



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

Caught Up in Bitter Contests

Human Rights Defenders working in the Context of Elections in Sudan, Ethiopia, Burundi and Uganda



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Published September 2015, reprinted August 2016

East and Horn of Africa Human Rights Defenders Project | Human Rights House |
Plot 1853 | Lulume Rd., Nsambya | P.O. Box 70356 | Kampala | Uganda |

Phone: +256-393-265-820/1/2/3/4

Email: program@defenddefenders.org, executive@defenddefenders.org

Web: www.defenddefenders.org.

This publication is available online in PDF format at www.defenddefenders.org/our-publications.

Research for this report was supported in part by the Ministry of Foreign Affairs of the Kingdom of the Netherlands, the Swedish International Development Corporation Agency and the Austrian Development Cooperation.

Report by Shannon Orcutt with contributions from Hassan Shire, Memory Bandera Rwampwany, John Foley, Neil Blazevic, and Clementine de Montjoye.

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“They violate human rights by using the law itself.”¹

- Sudan -

“We don’t have any place to hide.”²

- Ethiopia -

“Let us hope we will still be alive.”³

- Burundi -

“The timing of the NGO bill was deliberate to scare civil society so we don’t shout or speak loudly about human rights during the elections.”⁴

- Uganda -

1 Interview with Sudanese HRD in June 2015 in Khartoum
2 Interview with Ethiopian journalist in May 2015 in Nairobi
3 Interview with Burundian HRD in April 2015 in Bujumbura
4 Interview with Ugandan HRD in July 2015 in Kampala

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Acronyms

| | |
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| CCEDU | Citizens' Coalition for Electoral Democracy Uganda |
| CNDD-FDD | National Council for the Defense of Democracy – Forces for the Defense of Democracy |
| EACJ | East African Court of Justice |
| EPRDF | Ethiopian People's Revolutionary Democratic Front |
| FHRI | Foundation for Human Rights Initiative |
| HRD | Human Rights Defender |
| NCHRD-U | National Coalition of Human Rights Defenders – Uganda |
| NCP | National Congress Party |
| NCPP | National Council on Press and Publications |
| NGO | Non-Governmental Organization |
| NISS | National Intelligence and Security Services |
| NRM | National Resistance Movement |
| POMA | Public Order and Management Act |
| RPA | Radio Publique Africaine |
| SHRM | Sudan Human Rights Monitor |
| UBJ | Union of Burundian Journalists |
| UN | United Nations |
| UNHCR | United Nations High Commission for Refugees |

Foreword

Civil society and human rights defenders play a central role in monitoring, protecting, and promoting human rights during election periods to ensure transparent democratic processes. For this reason, they are routinely subjected to attacks and restrictions that limit their work prior to, during, and after elections. In the East and Horn of Africa, many states have yet to hold them in a free and fair fashion that complies with norms set out by the African Union Charter on Democracy, Elections and Governance and other international instruments.

Earlier this year, the East and Horn of Africa Human Rights Defenders Project (EHAHRDP) published an extensive report on the situation of human rights defenders in Burundi.⁵ Over the course of this six-month research project, it became apparent that many of the challenges faced by Burundian human rights defenders were directly linked to the country's July 2015 elections. This report inspired us to develop a new activity area in the sub-region – HRDs working in the context of elections – to add to five other most-at-risk groups we are already working on – women HRDs, HRDs working on LGBTI rights and on natural resource extraction, HRDs in conflict zones, and journalists working to end corruption and impunity.

In October 2015, EHAHRDP will be celebrating its tenth anniversary. Over the past decade, we have witnessed elections being held periodically while at the same time experiencing and documenting the shrinking of civil society's operating space. The aim of this report is to examine the work of human rights defenders prior to, during, and after elections, and the trends that have contributed to restricting their work. The report focuses on the three elections that took place in the sub-region in 2015 – Sudan, Ethiopia and Burundi – and Uganda, where the population will cast its vote in early 2016.

Human rights defenders working for the establishment of a transparent democratic process take this opportunity to demand accountability, justice and good governance practices. However, throughout the course of extensive research undertaken for this report, we have documented an extremely concerning trend towards intimidation, surveillance, digital and physical attacks, judicial harassment and arbitrary arrests of human rights defenders engaging on issues related to elections. This indicates a marked narrowing of the space for civil society more broadly during election periods.

The United Nations Declaration on Human Rights Defenders affirms that everyone, individually and in association with others, has the right to submit to governmental public bodies criticism and proposals to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.⁶ During elections, human rights defenders working to raise public awareness of human rights violations are routinely denied this basic right, and very much targeted for it.

In publishing this report, EHAHRDP seeks to not only analyze civil society participation in elections that took place in 2015, but more importantly to provide concrete recommendations to human rights defenders, and national, regional, and international stakeholders for elections to come. With elections in Tanzania at the end of 2015, Uganda in 2016, and Rwanda and Kenya in 2017, there are

5 EHAHRDP, '2015: Burundi at a Turning Point', February 2015, <http://www.defenddefenders.org/2015/02/burundi-at-a-turning-point/>

6 United Nations General Assembly, 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms' A/RES/53/144, 8 March 1999, Article 8 (2)

actions to be taken to ensure that civil society and the media are able to peacefully participate in the electoral process, rather than become victims of persecution, attacks, and exile as was the case in Ethiopia, Sudan, and Burundi.

I wish to take this opportunity to thank all of the individuals and human rights organizations that contributed to these research findings and shared their stories with our research team, without whose assistance this report would not have been possible.

EHAHRDP continues to work with human rights defenders and their organizations across the region to empower and support them in their efforts to address their concerns and contribute to protecting and promoting the freedoms fundamental to transparent, fair, and free elections. EHAHRDP has helped to establish national coalitions and networks of human rights defenders in Burundi, Kenya, Rwanda, Somalia, South Sudan, Tanzania and Uganda, which serve as support systems for HRDs during election periods.

EHAHRDP reiterates its commitment to standing alongside civil society across the region, in its efforts to achieve full respect for human rights.



Hassan Shire
Executive Director
East and Horn of Africa Human Rights Defenders Project
Chairperson
East and Horn of Africa Human Rights Defenders Network
Pan-African Human Rights Defenders Network

September 2015

About the East and Horn of Africa Human Rights Defenders Project

Established in 2005, the East and Horn of Africa Human Rights Defenders Project (EHAHRDP) seeks to strengthen the work of human rights defenders (HRDs) throughout the region by reducing their vulnerability to the risk of persecution by enhancing their capacity to effectively defend human rights. EHAHRDP focuses its work on Burundi, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Somalia (together with Somaliland), South Sudan, Sudan, Tanzania and Uganda.

EHAHRDP acts as the secretariat of the East and Horn of Africa Human Rights Defenders Network, which represents more than 75 members across the sub-region, and envisions a region in which the human rights of every citizen as stipulated in the Universal Declaration of Human Rights are respected and upheld.

EHAHRDP also serves as the secretariat of the Pan-African Human Rights Defenders Network (PAHRDN). PAHRDN was formed as a result of deliberations at the All African Human Rights Defenders Conference ('Johannesburg +10') hosted in April 2009 in Kampala, Uganda. The five sub-regional networks forming the PAHRDN are: the North Africa Human Rights Defenders Network (hosted by the Cairo Institute for Human Rights Studies in Tunis, Tunisia), the West African Human Rights Defenders Network (Lome, Togo), the Southern Africa Human Rights Defenders Network (hosted by Zimbabwe Lawyers for Human Rights (Harare, Zimbabwe), the Central Africa Human Rights Defenders Network (Douala, Cameroon), and East and Horn of Africa Human Rights Defenders Network (hosted by East and Horn of Africa Human Rights Defenders Project, Kampala, Uganda).

PAHRDN is aimed at coordinating sub-regional networks activities in the areas of protection, capacity building and advocacy across the African continent.



I. Executive summary

In the East and Horn of Africa, election periods often result in the closing of civic and political space as ruling parties seek to maintain power. The tense electoral climate in the region makes it increasingly difficult for human rights defenders (HRDs) to operate safely and effectively. While election-related targeting of human rights defenders occurs during nearly every election in the region, mechanisms for the support and protection of HRDs in these periods has often been insufficient to meet the challenges experienced.

This report examines the impact of elections on human rights defenders in Sudan, Ethiopia, Burundi and Uganda. Conclusions were drawn from both desk research and interviews conducted with 90 HRDs, INGOs and diplomatic missions. The technical nature of elections is not addressed in this report, but rather the environment in which HRDs operate and the attacks and abuses to which they are subjected as a result of the heightened tensions surrounding electoral periods.

States in the region have attempted to limit the operating environment for civil society in advance of elections by implementing legal mechanisms to restrict the rights to freedom of assembly, association, and expression. Many of these laws have sought to criminalize the activities of HRDs to prevent them from engaging on human rights issues.

Political parties in the region often lack strong platforms on social and political issues; in many cases civil society fills this gap. This has led to the increased targeting of HRDs through harassment, surveillance, arrest, torture, and attacks as ruling parties view their activities as threats and associate civil society with the opposition.

While the April 2015 election in Sudan was not competitive, free or fair, civil society was heavily constrained. Obstructive legislation such as the Organization of Humanitarian and Voluntary Work Act (2006), Press and Publications Act (2009), and the National Security Act (2010), were used in the election to shut down NGOs

and to arrest and charge journalists and HRDs. During the election period in Sudan, at least 5 HRDs were arrested and 4 NGOs were raided, 3 of which were shut down.

In Ethiopia, the Charities and Societies Act (2009), which was passed in advance of the 2010 elections, was used to heavily impair the capacity of NGOs to engage on human rights or governance issues. As a result, the media became the primary outlet for the discussion of civic and political matters. In order to inhibit the media, the Ethiopian authorities utilized the Anti-Terrorism Proclamation (2009) to label journalists as terrorists and shut down critical media houses. In the pre-election period, nine journalists were arrested and charged with terrorism and three publishers were sentenced in absentia. In August 2014, six newspapers and magazines were shut down and charged with crimes against the state leading to a mass exodus of journalists and HRDs. The increased harassment of journalists in the pre-election period led over 37 HRDs to flee the country. Since this deliberate election-related targeting of HRDs, independent media in Ethiopia has been largely silenced.

In Burundi, election-related insecurity devastated the country after President Pierre Nkurunziza decided to seek a third term despite constitutional limits. As a result of civil society's active participation in a campaign calling for the President to respect Burundi's constitution, HRDs were heavily targeted. In 2013, the *Law on Public Gatherings* and *Press Law* were passed, limiting freedom of expression and assembly in advance of the 2015 elections. HRDs in Burundi have faced harassment, arrest, torture, and physical and digital attacks. The increased risk led over 118 HRDs and journalists to flee the country between April and August 2015.

Unlike other countries researched for this report, Uganda's election has yet to be held and is scheduled to take place in early 2016. Historically, elections in Uganda have been periods of repression, increased intimidation, and targeting of HRDs. Thus far, in the pre-election period, journalists and other members

of civil society have been the primary victims of election-related abuses. However, as the elections near, the situation of HRDs must be monitored to ensure they do not face restrictions or abuses. Since it was passed, the Public Order Management Act (2013) has been utilized to selectively block public gatherings related to elections.

The direct targeting of human rights defenders and systematic tightening of civic and political space prior to, during, and after elections in the East and Horn of Africa is a critical issue that has been inadequately addressed. With the upcoming elections in Tanzania at the end of 2015, Uganda in 2016, and Rwanda and Kenya in 2017, lessons must be drawn to sufficiently support human rights defenders working in the context of elections. This report aims to provide insight into the trends that have developed throughout the region and offer recommendations to strengthen the work and protection of human rights defenders in such an environment.

