



CIVIC & DEMOCRATIC SPACE INDEX IN KENYA (2023)

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Contents

Pg.1 LIST OF ABBREVIATIONS

Pg.2 FOREWARD

Pg.3 EXECUTIVE SUMMARY

Pg.5 JUSTIFICATION METHODOLOGY

Pg.5 Introduction

Pg.6 Objectives of the Assignment

Pg.6 Scope of Work

Pg.6 Data Analysis

Pg.7 CHAPTER 1: INTRODUCTION AND BACKGROUND

Pg.7 1. Introduction

Pg.7 1.1 Background

Pg.8 2. Legal and Policy Framework

Pg.8 2.1 Legal Restrictions

Pg.8 2.2 The Impact of Legislation

Pg.9 3. Political Pressures

Pg.9 3.1 Politicization of Civic Space

Pg.9 3.2 Electoral Dynamics

Pg.9 4. Societal Challenges

Pg.9 4.1 Social Attitudes and Prejudices

Pg.10 4.2 Violence and Intimidation

Pg.11 CHAPTER 2: LITERATURE REVIEW

Pg.11 2. Introduction

Pg.11 2.1 Specific trends on police actions in public order management

Pg.13 2.2 Specific trends on freedom of the press

Pg.14 2.3 Specific trends on safety and protection of human rights
defenders

Pg.15 2.4 Specific trends digital space and freedom of expression

Pg.16 2.5 Specific trends on the right to privacy and data protection

Pg.17 3. Consequences of human rights violations and shrinking of civic
space in Kenya

Pg.17 3.1 Impact on Civil Society

Pg.17 3.2 Erosion of Fundamental Rights

Pg.18 4. International Implications

Pg.18 4.1 Regional and Global Perspective

Pg.18 4.2 Kenya's Commitments

Contents

Pg.19 CHAPTER 3: FINDINGS AND DISCUSSION

- Pg.19 3. Introduction
- Pg.19 3.1 Stakeholders Interviewed
- Pg.20 3.2 Reflections on our constitutional framework and civic space
- Pg.22 3.3 Perceptions on the state of civic space in Kenya
- Pg.24 3.4 Impact of past regimes on civic space
- Pg.27 3.5 Impact of UDA regime on civic space from August 2022
- Pg.29 3.6 State of freedom of association in Kenya
- Pg.31 3.7 Some examples of Kenya Kwanza Civic Space Transgressions
- Pg.32 3.8 Kenya Kwanza Public Posturing Regarding CSOs
- Pg.33 3.9 Perception of UDA Posturing
- Pg.34 3.10 Freedom of peaceful assembly
- Pg.35 3.11 Protest management by government
- Pg.36 3.12 Protest and Violence
- Pg.37 3.12 Causes of Violent Protests
- Pg.38 3.13 Barriers faced by groups assembling
- Pg.39 3.15 Interference with freedom of expression
- Pg.39 3.16 State of freedom of expression
- Pg.41 3.17 Government posturing on media/journalists
- Pg.42 3.18 State of media freedom
- Pg.43 3.19 State's duty to protect
- Pg.44 3.20 Prevalent abuses Targeting Activists/journalists
- Pg.45 3.21 Responses by state to abuses
- Pg.46 3.22 Security of Civil Society
- Pg.46 3.23 Perception of civil society to protection

Pg.48 CHAPTER 4: CONCLUSIONS AND RECOMMENDATIONS

- Pg.48 4.1 Conclusions
- Pg.49 4.2 Key Recommendations
- Pg.49 4.2.1 Civil Society Organizations
- Pg.51 4.2.2 Duty Bearers
- Pg.52 4.2.3 Development Partners

Pg.53 REFERENCES

Pg.55 APPENDICES: STUDY TOOLS



LIST OF ABBREVIATIONS

- ACC** Assistant County Commissioner
- CBOs** Community-Based Organizations
- CFF** Civic Freedoms Forum
- CIVICUS** World Alliance for Citizen Participation
- CJ** Chief Justice
- CoK** Constitution of Kenya
- CSOs** Civil Society Organizations
- DCC** Deputy County Commissioner
- DCI** Directorate of Criminal Investigations
- DNA** deoxyribonucleic Acid
- FGD** Focus Group Discussion
- HRDs** Human Rights Defenders
- ICC** International Criminal Court
- IG** Inspector General of Police
- IMLU** Independent Medical Legal Unit
- IPOA** Independent Police Oversight Authority
- KANU** Kenya African National Union
- KICTANET** Kenya ICT Action Network
- KK** Kenya Kwanza
- KNCHR** Kenya National Commission on Human Rights
- LGBTQ+** Lesbian, Gay, Bisexual, Transgender, Queer
- MCK** Media Council of Kenya
- MUHURI** Muslims for Human Rights
- NARC** National Rainbow Coalition
- NCTC** National Counter Terrorism Centre
- NGO** Non-Governmental Organization
- OCPD** Officer Commanding Police Division
- OCS** Officer Commanding Station
- ODPP** Office of the Director of Public Prosecutions
- PBO** Public Benefit Organizations
- PEN** Partnerships 4 Empowerment and Networking
- PIL** Public Interest Litigation
- PSC** Public Service Commission
- SHGs** Self Help Groups
- UDA** United Democratic Alliance
- US** United States

FOREWARD

This report looks back at one year after yet another controversial election in Kenya which ended in dispute at the Supreme Court. The President H. E William Ruto who took power on an economic recovery political agenda started with gusto. His initial actions to ensure the independence of the police budget, the appointment of the six Court of Appeal Judges, commitment to increasing the judiciary budget, banning of the Special Service Unit of the Directorate of Criminal Investigations (DCI), and a promise to appoint a task force to investigate all extra-judicial executions gave hope to CSOs and Kenyans in general. However, the subsequent events by the security agencies and other state machinery have raised more questions than answers as to whether the current regime is slowly sliding into a police state.

The regime has clamped down on freedom of assembly, association, expression, and free press amongst others. Several human rights organizations have reported abuse by security agencies during peaceful demonstrations since August 2022. Additionally, the Media Council of Kenya and other media stakeholders have also reported cases of abuse of power by state officers, independent agencies, and the police concerning handling the press. These actions inspired PEN and CFF to commission this survey to consolidate civic space reports documenting violations from August 2022 to November 2023.

EXECUTIVE SUMMARY

This report explores the disconcerting trend of shrinking civic and democratic space in Kenya, a nation historically celebrated for its transition to multiparty democracy in the early 1990s. This trend is characterized by legal, political, and societal challenges that inhibit the participation of civil society organizations (CSOs), activists, and individuals in democratic processes and human rights advocacy, endangering democratic principles and fundamental rights.

The Legal and Policy Framework section highlights how legal developments, such as the Public Benefits Organizations (PBO) Act and the Security Laws (Amendment) Act, have imposed complex and restrictive requirements on CSOs. These regulations divert resources and focus from their missions, leading to legal uncertainty and vulnerability.

Another significant factor contributing to the shrinking civic space is political pressure. The politicization of civil society organizations undermines its independence, and during elections, political tensions and polarities escalate, further constraining civic space in the binaries of the enduring two-party system.

Societal challenges, such as discrimination and prejudice against marginalized groups like LGBTQ+ communities and women, hinder activists and organizations advocating for their rights. Moreover, activists often encounter threats, harassment, and violence, creating a climate of fear and self-censorship.

The Consequences section outlines the severe impact of these restrictions. A weakened civil society can no longer effectively address societal issues or hold



the government accountable. Fundamental rights, including freedom of expression and association, are frequently violated.

The report also explores international implications, emphasizing that Kenya's regional leadership positions it as a role model for other East African countries. The erosion of civic space in Kenya could set a concerning precedent for the region, potentially undermining human rights and democratic progress. It also raises concerns about Kenya's commitment to international obligations, which could lead to diplomatic pressure or sanctions.

In conclusion, the shrinking civic and democratic space in Kenya poses a complex challenge. Addressing this trend is essential to protect fundamental rights, uphold democratic values, and maintain Kenya's standing as a regional leader. To

tackle this issue, a multi-faceted approach is needed, addressing legal restrictions, political pressures, societal prejudices, and violence against activists, to create a more open and inclusive civic space in Kenya.

“Societal challenges, such as discrimination and prejudice against marginalized groups like LGBTQ+ communities and women, hinder activists and organizations advocating for their rights.”

JUSTIFICATION METHODOLOGY

Introduction



The state of civic and democratic spaces in Kenya is directly affected by the political regimes. This is evident from the changing civic and democratic journey over the past eight decades. Civic and democratic space in the previous regimes have been classified as Colonial government (1920-1963): CLOSED; Jomo Kenyatta (1963 to 1978) and Daniel Arap Moi (1978-2002) regimes: REPRESSED; Mwai Kibaki regime (2002 to 2013): INITIALLY OPENED (2003-2004), LATER NARROWED (2005 to 2007) and FINALLY OPENED (2008 to 2013); Uhuru Kenyatta as both Obstructed 1 and Partly Free 2.

The August 9, 2022, General Election ushered in the Kenya Kwanza Government led by President H.E William Ruto who was elected on an economic-recovery political agenda. Events following countrywide protests and the brutality of security agencies in the one year that the current regime has been in power tell a different story. Kenya is slowly sliding into a police state, with a President who has publicly intimidated a businessman he had a tiff with whom he risked facing one of 3 options in his Kiswahili “Mambo ni matatu” infamy taken literally to mean (I am giving you 3 options that included death or jail). This is very chilling coming from the

President who is supposed to uphold the Constitution. Added to the brutality of the police in response to demonstrations and the numerous police killings is an IG who has refused to do body counts and take responsibility.

The regime has in one year clamped down on freedom of assembly, association, expression, and free press more brazenly than previous regimes ever did in many years. Several human rights organizations have reported abuse by security agencies during peaceful demonstrations since August 2022. The Media Council of Kenya and other media stakeholders have also reported cases of abuse of power by state officers, independent agencies, and the police concerning handling the press.

These developments informed the decision by CFF and PEN to undertake this survey to consolidate human rights reports of violations committed by the regime to date.

Objectives of the Assignment

The main objective of this assignment was to analyze the state of civic space in Kenya from August 2022 to date. But more specifically:

1. To document specific trends on police actions in public order management
2. To document specific trends in freedom of the press
3. To document specific trends in the safety and protection of human rights defenders
4. To document specific trends in digital space and freedom of expression
5. To document specific trends on the right to privacy and data protection;

and

6. To make recommendations on specific policy and administrative action to relevant duty bearers, civil society actors, and development partners.

Scope of Work

This assignment involved two parts, an analytical and an empirical part. The analytical part involved a desk review of relevant literature – the Constitution, human rights reports by CSOs, occasional relevant research reports and documents on the state of civic space in Kenya including news articles, press releases by Constitutional Commissions and Independent Offices as well as testimonies by victims, survivors, and witnesses of violations. The empirical part involved interviews that targeted pre-selected key informants among them relevant sector players and other state actors in response to a semi-structured questionnaire administered partly digitally through Google Forms and via in-depth face-to-face interviews, supported by focus group discussions.

Data Analysis

The mix of qualitative and quantitative data was processed and analyzed using adaptations from the CIVICUS civic space Index Methodology. A preliminary report was presented at a validation forum at the Civic Space National Conference in Kisumu at which the stakeholders enriched the report.

CHAPTER 1:

INTRODUCTION & BACKGROUND

1. Introduction



Monday, May 16, 2016 file photo, a Kenyan riot policeman repeatedly kicks a protester as he lies in the street after falling while trying to flee from them, during a protest in downtown Nairobi, Kenya.

© Ben Curtis, File, Associated Press

1.1 Background

Kenya, celebrated for its transition to multiparty democracy in the early 1990s, has experienced a disconcerting trend in recent years – the shrinking of civic and democratic space. This phenomenon is characterized by various legal, political, and societal challenges that restrict the participation of civil society organizations (CSOs), activists, and individuals in democratic processes and the advocacy for human rights. The weakening of democratic principles, as well as violations of fundamental rights, poses a significant threat to the country’s democratic

progress (Gichuhi, Mytty & Atuya, 2022).

Kenya’s history of democratic transitions and the adoption of a multiparty system in the early 1990s marked a pivotal moment in the nation’s path toward a more open and inclusive political landscape. It was a time when citizens, CSOs, and activists could actively engage in political processes, express their views, and advocate for human rights. This period brought a sense of optimism and hope, not only to Kenya but also to the international community, which saw Kenya as a potential model for democratic development in East Africa

(Poverty Eradication Network (PEN), 2022).

However, recent years have witnessed the erosion of this vibrant civic and democratic space. Legal, political, and societal factors have converged to limit the activities of CSOs, activists, and individuals who were once at the forefront of championing democratic values and human rights. The consequences of this trend are profound, as it impacts the country's ability to maintain democratic progress and undermines the fundamental rights and freedoms that citizens ought to enjoy. It is crucial to understand the dynamics, factors, and consequences of this shrinking civic and democratic space to take appropriate actions to address and reverse this concerning trend. This report delves into these intricacies, aiming to shed light on the challenges and implications of the shrinking civic space in Kenya.

Atuya, 2022). The PBO Act, for example, introduced complex registration and reporting procedures, which have placed onerous administrative responsibilities on CSOs. This not only diverts resources and time away from their core missions but also creates an environment of legal uncertainty and vulnerability. Moreover, the Security Laws (Amendment) Act has raised concerns about the limits placed on freedom of expression and assembly, as it grants authorities broad powers to restrict public gatherings and assemblies deemed to pose a threat. Consequently, CSOs and activists find themselves navigating a legal landscape that hampers their ability to operate freely and independently (Partnerships 4 Empowerment and Networking in Kenya, 2022).

2. Legal and Policy Framework



2.1 Legal Restrictions

Kenya's legal framework has evolved in ways that constrict civic and democratic space. The introduction of legislation like the Public Benefits Organizations (PBO) Act (2013) and the Security Laws (Amendment) Act (2014) has placed a substantial burden on CSOs. These legislations, while presented as measures for national security and accountability, have been criticized for their adverse effects on civil society (Gichuhi, Mytty &

2.2 The Impact of Legislation

The impact of these legal restrictions is palpable. The complex and bureaucratic nature of the PBO Act's registration and reporting processes has stifled the activities of many organizations. CSOs are compelled to divert their resources and focus on complying with these new legal requirements rather than dedicating their full attention to their missions. This not only limits their ability to drive change and advocate for critical issues but also introduces a climate of uncertainty, where they may fear punitive action for inadvertent non-compliance. Additionally, the Security Laws (Amendment) Act's influence on freedom of expression and assembly has been contentious. The broad powers granted to authorities to restrict gatherings and assemblies that are perceived as a threat can lead to curtailment of peaceful protests and demonstrations. This, in turn, reduces the

avenues available for citizens to voice their concerns and participate in democratic processes, leading to a more restricted civic and democratic space.

even targeted for aligning with particular political forces. As political contestations intensify, the space for civil society to operate freely narrows. Activists and organizations advocating for transparency, accountability, and human rights may face challenges in maintaining their independence, as they become embroiled in political narratives and polarized debates. Moreover, the heightened political tensions during elections can lead to government crackdowns, restrictions on freedom of assembly, and a reduction in the availability of spaces for citizens to voice their concerns and engage in democratic processes. These dynamics collectively contribute to the shrinking civic and democratic space during critical election periods (IMLU, 2022).

3. Political Pressures



3.1 Politicization of Civic Space

The politicization of the civic space is a significant factor contributing to its shrinking. Civil society's role in promoting accountability, transparency, and social justice has been intertwined with political dynamics. Increasingly, politicians have portrayed CSOs as partisan actors, attempting to align them with specific political forces. This has not only fueled public mistrust but also introduced an atmosphere of hostility towards these organizations. Such politicization undermines the independence of civil society organizations, as they are often viewed as driven by political motives rather than a commitment to serving the greater good (Article 19, 2022). As a result, CSOs find themselves navigating a challenging landscape where their legitimacy and effectiveness are under constant scrutiny.

3.2 Electoral Dynamics

The dynamics surrounding elections further exacerbate the restrictions on civic and democratic space. During election seasons, political tensions tend to escalate, and CSOs may find themselves under increased scrutiny, pressure, or



4. Societal Challenges

4.1 Social Attitudes and Prejudices

Societal attitudes in Kenya, particularly regarding issues such as gender equality and LGBTQ+ rights, are contributing to the shrinking civic and democratic space. Discrimination and prejudice against these marginalized groups have created additional barriers for activists and organizations advocating for their rights. Gender-based discrimination and stereotypes persist in various aspects of Kenyan society, limiting the effectiveness of women's rights organizations and those advocating for gender equality. Similarly, LGBTQ+ rights activists face deep-seated social prejudices and hostility, which

hinder their work to advance equal rights and challenge discriminatory laws and practices. This social bias against these groups not only constrains their ability to operate freely but also perpetuates systemic inequalities (Article 19, 2022).




