"If you want to kill a dog, you start by giving it a bad name."

(or Give a dog a bad name and hang him)

A single-case critical discourse analysis of state-civil society relationship in the Hybrid regime of Kenya

Abstract

This paper takes a closer look at civil society-state and global relations in the hybrid regime of Kenya, through Critical Discourse Analysis developed by Norman Fairclough. The paper looks closer at diverse sets of text produced by various actors such as the Kenyan state, Global institutions and local civil society actors. The analysis concludes that the hybrid regime of Kenya has consolidated power towards civil society through discursive and institutional means. Furthermore, it concludes that local civil society circumvents local hegemony by connecting to global patterns of institutional and bureaucratic language.

Keywords: Critical Discourse Analysis, State Regime, Hybrid State, Human Rights, Civil Society, Global Governance, Kenya

LUND
UNIVERSITY

Daniel Sahle, Master Thesis, Graduate School, Lund University

List of abbreviations

- **CDA** - Critical Discourse Analysis
- **CSO** - Civil Society Organization
- **EACC** - Ethics and Anti-Corruption Commission
- **GONGO** - Government-Organized Non-governmental Organization
- **ICC** - International Criminal Court
- **IEBC** - Independent Electoral and Boundaries Commission
- **IGO** - Intergovernmental Organization
- **KRA** - Kenya Revenue Authority
- **KHRC** - Kenya Human Rights Commission
- **KNCHR**- Kenya National Commission on Human Rights
- **MOP -** Member of Parliament
- **NGO -** Non governmental organization
- **PBO** - Public Benefit Organization

<u>**Table of Contents**</u>

1) Introduction

The global arena of states, global institutions and CSO-actors is changing rapidly. The material and social conditions, and how we discuss, conceptualize and communicate surrounding them, are being restructured. One of these global shifts pertain to the shrinking space for civil society. The Freedom House's "World freedom report 2018" shows a consistent global trend of decreasing global freedoms and democratic governance (Freedomhouse.org, 2019a). In face of the civic and democratic space shrinking, research on the subject - from various theoretical perspectives - have become very relevant. This trend that has been witnessed in both countries associated with the '*Global North'* and the *'Global South'*.With populist leaders in countries such as Brazil and the USA having grabbed disproportionate amount of media's and researcher's attention; the research on contemporary civic space in the Global South could become an interesting counterpoint.

Africa in general, and its sub Saharan regions in particular, have faced both material and political obstacles in regards to human rights, good democratic governance and development (Mubangizi, 2014). In the struggle for independence, and subsequent political strife, democratic institutions have had challenges to take root. The potential causes of this deficit are many - kleptocratic governments, corrupt regimes and authoritarian rule among them.

Kenya is an exceptional country in many ways. Officially, Kenya is a presidential representative democratic republic. However, Kenya has experienced important challenges to maintaining a fully fledged democracy, both historically and contemporarily. These have included ethnic violence and deficits in terms of both democratic and good governance. Kenya has also faced fundamentally political issues, such as maintaining sufficient separation of power between executive, judiciary and legislative branches of government (Oseko, 2012). Furthermore, Kenya is currently ranked as "partially free" in the Freedom House Index (Freedomhouse.org. 2019b).

Today, Kenya can be more adequately classified as a hybrid regime. As a state which has not yet fully undergone a democratic transition, and hence maintains some features of an autocratic regime clientelism and corruption - while simultaneously incorporating some liberal democratic aspects on a mainly rhetorical level (Rocha Menocal et. al., 2008; Wahman, 2104; O'Neil, 2010). Kenya has been shown to posses insufficient checks and balances between different branches of government (Mutua, 2001; Oseko 2012). The Kenyan context gives an interesting perspective on the meaning of democracy, authoritarianism, human rights, CSOs and development. In this paper, the meanings and interactions between these concepts will be explored through the critical analysis of discourses relevant to the relationship between civil society and state.

During 2017, two NGOs - AfriCog and Kenya Human Rights Commission (KHRC) - were deregistered by the Kenyan NGO Coordination Board, the authority tasked with the regulation and monitoring of NGO activity. This is particularly interesting as 2017 was also a year in which Kenya held its general elections. These were the second elections since the new constitution of 2010 (Negash, 2017; Iebc.or.ke, 2017). The election results were controversial, and contested from a number of civil society groups (Negash, 2017). This paper will focus mainly on the discourses and deregistration of the KHRC - who were deregistered, appealed to the high court, and won the case against the NGO Coordination Board authority (Maina, 2018).

1.1) Aim

This paper aims to study the underlying power-relations and discourses which surrounds the state and civil society interaction through a single case-study. The objectives of the study is to elucidate the discourses surrounding the Kenyan NGO Coordination Board 2017 deregistration of Kenya Human Rights Commision (KHRC). However, it will also situate these discourses within the broader backdrop of discourses from global intergovernmental organizations (IGOs) and non governmental organizations (NGOs) and inter-linked civil society counter-discourses. This is to situate the case within the broader global and local trends of civil society-state relations. The aim will be achieved through using theories related to civil society and state regime, as well as critical discourse analysis of relevant actors surrounding the case.

The ambivalent relationship between the civil society actors of Kenya and the NGO Coordination Board could help bring clarity into where Kenya is now in terms of its democracy. Ranked as a partially free by Freedom House - this case study could help further determine the features of the contemporary Kenyan democracy and society and how it relates to global aspects of civil society.

1.2) Research Question

The guiding research questions will be as follows:

- What can the broader local and global discourses surrounding 2017 deregistration of KHRC reveal surrounding the underlying power-relations and relationship between global actors, state and local civil society actors in a hybrid regime such as Kenya?

  - How does global aspects and governance regime structure influence the manifestation of discursive strategies?

○ What is the interplay between discursive hegemony and counter-hegemony within the selected case?

1.3) Structure of the paper

The paper be structured as follows: It will begin by presenting the guiding research questions and the aims of the research. It will then continue to introduce the Kenyan context and the case in greater detail. Subsequently, the paper will move on to discuss the conceptualizations and theoretical approaches which will then guide the analysis of discourses. In the methodology section, choices in discourse analysis methods will be discussed and motivated. The empirical material and findings will then be presented in order to create a basis for the analysis and discussion chapter; which will seek to connect all previous parts and provide the answers to the research questions. Lastly, the conclusion will provide a summary of the paper, as well as its key findings.

2) Background and Literature review

2.1) Historical and contextual overview

2.1.1) Historical overview - ethnic violence and the road to democracy

Kenya began its history as an independent nation state in 1963. A multiparty democracy was institutionalized, with regional self-determination strongly emphasized. However, throughout the decade power became increasingly centralized within the Kenyan African National Union (KANU) party led by Jomo Kenyatta. Soon it became the only legal party. Although the constitution at the point of independence did endow Kenyans with democratic rights such as right of assembly and free speech - the president retained the right to detain people without trial if they were deemed a risk to public security (Ominde et. al, 2019). Throughout the second half of the 20th century, ethnic divides grew, largely due to mismanaged land reforms, inequality and corruption. Particularly

the 1980's saw a greater extent of unhinged presidential power, under president Daniel arap Moi (Ibid , 2019)

Kenya was a recipient of large amounts of aid from the western powers, which helped the country steer away from larger economic issues. However, this was also partly an explanation for the reintroduction of a multiparty system in 1991 (Ibid, 2019) The highly tense election in 2007 resulted in a dispute over the final results, which led to widespread violence and protest. Independent international observers also contested the result. Furthermore, the controversial election exacerbated the already existing ethnic tensions. This sparked a circle of ethnic violent clashes in which approximately 1000 people died and more than 600,000 people were displaced (Ibid, 2019).

Later in the year of 2007, the ICC released the name of six suspects who were to be prosecuted for crimes against humanity committed during the violent aftermath of the election. One of the suspects were Uhuru Kenyatta, the incumbent president of Kenya, and then deputy prime-minister William Ruto. Although the case was later dropped - the consequences of this investigation still resonate in contemporary Kenyan politics. Kenyan civil society was involved with contributing evidence to the ICC, however, due to insufficient evidence and cooperation from the side of the Kenyan authorities the case was dismissed in 2014 (Ominde et. al., 2019; Birhanu, 2018). After the crisis, peace was reached through further reconstruction of the political system. In 2010, a new constitution which limited the power of the presidency and executive branches of government was introduced.. The local governments now instead had more power (Ominde et. al., 2019).

2.1.2) Challenges to Human Rights and Democracy in Africa and Kenya

Almost all post-colonial african states have included some form of civil and political rights protection within their constitution when they became independent from colonial rule - however this did not always translate into implementation. Instead, violation of these rights were commonplace throughout the continent (Mutunga and Mazrui, 2002).

Many saw this as a transitional phase, due to the establishment of a post-colonial state, coupled with the geopolitical tensions of the cold war and many believed would soon be rectified into more democratic rule (Ibid, 2002). The post cold war unipolar order has indeed offered some pressures for democratization across sub-saharan Africa (Wahman, 2014). Among human rights advocates economic, social and cultural rights have been contested by ideology to a greater extent than civil rights and political liberties. The Kenyan human rights context has however encompassed human rights as meaning both subsistence as well as democratic rights (Mutunga and Mazrui, 2002).

Throughout Kenya's history as an independent country, there has been a shifting degree of autocratic rule. During the most repressive years, under Daniel arap Moi - between 1982 and later liberalizations of 1991/1992 - torture and repression were commonplace. During these years, however, there were also many NGOs, religious CSOs and journalists that championed for human rights (Pagnucco et. al 2011).

2.1.3) The latest election

In the latest election of 2017 the front-runners were Raila Odinga and Uhuru Kenyatta. During the anacrusis to the election, much concern was voiced by Raila Odinga's oppositional party 'National Super Alliance' (NASA), as they thought that Kenyatta (representative of the Jubilee Party) would rig the election. The election was held on the 8th of August and on the 11th of August Kenyatta was declared winner. The general election results were largely uncontested by international observers such as the EU (Nagash, 2017). However, the results were locally contested. Many civil society organizations took note of the dubious circumstances surrounding the election, such as extrajudicial killings, mishandling of voters, electoral malpractices and unlawful arrests (Ibid, 2017).

Furthermore, the oppositional NASA maintained that it was a rigged election which led to the annulment of the election by the Supreme Court. This was a historical first, as an African court has never before annulled an election result. However, due to quickly passed laws, political instability, low voter turnout and an inability of the IEBC to

function properly - the results of the reelection of 26th of october were also under question (Ominde et. al., 2019).

2.2) Civil Society in Kenya

2.2.1) Civil Society in Kenya

The 1990's were a decade in Kenya in which many freedoms were gained, and civil society's role in Kenya was increased. During this time, several important and relevant NGOs were established - among them were Legal Advice Center (Kituo Cha Sheria), Law society of Kenya (LSK), the Greenbelt Movement, and the Federation of Women Lawyers-Kenya (FIDA-Kenya) which form a essential backbone of Kenyan civil society movements working with human and civil rights (Pagnucco et. al 2011). A large contributing factor to liberalizations was pressure from external donors (Wahman, 2014). Furthermore, civil consciousness and pressure for democratic reform increased steadily in lew of a democratic transformation during the 1900s throughout the continent. This civil consciousness erupted during the 1990's. This came at the same time as the cold war ended, and western political pressure towards liberalization could be exerted through direct intervention or aid programs from the Bretton Woods System. With the collapse of the Soviet Union, the fear of pushing the African states toward the Second World block was alleviated (Mutunga and Mazrui, 2002). However, this new geopolitical situation, coupled with expanded globalization of markets and Structural Adjustment Programs (SAPs) did not necessarily help the majority in actually realizing their human rights. Instead, it favoured the roll back of the state and made subsistence more challenging for the citizens within many African states. However, it did give the opportunity for a real resistance culture to flourish and gain more influence (Mutunga and Mazrui, 2002).

2.2.2) The KHRC

It was at this historical juncture that the KHRC was created in the USA in the 1991 by five Kenyans studying and working there (Khrc.or.ke, 2019a). Two of these were in

political exile at the time. It was formed as a response to the growing pro-government lobby in the USA, and the surmounting pressure for multi-party democracy inside and outside of Kenya. As the political climate opened up, KHRC could move their activities to Kenya. It was officially registered as an NGO in Kenya in the year 1994 (Pagnucco et. al 2011; Khrc.or.ke, 2019a). At the time of its conception the KHRC intended to a break with the culture of dependency, despotism, cronyism, negative ethnicity, sexism and other forms of discrimination. (Mutunga and Mazrui, 2002; Khrc.or.ke, 2019a). Since then the organization has incorporated a broader strategy and definition of its work with human rights - including economic and community-focused rights (Khrc.or.ke, 2019a).

Today, the organization holds a more integrative approach to rights. As the organization moved its activities to Kenya, it started agitating for 'bourgeoisie' rights (i.e. fundamental citizen rights which were argued to be essential prerequisites for attaining real democratic rights) and reporting human rights violations. As they established themselves, they moved towards advocating human rights and expanding networks for Human Rights NGOs (Mutunga and Mazrui, 2002).

Today the KHRC has its main offices in the Nairobi and a staff team consisting of 18 people (Khrc.or.ke, 2019b; Devex.com, 2019). The organization is headed by the board, with notable members such as Maina Kiai (the former United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association), the chairman and human rights activist and professor of law Makau W. Mutua and Executive Director and Secretary of the Board George Kegoro (Khrc.or.ke, 2019c). Recently KHRC has worked in on a number of projects involving human rights-centered governance, non-partisan electoral dialogue as well as emporwing stateless communities in Tanzania (Devex.com, 2019).

2.2.3) Civil society challenges in Kenya

The basis for the human rights based work in Kenya, are just as globally, the international conventions of the United Nations, and the Universal Declaration of Human Rights (UDHR). Additionally, these group find their legitimacy from the African Union's Charter on Human and People's Rights. In 2011, the percentage of general human rights NGOs was 27 percent of the total registered organizations in Kenya (Pagnucco et. al 2011).

Contemporarily, human rights have been moved to the periphery in the horn of Africa due to geopolitics, post-colonial and western donor trends as well as a contemporary evolutions within state-civil society relationships. Birhanu (2018) iterates how states such as Kenya have evolved in relation to civil society and human rights. Those in power are increasingly using a legal framework to suppress civil society actors and maintain power. Instead of illegally detaining or cracking down with violent means, they use legal frameworks, defamation and economic means to combat civil society. Birhanu (2018) shows a situation in which transnational human rights pressures do not necessarily lead to change in state behaviour, even if the state is particularly vulnerable. It highlights how systemic aspects (i.e. securitization, the war on terror and market expansion), within economics, geopolitics and development can limit the propagation of human rights.

Features of transnational and global trends are demonstrated to be important to take in account when understanding the case. The western donor states' focus on securitization and combating terrorism has led to a situation where keeping stable states in East Africa has been of larger concern than human rights experienced by citizens. This is a process where development aid and funding of security have become tightly intertwined - also known as the 'securitization of aid' (Birhanu, 2018 p. 103). The new geopolitical situation and China's larger role has lead to a situation where western donor leverage has been diminished and developing and middle income countries can negotiate the

terms of loans and aid. Hemce, the fact that Kenya is among the top-performing economies and one of the larger political powers in the continent and region creates less incentives for them to improve their human rights practices (Birhanu, 2018).

In a multi-polar world, the donor conditionality does not seem to be enough to dissuade power-holders in states such as Kenya and Ethiopia from employing repressive techniques or maintaining diplomatic relationships with repressive regimes (Ibid, 2018). This power structure seems also to stem from an increasing unwillingness from Western donors to support civil society in southern contexts, partly due to a preoccupation with their own democratic down-sliding and rise of authoritarian and populist forces. This is limiting civil society's opportunities to challenge the political status quo.

