



EAST AND
HORN OF
AFRICA
HUMAN RIGHTS
DEFENDERS
PROJECT
(EHAHRDP)

An overview of the Human Rights Situation in the East and Horn of Africa

Report to the 45th Session of the African Commission
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Introduction

EHAHRD-Net welcomes the opportunity offered by the 45th Session of the African Commission on Human and People's Rights to highlight some of the current human rights situations in the East and Horn of Africa region of utmost concern. There have been very few significant improvements in the field of human rights in this region over the course of the last six months. The positive steps that have been taken, notably the abolition of the Death Penalty in Burundi, have gone hand in hand with significant steps back on the road to furthering the rights identified in the UDHR. This dire situation clearly goes hand in hand with a deterioration in the reality facing Human Rights Defenders (HRDs) since the November 2008 Commission Session. These attacks on HRDs are of particular concern at a time when their work is more vital than ever before.

In spite of the current situation facing human rights defenders, a significant milestone in the protection of defenders in Africa was taken by the recent Johannesburg+ 10 All African Human Rights Defenders Conference in Kampala, organised by EHAHRD- Net under the auspices of Mme Alapini-Gansou, the ACHPR Special Rapporteur on HRDs, and in coordination with the different African HRD regional networks. The Conference brought together over 100 HRDs from throughout Africa and helped to identify shared challenges and common strategies for the promotion of the rights of HRDs. The members of the Steering Committee of the conference have agreed to work towards the implementation of the main recommendations of the conference and efforts are already underway to put in place a more clear structure to ensure these efforts are sustainable. I would like to thank Mme Alapini-Gansou once again for her support.

The situation in Sudan has significantly deteriorated since the attacks by the rebel Justice and Equality Movement (JEM) on the 10th May 2008 on greater Khartoum, and more recently as a result of the issuance by the International Criminal Court of an arrest warrant for President Omar al-Bashir. Staunch curtailments on freedom of expression and press persist, restrictions which are being formalised notably through a Draft Press Law which is at odds with the Comprehensive Peace Agreement. Behind the widely publicised expulsion of 13 international humanitarian organisations in March 2009 has been a more silent crackdown on national human rights organisations and activists. Several key HR organizations have been shut down, other organisations been made more or less inoperable and activists subjected to continual harassment; three key activists were in fact arrested and two of them tortured last November during interrogations concerning their alleged involvement with the ICC investigations.

The human rights record of the Ethiopian People's Revolutionary Democratic Front (EPRDF) and security forces remain poor, notably in the Ogaden and Oromia regions of Ethiopia. Of particular concern are the efforts by the EPRDF to clampdown on all forms of democratic space and independent civil society. The Proclamation on Charities and Societies which was passed by the EPRDF-dominated parliament in January 2009 threatens the very future of legitimate human rights work in the country. This is by far the most restrictive of such laws in the region. Under this bill, organisations receiving more than 10% of their funding from abroad will not be allowed to carry out any human rights work. The Ethiopian authorities are putting in place other legislative measures to justify their clampdown on civil and political rights in the country, notably a Draft Anti-Terrorism Proclamation. More recently the authorities resorted to more traditional measures- notably carrying out a series of arbitrary arrests of presumed or alleged members of an opposition party and of potential dissenters

within the army. Given the current situation, it is doubtful whether the 2010 elections will be free and fair. In spite of the authorities' disregard for their national, regional and international responsibilities, the international community continues to largely turn a blind eye to the record of this regime with whom many have diplomatic, economic and military ties and who is seen by certain States as a key ally in the war against terror.

The well entrenched culture of impunity in Kenya is proving difficult to surmount. The recent report by the Waki Commission of Inquiry does offer significant hope that past violations will be investigated yet until now the Kenyan government has not taken the necessary measures to implement its recommendations; notably by failing to pass a draft legislation which would have brought about the establishment of a constitutionally entrenched national Special Tribunal to hold those responsible for the 2007 election and post-election violence to account. The authorities have also failed to hold the security forces, both the police and the military, to account for mass violations, notably widespread extrajudicial killings. The situation facing HRDs in Kenya, notably their security, is of grave concern witnessed by the recent killings of two human rights activists involved in investigations into extrajudicial killings by the police.

Since reporting at the November 2008 Forum the human rights situation in Somalia has shown no improvements in spite of the signing of a peace agreement between the TFG and the Alliance for the Re-Liberation of Somalia (ARS) in Djibouti which led to the election of Mr. Sheikh Sharif Sheikh Ahmed, former President of the ARS, as the country's president and the withdrawal of Ethiopian troops in January 2009. Warfare between the Transitional Federal Government (TFG) forces and the insurgency, notably Al-Shabab persists. Fighting has continued in civilian areas of Mogadishu whilst also intensifying in towns in South and Central Somalia. Impunity prevails. Attacks and targeted killings of human rights defenders, particularly journalists, continue to occur, most notably at the hands of Al-Shabab.

The situation in Eritrea has shown no changes whatsoever since the last report: freedom of expression, thought, media, religion and movement are inexistent and all forms of activism has been entirely crushed forcing an ever increasing number of Eritreans from all walks of life to risk their lives and flee abroad. In spite of this, the international community, and most notably the European Union, has so far failed to abide by its own principles, notably the Cotonou Agreements, and ensure that aid to Eritrea is made conditional on the respect of basic human rights.

Finally the rights of LGBTI persons in the East and Horn of African region continue to be violated on a daily basis. Developments in Uganda and in Burundi are of particular concern. The recent passing of a new penal code by the Burundian President, in spite of significant mobilisation both by national human rights organisations, the media and international actors, which criminalises same sex relationships between consenting adults must be highlighted. This provision is in clear violation of Burundi's national, regional and international standards notably regarding the right to privacy and freedom from non-discrimination. In Uganda the threat stems primarily from everyday discrimination against LGBTI persons including persistent harassment, intimidation and assaults.

The following report offers a series of country overviews that look at the human rights situation in East and Horn of Africa Region focussing more specifically on the situation facing human rights defenders.

Burundi

Despite some positive steps, overall the human rights record in the country remains poor and certain developments that have occurred over the last six months are of particular concern given the forthcoming 2010 elections.

The recently passed new criminal code in Burundi is both a victory for justice but also a step back on the road to fulfilling the country's national, regional and international human rights obligations. On the one hand it abolishes the death penalty, and makes torture, war crimes, genocide and crimes against humanity criminal offences under Burundian law; on the other hand it criminalises consensual same sex relationships, which violates its responsibility to protect and ensure the right to be free from discrimination and the right to privacy. It also makes it the responsibility of the victims of domestic violence to report the violations, thereby failing to abide by its responsibility to offer protection.

The peace talks between the government and the only remaining rebel group, the Party for the Liberation of the Hutu People-National Liberation Front (PALIPEHUTU-FNL), also known as FNL, have continued as a result of significant international and regional pressure. The FNL has agreed to remove the word "Hutu" from its official name, which had been a major sticking point in the peace talks with the government, and one branch has become an official political party in April 2009. In spite of this the security situation in the country is still very fragile due to criminality linked to the post-conflict environment and the failure to fully disarm former rebel group members and members of the FNL. Furthermore, the government has of yet failed to implement some of the key components of the Arusha Peace agreement, notably regarding the establishment of a National Human Rights Commission, the draft legislation of which is still being considered.

High levels of arbitrary arrest, at the hands both of the police but also local administrators, and arbitrary detention continue to be recorded despite their prohibition in the Burundian constitution. The new criminal code has in fact given legitimacy to these actions by decriminalising arbitrary detention by state actors.¹ The systematic use of 'preventative' detention has also been recorded. Ill-treatment and sometimes torture of suspects by the Burundian National Police and the National Security Services continue to take place. Victims of torture are often reluctant to report the cases. The majority of those arbitrarily detained and those falling victim of torture are alleged FNL supporters or members of the Patriotic Hutu Party. Those in detention are often accused of illegal possession of firearms or being FNL members. The conditions in the prisons in Burundi are harsh and at times life threatening, worsened by an ever increasing prison population.²

Impunity continues to prevail and crimes committed by the security services in particular are rarely investigated. The judicial system is weak and largely fails to adhere to international

¹ HRW: Burundi Assembly Abolishes Death Penalty and Criminalises torture , <http://www.hrw.org/en/news/2008/12/03/burundi-assembly-abolishes-death-penalty-makes-torture-crime>, last visited on 5th May 2009

² APRODH, Population carcerale, au 15 Mars 2009, http://www.aprodh.org/article.php3?id_article=128, last visited on 5th May 2009

standards of independence and impartiality. Lack of resources is a considerable problem. The judiciary continues to be under the influence of the Executive. Transitional justice measures have not yet been put in place although a chairperson for the Truth Commission was finally appointed in August 2007.

Political freedoms are restricted and opposition party members continue to face harassment, intimidation and constraints on their work and abuse. Members or supporters of the former Chairman of the ruling CNDD-FDD (National Council for the Defense of Democracy – Forces for the Defense of Democracy) party, President Hussein Radjabu who was sentenced to 13 years imprisonment in mid 2008, have been the main victims of attacks on freedom of expression and movement.³ In fact supporters of Radjabu were arrested and remain in detention awaiting pre-trial on charges of threatening state security. Another means whereby the authorities have sought to hamper the work of opposition parties has been by denying them the right to assemble without prior authorisation.

Mr Sinduhije, chairperson of the Movement for Security and Democracy (MSD) was arrested on the 3rd November 2008 and detained on charges of having “shown contempt to the president” following the confiscation of documents which were apparently critical of governmental policy, from the party headquarters during an illegal search by the police.⁴ Previous attempts by this group, known as the Movement for Security and Democracy (MSD), to register as a party have been repeatedly thwarted by the Internal Ministry.⁵ Mr Sinduhije was finally acquitted after 4 months in detention on the 12th March 2009. Mr Sinduhije was re-arrested on the 17th March when arms were found in one of the vehicles that were travelling in the same convoy as Sinduhije; he was released again the following day.⁶ This situation is likely to further deteriorate in the run up to the 2010 general elections.

Right to association of trade unions is significantly hampered by continual harassment of trade unionists by the authorities. Trade unionist Juvenal Rududura, the vice-president of the judicial trade union, was arrested and imprisoned on charges of “false declarations” after he accused the Minister of Justice of corruption.

Sexual violence continues to be prevalent in Burundi. The new penal code has adopted a more comprehensive definition of rape. Perpetrators, which include members of the military and police personnel, have largely been given impunity and many victims fear speaking out about their violation.⁷ Efforts are being made by national and international organisations to encourage the victims to report and seek medical assistance; successful prosecution of rapists remains rare however.⁸ Yet the same code also differentiates spousal violence from other forms of violence by placing the burden of responsibility of reporting such violence on the victim thereby reducing the responsibility of the state to take action.⁹ This provision is of particular concern given the fact that domestic violence continues to represent by far the most prominent form of sexual violence in Burundi.¹⁰ Socio-economic, political and juridical

³ Ibid

⁴ Amnesty International, Burundi: Arbitrary Arrest, Prisoner of Conscience: Alexis Sinduhije, <http://www.amnesty.org/en/library/asset/AFR16/007/2008/en/1b4c7798-b65e-11dd-adb1-9b92b4b41c79/af160072008eng.html>, last visited on 5th May 2009

⁵ Ibid

⁶ APRODH, email received on

⁷ Ibid

⁸ US Department of State, 2008 Human Rights Report: Burundi, <http://www.state.gov/g/drl/rls/hrrpt/2008/af/118989.htm>, last visited on 5th May 2008

⁹ HRW, Background on the 2008 Penal code of Burundi, 3rd December 2008, <http://www.hrw.org/en/news/2008/12/03/background-2008-penal-code-burundi>, last visited on 5th May 2009

¹⁰ Association pour la defense des droits de la femme, Statistiques Victimes 2008, received by email

discriminations against women are widespread. Legislation continues to disadvantage women and the hard fought after inheritance law has still not been implemented.

Albinos in Burundi have recently come under threat by a spate of killings which are believed to be a spill-over from similar ones in Tanzania. The killings are fuelled by a trade in body parts that are then used in rituals by witchdoctors. The government has taken measures to arrest those believed to be behind these violations yet have not yet put in place more sweeping measures to overcome the wide ranging discriminations facing albinos.

Homosexuals have suffered from serious discrimination in Burundi but official discrimination against homosexuals only came to the scene recently when a provision was included in the draft of the new criminal code criminalising same sex relationships; this brought the issue into the public arena. The passing of the penal code in secret by the President, in spite of significant mobilisation both by national human rights organisations, the media and international actors, with the contested article 567 clearly violating Burundian's national, regional and international standards notably regarding the right to privacy and freedom from non discrimination. The provision also states that those found guilty risk imprisonment from three months to two years and a fine of 50,000 to 100,000 Burundian francs (42 to 84 US dollars).

Human rights defenders in Burundi are given a certain amount of space to exercise their rights notably to express themselves. Nevertheless, a series of recent events suggest that the space accorded to HRDs may reduce as the 2010 general elections approach. There is currently no legislation, either in the constitution or in other legal instruments that offer specific protection to HRDs.

Human rights defenders are subjected to threats and intimidation due to their reporting and work and the government is increasingly resorting to prosecution in order to silence defenders perceived as a threat to the ruling party. Defenders speaking out against cases of torture carried out at the hands of the security forces have been specifically targeted as those discussing issues of corruption by the authorities.

The recent murder of anti-corruption activist Ernest Manirumva on the 9th April 2009 however was a significant blow to the human rights community in the country and somewhat of a surprise. . Mr. Manirumva was the vice president of the widely respected anti-corruption NGO, OLUCOME (The Observatory for the struggle against corruption and economic malpractice). OLUCOME members, notably the organisation's President Mr. Gabriel Rufyiri, have suffered from continual harassment and even prosecution by the authorities in the past years. Mr. Manirumva has also recently taken up a post at the official public procurement body.¹¹ He had been working on a series of highly sensitive documents in his different posts, notably investigating corruption within the police and within private companies. The events surrounding his brutal murder are as of yet unclear but documents appear to have been taken from his home and possibly also from one of his offices. One thing that is evident is that the murder requires an impartial and independent investigation to be carried out. Following the murder the National Police set-up a police inquiry to look into it; nevertheless, after significant pressure from human rights organizations another commission was set-up. The actual make-up of the commission is not clear but it appears to include representatives of the judiciary and a member of the Federal Bureau of Investigation (FBI). According to reports Mr Gabriel Rufyiri has been receiving threats since the killing.¹²

¹¹ HRW , Burundi: Find killers of anti-corruption activists , April 16th 2009

¹² Informal communication with member of l' Action des Chrétienne pour l' Abolition de la Torture (ACAT), member of EHAHRD-Net, Burundi, 12th May 2009

Women human rights defenders in Burundi face specific obstacles as a result both of their inherently disadvantaged position in society and as a result of the issues which they seek to defend and challenge, notably discriminatory legislation on inheritance.

Press freedom has been significantly restricted in Burundi in recent months. Recent cases of harassment, censorship and intimidation and prosecution of journalists speaking out about issues seen as contentious by the government are of a particular concern. Journalists have had their material confiscated and have been arbitrarily detained and abused often on basis of 'national security' reasons.

This could be seen most recently by the arrest and lengthy pre-trial detention of journalist Jean-Claude Kavumbagu, who is the director of the online press agency Net Press, arrested on the 11th September 2008 and charged with defamation after he questioned whether there was a link between the President's trip to the Olympic Games, for which he had apparently taken \$100 000 with him, and a late delay in the payment of civil servants salaries. His arrest and pre-trial detention generated significant mobilization on behalf of national, regional and international journalist organizations. Mr Kavumbagu was finally acquitted after significant mobilisation by national civil society and the international community on the 18th March 2009 after the tribunal found that the charges could not be received.

Djibouti

The human rights situation in Djibouti has not experienced significant changes since the last report to the ACHPR. Of particular concern for the future human rights situation is the current border dispute with Eritrea; if it was to take a more military turn, this could lead to a significant deterioration in the country's human rights situation. The Djiboutian population has greatly suffered as a result of the current global food crisis.

Following independence in 1977, the country's first President Hassan Gouled Aptidon installed an authoritarian one-party state. The Rally for Progress (RFP) party, which is now headed by Gouled's nephew, Ismael Omar Guelleh, has been in power ever since. The first, although very limited, elections took place in 1992 - yet the presidential party took all the seats in the National legislature.

