

# **Strategic Session for Enhanced Rapid Response Support Mechanisms for Human Rights Defenders in West, East and Southern Africa**

Pretoria, South Africa, 27-28 March 2014

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® Strategic Session for Enhanced Rapid Response Support Mechanisms for Human Rights Defenders in West, East and Southern Africa

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International Commission of Jurists  
P.O. Box 91  
Rue des Bains 33  
Geneva  
Switzerland

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**Conference Partners:  
The International Commission of Jurist (ICJ) and the Open Society  
Foundations (OSF)**





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## **Foreword**

The sophistication with which state actors are taking actions that undermine the ability of independent human rights defenders (HRDs) in Africa and beyond to work safely and securely is reaching alarming proportions. The acts range from mundane to recondite and complex acts. Incidents of extra judicial killings, cancellation of travel documents, restrictions of freedom of movement, restrictions on freedom of assembly including all out prohibition of public gatherings, and prohibition of access to funding, imposition of requirements for centralized government approvals, use of tax laws and inspections that result in the forfeiture of funds, passing of laws further criminalizing individuals because of their real or perceived sexual orientation or gender identity and those who work to combat discrimination and persecution of gay, lesbian, transgender and intersex individuals, defamatory labeling of HRDs as “spies,” “unpatriotic,” “traitors,” “foreign agents”; and disproportionate criminal penalties for perceived breaches of the law, are some of the shocking developments on the continent.

In view of these developments and mindful of the needs to enhance protection of human right defenders, to share information about existing mechanisms for their protection and to develop new responses to the attacks they are facing, the International Commission of Jurists’ Africa Programme, the European Union and Open Society Foundations considered it appropriate to hold a reflection on Protection Strategies for HRDs in Africa.

At the session, participants explored the environment in which human rights defenders in Africa are working, the concept of safe spaces for the defense of human rights, practical approaches for strengthening networking and solidarity among human rights activists in the region with a view to establishing a robust rapid response mechanism, which could be triggered by HRDs in times of rule of law crisis and human rights abuse, and measures to be taken to ensure the establishment of a rapid response mechanism.

The end objective and outcome of the session was to develop a plan of action aiming to strengthen existing mechanisms for the protection of human rights defenders and to establish rapid response mechanisms that would react to protect human rights defenders at risk in the different regions and countries of southern, western and eastern Africa.

## **Introduction**

The Strategy Session for 'Enhanced Rapid Response Support Mechanisms for HRDs in West, East and Southern Africa' was held on 27 – 28 March 2014 at the Sheraton Hotel in Pretoria, South Africa. The International Commission of Jurists (ICJ) in partnership with the European Union, Open Society Foundations (OSF) convened the Strategic Session to enhance information sharing among human rights defenders from western, southern and eastern Africa and UN and regional protection mechanisms about their work and working environments and discussion on the establishment of regional Rapid Response Mechanisms for Human Rights Defenders.

The objective of the conference was to contribute to the establishment of a rapid response mechanism, which can be easily be triggered in-country and across countries in the event of human rights abuses or a breakdown in the rule of law.

In order to meet this objective, the Strategic Session was divided into three parts. The first, was comprised of presentations from the United Nations Special Rapporteur on the Situation of HRDs and the African Union Special Rapporteur on HRDs and ensuing discussion amongst participants; the second, was a lecture by the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association; and the during the third, participants held in-depth group discussions that focused on gaps in protection of human rights defenders at risk and recommendations to fill the identified protection gaps.



## **Abbreviations and Acronyms**

ACHPR	African Commission on Human and Peoples' Rights
AICHR	ASEAN Inter-governmental Commission on Human Rights
AU	African Union
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All forms of Racial Discrimination
CSO	Civil Society Organization
DRA	Department of Refugee Affairs
EU	European Union
HRDs	Human Rights Defenders
IACHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Commission of Jurists
ICT	Information and communication technology
IOM	International Organization for Migration
NGO	Non-Governmental Organization
NISS	National Intelligence and Security Services
OSF	Open Society Foundations
SADC	Southern African Development Community
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

## Opening Remarks

### **1. Mr. Arnold Tsunga - Director, Africa Regional Programme, International Commission of Jurists**

We gather today as human rights defenders (HRDs) from across Africa and beyond, to share, learn and exchange ideas on how to best advance our work within an ever changing context and environment.

HRDS have refused to dwell in the comfortable zones of life. They have pushed boundaries of state imposed limitations which are contrary to internationally and regionally enshrined rights. Theirs is a calling to make the world a better place, even if its costs them dearly.

Swaziland, one of the last absolute monarchys, continues to perfect the art of repression of HRDS. Those who attempt to peacefully question the management of public affairs by authorities, face arrest on spurious allegations. On March 18, Mr. Thulani Maseko a prominent human rights lawyer and columnist and Mr. Bheki Makhubu, editor of local paper Swaziland paper *The Nation*, were arrested and detained on contempt of court charges. Maseko and Makhubu were detained and indicted behind closed doors, sadly with the direct involvement of the Chief Justice. The contempt of court charges were brought following the publication of an article written by Thulani Maseko in *The Nation* questioning the judiciary's conduct in another case of contempt of court and obstruction of justice brought by members of the judiciary against a government vehicle inspector.

On 9 March 2014, armed assailants believed to belong to a local militia raided the offices of the human rights organisation AGAPE Hauts-Plateaux in the Democratic Republic of Congo, tortured human rights defenders Mr Alexis Nganire and Mr. David Muhorana and torched a substantial amount of the organisation's sensitive documents. AGAPE Hauts-Plateaux is a human rights organisation based in the Minembwe highlands, in South Kivu province, which advocates for the demobilisation and welfare of child soldiers who are exploited by various armed groups operating in the region.

There is proliferation of laws that undermine collective platforms for HRDs in Africa. Uganda, is perfecting its arsenal aimed at restricting fundamental freedoms and human rights through the Anti-Homosexuality Act, Public Order Management Act and proposed NGO Registration Act. In Ethiopia, HRDs are grappling with the highly restrictive Proclamation on Charities and Societies Act: among other restrictions, the Proclamation forbids civil society organizations that receive more than 10% of their funding from foreign donors, from promoting a range of rights including children's rights, disability rights, and gender equality. In Kenya, proposed amendments to the Public Benefits Organisation (PBO) Act are of concern as they could impact on operations of HRDs. On March 12, 2014,

Kenya's Minister for Security essentially declared human rights work to be "subversive" in response to a court case filed by InformAction's Lucy Hannan, that seeks reasons for the delay in renewing her work permit.

The ICJ has seen an increase in attacks on HRDs in special categories such as human rights defenders working to promote and defend the rights of LGBTI persons; HRDs in Community-Based Organizations (CBOs) focusing on service delivery at the local level; HRDs involved in efforts to protect natural resources and the environment as well as those advocating for greater realization of ESC rights.

Human Rights Defenders are being targeted because they are effectively defending the rights of others.

We should explore ideas for the use of new tools for greater protection of human rights defenders, including the use of social media and the establishment of a rapid response mechanism. This is why I am so happy that in our midst we have the Special Rapporteurs on Human Rights Defenders from African Commission on Human and Peoples' Rights, Mrs. Reine Alapini Gansou; the United Nations Special Rapporteur on HRDs, Mrs. Margaret Sekaggya; the United Nations Special Rapportuer on Freedom of Association and Assembly, Mr Maina Kiai; the Chairperson of the Pan Africa Human Rights Defenders Network, Mr Hassan Shire; representatives from the human rights defender networks from the African sub-regions; my dear friend and wonderful human being Mary Lawlor, Director of Frontline, and human rights defenders from Malawi, Zambia, Namibia, Ghana, Nigeria, Kenya, Uganda, Lesotho, Botswana, Tanzania, Zimbabwe, Senegal, Mozambique, South Africa, and Ireland. We are also holding the meeting in a country that has distinguished itself as host for HRDs facing persecution, the Republic of South Africa.

I thank you for honouring this invitation from the ICJ, in partnership with OSF and the EU, a true testament of your commitment and interest in making this world a safer space for HRDS in distress within and without our borders and regions.

## **2. Hon. Justice Moses Chinhengo - Commissioner, International Commission of Jurists.**

Hon. Justice Moses Chinhengo welcomed all participants to the Strategic Session. He then highlighted the work of the ICJ pertaining to the judiciary and the Rule of Law, emphasizing the need for independent judiciaries and strong legal systems.

Justice Chinhengo identified one of the main difficulties faced by HRDs on the continent as the constant fight against systems and not individuals. He also indicated how focus regarding human rights needed to broaden from civil and political rights to include economic, social and cultural rights. In considering the environment in which human rights defenders in southern, western and eastern

Africa are working, Justice Chinhengo noted setbacks on the continent and that the onus was now on HRDs to protect the peoples of the continent.

### **3. Ms. Louise Olivier - Programme Manager, Human Rights Initiative, Open Society Foundations.**

Ms. Louise Olivier welcomed all participants and particularly those HRDs attending from countries outside South Africa. She noted that engagement of South African HRDS with HRDs from other countries had been going on for a long time and would continue. Ms. Olivier then described how the concept and collaboration with the ICJ came about. She also emphasized that the collaboration (in both concept and practice), was a long-term project.

## **Panel Presentations and Discussions**

### **The Legal and Operational Environment for HRDs in Africa: UN and AU Perspectives**

#### **Ms. Margaret Sekaggya - United Nations Special Rapporteur on the Situation of Human Rights Defenders**

There is no specific definition of human rights defenders (HRDs): the Declaration on Human Rights Defenders refers to individuals, groups, associations contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals. Nonetheless, HRDs play important roles in society by flagging violations and disseminating information on them, providing support to victims of violations, providing human rights education and training. They also advocate for better Governance, and human rights adherence, among many other roles. Often time, the biggest perpetrator of violations against HRDs is the state; however, the state can also be the HRDs' biggest counterpart.

### **Legal Environment**

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 (UN Declaration on Human Rights Defenders), elaborates on the rights, responsibilities and roles of human rights defenders and the duties that states have towards fulfilling these rights. The Declaration is addressed to both states and human rights defenders, and is the foremost international instrument that is very specific on the rights of defenders. It however is not legally binding. That does not make it redundant as it contains principles that are contained in legally binding instruments such as the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) among others. In

addition as it was adopted by the UN General Assembly it represents a strong commitment by States to respect, promote and fulfill the rights of defenders.

### **Importance of the Declaration**

The Declaration is an acknowledgment of the important role of HRDs in Society; the requirement for protection owing to the nature of their work; and the need for States to implement several measures to facilitate a good working environment for HRDs. Articles 2, 9 and 12 of the Declaration highlight the right of HRDs to be protected and the duty of the State to protect them. The same right is also stated under Art. 2 of the Universal Declaration on Human Rights (UDHR), Art. 2 of the ICCPR, Art. 3 of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the European Convention on Human Rights, the African Charter on Human and People's Rights, and the American Convention on Human Rights. These rights are not only protected at the international level but also at regional level.

Rights such as the Freedom of Assembly and the Freedom of Association are very pertinent to the work of HRDs. These are protected under various international legal instruments such as the ICCPR, the ICESCR, the International Convention on the Elimination of All forms of Racial Discrimination (CERD), and the Arab Charter on Human Rights. The respect of these rights facilitates the observance of other rights by allowing for the discussion of human rights ideas and principles, advocating for their acceptance, and by providing criticism to governmental bodies on how to improve their work. These rights are however not absolute but any restrictions to them must be recognized under the law.

Freedom of Opinion and Expression is another important right, critical to the work of HRDs. The right is protected under the international Bill of Rights, and most regional Charters. Freedom of Opinion and Expression is also protected in various Constitutions, and has been highlighted as a cornerstone upon which the very existence of a democratic society rests.<sup>1</sup>

### **Resolutions for the protection of HRDs**

Resolutions like declarations are non-binding. Resolutions are usually agreed on by consensus of member states, and this implies a commitment by States to whatever is contained in the resolutions. They however still form part of "soft law". Nonetheless, "soft law" can be the basis upon which legally binding instruments are crafted. The Declaration on HRDs was adopted by Resolution 53/144 while Resolutions 7/8 and 16/5 renewed the mandate of the UN Special Rapporteur on Human Rights Defenders. Resolution 22/6 on the protection of HRDs was adopted by the Human Rights Council urging states to recognize the role HRDs play in society, and put in place measures to ensure their protection. The General Assembly also adopted a resolution on the protection of women HRDs highlighting the gravity of the special risks they face and the need to be protected in their work.

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<sup>1</sup> Inter American Court H.R Advisory opinion OC-5/85 Nov 18 1985, Commentary on the Declaration of Defenders.

## **Legal restrictions and common violations of the rights of HRDs**

Although the majority of the rights of HRDs stipulated in the Declaration on defenders are protected under legally binding instruments and some as earlier stated are also enshrined in national constitutions, there are still legal restrictions or barriers to the enjoyment of these rights exist.

**Non Absolute rights:** Some States have taken advantage of the fact that some rights are not absolute and have enacted laws that curtail these rights. These laws allow for the de-registration of NGOs, restrictions on funding for NGOs, and in some cases criminal sanctions for unregistered associations. The laws also impose requirements on public assemblies such as seeking permission from authorities, limitations in numbers of these gatherings and in some cases the content discussed at the gatherings. Many states have such laws including Uganda and Ethiopia.

**Security related legislation:** Anti terrorism laws and anti sedition laws have led to the stigmatization of HRDs who have been labeled as terrorists, opponents to Government and saboteurs of development. These laws are usually ambiguous and open to interpretation.

**Criminalization and prosecution of HRDs' activities:** HRDs in most countries suffer legal action including arrests, illegal detention and prosecution on false charges. Censorship and closure of media outlets, laws restricting printing and publication of important human rights material, are also common.

**Non existence of specific laws on the protection of HRDs:** Many countries have not yet domesticated the Declaration on Defenders, or enacted any law specific to the rights of HRDs. Having such a law facilitates adjudication on matters particular to HRDs.

## **Operating environment for HRDs**

The mandate of the UN Special Rapporteur on HRDs includes the presentation of thematic and country visit reports to the Human Rights Council and the General Assembly. These reports are based on observations of trends in the environment within which HRDs work. These trends have revealed that despite the efforts to raise awareness around the Declaration on Defenders, there is still insufficient understanding of the Declaration, the rights, roles and responsibilities and corresponding duties of states. Domesticating the Declaration is very important in raising awareness and consequently I have recommended as such globally and to several specific countries that I have visited. Due to the very limited understanding of the Declaration by State officials, the public and the HRDs themselves, there have been several violations. These violations include:

## **Shrinking space for HRDs**

This has been achieved either through legislation, administrative decisions and policies, or operational restrictions. These strategies are employed by States

trying to silence HRDs and reduce the amount of influence they can have in Society.

### **Threats, intimidation and harassment**

Many HRDs have faced physical and psychological threats as a result of their work. These have not only been against them but also their family members. HRDs have also been intimidated through surveillance methods such as trailing and monitoring in order to force them to stop their work.

### **Arbitrary and illegal detentions**

Numerous HRDs, are arbitrarily detained on false charges, and prosecuted. They are also detained with no adherence to the laws.

### **Reprisals**

These are faced by HRDs who use protection mechanisms that expose violations by states.

### **Vulnerable HRDs**

These are HRDs who face peculiar risks as a result of their work:

#### **Women**

Women as HRDs and those working on gender issues are usually victims, of cultural, religious and societal biases. A clause on invoking custom or religion as a basis on which to commit violations against women HRDs was eliminated from the Resolution on the Protection of Women Human Rights Defenders, showing that women still face added challenges.

#### **Sexual Orientation and Gender identity rights defenders**

These HRDs are also victims of cultural, religious and societal biases. They have faced particular aggression legally with the enactment of laws that criminalize homosexuality and the promotion of the rights of Lesbian, Gay, Bisexual, Transgender/Transexual and Intersex (LGBTI). The existence of these laws has also led the specific HRDs facing harassment from the societies in which they live.

#### **The Media**

One of the functions of the media is to bring violations into the spotlight. These usually controversial violations expose States, and therefore the media become a target of state violations and suffer restrictions to their freedoms.

#### **The youth, extractive industry and environmental defenders**

The youth are very central to societies as they combine knowledge, ability and a desire to change. This sometimes causes them to unearth violations by State

officials. Extractive industry and environmental issues also expose numerous human rights violations. There is usually economic gain at the expense of human rights and exposing such situations presents great risks for those that do so.

### **Evolving nature of violations**

There are increased violations being carried out by non-state actors including big corporations, cultural and religious fanatics, and the general public. As human rights evolve, so does the nature of violations.

### **Recommendations for the improvement of the environment in which HRDs work**

The following are recommendations that I gave in my last report to the Human Rights Council:

- Ensure that HRDs can conduct their work in a conducive legal, institutional and administrative framework;
- Combat impunity for violations against HRDs by ensuring that investigations are promptly and impartially conducted, perpetrators are held accountable, and victims obtain appropriate remedy. In this context, pay particular attention to violations committed by non-State actors;
- Raise awareness about the legitimate and vital work of HRDs and publicly support their work through dissemination of the Declaration and training on the rights and roles of defenders.
- Provide national human rights institutions with broad and solid mandates that include the protection of HRDs;
- Ensure that violations by State and non-State actors against HRDs, particularly vulnerable defenders, are promptly and impartially investigated, and ensure that perpetrators are brought to justice;
- Ensure that HRDs can actively participate in the universal periodic review process, and other reporting processes, by raising awareness about the process, organizing open and meaningful consultations;
- All stakeholders must respect and recognize the work of HRDs in accordance with the Declaration on Human Rights Defenders, and refrain from violating their rights or hindering their activities;
- HRDs should, be keen on understanding their rights, and being able to advocate for them;
- HRDs should not disregard the State as an important partner in human rights;
- HRDs should strive for high standards of professionalism and ethical behaviour when carrying human rights activities; and
- HRDs should continue to make full use of existing international and regional human rights mechanisms, including the United Nations, its mechanisms and representatives in the field of human rights.

### **The African Commission on Human and Peoples' Rights and the Operating Environment for HRDs in Africa**



**Mrs. Reine Alapini-Gansou - African Union Special Rapporteur  
on Human Rights Defenders, ACHPR Commissioner**

**I. Introduction de la Commission africaine des droits de l'homme et des peuples**

La Commission africaine des droits de l'homme et des peuples (la Commission africaine) est la première institution panafricaine mise en place par les Etats africains en vue de la promotion et la protection des droits de l'homme sur le continent africain. L'article 45 de la Charte africaine des droits de l'homme et des peuples (la Charte), instrument juridique créant la Commission africaine, investie celle-ci d'une quadruple mission: une mission promotionnelle, protectrice, consultative et interprétative.

Dans le cadre de la mise en œuvre de son mandat de protection des droits de l'homme en Afrique et au regard des différents développements dans le domaine des droits de l'homme sur le continent, la Commission africaine a mis en place les mécanismes spéciaux qui sont des organes techniques chargés de traiter des thématiques des droits de l'homme qui intéressent particulièrement le continent africain. Il existe à ce jour quinze mécanismes spéciaux auprès de la Commission africaine, notamment cinq (5) Rapporteurs Spéciaux, cinq (7) Groupes de Travail et (3) Comités.

Outre ces divers mécanismes, il existe au sein de la Commission la procédure des Communications et constitue également un outil auquel peuvent avoir recours les défenseurs des droits de l'homme.

Aux fins de cette présentation, nous nous appesantirons sur le mécanisme du Rapporteur Spécial sur les défenseurs des droits de l'homme en Afrique bien que nous présenterons brièvement la procédure de Communications devant la Commission africaine.

**II. Institutionnalisation du mécanisme du Rapporteur Spécial sur les défenseurs des droits de l'homme en Afrique**

Du fait du rôle extrêmement important qu'ils jouent dans le cadre de la protection des droits fondamentaux, les défenseurs des droits de l'homme ont été l'objet de graves atteintes et violations de leurs droits en lien avec leurs activités de défense des droits des autres. La question de la protection accordée à ces derniers a eu tôt fait de recevoir une attention à l'échelle internationale avec notamment l'adoption de La Déclaration de 1998 des Nations Unies sur le Droit et la Responsabilité des Individus, Groupes et Organes de la Société à Promouvoir et Protéger les Droits de l'Homme et les Libertés Fondamentales Universellement Reconnus (connue sous le nom de la Déclaration des Nations Unies sur les Défenseurs des Droits de l'Homme).

Confrontée à l'ampleur de ce phénomène et à la suite de l'action menée au plan international, la Commission africaine a adopté une résolution *sur la protection des défenseurs des droits de l'homme en Afrique* à l'occasion de sa 35<sup>ème</sup> Session

ordinaire en mai 2004. Cette résolution, Rés. N°CADHP/69 (XXXV) 04 a également créé le mandat du Rapporteur Spécial dans ce domaine ; mandat qui fut renouvelé par la Rés. N° CADHP/248 (LIV) 2013 adoptée lors de la 54<sup>ème</sup> Session ordinaire de la Commission africaine tenue du 22 octobre au 5 novembre 2013 à Banjul en Gambie.

Au titre de son mandat, le Rapporteur Spécial doit chercher, recevoir, examiner et agir sur l'information relative à la situation des défenseurs des droits de l'homme en Afrique. De plus, dans le cadre de son mandat, il doit collaborer et établir un dialogue avec les Etats parties, les institutions nationales des droits de l'homme, les organismes intergouvernementaux, les mécanismes internationaux et régionaux de protection des défenseurs des droits de l'homme, les défenseurs des droits de l'homme et les autres partenaires<sup>2</sup>.

### **III. Actions /activités entreprises par le mécanisme du Rapporteur Spécial sur les défenseurs des droits de l'homme en Afrique**

Au regard de son mandat, le Rapporteur Spécial mènent des actions aussi bien de protection que de promotion des droits des défenseurs des droits de l'homme.

#### *a. Actions de protection des droits des défenseurs des droits de l'homme*

La Communication ou appel urgent est l'outil principal utilisé par le Rapporteur Spécial pour agir sur des cas de violations portés à sa connaissance. Le Rapporteur Spécial engage un dialogue avec l'Etat concerné en rédigeant une Communication confidentielle ou lettre d'allégation portant sur ladite situation. Cette réaction vise à demander des clarifications sur les cas soumis et des actions correctives à travers des recommandations rappelant les obligations des Etats en vertu de la Charte africaine et la Déclaration des Nations Unies de 1998. Cette procédure de Communication avec les Etats est rapportée à chaque session publique de la Commission africaine<sup>3</sup> et figure dans les rapports d'activités que la Commission africaine présente au Sommet de l'Union africaine.

Le Rapporteur Spécial attire également l'attention des Etats sur des situations de violations des droits des défenseurs des droits de l'homme à travers la publication de Communiqué de presse et déclarations portant sur des cas dont il est saisi. Les Communiqués de presse servent aussi à saluer les progrès des Etats membres de l'Union africaine dans la mise en œuvre de recommandations à eux adressées au préalable. Au cours de son mandat, le Rapporteur Spécial a eu à publier de nombreux Communiqués de presse. Au nombre des plus récents, on compte entre autres :

- Communiqué de presse sur la situation des défenseurs des droits de l'homme au Bénin (<http://www.achpr.org/press/2014/01/d184/>)
- Communiqué de presse sur la situation des défenseurs des droits de l'homme à Djibouti (<http://www.achpr.org/press/2014/01/d186/>)
- Communiqué de presse sur les implications de la loi de 2013 sur [l'interdiction du] mariage homosexuels pour les défenseurs des droits de l'homme au Nigeria (<http://www.achpr.org/press/2014/02/d190/>)

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<sup>2</sup> CADHP, Rés. CADHP/Rés.69(XXXV) 04, point 1 (c).

<sup>3</sup> CADHP, Rés. CADHP/Rés.69(XXXV) 04, point 1 (b).

- Communiqué de presse sur le projet de loi sur les associations et la loi sur la presse au Kenya (Envoyé au gouvernement Kenyan le 5 Décembre 2013). Ces communiqués de presse sont mis à la disposition du grand public sur le site de la Commission africaine.
- Communiqué de presse sur les implications de la loi de 2014 anti-homosexualité sur le travail des défenseurs des droits de l'homme en République de l'Ouganda ( <http://www.achpr.org/fr/press/2014/03/d196/>)

## **La procédure de Communication devant la Commission africaine**

Bien qu'il ne s'agisse pas là d'un mécanisme de réponse rapide à des cas de violations des droits des défenseurs des droits de l'homme, il convient de noter que la Commission, au travers, de sa jurisprudence a eu à se prononcer sur la violation des droits des défenseurs des droits de l'homme.

