

**“I Am My Brother’s Keeper”: The  
Politics of Protecting Human Rights  
Defenders at Risk in Kenya**

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For my Mom

*“But you see, the history of the human rights movement in Kenya is ‘I am my brother’s keeper’.” (Grassroots human rights defender)*

*“And the Lord said unto Cain, Where is Abel thy brother? And he said, I know not: Am I my brother's keeper?” (Genesis 4:9)*

## **Abstract**

In this study, I examine the protection of human rights defenders as a contemporary form of human rights practice in Kenya, within a broader socio-political and economic framework, that includes histories of activism in Kenya. By doing so, I seek to explore how the protection regime, a globally defined set of norms and institutions increasingly located in the Global South, becomes embedded in a specific setting, and how it is used by relevant stakeholders. Conversely, by drawing on rich empirical data from a given context, I aim to nuance existing theoretical thinking about protection, and to tease out the implications for the broader political and economic processes in which the protection regime is inscribed.

By drawing on two years of ethnographic research in Kenya, I show that institutionalized protection as an extension of professional human rights can be counterproductive for the goals of the protection regime, but also for those of human rights more broadly conceived. Firstly, institutionalised protection entrenches pre-existing power relationships between professional activists and grassroots defenders across a class and socio-economic divide. Secondly, relevant actors at times resist this setting by appropriating the protection regime for purposes other than those it was intended for. Finally, the ensuing tensions risk eroding the human rights movement rather than strengthening it.

This study provides a critique of recent processes of professionalization by contextualizing them within wider histories of oppression and struggle. Additionally, it shows how economics, power and politics matter within locations (rather than just across the Global/South divide). In doing so, it provides a nuanced assessment of the protection regime as the human rights movement's primary response to reprisals against civic space across the globe. Finally, this study also adds to the growing body of scholarly work that investigates the effects that human rights and related norms and practices have in social life.

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## Preface and Acknowledgments

*“On 16 July 2006, a young man died in a district hospital in Narok, a dusty town on the road to the Maasai Mara, Kenya's most frequently visited safari park. He was only thirty-eight, and the illness which killed him is treatable. But poor Africans, receiving only spasmodic medical care, often die of ailments that would be beaten off in Western Europe. He left behind a widow and three children” (Wrong, 2010: 317).*

This is how Michela Wrong starts the Epilogue to *It's our turn to eat: the story of a Kenyan Whistle-blower*, her eloquent, gripping account of John Githongo's investigations into the Anglo-Leasing corruption scandal, and of its repercussions. Based on interviews with Githongo over a number of years, the book is a persuasive, beautifully written argument that Githongo's moral conviction and strength of character were key factors in his decision to investigate the affair and release his findings, at tremendous risk to his life. However, Wrong is also careful to bring nuance in her analysis of his ability to mitigate that risk when it occurred in the wake of his investigations. Born in London, but raised in Kenya for most of his life, in the upper middle-class neighbourhood of Karen, Githongo hailed from the family of an accountant whose clients included the family of Jomo Kenyatta, Kenya's first president, and who was a co-founder of Transparency International. Schooled at the private Saint Mary's in Nairobi, he later read for a BA in Economics and Philosophy at the University of Wales in Swansea, before he returned to Nairobi where, among others, he wrote a weekly column for *The EastAfrican*, the most reputable newspaper in the region, and headed the Kenya chapter of Transparency International for a while. His background, charisma, reputation and connections were pivotal in his ability to mitigate the threats to his life that arose in the wake of his investigations. He first escaped to London, where he lived for a while with Michela Wrong herself, and then was offered, through Paul Collier's intervention, a fellowship at Oxford's Saint Anthony College for a duration of three years, where he laid low while waiting for things to calm down in Kenya, where he returned in 2008 (Wrong, 2010).

David Munyakei, by contrast, the subject of the first few pages in Michela Wrong's epilogue from which I quote above, was born an illegitimate child, of a mother who worked at the Langata women's prison in Nairobi. In 1991, at 23, he got a job at the Kenya Central Bank, where he was soon moved to the pre-shipment compensation department. There, he would later observe irregularities in forms submitted for approval and payment by companies purporting to export gold. With what Wrong calls a "stubborn mulishness" (2010: 317), Munyakei photocopied these forms, sneaked them out and leaked them to the press in 1992. By doing so, he lifted the lid on one of the biggest corruption scandals in Kenya's history, known as the Goldenberg scandal. A year later, Munyakei was sacked from his job at the Kenya Central Bank, and was refused a reference letter. This effectively cut off his possibilities for employment elsewhere. At around the same time he also started receiving death threats. After a stint in Mombasa, where he took up a new identity and married, he moved with his young family upcountry, in Masaai land, where he struggled to live from one day to another and pay his children's school fees. The Kibaki government's establishment of the Goldenberg Commission in 2003 brought him a short-lived moment of fame – which included receiving a prize from Transparency International – but not his job back and compensation for years of lost income, which, according to Wrong, is the one thing he "really wanted" (idem: 320). Trapped in a life of poverty, he was eventually killed "not by a hired assassin, but by an ordinary African killer: pneumonia" (idem: 321).

Michela Wrong juxtaposes Munyakei's deeds and fate with those of Githongo to make the argument that they are alter-egos for each other. Their different lineage aside, which, as she admits, influenced the course of their life, their singular acts of extraordinary courage made them equals, and offered a glimmer of hope for Kenya's future. From that perspective, she is correct to emphasise their similarity in bravery, rather difference in background. Yet, when I read the book, during my first year as a PhD student, it was the latter that caught my attention. In parallel, I was also reading the literature on human rights defenders, at that time emerging almost exclusively from the non-governmental sector and from inter-governmental organisations, such as the United Nations. As I was doing so, I could not escape the feeling that, in focusing on defenders' bravery, moral character and the reprisals that they faced as a result we, as a community of

academics and practitioners (often wearing both hats), had imagined defenders as a homogenous group, and that that had a stubborn tendency to elude from our thinking and practice important differences, not so much across contexts (the literature acknowledged that much), but especially *within a given context*.

I spent the rest of that year refining that intuition through searching the literature, and nearly four years in Kenya afterwards, in a quest to understand its meanings for and effects on the practice of protection. This thesis is the result of that pursuit. Much, if not most of it, would not have been possible without the generous help of more people than I can acknowledge. In Kenya, Kamau Ngugi, Yvonne Owino-Wamari, Gloria Madegwa, Salome Nduta and Patrick Kararu from the National Coalition of Human Rights Defenders - Kenya, allowed me to engage in and with their work throughout the first year. By having the courage to open themselves up to inquiry, they have made the biggest contribution to this study, no doubt. Kamanda Mucheke told me about the international fellowship programme run by the Kenya National Commission on Human Rights, encouraged me to apply, and later became my supervisor and my friend. Charles Kigotho and Joseph Otieno were wonderful colleagues and friends. Jackie Njeru helped me understand the inner working of a large organisation in a way that no one else could. Gacheke Gachihi shared with me his struggles and those of his fellow human rights defenders numerous times, openly engaged with my critiques (and criticised me in return), and always encouraged me to continue. Betty Okero welcomed me to Kisumu and into her home every time I visited. Otieno Namwaya generously shared his knowledge of human rights and politics in Kenya over countless dinners of fish and ugali at Mama Oliech's. My dear friend, Mugambi Kiai, was a sounding board for many of my ideas throughout my time in Kenya. His excitement about my findings, coupled with his background as a practitioner with many years of experience in Kenya and in the region, gave me the incentive to continue at those times when I doubted the relevance of the project. Countless others, both from the professional and the grassroots sectors of the human rights community talked to me on more occasions than I could ever count, both during informal conversations and during our formal interviews. Some of them were remarkably open. I thank them for their trust, honesty and insights. Linda Ochiel generously hosted me in her home during my first month in Kenya, while I looked for a place of my own. She and her beautiful daughter, Keisha, remained my friends throughout. Marion Deniaud's friendship, while she was here,

grounded me. Kaloki Nyamai's friendship and art, both that at his studio and in my home, kept me inspired. Gabrielle Lynch acted as a colleague, friend and mentor. The sunny days that we spent writing at her house, on Galana Road, remain etched on my memory as celebrations of both intellectual labour and the joyous fruits of companionship. Kenya would not have been the same without the possibilities that her wonderful friendship created. The British Institute in Eastern Africa provided the home of an intellectual community. I thank them, and especially Joost Fontein, its director, for his generous initiative to offer writing PhD students a working space there from February 2017 onwards. Manissa Maharawal Gluck and Miriam Pahl were wonderful writing companions throughout most of that time. Esther Wagemba was a fabulous teacher of Swahili. Luisa, Steve and baby Imani forced me to take breaks. Zarina Rattansi and her son, Imran, whose flat I shared for over a year, made Kenya feel like home. Aude, Maxime and Silvan were simply the best flatmates that any PhD student in the final months of writing their thesis could have wished for. Their wisdom far exceeded their age, as did their empathy. That, and their sense of humour kept me sane (and grateful). Whether in Kenya or abroad, Neil Wilson James walked on this journey with me for most of the final two years that I spent working on the project. His support was especially crucial throughout the last few months and days of writing, including with helping me edit the bibliography, hours before submission. Without his help, I would have missed the deadline. A heartfelt thank you to Dr Mikhail Tamer, at the Coptic Hospital in Nairobi, who was nothing short of a guardian angel in medical disguise. His steady friendship and care saw me through those many months when my health failed me.

In the UK and elsewhere, my main supervisor, Paul Gready, has balanced giving me the freedom to make my own decisions about the project with an endless reservoir of patience, encouragement and extremely helpful guidance along the way. I cannot thank him enough for his personal and intellectual generosity. It has made me a better researcher, and, I hope, a better person. Alice Nah's contributions to the project cannot be overstated. Her comments and insights have challenged me to think more and with more nuance about the practical dimensions of the study. Alice also recruited me to work with her on other, related projects, that were both intellectually stimulating and financially sustaining at times when I had run out of my own resources. Without that, I could not have finished this project. The Politics Department funded the first three years of this research through a PhD Politics Scholarship. Liz O'Brien, the

Graduate School Co-ordinator in the Politics Department, was a steady source of support. She fielded my endless questions about the administrative aspects of writing and submitting the PhD with unwavering patience and kindness. Writing a PhD from Kenya would have been considerably harder otherwise. Adeline Sozansky was my rock during the first year on this project. Robert Archer's insights on the workings of international human rights organisations, along with his friendship, were invaluable. Felicia Smith-Kleiner provided emotional support and life advice from abroad at crucial moments. I thank her for her enduring friendship, from the days when she taught me literature at Middlesex University, in London. Anthea and Richard Nicholson welcomed me in their home throughout the spring of 2012 when I was in London looking for work, and helped me overcome my hesitation to apply for this project when the opportunity came up. During the days of drafting the proposal, on more than one occasion, they ordered pizza for dinner, so that I could work undisturbed in their kitchen through to the early hours of the morning - this project would never have happened without their support at that initial stage. Years later, their daughter, Rachel, who now works in Nairobi, brought me groceries and flowers during the final days of writing in a bid to help me beat the deadline. I thank her for her beautiful, selfless friendship. A special thank you to Lars Waldorf, for always believing that I would make a good scholar. I hope this thesis does not prove him otherwise. To G., my eternal gratitude, for everything.

My family have shown me love and support throughout. My brother and his partner hosted me in their home during my visits in London. Maeve, my adorable niece, was a source of wonder and delight. Watching her grow, even from afar, felt like a precious gift. My parents endured my absence over the years, vicariously experienced the joys of living in Kenya over the phone, and gently nudged me to finish with regular reminders about the possibilities of "a life after the PhD". I dedicate this thesis to the long line of women in my family whose aspirations for education eluded them. To my grandmothers, who, although not knowing how to read and write, filled my childhood with stories made of the stuff of novels. And to my mother, whose modest origins in rural, communist Romania prevented her from pursuing higher education, the dream of her youth. She embraced both that and others of life's challenges with grace, integrity and self-sacrifice. I have been at much of the receiving end of that. I thank her - she has taught me patience, resilience and hope.

## **Author's Declaration**

I declare that this thesis is a presentation of original work and I am the sole author. This work has not previously been presented for an award at this, or any other, University. All sources are acknowledged as References.

Irina Ichim

August 2017

# Chapter 1. Introduction

*“[P]aradigms work to reveal some things while they conceal others.” (Goodwin et al 2010: 8)*

## 1.1. Overview

In recent years, the protection regime for human rights defenders has grown into a multifaceted set of actors, that are increasingly located in the Global South. In some countries, the protection architecture includes national and regional organisations, state institutions, donors, and the human rights defenders themselves. These developments aim to achieve protection in the settings where defenders themselves are threatened and thus to disrupt their work as little as possible. By the same token, decentralizing the protection regime to countries where defenders face significant reprisals also aims to empower defenders by enabling them to continue their work free of retaliations. Finally, these developments aim to support the human rights movement itself, including by decreasing the power gaps between the Global North and the Global South, and strengthening the solidarity between various segments of the human rights movement.

In this study, I explore the complex effects of these developments by examining how the protection regime becomes embedded in Kenya’s socio-political and economic structures, and how relevant actors interact with it. Conversely, by drawing on rich empirical data from Kenya, I aim to nuance existing theoretical thinking about protection, and to draw out the implications for the broader phenomena within which protection is inscribed.

The protection regime and the case study of its operation in Kenya provide a lens through which to engage with and expand upon a set of broader theoretical and practical debates in human rights and related fields. First, the thesis examines a particular example of how global norms are translated into local settings, with a focus on the practice of norms and their effects in social life. Second, the study critiques the effects of recent processes of professionalization and institutionalization in activism, and argues for the importance of placing such developments within the context of longer histories of oppression and struggle. Third, the research is unusual in

addressing issues of economics, politics and power which shape human rights work from *within*, and in a particular location (thus moving beyond the North vs South debate). Finally, the thesis has significant contemporary relevance as the protection regime is the human rights movement's primary response to a global trend often now termed 'shrinking civil society space'. As such, it addresses nascent trends designed to both restrict and protect this space in a particular context, and the challenges researchers face in conducting research in such contexts and on such issues.

I start this introduction with a brief context for the project, which includes an overview of the international protection regime, and the problematics of the protection regime in Kenya more specifically. I use these observations to substantiate the research problem. I then highlight some key points of my theoretical approach. In a succinct literature overview, I highlight the limitations of the current literature on defenders and protection, and explain how this study fills a gap. I use that as an inroad into my research questions, before I briefly discuss the methodology, rationale for the case-study, and limitations (these include the limitations entailed by the choice to not include a gender perspective, which I also justify here). I end with an overview of individual chapters, and a short note on the title of the thesis.

## **1.2. Background and Statement of the Problem**

### **1.2.1. Human Rights Defenders and the Protection Regime**

Working for social justice can be a source of vulnerability for many people around the world, especially those based in countries characterized by repressive regimes, or unstable socio-political environments, defined by weak accountability and rule of law. In response to this, the international community has come up with a normative and institutional architecture for their protection. This is known as the "human rights defender protection regime" (Bennett et al., 2015; hereafter "the protection regime").

In recent years, the protection regime has grown into a multi-level, multi-actor initiative, that has become decentralized through both state and non-state institutions at the regional, national and even sub-national levels (Bennett et al., 2015). The foundational document of the protection regime takes the familiar form of a UN declaration. *The Declaration on the Right and*

*Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, also known as the Declaration on Human Rights Defenders was passed in 1998, by the United Nations General Assembly. The Declaration is the first international instrument that acknowledges that defending human rights is a right in itself that must be implemented by states through legislative, administrative and other steps as may be necessary (UN General Assembly, 1999, Article 2). Specific protection mechanisms for defenders replicate earlier ones that were meant to monitor the implementation of other human rights. International mechanisms include a United Nations Special Rapporteur on the situation of human rights defenders (UNSR). Their mandate is to monitor the situation of defenders, to respond to information received to this end, and to cooperate and engage with states and other stakeholders on the promotion and implementation of the Declaration, including through making recommendations for effective implementation strategies as well as following up on these recommendations (UN Office of the High Commissioner for Human Rights, 2004: 22-23). Regional mechanisms such as the Inter-American Commission on Human Rights and the African Commission on Human and Peoples' Rights have established their own special rapporteurs on human rights defenders, with a mandate similar to the UNSR. Finally, some states have national protection mechanisms that take the forms of both administrative protection programmes (Colombia) and laws (Mexico). Yet other states incorporate work on human rights defenders in the mandates of their national human rights institutions (Guatemala, Kenya).

This state-based institutional architecture is complemented by civil society initiatives aiming to ensure the protection of defenders. Like the state based architecture, the non-governmental sector concerned with the protection of defenders has expanded from the international, to the regional, and increasingly national levels, with more and more NGOs that have a mandate to protect defenders opening up in countries in the Global South. Some of the most well-known international organisations include Peace Brigades International (PBI), Front Line Defenders and Protection International (PI). Additionally, organisations like Amnesty International (AI), which have a broader human rights mandate, have programmes that focus on human rights defenders. Many of these international organisations have in recent years opened up offices in countries in the Global South. A similar dynamic is replicated in regional and national settings, where organisations develop either with a mandate focusing exclusively on the

protection of defenders (for example, Defend Defenders in the East and Horn of Africa, or the National Coalition of Human Rights Defenders - Kenya), or they incorporate work on human rights defenders in their wider human rights mandates. The range and reach of these organisations' programmes is also very diverse. These cover things such as monitoring, reporting and advocacy in international, regional and national fora, relocation grants, fellowships and capacity-building.

The logics of these developments are multi-fold. Firstly, they (aim to) disrupt the power dynamics between the Global North and the Global South, by locating an ever-higher number of initiatives in the latter<sup>1</sup>. Secondly, they aim to ensure that defenders are protected in the settings where they live and thus to empower them to continue with their work there (Bennett et al., 2015). This in turn, aims to strengthen the human rights movement on the ground: in that sense, the alliance between differently located actors within the protection regime is also fundamentally intended to act as a sign of solidarity spanning the international, regional and (intra)national levels. The protection regime, then, operates at the interface of wanting to achieve the protection of individual defenders, and strengthening the human rights movement itself, including by rallying individuals and institutions across locations to keep civil society space open when governments attempt to clamp down on defenders and their work<sup>2</sup>. Finally, this set-up is also meant to offer defenders in particular locations a broad array of accessible options for their protection, even when particular institutions that they might appeal to are designated as “international”. As I will show, Kenya illustrates these dynamics particularly well.

### **1.2.2. The Protection Regime in Kenya**

Kenya has a fairly complex infrastructure for the protection of defenders. Like other countries in the region, Kenya's human rights community has established its own non-governmental organization (NGO) which is concerned strictly with the protection of human

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<sup>1</sup> Back in 1999, Larry Cox, former executive director of Amnesty International US, argued that, instead of being equal partners in the international arena, “[g]roups in the South are still seen largely as domestic partners or as ‘human rights defenders’ who are protected by those doing international work” (1999). Cox may have been right at the time, but, at the moment, human rights defenders are increasingly protected by those doing national work, or, often, by a combination of both national and international actors.

<sup>2</sup> Bennett et al identify these as key principles of the protection regime. Moreover, they argue that efforts to keep the civic space open and ensure a safe and enabling environment for defenders also reflects a concern with preventive rather than reactive protection (Bennett et al., 2015: 884).

rights defenders. The National Coalition of Human Rights Defenders – Kenya (hereafter the Coalition) was founded in 2007, but it only opened its Secretariat in 2012. Since then, the Coalition, which runs three main programmes (advocacy, capacity-building, and protection) has emerged as the main institutional actor for the protection of defenders in Kenya. In recent years the Kenya National Commission on Human Rights (hereafter the Commission), the state human rights body, has also started working on defenders as part of its larger human rights mandate. Additionally, international organisations like PBI, PI and Front Line Defenders (all of them with a mandate concerning strictly defenders) have a presence in Kenya. Due to Nairobi’s status as an urban hub in the region, other international organisations, such as AI and Human Rights Watch (HRW), also have their regional offices here. Although Defend Defenders, the single most well-known protection actor in the region, is based in Kampala, it is often involved in the protection of defenders in Kenya. Those donors with a presence in Kenya are also actively involved in some of these initiatives, both in an individual capacity and through a European Union Working Group on HRDs. Finally, defenders in Kenya can also appeal regionally to the ACHPR’s Special Rapporteur on the situation of defenders, or, internationally, to the UNSR on the situation of human rights defenders, as well as other UN Special Rapporteurs whose mandates touch on the work of defenders (for example the UNSR on freedom of association and assembly).

The protection regime in Kenya, like in other countries, has become a “node” in an expanding set of institutions and groups that constitute the global protection regime<sup>3</sup>. Much of this expansion is driven by a belief in the norms that underpin the protection regime. In other words, the (positive) effects of protection measures are assumed rather than rigorously studied. In reality, we know very little about how globally defined protection norms and strategies encounter settings like Kenya’s, that are already defined by prior socio-political and economic histories, including histories of human rights activism. The protection regime in Kenya and its normative and institutional forms have not emerged in a vacuum. Although, like elsewhere around the globe, Kenya’s vibrant human rights community has become professionalized in recent years, its history long precedes those developments. That history of activism also includes

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<sup>3</sup> Although I draw on the literature on the appropriation or localization of human rights (Feyter, 2011; Großklaus, 2015; Levitt and Merry, 2009; Merry, 2006), I use terms such as “node” and “locality” in a bid to avoid reifications of terms such as “global” and “local” (see Goodale, 2007). I explain this at length in Chapter 3, where I conduct a literature review that includes surveys of key concepts that are central for this study.

sophisticated, informal protection measures that activists in Kenya relied on before protection became institutionalised<sup>4</sup>. Also like elsewhere around the globe, the professionalisation of the human rights movement in Kenya led to the crystallization of pre-existing divisions between professional defenders and defenders from the grassroots along lines of class and access to resources. The institutionalization of protection followed a similar logic, with protection initiatives becoming located in Kenya's professional, middle-class sector, while many of its beneficiaries come from impoverished socio-economic backgrounds and operate in an individual, unpaid capacity. This context is further complicated by shifting patterns of violence and repression in Kenya in recent years, which confound the simpler categories that a human rights approach to protection entails. Cumulatively, these factors complicate the protection regime in Kenya and its implementation in practice.

Within this framework, the effects of the protection regime, and the constraints and opportunities that it creates in settings like Kenya, must be rigorously studied, rather than anticipated by starting off from norms and ideals. In highlighting this gap, I take my cue from the theoretical and empirical work that has examined the practical effects of other regimes, including human rights. Scholars have shown that engagements of global regimes in particular locations are defined by resistance and transformation, often in directions that diverge from their stated ideals (Merry, 2006; Shaw et al., 2010; Wilson, 2001, 1997). Yet, such research on the protection regime is missing. In this study, I tackle that knowledge gap through a twofold approach: alongside critically interrogating the assumptions that underpin the protection regime, I also use ethnographic research to understand how Kenyan activist communities engage with it.

### **1.3. Preliminary Theoretical Observations**

Theoretically, I approach the term “human rights defender” as the marker of an emerging category whose meanings must be investigated as they develop in specific settings, and not assumed (Moore, 1988: 7). Starting from that, I make three key observations concerning the limitations of the protection regime. Firstly, the protection regime focuses on defenders' bravery, moral character and the reprisals that they face as a result. In doing so, the protection regime

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<sup>4</sup> I conduct extensive reviews of these histories and their implications for protection in Chapters 4 and 5.

constructs human rights defenders as a homogenous category, and attaches to it meanings that are normatively, rather than empirically derived. This inadvertently excludes from thinking and practice important differences, not so much across geographies and socio-political contexts, but especially within a given context.

Secondly, although it has developed as a subset of human rights, which include both civil and political and economic and social rights, the protection regime has developed with a bias on the former<sup>5</sup>. The Declaration on Human Rights Defenders – the authoritative document of the protection regime - revolves exclusively around defenders' civil and political rights. This normative gap is also reflected in conceptualisations of protection as a set of practices. Despite seeing defenders as promoters of human rights rather than victims of human rights abuse, protection models, by their very nature, continue to rely primarily on a concept of victimhood. Major actors involved in the protection of defenders focus on those activists who are victims of violence, and they conceptualize violence as violations of human rights, but with a focus on traditional civil and political rights. The overwhelming result of this is to render socio-economic issues concerning defenders invisible in the protection regime across both theory and practice. At the same time, the protection regime has become an important feature of landscapes of activism in countries in the Global South, which are often defined by steep socio-economic inequities. These, in all likelihood, also affect defenders.

Thirdly, in developing as a sub-set of human rights, protection itself has emerged as a contemporary form of professional human rights practice, that must negotiate the tensions between a broad definition of human rights defenders on the one hand, and the aspiration that

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<sup>5</sup> This is due primarily to the origins of the protection regime itself, which emerged in the halls of the UN, pushed by organisations like Amnesty International, the International Commission of Jurists and Human Rights Watch, who at the time were relying on activists in the Global South for information for their reports. The latter would then often suffer reprisals for having collaborated with their Northern counterparts (see Orentlicher, 1990). As a result, Northern human rights organisations started advocating for a set of norms and mechanisms to protect Southern activists from government reprisals; naturally, these focused on violations of defenders' civil and political rights, with a focus on their right to life and bodily integrity. While, within the context in which it emerged, this narrow focus was understandable, it is one of the arguments of this thesis that this focus is no longer adequate to respond to contemporary realities, especially since the professionalization of human rights work in the global South and the ensuing class structures within human rights communities there. See also Chapter 8, where I examine at length how the intersection between the international protection regime and the history of human rights activism in Kenya intersected to exclude socio-economic issues from the protection regime in Kenya.

defenders practice professional repertoires of activism on the other. The emergence of protection as a sub-set of professional human rights in the Global South raises further important questions about its reception by actors there. Despite its aura of universality, professional human rights is always politically positioned in specific contexts (Tate, 2007). Professionalised human rights, which reflects international criteria, often comes at the expense of other repertoires of activism, which better reflect local histories and ownership, and as such is a deeply contested issue. It can lead to division within activist communities along lines of class and ideology (Tate, 2007), and to changes in perceptions of activists and organizations' legitimacy by other local actors (Englund, 2006; Mutua, 2008). Despite these insights from the literature on professional human rights, current conceptions of protection have developed separately from an understanding of how the professionalization of protection impacts on social relationships, both within activist communities and between activist communities and other actors.

Cumulatively, these observations raise questions about how globally defined norms and their limitations encounter landscapes of activism that are defined by prior histories and cultures (including of activism) and socio-economic inequalities in the present, themselves a product of those histories. More to the point, these observations raise questions about whether, in such settings, the protection regime challenges or reproduces power relationships, especially within the sector, and thus, about whether, in practice, for an important segment of its beneficiaries, the protection regime works through processes of disempowerment, rather than its intended opposite. Finally, these observations suggest that a more nuanced assessment of the protection regime as a global response to reprisals against defenders and civic space are needed. These concerns, however, cannot be resolved in the abstract, but through empirical research that aims to understand how the protection regime shapes social relationships and practices in specific contexts. Perhaps more importantly, local empirical research can also nuance existing protection frameworks, and open the door to reconceptualising protection in ways that are informed by activists' own understandings and use of the protection regime and the norms that underpin it.

## **1.4. Overview of Literature on Human Rights Defenders**

In recent years, there has been a sustained effort within the academic sector to publish research on defenders and the protection regime. Studies that focus on the protection regime include overviews of recent developments in the normative framework and protection mechanisms (Bennett et al., 2015), analyses of the intersections between the human rights defenders protection regime and other protection regimes, such as the refugee regime (Jones, 2015), in-depth studies of specific protection mechanisms, state-based (Joloy, 2013), and inter-state based (Bennett, 2015), the role of networks in protection (East and Horn of Africa Human Rights Defenders Project, 2013), and interrogations of the term human rights defender and the usefulness of existing normative criteria used to define the term for the practice of organisations (Eguren Fernandez and Patel, 2015; Jaraisy and Feldman, 2013). Themes in the literature that focuses primarily on defenders themselves include analyses of state reprisals using the legal system (Anstis, 2012; Tate, 2013) and of strategies for activism (Nesossi, 2015), community-based protection measures (Burnyeat, 2013), and the relationship between activism and risk (Kogan, 2013; van der Vet and Lyytikainen, 2015), including specifically in relation to digital activism (Hankey and O Clunaigh, 2013). Finally, feminist perspectives in this literature focus on women's experiences of risk and violence (Amir, 2013), as well as their strategies for self-protection (Amir, 2013; IM-Defensoras, 2013).

However, in-depth studies of how protection actually works in practice, taking into account the historical, cultural, socio-economic and political constraints of particular locations are missing. The few studies that interrogate how protection unfolds in practice are limited to the work of a particular institution (Kogan, 2013) or community (Burnyeat, 2013), with little insight into the broader social effects of the protection regime as a more complex set of institutions and ideas that interact in particular locations. This study aims to fill that gap by exploring the protection regime in Kenya, within a broader historical and socio-economic framework.

## **1.5. Research Questions**

This dissertation addresses the following main question and sub-questions:

*How do activists and organisations in Kenya understand and use the protection regime, and what are the implications for protection and for the broader political and economic processes in which it is inscribed?*

1. How is the human rights defender identity currently constructed in the relevant international norms? How does that reflect in protection practices?
2. How do activists and organisations themselves understand the term human rights defender and the practices that have developed around it? Do they reject or embrace them? When and why?
3. How does protection as a contemporary form of human rights practice shape the opportunities available to activists? Do socio-economic factors matter in that, and if so, how?
4. What are the implications of activists' responses for the protection regime, and for the broader human rights movement?

## **1.6. Methodology, Case-study and Limitations**

To explore these questions in-depth, I conducted ethnographic research in Kenya over a period of nearly two years. A major component of my methodology consisted of participant observation with relevant Kenyan institutions. During my first year in Kenya, I was based as a fellow (a voluntary position) with the National Coalition of Human Rights Defenders-Kenya. In the second year, I took up a similar position (also in a volunteer capacity) with the Kenya National Commission on Human Rights, the state institution<sup>6</sup>. In addition to observing the work of these organisations, I conducted 72 in-depth interviews with several categories of actors that can be considered as stakeholders in the protection of human rights defenders in Kenya: Kenyan human rights activists (Nairobi and non-Nairobi based, both grassroots and working with professional human rights organisations), members of the donor community in Kenya, and staff from international professional protection organisations with a presence in Kenya. The

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<sup>6</sup> Chapter 3 of this thesis explores at length how I negotiated access to these organisations. That chapter also provides a more extensive discussion of my research methods and the complex ethical issues generated by my methodology, as well as, later, the data selection and writing process.

interviews ranged in length from 2,5 hours to 9 hours (the latter were conducted in several sessions). Finally, I had countless informal conversations with people in the office, at meetings, public and private events, and I conducted extensive reviews of the relevant press and grey literature.

Kenya was a suitable case-study for this project for a number of reasons. Firstly, although the environment for human rights defenders in Kenya is not as dangerous as in other states, it is, nevertheless, repressive enough to make research in the country relevant for a study of this nature. At the same time, Kenya was characterized by sufficient political openness to allow me to conduct this research without endangering either participants or myself. Finally, Kenya's extensive, sophisticated protection infrastructure, combined within the prior socio-economic and political histories that define its landscapes of activism in the present, provided excellent scope for a study seeking to understand how the protection regime functions in a specific setting.

Nevertheless, I am cautious to claim that the findings of this research are generalizable to other contexts. This is a limitation of research that relies on case-studies more generally: while adequate to reveal the real-life complexities of a specific context, case-study results typically do not have validity across other contexts (Bryman, 2008: 55; Noor, 2008: 1603). That being said, this consideration can be nuanced in two ways. Firstly, case-studies typically seek either to test existing theory or to generate new theory from rich empirical data (Bryman, 2008: 57). In that tradition, this study seeks to test the theories underpinning the protection regime, especially in relation to the lines of inquiry that I highlighted above. Conversely, as I will show, understanding how those theoretical approaches and their tensions affect practice has implications upwards for how we think theoretically about protection. Secondly, even as scholars point out the limitations of case-study research for the generalizability of results, they do, at the same time, acknowledge that generalizability is possible in those cases where others research has generated comparable findings (*idem*). Although, to date, no scholar has examined how the protection regime specifically works in practice within a given context, nevertheless, many studies have been carried out in relation to other human rights issues in contexts other than Kenya (see Allen, 2013; Englund, 2006; Tate, 2007). Bearing that in mind, I would suggest that, at the very least, the approach and findings of this study can validate similar lines of inquiry for future research in

countries that present characteristics similar to Kenya (a semi-repressive environment, a relatively well-developed protection infrastructure that draws on the international protection regime, and high socio-economic inequalities).

Before moving on, I wish to briefly address another limitation of the study, albeit, given the aims of this research, an unavoidable one. It might be argued that a study that deals with power relationships and argues for forms of protection that are more sensitive to local context should include a gender perspective. In part, this is correct. As elsewhere across the world, the Kenyan social context is defined by deeply patriarchal structures that define men's and women's roles in the family and in the broader social life hierarchically. Also, as elsewhere across the world, this affects the situation for Kenyan defenders, although the shape and extent of those effects will heavily depend on other factors, such as geographical location and class (for example, a middle-class woman defender might be in a better position to protect herself than a male defender who comes from an impoverished area). However, in part because this is a pressing concern that seems to largely transcend social contexts, existing literature, both scholarly and from the non-academic sectors, has picked up on the issue and created a fairly large body of analyses that focus specifically on how the gender dimension affects women defenders' experiences of human rights work, risk and protection (see, for example, Amir, 2013; IM-Defensoras, 2013). A primary aim of this literature is to ensure that protection is tailored according to women's needs. The danger in taking that approach is that women defenders and men defenders respectively emerge as homogenous categories with women defenders assumed to experience a heightened level of vulnerability, irrespective of factors such as their social position, for example. As a result, considerations such as economic security, which concern both men and women defenders when factors such as class are taken into account, are seen as being relevant to women defenders alone (for a good example see Barry and Nainary, 2008). In other words, hierarchies of gender take precedence over other hierarchies, although the latter have an equally important effect on how certain categories of defenders, men, women and otherwise, experience risk and protection. On that background, foreclosing a gender approach in this research aims precisely to shift the focus of attention to these other hierarchies, which affect defenders across genders. Since the existing literature pays virtually no attention to this aspect,

taking this approach is also a pathway to making a more significant contribution to existing bodies of knowledge on defenders and protection.

## **1.7. Overview of Individual Chapters**

The individual chapters of this thesis are organised as follows. In Chapter 2, I examine at length the research methods that I relied on for this study. I do that specifically with a view to examine the complex ethical issues entailed both by the research methodology and the subsequent decisions involved in data selection and writing, and how these relate to choices about how to reference empirical material in-text. In Chapter 3, I proceed with a more extensive review of the literature. There, I engage at length with the limitations of existing literature on human rights defenders and protection, and I introduce the broad concepts that underscore my approach and that cut across the empirical chapters. I do so by drawing on the literatures that have examined the effects of other international regimes in particular locations.

In Chapter 4, I provide a brief, factual history of forms of activism and repression in Kenya post-independence, by drawing on the scholarship on human rights in Kenya, as well as academic studies on the nature of the Kenyan state and its transformations post-independence. The aims of this chapter are twofold. Firstly, by tracing continuities in both activism and repression post-independence, I show that contemporary reprisals against defenders in Kenya are part of a much longer history of violence, that can be traced back at least to the immediate post-independence years. At the same time, however, I isolate changes in patterns of repression in recent years. These can be attributed both to changes in the nature of the Kenyan state and especially its monopoly on legitimate violence, and to the influence of international factors on the home front. The combined effect of these trends is to complicate the context in which the protection regime in Kenya is embedded, with important implications for the protection of defenders. The second aim of this chapter is to trace the emergence of the human rights movement in Kenya, by highlighting the elements that make up the more conventional narratives of this process.

In Chapter 5, I revisit the history of activism in Kenya through data from my fieldwork. In contrast to Chapter 4, here I focus on continuities and changes internal to the human rights movement in Kenya since its inception and set the stage for exploring their implications in later chapters of the thesis. I specifically focus on the professionalization of the human rights movement in Kenya, which I isolate as the single most important transformation in internal landscapes of activism in the past couple of decades. I show that the professionalization of the human rights movement in Kenya has been a process defined by fracture and internal contestation, which has sometimes engendered new, and sometimes crystallized pre-existing exclusions, especially along lines of class and socio-economic status. That history, I also show, explains the emergence of professional defenders and grassroots defenders as distinct categories of activism, which I briefly explore in the second section of this Chapter. Finally, class and socio-economic status explain the power relationships that underscore the interactions between professional activists and grassroots activists within the protection project. I explore that issue through a critical examination of how the grassroots are deployed by the professionals in their relationship with the donors. The remaining chapters of this thesis explore in-depth the implications of these changes for protection itself as a contemporary form of professional human rights practice.

Thus, in Chapter 6, I use power relationships internal to the sector as a lens to examine a specific protection practice, namely the capacity-building of defenders. As elsewhere, protection organizations in Kenya have made capacity-building a central element in their approaches to protection, in the belief that capacity-building is a pathway to empower defenders. Here, I show that this is informed by idea(l)s of sustainability, as well as the primacy of knowledge and ideas of agency in approaches to social change. These key assumptions limit capacity building to the pursuit of aims that often contradict participants' own expectations and desires for it (and the protection agenda more broadly). On the other hand, I also show that participants in capacity-building programmes often subvert this agenda (by prioritising material rewards over knowledge in choosing to participate), and acquiesce to it at the same time (by internalising its "hidden lessons" (Englund, 2006: 70)).

In Chapter 7, I extend my inquiry into attempts by grassroots defenders to manipulate protection by also exploring what the interpretations of these acts as “opportunism” by protection professionals might tell us about power and its workings within the protection system. I first deconstruct the human rights defender concept as it is employed in the discourse currently and isolate moral virtuosity as a key variable in how the concept functions. This, I suggest, serves to legitimate the work of protection organisations with various publics externally, and to support its resistance to the redistribution of resources internally. I also argue that this particular conceptualisation of the term human rights defender constraints the ability of professionals to understand actions that do not correspond to the model of agency entailed by that idealised figure. Through that lens, manipulations of the system are seen as opportunism, and grassroots defenders as “the problem”. By obliterating the need to investigate the causes of “opportunism”, this approach functions to maintain the status-quo. Grassroots defenders, however, resist this set-up through their own narratives about the professional sector. These often rely on rumour-based, exacerbated imaginaries of the latter’s wealth. From their position of subordination, these same narratives are employed by grassroots defenders to legitimize their attempts to take advantage of the system. Without seeking to excuse these efforts, nevertheless, I suggest that engaging with these alternative narratives, while also bearing in mind the precarious socio-economic conditions that structure the lives of many grassroots defenders, can forward alternative frameworks for understanding their interactions with the protection system. By drawing on the work of James. C. Scott and on grassroots defenders’ own perceptions, here I propose a notion of “resistance” as one such framework, and argue that this shift can forward more helpful explanations for why some beneficiaries attempt to manipulate the system for socio-economic gains.

In the Chapter 8, I finalise my investigation of the tensions and frictions that often define the encounters between protection professionals and defenders from the grassroots. I do so specifically by examining models of authentic activism in Kenya across the different sectors of the human rights community and their implications for protection. Among both professionals and grassroots defenders, models of authentic activism revolve around a concept of passion and commitment to human rights work. Nevertheless, the two sectors attach different meanings to the notion of passion. Protection professionals (and professional activists more broadly) define passionate activism at the intersection between ideas of (others’) volunteerism and a concept of

risk narrowly defined in relation to the category human rights violation. These approaches, I suggest, converge to exclude the possibility that protection as a set of formal norms and practices can engage with abuses experienced by beneficiaries at a socio-economic level. Defenders from the grassroots, on the other hand, define passionate activism primarily in relation to a notion of (their) own volunteerism despite (their) own poverty, and use this definition to make primarily socio-economic claims on the protection system. Ultimately, I argue, these clashing conceptions of passionate activism and associated claims lead to a breakdown in trust between the different sectors, including between protection professionals and grassroots defenders as beneficiaries of protection measures in Kenya. I also suggest that the ensuing range of negative emotions that defenders from the grassroots express in their critiques of the protection system, on the basis that it eludes their socio-economic concerns, risks undermining both the aims of protection and the broader human rights movement in Kenya.

In the Conclusion to this thesis (Chapter 9), I summarise the findings and tease out the specific theoretical and empirical contributions that this thesis makes to the literature on defenders and protection and to other literatures. Also there, I revisit the implications of my findings for the practice of protection and for the broader human rights.

### **1.8. A Note on the Title**

A few months into my fieldwork, I started to notice a recurrent phrase in my interviews and sometimes other fora. Referring back to the activism of the 80s and 90s, many of my interviewees would use the phrase “I am my brother’s keeper” to capture the solidarity that, according to them, defined the movement at the time: although many of the driving figures in the movement were well educated, middle-class activists coming from fairly affluent backgrounds, current narratives of that history often imagine the activism of those years as a level(ing) playing ground, a platform that erased those differences. By inverting Cain’s answer to God in the Biblical episode of Abel’s murder, “I am my brother’s keeper” is a strikingly concise and effective way to highlight ideas of solidarity and brotherhood. What is also striking is the invocation of this phrase almost exclusively in relation to the past in my data-set (although I have, on a couple of occasions, heard the phrase invoked at open events to emphasise solidarity

as an aim of current protection measures). As the marker of an (idealized) past, the phrase is simultaneously deployed as an oblique critique of the present, where solidarity is mediated less through personal relationships, and more through institutions that are forced to operate in an environment that is marked internally by visible inequality and often mutual (if also mostly concealed) suspicion.

In the second part of the title, I use the term “politics” by drawing on Ticktin’s distinction between “politics” and “the political” in her study of immigration policies in France. There, she defines politics as “everyday politics, often policy - that is, the set of practices by which order is created and maintained.” In contrast, she defines “the political” as “the disruption of an established order”. Ticktin concludes that, as politics, various “regimes of care” (she focuses on humanitarianism and regimes to address violence against women) “engag[e] and reproduce power relationships”, rather than change dominant orders (2011: 19-20). Following on from these insights, my use of the phrase “I am my brother’s keeper” alongside the term “politics” in the title aims to highlight the realities of power and its constraints in the protection regime, but also of resistance and subversion to the orders that they create.

## Chapter 2. Methodology and Ethics: (Beyond) the Field and Its Moral Conundrums

*“The real problem, he suspects, is something far more – he casts around for the word – anthropological, something it would take months to get to the bottom of, months of patient, unhurried conversation with dozens of people, and the offices of an interpreter.” (Coetzee, 2000: 118)*

*“I couldn’t be writing this if I didn’t hang around enough to observe it all. And no one else would.” (Achebe, 2001[1987]:2)*

### 2.1. Introduction

As I mentioned in the introduction to this thesis, this project required a complex methodology, involving, among others, a lengthy period of fieldwork (two years). Before heading off to Kenya, I had that methodology approved by the University’s Ethics Committee. The process of filling in a lengthy form with information ranging from details about the project to planned safeguards to the participants and safeguards to one’s own self, and of having to have information sheets and informed consent sheets validated, would be familiar to most researchers in the social sciences. While going through this process helpfully prompted a more structured thinking on the ethical implications of my fieldwork and broader research, it was, at the same time, hardly sufficient as an ethical framework that would guide my behaviour in every situation that I encountered in the field and after. For example, I had decided on important sections of my methodology before heading off to Kenya (among others, I had already made contact with the Coalition and we had agreed on the duration and main terms of our engagement, and I had made some important contacts during Front Line Defenders’ 2013 Dublin Platform for HRDs – a three-day international event bringing together over 100 defenders at risk from all over the world). Once I arrived in the field, however, I was met by both constraints and opportunities that I could hardly have anticipated earlier (for example, the chance to take up a useful position with the governmental human rights body came up).

Although, I would argue, even with the benefit of hindsight, it is impossible for researchers to completely account for all the instances in which they have had to weight the

ethical implications of their decisions and act accordingly, in what follows, I will try, at least in broad lines, to reflect on the challenges of my fieldwork and the main ethical difficulties that arose during that time and after. My aim here is less to argue that ethical frameworks set up by institutional review boards do not sufficiently cater for the complexities of fieldwork (this argument has been made elsewhere – see, for eg. Fujii, 2012; Harper and Jiménez, 2005), but rather to try and make up for that inevitable shortcoming by reflecting on the ethics of my particular research.

I will start off by describing in more detail the research methods that I employed. I will then explore the ethical quandaries of working in institutions while also researching them, before I look at the importance of considering power relationships, between the researcher and participants, and among the participants. Finally, I will discuss the ethical implications of making a critique of an establishment that has emerged around a moral discourse, and how these have shaped my decisions in writing about the data. I end with a note on how these factors have influenced my decisions about how to reference empirical material in-text.

## **2.2. A Brief Description of the Research Methods**

My methodology was twofold consisting of participant observation in two key Kenyan institutions, and interviews with relevant stakeholders. From November 2013 to September 2014 I worked as a research fellow (a voluntary position) with the Coalition. As I mentioned in the Introduction to this thesis, this is the first and only Kenyan organization concerned specifically with the protection of defenders at risk.

As is often the case in arrangements of this kind, my engagement with the Coalition was set up as a mutual relationship, that both parties would have something meaningful to gain from. I first made contact with the Coalition through a mutual friend from Defend Defenders (formerly East and Horn of Africa Human Rights Defenders Project), who are based in Kampala, and who played an important role in setting up the Coalition<sup>7</sup>. In the initial conversations that we had, I

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<sup>7</sup> I explain this history in more detail in Chapter 4.

explained to them the purpose of the project and expressed my interest in working with and writing about them, and offered in return to work in a voluntary position, and contribute to their activities in any way that they would need me to. The Coalition, in turn, expressed an interest in participating in the project, and in having me be part of their team for a period of ten months.

All throughout my time there I was mainly based in the Advocacy Programme, where I worked under the supervision of the Advocacy Coordinator, although I frequently interacted with the capacity-building programme as well, and, to a far lesser extent, with the protection programme. For the first five months of our engagement, I did so full time in a bid to get to understand their work by “immersing myself” in it. I also used this time to scan the human rights landscape in Kenya and make relevant contact for my interviews. Subsequently, as I started doing my interviews, I reduced my engagement to three days a week. My duties ranged from participating and/or representing the Coalition in meetings, rapporteuring, supervising trainings offered by non-Coalition staff, editing and/or writing publications, to participating in short-term research projects. I was also fortunate to be able to participate in their staff retreat for the development of their latest Strategic Plan, and, later, to the launch of this plan during a three day annual general meeting of many of its members.

While being based with the Coalition, I learned through one of my interviews that the Commission, the government human rights institution, had itself recently started working on defenders and that it regularly took in international fellows to contribute to its work. I subsequently applied for a one-year international fellowship with them, and opted to be based in the Complaints and Investigations Department, the one most closely involved in working on defenders. While fully aware that extending my fieldwork with one year would delay the completion of my PhD as initially planned, this, nevertheless, weighted lightly against the benefits that understanding the perspective of a governmental institution on working with and on defenders would bring to the project. Among others, while at the Commission, I contributed to their field and desk-based research projects on defenders, and to designing training programmes for defenders and sometimes carrying out particular training sessions, I participated in relevant in-house and external meetings, and edited or wrote publications. Beyond these specific tasks, by being based there, I had the opportunity to observe their work more broadly, and, especially, to

engage in countless informal conversations with colleagues and sometimes visitors on topics relevant to the project.

In addition to engaging with and studying the work of these institutions, I carried out over 70 extensive interviews with several categories of actors that can be considered as stakeholders in the broader human rights defenders protection project: Kenyan human rights activists (Nairobi and non-Nairobi based, both grass-roots and working with professional human rights organisations), members of the donor community in Kenya, and staff from international professional protection organisations with a presence in Kenya. I established some of these contacts through the Coalition, and later the Commission, but others were made independently – for example, I would hear someone express particularly relevant views in a forum, and this would prompt me to later approach them and ask for an interview. None of those that I approached for an interview declined – I suspect that face to face contact and my relationship with the Coalition and later the Commission accounted for this. The interviews were semi-structured. I opted for this format to make sure that I would be able to explore the themes that I considered relevant for the research topic, but also allow for new insights that participants may offer. Although I had a rough idea of what lines of inquiry I would want to follow before arriving in Kenya, during the first three months of my fieldwork I immersed myself in the work of the Coalition and tried to become familiar with the human rights and broader socio-political scene. I subsequently used those experiences to refine my lines of inquiry and translate them into open-ended questions. These were tailored to the various categories of actors, for example donors, protection professionals and activists. During the interview, I would often ask follow-up questions to my interviewees. The structure of the interview did not change during my fieldwork, although, obviously, follow-up questions varied. The interviews ranged in length from 2,5 hours, to 9 hours (the latter were conducted in several sessions). The longer interviews were in the minority, but they cut across categories (with the exception of donors) – i.e. I have had long interviews with protection professionals, grassroots defenders, and professional defenders. Typically, they would last long because I allowed my interviewees to speak freely and tried to reign in as little as possible on their narratives, even when these departed significantly from my script. I often found that these departures yielded important insights that I could not have anticipated through a stricter approach, in addition to allowing me to build a rapport of trust with

my interviewees. With the consent of my interviewees, I recorded the interviews at the stage of conducting them, and subsequently transcribed detailed notes into NVivo; alongside, I also coded diary notes that I kept during my fieldwork, which drew on both observation and informal conversations that I had with people throughout. As I kept coding the data certain themes started to emerge. Subsequently, I zoomed in on these and, alongside reading the relevant literature, developed them into empirical chapters of the PhD. I continued to engage with relevant stakeholders throughout my stay in Kenya, and conduct reviews of the relevant and grey literature, although towards the end of my stay there the majority of my time was dedicated to writing.

My relationship with the Coalition was established on the understanding that I would study their practices throughout my time there, and that I would write about that in my PhD and all staff signed informed consent sheets to that end. When I applied for the international fellowship with the Commission, I also described my research at length, and highlighted my interest in understanding their working methodologies and practices in addition to wanting to deepen my knowledge of issues concerning defenders in Kenya more broadly. However, the Commission being a much bigger, and vastly different institution from the Coalition, I preferred not to plan my fellowship with the idea that I would also write about them, and hence I did not negotiate consent to avoid the possibility that I may not be accepted on the fellowship scheme. At the time, I preferred to wage my bets on getting in the scheme with the expectation that studying closely another Kenyan institution, even if I could not write about it, would help me understand to what extent some of the practices that I had observed at the Coalition illustrated broader patterns in the institutional sectors of Kenya's human rights community, and hence to better understand the systemic constraints that dictate particular choices and behaviors. With the benefit of hindsight, that has proven to be a sound choice, particularly in shaping my choices of what and how to write about practices that I observed throughout my time in Kenya. Specifically, I decided to shift my focus from the work of the Coalition, which I had initially envisaged would be a central aspect of the thesis, to examining broader themes that impact on its work and that of other organisations. To be able to do so, however, I had to draw on observations made throughout the whole duration of my fieldwork, which I then anonymise to avoid the risk that blame might be apportioned to particular actors (see also the final section of this chapter).

The remainder of this chapter will explain at length the reasons that have informed that decision as well as other ethical issues that concern my methods and broader research.

## **2.3. The Ethics of Research Decisions in the Field and Beyond**

### **2.3.1. Conducting Research “On the Threshold”<sup>8</sup>**

In her account of the constraints and opportunities involved in studying the aid establishment as both an insider and outsider, Rosalynd Eyben has remarked that “[s]ustained liminality and the accompanying identity make life complicated and full of quandaries” (2009: 72). By drawing on classic anthropological commentary, she has helpfully interpreted states of liminality as spaces of ambiguity, that entail the possibility of simultaneous empowerment and rejection (idem: 85-86). I found that framework helpful to reflect on some of the difficulties, ethical and otherwise, that my own position as both an insider and outsider to the work of the two institutions that I was based with in Kenya raised. Specifically, being based in well-known institutional establishments was immensely helpful (empowering) and challenging at the same time in several ways, especially in the first few months of my being in Kenya.

Firstly, my institutional positioning helped me make invaluable contacts with defenders and other relevant stakeholders, many of whom I was later able to interview. At least in the initial stages, my association with the Coalition acted as an immediate legitimating factor for both my status and work, and thus as a short-cut to enabling me to approach potential participants, either for a formal interview or for more informal conversations and to receive positive responses. It is likely that this process would have been a lot longer and more difficult otherwise. Additionally, many of the meetings that I was able to attend as a voluntary staff with the Coalition and the Commission were an excellent entry point for understanding Kenya’s Nairobi based human rights community and the broader civil society, often at key points in their contemporary struggles<sup>9</sup>. Without this contextual background the research would have been

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<sup>8</sup> I borrow this phrase from Eyben (2009).

<sup>9</sup> For example, since November 2013 onwards, the government tried to introduce a series of amendments to the Public Benefits Organisations Act (PBO Act) (a new law under which the sector is to be governed, which has been developed in consultation with civil society, but which could not become active until the Rules and Regulations to the Act were approved). If the initial set of amendments had been passed into law, they would have increased state

much poorer, no doubt. Finally, working with the Coalition and the Commission provided me with the opportunity to observe first hand how the norms and ideas around human rights defenders work in the practice of national organizations and institutions that run programmes on defenders in the Global South.

Beyond these opportunities, however, that period was also fraught with many difficulties. For the first couple of months, my relationships with staff at the Coalition were smooth and my general impression was that they were quite open and candid about their work. During that time, I myself was tremendously excited to be in Kenya and working with them, and it is very possible that my first impressions were coloured by that excitement. As time went by, however, and as my critical perspectives started slowly to develop, I also started to notice boundaries to the knowledge and practices that I was allowed to access. For example, throughout my time there, I shared a room with the advocacy and capacity-building coordinators, as well as with an admin staff and an intern. Although all the staff were Kenyan, English was overwhelmingly the language of communication in the office. Because the working space was so small, it was impossible not to overhear staff when they were having conversations, and they would frequently switch to Swahili (which at the time I did not master) when discussing topics that they did not want me to share in. Similarly, I was not allowed to participate at all in processes that pertained directly to the Protection Programme, save for some meetings with members of the Protection Working Group (hereinafter PWG)<sup>10</sup>. As we have never had a direct conversation about these boundaries, I was left to infer that, at least as far as the Protection Programme was concerned, these were due to reasons of confidentiality and the security of defenders that had benefited from the programme<sup>11</sup>.

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control over civil society and they would have severely restricted access to foreign funding by NGOs (to 15 percent of their total income). In part due to intense civil society advocacy, the amendments were rejected in Parliament on multiple occasions, although the government did manage to amend the PBO Act in the Security Laws (Amendments) Act of Dec 2014. As a volunteer staff of the Coalition, between November 2013 and May 2014, I participated in many of the meetings of the Civil Society Reference Group, who have coordinated the lobbying and advocacy efforts around the amendments.

<sup>10</sup> The PWG is a consortium of Kenya based organisations who either work on HRDs directly or have an ability to help with cases of HRDs at risk through some of their programmes. The PWG meets regularly to discuss issues of coordination around ongoing cases and more general issues concerning HRDs.

