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Promoting the Rights of Human Rights Defenders in the East and Horn of Africa

by Hassan Shire Sheikh & Laetitia Bader*

I. INTRODUCTION

OVER THE COURSE OF 2008, THE SITUATION FACING HUMAN RIGHTS DEFENDERS (HRDs) IN THE EAST AND HORN OF AFRICA REGION¹ HAS DETERIORATED AFTER A SHORT PERIOD OF GREATER OPENNESS.² HRDs working to promote and protect human rights are themselves time and again victims of human rights violations. This occurs despite an increasing array of mechanisms available for the protection of HRDs at the regional and international level, notably the UN Special Rapporteur on Human Rights Defenders and the equivalent at the African Commission on Human and Peoples Rights (ACHPR), and to a lesser extent, networks and coalitions of defenders at the national level.

Basic rights of defenders, such as the rights to freedom of expression and freedom of assembly, which are guaranteed in the constitutions or other legal instruments of the majority of countries in the region, are rarely guaranteed in practice. In fact, a bureaucratic and legislative system of repression, which is being established through the passing of a series of NGO and media laws, is impeding the work of HRDs and narrowing the space in which they can legally operate. Additionally, the silence of many prominent members of the international community and the failure to ensure that aid to governments in the region is made conditional on the protection and promotion of basic human rights has given free rein to this brazen legislative affront on independent human rights activism. This article will address the primary challenges to HRD advocacy and the ways in which HRDs and the international community can overcome restrictive legislation.

II. CHALLENGES TO HRD ADVOCACY

Human rights organizations in the region tend to be perceived as political opponents by the ruling parties. This perception exists for a variety of reasons: the watchdog role played by NGOs during elections; the threat which NGOs are seen as posing to the status-quo given the outspokenness of many defenders on issues which governments would like to hide; and the lack or weakness of other political opposition in the region.

Given that the majority of the funding of human rights organizations in this region comes from abroad, governments often perceive these national organizations as threats to the country's sovereignty. This attitude influences the actions of the diplomatic community on the ground. Recently, governments have been increasingly critical, and in some cases openly antagonis-



Courtesy of Front Line

Reine Alapini Gansou, Special Rapporteur on Human Rights Defenders of African Commission on Human and Peoples Rights.

tic, to diplomatic pressure and “interference” in national affairs, particularly concerning human rights issues. As a result, many diplomatic missions have chosen to take a “quiet” diplomacy approach. In Ethiopia, for example, the United States, France and Great Britain conducted private talks with Prime Minister Meles Zenawi in order to convince him to amend the most restrictive provisions of the Charities and Societies Proclamation (2009). In other instances, the key western missions choose to remain silent and fail to defend the rights of defenders. In light of the influence that western nations continue to exert in many countries in this region, such inadequate responses are unjustifiable. On the very same day that the EU published a weak statement on the Proclamation, the European Commission renewed its aid package to the Ethiopian government.³ By placing geopolitical and strategic interests first, the international community has allowed governments to violate both their national and international legal obligations without significant financial or political repercussions. Consequently, the international community is at least partially responsible for failing to defend HRDs when their rights are so blatantly violated.

SOCIAL CONTEXT

The social context in which defenders work also undermines their ability to promote and secure their rights. Defenders in the region are faced with a non-mobilized general public and at times even an antagonistic one. The general public, especially in Rwanda and Ethiopia, has bought into government propaganda on defenders, particularly claims that defenders are mere opportunists. Consequently, many members of the public support attempts to impose strict regulations on human rights organizations and defenders. Further, in many countries in the

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“Basic rights of [human rights] defenders, such as the rights to freedom of expression and freedom of assembly, which are guaranteed in the constitutions or other legal instruments of the majority of countries in the region, are rarely guaranteed in practice.”

region, civil society mobilization is culturally limited because of a legacy of repressive regimes. This context impacts defenders’ capacity to mobilize a support base among the general public.

LEGAL CONTEXT

Of particular concern is the current legislative affront against defenders’ rights, as one country after another in the region has passed or is in the process of passing NGO legislation and media registration statutes which pave the way for violations of the rights of defenders.