Le mandat de protection de la Commission africaine vise à garantir la jouissance des droits et libertés énoncés dans la Charte, en œuvrant de concert avec les parties prenantes, notamment les gouvernements et les organisations des droits de l'homme.

La procédure des Plaintes/Communications, qui est le principal mécanisme utilisé par la Commission africaine dans le cadre de son mandat de protection, est prévue au chapitre III de la Charte, notamment en ses articles 46 à 59.

A ce titre, dans sa **Communication 228 /99 - Law office of Gazhi Suleiman c. Soudan**, la Commission africaine a relevé que la liberté d'expression et d'association sont des droits sensibles pour le travail des DDH. Dès lors, la restriction illégale de ce droit, même lorsqu'elle ne concerne qu'un individu, correspond à la violation du droit de tous les autres citoyens à recevoir des informations et des idées<sup>4</sup>. La Commission africaine a noté que le discours de M. Suleiman était axé sur la promotion et la protection des droits de l'homme et, en ce sens, est doté, "[...] d'une valeur considérable pour la société et mérite une protection particulière."

Par ailleurs, dans sa **Communication Egyptian Initiative for Personal Rights and Interights c. République Arabe d'Egypte**, La Commission africaine a relevé que l'Etat partie, en l'espèce l'Egypte a failli à son obligation de protéger des femmes contre les violences sexuelles lors d'une manifestation en 2005. La Commission a clairement énoncé le devoir des Etats de protéger les défenseurs des droits de l'homme dans l'exercice de leurs droits à participer à la vie publique.

La saisine de la Commission est rendue possible pour tout individu ou organisation-non-gouvernementale en vertu de l'article 55 de la Charte africaine.

*b. Actions de promotion des droits des défenseurs des droits de l'homme*  
Dans le cadre de son mandat, le Rapporteur Spécial mène et prend part à de nombreuses activités de sensibilisation et promotion des droits des défenseurs des droits de l'homme.

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<sup>4</sup> Article 6 de la Déclaration des Nations Unies sur les défenseurs des droits de l'homme

## **Communication et publication**

Au cours du mandat 2008-2009 des documents sur les normes relatives aux droits de l'homme notamment la Charte africaine, la Déclaration des Nations Unies sur les Défenseurs des Droits de l'Homme et les Déclarations de Kigali et de Grand Baie ont été éditée en langage simple pour une meilleure accessibilité des défenseurs à ces documents, capital pour leur travail. Le mandat a également élaboré un guide du défenseur africain, expliquant les bases fondamentales de l'activité de défense des droits de l'homme et le rôle qui doit être celui du défenseur des droits de l'homme, notamment ses droits mais aussi ses responsabilités.

Le mandat du Rapporteur Spécial a initié un bulletin d'information « La lettre du Rapporteur » qui est publié au cours de chaque session ordinaire de la Commission africaine. Le bulletin a pour vocation de maintenir un lien entre le mandat et les défenseurs, en informant ces derniers sur les activités du mandat et en donnant aux défenseurs un espace pour s'exprimer et donner leur avis sur des questions prioritaires pour le mandat telle que la liberté d'expression, la liberté d'association et autres.

## **Visites de promotion**

Le Rapporteur Spécial entreprend des missions de promotion dans les Etats, organisées par le mandat en particulier ou la Commission africaine en général, pour évaluer la situation des défenseurs des droits de l'homme dans lesdits Etats. Au cours de ces visites le Rapporteur Spécial engage un dialogue constructif avec les gouvernements et autres partenaires sur les questions de protection des DDH. Ces visites permettent d'assurer un dialogue direct avec les Etats et les défenseurs des droits de l'homme et interpellent les Etats sur les failles de leur système de protection, sur les insuffisances de leur cadre légal et la nécessité d'adopter un texte relatif aux défenseurs des droits de l'homme. A titre illustratif, le mandat du Rapporteur Spécial a contribué à lancer en 2011 et 2012 le processus de lobbying pour l'adoption en République Démocratique du Congo de la loi sur les défenseurs des droits de l'homme qui est en cours d'examen au parlement . De plus, on a l'adoption d'une loi en 2013 protégeant les défenseurs des droits des défenseurs en Côte d'Ivoire.

## **Sensibilisation et recherche**

Le Rapporteur Spécial se doit, par ailleurs, d'élaborer et recommander des stratégies visant à mieux protéger les défenseurs des droits de l'homme et assurer le suivi de ses recommandations. A ce titre, le Rapporteur Spécial a eu à initier de nombreuses recherches en vue de susciter une prise de conscience et promouvoir la mise en œuvre en Afrique de la Déclaration des Nations Unies sur les défenseurs des droits de l'homme. Au nombre de celles-ci, on compte l'étude sur les femmes défenseurs des droits de l'homme en Afrique, tout comme l'étude sur la liberté d'association et les Lignes Directrices sur la liberté de réunion en Afrique. Une fois adoptées par la Commission africaine, ces textes serviront d'outil pour inciter des réformes législatives au sein des Etats membres.

## **Participation à des conférences et séminaires**

Le Rapporteur Spécial prend part à des consultations, conférences et séminaires dans le but de renforcer les capacités des défenseurs des droits de l'homme sur le mécanisme régional de protection de leurs droits.

## **Activités de sensibilisation et de renforcement de capacité**

En collaboration avec le Réseau panafricain des défenseurs des droits de l'homme, La Rapporteuse Spéciale a organisé la première cérémonie de remise des prix des défenseurs des droits de l'homme en Afrique. La cérémonie s'est tenue à l'auspice de la 54<sup>ème</sup> Session ordinaire de la Commission africaine le 22 Octobre 2013 à l'Hôtel Kairaba Beach à Banjul, Gambie. Le Prix avait pour but d'honorer des individus qui ont œuvré de manière pacifique à la promotion et à la protection de droits universellement reconnus tels que énoncés dans la Déclaration Universelle des Droits de l'Homme et la Charte africaine des droits de l'homme et des peuples. Les lauréats de ces prix des défenseurs des droits de l'homme étaient Imam Baba Muhtarr Leigh (Gagnant du prix panafricain), Yara Sallam (Gagnant du prix de l'Afrique du Nord), Maria Lucia Da Silveira (Gagnante du prix de l'Afrique australe), Livingstone Sewanyana (Gagnant du prix de l'Est et de la Corne de l'Afrique), Paulette Oyane Ondo (Gagnante du prix de l'Afrique centrale).

## **IV. L'encadrement juridique du travail des défenseurs des droits de l'homme en Afrique**

Dans de nombreux pays, les défenseurs des droits de l'homme continuent d'être victimes d'exécutions extrajudiciaires et de disparitions forcées, d'agressions, de menaces et de harcèlements, de campagnes de diffamation et d'actions judiciaires intentées à leur encontre, de restrictions au droit d'accès aux informations détenues par l'État, de contrôles administratifs et financiers abusifs. Par ailleurs, l'impunité dont jouissent les auteurs de ces violations demeure préoccupante. Cet état de choses justifie la prise en charge juridique de la protection des droits des défenseurs des droits de l'homme.

Le texte premier qui consacre les droits des DDH est la Déclaration des Nations Unies sur le droit et la responsabilité des individus, groupes et organes de la société de promouvoir et protéger les droits de l'homme et les libertés fondamentales universellement reconnus (Déclaration sur les défenseurs des droits de l'homme), qui fut adopté à l'unanimité par les Etats. Au travers de cette déclaration, les Etats se sont engagés à assurer que les DDH puissent mener leurs actions librement sans craintes de représailles ou d'ingérence de la part de l'Etat.

La Charte africaine des droits de l'homme et des peuples adoptée le 27 juin 1981 ne mentionne pas spécifiquement la question des défenseurs des droits de l'homme. Toutefois, la Charte africaine reconnaît les libertés fondamentales comme les libertés d'expression, d'opinion, d'association, de manifestation, etc. qui sont des pierres angulaires dans le travail des DDH. De plus, elle protège des

droits fondamentaux tels le droit à un procès équitable, la protection contre les arrestation et détentions arbitraires.

### **Les Déclarations de Grand Baie et de Kigali**

Le 16 avril 1999, réunie à Grand Baie, la Conférence des Ministres des Etats de l'Organisation de l'Unité Africaine a adopté une Déclaration sans précédent dans le sens de la reconnaissance du rôle des défenseurs des droits de l'homme en Afrique. Elle invite les gouvernements africains à prendre les mesures appropriées pour mettre en œuvre, en Afrique, la déclaration des Nations Unies sur les défenseurs des droits de l'homme<sup>5</sup>.

La Déclaration de Kigali, quant à elle, fut adoptée lors de la première Conférence ministérielle de l'Union Africaine sur les Droits de l'Homme en Afrique réunie le 8 mai 2003 à Kigali (Rwanda). Elle a reconnu le rôle important des organisations de la société civile en générale et des DDH en particulier, dans la promotion et la protection des droits de l'homme en Afrique et lance un appel aux Etats membres et aux institutions régionales afin qu'ils protègent les droits DDH et encouragent la participation des organisations de la société civile à la prise de décision à travers des moyens de consultation en vue de consolider la démocratie participative et le développement durable. Il a également été souligné la nécessité pour ces organisations d'être indépendantes et transparentes<sup>6</sup>.

### **V. Défis auxquels font face les défenseurs des droits de l'homme en Afrique**

En dépit de la nomenclature juridique qui existe en Afrique en matière de protection des droits de l'homme, les défenseurs des droits de l'homme continuent d'être confrontés à des entraves qui les empêchent de mener à bien leurs activités.

Les DDH continuent d'être victimes d'assassinats, de menaces de mort, d'agressions physiques, d'enlèvements, des détentions arbitraires, l'acharnement judiciaire ou d'autres formes de harcèlement et d'intimidation policières. Dans de nombreux pays, il existe des législations qui limitent énormément leur travail.

#### **Entraves juridiques**

Dans de nombreux pays, on constate l'existence de lois restrictives pour ce qui est des activités des défenseurs des droits de l'homme.

- Restrictions sur la portée des activités des associations

Au Zimbabwe, les organisations gays et lesbiennes ne sont pas autorisées à opérer ouvertement. La loi mozambicaine sur l'Association interdit la création d'associations qui possèdent un caractère secret et les associations étrangères ne peuvent être autorisées à poursuivre leurs objectifs en territoire mozambicain

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<sup>5</sup> Paragraphe 19 de Déclaration et plan d'action de Grand Baie (Maurice).

<sup>6</sup> Paragraphe 28 de la Déclaration de Kigali

à condition que ces [objectifs] ne soient pas contraires aux principes de l'ordre public national.

- Restrictions sur les capacités de financement

L'appui des fonds étrangers est un aspect vis-à-vis duquel les gouvernements ont conçu des lois qui, dans certains cas ont entravé la construction de fortes ONG, OSC et la cohésion des DDH en limitant ou en structurant le flux des fonds qui leur sont alloués. Le cas le plus notoire de refus de financement externe pour les ONG en Afrique demeure l'Ethiopie.

- Contrôle du gouvernement sur les activités des associations

Au Congo, les ONG doivent «informer le Ministre de la planification de leurs activités de développement, les projets à mettre en œuvre et les ressources financières collectées afin de mener des activités ». En Zambie, les ONG sont tenues de soumettre des rapports annuels et des informations sur leurs activités, les bailleurs de fonds, le compte et la fortune personnelle de leurs employés. La loi insiste pour que tout manquement à fournir ces éléments d'information soit susceptible d'incrimination et de suspension consécutive et de l'annulation de l'ensemble du processus d'enregistrement et de fonctionnement de ces organisations dans le pays.

### **Situation des DDH en zone de conflits armés**

En temps de conflit armés et dans les zones où prolifèrent des acteurs non-étatiques, les défenseurs des droits de l'homme sont les principales cibles des groupes armés qui contrôlent ces zones. De nombreux défenseurs des droits de l'homme ont trouvé la mort dans des pays en conflit, notamment en Somalie, RDC et tout récemment dans le Nord du Mali et en République Centrafricaine.

### **Cas des femmes défenseurs des droits de l'homme**

Les femmes défenseuses des droits de l'homme en Afrique jouent un rôle clé dans la promotion et la défense des droits de l'homme et travaillent sur une gamme variée d'activités qui promeuvent le bien-être des populations.

Les femmes défenseuses des droits de l'homme en Afrique sont spécialement confrontées à des risques sexospécifiques. Certaines dispositions légales et les pratiques restreignent le militantisme des femmes à travers notamment l'utilisation restrictive du droit coutumier. Les restrictions sur la base du genre relatives à la liberté de circulation incluent le refus généralisé de voyager hors des frontières nationales (tel est le cas au Gabon), les restrictions des limitations ou obstruction de déplacements internes, le refus de visas pour les déplacements et la déportation.

### **Conclusion**

Force est de constater que les défenseurs des droits de l'homme africains font face à de nombreux challenges dans le cadre la réalisation de leurs activités quotidiennes. Bien que l'on relève que de nombreux Etats africains ont ratifiés des textes de protection des droits des défenseurs des droits de l'homme, on constate un grand nombre de manquement dans leurs mise en œuvre.

La Commission africaine a pris en charge la question de la défense des défenseurs des droits de l'homme à travers la mise sur pied du mécanisme y

afférent, le Rapporteur Spéciale sur les défenseurs des droits de l'homme. La pertinence de ce mécanisme n'est plus à démontrer. En ces dix années d'existence, il a permis, entre autre, de créer un espace de dialogue entre les Etats et les autres partenaires intervenant dans la défense des droits des DDH. Toutefois, la stabilisation des Etats africains et le renforcement de la démocratie sont tributaires de la jouissance des droits de tous ceux qui défendent les droits des autres. Le mécanisme se veut être un tremplin pour la protection des droits des défenseurs des droits de l'homme dont la responsabilité première incombe aux Etats.

### **Operating Environment for Human Rights Defenders – A Defenders' Perspective**

**Mr. Hassan Shire - Executive Director East and Horn of Africa Human Rights Defenders Project and Ms. Tabita Netuwa, Pan Africa Human Rights Defenders Network Coordinator**

Although the operational environment for human rights defenders (HRDs) varies from one country to another depending on their specific circumstances, a number of trends have been observed across the region. Some of these trends are so pronounced that we speak about States sharing 'worst practices' in the region in order to shrink the space available to civil society. At the 'Johannesburg+10' Conference held in Kampala, Uganda, in 2009, five specific groups of HRDs were identified as those who were most at risk across the continent. These were women human rights defenders, HRDs working in conflict/post conflict areas or under oppressive regimes, HRDs working on issues of sexual orientation and gender identity, and journalists working to end impunity and corruption. Since then, HRDs working on environmental issues have been explicitly recognized as one of the most-at-risk groups.

Some of the overarching factors limiting space for HRDs across the continent are legislative restrictions and the abusive use of the law, administrative obstacles for human rights NGOs, as well as psychological, economical and physical threats.

The global trend of restrictive legislation impeding the work of HRDs has been well-documented by many organizations and raised at the highest levels, including the UN Special Rapporteur on HRDs, the UN Special Rapporteur on Freedom of Peaceful Assembly and of Association, and the Special Rapporteur on HRDs in Africa. The East and Horn of Africa have not been spared this trend and indeed have seen the apparent sharing of 'worst practices' between countries in the region.



The severe restrictions on access to foreign funding for Non-Governmental Organisations (NGOs), working on human rights related issues in Ethiopia is well-known. The restrictions have had a devastating effect over the almost five years they have been in effect. Similarly in Sudan, NGOs must have approval from the Minister of Humanitarian Affairs to receive funds or grants from abroad or from foreign persons within or from any other entity. This has a chilling effect. In South Sudan, civil society was concerned that initial drafts of the new Voluntary and Humanitarian Organisations Law echoed provisions of the Ethiopian Law. And likewise in Kenya, the Miscellaneous (Amendment) Bill last year would have introduced a 15% limit on foreign funding for NGOs, but was withdrawn from parliament following much protest.

In some cases, governments are hostile to any citizen pursuing human rights issues. Eritrea is a clear example where independent human rights work is simply impossible as critical voices inside and outside of the country are aggressively pursued and stigmatized. Even the UN Special Rapporteur on the Situation in Eritrea has been unable to visit that country, with every request for access rebuffed by national authorities.

Legislation that appears favourable or neutral towards HRDs can also be abused in different ways to threaten or limit the work of HRDs. The most common threat for organisations is deregistration and for those that are not officially registered, to be labeled an illegal entity. This applies, for example, to various Lesbian, Gay, Bisexual, Transgender/transsexual and Intersex (LGBTI) organisations in Uganda. Organisations that have succeeded in being registered risk being de-registered or banned for just speaking out on issues like sexual orientation and gender identity.

Another example of the abusive use of law by governments is the criminalizing of some forms of public expression, through the use of criminal defamation laws. The recent case of our colleague Thulani Maseko, a human rights lawyer in Swaziland and member of the Southern African HRD Network, who was arrested on Monday 17<sup>th</sup> March along with the editor of the Nation Magazine in response to articles that they had written and published, is a good example. Tactics are evolving. A common practice used to silence HRDs is psychological threat such as intimidation letters and phone calls against HRDs and their families, phone tapping, cutting of phone lines and electricity of targeted individuals and organizations, or false accusations and smear campaigns among others.

In situations of armed conflict, HRDs may become targets of the parties in conflict. As a result HRDs can be subject to arbitrary arrest, torture, persecution, threats, attempted killings, killings and forced exile. The situation of Sudan, for example, is very worrying, with the recent arrest of at least seven student activists in less than 10 days, by Sudan's National Intelligence and Security Services (NISS). The arrests were in connection with a demonstration that took place at the University of Khartoum on 11 March 2014 in reaction to the escalating violence in South Darfur.

These and other challenges make up the incredible obstacles African HRDs face as they seek to carry out their mission to expose violations of human rights, prevent violations and seek justice for their victims. In this struggle there have

been far too many victims, and the stories of ordinary people whose lives have been affected by the powerful have been suppressed.

However at the same time we are now more than ever seeing coordinated efforts at local, national, and international levels to build a robust safety net for HRDs. Such safety net is essential when HRDs encounter grave threats to their well being. I strongly believe that safety nets will continue to allow HRDs to confidently seek political solutions to the obstacles discussed above.

**Ms. Irene Petras - Southern Africa Human Rights Defenders' Network and Executive Director Zimbabwe Lawyers for Human Rights:**

The Southern Africa region can generally be described as "schizophrenic". Blessed with vast resources, general peace and stability in a majority of the countries when compared to other regions on the continent (excluding the challenges of DRC and the current instability in Mozambique), the region nevertheless has not been spared the general challenges facing other human rights defenders (HRDs) and seems to be regressing in several respects. So we have started to witness an increased clampdown on HRDs in Swaziland, signs of disrespect for public processes and constitutionalism in Zambia, corruption and mismanagement issues in Malawi, continued monitoring and harassment of HRDs and civil society in Zimbabwe and Angola, continued conflict, sexual and gender-based violence in the DRC, and restrictions on the media and rising intolerance and xenophobia in South Africa.

The region has therefore not been spared from the general operational challenges being experienced continentally and globally. The three general challenges are:

**Shrinking space for civil society and HRDs**

On the whole, repressive legislation, policies and practices, abuse of state resources, institutions and infrastructure of power are used to suppress critique and dissent, prevent organizing and mobilisation by HRDs and social movements.

**Financial constraints and sustainability**

The global financial crisis, new priorities and urgencies on the continent and globally, have seen a downscale in activities. Consequently, there is an inability to work as widely as before. And added to this situation, is a hostile funding climate and aversion to the work of HRDs by domestic governments. There is also more focus on developmental and humanitarian aid and assistance.

**Priorities**

Priorities of donors and their foreign policy interests versus priorities of HRDs is a hard balancing act. Donors are currently looking for short-term impact (bang

for their buck), rather than sustained, deliberate and constant pressure for reform and improvement. The disadvantage of the latter being the requirement for long-term investment. This then raises the question of who is framing the issues and priorities on the continent and in the region, and whether we are really players in the global HRDs debates.

### **Some more specific trends and threats have emerged recently:**

#### **NGO legislation and funding issues**

Restricts operations (particularly for democracy and governance activities, human rights, elections); imposes bans or restrictions on funding sources; increases oversight over activities of organisations and invades privacy of individual HRDs (seen in Zambia most recently, but threats still hanging over Zimbabwe).

#### **Other legislation**

These include public order restrictions, criminal defamation and insult laws, contempt of court and media restrictions.

#### **Registration issues**

This is an effective way to control operations and monitor what organisations are doing. Registration gives the state access to information and finances. It is also a means to de-legitimize those they do not like by claiming that they are unregistered organizations operating outside the law.

#### **Information, technology and privacy issues**

Advances in technology have also meant electronic surveillance, social media and interception of communications. This is also linked to the increasing clampdown against, and abuse of, the media and media practitioners as HRDs. Thus abuses and corruption have been covered up, while the media has been used to target and character assassinate HRDs, etc.

#### **Abuse of the justice system to punish HRDs and shield perpetrators**

Procedurally and through conditions of detention, bail and remand abuse, compromised judicial systems. This is a major issue as public critique is then seen as contempt of court, resulting in further casualties. Many countries have learned to manipulate the system and so the abuse of courts is a major issue to be addressed.

#### **Anti-LGBTI drive and cultural issues**

There is more legislation, negative and retrogressive policies and practices. Although the challenges have thus far been most stark in Uganda and Kenya, there are several countries in the region who may take the example to heart as

justification for further clampdown (such as Zimbabwe). And whilst South Africa is more progressive, there is still the issue of corrective rape and community attacks against LGBTI.

LGBTI - source of attack not known or readily ascertainable as the LGBTIs are attacked by everyone including family members, neighbours. The attackers are not just the traditional state actors and their associates. Not many people want to defend the LGBTI due to perceptions. There is therefore need for clarity of purpose on this to prevent isolation and attacks.

### **Women's issues**

These are once again on the back burner on the political, socio-economical and cultural sphere. Women HRDs continue to face challenges of patriarchy, cultural attacks and violence. Attacks are not only from perpetrators, but their own communities, other HRDs and their families for involving themselves in activism and politics. The disjuncture between women's movements and the mainstream make it difficult to address these issues holistically. Thus they continue to be marginalized; the same applies to the youth.

### **Environment and natural resources**

Failure to strengthen laws on protecting the environment, and global issues around climate change, business and the extractive industry, environmental degradation have impacted on countries to differing extent. The expansionist drive and curse of natural resources, lack of transparency and accountability, corruption has not assisted. Weak oversight institutions on corruption (by government, state actors engaging in corrupt activities with multinationals or other companies i.e. mining exposing massive looting), are open to harassment by security agents (army, state security). When HRDs confront multinationals, working closely with governments they get targeted as they are seen as threats to economic development. Environmental activism is not as developed in the region and needs to be addressed. As a result, such activists are on the fringes, even though they are subjected to similar challenges and attacks as other HRDs. They need to be brought into the mainstream for better protection.

### **Opportunities**

There is a new drive to fight the shrinking space by HRDs regionally and globally. The need is hence to maintain pressure and momentum on this. Many issues are common throughout the region and can be addressed collectively, rather than individually.

- Growing focus on constitutional reform lends itself to pushing for increased constitutionalism and harmonization of laws to comply with constitution and human rights norms and standards.
- The role of the legal profession (Bar Associations, law-based organisations and legal support and public interest litigation service providers), through legal support services to ensure a safety net, legislative reform,

domestication of international and regional standards, public interest litigation

- The role of support organisations - medical, psychosocial support, welfare
- The role of parliamentarians in oversight and legislative reform to strengthen rights and protections for HRDs
- The role of ordinary communities and the general public in putting additional pressure
  
- Elections and regional standards and good practices - do these present an opportunity or a threat?
- Greater focus on mainstreaming environmental, women's issues and marginalized and vulnerable groups
- Greater interaction with AU system and at UN level - how can we strengthen these linkages and use them to maximum effect? Including use and strengthening the efficiency and effectiveness of the special mechanisms
- How can we best utilise advances in the media, technology etc for purposes of exposure, as well as advocacy and reform campaigns
- Capacity-building of HRDs so that those who have less developed structures can learn from others, for example in rapid response mechanisms, HRDs programmes etc and so that solidarity mechanisms can be established and solidified.

