



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

Overview of the Human Rights Situation in the East and Horn of Africa

Report presented to the 46th Session of the African
Commission
on Human and People's Rights (ACHPR),
Banjul, The Gambia, November 2009

Regional Coordination Office

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

Human Rights House, Plot 1853, Lulume Rd., Nsambya

P.O. Box 70356 Kampala, Uganda

Phone: +256-312-265820/1/2/3/4

Fax: +256-312-265825

Website: <http://www.defenddefenders.org>

Contact persons

Hassan Shire Sheikh (Executive Director): executive@defenddefenders.org,
hshire@yorku.ca, +256-772-753753

Laetitia Bader (Human Rights Officer – Advocacy & Research):
advocacy@defenddefenders.org, +256-775-141756

Table of contents

Table of contents	2
Introduction.....	3
Country overviews.....	5
Burundi.....	5
Djibouti	8
Eritrea	10
Ethiopia	15
Kenya.....	17
Rwanda.....	21
Somalia	25
Somaliland	27
Sudan.....	29
South Sudan	33
Tanzania	34
Uganda	36
Recommendations.....	40

Introduction

EHAHRD-Net welcomes once again the opportunity offered by 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. The approach of elections in most of the countries of the region over the course of the next two years is already having a negative impact on the human rights situation on the ground.

Restrictions on civil and political rights, the field that this report focuses on, have increased in almost every country covered. These restrictions have taken a range of forms from an array of legislative developments aimed at thwarting the rights of civil society, the media and the political opposition, through methods of intimidation such as threats, increased surveillance and censorship of key actors, to more traditional and violent means of restrictions. As a result the situation facing human rights defenders in the region has in certain instances deteriorated, in others shown no improvements but in no cases witnessed any improvements worth noting. This is of utmost concern at a time when the work of defenders is more vital than ever before given forthcoming elections as well a series of what might prove to be decisive turning points in several countries in the region. Although this report focuses on the East and Horn of Africa region, many of the issues raised, as recent events in the Gambia unfortunately show, appear to be relevant to other regions in Africa.

Sudan is at a turning point: the elections are currently planned for April 2010, the referendum in South Sudan for 2011 yet several recent developments suggest that the human rights situation in the country is deteriorating. The issuance by the International Criminal Court on the 4th march 2009 of an arrest warrant for President Omar al-Bashir has been used by the authorities to pursue its clampdown on civil society: the three key human rights NGOs shut down in March 2009 are still closed and activists in the country increasingly at risk. Staunch curtailments on freedom of expression and press persist and have been formalised by the passing of the controversial Press Law which is at odds with the Comprehensive Peace Agreement and the Interim Constitution. Some positive legislative measures have been taken, notably the passing of the National Human Rights Commission Act, yet have not had a concrete impact on the human rights situation on the ground. In fact, key provisions of the Comprehensive Peace Agreement (CPA) of 2005 have yet to be implemented. Violations of international humanitarian law and human rights continue to take place in the Darfur region despite claims by a range of actors that the situation is improving. And, insecurity remains high in South Sudan where the disarmament process has still not been fully implemented and recent outbreaks of inter-ethnic violence in the Jonglei state are particularly alarming.

The Ethiopian authorities have over the course of the last year passed several laws aimed at offering a legal grounding to their ongoing attacks on independent civil society and on the political opposition. The Charities and Societies Proclamation, passed in January 2009 by the Ethiopian People's Revolutionary Democratic Front (EPRDF) dominated parliament, 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, organizations receiving more than 10% of their funding from abroad will not be allowed to carry out any human rights work, democracy or conflict resolution activities. The recently passed Anti-Terrorism Proclamation with its broad and vague definition of terrorism and terrorist acts and its lack of judicial oversight is likely to be used as a tool by the Ethiopian authorities to clampdown on peaceful political protest and independent criticism. The authorities also resort to more traditional repressive measures, evidenced most recently by the much publicized arbitrary arrest and imprisonment of the leader of the opposition Unity for Democracy and Justice (UDJ) party, Birtukan Mideksa, as well as the arrests, and reported ill-treatment, of actual or alleged members of the Ginbot 7 opposition group. Current developments are in clear contravention

of the Ethiopian authorities' national, regional and international responsibilities. Yet, the international community fails, or refuses, to give the human rights record of the government sufficient attention.

The human rights situation in Somalia has shown no improvements in spite of the withdrawal of Ethiopian troops in January 2009 and the election of Mr. Sheikh Sharif as the country's president. In fact, a surge in violence since May 2009 has led to a further deterioration in the situation. International humanitarian law and human rights violations are committed by all the parties involved in a conflict that has brought about severe suffering for the civilian population. The perpetrators of these violations, whether governmental or members of insurgency groups, clan militias or warlords, have all been accorded impunity. Attacks and targeted killings of human rights defenders, particularly journalists, continue to occur, most notably at the hands of Al-Shabab, making Somalia the deadliest country in the world for journalists. International attention to the crisis and to the human rights situation has increased yet has so far not converted into concrete developments on the ground.

Although on paper the Kenya authorities appear willing to carry out some of the reforms stipulated in the National Accord, impunity continues to prevail in the aftermath of the post-election violence and the reforms called for in the field of justice and accountability have not been carried out; this can be seen in particular by the authorities' failure to establish a constitutionally entrenched national Special Tribunal. Similarly, although the authorities took a significant step by publicly acknowledging the problem of extrajudicial killings at the UN Human Rights Council in Geneva in June, this has not converted into concrete action aimed at holding the security forces to account for these violations. The situation facing HRDs in Kenya remains concerning witnessed by the recent killings of two human rights activists involved in investigations into extrajudicial killings by the police, killings that have not been sufficiently investigated.

The ongoing attacks on the private media in Rwanda, involving persistent harassment, public intimidation, prosecution and the passing of a new Media law that contains several restrictive provisions clearly aimed at the private media must be noted.

The human rights situation in Eritrea is dire; Eritrea is now one of the most repressive States in the world. The on-going tensions with Ethiopia shape both internal and external policies of the authorities. Freedoms of movement, religion, expression, and assembly are severely restricted in staunch contradiction of the country's domestic and international legal responsibilities. Tens of thousands of political prisoners are detained, many incommunicado, without charge or trial. 'Indefinite' conscription is enforced through brutal methods. There is no independent civil society to speak of and all independent and private media outlets have remained shut since a crackdown in 2001; largely obscuring the extent of the situation to the outside world. The Eritrean government has still not implemented the recommendations of the two ACHPR rulings.

Finally, the current legislative affront against sexual minorities in the East and Horn of African region, which added to the everyday harassment, intimidation and discrimination that LGBTI persons face is concerning. Current draft bills in Uganda and in Rwanda which seek to criminalise homosexuality, in the case of the former, or the promotion and sensitization of same sex relations, in the case of the latter, significantly violate these countries' national, regional and international standards notably regarding the right to privacy and freedom from discrimination. This comes after the passing of a new penal code by the Burundian President in April which criminalises same sex relationships between consenting adults. Thus, what appears to be fast becoming a trend requires the attention of all.

Country overviews

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

Burundi

The pre-election period that officially started in July 2009 has been marked by restrictions on civil and political rights as well as targeted violence. The emergence of youth militia groups that are believed to be affiliated with different political parties and have reportedly carried out politically motivated acts of violence is particularly concerning. The Burundian authorities have so far failed to put in place key institutional mechanisms for the protection of human rights, notably a national human rights commission, key to re-enforcing a culture of human rights and ending the deeply entrenched culture of impunity. 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 leadership's decision to include a provision criminalising consensual same-sex relationships in April 2010 in spite of significant mobilisation by both national and international human rights organisations and the diplomatic community continues to mar the country's human rights record.

High levels of arbitrary arrest and unlawful detention at the hands both of the police but also local administrators, notably of members of the political opposition, continue to be recorded despite the inclusion of an article in the new penal code which penalises the arbitrary deprivation of liberty by state agents. 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 in spite of the explicit criminalisation of torture based on the UN Convention against Torture (CAT) definition in the new penal code.¹ In light of this context, the failure to establish vetting mechanisms for the integration of former soldiers and rebels into the national police force and army is concerning. In fact, the recent integration of FNL and FNL dissident combatants into the security forces which was finalised in April 2009 was carried out without any form of vetting.²

The conditions in the prisons in Burundi are harsh and at times life threatening, worsened by an ever increasing prison population. The overcrowding is linked to the malfunctioning of the judiciary and the practice of lengthy pre-trial detention.³

Impunity continues to prevail and crimes committed by the security services in particular are rarely investigated. The judicial system is weak and fails to adhere to international standards of independence and impartiality. In fact, the judiciary continues to be under the influence of the Executive. Lack of resources is a considerable problem. Transitional justice mechanisms, notably a truth and reconciliation commission and a special tribunal, which the government had committed to establishing in its peace agreements, have of yet not been put in place and consultations between the UN, Burundian government and members of civil society regarding the make-up of the mechanisms are ongoing. 'Provisional immunity' has been granted by the President, until the constitution of these mechanisms, to former rebels and soldiers, including current members of the government, who had committed 'politically

¹ Report of the United Nations High Commissioner for Human Rights on the human rights situation in Burundi and the activities of her Office in Burundi, A.HRC.12.43, 31st August 2009, available at <http://www2.ohchr.org/english/bodies/hrcouncil/12session/reports.htm>, last visited on 31/10/09

² Ibid

³ APRODH, Population carcerale, au 15 Mars 2009, http://www.aprodh.org/article.php3?id_article=128, last visited on 5th May 2009

motivated crimes'. Although in theory these crimes exclude crimes against humanity and war crimes they have not been well defined, and have granted further free reign to violations.⁴

The Party for the Liberation of the Hutu People-National Liberation Front (PALIPEHUTU-FNL), also known as FNL, the only remaining rebel faction, became an official political party in April 2009 and several of its members have since joined the National Council for the Defense of Democracy – Forces for the Defense of Democracy (CNDD-FDD) government. Although the party has recently faced infighting and attempted breakaway factions it is likely to be the primary contender in the 2010 elections.

Restrictions on political freedoms are widespread: opposition party members face harassment, intimidation and constraints on their work. Opposition party members have repeatedly seen their right of freedom of assembly violated notably by provincial and communal authorities. Supporters of the former Chairman of the ruling CNDD-FDD party, President Hussein Radjabu, who was sentenced to 13 years imprisonment in mid 2008, have been arrested and remain in detention awaiting pre-trial on charges of threatening state security, notably Gérard Nkurunziza and Pasteur Mpawenayo who were amongst the group of 22 Parliamentarians that were removed from their post in 2008. Members of the FNL in particular have been subjected to arbitrary arrests and detention. The authorities have also at times sought to block the registration of opposition parties. The Movement for Security and Democracy (MSD) for example, whose leader Alexis Sinduhije was arrested on the 3rd November 2008 and detained on charges of having “shown contempt to the president” but finally acquitted after 4 months in detention on the 12th March 2009, had their registration process blocked by the Internal Ministry for several months on the grounds that its name needed to be changed. The name of the party has since been changed to Movement for Solidarity and Democracy and the registration was finally approved in June 2009. It is feared that restrictions on political freedom are likely to further deteriorate in the run -up to the 2010 general elections.

