



E - Haki news

A monthly reflection of the human rights agenda in Kenya.
November 2013 Edition

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Retrogressing the Media

By Winnie Moraa

The Kenya Communication Bill had in its first drafting the general idea of facilitating the development of the information communications sector, as opposed to the current position which reveals a conscious attempt by the legislators to reverse the gains made over the years in securing media freedom and the right to access information. The provisions of Article 34 of the Constitution of Kenya clearly state the limits to which the state can influence authority over media freedoms. In the Declaration of Principles of Freedom of Expression in Africa and the UN General Comment No. 34, the state is further mandated with ensuring respect of the freedom of expression and enhancing the right to access information in assisting people to make informed decisions and ultimately strengthening democracy.



To reflect on the Kenyan scenario, it is critical to remain cognizant of the right of access to information as an international human right as expressed in Articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, two international legal instruments binding on Kenya and part of the laws by virtue of Article 2 of the Constitution.

The published law is not only an affront to media freedom but

More importantly, freedom of expression is a prerequisite for the realization of the principles of transparency and accountability which are indeed core to the promotion and protection of human rights. In the concluding observations on the Republic of Moldova, the Human Rights Council rightly noted that the States parties should guarantee the independence of the broadcasting services.

Of the Powerful cabinet secretary

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First, the cabinet secretary wields exclusive powers in contravention of the Constitutional values and principles, by extension the democratic tenets espoused by our Constitution (2010). The Cabinet secretary has the powers to appoint the Communications Authority of Kenya (CAK) Board members, the selection panel for members of CAK and further have powers to reject a nominee from the panel without giving any reasons. In addition to these, the CS has powers to initiate the removal of board members and even the extension of their tenure.

Second, the concentration of powers in the Cabinet Secretary who is also a Government functionary speaks to the State's control of communication and information in the country and sidelines the other key players/ stakeholders such as the Media council.

Third, the new bill creates a Communications and Multimedia Appeals Tribunal which is appointed by the Cabinet Secretary, following advice from a five person selection panel that he will also appoint. To adhere to international

best practice, the Declaration of Principles of Expression in Africa in paragraph VIII articulates that “any public authority that exercises powers in the areas of broadcast or telecommunications should be formally accountable to the public through a multi-body.”

The Declaration further stipulates that “the appointment process for members of a regulatory body should be open and transparent, involve the participation of civil society and shall not be controlled by any particular political party”. Clause 6(E) allows the Communications Authority of Kenya, the successor of the Communications Commission of Kenya, to administer broadcast content, formulate media standards and regulate compliance with such standards through the Broadcasting Standards Committee which is to be established by the CAK. CAK is a government appointed and run institution and the regulation of the media content should not be within the exclusive purview of the Government but it is best practice in the interest of democracy to have the regulation of the same in the hands of the media council.

Fourth, the Bill also makes provision for punitive fines to media houses and threat of fines and deregistration to individual journalists for professional misconduct. In comparison with penalties issued for committing other offences in Kenyan law.

With the return of the Bill to the house by the President, the Commission hopes the house will now allow for participation by Stakeholders that will result in a law that will enhance the role of media in society.

Government targets NGOs external funding

By John Emeripus

The Government is set on a collision course with Non-Governmental Organizations (NGOs) or Public Benefit Organizations' (PBOs) in the country over the proposed amendments to the PBO Act. The controversial sections contained in the Statute Law (Miscellaneous Amendments) Bill, 2013 as amendments to The Public Benefits Organizations Act, 2013 and Section 27 A (2) which states; "A public benefit organization shall not receive more than 15 per cent of its total funding from external donors." It further says; "Any funding of a public benefit organization shall be made through the federation and not by an individual members' organization

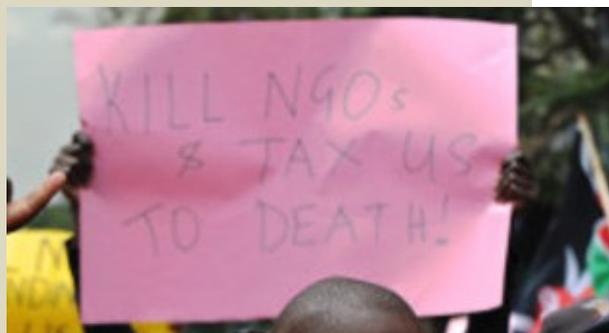
Coming in the wake of a backlash over the controversial Kenya Information and Communication Bill (2013) the intention of the Government to constrain civic space is not lost on us. This Bill in itself will impede the operations of Public Benefits Organizations and State corporations particularly the National Youth Council, a body corporate whose top organ is composed of members elected directly by the youth.

