

# Protecting Human Rights Defenders in The East Africa Community

*“Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international level.”*

(Article 1 of the UN Declaration on Human Rights Defenders, March 8, 1999)

## Briefing Paper

***Within the framework of the East African Community’s (EAC) Annual Conference on Good Governance, Avocats sans Frontières (ASF) and the East Africa Law Society (EALS) call upon the EAC’s authorities, Member States and National Human Rights Institutions (NHRIs) to concretise their commitments to protect HRDs in the EAC region and take concrete actions to ensure the realisation of their human rights.***

## Introduction

Human Rights Defenders (HRDs) are ordinary people taking extraordinary risks. Whether they are members of civil society organisations, community leaders, paralegals, social workers, media workers, volunteers or lawyers, HRDs share one common objective: they act, individually or with others, to promote and/or protect human rights.<sup>1</sup>

Through their actions, HRDs build bridges between vulnerable people who are prevented from accessing and enjoying their basic human rights, and State authorities who had promised, through national and international engagements, to ensure the respect, protection and fulfilment of these rights. These defenders ensure that society’s most marginalised voices are heard, providing people with information on how to best defend their interests, investigating sensitive issues that affect their rights’ realisation, and exerting pressure to turn governments’ promises into concrete and sustainable actions.

Due to the nature of their agenda, HRDs are often confronted with attempts to limit their capacity to defend and promote human rights. These attempts take various forms: physical threats, administrative or judicial harassment, criminal charges, and in some instances violent crimes (such as beating, torture or killing). The security of these defenders is inherently linked to the security of their communities, and protecting them should be part of a holistic approach aiming to strengthen the Rule of Law, and to guarantee the protection of fundamental human rights through access to independent and impartial justice.

The present paper examines the main challenges faced by HRDs in accomplishing their work, and proposes concrete actions and solutions designed to bridge the gap between the protection issues confronted by HRDs on a daily basis, and the national and international legal protection frameworks guaranteeing their basic rights.

<sup>1</sup> Most commonly used definition referring to the wording of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, General Assembly resolution 53/144 (A/RES/53/144), 8 March 1999, commonly known as the UN Declaration on Human Rights Defenders.

## Challenges of the shrinking space for HRDs

### 1) Threats and violence against HRDs

HRDs generally consider threats and attacks as an “occupational hazard”. Threats received by HRDs represent by far the most common protection challenge, and many defenders consider them an almost routine consequence of their work. In all contexts, threats are seen as a direct response to public denunciation of human rights violations.

The lines between political and human rights agendas in fractured political landscapes are often blurred. There is dangerous confusion between civil society activism and political action when issues addressed by HRDs are also those used by the opposition for political purpose. Although the HRDs’ rights agenda is not political, the public denunciation of human rights violations can still feel threatening to interests close to or in power. Even if the HRD entered into the political realm, citizen participation in public debates is an essential component of democracy and should be respected by all actors.

Although the vast majority of threats to HRDs are not carried out, some are, and with extreme violence; a significant number of deaths of HRDs in the EAC region have occurred in the past decade.

#### Kenya: Abduction and physical assault of Ms. Lydia Mukami

Ms. Mukami is the chairperson of Mwea Foundation, an organisation fighting for the socio-economic rights of Mwea rice farmers. As part of their actions to contribute to the realisation and justiciability of the Mwea fundamental rights, the Foundation filed a petition to the Supreme Court on November 1, 2012 against the National Irrigation Board, Kenya’s Attorney General and the Ministry of Land. On June 1, 2013, unidentified men kidnapped and physically assaulted Ms. Mukami for several hours before abandoning her in the bush. During the attack, the two men interrogated her on her role in the court case pending before the Supreme Court. This attack is the concretisation of numerous acts of intimidation against members of the Mwea Foundation in response to their peaceful and lawful demands.

