy at the Gitanga Road address, the KHRC in early 2024 relocated to its own premises on Amboseli Road, situated in the affluent suburb of Lavington. For Malombe, the KHRC’s relocation to a more upscale premises signifies not a detachment from the people it serves, but rather a symbol of its evolution from humble origins.

“Acquiring our own premises instead of paying rent marks a significant milestone. It’s a dream we’ve been pursuing for the past 30 years,” he explains.

Prof. Mutua concurs: “Fundamentally, I appreciate our growing sense of security. Having our own space is a significant achievement.”

“Over the past 30 years, one of our greatest accomplishments has been securing our own premises which we expect to maintain indefinitely. Because Kenya is a freehold society we anticipate being here for the long term,” he explains.



The newly unveiled headquarters of the Kenya Human Rights Commission (KHRC) on Amboseli Road in Nairobi is a great illustration of the organisation's evolution over the past three decades. From its modest origins as a small collective of Kenyan activists exiled in the US to its tentative beginnings as a briefcase NGO upon relocating to Kenya in 1992, the KHRC has risen to become one of Kenya's foremost human rights defenders. The new building is therefore more than just a physical space, it represents the fulfilment of a long-held dream that marks a big milestone in the KHRC journey. Photo credit: Grace Azuor.

A Programming Overhaul

Dias notes the organisation's remarkable momentum, yet underscores the importance of prioritising staff wellness and strategic discernment in selecting initiatives.

"The KHRC currently is moving at an amazing pace but, for me, the critical thing is they need to pay a greater deal of attention to their wellness. They also need to very strategically consider what it is they take on and why because there are so many challenges in this country at any given moment and the KHRC has to be careful not to spread itself too thin," she says.

Others argue that the KHRC should upend this approach entirely.

Given the financial strains induced by the global squeeze on donor funding, Steve Ouma, former Deputy Executive Director of the KHRC, believes the time is ripe for the organisation to reassess its programming model and find a way to achieve more with less. He suggests leveraging the KHRC's financial structures to directly and accountably fund grassroots initiatives.

“I believe that the KHRC needs a programming overhaul. In my opinion, 60 per cent of the KHRC’s efforts should involve providing small grants to grassroots networks, particularly those with longstanding ties in areas like Kwale and Thika. That should be the new paradigm. It will propel the KHRC to greater heights.”

Maina Kiai, the KHRC co-founder and the central figure in establishing the organisation’s presence in Kenya and securing its initial funding post-relocation from the US, envisions a shift in the landscape of NGO financing towards local sources.

NGOs like the KHRC have a good case to make for public funding through one-time financial contributions because they have been a force for effecting positive change in the country and, unlike politicians, have a track record for financial probity and trustworthiness:

“I would really like to see more Kenyans putting their money into organisations like the KHRC. My dream is still that we get to a place where Kenyans are the ones who are the primary funders of these organisations. I would love to see Kenyans contributing money to fund NGOs the same way they raise money for *matanga* (funeral contributions), hospital bills, school fees, and other community needs,” says Kiai.

“I’m not talking about all the funding, but a significant proportion of the funding for these organisations should be localised. I keep asking all of these rich people who are making billions, why can’t some of them just put something like Ksh100 million into an organisation that is doing some good in the form of a grant as a legacy project? If we ever get there, that will be a big turning point,” he explains.

“Those of us who care about this country and desire a Kenya full of strong institutions shouldn’t hesitate to fund these organisations. The payback won’t happen in a year but it will happen, sometimes indirectly,” he continues.

“Even more importantly, the country will be in a better place because we’ll have all these solid, creative and courageous people who work tenaciously to make Kenya live up to its true potential as a human rights state,” argues Kiai.

Mwasaru agrees and also advocates increased local funding for NGOs.

“I’ve had the opportunity to observe NGOs in India and other countries in the Asian subcontinent. These organisations have evolved in a manner that relies on the resources of their own communities. As a result, they have developed the resilience to sustain themselves without adopting a corporate model but as organisations that are deeply intertwined with their local communities,” he observes.