By proposing to cap the amount of funding PBOs receive from external sources, many of these institutions will not be able to deliver on their objectives. PBOs will only get more than the 15 per cent share of foreign funds if they demonstrate extraordinary circumstances why they require the funds. Additionally, it is proposed that a Government led - federation will be formed through which funds will be disbursed.

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The PBOs will be required to be in a roll in order to access these funds. In effect this requirement nullifies prior registration status, puts the PBOs at the mercy of state control and creates an unnecessary bureaucracy that will challenge the smooth operations of the sector not to mention technical challenges between the particular PBO and the donor with whom contracts will have been signed.

PBO's all over the world play an important development role and compliment government efforts for poverty eradication and service delivery. In Kenya, PBOs play a significant role in empowerment of communities, providing basic services, such as healthcare, water, shelter, education and livelihood building, compliment government developmental efforts and provide much needed humanitarian response services in some of the remotest parts of the country during disasters.



The Bill of Rights in chapter 4 of the Constitution of Kenya is an integral part of Kenya's democratic state and is the framework for social, economic, and cultural policies. This provision read together with the vision 2030 in which the Government has committed to transforming Kenya into a newly industrializing middle income country providing a high quality life to all its citizens by the year 2030 demonstrates the overall state responsibility in ensuring that all Kenyans enjoy their fundamental

rights. PBOs help government honor this commitment.

KNCHR is convinced that, curtailing the operations of these PBOs by amending an otherwise well intentioned PBO Act is equivalent to denying communities an existence that is dependent on the work of these PBOs and a major violation of the constitution. The legislators who are behind this bill and all other retrogressive Bills have demonstrated an unparalleled desire to muzzle the public voice, manage and control all form of public life and constrain the civic space which Kenyans fought for and this must be resisted by all well meaning Kenyans.

Editorial

Swimming against the current

Given that the proposed controversial amendments to the media laws and the Public Benefits Organizations Act came close on the heels of the summons by the Inspector General to two KTN investigative journalists who authored a feature on the Westgate Saga, it is understandable that these amendments were interpreted as aimed at curtailing the civic democratic space.

It is unfortunate that the sectors targeted are the very agencies that are credited with championing the liberties that we now all enjoy and that are articulated in the Constitution of Kenya, 2010.

It is inconceivable that the legislators could contemplate reversing the gains that we have made over the years and push for legislation that would revert this country to the yester years when executive excesses were not subject to question or challenge. Where media was muzzled and Civil Society voices suppressed.

It is unfortunate that the National Assembly has to be reminded that it is legislating contrary to the very constitution that it ought to protect. We welcome the President's action of declining to assent to the Bills and advice that as Parliament reconsiders the Bills it opens up the process to stakeholder participation and input.

We urge that the democratic foundations of Kenya will be strengthened only if we guarantee an independent media and a vibrant civil society. Indeed it is in the interests of the King to ensure that within his court there is a voice that shall alert him when the situation so demands that he is naked.

In this November issue, we focus on the bills above as well as the commission's efforts at decentralization through the opening of our Kisumu office Branch. We also highlight outreach activities that have been taking place to publicize the Integrated Public Complaints Referral Mechanism. KNCHR welcomes your feedback and articles.

Break from the Past?

By Josephine Muchilwa

In preparation for the March 2013 general elections, political parties held primary nominations in January 2013, an activity which the Kenya National Commission on Human Rights closely monitored in Kwale, Kilifi, Mombasa, Nairobi, Nakuru, Isiolo, Kisumu and Uasin Gishu. These regions were selected based on their historical, present and emerging political trends that shaped, in one way or another, the electioneering climate in the country.

The key objectives of the exercise were to monitor and observe the extent to

which the process facilitated participation by the people, attention to women, youths and vulnerable groups, to monitor as well as observe the level of adherence to the rule of law and the principles of transparency and accountability. Also, KNCHR intended to observe the extent to which political parties had institutionalized internal party democracy.