The conflation between post-colonial western meddling and human rights seems to be prevalent as well. States often use these as motivation to not take human rights in consideration, as they are seen as foreign meddling in state affairs (Birhanu, 2018). Furthermore, Birhanu (2018) describes a situation in Kenya in which the state institutions such as NGO Coordination Board uses other institutional frameworks such as Kenya Revenue Authority (KRA) to spy and impede civil society activity.

2.2.4) The PBO Act of 2013

The PBO Act of 2013 was a joint measure between civil society and the government, and while it still has its shortcomings, does create a more robust and democratic framework for civil society organizations operating within the country. With the ascension of this law, a collaborative regulatory system was introduced. Under this system two co-regulatory bodies ('*NGOs Council*' and '*National Federation of Public Benefit Organizations*') consisting of representatives from civil society were instituted. However, the importance of licensing and registration-status were more firmly institutionalized, as operating an NGO without being properly registered became a criminal offense (Ochido, 2013).

Furthermore, the law mandated the *Public Benefits Regulatory Authority* as the agency which would assume the responsibilities previously vested in the NGO Coordination Board (Ochido, 2013). Additionally, the law instituted a new framework for appealing authority sanctions or deregistration through the newly formed PBO Disputes Tribunal. This newly formed tribunal would create an avenue for more efficient and cheaper option than previous appeals which had to be made to the High Court (Ochido 2013). The government has however failed to implemented this act, which has created weak statutory frameworks for the protection and management of NGOs and PBOs in Kenya (Otieno, 2017).

2.3) NGO Coordination Board Deregistration of KHRC

2.3.1) Predating NGO Coordination Board 2017 KHRC de-registration

Kenya has had a long history of strained relationship between the state and civil society. In the recent decade, an increase in oppressive rhetoric and regulation in terms of civil society, media and the non-governmental sector (Human Rights Watch, 2017). In 2014 over 510 civil society organizations were deregistered, bank accounts were frozen and their operations made illegal (BBC News, 2014). In the subsequent year over 900 organizations were announced to be deregistered by the government (Human Rights Watch, 2017). The deregistrations came largely as a response to the new anti-terrorism act, and the securitization of the sector, aiming at targeting funding of Kenya by terrorist organizations such Al-Shabab and al-Qaeda (BBC News, 2014).

A year prior to the state probe and deregistration of 2017, the NGO Coordination Board attempted to do initiate a similar processes - which was dismissed by the High Court "*as void, null and unconstitutional*" (Amnesty, 2017a; Mutua, 2017; Civil Rights Defenders 2017; Cherono, 2017c). The High Court is tasked with handling civil, criminal jurisdiction and constitutional matters according to the 2010 constitution (Ominde et. al., 2019). This had not been the first time that similar action had been taken by the

NGO Coordination Board, as it had deregistered 957 civil society lobbies in 2005 - KHRC among them. This attempt was however quashed in court (Kakah, 2017a).

2.3.2) Deregistration and state probe of 2017

KHRC had a controversial role within the election of 2017, as they were part of a civil society coalition tasked with monitoring the contested election and its results (Amnesty.org, 2017a). On August 14 of 2017, KHRC were deregistered for allegedly evading taxes, possessing illegal bank accounts, illegally hiring expatriates and dissatisfactory book-keeping (Amnesty.org 2017a, B. Otiendo, 2017; Chereno, 2017a; Kadida, 2017a; Muthoni, 2017; Mutua, 2017; Abdi, 2017). This was only days after president Kenyatta had announced his political victory in the general elections of the same year (Mutua, 2017).

The KHRC were also accused of mismanagement of 1.2 billion Kenyan shilling, tax-evasion amounting to 100 million Kenyan Shilling and paying remuneration to board members that were supposed to be volunteers (Asamba, 2017; Munuhe, 2017; Cherono, 2017b; Kakah, 2017b). As mentioned earlier, the NGO Coordination Board had attempted to perform a similar deregistration in 2015, which was then deemed unconstitutional by the High Court (Amnesty.org, 2017a; Mutua, 2017).

Since its registration in 1994 the KHRC has been an organization which has been promoting human rights in Kenya both in private and public sectors. This move by the state-led authority was categorized as an attempt to hinder and intimidate civil society, rather than enforcing the law. The KHRC framed these allegations as falsifications and methods of intimidation performed by the NGO Coordination Board and its executive director Fazul Mohamed (Agutu, 2017). The KHRC believe that the deregistration came as a response to having convened with other civil society actors, with the plan of contesting the election results, and the re-election of president Uhuru Kenyatta (Cherono and Mwere, 2017)

During the state probe, the organizations were required to present their certificates of registration, donor lists from the last three years, bank account and tax information as well as work permits and information of any expatriates which have been involved (Onyango, 2017) The NGO Coordination Board recommended the Central Bank of Kenya to freeze all of the bank accounts in the NIC Bank and Commercial Bank of Africa allegedly owned by the organizations (Asamba, 2017; Munuhe, 2017; Muthoni 2017; Otieno, 2017). Further strengthening the connection to electoral politics was the fact that Key Empowerment Foundation Kenya, an organization connected to the NASA-coalition through the oppositional president candidate Raila Odinga's daughter - Rosemary Odinga - was also deregistered. This after it had allegedly received illegal funds amounting to Sh530 million from the US-based "Open Society Foundation" (Muthoni, 2017; Mutua, 2017)

2.3.3) Legal action and aftermath

On Monday the 21st of 2017, the High Court ruled that the deregistration of KHRC would be repealed. Following an application by the KHRC the case was suspended until the 2nd of October of the same year (Kakah, 2017a; Kadida, 2017b). KHRC followed to sue the NGO Coordination Board on the basis of arbitrary and unconstitutional deregistration (Kakah, 2017a). In the lawsuit, KHRC maintained that the allegations were false, and that the defamation they had sustained would harm their long standing reputation with international donors and collaborators (Kakah, 2017a; Kakah, 2017b; Kadida, 2017a).

The NGO Coordination Board's then executive director, Fazul Mohamed, was simultaneously being investigated for having been employed on fraudulent merits and academic achievements. This investigation which was being conducted by the Ethics and Anti-Corruption Commission (EACC) came to the conclusion that Mohamed has gained office through fraudulent means (Kakah, 2017c; Asamba, 2017; Cherono, 2017c). After suspending the NGO Coordination Board, and having instituted a

temporary forced leave on Fazul - president Kenyatta moved the NGO coordination operations into the Ministry of the Interior (Cherono and Mwere, 2017). This was a highly controversial move, which to many symbolized impunity and the high standing which Fazul had in relation to the Jubilee-government. On August 16 2017, following the deregistration, the acting Interior Cabinet Secretary Fred Matiang'i urged Fazul to stop the prosecution process (Asamba and Wambua, 2017; Civil Rights Defenders, 2017; Wanjala, 2017). Directives to freeze bank accounts and assets were also repealed by a ruling of the High Court, following a suit from AfriCOG (Maina, 2017).

The case drew international attention from Amnesty International, Human Rights Watch and the UN Human Rights Office of the Commissioner, who also expressed worry over the violence that erupted after the announcement of 11th of August election results (Ohchr.org, 2017a; Houreld and Miriri, 2017; Kelly, 2017). The UN High Commissioner for Human Rights deemed the de-registration as a '*grotesque*', and a '*witch-hunt*' and cited the reported extrajudicial killings of innocents in connection to the violence surrounding the election (Kelly, 2017). In 2018, the High Court ruled in favor of the KHRC. It was ruled that Fazul had overstepped the mandate of the NGO Coordination Board when they contacted the KRA for evaded taxes and the Kenyan Central Bank in order to freeze the KHRC-owned bank accounts. The lawsuit ended with NGO Coordination Board being sentenced to pay KHRC h2 million compensating them for the illegal freezing of their assets and illegally deregistering the organization (Maina, 2018).

3) Theoretical Frameworks

3.1) Civil society, globalization and state authority - meanings, understandings and definitions

In order to examine civil society and state relations, one must first understand the theories surrounding civil society. A theorist that sets out to capture the problematic

aspects of discussing civil society is Keane (2003). From this perspective, it is impossible to reduce "*civil society*" to an uncomplicated homogeneous group and term. According to Keane (2003) genealogy of the word "*civil*" has several roots. It connects both to the words "*civility*" (i.e. liberal democratic values) and "*civilian*" (i.e. *'non-governmental'*). The term "*Civility*" denominates adherence to certain ethical norms of western, progressive, liberal, democratic and modern values. This word is associated with tolerance, religious freedom, freedom of the press, good governance, legitimate national constitutions and the legitimate social contract between government and governed.

Simultaneously as alluding to democratic and liberal practices and norms, the term "*Civil*" in civil society is associated with any and all forms of non-government actors (i.e. civilian actors). These two words are often used interchangeably, which can lead to premature and inaccurate conclusions surrounding the normative components of civil society (Cox 1999; Keane 2003; Spini 2010). In this second component of civil society, corporate networks and populist groups could easily be considered to be essential components of civil society. Spini (2010) describes how many theorists in civil society have made an untrue equivalence between "*civility*" and "*civilian*" society - equating their normative values within academic conceptualizations. In the beginning of the term, in 18th and 19th century, economic activities were important in defining the unifying characteristic of civilian society which is still subconsciously prevalent today. This view heavily corroborates with the liberal tradition where a sharp line is drawn between state and general society - where the state's control should be minimal. All acts that are not political or connected to the state, are hence categorized jointly. Hegelian traditions regarding civil society also emphasize the importance of the state as a source of normativity and laws which can assist in the conflicts which will naturally arise in society (Spini, 2010).

Keane (2003) demonstrates the challenges of studying civil society empirically, due to the lack of proper definition, data and the inherent informality of the its occurrence.

According to Keane (2003) a lack of definition makes civil society residual term that describes "*everything and nothing*" at once. The lack of clear cut definition creates a situation in which one must be extremely clear on which groups are being studied and the aims of study (Keane 2003, p. 8-9). According to Keane (2003, p. 15; Ibid, p. 20) civil society, and its global components, could be defined as a heterogeneous, force which monitors state and suprastate actors in different ways.

Academics such as Cox (1999) understands civil society as: "[...] *the realm of autonomous group action distinct from both corporate power and the state*" as well as: "[...]*'civil society' has become the comprehensive term for various ways in which people express collective wills independently of (and often in opposition to) established power, both economic and political.*" (Cox 1999, p. 10). Scholte (2007, p. 7) gives the following definition: "*Civil society - the practice of being a citizen, attaining rights of the polity - outside of the political or corporate system.*" These definitions closely echoes the Habermasian tradition of separation between the *'Life World'*, of which civil society is closely linked, and the *'System'* of which state apparatuses and formal power is derived. In more cosmopolitan and Kantian perspectives, civil society can be seen as a unifying force of the polity, and an avant-guard for the supra-national democratic governance which most likely should arise as a consequence of modern global power shifts (Spini, 2010).

Another theoretical key-figure is Gramsci and his theoretical perspectives on marxism, hegemony and power. His perspectives are essential to gain an understanding of the contemporary academic definitions and theories surrounding civil society. The aforementioned theorist Robert W. Cox (1999) takes on a gramscian perspective on civil society; and in his view Gramsci succeeds in adding an important ideational aspect to the typically materialist dialectic of marxist political and historical philosophy. Gramscian theory questions many modernist rationalist assumptions. Marx primarily focused on the material economic relations of production, and how they govern history, which in many ways is relevant to the contemporary global class-structure and

governance. Gramsci however, adds a cultural and ideological aspects of civil and economic society, which assists in understanding the current state of governance. The antiquated class-structures of classic marxism have been somewhat altered, which also has changed the dynamics and role of civil society and class-identity. (Cox, 1999) According to Gramscian thought, hegemony has the possibility of both maintaining and countering the status quo - by using discourse to restructure the citizens' perception of "*reality*". Gramscian tradition sees civil society as dually split between being bourgeoisie non-state activities aimed at sustaining their hegemony as well as a counter hegemonic and an emancipatory force stemming from the lower classes(Cox, 1999). In contemporary understandings of civil society, its emancipatory dimensions have been emphasized. Previously, civil society stood for the relationship between political power and citizens and the state. This echoes the split between "*civility*" and "*civilian*" forces in society. Cox (1999) envisions civil society as both "*shaped by*" and "*shaper of*" the state. He uses Gramsci's conceptualizations in which the government and civil society functions almost like a cell; the state provides a protective shell against intruders while political change and political activity should stem from within civil society. When government tries to institute its own hegemonic revolution from above - it is bound to fail or to become grotesque. As Cox (1999) writes: "*Civil society would be the base upon which a new or reconstructed political authority would have to rest*." (Cox 1999, p. 12). Much like Keane (2003), Cox (1999) recognizes the western-influenced roots of the conceptualizations of civil society and its complex and heterogeneous nature.

In true constructivist fashion, Cox (1999) asserts that no rational universality exists. In typical western views of politics and society, the state has traditionally provided the basis for the ultimate "*universality*". Legitimate states must obey the rule of law. Even kings of old were exempted from the universality and authority derived from the rule of law. Civil society is now seen as a third state power, not bound by state interests, or by market and economic interests. Instead, citizenry has organized through voluntary common and particular interests aimed at achieving a common levels of welfare and rights again relating to the habermasian "*private sphere*" (Cox, 1999).

The globalization of both transnational civil society and the common understandings of it, in many ways stems from the wider globalization of the discourse associated with it. The diffusion of the discourse, culture and conduct of civil society as well as the ideas and language surrounding it is an important aspect of the globalization and spread of civil society around the world. Among these conceptualizations of civil society is its connectedness to discursive concepts such as humanitarianism and human rights (Kumar, 2008).

3.2) The Hybrid regime and the illiberal democracy

This paper conceptualizes an understanding of Kenya as a hybrid regime, also known as an illiberal democracy. Typically, a hybrid regime incorporates some mechanisms of the democratic state such as elections, while simultaneously operating through mechanisms of dubious democratic legitimacy. Within these states liberty has failed to be fully institutionalized, and authoritarian non-democratic practices and institutions coincide with democratic ones. Rigged or illegitimate elections and harassment of opposition are commonplace within these types of regimes (O'Neil, 2010 p. 162-164). A close link to between personalization of power exist in various regimes which incorporate authoritarian features, including multi-party states. Albeit Kenya is not personalist per sé, it is currently structured as a *limited multi-party regime*. This particular regime type is associated with various degrees of personalized rule (Van den Bosch, 2015).

This type of regime has contemporarily become more important, as many non-democratic states have transitioned into some form of hybrid regime rather than liberal democracies. Another common way of dubbing these regimes are *'partially free'*. In these regimes the rule of law - although sometimes institutionalized - is often disregarded. It is also typical of such regimes to lack sufficient separation of power between executive, legislative and judiciary branches of government (O'Neil, 2010 p. 163) Many of these attributes demonstrably fit well into the Kenyan political context. Kenya has been demonstrated to be characterized by personalised interests, clientelism

and elite impunity. The result is often the persistence of clientelistic structures and high levels of corruption, especially when citizens have few means of holding elites accountable (Rocha Menocal et al., 2008). Defining Kenya as a hybrid regime and does give some preliminary ideas on how to understand the current civil society-state relationship. However, these regimes are quite diverse and does not entail strong analytical parameters on which to engage analytically. Instead it does give a basic sense of the setting in which the local Kenyan civil society operates.