II. Summary of key recommendations

To human rights defenders:

- *Invest* in personal and organizational security by developing and implementing a security management plan, which addresses not only physical security but also digital security;
- *Carefully consider* when taking on issues outside of the organization's mandate that could endanger individual or organizational abilities to function and work effectively;
- *Participate* in the development of comprehensive support networks, including coalitions capable of coordinating support for HRDs at risk during election periods.

To the governments of Sudan, Ethiopia, Burundi and Uganda:

- *Immediately take steps* to ensure that human rights defenders and all members of civil society are allowed to conduct public assemblies, form and operate associations, and exercise their right to freedom of expression in accordance with national laws, as well as regional and international human rights standards;
- *Immediately take steps* to ensure that all state agencies and all branches of the security apparatus cease all intimidation, harassment and attacks against human rights defenders;
- *Ensure* transparent and thorough investigations into all reported threats or attacks against human rights defenders, and commit to hold perpetrators of such threats or attacks accountable in accordance with national, regional and international legal standards.

To Donors and Development Partners:

- *Anticipate* the need and have funds available well in advance of elections for

training and protection support of human rights defenders, with a particular focus on strengthening national human rights defenders coalitions;

- *Coordinate* support efforts to provide training and protection assistance to human rights defenders;
- *Develop* trainings on human rights monitoring and documentation, physical and digital security, and strategic advocacy and litigation;
- *Adopt* legislation making the export of cyber weapons conditional on strong human rights provisions. Assessment criteria should also take into consideration the human rights record of the end user of the technology, the potential for the technology to be used in a manner not compliant with international human rights standards, and the weakness or absence of an appropriate legal framework to regulate the use of the technology by the end user.

To the African Union:

- *Continue* to send African Union Election Observation Missions (AUEOM) to examine electoral processes taking place, while paying particular attention to the impact of elections on civil society and its ability to engage in human rights work during these periods;
- *Encourage* states to ratify and enforce the African Charter on Democracy, Elections and Governance adopted in 2007;
- *Continue and expand efforts* to send human rights observers to countries during their electoral periods with means to document and denounce human rights violations taking place, including against human rights defenders.

***To the European Union Mission, and
other European country missions:***

- *Ensure* that a robust and effective local implementation strategy for the European Union Guidelines on Human Rights Defenders is in place in countries with upcoming elections.

***To United Nations Human Rights Council
and its member states:***

- *Immediately condemn* abuses against HRDs during election periods;
- *Recognizing* the particular risk for human rights defenders during elections periods, take measures to ensure greater participation of civil society groups and human rights defenders and ensure transparent and representative elections in Africa.

III. Methodology

This report is based on extensive field and desk research conducted between February and August 2015. In producing this report, the Uganda-based researcher undertook three research missions to Bujumbura, Burundi in April, Nairobi, Kenya in May and Khartoum, Sudan in June. A total of 90 interviews were conducted with human rights defenders, INGOs and diplomatic missions. Interviews were conducted in English, French, Arabic and Amharic using translators when necessary.

EHAHRDP is grateful to all interviewees for their time in meeting with us, and for sharing their experiences. To preserve anonymity, the names and identifying details of some interviewees have been omitted from this report. Information published in this report has been thoroughly verified before publication.

IV. Overview of the impact of elections on human rights defenders

The context of elections in the East and Horn of Africa

Elections are considered a key element for democracy, and while they are generally associated with progress in governance, the practicalities of organizing elections pose serious challenges. Elections alone are not a sufficient indicator, and in many semi-democratic and authoritarian states, they have failed to meet the conventional minimum standards for democracy. Across the East and Horn of Africa, elections have been neither free nor fair and have been used by ruling parties to consolidate power and assert false legitimacy.

In Africa, states generally emerged out of colonial institutions and transitional 'self-rule' arrangements. In post-conflict countries, political parties frequently arise from former rebel movements. Parties often lack strong political platforms, rather contending on the basis of their ethnic or religious identity or merely as an alternative to the ruling party. Since they are seen as a signifier of democracy, in many post-conflict countries, elections have been rushed and occurred pre-maturely, which can increase the likelihood of insecurity.⁷

In the East and Horn of Africa elections have a history of igniting violence and insecurity. Election-related violence and insecurity in Ethiopia in 2005, Kenya in 2007-2008 and Burundi in 2015 have had a devastating impact on civil society.

The African Charter on Democracy, Elections and Governance states that, *"State Parties shall ensure that citizens enjoy fundamental freedoms and human rights taking into account their*

universality, interdependence and indivisibility".⁸ Moreover, according to the African Union Declaration on the Principles Governing Democratic Elections in Africa (2002), African governments are required to *"safeguard the human and civil liberties of all citizens including the freedom of movement, assembly, association, expression, and campaigning as well as access to the media on the part of all stakeholders, during electoral processes."*⁹ Despite their obligations, many states in the sub-region have not ratified the Charter and often fail to adhere to such commitments.

The challenge of elections for human rights defenders

In the East and Horn of Africa, elections are frequently a bellwether for insecurity and human rights abuses. Election cycles in the region regularly generate repression of civil society and several have resulted in violence. These abuses do not occur in a vacuum; the systematic tightening of political and civic space as ruling parties seek to consolidate power prior to, during, and after elections has repeatedly taken place throughout the region's semi-democratic and authoritarian states. There is consistently a lack of sufficient preparation to protect and support human rights defenders and create an enabling environment in which HRDs can operate during electoral periods.

Elections can be an opportunity to put human rights at the forefront and serve as an entry point for public debate about such critical issues. Whether or not an election is free or fair, it represents a period of heightened sensitivity as ruling parties seek to inhibit any threats to their power. This dynamic can pose a significant threat to HRDs advocating for human rights issues and exposing the shortcomings of their governments.

7 Höglund, Kristine, Anna K. Jarstad, "Strategies to Prevent and Manage Electoral Violence: Considerations for Policy", The African Centre for the Constructive Resolution of Disputes (ACCORD), June 2010, <http://www.accord.org.za/publications/policy-practice-briefs/749-strategies-to-prevent-and-manage-electoral-violence>

8 African Charter on Democracy, Elections and Governance (2007), Article 6

9 African Union Declaration on the Principles Governing Democratic Elections in Africa (2002), Article 3 (d)

Even if not directly working on election issues, human rights defenders are at particular risk during electoral period for highlighting failures or areas of weakness of the government. Ruling parties are exceptionally sensitive to the work of HRDs drawing attention to gaps in services and governance, as well as advocacy and reporting related to national security and economic stability.

Engagement of human rights defenders in politics

Political parties in the region often lack strong platforms on social and political issues; in many cases civil society fills this gap. This results in the blurring of the lines between political opposition and civil society. For instance, in Burundi and Uganda, HRDs have been regularly labeled as opposition groups during election periods.¹⁰

Since political space is highly regulated in election cycles, independent media frequently offer some of the few venues for opposition parties to release their message. Media outlets covering opposition campaign initiatives are especially vulnerable and many have been painted as extensions of opposition parties. For example, in Uganda, three journalists were suspended after their radio program aired an interview with one of the opposition presidential candidates.¹¹

Human rights defenders engaging on political issues are often faced with increased risks. For example, during the electoral period in Burundi, a number of different civil society organizations contributed to the campaign against President Pierre Nkurunziza's unconstitutional third term. This left HRDs vulnerable to attack by the ruling National Council for the Defense of Democracy–Forces for the Defense of Democracy (CNDD-

FDD), who repeatedly accused them of working for the opposition. This resulted in the bulk of civil society leaders either going into exile or hiding and their organizations rendered non-functional.

Legal mechanisms restricting human rights defenders

Our research found a clear increase of restrictive legislation and abuses against HRDs in the lead-up to elections in Sudan, Ethiopia, Burundi and Uganda.

Over the past decade, there has been a surge of laws designed to limit civic and political space throughout the East and Horn of Africa. A disturbing trend has developed across the region, whereby states have adopted or are currently considering restrictive legislation on counter-terrorism, NGOs, public gatherings and the media. Often the language in these legislative measures is vague, allowing states to selectively use these laws to target HRDs and criminalize their work.

“A dictator using the law is more dangerous than one using a gun”¹²

Ethiopia was an early adopter of some of the harshest laws affecting HRDs in the region, which have essentially rendered civil society unable to engage on political and civic issues. The *Anti-Terrorism Proclamation* and the *Charities and Societies Proclamation* were introduced in 2009, in order to limit the activities of civil society in advance of the 2010 elections. These laws have since been replicated in various forms across the region. The most recent of these attempts is the *2015 NGO Bill* in Uganda, which, as it stands at the time of writing, includes ambiguous clauses that can be used to target HRDs and constrain the work of international and local NGOs.

This law is still being debated in parliament and is therefore still subject to change.

10 Interview with Burundian HRDs in April 2015 and Ugandan HRDs between July-August 2015

11 Human Rights Network for Journalists (HRNJ), “Blatant abuse of media freedoms by State agencies threatens the watchdog role of the media ahead of the 2016 general elections in Uganda. Perpetrators must be brought to book”, 26 July 2015, <https://hrnjuganda.wordpress.com/2015/07/26/blatant-abuse-of-media-freedoms-by-state-agencies-threatens-the-watchdog-role-of-the-media-ahead-of-the-2016-general-elections-in-uganda-perpetrators-must-be-brought-to-book-said-hrnj-ugand/>

12 Interview with Ethiopian journalist in May 2015 in Nairobi

Laws limiting public gatherings introduced in Uganda and Burundi in 2013 have also been utilized to inhibit freedom of assembly and peaceful association. They give broad powers to the police to halt public assemblies and leave organizers at risk of prosecution. In advance of each country's election, the Uganda *Public Order Management Act* and Burundi *Law on Public Gatherings* were used to shut down public assemblies organized by HRDs.

Sudan's *Press and Publications Act (2009)* and Burundi's *Press Law (2013)* infringe on freedom of expression and the press, and were used during each country's electoral period to target journalists. The laws contain various restrictions on subjects on which the media can report and have strict penalties for disobedience.

V. Elections in Sudan 2015: Working in the “red zone”



(Credit: Shannon Orcutt)

The 2015 elections in Sudan were the fourth to have taken place since the ruling National Congress Party came to power following a coup in 1989. While the 2010 elections proved to be somewhat competitive, although neither free nor fair, the most recent elections were heavily criticized by the international community and considered to hold very little legitimacy.¹³

The Sudanese general public is largely disillusioned with the country's veiled democratic exercise and the idea that their vote would have a real impact. This led to an incredibly low turnout, even after voting was extended by a day. While the Electoral Commission reported that turnout reached 42%, most estimate it to be almost half that amount. There was little international engagement on the election due to the expectation that it would not be free or fair. Those predications proved to be true and President Omar al-Bashir was re-elected with 94% of the vote.¹⁴

Much of civil society in Sudan is highly political and many human rights activists are affiliated with political parties or movements against the regime. Opposition parties and a large portion of civil society were active in the *Irhal*¹⁵ campaign calling for a boycott of the elections, which took place between 13 and 16 April 2015. This campaign suffered from a variety of abuses perpetrated by the government, ranging from arbitrary arrests to digital and physical attacks on individuals and organizations, as is detailed later on in this report.

Sudan continues to be plagued by insecurity, and with the ongoing conflicts in Darfur, Blue Nile, and South Kordofan, it was not possible to organize elections in several areas of the country.¹⁶

94 percent of vote", 27 April 2015, <http://www.reuters.com/article/2015/04/27/us-sudan-election-idUSKBN0NIOV620150427>

15 *Irhal* translates to "Go"

16 Radio Tamazuj, "Sudan electoral body to leave out 7 Nuba Mountain constituencies", 8 April 2015, <https://radiotamazuj.org/en/article/sudan-electoral-body-leave-out-7-nuba-mountain-constituencies>

13 Al Jazeera, "'More of the same': Bashir sweeps Sudan election", 27 April 2015, <http://www.aljazeera.com/news/2015/04/bashir-sweeps-sudan-election-150427111551251.html>

14 Reuters, "Sudanese President Bashir re-elected with

Laws restricting the space of human rights defenders

Sudan has implemented a number of laws that have been used to target HRDs in election periods including the *Organization of Humanitarian and Voluntary Work Act (2006)*, *Press and Publications Act (2009)* and *National Security Act (2010)*. In addition to these laws, the Interim National Constitution and 1991 Criminal Code, as well as their amendments, have also been used to restrict the operating space of HRDs.

