

Submission to 56th session of the African Commission on Human and Peoples' Rights on the situation of human rights defenders

UGANDA

April 2015

The Republic of Uganda's 4th periodic report was presented to the 49th Ordinary Session of the African Commission on Human and Peoples' Rights (ACHPR) in 2011. Following its review of the report, the ACHPR concluded that despite Uganda's efforts to promote and protect human rights in the country, it had failed to establish adequate legislation on freedom of expression in compliance with its obligations under the African Charter on Human and Peoples' Rights and to repeal the legislation criminalising defamation. The ACHPR recommended that Uganda take legislative steps to domesticate the Maputo Protocol and the Optional Protocol to the United Nations Convention Against Torture; fight the prevalence of police brutality; and work closely with non-governmental organisations (NGOs) in the report writing process. In November 2013 Uganda presented its 5th periodic report to the ACHPR covering the period from 2010 to 2012. The ACHPR's concluding remarks on this report are not yet available.

The purpose of this paper is to highlight the situation for HRDs in Uganda since its last review by the ACHPR; the steps taken by the Uganda to implement the ACHPR's past recommendations; and key recommendations for the ACHPR to consider making to Uganda during its current review.

1. Risks facing human rights defenders

- According to the Press Freedom Index Report 2013, the relationship between the Police and journalists in Uganda is deteriorating. In 2012, 60% of violations of the rights of journalists were perpetrated by the Uganda Police Force, while in 2013 that figure rose to 81%. Cases of police brutality against journalists have been reported including physical attacks (including with tear gas), detention without trial, confiscation and destruction of equipment.¹
- Non-governmental organisations (NGOs) in Uganda operate in an unsafe and hostile environment. Frontline Defenders has reported that not only do NGOs face procedural and practical obstacles in their registration and functioning, but they are commonly targets of threats and attacks. The Soroti Development Association & NGOs Network, an NGO with a particular focus on transitional justice and land rights, was targeted on numerous occasions in 2013 and 2014. This harassment included an attempted shooting of two staff members, trespass on the office premises as well as the coordinator's private residence, and threats via anonymous phone calls and indirectly through law enforcement agents.²
- Voices critical of the Government are intimidated and repressed. Human Rights Watch reported that in the first 10 months of 2013, at least 28 individuals were arrested and charged with incitation to violence for handing out materials from Black Monday, an anti-corruption movement.³

2. Official restrictions on the space for human rights defenders

- In 2013 the Public Order Management Act (POM Act) was passed which legislatively restricts freedom of expression, association and peaceful assembly, in contravention of the Ugandan Constitution.⁴
- According to the Observatory for the Protection of Human Rights Defenders, the POM Act gravely restricts civil society space. It imposes conditions on holding public gatherings and demonstrations and criminalises meetings held in contravention of the POM Act⁵. Article 6 can be abused by authorities to arbitrarily prevent a 'public meeting' – a concept very broadly defined⁶. Moreover, the Inspector General of Police can regulate the conduct of all public meetings⁷, and meetings at public institutions are prohibited⁸. The Observatory believes that this Act contravenes Articles 9, 10 and 11 of the African Charter on Human and Peoples' Rights.⁹
- The former Special Rapporteur on the situation of Human Rights Defenders, Margaret Sekaggya, also stressed the danger of the POM Act in that it grants police the right to use guns during public events, enhancing police capacity to intimidate demonstrators. She commented that firearms should only be used as a last resort.¹⁰

- Journalists are commonly charged with defamation under the Penal Code Act which.¹¹ A recent example is that of CBS radio journalist, Ronald Ssembussi, who was convicted of defamation for a story about the former chairman of Kalangala district being investigated in connection with the disappearance of solar panels donated by the African Development Bank to pump clean water in the area. The conviction and sentencing has been criticised by both media and freedom of expression activists.¹²
- The 2010 Regulation of Interception of Communications Act in effect provides undue powers to State organs to intercept private communications and potentially threatens free expression through the restriction of content and access to information.¹³
- The 2006 Non-Governmental Organisations (Amendment) Registration Act increased administrative constraints in the registration of NGOs¹⁴. Registration certificates are issued by the Non-Governmental Organisations National Board, which is composed of government representatives who are granted significant discretion in their decisions. This Act, and the discretion of the NGO National Board, degrades the autonomy and independence of NGOs.¹⁵ In May 2014, the Cabinet approved the Non-Governmental Organizations (NGOs) Registration (Amendment) Bill which further expands the Government's powers to monitor and dissolve NGOs, and could bar NGOs from engaging in political work.¹⁶
- The activities of NGOs are also restricted. For example, regulation 13 of the 2009 NGO Registration Regulations requires NGOs to provide 7 days' notice to local councils before making direct contact with the people in the region, and restricts NGOs from engaging in any act which is prejudicial to the 'national interest of Uganda'.¹⁷
- The Anti-Homosexuality Act of February 2014 was an attempt to penalise those 'promoting' homosexuality, including by the imposition of sentences of between 5 to 7 years imprisonment. Since its adoption, the Act has facilitated an increase of arbitrary detentions, police abuse and other injustices against Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) people.¹⁸ Fortunately, this Act was declared 'null and void' by the Constitutional Court in August 2014. However, this was only for technical reasons, and the Government has indicated that it will appeal the decision before the Supreme Court.