Ismael Omar Guelleh, the current president, was re-elected in 2005 in what was a one-man Presidential elections seeing as Guelleh was the sole candidate of the Union for a Presidential Majority (UPM) (a coalition which includes the Rally for Progress party). In fact there are calls for the current President to change the constitution in order to enable him to run for a third mandate in 2011. The opposition parties claimed that they were prevented from campaigning as a result of government control over the media and repression of the opposition's activities and therefore boycotted the elections which they saw as neither free nor fair.

Opposition parties are in theory allowed to organise but in reality are faced with many restrictions highlighted during the 2008 legislative elections. Permits are required in order to hold assemblies and the government continuously monitors the activities of the opposition. Opposition members have been subjected to harassment, police repression as well as to more subtle legal and logistical constraints. Certain opposition leaders resort to self-censorship and refrain from organising popular demonstrations in order not to face the reprisals of the authorities. Several leaders of the opposition have as a result been forced into exile. The main

opposition party, le Mouvement pour le Renouveau et le Developpement (MRD), was dissolved in July 2008 on unsubstantiated grounds and has of yet not been re-opened.¹³

The judicial system in Djibouti is weak and was denounced most recently during the country's Universal Periodic Review session at the UN Human Rights Council in Geneva. State actors in particular are accorded more or less impunity. The recent killing of a shepherd in the North of the country in December 2008 by the military is revealing: those responsible were neither arrested nor tried but were in fact accorded a high military ranking some weeks following the killing.¹⁴

Women's rights are poorly respected in Djibouti but very little effort has been made by the government to improve this situation. Female Genital Mutilation (FGM) remains rampant and the criminal legislation dealing with FGM is not enforced. There have in fact so far been no legal proceedings deposited against individuals carrying out FGM.¹⁵ Many of the organisations working on women's rights are in fact linked to the regime. There have been some improvements regarding the representation of women within the political and economic arena due to the work of the regime's women's branch, the National Union of Djiboutian Women (UNFD).

Restrictions on the free operation of trade unions are numerous, both legal and practical. Members of trade unions have themselves in recent years been harassed, intimidated, arbitrarily arrested and detained. A number of trade unionists, from the Union of Djibouti Workers/General Union of Djibouti Workers (UDT/ UGTD) that were dismissed because of their trade union activities have as of yet not been re-instated despite a recent proclamation by the European Parliament calling for their re-instatement.¹⁶

There is a significant number of what could be considered as civil society organisations but most have links with the government. Human rights groups do not operate freely. As a result there are currently only a few human rights organisation in operation in Djibouti. The main organisation is EHAHRD-Net Focal Point, the Djibouti League for Human Rights (Ligue Djiboutienne des Droits Humains - LDDH).

Mr Jean Noel Abdi, President of LDDH, has been subjected to ongoing intimidation and harassment in recent years. Mr Abdi, who has been awaiting trial before the Supreme Court for over two years for having apparently 'divulged false information'. These charges had come shortly after the release of several statements on the discovery of mass graves which were apparently hiding the bodies of 7 victims of a government killing in 1994 he was re-arrested on the 4th April 2009 after he criticised the Djiboutian judicial system. He was released the following day but is under judicial control, is prohibited from leaving Djibouti and is expected to go to the tribunal every Thursday. Finally, on the 19th April 2009, Mr Abdi's Supreme Court hearing was finally held and has been postponed until the 18th October 2009, which it is hoped will enable Mr Abdi's defence lawyer, who is based in France, to attend.

¹³ Informal communication sent to EHAHRDP by the Djibouti League of Human Rights (Ligue Djiboutienne des Droits Humains- LDDH), April 2009.

¹⁴ Ibid

¹⁵ Informal communication sent to EHAHRDP by the Djibouti League of Human Rights (Ligue Djiboutienne des Droits Humains- LDDH), April 2009.

¹⁶ Ibid; European Parliament, European Parliament resolution of 15th January 2009 on the situation in the Horn of Africa, P6_TA(2009)0026, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0026+0+DOC+XML+V0/EN>, last visited on the 6th May 2009

Freedom of expression is almost inexistent thereby greatly hampering the work of human rights defenders (HRDs). There are currently no legal mechanisms in place offering protection to HRDs.

The constitution provides for freedom of press yet this is rarely adhered to. There are very few media outlets in Djibouti. The government owns the main newspaper, La Nation, as well as the only national radio and television broadcasting agency. There are no private broadcasters in Djibouti. Le Renouveau, the sole independent newspaper, was closed in May 2007 and since then no new independent newspaper has been established. According to the law legislating on freedom of the press, media entities can only be owned or funded by Djiboutians.¹⁷

Government control over the electronic media has increased after the authorities came to realise that the internet was gaining in popularity and was being widely used - notably amongst the Djiboutian youth to access and share information. The government has as a result blocked, since 2004, access to a number of websites - notably those of the LDDH, the Association for Respect of Human Rights in Djibouti (ARDHD) and the opposition parties' websites.

The Djibouti authorities are largely responsible for the series of violations described above but impunity reigns and the perpetrators have not been held accountable or brought to justice.

Eritrea

The human rights situation in Eritrea is by far the worst in the region, if not in the world, and yet the international community and most notably the European Union fails to take action against what is clearly an authoritarian regime. The situation has not significantly changed since the past NGO forum hence the similarities with the country section in the previous report.

The regime of President Isayas Afewerki, who has officially been in power since independence in 1993, maintains an authoritarian grip over the country. The President uses the continued border dispute with Ethiopia and to a lesser extent with Djibouti as a justification for his oppressive rule and for severe curtailments of human rights in the country by claiming that the implementation of the 1997 Constitution would not be possible until the border demarcation with Ethiopia has been finalized. The President himself has described the Constitution as 'just a piece of paper'. The on-going conflict with Ethiopia also has a negative impact on the human rights situation in the region as a whole given that the Eritrean regime offers support to armed opposition groups in Ethiopia and to militia groups in Somalia, notably Al-Shabab, in its efforts to undermine the Ethiopian government.¹⁸

Political freedom is inexistent. Eritrea is a one-party state with the ruling People's Front for Democracy and Justice (PFDJ) being the only party allowed to exist. The presidential elections which were planned for 1997 have never taken place. On the 18th September 2001, a more reformist group of the ruling party, which included several generals and former ministers, known as the Group of 15 (G15) were arbitrarily arrested after they called for the implementation of democratic reforms, including the implementation of the Constitution. This

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¹⁸ Informal communication to EHAHRDP by Human Rights Concern-Eritrea, May 2009

group continues to be held incommunicado and none of them have yet been charged or brought to court. It is believed that several have since died as a result of the harsh prison conditions and the torture and cruel, inhumane and degrading treatment or punishment to which they are believed to have been subjected to. Other supposed opponents of the regime have also been detained by a regime increasingly paranoid. As a result opposition parties are forced to operate in exile.

Torture at the hands of the security forces, notably during interrogations, is systematic within the prisons in Eritrea. It is also used as a form of punishment during military service.¹⁹ Some of the forms of torture which have been identified and are frequently used are the helicopter technique and Jesus Christ.

The prison conditions in Eritrea are terrible. Besides the make-shift prisons that are found in every sizable military unit, there are hundreds of conventional prisons, open-air prisons, under-ground dungeons, and metal shipping containers being used throughout the country. Prisoners, notably political and religious prisoners as well as draft evaders, are, according to reports and rare testimonies, held incommunicado, underground or in shipping containers. 'Track B' for example is a military prison in the suburbs of Asmara and consists of underground cells which are believed to hold about 2,000 detainees. Recently the authorities have begun to detain prisoners in houses in the centre of towns in order to obscure the violations taking place. Several high interest prisoners are detained in the notorious and remote Eirareiro centre.

The authorities refuse to allow local and international NGOs to monitor the prison conditions, with the notable exception of allowing the International Committee of the Red Cross to visit certain Ethiopian soldiers and to visit and register Ethiopian civilians.²⁰ Therefore, although it is very difficult to monitor the fate and the conditions facing detainees, the very few reports and investigations which are carried out or the reports from recently exiled Eritreans reveal that many detainees have in fact died in custody as a result of torture, forced labour and lack of access to medical facilities.

Arbitrary arrest and detention without trial are a serious problem in Eritrea. People are regularly arrested without warrants, in particular during clampdowns on draft evaders, members of non-registered churches or on critics or alleged critics of the government or the military.

Freedom of movement is in practice prohibited notably given the indefinite military conscription policy and what appears to be an official shoot to kill policy at the Eritrean border.²¹

Of concern has been the recent practice of neighbouring countries, notably Egypt and Sudan, of forcibly returning Eritrean asylum seekers to Eritrea, thereby violating their responsibility under the principle of non-refoulement not to return people to a country where they may face torture. Almost 1,500 asylum seekers have been deported to Eritrea from Egypt alone since June 2008. The majority of them were detained and have been maintained in military camps and prisons ever since.

Prolonged and repeated military and national service continue to be compulsory in Eritrea and are violently enforced; the service has become more military in nature as a result of the

¹⁹ HRW, Service for Life: State repression and indefinite conscription in Eritrea, 16th April 2009, <http://www.hrw.org/en/reports/2009/04/16/service-life-0>, last visited on 6th May 2009

²⁰ US Department of State, Eritrea: Country Reports on Human Practices, March 11 2008, <http://www.state.gov/g/drl/rls/hrrpt/2007/100480.htm>

²¹ HRW, Service for Life: State repression and indefinite conscription in Eritrea

unresolved border dispute with Ethiopia and a stalemate in the situation on the border with Djibouti. Conscription continues to be enforced through a range of methods notably mass round-ups and house-to-house sweeps; the men and women that are detained and conscripted are forced to serve indefinitely, i.e. for much longer than the statutory national service of 18 months. As a result, almost on a weekly basis, hundreds of young Eritreans seek refuge in neighbouring countries in order to evade conscription, often having to flee by foot across the very dangerous border given that it is almost impossible for Eritreans under the age of 50 to be granted exit visas²². The regime is therefore turning to increasingly older or younger layers of the population and drafting underage members of the population to make up for these numbers, notably by having moved the last year of high school to the Sawa military camp.²³ Draft evaders and their families are severely punished. In addition to risking torture, draft evaders also risk their lives: a number of evaders caught trying to escape abroad have been killed. Parents of those seeking to escape the draft are either expected to pay an incommensurate fine or, if they are unable to meet such costs, detained indefinitely, harshly interrogated, and in some instances tortured. Family members have been according to reports, sometimes also been forcefully conscripted, to replace missing relatives. The right to conscientious objection is therefore inexistent in Eritrea.²⁴

Forced labour is according to EHAHRDP focal point, Human Rights Concern-Eritrea, a widely used and enforced practice.²⁵ Both conscripts and prisoners are being used to work on government- run farming, dam building, housing, road construction projects and more recently on mining projects. Some are forced to work on the private farms of generals and ruling party allies.

Religious freedom is severely violated as the State is bent on prohibiting all forms of actions or thoughts which may deviate from its control.²⁶ In fact members of minority Christian churches, notably Pentecostal churches, continue to be persecuted in Eritrea. The government still operates according to a 2002 Decree that compels all religious groups to register. The only four religions allowed a certain amount of freedom in the country are the Eritrean Orthodox, Evangelicals (Lutheran) of Eritrea, Islam, and the Roman Catholic Church. Yet, even members of the official religion are not given the space to practice their religion freely. Minority churches notably independent evangelical groups, Pentecostals, and Jehovah's Witnesses have seen their registration applications ignored or rejected by the authorities. Public religious activities as private activities involving more than five people of unregistered churches are banned. Members of minority denominations continue to be subjected to intimidation and arbitrary arrests by the armed forces. Individuals, notably conscripts, found practicing unregistered religions in private are detained. According to Amnesty International, over 3,000 individuals of minority religions are at present detained in Eritrea;²⁷ they are held without trial or charges and often subjected to ill-treatment or torture in the aim of forcing them to renounce their faith. As a result, an increasing number of members of these minority churches are seeking refuge abroad.

²² Ibid

²³ Informal report sent to EHAHRDP by Human Rights Concern-Eritrea, November 2008 ; HRW, HRW, Service for Life: State repression and indefinite conscription in Eritrea

²⁴ Ibid

²⁵ Informal report sent to EHAHRDP by Human Rights Concern-Eritrea, November 2008

²⁶ HRW, Service for Life: State repression and indefinite conscription in Eritrea

²⁷ Amnesty International, Eritrea: Amnesty International submission to the UN Universal Periodic Review, Sixth Session of the UPR Working Group, November-December 2009,

<http://www.amnesty.org/en/library/asset/AFR64/001/2009/en/c51f0e91-04cc-437e-bd9b-79a220021cf7/afr640012009en.html>, last visited on the 6th May 2009

Violence against women, and notably domestic violence, is pervasive. Although the law prohibits domestic violence the government has not enforced it. FGM continues to be widespread. Women undertaking their military service face harassment, discrimination, abuse and sexual violence. Many high level commanders take women undergoing their service as their 'wives' expecting them to do their chores and also carry out sexual favours. Those that refuse are subjected to heavy military duties, torture and severe punishment. Unwanted pregnancies and HIV infection rates are high amongst these groups. Women who fall pregnant of rape in the military are expected to remain silent concerning the identity of the perpetrator. As a result, in order to escape military conscription, Eritrean women and girls are getting married increasingly younger.²⁸

There is currently no human rights movement to speak of in Eritrea given that all forms of "criticism" whether actual or theoretical is banned. Human rights organisations can only operate from outside of the country and are perceived by the regime as subversive and as a tool used by the Ethiopian authorities to undermine Eritrean sovereignty. There are currently no international human rights organisations working in Eritrea. NGOs working on non-rights issues have been systematically dismantled. The authorities have on several occasions expelled international organisations and employees of NGOs, aid agencies and the UN. In fact the staunch registration requirements, notably monetary, make it almost impossible for international NGOs to establish a presence in the country.

Freedom of speech and press are largely inexistent in Eritrea.²⁹ Eritreans live in complete dearth of information – with the rare exception of news which they can get from the odd foreign radio station which they can pick up in their country. Private ownership of media and international influence or ownership of media is banned. Eritrea is in fact the only country in Sub-Saharan Africa which does not have a single independent news outlet. The government has had total control over the media since September 2001, following the calls for the implementation of the constitution, which was followed not only by the arbitrary arrest of ruling party members but also by a massive crackdown by the authorities on the independent media. This ended with the arrest of thirteen journalists and the closure of the few independent media houses in operation. As a result of government control over the national media, a fear of reprisals amongst the prisoners' families along with the tight restrictions on foreigners' movement within Eritrea it is very difficult to shed light on the fate of these journalists.³⁰ Several of the journalists are still being held incommunicado in secret locations without being charged or given a fair trial. According to reports several journalists were amongst the political prisoners moved to a prison on the Dahlak archipelago, where the conditions are reported to be appalling.³¹ The fate of the Swedish-Eritrean journalist, Dawit Isaac, is symbolic of many others. Mr Isaac, editor and founder of the former weekly Setit, has been held incommunicado ever since his arrest in the 2001 clampdowns. He is reported to have been one of the journalists recently moved away from Asmara in December but on the 11th January 2009 was transferred to a military hospital. Despite significant mobilisation on his behalf, notably by the Swedish press, his whereabouts and condition are as yet unknown.³²

²⁸ Amnesty International, Eritrea: Torture, AFR 64/005/2008, 4th September 2008,

<http://www.amnesty.org/en/library/asset/AFR64/005/2008/en/f358f6b0-7d8c-11dd-8e5e-43ea85d15a69/afr640052008en.pdf>

²⁹ See EHAHRD-Net Index: ERIT 025/002/2007, *Eritrea must respect media freedom*, at

<http://www.protectionline.org/Eritrea-Must-Respect-Media-Freedom.html>

³⁰ Committee to Protect Journalists (CPJ), *Attacks on the media in Africa in 2007: Eritrea*,

<http://www.cpj.org/attacks07/africa07/eri07.html>

³¹ RSF, Plea to EU to suspend development aid in light of fresh clampdown on journalists, 6th March 2009,

http://www.rsf.org/article.php3?id_article=30491, last visited on the 6th May 2009

³² Informal report sent to EHAHRDP by Human Rights Concern-Eritrea, May 2009; RSF, Plea to EU to suspend

development aid in light of fresh clampdown on journalists, 6th March 2009,

http://www.rsf.org/article.php3?id_article=30491, last visited on the 6th May 2009

According to Reporters Sans Frontiers (RSF), a new crackdown on the press took place on the 22nd February 2009, this time on a radio station that works for the Ministry of Education. The entire staff of Radio Bana were arrested, some later released but several remain in detention but have not been charged.³³

A significant number of journalists have fled Eritrea. The decision to flee ones country is never an easy one but in Eritrea it has even more serious repercussions. Those caught whilst trying to escape have been immediately imprisoned and thereafter detained incommunicado. Furthermore, as is the case of the situation facing families of draft evaders, the families of journalists who flee the country have also been targeted with government reprisals.