### ***Discussion on UN and AU Mechanisms and Defenders Perspectives***

**Questions** and **comments** from the floor included:

- How do the UN Special Mechanisms link with UN organs within states? The experience in Swaziland has been a reluctance to engage civil society by UN organs operating within the country.
- Please share practical steps to ensure the welfare of HRDs is taken care of in cases such as that of Thulani Maseko.
- Regarding solidarity action, how have HRDs in South Africa aided the situation of HRDs in Uganda and Nigeria working on LGBTI issues?
- HRDs need to understand their operating environment so as to minimize risk and design appropriate strategies for issues such as LGBTI. What is being done to avoid the spread of laws such as those passed in Uganda and Nigeria?
- LGBTI work is high risk even from other civil society as state(s) have invested in ignorance on the issue. How accountable are governments on LGBTI to the UN?
- The judiciary in Malawi has openly invited discussion on the 'anti-sodomy' laws, to assess constitutionality thereof. The lawyers have consequently been *amicus curiae*.
- An entry point in most states for human rights advocacy is the Church. Religious leaders can be co-opted in order to facilitate meetings or gatherings where 'Public Order' legislation inhibits or prohibits such. The Church does not require a permit to meet and lawyers have utilized the platform to share information on the Constitution.
- Are there any notable examples of HRDs interaction with international financial institutions (IFIs)?

- There is need to widen the pool of participants to meetings. Including other relevant role players such as Members of Parliament (MPs), would go a long way to changing attitudes and achieving success. Acknowledging failure and learning from those experiences as well as understanding the motivations behind seemingly 'retrogressive' laws and practices could aid strategies.

### **Responses:**

- It is important to acknowledge that various UN organs that operate on a national level have specific mandates. The UNDP for instance carries a developmental mandate. The mandate at times presents problems even to other UN staff with differing mandate such as Special Rapporteurs on issues sensitive to the host state. In cases where the host country has an Office of the High Commissioner for Human Rights, HRDs tend to get more cooperation.
- Engagement between the UNDP and HRDs in Zimbabwe has had its challenges. The best approach is nonetheless to take on the international agencies operating within the state. Depending on the situation, a multiple and varied approach could be used, with some organisations using confrontation while others could use engagement.
- Civil society has become over-professionalised. In order to mobilize for action and fully appreciate the environment, there is need to reconnect with local communities.
- Uganda has a Human Rights Office which has intervened but on certain specific issues as mandated by government. An invitation by the state is usually a pre-requisite for intervention.
- The UN Special Rapporteur was not sure if Thulani Maseko's case was brought to her office's attention and hence advised accordingly. Her office has regrettably received only 14% communications initiated by Africans. The UN Special Rapporteur can issue communications and press releases regarding reported cases or situations. There is also practical assistance available to HRDs under attack from organisations such as Frontline; while some countries offer refuge through 'shelter cities'. But comprehensive information is needed regarding the sources of assistance, processes and procedure.
- An approach for LGBTI issues may be to align with mainstream issues or work in coalitions. This will minimize risk to individual HRDs.
- States should domesticate the UN Declaration on HRDs.

### **HRDs, Voluntary and Forced Migration to South Africa and Uganda: Issues, Laws, Policies and Practices to Consider**

Mr. David Cote and Mr. Jacob van Garderen - Lawyers for Human Rights, South Africa, Protection Options for Non-National Human Rights Defenders in South Africa

For human rights defenders (HRDs) who are dedicated to defending the rights of individuals and communities within their countries of origin, the decision to flee when it becomes too dangerous for one's personal safety is never easy. Sometimes the decision comes after months of agonising observation and contemplation of the deteriorating situation around them. Other times, it is a split decision that must be made on the spot in order to protect one's life or personal safety.

This paper will discuss protection options for human rights defenders who have fled their country of origin and seek protection in South Africa. As will be made clear below, sometimes seeking refugee protection is not the best option for the individual and a HRD will have to examine his or her own circumstances to decide which regime is best suited for their immediate and long-term needs. This will require advice, but will also require a thorough understanding of the human rights situation that one is fleeing, his or her role in defending human rights in that country, the adequacy of protection by the South African government under the refugee protection system and the limitations on mobility and support which that system provides. In the end, one of the most important factors will be the level of support from domestic and regional institutions and individuals who provide assistance to human rights defenders fleeing persecution.

We will not discuss, however, what options are available to South African HRDs who require protection from violations of their human rights by state and non-state actors in this country. Unfortunately, as examples of such abuses are exposed in the media and through commissions such as the Marikana Commission of Inquiry, a discussion is taking place regarding whether everyone in South Africa is able to exercise their right to association and expression without the fear of reprisal and ensuring that HRDs can continue to play their role in the democratisation of South Africa society. This paper, however, deals specifically with the legal regime available to non-national HRDs in South Africa and the options that are available to them.

## **Human Rights Defenders**

The definition of a human rights defender has been widely stated and must therefore be given a wide interpretation. Article 1 of the UN Declaration on Human Rights Defenders<sup>7</sup> states:

*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 levels.*

This wide-ranging definition does not limit itself to professionals who devote their careers to human rights causes, but entails everyone who works toward the recognition of human rights, be it in their own local area or more broadly on

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<sup>7</sup> This UN declaration is formally called the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms*, Resolution 53/144 of the General Assembly, 9 December 1998.

the national and international stage. It may also include student activists, journalists, government workers exposing corruption or unlawful actions of their state, environmental advocates or witnesses in investigations into allegations of crimes against humanity.<sup>8</sup>

It must be recognised, however, that certain HRDs are more vulnerable than others. Women who defy social protocol and devote themselves to human rights work are often targeted not only by angry state officials, but by their neighbours for not looking after their families. LGBTI activists face shunning and ostracizing from their neighbours and their own families for their sexual orientation. Refugees who continue their political activities while in exile are often seen as unwelcome and unappreciative of the protection, which has been afforded to them.

Certainly those of us who belong to well-established NGO's or who have a professional body such as the Law Society advocating on our behalf are in a far better position to protect ourselves against the threats or actions of aggressive state and non-state actors than a local activist campaigning against a dam project. This does not create a shield of immunity against oppressive regimes,<sup>9</sup> but often such professionals have the means to protect themselves by hiring security or living in safe neighbourhoods or, in the event that fleeing becomes a necessity, to choose how and to where one flees.

While it is important to be cognisant of these disparities in resources and knowledge, any system that is designed to ensure protection of HRDs in South Africa must be able to accommodate anyone fleeing threats to their lives and safety due to HRD work. This requires a bolstering of not only the refugee protection system, but a refinement of the rules and regulations relating to immigration and alternative forms of protection.

### **Immigration Laws and Individual Protection**

Not only is there a range of different HRDs who may seek protection in South Africa but in addition there are many ways in which one can arrive and remain in the country. From our anecdotal experience, most people wish to arrive and remain lawfully and in compliance with the relevant legislation. The unpredictable nature of living without proper documents and the fear of arrest and deportation only adds to the anxiety and danger which a HRD is already experiencing due to the circumstances that led him or her to flee. Unfortunately, South Africa's Immigration Act is not designed for those special circumstances and the rapid use of discretion in order to afford temporary protection. The Refugees Act is certainly geared toward protection, but the refugee status determination process is extremely cumbersome, often arbitrary and all too frequently exposes a HRD to new risks and dangers. Applying for asylum may also feed into negative sentiments about the HRD's work.

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<sup>8</sup> "Who Is a Defender", Office of the High Commissioner for Human Rights, <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx> Accessed: 25 March 2014

<sup>9</sup> Attacks against lawyers such as Albie Sachs during the apartheid regime in South Africa and the recent arrest of Thulani Maseko in Swaziland and Beatrice Mtetwa in Zimbabwe are just some examples.



The Immigration Act foresees that everyone who wishes to enter South Africa must do so at a port of entry, which can include a land border crossing, an international airport or a harbour.<sup>10</sup> In order to enter, a non-national who is not a permanent resident must be in possession of a valid passport, which is valid for 30 days beyond the intended period of sojourn and must be issued with a temporary residence permit. For many countries, the non-national must also be in possession of a visa, which allows him or her to travel to a South African port of entry (for example, such a visa would be issued by the South African embassy in the country of departure and must be in possession of the visa before boarding an aircraft). Nationals of specific countries are exempt from this requirement.<sup>11</sup>

A temporary residence permit can be issued for a number of specific purposes, depending on the reason for the visit. These include a visitor's permit, work permit, medical treatment permit, exchange permit and study permit, among others. Each of these permits specifies the reason for the sojourn and limits the activities, which the non-national may engage in while in the country.

An important aspect of immigration law (as opposed to refugee which is further explained below) is that once the permit expires, the non-national's permission to remain in the country also expires. If that person has not left by the designated time, he or she may be liable to arrest, detention and deportation to his or her country of origin.

Amongst the temporary permits, the longer terms permits (up to 3 years in some cases) are the work and study permits. These permits allow one to remain for an extended period and are usually renewable as long as he or she continues to comply with the requirements of the permit (enrolment in a learning institution or still employed and can show that no South African could have filled the position). Work permits may eventually lead to permanent residence whereas study permits are usually not included in calculations of time for permanent residence. The Department has recently made amendments to the Immigration Act which will make it more difficult to amend permits within the country and has remove some categories of "exceptionally skilled" workers from the Act. Non-nationals who wish to change the conditions on their permits will be required to return to their countries of origin to do so unless they can show compelling reasons while they should be allowed to apply in South Africa. Many have commented that it will make it far more difficult for skilled workers to settle in South Africa and contribute to the economy.

The Minister of Home Affairs has the authority to issue a discretionary permit which can give the same status as permanent residence to a non-national, although she retains the authority to attach conditions to that status. Known colloquially as a "section 31(2) (b) permit", this permit is issued at the discretion of the Minister where the applicant would not qualify for any other permit under the Act. No guidance is given to the Minister in terms of the Immigration Act or

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<sup>10</sup> Section 9(1) of the Immigration Act 13 of 2002

<sup>11</sup> A list of exempted countries is available on the Department of Home Affairs website: <http://www.dha.gov.za/index.php/countries-exempt-from-sa-visas>

accompanying regulations regarding what guidelines to use or how to use her discretion.<sup>12</sup> The recently published draft Immigration Regulations of 2014 (not yet in operation) do not provide any clarity.

The Department has, in the past, issued special temporary permits to certain categories of non-nationals who have been quasi-recognised as being in need of some protection. One example was the 2010 Zimbabwe Dispensation Permit ("ZDP"), which was issued to Zimbabwe nationals who had been working, studying or operating a business in South African before 31 May 2010. This permit was valid for up to four years and was issued to Zimbabwe nationals after a moratorium on deportation was imposed by the previous Minister of Home Affairs during the economic and political meltdown in that country after the 2008 elections.

While welcoming the measure as a way of alleviating the burden placed on the asylum system by providing alternative forms of protection to Zimbabweans fleeing the crisis, the system was beset by difficulties including a shortened time period to apply (three months), the requirement until two weeks before the deadline of being in possession of a Zimbabwe passport and being in possession of all the relevant documents including an employer's tax certificate. In the end, approximately 271 000 permits were issued. There has been no word on what will happen as those permits expire and the holders are not ready to return to Zimbabwe.

One hopes that the lessons learnt from that experience can be put to use when devising similar alternative forms of protection. As we will see below, the asylum system is plagued with systematic and resources problems which has led it to nearly collapse and often fails to offer the protection necessary to those in need of refugee protection.

## **Refugee Protection in South Africa**

Refugee protection in South Africa is governed by the provisions of the Refugees Act 130 of 1998. The Act was adopted by Parliament in 1998 after an extensive public consultation process. Particularly encouraging was the strong reflection of the international law of refugee protection, including provisions from both the 1951 UN Refugee Convention<sup>13</sup> and the 1969 OAU Refugee Convention<sup>14</sup> specific to refugee protection on the African continent.

Unfortunately, the optimism of the Act was not reflected in the restrictive Refugee Regulations, 2000, which limited many of the advances made in the legislation.

Section 3 of the Act reflects the definitions of a refugee and makes provision for three categories:

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<sup>12</sup> The recently passed Trafficking in Persons Act of 2013 makes provision for the Minister to issue a permit under section 31(2)(b) of the Immigration Act where a victim of trafficking has cooperated with investigatory officials and such cooperation makes it impossible for him or her to return to their country of origin. As of writing, this Act has not been brought into operation.

<sup>13</sup> UN Convention Relating to the Status of Refugees (1951)

<sup>14</sup> Organisation for African Unity Governing the Specific Aspects of Refugee Problems in Africa (1969)

*(a) owing to a well-founded fear of being persecuted by reason of his or her race, tribe, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable to unwilling to avail himself or herself of the protection of that country, or, not having a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, unwilling to return to it;*

*(b) owing to external aggression, occupation, foreign domination or events seriously disturbing or disrupting public order in either a part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge elsewhere;*

*(c) is a dependent of a person contemplated in paragraph (a) or (b).*

Paragraph (a) is a reflection of the 1951 UN Convention while paragraph (b) reflects the 1969 OAU Convention. The Act further recognises the principle of family unity by including dependents of both categories as a separate ground for refugee status.

When an applicant for asylum arrives at the border crossing, he or she must declare his or her intention to apply for asylum whereupon the applicant is given a permit valid for 14 days to travel to the nearest refugee reception office to make an application.<sup>15</sup> It is not necessary to be in possession of a passport to be issued with this asylum transit permit. There were initially 5 refugee reception offices, but since then three (at Johannesburg, Cape Town and Port Elizabeth) have been closed down by the Department or are no longer accepting new applications.<sup>16</sup>

Once at the refugee reception office, the Act contemplates a two-stage process. Firstly, once the applicant has made his or her application and submitted the required BI-1590 form with personal and country-related information and the refugee reception officer has taken fingerprints and biographic data, the applicant is issued with a Temporary Asylum Seeker Permit.<sup>17</sup> This permit allows the asylum seeker to sojourn, work and study pending the outcome of his or her asylum application.

This permission to work and study was not initially an automatic right, however difficulties in the asylum adjudication process quickly emerged after 2000 and the Supreme Court of Appeal had to intervene to ensure that asylum seekers who were stuck in the system for years on end had the means to support themselves during the process.

The second stage of protection is afforded to a successful applicant after an interview with a Refugee Status Determination Officer (RSDO) and the RSDO issues a decision that the applicant meets the criteria of a refugee under section 3. A recognised refugee permit is issued for two to four years after which the

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<sup>15</sup> Section 23 of the Immigration Act 13 of 2002. Under the new amendments to the Act (not yet in operation), the applicant will only be given 5 days to report.

<sup>16</sup> The remaining offices are in Pretoria, Musina and Durban.

<sup>17</sup> Issued in terms of section 22 of the Refugees Act 130 of 1998

refugee must indicate his or her intention to remain a refugee for a renewal. After five years of status, the Standing Committee for Refugee Affairs may certify that the holder of the permit will remain a refugee indefinitely, which will allow him or her to apply for permanent residence. If, however, the Standing Committee does not certify, it may use the opportunity to find that the circumstance which led to the refugee's flight no longer exist and therefore he or she must return to their country of origin. Refugee status is meant to be a temporary status under the refugee permit holder can safely return to his or her country of origin. In practice, very few recognised refugees receive certification from and Standing Committee and, for this reason, many choose not to apply for certification to avoid this danger.

If the application is refused, then the applicant may either appeal to the Refugee Appeal Board or, in certain circumstances, may be subjected to an automatic review process by the Standing Committee. In May 2012, the Department of Home Affairs reported a backlog of 74 000 refugee appeal cases and 66 000 Standing Committee cases.<sup>18</sup> These backlogs have led to long delays in adjudications with the concomitant instability, which is associated with asylum seeker status.

### **The Reality of Asylum Protection in South Africa**

Unfortunately, the asylum system at the moment is in serious trouble and is not affording the protection envisioned by the Refugees Act or the international conventions upon, which it is modeled.

There are serious problems of access to the refugee reception offices. Of the original five offices, which were opened around the country, the only offices still accepting new applications are in Pretoria, Durban and Musina. The closure of the offices in Johannesburg, Port Elizabeth and Cape Town have all been challenged in court and found to be unlawful.<sup>19</sup> With the new amendments to the Immigration Act, new applicants will only have 5 days to find the nearest refugee reception office and submit an application. If they do not apply in time, the Act foresees that they will be treated as "illegal foreigners" and subject to deportation.<sup>20</sup>

Another serious impediment to access is rampant corruption. Many of the offices are inaccessible while security guards and Home Affairs officials require payment for any service, particularly but not exclusively at the Pretoria offices. Many either lose hope in the system and allow their permits to expire or are

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<sup>18</sup> Parliamentary Portfolio Committee briefing by the Department of Home Affairs, 22 May 2012: [http://www.pmg.org.za/report/20120522-briefing-department-home-affairs-full-report-state-ports-entry-and-re?utm\\_source=Drupal&utm\\_medium=email&utm\\_campaign=Free%20Alerts](http://www.pmg.org.za/report/20120522-briefing-department-home-affairs-full-report-state-ports-entry-and-re?utm_source=Drupal&utm_medium=email&utm_campaign=Free%20Alerts)  
Current figures were not available.

<sup>19</sup> *CORMSA and others v Minister of Home Affairs and others*, Case no: 53576/11 (NGHC) Somali Association for South Africa and another v Minister of Home Affairs and others 2012 (5) SA 634 (EC)

*Minister of Home Affairs and others v Scalabrini Centre and others* 2013 (6) SA 421 (SCA)

<sup>20</sup>This is likely not lawful. The Supreme Court of Appeal in *Ersumo v Minister of Home Affairs and others* 2012 (4) SA 581 found that the current 14 day period was not decisive in testing if it is reasonable period within which an asylum seeker must make an application for asylum or risk deportation.

forced to wait until their permits expire and then are required to pay fines under the Refugee Act. A fine of R1000 is far beyond what many can afford which leads to further lack of access and documentation.

Even accessing the system, the quality of refugee status determination is abysmal. The overwhelming number of applications are rejected by Home Affairs, often through cut-and-paste exercises, showing a lack of regard for individual claims.<sup>21</sup> The appeals process before the Refugee Appeal Board is the last opportunity for rejected asylum seekers of proper adjudications. Unfortunately, the Minister refused to extend the contracts of the appeal board members and replaced them with new appointments in January 2013. The loss of institutional memory caused the board to retrogress. Although some of the members have been since re-hired, the backlog caused by training new members has led to additional problems of access and quality of decisions.<sup>22</sup> While there is a high level of rejection among RSDO and appeal board members (over 85%), the UNHCR figures for the same area put the same figure for the region at 62%.<sup>23</sup> This is a marked disparity and is likely resulting in many genuine refugees at risk of *refoulement*.

Unfortunately, the refugee reception offices can be dangerous places, particularly for vulnerable refugees. Media reports have publicised the use of so-called hit squads allegedly sent to South Africa by the Rwandan government to eliminate political opponents to the regime (to the point where the South African government has expelled Rwandan diplomats).<sup>24</sup> There were also reports during the last DRC elections of opposition members in the Johannesburg area being rounded up by police working, allegedly again, with Congolese officials.

Of repeated concern has been the operations by Zimbabwean Central Intelligence Officers (CIO's) in South Africa following and harassing Zimbabwe opposition members. While the primary responsibility for protection everyone (including non-nationals) rests on the police, a weak infrastructure and little cooperation from both police and refugee communities all too often leads to a lack of protection for such groups.

In light of the rigidness of the Immigration Act and the near collapse of the refugee protection system, a HRD who is forced to flee must make a decision how to flee. This decision must be based on his or her particular needs as well as the limitations and advantages of each system.

### **Limitations and Advantages – How to Decide?**

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<sup>21</sup> For a review of refugee status determination issues, please see Amit, R., "All Roads Lead to Rejection: Persistent Bias and Incapacity in South African Refugee Status Determination," African Centre for Migration and Society, University of the Witwatersrand, June 2012

<sup>22</sup> We have been recently informed that hearings have been postponed until June 2014 to allow for the backlog to be dealt with.

<sup>23</sup> "South Africa's Flawed Asylum System," IRIN News Website, 30 April 2013, Accessed 26 March 2014: [www.irinnews.org/report/97944/south-africa-s-flawed-asylum-system](http://www.irinnews.org/report/97944/south-africa-s-flawed-asylum-system) Statistics are notoriously difficult to obtain from the Department of Home Affairs and are not issued on a regular basis.

<sup>24</sup> SA Explains Rwandan Diplomats Expulsion, J. Maromo, Mail & Guardian Online, 19 March 2014 : <http://mg.co.za/article/2014-03-19-sa-explains-rwandan-diplomats-expulsion>

It should be stated that many HRDs who flee their country of origin do not have the luxury of deciding *how or when* they will flee. Often either lack of resources forces someone to find the quickest passage out or an organisation makes the arrangements on their behalf. This may result in someone arriving at the border with no passport and being funneled into the refugee system. Others will have the advantage of choosing the time of their departure and deciding whether to leave under their own passport or fleeing without a passport at all. International refugee law allows, although does not encourage, people to use false documents when fleeing as long as they report to the authorities upon arrival or within a reasonable time thereafter.<sup>25</sup>

For those who have the luxury of deciding, however, both systems offer advantages and disadvantages. It will greatly depend on the nature of the threat to the HRD and their short and long-term goals.

### **Refugee Protection**

The refugee system offers obvious protections – at least on paper. Section 2 of the Refugees Act reflects the key international protection principle of *non-refoulement*, which prohibits states from deporting, extraditing or otherwise removing a refugee to a country where he or she faces a real risk of persecution. There is debate whether this principle has achieved the status of *jus cogens* and is therefore automatically applicable to all states. Considering the wanton disregard for the principle by many states, it is doubtful that it has achieved this level of adherence, but the principle has been repeated in other areas of international law such as the protection against *refoulement* under the Torture Convention.<sup>26</sup>

Refugee protection also provides international recognition. This is helpful in order to access international assistance through bodies such as the United Nations High Commissioner for Refugees (UNHCR). The UNHCR can offer programmes such as voluntary repatriation to assist refugees to return to their countries of origin once it is safe to do so or in rare cases resettlement to third countries where the refugee is unable to find adequate protection (or integration) in the country of refuge.

International recognition also allows access to international travel documents. Until recently, the UNHCR provided travel documents to recognised refugees in South Africa which would allow them to travel to any country except for their country of origin. Although such documents were still subject to visa requirements, it offered an opportunity for refugees to travel. Unfortunately, since the South African government has taken over that function, it has resulted in huge delays and backlogs for travel documents resulting in most recognised refugees being unable to leave the country.

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<sup>25</sup> Article 31(1) of the 1951 Convention and section 21(4) of the Refugees Act 130 of 1998

<sup>26</sup> Article III of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA Resolution 39/46, adopted 10 December 1984.

The main advantage of the refugee system is supposed to provide stability and the ability of a refugee to find safety and integrate into the host country. Unfortunately, this is not always the case and many refugees in South Africa find it difficult to integrate or even access the system. All too often, this leads to instability and further security concerns for the HRD fleeing persecution.

One of the main disadvantages of the South African refugee system is the extremely long delays in the adjudication process. While awaiting the outcome of an application, the asylum seeker is not allowed to leave the country without the authorization of the Minister of Home Affairs. Without such authorization, he or her permit automatically lapses and he or she may be subject to arrest and detention pending the outcome of the asylum process. For a HRD who wishes to continue his or her work, this restriction on travel (combined with the further difficulties in accessing documents even once refugee status is conferred) may unduly hinder the work, which they may wish to continue.

Another disadvantage due to the long delay in adjudication is the chance that the circumstances, which led the HRD to flee in the first place may "simmer down" and not be as apparent to a decision-maker as they once were. The test for refugee determination is often called a "forward-looking test". Although the events leading to one's flight are important, the applicant must prove that he or she will still be in danger *today* if returned. After a three year wait for an appeal hearing, an applicant may be asked to produce relevant and up-to-date information which is impossible to obtain or which may not seem relevant to the adjudicator as it would have when the initial events took place. In this way, a HRD who is deciding which system to enter may wish to consider the long-term versus short-term needs for protection. Refugee status may be more appropriate for long-term protection rather than short-term protection of fleeing until it is safe to return. It is the HRD him or herself who will understand best their particular needs.