#### Tanzania: Murder of Mr. Maurice Mjomba

Maurice Mjomba was murdered by strangulation on 30 July 2012. He worked as a HRD with the Center for Human Rights Promotion (CHRP) and was involved with several regional human rights initiatives. He worked on combating discrimination against people infected with HIV/AIDS and was affiliated with various regional coalitions dealing with sexual health awareness for sexual minorities. Although Mr. Mjomba’s cause remains a source of social tension in the region, his murder due to his work as a HRD has led to increased hostility, making it all the more difficult to address his work within the legal arena.

The primary responsibility for HRDs’ protection rests with the States and their governments. This obligation has been officially recognised in the UN declaration on HRDs in article 2 (and further expressed in articles 9 and 12). Authorities must ensure that all crimes against HRDs are investigated efficiently, pursued by the judiciary, the perpetrators must be punished, and protective means must be implemented in practice.

At the same time, NHRIs can assist and eventually challenge their governments to play a substantive role in protecting HRDs. The UN Special Rapporteur on HRDs has recommended on numerous occasions that such institutions establish a focal point for HRDs with the responsibility of ensuring their protection through a wide range of measures and interventions (such as complaint mechanisms, advocacy and public mobilisation, visits to detainees, provision of legal aid and mediation, etc.).<sup>2</sup>

### 2) Impunity for the crimes against HRDs

Impunity appears to be, in some contexts, institutionalised for those who harass, attack or kill HRDs. This is a major obstacle for ceasing such violence. There are many intricately linked factors facilitating this impunity and impeding the HRDs’ access to justice in the region.

HRDs are sometimes reluctant to resort to legal action as a protective measure and/or to seek justice and reparation after acts of intimidation. This is particularly true for the abuses against HRDs that are not highly publicised by civil societies or by the interna-

<sup>2</sup> A/HRC/22/47 - Report of the Special Rapporteur on the situation of human rights defenders Margaret Sekaggya, United Nations Human Rights Council, 16 January 2013.

tional community. The lack of trust and confidence of some HRDs in the judicial system and its independence contribute to their isolation, and add to their fear of being further persecuted by taking legal action against their aggressor. In certain cases however, HRDs have sought and obtained judicial protection of their rights. The recent case of Mr Samwel Mohochi in front of the East African Court of Justice is a clear example of courts protecting HRDs' rights, and this type of initiative should be strongly supported.

When HRDs decide to take legal protection measures, the response from the officials is often unsatisfactory. Investigations and prosecutions of well-known cases related to attacks against HRDs have yet to be acceptably carried out. The UN Human Rights Council recognised this rampant issue in a resolution adopted in March 2013, strongly call upon all States to "to fulfil the duty to end impunity for any such acts of intimidation or reprisals by bringing the perpetrators to justice and by providing an effective remedy for their victims."<sup>3</sup>

Finally, the lawyers able to work with the HRDs and defend their interests are in some contexts extremely reluctant to engage in such sensitive issues for fear of reprisals and political backlash. There are of course many extremely engaged lawyers within every law society of the region who carry out essential work and sometimes face detention as consequence of their engagement. However, while the UN Basic Principles on the Role of Lawyers call upon governments to ensure that lawyers "are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference"<sup>4</sup>, those involved in defending HRDs continue to require the close support and protection from their law societies or from international organisations active in the sector.

### **Tanzania: Murder of Mr. Daudi Mwangosi**

Mr. Daudi Mwangosi, a journalist for Channel 10 and chair of the Iringa Press Club, was killed by the police on September 2, 2012, while covering a demonstration of opposition party supporters, defying a police-imposed ban on political demonstrations, in Nyalolo village. Police denied any deliberate involvement in Mr. Mwangosi's death, claiming that he died from an object thrown by demonstrators. A commission to investigate his death was created and one police officer was charged with Mr. Mwangosi's death. Other officers allegedly involved in the crime have however not been charged, leaving doubts as to the thoroughness of the investigation and judicial proceedings.