Organization of Humanitarian and Voluntary Work Act (2006)

The *Organization of Humanitarian and Voluntary Work Act* has been used to effectively block the work of NGOs operating in the country. According to Article 7 (2), civil society organizations cannot obtain grants or fundraise from any foreign source or the Sudanese diaspora without permission from the Ministry of Humanitarian Affairs.

The law also requires that NGOs have at least 30 members to register, a significant amount for young organizations,¹⁷ and that they renew their registration on an annual basis.¹⁸ Several Sudanese NGOs interviewed reported that their applications for renewal of registration never received a response from the Registrar. This was the case of the Mahmoud Mohamed Taha Cultural Centre, which applied to renew their registration in 2013, and continued to operate without ever receiving a response until they were shut down in January 2015.¹⁹ If an organization does not register or attempts to operate after their registration has been denied they can be fined, have their assets frozen, be suspended for up to six months, or face criminal proceedings.²⁰

The Registrar has the ability to refuse registration of NGOs for a number of vague reasons, and while NGOs may appeal within 15 days, the appeal decision is not time bound.²¹ For example, in July 2014, the Salamah Centre for Feminist Studies was shut down without prior notice

and with no official reason given. A letter was delivered revoking the organization's license as government officials confiscated organizational documents and resources. This situation is affecting several other NGOs.

In addition, the Registrar has the ability to pry into the work of organizations by supervising their national elections and requiring that they notify the National Intelligence and Security Service before carrying out activities, which gives the security agency the power to block activities it deems political.²²

Press and Publications Act (2009)

The *Press and Publications Act* replaced its predecessor of the same name from 2004 and established the National Council on Press and Publications (NCP) to “oversee the overall performance of the journalistic institutions and companies”.²³ The law limits freedom of expression and the press, and has been routinely used in the election period to target journalists and media houses.

According to Article 33 (1)(d), the NCP may suspend newspapers for up to three days without giving any cause. However, this clause is often violated. On May 25, 2015, the National Intelligence and Security Services (NISS) confiscated publications from ten newspapers and suspended another four, for over a week.²⁴

Article 23 (2) imposes strict qualifications for the position of Editor-in-Chief, whereby they can be held criminally liable for content published in the newspaper. This was the case in the pre-election period when two journalists from Al-Midan newspaper were charged after the paper interviewed Abdelaziz Al Hilu, a leader of the Sudan People's Liberation Movement-North. As a result, the paper's Editor-in-Chief, Madeeha Abudullah, was charged with “crimes against the State”.

17 Organization of Humanitarian and Voluntary Work Act (2009), Article 9

18 Ibid., Article 11

19 Interview with Sudanese HRDs in June 2015 in Khartoum

20 Organization of Humanitarian and Voluntary Work Act (2009), Article 24 (3)

21 Ibid., Article (5); Article 13 (3)

22 Ibid., Article 22 (2)(d)

23 Press and Publications Act (2009), Article 8 (A), Article 9 (M)

24 Interviews with HRDs in June 2015 in Khartoum and observations



Madeeha Abudullah,
Editor-in-Chief of Al-Midan Newspaper
(Credit: Courtesy Photo)

A further restrictive section of the law states that journalists are to “*refrain from disclosing information on national security and operations, actions and plans of the armed forces save when duly authorized by the competent authorities*”.²⁵ This article is highly restrictive considering the high level of conflict involving national security and armed forces throughout the country.

National Security Act (2010)

The *National Security Act (2010)*, which replaced the *National Security Act (1999)*, established the National Intelligence and Security Services (NISS) and the National Security Council. It has been repeatedly used to target HRDs and violates regional and international human rights norms.

Article 50 (1) gives NISS the power to detain suspects for up to 30 days and renew detention for an additional 15 days. Also, if the Director of NISS finds the individual has been “*disrupting peace*”, the detention can be extended by up to three months.²⁶ Once arrested, the detainee has the right to inform their family, employer and lawyer as long as it does not “*prejudice the progress of interrogation, enquiry and investigation*”.²⁷ This has been used to hold detainees incommunicado, as was the case with Dr. Amin Mekki Medani, the President of the Confederation of Sudanese Civil Society, who was held for 15 days without access to lawyers or his family.²⁸

25 Ibid., Article 26 (1)

26 National Security Act (2010), Article 50 (1) (h)

27 Ibid., Article 51 (2)

28 Details of this case are given in the next section of the report.

While the law mentions the rights of those detained, such as being treated with dignity and not “*physically or morally hurt*,” torture and humiliation are often used against detainees. However, even if NISS agents are found to be violating the law, Article 52 grants immunity to members and associates of NISS, preventing any civil or criminal proceedings from being brought against them as long as the crime was done on duty and with “*good intention*”. Additionally, the article absolves them of having to testify or provide information about the agency and its activities.

“They violate human rights using the law itself”²⁹

Key Constitutional Amendments

In addition to the laws discussed above, there have been constitutional amendments that have been used to target HRDs in the election period. On January 4, 2015 a series of constitutional amendments were passed restricting human rights and civil liberties even further and expanding the government’s power to clamp down on civil society. Perhaps the most significant amendment was the expansion of the mandate of NISS, giving it the power to combat all “*political, military, economic and social threats*”.³⁰ This gave NISS the power to further interfere with civil society and target HRDs in Sudan. Additionally, the amendments passed legalized the Rapid Support Forces, a militia group controlled by NISS.³¹

Situation of human rights defenders during Sudan’s 2015 election

“Civil society here is seen as a bigger threat than political parties. Anyone working on human rights is in the red zone.”³²

Throughout the election period in Sudan, human rights defenders faced serious risks as the government implemented a crackdown on civil

29 Interview with Sudanese HRD in June 2015 in Khartoum

30 Sudanese Interim Constitution, Article 151 (2)

31 Sudan Tribune, “Sudan’s NUP Rejects Constitutional Amendment”, 7 July 2015 <http://www.sudantribune.com/spip.php?article53590>

32 Interview with Sudanese HRD in June 2015 in Khartoum

society. The peak of the attacks against HRDs occurred in the days directly leading up to the election and during the voting period. Even in the post-election period, abuses continued at a heightened scale.

During this period, the Sudanese government and its security forces hindered the work of HRDs by impeding freedom of expression and the press, subjecting them to digital attacks, shutting down and raiding NGO offices, and carrying out arbitrary arrests and kidnappings.

Restrictions Targeting the Media

Independent media covering the election were heavily targeted and restricted as a result of their reporting. In the pre-election period from January to March 2015, the police and the National Intelligence and Security Services (NISS) interrogated at least 21 journalists and confiscated newspapers from 16 media houses on 42 occasions.³³ During the elections NISS repeatedly obstructed the work of journalists through arrests, intimidation, and the confiscation and suspension of newspapers.

NISS has implemented numerous red-line topics on which newspapers are not permitted to report, such as education, politics, human rights and health issues. Newspapers reporting on sensitive issues are regularly confiscated and targeted through surveillance and raids by NISS, without being given any explanation. Journalists interviewed over the course of this research highlighted the major financial impact these attacks have on newspapers, and described them as “*economic warfare against journalists*”.³⁴ Additionally, according to Sudanese journalists, NISS is attempting to monopolize the print market and increase prices of printing materials in order to deliberately limit their activities.³⁵

During the elections, the restrictions against the media were particularly stringent. Journalists were warned against writing about topics such as the election boycott, conflict areas, the economy and security. Many of those interviewed

described what they called the “10 o’clock man”, who would show up and censor stories at 10pm the night before papers were printed.³⁶

In addition to confiscation and censorship, intimidation of journalists occurred throughout the election period. For example, during the voting period, several journalists were forced to report to the offices of the NISS and remain there the entire day. They were not charged, but rather the practice prevented them from reporting on the election and was used to intimidate them.³⁷

Digital Attacks

Many HRDs in Sudan expressed concern about their digital security and vulnerability to potential government hacking. When Hacking Team, an Italian private digital surveillance company, was itself hacked in early July 2015, leaked documents revealed that it had provided Sudan with cyber weapons under a contract worth 980,000 Euros.³⁸ Just a day before the election took place, Hurriyat and Sudanile, two Sudanese online newspapers were hacked and taken offline.³⁹

Moreover, prior to the election, NISS confiscated laptops and phones from several HRDs in an attempt to gain entry to their organizational files. They were able to access their confidential documents, and as a result, several HRDs were questioned and arrested.⁴⁰

Social media activity of HRDs as well as protest and pro-democracy movements are monitored and have led to encounters with NISS. When arrested, social media and email passwords have been forcibly obtained under threat of torture.⁴¹

33 Amnesty International, “Entrenched Repression: Freedom of Expression and Association Under Unprecedented Attack”, April 2 2015, p. 2, https://www.amnesty.nl/sites/default/files/public/sudan__entrenched_repression_-_brief.pdf

34 Interviews with Sudanese journalists in June 2015 in Khartoum

35 Ibid.

36 Ibid.

37 Ibid.

38 Gilbert, David, “Hacking Team Hacked: Spy Tools Sold to Oppressive Regimes Sudan, Bahrain and Kazakhstan”, International Business Times, 6 July 2015, <http://www.ibtimes.co.uk/hacking-team-hacked-spy-tools-sold-oppressive-regimes-sudan-bahrain-kazakhstan-1509460>

39 ACJPS, “Sudan’s Election Period Marred by Arrests and Incommunicado Detention; Insecurity in Darfur”, 17 April 2015, <http://www.acjps.org/sudans-electoral-period-marred-by-arrests-and-incommunicado-detention-insecurity-in-darfur/>

40 See sections below detailing the raids of SHRM and TRACKS

41 Interview with Sudanese journalist in June 2015 in Khartoum

Sudanese Internet is filtered through the use of Blue Coat Systems' ProxySG appliance⁴², which permits the blocking of content based on a URL blacklist, content keywords, and category blacklists. Additionally, HRDs generally do not trust their phone lines, believing they are being monitored.⁴³

Harassment, Arrest and Raids

The practice of raiding and shutting down NGO offices has become a common occurrence in Sudan and was frequent during the pre-election period. Just weeks after the powers of NISS were expanded in January 2015, they raided two cultural organizations. On January 18, NISS searched and shut down the Mahmoud Mohamed Taha Cultural Centre. One week later on January 29, the Sudan Writers Union was shut down in a similar fashion.⁴⁴

While many of the arrests and detentions that occurred during the election period were of Sudanese political activists and opposition party members, many HRDs were also impacted during this time. At least 5 HRDs were arrested, charged or imprisoned during this period. While all have now been released, the charges for several remain and it was impossible to interview most of them due to continued pressure and fear of surveillance. In addition to the arrests, many HRDs were summoned by NISS for questioning in an attempt to intimidate them, but were never charged.⁴⁵

Kidnapping is becoming an increasingly common tactic to target female activists. On April 12, 2015, Dr. Sandra Kadouda, a prominent Sudanese activist, was pulled from her car and allegedly abducted by NISS. During her detention she was beaten and tortured before being left unconscious and with a dislocated shoulder in the street three days later. This incident created serious fear among civil society, who worried about extrajudicial targeting by NISS during the election.

Civil society, particularly those operating in the peripheral areas, has been largely marginalized and were perhaps the most at risk during the election period due to the lack of media coverage and support system that benefit NGOs in Khartoum.

