To retreat or to confront? Grassroots activists navigating everyday torture in Kenya

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Abstract: How do grassroots activists in Kenya protect themselves from torture and related forms of violence when formal protection mechanisms are not guaranteed? In answering this question, this article details the diverse tactics activists use to keep safe while doing unsafe work. Informed by the concept of social navigation, I explore two broad Kiswahili emic terms that capture what I refer to as their tactical retreats and confrontations in the face of torture and violence: kujitoa and kupenya. By elaborating on these tactics to keep safe, key gaps and tensions in the implementation of formal protection mechanisms in Kenya are made evident, while also highlighting the importance of grassroots activism(s) as the 'first line of defense' in the protection of communities at risk in Kenya.

Keywords: Protection, activists, torture, social navigation, Kenya.

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Introduction

Diary Excerpt from A* 21/08/2020

> Police brutality and excessive use of force has been the new norm for the residents of Mukuru Ruben. Police have been known as the enemy of the people for decades in most of the informal settlements. *Police have been used to silence activists and other vocal leaders who speak against their brutality, and they threaten to arrest them.* Mukuru Ruben has seen the worst of police, from when eight young men were killed in 2012 while they were holding a meeting as a garbage collection group. Recently, one of the vocal youths was arrested for speaking against police brutality.

Grassroots activists from community-based organisations in Kenya respond to all types of violations: from sexual and gender-based violence, to fire, to police brutality, health emergencies and other inter and intra locality violence. Certainly, for those who live in poor urban settlements in Nairobi, the neighbourhoods of over 60 per cent of the city population yet constituting only 6 per cent of its surface area, the absence of basic services—including water, sanitation and adequate shelter—forms the backdrop for other human rights violations committed by both community members and the state—including extra-judicial executions, forced disappearances and torture on such a scale they have become a morbid and routine occurrence, and for which residents are habitually unable to get redress (Amnesty 2013; HRW 2020).

   These activists, who may sometimes identify as human rights defenders,[1] take up advocacy on behalf of their communities more often as an intentional decision rather than a professional activity. In doing so, they respond to injustice via a constellation of actions: harboring victims, offering advice, notifying authorities, trying to find shelters for those impacted by sexual and gender-based violence to protesting, as but a few examples of their many situated interventions for protection. As the diary

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[1] While the grassroots activists whose experiences included in this article sometimes take up the identity of 'human rights defender,' and especially when negotiating more formal NGO spaces that are invested in global human rights terminologies, for the most part, the activists I spoke with describe themselves as 'grassroots activists' or in Kiswahili 'mwanaharakati' or 'mtetezi.' This, often both implicit and explicit, distinction signified by the term grassroots, is established to signal the differences between them, grassroots activists, and those who are habitually recognised as human rights defenders—they who have more access to formal human rights mechanisms, are usually working as human rights defenders in a professional capacity and thus may have a more elevated class status and public profile than their grassroots counterparts. This article highlights some of these differences and tensions, while also recognising how grassroots activists may take up the moniker human rights defender as a necessary, but not irrelevant, identity should they choose to, or to access protection mechanisms. Because of this overlap, in this article, the terms grassroots activist(s) and human rights defender(s) are used interchangeably, since international law would recognise them equally, even as these terms are often invested with situated nuances and politics in Kenya.

epigraph from an interlocutor shows, those who speak out against police brutality continue to be at risk: their 'silence' is sought through arrest and threats, jeopardising both their lives and their ability to attain justice for the violations for which they were seeking redress. These risks notwithstanding, Kenyan activists, as elsewhere, continue to demand an end to human rights violations, and may take up a continuum of protection mechanisms, between retreating and confronting, to navigate the everyday torture that targets them and their communities.

The International Committee for the Red Cross (ICRC), uses the following definition of protection: [...] 'activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law, i.e. human rights law, international humanitarian law and refugee law.' These activities are carried out 'in an impartial manner (not on the basis of race, national or ethnic origin, language or gender)' (ICRC 2009). While emerging from the ICRC, this definition has been taken up by actors such as the European Union and the Inter-Agency Standing Committee (IASC), which is the 'longest-standing and highest-level humanitarian coordination forum of the United Nations system' (IASC 2021). For the IASC, 'authorities at all levels of government hold the primary obligation and responsibility to respect, protect and fulfill the rights of persons on their territory or under their jurisdiction' (IASC 2016: 2).

In Kenya, protection remains a major challenge principally because the state, the humanitarian focal point for the IASC, does not 'protect and fulfill the rights of [all] persons on their territory.' These failures have been detailed in over a decade of the Universal Periodic Review process.[2] Furthermore, and of relevance to this article, Jones *et al.* (2017) document that 'avenues for legal, institutional and civil society redress, nominally expanded in recent years, display an ongoing tendency towards disconnection from the grassroots' (Van Stapele *et al.* 2019). Part of the disconnection is the result of an overly narrow focus on protection within Kenyan human rights organisations and mechanisms, one that upholds the protection of specific rights and focuses on individuals only in the context of criminal trials. This article, therefore, seeks to explore protection from the perspective of grassroots activists, dwelling in the everyday threats they face and the ways in which they try and keep themselves safe in a context where neither the state nor a 'disconnected' civil society offer a consistently

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[2] See, for example, the 'Compilation on Kenya: Report of the Office of the United Nations High Commissioner for Human Rights' (2019), available on the Kenya National Commission for Human Rights (KNCHR) website: https://www.knchr.org/Portals/0/InternationalObligationsReports/Universal%20Periodic%20Review/Compilation%20of%20information%20from%20UN%20bodies-%20Kenya.pdf?ver=2020-01-14-095101-797

[3] This project, whose focus was on the protection mechanisms of grassroots activists in Sri Lanka and Kenya, was supported by the British Academy.

dependable safety net for those most impacted by the Kenyan government's inability (and often unwillingness) to protect the rights of individuals and communities at risk.