### **Burundi: Assassination of Mr. Ernest Manirumva**

Mr. Ernest Manirumva, Vice-President of the Observatory for the fight against corruption and economic embezzlement (OLUCOME), was assassinated during the night of April 8-9, 2009. At the time of his killing, he was investigating sensitive cases, including allegations of police corruption and illegal weapon purchases, and it is believed that the crime could be linked to his professional activities. Four years after his death, the truth has yet to emerge due to apparent irregularities in the investigation and judicial procedures. While the OLUCOME is still involved in the on-going judicial proceedings, its members continue to be the target of death threats and intimidation.

### **3) Use of legislation and regulation to reduce HRDs ability to work**

Using their regulatory and legislative powers, State authorities have the ability to constrain HRDs' work through various types of policies affecting their activities' or their organisations' legality. Although it is important for HRDs to comply with basic laws and regulations in the course of their daily work, governments have used this approach to serve their own interests.

Regardless of the fields covered by such constraining provisions (NGO registration, criminal penalties, restrictions to fundamental freedoms, etc.), legislation affecting HRDs' activities and their implementation must be consistent with international human rights law, including the main regional and international human rights treaties, as well as specific international texts (such as the UN Declaration on HRDs or the Basic Principles of the Role of Lawyers).

#### **● Criminalisation of HRDs' activities**

An important factor causing HRDs' insecurity and instability arises from the politicisation and lack of independence of State institutions. As an attempt to indirectly obstruct their work, HRDs can face arrest, administrative or judicial harassment, and criminal charges.

As is often the case with lawyers, journalists are often identified with the topic on which they work or in which they specialise. Although these HRDs carry important responsibilities in discharging their functions, and must abide by a series of constraining rules (such as avoiding defamation, inciting illegal actions, or leaking classified or confidential information), judicial authorities should refrain from associating them with the crimes committed by their clients or contacts, and should carry out a thorough investigation

<sup>3</sup> A/HRC/22/L.13 - United Nations Human Rights Council Resolution on Human Rights Defenders (21 March 2013).

<sup>4</sup> Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August - 7 September 1990.

when doubts emerge on the legality of their actions. As the situation currently stands, serious doubts remain on the exact motive behind legal actions taken against HRDs.

### **Burundi: Mr. Hassan Ruvakuki's case**

Mr. Ruvakuki, a radio journalist, was arrested in November 2011 on terrorism charges, after interviewing Pierre Claver Kabirigi, who claimed to be the leader of a new rebel group. He was found guilty of "participating in terrorist attacks" with 13 other defendants and sentenced to life imprisonment. Mr. Ruvakuki was freed in March 2013 for medical reasons, but it remains unclear whether the release is permanent.

### **Rwanda: Umurabyo journalists**

In February 2011, Agnès Nkusi Uwimana and Saida-ti Mukakibibi, editor and deputy editor of the newspaper Umurabyo, were sentenced to, respectively, 17 and 7 years imprisonment for publishing articles criticising authorities. They both were found guilty of threatening state security, and Uwimana was also found guilty of defamation and spreading genocide ideology and divisionism.

### **Uganda: Twerwaheo Listeners Club – Fort Portal case**

In January 2013, in Fort Portal, Uganda, several members of Twerwaheo Listeners Club (TLC) were interrogated and detained by police in relation to a radio programme on which they aired allegations about corruption and land deals involving senior officials. They were charged with inciting violence and disseminating harmful propaganda. The arrests were the latest in a series of events of harassment of TLC's members.

This issue can be addressed through reinforcing measures designed to ensure judiciary and other State institutions' independence and, more precisely, to limit executive intrusions into the work and operations of these institutions. Despite constitutional guarantees, the judicial system continues to be perceived in many countries as an instrument of power and, through the influence of the executive, a way to exert pressure on those using human rights discourses for social change. When guarantees of independence are in place and strictly respected, judicial institutions can be extremely effective in protecting HRDs.