The very few foreign journalists allowed to operate in Eritrea are under staunch control and risk expulsion at the smallest reference made to the country's human rights situation.³⁴

Ethiopia

The human rights situation in the country has continued to deteriorate ever since the contested 2005 elections as the Ethiopian People's Revolutionary Democratic Front (EPRDF) party takes new measures, notably legislative, to ensure that all forms of democratic space and civil society activism is closed down. Given the current situation, it is doubtful whether the 2010 elections will be free and fair. In spite of the authorities' blatant disregard for their national, regional and international responsibilities, many key donors continue to offer support to the Ethiopian government, notably as a result of its role as an "ally" in the war against terror.

Since the elections of 2005 the government has come to perceive the political landscape in a binary manner and all form of criticism of the regime, whether from the political opposition or members of civil society, as an attack on the State. This perception and paranoia appear to be increasing as the 2010 elections approach. Political freedom continues to be hampered. This was seen recently by the widely reported arrest on the 28th December 2008 of Birtukan Mideksa, the leader of the main opposition party, Unity for Democracy and Justice (UDJ), which was one of the parties which split from the Coalition for Unity and Democracy (CUD), the main opposition in the disputed 2005 elections. The UDJ is gaining increasing support both in Addis Ababa and other urban areas. Given that the CUD had taken all seats in Addis Ababa in 2005, the EPRDF is increasingly weary and bent on ensuring that the events of the 2005 elections do not re-occur.³⁵ Ms Mideksa had been amongst the opposition politicians arrested and tried for treason, amongst other charges, during the post 2005 clampdown; she had been charged with treason and sentenced to life but later signed a letter of apology and received a Presidential Pardon. Following this most recent arrest Ms Mideska was initially held at the infamous Kaliti prison in solitary confinement and went on hunger strike.³⁶ Ms Mideska's life sentence was re-imposed after she was found guilty of having violated the terms of her previous pardon and release after she spoke about the experience at a conference in Sweden.

³³ RSF, Plea to EU to suspend development aid in light of fresh clampdown on journalists, 6th March 2009, http://www.rsf.org/article.php?id_article=30491, last visited on the 6th May 2009

³⁴ Ibid

³⁵ Informal interview with Ethiopian HRDs, Kampala, Uganda on the 6th May 2009

³⁶ AI, Ethiopia: Arbitrary detention/ torture or ill treatment : Birtukan Mideska, <http://www.amnesty.org/en/library/asset/AFR25/003/2009/en/f3521423-dcca-11dd-bacc-b7af5299964b/af250032009en.html>, last visited on 6th May 2009

More recently, since the 24th April 2009, a significant number of people, notably army officers, have been arrested apparently for having planned an attack on the government; others are believed to be mere supporters or family members of supporters of the opposition. The individuals are accused of being part of the Ginbot 7 (15th May) opposition group, members of which are based primarily in exile. The individuals had initially been charged with plotting a coup but have since been accused of committing terror activities, an accusation which appears to be more favourable to the government, notably its attempts to have key opposition figures currently in exile deported back to Ethiopia.³⁷ The exact names and situation of these individuals have not yet been made public.³⁸

The Ethiopian Human Rights Council (EHRCO), EHAHRD-Net focal point in Ethiopia, has reported on a number of cases of extrajudicial killings – notably of people who had in the past been linked to opposition parties and who had suffered from human rights violations at the hands of the authorities in the 2005 clampdown.³⁹ Government forces continue to arbitrarily detain people without arrest warrants, denying access to counsel and family members for periods longer than the Constitutionally stipulated time restrictions of 48 hours and at times in defiance of court rulings particularly in the more remote regions and notably in Oromia and Ogaden. Most cases of arbitrary arrest and detention involve people suspected of being opposition members or sympathisers of insurgent groups, notably of the Ogaden National Liberation Front (ONLF) or of the Oromo Liberation Front (OLF), outlawed groups which have been carrying out low-level insurrection against the government.⁴⁰ According to Amnesty International, the number of arbitrary arrests of alleged members of the OLF has been on the increase since late 2008.⁴¹ Much of the repression against government critics is also carried out by local authorities who have become increasingly powerful as a result of the government's decentralisation policies. Although prisoners are by law supposed to be detained in official detention centres, many continue to be held in unofficial local detention centres.

Of particular concern in the current context notably the violations committed during the government's abusive counter-insurgency campaigns and crackdown on all forms of independent civil society and peaceful criticism, is a current draft anti-terrorism proclamation which if implemented under its current form could be used to legalise these current government abuses. First and foremost the definition of terrorism put forward in the draft is very vague and therefore gives ample space for the authorities to implement the law in a haphazard manner notably to criminalise legitimate non-violent activism.⁴² The definition of terrorist acts also has the potential of being used to criminalise all form of peaceful protests and demonstrations.⁴³ The draft also offers the government another instrument with which to restrict freedom of speech and expression by broadly and yet once again vaguely defining the

³⁷ Informal interview with Ethiopian HRDs, Kampala, Uganda on the 6th May 2009 ; Reuters, Ethiopia opposition says anti-govt plot invented, 6th May 2009, <http://www.ethiomeia.com/adroit/2280.html>, last visited on 6th May 2009

³⁸ AI, Ethiopia: Arbitrary detention/ torture or ill treatment : Birtukan Mideska, <http://www.amnesty.org/en/library/asset/AFR25/003/2009/en/f3521423-dcca-11dd-bacc-b7af5299964b/af250032009en.html>, last visited on 6th May 2009

³⁹ EHRCO, *The human rights situation in Ethiopia : 28th Regular Report*

⁴⁰ EHRCO, *The human rights situation in Ethiopia : 28th Regular Report*

⁴¹ AI, Ethiopia: Submission to the UN Universal Periodic Review: Sixth Session of the UPR working group of the human rights council, November-December 2009, <http://www.amnesty.org/en/library/asset/AFR25/004/2009/en/52d803e9-3f0c-4529-a02c-571cffe4ed20/af250042009en.html>, last visited on 6th May 2009

⁴² Draft Anti-Terrorism Proclamation sent to EHAHRDP by an Ethiopian member of the network currently in exile, article 3.1; HRW, Analysis of Ethiopia's Draft Anti-terrorism proclamation, 9th March 2009, ethiopolitics.com/pdfiles/Analysis_of_Ethiopia's_Draft_CT_Proclamation_3.9.09.pdf -, last visited on 6th May 2009

⁴³ Ibid, article 3.1.vi

forms of speech that can be criminalised and seen as inciting or supporting terrorism.⁴⁴ The draft bill will also see the power of the police significantly increased.

The Constitution and law prohibit torture; however, reports show that torture continues to be practiced by the security forces, notably those working at the Maikelawi Prison in Addis Ababa, against people suspected of having links with the Oromo Liberation Front.⁴⁵

Besides the 2005 incidents, there have also been serious accusations of human rights abuses arising from the long standing fighting between the Ethiopian army and the Ogaden National Liberation Front (ONLF) rebels in the country's Somali Regional State. The Ethiopian troops have responded to the increase in attacks by the ONLF which has taken place since the Ethiopian troops invaded Somalia, by subjecting the civilian population to extrajudicial killings, rape, forced disappearances and arbitrary detentions during supposed counter-insurgency campaign. These actions have been carried out with impunity.

Despite these persistent and large-scale violations, particularly of civil and political rights, the government continues to receive foreign support and assistance. In fact, on the very same day that the EU published a weak statement on the Charities and Societies Proclamation, the European Commission renewed its aid package to the Ethiopian government.⁴⁶

The situation facing human rights defenders in Ethiopia continues to deteriorate. Human rights organisations and activists are subjected to threats, harassment and attacks on their personal security at the hands of the authorities. The authorities are increasingly using more subtle 'legal' constraints to further increase their oversight and control over the legitimate work of human rights defenders. The new Charities and Societies Proclamation is a perfect example of one of these new measures being used.

The Charities and Societies Proclamation was passed by the Ethiopian Parliament, largely dominated by the ruling Ethiopian People's Revolutionary Democratic Front (EPRDF) party, on the 6th January 2009 despite considerable efforts on behalf of national, regional, international organisations as well as the diplomatic community, although in a somewhat more restrained fashion, to bring about significant amendments to the bill. The law contains a series of provisions aimed at thwarting and criminalising human rights work. This legislation is the most restrictive legislation currently in place in the region targeting the work of human rights defenders and determines the very type of activities in which organisations can be involved in; organisations deemed to be foreign, i.e. receiving more than 10% of their funding from abroad⁴⁷, are not allowed to take part in human rights activities such as documentation, reporting and advocacy amongst others.⁴⁸ Given that even the largest human rights organisations in Ethiopia generate only very limited funds from internal sources in this poverty-ridden country, such provisions are directly aimed at thwarting human rights work, stifling one of the few avenues available for expressing critical opinions and creating service provision oriented organisations. These provisions also criminalise the work of international human rights organizations and prevent them from undertaking independent monitoring of human rights violations and from providing assistance to national NGOs.

⁴⁴ Ibid, article 6.1

⁴⁵ EHRCO, *The human rights situation in Ethiopia : 28th Regular Report*

⁴⁶ Ibid

⁴⁷ Proclamation to Provide for the Registration and Regulation of Charities and Societies Proclamation No.621/ 2009, Article 2(3), Federal Negarit Gazeta, N.25, 13th February 2009, available at <http://www.crdaethiopia.org/Documents/>, retrieved on the 11th March 2008

⁴⁸ Proclamation to Provide for the Registration and Regulation of Charities and Societies Proclamation No.621/ 2009, Article 14(5), Federal Negarit Gazeta, N.25, 13th February 2009, available at <http://www.crdaethiopia.org/Documents/>, retrieved on the 11th March 2008

The Proclamation allows for only a very limited form of review.⁴⁹ It sets up a supervisory agency - the Charities and Societies Agency (CSA) - that will be appointed by the Minister of Justice. The powers accorded to this Agency further extends government control over NGO registration notably by granting it the power to deny registration and cancel licences for reasons which are largely unclear and arbitrary. Given the demonstrated lack of commitment to democracy and human rights evidenced in recent times by the ruling party, this vagueness and consequent discretion placed in the hands of the CSA is particularly troubling. The many different registration and bureaucratic requirements put in place render it almost impossible for organizations to ensure complete compliance.

Given that human rights organizations in the country have since 2005 increasingly exercised caution in their work and often limited the types of activities which they undertake - the Ethiopian Human Rights Council (EHRCO) is in fact one of the only organizations carrying out advocacy and monitoring on human rights especially civil and political rights - this legislation risks to further limit significant monitoring and reporting on ongoing and widespread human rights violations in the country notably in light of the forthcoming 2010 general elections and the continued political repressions carried out at the hands of the ruling party. It is not yet clear how and whether the law will be implemented on the ground as in theory it does not come into effect until 2010 nevertheless, regardless of its implementation, it is already having a significant impact on human rights organizations and other independent civil society organizations on the ground. Organisations are for example seeking to identify ways of reducing their costs, taking on new activities which are not considered as “ideological” and therefore do not fall into the 10% category at the clear detriment of human rights advocacy for example.

The government has also heightened its practice of establishing GONGOs or funding pseudo-professional associations to discredit relevant independent national organisations.

Although the Constitution and law provide for freedom of expression the government has greatly restricted these rights. The authorities continue to harass, intimidate and prosecute journalists, publishers and editors thus forcing many journalists to exert self-censure. Of particular concern is the increasing use of criminal law by the authorities as a means of stifling critical journalism.⁵⁰

The Mass Media and Freedom of Information Proclamation, which was passed in July 2008 contains many provisions which are at odds with the Constitution, notably by introducing severe criminal charges against the media. The law notably allows the authorities to prosecute the media for defamation cases even if the allegedly ‘defamed’ government official does not initiate legal proceedings.

Independent media outlets remain scarce following the closure of several of the independent media outlets shut during the post election clampdown remain closed. Over the last six months, a few independent media outlets have been allowed to open up but their ‘independence’ is often threatened or undermined. The Ethiopian Broadcasting Agency ordered at the beginning of March the re-registration of all newspapers and magazines by June 2009 in compliance with the new Mass Media and Freedom of Information Proclamation.⁵¹ Although in theory such a procedure is not a problem, in practice, given the current context,

⁴⁹ Proclamation to Provide for the Registration and Regulation of Charities and Societies Proclamation No.621/ 2009, 104 (3), Federal Negarit Gazeta, N.25, 13th February 2009, available at <http://www.crdaethiopia.org/Documents/>

⁵⁰ CPJ, *Ethiopia: Two newspaper editors, publisher arrested for Libel*, March 6th 2008, <http://www.cpj.org/news/2008/africa/ethiopia06mar08na.html>

⁵¹ Afrol News, Ethiopian press ordered to re-register, 2nd March 2009, <http://www.afrol.com/articles/32568>, last visited on 7th May 2009

this is likely to be used to further restrict freedom of expression notably in light of the more stringent registration requirements. Prosecution is also used as a means of restricting the freedom of the media.

Kenya

The human rights situation in Kenya continues to be of significant concern and has seen in some areas significant deteriorations over the last one and half years. Impunity continues to prevail in the aftermath of the election violence and the reform agenda, which placed emphasis on the establishment of a series of accountability mechanisms, based in large part on the Waki Commission, is more or less stalled. The security situation of human rights defenders has been very poor ever since the 2007 elections as they have come under threat from both state and non-state actors. In fact, current trends confirm that the establishment of the Grand Coalition government is in fact having a negative impact on civil society notably by bringing both the government and the opposition together in a shared consensus to limit the space accorded to civil society and to restrict efforts to shed light on violations committed by both parties and the government's failure to offer HRDs the protection which their legitimate work requires.

Extrajudicial killings and enforced disappearances of Kenyan civilians by the Kenyan police are "systematic, widespread and carefully planned"⁵² as the recent visit by the UN Special Rapporteur on Extrajudicial Executions, Professor Philip Alston in February 2009 revealed. Such killings occur both on a daily basis as part of the police's supposed crime control strategies, as well as during special operations against armed and criminal gangs, notably supposed members of the Mungiki gang. According to reports, the Kenyan army also carried out extrajudicial executions during their crackdown on the Sabot Land Defence Force (SLDF) in March 2008 in the Mount Elgon region of Western Kenya.⁵³ The authorities, notably the police commissioner, continue to deny what are increasingly becoming hard facts.⁵⁴

Unlawful killings at the hands of vigilante groups also appear to be on the increase in recent weeks, as clashes between these groups and Mungiki members most recently in central Kenya are rising. Either incidents committed by state or non state actors are not systematically reported or investigated.⁵⁵

Authorities, and notably the police forces, continue to unlawfully and arbitrarily detain people without arrest warrants or charge, denying them access to counsel and family members for prolonged periods. Lengthy pre-trial detentions are a problem. Prison conditions continue to be harsh and at times life threatening due to overcrowding, insufficient access to health facilities and a climate of violence. Torture and inhumane and degrading treatment against people in police custody is allegedly widespread. This can be seen as being linked both to the widespread impunity in the country as well as a lack of legal provisions to prohibit torture.⁵⁶

⁵² UN Special Rapporteur on extrajudicial killings, UN Special Rapporteur on extrajudicial killings Concludes fact-finding missions to Kenya, 25th February 2009, <http://www.extrajudicialexecutions.org/>, last visited on 7th may 2009

⁵³ UN Special Rapporteur on extrajudicial killings, UN Special Rapporteur on extrajudicial killings Concludes fact-finding missions to Kenya, 25th February 2009, <http://www.extrajudicialexecutions.org/>, last visited on 7th may 2009

⁵⁴ Ibid

⁵⁵ Ibid ; AI, Public Statement: Kenya must respect and protect the rights of all, 27th April 2009,

<http://www.amnesty.org/en/library/asset/AFR32/004/2009/en/02cfa669-9e7f-4098-8e40-2b6cdf7626a3/afr320042009en.html>, last visited on 7th May 2009

⁵⁶ Committee against torture http://www.imlu.org/index.php?option=com_content&task=view&id=47&Itemid=29

Several accounts suggest that those increasingly at risk of torture are individuals coming from poorer, primarily urban, areas.⁵⁷

The judicial system in Kenya is thoroughly inadequate, lacking transparency, efficiency and largely failing to offer redress for key human rights violations.⁵⁸ A culture of impunity, notably for security and law enforcement agencies, is well-established. Independent and impartial investigations or legal sanctions against those responsible for clear human rights violations, notably extrajudicial executions, arbitrary arrests and detentions and torture, are almost non-existent. The investigations that are carried out are generally done so by the very actors behind the violations. The current Police Commissioner Major General Mohammed Ali along with the Attorney General Amos Wako, are according to reports posing significant impediments to the fight against impunity, but in spite of significant pressure on the government to replace them, no such measures have yet been taken.⁵⁹

Some efforts have been made as a result of the post-election commissions of inquiry to enhance accountability in the country. In September 2008, a police oversight body has been established by the Minister for State Provincial Administration and Internal Security based on the recommendations of the Commission of Inquiry into the post election violence. Nevertheless, so far it exists only on paper and many feel that it lacks independence, legal grounding, has no powers of enforcement and only limited funds allocated to it.⁶⁰ Similarly the parliament rejected a bill to set-up a Special Tribunal to investigate the violence that occurred during and in the aftermath of the 2007 elections and hold in spite of significant efforts and pressure by civil society and the international community.