The increasing presence of youth militia groups since the end of 2008, some of which are armed, affiliated with the main political parties is particularly concerning given the forthcoming 2010 elections.⁵ Violence and acts of intimidation, notably against members of opposing political groups, attributed to these groups has been most frequently reported in the rural areas.⁶ The youth wing of the ruling CNDD-FDD party, the *Imbonerakure*, has reportedly carried out harassment and arrests of political opponents with the acceptance of the local authorities notably local administrative, police and party officials.⁷

The right to association of trade unions continues to be restricted with trade unionists, notably from the medical and teachers' unions, facing significant harassment at the hands of the authorities. Trade unionist Juvenal Rududura, the vice-president of the judicial trade union, was arrested in September 2008 and imprisoned on charges of “false declarations” after he accused the Minister of Justice of corruption in the Ministry's recruitment process. He was finally released on a provisional basis in July 2009 after seven months in detention.

Sexual violence continues to be prevalent in Burundi. The new penal code has adopted a more comprehensive definition of rape and criminalises harassment. Perpetrators have largely been given impunity and many victims fear speaking out about their violation.⁸ Efforts are being made by national and international organisations to encourage the victims to report and seek medical assistance yet many face social pressure to remain silent. Successful prosecution of rapists remains rare however.⁹ Yet the same new penal code also differentiates spousal violence from other forms of violence by placing the burden of

⁴ HRW, The Pursuit of Power, May 2009, available at <http://www.hrw.org/en/node/83249/>, last visited on 06/06/09

⁵ HRW, Pursuit of Power

⁶ Report of the United Nations High Commissioner for Human Rights

⁷ HRW, Pursuit of power

⁸ Ibid

⁹ 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

responsibility of reporting such violence on the victim thereby reducing the responsibility of the state to take action.¹⁰ 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.¹¹ Socio-economic, political and juridical discriminations against women are widespread. Legislation continues to disadvantage women and the hard sought after inheritance law has still not been passed.

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; in July 2009 nine people were convicted of the murder of at least 12 albinos.¹² The government has failed however to put in place significant measures to protect albinos from violence and to overcome the wide ranging discriminations facing albinos.

Homosexuals have suffered serious discrimination in the past in Burundi largely from non-state actors notably from their families, local communities and also employers. This discrimination has been further aggravated of late by a state endorsed discrimination against homosexuals witnessed by the passing of the new penal code in April 2009 that criminalises same sex relationships. The contested article 567 clearly violates 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 for up to two years. The provisions have not as yet been implemented, and high level members of the authorities have repeatedly claimed that it will not be. Nevertheless in light of the forthcoming elections and the potential political use of this populist provision it remains of utmost concern.

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.

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 working in more rural areas or in political 'hotspots' are particularly at risk.

On the 14th July 2009, for example, human rights activist Stany Mbazumutima who works for the Ngozi section of the Ligue Iteka, one of the leading human rights organizations, denounced on the Radio Publique Africaine (RPA) station, a series of malfunctioning within a local court. Mr. Mbazumutima along with a journalist on RPA, Mr. Marc Kirura, were subsequently summoned to court on three occasions accused by the responsible of the court of having made false declarations. The case was subsequently dismissed.

Investigations into the murder of Mr. Ernest Manirumva, the vice president of the widely respected anti-corruption NGO, OLUCOME (The Observatory for the struggle against corruption and economic malpractice) are currently ongoing. Mr. Manirumva had been working on a series of highly sensitive documents notably investigating cases of corruption within the police and within private companies, some of which have links to the ruling party, when he was murdered. 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 results of which are of yet unknown. In the meantime a third commission of inquiry is currently underway and has lead to the arrest of a prominent businessman Hilaire Ndayizamba on the 15th October, on the basis of a series of phone calls

¹⁰ 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

¹¹ Association pour la defense des droits de la femme , Statistiques Victimes 2008, received by email

¹² BBC, Jail over Burundi albino murder, 23rd July 2009, <http://news.bbc.co.uk/2/hi/africa/8166273.stm>, last visited on 23rd July 2009

Mr. Manirumva has received from Mr. Ndayizamba on the night of his murder and two police officers. The importance and relevance of these more recent arrests are not yet clear. OLUCOME members, notably the organisation's President Mr. Gabriel Rufyiri, have continued to face harassment and threats in spite of the murder and the outcry from civil society and the diplomatic community.

Freedom of assembly of civil society has on several occasions been restricted in the last six months: two demonstrations planned by civil society organizations to protect against the lack of result in the Manirumva investigations were banned as was a demonstration against the attacks on albinos.

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.

The small LGBTI activist community in Burundi has come under threat as a result of the new penal code. Prior to the passing of the code the LGBTI community had begun to mobilise and was particularly active in the months leading up to the passing of the penal code. Although the provision of the code has not as yet been implemented it is already having a significant impact on the LGBTI community. The main LGBTI organisation has been forced to close, some of its members have left the country and others had been forced to join other organisations working on other issues notably issues of non-discrimination and to restrict their more public activism.¹³

Press freedom continues to be restricted in Burundi. Recent cases of harassment, censorship and intimidation and prosecution of journalists speaking out about issues affecting the ruling party are concerning notably in light of the forthcoming elections. Journalists working in more remote areas of the country or political hotspots have been the primary victims of these attacks.

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.

Ismail 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.

¹³ Meeting in Bujumbura with LGBTI activist, 24th June 2009

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 Développement (MRD), was dissolved in July 2008 on unsubstantiated grounds and has of yet not been re-opened.¹⁴

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.

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, both legal and practical, are numerous. 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 in October was postponed again until the 17th Janvier 2010, which it is hoped will enable Mr Abdi's defence lawyer, who is based in France, to attend.

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.

¹⁴ Informal communication sent to EHAHRDP by the Djibouti League of Human Rights (Ligue Djiboutienne des Droits Humains-LDDH), April 2009.

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

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.

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.

Eritrea

The human rights situation in Eritrea is dire and Eritrea is now one of the most repressive States in the world. The on-going tensions with Ethiopia shape both internal and external policies of the authorities. Freedoms of movement, religion, expression, and assembly are severely restricted in staunch contradiction of the country's domestic and international legal responsibilities. Thousands of political prisoners are detained, many incommunicado, without charge or trial. 'Indefinite' conscription is enforced through brutal methods. Any form or sign of dissent are immediately clampdown on: arbitrary arrest and detention of draft evaders, military dissenters, members of unregistered churches is systematic. There is no independent civil society to speak of and all independent and private media outlets have remained shut since a crackdown in 2001; largely obscuring the extent of the situation to the outside world. In spite of what is reported and known of the human rights situation, the European Union, one of the main donors to Eritrea, has failed to use its influence in the country to bring about the urgently needed changes. In fact, in September 2009, the European Commission concluded a 122 million Euro worth agreement with the authorities for the implementation of development programs for 2009-2013. Other international attention has focused on the role of Eritrea in Somalia and specifically on its alleged support to Al-Shabab. Following an appeal from the African Union and the USA, the UN Security Council has threatened to take sanctions against Eritrea for its role in undermining the peace process in Somalia¹⁷. Key actors fear however that this new attention is misguided and will only worsen the situation on the ground in Eritrea and in the region as a whole. The situation has not significantly changed since the past NGO forum hence the similarities with the country section in the May 2009 report.

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 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'.

Political freedom is inexistent. Eritrea is a one-party state under the control of the ruling People's Front for Democracy and Justice (PFDJ). 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

¹⁷ VOA News, UN Security Council considering sanctions against Eritrea, Others, 9th July 2009, <http://www.voanews.com/english/2009-07-09-voa41.cfm>, last visited on 06/11/09

Group of 15 (G15) were arbitrarily arrested after they called for the implementation of democratic reforms, including the implementation of the Constitution. This 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 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.¹⁸

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. 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.¹⁹ 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 an everyday practise 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.²⁰

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. The majority of them were detained and have been maintained in military camps and prisons ever since.

Military and national service is compulsory and has been extended indefinitely. The national service campaign is increasingly opposed by the population and yet the right to conscientious objection is inexistent.²¹ Conscription is enforced through a range of methods notably mass round-ups and house-to-house sweeps. The men and women that are detained and are conscripted 'indefinitely' in staunch contravention of the statutory national service of 18 months. In order to evade conscription, almost on a weekly basis, hundreds of young Eritreans seek refuge in neighbouring countries. They generally flee by foot across the border given that Eritreans under the age of 50 are seldomly granted exit visas²². As a result recruitment of older or younger layers of the population has increased; drafting underage members of the population to make up numbers is now common practice; in fact, the last

¹⁸ 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

¹⁹ US Department of State, Eritrea: Country Reports on Human Practices, March 11 2008, <http://www.state.gov/g/drl/rls/hrrpt/2007/100480.htm>

²⁰ HRW, Service for Life: State repression and indefinite conscription in Eritrea

²² Ibid

year of high school has been moved 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 draft evaders pay either an incommensurate fine or, if they are unable to meet such costs, detained indefinitely. Reports show that family members have also been forcefully conscripted, to replace missing relatives.

Forced labour is according to EHAHRDP focal point, Human Rights Concern-Eritrea, a widely used and enforced practice.²⁴ 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 restricted. Persecution of members of minority Christian churches, notably Pentecostals and Jehovah Witnesses, is rampant. The government operates according to a 2002 Decree that compels all religious groups to register. The registration applications of the minority churches notably independent evangelical groups, Pentecostals, and Jehovah's Witnesses are ignored or rejected by the authorities. Public religious activities as private activities involving more than five members of an unregistered church are banned and regularly clamped-down on through police and military raids. The Eritrean Orthodox, Evangelicals (Lutheran) of Eritrea, Islam, and the Roman Catholic Churches are allowed a certain amount of freedom. Yet, members of registered religions that criticise the authorities have also seen their rights violated and been detained. According to Amnesty International, thousands of individuals of minority religions are at present detained in Eritrea,²⁵ held without trial or charges and 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.

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.²⁶

NGOs working on non-rights issues have been systematically dismantled and employees of international NGOs, aid agencies and the UN expelled. The staunch registration requirements, notably monetary, make it almost impossible for international NGOs to establish a presence in the country.