At the same time, the strict application of the rules preventing arbitrary detention and illegal deprivation of liberty should be guaranteed, and specific attention should be given to the cases of HRDs detained without fundamental judicial guarantees.

### **Uganda / Kenya: Mr. Mbugua Mureithi's case**

During the football World Cup finals in 2010, a terrorist bomb blast occurred in a famous pub in Kampala, several people died and many others were severely injured. Suspects of the attack were arrested in Kenya, handled over to the Ugandan authorities, and Mr. Mbugua was appointed by their families to represent them.

Upon arrival in Entebbe, he was arrested and all his belongings were confiscated. He was subjected to interrogation by Kenya and Uganda security offices and threatened to be charged with the same terrorism and murder offences that his clients. Mr. Mbugua protested that he was only involved in the case due to his professional duty as a lawyer. After being detained incommunicado, without any charges and without being able to consult a lawyer, he was finally escorted by the Uganda security offices into an aircraft flying to Nairobi, his personal belonging were handed back to him, and he was informed by the officers never to come back to Uganda.

### ● ***Adoption of laws and regulations limiting the rights and freedoms of HRDs***

An extremely wide range of basic human rights and freedoms provided under national, regional and international instruments must be guaranteed for HRDs to accomplish their work without external interference, pressure or hindrance. Among these rights are the following:

- Right to life and protection;
- Right to freedom from torture;
- Freedoms of expression and speech;
- Freedom of association and reunion;
- Freedom of beliefs and religion;
- Right to a fair trial and to an effective remedy;
- Right of access to information;
- Right of access to finance.

However, in an attempt to regulate the sector and avoid abusing certain freedoms, States sometimes resort to restrictive laws and regulations preventing the realisation of these rights. Analysing the impact of such laws and regulations, and eliminating the ones that impair HRDs' work, should be a priority for the Member States.



The NGO registration sector provides an illustration of this problem; while legislation is essential to regulate the work and structure of NGOs, some laws prevent them from carrying out their human rights-related work and/or securing funding for their activities and structure. In a growing number of cases, legislation fails to comply with the criteria of necessity provided by the African Charter on Human and People Rights that guarantee the right to freedom of association and freedom of assembly.

The State security sector and fight against terrorism is another source of excesses in this regard. The United Nations Human Rights Council expressed grave concerns that “in some instances, national security and counter-terrorism legislation and other measures, such as laws regulating civil society organizations, have been misused to target human rights defenders or have hindered their work and endangered their safety in a manner contrary to international law.”<sup>5</sup>

### **Uganda: NGO Registration Act**

The National Board of NGOs charged with approving new registrations and monitoring NGOs activities was created by the NGO Registration Act adopted in 1989. NGOs often face the threat of deregistration when dealing with sensitive issues in Uganda, such as rights of sexual minorities. Furthermore, activities of NGOs are strictly regulated – for example, the law requires that NGOs give seven days prior notice before making direct contact with people in any rural area of Uganda.

### **Rwanda: Legislation governing divisionism**

Laws No. 47/2001 on Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarianism and No. 18/2008 relating to the Punishment of the Crime of Genocide Ideology were adopted after the 1994 genocide. The objectives of these laws – promoting the unity of the country and condemning comments inciting hatred – are perfectly justifiable. However, their implementation is source of limitation for human rights, notably freedom of expression.

These laws provide for sanctions to be imposed on people for “divisionism”, “sectarianism” and “genocide ideology”, definitions which are vague and susceptible to manipulation and abuse. Rwandan authorities have used accusation of “divisionism” and “genocide ideology” to influence and in some cases prosecute HRDs whose opinions and analysis were in opposition to the government’s policies.

### **Tanzania: Press law**

Freedom of speech is guaranteed under the Tanzanian Constitution. However, several laws constitute important limitation to this fundamental right and, as a result, self-censorship is often practiced by journalists who fear being threatened or sued. The National Security Act provides for governmental control over the dissemination of information to the public, and publicly criticising the government is criminalised under the country’s libel legislation.