3.3) Aspects of authoritarian power and consolidation

As mentioned in the previous section, a hybrid regime retains some features of both authoritarian as well as democratic practices and institutions (O'Neil, 2010). Christian Göbel's (2010) paper on authoritarian power and consolidation of said power gives three important dimensions of power within authoritarian regimes. Authoritarian consolidation could be understood as "[...] *a deliberate state project driven by political elites seeking to secure their ruling position*" (Göbel 2010, p. 183). Göbel (2010) further conceptualizes of different types of power, and mechanisms for their consolidation.

The different forms of power consolidation identified are:

Despotic
"*the power to coerce one's will on the people (despotic power),*" Göbel (2010, p. 177)

Discursive power
"*power to make people want what the government wants them to want (discursive power).*" Göbel (2010, p. 177)

Infrastructural
"*the power inherent in regulating society through institutions and organisa-tions (infrastructural power).*" Christian Göbel (2010, p. 177)

This conceptualization of power consolidation provides some form of dimensions by which one can discuss the strategies used to consolidate power. It could help explain why some forms of power are favored by authoritarian and hybrid regimes alike. Coercive means of maintaining power are costly, both from an efficiency and legitimity aspects, and alternatives might therefore emerge (Göbel, 2010). This could help explain why other forms of consolidating power could be favored by authoritarian regimes - or by elites within hybrid regimes such as Kenya. Employing these three different aspects of power gives a broader way of understanding power and its role in a hybrid regime. The despotic power can help support infrastructural and discursive power to some extent. However, it is costly and threatens to diminish legitimacy and regime stability. Infrastructural power is an effective way of relatively peacefully consolidate power further. Discursive power, is a form of consolidation employed by both democratic and authoritarian regimes. It mainly influences the cognitive filters of through which political occurrences are experienced - and hence shape perceived and actual political reality. Indicators and manifestations of discursive power can be found in consistent official ideologies, dispersion of propaganda or throughout media and education (Göbel, 2010).

3.4) Analytical framework of civil society-state relations

Newer research has questioned the neo-Tocquevillian western discussion narrative of equating civil society with democratization - in which civil society and state are different layers of the same governance superstructure, rather than two separate and independent entities contesting the constructed hegemony. Some have even suggested that western intervention into civil society is detrimental to the democratic process - as it legitimizes the authoritarian state to be repressive of civil society due to western interventionism and foreign meddling (Lewis, 2013).

Civil society in hybrid regimes and authoritarian states have a complex relationship to the state in which they are embedded. On the contemporary global stage authoritarian regimes thrive although civil society is becoming more prevalent in many cases. They

might actually be more flexible and resilient than previously conceptualized in traditional political theorization (Froissart, 2014). Illiberal regimes survive not only due to their ability to repress all civil society activity, but rather it maintains itself through allowing the *right* type of civil society organization.

Contention and citizen participation must be allowed to a certain extent, where political or material discontent is channeled in ways in which the basic "*rules of the game*" (set by the authoritarian rulers) are consciously or unconsciously accepted by the civil society (Froissart, 2014). These accepted forms of contention are commonly accepted and re-directed by illiberal regimes towards less controversial, harmful and depoliticized areas of discontent. Often identity and ethnic groups are emphasized, creating limited and divided areas of legitimate protest within mainly the socio-cultural sphere (Froissart, 2014). Today, legal instruments are used more often to suppress organization of political or critical nature. By restricting the legal space, and forcing civil society to constantly negotiate and compromise with the state, their space of action diminishes. Hence, it becomes a way of channeling and restricting the emergence of political plurality and challenge the status quo (Froissart, 2014).

Often illiberal or hybrid regime-states choose one of two options in its relationship to civil society: co-option/cooperation or repression (Tadesse and Steen, 2019). Lewis (2013) put forward a theoretical understanding of why some aspects of civil society are more prone to be repressed than others. Three main dimensions are identified to explain the relationship between the state and civil society: cultural, functional and attitudinal dimensions.

Firstly, the political and cultural context is important to take in consideration. Civil society tends to integrate parts of their given political culture. This could make western liberal conceptualizations of the role of civil society's' role harder to take root. In many ways, civil society continues to either reinforce the discourse of the authoritarian ruler, or mimicking their undemocratic structures and modes of operation. These are also the

Civil Society Organizations (CSOs) that tend to flourish inside the autocratic regime. Secondly, if the CSO has functional value (i.e. activities overlap with the goals and functions of the government) they tend to work well and are accepted or co-opted by the authoritarian state (Lewis, 2013). If they are seen by the state as allies helping them fulfill their responsibilities to the inhabitants, they are often accepted by the regime. The third set of dimensions, attitudinal, stresses a set of Civil Society Actions (CSAs) which stem from attitudes which may overlap between civil society and the state. These overlaps could strengthen cooperation between state and civil society. These shared values can even be democratic or moral in nature, for example the protection of certain marginalized groups of citizens. When these values overlap, CSOs are likely to be accepted within the regime state (Lewis, 2013).

Lewis (2013) theoretical approach adduces Young's (2000) dualistic characterization of civil society as part of either *'self-organization'* or *'public sphere'*. This view positions civil society as both independent and embedded in the state. In authoritarian or semi-authoritarian societies, civil society can help voice the concerns of marginalized social groups when representation is limited within the state. They can also assist in bridging the gap between state service provision and needs of the marginalized peoples through self-organization and service delivery . This is the mode which is often more accepted by authoritarian regimes (Lewis, 2013).

According to habermasian definitions, the *'public sphere'* is politically underpinned space of organizing civil society. Here, the public sphere interfaces between the private life sphere and the systemic world of the state. In this way, civil society interfaces between the private lifesphere and the public sphere, transmitting and distilling the issues emerging in the private sphere into the public sphere where actions of the state can be publically contested. It is mainly the public sphere which is limited in authoritarian regimes, through censorship and intimidation. The civic public space of contestation is limited more harshly than that of the private sphere or that of self-organization. This is to limit the emergence and circulation of non-official

discourses and delegitimizing discourse. This limitation comes into play in the realms of mass-communication and public opinion (Lewis, 2013).

In Lewis' (2013) view, the combination of self-organization - an inherent characteristic of civil society - in combination with a counter-discourse within the public sphere is dangerous for regimes with authoritarian traits. Hence, a combination of these activities tend to be repressed. Additionally, different parts of the state are all competing bodies within the loose framework simply conceptualized as the 'state'. In these instances alliances with certain state agencies who co-opt resources of NGOs may emerge (Lewis, 2013). Tolerance of civil society by authoritarian rulers may also stem from an insufficient ability to control as a consequence of infrastructural weaknesses. Functionalist approaches assume that civil society performs important functions that the state is incapable of doing, and yet overlaps with state goals. Sometimes civil society actors even build alliances with certain state agencies and co-opt their resources. A hybrid between state and private sphere organization may sometimes emerge - in the form of a government-organized non-governmental organizations (GONGO). These are highly instrumental and functional and serve three main purposes: 1) It compensates for lost welfare due to economic reform in many authoritarian regimes 2) It helps the government to co-opt new and emerging social groups 3) It helps to attract foreign funding for governments (Lewis, 2013).

In some cases, NGOs may just legitimize and reproduce aspects of the authoritarian rule they are situated in. An important aspect of authoritarian rule is that it is not completely separate from market and civil society. It connects to them through performative and discursive practice. Even if these aforementioned explanatory factors can not fully explain cooperation or contestation, it offers analytical strength by viewing civil society as both independent and embedded in within the state (Lewis, 2013).

3.4.1) Legal frameworks as repression

Authoritarian regimes often use legislative frameworks to restrict Civil Society Organizations in the public sphere, connecting to the infrastructural power as a consolidation strategy (Birhanu, 2018; Göbel, 2010). An example of such practice is the restriction on much income can come from foreign sources - a practice that has been implemented in both Kenya and Ethiopia (Lewis 2013; Birhanu, 2018; Tadesse and Steen, 2019). Other forms of draconian regulation, such as harsh NGO-registration laws that increase state control have also been made in a similar fashion (Gilbert and Mohseni, 2018; Lewis 2013).

In many cases, it would seem that the authoritarian or hybrid regime government's' main preoccupation is the sustaining of government legitimacy through discourse management, rather than restricting the relative autonomy of civil society. Generally, the activists engaging in counter-hegemonic discourse are the ones to face criminal prosecution, physical coercion, economic sanctions and discrediting discourse from state actors. Organizations preoccupied mainly in self-organizing are more likely to be accepted - as they do not disseminate counter-hegemonic discourse and narratives within the public sphere. This heavily limits civil society to effectively offer any type of alternatives to the policies and narratives created by the state and diminishes the political plurality (Lewis, 2013).

3.4.2) Legitimacy Discourses, Semantic Dictatorship and Civil Society

In Lewis' (2013) view, coercion is mainly a tool to maintain discursive monopoly. This is often visible in the amount of resources and effort used by authoritarian states to monitor and maintain hegemonic discourse - countering political alternatives to their regime and narrative. These hegemonic discourses are maintained through all forms of communication, such as written text, speach, rituals and visual media. These hegemonic practices are often ritualized into the everyday conduct and use of discourse. This echoes the gramscian conceptualization of hegemony, in which a national-popular

consensus of what is to constitute the political is reproduced and maintained. In extension to this, coercive efforts may not be constant, and in some cases even relatively rare.

Lewis (2013) conceptualizes the *'Semantic dictatorship'*. In this concept, the discursive tone and style is a way of increasing legitimacy and discursive monopoly, while constructing a contested public space that is not viewed as legitimate. Within this Semantic Dictatorship, some selected styles are usually pervasive in a large proportion of texts endorsed or produced by the state. He brings forth an example of how gendered and *'patriarchal style'* is used to motivate the confinement of civil society within the private sphere. In this example the state is often equalled to a father or a rational husband. The state stands for the decision-making and the voice of rationality and reason. Civil society, on the other hand is likened to the mother, wife, caretaker and facilitator of the nation. They are confined to the realms of private expression, service provision, dialogue and the private life-sphere. The counter-discourse expressed by civil society is therefore only accepted to a certain extent. In this dichotomy, civil society is more closely associated with caretaking and expressiveness through art or dialogue as well as communication. This style can also motivate acts of resistance as mere hysterical outbursts, rather than acts of actual and informed concern.

Civil society can chose to both contest and reinforce the hegemonic discourse. Civil society's' role is to interface between the private and public spheres and to channel the issues of the private into the state. In times of political turmoil, new national and particular discourses, practices, rituals and symbols are often reproduced by civil society. New songs, images and customs are created as a protest to the old *'lie'* of the state dominated discourse. The efficacy of this counter-discourse, however, can influence how much coercion is needed by the authoritarian ruler. It is often the combination of discursive power and organizational autonomy which provokes action by authoritarian regimes. Lewis (2013) argues that a discursive lense towards the

relationship between state and civil society can assist in explaining both patterns of oppression/coercion as well as cooperation.

Birhanu (2018) brings forward a theory based on the qualitative causal process-tracing, in order to shows circumstances shape state decisions. This research positions itself within the mechanisms (M) - of both counter-discourse and regulatory crackdown - of the model put forward by Birhanu's 2nd table (2018, p. 39). These are are also mapped casually in figure 4 (Birhanu, 2018, p. 44). This model of occurrences, causality and mechanisms will be the starting point for the analysis of intertextual discourse construction. The analysis that follows will mainly position itself within the hegemonic discourse performed by state actors, and combined with concepts of Gramscian (counter)-hegemony from civil society and global institutions. In order to more thoroughly understand the full scope of the discursive elements employed, as well as the underlying power-relations between state and civil society within the Kenyan context, all aforementioned theoretical frameworks will be combined and discussed. This will contribute to creating a more robust and explanatory analysis with relevance to the academic field.

4) Methodology and Research Design

The thesis will be inspired by the Critical Discourse Analysis (CDA) method. The discourse analysis will mainly depart from the theories of Norman Fairclough (1998; 2010). The research will be designed as a single case-study, focusing on the discourses surrounding the de-registration of the KHRC by the NGO Coordination Board. This chosen research design fits well into the discursive theory and methodological process put forward by Fairclough (1998, p. 230) - which preferably consist of few samples that are analyzed in detail. The thesis will seek to combine the multi-dimensional discourse analysis with the dialectical-relational methodological approach outlined in Fairclough (2010, p. 230-255). This element of analysis is of interest to the critical discourse analysis - as it tries to combine dialectical, historical and semiotic aspects (Fairclough,

2010). These frameworks will be more closely discussed and described in a later section of this chapter.

4.1) Ontological and Epistemological considerations

Within science, it is important to have well thought out philosophical basis for choices made in relation to methodological selection. The method adopted within this paper follows the position of the researcher as a critical realist. This position leans heavily on social constructivist explanations of reality - especially in terms of conceptualizations of reality. Simultaneously, while relying on the social constructions of language and identity to understand reality, the existence of an objective reality is still recognized.

This philosophical position lends itself well to the choice of discursive theory. Fairclough (1998; 2013) points out how social reality and discourse mutually influence each other. Fairclough describes how discourse both represents, and constructs (i.e. *constitutes*) social reality. These aspects of discourse interact on different levels and through different channels. Fairclough's (1998) multidimensional approach distinguishes discursive texts and practices as merely one aspect of many within social practices and social reality - hence expanding the social reality beyond discourse. Language, communication and text are situated within wider discourse, which is itself situated within broader social practice (Fairclough 1998, p. 73). The already existing intersubjective social relationships of norms and meanings shape the use of discourse and language. This in turn shapes the perceptions of people which constitute the larger intersubjective reality and its systems of knowledge-production and ascribed meaning. Fairclough (1998) makes an important distinction between language-use and reality. This is to say that the power relations and institutions addressed in discourse are independent of it and preceded the discursive conceptions and practices. He warns of the dangers of over-emphasizing the role of discourse in constituting the social reality we all collectively perceive. This sceptical position towards fully social constructivist perspectives, situates the multidimensional CDA in close proximity with the

researcher's own beliefs in both the existence of an objective reality and the nature of of social knowledge production.

4.2) The multi-dimensional aspects of Critical Discourse and the dialectical-relational approach

Described in the previous section were the epistemological justifications for using a critical discourse analysis. In this section a more detailed discussion of how discourse will be analyzed and the in depth exploration of the particularities of multi-dimensional critical discourse analysis as well as the dialectic-relational methodology will be explored more fully.

As the world moves towards a 'technologization' of discourse (i.e. the governance *through* discourse), the relationships of power within the wider use of discourse becomes relevant in order to discern patterns within wider socio-political aspects of society (Fairclough, 1998). Choosing a method for discourse analysis is not a straightforward process. Discourse analysis incorporates a broad set of traditions and theories. A variety of different critical and non-critical approaches to discourse analysis exist. Many of the non-critical scholars such as Sinclair & Coulthard, Potter and Wetherell are very comprehensive and technical in their linguistic analysis. These approaches tend to be primarily descriptive, rather than focusing on analyzing the social and normative aspects and historic interaction between discourses (Fairclough, 1998).

4.2.1) Fairclough's multi-dimensional discursive approach

As mentioned earlier, this paper will depart from a multi-dimensional critical discourse method. The multi-dimensional analysis will assist in understanding discourse as part of wider a social practice, as well as the interdiscursive and intertextual meanings. The approach assumes an independent reality, with pre-existing institutions and social practices (e.g. political, economic, cultural and ideological) - around which discourse is formed. Oftentimes, these existing structures shapes and delimit the extent and content

of discourse. Analysis can be made either bottom-up, or top-down. Bottom-up analysis starts at the text-level and moves upward toward practice and social practice, while the top-down analysis starts oppositely. This paper follows a bottom-up logic, as it mainly departs from texts analyzed in order to gain analytical understandings of the larger social orders. It does however also apply some '*a priori*' understandings of the social order as a lense through which texts are analyzed.