Eritrea has had no independent civil society or media to speak of since 2001. In 2001, reformist members of the ruling party (known as the G-15) joined by members of the country's nascent civil society and of the few private media houses began calling for more transparency and democratic change, namely the implementation of the 1997 Constitution. The authorities responded to these calls by arbitrarily detaining many in a move to silence

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

²⁵ 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

²⁶ 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>

voices of opposition, thus forcing many others into exile. While the exact number is unclear, several of those detained are held incommunicado to this day in the country's extensive prison network with no charges and their right to due process being violated.²⁷ The on-going tensions with Ethiopia are used as justification by the authorities for this: human rights activists or critical journalists are perceived and described by Eritrean authorities as subversive and as a tool used by the West and Ethiopia to undermine Eritrean sovereignty. The absence of critical reporting on the human rights situation, resulting from this and ongoing clampdowns largely obscures to the outside world the extent of the human rights violations occurring in what is rapidly becoming one of the most repressive countries in the world.

The limited information gathered from the ground highlights that the general human rights situation as the reality facing human rights defenders in Eritrea is dire.²⁸ Freedom of speech and press are currently nonexistent.²⁹ In fact, Eritrea is the only country in Sub-Saharan Africa which does not have a single operating independent or private news outlet as private ownership of media and international influence or ownership of media are banned. As a result, Eritreans live in complete dearth of information – only rarely receiving news from the odd foreign radio station when these are not blocked by the authorities.

Similarly, freedom of association is a right which is severely restricted, if not forbidden: the military and police clampdown on any assembly of more than seven people that has not been authorised by the authorities. As a result Eritrean human rights activists are forced to carry out their work underground, mostly on an individual basis, and Eritrean human rights organisations are forced to operate in exile.

The authorities' failure to fulfil, respect or promote the rights of human rights defenders, such as freedoms of expression, media and association, contravenes the country's national, regional and international legal responsibilities. The Eritrean Constitution, which contains key rights and freedoms, and was ratified by the Constituent Assembly in May 23, 1997, is yet to be implemented.³⁰ Furthermore, the Eritrean government has ratified the twin bill of rights treaties³¹ and the African Charter on Human and Peoples' Rights amongst other instruments protecting the fundamental rights and freedoms of human rights defenders.³²

Recognised as one of the main voices of the opposition, journalists are a group of human rights defenders whose fate has received significant attention outside of Eritrea. Since 2001, the rights of journalists have been systematically violated by the Eritrean authorities. Ensuring that the situation of journalists is improved by prioritising it in forthcoming EU activities can play a significant part in bringing about improvements in the general human rights situation.

The clampdown on the nascent independent media and on all forms of critical reporting began as a result of the extensive reporting by the independent media on the growing divisions within the ruling People's Front for Democracy and Justice (PFDJ) party and on the increasing restriction on freedom of the press in 2001. The ensuing clampdowns by the authorities led to the arrest and detention of journalists³³, the forced exile of others and the closure of the few independent media houses in operation.

²⁷ See the African Commission on Human and Peoples' Rights decision regarding their arrest and detention incommunicado, communication 250/2002. See also Declaration by the French Presidency on behalf of the European Union, Political Prisoner in Eritrea, September, 18, 2008.

²⁸ For a recent in-depth analysis of the situation please see HRW,

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 See Chapter III of the Eritrean constitution 1996.

³¹ Eritrea accessioned the International Covenant on Economic, Social and Cultural Rights on April 17, 2001 and the International Covenant on Civil and Political Rights on January 22, 2002.

³² Eritrea accessioned the African Charter on Human and People's Rights on January 14, 1999.

At least ten of the arrested journalists are held incommunicado to this day in secret prisons, notably the notorious Eiraeiro prison, without charge or trial.³⁴ The exact fate, location, health and legal status, of the journalists is unclear given the refusal by the government to disclose this crucial information along with the government's total control over the national media, fear amongst prisoners' families along with.³⁵

Numerous reports claim that journalist Fesshaye Yohannes died in custody in 2007; Eritrean authorities have not confirmed his death. Three other members of the group are also feared to have died as a result of lack of access to medical care, torture and inhumane treatment.

The fate of the Swedish-Eritrean journalist, Dawit Isaac, has generated significant international attention, notably by the Swedish press, yet is symbolic of many others. Mr Isaac, editor and founder of the former weekly Setit, who has been held incommunicado ever since his arrest in the 2001 clampdowns, is reported to have been transferred on the 11th January 2009, to a military air force hospital. Despite significant mobilisation on his behalf his whereabouts and health condition are as yet unknown.³⁶

Members of the state press have not been protected from this ongoing clampdown. In 2002 Mr Saleh Aljezeeri of the Eritrean State radio was imprisoned and continues to be held incommunicado. More recently, in what has been reported as a new wave of attacks on the press, the entire staff of Radio Bana, a station that works for the Ministry of Education, was arrested on the 22nd February 2009; most individuals were later released but an unknown number remain in detention without charge or trial³⁷ Similarly, several journalists are believed to be amongst the prisoners recently moved to a prison on the Dahlak archipelago, where the conditions are reported to be appalling.³⁸

The forceful and indefinite conscription of journalists and their subjection to forced labour has also been used to silence them.

Given this dire reality, journalists regularly seek to flee the country. The decision to flee Eritrea has serious repercussions: those caught whilst trying to escape have been immediately imprisoned, subjected to hard labour or detained incommunicado. Others die as a result of a more or less 'official' shoot to kill policy at the Eritrean border or of the harsh conditions along the way. Popular journalist Paulos Kidane, working for the State-run media attempted to flee to Sudan in 2007 after having been arrested and intimidated on several occasions between 2006- 2007 as a result of several journalists' from the state media defected: he died of exhaustion along the way. 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.³⁹

³⁴ It is unclear exactly how many journalists were imprisoned in 2001. The detention of ten journalists is known: **Said** Abdelkader, of Admas; Yusuf Mohamed Ali, of Tsigenay ; Amanuel Asrat, of Zemen; Temesken Ghebreyesus, of Keste Debona; Mattewos Habteab, of Meqaleh; Dawit Habtemichael, of Meqaleh; Medhanie Haile, Keste Debona; Dawit Isaac, of Setit; Seyoum Tsehay, freelance and Fesshaye, Yohannes, of Setit.

³⁵ Committee to Protect Journalists (CPJ), *Attacks on the media in Africa in 2007: Eritrea*, <http://www.cpj.org/attacks07/africa07/eri07.html>.

³⁶ 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

³⁷ 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

³⁸ 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

³⁹ Ibid

Ethiopia

Severe restrictions on civil and political rights in Ethiopia persist as the Ethiopian People's Revolutionary Democratic Front (EPRDF) party increases the measures, notably legislative, at its disposal to ensure that all forms of democratic space and civil society activism are closed down. Given the current situation, it is doubtful whether the 2010 elections will be free or 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 government, whether from the political opposition or members of civil society, as an attack on the State. This perception appears to be increasing as the 2010 elections approach.

Political freedom is severely restricted and the political opposition has been subjected to harassment, intimidation as well as to more traditional forms of repression. The popular leader of the main opposition party, Unity for Democracy and Justice (UDJ), Birtukan Mideksa, is still in detention after the life sentence, which she had been handed down in the post- 2005 election political trials, was re-imposed this year when she was found guilty of having violated the terms of her previous pardon. Individuals arrested in a crackdown in April 2009 on basis of their alleged support for the Ginbot 7 (15th May) opposition group, the majority of whose supporters are based in exile, remain in detention. The group includes army officers, supporters or mere family members of supporters of the party. The individuals had initially been charged with plotting a coup but they currently stand charges of conspiring with a terrorist group amongst other charges. The judgment is expected in early November. Reports suggest that several of this group of detainees have been tortured during interrogations.⁴⁰

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.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. 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.⁴²

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 the anti-terrorism proclamation, passed in July 2009 as this proclamation could be used as an instrument to legalise such current government abuses.⁴³ First and foremost the definition of terrorism put forward in the draft is

⁴⁰ EHAHRDP mission to Ethiopia 29th October- 5th November 2009

⁴¹ EHRCO, *The human rights situation in Ethiopia : 28th Regular Report*

⁴² EHRCO, *The human rights situation in Ethiopia : 28th Regular Report*

⁴³ EHAHRDP, Ethiopian Parliament should reject Draft Anti-Terrorism Proclamation and end legislative affront on independent civil society, 1st July 2009, EHAHRD-Net Index ETH 020/003/2009, available at <http://www.defenddefenders.org/html/advocacymaterial.html>

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.⁴⁴ Similarly, the definition of terrorist acts has the potential of being used to criminalise all form of peaceful protests and demonstrations.⁴⁵ It also offers the government another instrument with which to restrict freedom of speech and expression by broadly and yet once again vaguely defining the forms of speech that can be criminalised and seen as inciting or supporting terrorism.⁴⁶ The draft bill will also see the power of the police significantly increased and offers very little form of oversight.

The situation facing human rights defenders in Ethiopia continues to deteriorate. The new Charities and Societies Proclamation, passed in January 2009, is a perfect example of efforts by the government to legalise their restrictions on human rights work.⁴⁷

The Charities and Societies Proclamation contains a series of provisions aimed at thwarting and criminalising human rights work. This legislation is the most restrictive currently in place in the region: it determines the very type of activities in which organisations can be involved in. Organisations deemed to be resident or foreign, i.e. receiving more than 10% of their funding from abroad⁴⁸, are not allowed to take part in human rights activities.⁴⁹ 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.

The Proclamation allows for only a very limited form of review.⁵⁰ It sets up a supervisory agency - the Charities and Societies Agency (CSA) - appointed by the Minister of Justice that has 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, the list of which has been added to in the course of the current re-registration process, renders it very challenging for organizations to ensure complete compliance.⁵¹

The impact on the ground is already being felt. National organizations are currently in the process of deciding whether or not to opt for pursuing human rights work, i.e. becoming a national organizations and therefore having to significantly downsize(staff/ activities in some cases), or stop human rights work altogether. The burdensome reorganization process is clearly currently undermining the capacity of organizations to carry out their regular work in a period, notably given the approaching elections, when it is more essential than ever before.

⁴⁴ 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/pdffiles/Analysis_of_Ethiopia's_Draft_CT_Proclamation_3.9.09.pdf -, last visited on 6th May 2009

⁴⁵ Ibid, article 3.1.vi

⁴⁶ Ibid, article 6.1

⁴⁷ EHAHRDP, EHAHRD-Net deplores the passing of the law on Charities and Societies in Ethiopia which threatens the very future of human rights work, 13th January 2009, EHAHRD-Net ETH 001/003/2009, available at <http://www.defenddefenders.org/html/advocacymaterial.html>

⁴⁸ 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

⁴⁹ 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

⁵⁰ 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/>

⁵¹ EHAHRDP mission to Ethiopia 29th October- 5th November 2009

The government has also heightened its practice of establishing GONGOs or funding pseudo-professional associations as well as promoting 'mass based organisations' to discredit relevant independent national organisations.

Freedom of the media is also limited. Since the post elections clampdown on the private media, private media outlets remain scarce. The harassment, intimidation and prosecution of journalists, publishers and editors working for the private media has once again increased in recent months thus forcing many journalists to exert self-censure. The authorities are making use of the pro-governmental media as a channel with which to attack the private media. The Addis Neger, the leading private newspaper, has consistently been threatened in a series of articles in government papers over the course of the last two months making clear that if they do not change their policies and stance their fate will be similar to that of the private media journalists following the 2005 elections.