<sup>11</sup> I did however, interview HRDs who had been in the protection programme (without always knowing prior to the interview that they had received protection from the Coalition), and asked questions about the protection programme in interviews that I did with staff at the Coalition.

However, there was also another aspect to these boundaries, and this was more closely related to the Coalition's expectations of what I would write about it and its work, and, perhaps, to a desire to indirectly influence that. Being based in their office, I was inadvertently exposed to situations in which the effects of practice seemed far more ambiguous than simply good. Moreover, as I started doing my interviews, I came across considerable disenfranchisement with the Coalition and its working methods, a fact that the Coalition was likely aware of. Simultaneously, my own critical perspectives were developing, including through observations of discrepancies between the "script" and the "practice" of certain ideas related to human rights defenders. I don't know whether the Coalition had taken this aspect into consideration when they first accepted me on their team, but I felt that they were doing so later on. If, in the ideal scenario of ethnographic research, the longer one spends in a field location, the easier it is to blend in with one's identity as a non-researcher, in my case, the dynamics of my relationship with the Coalition developed in the opposite direction: the longer I stayed, the more aware staff seemed to become of my identity as a researcher, and the more this seemed to strain our relationships<sup>12</sup>.

We have never discussed this issue, and I myself never pushed for such a conversation, partly because I was aware that the kind of access that I already had, limited as it was, was both rare and difficult to obtain, and because I was afraid that emphasising my PhD researcher identity might lead to even stricter boundaries and potentially endanger my working relationships with Coalition staff. It is difficult to tell whether, ethically speaking, this was the best solution, but, as Rosalynd Eyben has explained, there is an inherent tension between trying to avoid co-optation in research participants' agendas while at the same time remaining immersed in the organizational setting (2009: 89-90). I would also add that, to the extent that often there are no obvious solutions to complex ethical dilemmas, these inherent tensions can be irresolvable or at least seem to be, but that acknowledging that in itself can be part of an ethical research process. As Harper and Jimenez put it, an intellectually holistic ethics must also embrace the condition of its uncertainty "both in relation to those who are positioned differently from us, but with whom we interact and may disagree over our practices and findings, and in relation to the uncertainty

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<sup>12</sup> I have, however, observed the inverse dynamics in my relationship with non-Coalition based human rights defenders and other stakeholders.

over what delineates the ethical field itself” (2005: 11; see also Darling, 2014).

Equally marked by uncertainty, I found, and equally difficult to manage was an often confused sense of my own identity as either a researcher and/or a member of the organisations that I was based with. I felt this particularly acutely in the situations where I was asked to contribute to practices that I was simultaneously critiquing, or disagreeing with, at least in certain aspects. As previously, there was no ethically clear response to this conundrum. At least in part, this was a dilemma of having to choose between long-term change and immediate action (see Eyben, 2009). Expressing reservations immediately could risk endangering my relationships with these organisations with no guarantee that doing so would change things; not raising issues immediately, on the other hand, meant that I was involved in perpetuating the same processes that I was interrogating, while placing hope in an imagined moment in the future when strong data would be a better guarantee for change. It was precisely the uncertainty about which option would be a better tool for change that led me to respond to such situations on a case-by-case basis. When I felt that open disagreement would be unwelcome and potentially counter-productive, I chose to keep my reservations to myself. There have also been cases, however, when, after developing long-term, close relationships with staff that were sympathetic to my findings, I would openly discuss in one on one conversations the things that I disagreed with. While this did not necessarily lead to change, it was, nevertheless, pivotal to my own sense of honesty and truthfulness when the occasion allowed, which in turn was crucial for my ability to straddle this particular challenge for extensive periods of time.

Last, but not least, there was the emotional difficulty of inevitably developing friendships with many of the staff in these organisations while constantly being aware that their work and ideas were the subject of my inquiry. I found it especially difficult to maintain my objectivity to the data and findings of the research without often being haunted by a sense of betrayal, since my critical stance was equal in power to my sense of gratitude for being allowed the position of an observer in the first place. As previously, in the few occasions when I was able to discuss things openly as I went along, I did so. Most of the times, however, I felt that the topic was too emotionally charged to allow for open conversation. Finally, equally challenging was a keen awareness of how my own positionality within the very power relationships that I was critiquing had implications for both my research and writing.

### 2.3.2. Research and Power Relationships

Institutional review boards (IRBs) function to safeguard participants in research projects<sup>13</sup>, including by limiting the power of the researcher through committing them to follow procedures such as providing participants with adequate information about the project and obtaining informed consent prior to involvement. However, these are hardly sufficient to resolve the complexities of power relationships in the field, especially as both these and the lines of the research develop and change over time (Hilhorst, 2003: 23).

Having staff of the Coalition understand the nature and scope of the project was crucial in establishing a relationship of trust, in deciding the main terms of our engagement and in them agreeing that I would study and write about them. However, even as, to begin with, I had decided on the main lines of inquiry based on a review of the literature, these only started to become specific in relation to the data after I arrived in the field, and often in unexpected directions, that I could not have anticipated earlier. Moreover, it was not easy or always possible to discuss these emerging critical perspectives, especially since this was simultaneous with a certain strain in my relationships with the Coalition that I felt was due to people's awareness of my identity as a researcher, an aspect that I have already addressed above.

More importantly, yet, being based with the Coalition, I also had the possibility to observe the limitations of its institutional ability to engage and respond critically to issues pertaining to its work. The latter was a crucial factor in my decision not to write about the Coalition directly: they are a young, small organization, whose staff do not have a solid training in critical thinking and writing, and who, at the same time, function in an environment that offers no incentives to efforts to interrogate and challenge the *status-quo*. Or, these forces work in exactly the opposite direction to those that drive academic research, which both offers training toward and rewards critical inquiry. This was perhaps the sharpest incongruity that I felt in power relationships that involved me directly while in the field, which is why it later also

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<sup>13</sup> Although, as Carpenter has argued, IRBs functions are equally, if not more attuned to protecting the reputations of universities and research institutions rather than research subjects (2012: 366). For an analysis of universities' concern with reputational risk, see Power et al. (2009).

became a critical element in how I selected, analysed and interpreted the data that I collected while at the Coalition for a wider audience.

In the broader context of Kenya's socio-economic context and the history of its human rights movement, similar issues emerged later, when I started to observe and critically examine inequalities in Kenya's human rights sector and the ways in which the professional groups employed the term "grassroots" as a conceptual category that shapes their work and their institutional as well as more informal relationships with other actors. And here there were two aspects that stood out. Firstly, there was the danger that, by being based in Nairobi and writing primarily about Nairobi based organisations, I would inadvertently reinforce existing inequalities between Nairobi and non-Nairobi defenders and organisations. I tried to address that by conducting as many interviews as possible on every opportunity I had to travel outside of Nairobi, either on institutional assignments, or on my own. Additionally, I also interviewed defenders from outside of Nairobi when they travelled to the capital and there was a possibility to meet. Comparatively though, it was clear to me that, due to first-hand experience and prolonged exposure, I had a much better understanding of Nairobi-generated debates and processes than of particular places where defenders outside of Nairobi live and work. Unfortunately, this remains a limitation of the study to the extent that logistical constraints impeded me from travelling more often and/or from residing outside of Nairobi for extensive periods of time. However, the interviews that I have conducted did enable me to draw conclusions from examining the particular themes that I have chosen that can be extended to activist communities from outside of Nairobi.

Secondly, similar issues emerged *within* Nairobi due to my particular institutional affiliation. I recall a moment when one of my informants, a grassroots defender in one of Nairobi's informal settlements, critiqued me for "working with all these rich organisations!", as we were discussing informally my project over a cup of tea in one of Nairobi's many low-key restaurants that poke its Central Business District. At that point, he and I had already known each other for more than a year, I had interviewed him twice, we had had several other one on one meetings, and had bumped into each other in various other fora. We were, in other words, quite closely acquainted and among my informants he was certainly one with a deeper understanding

of my project and the intentions underscoring it. Much as I was taken aback by his vehement resistance to my explanation of how the methodology squared with the intentions of the project, it was also a timely reminder of the possibility that my chosen approach might inadvertently reinforce existing power relationships in Kenya's already class-based, fragmented and often divided human rights community, or, at the very least, that some of my participants would walk away with that impression. This was further compounded by the fact that, in both status and background, I myself was more similar to staff in the organisations that I was based with, than with grassroots defenders<sup>14</sup>. By then, I had already spent a considerable amount of time reflecting on how my being based in Nairobi and the comparative lack of knowledge of dynamics outside the capital would skew my data and ability to contextualise it, and on the implications for existing power relationships, and it was clear to me that I would have to deal with this as a limitation of the project. The solutions to how my being based primarily with professional organisations *in* Nairobi might lead to similar problems, seemed far less obvious.

For one, in terms of conducting the research itself, I have made a consistent effort to spend time with grassroots human rights defenders in the areas where they reside, although, due to logistical and time constraints, I was unable to spend as much time there as I did with the Coalition and the Commission. Secondly, when and where I could, I tried to facilitate institutional intake of either cases of defenders from the grassroots that had suffered reprisals, or issues concerning defenders from the grassroots more generally<sup>15</sup>. Thirdly, I conducted a sizable number of interviews with grassroots defenders, kept in touch, electronically, face to face and in person with a number of my informants from this sector over time, and dedicated much of my thinking and writing to both explaining and challenging the power relationships between them and the more professional groups. One of the more difficult aspects of mediating these particular

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<sup>14</sup> At the end of an earlier interview, the same informant had pointed out to me, as we were taking our leave, that I was heading West, in the richer areas of Nairobi, while he was heading East. Although subtle, the irony of his comment as social critique was not lost on me: Nairobi's Western areas, also known as the "leafy suburbs of Nairobi", are generally where the middle and upper class Kenyan residents and expats live, and where the vast majority of professional human rights organisations have their offices. In contrast, Nairobi's Eastern areas are known for their poverty, high crime rate and pervasive human rights violations; many of Nairobi's grass-roots human rights defenders live there.

<sup>15</sup> It was easier to do so during the second half of my term at the Commission; by then, I was well familiar with the dynamics both at the grassroots and between grassroots and the professional groups, and grassroots actors knew me well enough to approach me.

power relationships was trying to understand the plight of grassroots groups, while at the same time avoiding to “romanticize” them and/or become co-opted in their agendas. These efforts have led me to observe their own role in re-producing the same power relationships that they criticize, and to critically examine that alongside corresponding modes of thought and behavior among the professionals. I have little doubt that this will be met with various degrees of resistance across both sectors, and I wish now to turn to examining some of the arguments that might be put forward by actors at that stage.

### **2.3.3. Understanding and Writing about the Gap Between Script and Practice<sup>16</sup>**

As I mentioned in the Introduction to this thesis, much like the broader human rights, the protection regime has developed very firmly within a certain moral universe, marked by values such as heroism, self-sacrifice and even martyrdom. The same values also narrowly circumscribe the conceptual space for defining the issues that are relevant to defenders and protection, making it difficult to carve alternative spaces for thought and action. This is further complicated by the fact that staff and organisations involved in protecting defenders are heavily invested, both intellectually and emotionally, in the protection regime and its ideals, and hence little receptive to the possibility of critiques that may interrogate their own role in its effects when those effects depart from those ideals. Often, throughout my time at the Coalition I felt that these factors, which I observed countless times during my fieldwork, influenced its expectations and desire for what I would write about it. I have already discussed at length in the previous section the implications of this fact for the power relationships at work in my association with the Coalition and explained how they influenced some of my decisions in writing about the data. However, it is likely that some of the participants in the research and others will still consider that the data that I did decide in the end to write about amounts to a discussion of the gap between script and practice as “bad practice”, at least in some of its aspects. Because of this, it is important to consider and examine this aspect. In particular, even as critiques of moral establishments entail the real possibility of repercussions to both the actors involved and others, these need to be

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<sup>16</sup> In a bid to avoid the possibly patronizing undertones of the phrase “bad practice”, I intentionally use instead the expression “the gap between script and practice” to refer to those instances when practice (inadvertently) departs from the ideals of protection.

balanced against the incentives of making public those critiques while also bearing in mind the obligations of the researcher in doing so.

### **2.3.3.1. The Potential Costs**

Three lines of inquiry stood out when I considered the potential costs of writing about the gap between the script and practice: there are the costs to personal relationships established during fieldwork, the potentially negative impact of doing so in Kenya's current socio-political context, and the possibility of other negative consequences for the participants. I will examine these in turn.

As scholars involved in examining human rights, humanitarian and development discourses and practice have discovered, "ethical careers" (de Waal, 2003: 478) do not always tally well with either self-critique, or critical research that challenges ideologies and practices in these lines of work. When personal relationships are involved, this can make it very difficult to both write and publish critical findings (see, for eg. Hilhorst, 2003 and Mosse, 2006a). I too have experienced this as an extremely difficult aspect of data selection and write-up. Having spent so long in Kenya, I developed friendships with many of the participants: these included staff from the Coalition and the Commission, as well as other organisations involved in human rights work, grassroots human rights defenders and others. At times, I found myself literally torn between what I felt was my duty to the truth as a researcher, and my duty as a friend to many of the people who participated in the research. While Mosse is correct to argue that "shaping research around the preservation of individual professional esteem is inconceivable [and that] tailoring analysis to protect our own market as consultants is self-serving in the extreme" (2006: 23), I also could not forget that the reason why I had access to much of my data was because the two institutions that I was based with allowed me to do so in the first place. At least in part, this access was due to an unspoken element of trust that I would not speak, write, or act in ways that would be damaging to them. This, in turn, created an acute sense of debt to how I would handle the potential repercussions to these institutions while also trying to make my critique.

These potential repercussions include damage to organizational reputation and loss of funding from donors and a reduction in the services offered to beneficiaries, and, in the extreme,

even complete closure<sup>17</sup>. These considerations too have weighed heavily in shaping my decisions about data selection, interpretation, and writing and they were among the main factors that determined that I shift my focus from particular actors to the structures, processes and systems that influence policy and behavior. A different decision may have made it look like I am apportioning blame to particular actors, which was never the intention of this project<sup>18</sup>.

Beyond organisations, I have also had to consider the potential of harm to individual participants. In the first instance, I have promised all the participants anonymity, although I also offered them the option of being quoted, should they wish me to. Of course, by anonymity I meant removing all the information that might make an individual recognizable, not just their name<sup>19</sup>. Where I felt that this was not possible, and that specific communications might put a participant at risk, either physically or in terms of their position within, or relationships with organisations, I preferred not to quote or use the data at all<sup>20</sup>.

Finally, I have had to consider the potential impact of the research findings on both researcher and participants in Kenya's socio-political context, where publishing a critique of the human rights community can be easily misappropriated by state actors and inadvertently offer them more ammunition for their campaigns to demonize and in other ways impede the work of the human rights community and the broader civil society. These include the recent efforts to come up with Amendments to the Public Benefits Organisations Act<sup>21</sup>, and arbitrary, mass de-

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<sup>17</sup> As Stirrat notes in his response to Sridhar's commentary on Mosse's critique of a development project in India, there is actually very little evidence of the impact of academic critiques based on participant observation on the institutions concerned (see (Mosse, 2005; Sridhar, 2005; Stirrat, 2005). I have not come across a case of closure in any of the literature that has discussed responses to critiques from the respective establishments. However, I still think that it is important to consider that as a possibility, however remote, especially when the research focuses on small, still fledgling organisations.

<sup>18</sup> It is due to this reason that I avoid using the term "intent" throughout the thesis, although I do operate with a notion of agency. This is possible because the two notions are not fully equivalent. Hence, when I critically discuss throughout the empirical chapters some of the concepts that structure the regime, I also make an argument for how these function to shape (constrain) the agency of the actors involved. Maintaining ideas of that agency, however, is not the same as claiming that these actors act with intent. See also the discussion of power in Chapter 3, Section 3.3.3.3. at page 66.

<sup>19</sup> This is especially important with the grassroots groups, who often feel that they cannot express their critiques of the professional groups more frequently or more openly because this may lead to loss of protection support. As one grassroots defender put it to me when we had an informal conversation on the issue: "these groups, they can blacklist you" (Ichim, personal fieldnotes). For an extensive analysis of this phenomenon, see Chapters 7 and 8.

<sup>20</sup> I emphasise that where I do quote from my conversations with my informants, especially when these were informal, I make sure that these quotes are completely anonymized *and* that there are significant benefits in using the quote for substantiating the argument.

<sup>21</sup> See back footnote 3.

registrations of NGOs<sup>22</sup>. Among others, the Kenyan government and politicians have argued that NGOs “are being used by foreign powers to undermine the Jubilee Government leadership”, and “of enriching themselves with donor money” (Karanja and Mutabo, 2014) to justify clamping down on them. It is crucial to emphasise that none of the findings in this research are meant to support or legitimate the government’s own criticisms of civil society in Kenya, none of which I endorse. I did think it necessary, however, to anticipate that this might happen, and, as with other factors, this has led me to leave out writing about some of the data that might more easily have been interpreted as supporting state claims, especially around corruption in NGOs and claims that NGOs act as “agents of foreign powers.” I have done my best to ensure that my interpretations of the remaining data will avoid the possibility that they are enlisted to support arguments that I deeply disagree with, both in terms of content and their political use.

Perhaps the above paints a bleaker picture than it is necessary, but, as a researcher, I felt that it is my ethical duty to err on the side of caution. Nevertheless, there are also good reasons to writing about the gaps between the script and practice, especially after the safe-guards that I have considered earlier have been taken into account.

### **2.3.3.2. Incentives and Obligations in Writing about the Gap between Script and Practice**

In her 1996 seminal study on refugees, Liisa Malkki argued that “precisely because international interventions (humanitarian and otherwise) are increasingly important, we should have better ways of conceptualising, designing and challenging them” (1995: 379). Critique, then, is essential for more effective practice, and critique can constitute a momentum for the sectors concerned to self-reflect and improve existing methods and approaches. This was the main justification behind the critical approach in this study. Moreover, critical research can play

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<sup>22</sup> In December 2014, the NGO Coordination Board announced the de-registration of 510 NGOs due to financial non-compliance; 15 of those were accused of being a “conduit of terrorism” (BBC News, 2014). Again, in April 2015, the government gazetted a number of organisations as “specified entities” under the Prevention of Terrorism Act 2012; these included two reputable organisations from the Coast, Muslims for Human Rights and Haki Africa, both known for working to document and seek redress for extra-judicial executions on the Coast (Kubana, 2013). Their accounts were frozen immediately, and they only managed to clear out their name in November 2015, after a prolonged court battle. Yet again, in October 2015, the NGO Coordination Board announced the intended de-registration of over 950 NGOs, including the Kenya Human Rights Commission, one of the oldest and most reputable NGOs in Kenya (Wanzala, 2015). There is a widespread perception that these attempts are meant to intimidate and stifle civil society.

an important role in strengthening accountability to and from donors, and to the intended beneficiaries. This practical imperative to write about the gap between script and practice (when there are benefits to practice and safeguards have been taken to anticipate potential harms to participants) is doubled by an ethical imperative to do so as a duty to the truth. Human rights organisations in particular, who justify much of their existence on uncovering and speaking truth (to power) as a tool for social change (Hopgood, 2006; Tate, 2007), have a moral responsibility to examine their own place in hierarchies of power and if and how their work challenges, changes or, instead, reproduces power relationships.

By the same token, however, as a researcher, I myself felt bound by an ethical obligation to consider the *how* of writing so as to minimize the chances that it can have unintended consequences. Empathy, for example, can play an important role in framing critique and in mediating its reception by both participants and a wider public. Eyben argues that being positioned “on the threshold” is supremely well suited to develop the capacity for empathy: “the critically constructive anthropologist is best positioned as neither insider nor outsider, retaining the empathy for the insider’s position, while sufficiently distant to cultivate a critical faculty.”<sup>23</sup> (2009: 72). Among others, writing with empathy entails acknowledging good intentions: there is no doubt that an overwhelming majority of those involved in the protection regime are guided by good intentions in both deciding to become involved in this particular endeavor and in the choices that they make afterwards. Good intentions can and often do shield from self-critique, but this should not detract from the importance of good intentions themselves: they can be as crucial in the reception of critique and its use for better practice.

Perhaps more importantly, empathy in the research, analysis and writing process also entails offering frameworks for interpretation that adequately contextualise the data within the systems and ideologies that influence behavior and particular choices, and that are able to depersonalize the analysis and hence deflect from the temptation to read the project as a “name and blame” approach. In particular, these systemic influences include very real constraints, financial, institutional, socio-political, and emotional under which actors interpret and play out

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<sup>23</sup> More generally, the ability to think and write with empathy is central in Eyben’s understanding of the role of critique in social change (see, for eg, 2009 at 84 and 95). While her argument is correct, it is worth mentioning that the kind of empathy that being an insider generates is very different from the one that is elicited to enlist support for human rights and humanitarian organisations.

the norms around human rights defenders. I have tried to take all of these into account in both making decisions about the data and the process of writing, especially when I choosing not to make the work of the Coalition the main focus of the thesis.

Of course, this approach does not preclude the need and possibility for moral and political judgment (Stirrat 2005: 19), nor is it meant to. But, as I have stressed earlier, moral and political judgement cannot be separated from the power relationships between researcher and participants and the two need to be carefully examined alongside. Within this framework, creating opportunities for objection and critique to the research and findings from the participants is one of the ways in which a more level playing field can be achieved, and perhaps the chances of personal offence can be minimized. I considered this aspect early in the process of working towards my PhD, and decided before heading out to Kenya that I would share the findings and outputs with those participants who would express an interest in seeing them. However, I also considered how this needs to be balanced against the need to maintain the integrity of my findings, and hence decided that I would carefully consider and integrate in the research those critiques that were theoretically and/or empirically justified, or those that would point out issues of risk to participants that I may have overlooked<sup>24</sup>.

Finally, it can be argued that spending extensive periods of time embedded in the communities that participate in the research, creates a responsibility to give back. Like the possibility of participant' objections, creative ways to give back may increase the chances that critique trigger constructive debates rather than be taken personally. This, again, was something that I considered from the very beginning of the project, but I never imagined the pressure and sense of urgency that I would feel to do so once I arrived in the field. For one, many of my interviewees critiqued previous researchers who, in my interviewees' perception, had disappeared after doing their interviews, and never communicated the results of their research or

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<sup>24</sup> Unfortunately, due to time constraints, I did not get a chance to share the findings of the research before submitting this PhD, although I have shared aspects of it in informal conversations with protection practitioners and other stakeholders when the situation allowed. In September 2014, I also shared preliminary findings at a closed workshop with defenders from another country in the region who were trying to set up a network there. I am planning to share a summary of findings with participants soon after submission. At the time of writing this thesis, I am also working on a number of internal policy papers for the Coalition that draw on the findings of this research, which hopefully can and will inform their practice. The considerations that I raise in the second paragraph above remain.

kept in touch in other ways. Secondly, I was often asked by my interviewees what the benefits of participating in the research would be for them directly. This is one of the most difficult situations imaginable, and one that often made me feel uncomfortable, not because I dislike the question (quite the contrary), but because I knew that an honest answer (which I tried to always give) could not possibly be satisfactory. However, such situations, by making me acutely self-conscious that I, as the researcher, had a lot more to gain from the research than most of my participants, were also a constant reminder that the communities that I was researching had expectations for social change through my research, and that, even if I could not hope to completely fulfill them, this did not suspend my duty to at least try and do so. In this sense, I have already detailed above the minimal ways in which, by being attached to protection organisations, I tried to help if and when I could, although those efforts remain marginal to the real expectations of participants. In the first part of 2016, I also worked intensely on fundraising for a workshop that would discuss the findings with stakeholders across the spectrum, using participatory methodologies. Unfortunately, that effort fell through at the last moment due to an administrative glitch in the funding organization. I am considering pursuing that project again after the submission of this PhD. Needless to say, the question itself about how to give back to the communities that have participated in the research remains an ongoing project, that does not end with the submission and defence of this PhD.

#### **2.4. A Note on References to Empirical Material in Text**

Bearing in mind the spectrum of considerations that I raise above, I reference empirical data throughout the remaining of this thesis as follows:

1) When I reference interviews, I use the following categories: a) “professional defender” refers to those human rights activists who are institutionally affiliated in a salaried position; “protection professional” refers to protection practitioners who are institutionally affiliated in a salaried position; “grassroots defender” refers to those human rights activists who operate in an individual, most of the times unpaid capacity, and who often come from a marginalised socio-economic background. Occasionally, I am more specific (for example, I mention membership of a particular group) when doing so is relevant for contextualising the data that I use, and it does not raise any sensitive issues.

2) In addition to this, I add the specification “Nairobi-based”, or from “outside of Nairobi”, depending on their respective location, when that is relevant for the data. I do not specify their exact location when they are not Nairobi-based to protect their anonymity: staff from the organisations that I was affiliated with, for example, are familiar with some of the defenders that I interviewed, and might be able to recognise particular human rights defenders based on their location.

3) By the same token, I only date my interviews in text when doing so does not threaten the anonymity of participants. For example, in some cases, I interviewed defenders during events organised by, the Coalition, the Commission, or other organisations and which had a small attendance. This might make particular defenders recognizable based on an association between the date of the interview (which would coincide with the date of the event) and the opinions expressed<sup>25</sup>.

4) I chose to use the distinct terms “professional” and “grassroots” (rather than appeal to a more abstract term such as “anonymous”) because that differentiation does not threaten the anonymity of particular individuals, but it often has relevance for the data that I quote. Continuing my lines of inquiry about the ethics of this research and its writing, I acknowledge that both terms are problematic to the extent that they might suggest a value judgement on different repertoires of activism on my part (I discuss the existence of such a hierarchy in Kenya in Chapter 5). Nevertheless, I do not have equivalent terms that are better able to reflect the status of my interviewees, at the same time as completely foreclosing the possibility of assumptions that, in using the terms, I am also passing value judgements on their work (the term non-professional, or non-professionalised as a version of “grassroots” connotes even more strongly assumptions of value-judgements). Equally, it is problematic that these terms might connote notions of homogeneity within categories or exclusive, rigid boundaries<sup>26</sup>. This is not the case: as

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<sup>25</sup> However, I include the date when I conducted all of my interviews in the bibliography. I anonymise all the other details, save in a couple of exceptions when the interviewees asked me to quote them, and the quotes that I use do not raise contentious issues.

<sup>26</sup> Although, as I detail in Chapter 5, in recent years ideological and especially socio-economic differences in Kenya have crystallized along lines of class, nevertheless, the idea of strict boundaries often evoked by the concept of “category” is artificial and certainly a lot more rigid than reality. However, conceptual analysis, by its very nature,

elsewhere, in Kenya there is great variation among both grassroots defenders and professional defenders along a spectrum that is more nuanced than such terms might imply. It is sometimes difficult to associate a defender with a particular category (for example, they may be in an unpaid position at the moment but have a history of professional activism, at least for a while in their history). However, overall, common traits can be discerned, as I detail throughout the thesis. The same caveat applies: I use the terms for linguistic convenience, without intending to convey ideas of uniformity within categories.

5) Finally, I do not date my field-notes for the purposes of preserving anonymity. Although I participated at countless events, both formal and informal, during my fieldwork, many of which were not organised by either the Coalition or the Commission, dating notes from the field to a particular period might lead the reader to assume that the events or conversations that I evoke took place at either at the Coalition or the Commission. In turn, that would defeat the purpose of focusing this research on the structures, both institutional and normative, that dictate choices and behaviours among relevant stakeholders (as opposed to apportioning blame to particular actors). By the same token, in the few occasions when I describe events that I observed at length, the names that I use for participants are fictitious. This is so as to preserve their anonymity.

## **2.5. Conclusion**

In this chapter, I examined the complex ethical dimensions of my research, why and how they arose, and how I navigated ensuing tensions and challenges, across data-gathering, analysis and interpretation, and writing.

In particular, I examined the opportunities but also the constraints entailed by conducting research “on the threshold”, an ambiguous position that entails simultaneous empowerment (as an insider to organisations, and contributor to their work) and disempowerment (as a critical outsider). The complex ethical issues of participating in the work of institutions while also conducting a critique of it were further complicated by my own positionality within existing

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cannot avoid a certain degree of abstraction from reality. It is important to acknowledge that that is the case, however.

power relationships as a researcher. By carefully considering these issues alongside, I showed that, contrary to appearances created by complicated (albeit necessary) IRB processes, the realities of both fieldwork and subsequent work with the data defy neat ethical solutions. In reality, research and writing happen through countless situations that do not have precise ethical answers. However, I also argued, acknowledging these constraints, and reflecting on how one navigates them, are part of a more complete (if also necessarily unfinished) ethical process.

Throughout the second half of the chapter, I explored the ethical implications of writing about the “gap between script and practice”, with a view to tease out the potential costs of doing so (especially considering power relationships within the sector, and between the sector and the state), but also the incentives in doing so. Here, I argued that the potential repercussions of writing about the gap between ideals and practice must be balanced against the need of critique for better practice. In a final note, I analysed how previous considerations shaped my decisions about how to reference empirical material in-text.

If in this chapter I dealt with the ethical aspects of the thesis, in the next chapter I move on to analyse relevant conceptual aspects. I do so through conducting a review of the literatures that pertain to this study, with the aim to clarify key concepts that will cut throughout the rest of this thesis.

## **Chapter 3. From Norms to Practice: Alternative Perspectives on Studying Defenders and the Protection Regime**

*“The limitations of any field of study are most strikingly revealed in its shared definitions of what counts as relevant.” (Scott, 1990: xv)*

### **3.1. Introduction**

The protection regime has developed as a “regime of care” (Ticktin, 2011), i.e. a series of institutional and normative measures aimed at protecting human rights defenders as a special category. In recent years, the protection of defenders has also emerged as a field of study within the academic sector. As a result, a small body of academic literature dedicated specifically to human rights defenders and protection is trying to delineate the boundaries as well as the key concepts that define the protection of human rights defenders as a field of inquiry. At the same time, there is a large body of literature that has examined other regimes of care and their effects in practice. Yet, so far, the literature that examines the protection regime has developed in separation from these other bodies of literature. In this chapter, I examine these literatures in conjunction, specifically aiming to find out what, if at all, the literature that has examined other, similar regimes could tell us that is useful for understanding the protection regime as a set of norm-based practices that unfold in the real world. In doing so, I also aim to isolate a series of specific concepts and approaches, which I subsequently employ throughout the empirical chapters of this thesis.

Before I proceed, it is important to mention that scholars who interrogate, *inter alia*, the institutional forms of human rights, do not do so with a view to jettison the project, but rather to offer evidence-based assessments, and, starting from these, to imagine new, if also more modest, possibilities for emancipation where they find that current practices foreclose rather than enable these. This observation matters because this approach overlaps with my own intention for this project. By drawing on these critiques, and borrowing the concepts that enable them to conduct my own investigation of the protection regime, I position (my) critique as a means towards forms

of practice that are more closely aligned with the ideals that the protection regime has set itself, and not to suggest that either protection, or its goals, are not worthwhile efforts.

I start off by providing an overview of approaches, main concepts and limitations of the current literature on defenders and protection. In the second part of this chapter, I suggest alternative approaches and concepts and explain how these can help as tools to explore the protection regime, as well as how they underpin my own study. In particular, following ethnographies of human rights activism<sup>27</sup>, I explore debates around how a focus on *the practice* of norms opens up new avenues for studying and understanding their effects in social life. From this basis, I then look at how a concept of practice links in to other useful concepts, such as the vernacularisation of human rights norms, power and agency. I summarize my findings in the conclusion<sup>28</sup>.

### **3.2. Delineating a Field of Study: What Is the “Literature on Human Rights Defenders”?**

The Declaration on Human Rights Defenders defines HRDs as those individuals, groups and organs of society that promote and protect universally recognized human rights and fundamental freedoms. If one were to use this broad definition to identify existing literature on defenders, regardless of whether this literature employs the term human rights defenders specifically or not, one would find a large body of literature that covers an array of diverse themes and approaches. To give just a few examples, there are academic studies that have focused on human rights organizations and institutions, both national and supra-national, and their strategies for the promotion and implementation of human rights (Chong, 2010; Goodman et al., 2012; Hopgood, 2006; Mertus, 2009, 2005; Nelson and Dorsey, 2008; Welch, 1995, 2001).

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<sup>27</sup> Throughout the text of this chapter I use the term human rights as a proxy for other regimes that display similar aims, such as humanitarianism and development. Critical inquiries of these other regimes are often similar to those of human rights (see, for eg, Ferguson, 1990; Hilhorst, 2003; Mosse, 2005; Mosse and Lewis, 2005 for development, and Malkki, 1995, and Ticktin, 2011 for humanitarianism). Scholars of human rights often take a similar approach with reference to terminology (see Goodale, 2007).

<sup>28</sup> While this literature review provides a broad overview of key concepts that cut across the thesis, each of my empirical chapters includes a very brief literature review that concerns specifically the themes that each of them is dealing with. Thus, Chapter provides an overview of the main arguments in the literature on the professionalisation of human rights; Chapter 6 of the literature on capacity-building; Chapter 7 of the literature that critiques how beneficiaries of regimes of care are being represented and the ensuing effects; and Chapter 8 of the literature on emotions and activism.

Other studies have examined the role of human rights networks in the socialization of human rights norms (Burgerman, 1998; Keck and Sikkink, 1998; Risse-Kappen et al., 1999; Sikkink, 1993). Yet other scholars have looked at the role of human rights field officers in the protection of human rights with a view to propose principles and guidelines for their professionalisation (O’Flaherty, 2007; O’Flaherty and Ulrich, 2010).

Yet, without discounting their importance, these bodies of literature are not typically considered to fall within the remit of the “literature on human rights defenders”. This points to the importance of terminology: identifying those involved in the protection and promotion of human rights as “human rights defenders” matters in academic approaches. Specifically, employing the terminology human rights defenders is inextricably linked to the advance of the protection regime, and particular spheres of meaning attached to the term human rights defenders in relation to it. These have largely transferred to the academic research and writing on human rights defenders. As a field of enquiry, this literature is concerned specifically with the *protection* of human rights defenders. This, in turn, influences the approaches in this literature and its attention to specific concepts that are meant to substantiate and delineate the protection of defenders as a field of study. As I will show, this has advantages, but also limitations.

Stemming from the idea of protection, the concept of risk has emerged as a key concept within the literature on the protection of defenders. The concept of risk is understood in close relation to ideas of reprisals against defenders, which occur as a result of defenders’ work, both from state and non-state actors. A number of studies are illustrative here: the work of Anstis (2012) and Tate (2013) explore how states use the legal system to repress human rights defenders and how that affects the risks experienced by the latter, including by allowing states to arrest human rights defenders under false charges. Conversely, Nesossi (2015) focuses on how reprisals experienced by human rights lawyers in China has led to shifts in their tactics to be able to continue with their work in a restrictive environment. Van der Vet and Lyytikainen (2015) take a similar approach by exploring how human rights defenders in Russia adapt strategies for human rights work in an increasingly risky environment, including by sometimes pushing at the boundaries of violence. At least to some extent, these studies include a component that relates experiences of reprisals and ensuing risks to protection. For example, Anstis’s article includes recommendations for how national actors and the international community can support lawyers

in Cambodia to continue their advocacy efforts despite a closing environment, while Kogan (2013) makes recommendations for how the (self-)protection efforts of a Joint Mobile Group of Russian lawyers activating in Chechnya on a rotational basis can be made more sustainable.

A series of other studies link into ideas of risk as an inroad into emphasizing a concept of security, as well as how this pertains to the protection regime itself, as a series of normative and institutional measures. Bennett et al. (2015), for example, examine the concept of security within the protection regime in relation to a concept of human security, which according to them, is the paradigm employed by the protection regime. Bennett et al. make this argument based on the fact that the concept of security in the protection regime focuses on individuals, groups and communities rather than states, and that it aims towards an ideal of holistic security (idem: 884). The concept of protection, equally important in both the academic and more practice-oriented discourses, is closely related to that of security. While the latter refers primarily to what defenders can do for themselves, the concept of protection entails ideas of what others (groups and institutions) can do for defenders, and it is at the basis of the protection regime and current analyses of it. On this front, academic writings on the protection regime focus on detailed overviews, which include normative and institutional advances in recent years as well as attempts to identify key underlying principles (Bennett et al, 2015). A smaller number of studies investigate specific protection mechanisms: while Bennett examines the implementation of the European Union Guidelines on Human Rights Defenders, a key inter-state mechanism, Joloy (2013) focuses on the process by which a Mexican law to protect journalists was arrived at and the lessons that this might entail for other contexts. While these two studies focus on state based mechanisms, others turn their gaze instead to civil society or community based mechanisms and the kinds of protection that these might offer defenders. East and Horn of Africa Human Rights Defenders Project (2013) examines national and regional networks as protective mechanisms, while Burnyeat (2013) zooms in on the protection strategies that a community in Colombia has forged itself.

To summarize, this body of literature offers rich descriptions of defenders' experiences of risks and the types of reprisals that they suffer. This literature also provides a sound understanding of the forms that the protection regime has taken, both state-based and non-state based, as well as a series of insights into measures that defenders themselves take in specific

situations to achieve their own security. This confirms Bennett et al.'s observation that the academic study of defenders and protection remains “goal-driven, practice-oriented, rights-based [in] nature” (Bennett et al., 2015: 884). As a result, its approaches and concepts are very similar to the ones that define the NGO and INGO literatures more broadly.

This has a series of important effects. Firstly, this body of literature remains largely descriptive and instrumental in its approach. Like the grey literature, the academic literature on defenders rallies to strengthen the normative consensus around defenders and protection. As a result, the literature rarely engages in debates around how normative discourses and institutions pertaining to defenders are constructed, the assumptions that underpin them, and what the effects might be for practice. For example, the definitions of key concepts such as risk and security are assumed rather than theoretically and critically examined, both with respect to their meanings and their effects in practice. Bennett et al.'s study provides a good illustration of this: in engaging with the human security paradigm and its uses for the protection regime, the authors state that the goal-drive nature of the protection regime “helps actors in this regime sidestep some of the debates that question the usefulness of the human security paradigm for meaningful action, policy and research” (2015: 884). Yet, it is not entirely clear how that is the case – quite the contrary, clarifying the meaning of key concepts, including by engaging with the relevant debates is useful both theoretically and for practice. Similarly, in engaging with processes of contestation, the authors conceptualise “contestations of the protection regime” as challenges thrown by states in various parts of the world, not, however, with how the regime might be contested by beneficiaries and other stakeholders (idem: 886-888). Other key notions are likewise assumed rather than interrogated. For example, there is an emphasis on notions of (international) solidarity as inherently good (Nah et al., 2013), as there are assumptions about the protective role of networks (Bennett et al., 2015; East and Horn of Africa Human Rights Defenders Project, 2013).

The overall effect of emphasizing concepts of risk, security and protection, without interrogating these concepts or the regime itself, is to endorse the current forms of the protection regime, as well as the idea that the protection regime does work for its beneficiaries. While this is, beyond a doubt, the *ideal* of the protection regime, more research is needed on how the

protection regime actually works in practice. While the existing literature on defenders and protection offers few helpful pointers for such an approach, scholars who have examined other regimes with similar ideals offer useful insights in this respect. In the next part of this chapter, I turn to exploring these alternative approaches, concepts, and how they might pertain to studies of the protection regime.

### **3.3. The Protection Regime as Practice: Perspectives from Other Literatures**

In recent years, scholars have engaged with human rights by putting aside its ontological status and turning instead towards the practice of human rights as an object of inquiry, which they have explored by using ethnographic methods (Cowan et al., 2001; Goodale, 2007; Merry, 2006; Wilson, 2001, 1997a). In contrast to legal or conceptual approaches to human rights, which see social practice as a “testing ground” where ideas of universality and particular ethical or legal systems meet, this approach works with the assumption that social practice is “constitutive of the idea of human rights itself” (Goodale, 2007: 8). Within this framework, rights are seen as social constructs, the products of power struggles in particular historical and social contexts. Accordingly, understanding human rights requires that they be investigated “according to the actions and intentions of social actors, within the wider historical constraints of institutionalized power” (Wilson, 1997: 3-4). This approach highlights a number of core concepts and related themes which are useful for investigating the protection regime. I examine these in turn below.

#### **3.3.1. From Normativity to Practice**

Exploring human rights as practice hinges on a key distinction between norms, understood as a set of value and ideas, and the actual practices that are shaped by how those norms are understood and engaged in particular locations. In contrast to previous approaches, scholars that advocate for this approach choose to circumvent human rights as a set of norms and ideals, and they do so for a number of reasons. Firstly, they observe that the effects of human rights are often assumed from its normative ideals, through a deductive process, rather than examined in the real locations where they occur (Englund, 2006; Goodale, 2007; Wilson, 1997b). As Montesinos Coleman observes, emphasizing norms at the expense of observing their effects by starting from the practices within which they are inscribed, risks “reifying humanistic

ideals” and eliding “entanglements between humanist interventions and logics of dispossession” (2015: 1060; Odysseos and Selmeczi, 2015). A second reason underlying this approach is its usefulness for “mak[ing] human rights normativity itself a category for analysis” (Goodale, 2007b: 8). From this perspective, rather than have an unquestionable ontological status ascribed to it, “normativity is understood as the means through which the idea of human rights becomes discursive, the process that renders human rights into social knowledge that shapes social action” (idem). Following on from this, the social practice of those ideals is consequently also elevated as both an analytical and methodological category.

This framework of inquiry, however, is contingent on how “the practice of human rights” is defined. Goodale defines this concept in the following way:

*“[T]he practice of human rights describes all of the many ways in which social actors across the range talk about, advocate for, criticize, study, legally enact, vernacularize, and so on, the idea of human rights in its different forms. By social actors we mean all of the different individuals, institutions, states, international agencies, and so on, who practice human rights within any number of different social contexts, without privileging any one type of human rights actor: the peasant intellectual in Bolivia who agitates on behalf of derechos humanos is analytically equal to the executive director of Human Rights Watch” (2007: 24).*

By including in his definition actors and actions, and by trying to capture the diversity that characterizes both, without, at the same time, assuming/infering hierarchies of status, Goodale aims to point out that “the practice of human rights is always embedded in preexisting relations of meaning and production” (Goodale, 2007: 24).

I will return to the implications of this definition below, but, for now, I want to emphasize the fact that the problematic of pre-existing relations is more fundamentally part of the interest in and approach to human rights as praxis. Specifically, scholars of this persuasion hypothesise that particular locations, where social interactions and the social knowledges that shape them are defined by prior histories, cultural norms, and specific political and socio-

economic factors, are likely to interact in complex ways with global norms and strategies. The resulting effects, they argue, often depart from those posited by normative ideals, and can even go in the opposite direction. Hence, the point of focusing on how universal ideas are engaged in particular localities is to also advocate for an inductive approach that seeks to re-evaluate normative thinking by starting from how ideas are actually engaged and transformed in particular localities. To explore these dynamics, the scholarship has forwarded a specific concept, namely the “vernacularisation” of human rights.

### **3.3.2. Vernacularisation and the Global/Local Problem**

Coined by Merry (2006), and subsequently refined by Levitt and Merry (2009), the concept of “vernacularisation” draws on the meanings of this term in relation to language to emphasise how globally generated ideas and strategies are being translated in the everyday in particular locations. By studying the adoption of women’s rights in four different countries (China, India, Peru and the United States), Levitt and Merry find that the practice of appropriating internationally defined women’s rights through local social and cultural ideas and relationships is extremely common. On the one hand, the authors explain the widespread appeal of international women’s rights in local settings through the legitimacy that global regimes gain in local settings by being invested with meanings of wealth and power in local imaginaries. Moreover, global frameworks can confer status, facilitate networking and attract funding. At the same time, the authors also find that vernacularisation will take different forms in specific localities depending on factors such as social relations and networks and the social position of “translators” – those actors strategically positioned to mediate between global and local norms (444)<sup>29</sup>.

Other scholars have replicated a similar approach, albeit not always using the same terminology. De Feyter et al. (2011), for example, employ a concept of “localization” to explore if and how human rights becomes relevant in local settings, which, according to the authors, is the real test for the usefulness of the global rights regime: “[i]t is when people face abuse in their

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<sup>29</sup> Nevertheless, in her earlier study, Merry also emphasises the fact that, “despite significant variation in cultural background, political power, and history of each country [here India, China, Fiji, Hong Kong and the United States], the palette of reforms is similar” (2006: 177).

personal experience and in their immediate surroundings that they feel prompted, even ‘obliged’, to engage in collective action for the defence of their rights. At that time, the efficacy of mechanisms for the protection of human rights is really put to the test” (De Feyter, 2011: 1). Although De Feyter et al.’s work also examines how global norms are being transformed in local settings, their terminology intends to emphasize the scalar aspect of human rights, including by associating “localisation” with a view “from below” (idem; see also McEvoy and McGregor, 2008). Großklaus, on the other hand, refers to the localization of norms as “appropriation”, to highlight their encounter with local landscapes of activism as an encounter with power, that can “both enable and constrain practices of dissent” (2015: 1253), an aspect to which I return below. Finally, Anna Tsing (2005) suggests the concept of “friction” to explore the encounter between global and local ideas, and the new relationships and meanings that emerge from these encounters.

A common problem raised across these approaches and their respective terminologies lies in the limitations of employing a global/local binary to explain the circulation of ideas and strategies across locations and cultures. In fact, different terminologies often reflect different responses to the problems raised by such simplistic dichotomies. Englund, for example, argues that the global/local binary implies “the local”’s distance, isolation and parochialism, and is insufficient to explain “how those wielding political and technocratic power come to regard some claims as having global purchase, while others are considered local”, which, according to him, is the real stake in his debate (Englund, 2011: 256; see also Tsing, 2005). A particularly astute critique comes from Goodale, who identifies a number of problems with this binary. These include its assumption of only two existing levels of circulation, a constructed hierarchy between the global as “the top” and the local as “the bottom”, and the reification and “anthropomorphising” of these categories, which, Goodale argues, are used in much of the literature as if they had a material existence (2007: 14, 15). Yet, despite these critiques, Goodale also acknowledges that, for the sake of analysis, the use of these concepts is often unavoidable. This is primarily for two reasons: for one, they are built into the ideology of human rights itself. Perhaps more importantly, however, maintaining concepts such as global/local (and their proxies, universal/particular, or international/national) is the only terminology, which, despite its limitations, can evoke the power asymmetries that define, and often circumscribe, encounters

between ideas in different locations and the ensuing transformations. As Tate argues, “designating a group “national” or “international” reflects the power and penetration—not just circulation—that is available to each group depending on where they are located in landscapes of power” (181). Nevertheless, this still entails the risk that examinations of power relationships be confined to those between the Global North and the Global South, which often overlap conceptually with “the global” and “the local”, and which are frequently imagined as homogenous (see, for eg. Ahmad, 2006; Bob, 2002; Elliott, 1987; Malena, 1995).

To bypass these limitations, Goodale draws on network analysis and its evocations of horizontality to reconceptualise the meanings of the terms global/local. From this perspective, particular locations become one among many nodes that constitute the networks within which ideas circulate, are consumed and transformed (2007: 18). Some scholars have helpfully approximated these meanings by inscribing the concept of “location” into a broader one of “locality”, which, especially since the emergence of ethnographies of transnationality, has avoided residual meanings of parochialism and hierarchy, while also maintaining an analytically useful notion of space. Tate defines locality as “the internal terrain of power and relationships, histories and interests, constituencies and agendas [that define locations]. Much of this landscape is ephemeral, developing through the specific temporal windows of conferences, commissions, and meetings” (Tate, 2007: 184). From this vantage point, a particular advantage of combining global/local terminology with insights drawn from network analysis is precisely to retain the relevance of such dichotomies as categories for exploring power relationships between and within the North and the South, an aspect that has received sustained attention in the literature.

### **3.3.3. Norms as Practice and Power Relationships**

One of the main aims of a focus on human rights as practice, rather than norms, is to explore if and how human rights can fulfill their emancipatory promises by challenging existing power relationships, or if resulting shifts are more closely aligned to reproducing those power relationships, or forming new ones. Here I will start by focusing on how power as an analytical lens in this body of literature is employed to explore two domains related to human rights: the institutional forms of human rights and their meanings for emancipation and empowerment, and the relationship between structural forms of violence, human rights and (dis)empowerment. However, these bodies of literature focus on power relationships within society broadly

speaking, whereas I focus primarily on power relationships within the human rights sector. In the final subsection, then, I zoom in specifically on a concept of power as domination and explain why and how this is useful for the aims of this project.

### **3.3.3.1. Institutions and Power**

Global norms are often expressed through and embedded in institutional forms, including emerging ones in new locations. This is often hailed as an advance in and of itself (see, for eg. Bennett et al., 2015; Keck and Sikkink, 1998). Consistent with their overall approach, ethnographers of human rights focus on investigating how human rights unfolds in practice through its institutional forms in particular locations rather than assume that institutional developments are unquestionably positive. Critiques of institutionalisation and its effects primarily emerge from examinations of the professionalisation of human rights, understood as the appropriation of consecrated institutional forms and repertoires by both state and non-state actors<sup>30</sup>.

Allen denotes this with the term “*human rights industry (or regime, system or structure)*”, which she defines “as the complex of activities and institutions that function under the label human rights, including the professionals who work within those organisations, the formulas they have learned in order to write reports and grant applications, and the funding streams that this industry generates and depends on” (2013: 4). On this basis, Allen suggests that professionalised human rights has led to the “hegemony of a particular form of marketable human rights work that does not always support political activism or engagement” (Allen, 2013: 104; see also de Waal, 2003). This is confirmed by a broader body of literature, which suggests that institutionalized human rights can demobilize human rights (see, for eg. Brown-Nagin, 2005; Kennedy, 2002; Merry et al., 2010; Odinkalu, 1999). This happens in several ways. Firstly, professional human rights displays a tendency towards abstraction and technicism. As Englund’s ethnography of activism in Malawi shows (2007) in practice, this can lead to a depoliticized form of human rights, which loses its relevance for the everyday struggles of those who experience situations of suffering and abuse. Institutional human rights also inclines

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<sup>30</sup> I also conduct a separate review of this literature in Chapter 5, where I deal with the professionalization of human rights work in Kenya specifically.

towards diplomacy, which in turn can lead to certain forms of cooptation. In her study of human rights activism in Colombia, Tate notes that in the name of professionalism, activists were forced to use diplomatic, official language, “light” language and weaken their critique of the state, hiding the seriousness of abuse and state responsibility (2007: 153-154). At the same time, abstract and technical human rights overwhelmingly benefit/ work to the advantage of those activists who can master its forms, and who, in effect, can become (or display the behavior of) a new kind of elite, that distances itself from the poor (Englund, 2006). Finally, abstract human rights can also benefit those donors who wish to continue funding their projects without, at the same time, engaging in sensitive political issues (idem).

The institutionalization of human rights through state mechanisms and discourses can further enhance these effects. To explain the paradoxical nature of states’ institutionalisation of human rights and their continued perpetration of human rights abuses, in her ethnography of human rights in Occupied Palestine Allen suggests a concept of human rights as “performance” (what she also calls the politics of acting “as if”) (2013: 25; 131-156). By employing this concept, she shows that state institutions in Occupied Palestine use human rights to legitimate their existence as a state to an outside, international order, rather than enact substantive changes. Tate (2007) comes to a similar conclusion in the context of Colombia, where she finds that the use of human rights by state actors and institutions contributed to the “production of impunity” rather than its resolution (215-156). Cumulated, these factors can lead to a maintenance of those power relationships that enable human rights abuses and conditions of marginalization to begin with, and even (inadvertently) forge new power relationships, for example by creating a class divide professional activists and victims of human rights violations.

### **3.3.3.2. Structural Violence and Power**

A related avenue for exploring human rights as a “site of power (struggles)” (Wilson, 1997b) is the examination of how human rights and related regimes interact with structural forms of violence, such as poverty, crime and marginalization. These latter realities, as forms of human rights violations, are typically captured through a lens of economic and social rights in the human rights discourse (see Pogge, 2007). In theory, civil and political rights and social and economic rights are upheld as indivisible and inter-related. In other words, both sets of rights are equally important. Yet, as scholars who have examined rights in practice found, for all the

theoretical appeal of interdivisibility, economic and social rights are often marginalised in the practice of states, organisations and institutions<sup>31</sup>. This is a particularly troublesome finding to the extent that socio-economic rights are inextricably linked with finding solutions to poverty and marginalization.

A key study that has explored how a bias on civil and political rights results in the entrenchment of poverty and marginalization is Harri Englund's excellent *Prisoners of Freedom: Human Rights and the African Poor*. Englund starts from an analysis of how human rights has been translated as "freedom" into Chichewa, the local language spoken in Malawi, the site of Englund's ethnography. This excluded the possibility of articulating claims as socio-economic rights using the human rights discourse (2006: 47-70). Drawing on rich empirical data, Englund's subsequent chapters show how, in settings marked by inequality, a discourse of rights that excludes their socio-economic component leads to disempowerment, by becoming focused on individualistic, technical solutions, to the detriment of wider forms of mobilization and (the deployment of) collective claims to address structural forms of violence. In other words, rather than address power, a biased discourse of rights risks further entrenching it.

A separate body of literature makes a similar argument in relation to transitional justice, which, like the protection regime, has developed as a subset of human rights (Waldorf, 2012). Also like the protection regime, transitional justice, which first emerged in response to transitions from authoritarian regimes in Latin America and Eastern Europe, developed with an emphasis on civil and political rights. This emphasis was maintained even when transitional justice expanded to cover post-conflict settings, which raised a set of complex issues that needed solutions, including entrenched structural violence and inequality persisting from the past into the present. In response, a number of transitional justice scholars examined specifically the nexus between the focus on civil and political rights in transitional justice and structural violence in the

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<sup>31</sup> Roth (2004) argues that this is due to strategic reasons and the considerable complexity of implementing socio-economic rights, especially with traditional methodologies, such as naming and shaming, which are better suited to civil and political rights. But see Rubinstein (2004), for a counter-argument for how human rights organisations can usefully push for the implementation of socio-economic rights. For an excellent overview of longstanding arguments pro and against socio-economic rights, see Alston and Quinn (1987, esp 159-160). For a rebuttal of the argument that socio-economic rights are positive rights and civil and political rights are negative rights, especially with a view to the costs involved in their implementation, see Holmes and Sunstein (2000), and Sunstein (2001).

specific contexts where transitional justice programmes were implemented<sup>32</sup>. Their inquiries into the effects of these encounters suggested that transitional justice needed to do more to address structural violence, and that one of the ways in which it could do so was by incorporating in its remit strategies to address persisting forms of socio-economic discrimination (Gready, 2010; Laplante, 2008; Miller, 2008; Pasipanodya, 2008)<sup>33</sup>.