Even once granted refugee status, he or she may be discouraged to continue conducting human rights work with regards to their country of origin. The 1969 OAU Convention expressly prohibits refugees from engaging in "subversive" activities:

*Article III*

- 1. Every refugee has duties to the country in which he finds himself, which require in particular that he conforms with its laws and regulations as well as with measures taken for the maintenance of public order. He shall also abstain from any subversive activities against any Member States of the OAU.*
- 2. Signatory States undertake to prohibit refugees residing in their respective territories from attacking any State Member of the OAU, by any activity likely to cause tension between Member States, and in particular by use of arms, through the press, or by radio.<sup>27</sup>*

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<sup>27</sup> Article III, 1969 OAU Convention

This absolute prohibition has been questioned by some authors<sup>28</sup> and has been found to be unlawful by others, not only in the realm of international refugee law but also when analysed in the context of international human rights law.<sup>29</sup> Importantly for South African purposes, this prohibition must be seen in light of the Convention as it was incorporated within the Refugees Act which does not contain any such prohibition and which specifically excludes persons from refugee status for whom there is reason to believe he or she "has been guilty of acts contrary to the objects and principles of the United Nations Organisation or the Organisation of African Unity;"<sup>30</sup> importantly, the exercise of a human right recognised by international law may not be regarded as being contrary to the objects and principles of the UN or OAU (today the African Union).<sup>31</sup>

Of particular importance, however, is the guarantee to *everyone* of the freedom of expression and the freedom of association under the Constitution of South Africa.<sup>32</sup> The freedom of expression specifically excludes certain activities such as propaganda for war, racial hatred or violence. In this way, the objects of the OAU prohibition would be satisfied by preventing violent conflict between states while not limiting the refugee's right to expression and association on behalf of his or her human rights cause. This is particularly the case in unpopular movements. As the UN OHCHR<sup>33</sup> has pointed out, it is not necessary for the HRD or his or her cause to be popular or on the right side of an issue in order to merit protection.<sup>34</sup>

## **Immigration Sojourn**

For those who require short-term protection and have the means to afford it, it may be advantageous to seek temporary sojourn in South Africa under the Immigration Act rather than embroil oneself in the unpredictable process of refugee protection. This type of alternative protection also has advantages and disadvantages, which the HRD must understand and appreciate when deciding how to proceed.

One important advantage is anonymity. Exposing oneself as a HRD in the refugee protection system (sometimes simply by being seen in the queues at a refugee reception office) may pose unforeseen dangers to the asylum applicant in South Africa. Arriving as a "normal tourist" will likely attract less attention. This will depend on the country. Some countries' nationals must acquire a visitor's visa *before* arriving at a port of entry in South Africa. If the embassy staff is aware of an individual's high profile, it may cause obstacles if they

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<sup>28</sup> Van Garderen and Eberstein, "Regional Developments: Africa," as appears in Andreas Zimmerman (ed.), *The 1951 Convention relating to the Status of Refugees and its 1967 Protocol: A Commentary*, Oxford University Press, Oxford, 2011 p. 192

<sup>29</sup> Hathaway, J. "The Rights of Refugees under International Law," Cambridge University Press, 2011, p. 905.

<sup>30</sup> Section 4(1)(c) of the Refugees Act 130 of 1998

<sup>31</sup> Section 4(2) of the Refugees Act.

<sup>32</sup> Sections 16 and 18 of the Constitution of the Republic of South Africa, 1996. The use of the term "everyone" has been found not to specifically exclude non-nationals.

<sup>33</sup> United Nations Office of the High Commissioner for Human Rights

<sup>34</sup> See fn 2 above



suspect that he or she will apply for asylum once they have arrived. There is nothing that prevents a visitor from applying for asylum after arriving, however the state may try to insinuate that he or she lied on their application regarding the reason for entry and therefore their credibility is diminished. This should be easily explained during a refugee status determination interview if it is necessary to apply after arrival. Otherwise, a short-term trip may be sufficient to watch and see if the situation he or she has fled normalises.

Another advantage is stability. An immigration permit is granted for a specific time period, depending on the type of permit. For example, a work permit can be issued for up to one year at a time, but renewable upon proof that one is still employed.<sup>35</sup> A study permit can be issued for the minimum duration of a specific course at a high learning institution (for example a university).<sup>36</sup> On the contrary, an asylum seeker permit is usually valid for three to six months at a time and a decision can be granted at any time during the process. Refugee status, once obtained, may be granted for a period of four years. Therefore an immigration permit at least provides some stability and predictability with regards to its length of time.

The other advantage of the immigration system is the ability to leave and enter the Republic. This allows a HRD to travel to do their work. It should be noted that a HRD must be extremely careful not to be seen "working" in South Africa without the requisite authority. "Work" is defined broadly under the Act and includes both remunerated activities and non-remunerated activities where someone is conducting activities "consistent with their profession".<sup>37</sup>

This is one of the disadvantages of the immigration system. One small violation may be enough to cancel one's permit and lead to his or her removal (either on their own or forcibly through deportation proceedings). It is possible to challenge such decisions, but that challenge can take an extremely long time to be adjudicated within the Department and Ministry and even longer (and far more expensive) in the court system.

Another serious disadvantage often occurs when one's immigration permit is set to expire but it is still too dangerous to return to his or her country of origin. If one then applies for asylum, he or she will likely be accused of making a fraudulent or abusive application simply to stay in the country. This can have seriously negative consequences in the adjudication process, particularly with regards to an assessment of the applicant's credibility. If one attempts to seek asylum in another country, it is likely that that country will refuse to grant refugee status on the basis that he or she should have sought protection in the first country in which he or she could have applied. A negative credibility assessment can sometimes be an impossible hurdle to overcome and may not only subject to HRD to removal to a country where he or she faces persecution, but will be used as ammunition against the HRD in his or her work.

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<sup>35</sup> Section 19(3) of the Immigration Act 13 of 2002.

<sup>36</sup> Regulation 10(3) of the Immigration Regulations, 2005.

<sup>37</sup> Section 1 of the Immigration Act 13 of 2002.

The deportation process itself can also create a dangerous situation. Deportations often happen quickly and with little to no notice given to the deportee. This provides little chance for the HRD to contact organisations, lawyers or other support to prevent the deportation or to ensure that there is someone waiting in the destination country to receive them (or report that they have not arrived).

The deportation process in South Africa is particularly troubling. The Lindela Repatriation Centre is notorious for its lack of systems and difficult access. There is no investigation done regarding a detainee's danger upon return or potential asylum claim. A detainee can be held for 30 days without a warrant, which can then be extended with an additional 90 days with a warrant. The detainee, however, is not brought in person to court to challenge the decision of the Department. Lack of access to courts, systems and in many cases legal representation has resulted in the deportation of genuine asylum seekers in danger of persecution upon return.

### **The Importance of Regional Networks in HRD Protection**

Considering the many factors to take into consideration, deciding how and when to flee is an important decision that the HRD must make and it must be made with adequate information. This requires a good network of those who defend human rights defenders to share information and remain involved in ensuring that the HRD makes an informed decision. This network must be in a position to provide important information to both the service provider (such as a lawyer, psychiatrist / counsellor and other support) as well as to the HRD who finds it necessary to flee.

Firstly, it is important that a network keep up to date on relevant human rights situation in the region. Often HRDs prefer to remain close to their country in order to keep up to date and relevant to the particular issue with which they are involved. Networks must be kept abreast of the prevalent human rights issues in neighbouring countries in order to prepare for the arrival of HRDs.

Secondly, networks must also be able to access quick information regarding asylum or alternative immigration protection in the region. Although this paper has focussed on South Africa, it is not the only country where HRDs will flee, but will include neighbouring countries in which the person can safely (if not temporarily) reside. Movements of HRDs should also be reasonably transmitted to the network where it may be necessary for his or her to move on to further safety.

Thirdly, HRDs and service providers must be able to communicate to one another to ensure proper arrival and preparation. This may include situations where it is necessary to speak to state officials to prepare for the HRD's arrival at the border, at a refugee reception office to avoid detection in the queues or arrange for alternative forms of protection such as discretionary permits under section 31(2)(b) of the Act. It may also be necessary to mobilise support groups within the country or, in appropriate circumstances, to publicise the HRD's flight for additional pressure.

Finally, it will be necessary for the network to prepare for return, if it is appropriate to do so. This may require some preparation in the country of origin or support when they return as well as the psycho-social support necessary to ensure that the HRD is able to return and feels safe to do so.

## **Conclusions**

The HRD's decision to flee is only the first in a myriad of other decisions during flight and exile which will not only influence the type of protection that he or she may be able to access, but can also affect the work that they have undertaken and the possible negative repercussions that flight may have on their career or community standing. Adequate information, strong networks and informed decision-making is essential to ensuring that HRD's are not only able to seek the protection they need when fleeing dangers, but also that they can continue their work and continue to support a culture of human rights protection in our region.

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### **Mr. Mohammed Ndifuna, Executive Director, HURINET-U, Forced and Voluntary Migration to Uganda: Laws, Policies, Issues and Practices to Consider**

Uganda continues to be an epicenter for refugees as it stands at the geographical centre of a region characterized by instability and conflict. Uganda has inextricably been linked to the numerous issues surrounding the presence and creation of varying numbers of refugees. The country has constantly had to balance the implications of its location within the great lakes region with the need to promote stability inside its own borders. Uganda continued to receive refugees from other countries during its own struggles in the 1970s and 80s; and just as the country is beginning to stabilize, a new wave of refugees keep entering Uganda fleeing conflicts in neighboring countries. Early this year, the government Minister in charge of Disaster Preparedness declared that the government was overwhelmed by the influx of refugees as the number of refugees in the country reached 317000. The minister indicated that most of the refugees were coming from the Democratic Republic of the Congo, South Sudan while the others were from Somalia, Kenya, Tanzania, Burundi and Rwanda.<sup>38</sup>

This short paper provides an overview of laws, policies, issues and practices surrounding the discussion on forced and voluntary migration in Uganda. It discusses emerging practices, lessons and opportunities.

## **Understanding Refugee HRDs**

Every year, a large number of human rights defenders (HRDs) flee authoritarian countries in the face of physical assaults, legal threats and imprisonment. It can be argued that forcing HRDs into exile is an effective technique for authoritarian

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<sup>38</sup> The New Vision 30<sup>th</sup> January 2014 <http://www.newvision.co.ug/news/651986-uganda-overwhelmed-as-refugees-hit-317-000.html>

regimes - succeeding in not only removing dissidents, but also leading to self-censorship amongst remaining activists. Once outside their homelands, exiled HRDs face many challenges, most notably the lack of effective support mechanisms to ensure their physical safety and enable them to continue their professional contribution. Many, despite facing severe challenges, bravely continue to work. HRDs in exile are prone to physiological and psychological insecurities, not to mention direct risks to their physical safety. Failures of protection institutions continue to plague exiled HRDs, indirectly rewarding those dictators at home and forcing most HRDs to live in an enduring state of limbo and fear<sup>39</sup>.

HRDs in the Sub-region surrounding Uganda have therefore found themselves under persecution and found Uganda as the next stop for resettlement. In comparison, for HRDS, Uganda is an epicenter and more peaceful. Organizations like the Refugee Law Project (RLP) and East and Horn of Africa Human Rights Defenders project (EHAHRDP) continue to extend support to HRD migrants facing persecution. The bottlenecks they have faced in the process largely include issues with interpretation and translation. The Refugee Law Project has been instrumental in securing sufficient protection under Ugandan Law and ensuring that Uganda's International commitments to refugees do not go unmet.

With the establishment of the national coalition of Human Rights Defenders in June 2013 hosted at Human Rights Network Uganda, there will be increased involvement of greater HRDs network in Uganda in responding to exiled HRDs concerns.

### **The Legal and Institutional Framework governing Refugees in Uganda**

Laws governing refugees in Uganda include the Constitution of the Republic of Uganda 1995 under Chapter 4 on 'fundamental rights and freedoms' and also its National Objectives and Directive Principles of State policy, the Refugees Act 2006, the Citizenship and Immigration Control Act of 1996, the National Policy for Internally Displaced Persons 2004 among others.

The Constitution of the Republic of Uganda 1995, Chapter 3 (Citizenship) Article 13(2) states that every person who has legally and voluntarily migrated to and has been living in Uganda for at least twenty years shall upon application be registered as citizen of Uganda as well as every person who, on the commencement of the Constitution had lived in Uganda for at least twenty years. However studies have shown that acquiring citizenship among refugees who have lived for a long time in Uganda has been a very cumbersome and bureaucratic process, which renders it difficult for the refugees to acquire citizenship (RLP, 2002). This provision is contradicted by Chapter 3 Article 12(1) (ii) of the Constitution that states that citizenship will only be granted *if "at the time of his/her birth neither his or her parents and none of his or her*

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<sup>39</sup>Refugees as human rights defenders: Can they protect or do they need protecting? *Katie McQuaid* 2011-07-26, Issue 541 Accessed at <http://www.pambazuka.org/en/category/features/75209>

*grandparents was a refugee in Uganda*". Moreover, Article 12 (1) (a) (ii) provides that a person may be naturalized as a citizen of Uganda if neither of his or her parents was a refugee in Uganda. Such a provision is discriminatory and violates refugee rights, and forces people to the perpetuation of being a refugee throughout generations while living in the same country.

Another subsection in 12(2) states that the following persons shall upon application be registered a citizen of Uganda: (a) every person married to a Ugandan citizen upon proof of a legal and subsisting marriage of three years or such other prescribed by parliament; (b) every person who has legally or voluntarily migrated to and has lived in Uganda for at least ten years or such other prescribed by parliament; (c) every person who on the commencement of this Constitution has lived in Uganda for at least 20 years.

Since refugees are involuntary migrants, no period of time can change the nature of migration. Unless host states come up with specific time limits within which refugees can be accorded citizenship, the article can be seen as a mockery of their stay in the country. Further, though not targeting refugees, it can be said that the word "person" also refers to refugees; that being the case, such a provision could give the settled refugees in Uganda the opportunity to regularize their stay in the country.

While allusion to refugees is not explicit, the Constitution of the Republic of Uganda (1995) Chapter 4, includes a Bill of Rights which enshrines not only civil and political rights but also economic, social and cultural rights. For instance, on equality and freedom from discrimination, Article 21 (1) states thus: All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law (2) without prejudice to clause (1) above of this article a person shall not be discriminated against on the grounds of sex, race, color, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.

Whereas the phrase, "all persons" would include refugees as well, in practice refugees have been denied certain privileges. For instance, refugees who have opted for an urban residence have been denied humanitarian assistance by the UNHCR on the pretext that refugees must reside in the designated rural settlements. **Another aspect, which contradicts this provision is in the Refugee Act [2006(29) (g)] which prohibits refugees from engaging in politics of Uganda or the country of their origin.** In this respect refugees who are HRDs may find it difficult to continue with the work they were doing in their own countries especially if such work touches on civil and political rights. This is coupled with the fact that the operating environment for Ugandan HRDs is not any safer. It is characterized by restrictive legislation passed recently including the Public Order Management Act 2013, the Anti Pornography Act 2014, the Anti Homosexuality Act 2014, an archaic Penal Code Act, The NGO Registration Act of 2006, the Anti Terrorism Act among other laws. Other issues that would affect the work of HRDs whether refugees or not include continued threats of detention and arrest by the state, and threats of deregistration of organizations. Many refugees in Uganda receive assistance from NGOs that offer humanitarian aid, legal assistance and monetary assistance and sometimes a

source of employment. If the political environment is fluid as it is, HRDs may not be able to receive such services, which are vital for their continuity and survival. Despite this, it is worth noting that in the early 1990s refugee welfare committees (RWCs) in settlements for Rwandese refugees in Uganda were used as springboards for political aspirations to oust the Rwandan sitting government.

Progressively, the Refugee Act accords all the rights stipulated in the UN and African Union Conventions, including freedom of movement and the right to work. However, free movement of recognized refugees in Uganda is subject to reasonable restrictions specified in the laws of Uganda or directions issued by the Commissioner which apply to aliens generally in the same circumstances, especially on grounds of national security, public order, public health, public morals or the protection of the rights and freedoms of others according to Article 30(2) of the Constitution of the Republic of Uganda, 1995. It can be deduced from this section that refugees have limited freedom of movement. This fact is affirmed by the refugee encampment policy whereby refugees must first secure permission before leaving the refugee settlement from their camp commandants. This section only applies to refugees in the settlement camps, which are not used by many HRDs

At the Institutional level, refugee management function is under the docket of disaster preparedness in the Office of the Prime Minister. It also establishes a Directorate of Refugees (DOR) under the headship of the Commissioner, which is charged with refugee matters. This process of centralization of refugee management shows the significance Uganda attaches to refugee presence in the country. In looking after these refugees, government often grapples with many challenges which include poor sanitation and hygiene, inadequate water supply, an old fleet of OPM vehicles, negative attitude by host communities towards new arrivals (sometimes the host communities are also poor and in need of the same assistance being accorded to refugees), harassment of service providers by refugees, and poor road network in settlements among others. However many of the HRD refugees do not live in these crowded camps as they only have minimal protection, safety and security.

Section 7 of the Act provides for the establishment of the Refugee Eligibility Committee whose main role is policy matters on refugees including status determination. This was lacking in the CARA. The Refugee Eligibility Committee (REC) is the government organ responsible for refugee status determination. REC is represented by several government ministries and the UNHCR may attend in an advisory capacity

## **Practice**

Even though refugees in Uganda are not confined behind barbed wire, their lifestyle and operations are highly regimented and fenced bureaucratically with laid down rules governing their behavior. For instance, refugees require travel permits before they can move out of a settlement. It is the role of government-appointed Settlement Commandants to control and monitor the activities of refugees and issue travel permits. Local Ugandans and other people seeking to access rural refugee settlements must first obtain permission from the Directorate of Refugees in Kampala. Refugee matters, even amidst local

decentralization policy in Uganda, are highly centralized. Therefore, with such bureaucracy, it is difficult to see how refugees can become integrated in the mainstream society

## **Recommendations**

The government must extend adequate protection to the most vulnerable refugees and must quickly disseminate the Act in more friendly languages. Mobility of refugees should be allowed both within the host country and back and forth to the country of origin. Uganda is a good place to host HRD migrants seeking refugee or asylum status. International organizations and other international human rights mechanisms need to adapt their working policies and strategies to protect and help HRDs both in their home countries and in exile

## **Conclusion**

The government of Uganda has made positive steps since the enactment of the 2006 Refugee Act, which in itself is a step toward enhanced protection of migrants in Uganda. There is also tremendous contribution from civil society in realizing these positive steps. Uganda nonetheless continues to be bordered by five countries, three of which remain involved in armed conflict. In order for the HRDs who are received in the country to continue in their trade, there is need for improvement in the legal, policy and political environment to enable them to thrive in the promotion and protection of human rights.

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**Mr. George Kegoro, Executive Director, Kenyan Section of the International Commission of Jurists:** Forced and Voluntary Migration to Kenya: Issues, Laws, Policies and Practices to Consider

*First they came for the Communists, and I didn't speak up because I wasn't a Communist. Then they came for the Jews, and I didn't speak up because I wasn't a Jew. Then they came for the trade unionists, and I didn't speak up because I wasn't a trade unionist. Then they came for the Catholics, and I didn't speak up because I was a Protestant. Then they came for me — and by that time no one was left to speak up—Pastor Martin Niemöller*

Protection of Human Rights Defenders (HRDs) is enshrined in various laws advocated for both by the state and in some cases, by civil society organizations (CSOs). Protection of HRDs is crucial and can be used to measure the level of democracy in a country. This is because more often than not, HRDs point out the misgivings of the government and push for implementation of human rights, which may discourage states from protecting them. Some of the officials involved in the protection of HRDs include, security forces and the Ministry of State, the executive, judiciary, and CSOs amongst others. All these persons have a major role to play in this process.

Kenya is a destination country for HRDs facing persecution within the Great Lakes region. This is mainly because:

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- **Integration prospects are good in Kenya** - For instance, many countries in the region have similar cultures and language, making it easy for them to interact and mix with Kenyans.
  - **Economic stability**
  - **Presence of several human rights organizations.**
  - **The political environment in Kenya is also favourable** to HRDs - For instance, Rwanda and Uganda have a common agenda against the Democratic Republic of the Congo (DRC) and have "gentlemen agreements" which facilitate extradition of migrants. A case in point is that of Joel Mutabazi, who was a former bodyguard of the Rwandese president. He exposed violations through interviews with human rights groups. He was arrested by the Ugandan authorities and extradited to Rwanda, which exposed him to persecution by the Rwandan government.
  - Having taken this into consideration, it is important to analyze the issues, laws, policies and practices to relevant to the protection of HRDs. Kenya has put in place several protection mechanisms including the implementation of universal instruments as well as local legislation.
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## Universal Instruments

Kenya is party to a number of international instruments, which recognize the protections of HRDs. Examples of these instruments include:

- The **Universal Declaration of Human Rights (UDHR)** which under Articles 19, 20 and 28 refers to freedom of opinion and speech, the right of peaceful assembly and association and the right to an established social and international order in which these rights and freedoms are fully effective;
- The **International Covenant on Civil and Political Rights (ICCPR)** under articles 19, 21 and 22, it guaranteeing freedom of opinion and speech as well as the right to peaceful assembly and association;
- The **Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949;**
- The **Protocol Additional to the Geneva Conventions of 12th August 1949 and Relating to the Protection of Victims of International Conflicts (Protocol I), 1977;**
- The **Convention Relating to the Status of Refugees, 1951;**
- The **Convention Relating to the Status of Refugees, 1967;**
- The Organization of African Unity (now African Union), **Convention Concerning Specific Aspects of Refugee Problems in Africa, 1969;**
- The **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (Article 3);**
- The **Convention on the Rights of the Child (Article 22);**
- The **Declaration on the Elimination of Violence Against Women, 1994;**
- The **African Charter on the Rights and Welfare of the Child, 1990 (Article 13);**
- The **Cartagena Declaration on Refugees, 1984;** and



- The **Statute of the Office of the United Nations High Commissioner for Refugees**.

The abovementioned instruments can be invoked as mechanisms to protect HRDs in Kenya as they conduct their activities in the protection of human rights.

### **Declaration on Human Rights Defenders**

Further to the abovementioned instruments, the United Nations (UN) also took into account the important work of HRDs and the need to guarantee their security. As a result, on 9 December 1998 under Resolution 53/144, the UN General Assembly adopted the Declaration on HRDs.<sup>40</sup>

### **Regional Instruments:**

**African Charter on Human and People's Rights** - It allows for individuals and Non-Governmental Organizations (NGOs) to make complaints about human rights violations. However, it should be noted that this is only applicable where national procedures have been exhausted and that these complaints do not deal with cases that have already been settled under the principles of the African Charter.

In 2003, the African Commission on Human and Peoples' Rights (ACHPR) issued the **Kigali Declaration** in which it wholeheartedly supported the role of HRDs and the need for their protection. By 2004, the African Commission had adopted its first **Resolution on the Protection of African Human Rights Defenders**, which introduced the post of a **Special Rapporteur for Human Rights Defenders in Africa**, answerable to the Commission.<sup>41</sup>

From the analysis above, it is evident that both international and regional instruments recognize the need for protection of HRDs and provide mechanisms for their protection. This is very encouraging because it proves different states' commitment to protection of HRDs which is essential for there to be a just, free and equitable society.

### **Domestic Legislation**

In Kenya, there is legislation including the Constitution that covers the protection of HRDs. The scope of the protection covered by the legislation is primarily witness protection. However, it can also cover the protection of whistleblowers on corruption, human rights violations and other crimes. It is also worthy to recognize that there is an **Ombudsman** in Kenya whose mandate includes the protection of HRDs. The use of the Ombudsman has however been minimal as not many cases have been reported.

The regulation of migrants into Kenya is guided by the **Refugees Act No. 13 of 2006**. Some of the obligations imposed on the Kenyan government in implementing the Act include the setting up of a Department for Refugee Affairs

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<sup>40</sup>Protection of human rights defenders: best practices and lessons learnt- Protection International

<sup>41</sup>Protection of human rights defenders: best practices and lessons learnt- Protection International

(DRA). This is an effort to domesticate and implement the 1951 UN Refugee Convention, its 1967 Protocol and 1969 AU Convention, which reflect the importance of these obligations.<sup>42</sup> The mandate of the DRA is to develop policies, promote durable solutions, co-ordinate international assistance, registration and management of refugee camps.

Ideally, the Act can be invoked to protect HRDs who are fleeing hostile environments in their countries because the legislation applies as a blanket authority for all refugees. Apart from this, immigration laws in Kenya give authorities the right to regulate who is present on its territory. The laws may further, prevent some individuals from entering or remaining in Kenya. Determination of deportation is at the Kenyan authorities' discretion and that may expose HRDs to a higher risk of deportation back to their countries.

## **Rights of Refugees**

- **Non-refoulement**

States are obligated not to refoul/return a refugee to "the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."<sup>43</sup> This right, however, does not apply to refugees who pose a threat to their host country or those who have been convicted of a serious crime that would make them a danger to their community.

- **Freedom of movement**<sup>44</sup>

Refugees have the right to choose where to settle in their host country. They also have the right to move freely within the State hosting them.