In the research project from which this article emerges, we aim, broadly, to discern and foreground the practical experiences of grassroots activists in Kenya and Sri Lanka in accessing formal protection mechanisms—those offered by the state or civil society organisations. Of interest are the practical steps they take to stay secure, in ways that often exceed the formal objectives of human rights norms. Informed by these collective processes, this article builds on interviews, diaries and ethnographic work with grassroots activists in Kenya, acquired and analysed as part of this broader project,[3] to reflect on their situated tactics for the protection of communities and person—interconnected endeavours. Our research in Kenya was situated primarily in Mathare, Nairobi, a poor urban settlement, in collaboration with the Mathare Social Justice Centre (MSJC), a local social justice organisation.[4]

To discern the different types of tactics taken up by grassroots human rights defenders, we launched our fieldwork process with a two-day workshop, organised in late November 2019, which brought together diverse activists from across the country. In attendance were human rights defenders from different parts of Kenya, and who focused on varied but interrelated issues, such as the negative impact of extractive industries, police abuse of power and LGBTQI rights, for example. Thereafter, over the subsequent months, I organised two focus groups in the settlement of Mathare, when stringent Covid-19 restrictions were suspended. Both focus groups were composed of young grassroots activists from social justice centres in Nairobi: the first one had eight participants, while the second session had 14 interlocutors. Complementing the focus groups were five participant diaries, our diarists were from different poor urban settlements in the city, and were chosen intentionally to represent diverse subjectivities. They were a young Muslim mother, a young person with a disability, a mother whose child had been killed by the police, a young Muslim man and a male community paralegal. Over the course of three months, between July–October 2020, these activists detailed events of everyday violence that

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[4] Social Justice Centres are community-based organisations in poor urban and rural areas in Kenya, which emerged organically to create spaces to organise against and document the violations that continue to obtain in many poor and working-class Kenyan spaces. In the politics they embody, they also function as a critique of the elite middle class human rights organising in Kenya, which is located spatially and socially away from the communities where the most human rights violations occur. Related, in taking up the name 'social justice' and not 'human rights' in their monikers, they register the debatable tension (see Petrasek 2015) between human rights work that is anchored in international legal standards and social justice bids to challenge structures and ensure equality for all. You can read more about them here: https://www.ohchr.org/EN/NewsEvents/Pages/SocialjusticemovementinKenya.aspx

[5] Kiswahili is the most widely spoken national language in Kenya.

occurred in their communities—from gender-based violence to police killings, as well as how these situations were responded to by human rights defenders and the community at large.

The diaries, focus groups and workshop were coupled with semi-structured key informant interviews with ten civil society interlocutors, which took place between 2020–2021. The bulk of these key informants were working for non-governmental organisations that offer protection to Kenyans navigating different forms of state torture. Combined, these methods allowed for the discernment of two broad tactics taken up by grassroots activists in order to keep safe. To discuss and theorise them more comprehensively, I capture these tactics in emic Kiswahili[5] terms: *kujitoa* and *kupenya*. Though these expressions can be implicated in a diversity of contexts and usages, kujitoa, in the ways that it has been habituated by grassroots activists, generally refers to one's ability to physically escape a threatening situation—to retreat in a manner that keeps one safe while still implicating them in human rights action in the long term. Kupenya, on the other hand, signifies one's ability to deftly negotiate risk, usually through the employment of one's networks and/or knowledge of constitutional rights, coupled with the courage to assert these in encounters with, often, state authorities. As descriptive emic categories anchored in Kiswahili terms, while also acting as signifiers of material conditions that can necessitate both retreat and confrontation, ultimately, kujitoa and kupenya are contingent on one's capacity to read, in an embodied way, a situation sufficiently to discern gaps for action. This is an ability that accrues principally because of years in the 'struggle,' and that is coupled with a cultivated defiance that cannot be taken for granted.

In addition, and as is discussed in a subsequent section, both space and time are critical features in determining one's capacity kujitoa or kupenya. And, often, where one is located and the time an activist finds themselves in need of protection, can also be put down to luck. Fortune, however, as we will discuss later, is influenced by the years activists bring to the 'struggle,' and their effrontery and ability to discern the appropriate moment and the required action at the time: whether kupenya or kujitoa.

Since these protection actions are enacted in a dynamic environment, what Vigh (2009) refers to as 'motion in motion' or 'motion squared,' they can be captured by the term social navigation, which 'encompasses both the assessment of the dangers and possibilities of one's present position as well as the process of plotting and attempting to actualise routes into an uncertain and changeable future' (Vigh 2009: 425). Certainly, the tactical retreats and confrontations of young activists in Nairobi, in an environment of both 'volatility' and 'opacity' (Vigh 2009), feature this constant appraisal and calculation within their fields of action. For these reasons, it is my assessment that kupenya and kujitoa function as emic social navigation vernacular and praxis that condense the 'plotting' that is required to 'actualise routes' in the face of (usually state) danger.