Although the authorities had agreed to allow the journalists released following the post 2005 election 'treason trials', to resume their work, the government has been using bureaucratic tactics as a means of preventing them from doing so, notably by withholding press licences. Widely respected journalists Eskinder Nega and Serkalem Fasil have for example repeatedly been denied licenses.

The authorities have also put in place legislation that criminalises press offences. 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.

Despite these persistent and large-scale violations, particularly of civil and political rights, the government continues to receive significant foreign support and assistance.

Kenya

The human rights situation in Kenya continues to witness significant deteriorations as the Coalition government fails to implement the Kenya national reconciliation agreement (National Accord), which outlines key reforms necessary to tackle some of the country's main underlying human rights problems. Although on paper the authorities are showing a willingness to carry out the reforms stipulated in the National Accord, impunity continues to prevail in the aftermath of the election violence and the reforms called for in the field of justice and accountability, based in large part on the Commission of Inquiry into Post election violence (Waki Commission), have not been carried out. 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. The government is also clearly failing to offer HRDs the protection which their legitimate work requires.

The use of extrajudicial killings and enforced disappearances of civilians by the Kenyan police is systematic. 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 alleged members of the Mungiki and other gangs. According to reports, the Kenyan army carried out a series of extrajudicial executions during their crackdown on the Sabot Land Defence Force (SLDF) in March 2008 in the Mount Elgon region of Western

Kenya.⁵² Similarly, widespread unlawful killings were carried out during the post-election violence, notably by the police, which have still not been accounted for. The authorities, notably the former Police Commissioner General Hussein Ali, have for a long time denied what are increasingly becoming hard facts.⁵³ Nevertheless, during discussions at the UN Human Rights Council in Geneva following the presentation of the report by the UN Special Rapporteur on Extrajudicial Executions, Professor Philip Alston, in June, the Kenyan delegation finally publicly acknowledged that extrajudicial killings are a problem in Kenya, and that police reform was necessary.⁵⁴ Certain members of the Kenyan government delegation rejected calls for the removal of Police Commissioner Ali and Attorney General Amos Wako.⁵⁵

Unlawful killings at the hands of vigilante groups continue 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.⁵⁶

On a more positive note, the President Kibaki decided in August 2009 to commute the sentence of 4000 death row prisoners to life imprisonment.⁵⁷ The death sentence is still legalised in Kenya however.

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 largely linked to underfunding. Torture and inhumane and degrading treatment against people in police custody is allegedly widespread as well as torture at the hands of the armed forces.⁵⁸ 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.⁵⁹ Several accounts suggest that those increasingly at risk of torture are individuals coming from poorer, primarily urban, areas.⁶⁰ Significant reforms of the police force in Kenya have been called for time and again by national and international human rights actors. President Kibaki appeared to respond to this pressure, and most notably the publication of a report by retired judge Philip Ramsey on police reform, by removing on the 8th September 2009, Police Commissioner Ali, who many have accused of supporting the practice of extrajudicial executions within the forces, from his post.⁶¹ Several other new appointments were made within the forces nevertheless it is unclear whether this apparent change of guard will lead to significant change in the police culture and practice.

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 Ibid

⁵⁴ EHAHRDP, EHAHRD-Net welcomes the report of the Special Rapporteur on Extrajudicial Executions following his visit to Kenya, EHAHRD-Net Index KEN 004/004/2009

⁵⁵ Kenya, Interactive Dialogue on the Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, 3rd June, Geneva, available at <http://portal.ohchr.org/portal/page/portal/HRCExtranet/11thSession/OralStatements/030609/Tab1>, last visited on 27/09/09

⁵⁶ 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/af320042009en.html>, last visited on 7th May 2009

⁵⁷ Amnesty International, 4000 Kenyans on Death Row get Life, 5th August 2009, <http://www.amnesty.org/en/news-and-updates/good-news/4000-kenyans-death-row-get-life-20090805>, last visited on 1/10/09

⁵⁸ IMLU, Press release, 23rd June, http://www.imlu.org/index.php?option=com_content&task=view&id=60&Itemid=29, last visited 1/10/09

⁵⁹ Committee against torture http://www.imlu.org/index.php?option=com_content&task=view&id=47&Itemid=29

⁶⁰ 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

⁶¹ The Daily Nation, Kibaki removes Ali, names new Kenya police boss, 8th September 2009, <http://www.nation.co.ke/News/-/1056/654698/-/item/1/-/c9ois5/-/index.html>, last visited on 8th September 2009

The judicial system in Kenya is thoroughly inadequate, lacking transparency, efficiency and largely failing to offer redress for key human rights violations.⁶² A culture of impunity, notably for security and law enforcement agencies, is well-established and none of the mass violations abovementioned, notably during the post-election violence and the Mount Elgon operations have been accounted for. 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 former Police Commissioner Major General Mohammed Ali along with the Attorney General Amos Wako, have according to reports posed significant impediments to the fight against impunity⁶³.

Efforts to enhance accountability in the country have been minimal and the authorities have shown little commitment to ensuring accountability for the victims of the post election violence as stipulated in the recommendations of the Waki Commission. In fact, on the 30th July 2009, the authorities announced that they would not be establishing a special tribunal, independent of the high court and with international participation to investigate the violence that occurred during and in the aftermath of the 2007 elections, but would rely on a reformed judiciary and a slightly altered Truth, Justice and Reconciliation Commission (TRJC) to carry out the stipulated work of the special tribunal. Given the abovementioned weakness of the judicial system in Kenya this decision is seen by many as a means of ensuring impunity for those responsible for the post-election violence. Furthermore, given the TRJC's mandate, notably to establish an accurate mapping of violations carried out by the state between the 12th December 1963 and February 2008, it is unlikely that it will have the capacity to ensure justice for victims of the post-election violence.⁶⁴ Given the failure of the Kenyan government to abide by the August 2009 deadlines, set by Kofi Annan, chief mediator in the post election talks, to see the establishment of a special tribunal, Mr Annan handed the list of suspected individuals responsible over to the International Criminal Court (ICC). It is yet unclear how the situation will unfold.

The authorities have also failed to hold the military to account for mass violations, notably widespread extrajudicial killings. 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 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.⁶⁵

In light of the current situation in Kenya the lack of an ineffective and viable witness protection mechanism is of utmost concern. According to the provisions of the Witness Protection Act, 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

⁶² 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;

⁶³ Statement by Professor Alston, Special Rapporteur on Extrajudicial, Summary or Arbitrary executions, United Nations Human Rights Council, 3rd June 2009, http://www.imlu.org/index.php?option=com_content&task=view&id=57&Itemid=29, last visited on 1/10/09

⁶⁴ See for example Kenya Human Rights Commission, Prosecutions vs. Truth Commissions, The Bitter and better options for Kenya in the fight for justice, 19th July 2009, www.khrc.or.ke, last visited on 31st October 2009

⁶⁵ 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;

offer the necessary protection to those testifying against these actors. A committee has been established by Attorney General's office in order to look into possible measures to increase the effectiveness of the mechanism. Without ensuring that protection is accorded to human rights defenders in general, and witnesses in particular in this context, impunity will continue to prevail.

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 Internally Displaced Persons (IDPs) have still not been able to or been willing to return home and remain in camps which apparently fail to meet their basic needs. Harsh weather conditions, notably drought in northern Kenya, as well as conflict over land between farming and pastoralist groups has also lead to significant displacement.⁶⁶ The failure of the authorities to carry out land reform is believed to be at the heart of this ongoing problem.

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.⁶⁷ 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, prosecutions as well as threats to their lives.

Human rights organisations have faced severe violations to their rights in their attempts to investigate cases of extrajudicial killings and enforced disappearances. These violations are rarely investigated. In fact, investigations into the assassinations of Mr. King'ara and Mr. Oulu of Oscar Foundation Free Legal Clinic, on the 5th March 2009, have more or less stalled.⁶⁸ These recent incidents 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.

Cases of harassment, intimidation as well as arbitrary arrests of defenders working for the more prominent human rights organizations as well as those working with more grassroots organisations have been reported in the last six months.

The abduction of, Mr. Samson Owimba Ojiayo and Mr. Godwin Kamau Wangoe, members of Bunge La Mwananchi, a grassroots movement seeking to fight against social injustice in Kenya, by police officers in civilian clothing on the 15th September 2009 follows ongoing harassment, arrests and intimidation of members of Bunge. The two were threatened at gunpoint during the abduction and told to produce a ransom which neither could produce. On the 16th September Mr. Kamau was charged with belonging to an unlawful organisation (the Mungiki). The High Court Judge overseeing Kamau's case however postponed the case on the basis of reports that a group within the Police, the Kwekwe Squad, believed to be responsible for a significant number of extrajudicial killings, were threatening to kill him.

The media plays a role in Kenya notably helping to push for government accountability and yet has come under significant pressure of late which is clearly affecting this role and their impact. There are still no legislation relating to freedom of information despite the fact that

⁶⁶ IDMC, Resource conflict displaces hundreds in the north, 3rd July 2009, <http://www.internal-displacement.org/countries/kenya>, last visited on 1/10/09

⁶⁷ Statement by Professor Alston, Special Rapporteur on Extrajudicial, Summary or Arbitrary executions, United Nations Human Rights Council, 3rd June 2009,

⁶⁸ EHAHRDP, EHAHRD-Net and IMLU are appalled by killing of Kenya human rights activists Mr. Oscar King'ara last night, EHAHRD-Net Index KEN 006/004/09, available at, <http://www.defenddefenders.org/html/advocacymaterial.html>

Kenya is party to several international and regional treaties guaranteeing freedom of expression and the media. On a more positive note, the government has agreed to amend some of the more contentious provisions of 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, notably a controversial clause allowing for police raids of media stations, after Kibaki sent the Bill back to Parliament.⁶⁹

Rwanda

In spite of the clear improvements in the field of economic development and efforts to bring an end to the Gacaca trials, violations of civil and political rights are widespread in Rwanda. Restrictions on freedom of expression and the press continue to increase and independent journalists, in particular, are faced with persistent harassment, public intimidation and prosecution. This is of particular concern given the importance of the media in the forthcoming 2010 elections. Political space is 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 thereby undermining fair trial rights in the country, notably the right of equal access to justice. The introduction of a provision into the draft penal code that seeks to criminalise the "promotion and sensitization of same sex relations" is alarming. In spite of these clear violations of key 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.⁷⁰ Arbitrary arrest and detention without trial is a major problem. Thousands of people continue to be held without trial. Many of these are accused of genocide. Nevertheless, street children, sex workers and vagrants are also particularly vulnerable to being arbitrary arrested and detained without trial.⁷¹ The country's prisons are overcrowded, although improvements have been made as a result of 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.⁷² 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.⁷³

