



# LESSONS LEARNT

## HUMAN RIGHTS DEFENDERS WORKING IN AFRICAN STATES IN TRANSITION

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#### CONTRIBUTORS

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# About ISHR

For over 30 years, ISHR has worked closely with and supported human rights defenders from Africa, Asia, Latin America and Europe. Our work includes supporting defenders at the international and regional levels because we understand that their work is essential to protect and promote human rights and the rule of law on the ground. We also build, lead and support networks and coalitions because our experience demonstrates that organisations that work in strategic partnerships are the most effective in achieving positive and sustainable change.

For more information, visit [www.ishr.ch](http://www.ishr.ch)

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# Introduction

For many years the International Service for Human Rights (ISHR) has worked with human rights defenders in Africa dedicated to promoting democratic rights and good governance.

A State's transition towards democracy will invariably present particular dangers and challenges for human rights and their defenders, but it will also present opportunities. ISHR's 'States in transition' programme seeks to ensure that human rights defenders have the tools that will enable the development of domestic laws and mechanisms that are compatible with, and give effect to, international human rights obligations.

Through our 'States in transition' programme we have had the privilege of meeting many inspiring human rights defenders. We have heard some wonderful stories, shared ideas and given advice for achieving positive human rights change.

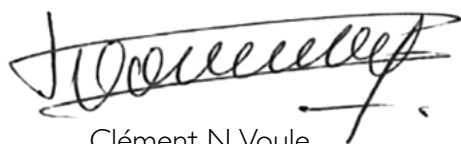
We would like to thank all the human rights defenders and civil society organisations (CSOs), together with ISHR interns and staff, who carried out research, provided information and shared their case studies with us.

This short report shares some of the lessons that have emerged from the various meetings and consultations that we have held.

We hope that other human rights defenders seeking to engage with regional and international human rights mechanisms will find it useful for their work. Defenders can use this report to reflect on the strategies, successes and shortcomings of other campaigns and programmes in order to appreciate the impact they have had in various African States.

We also hope the information and case studies we have collated will be useful to other non-governmental organisations (NGOs), States and the human rights mechanisms themselves. We have made a series of recommendations on how various stakeholders can support and respond to the needs of human rights defenders and help eliminate the dangers that they often face.

We would like to thank Irish Aid for supporting the production of this report and we hope it provides defenders working in States in transition with some tactical ideas on how to utilise human rights mechanisms to help advance their national advocacy objectives.



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# Key findings

Democratic transitions are often key points in the evolution of a States' laws and institutions, resulting in changes that will better promote human rights principles and protect citizens in general, and human rights defenders in particular.

Defenders have emphasised that it is difficult to bring about legal changes in repressive States – where the law is used as a power retention tool and any proposed changes by defenders are seen as a threat by the ruling governments. Nevertheless, legal reform is often the first step for defenders working in States in transition when seeking to promote democratic rights and good governance. Fortunately, many defenders are trained and have expertise in this area.

Defenders working in States in transition often utilise windows of opportunity during transition phases to lobby their governments for better laws and national mechanisms that promote human rights and meet international human rights standards.

Defenders have identified three ways in which they contribute during transition, these include:

- monitoring and promoting accountability
- conducting lobbying/advocacy and
- undertaking awareness raising/education.

Support to human rights defenders by regional and international human rights mechanisms is therefore necessary at the local, regional, and international level.

The decision about where the defenders themselves choose to engage has been influenced by their skills, financial capacity and the anticipated potential for impact on advancing their advocacy objective.

Traditional, cultural and religious beliefs on the African continent in general, and within human rights defenders' respective countries in particular, often stand in the way of reform efforts.

Defenders feel there is significant, but not necessarily adequate, support from human rights mechanisms. Those working on more controversial transition issues, such as the violation of women's rights and human rights abuses in the extractive sector, felt they needed more support from mechanisms given the politicisation of their thematic areas of work.

Defenders often feel let down by the slow rate of response by human rights mechanisms to pressing human rights situations. In some cases, international NGOs have helped to raise awareness about violations through their coalitions and relevant networks.

African defenders who took part in the consultations stressed that human rights mechanisms need to evolve and move beyond reacting to communications submitted by NGOs and defenders, to include early and preventive action towards human rights situations of concern in any given country.



# Glossary

## ► United Nations Human Rights Council (UN HRC)

The Human Rights Council is the United Nation's peak human rights body. The Council consists of 47 UN Member States that are elected by the UN General Assembly. The Council is responsible for strengthening the promotion and protection of human rights around the world and for addressing human rights crises and violations. It makes recommendations on how countries and the international community should respond to thematic or country specific human rights issues and situations. Defenders working for or accredited by NGOs with Economic and Social Council observer status can: submit written statements, make oral statements, participate in panels and organise official side events. The Council meets in ordinary sessions three times a year in Geneva, Switzerland. The Council may also convene special sessions.