It is important to note that tactics is used here in reference to De Certeau (1998), who puts forward that tactics, in contrast to strategies, are 'a calculus which cannot count on a 'proper' (a spatial or institutional localisation), nor thus on a borderline distinguishing the other as a visible totality. The place of the tactic belongs to the "other"' (De Certeau 1998: xxi). In this context, community activists embody the other, and by virtue of the 'territorial stigmatization' of their communities (Wacquant 2020), a 'stain' that leads to differential rights from those who have 'will and power' (De Certeau 1998: xxi) and which has a symbiotic relationship with their corporeality, the tactics that constitute kupenya and kujitoa, efforts to stay safe in ways that may not necessarily be safe, belong to them.

These reflections on the navigations of grassroot activists in Kenya are informed by the aforementioned larger project that explores the need to recognise the constellation of protection mechanisms taken up by those in poor communities and who are at risk, beyond those offered by more formal non-governmental and, even, government institutions, since these are often inadequate and inaccessible to those who continue to live in environments of everyday torture. The call is that we view these tactics as the 'first line of defense' against, primarily, state violence (Kimari *et al*. 2021), and which, ultimately, operates as the only constant mode of redress available to the most marginalised, despite the protection of fundamental rights and freedoms in the Kenyan Constitution (Article 25–51), and in international documents to which Kenya is a signatory, such as the UN Convention Against Torture.

Towards documenting these grassroots actions and mapping some of the manifestations and implications of kujitoa and kupenya, what follows is a brief detailing of the formal protection mechanisms understood to be in place in Kenya to prevent and respond to cases of torture. Thereafter, in a section titled Kujitoa and Kupenya, I elaborate on the conditions faced by grassroots activists, and their tactical retreats and confrontations for self and community protection. I conclude by summarising the main arguments of this article and pointing towards other directions for research on the 'first line of defence' in poor urban communities in Kenya.

Formal protection mechanisms in Kenya

The new Constitution of Kenya, which was promulgated in 2010, established explicit legal protections against torture. In this regard, Article 25A of this document asserts that Kenyan citizens' rights to 'freedom from torture and cruel, inhuman or degrading treatment or punishment' should not be limited. Complementing this provision, Article 26 emphasises one's 'right to life,' while Article 29 asserts the 'freedom and security of the person'; that citizens should not be arbitrarily detained without just cause, subjected to any form of violence from either public or private sources, torture,

corporal punishment or treated in a 'cruel, inhuman or degrading manner' (Republic of Kenya 2010). Related, Article 50 of the Constitution makes explicit the conditions under which evidence should be garnered to ensure a 'fair hearing,' and, in doing so, establishes barriers to the extraction of this information through torture.

Breathing legislative life into these constitutional provisions, *The Prevention Against Torture Act of 2017* allows for more clarity about what torture is, and concretises the ramifications for torturing a person, or aiding and abetting the process. This Act also calls for the creation of a Victims Trust Fund towards engendering 'compensation to enable families to rebuild and provide redress for the violations suffered' (Kiprono 2017, 2019). It is also important to note that The Prevention Against Torture Act (2017) permits the country to fulfill requirements of the UN Convention Against Torture to have adequate local 'legislative, administrative [and] juridical' measures to buttress this international agreement (Kiprono 2017, 2019). Kenya has been a signatory to the UN Convention Against Torture since 1997.

Furthermore, the National Coroners Service Act of the same year (2017) legislates the need for deaths in police or prison custody to be reported to the national coroner, established by the same Act, who would then forward their investigations of suspicious deaths to the Office of the Director of Public Prosecutions and the National Police Service. Ultimately, the main goal of this Act is to establish a 'framework for investigations and determination of the cause of reported unnatural deaths in the country' (KNCHR 2017). On a regional front, Article 5 of the African Charter on Human and People's Rights (1981), to which Kenya is also a signatory, prohibits 'all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment.'

Correspondingly, Kenya's (2018) third periodic report for the UN Committee Against Torture emphasises the strides made in the improvement of police conduct and offers examples of judgements that demonstrate a judiciary adhering to the Bill of Rights, even in cases of suspected terrorism. However, this response also alerts readers to the (few) convictions of policemen accused of extra-judicial killings, and the procurement of evidence under torture.[6] Against the not too distant histories of colonialism and the Moi dictatorship (1978–2002), when torture of political dissidents was widespread and expected, these recent legal provisions go a long way to denaturalise this phenomenon, and potentially offer powerful formal mechanisms for redress should this violence be enacted.