- **Right to family life**

Family is considered as a "natural and fundamental group unit of society and is entitled to protection by society and the State."<sup>45</sup> In light of this, when a refugee is granted asylum, his/her dependent relatives should be granted asylum as well, in order to maintain the refugee's family unit.

- **Right to education, right to employment and the right to access to justice**

As provided for by the Convention Relating to the Status of Refugees 1951, refugees also have the right to education, right to employment and the right to access to justice.

## **Who Migrates to Kenya?**

According to the International Organization for Migration (IOM), Kenya hosts hundreds of thousands of refugees from neighbouring countries such as Somalia, Ethiopia and Sudan in camps as well as in urban settings. For instance, it is

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<sup>42</sup>A Human Rights Defender's Perspective- [bemihblogger.blogspot.com/](http://bemihblogger.blogspot.com/)

<sup>43</sup>[1951 Convention relating to the Status of Refugees](#), art. 33(1)

<sup>44</sup>International Covenant on Civil and Political Rights, arts. 12

<sup>45</sup>[International Covenant on Civil and Political Rights](#), art. 23(1)

reported that Kenya is hosting over 350,000 refugees with a growing influx from South-Central Somalia and other African countries.<sup>46</sup> Further to this, it reported that Kenya hosts one of the largest refugee camps in the world such as Daadab and Kakuma camps. The key determinant of which refugees go to camps or stay in Nairobi is financial ability.

### **Examples of HRDs who migrate to Kenya include:**

- HRDs from the **DRC** – These are mainly journalists who are vocal about violations faced by civilians;
- HRDs from **Ethiopia** - Mostly journalists who publish international articles that expose/ criticize violation of human rights;
- **Congolese** HRDs - Mainly human rights activists;
- **Rwandese** HRDs – These include human rights activists, journalists and lawyers. There is a lot of repression and HRDs who follow up on human rights violations are usually tracked down and prosecuted under trumped up charges;
- **Somali** HRDs - Journalists and HRDs (mainly women activists who oppose the conservative Sharia law);
- **Uganda** – There are no reported cases so far, however, with the passing of legislation criminalizing homosexuality, HRDs are now in danger of persecution; and
- From **Burundi** – Mainly opposition groups who are vocal against government violations.

### **Kenyan Policy And Administrative Practice While Dealing With:**

#### **Family/Relatives**

The right to a family unit is a universal right, which is recognized and respected by the United Nations High Commissioner for Refugees (UNHCR). The Kenyan government does not openly encourage migrants to invite their relatives due to the economic burden. However, migrants are allowed to do so because Kenya employs the structures of the UNHCR, which uphold this right.

The Kenyan government is still setting up structures to give refugee assessment status. Countries, which practice refugee assessment include Uganda, Ethiopia and Rwanda.

#### **Minors**

The Kenyan government respects children's rights. It works closely with NGOs such as UNHCR and HESHIMA Trust, who organize foster care arrangements for unaccompanied minors and assist them to get enrolled in learning institutions. Organisations such as Red Cross also assist with tracing family members of unaccompanied minors.

### ***Discussion on Migration, Forced or Voluntary for HRDS***

**Questions and comments** from the floor included:

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<sup>46</sup><https://www.iom.int/cms/en/sites/iom/home/where-we-work/africa-and-the-middle-east/east-africa/kenya.default.html?displayTab=map>

- Bearing in mind that governments liaise on some matters related to HRDs, is it preferable to use the state or non-state system for migration?
- What is the scope of support offered to HRDs in South Africa and Kenya? Does it include family and for how long? How do you insulate against dependency?
- What is the situation in Uganda and South Africa regarding refoulement?

### **Responses:**

- Generally the formal process is preferable to unofficial channels. Practical decisions may however imply the use of unofficial systems.
- South Africa through the doctrine of 'imputed political opinion' covers immediate dependants to migrating HRDs. The main challenges however are the prohibition of 'subversive acts' that limits the awarding of status and a need for support that allows for self-sufficiency.
- Kenya does not distinguish HRDs from other 'refugees'. There is no consideration for unique vulnerabilities or special protection; HRDs are given 'refugee' status. For instance, Ugandan HRDs who could adduce evidence at the ICC found themselves more vulnerable as 'refugees' in refugee camps.
- Regarding country of first asylum, the South African courts have been accommodating. The immigration laws are however under review and the situation may change.

## **Regional Solidarity and Networking for HRDs: What is Missing and What is Needed? Critical Assessment and Reflection**

### **Mr. Onesmo Olengurumwa, Tanzanian Human Rights Defenders Coalition**

The concept of human rights defenders (HRDs) solidarity will be discussed intensively during the Human Rights Defenders Regional Meeting on Protection Strategies in Pretoria, South Africa March 2014. The content of the discussions will include among others, the working environment for HRDs in Africa, what needs to be done to improve networking and solidarity among HRDs, the concept of safe spaces for the defense of human rights, mechanisms for rapid response work, and possible post conference steps towards the establishment of a rapid response mechanism.

This paper presents key issues on the concept of solidarity and networking among HRDs. Regional solidarity starting from the current trends, challenges, and the way forward are presented in this piece of work.

## **Who is a Human Rights Defender?**

According to the *United Nations Declarations on Human Rights Defenders of 1998* "human rights defender" is a term used to describe people who, individually or with others, act to promote or protect human rights. HRDs are identified above all by what they do and it is through a description of their actions and of some of the contexts in which they work. HRDs can be journalists, lawyers, or whistle blowers; it can as well be all organizations that defend human rights. HRDs are recognized due to their work, as they protect, and enhance human rights, politically, economically, socially, and culturally. They have been facing various challenges, during the execution of their duties, for example; being, imprisoned, tortured, being sidelined, and being expelled from their communities in extreme cases they are even murdered. Investigations are excessively protracted, due process is not always guaranteed and perpetrators are often not held accountable<sup>47</sup>.

HRDs are champions for human rights and promote constitutional rights for instance the right to life, food, shelter, health, education, freedom of expression, children's right, women's' right, youths, development, policy changes, etc. HRDs are the hope for the ordinary citizens against unbridled power. They are important for democratic institutions and they tend to stop the execution of wrong doings with impunity and also protect rights.

Any person can be a human rights defender without considering the level of education, defending human rights does not require one to have a degree or diploma, but it is a calling from the heart. However there are those who are defenders due to their professional engagement like lawyers, journalists, judges and Police Officers.

Defenders and their families are intimidated, harassed, subject to surveillance, threatened, attacked, arbitrarily arrested, criminalized, tortured and ill-treated in detention, subject to enforced disappearances, and sometime killed. States and non-states actors are involved in the commission of these acts and impunity tends to prevail when it comes to attacks and violations against defenders.

## **The Essence of HRDs Solidarity and Networking**

Solidarity is defined as a unity or agreement of feeling or action, especially among individuals with a common interest.<sup>48</sup> Networking is as well defined to mean a group or system of interconnected people or things.<sup>49</sup> This connection may be by meetings, workshops, communication through internet, social media and even events. Previously, these ties were traditionally developed through face to face interaction, as of today these relationships can be developed over electronic networks, including email, Skype, Facebook or Twitter.

Through solidarity and networking HRDs will be able, with one voice, to put pressure on states to provide for one of the key elements of a safe and enabling

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<sup>47</sup> Human Rights Council (2013) Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya, 25 December 2013.

<sup>48</sup> Concise Oxford Dictionary Tenth Edition.

<sup>49</sup> *Ibid.*

environment for defenders which is the existence of laws and provisions at all levels, including administrative provisions, that protects, support and empower defenders. We always recommend collective action because it is easier to get results through networked advocacy and it also helps to minimize risks among HRDs.

### **The Essence**

- HRDs work with a complex range of perpetrators of human rights violations; and the perpetrators of human rights abuses usually do not want the world to witness their actions. Strong networking and solidarity among HRDs are therefore a threat to their actions.
- Every day, the field of human rights receives new initiatives, declarations and rules on the rights of HRDs and Civil Society in general. Therefore, another essential value of creating such kind of solidarity is to enable all HRDs from different parts of the world in rural or urban areas to interact, learn and use the available opportunities for their welfare and security.
- Solidarity and networking among HRDs help to heighten the capacity of HRDs and reduce their vulnerability. Capacity is the strength and resources a group or defender can access to achieve a reasonable degree of security. Examples of capacity could be training in security or legal issues, a group working together as a team, access to a phone and safe transportation.
- Networking among HRDs also helps to bridge the gap between the UN and AU human rights systems and group of HRDs.
- HRDs connections and solidarity help in strengthening and improving their working environment. In assessing the working environment for HRDs we need to consider the extent, level and quality of connections, and state of relations between HRDs and CSOs, but also between HRDs and other partners such as development partners, religious leaders and political leaders.

Transnational advocacy helps HRDs deliver the message to relevant authorities and put pressure on states in question. HRDs/NGOs may seek help from other states through their transnational networks to achieve a goal within an offending state. This makes solidarity and networking among HRDs inevitable for effective protection of HRDs.

### **Regional Solidarity and Networking for HRDs**

The current solidarity and networking among HRDs at all levels is not yet promising. Majority of HRDs still work individually. However, there is a positive development at international, regional and national levels as described herein below.

### **At the International Level**

At international level, the mandate on the situation of HRDs was established in 2000 by the United Nations Commission on Human Rights (as a Special Procedure) to support implementation of the 1998 Declaration on HRDs. The

Commission on Human Rights appointed a special rapporteur to oversee the situation of HRDs and report the same.

In 2008 Mrs. Margaret Sekaggya was appointed as Special Rapporteur she is supposed to visit various countries and then report the same to the United Nations General Assembly. The appointment of the special rapporteur is aimed at bridging the gap between HRDs and the UN human rights systems. However, this system is not known to many HRDs.

All the HRDs' institutional mandate-holders (created within the United Nations, the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights, Council of Europe, the Organization for Security and Cooperation in Europe, the European Union) met for the first time in 2008 under the Observatory for the Protection of Human Rights Defenders, a joint programme of the International Federation for Human Rights (FIDH) and the World Organization Against Torture (OMCT), to find ways to enhance coordination and complementarities among themselves and with NGOs.<sup>50</sup>

In 2010, a single inter-mechanisms website was created, gathering all relevant public information on the activities of the different HRDs protection mandate. Holders aim at increasing the visibility of the documentation produced by the mechanisms – press releases, studies, reports, statements, etc., as well as of their actions, country visits, institutional events, and trials observed.<sup>51</sup>

In 2002, an international defender's NGO, Front Line Defenders established the Dublin Platform for Human Rights Defenders. The Dublin Platform is an annual event, which provides a truly unique opportunity for HRDs at risk, from every corner of the world, to come together to share experiences, learn from one another, discuss relevant issues and engage with decision makers from governmental and intergovernmental bodies.

As part of each Dublin Platform, Front Line Defenders works with all of the participants to coordinate panel discussions, defender testimonies, presentations and working groups to address the most pressing security and protection issues facing HRDs in their daily lives. To date, the seven Dublin Platforms in 2002, 2003, 2005, 2007, 2010, 2011 and 2013 have each brought together more than 100 HRDs from over 80 countries around the world.<sup>52</sup> This is the only well known global platform that brings together HRDs from different parts of the world.

## **At Regional Levels**

At the regional level the situation varies depending on the level of human rights enjoyment in the particular region. Currently, the world has five administrative regions. These regions include; Africa, Asia, European Union, Latin America and North America. The situation of human rights in Asia and Middle East is unique

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<sup>50</sup> Keck, Margaret., and Kathryn Sikkink ( 1998) "Activists beyond Borders: Advocacy Networks in International Politics." Cornell University Press.

<sup>51</sup> THRDC (2013) Security Needs Assessment Report for Human Rights Defenders available at [www.thrd.or.tz](http://www.thrd.or.tz)

<sup>52</sup> [www.frontlinedefenders.org](http://www.frontlinedefenders.org)

and therefore difficult to find strong groups of HRDs defending the rights of people.

### **Africa**

The Africa Union through the Grand Bay Declaration in April 1999 and through the Kigali Declaration of 2003 showed an intention to recognize and protect HRDs. To bring closer and enable HRDs access Africa Human Right System, the African Special Rapporteur on HRDs was appointed. The Special Rapporteur's mandate is to investigate and report HRDs issues to the AU General Assembly.

Available Regional Networks in Africa include; East and Horn of Africa Human Rights Defenders Network (EHAHRDN), West Africa Human Rights Defenders Network (WAHRDN), South Africa Human Rights Defenders Network (SAHRDN), Central Africa Human Rights Defenders Network (CAHRDN), The African Centre for Democracy and Human Rights Studies (ACDHRS) and Pan Africa Human Rights Defenders Network. These networks have been established among other things, to improve HRDs solidarity and networking in Africa.

The African Centre for Democracy and Human Rights Studies (ACDHRS) is independent, non-profit regional human rights NGO based in Banjul, the Gambia. It was set up in 1989 by an Act of Parliament of the Republic of The Gambia. However, 1995, the African Centre was re-launched, thereby repealing the Act, and thus making the Centre a truly independent, autonomous and pan-African NGO.<sup>53</sup>

The African Centre seeks to promote the awareness and adherence of human rights and democratic principles throughout the African continent. It further seeks to uphold and promote Article 25 of the African Charter on Human and Peoples' Rights which states that:

*"State Parties have the duty to promote and ensure, through teaching, education and publication, respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood."*

The African Centre builds bridges between Inter-Governmental Organizations (IGOs) and Non-Governmental Organizations (NGOs), as well as between and among NGOs. It maintains networks of communications, human rights education and research among others.<sup>54</sup>

The NGOs Forum is one of the main advocacy tools that the Centre uses to promote networking among Human Rights NGOs, for the promotion and protection of human rights in Africa. In collaboration with the African Commission on Human and People's Rights (ACHPR) and other human rights organizations, the African Centre has facilitated the participation of civil society

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<sup>53</sup> <http://www.acdhhs.org/about-acdhhs/>

<sup>54</sup> *Ibid.*



organizations, academicians and other professionals from Africa and beyond in the African Commission's sessions.<sup>55</sup>

The NGO Forum convenes twice a year for three days, just before the ACHPR sessions. It provides a discussion platform for over 200 organizations working on democracy and human rights issues in the continent. It is open to all, and all are welcome to take part. The main objectives of the Forum are:

- To foster closer collaboration and co-operation among NGOs, and with the African Commission for promotion and protection human rights in Africa;
- To provide a discussion platform for organizations working on democracy and human rights issues in the continent;
- To promote inter-regional/organizational networking for the implementation of decisions of the Forum as contained in the ACHPR Communiqué amongst others.

The last Forum held in Banjul, the Gambia in October 2013 was a resounding success with over 200 participants, coming from civil society organization and NGOs in Africa and beyond, inter-state organizations, the academia, and many more. During the Forum the African Human Rights Book takes place to enable NGOs network and initiate or renew, the exchange of materials and information, as well as to publicize their activities. This is one of the most reliable forums for whereby HRDs in Africa join their efforts and show solidarity against human rights violations in Africa.

## Europe

In Europe, the European Union established EU Guidelines on Human Rights Defenders as the best way to support the implementation of the Declaration on Human Rights Defenders in third countries.<sup>56</sup> In June 2004 the Council adopted the *EU Guidelines on Human Rights Defenders*, which provide practical recommendations to streamline EU actions in this field. The Guidelines, which build on the UN Declaration on Human Rights Defenders adopted in 1998, represent the political framework under which financial support is given to defenders through the European Instrument for Democracy and Human Rights (EIDHR).

The guidelines provide practical suggestions for enhancing EU action in relation to HRDs. The Guidelines can be used in contact with third countries at all levels in order to support and strengthen ongoing EU efforts to protect the rights of HRDs. This may also provide for interventions by the EU on behalf of HRDs at risk, and suggest practical means to support and assist them.

On 2010, the European Parliament adopted a Resolution on the EU policy in favour of Human Rights Defenders (2009/2199(INI), it called on the various EU institutions and its missions to reinforce their action for effective implementation of the Guidelines, notably by ensuring regular contact with HRDs prior to taking any action on their behalf and to provide them with feedback. These

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<sup>55</sup> *Ibid.*

<sup>56</sup> *The European Union (EU) Guidelines on Human Rights Defenders (2004)*

recommendations were reiterated with the adoption, on 16 December 2010, of its annual report for 2009 on Human Rights in the World, and the European Union policy on Human Rights (2010/2202(INI)).<sup>57</sup>

Therefore one can say Europe is the leading continent in laws, guidelines, judicial, administrative, policies and networks that protect HRDs. EU members should play an active role in the enforcement of Guidelines issued by EU, and as member of the Council of Europe they should play a dynamic role in order to create a successful mechanism to protect HRDs in Europe, and thus create precedent for other states in the world.

Support for HRDs has long been an integral part of the European Union's external policy on human rights. Through EIDHR, the EU supports HRDs against repression and the arbitrary exercise of power, and aims at providing swift assistance to HRDs at risk. It also aims at reinforcing their capacity to do their human rights work in the medium and long term.<sup>58</sup>

There are many organizations for HRDs in Europe including the Front Line Defenders, Protection International, Human Rights Centre, Euro-Mediterranean Foundation of Support to Human Rights Defenders, Federation Internationale des Droits de L'Homme (FIDH), Association Reporters Sans Frontieres and many more.

The European Commission introduced EU NGOs Forum that brings together HRDs from across the world. The EU-NGO Forum on Human Rights is an annual conference that provides a venue for direct interaction and in depth discussion between representatives of global civil society and the EU institutions. EU Member States and international organizations on various topics related to the promotion and protection of human rights.<sup>59</sup>

## **Latin America**

In its 1998 annual report, the **Inter-American Commission on Human Rights (IACHR)** highlighted the importance of the work carried out by HRDs and recommended to Member States of the Organisation of American States (OAS) the adoption of measures necessary for their protection. On this basis, in June 1999 the General Assembly of the OAS adopted a resolution entitled *Human Rights Defenders in the Americas, support for the individuals, groups, and organizations of civil society working to promote and protect human rights in the Americas* (AG/RES.16715).<sup>60</sup>

In the event of imminent danger, the IACHR may issue preventative measures to HRDs under threat so as to avoid any irreparable harm. The IACHR may also request information from States and issue recommendations thereunto. It is also possible to request that the Inter-American Court adopts provisional protection measures.

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<sup>57</sup> [http://europa.eu/legislation\\_summaries/human\\_rights/human\\_rights\\_in\\_third\\_countries/l33601\\_en.htm](http://europa.eu/legislation_summaries/human_rights/human_rights_in_third_countries/l33601_en.htm)

<sup>58</sup> [www.eidhr.eu](http://www.eidhr.eu)

<sup>59</sup> <http://www.eidhr.eu/events/15th-eu-ngo-forum-on-human-rights>

<sup>60</sup> <http://www.oas.org/juridico/english/ga-res99/eres1671.htm>

In 1998 report of the commission, the Commission recommended to the member states that they “take all necessary measures to protect the physical integrity of human rights defenders and to ensure they can work under appropriate conditions”. When these recommendations were presented to the member states, the General Assembly adopted resolution 1671, entitled “Human Rights Defenders in the Americas, Support for the Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights in the Americas”.

In December 2001, the Inter America Commission on Human Rights Executive Secretariat decided to establish a Human Rights Defenders Unit, entrusted with coordinating the activities of the Executive Secretariat in this area, directly under the Executive Secretary.

Other Organizations for protection of HRDs in Latin America includes Committee to Protect Journalists, Environmental Defender Law Centre, Indian Law Resource Centre, and the US Human Rights Network.

## **Asia**

The ASEAN Inter-governmental Commission on Human Rights (AICHR) has now been set up as the overarching body to promote and protect human rights in the Association of Southeast Asian Nations (ASEAN). Two sectoral bodies working on human rights have also appeared: the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC) and the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW)<sup>61</sup>.

FORUM-ASIA’s Human Rights Defenders Programme aims to strengthen the protection of HRDs and women human rights defenders (WHRDs) in Asia. FORUM-ASIA (Asian Forum for Human Rights and Development) is a membership-based regional human rights organization committed to the promotion and protection of all human rights including the right to development. FORUM-ASIA was founded in 1991 in Manila and its regional Secretariat has been located in Bangkok since 1994. The programme objectives include, inter alia, promoting the role and the rights of HRDs and WHRDs under the UN Declaration on HRDs.

## **At the National Level**

African civil society continues to form networks and coalitions for HRDs in their respective countries and regions. Coalitions and networks in Africa include: Kenya, Eritrea, Djibouti, Uganda, Tanzania, and Burundi Human Rights Defenders Coalition. The final group in the list is South Sudan, Rwanda, Somali and Senegalese Human Rights Defenders Coalition.

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<sup>61</sup> <http://www.europarl.europa.eu/activities/committees/studies.do?language=EN>

In Tanzania, the Tanzania Human Rights Defenders Coalition (THRDC) was formed to address HRDs issues in Tanzania. The THRDC is comprised of both individual and organizational memberships. Its membership and representation in terms of operation is spread (through designated zone offices of coordination) all over the United Republic of Tanzania (Mainland and Zanzibar).

The main interest of this coalition is to, inter alia, work towards enhanced security and protection of the HRDs in the United Republic of Tanzania. It also intends to strengthen regional and international interventions towards protection and promotion of the rights and responsibilities of the HRDs. The ultimate result of all these, as this coalition visualizes is a contribution to creation of safer working environment for the HRDs. It has been and still intends to work closely with different stakeholders including local, regional and international HRDs' organizations and coalitions; individual HRDs; development partners; United Nations; duty bearers and other relevant stakeholders.

### **(a) Human Rights Defender's Day**

The Tanzania Human Rights Defenders Coalition (THRDC) on the 12<sup>th</sup> December 2013 introduced for the first time ever in this country, a Human Rights Defenders Day which incorporated a review of all activities of the HRDs in that particular year. More than 100 HRDs, government officials and development partners attended the first Anniversary of the Tanzania Human Rights Defender's Day

The Coalition conducts advocacy through networks focusing on, and targeting particular audiences in order to gain support. These are human rights organizations and networks. The THRDCs also increases their visibility through documentation, press releases, studies, reports, statements, etc., as well as other actions like country visits and institutional events such as the Human Rights Defender's Day.

THRDCs discuss frequently with the government and other CSOs in order to let them have a better understanding of what HRDs do. There will be a creation of a HRD calendar and human rights defenders' day to enhance the visibility of HRDs' actions to allow people to be more aware and appreciate their actions. In order to facilitate transnational advocacy networks, the network needs to have common values and principles, access to information and be able to effectively use that information, believe their efforts will cause change and effectively frame their values.

The Coalition being an umbrella body has primary role of bringing together HRDs and network among themselves and as well with different relevant stakeholders. During the first anniversary in 12/12/2013, this occasion brought together not only HRDs' stakeholders, but also people who have positive interest or influence in the work HRDs such as development partners and state officials. The commemoration day focuses on the following:

### **Tanzania Human Rights Defenders' Day Provides the Following**

- a) Improving networking and experience sharing among HRDs and relevant stakeholder by providing a venue for direct interaction and in depth discussion between representatives of global civil society, media, government officials, regional and UN human rights bodies.
- b) This is a day where HRDs will show their works to the public and relevant invited guests. During this day HRDs will display different activities relating to human rights promotion. This may also provide a room for the exchange of materials and information, as well as to publicize their activities.

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### **Ms. Irene Petras - Executive Director, Zimbabwe Lawyers for Human Rights;**

Solidarity and networking will largely depend on how proactive we can be in reading early warning signs and robustly addressing challenges faced by HRDs, how effectively people or institutions communicate and collaborate, how timely their responses are in emergency situations, and how well they are able to mobilize broader support at the national, regional and international levels.

#### **Intra-network issues**

- Communication must be quick and effective; and advances in technology must be explored and adopted. There must also be proper communication procedures, which are known, observed and respected.
- Language barriers need to be addressed.
- Individual, rather than institutional contact points and a lack of internal sharing of information within country organisations slow down responses. The absence of a key person hampers the process of rapid response due to lack of adequate information.
- The differing levels of capacity within the network and its members affect efficiency and efficacy. This is true with reaction to attacks and challenges faced, rapidly reacting to HRDs in distress, communicating, and offering solidarity. There is therefore a need for capacity-building; and a need also for those being capacitated to embrace this and be willing to learn and implement the lessons
- There is need for regular updates on situations which might escalate or prove problematic for HRDs in specific countries or group of countries. Although the situation is beginning to be addressed through among others extended mailing lists and newsletters, an early warning, or tracking system is necessary for the network.
- There is need for the network to include, or have easy access to, information about specific high-risk HRDs or issues, database of contacts and expertise.
- The possible pairing up of countries could also enhance reaction through constant alertness and awareness. For instance, in the event of one being targeted in a paired country, the partner/(s) within the network should always be in the loop regarding the challenges.