## ► The African Commission on Human and Peoples' Rights (ACHPR)

The Commission is Africa's main human rights body and is located in Banjul, in the Republic of The Gambia. It consists of eleven elected Commissioners who serve in their personal capacity for six-year terms that may be renewed once. The Commission has 'special measures' which consist of Special Rapporteurs who are in charge of specific human rights issues/themes and working groups that monitor and investigate specific questions. The duties of the Commission include: examining national reports on the situation of human rights which each State is required to submit every other year; adopting resolutions and declarations; country visits; and adjudicating communications (complaints) submitted by Member States, individuals, and NGOs. Human rights defenders and civil society groups can send communications to the Commission and, if granted observer status, can make oral statements during interactive dialogues with Commissioners. Defenders and civil society are welcome to submit shadow reports of State Periodic Reports.

## ► Office of the High Commissioner on Human Rights (OHCHR)

This Office is located in Geneva, Switzerland and offers expertise and support to the different human rights monitoring mechanisms in the UN. In particular, the Office provides secretariat support to the charter-based bodies such as the Human Rights Council, the Universal Periodic Review, the Special Procedures of the Human Rights Council and Human Rights Council Complaints procedures. The Office also gives secretariat support to the ten human rights treaty bodies that monitor the implementation of the core international human rights treaties. These include the Committee on Economic Social and Cultural Rights, the Human Rights Committee and so on.

## ► Pan-African Parliament (PAP)

The Pan-African Parliament is located in Midrand, South Africa and its purpose is to ensure the full participation of African people in the development and economic integration of the continent. The ultimate aim is for the Parliament to be an institution with full legislative powers, whose members are elected by universal suffrage. Until such time, the Parliament has consultative and advisory powers within the African Union. The functions include facilitating and overseeing implementation of African Union's policies, objectives and programmes, as well as promoting human rights and consolidating democratic institutions and good governance.

## ► Country visits

Assessments of the situation of human rights at the national level usually carried out at the request of a UN mandate-holder or an African Commission's Commissioner. The government will then send an official invitation allowing a fact-finding mission or country visit.



## Background

African defenders working to promote democratic rights and good governance in States undergoing transition operate in environments characterised by significant economic, political and social upheaval. It is during these transformation phases that various human rights violations often manifest. Violations can include strong legal restrictions against organised human rights advocacy groups, reprisals, enforced disappearance and harassment.

A country's specific history and context often influence the level and types of human rights violations that arise.

The role of human rights defenders in these contexts is to ensure that the democratic transition does not result in a worse situation, but instead helps create a society that upholds the rule of law and promotes human rights. It is during these transition phases that defenders often seize the opportunity to influence policy and legal reforms by advancing a rights-based approach to development and peace building.

Defenders will often seek to:

- establish the facts through truth-seeking measures including independent investigations,
- ensure accountability for past human rights violations,
- secure remedies for victims,
- address on-going violations, and
- pursue legal frameworks that will prevent or minimise future violations.

They do this to prevent their societies from reverting to former practices with the potential of causing government failure, communal violence or even war.

Defenders working in countries undergoing political change do so within contexts where impunity is deeply

entrenched and the very nature of their work can result in enforced disappearances, arbitrary detention, targeting of family members, torture and harassment.

Examples include the targeted attacks against individual defenders such as the attempted assassination of Burundi's Pierre-Claver Mbonimpa<sup>1</sup>, the judicial harassment of Kenya's Ruth Mumbi<sup>2</sup> and the enforced disappearance of Zimbabwe's Itai Dzamara<sup>3</sup>. These challenges have often been coupled with repressive laws as well as reprisals that contribute to shrinking civil society space which limits the role and work of defenders.

Due to the lack of effective national human rights mechanisms and independent judicial systems in most States in transition, defenders often turn to the regional and international human rights mechanisms to seek support during transition processes.

A number of tools exist at the international and regional levels to empower human rights defenders with knowledge of their rights and the obligations of their governments to ensure their recognition, protection and a safe and enabling environment for them to conduct their work. These tools include the UN Declaration on Human Rights Defenders, a number of resolutions made at the UN and African Commission level, and political commitments made to the international community through processes such as the Universal Periodic Review.

Despite the existence of such human rights mechanisms, regional organs and legal instruments, there is still not adequate protection and promotion of human rights defenders around the world, and in particular in Africa.

<sup>1</sup> <https://www.hrw.org/news/2016/09/01/pierre-claver-mbonimpa-burundi>

<sup>2</sup> <https://www.frontlinedefenders.org/en/profile/ruth-mumbi>

<sup>3</sup> <https://www.frontlinedefenders.org/en/case/case-history-itai-dzamara>



# Methodology

The research for this handbook required qualitative methods that included small group discussions, one on one interviews and plenary discussions. Two main events were used to collect information. The first was a consultation in Abidjan, Côte d'Ivoire, held on 13 February 2015, which brought together 25 defenders from all the sub-regions in Africa. The second consultation meeting was held in Lomé, Togo, on 18 December 2015 and brought together 30 defenders from the West African sub-region. This

report is based on the experiences of defenders, the primary stakeholders, working and living in at least 20 African countries. The defenders came from Bénin, Burkina Faso, Burundi, Côte d'Ivoire, Cabo Verde, Egypt, the Democratic Republic of the Congo, Ghana, Guinea, Kenya, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, The Gambia, Togo, Tunisia, Uganda and Zimbabwe.