4.2 Violence and Intimidation

Activists in Kenya frequently encounter threats, harassment, and violence for their work, which creates an environment of fear and self-censorship. Perpetrators of violence, often acting with impunity, add to the challenges faced by those advocating for change and accountability (Asare, 2021). The use of threats, physical violence, and intimidation tactics against activists has a chilling effect on civic engagement and free expression. It discourages individuals from speaking out, participating in peaceful protests, or expressing their dissenting opinions. Moreover, the lack of accountability for those who commit violence against activists reinforces a culture of impunity, further eroding the civic space. In many cases, activists face risks to their safety and well-being, leading to self-censorship or, in extreme cases, causing them to cease their activities. This environment of intimidation not only stifles civil society but also infringes upon individuals' fundamental rights, including their right to freedom of expression and assembly (IMLU, 2022).



A Kenyan police officer shoots a tear gas canister to disperse some protesters as they gather to demonstrate in Nairobi, Kenya on 12 July 2023.

© AFP - LUIS TATO



CHAPTER 2: **LITERATURE REVIEW**

2. Introduction



This chapter provides an analysis of the situation of the civic and democratic space in Kenya over the years narrowing down to the specific trends that have been documented regarding it. The focus of this chapter is on literature materials inferred from the Constitution, human rights reports by CSOs, occasional relevant research reports, and documents on the state of civic space in Kenya including news articles, press releases by Constitutional Commissions, and Independent Offices among others.

2.1 Specific trends on police actions in public order management

In Kenya, police actions in public order management have been the subject of ongoing scrutiny and concern. These trends highlight the need for reforms in public order management practices in Kenya, including addressing excessive use of force, ensuring accountability for police misconduct, revising outdated legislation, and protecting the right to peaceful assembly and freedom of expression. Public dialogue and collaboration between law enforcement agencies, government authorities, civil society organizations, and

human rights advocates are essential for addressing these challenges.

As such, the following 12 points provide a summary overview of specific trends and challenges related to police actions in public order management in Kenya particularly about the period from August 2022 to date:

- a. Excessive use of force:** One of the primary concerns is the excessive use of force by the police during public demonstrations and protests. This includes the use of live ammunition, tear gas, water cannons, and physical violence against protesters. Such actions have led to injuries and fatalities.
- b. Lack of accountability:** Impunity by police officers involved in the excessive use of force remains a significant challenge. Cases of police brutality and violence often go uninvestigated, and officers responsible are rarely held accountable.
- c. Restrictions on Freedom of Assembly:** The Kenyan government has imposed restrictions on the right to assemble and protest. Police have frequently disrupted or denied permission for demonstrations, citing security concerns. This has led to confrontations between protesters and law enforcement.
- d. Tear gas and chemical irritants:** Tear gas is routinely used to disperse crowds during protests. However, the improper use of tear gas can result in excessive exposure to chemical irritants and harmful health effects on protesters.
- e. Arbitrary arrests and detentions:** The police have been accused of arbitrarily arresting and detaining protesters

and opposition figures. Some victims have been held without charges for extended periods.

- f. Targeting of journalists and media:** Police have sometimes targeted journalists and media personnel covering protests. They have confiscated equipment, disrupted live broadcasts, and, in some cases, physically assaulted journalists.
- g. Legal Framework:** The Public Order Act, which governs public gatherings and demonstrations, has faced criticism for being outdated and unnecessarily restrictive. Critics argue that it grants authorities excessive discretion to limit protests thus in need of reform.
- h. Election-related violence:** During election periods, public order management can become particularly contentious. There have been incidents of election-related violence and police responses that have raised concerns.
- i. Lack of crowd control training:** Some police officers may lack proper training in crowd control and the use of non-lethal methods for managing public gatherings. This can lead to poorly managed situations that escalate into violence.
- j. Community policing initiatives:** There have been efforts to improve police-community relations, including via community policing initiatives. However, the effectiveness of such programs in preventing police violence during public order management remains a subject of debate.
- k. Activist and human rights concerns:** Human rights activists and organizations have consistently raised concerns about police actions in

public order management and have called for reforms to protect the rights of protesters.

- i. Public outcry and advocacy:** Incidents of police violence during public order management have led to public outcry, media coverage, and advocacy for police reform, improved training, and greater accountability.

2.2 Specific trends on freedom of the press

A review of multiple CSO reports highlights the complex environment for freedom of the press in Kenya, where media independence and pluralism coexist with challenges related to journalists' safety, regulatory pressures, and the financial sustainability of media outlets. Maintaining and strengthening press freedom remains an ongoing concern. The following 12 points summarize the specific trends in freedom of the press in Kenya critical from this analysis:

- a. Media independence and pluralism:** Kenya has a diverse and vibrant media landscape with numerous newspapers, television stations, and radio stations. Media outlets are relatively independent, providing a variety of voices and opinions.
- b. Digital media growth:** With the proliferation of the internet and mobile technology, digital media has seen significant growth. Online news portals, blogs, and social media platforms have become important sources of news and information.
- c. Journalist safety concerns:** Journalists in Kenya face various risks, including

physical attacks, threats, and harassment. Covering sensitive topics like corruption or politics can be dangerous, and some journalists have been assaulted or even killed in the line of duty.

- d. Laws regulating media:**

Kenya has many laws that regulate media, including the Media Council Act 2013 and the Kenya Information and Communications (Amendment) Act. (2013), Computer Misuse and Cyber Crime Act (2018), among others. These laws, while aimed at promoting responsible journalism, can also be used to restrict press freedom.

- e. Social media regulations:** There have been attempts to regulate social media and online content, which has raised concerns about freedom of expression. Proposed laws and regulations have sought to control the spread of fake news and hate speech but also have the potential to stifle free expression.
- f. Government influence:** Concerns have been raised about government interference in the media. This can take the form of editorial control, selective advertising revenue distribution, or selective application of laws to target critical media outlets.
- g. Self-censorship:** Journalists in Kenya often engage in self-censorship to avoid backlash or threats. This can limit the scope of reporting and investigative journalism.
- h. Media sustainability:** Many media organizations in Kenya struggle with financial sustainability. Advertisers, who may fear government backlash, may be reluctant to support independent media. This financial pressure can affect editorial independence.

i. High-profile defamation cases: High-profile individuals and public figures sometimes file defamation lawsuits against media outlets and journalists. These cases can have a chilling effect on press freedom.

j. Access to information:

While Kenya has progressive laws like the Access to Information Act, of 2016, access to government-held information is sometimes restricted. Journalists and media outlets face numerous challenges when seeking information from government bodies.

k. Media training and professionalism:

Efforts are being made to enhance the professionalism of journalists in Kenya. Training programs and workshops are helping journalists improve their skills and adhere to ethical standards.

l. Press freedom advocacy:

Various organizations and civil society groups in Kenya actively advocate for press freedom and the protection of journalists. They provide support to journalists who face threats and harassment.

by 30.1%, and enforced disappearances decreased by 38%, resulting in a total drop of 31.5%.

These results can be broken further into different demographics and formats for clarity of the dire situation as follows:

2.3.1 Monthly Patterns

January 2022 had the highest number of police killings, with 28 cases arising from 11 incidents. July had the second-highest count, with 21 police killings from 12 incidents. February ranked as the third-highest month, with 13 police killings stemming from 9 incidents. Notably, there were no recorded enforced disappearances in April, July, November, and December 2022.

Regarding enforced disappearances, June had the highest number, with six cases. However, in June, four of these victims were later found dead. Notable victims included Moses Nyachae, Frank Obegi, Fred Obare, and Elijah Omeka, who were initially arrested at Kasarani police station and later found deceased. September 2022 had the second-highest count of enforced disappearances, with four cases. Other months with such cases were March (3) and January (2).

2.3 Specific trends on safety and protection of human rights defenders

A review of human rights advocacy reports paints a very worrying picture of the safety and protection of human rights defenders in Kenya from August 2022 to date. For example, in 2022, Missing Voices documented 130 cases of police killings and 22 cases of enforced disappearances, totaling 152. This represented a significant reduction from 2021 when Missing Voices documented 186 cases of police killings and 36 cases of enforced disappearances. Specifically, police killings decreased

2.3.2 Quarterly Trends

The last quarter of 2022 (October to December) witnessed the lowest number of enforced disappearances, with three

cases. This period coincided with consistent condemnation of enforced disappearances by the new government, indicating the potential impact of political goodwill and official condemnation in reducing these cases.

2.3.3 Impact on Youth

Young people in impoverished urban areas were the most affected by both police killings and enforced disappearances. The data indicated that young males were particularly vulnerable to these incidents.

Additionally, a report by IPOA indicates that in January 2022, the agency initiated investigations into incidents where 22 bodies were retrieved from River Yala in Siaya County on diverse dates, prompted by HAKI Africa. The total number of bodies later reached 36 as other Missing Voices partners joined the search for answers.

IPOA's statement indicated that post-mortem examinations revealed various causes of death, including head injuries, abdominal and chest injuries, drowning, strangulations, and peritonitis. In 5 cases, the cause of death remained undetermined. Preliminary investigations suggested similarities among the injuries and causes of death, and DNA profiling was ongoing.

A local diver, Nicholas Okero Okite, responsible for recovering bodies from the river, claimed that more bodies were still being dumped into the river.

Further, a report by Missing Voices indicates that eight out of thirteen persons reported missing between July 2021 and the

present were last seen in Nairobi City. Two of them were positively identified at Yala Sub County Mortuary. Others originated from Nakuru, Kisumu, Embu, Kakamega, and Siaya, suggesting that most of the reported cases of missing persons were from Nairobi City. However, Missing Voices could not include the River Yala bodies in the total count of police-related deaths because investigations were ongoing.

2.4 Specific trends digital space and freedom of expression

In Kenya, the Presidency has effectively harnessed various state institutions to control and restrict civic and independent entities. This has been particularly prominent during and after the 2017 General elections, where efforts were made to wield authority over electoral and governance processes.

Following a temporary improvement due to a political agreement known as the "handshake" between President Uhuru Kenyatta and opposition leader Raila Odinga, the situation remained challenging. Initiatives like the Building Bridges Initiative (BBI) aimed at addressing historical human rights and governance issues made limited progress, as there was little political will to confront the past.

Both CIVICUS and Freedom House have classified Kenya's civic and democratic spaces in 2022 as "obstructed" and "partly free." This assessment reflects the imposition of legal and practical constraints on fundamental rights by those in power and their efforts to undermine civil society organizations.

Particularly targeted are those advocating for human rights, the rule of law, accountability, and justice. Vulnerability depends on how these actors frame and address these issues. The period surrounding elections and transitions is especially precarious, and regimes with legitimacy deficits often resort to coercion.

Moreover, security and health emergencies, such as the COVID-19 pandemic, have provided opportunities for violating human rights and democratic space through the enforcement of health and security regulations. This includes restrictions on public gatherings, movement, and health protocols like mask-wearing and social distancing.

2.5 Specific trends on the right to privacy and data protection

A review of the literature on the trends on the right to privacy and data protection in Kenya shows a promising but equally weakening regime for human rights protection as summarized in the following 7 key trends observable in the Kenya context currently:

- a. Data protection legislation:** Kenya enacted the Data Protection Act in 2019, bringing the country in line with international data protection standards. The establishment of the Office of the Data Protection Commissioner underscores the commitment to safeguarding personal data.
- b. Increased data privacy awareness:** Kenyan citizens are becoming more aware of their rights to data privacy. The Data Protection Commissioner's office and various organizations

are engaged in public awareness campaigns to educate individuals about data protection.

- c. Biometric data concerns:** The use of biometric data, such as fingerprints and facial recognition, has raised privacy concerns. The Data Protection Act contains provisions that regulate the collection and processing of biometric data.
- d. Cybersecurity emphasis:** Data breaches and cybersecurity incidents have become more prevalent. This has prompted a greater emphasis on cybersecurity measures to protect personal data from unauthorized access.
- e. Regulation of telecommunication companies:** Telecommunication companies have faced scrutiny regarding the handling of customer data, including call records. Ensuring the privacy of customer data is a priority, and regulations have been put in place to enforce this.
- f. Cross-border data transfers:** With the rise of the digital economy, cross-border data transfers have become common. Kenya is focusing on establishing international data transfer agreements to protect data as it flows across borders.
- g. Social media platform regulation:** Kenya is exploring regulations for social media platforms to address issues related to the dissemination of personal data and user-generated content. Balancing freedom of expression and privacy is a key consideration.

Research also shows that Kenya faces key challenges in data protection and privacy

through the lens of human rights advocacy and these key challenges are summarized in the following 8 points:

a. Lack of comprehensive data protection culture:

While data protection laws exist, there is still a need for a comprehensive culture of data protection in Kenya. Many organizations and individuals are not fully aware of their obligations and rights under these laws.

b. Limited resources for enforcement:

The Office of the Data Protection Commissioner and other regulatory bodies may have limited resources to effectively enforce data protection regulations and investigate data breaches.

c. Data security vulnerabilities:

Organizations, especially small and medium-sized enterprises (SMEs), may lack the necessary resources and expertise to secure data adequately, leaving them vulnerable to data breaches.

d. Cross-border data flow challenges:

Kenya faces challenges related to cross-border data transfers, especially when dealing with international companies. Ensuring data protection standards are upheld in these situations can be complex.

e. Balancing freedom of expression:

Regulating social media platforms and content to protect privacy while preserving freedom of expression is a delicate balance, and finding the right approach is challenging.

f. Legal interpretation: The interpretation and application of data protection laws in Kenya can be complex, leading to legal disputes that require resolution.

g. Lack of standardized data protection practices:

Some organizations may struggle to implement standardized data protection practices and mechanisms, resulting in inconsistent protection of personal data.

h. Data breaches and cybersecurity risks:

The evolving nature of cyber threats poses ongoing challenges for protecting personal data from breaches.



3. Consequences of human rights violations and shrinking of civic space in Kenya

3.1 Impact on civil society

The restrictions and pressures imposed on CSOs have significantly hampered their ability to address critical societal issues and hold the government accountable. A weakened civil society is detrimental to the functioning of any democracy. Civil society organizations play a crucial role in promoting transparency, accountability, and social justice. They act as watchdogs, advocating for the protection of human rights and pushing for necessary reforms. The limitations imposed on these organizations, both legal and non-legal, hinder their effectiveness. Their inability to operate freely, independently, and without political influence weakens the checks and balances necessary for a healthy democracy. A diminished civil society ultimately leaves a void in the civic space, reducing the ability of citizens to engage in shaping their country's future.

3.2 Erosion of Fundamental Rights

The shrinking civic space has had dire consequences for fundamental rights in Kenya. Violations of rights, such as freedom of expression, association, and assembly, have become more frequent. Individuals face significant obstacles when attempting to participate in democratic processes, including peaceful protests, civic engagement, or expressing dissenting opinions. The increased legal restrictions, social biases, and intimidation tactics have collectively chipped away at the core principles of democracy. When citizens are prevented from participating freely in the democratic processes, it undermines the legitimacy of the government and the rights that citizens should enjoy. The erosion of these fundamental rights poses a considerable threat to Kenya's democratic progress, making it increasingly challenging for citizens to voice their concerns and challenge policies or actions that do not serve their best interests.

influence other countries in the region to adopt similar restrictions. The ripple effect could lead to a broader deterioration of civic and democratic spaces in East Africa. Consequently, the trends in Kenya have the potential to impact the broader human rights and democratic landscape in the region, potentially undermining the progress made over the years.

4.2 Kenya's Commitments

Kenya has international obligations to uphold democratic values and respect human rights. The contraction of civic space raises concerns about the nation's commitment to these obligations. As a signatory to international human rights treaties and agreements, Kenya is expected to adhere to certain standards. The recent trends in restricting civic and democratic space raise questions about Kenya's commitment to these international agreements.

Failure to uphold these obligations not only affects the country's international reputation but may also lead to repercussions from the international community, potentially including diplomatic pressure, sanctions, or limitations on foreign aid. Kenya's adherence to its international commitments is vital to ensure the protection of fundamental rights and the promotion of democratic values within its borders and to uphold its standing on the global stage.

4. International Implications



4.1 Regional and global perspective

The shrinking civic and democratic space in Kenya has regional and global implications. As a regional leader in East Africa, Kenya's actions and trends are closely followed by neighboring countries. The constriction of civic space in Kenya sets a concerning precedent, which may

“Kenya is expected to adhere to certain standards.”



CHAPTER 3: **FINDINGS & DISCUSSION**

3. Introduction



Protesters marched countrywide during the 'Feminists March Against Femicide,' in Kenya.