Press freedom was widely restricted prior the October 2010 elections. A new law was adopted, limiting access to information about expenses incurred by political parties and their candidates, making it difficult for media to submit political campaign funding to public scrutiny. In addition, threats by State officials to journalists were reported for those who negatively portrayed the government.

Concerns about the situation of HRDs on issues related to the right to freedom of association and the right to peaceful demonstration are also growing with the recent escalation in the number of arrests and attempts to prevent such demonstrations. In this regard, Ms. Reine Alapini-Gansou, AU Special Rapporteur on the Situation of HRDs in Africa, shared her concerns and observed in a recent report that HRDs continue to suffer restrictions at the hands of some State Parties to the African Charter. She “encourage(s) the exercise of the rights of human rights defenders to peaceful demonstration through the adoption of laws that are more compatible with the free exercise of the right of assembly and freedom of association.”<sup>6</sup>

### **Uganda: Anti-corruption activists arrested**

Nine anti-corruption activists were arrested on 4 February 2013 by the Ugandan police and detained at Wandegaya police station in Kampala for distributing anti-corruption materials at Makerere University on 4 February 2013. They were charged with “inciting violence”. These arrests took place in the framework of an increased repression against HRDs fighting corruption in Uganda.

### **Kenya: Arrest of Ms. Phyllis Omidio**

As member of the Center for Justice Governance and Environmental Action, Ms. Phyllis Omidio organised a peaceful demonstration in order to protest against EPZ Metal Refinery Ltd, a firm located in the village of Owino Uhuru (Mombasa) which does not respect regulations, leaking waste into the environment and causing severe illnesses in the local population. During the peaceful demonstration, she was arrested by the police and charged with “inciting violence”.

<sup>5</sup> A/HRC/22/L.13 - United Nations Human Rights Council Resolution on Human Rights Defenders (21 March 2013)

<sup>6</sup> Report on the Implementation of the Mandate of the Special Rapporteur on Human Rights Defenders in Africa of the African Commission on Human and Peoples’ rights, 52nd Ordinary Session, Yamoussoukro, 9 - 22 October 2012.

## Solutions based on the implementation of a regional protection legal framework

In all EAC Member States, legal frameworks, while imperfect, provide theoretical protection of fundamental human rights. Indeed, all of them have a constitution guaranteeing a wide range of human rights, and have ratified the main international treaties in the sector. However, while governments continue to ratify these treaties and adopt legislation ensuring the protection of human rights (including those of HRDs), their commitments must be reflected on the ground.

ASF and the EALS therefore invite the EAC and its Member States to adopt a series of actions aiming

to develop norms and practices favourable to creating a human rights environment that is more secure for and respectful of HRDs' rights and needs.

Alongside the development and provision of sustainable legal and physical protection for HRDs, it is equally important to promote and contribute to the development of a legal framework designed to provide specific protection for HRDs and the emergence of good practices in State institutions, promoting respect for the work of HRDs.

## Recommendations

HRDs are vital for efforts to promote and contribute to successful democratisation processes. Ensuring a safe and conducive environment for HRDs would positively impact the region on both the macro-and micro-levels.

ASF and the EALS call upon the EAC and Member States to comply with their obligation to protect HRDs within the following framework and, with the contribution and collaboration of the NHRIs, participate to the realisation of all human rights.

### ***East African Community***

The EAC is committed to promoting and protecting human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights, as provided for by article 6 of the Treaty for the Establishment of the EAC.

The EAC is also committed to adhering to the principles of democracy and the Rule of Law, as well as to the maintenance of universally accepted standards of human rights, as provided for by articles 6 and 7 of the Treaty for the Establishment of the EAC.