Both these bodies of literature focus specifically on power relationships within society. When using the term power or power relationships, I, on the other hand, refer mostly to the power relationships that configure the human rights sector internally. Even more specifically, I primarily discuss throughout the thesis power relationships within the human rights sector in Kenya. I occasionally also refer to the power relationships between the international human rights sector and the human rights sector in Kenya (for example, as an aspect of the broader power imbalance between the North and the South), but that is not a central aspect of the thesis. As a result of this focus, I also narrow in on a specific understanding of power as domination, which, although not necessarily different from the one(s) that the scholars that I invoke above use, it is, nevertheless, much more specific to my methodology, case-study and the aims of the project.

### **3.3.3.3. The case for power as domination**

Much ink has been spilled over the meanings and uses of the concept of power within a body of scholarship that spans disciplines such as sociology, political science and anthropology. As a result, there is a broad spectrum of meanings that scholars associate with this term. These range from a basic understanding of power as coercive force, to a set of meanings generally subsumed under the category “domination” which include the idea of coercive, undue influence but also significantly expand beyond it (Lukes, 2005), to the idea of power as governmentality (see Dean, 1999), an approach that tries to take into account all the social forces that constitute the subjectivity of those who are influenced by them.

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<sup>32</sup> For a full explanation of why transitional justice has failed to engage with socio-economic wrongs, see Waldorf (2012).

<sup>33</sup> For a counter-argument, see Waldorf (2012), who suggests that transitional justice is already overstretched, and that asking it to engage with socio-economic injustice is not feasible.

As mentioned above, in this thesis, I use the term power to denote phenomena of domination, which are both triggered by and reinforce existing, unequal power relationships within the human rights sector. In what follows, I clarify why I settled on this particular approach, what I mean by the term domination and why and how it is analytically useful for understanding how protection works in practice. At the outset, however, I wish to clarify that I do not identify the problem in the inequality of relationships per se<sup>34</sup>, but rather in the immutability of this inequality. In effect, this functions as a glass ceiling that is virtually impossible to break by those who wish to escape the confines of their particular location on the “power ladder”. Much of the thesis focuses on the negative consequences that result from this state of affairs.

An important theoretical contribution to understanding power as domination was made by Steven Lukes (2005). In approaching this topic, Lukes’ main concern was with understanding how domination is achieved, and when and why domination is wrong (2005: 85-88). Unlike many of his predecessors, Lukes made an argument for understanding power in its “hidden, least visible forms”:

*“the power of the powerful is to be viewed as ranging across issues and contexts, as extending to some unintended consequences and as capable of being effective even without active intervention. (...) [P]ower as domination will be present wherever it furthers, or does not harm, the interests of the powerful and bears negatively upon the interests of those subject to it.” (at 86)*

In taking this approach, Lukes aimed, among others, to come up with a sound conceptual and methodological apparatus for assigning responsibility for negative consequences: “to identify a given process as an ‘exercise of power’, rather than as a case of ‘structural determination’, is to assume that it is in the *exerciser’s* or *exercisers’* power to act differently” (57-58). There was a strong moral (or what Lukes calls “value-laden”) component to this; in other words, Lukes understands responsibility as moral responsibility.

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<sup>34</sup> The literature too admits that much, for example when it discusses power as authority, i.e. legitimate power (see Weber 1978) or when it discusses the fact that not all actions that stem from power relationships result in pernicious consequences for the less powerful (Lukes, 2005: 85).

By contrast, Morriss (2002) argues that, when analyzing power, moral responsibility can only be assigned when powerful actors have the ability to foresee the negative consequences of their actions. Beyond that, evaluations of power are still possible and desirable – for example, evaluations of particular social arrangements which might work to the disadvantage of some groups - but that must be sharply distinguished from distributing blame to people (42). Another critic of Lukes, Hearn argues that the former focuses too much on the condition of being dominated and that a more useful approach to domination would be to focus on the range of relationships that it engenders, and, conversely, the conditions and forces that engender it. Starting from that, and by expanding Morriss’s own critique of Lukes, Hearn proposes four different types of relationships of domination: strategic control, i.e. intentionally influencing the dominated to fulfill the interests of the dominant; advantageous position i.e. inherited superior position (as opposed to intentionally achieved); malign influence, i.e. negatively, but unintentionally affecting the dominated; and negligence understood as a failure to act on the part of the powerful, which can have negative consequences on the dominated.

None of the categories that Morris proposes, can, on its own, explain the how power as domination functions, or why, and Hearn is careful to warn that boxing reality into either one of these categories would be a mistake, since the complexity of relationships in the real world does not lend itself to such simplistic categorisation. Nevertheless, I find that Hearn’s concept of power as “malign influence”<sup>35</sup> is especially useful for exploring the nature of power relationships within the human rights sector. To explain that, I will start by giving Hearn’s definition of domination as malign influence in full:

*[T]his term specifies the ways agents and institutions have negative but unintended (though not necessarily unknown) effects on individuals and society more generally, in a regular, ongoing fashion. It does not imply that the influence of such agents/institutions need be only or completely malign. Thus when we bemoan the ecological and economic affects [sic] of the wasteful consumer behaviour in affluent countries, we may be critical of the social impact of such behaviour on the lives of people in poorer countries whose*

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<sup>35</sup> With the caveat that I would prefer a more neutral-sounding term, such as “unintended negative influence”.

*economies are heavily shaped by such behaviour, without wanting to entirely condemn market relations, or to suggest that such effects are intended by the fortunately affluent (47, 48).*

This definition relies on a few crucial factors: although negative consequences exist, they are not intended; although negative consequences are unintended, they can be known; and, finally, the existence of negative, unintended consequences does not imply a wholesale rejection of the project (for lack of a better term) that gave rise to them in the first place. This triad of factors make an excellent framework that can reconcile the realities of unequal power relationships and processes of domination with a nuanced view on attributing blame to particular actors. That, in turn, squares extremely well with the intentions of this project. As I have already explained in the methodology chapter, a key aim of my research and writing has been to highlight the realities of inequalities within the Kenyan human rights community and the protection regime, and the ensuing consequences, but also to explain the fact that they are not the result of intentional actions by particular stakeholders. As this thesis will show, within the protection regime, as elsewhere, actors' interpretation of phenomena related to protection is constrained by a particular set of protection concepts that are limited in very specific ways, and which have not been interrogated so far. Moreover, powerful actors themselves are embedded in power relationships in which they are the less powerful party – in other words, they are not always in a position to decide the rules of the game (which is not to say that they do not have any power to influence them, even if marginally). However, and as I repeatedly highlight throughout the thesis, examining these negative consequences is not meant to suggest that we should do away with the whole protection project but rather to highlight areas that need further work<sup>36</sup>.

In addition to the above, understanding domination as malign influence maintains, to various degrees, aspects that relate to the other meanings of domination (as strategic control and

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<sup>36</sup> As Hearn argues (at 48), Morriss' distinction between the evaluative and moral aspects of analyzing power is particularly relevant here. The question of not assigning moral responsibility for unintended consequences, however, does raise the issue of whether there is a corollary moral duty to try to address them, especially once they are identified and/or solutions are proposed. It is beyond the scope of this project to analyse this proposition for projects other than the protection regime, but, in regard to the latter, I would argue that, to the extent that the human rights movement has set as its task to speak truth to power, i.e. hold power accountable, it has a duty address the effects of its own power (see also Chapter 2, Section 2.3.3.2).

advantageous position, for example). This approach also helps me to achieve two other key aims. Firstly, it helps me to nuance how I relate, theoretically, to the position of other scholars of power that I invoke in particular chapters. This is especially the case with Scott's work (see Chapter 7), another prominent scholar who has dedicated much of his work to phenomena of domination (and resistance). Although in that chapter I zoom in on concepts such as the "public transcript" and the "hidden transcripts", I do not borrow more extensively from his work because, as I explain there, Scott deals with social phenomena where power relationships are evident (although, as he argues, its workings are not always so). I, on the other hand, examine a regime in which it is a lot less evident that power relationships matter and how. Although, as it will become obvious throughout the empirical chapters, understandings of domination as strategic control (see, for example, Chapter 5, Section 5.4.3.) and advantageous position (see, for example, Chapter 7, Section 7.3.2) can also be useful frameworks at times, the focus on domination as malign influence helps me to explore these other aspects while also keeping firm in sight my understanding of these as phenomena that exceed the actions of any one actor. Secondly, this approach helps me to maintain ideas of agency – these are implicit in this understanding of domination, to the extent that dominance over the dominated happens through the actions of the dominant (although, as we shall see further on, it also happens through particular actions by the dominated). It is to the concept of agency that I now turn.

### **3.3.4. The Practice of Norms and Agency**

Like the concept of rights itself, there is a risk that notions of agency acquire a dimension of rigid normativity that can have detrimental effects on practice, at the same time as limiting explorations of rights as practice. Seeing defenders as "key agents of change", what Bennett et al. identify as a core principle of the protection regime, is a good example of this. In this conceptualisation, agency refers to defenders' role in the implementation of human rights. On a background of having constructed the figure of the defender as a fundamentally moral actor, the notion of agency too, as it is deployed in the protection regime, acquires inflexions of morality. As I will show at length in Chapter 7, this can limit understandings of the full range of actions and motivations that underpin stakeholders' use of the protection regime.

In contrast to this notion of agency, ethnographies of human rights suggest a different definition, one that is better able to “sho[w] humans replete with feelings, engaged in their brute material existence, and enmeshed in the complexities of their social world” (Wilson, 1997: 15). This approach to agency is intrinsic to the concept of vernacularisation (appropriation, transformation) itself as I discuss it above. As Großklaus states:

*“This [appropriation] allows us to think of actors as (boundedly) capable of acting intentionally (...). In this conception local agents are neither mere passive receptors of transnational normative supply nor are they unboundedly agentic rejecters of human rights. The appropriation lens is interested in the potentially transformative role of human beings by looking at social institutions that serve as points of crystallisation, where both structural power and bounded freedom to resist and challenge become visible” (2015: 1256).*

This understanding of agency, then, follows closely conceptions of rights, in that, rather than having a predetermined meaning attached to it, it is instead deployed as a tool to discover how actors *make meaning* of ideas and institutions in their specific locations. By circumventing normative assumptions, this approach is also more suitable for exploring those acts of agency that fall in the greyer areas of moral options but are closer to everyday life, an issue that, as I will show in Chapter 7, is particularly relevant for the protection regime.

### **3.4. Conclusion**

In this chapter I briefly reviewed the current literature on human rights defenders and protection and highlighted some of its limitations. Additionally, I examined a number of concepts and approaches from other literatures that offers useful guidance for new ways of understanding and exploring the protection regime. A concept of practice that seeks to investigate how norms unfold in social life, within the constraints and opportunities created by previous histories and cultures, is a helpful tool for investigating how the protection regime actually works in specific locations and the implications for its ideals. Similarly, a concept of vernacularisation (and its proxies) aims to understand how norms are being appropriated and transformed in particular locations, and how that relates to the ideals entailed by those norms. These two, interconnected concepts also open the door to sub-concepts such as power and

agency, as tools that can aid an understanding of local transformations, and the factors that shape these in specific directions.

These concepts inform my own frame of inquiry into the protection regime, which I conduct with a view to putting aside its normative ideals, and seeking instead to understand its effects in the social world. In tune with the importance of context and local histories for how international ideas and the regimes in which they are inscribed become meaningful in particular locations, I start off in the next chapter with an overview of the history of (human rights) activism in Kenya.

## Chapter 4. Continuities and Changes in Landscapes of Activism and Repression in Kenya

*“What is past is prologue.” (William Shakespeare, 2010: 60)*

*“The more things change, the more they remain the same.” (Grassroots defender)<sup>37</sup>*

### 4.1. Introduction

It was the morning of 3 November 2016, and by the time I got to Uhuru Park, it was already 9:30 am, about half an hour after people had already started gathering for a mass protest against corruption in Kenya, one of several that had taken place throughout the duration of my three year stay in the country. The protest was organised by the Kenya Human Rights Commission (KHRC), in conjunction with PAWA254 and Boniface Mwangi, a well-known activist in Kenya, who had gained a reputation through his unorthodox methods of protest, that relied overwhelmingly on spectacle to garner widespread attention from both the public and the media. Given the prominence of the organisers in Kenya’s human rights circles, as well as the fact that this protest was happening in the wake of a series of shocking corruption scandals that had been extremely well publicised in Kenya’s main media outlets, I expected a large turnout. Yet, by the time I got at Uhuru Park, only about 150 people had gathered. By around 11 am, when the proceedings started, the number had perhaps doubled, but it was still well-low of my expectations.

The meeting point was the Mau Mau monument, recently built as part of a package that the British had committed to implement after a settlement reached with Mau Mau survivors in a court case that the latter had filed to obtain compensation for atrocities committed against them during the struggle for independence<sup>38</sup>. About an hour after my arrival, as I was standing on the

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<sup>37</sup> Interviewed on 1<sup>st</sup> August 2014.

<sup>38</sup> A Kikuyu initiative, the Mau Mau was a rebellion against British settlers and their Kikuyu collaborators in Kenya. For details of the Mau Mau and the British counter-insurgency war against it, see Anderson (2005), and Elkins (2005).

monument surrounded by others, overlooking the immediate environs of the park, I suddenly noticed the participants converging around a KHRC member of staff who was carrying on his shoulders a large plastic bag filled with what looked like red, folded T-Shirts: together, they were moving towards the monument. As I descended and moved slightly to the right to avoid being in anyone's way, the rush for T-Shirts became something of a stampede, so much so, that, one of the organisers, a senior KHRC member of staff, had to grab a microphone and shout to the crowd "Please: we are here to protest corruption, not to fight for T-shirts." Of course, the irony of a situation where both purposes seemed, in fact, to overlap, was lost on many, even as the unfolding of events continued to hammer that point home. In an effort to control the situation, KHRC staff positioned themselves at one of the entrances to the monument, shaped as the frame of a symbolical door at the end of a ramp a few meters long that provided access to the main platform. For a few minutes, participants queued orderly on the ramp, but only for that long. As staff handed out T-Shirts to those at the front of the queue, only a few meters behind people started pushing into one another, and then climbing to the front of the queue from the bottom, until, in the fervour of the push and pull and shouting and screaming someone eventually snatched the plastic bag with the remaining T-Shirts, and disappeared with it<sup>39</sup>.

The awkwardness of that moment was quickly resolved as the organisers moved on with the proceedings. These consisted of song and dance to begin with – I could recognise the national anthem and a few other protest songs that I had heard at past events – and then an elaborate staging of a spectacle that seemed to be intended as a metaphor for the condition of Kenya's citizens in a state that was so deeply marked by massive corruption. A few tens of meters away from the monument, four participants, dressed in striped white and grey costumes were having their hands tied in chains, after which they proceeded towards the monument from behind what looked like gates made of iron bars which they carried with their chained hands. Slow-paced, they did not stop until they made it on the monument's main platform. Next to them, the organisers started reading their speeches and list of anti-corruption demands to the government.

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<sup>39</sup> By that point it was difficult to see what was going on, but as I later noticed small groups of people on the grounds around the monument passing around T-Shirts, I can only assume that, whomever took hold of the bag, shared its contents with others later on.

I was to the left of the crowd now facing the monument, trying to listen to the speeches and simultaneously make mental notes of what had happened when I heard loud, frantic shouts and noticed that people were moving towards me. As I turned my eyes to the right, I saw the first teargas canisters exploding, and, along with everyone else, started running towards the left. But as we were heading towards the edge of the park to the left, we saw that the military had surrounded every single conceivable exit, and teargas was coming in from everywhere. In the confusion of the moment, together with others, we headed towards the barbed wire fence that was separating Uhuru Park from Valley Road – the only place where there did not seem to be a military presence. We jumped over the fence, crossed the street and gathered, a few of us, on the side of Uhuru Park past Valley Road. We were not sure what had happened to the others – in the rush of the moment, with our eyes and skin burning, it had been hard to see – everyone had been looking for the nearest, safest way out. As we waited around for things to calm down, and for news from others, we could see protest signs scattered all around, and police cars approaching from several directions. People took their T-Shirts out, and abandoned the protest signs, as we looked to make our way out of the park. About half an hour later, I ran into a colleague from the Kenya National Commission on Human Rights, with whom I had worked closely for a period of time during my fellowship there. He was going around police stations to try and release those who had been arrested. Meanwhile, in relevant WhatsApp groups, participants who had made it to the Central Business District were advising others to take their protest T-shirts off – the police were arresting anyone who was wearing signs associating them with the protest. As I jumped in the car to join my former colleague in his search throughout the nearby police stations, I could see the military still throwing tear gas, although it was more than an hour since the violent dispersal had started, and I could not see any participants on the ground, save a few scattered figures at the edges.

Not without a hint of irony, at the time of this protest, I was working on writing this chapter and hence becoming increasingly familiar with the history of corruption and repression in Kenya. The more academic literature, (necessarily) cold and forensic in style, made it possible to navigate the paths of that history with relative emotional ease. By contrast, the events of that morning brought me close to aspects of state corruption and violence in a way that felt

bewilderingly close and personal. At the same time, and unexpectedly so, that protest also illustrated with (painful) accuracy many of the contradictions that define contemporary human rights practice in Kenya.

It seems accurate, then, to try and use these counter-pointing facets of what happened that day as an inroad into this chapter and the next. Here, I want to deal specifically with the aspect of violence. While as a researcher, this was my first time to be involved in a protest that was violently dispersed, I knew that this was by no means an isolated case - the military and the police's actions that day were part of a much longer history of violence and repression in Kenya. And even as this particular violence was state organised, I also knew that many of Kenya's defenders were simultaneously subject to other forms of violence, that were either purely criminal or that combined political and criminal elements, and which were much more difficult to address using the established practices that have come to define much of human rights activism and, consequently, methodologies for protection in contemporary Kenya.

To illustrate this point, in this chapter I will provide a brief, factual history of forms of activism and repression in Kenya post-independence. In doing so, I will be guided by the same broad periodization that other scholars of human rights in Kenya have used, namely the post-independence years up to 1982, with the first signs of the entrenchment of an authoritarian state, the 80s with their patterns of severe repression, the 90s, which were defined by an opening up of political space, and the post-2002 era, widely considered in the scholarship to mark the end of authoritarianism in Kenya. My aims here are twofold: firstly, by tracing continuities in both activism and repression post-independence, I show that contemporary reprisals against defenders in Kenya are part of a history of violence that can be traced back at least to the immediate post-independence years. At the same time, however, I also isolate changes in patterns of repression in recent years, that can be attributed both to changes in the nature of the Kenyan state and especially its monopoly on legitimate violence, and to the influence of international factors on the home front. The combined effect of these trends is to complicate the context in which what I call "the protection project" is embedded, with important implications for protection. The second aim of this chapter is to trace the emergence of the human rights movement in Kenya, by highlighting the elements that make up the more conventional narratives of this process. In the

next chapter, then, I will draw on data from my fieldwork to show how this process was defined by fracture and contestation – aspects that are far less explored in the relevant scholarship.

## **4.2. Repression and Activism in Kenya: A Brief History**

### **4.2.1. Post-Independence to 1978: The Emergence of the Authoritarian State**

The history of repression and activism in Kenya, as elsewhere on the African continent, is inextricably linked to the legacy of the colonial state to the independence era. Pre-independence, the colonial administration developed a highly centralized administrative apparatus<sup>40</sup>, whose main purpose was to control emerging forms of dissent to its rule from African Associations, including through preventing the raising of funds, refusals to permit public meetings, and the suppression of protests (Branch and Cheeseman: 18, 2006; see also Mueller, 1984: 402). The provincial administration was further strengthened and expanded throughout the whole country during the counter-insurgency against the Mau Mau (Branch and Cheeseman, 2006; Mueller, 1984: 403). Also as part of the counter-insurgency, the colonial administration facilitated a process of “accelerated class formation” (Branch 2006: 28) as a means to protect British interests in post-colonial Kenya. This was done by promoting Kikuyu loyalist interests in agricultural and land reforms and by a gradual transfer of political power to the same elite in the final years of colonial rule (Branch and Cheeseman, 2006: 19)<sup>41</sup>.

At independence, then, this elite inherited both a monopoly over resources and a well-developed, extensive repression apparatus, which it further refined in the post-independence years (Cheeseman, 2006: 11; Mueller, 1984). Subsequently, both were used to close off political space and strengthen the executive’s hold on power<sup>42</sup> through methods that have persisted to

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<sup>40</sup> For an analysis of the relationship between the party and the provincial administration in the immediate post-independent years, and an explanation for why Kenyatta decided to rely overwhelmingly on the latter to implement executive decisions, see Gertzel (1966).

<sup>41</sup> The means to achieve this included the manipulation of elections to the Legislative Council (the legislative body under the colonial government), the Africanisation of the provincial administration, and preferential access to the labour market for loyalists (Branch and Cheeseman, 2006: 19). For an excellent, nuanced account of how the elections were manipulated, see Branch (2006), where he correctly notes that this set-up a precedent for subsequent manipulations of the elections in Kenya’s post-independence period (at 29).

<sup>42</sup> As Mueller (1984) cogently argued, “[t]he anti-colonial struggle was considered by many to be primarily against a racially dominated regime and not the system itself. Consequently, certain groups found that the colonial way of doing things was admirably suited to the retention of political power. Indeed, when this appeared to be threatened,

nowadays (Cheeseman, 2006). For example, the elimination of the Kenya People's Union (KPU), the only opposition party to the ruling Kenya African National Union (KANU) during the period from independence until 1992, when multi-partyism was re-introduced in Kenya, was possible through a complex system of state sanctions exercised through executive control over resources and the provincial administration.

As Mueller (1984) explains, the elite that formed in the pre-independence years had a weak entrepreneurial base (see also Widner, 1992: 36-37). That, combined with the state's control over resources, created a relationship of dependency between social mobility and political support for KANU: in the immediate years after Kenya's independence, "politics provid[ed] access to wealth rather than the reverse" (Mueller, 1984: 405). Moreover, dependence on the state for "economic mobility" was not limited to individuals, but it extended to whole communities or districts (Mueller, 1984: 406). Even when the state did not directly own resources – such as in the case of the foreign owned private sector, it still had the power to grant or withhold licences for operation in Kenya (idem: 407). A combination of these factors, made support or membership of the opposition extremely taxing: "the nature of the costs differed, but they were not confined to Nairobi or to the middle-class elite: for a civil servant or a teacher, it might be the loss of a job; for a small shopkeeper, the refusal to award a trade licence; for a local farmer, the inability to obtain a small loan; for a peasant, the unwillingness to grant famine relief; and so on" (idem; see also at 419-20). This strategic deployment of resources control for political purposes, left opposition members/supporters with virtually no economic means to either fund their activities or, more broadly, to avoid financial destitution (Mueller, 1984: 419; 422-3).

By co-opting the political elite, including in the legislature, the executive was also able to maintain repressive legislation inherited from the colonial administration, and to further legalise its clamp down on KPU members. Between 1963 and 1969, it enacted several constitutional amendments, amendments to the Preservation of Public Security Act (inherited from the colonial era) to make it include preventive detention<sup>43</sup>, and the modification of electoral laws in situations

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many of these pre-independence laws and institutions were used to the same ends as they had been during the colonial period." (at 405).

<sup>43</sup> At the beginning of 1966 nine KPU MPs were arrested under the Act. Of the other 19 persons detained under the Act between August 1966 and October 1969, 17 were KPU members (Mueller 1984: 418). As Branch has argued in

where it seemed that the existing versions favoured the KPU. Perhaps more importantly, the executive was also able to also implement this legislation country-wide through its control of the provincial administration. Much of Mueller's analysis hinges on the crucial observation, later endorsed by other scholars that, in contrast to other states in Africa, the executive in Kenya had unparalleled control over the periphery, through the provincial administration which it used as "a local instrument for state control" (Branch and Cheeseman, 2006: 22; see also Branch and Cheeseman 2008; Orvis, 2006; Widner 1992). With its help, the executive impeded the registration of KPU branches country-wide, and dispersed their meetings, especially in rural areas, where visibility was extremely high and where the government had a monopoly over the available information (Mueller 1984: 413 - 415). Through the latter, the government was able to easily demonise the KPU as a foreign-backed party that sought to discredit Kenya's independence and the values that it had been built upon (Branch, 2012: 62-63). The final blow to the KPU came through the rigging of the August 1968 local election, when the government ordered returning officers to reject the nomination papers of all KPU candidates (idem: 64).

The elimination of KPU marked a milestone in the development of the Kenyan post-colony; subsequently, "dissent was muted and state-level political competition became the personal fiefdom of the elite" (Branch and Cheeseman, 2006: 27). The KPU's demise also showed that, both like the colonial government before it and Moi's reign after, the Kenyatta administration relied on a combination of measures to maintain order<sup>44</sup> and stifle dissent. These included "techniques of political intimidation" (Widner, 1992: 33) such as detention laws but also the use of "periodic but carefully targeted (...) political assassination[s]" (Branch and Cheeseman, 2006:13)<sup>45</sup>. Three key politicians, all of whom were powerful threats to the status-quo, were assassinated during the Kenyatta era: Pio Gama Pinto in 1965, Tom Mboya in 1969, and J.M. Kariuki in 1975.

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relation to KPU arrests during this period, "[d]etention, a hallmark of colonial rule, was resurrected as a tool of government" (2011: 62).

<sup>44</sup> Branch and Cheeseman talk rather about an "aspiration for order" as a better descriptor of the lived experience of various post-colonial regimes (2006:12). See also Odhiambo (1987) arguing that the fetishisation of order in the Kenya post-colony was used by successive regimes to perpetrate human rights violations.

<sup>45</sup> For details, see Branch (2012: 44-47, 69-81, 105-120). The salience of targeted political assassinations into the contemporary era is illustrated, for example, by the broad daylight shooting of two prominent human rights activists in February 2009, after they had spoken to the then UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, during his fact-finding mission to Kenya (Alston, 2010; Rice, 6 March).

In an increasingly suffocating political space, much of the opposition to government policies moved into the university campuses, beginning with end of the 1970s<sup>46</sup> (Klopp and Orina, 2002: 49). The first confrontation between the government and the student body occurred in 1969, when students protested Kenyatta's refusal to let Oginga Odinga speak at the University College of East Africa. The government responded by closing the university and forcing all students to reapply. Those who refused to sign an apology for disobeying the government, were expelled (*idem*). Subsequent protests in the first half of the 70s, most notably after J. M. Kariuki's murder, were met with more university closures, and with General Service Unit (GSU) attacks on campuses, which in several cases led to student deaths.

Importantly, however, the scholarship also highlights the relative degree of openness that the Kenyatta regime maintained throughout the first years of its existence, in comparison to both other regimes in Africa at the time, and Moi's subsequent regime in Kenya (Barkan, 1992; Branch and Cheeseman, 2008, 2006; Cheeseman, 2006; Orvis, 2006; Widner, 1992). Beginning with 1969, after KPU's defeat, and after Kenyatta strengthened the provincial administration at the expense of party structures and dissenting elements within KANU no longer posed a serious threat to his rule, he allowed semi-competitive elections within KANU. The election system remained riddled with problems<sup>47</sup>; however, the ability of local communities to elect their representative and/or replace them when they did not perform to their satisfaction, did achieve a measure of meaningful political participation within the limits prescribed (Cheeseman, 2006; Orvis, 2006). At the same time, Kenyatta fused the election system and state institutions more broadly with pre-existing, informal relationships of patronage that served as a channel for the dispensation of both state and non-state resources to local communities in exchange for political support (*idem*). Relative citizen participation in the form of voting in semi-competitive elections, combined with the overlap between state institutions and relationships of patronage, i.e. between

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<sup>46</sup> In the first few years after independence, students in Kenya had excellent schooling conditions, which included free education, a stipend, and guaranteed government jobs upon graduation. According to Amutabi (2002) this accounted for their lack of involvement in politics until the late 60s, early 70s, when the worsening economic conditions in Kenya affected the student body as well. Klopp and Orina too see Kenyatta's initial investment in education as both a result of economic conditions and the desire to "socialise students into accepting the status-quo." However, they also emphasise that "[s]uch socialisation was never hegemonic" and that "[m]any university students felt that, as future leaders, they should take part in debates about events in the country" (2002: 48-49).

<sup>47</sup> These included unequal constituencies, restrictions on voter registration, and using the provincial administration to harass candidates (Orvis, 2006: 101). Many of these practices have persisted into the contemporary era.

political support and access to resources, ensured that Kenyatta had the ability to “regulate political space, without completely devoiding it of meaning” (Cheeseman, 2006: 17). This was also a crucial factor in the Kenyatta regime’s ability to demobilise dissent without relying on coercive measures alone<sup>48</sup>.

However, much of that started to change after 1974, when over 50% of the sitting MPs lost their seats in that year’s local election – a sign that discontent in Kenya was growing. On the background of a dire economy and widespread protests after J.M. Kariuki’s murder, Kenyatta tightened his control of both security forces and the Parliament. He brought the portfolio for the first within the purview of a close ally, and he ordered the arrest of MPs who were known to be critics of his presidency. The diminishing of state institutions’ legitimacy, coupled with an increasing reliance on coercive means of rule, was a trend that would only get worse during Moi’s subsequent reign.

#### **4.2.2. The Moi Era: Authoritarianism and the Emergence of Human Rights**

##### **4.2.2.1. 1978 to 1989: Kenya’s Descent into Complete Authoritarianism**

Moi became president in 1978. In an attempt to “garner populist support in the uncertain circumstances of the transfer of power” (Klopp and Orina, 2012: 50), he released the political prisoners who had been jailed under Kenyatta immediately afterwards. That initial opening, however, was short lived. The context of his presidency, defined by a growing population and simultaneous economic decline, meant that, unlike his predecessor, Moi could not rely on central state funding to dispense patronage to the same extent. Unable to control key resources, and increasingly distrustful of the institutions that he had inherited from Kenyatta, Moi needed to rely on a “very different toolkit to maintain authority” (Branch, 2011: 138; see also Orvis, 2006: 102; Widner, 1992). In practice, this meant an increasing, and eventually almost exclusive reliance on coercive measures of political, social and economic control, at the expense of the institutions that, under the previous dispensation, had managed to ensure a modicum of political

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<sup>48</sup> Importantly, the executive in Kenya already had great degree of legitimacy when it took power immediately after independence – its leaders had been in colonial prisons or had played key roles in constitutional negotiations pre-independence. This made it necessary for the elite to maintain avenues for political participation, but also easier to appropriate state and non-state institutions for their own purposes (Branch and Cheeseman, 2006; Orvis, 2006).

participation for Kenya's citizens<sup>49</sup>.

Conveniently, the political circumstances of Moi's presidency offered him a number of handy pretexts to clamp down on his opponents. Under the excuse of fighting anti-corruption, he first got rid of his enemies, and put Kalenjin allies – members of his own ethnic group -, in key positions in Parliament, the cabinet, and the civil service (Branch 2011: 144). Corruption, however, only increased: devaluation of the shilling and the resulting constraints on imports as well as cuts on public spending under conditions imposed by the International Monetary Fund (IMF) forced both national and local government officials to look elsewhere for resources to maintain networks of clients in their constituencies. This resulted in rampant theft (including of resources like strategic maize reserves and humanitarian aid) by executives that had been appointed by Moi to head state-owned business and by others close to government circles. Simultaneously, Moi forbid opponents of his regime from standing up in elections – most notably Odinga in 1981-, moved to force the press into submission when it critiqued his policies, and continued to imprison dissenting MPs on false charges (Branch 2011: 150).

Widespread corruption and public mismanagement, coupled with increasing levels of repression, led to calls for the formation of an opposition party in Kenya, first by Oginga Odinga in a visit to the UK in 1982, and by others back in Kenya. Rather than respond to these calls, Moi used them to impose further restrictions on political space. Through his attorney general, he codified the one-party system in the Constitution through a motion unanimously adopted in Parliament in 1982. Immediately afterwards, he detained without trial Odinga's supporters and their lawyers (Branch 2012: 152). A failed coup in the same year was used by Moi in much the same way to purge the public and private sector of his enemies through swift arrests and detention.

Alongside these measures, Moi continued to clamp down on student activism, which had remained one of the few alternative forms of political association and dissent in independent Kenya. He did so both by continuing Kenyatta's practice of university closures and the use of extreme state force against student protests, and by continuing to incorporate the university as a

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<sup>49</sup> As Widner has put it, the Moi era marked the transition from “the politics of exchange” to the “politics of control” (1992: 130).

site of struggle into the post-colonial logic of power, that relied on executive control and patronage (Klopp and Orina 2012; see also Amutabi 2002; Branch 2012, esp. 144-151). From 1985 onwards, the government re-directed resources from the University of Nairobi to newer universities outside the capital, and co-opted the teaching staff by offering them jobs in corporations and by attaching attractive perks such as house and car loans to their job packages, which made them “less inclined to risk their privileges and thus weary of student activism” (Klopp and Orina, 2002: 53).

By the mid-1980s, Kenya’s descent into authoritarianism was complete. Repression had extended from radical MPs, students and lecturers, to the broader body politic. Detentions without trial and torture (sometimes resulting in death), both of suspected political dissidents and of common citizens were rife in the underground chambers of the infamous Nyayo House (Amnesty International, 1987; Branch, 2011; Hornsby, 2012; TJRC, 2013)<sup>50</sup>. Student activism too dissipated when the executive started fostering student associations along ethnic or regional lines (Klopp and Orina 2002: 53). Lacking channels to voice their discontent, political opponents of the regime were pushed underground: between 1983 and 1988 three underground, revolutionary movements were formed. While none of them posed a serious threat to the state, they did provide the government with yet more excuses to crack down on opponents: surveillance, detention and torture further intensified in their wake (Hornsby, 2012: 416).

Driven by the climate of fear and impunity, many of the regime’s dissidents fled into exile. There they became active in circulating information about the situation back in Kenya. Some formed the Committee to Release Political Prisoners, in London, in 1986. Others, like the former MP Koigi wa Wamere, who was granted asylum in Norway in the same year, engaged in what Schmitz (1999: 50-51) calls “moral consciousness raising and redefinition of Kenya’s image abroad” by holding meetings and giving public talks about the situation in Kenya. Their efforts to re-define perceptions of Kenya abroad found a ready audience: by that time, the human rights discourse and its attendant institutions had already gained a foothold internationally,

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<sup>50</sup> Inaugurated by Moi in 1983, Nyayo House, a 27 floor-tall building in down-town Nairobi, housed several government departments in addition to torture and interrogation chambers. Branch notes: “There, at his inauguration, Moi had promised Kenyans that he would deliver ‘love, peace and unity.’ Instead, in the words of the Mwakenya dissident group, the country had become a ‘democracy of the police boots and torture chambers’” (2012:161).

providing a “recognisable cognitive framework” (Subotic, 2009: 111) for interpreting the realities of political repression in the former British colony<sup>51</sup>. These efforts also tied in with the work of a number of international human rights organisations, like Amnesty International, who had taken up cases of political prisoners in Kenya, campaigned intensely around them, and, in the process, publicised details of political detention and torture (Schmitz 1999).

Meanwhile, back in Kenya, the blatant rigging of the 1988 general election – popularly known as “queue voting”, so dubbed because of the requirement that voters stand in a queue behind an image of their preferred candidate - caused widespread discontent throughout the country. For many, this was the last straw in a long series of injustices that had slowly and completely eroded the legitimacy of Kenya’s state institutions in the eyes of its citizens. For the first time since independence, this state of affairs consolidated opposition to Moi’s regime, including across sectors that traditionally had stayed clear of political involvement, such as the churches, which now took the lead in openly criticising the government in pastoral letters, sermons and publications<sup>52</sup>. Soon after, lawyers, through the Law Society of Kenya (LSK) joined efforts with the church. The combined efforts of these two sectors were particularly well suited to make their critique relevant to a broad audience across Kenya and beyond. Both lawyers and the churches had strong international ties through their respective professions and associations, and used these to publicise the abuses in Kenya abroad and to gain leveraging power with the government (Widner 1992). Domestically, the lawyers and the clergy were the only two professional categories that could still speak to their clients and parishioners respectively in a context where neither opposition parties nor smaller meetings could take place freely. As such, these two categories were the only connection between dissident politicians and other Kenyans (idem: 1992: 187-8). Moreover, the church had a huge following in Kenya - by 1980 about 80 percent of the population had been baptised -, and Christianity itself “provided its adherents and leaders with a common language and a set of idioms that cut across Kenya’s many ethnic vernaculars and cultural traditions” (Branch: 180). Lawyers too had been involved in challenging

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<sup>51</sup> For details about the history of international human rights, see, for eg, de Waal (2003), Dezalay and Garth (2006), Hoffmann (2011), Moyn (2012), and Neier (2012).

<sup>52</sup> Queue voting had been introduced in 1986, during the KANU primaries elections. By the time of the 1988 general election, the churches had already developed a strong, public critique of the system. As Widner observes, however, this attitude was by no means homogenous within the ranks of the churches. Quite the contrary, some high-ranked clergy staunchly critiqued those of their peers who opposed Moi (see Widner 1992: 192).

political detentions throughout the decade, and often were themselves jailed and tortured as a result. Yet, despite these efforts, they found that “the treatment of political prisoners was not an issue on which popular discontent could be galvanised (...). Concerns about such matters were typically expressed in the parlance of human rights, with little thought being given to translation into a language that was more understandable to a wider public” (idem: 181). In the church, then, lawyers found both the tools and a suitable medium of communication for their message of reform, which they expanded into a broader debate about constitutional reform (Branch 2012: 180). Additionally, through their work on political prisoners, lawyers provided the perfect link between civil society and the political opposition. Throughout the next decade, this new “political alliance based around the demands for constitutional reform and driven by civil society” would dominate the landscape of politics and change in Kenya. The end of the Cold War and the new geo-politics of the post-Cold War period provided their activism a new impetus a couple of years later.

#### **4.2.2.2. 1989 to 2002: The Return to Multipartism and the New Violence**

The fall of the Berlin Wall in Eastern Europe inspired renewed demands for political reform worldwide. In Kenya too, emboldened by the new global context – which they correctly predicted would help usher in change at home as well –, and by the lawyers and the churches’ open dissent and critique of the regime’s excesses, opposition politicians joined the ranks of the former and started demanding the legalisation of opposition parties in Kenya.

To begin with, Moi was unmoved, and responded to these calls in typical fashion - by painting them as foreign-backed attempts to subvert the *status quo* and by harassing the proponents of multipartism. The opposition, however, did not relent, and continued to mobilise, including among members of the public – the 1990s and 1991 were defined by massive street protests and shows of support for opposition politicians. The most important of these protests, and one which has remained ingrained in public memory, was organised on 7 July 1990 (remembered as 7/7 - *Saba Saba* in Swahili) at Kamukunji, a Nairobi site chosen for its historical significance because many demonstrations during the colonial era had taken place there. Although the government did not issue a permit for the protest, and it arrested many of the organisers prior to the rally, nevertheless, thousands of people gathered at the grounds on the day. The protests spread further in Nairobi and other major towns in Central Province and

Nakuru after the police tried to forcefully disperse the protest using tear gas. Eventually, Moi issued orders allowing the security forces to use lethal force against the protesters - in total, over twenty people were killed during the demonstrations (Branch, 2012 – 194; Schmitz 1999: 57).

Moi only relented in December 1991, when the donor community firmly leaned in by agreeing to withhold aid pending the introduction of meaningful reforms in Kenya. On the 3<sup>rd</sup> of that month, Section 2A of the Constitution, which had codified the one-party state into law, was repealed, and multipartism became legal again. At around the same time, with the old geo-strategic calculations inspired by Cold War politics displaced by the new mantras of good governance and, by extension, human rights, donors' tolerance for government corruption and political repression diminished, and their support shifted towards civil society organisations and movements, which were seen as more accountable and transparent than state institutions. Under the influence of structural adjustment programmes in the 80s, a sizable number of development NGOs had already emerged in Kenya to fill in the vacuums left by the withdrawal of the state from service delivery (Bratton, 1989; Murunga, 2007). With the political openings that followed the reintroduction of multipartism in 1992, human rights and governance NGOs quickly followed suit – their numbers increased from a handful in 1990 to about one hundred towards the end of the decade (Kanyinga, 2009: 193).

Having gained a foothold in the newly opened civic space, human rights NGOs became central players on the Kenyan political scene throughout the 90s. This trend had already started pre-1992, when the Forum for the Restoration of Democracy (FORD), the only opposition political party in Kenya, had drawn its membership from both civil society and opposition groups, with discreet donor support. Following the defeat of the opposition in the 1992 elections by Moi, “civil society organisations assumed the role of the effective opposition in the state”; at the same time, it continued to spearhead the movement for a new constitution and the repeal of repressive legislation more broadly (Kanyinga 2009: 92). Human rights NGOs, in particular, rallied behind the opposition in an attempt to unify it – a precondition to ousting Moi from power, - convinced that only a new government would enact comprehensive reforms (idem: 94). When Moi's government refused to engage, human rights NGOs and civil society more broadly were at the forefront of drafting model constitutions and organising widespread civic defiance (Kanyinga, 2009; Mutunga, 1999). Yet, their radical position eventually caused a split with the

opposition parties too, which preferred to liaise with Moi's KANU on a set of limited reforms ahead of the 1997 elections – sufficient to stave off some of the pressure, but well short of the demands of human rights NGOs. Some donors too felt that the human rights movement was becoming too radical, and pulled out from funding it on the basis of that consideration<sup>53</sup>. Lacking a unified vision, the opposition again lost the 1997 elections to Moi.

That only strengthened the resolve of civil society to unify the opposition behind one candidate in the 2002 elections. Along with continuing their work on civic education, they started several initiatives to bring opposition politicians together, including by providing leadership in the formulation of vision and programmes (Kanyinga 2009: 197). The last and most successful of these initiatives – the National Alliance (Party) of Kenya emerged further strengthened when a splinter faction of KANU joined it in October 2002. The new alliance of parties, the National Rainbow Coalition (NARC) rallied behind Mwai Kibaki as its presidential candidate, and went on to win the elections of 2002 on a platform of comprehensive reform and anti-corruption.

The result of the 2002 election had come at a steep price, as much of the work of civil society organisations and the political opposition had taken place on a background of severe reprisals. Some of these took familiar forms as they continued patterns that had been seen throughout the previous decades. During the elections, like Kenyatta before him, Moi relied on the provincial administration to harass political opponents and their planned rallies and meetings (Branch 2011), he used the media as a propaganda tool, and continued the earlier trend of arrests without trial, although the use of torture decreased significantly during this time (Press, 2012: 5). As I have already indicated above, the security apparatus was also relied on to forcefully disperse the large protests of the 1990s in a show of force that was reminiscent of the 70s and 80s. Another familiar technique was the use of legislation to counter the opportunities multipartism offered Moi's political opponents and civil society. Under the pretext of a need for coordination, in 1990 the Kenyan government passed the NGO Coordination Act, which was aimed at controlling the activities of NGOs in Kenya. Over the next two years, however, in an

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<sup>53</sup> This split and the resulting lack of mobilisation also revealed one of the most important tensions in the role of human rights NGOs during this transition period: “[a]lthough civil society organisations were able to direct political processes, they were unable to consolidate their hold on the political space” (Kanyinga 2009: 196). As we will see later, this tension continues to haunt human rights NGOs and their role in Kenya's society.

unprecedented show of unity and open opposition to government policies, and with support from the donor community, NGOs engaged in intense lobbying and advocacy, and got the government to drop some of the most contentious provisions in the Act (Ndegwa, 1996: 31-54). While not a complete victory, to the extent that the Act had not been entirely scrapped, this was, nevertheless, a stunning victory, unthinkable only a few years earlier, and an incipient sign of how much things had, indeed, begun to change (Kanyinga 2009: 191).

Along with these familiar techniques of repression, however, newer forms of reprisals also started to emerge in a context in which the government could not employ harassment techniques as openly as before. For example, court cases of opposition politicians started to be moved outside of Nairobi, in a bid to shield them from media attention and national and international condemnation. And rather than detaining people without trial or charging them with political offences, evidence would be fabricated linking them to criminal offences (often of a capital nature) allowing the government to keep them away for long periods of time (Schmitz 1999: 62).

Perhaps more importantly, the nature of violence itself in Kenya began to change in the 90s, with important, long-term implications for human rights activists and organisations. During this period, forms of extra-state violence that Moi's government had started manufacturing in the 80s as part of its efforts for political control intensified and merged with forms of criminal violence, eventually ending up beyond the state's control (Mueller 2007). One of the main forms of this extra-state violence consisted of private bodyguards and gangs of supporters that KANU politicians maintained on their payroll and used regularly to intimidate and harass opposition politicians in the 80s. This continued into the 90s, and diversified along similar patterns after the introduction of multiparty elections and the ensuing battles for political control. In a bid to maintain his grip on power, which required that he win a minimum of 25% of the votes in at least five of Kenya's regions, some of which hosted large ethnic groups opposed to his rule, Moi stirred ethnic divisions by reviving the debate on *majimboism*<sup>54</sup>. This led to widespread, localised violence before the elections, especially in the Rift Valley and on the Coast, but also in other key

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<sup>54</sup> *Majimbo* is the Swahili term for region. Debates about regionalism, land control and regional devolution of powers have been a main feature of Kenya's politics since Independence onwards (Anderson and Lochery, 2008: 329-330)

regions in Kenya (Branch 2011: 198-202). Much of this violence was perpetrated with the help of groups of young thugs who were formed and/or helped by the state's security apparatus and the provincial administration, and who killed and displaced opposition supporters along ethnic lines in key Kenyan provinces prior to the elections in the 90s (Mueller 2007: 107-8). In total, over 2000 people were killed, and 500000 displaced during the 1992 and 1997 elections (Mueller 2007: 191).

The collapse in state services, especially in urban areas, and the resulting rise in urban crime from the 80s onwards provided further opportunities for the emergence of non-state violence. Gangs and vigilante groups started to mushroom in Nairobi and other urban centres. Contrary to their avowed intents, all of these gangs developed into criminal and extortionist networks, taking control over transport routes in Nairobi, charging "protection fees" for their services under threat of extreme duress, and fighting regular turf battles with each other (Anderson, 2002; Katumanga, 2005). In the context of multiparty elections, many of these gangs were hired by political patrons to further the latter's attempts for political control in Nairobi and other areas. Often, these arrangements of mutual benefit went beyond mere financial transactions. For example, in 2002 Mungiki, the largest and most well known of vigilante groups in Kenya, agreed to back Uhuru Kenyatta, Moi's chosen successor to the presidency. In exchange, Mungiki was free to expand its criminal operations with little interference from the police or ruling politicians (Branch, 2011: 237-8). With the scope of its operations vastly expanded, at its peak, Mungiki came to operate as "shadow-state" in Nairobi, with virtual impunity (Mueller 2008: 192).

By the end of the 90s, beginning of 2000s, the state had lost much of its monopoly on violence (Mueller 2008). The violent gangs that KANU helped form throughout the country to steer the results of the elections in its favour, and the pre-existing criminal formations that both KANU and later opposition politicians had enlisted for similar purposes, continued to exist and engage in extra-state violence after the elections finished. Even as Kenyans rejoiced at the results of the 2002 election, which finally ousted Moi from power at the end of a 24 year long, extremely repressive rule, they were, nevertheless, transitioning into a "criminalised, predatory state", bent on "self-cannibalising", which had appropriated private violence and privatised public violence (Katumanga 2005: 508 *et passim*).

At the same time, because of the specific dynamics of their relationship with the political opposition during the 90s, when the lines between being associated with either sector blurred while ousting Moi from power acted as a unifying goal, civil society lost its edge in being able to critique the status-quo and hold those powerful to account. But the consequences of this unhealthy proximity were only going to become obvious during the Kibaki era.

#### **4.2.3. Post-2002, the Illusion of Change, and the New Constraints on Activism**

Moi's defeat in the 2002 elections had the aura of a defining moment in Kenya's history. Kibaki and NARC's win on a platform of reform and anti-corruption, and the peacefulness of the elections, seemed to mark a firm departure from authoritarianism. Kenyans from everywhere were celebrating change. A first set of immediate post-election measures looked likely to confirm their hopes: free primary education, the replacement of important figures associated with corruption in the judiciary and civil service, a cabinet composed of representatives of almost all the important ethnic groups in Kenya, a free press vigorously debating the political issues of the day (Branch 2012).

These positive signs, however, turned out to be little more than an illusion in the years following the election. Despite the rhetorical emphasis on anti-corruption, a key point during the election campaign, the new government was not only little willing to address it, but itself practiced it on a scale that, with few exceptions, belied the massive looting that had taken place before. The creation of the post of Permanent Secretary in Charge of Governance and Ethics in the Kibaki Cabinet, and the recruitment of John Githongo – reputed for his earlier anti-corruption efforts as founder and head of the Kenya chapter of Transparency International and earlier a columnist for the East African - to lead it created a solid impression of a real anti-corruption drive in the new dispensation (Wrong 2010: 12). However, as early as April 2004, the press started reporting on a series of government contracts that involved paying large sums of public money to sham companies, among them Anglo-Leasing, which became the tagline by which the scandal was known. Simultaneously, some members of the donor group started publicly denouncing the “gigantic looting spree” that was under way<sup>55</sup>. During this time, Githongo himself conducted his own internal investigations in the affair and found that involvement ran all

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<sup>55</sup> Sir Edward Clay, the British High Commissioner at the time, quoted in Branch (2012: 253).

the way up to the top echelons of government, with the knowledge of the president. The sheer sums involved indicated that this was one of the biggest financial scams from independence onwards – the fake contracts held a total value of anywhere between 700 million and 1 billion US dollars (Branch 2011: 254). Aware of the implications and potential repercussions of the scandal – perhaps never more obvious than when he started receiving threats to his life –, Githongo fled to Oxford in 2005, from where he released the results of his investigations to the international and Kenyan press over the next year. His well-documented dossier was irrefutable proof that “behind the scenes, the newly appointed ministers and their supporters had quickly eased themselves into positions at the top of corruption networks” (Branch, 2012: 253).

At the same time as rampant corruption was taking its toll, it was becoming increasingly obvious that Kibaki and his political entourage had little intention to address the issues contained in the memorandum of understanding that he had signed with Raila Odinga prior to the two joining efforts in the 2002 election. One of the most important points in the MoU was that of fast constitutional reform, with an emphasis on the dilution of presidential powers and the creation of a post of prime minister for Odinga. The provisions concerning these issues were deleted from the draft constitution that was eventually tabled in parliament in 2005. In the ensuing fall-out, Raila Odinga and his faction left NARC and, together with other disillusioned members of the government they constituted a new political movement – the Orange Democratic Movement, that campaigned for the rejection of the draft constitution in a November 2005 referendum, which they won with 57% and a majority of votes in seven out of Kenya’s eight provinces (Cottrell and Ghai, 2007).

Meanwhile, the ability of civil society, including human rights organisations to monitor and influence these developments, much like it had done throughout the 90s, severely diminished. Like everyone else, these actors too were caught-up in the post-2002 euphoria of change. Many of their erstwhile colleagues on the lines of resistance were now serving in Parliament, while the state itself had started speaking the language of democracy and human rights and rolling out projects that for all intents and purposes were similar, if not identical to those that had been the purview of NGOs earlier. The operationalisation of the Kenya National Commission on Human Rights – Kenya’s national human rights institution - in July 2003 was

yet another indicator of the state's commitment to human rights. Yet, despite what might have appeared as a great opening for the establishment of a truly democratic culture in Kenya, paradoxically, this "great opening" ended up functioning as a weakening of civil society and human rights organisations (Kanyinga 2009). On the one hand, the migration in large numbers of important civil society figures, that had built up a reputation by resisting the Moi government, to state structures, deprived the former of a strong leadership. Not only that, but, with few exceptions, such as Maina Kiai at the KNCHR, and John Githongo, many of those who had formerly built up a reputation by standing against Moi's authoritarian tendencies turned out to lose their critical edge when faced with NARC's own shortcomings, and, more often than not, became co-opted by the NARC regime (Murunga and Nasong'o, 2006). Those who had remained in the ranks of civil society, on the other hand, had a hard time finding their feet in the new dispensation, where the Moi and KANU threat were gone and the state had started performing human rights. The donors too, mesmerised by the promise of reform under NARC and its initial policies, started to divert funding from civil society to the government. A good number of organisations dissolved in the immediate post-2002 years for lack of funding. Others barely stayed afloat, while even the most established had a hard time continuing with their activities.

Combined, these factors led to a "crisis of relevance" for governance and human rights NGOs in the new dispensation, which, among others, weakened their ability to function as watch-dogs of the status quo (Kanyinga 2009: 199). At the same time, many observers of Kenyan politics, interpreted the peacefulness of the 2002 election and the 2005 constitutional referendum as the sign of a strong democracy in Kenya, when, in fact, at least in the latter case, the lack of violence had been the result of political calculations in Kibaki's camp, who were equally served by both the old and the revised drafts of the constitution, and who placed their bets instead on winning the 2007 elections (Branch 2012: 260)<sup>56</sup>.

Within that context, the 2007/8 post-election violence (PEV) took both the world at large

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<sup>56</sup> For an analysis of the 2002 elections, and, among others, why they were peaceful, as well as the implications for democratisation processes more broadly in Africa, see Brown (2004).

and many in Kenya by surprise<sup>57</sup>. The election was contested along the same fault-lines as the 2005 referendum. The race was close, and the campaign took place in an environment marked by deep divisions, new technologies of fast communication that helped the spread of false information and rumours and strengthened their influence on public perception and behaviour (see Osborn 2008), weak state institutions for resolving issues arising from a potentially contested election, and a wide array of violent formations outside of state control (see Mueller 2008). Although the voting itself went relatively peacefully, the delay in announcing the results, and the sudden change from what looked like an Odinga victory on the morning of the second day of vote-counting, to a Kibaki victory later that afternoon, kicked-off widespread suspicions of rigging, especially among Odinga's supporters. When Kibaki was declared president on the third day and sworn in in a quick ceremony, violence erupted all over the country, first in ODM strongholds, and then in Kibaki strongholds, where evidence pointed to the hiring of Mungiki to carry out revenge attacks against local supporters of Odinga. Additionally, there were large protests all over the country contesting the results of the election, and indiscriminate use of live bullets by the police against protesters. In all, throughout the two months following the election, at least 1100 Kenyans were killed and over 500000 displaced and their property destroyed (Branch 2011).

The violence only stopped when, with the international community's involvement and Kofi Annan's mediation efforts, the two parties reached a power-sharing agreement spelled out in a National Accord, that, among others, stipulated a role of prime-minister for Odinga, that half of the cabinet positions be allocated to ODM members, the enactment of reforms, including on the constitutional front<sup>58</sup>, and two independent inquiries into the elections and the subsequent violence (Branch 2011; Brown 2013). The inquiry into the post-election violence, under the leadership of Justice Phillip Waki, popularly known as the Waki Commission, recommended, among others, the creation of a Special Tribunal to try those most responsible for the violence

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<sup>57</sup> Kenya might have gained a reputation for being a corrupt country by that stage, but it was still seen by many as a pillar of stability in the region. This was partly because of donor politics throughout the 90s, when, for the sake of broader geo-strategic considerations, they turned a blind-eye to election-related violence during 1992 and 1997 (Brown, 2007, 2001). Yet, as Cheeseman argues, the months preceding the 2007 December elections were also marked by election-related violence in several areas of Kenya. This should have been a forewarning sign of worse to come (Cheeseman 2008: 170).