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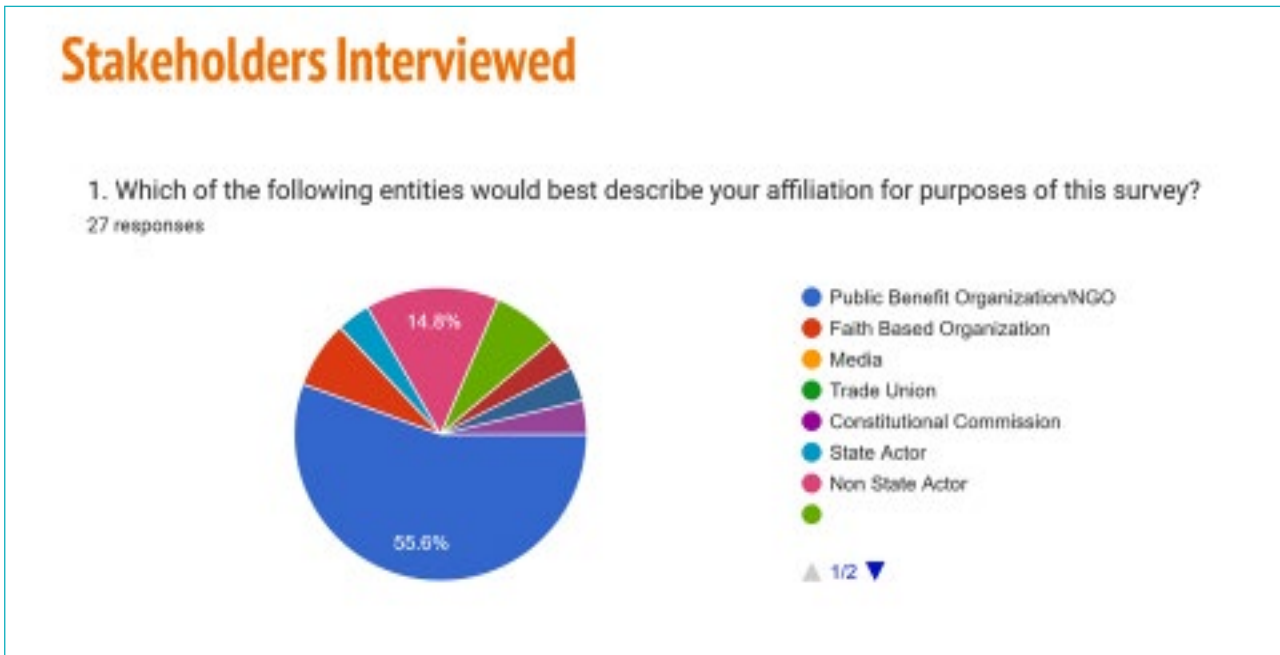
This chapter discusses results obtained from primary data collection methods. Two methods were utilized so that there is empirical data that is embellished with analytical findings. Interviews that targeted key informants among them relevant sector players and other state actors were done by way of a semi-structured questionnaire prepared for the same purpose and administered digitally through Google Forms and direct face-to-face interviews with a pre-selected sample for depth supported by Focus Group Discussions to detail certain critical parameters.

3.1 Stakeholders interviewed

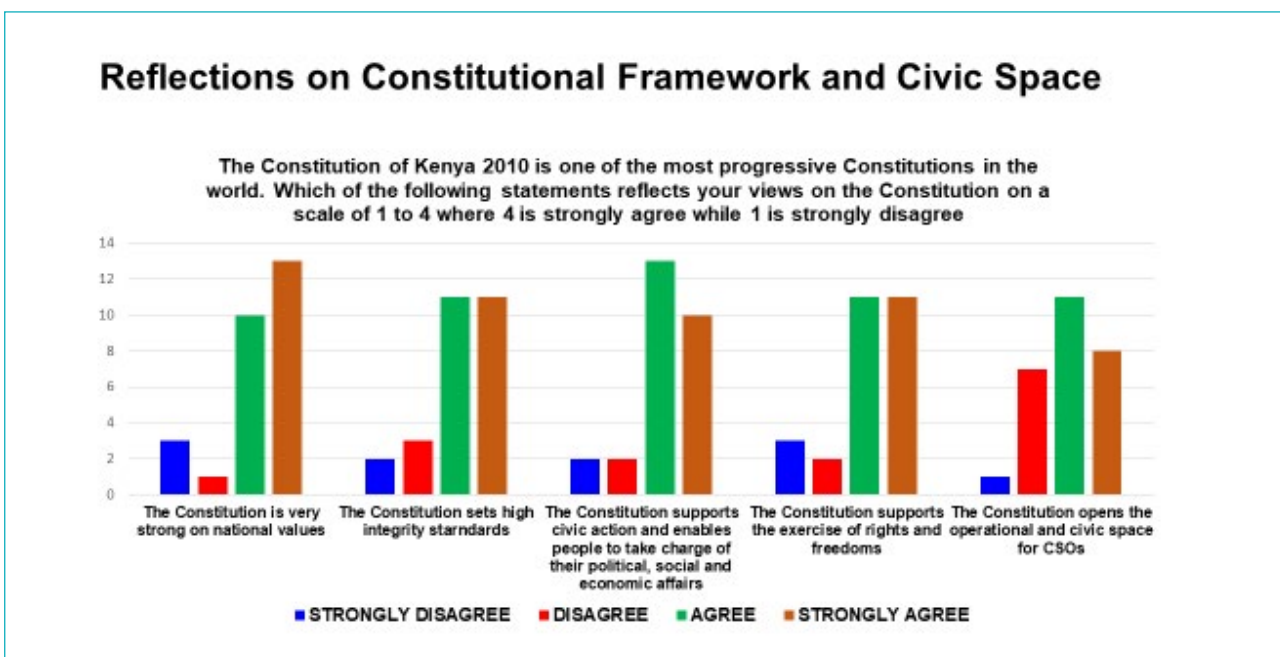
Of the stakeholder groups that responded online 55.6% identified as Public Benefit Organizations/NGOs, 7.4% as Faith-Based Organizations, 5.8% as Media, 7.4% as Trade Union, 3.7% as State Actor, 14.8% as Non-State Actor, 3.7% as for Profit while Community Groups and Movements were 3.7%. Whereas no respondent identified as a member of a Constitutional Commission, any of the State Actors may well represent such an actor. The majority of the respondents were therefore CSOs whether they went with the euphemism Non-State Actor, PBO, NGO or community

movement, or independent media. 8 Key members of the Civic Freedoms Forum (CFF) interviewed together with contacts from the NGOs Coordination Board, the ICT Network KICTANET and the Media Council of Kenya (MCK) added value to the findings and provided context as practitioners and duty bearers.

“Interviews that targeted key informants among them relevant sector players and other state actors were done by way of a semi-structured questionnaire”



3.2 Reflections on our constitutional framework and civic space



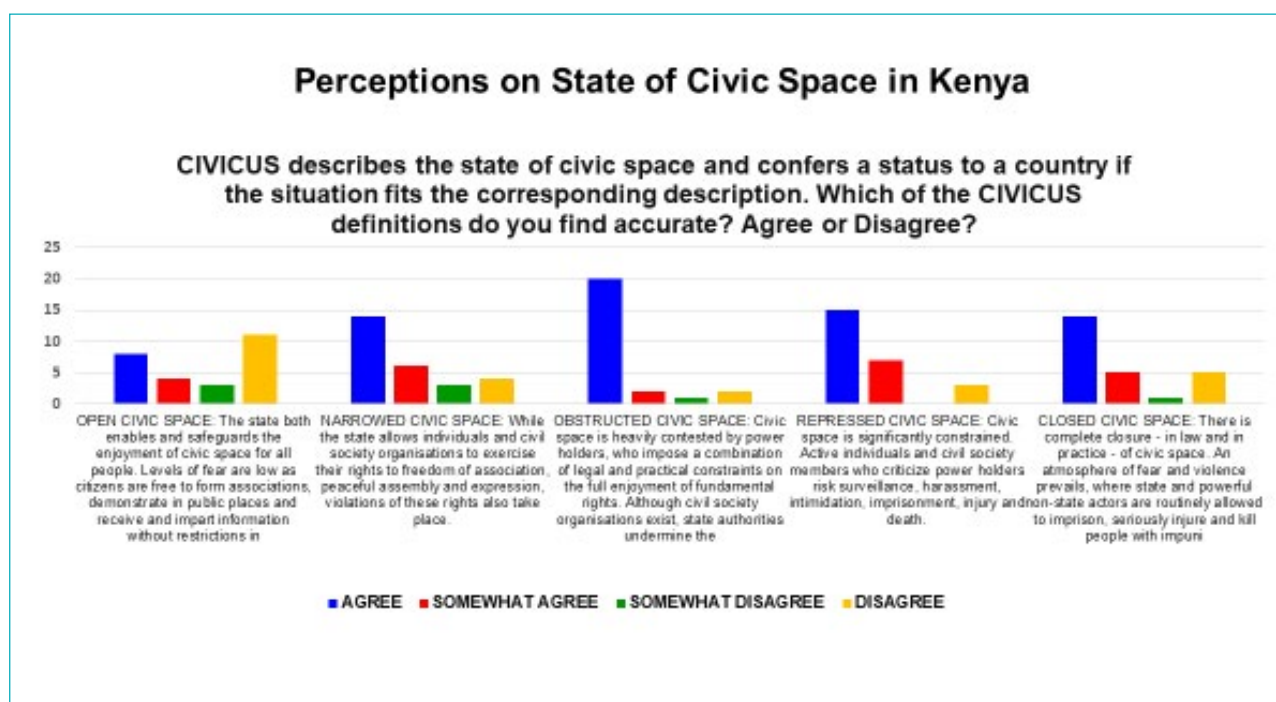
- a. A combined 85 percent of respondents agree the constitution of Kenya is very strong on national values, 4% disagree and 11% strongly disagree. The vision Kenyans had when they wrote the Constitution was not only a new nation but also a new people, the study was told. The Constitution sets out the character of the state and nation by defining the foundational principles very clearly. Throughout the Constitution what Kenya should be is defined and the document enjoins state organs to comply with the document and act with authority of the Constitution. The character of the state has not changed going by the state's reaction to its citizens who only went out to exercise their civic rights.
- b. A combined 82 percent of respondents agree that the Constitution sets high integrity standards; only 18% disagree with this prognosis. The postulation that the Constitution expected leadership and institutions whose conduct and character matched these new standards was far from being achieved. "We are really at a bad place" exclaimed a respondent who spoke to the study. Police conduct during the recent demonstrations smirked of state terror when snipers or policemen who were not wearing uniforms shot people dead and used assault rifles and trucks that were tanks in a supposedly 'free democratic society'. The Leadership and Integrity Chapter according to a CSO leader, 'imekojolewa' (Kiswahili for peed on). "The country is in the hands of murderers, rapists, and thieves. The quality of leadership is so wanting that constitutionalism cannot be guaranteed including implementation of the Bill of Rights" continues the leader. The majority of those in political leadership are either transactional or populist.
- c. The majority 49% agree while 37% agree strongly that the Constitution supports civic action and enables people to take charge of their political, social, and economic affairs; only a paltry 7% respectively disagree and disagree strongly with this position. Despite the strong constitutional foundation, Kenya's democracy remains wobbly. Political organizing is ethnic and is essentially about "Mtu Wetu" in a two-party system that nurtures ethnic cocoons or ethnic boxes that determine what comes to pass in our civic and democratic space. The electoral system produces mixed results. For example, in the last election, the UDA regime garnered 6.5 million votes against an opposition that also garnered 6 million votes from a possible 21 million voters. The nature of our democracy is challenged by the fact that over 30 percent of voters do not turn up, the 2022 winner had a very small margin and so the paradox that the fate of the majority is being determined by a minority taints our democracy. This challenges the legitimacy of the current regime in addition to a disputed result that ended at the Supreme Court at which the language of the Judges was unprecedented.
- d. On whether the Constitution supports the exercise of rights and freedoms 41% agree strongly a similar % only agree; with 7% disagreeing and 11% disagreeing strongly. The Bill of Rights is an integral part of the state and Kenya's democracy the study was told. Even with a robust Bill of Rights in the Constitution that guarantees freedoms of assembly,

expression, and association these freedoms roundly get smothered by a government that is sponsoring state-driven backlash on gender minorities through powerful individuals organizing weekly demonstrations against LGBTQ, or visible labeling and narratives that present its critics and opposition as devils as the government poses as a Christian communion or through open corruption and an executive that seems to be controlling the other two arms of government i.e. the Legislature and the Judiciary.

- e. As to whether the Constitution opens the operational and civic space for CSOs 30% strongly agree, 41% agree, 25% disagree and 4% of the respondents strongly disagree. A key player in the Constitution making process observed that the vision of the 2010 Constitution

was to dismantle the colonial state and several laws such as the penal code, the Public Order Act, the Chiefs Authority Act, the law of treason in section 40 of the penal code and the language of unlawful assembly in section 78 of the same code should have been repealed by now for the Republic to be truly democratic. With laws that still speak about incitement to violence or threatening breach of peace or compassing the death and maiming of the President as grounds for treason or subversive activities, it is difficult to see how the civic space opened by the Constitution can be enjoyed before these retrogressive laws are repealed. These laws, others contend, are applied selectively such that those deemed to be against the government are targeted for attacks.

3.3 Perceptions on the state of civic space in Kenya



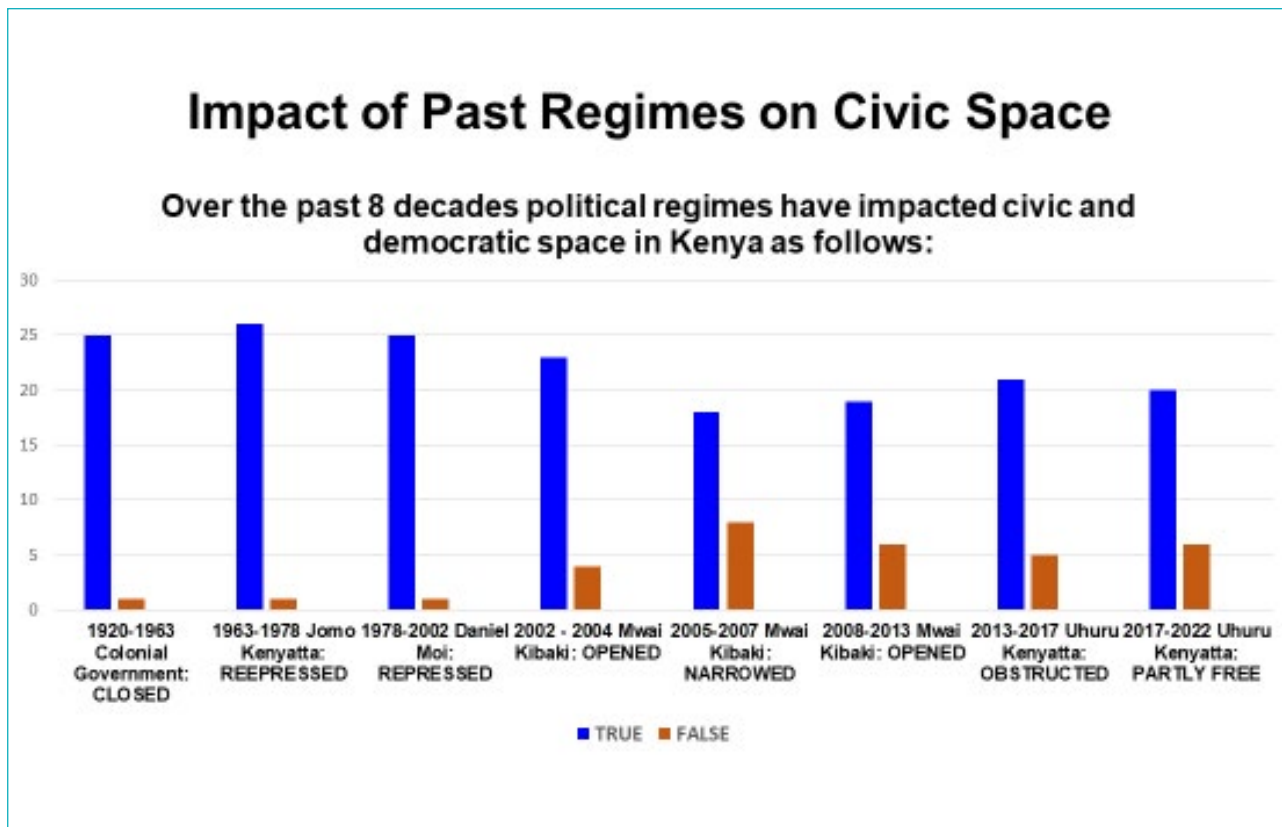
- a. Open civic space: Q** – The state both enables and safeguards the enjoyment of civic space for all people. Levels of fear are low as citizens are free to form associations, demonstrate in public places, and receive and impart information without restrictions in law or practice. Of all the respondents 30% agree that Kenya’s civic space is open, 15% somewhat agree, 11% somewhat disagree and a majority 41% disagree. There is a tendency for actors in civil society to be unwilling to build synergies. Many groups work in silos and attempts to find synergies flop because of individualism. This behavior limits CSO’s capacity to voice concerns around civic space which in turn contributes to exposure as the state takes advantage of CSO internal divisions to slowly remove civic space safeguards.
- b. Narrowed civic space: Q** – While the state allows individuals and civil society organizations to exercise their rights to freedom of association, peaceful assembly, and expression, violations of these rights also take place. A majority 52% agree that the civic space is narrowed, 22% somewhat agree, 11% somewhat disagree and 15% disagree. While the most important issue for civil society is the ability to engage and operate without undue interference, even if there are limitations, the human rights and constitutional values that help in the achievement of this ambition are not respected by the Kenya Kwanza regime. The constant invitation to critics of the government to “go to court” whenever the state tramples on rights is a veiled threat to silence opposition and intimidate everyone to silence.
- c. Obstructed civic space: Q** – Civic space is heavily contested by power holders, who impose a combination of legal and practical constraints on the full enjoyment of fundamental rights. Although civil society organizations exist, state authorities undermine them. A majority 82% perceive the civic space in Kenya to be obstructed. 7% somewhat agree, 4% somewhat disagree and 7% disagree. Institutions with a mandate to act have been weakened, IPOA, KNCHR, and DPP among others are a shadow of what they were intended to be. They have no resources, have staff with low morale, are complicit, and only issue statements. Most appointees to these institutions are cronies of the regime and are very unprogressive. These agencies of state were intended to provide additional accountability to the three arms of government and act as insurance against the excesses of the traditional 3 arms. The regime’s language is anti-human rights and anti-social justice and mostly is about ethnic mobilization and shareholding.
- d. Repressed civic space: Q** – Civic space is significantly constrained. Active individuals and civil society members who criticize power holders risk surveillance, harassment, intimidation, imprisonment, injury, and death. 56% find the civic space repressed, 30% somewhat agree with this and 11% disagree, the rest 3% somewhat disagree. Article 37 of the Constitution that allows protests appears suspended given the trend that some protests are not allowed by the police such as the cost of living protests that the police have roundly outlawed through systematic abuse of legal processes by the state and the use of autocratic

