

"TO THEM, WE'RE NOT EVEN HUMAN"

Marginalised Human Rights Defenders in
Uganda, Kenya, and Tanzania



DEFENDDEFENDERS

East and Horn of Africa Human Rights Defenders Project

"To Them, We're Not Even Human": Marginalised Human Rights Defenders in Uganda, Kenya, and Tanzania

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

- Ugandan Human Rights Defender,
February 2018

"These people need to be protected or they will be extinguished from history. They have no access to education, health facilities, water, nothing. No access to legal support. They have their own way of life, but the government has increasingly interfered with their life."

- Tanzanian Human Rights Defender,
August 2018

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

- Kenyan Human Rights Defender,
September 2018

"My struggle and pain have given women courage. When one woman stands, other women know that we can all do it. No one can subjugate me because I am a woman."

- Tanzanian Human Rights Defender,
August 2018

Table of Contents

Foreword	7
About DefendDefenders	8
Executive Summary	9
Methodology	11
Part 1 – Indigenous Minority Human Rights Defenders	12
• Uganda – Empty Acknowledgement: Western Uganda and the Batwa	14
• Kenya – Diversity and Devolution: the Forgotten People of Turkana	20
• Tanzania – Lands Apart: Forcibly Displacing the Maasai	24
• Conclusion and Recommendations	30
Part 2 – Women Human Rights Defenders	34
• Uganda – An Increasingly Restricted Legal Environment	35
• Kenya – The Price of Challenging Patriarchy	41
• Tanzania – Operating in a Restricted Civic Space	47
• Conclusion and Recommendations	54
Part 3 – LGBT+ Human Rights Defenders	58
• Uganda – An Uphill Battle	60
• Kenya – Towards Decriminalisation	68
• Tanzania – An Uncertain Future	74
• Conclusion and Recommendations	80

Acronyms

ACHPR	African Commission on Human and Peoples' Rights
AHA	Anti-Homosexuality Act
APA	Anti-Pornography Act
CBO	Community-based Organisation
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CHESA	Community Health Education Services and Advocacy
CSO	Civil Society Organisation
EAC	East African Community
EACJ	East African Court of Justice
FGM	Female Genital Mutilation
HRAPF	Human Rights Awareness and Promotion Forum
HRD	Human Rights Defender
ICC	International Criminal Court
ITGNC	Intersex, Transgender, and Gender Non-conforming
KBH Sisters	Kazi Busara na Hekima Sisters
KFCB	Kenyan Film Classification Board
KP	Key Populations
LGBT+	Lesbian, Gay, Bisexual, Transgender, and Other Sexual Minorities
MP	Member of Parliament
MSM	Men Who Have Sex with Men
NGLHRC	National Gay and Lesbian Human Rights Commission
NGO	Non-Governmental Organisation
OBC	Ortello Business Corporation
PAHRDN	Pan-African Human Rights Defenders Network
POMA	Public Order Management Act
PTSD	Post-traumatic stress disorder
SGBV	Sexual and Gender-based Violence
SMUG	Sexual Minorities Uganda
UN HRC	United Nations Human Rights Council
WHRD	Women Human Rights Defender
WMA	Wildlife Management Area



Foreword

The East and Horn of Africa sub-region is sometimes the scene of startling contradictions. Bloody land conflicts are often set in areas of stunning natural beauty. Pervasive patriarchy thrives in societies built on the labour of strong women. Rich traditions and power structures are often eclipsed by colonial-era legislation or policies meant to subjugate rather than empower. Amid these juxtapositions are human rights defenders (HRDs) who strive to promote and protect human rights in a shrinking civic space. While fighting for their economic, social, political, and cultural rights, HRDs face opposition from a range of actors who disregard the rights of the people.

Over the last 13 years, DefendDefenders has supported countless HRDs working in all walks of life, from environmentalists to those struggling for the rights of people with disabilities. While the efforts of all HRDs are important and deserving of protection, some groups of HRDs are further marginalised and vulnerable to threats, harassment, and social exclusion, simply because of who they are. This is especially the case for those working with indigenous minorities, women's rights, and the rights of sexual minorities. In addition to the everyday struggles of being HRDs, these defenders show courage while being systematically pushed to the margins of public discourse and protection mechanisms.

We, at DefendDefenders, are also guilty of this oversight, but it is our intention that this report highlights the struggles of these marginalised HRDs, identify existing human rights and protection gaps, and make recommendations to address them. This report will also serve as a means to identify best practices in Uganda, Kenya, and Tanzania, and contrast the effectiveness of HRD strategies to mainstream marginalised issues. Through these methods, it should become clear that despite the challenges facing marginalised HRDs, even small measures can significantly reduce their vulnerability and help create an environment where they can work without fear of persecution.

Grassroots activists are the backbone of establishing sustainable human rights systems in Uganda, Kenya, and Tanzania. This is evermore important as 2018 marks the 70 year anniversary of the Universal Declaration of Human Rights, and the 20 year anniversary of the Declaration on Human Rights Defenders. Only by examining the challenges of the most marginalised HRDs can we begin to create a unified human rights movement that sees all issues as equally deserving of a seat at the table.

We would like to express our thanks to every respondent that took time to share their experiences with us, and reiterate our solidarity in their daily struggle for justice and equality. No matter how lonely the road may seem at times, know that you are never forgotten and never alone.



Hassan Shire

Executive Director of DefendDefenders
Chairperson of the Pan-African Human Rights Defenders Network



About DefendDefenders

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

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

DefendDefenders also serves as the secretariat of the Pan-African Human Rights Defenders Network (PAHRDN). The network was formed as a result of deliberations at the All African Human Rights Defenders Conference (Johannesburg +10) hosted in April 2009 in Kampala, Uganda. The five sub-regional networks forming the PAHRDN are: the North Africa Human Rights Defenders Network (hosted by the Cairo Institute for Human Rights Studies in Tunis), the West African Human Rights Defenders Network (Lomé, Togo), the Southern Africa Human Rights Defenders Network (hosted by the International Commission of Jurists in Johannesburg, South Africa), the Central Africa Human Rights Defenders Network (Douala, Cameroon), and the East and Horn of Africa Human Rights Defenders Network (hosted by DefendDefenders in Kampala, Uganda). PAHRDN aims to coordinate activities in the areas of protection, capacity building, and advocacy across the African continent.



Executive Summary

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

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

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

LGBT+ HRDs face deep-rooted challenges related to harmful narratives against their work perpetuated by a range of actors, forcing them to balance increased visibility with justice systems that harshly penalise consensual same-sex relations or those believed to be promoting them. As a result, they are sometimes forced to conduct their work clandestinely, seriously limiting advocacy efforts or running the risk of

having their events raided or shut down by the government. In Uganda, discourse surrounding draconian legislation led to the organisation of an LGBT+ rights movement, while also attracting consistent backlash from the government and other segments of society. Kenyan LGBT+ HRDs have made significant gains for their rights through organised strategic litigation and a strong push for decriminalisation, yet many still struggle with unconstrained freedom of expression and association. Conversely, Tanzania's shrinking civic space has seen the LGBT+ community increasingly targeted in national discourse, leading to increased attacks and arrests of HRDs. In all three countries, LGBT+ HRDs face negative stereotypes, hateful rhetoric from media and government officials, and threats to their personal safety, all of which culminate in unstable working environments and unaddressed needs related to psychosocial support.

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

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

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



Methodology

This report is a combination of desk research and interviews with 161 HRDs, including lawyers, grassroots activists, and journalists. All interviews were conducted between February and October 2018 in Uganda (Kampala, Mbarara, Kabale, Fort Portal, Gulu), Kenya (Nairobi, Lodwar, Lokichar), and Tanzania (Dar es Salaam, Zanzibar City, Arusha). Claims not otherwise sourced are credited to the interviews conducted by DefendDefenders, making every effort to confirm this information with multiple independent sources.

The names and identifying markers of all sources have been deliberately omitted in order to ensure their safety, independence, and protection from reprisals in the form of legal and extra-legal harassment, or acts of intimidation, threats, or attacks. We would like to express our heartfelt thanks to all the individuals who contributed their testimonies, insights, and analyses for this report.

We would also like to extend our thanks to the enormous contributions of the National Coalition of Human Rights Defenders Uganda, the National Coalition of Human Rights Defenders – Kenya, and the Tanzanian Human Rights Defenders Coalition. This research would have been impossible without your diligent support, facilitation, and patience.

Part 1 – Indigenous Minority Human Rights Defenders



Uganda, Kenya, and Tanzania are home to hundreds of indigenous ethnic groups with unique cultures, languages, and social structures that often differ considerably from the dominant society. While all three countries have signed the United Nations Declaration on the Rights of Indigenous Peoples,¹ issues over ethnic marginalisation, land grabbing, forced evictions, and extra-judicial harassment from both states and businesses remain pervasive. These human rights violations and abuses often go unreported, unredressed, and sometimes fall between the cracks of human rights protection mechanisms.

With few exceptions, indigenous minority groups within the three countries are economically disenfranchised, linguistically and geographically isolated, and lack access to education, avenues for visibility such as the media, and larger justice systems to expose and address the human rights violations they experience. The work of HRDs is therefore paramount in ensuring the full enjoyment of human rights for marginalised indigenous groups, especially in light of their often isolated nature.

Their vulnerability is often increased by unpredictable weather patterns, semi-arid landscapes, and the relative proximity of agrarian and nomadic communities, which often lead to pervasive conflicts over land throughout East Africa. These factors are compounded by climate change, which renders previously affable grazing or farmland increasingly scarce and can affect the migratory patterns of wild animals, leading to competition between rural communities who may have previously lived in harmony. These factors have been particularly pronounced for already marginalised indigenous groups, who are often further disenfranchised by the large-scale exploitation of natural resources on

1 United Nations, “United Nations Declaration on the Rights of Indigenous Peoples, Adopted 13 September 2007,” March 2008, https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf, Accessed 15 November 2018.

land tied to their cultural heritage and traditional livelihood systems. In 2006, Uganda, Kenya, and Tanzania all signed the East African Community (EAC) Protocol on Environment and Natural Resources Management,² (though Tanzania has not ratified) which stresses sustainable development in consultation with indigenous knowledge.

There has been some controversy regarding the definition and identification of “indigenous” peoples in East Africa. For instance, are not all native Ugandans, Kenyans, and Tanzanians “indigenous” in their home countries? The term also harbours negative connotations instilled during the colonial period, often as a means to denigrate or further marginalised groups that refused to conform to more conventional social norms, even after the establishment of post-colonial independent states in the 1960s. While the African Charter on Human and Peoples’ Rights (the Banjul Charter)³ never expressly mentions “indigenous peoples”, the African Commission on Human and Peoples’ Rights (ACHPR) defines indigenous groups (see Box 1).

“We are losing our heritage and our culture. Forcing us to lose our culture violates our basic human rights. If we are removed from our land, we are limited from accessing our ancestral spiritual areas. When we come out and speak about this, we become victims.”⁴

2 East African Community, “Protocol on Environment and Natural Resources Management,” 3 April 2006, <http://repository.eac.int/bitstream/handle/11671/1638/EAC%20PROTOCOL%20ON%20ENVIRONMENT%20AND%20NATURAL%20RES%20MGMT.pdf?sequence=1&isAllowed=y>, Accessed 15 November 2018.

3 ACHPR, “AFRICAN (BANJUL) CHARTER ON HUMAN AND PEOPLES’ RIGHTS,” 21 October 1986, http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf, Accessed 15 November 2018.

4 DefendDefenders interview, Tanzania, August 2018.



For the purposes of this report, nomadic communities, pastoralists, hunter-gatherers, and forest-dwellers are considered "indigenous" within the East African context as they follow traditions, cultural practices, and religions that predate the colonial period and are under threat by outside influences or majority groups.⁵ This working and analytical category does not mean that diversity and power struggles do not exist within the groups considered, an important caveat to keep in mind when working with indigenous groups. Note that HRDs consulted for this section are those defending the rights of indigenous groups, irrespective of being indigenous persons themselves.

"People use land for their livelihoods, cultivation, pastoralism; people use land for their cultural issues. Taking them from their own land, means you disrupt their entire lifestyle."⁶

While issues of tribalism and economic empowerment remain key issues faced by indigenous communities in Uganda, Kenya, and Tanzania, this section of the report will focus predominantly on land, as it is central to the cultural rights and livelihoods of marginalised peoples and many indigenous groups. Land grabbing occurs in many forms, and indigenous peoples are often dispossessed of their land by the gazetting of national parks, corporate interests in natural resources, or influence from the tourism industry. Regardless, at the heart of these matters lie deep-seated issues of corruption and government disregard for the rights of citizens based on cultural association, self-identification, and ethnic identity. Amid these struggles are HRDs

5 African Commission on Human and Peoples' Rights, "Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities," November 2003, <https://books.google.co.ug/books?id=vg2Fg-X73IEC&pg=PA12&lpg=PA12&dq=November+2003,+Report+of+the+working+group+of+African+Commission+on+human+and+people%27s+rights+on+indigenous+people&source=bl&ots=p511xQCSq&sig=7D88IzDPc5orRw67aunHvN3aB20&hl=en&sa=X&ved=2ahUKewjfnIjwl-DeAhUIDcAKHSilBLIQ6AEwBnoECAMQAQ#v=onepage&q=November%202003%2C%20Report%20of%20the%20working%20group%20of%20African%20Commission%20on%20human%20and%20people's%20rights%20on%20indigenous%20people&f=false>, Accessed 19 November 2018.

6 DefendDefenders interview, Tanzania, August 2018.

who brave intimidation, harassment, and injustice. While this report is by no means exhaustive, it is meant to highlight injustices and the unique needs of HRDs whose struggles often go unnoticed.

"Cultures and ways of life [that] differ considerably from the dominant society, and [whose] cultures are under threat, in some cases to the point of extinction. A key characteristic for most of them is that the survival of their particular way of life depends on access and rights to their traditional lands and the natural resources thereon. They suffer from discrimination as they are regarded as less developed and less advanced than other more dominant sectors of society. They often live in inaccessible regions, often geographically isolated, and suffer from various forms of marginalization, both politically and socially. They are subjected to domination and exploitation within national political and economic structures that are commonly designed to reflect the interests and activities of the national majority. This discrimination, domination and marginalization violates their human rights as peoples/communities, threatens the continuation of their cultures and ways of life and prevents them from being able to genuinely participate in decisions regarding their own future and forms of development."

- African Commission on Human and Peoples Rights, 1986

Box 1

Uganda – Indigenous Minority Human Rights Defenders

Empty Acknowledgement: Western Uganda and the Batwa

Uganda is culturally, ethnically, and religiously diverse, due in part to a rich history of small pre-colonial kingdoms and mass migrations related to conflicts in neighbouring countries. The current situation for indigenous groups in Uganda must be viewed in light of the massive human rights abuses and ethnic marginalisation that took place under the Amin and Obote regimes of the 1970s–80s, with both rulers inciting violent ethnic divisions as a means to exclude minority groups from power.⁷ While this has significantly improved under the current Museveni administration, indigenous populations continue to struggle with significant challenges related to chronic impoverishment, lack of access to education, as well as social and political exclusion from national politics.

"In Africa, if you don't have land, you are poor. How do you even begin talking about human rights when people cannot even eat?"⁸

Conflicts over land and natural resources are regular features of Uganda's political economy. These are partially rooted in a complex system of traditional cultural kingdoms with varying degrees of autonomy and authority. This ethnic diversity includes many hunter-gatherer groups, pastoralists, as well as forest dwellers whose cultures, spiritual beliefs, and livelihood systems are inextricably tied to the lands they inhabit. While cultural diversity positively contributes to the country's heritage, the linguistic, religious, and ethnic divisions are sometimes sources of conflict, especially in rural communities where groups live in close proximity and local leaders can use this diversity to exacerbate rivalries.

Schedule Three of the Constitution of the Republic of Uganda (1995)⁹ distinguishes 56 groups as

7 Minority Rights Group International, "Uganda: The Marginalization of Minorities," December 2001, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.451.6810&rep=rep1&type=pdf>, Accessed 15 November 2018.

8 DefendDefenders interview, Uganda, February 2018.

9 Constitution of the Republic of Uganda, 1995,

indigenous, as per Article 10(a), who have lived within the country's borders as far back as February 1926. Another nine groups were added following constitutional amendments in 2005. However, there remains some controversy over additional minority groups who identify as indigenous but are still not explicitly recognised by the Constitution.¹⁰ The 2014 national census identified 17 indigenous groups with populations under 25,000, including the Banyabindi, Basongora, and Batwa peoples of Western Uganda.¹¹

Legal and Policy Framework

Under Ugandan law, the rights of indigenous groups are set forth in various binding and non-binding legal texts and national policies. Article 36 of the Constitution provides for the "protection of rights of minorities," while Article 32 stresses the need for "affirmative action for marginalized groups." The Equal Opportunities Commission, mandated to eliminate discrimination and inequalities against any individual or group of persons, is meant to give full effect to Article 32. The National Culture Policy¹² further acknowledges the important cultural contributions of marginalised indigenous minorities, as well as threats to their heritage, identity, and even their continued existence in some cases. However, issues over the designation and recognition of customary land rights remain major flashpoints of conflict between the government and these

http://statehouse.go.ug/sites/default/files/attachments/Constitution_1995.pdf, Accessed 15 November.

10 Foundation for Human Rights Initiative, "Recognize and protect the rights of Indigenous Minority Groups in Uganda," 9 August 2017, <http://www.fhri.or.ug/index.php/pages/whats-new/item/212-recognize-and-protect-the-rights-of-indigenous-minority-groups-in-uganda>, Accessed 15 November 2018.

11 Uganda Bureau of Statistics, "National Population and Housing Census 2014: ANALYTICAL REPORT," November 2017, https://www.ubos.org/onlinefiles/uploads/ubos/2014CensusProfiles/National_Analytical_Report_nphc%202014.pdf, Accessed 15 November 2018.

12 The Uganda National Culture Policy, December 2016, http://ocpa.irmo.hr/resources/policy/Uganda_Culture_Policy-en.pdf, Accessed 15 November 2018.



communities, especially when they clash with vested economic interests in tourism and natural resources.

Article 237 of the Constitution denotes all land as owned by the "citizens of Uganda" and vests attendant rights in accordance with four formally recognised land tenure systems: customary, freehold, leasehold, and mailo (a unique system that came into effect when the Kingdom of Buganda signed an agreement with the British-administered Uganda Protectorate in 1900). The Land Act (1998)¹³ and the National Environmental Act (1995)¹⁴ protect customary interests in land and uses of forests for cultural heritage, religion, and traditional livelihood systems. However, these laws also allow the government to restrict human activities in any area by declaring it a protected forest or national park, essentially nullifying the customary land rights of indigenous peoples.¹⁵ The National Land Policy (2013)¹⁶ sought to clarify and consolidate a number of scattered policies by acknowledging the vulnerability of indigenous communities and committing to managing natural resources with the protection of ancestral lands of minority communities, or at the very least, fair and prompt compensation in case of resettlement.

Although the government has encouraged the registration of communal land associations as provided for in the National Land Policy and the Land Act, this has not necessarily translated into tangible action with regard to land claims of indigenous communities.¹⁷ HRDs interviewed for this report noted that the existence of these laws allows the national government to publically espouse commitment to equal land rights while simultaneously doing little

13 The Land Act, 1998, <https://ulii.org/ug/legislation/consolidated-act/227>, Accessed 19 November 2018.

14 The National Environmental Act, 1995, <https://ulii.org/ug/legislation/consolidated-act/153>, Accessed 19 November 2018.

15 IWGIA, "Indigenous Peoples in Uganda," <https://www.iwgia.org/en/uganda>, Accessed 15 November 2018.

16 MLHUD, "The Uganda National Land Policy," February 2013, <http://extwprlegs1.fao.org/docs/pdf/uga163420.pdf>, Accessed 15 November 2018.

17 The Monitor, "Indigenous minorities want fair land policies," 12 October 2017, <http://www.monitor.co.ug/News/National/Indigenous-minorities-demand-fair-land-policies/688334-4136816-7x1xd/index.html>, Accessed 15 November 2018.

to seriously address them. This is partially a result of the lack of certificates of customary land ownership, which are provided for by legislation but difficult to secure for communities struggling with a host of other crises. Even institutions such as the Uganda Human Rights Commission, which is mandated to address these concerns, has demonstrated a fairly limited commitment to approaching indigenous issues, especially as they pertain to ongoing human rights violations and abuses.¹⁸

"We don't even have a teaspoon of land to grow crops. This makes us suffer. Most legal documents are also not in our language, which makes everything difficult. We now hold sensitisation meetings, write letters; legal education has allowed this. It is harder for the government to ignore us, but they still do because we are few."¹⁹

In 2015, the UN Committee on Economic, Social and Cultural Rights (UN ESCR) expressed concern that indigenous peoples, including the Benet, Batwa, and other pastoralist groups, "were being denied access to their ancestral lands and prevented from preserving their traditional way of living," in direct contradiction of Uganda's national and international obligations.²⁰

While significant and under-reported issues relating to land, resource extraction, cultural rights, and political representation are major sources of human rights violations, notably among the Karamojong and Acholi, this section of the report will focus predominantly on HRDs working in Western Uganda, notably among the Basongora and Batwa indigenous peoples.

18 ACHPR, "Report of the African Commission's Working Group on Indigenous Populations/Communities: Research and Information Visit to the Republic of Uganda," 22 May 2008, http://www.achpr.org/files/sessions/43rd/mission-reports/uganda/misrep_specmec_indig_uganda_2006_eng.pdf, Accessed 15 November 2018.

19 DefendDefenders interview, Uganda, February 2018.

20 UN Committee on Economic, Social and Cultural Rights, "Concluding observations on the initial report of Uganda," 8 July 2015, <http://docstore.ohchr.org/SelfServices/FilesHandler>.

Western Uganda

The restless Rwenzori region of Western Uganda has long been the scene of inter-ethnic conflict over land and political power. The area is dominated by the influence of the Rwenzururu sub-national kingdom, and is inhabited by many indigenous pastoralist and hunter-gatherer communities often in small-scale conflict with one another. HRDs working in this area often focus on issues pertaining to land rights for small communities along the Rwenzori Mountains National Park. Many communities in this area have been dispossessed of land, either by the gazetting of national parks or other policies that limit the movements of semi-nomadic pastoralists, often to benefit the income-generating tourism industry. Small-scale conflicts over land are also common in the area, as well as ethnic enmity between recognised and non-recognised indigenous groups vying for local power or control of scarce resources.

In 2014, outbreaks of violence affected multiple communities in the area, and tensions further came to a head near Kasese in November 2016, when inter-ethnic rivalries, competition over natural resources, and hostility towards national security forces left at least 126 people dead in localised violence.¹ While the situation is now more stable, Western Uganda remains the scene of ethnic tensions among and between marginalised groups, especially as victims of violence never saw adequate investigation into, or redress for, human rights violations and abuses committed by security forces and community members.²

In addition to land rights, HRDs working in the region have focused on addressing several human rights concerns, such as systematic lack of access to education, as well as sensitising government officials and community members to encourage peaceful methods to settle clashes over land or livestock. These

1 Uganda Human Rights Commission, "Statement on the recent clashes in Rwenzori region in Kasese District on Sunday 27th November 2016," 2 December 2016, <http://uhrc.ug/statement-recent-clashes-rwenzori-region-kasese-district>, Accessed 15 November 2018.

2 Human Rights Watch, "Uganda: Ensure Independent Investigation into Kasese Killings," 15 March 2017, <https://www.hrw.org/news/2017/03/15/uganda-ensure-independent-investigation-kasese-killings>, Accessed 15 November 2018.

struggles have been particularly prominent among HRDs working with the Bachingwa, Banyabindi, and Basongora peoples. However, addressing these immediate concerns has led some HRDs away from focusing on broader land rights advocacy that could help with long-term solutions to the landlessness or land tenure insecurity faced by many indigenous communities. Some respondents noted that many civil society organisations (CSOs) continue to ignore issues of land rights to avoid potential conflicts with the government which could result in deregistration or incidents with security forces.

The Batwa

The Batwa, sometimes also known as Twa, inhabit the Great Lakes region of East Africa that straddles the remote hilly border between Uganda, Rwanda, and the Democratic Republic of the Congo. According to the 2014 census, the Batwa of Uganda number some 6,200, roughly 0.02 percent of the total national population.³ They are sometimes referred to as "pygmies" due to their small stature, though the derogatory use of this term has negative connotations despite ongoing attempts by some communities to reclaim it.⁴ Since the early 1990s, the government of Uganda has systematically gazetted significant swathes of Batwa forest homeland into national parks, evicting communities without free, prior, and informed consent, or fair compensation.⁵ The Batwa of Uganda previously lived in what is now the Bwindi Impenetrable National Forest, Mgahinga Gorilla National Park, and Echuya Central Forest Reserve.⁶ According to a statement delivered at the UN Human Rights Council (UN HRC) in 2014, the existence of these preservation areas for

3 Minority Rights Groups International, "Uganda: Batwa," July 2018, <https://minorityrights.org/minorities/batwa/>, Accessed 15 November 2018.

4 ONE, "How indigenous communities in Uganda are trying to reclaim their land," 28 March 2018, <https://www.one.org/ug/2018/03/28/land-rights-uganda-batwa-legal/>, Accessed 15 November 2018.

5 Minority Rights Group International, "Uganda: Current Issues," July 2018, <https://minorityrights.org/country/uganda/>, Accessed 15 November 2018.

6 Minority Rights Group International, "World Directory of Minorities and Indigenous Peoples - Uganda: Batwa," July 2018, <http://www.refworld.org/docid/49749c92c.html>, Accessed 15 November 2018.





endangered mountain gorillas has led to continued violations against the Batwa where “their customary rights to land are not recognized by the state and they have no recourse to compensation, resulting in a situation where the majority is landless.”⁷

Sparse and isolated communities now live on the periphery of mainstream Ugandan society, surviving as squatters on other communities’ land, which often leads to small-scale conflict over resources. Negative stereotypes and discrimination against the Batwa also make representation in national politics difficult. This issue is further exacerbated by generational cycles of poverty and lack of access to education.⁸ Due to the dwindling number of Batwa in Western Uganda, in 2006 the Coalition of Pastoral Civil Society Organizations warned that the remaining

communities were at risk of cultural extinction if adequate measures were not taken to address their precarious situation.⁹ The challenges faced by the Batwa community have equally extended to HRDs working with or within these communities, which intensifies the fragile human rights situation in the area and their access to human rights mechanisms.

Since their eviction, the African International Christian Ministry, a CSO operating in Western Uganda, has purchased land on which some Batwa communities currently live, allowing them to protect their way of life and facilitating access to education and agricultural development programs. However, these ad hoc initiatives do not amount to proper customary land titles or land tenure security as per international standards, or access to their ancestral forests. This strategy has allowed for better capacity building efforts, but also led to a certain level of community dependence on CSOs to cover access to basic amenities which should be provided by a proper government policy to protect indigenous rights. Some HRDs interviewed for this report also noted a lack of civil society coordination among organisations serving the scattered Batwa communities, as well as some competition over resources, and difficulty in managing community expectations.¹⁰

7 UN Human Rights Council, “Joint written statement submitted by France Libertés : Fondation Danielle Mitterrand, Les Amis de la Terre-Togo, Stichting Forest Peoples Programme, non-governmental organizations in special consultative status, International Educational Development, Inc., Mouvement contre le racism et pour l’amitié entre les peuples, non-governmental organizations on the roster,” 2 June 2014, https://www.france-libertes.org/wp-content/uploads/2014/06/ouganda_eng.pdf, Accessed 15 November 2018.

8 Minority Rights Group International, “The Right to Learn: Batwa Education in the Great Lakes Region of Africa,” 12 December 2018, <https://minorityrights.org/wp-content/uploads/old-site-downloads/download-591-The-Right-to-Learn-Batwa-Education-in-the-Great-Lakes-Region-of-Africa.pdf>, Accessed 15 November 2018.

9 Minority Rights Groups International, “Uganda: Batwa,” July 2018, <https://minorityrights.org/minorities/batwa/>, Accessed 15 November 2018.

10 DefendDefenders interviews, Uganda, February 2018.

HRDs working with Batwa communities noted the remoteness of some villages as a major impediment to addressing emergency situations, with one respondent noting that "ethnic and family conflicts escalate by the time you reach these areas."¹¹ Several CSOs work within these remote communities, addressing key development issues such as poor living conditions, and sustainable access to basic amenities such as water. CSOs have also put considerable efforts into training Batwa community members as paralegals, equipping them with basic skills to become "community change agents."¹²

HRDs noted that an overall lack of political representation among the Batwa was a major issue, not only for the community itself, but also for CSOs trying to secure funding and meetings with key stakeholders. Despite some action on the part of the government to address these longstanding issues, the Batwa still struggle to meaningfully exercise their civil and political rights in local council elections, further obfuscating human rights violations and abuses committed against them.¹³ Access to justice was also cited a major challenge, especially since travelling to courts, meetings, or hearings is a significant financial burden that HRDs can seldom afford.

Challenges and Needs

Based on the findings of this research, several key challenges emerged among HRDs working with indigenous minority groups in Western Uganda, mainly related to their overall exclusion from national politics and lack of access to international forums to bring greater attention to their issues. Inadequate funding and access to resources was reported as the top challenge facing HRDs and CSOs in Western Uganda, followed by inadequate skills in security management and advocacy.

"The moment you start defending people, you are a political opponent."¹⁴

11 DefendDefenders interview, Uganda, February 2018.

12 DefendDefenders interview, Uganda, February 2018.

13 Africa's Public Service Delivery & Performance Review, "Civic and political rights of the Batwa ethnic minority in local governance at village level: The case of Kanungu District," 8 March 2018, <https://apsdpr.org/index.php/apsdpr/article/view/162/280>, Accessed 15 November 2018.

14 DefendDefenders interview, Uganda, February 2018.

HRDs from indigenous communities also lamented that due to their small population size, it was difficult to secure meetings with key stakeholders from national or district governments to raise their grievances. The relative remoteness of some communities also negatively affects HRDs trying to advocate for greater respect for their rights, with one respondent noting that "isolation is a form of marginalisation."¹⁵ A major challenge for HRDs remains being arbitrarily labelled as opposition members and supporters, which affects their ability to access meaningful political forums where they might otherwise express their grievances.

HRDs working on land rights often reported intimidation by corrupt security officials as a major impediment to adequately monitoring and reporting human rights violations. They reported intimidation ranging from threats over text messages or phone calls, to physical abuse from security officials, as well as arrests, arbitrary detentions, and legal harassment. Spurious charges are allegedly levied on HRDs seen to be mobilising communities against majority groups, who are often over-represented in local councils and security forces. Others noted that their work often led to social exclusion from their own communities as local leaders branded them "troublemakers" – this is partially rooted in an overall lack of human rights awareness among marginalised communities.