<sup>58</sup> This provided a momentum for the civil society's struggle for constitutional reform to finally materialize into a Constitution that incorporates human rights and its underlying principles. I return to this issue in the final section.

within a set deadline from the publication of its report. Short of that, the Waki Commission would hand an envelope with 56 names of those it thought most responsible for the violence to Kofi Annan, who in turn would hand it in to the International Criminal Court (Brown 2013: 242). Although the Kenyan Parliament accepted the Waki report and all of its recommendations, nevertheless, it failed to pass the necessary legislation for a Special Tribunal. As a result, in January 2009 Annan passed on the infamous envelope to the International Criminal Court (ICC)'s Special Prosecutor, at the time Luis Moreno Ocampo, who subsequently opened investigations on six suspects for the violence<sup>59</sup>. Four of these were later charged, among them Uhuru Kenyatta and William Ruto, who would later go on to win the 2013 elections as president and deputy president respectively.

Civil society and human rights organisations had been at the forefront of reporting human rights violations committed during the post-election violence, and subsequently they took a leading role in requesting accountability for the perpetrators and redress for the victims, including by aiding the ICC investigations. Not surprisingly, this led to a severe backlash to try and curtail their efforts. This situation was compounded by the fact that politicians from both the winning and the losing camps had allegedly been involved in organising or aiding the violence, and hence that the post-election power-sharing agreement had resulted in a consensus to push back at the boundaries of political space (EHAHRDP 2008: 18). Furthermore, the ICC investigations were a wake-up call to many in Kenya's political circles that, in the new global context, where the norms of accountability for mass atrocity superseded state sovereignty and immunity for highly positioned politicians, Kenya's status too had changed. When Kenya's politicians stalled on the legislation necessary for the formation of a Special Tribunal as recommended by the Waki Commission, they did so in the belief that the prospect of accountability through an international criminal justice system was too distant a possibility to ever materialise<sup>60</sup>. Yet, the start of the ICC investigations and subsequent charges hammered home the point that, unlike throughout the previous decades, the possibility of accountability was real, and that Kenya's human rights

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<sup>59</sup> The six were William Ruto, Joshua arap Sang, and Henry Kosgey in Case 1, and Uhuru Kenyatta, Francis Muthaura and Mohammed Hussein Ali in Case 2. In September 2011 charges were confirmed against four of these, namely Kenyatta, Muthaura, Sang and Ruto (Lynch 2013: 104).

<sup>60</sup> William Ruto, one of the accused, is reputed to have claimed in a rally that an ICC process "would take 90 years to conclude" (...) "and I doubt that any of us here will be alive by then" (Mathenge 2010). This attitude illustrated the position of many in Kenya's political circles more broadly.

NGOs, in particular, had emerged with a degree of unprecedented strength as actors centrally positioned in mediating these new discourses and their implications on the home front. From state actors' perspective, then, the balance of power seemed to have tipped to an undesirable and extremely inconvenient degree towards NGO actors, especially those active in human rights and governance.

This explains why and how the outcomes of the PEV and the ICC's subsequent involvement shaped state actors' political choices afterwards, and their renewed preference for methods of political repression that seemed to throw Kenya back into the Moi era. Politically, the ICC's investigations and subsequent charges had the unintended outcome that two of the accused, Uhuru Kenyatta and William Ruto, who in the 2007 elections had been on opposite sides of the political divide, formed a new political coalition of their respective parties ahead of the 2013 elections, which they went on to win, although with a narrow majority, and in a context marred by irregularities (AfriCOG, 2014; Cheeseman et al., 2014). Uhuru and Ruto's alliance was dictated primarily by the imperative of "deflect[ing] the court and insulat[ing] themselves from its power once they won the election" (Mueller 2014: 25). To that end, and as Gabrielle Lynch has cogently argued, during their campaign, the two managed "to reframe the ICC story – at least in the eyes of a significant number of Kenyans – into a performance of injustice, neo-colonialism, and threat to the country's sovereignty, peace and stability" (2013: 105). This had important implications for human rights and governance NGOs and civil society more broadly, as they had been widely known to have helped the ICC investigations and promote accountability through its processes.

For one, and as I have briefly noted above, this led to a new wave of reprisals, especially against a number of prominent human rights activists and organisations, who had taken lead roles in the struggle for accountability. However, with few exceptions, reprisals against human rights defenders carefully avoided the appearance of state involvement: often they took the form of anonymous threatening messages or public denunciations of civil society figures as traitors by criminal groups, and anonymous, but clearly targeted shootings. The latter were well illustrated by the shooting of a driver who had agreed to testify on extrajudicial killings committed by the police (Observatory for the Protection of Human Rights Defenders, 2009).

At the same time, and perhaps more importantly, the government also kick-started a series of more macro-level measures to clamp down on civil society. Legislative measures to that end had been anticipated by many when the Jubilee Alliance's Manifesto during its election campaign stipulated that the Coalition Government would "[i]ntroduce a Charities Act to regulate political campaigning by NGOs, to ensure they only campaign on issues that promote their core remit and do not engage in party politics" (Jubilee Alliance Party, 2013). For many civil society activists, the allusion to their involvement in politics was a slight of hand reference to the political implications entailed by their support for the ICC investigations<sup>61</sup> (see, for eg, Churchill 2013). It came as no surprising then that, throughout 2013 and 2014, the government tried to initiate a series of legislative measures to restrict the activities of NGOs. In particular, it tried to table a series of amendments to the Public Benefits Organizations Act – a new law under which the sector was to be regulated, with the clear aim of increasing its control over the NGO sector. One of the most contentious among the first set of amendments that were tabled in November 2013, sought to restrict foreign funding to NGOs to 15% of their total income. Although this particular amendment was taken out from subsequent sets that were tabled in Parliament, NGOs continued to fight the modification of the Act through lobbying, advocacy and media engagement among others. They were eventually successful when they took the government to court over its failure to operationalize the Act, and received a positive decision: on 31 October 2016 the High Court ordered the Cabinet Secretary of the Ministry of Devolution and Planning to gazette the PBO Act within 14 days (The Observatory for the Protection of Human Rights Defenders, 2016). However, up until then, the lack of a clear regulatory framework had enabled the government to abuse its power by arbitrarily de-registering hundreds of NGOs on several occasions, allegedly for financial non-compliance and involvement in terrorism. Since no evidence was brought to support these accusations, they were widely perceived to be an old tactic in a now familiar repository of tools for political repression. Simultaneously, the government also targeted the media through two bills which sought to provide it with extensive powers over the latter, through, among others, creating a government controlled body with powers to revoke journalists' accreditation, seize their property, and impose excessive fines on the basis of anonymous complaints (HRW 2013). Although these bills were

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<sup>61</sup> For analyses of how the ICC became entangled in political debates in Kenya ahead of the elections, see Brown and Sriram (2012), Lynch (2013) and Mueller (2014).

challenged in Court, in 2016, a reputable journalist writing for The Nation was fired after writing an editorial critical of Uhuru Kenyatta's performance at the helm of the republic. This was an extremely worrying sign of arbitrary limitations to the media's freedom of expression, despite the temporary stop-gap on legislation that would have formally legalized such restrictive measures. Finally, the violent dispersal of a number of public protests from 2013 onwards, the vast majority taking aim at Kenya's ever-growing culture of corruption, coupled with arrests and punitive bails for defenders, were yet another sign of state restrictions on democratic space. Both the human rights sector and the broader civil society, and the media sector, however, fought hard against government efforts to constrain their activities. Their main strategy has been to make use of Kenya's 2010 constitution and the court system.

#### **4.2.4. The 2010 Constitution and the Protection of Human Rights**

The 2010 constitution was the fruit of civil society efforts towards constitutional reforms going back over a couple of decades. As I have shown, the human rights and governance sector, through organizations like the KHRC and RPP, played a particularly important role in that process, especially throughout the 90s (Mutunga, 1999). Although these efforts stalled in the immediate post-2002 years, the post-PEV mediation agreement renewed the momentum for constitutional reform. Civil society actors took advantage of that by ensuring that comprehensive constitutional reform would feature prominently in the final agreement, and later by acting as election observers during the constitutional referendum to safeguard the process from manipulation (Nasong'o, 2014). Partly due to these long-standing endeavors, the constitution embeds human rights and its underlying principles in how it envisions the exercise of power by the state, it includes an expansive bill of rights that provides for both civil and political, and economic, social and cultural rights, and it promotes good governance, integrity, transparency and accountability as principles of governance. Moreover, the constitution stipulates measures for institutional reforms according to these principles. These include the framework for a reformed judiciary, and guidelines for the transparent appointment and removal of individuals in key public offices, including that of chief justice. Partly as a result of this strengthened framework, Willy Mutunga, a reputable advocate and one with an impeccable record as a long-standing human rights activist throughout successive dispensations in Kenya, was appointed

Chief Justice in 2011. Under his leadership, reform in the judiciary, although incomplete and at times marred by corruption scandals, nevertheless achieved key milestones, such as the vetting of existing judges and the appointment of new ones, the training of judiciary staff, encouraging jurisprudence and clarifications of constitutional provisions (Ghai, 2014: 134).

A combination of relevant provisions in the constitution and a judiciary able to interpret and apply those provisions in an impartial manner have proven to be the civil society and media sector's most invaluable ally in their struggle to resist government efforts to clamp down on civic space. Favorable decisions in cases brought by civil society actors against the state often rely on constitutional provisions, especially those in the bill of rights. Some of the most relevant examples include the High Court's 31 October 2016 decision in the PBO Act case, which invokes an infringement of the constitutional right to freedom of association and assembly by successive Cabinet Secretaries' refusal to operationalize the Act (The Observatory for the Protection of Human Rights Defenders, 2016). More recently, a section of the Penal Code that created the offence of criminal defamation and which was increasingly used by state actors to criminalize and punish critical reporting, was declared unconstitutional by the High Court, which found that this section was an unjustifiable limitation of the right to freedom of expression (Article 19, 2016). Similarly, eight clauses of the controversial 2014 Security Laws (Amendment) Act (see Section IV) were declared unconstitutional, among them clauses concerning the rights of arrested persons and the right to media's freedom of expression (Ogemba, 2015)<sup>62</sup>.

The constitution has also been upheld in cases relating to individual organizations that have been the target of administrative harassment in recent years. On 11 November 2015, the High Court in Mombasa declared that a government order to gazette Haki Africa and Muslims for Human Rights, two prominent human rights organisations from the Coast, as terrorist entities and the subsequent freezing of their accounts was unconstitutional (The Observatory for the

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<sup>62</sup> However, in a decision seen by many as a set-back to media freedom, following a case brought by a coalition of media stakeholders challenging the constitutionality of the Media Council Act and the Kenya Information and Communication Act (see footnote 4), the courts have decided that the acts are constitutional (save a couple of clauses in the former). Many now fear that the media will self-censor to avoid the possibility of punitive fines if found in breach of a government-dictated code of conduct contained in the Media Council Act (Kadida, 2017).

Protection of Human Rights Defenders, 2015)<sup>63</sup>. Similarly, on 27 May 2016, the High Court, ruled that a decision by the NGO Board which threatened to cancel the KHRC's registration certificate and to freeze its accounts was unconstitutional and "riddled with improprieties and procedural deficiencies" (KHRC, 2016)<sup>64</sup>.

These favorable decisions are an incipient sign that the constitution is a "major source of empowerment for reform activists" (Nasong'o, 2014: 109). These decisions also point to a stronger judiciary, more willing and able to assert its role in the protection of human rights in Kenya and the values enshrined in the constitution more broadly. Nevertheless, these gains, however important, remain limited in a context in which old values remain etched on political culture and leadership in Kenya. This is illustrated by repeated assaults on the constitution by political actors since its adoption (see Murunga et al., 2014), by the enormous challenges of reforming other state sectors, such as the security sector, which continues to be heavily involved in perpetrating human rights violations in Kenya (see Ruteere, 2014), and by persistent high levels of crime and violence perpetrated by non-state actors.

### **4.3. Conclusion**

Many of the recent state-led measures to clamp down on civil society, which have occurred at least in part as an unintended consequence of the ICC intervention, are reminiscent of the Moi era repression. In the new context, however, they are further complicated by the new, widespread, informal means of violence, which the Kenyan state created during the 90s and after, but which continued to exist outside of its control afterwards. The contemporary environment for human rights defenders, then, can be understood as an overlap between continuities with the past history of repression, and changes that have occurred in the past couple of decades. Both these continuities and changes are deeply interconnected with the transformations in the nature of the Kenyan state after independence, and especially its monopoly on violence.

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<sup>63</sup> See Chapter 2, footnote 19, pg 45.

<sup>64</sup> The KHRC had been one of 957 organisations threatened with immediate de-registration by the NGO Board on 29 October 2015, allegedly because they failed to fully account for their finances (KHRC, 2016).

The combined effect of these trends is to complicate the context in which the protection regime in Kenya is embedded, with important implications for the protection of defenders. In particular, the widespread, high-rate of crime from the 80s and especially 90s onwards, translated into a readily available set of tools for state actors to disguise politically motivated acts of reprisals, especially against individual defenders. On the other, however, politically motivated violence, whether openly so or under the guise of crime, co-existed with purely criminal, non-state violence which often affected especially human rights defenders active in socio-economically marginalized communities such as informal settlements in urban areas or locations beyond the boundaries of the capital and the bigger cities.

At the same time, this particular group of human rights activists has also emerged as a particular category of activism within the human rights community, as the latter too has undergone its own transformations in recent years and became increasingly differentiated, especially along lines of class. In the next chapter I will survey these transformations, with a focus on how professional activists and grassroots activists in Kenya interact with each other within protection practices. I do that within a framework that also seeks to explore the outcomes of the tension between normative civil and political rights, and socio-economic claims.

## Chapter 5. Revisiting the History of Activism in Kenya through a Class and Socio-Economic Lens

*“Professionalising human rights has broken the mirage that we are all equal.”  
(Professional defender)<sup>65</sup>*

### 5.1. Introduction

At the invitation of a staff member of the Coalition, on January 18, 2014, I attended a meeting of civil society activists at the Kenya National Theatre. Dubbed “the Civil Society Forum”, this was an initiative that aimed to debate the role of the human rights community in Kenya’s contemporary society, to strategize on how to ensure that the political space for activism can be protected, and to brainstorm ideas for how to create what, during that meeting, was called “a home for the movement” – both physical and intellectual, in order to preserve the history of human rights activism in Kenya and to inform the struggles of future generations of activists. The first thing that struck me when most of the attendees, about forty in number, gathered in the large, but very modest space allocated for the meeting, and introduced themselves, was that, with a couple of exceptions, most of them were not affiliated with any of the large, well-established human rights organisations that I had come to know of during my short time in Kenya. It was no surprise then that, as the meeting progressed, the debate turned into a critique of Kenya’s human rights community becoming professionalised and consequently class-based, a development that had occurred in the latter decade and a half of its existence, and the implications of that development for human rights activists such as those attending the meeting.

The strength of that critique and the consensus around it were all the more striking as many of the ideas that came up during the conversation emerged after a (lengthy) exercise during which the participants were split into four groups, and asked to brainstorm suggestions for how to achieve the aims of the initiative. As feedback from the smaller groups kept streaming in to the bigger group, unsettling similarities began to emerge: when Moi, Kenya’s longest-term

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<sup>65</sup> Interviewed on 21 August 2014.

president, who had presided over an authoritarian regime, was ousted from power in 2002, the movement became too institutionalised and lost much of its membership. In the process, donors appropriated and started to dictate the agenda of the human rights community, depoliticising the latter. Also as a result of the movement becoming professionalised, education, connections and economic power started to matter more than passion and commitment in facilitating activists' trajectory and inclusion in the human rights community. The ensuing disconnect between the grass-roots sectors and what, during the meeting, were called "national institutions", led to grass-roots activists not receiving protection when they found themselves under threat. And more.

As the participants continued to develop these themes, it became apparent that the conversation was less about the role of the human rights community in Kenya's society, than it was about the role of this particular sector of human rights activists in the broader human rights community. Not unrelated, it also became apparent that the participants in the meeting worked with a concept of protection that was much broader than the approaches that I had encountered up to then, both in the literature and in the practice of protection organisations. Specifically, the concept of physical security for human rights defenders, was, for them, inseparable from a concept of financial security. As the leader of the meeting, an older generation human rights activist, whom I later got a chance to interview one on one put it:

*"[t]he majority of us can't feed for themselves, so we have to make sure that those in the street don't waste out just because they missed on big money because they are in the street fighting for our freedom (Ichim, personal fieldnotes).*

As I continued my fieldwork in Kenya throughout the next couple of years, and attended meeting after meeting as part of that, and as I started to conduct my own interviews, I came to learn that these themes were far from particular to that meeting, but that they cut across the concerns of grassroots communities of human rights defenders. It was not just that the history of the human rights movement was deeply contested among various sectors of the human rights community, and that these contestations, in turn, revealed its moments of fracture, but that the practice itself of protection was mediated by how the various stakeholders understood and positioned themselves within that history. As I observed these debates and their relationship to protection as a contemporary form of human rights practice, I slowly came to understand that

this history was key in explaining the genesis of professional defenders and grassroots defenders as distinct categories that interact within activism as a field of social and moral practice, as well as the specific forms of their interactions within the practice of protection more specifically.

To substantiate this argument, I start off with a series of brief insights from the literature that discusses the professionalization of human rights, which I use to set the stage for my own findings. I then focus specifically on the professionalization of the human rights movement in Kenya. I first explore the emergence and evolution of two key NGOs in Kenya in the 90s, the Kenya Human Rights Commission (KHRC) and Release Political Prisoners (RPP, currently known as Rights Promotion and Protection Centre), which took completely different trajectories in subsequent years. This was to some extent due to difficulties internal to RPP. However, I show, these different trajectories were also the result of the the changing context in which human rights organisations operated, and especially, transformations in cultures of human rights practice in Kenya under the impact of professionalization. In the second section of this chapter, I set the stage for exploring some of the implications of protection for defenders as a professional form of human rights practice, in later chapters of the thesis. I start off with a discussion of how protection in Kenya transitioned from a set of sophisticated informal practices to the current institutional set-up, and the convergence of factors that led to this. I then explore “the professionals” and “the grassroots” as distinct categories of activism, and show that class and socio-economic status play a crucial role in the constitution of these categories internally. I also show that those same factors are key in the power relationships that circumscribe their interactions, between themselves and with donors externally; I examine this last issue through analysing of the launch of a report on human rights defenders in one of Nairobi’s informal settlements.

## **5.2. The Professionalization of Human Rights: Preliminary Considerations from the Literature**

The professionalization of human rights has been the subject of ongoing debates within a large body of literature. Two broad approaches stand out in this literature. A first, “technical” approach focuses on the elements that make up human rights work as a profession, with the

intention to make recommendations for improving and speeding up the processes of professionalisation. This is best illustrated by O’Flaherty and Ulrich’s writing about the professionalisation of human rights field officers (2010a, 2010b). In short, the authors argue that professional human rights work must be conceptualized around three elements: a set of shared values (in this case those contained in the international human rights system and the broader set of values underlying it, such as the integrity, dignity and equal worth of all human beings), a body of scientific knowledge (derived from international human rights law), and procedures and systems to apply that knowledge (relevant judicial, quasi-judicial and diplomatic institutions, education and training centres, etc.) (idem: 14-17; see also Bruch, 2013; Horowitz, 2009). This approach treats the criteria of professional human rights work as a tool<sup>66</sup>. While this may be useful for institutions such as the UN and similar bodies, nevertheless, it depoliticizes and de-historicises discussions about the professionalisation of human rights work, and it obscures the complicated dynamics of this process in local settings.

A second, “interpretive” approach, provides a useful corrective to that. This literature too identifies professional human rights work with the overlap between expert knowledge and international human rights law (Bruch, 2013; Dudai, 2009; Moon, 2012), specific methodologies of implementation, which include monitoring human rights violations, reporting, and advocacy (Bruch, 2013; de Waal, 2003; Dudai, 2009; Moon, 2012; Tate, 2007a), and the values underlying human rights, especially objectivity and impartiality (Bruch, 2013; de Waal, 2003; Dudai, 2009; Hopgood, 2006; Moon, 2012). However, this body of literature usually approaches the topic from a position of questioning those criteria, both historically and in terms of their effects for practice. Thus, this literature highlights the fact that, despite its unquestionable, universal status, the criteria that define professional human rights are a result of the specific history of the international human rights movement (de Waal, 2003; Dezalay and Garth, 2006; Hoffmann, 2011; Moyn, 2012; Neier, 2012). As a result, many scholars in this body of literature question the relevance and effects of professional human rights in local settings, where social justice work has a longer history and, as a result, draws on alternative cultural frameworks. Without discounting the advantages of professional human rights work, scholars in this camp find that its

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<sup>66</sup> Not surprisingly, the literature on the professionalisation of humanitarian work takes the same approach (see Gentile, 2011; Walker and Russ, 2010; Walker, 2004).

encounter with local landscapes of activism is also defined by important limitations.

For example, the literature shows that the idea of “human rights expertise” entailed by professional human rights can have deeply problematic impacts in domestic settings. Identifying human rights expertise with the legal discourse of human rights may, in fact, impede the growth and effectiveness of the human rights movement. In her study of grassroots activism in New York City, Merry et al, show that the “nonlaw dimensions of human rights are more accessible to the poor than the law dimensions” (2010: 125), and that “[u]sing human rights law as a social movement strategy domesticates human rights ideology” (Merry et al., 2010: 124; see also Brown-Nagin). Perhaps more importantly, human rights as “expertise” can also negatively affect the relationship between activists and victims, by transforming it from one of advocate/victim to one of professional/client (Kennedy, 2002: 120). O’Flaherty and Ulrich argue that professionalisation can have a positive impact on the relationship between human rights field officers and their “clients” helping to establish that “peculiar quality of impersonal commitment and obligation that involves acting on the basis of expert knowledge, in accordance with set principles, and in compliance with established methods and procedures” (O’Flaherty and Ulrich, 2010: 6-7). While in O’Flaherty and Ulrich’s model for the professionalisation of human rights field officers that is seen as a necessity because their work is conceptualized as “service-delivery” (2010: 7), elsewhere the literature has criticised that dynamic, especially in the case of “locally embedded” activists. Harri Englund’s ethnography of activism in Malawi, for example, shows how activists engaged in human rights litigation appropriated the human rights language in order to distance themselves from the poor rather than enable them to mobilise for their rights: mastery of the human rights language became for activists a “certificate of privilege” (Odinkalu, 1999) and separation rather than a tool for solidarity.

Another important critique in this body of literature concerns the cooption of the human rights movement by donors (Cooley and Ron, 2002; Cornassel, 2007; de Waal, 2003)<sup>67</sup>. De Waal describes this process as being one where “ideas follow money” by which he means that both international and local agendas are being set up depending on what the donors are willing to

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<sup>67</sup> Professionalisation can also lead to co-option of activist agendas by the state, or a weakening of activist language vis-à-vis human rights abuses perpetrated by state actors (McAdam, 1996; Ndegwa, 1996; Tate, 2007b; Tsutsui et al., 2012).

fund, a process that has been facilitated by the historical trajectory of professionalisation. This leads to upward structures of accountability where organisations become accountable to donors rather than to the people they represent (2003; see also Englund, 2006). More broadly, Englund's study of human rights activism in Malawi points to the problematic way in which externally defined "professional projects" (Larson, 1977) encounter landscapes of activism marked by inequality and poverty. Scholars have written extensively about the inequalities and divisions within global civil society (Beckfield, 2003; Bob, 2009, 2005; Chinkin, 2001; Smith and Wiest, 2005). Far less attention has been paid to domestic divisions and the way in which global discourses affect these. Englund's ethnography shows that in poor settings professionalisation can create class between activists and those they advocate for (see also Mutua, 2008: 33-36). Here, however, I focus more on differentiations *internal* to the human rights community, and how these become divisions. In doing so, I join the scholarly voices which call for continuous investigations of how professional human rights and ideals of universalism work in practice. I start with examining the different trajectories of two important Kenyan human rights NGOs, the KHRC and RPP.

### **5.3. The Professionalization of Human Rights in Kenya**

#### **5.3.1. KHRC's Rise to Prominence**

The year 1991 and the repeal of Section 2A in Kenya's Constitution, which had previously legalised the one-party state, marked a significant moment not just in Kenya's socio-political history, but also in the nature of the struggle for human rights and democracy in Kenya. Like elsewhere across the globe, at this key juncture, activism in Kenya went through a fundamental shift: with the emergence of human rights and governance NGOs in the more open political space, human rights activism began to institutionalise, a trend that would solidify later, under the presidency of Mwai Kibaki.

Two of the most important human rights NGOs to emerge at this time were the KHRC and RPP. The KHRC was registered in Washington, in 1991, by five Kenyans in exile, trained abroad at reputable schools, and well connected to international networks, in part through their efforts to publicize details about Moi's repressive regime back in Kenya. For example, Makau

Mutua, one of the founders of the KHRC, and chair of its board since its inception, had been an employee of the Lawyers Committee for Human Rights and had spent time testifying in Washington and building political pressure against the KANU regime (Mutunga, 1997: 68)<sup>68</sup>. Maina Kiai, another one of the founders of the KHRC, and its first executive director, had been trained in law at the University of Nairobi and subsequently Harvard Law School, where he read for a masters in law. Kiai had been actively involved in organising protests against the KANU regime at the Kenyan Embassy in Nairobi and subsequently became the organisation's first executive director after it moved to Kenya in 1992 (Interview with Maina Kiai, 2 July 2014)<sup>69</sup>.

From the start, the KHRC adopted professional methodologies of human rights work as a cornerstone of its activities. According to the KHRC's Strategic Plan for the period 2014-2018, the KHRC's founders "chose the human rights language because of the innumerable human rights violations taking place in the country during that time. But the founders had no experience on how to operationalise the language. In the formative years, KHRC used the template of existing human rights organisations, which were quite a novelty in Kenya" (KHRC, 2014: 13). When I asked Maina Kiai to comment on this passage, he explained to me that the founders used the template of the professional Western human rights NGO because they were familiar with it through their previous work. More importantly, however, the decision to start publishing reports, and later reference them to regional and international human rights law was dictated by the imperative to challenge the domination of organisations like Amnesty International (AI) and Human Rights Watch (HRW) in researching and publishing reports about Kenya (Interview with Maina Kiai, 2 July 2014). To displace that dominance, however, KHRC had to resort to the same human rights methodologies that had ensured the prominence of AI and HRW to begin with.

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<sup>68</sup> With a masters and doctorate in law from the Harvard Law School, Mutua subsequently took up a professorship at the University at Buffalo School of Law, and is currently a well-known human rights scholar.

<sup>69</sup> The other founders were Peter Kareithi, a journalist, Kiraitu Murungi (who subsequently went into politics), and Willy Mutunga. Mutunga was (and remains) one of the most reputable human rights activists in Kenya. With a doctorate in law from the Osgoode Law School in Canada, he became the second executive director of the KHRC after Maina Kiai's departure, later on taking up a post with the Ford Foundation. From 2011 to 2017 he was Kenya's Chief Justice and spearheaded important reforms in Kenya's justice system. The KHRC was only registered in 1994. Initially, its earlier application to be registered was refused on the basis that the name was inflammatory and that they were pursuing anti-government activities. Eventually, Willy Mutunga, at the time vice-chair of the NGO Board, was able to push the registration through in 1994 (Interview with Maina Kiai, May 2014).

At least in part, this ensured the KHRC's visibility with donors looking to fund new work in Kenya at the time. In the first year of its existence, the KHRC stayed afloat through Kiai's personal savings and voluntary work from friends and families. Its first donor funding came from the Swedish NGO Foundation for Human Rights, whose executive director, on one of her visits to Kenya, read one of Kiai's opinion pieces in the Daily Nation, and saw him give a press statement. She later expressed an interest in funding the KHRC's work and a day before her departure they arranged a two-year grant. Shortly after, the Ford Foundation became their main funder with a 40000 USD grant. Funding continued to grow after that – at the time of Maina Kiai's departure, in 1998, the organisation's budget stood at 1 million dollars<sup>70</sup> (idem).

The KHRC's first generation of staffers were recruited from the activists of the 80s and 90s, some of whom had been imprisoned and tortured at Nyayo House, and many of whom had been expelled from the University because of their activism. Maina Kiai explicitly targeted this group – “young student leaders and people expelled from the university” – for formal employment with the KHRC in the knowledge that, without their “papers”, they would have a hard time finding a job:

*“It is still one of the things that gets me in this country, that once you leave a job or you are jailed and you are doing this work people just abandon you, you are on your own, totally on your own, (...) so you end up being misused by politicians or doing the wrong thing, when you shouldn't” (Interview with Maina Kiai, 2 July 2014).*

A second factor that underscored this recruitment strategy was the firm commitment to human rights that these activists had already proven through their sacrifices: “we were clear that the first bunch of our officers would be people who had contributed in some form” (idem). Overall, this first generation of staffers did sufficiently well “to keep the organisation going” (idem). Some among them did very well and went on to found other organisations after leaving the

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<sup>70</sup> At the time of my interview with him, in July 2014, the KHRC's funding stood at 2.5 – 3 million dollars (Interview with Maina Kiai, 2 July 2014). In 2012, the KHRC was one of seven organisations to be awarded a 1 million dollars grant by the Ford Foundation, as part of a programme to strengthen voices in the Global South – a testament to how important the KHRC had become by that time (see <https://www.fordfound.org/the-latest/news/ford-awards-seven-human-rights-organizations-1-million-each-to-become-global-leaders/>, last accessed on 15 February 2017).

KHRC; others, however, struggled with addictions such as alcohol abuse, the result of trauma suffered in the chambers of Nyayo House, and this interfered with their ability to carry out their work in an institutional setting<sup>71</sup>. All these staff, however, maintained a sense of entitlement to their jobs – however well or poorly they did at it – due to their past involvement in activism and the sacrifices that that had entailed. This created tensions when, later on, the KHRC started also hiring people who did have formal qualifications and were better able to perform tasks like documenting and writing across a variety of professional genres, that ranged from human rights reports to funding proposals: “*some people felt that they were better than others because they have been in jail*” (*idem*). During his leadership, from 1992 to 1998, Maina Kiai could still adapt to these staff, and himself sought to learn from them and to incorporate in the working culture of the KHRC methodologies of activism that they had learned in the 80s. For example, the KHRC helped Wafula Buke – a student activist in the 80s and later a staffer of the KHRC – to initiate and run a campaign against police killings that involved marching with coffins to police stations (Interview with Wafula Buke, 31<sup>st</sup> March 2014). The KHRC was also actively involved in organising and participating in the widespread, anti-Moi protests throughout the 90s<sup>72</sup>.

Much of that would change during the leadership of Willy Mutunga, the KHRC’s next executive director. Mutunga was confronted by the same problems that stemmed from having staff that had come from radically different backgrounds and hence lay different claims to their place within the organisation and its aims. But, unlike Maina Kiai, Mutunga took over an organisation that was operating in a very different environment: the 1997 elections had been lost to Moi by a fragmented opposition, and protests – at their peak during election cycles (see Press, 2012) - had died down by 1998, when Mutunga came at the helm of the KHRC. According to Wafula Buke, at around this time, the KHRC’s donors started feeling uncomfortable with the KHRC’s methods, which, they felt, “*mov[ed] people towards anarchy or disorder*”, and started putting pressure on the KHRC to move towards less confrontational methods, that were geared towards collaborating with the state (Interview with Wafula Buke, 31 March 2014). This caused

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<sup>71</sup> With the benefit of hindsight, Maina Kiai thinks that they should have hired a counsellor for them at the time (Interview with Maina Kiai, 2 July 2014).

<sup>72</sup> According to Maina Kiai, the KHRC’s support for and involvement in protests was inspired by the US civil rights movement and its achievements, and it was conceptualised as a departure from the more sanitised methodologies of organisations like AI and Human Rights Watch (HRW), who had done a lot of work on Kenya and other countries in the Global South up to that point (Interview with Maina Kiai, May 2014).

many of the first-generation staffers, with a background in radical activism, to leave the KHRC. Subsequent staffers were recruited from among those who were malleable to adopting professional repertoires of activism and could be expected to perform well in an institutional setting: by 2002, the KHRC would not employ staff unless they had a degree that prepared them for carrying out their work professionally (Interview with professional defender, 21<sup>st</sup> August 2014).

Although, in the first few years of its existence, the KHRC combined professional repertoires of activism with more radical ones, inherited from the activism of the 80s and that still defined mainstream activism in the 90s, by the end of the 90s and beginning of the next decade its work revolved almost exclusively around the professional component. The reputation of its founders, the quality of its outputs, and its increasing emphasis on professional repertoires of activism ensured that it would thrive in the post-2002 dispensation. During this time, practicing human rights professionally became essential for organisations' ability to survive in the new environment, where donor preferences changed once again and the culture of human rights practice in Kenya adapted accordingly<sup>73</sup>. RPP, on the other hand, an equally important organization throughout the 90s, but of more modest origins and with a different ethos, would take a completely different trajectory during its existence.

### **5.3.2. RPP's Downfall**

Release Political Prisoners was born out of a strike staged in 1992 at Freedom Corner – a well-known site in Uhuru Park next to Nairobi's Central Business District - by the mothers of 53 political prisoners held and tortured at Nyayo House during the Moi regime<sup>74</sup>. Initially, RPP was formed as a pressure group whose aim was to protect the mothers from the ire of the Moi regime and to support them in securing the release of their sons. All of RPP's work during the first years

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<sup>73</sup> The KHRC has remained the most reputable human rights organisation in Kenya. The quality and training of its staff has stayed constant throughout the years, as has the professional quality of its outputs. The KHRC's staff are a constant presence at regional and international fora, such as the Africa Commission on Human and People's Rights or the United Nations Human Rights Council, where they submit shadow reports on a regular basis, and where they conduct lobbying and advocacy around issues of interest in Kenya.

<sup>74</sup> For an analysis of the mothers' strike from feminist perspectives, their strategies and impact, see Tibbetts (1994).

of its existence was done on a voluntary basis, and small costs involved were covered through contributions from its members:

*“RPP had a desk at Njeri Kabebere’s office -- someone would go there 3 days a week; we would meet there to discuss what to do about political prisoners -- do they need medicine, how would we do it? We did not have money, but those with a job would put in some money, and those without would contribute the work. You would take a bus to Kisumu overnight, go and see the prisoner in the morning, and come back to Nairobi by next bus. You only eat before and after you come back -- that was all the money we had. This is how we released the 51 prisoners in 1992, and the 52nd in 93 or 94” (Interview with Muthoni Kamau, RPP member, 1 August 2014).*

According to Muthoni Kamau, during that time, the Nairobi based donors would not fund RPP because the group was “too radical”. However, in 1996, RPP too received a funding offer from the same Swedish NGO that had first funded the KHRC<sup>75</sup>. Before accepting funding, the core membership of RPP met to discuss whether they should accept funding from an international donor, and what the benefits and disadvantages of doing so would be (Interview with Muthoni Kamau, 1 August 2014, Nairobi; Interview with Gitau Wanguthi, 22 July 2014, Nairobi). Even after they did decide to accept funding, with that same money, RPP first held two workshops to decide how they were going to relate to donor money and to ensure that it would not hijack the group’s activities by aligning them to donor interests rather than RPP’s interests: *“that was the level of political awareness in RPP at the time”* (Interview with Muthoni Kamau, 1<sup>st</sup> of August, Nairobi). To receive funding, RPP had to start by operating as a project of the KHRC, which by that time had already registered and had financial accounting structures in place. Soon after RPP was able to account for funding through the KHRC, the Danish International Cooperation Agency (DANIDA) also approached them with an offer to fund the rest of their activities.

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<sup>75</sup> According to a long-standing member of RPP, who continues to be actively involved with them, this occurred after the press publicized the arrests of a number of RPP members who had staged a protest (Interview with Gitau Wanguthi, 22 July 2014).

In the first few years after receiving funding, RPP was able to hold to its own when donors intervened in situations where they felt that the organisation's activities were too radical and could potentially harm them as funders<sup>76</sup>. However, donor funding affected RPP in other ways. Specifically, the establishment of a small secretariat to coordinate its activities, with paid members of staff, created a class structure in what had been an egalitarian, membership organisation up to then:

*“The little shillings that were contributed before stopped being given, and that goes away with the commitment and the belief system that the organisation had. People started changing, it brings in a different association dynamics and it brought in a different culture. Because now this is an activist organisation, with a paid leadership, and with members doing risky stuff. But now there are members in the secretariat, and because they are employees, they have a medical insurance and a salary, and when it comes to going into the streets, those hurt in the streets have insurance, but ordinary members don't. This brought tensions until ordinary members went off; it was hard even for [the] leadership to continue with the earlier culture and commitment” (Interview with Muthoni Kamau, 1<sup>st</sup> August 2014, Nairobi).*

This rift further deepened when donor-dependence slowly crept in with the increase in donor-funding. Towards the end of the 90s, the donors were in a position to ask RPP that it hire human rights professionals rather than members, and this accentuated the pre-existing dynamics:

*“Some people feel that they are employees of RPP, and we are going out in the streets, they are not coming, yet these are the people who are getting the insurance. So, you, the member who don't even have insurance or salary risk*

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<sup>76</sup> In a particular incident that took place in 1997 or 1998, the Kenya Bus Service arbitrarily increased bus-fare rates and RPP members, seeing this as a human rights issue, made and distributed leaflets urging people not to pay the new rates. A few days later, RPP got a call from one of its funders, who told the secretariat that it (the funder) would have problems with the government as one of RPP's main funders. But RPP stood its ground and reminded this funder that it knew how RPP worked when they committed to fund them, and that RPP would not go back on their planned activities (Interview with Muthoni Kamau, 1 August 2014).

*your life in the street for the organisation who is paying someone else to be in the office” (Interview with Muthoni Kamau, 1<sup>st</sup> August 2014, Nairobi).*

This internal dynamics, extremely damaging to the RPP, was compounded by two factors post-2002, after the ascension of Mwai Kibaki to power on a platform of reform and anti-corruption, and the state’s institutionalisation of human rights through the formation of the KNCHR. In the new dispensation, the same factors that cemented RPP’s downward path, ensured KHRC’s trajectory in the opposite direction.

### **5.3.3. Donors, NGOs, and Professional Human Rights**

The first of these factors consisted of shifting donor attitudes at the time, with much of the available funding diverted to the state and to the state human rights institution. The decrease in the donor funds available to NGOs led to a fierce scramble within civil society for the little that was available. This was eventually won by the big, well-established organisations that were well-versed in professional methodologies of activism and visible through their written outputs, to the detriment of the smaller, community-based organisations or organisations that favoured working directly with communities at the grass-roots rather than research and publish human rights reports. In that scramble, RPP, like other similar organisations, came out a loser to bigger organisations like the KHRC, the ICJ-Kenya, and FIDA-Kenya (Interview with Gitau Wanguthi, RPP member, 22 July 2014).

A second crucial factor was the changing culture of human rights activism itself in Kenya, which in the 2000s could no longer easily accommodate RPP’s methodologies of activism. Throughout the 90s – which were defined by massive street protests against the Moi regime, RPP’s own tactics – which consisted primarily of campaigns for the release of political prisoners, protests, and marches, - coincided with what were regarded as mainstream and effective forms of human rights activism at the time. Post-2002, after the state itself institutionalised human rights through the formation of the KNCHR, those methodologies were almost entirely displaced from the repertoire of professional Kenyan human rights NGOs. Many of these were now putting pressure on the state by working with

it, rather than through direct confrontation, as they had traditionally done (Interview with George Morara, 21<sup>st</sup> August 2014). Throughout the 90s, professional methodologies of activism co-existed with more radical ones, such as street protests. In the new environment, however, professional repertoires – research, writing, report publishing, and involvement with regional and international mechanisms to put pressure on the state, or what Tate calls “the new codes of knowledge production and institutional practices” (2012: 150) became the definitive markers of effectiveness in activism.

This had important effects on both organisations and activists. To survive, organisations like RPP had to make a choice between older forms of activism, which were an intrinsic part of their formation and ethos, at the risk of perishing, or sacrifice those in favour of professional methodologies in order to secure donor funding. Post-2002, RPP slowly started acknowledging this reality, and shifted much of its work towards research and publication of reports, even as many of its staff and members remained critical of how effective the new methodologies might prove in effecting change. In a similar move, towards the end of the same decade, RPP considered several times the possibility of changing its name since it was felt that the term “political prisoners” no longer reflected realities in Kenya. Eventually, in 2010, after the adoption of Kenya’s new Constitution and its progressive Bill of Rights, RPP’s board members voted to change the organisation’s name from Release Political Prisoners, to Rights Promotion and Protection<sup>77</sup> - a name that is much more attuned to professional cultures of activism in Kenya (Interview with Gitau Wanguthi, 22 July 2014, Nairobi). By the time RPP had made this move, however, it was too late – civil society space had already been occupied by bigger, professional organisations, and its own staff did not have the requisite training and formal qualifications to undertake professional work with outputs of the same professional standards. Nowadays, RPP, reduced to a core of three staff, barely survives from one day to another.

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<sup>77</sup> After the release of the 53 Nyayo political prisoners, RPP’s tried to broaden the concept of political prisoners to a symbolical meaning that would include in its remit every Kenyan who was still living in poverty, affected by political greed and corruption. These efforts failed. Yet, the imagery employed by contemporary, well-known activists like Boniface Mwangi often successfully relies on precisely that same concept (see back the Introduction to Chapter 4).

KHRC, on the other hand, became the single most well-known human rights NGO in Kenya. Changes in the landscape of activism in Kenya over time, coupled with a shift in the Kenyan state's own positioning towards human rights norms (albeit mostly as performance) and donor preferences for professional human rights, created the necessary space for the KHRC and other similar professional organisations to thrive.

These shifting cultures of human rights practice also had another, more insidious, and perhaps more important effect. Elevating professional repertoires as the markers of effective activism created hierarchies of knowledge and action within the human rights community. These, in turn reflected in increasingly rigid hierarchies between activists, which often came with assumptions of value-judgement attached to them. When the older methodologies of activism were displaced from the repertoires of professional NGOs, they were not disappeared, but relegated to an “inferior” position, along with those who were still the proponents of these methodologies of activism in Kenya's firmly class based human rights community in the post-2002 years. As the institutionalisation of human rights by the state itself post-2002 created formal spaces for engagement between civil society and the state, these spaces became reserved for the privileged few who mastered the rules of the “appropriate” modes of interaction with the state:

*“You are not engaging in those spaces as a human rights activist, but as a human rights professional. The elite consensus works at that level whereby you are creating space for your own. The other guys, down there, the trouble-makers, you don't want to give them room”* (Interview with professional defender, 8 January 2015).

The rest became the “trouble-makers”, “those guys in the stone-age”, “the non-descript” (Interview with human rights professional, 8 January 2015), “*cranks, mad men*, [who] don't have papers, they demonstrate about issues that people have forgotten all about” (Interview with human rights defender from outside of Nairobi, 25 March 2015, my emphasis)<sup>78</sup>.

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<sup>78</sup> Both of these interviewees have a long history of involvement in human rights activism in Kenya.

The human rights community in Kenya was class-based and a project of the middle class from the start (Mutunga, 1999). However, the professionalization of human rights, coupled with the spread of the human rights discourse and an increasing number of those who rally the discourse to label their work as human rights, has crystallized pre-existing differences. As a result, professional activists and grassroots defenders have emerged as distinct categories of activism on opposite sides of that class divide. Even as the professionalization of human rights did not create class in the human rights community in Kenya in the strict sense of the word, *it made class matter in new ways*. These, as I will show, are mediated by status and especially socio-economic factors, an issue that becomes especially apparent in the practice of protection. I will return to that below, but not before I dwell in some detail on the professionalization of protection for defenders at risk in Kenya as a form of human rights practice.

## **5.4. Professional Human Rights and Implications for the Protection of Defenders**

### **5.4.1. The Professionalisation of Protection as a Form of Human Rights Practice**

Protection practices long precede the birth of the protection regime – they are, in fact, integral to the development of the human rights movement itself (see, for eg. Loveman, 1998). In Kenya, especially beginning with 1982, when, after a failed coup, Moi increased his repression, activists established an elaborate system of protection for fellow activists that continued into the 90s. This included a sophisticated relocation system<sup>79</sup> that relied on those of means raising the money necessary for flight tickets and small funds to enable exiles to start a life abroad. Equally important were networks of other exilés abroad receiving the new-comers and helping them with money, food, housing and job-hunting until they were sustainable on their own. These newcomers would then themselves become part of the receiving networks for other newcomers (Interview with former exilé, 21 August 2014)<sup>80</sup>.

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<sup>79</sup> This usually happened through Tanzania - under Nyereri's leadership at the time, who viewed favourably the left-leaning underground movements in the region, and later through Uganda, when Museveni, Nyereri's disciple came to power (Interview with human rights professional, 21 August 2014).

<sup>80</sup> Many of those who fled in the 80s and 90s were able to finish their studies abroad, and, with formal qualifications from reputable institutions, either went into politics or they became part of Kenya's newly professionalized human rights structures when they returned.

In the 90s, these efforts by networks of exiles abroad were joined by a group of the newly emerged organisations in Kenya – often headed by individuals that had already played a key role in these networks, usually from abroad before their return to Kenya in 1992 or later. Some of these organisations then diversified their protection efforts along other lines. The KHRC, for example, after getting its registration in 1994 in an environment where registering as an NGO with a human rights mandate was nearly impossible, offered legal cover to other groups so that they could operate. According to Maina Kiai, by 1997 they were hosting at least 6, 7 other projects, some of which subsequently became NGOs in their own right (Interview with Maina Kiai, 2 July 2017; see also Murungi, 2008). I already mentioned above Maina Kiai’s efforts to also hire activists that had either been jailed and/or been expelled from the university due to their activism; at the time, he specifically conceived of this as a protection strategy for activists that risked being left on their own otherwise.

*"Even before the HRD<sup>81</sup> term came up, KHRC was offering succor to people who needed it, to people who were HRDs in their own right and did not have anything to do, or who couldn't... because you could not get a job if you had been in jail, or university, [we were] giving space for them to operate so at least, even though we were not hiding them or protecting them in that way, at least we were giving them a place where they could pick up their lives again. And some have done very, very well." (idem)*

Many of those who fled, especially the first generation of exilés, were middle-class Kenyans. However, many others, especially throughout the end of the 80s and the 90s were from more modest backgrounds, what Press (2012) has called the “foot-soldiers for democracy and human rights”, young people, usually student activists. At that time, although the human rights community was well on its way to becoming professionalized, the boundaries between the professional and non-professional sectors were still porous: as we have seen above, many activists without formal training were accepted – and even effectively sought after – in the professional sectors.

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<sup>81</sup> Where I use the acronym HRD in text that I quote from my interviews, informal conversations, or observations, participants themselves used the acronym (rather the full term “human rights defender”).

Early on then, despite the fact that human rights was a project of the middle class, protection practices were more egalitarian in nature and mediated by personal relationships rather than by institutions; equally importantly, these practices were informed by home-grown notions of solidarity and mutuality, rather than by formal norms:

*“It was a looking out for each other system, whereby those who had found safer space tried as much as possible to organize for safer spaces or to secure the lives of those who had not secured safer spaces, one of them being the one that I told you, looking for means of evacuating them from places of danger“ (Interview with former exilé, 21<sup>st</sup> August 2014).*

Much of this was going to change in the subsequent years, as the practice of protection itself became professionalized and institutionalized. As the 2007/8 post-election violence affected Kenya’s image abroad and the environment for human rights defenders internally, and as the international community became increasingly concerned about the latter, the human rights defenders discourse captured the political imagination of activist communities in Kenya. In 2007, they established the first NGO concerned specifically with the protection of defenders in Kenya. The National Coalition of Human Rights Defenders Kenya (the Coalition) was the result of a fortuitous convergence of factors. Firstly, by 2007, the protection regime and afferent norms had gained a strong foothold internationally, and a sizable number of international organisations were active both in further spreading the emerging norms concerning defenders and in offering protection to defenders, primarily from the Global South. Secondly, the ICC investigations led to the emergence of “witnesses” as a new vulnerable category in need of protection. In a context in which defenders themselves who supported the ICC were the targets of reprisals, the two categories often overlapped, with the effect that ideas of witnesses’ vulnerability and need for special protection transferred to defenders (Interview with Gitau Wanguthi, 22 July 2014). Thirdly, the protection regime was gaining ground regionally as well, through the Kamapala-based Defend Defenders (formerly East and Horn of Africa Human Rights Defenders Project). Founded in 2005, Defend Defenders operated as the secretariat to a network of over 75 national human rights organisations in the region, including Kenya and Ethiopia, and it offered protection to defenders in the region, in addition to conducting advocacy at the regional and international

level on behalf of defenders. Defend Defenders played, and continues to play a key role in mediating norms and discourses between international fora and actors in countries in the region. One of the main strategies it has employed to that end has been to support the formation of national chapters in countries in the region – with the Kenyan Coalition being one such chapter. In effect, national chapters are replicas of its Kampala office to the extent that the former have copied the programme structure and working methods of Defend Defenders.

As in other countries in the region, the Kenya Coalition was created as the outcome of a three-day capacity building workshop organised by EHAHRDP in November 2007 in Nairobi<sup>82</sup>. Throughout 2007 to 2012 it was hosted as a project by two other prominent human rights organisations, the Independent Medico-Legal Unit (IMLU) and the KHRC. In 2012, the Coalition finally established its own fully functioning Secretariat, and hired its first, full-time staff, initially a Protection Officer, and later an Advocacy Officer and a Capacity-building officer – each corresponding to its three main programmes.

The Coalition's efforts were complemented a by those of international organisations concerned with the protection of defenders, either wholly or through parts of their mandates, who set up camp in Kenya at around the same time (PI opened a protection desk in Kenya in 2010; PBI and Freedom House both opened a Kenya country programme in 2012). Subsequently, the Kenya National Commission on Human Rights also started fundraising to integrate work on defenders in its broader mandate. By the end of 2013, when I started my fieldwork, Kenya had a fairly well developed institutional infrastructure for the protection of defenders, that was concerned with the protection of both individuals and organisations.

Although these were all new initiatives in Kenya's layered, historically complex landscapes of activism and repression, and welcomed as such by many, their working methods, and especially the broader systemic issues that these represent, are also contested by many in Kenya's activist communities. On the one hand, these organisations are Nairobi-based and have developed and become embedded in Kenya's professional human rights

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<sup>82</sup> The outcome report from this workshop can be accessed at <https://www.defenddefenders.org/wp-content/uploads/2011/11/Kenya-HRD-workshop-report-FINAL.pdf> (last accessed on 9 august 2017).

sector<sup>83</sup>. Moreover, organisations like the Coalition often rely for much of their work on defenders living and working in rural areas or small town centres outside the capital, and on defenders from informal settlements in Nairobi. This is further complicated by the fact that the vast majority of those defenders, typically known as grassroots defenders, live and work in those same socio-economically marginalised areas, and are not paid for their work. As a result, protection institutions and most (though not all) of the beneficiaries of their programmes fall on opposite sides of the class divide that crystallized when the human rights community in Kenya became professionalised. This in turn, creates a complex power relationship between protectors and their beneficiaries, which is key for explaining the (often unexpected) directions that protection takes in practice. I will return below to discussing how these power relationships influence protection through the lens of a specific event and how it unfolded. Before doing that, however, I want to describe in more detail the professional defenders and the grassroots defenders as distinct categories of activism that interact within the protection project in Kenya. In particular, I want to show how socio-economic factors are structural to how these categories are constituted.

## **5.4.2. Human Rights, Class and Power Relationships**

### **5.4.2.1. The Professionals as the Gatekeepers**

In February 2014, I attended a meeting organised by the KNCHR, at its offices, which occupy nearly two of a four-storey modern building in Kilimani's upper middle-class, tree-filled neighbourhood. This was the first time during my fieldwork that I was visiting the KNCHR offices. Its reception was tastefully decorated with framed posters advertising human rights issues that the KNCHR had recently been engaging with, on the background of a brick wall, orange painted – the brand colour of the KNCHR. On the right hand-side, a cabinet with transparent glass-walls boasted human rights awards and framed group photos of staff. Simple, black chairs for waiting visitors and clients, lined the left side wall. There, I was met by two members of staff who asked me to wait while they confirmed the meeting. I

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<sup>83</sup> The KNCHR has offices in four of Kenya's former regions, but considerably less staffed than its Nairobi head-office.

was then led through an airy, open-desk space, staffed by busy employees in formal attire, to a large boardroom furnished in the minimalist, modern style that I would later observe in the offices of other professional organisations. A long, oval table and large office chairs occupied the middle of the room; from behind transparent blinds filtering the day-light, the large windows stayed open to breeze out the heat of the Kenyan summer.

By the time I got there, only two of the invitees had arrived, both of whom I had met before. They were young and with a background in law; while one was practising as a lawyer occasionally doing work for NGOs, the other was directly employed by a Kenyan NGO in an advocacy role. The aim of the meeting was to strategize around the bail release of four defenders who had been recently arrested during a protest and their subsequent court-case. As we waited for the remaining participants to arrive, the two young professionals started talking about the case. And as the conversation progressed, I began to understand that both of them profoundly disagreed with the idea of organising a protest as a method of contesting and seeking to redress Kenya's current socio-political realities. Towards the end of the conversation, the professional working with the NGO told the lawyer "*these people just don't understand; I know that we are now sitting in these chairs because of them, but things have changed.*" The lawyer nodded in agreement, and added, "*yes, these methods don't work nowadays anymore*" (Ichim, personal fieldnotes).

At the time of hearing this conversation, still early on in my fieldwork, I was surprised to come across such a trenchant critique of protest as a form of activism, and even more surprised to understand how radically the younger generation of professional activists distanced themselves from those who still regarded methods such as protests and public rallying as effective forms of reclaiming civic space and holding the state to account. Many among the latter were activists from the grassroots, either of a younger age and coming from Nairobi's informal settlements, or older generation activists who had not managed to fit in the newly professionalised structures when that change had happened. As my fieldwork progressed, I began to understand that this was by no means a singular episode, but that many professional activists, both young and old conceived of themselves as a distinct group from that of their grassroots counterparts. Rather than intentional, this process was the

natural result of a series of social markers that coalesced to constitute professional defenders as a distinct category. These markers ranged from the location and style of their offices, to their outward appearance, to their working methodologies.