## Lessons learnt

The time taken for human rights defenders to meet their advocacy objectives varies considerably and is often dependent on the thematic issue and the context in which defenders are operating.

Defenders often set challenging, yet realistic advocacy objectives and goals that they manage to achieve.

Below is a list of some of the commonly shared pieces of advice from defenders who have successfully engaged with various human rights mechanisms to advance their advocacy objectives:

- use the national and regional courts of law to enforce human rights and hold the State accountable
- make relevant linkages with regional and international human rights mechanisms and processes
- initiate contact with regional and international inter-parliamentary organisations such as the Pan-African Parliament, the Southern African Development Community (SADC) Parliamentary Forum and the Economic Community of West African States (ECOWAS) Parliament
- use the United Nations system to enhance advocacy objectives by highlighting the problem and solutions, thereby pressuring governments to meet their human rights obligations
- locate culturally sensitive issues, such as the debate around lesbian, gay, bisexual, transgender and intersex (LGBTI) people in Africa, within the broader human rights context
- mobilise and educate citizens
- build alliances and bring all relevant stakeholders to the table
- communicate with and keep influential decision makers informed about progress made, challenges and opportunities for further advancing the advocacy objective
- confrontation is not always the best tactic; be firm but respectful

# Promoting democratic rights and good governance in Africa



Defenders play a vital role in promoting and protecting democratic rights, good governance and the rule of law at all times, but particularly during transitional periods which present particular challenges and opportunities for human rights and their defenders.

While not exhaustive, for the purpose of this report, such challenges and opportunities may arise when:

- a State is transitioning from dictatorship or authoritarianism, such as in Benin
- a State is emerging from civil war or internal conflict and entering a process of social and political reconstruction, such as in Côte d'Ivoire, Sierra Leone, Liberia and Angola
- popular or large-scale protest movements have resulted in the overthrow or resignation of a government, such as in Tunisia and Egypt during the Arab Spring
- a process of transition has occurred but could be considered incomplete due to the absence, weakness or fragility of democratic institutions and the rule of law, such as in Zimbabwe and Togo
- a State is in a period of democratic recession or human rights regress, such as is currently the case in Burundi, South Sudan or the Democratic Republic of the Congo

This report also touches upon cases of States considered to be in pre-transition as the work of defenders is also crucial in such phases to establish the conditions necessary to move towards sustainable transition, such as in Burundi and South Sudan.

# The role of defenders in periods of transition

Across Africa, human rights defenders play a vital role in countries undergoing transition towards democracy. Defenders have identified three key ways in which they contribute during transition, which include: accountability, lobbying/advocacy and awareness raising/civic education. There is agreement that while these roles were not necessarily mutually exclusive, analysing each role separately allowed defenders to explain their niche areas more precisely.

## Accountability

Monitoring activities, encouraging peace building and development as well as promoting political and institutional reform are some of the ways in which defenders have been holding governments accountable in their countries.

Monitoring activities has included influencing the creation of accountability mechanisms, producing films, reports and policy briefs, as well as documenting the status or progress regarding

human rights in the various countries where defenders work. These monitoring activities offer analysis of improvements, set backs and opportunities for raising thematic issues or concerns that defenders think need attention.

Other efforts to monitor have been made in collaboration with relevant human rights organisations. These include working with peace-keeping missions, national human rights institutions (NHRIs) and offices or departments of the OHCHR to ensure that accountability mechanisms such as truth and reconciliation commissions effectively carry out their work.

Lastly, defenders explained that it was important for them to accompany and meet UN Special Procedure mandate holders or African Commission's Commissioners during their country visits. Defenders' role here was seen to be of offering the counter narrative on the human and civil rights situation in the country, compared to the governments' position on the same.

## Case Study: Sierra Leone

### Country Context

Country, Capital: **Sierra Leone, Freetown**  
Region: **West Africa**

Colonial History: **Former British Colony**  
Independence: **1961**

Joined United Nations: **September 1961**

Ratification of the African Charter (on Human and Peoples' Rights): **1983**

30 years after Sierra Leone gained independence and inherited an extractive sector, the country suffered from weak governance institutions. Corruption, a lack of access to justice and overall political intolerance contributed to the commencement of an eleven-year civil war. It concentrated around the mining districts and disrupted the country's transition to democracy and economic growth.