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. Nevertheless, the continued and widespread use of these courts, which according to reports 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.⁷⁴ Furthermore, these courts risk to be used as a means of settling

⁶⁹ IFEX, Triumph for journalists as government agrees to amend media law, 20th May 2009, http://www.ifex.org/kenya/2009/05/20/govt_to_amend_law/, last visited on 05/11/2009

⁷⁰ Human Rights Committee, Concluding Comments of the Human Rights Committee, Rwanda, CCPR/C/RWA/CO/3/CPR.1

⁷¹ LDGL, Rwanda: Rapport de la société civile sur la mise en oeuvre du PIDCP. Réponses à la listes des points à traiter, LGBT_HRC95_Rwanda, Mars 2009, <http://www2.ohchr.org/english/bodies/hrc/hr95.htm>

⁷² LDGL, Rwanda: Rapport de la société civile sur la mise en oeuvre du PIDCP. Réponses à la listes des points à traiter, Mars 2009, <http://www2.ohchr.org/english/bodies/hrc/hr95.htm>

⁷³ LDGL, Rwanda: Rapport de la société civile sur la mise en oeuvre du PIDCP. Réponses à la listes des points à traiter, Mars 2009, <http://www2.ohchr.org/english/bodies/hrc/hr95.htm>

⁷⁴ Human Rights Committee, Concluding Comments of the Human Rights Committee, Rwanda, CCPR/C/RWA/CO/3/CPR.1

personal and political scores as local administrators have been given increasing control over cases. The trials were supposed to end in December 2007 but President Paul Kagame ordered the transfer of thousands of genocide cases from the conventional courts, reluctant to deal with Genocide cases, to the Gacaca courts and the Gacaca law was amended to allow these courts to impose life imprisonment.⁷⁵ In theory, the courts are means to end this year, nevertheless, the number of cases and appeals pending are likely to bring about the extension of the mandate once again. The Gacaca system offers only limited channels of recourse. Furthermore, the protection of victims and witnesses appearing in Gacaca trials has not been guaranteed.

Fair trial standards continue to be violated in Rwanda in spite of significant reforms of the conventional court system aimed in part at enhancing the independence of the judiciary; the Executive, members of the ruling party and powerful actors with links to the ruling party in particular continue to exert significant pressure over the judiciary. The recent trial of Jean-Bosco Gasasira, Editor in Chief of the bi-monthly magazine *Umuwugizi*, which will be discussed below, is an example of the lack of independence of the judiciary and undue political interference in judicial proceedings. Another clear sign of the failure of the Rwandan judicial system to ensure equal access to justice is the fact that 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 few cases that have been carried out have tended to implicate low ranking officials and overlook issues of crimes of humanity and war crimes.

The Executive continues to exert significant control over the judiciary particularly over the Gacaca trials and cases relating to 'genocide ideology' and 'divisionism'. 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.⁷⁷ This legislation is a clear violation of the right to equality before the law. 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 in 2010.

The law on genocidal ideology 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.⁷⁸ The law is increasingly being used to silence any form of criticism of the ruling party's policies.

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. Two new parties, the Socialist Party Imberakuri, and the Green Party, have recently been created but have already faced challenges. In June, a press conference held by SP-Imberakuri was broken up by the police.⁷⁹ More recently, the Green Party leader was

⁷⁵ HRW, *Country Summary: Rwanda*, January 2008, <http://hrw.org/wr2k8/pdfs/rwanda.pdf>

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

⁷⁷ 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

⁷⁸ HRW, *Rwanda: Law and Reality. Progress in Judicial reform in Rwanda*, July 2008, available at <http://www.hrw.org/en/reports/2008/07/24/law-and-reality-0>

⁷⁹ Rwanda News Agency, More details emerging on Green Party in-fighting, 27th October; RNA, Police halts Green Party Congress "due to security", 30th October 2009

removed in unclear circumstances and replaced by an RPF chairperson; in November a Green Party conference was broken-up after an intruder began to create havoc which resulted in a police intervention.⁸⁰ 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.

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. 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.⁸¹

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.⁸² As a result, ethnic minorities and indigenous 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.⁸³

Discrimination based on sexual orientation is a problem. The new draft penal code is of particular concern. Although in theory it does not criminalise same sex relations per se the provision criminalises the "promotion and sensitisation of same sex relations" which in practice can clearly be used to criminalise homosexuality. .

The space accorded to human rights defenders in Rwanda is 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.

Delaying tactics during registration processes are used as a means of undermining the work of organisations; and discrediting organisations if need be. 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, waited months for its licence to be 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. 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.⁸⁴

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

⁸⁰ Ibid

⁸¹ US State Department, *Rwanda: Country reports on human rights practices*

⁸² 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>

⁸³ Ibid

⁸⁴ EHAHRDP, Promoting the rights of human rights defenders in the East and Horn of Africa, April 2009, not yet officially released.

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.⁸⁵ One case of an activist lobbying against the bill having received significant threats has been registered.

International human rights organisations have also come under attack from the government, and from President Kagame himself, notably Human Rights Watch. 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 by regularly discrediting HRW in the pro-governmental media as well as during Parliamentary discussions.

The government has continued to pursue its attacks on private media outlets and its harassment, intimidation and smear campaign against independent and critical journalists.

The three main private newspapers, *Umuseso*, *Umuwugizi* and *Rushyashya*, have been banned from attending all governmental events since May 2008, after Minister Mushikiwabo expelled them from the World Press Freedom celebrations to 'teach them a lesson'. More recently, on the 27th July 2009, the Minister announced at a press conference that the days of *Umuseso* and *Umuwugizi* were numbered and that the Government had already begun taking measures, notably mentioning that *Umuwugizi* was being brought to justice.⁸⁶ Within hours, the police summoned *Umuwugizi* editor Jean-Bosco Gasasira over criminal defamation allegations for a recent article exposing an affair involving Jean Bosco Mutangana, a public prosecutor.

Many developments in Gasasira's trial, the verdict of which will be made on the 13th November, reveal the politicized nature of the case and once again questions the ability of the Rwandan judicial system to offer fair and free trials to all its citizens. In fact, the lead defense lawyer, Momo Jean de Dieu, renowned Cameroonian lawyer, filed a complaint to the Chief Justice of the Supreme Court, against the Presiding Judge notably for having held a private meeting on the day of the trial with the Court President and the lead prosecutor without inviting the defense lawyers and for having failed to consider the defense teams' calls for key witnesses, notably Mutangana, to appear in court.⁸⁷ Gasasira has reported that he has been continually monitored ever since the charges were deposited.⁸⁸ Several other journalists in the past six months have faced unfair trials and charges.

Similarly, on August 6, the Media High Council recommended the three-month suspension of *Umuseso* for a critical article in which it had compared President Kagame's government to that of Habyarimana, the president whose death in a plane crash in 1994 is viewed as the trigger of the genocide.

Private media journalists have faced systematic monitoring rendering their investigative work particularly difficult. Ongoing intimidation and monitoring of the Chief Editor of *Umuseso*, Charles Kabonero, led to his rapid departure from Rwanda in May based on fears for his safety.

⁸⁵ HOCA and co, The violations of the rights of LGBT persons in Rwanda, March 2009,

⁸⁶ Transcript from 27th July 2009 Press Conference by President Paul Kagame

⁸⁷ Letter from Jean De Dieu Momo, 23rd October 2009, sent to EHAHRDP by email

⁸⁸ Private communication between EHAHRDP and Gasasira, 28/10/09

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 2009.⁸⁹ 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".⁹⁰ The ban has since been lifted, notably after the British government publicly criticised the ban, but under the condition that the BBC would change its editorial policy.

The press law, adopted at the beginning of 2009, is another clear attempt by the government to further legitimise its efforts to limit freedom of expression. Although the final draft has been seen by certain actors as an improvement on earlier drafts, several of the key provisions, targeted at the private media in particular, have been maintained. Many of the key provisions of the law are vague and therefore risk to be used in a haphazard manner. It imposes criminal sanctions on the media and allows for journalists to be charged under the penal code. It also introduces monetary requirements that are to be determined by the Ministry of Information in consultation with the High Media Council, and according to recent reports are likely to be stringent, and makes a journalism qualification a prerequisite for registration.⁹¹ The monetary requirements are clearly targeted at the independent newspapers that have faced significant financial difficulties ever since the authorities began to seek to thwart advertisements in their papers.

Somalia

The human rights situation in Somalia has shown no improvements in spite of the withdrawal of Ethiopian troops in January 2009 and the election of Mr. Sheikh Sharif as the country's president. In fact a surge in violence since May 2009 has led to a further deterioration in the situation. International humanitarian law and human rights violations continue to be committed by all the parties involved in a conflict that has brought about severe suffering for the civilian population. The perpetrators of these violations, whether governmental or members of insurgency groups, clan militias or warlords, have all been accorded virtual impunity. International attention to the crisis and to the human rights situation has increased yet has so far not converted into concrete developments on the ground.

Somali civilians continue to bear the brunt of the deteriorating security and human rights situation in the country. The signing of the Djibouti peace agreement, followed by the formation of a new Transitional Federal Government (TFG) under President Sheikh Sharif Ahmed and the withdraw of the Ethiopian troops in January 2009 were seen by many as a positive step and left many in hope that the security situation would improve. The beginning of 2009 saw a significant number of Internally Displaced Persons (IDPs) returning to Mogadishu. Much of the population has however been once again displaced as fighting in Mogadishu broke out in May 2009 as the TFG forces sought to overcome the increasing

⁸⁹ 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

⁹⁰ Ibid

⁹¹ RSF, Government to demand exorbitant sums to launch new news media, 24th September 2009, <http://www.rsf.org/Government-to-demand-exorbitant.html>, last visited on 01/11/09

insurgent presence in Mogadishu. Since May the violence has been very unpredictable and civilians the primary victims of attacks and counter-attacks.

Mass violations of international humanitarian law (IHL) and human rights are committed against civilians during the fighting by all actors involved in the conflict, notably armed opposition forces, government forces and Al-Shabab members. Recent reports also point to the African Union Force in Somalia (AMISOM) troops as having committed IHL violations.⁹² Clear violations of IHL include: attacks on civilians and civilian areas and objects (notably schools), indiscriminate attacks, shelling, exchange of mortar fire in civilian areas, the use of human shields notably by launching missiles from highly populated areas in Mogadishu but also near IDP camps and the deployment of insurgent forces into civilian areas. Similarly, civilians fleeing Mogadishu have been subjected to significant abuses: assaulted, raped and looted of all their property during their flight.

Right to life has been gravely violated notably as a result of the continued fighting in Mogadishu and in south and central Somalia as well as a result of targeted killings of politicians and journalists.