The new Witness Protection Act is largely failing to fulfil its stipulated aims. According to its provisions, witnesses may be given new identities and relocated to other countries. In case their lives are perceived to be in danger, the state will cater for transport, meals and accommodation if need arise of safe keeping of a witness. Of particular concern is the fact that the Act stipulates that the Attorney General and the police are those given the responsibility to accord protection to witnesses. Given that several of the current key commissions and investigations, both into the post election violence and into the extrajudicial killings, point towards state agents as perpetrators, notably the police, the bill clearly fails to offer the necessary protection to those testifying against these actors. The preliminary findings of Professor Alston reveal clearly the urgent need for the establishment of an independent witness protection mechanism given the utter failure of the current system to provide an adequate framework to denounce human rights violations and their perpetrators.⁶¹ This is particularly vital in light of the fact that the Independent Medico-Legal Unit, EHAHRD-Net focal point in Kenya, has in fact estimated that between 200 and 300 individuals will be in need of protection.⁶² Without ensuring that protection is accorded to human rights defenders in general, and witnesses in particular in this context, impunity will continue to prevail.

⁵⁷ Ibid; IMLU, Kenyan and international NGOs condemn the government of Kenya's lack of commitment to end torture, 13th November 2008,

http://www.imlu.org/index.php?option=com_content&task=blogcategory&id=15&Itemid=29&limit=9&limitstart=9, last visited on 7th May 2009

⁵⁸ http://www.imlu.org/index.php?option=com_content&task=view&id=47&Itemid=29; UN Special Rapporteur on extrajudicial killings, UN Special Rapporteur on extrajudicial killings Concludes fact-finding missions to Kenya, 25th February 2009, <http://www.extrajudicialexecutions.org/>, last visited on 7th may 2009;

⁵⁹ UN Special Rapporteur on extrajudicial killings, UN Special Rapporteur on extrajudicial killings Concludes fact-finding missions to Kenya, 25th February 2009, <http://www.extrajudicialexecutions.org/>, last visited on 7th may 2009;

⁶⁰ UN Special Rapporteur on extrajudicial killings, UN Special Rapporteur on extrajudicial killings Concludes fact-finding missions to Kenya, 25th February 2009, <http://www.extrajudicialexecutions.org/>, last visited on 7th may 2009; KNCHR, Press Statement, Kenya needs an independent and effective police oversight board, 12th September 2008,

⁶¹ http://www.imlu.org/index.php?option=com_content&task=blogcategory&id=15&Itemid=29&limit=9&limitstart=9

⁶² Informal communication with IMLU, March 2009

The deployment of Kenyan military to the Mount Elgon region of western Kenya in order to put down an insurgency by the Sabot Land Defence Force (SLDF) in March 2008, was marked by severe violations which include mass detentions, rape, torture, forced disappearances and killings. The military was deployed and initiated a strategy aimed at rounding up the entire male population in the district; including children, in the process not only arbitrarily detaining thousands but also torturing many of those detained and deliberately killing a significant yet as of yet unknown number. An investigation by IMLU reveals that the military are the main perpetrators of cases of torture identified but in some cases victims reported to having been tortured by police.⁶³ The government has launched an internal police inquiry but according to the UN Special Rapporteur on Extrajudicial Executions, the investigation conducted was inadequate as no significant prompt, impartial and independent investigation has been put in place.⁶⁴ .

Internal displacement has been a continuing problem within Kenya, particularly displacement from within the Rift Valley region. The resettlement of the displaced was to be a key aspect of the peace accord signed between the two protagonists in the elections; nevertheless many IDPs have still not been able to return home and remain in camps which apparently fail to meet their basic needs.

The rights of women continue to be violated. Cases of sexual violence have been particularly high in situations of conflict notably during the post election violence and the military deployment in the Mount Elgon region. Domestic violence is widespread and yet the government appears to be delaying the enactment of key legislation relating to the protection of women.⁶⁵ The trafficking of women and children is also an issue of concern in Kenya. Although Female Genital Mutilation (FGM) has been made illegal in Kenya it continues to be practiced particularly in rural areas and amongst specific ethnic groups. The practice is increasingly becoming medicalised. The authorities have been very slow to implement the law which criminalises FGM. Unequal property rights are a significant problem to women.

Human rights defenders in Kenya continue to face harassment, intimidation and prosecutions. Human rights organisations have faced severe violations to their rights in their attempts to investigate cases of extrajudicial killings and enforced disappearances. These violations have gone from violating their right to access key information and witnesses, to in the tragic case of Mr. King'ara and Mr. Oulu, the violation of their right to life. Mr. Oscar Kamau King'ara and Mr. John Paul Oulu, both of Oscar Foundation Free Legal Clinic, were murdered in public on the 5th March 2009. The vehicle of Mr. King'ara and Mr. Oulu was blocked by two cars near the residence of the Kenyan President; an individual in police uniform is believed to have been driving one of the two vehicles. The two men died as their car was sprayed with bullets. Mr. King'ara's Oscar Foundation Free Legal Clinic had in the past concentrated on offering legal aid to the poor but more recently had become one of the leading organisations documenting cases of extra-judicial killings, working closely with witnesses and survivors of these violations. The Foundation had presented their most up-to-date report on extra-judicial killings during the police crackdown on the Mungiki to the Special Rapporteur on Extrajudicial Executions, Professor Philip Alston, upon his visit to Kenya in February 2009. These findings had also been presented to the Kenyan Parliament on 19th February. Only hours before the killings, a government spokesman, Dr. Alfred Mutua, accused the Oscar Foundation of supporting the Mungiki. This was the most recent example of the extent to

⁶³ IMLU, *Preliminary Report of Medico-Legal Investigation of Torture by the Military at Mount Elgon 'Operation Okoa Maisha'*, April 2008, http://www.nationmedia.com/dailynation/downloads/mt_elgon_investigations_IMLU_report.pdf

⁶⁴ UN Special Rapporteur on extrajudicial killings, UN Special Rapporteur on extrajudicial killings Concludes fact-finding missions to Kenya, 25th February 2009, <http://www.extrajudicialexecutions.org/>, last visited on 7th may 2009;

⁶⁵ http://www.imlu.org/index.php?option=com_content&task=view&id=47&Itemid=29

which the police in Kenya are willing to go to silence critics of their rampant human rights violations and of the impunity granted to them. These recent incidents also highlight very clearly the authorities' complete disregard for their responsibilities to ensure the protection of human rights defenders and to create an enabling environment for defenders.

The government continues to use prosecution as a means of undermining the work of defenders.

The complacency of the authorities, even former members of the opposition, and the lack of willingness and effort to respond to defenders' calls is a significant challenge for Kenyan HRDs. The work of human rights defenders has been made particularly complicated by the establishment of the Government of National Unity, following the contested elections of December 2007, as this coalition has brought the opposition to power. Since its ascension to power the opposition which was once more open to HRDs and their work is increasingly taken a more negative stance and therefore poses a risk to defenders and their ability to serve as effective watchdogs.

Regulations are increasingly being interpreted in a manner so as to undermine the work of defenders and their rights, notably the freedom of assembly. The Independent Medico Legal Unit, EHAHRD-Net focal point in Kenya, along with several other civil society organizations sought, to organise a peaceful procession for the 26th June 2008, in honour of the UN's International Day in support of torture survivors and victims. In order to comply with Kenyan law, which stipulates that the police must be notified before the holding of such event, IMLU informed the police prior to the event only to see their 'notification' rejected on security grounds. The march was called off but participants gathered on the given day but they were soon dispersed by the police using tear-gas. IMLU is seeking to bring this case to court based on the notion that the police's decision to reject the notification was illegal and unconstitutional given that only a notice is sufficient under the Public Order Act.⁶⁶

Civil Society Organisations have been trying to offer each other support in these attacks, notably following the killings of Mr. Oscar Kamau King'ara and Mr. John Paul Oulu, Kenyan organizations mobilized and released significant press releases and also re-enforced their protection programs, but neither the President nor the Prime Minister have responded to these complaints.

A significant challenge facing human rights defenders is the lack of accountability for those responsible for human rights violations - particularly state actors. When efforts are made to hold individuals and entities accountable, notably through the release of key recommendations relating to the given issues, the State has time and again sought to delay the implementation of the recommendations.

The government has of yet failed to establish the local Special Tribunal, the establishment of which was a key component of the Waki Commission of inquiry, after the parliament overwhelmingly rejected a bill which would have based the tribunal within the Constitution which would have offered it the necessary legal grounding and independence. In its recommendations the Waki Commission stipulated that if the proposed tribunal is not established or efforts are made to undermine it then a list of those believed to be responsible for the most serious crimes will be sent to the International Criminal Court in The Hague. Several parliamentarians claimed that they felt that referral to the ICC, was a preferable alternative, fearing that a local tribunal would be vulnerable to political manipulation. Nevertheless, rights groups have highlighted the benefits of the Special Tribunal and stressed

⁶⁶ Ibid

that the mechanisms should be complimentary and not exclusive.⁶⁷ Mr Annan, chief mediator in the post election talks, has recently stated that if the said tribunal is not established by the end of the summer, he would hand the envelope with the names of those deemed of highest responsibility to the ICC.

The media continues to play a key role in Kenya notably helping to push for government accountability and yet there are still no legislation relating to freedom of information despite the fact that Kenya is party to several international and regional treaties guaranteeing freedom of expression and the media. Nevertheless the freedom of the media has come under threat on several occasions in the past 15 months. Most recently, the Kenyan government sought to pass the Kenya Communications (Amendment) Bill 2008, seen by many as an attempt to legalise the arbitrary ban imposed by the Kibaki government during the post election violence. The Bill was initially passed by Parliament but President Kibaki has since sent it back to Parliament for review as a result of the significant contestation the Act generated.

Accountability for these violations remains largely inexistent yet for peace to be lasting and concrete the climate of impunity which continues to reign in Kenya will need to be dealt with by the new coalition government.

Rwanda

In spite of the clear improvements in the field of economic development and efforts to bring an end to the Gacaca trials, civil and political rights in particular continue to be violated in Rwanda. Restrictions on freedom of expression and the press are widespread and independent journalists, in particular, are faced with persistent harassment and persecution. This is of particular concern given the importance of the media in the forthcoming 2010 elections. Political space is severely limited. The current pressure, stemming in particular from outside of Rwanda, to ensure that members of the Rwandese Patriotic Army (RPA) are held accountable for their crimes during and in the immediate aftermath of the genocide has received very negative responses from within the government who have tended to accuse those calling for such accountability of promoting 'genocidal ideology'. In fact the genocide continues to serve in many ways as a means for the government to exert control not only over independent civil society but over the population as a whole. The government is increasingly seeking to make civil society organizations join larger umbrella organizations and platforms. Many activists, notably journalists, resort to self-censorship. In spite of these clear violations of key civil and political rights, the international community, largely as a result of the success of the government in the economic arena and as a result of a collective guilt for their failures to halt the genocide, tends to overlook these violations and continue to offer the government its political and economical support.

Extrajudicial executions and enforced disappearances continue to take place and those responsible are granted impunity.⁶⁸ Arbitrary arrest and detention without trial is a major problem. Thousands of people are held without trial. Many of these are accused of genocide. Nevertheless, street children, sex workers and vagrants are also particularly vulnerable to

⁶⁷ See for example HRW, EU : Support the Establishment of a Special Tribunal in Kenya, 16th April 2009, <http://www.hrw.org/en/news/2009/04/16/eu-support-establishment-special-tribunal-kenya>, last visited on 7th May 2009

⁶⁸ Human Rights Committee, Concluding Comments of the Human Rights Committee, Rwanda, CCPR/C/RWA/CO/3/CPR.1

being arbitrary arrested and detained without trial.⁶⁹ The country's prisons are overcrowded, although improvements have been made thanks to the Gacaca court system and the use of community service instead of imprisonment. Conditions are extremely harsh, notably due to poor health facilities and limited access to food.⁷⁰ Of particular concern in light of these conditions is the legislation which abolished the death penalty in 2007, but in the same time replaced it with the conviction of life imprisonment in solitary confinement. According to reports, on top of being held in solitary confinement these prisoners also face other severe restrictions on other rights, notably their right to receive visitors.⁷¹

Gacaca trials, a system of community based courts that was established in 2001 has helped to deal to a certain extent with the problem of the massive prison population as a result of the 1994 genocide. Nevertheless, the continued and widespread use of these courts, which fail to meet the minimum international standards of impartiality and independence, is of concern; the courts do not grant legal representation to every defendant, in practice do not ensure the impartiality of the judge and have no mandate to look at human rights violations committed by the RPA during the genocide.⁷² Furthermore, these courts increasingly serve to merely settle personal scores or to silence dissent (please see case of Byuma below).⁷³ The trials were supposed to end in December 2007 but President Paul Kagame ordered the transfer of thousands of cases from the conventional courts to the Gacaca courts and the Gacaca law was amended to allow these courts to impose life imprisonment.⁷⁴ In theory, they will end in June 2009. The Gacaca system offers only limited channels of recourse. Furthermore, the protection of victims and witnesses appearing in Gacaca trials has not been guaranteed, and reports show that several witnesses and survivors have been killed by unidentified individuals since 2007.⁷⁵

Fair trial standards continue to be violated in Rwanda: crimes committed by the RPA have not been adequately investigated. In reality most victims of the crimes of the RPA have not been granted access to justice and the government has made it an important part of its foreign policy to undermine efforts by other national jurisdictions to prosecute RPA soldiers.⁷⁶ The reaction to the arrest on the 9th November 2008, of Rwandan Director of State Protocol, Rose Kabuye, whilst on an official visit to Germany highlighted the extent to which the government is prepared to go to prevent such prosecutions. Ms Kabuye was arrested on the basis of an arrest warrant issued by French Judge Jean Louis Bruguiere, who claims that Ms Kabuye played a role in the killing of former President Habyarimana, which many see as having triggered the genocide. Following the arrest, the German ambassador in Kigali was expelled and the Rwandan government recalled its envoy to Germany. The arrest warrant has since been lifted.

The Executive continues to exert significant control over the judiciary particularly over the Gacaca trials and cases relating to 'genocide ideology' and 'divisionism'. Steps aimed at ensuring the transfer of individuals from the International Criminal Tribunal for Rwanda (ICTR) in Arusha to Rwanda have been initiated, notably with the enactment of legislation

⁶⁹ LDGL, Rwanda: Rapport de la société civile sur la mise en oeuvre du PIDCP. Reponses a la listes des points a traiter, LGBT_HRC95_Rwanda, Mars 2009, <http://www2.ohchr.org/english/bodies/hrc/hrcs95.htm>

⁷⁰ LDGL, Rwanda: Rapport de la société civile sur la mise en oeuvre du PIDCP. Reponses a la listes des opints a traiter, Mars 2009, <http://www2.ohchr.org/english/bodies/hrc/hrcs95.htm>

⁷¹ LDGL, Rwanda: Rapport de la société civile sur la mise en oeuvre du PIDCP. Reponses a la listes des opints a traiter, Mars 2009, <http://www2.ohchr.org/english/bodies/hrc/hrcs95.htm>

⁷² Human Rights Committee, Concluding Comments of the Human Rights Committee, Rwanda, CCPR/C/RWA/CO/3/CPR.1

⁷³ HRW, The power of horror, by Kenneth Roth, 11th April 2009, <http://www.hrw.org/en/news/2009/04/11/power-horror-rwanda>, last visited on 7th May 2009

⁷⁴ HRW, *Country Summary: Rwanda*, January 2008, <http://hrw.org/wr2k8/pdfs/rwanda.pdf>

⁷⁵ US Department of State, *Rwanda: Country reports on human rights practices*

⁷⁶ HRW, Rwanda: Law and Reality. Progress in Judicial reform in Rwanda, July 2008

abolishing the death penalty; nevertheless this has been replaced by the abovementioned maximum criminal punishment of life imprisonment with solitary confinement. Such a sentence can be considered as an inhuman and degrading treatment if not torture. There are still many improvements needed before the Rwandese justice system will adhere to international standards of independence and impartiality, improvements which will need to take place promptly, notably given the fact that the ICTR mandate will expire this year.⁷⁷ Following a recent decision by the International Criminal Tribunal on Rwanda (ICTR) in which it declared that it would not initiate the process of transferring cases from the tribunal to national Rwandan courts notably in light of the legislation on life sentencing in solitary confinement, the Rwandese parliament adopted a legislation on the 1st December 2008 which exempts all cases transferred from the ICTR or from abroad from such a sentence.⁷⁸ This legislation is a clear violation of the right to equality before the law.