“They exude a level of confidence that far surpasses our own. They possess the ability to resist external pressures and the imposition of agendas from potential or current donors. This resilience stems from having alternative sources of support rooted in their socioeconomic and cultural contexts.”

Time for a Strategic Shift

Prof. Mutua shares this perspective. While he acknowledges the support the KHRC has received from external donors, he believes it is time for a strategic shift.

“Of course, I appreciate the support we have gotten from external donors,” he remarks, “but what I would like us to do is to wean ourselves from such funding.”

Mutua envisions a more self-sustaining future for the organisation.

“We need to form a trust to hold the assets of the KHRC,” he explains.

“The trust should conduct ethical business, with the proceeds funnelled back to the KHRC.”

He emphasises the potential for financial independence, asserting:

“There’s nothing that says we cannot make money in the marketplace and then fund the organisation. If we can legally separate the NGO from the trust, that might be a workable solution. We’ve been discussing this for the last 10 years.”

However, despite numerous attempts, the vision has yet to materialise fully.

“We never really actualised it, although we’ve tried many times,” Mutua says.

“I think we need to either generate our own revenue or begin local fundraising. We cannot continue to rely on external donors,” he asserts.

Mutua is candid about the limitations of donor dependency.

“To me, it distorts your priorities and makes you insecure. Endowment funds from external sources would be fine, but recurrent expenditures should never be funded through the whims of donors.”

Mutua is clear about his goal:

“We should never be beholden to donors in perpetuity in a hand-to-mouth sort of formula. I would like us to free ourselves from that, as we have from rental obligations. That should be the next chapter for the KHRC.”

The KHRC is well noted for its ability to adapt creatively to emerging situations. However, with its extensive interventions and frequent staff transitions, some valuable initiatives fall through the cracks over time, particularly after long-term implementation.

“While our programming has been innovative and responsive, maintaining the essence of our initiatives over the years has been a challenge, especially as we undergo significant organisational changes,” Malombe admits.

One notable example is the community engagement framework established in 2003 as part of the Vision 2012 strategic plan. This ambitious idea aimed to root human rights deeply within

communities, fostering robust advocacy networks and political movements. It was supported by substantial intellectual and political investments, including insightful comparative studies with countries in Asia and Latin America.

“The framework we developed up to 2012 gave rise to the human rights networks, or HURINETS, which have become critical in community action and advocacy in Kenya. The 2013 assessment of our strategic plan confirms their long-lasting influence,” explains Malombe.

However, progress was tempered in 2011 following the adoption of a new constitution, which necessitated a greater focus on legal and policy work at the national level.

“We had plans to integrate national advocacy with community-level interventions,” Malombe notes, “but this integration didn’t fully materialise.”

“Consequently, we shifted our focus more towards thematic issues, somewhat neglecting the crucial geographical aspects needed for ongoing grassroots engagement.”

Today, the KHRC operates approximately 20 HURINETS, but the original vision’s momentum has slowed.

Additionally, ‘The Mizizi ya Haki’ newsletter, launched in 2004 as a powerful tool for documenting HURINETS’ issues and experiences, experienced a decline in quality and timeliness of contributions after HURINETS became less functional.

“Community leaders, who originally wrote and edited the articles, struggled to keep up,” Malombe explains.

“Our role was primarily technical and financial support, but this was insufficient to sustain the newsletter’s impact.”

Another significant initiative was the ICT4Democracy project, supported by the Swedish International Development Cooperation Agency (SIDA) through the Collaboration on International ICT Policy for East and Southern Africa (CIPESA) in Uganda. This project equipped communities with computer skills and resources to advance democratic engagement but lapsed in 2016.

For Malombe, however, hope springs eternal.

“While the KHRC has been diligent in pushing initiatives until justice is served, the community advocacy component should be revitalised as originally conceived. The KHRC has been ahead of the pack. Ours should be a matter of revisiting, reflecting, and sharpening the frameworks,” he explains.

A Feather in the KHRC's Cap

The KHRC takes great pride in its election-related initiatives, and rightly so. Since the early 1990s, Kenya's leading NGO has been a key player in driving election reforms. Despite encountering numerous obstacles along the way, these efforts have yielded significant achievements that have instilled a semblance of civility and verifiability, or at the very least, the aspiration for it, in Kenya's electoral processes.