## External issues

- Travel restrictions such as visa requirements and language barriers inhibit the effectiveness of the network.
- There are too many initiatives, which remain largely uncoordinated and have the propensity to duplicate efforts rather than act as a multiplier effect. An example is the case of Thulani Maseko, where lawyers, HRDs, regional organisations, international organisations are all in the fray. This is not necessarily bad, but needs coordination so as to avoid looking disorganized. There is also need to maintain momentum and prevent fatigue.
- There is inadequate interaction with other networks in the region and throughout the continent. These networks include law-based, unions, civil society, faith-based organisations, the Pan African Parliament and the SADC Parliamentary Forum. Increased interaction would allow for reflection, the sharing of good practices and lessons learned, and the appropriate delegation of roles including discussion, negotiation and putting pressure on government actors.
- There is inadequate feedback on developments in-country, in region or across regions. This not only refers to developments in a specific country or against certain HRDs, but also developments on meetings held and initiatives being planned. The ACHPR is often used as such a platform, not all networks will be represented. There is therefore need for information and feedback on initiatives through formal structures for transparency and accountability purposes
- There is a failure to invest in regional mechanisms and maximize their efficiency and effectiveness. At the Southern African Development Community (SADC) and AU/ACHPR level, developments need to link back to the work of the networks and individual organisations.
- There is need to improve access to, and dispersal mechanisms of funding for projects involving HRDs and competition for resources locally, regionally and internationally.
- There is also a failure to appreciate our strength in numbers against repressive state machinery such as corrupt judicial systems. There should be increased solidarity and speaking with one voice on issues of common concern at fora such as the ACHPR.
- There is a failure to educate and involve media in the struggles HRDs face, use the media and new technology to optimal effect, and to involve and mobilize communities and general public.
- Failure to fully involve ourselves in the global debates around protection of HRDs and ensure that Africa and the regional initiatives are properly funded, respected and led. This will aid continued funding and sustainability of initiatives.

## **Regional Protection Mechanisms for HRDs, Efficiency, Effectiveness and Efficacy – What is Missing and What is Needed-Concept of Rapid Response?**

### **Mr. Hassan Shire Sheikh - Executive Director of East and Horn of Africa Human Rights Defenders Project**

From the start, even the UN Declaration on HRDs does not contain a definition of HRDs. Instead it refers to "Individuals, Groups and Organs of Society". This was a compromise as there could not be an agreement regarding who was or indeed is an HRD by the state parties at the UN. On the one hand, where states that consider HRDs as 'terrorists', 'agitators', 'spies' and 'saboteurs'; while the other group of states was more tolerant of HRDs.

However, even without a set definition, HRDs can identify themselves as 'voluntarily' actors. Their work of HRDs involves speaking truth to power; challenging the status quo; and advocating for higher standards. Consequently, HRDs face risk and danger in their working environment. Those especially unhappy with the work of HRDs have been known to question the identity and role of HRDs. Museveni, for instance, has indeed asked who the HRDs are, who elected them and who they represent.

#### **What is missing?**

Using the Pan-African HRDs Network as background, there are several gaps to be filled.

In making regional protection mechanisms efficient, solidarity and goodwill is necessary. Such solidarity and goodwill is evident on the international level but does not filter down or get replicated in Africa. In fact, some regions and countries on the continent do not even have coalitions. And further, there are no protection mechanisms for HRDs at the local level. There is therefore a need to advocate for protection through the enactment of local laws and a transfer of skills in the region. HRDs should not only be protected in states where they have sought refuge but should be able to continue their activism work.

It is also important to address the challenges of HRDs that are currently 'most-at-risk'. These include HRDs working in the areas of LGBTI, HIV and the environment. For these specific groups, there is urgent need to create mobile lawyers for and on the continent. Likewise, HRDs should advocate for all human rights (a totality of rights and not a selection), with emphasis on the 'universality' and 'indivisibility' of human rights. The intention should always be to bring controversial issues within the framework of law and policy.

Solidarity has been a recurrent topic at numerous conferences held all over the world, including 'Johannesburg +10'. Several initiatives were born of these meetings. Of note, is the Pan-African HRDs Network, which came out of 'Johannesburg +10'. The Eastern Horn also has an establishment with a 3-pronged mandate for active protection, preventive protection, advocacy and capacity building.

## **Success**

So far, there are some successes worth noting. These include the launching of the HRD Hour at Pan-African level. The HRD Hour at its launch in 2013 recognized the work of 5 HRDs. An overall African shield was also awarded in recognition of the work done by HRDs. And an HRD Identity Card, HRD Index and HRD Code of Conduct are set to be launched at the next session of the African Commission. It is hoped that this amongst other reasons will go a long way to raising the profile of the work done by HRDs.

And lastly, there are some successful cases of rapid response to HRDs on the continent. Of note, are the following two cases of HRDs that had been forced to move as a result of their work:

1. The African Centre for Justice and Peace Studies, which had to move from Sudan to Uganda; by choice, they remained in the sub-region and continued their activism and networking. The Centre had been under attack for collaborating with the ICC on the *Al Bashir* case. However, owing to the support they got, the Centre remains legitimate and functional to date in the Sudan.
2. Following the Kenyan election dispute, many HRDs from Kenya left for other states. Many HRDs who sought asylum in other countries were however turned down. The rest, in Tanzania and Uganda, received training before returning to their home countries (where they continue to be prominent HRDs).

## **Ms. Mary Lawlor - Executive Director, Front Line Defenders**

The presentation will give an overview of the work of Front Line Defenders and then move on to highlights of the Front Line Defenders Strategic Planning meetings.

## **Front Line Defenders**



Front Line Defenders was founded in 2001, for the purpose of protecting HRDs' at risk (i.e.:- only people in danger). To this effect, the work of Front Line Defenders includes the following services and programs:

- **'24 hour' emergency line service**

The emergency line is in English, French, Spanish, Russian and Arabic.

There is also an encrypted page on the website for anyone who needs to make contact urgently.

- **Security Grants**

Security grants for HRDs range from legal and medical assistance to the provision of bulletproof vests.

The grants cover anything that will contribute to the security of HRDs allowing them to do their work peacefully.

- **Emergency Relocation**

If HRDs have to flee, then assistance with emergency passage and relocation to a 'safe' house or country in the region is offered. Quick Active visas can also be arranged for Ireland (lasting up to 3 months).

'Rest and respite' is included under the program. And such 'relocation' is not limited to Ireland but includes other warmer climates as a destination.

Family support and stress management are part of the program.

- **Advocacy**

Lobbying is done at the UN, EU, Inter-American and the African Commission. Appeals are lodged with Special Rapporteurs on HRDs.

Interns are also seconded to the UN and African Commission offices of Special Rapporteurs to increase the office's capacity to respond HRDs' appeals.

- **Trainings**

Trainings are done in a variety of areas including 'Personal Security and Risk Management', 'Digital Security', 'Trial Observation', 'EU Guidelines', as well as 'Organisational and Financial Management'.

The 'Dublin Platform' conducted every two years also allows for HRDs' experience sharing.

- **Annual award**

The Front Line Defenders recognizes HRDs through an annual award.

## **Strategic Planning Agenda for Front Line Defenders**

The last Strategic Planning meeting highlighted the importance of visibility. Case in point was the Zimbabwean online updates via a FaceBook page that proved

invaluable and convenient for networks abroad. The adoption of social media significantly reduced costs in terms of time and money. The last Strategic Planning meeting hence focused on increasing resources for the 'Visibility of HRDs' in danger so as to reduce risk. International recognition and credibility gained from increased visibility tends to imply that the political cost of an attack is affected. Visibility although in some instances still experimental is enhanced via magazines, the YouTube channel and novels. Another area of focus at the last meeting was the 'Partnering with HRDs to reduce stigmatization'. Education on the legitimacy and role of HRDs for society was identified as important to this process.

The next Strategic Planning meeting of Front Line Defenders will consider:

- Extractive industries;
- How to reduce Reprisals in cooperation with the UN; and
- Impunity.

In conclusion, it is necessary as individual organizations, to assess strengths and weaknesses. Reflect on how to make use of relevant players in the communities such as the media, the law and political allies.

Women HRDs and HRDs working on LGBTI rights also need to be treated equally. As encouragement, Ireland too went through the long process of eradicating discrimination but it is possible.

## ***Discussion***

### **The Plenary Discussion combined reaction to Panels 4 and 5.**

**Questions** and **comments** from the floor included:

- Does a lack of mechanisms at SADC level affect HRDs' action?
- What is available as best practice under 'early warning' systems?
- Could Frontline Defenders' IDs be availed to HRDs on request?
- Are multiple appeals on a single case or a singular consolidated appeal preferred when engaging the UN?

### **Responses:**

- Multiple appeals increase pressure for action. Therefore communication from various quarters forces action. The reverse is also true of communications from the UN which could be collaborations between several Rapporteurs. These put more pressure on states. Reinforcements and therefore amplification of issues is generally preferred.
- The Frontline ID cards are a gimmick but a gimmick that works – they give the impression of international connections. They are available on request but use should of course be discretionary.
- Mechanisms at a SADC level would be preferable. Such mechanism would be easier to engage and implement.
- 'Early warning' systems can include newsletters, magazines and databases.

## **Freedom of Association and Assembly for Human Rights Defenders in Africa: Concept of Safe Spaces in Africa**

### **Mr. Maina Kiai - United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association**

I have been asked to speak about the concept of 'safe spaces' in Africa, in the context of human rights defenders (HRDs). It is very difficult to talk about 'safe spaces', and it may seem obvious; so let me focus instead on what is 'not safe spaces', because those are the ones that are now giving us problems as HRDs in this part of the world and actually across many parts of the world.

States are becoming cleverer: They are still using traditional methods of clamping down but they are also using new creative methods. And really, our task as HRDs is to not only counter those new methods but perhaps more importantly to think ahead of the states so we can begin to counter that. A lot of those restrictions, those methods and unsafe spaces are almost always legalistic or legal. This is part of the problem, I think, that lawyers have created in our world –making everything look legal even when it is evil- and so they are using that a lot.

But I want to start off as I go through, with a bit of history. And I say history because I think we are at a defining moment in our world today. A defining moment of a contestation between democracy and non-democracy - it is a big moment! It is actually a big fight going on. And civil society and HRDs are at the epicenter of this new struggle that's going on. And if you look backwards, the big struggle of our times was the cold war. We saw the fall of the Berlin Wall and from then on, we actually began seeing in the 1990s a progression of rights, a progression of space. And if you look through the 1990s, you look at: 1993, we have the Vienna Declaration of Human Rights which was a pivotal piece of soft law in terms of creating the path forward; we had in 1995, the Paris Declaration on the Formation of National Human Rights Institutions, again a positive move forward for the world; we had in 1994, the end of apartheid in South Africa that brought us then the beginnings of a democracy in South Africa; we had in 1999/2000 the Millennium Declaration which again was a move forward. We had all these things going forward that were creating and expanding space for democracy and human beings.

Of course we have to admit that there were pitfalls in that decade, if you wish. And the biggest one of course, was the Rwandan genocide of 1994 that really dehumanized us all as the world and is a real scar on us especially the international community that allowed that genocide to happen. So, it is not a

perfect trend is what I am trying to say but I think you can see a forward movement going on since the fall of the Berlin Wall. And we started seeing in Africa as well, the beginnings of 'multi-partyism' in the 1990s. So we can see space building and building.

Sadly, all those things ended or began to end with 9/11. And 9/11 has had profound impact on us all in more ways than it affected the Americans in terms of deaths and scare. It was big because for the first time in many, many years democracy and human rights were now being subjected to this idea of security. This idea that the rights can be limited because there are these invisible people we call terrorists who are going to take it away from us. And we start seeing a tightening of space happening. And that goes on of course when they went into the war against Iraq, the invasion of Iraq. Again, limiting and limiting; and all of a sudden the dynamics and hope that had been carried on from the end of the Cold War begun reducing and reducing.

The Americans and those who were democratic made these unholy alliances between them and these other states – as long as you are anti-terror you are going to be a friend of democracies. And we start seeing mass surveillance, judicial executions, detentions, extraditions, torture; we see a whole beginning of it. And so with that context now of terrorism and the whole securitization of the world, then we start seeing now an alternative coming up, even if it's unwittingly coming up by other people. And the idea was that now: 'if the Americans, if the West, if Europe can do it - why not us?' And we start seeing the decline very, very carefully and very, very smoothly of the space that is going on. So, no people sacrificed security because they said they were scared of the war on terror. Repressive regimes enjoyed the same perks, so nothing changed for them. So, as long as they cooperated on terrorism they were able to be corrupt, they were able to suppress their rivals, they were able to control every aspect of the state and there is no consequence whatsoever. So we start seeing that kind of alliance building going on that hurts democracy that hurts human rights.

But it's not that the people are sitting back and doing nothing. Again we start seeing then human beings resisting. Like we have seen now the Arab Spring, Turkey, Venezuela, Thailand, Ukraine; even the Occupy movement where people are saying, 'Hey! Hold on! This is not what we bargained for - we want more than has come to us!' People are fed up, in a sense and are saying we want to come up. So, these people movement and all these springs and protest across the world is a reaction to that closing space. But because of it as well, it has had a reaction. And the reaction is that states have tried to figure out 'how do we stop Zimbabweans from ever thinking they can be like Tunisians and come on the streets in those numbers? How do we stop Ivorians from doing this? How do we stop Ugandans from doing this?' And so, we start seeing the cycle going on because of that contestation between democracy and non-democracy.

And what I am arguing as well is that even democracies have not necessarily promoted democracies; that their actions have in fact hurt democracies. So, this historic battle is continuing and I can't think of a time when there's been such a big push back especially against people working in this area than is happening now. So, today we go into Africa, in East, West and Southern Africa we see so much going on. And you can see the targeting of civil society, the targeting of HRDs, the targeting of anybody who is going to dissent. And there are many examples and I will just give a few – I am sure you know them all. But I think that for me one of the most crucial ones on this continent is the example of Ethiopia. I don't talk about Eritrea because there is really not much to say about Eritrea except that there is nothing – there is no space. There is nothing that has been lost; it is so bad. It's really off the charts. It is almost difficult to bring it into an argument because it is really off the charts; it is so horrible there. But Ethiopia is important because it pioneered a creative way of dealing with HRDs. And if you follow the history of Ethiopia, in 1991 the rebels kick out Mengistu. They come in; they consolidate; they do quite a lot of good development work. So, they decide in 2005 to have a free and fair election. They say, 'let's see how popular we are?' and they go into the election and get shocked at the votes that they lose. So they decide that they are weak because of civil society. So after putting down protests, which I am told were massive protests, in Addis Ababa - it was a cruel suppression of demonstrations where there were snipers on roof just shooting down at protestors. The government came up with a very, very unique way, which was rather than saying we have banned these associations, rather than jailing people because they are subversive, we simply restrict funding. And they came up with a 10% rule for foreign funding to say that if you are working on any issue that is governance-related then you can only receive 10% of your funding as an organization from foreigners. 90% must come from the people of Ethiopia. That includes disability; governance includes children's rights, includes women's rights, includes elections, includes anti-corruption, includes human rights - there is a whole list of activities that non-governmental organizations (NGOs) can only do if they get a maximum of 10% of their funding from foreign sources. The grand effect of that is that now from a height of 40/50 human rights NGOs in Ethiopia, today there are probably just 2 or 3 active ones (and even those are probably not very active). It's dead; it's gone.

And the worst thing about that is that, as that has happened since 2009 when the law was enacted Ethiopia's assistance from democracies has kept increasing. So, as civil society dies Western donors, Western democracies are saying, 'Well done! Here is more money. Spend it!' That dichotomy hurts us all and it makes a charade of any claims to care about human rights and HRDs. If you can stand and increase assistance to a country like Ethiopia that has basically killed off human rights NGOs, how can you then say 'We are pro-human rights; we are pro-HRDs'? That has been the challenge of our time. Those are challenges that are coming up, of our time - that we've got to have consistency. That the lack of

consistency, the lack of appreciating or accepting that democracy and development go hand in hand, hurts us all and comes back to haunt even those democracies that want to see democracy furthered and deepened. So, Ethiopia for me has been a really serious test case and now of course we see that law also had the requirement that associations had to allocate 70% of the budget to program activities and 30% to admin. Except of course it is the state that decides what is admin and what is programmatic. So, if you drive to a meeting, which you are organizing as a Program Officer that is seen as administrative. It cannot count for the 70%. So, there are a lot of issues around that have happened to shrink the space that we are in. And for me that is an issue that is fundamental and I think is important for all of us to think about. And those of us here, even though we are African, it is very important for us as African NGOs to raise this with our partners. And we are talking about strategies and I think the strategy of collaborating, the strategy of solidarity among ourselves, raising this with our partners who are Western donors on this dichotomy is crucial and important.

I also then come to another good example: Kenya. Kenya is interesting (and I speak especially here as a Kenyan activist), because it comes up with very creative ways. So, after 10 years of space in Kenya between 2003 and 2013, there is a regime in power that is allergic to dissent, allergic to criticism. A regime that believes that the only role of citizens is to accept and do what it says. So, it's become clever; it tried to copy the Ethiopian law and that failed. It failed for many reasons including the fact that the state was a bit silly in the way that it channeled and framed that amendment.

But it has also gone now to going for staff at NGOs, at groups that they think are dissenting. And that applies to a group that I work in. It is called 'InformAction', where my colleague who happens to be British and moved to Kenya in 1988, was recently declared a 'subversive element' and has been declared a *persona non grata*. Most interesting of course is that they said her activities are subversive. So, in our reading, her activities is what we do - it's human rights work. So, our question is, 'Is the state saying that human rights activities are subversive?' So this case is being challenged in court. And a few of us have been on this trying to warn other NGOs that if we let this get on, if we don't speak out about this, it will spread across. Because if we accept that human rights work can be deemed subversive, peaceful, non-violent work can be deemed subversive then it will affect all of us in the human rights field. It is not a personal issue and I think there has been a lot of support, thank God, on that issue. But I think it is going to be on because once a regime is as allergic to dissent on independent thinking then you are going to see a spate of it all.

Then there is Rwanda, which is always very interesting and is a complicated issue because of the genocide. I was in Rwanda earlier on this year on mission. And it is a country that is complex in many ways. One of the things that I found very interesting about Rwanda is that there is nowhere in the world where it is easier to register a business as it is in Rwanda. You can register a business online in real time for free. And there is no regulation around registering a business. But if you want to register an NGO and human rights NGO, you will take 5 or 6 months to do so. So, I asked the government; I complimented the government. I praised them very well for doing very well in terms of expanding the space for corporate and private business. And then I asked them why they don't deliver the same thing for NGOs. And they were a bit stomped and somebody told me that, 'Well you know NGOs can end up doing anti-governmental things and genocide'. And I said, 'But if you look at the genocide of 1994, it was businesses that funded the genocide. It was not NGOs. It was businesses. And so, if you have non-state actors getting so much space and not NGOs, what does it say about the way you are thinking in a country?' So, for me, one of the parallels that I began using was that I began demanding that states treat NGOs the same way they treat companies. I have had a bit of pushback from some people in Western countries who said that said that, 'If we do that then we lose our charity status and lose our tax exemption'. But I said, 'When I look at most Africans and most people in Asia, they will be happy to be treated like a business. Left alone and all you have to do is file your tax returns and file your returns to the Registrar of Companies once a year and they leave you. Everything else is regulated by law that affects everybody else. There is no extra law, no extra burden. And we have seen a society where we have put so much emphasis now on private business; so much so that we are now even privatising development. It has become a big thing.

I was in Busan in 2011 and I was amazed at how much room and time that the whole idea of private business got as a development partner; and they were not even in the room. Civil society is trying to raise their hands and say, 'Give us space. We want this!': Nothing! The best that civil society got out of Busan in 2011 was what they got out of Accra in 2009. There was no difference. There was not a single private business owner at the table around there but they got so much space - "We must engage private business/we must do this/they must do the development for us". And when you start privatizing development then you are privatizing many other aspects. You are privatizing security – we know that some countries have privatized security. They have privatized prisons. And this whole love affair with the profit motive is going to be our downfall because the regulations against business are so few. So, it's a big issue for us to start thinking of in terms of the space. Why is it that the space for private sector is so protected and so uplifted? And yet again, you look at the role of business in many parts of the world. From Shell in Nigeria (I am sorry, my friend from Poland), to many other companies that you see, the role the private business

has done in destroying our environment, destroying the moral fibre of our society all because we care about one thing: the profit margin, that's it! And this is what you all want to be. That is something to me, that is reducing that space ahead of us.

Then of course there is my second country, Uganda, which has been in the news recently for sadly all the wrong reasons. We have got the Public Order Management Bill, which restricts people from meeting whenever they want to. And there is the most notorious now (at least in the West), the Uganda Homosexuality Act or what they used to call the 'Kill the Gays' Bill before. That whole movement and that's not Uganda alone but one of the things about Uganda that I think it is important is the penalty for people who could aid and abet homosexuality. Anybody who rents out rooms, houses to anybody for the purposes of homosexuality; you can't not tell what you are renting. And that just makes it so big.

And then advocacy work on non-discrimination is seen as a problem. Of course, the same thing as you are going along - Nigeria has a very similar law in which it actually prohibits associations advocating on these issues. And they have got laws in Cameroon. LGBTI has become the big issue now; and it is becoming an easy issue for regimes in Africa to use. And it has had the effect in Africa of silencing mainstream human rights organizations. And that is really unacceptable for those of us who are in Africa. African NGOs, we must not be allowed to be silenced by fear of engaging in the gay debate. We must be at the fore-front of it. It is about discrimination; it is about our values of non-discrimination. It is about our values of treating everybody equally. We don't have to like gays or support gays; you don't have to but you must defend the principle of equality. We must do that fully. We must do that strongly otherwise there is no need for us in Africa to say we are HRDs if we cannot take on the cause of LGBTI rights. And make no mistake, LGBTI rights are easy. They are relatively easy to handle in a state, in a continent that is so homophobic but they start off with LGBTI. Secondly, then they go for those pesky critics who are always against everything; then those guys who like ICC. It will go on and on. We have to confront that issue. I have been in sufficient meetings around Africa, with Africans where there is so much trepidation of dealing with LGBTI rights. We must as mainstream HRDs take this cause up. It is a cause you may not have asked for. It is a cause you may not have planned for; but it is a cause about discrimination, it is on discrimination, it is on equality. We have to take it up otherwise we don't deserve to be doing the work we are doing. Let's close up, join the bank - it's a happy life!

And so as we go on there is Zimbabwe: And on Zimbabwe, I must say there is some good news. I read recently about a judgment of a lower court that refused to harass and imprison members of Gays and Lesbians of Zimbabwe (GALZ), for not being registered under the Private Voluntary Organisations (PVO) Act. It



was a good judgment stating that they were already legally registered and don't need to be under the PVO Act. So there are small gains we are finding. The challenge is to find those safe spaces. Could our judiciary be a safe space? Sometimes, 'yes' and sometimes 'no'.

So we have got so many examples across Africa of this shrinking space (but I won't go into them) and I think you all know them. But I want to also say that the shrinking space is not only in Africa. Working in this field is always illuminating because Hassan's country, Canada, is moving South on the space for civil society. And all of a sudden, you see different rules for different communities in Canada. There is extensive government surveillance of associations especially among the First Nations groups and environmental groups in Canada. There is a difference in the way that Canadian police, police protest by First Nations and police, protest in Toronto or Ottawa or the big cities. In the First Nations, you see and read what they do, you will think that you are in Zimbabwe. They come out with hosepipes, they come out with teargas, and they come out with helmets! And yet, when a demonstration is done in Toronto, it is nice. The police are kind, they carry nothing. There is no armour. They are very nice and facilitating. But of course the real issue in Canada is about resource exploitation. That is the real issue - resources are available there. That is crafting and creating attention and a downward spiral for Canada as a guarantee and country that has been hitherto fore respected for its respect of human rights and democratic space. I recommend, for those who are shocked that Canada could be going downwards, to go see a website called: [www.voices-voix.ca](http://www.voices-voix.ca); these are real stories that I have heard and testimonials from individuals and NGOs about what is going on. It is actually amazing!

In the UK, where I was on mission last year, again you see surveillance of environmental groups; the police infiltrating groups and what they call undercover policing happening. They also passed recently the Anti-lobbying Bill. It, in very vague language restricts civil society in engaging in campaigning a year before elections. So, we are seeing a sense of across the world. This contestation between democracy and non-democracy is not just between nations; it is even within the countries themselves. It's an issue we have to come to.