A new law on genocidal ideology that was adopted by the parliament in June 2008 is of particular concern given the rather vague list of criteria it sets down as defining genocide ideology and due the fact that it fails to consider the question of intent in the manifestations of behaviour deemed to fit into this definition.⁷⁹

The current president Paul Kagame was elected following a landslide, in what appears to be a rather irregular election in 2003, the first elections since the genocide. Political freedom continues to be restricted in Rwanda both as a result of a rather dismissive political culture linked to the post-genocide climate, the moral and physical dominance of the RPF and its policy of 'National Unity'. Furthermore, the opposition is more or less inexistent in Rwanda. Creating a political party is very difficult notably given that such formations would be seen as a form of treason. As a result, the RPF led coalition won 78.76% of the votes in the September 2008 legislative elections.

Land rights continue to be a significant problem in Rwanda and the recent land law has created much controversy notably given its attempt to create a more centralized control over the land in Rwanda and the fact that it stipulates that those holding a certain amount of hectares must give part of their land to others without compensation. Another issue which has resulted in significant violations has been the recent evictions taking place in Kigali as part of a plan of urban development. A large part of those evicted have not been sufficiently compensated and have been forced to resettle at a distance from the capital.

The 2003 Constitution stipulates that at least 30% of seats in parliament must be filled by women. The law prohibits rape and the government has taken significant measures to put this law into practice. Domestic violence however is not criminalized and is widespread. Women continue to face societal discrimination although efforts have been made to overcome such challenges notably by putting in place measures to increase girls' access to education and women's involvement in the workforce.⁸⁰ In spite of this, girls continue to be unequally represented in schools.

The rights of minority groups, notably the Batwa, are severely restricted as a result of the government's policies of national unity which stipulate that everyone is a Rwandan and that there is no ethnic minority in the country.⁸¹ As a result, ethnic minorities and indigenous

⁷⁷ Ibid

⁷⁸ HRW, Letter to Rwanda Parliament Regarding the Penalty of Life Imprisonment in Solitary confinement, 29th January 2009, <http://www.hrw.org/en/news/2009/01/29/letter-rwanda-parliament-regarding-penalty-life-imprisonment-solitary-confinement>, last visited on 7th May 2009

⁷⁹ HRW, Rwanda: Law and Reality. Progress in Judicial reform in Rwanda, July 2008

⁸⁰ US State Department, *Rwanda: Country reports on human rights practices*

⁸¹ Minority Rights Group International, Human Rights Committee, 94th Session, 13-31 October 2008, Country Report Taskforce, <http://www2.ohchr.org/english/bodies/hrc/hrcs95.htm>

people are not recognised, no data is collected on them and therefore despite the recognition by the government that there are certain communities within society which have been marginalised, such policies make any effective program to overcome this marginalisation futile.⁸²

Discrimination based on sexual orientation is a problem. Homosexuality is not illegal in Rwanda and previous proposed amendments to the penal code that would have criminalised sexual conduct between individuals of the same sex have been dropped.⁸³ However, the new draft penal code prohibits people from encouraging others to engage in same sex relations, which might inadvertently be used to criminalise a partner in a relationship who could in theory be considered as encouraging others. Religious leaders, that continue to have a significant influence on Rwanda society, play an important part in enhancing and shaping the discrimination facing LGBT persons.

The space accorded to human rights defenders in Rwanda is very limited. The genocide and its consequences continue to influence the human rights community in Rwanda and to shape the discourse used by the authorities to restrict and repress critical defenders. The government, for example, continues to use 'divisionism' as a justification for its oversight and restrictions on human rights activities. NGO regulations are constraining. The mechanisms in place which are in theory supposed to protect defenders, notably the Human Rights Commission or the High Council of the Press, are often either still rather weak, as is the case of the former, or in fact often antagonistic to the independent defenders, as the case of the later.

As a result of the post-genocide climate and in particular as a result of repression against human rights organizations, notably against la Ligue Rwandaise pour la Promotion et la Defense des Droits de l'Homme (LIPRODHOR), EHAHRD-Net Member, self-censorship remains widespread amongst the human rights community. Certain issues have been made more or less taboo by the authorities. The gacaca courts and the trial of the RPF are some of the issues deemed taboo.

The final verdict in the trial of Mr Francis Xavier Byuma marks a significant blow to the human rights movement in the country. Mr Byuma was the President of *Turengere Abana*, an NGO working on child rights. Mr Byuma was investigating the rape allegations made against a Judge of a gacaca tribunal when he was himself placed on trial and accused by that very same court. He was sentenced to 19 years imprisonment for complicity to genocide. The law establishing the gacaca courts specifically states that the accused and the judges could not have had personal conflicts in the past.⁸⁴ By going ahead with this trial despite the conflict of interest, the court denied Mr Byuma his right to a fair and independent trial. A gacaca appeals court upheld the decision in August 2007. A revision trial took place on 24 January 2009, was pursued on 7 February; the final verdict released on the 14th March 2009 upheld previous decisions and sentenced Mr Byuma to 17 years of imprisonment.⁸⁵

Mistrust amongst individual defenders and organizations, as a result of the prevailing situation in the country, is rife and undermines collaboration amongst human rights defenders. Reports suggest that the government has in fact put pressure on certain NGOs to keep them informed

⁸² Ibid

⁸³ HOCA and co, The violations of the rights of LGBT persons in Rwanda, March 2009, <http://www2.ohchr.org/english/bodies/hrc/hrcs95.htm>

⁸⁴ HRW, *Appeals Court Confirms sentence against activist*, 22nd August 2007, <http://hrw.org/english/docs/2007/08/21/rwanda16714.htm>

⁸⁵ EHAHRDP, Promoting the rights of human rights defenders in the East and Horn of Africa, April 2009, not yet officially released.

about the activities of other NGOs.⁸⁶ This mistrust has been further accentuated by the recent Byuma trial.

Minority rights activists, notably those seeking to promote the rights of indigenous minorities, have often fallen prey to government claims of divisionism given that since the genocide all references to ethnic groups are banned. This has had a particular impact on the Community of Indigenous Peoples in Rwanda (CAURWA), an organization that seeks to promote the rights of the Batwa minority, were accused of violating the constitution and were forced to remove the word 'indigenous' from the name of the organisation.

The small group working on the rights of sexual minorities faces staunch opposition both from the authorities and the general population. The abovementioned proposed amendment to the penal code which criminalises anyone encouraging or carrying out sensitisation on the rights of LGBTI activists is evidently also a means of thwarting and criminalising LGBTI activism.⁸⁷ The two lesbian Rwandese human rights defenders who were arrested at Kigali Airport on their way to Maputo, Mozambique, to attend the 3rd Leadership Institute of the Coalition of African Lesbians (CAL) on the 27th February 2008 have as of yet still not had their passports returned from the immigration officers.⁸⁸

NGO registration and reporting requirements are extensive and time consuming. Domestic NGOs have to, for example, register on a yearly basis at the Ministry of Justice; they must also present significant documentations to the authorities in all the districts in which they work in. Such regulations place significant burdens on their human resources. A recent NGO Bill also grants the government significant oversight over the activities of foreign NGOs. The space which is open for a constructive, professional and independent civil society to grow is often restricted.

Freedom of association of human rights organisations is limited through a variety of means. The case of Ligue des Droits de la Personne dans les Grands Lacs (LDGL) in Rwanda is a good example of this. LDGL, which is a regional organisation, has still not had its license for 2008 renewed by the Immigration Ministry. Initially LDGL was told that it had failed to produce the necessary paperwork on time and the delay is due to the fact that the board had not yet pronounced itself. However, the real reason is likely to be that the organisation monitored the September 2008 elections outside of the umbrella NGO platform and produced a report which many state authorities were unhappy with. Such delay tactics can be used in the future as a means of discrediting the organisation if need be. These provisions not only violate defenders' rights to associate and mobilise but also once again risks undermining human rights organisations' efforts and willingness to speak out about violations affecting their rights.⁸⁹

International human rights organisations have also come under attack from the government, and from President Kagame himself, notably Human Rights Watch, as a result of their criticism of the government. The government has reacted particularly badly to calls by HRW for members of the Rwandan Patriotic Front (RPF) suspected to be responsible for war crimes and crimes against humanity to be prosecuted notably banning the late Alison de Forges, a

⁸⁶ US Department of State, *Rwanda: Country reports on human rights practices*

⁸⁷ HOCA and co, *The violations of the rights of LGBT persons in Rwanda*, March 2009,

⁸⁸ *Ibid*

⁸⁹ EHAHRDP, *Promoting the rights of human rights defenders in the East and Horn of Africa*, April 2009, not yet officially released.

long-term activist in Rwanda, from entering Rwanda twice both on the 4th September 2008 and then again on the 2nd December 2008.⁹⁰

The government has continued to pursue its attacks on independent media outlets and its harassment and persecution of independent and critical journalists. Given the involvement of the press in the genocide, the press continues to be viewed with suspicion. The government, as many other governments in the region, has increasingly sought to use restrictive legislation as a means of undermining freedom of expression. Laws on divisionism and genocide ideology are used as a powerful tool to restrict freedom of expression. The most recent and blatant example of this was the suspension of the Kinyarwanda service of the British Broadcasting Corporation (BBC) by the Minister of Information, Ms Louise Mushikiwabo, on the 25th April 2009.⁹¹ This suspension came after the BBC broadcast a programme analysing the country's forgiveness policies and one participant criticised the government's policy towards Hutu and its calls for the entire Hutu population to express remorse for the genocide. The minister accused the programme of genocide denial and "unacceptable speech".⁹²

The new press law, adopted at the beginning of 2009 in spite of significant contestation, is another clear attempt by the government to further legitimise its efforts to limit freedom of expression. It imposes criminal sanctions on the media and authorises the preventative detention of journalists.⁹³ The law also introduces very harsh monetary requirements and makes a journalism qualification a prerequisite for registration. The monetary requirements are clearly targeted at the independent newspapers that have faced significant financial difficulties ever since the ban on all advertisements in their papers was imposed. This provision therefore risks to force several papers to shut.

That these restrictions are targeting private papers first and foremost is clear. Since the 6th May 2008, the independent national newspapers, notably Umuseso, Rushyashya and Umuvugizi have been banned from attending all government events after the Information Minister, Louise Mushikiwabo, expelled this respective papers from World Press Freedom Day. The Minister justified this move by claiming that she wanted "to teach them a lesson" to become professional in their careers.

Somalia

The human rights situation in Somalia has not improved in recent months in spite of the signing of the Djibouti Peace Accords in 2008 and the withdrawal of the Ethiopian troops. The perpetrators, whether governmental or members of insurgency groups, clan militias or warlords, have all been accorded virtual impunity. The civilian population continues to be the main victims of the continuing fighting whilst the international attention seems to be focussed on the rampant piracy off the coast of the country in the Gulf of Aden.

⁹⁰ Please see HRW, Rwanda Tribunal Should Pursue Justice for RPF Crimes, 12th December 2008, <http://www.hrw.org/en/news/2008/12/12/rwanda-tribunal-should-pursue-justice-rpf-crimes>, last visited on 7th May 2009 ; HRW, Rwanda: End Bar on Human Rights Watch Staff Member

⁹¹ HRW, Restore BBC to the Air, 27th April 2009, <http://www.hrw.org/en/news/2009/04/27/rwanda-restore-bbc-air>, last visited on 7th May 2009

⁹² Ibid

⁹³ LDGL, Rwanda: Rapport de la société civile sur la mise en oeuvre du PIDCP. Reponses a la listes des opints a traiter, Mars 2009, <http://www2.ohchr.org/english/bodies/hrc/hrcs95.htm>

In June 2008, an UN-brokered peace deal was reached between the Transitional Federal Government of Somalia (TFG) and the Alliance for the Re-liberation of Somalia (ARS), one of the main opposition groups. Meeting once again in October 2008, both parties agreed to form a unity government including members from both sides and to observe the former ceasefire agreement which had not yet come into effect. During this meeting the withdrawal of Ethiopian troops from strategic areas was agreed to along with their replacement by additional African Union Force in Somalia (AMISON) forces, from Uganda and Burundi, and in the long term by a joint police force. The failure to include key actors in the conflict, notably the Islamic insurgent group Al-Shabab, severely undermines the process however.

The Transitional Federal Government of Somalia (TFG) however continues to be incredibly weak and largely lacks the essential support of the Somali population in spite of the appointment of Mr. Sheikh Sharif Sheikh Ahmed, former leader of the ARS, as the country's new president. Lawlessness prevails in many parts of the country as the TFG has failed to consolidate control over the Somali territory. The failure of the TFG to even gain control over certain areas of Mogadishu and its inability to assure the security of the civilian population has given free reign to Al-Shabab fighters, clan-based insurgents and warlords.

Somali civilians continue to bear the brunt of the deteriorating security and human rights situation in the country. Sixty percent of the civilian population of Mogadishu is believed to have deserted the town since the fighting started in 2006 as the different warring parties have indiscriminately attacked civilian areas and terrorized the population of the capital.⁹⁴ And yet many civilians remain in the city and a significant number of those who fled initially began to return at the beginning of 2009 in hope that the new TFG leadership might bring more significant changes to the country.⁹⁵ Those fleeing Mogadishu have often been injured, assaulted, raped and looted of all their property during their flight. The internally displaced camps are overcrowded and lack access to basic sanitation.⁹⁶

Right to life has evidently been gravely violated notably as a result of continued fighting in Mogadishu and in south and central Somalia.

Indiscriminate attacks and human rights violations and violations of humanitarian law continue to be committed against civilians by all actors involved in the conflict, notably armed opposition forces, government forces and Al-Shabab militia members amongst others. Of particular concern are the recent reports that the African Union Force in Somalia (AMISOM) troops have recently carried out indiscriminate attacks notably into civilian populated areas.⁹⁷

Arbitrary arrests are frequent and although torture is prohibited by the TFG Charter, there are reports that both the TFG forces and militia groups have tortured their detainees. According to Human Rights Watch, a terrible detention centre in Southern Mogadishu is used by the TFG and the conditions and treatment in the prison appalling.⁹⁸ The country has no formal justice system to speak of and impunity is rampant. In fact the country has not seen any form of accountability or redress for the serious abuses that have been committed by all the warring parties since the state collapse of 1991. According to Human Rights Watch, the international community is in part responsible for the on-going impunity, notably through its failure to

⁹⁴ HRW, The Human Rights Situation in Somalia. Statement prepared by HRW FOR THE 'Arria Formula' meeting on Somalia, 31 March 2008, <http://hrw.org/english/docs/2008/03/31/somali18408.htm>

⁹⁴ Report by the independent expert appointed by the Secretary- General on the situation of human rights in Somalia (A/ HRC/ 5/2)

⁹⁵ AI , Somalia: Civilians pay the price of intensive fighting in Somalia, AI index: AFR 52/002/2009, 4th march 2009

⁹⁶ Ibid

⁹⁷ Ibid

⁹⁸ HRW , World Report 2008, Somalia, <http://www.hrw.org/en/node/79207>

ensure that the violations committed by the TFG forces, and more recently the alleged violations by the AMISOM forces, that were funded by many donors, were accounted for.⁹⁹

Women's rights have always been poor in Somalia. Nevertheless, the current lawlessness, insecurity and forced displacement have led to a further deterioration of the reality facing women and girls. All actors involved in the conflict, from the TFG forces, to the Ethiopian troops, to the different militias have and continue to take advantage of the situation to exploit women and girls. Sexual and gender-based violence (SGBV) is a significant problem and yet women have little access, if any access, to health care or justice,¹⁰⁰ a situation which is made worse by attacks on humanitarian and human rights workers.¹⁰¹ Many of those living in displacement camps are particularly vulnerable to SGBV. Women continue to be discriminated against in access to land and property. FGM, notably the most serious forms, continues to be practised. Rape at the hands of TFG and Ethiopian armed forces, the police but also resulting from inter-clan rivalry, is widespread but perpetrators are rarely held accountable.