The KNCHR office-style that I described above is not uncommon among the biggest and wealthiest Nairobi-based human rights organisations. Sometimes their offices do not display the same wealthy markers of style – the KHRC, for example, has its offices in a short, sprawling old house along Gitanga Road, in Lavington, with offices relatively modest when compared to those of the KNCHR and other big organisations. Even then, however, these offices are still located in Nairobi’s wealthy, leafy neighbourhoods widely known as “*mzungu* areas” (*mzungu* is the Swahili term for “white person”, and, on the background of Kenya’s colonial and post-colonial history, its meaning has acquired strong connotations of wealth and power). Office-style and location, is also matched by clothing style and manner of outward presentation more generally. The vast majority of professional human rights activists that I have encountered throughout the duration of my fieldwork, both from the two institutions that I was based with and beyond, don elegant, Western style attires – either suits, or variations thereof – often in monochromatic ranges of black, brown or grey. Women NGO workers will often complete that outfit with high heel shoes, expensive, intricate hair styles, and manicured nails.<sup>84</sup>

The working methodologies of professional activists in turn draw on a repertoire that includes research and writing, strategic planning, internal monitoring and evaluation meetings on a regular basis and the use of complex logframes, writing of funding proposals and reports back to donors, complex financial accountability procedures, and formal and informal meetings with their peers in NGO offices or in the conference rooms of Nairobi’s vast range of hotels. The preferred mode of travel for trips to and from the meetings that make up much of the schedule of professional activists is by taxi, and the costs for these trips are covered by the budget of their respective organisations. Finally, professional,

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<sup>84</sup> Englund sees this as a process of self-regulation by NGO professionals, which, according to him, “is far more insidious than any law that the government can formulate” (Englund, 2006: 18-20). Like other scholars, Englund concludes that insitutionalised human rights works to the detriment of the rights holder, by excluding the possibility of larger forms of mobilization.

institutionally affiliated human rights workers are either provided with a phone and monthly credit for work purposes, or they are provided solely with phone credit which they can use on their own phone.

Unsurprisingly, markers of a formal style of professionalism in outward appearance are identical in outlook to those adopted by the donor group. Embassies themselves are housed in Nairobi's upper-class or upper middle-class areas; those that I had an opportunity to visit were frequently built and furnished in contemporary style, with airy halls and rooms, and, in more than one occasion, modern artwork adorning their walls. Similarly, the working methodologies that I have mentioned above coincide with donor preferences for what they are willing to fund. The political officer of one of the main embassies in Nairobi who funds human rights work in Kenya, put it to me in the following way in our interview:

*"In this context, of course, it is extremely important that these are organisations that have the proper structure, administration, proper financial management, but also that they give an impression that they know what they are speaking about, that they have professionals, people with qualifications and training and expertise, (...) that they can present in a manner which is convincing and thorough and that they also cooperate with similar stakeholders and other operating on their own. And yes, they also participate in these forums and networks that exist." (Interview, 15 May 2014)*

As a result, those organisations and groups that do not satisfy these criteria can rarely access direct funding from donors. Repeatedly, throughout my donor-interviews and conversations, when I asked about funding for grassroots groups, the donors would acknowledge that, even as they were aware of the need to extend resources to these more "peripheral" actors, their preferred strategy was to fund professional groups to then work with their grass-roots counterparts (Interview with Political Officer, Embassy of Western country, 14 May 2014; Interview with Political Officer, Embassy of Western country, 14 May 2014; Interview with Political Officer, Embassy of Western Country, 6 August 2014; Interview with staff of donor organisation, 15 May 2014). While this approach is suitable to satisfy the risk-averse donor world, it also entrenches the class dynamics that defines the interaction between the professionals and the

grassroots, and it deepens the pre-existing power relationship between these two groups, making the former a gatekeeper in the system. Excluded from those structures, meanwhile, grassroots defenders have emerged as a “subaltern” category, which, like that of the professionals, is defined by its own social markers.

#### **5.4.2.2. The Grassroots as the “Subaltern”<sup>85</sup>**

On the 14<sup>th</sup> of March 2015, I attended a meeting of activists from Mathare, one of Nairobi’s largest informal settlements. I had been invited to join by one of my informants, himself a resident of Mathare and active with a small youth group there, whom I had interviewed on the previous day. With the help of a Kenyan PhD student at York University in Canada, a number of activists from Mathare had been engaging in efforts to set up a community forum to address human rights violations in Mathare<sup>86</sup>; this meeting was part of those efforts and it sought to refine a concept note on the forum’s structure and activities. I met Mugambi at the petrol station by the main road leading into Mathare; from there, we moved to a small, local joint serving tea, fries and sodas, where the remaining participants were waiting. We climbed a narrow set of worn-off stairs to the first floor, to a windowless room, made smaller by the short ceiling and the faint, yellow light coming from the only lightbulb in the room. Three narrow benches lined the walls, their colour impossible to tell in the semi-dark (Ichim, personal fieldnotes). This space, with its restrictions, was not unusual among those that grassroots defenders used for their work. A few weeks earlier, another one of my informants had shown me the office space of a different youth group in Mathare. Located in a tiny structure made of corrugated iron-sheets, and containing two old, broken armchairs and a few other random objects left in disarray (a broom, a few yellow plastic containers typically used to store water in places like Mathare, and an amputated chair), the office seemed like a shed – a space for storing disposables - more than a meeting space.

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<sup>85</sup> The “subaltern” has become a key concept in post-colonial literature to investigate phenomena of oppression and marginalization theoretically (Gramsci and Forgas, 2000; Spivak et al., 2013). Here, I borrow the term from one of my interviewees, whom I quote later in the text.

<sup>86</sup> This later became Mathare Social Justice Centre. See <http://www.matharesocialjustice.org> (last accessed on 10 March 2017).

The contrast between professional activists and those from the grassroots is not limited to the spaces – formal and informal – from which they work. As is the case with their professional counterparts, grassroots defenders’ outward appearance, methodologies of and possibilities for activism also function as markers of their status as a distinct category within Kenya’s landscapes of activism. When I had met Mugambi for our interview the previous day, he was wearing a pair of worn-out blue jeans, that looked like they had long exceeded their shelf-life. From underneath the orange jumper, threatening to unravel under the weight of holes, a crumpled light-blue shirt looked like it had nowhere to belong. The right hand-side bottom of his small, colour-faded backpack was poked by a hole through which a corner of his notebook peeped out. His long, rasta hair, gathered under a colourful, thick hat, looked dangerously heavy for his small, thin frame. Like other young activists from Nairobi’s informal settlements that I had met throughout my fieldwork, paradoxically, Mugambi’s activism had been spurred on by a past that had begun with his involvement in crime. Coming from a poor family, he left school in form three, and became a criminal – stealing from passers-by. In 2006 he was arrested, but he was acquitted two years later, under a constitutional clause that stipulates that no one shall be arrested for longer than 24 hours without being charged. Mugambi found out in prison about this clause, realized that it applied to his case, requested different counsel, and was able to get out shortly after. This was Mugambi’s first encounter with human rights, and, according to him, the moment when he realized the importance of education. Subsequently he went back to school, and in 2011, started doing art and acrobatics together with other young people from Mathare, which they combined with garbage collection and other environmental activities. A small office space and their activities were funded in the first year through a USAID grant managed by a reputable Kenyan professional activist; during that time, they worked on land reform in Mathare, gender-based violence, and extra-judicial executions. When that money ran out, Mugambi went back to his parents’ place in the slums, divided one of their two small rooms in two, and started using half as an office space. But the local police came not long after, confiscated his documents, and assaulted him – police harassment was an ongoing issue for Mugambi’s work and livelihood in Mathare; during our interview, he told me that just a day earlier the police had come and shot his dog in the leg. At the time of our interview, in March 2015, Mugambi supported himself through *vibarua*. The term translates from Swahili into English as “labourers”, but informally it has come to refer to short-term (usually daily) odd jobs, that the poor in Kenya often get by waking up

early in the morning and waiting at the edge of the road for someone to pass by and give them work<sup>87</sup>; on a good day, Mugambi will earn 500 Kenyan Shillings (KSH) (about £3), but the average nears more to 300 KSH; on a bad day, it can be as little as 100 KSH. At the end of the month, he saves around 2000 KSH (the equivalent of about £13), a bit over half his rent. Friends will usually help him cover the rest.

Mugambi's story, and especially his current situation, the struggle to eke out a meagre living and make ends meet from one day to another, is in no way unique. I have come across the same patterns in other of my informants' stories, both defenders living and working in Nairobi's socio-economically marginalized spaces, and those from rural or small town centres beyond the boundaries of the capital. Unlike their professional colleagues, these defenders work on issues intensely "close to home" - usually human rights violations very local in nature; something that happened to a family member, or a neighbor, or a member or group that is tightly knit in the same geographical and moral community. Their familiarity with the nature of human rights violations "on the ground" makes them reliable sources of information for their professional counterparts. The latter's busy work schedules typically allow them little time to travel to "the ground", unless they have a specific job description that includes an investigative component. Often, professionals rely on defenders on the ground for mobilization for events (Interview with protection professional, 4 May 2014, Nairobi), information for human rights reports (Interview with grassroots defender from outside of Nairobi, 4 March 2014), and liaising between them and victims of human rights violations for cases that they can act on. However, defenders from the grassroots are rarely, if ever paid for this work, and often, they have to cover expenses from their own, meagre resources. For example, to report human rights violations to professional organisations, citizens and defenders from the other parts of Nairobi must travel long distances, in traffic, and at a cost that, to them, can be prohibitive. Even by *matatus* – the ubiquitous minibuses that make up much of Nairobi's public transport system – for that distance, the cost of a journey can reach 200 KSH both ways – about £1.60, which for people with very little or no income is very high. At the same time, professional organisations receive an overwhelming

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<sup>87</sup> I have seen this in my own and other middle-class neighbourhoods in Nairobi. Usually women, sitting patiently for hours by a shopping centre or a roundabout; occasionally, they will be lucky to be offered a small job – like laundry or cleaning – by a resident of these neighbourhoods (Ichim, personal fieldnotes).

number of reports of human rights violations. The long-term nature of investigating these violations to assess cause, responsibility and means of redress, coupled with the bureaucratic nature of human rights work in professional organisations and insufficient numbers of staff, means that they are able to take on a very small number of cases from those reported to them. In turn, this creates the perception among grassroots defenders that professional organisations are unresponsive. This perception is further strengthened by their knowledge (and corresponding expectations) that the staff of professional organisations are paid for their work, in addition to receiving other benefits, such as health insurance and pension schemes.

Social markers such as poverty, lack of access to resources, an inadequate educational background, unsystematic, ad-hoc human rights work that is geared towards the immediate rather than long-term projects in the halls of Geneva and Brussels, define grassroots defenders not only as a distinct group within the human rights community in Kenya, but also, importantly, as one that is subordinated to that of the professionals. Within Kenya's class-based human rights community, defenders from the grassroots have become what one of my interviewees, a high-ranking staff in a top Kenyan human rights organisation, has called a "subaltern" category. In both outlook and methodologies for work, today's grassroots defenders mirror those activists who, back in the 90s and 2000s, fell through the cracks of the new system for lacking the professional credentials of their middle-class, better educated, colleagues. Concepts such as "the struggle" and "comrades", which defined the left-leaning underground movements of the 80s, and which have long disappeared from the lexicon of the majority of professional human rights activists, pervade the grassroots' human rights vocabulary. This is at once an oblique critique of the present – a rejection of the NGO model as the embodiment of a neo-liberal world that has eluded them and that history from the present, and it reflects an intentional affiliation with that history as a critical factor in their subjectivity as human rights defenders.

The hierarchy between professional defenders and grassroots defenders is especially apparent in the subtle changes in the meanings attached to the term "activist" in Kenya in recent years. Within closed circles, many professionals find that the term "activist", discredited post-Kibaki, defines grassroots defenders better than the term "defender". This categorisation and its subtle meanings in the present only make sense within the history of activism in Kenya. On the

one hand, the term activist, once a badge of honour, was discredited in the public eye as a result of Kibaki's credibility with the public post-2002 and the ensuing traction that his hostile remarks towards activists achieved with the public (Interview with human rights professional, 20 August 2014)<sup>88</sup>. There was also a more insidious development, however, which took place *within* civil society. When, after Kibaki's ascension to power in 2002, the state formally opened up spaces for engagement with civil society, and those who were still proponents of earlier, more radical, methodologies of activism became excluded from the new structures, the latter became relegated to the category of "activists". Meanwhile, the former better defined themselves through the titles of their positions within professional organisations, and, later, through the term "defender", because of its professional connotations, when it became known in Kenya. Often, these two categories overlap with "the grassroots" and "the professionals" as distinct categories of activism, on opposite sides of the hierarchical class divide in Kenya:

*"It [the term activist] has been turned into a word associated with a subaltern culture. Those who struggle to eke out a living and make noise, they come to you, you give them 10 shillings, they go to someone else they give them 10 shillings, etc." (...) "The activist element has become the subaltern. It is associated with the so-called rowdy, noisy, less educated human rights workers, that you will find coalescing around, for example, Bunge La Mwananchi, people doing things from the stomach most of the time, the other ones [who] combine a little bit of the gut feeling with thinking about it a little bit. Activism has then come to be something associated with those ones who do not have access to the boardrooms" (Interview with human rights professional, 8 January 2015).*

Although, theoretically, the term defender covers both categories, and nowadays it is employed as such in public and often private spaces, nevertheless, internally, both terms continue to be used, with nuances and meanings attached that are informed by the changes in human rights

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<sup>88</sup> In the immediate post-2002 years, Kibaki enjoyed a high degree of public confidence, at least in part due to the fact that his administration co-opted former activists. As a result, when activists who did not join politics criticized the excesses of Kibaki's administration, his critical remarks had credibility with the public (Murunga and Nasong'o, 2006).

activism in Kenya in the past couple of decades. As such, their usage also expresses the kinds of inclusions and exclusions that the professionalization of the movement has engendered.

Within this framework, much as the markers that define the grassroots as a distinct group of activists, and I have mentioned some of them above, are all too real, the meanings of the category itself as they emerge through the practice of protection must also be interrogated. Here, I wish to do so through analysing the launch of a report on human rights defenders in one of Nairobi's informal settlements. Specifically, I investigate how, in the practice of protection (broadly defined), grassroots defenders transition from a marginalized group that needs attention, to a group that ends up counting more as a referent for the relationship between professionals and the donors, without, at the same time, being part of that relationship.

#### **5.4.3. Deploying “The Grassroots”: The Launch of a Report on Defenders**

Sometime in 2015, one of the biggest and most important human rights organisations [henceforth the human rights organisation]<sup>89</sup> in Kenya published a report on the situation of human rights defenders in a number of counties in Kenya; the research and publication of this report were supported through a grant from one of the biggest global funders of protection for defenders. Although Nairobi county was not among them, the human rights organisation decided to launch the report in one of Nairobi's informal settlements.

The launch of the report took place on a big, empty playground in the respective informal settlement. Big, white tents and plastic chairs were arranged in a square: the public seats to the North, South and West, with a capacity of about 90 seats for each wing. The “VIP” area, to the East (for the donors, important staff from the human rights organisation, and invitees from state institutions) had a seating capacity of about 40 seats. In front of the VIP tent there was a long table, and to its left a small podium where the various speakers delivered their speeches.

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<sup>89</sup> I intentionally choose a vague term for the human rights institution behind the research, publication, and launch of the report for anonymity purposes.

When I arrived on the grounds in the morning, staff from the organizing institution were wearing T-Shirts and caps that had been printed especially for the occasion, displaying the funder's label on one of the arms, and messages printed on the front and back in Swahili. Some of the defenders present and, in a couple of cases, members of the public had also been given T-shirts and caps, in total, perhaps 15 or 20. The prognosis for attendance looked poor – hardly anyone was there by the start of the programme. Its beginning then was delayed by more than an hour, as staff from the human rights organisation were waiting for more people to come, and as, I later realized, the donors were also late to arrive. Within that hour, very slowly, people from the neighborhood kept streaming in, sometimes with young babies in their arms or hanging on their backs. Yet even at the peak, less than a third of the seats were filled.

The programme started at about 10 am. One of my key informants, Gathogo, was the first speaker. Gathogo is a human rights activist who does much of his work in that informal settlement, which is also where he lives together with his family. Gathogo is so much part of the landscape of activism in Kenya that the exact moment of our first encounter escapes my memory. He was one of the first defenders that I interviewed, and I have met him several times afterwards, in addition to meeting him at various other events and more informal occasions. Gathogo is one of the founders of *Bunge La Mwananchi* (the Swahili for the Citizens' Parliament), a social movement based in the slums and urban and rural areas outside of Nairobi, which, according to its members, is trying to revive and redefine citizen involvement in the country's affairs. Since its formation, Bunge members have become the epitome of grassroots defenders in Nairobi: living in the slums or poor neighbourhoods, often mastering only little English, poorly educated, often rowdy and defying the professional rules of activism, Bunge act as mobilisers for many professional organisations, who rely on them to rally the public for various activities. Bunge members also often document human rights violations in the slums, and they act as intermediaries between professional NGOs and the poorer citizens, who, in both outlook and interests are much closer to Bunge than to Bunge's professional counterparts. Much as they need them, however, professionals also find the Bunges difficult to work with: if they invite them at meetings, their outlook and lack of manners can lead to awkward situations (Interview with human rights professional, 8 January 2015) and they will often explode the agenda by diverting the attention to their own concerns instead (Interview with former human

rights professional, 13 August 2014). Hence, their relationship is fraught with tensions. On the one hand, the Bunges consider that the professionals are a co-opted group but they co-operate with them because they need them as a link to the donors and other institutional actors. On the other, professional groups perceive Bunge members as “trouble-makers”, people who do not understand that the rules of the game have changed. Nevertheless, they continue to rely on Bunge members as one of the few links that they have with the poorest sections of society. Bunge members are often the bulk of those who participate in protests. Gathogo himself had a few cases on the roll against him at the time when I last met him, all as a result of protests that had been forcefully dispersed by the police.

Most of Gathogo’s speech focused on the challenges faced by communities and defenders in informal settlements and, to a lesser extent, on the non-responsiveness of professional organisations when these issues are raised. As a solution, he then recommended building a community centre in that informal settlement with support from the organization that had organized the launch on the day and its funder. This, he suggested, would support documentation by defenders but also ensure prompt response to human rights violations. Yet, despite the importance of the issues he was raising, his audience’s attention was elsewhere. As Gathogo was pacing in the middle of the square, facing the VIP tent, those seated in that area were whispering to each other rather than face him back. When the donors arrived, half-way through his speech, the executive director of the human rights organisation and their deputy stood up to greet the guests, shake hands, and engage in small talk. This went on after they were seated, as they continued to face each other and kept talking, rather than listen to Gathogo.

Gathogo had been advocating for the idea of a community centre in that area for a long time, to me in our interviews, and in other fora where I had heard him speak. He insisted that it would not be expensive. To illustrate this particular aspect he pointed to a corner of the playground, where a Safaricom big kiosk had been built from new, corrugated iron sheets, painted in bright colours, and he gave that as an example of what could be achieved with a little funding – very different from the offices of many of the Western Nairobi based organisations, but sufficient for the needs of the local community. He imagined this solution as an attempt to close the gap in the geographical and social distance that defined the relationship between

professional organisations and grassroots defenders and their communities, and to address the lack of responsiveness from the former. To make this point, after talking about the community centre, he went with the microphone to the audience on the left to the VIP area where most of the defenders were seated, and he asked them to name cases of individuals that had been unlawfully killed, if they had reported the cases to professional organisations, how much travelling to report to these organisations' offices has cost them and if they were in paid employment, and if their reports had been acted on. After a couple of examples of abuses that had been reported but went unanswered were given, Gathogo was told by the moderator that his time had run out and that he needed to pass on the microphone to the next speaker.

Subsequently, a number of defenders, one each from the counties that had been covered in the report also briefly spoke. The contrast with Gathogo's talk was poignant. They all briefly addressed the challenges faced by defenders in their respective counties and expressed gratitude to the human rights organization for including their county in the research. The remaining programme and the launch itself of the report followed the more familiar pattern that I had seen at similar events. Subsequent speeches included one from the executive director of the human rights organisation, another from a member of another organization funded under the same grant on a project not related to defenders, and a speech from a high-ranking representative of the funding institution. They all revolved around the topics that make up the familiar repertoire that official statements on defenders draw on, namely ideas of defenders' bravery and heroism coupled with their vulnerability and need for support. The programme finished with the launch proper of the report, when the donors, the leadership from the human rights organisation and the defenders from the counties covered in the report gathered around a table stacked with copies of the report, cut a ribbon and took photos for the press.

I have witnessed similar dynamics on other occasions during my fieldwork, but I have chosen to focus on this specific event because it was particularly poignant for how the power relationship between the professionals and the grassroots unfolds in the practice of protection (with all the plethora of methodologies that have come to define its current form) and for how that can render the norms and values that define the discourse inadequate in practice. By choosing to organize the launch in the informal settlement, the human rights organisation

acknowledged that they need “to be close to the people.” However, in the event, this acknowledgement materialized as a pretext for referencing the relationship between the human rights organization and the donor body, from outside that relationship. The spatial conceptualisation of the stage for the launch, which grouped together the staff from the human rights organization and the donors in the same area, separate from that of the defenders and their communities made this particularly visible. This was later reinforced by the donors’ arrival in big, white four-by-fours that made a strikingly dissonant note in a landscape otherwise marked by struggle and impoverishment. As importantly, it was also strengthened by the attitudes of both staff and donors in the VIP area, and the little attention they paid to what members of the host community were saying.

At the same time, staff and donors’ mutual attention to each other pointed to the fact that defenders and members of their community were there as an entirely separate category, one that justified the relationship between the human rights organisation and the donors to begin with, but without being meaningfully included in it. The presence of defenders from Mathare and their communities at the event and simultaneous exclusion from that relationship was essential to it existing in the first place: just as Bunges often explode the agendas of formal meetings by voicing their own concerns, so they would undermine the relationship between the professional NGO sector and donors if they were to be meaningfully included in it. Hence, on that day, grassroots defenders mattered less as a category whose concerns were worthy of being voiced and heard on their own terms, and more as a group whose existence functioned to legitimize the work of the human rights organization with its donor, and, conversely, the donor’s choice to fund the organization for that specific project. That attention was focused on the donor also points to how the relationship between organisations and donors is also hierarchically structured. Donor funding is essential for organisations existing and being able to function in the first place, and keen awareness of that dependency constantly shapes the attitudes and responses of their staff.

## **5.5. Conclusion**

The professionalization of human rights in Kenya has led to a hierarchy between professional activists and grassroots defenders, which often reflects in geographical terms, but also especially social and economic. In many ways, these two groups function as different epistemic communities. This becomes apparent particularly in how they relate to the norms around human rights defenders and their perceptions about the intended (or imagined) finality of protection mechanisms. The human rights community in Kenya has never been a level playing field (see Press 2012), as some like to imagine, to the extent that, from the very start, human rights in Kenya was a project of the elites. Nevertheless, the professionalization of the movement in the 90s and especially 2000s and the simultaneous spreading of human rights norms throughout Kenya, solidified the pre-existing, more malleable class structure within the human rights community. Throughout the years when the professionalization of the movement was an ongoing process, the boundaries between professional defenders and those from the grassroots were still porous, allowing activists with the latter background to occupy professional positions, including in NGOs. The post-2002 years have crystallized socio-economic differences between groups to the point where they function and relate to each other as distinct categories of activism.

Their different positions within the landscape of human rights activism in Kenya, in turn, reflects in differences in the kinds of claims that they lay on protection. As I have learned throughout my fieldwork, the different understanding of protection that these categories have is inseparable from the social worlds that they inhabit. The focus on the civil and political rights of defenders in the discourse at once responds to professional protectors' concerns that the resources that can be dispensed on protection are limited, and is a reflection of their social status, in which paid human rights work alleviates socio-economic concerns. This also explains the professionals' ability to relate to grassroots defenders as a category that shapes their relationship with the donors and their legitimacy with other publics (the international community, for example). For grassroots defenders, the discourse is a pathway to making primarily socio-economic claims. When the space is closed to making those claims openly, they will subvert existing mechanisms to make them suit their own needs, both discursively (through legitimizing arguments, for example) and in practice. The remaining chapters of this thesis explore in depth particular aspects of this dynamics and the ensuing disconnect between the stated aims of protection and the directions that it takes in practice. In the next chapter, I start with an

exploration of the practice of “capacity-building” – a key element in the programming of many organisations that work on defenders at risk.

## Chapter 6. Capacity Building, (Dis)Empowerment and the Grassroots

*“I was just happy because I went and ate.” (Grassroots defender)<sup>90</sup>*

### 6.1. Introduction

It was during one of the many trainings for defenders that I attended during my fieldwork, organised both by the two institutions that I was affiliated with during that period, and others. The tea-break had finished a few minutes earlier, but the participants were slow to stream back in to the room. Eventually, the trainer, a staff member with the organisation that was hosting that particular training, decided to go ahead with his session, despite the fact that two or three participants were yet to come. A few minutes into his session, the remaining participants entered. One of them, a young woman from one of Nairobi’s informal settlements that I had met on a few occasions before, was holding her cup of tea. As she sat down, on the right side of the U-shaped seating arrangement filling the middle of the room, she leaned with her elbows on the table and rested her head on the left arm. From this position, she continued to watch the trainer for a few long minutes, visibly uninterested in the content of what he was saying. Eventually, he stopped and asked her: “Are you enjoying your tea?”. She was quiet for a couple of seconds, before she replied, in an intentionally ironic tone “Yes, very much, I am enjoying the fruits of your organisation.” During that same training, just before the beginning of the tea-break, as nearly everyone had left the room and I was scribbling some of my own notes down, I had asked the defender still sitting next to me, another young woman from the same informal settlement if she knew what session was coming up next. Her reply was swift: “I don’t know, but, oh, I’ve done this, like, twenty times before.” Taken aback by her answer, I looked ahead at the projection wall, where the trainer had put up the title of his upcoming presentation; it read: “Introduction to Human Rights” (Ichim, personal fieldnotes).

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<sup>90</sup> Interviewed on 13 March 2015.

I witnessed similar moments during that training, and others before and after. However, a conjunction of these two key encounters, which happened very soon one after another during the same event, acutely reminded me of countless conversations that I had had with protection professionals earlier. In these, they expressed a sense of worry and dismay that defenders often did not seem to apply the knowledge that they were being taught in trainings, even though protection organisations invest heavily in that. Indeed, capacity-building has become one of the main programmatic objectives of many protection organisations around the world. Some, like PI, focus primarily on trainings, in this case specifically security trainings for human rights defenders. Others, like Defend Defenders, dedicate one of their three main programmes to capacity-building. Its national chapters (also known as national coalitions), of which the Coalition in Kenya is one, have replicated that exact same structure. The fact that Defend Defenders has preceded the launch of each one of the national chapters that it has founded throughout the years<sup>91</sup> with a long training for defenders from the respective countries<sup>92</sup> can be further interpreted as a sign of the unquestionable status that capacity-building has gained in the work of protection organisations. More strikingly, during the Coalition's 2014 Annual General Meeting, the programme included several training sessions, even though over 100 defenders from all over Kenya gathered at the event, which made the possibility of efficient learning through training rather unlikely.

As I will show below, the importance of capacity-building for defenders in protection programmes everywhere replicates the status of capacity-building in the global development agenda. Like the latter, the capacity-building of defenders is loaded with “positive normative assumptions” of empowerment and long-term sustainability in conditions of limited resources, and, simultaneously, salient condemnations of dependency (Kenny and Clarke, 2010a: 10). Yet, I argue, the uncritical adoption of these ideas in contexts of deep socio-economic inequalities ends up working in the opposite direction: the unfolding of capacity-building in practice, in other words, is a disempowering process for many of its beneficiaries. However, beneficiaries themselves play a complex and ambiguous role in this process and are often complicit in the

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<sup>91</sup> Currently there are chapters in Burundi, Kenya, Somalia/Somaliland, South Sudan, Tanzania, and Uganda, at different stages of development.

<sup>92</sup> These ranged in duration from 3 days (Kenya) to 5 days (South Sudan).

directions that capacity-building takes in practice. This is motivated by the desire for material rewards and improvements in their socio-economic status, and, simultaneously, the knowledge that the protection agenda, as it is currently conceived, cannot openly accommodate those ambitions. On that background, beneficiaries appropriate capacity-building for purposes other than those for which it was created, but they do so within a very narrowly circumscribed set of possibilities for decision-making. Therefore, even as this process of appropriation subverts the purposes of capacity-building, at the same time, it reinforces the power relationships that underscore it in the first place.

To substantiate this argument, I start off with a brief examination of when, how and why capacity building gained global ascendancy, as well as the assumptions that underscore the practice and some of the critiques in the relevant literature. In the second section, I move on to specifically explore the practice of capacity building for defenders. I start with an overview of how capacity building is implemented by drawing on observations that I made during several trainings that I participated in throughout my fieldwork: here, I focus on issues such as the format of trainings and their locations, the topics that are covered, and the social status of participants and trainers. I then move on to examine the complex relationships between socio-economic issues and processes of subversion in the capacity-building project within a framework that seeks to understand existing power relationships and how these shift, or, indeed, are further entrenched by current practices. Here, I start off by examining how the consensus on protection among donors and protection organisations defines the limits of acceptable claims that can be made under the label human rights defender, and the implications for capacity building in particular. I then explore capacity-building as a neo-liberal model of “new managerialism” (Kenny and Clarke, 2010a: 10), characterised by forms of complex technicism that cast the trainers as the unquestionable experts and how that reinforces that consensus. I move on to analyse two different processes of subversion within the limits of acceptable claims imposed by that consensus: while I interpret the appropriation of capacity-building for immediate material rewards as an act of resistance, I also find evidence of acquiescence to capacity-building, especially visible in how defenders internalise its “hidden lessons” (Englund, 2006: 70). I conclude by suggesting that the failure of current forms of capacity building to confront

underlying power inequalities and the attempts by beneficiaries to subvert these programmes are two sides of the same coin.

## **6.2. Capacity Building: Rationale and Critiques**

Although its history overlaps with that of development itself (Smillie, 2001), capacity building became a key programmatic element in the global development agenda in the 1990s. Its ascendancy was a response to top-down approaches to social engineering, ranging from structural adjustment programmes to welfare models of development (Kenny and Clarke, 2010: 4).

It has been pointed out that there is no consensus on the exact meaning of the term capacity-building (Kaplan, 2000; Miller, 2010) beyond a rather vague agreement that it involves “a transfer of knowledge and skills” (Kenny and Clarke, 2010: 4) to a target group of beneficiaries, be they institutions, sectors or communities (Smillie, 2001)<sup>93</sup>. Nevertheless, despite the lack of a consensus around a precise definition, there is a widespread agreement in the scholarly literature that, regardless of the particular forms that it takes in practice, capacity building is informed by a number of key assumptions. According to Kenny and Clarke, the ascendancy of capacity building can be traced back to three sociological perspectives that came to dominate social sciences and policy making in the 1970s and 80s, namely agency, active citizenship and civil society (2010: 6). In turn, the assumptions that underscore capacity-building and its “fetishisation” in development programmes (Clarke, 2010: 113) are directly related to that genealogy. Firstly, the emphasis on agency in capacity building evokes notions of self-emancipation, empowerment and taking control over one’s destiny (Kenny and Clarke, 2010: 4). A second key assumption is that developing the capacities of beneficiaries is a sustainable model of programming. Under the slogan “teach a man to fish”, capacity-building programmes promise to avoid beneficiaries’ dependency (and corollary ideas of helplessness and passivity) and simultaneously to achieve their self-reliance, hence offering the best possible return on donor investment (Swidler and Watkins, 2009: 1184). A final assumption is that capacity building can

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<sup>93</sup> For many decades, capacity building was preceded by the practice of community development: this prompted scholars to questions whether capacity-building is merely a much older practice with a new tagline, or whether there are, indeed, significant differences between the two that warrant capacity-building’s new found fame in the 90s (see, for eg. Craig, 2007).

ensure beneficiaries' participation in and control over development projects, which in turn will ensure that they can draw on local knowledge and social capital to ensure their success (Kenny and Clarke, 2010a; Swidler and Watkins, 2009).

Despite its appeal, recent theoretical and empirical scholarship has shown that the practice of capacity building and the ideas that underpin it are far more problematic than one might think (see, for eg., Eade, 2007; Kenny and Clarke, 2010b; Smith, 2003; Swidler and Watkins, 2009). For one, scholars have pointed out the need to look beyond the positive meanings attached to the term capacity-building, and to interrogate the assumption of beneficiaries' *lack of capacity* (Clarke, 2010). Indeed, Abdullah and Young (2010) question the deficit model implied by the term capacity-building and argue, instead, that a focus on pre-existing strengths and capabilities is more conducive to positive results. Smith too, shows that the methods of capacity building often conform to a Western model of social change, "in which 'traditional' (...) cultural beliefs are viewed as inhibiting the kinds of practices that development agencies aim to encourage" (2003: 712). From this perspective, beneficiaries' capacity may be overlooked and/or unrecognizable through a Western lens, rather than altogether missing.

More importantly, the literature engages with the primacy of a concept of agency in capacity-building, and argues that this approach overlooks the role of structures in impending socio-economically and politically marginalized people and groups from taking control over their own lives (Kenny and Clarke, 2010a). As Kenny and Clarke put it, "empowerment requires change to the material conditions of those who are oppressed and disadvantaged in society" (idem: 10). Moreover, the emphasis on agency and the related call to self-reliance, to the detriment of engaging with structures and their role in creating and perpetuating oppression, is profoundly moralising (Swidler and Watkins, 2009: 1184; see also Englund, 2006).

Thirdly, the literature has critiqued "the construction of the discourse and practice of capacity building within narrow instrumentalist and technocratic terms of reference" (Kenny and Clarke, 2010: 9). This results in the search for technocratic solutions to political problems (Ife, 2010; Oxenham and Chambers, 1978; see also Cleaver, 1999; Hickey and Mohan, 2005), and it ends up emphasizing the mastery of pre-defined skills, within a framework of top-down approaches to decision-making, the very opposite of what capacity-building aims to achieve

(Kenny and Clarke, 2010a: 9). By the same token, the “capacity-builders” are often cast as “experts” who impart “expert” knowledge to “backward” beneficiaries: This, in turn, overlooks not only the role of broad societal power relationships in maintaining inequality, but also how power is enacted in the practice of capacity building itself (see Englund, 2006: 99-122).

Despite these observations in the scholarly literature, no attention has been paid so far to whether the practice of capacity building for defenders resolves some of the problematic dynamics that the literature has highlighted with respect to capacity-building in other fields, or whether, in fact, it confirms those observations. As I will show, in some respects, the capacity-building of defenders replicates patterns seen elsewhere, but in others it departs from those. Even in the latter case, however, those shifts serve to re-inforce existing power relationships rather than challenge them. But, before I explore that at length, I will first describe what the capacity-building of human rights defenders entails more specifically.

### **6.3. The Capacity Building of Human Rights Defenders**

#### **6.3.1. A Brief Overview of Capacity-Building Practices for Defenders**

All the capacity building programmes that I interacted with during my fieldwork consisted of trainings for defenders. With very few exceptions, these trainings are organised in the conference rooms of Nairobi’s hotels. Depending on the amount of funding that is available, these can vary from the most expensive ones, to the more middle range in both setting and pricing. Even the latter, however, will provide good quality accommodation and services. The costs of participating are always fully covered by the organisers. This will include flights and/or road travel for participants who must travel long distances and full board accommodation in the same hotel where the training takes place. Additionally, a small per diem to cover other costs participants might have incurred is also provided (for example, for meals if they travelled long distances by road, or for travel to the airport if they were flown in). In virtually all the trainings that I observed, these per diems are larger than what participants might spend, thus allowing them to take some money home. Depending on the topic of the training and/or the organising institution and funder, trainings can include either only Nairobi-based participants, or a mixture of both Nairobi-based participants and participants travelling in from elsewhere. In both cases, Nairobi-based participants are often *also* put in hotel accommodation.

In all the trainings that I attended in Kenya throughout my fieldwork, the participants were grassroots defenders, either living and working in Nairobi's informal settlements, or outside of Nairobi, in small town centres and/or rural areas. For more complex trainings, like digital security for example, that require extremely specialised knowledge, the trainers were most of the times brought from other protection organisations that have expertise in those specific areas, usually those like Protection International (PI) (unless, of course, PI itself is the organiser). I have also witnessed trainings where trainers external to the hosting organisations were brought in for less complex topics, for example monitoring, documenting and reporting human rights violations. The converse is also true, however: I have participated in trainings where the content was taught by staff that I knew did not specialise in the respective topics (security for defenders, for example).

The length of trainings ranges from one day to one week (on some occasions it can be longer). Broadly speaking the topics covered fall into two major categories: one concerns the well-being and security of human rights defenders (digital and physical); the other concerns their work. Within these two categories, the variety of topics covered is virtually endless. The training sessions that I observed, for example, included topics like monitoring and documenting human rights violations; human rights monitoring and advocacy; investigating, preventing and reporting torture; advocacy in national, regional and international mechanisms; human rights defenders and their work; resource mobilisation; human rights defenders and security; security management and risk assessment; digital security and social media for human rights work; and sustaining activism through self-care. At the end of the training, participants will almost always receive a certificate of participation with their name on it, the topic(s) that they have been trained in and the awarding institution.

When I first started my fieldwork, I followed mainstream thinking and was concerned with understanding in what way these trainings might enhance the skills and knowledge of defenders. However, as time went by, and as I started to observe certain discrepancies that seemed to occur across trainings, I also started to suspect that, from the perspectives of beneficiaries, these trainings served a rather different purpose. More specifically, I began to understand that the choice to participate in trainings was more closely aligned with the kinds of

socio-economic claims that they were making on the basis of self-identifying as defenders in my one on one interviews with them (and, more rarely, in other fora). Moreover, socio-economic aspirations and the attempt to fulfil them played a crucial role in what was a complex process of subversion and, simultaneously, disempowerment.

### **6.3.2. Socio-Economic Issues, Subversion and Disempowerment**

#### **6.3.2.1. The Consensus on Capacity Building: The Donors and Protection Professionals**

I wrote in the Introduction to this thesis about the bias on civil and political rights in the protection regime. That bias reflects in a consensus between donors and protection organisations on the role and aims of protection, which in turn is mirrored in how specific protection activities/programmes, including capacity-building, are conceptualised and implemented. I want to support that claim by examining two key issues: donors' aspiration for sustainability and its impact on protection organisations' programming, and the way in which the primacy of knowledge in ideas of social change point to an emphasis on agency over the role of structures in maintaining inequality.

Swidler and Watkins have cogently argued that the preference for investing in workshops and trainings, to the detriment of funding substantive projects (they examine HIV/AIDS related ones, such as nutrition supplements and paid healthcare workers, for example) reflects the donor community's aspiration for sustainability (2009: 1190). Similarly, unstated definitions of capacity-building among donors have come to exclude material things like core funding or work tools (for example cameras, laptops/computers, or phones), and draw instead on an almost utopian vision of sustainability where skills evoke visions of permanence. In an interview with a member of the donor community he talked to me about the donor group as an "epistemic community", whose attention is caught up by trendy concepts that fall in and out of fashion (see also Cornwall, 2007). According to him, donors wholeheartedly support capacity-building because "*it evokes ideas of sustainability; if you buy someone a computer, it will be gone in three years, but if you build their capacity, this does not go away*" (Interview, 6 August 2014).

Furthermore, the preference for funding trainings and workshops goes hand in hand with the expectation that trainees will go back to their communities and do voluntary work (Swidler and Watkins 2009). This is especially the case with grassroots human rights defenders. Before human rights work became professionalised, an ethics of volunteerism was central to it, both globally (see Hopgood, 2006) and in Kenya (see Chapter 5). Although the professionalization of human rights work has turned it into a paid occupation, nevertheless, a concept of volunteerism has survived in both public and private representations of non-professional defenders, who most of the times live and work in small communities (see Chapter 8)<sup>94</sup>. No so, however, the “elites who plan how the donor project is to be implemented and those fortunate enough to become trainers and trainers of trainers” – these must always be paid (Swidler and Watkins, 2009: 1185).

This emphasis on sustainability has particularly insidious effects when it converges with donors’ control of NGOs’ agendas and the latter’s adjustment to changes in funding trends and donor requirements. Indeed, in Kenya, as elsewhere (see Edwards and Hulme, 1996; Fisher, 1997; Hellinger, 1987; Smith, 2003)<sup>95</sup>, protection organisations often follow the donors’ lead in setting up their priorities. When, for example, I once advised a programme officer of a Nairobi based organisation to integrate into a new funding proposal that they were working on the suggestion to buy laptops/computers for their networks on the ground, their response was: “*my executive director will say that this is not sexy enough for the donors*” (Ichim, personal fieldnotes). Incidentally, this was confirmed a few months later, when the ED of a protection organisation in Kenya was addressing a group of defenders from Nairobi’s informal settlements before the start of a training. Half-way through his speech, he said:

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<sup>94</sup> That the status-quo is both widely and uncritically embraced is well illustrated by the fact that, during two years of fieldwork and three years and a half of being based in Kenya, I have not come across a professional actor willing to question whether, in the new circumstances, expectations of voluntary work were still acceptable. If anything, the converse is true, to the extent that, even among professional circles, the open admission that some professional activists might be motivated by the idea of financial gains when choosing human rights as a career is taboo. When the issue comes up at all, the usual fall-back notion is that the resources are limited, an idea that normalises expectations of voluntary work at the grassroots. Yet, as Swidler and Watkins argue, “turnover among volunteers and the continual need for new training make volunteers as costly as paid staff” (2009: 1885). In the same vein, for example, the cost of two nights for accommodation in a middle-range Nairobi hotel comes close to the cost of a laptop. So, while it is true that resources are limited, different choices for how these are spent are indeed possible.

<sup>95</sup> As Smith (2003) has shown, changes in donor policy often merely enable local actors to act on knowledge that they already have; sometimes this does lead to better solutions to social problems. However, as he points out, the problematic aspect here is that useful prior knowledge only starts to matter when it becomes rewarded by the donor community (at 712).

*“I look here and I see people from Kangemi, Mathare, Kamukunji, but I don't see anyone from Loresho, Kileleshwa, Lavington<sup>96</sup>. There is a connection between poverty and human rights violations. When I am in conversations with the donors and tell them that HRDs are victimised because they fight on behalf of victims, or that they have been arrested, etc., I get a positive response. But when I tell the donors that HRDs are sick because they have no employment, they are poor and have no support, the donors look odd at me” (Ichim, personal fieldnotes).*

Subsequently, he suggested that grassroots defenders start a campaign to “change the donor mind-set,” and offered a more specific solution in the form of his organisation’s firm commitment to train defenders in security management so that “at least you can be more empowered”. Yet, this was deeply problematic. His first recommendation implied that grassroots defenders have the power to “change the donor mind-set”, while bypassing the fact that their meaningful encounters with the donor community are far too limited for any campaign to have an impact in that sense. At the same time, it failed to acknowledge that, as the mediators between grassroots defenders and donors, protection organisations are better placed to advocate for changes, and thus relieved protection organisations of that responsibility. His second assertion was even more troublesome, because it *replaced* that responsibility with a well-established solution, yet one that is founded on assumptions generated by the group of donors and protection organisations, rather than by the beneficiaries. I am thinking specifically about his suggestion that, in the absence of measures to ensure a modicum of sustainability of their livelihoods, knowledge about security management strategies would, nevertheless, empower defenders.

The idea of knowledge gains as an avenue to empowerment is articulated both orally and in written outputs from protection organisations. Yet, the implied causal connection between the two is assumed rather than proven. Or, as Cleaver put it, “[t]he scope (and limitations) of the empowering effects of any project are little explored; the attribution of causality and impact within the project alone problematic” (1999: 599). I want to examine the (problematic)

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<sup>96</sup> Kangemi, Mathare, Kamukunji are informal settlements in Nairobi. By contrast, Loresho, Kileleshwa, Lavington, known as the “leafy suburbs” of Nairobi, are those areas of Nairobi where the expat community and Kenya’s upper middle class live.

implications of assuming that causality by analysing a short passage from a concept note for a five day-long training where most of the participants were grassroots defenders. In that concept note, the authoring organisation states that, following extensive interactions with both human rights organisations and individual defenders, it concluded that there was

*“a clear lack of knowledge and subsequently low levels of utilisation of existing protection mechanisms for HRDs, including both international and regional instruments such as the UN Declaration on HRDs, the EU Guidelines on Human Rights Defenders and the African Commission on Human and Peoples’ Rights Resolution on the Protection of Human Rights Defenders (2004)” (Concept note, on file with the author).*

The concept note draws a clear causal link between lack of knowledge about protection mechanisms and low or inexistent usage of protection mechanisms. Of the three mechanisms involved, the UN Declaration on Human Rights Defenders and the ACHPR’s Resolution for the Protection of Human Rights Defenders are so called “soft law” instruments, i.e. they do not have legally binding power on states. They can, at most, (re)assert normative standards on HRDs, and be used to put political pressure on state actors. By their very nature, these instruments are more amenable to being used successfully in the halls of the UN and similar places, where actors operate with similar conceptual frameworks, than in the remote places where grassroots HRDs live and work. In such places, defenders “facing daily violence and threats, are not concerned about long-term lobbying strategies, but consumed with the daily tasks of survival and emergency response. If considered at all, lobbying in Washington, Brussels and Geneva seems impossibly luxurious and difficult to consider as part of the same political project” (Tate, 2007: 186). On the other hand, the actors who do use these instruments in places like Geneva or Banjul can do so both because they know about them, and because they have the financial and institutional clout to operate in those spaces to begin with. Advocating in capitals abroad, whether in the region or beyond, requires not only familiarity with the rules that define appropriate interaction in those spaces (Tate, 2007), but also the ability to travel to and stay in important capitals over a period of at least a few days during relevant times of the year, and the personal and institutional connections necessary to gain entrance in such spaces in the first place. As such, financial and institutional power is at least as important as mastering the knowledge of

UN and regional instruments, in being able to enact the changes envisioned by these instruments – however peripherally so. Moreover, the absence of the former, can render the latter little relevant, especially for human rights defenders from the grassroots.

The EU Guidelines on Human Rights Defenders differs from the other two instruments in that its main aim is to offer support to human rights defenders on the ground, especially, although not only, through EU missions and embassies of EU states in the respective country (see European Union, 2004). However, in practice, most EU missions rely on protection organisations and/or organisations whose broader mandates can or do include the protection of human rights defenders to extend support to defenders (Interview with Political Officer from embassy of EU member state, 28 May 2014). For example, since the establishment of protection organisations in Kenya, embassies of EU countries refrain from offering support to defenders directly when contacted to do so, but instead refer them back to protection organisations (Interview with Senior Programme Manager, Democracy and Human Rights Programme, embassy of EU member state, 28 May 2014). Despite their applied focus, the implementation of the EU Guidelines relies on and reinforces the same dynamic that makes the meaningful usage of the other two instruments the prerogative of professional organisations. When protection organisations emphasise knowledge and the assumption that knowledge translates into agency, understood as the ability to act, they inadvertently overlook the structural constraints that prevent beneficiaries from making the knowledge of these instruments relevant to their work and daily lives.

Overall, assumptions of causality between knowledge and empowerment, and between training and sustainability condition trainings not on the needs of beneficiaries, but on the cultural worlds of donors (Smith, 2003: 711; see also Escobar, 2012; Ferguson, 1990) and protection organisations. This process in turn, reinforces the existing power relationship between donors and protection organisations on the one hand, and beneficiaries on the other. Moreover, this same dynamic is replicated in capacity-building settings where the relationship between beneficiaries and trainers often translates into one between experts and non-experts.

### 6.3.2.2. Power and Capacity Building as Expertise

The capacity-building of human rights defenders is inseparable from the professionalization of human rights work and protection. Although, in theory, defenders do not need to carry out their work as professionals to be considered as defenders (see, for eg. UNOHCHR, 2004), the ability to draw on a professional repertoire of work is certainly seen as a desirable goal of protection initiatives. This is a key point in international documents that make up the normative architecture on defenders (see, for eg. UNOHCHR, 2004: 2-8) and it shapes the practice of protection organisations. For example, Defend Defenders emerged as the result of a research exercise carried out in West Africa and the East and Horn of Africa, which concluded, among others, that “[t]he *specialized expertise required for being a human-rights defender* means that there is a great need for knowledge development and skill training, especially on human-rights instruments and mechanisms as well as crisis management, particularly under repressive regimes” (Shire et al., 2004: 3, my emphasis). Further down, the report re-iterates the same idea: “One of the problems for HRDs is that it is an area that requires quite specialized expertise and yet relies to a considerable extent on individuals’ concern, dismay and courage to be mobilized or mobilize others to human-rights advocacy, rather than any *professional preparation*” (idem, 23, my emphasis)<sup>97</sup>. As a result, when Defend Defenders made capacity-building a priority in its programming, topics related to professional human rights became a key thematic area of training sessions. The same approach in the work of other protection organisations points to a similar underlying assumption.

Like the introduction of topics drawing on professional human rights, the central role of topics on security and protection is the result of protection itself becoming professionalized. The emergence of PI, an international protection organization whose main focus was to refine approaches to protection and security into a scientific body of knowledge that could be applied

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<sup>97</sup> In the same vein, in one of the trainings that I attended, the trainer, affiliated with the hosting organization, addressed the audience, made up of defenders from Nairobi’s informal settlements at the start of the programme by saying that “HRDs need to work in a certain way. After this, we will have collaboration by creating strong linkages” (Ichim, personal fieldnotes). Indeed, unless grassroots defenders can learn how to frame instances of abuse as human rights violations, they can have a hard time being heard by professional organisations: “*To the donor community, or rather the people who are doing human rights work, the professional human rights work, you need to convince them how the violation has occurred. Unless you know how to frame your story, you might not get the kind of assistance that maybe you are asking*” (Interview with defender from informal settlements, 18 May 2014 Ruth Mumbi).

irrespective of context, illustrates this development particularly well. While this approach quickly caught-up the imagination of both donors and other protection organisations, it also marked a radical departure from previous protection models. These were best illustrated by PBI, the oldest international protection organization, whose main methodology, protective accompaniment involved, among others, long-term presence on the ground and close, daily contact with defenders<sup>98</sup>. Before it split off from PBI into an autonomous organization, PI functioned as PBI's Brussels and European Office (BEO). In that position, its staff published the first protection manual for human rights defenders, in 2000. Subsequently, BEO staff started flying into countries where PBI had field presence, to carry out trainings for human rights defenders. Their positioning as experts and masters of technical knowledge, along with their short-term presence in the field, created tensions between them and local PBI staff. The latter had spent a much longer time building relationships of trust with local actors and practised more basic approaches to security, but they also felt that these were more attuned to local contexts, and hence more successful. Eventually, BEO staff went into DRC and carried out security management trainings without approval from PBI. This crystallized into a formal split the pre-existing tensions and disagreements about the most effective ways to approach protection. From 2005, BEO has been functioning as PI, an autonomous organization (Informal conversation with PBI long-term staff, 23 May 2015). It grew fast in the following years with support from donors, opened several protection desks in the Global South, continued to revise its trademark protection manual (now at the third edition), and works mainly on the capacity-building of human rights defenders. In practice, this means that they offer trainings with a focus on security and protection.

The rapid growth of organisations like PI and the spread of training programmes in other organisations working on protection, despite the lack of solid evidence on whether this approach works in the way that it is intended, illustrates the growing role of technical knowledge in finding solutions to defenders' predicaments<sup>99</sup>, or, what Cleaver has called "the tyranny of techniques" (Cleaver, 1999: 599). This development has several consequences. Firstly, the topics

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<sup>98</sup> For extensive analyses of protective accompaniment and how it works, see Coy (1997) and Mahony and Eguren (1997).

<sup>99</sup> How defenders' problems are being imagined and who gets to define them is also a point of contention. See Chapter 7 for a detailed analysis.

that are taught in trainings for defenders draw on specialized, technical bodies of knowledge, often rooted in international human rights law and specific methodologies of implementation, which include monitoring human rights violations, reporting, and advocacy. Similarly, ideas related to protection have slowly but surely developed into a specialized body of knowledge. PI's manual for the protection of defenders, for example, frequently relies on terms such as "situational analysis" "security assessment", "security management", "security incident", and the now infamous formula that attempts to scientifically quantify and define the concept of risk: "risk = threats x vulnerability : capacity" (Quintana and Eguren, 2011: 30). The jargon of human rights and protection makes trainings both conceptually and linguistically difficult. This is further complicated by the widespread application of technical solutions as a blueprint, with little consideration for local context and without a prior measurement of participants' previous educational background and ability to engage with complex information. In an interview with a defender from a small community outside of Nairobi, he told me in relation to security trainings:

*"You have to be reasonably literate. You need a lot of English (emphasis on "a lot"). Every time they ask me to bring people I must shop around and get someone who at least has done form 2, because I think [otherwise] they would not even understand a thing, you know with the graphs and a lot of...what...you know. This time at least I got some people who can understand English [for a training that was going on at the time of the interview]. Because when we did it here in 2012, we sent in every Tom and Dick, and I was told half of the class didn't even get anything. From amongst ourselves. We didn't get it from the teacher, but we could know. Because when you sit in for the whole day and you don't even get a word, it's like you are out. It's just that you can't get out, but you are not part of the whatever. So, I sent, this time, at least people who can read and write.*

*Q: What is the topic [of the current training]?*

*It is the same thing, it's the whole story, the protection and whatever."*  
*(Interview with defender from outside of Nairobi)<sup>100</sup>.*

The (often unnecessary) difficulty of trainings has also been observed by scholars elsewhere (Cleaver, 1999; Swidler and Watkins, 2009). Swidler and Watkins refer to this “esoteric knowledge”, and link it to the logic of sustainability that underscores trainings as a methodology of development: the “elaborate formalizations of what would otherwise be common sense” requires the need for more training and refresher courses<sup>101</sup> (2009: 1190). More importantly, the reliance on technical knowledge also casts the trainers as the experts par excellence, who are there to “enlighten” the grassroots. There is no doubt that many of the things that protection organisations do not do before designing trainings (for example surveys of baseline knowledge), are often due to logistical and time constraints. Nevertheless, not addressing the gap between technical knowledge and participants’ ability to engage with it “contributes to making distinctions between the grassroots and those who [are] privileged enough to spread the message” (Englund, 2006: 70). The widespread use of jargon in trainings prohibits conversations about the issues on equal terms and discounts participants’ own “insights into their life situations” (idem: 71).

This dynamic, however, is possible with the complicity of defenders themselves. When asked by protection organisations what they need, defenders often say “trainings”, and/or they try to make sure that they can repeatedly get back into the same training programmes. In a

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<sup>100</sup> Even protection professionals confess to being befuddled by the security terminology in some of their more candid moments. When I asked one of them how their organization defined the concept of “risk” and how important that notion was for their work, he laughed before he told me: “I will refer you to the security handbook of [protection organisation] and .... I’ve sat in so many training programmes and I’ve heard HRDs debate for hours what is the difference between a risk and a threat, and I’ve asked trainers, can you tell me, aside from what we tell in the handbook, what is the difference?” (Interview, 29 July, 2014).