Given the level of conflict and tension in the area, some respondents noted that indigenous activists are not only attacked because of their work, but also because of their ethnic affiliation. This led one HRD to note that psychological stress is also prominent: "psychologically, we are tortured. We are beyond marginalised, we don't get a share in the national cake."¹⁶ These challenges are compounded by an overall lack of psychosocial support mechanisms for HRDs working in remote areas, in addition to stigma surrounding mental health issues.

Awareness about and access to human rights protection mechanisms was identified as a challenge among HRDs in the region. While protection mechanisms are available, many HRDs were unaware

15 DefendDefenders interview, Uganda, February 2018.

16 DefendDefenders interview, Uganda, February 2018.



of how to access them in case of emergency. Several respondents noted that they lacked adequate equipment and capacity to publicise their grievances, while some commended the efforts of local radio stations to raise awareness of their activities.

Based on interviews conducted by DefendDefenders in Western Uganda, it became apparent that inter-ethnic grievances sometimes overshadowed human rights concerns among some HRDs, especially among rival communities facing similar challenges. A lack of proper networking among HRDs is partially to blame, as well as an overall lack of awareness regarding common grievances. HRDs often chalked this ethnic chauvinism up to an ingrained tribal loyalty, but this challenge cannot be ignored with regard to future network-building efforts between HRDs working on land issues.

In light of the challenges experienced by HRDs promoting and protecting human rights for indigenous communities in the area, several needs were identified for further action by relevant local, national, and international actors.

Almost all HRDs interviewed for this report noted that legislation relating to land or cultural rights was often unavailable in indigenous languages, further disenfranchising communities from realistically engaging with the national government on a policy level. Nearly all respondents noted the need for HRDs to help communities represent themselves through the development of grassroots organisations that could advocate for their rights, especially during the formulation of government development plans. Additional forums for indigenous HRDs to speak and network was cited as a major need among respondents for this report. Given the enduring nature of ethnic tensions in Western Uganda, these forums could not only increase the sharing of best practices among HRDs, but also serve as a means to peacefully mediate grievances that often eclipse shared challenges. HRDs also noted that existing networks often failed to take into account their financial limitations, and were often slow to respond to emergencies in remote areas.

Trainings in digital and physical security, as well as navigating the country's legal system, were often

mentioned as a means to further empower HRDs to continue their work with a higher degree of operational safety, or at the very least, peace of mind. However, any trainings in digital security would need to seriously take into account a general lack of technological capacity among many indigenous HRDs, focusing first on computer literacy and online networking. This could also be paired with a communications workshop and advocacy strategising session.

"The same government that gazettes land has the power to un-gazette it, if the evidence presented by the people are viable."¹⁷

HRDs working with indigenous communities should be afforded easier access to legal support, including lawyers to take up larger cases challenging existing policies on land rights. Efforts by CSOs to train indigenous paralegals, among Batwa community members for example, have had positive effects with regard to internal conflict resolution and advocacy efforts. This has allowed communities to speak on their own behalf and further encouraged them to create inter-community organisations, which has aided in networking and mitigating ethnic tensions. This training should include WHRDs in order to properly address community issues such as domestic violence, as well as early and forced marriage. For example, the United Organisation for Batwa Development in Uganda has implemented the "Giving Hope to Batwa Women and Girls" project and trained at least two Batwa representatives from 43 communities as WHRDs.¹⁸

Finally, there remains tremendous need for psychosocial support for indigenous HRDs, who often work with few resources under considerable pressure from both the government and their own communities. These support mechanisms could be incorporated into existing cultural practices or religious ceremonies so as to be less invasive and more culturally acceptable.

17 DefendDefenders interview, Uganda, February 2018.

18 IWGIA, "Indigenous Peoples in Uganda," <https://www.iwgia.org/en/uganda>, Accessed 15 November 2018.

Kenya – Indigenous Minority Human Rights Defenders

Diversity and Devolution: the Forgotten People of Turkana

Kenya is by the far the most open democracy in East Africa, notwithstanding ongoing human rights challenges related to economic, social, cultural, and political rights, especially freedom of association and peaceful assembly. However, competition for power, and exclusion from it on an ethnic basis, have been major sources of social tension in this regional powerhouse.

Ethnic enmity in Kenya manifested during the first multi-party elections in 1992, when allegations of electoral fraud sparked targeted ethnic violence in the Rift Valley Province.¹⁹ Tensions came to a boiling point after the 2007 presidential vote, when post-election violence largely along ethnic lines claimed the lives of some 1,500 people across the country.²⁰

Following this political and human rights crisis, a new Constitution²¹ was adopted in 2010, devolving considerable authority to newly established county governments, notably in matters of land. While this has given a higher degree of autonomy to minority ethnic groups, federal power remains largely controlled or contested by representatives from the four major ethnic groups, the Kikuyu, Luhya, Kalenjin, and Luo. While the new Constitution stipulates national unity, ethnic identity continues to play a major role in national politics, often leading to the marginalisation of minority cultures who have never held significant power at the national level. This has become especially prominent as Kenya has positioned itself as a regional leader

in international trade, spurred by increased foreign investments and a shift from an economy traditionally dominated by agricultural exports.

In their role as community leaders, the elimination of political tribalism and the promotion of national unity has been a major focus of Kenyan HRDs since 2008. However, despite a strong civil society presence in the country, HRDs working on corruption and economic, social, and political rights often find themselves in the crossfire, especially when it comes to issues pertaining to land and natural resources.

Legal and Policy Framework

Article 61-65 of the Constitution of Kenya classifies land for private, public, and community use. The Community Land Act (2016)²² fully operationalises Article 63 pertaining to community land, a new classification that gives communities more control over land in which they share a common interest. Moreover, this legislation makes it clear that customary land rights are equal in status to any other form of land holding – an important step towards land tenure security.²³ Moreover, Article 159 of the Constitution also seeks to promote traditional dispute resolution mechanisms, which are more relevant in rural or indigenous contexts, so long as they do not violate elements of the Constitution or other written laws.

During the constitutional drafting process, minority and indigenous communities fought for better inclusion under Article 63 and recognition of ownership over land long inhabited by communities.

However, while both the Community Land Act and the Constitution provide for citizen engagement,

19 Human Rights Watch, “Divide and Rule: State-Sponsored Ethnic Violence in Kenya,” 1 November 1993, <https://www.hrw.org/reports/1993/kenya1193.pdf>, Accessed 15 November 2018.

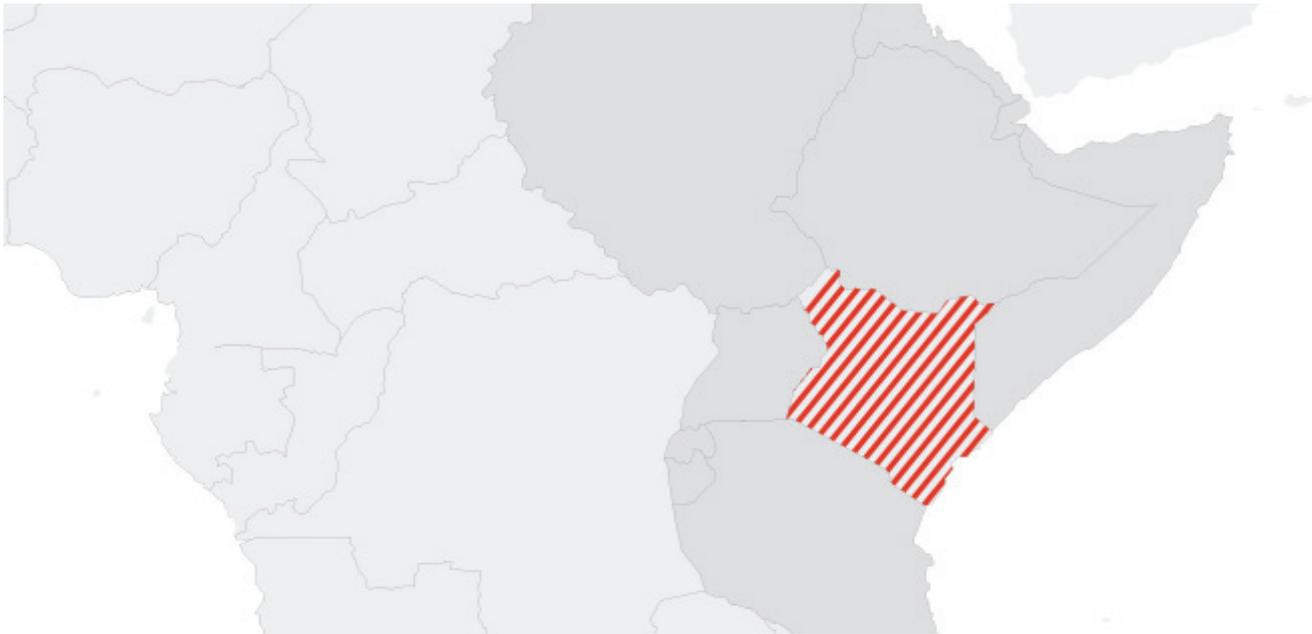
20 Human Rights Watch, “Ballots to Bullets: Organized Political Violence and Kenya’s Crisis of Governance,” 16 March 2018, <https://www.hrw.org/report/2008/03/16/ballots-bullets/organized-political-violence-and-kenyas-crisis-governance>, Accessed 15 November 2018.

21 Constitution of Kenya, 2010, <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>, Accessed 15 November 2018.

22 The Community Land Act, September 2016, http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/CommunityLandAct_27of2016.pdf, Accessed 15 November 2018.

23 Minority Rights Group International, “Kenya: Marginalised and Indigenous peoples,” January 2018, <https://minorityrights.org/country/kenya/>, Accessed 15 November 2018.





some HRDs allege that this has not necessarily translated into direct action or policies to empower marginalised communities and recognise their legitimate claims to ancestral land.²⁴ For example, in May 2017, the African Court on Human and Peoples' Rights ruled that the Kenyan government had violated the Ogiek people's rights to land, religion, culture, development, and non-discrimination. The indigenous Ogiek community, who live in the Mau Forest Complex, allege that they have for decades been forcibly evicted from their ancestral lands without compensation.²⁵ In August 2018, a Kenyan lawyer filed a petition at the International Criminal Court (ICC) to officially investigate crimes against humanity allegedly committed during the eviction of families from the Mau Forest.²⁶ The Kenyan government was also accused of violently and illegally evicting thousands of Sengwer peoples from their ancestral homes in the Embobut Forest since 2013, without adequate resettlement efforts.²⁷

24 DefendDefenders interviews, Kenya, March 2018.

25 Reuters, "African Court rules Kenya violates forest people's land rights," 26 May 2017, <https://www.reuters.com/article/us-kenya-rights-ogiek/african-court-rules-kenya-violates-forest-peoples-land-rights-idUSKBN18M1ZC>, Accessed 15 November 2018.

26 Daily Nation, "Mau evictions: ICC receives petition against the State," 22 August 2018, <https://www.nation.co.ke/news/ICC-receives-petition-on-Mau-evictions/1056-4723510-ji7mgd/index.html>, Accessed 15 November 2018.

27 Amnesty International, "Families Torn Apart: Forced Evictions of Indigenous People in Embobut Forest,

Disputes over land are generally exacerbated by inadequate mechanisms to ensure the fair distribution of profits related to the exploitation of natural resources, which are often flashpoints of conflict with marginalised communities. Resources such as minerals, timber, or fossil fuels are often found on lands inhabited by indigenous communities who lack overall capacity and political representation to pursue claims for compensation, as resources are managed in trust by the government.

The Natural Resources (Benefit Sharing) Bill (2014),²⁸ which has yet to pass in Parliament, seeks to establish a system to share benefits of resources between resource exploiters (private or public), the national government, county governments, and local communities. Under Article 20 of the Bill, 20 percent of revenues from taxes and licensing fees would be set aside into a sovereign wealth fund, with the remaining 80 percent split among the national and county governments, with each taking 60 and 40 percent, respectively. Of the county government's share, only 40 percent is specifically designated for community projects. Therefore, in total, only 12.8 percent of all revenues from taxes and licensing fees would be designated for community projects. Article

Kenya," 15 May 2018, <https://www.amnesty.org/en/documents/afr32/8340/2018/en/>, Accessed 15 November 2018.

28 Kenya Law, "KENYA GAZETTE SUPPLEMENT," 12 September 2014, http://kenyalaw.org/kl/fileadmin/pdfdownloads/bills/2014/NaturalResources_Benefit_Sharing_Bill_2014.pdf, Accessed 16 November 2018.

32 outlines how local communities affected by resource exploitation must have a democratic say in the allocation of funds. However, these protections would still only apply in practice if community land is duly registered as such, and communities can provide adequate documentation to stake their claims for compensation and resource sharing.

'Northern Kenya is now highly militarised, especially when it comes to oil. If you're not careful, you can easily burn your fingers...and your face.'²⁹

While this clearly demarcated devolution of funds would be commendable in theory, according to HRDs interviewed for this report, political corruption and the involvement of multinational private-sector actors have led to allegations of land-grabbing and inadequate compensation for marginalised communities on resource-rich land.³⁰

While issues over land, forced relocation, corruption, and revenue sharing are ubiquitous across indigenous communities in Kenya, this report will focus predominantly on the Turkana peoples of Northern Kenya, and efforts by HRDs to balance these grievances with their own security and professional needs.

Challenges and Needs

Throughout the course of this research, several key challenges emerged for HRDs working in Turkana, generally linked to the remoteness of the area and the difficulty in documenting human rights abuses. While grassroots indigenous HRDs may be intimately attuned to the needs of their communities, monitoring and advocacy efforts with regard to extractive industries require expertise and financial resources that are often lacking.

Corruption was cited as a major factor aggravating these incidents. The county and national governments also have major vested interests in seeing these projects and industries succeed, leading them to allegedly direct security forces to harass HRDs during peaceful demonstrations. While fighting corporate interests in natural resources is challenging

in itself, the involvement of state actors with vested financial or personal interests in contested land compounds the vulnerability of activists. As one HRD interviewed for this report noted, "dealing with politicians is like playing in the mouth of a lion."³¹

Several grassroots HRDs interviewed for this research reported receiving threats, often via text message or by word of mouth from community members. These are often aimed at silencing HRDs whose advocacy on behalf of the community proves inconvenient for politicians and other community elders with vested financial ties to local industries. One HRD noted that these threats sometimes extend to family members who are easily identifiable in small communities, with one respondent saying that "once they do that, people start to re-evaluate whether this is worth it."³² Respondents reported the ongoing harassment and spurious charges levelled against HRDs or community members who often lack the resources to hire a lawyer to ensure their defence.

While some respondents noted that they were sometimes included in official talks with government officials or oil companies, it was mostly when stakeholders felt that their presence might be helpful in turning public sentiment to their advantage. Others worried that their electronic communications were being monitored, with one organisation claiming that their recording equipment was stolen after a fact-finding mission. One HRD claimed that his home was illegally searched by police under the pretext that he was storing small arms and ammunition. Respondents claimed that these threats came not only from state actors, but also from private security forces with ties to companies or local politicians.

HRDs lamented that their focus on small-scale conflict resolution meant that they were often putting out fires rather than pushing for long-term solutions to pervasive issues. An overall lack of resources, equipment, skills, and capacity in monitoring and documenting human rights violations was cited by most HRDs as a major impediment to their work. Without adequate forums to engage duty bearers or publicise their findings,

29 DefendDefenders interview, Kenya, March 2018.

30 DefendDefenders interviews, Kenya, March 2018.

31 DefendDefenders interview, Kenya, March 2018.

32 DefendDefenders interview, Kenya, March 2018.



HRDs are often demoralised into silence and isolated from available protection mechanisms. These factors are exacerbated by knowledge gaps among HRDs, as well as a lack of proper networking and broader outreach opportunities for advocacy, especially when working with rural communities who are not necessarily aware of the human rights guaranteed by the Kenyan Constitution.

Given the current human rights situation in Turkana, several measures could help mitigate the aforementioned challenges and contribute to a safer working environment for HRDs. Respondents requested trainings to address serious capacity needs related to physical and digital security, ideally tailored to their specific context. Better skills and tools for collection and preservation of evidence are also paramount in exposing human rights violations to a wider audience, which could help attract donor funding to this economically disenfranchised region. These trainings would also help network-building among grassroots HRDs who are often isolated in remote areas. Ideally, these trainings would be held in Turkana so HRDs can further strengthen their credibility in communities where misinformation has led to hostility, as well as sensitise local communities in human rights awareness with regard to the extractive industry context. Several HRDs working in Turkana also noted that due to high rates of illiteracy, trainings in the area must be tailored to the existing capacity of HRDs and communities, necessitating follow-ups to ensure the proper relaying of skills and knowledge.

Training paralegals and lawyers from marginalised groups was also cited as a significant strategic tool to empower communities and help them bring cases to court, or spearhead alternative dispute mechanisms rooted in their own traditional power structures. In the long run, this could also make it easier for indigenous peoples in Turkana to use the precedent set by the Ogiek people at the African Court on Human and Peoples' Rights and seek redress via supranational justice mechanisms, which are often less biased or susceptible to corruption than local or national courts.

Additionally, HRDs highlighted the need for more inclusive and transparent public forums

where they can raise community grievances with corporations, the outcomes of which should be available to community members in local languages to strengthen community decision-making processes. These forums could also help the national government establish a streamlined action plan and regulatory framework for businesses and human rights, especially as Kenya becomes a regional hub for international investment. The Kenya National Commission on Human Rights has already hosted several such forums.

"Money in Turkana has changed everything. The weak remain weak. The poor remain poor. And the gaps in protecting them get wider."³³

Finally, nearly all HRDs interviewed for this report acknowledged the need for duty bearers to appreciate and recognise the vital work of HRDs, rather than see them as a nuisance to be dealt with by extra-legal methods. This recognition and awareness should be ensured in light of their overall human rights obligations. Closer engagement and dialogue with local and national government representatives would be a valuable tool to ensure awareness, in addition to human rights education for all relevant actors at the local level.

33 DefendDefenders interview, Kenya, March 2018.

Tanzania – Indigenous Minority Human Rights Defenders

Lands Apart: Forcibly Displacing the Maasai

Tanzania developed a cohesive national identity under the African socialist leadership of Julius Nyerere from 1961 to 1985, yet the country remains culturally, religiously, and linguistically diverse. While political power is centralised in urban centres like Dodoma and Dar es Salaam, at least 100 ethno-linguistic minority groups exist throughout the country, including the Barabaig, Hadza/Hadzabe, Maasai, Shirazi, and Zanzibar Arabs.³⁴ While all non-Swahili speaking ethno-linguistic groups in the country may be considered indigenous minorities; pastoralists, nomadic groups, and hunter-gatherer communities all face systematic disadvantage and discrimination at the local and national level. This marginalisation is partially rooted in the ill-fated forced nation-building collectivisation efforts of the Nyerere government, which often forcibly relocated communities from ancestral lands. These factors are further exacerbated by predatory foreign investment and the Magufuli government's ongoing crackdown on civil society and independent media.³⁵

"The main challenge is government expansion into areas without involvement of nearby villages, which rely on pastoral land. Their land is taken without compensation, or grabbed by commercial funds, or other government developments."³⁶

The Tanzanian government does not officially recognise any indigenous communities within the country, and has no official policies, laws, or human rights mechanisms in place to protect disadvantaged groups from ethnic marginalisation

34 Minority Rights Group International, "United Republic of Tanzania," May 2018, <https://minorityrights.org/country/united-republic-of-tanzania/>, Accessed 15 November 2018.

35 DefendDefenders, "Spreading Fear, Asserting Control: Tanzania's Assault on Civic Space," June 2018, <http://www.defenddefenders.org/wp-content/uploads/2018/06/Spreading-Fear-Asserting-Control-web.pdf>, Accessed 15 November 2018.

36 DefendDefenders interview, Tanzania, August 2018.

or other human rights abuses. In order to foster a more cohesive sense of national unity, the government has denied specific protection to vulnerable groups who might otherwise enjoy a degree of security regarding the cultural heritage and access to land directly tied to their heritage.

Legal and Policy Framework

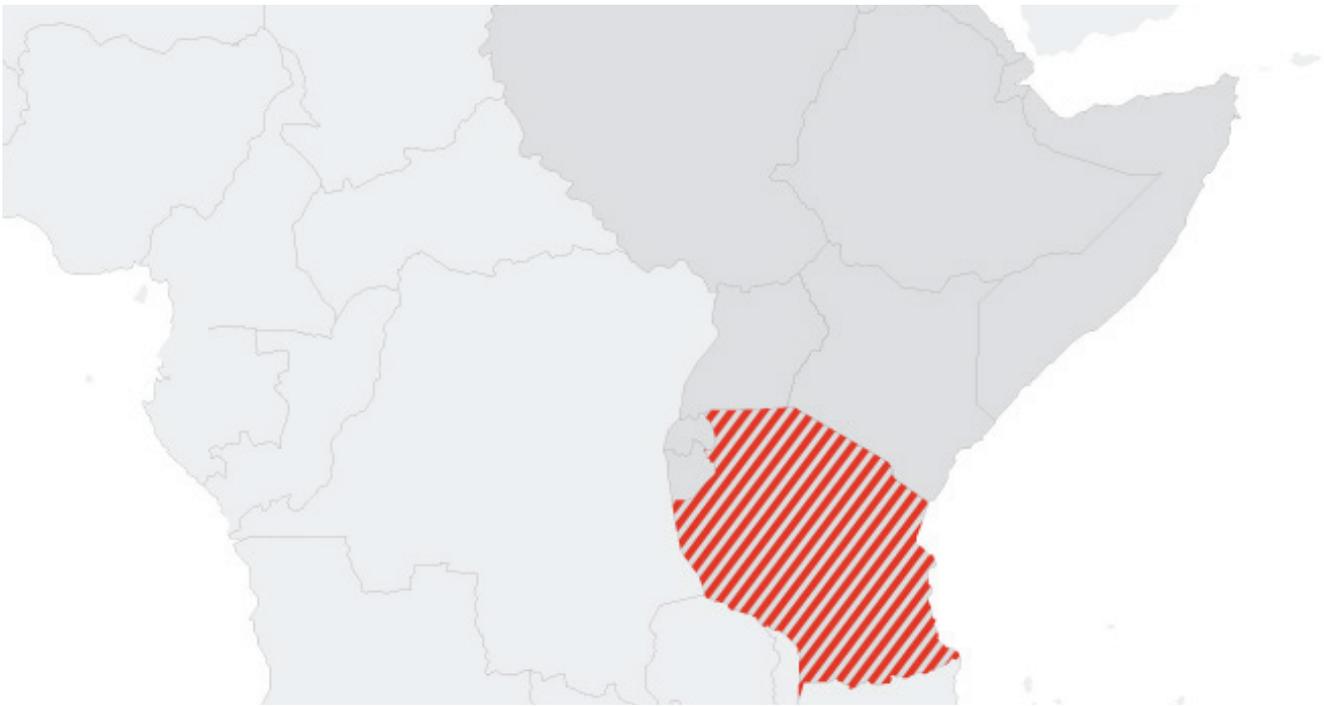
Sections 3(a) and 4 of the Land Act (1999)³⁷ designate all land in Tanzania as public, controlled by the state with the President as a trustee on behalf of all citizens. Non-Tanzanians are barred from owning land, save for investment purposes under the Tanzania Investment Act (1997).³⁸ While residents are entitled to compensation if they can produce proper documentation, they cannot refuse government claims on any section of land designated for public interest. These lands can be appropriated for government activities, gazetted as national parks, or designated as Wildlife Management Areas (WMAs). However, indigenous communities often inhabit or neighbour these areas, often without official documentation proving their rights or tenure over the land ensuring adequate compensation in case of eviction.

Titled land in Tanzania falls within three categories: general land (managed by the state), village land, and reserved land (usually WMAs or national parks). Previously, communities could apply for a government-issued title deed that gave them a degree of land tenure security as well as guarantees regarding compensation in the event of relocation. When the Land Act was implemented, laws governing ownership of village land were amended, shifting from title deeds to certificates that would denote the right of occupancy, with the President

37 The Land Act, 1999, <http://tanzania.eregulations.org/media/The%20Land%20Act%201999.%20Cap%20113.pdf>, Accessed 19 November 2018.

38 The Tanzania Investment Act, 3 October 1997, <http://tanzania.eregulations.org/media/INVESTMENT%20ACT.pdf>, Accessed 19 November 2018.





being the ultimate authority on transfer of public or reserved land to village land under the governance of a Village Council.³⁹ However, pre-1999 village title deeds did not necessarily translate directly into village land certificates under the new system.

"The new certificates gave opportunity for new investors, while the older titles were intended to protect community land from investors."⁴⁰

According to several HRDs interviewed for this report, this change allowed for land grabbing and dubious claims on the part of private business interests, government officials, as well as tourism and hunting companies.⁴¹ While official community ownership through these new government certificates would benefit indigenous communities, these are only rarely issued in practice. As one human rights lawyer interviewed for this report noted, "this is deliberate, because this is reserved land the government would wish to take without any restrictions. The government is hesitant to issue certificates because it will become more troublesome to take it later if they wish."⁴²

While unique legal and human rights challenges

39 See Section 5, The Land Act, 1999, <http://tanzania.regulations.org/media/The%20Land%20Act%201999.%20Cap%20113.pdf>, Accessed 19 November 2018.

40 DefendDefenders interview, Tanzania, August 2018.

41 DefendDefenders interviews, Tanzania, August 2018.

42 DefendDefenders interview, Tanzania, August 2018.

persist in various indigenous communities across Tanzania, this portion of the report will focus predominantly on land disputes surrounding the Maasai communities and other indigenous groups in Northern Tanzania.

"In the Maasai context, few village land certificates have been given. The land is taken without consulting or informing people. Free prior consent is not there. The government is giving an investor the land."⁴³

The Maasai: A Crisis in Loliondo

The Maasai peoples of East Africa have inhabited parts of what are now Kenya and Tanzania for centuries. They are known for their distinctive dress and pervasive pastoralist culture, centered on semi-nomadic cattle herding. When the Serengeti National Park was gazetted in 1959, many Maasai lost grazing rights in much of the Serengeti and Ngorongoro Crater,⁴⁴ and at least 50,000 have since been evicted or displaced, according to some estimates.⁴⁵ Many

43 DefendDefenders interview, Tanzania, August 2018.

44 Cultural Survival Quarterly Magazine, "Maasai and Barabaid herder struggle for land rights in Kenya and Tanzania," September 1997, <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/maasai-and-barabaig-herders-struggle-land-rights-kenya-and>, Accessed 16 November 2018.

45 Carnegie Council for Ethics in International Affairs, "When Parks and People Collide," 23 April 2004, https://www.carnegiecouncil.org/publications/archive/dialogue/2_11/section_2/4449, Accessed 16 November 2018.

settled in areas bordering the park, which has grown in size since its initial boundaries were drawn.

"Taking the Maasai from their land is like taking the life out of them. For them, land is more than what we see. Tampering with their land is tampering with their life, their history, their culture, their religion. You don't just take away their land, you destroy their whole way of life."⁴⁶

On 3 February 2010, a group of Maasai pastoralists filed a claim against Tanzania Breweries and Tanzania Conservation Ltd, a Tanzanian subsidiary of US-based Thomson Safaris. The group alleged that the companies, in league with corrupt government officials, had forcibly evicted them from ancestral land around Loliondo without free, prior, and informed consent, or compensation of any kind.⁴⁷ Over the course of the case, residents of Mondrosi, Sukenya, and Soitsambu villages alleged that local homes were deliberately set on fire, and that HRDs had been attacked and arbitrarily detained while accessing areas near the contested land. On 28 October 2015, an Arusha-based High Court ruled against the Maasai, setting a dangerous precedent and paving the way for additional conflict and human rights abuses on neighbouring indigenous land.⁴⁸

These disputed land claims were further compounded by the involvement of the United Arab Emirates-based Ortello Business Corporation (OBC), which in 1992 was granted big-game hunting and safari rights to a massive stretch of land inhabited by some 50,000 Maasai. Over the next two decades, private security officials from the company and Tanzanian security agents were accused of violently evicting Maasai from these areas, and slaughtering or confiscating cattle in the process.⁴⁹

46 DefendDefenders interview, Tanzania, August 2018.

47 Business and Human Rights Resource Centre, "Thomson Safaris lawsuit (re Maasai in Tanzania)," <https://www.business-humanrights.org/en/thomson-safaris-lawsuit-re-maasai-in-tanzania>, Accessed 16 November 2018.

48 Minority Rights Group International, "MRG deeply disappointed by Arusha Court land rights judgment against Loliondo Maasai," 28 October 2018, <https://minorityrights.org/2015/10/28/mrg-deeply-disappointed-by-arusha-court-land-rights-judgment-against-loliondo-maasai/>, Accessed 16 November 2018.

49 United Nations Special Rapporteur on the Rights

In July 2016, several Maasai HRDs working on these issues were arrested near Loliondo, as well as a lawyer sent to investigate the case after the HRDs in question were held for several days without charge.⁵⁰ A year later, in August 2017, Tanzanian wildlife officials and Tanzanian security forces began torching Maasai homes near Loliondo, and by September more than 5,000 homes had been burned and 20,000 people left homeless, by some estimates.⁵¹ While the Ministry of Natural Resources and Tourism said that the evictions were legally justified and claims of destruction exaggerated,⁵² HRDs interviewed for this report described it as the most violent eviction in living memory, leading to the arbitrary arrests of several HRDs.⁵³ Many allege that since this time, a pervasive climate of fear has surrounded HRDs attempting to bring these issues to light, including police harassment and confiscation of travel documents. Corruption was cited by nearly all respondents as a major factor contributing to violence in pastoralist communities across Northern Tanzania. As one HRD noted, "an investor does not just come in empty-handed. Corruption is the norm of the day."⁵⁴

In a reversal of tactics, HRDs and CSOs dealing with pastoralist issues in Northern Tanzania brought the fight not to the battlefield, but to regional courts

of Indigenous Peoples, "Cases Examined by the Special Rapporteur (June 2009 – July 2010)," September 15 2010, <http://unsr.jamesanaya.org/cases-2010/32- united-republic-of-tanzania-alleged-forcedremoval-of-pastoralists>, Accessed 16 November 2018.

50 Tanganyika Law Society, "PRESS STATEMENT ON THE ARREST OF ADVOCATE SHILINDE NGALULA WHILE IN THE COURSE OF PERFORMING HIS DUTIES AS AN OFFICER OF THE COURT," 22 July 2016, <http://tls.or.tz/wp-content/uploads/2016/07/Statement-on-Illegal-arrest-of-Advocate-Shilinde-Ngalula-Signed.pdf>, Accessed 16 November 2018.

51 The Oakland Institute, "LOSING THE SERENGETI: THE MAASAI LAND THAT WAS TO RUN FOREVER," 9 May 2018, <https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/losing-the-serengeti.pdf>, Accessed 16 November 2018.

52 Tanzania Ministry of Natural Resource and Tourism, "ZOEZI LA KUONDOA MIFUGO NA MAKAZI NDANI YA HIFADHI YA SERENGETI NA MPAKA WA PORI TENGEFU LA LOLIONDO," 17 August 2017, www.mnrt.go.tz/highlights/view/zoezi-la-kuondoa-mifugo-na-makazi-ndaniya-hifadhi-ya-serengeti-na-mpaka-wa, Accessed 16 November 2018.