42 Citizen Lab, "Some devices wander by mistake: Planet Blue Coat Redux", 9 July 2013, <https://citizenlab.org/2013/07/planet-blue-coat-redux/>

43 Interview with Sudanese journalist in June 2015 in Khartoum

44 Sudan Tribune, "Sudanese Writers Union Shut Down by Authorities", 29 January 2015, <http://www.sudantribune.com/spip.php?article53823>

45 Interviews with Sudanese HRDs in June 2015 in Khartoum

Arrest of Dr. Medani and raid of the Sudan Human Rights Monitor:

On December 6, 2014, Dr. Amin Mekki Medani, President of the Confederation of Sudanese Civil Society, was arrested along with political opposition members after returning from a meeting on the Sudan Call, a declaration demanding a democratic transformation of Sudan's single-party state, where he was representing civil society. Dr. Medani was charged with "waging war against the State" and "undermining the constitution", offenses which can carry the death penalty. He was released and the charges were dropped on April 9, 2015. By holding Dr. Medani until just days before the elections took place, Sudanese security forces effectively prevented him from leading pre-election activities.

Just weeks after Dr. Medani's arrest, on December 21, 2014, the offices of the Sudan Human Rights Monitor (SHRM), where he was on the Board of Trustees and a former President, were raided. The raid occurred during a workshop being held on Sudan's Universal Periodic Review. NISS confiscated organizational documents, cameras and laptops and arrested one of the participants.⁴⁶

Raid of TRACKS and arrest of Adil Bakheit:

On March 26, 2015, the office of TRACKS for Training and Human Development was raided by NISS while holding a workshop, during which participants were accused of gathering to discuss the election boycott. Just days after the office was raided, NISS summoned the organization's staff questioning them and demanding the passwords to laptops that had been taken during the raid. On the final day of the election, Adil Bakheit, a prominent human rights leader who was part of the TRACKS training, was charged with "crimes against the State".

⁴⁶ Interview with Sudanese HRD in June 2015 in Khartoum

VI. Elections in Ethiopia 2015: Journalists on the frontlines

Since the Ethiopian People's Revolutionary Democratic Front (EPRDF) came to power in 1991, each election cycle has been marred by repression as the government seeks to further consolidate power, often at the expense of civil liberties. HRDs continually face shrinking civic space before, during, and after each election period. As a result of these repeated restrictions, there are very few active human rights defenders remaining in the country. Due to security risks for HRDs operating in Ethiopia, interviews for this section were conducted in Nairobi with HRDs in exile.

Since the overthrow of the Derg regime in 1991, Ethiopia has held six elections in highly restrictive environments. The EPRDF has used each election cycle to further secure the party's domination of political space, and marginalize voices critical of the regime, whether they be the opposition or civil society.⁴⁷ Elections in Ethiopia, particularly since 2005, have had a dramatic impact on the situation of human rights defenders in the country.

In 2005, the most competitive election in Ethiopian history took place with opposition parties winning an unprecedented number of seats in parliament.⁴⁸ After the results were delayed and allegations of vote rigging emerged, the opposition organized protests, which were brutally repressed. A massive crackdown ensued led by the EPRDF and targeting the opposition, civil society, and HRDs in the country. Over 200 Ethiopians were killed during the protests and tens of thousands arrested, ushering in a period of severe repression of civil society and Ethiopian society in general.⁴⁹ After the election, 131 political detainees, including dozens of HRDs and

journalists, were charged with crimes against the State.⁵⁰

While civil society was very active in the 2005 election, their ability to monitor elections, conduct civic education, or report on election-related issues was highly restricted in later electoral periods. High levels of intimidation and repressive legislation were enacted to restrain and silence independent voices during electoral periods, and have largely decimated civil society. The once strong political opposition also faced serious threats, leading the EPRDF to win 99% and 100% of the seats in parliament in 2010 and 2015 respectively.⁵¹

Following the death of Prime Minister Meles Zenawi in 2012, who had ruled the country since 1991, Hailemariam Desalegn became Prime Minister. The May 2015 election was the first to take place since Zenawi's repressive rule. There was hope amongst civil society that the leadership transition would lead to an opening of civic and political space, however, this has not yet been the case.

Laws restricting the space of human rights defenders

In 2009, as a result of the unrest during the 2005 election period, legislation was introduced that crippled civil society's ability to operate ahead of the 2010 election. The 2009 Anti-Terrorism Proclamation and 2009 Charities and Societies Proclamation severely restricted the ability of HRDs to operate in Ethiopia.

47 Lyons, Terrance, "Ethiopian elections: Past and future", 2010, International Journal of Ethiopian Studies 5, no.1 : 107-121, Pg. 109, <http://www.jstor.org/stable/41757576>.

48 Voice of America, "2005 Ethiopian Election: A Look Back", 16 May 2010, <http://www.voanews.com/content/article-2005-ethiopian-election-a-look-back-93947294/159888.html>

49 Ibid.

50 Article 19, "Ethiopia 2015 elections: An opportunity to change course and increase freedom of expression", 2 December 2014, <https://www.article19.org/resources.php/resource/37788/en/ethiopia-2015-elections:-an-opportunity-to-change-course-and-increase-freedom-of-expression>

51 New York Times, "Government in Ethiopia Is on Track to Win With 100% of Vote", 22 June 2015, http://www.nytimes.com/2015/06/23/world/africa/government-in-ethiopia-is-on-track-to-win-with-100-of-vote.html?_r=0

Both of these pieces of legislation have been heavily criticized for their drastic restrictions on civil liberties and failure to adhere to regional and international human rights standards. In October 2012, the African Commission on Human and Peoples' Rights passed Resolution 218 calling on the Ethiopian government to "[a]mend the *Charities and Civil Societies Proclamation in accordance with the UN Declaration on Human Rights Defenders*" and remove restrictions in "the *Anti-terrorism Proclamation (2009)* that do not conform to rights of freedom of expression provided in international human rights law".⁵² At time of publication, these requests had not been complied with.

Anti-Terrorism Proclamation (2009)

The *Anti-Terrorism Proclamation* has been used frequently against HRDs in Ethiopia. Since the legislation was enacted, some 24 journalists and bloggers have been charged with terrorism and many more have been detained without charge under the accusation of terrorist-related activities.⁵³

*"They use the anti-terrorism law to silence everyone in our country. As journalists we are labeled as terrorists."*⁵⁴

The description of what constitutes a terrorist act is ambiguous, and enables authorities to use it to target individuals and organizations. Part II Section III of the Proclamation declares that any individual or group intending to advance a political, religious or ideological cause by coercing the government or destabilizing the country's

fundamental institutions can be punished with "rigorous imprisonment from 15 years to life or with death".

The broad nature of this clause has permitted the government to charge numerous HRDs reporting on human rights or civil liberties issues with terrorism. Individuals can be held for up to four months without being charged.⁵⁵ Additionally, the law could also be interpreted so that journalists working for a newspaper charged with terrorism can be sentenced from 5 to 10 years for "participating in a terrorist organization."⁵⁶

*"So many journalists are in jail for no crimes. Most are my friends, jailed for their profession"*⁵⁷

Charities and Societies Proclamation (2009)

The 2009 *Charities and Societies Proclamation* has had a catastrophic impact on HRDs in Ethiopia and has radically limited the capacity of the once vibrant civil society to operate effectively.

The Proclamation prohibits international NGOs from working on human rights issues and forces domestic NGOs to obtain 90% of their funding from within the country.⁵⁸ This is an impossible challenge for human rights organizations operating in an environment where anonymous donations are prohibited, public collections of funds require a permit, and contributions could result in the targeting of the donors.⁵⁹

The law created the Charities and Societies Agency, which has broad powers to intervene in the work of NGOs such as the ability to appoint the board members of independent organization and remove and assign officers.⁶⁰ The Agency can also assign Sector Administrators who can interfere with NGO programs and projects and control activities.⁶¹

52 African Commission on Human and Peoples' Rights, "218: Resolution on the Human Rights Situation in the Democratic Republic of Ethiopia", 2 May 2012, <http://www.achpr.org/sessions/51st/resolutions/218/>

53 Journalists and bloggers charged with terrorism include: Woubshet Taye, Elias Kifle, Reeyot Alemu, Mesfin Negash, Abiye Teklemariam, Dereje Habtewold, Abebe Gellaw, Abebe Belaw, Fasil Yenealem, Eskinder Nega, Yusuf Getachew, Solomon Kebede, Edom Kassaye, Tesfalem Waldyes, Asmamaw Hailegiorgis, Atnaf Berahane, Natnael Feleke, Zelalem Kibret, Abel Wabela, Befekadu Hailu, Mahlet Fantahun, Soleyana Gebremichale, Martin Schibbye, and Johan Persson.

54 Interview with Ethiopian journalist in May 2015 in Nairobi

55 Anti-Terrorism Proclamation (652/2009), Article 20 (3)

56 Ibid., Article 7 (1)

57 Interview with Ethiopian journalist in May 2015 in Nairobi

58 Charities and Societies Proclamation (621/2009), Article 14 (5)

59 Ibid., Article 98; Ibid., Article 77 (3)

60 Ibid., Article 20 (1); Article 91(1)

61 Ibid., Article 67 (2)



Members of the Zone 9 bloggers collective
(Credit: Endalk Chala)

The Proclamation also prevents individuals who have been convicted of a crime that “*involve[s] dishonest acts*” or “*has been interdicted by a court*” from working with a charity or society.⁶² Considering the number of HRDs who now have criminal records due to government crackdowns, this prohibits many of them from working with charities or societies. The Agency can also prevent an organization from registering if they are deemed “*prejudicial to public peace, welfare or good order in Ethiopia*.”⁶³ The punishment for failing to adhere to the Proclamation could result in hefty fines or prison sentences.⁶⁴

The Charities and Societies Proclamation dramatically weakened the capacity of NGOs such as the Human Rights Council Organization (HRCO), a once premier human rights organization working in Ethiopia since 1991. After the introduction of the law, HRCO was forced to let go over 80% of its staff, made to change their name, and the government froze the organization’s bank accounts and limited the program of work HRCO could take on.⁶⁵ Another once prominent NGO, the Ethiopian Women Lawyers Association, “*effectively ceased to*

function” after the Proclamation law decimated their budget and forced the organization to lay off much of their staff.⁶⁶

Situation of human rights defenders during Ethiopia’s 2015 election

Despite the highly limited political and civic space, several independent newspapers and magazines continued to operate. Journalists became one of the few remaining groups of HRDs able to actively report on human rights in the country after the *Charities and Societies Proclamation* (2009) seriously hampered the capacity of NGOs. For this reason, this section of the report focuses mainly on the work of journalists during Ethiopia’s 2015 election.

While journalists had limited space to operate prior to the 2015 election, the increased repression in the pre-electoral period resulted in the arrest and mass exodus of journalists and bloggers who took a critical approach to civil and political issues in the country.⁶⁷ In the 13 months

62 Ibid., Article 70 (1, 4)

63 Ibid., Article 69 (2)

64 Ibid., Article 102

65 Human Rights Council (HRCO), “The Situation of Human Rights and Human Rights Defenders in Ethiopia: An Urgent Call for Action”, 28 July 2015.

66 Amnesty International, “Stifling Human Rights Work: The Impact of Civil Society Legislation in Ethiopia”, <https://www.amnesty.org/en/documents/AFR25/002/2012/en>

67 EHAHRDP, “Ethiopia: Crackdown on Dissent Intensifies as Journalists Convicted”, 31 October 2014, <https://www.defenddefenders.org/2014/10/ethiopia->

before the May 2015 election, increased judicial harassment led over 37 journalists to flee the country.⁶⁸ Even while in exile, many journalists remain at risk and continue to be monitored and harassed by Ethiopian and Kenyan intelligence services.⁶⁹ While the majority of journalists left Ethiopia in August and September 2014, many more continued to flee the country in the lead-up to the election.