So, as I conclude, the big issue for me and message I really want us to go with is the issue of LGBTI because it causes confusion in Africa. It's an issue that we have to take seriously. And I would recommend you, as I end, those famous words by Pastor Martin Niemöller:

First they came for the Socialists, and I didn't speak out-  
Because I was not a Socialist.

Then they came for the Trade Unionists, and I did not speak out-  
Because I was not a Trade Unionist.

Then they came for the Jews, and I did not speak out-  
Because I was not a Jew.

Then they came for the LGBT, and I did not speak out-  
Because I was not homosexual.

Then they came for me—and there was no one left to speak for me.

## Plan of Action

**Immediate Actions:-** Within the next six months

**Short term:-** within the next two years

**Medium term:-** two to five years

**Long term:-** Beyond five years

What (Intervention)	When (timeline for intervention)	How (Strategy and Methodology)
<b>1. Legal and Operational Environment</b>		
Translation of declaration into local languages	Immediate to Short Term	<ul style="list-style-type: none"> <li>Identify which languages it has been translated into and popularise these translations</li> <li>Identify gaps or translation to be made.</li> </ul>
Domestication of declaration and development of General Guidelines and Principles on HRDs in Africa	Immediate to short term	<ul style="list-style-type: none"> <li>Drafting of model law for the domestication of the HRD Declaration;</li> <li>Development of principles and guidelines on HRDs in Africa</li> <li>Invitation to government officials to participate in the various HRDs forum</li> <li>Lobby and advocacy on the draft law</li> </ul>
Combating impunity and violations against HRDs	Ongoing	<ul style="list-style-type: none"> <li>Documentation of existing cases and violations</li> <li>Strategic litigation</li> <li>Lobby and advocacy on strategic litigation cases</li> </ul>
Awareness raising amongst HRD rights and ethical/good governance standards	Immediate to short term	<ul style="list-style-type: none"> <li>Identify new needs and trends pertinent to HRDs</li> <li>Conduct training meetings on basic HRD standards and emerging gaps</li> <li>Discussions on what constitutes an HRDs for legislative and policy issues</li> <li>Include African governments and actors in the work of HRDs</li> </ul>
Advocacy with International and Regional Mechanisms (Special	Immediate/Ongoing	<ul style="list-style-type: none"> <li>Complaints, appeals to regional and international mechanisms</li> <li>familiarization of the processes amongst HRDs of</li> </ul>

Mechanisms AU, UN Special Rapporteurs)		usage <ul style="list-style-type: none"> <li>Summary reports of mechanisms recommendations in Africa</li> </ul>
Monitoring and advocating against the enactment of oppressive legislation	Ongoing	<ul style="list-style-type: none"> <li>Surveys and analytical reports on current and proposed legislation.</li> <li>Strategic partnerships with international organizations,</li> <li>Trends and patterns</li> </ul>
Policy Dialogue Forums HRDs and Policy Makers (national and regional)		<ul style="list-style-type: none"> <li>Lobby parliamentarians and policy makers on the findings</li> <li>Use model law for possible engagement on the domestication of the HRDs Declaration</li> </ul>
Reflection Sessions for HRDs	Immediate to short term	<ul style="list-style-type: none"> <li>Research on trends</li> <li>Analyse the operating environment and document the findings.</li> <li>Highlight successes and failures,</li> <li>Political Economy Analyses</li> </ul>
<b>2. Migration and Human Rights Defenders</b>		
HRDS and Migration vulnerabilities	Ongoing	<ul style="list-style-type: none"> <li>Lobby for legislation that protects the rights of HRD in migration.</li> <li>Lobby for resolutions at the AU, UN and sub regional level that address the plight of HRDs in Migration.</li> <li>Linkages of mechanisms such SR on HRDs and SR on Refugees , Asylum Seekers and IDPs</li> </ul>
psycho-social support to migrant HRDS	Ongoing	<ul style="list-style-type: none"> <li>Counselling,</li> <li>Identification of reception facilities that will allow involvement (Shelter cities and Shelter Universities)</li> <li>Preparation of reception facilities within home organization,</li> </ul>
Making work and study option available to HRDs to ensure self sufficiency	Ongoing	<ul style="list-style-type: none"> <li>Develop a manual on best practice</li> <li>Develop protocols and principles for receiving and sending HRD</li> </ul>

<b>3. Regional protection mechanisms and Solidarity</b>		
Participating in global debates and supporting African initiatives	Ongoing	<ul style="list-style-type: none"> <li>• Develop a rapid response mechanism that focus on Africa within Africa</li> <li>• Develop sustained engagement platforms with AU mechanisms including the African Union, African Commission and African Court</li> </ul>
Galvanising communities for HRDs	Ongoing	<ul style="list-style-type: none"> <li>• Community dialogues, meeting with community leaders and opinion makers</li> <li>• Invitation of African governments to participate the HRDs forums national and regional activities</li> </ul>
Database of services providers to HRDs	Ongoing	<ul style="list-style-type: none"> <li>• Mapping exercise (desk and field of the services available)</li> <li>• Documenting findings</li> <li>• Popularize the mechanisms before national and domestic platforms</li> </ul>
Early Warning Mechanisms	Immediate	<ul style="list-style-type: none"> <li>• Index of freedoms and Trends</li> <li>• Identify the trends and patterns</li> <li>• Link EWS with response system to create a EWRS.</li> </ul>
Develop extensive links with groups working with LGBTI, women and on extractive industries, environmental rights	Immediate	<ul style="list-style-type: none"> <li>• Create platform for dialogue and exchange of ideas,</li> <li>• Identification of lead campaigners and response institutions that will assist in litigating, advocacy on such cases</li> <li>• Training of HRDs on LGBTI, extractive industries and environmental rights</li> </ul>
Protection of individuals who are cooperating with regional and international mechanisms that combat impunity	Ongoing	<ul style="list-style-type: none"> <li>• Development of standards on witness protection</li> <li>• Advocate for the implementation of UN HRC resolution on reprisals</li> </ul>

<b>4. General</b>		
Training of HRDS	Ongoing	<ul style="list-style-type: none"> <li>• Training meetings and platforms for sharing experiences and best practice</li> <li>• Security and safety physical and digital</li> </ul>
Setting of national focal points on HRDs (national coalitions for HRDS)	Ongoing	<ul style="list-style-type: none"> <li>• Identify local actors and institutions that will lead as focal points (capacitated on HRDs norms, standards etc)</li> <li>• Involve community actors to constitute a platforms for national HRDs</li> </ul>
Broaden the advocacy strategy targeting Financial Institutions and donors	Ongoing	<ul style="list-style-type: none"> <li>• Advocate the inclusion of civil society and human rights indices in impact assessment</li> <li>• Invoking Best practices and Guidelines on donor coordination and civil society</li> <li>• Human rights working groups (Donor/Civil Society Coordination)</li> </ul>
Social networks	Ongoing	<ul style="list-style-type: none"> <li>• Training on use of social media for effective results</li> <li>• Security training for secure social media communications</li> <li>• Digital and physical security training for HRDs</li> <li>• Monthly HRDs newsletter</li> </ul>

### **Adopted General Concluding Statement**

#### **We, African human rights defenders,**

**Guided** by the 1998 United Nations Declaration on Human Rights Defenders and encouraged by the establishment in 2000, with subsequent renewals in 2008 and 2011, of the mandate of the Special Rapporteur on the Situation of Human Rights Defenders,

**Encouraged** by the establishment in 2004, by the African Commission on Human and Peoples' Rights, of the Special Rapporteur on Human Rights Defenders

**Concerned by** the plight of human rights defenders on the continent and conscious of the inadequacies of protection mechanisms for HRDs in Africa,

**Acknowledging** the strides made by HRDs in Africa in setting up regional and national coalitions for the protection of HRDs in particular the Pan African Human Rights Defenders Network and its constituent elements,

**Mindful** of the lack of a legally binding instrument, at an international, regional and local level, guaranteeing and protecting the rights of HRDs and being aware of the need to establish such a framework,

**Cognisant** of the need to have the established international standards for the protection and guaranteeing of rights HRDs domesticated, in particular by codification into local legislation,

**Aware** of the plight of HRDs who have been forced outside their countries and have sought temporary respite in other countries, particularly concerned about the lack of adequate legislative protection of such migrants.

We, human rights defenders (HRDs) meeting in Pretoria, do hereby adopt the following resolutions for the enhancement of the protections afforded to HRD on the continent.

## **5. Legal and Operational Environment**

**Call upon** AU member states to take positive steps to domesticate and/or give effect through enactment of appropriate legislation of regional and international standards for the protection of HRD in their countries;

**Undertake to** develop and implement targeted lobby and advocacy initiatives to call for the codification in our countries of legislation that guarantees and protects the rights of HRDs. To this end we stand guided by the plan of action adopted at the meeting and attached to this resolution.

## **6. Migration and Human Rights Defenders**

**Call upon** the African Union to develop principles and standards to protect migrant HRDs who have been forced out of their countries for any period. These principles must include but not be limited to waving or relaxing of provisions dealing with work permits, visa restrictions;

**Further call upon** African Union members to the OAU/AU Convention Governing Specific Aspects of Refugee Problem to simplify receipt and processing of individuals seeking asylum for efficiency and effectiveness;

## **7. Regional Protection Mechanisms**

**Call Upon** the African Union and its member states to take steps towards the domestication of existing instruments which set out and guarantee the rights of HRDs and the corresponding duties of states;

**Undertake to** take all reasonable measures to cater for the need of HRDs in distress. This was done at Pretoria on 28 March 2014

## **SUMMARY OF CONCLUDING STATEMENTS and VOTE of THANKS**

**Emily Martinez** (Director, Human Rights Initiative, Open Society Foundations)

Ms. Emily Martinez reflected on some poignant ideas and memories she from the two day Strategic Session. These included the subversive human rights work in Kenya and the creative ways that women HRDs were adopting to survive hostile environments.

Ms. Martinez further highlighted the 'way forward' to include:

- The need to dispel the notion of 'unfriendly states' by having African states come out as allies;
- Strengthen solidarity and reach out to new players;
- Need for greater inclusivity and defense of the most vulnerable; and
- The building of national and regional networks.

Ms. Martinez concluded by thanking the participants and the ICJ, for their time and the information shared.

**Hon. Justice Moses Chinhengo** (Commissioner, International Commission of Jurists). Hon. Justice Moses Chinhengo thanked all participants to the Strategic Session. He commended the manner in which the participants had worked together; and indicated how the ICJ and its collaborating partners recognise the work of HRDs. Justice Chinhengo indicated the timely nature of the Strategic Session vis-à-vis current disturbing developments on the continent. Justice Chinhengo emphasized the necessity of the Strategic Session as it opened minds to current and future challenges. In particular, he had been inspired by the Dinner Lecture. Justice Chinhengo then concluded by recommending that the Strategic Sessions be an annual activity.

**Martin Masiga** (Deputy Director, International Commission of Jurists Africa Program) Mr. Martin Masiga, closed the Strategic Session by thanking the delegates and the support staff. He challenged participants to continue networking beyond the workshop, to implement some of the lessons they learnt from the meeting; and to remain in touch with the ICJ. He expressed the gratitude of ICJ to the European Union and Open Society Foundation, through whose sponsorship this meeting was made possible.

The organizers acknowledge the report writing assistance of **Ms. Berita Kopolo**.





## APPENDIX 1: CONFERENCE PROGRAMME

<b>Day 1 (27 March)</b>		
<b>830-900</b>	<b>Registration</b>	<b>ICJ Team</b>
<b>915-920</b>	Welcome remarks and introduction of participants, key note speakers and laying of the session/workshop foundation	<b>Mr. Arnold Tsunga</b> <b>(Director, Africa Regional Programme, International Commission of Jurists)</b> <b>Hon. Justice Moses Chinhengo</b> <b>(Commissioner, International Commission of Jurists)</b> <b>Ms. Louise Olivier</b> <b>(Programme Manager, Human Rights Initiative, Open Society Foundations)</b>
<b>920-1045</b>	Panel Presentation from UN and AU/ACHPR Special Rapporteurs on Human Rights Defenders: The legal and operational environment for human rights defenders in Africa UN and AU Perspectives	<b>Ms. M Sekaggya,</b> <b>Ms. R A Gansou,</b> <b>Special Rapporteurs HRDS (UN and ACHPR)</b>
<b>1045-1100</b>	<b>Health break</b>	
	<b>Session Chair</b>	<b>Ms. Makanatsa Makonese</b>
<b>1100-1200</b>	Operational environment for human rights defenders, a defenders perspective (specific themes to be covered include women HRDS, LGBTI, Environment)	<b>Ms. Irene Petras</b> <b>SADHRDN, Ms. Tabitha Netuwa</b> <b>PAHDRN</b>
<b>1200-1300</b>	Operational environment for human rights defenders, a defenders perspective (specific themes to be covered include women HRDS, LGBTI, Environment)	<b>Ms. Irene Petras</b> <b>SADHRDN, Ms. Tabitha Netuwa</b> <b>PAHDRN</b>
<b>1300-1400</b>	<b>Health break</b>	
	<b>Session Chair</b>	<b>Ms. Corlett Letlojane</b>
<b>1400-1515</b>	HRDS and forced and unforced migration to South Africa and Uganda: Issues, laws, policies and practices to consider.	<b>David Cote LHR</b> <b>Mohammed Ndifuna</b>
<b>1515-1530</b>	<b>Health break</b>	

<b>1530-1630</b>	Regional solidarity and networking for HRDs, what is missing and what is needed – A Critical Assessment and Reflection?	<b>Ms. Irene Petras SAHRDN, Mr. Onesmo Olungurumwa THRD</b>
<b>1630-1730</b>	Regional protection mechanisms for HRDS, efficiency, effectiveness and efficacy. What is missing and what is needed-concept of rapid response?	<b>Mr. Hassan Shire PAHRDN George Kegoro ICJ-Kenya, Mary Lawlor, Frontline Defenders</b>
<b>1830-2100</b>	Dinner and Lecture on Freedom of association and assembly for human rights defenders in Africa: Concept of Safe Spaces in Africa	<b>Maina Kiai, UN Special Rapporteur Freedom of Assembly and Association</b>

<b>Day 2 (28 March)</b>		
<b>830-900</b>	<b>Registration</b>	<b>ICJ Team</b>
<b>915-930</b>	Recap of discussions for Day I	
	<b>Session Chair</b>	<b>Mr. Norman Tjombe</b>
<b>930-1045</b>	Adequacy of protection mechanisms for HRDS in Africa, efficiency, effectiveness and efficacy: concept of safe spaces in Africa in the context of Assembly and association?	
<b>1045-1100</b>	<b>Health break</b>	
<b>1100-1200</b> <b>1200-1300</b>	Discussion on the gaps identified in the presentations and formulation of strategies to close the gaps; establishment of a rapid response mechanism, in country and across countries, modalities and strategies and plan of action	
<b>1300-1330</b>	Concluding statement and Plan of Action Presentation	<b>ICJ ARP Senior Legal Advisors, Otto Saki and Brian Penduka</b>
<b>1330-</b>	Vote of Thanks	<b>Hon. Justice Moses Chinhengo Emily Martinez, Director, Human Rights Initiative, Open Society Foundations</b>

## **Biographies of Speakers and Chairs**

### **Ms. Margaret Sekaggya**

United Nations Special Rapporteur on the situation of Human Rights Defenders (since May 2008)

A Ugandan lawyer and academic, Ms. Sekaggya is also the Chairperson of the Uganda Human Rights Commission (UHRC), a post she has held since its establishment in 1996, a member of the UN High Level Task Force on the Rights to Development, a board member of the International Service for Human Rights (ISHR), and Chairperson of the Commonwealth Forum for National Human Rights Institutions (2007-2009). She holds an LLB degree from Makerere University in Uganda and a Master of Laws degree from the University of Zambia. From 1982 to 1990, she was a lecturer at the UN Institute for Namibia, where she taught on the criminal justice system, including the rights of peoples and, from 1990 to 1995, she was principal lecturer at the Law Development Centre in Uganda. In 1995, She was appointed Judge of the High Court of Uganda. She also was a Commissioner with the Ugandan Interim Electoral Commission, which organized the 1996 elections and in which she dealt with human rights issues. She is the author of many publications and consultancies, especially on constitutional issues, human rights and environmental law.

### **Mrs. Reine Alapini-Gansou**

Chairperson, ACHPR & African Union Special Rapporteur on Human Rights Defenders

Lawyer to the Bar of Benin since 1986 and Law Teacher at University of Abomey-Calavi (Benin) since 2000. She is Member of the African Commission since 2005 and member of the UN Permanent Court of Arbitration since 19th July 2011. Laureate of the Prize of Human Rights for the Fiftieth year of African Countries independence in 2010. Recently, she has been Member of the United Nations' International Commission of Inquiry on post-electoral violence in Cote d'Ivoire (May-June 2011). Agreed Arbitrator to the Beninese Chamber of trade and Industry (2005), Agreed Arbitrator to the Interprofessional Association of Cotton of Benin (2004) and President of the Technical Committee for elaboration of Statutes and Regulation of the Centre of Conciliation, Arbitration and mediation of the Beninese Chamber of the trade and Industry (2003). She holds two High Level University degrees, in Common Law at University of Lyon in 2007 (DU) and in Environmental Law and Politic at University of Lomé, Maastricht and Bhutan in 1999. She is author and coauthor of Research papers in Human rights and in Law. **Specialization:** International Law and Human Rights, Commercial and Business law (Alternative Disputes Resolution Mechanisms), Labor law and Criminal Law.

### **Mr. Maina Kiai**

United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association.

Mr Kiai took up his functions on 1 May 2011, for an initial period of three years. A lawyer trained at Nairobi and Harvard Universities, he has spent the last twenty years campaigning for human rights and constitutional reform in Kenya – notably as founder and Executive Director of the unofficial Kenya Human Rights Commission, and then as Chairman of Kenya’s National Human Rights Commission (2003-2008), where he won a national reputation for his courageous and effective advocacy against official corruption, in support of political reform, and against impunity following the violence that convulsed Kenya in 2008, causing thousands of deaths. From July 2010 to April 2011, Maina was the Executive Director of the International Council on Human Rights Policy, a Geneva-based think-tank which produces research reports and briefing papers with policy recommendations. He was also the Director of Amnesty International’s Africa Programme (1999-2001), and the Africa Director of the International Human Rights Law Group (now Global Rights, 2001-2003). He held research fellowships at the Danish Institute for Human Rights (Copenhagen), the Woodrow Wilson International Center for Scholars (Washington), and the TransAfrica Forum (Washington). He has regularly been an advocate informing and educating Kenyans through various media about their human rights.

### **Mr. Hassan Shire Sheikh**

Chairperson/Director, Pan-African Human Rights’ Defenders Network (PAHRDN)

Hassan was the founder and co-director of Dr. Ismail Jumale Human Rights Centre and Chairperson of Peace and Human Rights Network in Mogadishu, before he was forced to flee his native Somalia. In 2005, He founded the East and Horn of Africa Human Rights Defenders Project and became the elected Chairperson of the East and Horn of Africa Human Rights Defenders Network (EHAHRDN) and currently serves his second term (2011-2016). For a number of years, he has served as the coordinator of the African Human Rights Defenders Project at Centre for Refugee Studies, York University, Canada. He also engages actively as the Chairperson of Pan-African Human Rights Defenders Network with the African Commission on Human and Peoples’ Rights; UN Human Rights Council and Community of Democracies. In addition he is an active member of the World Movement for Democracy, Board member of Centre for Civil and Political Rights (Geneva) and Bar-Kulan Radio (Mogadishu) among others.

**Ms. Irene Petras**

Executive Director, Zimbabwe Lawyers for Human Rights (ZLHR)

ZLHR, a law-based membership organisation which aims to foster a culture of human rights in Zimbabwe and the SADC region through litigation, education and advocacy. ZLHR coordinates the Southern Africa Human Rights Defenders Network. A lawyer by profession, Irene is the Chairperson of the Zimbabwe Human Rights NGO Forum and Vice Chairperson of the Zimbabwe Election Support Network.

**Mr. Abdoul Diallo Gadiy**

Coordinator, West African Network of Defenders of Human Rights (WAHRDN)

A consultant on governance, democracy and human rights expert, Member of the Steering Committee of the NGO Forum of the African Commission on Human and Peoples' Rights (ACHPR) Member of the Regional Executive Board WACSOF (West African Civil Society Organization Forum), Member of the Executive Bureau of the Guinean Organization for Defending Human Rights and (OGDH). Gadiy holds a DSS in mathematics. He has designed monitoring and evaluation tools for human rights and democracy programs, and teaching materials in the field of education for human rights. He has conducted researches and publications on human rights in the strategy to reduce poverty in Guinea, Inventory of democratic processes in West Africa since 1990 / Case of Guinea (on behalf of Gorée Institute, Dakar), Legal framework concerning the organization of associations in West Africa (on behalf of the African Commission on Human and Peoples' Rights (ACHPR), Reform of the Security Sector in Guinea (RSS), role and impact of peace and security on the regional dynamics in the Mano River Union (on behalf of the Office of the ECOWAS Early Warning) among others.

**Mr. David Cote**

Coordinator, Strategic Litigation Programme, Lawyers for Human Rights, RSA

David obtained his civil law / common law degree from the University of Ottawa in 2003 and completed his LL.M. in criminal justice at the University of Cape Town (2005) and thereafter his LL.B. at UNISA. David started with LHR since 2006 and coordinated the detention monitoring project advising and assisting immigration detainees before taking over the strategic litigation programme in 2008. His areas of interest include refugee law, international criminal justice and constitutional law. He is based at the LHR Headquarters in Pretoria.

**Mr. Mohammed Ndifuna**

Chief Executive Officer, HURINET-U

Mohammed is a member of International Advisory Board of Human Rights House Network (A global Network of Human Rights Defenders); The Chairman of the Board of Directors of the National Coalition for the Human Rights Defenders in Uganda; and a member of the steering committee of the Coalition for the International Criminal Court (CICC). He also lectures at Nkumba University in Uganda.

### **Mr. Onesmo Paul Olengurumwa**

National Coordinator/CEO, Tanzania Human Rights Defenders Coalition

Onesmo did his LLB at the University of Dar es Salam (UDSM) and graduated with honor in 2009. He holds a diploma in Security and Protection Management for Human Rights Defenders and Social Organizations offered by Protection International Brussels. He also acquired a Certificate In Security Management and Risk Assessment at the York University in 2013. His passion for human rights dates all the way back from the University of Dar es Salaam where he served as a President of the UDSM Human Rights Association (2008). Directly from the University of Dar es salaam, Onesmo joined the Legal and Human Rights Centre (LHRC) one of the reputable human rights bodies in Tanzania as the researcher and writer of the Tanzania human rights reports from 2009-2012. [www.humanrights.org](http://www.humanrights.org). Being a young, visionary, innovative and vibrant human rights lawyer in Tanzania, he has now embarked into yet another journey to fulfill his passion as the co-founder and CEO of THRD-Coalition beginning January 1st, 2013. [www.thrd.or.tz](http://www.thrd.or.tz). Through the THRD-Coalition he is striving to create a peaceful and secure environment for HRDs in Tanzania.

### **Mr. George Kegoro**

Executive director, Kenyan Section of the International Commission of Jurists.

An advocate of the High Court of Kenya, George previously served as Secretary to the Law Society of Kenya and also worked as a State Counsel in the office of the Attorney General and was responsible for legal research for purposes of law reform. George is a leading human rights defender in Kenya and has supported efforts for accountability for crimes that took place in the country during large-scale violence that followed disputed election results in 2008. George has authored many papers on a wide range of issues.

### **Mr. Norman Tjombe**

Trustee, Legal Assistance Centre

Norman is a human rights lawyer in Namibia, but works on a range of issues across the southern region. He was the Chairperson of OSISA (and ordinary board member) for several years up to 2010. He is currently a trustee of the

Legal Assistance Centre, Namibia's only public interest and human rights law firm. He was director thereof from 2004 to 2010, but has been working there since he was 16 years old. Norman Tjombe set up a private law firm in 2010, which specializes in human rights – a first of such law firm in Namibia.

### **Mrs. Makanatsa Makonese**

Executive Secretary/CEO, SADC Lawyers' Association (SADCLA).