<sup>101</sup> At the very least, these elaborate formalizations might lead to participants not understanding more basic approaches to security. At the same time, the implied hierarchy between technical-scientific and other kinds of knowledge, which casts the former as having a universal status, can lead might lead trainers to assume that their imparting of knowledge is successful. This is well illustrated by an incident that happened on a visit that I conducted outside of Nairobi during my fieldwork, when a local organization had their offices broken into. All their equipment was stolen, and they lost all their electronic data because the flash-disk that it had been saved on had been left next to the computer overnight. Yet, this same organization had been intensely trained on security, on several occasions, by one of the most prominent protection organisations in Kenya (Ichim, personal fieldnotes). When a month later I interviewed a staff member from that protection organization, they told me that they were working very closely with the local organization, and that the latter were doing “very well” in their approaches to security (Interview with protection professional).

particular incident, the trainer, affiliated with a protection organisation based in Kenya, asked the participants how many of them had been trained in security management. Only three hands went up, although a good number among the participants were well known as grassroots defenders operating in the informal settlements in Kenya and had likely been in security trainings before. The trainer was visibly surprised, as was I (Ichim, personal fieldnotes). In a later conversation with them, the trainer confirmed to me that at least a few other defenders in the room had received security training, which they had been able to verify by looking at attendance sheets from past trainings (Ichim, personal fieldnotes). At first sight, it might seem counter-intuitive that defenders themselves not only support trainings, but actively work to make sure that there is an endless supply of them. Yet, as I will show, the range of reasons that shape grassroots defenders' interactions with and responses to capacity-building programmes is a lot more complex than simply seeking knowledge. Rather, in deeply unequal socio-economic settings, where professional protection organisations and trainers on the one hand, and many of the beneficiaries of these programmes on the other fall on opposite sides of the class divide that I wrote about in the previous chapter, trainings have acquired multiple meanings and functions, that go beyond those intended for them by protection organisations. Notably, trainings have come to play an important role as a solution to socio-economic marginalisation, both temporary, through the perks that are associated with trainings, and more long term through their active role in constructing aspirations for a higher socio-economic status among beneficiaries.

### **6.3.2.3. Resisting the Consensus on Capacity Building: The Role of Material Rewards**

As I mentioned above, often, even if participants live and work in Nairobi, they will be put in a hotel in Nairobi for the duration of a training, even in situations when *all* the participants are based in the capital. During one such training, I asked one of the organisers what motivated that choice. They answered that the organisation took this approach to make sure that the participants would arrive in time for the second day of the training, scheduled to start at 8 am. Because trainees would otherwise be travelling from Nairobi's informal settlements to where the hotel was located, the organisers thought, there was every chance that they would be coming late. While in theory sound, the unstated expectation behind this approach was that defenders had

chosen to participate in the training for the sake of knowledge gains, and that if all else was facilitated on their behalf, they would do everything in their power to maximise the opportunity in that sense.

Yet, on the second day of the training no one showed up less than one and a half hours late, although the distance from the breakfast hall to the training room was less than five minutes. More generally, in both this training and others that I attended I often observed a low level of attention during the sessions. Often, defenders would be fiddling with their phones or walk in and out of the training session; on one occasion I even witnessed a participant fall asleep, as the trainer continued undisturbed. During a training, as I left the room to make a quick, urgent phone-call, one of the participants followed me outside, and confessed that she was extremely bored (Ichim, personal fieldnotes). These attitudes seem to indicate that knowledge and the desire to attain it play a minor role in defenders' presence there. That that should be the case can be explained at least in part by the considerations that I raised in the previous section, i.e. the high level of conceptual and linguistic difficulty of the material being taught. However, those same considerations do not explain what defenders seek for in trainings if not knowledge.

The first cue for a possible answer to that puzzle came during an interview with a defender from one of Nairobi's informal settlements, when we discussed a digital security training that he had told me he had participated in. This training had been organised with funding from one of the big international NGOs working on defenders at risk, but facilitated by a protection organisation in Kenya, and had been held at a high-end hotel in Nairobi, over a period of three days. All the participants, both from Nairobi and beyond, were lodged in the hotel throughout the duration of the training. When I asked my interviewee if he had found the training useful, his response was prompt and remarkably candid:

*“The training was good because they took me to [hotel] and I had never been there. It was a 3 days training. I stayed in the [hotel] for 3 days. It was fun, and that big bed there. I asked [the person from the organisation that had organised the training]: now, I have come to [hotel], but now why don't you come to [where I come from] to train people there. You work for HRDs, come to [where I come from], not all people can come here to [hotel], and train*

*people there, and then they will be going to their home daily. (...) It didn't make a lot of sense, but it did, because I slept there and I met all those people from [country of international organisation that funded and delivered the training]."*

Later in the interview, he complained that, although this was a digital security training, he did not have a laptop of his own, and that, from the second day onwards, he had had to borrow one from a staff member of the Kenyan organisation that had facilitated the training. Then he added:

*"I was just happy because I went and ate." (Interview with grassroots defender, 13 March 2015)*

That defenders participating in trainings often do so because of the small material rewards associated with this activity has also been confirmed by others. A Kenyan activist who used to be on the board of a protection organisation in Kenya told me in a one on one informal conversation that the "whole capacity-building project is one big illusion. Most people go there because there is food, a nice place to stay, per diems" (Ichim, personal fieldnotes). The scholarship too documents similar findings in other contexts. For example, in the context of HIV/AIDS donor funded workshops in Malawi, Swidler and Watkins find that cash, certificates of attendance and the possibility to network are the most important incentives for participants (2009: 1189). The cash that comes from per diems is often the only source of money for impoverished participants, while networking helps extend the patron-client relationships that are often so crucial to buffering socio-economic insecurity in African settings (see also Smith, 2003).

The certificates that participants are being given at the end of trainings are a particularly important incentive to attend trainings since participants believe that they can make a difference in their ability to secure paid employment further down the road (Swidler and Watkins, 2009). In the Kenyan context too, paid employment is an important aspiration for grassroots defenders, and capacity-building plays a key role in feeding that aspiration. Before an interview that I carried out with a defender from one of Kenya's informal settlements for a different project, she recounted to me how an Asian NGO which had conducted conflict monitoring and prevention in the area had paid her as a member of a local network of monitors 7000 KSH (about £50) a month

over the 2 years that the project had lasted<sup>102</sup>. After explaining how important this money had been for her family, she went on to pull out from a small drawer a bunch of certificates that she had obtained through participating in various trainings (Ichim, personal fieldnotes). On a different occasion, I bumped into another defender, also from an informal settlement, at the offices of a human rights organisation. As we engaged in small talk, he told me that he had come for a meeting to try and arrange for that organisation to sponsor the launch of a report about human rights violations in Kenya's informal settlements that him and a group of other defenders from the informal settlements had researched and written. Then he added: "I hope that if we can organise for the launch of this report, these people will see that we also can do human rights work like them, and next time when there is a consultancy they will give it to us" (Ichim, personal fieldnotes).

The desire for jobs is part of longer term projections of a future that is shaped by imaginaries of a particular social status and associated economic rewards. However, these aspirations cannot be expressed openly because the consensus on the role and aims of capacity-building among donors and protection organisations renders them irrelevant and/or potentially risky for how protection is currently imagined. For example, capacity-building as a socio-economic enterprise might create dependency among beneficiaries, and it would fail to develop their agency and achieve sustainable objectives. Through sustained interaction with protection programmes, defenders themselves have learned the limits of acceptable claims that can be made on the protection system as defenders (see also Swidler and Watkins 2009, 1185-1188). And since the boundaries of acceptable claims cannot include those informed by socio-economic concerns, defenders have learned to "bend" existing avenues towards fulfilling precisely those concerns, even as publicly they state otherwise, thus helping to simultaneously satisfying the donors' and professional organisations' imaginaries of capacity-building (see also Smith, 2003).

Paradoxically, then, appropriating capacity-building along socio-economic lines happens through both resistance and acquiescence to the consensus among donors and protection

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<sup>102</sup> To put this in perspective, 7000 ksh is slightly less than the daily per diem that staff in the average Kenyan NGO will get when travelling on assignments outside of Nairobi. In some organisations, and depending on the grade pay of the staff on travel, daily per diems for travel outside of Nairobi can be more than double that.

organisations. The latter aspect is illustrated especially well by an unexpectedly strong commitment among defenders to the “forms of rationality” and modern subjectivity promoted in trainings (Swidler and Watkins 2009: 1190).

#### **6.3.2.4. Between Critique and Acquiescence: The New Subjectivities and Power**

In many of my interviews, defenders from the grassroots displayed a strong attachment to the human rights defender identity as it is embodied in current discourse and institutional practice. Often, this attachment was expressed through perceptions about how a “defender” is different from an “activist”. In these conversations, markers of professionalism were most frequently invoked to clarify how “human rights defending” was “an upgrade” from activism. While the latter was associated with “noise-making” without prior planning or ideas of concrete solutions, defending human rights brought clarity of purpose and solutions that often drew on professional repertoires of human rights work:

*“Human rights activism does not need facts much; activism is not always organised; the skills used in carrying out activism, not much. But a human rights defender goes a step further in doing interventions in a more organised way, broader way, and to higher channels. An activist will do a demo here and go home; but a human rights defender comes here, sees the intervention, and knows which channels to access until you get the results or the change that you want. Hence our work is human rights defending, not human rights activism. (...) Activism used to be there in 80s and 90s, there was a lot of running up and down, but now human rights defending involves a lot of research, a lot of dialogue, and a lot of public interest litigation, using all means, electronic, radio, partnerships, etc.” (Interview with defender from outside of Nairobi)*

and

*“A human rights activists will only make noise around a human rights violation, but a HRD will do something more, they will make sure the person who has violated the rights, is maybe taken to custody, record statement, if*

*your life is in danger they will maybe look for some funding to take you out of the country. But an activist, apart from citing the violations, what?” (Interview with defender from Nairobi informal settlements, 18 April 2014)*

To illustrate their commitment to a professional human rights identity, defenders assimilate the jargon of human rights work and invoke it frequently and with seeming ease, even though, often, this jargon does not seem to have much substantive meaning in context. The same defender that I quoted from immediately above, continues:

*(...) It [self-identifying as a human rights defender] does help me because even on my line of interest I am focusing more on human rights issues even in advocacy; before that we could do advocacy on anything that was available, but since that I've been focusing more on human rights violations, gender equality, because I am more on the human rights perspective; I advocate more on the human rights issues; more governance, human rights, peace building, but I am focused more on the human rights perspective; just to make the human rights promotion. (idem)*

This attachment to the human rights defender identity might seem surprising and difficult to understand when considered alongside incisive critiques of how the term human rights defender and its meanings have become embedded in the power relationships that shape the human rights sector. Often, those same defenders that exhibit a strong attachment to the defender identity are simultaneously critical of the class differences between themselves and protection organisations, and especially of how the latter have appropriated the “term human rights defender” for what, they perceive, is these organisations’ own benefit – for example, to strengthen their relationship with the donors or international publics. In an illustrative example, one of the defenders that I quote from above, complained to me a few months later, in a one on one informal conversation at a public event, that the organisation behind the event was “parading” defenders from all over the country to improve its relationship with the donors (Ichim, personal fieldnotes). However, the tension between commitment and critique will seem less puzzling if defenders’ commitment to the human rights defender identity is a marker of grassroots defenders’ aspiration for the professional status that the human rights defender

identity illustrates in contexts where a professional status is the source of hope for better working and living conditions.

Importantly, in deeply unequal socio-economic contexts, a professional status can also sustain the hope that it might level the unequal power relationship between defenders and protection organisations. This, however, is unlikely to happen. On the contrary, as recent scholarship has shown, capacity-building is predicated not only on maintaining, but often on creating new power relationships. In their research on the effects of the doctrine of sustainability on HIV/AIDS programming, Swidler and Watkins (2009) talk about aspiring or “interstitial elites”, those villagers with a sufficient level of education to hope that they might find a formal job in the NGO sector, but insufficiently schooled to be hired at a high salary to implement donor projects. This ambiguous social category, whose members act as intermediaries between NGOs and the public, provides many of the volunteers that populate NGO workshops. The authors find that these “interstitial elites” are taught to define themselves through opposition with “the ‘backward’ villagers whose ignorance it is their mission to correct”, and that this distinction becomes key to their social identity (1190). Englund arrives at a similar conclusion in his study of NGOs and human rights in Malawi. Specifically regarding the role of volunteers in carrying out civic education country-wide for a national NGO, he shows that these are trained to think of themselves as different from the grassroots whom they must enlighten on human rights and democracy (2006: 87-95). Hence, volunteers’ commitment to the modern identities taught in trainings rests on a power relationship between them and their communities, where the communities are cast as “backward” and the volunteers as the “torchbearers” (idem).

In this respect, the human rights defender identity and the way in which it is being taught in trainings marks an important departure from that practice. Defenders are also taught to think of themselves in relation to their communities, but this time through a process of identification rather than differentiation. Differentiation, to the extent that it occurs at all, is only to allow for an emphasis of defenders’ bravery and courage as members and protectors of their communities. Yet, despite moving away from constructing hierarchies between defenders and their communities to emphasise defenders’ status, this process of identification serves to reinforce another strict hierarchy, but this time between grassroots defenders and protection organisations.

Like the consensus on protection, identifying defenders with their communities, serves to circumscribe the range of acceptable aspirations that defenders can have. For example, for many defenders from the grassroots, a fundamental aspiration is to have a different socio-economic status from their communities. Occasionally, this can include the ambition to move away from their communities in a geographical sense; as one of my informants from the informal settlements put it to me in one of our conversations “I would like so much to move to America” (Ichim, personal fieldnotes). Or, as Swidler and Watkins put it, aspiring elites “seek not to live in the village, but to *leave* it” (1190, my emphasis; see also Englund 2006). Yet, precisely because the defender identity rests on a logic of similarity with communities, aspirations that threaten to break that are difficult to accept as legitimate. At the same time, many professional organisations’ own work is predicated on distance – both social and geographical - from those same communities. This dynamic entrenches the existing power relationship between protection organisations and many of their beneficiaries. Ironically, then, this power relationship both engenders new subjectivities, which are often readily ascribed to, and it constraints the range of claims that can be made in public discourse on the basis of ascribing to these new subjectivities.

#### **6.4. Conclusion**

Donors’ and protection organisations’ consensus on protection as a response to violations of defenders’ civil and political rights defines the boundaries of acceptability for claims that defenders can make on the protection regime. At the same time, many of the concerns that define the work and lives of grassroots defenders revolve around socio-economic issues. Having learned, through sustained interaction with protection programmes, that socio-economic claims on protection fall below the threshold of acceptability, nevertheless, grassroots defenders find other ways to appropriate existing protection programmes for those same ends. Paradoxically, however, their ability to do so is predicated on continuously pretending otherwise in their interactions with protection organisations (and, to a much lesser extent, donor community). Therefore, defenders subvert existing programmes and simultaneously support the power relationships that lock them out of being able to voice their concerns openly and have them addressed in the first place.

I have shown here how these dynamics play out in relation to capacity-building from the perspective of the beneficiaries of these programmes. I move on to explore processes of appropriation from the perspective of protection professionals. This group of stakeholders widely interprets appropriation as “opportunism”, and in the process casts grassroots defenders as “the problem”. In doing so, it re-enacts the same dynamics that I have analysed here, by delegitimising socio-economic claims even as they fail to interrogate their own positionality within existing power relationships. Along with examining the implications of this, I also suggest an alternative way of reading grassroots defenders’ (mis)use of protection programmes, one that is better able to forward a more nuanced understanding of why abuse happens, without, however, seeking to excuse it.

## Chapter 7. Protection and Opportunism: The Grassroots as the Problem

*“It is not in the definition of a HRD to be dishonest” . (Kenyan protection professional) <sup>103</sup>*

*“So, we are the ones who are having the challenges, but they are the ones who are having the money.” (Grassroots defender)<sup>104</sup>*

### 7.1. Introduction

Among other events during my fieldwork, I participated in the launch of a report on human rights violations in Nairobi’s informal settlements. The report had been researched and written by defenders from the informal settlements, but had been printed and launched with financial support from a professional human rights organisation in Kenya. The launch took place in a very modest hotel in downtown Nairobi, on the fifth floor of a long, tall building, almost Kafkaesque in its oppressive anonymity. This was happening quite late in my fieldwork, and by that time I had already attended other launches and similar events, all of which took place in one or other of Nairobi’s vast range of more expensive, more good-looking hotels, often boasting elegantly decorated conference rooms and swimming pools. Slightly surprised by the choice of venue on this particular occasion, I assumed that it had been dictated by budget constraints. Yet, when I asked one of the organisers about this, they told me that their organisation had, in fact, suggested one of the more expensive hotels for the launch, but that the small group of defenders involved in researching and writing the report had insisted on the cheaper option.

At the beginning of the launch, attended by at least 50 defenders from the grassroots by my count, an attendance sheet was circulated, in which the participants had to fill in details such as their name, affiliation, email address, and phone number. This was customary practice in almost all the events that I had observed before, but I made a mental note that in this particular

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<sup>103</sup> Informal communication, 11 Oct 2015.

<sup>104</sup> Interview, 13 March, 2015.

occasion the sheet included a column for the ID number of the participants, a biographic detail that I had never encountered before. The rationale for that specific piece of information only became known to me on the way back from the launch, when I fetched a ride with staff from the professional organisation, who were travelling to the same area of Nairobi, where their offices were located. As they were catching up on small details related to the launch, one of them brought up an incident that had occurred towards the end of the event, when participants had been paid their per diems of 500 Ksh (about £4) on the basis of the attendance sheet. According to these staff, one of the defenders on the list failed to show up when their name was called; two other defenders, both from the small group involved in producing the draft report, reassured them that the defender was “just around”, and offered to sign on their behalf. The staff, however, refused to give the money to someone else, and advised the two defenders to tell the third – the absent one – that they could drop by and pick up the money from the organisation’s offices later in the week. They added that inventing fake attendees when participation was high (and hence more difficult for organisers to remember new faces) was a method by which grassroots defenders were sometimes trying to make money. When I gently suggested that, if they were telling the truth, then the defender who did not pick up their per diem would have to spend up to 200 Ksh on transport to come pick up the money, in addition to a few hours in traffic, one of the staff members replied to me that it did not matter, because this was a matter of “accountability” (Ichim, personal fieldnotes).

Without discounting the need to know whether the defenders were telling the truth or not (much as that is close to impossible), I want to suggest here that that is less relevant than the inclination among their professional counterparts to assume from the start that they were *not* telling the truth, and the kinds of actions that these assumptions engender(ed). This episode illustrates a common attitude among protection practitioners, one that I encountered repeatedly during my fieldwork, that portrays attempts by grassroots defenders to appropriate the protection system as “opportunism”. In turn, this attitude illustrates an inclination to see the grassroots as “the problem” more generally. The consequence of this approach is to shield both the protection system and its practitioners from interrogation: the corollary of assuming that the grassroots are the problem is that the protection system is *not*. Yet, as I have already begun to show in previous chapters, the protection system is far from unproblematic, both in its design, and implementation.

One of the most important among its problems, I suggested earlier, is the system's bias on defenders' civil and political rights and the side-lining of their socio-economic concerns. Continuing that idea, here I want to show how seeing the grassroots as "opportunists" and as "the problem" is an interface for protection actors' resistance to the redistribution of protection resources to make them fulfil grassroots defenders' socio-economic claims, however peripherally so<sup>105</sup>. However, I also argue that these are not willed intentions of protection practitioners (much as grassroots defenders often seem to think so). Rather, protection practitioners themselves are constrained in their ability to interpret attempts to appropriate the system both by the cognitive frameworks generated by the discourse on defenders, and by institutional constraints. Here, I deal with the former, while in the next (and final) chapter, I deal with the latter. Even as these frameworks, built on an abstract category of defenders as heroes, legitimate defenders' work and that of protection organisations with the public, at the same time, they serve to maintain existing power hierarchies within the protections system, if inadvertently so<sup>106</sup>.

I start off by exploring how the term human rights defender, as the marker of a special category, draws on the "heroic victim paradigm" (Meyers, 2011) and the implications for how protection professionals interpret acts of subversion by the beneficiaries of protection programmes. I then move on to specifically explore how current understandings of the term human rights defender and its deployment in public discourse function to enable resistance to the

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<sup>105</sup> This is an important point. Of course, resources will never be sufficient to address the full range of socio-economic claims made by defenders, especially as the discourse is spreading locally, and more and more defenders from the grassroots start self-identifying as defenders and make claims accordingly. However, how the limited resources available are being spent is crucial for buttressing or denting the legitimacy of protection organisations in the eyes of their beneficiaries. See also Chapter 6, footnote 88, pg. 138.

<sup>106</sup> A word of caution before I proceed with my analysis, as I anticipate counter-arguments from my peers, both academics and protection professionals. The central axis of my argument is that we need to move away from moral judgements in trying to understand how *all* social categories of activism relate to the protection system, and tackle them as social phenomena instead. However, the aim of this approach is not to excuse appropriation (or what protection professionals consider to be "opportunism"), but rather to forward alternative frameworks, that have a better explanatory power for understanding why these acts happen in the first place, *and* for seeking adequate solutions. By the same token, the alternative framework that I am suggesting cannot function as a blanket explanation of all the cases of opportunism. In 2014, for example, Front Line's Congo Programme experienced a rate of 80% of fraudulent requests for protection funding, which required 50% of the programme's resources to distinguish from the genuine applications (Interview with Front Line staff, 29 July 2014, Nairobi). This is the single most severe case of abuse of the system that I have come across in my data. Without being familiar with the context in the Congo, I would be extremely cautious to claim that my own alternative framework can better explain this situation. However, at the very least, the spike in these incidences indicates that we need new ways of thinking about these realities.

redistribution of existing protection resources towards grassroots defenders, to fulfil socio-economic claims made by the latter on the protection system. Also in this section, I analyse how, in parallel to enabling resistance to redistribution, current rationalisations serve to maintain gatekeeping and trusteeship. In the final section, I suggest a different reading of subversion as “resistance” rather than “opportunism”. By drawing on the work of James C. Scott, I seek to show how a concept of resistance is better able to explain why appropriation happens in the first place and how existing power relationships influence that. Moreover, reframing opportunism as resistance also provides a more suitable avenue to nuance current understandings of agency in “regimes of care” (Ticktin, 2011), away from essentialised notions towards ideas that more closely reflect the realities of everyday life.

## **7.2. The “Heroic Victim” Paradigm: Virtue and Its Perils**

In an essay published a few years back, where she tackles the problem of “impure” victims, Meyers (2011) distinguishes between the “pathetic victim paradigm” and the “heroic victim paradigm”. The pathetic victim is the traditional beneficiary of humanitarian and human rights support, whose passivity is a pre-requisite for acknowledging its innocence and offering protection. At the opposite pole, the “heroic victim paradigm”, conceptually moulded on Amnesty International’s prisoner of conscience, is predicated on the victim’s agency, exercised in fighting back repression. Here too there is a criterion of innocence, reflected in the requirement that the heroic victim’s acts take place non-violently and within international rights standards. Meyers questions the usefulness of the innocence criterion as it is currently used on the basis that it is an “invidious fiction” (268). Instead, she proposes that it be replaced by a “burdened agency criterion”, i.e. one that shifts the focus from the victim herself to emphasising the nature of the treatment inflicted on the victim and how it constrains (“burdens”) the victim’s agency. Yet, at the same time, Meyers contends that “there is no way to avoid judging the moral merit of anyone’s claim to be a victim” (idem), and subsequently suggests that the solution to avoiding the problems raised by the innocence criterion is to stretch it to cover acts that are currently seen as not innocent (for example, the reasons that many immigrants leave home should be seen as altruistic sacrifices for the sake of their families rather than as a desire for material gain) (idem). Similarly, Meyer’s suggestion for how to nuance the super-human figure

of the heroic victim is to place it on a continuum with the pathetic victim, an act that would entail acknowledging that heroic victims can also “suffer and despair, even as they lead and triumph” (269).

While Meyers does a good job of highlighting the limitations entailed by maintaining the innocence criterion, she nevertheless remains within the sphere of moral value judgements. As a result, Meyer’s argument inevitably loops back to the “nature” of the victims, which it wanted to avoid to begin with, and hence runs the risk of encountering the same problems that it set out to resolve. Rather, I suggest that the solution is to move beyond innocence (and its proxies/opposites) altogether. That merely broadening ideas of innocence, rather than questioning the usefulness of moral value judgments (such as innocent/not innocent) is at best problematic, at worst counter-productive, is illustrated by how defenders’ representations in institutional discourses, both internally and externally, limit rather than improve the practice of protection. I analyse this at length below, starting with some preliminary ideas from the relevant literature on the notions of victimhood, innocence, and agency, and their effects on human rights norms and practice.

### **7.2.1. Victimhood, Innocence, Agency: Some Preliminary Considerations**

Much of the literature that explores “regimes of care” (Ticktin, 2011) – i.e. the normative and institutional complexes that have the protection of vulnerable groups and populations at the core of their mission - has critiqued the role of an essentialised concept victimhood in how these regimes function. Scholars argue that this approach morphs protection into a practice of assistance that views affected populations as dependent, passive victims lacking voice, agency and solutions to their predicament (Armstrong, 2008; Bonwick, 2006; Malkki, 1996; Merry, 2007a; Moeller, 1999). As Megret put it, “[t]he victim is cause, object, but never actor or subject” (2009: 580). Although human rights - of which the human rights defenders regime is a sub-set – revolves around the rights-bearing, claim making individual, theoretical and empirical work has shown that, in reality, there are “considerable slippages of ideologies and practices” between human rights and humanitarianism, with the simple victim/perpetrator dialectic making the notion of victimhood as central to former at it is to the latter (Merry, 2007a: 198)

Within this framework, critiques of a concept of victimhood in human rights follow several lines of inquiry. Firstly, it is argued that victimhood can have a depoliticizing effect on human rights. Mamdani, for example, states that human rights, with its emphasis on “victims as wards needing protection” “has gradually been incorporated into a depoliticizing discourse whose effect is to transfer agency from victims to their ‘protectors’” (Mamdani, 2009: 471; see also Gourevitch, 2009; Humphrey, 2008; Madlingozi, 2010; Neocosmos, 2006). Secondly, it is argued that a focus on victimhood operates through processes of exclusion across multiple levels: in addition to sidelining alternative discourses, such as agency, resilience and resistance (Gready, 2010; Ross, 2003), victimhood in human rights is predicated on a very narrow understanding of violence, i.e. one derived from the category “human rights violation.” This approach decontextualizes violence and its causes and it eludes more sophisticated explanations of how people experience and represent to themselves and to others situations of injustice and abuse (Merry, 2007a; Mutua, 2001; Ross, 2005, 2003; Wilson, 1997)<sup>107</sup>.

Perhaps more importantly, the literature also explores the way in which victimhood is circumscribed by ideas of innocence and the implications for practice. According to Mutua, “[t]he victim figure is a powerless, helpless *innocent* whose *naturalist attributes* have been negated by the primitive and offensive actions of the state or the cultural foundation of the state” (2001: 205, my emphases). The central role of a notion of innocence in defining victimhood is partly due to ethical reasons: the innocence of vulnerable victims is tied to the legitimacy of human rights and humanitarian organisations. Traditionally, these organisations have taken a neutral stance, trying to distance themselves from particular political struggles. This, in turn, required that victims be seen as “vulnerable and suffering bodies rather than political persons” (Merry, 2007a: 197; Ticktin, 2011). Yet, in the process, more insidious dependencies have also developed, to the extent that human rights and humanitarian organisations have also come to rely on the image of the suffering, innocent victim for sympathy to their cause, mobilisation and finances (Armstrong, 2008). This reliance, in turn, leads to the exclusion of those individuals whose actions that do not conform to the image of the innocent victim (Merry, 2007a: 198).<sup>108</sup>

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<sup>107</sup> See also Chapter 8, which deals extensively with this aspect.

<sup>108</sup> Bonwick makes a similar argument about the selective nature of interventionist agendas in relation to civil society more widely. In a comment on the doctrine of the responsibility to protect and how it influences the representation of affected populations, Bonwick notes that the current logic of intervention can only accommodate

Despite the multi-faceted critiques brought to a concept of victimhood, scholars have primarily suggested solutions to the problems it raises by insisting on the advantages of a concept of agency (see, for eg, Baines and Paddon, 2012; Barrs, 2010; Bonwick, 2006; Coulter, 2008; Coulter et al., 2007; Megret, 2009; Utas, 2005). Here too lines of inquiry follow several directions. Firstly, the literature investigates the benefits of employing agency for protection practices and their impact on the ground. Thus, it is argued that intervention programmes must pay more attention to what those affected themselves are doing in situations of distress, because those actions are an “endogenous source of protection” (Baines and Paddon, 2012), to build on that for more effective interventions (Barrs, 2010; Bonwick, 2006), or, at the very least, to avoid harming them (Baines and Paddon, 2012; Megret, 2009). Secondly, a shift of emphasis on agency also satisfies the ethical imperative of recognizing the humanity of those affected by adversity by restoring to them their “subjecthood”. Seeing those in distress as people trying to stay in charge of their own destiny rather than as passive victims can reverse the trend to see people in the South as objects of pity, and thus challenge the power imbalance between the North and the South. Moreover, highlighting victim’s agency can also be a more powerful tool to mobilise constituencies in the Global North. Seu, in particular, argues that the human rights and humanitarian practice of employing images of victimhood and suffering to get audiences in the West to act is a “shock tactic” that treats the latter as “reactors.” This leads her to conclude that a more effective message should include “counter-discourses, socially available narratives of human beings as morally responsible agents, capable of empathy” a tactic which has better chances to make audiences in the West feel “empowered and directly responsible” (2003: 195).

The human rights defenders discourse is an almost text-book answer for some of the scholarly suggestions that I have reviewed above. Yet, as I will show below, rather than resolve the problems entailed by a concept of victimhood, introducing a concept of agency in the human rights defenders discourse seems to further entrench some of the problems that it is meant to resolve. This, I suggest, indicates that the problem lies less with the notion of victimhood, and more with the notion of innocence.

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the concept of a “‘very’ civil society” in conflicted areas, but not the image of “a more pugnacious one involved in defiance, resistance, civil disobedience or struggles against oppression. There is no mention, for example, of civil society acting in ways that could be conceived as unlawful or clandestine” (2006: 580).

## 7.2.2. Defenders, Agency and Innocence: Problematizing the *Perfect Victim*

### 7.2.2.1. The Human Rights Defender Concept and Its Representational Forms

In a training for defenders that I attended outside of Nairobi during my fieldwork, the trainer started his PowerPoint presentation with three slides that sought to explain to the audience the concept of human rights defenders. The first slide showed a drawing of two infantilized human figures, looking like they were dancing with joy. Bubble speeches next to their smiling faces showed them saying, “my right, my land”, and “my choice, my freedom” respectively. The image was accompanied by the following text: “[p]eople were living free, enjoying their right to their land, their freedom of choice. People were really happy and were living in peace.” The next slide continued: “Then someone came to silence them, grab their land, leaving them hopeless and voiceless. This person is called the perpetrator”. This text too was accompanied by a drawing, this time of the perpetrator, represented three times bigger than his victims, who looked cowed as they were fleeing from his threatening posture. The perpetrator, in turn, was shown as saying “my land, my decision. Shut up,” while one of the victims thought to themselves “no hope”. Finally, the third slide introduces the human rights defender: double the size of the victims, and almost the same size as the perpetrator, the defender is positioned between the perpetrator and the victims: with his hand raised, he says to an angry perpetrator that looks like s/he is holding a spade: “No! Stop!!!”. Taking shelter behind the defender, the victims think to themselves “Hope” and “Protection.” The text accompanying these final slides states: “But some people who can not [sic] keep quit [sic] in front of such abuses decide to take action to promote and protect the right of those who are voiceless. THESE PEOPLE ARE HUMAN RIGHTS DEFENDERS. Risking their own physical and mental integrity, they strive to bring an end to impunity of human rights violations and to promote social justice and peace” (Ichim, personal fieldnotes).

This (remarkable) conceptualization of defenders and its visual and textual correspondents construct the image of the human rights defender through a mechanism that hinges on a few key elements. The first of these elements is the innocence and passivity of victims of human rights violations, who are imagined as the community of the defender. In the slide, they are represented through the recourse to an idealized past, when social life and human

nature were untainted by conflict or corruption (“people were really happy and were living in peace”), a strong marker of their unadulterated innocence. This state of affairs is only disturbed (but, importantly, not corrupted) when “the perpetrator” intervenes with the evil intention of stealing their land. Here, the text emphasises the idea of victims’ innocence by adding to it the additional layer of utter passivity and exposure (“leaving them hopeless and voiceless”). The human rights defender, introduced in the next slide, is the very opposite of passivity; instead, he appears to embody what one might call “perfect agency”. The defender’s agency, then, is the second key element of the mechanism through which s/he is constructed. This agency is entirely contingent on the community’s passivity (the community members’ vocabulary has changed now to “hope” and “protection”, as they stand behind the defender, almost three times smaller in size, a hint of the defenders’ exceptionality and “super-humanity” (Meyers 2011), reinforced by the capitalized “THESE PEOPLE ARE HUMAN RIGHTS DEFENDERS”, written in red font in the slide. Building on the previous depictions of the community members and “the perpetrator” as passive, helpless victims and pure evil respectively, the defender here emerges as the perfect hero. Like the victims, he is characterized by innocence, but unlike them, he is also agentic: his agency, in fact, serves to strengthen the idea of his innocence (the defender is striving for a return to the innocent, unaltered state of social life as suggested by the closing loop in the text, “to promote social justice and peace” – a reference to the earlier introduction of the idea of peace, before the perpetrator intervened). Coupled, the defender’s agency and innocence, also make them a perfect victim when s/he is under attack, or, what Meyers (2011) has called the “heroic victim”. This is the third, and final stage in the construction of the figure of the defender: when s/he is suffering reprisals, this is absolutely undeserved and absolutely deserving of protection, often imagined to translate into the protection of their communities. If the traditional victim of human rights violations was a perfect *victim* (where perfection underscores the state of passive victimhood), defenders, instead, are the *perfect* victims (where agentic victimhood defines the state of moral perfection).

This same mechanism can be found in representations in discourses emerging from regional and international organisations. To give just a couple of illustrative examples, in an online Youtube video posted in December 2016, Hassan Shire, the executive director of Defend

Defenders, pays tribute to the human rights defenders working for the Human Rights Council in Ethiopia, to mark 25 years of the latter's existence, with the following words:

*“Good afternoon, friends, the board of directors, the supporters and the workers of Human Rights Council in Ethiopia, Addis Ababa. For this milestone of 25 years, of protecting and promoting the fundamental rights of the great people of Ethiopia, making sure that with little resources you have in hands to reach far and wide wherever there is a call and cry for documentation and researching and meeting victims of human rights violations in their own villages, their own localities and giving them assurances that they are not alone, their suffering will be shared, will be known and will be shared on a light of national attention and global attention as well. Your persistence and resilience despite Societies and Proclamations Act, another affront law which equates activism and terrorism and other challenges in administrative and legal framework you are facing, you stood up and you still continue with you own limited resources to engage and raise active voice when rights are being trampled upon. Your tremendous work and the value of the efforts you are putting is highly recognised and you have friends all over the world. We answer your calls, we continue to answer your calls, we are here in solidarity. You existed in 25 years of golden years. It is worth tons of gold, the work you did. Please continue” (SomaliUpdate Online, 2016).*

Similarly, in a Front Line animated video called *Empower One, Protect a Thousand* community members (and potential victims of human rights violations) are represented through black figurines; a red one (representing the defender) is shot; as the red figure falls to the ground, the black ones begin to vanish, while the message “Kill one terrify a thousand” comes up on the screen. In the sequence that follows, the red figure is depicted with a green circle around it (representing protection agencies); when it is shot at again, the green circle does not break (evoking the idea of effective protection) and, as the red figure continues to function, the black figures (community members) slowly come alive and they start to multiply (Front Line Defenders, 2009). Although they are generated in different spaces, use different media of communication, and serve seemingly different purposes, identical themes pervade these other

two snippets. As in the PowerPoint presentation that I analysed extensively above, they both rely on an image of victims of human rights violations as innocent and passive. This, in turn, underscores defenders' own innocence but also their agency, which then again translates into their perfect victimhood when under attack.

As these representational forms illustrate, the discourse on defenders maintains ideas of vulnerability and victimhood, but it also challenges them by introducing a notion of agency in how defenders are represented. The concept of human rights defenders, both as a social and legal category, sees defenders as promoters of human rights *before* seeing them as sufferers of human rights abuse. In fact, the latter hinges entirely on the former: for the purpose of the category, vulnerability matters only so long as it is a consequence of HRDs' defense of human rights, which is an act of agency. In all likelihood, it appears that the protection regime promotes a new type of self, which corrects the older one of the passive victim. Yet, this new "agentic" identity is in reality extremely limited<sup>109</sup>: to the extent that it is circumscribed by ideas of innocence, the agency of human rights defenders can accommodate only certain kinds of actions – i.e. those actions that correspond to the ideal of moral perfection created by the discourse<sup>110</sup>. This emphasis on innocence and the specific type of agency that it engenders, as well as the victimhood model that the two result in, have important consequences for power relationships within the protection system. This is most evident in two of the outcomes that the representational forms that I have discussed above have for protection.

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<sup>109</sup> This is not to mention the deeply problematic nature of continuing to employ an image of victimised, passive communities whose rights defenders protect, to enhance the latter's exceptionality. One might argue that, within this framework, the defender is the proxy for the NGOs of yesteryear, the same that the literature that I have reviewed earlier targets in its critiques.

<sup>110</sup> Here I analyzed specific examples from the work of protection NGOs. International intergovernmental organisations, which play a key role in establishing the normative discourse pertaining to HRDs, take the same approach. For example, according to the United National Office of the High Commissioner for Human Rights (UNOHCHR), defenders' work must respect the universality of human rights, and it must be performed non-violently (UNOHCHR, 2004: 9-10). This points to the fact that, although the HRD concept shifts the profile of the victim towards agency, nevertheless, this shift maintains a tendency towards essentialisation: defenders may be seen as agents, but their agency is only valid so long as their actions correspond to a standard of "goodness" that is derived from the ideology of human rights. As I discuss above, this approach is no less problematic than that of working with a concept of essentialised victimhood.

### 7.2.2.2. The Outcomes of Representational Forms for Protection

The conceptual underpinnings of the term defender and its representational forms in the discourse affect the practice of protection both in relation to external publics, and internally. Externally, they augment the work of protection organisations, through a transfer of the ideas implied by these representational forms from defenders to protection organisations. This mechanism is similar to the one that the literature has highlighted in its critical engagement with a notion of passive victimhood (see, for eg, Merry, 2007a): as I mentioned above, scholars have argued that the idea of passive victimhood disempowers victims and empowers instead the organisations that protect them. Although founded on their agency, defenders' victimhood serves to strengthen that dynamic rather than resolve it. A very good example for this come from a joint funding appeal from the International Service for Human Rights (ISHR) and Defend Defenders, posted on YouTube. The video starts with the directors of the two organisations appraising the work and courage of human rights defenders: "The foremost role of human rights defenders is to tell truth to power, and also to raise the power of human rights entitlement. Human rights defenders are the lifeblood of the human rights movement. Human rights defenders are prepared to work, often at great personal risk, to challenge authoritarianism, repression, the status quo to achieve human rights change." Afterward, Defend Defenders' director makes a positive assessment of the ISHR's role in bringing the voices "from Africa to the wider human rights discourse at the international level", especially through the trainings they offer, while ISHR's director provides details about the organisation's future projects (one focused on a model law for human rights defenders, the other on women human rights defenders). At this time, the following message appears on the video screen: "ISHR and EHAHRDP need your help and support", while the director of Defend Defenders utters the following words: "*Human rights defenders sometimes pay their own lives [sic] in order to promote and to protect human rights; what are you going to pay to protect them?*" (ISHRGlobal, 2014).

In this appeal, the legitimacy of the work of protection organisations (and of their request for money) is strengthened through a twofold process of iteration, that likewise involves a sequential transfer in two-steps: once, of innocence from the victims of human rights violations to the defender, which I have already analysed extensively earlier; second, of defenders'

innocence and agency from them to their protectors. Paradoxically, then, the notion of agency in the current normative set-up on defenders serves to augment the power of protection organisations rather than that of defenders themselves (illustrated, perhaps somewhat cynically, by how defenders' self-sacrifice - "pay [with] their lives" in the passage I italicised above is expected to translate into a source of income for protection organisations - "*what are you going to pay to protect them*"?). The relationship between protection organisations and the defenders that benefit from their programmes is identical to that which has been critiqued in the literature between human rights organisations and victims of human rights violations more generally, with the caveat that protection organisations emerge with a higher degree of legitimacy on the basis of defenders' agency and moral virtuosity. Rather than address the disempowering aspects of this relationship as they have been highlighted in the literature, on the contrary, this dynamic deepens them.

Secondly, the innocence-agency-victimhood model in representations of defenders shapes protection practitioners' thinking internally, with negative implications for their ability to understand beneficiaries and the range of their decisions in context. The moral standard that underpins representations of defenders in relation to publics external to the protection regime, becomes the lens through which *the whole range* of beneficiaries' actions are interpreted and subsequently assessed as fulfilling or falling short of that standard. Thus, those of beneficiaries' decisions and actions that would qualify as agentic, but which do not fall within the limited range prescribed by the notion of innocent agency, are also described and understood through qualifiers that remain within the sphere of morality. More specifically, they are seen as the markers of a deficient moral character, rather than as deriving from structural constraints that dictate choice and behaviour: within this framework, moral considerations replace the need to understand the social causes of specific actions. This explains why attempts by the beneficiaries to appropriate the system for their own needs are framed as "opportunism", a term that is loaded with moral connotations.

At the same time, interpretations along the lines of opportunism function to legitimise the professional circles' resistance to the redistribution of resources, which is how grassroots

defenders often frame their socio-economic claims on the system. I explain this at length in the following section.

### **7.3. Protection Professionals and Their Resistance to Redistribution**

#### **7.3.1. Resistance to Redistribution Rationalised: The Grassroots as the Problem**

In both interviews and informal conversations with protection professionals, they have often referred to acts of “opportunism” by defenders. The propensity of beneficiaries of the system to “take advantage of the protection system”, in fact, was highlighted as one of the biggest problems that protection professionals have to face.

Attempts to take advantage of the system took a range of forms, according to these actors. On the lowest end of the scale, protection professionals would complain that defenders from the grassroots were falsifying receipts to claim more money than they had spent, or otherwise try and access small monetary rewards in those instances when they would carry out field assignments on behalf of protection organisations by, for example, claiming that they spent more money than was possible on phone calls which would then enable them to ask for more to be sent to them for other expenses (Interview with protection professional, 21 august 2014). On the higher end of the scale, the biggest concern was defenders’ exaggeration of risks that they faced or outright invention of risks, in order to access the benefits that came with being covered by the protection programme.

Across the board, when these incidents were mentioned in my interviews or more informal conversations, they were framed as instances of opportunism (most often, though not always, by grassroots defenders, who would seek to take advantage of the system for economic reasons). The language used in a few instances was particularly strong as an indicator of protection actors’ moral opprobrium for such attitudes. In one of my interviews, a former protection professional referred to defenders attempting to appropriating the system for material rewards as “economic barracudas wanting to capitalise on the system” (Interview with protection

professional). In a different interview, another protection professional referred to these efforts as attempts to “milk” the organisation of money (Interview with protection professional).

Without meaning to detract from the gravity of abusing the protection system, nevertheless, framing appropriation as “opportunism” locates the responsibility for these acts solely in the camp of those who seek to take advantage of the system, and, in the process, it obliterates the need to examine the root-causes of this phenomenon, and in particular whether these might require a more nuanced and critical understanding of how the protection system operates. This is the case even when protection professionals admit that many of those who abuse the system are driven to do so by poverty. A human rights professional (also involved in the protection of defenders) told me during a one on one informal conversation:

*“Because they are poor and there is little facilitation, they think this is a way to make a few dollars, is to abuse the system. I also am threatened because of this report, [protection professional] keeps saying that I should go, but I told him I did not reach a certain threshold, but if it was someone else they would already be in Sweden.” (Ichim, personal fieldnotes)*

However, this statement ignores the very different positions from which protection professionals<sup>111</sup> and grassroots defenders interact with the protection regime, and the resulting difference in their perception of the material rewards associated with the system. As I mentioned in the Introduction to this thesis, the institutional architecture for the protection of defenders focuses on three main components: capacity-building, advocacy, and protection. “Protection” here refers to direct support measures extended to defenders at risk: these include support for medical bills when injury is incurred as a result of human rights work, legal aid in situations where charges are being brought as a result of human rights work (for participation in peaceful protests, for example), and relocation. Relocation is generally regarded as a last resort measure, both because of the impact on defenders and their ability to carry out their work, and the costs attached to it. For example, when the Coalition relocates a defender, they will pay for accommodation, children’s school fees if the family is also relocated, and a stipend of 20000 ksh

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<sup>111</sup> This particular professional, for example, was working for one of the best paying organisations in Kenya.

(about £150) a month for expenses<sup>112</sup>. Or, these benefits are often much higher than what defenders from the grassroots otherwise earn<sup>113</sup> - the stipend for a month alone can be the equivalent of 7 months' rent for someone living and working in an informal settlement. While precarious living standards cannot justify attempts to access these benefits when not at risk, nevertheless, at the very least they can help contextualize (if not explain) them, especially when considered alongside the expectation that defenders will work voluntarily and out of "passion", even as they see that their professional peers will get paid for their work<sup>114</sup>.

The tendency to see appropriation as opportunism and the related assumption about who is at fault is part of a broader trend among protection professionals to cast grassroots defenders as "the problem" when seeking to explain those aspects of the protection system that do not work as they were intended to. In a paradigmatic interview with a protection professional, they repeatedly highlighted the fact that many defenders do not understand the mandate of their organization to ensure a safe and secure environment for defenders, thinking instead that it should "ensure that HRDs have salaries, and work, and are socially and economically good thanks to the [protection organisation]" (Interview with protection professional). Repeatedly throughout the interview, defenders' expectations that the protection system should also address socio-economic claims was identified solely as a challenge in the work of this organisation, rather than as a claim that needed to be considered on its own terms. The solution, in turn, lay in "forums and conversations" to make defenders "understand". When they did understand, "the relationship between [the organisation] and defenders became so much better; but for those who have *refused to* understand, it becomes very difficult" (idem, my emphasis). The notion of carrying out forums

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<sup>112</sup> When defenders are relocated within the East Africa region or internationally, that sum will be larger. I have not been able to gather data about exact amounts since this is not a topic that protection professionals will easily speak about, but it is very likely that these sums will vary from one organisation to another. Moreover, within the Kenyan context these sums have varied over time. Before protection in Kenya became institutionalised and it was practiced on a more ad-hoc basis, the sums were even larger than those that are disbursed at the moment. In a 2016 piece entitled *Safe House*, the author, a former student activist at the University of Nairobi, who had to go underground and eventually flee to Uganda with the help of a Kenyan human rights organisation in the wake of JP Oulu and Kingara's murders in 2009, recounts his experience of being relocated. Among others, he mentions that his stipend at the time was 300 USD a month, and that, while in Nairobi, he was put in a safe house in Kilimani, a one bedroom flat whose rent was a whopping \$1200 a month (Amuke, 2016). (The author has confirmed in an informal conversation that these details are correct.)

<sup>113</sup> See back Chapter 5, pg 120.

<sup>114</sup> To put this in perspective 20000 KSH is about a fifth of the monthly salary for professionals at the lower end of the pay-scale at the larger Kenyan organisations, and it can be a tenth at the higher end of the scale (head of programme or department for example), or even a thirtieth in exceptional cases.

and having conversations to publicise/clarify the organisation's mandate is built on the assumption that defenders' insistence on socio-economic claims is based on a misunderstanding of the system. Equally, it is built on the assumption that the system is designed with the correct ideas in mind, irrespective of whether these correspond or not to beneficiaries' own notions of what the protection system's priorities should be. As a result, when defenders insist on making socio-economic claims after these conversations have taken place, this is portrayed as a "refusal" to understand, a gesture that continues the pattern of seeing defenders as the problem.

Ironically, at least in part, this attitude can be traced back to how the "human rights defenders" concept is currently constructed and employed in the discourse. Specifically, the construction of the concept around the idea of virtue and high moral standards results in the widespread assumption that being a human rights defender and seeking monetary rewards as a result of that status are incompatible phenomena<sup>115</sup>. In other words, the human rights defenders concept and its emphasis on moral character, and the interpretation of acts of appropriation strictly through a moral (rather than social) lens are two sides of the same coin. For example, in one of my interviews, a human rights practitioner who is also involved in protection through his organisation's broader mandate, told me:

*"So, also [there are] people who take human rights work as a form of, I don't want to say rent-seeking, you know, opportunists, when you are doing human rights work there is this immunity, you can be protected, you can go to Europe. Us, when we started it was passion, we were in the streets (...). It was not about money, it was about our country – the realization of rights. But now you have people who call themselves, you know they are brokers, yeah?, they are not genuine, they are not bona fide, which has become a big problem."*  
*(Interview with professional defender)*

This juxtaposition of money and passion, as antithetical and mutually exclusive terms was a recurring theme in interviews with protection professionals. In a different interview in which the problem of "opportunism" came up repeatedly, I asked my interviewee, a former protection

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<sup>115</sup> Importantly, this is not limited to aspects of "opportunism", but encompasses the broader idea of engaging in human rights work as a means of making an income, an aspect that I will discuss in more detail in the next chapter.

professional, if he had any suggestions for how opportunism, as a limitation of institutionalised protection (highlighted as such by him earlier in our conversation) can be addressed. His response was:

*“In recruitment, people should look for courage and passion, and for someone's track record” (Interview with protection professional, 22 October 2014).*

The assumption in invoking passion was that its presence would preclude the impulse to try and take advantage of the system, since the two are considered to be incompatible. This is a sign of how, internally, the desire for financial gain is often seen by protection professionals as the sign of “moral deficiency” (Harrell-Bond et al., 1992: 211), incongruous with the status of being a human rights defender. At the same time, even as conceptualising the term human rights defender along high moral standards justifies protection professionals’ resistance to the redistribution of resources, this simultaneously limits their ability to reflect critically on their own positionality as relatively well-paid staff, and the implications of this for others’ aspiration for the same. Combined, these two factors serve to maintain the inflexibility of the current power hierarchy within the protection system. This is especially evident in a dynamic of trusteeship enacted through the implementation of certain types of measures that aim to prevent opportunism.

### **7.3.2. The Effects of Non-Distribution: Trusteeship and Gatekeeping**

Framing attempts to abuse the system as opportunism, and in particular seeing them as the marker of moral deficiency, obliterates the need to search for the social causes of opportunism (as opposed to framing it as a purely moral problem). This approach, in turn, legitimises the kinds of solutions that protection organisations currently implement to try and address this problem. The vast majority of these solutions revolve around “policing” existing resources and designing ever tighter control measures over them. For example, a protection practitioner – the same that had mentioned that defenders often falsify receipts - told me that their organisations tried to address this problem by putting in place strict procedures for any additional money being given. Disbursing this additional money would require prior approval

and documentary evidence for how it had been spent afterwards<sup>116</sup> (Interview with protection professional, 21 August 2014). More generally, protection organisations blacklist defenders who take advantage of the system, even in those instances when they only exaggerate (rather than invent) the risks that they are facing, in an effort “to let them [defenders] know it is not ok” (Interview with protection professional, 29 July 2014).

In turn, the approach to opportunism as an effect of moral deficiency and the resulting tight regulation of resources enact a broader dynamic of trusteeship, where protection organisations often imagine themselves as the guardians of defenders. Conversely, internal representations of grassroots defenders as the problem, occasionally coupled with subtle nuances of infantilisation, combine to rationalise and legitimise current decisions about resource management within the protection system. To give just one example, half way through a meeting of protection organisations that I attended during my fieldwork, the participants, all staff with protection organisations in Kenya, or organisations that might otherwise support defenders, started discussing updates on the situation of a grassroots group harassed by a land-grabbing company operating in their area, and strategies to support this group. During that discussion, someone suggested that the grassroots group apply for funding from an international body. In response, one of the participants in the meeting urged the organisation that had put forward the idea to apply for the funding themselves on behalf of the community-based group, so that they could have control of the money and its spending. After which, they added: “You know how these CBOs [community-based organisations] can be” (Ichim, personal fieldnotes). The assumption that this particular group would not be able to manage the money and/or would mismanage it, was based on a blanket judgment of community-based organisations, and defenders from the grassroots more generally, as a whole category (see also Waldron, 1987: 1).

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<sup>116</sup> Anyone who has carried out research in those geographical and social spaces in Kenya where its extended informal economy predominates will know that providing precise documentary evidence for all the expenses incurred during field-trips is very difficult. In such places – rural areas and the informal settlements in major urban centres such as Nairobi and Mombasa are good examples – it is not always possible to obtain documentary evidence (such as official receipts) of money being spent. Moreover, documentation – even in official institutions (like mortuaries, for example), sometimes requires expenses that by their very nature cannot be documented. To give just one example, a defender from a rural area mentioned to me the case of a police-shooting that they documented for a human rights organisation. To gain access to the mortuary where the body was being held, they had to bribe the mortuary attendant 1000 KSH (about £7). According to them, this money was never reimbursed to them (Interview with defender from outside of Nairobi).

There was also a deep irony about this remark occurring during a meeting whose venue was in Lavington, well-known in Nairobi's expat circles and equally Kenya's upper middle class for its green scenery, quiet streets, and its mixture of newly built flats and old, colonial-style houses surrounded by large, lush gardens. The guesthouse itself in whose conference room the meeting took place was located in such a compound, a mixture of alleys paved with cobbled stones, and abundant vegetation occasionally poked by wooden tables with matching chairs tucked away under large, green umbrellas. By start time, breakfast was ready to be served with a buffet style assortment of bacon, sausages, mushrooms and fried tomatoes, elements of French cuisine - croissant and other patisseries, but also the boiled roots traditionally served in Kenya – sweet potatoes or yams, as well as freshly squeezed juices, brewed coffee, tea and hot chocolate (Ichim, personal fieldnotes). To mention the set-up of the meeting in such detail might seem superfluous, but it is an extremely powerful reminder, precisely because of its material poignancy, of who has control over resources in the protection system, and what some of the benefits of controlling those resources are.

It is also a powerful reminder of the implications that resource-control has for how power relationships are being configured, a critical issue that raises the question of whether current resource management decisions and their rationalisations have the potential to challenge, or whether they merely re-inforce these power relationships. If the argument that power and resource control are deeply intertwined (Waldron, 1987) is correct, then its corollary is that empowerment necessarily entails processes of resource (re)distribution that open up different possibilities for action. That, however, would also require a radical rethinking of why beneficiaries attempt to appropriate (“abuse”) the system in the first place. In the next section, I offer a re-reading of “opportunism” as “resistance”, based on beneficiaries' own narratives as they emerge from my data, and I explore what the implications might be for protection.

## **7.4. Reframing Opportunism as Resistance**

### **7.4.1. The Professionals in Grassroots Defenders' Narratives**

Defenders' (ab)use of the protection system cannot be understood outside of their own narratives about the professional human rights sector, and especially about the sub-group that is involved in their protection. Just as professionals' interpretation of defenders' actions is both informed and constrained by how the discourse constructs the human rights defender concept, defenders' own interpretation of the protections system and their own responses to it draws on an imaginary that has constructed the figure of the protection professional in a particular way.