Several general analytical aspects are described as the point of entry into discursive texts, discursive practice and social practice. Text-level analysis includes vocabulary, grammar, cohesion and text structure. Discursive practice level analysis emphasizes the broader production, consumption and distribution of texts. Additionally this level approaches pertain to the aspects of force[1], intertextual and interdiscursive analysis. These channels are often-times constrained by social norms and practice which need to be accounted for. Among these practices, ideology and hegemony are essential. Discourse constantly reproduces reality, which in turn reproduces subjects, communities and identities. These processes become more observable by shifting dimension and analysis level - exhibiting this process more comprehensively. Furthermore, the presuppositions, negations, irony and distancing (i..e *meta-discourse*) made by text-producers are also important aspects to take in account within this dimension.

The multi-dimensionality of Fairclough's (1998) CDA-approach imply that discourse is occurs at different levels within the social structure and practice. Hence discourse must be studied as specific *text*, which is situated in the larger body of *discursive practice* which in itself is situated within the larger *social practices*. This enables a broader view of the interplay between power, social practice and discourse. Additionally it expands and situates discourse historically in order to elucidate important societal trends over time (Fairclough, 1998). This study mainly emphasizes the dimensions of text and social practice - while only discussing discursive practice to a limited extent.

---

[1] i.e. speech act genres such as give an order, ask a question, accuse, answer, threat, promise, etc

4.2.2) The dialectical-relational approach

The CDA approach in Fairclough (1998) does offer many general and theoretical insights into the genealogical development of CDA as a strand of linguistic philosophy. Throughout the book, insights into the connection between social relations, power and linguistics are presented in general terms. And so, the general analytical and theoretical framework presented by Fairclough (1998) will be combined with a more structured methodological approach to increase the specificity of the method. More specifically, it will follow the methodology of the "*dialectical-relational approach*", as outlined by Fairclough (2010).

This analysis method is centered around four parts, which are incorporated throughout the paper. The first step is identifying a social wrong or normative social issue and selecting a relevant case subject, material and texts. This has been performed in the *'Background'* and *'Empirical Findings'* chapters of this thesis. Secondly, the researcher must identify the obstacles in combatting or changing said social wrong - use text and linguistic material as an entry-point. These obstacles are discussed in the *'Empirical Findings'* and *'Analysis'* chapters. The third step involves analyzing the broader social order and circumstance of the social wrong. One must then question whether or not the social wrong is embedded within the system. Within this step the need for radical change is discussed. This will be addressed within the '*Analysis'* and '*Conclusion'* chapters. Lastly possible ways to move past the social wrong and its systematic obstacles will also be discussed in the *'Analysis'* and *'Conclusion'*.

Wrongs in this case denotes *"aspects of social systems, forms or orders which are detrimental to human well-being, and which could in principle be ameliorated if not eliminated, though perhaps only through major changes in these systems, forms or orders"* (Fairclough 2010, p. 235). The author is aware and acknowledges that this premise makes the framework heavily interpretive and normative in nature, and so are any conclusions that might emerge from the study.

Within the second and analytical stage, the social order the of the studied context is in focus. Fairclough (2010) gives a set of tools with which one can be laborate with in order to better understand and interpret text. These tools include among other pronouns, voice, temporality, syntax and sentence structure as well as underlying assumptions. These will be used as tools to understand the (inter)textual samples and give greater understanding to the broader aspects of power within and beyond the case.

The third step takes a deeper look at the relationship between the division of power and ideological aspects of the context. In this stage, one must attempt to interpret the connection between the hegemonic rationale and the social order. In the fourth and final stage, a discussion on how to overcome the obstacles identified in stage 2 is to be had. One must observe how the obstacles are tested, challenged and resisted within the context. This observation could be made on the basis of social movements or actions in everyday life.

However, Fairclough is forthcoming in the shortcomings of this method of discerning the intricate cognitive and political aspects within social relations. It is nonetheless, a critical normative framework which can help explain broader use of text and semiotic significance within social power relations and structures.

4.3) Case selection and sampling of empirical material

Kenya was chosen due to multiple factors such as how civil society has previously shown strong commitment to attaining accountability from the national government as well as internationally. A prevalent example is how civil society has played a key part in instituting democratic change. An example of this is how civil society appealed to the US Kenyan diaspora, regional and international actors (such as the African Union and the ICC), as well as global politics and governance to help build national cohesion and a somewhat democratic state (Sjögren et. al., 2017; Birhanu, 2018). Furthermore, the political situation and context, displaying features of both authoritarianism and

democracy makes it a compelling setting for studying and understanding state and civil society relations. The long struggle from the side of local civil society also helped create the seedbed for the work surrounding the new constitution of 2010. This constitution has been instrumental in creating a more open and democratic society. However, the new constitution of 2010 has yet to be implemented fully - and Kenya retains some aspects of patrimonial authoritarianism (Wahman, 2014; Rocha Menocal et al., 2008; Sjögren et. al., 2017). The single case study design was chosen both due to time-constraints, and relevancy within the chosen methodology.

Textual material is sampled from press-releases, statements and quotes made in news media broadcasts in connection to the case of KHRC deregistration and the broader civil society-state relations. This is to increase the intertextuality and epitomize this case within the more general discursive relations between state and civil society in Kenya. Analyzed text will also consist of statements and social media posts made from NGO Coordination board, civil society activists (including KHRC), other state representatives (Members of parliament and the KNCHR). These samples will then be situated within a larger historical and social context both locally in Kenya and globally. The selection of global actors were chosen considering the availability of discourse and level of engagement with the specific case.

In order to address intertextuality and historical factors, a broader sampling will be made. This is to address the historical and structural aspects, as well as the orders of discourse and genres other than those produced within the specific case. This is in order to initiate more historical and interdiscursive analysis conclusions.

Reflecting upon the reliability of the sources of empirical material is important. In reviewing the validity aspects which could influence meanings, one is somewhat entering the realm of discussing discursive practice. Quotes have been extracted from direct statements made on privately owned and managed news channels such e.g. Kenya Citizen TV owned by Royal Media Services and KTN News owned by Standard Media

Group (Royal Media Services, 2019; Standardmedia.co.ke., 2019). The fact that Kenya has been ranked as 'partially free' in the Freedom House index is an important aspect to take in account. Freedom House's report relating to this period stated that even if Kenya is relatively free in terms of African media freedom some issues have been underreported due to political and business influences (Freedomhouse.org, 2018). These are of course aspects which might influence the validity of the media sources and the empirical material withdrawn from them. .

4.3.1) Sampling social media for discursive analysis

Twitter, as a micro-blogging tool, has more widely become understood as a valid and relevant source of genuine opinion and public metalinguistic discourse. It could be considered a valid way of expanding the corpus for conducting discourse analysis. The wide user-base and availability makes it a valuable source of broad discourse (García-Gomez, 2018). Within this context, NGO Coordination Board has extensively used Twitter as a channel to maintain public relations and disseminate information and discourse to the public. The NGO Coordination Board twitter-account has hence been identified as a source of text and discourse which will be sampled.

5) Empirical Findings

In this section I will present the main body of texts. These texts will be engaged with analytically, albeit the main analytical discussion will be held in the next chapter. It will feature a presentation of global, state and civil society discourses pertaining to discourse surrounding the chosen case.

5.1) Global Discourses

Many international organizations take a matter of fact stance, describing the events in a way of seemingly trying to elucidate the situation, rather than to persuade. Looking at the global discourses surrounding the case, it is important to make a distinction between the different global actors - as they are quite different in their goals and nature. While

the organizations are very different similarities emerge at the global discursive level. Furthermore, several important trends and themes emerge on the textual level. These distinctions are not clear cut, and oftentimes one or more strands of discourse overlap within the same sentence or clause.

However, in order to create a comprehensive textual analysis, the main themes identified are the following:

1) Combative discourse, and a call to action,

2) Concern and condemnation as well as delegitimizing,

3) Victimization discourse,

4) Encouragement and legitimation of human rights defenders,

5) Rights based discourse,

6) Institutional, legal and bureaucratic discourse.

A quote which exemplifies this overlap and a large degree of the strands can be found below:

"Amnesty International is concerned (2) that the threats (3) to shut down these leading (4) human rights and governance organizations and the continued threats of arrest (⅔) of human rights defenders (4) is intended to intimidate and harass (1) them in an attempt to silence them and prevent their legitimate (4) human rights work."
(Amnesty.org., 2017d)

Many of these commonalities in style sand wordings could also be identified a number of other actors within the case, and will be discussed in within their own sections.

5.1.1) Combative discourse, and a call to action

Metaphors alluding to armed conflict or a combative relationship between the parties in the case can be observed. The words "*attack*", "*crackdown*", "*combat*(ing)", "*fight*" and "*assault*"are used commonly throughout statements made by organizations such as Amnesty, **[....]** (Amnesty, 2017a; Amnesty, 2017b; Amnesty, 2017c; Amnesty, 2017d).

This implies an opposition, and a cause for which one must fight back. It also implies some form of normative power-struggle, and struggle between two forces and for what is "*right*" or "*wrong*". These arguments are often drawn further, into calls for action - something which is exemplified through with Amnesty's plea to the public for discursive pressure and support to the human rights defenders. Often these attacks need to be '*halted*' or '*stop*' (Amnesty, 2017a; Amnesty, 2017c). These two discourses can almost be seen as two sides of the same coin - a call and response between pointing out the conflict, and then soliciting an action or reaction.

5.1.2) Concern and condemnation as well as delegitimizing

A large proportion of the text from global institutions, NGOs and discourse have included statements that are aimed at showing concerns about the worrying authoritarian trends in Kenya. Words such as "*worrying*" (Amnesty.org, 2017d), "*unlawful*" (Amnesty.org, 2017e; Amnesty.org 2017b), "*irresponsible*" (Amnesty.org, 2017e) are used. These narratives connect the increased political tensions and violence to the use of "*excessive force*" (Ohchr.org, 2017a) from police and paramilitary groups. Emphasizing coercive actions and authoritarian trends such as "*arrests*" (Amnesty.org 2017a; Amnesty.org 2017b; Amnesty.org 2017c; Amnesty.org 2017d), "*crackdowns*" (Ohchr.org, 2017b; Amnesty.org, 2017b; Amnesty.org 2017d) and how this violence is left to go on unchecked.

This strand of condemnation can also be linked to the delegitimation of the institutions and people who are involved in them. By using words which connect heavily to that of

subjective opinions and feelings the arbitrary nature of these actions are demonstrated and underlined as exemplified by the use of the word cynical in the subsequent quote: "*The NGO Coordination Board's decision must be seen for what it really is - a cynical attempt to discredit human rights organizations [...].*" (Amnesty.org, 2017e)

Illegitimate and coercive action taken by the government are often cited and juxtaposed with the *'legitimate'* (Amnesty.org, 2017d) and responsible peaceful civil society. As the UN Special Rapporteur on freedoms of peaceful assembly and of association Maina Kai (Ohchr.org, 2017b) states: "*These issues are extremely important in a democracy, and attempting to shut down the debate taking place in the civic space threatens to irreparably taint the legitimacy of the upcoming elections*".

Further examples referencing the Kenyan government's authoritarian response to civil unrest can be found in the Amnesty International's oral statement from the 61st Ordinary Session of the African Commission on Human And People's Rights: "[...]*excessive force to disperse protests, shooting and beating to death people on the street and in house-to-house searches*." (Amnesty.org, 2017b).

5.1.3)Victimization discourse

An important strand of discourse takes an oppositional stand, which is more illustrative of the power-imbalance between the NGOs and the state actors.In this discourse, civil society are portrayed as a victim within the power-imbalance of the situation, as well as the harsh treatment by government bodies. This strand of discourse could be labeled as being a "*victimization*" discourse - in which civil society is illustrated to be "*harassed*" and "*threatened*" by their own state institutions. This strain of discourse relates heavily to the combative strain of discourse, but takes a sympathetic rather than subversive stance. These discourses tend to focus on on the maladies experienced - such as "*excessive use of force*" (Amnesty, 2017b), "*witch-hunt(s)*", "*oppress(ion)*", "*harass(ment)*" and "*threat(s)*" and "*attack(s)*" (Ohchr.org, 2017b; Amnesty, 2017b;

Amnesty, 2017c). These are endured by civil society at the hands of the oppressive or authoritarian state.

Emotions experienced by the victims of such coercive actions, such as "*fear*", are also mentioned and emphasized (Amnesty.org, 2017c, Amnesty.org, 2017d; Ohchr.org, 2017a). Organizations such as the Human Rights Watch also connect to the victimization discourse, while using other wording to emphasize and portray a similar position. *"NGOs working on a range of issues, particularly accountability, security forces abuses, and elections,* **_continue to face hostile rhetoric and restrictions,_** *including* **_threats_** *of closure by authorities."* (Human Rights Watch, 2018)

5.1.4) Encouragement and legitimation of human rights defenders

A strain within the global discourse of the case shows solidarity, encouragement and legitimation of the work of "*human rights defenders*". The term "*human rights defenders*" (HRD) in which is used to describe the activists is highly normative and implies an inherent legitimacy. This creates a linguistic inseparability between the oppositional (overlap of combative discourse) and a normatively important role in standing up for human rights. The functions of civil society within a free and democratic society could also be categorized in this typology of discourse. It emphasizes the legitimate place of a "*free*" and independent civil society within the democratic state (Freedomhouse.org, 2017). "*Without all of these groups and people, there would be no-one to defend people's freedoms and rights in Kenya.*" "*Ensure a safe and enabling environment for civil society to function* [..]" (Amnesty.org, 2017c)

The fact that civil society is peaceful is often emphasized "[...] **_peaceful_** *exercise of human rights.* " "*we cannot let this post-election crackdown on* **_peaceful_** *protest and human rights become the new normal in Kenya*" (Amnesty.org, 2017c). A strong statement on Amnesty.org (2017c) exemplifies this quite firmly: "*The Kenyan government is harassing and threatening people that speak out for human rights -* _even though they've done nothing wrong_." Words used in this global legitimization and

encouragement are alluding to the "*resilience*" and "*courage*" demonstrated and a refusal "[...] *to give up, coming together to fight for a just and fair world for all.*" (Amnesty, 2017b) Here, adjectives and qualities, demonstrating inherent moral character of civil society. Describing the organization with words such as *'leading'* and their work as '*legitimate'* have also been recurring (Amnesty.org, 2017d; Ohchr.org. 2017b).

5.1.5) Rights based discourse

Some of the international statements regarding the case have emphasized the rights of citizens relating to human and civil rights. This is manifested throughout the sampled statements. An example of this discursive argument is the oral statement made by Amnesty International during 61st Ordinary Session of the African Commission on Human and Peoples' Rights (Amnesty.org, 2017b). In this strain of discourse, the western human and citizen rights are normatively assumed to be a model which should be respected and followed by all. Within these mentioned rights include constitutional rights such as "*freedom of expression, association and assembly for all*". These are assumed and argued to be inalienable human and civil rights that all people within a legitimate state should enjoy as demonstrated by these quotes: "*The **right** to freedom of association is a fundamental right, and like all fundamental **rights,** its exercise cannot be predicated upon government permission.*" (Ohchr.org, 2017b)

"*People have the **right** to assemble and protest peacefully, and the authorities have a responsibility to ensure they can do so.*" (Ohchr.org, 2017a)

5.1.6) Institutional, legal and bureaucratic discourse

A call to action specifically to international and national government institutions are commonplace within the discourses at the global level. "*The Kenyan authorities must rein in the NGO Coordination Board [...]*" (Amnesty.org, 2017e; Amnesty.org, 2017d) deeming the deregistration "*unlawful*" (Amnesty.org, 2017e). "*Amnesty International*

calls on the African Commission to urge the Kenyan government to [...]" (Amnesty.org, 2017b)

Within this category, institutional pressure from intergovernmental organizations (IGOs) such as the UN, can be submitted. This is a discursive strand which prompts the government and politicians to adhere to the rule of law, and to create institutional and legal changes that accomodate international moral standards are then made through the mandate of the international legal system. Words urging for "*cooperation*" and "*compliance"* with international norms, institutions and national law. This discourse relies heavily on a rhetoric which has been underpinned with both concern, condemnation/delegitimation as well as rights based arguments (Ohchr.org, 2017a; Ohchr.org, 2017b).

