

"TO THEM, WE'RE NOT EVEN HUMAN"

Marginalised Human Rights Defenders in
Uganda, Kenya, and Tanzania

Executive Summary
and Key Recommendations



DEFENDDEFENDERS

East and Horn of Africa Human Rights Defenders Project

Executive Summary

While all human rights defenders (HRDs) in the East and Horn of Africa sub-region face significant challenges in their work, some are marginalised due to their geographical location, cultural identity, gender, or sexual orientation, in addition to their work. In order to better understand and address this marginalisation, this report focuses on indigenous minorities, women human rights defenders (WHRDs), and lesbian, gay, bisexual, transgender, and other sexual minority (LGBT+) HRDs. While challenges related to these groups are ubiquitous across the sub-region, this report will focus entirely on Uganda, Kenya, and Tanzania, specifically as the three countries share considerable historical, social, and legal similarities. The historical background, relevant legal and policy framework, challenges, and needs of these HRDs are examined in order to highlight their vulnerability, while also presenting recommendations to help mitigate and address these issues.

Despite commitments at the international level, the three governments have disregarded their obligations or employed misleading definitions of the already problematic "indigenous" label in national legislation to dispossess peoples of their customary right to land that is integral to their cultural and spiritual heritage. This has created significant legal gaps and a lack of access to effective remedies for HRDs working with these communities, often in geographically isolated and economically disenfranchised regions. In Western Uganda, several indigenous pastoralist and hunter-gatherer groups, notably the Batwa, have been forcibly evicted from their traditional homes due to the gazetting of national parks, leading to perpetual landlessness, lack of political representation, and reduced access to human rights mechanisms. Indigenous peoples in Kenya's isolated Turkana region have similarly been denied compensation for their eviction from customary land after the discovery of fossil fuel deposits – their attempts at redress have been stifled by both state and private sector actors. Conversely, in the face of inadequate legislation and policies governing indigenous issues, the Maasai of Northern Tanzania have turned to supranational courts for justice after several communities were violently evicted from their homes to facilitate tourism.

"We are losing our heritage and our culture. Forcing us to lose our culture violates our basic human rights. If we are removed from our land, we are limited from accessing our ancestral spiritual areas. When we come out and speak about this, we become victims."

- Tanzanian human rights defender, August 2018

WHRDs face specific vulnerabilities linked to pervasive patriarchal norms and traditional gender roles ingrained into their respective societies, which present women as subservient to men and unfit for non-domestic labour. In addition to challenges experienced by most civil society actors, WHRDs face unique obstacles due to the sensitivity of their work, as well as unique risks such as gender-based violence and misinformation campaigns regarding their personal lives. In Uganda, WHRDs face an increasingly hostile legal environment with the adoption of several laws that have constrained their ability to work in a safe and enabling environment. In Kenya, WHRDs peacefully demonstrating for women's rights or access to justice are increasingly at risk of attacks, while gaps within the women's movement itself obstruct greater cooperation. In Tanzania, WHRDs work in the context of a rapidly shrinking civic space, with the government openly advocating for repressive traditional gender roles, which has raised concerns over funding and effectiveness. Some respondents for this portion of the research reported being marginalised within the human rights movement itself, as WHRDs are discouraged from leadership positions or



relegated to focusing only on women's issues. Virtually every respondent cited a pressing and urgent need for increased WHRD networking across the region to share best practices and establish joint advocacy strategies in the face of shared challenges, perhaps culminating in a multinational WHRD coalition.

LGBT+ HRDs face deep-rooted challenges related to harmful narratives against their work perpetuated by a range of actors, forcing them to balance increased visibility with justice systems that harshly penalise consensual same-sex relations or those believed to be promoting them. As a result, they are sometimes forced to conduct their work clandestinely, seriously limiting advocacy efforts or running the risk of having their events raided or shut down by the government. In Uganda, discourse surrounding draconian legislation led to the organisation of an LGBT+ rights movement, while also attracting consistent backlash from the government and other segments of society. Kenyan LGBT+ HRDs have made significant gains for their rights through organised strategic litigation and a strong push for decriminalisation, yet many still struggle with unconstrained freedom of expression and association. Conversely, Tanzania's shrinking civic space has seen the LGBT+ community increasingly targeted in national discourse, leading to increased attacks and arrests of HRDs. In all three countries, LGBT+ HRDs face negative stereotypes, hateful rhetoric from media and government officials, and threats to their personal safety, all of which culminate in unstable working environments and unaddressed needs related to psychosocial support.

"If you defend the rights of others you are putting yourself in line for confrontation with the government, they see you as being against the state. You become part of their focus, and sometimes you are killed."

- Ugandan human rights defender, February 2018

While all these marginalised groups face unique challenges, several trends became apparent through the course of this research, chief among them that marginalised HRDs face additional obstacles to enjoying freedoms of expression, association, and peaceful assembly in Uganda, Kenya, and Tanzania. Nearly all marginalised HRDs from the three thematic groups listed social isolation and a lack of access to mental health support services as major impediments to their personal well being, which has direct effects on their ability to conduct their human rights work effectively. Furthermore, nearly all groups lacked significant political representation at the local and national level, further obfuscating their activities and leaving them vulnerable to misinformation campaigns aimed at silencing their activism. Threats, physical attacks, and arbitrary arrests were common with all three groups, with respondents noting that a perceived lack of will on the part of authorities to properly address these injustices led them to self-censor.