The single most important among the set of ideas that constitute these narratives, is the notion that protection professionals have appropriated the term "human rights defender" for their own purposes, rather than for the interests of defenders. In an interview with a defender from an informal settlement in Nairobi, when I asked them if they consider themselves to be a human rights defender, and why, they told me:

*"The name, I've been having a problem with it for a long time. There was a time I sat in a meeting, I said, me I'm not a HRD, I am [a] social justice activist. Because also the middle class has captured this name, as a cash crop. So, middle class has taken HRD as their cash crop to start an organization and say we are protecting HRDs, but then they are never involved in human rights work." (Interview, 9 March 2014)*

In a different interview, another defender, also from one of Nairobi's informal settlements, expressed a similar idea:

*"They [protection organisations] don't support the work of HRDs. Because if they do, they could be having a programme to ensure that HRDs are financially safe. Because they [protection organisations] have a lot of money. Also, they could ensure that there is communication, research, capacity building whenever needed. Because the money they are given is [unclear], but now they use [it] to pay their big houses and have mortgages. Through our activities, not their activities. Because when we are arrested, that is when you see them. But when we organise to demonstrate, or what is making you to demonstrate, maybe they don't even know what it is that make you to*

*demonstrate. So, we are the ones who are having the challenges, but they are the ones who are having the money.” (Interview, 13 March 2015)*

The idea that protection professionals have appropriated the term human rights defender for their own interests is inseparable from grassroots defenders’ conception of security as financial security (rather than physical security)<sup>117</sup>, and corresponding imaginaries of protection professionals’ personal wealth. That Kenyan protection professionals are comparatively well off is beyond doubt. Nevertheless, often they are not as rich as their grassroots counterparts imagine them to be (with – not a small - number of exceptions). In fact, imaginaries of professionals’ wealth are often built on rumours; these draw on reality, but one that is exaggerated in directions that serve to legitimize grassroots defenders’ attempts to appropriate the system for ends other than those intended for it. The issue of mortgages – mentioned in the quote above as a general issue - is a good example. In the spring of 2014 a staff member of the Coalition was moving house, in rented accommodation, in a lower middle class area of Nairobi. At around the same time, in three different interviews that I conducted with grassroots defenders from outside of Nairobi who were working closely with the Coalition, they expressed their bitterness with the fact that Coalition staff were getting rich off their work, and gave me the example of this particular member of staff who, they said, was buying a house through a mortgage (Interview with defenders from outside of Nairobi). Although I tried to convince them that this was not the case, they nevertheless insisted on their version of events. As I reflected back on that insistence, I came to understand that it had less to do with the relevant facts, and more with the broader reality that it pointed to, i.e. the inequality between the two worlds represented by these two categories and the limited, almost non-existent possibility to break the ceiling separating them, despite the fact that the term “human rights defender” applies indiscriminately to those active in human rights work – in the broadest sense – across that divide<sup>118</sup>.

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<sup>117</sup> I discuss this issue in more detail in the next chapter.

<sup>118</sup> Frequent public statements from protection professionals serve to reinforce rather than resolve this problem, precisely because they claim a role for grassroots defenders that the later both aspire to and cannot reach. At a public event, a KNCHR commissioner told an audience made almost exclusively of grassroots defenders that “*as grassroots defenders you are the crème de la crème of the Commission.*” (Ichim, personal fieldnotes) At the Coalition’s 2014 Annual General Meeting, the chair of the board told the audience (also made almost exclusively of defenders from the grassroots) that “*the Coalition hinges on its members*” and that “*it is the Coalition’s members who decide what and how the Coalition should work*” (Ichim, personal fieldnotes). Again, the membership of the Coalition (in 2014 at around 600 defenders according to a member of its board) is made up primarily of defenders from the grassroots. Despite these public claims, they are rarely involved in meaningful ways in decision-making processes at the Coalition.

Some of the practices employed by protection professionals inadvertently point to this inequality, and by default feed the narratives that justify taking advantage of the system. These include an alleged slowness of response to requests for protection (or lack of response altogether) – a frequent complaint in my interviews with defenders from the grassroots -, and the vetting system. Both remain a cause of disenfranchisement among grassroots defenders, not necessarily because of the practices themselves, but because of comparisons with speed of response and vetting procedures for professional defenders, which are typically faster and far less strict. In one of the trainings that I attended, one of the participants, a defender in the informal settlements, told the audience:

*“[Protection organisations] need to treat everyone equally. If Maina Kiai is at risk, everyone will run out of their offices to help. But if a grassroots HRD is at risk there have to be many checks done. There is a notion that grassroots HRDs are lying.” (Ichim, personal fieldnotes)*

The audience, made entirely of other grassroots defenders, applauded forcefully.

Yet, despite the prevalence of these narratives among grassroots defenders, with very rare exceptions – such as the training that I mention immediately above, they are never expressed openly. In fact, the opposite is true: on more than one occasion, defenders would express their critique to me in our private conversations, only to take the opposite stance when I met them again, in either public fora, or in circumstances where protection professionals were also present. The converse is also true: protection practitioners’ own narratives about defenders’ “opportunism” is hardly ever expressed publicly; instead, their public narratives are rooted in the more traditional themes in the discourse – such as defenders’ heroism and self-sacrifice<sup>119</sup>. These “discursive” dynamics”, I suggest, are both an instantiation of power relationships within the protection system and a pointer to how they are contested. The configuration of these power relationships, in turn, and their discursive “footprint” can help forward alternative

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<sup>119</sup> See also footnote 15 above.

understandings of acts of appropriation by defenders from the grassroots, ones that go beyond opportunism and the moral implications entailed by the term.

#### **7.4.2. Opportunism as “Weapons of the Weak” and Protection**

It was not long after I arrived in Kenya that I began to observe these narratives. However, it took me months of reflection before I began to understand that their meaning was to be found less in the themes that constituted them, and more in when and how they were deployed. James C. Scott’s work was a particularly useful guide throughout that process. In his seminal *Domination and the Arts of Resistance*, a study of how power relations affect discourse, Scott introduces the twin concepts of “hidden transcripts” and “public transcript”. Both the powerful and the oppressed develop a critique of their counterpart: “every subordinate group creates, out of its ordeal, a ‘hidden transcript’ that represents a critique of power spoken behind the back of the dominant. The powerful, for their part, also develop a hidden transcript representing the practices and claims of their rule that cannot be openly avowed” (Scott, 1990a: xiv). While these critiques are radically different, nevertheless they share the quality of not being openly spoken to the respective opponent. Instead, public interactions between the powerful and the subordinate are typically guided by the public transcript, which Scott describes as the shared discourses and practices that can be avowed publicly by both sides of the divide, or the “official transcript of power relations” (pg. xi). One of Scott’s key insights is that subordinates often have an active interest in maintaining the appearance of submission, when the risks of openly speaking the hidden transcript to the powerful are too high. Instead of openly confronting power, they tackle it at the fringes, by engaging in everyday acts of subversion such as stealing, pilfering, laziness and foot-dragging, or what elsewhere he calls “weapons of the weak” (Scott, 1990b).

Scott’s work zooms in on social phenomena such as slavery and serfdom, where power relationships and subordination are evident. As a result, he is interested in what power tells us about discourse. My own inquiry follows the opposite trajectory: in this chapter I am interested in what discourse tells us about power, because power and its workings within the institutional and normative architecture that has sprung around the idea of protection are not immediately

apparent<sup>120</sup>. More specifically, I am interested in what that line of inquiry tells us about why grassroots defenders appropriate the system and about the practice of protection more broadly. The most obvious, first, point is that the difference between the public and the hidden transcripts employed by both protection practitioners and grassroots defenders unveils power as a central issue within the protection regime, despite the fact that public interactions between protection practitioners and grassroots defenders might not look like that. Secondly, the difference between the public and the hidden transcript is also an indicator that this power is heavily contested internally. I have explored above the way in which professionals' (hidden) narratives of grassroots' opportunism and resulting moral opprobrium function to legitimize their own position in the power hierarchy that underscores protection. Grassroots defenders' own narratives function in a similar way in so far as they legitimize their attempts to appropriate protection resources, even though that means driving the protection system in directions that run counter to those imagined for it when it was designed, and which are endorsed by grassroots defenders themselves in public discourse and interactions<sup>121</sup>.

Finally, I argued above that professionals' interpretations of acts of appropriation by grassroots defenders as opportunism cannot be understood in disconnect from the types of constraints, both normative and institutional that the protection system places on them. In the same way, grassroots defenders' acts of appropriation cannot be understood in disconnection from the opportunities that the system creates or it denies them. From this perspective, I propose that the attempts to manipulate the system are a form of subversion rather than opportunism. This form of subversion is both a statement about grassroots defenders' relation with the protection

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<sup>120</sup> Hence, my purpose in going from discourse to power is to bring power and its manifestations within the protection system into both private and public debates on human rights defenders. See back the discussion of power as domination that draws on other scholars, Chapter 3, Section 3.3.3.3.

<sup>121</sup> The dynamic between the public and the hidden transcripts is not strictly one of confrontation, however. I have suggested above that the public script is not purely performance (see Scott, 1990: 45-69), but that some of its aspects are internalized and re-emerge in the hidden scripts. For examples, those aspects of the public discourse on defenders that construct their figure around an ideal of moral virtuosity and selflessness constrain the ability of protection professionals to interpret acts of appropriation by grassroots defenders through something other than a moral framework. Similarly, in the previous chapter, I have argued that some of my data also suggests that some defenders internalize aspects of the public discourse *because*, not despite the fact that they are in a position of inferiority that they cannot break away from. The interactions between the public and the hidden transcript, then, are much more fluid that it might seem at first sight.

system<sup>122</sup> and it is driven by the structural constraints entailed by extremely precarious socio-economic lives, that are typically defined by very low or non-existent income and its resulting effects.

On this background, grassroots defenders often see the reliance of their professional counterparts on them for monitoring and reporting violations in local communities as an extractive form of labour appropriation. In their perception, this labour is not only not that different from the one that the professionals engage in, but it actively contributes to the latter's professional outputs, with little visible impact in the communities involved. Moreover, while the professionals defenders get paid for their work, grassroots defenders are expected to contribute their efforts voluntarily. For many, this is an issue of justice *within* the protection regime, and the engagement with the system for material rewards, when the system refuses to reward labour, an act of resisting this set-up, in conditions where tactical choices to change the set-up are very limited<sup>123</sup>.

## 7.5. Conclusion

The causes of abusing the protection system among grassroots defenders are far more complex than explanations rooted in moral judgements might suggest. Nevertheless, protection

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<sup>122</sup> Although here I have focused primarily on narratives, in Scott's conception "transcripts" include both narratives and practices (Scott, 1990a: 14).

<sup>123</sup> It is important to mention the fact that Scott's notion of resistance is applicable to those situations when acts of what might be considered individual "crime" occur frequently enough to have aggregate effects, but which, nevertheless, stop well short of open, outright defiance (1990b:29). As Scott argues, even given their aggregate effects, these everyday forms of resistance only marginally affect the forms of exploitation that are inflicted on the less powerful. At the same time, however, they are not trivial by any measure - Scott uses the example of how desertion and evasion of conscription affected imperial ambitions in the past (at 29-30). The issue of frequency and aggregate effects raises questions about what the implications of re-interpreting "opportunism" as "resistance" might be for policy, and especially if all acts and levels of manipulation should be treated equally. As to the latter question, it is a difficult one to address due to the lack of hard data on the topic; we do not know, for example, how many claims of invented risks there are versus how many times defenders claim that they have not been in a particular training before. Not only that, but it is very unlikely that data will be available any time soon, and, ironically, this is precisely because the moral dimensions of the human rights defender figure make it extremely difficult for organisations to discuss publicly these acts, their meanings, and how they might be addressed, without, at the same time, denting their own reputation and legitimacy with the public (vs their beneficiaries - see Section 7.2.2.2 above where I discuss how the aspects of innocence and heroism in representations of defenders transfer to protection organisations). Even in the absence of that, however, I would tentatively argue that there are implications for policy-makers, and here I want to link back to footnote 110 above (page 172), where, when I refer to the scale of the manipulation of Front Line Defenders grants in the Congo, I both acknowledge that my proposed framework might not provide a better solution to the problem there, and I suggest that, at the very least, cases like the Congo show that we need new ways of thinking about these phenomena. Beyond that, the implications for policy-making depend on whether my framework is accepted as being correct, and I discuss those in the Conclusion to the thesis.

professionals often take the latter approach. I have argued here that this can be traced back to how the discourse constructs the human rights defender concept, and especially to the central role of innocence and virtue in that. By deconstructing and analyzing extensively the human rights defender concept and its representational forms, I have shown that these can only accommodate notions of agency that correspond to that idealized figure, and that this constrains the ability of protection professionals to interpret forms of agency that fall outside that narrow remit.

The resulting interpretation of acts of manipulation of the protection system as “opportunism” inadvertently enacts a dynamic of trusteeship and gatekeeping between protection professionals and beneficiaries of the system, and thus serves to cement the power of the former within the protection system. Grassroots defenders, however, resist this set-up through their own narratives about the professional sector, which often rely on rumour-based, exacerbated imaginaries of the latter’s wealth. From their position of subordination, these same narratives are employed by grassroots defenders to legitimize their attempts to take advantage of the system. Without seeking to excuse these efforts, nevertheless, I have suggested that engaging with these alternative narratives, while also bearing in mind the precarious socio-economic conditions that structure the lives of many grassroots defenders, can forward alternative frameworks for understanding their interactions with the protection system. Here I have proposed the notion of “resistance” as one such framework, drawing on both grassroots defenders’ own perception, and the relevant scholarship that has examined acts of everyday insubordination to the hegemony of power.

In the next chapter I further expand on this line of inquiry, specifically by shifting my focus on the role of a notion of passion in defining authentic models of activism across the class divide in the activism and protection communities in Kenya. In doing so, I seek to tease out the implications for protection, and especially for protection professionals’ ability to engage with the social constraints that dictate grassroots defenders’ interaction with the protection system.

## Chapter 8. Passionate Activism and Protection as a Professional Practice

*"[Human rights defenders] should not come in it [human rights activism] for the money; there is no money." (Professional defender)<sup>124</sup>*

*"As a HRD I can defend rights everywhere. Activism is in the heart. An NGO worker does it because he wants to be paid." (Grassroots Defender)<sup>125</sup>*

### 8.1. Introduction

In December 2014, I attended the Coalition's annual general meeting (AGM), the only such event that I had the opportunity to observe during my fieldwork. Organised as a three-day conference that included panel discussions with Q&As, training sessions and the launch of a new four-year strategic plan, this event brought together almost 100 defenders from all over Kenya. The closing remarks, at the end of the third day, were given by Maina Kiai, one of Kenya's most reputable human rights activists and one of the most consistent critics of successive political dispensations in Kenya throughout the past couple of decades. The opening sentences, after he thanked the hosts, immediately caught my attention:

*"If you're doing human rights, you know this is a calling. If you don't want to do it, the time to leave is now. Please leave, because it will be tough, it will be hard, it will not pay you well. You can make more money doing other things if that's what you want. (...) This is not about, well, it's not about money, it is about a commitment. And there will be a time when the partners you see here will not be there, they will not be there, but the question is, will you work? Will you keep doing this work without the Swedes, and the Dutch, and the rest? You have to, otherwise the time to leave is now, the door is open" (Ichim, personal fieldnotes).*

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<sup>124</sup> Interviewed on 2 January 2015.

<sup>125</sup> Interviewed on 3 March 2014.

As he uttered these last words, Maina Kiai pointed, not without a certain degree of measured drama, the same that seemed to mark the cadence of his speech, to the doors on the left of the large conference hall. Of course, no one left; if anything, the audience, to the last, seemed glued to his words. Yet, a large number of human rights defenders in the room came from outside of Nairobi, where human rights work is considerably less funded than that within the capital. Of those present that came from Nairobi, a vast majority were based in its informal settlements, where human rights work has even less direct support from donors than that beyond the boundaries of the capital. By that stage, well over a year into my fieldwork in Kenya, I had already interviewed a good number of the defenders in the audience, both from within and outside of Nairobi, and I knew that, in the privacy of one on one conversations (and, far more rarely, in open fora), they would have been extremely critical of Maina Kiai's glossing over the hierarchies in the room, socio-economic and otherwise. Indeed, Maina Kiai had been a co-founder and former director of the Kenya Human Rights Commission<sup>126</sup>, later moving on to head the Kenya National Commission on Human Rights (the national human rights institution – a government body). He was, at the time of this speech, in 2014, the director of a Kenyan human rights organization which he had again co-founded, a position that he exercised while also being the United Nations Special Rapporteur on Freedom of Association and Assembly since 2011. Very popular in human rights circles, extremely well connected to the donor and broader international community, and owning a diplomatic passport, Maina Kiai could not have stood in starker contrast to the rest of the audience, most of whom had meager resources not just for their human rights work, but also for their livelihoods. I knew then that, much like human rights, the abstract rallying behind human rights as a calling, rather than a job, had very different meanings for the human rights defenders in the audience, than as they did for activists like Maina Kiai.

This chapter explores these different meanings, and their implications for protection as a contemporary form of human rights practice. As I will show, the idea of “authentic activism” plays an important role in claims made on the protection system by both protection professionals and grassroots defenders. Moreover, ideas of authenticity across both constituencies are grounded in a concept of passion, understood as a deep, unshakeable commitment to human

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<sup>126</sup> See Chapter 5.

rights activism. However, protection professionals and grassroots defenders arrive at different definitions of what defenders' passion for activism is, and how it is proven. At one level, both groups define passion for human rights as volunteerism for human rights work. Among protection professionals (and professional activists more broadly), the notion of passion as volunteerism is an extension of the early history of human rights activism in Kenya. However, as human rights has become professionalised, and resulted in some activists being paid, but not others, a broad concept of passion as volunteerism has morphed into a definition of passion as the volunteerism *of others* within this sector. Furthermore, protection professionals employ that definition in conjunction with a concept of passion as risk (understood as the risk of politically motivated physical injury), which emerges at the intersection between the international protection regime and the history of activism in Kenya. The cumulated effect of these two definitions of passion among protection professionals is to render invisible the socio-economic claims of human rights defenders from the grassroots.

Human rights defenders from the grassroots, on the other hand, who also define passionate activism primarily as volunteerism for human rights work, arrive at this definition as members of socio-economically marginalised communities, who experience the risk of politically motivated physical injury within a broader spectrum that includes (non-politically motivated) every day risks to their livelihoods. Within this framework, grassroots defenders deploy a definition of passion as volunteerism despite poverty to denounce human rights professionals' lack of commitment, seen to stem from their status as staff who have started off by being paid. As a judgement passed on professional human rights work broadly speaking, this perception extends to protection as a form of professional human rights practice and to protection practitioners as its exponents. These clashing conceptions between notions of passionate activism in general, and a notion of passionate activism as poverty in particular are the inevitable result of the professionalization of protection. If in Chapter 5 I examined the professionalization of human rights in Kenya and highlighted the tensions and fractures that defined that process, in this final chapter I extend that line of inquiry by zooming in on how similar tensions define the professionalization of protection as a form of human rights practice in Kenya. Ultimately, I argue, locating protection in the professional sector fails to negotiate the tension between

radically different markers of authentic activism across constituencies, which, in turn, leads to a breakdown in trust between protection professionals and potential beneficiaries.

I start off with a brief exploration of why it is a concept of passion that has come to define ideas of authentic activism. I do so by drawing on scholarly perspectives on emotions and activism in the relevant literature, before I zoom in on how the scholarship has dealt with authentic activism in particular. Here, I will show that, while much of the literature on emotions and activism explores what Tate has called “the emotional politics of activism”, a shift to examining the politics of emotional activism is more relevant to understanding power in the protection system and I use this to set-up the framework for the remaining chapter. I then move on to examine how and why protection professionals and grassroots defenders attach different meanings to the idea of passionate activism, as well as the effects of these different approaches. I first look at the role of a notion of risk in how protection professionals define “passion” and show that this is narrowly defined in relation to the concept of “human rights violation” as an analytical category of human rights. The effects of this, I argue, is to focus attention on political violence and defenders’ civil and political rights, and simultaneously (if also inadvertently) to preclude their socio-economic claims on protection. I move on to examine grassroots defenders’ own definitions of passion, which are centered on notions of volunteerism in the context of poverty (what I call “passion as poverty”). I start off with an examination of the social worlds of grassroots defenders to highlight the fact that defenders experience risk along a continuum that includes risks to their lives and livelihoods as members of socio-economically marginalised communities. In this context, differentiating between the risk of politically motivated violence and other forms of violence is not as clear-cut or meaningful as the human rights framework might suggest. In the next section, then, I examine why framing passion as commitment to human rights work despite poverty rather than despite risk is a claim to shifting the attention of protection programmes to structural violence and socio-economic issues. However, these claims and their framings are fundamentally defined by contradictions that mirror each other across the grassroots sector and the professional sector. The result of this, I argue in the final section, is to undermine the solidarity that protection as a professional form of human rights practice aims to embody, through engendering a range of negative emotions that run in the opposite direction.

This, I also suggest, risks undermining the human right movements in Kenya, rather than strengthening it.

## **8.2. Passion and (Authentic) Activism: A Brief Review of the Literature**

The reference to authentic activism as a commitment, as “passion” rather than the desire for material rewards points to the role of emotions in activism, to the gratification that results from doing what is right. This is an allusion to the idea that this gratification can (and should) often either supersede the fulfilling function of financial recompense, or even be sufficient in itself when the latter is missing entirely.

This is not specific to Kenya. Indeed, a growing body of literature has explored the importance of emotions in activism (see, for eg. Flam, 1990a, 1990b; Flam and King, 2005; Goodwin et al., 2004, 2001a; Goodwin and Jasper, 2006; Gould, 2002; Jasper, 1997). In part, this has been a response to the rational and structural models that dominated the earlier literature, which portrayed activists as purely rational actors (Calhoun, 2001; Goodwin et al., 2001b). Cultural approaches in a later wave of scholarship opened new avenues for the study of emotion (Goodwin et al., 2001b, 9). For example, Goodwin et al (2001b) argue that many of the core concepts in cultural approaches to activism – such as frames, social networks and collective identity - draw their “causal force from the emotions involved in them”, rather than through other mechanisms (6-10). Their analysis seeks to dismantle the “myth” of rationality and cognition as the most important factor in collective action and identities, and emphasizes instead the role of affective ties in the same. As they put it, “[t]he strength of an identity, even a cognitively vague one, comes from its emotional side” (2001b: 9). In a similar vein, other scholars examine the emotional labour involved in activism, either as “self-work” by participants at large (Allahyari, 2001), or as the work of emotions in rallying people behind a particular cause (Kane, 2001), and in sustaining activism in conditions of high risk (Goodwin and Pfaff, 2001).

Having established the way in which emotions structure political action, and how emotions interact with other societal factors, be they cultural or organizational, a smaller body of literature also engages with the dilemmas of emotional activism. Thus, Tate examines how

emotions shape the frameworks for authentic activism in Colombia, in contexts of prolonged risk and exposure to threat, and the interpretation of authentic activism as martyrdom on a background of Catholic social teaching. Tate observes that ideas of authentic activism were extremely emotionally charged in a context in which repertoires of human rights work were changing, and that they created deep divisions within the human rights community: activists and organisations that did not experience high risk and threat started being rejected within the community as not fitting models of authentic activism (Tate, 2007: 146-175). Morgen (1995) and Rodgers (2010), explore more specifically how activists balance emotions in work settings. Morgen's research in feminist organisations working with victims of rape finds that personal emotions – which can range from self-realisation to exhaustion - are difficult to balance in such delicate contexts, and that often they can lead to burnout. Rodgers (2010) too nuances the argument that emotions are constructive in social movements, by showing that organizations with a moral mandate and that typically encourage emotional cultures that emphasize selflessness, can, in fact, be detrimental to the quality of working life and to staff retention.

Both strands of literature that I highlighted above are broadly concerned with what Tate has called “the emotional politics of activism” – i.e. activism as a set of actions that are infused with and shaped by passion and emotion. This approach has been extremely useful for nuancing theories about the role of rational factors in activism with an understanding of the functions of emotions in the same. Nevertheless, here I am more concerned with how passion and emotions become disembodied from action, and turn into ideas that are deployed to make specific claims (here on the protection regime). In other words, I am more concerned with what one might call “the politics of emotional activism” (see also Morgen, 1995). From this point of view, the circulation and transformation of passion as an idea, within the broader set of ideas that constitute “activism” in a given setting, become a tool to explore the workings of power, an approach that continues my investigation in the previous chapters. As we will see, across categories of activism, the idea of passion acquires different meanings, and is consequently deployed to endorse different understandings of the protection regime and its aims. The most important among these differences become visible in how the professional sector complements a notion of (defenders') passionate activism as volunteerism (an aspect that I discussed in the previous chapter) with a concept of their passionate activism defined in relation to a concept of

risk. The grassroots sector, by contrast, defines passionate activism primarily in relation to a concept of volunteerism despite poverty.

### **8.3. Professional Protection and Passion as Risk**

#### **8.3.1. The Genealogy of Passion as Risk: Early Activism and the International Protection Regime**

The central role of a notion of risk in imaginings of passion and commitment to human rights among protection professionals in Kenya emerged at the intersection between the historical trajectory of the human rights community in Kenya and the international protection regime, which, as a sub-set of human rights, has reproduced the latter's biases. As I have already discussed in Chapter 5, the importance of economic and social issues within the human rights community in Kenya increased after human rights became professionalized, a development that differentiated (and, often, divided) the human rights community along lines of class. I also argued there that, as a result, the ways in which relevant actors in Kenya appropriate protection norms and mechanisms cannot be understood in disconnection from class issues. The developments that preceded those pivotal years are equally important, however. During the early years of the human rights movement in Kenya, courage was central to ideas of activism; courage, in turn, was defined through extreme forms of self-sacrifice despite the lack of rewards, not only material, but also in relation to the ability to achieve the aims of activism itself. A senior human rights activist – active with the Student Union at the University of Nairobi in the 80s – told me when I asked him if and to what extent activists of that period were taking measures for their own protection:

*“Back in the 80s you had to do a lot of soul-searching and see if you fully understood what you were doing, and if you were ready to pay the ultimate price. But those who were aware of the consequences... Which is why when I was elected [to lead the Student Union] I called my staff and asked them if they knew they would not finish their studies, that they would be arrested, that they could even die. That was the greatest moment in my student leadership. We could not even meet as a team at the time, people would do their things*

*independently and then we would come together. But we did not think about security; we only knew sacrifice; we just waited for the bullet, but it did not come for some, for others it came. (...) you know, what was inspiring us were setbacks in struggle. Not successes in the struggle. It was, it is, the heroism of those who lost the war. Dedan Kimathi, we read the stories, we said yeah, that's what [inaudible]. You look at people like Alexander Muge who had just been killed, that was later on, in 1997, Pio Gama Pinto<sup>127</sup>, and we say we cannot betray, we should also die with them; that's what inspired us; so, the inspiration behind confronting the fascistic [sic] state under Moi was the knowledge that if we don't do this, then things would only get worse, and we were prepared for the worst. The struggle was about meeting your death as opposed to meeting you victory." (Wafula Buke, Interview, 31<sup>st</sup> March 2014)*

Another one of my interviewees referred to this as “raw activism”:

*“At the time it was raw activism. People went out there because they believed there was something wrong with the country. Moi was the evil, he was the unifying factor that made it possible to organize people. (...) During that time, there was no room for negotiation with the state. You go out there to demonstrate, you were beaten up. But people kept charging. People went to hospitals, you recover, you come back. And in that space what counted was raw courage. And the only friend you had was your comrade.” (Interview with professional defender, 21<sup>st</sup> August 2014).*

These accounts suggest that the historical trajectory of the human rights community in Kenya, especially in its early years, which were defined by high-risk activism in an extremely repressive environment, generated a model of authentic human rights activism that was centered on notions

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<sup>127</sup> Dedan Kimathi was a leader of the Mau Mau rebellion (see back, Chapter 1, fn 1). Alexander Muge was an Anglican priest especially vocal against Moi's regime during the second half of the 80s (see Branch, 2012: 180). Muge died in a road crash in 1990, which, some in the human rights community believe was planned. Pinto was widely considered to be Oginga Odinga's chief strategist and a powerful threat to the conservative factions within the ruling KANU. He was shot in his car in 1965 while waiting for the gates to his residency to open (Branch 2012: 44-47).

of self-sacrifice and persistence in human rights work despite the risks that it entails<sup>128</sup>: commitment to human rights was proven through “pressing ahead” despite the very real possibility of harm, and even death<sup>129</sup>. Furthermore, understandings of risk at the time revolved around physical injury and death: death as the ultimate attack on the integrity of the body predominates in the first account, while beatings and the ensuing bodily harm prevail in the second. Understandings of passion as risk to the body have survived in the ongoing discourses in the professional sector, especially among those professionals whose involvement in activism in Kenya can be traced back to those years<sup>130</sup>.

That understanding of passion and commitment to human rights as the risk of physical injury and death coincides with conceptualisations that predominate in the international protection regime. I will briefly illustrate this with a video uploaded on YouTube in May 2016 that aims to publicise the work of Protect.Defenders.eu, the European Union mechanism for the protection of defenders, to the broader public, but which is typical for approaches across the international sector more broadly. In this video, which begins with a basic, 30 seconds introduction to human rights, defenders are defined in the following way:

*“When these basic rights are denied, there are people who try to help. People engaged and committed in [sic] the defence of human rights. These are human rights defenders. Anybody acting peacefully to protect or promote human rights is a human rights defender. It can be a journalist fighting for the freedom of expression, a lawyer taking up a human rights case, a rural community opposing environmental degradation or a youth group pursuing*

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<sup>128</sup> A similar dynamic has been documented in other contexts. For Colombia, see Tate (2007); for Argentina, Uruguay and Chile, see Loveman (1998).

<sup>129</sup> I have already discussed in Chapter 4 the fact that human rights activists at the time were indeed operating in an extremely repressive environment and at tremendous risk to themselves and their families. Nevertheless, the memory of those years in current accounts of that history have also acquired a romanticized dimension that obliterates the negative impacts of high risk, voluntary activism on defenders – an aspect that I return to in the final section of this chapter, where I tease out the emotional effects of long term volunteerism specifically. For an account of how human rights activists in Kenya interpret Kenya’s socio-political history by, among others, erasing its contradictions, in order to support human rights claims in the present, see Pommerolle (2006).

<sup>130</sup> For example, the human rights professional that I quoted in the previous chapter as saying that “[u]s, when we started it was passion, we were in the streets (...). It was not about money, it was about our country – the realization of rights” (see Chapter 7, pg 171), is a senior figure in the human rights movement in Kenya, whose activism included working with RPP and People Against Torture, a spin-off of RPP, which had a similar fate (Interview with human rights practitioner, 26 August 2014).

*equal access to education for girls. But when they try to defend human rights, these people often face danger themselves. Harassment, threats, detention, torture, enforced disappearance, and death. In 2015, 156 defenders died because of their work. That's 3 a week, and the number is rising every year"* (ProtectDefenders.eu, 2016; my emphases).

This definition, centered on defenders' selfless commitment to human rights and to the victims of human rights violations, constructs a model of authentic activism that is identical to the one that I found in the accounts of long-term activists in Kenya. As in those accounts, this video conceptualises the markers that define commitment to human rights through the dangers associated with doing human rights work, here identified as harassments, threats, detention, torture, enforced disappearance and death. The latter is given particular attention through the subsequent introduction of statistics on deaths among human rights defenders caused by their work, an approach that is meant to emphasise the gravity of the circumstances surrounding defenders.

However, the protection regime enacts a further, essential shift: the notion of risk as politically motivated violence enacted on the body is key not only to an authentic model of activism, but it also becomes the notion on which the protection regime hinges. Much as, in theory, human rights defenders are defined through their work, in practice, the notion of risk is a more important element of that definition. For the purposes of the protection system, human rights defenders matter as *human rights defenders at risk*, with risk primarily (though not only) defined as the reality or possibility of violence to their physical (and, increasingly, mental) integrity<sup>131</sup>. This narrow definition of risk as the possibility of physical injury and death is further

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<sup>131</sup> This was well illustrated by an encounter that occurred during a solidarity forum for women human rights defenders in one of Nairobi's many informal settlements, which I attended during my fieldwork. In typical fashion, the programme included several training sessions. During one of them, I happened to sit next to a member of staff from an international human rights organisation, which, among others, is also working on the protection of human rights defenders. This particular session dealt with socio-economic issues in the local community, such as education and land. Half-way through the session, the staff from the international organization turned to me and whispered in my ear that she was surprised that there was no link to security in the training: "it looks to me like this is a training on economic and social rights, which is not what I had expected" (Ichim, personal fieldnotes). The expectation that, on the contrary, this would have been a training on security, or that security elements would have been integrated in the training, shows to what extent the human rights defender category has come to be defined by a notion of risk, and a correlated notion of security.

reinforced through the analytical categories and frameworks that the defender regime has inherited from the broader human rights, with important effects for practice<sup>132</sup>.

### **8.3.2. Human Rights and the Effects of Passion as Risk: Political Violence and Civil and Political Rights**

In developing as a subset of human rights, the protection regime has replicated the centrality of a concept of human rights violations as an analytical category that codifies the violence suffered by human rights defenders. In doing so, however, the protection regime has inherited both the advantages and the limitations of this approach. Scholars of human rights that have examined the problematic nature of the concept of human rights violations and its functions for human rights practices have shown that, on the one hand, the category human rights violation and its correlate triad of victim-perpetrator-duty bearer provide a universal template that organisations can replicate across contexts, and are an effective/straightforward method of prescribing interventions (Moon, 2012). On the flipside, however, categorising violence as human rights violations simplifies it and decontextualizes it from its historical and social context (Gready, 2010; Moon, 2012; Wilson, 1997).

This simplification and de-contextualisation operates through a twofold process of translation that entails the gradual exclusion of certain categories of violence from the remit of human rights. Once, human rights violations translate violence into physical injury and death. Or, as Merry put it, “[o]nly some kinds of violence are considered human rights offenses. Physical injury and death are often viewed as violations, but other forms of violence are not, such as economic violence, environmental degradation, or the violence of development” (Merry, 2007a: 41). Similar remarks have been made in the feminist scholarship on transitional justice (also a subset of human rights), which has developed as a particularly powerful locus for the emergence of these critiques (Ichim, 2008). Ross’s work on the South African Truth and

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<sup>132</sup> The human rights defenders discourse does include a component that investigates (and tries to find solutions to) macro-level governmental measures to stifle the work of defenders, such as restrictive legislation, or criminalization measures (usually discussed under the broad category “shrinking civil society space”) (see, for eg. AI, 2017). Nevertheless, to the extent that the protection regime has developed as a sub-set of human rights, and borrowed the latter’s conceptual categories, the individual (defender) will remain a primary focus in the discourse and practice of protection.

Reconciliation Commission (TRC), for example, shows how the TRC's work relied on a three-fold process of translation: once, of apartheid into various forms of violence; second, of violence into gross human rights violations; third, of gross human rights violations into violations of bodily integrity (Ross, 2003: 11). Similar dynamics have been noted in the work of other truth commissions. Ni'Aolain and Turner note that the El Salvador TRC took as a point of reference for its accountability framework the International Covenant on Civil and Political Rights and the American Convention on Human Rights, and it established "serious acts of violence" according to the principle of "non-derogation". In effect, this meant an almost exclusive focus on the right to life and the right to physical integrity (2007: 254). This strand of the literature concludes that a human rights framework has often meant that both trials and truth commissions have constructed women's victimhood in relation to sexual violence (understood as injury to the body) as a "primary form of harm" and discounted women's other experiences as secondary (Franke, 2006; Ni'Aolain and Turner, 2007), despite the fact that women themselves considered "these secondary harms to be pivotal to their experience of conflict" (Ni'Aolain and Turner, 2007; see also Ross, 2005, 2003)<sup>133</sup>. The human rights defenders discourse operates through an identical framework. For example, the majority of reports being published by protection organisations focus on violations of defenders civil and political rights (see, for example, Inter-American Commission on Human Rights, 2006; Observatory for the Protection of Human Rights Defenders, 2011, 2010, 2009). There is virtually no published output that focuses on the forms of structural violence that affect both the work and livelihoods of human rights defenders<sup>134</sup>.

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<sup>133</sup> This discussion of feminist critiques of transitional justice draws on Ichim (2008).

<sup>134</sup> A notable exception is a 2015 report published by the United Nations Special Rapporteur on Human Rights Defenders, entitled *Facing Risks and Threats for Defending Human Rights: The Voices of Human Rights Defenders*. This report, which is the result of an extensive series of consultations with defenders from all over the world, introduces a concept of "Intersectionality" as a tool to analyse the various risks and threats that defenders face. The report points out that "[t]he international human rights system has not yet systematically incorporated an intersectional approach and, as a result, different sources of discrimination tend to be treated compartmentally. Thus, solutions do not permit a comprehensive grasp of the whole set of discriminations and vulnerabilities to which such defenders are exposed" (Forst, 2015: 16, 17). Nevertheless, the report mostly notes how specific political factors intersect in different regions of the world to compound the threats faced by human rights defenders (see, for eg. at pg. 9), which, I suggest, is a result of subsuming the effects of socio-economic factors under the category of "threats". That limitation aside, a concept of intersectionality in an international report from, arguably, the most authoritative institution working on human rights defenders, is a decisive step forward. Another useful concept is forwarded by Barry and Nainar (2008). The authors refer to "integrated security" for women human rights defenders, which includes a strong socio-economic component (employment, for example). However, this is limited to women alone, an approach that risks ghettoising women defenders within the movement, especially since socio-economic concerns cut across genders.

Secondly, violence as physical injury and death is further narrowed down through the introduction of a sub-concept of political motivation and state involvement in how the category human rights violation operates. As Wilson (1997) and Merry (2006) observe, this results in a rigid differentiation between human rights violations and common crimes. Yet, despite this neat theoretical distinction, in practice “these binary categories are not hermeneutically sealed, static or universal, but are overlapping and are mutually constitutive” (Wilson 1997: 141). Indeed, separating crime from human rights violations is not at all straightforward (Godoy, 2005; Merry, 2007a). This categorisation worked rather well back in the 1980, when the practice of human rights reporting first emerged in the context of human rights violations committed by authoritarian regimes in Latin America. However, during the transitions of the 1990s, non-state actors became increasingly involved in perpetrating violence and both state and non-state actors shifted their modes of committing violence, partly as a response to human rights reporting: while states started adopting “common crime” methods, non-state actors often “plagiarised from the stock symbolism of politically motivated murders” (Wilson, 1997: 141; see also Godoy, 2005; Tate, 2007). As I have discussed already in Chapter 4, where I explored conventional histories of activism in Kenya within a broader framework of understanding how shifts in patterns of repression have changed through time, similar developments have occurred in Kenya, an aspect that I also return to below.

Although these changes deeply unsettle the usefulness of such strict categorisations, nevertheless these continue to predominate in professional repertoires of human rights work, including in protection as a form of contemporary human rights practice. During an interview with a human rights activist who at the time of our conversation lived in a socio-economically marginalized area of Nairobi, she told me about how, not long before our meeting, she had been attacked on the way home and robbed by unknown assailants. Shaken, in the aftermath of the incident, she called a staff member of a protection organization in Kenya that she happened to also know personally. According to my interviewee, after hearing details of the incident, the staff member of the protection organization told her “I hope it was just thugs” (Interview with grassroots defender). Although on a purely interpersonal level one might wish for a different kind of reaction, from a professional point of view, the staff member was merely responding to the incident of violence that had been reported to them within a human rights framework. Yet, to

my interviewee, the reaction made little sense. To her, the notion that her predicament should have mattered less because she might have been attacked by thugs rather than by actors intent on stifling her human rights work was both puzzling and deeply disillusioning. It was also a confirmation of her intuition, expressed earlier on in the interview, that the professionalization of human rights work in Kenya had led to a breakdown of the solidarity that had defined the earlier movement, and that protection as a professional practice, could not repair those fault-lines.

The effects of interpreting violations of the rights of human rights defenders as politically motivated physical injury and death are twofold. On the one hand, this approach constructs hierarchies of violence and corresponding rights, where civil and political rights are prioritized over socio-economic rights. These hierarchies are deeply embedded in the protection regime. In an interview with a protection professional, he recounted to me how his organization, typically focused on offering personal, institutional and digital security, had recently made an exception to that pattern and had organised a training on fund-raising techniques. When I asked him for his opinion on that particular training, he told me

*“We kept wondering, you know, HRDs will always tell you we really need this and you can see that they really need to know about fundraising and about financial management, but how do you relate, connect it to security? Because this is our primary mandate. Of course, there is some relationship, but it’s not clear a lot. You know the feedback we got is it would be interesting if this could happen and be expanded to... if more HRDs, more organisations could have, take part in these trainings and...but I don’t think it’s something that [protection organisation] as an organisation wants to take up as a priority”*  
(Interview, 29 July 2014).

I have critiqued in Chapter 6 these trainings and their limitations, but to engage with my interviewee’s position here we need to consider for a moment the idea that trainings are effective at face value, because my interviewee considered so. The dissociation between financial security (imagined as a possible outcome of the training, albeit organisational in this context), and other types of security, illustrates how current concepts of security in the protection regime work through the exclusion of insecurities created by socio-economic precarity, yet another expression

of the hierarchy between defenders' civil and political rights and socio-economic rights in the protection regime. Perhaps more forcefully, the same idea emerged in an interview with a former protection professional, whose stance on the dissociation between socio-economic claims and "threats" was remarkably trenchant:

*"So, when I do it, and you think we are joking, your people are not under threat, [you] are looking for money. (...). And, there was this issue, which, I used to have this argument about people using this project as a socio-economic benefit. When they are broke, they want to be protected. I said, no, you are just broke, they are not under threat. And people don't like being told the truth; you want money?, or you are under threat? (...)." (Interview, 22 October 2014)*

Narrowing violations of the rights of human rights defenders to their civil and political rights (with a particular focus on their physical integrity) functions conversely to strengthen those conceptualisations of risk that I have discussed above. The notion of risk in the protection regime is understood through a framework of politically motivated physical injury and death. The emphasis on civil and political rights and a concept of risk that gravitates on physical injury and death coexist in a relationship of mutual reinforcement, whose overall result is to restrict the capacity of the protection system to respond to claims put forward by defenders on the basis of self-identifying as defenders, and, consequently to limit the ability of protection professionals to interpret and respond to such claims within the formal protection architecture. Specifically, this approach creates a conceptual vacuum for identifying and addressing socio-economic claims made on the protection system<sup>135</sup>. Yet, socio-economic issues play an important role in Kenyan grassroots defenders' understandings of and responses to the protection regime. Their understandings of passionate activism, as I will show, revolve not around notions of risk, but around notions of poverty.

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<sup>135</sup> Of course, recognizing socio-economic claims as rights might not necessarily lead to immediate solutions, material and otherwise. Nevertheless, it would be a first step in creating an enabling framework for engaging with these issues on a different conceptual platform, which is a prerequisite for coming up with practical solutions.

## 8.4. Grassroots Defenders and Passion as Poverty

### 8.4.1. The Genealogy and Claims of Passion as Poverty: Structural Violence and Socio-Economic Rights

At the launch of a report on extra-judicial executions in Mathare, one of Nairobi's informal settlements, that took place at the British Institute in Eastern Africa in May 2017, a defender from Mathare, also associated with the group that had written and researched the report, stood up during the Q&A and said:

*“[State institution] also needs to understand that grassroots HRDs work with passion: we work voluntary [sic], we are not paid, we go there [at human rights organization] at ten and leave at five, we don't have a fare, the journey takes a long time. [Human rights organisation] is far from Mathare, we go with the victim, it happens to be on a Wednesday, you find that they don't work on a Wednesday<sup>136</sup>. National organisations need to recognize the work of grassroots organisations.” (Ichim, personal fieldnotes)*

Coming as it did towards the end of my stay in Kenya, at that time nearly three and a half years long, this association between poverty and volunteerism as the markers of passionate activism was an extremely familiar stance among the encounters – both formal and informal - that I had had with human rights activists from the grassroots during that period. In an earlier interview with a defender from outside of Nairobi, when I asked him if he saw himself as a human rights defender, he told me:

*"I have passion for this the work, I do. I have been in the human rights work, I have been doing this work, now it's almost over, it's around 20 years, and I've*

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<sup>136</sup> Here my interviewee was referring to a specific organisation, which I am not naming to preserve its anonymity. Although he stated here that the organisation's members were not working on a weekday, it is more likely that what he meant was that they did not receive visitors on the respective day. The same problem was pointed out in an interview with a defender from the grassroots when he told me that they went to the offices of this same organisation on a weekday with a victim, but were told by the watchman that the organisation did not receive visitors on that day. In the same interview, he explained that this made it difficult for them as intermediaries between professional organisations and victims of human rights violations, who expected that they would receive help when appealing for support from defenders from their communities (Interview, 18 April 2014, Nairobi).

*not, I've not jumped ship, I've not crossed the floor. I've not seeked [sic] to go and be employed, to get permanent employment or do the work, to be a human rights worker [laughs], in a national organisation in Nairobi; I've been working in community based organisations where there is a lot of poverty, a lot of hunger, no money, using my own resources, so I can consider myself that the passion that I have, because it is like I have been sacrificing enough. And also, even on research, I've assisted, I've been carried out, I can say I have been used by so many organisations to do research. And most of these organisations have fundraised a lot using the research that I carry out for them, but without much, without pay. I can have volunteering, a lot of research and a lot of info which they use in fundraising, and then they don't even... it does not trickle down in effect. So, I can say I am truly a HRD because I have not looked back and I have not surrendered. (...) The truth of the matter is on this side [grassroots] of the HRDs, if you are a volunteer here in Kenya and in Africa, you take poverty head on. (...) So that is why I am saying that, I am happy to say that I am, without contradiction or fear, that I know that I am a true HRD." (Interview with grassroots defender)*

In yet another interview with a defender from a different area of Kenya, after discussing the financial challenges involved in working as a volunteer for a protection organisation, she added:

*"But I do it because activism comes from the inside. Defending and activism comes from the inside, you feel so and so has a problem, I should assist. So, the most challenge is finances." (Interview with grassroots defender)*

The same idea was expressed by a defender from the grassroots based in Nairobi:

*"Me, I am a volunteer, I struggle to pay my rent and feed my kids, but I stay in this work because I am passionate." (Interview, 17 July 2014)*

A defender that had been active in Nairobi for many years before he moved in a different county confirmed that this was a general trend. During our conversation, he pointed out how this had emerged as a feature of grassroots activism in recent years:

*"Initially, especially during the 1990 to 2002 -- there was a lot of volunteerism; in fact, from 1990s to 2002, I had not experienced, from where I was working, a lot of funding, from any organisation; in fact, I did not know that there are funds. What I knew, I knew there were strong colleagues who would support us from when we were arrested, by paying bond, by visiting us, because those are the things that would happen more often. And sometimes when you are sick during the course of that struggle they would pay your bills, and for me, that is what I needed. I did not need anything more than that. When I need a lawyer, a lawyer is paid for me, and it appears for many human rights activists then, that is what we needed. When your life is extremely in danger, and you want to be removed from the country, they remove you from the country. (...) What has changed is that human rights workers now want more than that, they want money in their pocket, they want to be paid for being HRDs. They want to get some of the proceeds to support their families. In the 90s the family was not part of this. You would risk your life and expect the family to understand. And you would find your own ways to survive, for example by finding another work. And even those who were working would use some of their money to support their fellows." (Interview, 9 December 2014)*

My interviewee's account confirms that concepts of protection among human rights defenders from the grassroots have evolved to include socio-economic concerns, and that this is a recent development within the broader history of activism in Kenya. Indeed, this shift in conceptions of protection held by beneficiaries occurred in recent years, at the intersection between every day challenges posed by both their work and livelihoods, and their encounter and interactions with the professional world of activism and its exponents.

The challenges of everyday life in Kenya's socio-economically marginalized spaces cannot be understood in separation from the broader, structural realities that define and shape the lives of the poor. Approximately 33.6 percent of Kenya's population lives below the poverty line, although recent techniques to measure poverty highlight the fact that even those above that threshold suffer severe deprivations, such as poor-quality education and poor health (UNDP, 2016: 6, 7). In Nairobi alone, approximately two million residents, almost two thirds of the city's

population, are crammed on a mere 1% of city land (AI, 2009: 3)<sup>137</sup>. In the vast majority of these spaces, basic services and infrastructure are almost entirely lacking, with electricity, safe drinking water and proper sanitation being highlighted as some of the biggest problems (APHRC, 2002: xi). The resulting health problems are further compounded by the lack of hospital and clinics (APHRC, 2002; AI, 2009). The quality of housing is extremely low, and most residents do not have security of tenure, absence of which puts them at permanent risk of eviction (AI, 2009). The precarity of the livelihoods of the poorest is further complicated by the scarce and often sporadic employment opportunities. This raises particular difficulties for slum residents, who, compared to their rural counterparts, live in cash-dependent economies (APHRC, 2002: xi).

These aspects of economic marginalization are exacerbated by high levels of crime and physical violence, perpetrated by a combination of state and non-state actors in Kenya's changing political culture. I have discussed at length in Chapter 5 how patterns of violence have shifted in Kenya in recent years, to include informal means of violence that are both criminal and political in character, and that are often beyond the state's control. Recent reports examine how this translates into facts and figures. A 2016 Public Security Insight report states that during one of the focus groups it has conducted in Mathare, every single one among the twenty participants reported having lost a family member to violence (Price et al., 2016: 7). A 2017 report by Mathare Social Justice Centre on extrajudicial executions in Mathare documents 50 police killings from 2015 onwards in that area, and a total of 803 reported police killings in the period 2013-2015, documented in the reported press (MSJC, 2017: 35). Although much of the human rights community is focusing on extra-judicial killings perpetrated by the police, in fact, a large number of killings are perpetrated by gangs. In a 2016 survey conducted by the Independent Medico-Legal Unit settlement residents indicated gangs as the primary perpetrator of violence (61%) followed by police (19%) (IMLU, 2016). Finally, although much of the relevant research is focusing on violence in urban areas, studies indicate that rural areas experience victimization at a similar rate (see, for eg. UNODC, 2010).

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<sup>137</sup> To put this in perspective, Mathare's population of approximately 250000 residents live on only 3 square kilometers of land (MSJC, 2017: 7).

The forms of structural violence that many defenders face, then, include both economic and crime and security aspects. These two facets are deeply intertwined and mutually reinforcing. This context explains why concepts of risk upheld by human rights defenders from the grassroots occur along a spectrum that includes risk to their lives and livelihoods as members of socio-economically marginalized communities, in addition to the risks of politically motivated forms of physical violence. Or, as a defender from one of Nairobi's informal settlements put it to me in our interview:

*“The environment for grassroots HRDs is a challenge; the way they live – they don't live in a gated community, like everyone else. The condition as to how you live is also a challenge.” (Interview, 18 May 2014)*

Grassroots defenders' concepts of security, accordingly, revolve around ideas of financial security more than physical security, although the two are not mutually exclusive, but rather support each other. When I discussed with a defender from one of Nairobi's informal settlements what kinds of challenges he faced in his work, he told me:

*"One challenge that I am facing, and not only me, but even other HRDs that I have been working with, one challenge we have is financial security; HRDs don't have financial security. A lot of organisations comes [sic] and say they are supporting HRDs only on issues of immediate, urgent intervention, but now that to me, it doesn't..., yeah, it sounds, but it doesn't really sound, because even I've been telling [protection organisation], why should you wait even until someone is threatened, so then you are coming to react; it does not make sense." (Interview, 13 March 2015)*

This is not a singular case. A member of an international protection organisation whose volunteers work closely with defenders from Nairobi's informal settlements told me in a one on one informal conversation that conceptions of empowerment among defenders from the grassroots decidedly revolve around the idea of financial security (Ichim, personal fieldnotes). As it is clear from the statement above, conceptions of financial security as empowerment exist within broader ideas of protection, as preventive, rather than reactive in nature. This conceptualization of financial security as prevention, I suggest, is an argument for shifting

broader concepts of protection to include in their remit, however peripherally so, the forms of structural violence and resulting socio-economic marginalization that defenders face.

Defenders from the grassroots will often make socio-economic claims on the system by highlighting the difficulties that financial hardship raises for their work as well as their persistence in working, despite these challenges. On more than one occasion, defenders from rural areas have mentioned how, to send a report to a professional organisation, they and their colleagues will have to travel tens of kilometers to the nearest town, where they can find a cyber cafe. Some of them resort to writing reports by hand on pen and paper, then travel to cyber-café, type and print the report and then send it (Interview, grassroots defender from outside of Nairobi). For defenders based in Nairobi's informal settlements distance may be less of an issue, but costs remain prohibitive:

*“When I get out of the house, I have to go to the cyber, to send emails. As a leader, there is a lot to be done; it is expensive for me and there is [sic] no funds. Sometimes you have to do a proposal of 25 pages in the cyber, it can cost 800<sup>138</sup>. Whereas if I had a corner and a laptop... But I am very passionate on the grassroots aspect, which you cannot lose.” (Interview with grassroots defender from Nairobi, 18 April 2014, Nairobi)*

Through sustained interactions with the professional world of activism, grassroots defenders have learned about the material rewards associated with the former. At the same time, they are often taught and expected to perform themselves professional repertoires of activism – such as monitoring and reporting human rights violations in their communities. Within this framework, they find it particularly difficult to understand why their professional counterparts are entitled to a medical insurance, for example, but not them, or why they cannot get paid for their work, especially when their expectations for pay are much smaller than the current rates in the professional sector:

*“We asked for them [protection organisation] to cover our medical insurance -- it is only 12000 per year<sup>139</sup>, and then a small stipend of 10k per month in the*

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<sup>138</sup> Approximately £6.

<sup>139</sup> Approximately £85

*form of airtime allowance. If 60000 is for 6 people [defenders from the grassroots], and yet one person in that place [protection organisation] is earning something like 80000 or 90000, it is just something very little. Because with us, with me, if I'm given that 10000 every month, I can even learn, I can complete my studies that I wanted to complete, and I can't be indebted, I could do more work more effectively, because even if you borrow something, you are called maybe in [name of town]. From my place to [name of town] it is 1000. And I go there to do work there to assist people, when I come back even if borrow money I know at the end of the month I'll get a small stipend from the [protection organisation], I will pay there, you see?" (Interview with grassroots defender from outside of Nairobi).*

When, on this background, grassroots defenders emphasise their persistence in carrying out their work despite the tight financial constraints and ensuing challenges, the latter also become a referent for grassroots defenders' self-sacrifice:

*"You can see how much people are sacrificing, and yet other people, when they are here [in human rights work], they are getting paid. And they say that we are HRDs. But HRDs are getting paid for their work" (Interview with grassroots defender from outside of Nairobi).*

As I will show, this claim is part of the broader debate around the professionalization of human rights work that disputes its compatibility with human rights as a calling. Yet, an analysis of this claim reveals that the same contradictions that underscore the idea that paid human rights work is incompatible with human rights as a calling, transfer to the claims that both grassroots activists and professional activists make within this debate.