Makanatsa joined SADC-LA in April 2009 in Botswana as the Assistant Programmes Director and was promoted to her current position in March 2011. In 2001, Makanatsa co-founded the Zimbabwe Environmental Law Association (ZELA), the first and currently only public interest environmental law organization in Zimbabwe. She worked for ZELA for more than 6 years as a Senior Staff Attorney before joining SADCLA. She remains as a board member and trustee of ZELA. Before joining ZELA on a full-time basis in 2003, she worked as a magistrate (1998-2002) and as a legal officer for a child rights organization (2002-2003). She holds an LLB (1997-UZ), an LLM (2008-UZ) and is currently in her 4<sup>th</sup> year of study for a PhD in Law with the University of Zimbabwe. She is passionate about improving the human rights and rule of law situation in the SADC region and has a particular interest in women's rights, children's rights, environmental rights and the administration of justice.

### **Ms. Corlett Letlojane**

Executive Director, Human Rights Institute of South Africa (HURISA)

Corlett is passionate about regional human rights mechanisms. She strengthens the African system of human rights through capacity building workshops conducted by the organization she works for (Human Rights Institute of South Africa - HURISA). The organization monitors enforcement of regional mechanisms at domestic level and also serves as a focal point for drafting and submission of NGO shadow reports. Her organization is a founding member of the Coalition of An Effective African Court on Human and People's Rights and hosted the Secretariat of the Coalition until a permanent structure was launched and set up in Tanzania. She serves as a member of the African Commission on Human and People's Rights Study Group on Freedom of Association, Executive Committee of the NGO Forum for participation of NGOs in Ordinary Sessions of the African Commission and a Focal Point for the SADC region, Advocacy Officer of the Pan African Human Rights Defenders Network and Member of a Reference Group set up by the Special Rapporteur on Human Rights Defenders for writing a report on the situation of women human rights defenders (for presentation at during 53<sup>rd</sup>, 54<sup>th</sup> and 55<sup>th</sup> Sessions of the African Commission). Corlett holds a Diploma Bjuris (UNIBO) and LLB degree (UNISA).



## **Participants**

### **Mr. Yona Wanjala**

Program Director, Defenders Protection Initiative (DPI)

Yona is a founder member of DPI, a non-profit organisation aimed at promoting and protecting human rights by strengthening the capacity of Human Rights Defenders to mainstream security, safety and protection management in their work. He has over 10 years of experience in human rights, security and protection work. He is trained and skilled and has worked with a range of human rights defenders organizations and networks within the East and Horn of African Region in the area of security and protection. Yona has been able to create trust and confidence and will greatly contribute to enhancing the security of HRDs in a quickly changing and volatile political and social environment. Yona holds a Masters Degree in International Relations and Diplomacy and a Bachelor of Arts Degree (BA Development Studies) both of Nkumba University. He also holds a Diploma in Law of (Law Development Center- Kampala).

### **Ms. Irimi Anastassiou**

Programmes and Research Associate, Office of the CEO, Pan African Lawyers Union (PALU)

Irimi is a human rights advocate, with experience in working with various civil society organisations in Cyprus and East Africa, providing socio-legal support, conducting research and advocacy, developing and coordinating projects. Her areas of interest are human rights and forced migration. From her current post, she has coordinated a project on Complementarity within the African Human Rights system and the development of a Directory of organisations and individuals that offer pro bono legal aid before African regional Courts. Furthermore, she contributes to research and advocacy as well as resource mobilisation. Irimi holds a Bachelor on International and European Studies, from the University of Macedonia, Greece and an LLM in Public International Law, with special focus on forced migration, from the University of Kent, UK. She speaks fluently English and Greek, has very good knowledge of French and has recently began learning Swahili.

### **Ms. Obiageli Oraka**

Programmes Manager, West African Bar Association (WABA)

Obiageli is a lawyer with vast experiences in human rights advocacy that cuts across the whole of Africa. Based in Abuja, Nigeria, WABA is an umbrella body for lawyers and bar associations in West Africa that advocates for functional

democracy, human rights and law reforms. She earned a Masters of Law degree (LLM) in Human Rights and Democratization in Africa from the Centre for Human Rights, University of Pretoria, South Africa. She qualified as Barrister at Law (BL) in Nigeria from the Nigerian Law School and obtained her Law Degree (LLB) from Enugu state University, Nigeria. She is responsible for the programming work of WABA across West Africa with a focus on human rights defence, continued legal education for lawyers, reform of criminal justice, promotion of democratic governance, rule of law Initiatives and Judicial Integrity. Her advocacy work also covers responsibility for mass atrocities in Africa in support of a credible system of international justice under the auspices of the Coalition for the International Criminal Court. She is also a strong advocate for legal reforms to promote security of women and is experienced in building networks within the Civil Society, Media, Human Rights Institutions, government and the Judiciary. She has a deep understanding of the ECOWAS and the African Union (AU) systems. She is a member of the steering committee of the African Lawyers for the Defense of Civil Society, a network that aims to involve African Lawyers in promoting and defending the rights of media practitioners and human rights defenders across Africa.

### **Mr. Luther Yameogo**

Country Manager, Diakonia Burkina Faso Country Office

Luther graduated in Law (1997, Montpellier, France) and Political Science (2002, Paris Nanterre, France). Expert in Programmes management (2000, Netherlands), specialized in Institutional and Organizational Development (1999, Perfectum, Burkina) with 16 years working experience in Africa (Great Lakes, West Africa, North Africa, South Africa), and currently leading a dynamic team of 13 staff as Country Manager of the Swedish NGO Diakonia in Ouagadougou. Luther worked with Avocats Sans frontières ([www.asf.be](http://www.asf.be)) in Great Lakes (Burundi, East DRC, Uganda and Rwanda) as Chief of Party, focusing on strengthening the access for the vulnerable populations to justice through law clinics and also judicial assistance through itinerant courts. The records influenced the set up of a legal aid mechanism handled jointly by the Government, the civil society and the donors.

### **Mary Lawlor**

Executive Director, Front Line Defenders

Mary has a background of over 35 years experience in human rights. She set up Front Line - the International Foundation for the Protection of Human Rights Defenders - in 2001. Front Line concentrates all its activities on human rights defenders at risk who work non-violently for the rights of others as enshrined in the Universal Declaration of Human Rights. The aim is to protect defenders of

human rights and provide them with “round the clock” practical support so that they can continue their work to build civil and just societies. Prior to Front Line, she was Director of the Irish Section of Amnesty International for 12 years. She has wide experience of how to develop a human rights organization. Mary Lawlor has a BA in Psychology and Philosophy and postgraduate degrees in Montessori Teaching and Personnel Management.

**Ms. Fatou Kama Marone**

Executive Director, Rencontre Africaine pour la Defense des Droits de l’Homme (RADDHO)

Fatou holds a Master 2 in human rights and humanitarian action [ OS1 ] and an MA in Law at the Faculty of Law of the University Cheikh Anta Diop of Dakar. She is a member of the African Assembly for the Defense of Human Rights , where she has held several positions including Director National Executive . She has participated in several regional and international meetings on human rights. She is actively involved in the campaign against impunity in Africa through the Habré Case , which she coordinates on behalf of RADDHO. She contributed to the Conference on Litigation of international law and human rights in Africa, organized by the Centre for Human Rights, University of Pretoria, August 2013, her contribution focusing on the theme, " the application of the international law of human rights by national courts : the example of Senegal in Hissène Habré".

**Mr. James Banda**

President, Law Association of Zambia

James holds a Bachelor of Laws degree from the University of Zambia and a Post Graduate Certificate at the Zambia Institute of Advanced Legal Education. He is an Advocate of both the High Court and Supreme Court of Zambia. James is a Partner practising as such in the firm styled A.M. Wood and Company. He is a qualified Arbitrator and certified as such by the Zambia Institute of Arbitrators. He is also a Council member of the International Bar Association, Councillor of the Southern African Development Community Lawyers Association and serves as a Commissioner of the Small Claims Court in Zambia.

**Mr. Gerald Kankya**

Programs Coordinator, Twerwaneho Listeners Club (TLC)

TLC is a Human Rights organization operating in Rwenzori since 2008. TLC’s work focuses on 6 thematic themes, Freedom of expression and association, Access to information, Land rights, Good Governance and Accountability, Mineral resources extraction and people’s rights and promotion of peaceful co-existence. Gerald has won the European Union Human Rights Defenders Award 2012, an

award that recognized the courage, commitment and outstanding contribution to promoting human rights amidst many challenges including judicial harassment and arrest. He holds a Masters' Degree of Arts in Ethics and Public Management and a Bachelors Degree of Arts in Social Science.

### **Mr. Osmond Mngomezulu**

Attorney, Environmental Rights Programme, Lawyers for Human Rights (LHR), RSA

Osmond completed his BA (Law and Sociology) at Wits University in 2004 and his LLB degree in 2006. Prior to joining LHR he worked as Research Intern in the Gender Research Programme at the Centre for Applied Legal Studies at Wits University and went on to serve his articles of clerkship at the Wits Law Clinic. He has worked as an attorney at the Centre for Applied Legal Studies, Socio-Economic Rights Institute of South Africa (SERI) and ProBono.Org. Osmond is dedicated to providing legal support and representation to non-governmental organisations, community-based organisations and voluntary associations of communities in order to protect, claim and advance human rights. He believes in using law as an instrument for achieving social justice and the transformational imperative of the Constitution.

### **Adv. Motene Rafoneke**

Councilor, Law Society of Lesotho

Motene began his professional legal career in 2008 practising in all courts of Lesotho. He has a professional career spanning six years and he is currently practicing under the firm name and style of K.E.M. Chambers whose managing partner is Dr. Kananelo Mosito K.C. who is currently the dean of The Faculty of Law and Acting Judge of The High Court.

### **Mr. Robert Akoto Amofo**

Executive Director, Human Rights Advocacy Centre (HRAC)

Robert is a young human rights advocate and a communication professional. He advocates for women and children rights, prevention and management of HIV/AIDS, protection of the human rights of LGBTs in Africa, Security and human rights and the prevention of human trafficking. He is currently the coordinator of NGOs in Ghana on Human Rights, Security and Voluntary Principles. HRAC is based in Accra, Ghana

**Adv. Lerato Seema**

Programmes Manager, Federation of Women Lawyers (FIDA)

Based in Lesotho, FIDA deals with mediation proceedings between clients that have disputes, either domestic or within any spectra of Human rights. FIDA is engaged in various programmes funded by different donors internationally, amongst others, the Freedom House, Global Fund, Management Sciences for Health, European Union and Ireland Aid. Lerato currently manages a programme funded by the European Union titled 'Capacity Building of Local Non-state Actors to deliver social services, alleviate poverty and promote local economic development'. He will primarily be engaging in strategic litigation in an effort to enhance the rights of addressing Women and Childrens' issues.

**Ms. Paula Caetano**

Executive director, Malawi Law Society

Paula was trained at University of Malawi, Chancellor College between 2001 and 2006 graduating in 2007 with a law degree. She started out working for the Ministry of Justice and Constitutional Affairs as a Senior Legal Aid Advocate representing underprivileged members of society. After a year, she joined the Malawi Law Society (MLS) as a programs lawyer responsible for implementing the Malawi Justice Monitoring Project. In 2010, Paula was appointed Executive Director of MLS. For Paula, working in a member based organization is both exciting and challenging and it is what drives her to build MLS as an institute so that it has presence in the region and abroad and that it advocates on matters of regional importance such as human rights and rule of law.

**Mr. Joseph Ntita**

Legal associate, R&R Incorporated, a South African Law practice

Joseph is a lawyer and human rights defender from the Democratic Republic of Congo. He is an active member of the Congolese civil society and former coordinator of "the League Des Electeurs" a Congolese non-government organization which specialized in the monitoring and observation of elections in the Democratic Republic of Congo.

**Mr. Richard Mugisha**

Country Manager/ Program Officer, Open Society Initiative for Eastern Africa (OSIEA)

Richard has 19 years' experience working with civil society organizations both in Uganda and in the United Kingdom. In Uganda, he has headed several

leadership development projects. In the United Kingdom, he worked extensively with refugee resettlement and integration programs. He has strong interests in modern languages; human development in Africa; the role of technology in social transformation; gender relations; environmental and development ethics. He has been published on an array of issues including governance, culture, and social justice. OSIEA is based in Kampala, Uganda.

### **Ms. Angela Mudukuti**

Project Lawyer, International Criminal Justice, Southern Africa Litigation Centre (SALC)

Angela graduated with an LL.B from the University of Pretoria in 2009 and completed an LL.M in Transitional Justice, International Criminal Law and Anti-Corruption Law at the University of the Western Cape, in conjunction with the Berlin based Humboldt-Universität. Prior to joining SALC, she worked at the International Criminal Court in The Hague, and worked under the supervision of Prof. Cherif Bassiouni at the International Institute for Higher Studies in Criminal Sciences (ISIS) in Italy.

### **Mr. Chacha Wambura**

Consultant, International Alliance on Natural Resources (IANRA)

Chacha was Executive Director of Foundation HELP, an NGO based in Musoma Tanzania until April 2013. Having trained in local environmental management and public policy, Mr. Chacha has been working in the CSO sector for the last 15 years. Foundation HELP works to support local communities across a broad base of participatory and multi sectoral development sectors throughout the selected regions of Tanzania. He is currently temporarily attached to IANRA - International Alliance on Natural Resources whose secretariat is in Johannesburg

### **Mr. Timothy Mtambo**

Executive Director, Centre for Human Rights and Rehabilitation (CHRR)

Timothy is a graduate from the University of Malawi, Chancellor College Specialising in Politics and Development. While a student at Chancellor College, he served the Chancellor College community as the Speaker of the Students Union, a very challenging responsibility, which exposed him to critical decision making as well as transformative leadership. He is very passionate about social justice issues and believes that service to others is the noblest thing in the world. Currently, an Activist/Human Rights Defender working for CHRR, Malawi's leading Human Rights and Governance, whose vision is of a Malawi with a vibrant culture which embraces principles of Human Rights, Democracy and the

Rule of law. He joined CHRR in 2011 as Programmes Manager. He also seats in various boards at national level and at regional level and is a steering committee member for the newly formed Southern Africa Human Rights Defenders Network.

**Mrs. Maria Alice Mabota**

President, Mozambican league of Human Rights

Maria is a lawyer and one of the founders of the Mozambican League of Human Rights (Liga/LDH) in 1994 few years after the pacification of the country and the establishment of democratic rule in Mozambique. Under her leadership, the LDH became one of the strongest civil society organizations in Mozambique in the field of human rights, acting to promote the access of justice to vulnerable citizens such as woman and children, prison monitoring, advocacy for civil and democratic right, torture, police abuse, human trafficking. The LDH is operating in almost all the country with 3 regional delegations/offices, 130 paralegal centers and has an average of 80,000 cases per year handled from vulnerable groups seeking access to justice.

**Ms. Tabitha Netuwa**

Protection and Security Management Manager, East and Horn of Africa Human Rights Defenders Project/ Network (EHAHRDP)

Based at the secretariat in Nsambya, Kampala, Uganda, her main role at EHAHRDP entails managing the protection programme, which supports HRDs at risk to ensure that they receive the necessary support to overcome the challenges that they face. The programme also undertakes training HRDs in security management and digital security to ensure that they are equipped with the skills to put in place measures to mitigate the risks that they are faced with. Tabitha has been involved in trial observation mission, advocacy missions at the local and international level and research missions into the situation of HRDs in Africa.

**Mr. Tshiamo Rantao**

Attorney, Ditshwanelo

Tshiamo is a practising attorney in Gaborone, Botswana. He is the Chairman of Botswana Network on Ethics, Law and Human Rights (BONELA). He serves in the Board of Media Institute of Southern Africa (Botswana Chapter) and is a convener of the Botswana Law Society Human Rights Committee. In 2013, he was selected as one of twenty, of The Outstanding Young Persons of the World (TOYP) by Junior Chamber International. He has handled, and continues to

handle, many human rights and public interest cases in the Botswana courts. He also continues to act for trade unions, particularly the largest public sector unions against the government of Botswana. He is very passionate about litigation and likes travelling and watching soccer. However, he does not have enough time and money to travel as much as he would love to.

### **Ms. Mary Pais Da Silva**

Lawyers For Human Rights Swaziland (LHRS)

Mary is a female Admitted Attorney of the High Court of Swaziland of 10 years standing. Not only is she a Human Rights Defender, but also a Human Rights Lawyer and member of Lawyers for Human Rights Swaziland (LHRS). She is one of the few Attorneys willing to take on political cases which have personally landed her in trouble. She is a survivor of arbitrary arrests, unlawful detentions, assault by police as well as brutality at their hands. In the long term, she is working towards a democratic Swaziland which recognises, promotes and protects human rights.

### **Ms. Lomcebo Dlamini**

Programme Manager, Swaziland Coalition of Concerned Civic Organisations (SCCCO)

Lomcebo is a lawyer and human rights and gender equality activist with experience in women's rights, human rights, democracy and good governance at national and regional level. SCCCOC is a collective of civil society organisations established to collectively work on promoting respect for and implementation of human rights and the tenets of democracy and good governance in Swaziland. It comprises membership from NGOs; the Church, women's rights and media advocacy organisations, trade unions and organisations of the youth, lawyers and the informal economy sector. SCCCOC programmes include civic education and mobilisation; advocacy; working with the Swazi diaspora; bridge-building and conflict transformation as well as capacity-building of civil society. Ms Dlamini is also a founding member and former Secretary of Lawyers for Human Rights Swaziland (LHRS). She has previously worked with Women and Law in Southern Africa (WLSA) where she dealt with issues relating to maintenance, access to and control of resources, inheritance and property, sexual and reproductive rights; administration of justice; gender-based violence and access to justice; human rights, HIV&AIDS, gender and the law; human trafficking; international and regional human rights; women in decision-making and political participation and pursued interests in legal aid provision; strategic litigation; civil claims and restorative justice in the context of GBV and the promotion of gender justice within the citizenry, legal training institutions and the judiciary. As a member and part of the leadership of the Media Institute of Southern Africa



(MISA) for a number of years, she has contributed to advocacy for the protection of freedom of expression and the media in Swaziland and the region. She has also been a member of the Teaching Service Commission; Judicial Service Commission and the Task Force on the Prevention of People Trafficking and People Smuggling. Lomcebo is the author of the 2013 Afrimap publication, "Swaziland: Political Participation and Democracy" which examines Swaziland's governance system and explores possible opportunities for civil society activism to contribute to the democratic transformation of the country.

## **ICJ**

### **Hon. Justice Moses Hungwe Chinhengo**

Commissioner, International Commission of Jurists

Judge Chinhengo studied law at the University of Zimbabwe (then University of Rhodesia) completing a Bachelor of Law degree in 1978. Worked in South Africa in 1979 for Munich Reinsurance Company Ltd and on imminence of deportation escaped to and became a refugee in Lesotho up to the cease-fire in Zimbabwe. Returned home and co-opted into the Zanu PF Legal Committee during the elections leading to Independence in 1980. Appointed to the Ministry of Foreign Affairs as Assistant Secretary, Legal Department. Led Zimbabwean delegations to many bilateral and multilateral meetings/conferences and participated in the Law of the Sea Conference for many years. Joined the Ministry of Justice, Legal and Parliamentary Affairs and rose to position of Chief Law officer in the Legislative Drafting Department of the Attorney-General's Office. Returned to the University of Zimbabwe for one year in 1987 and obtained a Bachelor of Laws degree and admitted to practice law. Left Government service in 1989 and worked briefly in the Insurance Industry and then entered private legal practice. Appointed a Judge of the High Court of Zimbabwe in 1996. Served 8 years and resigned. Appointed a Judge of the High Court of Botswana in March 2004 and served for 8 years until March 2012 when called to be part of the team of 3 legislative draftspersons of the new Constitution approved and adopted in 2013. Had been one of the 5 draftspersons of the proposed new constitution for Zimbabwe in 1999. As a Commissioner of the ICJ, he has led ICJ Missions to Lesotho, Zambia and South Sudan to name a few; Co-founder and Executive Director of Africa Institute of Mediation and Arbitration (AIMA) in Harare, Chairman of the Midlands State University (Zimbabwe) Disciplinary Committee, and Temporary Full-time Lecturer in the Department of Procedural Law at the University of Zimbabwe

### **Arnold Tsunga**

Director, Africa Regional Programme, International Commission of Jurists (ICJ)

A highly experienced lawyer, Arnold was the founding Executive Director of Zimbabwe Lawyers for Human Rights (ZLHR) and a past Executive Secretary of the Law Society of Zimbabwe (LSZ). He sat on a number of Boards of non-profit organisations including being vice president of the International Federation for Human Rights (FIDH); a board member of the Martin Ennals Award Foundation (MEA); former Advisory Committee member for the Africa Division of Human Rights Watch (HRW); Board member Lawyers for Human Rights (LHR) South Africa; past Chairperson of the CRISIS COALITION in Zimbabwe and the Zimbabwe Human Rights Association (ZIMRIGHTS) among others. He has received international recognition for his role in promoting and protecting human rights including awards by the Rotary Foundation of Rotary International Paul Harris Fellowship in appreciation of tangible and significant assistance given for the furtherance of better understanding and friendly relations among peoples of the world in 2007; southern Illinois University School of Law 2007 Rule of Law Citation for being an example of what a lawyer should aspire to be in a community; the Human Rights Watch Defender Award (2006-7); the Martin Ennals Award for Human Rights Defenders (2006) ; Certificate of Special Congressional Recognition, 2006 ( US Congress) ; Certificate of Courage in Civil Liberties, 2004, (Parkinson's Fund) which "honors civil courage — steadfast resistance to evil at great personal risk.

### **Martin Masiga**

Deputy Director, Africa Regional Programme, International Commission of Jurists (ICJ)

Martin is a Ugandan lawyer and human rights advocate. Previously he worked with the Rule of Law Programme of the United Nations in South Sudan after service as the director of the Human Rights Network-Uganda. He also practiced with Rwakafuuzi & Company Advocates in Uganda.

### **Otto Saki**

Senior Legal Adviser, Africa Regional Programme, International Commission of Jurists (ICJ)

Otto is a Zimbabwean lawyer and organisational development specialist. He is former Senior Democracy and Governance Adviser at USAID Zimbabwe and former Programmes Coordinator of Zimbabwe Lawyers for Human Rights running the Human Rights defenders and International litigation projects. An experienced defender of civil society activists in the Zimbabwean courts, he is a Human Rights Fellow of Columbia University, holds a Bachelor of Laws (Hons) from the University of Zimbabwe, Masters of laws (LLM) from Colombia Law School (2007-2008). He has also won the international Reebok Human Rights Award in 2006.

## **OSF**

### **Ms. Emily Martinez**

Director, Human Rights Initiative, Open Society Foundations.

Emily has been with the Foundations since 1995. Previously, she set up and directed four global grant-making programs on disability rights, LGBTI rights, the rights of criminal defendants, and the right to information. Prior to moving to Washington, D.C., Martinez was the director of the Budapest-based Human Rights and Governance Grants Program for the Foundations, where she helped promote the development of human rights and accountability groups in Eastern and Central Europe and the former Soviet Union. As the founding director of the program, she developed expertise in a broad range of fundamental human rights issues in that region, as well as civil society's role in promoting rule of law and accountable governance. Martinez holds an MA in human rights from the University of Essex. She also graduated from Georgetown University with a BS in international affairs and developmental economics.

### **Ms. Louise Olivier**

Programme Manager, Human Rights Initiative, Open Society Foundations.

Louise is responsible for the grants portfolio focusing on the rights to assemble and protest and expression. She also works on the Right to Truth portfolio and the grants related to Transitional Justice. She is the Human Rights Initiative's person on a new OSF focus on food security and climate change in Africa. Prior to this work Louise was the Law Programme Manager at OSISA for eight years. Before joining OSISA she worked at the South African IEC in the Legal Unit. She has vast electoral experience on the continent. She has a LLB from the University of KwaZulu-Natal (previously university of Natal, Durban). Louise is based in Johannesburg.

### **Ms. Iva Dobichina**

Program Manager, Human Rights Initiative, Open Society Foundations.

Iva is responsible for grants portfolio focusing on human rights defenders and freedom of association. Before joining Human Rights Initiative, Iva was Advocacy Manager at OSF's International Advocacy Office. She has worked for Freedom House and prior to joining OSF, she served as Director of Programmes for Central Asia, where she was responsible for implementing human rights programmes mainly focusing on legislative reforms, freedom of expression and assembly, and the right to fair trial. Prior to joining Freedom House, Iva served as Director of Programs at the Balkan School of Politics and Director of

Programmes at the Political Academy for Central and South Eastern Europe in Bulgaria.

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**International  
Commission  
of Jurists**

P.O. Box 91  
Rue des Bains 33  
CH 1211 Geneva 8  
Switzerland

**t** +41 22 979 38 00

**f** +41 22 979 38 01

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