Participants at the Kisumu forum

On November 3rd 2013, KNCHR team led by the Acting Chair Commissioner Ann Ngugi and the commission Secretary Patricia Nyaundi set out to Kisumu to disseminate the nominations report dubbed ['Break from the Past? A Monitoring Report of the 2013 Political Party Nominations.'](#) The main objective of the dissemination forum was to engage with civil society organizations and political parties and thereafter forge a way forward for better, organized and transparent nominations in future. In attendance were Commissioner Galma Godana from the Independent Electoral and Boundaries Commission (IEBC) and Dinah Liech from the Office of the Registrar of Political Parties (RPP).

From the engagements, it emerged that some of the challenges in the nominations process were on account of flaws in the electoral laws. Participants recommended that there was need to curb this practice by introducing provisions in the law that would require that persons be members of

a party for a minimum period to entitle them to the party ticket for any position.

Key recommendations in the report include requirements that; political parties should deposit membership registers with the Registrar of Political Parties and that only those in the register can participate in the nominations process; political parties should discourage officer bearers such as members of election management boards from seeking party nominations; parties should conduct audits on representation of vulnerable groups and take measures that ensure such groups exercise their right to participate in the elections. The full report is available on the KNCHR website.

Taking it to the grassroots

By Lynesther Mureu

The rains pounded and then the sun would peer and as the caravan moved, cloud would gather along the way. So it was in Kitale and Mombasa when the '**Sema**' teams took to the grassroots this month on road shows and public forums that aimed at sensitizing members of the public on the workings of the joint complaints platform known fondly as Integrated Public Complaints Referral Mechanism (IPCRM). In Kitale, stopovers at Matunda, Moi's Bridge and Kiminini attracted crowds that were eager to learn on how and where they can launch complaints in human rights violations, corruption, maladministration and discrimination.



Church members at one of the outreach sessions

The team also visited two churches which graciously accorded them time to speak to the congregations concerning the project. “We have a duty as a church to play a role in enhancing Civic education as long as the pulpit is not used for political agenda,” said one church elder at the Quakers Church, Kitale.

IPCRM is a joint initiative by Kenya National Commission on Human Rights (KNCHR), National Cohesion and Integration Commission (NCIC), Commission in Administrative Justice (CAJ), Ethics and Anti Corruption Commission (EACC), National Anti Corruption Campaign Steering Committee (NACCSC) and Transparency International-Kenya (TI-Kenya). More information on <http://www.knchr.org/Portals/0/AllOtherReports/Sema!%20Piga%20Ripoti%20Manual.pdf>

Aging with Rights!

By Josephine Muchilwa

To burn old people in the name of exorcising witchcraft, to have young children participate as on lookers in the inhuman activity and to justify the right to take away someone’s life. Seems like a scenario from a ghastly movie but indeed one that took place in the country. Older persons, by virtue of their age are increasingly becoming targets of human rights violations owing to their feeble stature.

In May 2009, Kenya National Commission on Human Rights published a human rights report: [*Growing old in Kenya- Making it a positive experience.*](#) The report focused on the process of growing old in Kenya, highlighting experiences of older persons who are mostly treated as an invisible and neglected population. These experiences demonstrate the policy, legislative and programmatic deficiencies including discrimination that affect or are likely to affect any one growing old in Kenya.

In drafting and entrenching the rights of older persons in Article 57 (c) of the Kenyan Constitution, the state committed to protecting such vulnerable persons as partakers of the Kenyan law. *‘The State shall take measures to ensure the rights of older persons-to live in dignity and respect and be free from abuse and to receive reasonable care and assistance from their family and the state,’* says the constitution.

In seeking redress for these members of society, KNCHR in partnership with Help Age Kenya are in talks to get to the root cause of this violation and come up with interventions resulting in the elimination of the violations. A recent visit to Magharini District Kilifi County indicates the Giriama and Digo stood out as communities where the vice was of a growing concern owing disputes over land inheritance. In an effort to ‘get their fair share’ youth result to burning older persons as punishment for engagement in witchcraft.

Malindi Deputy Commissioner Joshua Nkanatha exonerated the local administration from responsibility citing the non cooperation of community and family members which made it difficult for law enforcement agencies to prosecute the perpetrators. In addition KNCHR observed that the practice has its roots in cultural beliefs and of concern

was the resistance to efforts from 'external' actors.

Older persons like all other people have their right to life which must be safeguarded. Kaya elders were called upon to create awareness and senior members of the society called upon to stand against the violence. Other interventions proposed were, provision of special protection programmes for older persons and civic education among the community which would greatly reduce the gap between the old and youths.

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