53 DefendDefenders interviews, Tanzania, August 2018.

54 DefendDefenders interview, Tanzania, August 2018.



of law. In October 2017, the combined Village Councils of Ololosokwan, Oloirien, Kirtalo, and Arashi lodged an official complaint at the East African Court of Justice (EACJ), demanding that the government of Tanzania formally acknowledge Maasai claims on the disputed land near Loliondo, release HRDs arrested in connection to the case, and cease the harassment of local communities. However, several HRDs interviewed for this report noted that defendants associated to the case had faced reprisals, notably in the form of arbitrary arrests.⁵⁵ In January 2018, the EACJ dismissed a petition on behalf of the government of Tanzania to block the case, affirming the right of Village Councils to sue the government as legal entities.⁵⁶

"We have no conflict with the government, but the investors come in a different way – through corrupting people, by taking advantage of uneducated people."⁵⁷

In November 2017, OBC's 25-year-old hunting concession was terminated, resulting in the suspension of the Director of Wildlife and an investigation into alleged corruption between foreign nationals and former and current members of the Ministry of Natural Resources and Tourism.⁵⁸ In late September 2018, the EACJ ordered the Tanzanian government to halt the eviction of Maasai pastoralists in Ngorongoro District.⁵⁹

55 Pan African Lawyers Union, "URGENT LETTER SEEKING INTERIM MEASURES Under Rule 1(2) of the East African Court of Justice Rules of Procedure (2013) In EACJ Reference No. 10 of 2017 and Application No. 15 of 2017: Ololosokwan Village Council and 3 Others versus The Attorney General of the United Republic of Tanzania," 31 May 2018, https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/pdfpreview/pan-african-lawyers-union-letter_0.pdf, Accessed 16 November 2018.

56 The East African Court of Justice, "Court dismissed Tanzania's objection blocking the Village Councils in Ngorongoro not to sue the government over a land eviction dispute," 26 January 2018, <http://eacj.org/?p=3513>, Accessed 16 November 2018.

57 DefendDefenders interview, Tanzania, August 2018.

58 The East African, "Tanzania ends hunting deal with Dubai royal family," 12 November 2017, <http://www.theeastafrican.co.ke/news/Tanzaniaends-hunting-deal-with-Dubai-royal-family/2558-4182470-dv6hysz/index.html>, Accessed 16 November 2018.

59 The East African, "Leave herders alone, East African court tells Tanzania," 29 September 2018,

The ruling grants an injunction prohibiting the Government of Tanzania from evicting the Maasai communities, prohibits the destruction of homes and the confiscation of livestock, and bans police from intimidating the plaintiffs.⁶⁰ While the case is ongoing, the simple acknowledgement of these violent, non-voluntary resettlements represents a major milestone in strategic litigation for indigenous HRDs in Tanzania. While these positive developments have allowed HRDs to gain a legal footing, they continue to face pervasive challenges in their work.

"We are talking about our survival, we are talking about our land. We have nowhere else to go, this is our home, this is our identity, this is our life. You can do anything to us, because we have nowhere else to go. Loliondo is no longer a peaceful place. People are extremely scared."⁶¹

Challenges and Needs

Based on input from HRDs and CSOs working on indigenous human rights issues in Northern Tanzania, several key challenges emerged. HRDs reported being harassed by threatening text messages or phone calls, hostile encounters with police and security forces, arbitrary arrests, spurious charges of incitement or sedition, and a general lack of access to justice. One HRD reported that their passport had been confiscated by authorities after an arrest, barring them from testifying at international human rights mechanisms and advocacy forums.

Nearly every HRD interviewed for this report noted that harassment often focused on citizenship, with HRDs accused of being foreign nationals or subversive western-funded agents. Some CSOs were threatened with deregistration, or reported being pressured by donors to scale back their advocacy efforts so as to avoid deregistration. In addition to frustrating and intimidating HRDs, these tactics are

<http://www.theeastafrican.co.ke/news/ea/Leave-herders-alone-East-African-court-tells-Tanzania/4552908-4783586-1ka6i7z/index.html>, Accessed 16 November 2018.

60 The Oakland Institute, "Maasai Villagers Win a Major Victory in the East African Court of Justice in Case Against Tanzanian Government," 27 September 2018, <https://www.oaklandinstitute.org/maasai-victory-east-african-court-justice-tanzanian-government>, Accessed 16 November 2018.

61 DefendDefenders interview, Tanzania, August 2018.

coupled with a high level of impunity for police, local government officials, or other private sector actors.

"Even with all this intimidation, people are still mobilising, organising the community at night. These young people are what keep me going."⁶²

The perceived unwillingness of national and local media to cover indigenous minority issues was a major concern among HRDs, some of whom previously enjoyed healthy local media coverage or were journalists themselves. A general crackdown on media by the Magufuli government has led many journalists, editors, and publishers to refrain from highlighting human rights violations or publishing even legitimate criticism of government policies.⁶³

This has led already marginalised indigenous groups to be pushed even further to the periphery of national dialogue, even online, with several grassroots CSOs lamenting the muzzling of whistle-blower platforms like JamiiForums.⁶⁴ Other respondents reported self-censorship practiced among HRDs themselves, usually due to security concerns.

A lack of proper networking and solidarity was cited as another challenge for HRDs working with indigenous communities, with poor communication cited as a major factor, as pastoralists generally live in remote areas poorly serviced by Internet or secure telephone connection. This further complicates monitoring and reporting efforts. Several organisations acknowledged a lack of access to regional and international human rights bodies and mechanisms such as the ACHPR and the UN HRC.

"The media is afraid, and anyone who wanted to help indigenous communities is also afraid. They've taken a step back and thought about their own lives. Things are still hot with regards to indigenous human rights violations, but you'll never hear the media covering such issues."⁶⁵

62 DefendDefenders interview, Tanzania, August 2018.

63 DefendDefenders, "Spreading Fear, Asserting Control: Tanzania's Assault on Civic Space," June 2018, <http://www.defenddefenders.org/wp-content/uploads/2018/06/Spreading-Fear-Asserting-Control-web.pdf>, Accessed 16 November 2018.

64 DefendDefenders interviews, Tanzania, August 2018.

65 DefendDefenders interview, Tanzania, August 2018.

Despite gains made at the EACJ, an overall lack of access to justice at the national level remains a major challenge for indigenous HRDs in Tanzania. Legislation and legal documentation are often not available in minority languages, and HRDs in remote communities reported difficulties in accessing a lawyer to represent them in court. As previously noted, in one instance, a lawyer with a major national CSO was arrested and detained while investigating the arbitrary detention of Maasai HRDs.

"This harassment is because of my clear, frontline defence of my community. I do it to defend my community and my own livelihood. I am a lawyer, I don't run from the law."⁶⁶

An overall lack of digital capacity was also cited as a major challenge, including worries over online monitoring. Several HRDs acknowledged that a lack of online capacity contributed to human rights violations remaining largely obscured. Without adequate digital security tools, secure communication with international actors or investigative journalists remains another challenge altogether.

Given these significant challenges, HRDs identified the need for trainings to better document human rights violations and share up-to-date information from rural areas. This could be accomplished by a dedicated network of trained human rights monitors throughout the area with digital communication skills in live broadcasts and launching emergency alerts. However, these goals remain impeded by low Internet connectivity in rural areas.

"This is historical injustice and marginalisation. The Maasai people have not gone to school, we are not part of decision making processes. We don't have someone to speak for us, and if they make policies, we are not involved."⁶⁷

Challenges highlighted by indigenous minority HRDs in Tanzania could be addressed through a more streamlined network of HRDs working on indigenous issues, which could aid in mapping and better communication. This could contribute to more

66 DefendDefenders interview, Tanzania, August 2018.

67 DefendDefenders interview, Tanzania, August 2018.



evidence-based advocacy in securing international pressure surrounding the current crackdown on civic space. A need for human rights sensitisation among Maasai people themselves was also cited by HRDs as a potential means to empower communities and encourage traditional power structures to better advocate on behalf of their collective needs.

"The biggest problem we are having is how to get this information outside. We are scared – if I get this information out, will I be safe? How do you continue fighting for your community when you are being monitored?"⁶⁸

Given the rulings of the EACJ, strategic litigation at the national or supranational level remains a key, yet costly, strategy to challenge existing legislation or policies that target HRDs or allow for human rights violations. As Village Councils can legally represent the interests of indigenous peoples in courts of law, it is imperative for CSOs and international donors to support their access to lawyers with knowledge of marginalised indigenous communities. On a more long-term basis, donors could also support the training of indigenous lawyers or paralegals, further empowering communities to advocate for themselves in national decision-making processes.

"The government doesn't have any programs aimed at rural people. Economic industrialisation does not affect rural people. They want to focus on investment and tourism, but not on development. It is better we sell one goat with dignity, than sell out for briefcases full of cash and corruption."⁶⁹

68 DefendDefenders interview, Tanzania, August 2018.

69 DefendDefenders interview, Tanzania, August 2018.



Conclusion

Land conflicts often lead to human rights violations and abuses, including the forced eviction of indigenous people from their traditional land in the absence of free, prior, and informed consent, or fair compensation. These forced resettlements can take place to gazette national parks or wildlife reserves, exploit natural resources, or to accommodate the needs of tourism companies. Additionally, the vague overall definition of "indigenous" within African contexts, as well as individual nations' interpretation of the term, creates significant gaps in legal protection and access to effective remedies, especially for HRDs.

In Uganda, despite official recognition of indigenous peoples in the Constitution, minority ethnic groups in Western Uganda have long been subjected to forced evictions to accommodate the gazetting of national parks, leading to them being severed from land tied to their traditional way of life.

In Kenya, resources such as minerals, timber, or fossil fuels are often found on lands inhabited by indigenous communities who lack overall capacity and political representation to pursue claims for compensation. This has especially applied to indigenous peoples in the Turkana region, whose attempts at redress have been stifled by both state and private actors.

In Tanzania, despite the Magufuli government's anti-corruption rhetoric, these efforts have not necessarily trickled down to rural and indigenous peoples. In addition to inadequate legislation and policies governing indigenous issues, the ongoing crackdown on civil society and independent media has pushed the human rights concerns of marginalised groups like the Maasai further to the periphery of public attention, despite positive precedents set in regional courts.

These pervasive challenges have significantly affected the work of HRDs working with these communities, whose efforts are often frustrated by high levels of impunity for police, local government officials, or other private sector actors. Their vulnerabilities are often compounded by difficulties navigating complex legal systems, as well as attempting to mobilise communities in remote areas who are often unaware of greater human rights protection mechanisms. In order to mitigate these challenges, several key recommendations should be adopted.



Recommendations

To the governments of Uganda, Kenya, and Tanzania:

- Respect and promote the rights of indigenous peoples as set out in the United Nations Declaration on the Rights of Indigenous Peoples and international legal instruments to which they are Parties, including the International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ESCR), as well the UN Guiding Principles on Business and Human Rights;
- Ratify and promote the Indigenous and Tribal Peoples Convention (1989);
- Implement relevant decisions and recommendations of UN human rights bodies and mechanisms, including the special procedures set up by the Human Rights Council and UN treaty monitoring bodies;
- Extend a standing invitation to all UN special procedures and regional mechanisms to visit their country;
- Allow, by making the necessary declarations under the relevant legal instruments, international and regional treaty monitoring bodies to receive complaints to allow members of indigenous communities and indigenous rights defenders to seize these bodies, in particular the First Optional Protocol to the International Covenant on Civil and Political Rights (OP1-ICCPR) and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR);
- Afford indigenous peoples genuine participation and access to information in a language they understand, to ensure free, prior, and informed consent;
- Ensure prompt and effective procedures to adjudicate land titles, review laws on expropriation, and provide for adequate grievance mechanisms to resolve land disputes and guarantee land tenure security in the form of either ownership, possession, or usage;
- Ensure the sharing of benefits accrued from the use of resources in areas occupied by indigenous peoples, and provide reparations, including through restitution, and/or apologies and guarantees of non-recurrence, or adequate compensation for lands that were alienated without prior consultation or consent;
- Amend existing legislation to facilitate the official registration of community and customary land tenure;
- Translate existing legislation into indigenous minority languages, especially laws that pertain to land, or economic, social, and cultural rights;
- Combat impunity for attacks against indigenous rights defenders or members of indigenous communities, and ensure that they can carry out their activities free from intimidation, threats, and reprisals; and
- Ensure legislation imposes due diligence obligations for companies where there is a risk of human rights abuses against indigenous peoples.

To the Government of Kenya:

- Recognise the Turkana as indigenous peoples, taking due account of the principle of self-identification, and make appropriate legislative provisions in this respect.

To the Government of Tanzania:

- Adopt comprehensive national legislation recognising indigenous peoples, and according them and their communities due protection.

To National Human Rights Institutions in Uganda, Kenya, and Tanzania:

- Closely monitor complaints related to development projects in areas occupied by indigenous peoples and provide appropriate and timely recommendations to states to address these concerns.

To private businesses and companies:

- Fully integrate a human rights-based approach in all business operations that affect or are likely to affect indigenous peoples and their rights, including their right to an adequate standard of living;
- Conduct comprehensive human rights impact assessments with the meaningful participation of the affected populations and communities, including indigenous rights defenders, prior to large-scale projects, ensuring that proper safeguards mechanisms, including grievance mechanisms, are put in place to mitigate and/or remedy any adverse human rights impact;
- Ensure due diligence in line with corporate social responsibility obligations, as set out in the UN Guiding Principles on Business and Human Rights, in all activities carried out in areas occupied by indigenous peoples, especially ensuring that the latter have access to all relevant information and are able to exercise free, prior, and informed consent as well as to receive adequate compensation in case they are adversely affected by business operations;
- Abide by relevant provisions of the UN Declaration on the Rights of Indigenous Peoples and the UN Guiding Principles on Business and Human Rights, in particular the corporate responsibility to respect human rights as set out in the second pillar; and
- Engage with indigenous peoples organisations, and human rights organisations working on the rights of indigenous people.



To indigenous communities and human rights defenders:

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

To national human rights defenders coalitions in Uganda, Kenya, and Tanzania:

- Establish a desk or focal point specifically appointed to monitor and document human rights abuses committed against indigenous minority human rights defenders; and
- Better incorporate indigenous monitors into existing structures, taking into account a lack of communication and organisational capacity.

To civil society organisations:

- Provide support and legal advice, facilitate sharing of experiences in relation to protection of indigenous peoples; and
- Facilitate human rights trainings for indigenous peoples including available protection mechanisms. Prioritise the trainings of grassroots HRDs as lawyers and paralegals.

To UN human rights bodies and mechanisms:

- Building on existing instruments, initiatives, and mechanisms such as the UN Declaration on the Rights of Indigenous Peoples and the work of the Special Rapporteur on the rights of indigenous peoples and the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), the UN Human Rights Council should mainstream the protection of indigenous peoples and indigenous rights defenders into its work;
- The UN Human Rights Council should recognise the need for enhanced protection of indigenous rights defenders by adopting a specific resolution on their protection; and
- UN human rights bodies and mechanisms should remind states of their obligations to cooperate fully with them, including special procedures and treaty bodies, including by implementing relevant decisions, concluding observations, and recommendations.

Part 2 – Women Human Rights Defenders



As the #metoo campaign went viral on social media in 2017 and 2018, women's rights issues, particularly the widespread sexual harassment experienced by women across the world, became a key topic of discussion.

In Africa, however, the movement has struggled to fully materialise because of the potential repercussions faced by women reporting abuse, as well as the unique challenges faced by women in different countries.⁷⁰ This, however, should not obscure the long lasting struggles of women movements across the continent. In Uganda, Kenya, and Tanzania, women have long been active in the promotion of human rights, and women's rights organisations are in forefront.

Uganda, Kenya, and Tanzania have ratified the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)⁷¹ and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, also known as the Maputo Protocol.⁷² Under CEDAW, states have the responsibility to ensure women's right to participate in CSOs and the formulation of government policies.⁷³ The Maputo Protocol

70 The Washington Post, "A year after it began, has #MeToo become a global movement?" 5 October 2018, https://www.washingtonpost.com/world/a-year-after-it-began-has-metoo-become-a-global-movement/2018/10/05/1fc0929e-c71a-11e8-9c0f-2ffaf6d422aa_story.html?noredirect=on&utm_term=.9eedb38afdaf, Accessed 16 November 2018.

71 United Nations Treaty Collection, "Depositary," https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en, Accessed 16 October 2018.

72 African Commission on Human and Peoples' Rights, "Ratification Table: Protocol to the African Charter on the Rights of Women in Africa," 2018, <http://www.achpr.org/instruments/women-protocol/ratification/>, Accessed 16 October 2018.

73 Article 7, Convention on the Elimination of All Forms of Discrimination against Women, 1981, <https://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>, Accessed 16 October 2018.

also recognises women's right to participate in the promotion and maintenance of peace, and invites state parties to provide for appropriate remedies to any women whose rights or freedoms have been violated. However, national legislations do not always reflect these commitments, and when strong provisions for the protection of women and HRDs do exist, they may not be implemented in practice.

"We talk with the police but nothing is done. For how long shall we be raped? We prefer protesting to make noise about rape."⁷⁴

WHRDs and HRDs working for the promotion of women's rights face serious marginalisation and specific vulnerabilities. Despite the linguistic, cultural, and historical diversity of the three East African countries, patriarchal norms and traditional gender roles continue to dominate society's understandings of what women should and should not do, resulting in similar barriers to the realisation of women's rights and the work of WHRDs.

For the purpose of this report, WHRDs include women who work for the protection of human rights, as well as any HRD, regardless of their gender identity, who works for the promotion of women's rights and gender equality.⁷⁵ In addition to all the challenges normally experienced by HRDs, WHRDs face unique obstacles to their work because of the sensitivity of the issues they tackle, as well as unique types of risks, such as sexual and gender-based violence (SGBV) and smear campaigns.

This section aims to highlight the achievements of WHRDs in Uganda, Kenya, and Tanzania to provide an overview of the issues they tackle, and to analyse the unique challenges they face. This analysis will allow the formulation of concrete recommendations

74 DefendDefenders interview, Kenya, September 2018.

75 OHCHR, "Women's Human Rights Defenders," September 2014, <https://www.ohchr.org/Documents/Events/WHRD/OnePagerWHRD.pdf>, Accessed 16 November 2018.



Uganda – Women Human Rights Defenders

An Increasingly Restricted Legal Environment

for WHRDs and other stakeholders for the improvement of their working environment, towards gender equality within the human rights movement.

WHRDs play an active role in the promotion and protection of human rights in Uganda.⁷⁶ Over the past decades, WHRDs have created new organisations, networks, and partnerships in an effort to increase their effectiveness and reduce their vulnerability.⁷⁷ As a result of their activism, the Ugandan women's movement is today considered as one of the most influential and effective in Africa.⁷⁸ However, despite the progress achieved on many fronts, the situation of WHRDs in Uganda remains precarious.

Ugandan WHRDs work on a wide range of issues, from political representation to domestic violence, child, early, and forced marriage, as well as sexual and reproductive health and rights. They are active in all regions of the country, focusing on various thematic challenges – such as Northern Uganda, where they are at forefront of the fight against SGBV and for women's land rights. Moreover, because of their active role in the promotion and protection of human rights, WHRDs are well organised and collaborate in many organisations and networks, notably the Uganda Women's Network and the National Association of Women's Organisation in Uganda.

76 UWONET, “Documentation of pluralism within the women's movement in Uganda,” 2012, <https://www.uwonet.or.ug/download/documentations/DOCUMENTATION-OF-PLURALISM-WITHIN-THE-WOMEN%25E2%2580%2599S-MOVEMENT-IN-UGANDA-REECHOING-VOICES-OF-WOMEN-ACTIVISTS-Sustaining-Women-Activism-2012-..pdf>, Accessed 16 October 2018.

77 Human Rights Centre, “Women Human Rights Defenders in Uganda: Working Against All Odds,” 2017, <https://www.hrcug.org/publications/file/WHRDs%20report.pdf>, Accessed 16 October 2018.

78 Aili Mari Tripp, “Women and Politics in Uganda,” May 2000, https://books.google.co.ug/books/about/Women_and_Politics_in_Uganda.html?id=k0HMhG81-AIC, Accessed 16 October 2018.

In addition to the general threats, violence, and other human rights violations faced by all HRDs, WHRDs are exposed to specific risks due to their identity as women. While the Constitution of the Republic of Uganda (1995)⁷⁹ establishes several institutions where HRDs can seek redress in case of human rights violations, access to justice remains one of the main challenges for WHRDs across the country. In some cases, security officials and local council members have perpetrated human rights violations against WHRDs, especially with regard to land rights and SGBV.

Uganda's patriarchal society constitutes by far the main obstacle to WHRDs' work. This pervasive patriarchy translates into various obstacles and attacks against WHRDs, which hinders their ability to work in a safe environment. These attacks come from a wide range of actors, including their community, family, and even state institutions whose primary responsibility is to protect their rights.

Legal and Policy Framework

Uganda's national legal framework does not explicitly recognise WHRDs. However, the Constitution recognises women as a marginalised group requiring affirmative action.⁸⁰ Additionally, the Constitution includes several provisions that guarantee the rights of women, notably Article 33. Women are also encouraged to participate in political affairs. According to Article 78(1) of the Constitution, the Parliament shall include one woman representative for every district, for a total of 120 District Women Representatives.⁸¹ The Local

79 Constitution of the Republic of Uganda (1995), http://www.statehouse.go.ug/sites/default/files/attachments/Constitution_1995.pdf, Accessed 16 October 2018.

80 Article 33 (5), Constitution of the Republic of Uganda (1995), http://www.statehouse.go.ug/sites/default/files/attachments/Constitution_1995.pdf, Accessed 16 October 2018.

81 Article 78 (1), Constitution of the Republic of Uganda (1995), http://www.statehouse.go.ug/sites/default/files/attachments/Constitution_1995.pdf,

Government Act (1997)⁸² also requires one-third of local council members to be women. Paradoxically, these affirmative actions have also constrained women's political environment, as some women have been told to compete only for women seats, and not for open seats. The high cost of nomination fees and fear of electoral violence have also contributed to their marginalisation and lack of participation in politics.⁸³

In 2007 Uganda adopted a Gender Policy⁸⁴ replacing the National Gender Policy (1997). The Policy seeks to ensure that all government's plans and programmes are geared towards addressing gender inequalities. It also guides stakeholders in planning, resource allocation, implementation, and monitoring and evaluation of programmes with a gender perspective. A Users' Guide was also formulated following the adoption of the policy with the aim of helping local governments implement it.⁸⁵

Despite this robust legal and policy framework, laws have been adopted since 2011 that constrain HRDs, including WHRDs' right to freedom of expression, notably in the Computer Misuse Act (2011),⁸⁶ the Public Order Management Act (POMA)(2013),⁸⁷ and the Non-Governmental Organisations (NGO) Act (2016).⁸⁸

While the Computer Misuse Act officially intends

Accessed 16 October 2018.

82 Ministry of Local Government, "Chapter 243. The Local Governments Act," <http://www.molg.go.ug/sites/default/files/LOCAL%20GOVERNMENTS%20ACT.pdf>, Accessed 3 November 2018.

83 DefendDefenders interview, Uganda, October 2018.

84 The Uganda Gender Policy 2007, <http://www.mglsd.go.ug/policies/Uganda-Gender-Policy.pdf>, Accessed 16 October 2018.

85 Solomon Mwije, "A Review of the 2007 Gender Policy," 2012, Accessed 1 November 2018.

86 Chapter Four Uganda, "The Computer Misuse Act, 2011," 2011, http://chapterfouruganda.com/sites/default/files/downloads/Computer-Misuse-Act-2011_0.pdf, Accessed 16 October 2018.

87 Uganda Legal Information Institute, "The Public Order Management Act," 2 October 2013, <https://ulii.org/system/files/legislation/act/2013/1/PUBLIC%20ORDER%20MANAGEMENT%20ACT.pdf>, Accessed 26 October 2018.

88 Uganda Legal Information Institute, "Non-Governmental Organisations Act," 11 February 2016, <https://ulii.org/ug/legislation/act/2016/1>, Accessed 17 October 2018.

to establish a trustworthy electronic environment,⁸⁹ it also includes vaguely worded provisions that seriously limit freedom of expression.⁹⁰ Section 24 defines cyber harassment as the use of a computer to make any request, suggestion, or proposal which is obscene, lewd, or indecent. Section 25 prohibits the dissemination of "offensive communication," including communications that disturb or attempt to disturb the peace, quiet, or right to privacy of any person.⁹¹ Both provisions have been used since April 2017 to target academic and human rights activist Stella Nyanzi following her criticism of President Museveni on Facebook, whom she called a "pair of buttocks" for not fulfilling his electoral commitment to provide free sanitary pads to all schoolgirls.⁹² During her trial, the prosecution also invoked the Mental Treatment Act (1938)⁹³ to request an examination of her mental health. According to prosecutors, only a crazy woman could express such anger⁹⁴ and her offensive behaviour has a direct impact on the moral decadence of the country.⁹⁵

WHRDs' right to peacefully demonstrate has also been restricted with the adoption of POMA, which

89 Chapter Four Uganda, "The Computer Misuse Act, 2011," 14 February 2011, http://chapterfouruganda.com/sites/default/files/downloads/Computer-Misuse-Act-2011_0.pdf, Accessed 16 October 2018.

90 Freedom House. "Freedom on the Net 2017," 2017, https://freedomhouse.org/sites/default/files/FOTN%202017_Uganda.pdf, Accessed 16 October 2018.

91 Chapter Four Uganda, "The Computer Misuse Act, 2011," 14 February 2011, http://chapterfouruganda.com/sites/default/files/downloads/Computer-Misuse-Act-2011_0.pdf, Accessed 16 October 2018.

92 Mail & Guardian, "Vulgar activist, hyper-sensitive president: Stella Nyanzi's fight continues," 19 May 2017, <https://mg.co.za/article/2017-05-19-vulgar-activist-hyper-sensitive-president-stella-nyanzis-fight-continues>, Accessed 16 October 2018.

93 Uganda Legal Information Institute, "Mental Treatment Act 1938," <https://ulii.org/ug/legislation/consolidated-act/279>, Accessed 9 November 2018.

94 Mail & Guardian, "Vulgar activist, hyper-sensitive president: Stella Nyanzi's fight continues," 19 May 2017, <https://mg.co.za/article/2017-05-19-vulgar-activist-hyper-sensitive-president-stella-nyanzis-fight-continues>, Accessed 31 October 2018.

95 The New York Times, "Uganda Tries to Commit Critic of President to Mental Institution," 13 April 2017, <https://www.nytimes.com/2017/04/13/world/africa/uganda-yoweri-museveni-protest-mental-institution.html>, Accessed 31 October 2018.



requires individuals and organisations to inform police about an upcoming demonstration, and gives ample power to security officials to deny a permit to protest.⁹⁶ On 13 July 2018, a group of women activists under their umbrella body, the Women's Protest Working Group, gave the police chief a notice of a peaceful demonstration to protest the kidnappings and killings of women and children in the country.⁹⁷ On their way to deliver the letter to the inspector general, five WHRDs were arrested and charged with unlawful assembly. A few days later, the Inspector General of Police, Martins Okoth Ochola, rejected the group's request to protest, alleging that their concerns had already been addressed in a presidential speech.⁹⁸ After some conversations with the police and the internal affairs minister, the women were finally allowed to hold their march on 30 June 2018.⁹⁹

"There are so many rules, regulations and restrictions coming up. I'm seeing that as a threat in the future, or a threat to organisations working on child marriage."¹⁰⁰

The NGO Act unduly restricts the work of human rights organisations and HRDs. Section 44 prohibits NGOs from carrying out activities without the approval from the District Non-Governmental Monitoring Committee and the local government. It also grants broad powers to the new National Bureau for NGOs, including the power to revoke their registration. Moreover, the National Bureau

is placed under the authority of the Ministry of Internal Affairs, thus not acting as an independent body.¹⁰¹ While the NGO Act itself does not directly target WHRDs, respondents noted it as an obstacle to their work which could muzzle organisations working on sensitive issues, such as the promotion and protection of sexual and reproductive health and rights.¹⁰²

"The process to register as an NGO is rigorous. Let alone that internal security has to come and check your office, you have to go to Interpol to get fingerprints of the directors. There is more intrusion in terms of your work, to know who is funding you, what are you focused on."¹⁰³

Women human rights organisations have also seen state institutions interfere in their work. Many CSOs take additional precautions to avoid potential political interference in their work. One Kampala-based organisation working with women in leadership positions emphasised that, "you can face a lot of repercussions. If somebody looks in, and they start looking at what you are saying as going against the establishment. You have to be very careful."¹⁰⁴

To avoid potential intrusion in their work, women human rights organisations have adapted their strategy and even their discourse. Nonetheless, it does not guarantee the absence of political interference. A women human rights organisation, and member of the Citizens' Coalition for Electoral Democracy in Uganda, was barred from observing 2018 local elections.¹⁰⁵ According to the

96 Uganda Legal Information Institute, "Public Order Management Act, 2013," 2 October 2013, <https://ulii.org/ug/legislation/act/2015/1-6>, Accessed 17 October 2018.

97 The Insider, "Fury as Police Block Women Protest Match on Murders, Kidnaps," 27 June 2018, <https://theinsider.ug/index.php/2018/06/27/fury-as-police-block-women-protest-match-on-murders-kidnaps/>, Accessed 16 October 2018.

98 Daily Monitor, "IGP Ochola blocks planned women protest against kidnaps, murders," 27 June 2018, <http://www.monitor.co.ug/News/National/IGP-Ochola-blocks-women-protest-over-kidnaps-murders/688334-4634738-14jemldz/index.html>, Accessed 17 October 2018.

99 Women's Media Center, "The homophobic backlash that followed the Ugandan Women's March," 22 August 2018, <http://www.womensmediacenter.com/fbomb/the-homophobic-backlash-that-followed-the-ugandan-womens-march>, Accessed 16 October 2018.

100 DefendDefenders interview, Uganda, October 2018.

101 Uganda Legal Information Institute, "Non-Governmental Organisations Act, 2016," 11 February 2016, <https://ulii.org/ug/legislation/act/2016/1>, Accessed 17 October 2018.

102 Global Press Journal, "NGOs in Uganda Face Greater Scrutiny Under New Law, Worry About Impact on Their Work," 12 April 2016, <https://globalpressjournal.com/africa/uganda/ngos-uganda-face-greater-scrutiny-new-law-worry-impact-work/>, Accessed 16 October 2018.