At the end of the war, the Lomé Peace Agreement signed in July 1999 gave absolute and free pardon and reprieve to all combatants and collaborators that participated during the civil war. CSOs identified that this would make it difficult to address human rights abuses and impunity. The Sierra Leone human rights community led by Forum of Conscience (now called Fambul Tok) created a Working Group of CSOs calling for the establishment of a credible and independent Truth and Reconciliation Commission.

### Human Rights Advocacy Objective

The goal of the Working Group of CSOs was to establish the facts and address the human rights abuses of the civil war; promote reconciliation, and encourage Sierra Leonean ownership of and participation in the process and create a credible and legitimate Truth and Reconciliation Commission (TRC).

### Experience and Results

The lack of political will to establish a credible commission propelled the Working Group to step in and mobilise the citizens about the importance of a commission. The Working Group was composed of organisations based in all the districts of Sierra Leone. The decentralised nature of the group helped to ensure that all districts were mobilised and aware about the importance of the commission. The Working Group members worked as a pressure group, keeping citizens engaged and interacting with the various government offices in the different parts of the country. They carried out consultations in the various districts and the outcome was a list of recommendations on what needed to be taken into account to create a credible and legitimate commission.



The Working Group focused its advocacy on the Minister of Justice, members of Parliament, the office of the President through the minister of Presidential Affairs and the United Nations Human Rights Unit in the peace keeping mission. These efforts helped to ensure that the vast majority of the Working Group's recommendations were ultimately included in the final version of the Act.

ARTICLE 19 and ISHR worked closely with the Working Group at the international level. Members of the group also visited Zimbabwe, South Africa, Guatemala and Germany to learn about their commissions and other truth processes in order to explore what might be relevant in the Sierra Leone context.

Over two years, the group experienced considerable criticism from government officials, UN agencies and international NGOs. They argued that CSOs were over stepping and intruding in a government process. Nevertheless, the Working Group's significant contribution in the Act drafting process was putting forward 'the citizens perspective and voice' to the peace building conversations.

In the end, a credible and legitimate commission was established in February 2000.

Today the Working Group believes that the process could have been better. However, the Group agrees that the Truth and Reconciliation Commission report is very good and has come up with excellent recommendations.

## Strategic and Tactical Lessons Learnt

- Identify like-minded organisations and create a network to work with. Diversify the group with members from relevant human rights groups in your country. In this case, religious groups were crucial.
- Consider a decentralised membership where possible. This helps curb government influence and coalition divisions that can potentially kill the movement or campaign.
- Take note of politicised and sensitive issues such as impunity and peace building. It is best to avoid being confrontational – be respectful, yet firm in your position.

## Lobbying/Advocacy

Defenders have focused their lobbying and advocacy efforts at the national, regional and international levels. They have done so by engaging with the national legislature and judicial systems, taking national advocacy objectives/campaigns to regional forums and international human rights mechanisms such as the UN Human Rights Council and the UN Special Procedures and Treaty Bodies.

Defenders explained that ultimately, their skills, financial capacity and the anticipated potential for impact on advancing their advocacy objective informed the level where advocacy was emphasised. As such, some defenders had only lobbied at the national level, while others at all three.

Defenders have used the human rights mechanisms and instruments to provide impetus for holding their States to account. Many defenders see being able to interact in national political developments as part of their role. As a result, defenders have actively contributed towards legal and legislative reforms and processes. They have also been interacting with their electoral commissions, made

presentations to parliamentary committees and actively engaged with NHRIs to ensure that the views of civil society are understood and presented.

Regional lobbying and advocacy takes place in spaces such as the African Commission. Defenders have submitted NGO reports during the State Periodic Reviews and galvanised support from defenders, Commissioners and CSOs at the NGO Forum, which precedes sessions of the African Commission.





Lastly, at the international level defenders saw their role as being to speak to the international community as experts on their countries and specific advocacy objectives. They demonstrate and communicate their expertise by: submitting shadow reports during the Universal Periodic Reviews and to Treaty Bodies; engaging at the UN Human Rights Council by delivering statements, briefing diplomats and participating as panellists at side events. It was stressed that spaces such as the Council were strategic as they give defenders an opportunity to access ministers and diplomats

whom they would not ordinarily have an audience with at home.

When they interact with mechanisms, defenders working in States in transition tend to focus on State compliance with specific international laws, rulings and mechanisms. This has included following up on the States' responsiveness and implementation of specific recommendations, calling for electoral reform at the national level, ensuring that the NHRIs are in line with the Paris Principles and lobbying for the adoption of defender protection laws.

## Case Study: Côte d'Ivoire

### Country Context

Country, Capital: **Côte d'Ivoire, Yamoussoukro**  
Region: **West Africa**

Colonial History: **Former French Colony**  
Independence: **1960**

Joined United Nations: **September 1960**

Ratification of the African Charter (on Human and People's Rights): **1992**

Prior to 2002, Côte d'Ivoire was hailed as West Africa's model for stability and economic development. An armed rebellion in 2002 escalated into a civil war and resulted in the establishment of the United Nations peacekeeping Operation in Côte d'Ivoire (UNOCI) and the civil war ended in 2007. A second war erupted abruptly in 2010 after the disputed 2010 Ivorian Presidential elections resulted in post-election violence.