Targeted attacks, kidnappings and killings of humanitarian workers continue to occur. On the 6th January 2009 a UN World Food Programme employee, Mr Ibrahim Hussein Duale, was shot dead whilst working in southern Somalia.¹⁰² Aid operations are also hampered by attacks from the different warring parties. The abduction and attacks carried out on humanitarian personnel has forced many NGOs to pull out. As a result access to greatly needed humanitarian assistance by the Somali population is further thwarted. The TFG has also been involved in actions aimed at obstructing the delivery of humanitarian aid.

Civilians in general have suffered from massive rights violations but certain groups of the population, notably human rights defenders (HRDs) and in particular journalists, have been subjected to persistent and targeted violations from all parties involved in the conflict, from the TFG, to Ethiopian troops to insurgent groups leaving defenders with no protection to speak of.

Human rights activists have come under considerable attack. Those still operating on the ground, notably the Peace and Human Rights Network (PHRN) have resigned themselves to using self-censorship in order to protect themselves from TFG and insurgent attacks. In spite of this they continue to be subjected to intimidations and threats.

Somalia is at present the deadliest place in the world for the news media and the situation has continued to rapidly deteriorate ever since the Ethiopian invasion in 2006.¹⁰³ This has created a climate of intimidation and fear which greatly hampers freedom of expression amongst these key proponents of human rights. Journalists and media organisations in all regions have reported harassment, killings, detention without charges and assaults.

This crackdown on independent media is largely due to the fact that following the closure of prominent human rights organisations and the flight of key human rights activists, journalists are at present one of the few voices still speaking out against the massive human rights

⁹⁹ HRW, Somalia: Donors should address accountability. Make human rights guarantees a condition of aid to security forces, 22nd April 2009

¹⁰⁰ HRW,

¹⁰¹ Ibid

¹⁰² AI, Journalists and humanitarian workers at risk in war ravaged Somalia, 6th January 2009, <http://www.amnesty.org/en/news-and-updates/news/journalists-and-humanitarian-workers-risk-war-ravaged-somalia-20090106>, last visited on 7th May 2009

¹⁰³ RSF, Islamist militia closes radio station, arrests three journalists, 27th April 2009, http://www.rsf.org/article.php3?id_article=30923

violations being perpetrated against innocent civilians in the country and have thus become prime targets of these attacks.

Journalists have been subjected to systematic attacks: arbitrarily arrested and detained without charges, threatened with imprisonment or death, followed and harassed in the streets and intimidated at their place of work. Several journalists have had their houses searched, property destroyed, members of their families intimidated, received death threats, and some have seen members of their families kidnapped. Journalists have been detained for prolonged periods by the TFG without charge in an apparent attempt to thwart independent reporting.

In recent months, notably since the signing of the peace accords, the attacks on the media and media workers have primarily been carried out by members of the Al-Shabab militia. The killing of Mr. Said Tahlil Ahmed, the Director of HornAfrik, one of the country's leading independent radio stations, on the 4th February 2009 was a telling example of the new pattern of attacks on journalists. Mr. Tahlil Ahmed was shot dead in Mogadishu's Bakara market by unknown gunmen. In the same attack a number of other journalists were also injured notably Mr. Mukhtar Mohamed Hirabe, the Director of another prominent radio station, Shabelle Radio. The journalists were on their way to a press conference which had been called by the Islamist militia Al-Shabab. The motives of the attacks are unknown but it was reported that the killing might be linked to the extensive coverage given by HornAfrik to the recent elections in Djibouti. This is the second journalist killed in Somalia in 2009 alone.¹⁰⁴

Attacks on the media have at times come from less expected sources, notably the civilian population and more recently from the UN Secretary-General's Special Representative to Somalia, Mr. Ahmedou Ould-Abdallah, who accused the Somali media of seeking to incite a genocide after they reported on the supposed AMISOM indiscriminate killings. In fact, the leading independent radio stations, HornAfrik, Radio Shabelle and Holy Q'uran Radio, have all been repeatedly attacked. All of these have been closed at one time or another by the TFG forces. More recently, Al-Shabab has been closing down media stations in the areas of the country under its control. On the 26th April 2009 according to reports, the group raided Radio Jubba in Baidoa, went on to close the station and arrest three of its journalists.¹⁰⁵

As a result, many journalists have either been forced to exert self-censure, notably by reducing their reporting on 'taboo' issues such as human rights violations and military operations, forced into hiding or forced to seek refuge abroad. Although the exact number of journalists that have fled from Somalia is not known there are at present over a hundred scattered around the sub-region. The number of exiled journalists and HRDs in the sub region continues to rise.

Somaliland

Somaliland declared its independence from Somalia in 1991, following the overthrow of former Somali dictator Mohamed Siad Barre. It has since enjoyed relative stability but has still not been recognised as a sovereign state by the international community. In comparison to its neighbouring regions the human rights situation is relatively positive. Nevertheless,

¹⁰⁴ EHAHRDP, EHAHRD-Net Index UGA 002/005/2009: EHAHRD-Net vehemently condemns the killing of the HornAfrik director today, 4th February 2009

¹⁰⁵ RSF , Islamist militia closes radio station, arrests three journalists , 27th April 2009, http://www.rsf.org/article.php3?id_article=30923

Somaliland has witnessed increasing attacks on free press, public meetings and cases of torture, generally in the name of national security, notably in light of the October 2008 bombings. Many fear that the human rights situation will deteriorated in light of the forthcoming general elections scheduled for this year.¹⁰⁶

The rivalry between the two breakaway semi-autonomous regions of Somaliland and Puntland persist with clashes taking place on a sporadic basis, at times forcing further displacements of the population of these regions and also costing lives. . The two territories are conflicting over the control of the city of Las Anod, the capital of Sool region. The fighting which escalated in October, involving exchanges of heavy artillery fire, took place in and around Las Anod, a town near the Ethiopian border.

The government continues to use its current legal status, or lack of recognition, as a means of restricting civilians' political rights. The opposition is viewed with hostility and their movements are restricted, any criticism made of the regime by the opposition is countered by hostile propaganda in which they are accused of endangering peace and stability. Opposition parties are prevented from staging public gatherings in key, symbolic locations.

The municipal elections which were supposed to take place on the 15th December 2007 were postponed for a year; the Council of Elders, which is largely unrepresentative of the population and plays a significant part in maintaining negative traditions, saw its' term extended for a further 4 years and the Presidential elections which were due to take place in April 2008 will now take place in May 2009.

The security services continue to unlawfully arrest civilians under the pretext of protecting national peace notably as a result of an non-transparent and unaccountably system of internal security committees.¹⁰⁷ Prolonged and unlawful detention is frequent. The Somaliland authorities persist in rounding up refugees from Somalia and Ethiopia and handing them over to the Ethiopian authorities on the pretext of belonging to Oromo Liberation Front, Ogaden National Liberation Front, AL-Qaeda or Union of Islamic Courts. Others have been arrested and 'disappeared'.

Societal discrimination against women continues to be a serious problem in Somaliland. According to EHAHRD-Net's Focal Point in Somaliland, Samotalis Coalition of Human Rights, the bill approved by parliament on quotas set for the minority groups and women which was supposed to be initiated during the Municipal Elections of December 2007 has since been disregarded by the government. Most forms of violence against women are widespread in Somaliland. Rape, including gang rape, continues to take place in a climate of impunity as cultural norms prevent women from seeking redress. In fact, on many occasions women who speak out end up being forced to marry their violators. The perpetrators go unpunished and the victims are left untreated, un-rehabilitated and without reparation. Women continue to face physical, sexual and psychological abuses throughout the country. The practice of female genital mutilation, in its worst form, is pervasive. The judicial system in Somaliland which is made up of three parallel legal systems- Sharia law, traditional Somali

¹⁰⁶ Amnesty International, Human Rights Challenges. Somaliland facing elections, March 2009

¹⁰⁷ Ibid

customary law and a more modern legal component- has a negative impact on justice in the country in general and a very negative impact on women in particular with regards to the fight against FGM.

Religious freedoms are curtailed notably by customary law which make it illegal to proselytize for any religion except Islam.

The work of humanitarian organisations received a significant set-back as a result of recent Al-Shabab attacks on the United Nations Development Programme (UNDP) compound. The attacks took place on the 29TH October 2008 and were carried out in coordination with a series of attacks in Somaliland and Puntland, notably against the presidential palace and the Ethiopian Diplomatic mission in Hargeisa . Some of the attacks were carried out by suicide bombers. The attacks coincided with a meeting of the Intergovernmental Authority on Development (IGAD) in Nairobi to analyse the work and impact of the TFG in Somalia since its establishment.

The Somaliland authorities tend to perceive society in a binary manner, either you are with them or against them, which places particular risks on independent civil society.¹⁰⁸ They accuse human rights organisations of undermining the fight for self-determination.¹⁰⁹ They appear determined to gain control over human rights organizations and transform them into GONGOs (Governmental NGOs). The excuse of national peace is often used as a means of restricting public gatherings. Stringent registration criteria greatly undermine the space accorded to human rights NGOs. Human rights defenders are denied access to key information and continue to be branded as enemies of the nation. Nevertheless according to EHAHRD-Net member, human rights activists are able to a certain extent to pursue their work.

Freedom of expression, though constitutionally provided for, continues to be restricted. The Somaliland government has openly banned the opening of private radio stations. Journalists are subjected to unlawful arrests, beatings, harassments, by police units acting on the orders of the Government.

The editor of Somaliland's leading independent newspaper, the Jamhuuriya, Hassan Said Yusuf, has been arrested more than fifteen times. Restrictions and attacks on free expression have been justified as being carried out in the name of national unity. Mr Yusuf's last arrest in September 2007 followed the publication of a report he had written on the Somali Peace Conference, which included comments by Somali warlords accusing the Somaliland authorities of being soft.¹¹⁰

The Haatuf Media Network and its journalists have come under attack on several occasions. In a recent case, Ahmed Adan Dhere, a journalist from Haatuf newspaper, was arrested by the Police in Berbera "on the false pretext of printing anti-government slogans and mobilizing young people to stage a demonstration."¹¹¹ However, independent sources suggest that the

¹⁰⁸ Ibid

¹⁰⁹ Ibid

¹¹⁰ AFROL News, Somaliland Editor Freed, paper deploras oppression, 08th September 2008 <http://www.afrol.com/articles/13905>

¹¹¹ Somaliland Times, 11th August 2007 <http://www.somalilandtimes.net/sl/2007/290/01.shtml>

main reason behind his arrest had been his involvement in critical reporting against government actions. He has since been released.

In November 2007 two journalists were arrested without charges and badly treated at the hands of the security forces; one of the journalists, Abdiqani Hassan Farah, believes that he was arrested after he reported on the issue of the disputed Las Anod region which the Somaliland authorities make claim to.¹¹²

Another example of the authorities lack of respect for freedom of expression and press was the threat made against Somali journalists that arrived in Hargeisa in December 2007 that they would be expelled from Somaliland as their presence risked to undermine relations with Ethiopia; this was clearly in disrespect of international law and largely ignored the fact that the lives of these journalists were at risk. The authorities eventually gave into pressure for human rights groups and did not expel the journalists.

Sudan

The human rights situation in Sudan has significant deteriorated over the last year as a result of a series of developments. First of which are the attacks by the rebel Justice and Equality Movement (JEM) on Omdurman, part of greater Khartoum on the 10th May 2008, which the government and security services have responded to with a wave of arrests, particularly of people of darfuri origin. The issuance by the International Criminal Court on the 4th march 2009 of an arrest warrant for President Omar al-Bashir has also created a very negative reaction on behalf of the authorities. Curtailment on freedom of expression and press, which has increased over the last year or so, persists and the government is currently seeking to give legal grounding to its actions through the drafting of a Press Law which is at odds with the Comprehensive Peace Agreement and the Interim Constitution. Human rights organisations, who have seen their work restricted in recent times, have come more severely under attack since the issuance of the arrest warrant. Many fear that the situation will only get worse in the months leading up to the elections, initially planned for 2009 but have recently been postponed to 2010. Key provisions of the Comprehensive Peace Agreement (CPA) of 2005 notably the Bill of Rights have still not been implemented. The National Human Rights Commission for example has of yet still not been established largely as a result of continued political disagreements between the National Congress Party (NCP) and Sudan People's Liberation Movement (SPLM) – the two main parties on making-up the current Government of National Unity.¹¹³ Insecurity remains high in South Sudan where the disarmament process has still not been fully implemented.

On the 4th March 2009, the International Criminal Court issues an arrest warrant against President Al-Bashir for war crimes and crimes against humanity after it judged that his status as a sitting head of State did not exclude his criminal responsibility or grant him immunity

¹¹² CPJ, in Somaliland two journalists arrested in separate incidents, 29th November 2007, http://www.cpj.org/cases07/africa_cases_07/somalia29nov07ca.html

¹¹³ The report by the Independent Expert on the Situation of Human Rights in Sudan, <http://daccessdds.un.org/doc/UNDOC/GEN/G08/114/97/PDF/G0811497.pdf?OpenElement>

from prosecution. The court found however that it did not have sufficient evidence to charge him of genocide. The issuance has been met with very mixed reactions. On the one hand, it has been seen as a positive step towards justice and towards ending the conflict in Darfur by national, regional and international human rights organisations. On the other it has been met by staunch opposition by the African Union member States, who claim this may stall the peace process in Darfur; Mr Al-Bashir has in fact recently travelled to several of these States, notably Egypt, Libya and Eritrea, all of which have not actually signed the Rome Statute establishing the Rome Court thereby having no legal obligations to arrest Al-Bashir, yet clearly seeking to publicly undermine the request by the ICC for States to cooperate in the arrest and surrender of the President.

As a result of Ocampo's decision, the Khartoum government has been repeatedly seeking to persuade the international community that the situation in the region is improving and has been launching a series of initiatives which critics have said are a means of thwarting the ICC investigations given that international mechanisms can only be used when national courts have neither the means nor the will to carry out the necessary investigations.¹¹⁴ On the 13th November 2008, for example, President Al-Bashir announced an immediate ceasefire in Darfur claiming that his government would disarm the militias and reduce the spread of arms.¹¹⁵

In spite of claims to the contrary by the Khartoum government, bent on undermining the ICC, rights violations in Darfur, which include unlawful killings, gender-based violence, arbitrary arrests and torture, continue to occur on a massive scale, primarily at the hands of the Sudanese Security Forces as well as the Khartoum-backed Janjaweed militia. Civilians, most of who are living in internally displaced people's camps in Darfur, bear the brunt of these mass violations.¹¹⁶ The United Nations-African Union Mission to Darfur (UNAMID) appears to be failing in its mandate of offering protection to the civilian population.

Right to life is regularly violated in Sudan, most notably in the Darfur region but also as a result of the continued application of the death penalty. A total of eighty-one individuals have been sentenced to death by Anti-Terrorism Special Courts for their alleged involvement in the May 10th JEM attacks. According to reports, the trials were unfair notably given that those detained were tortured and forced to confess to their crimes and that several defendants were not given access to legal counsel.¹¹⁷ The court however refused the request for an investigation into the claims of allegations of torture and degrading treatment. These proceedings mark a significant violation of international fair trial standards.¹¹⁸ Furthermore nine men were executed after an unfair trial in which they were found guilty on the 13th March 2008 of the murder of Mohamed Taha the editor of the newspaper Al Wifaq, in September 2006.¹¹⁹

Much of the legislation currently in place still needs to be brought into line with the standards established by the Interim National Constitution and other international agreements to which Sudan is party. Current laws regarding the National Intelligence and Security Services (NISS), for example, give the NISS sweeping powers to arbitrarily arrest and detain people for up to

¹¹⁵ BBC, Sudan declares Darfur ceasefire, 13th November 2008

¹¹⁶ HRW, Sudan: New Darfur Attacks Show Civilians Still at Risk, 24th October 2008, <http://hrw.org/english/docs/2008/10/24/sudan20061.htm>

¹¹⁷ AI Sudan : Death Penalty, PUBLIC AI Index: AFR 54/012/2009 29 April 2009, <http://www.amnesty.org/en/library/asset/AFR54/012/2009/en/2136abc4-2bf6-48af-8fdc-da57606ba8b7/afr540122009eng.html>, last visited on 8th May 2009

¹¹⁸ <http://www.amnesty.org/en/news-and-updates/news/sudan-holds-hundreds-without-charge-after-10-may-attack-20080820>

¹¹⁹ See EHAHRDP report to the 53rd ACHPR Commission, May 2008, for further information on this case; Also AI,

nine months without charge. According to the Sudanese Organization against Torture (SOAT), this legislation allows for individuals to be held for six months with no right to challenge their detention. Incommunicado detention continues to be used for indeterminate periods of time.