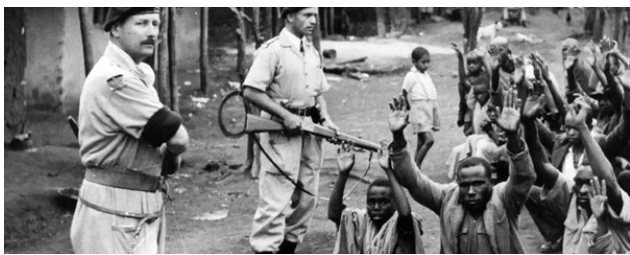
legalism that relies on the Public Order Act. People are losing hope, as the lack of accountability by police continues to erode the rule of law.

e. Closed civic space: Q - There is complete closure - in law and practice - of civic space. An atmosphere of fear and violence prevails, where state and powerful non-state actors are routinely allowed to imprison, seriously injure, and kill people with impunity for attempting to exercise their rights to associate, peacefully assemble, and express themselves. 52% feel the civic space is closed, while 19% somewhat

agree, 4% somewhat disagree and 22% disagree. A respondent reminded the study of the words of Archbishop Muheria who criticized the President thus: “The current ruler is rough, insulting, arrogant and imposing”. The Inspector General of Police is reported to have been taken to Court to take responsibility for 33 fatalities in 2017 when he was Police Commander in Nairobi. This now adds to 57 new deaths in 2023 according to IPOA in his tenure as IG. The deaths, bloodbaths, and lost limbs added to skirmishes in Sondu are all pointers to a repressed civic space.

3.4 Impact of past regimes on civic space

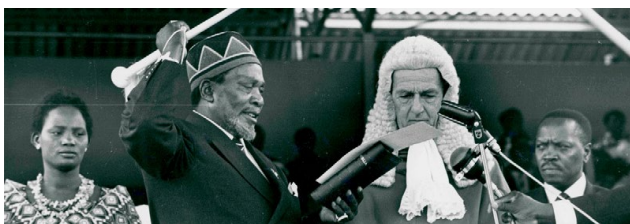




a. 1920-1963 COLONIAL GOVERNMENT:

96% of the respondents agree that civic and democratic space in Kenya was **CLOSED**. Only 4% feel on the contrary.

That statute books affirm that this epoch was closed given the content and impact of colonial laws such as the Penal Code that was borrowed from India and has been repealed in several Commonwealth Countries including Palestine. The treason laws were borrowed from England where the monarch was supreme, and these were used to detain Africans and silence criticism.

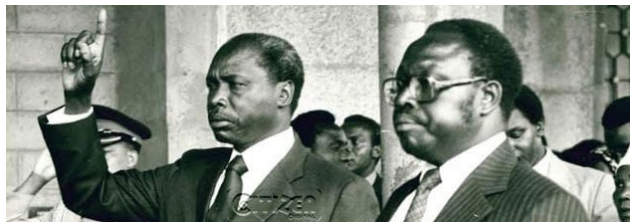


b. 1963-1978 JOMO KENYATTA:

96% agree with the view that the civic and democratic space in Kenya during this period was **REOPRESSED**. Again only 4% hold a contrary opinion

an insignificant margin. Most of what the colonial state used to repress the society was retained by the first African President in his bid to consolidate raw power. Dissent was not entertained and those who dared to speak out were targeted and eliminated. The country slid into a de facto one-party state as the political opposition was outlawed, organizing was restricted and most

opposition leaders were detained without trial or put under house arrest for long periods.



c. 1978-2002 DANIEL MOI:

93% an overwhelming majority believe that civic and democratic space was **REPRESSED** during this period, only 7% have a contrary view.

Moi promised to follow in the footsteps of his predecessor. He perfected the art of deception, was a populist, and made the presidency the center of power. He ultimately made Kenya a de jure one-party state and promoted the single-party dictatorship by coopting every institution that mattered such as the umbrella workers' organization, and the women's NGO Maendeleo Ya Wanawake among others. In what Prof. Anyang' Nyong'o¹ refers to as the Nyayo era² "the Civic Society movement in Kenya [went] through hell, many were detained, hundreds of others were arrested and tortured while others died under mysterious circumstances. We all know of comrades who fled the country for their safety. One of the victims of the onslaught on the civic society movement was former MP Koigi wa Wamwere." It was recalled that the pro-democracy movement of 1990 organized the Saba Saba Rally on 7th July 1990 which kicked off the first milestone in challenging the draconian laws. The rally was outlawed but Kenyans showed up, 39 people

1 Excerpts from Prof. Nyong'o's Speech read on his behalf by Deputy Governor Mathews Owili at the Civic Freedoms Forum in Kisumu

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

were killed, 69 were injured and 5000 were arrested together with the protest leaders who were arrested before the rally. The coalition of pro-reform political parties, faith-based organizations, and CSOs put pressure on Moi who finally agreed to relax some of the harsher restrictions on freedoms of association, assembly, and protest.



d. 2002-2004 MWAI KIBAKI:

85% of the respondents feel the civic and democratic space during this period was OPENED compared to 15% who say this is false. The NARC regime that marked the end of the KANU dictatorship was received with pomp and Kenyans were the most optimistic nation buoyed by the overwhelming popular vote for an opposition candidate who had promised so much.

e. 2005-2007 MWAI KIBAKI:

70% of the respondents interviewed agree and bill it true that the civic and democratic space was NARROWED during this period, while 30% disagree. The misstep by the NARC regime was marked by the action of sabotage that government ministers exhibited when they walked out on the Constitutional Conference to push back on the extremely popular devolved system of government. This was followed by the unilateral decision to draft a constitution and subject the same to a referendum that the people promptly rejected. The government then sacked its Ministers who were of the opposing opinion, and the subsequent election

was a competition pitting the two referendum sides. Kibaki was declared the winner and the situation quickly degenerated into what is now known as post-election violence.

f. 2008-2013 MWAI KIBAKI:

78% of the respondents agree that the civic and democratic space was OPENED during this period compared to 22% who say this is false. This period was negotiated through the Kofi Anan-led mediation effort following the electoral conflict of 2007-8 which hammered out an accord together with a range of transitional justice mechanisms that made it possible to have a coalition government. This meant that governance was done by consultation and concurrence between the two sides which fostered a good atmosphere for democratic and civic space.



g. 2013-2017 UHURU KENYATTA:

81% of the respondents agree as true the fact that civic and democratic space was OBSTRUCTED during this period. 19% say this is false. In this period respondents confirm that the President was battling criminal prosecution at the ICC having been indicted together with his deputy for the role both played in the election skirmishes that saw at least one thousand Kenyans lose their lives. Having used their indictment as an organizing issue, the two had intimated that once elected to office they would visit reprisals on groups and people they believed played a role in having

them indicted. The obstructions to civic space took many forms, the majority of the ICC witnesses disappeared, and many lost their lives mysteriously, civil society was targeted for attacks, many NGOs were deregistered, incidents of extra-judicial killings were rampant as were legal instruments of various shades proposed and mooted whose effect would be to shrink and limit the civic and democratic space.

h. 2017-2022 UHURU KENYATTA:

The majority of the respondents (77%) agree that during this period civic and democratic space was PARTLY FREE. 23% find fault with this. While the past regimes especially Kenyatta 1 and Moi were openly totalitarian, their totalitarianism can be described as classical. The two regimes detained their critics, jailed them even ostracized them no matter what their situation in life. Academic and press freedom was curtailed, as were political rights and association. The regimes that followed as highlighted above were not as

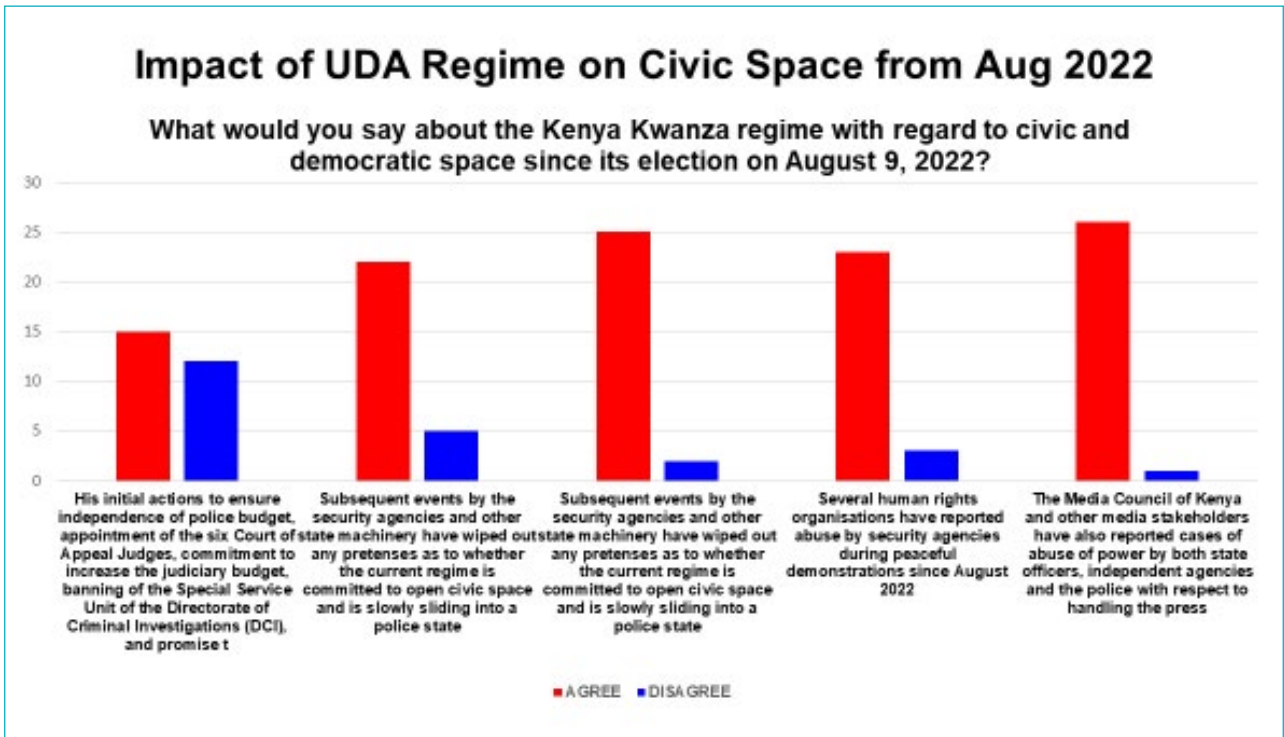
near classical in their totalitarianism but were totalitarian all the same. Perhaps the best way to understand their totalitarianism has best been described by writer Chris Hedges as “inverted totalitarianism” a situation in which actions are subtle, tools used are different and regimes appropriate human rights language and rhetoric but do the same thing that classical totalitarian regimes do if not worse. It is therefore easy to see how the Uhuru regime in the second term could be described as partly free.



3.5 Impact of UDA REGIME on civic space from August 2022

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a. Since its election to office in August 2022, the Kenya Kwanza regime carried out initial actions to ensure independence of police budget,



appointment of the six Court of Appeal Judges hitherto stopped by the former regime from assuming office, commitment to increase the judiciary budget, banning of the Special Service Unit of the Directorate of Criminal Investigations (DCI), and promise to appoint a taskforce to investigate all extra-judicial executions to exonerate the regime from taking blame for the initial restricted civic space. These actions are hailed and 54% of the total number of respondents agreed with this analysis compared to 46% who disagreed. These promises lack the constitutional safeguards and premises to stand on. The constitutional bodies responsible for monitoring human rights and protecting our constitutionality are underfunded and or populated by cronies and sycophants. Kenya National Commission on Human Rights (KNCHR) and other constitutional bodies seem designed to fail because all are starved of resources and their appointees are beholden to their appointing authority. IPOA for example is reported to be completely demobilized and cannot access police stations to get arms movement or track operational orders. As one informant remarked, “the words of the opposition leader Raila Odinga ring true, “IPOA haina makende” (meaning IPOA lacks the will to execute its mandate).

b. Asked for an opinion on subsequent events by the security agencies and other state machinery and whether the behavior had wiped out any pretenses as to whether the current regime is committed to open civic space and is slowly sliding into a police state, 85% felt this to be accurate while 15% felt otherwise. The Kenya Kwanza

Government had in the space of just one year exhibited its grotesque traits that it was a dictatorship. The regime could no longer hide its intentions regarding killing the opposition so that it could continue to make unilateral and unpopular decisions on issues that had serious economic, security, and social implications for the people. The government used brutal force to handle the recent countrywide protests on the high cost of living, shooting and beating several protesters and other citizens to death.

c. On the view that the regime has clamped down on freedom of assembly, association, expression, and free press amongst others most respondents 96% agreed while only 4% had a contrary opinion. A key informant confirmed that between March and July 2023 all demonstrations that had been held occasioned unprecedented suffering across the country. In just five days at one stage fifty-one (51) deaths were recorded an average of 10 deaths a day a record the country had not witnessed since 2013 in the hands of the police. Out of this number, a majority (19) were killed in Kisumu with others accounting for Migori, Bondo, and Busia all in the Western region.

d. “Several human rights organizations have reported abuse by security agencies during peaceful demonstrations since August 2022”. Asked to reflect on this statement 89% agreed with this conclusion while 11% disagreed. While Kenya scores very highly on ratifying international instruments the regime in office lacks the political will to implement these treaties hence the gap between the

treaties and their implementation. The impunity of some of these individuals in power was responsible for giving the ICC witnesses away in 2008. Torture for example is prohibited but is still widely used in Kenya. The decision by the President to send police officers from Kenya to Haiti without following the constitution bodes ill for the future. The implementation of the constitution is very poor with this regime probably scoring 30% according to a cross-section of the respondents. The values and principles chapter remains unimplemented, both this regime and its predecessor seem to be anti-constitution; while the former brought BBI to subvert the Constitution, the current regime has come to office on the foundation of lies.

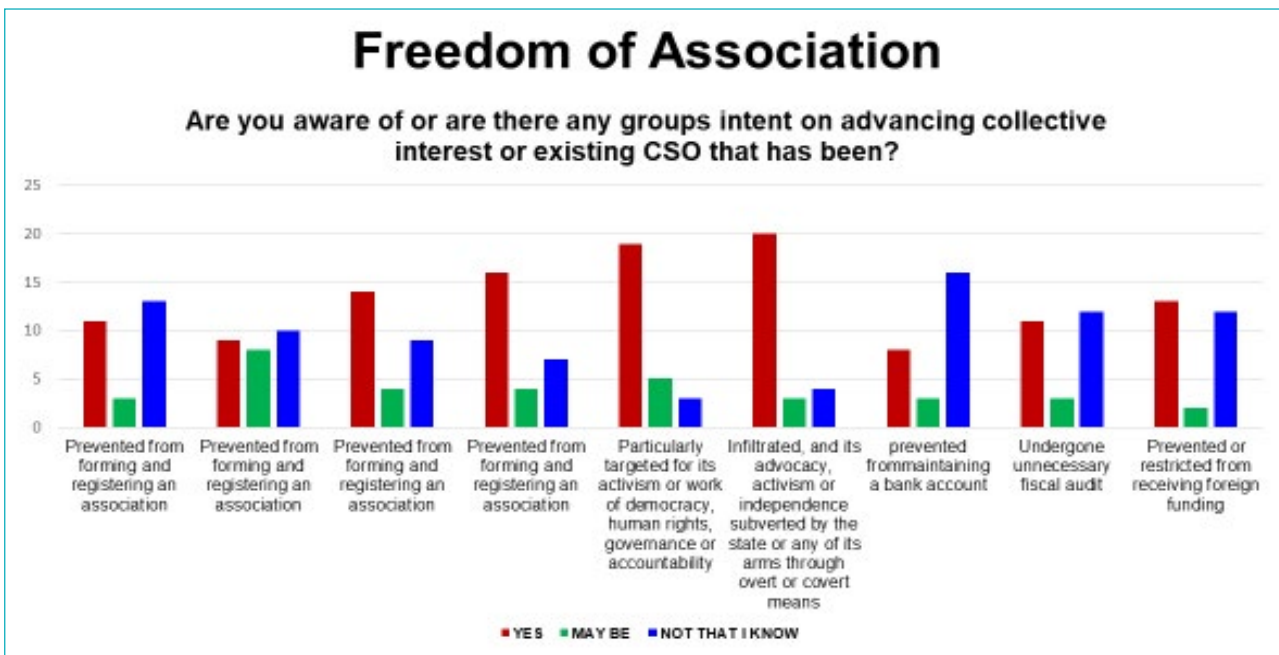
e. The Media Council of Kenya and other media stakeholders have also reported cases of abuse of power by state officers, independent agencies, and the police for handling the press had a unanimous acceptance as true by all the respondents. The constitution which sets the bar on leadership, entrenches the bill of rights and

access to information but is abused when laws are introduced that are retrogressive. Use of the Public Order Act that outlaws protests the penal code that criminalizes dissent or the new community groups registration law amounts to clawing back the gains in the constitution.