103 DefendDefenders interview, Uganda, August 2018.

104 DefendDefenders interview, Uganda, October 2018.

105 Daily Monitor, "Reinstate CCEDU as election observer," 29 July 2018, <http://www.monitor.co.ug/OpEd/Editorial/-CCEDU--election-observer-Electoral-Commission-partisan/689360-4686404-8m4n17/index.html>, Accessed 1

Electoral Commission, the organisation seemed to support political opposition movements, which the organisation strongly denied, insisting it works with women candidates from different political parties and backgrounds.¹⁰⁶

Reputations Under Attack: When Patriarchy Comes to Light

WHRDs in Uganda operate in a conservative and patriarchal environment in which women are seen as subordinate to men. As WHRDs fight for human rights, they also challenge cultural norms and combat gender stereotypes that invalidate their role as societal leaders. As they challenge the status quo, they are perceived by their family, community, and colleagues as threats, and are thus targeted for their work. Many WHRDs reported being accused of promoting Western values, undermining Uganda's traditions and cultures, and being too masculine. As such, their reputations are constantly under attack.

WHRDs working on SGBV are particularly vulnerable to gender-based attacks and gender stereotypes because of the nature of their work. They have been labelled as women hatters, and accused of spoiling marriages for challenging the status quo.

"They are going to tell you 'ok you are telling us not to marry girls, like at 18, no wonder you are not married, what kind of woman are you if you're not married, what kind of woman are you if you're divorced?'"¹⁰⁷

WHRDs working on child, early, and forced marriage are also victims of intimidation based on gender stereotypes. As one WHRD noted "you go to a place, and people say: 'it's culture and do not interfere.'"¹⁰⁸

When WHRDs speak up for women's rights, they are often shut down by community members and local leaders. A key example is the case of a group of elderly women who stripped naked in Apaa to protest against land grabbing and the violation of their land rights. In Acholi culture, women bring a curse

November 2018.

- 106 DefendDefenders interview, Uganda, October 2018.
- 107 DefendDefenders interview, Uganda, October 2018.
- 108 DefendDefenders interview, Uganda, October 2018.

to their village when they strip naked.¹⁰⁹ Community members accused them of diluting their culture and the Acholi Paramount Chief condemned their act, asking them to apologise for degrading mothers.¹¹⁰

Moreover, though women constitute at least a third of communal land association officers, their opinion is often dismissed.¹¹¹ A Kampala-based organisation working on land rights reported that in rural areas, during community meetings, men sit on chairs while women stay on the floor or even outside the room. Some women are also unaware of their rights and do not feel confident enough to voice their opinion and concerns.¹¹²

Male HRDs sometimes use gender-based stereotypes to discourage their female colleagues from getting involved in the promotion and protection of human rights, which is paradoxical. As one WHRD interviewed for this report noted, "even in the mainstream human rights organisations, women are facing threats, intimidation, and a lack of support and recognition of their work."¹¹³

"You will hear very many people saying 'have men allies, male champions.' That it is better for men to front, to promote women's rights than you women. Yet, it is our right according to the Declaration of Human Rights Defenders to also participate in the promotion of rights. But they are telling us 'you, get back women. Let men promote your rights. It is better that way.' That is the dynamic."¹¹⁴

109 Daily Monitor, "Nude protests: the Acholi signal of distress," 30 April 2015, <http://mobile.monitor.co.ug/Nude-protests--the-Acholi-signal-of-distress/691260-2701176-format-xhtml-13wdgyb/index.html>, Accessed 17 October 2018.

110 Uganda Radio Network, "Amuru Nude Protests Undermine Women Dignity – Acholi Chief," 22 April 2015, <https://ugandaradionetwork.com/story/amuru-nude-protests-undermine-women-dignity-acholi-chief->, Accessed 17 October 2018.

111 Article 16(4), Uganda Legal Information Institute, "Land Act 1998," <https://ulii.org/ug/legislation/consolidated-act/227>, Accessed 4 November 2018.

112 DefendDefenders interview, Uganda, October 2018.

113 DefendDefenders interview, Uganda, October 2018.

114 DefendDefenders interview, Uganda, October 2018.



Justice Denied

The Constitution of Uganda states that "the State shall guarantee and respect institutions which are charged by the State with responsibility for protecting and promoting human rights by providing them with adequate resources to function effectively."¹¹⁵ The Constitution also establishes institutions where citizens, often with the support of HRDs, can seek redress in the case of human rights violations, such as courts of law, the Uganda Human Rights Commission, and the Equal Opportunities Commission. Police officers and local council members are also responsible to report cases of human rights violations.

However, access to justice continues to be denied to WHRDs and women in general. The high level of corruption in the police and a lack of sufficient financial resources hinder their capacity to ensure WHRDs' access to remedies.¹¹⁶ Police officers sometimes allegedly refuse to provide assistance and report human rights violations when the victim is unable to pay for their transportation and other expenses.¹¹⁷ In 2017, police officers refused to properly investigate a case after criminals broke into MIFUMI's office, an NGO promoting women's and children's rights, stole their property, and killed a security guard.¹¹⁸ WHRDs' access to justice is also hindered by the existence of patriarchal norms that pervade traditional justice and informal justice mechanisms.¹¹⁹

115 See National Objective V, Constitution of the Republic of Uganda, 1995, http://www.statehouse.go.ug/sites/default/files/attachments/Constitution_1995.pdf, Accessed 16 October 2018.

116 Daily Monitor, "Police most corrupt institution - UBOS," 22 June 2016, <https://www.monitor.co.ug/News/National/Police-most-corrupt-institution-UBOS/688334-3261630-3jq36az/index.html>, Accessed 31 October 2018.

117 DefendDefenders interview, Uganda, October 2018.

118 Daily Monitor, "Guard killed as thieves break into three offices," 29 May 2017, <http://www.monitor.co.ug/News/National/Guard-killed-thieves-break-into-three-offices/688334-3946636-119vs4uz/index.html>, Accessed 16 October 2018.

119 Legal Aid Service Providers' Network, "Access to Justice for the Women: The Affordability of Access to Justice for Women in Uganda & the Plight of Laps And Legal Fees in Case of Having to Pay Fees After Losing A Case," 26 November 2015, <http://www.laspnet.org/joomla-pages/reports/presentations/387-the-affordability-of-access-to-justice-for-women->

The difficulty for women to access justice is exemplified by the Secret Sellers' case, named after a case in which a woman fought for her land rights after she realised her husband had sold off all their land without her consent. Local council members refused to report the case under the pretext that she had no ownership of the land in question. Despite the obstacles she faced, she decided to pursue the human rights committee members and the community development officers, and finally, the case was mediated.¹²⁰

More recently, a shelter for women victims of SGBV based in Lira was attacked by local leaders and a grandfather who abused his granddaughter, in a bid to silence the organisation. When the shelter's staff members sought legal counsel, the lawyers asked them to reconsider pursuing the case since the grandfather is a chief. In certain cases, police officers deny WHRDs access to justice since they are themselves involved in human rights violations. For example, during her detention at the Kira Division police station, Nyanzi was allegedly beaten by the police, denied feminine hygiene products, and had her clothes torn.¹²¹

In Need of Gender-Specific Protection Mechanisms for WHRDs

Several Ugandan WHRDs expressed the need for protection mechanisms to address their specific needs. Currently, mainstream protection mechanisms do not take into account the specific nature of WHRDs' needs and vulnerabilities. For example, state institutions should provide WHRDs with feminine hygiene products while in detention. They should also ensure the protection of their family members since WHRDs often have additional domestic responsibilities, such as caring for children.

[in-uganda-a-the-plight-of-lasps-and-legal-fees-in-case-of-having-to-pay-fees-after-losing-a-case/file](http://www.monitor.co.ug/News/National/in-uganda-a-the-plight-of-lasps-and-legal-fees-in-case-of-having-to-pay-fees-after-losing-a-case/file), Accessed 31 October 2018.

120 Independent Development Fund, "Investing in the Change Makers. Annual Report 2016/2017," 2017, <http://idf.co.ug/wp-content/uploads/2018/01/web-7mb.pdf>, Accessed 16 October 2018.

121 OHCHR, "Opinions adopted by the Working Group on Arbitrary Detention at its seventy-ninth session, 21-25 August 2017," 11 October 2017, https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session79/A_HRC_WGAD_2017_57.pdf, Accessed 16 October 2018.

A higher representation of women in state institutions, including the Uganda Human Rights Commission, could be a good start to increasing the focus on WHRDs, and women's rights in general. The absence of representation of women on the Commission was highlighted in the Commission's 20th report as one of its main challenges.¹²² The Commission has also never documented in its reports the specific issues and risks WHRDs face in the country, a situation the institution should remedy in its future reports.¹²³

WHRDs interviewed also acknowledged their lack of knowledge of the available protection institutions and mechanisms to seek assistance if they are at risk. Some of them also do not identify as HRDs, because of the lack of awareness on the nature of HRDs' work in the country. This hinders their ability to reach protection mechanisms. In 2017, the Women Human Rights Defenders' Network was established in Uganda to address some of these gaps, but a single organisation cannot alone provide all the information and training needed by WHRDs across the country.

The centralisation of services and resources in Kampala also hinders HRDs' ability to reach protection mechanisms, a situation that disproportionately affects WHRDs who are at the forefront of many human rights issues in remote areas. A Gulu-based women human rights organisation added that WHRDs need more trainings on how to amplify their voice and work with political officials, especially outside of Kampala. Therefore, the state and CSOs should provide more support to organisations in remote areas to ensure all WHRDs' rights are guaranteed.

122 Uganda Human Rights Commission, "The 20th annual report to the Parliament of the Republic of Uganda 2017," 2017, http://uhrc.ug/system/files_force/ulrc_resources/20th%20Annual%20Report.pdf?download..., Accessed 16 October 2018.

123 DefendDefenders interview, Uganda, October 2018.



Kenya – Women Human Rights Defenders

The Price of Challenging Patriarchy

For almost four and a half decades, Kenya's women's movement has strived to improve the situation of women's rights.¹²⁴ As a relatively stable democracy in East Africa, Kenya has a notable history of WHRDs, especially in the capital, Nairobi. For example, in 2004, WHRD Wangari Maathai became the first African woman to receive the Nobel Peace Prize for "her contribution to sustainable development, democracy and peace."¹²⁵

Since 2007, the government has put in place policies and legislative frameworks to promote gender equality and women's rights, embedded in the Kenyan Constitution (2010).¹²⁶ This is largely the result of engagement by the women-focused human rights organisations, in addition to compliance with international human rights standards. However, women face many challenges in realising equal political, social, cultural and economic rights, partly due to patriarchal forces in Kenyan society. This in turn leads to challenges for WHRDs working to promote and protect human rights across the country.

WHRDs are confronted with the same challenges as all HRDs, but are made particularly vulnerable by the myriad of gender-specific risks they also face due to their identity as women.¹²⁷ These risks are intersecting. Patriarchal practices embedded in Kenyan society are by far the greatest barrier for WHRDs, despite legislation enacted to help them promote human rights. WHRDs face challenges

from a range of both state and non-state actors, community members, and even from the institutions whose duty is to promote their rights.

Legal and Policy Framework

While Kenya is a signatory to CEDAW, it has not ratified its optional protocol, which operationalises complaint and inquiry mechanisms. However, in accordance with the Constitution, all international and regional legislative frameworks adopted and duly ratified by Kenya are domesticated into national law, and thus enforceable within its domestic legal order.¹²⁸

Women's rights are embedded in the Constitution, which expressly provides that women and men have equal rights to opportunities in political, economic, cultural, and social life. Article 10 proclaims the "[...] rule of law, democracy and participation of the people; [...] human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination, and protection of marginalised." Additionally, the Constitution stipulates that "every person is equal before the law and has the right to equal protection and equal benefit of the law."¹²⁹

The Sexual Offences Act (2006)¹³⁰ aims to protect all persons from rape and other forms of sexual violence, and to ensure access to justice and psychosocial support for victims of such violence. The Employment Act (2008)¹³¹ prohibits discrimination and harassment of employees on the basis of sex.

124 Nawey, "The history of feminism in Kenya," October 2011, www.nawey.net/wp-content/uploads/downloads/.../History-of-Feminism-in-Kenya.pdf, Accessed 4 October 2018.

125 The Nobel Prize, "Wangari Maathai Facts," 2004, <https://www.nobelprize.org/prizes/peace/2004/maathai/facts/>, Accessed 9 November 2018.

126 Kenya Law, "Constitution of Kenya," 2010, <http://www.kenyalaw.org/lex//actview.xql?actid=Const2010>, Accessed 9 October 2018.

127 DefendDefenders, "Women HRDs," 9 December 2013, <https://www.defenddefenders.org/theme/women-hrds/>, Accessed 9 October 2018.

128 Article 2 (6) of the Constitution of Kenya, 2010, <http://www.kenyalaw.org/lex//actview.xql?actid=Const2010>, Accessed 9 October 2018.

129 Article 27 (1) of Constitution of Kenya, <http://www.kenyalaw.org/lex//actview.xql?actid=Const2010>, Accessed 9 October 2018.

130 Kenya Law, "Sexual Offences Act n°3," 2006, <http://www.kenyalaw.org/lex//actview.xql?actid=No.%203%20of%202006>, Accessed 15 October 2018.

131 Kenya law, "Employment Act n°11," 2 June 2008, <http://www.kenyalaw.org/lex//index.xql>, Accessed 24 October 2018.

Kenya has increased efforts to eliminate all forms of SGBV since the promulgation of the Constitution in 2010. For example, Kenya took further steps to prohibit the practice of female genital mutilation (FGM) through the Prohibition of Female Genital Mutilation Act (2011),¹³² and to safeguard against violation of a person's mental or physical integrity through the Protection Against Domestic Violence Act (2015),¹³³ a crucial step for the protection of women's rights.

These elements of Kenyan law acknowledge women's rights and should, by extension, help reduce the vulnerability of WHRDs. However, their situation in Kenya remains hostile, with one respondent noting that "we're perceived as anti-government and subversive, even though a lot of the work that we're doing is anchored in women's rights and the Constitution."¹³⁴

The Role of WHRDs in Kenya

Much of the work conducted by Kenyan WHRDs interviewed for this report focuses on protecting civil and political rights, advocating for equal rights to education for girls, ending child, early, and forced, marriage, as well as combating SGBV, extrajudicial killings, and police violence. Other WHRDs work on ensuring redress for violations of social and economic rights, including land grabbing or lack of access to reproductive health care. While WHRDs work on a range of topics, this section will specifically address the most common work areas mentioned by the WHRDs interviewed for this report such as SGBV, extrajudicial executions, and land rights.

SGBV is a pressing human rights issue in Kenya. According to the 2014 Kenya Demographic and Health Survey, "45 percent of women and girls between 15 and 49 years have experienced physical violence and 14 percent have experienced sexual

violence."¹³⁵ Sexual violence against women often occurs within a domestic setting. According to the aforementioned survey, "42 percent of women and 36 percent of men believe that a husband is justified in beating his wife for at least one of these reasons: if the wife burns the food, argues with him, goes out without telling him, neglects the children, or refuses sexual relations."¹³⁶ It is remarkable that the percentage of interviewees who responded positively is higher among women than among men.

Seeking justice for victims of SGBV remains a challenge for WHRDs, as victims are often stigmatised and subjected to verbal abuse for speaking out. Additionally, WHRDs reported a lack of accountability for violence against women and girls as a main concern. Many victims do not obtain redress, or even medical assistance, counseling, or other forms of psychosocial support following sexual violence.

Sexual violence is not only limited to the domestic setting. WHRDs interviewed for this report noted that many women and girls faced sexual violence during the hotly contested 2017 elections and violent aftermath. In this regard, Human Rights Watch reported that 65 women, three girls, and three men experienced sexual violence during the election period, including seven cases of politically-motivated sexual assaults in the pre-election period.¹³⁷ Three WHRDs interviewed for this report stated that they witnessed such treatment meted out against their fellow defenders. Threat of sexual violence against WHRDs can affect their commitment to reporting human rights violations since they are doubly at risk.

With regards to land rights issues, the Constitution provides for equitable access to land ownership,

132 Kenya Law, "Prohibition of Female Genital Mutilation Act," 4 October 2011, <http://www.kenyalaw.org/lex//index.xql>, Accessed 24 October 2018.

133 Kenya Law, "Protection Against Domestic Violence Act," 4 June 2015, <http://www.kenyalaw.org/lex//actview.xql?actid=NO.%20%20OF%202015>, Accessed 24 October 2018.

134 DefendDefenders interview, Kenya, September 2018.

135 Human Rights Watch, "Tackling the Violence Faced by Women and Girls in Kenya," 9 October 2017, <https://www.hrw.org/news/2018/10/09/tackling-violence-faced-women-and-girls-kenya>, Accessed 7 November 2018.

136 Human Rights Watch, "Tackling the Violence Faced by Women and Girls in Kenya," 9 October 2017, <https://www.hrw.org/news/2018/10/09/tackling-violence-faced-women-and-girls-kenya>, Accessed 7 November 2018.

137 Human Rights Watch, "They Were Men in Uniform Sexual Violence against Women and Girls in Kenya's 2017 Elections," December 2017, https://www.hrw.org/sites/default/files/report_pdf/kenya1217_web.pdf, Accessed 7 November 2018.



including its distribution amongst Kenyan community members, without discrimination.¹³⁸ Additionally, the Land Act proclaims the principle of "equitable access to land, and urges state officers to eliminate gender discrimination in law, customs and practices related to land and property in land."¹³⁹ However, despite the existence of laws prohibiting discrimination in customary land tenure, one WHRD interviewed for this report noted that in many Kenyan communities women do not own land; they are restricted to its use only.¹⁴⁰ Women also lack access to, and meaningful control over, economic resources within the household.¹⁴¹

Four WHRDs working on land rights of minority groups like the Ogiek, who used theater for civic education to raise awareness of land issues, were detained in 2007. One of these WHRDs reported that they were "first arrested then taken to court during non-working hours. In the evening, magistrates were called back to court by the government to sit and charge us."¹⁴² They were charged with "disturbing the public order" and were taken into custody for one week. They claim to have been beaten by police officers, who stated that "these are ladies fighting for rights [who call] themselves 'human rights defenders.'" Amnesty International and civil society networks eventually managed to secure legal assistance, and the charges were dropped.¹⁴³

Many WHRDs focus on women's access to healthcare in Kenya, notably by advocating for affordable and adequate health care services for low-income women to prevent maternal mortality. The Constitution guarantees "every person [...] the right to the highest attainable standard of health, which

includes the right to health care services, including reproductive health care."¹⁴⁴ Among their working strategies, WHRDs submit petitions challenging the governments' failure to take appropriate action to implement a comprehensive strategy to provide women with affordable health care, in particular those who live below the poverty line.¹⁴⁵

Challenges and Needs

The challenges faced by WHRDs are complex, highly sensitive, and crosscutting, often hindering their ability to effectively carry out their work. These challenges are generally related to insecurity, including violence, threats, and stigmatisation, especially if WHRDs seek to address issues such as women's health, reproductive rights, SGBV, as well as more contentious topics like corruption or extrajudicial killings in poor urban areas.

Notwithstanding the existing legal framework on women's rights, WHRDs noted that police often impede reporting and follow-up on cases of SGBV. Several WHRDs also noted that this obstruction often manifested in a lack of due diligence or in a refusal to follow official procedures. They also highlighted the selective application of remedial measures and a lack of equal access to state institutions like police or courts of law.

"Your place is not here, we don't see you, you don't exist."¹⁴⁶

Women are often discouraged from reporting crimes, especially cases of SGBV, as speaking up is seen as running counter to traditional norms and gender roles. WHRDs supporting victims risk being accused of acting as foreign agents or government opponents. In traditional patriarchal systems, women are primarily seen as household caretakers, not vocal activists. One interviewee reported that in public discussions, government officials and community members often ignore them.

138 Article 63 of the Constitution of Kenya, <http://www.kenyalaw.org/lex//actview.xql?actid=Const2010>, Accessed 9 October 2018.

139 Kenya Law, "The Land Act" 2 May 2012, <http://www.kenyalaw.org/lex//actview.xql?actid=No.%206%20of%202012>, Accessed 8 November 2018.

140 DefendDefenders interviews, Kenya, September 2018.

141 FIDA, "WOMEN'S LAND AND PROPERTY RIGHTS IN KENYA," April 2017, <http://fidakenya.org/wp-content/uploads/2017/04/Women-Land-rights-Handbook.pdf>, Accessed 7 November 2018.

142 DefendDefenders interviews, Kenya, September 2018.

143 DefendDefenders interviews, Kenya, September 2018.

144 Article 43(1) of the constitution of Kenya, <http://www.kenyalaw.org/lex//actview.xql?actid=Const2010>, Accessed 9 October 2018.

145 Kenya Law, "PETITION NO. 562 OF 2012," 17 September 2018, <http://kenyalaw.org/caselaw/cases/view/131104/>, Accessed 7 October 2015..

146 DefendDefenders interviews, Kenya, September 2018.

WHRDs often face further stigmatisation if they advocate for women's sexual and reproductive health rights. In certain cultural contexts, issues relating to access to birth control, as well as women's sexual and physical autonomy, remain taboo. For example, one WHRD was accused of helping a young girl procure an abortion after she responded to the girl's appeal, through Facebook, for resources. According to the WHRD, the girl risked being charged with a felony and was a police target.¹⁴⁷ As a result, people shunned the WHRD and she was allegedly the victim of a smear campaign.¹⁴⁸

WHRDs face social exclusion as a result of their activism, particularly when they assist victims of sexual violence to report cases to the police. Lack of sensitisation on the part of police, as well as bureaucracy, public stigma, and the risk of reprisals, lead many victims to drop their cases, which is an additional cause of frustration for WHRDs.¹⁴⁹ For example, one WHRD was arrested while helping victims of domestic violence, sexually assaulted by officers while in custody, and accused of "destroying harmony in the household."¹⁵⁰ Cases of violence against married women within the home, including marital rape, are also often dismissed by police, because they are perceived as private matters. State institutions' failure to implement legal provisions meant to address violations such as SGBV, and the related impunity, often discourage WHRDs. Indeed, as one respondent noted, "people draw on culture and say men have the right to abuse their wives."¹⁵¹

147 Irish Medical Times, "Slum girls of Kenya take a stand," 10 January 2014, <https://www.imt.ie/features-opinion/slum-girls-of-kenya-take-a-stand-10-01-2014/>, Accessed 9 November 2018.

148 Protection International, "Criminalisation of rural-based human rights defenders in Kenya," 2017, <https://www.protectioninternational.org/en/criminalisation-human-rights-defenders-kenia>, Accessed 8 November 2018.

149 DefendDefenders interview, Kenya, September 2018.

150 KNCHR, "A Report on Gender Audit of the Situation of Women & Other Vulnerable Human Rights Defenders in Kenya," 2017, http://www.knchr.org/Portals/0/OccasionalReports/Gender%20Audit%20of%20the%20Situation%20of%20WHRD_2017.pdf?ver=2017-06-29-164919-560, Accessed 8 October 2018.

151 Human Rights Watch, "Tackling the Violence Faced by Women and Girls in Kenya," 9 October 2018, <https://www.hrw.org/news/2018/10/09/tackling-violence-faced-women-and-girls-kenya>, Accessed 11 October 2018.

This pervasive impunity further exposes WHRDs to retaliation from perpetrators, increasing their overall vulnerability.

Moreover, WHRDs lamented a perceived lack of political will to promote the equal participation of women in state institutions and the fact that this gender imbalance exposed WHRDs to demands for sexual favours in exchange for addressing human rights violations. According to WHRDs interviewed for this report, this was especially the case when reporting violations such as rape to the police, as officers tend to be men, some complaints risk being dropped if WHRDs refuse sexual demands. As WHRD voices are sidelined, government officials and perpetrators are not held to account, and anyone seen challenging cultural norms or existing social structures is declared an "outcast."¹⁵² In response to this lack of access to justice, in 2013, several women's rights organisations staged protests against impunity for rape cases, yet few changes have occurred as a result.

"When going to report any human rights violations, the problem is that police offices are full of men and they don't take our concern seriously. Officers don't hear our voices in a professional way, but presume we're prostitutes and secure ways to have sex with us."¹⁵³

Grassroots WHRDs are particularly vulnerable as they often have less technical and financial capacity. This has led to internal divisions and some tension among WHRDs in local, national, and international organisations. Several WHRDs reported that they often face threats as perpetrators wish to conceal evidence to escape justice. Grassroots WHRDs working to monitor and report human rights violations face numerous challenges and threats, including being profiled or accused of challenging the police, particularly if they work in populous Nairobi slums where issues like SGBV, land rights, corruption, and extrajudicial killings remain rife. WHRDs working on these issues reported being monitored, threatened, and attacked by security forces or community members, especially during

152 DefendDefenders interview, Kenya, September 2018.

153 DefendDefenders interview, Kenya, September 2018.



demonstrations. They also stressed that threats can extend to their friends and family members. One WHRD claiming the police killed her brother to pressure her to abandon her human rights work.¹⁵⁴

"I was targeted by retaliation from policemen dismissed from their position because they were involved in cases related to extrajudicial killings that I was following to ensure justice is served for victims. They didn't meet me at home, but they met my young brother and killed him."¹⁵⁵

These abuses reflect the wider context of gender inequality in Kenyan society and the social stigma used to silence WHRDs or intimidate them into abandoning their activism.¹⁵⁶

Since no legal provisions directly impede women from advocating for human rights or exercising their right to freedom of expression, Kenyan WHRDs should be able to work in a safe and enabling environment. Additionally, the Constitution grants every person "the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities."¹⁵⁷ Yet, WHRDs demonstrating against human rights violations are often arbitrarily accused of "incitement to violence" under Section 96 of the Penal Code.¹⁵⁸ This carries a penalty of up to five years in prison, a strategy often used to intimidate and suppress WHRDs.¹⁵⁹

For example, one WHRD interviewed for this report noted that after mobilising women to demonstrate against the Ministry of Health and Kenya's Anti-

Corruption Commission for their alleged inaction with regard to maternal deaths in Haruma, they were arrested and charged with "inciting violence."¹⁶⁰ The WHRDs in question were released on bail, but again arrested in April 2016 after the court issued warrants for their arrest. This case dragged on for five years but was closed on condition that no evidence be later discovered. In this instance, respondents described this prosecution as an effort to intimidate and harass them.¹⁶¹ The risk of criminal proceedings intensifies potential threats facing WHRDs in a social setting where rigid gender roles ensure male domination over public life.

Other WHRDs reported being accused of associating with opposition political movements or extremists. For instance, one WHRD was accused of being a government opponent for protesting extrajudicial killings in Dandora, a low-income neighbourhood in Nairobi.

"One day, I stood to protest against summary executions, I got arrested and taken to the police station. The police officer then said: 'you are committed to challenging the government, who are you?'"¹⁶²

WHRDs interviewed for this report stressed that police often used excessive force against WHRDs organising protests. This was vividly demonstrated in a photograph that was widely circulated on social media, which depicted police officers assaulting a woman during a protest in Nairobi in November 2017.¹⁶³ Such violence can take the form of sexual violence at the hands of security forces, as documented in a Human Rights Watch report which lists several cases of women and girls

154 DefendDefenders interview, Kenya, September 2018.

155 DefendDefenders interview, Kenya, September 2018.

156 Protection International, "Criminalisation of rural-based human rights defenders in Kenya," 2017, <https://www.protectioninternational.org/en/criminalisation-human-rights-defenders-kenia>, Accessed 8 November 2018.

157 Article 37 of the Constitution of Kenya, <http://www.kenyalaw.org/lex//actview.xql?actid=Const2010>, Accessed 9 October 2018.

158 Pambazuka News, "Arrest of WHRDs in Huruma," 17 March 2011, <https://www.pambazuka.org/gender-minorities/kenya-arrest-women-human-rights-defenders-huruma>, Accessed 23 October 2018.

159 Kenya Law, "Penal Code," 2012, <http://kenyalaw.org/kl/index.php?id=3409>, Accessed 25 October 2018.

160 DefendDefenders interview, Kenya, September 2018.

161 WHRDIC, "A letter to Chief Justice of Kenya to end police and judicial harassment of Ruth Mumbi and Bunge la Wamama," 9 May 2016, <http://www.defendingwomen-defendingrights.org/2016/05/09/a-letter-to-chief-justice-of-kenya-to-end-police-and-judicial-harassment-of-ruth-mumbi-and-bunge-la-wamama/>, Accessed 25 October 2018.

162 DefendDefenders interview, Kenya, September 2018.

163 The Star, "Police raped, abetted sexual assault during poll protests - Human Rights Watch," 14 December 2017, <https://www.the-star.co.ke/news/2017/12/14/police-raped-abetted-sexual-assault-during-poll-protests-human-rights-c1685011>, Accessed 25 October 2018.

victims of SGBV.¹⁶⁴ Furthermore, one WHRD who demonstrated against sexual violence reported that she was shot by security forces, and despite lodging a complaint against the officers in question, no one has been prosecuted or otherwise held to account.¹⁶⁵

"I was shot while protesting the impunity of rapists in Mathare, but I didn't get any judicial and psychosocial assistance."¹⁶⁶

Another WHRD reported being severely beaten while in police custody after a demonstration, while another claims she was sexually assaulted.¹⁶⁷ The use of excessive force, torture, and other forms of ill-treatment in restricting the right to peaceful assembly are in direct contradiction to Kenya's obligations to international human rights standards.

Injustices faced by WHRDs often lead to emotional and psychological trauma. Indeed, verbal harassment, including being labelled "homewreckers," "prostitutes," or "moral decadents," negatively affects WHRDs psychologically.¹⁶⁸ WHRDs also claimed to receive pressure from their families to stop their human rights work, compounding psychological stress.¹⁶⁹

Ultimately, the challenges faced by WHRDs are multifaceted. They are based on multiple factors, including patriarchal norms, cultural intolerance, and an absence of the rule of law that leaves them vulnerable. By not promptly conducting effective investigations into excessive use of force by the police and by maintaining de facto barriers to women's rights, the government of Kenya disregards its duty to protect and uphold the fundamental rights of victims, WHRDs, and women.

164 Human Rights Watch, "Kenya: Police Threaten Activists Reporting Abuse," 4 June 2018, <https://www.hrw.org/news/2018/06/04/kenya-police-threaten-activists-reporting-abuse>, Accessed 25 October 2018.

165 DefendDefenders interview, Kenya, September 2018.

166 DefendDefenders interview, Kenya, September 2018.

167 DefendDefenders interview, Kenya, September 2018.

168 Human Rights Watch, "Tackling the Violence Faced by Women and Girls in Kenya," 9 October 2018, <https://www.hrw.org/news/2018/10/09/tackling-violence-faced-women-and-girls-kenya>, Accessed 11 October 2018.

169 Protection International, "Criminalisation of rural-based human rights defenders in Kenya," 2017, <https://www.protectioninternational.org/en/criminalisation-human-rights-defenders-kenya>, Accessed 8 November 2018.

WHRDs interviewed for this report identified several immediate and long-term needs in light of the multifaceted challenges they face. The current situation in Kenya calls for urgent political commitment to provide a conducive and safe working environment that enables WHRDs to advocate for human rights. In order to do so, legal provisions, as well as policies to protect, support, and empower WHRDs in compliance with international human rights standards, are crucial. Therefore, adopting national laws that explicitly guarantee the protection of HRDs is judicious and can effectively contribute to legitimising the work of WHRDs. Additionally, it is essential that the Kenyan government implement current national and international legislation concerning women's rights.