Abuses against journalists in the 2015 pre-election period began to escalate in April 2014 with the arrest of nine journalists and bloggers affiliated with the Zone 9 bloggers collective. A second purge occurred in August 2014 after 6 newspapers and magazines were charged with “encouraging terrorism, endangering national security, repeated incitement of ethnic and religious hate, and smears against officials and public institutions”.⁷⁰ While many of the journalists faced intimidation and harassment before the election period, those interviewed noted that it escalated significantly in the year prior to the election.⁷¹

The Ethiopian security forces appear to follow a general pattern when targeting journalists. The threats they face evolve from physical and digital surveillance to judicial and physical harassment, before the journalist is either arrested or forced to flee the country.

“We don’t have any place to hide”⁷²

Physical and Digital Surveillance

The Ethiopian government employs high-level digital and physical surveillance, which is used to monitor human rights work in the country. International digital surveillance companies as

crackdown-dissent-intensifies-journalists-convicted/

68 Figure gathered by EHAHRDP during the mass exodus of journalists

69 Interviews with Ethiopian HRDs in May 2015 in Nairobi

70 Reporters Without Borders, “Ethiopian Government to Bring Criminal Charges Against Six Weeklies”, 12 August 2014, <http://en.rsf.org/ethiopia-ethiopian-government-to-bring-12-08-2014,46796.html>

71 Interview with Ethiopian journalists in May 2015 in Nairobi

72 Interview with Ethiopian journalist in May 2015 in Nairobi

such as the Hacking Team⁷³ and Gamma International⁷⁴ have provided the Ethiopian government with equipment and services that have the ability to monitor digital activity. Several HRDs reported receiving suspicious emails from individuals they believed were from Ethiopian intelligence services attempting to gain access to their email accounts.⁷⁵

Human rights defenders living in both Nairobi and Addis Ababa reported that they were followed by Ethiopian authorities and Kenyan intelligence services, which at times cooperate on security issues in the Horn of Africa. Many of those living in exile in Nairobi regularly change residence fearing they are being monitored. This constant pressure on journalists has had a devastating impact on their lives, and many are now afraid to sleep at night, and avoid leaving their homes.⁷⁶

Even journalists exiled in the USA have been targeted by cyber-surveillance. In three instances in November and December 2014, journalists from the independent TV station Ethiopian Television Satellite Service (ESAT) received forged emails with infected attachments. Security researchers at Citizen Lab identified these as malware produced by Hacking Team.⁷⁷

Physical and Judicial Harassment

Ethiopian journalists frequently face various forms of judicial harassment and physical attacks from government authorities. Often, after publishing articles related to the election or other sensitive issues, journalists and newspapers would receive anonymous and

73 Gibbs, Simon, “Hacking Team boss: we sold to Ethiopia but “we’re the good guys””, The Guardian, 13 July 2015, <http://www.theguardian.com/technology/2015/jul/13/hacking-team-ethiopia-attack-data>

74 Marquis-Boire, Morgan, Bill Marczak, Claudio Guarnieri and John Scott-Railton. “You Only Click Twice: FinFisher’s Global Proliferation”, Citizen Lab, 13 March 2013, <https://citizenlab.org/2013/03/you-only-click-twice-finfishers-global-proliferation-2/>

75 Interview with Ethiopian journalist in May 2015 in Nairobi

76 Interview with Ethiopian journalist in May 2015 in Nairobi

77 Citizen Lab, “Hacking Team Reloaded? US-Based Ethiopian Journalists Again Targeted with Spyware,” 9 March 2015, <https://citizenlab.org/2015/03/hacking-team-reloaded-us-based-ethiopian-journalists-targeted-spyware/>

threatening phone calls the next day. In some cases, these phone calls would be followed by physical encounters with intelligence officials.⁷⁸

Even while in exile in Nairobi, many journalists received threatening messages on social media from Ethiopian officials in Kenya and Ethiopia. Several HRDs in Nairobi have also had intimidating encounters with Ethiopian embassy personnel and what they believed to be intelligence officials.⁷⁹

“We expected they would eventually close the magazine but I never thought I would be charged”⁸⁰

In the year prior to the election, judicial harassment of journalists became increasingly frequent and severe. In August 2014, the government announced over the national television that charges were being brought against six magazines and newspapers, Lomi, Enku, Fact, Jano, Addis Guday, and Afro Times.⁸¹ Over the following days police raided media houses and journalists were detained there for hours as the government seized their recordings and files. Uncertain whether they would also face charges, dozens of journalists decided to flee the country to avoid arrest.⁸² In addition to the media houses, three publishers were also charged in October 2014. Endalkachew Tesfaye, Fatuma Nuriya, and Gizaq Taye, were sentenced in absentia to three to four years imprisonment for “inciting violent revolts, printing and distributing unfounded rumors and conspiring to unlawfully abolish the constitutional system of the country.”⁸³

Arbitrary Arrests and Torture

Arbitrary arrests, unlawful detentions, and torture are frequent in Ethiopia, but increased

dramatically prior to the election. In April 2014 three journalists and six bloggers writing for the Zone 9 collaborative blogging project were arrested and charged with terrorism and inciting violence.⁸⁴ A seventh blogger with Zone 9 was charged in absentia. The mass arrest and charges clearly signaled that criticism of the government would not be tolerated. While intimidation and harassment had been a common occurrence, the mass arrest of April 2014 was a major turning point and greatly alarmed the media community.⁸⁵

In advance of President Obama’s visit to Ethiopia in July 2015, five of the journalists and bloggers arrested in April 2014 were released, alongside one other who had been held since 2011. Four of the Zone 9 bloggers remain in prison along with seven other journalists.⁸⁶

In two separate incidents, two journalists interviewed reported being detained without charges brought against them for 3-4 weeks in July and August 2014. Both described how they were beaten, tortured, threatened, and faced verbal abuse as authorities tried to force them to give information and testify against other journalists.⁸⁷

Situation of human rights defenders in exile in Kenya

“We left many things but we don’t want to lose our dignity”⁸⁸

Journalists interviewed in Nairobi believed that the goal of the government was to push them into exile. This was underscored by the fact that even those who had been charged were permitted to exit the country using the Bole International Airport in Addis Ababa.⁸⁹

78 Ibid.

79 Ibid.

80 Ibid.

81 Horne, Felix, “Journalism Is Not a Crime”, Human Rights Watch, 21 January, 2015, <http://www.hrw.org/node/132073>

82 Figures gathered by EHAHRDP

83 EHAHRDP, “Ethiopia: Crackdown on Dissent Intensifies as Journalists Convicted”, 31 October 2014, <https://www.defenddefenders.org/2014/10/ethiopia-crackdown-dissent-intensifies-journalists-convicted/>

84 Ethiopian journalists arrested: Edom Kassaye, Tesfalem Waldyes, and Asmamaw Hailegiorgis
Zone 9 bloggers arrested: Atnaf Berahane, Natnael Feleke, Zelalem Kibret, Abel Wabela, Befekadu Hailu, and Mahlet Fantahun

85 Interviews with Ethiopian journalists in May 2015 in Nairobi

86 Committee to Protect Journalists, “2014 prison census: 221 journalists jailed worldwide”, 1 December 2014, <https://cpj.org/imprisoned/2014.php>

87 Ibid.

88 Interview with Ethiopian journalist in May 2015 in Nairobi

89 Ibid.

Even after leaving Ethiopia, the exiled community of journalists faces a number of challenges. Below is the personal narrative of the former Editor-in-Chief of a major Ethiopian magazine:

Our biggest challenge is security. Since the Ethiopian government is very close with the Kenyan government, we fear that someday they might collect us and deport us back to Ethiopia to jail us. This happened to some prominent politicians a year ago⁹⁰ Because of this, our movements are very limited, even with other Ethiopians. The Ethiopian embassy is working with the Ethiopian community, the Orthodox Church and even Ethiopian hotels and restaurants.

The second most challenging thing is the lack of financial assistance. Since we are refugees, we are not allowed to work in Kenya, even if we decide to take risks about our security. Because of this we have challenges to pay for rent, even though we live in the cheapest houses of the shanty areas of the city. Food, medication, clothing and cleaning are issues we have to deal with.

The process in the UNHCR is also very challenging. This organization makes things worse with their long process. They give us extended appointments. For example my wife had to wait two years just for the first interview. Can you imagine? How can someone who is afraid to live in a given area, someone who has issues with survival, wait this long to get a refugee mandate and to be resettled where he/she can be safe and work?⁹¹

These challenges were reiterated by each of the journalists interviewed in Nairobi. The frustrations with UNHCR were repeatedly emphasized. While many of the journalists who arrived prior to October 2014 were able to have their initial interviews within a few months, those who came later generally had to wait 6-7 months for even the first meeting with UNHCR. There was an overall sense of hopelessness and frustration among the exiled community who felt that the agency was not doing enough to support them.

90 The Economist, "Snatched: Justice and Politics in Ethiopia", 9 July 2014, <http://www.economist.com/blogs/baobab/2014/07/justice-and-politics-ethiopia>

91 Interview with Ethiopian journalists in May 2015 in Nairobi

VII. Elections in Burundi 2015: A choice between silence and exile

The election period in Burundi rapidly degenerated into a widespread political crisis, which took the international community by surprise. Within four months of its outbreak in April 2015, over 181,630 Burundians had fled the country as a result of the insecurity caused by the crisis.⁹² As of August 14, 2015, over 96 individuals have been killed and another 600 arrested or detained.⁹³ Assassination attempts of political opposition, HRDs, and even ruling party leaders have become frequent.⁹⁴

“Burundi is at a crossroad where we could respect democracy and human rights or plunge into civil war. The President is the one with the power to make that decision.”⁹⁵

Pierre Nkurunziza was first elected President by parliament in 2005, after the National Council for the Defense of Democracy–Forces for the Defense of Democracy (CNDD-FDD) came to power. The Constitution of Burundi and the 2000 Arusha Accords stipulate that presidents are only to serve two terms. Since he was elected by Parliament and not by popular vote in 2005, President Pierre Nkurunziza claims that he had only served one official term.

On May 5, 2015 the Constitutional Court of Burundi ruled in favor of President Pierre Nkurunziza and he was able to campaign for the presidency. Regional and international actors criticized the Court’s decision and in July 2015, the Pan African Lawyers Union (PALU) and East African Civil Society Organisations’ Forum (EACSO) filed a case against the Burundian government with the East African Court of Justice questioning the ruling of the Constitutional Court.⁹⁶

On May 13, 2015, while President Pierre Nkurunziza was in Tanzania at a summit of the East African Heads of State to discuss the situation in Burundi, a group of military generals led a coup d’état attempt. The coup failed two days later, and HRDs, feeling increasingly vulnerable, quickly began to flee the country. As of August 14, 2015, EHAHRDP has documented at least 118 HRDs and journalists living in exile; however, the figure is likely much higher.⁹⁷

While the election was postponed several times and despite a resolution from the African Union Peace and Security Council calling for further postponement, presidential elections were finally held on July 21, 2015.⁹⁸ The election was neither free nor fair and yet President Pierre Nkurunziza claimed victory and was sworn into office on August 20, 2015 in a hasty surprise inauguration ceremony one week ahead of schedule.

92 OCHA, “Burundi Humanitarian Snapshot”, 10 August 2015, http://reliefweb.int/sites/reliefweb.int/files/resources/Burundi_Snapshot_20150810.pdf

93 Shamdasani, Ravina, Spokesperson for the UN High Commissioner for Human Rights, “Press briefing note in Burundi and Iraq”, 14 August 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16320&LangID=E>;

94 EHAHRDP, “Prominent Human Rights Defender Injured in Brutal Attack”, 4 August 2015, <https://www.defenddefenders.org/2015/08/burundi-prominent-human-rights-defender-injured-brutal-attack/>

95 Interview with Burundian HRD in April 2015 in Bujumbura

96 The East African, “Regional lobby sues to stop Nkurunziza third term bid”, 13 July 2015, <http://www.theeastafrican.co.ke/news/Regional-lobby-sues-to-stop-Nkurunziza-term-bid/-/2558/2787726/-/i84qvo/-/index.html>

97 Figure determined by known cases of HRDs that applied for assistance with EHAHRDP and partners

98 African Union Peace and Security Council, “Communiqué of the Peace and Security Council of the African Union (AU), at its 523rd meeting on the situation in Burundi”, 9 July 2015, <http://www.peaceau.org/en/article/communique-of-the-peace-and-security-council-of-the-african-union-au-at-its-523rd-meeting-on-the-situation-in-burundi>

Laws restricting the space of human rights defenders

In 2013, two laws seriously restricting the work of HRDs were passed in Burundi. Both of these laws were used in the run up to elections to limit the ability of civil society to operate on numerous occasions.