3. Human rights defenders facing particular risks

- The Anti-Homosexuality Act constitutes a real threat to the life and safety of the LGBTI community and defenders. The United Nations Special Rapporteur on the situation of HRDs has expressed concern that the criminalisation of the 'promotion of homosexuality' will detrimentally impact on healthcare providers, and Ugandan and international organizations advocating on human rights issues.¹⁹ Other laws also discriminate against homosexuality, including the Penal Code which criminalises same-sex relations²⁰. For this reason LGBTI defenders in Uganda are faced with severe discrimination and are especially vulnerable.²¹
- Attacks against human rights defenders involved in protests against business operations and major development projects in Uganda are very concerning. In 2014 Human Rights Watch reported that civil society working on environmental, land and corruption issues faced threats of deregistration, accusations of sabotaging government programs, and arrest by government officials.²²
- Throughout 2014 opposition politicians faced arrest, detention, and criminal charges for holding public assemblies in Uganda.²³ In July 2014, seven opposition politicians were charged for belonging to an 'unlawful society', Activists for Change – a political pressure group the government had banned in 2012 on spurious grounds.²⁴
- The government continues to be hostile to independent media publishing politically sensitive articles. On 20 May 2014 more than 50 uniformed police sealed off the premises of the Daily Monitor newspaper after it published a letter allegedly written by Uganda's coordinator of intelligence service. Two radio stations located in the same compound were also forced off air by the Uganda Communications Commission. The same day, police closed the Red Pepper newspaper on similar grounds. Two journalists and eight civil society members protesting the closures were arrested, beaten, and detained by police. They were charged with inciting violence before being released.²⁵
- In 2013, Human Rights Watch documented over two dozen cases of illegal arrest and detention of Salaf Muslims, predominant members of the Allied Democratic Forces rebels, who were later released without charge or brought before a court.²⁶

4. The response of the State regarding the protection of human rights defenders

- In 2013 the ACHPR acknowledged Uganda's incorporation of the United Nations Convention Against Torture into domestic law via the passage of the Prohibition and Prevention of Torture Bill in 2012.²⁷ In its report to the presented to the ACHPR in 2013 for the period 2010-2012 (2013 State Report), Uganda agreed to incorporate provisions from the Optional Protocol to the Convention Against Torture into domestic legislation and confirmed that steps are being taken to domesticate provisions of the Maputo Protocol.²⁸ Uganda should ensure that steps are taken to implement these undertakings.
- Despite ACHPR recommendations in 2008, and Uganda's commitment in its 2013 State Report to review and amend laws that are inconsistent with media freedoms, Uganda is yet to repeal the sections of the Penal Code Act criminalising defamation.²⁹
- Further, while in the 2013 State Report, Uganda declared its readiness to increase efficiency in registering NGOs, this statement has been significantly undermined by the subsequent 2014 Non-Governmental Organizations Registration (Amendment) Bill.
- In December 2013 the United Nations Special Rapporteur on the situation of HRDs sent communication to the Ugandan Government expressing his concern that a number of provisions in the POM Act curtail the rights to freedom of peaceful assembly, and of expression. No response was received to this communication.³⁰
- In February 2014 the United Nations Special Rapporteur on the situation of HRDs sent another communication to the Ugandan Government, expressing his concern that the Anti-Homosexuality Act would institutionalise discrimination against LGBTI people and could encourage harassment and violence against them. The Special Rapporteur remains concerned about severe discrimination that is still faced by LGBTI people in Uganda.³¹