Although torture is prohibited under Sudan's Interim National Constitution as well as by several of the international agreements that Sudan is party to, in practice, however, physical abuse in custody is widespread and is encouraged by a culture of impunity underpinned by mechanisms including immunity laws, pardons and amnesties for state officials responsible for human rights violations. Individuals of Darfuri origin in particular when under the control of the National Intelligence and Security Services (NISS) are particularly vulnerable to being subjected to torture or ill-treatment. Certain provisions also grant immunity to members of the military, including militia, the security services and the police.

Arbitrary arrests, against HRDs, peace activists, journalists and individuals believed to be linked to Darfuri rebel groups or to the opposition party, Popular Congress Party, have increased in Khartoum notably since the attack by the rebel Justice and Equality Movement (JEM) on Omdurman, part of greater Khartoum on the 10th May 2008 and more recently as a result of the ICC indictment.

Women's rights continue to be systematically violated. Some of the issues of key concern are early and forced marriages, widespread violence against women and practice of FGM and the frequent detention of women for lack of payment of dowry, family debts, and acts committed by family members or on adultery charges.¹²⁰ Women and girls in Darfur, and particularly those that are internally displaced, are particularly vulnerable to sexual and gender based violence where much of the violence occurs at the hands of armed groups.

The current harassment of Eritrean asylum seekers and the refoulement of many back to Eritrea, given the increasingly cordial relationship between the two countries, is of particular concern and marks a grave breach of international law given that those returned to Eritrea risk to face harsh treatment, prolonged detention, torture and even death.

In retaliation to the issuance of the ICC arrest warrant the Sudanese government ordered the closure of 13 international aid agencies on the 4th March 2009, agencies which were key to the provision of water, food, shelter and medicine to the population of Darfur. According to reports more than 1 million people were at greater risk of malnutrition and disease as a result of the expulsions.¹²¹ On the 8th May 2009 the Sudanese accepted to allow in new non-governmental relief agencies.¹²²

The assault on human rights defenders in Sudan continues to intensify. The main perpetrators of these attacks are members of the National Intelligence and Security Services (NISS). Although the Interim Constitution guarantees freedom of assembly, expression and press, in practice restrictions on human rights defenders, arbitrarily detentions and harassments have increased in Darfur since 2006 and in Khartoum most dramatically since the attacks by the JEM rebel group on Khartoum and ever since November 2008 as the decision regarding the request of an arrest warrant for President al-Bashir by the Chief Prosecutor of the ICC, Mr

¹²⁰ Ibid

¹²¹ Comment by Ban Ki-Moon

¹²² BBC, Sudan opens up to more aid agencies, 8th May 2009, <http://news.bbc.co.uk/1/hi/world/africa/8039327.stm>

Luis Moreno Ocampo, approached .¹²³ These attacks are of particular concern in light of the investigation by the ICC, of the forthcoming national elections scheduled for 2010, after having been postponed by a year,; the Darfur Peace Process and the on-going- or rather stalling- implementation of the Comprehensive Peace Agreement. HRDs and their work are more vital now in Sudan than ever before.

Must less reported has been the clampdown on Sudanese human rights organisations following the ICC arrest warrant. In fact, in March 2009, the Humanitarian Assistance Committee (HAC), called for the registration of the Khartoum Centre for Human Rights and Environmental Development (KCHRED), the country's leading national human rights organisations, to be revoked ending almost a year of intensive pressure on this organisation. Its bank accounts had already been frozen in February. Following the issue of the arrest warrant security forces arbitrarily entered the premises of the Centre and seized all of the property including highly sensitive and confidential files. Two other national organisations the Sudan Social Development Organisation (SUDO) and the AMEL Centre, have also recently been closed down; appeals are currently underway to contest the closures of these organisations.

Many other national human rights organisations have either been closed or rendered more or less demobilised as activists are continually monitored, harassed, and the everyday running of organisations made almost impossible.

Individuals or organisations believed to have been involved in one way or another with the ICC investigations have been key targets of the crackdown. On the 24th November 2008 Mr. Hummaida together with Mr. Monim Elgak, Regional Coordinator of the Strategic Initiative for Women in Horn of Africa (SIHA) and Mr. Amir Mohamed Suliman, Chairperson of the Khartoum Centre for Human Rights and Environmental Development (KCHRED), was arrested and taken to the political department of the National Security Service (NSS) offices in Khartoum. All three human rights defenders were interrogated on their assumed engagement with the International Criminal Court (ICC) investigations relating to the recent request for the issue of an arrest warrant against the Sudanese President Omar al Bashir for his alleged involvement in war crimes in the Darfur region. Mr. Elgak and Mr. Hummaida were both tortured during the interrogations. They have since been released after significant national, regional and international pressure.¹²⁴

Human Rights Defenders working in Darfur face a particularly harsh situation. The authorities are keen to silence any voice of dissent in this war torn region and therefore human rights defenders, along with foreign aid workers, leaders of displaced communities and politically active students are often harassed and their legitimate work curtailed. This was seen most recently when Mr Mohamed Al Mahjoub, Director of the Amal Centre in El Fasher, was arbitrarily detained and held incommunicado by the NISS for six days.¹²⁵ He was released without charges on the 28th April 2009.

¹²³ Human Rights Watch, *Sudan, Country Summary*, January 2008, <http://hrw.org/wr2k8/pdfs/sudan.pdf>

¹²⁴ EHAHRDP, EHAHRD-Net Index 030/006/08, EHAHRD-Net calls for the release of Sudanese Human Rights Defender, 26th November 2008

¹²⁵ AI, Further information on incommunicado detention /fear of torture/ prisoner of conscience: Mohammed Al Mahjoub, 28th April 2009, <http://www.amnesty.org/en/library/asset/AFR54/011/2009/en/1d62594a-66f5-4cea-839c-fd2a92dda410/afr540112009en.html>

The once diverse media scene in Sudan is shrinking. Systematic attacks on freedom of expression, notably through case-by-case pre-print censorship, public information bans, legislation, intimidation and arrests of journalists, continue to occur and the legislation imposed on the independent media is more in-line with pre-2005 legislation and largely at odds with the Interim Constitution. These recent attacks on freedom of expression and the Draft Media Law currently being debated in parliament are in clear contravention of the Interim National Constitution which firmly guarantees freedom of press and media.

The draft Media law, which was submitted to parliament at the end of April, has generated significant contestation by national and international human rights organisations and media. The law would impose heavy criminal sentences and fines for infractions by the media, establish a Press Council which lacks independence and with extensive regulatory powers, notably the power to shut down newspapers; the Draft also includes stringent registration requirements.¹²⁶

Since the 6th November 2007, NISS officials inspect the content of reports on a nightly basis and regularly order the withdrawal and replacement of articles deemed unacceptable. Editions of the independent papers are regularly banned. Due to the increasing censorship journalists are often forced to resort to self-censorship and overlook taboo issues, notably criticism of the government and its policy in Darfur. In spite of the self-censorship the authorities continue to crackdown on papers deemed overtly critical. In April, two private dailies decided to suspend their publications after several of their articles were censored. Al-Midan decided not to public after 17 articles were censored, including opinion pieces on the draft media bill. Ajras al-Hurriya also suspended its publications for several days preferring not to print under such conditions. This same paper had previously suspended its publication for three days in November to protest the censorship.¹²⁷

Journalists have also been arrested. Dozens of journalists were in fact temporarily detained in November 2008 when they organised a protest to contest the ongoing censorship.¹²⁸

This harassment is not subjected to the private media alone but to any journalists, even those working for the pro-governmental media who write about issues deemed taboo by the Khartoum authorities. Restrictions and repressions of journalists working in Darfur is particular harsh.

This current clampdown on the independent media is of particular concern given the situation in Darfur, which many Sudanese outside of Darfur would be largely unaware of if it was not for the media, that Sudan has recently initiated its national census process which is supposed to pave the way for the elections in 2010, journalists, as all HRDs, will play a crucial part in ensuring that any abuses in this process are brought to public and international attention; such restrictions however are likely to prevent them from playing their role as watchdogs.

Sudan's National Intelligence and Security Services are the main perpetrators of these rights violations in Khartoum and yet they continue to work in a climate of impunity. In Darfur this culture of impunity is particularly widespread and once again most investigations into violations are generally thwarted by a lack of cooperation this time on the part of the military.

¹²⁶ AFP, Fury in Sudan over repressive Press law, 27th April 2009,

¹²⁷ The Washington Times, Dozens of Protesting journalists arrested in Sudan, 17th November 2008

¹²⁸ The Washington Times, Dozens of Protesting journalists arrested in Sudan

South Sudan

According to sources the human rights situation in the region has seen some improvements. However, much work still needs to be done for even basic human rights to be guaranteed. Lack of resources is a considerable problem and at present there are no mechanisms in place to protect and promote human rights as the Southern Sudanese assembly has largely failed to implement key legislation of the Comprehensive Peace Agreement. Furthermore the situation in Sudan, the forthcoming 2010 elections and the increased tensions over the oil rich regions risk to lead to a deterioration in the human rights situation in the region.

Military personnel continue to carry out illegal arrests. Cases of sexual assault involving Sudanese People's Liberation Army units continue to occur and yet local police are often unwilling to investigate the reports. Ill treatment in order to gain information continues to be practiced by the security forces.¹²⁹

Political freedom is largely undermined by the fact that majority of members of parliament are members of the SPLM- thus running the risk that Southern Sudan could turn into a one-party state. This also clearly thwarts attempts to bring an end to impunity. In fact, most legislation which has been promulgated so far by the SPLM tends to protect the government from future prosecution.

Torture continues to be used by the security forces in order to extract information despite attempts by human rights organizations to carry out trainings in order to raise awareness of the fact that this constitutes a human rights abuse. Customary justice is presently the main form of justice available in Southern Sudan.

Civil society is largely inexistent in South Sudan as a result of the years of warfare which have thwarted the development of a national civil society. As a result, most of the human rights work is carried out by International NGOs or UN agencies and this is likely to persist given that donor attention is currently focusing on institution building rather than on offering greatly needed support to civil society.

Efforts to challenge or critique government practices by human rights activists tend to be perceived as treason or offences against the state. The few human rights organizations which operate on the ground face considerable constraints; the Legal Aid Centre, which is run by South Sudan Law Society, has been threatened with closure as a result of their work on land rights and access to land in urban areas.

Activists are concerned by the fact that one of the only domestic human rights entities in existence on the ground is the Human Rights Commission, which has been established as part of the CPA, and is a governmental entity.

Tanzania

¹²⁹ Ibid

Tanzania is the country in this sub-region with the most positive human rights record. However there are clearly gaps between the political and legal commitments and the reality on the ground.

The death penalty continues to be retained in the Penal Code and used in Tanzania although no executions have been carried out since 1994.¹³⁰ Two hundred and eighty-six people were on death row as of October 2008.¹³¹ The government of Tanzania is currently taken steps however to re-consider the current position.¹³² Extra judicial killings continue to occur. Yet a positive development identified by EHAHRD-Net Focal Point, the Legal and Human Rights Centre (LHRC), has been the recent arrest and trial of 12 of the policemen believed to be responsible for the unlawful killing of four individuals in 2006.¹³³ The police had initially claimed they were bandits killed in a shoot-out but these were soon proven to be false allegations. Torture is not defined in the Tanzanian legal system and the act of torture has not been criminalised.¹³⁴

Mob violence is also an issue of concern and violates the victims of this violence of their right to life and presumption of innocence.¹³⁵ It also highlights the need to increase the population's confidence in the justice and policing system, increase awareness of legal proceedings and tackle corruption. The media often reports on these violations.

Discrimination against minority groups persists. Members of the Hadzade tribe for example have seen their access to and control over land restricted. The government recently decided to evict the tribe from their ancestral land in two districts in order to sell the land to an investor. The right to life of albinos continues to be severely violated by an upward trend of targeted killings in the country which are believed to have been carried out by witchdoctors who perceive albinism as a curse.¹³⁶ More than 40 have been killed since 2007.¹³⁷ Many arrests have been made although no prosecutions have as yet been carried out.¹³⁸

Female Genital Mutilation continues to be practiced by certain groups in the population notably by the Maasai. Those carrying out these practices are rarely held accountable. The legislative environment in Tanzania is generally favourable to the rights of women yet contains gaps, and the implementation of the laws is not always carried out.

Although violations of the rights of human rights defenders are rare in Tanzania defenders continue to work in a climate which is not always productive and does not guarantee the protection of their rights and their ability to carry out their legitimate work. According to, LHRC, Human Rights Defenders continue to be perceived as a threat to the government rather than an actor with which to work with so as to improve the country's record. Human Rights Defenders are not specifically mentioned or recognized by the Constitution or any other law

¹³⁰ Legal and Human Rights Centre, Tanzania Human Rights Report 2008, available on the LHRC website under publications.

¹³¹ Ibid

¹³² Ibid

¹³³ Ibid

¹³⁴ Ibid

¹³⁵ LHRC, Newsletter, July 2008, http://alpha.web2-netshine-hosting.co.uk/~lhrc/index.php?option=com_letterman&task=view&Itemid=65&id=12

¹³⁶ Mail and Guardian. Another albino murdered, 21st October 2008, <http://www.mg.co.za/article/2008-10-21-another-albino-murdered-in-tanzania>

¹³⁷

¹³⁸ New York Times, Bid to stop killing albinos, February 16th 2009, www.newyorktimes.com,

in Tanzania. There are therefore insufficient safeguards available to HRDs in Tanzania as compared to those made available in international human rights instruments. The concept of human rights defenders continues to be misunderstood both by the authorities and by many human rights defenders. As a result HRDs are forced to be affiliated with human rights organizations in order to have access to some sort of formal protection and support. The legal framework regulating the work of NGOs is also not always conducive notably given that the NGO Act of 2002 has relatively difficult registration requirements and also renders members of an organisation criminally liable for the offences of the NGO.¹³⁹

LHRC reports that some of their paralegals and collaborators have been victimized by the Tanzanian authorities for their human rights work. The cases brought against these activists are generally never carried through and are clearly aimed at merely intimidating and harassing the defenders.

As a result of social and cultural norms prohibiting women's involvement in the public sphere there are very few women human rights defenders in Tanzania. In fact even feminist organizations tend to be headed by men.

Tanzania has a relatively diverse and outspoken media community nevertheless restrictions on the media continue to take place. The Right to Information Bill which many hoped would help to further entrench this and offer journalists' concrete protection has still not been passed. In fact, the authorities continue to exert a certain amount of control over the country's media through a series of laws – notably the National Security Act and the Prevention of Corruption and Combating Act of 2007. The former allows the government to control information which goes out to the country and is disseminated abroad and the later which prevents the media and individuals from reporting alleged offences under investigation by the Prevention and Combating of Corruption Bureau (PCCB) and prevents the disclosure of the names of the individuals under review.¹⁴⁰

In October 2008 the Minister of Culture and Information suspended the publication of *Mwanahalisi*, a privately owned newspaper which tends to be highly critical and often covers sensitive issues notably regarding cases of public mismanagement and government corruption, for three months on the grounds that it published stories that could incite hatred against the President.¹⁴¹ Two editors of this same paper had been violently assaulted by unknown assailants in January 2008.¹⁴² The police also on occasion attacks and harasses the media. The most recent case was the summoning in November 2008 of the editors of the government run newspaper Habari Leo by the Ministry of Information, Culture and Sport to discuss the content of an article that had been published which described a conflict within the authorities regarding the handling of a governmental scandal.¹⁴³

¹³⁹ Legal and Human Rights Centre, Tanzania Human Rights Report 2008

¹⁴⁰ International Press Institute, World Press Freedom Review, 2007,
http://www.freemedia.at/cms/ipi/freedom_detail.html?country=KW0001/KW0006/KW0179/

¹⁴¹ Ibid

¹⁴² See EHAHRDP report to the 43rd Session of the ACHPR, May 2008 available at www.defenddefenders.org

¹⁴³ Legal and Human Rights Centre, Tanzania Human Rights Report 2008,

Uganda

The human rights situation in Uganda appears to have taken a step back in recent months as the issue of cases of torture and prolonged detention in safe houses, notably of presumed or alleged “terrorist” suspects, once again came to the fore. The judgment by the Supreme Court on the legality of the death penalty, which has been pending, thus leaving hundreds of people lingering on death row, was finally passed and describes mandatory death penalty as unconstitutional but not the death penalty per se.