5.2) State discourses

5.2.1) Promotion and partnership with certain NGOs

As proposed by theory, the state does seem to promote and commence partnerships with the certain NGOs. There are many examples where the state and the NGO Coordination Board has promoted certain organizations that either align with functional service provision or are otherwise connected to the state. Among these organizations is the highly controversial Sonko Rescue Team - an NGO created by the Nairobi governor Mike Sonko - which was awarded (*i.e. 'commended'*) for their '*exemplary performance of humanitarian intervention & community programme'* (NGO Coordination Board, 2017a). Another NGO founded by a Kenyan senator was also promoted in the social media channels of the NGO Coordination Board citing the work as '*exceptional'* and '*laudable'* (NGO Coordination Board, 2017b). Team Mafisi is another NGO which was highlighted by the NGO Coordination Board for their aims of providing government like services, such as HIV-prevention (DailyNation, 2017b). The theory proposes that CSOs are accepted as they move closer to working together with state in providing

services, but also away from critical deliberation and questioning the political status quo.

5.2.2)Lack of proper engagement and silence

As mentioned earlier, the NGO Coordination Board chose to not contact or accuse KHRC directly. Instead these allegations were circulated discursively on social. As mentioned by Fairclough (1998; 2010), it is just as important to look at what is being said as what is not. This provides an avenue to look beyond the text and at the lack of engagement as a significant indicator at the balances between civil society and state. This will be discussed further in the analysis chapter.

5.2.3) Delegitimization and accusation of critical NGOs

State discourses connected to deregistrations have been going back a long time around the 2010's and beyond. Throughout the discussion, the discourse has centered around delegitimizing parts of civil society by accusations pertaining to criminal and immoral acts - such as embezzlement and corruption, sponsoring terrorism, not complying with NGO laws or harboring illegal expatriates (KTN News Kenya, 2014). Furthermore, the already mentioned questions regarding the nature of volunteerism and remuneration further de-legitimizes the organization, and tarnishes its reputation. This delegitimation connects heavily to the next strand of discourse: that of securitization and state interests.

This discourse can be exemplified by this quote from MOP Hon. Jeremiah Ng'ayu Kioni

"*But we can't fail to say it that all is not well, in the management of non-governmental organizations. We here have Kegoro - if he's being accused that he has foreigners working within his institutions, and you can go and verify. And he says he doesn't have a single foreigner within his institution - that's a red flag. Something is amiss in the management of this non-government organization.*" - Hon. Jeremiah Ng'ayu Kioni (KTV News Kenya, 2017c).

5.2.4)Securitization and state interests

A trend of securitization - whereby a matter which is not generally in the realm of national security are transferred into this realm through discursive means. As mentioned earlier, this trend of discursive conflict has not been limited to this particular case. This has happened beyond the case, but nonetheless demonstrate the approach which the state takes to civil society. An example of the securitization of civil society from 2014 can be seen in the following example:

"*NGOs have been used **criminal activities including as conduits of terrorism financing** in Kenya and in the whole of Africa.*" - Mohammed Fazul (KTN News Kenya, 2014)

This trend to the observations made by Birhanu (2018), where representatives of the Kenyan state have argued that foreign intervention damages state interests and independence. Foreign state intervention in Kenyan politics is a weighty subject in the official discourse. The fear of international meddling displays a securitization of the civil space. This shown in various degrees in the answers given by MOPs Hon. Alice Muthoni Wahome and Hon. Jeremiah Ng'ayu Kioni - both representatives of the Jubilee Party (Parliament.go.ke. 2019b; Parliament.go.ke. 2019c). In the debate, the focus seems to be on regulating civil space, in order to limit funding terrorism or limit foreign influence to various degrees.

"*[...] we should not allow other channels to be **used to destabilize us** if that is the cases which we have had. We shouldn't have **foreign governments to try and just come and interfere with our earnings or affairs**, or even the outcome of our forthcoming elections.*" - Hon. Jeremiah Ng'ayu Kioni (KTV News Kenya, 2017c).

"*And we need to be very careful because [...] it is just a matter of time before it starts eating you. You think that you are safe for a while but it will hit you from wherever you are.*" - Hon. Jeremiah Ng'ayu Kioni (KTV News Kenya, 2017c).

These concerns about national security can also seen within the answers given by Hon. Alice Muthoni Wahome: "[...] *There are people, even some of them **have been funding terrorism in this country**. They have been recruiting, you know, young men and women in the name of-of-of-of working in civil societies.*" - Hon. Alice Muthoni Wahome

"*[...] but we can also not shut our eyes to the fact that some have been misused, they have been funded wrongly and illegally and irregularly. And that the fact they are also huge funding **without the government knowing** where is the source and what is the purpose of that sourcing or that funding.*"- Hon. Alice Muthoni Wahome

5.2.5) Developmental, Fairness and capabilities arguments

Deregistrations are further motivated by developmental and state interests. Limiting the number of foreign nationals involved in developmental work is argued to be in the interest of Kenyan nationals. To further this argument a discourse of fairness is employed.

"*You only employ expatriates where there are no skills available locally. And two, there's **differential treatment between the internationals staff and the local staff**.*" - Fazul Mohammed (Kenya Citizen TV, 2016).

The argument is that foreigners make more money doing what local Kenyans could do. This argument could be seen as underpinned with a local capabilities approach, as a way of legitimizing limiting foreign influence within the sector. This coupled with securitization show the how discursive strategies interplay in order to influence, and ultimately shrink, civil society. Furthermore, this discourse could be argued to connects to the capabilities approach of development. Promoting the belief that development stems from local population's capabilities of enhancing development has become commonplace, also in global institutions. This type of arguments could be a local attempt to rationalize the illegalization of expatriates to participate in Kenyan civil society activities. This could be further argued to connect to the post-colonial scepticism

and fear of foreign political influence put forward by Birhanu (2018). There is a possibility that this is yet another bid in attempting to further consolidate authoritarian power, or it could be a genuine attempt at increasing local capabilities. This ambiguity creates need for further discussion. However, there is compelling this aimed at limiting civic space, as demonstrated by the aforementioned the limitation of foreign funding (Birhanu, 2018 p. 15). Hence, these actions seem to primarily aimed at limiting civic space as well as foreign influence, aiming at democratizing Kenya.

5.2.6) Concern with increased autocratic rule and shrinking civil space

Looking at broader discourses from other state institutions in regards to this case and the NGO Coordination Board shows a fragmented government with diverse set of agendas. This further confirms many of the characteristics of hybrid regimes. One of the most prominent examples of this is the independent national human rights commision '*Kenya National Commision on Human Rights'* (KNCHR) who have voiced several concerns. A bureaucratic argument, combined with delegitimation of Fazul Mohammed and the NGO Coordination Board is prominently used. Examples of these styles are demonstrated in these two quotes, taken from a press-conference statement made by Ms.Kagwiria Mbogori, chairperson in the commission, in connection to the case:

"Kenya National Commission on Human Rights is an independent national human rights institution, and we are established under article 59 of the constitution of Kenya and under the the Kenya National Commission on Human Rights Act 2011, as revised in 2012" - Ms.Kagwiria Mbogori (NTV Kenya, 2017).

"The commision on administrative justice also established that Mr Fazul was irregularly appointed to the office having misrepresenting about his academic qualifications.
We again call on the government to henceforth desist from the embarrassment of civil society organizations and criminalize and criminalization of legitimate human rights work by civil society bodies." - Ms.Kagwiria Mbogori (NTV Kenya, 2017)

"We call on the acting cabinet secretary for ministry of interior and coordination of national government Dr. Fred Matiangi to operationalize the PBO act forcewith. Continued delay will only serve to create more uncertainty in the sector and perpetuate the illegal conduct of affairs by the defunct NGO coordination board." - Ms.Kagwiria Mbogori (NTV Kenya, 2017)

This shows the fragmented nature of the state institutions. While they are showing some form of support with KHRC - they are also using the a linguistic form of "*hedging*" (Fairclough, 1998) by using words such as *'to the best of our knowledge'* when addressing the expatriate situation of the KHRC (NTV Kenya, 2017).

Further critical voices can be found within the oppositional parties. The interview with members of parliament cited earlier also featured Hon. David Eseli Simiyu, representing the oppositional party FORD-K *(*KTN News Kenya, 2017c; Parliament.go.ke., 2019a). Varied language is used to warn of the dangers surrounding dictatorships and authoritarian rule.

"The word over dictatorships don't just come on the people unless it's a military coup. Usually they creep on and a lot of people are clapping as they creep on. And I'm slowly seeing that sort of situation, where you find civil society emasculated, when you find police barricading parliament to intimidate legislators. That is how dictatorships creep on. And a few people clap for it, without knowing where they are heading - and by the time they get to where are heading and realizing where they have gone to: Oops! It will be too late to reverse… [...] Incremental, slowly, slowly. And Fazul is one of the cogs in the wheel of that slow emasculation civil society and slow reduction of the political space. And, generally just forgetting, generally it's just a forgetting." - Hon. David Eseli Simiyu *(*KTN News Kenya, 2017c)

Discourses alluding to the violent and non-democratic past of Kenya emerges - where the member of parliament (MOP) heavily criticizes Fazul Mohammed, the Jubilee party and the NGO Coordination Board. Hon. Simiyu describes in other parts of the interview he is referred to as a government '*hatchet-man*' used mainly to '*emasculate*' civil society. These metaphorical statements are of great importance within critical discourse analysis, as they can illustrate more than just a particular style (Fairclough, 1998). As mentioned earlier, unpacking the wordings and metaphorical choices can delineate contextually important information, as well as structures within the social order. As discussed by Fairclough (1998), stylistic metaphors that exemplify aspects of culturally normalized scripts and narratives. This means, that they portray societal norms, as well as relative social positioning which can be found in wording.

Connecting Fairclough (1998) to the broader theoretical framework of Lewis (2013), the metaphor of '*emasculation*' shows an interesting discursive aspect. As Lewis (2013) has theoretically discussed there is a strong connection between the masculine and the public political space. By using this type of discourse Hon. David Eseli Simiyu connects to this and engenders the act of deregistration as a figurative castration (i.e. *paralyzation*) of the civil society. This shows again the strong connection between the private sphere of self-organization and service provision, which is traditionally the space associated with both femininity and service provision - characteristics and responsibilities which tends to be accepted or co-opted by the state. This metaphor hence demonstrates this aforementioned underlying assumption and as site of discursive contestation by critics of the NGO Coordination Board's conduct and deregistration. The phrase *'emasculation'* was used four times by said MOP, showing the large concern and extended use of this metaphor *(*KTN News Kenya, 2017c).

5.2.7) Promotion of certain public digital discourse

A discursive strategy employed by The NGO Coordination Board seems to emphasize digital discourse which displays state-leaning sympathies. Instead of using or constructing their own discourse in this case, it seems the agency amplifies, promotes

and retweets voices which post under the supportive Twitter-hashtag '#FazulCleansNGO'. This hashtag is used by outspoken supporters of the NGO Coordination Board deregistrations and Executive Director Fazul Mohammed (NGO Coordination Board, 2019). Mainly, the hashtag point towards how the NGO Coordination Board, under the rule of Fazul Mohammed, has been working towards cleaning out corruption and illegal activity within the civil society sector.

5.3) Civil Society Discourses

Civil Society discourse connected to the NGO Coordination Board's actions which have spanned several years. These interdiscursive aspects must also be taken in account in order to understand the grander scope and context of this particular case. Throughout this case, as well as in the general discursive trends surrounding the government prosecution and restriction of civil society in Kenya, a large degree of solidarity can be found between civil society actors. Many similar strands to the global discourses surrounding the case emerge.

5.3.1) Combative discourse

An emphasis on the conflictual nature and divide between civil society and state actors is present in this type of discourse. A closer inspection of the combative and subversive discourse yields interesting observations. A call to action through legal redress has been present since earlier instances. A term which frequently emerges is *'attack'* (KTN News Kenya, 2017a; KTN News Kenya 2017b). This creates a narrative image of either of victimization (written about in a separate section), or that of combat, war or conflict.

The discourse used also shows the habitual and common nature of these *'attacks'*:
*"This is one of those **attacks** that the board is accustomed to. It is the third time they are giving these statements to the media without our knowledge of the existence of such."*
- George Kegoro (Cherono, 2017a)

Further continuing this stream of discourse there are also some aspects that could even be perceived as threats - either indirect or direct: "*[...] whether they want legal redress or they want extra legal redress of the situation in this country. Once you close off avenues for legal nonviolent peaceful redress you __open up a can of worms__ and the state needs to be very clear about what it wants to do*." - Maina Kiai (KTN News Kenya, 2017a)

By using this type of language, it could be argued that the representatives are implicitly communicating that there could be violent repercussions (either from themselves, or other entities) if extra-judicial actions are taken by the government. This could in turn be somewhat of an demonstration of the popular power hiding underneath the surface.

Other civil society actors speaking out in protest and solidarity have also demonstratively used the same type of discourse. In an interview featuring Zahid Rajan (member of the CSO *"We the people"*) used a similar style in an interview on on KTN News Kenya (2017b) featuring himself as well as Daisy Amandy (from the CSOs '*Kura Yangu, Sauti Yangu'* - which includes the KHRC in their secretariat):

Examples of this type of 'veiled threat' style can additionally be seen here: "*We are all committed to having a nonviolent situation but I'm afraid suppressing citizen's rights is completely unacceptable and unconstitutional.* " - Zahid Rajan (KTN News Kenya, 2017b)

"*I think in terms of where the country is going there is this constant debate about having peace at any cost and I think in our in our thinking that- that- that it is vital that we have peace, but it must be with truth and justice.*" - Zahid Rajan (KTN News Kenya, 2017b).

Hence, the combative discourse is also used by civil society which are demonstrating their support with the KHRC. Further, in the interview on KTN News Kenya (2017b).

We see examples of likening the situation to a boxing-match, or game, where endurance and perseverance is key: *"Therefore, we cannot just decide that 'oh, you know, we're so tired so let's throw in the towel' "* - Daisy Amandy (KTN News Kenya, 2017b).

The public outrage alluded to could possibly be channeled by civil society actors and organizations such as KHRC and *"We the people"* to disrupt the power of the state - both violently and non-violently. This statement could however also be interpreted as one of reason - indicating the mutual detriment of extra-judicial actions that might lead to further spirals of violence. Having had a history of ethnic and political violence, it is likely a situation that neither KHRC or the state wants to repeat again.

The discursive nature of the occuring conflict has been highlighted repeatedly in the choice of words and themes by the KHRC: "[...] *KHRC will seek legal recourse for the defamatory damage [Fazul] has done to the organisation*" " "*Fazul only <u>attacks</u> us on the media he has never written letters to us [...]*" - George Kegoro *(*Agutu, 2017; KTN News Kenya 2017a). This is not to say that the conflict has not taken more physical manifestations, such as the KRA and police raid on the offices of AfriCOG offices - where KHRC and other civil society organizations showed their support.