Nonetheless, despite the expanding national legal protection framework, both mundane and spectacular torture persists in the country, and the police continue to be perceived as the main perpetrators of these violations (IMLU 2011). Other

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[6] This Committee Against Torture report (CAT/C/KEN/3) is available through this UN link: https://digitallibrary.un.org/record/1659965?ln=zh_CN

government actors, such as county government officials, prison wardens, special police squads and related enforcement agencies are also widely implicated in torture practices in the country, and the weak enforcement of existing protection mechanisms is seen as a key cause for the endurance of these violations (IMLU 2011). In this regard, though The Prevention Against Torture Act of 2017 was assented to, the absence of both a Ministry and Minister of Justice (when the Act was assented to there was an actual Ministry of Justice), and attendant guidelines to implement it, have prevented the Act from being operationalised. Similarly, almost five years on, the Office of the Coroner General, created by the National Coroners Service Act of 2017, has not been established. These two examples offer symbolic glimpses into the difficulties of implementing the legal anti-torture mechanisms in the country, and, correlatedly, the obstacles to ensuring comprehensive protection for the activists who need it.

Other local protections against torture in Kenya

The Independent Medico-Legal Unit (IMLU) is the foremost non-governmental organisation that advocates explicitly against torture in Kenya, although, by virtue of the wide scope of torture phenomena, a significant number of different NGOs and community-based organisations work towards mitigating and redressing its constituting violences in their everyday activities. These bodies include Katiba Institute, the Kenya National Commission on Human Rights (KNCHR) (who have instituted a torture database), Haki Africa and grassroots social justice centres across the country, as but a few examples.

Though the Witness Protection Agency (WPA) and the Independent Policing Oversight Authority (IPOA), both government organisations, and Shield for Justice, an NGO, were established to assist with the protection of witnesses who may be at risk of torture and related violences, as continuously expressed by interlocutors, these provisions exist more in theory than in practice. In this regard, since state witness protection, through the WPA, is only launched when a matter has been brought before the court, potential witnesses do not have any protection while a case is being investigated—a process that can take years. In addition, it is informally acknowledged that the mandated witness protection process is rarely initiated by instituting organisations, and, moreover, because of its ties to the government, as well as its employment of former police officers, the WPA is not entirely secure for those needing its services.

While these formal witness protection services are inadequate, the Defenders Coalition in Kenya, as well as Front Line Defenders (FLD)—an international organisation, are able to offer relocation grants for activists who can demonstrate a heightened risk of violence to their person because of their human rights activities. This process is not without its challenges—it is quite bureaucratic and habitually available

to activists with a more prominent profile, or those able to navigate the paperwork. For those fortunate enough to receive these grants, they inevitably function as a useful, albeit short term, protection facility. Ultimately, however, the absence of sustained resources at the organisational level, within both 'big' and 'small' groups, limits the potential, scale and longevity of local protection mechanisms, be it relocation funds or witness protection. In addition, as becomes clear in the following section, interventions for safety emerging from contexts external to the communities where violations take place (both international and local) come with bureacracy that can challenge their applicability in areas of everyday torture. As a consequence, even while formal protection mechanisms exist and are being expanded, there still remains many obstacles—social, political, financial and even cultural—to taking them up, necessitating, thus, that mitigating everyday violence is principally the domain of the 'other'—those most at risk.

Kujitoa and Kujificha

On 7 July 2020, grassroots activists from over 16 justice centres in Nairobi organised a protest to commemorate the Saba Saba Day pro-democracy rallies of 1990. These earlier events were part of the watershed actions that led to the return of multiparty democracy in Kenya (Mutunga 2020). Mostly young and from poor urban settlements across the city, the plan was to peacefully flood the streets to protest the continued violence that was enacted on many residents of Nairobi on a daily basis. In particular, of critical concern was the continuous violence, harassment, disappearance and extrajudicial killing of citizens, as well as the government's incessant contravention of their constitutional rights: from the right to food, water and social security, to the right to protest.[7] While the social justice centres' activists had given notice to the relevant authorities that they would be marching to deliver a petition to the president—a courtesy established in view of an authoritarian government despite the constitutional right to assembly, over 60 grassroots activists were arrested for ostensibly contravening Covid-19 restrictions (Ombuor *et al.* 2020). Though they had been 'warned' by state officials and advised by some heads of formal civil society organisations not to go through with the protest, a key organiser stated that they were left with no choice: 'we were on our own [...] This is between us and destiny, because our lives depend on it' (Wilfred Olal quoted in Ombuor *et al.* 2020).

Activists like those mentioned above play an important role in the protection of communities prone to harassment and torture by the state. Despite the criticality of

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[7] More information on the demands by the protestors can be read here: https://www.matharesocialjustice.org/solidarity/press-release-saba-saba-march-for-our-lives-tekeleza-katiba/

their work, in 2016, the Kenya National Commission on Human Rights (KNCHR) documented that this demographic is:

> often subjected to arbitrary arrests and detentions, death threats, harassment and defamation, restrictions on their freedoms of movement, expression, association and assembly among many other violations of human rights. This has an effect on their critical role of defending, promoting and protecting human rights. (KNCHR 2016: 7)

All of the above is evidenced by the events of 7 July 2020, although harassment, limits to assembly and the threat of detention, as but a few examples, continue to be daily fare for activists: were normal(ised) both before and after this protest.