The lack of clarity over the role given to the different security organizations is also a cause for concern.

The December 2008 joint military operation involving Uganda, DR Congo and Southern Sudan, against the Lord Resistance Army (LRA) in the DRC, which had failed to offer significant protection to the population, led to brutal reprisal massacres by the LRA against the surrounding civilian population.¹⁴⁴ Uganda’s President Yoweri Museveni also took measures which many have decried as undemocratic notably appointing his wife as State Minister of the remote region of Karamoja. The situation of human rights defenders has seen some deterioration in recent months, notably as a result of the developments around the draft amendments to the NGO Laws. Sexual minority rights activists in particular continue to be harassed, intimidated, prosecuted and subjected to inhumane and degrading treatment.

The peace talks between the LRA and Museveni’s government, which began in July 2006 and saw the signing of the Cessation of Hostilities Agreement (CHA) in August of that year, have stalled over recent months, and the CHA has expired. Since the issue of arrest warrants by the International Criminal Court (ICC) in 2005, against Kony and other LRA leaders, the LRA has been trying to portray the warrants as an obstacle to peace. The LRA leader, Joseph Kony, has demonstrated little commitment to the peace talks and once again failed to sign the peace agreement in late November 2008. As the LRA has committed a range of human rights violations, from abductions of children, acts of sexual violence to pillaging in neighbouring Democratic Republic of Congo, the Central African Republic and South Sudan highlighting a lack of their commitment to the peace process. Given the stalling of the process the Uganda government in collaboration with the governments of Southern Sudan and the DRC carried out a raid on LRA camps in the DRC in December 2008. According to Human Rights Watch, the planners of the attacks had failed to pay significant attention to the need for civilian protection and the international peacekeeping forces in the area, notably the United Nations peacekeeping mission in the DRC (MONUC) were not informed sufficiently in advance and had insufficient forces in the affected areas leaving the civilian population at the risk of brutal attacks by the LRA.¹⁴⁵ The impact of the long-term conflict in the North between the Lord’s Resistance Army (LRA) and Ugandan military forces continues to affect the population of this region and the current and former IDPs. The conflict has led to the murder of tens of thousands of people by both sides over the course of the last 22 years, and the uprooting of around two million people in Northern Uganda alone. Hundreds of thousands of internally displaced persons (IDPs) remain in camps plus transit sites. The prolonged conflict continues to have an immense impact on the social and economic structure of the Acholi society,

¹⁴⁴ HRW, The Christmas massacres, 16th February 2009, <http://www.hrw.org/en/reports/2009/02/16/christmas-massacres-0>, last visited on 8th May 2009

¹⁴⁵ Ibid

consequences which are further accentuated by the continued violations of certain segments of this populations' right to food, health and housing due to the inability at times of the government and the donor community to cater for the returnee and IDPs basic needs. Reparations for victims and survivors have been limited. Victims of rape and sexual violence continue to suffer immense physical and psychological consequences. The shortage of health care facilities in many parts of the region, notably counselling services, further hampers their recuperation.¹⁴⁶ Those that have undergone rehabilitation programs often feel that these only offer short term assistance.¹⁴⁷ The land issue is a significant problem as many of those displaced by the conflict have lost their land or seen their property destroyed.¹⁴⁸

The right to life in Uganda has recently been violated by a series of ritual killings, notably of children. Witch doctors are believed to have been the main causes and perpetrators of these murders which are believed to have been contracted by individuals hoping to enhance their luck and fortune. In the first two months of 2009 alone, 18 cases of child sacrifices had been recorded, 15 of which are being investigated.¹⁴⁹ A police unit to look into the incidences has been set-up.¹⁵⁰

The death penalty continues to be retained in the Penal Code thereby violating the right to life. The Penal Code stipulates that eight offences are punishable by death and since the passing of the Terrorism Act in 2002, terrorism has been added as the ninth.¹⁵¹ In fact, on the 21st January 2009, the Supreme Court finally made its ruling on the constitutionality of the death penalty. The Court upheld the decision of the Constitutional Court which stated that the mandatory application of the death penalty was unconstitutional, but at the same time judged that that death penalty was not unconstitutional per se. Nevertheless, on a somewhat more positive note, the court also ruled that those having been on the death row for more than three years would have their sentences commuted to life imprisonment without remission as such delays would constitute cruel and inhumane punishment. Furthermore, it decided that given that the majority of the hundreds of individuals on death row had been subjected to a mandatory death row sentence, their sentences would be converted to life imprisonment. The court also encouraged the legislature to reopen the debate on the need and desire for death penalty.¹⁵² The judgement therefore received a mixed reaction from the many human rights organisations that have been campaigning for years to see it abolished. According to EHAHRD-Net Focal Point, the Foundation for Human Rights Initiative (FHRI), as of October 2008, there were 800 individuals on death row.¹⁵³ The Supreme Court has not yet ruled on the appeal pending in its jurisdiction which questions the legality of the death penalty.

Arbitrary arrests and illegal detention notably without trial, particularly of individuals suspected or alleged to be 'terrorists' persists. Over the last few months both the press and human rights organisations, most notably HRW, have documented how the use of torture within illegal safe houses in the Ugandan capital Kampala by the country's anti-terrorism unit,

¹⁴⁶ AI, Left to their own devices. The continued suffering of victims of the conflict in Northern Uganda and the need for reparations, November 2008

¹⁴⁷ Ibid

¹⁴⁸ Ibid

¹⁴⁹ The Independent Magazine, Uganda's epidemic of child sacrifices, 25th February 2009, <http://www.independent.co.ug/index.php/society/society/37-society/620-ugandas-epidemic-of-child-sacrifice>, last visited on 8th May 2009

¹⁵⁰ BBC, Arrests for Ugandan Ritual Murders, <http://news.bbc.co.uk/1/hi/world/africa/7880763.stm>, last visited 10th March 2009

¹⁵¹ FHRI, Land Rights. The Ugandan Experience. January- June 2008

¹⁵² FHRI, Supreme Court Judgment on Constitutional Appeal N.3 of 2006 (Attorney General Vs Susan Kigula and 417 others). www.fidh.org/IMG/pdf/Summary_on_the_Judgement_of_the_Death_Penalty_Appeal.pdf, last visited on 8th May 2009

FHRI, 900 await execution, 24th October 2008,

http://fhri.or.ug/index.php?option=com_content&task=view&id=69&Itemid=68, last visited on 8th may 2009

has become systematic practice.¹⁵⁴ Individuals of Muslim belief are according to HRW most frequently arrested by the Joint Anti-Terrorism Taskforce (JATT).¹⁵⁵ As of yet no member of the JATT has been held accountable for their actions.

The recent appointment of the First Lady Janet Museveni as the State Minister for the remote and conflict prone region of Karamoja by President Museveni was seen by many as a further sign of the increasing restrictions on political freedom in Uganda. The appointment was described as one amongst a series of measures and appointments made by the current President to ensure his succession, or at least his family's. This comes after the President amended the Constitution in 2005 which lifted presidential term limits to enable him to run for a third term in office.

The freedom of assembly and association of political activists continues to be threatened by the police imposed bans on holding rallies in certain key, central or symbolic areas of the capital. The police, which under the recent Police Act have been charged with the duty of providing security during demonstrations, have often used these provisions as an excuse to break up demonstrations organised by members of the opposition or peaceful protests calling for government accountability on human rights issues. On the 27th May 2008 the Constitutional Court nullified provisions in the Act granting the police the power to allow or not allow rallies to take place but this decision has not been put into practice in reality.¹⁵⁶

Violence against women is a significant problem in the whole of Uganda and SGBV has been particularly rife in Northern Uganda as a result of the conflict and avenues for redress are still scarce. Women's land and property rights continue to be violated as some of the recent efforts to offer legal guarantees to women in these areas have failed to be implemented and fail to take into account the everyday reality facing Ugandan women.¹⁵⁷

Sexual minorities are severely discriminated against both by state and non-state actors, notably the press. 'Carnal knowledge of any person against the order of nature' is illegal in Uganda and in recent months certain MPs, lead by the Minister of Ethics and Integrity, are reported to be working to further entrench legislation that could be used against homosexuals.

Uganda's record regarding human rights defenders has improved in recent years; nevertheless recent repression against minority rights activism and constraints on freedom of expression are of concern.

Minority rights activists, notably members of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) organizations, continue to be harassed, subjected to verbal and legal attacks and ill treatment whilst in detention primarily at the hands of the Ugandan police but more recently also by key members of the government. In a statement to Parliament, Minister of Ethics and Integrity, Mr Buturo, attacked a range of international organisations, including UNICEF, Amnesty, as well as the East and Horn of Africa Human Rights Defenders Project (EHAHRDP) for funding national LGBTI groups and supposedly seeking to "spread homosexuality" in the local population.¹⁵⁸ In the same Mr Buturo stated that he would seek to ensure that the government would enact legislation that would criminalise the promotion of homosexuality and the membership to homosexual groups. Given that homosexual acts are illegal in Uganda, many NGOs and activists are reluctant to take-up the issue. On a slightly more positive note, on the 22nd December 2008, the High Court finally ruled on the case of

¹⁵⁴ HRW, Open Secret, Illegal detention and torture by the Joint Anti-Terrorism Task Force in Uganda, 8th April 2009, <http://www.hrw.org/en/reports/2009/04/08/open-secret-0>, last visited April 2009

¹⁵⁵ Ibid

¹⁵⁶ FHRI, Land Rights

¹⁵⁷ See FHRI, Land Rights.

¹⁵⁸ The New Vision, 16th April 2009

Ms. Victor Juliet Mukasa, former Chairperson of Sexual Minority Rights Uganda (SMUG), whose house had been unofficially raided in 2005 by the police and work documents seized. Ms Mukasa and a guest at her house were arbitrarily arrested and subjected to treatment which amounts to sexual harassment and indecent assault. The Court ruled that the search without an arrest warrant has violated the rights of Ms Mukasa and stated that the rights guaranteed in the Ugandan Constitution, notably freedom from torture and inhuman and degrading treatment and the right to privacy, apply to all and sundry. Although the decision did not specifically mention that these rights apply to LGBTI persons, given that the Attorney General's principal witness had argued that he had treated the two applicants as such because of their sexuality, the court's refusal to accept this argument can be interpreted as such.¹⁵⁹ The government has been asked to pay reparations to the victim.

The legal environment shaping the work of NGOs in Uganda is becoming increasingly more restrictive. The NGO Act of 2006 along with the draft NGO Regulations which has been put forward to parliament as they currently stand severely restrict and hamper the legitimate work of HRDs. The NGO Regulation fail to take in account the recommendations of the NGO community. They define NGOs in a very limited manner, primarily as service delivery organizations and reflect a deep distrust towards these organisations. The NGO board, established to regulate NGOs under the 2006 Act, includes only a very limited number of members of civil society; in fact the majority of the Board members come from different ministries including Internal and External Security, whose staff is unlikely to have a profound understanding of the work and activities of civil society organizations. Finally the Act includes no provisions for recourse to justice only to the Minister of Internal Affairs. Such extensive interference clearly risks undermining the more critical organisations. Of particular concern in the draft Regulations, are the extensive bureaucratic procedures required of NGOs for them to register, notably having to renew licences on a regular basis (after the first year the licence is renewed every three years) and to provide significant details of their activities, excessive requirements for NGOs with limited resources. Under the NGO Regulations the NGO board is granted significant power over NGOs, notably with discretion to deregister, disband NGOs and impose conditions on permits as to areas of operation thereby threatening their autonomy.¹⁶⁰ Finally, the provision in the NGO Regulation which stipulates that organizations are prevented from making direct contact with local people in rural areas without giving 7 days notice in writing to the district authorities clearly further undermines their work, particularly activities of human rights monitoring. In response to this legislative affront, key national human rights organisations have recently mobilised and organised a week-long series of activities and debates aimed at highlighting the key role of non-governmental organisations. The week was ended on the 2nd April 2009 by the deposition in front of the Constitutional Court of a petition which challenges the constitutionality of the NGO Act 2006.¹⁶¹

Legislative and administrative measures in Uganda continues to limit the space accorded to critical reporting as does government interference with the legitimate work of journalists and broadcasters, notably through public statements, intimidation, threats and arbitrary police actions against those seen as errant or too critical of the government.

The authorities exert at times more subtle constraints on the media, notably calling talk show hosts and telling them who should appear on their shows, or using the Broadcasting Council

¹⁵⁹¹⁵⁹ Informal communication with Mr Rwakafuuzi, the lawyer of Ms Mukasa in this case, May 2009

¹⁶⁰ See NGO Petition on the NGO Act 20611(2)

¹⁶¹ For a more detailed description please see NGO Forum, NGO Act, Regulations and Policy. A briefing Paper. 2009, <http://www.ngoforum.or.ug/news/newsDetails.php?unique=63>

as a means through which to dismiss presenters who host guests or tackle issues which are deemed unacceptable or ‘immoral’.

Sedition laws and other criminal laws continue to be used against journalists who are seen as overtly critical of the authorities or are willing to tackle certain ‘taboo’ issues, notably the government’s war against terrorism.

Freedom of expression of HRDs in particular but also of the general population also risks to come under threat if the current Draft Regulation of Interception of Communications Bill 2007 is passed. The draft bill accords extensive powers to the Minister of Justice, notably by enabling him to allow an interception merely on grounds which he is “reasonably” satisfied that an interception is necessary.¹⁶² It accords only limited involvement to the judiciary.¹⁶³ It also gives the authorities excessive space for abuse, notably to violate key rights of freedom of expression privacy, notably by only vaguely defining the grounds for the issuance of a warrant for interception and the length of the interference amongst other provisions.¹⁶⁴

Many of the cases brought against journalists are not heard till their conclusion but several journalists are forced to continue to report to court nevertheless. The government and Ministry of Information continue to claim that government monitoring activities are for security reasons.

¹⁶² The Regulation of Interception of Communications Bill, 2007, Bill N.9, 25th May 2007, clause 5

¹⁶³ Informal presentation on the Draft Bill presented at the ICT committee on 25th March 2009, sent to EHAHRDP by HURINET on 4th April 2009

¹⁶⁴ See The Regulation of Interception of Communications Bill, 2007, Bill N.9, 25th May 2007, clause 5 ;

Recommendations

EHAHRDP-Net calls on the African Commission on Human and People's Rights to:

- Make the fight against impunity a key focus of the ACHPR and its special mechanisms;
- Provide support - logistical, material and political- to entities and bodies that can help to establish accountability mechanisms and to international and regional efforts aimed at ensuring that those responsible for grave violations of human rights and humanitarian law are held to account notably in Somalia, Sudan and Kenya;
- Promote the establishment of international criminal investigations into the human rights violations being committed in countries where an impartial national investigation is unlikely to take place- notably in Kenya, Somalia and Sudan;
- Strongly condemn actions by state and non-state actors which thwart and curtail humanitarian assistance, notably in Sudan, Somalia and Ethiopia;
- Ensure that human rights is at the heart of all diplomatic and peace and reconciliation dialogues, notably in Somalia, Kenya and Sudan;
- Encourage African Union member States to offer standing invitations to the ACHPR's special mechanisms and to provide them with necessary assistance in the course of eventual visits whilst ensuring the protection of all witnesses meet by the mandate holders in the course of their missions;
- Publicly condemn the continuing harassment and discrimination of LGBTI persons;
- Continue monitoring the situation facing human rights defenders(HRDs) most particularly in Kenya, Sudan, Somalia, Burundi and Ethiopia;
- Call for an end to all practices, notably legal restrictions, which threaten the fundamental rights, in particular the freedom of expression, and legitimate work of HRDs;
- Call on member States to ensure the protection of Human Rights Defenders, notably by observing the African Charter on Human and People's Rights and other human rights treaties to which most of these countries are signatory;
- Support initiatives by HRDs to strengthen their position, notably by calling on national NGOs to present their assessment of their country situations prior to and during country missions.