Further connection to this type of combatitative discourse is the open provocation used in when asked whether or not the members of the KHRC board members were afraid of being arrested. In this instance Maina Kiai openly says: *"If they're going to arrest me I'm here, I'm here. And those policemen, here, here please in front of the cameras, please. Please, I'm here."* This could be an implication of a perceived moral superiority. Simultaneously it challenges the state to go beyond its use of extra-judicial discourse and infrastructural and institutional tools of power, and move towards the more directly coercive sphere. If this were to happen, it would more clearly demonstrate the power-disparity between civil society and state - which could legitimize the organization further in the eyes of the public. The state is then visualized as a mutilating force, an institution which is hurting itself in confusion. The importance of the "*media*

spin" in this case and in general, could lead to public sympathy if the KHRC were to be maltreated, especially in front of the cameras.

5.3.2) Self-justification, integrity of civil society and KHRC as an organization

This is a discourse explaining and justifying the functions of civil society as the voice of the people, and the keeper of peace and combating social injustices. The KHRC has described themselves as *"the 'eye' of society"* (Mutua, 2017), as well as emphasizing civil society's and the organization's role in fighting for the implementation of the 2010 constitution, as well as watchdogs for civil and human rights (Mutua, 2017). This corporal metaphor creates an image that a society without a civil society is a society missing a vital organ of vision and scrutiny. This becomes an important self-justification strategy in the face of primarily defamatory discourse - where the excess, frivolity and needless nature of civil society is emphasized.

Furthermore, KHRC attach terms used in the global discourse to describe themselves. Examples are *'leading'*, and furthermore emphasize their *'financial and operational integrity'* (KTN News Kenya, 2017a; Kakah, 2017b) , something they describe as missing when compared with state institutions. The missing commitment towards accountability as well as the obstruction of accountability processes of civil society has been discussed in statements dating as far back as 2015. In a statement made by the Kenyan Civil Society Reference Group (an umbrella organization of Kenyan several CSOs), in reference to NGO Coordination Board's decision to deregister a large number of NGOs, the government's lacking and preventing of accountability is in their management of civil society groups is stressed - further creating a strong dividing line between them (Maskani Ya Taifa, 2015)

Defamation and accusations of corrupt remunerations is further defended against through citing the KHRC's non-profit structure and strong beliefs, in contrast with corrupt politicians who want to benefit themselves. The fact that it is a non-profit

organization aimed at the improving the national human-rights contrary to the allegations is stated explicitly. Examples of this can be found in quotes such as:

" *[...] we do this work not because it has got any benefit to us - but because we believe*."

    - Maina Kiai (KTN News Kenya, 2017a)

On the accusation on being partisan towards certain political parties the function, importance and independence of civil society are instead envoced as a defence: *"Civil Society has been advocating for good governance, constitutionalism, rule of law and has gone about the business of educating Kenyans on their civic responsibilities and their civic duty."* - Daisy Amandy (KTN News Kenya, 2017b).

5.3.3) Legal and institutional discourse

Much like within the global discourses, local civil society is heavily influenced by institutional, legal and bureaucratic arguments. This discourse also emphasizes the rights that have been institutionalized within the new 2010 Kenyan constitution - which offers among other things rights of freedom of association. Phrases such as "*travesty of justice*", "[...] *clear violation of the Constitution as well as statutory and procedural provisions on this matter*." (Cherono and Mwere, 2017; KTN News Kenya, 2017a). Noteworthy is that language within this sphere of discourse is formal, which be a conscious or unconscious way of subtly signalling the qualifications and legitimacy of which the organization holds.

Within this discourse, a matter-of-fact description of legal actions that have been taken by the KHRC and the subsequent rulings are emphasized. KHRC demonstrate their willingness to enter into legal conflict over what they deem to be extra-legal and discursive tools that have been used. "*KHRC remains ready to yet again seek legal recourse to prohibit this and constitutional action and also to seek redress for the defamatory nature of this baseless, false and malicious accusations.*" (KTN News, 2017a) This also ties in well with discrediting the NGO Board and Fazul Mohammed,

which can be exemplified by "*[...] defamatory nature of this baseless, false and malicious accusations.*" As displayed by these examples - colorful adjectives are used to further the picture of an illegitimate and illegal action taken against the organization. This delegitimizing discourse will be discussed in a separate section.

Further on, the PBO act of 2013 is often cited as an institutional reminder of the illegitimate and *'illegal'* actions for the NGO Coordination board, both by civil society actors and other official representatives, such as aforementioned Kenya National Commission on Human Rights (KNCHR). The actions of the NGO Coordination Board are discussed as being an institutional *'overreach'* or *'illegal'* by civil society actors siding with KHRC (KTN News Kenya, 2017b). Civil society accentuate the need for rule of law to be standard procedure, and how the government (and particularly the Jubilee party) does not adhere to these principles.

The connection to the disputed election results is also being heavily spotlighted by the civil society actors (KTN News Kenya, 2017b). The disregard and power-imbalances between branches of the government (judiciary vs. executive) are important discursive focalpoint, since contestation of the elections and rulings of the court have been ignored.

5.3.4) Victimization discourse

The often-used word '*attack'*, as mentioned earlier, alludes to another narrative - that of victimization. This discourse is utilized by civil society to appeal to public opinion and most probably appeal to global institutions and audiences. This argument has been common, also in older strands of civil society discourse as demonstrated by the statement made by the earlier mentioned Civil Society Reference Group (Maskani Ya Taifa, 2015) : "*Ill-conceived attacks using a long expired Act as a mechanism of **control and domination** will not raise our public accountability and transparency.*" and "*The sector is **slowly being choked to death** by a clumsy, **short-sighted legislative and smear campaign** to reduce space for PBOs to operate.*"

George Kegoro, the executive director of KHRC, puts forward the idea that these action have been used mainly to discredit the civil society sector, and KHRC in particular. As he puts it: *"There's a clear smear campaign against individuals. There's a smear campaign against the sector. There's an attempt- There's a commitment to portray us as out to do things that are illegal. As supporting terrorism, as supporting a foreign agenda that is not articulated. So that is the context in which we have been operating. And there's a context that is very similar to what used to happen during KANU."* A connection to Kenya's past of violence and authoritarian rule is hence alluded to.

The ways in which NGO Board treats civil society and KHRC in particular is described as "*Harassment and intimidation*" by themselves. *"In what is a recurring trend KHRC* ***has been condemned*** *[...]"* - George Kegoro (KTN News Kenya, 2017a).

"*Deregistering us is another chapter in the* ***attempt to harass*** *KHRC. KHRC maintains a high level of financial integrity and we are up to date in our filings.* ***This is an act of intimidation***."
- George Kegoro (Agutu, 2017)

This is also reflected in statements from other civil society actors:
"*My final comment, I think that as Kenyans we need to be we need to jealousy safeguard the Democratic space that we have enjoyed over the years. That is currently being threatened*" - - Daisy Amandy (KTN News Kenya, 2017b).

5.3.5) Denial of guilt

In terms of defending against actual allegations, relatively few statements straightly deny them. Instead the focus seems to be subtly, through the choice of words, pointing out the illegitimate nature of NGO Coordination Board and Fazul Mohamed as a way of defending against alleged wrongdoing. There are however examples of pure denying guilt - such as denying any use of expatriate workers. *"We do not have a single*

foreigner on our staff. All of our staff are 100% local. So we don't have work permit issues. We don't need work permits, because all our staff are Kenyan Nationals." - George Kegoro (KTN News Kenya, 2017a)

Beyond strictly denying their own guilt, KHRC hedges itself by using words which signal its innocence and the incredibility of the accusations made against them. It uses words such as "*baseless*" and "*alleged*" to signal that there is little substance to any claims made against the organization by the NGO Coordination Board (KTN News Kenya, 2017a). Another, more sarcastic version of this type of discursive defence could be found in the following quote:

"[...] *If we had 1.2 billion shillings we would be a very, very happy organization but to the point is, we don't have that level of income, unfortunately. And so, we wonder where this figure is coming from.*" (KTN News Kenya, 2017a) By using wit and humour a comfortability and relatability, not often displayed by more official and state sources it increases its chances to raise public opinion and seem more sympathetic; while at the same time discrediting the allegations through ridicule.

5.3.6) Concern with shrinking democratic space and targeting of civil society and democratic space

In response to the deregistration a more general concern in regards to the shrinking of civil and democratic space emerged. A call to the public for more "*dialogue*" (KTN News Kenya, 2017b) and to "[...] *jealousy safeguard the Democratic space that we have enjoyed over the years.*" (KTN News Kenya 2017b) can be seen. The argument stems from the fact that the civic space needs to be safeguarded, and the ability to question the state stems from unrestricted democratic space. The statements made by the civil society representatives in KTN News Kenya (2017b) interview warns that autocratic rule stems from slowly shrinking democratic space. This line of reasoning is perhaps best illustrated by the following quote: "*Because when it becomes inconvenient for the state to be to adhere to accountability and to the rule of law and therefore targets those*

people who are demanding that from the state, then you must ask yourself at what point will it become inconvenient for you to express yourself in the state?"
- Daisy Amandy (KTN News Kenya, 2017b)

Furthermore, KHRC have also used this as an argument, voicing their concern about shrinking democratic space: *"There's a wide view that has been created of only one voice is allowed in this country - and that is the voice of Jubilee and jubilee supporters."* - George Kegoro (KTN News Kenya, 2017c)

5.3.7) Rights based arguments

Many outside civil society actors have shown solidarity with the KHRC. Rights based arguments can be traced throughout civil society actors' discourse, emphasizing the way in which government is silencing dissenting voices by limiting rights such as the freedom of assembly, free and fair elections and due process. Language associated with the human-rights based approaches such as framing the state as *'duty-bearers'* for human rights (KTN News, 2017b).

5.3.8) Delegitimization of the government and NGO Coordination Board

Deregistration of CSOs and NGOs is not a new phenomenon in Kenya. This has happened repeatedly. Civil society has then used a strategy of delegitimation to undermine the authority and integrity of the institution which has accused them. In 2015, CSO Reference Group used words such as "*alarmist*", "*sensationalism*" to describe the actions of the NGO Coordination Board (Maskani Ya Taifa, 2015).

Within the this discursive category a prominent subset of personal accusations directed towards the head of the NGO Coordination Board were identified. These arguments are directed towards showing the lack of legitimacy and integrity of the person heading the institution - seemingly to de-legitimize the actions taken by the institution. Words such as '*attention seeker', 'fake'* and '*vulnerable'* are words used to describe the leader and leadership of the NGO Coordination Boards. This could partly show the importance and

emphasis of the personal leadership within the Kenyan context. This strand of discourse connect heavily to the combative discourse and juxtaposition between the NGO Coordination Board and KHRC, as well as the state and civil society. The choice of words shows how the NGO board supposedly used the '*baseless*' accusations in order to defame and immobilize the activities of the KHRC. This sentiment was echoed by the judiciary in the subsequent legal hearing and lawsuit. The judge was quoted as follows: *"It would appear the respondent was only interested in paralysing the operations of the organisation, not enforcing the law. Neither were the actions in public interest nor in pursuit of justice."* (Maina, 2018).

Colourful adjectives and characteristics are used to ascribe qualities and motivations to the personality and actions of the institution and its leader. This makes Fazul Mohammed, and any claims made against the KHRC by the state agency, less credible in the eyes of the public. "*So, Fazul Mohamed is the quintessential attention seeker. He can't do without attention for even one minute, and he creates ways of finding attention every time.*" - George Kegoro *(*KTV News Kenya, 2017a)

Fazul Mohammed is often cited as being corrupt, to possess disproportionate power or having contacts in higher instances of government; particularly in response to moving the NGO Coordination Board from the Ministry of Devolution to the Ministry of the Interior. As exemplified here: *"It's clear Mahamed is being protected from the inner sanctum of the state."* - Makau Mutua, Board Member of KHRC (Mutua, 2017)

As George Kegoro (DailyNation, 2017a) put it when trying to defend civil society organization AfriCOG when targeted by the NGO Coordination Board and the Kenya Revenue Authorities (KRA): *"It seems like Fazoul Mohammed is the one who moves every government department to act, or to remember its responsibilities."* Further examples of strong wording directed at discrediting the person which most strongly represents the institution can be seen here: "*The executive director of the NGOs Coordination Board, in an act of __vile abuse__ of office and __sheer impunity__, has purported*

to direct the collection of taxes, the freezing of bank accounts and the deportation of persons." - George Kegoro (Kakah, 2017b)

The fact that the NGO Coordination Board transferred to the ministry of the Interior could be a further indication of the securitization of the issue, as well as indicating some form of corruption within the hybrid regime. "*Mr. Fazul was returned to office and the docket for- for- for the regulation of NGOs were removed from the minister's office and taken to internal security. That should give you an indication that Mr. Fazul is no ordinary regulator. He's got connections in the highest places in the government, because he can besmudge a minister and nothing gets done to him. Who is higher than a minister in this country?"*
- George Kegoro (KTN News Kenya, 2017c).

Furthermore, in the spirit of de-legitimizing of both the NGO Board and Mr. Fazul, arguments the KHRC points out the substantial connections between some state actors and civil society actors. Within this strain of communication the personal character is an important focus which could be due to the intimate connection between political power and the personalization of it. "*When he is not finding attention or seeking attention by funny purported registrations, he seeks it by creating a category of 'awards for best performing NGOs' and he gives that to the 'Sonko Rescue Team'.*" (KTN News Kenya, 2017a) *"So he has set up an award- an award system and he has awarded only to NGOs and they are those two. And- I mean- [gesture of disbelief] And then he has also been banning NGOs. And which ones has he banned? Kalonzo Musyoka Foundation, the Event Coderre Foundation, the Kenya Human Rights Commission, AfriCOG. Do we need to say more about that that method of regulation*?." - George Kegoro (KTN News Kenya, 2017a)

Sonko Rescue Team, the NGO mentioned in the quote, seems to be providing a number of government-like services (NGO Coordination Board, 2017: KTN New Kenya, 2015). These services include fire-brigade, funeral assistance, medical facilities (clinics and

vaccinations), food, sanitation and water provision, security services in cooperation with the police, fumigation, marriage limousines and beyond (KTN News Kenya, 2015). These activities are offered without monetary compensation. The fact that these are the organizations that are tolerated, and even commended, shows the patterns recognized within hybrid regimes - in which the partnership and embeddedness between state and NGO extend primarily to service provision, in accordance with Lewis' (2013) theory.

Further on, the extra-judicial discursive element of the accusations (i.e. '*attacks*') are emphasized. The KHRC has underscored the failure to engage with the organization as a reason and motivation to the KHRC is used to undermine validity of the case against them (KTN News Kenya, 2017a). The refusal of direct confrontation and use of social media is cited throughout the press-conference and is used to strengthen the pre-supposed baselessness and fakeness of both accusation and accuser.
"*What kind of government agency is this, that that attacks us in the media and ref-refuses to meet us?" (*KTN News Kenya, 2017a) *"Mohammed Fazool only attacks us in the media, he never writes to us.*" - George Kegoro (KTN News Kenya, 2017a)

"*There's been- there's been open and in flagrant attack on civil society calling people 'walk around network' and- and- and- and- unacceptable terms like that*." - Zahid Rajan (KTN News Kenya, 2017b).