One of the feathers in the KHRC's cap was its central role in securing the election of President Mwai Kibaki as Kenya's third head of state. This victory marked a significant departure from the autocratic rule of the past, symbolised by the defeat of the KANU candidate Uhuru Kenyatta, who had been handpicked by former President Daniel arap Moi as his successor.

Kibaki's ascent to power represented the culmination of years of relentless advocacy by the KHRC and its civil society allies, who endured the oppressive and arbitrary rule of the Moi regime. Moreover, the composition of Kibaki's administration, which included former civil society luminaries such as Kiraitu Murungi, Wangari Maathai, and Koigi wa Wamwere, further underscored the transformative potential of the electoral triumph.

Despite Kibaki's failure to fulfil certain promises, such as addressing historical injustices comprehensively, his election cemented the KHRC's ability to punch above its weight in the political arena. Since then, the KHRC has persistently sought to shape the trajectory of political power in Kenya. According to Malombe, the KHRC makes no apologies for its inherently political nature.

"I think it's time, just as in 2002, for the people of Kenya to see civil society as part of the people doing social, human rights and political governance work. People must not separate governance and elections. Governance is what happens after elections so it matters who the people choose," stresses Malombe.

Not everybody is in the amen corner. Mutunga believes that the KHRC hasn't necessarily strayed from its path but has perhaps drawn misguided conclusions from Kibaki's victory. According to Mutunga, instead of prioritising the interests of Kenyans above all else, the KHRC has fallen into the trap of hyper-partisanship, placing undue emphasis on influencing the outcome of presidential elections rather than critically evaluating the suitability of candidates.

"The Kenya Human Rights Commission and others can lead the movement as we did in the '90s by working with political parties that address the root causes. Kenya will not change unless we have political parties competing to capture state power from the elite that keep running circles around us. That's the only way to make the changes people need," argues Mutunga.

To realign its political compass, Mutunga advises the KHRC to draw inspiration from the liberation struggles that have shaped Kenya's history.

“We’ve got to start organising the way Kenyans did in the ’50s when they demanded independence from the British. For us to achieve independence, the colonists had to cede power to us. Or the Second Liberation where we rejected Moi’s dictatorship,” he advises.

“We have to level with Kenyans and tell them the truth. People recognise the truth when they hear it. That’s the only way to build broad political fronts,” he adds.

Vigorous and at Times Scathing Debates

The fact that the KHRC has sustained such vigorous and at times scathing debates over the years, all the while maintaining a strong and focussed institutional posture, speaks to its singular nature and underscores its profound connection to the spirit of rebellion and dissent that led to its founding in the US in the early ’90s.

“At the heart of the KHRC’s ethos lies a belief in the power of advancing courage and dialogue through confrontation. It is one of the things that stands out for me about the KHRC—the idea that one can engage in dialogue through direct confrontation. This philosophy is not merely theoretical; the KHRC has put it to good use internally and externally,” says Kiai.

Dr. Steve Ouma, who like many former team members of the KHRC has a soft spot for the organisation and wishes to see it grow from strength to strength, says one of the ways the Commission can keep this rich tradition of constructive feedback going is by establishing an alumni association. This, he believes, would allow the KHRC, in keeping with its rich tradition of relishing constructive feedback, to tap into the vast pool of former team members with diverse perspectives.

“Many institutions like Harvard thrive due to their organised alumni networks. Alumni may not always see eye to eye, but with the right structure and time, they can forge valuable connections that will benefit the KHRC,” Ouma explains.

“I always had the vision of creating an alumni group during my time at the KHRC, but I didn’t manage to get around to it. I hope the current Chair of the board, Davinder Lamba, can bring this vision to fruition,” he adds.

As an alumnus, few individuals possess a deeper understanding of the KHRC than Peter Kiama, the current Executive Director of Haki Yetu, a prominent human rights NGO based in Mombasa.

Having spent his entire career in the governance and human rights sector, including five years at the KHRC from 2001 to 2006, Kiama has witnessed first-hand the transformative role the organisation played in reshaping Kenya’s human rights landscape.