Many HRDs interviewed for this report noted that their marginalisation occurred not only within their families and communities, but sometimes also from broader civil society, creating harmful competition over funding and perpetuating a cycle of isolation and a lack of capacity. The human rights movement in the East and Horn of Africa sub-region cannot progress without acknowledging and addressing the needs of its most vulnerable defenders, and only by deconstructing internal divisions can civil society present an effective and unified front to combat human rights violations.

The report is organised thematically, and contains individual country case studies along with thematic recommendations to governments and stakeholders. These findings are the result of interviews with 161 HRDs in 11 cities, making every effort to verify information with multiple sources to ensure accuracy.

"We have this beautiful new Constitution, and now it is time for us to test it, and the petitions in the Supreme Court to decriminalise homosexuality will allow us to see whether this document actually holds itself up."

- Kenyan human rights defender, September 2018



Key Recommendations

PART 1 – INDIGENOUS MINORITY HUMAN RIGHTS DEFENDERS

To the governments of Uganda, Kenya, and Tanzania:

- Respect and promote the rights of indigenous peoples as set out in the United Nations Declaration on the Rights of Indigenous Peoples and international legal instruments to which they are parties, including the International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ESCR), as well the UN Guiding Principles on Business and Human Rights;
- Ratify and promote the Indigenous and Tribal Peoples Convention (1989);
- Implement relevant decisions and recommendations of UN human rights bodies and mechanisms, including the special procedures set up by the Human Rights Council and UN treaty monitoring bodies; and
- Extend a standing invitation to all UN special procedures and regional mechanisms to visit your countries.

To indigenous communities and human rights defenders:

- Appoint or elect community councils, and where possible, duly register these as community organisations so as to better facilitate advocacy and legal strategies. Ideally, these councils would include adequate representation from women and other marginalised groups within the community.

PART 2 – WOMEN HUMAN RIGHTS DEFENDERS

To the governments of Uganda, Kenya, and Tanzania:

- Ensure that violations against women human rights defenders committed by state and non-state actors are promptly and impartially investigated and that those responsible are held accountable;
- Recognise and acknowledge the crucial role played by women human rights defenders as an initial step towards their protection;
- Adopt national legislation to protect human rights defenders, including women human rights defenders, to ensure they work in a safe environment free from attacks, reprisals, and unreasonable restrictions;
- Ensure that victims of sexual violence are attended to by personnel who are qualified from a gender perspective and trained in interacting with victims of such violence and responding to their specific situation and needs. Victims must be consulted during each step of the process;
- Strengthen state institutions to ensure protection for women and girls; and
- Ensure that legal provisions on women's rights are implemented and upheld in national courts, and that all women victims of violations have equal and affordable access to justice mechanisms.



To women human rights defenders:

- Actively seek collaboration with other women's rights initiatives by immediately establishing a cross-border women human rights defender coalition for the sub-region, ensuring the inclusion of grassroots and rural activists, as a platform to share best practices and conduct joint advocacy at the regional and international level; and
- Develop simplified ways to articulate the importance of women's rights for all members of society, which can resonate with different women groups in the country.

PART 3 – LGBT+ HUMAN RIGHTS DEFENDERS

To the governments of Uganda, Kenya, and Tanzania:

- Desist from all public expressions of animosity, hatred, incitement to hatred, discrimination or violence, and negative stereotyping or scapegoating of the LGBT+ community;
- End intimidation and harassment of LGBT+ human rights defenders, and respect their right to free expression;
- Stop impunity for hate crimes, violence against LGBT+ human rights defenders, and sensitise state authorities to respect the rights of LGBT+ people based on the principle of non-discrimination;
- Prioritise mental health, including of LGBT+ human rights defenders, and ensure public access to psychosocial support to address problems of burnout, depression, and anxiety amongst human rights defenders in a more systematic manner;
- Engage with the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (SOGI), and extend an official invitation to visit your countries; and
- Ahead of, and during the 41st session of the UN Human Rights Council, in June-July 2019, refrain from opposing the renewal of the mandate of the Independent Expert on SOGI so he can continue his work to tackle violence and discrimination committed against LGBT+ persons.

To LGBT+ human rights defenders:

- Prioritise self-care to address mental health challenges, and seek out psychosocial support where available;
- Collaborate with regional and international LGBT+ organisations to identify synergies and share best practices;
- Enhance cooperation with National Human Rights Institutions;
- Organisations and human rights defenders should share information and build capacities of grassroots and rural LGBT+ organisations and human rights defenders;
- Human rights defenders in mainland Tanzania should consistently engage with defenders in Zanzibar, especially with queer women, sex workers, and transgender people; and
- Elevate the voices of lesbian, bisexual, queer women, and transgender human rights defenders.



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

DefendDefenders serves as the secretariat of the East and Horn of Africa Human Rights Defenders Network, which represents hundreds of members consisting of individual HRDs, human rights organisations, and national coalitions that envision a sub-region in which the human rights of every citizen as stipulated in the Universal Declaration of Human Rights are respected and upheld.

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