5. Recommendations to the Government of Uganda

- Refrain from criminalising the legitimate activities of HRDs and repeal all laws and policies which restrict their activities, including the POM Act, the Uganda Communications Act (2013) and the NGO Registration (Amendment) Act (2006) and Bill (2014).
- Refrain from adopting laws which increase the threat to LGBTI community and defenders such as the Anti-homosexuality Act (2014).
- Take conclusive steps to give effect to the United Nations Declaration on HRDs in domestic legislation, including the recognition of the right of all persons to participate in peaceful activities against violations of human rights.
- Combat impunity by ensuring the prompt, thorough and impartial investigation of all violations against HRDs, the prosecution of perpetrators, and access to effective remedies for victims.
- Provide safe spaces for meaningful civil society participation in the development and implementation of public policies, in particular guaranteeing the free, prior and informed consultation of communities affected by economic and development projects.
- Issue a standing invitation to the Special Procedures of the Human Rights Council, as well as relevant regional mandate holders, and specifically invite and facilitate visits from the UN Special Rapporteur on the Situation of HRDs and the ACHPR Special Rapporteur on HRDs.

The Government must not use the 2016 elections as motivation to obstruct freedom of expression, in particular of HRDs or journalists. On the contrary, public participation must be fostered by a thorough implementation of the recommendations above.

¹ <http://www.hrnjuganda.org/reports/Press%20Freedom%20Index%20Report%202013.pdf>.

² <http://www.frontlinedefenders.org/node/25937>.

³ <http://www.hrw.org/world-report/2014/country-chapters/uganda>.

⁴ http://www.ishr.ch/sites/default/files/article/files/ishr_-_statement_under_item_2_-_hrc24_-_ms.pdf.

⁵ Article 10, Public Order Management Act (2013); <https://www.fidh.org/International-Federation-for-Human-Rights/Africa/uganda/14422-uganda-s-constitutional-court-should-repeal-the-public-order-management>.

⁶ Article 4, Public Order Management Act (2013); *ibid*.

⁷ Article 3, Public Order Management Act (2013); *ibid*.

⁸ Article 13, Public Order Management Act (2013); *ibid*.

⁹ <http://www.omct.org/human-rights-defenders/urgent-interventions/uganda/2013/12/d22512/>.

¹⁰ <http://freeassembly.net/rapporteurpressnews/uganda-public-assembly/>.

¹¹ Section 179, Penal Code Act (1950).

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- ¹² <http://chimpreports.com/grief-as-sentenced-cbs-journalist-dies-in-masaka/>;
http://www.academia.edu/9340521/Defamation_in_Uganda.
- ¹³ <https://freedomhouse.org/report/freedom-net/2012/uganda#.VRUhBPnF9Ro>.
- ¹⁴ http://webcache.googleusercontent.com/search?q=cache:vb-umaUNnYMJ:www.civicus.org/new/media/BriefingPaper_Final.doc+&cd=1&hl=en&ct=clnk&gl=ch
- ¹⁵ http://www.frontlinedefenders.org/uganda_
- ¹⁶ <http://www.icnl.org/research/monitor/uganda.html>
- ¹⁷ https://freedomhouse.org/report/countries-crossroads/2012/uganda#.VR02X_mUdRp
- ¹⁸ Increased Criminalization, Arbitrary Detention, and other Deprivations of the Right to Liberty and Security of Person for Lesbian, Gay, Bisexual and Transgender (LGBT) and Intersex People - <https://www.google.ch/url>.
- ¹⁹ http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_63_Add_1_en.doc
- ²⁰ Section 145, The Penal Code Act (1950).
- ²¹ <https://www.amnesty.org/en/articles/news/2014/05/uganda-anti-homosexuality-act-prompts-arrests-attacks-evictions-flight/>
- ²² http://www.ishr.ch/news/end-attacks-human-rights-defenders-who-protest-against-business-operations-and-development_
- ²³ <http://www.hrw.org/world-report/2014/country-chapters/uganda>.
- ²⁴ Ibid.
- ²⁵ Ibid.
- ²⁶ Ibid.
- ²⁷ <http://www.achpr.org/press/2013/09/d173/>.
- ²⁸ http://www.achpr.org/files/sessions/54th/state-reports/5-2010-2012/periodic_report_2010_2012_eng.pdf.
- ²⁹ <http://www.achpr.org/states/uganda/reports/3rd-2006-2008/>.
- ³⁰ http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_63_Add_1_en.doc
- ³¹ Ibid.