Raising awareness among women about their rights and building the capacity of WHRDs is critical in strengthening existing protection mechanisms. There remains an urgent need to develop capacity in international human rights standards, advocacy strategies, and digital security. These skills would be crucial for WHRDs to further increase public awareness of human rights. When promoting human rights education or raising awareness, it is essential to focus on remote and rural areas, as these tend to be overlooked. Women's rights organisations and WHRDs must also achieve greater unity by building an effective network through which women can share information and strategies to effectively fight stereotypes, stigma, and other challenges.

For WHRDs dealing with sensitive issues like SGBV, it is important to establish and promote protection mechanisms for those experiencing threats and harassment. In extreme cases, WHRDs must be ensured the possibility of proper protection in safe locations and supported in the process. Additionally, protection mechanisms should focus on offering psychosocial support to deal with the potential trauma arising from threats and social isolation. WHRDs also stressed the need to improve gender representation in public institution to ensure equal opportunities. More women in high-level positions in state institutions could potentially lead to more focus on women's rights, and potentially increase gender sensitivity in investigations of sexual violence.



Tanzania – Women Human Rights Defenders

Operating in a Restricted Civic Space

Since Tanzania's shift to a multiparty system in 1992, several CSOs focusing on women's issues and rights have been formed, such as the Tanzania Media Women's Association, Women Fund Tanzania, and the Tanzania Women Lawyers Association.¹⁷⁰ The demands of WHRDs in Tanzania, in addition to the protection and promotion of human rights in general, have touched upon several societal issues, including health, education, violence, legal discrimination, and economic inequalities. Discussions on constitutional reform presented an opportunity for women's rights organisations to push for the inclusion of clear provisions on gender equality.¹⁷¹ The 2015 elections have also seen increased women participation through affirmative action.¹⁷²

Yet, the challenges faced by Tanzanian women and the demands of women's rights' activists, have often remained unaddressed. Indeed, Tanzanian women continue to face issues relating to child, early, and forced marriage, SGBV, and lack of access to justice. Moreover, the space for WHRDs has shrunk since President Magufuli came to power in 2015, as the government has cracked down on independent voices, increasingly harassing HRDs and promoting patriarchal views of women in society.¹⁷³

170 Ernest Mallya, "Women NGOs and the policy process in Tanzania: The case for the land act of 1999, African Studies Monographs 26(4)," December 2005, http://jambo.africa.kyoto-u.ac.jp/kiroku/asm_normal/abstracts/pdf/26-4/26-4-1.pdf, Accessed 16 November 2018.

171 Thomson Reuters Foundation, "Tanzania: Women push for gender equality in new constitution," October 2013, <http://news.trust.org/item/20131004020943-k4abc/>, Accessed 16 November 2018.

172 International Republican Institute, "Tanzania national election gender assessment," October 2015, https://www.iri.org/sites/default/files/wysiwyg/tanzania_gender_report.pdf, Accessed 16 November 2018.

173 DefendDefenders "Spreading fear, asserting control: Tanzania's assault on civic space," June 2018, <http://www.defenddefenders.org/wp-content/uploads/2018/06/Spreading-Fear-Asserting-Control-web.pdf>, Accessed 16 November 2018.

Legal and Policy Framework

At first glance, Tanzania may seem to provide a conducive environment for women's rights and the WHRDs promoting them. The Constitution of the United Republic of Tanzania (1977)¹⁷⁴ prohibits discrimination on the basis of gender and stipulates that women members of parliament (MPs) should be no less than 30 percent of all MPs.¹⁷⁵ Furthermore, in 2008, Tanzania adopted a National Strategy for Gender Development that outlines challenges and solutions for the achievement of "gender equality and gender equity."¹⁷⁶ However, legal gaps in the protection of women's rights continue to exist, as well as problems in ensuring the effective implementation of the legal provisions protecting these rights.

Article 13 of the Law of Marriage Act (1971)¹⁷⁷ sets the minimum age of marriage at 18 for boys, while girls can be married at 15 with parental consent, and at 14 with permission from a court. In 2016, Tanzania's High Court declared this provision unconstitutional, giving hope to WHRDs in a context where two out of five girls marry before the age of 18.¹⁷⁸ However,

174 The Constitution of the United Republic of Tanzania of 1977, <http://www.wipo.int/edocs/lexdocs/laws/en/tz/tz008en.pdf>, Accessed 9 October 2018.

175 Tanzania Women Lawyers Association, "Review of Laws and Policies related to gender based violence of Tanzania mainland," September 2014, <http://www.svri.org/sites/default/files/attachments/2016-07-05/Tanzanian%20review%20GBV%20report%202014%20by%20TAWLA%20TAMWA%20CRC%20TGNP%20ZAFELA.pdf>, Accessed 22 October 2018.

176 Ministry of Community Development, Gender and Children, "National Strategy for Gender Development," 2008, http://www.mcdgc.go.tz/data/Tanzania_-_National_Strategy_for_Gender_Development.pdf, Accessed 22 October 2018.

177 The Law of Marriage Act, Chapter 29, [http://www.rita.go.tz/eng/laws/History%20Laws/Marriage%20Ordinance,%20\(cap%202029\).pdf](http://www.rita.go.tz/eng/laws/History%20Laws/Marriage%20Ordinance,%20(cap%202029).pdf), Accessed 22 October 2018.

178 Reuters, "Tanzania High Court rules against child marriage but cultural beliefs still a concern," 12 July 2016, <https://www.reuters.com/article/us-tanzania-childmarriage/tanzania-high-court-rules-against-child-marriage-but-cultural-beliefs-still-a-concern-idUSKCN0ZS1W7>, accessed 22 October 2018. Data on child marriage from: Human Rights Watch,

Tanzania's Attorney General has appealed the ruling, and the implementation of the High Court's decision has since stalled.¹⁷⁹ Additionally, the Sexual Offences Special Provisions Act (1998)¹⁸⁰ does not cover domestic violence, nor does it define marital rape as a sexual offence.

The legal regime for women is particularly complex, and disadvantageous, in relation to issues of ownership, divorce, and inheritance. The Tanzanian legal framework has a pluralistic nature, which sees several systems, including statutory, customary, and Islamic law, operating side by side and applying to different categories of persons. In this context, the Local Customary Law Declaration Order (1963) codifies a series of tribal customary norms, which are deeply discriminatory towards women.¹⁸¹ Customary laws are often used to discriminate against women inheriting land, though the Land Act (1999) provides for women's ownership of land.¹⁸²

Additionally, principles enshrined in law are often unknown or unenforced as personally-held

"Tanzania: events of 2017", <https://www.hrw.org/world-report/2018/country-chapters/tanzania-and-zanzibar>, Accessed 22 October 2018.

179 Africanews, "Tanzania's AG appeals against court ruling raising marriage age for girls to 18," 29 September 2017, <http://www.africanews.com/2017/09/29/tanzania-s-ag-appeals-against-court-ruling-raising-marriage-age-for-girls-to-18/>, Accessed 22 October 2018.

180 Tanzania Women Lawyers Association, "Review of Laws and Policies related to gender based violence of Tanzania mainland," September 2014, <http://www.svri.org/sites/default/files/attachments/2016-07-05/Tanzanian%20review%20GBV%20report%202014%20by%20TAWLA%20TAMWA%20CRC%20TGNP%20ZAFELA.pdf>, accessed 22 October 2018. The full text of the act can be found here: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/67094/63635/F532037758/TZA67094.pdf>

181 Tanzania Local Customary Law (Declaration) (No. 4) Order, Government Notice (GN) 436/1963, Schedule 1, Laws on Guardianship [Sheria za Ulinzi], in Judicature and Application of Laws Act, TANZ. LAWS SUBSIDIARY LEGIS. [CAP 358 R.E. 2002] [hereinafter GUARDIANSHIP LAW], Rule?, https://s3.amazonaws.com/landesa_production/resource/2606/Tanzania_Local-customary-law-436_1963.pdf?AWSAccessKeyId=AKIAICR3ICC22CMP7DPA&Expires=1543471769&Signature=vPJ%2B7K1qdq2fC08jTy7LQRYpmqI%3D, Accessed 28 November 2018.

182 Social and Legal Studies, "An equal right to inherit? Women's land rights, customary law and constitutional reform in Tanzania," 10 October 2017, <https://core.ac.uk/download/pdf/144580217.pdf>, Accessed 28 November 2018.

subjective beliefs of both citizens and security forces are powerful. For instance, while Article 66 of the Law of Marriage Act prohibits adult corporal punishment in the context of marriage, many community members, including women themselves, see domestic violence as a permissible practice.¹⁸³

Women's rights and WHRDs' struggles

In addition to a mixed and ambiguous legal framework for the protection of women's rights, Tanzanian women and WHRDs face a society which is deeply patriarchal. As explained by many of the WHRDs interviewed for this report, this pervasive patriarchy begins in the household, as women are rarely consulted in family decision-making processes. This is particularly the case when it comes to financial decisions, as men are often in control of household finances, since women's financial independence would challenge traditional power structures.¹⁸⁴

"When you come out and speak, people ask, are there no other men who can discuss this? Who is she?"¹⁸⁵

This lack of inclusion of women's voices at the domestic level extends to community and public life. Despite the fact that Tanzania was one of the first countries in Africa to introduce parliamentary quotas for women, interviewed WHRDs expressed the feeling that men's voices continue to be valued more than women's. In fact, as in Uganda, women MPs struggle to go beyond their 'special seats,' as political parties rarely appoint women as candidates for constituency (non-reserved) seats.¹⁸⁶ Similarly, the idea that women should be economically dependent

183 Tanzania Women Lawyers Association, "Review of Laws and Policies related to gender based violence of Tanzania mainland," September 2014, <http://www.svri.org/sites/default/files/attachments/2016-07-05/Tanzanian%20review%20GBV%20report%202014%20by%20TAWLA%20TAMWA%20CRC%20TGNP%20ZAFELA.pdf>, Accessed 22 October 2018.

184 Social and Legal Studies, "An equal right to inherit? Women's land rights, customary law and constitutional reform in Tanzania," 10 October 2017, <https://core.ac.uk/download/pdf/144580217.pdf>, Accessed 28 November 2018.

185 DefendDefenders interview, Tanzania, August 2018.

186 Global Partners Governance, "Challenges for Female Members of Parliament in Tanzania", March 2018, <https://www.gpgovernance.net/blog/challenges-for-female-members-of-parliament-in-tanzania/>, Accessed 1 November 2018.



on men translates into difficulties in accessing skilled jobs, seen as the realm of men, leading to economic inequalities. On average, Tanzanian men earn 39 percent more than women.¹⁸⁷ Moreover, according to UN Women, a quarter of all households in mainland Tanzania and a fifth in Zanzibar are headed by women, with the vast majority characterised as "resource poor."¹⁸⁸

"Patriarchy still dominates Tanzania. Even women who are executive directors are expected to have lower salaries, because we have husbands who should be supporting us."¹⁸⁹

WHRDs interviewed for this report noted that traditional gender roles have been further entrenched since the election of President Magufuli in 2015. Despite the nomination of Tanzania's first female Vice-President, Magufuli's presidency has been characterised by discourse and policies that have caused outrage among WHRDs.¹⁹⁰ For example, in June 2017, President Magufuli declared that pregnant schoolgirls would not be allowed to continue their education, and pregnant girls have since been arrested and forced to reveal the identity of the men who impregnated them.¹⁹¹ In September 2018, President Magufuli also accused women using contraceptives of being "lazy," followed by a ban on family planning advertisements by the Ministry of Health, Community Development, Gender, Elderly and Children.¹⁹²

These policies are particularly worrying in light of Tanzania's high teenage pregnancy rate, as the National Bureau of Statistics estimates that 21 percent of girls between 15 and 19 years of age have given birth.¹⁹³ Excluding them from educational opportunities would further reduce the number of women in higher echelons of public life (the enrollment rate of women in tertiary education is about half of that for men), and other economic opportunities.¹⁹⁴ In this context, access to education for women has long been a crucial mission for WHRDs in Tanzania. Unfortunately, it has become a particularly controversial topic under President Magufuli. After the President's ban on pregnant schoolgirls, WHRDs started an online campaign with the hashtags #ArusiShule ("let her return") and #StopMagufuli, as well as a petition calling for more rather than less education, including sexual education to prevent unwanted pregnancies.¹⁹⁵

"According to "culture," women are supposed to stay in the kitchen. So the first attack on WHRDs is based on the fact that women are not supposed to be seen or heard. So when a woman stands up to defend people who are victimised or stigmatised, she is seen as a rebel, someone who was not well raised by her parents, someone who does not respect their culture."¹⁹⁶

187 The Citizen, "Tanzania: Female workers still paid less than male colleagues," 8 March 2018, <https://allafrica.com/stories/201803080503.html>, Accessed 1 November 2018.

188 UN Women, "Tanzania," <http://africa.unwomen.org/en/where-we-are/eastern-and-southern-africa/tanzania>, Accessed 22 October 2018.

189 DefendDefenders interview, Tanzania, August 2018.

190 The Citizen, "Ruling party VP nominee a first for women," 14 July 2015, <http://www.thecitizen.co.tz/News/Ruling-party-VP-nominee-a-first-for-women/1840340-2788528-wvg0ku/index.html>, Accessed 1 November 2018.

191 Human Rights Watch, "Africa: Pregnant Girls, Young Mothers Barred from School," 14 June 2018, <https://www.hrw.org/news/2018/06/14/africa-pregnant-girls-young-mothers-barred-school>, Accessed 22 October 2018.

192 Amnesty International, "Tanzania: Decision to pull family planning ads an attack on sexual and reproductive

rights," 21 September 2018, <https://www.amnesty.org/en/latest/news/2018/09/tanzania-decision-to-pull-family-planning-ads-an-attack-on-sexual-and-reproductive-rights/>, Accessed 16 November 2018.

193 The Guardian, "'After getting pregnant, you are done': no more school for Tanzania's mums-to-be" 30 June 2017, <https://www.theguardian.com/global-development/2017/jun/30/tanzania-president-ban-pregnant-girls-from-school-john-magufuli>, Accessed 23 October 2018.

194 UNESCO, "United Republic of Tanzania - Participation in education," <http://uis.unesco.org/country/TZ>, Accessed 23 October 2018.

195 The East African, "Activists slam President Magufuli for teen mothers school ban," 23 June 2017, <http://www.theeastafrican.co.ke/news/ea/Activists-slam-President-Magufuli-teen-mothers-school-ban/4552908-3984398-d3oascz/index.html>, Accessed 23 October 2018.

196 DefendDefenders interview, Tanzania, August 2018.

Additionally, many of these pregnancies may be the result of sexual violence, as some estimates note that one out of ten women aged 15 to 49 years have experienced forced sexual intercourse.¹⁹⁷ This percentage increases exponentially when it comes to physical violence in general, experienced by two out of five women aged 15 to 49. This is often tolerated due to patriarchal traditional norms.¹⁹⁸ The elimination of sexual violence, or at the very least a more streamlined approach to justice and redress, remain key areas of work for WHRDs in Tanzania.

The eradication of SGBV is thus a major area of focus for WHRDs, closely intertwined with other women-related issues and traditional customs, such as child, early, and forced marriage, FGM, and community killings of rural women accused of witchcraft.¹⁹⁹ In particular, WHRDs point out that women who are victims of SGBV at the domestic level may remain trapped in their violent marriage because of the societal stigma associated with divorced women. In Zanzibar, WHRDs also reported having to fight against families who push girls victim of rape to marry their rapist to avoid "shame" for the family.

A specific form of sexual abuse against women prevalent in Tanzanian society is 'sextortion,' which is defined as the misuse of authority to force someone into an unwanted sexual activity for corrupt purposes, or, in other words, as "a form of corruption in which sex and not money is the currency for the bribe."²⁰⁰ As one WHRD explained, a key difference between sextortion and other forms of corruption is that women often do not have a choice to refuse the "sexual bribe." Despite difficulties in accessing reliable data on the extent of this practice, due to the social shame attached to reporting this type of abuse, WHRDs stressed the pervasiveness of

sextortion, stating that it can be found not only in politics and high level positions, but also in hospitals, schools, universities, law enforcement, and in the transport sector. In this context, WHRDs are also at risk of becoming victims, especially if they are arrested by the police during demonstrations.

Another key issue tackled by Tanzanian WHRDs is women's property rights, which are intertwined with divorce and inheritance. As interviewed WHRDs explained to DefendDefenders, title deeds to property or businesses are traditionally seen as the prerogative of men, regardless of the role played by women in the acquisition of assets or in the running of a business. This is particularly important when it comes to land ownership, as the land used by a family tends to be titled only in the name of the man who is the head of the household, meaning that women can lose access to their land if they divorce or if their male relative or husband dies.²⁰¹ As a result, only 20 percent of women own land in their name.²⁰²

Lack of evidence of female ownership becomes central when women decide to bring disputes to court. For example, one of the WHRDs interviewed was supporting the court case of a woman who had bought a motorcycle with her own money, but saw it taken away from her during her divorce, as the motorcycle was officially owned by her husband. In this context, the inconsistencies between statutory law, customary norms, and practice often lead to women being discriminated in their search for justice. Even when laws are not discriminatory in nature, enforcement institutions may reflect traditionally held attitudes in their interpretation.²⁰³ Access to justice is further limited for women in rural areas, where legal aid is often not available, traditional attitudes more entrenched, and awareness of women's rights less widespread. In Zanzibar, the struggle to access justice is particularly difficult as no women judges are appointed to Islamic courts, which are often used to disenfranchise women who seek justice, including for grave violations such as rape, and the WHRDs who support them.

201 UNA Tanzania, "Land rights in Tanzania - A gender issue," 8 November 2017, <http://una.or.tz/land-rights-tanzania-gender-issue/>, Accessed 23 October 2018.

202 Ibid.

203 Ibid.

197 UN Women, "Tanzania" <http://africa.unwomen.org/en/where-we-are/eastern-and-southern-africa/tanzania>, Accessed 22 October 2018.

198 Ibid.

199 Legal and Human Rights Centre, "Human Rights Situation Report January-June 2018," August 2018, [http://www.humanrights.or.tz/assets/images/upload/files/Mid-Year%20Human%20Rights%20Report%202018\(2\).pdf](http://www.humanrights.or.tz/assets/images/upload/files/Mid-Year%20Human%20Rights%20Report%202018(2).pdf), Accessed 23 October 2018.

200 Women Fund Tanzania, "What is sextortion? (a brief intro...)" <https://wft.or.tz/2016/08/10/what-is-sextortion-a-brief-intro/>, Accessed 23 October 2018.



"People are not born gender biased. The bias is transferred from one generation to the next, and it is this transfer that reinforces male dominance. It is this social upbringing that reinforces the idea that boys are superior to girls, that says that a girl has nothing to say if a man is in the room."²⁰⁴

Working Under Pressure in a Shrinking Civic Space

WHRDs are themselves subject to societal norms and stereotypes, further compounding their struggles, forcing them to attain the same respect from communities and stakeholders as their male colleagues while also promoting human rights. What is more, some WHRDs lamented feeling marginalised even within the human rights community, where not all HRDs are gender-sensitive and where, in the words of an interviewee, "women issues are seen as just another drop in the bucket."²⁰⁵

The focus on traditional cultural values espoused by the current government complicates this picture. As one WHRD pointed out, while women and children issues were previously less controversial, under the current government, protecting these rights can lead to clashes with authorities. The assault on civic space that has characterised Magufuli's presidency has also resulted in increased harassment of WHRDs.²⁰⁶ For example, many women's rights organisations at the forefront of the petition against President's Magufuli ban on pregnant schoolgirls were threatened with deregistration.²⁰⁷ In this context, several WHRDs lamented that they increasingly struggle to cooperate with authorities, as authorisation is required for most civil society

204 DefendDefenders interview, Tanzania, August 2018.

205 DefendDefenders' interview, Tanzania, August 2018.

206 DefendDefenders, "Spreading fear, asserting control: Tanzania's assault on civic space," June 2018, <http://www.defenddefenders.org/wp-content/uploads/2018/06/Spreading-Fear-Asserting-Control-web.pdf>, Accessed 16 November 2018.

207 The Guardian, "After getting pregnant, you are done': no more school for Tanzania's mums-to-be," 30 June 2017, <https://www.theguardian.com/global-development/2017/jun/30/tanzania-president-ban-pregnant-girls-from-school-john-magufuli>, Accessed 23 October 2018.

activities, in a context in which corruption is rife and the risk of sextortion for WHRDs high.

Interviewed WHRDs reported experiencing threats including intimidating messages and phone calls, arbitrary arrest, physical attacks, and body searches by male police officers during demonstrations. In Zanzibar, WHRDs reported that speaking against discrimination, particularly under the Islamic justice system, may result in WHRDs being openly threatened during prayer services at Mosques. A well-known incident involved Fatma Karume, a prominent Zanzibari lawyer and activist, and president of the Tanganyika Law Society, who was attacked by a man in the street and then surrounded and harassed by police in August 2018.²⁰⁸ An interviewed WHRD promoting the rights of women in pastoralist communities also reported being arrested in the middle of the night, and accused of being Kenyan and inciting her community against the government. Others mentioned the case of a WHRD arrested as she was providing sexual education to local communities in Northern Tanzania, and at least two cases of WHRDs murdered in Zanzibar. In this context, WHRDs pointed out that arrests and attacks are used to intimidate WHRDs, and that their fear of repression has increased under the Magufuli government.

"This is my right – nobody should ever take my right away. People tell me that I'm lucky that I am not in prison; that I'm lucky to still be alive. But in my heart, I know this is right."²⁰⁹

WHRDs face further discrimination aimed at excluding them from the professional sector. According to interviewed WHRDs, a common strategy to discourage women from taking up positions of relevance in society is to dig into their private lives to discredit their reputation, such as questioning a divorced woman's ability to perform in her career if she has "failed" in her marriage.

The same tactic is used against WHRDs who are sometimes victims of verbal attacks and smear

208 Fatma Karume, 9 August 2018, Twitter, https://twitter.com/fatma_karume/status/1027560699202035712?lang=en, Accessed 23 October 2018.

209 DefendDefenders interview, Tanzania, August 2018.

campaigns focused on their private lives to discredit their human rights work. These tactics are often perpetrated by government authorities, security forces, or even community members themselves. For example, interviewees reported that single WHRDs are told they will never get married, while those who are married or divorced are labelled as homewreckers. WHRDs are also potential targets of rumors on their sexual conduct, questions of spousal loyalty, or accusations of prostitution. As one WHRD explained, this discourse resonates with traditional views on gender roles, as timidity, obedience, and silence are seen as key qualities for women. Furthermore, a WHRD reported that this strategy of blurring the lines between their work and private life can be exacerbated by the fact that, due to lack of resources to rent office premises, WHRDs often work from their places of residence, potentially publicising their private lives.

This extreme social pressure exerted on women who speak up often results in self-censorship among WHRDs. According to WHRDs interviewed for this report, self-censorship is a pervasive practice that extends to the organisational level, as the impact of every public statement needs to be weighed against potential persecution in the media. This is also the case for women who are victims of violations, who may not report incidents or seek reparation because of the potential social or reputational cost. This high level of self-censorship, in turn, exacerbates other existing obstacles to the work of WHRDs, who already work in small numbers and are often overburdened.

"Even as an activist, sometimes I remain silent. We are female, we have families, we don't know what will happen."²¹⁰

Another strategy to delegitimise WHRDs, used by authorities and community leaders alike, is to accuse them of being vehicles for foreign interests and neocolonial values that are counter to Tanzanian or African culture. This discourse is particularly prevalent in Zanzibar, where WHRDs are often opposed by Islamic scholars, who question their religiosity and accuse them of trying to disrupt Zanzibari society using foreign funding. In

210 DefendDefenders interview, Tanzania, August 2018.

this context, some WHRDs highlighted that they struggle to approach women in rural areas, where they are seen as intruders.

"Quite a lot is being done in the name of culture against women. But there is no culture that allows women to be beaten up. This is used by men in order to silence women."²¹¹

At the organisational level, interviewed WHRDs mentioned funding limitations as a major barrier to their work. Some identified a lack of interest among donors towards women's rights as the source of this problem; others expressed the need to improve skills in budgeting and proposal writing. Some WHRDs blamed this lack of resources on the inability of many women-focused organisations to employ salaried staff, forcing them to rely on volunteers who generally have a high turnover rate, reducing institutional knowledge. Furthermore, some WHRDs pointed out that the limited availability of resources for women organisations leads to strong competition, leading to increased fragmentation of the country's women rights movement. Such fragmentation was identified as a key challenge, as WHRDs recognise that only acting as a movement with a unified voice can help them face growing threats and social pressure. Furthermore, women's poverty was also identified as a challenge to increasing involvement, as women tend to prioritise basic needs.

"After being mocked in public about being a bad wife because of my human rights work, I said 'we are not talking about marriage, we are talking about rights.' He was shocked."²¹²

In order to overcome the challenges faced by WHRDs and women in general, interviewed WHRDs identified raising awareness on women's rights as the cornerstone of their long-term success. They indicated a need for educating the public to understand that women should not be second-class citizens, starting by reminding parents of the value of education for their daughters and sensitising younger generations on the importance of mutual

211 DefendDefenders interview, Tanzania, August 2018.

212 DefendDefenders interview, Tanzania, August 2018.



respect and human rights. In order to achieve these goals, some WHRDs stressed the importance of conducting professional research into women issues to develop evidence-based advocacy, including training communities in monitoring and documenting violations.

Moreover, all WHRDs interviewed for this report expressed the need to build a strong network among women initiatives in Tanzania. This would not only enable them to have a network of monitors across the country, but also to establish effective referral mechanisms to provide victims of violations with easier access to support mechanisms, such as social services and legal aid. More importantly, building a united intergenerational women's movement would allow WHRDs to speak with a unified voice against threats and social pressure. In the words of one HRDs, a strong network is needed to stop "having a one-woman show."²¹³

In order to achieve these goals, WHRDs emphasised the importance of mapping women initiatives beyond major NGOs, and establishing spaces for sharing experiences and networking. In order to successfully involve women from all backgrounds, including those living in remote rural communities, some WHRDs stressed the need to rearticulate issues in a way that can resonate with local knowledge and to use common language to debunk patriarchy even in the places where it is most entrenched.

As a preventive measure, in light of growing threats and harassment, WHRDs expressed the need to establish emergency mechanisms for at-risk WHRDs to improve their capacity in security management. One of the interviewees also stated that the prospect of exile is increasingly an option for the most vocal WHRDs, calling for the creation of an emergency fund for those in need of emergency relocation. The need for streamlined support mechanisms was also identified for women facing abuse, through the creation of relocation centres and shelters.

"We can't fix this with laws. We have to change the mindset of the people. We should start with young children in schools, with young boys and girls, to teach about human rights, women's rights."²¹⁴

213 DefendDefenders interview, Tanzania, August 2018.

214 DefendDefenders interview, Tanzania, August 2018.



Conclusion

Despite the progress achieved over the past decades, the situation of WHRDs in the sub-region remains fragile. In Uganda WHRDs have faced an increasingly hostile legal environment with the adoption of several laws that have constrained their ability to work in a safe and enabling environment. In Kenya, WHRDs demonstrating for women's rights are increasingly at risk of attacks. In Tanzania, WHRDs work in the context of a rapidly shrinking civic space for all HRDs, with a government that has openly pushed for traditional gender roles, causing the outrage of women's rights activists.

Despite different legal frameworks and cultural contexts, patriarchy remains a pervasive source of human rights violations against women, and one of the main barriers to all WHRDs. In addition to persecution from state authorities, WHRDs risk being rejected by their communities and families, and being marginalised within the human rights movement itself, as the latter reflects broader patriarchal attitudes at play within society. Therefore, WHRDs are more vulnerable than other civil society actors, and are marginalised because of who they are and their work of defending human rights. Despite these obstacles, WHRDs continue to promote women's rights, fight for the eradication of widespread violence against women, and advocate for the transformation of a patriarchal mindset that enables both abuses and impunity. They play a vital role in documenting and reporting human rights violations and ensuring access to justice for victims.

Mainstreaming gender-based approaches to human rights, monitoring violations and abuses against WHRDs, and promoting their role in society is crucial for any intervention aimed at fostering the role of HRDs in the region. This should be accompanied by efforts to change patriarchal norms to ensure that the rights of all are respected, as no effective long-term change can happen without addressing the root causes of human rights violations against women and WHRDs. Lastly, it is necessary for WHRDs to unite, share experiences, and collaborate more systematically to form an effective network for supporting victims of violations, eradicating discrimination, and asserting their equal role in society. In light of these findings, the following recommendations should be adopted.



Recommendations

To governments of Uganda, Kenya, and Tanzania:

- Ensure that violations against women human rights defenders committed by state and non-state actors are promptly and impartially investigated and that those responsible are held accountable;
- Recognise and acknowledge the crucial role played by women human rights defenders as an initial step towards their protection;
- Adopt national legislation to protect human rights defenders, including women human rights defenders, to ensure they work in a safe environment free from attacks, reprisals, and unreasonable restrictions;
- Ensure that victims of sexual violence are attended to by personnel who are qualified from a gender perspective and trained in interacting with victims of such violence and responding to their specific situation and needs. Victims must be consulted during each step of process;
- Strengthen national institutions to ensure the protection of girls and women;
- Ensure that legal provisions on women's rights are implemented and upheld in national courts, and that all women victims of violations have equal and affordable access to justice mechanisms;
- Adopt a policy on the eradication of practices of sextortion in public and private services;
- Implement relevant decisions and recommendations of UN human rights bodies and mechanisms, including special procedures and the UN Committee on the Elimination of Discrimination against Women;
- Extend a standing invitation to all UN special procedures and regional mechanisms to visit your countries; and
- Allow the UN Committee on the Elimination of Discrimination against Women to receive individual complaints and launch inquiry procedures, by making the necessary declaration under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and/or ratifying its Optional Protocol (OP-CEDAW), or lifting reservations.

To the Government of Uganda:

- In line with international human rights standards, amend the Non-Governmental Act (2016), Public Order Management Act (2013), and section 24 of the Computer Misuse Act (2011) that place undue restrictions on the rights to free expression and association of human rights defenders, including women human rights defenders.



To the Government of Kenya:

- In line with international human rights standards, amend Section 96 of the Penal Code criminalising 'incitement to violence.'

To the Government of Tanzania:

- Respect women and girls' right to education, including by allowing pregnant schoolgirls to continue their studies, and include sexual education in national education programmes; and
- Immediately implement the Constitutional Court Decision to amend Article 13 of the Law of Marriage Act (1971) to establish the same age of marriage for boys and girls.

To the National Human Rights Institutions in Uganda, Kenya, and Tanzania:

- Document the specific issues and vulnerabilities of women human rights defenders, and promote their crucial role in the protection of human rights;
- Monitor and report on violation of women's rights, including human rights violations by the police and other state institutions;
- Integrate a gender dimension in the planning and implementation of all programmes and other interventions related to human rights defenders,
- Promote the adoption of the UN Declaration on Human Rights Defenders within the respective national legal framework, emphasising women human rights defenders; and
- Promote the adoption of a National Action Plan on human rights defenders, emphasising women's rights.