### Human Rights Advocacy Objective

The objective of the Coalition Ivoirienne des Défenseurs des Droits Humains (CIDDH) was the creation and adoption of a national law that protects and promotes human rights defenders.

### Experience and Results

The post-electoral crisis in Côte d'Ivoire resulted in at least 3,000 deaths and prompted international response from human rights agencies of the UN and the African Union. During this period defenders were the target of attacks because they were exposing election-related violations and abuses. Dozens were forced into exile, after offices were ransacked and defenders faced harassment and intimidation.

Thanks to the advocacy and mobilisation of human rights defenders, a Special Session was organised by the UN Human Rights Council, an international commission of inquiry was set up, communiques were issued by the African Commission, letters warning perpetrators of their criminal responsibility were sent by the UN High Commissioner for Human Rights, and after the crisis a UN independent expert was appointed to advise and assist the Ivorian authorities.

The newly installed Ivorian Government of 2010 committed to bringing the country back to the concert of the nations through democratic reform. Pressure from the UN and African Union and other human rights bodies during the crisis led to the establishment of a national commission of inquiry to investigate human rights violations committed during the post-election crisis, which revealed the extent of the violence, followed by a national truth commission.

Advocacy by Ivorian CSOs led by the CIDDH, and supported by ISHR, exposed the lack of cooperation of the Ivorian Government with the African Commission. As a result, Côte d'Ivoire agreed to host the 52nd ordinary session of the African Commission in October 2012. During this session, the CIDDH and their partners advocated and called for a law to protect Ivorian human rights defenders. The African Commission took up the recommendation and the African Commission Special Rapporteur on human rights defenders asked the Ivorian authorities to consider drafting such a law. The recommendation was well received by the Ivorian Government.

From 2012, the Ivorian Coalition followed up with the authorities, especially with the National Human Rights Commission, and continued lobbying for the adoption of a law. In June 2014, the fruitful cooperation with the Government led to the adoption of the law setting out the main objectives of defenders protection in the country.

The law required the adoption of a decree to detail the modalities of its implementation. The decree was adopted in February 2017.

## Conclusions and Lessons Learnt

- Seize the moment and opportunities that arise through democratic transition processes to propose reforms that can enhance human rights defenders' protection.
- Maintain momentum of your advocacy objective by making relevant linkages with regional and international human rights mechanisms and processes. In this case, a particularly important role was played by the African Commission, but equally the pressure from UN human rights bodies was instrumental in mobilising the good will of the Government, including the Independent Expert on Côte d'Ivoire, the OHCHR, the UN peacekeeping Operation in Côte d'Ivoire (UNOCI) and the Universal Periodic Review.
- Build alliances with key stakeholders. In this case, the CIDDH, the African Commission Special Rapporteur for Human Rights Defenders, NHRIs, UNOCI, the Ministry of Human Rights and international NGOs.
- Communicate with and keep influential key decision makers and interlocutors informed about progress made, challenges and opportunities for further advancing the advocacy objective.

## Awareness Raising/Civic Education

Communicating pertinent human rights issues to ordinary citizens is an essential part of the work of defenders. Defenders are well informed about the context, the timing to raise issues and have the legitimacy to begin a dialogue on sensitive and topical issues among fellow citizens.

Defenders felt that over the years they have been able to stimulate national dialogue and educate citizens about human rights violations that occurred before, during and after the transition period. They have done so through town hall debates, community radio, outreach to key stakeholders

such as women and youth, training journalists, television shows, using social media, distributing information brochures, and so on.

These tactics have resulted in community mobilisation and advocacy messages reaching target groups, such as the members of the judiciary, legislature and other key policy makers. In cases where this has been done well, it has captured the attention of the regional and international community as was the case in Uganda regarding the Anti-Homosexuality Bill (2009). Awareness-raising and citizen education reinforce and give visibility to the defenders' lobbying and advocacy efforts.





# Case Study: Uganda

## Country Context

Country, Capital: **Uganda, Kampala**  
Region: **East Africa**

Colonial History: **Former British Colony**  
Independence: **1962**

Joined United Nations: **September 1962**  
Ratification of the African Charter (on Human and Peoples' Rights): **1986**

Uganda's transition to democracy has been very unstable. President Museveni has been dominating political life for thirty years. The country has an increasing intolerance for press freedom and worsening of legal restrictions on CSOs. Culturally sensitive human rights issues such as homosexuality remain a concern. The first Anti-Homosexuality Bill (2009) called for harsh penalties for homosexuals, including the death penalty. As a result, in the same year the Civil Society Coalition on Human Rights and Constitutional Law, known as the Coalition, was formed. It consists of at least 40 LGBTI defenders seeking to prevent further criminalisation of homosexuality in Uganda through such legal bills.