Accordingly, ASF and the EALS invite the Council of Ministers to express concerns about the situation of HRDs in the region and to adopt a recom-

mendation addressed to the Member States that calls for regionally concerted actions to reinforce the protection of HRDs through the following measures:

- The respect and domestication of the UN Declaration on HRDs, and support for the inclusion of this objective in the Second Plan of Action on Promotion and Protection of Human Rights in East Africa (2012-2015), together with the development and implementation of a regional strategy aimed at reinforcing and sensitising the human rights and political actors on the issue; and
- The establishment of a monitoring mechanism on the situation of HRDs in the EAC in order to ensure that Member States comply with regional and international human rights instruments and standards.

### ***Member States***

In accordance with their international obligations resulting from their ratification of international human rights treaties, the responsibility to protect HRDs rests with the States and the national mechanisms developed and implemented by them.

ASF and the EALS thus urge the Member States to:

- Guarantee the physical and psychological integrity of HRDs and ensure that they can carry out their work without hindrance, enabling them the full exercise of their fundamental freedoms;
- Thoroughly investigate all forms of threats and attacks against HRDs, and bring all perpetrators to justice;
- Adopt the necessary legal framework for the promotion and protection of HRDs, according to international instruments and standards, notably the UN Declaration on the Protection of HRDs; and
- Reinforce the National Human Rights Institutions' (NHRIs) mandate in the sector of the promotion and protection of HRDs, and provide them with sufficient funding and support.

### ***National Human Rights Institutions***

In conformity with their mandate to promote and protect human rights and their independent status,<sup>7</sup> and considering their key role in the protection of HRDs, ASF and the EALS encourage the NHRIs to take the following measures:

- Support the domestication of the UN Declaration on HRDs and the development of specific frameworks for the promotion and the protection of HRDs at regional and national levels;
- Establish a focal point for HRDs within the NHRI structure with the mandate to ensure their protection and monitor the national situation of HRDs in order to prevent or denounce abuses and violations to national, regional and international human rights instruments by State organs; and
- Organise sensitisation and capacity reinforcement programmes for domestic human rights and political actors on the issue.

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<sup>7</sup> Principles relating to the Status of National Institutions (The Paris Principles), adopted by United Nations General Assembly Resolution 48/134 of 20 December 1993.

# ASF and the EALS: A common commitment for the promotion of human rights and the rule of law

Engaged in the defence of human rights and the establishment of the Rule of Law, Avocats Sans Frontières (ASF - lawyers without borders) and the East Africa Law Society (EALS) decided to join efforts in a three years project, financed by the European Union, designed to support and protect lawyers and HRDs in East Africa and the African Great Lakes Regions

## AVOCATS SANS FRONTIERES

[www.asf.be](http://www.asf.be)

Created in Brussels in 1992, Avocats Sans Frontières (ASF - lawyers without borders) is an international NGO specialising in defending human rights and access to justice. From Kathmandu to Kinshasa, from Bogota to Tunis, its teams defend the victims of torture and prisoners held illegally, train local lawyers, magistrates and judges and ensure that the voices of the victims of international crimes are heard by the courts. Present in the Great Lakes region since 1996, ASF intervenes in certain judicial emblematic cases and also mobilises on behalf of lawyers at risk in the practice of their profession. ASF's programmes are centred on the themes of access to justice and the fight against impunity.



## EAST AFRICA LAW SOCIETY

[www.ealawsociety.org](http://www.ealawsociety.org)

THE EAST AFRICA LAW SOCIETY (EALS) is the umbrella regional Bar Association of the legal profession in East Africa. It is a dual membership organization that brings together the six national Law Societies of: the Burundi Bar Association, the Kigali Bar Association, the Law Society of Kenya, the Tanganyika Law Society, the Uganda Law Society and the Zanzibar Law Society; as well as their respective individual membership. The EALS works to promote the Observance of and adherence to the Rule of Law, Democracy and Good Governance; and to enhance the professional knowledge and skills of its membership. The EALS enjoys formal Observer Status with the East African Community.



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