3.6 State of freedom of association in Kenya

The respondents were asked if they were aware or knew of any group that was intent on advancing collective interest or knew any existing CSO that had gone through any of the following experiences:

a. Was prevented from forming and registering an association; 41% answered in the affirmative, 11% were not sure about choosing the maybe option, and 48% a majority were not aware of any that they know with such an experience. The most prominent development shared was the enactment of the Community Groups Registration Act that came into force in July 2022. Although its proponents claim stakeholders were



taken through “thorough sensitization and public participation” this is reported to have taken place in a mere ten counties. The State Department for Social Protection is now responsible for registering groups that fall within the ambit of this law within the specified period of one year, the transition period, failure to which the entity will stand deregistered. Community-based organizations (CBOs), Self-Help Groups (SHGs), Refugees Integrated Groups, and Special Interest Groups will now have to familiarize themselves with these new layers of requirements a development that impacts the citizens’ inalienable right to form, join, and register groups, and associations without any hindrance.

- b. As to whether any groups were subjected to unreasonable delays when trying to register or form an organization; 33% confirmed to be in the know about this, 30% chose the maybe option and 37% were not aware. Of course, the requirements that for Special Interest Groups, a minimum of 5 members must be present, and normal groups require a minimum registration of 10 members and that for refugees the right to register groups is essentially for social and economic inclusion, provided that all members are adults with a common purpose will mean that this transition will require comprehensive training if even writing a group constitution is said to require training provided by the department. One can already foresee the delays this will occasion.
- c. As to whether any group was hindered or disabled from the enjoyment of freedom of association on account




of the new law; 52% had evidence to this assertion while 15% just thought maybe and 33% did not know of any such account. A group confirmed receiving letters from the provincial administration as a CBO to explain why they were doing human rights work meaning that the government intended to limit the CBO by suggesting CBOs should not touch the work of human rights. This undermines civic space, and the prospect of the Community Groups Registration Act seems to hold the potential to undermine the freedom to associate.

- d. As to whether any group was deregistered or interfered with by the authority of the government; 59% were categorical that such had happened, 15% chose maybe option and 33% did not recall any such occurrence. The requirement that community groups will be required to renew certificates annually imposes a duty that is inhibiting, it means this registration still does not amount to conferring the groups with legality. The fact that non-compliance for four consecutive years leads to forceful dissolution of the group means that the authority of government will make it difficult for groups to register and operate unfettered. Further, that the group’s name can be taken over by another organization compromises autonomy and independence, and that groups that fail to renew can be completely dissolved without leniency abrogates the constitution and interferes with the freedom of association.
- e. As to whether any group was particularly targeted for its activism or work of democracy, human rights,

governance, or accountability; 70% confirmed this to be true while 19% thought just maybe and 11% had no such evidence. The overall discretion that the Directorate of Social Protection has over 40,000 groups to monitor/regulate and provide them with ‘technical support’ and guidance should be cause for worry according to many key informants who feel this power is subject to abuse and may expose groups to targeting for the work they do. The requirements that groups furnish the Directorate with immediate updates in case groups change mandate amounts to interference and the sanction that certificates can be cancelled the group deregistered for failing to do so sounds capricious.

- f. As to whether any group was infiltrated, and its advocacy, activism, or independence subverted by the state or any of its arms through overt or covert means; 74% evidenced this, 11% just thought maybe and 15% lacked such evidence. The regime is hostile to the work of HR defenders especially those at the grassroots just like its predecessor.
- g. As to whether any group was prevented from maintaining a bank account; 59% objected to such a possibility but 30% had such evidence while 11% thought maybe. As to whether any group had undergone an unnecessary fiscal audit 48% denied any such event compared

3.7 Some examples of Kenya Kwanza Civic Space transgressions

Institutions that have undergone harassment/mistreatment 	Types of mistreatment 	Instruments being used 
<ol style="list-style-type: none"> 1. GALCK 2. MUHURI 3. HAKI AFRICA 4. Eric Omondi while fighting against the cost of living 5. CSOs involved in demonstrations 6. Churches 	<ol style="list-style-type: none"> 1. Extra judicial killings 2. Forced disappearances 3. Repression of NGOs, individuals and institutions 4. Freezing of accounts 5. Frustrations by government systems leading to departure of some 6. Denying groups registration for use of the words social, social justice etc. 7. Attempts to restrict foreign funding 8. Police harassment of human rights-centred NGOs/labelling 9. Police harassment of picketers 10. Calculated victimization 	<ol style="list-style-type: none"> 1. Community Groups Registration Act which violates the constitution 2. NGO board refusing to register LGBTQ organizations leading to Court action

to 41% who had such evidence and 11% who thought maybe. And finally as to whether any group was prevented or restricted from receiving foreign funding 48% evidenced this while 8% thought maybe and 44% did not know of any such incident. (See Table 3.7 for some examples of these transgressions by Kenya Kwanza on Civic Space).

That the registration fees have been revised upwards, this may be a challenge for small community groups. Further placing offices responsible for handling complaints at the DCCs and ACCs offices may achieve the opposite effect and militate against prompt and effective resolution of grievances as these offices are associated with oppressive practices that limit civic space rights over the years.

3.8 Kenya Kwanza Public Posturing Regarding CSOs

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

Government has shifted its posturing and narratives towards CSOs. A key pointer to buttress this majority view according to key informants is the blatant call by Kenya Kwanza that civil society aligns its agenda with that of KK Manifesto. It is not stated what fate will befall those that do not follow this through. There is already ample evidence that the regime seems intent on using legal instrumentalism to impose restrictions on organizing of community groups following the enactment of the Community Groups Registration Act one of the many pieces in the toolbox of this administration's instruments for controlling society. The government still gives civil society tags such as busy bodies, evil society, and agents of foreign masters.

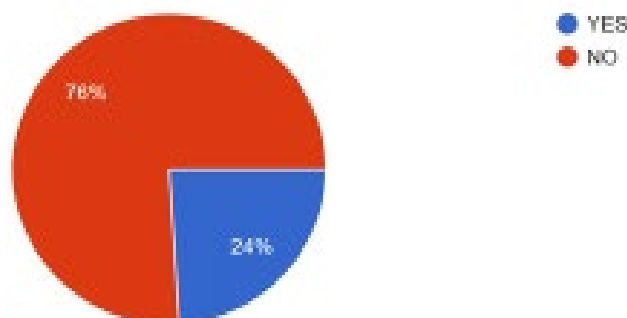
a. The government has softened its position on the PBO Act that promises to make things better for CSOs – for example on how CSOs are registered, how they are taxed, how they are supervised/regulated, and how they are required to report on their activities.

Only 25% think this statement is true, 75% say this is false and 5% are not sure. This position is further cemented

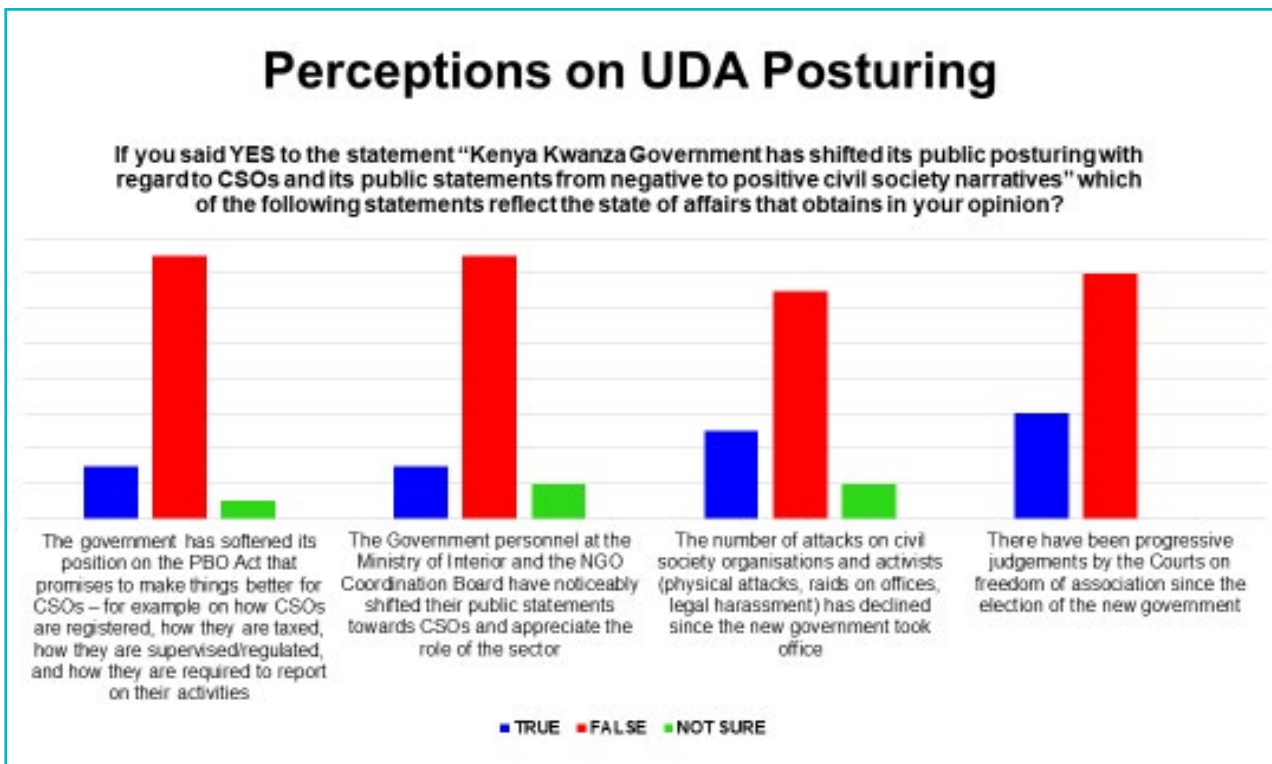
KK Public Posturing Regarding CSOs

6 c) Since its election to office has the Kenya Kwanza Government shifted its public posturing with regard to CSOs and its public statements from negative to positive civil society narratives?

25 responses



3.9 Perception on UDA Posturing



since the NGOs Coordination Act that governs the sector was long repealed by the PBO Act which is aligned to the 2010 Constitution but whose commencement date the government has blatantly refused to gazette. Despite promising to operationalize the PBO Act within 100 days of taking power as a component of their manifesto Kenya Kwanza has not delivered on this promise meaning that government posturing has hardly shifted about CSOs despite the amount of work that was put in realizing this law. Asking PBOs to align their activities to the Kenya Kwanza Manifesto does not radiate good faith and casts the new promise to have the Act operationalized by end of the year in doubt.

- b. The Government personnel at the Ministry of Interior and the NGO Coordination Board have noticeably shifted their public statements towards CSOs and appreciate the role of the sector. Only 15% of the respondents

think this is true, 75% believe this to be false while 10% are not sure. The Ministry has not shifted its public pronouncements about CSOs in fact the Ministry is big on security issues as its core focus, when it speaks about CSOs. A case in point was the Shakahola crisis when human rights organizations and media were barred from accompanying police in the recovery and autopsy activities that were being conducted on bodies recovered from mass graves. The sector's role is hardly appreciated, and government is mostly keen to coopt progressive CSO leaders and unwittingly use the CSO players to propel their (elite) interests.

- c. The number of attacks on civil society organizations and activists (physical attacks, raids on offices, legal harassment) has declined since the new government took office. 25% say this is true but 65% believe this to be false and 10% as not sure. The current regime, many believe is no different from the

last one perhaps a little different for its honesty and classical about its totalitarian methods but also bolder in its attitude towards alternative thought and its approach to freedoms of expression and assembly. Which means even if attacks on civil society have not happened, it may be a matter of time before the sector is targeted. CSOs cannot organize to do human rights work without freedoms, as provided in Art 37 of the constitution on rights to associate, picket and demonstrate.

d. There have been progressive judgements by the Courts on freedom of association since the election of the new government. Only 30% of the respondents agree with this statement. 70% say this is false. The Judiciary appears to have lost its independence with the entry of this populist regime and elements within the Judiciary have become very opportunistic. Both the progressive forces in civil society and the Judiciary are facing a crisis of confidence.

3.10 Freedom of peaceful assembly

70% of the respondents have either participated in a public protest or been caught up in or impacted directly or indirectly by a protest organized by others compared to 30% who have not. The right to assembly, association, expression, picketing, and petition are protected by Article 37 of the Constitution. The branding of protests such as the cost of living protests by media as being either Azimio or civil society or as belonging to good civil society or bad civil society creates room for skewed management of protests.

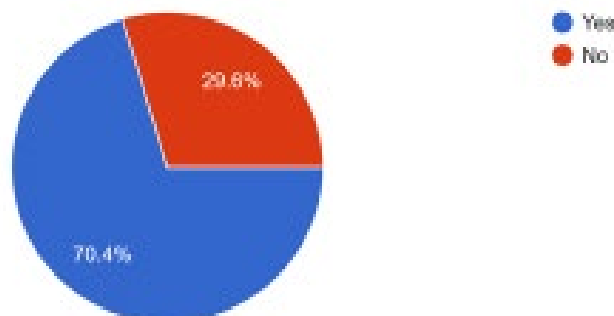
3.11 Protest management by government

a. On whether the government facilitated the exercise of protests and demonstrations 19% of the respondents agree while 67% somewhat agree. 15% somewhat disagree. The regime's public face of impunity came out more grotesque given the manner in which the state managed the cost-of-

Freedom of Peaceful Assembly

7. FREEDOM OF PEACEFUL ASSEMBLY Have you participated in any public protest or been caught up in or impacted directly or indirectly by a protest organised by others?

27 responses

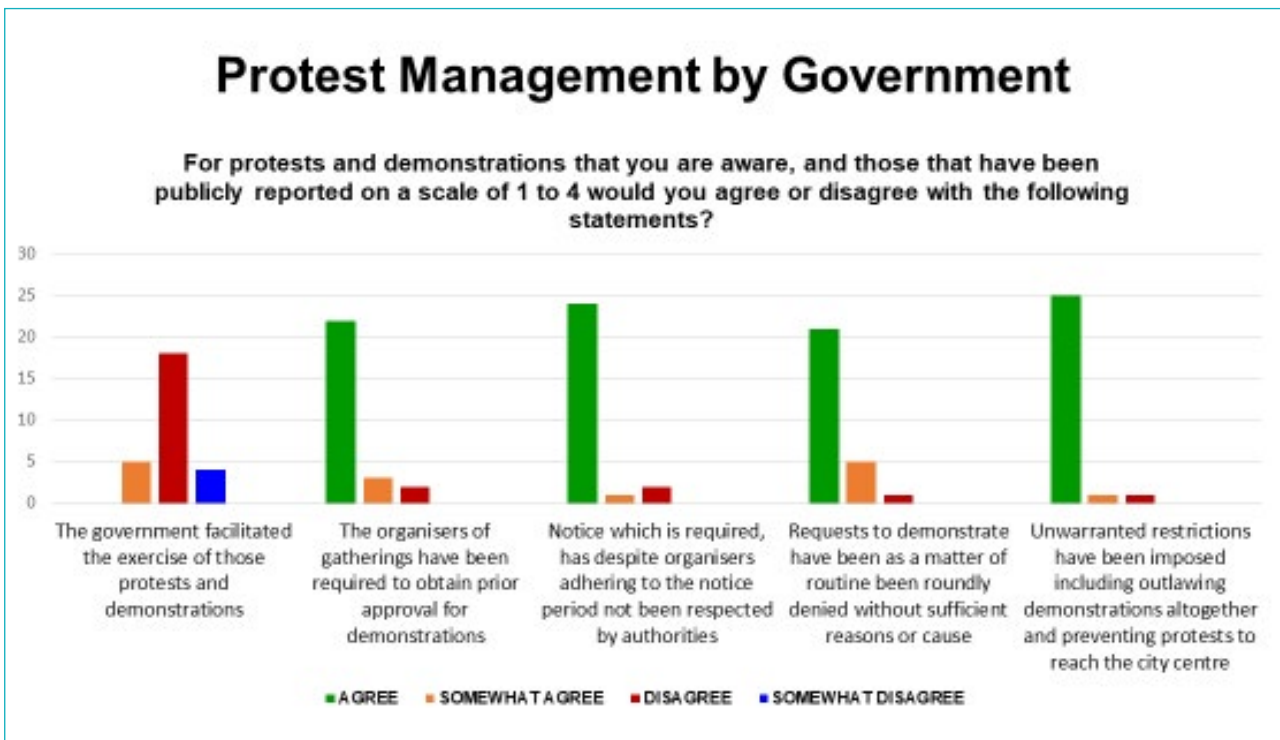


living protests. First the state branded the protesters and was thus able to abuse protesters having engaged in “othering” to justify the brutality that was meted on protesters. Second, the state claimed the protesters destroyed the Expressway to the tune of 700m which amounted to economic sabotage hence the justification to shoot and kill five Kenyans in Mlolongo by people in plain clothes said to be police officers. Arrests of demonstrators, intimidation of HRDs and crushing of dissent are not new in the country but the present regime seems to be going back to brute force and verbal attacks. None of the police officers who committed aggression have been held responsible for their actions.