In detailing the dangers involved in everyday local grassroots activism, similar to the KNCHR report cited earlier, there is literature that recognises the variety of situated tools that human rights defenders take up to enable individual and community protection. A 2017 study by Protection International (PI), on the criminalisation of rural based human rights defenders in Kenya, discussed how:

> Faced with increased criminalisation of their work and security threats, and the reality of weak protection mechanisms, HRDs have resulted to adopting and employing informal protection mechanisms in order to stay safe. By 'informal mechanisms', we mean the range of processes and resources that fall outside of the formal institutional protection structures ran and managed by NGOs and donors. This is not to suggest they are inferior in nature, but they are informal since they are not institutionalised in any manner. These include creating personal relationships and networks, being street smart, knowing the geographical area they live and having basic knowledge on what to do when faced with danger[sic] (Protection International 2017: 32–33)

The report goes on to further document some of the 'informal mechanisms' used by activists, including: avoiding being photographed by the media or being at the forefront of demonstrations, interchanging leadership roles so that no one person bears an inordinate burden of risk, or, even, acting only on human rights issues in localities far from where they live, so that they can retreat to their homes without fear (Protection International 2017: 33–34).

Ultimately, these practices that are 'motion in motion' (Vigh 2009) since are enacted in a changing environment, are enrolled to keep safe both in the present and future, and are important in areas of significant social, socio-economic and cultural dynamism (Nyairo 2006; Wa Mungai 2013; Kimari 2020), and, also, where there are high levels of poverty, police surveillance and criminalisation, crime and sexual and gender-based violence (Swart 2012; Jones *et al.* 2017; Kimari 2017). It is in these contexts of the other—a difference that is produced through structural violence and the attendant problematic tales that narrate into being othered subjects and their spaces— that kupenya and kujitoa tactics are most pronounced. Since they obtain, especially, in situations where formal institutions cannot be depended on, they become powerful descriptors of social navigation corporeal practices in the face of recurring risk

spatialised to particular geographies. Kupenya and kujitoa are some of the critical tactics that activists left on their own engage in. And from the descriptions of the 7 July march, these retreats and confrontations were social navigation actions sought, through various modes and nodes, by those involved in the protest.

Kujitoa

As part of their tactical retreats, notwithstanding whether they were eventually arrested, the activists who took part in the Saba Saba day protest took up a number of protection practices. Because of the heavy police presence in the central business district of Nairobi, there was coordinated dispersion: they gathered in 'scattered groups' (Ombuor *et al.* 2020) in order to break up the united police presence, and WhatsApp messages and phone calls helped these smaller sets of people to regroup. Convening in small numbers was also critical so as not to attract any attention until protestors could 'safely' assemble in a central area. On an individual level, some activists wore two shirts; one with a human rights message which could mark them as human rights defenders and another basic one underneath, and would remove the one on top—with the message—when they felt unsafe, to avoid being recognised by both uniformed and plain clothes police officers. In addition, speaking to this and other protests, one activist detailed how he always endeavoured to be hyperattentive to the environment: to be observant and to survey what was going on around him, mapping out the dangers, since protests usually had a lot of 'normal' looking people who would later be revealed to be plain clothes police officers when activists were being arrested.

Away from protests, kujitoa can constitute other spatially and temporally distinct practices. In this regard, the Protection International (2017: 33) report documents that:

> When physically attacked, most defenders said they rely on good personal relationships with family or friends in order to stay safe. This seemed the most common form of informal protection mechanism to assist in navigating security threats. Some of the HRDs talked of how family and friends always look out for them daily and help them escape when faced with danger.

In addition, other tactics, including those put forward by LGBTQIA activists, are: constantly letting people know where they are going, announcing a time they would be home, not inviting donors or others who could draw undue attention to their gatherings, moving to stay with another human rights defender for as long as was needed, and even, when necessary, 'going underground' for a while. This wide range of actions was tactically employed to ensure retreats from danger, and could be complemented by: 'switching off phones and removing batteries to avoid being tracked, not staying

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[8] K, personal communication, October 15, 2020.

out [...] late in social places; operating and organising almost anonymously so that it is not easy for people to know the organisers or the schedules of activities' (Protection International 2017: 34).

While some of these practices were taken up more intensely during moments considered to be of elevated risk, kujitoa was also part of one's daily calculus, and could involve decisions as simple as not to walk down a certain path known to be where danger could lie, or efforts to make oneself inconspicuous through dress or comportment. Speaking to the gendered actions that women adopt to keep safe from all types of perpetrators, one interlocutor from Kiambiu conveyed how:

> They [women] will try and act inconspicuous: they try and blend in, especially if they are not from the area. [...] they identify people in their path that they can point to if stopped, or call to if they are confronted. They also send signals that they are from the area in the ways that they can. But they also walk around with other people, and like this they are usually fine on the main road. They should just avoid alleys [...].[8]

This interlocutor also spoke about how in his centre they took turns going to the police station, even if he is a known activist in his area, so that they could share the risk and allow others to retreat when needed. Personally, he also worked hard to make sure he knew what the police in his area looked like, so that he could avoid them. Ultimately, however, all of these actions hinged on the development and maintenance of close personal relationships with other activists, friends and family members, who could always provide support and information, and these kinship networks are also a central principle of kupenya described below.

Kupenya

When one is not able to extract themselves, kujitoa, in a situation of danger, there is always the hope that they can *penya*—negotiate a tactical breakthrough. One interlocutor shared that:

> Penya is useful because when you can't *hepa* [escape], you can only use your tact to negotiate and find a way out. Penya means and requires finding a way out, whatever is possible, as complete escape is not possible. For example, a way of kupenya is you go with someone you know to the police station. Someone who has built rapport [there], even if it is you. This works if the police know your work, which is increasingly the case for many justice centres.[9]

In this case, knowing a 'loud mouth' activist (Kimari *et al.* 2021), or even being one yourself, who knows their rights and is not afraid to speak to the police, can be the difference between being taken to court, detained on spurious charges and even assault.