Arbitrary arrests and detention, notably at the hands of the TFG during house searches to find illegal weapons and insurgent fighters as well as by Islamic Courts; are frequent and according to reports both the TFG forces and militia groups have tortured their detainees. 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 any of the warring parties since the state collapse of 1991.⁹³ The failure of the international community to 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, are accounted for contributes to this ongoing impunity. According to reports, ad hoc tribunals have been set-up in areas controlled by insurgent groups that are unfairly trying civilians and sentencing them to death sentences by stoning or decapitation, and amputation of limbs and other forms of corporal punishment.⁹⁴

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 to health care and no access to justice, a situation which is made worse by attacks on humanitarian and human rights workers.⁹⁵ Many of those living in displacement camps are particularly vulnerable to SGBV. Rape at the hands of TFG forces, the insurgent groups but also resulting from inter-clan rivalry, is widespread. The increase in application of sharia law in areas dominated by Al-Shabab is also further undermining women's basic rights. FGM, notably the most serious forms, is pervasive.

Targeted attacks, kidnappings and killings of humanitarian workers continue to occur. The abduction and attacks carried out on humanitarian personnel has forced many NGOs to pull out. In recent months those still present on the ground have seen their compounds looted and the UN has received significant threats by Al-Shabab.⁹⁶ As a result access to greatly

⁹² HRW, African Union; Focus on Justice in Somalia, Chad, 25th June 2009, available at <http://www.hrw.org/en/news/2009/06/25/african-union-focus-justice-somalia-chad>, last visited on 06/11/09

⁹³ EHAHRDP, U.S should end impunity in Somalia, EHAHRD-Net Index SOM 021/005/2009 available at <http://www.defenddefenders.org/html/advocacymaterial.html>

⁹⁴ Report by the Special Rapporteur, Technical Assistance and capacity building: Report by the Independent Expert of the situation of human rights in Somalia, A.HRC.12.44(1), 17th September 2009, available at <http://www2.ohchr.org/english/bodies/hrcouncil/12session/reports.htm>, last visited on 06/11/09

⁹⁵ Ibid

⁹⁶ Ibid

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. Their ability to work and to carry out human rights monitoring is at present significantly impeded both by the general insecurity and these targeted 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 2006.⁹⁷ This has created a climate of intimidation and fear which greatly hampers freedom of expression amongst these key proponents of human rights.

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. Journalists have been detained for prolonged periods by the TFG without charge in an apparent attempt to thwart independent reporting.

Six journalists have been killed in Somalia in 2009 alone, three of which were victims of targeted killing. The latest of these killings was that of Mukhtar Mohamed Hirabe, Director of Radio Shabelle- one of the leading independent radios, on Sunday 7th June in Bakara Market, Mogadishu, by two gunmen. He had in fact been severely wounded in February 2009 in the very same market, currently under the control of the Al-Shabab militias, in an attack which had resulted in the death of another key journalist, Mr. Tahlil Ahmed, who was the Director of Radio HornAfrik, another of the country's key independent radio stations. In the attack which cost Mr. Hirabe his life, another journalist of Shabelle Radio, Ahmed Omar Hashi 'Tajir', was also shot at by the gunmen and severely wounded. 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. According to a report by the Independent Expert on the Human Rights situation in Somalia, women journalists have come under particular threat from both the insurgents, which accuse them of carrying out work that is contrary to Islam, and by the governmental forces that have placed them in particularly precarious detention facilities as a means of intimidation.⁹⁸

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. Mr. Hashi, for example, fled the country after his attack as he continued to receive death threats. The number of exiled journalists and HRDs in the sub region continues to rise.

Somaliland

In comparison to its neighbouring regions the security and human rights situation is relatively positive. Nevertheless, Somaliland has witnessed increasing attacks on free press, public

⁹⁷ RSF, Islamist militia closes radio station, arrests three journalists, 27th April 2009, http://www.rsf.org/article.php3?id_article=30923

⁹⁸ Report by the Independent Expert on the human rights situation in Somalia

meetings and cases of torture in recent months generally in the name of national security. The decision by the President and the House of Elders to postpone the elections for a third time is concerning and has marred the positive record of the government in Somaliland.

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. Restrictions on political freedoms are concerning. The rights of the opposition have been restricted through a variety of means. The government, for example, generally overlooks the House of Representatives, that is under the control of the opposition.⁹⁹ The opposition had initially finally consented to the prolonging of the mandate of President Riyale and the postponement of the elections in April 2008. However, the most recent postponement in September 2009 occurred without the consent of the opposition. A key contention between the ruling party and the opposition is whether or not the President can extend his mandate for a fourth term.¹⁰⁰ The President has sought to use the unelected House of Elders to further extend his mandate even though the last term had been fixed as the last. Opposition party members challenging the President's calls for extension of his term have been assaulted and harassed, notably through short arbitrary arrests and detention, by the authorities.¹⁰¹

Unlawful arrest and detention of human rights defenders and opposition politicians persist under the pretext of protecting national peace notably as a result of an non-transparent and unaccountably system of internal security committees.¹⁰² Justice and fair trial rights in Somaliland are hampered by the predominance of these security committees, made up of government officials and security officers.¹⁰³

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, has been on the increase and takes 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 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.

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'.

⁹⁹ HRW, Somaliland: Hostages to Peace, Threats to Human Rights and Democracy in Somaliland, July 2009, <http://www.hrw.org/en/reports/2009/07/13/hostages-peace>, last visited on 06/11/09

¹⁰⁰ Informal communication with EHAHRD-Net's Focal Point in Somaliland, Samotalis Coalition of Human Rights, 19th September 2009 2009

¹⁰¹ HRW, Somaliland: Hostages to Peace, Threats to Human Rights and Democracy in Somaliland

¹⁰² HRW, Somaliland: Hostages to Peace, Threats to Human Rights and Democracy in Somaliland

¹⁰³ Ibid

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

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.

The relatively vibrant media in Somaliland has recently come under threat. Journalists are subjected to unlawful arrests, beatings, harassments, by police units acting on the orders of the Government.

Mr. Sayid Osman Mire and Ahmed Suleiman Dhuxul, for example, both reporters from Horyaal Radio, an independent radio station that operates in Hargeisa were arrested by the Somaliland Police on the 14th of July on charges of inciting violence.¹⁰⁴ The radio station had covered a meeting between Somaliland President Dahir Rayale Kahin and 25 elders over a land dispute between two clans that has resulted in the death of four people. The journalists, after several court appearances, were released but two other journalists from the same station were subsequently detained. Similarly HornCable, a local television station, was closed by the Somaliland attorney general for broadcasting a report about the same dispute.

Sudan

The country is at a turning point and yet the human rights situation in Sudan remains very poor. The issuance by the International Criminal Court on the 4th march 2009 of an arrest warrant for President Omar al-Bashir has been used by the authorities to increase its efforts to clampdown on civil society in Sudan. Curtailment on freedom of expression and the press persists and the government has sought to give legal grounding to its actions by the recent passing of a Press Law which is at odds with the Comprehensive Peace Agreement and the Interim Constitution. Many fear that the situation will only get worse in the months leading up to the elections that have been postponed to April 2010. Some positive legislative measures have been taken, notably the passing of the National Human Rights Commission Act, yet these have of yet either not been implemented or had a concrete impact on the human rights situation on the ground. Key provisions of the Comprehensive Peace Agreement (CPA) of 2005 notably the Bill of Rights have still not been implemented; in fact, the fundamental aims of the Agreement are yet to be achieved. Widespread human rights violations in the Darfur region persist despite of claims by a range of actors that the situation is improving. Insecurity remains high in South Sudan where the disarmament process has still not been fully implemented and recent outbreaks of inter-ethnic violence in the Jonglei state are particularly alarming.

In spite of claims to the contrary by the Khartoum government human rights and international humanitarian law violations in Darfur continue to occur on a large scale. Civilians, many of whom are living in internally displaced people's camps in Darfur, bear the brunt of these mass violations.¹⁰⁵ 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

¹⁰⁴ Based on informal exchange of information with EHAHRD-Net's Focal Point in Somaliland, Samotalis Coalition of Human Rights, 29th July 2009

¹⁰⁵ HRW, Sudan: New Darfur Attacks Show Civilians Still at Risk, 24th October 2008, <http://hrw.org/english/docs/2008/10/24/sudan20061.htm>

malnutrition and disease as a result of the expulsions. On the 8th May 2009 the Sudanese accepted to allow in new non-governmental relief agencies.¹⁰⁶ Nevertheless, humanitarian aid operations have continued to come under attacks notably by armed groups on the ground in Darfur thwarting their ability to provide vital assistance.

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. The number of individuals sentenced to death by Anti-Terrorism Special Courts for their alleged involvement in the May 10th 2008 Justice and Equality Movement (JEM) attacks have continued to rise in recent months.¹⁰⁷ 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.¹⁰⁸ These proceedings mark a significant violation of international fair trial standards.¹⁰⁹

Arbitrary arrests and detention at the hands of the National Intelligence and Security Services (NISS), military and police is widespread throughout Sudan notably affecting HRDs, peace activists, Darfuri students, journalists and individuals believed to be linked to Darfuri rebel groups or to the opposition party, Popular Congress Party. Current laws notably the National Security Forces Act give the NISS sweeping powers to arbitrarily arrest and detain people for up to nine months without charge and grant procedural immunity for such violations. 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, ill-treatment and torture 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 when under the control of the NISS are particularly vulnerable to being subjected to torture or ill-treatment.

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.¹¹⁰ Women and girls in Darfur, and particularly those that are internally displaced, are particularly vulnerable to sexual and gender based violence (SGBV) where much of the violence occurs at the hands of armed groups. The arrest and trial of Lubna Hussein, journalist working for the UN Mission in Sudan (UNMIS) under the country's Public Order Law brought the restrictions to women's rights in Sudan onto the international agenda. Ms Hussein was charged under the law of indecency after having been found wearing trousers in public. Ms Lubna subsequently resigned from her post at the UN, which would have granted her impunity, in order to be able to challenge the law in court rather than accept the punishment of lashings imposed on the other individuals arrested with her. The law is in clear contravention of Sudan's Interim National Constitution and of international law: it has generally applied in public order courts which fail to adhere to due process standards, is applied to Muslim and non Muslim women alike¹¹¹ and the punishment for the law generally handed down by the courts, notably flogging, can represent torture, cruel, inhumane and degrading treatment¹¹². Ms Lubna was sentenced on

¹⁰⁶ BBC, Sudan opens up to more aid agencies, 8th May 2009, <http://news.bbc.co.uk/1/hi/world/africa/8039327.stm>, last visited 06/11/09

¹⁰⁷ African Centre for Justice and Peace Studies, Human Rights Monitor, Issue 1, March-May 2009, sent to EHAHRDP by email

¹⁰⁸ Report of the Special Rapporteur on the Situation of Human Rights in Sudan, Sima Simar, A.HRC.11.14.AUV14, June 2009, available at <http://www2.ohchr.org/english/bodies/hrcouncil/11session/reports.htm>, last visited on 01/11/09

¹¹⁰ Ibid

¹¹¹ Under the 2005 CPA Sharia law is not supposed to be applied to non-Muslims living in the capital.