## Human Rights Advocacy Objective

The Coalition started a campaign to oppose the Anti-Homosexuality Bill (2009) – the 'Bahati Bill' and advocate for sexual rights in Uganda.

## Experience and Results

The 2009 Bill sought to create an offence called 'homosexuality', nullify international instruments that promote homosexuality and provide for extra territorial jurisdiction and extradition of offenders.

The Coalition opposed the 'Bahati Bill' purely on human rights and constitutional law grounds. Most of the Coalition's advocacy was at the national level with strategic lobbying and advocacy towards the Parliament. The Coalition actively participated in Parliamentary Committee proceedings, especially the Legal and Parliamentary Affairs Committee – the Committee tasked with compiling a report after collecting the citizen's views on the Anti-Homosexuality Bill (2009).

In May 2011, the Coalition presented a 14-page memorandum to the Committee reiterating its position as regards the Bill. The Coalition kept the parliamentarians engaged by inviting them to academic debates and presentations about homosexuality. Even the proponent of the Bill, MP Bahati himself, engaged in debates about the Bill and criminalisation of homosexuality in general which helped to draw attention to the issue.

Lastly, the Coalition produced and distributed literature written for parliamentarians concerning the Anti-Homosexuality Bill and views on it from various perspectives. The aim was to inform parliamentarians about the dangers of further criminalisation of homosexuality and make a case for the need for de-criminalisation.



At the regional level, defenders lobbied at the NGO Forum held on the margins of the 51st ordinary session of the African Commission in April 2012. The Forum passed a resolution condemning the increasing clampdown on freedom of association and assembly of people on the basis of real or perceived sexual orientation or gender identity throughout the continent, especially in Uganda. During its promotion mission to Uganda in August 2013, the African Commission re-enforced the national level advocacy by calling on the Government to do away with legal frameworks that limit the rights and freedoms of LGBTI people.

As a member of the UN, Uganda is subject to most of its human rights mechanisms. In 2011 when Uganda was due for its Universal Periodic Review, the Coalition submitted a NGO report with recommendations on decriminalising homosexuality in the country. These recommendations were reflected in many recommendations made to Uganda by other States.

A revised Anti-Homosexual Act was passed in Parliament in December 2013 and signed into law on 24 February 2014. On the same day, the UN's High Commissioner for Human Rights, Navi Pillay, and the Secretary-General, Ban Ki Moon, condemned the signing of the bill into law.

In March 2014 the African Commission's Special Rapporteur on Human Rights Defenders in Africa released a statement expressing regret for the promulgation of the Anti-Homosexual Act. After international community condemnation and persistent lobbying of the judiciary by defenders, the Anti-Homosexual Act was overturned by the Constitutional Court of Uganda in August 2014 when it ruled that the act was invalid as it broadened the criminalisation of same sex relations domestically. Defenders utilised the courts of law to enforce the rights of LGBTI persons living in Uganda. The successful challenge to the Anti-Homosexuality Act has helped to set a precedent that neither the State nor non-State actors can treat LGBTI persons as lesser beings.

## Conclusions and Lessons Learnt

- **Use strategic litigation as an option, especially if you have strong grounds**

The role of national courts includes upholding and enforcing anti-discrimination laws. Strategic litigation helped to change the law that violated the constitution or international human rights norms.

- **Reach out across borders/internationally**

Sometimes it is not enough to lobby local Parliament alone. Reach out to regional and international inter-parliamentary organisations such as the Pan-African Parliament and also the members of parliament from other countries that have influence on your situation.

- **Use UN systems to enhance your advocacy objectives**

Processes such as the UN's Universal Periodic Review cycle helped to raise awareness of the situation and garner support from sympathetic quarters in an attempt to apply some diplomatic pressure on the Government of Uganda.

- **Diversify the ways your efforts can appeal to a wider audience or support base**

Defenders assembled a wide variety of human rights organisations to join the coalition. In the petition, for example, they ensured the participation of many other people who were not part of the LGBTI movement, but who did share a common human rights concern. By demonstrating that doctors, politicians, media practitioners and scientists among others all supported the campaign, it helped to broaden the appeal and buy-in.



## Defenders working in States in transition: in their words

### ► Objectives as articulated by defenders:

- report on the status of human rights
- increase women and youth participation
- encourage active participation in legislative processes
- monitor level of protection of human rights defenders
- promote national security and equal protection of all before the law
- decrease incidents of conflict
- promote social cohesion
- assist defenders to engage with regional and international mechanisms
- demand legal protection for all before the law
- promote rule of law and good governance
- fight against impunity
- ensure that NHRIs comply with the Paris Principles
- promote and reinforce the independence of State institutions such as the judiciary, parliament and

other institutions such as electoral commissions, anti-corruption commissions, etc.