#### **8.4.2. Careerism vs. Calling: Passion as Poverty and Its Contradictions**

On the evening of 13 May 2015, I attended a book launch organised in the conference room of one of the many hotels that line the streets of Kilimani – one of Nairobi's high-end neighbourhoods. In the immediate aftermath of the launch, I had the opportunity to chat with Willy Mutunga, at the time Kenya's Chief Justice, but with a long and impeccable track record

as a human rights activist during the four decades that preceded him taking up that role. Our conversation that evening was also joined by Father Gabriel Dolan, a Mombasa-based Catholic priest resident in Kenya for many decades, who, like Dr Mutunga, is well known and much loved in Kenya's human rights circles. Among others, Dr Mutunga and Fr Dolan touched on the dichotomy between human rights as career and human rights as a calling, a theme that had already emerged in many of my interviews as one of the key debates in contemporary activism in Kenya. Like many others before them and after, as they discussed the issue, both Fr Dolan and Willy Mutunga decried the fact that civil society had become a matter of career in Kenya, and that the passion for human rights that had motivated the earlier generation of activists was no longer there (Ichim, personal fieldnotes).

Paradoxically, this debate and its core assumption that, with few exceptions, human rights as a career and human rights as a calling are incompatible, is an ideological meeting point for professional activists (a category that includes protection professionals) and defenders from the grassroots in Kenya. Yet, as I have stated above, while formally both categories endorse this position, nevertheless, they associate different meanings to it. Moreover, these different meanings are fraught by contradictions that mirror each other across the sectors.

I have written extensively in Chapter 6 about grassroots defenders' socio-economic aspirations. Those socio-economic aspirations nuance the absolute meanings attached to passion as volunteerism among the grassroots, not least in relation to how that idea is deployed as a critique of the professional sector. More than once, in the course of the same interview, defenders from the grassroots would state that authentic human rights work and financial rewards are not compatible, only to claim, often in the course of the same interview, and on the basis of that very same statement, that they themselves should be paid, apparently oblivious to the fact that, if their first statement is true, then material rewards would invalidate the authenticity of their own activism. The following extract from an interview with a defender from outside of Nairobi is typical for similar ideas that have occurred in other interviews. When I asked my interviewee if he sees himself as a human rights defender, he drew a firm distinction between himself as a defender and NGO workers:

*“An NGO worker does a totally different thing. As a HRD I can defend rights everywhere. Activism is in the heart. An NGO worker does it because there he wants to be paid.*

*Q: But is it impossible to be an NGO worker and have activism at heart?*

*A: I don't know, because if you have both things, one will slip.” (Interview, with grassroots defender from outside of Nairobi)*

Yes, later in course of the same interview, my interviewee claims that defenders like himself should be paid. However, according to his own statement earlier on, if he were to become paid, then financial rewards would displace his passion for human rights. Inexplicable at first sight, this contradiction, nevertheless, becomes meaningful (albeit not resolved) when seen in the broader context of grassroots defenders' criticisms of the professional class. In an interview with a defender from Nairobi's informal settlements, he told me when I asked him what the meaning of the term human rights defender is to him:

*“Someone who cannot see a violation and be quiet. But you go to an organisation and they tell you that they don't have funds. But me? There are two different types of people: one will be waiting for funds; the other will do something with or without funds. The one is a career[ist].” (Interview, 18 April 2014)*

This notion that commitment for human rights work and payment for human rights work are incompatible is extremely widespread among defenders from the grassroots. Yet, it is only ever invoked to critique the position of their professional counterparts as one that reflects their perceived opportunism as careerists and their simultaneous lack of commitment for human rights work. Indeed, to tap for a moment into ideas explored in the previous chapter, grassroots defenders' notion that professional activists are careerists lacking passion for human rights work is the counterpart to professionals' own notions of grassroots defenders' opportunism when the latter expect material rewards for their human rights work.

At the same time, grassroots defenders use this argument to endorse their own claims for material rewards, bypassing in the process the ensuing contradictions<sup>1</sup>.

This position, however, and its defining tensions and contradictions, closely echoes that of professionals themselves. Indeed, an almost identical conceptual framework was used by a former protection professional in an interview that I conducted a few months later.

*“Personally, I have two categories of HRDs, ok? (...): there is one who has gone to school like you, who is actually coming to work and make a living, so when the money stops flowing you disappear; you will not be seen; the Coalition will not see you. And there is the other one, whether there is money or not, that person will be there, whether it is going to the cells or not, that person will go to the cells, whether it is being beaten or being sprayed with tear gas or whatever, that person will be there, the people who believe in change, the people it is inside them, you cannot remove it from them. It is... it is.... and this to me are the HRDs who need to be built and capacity-built properly. The others, if they get a good job in the bank, they will go. This one won't go. An if he goes, one, two months he comes back to his work. So those are the categories, and there are those HRDs out there who are illiterate, but they fight for values, they fight for human rights values, in communities. and everybody knows that his opinion is taken very seriously, because the community sees him, fighting defending and practicing human rights values.”*  
*(Interview, 5 August 2014)*

I have already discussed in the previous chapter how this model of an authentic defender, centered on notions of selflessness understood, among others, as volunteerism, function to delegitimise socio-economic aspirations entertained by grassroots defenders. Much in the same way as grassroots defenders do, when professional activists invoke these notions they bypass the contradictions that this raises in relation to their own position, as paid staff who understand passion as the poverty *of others*, the vast majority of whom are already in a marginalised socio-economic position.

Contradictions in imaginaries of passion as poverty, then, reflect each other across sectors. In turn, these contradictions are engendered and sustained by the broader tension within the practice of protection between teaching defenders professional repertoires of activism

through protection programmes, but stopping short of rewarding them materially for their work. Concepts of volunteerism as the marker of passionate, committed activism among professional activists are needed for and function to legitimize this state of affairs. This explains why voluntary activism as passionate activism is always imagined as the voluntary work of others. The moral dimensions of a concept of passionate activism also helps to erase the contradictions entailed by expecting voluntary work from a position of being paid: as scholars have shown, the moral features of the victim transfer to their protector (see, for eg. Armstrong, 2008; Merry, 2007a). Conversely, being refused the satisfaction of expected material rewards, grassroots defenders resists this reality by appropriating that same concept of passionate activism as volunteerism as a critical lens for their professional counterparts. This explains why, among them, material rewards as the marker of lack of commitment to human rights is often deployed to signal the lack of commitment *of others* (professional defenders). In the process, the moral dimensions of a notion of passionate activism helps to also erase the contradictions entailed by claiming volunteerism as the marker of their own authentic activism while simultaneously aspiring for material recompense.

On the rare occasions when I discussed these and other similar problems with Kenyan protection professionals, they were regarded as theoretical details more than anything else, with little, if any relevance to the day to day practice of protection. It is not difficult to understand how, in the middle of being consumed by the urgency of writing the next funding proposal, organising someone's relocation, or making sure that the logistics of an upcoming training are in place (or, often, all three at once), such issues might look like addenda to protection, rather than one of its main chapters. Yet, these contradictions have more than theoretical relevance, because the tensions that surround them sap at the very root of the solidarity that protection aims to embody, both as an ideal and practice, through engendering a range of negative emotions that run counter to it.

### **8.5. Passionate Activism, Professional Protection and the Erosion of Solidarity**

The sound of the phone ringing one evening during my fieldwork, as I was sitting in the balcony, startled me. It was about 10 pm, customarily a late hour for receiving a phone call. I

was all the more surprised to see that the call was coming from a defender from outside of Nairobi. We knew each other quite well by that stage – we had met on a number of occasions in the preceding months – and I had also interviewed him for the project; phone calls, however, were rare, and certainly at that late hour. The tone of his voice as he started speaking was agitated and angry, a sign that this was not a casual conversation. Indeed, most of our conversation that evening resembled a monologue more than anything else. This defender had been working in a formal but voluntary role for a protection organisation for a number of years, and I knew from our previous encounters that both him and others in a similar position had expected that this role would eventually translate into a form of paid employment with the respective organisation. I also knew that the continued deferment of that expectation was a source of great frustration for them. On this evening, triggered by a particular encounter with a staff of the respective organisation, his resentment had reached a tipping level; during the course of our conversation, I came to understand that he had called me to vent his frustration, more than anything else. I was particularly taken aback when, towards the end of our talk, this defender called the respective protection professional “a monster”, more than once, and each time emphasised the word, as if its meaning needed more emphasis than that it held already (Ichim, personal fieldnotes).

This degree of disenchantment with protection as a set of practices and its expression through a variety of negative emotions that evening, ranging from frustration, to resentment, to outright anger was taken to the extreme in that particular instance, no doubt. Yet, having been in Kenya for a good while at that stage, and having conducted a sizable number of interviews, I had begun to observe that the mediation of perceptions about protection through that range of negative emotions, if in less extreme forms, was a trend among grassroots defenders. These negative emotions were nearly always an expression of their disenfranchisement with protection as a set of practices that always bypassed their socio-economic concerns, despite asking them to provide work that needed to match professional standards of activism. The ambiguity of their position as volunteers aspiring for the position of paid staff, functioning within a system that feeds those aspirations as the same time as it denies their material realisation, was the source of a great sense of injustice. In an interview with a defender in a similar role to the one that I already quoted above, he told me:

*“That is what I am told as a [defender on the ground]. We are not entitled to medical cover as a [defender on the ground]. But they, they have legal cover, they are paid, is it fair? Simply because they say you are not staffs, so if I get sick, where I am now, if something happens to me, maybe it will be out of you in your good heart, this is my friend, can we see how best we can take care of him? But not from the pocket of [protection organisation] that will never happen, it wouldn’t” (Interview with grassroots defender from outside of Nairobi).*

The negative emotional dimensions of their ambiguous position and resulting sense of unfairness are further magnified by the ongoing narrative that protection organisations benefit financially from the work of defenders, an aspect that I have dwelt on in detail in the previous chapter. In another interview with a defender from outside of Nairobi, who was doing work in a voluntary position for a number of Nairobi based organisations, she recounted how, when she asked for a format for a fundraising proposal, she was told to be patient. She then continued:

*“I’ve been patient, but this is now the 7th year. Nobody’s willing. These people, they like..., when they are the ones up there getting money, but we people down here, if you can’t get money you struggle on your own” (Interview with grassroots defender from outside of Nairobi).*

A similar idea was expressed by a Nairobi-based defender from the grassroots, who specifically tied this narrative with an ensuing sense of mistrust between protection organisations and their beneficiaries:

*"Because they don't come to the grassroots level, they just stay here in [location of protection organisation], and they are the ones who take a lot of funds on HRDs, but not the HRDs themselves. So that brings a lot of challenge, and also that sense of mistrust. I can't come to tell you anything.” (Interview, 13 March, 2015)*

While, in recent years, protection professionals have increasingly focused on the impact that conducting human rights work in repressive environments has on the emotional well-being of defenders (CAHR, 2017), there has been virtually no attention being paid to the emotional

effects of protection itself, both on defenders and on the aims of protection. Yet, as scholars have shown, emotions triggered by dynamics internal to movements are as important for the cohesion and success of movements, as those effected by factors external to movements. For example, Deborah Gould's ethnography of the AIDS Coalition to Unleash Power (ACT UP) convincingly shows how the privileged access of some activists to scientific communities, and the resulting concerns that the movement did not pay enough attention to members representing marginalized sections of society, were key factors in the fracture of ACT UP. Mutual moralizing and shaming among actors, itself a consequence of these conflicting interests, played a key role in the movement's eventual demise (Gould, 2009).

As the human rights movement in Kenya has grown, and as the human rights discourse, and increasingly the human rights defenders discourse, have spread beyond the boundaries of the capital and other urban centres, the grassroots sector has become an increasingly important part of the movement. This is openly and repeatedly acknowledged by the professional sector. A human rights professional working with the Kenya National Commission on Human Rights, put it in the following way:

*“The Commission as an NHRI [national human rights institution] has to work with HRDs: they are the ones that report violations to us and they are the vehicles for the realization of human rights at the grassroots level; we are in Nairobi, we cannot go far because of constraints in funding, so we cannot become a human rights state without the efforts of those HRDs all over the country. So, we are as the national office and in those four regions we have to ensure that not only we nurture... because our motto is to nurture a culture of human rights in the country... we cannot do that from the headquarters and the few regional offices that we have; nurturing that culture of human rights is ensuring that we have that networks of human rights actors all over the country, who not only understand what human rights work is, what human rights is, but are also enabled to do the work they do free from threats, free*

*from intimidation, and all that, from both the state and the private non-state actors.”<sup>140</sup> (Interview, 26 August)*

Yet, the grassroots sector is only partially included in the human rights movement in Kenya. While its work is both desired and recognised as necessary to fulfill the broader aims of the movement, and measures are being taken to perfect that work according to consecrated, professional repertoires of activism, at the same time, the overwhelming expectation is that it will be performed voluntarily<sup>141</sup>. Like a concept of risk, the concept of volunteerism for human rights work has acquired a romanticized dimension in accounts of activism, both past and present. I have shown above how that idealized aspect is simultaneously upheld and subverted in its use by members of both the grassroots sector and the professional sector. This is hardly surprising – long-term, voluntary activism, especially in highly unequal socio-economic settings, such as Kenya’s, is unsustainable. For example, one of the factors in the decline of RPP, whose history I detailed in Chapter 5, was the waning strength among its volunteers, caused, among others, because of lack of material support for members of RPP, despite the expectation that paid staff and members would carry out similar work:

*“[T]he internal dynamics that I was telling you about [after donors started funding RPP, which resulted in a small number of staff being paid], internal push and pull, you are an employee, you have insurance, I am a member, I don't have insurance, you have a salary year in year out, I cannot feel myself, some members almost felt like beggars coming to sit around there waiting for evening they are given fare back home or something like that, but when it comes to working we are working at par, all that, you know.” (Interview with Muthoni Kamau, former RPP member, 1<sup>st</sup> August, 2014)*

Later in the interview she added:

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<sup>140</sup> See also back Chapter 7, footnote 16, pg X.

<sup>141</sup> I will reiterate here a point that I raised in previous chapters. The claim that there are no sufficient resources to fulfill all the material expectations among grassroots defenders is true. Nevertheless, it is possible to allocate existing resources in ways that can fulfill *some* of those expectations - as a visible proof that the professional sector is willing to engage with socio-economic concerns among their counterparts from the grassroots, this is key for the legitimacy of the professional sector, and especially for that subsector that engages in protection.

*“Most of the work then when we were activists was voluntary, and it drains you: energy, resources. We took it as a calling and it affects so many things in your life: you are arrested, cases last for months, anxiety. It is a risky life, you don't know when you die. (...) Most of us went out of the organisation because at some point when you volunteer for 5 years and you start getting... your family start growing, and you can't get a job in the organization that you volunteer because, you know, you are in the leadership, so you can't be an employee and a leader at the same time; in any case, these jobs are too few; so then you have to go out and look for a job.” (Interview Muthoni Kamau, former RPP member, 1<sup>st</sup> August, 2014)*

The sustainability of the movement, then, is undermined both by the lack of socio-economic support, and by the negative emotions triggered by that, in a context in which some members of the movement benefit materially from being part of it, while others do not. For many, the inequalities internal to the movement, and especially the difficulties of breaking the glass ceiling that separates the professional and the grassroots sectors, are the ultimate proof that the solidarity that defined the earlier human rights movement is not possible in the new context. Or, as the same former RPP member that I quote above put it: “there is no sense of comradeship anymore” (Interview, 1<sup>st</sup> August, 2014).

## **8.6. Conclusion**

Like other activist communities around the world, throughout the course of its history, the human rights community in Kenya has forged models of authentic activism that draw on both the experience and ideals of activism, and that have an important emotional component. In this chapter, I have shown how, in Kenya, these models revolve around notions of passion for and commitment to human rights work, and I have explored how the meanings attached to these notions have shifted through time, to reflect the changes brought about by the professionalization of activism and the ensuing class structure that defines the human rights community.

In particular, I have examined how these different meanings impact on protection as a contemporary form of human rights practice. On the one hand, I traced the processes through

which protection professionals (and professional activists more broadly) define passionate activism at the intersection between ideas of (others') volunteerism and a concept of risk narrowly defined in relation to the category human rights violation. These approaches, I suggested, converge to exclude the possibility that protection as a set of formal norms and practices can engage with abuses experienced by beneficiaries at a socio-economic level. Yet, I have also shown, many of the claims made by grassroots defenders on the protection system, on the basis of self-identifying as human rights defenders, focus precisely on socio-economic issues. This, I have shown, reflects in how their own definition of passionate activism revolves primarily around a concept of volunteerism despite poverty.

Ultimately, I argued, these clashing conceptions of passionate activism and associated claims can lead to a breakdown in trust between the different sectors, including between protection professionals and grassroots defenders as beneficiaries of protection measures in Kenya. If, throughout most of the chapter I examined "passion" as an idea that has become disembodied from action and is deployed to endorse rational arguments about what authentic human rights activism is and to make related claims, in the final section I extended that investigation to the emotions that these different notions of passionate activism and their effects engender in beneficiaries. The range of negative emotions that beneficiaries have expressed in their critiques of protection as a set of practices that elude socio-economic concerns from their remit, I argued, risks undermining both the aims of protection and the broader human rights movement in Kenya. The corollary, I suggest, is that a practice of protection that would include ways to address the socio-economic concerns raised by beneficiaries would lead to a more meaningful notion of solidarity and empowerment, and it would strengthen the human rights movement in Kenya. I return to this claim in the Conclusion to this thesis, where I examine it as an extension of both the arguments put forward in this chapter and in the preceding chapters of this thesis.

# Chapter 9. The Protection Regime and the Future of Human Rights

*“[T]he global inevitably structures, disciplines, channels, institutionalizes, and eventually colonizes the local reproducing hierarchies of power” (Hopgood, 2013: x).*

*“Relations of domination are, at the same time, relations of resistance (Scott, 1990: 45).*

## 9.1. Introduction

This study has revealed a gap between the ideals that underpin the protection regime and its implementation in practice, and it has explored why and how that gap occurs. The study has done so by examining how relevant actors, both protection professionals and beneficiaries of protection programmes, engage with the normative and institutional forms of the protection regime in Kenya.

As a sub-set of international human rights, the aims of the protection regime are inseparable from the aims of the former. The logic behind the fast expansion and institutionalisation of the protection regime, including, increasingly, in countries in the Global South, is informed by assumptions that it can empower individual defenders in the settings where they live and work, and, in the process, strengthen the human rights movement itself on the ground, both within specific locations and across countries and regions.

Yet, as this study of the protection regime in Kenya has shown, its effects in practice are much more complex than those ideals might suggest. In specific settings, the protection regime as a set of globally defined, homogenous set of norms and institutions encounters landscapes that are defined by prior political histories and, often, socio-economic inequalities in the present. In such settings, the protection regime functions not just through possibilities, as one might like to imagine, but also through constraints. Some of these constraints derive from the limitations that define the ideological frameworks that constitute the protection regime, others from the specificities of the Kenyan landscape, and yet others from the encounters between the two. On

this backdrop, relevant actors in Kenya appropriate the norms and institutions that define the protection regime, re-shape them, and often drive them in unexpected directions, that can run counter to its ideals. This, in turn, can be counterproductive not just for the protection regime and its aims, but for the human rights movement itself.

In this chapter, I set out the contributions to knowledge made by this thesis, by drawing on the theoretical and empirical findings from the previous chapters. In the first section, I highlight the theoretical and empirical contributions to the literature on defenders and protection, before I examine more narrowly my methodological contributions, especially from a research ethics perspective, and how these add to the relevant literature. Also here, I examine the contributions that this thesis makes to other literatures, and the mutually beneficial insights of these cross-linkages. In the second section, I examine the implications of my findings and the contributions of the thesis to practice. I start off with drawing out the implications for the practice of protection, before I move on to explore the implications of this study for the broader phenomena that frame the protection regime and, in the conclusion, debates about the future of human rights itself.

## **9.2. Contributions to the Literature and Practice on Defenders and Protection**

### **9.2.1. Theoretical Contributions: The Constraints of Rigid Categorisations**

The key theoretical contributions of this study emerge from the observation that, as a subset of international human rights, protection itself has developed as a professional form of human rights practice that has replicated both the methodologies, and, especially, the analytical frameworks and categories employed by professional human rights. As such, several chapters in this thesis have questioned the use of simplistic binaries (for example, crime vs human rights violations), challenged idealised notions of pure heroism in representations of defenders, and examined how these theoretical tendencies converge to reveal some things, even as they conceal others in both discourse and practice.

In Chapter 7, I interrogated the figure of the human rights defender as it is employed in the protection regime and showed that it is underpinned by two key, interrelated notions of innocence and agency. By employing a concept of agency in representations of human rights defenders, the protection regime marks a salutary departure from previous representations of passive victimhood in other regimes of care. At the same time, by inscribing defenders' agency within the ideology of human rights, it ends up strengthening the criterion of defenders' innocence. As a result, the figure of the human rights defender emerges as a *perfect* victim in the discourse (or, what Meyers (2011) calls the "heroic victim"). This theoretical line of inquiry led me to suggest that the problem lies less with victimhood, as much of the literature suggests, and instead with its qualifiers. Regardless of the direction they take (passive vs agentic, for example), these qualifiers maintain ideas of (defenders') whole spectrum of actions within the sphere of moral value judgments.

In Chapter 8, I continued my theoretical inquiry by zooming in on how a notion of risk (alongside volunteerism) constitutes a model of defenders' authentic activism among protection professionals. Specifically, I showed that the protection regime defines risk in relation to ideas of physical injury and death. This results in a tight focus on defenders' civil and political rights understood primarily as politically motivated violations of their right to life and bodily integrity. These tight conceptual boundaries are further strengthened through an overlap with similar notions of risk emerging from the history of activism itself in Kenya during its most repressive years.

A further theoretical addition across the two chapters is to explain how socio-economic issues affecting defenders are rendered invisible in the protection regime (what Miller (2008) has called "the constructed invisibility of socio-economic issues" in relation to transitional justice). In Chapter 7, I showed that idealised notions of agency as markers of an untainted moral character limit the ability of protection professionals to engage with the socio-economic constraints that often cause defenders' attempts to appropriate the protection regime for purposes other than those it was intended for. In Chapter 8, I continued that idea by showing that the self-referential relationship between a concept of risk understood as the possibility of physical injury and death and violations of the rights of human rights defenders as civil and political rights (with

a focus on their physical integrity) creates a conceptual vacuum for identifying and addressing socio-economic claims made on the protection system by defenders.

This thesis also showed that these observations have more than just theoretical relevance, but that they influence how the protection regime works in practice. I examine that below within a broader framework that highlights the empirical contributions of this study.

### **9.2.2. Empirical Contributions: The Importance of History and Context**

The key empirical contributions of this study derive from its examination of the protection regime and its effects in social life within a broader socio-political and economic framework. This framework interrogates contemporary developments in the *longue durée*, at the intersection between ideologies intrinsic to the protection regime and factors specific to Kenya.

Thus, in Chapter 4, I situated the emergence of the protection regime in Kenya within Kenya's broader socio-political history, including the history of activism here. By doing so, I showed two things. Firstly, the protection regime operates in a complex environment, that is defined by a mixture of criminal and political violence, which confounds the simpler conceptual categories that it inherited from human rights. Secondly, by tracing historical developments, I showed that, following a similar logic globally, in Kenya, the institutionalisation of protection developed as an extension of a movement that had already become professionalised and institutionalised. By the same token, the internal dynamics of fracture and contestation that defined the professionalization of human rights in Kenya, which I explored in Chapter 5, transferred to protection itself as a set of institutional practices, that displaced a set of earlier measures that had been mediated by personal rather than institutional relationships. On that background, I also showed in Chapter 5, protection as a form of professional human rights practice inadvertently deepens pre-existing class structures and ensuing power dynamics, by situating protection professionals and many beneficiaries of protection on opposite sides of a deep class and socio-economic divide. In Chapter 6, I examined the effects of how institutional protection works through power relationships by zooming in on capacity-building, a key element in protection programming across organisations. Here, I showed that the protection regime

fundamentally continues the drive to professionalise the human rights movement by elevating particular repertoires of activism (and protection) as the appropriate solutions to social injustice (and insecurity). Also here, I raised preliminary considerations about a fundamental tension between professionalising defenders, while, at the same time, maintaining expectations of volunteerism on their part, and showed how grassroots defenders navigate this tension and its constraints by often appropriating capacity-building programmes for their own, socio-economic purposes.

In Chapter 7, I focused on how the figure of the human rights defender as it is currently constructed in the protection regime impedes the ability of protection professionals to engage with the socio-economic causes that lead defenders to appropriate the protection regime. Instead, protection professionals interpret these attempts as acts of opportunism, a term that is loaded with moral connotations. Such interpretations, I also showed, function to justify the policing of resources by the professional groups to legitimate their positions as gatekeepers. This results in a dynamic of trusteeship between them and grassroots defenders. In Chapter 8, I examined how models of authentic activism among professionals, which revolve around notions of risk as physical injury and death and defenders' civil and political rights, are inadequate to engage with a much broader set of risks experienced by defenders, that include non-politically motivated forms of physical violence as well as structural violence. Also here, I showed how romanticised notions of defenders' volunteerism as a second key element of models of authentic activism among protection professionals clash with models of authentic activism among grassroots defenders, who deploy a notion of their own volunteerism despite their poverty to critique their professional counterparts as opportunists.

Overall, this thesis has shown that protection professionals in Kenya struggle to stay close to the spirit and aims of protection as it is internationally defined. Yet, at the same time, they are constrained both by factors that are structural to professional, institutional human rights, and by the protection regime itself, which has inherited from human rights a set of simplified, deceptively straightforward set of ideas about the world. Protection professionals must constantly negotiate these constraints and ideals against Kenya's socio-economic and political realities. Beneficiaries of protection, on the other hand, are often themselves constrained by those same

socio-economic realities, and must make decisions within those limitations. Contrary to the efforts and expectations of protection professionals, the beneficiaries of protection often appropriate protection norms and mechanisms for their own socio-economic purposes, even as they pretend otherwise. Rather than enhance solidarity across the sectors, the protection regime risks eroding it due to these clashing tendencies and the feelings of mutual distrust that they engender.

Researching and writing about these realities has been fraught with difficulties and ethical challenges, especially when considered alongside the ideals of human rights and the protection regime, as well as the significant intellectual and emotional investment that relevant actors have in both. In the next section, I examine the contributions of this study specifically in relation to this issue.

### **9.2.3. Methodological Contributions: The Importance (and Challenges) of Method**

By using ethnographic methods for this study, I have shown how they are singularly well-suited for understanding the protection regime as a set of practices, employed by actors who are embedded in complex settings, and that have a series of effects which can relate in contradictory ways to the goals that the protection regime pursues. However, my research made a distinct contribution beyond that, by also exploring the complex ethical issues that ethnographic methods can raise, especially when they engage regimes that have moral aims. These contributions to the ethics of research and methodology add to the literature that explores the inadequacies of IRB processes to prepare researchers for the myriad of instances that they encounter in the field that entail an ethical dimension. Along with scholars of this persuasion, I argued that ethical research is an open-ended process, that can never be fully anticipated (and thus prepared for). However, in following Harper and Jimenez (2005), I also suggested that acknowledging those complexities and the lack of a straightforward ethical solution to difficult moral conundrums in certain situations is the best approximation to a more complete ethical research process.

More precisely, I focused on the ethical challenges that stemmed from conducting research “on the threshold” (Eyben, 2009), as both an insider and an outsider to the organisations that I worked with, and thus someone who contributed to their work at the same time as conducting a critique of it. I showed that this raised complex ethical issues not only during the research itself, but also at the stage of data selection and writing. In relation to the latter issue, I argued for the importance of negotiating a duty to the truthfulness of findings, with a duty to not betray the trust of participants, or, indeed, with the need to avoid endangering their position in a setting where their work is already challenged by a state with authoritarian tendencies. Related to that, I also made an argument for the importance of researchers examining how they themselves are embedded in power relationships, as both actors with power (for example academically trained and with strong incentive to interrogate the status-quo), and without (for example, depending on gatekeepers for access). These power relationships, I also showed, extend well beyond “the field” (for example, scholars are well positioned to influence the production of knowledge). As a result, the ethical implications of power relationships must also be borne in mind at the stage of data selection and writing.

Conversely, however, and taking into account those ethical considerations, I also made an argument for how and why it is important to write about what I called “the gap between the script and practice” in the work of organisations. In particular, I suggested that critique plays an important role in opening up possibilities for more effective practice. In showing how institutionalised protection, as an extension of professional human rights, can be counterproductive both for the aims of the protection regime and the broader human rights movement, my aim was not to undermine protection or human rights efforts, but rather to suggest ways to strengthen them. By the same-token, focusing on the counter-productive effects of the protection regime, was not meant to suggest that we should do away with it altogether, but rather that, dealing with these counterproductive effects will make the protection regime stronger on the longer term.

Although testing the findings of this project beyond the confines of my particular case-study was not within the scope of the research, combined, my theoretical, empirical and methodological contributions have a number of implications for researchers who might want to

delve into similar phenomena elsewhere. Firstly, it is important to move beyond the Global/South debate, towards examining inequalities within the Global South, and how these affect the practice of human rights in specific locations. The literature has covered important (if also insufficient) ground in this respect. Englund's study of human rights activism in Malawi, in particular, has eloquently demonstrated how, in settings that are marked by poverty, professional human rights effectively creates class structures between its proponents and its beneficiaries, thus working against its own aims (2006). Tate too, has examined the history and politics of professional human rights in Colombia, and has noted the ensuing class structure within the activist community (2007). Although Tate has examined its effects on defenders historically, she has stopped short of examining these in contemporaneity. This project has built on these studies and their methodology (both Tate and Englund relied on ethnographic research) but it has also gone further by focusing on inequalities within the human rights community (rather between it and those it is meant to help) at the present time (although it has also examined the present within a broader historical trajectory). More specifically, it has shown how a contemporary, relatively new form of human rights practice further entrenches these inequalities (if inadvertently so) and that the responses of those defenders affected by this state of affairs sit uncomfortably with the aims of the protection regime.

Secondly, and having said that, studies that examine similar issues elsewhere must pay special attention to the methods they employ. A key contribution of this study has been to reveal the gap between the script (not necessarily only of power relations, like in Scott's understanding, but the script of protection ideals) and a set of practices that depart from that script in significant ways. These departures happen away from the public eye and are concealed with the active contribution of actors across the spectrum of power relationships that mediate protection. It is likely that other methods (for example, those which rely on interviews and surveys alone) would be less successful in uncovering these sets of practices. Similarly, while evaluations of the protection regime and similar practices that take its ideals at face value can yield valuable results, it is equally unlikely that they would be able to uncover these divergent side-effects, since these require long-term, painstaking observation of how protection unfolds in practice, as well as developing relationships of trust with interviewees, which, again, can only happen over time.

I will discuss the remaining implications of my overall findings in more depth below, but, before I do that, I wish to briefly examine how this study contributes to bodies of literature other than that on defenders and protection (and, more narrowly, the literature on the ethics of research).

#### **9.2.4. Contributions to Other Literatures: Scholarly Linkages Across Fields of Inquiry**

In addition to a separate literature review chapter, each of my empirical chapters included brief reviews of the literatures that were more specifically relevant to the themes that each of them dealt with. The purpose of this approach was twofold. On the one hand, I wished to inscribe the specific themes within the pre-existing scholarly research that pertained to them. On the other, I aimed to highlight the fact that, as an emerging field of inquiry, the research and writing on protection can usefully borrow from scholarly insights in other fields, at the same time as bringing important contributions to these itself. Here, I highlight some of the contributions that my own thesis brought in that sense.

In Chapter 5, I examined the professionalization of protection in Kenya within the broader, scholarly debates about the professionalization of the human right movement itself, both internationally and in particular locations across the globe. In doing so, I showed that empirical findings about protection in Kenya as a form of professional human rights practice confirm the scholarly literature that approaches professionalisation as a fundamentally political issue. While useful to expand the human rights movement as a professional project, professional human rights can, at the same time, lead to divisions within particular locations, especially along lines of class and socio-economic status. Chapter 6 made a significant contribution to the literature on capacity-building, by showing that, like elsewhere, capacity-building in the programming of protection organisations works through processes of both disempowerment and resistance by the beneficiaries, and that some of its most important effects are visible in how they shape the subjectivities of defenders, rather than in advancing solutions for social justice. Chapter 7 added to the theoretical and empirical research that examines how representing beneficiaries of regimes of care as passive, innocent victims results in their disempowerment, and tested solutions

forwarded by some scholars that revolve around the benefits of a concept of agency. Specifically, the chapter showed how the introduction of an element of agency in representations of defenders paradoxically results in a similar dynamic of disempowerment, and argued for a shift in both thinking and practice from a focus on victimhood per se, to the qualifiers that maintain evaluations of victimhood within the sphere of moral value judgements. Chapter 8 contributed to the literature on emotions and activism both by suggesting that a shift from exploring the emotional politics of activism (Tate, 2007) to exploring the politics of emotional activism is more useful for understanding power within the human rights movement, and by examining how power, in turn, results in a range of negative emotions that can work towards demobilization rather than its opposite.

More broadly, the study adds to the growing body of ethnographic studies that investigate the local transformations of international norms (human rights and otherwise), and how their actual effects in social life relate to the ideals they pursue. By drawing on those studies, here I foregrounded those ideals, and instead approached protection as a set of practices, that unfold in real locations, “within the wider historical constraints of institutionalized power” (Wilson, 1997: 4). In doing so, I showed how social context (seen as the product of a longer history of violence and oppression) and practice “constitute” ideas of protection (much like they do ideas of human rights (see Goodale, 2007: 8)). Conversely, I showed how the specific ways in which those ideas are deployed shape the practice of protection.

Finally, this research complements those investigations by testing the usefulness of a series of concepts that they forward, for exploring the contingent and divergent side-effects of the protection regime (see Allen, 2013: 21). Before I move on, I want to briefly revisit, in the light of what this research has found, some of the key concepts that I invoked in the literature review chapter and throughout the subsequent chapters. The concept of practice itself, understood as a departure from normativity and its assumptions, has proven an extremely useful conceptual tool for exploring the “social life” of protection norms in a specific context. However, rather than completely lay aside the assumptions of normativity, I found that these were helpful tools for understanding why practice unfolds in particular ways. In other words, the answer to understanding why a series of practices contradicted assumptions about protection often lay

within the assumptions themselves rather than away from them. This was well proven, for example, by my analysis of how key concepts that structure the protection regime (such as the concept of human rights defender and the concept of risk), and their qualifiers (moral virtue, and injury to the body) constrain the ability of professional defenders to interpret specific situations and how this in turn influenced their responses. The implication, I would suggest, is that even while foreclosing norms is important for exploring reality free of prejudices, holding the two in sight, as something like mirrors for each other can be even more helpful for understanding each.

At least in part, this approach helped me to refine another key concept that I explored in the literature review chapter, i.e. the concept of vernacularisation and the associated problematics of locality vs globalism. I find that vernacularisation, as Merry et al propose it, is only partially useful for understanding when and especially how human rights becomes translated in particular settings. More specifically, I find that the issue of “translation” and the forms that it takes is closely associated with where the translators are located in the power landscape. In particular situations, for example, the process through which human rights norms are circulated in local settings could be more adequately described as “transfer” rather than translation. This, I suggest, happens because the incentives to find local idioms for human rights ideas (and protection) decrease as the prestige of professional human rights (of which protection is a vehicle) increases, an issue to which I return in the final section of this chapter, where I engage with the argument of a prominent human rights scholar. These considerations about vernacularisation necessarily also add nuance to the global/local debate. Specifically, they confirm Goodale’s insights that understanding the global and the local hierarchically (like much of the North/South debate has done) only half gets the mark. Indeed, to give just the most obvious example, some of the activists in the Global South are more similar in outlook to their international counterparts than to their “local” ones, although they remain embedded in settings where they compete with the latter for influence and resources. This results in an extremely uneven playing field, which also influences whose ideas are being heard and whose not. However, even as the concept of location as a node in an expanding set of networks is more suitable to capture these complexities, my research suggests that particular attention must also be paid to how localities are understood from within – especially to how they are shaped by existing inequalities.

I now turn to examining how these findings, which bring together insights from scholarly literature(s) and analyses of rich empirical data from Kenya, matter for both the conceptualization and implementation of the protection regime, and for the wider human rights movement.

### **9.3. Implications for the Protection of Defenders: Socio-Economic Issues and Empowerment**

My earlier observations suggest not only that more can be done to empower defenders, but also ways in which that might be achieved. A first step, is to acknowledge the reality of power relationships across the sectors, and their effects, both for protection and for human rights practice. A second step is to align conceptions of empowerment as they are imagined in the protection regime, with conceptions of empowerment held by defenders themselves. While the protection regime employs a notion of empowerment understood as its enabling defenders to do their work, many defenders understand empowerment as more effective work within broader ideas of their sustainable livelihoods.

Accordingly, throughout this thesis, I have suggested that idea(l)s of defenders' empowerment through the protection regime cannot become meaningful without a fundamental shift towards engaging with the socio-economic issues that affects defenders who come from impoverished backgrounds. Finding ways to reward them materially for their work, especially when that entails methodologies that are at a par with those of their professional counterparts, is one such way. However, I also proposed that such a shift entails a need for legitimating conceptual and theoretical frameworks that can guide practice (see Ferguson, 2015). These are lacking in the current set of current norms that concern defenders. Although tentative efforts that can be useful in that sense have been made – most notably, the concept of intersectionality that a UNSR on the situation of human rights defenders 2015 report has forwarded (see Forst, 2015) – these need to be further refined to incorporate and legitimate engaging with socio-economic issues within a protection framework.

My own thesis has made a modest contribution in that sense, including by showing that rigid frameworks inherited from human rights converge with limited definitions of other key

notions within the protection regime to render socio-economic issues as well as broader issues of structural violence that affect defenders invisible within the protection regime. Thus, a further implication for protection practitioners is that, in the day to day practice of protection, human rights frameworks need to be nuanced against the realities of settings where defenders suffer from forms of violence that do not neatly fall within the categories of human rights. This matters even for a limited conception of empowerment, that dissociates between defenders' work (current approaches) and their work seen as one aspect of their livelihoods (the approach that I advocate for). If the ultimate aim is to protect defenders so that they can continue to work in their localities, then the distinction between criminal and other forms of structural violence and political violence becomes less meaningful, to the extent that both forms of violence affect the work of defenders<sup>142</sup>.

Stemming from the previous considerations, protection practitioners need to reconcile expectations of volunteerism with the realities of professional human rights work. Expectations of defenders' voluntary work as a sign of their selflessness and commitment to human rights, especially in locations where large numbers of defenders come from impoverished socio-economic backgrounds, undermine the cohesion of the sector on the long term. At the same time, idealised representations of defenders serve to conceal those realities, rather than engage them. Continuing that idea, those representations themselves need to be nuanced against the constraints that dictate particular choices and behaviours, which often fall in areas of (moral) options that are far greyer than those entailed by current conceptualization of defenders.

Finally, I will re-iterate a point that I have already raised, but whose importance warrants repeated stating. The protection regime's failure to engage with socio-economic and structural issues, and its simultaneous demand that defenders from the grassroots perform human rights work voluntarily and professionally de-legitimises it in the eyes of many of these defenders, and at the same time legitimises their (concealed) attempts to manipulate the system. Conversely, I suggest that reversing that trend requires not so much fulfilling *all* of defenders' socio-economic

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<sup>142</sup> For example, if the ultimate purpose of the protection regime is to enable defenders to carry out their work, then it is more difficult to argue that a defender who is sick should not receive support, on account of the fact that sickness is not a form of threat that is a direct result of their work.

needs, but rather engaging with *some of them* in visible, meaningful ways that can function as a clear signal that these needs are taken seriously. Failure to do so, I showed in Chapter 8, risks further fracturing a sector that is already divided. In this thesis, I explored these division, including their ideological and affective dimensions in Kenya. Nevertheless, my findings also have implications that reach beyond the Kenyan case-study.

#### **9.4. Broader Implications: Universal Human Rights and Its Effects as Power**

Approaching the protection regime as a set of practices that unfold in specific locations reveals that institutionalised protection can be counterproductive for the human rights movement and its particular vision of social justice, that proclaims principles such as the universality and indivisibility of human rights, equality, and non-discrimination. In reality, the protection regime itself functions through situating the rights of human rights defenders hierarchically, where civil and political rights displace socio-economic concerns and broader issues of structural and everyday violence from both thinking and practice. Moreover, as a set of global norms and institutions, embedded in broader meanings of wealth and power, the protection regime reproduces power relationships, rather than challenge them. To date, much of the literature has focused on the power dynamics that structures the relationship between the Global North and the Global South. Here, I have shown that the protection regime in Kenya has (inadvertently) developed its own, internal version of the Global/South divide, in the form of a distinction between professionals (of protection and of activism more broadly) and “grassroots defenders”, who typically come from impoverished socio-economic backgrounds and operate in an individual, unpaid capacity.

Assumptions of universality, in turn, ensure the increasing hegemony of a particular set of methodologies of activism in local settings, whose status derives less from their (unquestioned) suitability as solutions for social justice across the spectrum in particular locations<sup>143</sup>, and more from their position as the markers of (often imagined) status, access,

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<sup>143</sup> Of course, this is not to say that professional repertoires are univocally unhelpful. Indeed, the human rights community in Kenya has been able to fight back government attempts in recent years to close down civic space by relying primarily on professional methodologies, and on Kenya’s 2010 Constitution and a judiciary that was reformed under the leadership of Willy Mutunga. Rather, I suggest that appraisals of the usefulness of professional

wealth and power. Their uncritical promotion as *the* methodologies of activism through the protection regime, especially through its capacity-building programmes, inadvertently risks displacing alternative repertoires, rooted in previous histories, and that are more closely aligned with ideas of widespread mobilization, rather than institutional activism (see de Waal, 2003). Of course, in the ideal scenario this should not be a choice of either/or, yet, the protection regime as a vehicle for professional human rights, functions precisely to narrow down the possibility of “*and*” as an alternative option.

Finally, institutionalized protection goes against the principle of non-discrimination by working through processes of exclusion in practice, not just of non-professional methodologies, but also of their exponents. As the movement continues to become professionalized, including through the functions of the protection regime, it is increasingly forced to reckon with issues of injustice that structure it internally. As I have shown, defenders’ perceptions and experiences of how power configures the protection regime in Kenya, including through its silence on their socio-economic concerns, risks eroding the very solidarity that the protection regime aims to achieve. This displaces the constructive role that a range of emotions, such as anger and resentment can play when directed, from within a cohesive movement, at broad societal issues of inequality and discrimination, towards eroding the movement itself from within. From this perspective, acknowledging power and its workings within the protection regime, and finding ways to engage with them more horizontally is a precondition to a movement that is stronger, and more capable to address societal issues of power, not only in Kenya, but also globally. I further expand on this idea in the conclusion to this chapter and thesis, by engaging with one of the most important arguments in the recent scholarly literature about the future direction of human rights.

## **9.5. Conclusion: The Protection Regime and the Future of Human Rights**

In his superbly argued *The Endtimes of Human Rights* (2013), Stephen Hopgood distinguishes between Human Rights with capital letters, understood as the “global structure of

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methodologies must be balanced against their negative effects (see also Tate (2007), for a nuanced analysis of what professional activism in Colombia enabled and what it foreclosed).

laws, courts, norms, and organizations that raise money, write reports, run international campaigns, open local offices, lobby governments, and claim to speak with singular authority in the name of humanity as a whole” (ix), and lower case human rights, “a non-hegemonic language of resistance” (178) that is reflected in the diverse array of locally-rooted actions and idioms that people across the world employ to pursue social justice ideals. Hopgood draws on this distinction throughout the book to make the case that, by cozying up to state power (especially American and neo-liberal), and by losing its moral authority as a result, Human Rights has reached the nadir of its history. However, Hopgood also suggests that the space created by its wane “will help create a more sustainable space for human rights as locally owned and interpreted principles for political action. In the end politics trumps law, and the local trumps the global” (xiv). Coming as it does, at a time when some of the most well-known exponents of Human Rights, such as Amnesty International and Human Rights Watch, are increasingly trying to adjust to the limitations of Western-led activism by, for example, opening offices in the Global South, hiring national staff in key positions, and, in the case of Amnesty, trying to build a membership-base there, Hopgood’s argument is both timely and extremely important. For that reason, I would like to end this thesis by both continuing and, in some respects, diverging from it by drawing on my findings from Kenya.

At least in part, Hopgood’s position about Human Rights as a regime in decline hinges on the observation that Human Rights has replaced the incentives of a vocational ethics of sacrifice with “plush offices or high salaries” (178). As a result, he observes, a “Global Human Rights Regime has created a wider gap between what people face on the ground and those who claim solidarity with them in Western capitals” (idem). Yet, I suggest, as Human Rights becomes decentralized in the Global South, it replicates a similar gap between people in countries there and those who claim to represent them in their own capitals. Even more narrowly, as the protection regime itself, as a key vehicle of Human Rights, has become decentralized, it has created a gap between grassroots defenders and those who claim to represent them from within their own movement. In other words, if Global Human Rights works through money and power, its decentralized versions create identical orders that work through the same means and generate a similar set of incentives. This seems to confirm Hopgood’s insight that “the global inevitably

structures, disciplines, channels, institutionalizes, and eventually colonizes the local reproducing hierarchies of power” (2013: x).

Yet, my findings from Kenya also paint a more nuanced picture of the realities of power enacted through both Human Rights and the protection regime. Specifically, in Kenya, Human Rights and human rights do not work alongside each other, making space for each other as one declines and the other grows. Rather, in particular locations, Human Rights and human rights meet, often in scenarios defined by “friction” (Tsing, 2005), and, at the tension between their encounter, they result in new realities. Moreover, these emergent forms, while “apparently ratifying the social ideology of the dominant” (Scott, 1990: 34), are fundamentally also defined by resistance from within (see Chapter 6). This resistance, in turn, is justified through “hidden transcripts” (Scott, 1990) that combine romanticized memories of local history with the ideals of both local versions of human rights and those of Human Rights, and that are deployed as a lens to scrutinize the (internal) injustices of Human Rights.

These complex realities of power *and* resistance<sup>144</sup>, often through and within the same (institutional) forms, suggest that, even as binaries such as Human Rights and human rights are analytically useful, there are also important advantages to moving beyond them in thinking and practice. I propose that examining the new forms that emerge at the intersection between Human Rights and human rights, within the broader histories that shape both, can open avenues for envisioning how practices that are more truthful to human rights, in its myriad of forms, can emerge and be given more prominence. The protection regime, as the extension of a movement that speaks truth to power, has a particular duty to do so. This may mean more modest ambitions on its part, including though a shift away from aiming to address a globally shrinking space for civil society, to imagining new possibilities for how it can increase the space for (lower case) human rights.

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<sup>144</sup> These realities complement rather than refute Hopgood’s argument. Specifically, and at the risk of reifying the binaries that I critique earlier, if Hopgood takes the macro-view in arguing that Human Rights is on the decline through its association with state power, I take the view “from below” and show that Human Rights (and the protection regime as one of its main institutional and normative forms) is equally undermined from within, by the very individuals that it claims to represent.

## **Abbreviations**

AI – Amnesty International

BEO – Brussels and European Office (of Peace Brigades International)

FIDA – Federation of Women Lawyers

HRD – Human Rights Defender

HRNGO – Human Rights Non-Governmental Organisation

HRW – Human Rights Watch

ICC – International Criminal Court

ICJ – The International Commission of Jurists

KHRC - The Kenya Human Rights Commission

KNCHR – The Kenya National Commission on Human Rights (The Commission)

NGO – Non-Governmental Organisation

NHRI – National Human Rights Institution

PBO Act – Public Benefits Organisations Act

PI – Protection International

RPP – Rights Promotion and Protection (formerly Release Political Prisoners)

UNSR – United Nations Special Rapporteur

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# List of Interviews Conducted

## **Interviews with professional defenders from Nairobi**

1. Wafula Buke (31 March 2014). Personal interview, with I. Ichim.
2. Professional defender, Nairobi-based (7 April 2014 and 20 April 2014). Personal interview, with I. Ichim.
3. Professional defender, Nairobi-based (28 April 2014). Personal interview, with I. Ichim.
4. Professional defender, Nairobi-based (2 May 2014). Personal interview, with I. Ichim.
5. Professional defender, Nairobi-based (9 May 2014). Personal interview, with I. Ichim.
6. Maina Kiai (2 July 2014). Personal interview, with I. Ichim.
7. Professional defender, Nairobi-based (6 July 2014). Personal interview, with I. Ichim.
8. Professional defender, Nairobi-based (29 July 2014). Personal interview, with I. Ichim.
9. Professional defender, Nairobi-based (26 August 2014). Personal interview, with I. Ichim.
10. Professional defender, Nairobi-based (28 August 2014 and 8 January 2015). Personal interview, with I. Ichim.
11. Professional defender, Nairobi-based (2 January 2015). Personal interview, with I. Ichim.

## **Interviews with grassroots defenders from Nairobi**

12. Grassroots defender, Nairobi-based (9 March 2014 and 3 April 2014). Personal interview, with I. Ichim.
13. Grassroots defender, Nairobi-based - 1 (18 April 2014). Personal interview, with I. Ichim.
14. Grassroots defender, Nairobi-based - 2 (18 April 2014). Personal interview, with I. Ichim.
15. Grassroots defender, Nairobi-based (24 April 2014). Personal interview, with I. Ichim.

16. Grassroots defender, Nairobi-based (18 May 2014). Personal interview, with I. Ichim.
17. Grassroots defender, Nairobi-based - 1 (17 July 2014). Personal interview, with I. Ichim.
18. Grassroots defender, Nairobi-based - 2 (17 July 2014). Personal interview, with I. Ichim.
19. Gitau Wanguthi, Release Political Prisoners (22 July 2014). Personal interview, with I. Ichim.
20. Grassroots defender, Nairobi-based (26 July 2014). Personal interview, with I. Ichim.
21. Grassroots defender, Nairobi-based - 1 (13 August 2014). Personal interview, with I. Ichim.
22. Grassroots defender, Nairobi-based - 2 (13 March 2015). Personal interview, with I. Ichim.
23. Grassroots defender, Nairobi-based (27 March 2015). Personal interview, with I. Ichim.
24. Grassroots defender, Nairobi-based (26 May 2014). Personal interview, with I. Ichim.
25. Muthoni Kamau, Release Political Prisoners (formerly) (1 August 2014). Personal interview, with I. Ichim.

### **Interviews with grassroots defenders from outside of Nairobi**

26. Grassroots defender, from outside of Nairobi (3 March 2014). Personal interview, with I. Ichim.
27. Grassroots defender, from outside of Nairobi (4 March 2014). Personal interview, with I. Ichim.
28. Grassroots defender, from outside of Nairobi (6 March 2014). Personal interview, with I. Ichim.
29. Grassroots defender, from outside of Nairobi (12 March 2014). Personal interview, with I. Ichim.
30. Grassroots defender, from outside of Nairobi (13 March 2014). Personal interview, with I. Ichim.
31. Professional defender, from outside of Nairobi (14 March 2014). Personal interview, with I. Ichim.

32. Grassroots defender, from outside of Nairobi (30 April 2014). Personal interview, with I. Ichim.
33. Grassroots defender, from outside of Nairobi (14 June 2014). Personal interview, with I. Ichim.
34. Grassroots defender, from outside of Nairobi - 1 (11 July 2014). Personal interview, with I. Ichim.
35. Grassroots defender, from outside of Nairobi - 2 (11 July 2014). Personal interview, with I. Ichim.
36. Grassroots defender, from outside of Nairobi - 3 (11 July 2014). Personal interview, with I. Ichim.
37. Grassroots defender, from outside of Nairobi (16 July 2014). Personal interview, with I. Ichim.
38. Grassroots defender, from outside of Nairobi (23 July 2014). Personal interview, with I. Ichim.
39. Grassroots defender, from outside of Nairobi (14 August 2014). Personal interview, with I. Ichim.
40. Grassroots defender, from outside of Nairobi - 1 (28 November 2014). Personal interview, with I. Ichim.
41. Grassroots defender, from outside of Nairobi - 2 (28 November 2014). Personal interview, with I. Ichim.
42. Grassroots defender, from outside of Nairobi - 1 (29 November 2014). Personal interview, with I. Ichim.
43. Grassroots defender, from outside of Nairobi - 2 (29 November 2014). Personal interview, with I. Ichim.
44. Grassroots defender, from outside of Nairobi – 3 (29 November 2014). Personal interview, with I. Ichim.
45. Grassroots defender, from outside of Nairobi - 1 (30 November 2014). Personal interview, with I. Ichim.
46. Grassroots defender, from outside of Nairobi – 2 (30 November 2014). Personal interview, with I. Ichim.

47. Grassroots defender, from outside of Nairobi (8 December 2014). Personal interview, with I. Ichim.

48. Grassroots defender, from outside of Nairobi (9 December 2014). Personal interview, with I. Ichim.

### **Interviews with protection professionals**

49. Protection professional (15 July 2014). Personal interview, with I. Ichim.

50. Protection professional (24 July 2014). Personal interview, with I. Ichim.

51. Protection professional (29 July 2014). Personal interview, with I. Ichim.

52. Protection professional (3 August 2014). Personal interview, with I. Ichim.

53. Protection professional (5 August 2014). Personal interview, with I. Ichim.

54. Protection professional (21 August 2014). Personal interview, with I. Ichim.

55. Protection professional (26 August 2014). Personal interview, with I. Ichim.

56. Protection professional (4 October 2014). Personal interview, with I. Ichim.

57. Protection professional (16 October 2014). Personal interview, with I. Ichim.

58. Protection professional (22 October 2014). Personal interview, with I. Ichim.

59. Protection professional (13 May 2015). Personal interview, with I. Ichim.

### **Interviews with members of the donor community**

60. Staff of donor organisation (14 May 2014). Personal interview, with I. Ichim.

61. Staff of Embassy of European Union Member State (27 May 2014). Personal interview, with I. Ichim.

62. Staff of donor organisation (27 May 2014). Personal interview, with I. Ichim.

63. Staff of Embassy of European Union Member State - 1 (28 May 2014). Personal interview, with I. Ichim.
64. Staff of Embassy of European Union Member State - 2 (28 May 2014). Personal interview, with I. Ichim.
65. Staff of Embassy of Western State (28 May 2014). Personal interview, with I. Ichim.
66. Staff of donor organisation (29 May 2014). Personal interview, with I. Ichim.
67. Staff of Embassy of Western State (30 May 2014). Personal interview, with I. Ichim.
68. Former Staff of Embassy of European Union Member State (23 June 2014). Personal interview, with I. Ichim.
69. Staff of Embassy of Western State (6 August 2014). Personal interview, with I. Ichim.
70. Staff of donor organisation (6 August 2014). Personal interview, with I. Ichim.
71. Staff of donor organisation (20 August 2014). Personal interview, with I. Ichim.
72. Staff of Embassy of European Union Member State (28 August 2014). Personal interview, with I. Ichim.