¹¹² For more information see African Centre for Justice and Peace Studies, Human Rights Monitor, Issue 2, June-July 2009, sent to EHAHRDP by Email

the 7th September, given the choice between a fine and a one month's present sentence she choose imprisonment but was released after one day in prison as a governmental journalist body paid for her fine.¹¹³

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.

Attacks on human rights defenders in Sudan are pervasive. The main perpetrators of these attacks are members of the 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 Luis Moreno Ocampo, approached.¹¹⁴ These attacks are of particular concern in light of the investigation by the ICC, of the forthcoming national elections, the Darfur Peace Process and the on-going- or rather stalling- implementation of the Comprehensive Peace Agreement as HRDs and their work are more vital now in Sudan than ever before.

The clampdown on Sudanese human rights organisations following the ICC arrest warrant notably the closure by the Humanitarian Assistance Committee (HAC) of the Khartoum Centre for Human Rights and Environmental Development (KCHRED), the Sudan Social Development Organisation (SUDO) and the AMEL Centre, have greatly reduced human rights monitoring and reporting in the country. According to the recent report by the UN Special Rapporteur on the Human Rights Situation in Sudan, Sima Simar, the impact of their closure is being felt on the ground notably in the Darfur region where they were amongst the only organizations carrying out legal aid (in the case of Amel) and humanitarian assistance (in the case of SUDO).¹¹⁵

Other national human rights organisations have either been closed or rendered more or less inoperative as activists are continually monitored, harassed, interrogated, have their equipment confiscated, and the everyday running of organisations made almost impossible. 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

Freedom of assembly of activists is regularly violated: a peaceful protest organized by human rights activists in solidarity of Lubna Hussein and against the Public Order Law resulted in the arrest of many of the women protesting.¹¹⁶

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.

¹¹³ African Centre for Justice and Peace Studies, Human Rights Monitor, Issue 3, August-September 2009, sent to EHAHRDP by email

¹¹⁵ Report of the Special Rapporteur on the Situation of Human Rights in Sudan, Sima Simar, A.HRC.11.14.AUV14, available at <http://www2.ohchr.org/english/bodies/hrcouncil/11session/reports.htm>, last visited on 01/11/09

¹¹⁶ Human Rights Monitor, Issue 3

The Press and Printed Press Material Act, was passed by the Sudanese Parliament on the 8th June 2009 despite significant opposition to the draft from national, regional and international media and civil society as well as from within the Parliament itself; in fact, several opposition parliamentarians walked out of Parliament in protest.¹¹⁷ The Act imposes heavy fines for infractions by the media, establishes a Press Council which lacks independence, with eight of its twenty-one members including the Chairperson being appointed by the Presidency itself, and is granted extensive regulatory powers, notably the power to suspend newspapers without judiciary approval for up to three days. The Press Council is also granted the power to assess the eligibility of journalists to exert their profession. Furthermore, the law allows the State to impose restrictions on the press for national security and public discipline considerations and requires that journalists do not publish material at odds with religious values and traditions.

Since 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. Most recently, the NISS issued orders not to publish any information relating to the Lubna Hussein case. In spite of the resulting self-censorship the authorities continue to crackdown on papers deemed overtly critical. Over the course of the last four months newspapers have regularly been suspended and seen a number of their articles censored. *Al-Midan* and *Ajras al-Hurriya* the Communist papers have repeatedly been suspended in recent months

The announcement by President Al-Bashir on the 27th September, shortly after the signing of a code of conduct by journalists, that the pre-print inspections of newspapers and stringent censorship these entailed would be halted, has been met by mixed reactions from journalists in Sudan. According to a report by the African Centre for Justice and Peace (ACJP), many fear that these measures will be replaced by other just as onerous restrictions.¹¹⁸ The report points out in particular that under the country's National Security Act, the NISS, the very actors carrying out pre-press censorship, are allowed to censor.

Journalists have also faced prosecution. In fact, one journalist, Ms Ammal Habani, who works for *Ajras al-Hurriya* newspaper, was accused of defaming the Public Order Police, after she wrote an article in defense of Ms Lubna Hussein and criticizing the Public Order Law. The article was censored prior to its publication by the NISS.¹¹⁹ At the time of drafting this report the date for the trial has still not been set.

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 particularly 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.

¹¹⁷ See EHAHRDP

¹¹⁸ ACJPS, An opening for expression or shifting tactics, Freedom of the Press and freedom of expression in Sudan, October 2009, sent to EHAHRDP by email

¹¹⁹ Communication to EHAHRDP from Ms Habani, 13th August 2009

South Sudan

The human rights and security situation in Southern Sudan continues to be poor. Of particular concern have been recent spates of inter-ethnic violence, primarily in the Jonglei region between the Lou Nuer of northern Jonglei and the Murle tribe from the east of the state, that are reported to have left over a thousand people dead.¹²⁰ Women and children are reported to have been the main victims of the violence.¹²¹ Protection of civilians by the Southern Sudanese security forces was insufficient.¹²² Similarly, civilians in Southern Sudan have been the primary victims of attacks by Uganda's Lord's Resistance Army (LRA).

The proliferation of small arms amongst civilians in the region as well as the failure of the authorities to carry out a significant disarmament and demobilisation process have been identified as the main causes for ongoing insecurity in the region.¹²³

The decision of the Permanent Court of Arbitration in the Abyei boundary dispute was initially welcomed by both the Southern Sudanese SPLM authorities and the Khartoum government nevertheless subsequent events suggest that the decision may not be adhered to.¹²⁴ The release of the census results in June 2009 was seen as a positive step towards the 2010 elections nevertheless these results have been contested by the Southern People's Liberation Movement (SPLM) who feel the Southern Sudanese population in Northern Sudan have been underrepresented in the results.¹²⁵

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.

The justice system in Southern Sudan is weak notably due to a lack of capacity largely resulting from the legacy of the region's 20 year conflict. Judges are unqualified and absenteeism is high.¹²⁶ Customary justice is presently the main form of justice available in Southern Sudan even though the judges of these courts are rarely aware of key national and international legal standards.¹²⁷

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.¹²⁸

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.

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

¹²⁰ HRW, End Violence in Jonglei State, 11th August 2009, <http://www.hrw.org/en/news/2009/08/11/sudan-end-violence-jonglei-state>.

¹²¹ Ibid

¹²² Ibid

¹²³ Report of the Special Rapporteur on the Situation of Human Rights in Sudan, Sima Simar

¹²⁴ African Centre for Justice and Peace Studies, Human Rights Monitor, Issue 2

¹²⁵ Ibid

¹²⁶ Report of the Special Rapporteur on the Situation of Human Rights in Sudan, Sima Simar, A

¹²⁷ Ibid

¹²⁸ Ibid

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.

Restrictions on the media continue to take place. In fact, in the last six months journalists in Southern Sudan have on several occasions been arbitrarily arrested and had their equipment confiscated.¹²⁹

Tanzania

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 for treason and murder although no executions have been carried out since 1994.¹³⁰ The Human Rights Committee of the UN recommended in its concluding comments to Tanzania in August to abolish the death penalty and called on it to become party to the Second Optional Protocol to the International Covenant on Civil and Political Rights. A group of Tanzanian human rights organisations had submitted a petition calling for the abolishing of the death penalty to the High Court last year which is expected to be considered shortly.¹³¹

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 2006.¹³² The police had initially claimed they were bandits killed in a shoot-out but this was soon proven to be false allegations. Torture is not defined in the Tanzanian legal system and the act of torture has not been criminalised.¹³³

Mob violence is also an issue of concern and violates the victims of this violence of their right to life and presumption of innocence.¹³⁴ According to reports incidences have been on the increase.¹³⁵ This phenomenon 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.

Significant discrimination against minority groups persists. Members of the Hadzade tribe continue to face a range of rights violations: limited access to and control over land, discrimination, unequal access to justice and lack of political rights. The government recently

¹²⁹ Human Rights Monitor, Issue 2

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

¹³¹ LHRC, Newsletter, September 2009, http://alpha.web2-netshine-hosting.co.uk/~lhrc/index.php?option=com_letterman&task=view&Itemid=65&id=21, last visited on 06/11/09

¹³² Legal and Human Rights Centre, Tanzania Human Rights Report 2008,

¹³³ Ibid

¹³⁴ LHRC, Newsletter, July 2008, http://alpha.web2-netshine-hosting.co.uk/~lhrc/index.php?option=com_letterman&task=view&Itemid=65&id=12

¹³⁵ Tanzanian NGO Coalition report, T_NGO_COALITION_HRC95_Tanzania(1), available at <http://www2.ohchr.org/english/bodies/hrc/hrcs95.htm>, last visited on 04/11/09

decided to evict the tribe from their ancestral land in two districts in order to sell the land to an investor.¹³⁶ The violations of the right to life of albinos have recently received significant international as well as national attention. More than 50 have been killed since 2007 with 20 in 2009 alone; killings that are believed to have been carried out by witchdoctors who perceive albinism as a curse.¹³⁷ Many arrests have ensued, although few prosecutions have taken place so far. Of particular concern however was the sentencing to death by hanging of four individuals found guilty of such a killing on the 3rd November 2009.¹³⁸ Furthermore, the Tanzanian authorities have so far failed to put into place the necessary measures to protect albinos from violence and to overcome the deeply entrenched discrimination they face in Tanzania.¹³⁹ An albino rights organisation, in collaboration with the LHRC, has filed a petition against the government to the High Court, accusing the health ministry in particular of having failed to offer people suffering of albinism with the necessary health care.¹⁴⁰ The High Court is set to consider the case in December 2009.