To women human rights defenders:

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



To national coalitions of human rights defenders in Uganda, Kenya, Tanzania:

- Commit to strengthening HRD networks with a particular focus on WHRDs, and ensure gender mainstreaming;
- Report security concerns of WHRDs to the relevant authorities, and where appropriate seize the African Commission on Human and People's Rights when domestic means of judicial appeal are ineffective; and
- Enhance cooperation and engagement with the government, and National Human Rights Institutions, and share information on human rights concerns.

To civil society organisations:

- Mainstream gender-sensitive approaches into all aspects of human rights work, and highlight and advocate for the protection of women human rights defenders by reporting on and recognising their work;
- Mainstream a gender-based approach in protection mechanisms for WHRDs, taking into consideration the specific needs of women human rights defenders at risk; and
- Promote campaigns to address the prejudices against the work of women human rights defenders.

To UN human rights bodies and mechanisms:

- The UN Human Rights Council should continue mainstreaming the promotion and protection of women's rights, the fight against gender discrimination, and the promotion of gender equality into its work, especially the situation of women human rights defenders and their specific protection needs;
- The Council should recognise the need for enhanced protection of women's rights and women human rights defenders by adopting a specific resolution addressing their work, role, and protection needs; and
- Relevant bodies, such as UN Women and the Office of the UN High Commissioner for Human Rights should provide governments with technical assistance and capacity-building to develop laws, policies, and practices that support and protect women human rights defenders.

To the ACHPR and its special mechanisms:

- The Special Rapporteurs on human rights defenders, women's rights, and on freedom of opinion and expression should request visits to Uganda, Kenya, and Tanzania, to assess the situation of women human rights defenders and propose recommendations to address their challenges.

PART 3 – LGBT+ Human Rights Defenders



Caught between the personal and the political, LGBT+ HRDs working in Uganda, Kenya, and Tanzania face deep-rooted challenges related to their human rights work and the pervasive climates of fear in which they operate. HRDs in this field must upend popular notions of homosexuality as a malicious “foreign import,” fight attempts to criminalise or harshly punish consensual relations between same-sex adults, and navigate increased visibility as a pendulum between empowerment and vulnerability.

While the struggle of LGBT+ communities in East Africa has come to the forefront of public debate and scrutiny since the early 2010s, the roots of homophobia reach much further back. Being erstwhile British colonies, the sections of the penal codes corresponding to sodomy in Uganda, Kenya, and Tanzania have colonial origins.²¹⁵ While England and Wales decriminalised homosexual acts in 1967, and Scotland in 1981, many former colonies have kept these laws.²¹⁶

Though LGBT+ HRD challenges in Uganda, Kenya, and Tanzania overlap, the three countries face different obstacles within their respective national contexts. In Uganda, the LGBT+ community’s fight for survival from the years 2009–2014, when discourse around draconian legislation was most pronounced, has now led to more consistent push for visibility and recognition of LGBT+ rights and organisations, but not without backlash from the government and other segments of society. In Kenya, HRDs have made significant gains for their rights through organised strategic litigation and are potentially steps away from full decriminalisation. Since the election of President Magufuli in 2015, Tanzania has seen an unprecedented shrinking of civic space with amplified effects on LGBT+ HRDs.

This report seeks to detail and analyse the experiences faced by LGBT+ HRDs in Uganda, Kenya, and Tanzania, and explore their ability to promote and protect human rights while taking stock of both their accomplishments and ongoing challenges. For clarification, the reference to LGBT+ HRDs in this report encompasses all HRDs working to promote and protect human rights for LGBT+ people, regardless of whether they identify on the LGBT+ spectrum.

215 Human Rights Watch, “This Alien Legacy: The Origins of “Sodomy” Laws in British Colonialism,” 17 December 2008, <https://www.hrw.org/report/2008/12/17/alien-legacy/origins-sodomy-laws-british-colonialism>, Accessed 16 November 2018.

216 Ibid.



Glossary of Terms

- **LGBT+:** Stands for: lesbian, gay, bisexual, transgender, and other sexual minorities. Different cultures use different terms to describe people who have same-sex relationships or who exhibit non-binary gender identities.
- **SEXUAL ORIENTATION:** Refers to a person;s physical, romantic, and/or emotional attraction towards other people. Everyone has a sexual orientation, which is part of their identity. Gay men and lesbian women are attracted to individuals of the same sex. Heterosexual people are attracted to individuals of a different sex from themselves. Bisexual people may be attracted to individuals of the same or different sex.
- **GENDER IDENTITY:** Reflects a deeply felt and experienced sense of one;s own gender. Everyone has a gender identity, which is part of their overall identity. A person;s gender identity is typically aligned with the sex assigned to them at birth. Transgender is an umbrella term used to describe people with a wide range of identities including people whose appearance and characteristics are seen as gender atypical, and whose sense of their own gender is different to the sex that they were assigned at birth.
- **QUEER:** A term often used to express fluid identities and orientations which fall outside the norm of cisgender and heterosexual identities and practices. It is an umbrella term and often used interchangeably with LGBT+.
- **TRANSGENDER:** An umbrella term used to describe a wide range of identities whose appearance and characteristics are perceived as gender atypical. Transgender women identify as women but were classified as males when they were born, transgender men identify as men but were classified female when they were born, while other transgender people don't identify with the gender-binary at all (non-binary or gender non-conforming). Some transgender people seek surgery or take hormones to bring their body into alignment with their gender identity; others do not.
- **INTERSEX:** Intersex people are born with physical or biological sex characteristics, such as sexual anatomy, reproductive organs, hormonal patterns and/or chromosomal patterns, which do not fit the typical definitions of male or female. These characteristics may be apparent at birth or emerge later in life, often at puberty. Intersex people can have any sexual orientation and gender identity.
- **GENDER NON-CONFORMING:** A broad term referring to people who do not behave in a way that conforms to the traditional expectations of their gender, or whose gender expression does not fit neatly into any category.

Source: UN Free & Equal,¹ Human Rights Campaign²

1 UNFE, "DEFINITIONS," <https://www.unfe.org/definitions/>, Accessed 16 November 2018.

2 Human Rights Campaign, "Glossary of Terms," 2018, <https://www.hrc.org/resources/glossary-of-terms>, Accessed 5 October 2018.



Uganda – LGBT+ Human Rights Uganda Defenders

An Uphill Battle

The rights of LGBT+ people in Uganda have come to the forefront of public discussion since the early 2010s, with the introduction of the repressive Anti-Homosexuality Bill in 2009.²¹⁷ It was signed into law as the Anti-Homosexuality Act (AHA) by President Yoweri Museveni on 24 February 2014²¹⁸ (with the initial draft Section 3 prescribing the death penalty for "aggravated homosexuality"²¹⁹ replaced with life imprisonment). Article 31 of the AHA criminalised the "promotion of homosexuality," vague language which is still used to limit the activities of LGBT+ HRDs and CSOs. The law was nullified by the Constitutional Court on a technical fault in August 2014²²⁰ after a petition was filed by HRDs with the Civil Society Coalition on Human Rights and Constitutional Law asking the Constitutional Court to declare AHA null and void.²²¹ However, significant challenges for Ugandan LGBT+ HRDs persist to this day, while new threats to their freedom of expression and association have also emerged.

"When something is threatening to endanger your life, you don't run away and hide, you organise."²²²

Despite the nullification of the AHA, police still halt events, harass LGBT+ HRDs, and stifle their work,

217 "Anti-Homosexuality Act," 24 February 2014, <http://www.refworld.org/pdfid/530c4bc64.pdf>, Accessed 16 November 2018.

218 BBC News, "Ugandan President Yoweri Museveni Signs Anti-Gay Bill" 24 February 2014, <https://www.bbc.com/news/world-africa-26320102>, Accessed 16 November 2018.

219 "Anti-Homosexuality Bill," 25 September 2009, <http://www.lgbt-ep.eu/wp-content/uploads/2013/12/UGANDA-Anti-Homosexuality-Bill.pdf>, Accessed 16 November 2018.

220 BBC News, "Uganda court annuls anti-homosexuality law," 1 August 2014, <https://www.bbc.com/news/world-africa-28605400>, Accessed 16 November 2018.

221 Outright International, "Petition 8 of 2014, Prof J Oloka-Onyango & others vs. Attorney General of Uganda," 11 March 2014, <https://www.outrightinternational.org/sites/default/files/Uganda%20Anti%20Homosexuality%20Act%20Petition%20No.%20008%20of%202014.pdf>, Accessed 16 November 2018.

222 DefendDefenders interview, Uganda, July 2018

often on charges of "promotion of homosexuality," "recruitment," or "exhibition" of homosexuality.²²³ Article 29 of the Constitution of Uganda²²⁴ provides for freedom of expression and association, yet this is limited by the erroneous application of POMA regulations, which requires that organisations give advance notice to police of the time, place, and purpose of any public gathering.²²⁵ Police misinterpret the requirement for notification as a request for permission to assemble. As a result, Ugandan LGBT+ HRDs consulted for this research reported that POMA causes difficulty in organising activities without prior permission, with police often interrupting or raiding events, workshops, and trainings, while stressing that the law does not require them to give permission for these events in the first place.

In April 2018, there were talks in Ugandan Parliament to re-table anti-homosexuality legislation.²²⁶ MPs moved a motion to praise Speaker Rebecca Kadaga for 'standing up' at the 138th Inter-Parliamentary Union Summit in Geneva against the endorsement of LGBT+ rights.²²⁷ This renewed conversation in parliament regarding the

223 The Guardian, "Pride Uganda has been crushed. Please don't look away," 21 August 2017, <https://www.theguardian.com/commentisfree/2017/aug/21/lgbt-ugandans-pride-uganda>, Accessed 16 November 2018.

224 Article 29(1)(a)(d)(e), "Constitution of the Republic of Uganda," 1995, http://www.statehouse.go.ug/sites/default/files/attachments/Constitution_1995.pdf, Accessed 19 November 2018.

225 Part II Section 5(1), "Public Order Management Act," 2013, <https://ulii.org/system/files/legislation/act/2013/1/PUBLIC%20ORDER%20MANAGEMENT%20ACT.pdf>, Accessed 19 November 2018

226 New Vision, "MPs renew call for anti-homosexual law," 17 April 2018, https://www.newvision.co.ug/new_vision/news/1475795/mps-renew-anti-homosexual-law, Accessed 16 November 2018.

227 Gay Times UK, "Ugandan politicians aiming to bring back harsher anti-gay laws," 12 April 2018, <https://www.gay-times.co.uk/community/103717/ugandan-politicians-aiming-to-bring-back-harsher-anti-gay-laws/>, Accessed 16 November 2018.



government's official position on homosexuality.²²⁸ The possibility of reintroducing the AHA could be extremely detrimental for the gains made by HRDs since the nullification of the AHA in 2014 – especially given that LGBT+ HRDs continue to face threats from physical, verbal, and digital attacks.

"There is a fear. We want to ask what the government's position is on these issues, but we have to be careful what we ask for. They might just give a negative response."²²⁹

Legal and Policy Framework

Several Ugandan laws establish highly discriminatory provisions against the LGBT+ community, with severe punishments. Section 145 of the Ugandan Penal Code Act (1950)²³⁰ criminalises "carnal knowledge against the order of nature" punishable by imprisonment for life, while Section 146 criminalises "attempt to commit unnatural offences" punishable by imprisonment up to seven years. This has been a major barrier for LGBT+ HRDs whose work is painted with allegations of promoting or committing a crime.²³¹

"I have faced backlash from my family, from the neighbourhood – people say homophobic things in the street or they chase you, want to beat you, undress you, try to find out if you are a man or a woman."²³²

A struggle for HRDs has been the registration of organisations that work for LGBT+ rights under the the NGO Act.²³³ Official registration and government

acknowledgement helps organisations legitimise their work and legally secure funding. Article 31 of the NGO Act bars registration of organisations whose objectives "as specified in its constitution are in contravention of the laws of Uganda."²³⁴ This also allows the government to deny registration to groups advocating for legislative changes, and this vague language has been used to deny registration to groups advocating for LGBT+ rights.²³⁵ In particular, the organisation Sexual Minorities Uganda (SMUG) has been refused by the Ugandan Registration Services Bureau to reserve their name as "Sexual Minorities Uganda," therefore not allowing them to register.²³⁶ The organisation was asked to explain their activities, and on this basis refused registration as they are seen to be promoting illegal activities. These repressive registration barriers have created an environment of constant surveillance for LGBT+ organisations, who are forced to limit their activities and objectives to what is deemed appropriate by state authorities. The NGO Act also includes provisions that authorise the NGO Board to visit NGO offices and inspect their activities.²³⁷ LGBT+ HRDs reported that their offices are often visited by police, sometimes unannounced, who accuse organisations of promoting homosexuality.²³⁸

[The%20Non%20Governmental%20Organisations%20ACT%202016-1%281%29.pdf](https://ulii.org/system/files/legislation/act/2016/1/The%20Non%20Governmental%20Organisations%20ACT%202016-1%281%29.pdf), Accessed 16 November 2018.

234 Article 31, Non-Governmental Organisations Act, 30 January 2016, <https://ulii.org/system/files/legislation/act/2016/1/The%20Non%20Governmental%20Organisations%20ACT%202016-1%281%29.pdf>, Accessed 16 November 2018.

235 International Center for Not-For-Profit Law, "Civic Freedom Monitor: Uganda," 18 May 2018, <http://www.icnl.org/research/monitor/uganda.html>, Accessed 16 November 2018.

236 Sexual Minorities Uganda, "Sexual Minorities Uganda-SMUG To File Written Submissions On 15th May 2017 in the SMUGvsURSB Case," 28 April 2017, <https://sexualminoritiesuganda.com/smug-to-file-written-submissions-on-15th-may-2017-in-the-smugvsursb-case/>, Accessed 16 November 2018.

237 Human Rights Awareness and Promotion Forum, "Position Paper on the Non-Governmental Organisations Act, 2016," 20 March 2016, <http://hrapf.org/wp-content/uploads/2017/06/160320hrapfpositionpaperonthengoact2016.pdf>, Accessed 16 November 2018.

238 Kuchu Times, "THE JOURNEY OF ANGELS REFUGEE SUPPORT GROUP," 28 February 2018, <https://www.kuchutimes.com/2018/02/the-journey-of-angels-refugee-support-group/>, Accessed 16 November 2018.

228 New Vision, "MPs renew call for anti-homosexual law," 17 April 2018, https://www.newvision.co.ug/new_vision/news/1475795/mps-renew-anti-homosexual-law, Accessed 16 November 2018.

229 DefendDefenders interview, Uganda, July 2018.

230 Penal Code Act, 1950, <https://ulii.org/ug/legislation/consolidated-act/120>, Accessed 16 November 2018.

231 The Guardian, "No gay promotion can be allowed: Uganda cancels pride events," 21 Aug 2017, <https://www.theguardian.com/global-development/2017/aug/21/no-gay-promotion-can-be-allowed-uganda-cancels-pride-events-lgbt>, Accessed 16 November 2018.

232 DefendDefenders interview, Uganda, July 2018.

233 "Non-Governmental Organisations Act," 30 January 2016, <https://ulii.org/system/files/legislation/act/2016/1/>

"In most cases we organise trainings and dialogues at our office and we have to inform the police and they issue a clearance. Many times the police have actually come here – because people report that we are recruiting others into homosexuality. The police have also searched this office before, and so we don't keep LGBT+ related things in the office."²³⁹

The Anti-Pornography Act (APA) (2014)²⁴⁰ and the government's Pornography Control Committee²⁴¹ also pose a threat to LGBT+ organisations and HRDs, with many expressing fear that the government could monitor their online activities.²⁴² LGBT+ HRDs interviewed for this report expressed concern that these limitations to their online activities threatened their freedom of expression.

"People try to hack our website and put pornography there. This makes us vulnerable to government censorship, blackmail, extortion even more. We have not been charged under the APA, but we get a lot of blackmail using the APA."²⁴³

The Sexual Offences Bill (2015)²⁴⁴ was also criticised by HRDs, who pointed out that several provisions of the bill further endanger the rights of LGBT+ persons.²⁴⁵ For instance, the inclusion of women as

offenders in the "carnal knowledge against the order of nature" provision (Clause 16), vague definition of "sexual acts" (Clause 1), and consideration of a positive HIV/AIDS status as part of "aggravated defilement" liable to punishment for life (Clause 24). These provisions could unfairly target lesbian, bisexual, and queer women, as well as defenders working with "key populations" vulnerable to HIV/AIDS, including men who have sex with men (MSM), sex workers, and transgender people.²⁴⁶

"We have had issues with our website being hacked, our emails have been tampered with, and our website being pulled down."²⁴⁷

Threats, Humiliation, and Attacks

LGBT+ HRDs in Uganda continue to face assault and mob violence. Some within the LGBT+ community are more vulnerable to attacks because of their gender identity and physical appearance. HRDs noted that transgender people face harassment and physical abuse simply for expressing their identities in public spaces, because they are perceived to be flouting socially-accepted gender norms.²⁴⁸ A transgender HRD in Kampala was assaulted in October 2015 by a homophobic mob, which led to her being hospitalised with injuries to her face and body.²⁴⁹ Transgender women in Uganda regularly face violence and harassment at the hands of police and the community, and in the case of transgender women sex workers, from their clients as well.²⁵⁰ In

Bill 2015 on sex workers, LGBTI persons and people living with HIV / AIDS," 12 May 2016, <https://hrapf.org/?m-docs-file=1681&m-docs-url=false>, Accessed 16 November 2018.

²⁴⁶ Ibid.

²⁴⁷ DefendDefenders interview, Uganda, July 2018.

²⁴⁸ American Jewish World Service & others, "The State of Trans Organizing," 2017, <https://transactivists.org/wp-content/uploads/2017/10/Trans-REPORT-for-the-web.pdf>, Accessed 16 November 2018.

²⁴⁹ Gay Star News, "Trans activist escapes death after being beaten by Ugandan mob," 26 October 2015, <https://www.gaystarnews.com/article/trans-activist-escapes-death-after-being-beaten-by-ugandan-mob/#gs.Xhnapz8>, Accessed 16 November 2018.

²⁵⁰ Amnesty International, "We are not criminals, we are people' A Ugandan sex worker tells her story," 26 May 2016, <https://www.amnesty.org/en/latest/news/2016/05/bad-black-sex-worker-testimony-uganda/>, Accessed 16 November 2018.

²³⁹ DefendDefenders interview, Uganda, July 2018.

²⁴⁰ "Anti-Pornography Act of 2014," 6 February 2014, <https://ulii.org/system/files/legislation/act/2014/1/Anti%20Pornography%20Act%20of%202014.pdf>, Accessed 16 November 2018.

²⁴¹ DW, "Uganda: Government introduces pornography control committee," 29 August 2017, <https://www.dw.com/en/uganda-government-introduces-pornography-control-committee/a-40286069>, Accessed 16 November 2018.

²⁴² Sexual Minorities Uganda, "Uganda's Pornography Control Committee' To Get Away With Tracking LGBT People," 28 August 2017, <https://sexualminoritiesuganda.com/ugandas-pornography-control-committee-to-get-away-with-tracking-lgbt-people-in-uganda/>, Accessed 16 November 2018.

²⁴³ DefendDefenders Interview, July 2018

²⁴⁴ "Sexual Offences Bill, 2015," 11 December 2015, <http://parliamentwatch.ug/wp-content/uploads/2016/10/L-14-04-16-The-Sexual-Offences-Bill-2015.-1.pdf>, Accessed 16 November 2018.

²⁴⁵ Human Rights Awareness and Promotion Forum, "Summarised analysis of the impact of the Sexual Offences



March 2018, another transgender woman based in a Kampala slum was attacked by a gang of three men while she was with her boyfriend.²⁵¹ In July 2018, the office of an organisation working with transgender youth based in Bunamwaya was temporarily closed after they were arbitrarily evicted by their landlord. The eviction came after neighbours became suspicious of transgender people coming to the office and a staff member was attacked outside the premises.²⁵²

"I get a lot of phone threats. People used to call me – so I had to change the number.

They would call me and say: 'we are looking for you, you won't survive, you are promoting homosexuality, you are being given money to spoil our children.' People who are harassing me the most are from the general public. Even if you report it, the hate is still there and it is a lot."²⁵³

For HRDs working outside Kampala, threats of physical and verbal attacks are increased because of heightened visibility in more conservative traditional communities. While larger urban centres afford LGBT+ individuals more anonymity, those working in smaller towns often face blackmail, extortion, and harassment from both state and non-state actors. HRDs associated with transgender rights in the northern Ugandan city of Lira mentioned that there are fewer resources and more challenges for LGBT+ organisations working in rural areas.²⁵⁴

Extortion, blackmail, and verbal attacks against LGBT+ people come from various actors, including local media houses. In October 2010, Rolling Stone, a sporadically published Kampala-based tabloid with no affiliation to the US publication of the same, infamously published a list of LGBT+ individuals,

251 Kuchu Times, "AFTER A HOMOPHOBIC ATTACK," 2 March 2018, <https://www.kuchutimes.com/2018/03/after-a-homophobic-attack/>, Accessed 16 November 2018.

252 Kuchu Times, "RAINBOW MIRRORS EVICTED FROM BUNAMWAYA OFFICE," 25 July 2018, <https://www.kuchutimes.com/2018/07/rainbow-mirrors-evicted-from-bunamwaya-offices/>, Accessed 16 November 2018.

253 DefendDefenders interview, Uganda, July 2018.

254 Kuchu Times, "TRANZ NETWORK UGANDA Holds Trans-Focused Sexual and Reproductive Health Dialogue," 14 August 2017, <https://www.kuchutimes.com/2017/08/tranz-network-uganda-holds-trans-focused-sexual-and-reproductive-health-dialogue/>, Accessed 16 November 2018.

along with their photos and addresses, under the headline "100 Pictures of Uganda's Top Homos Leak" and a banner that read "Hang Them."²⁵⁵

"During distribution of the first and second issues of Bombastic Magazine (*LGBT+ magazine published by Kuchu Times network in Uganda*) upcountry, several people were arrested by police. Now before distributions we have security briefings for the volunteers. When people go into the field you don't actually know what they are going to face."²⁵⁶

Media coverage of this kind directly incites violence, which is a crime in Uganda. In December 2010, LGBT+ HRDs in Uganda won a court case against the tabloid on the grounds that the article threatened their fundamental human rights.²⁵⁷ Rolling Stone was barred from publishing more lists of gay people, and the tabloid soon stopped publishing altogether. David Kato, an activist whose picture was on the front page of the article, was murdered three weeks after the court case, in which he participated.²⁵⁸ Rolling Stone also published a headline "Homo Generals Plotted Kampala Terror Attacks" after the July 2010 suicide bombings in Kampala.²⁵⁹ In February 2014, another tabloid, The Red Pepper, published a list of "top 200 homosexuals."²⁶⁰ This kind of media coverage of LGBT+ people in Uganda is linked to increased vulnerability of

255 Independent, "Outcry as Ugandan paper names 'top homosexuals,'" 22 October 2010, <https://www.independent.co.uk/news/world/africa/outcry-as-ugandan-paper-names-top-homosexuals-2113348.html>, Accessed 16 November 2018.

256 DefendDefenders interview, Uganda, July 2018.

257 The Republic of Uganda, "Kasha Jacqueline, David Kato Kisule and Patience Onziema vs. Rolling Stone and Giles Muhame, Case no. 163 of 2010," 30 December 2010, <https://www.icj.org/wp-content/uploads/2012/07/Kasha-Jacqueline-David-Kato-Kisule-and-Onziema-Patience-v.-Rolling-Stone-Ltd-and-Giles-Muhame-High-Court-of-Uganda-at-Kampala.pdf>, Accessed 16 November 2018.

258 The Atlantic, "Death by Tabloid," June 2011, <https://www.theatlantic.com/magazine/archive/2011/06/death-by-tabloid/308491/>, Accessed 16 November 2018.

259 Ibid.

260 BBC, "Ugandan 'homosexuals' named in Red Pepper paper," 25 February 2014, <https://www.bbc.com/news/world-africa-26338941>, Accessed 16 November 2018.

HRDs (who are often the most "out" figures of the community), harassment, and violence.²⁶¹

"Now there is more blackmail and extortion than physical attacks. People's pictures get exposed, sex tapes leaked. For example, lesbian, bisexual, and queer women who are married face blackmail from their families. They are threatened that they will be exposed."²⁶²

Interruption of Events

Despite the AHA being nullified in 2014, LGBT+ HRDs face difficulties organising social events, workshops, public gatherings like Pride, film festivals, and conferences. These events are often interrupted by police, followed by the arrests and detentions of organisers and attendees without charge. In some cases, event organisers are forced to cancel on short notice after facing threats from the police or the Minister of State for Ethics and Integrity, Simon Lokodo, an excommunicated former priest who for years has publically vocalised dubious anti-LGBT+ conspiracies.²⁶³

Closure of events has been a continuous hurdle for LGBT+ organisers in the country. Constantly denied the right to talk about their lived realities and concerns, LGBT+ issues remain marginalised in public discourse, making HRDs' work more difficult and vulnerable to backlash. When LGBT+ events are regularly halted by the police, the effect is that HRDs are regarded as criminals, derided, and punished by authorities. On 9 December 2017, the Queer International Film Festival Kampala was closed down by police.²⁶⁴ The event usually happens at undisclosed locations

across the city to protect attendees. When the event was shut down, police told the organisers it was because the films were "pornographic" in nature.²⁶⁵

In May 2018, two more LGBT+ focused events were cancelled. The First Annual Conference on Key and Priority Populations was cancelled after Minister Lokodo accused the conference of aiming to "promote homosexuality and other dirty things."²⁶⁶ On 17 May 2018, an International Day Against Homophobia, Biphobia and Transphobia event organised by SMUG was also shut down by Minister Lokodo, with the organisers accused of "promoting homosexuality."²⁶⁷

Pride

For LGBT+ people in Uganda and worldwide, Pride represents an opportunity for the community to celebrate their identities and express themselves freely despite being otherwise forced to live in fear and self-censorship. As one HRD noted, "Pride is the only time I am free to express myself the way I want."²⁶⁸ But in Uganda, Pride events have been fraught with controversy.

"When Pride was hijacked, I saw my dream fall down. Then everything was shut down. We had conversations with government officials, and Pride brought with it the dream of reorganising ourselves and have Pride no matter what. But when it was shut down – I saw so many faces very disappointed. Then before I know it one of our friends has jumped from a window..."²⁶⁹

On 4 August 2016, the Mr/Ms/Mx Pride event at Club Venom in Kampala was raided by police who entered the club's premises, blocked the exits, and

261 New York Times, "Ugandan Who Spoke Up For Gays is Beaten to Death," 27 January 2011, <https://www.nytimes.com/2011/01/28/world/africa/28uganda.html>, Accessed 16 November 2018.

262 DefendDefenders interview, Uganda, July 2018.

263 Radio Netherlands Worldwide, "Uganda's Moral Crusader Simon Lokodo - 'The Whites Are Spreading Pornography and Homosexuality,'" 5 August 2016, <https://thomaskleinveld.wordpress.com/2016/08/05/ugandas-moral-crusader-simon-lokodo/>, Accessed 16 November 2018.

264 Pink News, "Ugandan Police Raid and Shut Down Queer Film Festival," 10 December 2017, <https://www.pink-news.co.uk/2017/12/10/ugandan-police-raid-and-shut-down-queer-film-festival/>, Accessed 16 November 2018.

265 Human Rights Watch, "Uganda: Police Raid Queer Kampala Film Festival," 15 December 2017, <https://www.hrw.org/news/2017/12/15/uganda-police-raid-queer-kampala-film-festival>, Accessed 16 November 2018.

266 Daily Monitor, "Minister Lokodo blocks HIV/AIDS conference," 2 May 2018, <https://www.monitor.co.ug/News/National/Minister-Lokodo-blocks-HIV-Aids-conference/688334-4541356-0jhe6jz/index.html>, Accessed 16 November 2018.

267 Kuchu Times, "MINISTER LOKODO HALTS UGANDA'S 2018 IDAHOBIT EVENT," 17 May 2018, <https://www.kuchutimes.com/2018/05/minister-lokodo-halts-ugandas-2018-idahobit-event/>, Accessed 16 November 2018.

268 DefendDefenders interview, Uganda, July 2018.

269 DefendDefenders interview, Uganda, July 2018.



arrested more than 16 people, many of them HRDs, detaining them for several hours. According to news reports, police assaulted many participants, especially transgender women and men.²⁷⁰ One person jumped from a sixth-floor window to avoid police abuse and was hospitalised.²⁷¹

"I was in Venom where we were arrested and the event was stormed and stopped, and we were told to lie down in the dirt, police stepped on us, beat us, harassed us, pulled our hair, packed us in cars, took us to the station, stripped us naked. Some were hurt and a boy jumped through the window. Personally I was scared but I had to be strong, for my friends."²⁷²

The last successful Pride March was held in 2015, outside Kampala, in Entebbe.²⁷³ Since then, Pride events have either been raided, as in 2016,²⁷⁴ or cancelled by organisers fearing backlash from the government and police. In 2017, Pride events were stopped by Minister Lokodo who issued a directive shutting down the events at Sheraton Hotel, accusing the organisers of "recruitment, exhibition and promotion of homosexuality."²⁷⁵ The Pride Committee members then cancelled the events when they found security forces surrounding the venue on the morning of 16 August 2017.²⁷⁶ HRDs

270 ABC News, "Uganda gay pride event raided by police, activists arrested and reportedly beaten," 5 August 2016, <http://www.abc.net.au/news/2016-08-05/police-raid-uganda-gay-pride-event/7694370>, Accessed 19 November 2018.

271 Human Rights Watch, "Uganda: Police Attack LGBTI Pride Event," 5 August 2016, <https://www.hrw.org/news/2016/08/05/uganda-police-attack-lgbti-pride-event>, Accessed 19 November 2018.

272 DefendDefenders interview, Uganda, July 2018.

273 Voa News, "Uganda Celebrates Fourth Annual Pride Parade," 8 August 2015, <https://www.voanews.com/a/uganda-celebrates-fourth-annual-pride-parade/2908647.html>, Accessed 19 November 2018.

274 ABC News, "Uganda gay pride event raided by police, activists arrested and reportedly beaten," 5 August 2016, <http://www.abc.net.au/news/2016-08-05/police-raid-uganda-gay-pride-event/7694370>, Accessed 19 November 2018.

275 The Guardian, "No gay promotion can be allowed: Uganda cancels pride events," 21 Aug 2017, <https://www.theguardian.com/global-development/2017/aug/21/no-gay-promotion-can-be-allowed-uganda-cancels-pride-events-lgbt>, Accessed 19 November 2018.

276 Kuchu Times, "STATEMENT ON CANCELLA-

interviewed for this report noted that this manner of policing Pride events and the LGBT+ community contributed to a sense of fear that prevented the community from organising Pride events in 2018.