NGO legislation, which sets-up registration and accountability requirements of NGOs, has been introduced in Uganda, Rwanda, Kenya, and most recently in Ethiopia. Although these laws vary in content, they all describe NGOs in a rather limited and negative manner and emphasize the need for regulation. The legislation tends to be vague and thereby allows the overseeing body or individuals—more often than not under nominal governmental control—to interpret the laws and provisions as they see fit. This creates uncertainty for many human rights organizations as to what constitutes permissible action. The NGO Registration (Amendment) Act 2006 in Uganda, for example, requires that NGOs applying for registration must provide written recommendations by two entities deemed “acceptable” by the NGO Board, a body dominated by ministerial appointees.⁴ Further, these NGO laws allow for the suspension of an organization with only limited possibility of review. In Uganda, the NGO Registration (Amendment) Act 2006 provides for an appeal against the decision of the Board to refuse or revoke a certificate of registration to the Minister for Interior Affairs, but does not allow an independent appeal process in the court of law.⁵ The recent Charities and Societies Proclamation (2009) in Ethiopia, the most restrictive legislation currently in place in the region, allows for only a very limited form of review.⁶ The registration requirements are often time-consuming and burdensome, making defender compliance almost impossible.

The right to freedom of expression for journalists is also under threat as a result of a series of media and communications bills currently being drafted or amended in Kenya, Ethiopia, and Rwanda.⁷ Such legislation not only violates the rights of defenders but also creates a context which is unfavorable to HRDs’ efforts to advocate for their own rights. Of specific concern is the requirement for individual journalists to register; the pres-

sure this exerts on journalists is considerable given that the final decision about whom to give these licenses tends to lie with governmental or semi-governmental bodies.⁸

In addition to formal NGO and media legislation, the criminalization of human rights advocacy through a range of laws on sedition and defamation is also common practice in this region and continues to be used as a means of silencing HRDs deemed too outspoken. These laws restrict the very means by which HRDs can advocate for their rights without fear of reprisal. Perhaps of greater concern is that, on a practical level, efforts by defenders to advocate for their own rights in the face of such legislation can be dismissed by governments and their supporters as being merely self-serving. Further, more often than not, the individuals and sectors protected by such laws are those most likely to be the very ones violating the rights of defenders. Stringent terrorism laws, which have been implemented in Kenya and Uganda and are currently in the drafting process in Ethiopia, containing broad definitions of terrorism and provisions criminalizing the publication of information, which encourages terrorism, severely constrain key rights of defenders, notably freedom of expression.⁹ As a result of human rights abuses by many western governments in the “war on terror,” governments in the East and Horn of Africa are able to implement restrictive terror laws without significant criticism from the international community.

In most of the countries visited, the lack of an independent judiciary inhibits defenders seeking to challenge restrictive legislation. The judiciary, which is often controlled by the executive branch, undermines the work and rights of defenders by subjecting them to lengthy trials and denying them bail. Further, judges in the region are generally not well versed in international law; this often results in courts not requiring countries to uphold their international legal obligations. Finally, national human rights commissions, which have been established by statute in all the countries visited with the exception of Burundi, often fail to offer defenders concrete and viable channels for protecting their rights.

As a result of this amalgam of laws, defenders are arbitrarily arrested, unlawfully detained, and, in some instances, subjected to torture or other cruel, inhumane or degrading treatment. Given that the authorities currently have a legal basis for these actions, it is difficult for defenders to generate support neces-

sary to promote their rights; many key stakeholders are often more reluctant to take up a case or an issue which has a front of legality.

LIMITATIONS OF NGOS

There are many factors inherent to national human rights organizations in the region that have a detrimental impact on the promotion of HRDs' rights. Capacity is a significant problem. Many organizations, faced with high staff turnover do not have the means to concentrate on activities relating to their own rights. Another challenge to effective and sustainable HRD efforts to enhance and secure their rights is the lack of a collaborative culture. This appears to stem from a range of social, political and financial factors. Mistrust among organizations, heightened by the practice of setting up governmental NGOs (GONGOs) and witnessing attacks on other organizations or individual defenders, all undermine trust and thwart collaboration. Competition for funds in a region where financial instability is an everyday reality for many organizations also thwarts collaboration. Donors tend to force human rights organizations to define themselves as specialized entities focusing on specific rights, issues, and areas.