### ► Means of bringing about change in their communities or countries:

- public education on democracy and civic participation
- debates
- dialogue with ministries, parliamentarians and NHRIs
- gender specific sensitisation
- training defenders on how to effectively engage with UN and African mechanisms
- key spaces e.g. NGO Forum, Human Rights Council, national NGO platforms
- submitting recommendations and resolutions to the African Commission
- social mobilisation and coalition building
- campaigns
- training and supporting duty bearers

# ■ Positive contributions by defenders during transition

Defenders across Africa consider that they have an influence on creating or stimulating reform at the national level. In Sierra Leone, defenders and civil society coalitions such as the National Advocacy Coalition on Extractive Industries (NACE) are involved in the promotion of transparency and accountability in their sector. NACE has done so by lobbying for mining and oil contracts to be accessible to the public.

Defenders believe that they have been integral in creating and maintaining regional networks, including building relationships so that civil society and defenders can have a stronger influence beyond the national level. Methods that defenders consider to have been successful include lobbying and advocacy through the media and the publication of reports, as well as synchronised regional peaceful protests.

Thematically, defenders felt they contributed the most on issues pertaining to: women's rights; business and human rights; conflict prevention and resolution; as well as electoral processes and constitutional reform. Defenders however highlighted that they had significant gains and a positive

impact in influencing legal processes. Examples that were highlighted by respondents included: constitutional review processes in Nigeria, Tunisia and Liberia; adoption of new laws in line with treaty body obligations in Nigeria; electoral law reform in Côte d'Ivoire; drafting and adopting a defenders' specific law in Côte d'Ivoire and as a result drafting similar laws by defenders in Mali and Burkina Faso.




## ► Why are defenders having a significant positive impact on legal processes?

Defenders explained that legal reform is often the first step taken during a State's transition. As a result, defenders have spent most of their time on legal processes and this has cultivated their expertise on legal reform. To this end, defenders have received significant training on legal reform with the support from various donors.

The impact comes from the fact that defenders have knowledge and expertise on this issue, know how to mobilise the population around the issue because they understand the context and they can also count on local and international partners for support.

## ► Examples of tactics defenders reported using to achieve legal reform:

- alliance building across CSOs
- lobbying members of parliament
- identifying champions in various country-specific fields such as trade unions
- encouraging academics and think tanks to write on the issues
- training and keeping the media abreast of developments
- advocacy research and policy briefs
- civic education through public debates on television, opinion pieces in papers and visiting strategic communities



# Challenges faced by defenders

Defenders face numerous challenges as a result of their work. The challenges vary and often depend on the type of transition that the respective State is undergoing.

Specifically, defenders shared that in a State

► **transitioning from dictatorship or authoritarianism, they experienced:**

- severe limits on freedom of expression, association and freedom of assembly
- misunderstandings about their role as defenders in a democracy making them vulnerable to pressure and threats from the State
- judicial harassment because of the lack of separation of powers between the judiciary and executive thus reinforcing repression and limiting defender rights.

Examples: Benin and The Gambia

► **emerging from civil war or internal conflict and entering a process of social and political reconstruction, they are at the mercy of:**

- weak and corrupt judicial systems that increase their vulnerability as they often face judicial harassment, unfair trials and are often denied access to justice.

Examples: Côte d'Ivoire, Sierra Leone Liberia and Angola

► **where popular or large-scale protest movements have resulted in the overthrow or resignation of a government, such as during the Arab Spring, they experienced:**

- restrictive laws, such as the Public Order Act, Security Act and new counter-terrorism laws that criminalise their work and ultimately reduce its scope.

Examples: Egypt, Tunisia<sup>4</sup>

► **where transition has occurred but could be considered incomplete due to the absence, weakness or fragility of democratic institutions and the rule of law, they are subjected to:**

- enforced disappearances — the lack of record keeping by the State on these cases, the weak

legal and judicial systems as well as the lack of funding for defenders to follow up on individual cases, has left a vacuum and fed into the cycle of struggle against impunity

- State agents who monitor the work of defenders. For example national security officers in fragile States harass defenders and threaten to raid the offices of defenders.

Examples: Zimbabwe, Togo

► **undergoing a period of democratic recession or human rights regress, they face:**

- restrictions imposed on CSOs, including: denied access to foreign funds, burdensome registration requirements, as well as onerous reporting requirements
- non-cooperation from district leaders and authorities in critical communities who fear being victimised by State agents
- challenges when addressing culturally sensitive human rights topics such as LGBTI rights. The advocacy and lobbying space was further reduced due to religious and cultural arguments and the issues being perceived as 'western' and not African.

Examples: Burundi, South Sudan, Uganda, Zimbabwe and the Democratic Republic of the Congo

These obstacles and challenges are not mutually exclusive but often overlap across the various types of democratic transitions. Other general challenges that were mentioned included: direct threats such as harassment, arbitrary detention, intimidation, allegations of criminal charges, limitations on freedom of movement and assembly, and in some cases death. The perpetrators of these violations include both State and non-State actors.