Law on Public Gatherings (2013)

In December 2013, the Burundian parliament passed the Law on Public Gatherings. Since it was passed, the law has been widely used to restrict freedom of assembly in the lead-up to the 2015 elections. While CNDD-FDD rallies and gatherings have been largely unaffected by these restrictions, the law has been used repeatedly to limit the ability of civil society and opposition parties to gather.⁹⁹

According to the law, the organizers of public demonstrations or assemblies are required to previously declare their intention to hold an event and give information about the assembly.¹⁰⁰ These requirements created a de facto ban on spontaneous public gatherings, violating Burundian's freedom of assembly.¹⁰¹ These clauses were used to prevent Gabriel Rufyiri, President of *Observatoire de Lutte Contre la Corruption et les Malversations Économiques* (OLUCOME), from conducting a series of one-man demonstrations against corruption and economic inequality in 2014. On one occasion, he was stopped by police and forced to return and stay in his home under de facto house arrest.¹⁰²

The language in the law gives the state broad authority to, *"at any moment, regardless of a properly executed notification, defer or end any*

*public meeting, march, or rally organized in the public domain, if it is considered necessary in order to maintain public order."*¹⁰³

Another aspect of the law that restricted the ability of HRDs to organize is Article 13, which requires organizers of events to maintain public order during gatherings and leaves the organizations open to prosecution if public order is breached.¹⁰⁴ By placing the responsibility for public order on the organizers, the law challenges organizations that realistically do not have the capacity or authority to enforce the maintenance of public order.

Press Law (2013)

"The Press Law effectively limited the domain of journalists here in Burundi. We couldn't write on issues such as the economy or security."

On June 4, 2013, President Pierre Nkurunziza signed a new Press Law into effect, severely restricting freedom of expression and the press. During the election period, journalists were frequently harassed and targeted and the law imposed a number of vague restrictions on the topics they are allowed to cover. These restricted topics include: the stability of the currency, insults against the Head of State, calls for civil disobedience or unauthorized demonstrations, the defense of crimes, offensive articles or reports regarding public or private persons, propaganda against Burundi, as well as information that *"may harm the credit of the state and national economy"* or even diplomacy.¹⁰⁵

The law requires journalists to disclose confidential sources that provide information on a variety of issues including the *"moral and*

99 Interviews with Burundian HRDs in April 2015 in Bujumbura

100 Law on Public Gatherings (No 1/28, 2013) Article 4, 7

101 Gatavu, Audace, "Analysis of the Legal Framework for Civil Society in Burundi: Case of the December 2013 Law on Public Demonstrations and Assemblies", International Journal of Not-for-Profit Law, V 16, no. 2 December 2014, <http://www.icnl.org/research/journal/vol16iss2/v16n2%20Gatavu.pdf>

102 Reuters, "Burundi Police Stop Prominent Anti-Graft Activist in Protest March", 25 September 2014, <http://www.reuters.com/article/2014/09/25/us-burundi-corruption-idUSKCN0HK1VB20140925>

103 Law on Public Gatherings (No 1/28, 2013) Article 10.

104 De Montjoye, Clementine, "2015: Burundi at a Turning Point", East and Horn of Africa Human Rights Defenders Project, February 2015, <https://www.defenddefenders.org/wp-content/uploads/2015/02/burundi-2015-en.pdf>

105 East African Court of Justice, "Reference No. 7 of 2013", 15 May 2015, <http://eacj.org/wp-content/uploads/2015/05/Reference-No.7-of-2013-Final-15th-May-2c-2015-Very-Final1.pdf>

physical integrity of one or more persons".¹⁰⁶ If journalists fail to adhere to the law, hefty fines and penalties could ensue.

After the courts failed make adequate changes to bring the Press Law in line with international norms, the Burundian Journalists Union (UBJ) and the Media Legal Defence Initiative brought the Press Law to the East African Court of Justice (EACJ). On May 15, 2015, the EACJ ruled the law violated the right to freedom of the press and expression and ordered the government to either repeal or significantly amend the law.¹⁰⁷

As a result of the pressure from the case, a new bill was introduced in parliament, which Burundian journalists believe includes positive elements that correct the ambiguous clauses in the 2013 law. However, the new bill has not yet been passed and in the current political climate, it is unclear if a vote would take place in the near future.

Situation of human rights defenders during Burundi's 2015 election

*"Hell is not just after the election, it is also before."*¹⁰⁸

Many HRDs in Burundi experienced a variety of attacks as a result of the tense elections. During this period, EHAHRDP documented a rise in digital targeting, harassment, physical attacks, and arbitrary arrests, detentions and torture. These abuses took place over two distinct periods prior to Burundi's election: before the announcement of the candidacy of President Pierre Nkurunziza on April 25, 2015 and post-announcement.

Prominent HRDs, particularly heads of organizations and journalists, have been the primary targets of threats and harassment as a result of their visibility and vocal roles. Individuals highlighting the arming and training of the *Imbonerakure* and against the third term were at particularly high risk, especially those living in the rural provinces.¹⁰⁹

"Before the threats were usually just against those who were most vocal, but now they are against anyone involved in the anti-third term campaign"¹¹⁰

Digital Targeting

The pre-election period in Burundi saw a series of digital attacks take place against human rights defenders and civil society organizations. This appears to be a new trend in Burundi that has greatly intensified in the months prior to the elections. These digital attacks have included the hacking of email, websites and social media. During this period, WhatsApp, Facebook, and Viber were periodically blocked.¹¹¹

In March 2015, two cases were documented where the email accounts of heads of prominent human rights organizations were hacked. In another case, also in the same month, a Burundian human rights organization shared a suspicious email with EHAHRDP that specifically targeted an HRD to gain access to their organization's email accounts.¹¹²

Several leaders of prominent human rights organizations have been targeted through social media smear campaigns. False Facebook accounts impersonating HRDs have emerged posting messages meant to harm their reputations or support the CNDD-FDD.¹¹³ The fake accounts can also be used to monitor supporters of the human rights defender in question.¹¹⁴

Human Rights Defenders Project, January 2015, <https://www.defenddefenders.org/wp-content/uploads/2015/02/burundi-2015-en.pdf>

110 Interview with Burundi HRD in April 2015 in Bujumbura

111 International Business Times, "Burundi Elections 2015: President Blocks Twitter, Facebook, WhatsApp, Tango Mobile Access In Protest Crackdown," 29 April 2015, <http://www.ibtimes.com/burundi-elections-2015-president-blocks-twitter-facebook-whatsapp-tango-mobile-access-1901246>

112 Email provided to EHAHRDP by Burundian HRD in March 2015

113 Nininakazwe, Pacifique, "Photo from Pacifique Nininakazwe Facebook Post", 18 April 2015, <https://www.facebook.com/pnininahazwe/photos/pcb.460239540800934/460239220800966/?type=1>

114 Interview with Burundian digital security trainer in August 2015

106 Ibid.

107 Ibid.

108 Interview with Burundian HRD in April 2015 in Bujumbura

109 Extensively documented by EHAHRDP in its report: De Montjoye, Clementine, "2015: Burundi at a Turning Point", East and Horn of Africa

Many HRDs are worried their email and social media accounts are being monitored.¹¹⁵ Burundians digital surveillance capabilities have so far been limited, however few HRDs follow digital security best practices.



Screenshot of fake Facebook account created to smear Pacifique Nininahazwe

Harassment

The pre-election period was characterized by the increase of direct and indirect threats against HRDs, which further intensified after Nkurunziza announced his candidacy.

*"I would get calls from unknown people saying 'we know who you are and what you're doing.'"*¹¹⁶

Numerous HRDs reported receiving anonymous phone calls or having encounters with unknown individuals issuing threats. After the general context of insecurity intensified in late April, many HRDs went into hiding. Three HRDs interviewed reported being aggressively followed from their offices by unmarked vehicles.¹¹⁷ The threats have primarily come from members of the *Imbonerakure*, police, and intelligence.¹¹⁸

*"I was warned the Imbonerakure were going to kill me in my home. Six days later someone tried to break in, I believe it was to carry out the threat. I notified the police but they did nothing."*¹¹⁹

115 Burundian HRD interviewed in April 2015

116 Ibid.

117 Ibid.

118 Ibid.

119 Ibid.

HRDs spoke of a list released in March 2015 of 13 individuals to be killed from opposition parties and civil society.¹²⁰ Whether or not the threat is real or designed to intimidate, even the rumors of the list created substantial fear amongst the human rights community. As a result of the list, several of the HRDs changed residences or went into hiding.

There have also been a series of threats from CNDD-FDD officials during official events and over the radio. Some of these statements have been broad threats against anyone opposing Nkurunziza's third term while others have been more specific threatening HRDs by name.

Independent media were heavily targeted in the pre-election period. Just days after President Pierre Nkurunziza announced his candidacy sparking widespread protests, *Radio Public Africaine (RPA)*, *Radio Bonesha* and *Radio Isanganiro* were forbidden from broadcasting about the demonstrations and in several areas broadcasts were blocked.¹²¹ The targeting of the media continued and on April 27, 2015 the *Maison de la Presse*, where the Synergy of Media was located, was raided and shutdown. Following the coup attempt, *RPA*, *Radio Bonesha* and *Radio Isanganiro* were attacked and suffered grave material losses. Most private independent radios are no longer able to operate in the country, or do so at a significantly reduced rate.

In the pre-election period police attempted to conduct searches at the homes of HRDs without warrants, by claiming they were searching for weapons that civil society is stockpiling. The *Imbonerakure* reportedly participated in the warrantless searches, issuing threats and taking documents.¹²²

HRDs and journalists in the rural provinces found themselves at particularly high risk since they are well known in their communities and often

120 Bujumbura News, "L'APRODH révèle l'existence d'une liste de 13 personnes à éliminer", 17 March 2015, <https://bujanews.wordpress.com/2015/03/17/laprodh-revele-l'existence-dune-liste-de-13-personnes-a-eliminer/>

121 EHAHRDP, "Burundi: Unprecedented State assault on human rights defenders and journalists", 27 April 2015, <https://www.defenddefenders.org/2015/04/burundi-unprecedented-state-assault-on-human-rights-defenders-and-journalists/>

122 Information reported to EHAHRDP during the crackdown



Celebrated Burundian human rights defender Pierre Claver Mbonimpa
(Credit: Teddy Mazina)

isolated compared to those in main offices in Bujumbura.