“I started as a Project Assistant, focusing on constitutional reforms advocacy,” Kiama recalls, “before leading the KHRC’s community outreach strategy. Our goal was clear: empower communities nationwide through grassroots networks that remain foundational for many NGOs today.”

Reflecting on the KHRC’s legacy, Kiama highlights its seismic impact:

“In the late ’90s and early 2000s, the KHRC pioneered community human rights organising. This pioneering spirit spread to the sphere of education, where the KHRC integrated human rights into the national school curriculum.”

“We infused human rights into subjects like civics and geography,” he explains, “empowering a generation of students about their rights.”

Besides education, Kiama recounts the KHRC’s transformative role in national advocacy: “The KHRC led civil society efforts for the release of landmark reports like the Ndung’u Report on Land Grabbing and the Akiwumi Commission of Inquiry into Tribal Clashes, thereby helping to shine an unforgiving light on historical injustices.”

An Unexpected Figure Seated behind a Formidable Desk

These efforts often came with risks. For instance, Kiama recalls the daring steps he had to take in the push to secure an embargoed copy of the Akiwumi report.

“I was at the forefront advocating its release,” he states.

Amid heightened tensions, he remembers an unexpected after-hours invite to the office of the Attorney General of Kenya.

“One evening, I received a call from a former senior police officer at Sheria House, offering to provide me with a copy of the report,” Kiama recalls, with a touch of apprehension.

At Sheria House, Kiama found himself facing an unexpected figure seated behind a formidable desk.

“I was addressed by my full name,” he reminisces.

“It set the stage for a terse exchange about the report,” he adds.

For Kiama, the willingness to navigate such delicate situations underscored the KHRC’s commitment to transparency and accountability and readiness to push boundaries on behalf of the Kenyan people. Though Kiama didn’t obtain a copy of the report that day, that didn’t deter the KHRC from maintaining the pressure.

“We organised press conferences, wrote petitions, and persisted in keeping the report at the forefront of national dialogue,” Kiama explains.

The report finally saw the light of day in 2002. Despite challenges in implementation, the KHRC's efforts ensured the issues it raised, such as the underlying current of violence in Kenyan politics, became common reference points in human rights discourse. The Akiwumi Commission's findings also heavily influenced subsequent reports, including the Waki Commission's investigation into the 2007-2008 post-election violence.

For Kiama this underlines one of the KHRC's under-appreciated legacies as "a force for justice and a guardian of public scrutiny that exhibited the ability and staying power to influence major policy long after initial reports are published."

However, Kiama believes KHRC should reconnect with its founding principles, stating:

"Its spirit lies in confronting power and defending marginalised rights. It's time for a revitalisation. The KHRC must reaffirm its pioneering role in human rights advocacy in Kenya."

In the spirit of well-meaning alumni offering candid insights to the KHRC, Mutunga believes that the organisation's future hinges on the empowerment of its younger team members. He emphasises the importance of these individuals finding their voices and actively participating in steering the organisation, ensuring that their perspectives are valued and integrated into decision-making processes.

"I think Malombe, who is from my village, can be the engine of change. The new generation within the KHRC has to have more of a say," argues Mutunga.

Mutunga is quick to express his confidence in the KHRC's capacity for reinvention. In that vein, he delivers a stirring message directed especially at the organisation's younger members:

"The KHRC has a history of intervening in great pursuits of national and social transformation. That's the ideology that the KHRC is deeply rooted in. They have to understand that now they are being called as an institution to basically look at the world the way it is and the way the country is and decide if the Commission will act the same way it did in the early 1990s and actually find a way to move Kenya forward."

The former Chief Justice's confidence is well-placed. The KHRC has honed the skill of turning adversity into triumph. Since the 1990s, the organisation has confronted numerous challenges in its quest for a fairer society. Despite facing threats to its very existence, including a 2017 attempt by the NGOs Coordination Board to deregister it, the KHRC has maintained its crucial role as a vanguard for a fair and just society in Kenya.

Through its proven capacity to envision a brighter future for both Kenyans and itself through rigorous research, relentless inquiry, and robust dialogue, the KHRC has not only proved to be a source of hope and inspiration for human rights defenders locally, regionally, and globally but also as an organisation of indispensable significance.