The current response by certain missions in Ethiopia to the passing of the Charities and Societies Proclamation is a clear example of the diplomatic community's failure to ensure collaboration among defenders. Rather than continuing to place pressure on the government in Ethiopia to repeal or amend the Law, the missions are trying to negotiate exception clauses for the international and local organizations, which they support. Finally, in countries with high rates of unemployment, finances directly affect individuals' willingness to speak out on behalf of their colleagues or for the wider issue of promoting the rights of defenders because such activities could place their livelihoods at risk.

III. ESTABLISHMENT OF MORE SUSTAINABLE PROTECTION MECHANISMS

When legislation is put forward that directly or indirectly influences either human rights activists or journalists, HRDs mobilize. This one-off irregular mobilization has taken a range of forms including mass protests, the formation of *ad hoc* NGO coalitions to discuss and offer recommendations on the most restrictive and contentious provisions of the relevant bills, and informal lobbying of personal contacts. In rare instances, defenders have utilized the legal process to challenge legislation or regulations that undermine their rights and their work. In Ethiopia, for example, prior to the elections of 2005, 15 human rights organizations took the Electoral Commission to the High Court to challenge the Commission's decision that organizations that carried out voter education could not also carry out election monitoring activities.¹⁰ The High Court ruled in favor of the NGOs.



Courtesy of Front Line

Mary Lawlor, Front Line Director and Hassan Shire Sheikh, Chairperson EHAHRD.

While one-off mobilization is a form of defense for the rights of HRDs, it is not a structured safeguard. In all of the countries visited with the exception of Uganda, however, attempts have been made by national human rights organizations to establish more sustainable protection mechanisms, notably national coalitions of HRDs. Such coalitions are vital to ensure that HRDs have the resources to protect their rights. In addition, in each country, HRDs are finding means to reach out to key potential advocates. In the countries visited, defenders reach out to members of the authorities and such interaction generally occurs through informal communication. Communicating with authority figures is particularly important when the issues discussed relate to sensitive cases for which public discourse might not be possible

or effective. Interacting in a strategic manner and maintaining personal contacts within the authorities can and should form part of a greater effort to promote the rights of defenders.

Human rights organizations in all the countries visited, particularly in Burundi and Kenya, interact with the diplomatic community. Some examples of interaction include roundtable sessions to which the diplomatic community is invited and meetings with the most active members of the community to call for specific action. The *EU Guidelines on the Protection of Human Rights Defenders*,¹¹ offer a range of channels and activities, which are aimed at supporting HRDs and their rights. There are clear limitations, however, to the capacity and political will of the donor community to bring about substantial improvements to the rights of HRDs. Nevertheless, the donor community is one of the few main channels available to defenders.

Despite a lack of horizontal collaboration between national organizations, the well recognized organizations in the region have established contacts with larger international human rights organizations. National organizations often choose to pass on particularly sensitive information to international organizations when they feel they cannot take up issues themselves. This information sharing often takes place through individual meetings with the international organizations, which take place on the ground. National organizations are also part of a much larger network of human rights defenders organizations, including EHAHRD-Net, the International Federation for Human Rights (known as "FIDH" in French), and Amnesty International.

Although some efforts have been made, making use of international and regional mechanisms is rare in this region. Occasionally, and generally in collaboration with international human rights organizations, HRDs have approached these mechanisms for protection.¹² HRDs could better protect their rights, however, by relying more on international and regional mechanisms such as the Special Rapporteur on the situation of Human Rights Defenders of the African Commission of Human and People's Rights and her counterpart in the UN.

IV. CONCLUSION

Despite the myriad challenges to human rights advocacy in the East and Horn of Africa, defenders are mobilizing around individual cases and on a one-off basis. Regular collaboration and joint efforts to speak out against violations or threats to their rights does take place, particularly in countries with more favorable contexts, namely Burundi and Kenya.

It is essential at this point, however, for such efforts to become more systematic and for one-off collaborations among human rights defenders to be transformed into more concrete and long-term relationships. Increasing the space for interactions with key stakeholders to take place is crucial. More sustainable mechanisms at a national level need to be established whenever possible in order to promote the rights of defenders in a systematic, sustainable and effective manner.