6) Analysis and Discussion

An analytical discussion will now be maintained on the basis of the empirical material and findings presented in the previous chapter. Returning once again to the research question, this paper seeks to elucidate the underlying power-relations and relationship between the global actors, state and local civil society actors. In this analysis, the influence of global actors upon manifestation of discursive strategies will be studied. It will also seek to distill the interaction between discursive hegemony and counter-hegemony within this case. This analysis has based itself on the broader

discourses, manifested through a particular and recent case which could be considered to be emblematic of the state-civil society relations which have emerged within recent and contemporary Kenya.

6.1) Global discursive aspects of state and civil society relations in Kenya

Drawing any wide-ranging analytical conclusions surrounding the interaction of the global and local discourse within the case and wider scope of Kenyan state-civil society relationship is not a straightforward process. Applying an analytical perspective, the discursive strategies and outcomes from global actors seem different depending on the outset goal of the organization. Organizations such as Amnesty and HRW have been found to be generally critical and combative. This choice of critically oppositional discourse could be a way of supporting the institutional goals of promoting and maintaining accountability towards civil and human rights.

Conversely the United Nation Human Rights Office of the High Commissioner (OHCHR), being a body within an Intergovernmental Organization, seems to favor less harsh and more institutionally founded arguments. Rather than applying criticism, being more contingent on global legitimacy and international relations. One could interpret this as adhering more closely to the strategic goals of the institution as well as reinforcing the same institutional frameworks which legitimizes its own existence. Global observers such as Human Rights Watch and Amnesty are arguably primarily concerned with human rights, where as the UN has interests of maintaining legitimacy and influence through more institutional means - this could mean that they would favour less combative discourse, and instead emphasize more institutional, legal and bureaucratic language. Maintaining an institutional discourse could also be a way to subtly reinforce the legitimacy of the international system of states, and reinforcing the existent institutional status quo. By reinforcing this global institutional system, the IGO could cement its own structures and avenues for political change as well as its importance within the global state-based system.

A commonality within the statements drawn from global institutions seem to offer some form of support to the defenders of human rights as well as a victimized portrayal of civil society to different extents. The victimization discourse, which is an important strand among global actors and local civil society alike, becomes an important aspect in acknowledging and international drawing attention to the problem, as well as soliciting sympathy with those affected.

6.2) Hegemony, power-consolidation and Kenya's status as a Hybrid Regime

Consolidation of power discussed in the theoretical chapter, seems to be an important aspect of explaining the nature of state-civil society relations of this case. Kenya's current government seems to mainly favor the use infrastructural and discursive power in order to maintain their regime. These strategies of power-consolidation could be employed in order to keep its legitimacy a 'democratic' state, while at the same time lowering costs of suppressing counter-hegemonic voices.

By employing a restrictive legal framework, infrastructural power is used to consolidate power. As discussed by Froissart (2014): keeping the organization in a state of constant negotiation limits their influence over the political and hegemonic status quo and the political plurality. By having to defend themselves against accusations (whether they are true or not) resources which could be used to offensively combat the political system are instead directed toward discursive defense. Hence, the ability to participate within the sphere of critical political counter-discourse and political deliberation becomes limited. This demonstrates a tight interaction between different forms of power consolidation used by states with authoritarian characteristics - as the infrastructural power seems to affect discursive aspects of power consolidation as well.

Employing Cox's (1999) interpretation of Gramscian theory to the actions taken by NGO Coordination Board we see that hegemonic discursive actions are taken in order to

influence and reinforce certain perceptions of the public. This is seen in the retweeting of the hashtag "*#FazulCleansNGO*". The sharing and reinforcing of certain voices could very well be an attempt at fuelling discursive power consolidation, while not actively producing discursive texts. This could be linked to the Gramscian conceptualization of bourgeoisie elite's hegemonic attempts at maintaining and consolidating their hegemonic discursive power, while influencing perceptions of the political reality and themselves in the eyes of the public.

The theory provided by of Lewis (2013) and Froissart (2014) do fit the current power-structures between civil-society in Kenya mainly in the contrasting type of NGOs promoted and de-legitimized by the NGO Coordination Board. As Froissart (2014) presumes, CSAs are accepted when directed towards less controversial and depoliticized areas. NGOs with strong connections to government officials have received praise and promotion. The organizations which have been lifted in the government discourses which have been examined show strong similarities to GONGOs presented in the theoretical chapter.

Furthermore, organizations such as the Sonko Rescue Team also seems to establish strong patterns of a patron-client and "*quid-quo-pro*" relationship between constituency and public office. Through this process, the provision of free service is a strategy of ensuring voting loyalty, which could be considered a corrupt electoral practice. The outright connection to the incumbent (and highly controversial) Nairobi governor Mike Sonko who formed the organization demonstrates a strong the conflict of interests between civil society and the government. Hence the strategy, actions and discourse chosen seem to align well with the theory on hybrid theory and civil society. The NGOs which have been accepted and integrated well into the state system have focused on service delivery and alignment with state priorities. In many ways they are even organized or strongly connected to government themselves. Conversely, organizations connected to either oppositional parties or critical political and rights discourse within the public sphere have been specifically targeted. This pattern further solidifies the case's connection to the theoretical assumptions made by Lewis (2013).

Hence, the motivations behind the deregistrations could be interpreted to rely on the underlying antagonism displayed by the KHRC. KHRC is an organization focused on bringing critical discourse into the public sphere, something which has also been demonstrated by their arguments in connection within the empirical material presented within the previous chapter. The actions from the NGO Coordination Board seem to exemplify how Kenya's ruling party consolidated their power both infrastructurally and discursively during a time of political crisis. By limiting critical elements within civil society during the controversial election, they managed to more easily maintain their power and increase regime stability.

The securitization-style of the state could be argued to be a strategy of maintaining discursive hegemony and the semantic dictatorship. As mentioned by Lewis (2013), the realm of civil society is often associated with 'femininity', service provision and the private sphere. However, governance (and in extension national security) are realms generally situated within the realm of the 'masculine' or the 'state' (Lewis, 2013). This form of discursive action situates civil society into a realm which goes beyond 'civilian' aspects of civil society, legitimizing further governmental control. Hence, by discursively securitizing NGOs, it could be argued that the state consolidates its power through discursive means - reaching into the realm of the civilian which would traditionally not be associated with the state. The pervasiveness of engendered language can moreover be connected to the metaphor of *'emasculation'* used by government critics, arguably asserting civil society's place within the political and public spheres.

As demonstrated by the texts produced by the government, hegemony is not always uncontested within all branches government. Examples include contestation within government in the form of oppositional leaders within the legislature (KTN News Kenya 2017b), the judiciary and independent the KNCHR-body. This could be interpreted as either demonstrating democratic features of a multi-party state, or to connect to the theoretical conclusions of Lewis (2013), who stated that hybrid regimes

tend to be a loose framework of relatively independent bodies and actors building alliances with some civil society actors. Strengthening this claim is the close association between NGO Coordination Board and the organizations which were promoted, contrasted with the strong supportive statements made by the KNCHR's in regards to KHRC; e.g. by urging Interior Cabinet Secretary Fred Matiang'i to operationalize the PBO-act (NTV Kenya, 2017).

6.3) Counter-hegemonic discursive practice

There are strong parallels between global discourses and those used by local civil society. Similarities emerge in choices regarding style, especially in terms of bureaucratic style. Arguably this could be a strategy chosen by local civil society actors in order to circumvent the national hegemonic discourse, and seek assistance from global actors. Using wording and signalling adherence to western civility norms could be a way of strengthening global legitimacy, and appeal to higher instances of global governance and discourse and the global public. Further emphasis on combative and victimization discourse could be an attempt to appeal to certain values shared by mainly rights based international organizations. This could help further the global public legitimacy of the KHRC, and be a useful strategy when faced with discursive defamation and questioning of their moral character.

As demonstrated within self-justification discourse (5.3.2), a strategy of clear discursive distinction between civil society and official institutions is employed. Having been defamed primarily on the basis of their operational and financial integrity it could prove to be an effective to use these types of self-legitimizing arguments and contrast them with state's lack of legitimacy and accountability, in order to retain legitimacy in the eyes of the public as well as international organizations. Alluding to justification, conviction, integrity and distinction from state has also been used earlier by civil society as a defense-strategy against the NGO Coordination Board's attempts at arbitrary deregistration and defamation. A discursive emphasis of civil society's inherent

processes and mechanisms of accountability towards the people are highlighted also in the example from the Civil Society Reference Group (Maskani Ya Taifa, 2015).

A large proportion of counter-discourse employs a delegitimizing discourse to discredit the accusations made towards them. Within this practice, it takes a heavily personalized stance against Fazul Mohammed. This feature, interpreted through the context, could have basis in the heavily personalized power which is typical of authoritarian and hybrid regimes. Accusations made against the personal integrity of the head of the authority, could be a way of undermine any credibility of the NGO Coordination Board in the eyes of the public. In a political and cultural context which depends heavily on the personalization of power; delegitimizing the leader could prove to be an in neutralizing the claims of the institution as well.

7) Conclusion

To conclude this thesis, the findings and conclusions will be presented in a summarized manner. I will also open up for further potential avenues of academic research and discussion.

Kenya displays many features which could be expected from a hybrid regime, incorporating both authoritarian features as well as dubious democratic and electoral practices (O'Neil, 2010). As suggested Lewis (2013) government institutions co-exist within a loose *'state'* framework, with vast differences in their conduct and interests. This fragmented nature can be seen in the wide scope of discourses and actions from bodies such as the judiciary, the KNCHR as well as the legislative branch and the NGO Coordination Board. However, this divide between government officials and branches, could just as well be symptomatic of the actual democratic features and division of power, which is not sufficiently respected by executive branch. Both judiciary and legislative branches have been disregarded to some extent. A emblematic example is the lack of full implementation and as well as augmentations to the PBO act of 2013. The

lack of proper civil society regulation, and in extension the case studied, could hence be argued to be a symptomatic display of this fundamentally institutional issue.

Furthermore, the analysis has confirmed some further predictions made by the theory as hybrid regime states tend to accept civil society organizations focused on service provision while subverting counter-hegemonic ones. The actions demonstrated by the NGO Coordination Board and the executive branch shows that they are more likely to favor organizations that align themselves with state interest, discourse or ideology. Open criticism is connected to the realm of political deliberation, something that authoritarian regimes are not comfortable with when combined with aspects of self-organizing aspects of civil society. Furthermore, the associations between masculinity and political power alluded to by theory has also been somewhat confirmed.

The paper has however also demonstrated some features that are not as clearly predicted by theory. As Fairclough (2010, p. 185) points out discourse is also about what is being left unsaid, and both presences and absences must be taken into account. The lack of direct engagement and communication from the NGO Coordination Board toward the KHRC could demonstrate an attempt state to not acknowledge their *raison d'être* - and hence be a discursive strategy aimed at delegitimizing the organization through limited engagement.

As for counter-hegemonic discourse, the heavy emphasis on legal and institutional arguments utilized by civil society could be a response to infrastructural and discursive power consolidation applied by Kenyan state actors. As legal frameworks are being increasingly tightened and disregarded, civil society must use the legal avenues they can find defend themselves. The fact that the global organizations' discourse puts itself is mainly in the sphere bureaucratic and institutional discourse could be a further explanation to the local civil society's choice to do the same - who could be utilizing this as a way to gain international legitimacy and support.

As in all science, theory does not have the power to perfectly explain all aspects of reality. However, it does help to make highly complex observable relationships more understandable. Further research could be made on the interplay between discourse levels within different regime-types and contexts, in order to increase comparability and predictability.

Bibliography[2]

Abdi, A. (2017). *Kenya, Again, Represses Civil Society*. [online] Human Rights Watch. Available at: https://www.hrw.org/news/2017/11/07/kenya-again-represses-civil-society [Accessed 7 Mar. 2019].

Agutu, N. (2017). *KHRC to sue 'attention seeker' Fazul over illegal deregistration*. [online] The Star, Kenya. Available at: https://www.the-star.co.ke/news/2017/08/15/khrc-to-sue-attention-seeker-fazul-over-illegal-deregistration_c1617174 [Accessed 26 Feb. 2019].

Amnesty.org. (2017a). *Urgent Action - Worrying Crackdown on Kenyan Defenders*. [online] Available at: https://www.amnesty.org/download/Documents/AFR3269712017ENGLISH.pdf [Accessed 1 Mar. 2019].

Amnesty.org. (2017b). *Africa: Oral Statement On The Situation Of Human Rights Defenders In Africa at the 61st Ordinary Session of the African Commission on Human And People's Rights*. [online] Available at: https://www.amnesty.org/download/Documents/AFR0173842017ENGLISH.PDF [Accessed 11 Apr. 2019].

---

[2] All empirical material is directly accessible within the sources, hence an appendix with transcriptions has not been added to the thesis. However, the transcription of empirical material are available for reference upon request.

Amnesty.org. (2017c). *Stop the post-election crackdown on peaceful activists in Kenya*. [online] Available at: https://www.amnesty.org/en/get-involved/take-action/stop-the-post-election-crackdown-on-peaceful-activists-in-kenya/ [Accessed 11 Apr. 2019].

Amnesty.org. (2017d). *Urgent Action - Worrying Crackdown on Kenyan Defenders*. [online] Available at: https://www.amnesty.org/download/Documents/AFR3269712017ENGLISH.pdf [Accessed 11 Apr. 2019].

Amnesty.org. (2017e). *Kenya: Attempts to shut down human rights groups unlawful and irresponsible*. [online] Available at: https://www.amnesty.org/en/latest/news/2017/08/kenya-attempts-to-shut-down-human-rights-groups-unlawful-and-irresponsible/ [Accessed 10 Apr. 2019].

Asamba, M. (2017). *KHRC: NGOs Board is out of order : The Standard*. [online] The Standard. Available at: https://www.standardmedia.co.ke/article/2001251462/khrc-says-move-to-delist-it-is-politically-motivated-as-ngo-board-bares-fangs-at-africog [Accessed 1 Mar. 2019].

Asamba, M. and Wambua, S. (2017). *Matiang'i stops Fazul clampdown on AfriCOG, KHRC: The Standard*. [online] The Standard. Available at:

BBC News. (2014). *Kenya terror clampdown targets NGOs*. [online] Available at: https://www.bbc.com/news/world-africa-30494259 [Accessed 7 Mar. 2019].

Birhanu, B. (2018). *Transnational human rights pressure at critical political junctures and the behavior of strategically important, yet "vulnerable", target states: insights from the Horn and East Africa*. Ph. D. University of Zurich.

Cherono, S. (2017a). *NGOs board de-registers KHRC*. [online] Daily Nation. Available at:

https://www.nation.co.ke/news/kenya-Human-Rights-Commission-deregistered-/1056-4
057174-10291od/index.html [Accessed 4 Mar. 2019].

Cherono, S. (2017b). *Human rights NGO deregistered in Sh1.2bn feud* [online]
Available at:

https://www.businessdailyafrica.com/economy/Human-rights-NGO-deregistered-in-Sh1
-2bn-feud/3946234-4057516-lsr1vd/index.html [Accessed 25 Feb. 2019].

Cherono, S. (2017c). *Fazul's sword now targets AfriCOG*. [online] Daily Nation.
Available at:

https://www.nation.co.ke/news/africa/NGOs-board-shuts-Africa-Centre-for-Open-Gove
rnance-AfriCOG/1066-4057960-soyu16/index.html [Accessed 2 Mar. 2019].

Cherono, S. and Mwere, D. (2017). *NGOs: We were shut over plan to contest poll result
in court*. [online] Daily Nation. Available at:

https://www.nation.co.ke/news/NGOs--We-were-shut-over-plan-to-contest-poll-result-i
n-court-/1056-4059114-jc5pvc/index.html [Accessed 4 Mar. 2019].