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[9] Z * personal communication, October 16, 2020.
[10] PO* diary entry.

Highlighting what can happen when one cannot penya, an interlocutor diary entry detailed the following:

> When the police have anything on you they can really capitalize on that. Keeping you at bay is one way of doing this. They tell you to report to the station at 08.00 am, but don't serve you until 11.00 am or 12.00 pm. This is so draining. They also don't present a substantial case against you but just take advantage of the current situation to build a case against you. The day was spent mostly on following up the cases of our comrades arrested on the previous day, but it was clear that mental torture is one thing that Kenyan police are good at, and they do it with a lot of threats and sarcasm. We live to fight another day but we shall not relent. A win is a win no matter how small.[10]

From this narrative we can discern the fates that befall 'comrades' who for some reason or another were unable to escape or manoeuvere from police officers' grasp. Those detained could have been new in 'the struggle,' and thus with insufficient knowledge or networks to help them 'plot' and 'actualize [the] routes' (Vigh 2009) needed to navigate this moment in the obstacle ridden terrain that is grassroots activism in Kenya.

Echoes of *penya* infrastructure are seen in Brazil, where mothers involved in advocating against police violence are helped to navigate bureaucratic state justice channels by grassroots activists and civil society actors (Alves 2018). Equally in Kenya, a relationship with civil society actors who can call Officer(s) in Command of Station(s) (OCS) directly, hire lawyers, or perform the imposing habitus of a learned professional at a police station, are often the means by which a grassroots activist can successfully evade long term police detention and/or violence.

Certainly, in view of the state's role in the perpetration of multiple human rights violations, it was not surprising that the majority of those queried were reluctant to get protection from state oversight organisations such as the Internal Affairs Unit (IAU) of the police, the Independent Policing Oversight Authority (IPOA) or the Witness Protection Agency (WPA). It is important to note that in some cases, grassroots activists were not even aware that institutions such as the Witness Protection Agency (WPA) existed.

In situations such as those above, where one would need to penya, formal human rights NGOs were recognised and contacted primarily by more experienced activists, who may call on them for several services, including, and as detailed by Nah *et al.* (2013: 412): 'supporting risk assessment and analysis, emergency hotlines, emergency grants, legal aid, medical and psychosocial services, temporary relocation, and safe houses.'

However, despite the existence of these mechanisms in Kenya, grassroots activists felt it was difficult to access them, and thus local efforts kujitoa and kupenya were foregrounded before seeking access to these institutional safety interventions. This is because, as documented earlier, the bureaucracy that one had to navigate before formal protection facilities were confered, and, even, the distance of the organisation

offering the service to the place of the 'other' where the violation took place, limited the number and profile of activists who could access these mechanisms.

In addition, Jones *et al.* (2017) detail the class hierarchies between those who work for the civil society organisations offering these services and those who habitually need access to them; a power dynamic that enacts social and psychic barriers that discourage grassroots activists from seeking these protections. What's more, civil society organisations that offered the mechanisms mentioned above were often considered to be in competition with each other by grassroots activists, and, perhaps as a consequence, favoured taking up the cases of more recognised human rights defenders, since these could help them rally much sought after donor funds.

In response to these claims, professionals working within more formal NGO settings spoke of how their desire to do more was impeded by internal capacity, which was ultimately shaped by their mandates and access to money. And while, in theory, the potential to lodge a case at the African Court of Human and Peoples Rights, or other similar international bodies, was available to Kenyan citizens who felt that their rights had been violated by their government, specialist knowledge and budgets were required to launch such a claim. Above all, there was also the reality that if a judgement in favour of activists was obtained—whether through local or international judicial processes, there was no certainty that this would be upheld.

Therefore, against the uneven access to protection mechanisms, and often the absence of political will, within both the state and NGOs, to change this situation (Jones *et al.* 2017; Van Stapele *et al.* 2019), citizen's bids for redress and protection, including those waged by activists themselves, remain hinged on the efforts of grassroots community advocates, their actions to retreat and confront, even if, at later periods and if attainable, they could be complemented by the formal protection facilities offered by civil society organisations, and, rarely, the state.

Correspondingly, kujitoa and kupenya, amongst other descriptors,[11] have been habituated to the everyday speech of activists to shine a light on the social navigation protection methods that make sense to them in the spaces in which they operate. However, akin to kujitoa which is also reliant on one's luck, kupenya appears to be specifically oriented around three critical axes: 1) enough knowledge of the law—personal or in one's networks; 2) a strong local and civil society 'loudmouth' network; and 3) the courage of the activist, in the face of violence, to put to use both knowledge and networks. These initial factors—knowledge and networks—are cultivated intersubjectively: in activist meetings and trainings (Protection International 2017), but also in the fluid informal encounters discussed by Jensen (1999: 82).

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[11] This vernacular resonates with the term *kujificha*—or to hide oneself—used by street hawkers who are constantly harassed by Nairobi's administration, and have to negotiate the risks of selling their wares 'illegally' in the city on a daily basis. I am grateful to Brigitte Dragsted-Mutengwa for alerting me to this term.