The diplomatic community in the region, as well as the international community as a whole, has an essential role to play in ensuring that the rights of defenders are protected and promoted. First, aid to governments in this region must be made conditional on the protection of key basic human rights both in principle and in practice; such a commitment should not be compromised in the name of “strategic” interests. Second, the donor community should allow national human rights organizations to develop their own organizational priorities and it should support these initiatives. The new U.S. administration and other key stakeholders have an opportunity to transform their policies in the East and Horn of Africa by organizing immediate high level visits to the region and by ensuring that the visiting delegations meet with HRDs. Such symbolic first steps would illustrate that commitment to human rights and civil society space is at the forefront of donors’ agendas in the region. **HRB**

ENDNOTES: Promoting the Rights of Human Rights Defenders

¹ The region referred to consists of ten countries covered by the East and Horn of Africa Human Rights Defenders Network (EHAHRD-Net): Djibouti, Eritrea, Ethiopia, Somalia, Sudan and Burundi, Kenya, Rwanda, Tanzania and Uganda.

² This was highlighted during interviews in Burundi and Kenya in particular. In Kenya, the first years of the Kibaki government (2002–2005) are generally depicted as a period of greater openness where HRDs, after years of repression, were generally given greater space.

³ See Lotte Leicht, Human Rights Watch, *EU should not tolerate Ethiopia’s repression* (Feb. 18, 2009), available at <http://www.hrw.org/en/news/2009/02/18/eu-should-not-tolerate-ethiopia-repression> (last visited on April 10, 2009).

⁴ Proclamation to Provide for the Registration and Regulation of Charities and Societies Proclamation No.621/ 2009, Article 2(3), Federal Negarit Gazeta, N.25 (Feb. 13, 2009), available at <http://www.crdaethiopia.org/Documents> (last visited on Mar. 11, 2008).

⁵ NGO Registration Act, 1989, (Chap 113), § 9, Laws of Uganda at http://www.saflii.org/ug/legis/consol_act/nora1989113495 (last visited Mar. 11, 2008).

⁶ Proclamation to Provide for the Registration and Regulation of Charities and Societies Proclamation No. 621/ 2009, 104 (3), Federal Negarit Gazeta, N.25 (Feb. 13, 2009), available at <http://www.crdaethiopia.org/Documents> ((last visited on Mar. 11, 2008).

⁷ See The Kenya Communications (Amendment) Bill 2008 available at www.kenyalaw.org/Downloads/Bills/2008/THE_KENYA_COMMUNICATIONS_AMENDMENT_%20BILL%202008_2.pdf (last visited on Mar. 11, 2009). The Bill was initially passed by Parliament but President Mwai Kibaki has since sent it back to Parliament for review as a result of the significant contestation the

Act generated; see also Proclamation to Provide for Freedom of the Mass Media and Access to Information, N. 590/2008, Federal Negarit Gazeta, (Dec. 1, 2008), available at www.ethiopianreporter.com (last visited on Mar. 11, 2009); on Feb. 23, 2009, the Lower Chamber of the Rwandan Parliament approved a new media law which compels sources to reveal information and establishes specific academic requirements as preconditions of the granting of a license to journalists.

⁸ In Rwanda, journalists must apply to the High Media Council to register. The High Media Center is a semi-autonomous body which has so far more often than not sought to restrict independent journalism rather than protect the rights of defenders.

⁹ See Uganda Suppression of Terrorism Bill (2002), N. 14/2002, Section 7, Laws of Uganda (June 7, 2002).

¹⁰ On Apr. 20, 2005, 15 CSOs took the National Election Board (NEB) to court over new directives it has published stating that national organizations must have registered as election observer organizations when they were first formed in order to be able to take part in the election monitoring. On May 3, 2005, the Federal High Court Judge Berhanu Teshome ruled, case N. 38472, that the new directives “contravened the laws on the country.”

¹¹ Ensuring Protection—European Union Guidelines for Human Rights Defenders (June 2004) available at <http://ue.eu.int/uedocs/cmsUpload/GuidelinesDefenders.pdf> (last visited Apr. 16, 2009).

¹² Daniel Bekele, an Ethiopia HRD, took his case to the African Commission on Human and People’s Rights, with the help of an international NGO, after all local remedies failed. The Commission was about to rule on the admissibility of the case when the Prime Minister released him on the grounds that pursuing the case was not possible.