- b. On whether the organizers of gatherings have been required to obtain prior approval for demonstrations 82% agree while 11% somewhat agree. 7% disagree with this position. The constitution protects civic space but since the advent of the KK regime

several laws are being proposed that are bent on limiting protests by giving the OCS power to refuse notifications. The regime has used administrative regulations in the Public Order Act and the Penal Code to shrink civic space.

- c. On whether notice, which is required despite organizers adhering to the notice period, has been respected by authorities, 89% confirm these notices have not been respected while 4% somewhat agree while 7% disagree. Most police stations interpret notification as a request for permission which they invariably refuse to grant so that they use this as grounds for dispersing protests they deem illegal for lack of notification. The police often refuse to receive the notification as they interpret this to mean permission which they repeatedly frustrate.
- d. On whether requests to demonstrate have as a matter of routine been roundly denied without sufficient reasons or cause - 78% agree, 19% somewhat



agree. Institutions are abusing their authority and are being weaponized against citizens with police at the level of OCS and OCPDs being the worst examples in exercising powers they do not have. The IG has literally outlawed maandamano.

- e. On whether unwarranted restrictions have been imposed including outlawing demonstrations altogether and preventing protests to reach the city center – 96% answer in the affirmative while 3% somewhat agree. State machinery is used to disperse opposition demos and the 2023 police actions have led to deaths, arrests, and injuries. Example is the cost-of-living demos where HRDs stayed in custody for the weekend. The protests are stopped like the Saba Saba march which led to arrests and brutalization and detention for four days followed by malicious charges that have the effect of a shrinking democratic space. When lawyers went to check on the detainees the police teargassed them at the station. When government descended on protesters in Mlolongo the narrative was that they had destroyed property worth 700 million and five innocent Kenyans were gunned down by people

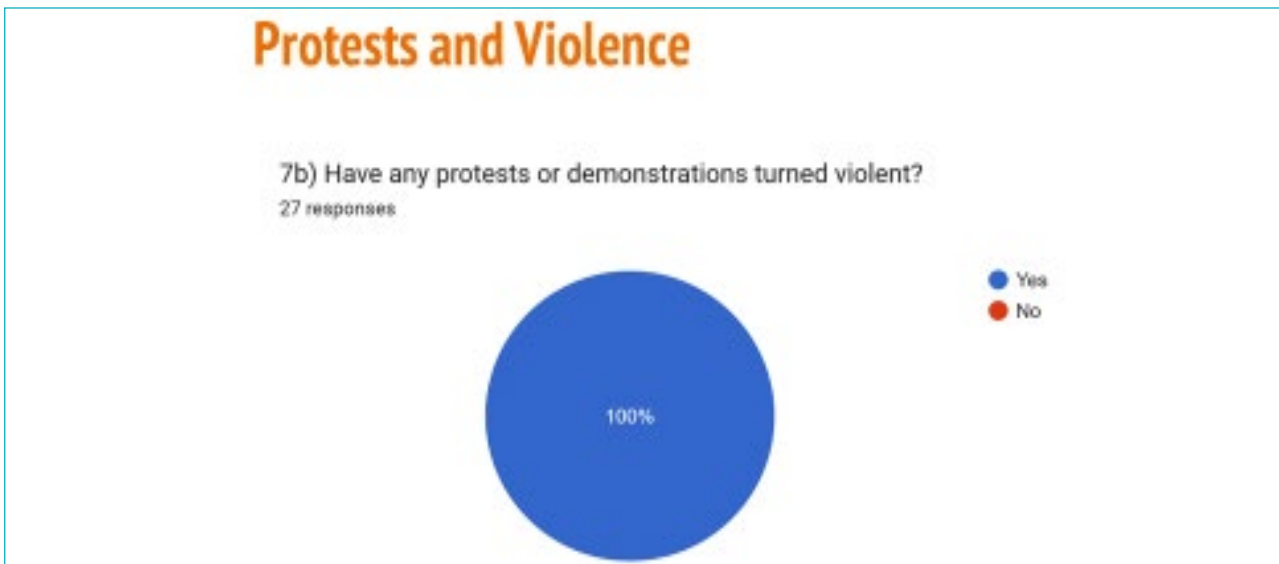
in plain clothes brandishing pistols and assault rifles.

3.12 Protest and violence

All respondents agree that protests and demonstrations have turned violent. Mathare HRDs reported several deaths happened there. Police are roundly abusing their powers and office that is why they engage in extra judicial executions. The KNCHR that is mandated to monitor protests believe the Kenya Kwanza government is not living up to its promise that they were committed to security sector reforms. **For all the 22 protests monitored by IMLU an average of one life was lost for each**, several injuries were sustained by a majority that were not even in the protest.

3.12 Causes of violent protests

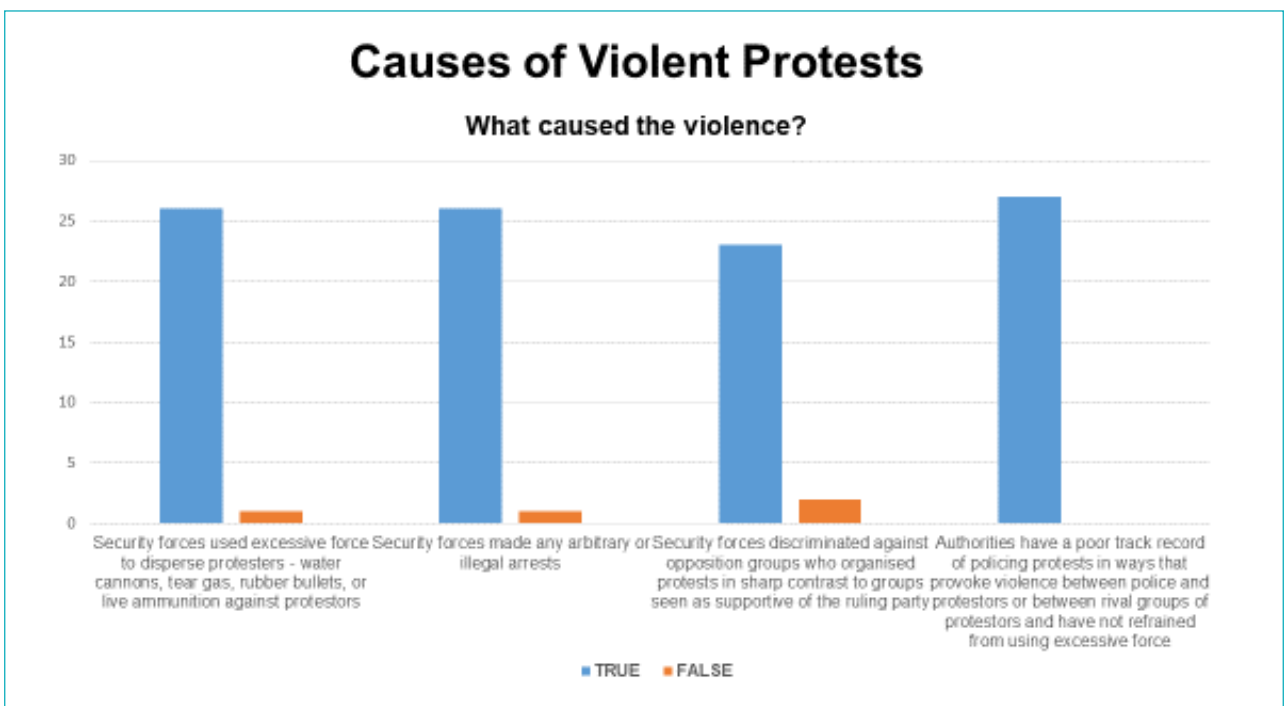
- a. On the causes of violence 96% of the respondents believe that security forces used excessive force to disperse protesters – water cannons, tear gas, rubber bullets, or live ammunition against protestors against 4% who



felt this to be false. Before 2023 the commanders used to engage protesters and their leaders, but the new commander has gone back to the colonial practices which is why protests are ugly and deadly because the police are instigating the violence. The police are more brutal and insensitive, keen only on combat rather than the protection of citizens. In the informal settlements the police have lately become robbers as they ransack our pockets for money when they make arrests and take all the money leaving us with only bus fare. When we argue with them the altercations turn violent. In the recent protests tear gas, chemical water and live bullets were used indiscriminately to attack journalists, protesters, and protest leaders. Many people were killed by police. But police have refused to take responsibility or even record statements or do body counts and investigate the deaths. IPOA who are expected to undertake investigations is unable to proceed as the police command seems to have instructed officers not to cooperate. Police also

seem to be taking instructions from the executive.

- b. Ninety six percent (96%) of the respondents felt that security forces made arbitrary or illegal arrests against 4% who felt otherwise. Police have become a tool of oppression to undermine civic space. The force that was supposed to transform to a service remains a force and has never become a service, so they continue to extort, intimidate, harass, and implement the wishes of their regime masters. Activists were arrested mostly on orders received via a phone call from superiors. The regime is dictating how police operations take place, despite the assertions that police are victims of circumstances, many respondents confirmed extensive arbitrary and illegal arrests.
- c. Eighty-five percent (85%) on the other hand felt that security forces discriminated against opposition groups who organised protests in sharp contrast to groups seen as



supportive of the ruling party against 5% who felt otherwise. About a tenth of the respondents did not answer this question. There was clear differential treatment of protests especially as far as protesters from informal settlements were concerned, or those from Kisumu and opposition strongholds. For example, those who live in ghettos buried many among their ranks that were killed by police and according to them it became apparent that the IG gave instructions that body counts were not done. This ensured there was no documentation of bodies that were buried. This seems to be the reason IG claimed rather sensationally and recklessly that politicians had hired bodies for burial and display.

- d. One hundred percent (100%) of the respondents felt the authorities have a poor track record of policing protests in ways that provoke violence between police and protestors or between rival groups of protestors and have not refrained from using excessive force. Many informants narrated cases of injuries from police actions, use of live ammunition, harassment and intimidation including sexual assault of female protestors and forceful disruption of protests. In the past police have resorted to arbitrary arrests, punitive bail terms and vindictive prosecution but also pre-emptive arrests as was seen in the last protests. The police reforms narratives have remained merely rhetoric by the establishment. For example, they promised better terms of service for police during campaigns but in reality they only added one thousand shillings to the police pay slip. In fact, one informant observed that police

reforms is off the table and is not a priority and where any minor reforms are made like change of uniform these are akin to putting bandage on cancer because without tweaking policy, philosophy, training and design of the administration police excesses will continue and its character will remain colonial.

3.13 Barriers faced by groups assembling

On barriers that groups face when organizing peaceful assemblies 96% believe that arrest of protestors and trumped-up charges is a major barrier. A similar statistic, 96% find police and civilian violence a major barrier, while 70% feel it is biased coverage by media that focuses on the outcome of violence rather than the exercise of right to protest.

Eighty-nine percent (89%) observed disproportionate use of force and 82% the selective treatment of different protest themes. In the words of one practitioner, “The police service is totally dysfunctional and incapable of defending civic space, the police have criminalized protest whether online or live”. It is tragic that after the police used deadly violence on protestors following post-election protests in 2022, the President congratulated the police for a job well done meaning the atrocities and impunity notwithstanding. Ultimately police reforms have wound up according to most interviewees as a terrible failure. It is disconcerting that the US and UK have emboldened police impunity by funding the police service despite their lack of accountability.

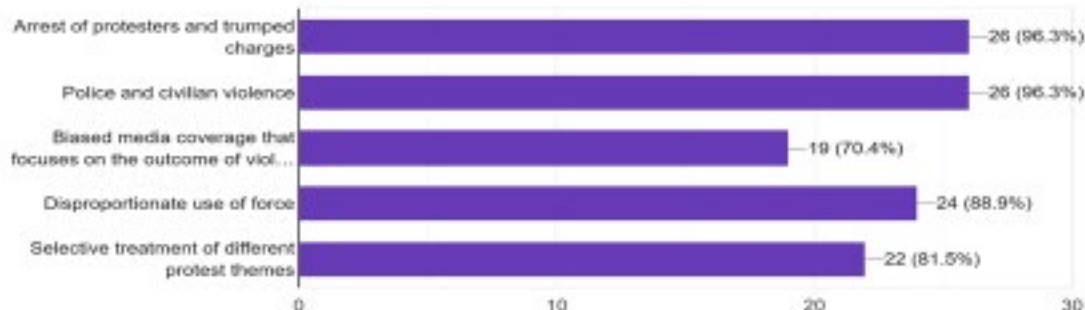
“...the police have criminalized protest whether online or live”

Barriers faced by groups assembling

7d) Which are some of the major barriers that groups face when organising peaceful assemblies?

Tick all that apply

27 responses



3.15 Interference with freedom of expression

Ninety-six percent (96%) of the respondents share the opinion that the state interferes with media houses, CSOs, academics or activists' right to freely express themselves. The biggest threat to free expression is the state security apparatus that for example barred journalists from covering the Shakahola massacre followed by the ruling political party that lashes out at media, CSOs and activists for exposing their inaction or missteps or public policy mistakes.

The criticism of media regarding the unpopular tax measures that were passed without public participation, is a case in point. Government has failed to clarify for citizens how to access information and which agency is available to all citizens in the quest to get public information.

3.16 State of freedom of expression

a. Regarding the situation of freedom of expression since the Kenya Kwanza regime took over majority of the respondents agree that journalists,

Interference with Freedom of Expression

8. FREEDOM OF EXPRESSION In your opinion, has the state interfered with media houses, CSOs, academics or activists right to freely express themselves?

26 responses

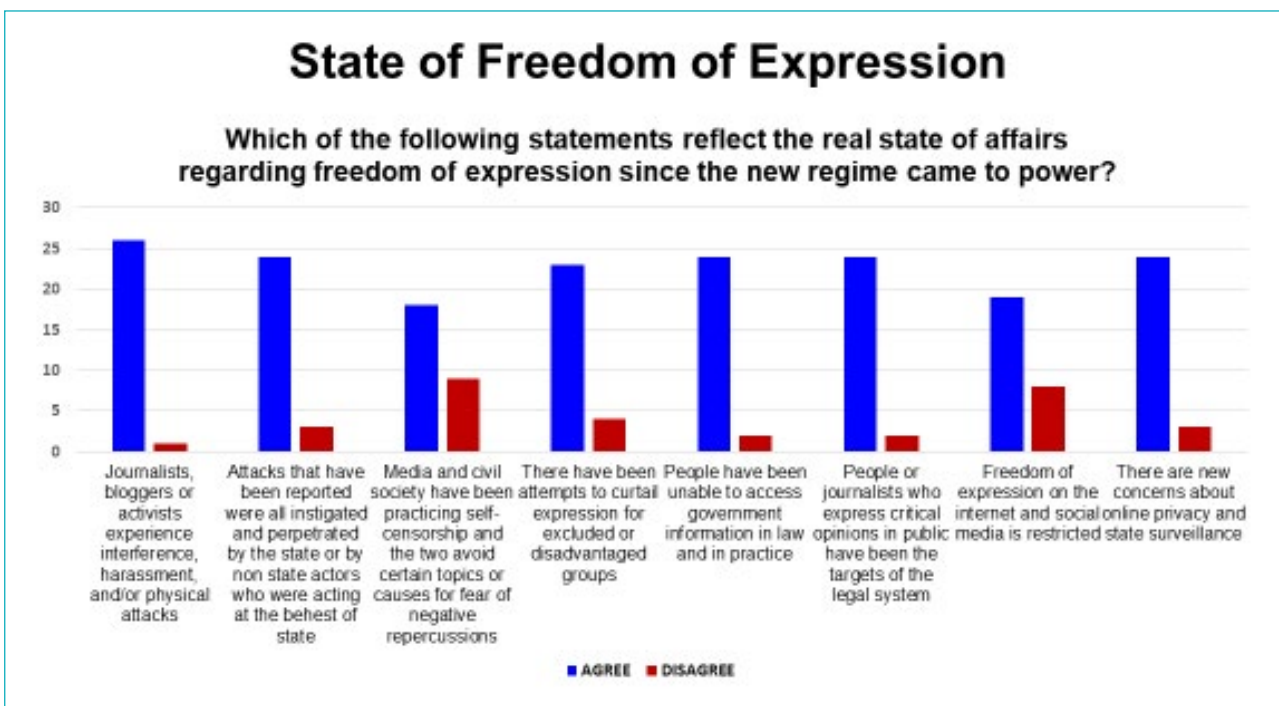


bloggers or activists experience interference, harassment, and/or physical attacks compared to only 4% that think this to be untrue. The frequency of cases of surveillance and sabotage seen following the frequent network shutdowns that cannot be explained and the common attacks during Zoom meetings where calls and conferences are intercepted, mics get muted, or all mics go on or off at the same time.