Prof. Mutua envisions a bright future for the KHRC. He sees the NGO emerging as an even more muscular and assertive presence in the civil society space.

“New forms of powerlessness continually surface, particularly within the realm of economic and social rights,” he observes.

“The KHRC must remain at the forefront of these issues. We should never retreat from advocating fundamental rights, whether they involve gay rights, women’s rights, or children’s rights. Our commitment should only expand, as our societies are rife with distortions that demand fearless advocacy.”



George Kegoro, then Executive Director of the Kenya Human Rights Commission, sits fourth from the left in the back row with President Barack Obama. Davis Malombe, then Deputy Executive Director of the KHRC, sits second from the right in the front row. This photo was taken during President Obama’s historic visit to Kenya in July 2015. Kegoro and Malombe were invited in recognition of the KHRC’s tireless efforts advocating human rights in Kenya.

A Transparent yet Dynamic Organisation

While Mutua praises the KHRC’s track record of bravery, he would like to see a more light-footed organisation going forward:

“The KHRC has always been fearless, and it must continue to be. While accountability and justice are crucial, we should not let internal decision-making processes paralyse us.”

“We need to be nimble and capable of making swift decisions. I’ve always championed a transparent yet dynamic organisation.”

For Mutua, there's no doubt about the KHRC's place in the advocacy space in Kenya.

"I still regard the KHRC as the foremost entity in civil society, setting the standard for the sector," he affirms.

Diana Gichengo, the current National Coordinator of The Institute for Social Accountability (TISA) and erstwhile Programme Advisor for Political Pluralism and Diversity (2013-2016) and Programme Manager Identity and Inclusion (2016-2021) at the KHRC, harbours fond recollections from her tenure.

"I do admire the backbone of the KHRC and its intrinsic structure," she asserts. "During my time there, under the leadership of George Kegoro and Atsango Chesoni, each programme officer essentially operated as an Executive Director of their own domain, fostering an environment ripe for innovation and impact."

One thing the KHRC isn't lacking is sage advice, whether from within its own ranks or from esteemed figures outside its fold. During a visit by the KHRC team to Gitu wa Kahengeri's home on the outskirts of Thika in mid-February 2023, during his one-hundredth birthday, the revered Mau Mau veteran imparted his wisdom to the young members of the KHRC team, framing his counsel as his 'final words' to them.

"First, take up arms—I recommend a sledgehammer—to combat corruption in Kenya," advised the current Secretary-General of the Mau Mau War Veterans Association, his words carrying added weight given his role and sacrifices in Kenya's struggle for liberation from British rule.

"If you don't fight corruption in Kenya, you don't have a future here," he ominously added.

"Second, cultivate love for one another. From love springs prosperity. No individual is self-sufficient; we are all interconnected and reliant on one another for our existence," Gitu continued.

"Third, master the art of negotiation. Negotiation is the foundation of all agreements, whether in England, America, Czechoslovakia, Norway, or South Africa. It begins in the home; without negotiation, you undermine the very fabric of your household," he emphasised.

"I urge you to extend a helping hand whenever possible. Assistance to fellow human beings transcends mere financial aid. Warning someone of imminent danger, like a snake on their path, is a meaningful act of assistance in itself," Gitu advised.

The Mau Mau veteran concluded with a powerful reminder of our interconnectedness as human beings, drawing attention to the simple act of wearing shoes made by others.

"I want to offer you a tangible illustration today, one that underscores our fundamental bonds as humans. How many of you personally manufactured the shoes you're wearing and selected a pair from the factory floor this morning? Anyone? Anyone at all?"

Not a single hand went up.

“No. These shoes were crafted by the hands of others and have been graciously provided to assist you as you walk around this world,” said Gitu.

“This should be a humbling thought that should drive home the notion that human beings are always intertwined in a web of mutual reliance. As you walk around this country in the years ahead, consider this: your very steps are guided by the labour of fellow human beings who crafted your footwear. Reflect on this and think about the other ways in which each of our actions ripples outward, shaping the lives of others. Thank you. I will leave it there.”