Civil Rights Defenders. (2017). *Stop Harassment of Civil Society Organisations - Civil
Rights Defenders*. [online] Available at:

https://crd.org/2017/08/18/kenya-stop-harassment-of-civil-society-organisations/
[Accessed 3 Mar. 2019].

Cox, R. (1999). Civil society at the turn of the millenium: prospects for an alternative
world order. *Review of International Studies*, 25(1), pp.3-28.

DailyNation. (2017). *Team Mafisi Foundation registered by NGO board*. [online] Available at: https://www.youtube.com/watch?v=TIii_i8Y66U [Accessed 26 Apr. 2019].

Devex.com. (2019). *Kenya Human Rights Commission (KHRC) | Devex*. [online] Available at: https://www.devex.com/organizations/kenya-human-rights-commission-khrc-46215 [Accessed 13 May 2019].

Fairclough, N. (1998). *Discourse and social change*. Cambridge, UK: Polity Press.

Fairclough, N. (2010). *Critical discourse analysis: The critical study of language*. 2nd ed. London: Routledge.

Freedomhouse.org. (2017). *Kenya: Government De-Registers Human Rights NGO*. [online] Available at: https://freedomhouse.org/article/kenya-government-de-registers-human-rights-ngo [Accessed 18 Apr. 2019].

Freedomhouse.org. (2018). *Kenya*. [online] Available at: https://freedomhouse.org/report/freedom-world/2018/kenya [Accessed 14 May 2019].

Freedomhouse.org. (2019a). *Freedom in the world 2019*. [online] Available at: https://freedomhouse.org/sites/default/files/Feb2019_FH_FITW_2019_Report_ForWeb -compressed.pdf [Accessed 8 Feb. 2019].

Freedomhouse.org. (2019b). *Kenya*. [online] Available at: https://freedomhouse.org/country/kenya [Accessed 8 Feb. 2019].

Froissart C. (2014) The Ambiguities between Contention and Political

Participation: A Study of Civil Society Development in Authoritarian Regimes, *Journal of Civil Society*, 10:3, 219-222,

García-Gómez (2018) 'Sexting and Hegemonic Masculinity: Interrogating Male Sexual Agency, Empowerment and Dominant Gendered Norms' in Bou-Franch & Garcés-Conejos (eds.) 2018, *Analyzing Digital Discourse : New Insights and Future Directions*, Palgrave Macmillan US, Cham. Available from: ProQuest Ebook Central. [12 April 2019].

Gilbert, L. and Mohseni, P. (2018). Disabling dissent: the colour revolutions, autocratic linkages, and civil society regulations in hybrid regimes. *Contemporary Politics*, 24(4), pp.454-480.

Göbel, C. (2010). Authoritarian Consolidation. *European Political Science*, 10(2), pp.176-190.

Houreld, K. and Miriri, D. (2017). *Kenyan government attempts to close down two rights groups*. [online] Reuters. Available at: https://www.reuters.com/article/us-kenya-election-rights-idUSKCN1AV12I [Accessed 4 Mar. 2019].

Human Rights Watch. (2017). *World Report 2017: Rights Trends in Kenya*. [online] Available at: https://www.hrw.org/world-report/2017/country-chapters/kenya [Accessed 7 Mar. 2019].

Human Rights Watch. (2018). *World Report 2018: Rights Trends in Kenya*. [online] Available at: https://www.hrw.org/world-report/2018/country-chapters/kenya [Accessed 7 Mar. 2019].

Iebc.or.ke. (2017). *Speech by independent electoral & boundaries commission Chairperson Wafula Chebukati at the announcement of presidential results at Bomas of Kenya August 11th 2017*. [online] Available at: https://www.iebc.or.ke/uploads/resources/IukcNTAE3I.pdf [Accessed 3 Mar. 2019].

Kadida, J. (2017a). *KHRC takes court action over Fazul's 'illegal' threat to cancel its operations*. [online] The Star, Kenya. Available at: https://www.the-star.co.ke/news/2017/08/21/khrc-takes-court-action-over-fazuls-illegal-threat-to-cancel-its_c1620541 [Accessed 26 Feb. 2019].

Kadida, J. (2017b). *High Court suspends Fazul order to deregister KHRC*. [online] The Star, Kenya. Available at: https://www.the-star.co.ke/news/2017/08/22/high-court-suspends-fazul-order-to-deregister-khrc_c1621192 [Accessed 4 Mar. 2019].

Kakah, M. (2017a). *KHRC wins round one of delisting suit*. [online] Daily Nation. Available at: https://www.nation.co.ke/news/KHRC-deregistration-suspended/1056-4066242-dq1h9az/index.html [Accessed 26 Feb. 2019].

Kakah, M. (2017b). *KHRC takes row with NGOs board to court*. [online] Daily Nation. Available at: https://www.nation.co.ke/news/KHRC-takes-Fazul-Mahamed-to-court/1056-4065038-fb44wt/index.html [Accessed 2 Mar. 2019].

Kakah, M. (2017c). *NGO board chief loses bid to halt fraud claim report*. [online] Business Daily. Available at: https://www.businessdailyafrica.com/news/NGO-board-chief-loses-bid-to-halt-fraud-claim-report/539546-3942168-dyv2o8/index.html [Accessed 1 Mar. 2019].

Keane, J. (2003). *Global civil society?*. Cambridge: Cambridge University Press.

Kelly, K. (2017). *UN, Amnesty condemn NGO board over AfriCOG, KHRC attacks*. [online] Daily Nation. Available at: https://www.nation.co.ke/news/UN-Amnesty-condemn-NGO-board-AfriCOG-KHRC/1 056-4058566-8ryftpz/index.html [Accessed 2 Mar. 2019].

Kenya Citizen TV. (2016). *Expatriates On The Spot: NGOs Board sets out new rules on staff hiring*. [online] Available at: https://www.youtube.com/watch?v=Esvj6adKtTs [Accessed 10 Apr. 2019].

Khrc.or.ke (2019a). *KHRC - History*. [online] Available at: https://www.khrc.or.ke/about-us/history.html [Accessed 13 May 2019].

Khrc.or.ke. (2019b). *KHRC - Meet The Team*. [online] Available at: https://www.khrc.or.ke/about-us/meet-the-team.html [Accessed 13 May 2019].

Khrc.or.ke. (2019c). *KHRC - Board Members*. [online] Available at: https://www.khrc.or.ke/about-us/board-members.html [Accessed 13 May 2019].

KTN News Kenya. (2014). *At least 15 Non-Governmental Organizations enmeshed to fund terrorism in Kenya*. [online] Available at: https://www.youtube.com/watch?v=KRZiSTEj1uo [Accessed 12 Apr. 2019].

KTN News Kenya. (2015). *Sonko Rescue Team Documentary*. [online] Available at: https://www.youtube.com/watch?v=6b7zC26Y9wk [Accessed 4 Apr. 2019].

KTN News Kenya. (2017a). *KHRC speaks, terms de-registration as "harrassment and intimidation"*. [online] Available at: https://www.youtube.com/watch?v=Bz5_h-wU9_0 [Accessed 9 Mar. 2019].

KTN News Kenya. (2017b). *Civil Liberty: NGO board outlaws two civil society*. [online] Available at: https://www.youtube.com/watch?v=xVeDWiCEniM [Accessed 16 Apr. 2019].

KTN News Kenya (2017c). *Is NGOs Coordination Board Executive Director Mohamed Fazul a State puppet?*. [online] Available at: https://www.youtube.com/watch?v=j9uxgClVLN8 [Accessed 9 Mar. 2019].

Lewis, D. (2013). Civil Society and the Authoritarian State: Cooperation, Contestation and Discourse. *Journal of Civil Society*, 9(3), pp.325-340.

NTV Kenya. (2017). *Fazul Mohamed's NGOs board is an illegal outfit — KNCHR*. [online] Available at: https://www.youtube.com/watch?v=cowUVabffCs [Accessed 8 Apr. 2019].

Maina, C. (2017). *NGO Board blocked from shutting down AfriCOG*. [online] The Star, Kenya. Available at: https://www.the-star.co.ke/news/2017/08/17/ngo-board-blocked-from-shutting-down-africog_c1618021 [Accessed 4 Mar. 2019].

Maina, C. (2018). *NGOs board to pay KHRC Sh2 million for illegal deregistration*. [online] The Star, Kenya. Available at: https://www.the-star.co.ke/news/2018/02/07/ngos-board-to-pay-khrc-sh2-million-for-illegal-deregistration_c1710786 [Accessed 4 Mar. 2019].

Maskani Ya Taifa. (2015). *Press statement on Deregistration of KHRC and other NGOS*. [online] Available at: https://www.youtube.com/watch?v=HdlTZ9jWlgU [Accessed 14 Apr. 2019].

Mubangizi, J. (2014). A Human Rights-based Approach to Development in Africa: Opportunities and Challenges. *Journal of Social Sciences*, 39(1), pp.67-76. ;

Munuhe, M. (2017). *Board wants KHRC accounts frozen over tax evasion : The Standard*. [online] The Standard. Available at: https://www.standardmedia.co.ke/article/2000229072/board-wants-khrc-accounts-frozen-over-tax-evasion [Accessed 1 Mar. 2019].

Muthoni, K. (2017). *KHRC deregistered for allegedly breaking NGO laws : The Standard*. [online] The Standard. Available at: https://www.standardmedia.co.ke/article/2001251381/khrc-deregistered-for-allegedly-breaking-ngo-laws/ [Accessed 1 Mar. 2019].

Mutua, M. (2001). Justice under Siege: The Rule of Law and Judicial Subservience in Kenya. *Human Rights Quarterly*, 23(1), pp.96-118.

Mutua, M. (2017). *KHRC targeted because it points out State excesses : The Standard*. [online] The Standard. Available at: https://www.standardmedia.co.ke/article/2001251918/khrc-targeted-because-it-points-out-state-excesses [Accessed 2 Mar. 2019].

Mutunga, W. and Mazrui, A. (2002). Rights Integration in an Institutional Context: The Experience of the Kenya Human Rights Commission. *Buffalo Human Rights Law Review*, 8(123), pp.123-146.

Negash, M. (2017). *Kenya: Is "the Boat of Democracy" Sinking or Floating? - Civil Rights Defenders*. [online] Civil Rights Defenders. Available at: https://crd.org/2017/08/23/kenya-is-the-boat-of-democracy-sinking-or-floating/#_ftn1 [Accessed 3 Mar. 2019].

NGO Coordination Board. (2017a). *NGO Coordination Board - Tweet #1*. [online] Available at: https://twitter.com/ngoboardkenya/status/872876593399681024 [Accessed 10 Apr. 2019].

NGO Coordination Board. (2017b). *NGO Coordination Board - Tweet #1*. [online] Available at: https://twitter.com/ngoboardkenya/status/951472042309713920 [Accessed 26 Apr. 2019].

NGO Coordination Board. (2019). *NGO Coordination Board*. [online] Available at: https://twitter.com/ngoboardkenya/status/951472042309713920 [Accessed 26 Apr. 2019].

Ochido, H. (2013). Review of the Public Benefit Organisations Act 2013, Kenya. *International Journal of Civil Society Law*, XI(1), pp.31-45.

Ohchr.org. (2017a). *OHCHR | Kenya at critical juncture, leaders must act responsibly – Zeid*. [online] Available at: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21972&LangID=E [Accessed 4 Mar. 2019].

Ohchr.org. (2017b). *OHCHR | UN experts urge Kenya to end crackdown on rights groups to ensure fair elections*. [online] Available at: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21172&LangID=E [Accessed 16 Apr. 2019].

Ominde S.H. , Ingham K., Ntarangwi M. 'Kenya'. (2019). In *Encyclopædia Britannica*. [online] Encyclopædia Britannica, Inc. Retrieved from: https://academic-eb-com.ludwig.lub.lu.se/levels/collegiate/article/Kenya/108363 [Accessed 7 Mar. 2019]

O'Neil, P. (2010). Essentials of comparative politics. New York: W.W. Norton & Co.

Onyango, P. (2017). *State probe on AfriCOG and KHRC begins : The Standard*.
[online] The Standard. Available at:
https://www.standardmedia.co.ke/article/2001251746/state-probe-on-africog-and-khrc-b
egins [Accessed 26 Feb. 2019].

Oseko, J. (2012). *Judicial independence in Kenya:constitutional challenges and
opportunities for reform*. Ph.D. University of Leicester.

Otieno, G. (2017). *Attack on civil society is a bad sign for the future of democracy in
Kenya : The Standard*. [online] The Standard. Available at:
https://www.standardmedia.co.ke/article/2001251911/attack-on-civil-society-is-a-bad-si
gn-for-the-future-of [Accessed 1 Mar. 2019].

Pagnucco, R., Hausmann, C., Moua, M., Norman, J., Seslija, K. and Wilson, L., 2011.
An Overview of the Human Rights Movement in Kenya.

Parliament.go.ke. (2019a). *Hon. Simiyu, David Eseli | The Kenyan Parliament Website*.
[online] Available at:
http://www.parliament.go.ke/the-national-assembly/hon-simiyu-david-eseli [Accessed 7
May 2019].

Parliament.go.ke. (2019b). *Hon. Kioni, Jeremiah Ng'ayu | The Kenyan Parliament
Website*. [online] Available at: http://www.parliament.go.ke/node/3288 [Accessed 7
May 2019].

Parliament.go.ke. (2019c). *Hon. Wahome, Alice Muthoni | The Kenyan Parliament
Website*. [online] Available at:

http://www.parliament.go.ke/the-national-assembly/hon-wahome-alice-muthoni [Accessed 7 May 2019].

Rocha Menocal, A., Fritz, V. and Rakner, L. (2008). Hybrid regimes and the challenges of deepening and sustaining democracy in developing countries 1. *South African Journal of International Affairs*, 15(1), pp.29-40.

Royal Media Services. (2019). *About - Royal Media Services*. [online] Available at: https://www.royalmedia.co.ke/about/ [Accessed 14 May 2019].

Scholte, J.. (2007). Civil Society and the Legitimation of Global Governance. *Journal of Civil Society*, 3(3), pp.305-326.

Sjögren, A. Oloo O., and Shailja Patel (2017). 'State, Civil Society and Democracy in Kenya: Kenyans for Peace with Truth and Justice (KPTJ) and the Political Crisis of 2007–2008'. in Sahle, E. (ed.) *Democracy, Constitutionalism, and Politics in Africa*. 1st ed. New York: Palgrave Macmillan, pp.265-291.

Spini D., 'Civil society and the democratisation of global public space' In: Armstrong, D, Bello V. Gilson, J., and Spini, D. (eds.) (2010). *Civil Society and International Governance*. [New York]: Taylor & Francis. pp. 15-30

Standardmedia.co.ke. (2019). *About Us*. [online] Available at: https://www.standardmedia.co.ke/corporate/about [Accessed 14 May 2019].

Tadesse, H. and Steen, T. (2019). Exploring the Impact of Political Context on State–Civil Society Relations: Actors' Strategies in a Developmental State. *VOLUNTAS: International Journal of Voluntary and Nonprofit Organizations*.

Van den Bosch, J. (2015). Personalism: A type or characteristic of authoritarian regimes? *Politologicka Revue*, *21*(1), 11–30.

Wahman, M. (2014). Democratization and electoral turnovers in sub-Saharan Africa and beyond. *Democratization*, 21(2), pp.220-243.

Wanjala, E. (2017). *Matiang'i suspends NGOs purge for 90 days pending review*. [online] The Star, Kenya. Available at: https://www.the-star.co.ke/news/2017/08/16/matiangi-suspends-ngos-purge-for-90-days-pending-review_c1617752 [Accessed 4 Mar. 2019].