Arbitrary Arrest, Torture and Detention

The judicial harassment and arbitrary arrest and detention of HRDs increased dramatically in the lead-up to elections. In the first phase of the pre-election period, radio and newspaper journalists were the primary targets of judicial intimidation for reporting on the arming, training and activities of the *Imbonerakure*. Journalists were also falsely accused of serious crimes in an attempt to silence their reporting.¹²³ Others were forced to regularly report to police commissioner offices and endure lengthy questioning as a result of their investigations.¹²⁴

123 RPA, "Arrestation du journaliste Eloge Niyonzima à Bubanza", <http://www.rpa.bi/index.php/component/k2/item/766-arrestation-du-journaliste-elogé-niyonzima-a-bubanza>

124 Radio Télévision Nationale du Burundi, "La journaliste Yvette MUREKASABE de la RPA a comparu au parquet de NGOZI", <http://www.rtnbdi.bi/?p=4646>; RPA "Deux journalistes de la RPA convoqués par la justice au nord du pays", [http://www.rpa.bi/index.php/component/k2/item/1004-deux-journalistes-de-la-rpa-convoques-](http://www.rpa.bi/index.php/component/k2/item/1004-deux-journalistes-de-la-rpa-convoques-par-la-justice-au-nord-du-pays)

Two of the most visible arrests were those of Pierre Claver Mbonimpa, the Director of the *Association pour la Protection des Droits Humains et des Personnes Détenues* (APRODH), and Bob Rugurika, the Director of *Radio Publique Africaine* (RPA). The first major arrest in the pre-election period was that of Mbonimpa on May 14, 2014. He was charged with inciting public disobedience and threatening national security after speaking on RPA about the training of the *Imbonerakure* in the Democratic Republic of Congo. He was provisionally released on September 29, 2014 on medical grounds, after spending over four months in prison.

The second high profile arrest occurred on January 20, 2015 with the arrest of Bob Rugurika for reporting on the murder of three Italian nuns, which allegedly implicated senior intelligence officials.¹²⁵ He was charged with "conspiracy to murder, violating confidentiality in criminal investigations, harboring a criminal, and failing

125 par-la-justice-au-nord-du-pays
EHAHRDP, "Burundi: Human Rights Defenders Under Government Attack", 17 February 2015, <https://www.defenddefenders.org/2015/02/burundi-human-rights-defenders-government-attack/>

to uphold public solidarity.”¹²⁶ After a massive international outcry, Rugurika was released on bond on February 19, 2015.

In the second phase of the pre-election period, HRDs were more blatantly targeted. Pierre Claver Mbonimpa was again arrested on April 27, 2015 just days after the announcement of Pierre Nkurunziza’s candidacy for President. He was released the next day following widespread international outcry. Arrest warrants were also issued for two other leaders of prominent human rights organizations, Vital Nshimirimana of *Forum des Organisations de la Société Civile* (FORSC) and Pacifique Nininahazwe of *Forum pour la Conscience et le Développement* (FOCODE), on the same day, for their role in organizing civil society’s protest against Pierre Nkurunziza’s third term.

Physical Attacks

Even before the announcement of the candidacy of Pierre Nkurunziza, early April marked an increase of physical attacks against HRDs. Two of the attacks involved grenades thrown at the homes of journalists, a foreshadowing to the trend of grenade attacks that became common in the chaos following the announcement.¹²⁷

One of the first serious public attacks on HRDs took place on May 23, 2015, when Jean-Baptiste Bireha, a journalist with Bonesha FM was shot twice in an attack in Bujumbura.¹²⁸ Bireha was interviewing Zedi Feruzi, the leader of the Union for Peace and Development opposition party

when gunmen attacked them, killing Feruzi and injuring Bireha.

“Let us hope we will still be alive.”¹²⁹

Abuses have also continued in the post-election period. On August 2, 2015, Esdras Ndikumana was beaten by police after reporting on the death of General Adolphe Nshimirimana.¹³⁰ The following day on August 3, Pierre Claver Mbonimpa, one of the most respected leaders of civil society, was again targeted. He was shot in the face and neck and seriously injured after a group of motorcyclists with guns attacked him near his home in Bujumbura.¹³¹

126 Human Rights Watch, “Burundi: Journalist to be Freed on Bail”, 18 February 2015, <http://www.hrw.org/news/2015/02/18/burundi-journalist-be-freed-bail>

127 Radio Publique Africaine, “Des grenades artisanales lancées sur la maison de la journaliste Spès Caritas Kabanyana”, 16 April 2015, www.rpa.bi/index.php/component/k2/item/986-des-grenades-artisanales-lancees-sur-la-maison-de-la-journaliste-spes-caritas-kabanyana; IWACU, “Un journaliste de Bonesha FM échappe à un attentat”, 11 April 2015, <http://www.iwacu-burundi.org/un-journaliste-de-bonesha-fm-echappe-a-un-attentat/>

128 Radio France Internationale, “Burundi: assassinat du leader d’opposition Zedi Feruzi” 23 May 2015, <http://www.rfi.fr/afrique/20150523-burundi-assassinat-opposant-zedi-feruzi-upd-bujumbura>

129 Interview with Burundian HRD in April 2015 in Bujumbura

130 Amnesty International, “Just Tell Me What To Confess To: Torture By Police and Intelligence Service Since April 2015”, 23 August 2015, <https://www.amnesty.org/en/documents/afr16/2298/2015/en/>

131 EHAHRDP, “Prominent Human Rights Defender Injured in Brutal Attack”, 4 August 2015, <https://www.defenddefenders.org/2015/08/burundi-prominent-human-rights-defender-injured-brutal-attack/>

VIII. Elections in Uganda 2016: Troubled waters ahead

Unlike other countries researched for this report, Uganda's election has yet to be held and is scheduled to take place sometime between February 12 and March 12, 2016. Historically, elections in Uganda have been marked with periods of repression, increased intimidation, restrictive legislation and targeting of HRDs.

"In countries transitioning to democracy, like here in Uganda, elections are an opportunity for those in power to maintain control and for the opposition to attempt to claim space."¹³²

The 2016 elections in Uganda will be the third multi-party elections held in the country's history. President Yoweri Museveni will be running for his fifth term in office since coming to power in a coup in 1986. This election is likely to be one of the most contentious in recent history, following a rift within the ruling National Resistance Movement (NRM). Prime Minister Amama Mbabazi, former Secretary General of the NRM and Prime Minister since 2011, was accused of having presidential ambitions and was dismissed in September 2014. Tensions have dramatically increased during the pre-election period, which will not only impact political parties, but also human rights defenders. In addition to Mbabazi, Kizza Besigye is also seeking election for President and has been the primary rival to Museveni since 2001. Both Mbabazi and Besigye were arrested in July 2015 and their supporters have also been targeted.¹³³

In the 2011 election, HRDs were targeted through heavy limitations on the freedoms of assembly and expression. Many NGOs were accused of inciting violence and of supporting the opposition. Domestic observers were blocked and faced harassment, even when they had the proper accreditation. HRDs were followed and believe their phone calls were monitored. In the year prior to the elections, there were at least 52 abuses of press freedom including intimidation, attacks and murder.¹³⁴ The 2016 election is likely to see an increase in restrictions, which have worsened since a number of them have been integrated into Uganda's legal framework.

Laws restricting the space of human rights defenders

Uganda has recently passed several pieces of legislation affecting a variety of human rights and civil liberties. While the Anti-Homosexuality Act, which was later annulled, and Anti-Pornography Act negatively impacted mainly LGBTI and women's rights, the Public Order Management Act and proposed NGO Bill are likely to have a strong bearing on HRDs in the lead-up to the 2016 elections.

Public Order Management Act (2013)

The Public Order Management Act (2013) was signed into law in October 2013 to regulate public meetings which, according to the law, means "a gathering, assembly, procession or demonstration in a public place or premise held for purposes of discussing acting upon, petitioning or expressing views on a matter of public interest".¹³⁵ The law has been used in advance of the 2016 elections to limit civil society activities, to control civic and political space and

¹³² Interview with Ugandan HRD in August 2015 in Kampala

¹³³ The New Vision, "Arrests: Mbabazi at Kira Rd Police, Besigye at Naggalama", 9 July 2015, <http://www.newvision.co.ug/news/670769-arrests-mbabazi-at-kira-rd-police-besigye-at-naggalama.html>

¹³⁴ Committee to Protect Journalists, "As Uganda election nears, fear among reporters", 11 February 2011, <https://cpj.org/blog/2011/02/as-uganda-election-nears-fear-among-reporters.php#more>

¹³⁵ Article 4 (1) Public Order Management Act (2013)

gives the police broad powers to authorize or halt public gatherings.

According to the *Public Order Management Act (POMA)*, organizers must give at least three days' notice of a public meeting.¹³⁶ If they fail to do so the event can be shut down. If the organizers fail to give notice or comply with the stipulations of the Act, they can be held liable.¹³⁷ In December 2014, Phil Wilmot, an American living in Uganda and founder of Solidarity Uganda, was arrested and charged under POMA for holding a small meeting at a guesthouse in Lira where he "allegedly recruited people into activism".¹³⁸

Thus far in the pre-election period, political opposition members have been the primary targets of POMA restraints, however, HRDs working on contentious issues have also faced restrictions.

In March 2014, the police dispersed a meeting of the Free and Fair Elections Campaign in Mbale by shooting into the air and using teargas. In Kabale, Zac Niringiye, an activist of the Free and Fair Elections Campaign and retired Assistant Bishop, was blocked on two occasions from addressing the public during a university lecture and radio interview for "publicizing an illegal meeting[...] that may incite violence".¹³⁹

Non-Governmental Organizations Bill (2015)

In April 2015, the NGO Bill was introduced in parliament. The Bill has received heavy criticism by the NGO community and international human rights bodies due to its obstructive language and several imprecise clauses that can be used to infringe on civil society activities. As Maina Kiai, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, stressed in his statement, "*The vague formulation of such provisions and wide discretion given to the Ugandan Minister for*

Internal Affairs can have a detrimental impact on the formation and work of associations."

The bill has the potential to amend the NGO Registration Amendment Act of 2006, which requires NGOs to be certified by the NGO Board before legally being able to operate. Several organizations working on electoral issues reported that their registrations were often delayed, at times for up to a year, believing that the delay was related to their electoral work.¹⁴⁰

*"The timing of the NGO bill was deliberate to scare civil society so we don't shout or speak loudly about human rights during the elections."*¹⁴¹

While the original text of the bill is problematic, the Parliamentary Committee on Defence and Internal Affairs drafted a report with strong recommendations informed by the NGO community that if incorporated into the bill could make a positive impact. In a special session of parliament on September 1, 2015, the NGO bill was hotly debated. However, parliament did not get beyond Clause 9 of the 51 clauses in the bill. The initial debate was productive with many MPs advocating strongly on behalf of NGOs and amendments were made to several of the clauses to remove the restrictions of the original text. The future of the bill remains unclear, and at the time of writing, several controversial clauses were still to be discussed in parliament.

Situation of human rights defenders in preparation of Uganda's 2016 election

Civil society has increasingly played an active role in elections in Uganda and expanded its influence through improved coordination among international and domestic NGOs. Civil society groups are taking on a variety of roles in the election, such as advocating for electoral reforms, providing capacity building trainings to political parties, monitoring and reporting on the election period and providing technical monitoring of the elections themselves.

136 Ibid., Article 5 (1)

137 Ibid., Article 5 (8)

138 The Daily Monitor, "American Charged Over Illegal Assembly", 12 March 2015, <http://www.monitor.co.ug/News/National/American-charged-over-illegal-assembly/-/688334/2649956/-/spl9nqz/-/index.html>

139 Amnesty International, "Rule by Law. Discriminatory Legislation and Legitimized Abuses in Uganda", 16 October 2014, <http://www.amnesty.org/en/documents/AFR59/006/2014/en/>

140 Interviews with Ugandan and international NGOs between June – August 2015 in Kampala

141 Interview with Ugandan HRD in July 2015 in Kampala



Sheila Nabachwa and Dr. Livingstone Sewanyana of the Foundation for Human Rights Initiative at the 2013 closure of The Monitor. (Credit: Foundation for Human Rights Initiative)

“During elections in Uganda, human rights NGOs face several challenges in terms of intimidation, restrictive legislation, threats, increased surveillance, and monitoring of NGO accounts.”¹⁴²

In the current tense political climate, civil society’s activities can endanger HRDs. The government increasingly associates civil society with the political opposition, and this places them at an increased risk. Targeting has already begun in the pre-election period. For example, HRDs have deplored the timing of the restrictive NGO Bill, which they see as an attempt to limit their ability to actively participate in the political and civil dialogue during the election period. Many HRDs also resort to self-censorship, worrying about the retribution they might face.