"Pride is everything to me. This is the only time I am completely happy and I associate with my brothers from other parts of the country. But they always stop it. They always shut it down."²⁷⁷

Office Break-ins

Another threat faced by organisations working on LGBT+ issues is break-ins at their offices and, at times, even their homes – it should be noted that this threat has extended to all CSOs in Uganda.²⁷⁸ Human Rights Awareness and Promotion Forum (HRAPF) experienced break-ins at their offices in Kampala twice between 2016-18. On 22 May 2016, a break-in resulted in the death of a security guard after he was suffocated by four assailants.²⁷⁹ On the night of 8 February 2018, assailants broke in and attacked security guards with iron bars, seriously injuring them.²⁸⁰ For the staff of HRAPF, the break-in caused an environment of fear and uneasiness, and disrupted their activities for about two weeks after the incident as they needed time to recuperate.²⁸¹

TION OF PRIDE UGANDA 2017," 16 August 2017, <https://www.kuchutimes.com/2017/08/statement-on-cancellation-of-pride-uganda-2017/>, Accessed 19 November 2018.

277 DefendDefenders interview, Uganda, July 2018.

278 DefendDefenders, "Uganda: Government should immediately take steps to end pattern of office break-ins," 23 May 2016, https://www.defenddefenders.org/press_release/uganda-government-immediately-take-steps-end-pattern-of-office-break-ins/, Accessed 19 November 2018.

279 FIDH, "Uganda: Break-in of the Human Rights Awareness and Promotion Forum (HRAPF)'s premises," 12 February 2018, <https://www.fidh.org/en/issues/human-rights-defenders/uganda-break-in-of-the-human-rights-awareness-and-promotion-forum>, Accessed 19 November 2018.

280 Human Rights Watch, "Uganda: Human Rights Group Targeted in Violent Break-In," 9 February 2018, <https://www.hrw.org/news/2018/02/09/uganda-human-rights-group-targeted-violent-break>, Accessed 19 November 2018.

281 Human Rights Awareness and Promotion Forum, "REPORT ON THE SECOND BREAK-IN AT HUMAN RIGHTS AWARENESS AND PROMOTION FORUM (HRAPF)'S OFFICES AND THE RESULTANT SIT-IN AT OLD KAMPALA POLICE STATION," 14 February 2018, <http://hrapf.org/wp-content/uploads/2018/02/18-02-14-Detailed-Report-on-the-HRAPF-Office-Break-in.pdf>, Accessed 19

"After the break-in, we had setbacks in implementing our work because we had to take two weeks away dealing with police and security measures. It also brings down morale and people get sensitive and more fearful. You cannot blame them for being tense like that because of the circumstances they are operating under."²⁸²

Mental Health

For LGBT+ HRDs in Uganda, the constant threats and abuse have taken a toll on their mental wellness. Mental health should ideally be a state of complete well-being, where the person can cope with the stresses of life and make a contribution to their community.²⁸³

When HRDs are in constant physical danger, or deal with marginalisation in their personal lives, it is difficult for them to maintain their well-being. The mental and personal cost of these factors in the life and work of Ugandan LGBT+ HRDs is felt throughout the community. Most HRDs interviewed reported facing problems like depression, anxiety, alcohol and drug abuse, paranoia after a traumatic event, feelings of isolation, and other symptoms associated with post-traumatic stress disorder (PTSD). No matter what their identity on the LGBT+ spectrum, HRDs are even more vulnerable to mental health problems because they are attacked not just because of their identity, but also their work. Due to deep-rooted social homophobia, HRDs often also deal with isolation from family or friends, firstly for being LGBT+, and secondly for being involved in activism regarding this sensitive issue.

One way in which the LGBT+ community in Uganda has chosen to cope with the mental stress of these attacks and their work is through the Uganda Kuchu Aquatics Team, many members of which are prominent lesbian, bisexual, and queer women HRDs. The team aims to increase visibility and positive media presence of Ugandan LGBT+ people by participating in international sporting events.

November 2018.

282 DefendDefenders interview, Uganda, July 2018.

283 World Health Organization, "Mental health: a state of well-being," August 2014, http://www.who.int/features/factfiles/mental_health/en/, Accessed 19 November 2018.

However, HRDs associated with the team often face verbal homophobic attacks while accessing public pools and have even been disallowed from using pools for practice because of complaints against them.²⁸⁴

"I have been in depression...even my family is not on my side. They ask me, 'why did you decide to join this lesbian movement?' It's not failure on my part, it's a failure of the system. I don't think we take mental health seriously. We assume someone is acting up, is under the influence, seeking attention, or just being crazy."²⁸⁵

284 Sexual Minorities Uganda, "A Chat With Uganda Kuchu Aquatics Team Leader On Swimming For Advocacy," 26 June 2018, <https://sexualminoritiesuganda.com/a-chat-with-uganda-kuchu-aquatics-team-leader-on-swimming-for-advocacy/>, Accessed 19 November 2018.

285 DefendDefenders interview, Uganda, July 2018.



Case Study: The Civil Society Coalition on Human Rights and Constitutional Law

The Coalition, a collective of CSOs and other groups, was formed in 2009 to oppose the tabling of the AHA.²⁸⁶ As members included lawyers, academics, activists, feminists, media, and refugee organisations,²⁸⁷ the Coalition brought together a diverse group of specialists to oppose the AHA and spark dialogue around the fundamental rights of LGBT+ individuals in Uganda. They filed a petition opposing the AHA at the Constitutional Court of Uganda, which highlighted how the provisions of the act violated the rights of LGBT+ individuals. The petition also noted that the AHA was passed without quorum in parliament on 20 December 2013, and that its provisions violated the right of Ugandan citizens to equality, freedom from discrimination, freedom of expression, and peaceful assembly.²⁸⁸ It also put forward that the AHA legitimised homophobia and institutionalised a "culture of hatred" towards LGBT+ people in Uganda.

Though the Constitutional Court nullified the AHA based on only one part of the petition²⁸⁹ – that AHA was passed without quorum in Parliament – it is an important document that presents legal arguments against AHA provisions such as life imprisonment for "aggravated homosexuality," harsh punishment for HIV-positive "offenders," compulsory HIV-testing for those accused of the same, and broad provisions that could be used to unfairly criminalise any discussions about homosexuality.²⁹⁰ The Coalition, through the petition, challenged state-sponsored homophobia head-on, reiterating that LGBT+ people in Uganda should not be criminalised for merely existing.

286 Civil Society Coalition on Human Rights and Constitutional Law, "About Us," <https://web.archive.org/web/20131226094901/http://www.ugandans4rights.org:80/index.php/about-us.html>, Accessed 16 November 2018.

287 The Guardian, "Uganda anti-gay law declared 'null and void' by constitutional court," 1 August 2014, <https://www.theguardian.com/world/2014/aug/01/uganda-anti-gay-law-null-and-void>, Accessed 16 November 2018.

288 Outright International, "Petition 8 of 2014, Prof J Oloka-Onyango & others vs. Attorney General of Uganda," 11 March 2014, <https://www.outrightinternational.org/sites/default/files/Uganda%20Anti%20Homosexuality%20Act%20Petition%20No.%20008%20of%202014.pdf>, Accessed 16 November 2018.

289 "Oloka-Onyango & 9 Ors v Attorney General (CONSTITUTIONAL PETITION NO. 08 OF 2014)," 1 August 2014, <https://ulii.org/ug/judgment/supreme-court-uganda/2014/14>, Accessed 16 November 2018.

290 Ibid.

Kenya – LGBT+ Human Rights Defenders

Towards Decriminalisation

Of the three countries included in this report, the Kenyan LGBT+ community has made the most concrete human rights gains. However, the LGBT+ community and HRDs still faces gross human rights violations. The effects of Uganda's anti-homosexuality legislation during the early 2010s were also felt in Kenya, bringing LGBT+ rights to the forefront of public debate.²⁹¹ The number of reported violations against LGBT+ individuals increased around this time, ranging from 1,500 to 3,000 cases between 2012-2018.²⁹² In March 2014, Kenyan MPs debated the possibility of tougher laws to deal with homosexuality, describing a problem "as serious as terrorism."²⁹³ In August 2014, the fringe Republican Liberty Party presented a draft anti-homosexuality bill that proposed public stoning to death or life imprisonment for gay people.²⁹⁴ LGBT+ HRDs in Kenya have since organised themselves into strong national organisations and coalitions, rural groups, and LGBT+ refugees groups, establishing a growing national movement.

Legal and Policy Framework

Kenyan HRDs have been able to organise themselves and win important legal and policy battles regarding the rights of LGBT+ people. For

example, the banning of court or police-directed anal examinations of men suspected of engaging in homosexual acts in March 2018,²⁹⁵ and the ability for transgender people to change their name on national identification documents, in February 2017.²⁹⁶ However, in the course of this research, LGBT+ HRDs in Kenya identified challenges regarding their rights to freedom of expression and freedom of association. Several legal and policy battles ultimately brought about recognition of the rights of LGBT+ individuals, with specific needs in health, education, and civil and political rights.²⁹⁷

Section 162(a)(c) of the Kenyan Penal Code prohibits "carnal knowledge of any person against the order of nature," and permitting "a male person to have carnal knowledge of him or her against the order of nature" with punishment of imprisonment for fourteen years for both, and in the case of non-consensual acts of the same nature, imprisonment for twenty years.²⁹⁸ Section 163 prohibits "attempt to commit unnatural offences" punishable by imprisonment for seven years, and Section 165 prohibits "any act of gross indecency" between two men, whether in public or in private, with the punishment of imprisonment for five years.²⁹⁹ Though these laws do not explicitly specify homosexual identities, they are used to arbitrarily target the LGBT+ community and

291 United Kingdom Home Office, "Country Policy and Information Note Kenya: Sexual orientation and gender identity," March 2017, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/602447/Kenya - SOGI - CPIN - v2 March 2017 .pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/602447/Kenya_-_SOGI_-_CPIN_-_v2_March_2017_.pdf), Accessed 19 November 2018.

292 PRI, "Gay rights ruling in Kenya could reverberate through Africa," 17 April 2018, <https://www.pri.org/stories/2018-04-17/gay-rights-ruling-kenya-could-reverberate-through-africa>, Accessed 19 November 2018.

293 Reuters, "Leading Kenyan MP says homosexuality 'as serious as terrorism'," 26 March 2014, <https://www.reuters.com/article/us-kenya-gays/leading-kenyan-mp-says-homosexuality-as-serious-as-terrorism-idUSBREA2P1UD20140326>, Accessed 19 November 2018.

294 Human Rights Campaign, "Kenya: Draft Bill Proposes Stoning to Death of Gay People," 15 August 2014, <https://www.hrc.org/blog/kenya-draft-bill-proposes-stoning-to-death-of-gay-people>, Accessed 19 November 2018.

295 DW, "Kenya court outlaws anal exams in landmark victory for gay rights," 22 March 2018, <https://www.dw.com/en/kenya-court-outlaws-anal-exams-in-landmark-victory-for-gay-rights/a-43094775>, Accessed 19 November 2018.

296 Justice Now, "Court orders state to alter names in IDs for five transgender Kenyans," 15 February 2017, <http://justice-now.co.ke/2017/02/15/court-orders-state-to-alter-names-in-ids-for-five-transgender-kenyans/>, Accessed 19 November 2018.

297 Daily Nation, "Transgender people seek legal recognition through health bill," 20 June 2016, <https://www.nation.co.ke/news/Transgender-Kenya/1056-3258498-e1adv7/index.html>, Accessed 19 November 2018.

298 "Laws of Kenya, Penal Code: Chapter 63," Revised Edition 2012, <https://www.ilo.org/dyn/natlex/docs/ELEC-TRONIC/28595/115477/F-857725769/KEN28595.pdf>, Accessed 19 November 2018.

299 Ibid.



impinge upon their right to privacy, and right to live a life free of discrimination and unequal treatment.³⁰⁰ HRDs reported that due to the criminalisation of homosexual acts, as well as negative attitudes from the public, politicians, religious leaders, and media, LGBT+ people in Kenya face a wide range of violations from "murder to mob violence, rape, forced evictions, blackmail, and extortion."³⁰¹

Negative Discourse

For the LGBT+ community in Kenya, a major challenge revolves around negative discourse on LGBT+ issues from the media, politicians, or other influential actors. In May 2015, a Nairobi-based newspaper, Citizen Weekly, published a list of 11 LGBT+ activists with the headline, "Top gays, lesbians list," endangering these HRDs and the community.³⁰² In April 2018, President Uhuru Kenyatta reiterated his stance that LGBT+ rights are a "non-issue" in Kenya, arguing that it does not concern human rights, but the cultural norms of the country.³⁰³ In August 2018, an online news report focusing on an LGBT+ pride flag spotted in Nairobi stated that "despite being outlawed, LGBTs have become bolder nowadays."³⁰⁴

In April 2018, Ezekiel Mutua, CEO of the Kenyan Film Classification Board (KFCB), banned the internationally lauded Kenyan lesbian romance film

"Rafiki." Mutua made several hateful statements about the LGBT+ community in the past, ranging from allegations that foreign NGOs fund and promote homosexuality in Kenya,³⁰⁵ to stating that Kenyan culture does not support homosexuality and that the "LGBT agenda" threatens the country.³⁰⁶ In September 2018, he tweeted that "homosexuality is not our way of life."³⁰⁷ Another concern among LGBT+ HRDs is the negative news coverage of young LGBT+ relationships in Kenyan boarding schools. In July 2018, Principal Secretary in the Ministry of Education, Dr. Richard Belio Kipsang, said that homosexuality is a "deep-rooted problem" in boarding schools in Kenya that needs to be curbed.³⁰⁸ In July 2015, a group of 19 high school students in Bungoma County were suspended for a week after they expressed support for homosexual people and were accused by other students of being gay.³⁰⁹ The negative media coverage surrounding these events, especially from local news outlets, impacts HRDs who must battle both government policy and pervasive homophobia in their communities.

Media coverage aside, HRDs reported that negative perceptions of LGBT+ people in Kenyan society are also affected deeply by community and religious leaders at the local level. In Kisumu County, for

300 U Report, "OPINION: Kenya's anti-gay laws are hurting LGBT community," 24 February 2018, <https://www.standardmedia.co.ke/ureport/story/2001270983/opinion-kenya-s-anti-gay-laws-are-hurting-lgbt-community>, Accessed 19 November 2018.

301 Auto Straddle, "Kenyan LGBT Activists Bring Groundbreaking Court Case Against Laws Criminalizing LGBT Relationships," 7 March 2018, <https://www.autostraddle.com/kenyan-lgbt-activists-bring-groundbreaking-court-case-against-laws-criminalizing-lgbt-relationships-413147/>, Accessed 19 November 2018.

302 The Advocate, "Kenyan Paper Shamed for its 'Top Gays' List," 14 May 2015, <https://www.advocate.com/politics/media/2015/05/14/kenyan-paper-shamed-its-top-gays-list>, Accessed 19 November 2018.

303 Daily Nation, "President Kenyatta says gay rights 'of no importance' in Kenya," 21 April 2018, <https://www.nation.co.ke/news/Gay-rights-non-issue-Uhuru-Kenyatta-says/1056-4491774-tohqyh/index.html>, Accessed 19 November 2018.

304 Kahawa Tungu, "LGBT Flag Spotted on an Apartment Block Along Lenana Road," 17 August 2018, <https://www.kahawatungu.com/2018/08/17/lgbt-flag-lenana-road/>, Accessed 19 November 2018.

305 Kahawa Tungu, "Foreign NGOs Advocating for Homosexuality in Kenya – Ezekiel Mutua," 23 September 2018, <https://www.kahawatungu.com/2018/09/23/foreign-ngos-advocating-for-homosexuality-in-kenya-ezekiel-mutua/>, Accessed 19 November 2018.

306 Pulse Live, "Ezekiel Mutua blasts Kenyan homosexuals after new discovery," 22 March 2018, <https://www.pulselive.co.ke/entertainment/ezekiel-mutua-blasts-kenyan-homosexuals-id8151990.html>, Accessed 19 November 2018.

307 Twitter, @EzekielMutua, 21 September 2018, https://twitter.com/EzekielMutua/status/1043075572048384000?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwttr-m%5E1043075572048384000&ref_url=https%3A%2F%2Fwww.kahawatungu.com%2F2018%2F09%2F21%2FEzekiel-mutua-lashes-out-after-court-lifts-ban-on-rafiki-movie%2F, Accessed 19 November 2018.

308 Daily Nation, "PS says homosexuality is rampant in schools," 12 July 2018, <https://www.nation.co.ke/counties/mombasa/PS-acknowledges-homosexuality-rampant--in-schools/1954178-4659698-wq4bc6/index.html>, Accessed 19 November 2018.

309 Pink News, "Kenya: 19 school students suspended for supporting LGBT rights," 16 July 2015, <https://www.pinknews.co.uk/2015/07/16/kenya-19-school-students-suspended-for-supporting-lgbt-rights/>, Accessed 19 November 2018.

example, the work and existence of LGBT+ HRDs and the community is threatened by hostility from leaders of the Archdiocese of Kisumu.³¹⁰ In May 2018, the County Assembly of Kisumu passed a motion to withdraw the licenses of "organisations promoting gay practices." The move came in the wake of news about growing LGBT+ populations in Kisumu, clinics, and organisations that formed to serve their needs.³¹¹ These news reports, often featuring inflammatory headlines, led LGBT+ people and HRDs to face backlash from communities and religious leaders.³¹²

Legal Battles

A major strategy employed by LGBT+ HRDs in Kenya is strategic litigation and petitioning to make government policies more inclusive of LGBT+ identities and needs. For example, in 2013, the National Gay and Lesbian Human Rights Commission (NGLHRC) was denied registration by the Non-Governmental Organisation Board on the basis that their name contravened Section 162, 163, and 165 of the Penal Code.³¹³ In April 2015, a High Court ruled in favour of the NGLHRC, ordering the official registration of the organisation and affirming the freedom of association of LGBT+ HRDs in the country.³¹⁴ However, as of October 2018, an appeal is waiting to be heard by the Court of Appeal.³¹⁵ In

the meantime, HRDs from NGLHRC reported that the organisation's registration is still pending.³¹⁶

As of October 2018, LGBT+ HRDs in Kenya are pursuing a petition to decriminalise Sections 162, 163, and 165 of the Penal Code. In the past, criminalisation of homosexuality has been used by state authorities to justify harassment by police and non-state actors, denial of equal access to education, health facilities, and justice.³¹⁷ In February 2015, two men were arbitrarily arrested in Kwale County on suspicions of being gay, and subjected to forced anal examinations by the Kwale District court magistrate.³¹⁸ The men, represented in court by HRDs from NGLHRC, filed Petition 51 of 2015 seeking an order that anal examinations amount to cruel, inhuman, or degrading treatment and sought damages for the violation of their human rights.³¹⁹ In the ruling, the judge declared that "neither the mouth nor the anus is a sexual organ," and that anal examinations were lawful.³²⁰

Despite the insensitivity shown by the justice system regarding the issue, HRDs were able to appeal the case in June 2016 at the Court of Appeal in Mombasa, which they won on 22 March 2018.³²¹ The victory in the anal examinations case has been significant for HRDs in Kenya, who hope that it sets a legal precedent for another petition to

310 Standard Media, "Uproar as homosexuality spreads across Kisumu," 15 April 2018, <https://www.standardmedia.co.ke/article/2001276903/uproar-as-homosexuality-spreads-across-kisumu>, Accessed 19 November 2018.

311 Standard Media, "MCAs in push to curb same sex relations," 31 May 2018, <https://www.standardmedia.co.ke/article/2001282393/mcas-in-push-to-curb-same-sex-relations>, Accessed 19 November 2018.

312 Erasing 76 Crimes, "Falsehood in Kenyan newspaper trigger anti-gay abuses," 18 April 2014, <https://76crimes.com/2018/04/18/falsehoods-in-kenyan-newspaper-trigger-anti-gay-abuses/>, Accessed 19 November 2018.

313 Human Dignity Trust, "Case Digest: Eric Gitari v NGO Board & 4 others, [2015], Petition 440 of 2013, The High Court of Kenya at Nairobi," http://www.humandignitytrust.org/uploaded/Library/Other_Material/Eric_Gitari_v_NGO_Board_Case_Digest.pdf, Accessed 19 November 2018.

314 Human Rights Watch, "Kenya: High Court Orders LGBT Group Registration," 28 April 2015, <https://www.hrw.org/news/2015/04/28/kenya-high-court-orders-lgbt-group-registration>, Accessed 19 November 2018.

315 All Africa, "Kenya: MPs want AG to Appeal High Court Ruling on Gay and Lesbian Group," 28 April 2015, <https://allafrica.com/stories/201504290100.html>, Accessed 19

November 2018.

316 DefendDefenders interview, Kenya, September 2018.

317 Astraea Lesbian Foundation for Justice, "Kenya LGBTI: Landscape Analysis of Political, Economic and Social Conditions," 2015, http://www.astraeafoundation.org/uploads/files/publications/AstraeaUSAID.Kenya.04_11_16.pdf, Accessed 19 November 2018.

318 Human Rights Watch, "The Issue is Violence: Attacks on LGBT People on Kenya's Coast," 28 September 2015, <https://www.hrw.org/report/2015/09/28/issue-violence/attacks-lgbt-people-kenyas-coast>, Accessed 19 November 2018.

319 Kenya Law, "Petition 51 of 2015 C O L & another v Resident Magistrate - Kwale Court & 4 others," 13 November 2015, <http://kenyalaw.org/caselaw/cases/view/123715/>

320 Ibid.

321 National Gay and Lesbian Human Rights Commission, "Press Release: Kenya Appeal Court Moves to End Forced Examinations of Men Suspected of Being Gay," 22 March 2018, <https://static1.squarespace.com/static/581a19852994ca08211fa-ca4/t/5ab395190e2e72ea7690e401/1521718555090/Press+Release+Forced+Exams+Ruling.pdf>, Accessed 19 November 2018.



finally decriminalise homosexuality altogether.³²²

The decriminalisation Petition 150 of 2016, *Eric Gitari v. Attorney General and Another*, dated 15 April 2016, was premised on the grounds that Sections 162, 163, and 165 contravene specific articles of the Kenyan Constitution, notably Article 27 on equality and non-discrimination, Article 28 on human dignity, Article 29 on freedom and security of the person, Article 31 on privacy, and Article 43 which contains provisions related to the right to health.³²³ The petition is facing opposition from the group Kenya Christian Professionals Forum and Senator Irungu Kangata, who claim that homosexuality is un-African.³²⁴

"Section 162 and 165 stop people from accessing our (MSM health) services, or from openly discussing it. Fear of the Penal Code hinders our work – people don't want to come out because of it, to access services that they actually need."³²⁵

The petition received mention in High Court on 23 February 2018, two years after it was filed.³²⁶ At the same time, the Attorney General's office, through lawyer Jennifer Gitiri, asked the Court to dismiss the case, on the grounds that it would encourage unnatural acts and tear the social fabric of Kenyan society.³²⁷ On 27 September 2018, the Petition received another mention, during which the Court

322 Human Right Watch, "Kenya: Court Finds Forced Anal Exams Unconstitutional," 22 March 2018, <https://www.hrw.org/news/2018/03/22/kenya-court-finds-forced-anal-exams-unconstitutional>, Accessed 19 November 2018.

323 Kenya Law, "Petition 150 of 2016 Eric Gitari v. Attorney General & another," 15 April 2016, <http://kenyalaw.org/caselaw/cases/view/122862/>

324 Auto Straddle, "Kenyan LGBT Activists Bring Groundbreaking Court Case Against Laws Criminalizing LGBT Relationships," 7 March 2018, <https://www.auto-straddle.com/kenyan-lgbt-activists-bring-groundbreaking-court-case-against-laws-criminalizing-lgbt-relationships-413147/>, Accessed 19 November 2018.

325 DefendDefenders interview, Kenya, September 2018.

326 CNN, "Kenya's top court considers case to legalise homosexuality," 23 February 2018, <https://edition.cnn.com/2018/02/23/africa/case-legalize-homosexuality-kenya/index.html>, Accessed 19 November 2018.

327 Citizen Digital, "AG opposes making homosexuality legal in Kenya," 23 February 2018, <https://citizentv.co.ke/news/ag-opposes-making-homosexuality-legal-in-kenya-191822/>, Accessed 19 November 2018.

scheduled its next session to hear oral submissions from each side related to the Indian Supreme Court's 6 September 2018 judgement to decriminalise a similar section of the Indian Penal Code, which dated back to colonial-era legislation the country shares with Kenya on "unnatural offences."³²⁸

For HRDs interviewed in this research, the court's ruling on this petition would bring visibility to their issues and expand the scope for securing legal and policy protections and realising the social and economic rights of LGBT+ people, illustrating the importance of using legal avenues to promote LGBT+ rights in Kenya. ³²⁹ HRDs interviewed were hopeful about the result but wary of the heightened vulnerability that visibility would also bring. As one HRD interviewed for this report said,

"With the "Rafiki" ban being lifted right at the time of the decriminalisation case, we are having a lot of conversations and visibility around queerness in Kenya, but there is also more risk to queer bodies at this time. The queer people in the slums would be the ones to suffer most from attacks."³³⁰

Heightened Vulnerabilities of LGBT+ HRDs

Because of their physical appearance and external identity markers, intersex, transgender, and gender non-conforming (ITGNC) people face harassment and violence in public spaces, and are denied services like education and healthcare on the basis of their identities.³³¹ For ITGNC HRDs, this stigma and discrimination manifests in the form of public violence from non-LGBT+ individuals,

328 Reuters, "In legal battle over gay sex, Kenyan court to consider Indian ruling," 27 September 2018, <https://www.reuters.com/article/us-kenya-lgbt/in-legal-battle-over-gay-sex-kenyan-court-to-consider-indian-ruling-idUSKCN1M71LU>, Accessed 19 November 2018.

329 Astraea Lesbian Foundation for Justice, "Kenya LGBTI: Landscape Analysis of Political, Economic and Social Conditions," 2015, http://www.astraeafoundation.org/uploads/files/publications/AstraeaUSAID.Kenya.04_11_16.pdf, Accessed 19 November 2018.

330 DefendDefenders interview, Kenya, September 2018.

331 Pink News, "Meet the activists fighting for transgender rights in Kenya," 18 September 2018, <https://www.pink-news.co.uk/2018/09/18/meet-the-activists-fighting-for-transgender-rights-in-kenya/>, Accessed 19 November 2018.

marginalisation from mainstream feminist and LGBT+ activism, heightened security concerns, and an overall lack of capacity.³³² Six ITGNC HRDs interviewed noted that their capacity is low because of public visibility of their identities: "Many people are transitioning, they are very visible, they can't hide it from school, family, or employers, so you face double discrimination because you walk around with it. It's your identity. This problem manifests in the movement too. This movement has structural issues."³³³

For lesbian, bisexual, and queer women in Kenya, the double marginalisation of being women and LGBT+ poses unique struggles - being pressured to marry men, facing violence and so-called "corrective rape" when outed to their family or community, and an overall lack of support mechanisms to address these issues.³³⁴ Lesbian, bisexual and queer women activists face the same stigma from family and community, both for their identities and their work in the LGBT+ movement in Kenya.

"The media has been one of our biggest enemies – their articles and reports are very aggressive, very detrimental. We have to be careful about religious leaders and politicians and what they say because these things move people to mob action."³³⁵

Mental Health

LGBT+ HRDs interviewed across the three countries concerned in this report have given accounts of personal and collective mental health struggles in their communities, with problems like burnout, depression, anxiety, and feelings of isolation from family and friends, as well as PTSD for those who have been subjected to traumatic events such as acts of violence. In general, mental illness is a taboo topic in

Kenyan society, and not seen as a medical or social problem that can be treated.³³⁶ Because of the sheer amount of work LGBT+ HRDs have to do in order to secure the rights of their community, in addition to the discrimination they face because of their identities, the mental pressure can be overwhelming.

"We deal with depression and mental health issues. You find you have anger within yourself which you can't really control, because you feel you are not doing enough and you have mental breakdowns, you have no one to talk to. The community sees you as a burden."³³⁷

As one HRD noted, "people don't want to associate with you because of your work, because the government might be targeting you as an HRD because you are not only defending LGBT+ people but other people as well. They see it as something you are not supposed to do."³³⁸

Mental health support mechanisms and "safe spaces" for LGBT+ community and HRDs are slowly being created in Kenya, to provide them with access to LGBT+ friendly psychosocial services,³³⁹ which shows progress made in LGBT+ discourse beyond the framework of KP, health advocacy, or simply survival, still unseen in Tanzania and Uganda.

332 Reuters, "Kenya's transgender warrior: from suicide bid to celebrity," 8 April 2015, <https://www.reuters.com/article/us-gay-rights-kenya/kenyas-transgender-warrior-from-suicide-bid-to-celebrity-idUSKBN0MZ00320150408>, Accessed 19 November 2018.

333 DefendDefenders interview, Kenya, September 2018.

334 HuffPost, "Lesbian, Bisexual and Queer Women Speak Out in Kenya," 20 February 2016, https://www.huffingtonpost.com/neela-ghoshal/lesbian-bisexual-and-queer_b_9280166.html, Accessed 19 November 2018.

335 DefendDefenders interview, Kenya, September 2018.

336 Al Jazeera, "The taboo of mental illness in Kenya," 18 April 2016, <https://www.aljazeera.com/indepth/features/2016/04/taboo-mental-illness-kenya-160406093345546.html>, Accessed 19 November 2018.

337 DefendDefenders interview, Kenya, September 2018.

338 DefendDefenders interview, Kenya, September 2018.

339 Jinsiangu, "Psychosocial Support," <https://www.jinsiangu.org/support/>, Accessed 19 November 2018.





Rafiki: A Winning Battle

Rafiki (friend in Swahili) by Kenyan director Rafik Wanuri Kahiu, depicts a lesbian romance between two young women in Nairobi and was the first Kenyan film to be screened at the Cannes Film Festival. But in April 2018, the KFCB banned Rafiki and alleged that it had a "clear intent to promote lesbianism in Kenya contrary to the law."³⁴⁰ It was banned from screening on grounds that it tried to "normalise homosexuality in Kenya" and had offensive elements like showing a lesbian romance.³⁴¹

Kahiu was also accused by the KFCB of contravening Section 7 of Chapter 222: Film and Stage Plays Act,³⁴² which states that alterations to the script of a production can only be made after the permission of the licensing officer. They accused her of changing the script to include content to "celebrate the resilience of the youngsters involved in lesbianism,"³⁴³ after the licensing of the film. Kahiu was threatened with arrest, yet denied the charges.³⁴⁴

In September 2018, Kahiu sued the KCFB on grounds of damage to her career, which led to the ban being finally lifted on 21 September by the High Court in Nairobi so it could be screened for a single week and qualify for Academy Award nominations.³⁴⁵ In her ruling, Justice Wilfirda Okwany stated that Kenyan society is not so weak that its "moral foundation will be shaken by seeing such a film."³⁴⁶ After lifting the ban, Ezekiel Mutua publicly stated that he would contravene the court order, reiterating his hostility towards LGBT+ issues.³⁴⁷

340 Twitter, @InfoKfcb, 27 April 2018, <https://twitter.com/InfoKfcb/status/989785599799447553>

341 Daily Nation, "Banned gay film 'Rafiki' reveals Kenya's sexuality progress," 8 May 2018, <https://www.nation.co.ke/news/What-ban-of-gay-film--Rafiki--indicates-about-Kenya/1056-4549802-r5p0flz/index.html>, Accessed 19 November 2018.