- b. Eighty-nine percent (89%) agree that attacks that have been reported were all instigated and perpetrated by the state or by non-state actors who were acting at the behest of state against 11% who felt this is not the case. It is disturbing that Government has retained bloggers who push their narratives making official communication and propaganda to enjoy almost a similar profile.
- c. While 67% agree that media and civil society have been practicing self-censorship and the two avoid certain topics or causes for fear of negative

repercussions, 33% think otherwise and disagree.

- d. Majority of the respondents, 85% believe there have been attempts to curtail expression for excluded or disadvantaged groups with 15% disagreeing. The state has rendered public participation useless. Example is the Finance Act that was overwhelmingly rejected by the public but the state ignored citizens and forced its will on the people.
- e. Eighty-nine percent (89%) agree that people have been unable to access government information in law and in practice and while 7% disagree about 5% did not answer this question. State is unwilling to provide information despite the existence of the law. The state is happy to keep people ignorant. It seems uncomfortable with people having information that will impact their lives even though civil society believes people know about Art 35 or comprehend the Constitution of Kenya altogether. The quality of access to



information is visible only with regard to pro-government messages but one cannot access information about scandals. Government programs such as Huduma, low-cost housing, Hustler fund etc. were rolled out without sufficient information and many features of these programs remain vague.

- f. Eighty-nine percent (89%) of the respondents believe people or journalists who express critical opinions in public have been the targets of the legal system compared to 11% who disagree.
- g. Seventy percent (70%) agree that freedom of expression on the internet and social media is restricted while 30% disagree. Government is practicing communication interception a practice that begun with COVID-19 where apps to do this could be installed remotely on phones of unsuspecting citizens.

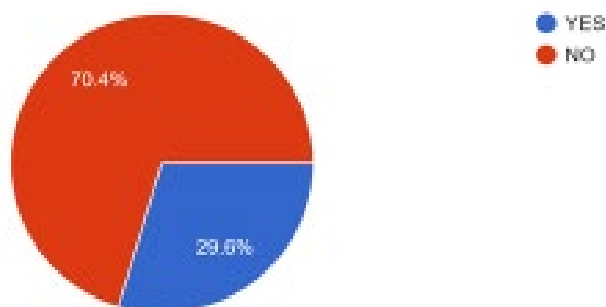
h. Eighty-nine percent (89%) were in agreement that there are new concerns about online privacy and state surveillance compared to 11% who disagree. There are new cyber laws that are detrimental to online growth and are punitive for users of the digital space e.g., the proposed amendments to the Computer Misuse and Cybercrimes Act (CMCA), 2018 that seeks to license films.

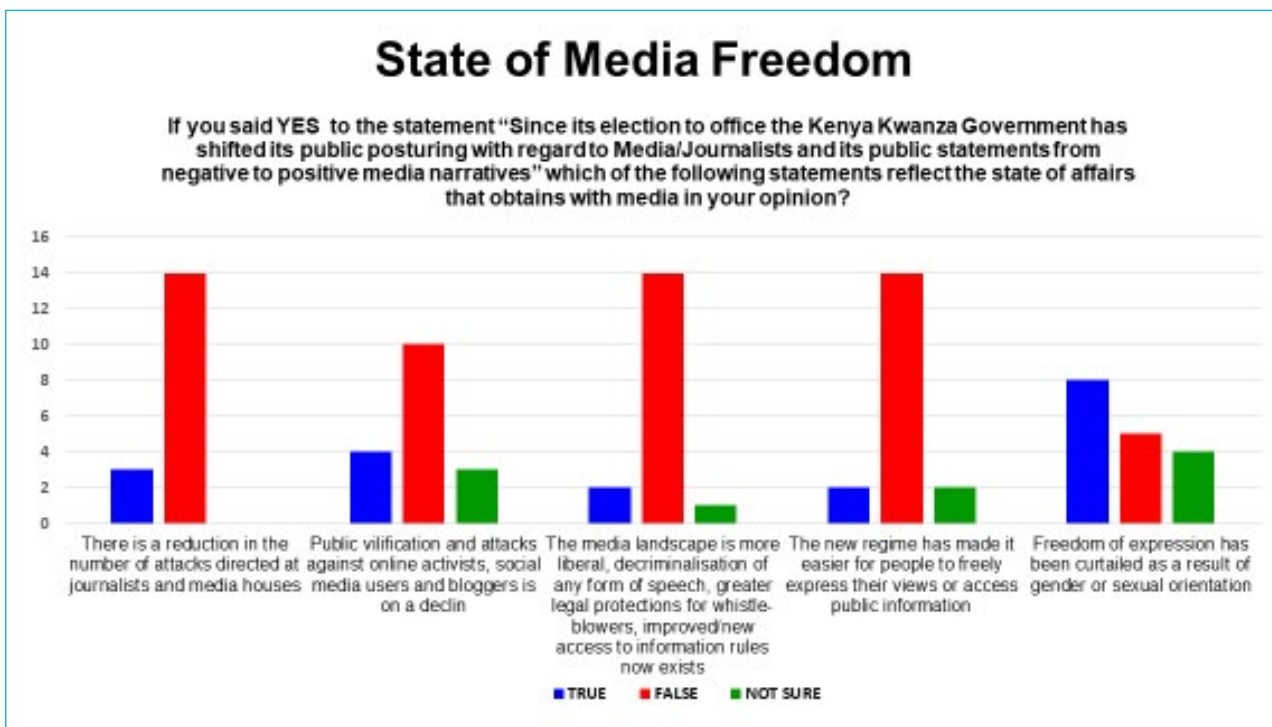
3.17 Government posturing on media/journalists

Seventy percent (70%) of the respondents agree that since its election to office the Kenya Kwanza Government has not shifted its public posturing with regard to media and journalists and its public statements have not moved from negative to positive media narratives. 30% have a contrary view.

Government Posturing on Media/Journalists

B b) Since its election to office has the Kenya Kwanza Government shifted its public posturing with regard to Media/Journalists and its public statements from negative to positive media narratives?
27 responses





3.18 State of media freedom

- a. According to 82% of the respondents the claim that there is a reduction in the number of attacks directed at journalists and media houses is false. Only 18% believe this statement to be true. Media was roundly attacked with a Cabinet Secretary and the Deputy President hurling epithets at the media calling them “Malaya” (prostitutes) for criticizing the government. The recklessness of state officers and verbal attacks against journalists is impacting negatively on the security of journalists who are now vulnerable to attacks by political supporters of the various conflicting political groupings.
- b. Majority of respondents, 59% confirm as false the view that public vilification and attacks against online activists, social media users and bloggers is on a decline since the Kenya Kwanza regime took power. 23% believe this view to be false while 18% are not sure. The World Coin saga at KICC where youth were
- c. mobilized to give their biometrics in exchange for money without proper procedure was an example of lapses in data protection. Government could not explain this issue and it is unknown what the company was going to do with the data, which some fear was going to be used to make robots, it was surprising that a foreign company could come and collect data without government knowledge.
- d. An overwhelming majority 82% deny the media landscape is more liberal, decriminalization of any form of speech, greater legal protections for whistle-blowers, improved/new access to information rules now exists after the entry of the new regime. Only 12% affirm this to be true while 6% are not sure. The visible gagging of the media was witnessed at Shakahola when media was chased from the scene and barred from covering the foregoing. In the fight against terrorism in the

northern part of Kenya the media has totally blacked out what goes on and no reports are allowed by NCTC and the anti-terror police unit so the only news Kenyans get of this campaign and attacks are occasional clips from Aljazeera and other international networks.

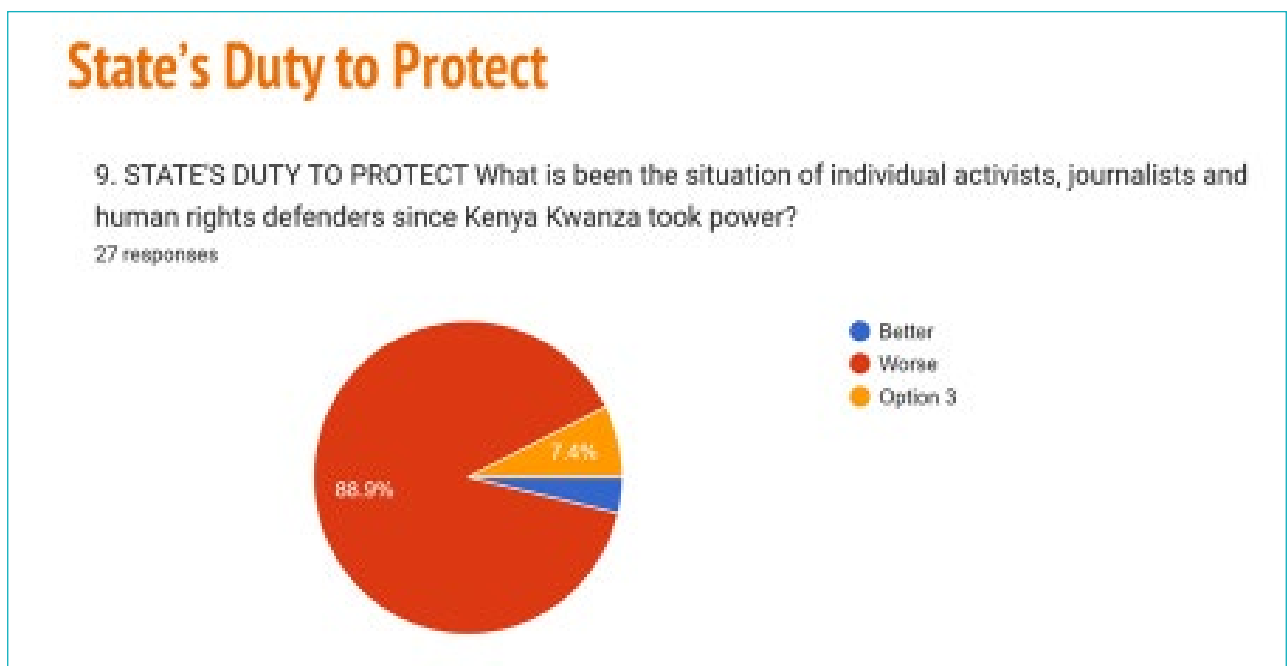
- e. Eighty-two percent (82%) of the respondents' object to the claim the new regime has made it easier for people to freely express their views or access public information, 9% believe this to be true just as a similar percentage say they are not sure.
- f. Forty-seven percent (47%) confirm that freedom of expression has been curtailed as a result of one's gender or sexual orientation, with 29% disagreeing and 24% unsure.

worse, 89%, while only a paltry 7% feel it has become better. The reminder of the respondents were not sure. One of the indicators of progress for defenders who constantly speak truth to power is the state of the justice sector, its independence and its ability to dispense justice when one branch of government threatens to do things outside the rule of law. Since the Kenya Kwanza regime took power the judiciary which looked a little independent seems to be losing this identity after accepting the offers by this regime to swear in judges rejected by the last administration and promises of independent funding, that now seemingly appears to have been a favor to be returned. The delivery of justice is taking a beating as more and more litigants are subjected to rulings that appear compromised.

The ODPP, Judiciary and Independent offices that were created to protect our constitutionality are not independent anymore. The ODPP has dropped many cases touching on prominent individuals for example Hon. Didimus Baraza who fatally shot a person has had his case dropped like many others. The President

3.19 State's duty to protect

Since Kenya Kwanza took overpower the state of individual activists, journalists and human rights defenders has become



has declared himself the judge, jury and executioner and is literally micromanaging, through executive orders the delivery of services and the enjoyment of rights by his recent pronouncement of “mambo ni ma tatu” that has the effect of suspending the constitution to be replaced with his temperament that will now run the state. With a judiciary that is intimidated by the executive, CSOs that did public interest litigation and are strong on human rights are now facing a future where their ability to do their work will be limited.

State is actively interfering with judicial processes especially when state makes illegal decisions that are taken for litigation by the people they aggrieve. This places courts in the cross hairs of a rogue executive. Indeed, Court operations are now subject to political influence and people are losing trust in our Courts, leading to cases being dropped.

The president having made his proposition to be judge, jury & executioner will soon make mob justice and anarchy the only options available to respond to his (mambo ni ma tatu) clarion. It is unlikely that anyone will go to court in the 2027

elections should there be a dispute. Any dispute will be determined in the streets. Petitions were very few the last election signaling what is likely to come. That only influential people are having their day in court, it will be difficult to win back the confidence that Kenyans had for the Court.

Makadara is one of the Courts the police shop to harass youths from informal settlements with trumped up charges like possession of bhang. In this court it is near impossible to get a release order. These negative developments could not have been clearer such as they were in the controversy around the Finance Bill which became law following a Court decision that seemed to whitewash the glaring illegalities.

3.20 Prevalent abuses targeting activists and journalists

Respondents confirm that the most prevalent abuses are verbal threats (93%), followed by physical attacks (85%), enforced disappearances (74%), assassination of activists (33%), profiling of certain journalists and HRDs as opposition



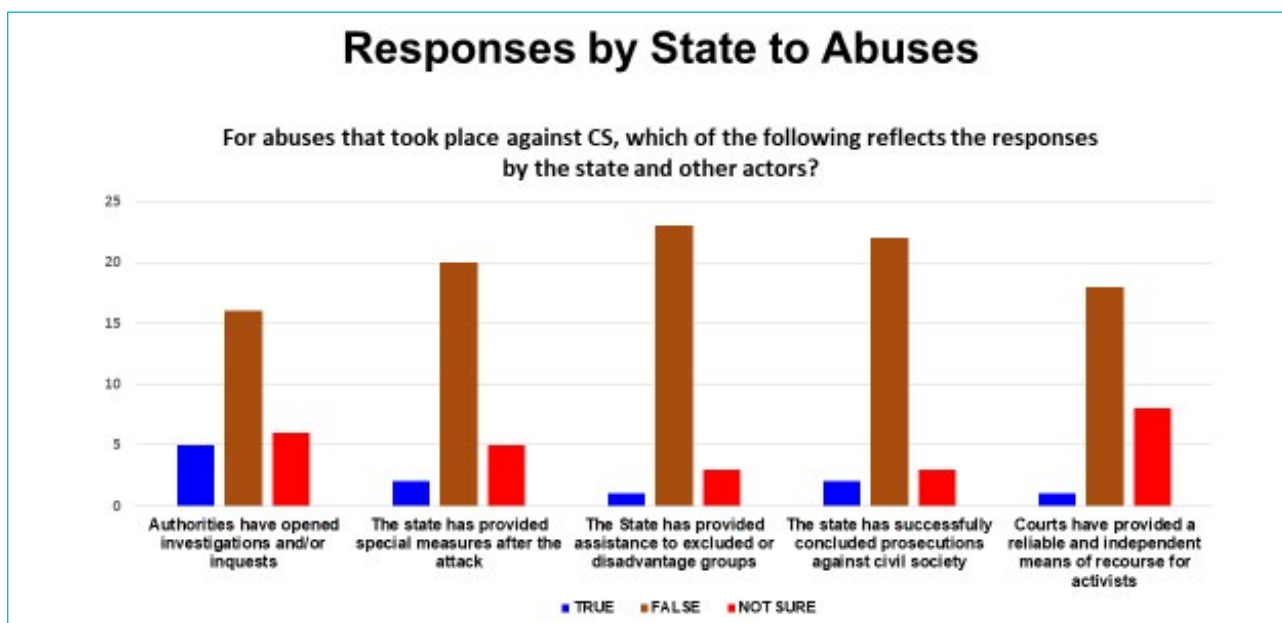
to Kenya Kwanza (4%) and killings (4%). The media and the press have no freedom and are barred from covering some events. Police have on many occasions deleted posts/videos that were recorded especially where they the police know they have overstepped their mandate in attacking journalists, media practitioners or digital content creators going about their work. Police regularly confiscate cameras and phones to erase their misdeeds that are captured on camera. Censorship on digital media is rampant due to state intimidation.