Kenya's New Civic Awakening: Passing on the Baton



Part of the KHRC's intention in sharing the highs and lows of its 30-year legacy in Kenya is to inspire the next generation of active citizens to champion worthy causes for the good of the nation. In that spirit, this effort would not be complete without showcasing some of the images captured by the KHRC's team during the youth-led protests sparked off by the Finance Bill, 2024. The countrywide protests have since evolved into a broader pro-accountability movement that some have aptly named 'Kenya's Third Liberation'.

Amid this hopeful surge of patriotism, there are troubling signs that hark back to Kenya's darker days. According to the Kenya National Commission on Human Rights (KNCHR), over 60 young Kenyans have been killed by trigger-happy police officers, while numerous others, including journalists performing their duties, have been shot without provocation or justification.

There have been numerous reports of excessive use of force and arbitrary arrests on trumped-up charges by plainclothes officers who cover their faces with scarves and balaclavas to avoid identification. These actions are reminiscent of the repressive tactics used during the Moi era, which are now strictly prohibited under the 2010 Constitution.

A particularly harrowing case is that of 28-year-old Joseph Mwangi. On June 18, he was forcibly seized from the Githurai 45 area, blindfolded, and driven to several unknown locations where he was held without charge for a month. His release came only after a public outcry led by his mother, Tabitha Wanjiru Kairu. His ordeal and those of other similar ones speak volumes of a blatant disregard for the constitutional requirement that an arrested person must be brought before a court within 24 hours.

Despite these violations, there are many reasons for optimism. Kenyans, particularly the youth, are actively pushing back against these abuses. In offline and online forums such as the now popular X Spaces, there are loud and unequivocal demands for adherence to constitutional protections. Civil society organisations have also risen to the occasion. Following the protests on June 25, the Kenya Human Rights Commission, through the Police Reform Working Group – Kenya (PRWG-K), which includes 20 civil society organisations focused on police reforms, issued a strong statement:

“We stand in solidarity and commend the Kenyan youth who came out in large numbers to defend our rights by rejecting the punitive Finance Bill, 2024. This is our constitutional right, per Article 37 of the Kenyan Constitution,” the statement declared. The KHRC and its partners did not mince words about responsibility for the violence:

“Responsibility for these killings lies squarely with Ruto, even though he was not present on the street. He cannot escape accountability. Adamson Bungei, the immediate former Nairobi police commander, is equally liable. Ruto has overseen a planned and executable massacre against peaceful protesters who came out across the country to protest against the punitive Finance Bill, 2024. These shootings, killings, and abductions constitute crimes against humanity, making Kenya’s President, Ruto, yet again, a candidate for the International Criminal Court (ICC).”



From left: Sheila Masinde (TI-Kenya), Davis Malombe (the KHRC), and Kawive Wambua (Inuka ni Sisi) speak at a press conference on July 18, 2024, convened by the National Integrity Alliance (NIA). Comprising Transparency International Kenya (TI-Kenya), Inuka Kenya Ni Sisi!, and the Kenya Human Rights Commission. The NIA aims to uphold constitutional integrity by empowering ethics and anti-corruption institutions and active citizens to combat corruption. Photo: Grace Awuor.

The Law Society of Kenya (LSK), under the leadership of its President Faith Odhiambo, has been particularly commendable. The LSK swiftly deployed a battalion of lawyers to represent many young protestors and activists detained during the protests. They also worked to secure the release of digital activists abducted without charge during the wee hours of the night. Collectively, these efforts underscore the vitality of Kenya's civil society.

What's beyond doubt is that Kenya is in the midst of an unprecedented civic awakening that has toppled long-held assumptions about apathetic youth and a civically comatose middle-class. The political establishment, accustomed to a more complacent citizenry, has been shaken to its core. The international community must recognise the importance of Kenya's civic awakening and provide the necessary support to ensure its success. This includes not only condemning human rights abuses but also offering practical, concrete assistance to strengthen civil society organisations and protect activists.