These determined grassroots actions notwithstanding, one's ability to keep secure, regardless of their ability to penya and kujitoa, is also shaped by the dynamics of the space one finds themselves in (*is the environment and people known to them?*) and the time—both political and temporal (*is it a time when the government is being particularly heavy handed on activists* (political time)?, *or have you been detained on a Friday and thus can only get help or be allowed to leave on a Monday* (real time)?).

Furthermore, being able to retreat or confront does not mean that violence or torture will not happen to you at some point. As Jensen (1999) discusses, even while the materialities of violence can be avoided to some extent, it continues to haunt those who seek to avoid it, and these intangible effects instill fear, limiting the ways in which citizens who live with the threat of violence and torture are able to respond to such phenomena when they do materialise.

But, as the experiences of the human rights defenders consulted makes clear, community advocates rally all of their experiences of violence and the potential of violence to inform their ability to predict its occurrence. This capacity allows them to plot in real time, on the 'fly,' what calculus needs to be employed at that moment. And these safety tactics of the 'other'—broadly categorised here as tactically retreating and confronting—are strengthened and anchored, ironically, by the very thing that makes them unsafe: their ongoing activism for their communities.

Conclusion

In this article I have sought to detail the diverse mechanisms through which grassroots activists in Kenya protect themselves. Using the concept of social navigation, I have detailed dynamic practices, 'motion in motion' actions, broadly categorised here as kuijtoa [tactical escape] and kupenya [tactical breakthrough], to convey the varied means by which community activists with no consistent access to formal protection mechanisms use to keep safe while doing unsafe work.

Kujitoa practices are, for example, changing one's routine so that your movements are not so predictable. In addition, labours for a breakthrough, kupenya, involve a confrontation that is hinged on powerful local or civil society networks, information about one's constitutional rights—whether this is personal knowledge or accessible within an available network, and, above all, the courage to put networks and knowledge to use in the face of threats.

While dubbed 'informal' in the literature, these everyday tactics for protection are expansive, and form the most consistent infrastructure for grassroots activists unable to navigate the bureaucracy, elitism and selective assistance of non-governmental or state organisations (Jones *et al.* 2017; Van Stapele *et al.* 2019), and who don't have the power that would enable them to create long term strategies. Against these realities,

ultimately, the need to engage in tactical retreats and confrontations falls not only on the human rights defenders facing threats because of their work, but, as well, on the very people they are trying to protect: their families, friends and community members at large.

Documentation of the safety and security tactics taken up by grassroots activists is important in view of the continued recognition of the challenges they face in their advocacy, and the inadequacy of formal protection mechanisms. Elsewhere (Kimari *et al*. 2021), as part of the aforementioned project, we have highlighted the reality that the protection needs of activists are often subsumed within other individualised rights, that the focus of protection agencies is often on more known human rights defenders, and, as well, that the risks grassroots activists face are not one off issues, but are embedded in structural violence that has varied articulations—from police violence to the withholding of identity documents for minorities for example, creating the conditions for risks that may be diffuse and difficult to get comprehensive redress from.

Notwithstanding the persistence of a treacherous human rights environment, this 'first line of defense' continues to try and change an unsafe world into a safer one. Future research on human rights defenders in Kenya can explore avenues for engendering much more accountable and accessible formal protection mechanisms, so that they can offer a viable safety net to couch and amplify activists' tactical retreats and confrontations.

References

Alves, J.A. (2018), *The Anti-Black City: Police Terror and Black Urban Life in Brazil* (Minneapolis, University of Minnesota Press).

Amnesty International (2013), 'We are like rubbish in this country': Forced evictions in Nairobi, Kenya', (Amnesty International). https://www.amnesty.org/en/documents/afr32/005/2013/en/

De Certeau, M. & Mayol, P. (1998), *The Practice of Everyday Life: Living and Cooking* (Vol. 2) (Minneapolis, University of Minnesota Press).

Human Rights Watch (HRW). (2020), 'Kenya: Events of 2020', HRW Official Website. https://www.hrw.org/world-report/2021/country-chapters/kenya#

Jensen, S. (1999), 'Discourses of Violence: Coping with Violence on the Cape Flats', *Social Dynamics*, (3) 2: 75–97.

Jones, P.S., Kimari, W. & Ramakrishnan, K. (2017), 'Only the people can defend this struggle': the politics of the everyday, extrajudicial executions and civil society in Mathare, Kenya', *Review of African Political Economy*, 44(154), 559–576.

Independent Medico-Legal Unit (IMLU) (2011), *Upscaling Torture Prevention and Responses in Kenya: National Torture Prevalence Survey Report 2011* (Nairobi, IMLU).