The Tanzanian authorities have recently violated international refugee law when their attempt to consolidate the Mtabila refugee camp in June 2009 was marked by a failure to ensure that refugees were made fully aware of their rights and alternatives.¹⁴¹ The majority of the refugees affected were of Burundian origin many of whom have been living in the camp since the early 1990s. According to Human Rights Watch the authorities threatened the refugees telling them that they had no alternative but to return home and that they would lose their refugee status once the camps were closed. Furthermore, some of the refugees had their homes destroyed during the camp consolidation exercise. These developments are a clear violation of international refugee law and of the Tripartite agreement signed between the Tanzanian and Burundian governments and the United Nations High Commission for Human Rights (UNHCR) which stressed the voluntary nature of the repatriation exercise.¹⁴²

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, notably the existence of a discriminatory Law of Marriage Act, which restricts women's right to own land and property; furthermore the implementation of laws guaranteeing women's rights often poor.¹⁴³

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 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

¹³⁶ Tanzanian NGO Coalition report, T_NGO_COALITION_HRC95_Tanzania(1), available at <http://www2.ohchr.org/english/bodies/hrc/hrcs95.htm>, last visited on 04/11/09

¹³⁷ Amnesty International, Four Tanzanians sentenced to death for killing an albino man, 3rd November 2009, available at <http://www.amnesty.org/en/news-and-updates/news/four-tanzanians-sentenced-death-killing-albino-man-20091103>, last visited on 06/11/09

¹³⁸ Amnesty International, Four Tanzanians sentenced to death for killing an albino man, 3rd November 2009, available at <http://www.amnesty.org/en/news-and-updates/news/four-tanzanians-sentenced-death-killing-albino-man-20091103>

¹³⁹ Ibid

¹⁴⁰ LHRC, Newsletter, September 2009, http://alpha.web2-netshine-hosting.co.uk/~lhrc/index.php?option=com_letterman&task=view&Itemid=65&id=21, last visited on 06/11/09

¹⁴¹ HRW Tanzania/ Uganda: Stop forced return of refugees, 19th June 2009, available at <http://www.hrw.org/en/news/2009/06/19/tanzaniauganda-prevent-forced-return-refugees>

¹⁴² HRW Tanzania/ Uganda: Stop forced return of refugees,

¹⁴³ Tanzanian NGO Coalition report, T_NGO_COALITION_HRC95_Tanzania(1), available at <http://www2.ohchr.org/english/bodies/hrc/hrcs95.htm>

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.¹⁴⁴

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.¹⁴⁵

Uganda

The human rights situation in Uganda has seen significant deteriorations in recent months notably with cases of excessive use of lethal force by the police during riots that broke out in September in Kampala as well as a series of actions aimed at restricting freedom of the media and association. Cases of torture and prolonged detention in safe houses, notably of presumed or alleged "terrorist" suspects, also continue to undermine the country's human rights record. The draft Anti-Homosexuality Bill currently before parliament seeks to give legal grounding to ongoing attacks on Uganda's lesbian, gay, bisexual, transgender and intersex (LGBTI) community and if passed under its current form would represent a significant violation to the country's national, regional and international legal obligations.

According to a recent report by Human Rights Watch, the right to life was violated by the Ugandan armed forces when they reacted with unnecessary use of lethal force during riots that broke out in Kampala in early September.¹⁴⁶ The riots broke out in Kampala on 10th September following the decision by the authorities to refuse to allow the Kabaka, the King of the Buganda Kingdom which is the largest ethnic group in Kampala, to take part in a Youth Day Celebrations in a contested northeastern district of the city. According to the authorities 27 people died during the riots but HRW believes that at least 13 were killed by police using excessive lethal force.¹⁴⁷

Arbitrary arrests and illegal detention without trial and in ungazetted locations, particularly of individuals suspected or alleged to be 'terrorists', persists. Over the last few months both the press and human rights organisations have documented how the use of torture within illegal

¹⁴⁴ Legal and Human Rights Centre, Tanzania Human Rights Report 2008

¹⁴⁵ International Press Institute, World Press Freedom Review, 2007, http://www.freemedia.at/cms/ipi/freedom_detail.html?country=/KW0001/KW0006/KW0179/

¹⁴⁶ HRW, Uganda: Investigate use of lethal force during riots, 1st October 2009, available at <http://www.hrw.org/en/news/2009/10/01/uganda-troops-killed-unarmed-people-riot-period>

¹⁴⁷ Ibid

safe houses in the Ugandan capital Kampala by the country's anti-terrorism unit, has become systematic practice.¹⁴⁸ Individuals of Muslim belief are according to HRW most frequently arrested by the Joint Anti-Terrorism Taskforce (JATT).¹⁴⁹ The use of the military as well as of unauthorised agents during operations most notably against supposed rebel groups or alleged terrorists is concerning.¹⁵⁰

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.¹⁵¹

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.¹⁵²

Sexual minorities, and most particularly LGBTI activists, are severely discriminated against both by state and non-state actors in Uganda: regularly attacked in the press, ostracised by their communities and even their families. Individuals presumed to be LGBTI are harassed, subjected to verbal and legal attacks, including death threats, and ill treatment whilst in detention. Cases of torture against LGBTI activists have also been reported. 'Carnal knowledge of any person against the order of nature' is already illegal in Uganda. The introduction before the Ugandan Parliament on the 14th October 2009 of a private members bill, the Anti- Homosexuality Bill, which seeks to criminalise homosexuality is of utmost concern. The bill is in staunch contravention of Uganda's national, regional and international human rights obligations notably basic rights of non discrimination and privacy. The bill is also clearly an attack on human rights activism: it makes any form of promotion of homosexuality and thereby the rights of LGBTI a criminal activity. Of particular concern is the impact that this bill could also have on the fight against HIV/AIDS and access to health of HIV/AIDS affected LGBTI individuals. Other elements of utmost concern in the bill: the imposition of the death sentence for acts of 'aggravated homosexuality', a provision granting extraterritorial jurisdiction, a provision that would nullify any regional or international commitments that contradict the spirit of the bill as well as one which would see individuals failing to report a homosexual act within 24 hours at risk of up to three years imprisonment.¹⁵³

The situation of human rights defenders has seen mixed developments in recent months: one important trial against members of a local rights organisation was finally dismissed whilst repression against minority rights activists and constraints on freedom of expression were taken to a new level.

The legal environment shaping the work of NGOs in Uganda has become more restrictive notably with 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.¹⁵⁴ 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

¹⁴⁸ 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

¹⁴⁹ Ibid

¹⁵⁰ HRW, Uganda: Gov't reponse to alleged new rebel group in the north calls for reflection, 13th July 2009

¹⁵¹ FHRI, Land Rights

¹⁵² See FHRI, Land Rights.

¹⁵³ Draft Anti-Homosexual Bill

¹⁵⁴ See EHAHRDP, ACHPR Report, May 2009 available at

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.¹⁵⁵ 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 2006.¹⁵⁶

More traditional restrictions have been used against defenders, activists and journalists, in recent months. On the 8th May a freelance journalist in Northern Uganda, Patrick Otim, was unlawfully arrested and detained as a result of the journalist's alleged involvement in a new rebel group in the north of the country. Mr Otim arrest followed a pattern of such unlawful detentions in Uganda: unlawfully arrested by unclothed policemen in an unmarked car and detained incommunicado until mid-June. He was finally located after his wife filed a habeas corpus petition on his behalf.¹⁵⁷ Mr Otim appeared in Court soon after with six others accused of charges of treason. Another development in this case saw a renowned northern-based NGO, Human Rights Focus (HURIFO), being similarly accused by a local politician of supporting the rebel group, after they spoke out against a series of unlawful detentions in the region.¹⁵⁸

On a slightly more positive note, after nearly two years of trial the Tweraneho Listeners Club trial was finally dismissed on the 23rd September.¹⁵⁹ The case against the Tweraneho Listeners Club, a local human rights organisation working in Western Uganda, had dragged on since January 2008 when five of its members were arrested after they took part in a weekly local radio talk show in which they criticized the district's political leadership and discussed cases of corruption and abuse of office. The program moderator, Gonza William of Life FM, was also arrested. The six accused had been charged with two offences: incitement to violence and defamation and were acquitted on both charges but the case was seen by many as highly politicized.¹⁶⁰

Legislative and administrative measures in Uganda continue to limit the space accorded to critical reporting as does government interference with the legitimate work of journalists and

¹⁵⁵ See NGO Petition on the NGO Act 20611(2)

¹⁵⁶ 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>

¹⁵⁷ Human Rights Journalists, Uganda: Alert, journalists Missing, 31st May 2009; HRW, Uganda: Gov't reponse to alleged new rebel group in the north calls for reflection, 13th July 2009,

¹⁵⁸ Monitor, RDC wants NGO probed, over rebel links, 15th June 2009, http://www.monitor.co.ug/artman/publish/regional-special/RDC_wants_NGO_probed_over_rebel_links_86464.shtml

¹⁵⁹ EHAHRDP, Dismissal of politicised trial of HRDs in Western Uganda, 23rd September, EHAHRDP-Net Index UGA 27/008/09

¹⁶⁰ EHAHRDP, Dismissal of politicised trial of HRDs in Western Uganda, 23rd September, EHAHRDP-Net Index UGA 27/008/09

broadcasters, notably through public statements, intimidation, threats and arbitrary police actions against those seen as errant or too critical of the government.

In August President Yoweri Museveni accused private broadcasters of unethical reporting. The comments came in the midst of two important, ongoing developments: mounting public criticism of Museveni's policies and the government's criminal prosecutions of six journalists for their coverage. He was quoted as saying "you rarely inform, you rarely educate, you entertain, yes; but you mostly lie and incite. I have so much evidence to prove all these". Two weeks later, four journalists from Uganda's largest independent newspaper, *the daily Monitor*, faced criminal prosecutions, joining four others already charged since 2007.¹⁶¹

The increasing restrictions on freedom of the media were most visibly seen however by the Ugandan authorities' response to the riots in September in Kampala: it shut down four radio stations and suspended live public debates.¹⁶² The four suspended radio stations, *Central Broadcasting Service (CBS)*, *Suubi FM*, *Radio Sapienta* (*that has since been re-opened but on the condition several of its presenters would be fired*) and *Radio Two Akaboozi ku Bbiri*, were accused by the Minister of Information Matsiko of inciting violence, riots and destruction of property. The closure of these stations, coupled with the suspension of live public debates, known as *bibeza*, on the grounds that the presenters of the debates had failed to control the discussions and comments by callers represents a violation of Uganda's laws on freedom of the media and expression. The suspensions resulted in a dearth of information at the very height of the tensions which increased people's concerns, insecurity, frustration and played a significant part in the spreading of alarming rumours.

Individual journalists were also personally targeted during the attacks on the media. The host of Radio's One's *Spectrum* programme, Kalundi Robert Serumaga, was abducted late on the 11th September by unknown persons and held in detention, initially in an ungazetted area and later transferred to Central Police Station (CPS), without charges or access to his lawyer. He was severely beaten during his interrogations and was therefore admitted on Sunday 13th to a police medical unit and later transferred to one of Kampala's main hospitals. Mr. Serumaga was on Tuesday 15th charged with six counts of sedition but has been released on bail as the constitutionality of the charge of sedition is currently under review in the Constitutional Court.

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

Freedom of expression of HRDs in particular but also of the general population also risks coming 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.¹⁶³ It accords only limited involvement to the judiciary.¹⁶⁴ 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.¹⁶⁵

¹⁶¹ CPJ, Four from Uganda's Monitor Face Criminal Charges, August 25th 2009, <http://cpj.org/2009/08/four-from-ugandas-monitor-face-criminal-charges.php>, last visited 30/10/09

¹⁶² EHAHRDP, Ugandan government should immediately end attacks on the media, EHAHRD-Net Index UGA 28/008/09

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 and political- to entities and bodies that can help to establish accountability mechanisms as well as 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;
- Publicly condemn the continuing harassment and discrimination of LGBTI persons;
- Call on African Union member States to offer standing invitations to the ACHPR's special mechanisms, notably the Special Rapporteur on HRDs, 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;
- Continue monitoring the situation facing human rights defenders(HRDs) most particularly in Kenya, Sudan, Somalia, Rwanda 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.