“Elections serve as a period of suspicion between HRDs and the State. As HRDs we are viewed as potential spoilers or agents of the opposition.”¹⁴³

Human rights defenders outside of Kampala in the upcountry regions are particularly at risk. In Kampala, access to legal support and media coverage, in addition to a strong NGO network, provides HRDs with a certain level of protection. However, in other regions of Uganda, many HRDs are isolated and therefore more vulnerable. Legal resources are not as readily available and lawyers generally have to travel from Kampala.

Targeting of Journalists

Journalists in Uganda are frequently the victims of abuse by security forces. In 2014, the Human Rights Network for Journalists recorded 124 violations against journalists, including attacks by police forces.¹⁴⁴ The media is often viewed as partisan, and several media houses are owned partially or in full by the government or politicians. This becomes increasingly apparent in election cycles as censorship increases.

142 Interview with Ugandan HRD in August 2015 in Kampala

143 Interview with Ugandan HRD in June 2015 in Kampala

144 Human Rights Network for Journalists (HRNJ), “Press Freedom Index Report 2014” <https://www.hrnjuganda.org/reports/Press%20Freedom%20Index%20Report%202014.pdf>

Thus far in the election period, journalists have been the most impacted within the HRD community. Broadcasts or articles touching upon sensitive issues, or providing a platform for the opposition, place journalists at risk.

On July 21, 2015, three journalists in Jinja were suspended after hosting Kizza Besigye for a radio interview.¹⁴⁵ The same day in Gulu, Payira Bonny from Jal Fresh Radio, was arrested along with three of his talk show panelists for using language that allegedly insulted President Yoweri Museveni. Just weeks later in early August, Eshato Publications Limited was forced to remove a congratulatory message to Amama Mbabazi and two individuals were arrested for overseeing its sale.¹⁴⁶

Surveillance and Harassment

In the 2011 elections, HRDs reported Ugandan security forces followed them between their offices and homes on several occasions.¹⁴⁷ While none believe they have been followed thus far in the current election period, several NGOs suspect their phone calls are being monitored. One NGO reported a suspicious incident where individuals claiming to be the local police came to their organization, attempting to find out information such as the organization's donors, partners and program of work.¹⁴⁸ HRDs working on sensitive issues such as security, police brutality, media freedom, nomination of candidates, or corruption fear monitoring and

surveillance during elections.

Human rights defenders also expressed concern over digital surveillance. Documents leaked from Hacking Team showed correspondence starting from April 2015 with a broker seeking to purchase Hacking Team malware Remote Control System for the Office of the President.¹⁴⁹

Moreover, many HRDs interviewed during the course of this research expressed fears over the Crime Preventers, a youth group which Ugandan police and security forces have trained. The force is largely made up of young men who are being trained in "*ideological orientation, skills at arms (stripping and assembling of an AK-47), martial arts basics as well as military foot drills,*" rather than traditional community policing areas.¹⁵⁰ HRDs fear that given the targeting of civil society by armed groups that has taken place during past elections and allegations of torture committed by the Crime Preventers, they may be vulnerable to similar attacks in the near future.¹⁵¹

145 HRNJ "Blatant abuse of media freedoms by State agencies threatens the watchdog role of the media ahead of the 2016 general elections in Uganda. Perpetrators must be brought to book", 26 July 2015, <https://hrnjuganda.wordpress.com/2015/07/26/blatant-abuse-of-media-freedoms-by-state-agencies-threatens-the-watchdog-role-of-the-media-ahead-of-the-2016-general-elections-in-uganda-perpetrators-must-be-brought-to-book-said-hrnj-ugand/>

146 HRNJ, "State House Orders Journalist to Delete Mbabazi's Congratulatory Message From Magazine and Apologize", 5 August 2015, <https://hrnjuganda.wordpress.com/2015/08/05/hrnj-uganda-alert-state-house-orders-journalist-to-delete-mbabazis-congratulatory-message-from-magazine-and-apologize/>

147 Ibid.

148 Interview with Ugandan HRD in June 2015 in Kampala

149 The Independent, 'Museveni opponents in trouble', 3 August 2015, <http://www.independent.co.ug/cover-story/10483-museveni-opponents-in-trouble>

150 National Crime Preventers Forum (NCPF). Background. <http://ncpfug.com/>

151 Interview with Ugandan HRDs between June-August 2015 in Kampala; African Centre for Treatment and Rehabilitation of Torture Victims, "Bi-Annual Narrative Report" August 2015

IX. Conclusion

In the East and Horn of Africa, elections have often been the trigger of increased insecurity, which have had a severe impact on the work of human rights defenders. The targeting of HRDs are often deliberate attempts to silence critical voices during highly sensitive periods.

Over the past decade, there has been an increase in the implementation of legal mechanisms aimed at restricting the space of civil society, and nearly all of the countries researched for this report have obstructive laws limiting the press, NGOs and public gatherings. Most of these laws were passed in advance of election periods and have effectively been used to target and impede the legitimate work of HRDs. Efforts must be made to pressure states to amend or repeal such legal mechanisms that inhibit basic civil liberties and human rights.

In addition to the use of legal means, direct targeting of HRDs has been significant. Judicial harassment, arbitrary arrests, detention, and torture are frequently used by security forces in each of the countries examined to intimidate and attack HRDs. Governments also employ physical and digital surveillance to monitor and disrupt the work of civil society. In both Burundi and Ethiopia, these measures have been so severe that the bulk of HRDs that were actively participating in the election process were forced into exile.

While the trends detailed in this report have been steadily developing over the past decade, with a noticeable intensification of repression over the course of the last few years, adequate planning and support for civil society's involvement in elections continues to be insufficient. Many of the multilateral organizations and INGOs that provide election related programming for HRDs do not start their activities early enough. Election related targeting normally begins a year in advance of the polls themselves, and yet many of the INGOs and multilateral organizations interviewed only began their activities and trainings within a few months prior to the elections.

With the upcoming elections in Tanzania at the end of 2015, Uganda in 2016, and Rwanda and Kenya in 2017, lessons must be drawn from the countries examined in this report to adequately support human rights defenders working in the context of elections. If the patterns outlined in this report are allowed to continue with impunity, the operating space for human rights defenders in the sub-region is highly likely to shrink further. The efforts of national coalitions of human rights defenders to hold their governments to account, and articulate the concerns of their fellow citizens, will be further diminished, if not completely eliminated.

EHAHRDP appeals to the governments of Sudan, Ethiopia, Burundi and Uganda to acknowledge and respect the value of the work of human rights defenders. EHAHRDP also strongly urges the government of Uganda to take steps to enable human rights defenders to engage in meaningful dialogue with state authorities in the upcoming 2016 election.

X. Recommendations

To human rights defenders:

- *Invest* in personal and organizational security by developing and implementing a security management plan, which addresses not only physical security but also digital security;
- *Carefully consider* when taking on issues outside of the organization's mandate that could endanger individual or organizational abilities to function and work effectively;
- *Participate* in the development of comprehensive support networks, including coalitions capable of coordinating support for HRDs at risk during election periods.

To the governments of Sudan, Ethiopia, Burundi and Uganda:

- *Immediately take steps* to ensure that human rights defenders and all members of civil society are allowed to conduct public assemblies, form and operate associations, and exercise their right to freedom of expression in accordance with national laws, as well as regional and international human rights standards;
- *Immediately take steps* to ensure that all state agencies and all branches of the security apparatus cease all intimidation, harassment and attacks against human rights defenders;
- *Ensure* transparent and thorough investigations into all reported threats or attacks against human rights defenders, and commit to hold perpetrators of such threats or attacks accountable in accordance with national, regional and international legal standards.

To Donors and Development Partners:

- *Anticipate* the need and have funds available well in advance of elections for training and protection support of human rights defenders, with a particular focus

on strengthening national human rights defenders coalitions;

- *Coordinate* support efforts to provide training and protection assistance to human rights defenders;
- *Develop* trainings on human rights monitoring and documentation, physical and digital security, and strategic advocacy and litigation;
- *Adopt* legislation making export of cyber weapons conditional on strong human rights provisions. Assessment criteria should also take into consideration the human rights record of the end user of the technology, the potential for the technology to be used in a manner not compliant with international human rights standards, and the weakness or absence of an appropriate legal framework to regulate the use of the technology by the end user.

To the African Union:

- *Continue* to send African Union Election Observation Missions (AUEOM) to examine electoral processes taking place, while paying particular attention to the impact of elections on civil society and its ability to engage in human rights work during these periods;
- *Encourage* states to ratify and enforce the African Charter on Democracy, Elections and Governance adopted in 2007;
- *Continue and expand efforts* to send human rights observers to countries during their electoral periods with means to document and denounce human rights violations taking place, including against human rights defenders.

To the European Union Mission, and other European country missions:

- *Ensure* that a robust and effective local implementation strategy for the European Union Guidelines on Human Rights Defenders is in place in countries with upcoming elections.

To United Nations Human Rights Council and its member states:

- *Immediately condemn* abuses against HRDs during election periods;
- *Recognizing* the particular risk for human rights defenders during elections periods, take measures to ensure greater participation of civil society groups and human rights defenders and ensure transparent and representative elections in Africa.

Sudan recommendations

To the Sudanese Government:

- *Repeal or amend* the National Security Act (2010), Press and Publications Act (2009), Organization of Humanitarian and Voluntary Work Act (2006) and make amendments to Article 151 so that they adhere to regional and international human rights standards.

To the International Community:

- *Actively monitor* the situation of human rights defenders and condemn abuses perpetrated by the Sudanese government against human rights defenders.

Ethiopia recommendations

To the Ethiopian Government:

- *Immediately rescind* all charges against and release human rights defenders and journalists in detention;
- *Repeal or significantly amend* the 2009 Anti-Terrorism Proclamation and 2009 Charities and Societies Proclamation so that they adhere to regional and international legal standards

Burundi recommendations

To the Burundian Government:

- *Pass* the amended Press Law in accordance with the judgment of the East African Court of Justice;
- *Repeal or amend* the Public Gatherings Law so that it adheres to regional and international legal standards and protects freedom of assembly;
- *Create* an enabling environment for HRDs to return and feel secure to conduct human rights work.

To the Office of the High Commissioner for Human Rights in Burundi:

- *Regularly and publicly report* on human rights violations and ensure that human rights abuses are being monitored and documented.

Uganda recommendations

To the Ugandan Government:

- *Amend* the Public Order Management Act and ensure that it does not limit freedom of assembly;
- *Continue* to debate the NGO Bill in parliament and ensure that the NGO Bill respects national, regional and international norms regarding freedom of association;
- *Cease* the harassment of journalists and HRDs being targeted in pre-election period and hold those responsible accountable;
- *Ensure* transparent and thorough investigations into all reported threats or attacks against human rights defenders, and commit to hold perpetrators of such threats or attacks accountable in accordance with national, regional, and international legal standards.

To the International Community:

- *Provide* support to the national coalition of human rights defenders to improve their protection and security responses in advance of the 2016 elections.

The East and Horn of Africa Human Rights Defenders Project (EHAHRDP) seeks to strengthen the work of human rights defenders throughout the sub-region by reducing their vulnerability to the risk of persecution and by enhancing their capacity to effectively defend human rights.

EHAHRDP is the secretariat of EHAHRD-Net, a network of over 75 human rights organisations in the eleven countries of the sub-region: Burundi, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Somalia (together with Somaliland), South Sudan, Sudan, Tanzania and Uganda.



East and Horn of Africa Human Rights Defenders Project
Human Rights House, Plot 1853, Lulume Rd., Nsambya
P.O. Box 70356, Kampala, Uganda

Phone: +256-393-265-820/1/2/3/4

Email: program@defenddefenders.org, executive@defenddefenders.org

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



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