342 CAP 222, Film and Stage Plays Act, Revised Edition 2012, http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/FilmsandStagePlaysAct_Cap222.pdf, Accessed 19 November 2018.

343 Kenya Film Classification Board, "Statement by the Kenya Film Classification Board Chief Executive Officer Dr. Ezekiel Mutua, MBS on the Banning of the Film Rafiki," 27 April 2018, <http://kfcg.co.ke/wp-content/uploads/2018/04/CEO-STATEMENT-ON-RAFIKI-RESTRICTION-27-4-2018.pdf>, Accessed 19 November 2018.

344 The Hindu, "Kenyan filmmaker Wanuri Kahiu fears arrest," 11 May 2018, <https://www.thehindu.com/entertainment/movies/kenyan-filmmaker-fears-arrest/article23854026.ece>, Accessed 19 November 2018.

345 The East African, "Kenyan 'Rafiki' film ban lifted for a week," 21 September 2018, <http://www.theeastafrican.co.ke/magazine/Kenyan-Rafiki-film-ban-lifted-for-a-week/434746-4770672-rsxepuz/index.html>, Accessed 19 November 2018.

346 Indie Wire, "'Rafiki': Kenya Lifts Ban on Lesbian Film, Qualifying It for Oscar Submission," 21 September 2018, <https://www.indiewire.com/2018/09/rafiki-ban-lifted-kenya-lesbian-movie-1202005785/>, Accessed 19 November 2018.

347 Kahawa Tungu, "Ezekiel Mutua Lashes Out After Court Lifts Ban On 'Rafiki' Movie," 21 September 2018, <https://www.kahawatungu.com/2018/09/21/ezekiel-mutua-lashes-out-after-court-lifts-ban-on-rafiki-movie/>, Accessed 19 November 2018.

Tanzania – LGBT+ Human Rights Defenders

An Uncertain Future

In Tanzania, including the semi-autonomous Zanzibar Archipelago, the rights of LGBT+ people have been restricted since colonial times,³⁴⁸ however, much like Uganda, they have only come to the forefront of international public discussion in the 2010s.³⁴⁹ In mainland Tanzania, Section 154 of the Penal Code prohibits "carnal knowledge against the order of nature," punishable by imprisonment for 30 years, and Section 155 prohibits "attempt to commit unnatural offences" punishable by 20 years imprisonment, though it does not explain what constitutes an "attempt."³⁵⁰ Section 138A, introduced through the Sexual Offences Special Provisions Act (1998), also prohibits "gross indecency", which is loosely defined as acts which "fall short of actual intercourse" but includes masturbation and "indecent physical contact."³⁵¹

"Last year in December, I received calls from unknown people... they said if you come to your home your life is over. I was threatened to be killed for working with LGBT+ people... So I decided to move to the village where no one knows me."³⁵²

Section 150 of Zanzibar's Penal Code prohibits sexual acts "against the order of nature," punishable by up to 14 years in prison, while Section 153 prohibits "an

348 AfricLaw, "Stripped of Dignity: The Struggle for LGBT Rights in Tanzania," 17 March 2017, <https://africlaw.com/2017/03/17/stripped-of-dignity-the-struggle-for-lgbt-rights-in-tanzania/>, Accessed 19 November 2018.

349 Human Rights Watch, "'Treat us Like Human Beings': Discrimination against Sex Workers, Sexual and Gender Minorities, and People Who Use Drugs in Tanzania," 18 June 2013, <https://www.hrw.org/report/2013/06/18/treat-us-human-beings/discrimination-against-sex-workers-sexual-and-gender>, Accessed 19 November 2018.

350 Tanzania Penal Code, 1981, http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TZA_penal_code.pdf, Accessed 19 November 2018.

351 "Sexual Offences Special Provisions Act," 1998, <https://www.ilo.org/dyn/natlex/docs/ELECTRON-IC/67094/63635/F532037758/TZA67094.pdf>, Accessed 19 November 2018.

352 DefendDefenders interview, Tanzania, August 2018.

act of lesbianism" between two women, punishable by up to five years in prison.³⁵³ Because of these laws, LGBT+ persons in Tanzania are always at risk of being targeted by police for harassment or arrests, and many choose to hide their identities and censor themselves in public spaces.³⁵⁴

Attitudes towards LGBT+ communities or HRDs in Tanzania are generally not favourable, and new threats to their work have emerged since the election of President Magufuli in October 2015.³⁵⁵ HRDs interviewed for this report mentioned that while previous attitudes towards the LGBT+ community were already negative, President Magufuli's government instigated a crackdown on LGBT+ rights. Many HRDs described being denied registration, shut down, investigated, deregistered, or arbitrarily arrested without charge.³⁵⁶

Negative Discourse and Self-Censorship

Most HRDs in mainland Tanzania and Zanzibar report that in order to work on LGBT+ rights, organisations often self-censor or obfuscate their objectives in the public sphere. HRDs working on LGBT+ rights are able to work within the framework of Key Populations (KP), an umbrella term for those most at risk of contracting HIV/AIDS and other sexually transmitted diseases, including people who use intravenous drugs, MSMs, and in most cases, transgender persons. Operating under the "KP" moniker allows organisations to formally register

353 "Penal Decree Act," 16 August 2004, https://www.unodc.org/res/cld/document/criminal-procedure-act--2004-zanzibar_html/Penal_Decree_Act.pdf, Accessed 19 November 2018.

354 News Deeply, "Tanzania Continues Crackdown on LGBT Communities," 4 April 2017, <https://www.newsdeeply.com/womenandgirls/articles/2017/04/04/tanzania-continues-crackdown-lgbt-communities>, Accessed 19 November 2018.

355 AfricLaw, "Stripped of Dignity: The Struggle for LGBT Rights in Tanzania," 17 March 2017, <https://africlaw.com/2017/03/17/stripped-of-dignity-the-struggle-for-lgbt-rights-in-tanzania/>, Accessed 19 November 2018.

356 DefendDefenders interviews, Tanzania, August 2018.



with the Registrar of NGOs without explicitly mentioning LGBT+ rights.³⁵⁷ However, this often forces them to frame the rights of LGBT+ people only in terms of health and disease risk, and not in terms of human rights, thereby limiting outlets for outreach, or forcing them to hide parts of their work from the State. For lesbian, bisexual and queer women, it also limits their access to support as they are not necessarily included in the traditional KP framework.

One stated that, "I saw a gap in the LGBT+ movement because they were only working with MSM and gay men. There is just one lesbian, bisexual, and transgender organisation here (in Zanzibar). Guidelines of government don't include women who have sex with women. We do advocacy to put us in those terms so we can assert our sexual and reproductive health and rights."³⁵⁸

"We need to have more lawyers on our side. Sometimes they just give up on our space because their career is at risk. We have done some trainings with them but it's not enough."³⁵⁹

Since the election of President Magufuli, general attitudes towards LGBT+ people in Tanzania have soured, especially from influential authority figures, and organisations have seen an increase in threats to deregister those working on these issues.³⁶⁰ For instance, in June 2016, Amon Mpanju, the Deputy Permanent Secretary of Constitutional and Legal Affairs Ministry, said that Tanzania would not consider decriminalising homosexuality as it goes against the culture and traditions of the nation.³⁶¹

357 UHAI – East African Sexual Health and Rights Initiative, "The Other Tanzanians: Landscape analysis of the human rights of Sex Workers and LGBTI communities in Tanzania 2015-2016," 16 May 2016, <http://www.uhai-eashri.org/ENG/resources?download=27:the-other-tanzanians>, Accessed 19 November 2018.

358 DefendDefenders interview, Tanzania, August 2018.

359 DefendDefenders interview, Tanzania, August 2018.

360 Erasing 76 Crimes, "65 Groups Arrest Tanzanian Repression, LGBT arrests," 28 May 2018, <https://76crimes.com/2018/05/28/65-groups-protest-tanzania-repression-lgbt-arrests/>, Accessed 19 November 2018.

361 International Business Times, "Gay Rights in Africa: Tanzania Will 'Never' Lift Same-Sex Marriage Ban, Official Says," 28 June 2016, <https://www.ibtimes.com/gay-rights-africa-tanzania-will-never-lift-same-sex-marriage-ban-official>

In August 2016, the Regional Commissioner of Dar es Salaam, Paul Makonda, said that social media would be used to track down those who are homosexual, and those who "follow" them would be equally guilty.³⁶² It was reported that after the speech, at least 20 people were arrested outside bars and clubs popular with the LGBT+ community, on charges of loitering and prostitution.³⁶³

"They say we are promoting ushoga (*homosexuality in Swahili*) and I want to ask them how are we doing that? Are we putting people in a class and promoting it?"³⁶⁴

Similarly, in September 2016, then Deputy Minister for Health, Community Development and Gender, Dr. Hamisi Kigwangalla, threatened to ban groups advocating for gay rights, saying that there is a need to protect Tanzanian traditional values, and that the government would not "allow activist groups carrying out campaigns that promote homosexuality."³⁶⁵ He also said the government was vetting NGOs focusing on LGBT+ rights. Kigwangalla has, in the past, tweeted against LGBT+ rights, claiming that "homosexuality is not biological, it is unnatural"³⁶⁶ and that it is not protected by the customs and traditions of Tanzania.³⁶⁷ At a June 2017 rally, President Magufuli himself mentioned that "even cows" would disapprove of homosexuality.³⁶⁸

[says-2387584](https://twitter.com/HKigwangalla/status/7387584), Accessed 19 November 2018.

362 New Now Next, "Tanzanian Official Wants To Arrest People Who Follow Homosexuals On Instagram," 8 September 2016, <http://www.newnownext.com/tanzania-gay-lgbt/08/2016/>, Accessed 19 November 2018.

363 The Guardian, "'Seeds of hate' sown as Tanzania starts LGBT crackdown," 8 August 2016, https://www.theguardian.com/world/2016/aug/08/seeds-of-hate-sown-as-tanzania-starts-lgbt-crackdown?CMP=fb_gu, Accessed 19 November 2018.

364 DefendDefenders interview, Tanzania August 2018.

365 Reuters, "Tanzania threatens to ban groups supporting gay rights," 8 September 2016, <https://www.reuters.com/article/us-tanzania-rights-lgbt-idUSKCN11E2FM>, Accessed 19 November 2018.

366 Twitter, @HKigwangalla, 19 February 2017, <https://twitter.com/HKigwangalla/status/833381122201497600>, Accessed 19 November 2018.

367 Twitter, @HKigwangalla, 21 February 2017, <https://twitter.com/HKigwangalla/status/833763282209140736>, Accessed 19 November 2018.

368 Vox, "Tanzania's president is cracking down on LGBTQ rights. He says cows would approve," 28 June 2017,

The Home Affairs Minister Mwigulu Nchemba threatened to deregister organisations working for sexual minorities, arrest Tanzanian activists, and deport or expel foreign activists working on gay rights.³⁶⁹

Interviewed HRDs noted that they do not mention the terms "LGBT+" or "Sexual Orientation and Gender Identity" (SOGI) while reporting their work to the government or Registrar of NGOs. They fear that if they explicitly mention this part of their mandates, they would be denied registration or investigated by authorities.³⁷⁰

"Due to the new government we are now working under poor working conditions, because of the different statements given out by government officials. In the past years it was easier, but the President now is strict with the LGBT+ community."³⁷¹

Media censorship regarding LGBT+ issues is also a major hurdle that poses a threat to the work of HRDs in Tanzania. On 28 June 2016, Tanzanian Clouds TV caused controversy when one of its programs featured an interview with a gay man.³⁷² The issue was debated in Tanzanian Parliament after it was raised by MP Amina Mollel. The Content Committee of the Tanzania Communications Regulatory Authority then ordered Clouds TV station to apologise to viewers for airing the episode.³⁷³ Media professionals and HRDs also noted that journalists and editors were reticent to cover any issues related to the LGBT+ community, especially those dealing with human rights, as they feared being arbitrarily shuttered or banned amid the Magufuli government's

continued crackdown on independent media.³⁷⁴

Barriers to Work

For LGBT+ HRDs in Tanzania, a major part of reaching out to their communities involves health and HIV/AIDS programming. But since the election of President Magufuli, there have been barriers in organising these activities as well. In July 2016, the Tanzania Ministry of Health banned the import and sale of personal lubricants to "curb homosexuality," despite the fact that these products are used by non-LGBT+ peoples and significantly help prevent the spread of HIV/AIDS and other sexually transmitted diseases.³⁷⁵ These measures prevent HRDs, especially those working for the health of LGBT+ people, from carrying out their activities and reaching vulnerable populations in their regions.

"You cannot mention the word LGBT+ in Zanzibar, you have to say "Key Population." Sex work is still acceptable by government norms and laws. MSM is also okay. But we cannot say lesbians and gays. We cannot import lubricants. All this influences the work we do and whom we can help."³⁷⁶

Following the announcement to ban lubricants in Tanzania, there was an increase in public violence against people suspected of being LGBT+, according to Pan-Africa ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association).³⁷⁷ In October 2016, a Ministry of Health directive temporarily suspended "provision of HIV and AIDS services at a community level," followed by an order to close "drop-in centres" that cater to

<https://www.vox.com/world/2017/6/28/15885748/tanzania-president-homophobic-cows-lgbtq-crackdown>, Accessed 19 November 2018.

369 Reuters, "Tanzania threatens crackdown on LGBT advocates," 26 June 2017, <https://www.reuters.com/article/tanzania-lgbt-idUSL8N1JN373>, Accessed 19 November 2018.

370 DefendDefenders interview, Tanzania, August 2018.

371 DefendDefenders interview, Tanzania, August 2018.

372 Kuchu Times, "Tanzanian TV Station in Trouble for Hosting Gay Man," 6 July 2016, <https://www.kuchutimes.com/2016/07/tanzanian-tv-station-in-trouble-for-hosting-gay-man/>, Accessed 19 November 2018.

373 All Africa, "Tanzania: Clouds TV Ordered to Run Apologies on Gay Interview," 9 July 2016, <https://allafrica.com/stories/201607110805.html>, Accessed 19 November 2018.

374 DefendDefenders, "Spreading Fear, Asserting Control: Tanzania's Assault on Civic Space," June 2018, <http://www.defenddefenders.org/wp-content/uploads/2018/06/Spreading-Fear-Asserting-Control-web.pdf>, Accessed 19 November 2018.

375 Independent, "Tanzania bans lubricant in a bid to 'curb homosexuality,'" 23 July 2016, <https://www.independent.co.uk/news/tanzania-lubricant-ban-to-curb-homosexuality-lgbt-rights-east-africa-a7152656.html>, Accessed 19 November 2018.

376 DefendDefenders interview, Tanzania, August 2018.

377 Pan Africa ILGA, "Press Release: LGBTI Lives Under Threat as Tanzania Bans Distribution of Lubricant!" 11 August 2016, <https://panafricailga.org/press-release-lgbti-lives-under-threat-as-tanzania-bans-distribution-of-lubricant/>, Accessed 19 November 2018.



KPs.³⁷⁸ Subsequently, in November 2016, 40 HIV facilities serving MSM and transgender people were shuttered by the Tanzanian government.³⁷⁹

The low visibility of LGBT+ organisations, lack of support from larger CSOs and lawyers, as well as limited access to funding and capacity-building are crucial structural barriers that prevent growth. Low availability of funding has created competition amongst LGBT+ HRDs for resources and limits their activities to approved donor goals, which carries the risk of further reinforcing anti-LGBT+ biases and discourses - especially those branding them as "foreign agents." Because of limited resources, the trainings and funding available to some HRDs and organisations does not necessarily trickle down to all, fracturing the movement further while leaving some with lower capacity than others.³⁸⁰

"We need to help build each other's capacities. What is the meaning of a movement - we need each other, we need to work in harmony and work together. There is a competition for funds and for achieving our goals. If I was a donor I would prioritise new things."³⁸¹

Closure of Events and Arbitrary Arrests

In February 2017, three men were arrested in Dodoma on charges of "promoting homosexuality," because their online activity allegedly showed a gay sex act.³⁸² In March 2017, several LGBT+ HRDs

378 Human Rights Watch, "Tanzania: Stop Threatening Rights Groups," 6 July 2017, <https://www.hrw.org/news/2017/07/06/tanzania-stop-threatening-rights-groups>, Accessed 19 November 2018.

379 Mamba Online, "They are killing LGBTI community says Tanzanian activist," 27 February 2017, <http://www.mamba-online.com/2017/02/27/killing-lgbt-community-says-tanzanian-activist/?platform=hootsuite>, Accessed 19 November 2018.

380 UHAI - East African Sexual Health and Rights Initiative, "The Other Tanzanians: Landscape analysis of the human rights of Sex Workers and LGBTI communities in Tanzania 2015-2016," 16 May 2016, <http://www.uhai-eashri.org/ENG/resources?download=27:the-other-tanzanians>, Accessed 19 November 2018.

381 DefendDefenders interview, Tanzania, August 2018.

382 News 24, "Tanzania orders arrest of 3 men for 'promoting homosexuality,'" 7 February 2017, <https://www.news24.com/Africa/News/tanzania-orders-arrest-of-3-men-for-promoting-homosexuality-20170207>, Accessed 19 November 2018.

were arrested for holding meetings,³⁸³ taken to the police station in Songea, detained for six days, and finally released without charge.³⁸⁴ It is important to note that while "carnal knowledge against the order of nature" is criminalised in Tanzania, there is no provision against "promotion of homosexuality" in the Penal Code.³⁸⁵ Moreover, in the cases of arbitrary arrests of men suspected to engage in same-sex acts, physicians still carry out, or threaten to carry out, forced anal examinations under the direction of law enforcement.³⁸⁶ This practice is not only pseudoscientific, but has been widely condemned by medical communities worldwide as amounting to cruel, inhuman, and degrading treatment.³⁸⁷

"We were detained for six hours without being told our case, until midnight. From there we were asked to report to the police station for the next three months, almost everyday. It was hard to get lawyers in Zanzibar to fight our case. We don't have any legal support."³⁸⁸

On 15 September 2017, Zanzibar police arrested and detained 20 people, accusing them of engaging in homosexual activities at a workshop organised by one of the few LGBT+ focused organisations in the archipelago.³⁸⁹

383 Human Rights Watch, "Tanzania: Events of 2017," January 2018, https://www.hrw.org/sites/default/files/tanzania_wr2017_pdf.pdf, Accessed 19 November 2018.

384 Google Plus, Goodluck Haule, 21 April 2018, <https://plus.google.com/103761502207482944470/posts/2JeJrcFdCdz>, Accessed 19 November 2018.

385 DefendDefenders, "Spreading Fear, Asserting Control: Tanzania's Assault on Civic Space," 26 June 2018, <https://www.defenddefenders.org/wp-content/uploads/2018/06/Spreading-Fear-Asserting-Control-web.pdf>, Accessed 19 November 2018.

386 PLOS Medicine, "Forced anal examinations to ascertain sexual orientation and sexual behavior: An abusive and medically unsound practice," 16 March 2018, <https://journals.plos.org/plosmedicine/article/file?id=10.1371/journal.pmed.1002536&type=printable>, Accessed 19 November 2018.

387 World Medical Association, "WMA RESOLUTION ON PROHIBITION OF FORCED ANAL EXAMINATIONS TO SUBSTANTIATE SAME-SEX SEXUAL ACTIVITY," 17 October 2017, <https://www.wma.net/policies-post/wma-resolution-on-prohibition-of-forced-anal-examinations-to-substantiate-same-sex-sexual-activity/>, Accessed 19 November 2018.

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389 AP News, "Police in Zanzibar Arrest 20 over Ho-

"We had peer educators who used to be sex workers, but now they are not so involved in our work anymore, the economic situation is very hard. This source of income has been stopped for them. This project was stopped (after KBH Sisters was closed) and since then we have not been able to start another project where we can pay salaries."³⁹⁰

On 29 October 2018, the Dar es Salaam Regional Commissioner announced that a committee would be put in place to "track and arrest gay people," putting the identities of LGBT+ individuals in the region at risk.³⁹¹ While the central government of Tanzania later attempted to distance itself from these statements by claiming that the views expressed by the commissioner did not reflect those of the government, no action has been taken to protect LGBT+ citizens from these threats.³⁹² Within the same week, on 3 November 2018, 10 men in Zanzibar were arrested on suspicion of allegedly conducting a gay marriage.³⁹³ The events of November 2018 in Tanzania are indicative of the increased insecurity facing LGBT+ people and HRDs.

Deregistration of LGBT+ organisations

On 17 October 2017, 13 human rights lawyers and activists in Dar es Salaam meeting at the Peacock Hotel were arrested, detained, and accused of "promoting homosexuality."³⁹⁴ The meeting was

mosexual Activities," 26 September 2017, <https://apnews.com/9fb09123d5fc4e50ab7bacb308a64dc2>, Accessed 19 November 2018.

390 DefendDefenders interview, Tanzania, August 2018.

391 OHCHR, "Bachelet: Tanzania has duty to protect – not further endanger – LGBT people," 2 November 2018, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23817&LangID=E>, Accessed 19 November 2018.

392 CNN, "Tanzania's LGBT community 'fearing for their lives,'" 5 November 2018, <https://edition.cnn.com/2018/11/05/africa/tanzania-crackdown-on-gays-intl/index.html>, Accessed 19 November 2018.

393 Amnesty International, "Tanzania: 10 men arrested in Zanzibar for being 'gay,'" 6 November 2018, https://www.amnesty.org/en/latest/news/2018/11/tanzania-10-men-arrested-in-zanzibar-for-being-gay/?utm_source=twitter&utm_medium=quote&utm_term=VGhpcyBpcy&utm_campaign=social, Accessed 19 November 2018.

394 The Guardian, "Tanzania illegally detains human rights lawyers for 'promoting homosexuality,'" 26 October

organised by South Africa-based Initiative for Strategic Litigation in Africa (ISLA) and Tanzania-based Community Health Education Services and Advocacy (CHESA) to discuss the Tanzanian government's ban on lubricants and drop-in centres serving KPs.³⁹⁵ The detainees were kept in the police station for over a week and finally released without charge.³⁹⁶ In the aftermath of this incident, CHESA was deregistered³⁹⁷ and another organisation, Kazi Busara na Hekima Sisters (KBH Sisters), was barred from using their office, officially told that they were being "investigated."³⁹⁸

"After these arrests, the registrar of organisations issued a notice that we were suspended. They searched our offices...We still don't have an official notice to cancel the suspension, we are working on it. Since then it has been very, very difficult to work. We can't do most of our work right now without our office."³⁹⁹

As of August 2018, HRDs interviewed in Dar es Salaam reported that the effects of these arrests were still being felt. CHESA and KBH Sisters members were still not allowed access to their offices and LGBT+ HRDs working in these organisations have lost a source of income which has not been recovered.

2017, <https://www.theguardian.com/global-development/2017/oct/26/tanzania-illegally-detains-human-rights-lawyers-for-promoting-homosexuality>, Accessed 19 November 2018.

395 Human Rights Watch, "Facing Prosecution for Challenging HIV Policies in Tanzania," 20 October 2017, <https://www.hrw.org/news/2017/10/20/facing-prosecution-challenging-hiv-policies-tanzania>, Accessed 19 November 2018.

396 Kuchu Times, "SUSAN MIREMBE OPENS UP ABOUT BEING DETAINED IN TANZANIA," 13 November 2017, <https://www.kuchutimes.com/2017/11/susan-mirembe-opens-up-about-being-detained-in-tanzania/>, Accessed 19 November 2018.

397 DefendDefenders, "Spreading Fear, Asserting Control: Tanzania's Assault on Civic Space," 26 June 2018, <http://www.defenddefenders.org/wp-content/uploads/2018/06/Spreading-Fear-Asserting-Control-web.pdf>, Accessed 19 November 2018.

398 DefendDefenders interview, Tanzania, August 2018.

399 DefendDefenders interview, Tanzania, August 2018.



Mental Health

The insecurity and subsequent self-censorship also affects the mental health of LGBT+ HRDs in Tanzania, reported feeling isolated and neglected from family, community, and government policies because of the homophobia and transphobia surrounding them. HRDs interviewed in Tanzania reported that there is little to no psychosocial support for them when they face arrests, detention, harassment from authorities, or online smear campaigns. For lesbian, bisexual, queer women, and transgender men, "corrective rape" is a widespread problem which goes unaddressed due to high rates of stigma and hesitation to report such incidents.⁴⁰⁰

"We have no psychiatrists who are LGBT+ friendly. But there are people in our community and we help each other. Depression and anxiety are common among LGBT+ people everywhere. We need professionals who can deal with this because there are many people who are suffering in silence."⁴⁰¹

Because of the stigma associated with LGBT+ people and HRDs in Tanzania, many also face the problem of being evicted from their homes, or choosing to live in remote areas outside of major cities. 13 out of 18 HRDs interviewed in Tanzania for this research reported that they were either chased out by their landlord or community members, or had to make the difficult choice of moving home because of security concerns. The same HRDs also reported feelings of isolation from their family and communities, due in part to their living situation.⁴⁰²

"I had to limit my socialisations, you feel depressed because you can't do things due to security, you have to keep quiet because something can happen to you."⁴⁰³

400 UHAI – East African Sexual Health and Rights Initiative, "The Other Tanzanians: Landscape analysis of the human rights of Sex Workers and LGBTI communities in Tanzania 2015-2016," 16 May 2016, <http://www.uhai-eashri.org/ENG/resources?download=27:the-other-tanzanians>, Accessed 19 November 2018.

401 DefendDefenders interview, Tanzania, August 2018.

402 DefendDefenders interviews, Tanzania, August 2018.

403 DefendDefenders interview, Tanzania, August 2018.

In February 2018, an HRD in Zanzibar was outed by his community members, reported to the police for "promotion" of homosexuality, and humiliated by a news outlet in the process.⁴⁰⁴

"Our government is harsh and there is punishment for queer women. Transgender women and transgender men hide themselves. Even I have to wear women's clothes sometimes so that people don't recognise me as I am. They rape and beat queer women and transgender men. They beat us, we are chased by landlords because of neighbours reporting us, we are told to move."⁴⁰⁵

404 KTV TZ ONLINE, 21 February 2018, <https://www.youtube.com/watch?v=laWHEy2ySiM&feature=youtu.be>, Accessed 19 November 2018.

405 DefendDefenders interview, Tanzania, August 2018.

Conclusion

LGBT+ people are one of the most persecuted and at-risk populations in Uganda, Kenya, and Tanzania, and these vulnerabilities have extended to HRDs working with them. While the introduction of draconian legislation was a catalyst for the creation and networking of LGBT+ organisations in Uganda, HRDs still face significant backlash from government and community members. While HRDs have made significant legal and policy gains for LGBT+ rights in Kenya, significant barriers to their work continue to exist as they press for full decriminalisation. In Tanzania, the situation is increasingly precarious, with the government actively seeking to persecute the LGBT+ community in the name of traditional values.

In all three countries, LGBT+ HRDs face negative stereotypes, hateful discourse from media and government officials, unstable working environments, and threats to their personal safety. This has affected the life and work of HRDs who feel trapped because they are attacked simply for being themselves. Within the LGBT+ community itself, various forms of violence affect different people, for example lesbian women who also face patriarchal oppression, or transgender people whose identities are most visible in public spaces. Moreover, working in unsupportive political climates has also contributed to funding gaps and competition among many organisations, especially in Tanzania. This has only exacerbated their struggles and constrained the important work of raising awareness about their rights.

These layers of marginalisation and constraints have overwhelmed HRDs, and many interviewed for this research reported facing mental health breakdowns and feelings of isolation. In addition to already having lost family and friends' support because of homophobic and transphobic cultural attitudes, they also face stressful working environments. Without adequate support and funding for these HRDs, they run the risk of burnout or other serious psychosocial issues related to PTSD. Their needs are urgent.

It is important for national and international civil society to unite publicly in support of LGBT+ HRDs in Uganda, Kenya, and Tanzania. Negative attitudes towards LGBT+ people in these countries cannot be tackled without the support of civil society. Moreover, the LGBT+ communities in these countries also need to come together despite their differences, as political and religious leaders continue to attack their rights. In light of the findings of this research, the following recommendations should be adopted.



Recommendations

To the governments of Uganda, Kenya, and Tanzania;

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

To the Government of Uganda:

- Allow Sexual Minorities Uganda to register as an NGO and continue their important work;
- Respect the right to free expression of LGBT+ persons by allowing them hold their annual Pride events free from fear of harassment and arrests; and
- Repeal sections 145 and 146 of the Penal Code Act.

To the Government of Kenya:

- Repeal sections 162 and 165 of the Penal Code; and
- Create more inclusive, gender-affirming policies to enable LGBT+ people to access health and education services without discrimination;



To National Human Rights Institutions in Uganda, Kenya, and Tanzania:

- Enhance the engagement with LGBT+ HRDs, especially in rural areas and at the local level;
- Monitor and report on the situation of LGBT+ persons and defenders, especially focused on their rights to freedom of expression and freedom of association;
- Issue recommendations and statements on the rights of LGBT+ persons and defenders to state authorities;
- Promote the amendments of discriminatory laws for LGBT+ persons and HRDs, through submissions, amicus curiae, and strategic litigation; and
- Set up emergency desks for vulnerable HRDs in need of protection, including LGBT+ defenders.

To LGBT+ human rights defenders:

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



To civil society organisations:

- Engage with LGBT+ HRDs, and extend support to them as they are vulnerable to physical and verbal abuse;
- Initiate more therapeutic avenues for HRDs, such as arts-based therapies or collective healing spaces, specifically tailored to LGBT+ experiences;
- Enhance the capacity of LGBT+ HRDs through bespoke trainings and workshops, especially in rural areas and at the local level, in cooperation with national coalitions;
- Engage with the Tanzania Human Rights Defenders Coalition to address the needs of LGBT+ defenders at risk; and
- Highlight the situation of LGBT+ defenders to regional and international stakeholders, such as the ACHPR and UNHRC.

To UN human rights bodies and mechanisms:

- The UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity should request visits to Uganda, Kenya, and Tanzania;
- The UN Human Rights Council should, at its 41st session (June-July 2019), renew the mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and
- UN human rights bodies and mechanisms, including special procedures and treaty bodies, should mainstream the protection of LGBT+ persons and defenders into their work.

To the African Commission on Human and Peoples' Rights:

- The Special Rapporteur of human rights defenders should highlight the challenges faced by LGBT+ defenders and urge member states to respect their obligations as set out in the African Charter on Human and Peoples' Rights; and
- Grant LGBT+ HRDs observer status to allow them access the African Commission on Human and Peoples' Rights.



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

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

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