Inter-Agency Standing Committee (IASC) (2016), *Policy: Protection in Humanitarian Action* (October 2016). https://interagencystandingcommittee.org/system/files/2020-11/IASC%20Policy%20on%20Protection%20in%20Humanitarian%20Action%2C%202016.pdf

Inter-Agency Standing Committee. (2021), Official Website. https://interagencystandingcommittee.org/the-inter-agency-standing-committee

International Committee for the Red Cross (ICRC) (2009), *Professional Standards for Protection Work: Carried Out By Humanitarian and Human Rights Actors in Armed Conflict and other Situatioins of Violence*. ICRC Geneva. https://www.icrc.org/en/doc/assets/files/other/icrc_002_0999.pdf

Kenya National Commission On Human Rights (KNCHR) (2017), *A Handbook On the National Coroners Service Act 2017*. https://www.knchr.org/Portals/0/Handbook%20On%20The%20National%20Coroners%20Service%20Act%2C%202017_2018.pdf

Kenya National Commission on Human Rights (2016), *Defending the Defenders: Human Rights Defenders in Conflict with the Law*. https://www.knchr.org/Portals/0/HRD%20Downloads/Report%20on%20the%20Status%20of%20HRDs%20in%20Conflict%20with%20the%20Law.pdf?ver=2018-06-03-120225-007

Kimari, W. (2017), 'Nai-rob-me Nai-beg-me Nai-shanty: Historicizing Space-Subjectivity Connections in Nairobi from its Ruins', *PhD thesis*. York University.

Kimari, W., Jensen, S., Kelly, T. & Oygard, K. (2021), '"The first line of defense": grassroots activists and protection in Kenya', *Open Global Rights*, April 23. https://www.openglobalrights.org/the-first-line-of-defense-grassroots-activists-and-protection-in-kenya/

Kimari, W. (2020), 'War-Talk: An Urban Youth Language of Siege in Nairobi', *Journal of Eastern African Studies*, 14 (4): 707–723.

Kiprono, D. (2017), 'Prevention of Torture Act is a vital step in the right direction', *Daily Nation*, April 25. https://www.nation.co.ke/oped/opinion/-Prevention-of-Torture-Act-vital-step-right-direction/440808-3903642-82owe7/index.html

Kiprono, D. (2019), 'Effect prevention of torture laws to enhance political accountability', *Standard Media*, January 7. https://www.standardmedia.co.ke/commentary/article/2001308544/effect-prevention-of-torture-laws-to-enhance-police-accountability

Mutunga, W. (2020), 'Saba Saba at 30: The Struggle for Progressive Alternative Political Leadership in Kenya Continues'. *The Elephant*, July 10. https://www.theelephant.info/op-eds/2020/07/10/saba-saba-at-30-the-struggle-for-progressive-alternative-political-leadership-in-kenya-continues/

Nah, A.M., Bennett, K., Ingleton, D. & Savage, J. (2013), 'A Research Agenda for the Protection of Human Rights Defenders', *Journal of Human Rights Practice*, 5(3): 401–420. https://doi.org/10.1093/jhuman/hut026

Nyairo, J. (2006), '(Re) Configuring the City: The Mapping of Places and People in Contemporary Kenyan Popular Song Texts', in M. Murray & G. Myers (eds) *Cities in Contemporary Africa* (New York, Palgrave Macmillan), 71–101.

Office of the UN High Commissioner for Human Rights (OHCHR). 'Social Justice Movement in Kenya'. https://www.ohchr.org/EN/NewsEvents/Pages/SocialjusticemovementinKenya.aspx

Ombour, R. & Bearak, M. (2020), 'On Our Own': Kenyan activists feel alone in the fight against police brutality', *Washington Post*, July 12. https://www.washingtonpost.com/world/africa/kenya-police-protests-brutality-pandemic/2020/07/11/a324f802-c0a4-11ea-8908-68a2b9eae9e0_story.html

Petrasek, D. (2015), 'Human Rights and Social Justice—A False Dichotomy?' *Open Democracy*, November 10. https://www.opendemocracy.net/en/openglobalrights-openpage/human-rights-and-social-justice-false-dichotomy/

Protection International. (2017), *Criminalisation of Rural-Based Human Rights Defenders: Impact and Counterstrategies*. Protection International. https://www.protectioninternational.org/sites/default/files/23102017_PI_Kenya_criminalisation_web.pdf

Republic of Kenya (2010), *Constitution of Kenya* (Kenya, Government of Kenya).

Republic of Kenya (2017), *The Prevention of Torture Act 2017*. Kenya Gazette Supplement No. 55. http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/PreventionofTortureAct2017.pdf

Republic of Kenya (2017), *The National Coroners Service Act 2017*. Kenya Gazette Supplement No. 98. http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/NationalCoronersServiceActNo18of2017.pdf

Republic of Kenya (2018), *Third Periodic Report Submitted by Kenya Under Article 19 of the Convention pursuant to the Optional Reporting Procedure*, due in 2017. https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/KEN/CAT_C_KEN_3_5856_E.pdf

Swart, E. (2012), 'Gender-based Violence in a Kenyan Slum: Creating Local, Woman-Centered Interventions', *Journal of Social Service Research*, 38 (4): 427–438.

Van Stapele, N., Woensdregt, L., Nencel, L. & Rwigi, E.K. (2019), *Towards Inclusive Partnerships: The Political Role of CBOs and the Official Development Aid System*. INCLUDE. https://includeplatform.net/publications/towards-inclusive-partnerships-the-political-role-of-community-based-organisations-and-the-official-development-aid-system-in-nairobi-kenya/

Vigh, H. (2009), 'Motion Squared: A Second Look at the Concept of Social Navigation', *Anthropological theory*, 9(4): 419–438.

Wacquant, L. (2020), 'Territorial stigmatization in the age of advanced marginality', *Thesis Eleven*, 91(1): 66–77.