Within Kenya, the government must heed the calls for accountability and reform. The current administration has an opportunity to demonstrate its commitment to the rule of law by addressing the grievances of the protestors and ensuring that the security forces operate within the bounds of the Constitution. This will require a concerted effort to root out impunity and promote a culture of transparency and respect for human rights. The youth of Kenya have shown that they are not only the leaders of tomorrow but the changemakers of today. Their innovative approaches to activism, harnessing both traditional methods and digital platforms, have set a new standard for civic engagement. As they continue to push for change, they must be supported and encouraged.

Why? Because the faces in the photos that follow are but our fellow citizens, united in their quest for justice and accountability. They are of mostly young Kenyans writing an inspiring new chapter in the country's democratic history—one defined by a commitment to the rule of law.

The founders of KHRC were in the same age range as Generation Z when they dreamed up this organisation.

The KHRC team, whose 30-year legacy of advocating human rights has laid the groundwork for the current wave of activism, couldn't have imagined a more fitting conclusion to this book. The youth, inspired by this legacy, are now taking up the mantle, ensuring that the fight for a just and equitable society continues. As our national anthem proclaims, may "Justice be our shield and defender."

Photo credits:

Ernest Cornel, Communications Lead, the Kenya Human Rights Commission (KHRC).

Cy Muganda, Communications Associate, the Kenya Human Rights Commission (KHRC).









ZAKAYO JAMANI!



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JUNE 20
2024

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WE SHALL
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SEA FOOD













RIGHTS AND FIGHTS

30 Years of the Kenya Human Rights Commission's Impactful Legacy

Rights & Fights is the inspiring story of an organisation that changed a nation. This is being told as part of the institution's 30th anniversary. For three decades, the Kenya Human Rights Commission (KHRC) has been a catalyst for positive change through bold and transformative advocacy worthy causes, pioneering novel interventions, and challenging state, and corporate power, reshaping the nation's democratic landscape, and being a torchbearer in Kenya's quest for a human rights state and society. This book offers an in-depth account of the KHRC's groundbreaking victories, told through the voices of eyewitnesses, key leaders, and beneficiaries.

Rights & Fights takes readers through the remarkable journey of the KHRC's humble beginnings in the United States to its relocation to Kenya, where it has evolved into an indispensable domestic and transnational institution. The book offers a unique insight into the growth and enduring impact of Kenya's premier human rights NGO in Africa. By honouring the courage and commitment of those who have fought on the front lines for a just society, this book aims to inspire future generations to carry forward the vision of Kenya as a society grounded in accountable human rights and governance.

"Maina [Kiai] has to be praised for the great timing of the KHRC's establishment and his recruitment of the first directors. We were convinced that the KHRC would reinforce FIDA and Kituo Cha Sheria to grow a human rights movement that would support the Second Liberation." - Dr. Willy Mutunga, former Chief Justice of Kenya.

"The KHRC was a briefcase NGO when I came back to Kenya with it [from the US]. We had no resources or physical presence, just a structure on paper." - Maina Kiai, co-founder, the KHRC

"We always understood the KHRC as a citizen of Kenya and a political actor in the Kenyan political landscape." - Prof. Makau Mutua, co-founder and former Chairperson, the KHRC

"We weren't thinking of ourselves as activists. We were just people who saw that what was happening was wrong and wanted to do something about it." — Davinder Lamba, Board Chairperson, the KHRC

"The KHRC has become synonymous with resilience, solidarity, and unwavering commitment to the cause of human rights." — Kamau Ngugi, Executive Director, National Coalition of Human Rights Defenders (Defenders Coalition)

"If you don't fight corruption in Kenya, you don't have a future here." — Gitu wa Kahengeri, Secretary-General, Mau Mau War Veterans Association

COVER IMAGE:

A protester defiantly holds a copy of the Kenyan Constitution as they confront a line of police officers during the Occupy Parliament demonstration in Nairobi on June 25, 2024. The photo was selected to pay tribute to the countless Kenyans who, over the years, have wielded the nation's supreme law as both a shield and a rallying cry for integrity, accountability, and competence in public service. The Kenya Human Rights Commission (KHRC) has proudly stood alongside these patriots for over three decades. The fight for our rights as enshrined in the Constitution continues.