3.21 Responses by state to abuses

- a. For abuses that took place against civil society the claim that authorities have opened investigations and/or inquests is agreeable and true for only 19% of the respondents, majority 59% find this claim false and 22% are not sure. In fact, the IG was categorical that no deaths happened, and any dead bodies was purely a stunt by politicians.
- b. As to whether the state has provided special measures after the attack 74% deny and find this false while 19% are not sure a paltry 7% believes this to be

true. The state has shown that it has zero intention to be accountable.

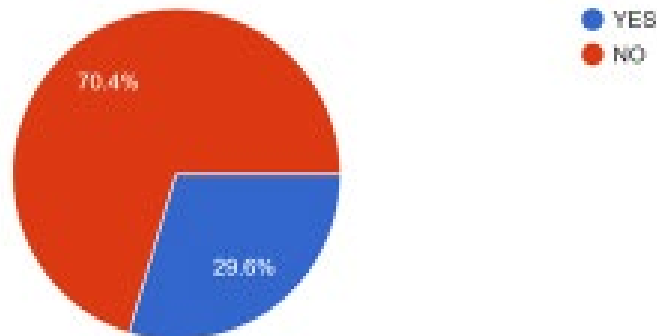
- c. Most respondents 85% bill as false the claim that the State has aided excluded, or disadvantage groups whenever abuses occur in comparison to 11% who are not sure and 4% who claim this is true. The IG has stifled the internal affairs unit that made oversight easier to enable tracking of actions regarding abuses.
- d. Respondents 81% deny that the state has successfully concluded prosecutions against civil society, 11% are not sure while 8% claim this is the case. All pending abuse cases in Court have stalled because the IG has instructed Commanders not to cooperate with IPOA.
- e. As to whether Courts have provided a reliable and independent means of recourse for activists 67% say this is false with 30% saying they are not sure and 3% claiming this is true. The time taken to conclude cases and the high cost of litigation makes it difficult to see Courts as a recourse for activists.



Security of Civil Society

9 c) Does civil society feel more or less protected?

27 responses



3.22 Security of civil society

70% of CSOs feel less protected compared to 30% who feel more protected. In the past police respected HRDs and protected them, even in situations of agitation, today they don't care. Within the sector HRDs are involved only when things are important for NGOs but when HRDs are in trouble the protection groups do not act swiftly, they take too long to verify a comrade is at risk. There is too much bureaucracy horizontally. In comparison to other regimes, this regime is the worst because within a year it has done what it took other regimes several years to do.

It is easy to be disappeared by this regime even from lawful custody. Goons come in the name of the police and target HRDs even before a demonstration, and they arrive on horseback and surround the HRD before arrest. The president's mambo ni ma tatu remark is scary and chilling. ***Even after Human rights organizations castigated the president, he sneered at the criticism by LSK while in Mumias for***

ticking him off. There is a clause in the CBO registration law that requires CBOs to merge if they come from one area. This is a limitation of civic space. One CBO was refused registration in Kayole South. They were told all self-help groups should come together to be registered.

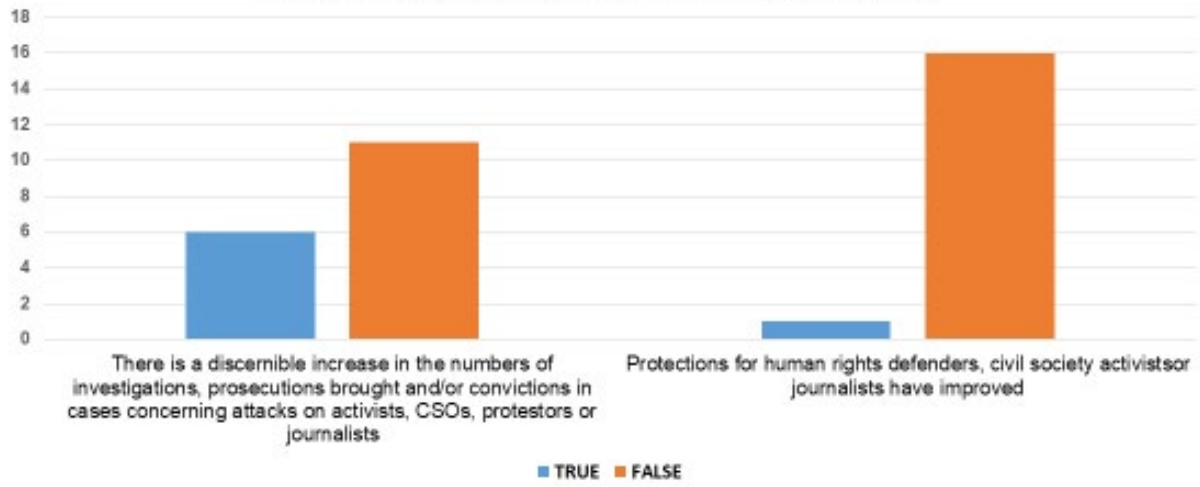
3.23 Perception of civil society to protection

35% believe there is a discernible increase in the number of investigations, prosecutions brought and/or convictions in cases concerning attacks on activists, CSOs, protestors or journalists compared to 65% who feel the cases have reduced. 94% feel the protections for human rights defenders, civil society activists or journalists have improved compared to 6% who do not agree.

“Goons come in the name of the police and target HRDs even before a demonstration”

Perceptions of Civil Society to Protection

If your answer was YES to the question, “Does civil society feel more or less protected” what your motivation for feeling so?





CHAPTER 4:

CONCLUSIONS & RECOMMENDATIONS

4.1 Conclusions



Police officers patrolling a barricaded road during a protest in 2017.

© Yasuyoshi Chiba/AFP/Getty Images

In conclusion this democratic space index is an examination of one year of Kenya Kwanza and what emerges very clearly is that constitutional democracies are sometimes mere exercises in enthronement of one leadership to another with very little substance. In the words of Siaya Governor James Orengo, “even at the Vatican people ask for changes despite the fact that the Pope’s word is law.” This regime does not hold hope for Kenya and neither does the progressive constitution because the crisis of confidence can only be confronted by

an eternally vigilant citizenry and a robust civil society. The civic and democratic space in Kenya is in peril, the actions of the police in recent demonstrations was reminiscent of the colonial state. Never has a free democratic society descended to such a low level and committed acts of terror against its people. Never has a regime in its first year in office unleashed deadly violence in the name of maintaining public order and killed innocent citizens whose only crime was exercising their constitutional right to protest the high cost of living. As the police shot and beat

people to death, it is civil society, human rights organizations and the media that has been gathering the hard and compelling evidence to bring the police, whose denials are a shame to human decency to account for their atrocities.

- **On Freedom of Association the study finds that the Community Groups Registration Act poses an existential threat to CBOs** having been enforced without sufficient public participation and the rush to implement it before the regulations are ready. Already groups have been denied registration over contestable issues and domiciling this law under the national government administrative officers (NGAOs) robs the law of independence given the historical role this colonial structure has played in limiting the freedom of association. As far as the PBO Act is concerned the NGO board continues to operate with a framework that is not aligned to the Constitution.

- **On Freedom of Peaceful Assembly that includes Protest and Public Order Management the findings confirm that civic space is repressed** and requires a lot of work to push back on serious threats emanating from the Community Registration Act to community-based organizations and community organizers, the systematic abuse of legal processes and legal instruments to limit freedoms, silence the opposition and intimidate HRDs. The legal regimes governing public order management are colonial and antithetical to the progressive Bill of Rights in our Constitution. The groups that work on governance issues are faced with surveillance and intimidation by both the national and County Governments.

- **On Freedom of Expression that includes Media/Press and Digital/ Data Protection the study finds that the main challenges have to do with increasing questions about the quality of media content, partisan reporting, and poor quality of media content** because of capacity issues among journalists and editorial teams.



Kenyan journalists and members of civil society marching on the World Press Freedom Day in 2018 © Suleiman Mbatiah/AFP via Getty Images

4.2 Key Recommendations



4.2.1 Civil Society Organizations

1. **Civil Society should consolidate its efforts at self-regulation as the sector awaits the enactment of the PBO Act.** Such regulations should include specific provisions for collective protection and county networks or federations that can receive applications from community groups and vet these before transmission to the community

registration office that at the moment is not community friendly.

2. **There is need for a strong, innovative, and independent civil society and media** that possesses the capacity to influence public policy and salvage the bad situation and make the state accountable, inclusive, and effective in protecting civic and democratic space.
3. **Civil society actors should undertake advocacy towards legal reform and changes** in practice to the conduct of civic and political education and awareness raising on the State's obligations under Article 37 of the Constitution, to reposition the right to protest, and its importance to our democracy and the mechanisms for claiming these rights.
4. **Civil Society actors should institute strategic public interest litigation on a constitutional interpretation of the right to protest** to enforce upholding of the constitutional right and enforcement of the law.
5. **They should seek, document and petition authorities to consider redress pathways for survivors of violence during protests** and disseminate the information to people subjected to police violence during protests for purposes of compensation and healing
6. **Media outlets should review their production and operational models** to cut out on non-core expenditures and be more innovative.
7. **Journalists must leverage on technology to survive**, change the mode and content of their stories, and seek opportunities beyond national boundaries including setting up their own online media which must be made as credible as possible.
8. **The industry and the government should work on modalities for setting up a media sustainability fund** whose management must be open and transparent with the media stakeholders.
9. **The media should ensure a sustained defense of the constitutional guarantees of press freedom** under Article 34 and work with CSOs and other actors to protect all civil liberties.
10. **Media houses should mount continuous training of journalists to prepare them for the evolving technological environment** as part of promoting public confidence in the media as well as help them build capacity on emerging complex subjects.
11. **Civil society should create more awareness for citizens, particularly young people, about digital rights.**
12. **Civil society organizations should start working as a team and stop competition or ego trips**, it is unhelpful that in the Kianjokoma case IMLU, Haki Africa and Amnesty all sent officers to the family instead of maximizing the resources to get the best results.
13. **They should continue organizing but must retool and connect with the grassroots movements** so that its power comes from below and is driven by peoples issues not just donor requirements and reporting, there is a need for greater honesty of intention and embrace openness to win public trust

14. **Citizens should step up PIL** to veto bad laws that are passed to limit the enjoyment of civic and democratic space.
15. **Civil Society should stop being reactive** as champions of constitutional implementation and in this connection should start engaging with party politics as proto parties to influence the options available for Kenyans instead of lamenting about the dearth of leadership



4.2.2 Duty Bearers

16. **The Kenya Kwanza government should operationalise the PBO Act** before the end of 2024 as per the promise in their Manifesto.
17. **The Kenya Kwanza government should completely overhaul the dysfunctional police service** through comprehensive institutional reform and retooling that includes re-training and re-orientation to make the service professional, honest and open for the service to win public trust.
18. **The police firepower should be subjected to stricter oversight** through stronger oversight bodies so that those who misuse firearms take individual responsibility for their actions.
19. **The Judiciary should establish special**

Courts to deal with cases involving police abuse of its power.

20. **The judiciary should also uphold a progressive interpretation of the right to protest**, drawing from the spirit and substance of the right in the Kenyan Constitution and in international and regional legal frameworks and guidelines.
21. **The Public Service Commission should be held responsible for all public officers** who are in office on considerations other than merit and all acts of omission by such officers be charged on the PSC.
22. **The Kenya Kwanza Government should propose urgent reforms to our electoral system** in order to deal with the institutional and attitudinal barriers that sustain the two-party system and its first-past-the-post electoral framework which makes our democracy ineffective and inimical to civic and democratic space.
23. **Studious efforts should be employed to break the matrimony between the legislature and the executive** and the claims that the executive has compromised parliamentarians through bribery should be investigated.
24. **The Independent Policing Oversight Authority (IPOA) and the Office of the Director of Public Prosecutions should investigate, discipline, and prosecute officers responsible** for excessive and disproportionate use of force against protesters.
25. **Parliament should completely repeal and replace the provisions of the Public Order Act 1950 and the Penal**

Code Chapter IX on Unlawful assembly, Riots, and other Offences against Public Tranquillity, particularly the provisions that give security officers far-reaching discretionary powers, that are roundly abused, by issuing a proclamation on protestors to disperse, failing which protestors face up to life imprisonment with regulations that are in strict compliance with the human rights norms.

Kenyan government's violations of the right to protest and failure to honour past commitments.



4.2.3 Development Partners

26. The US Embassy which has exhibited a very partisan approach to its dealings with KK and appears to prop its unpopular policies including those that impinge on civic space should be called out.

27. The International Community should support efforts at protecting press freedom by speaking out against attacks on the media and offer other forms of support towards the protection of media freedom.

28. International Civil society organizations should engage the UN Human Rights Council's Universal Periodic Review (UPR) process, the African Commission on Human and Peoples' Rights, and other mechanisms to bring attention to the

“Never has a regime in its first year in office unleashed deadly violence in the name of maintaining public order and killed innocent citizens whose only crime was exercising their constitutional right to protest the high cost of living.”



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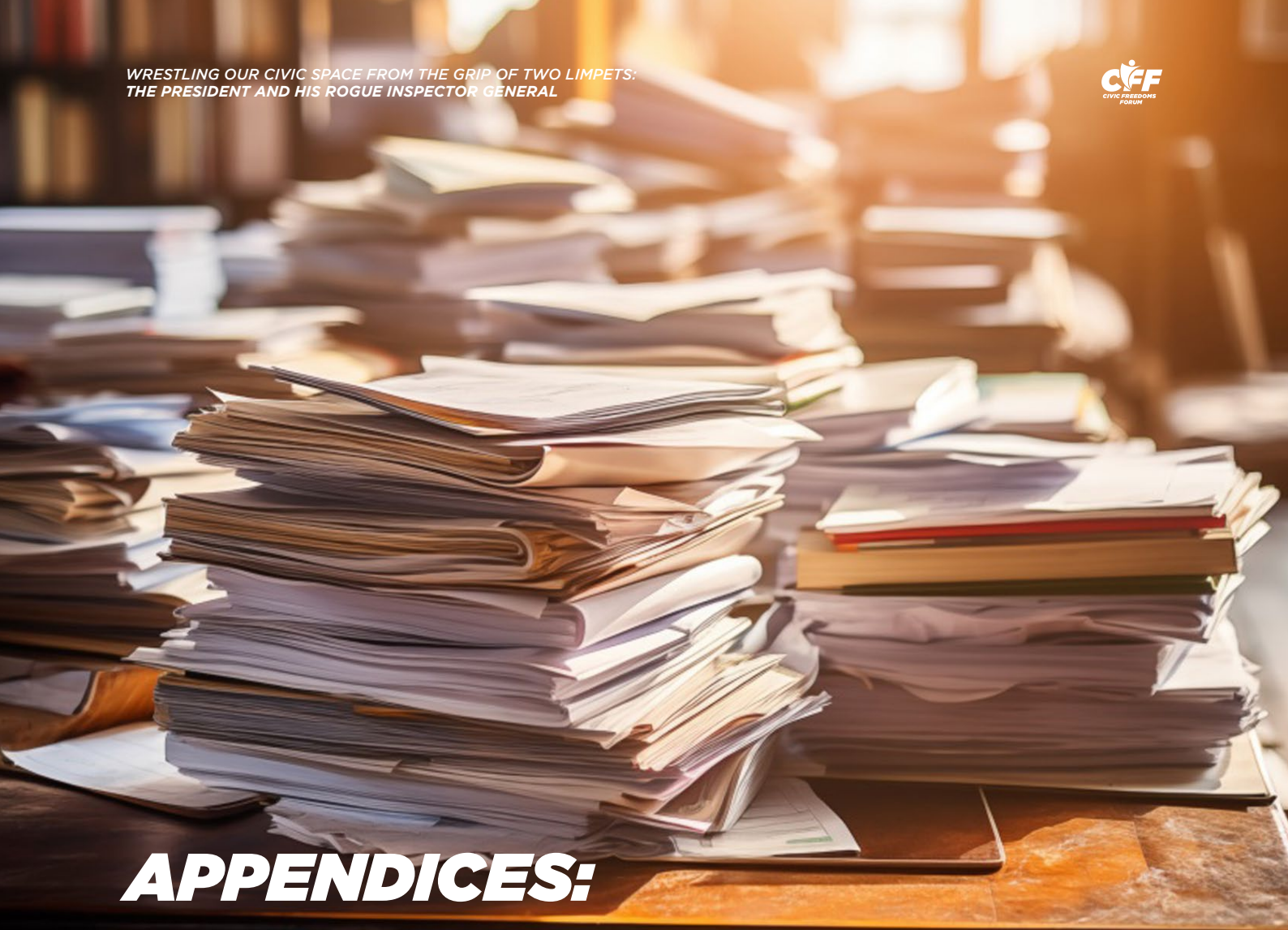
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APPENDICES: STUDY TOOLS



Online Google Tool
Qnr 2.docx



KEY INFORMANT
INTERVIEW GUIDE 2.d



FOCUS GROUP
DISCUSSION GUIDE.d



***“This must be a
world of democracy
and respect for
human rights”***

NELSON MANDELA



***“We will never, never
sell our freedom for
capital or technical aid.
We stand for freedom
at any cost.”***

TOM MBOYA



A Society Free From Torture and Related Violations