<sup>4</sup> <http://foreignpolicy.com/2015/05/05/a-new-law-sends-an-ominous-signal-in-tunisia-arab-spring-bardo-tunis/>

► **Challenges, reprisals, obstacles or restrictions faced by defenders working in States in transition:**

lack of institutional capacity within NGOs | denial of access to information | lack of funding and poor resource mobilisation | reprisals | forced censorship by State | gender barriers | being labeled as political opponents | intimidation and harassment | barriers or bans in peaceful demonstrations

**How defenders and particularly women human rights defenders (WHDRs) are seeking protection from attacks or reprisals**

Women human rights defenders expressed grave concern for their safety. The defenders we spoke with explained that cultural and traditional practices on the African continent in general, and within their respective countries in particular, resulted in women being exposed to greater risks and less protection in their work than men.

Specific challenges that were identified include incidents of blackmail, physical attacks, threats towards their families, especially children, violence based on gender, intimidation as well as sexual, mental and psychological harassment.

Defenders emphasised that the choice of method to stay protected depends on the visibility of their country and

the human rights violation at hand. They explained that when in-country human rights violations are exposed and made known to the national, regional and international community, then WHDRs have better means to seek protection.

Generally speaking, it was agreed that being part of a civil society network, domestically and internationally helps because these networks could relay urgent information or concerns and other defenders could pursue the appropriate means on one's behalf. The collaboration with and intervention of embassies such as the United States and United Kingdom helped in some instances of reprisals against defenders. Solidarity movements, contacts with human rights lawyers and the use of the media are also ways defenders said they sought protection.







## Examples of support from human rights mechanisms

Most human rights defenders feel there is significant but not necessarily adequate support from human rights mechanisms.

Engaging with the Universal Periodic Review process, meeting with UN and African Commission's Special Rapporteurs and Commissioners during country visits were seen as useful, as were the meeting spaces created by the UN peacekeeping missions and OHCHR country or regional offices. Some defenders felt, however, that more could have been done during periods of transition. They would have benefited from faster responses on communications submitted. International NGOs were seen to be more reactive and responsive to the needs of defenders.

Defenders working in countries in transition have indicated that the UPR process provides an opportunity to push for transitional justice issues, and for recommendations to countries under review.

They acknowledged that the OHCHR was of assistance in providing country visits, in particular, through requests made and information provided to the United Nations Special Rapporteurs, which resulted in visits to Togo, Nigeria and Angola, for example. Special Rapporteurs were encouraged to be more engaged, including during country visits or

when making urgent appeals to the relevant government. Defenders felt that more could be done by the OHCHR regarding its strategic engagement with national human rights institutions and the sharing of best practices regarding the role of defenders and civil society therein.

Ivorian defenders interviewed in December 2015 confirmed that they felt the support of the African Commission Special Rapporteur on Human Rights Defenders in Africa as well as the UN human rights agencies. They explained that UN agencies assisted with multi-stakeholder meetings regarding the Ivorian human rights defenders protection law and the need to establish its legal framework. They thought they got adequate support for these meetings and hearings from relevant international authorities and the Côte d'Ivoire National Human Rights Commission.

Defenders from the Democratic Republic of the Congo indicated that they have received support from the African Commission, including a mission by the African Commission's Working Group on Indigenous Populations/Communities, which conducted a research and information visit to the country in August 2009. The aim of the mission was to meet Government officials, collect information on the human rights situation of indigenous people and disseminate the African Commission report on indigenous people. While this mission was acknowledged as a good effort to highlight a thematic human rights issue, defenders in the country said they did not feel adequately supported when working on more controversial transition issues such as the violation of women's rights and human rights abuses in the extractive sector. They said they needed additional support and visibility from the African Commission in this regard.

Defenders from Sierra Leone referred to technical training received from the African Commission, as well as support from the UN peacekeeping force, commenting that this support was integral. Defenders stressed, however, that there could be stronger communication between UN peacekeepers and defenders so that the needs of defenders living in the worst affected communities are clearly communicated and taken into account to improve protection. This was in particular reference to the protection needs of defenders during civil wars, for example.

In some cases, defenders expressed that they were not aware of how to submit communications and did not know if there were deadlines to meet. They added that in instances when they had sent communications on incidents

of intimidation or reprisals cases for example, there was no response and nothing was done. As a result, defenders felt unsure about the capacity and ability of the African Commission and UN Human Rights Council to adequately respond to communications.

As a result, international NGOs have stepped in to fill the gap and seek redress where possible.

Lastly, there seemed to be a sense that the human rights mechanisms need to evolve and move from being only reactive to communications submitted but also taking early and preventive action on any situation of concern in any given country.

## Tips and recommendations

### To human rights defenders

- Ensure that your team is equipped with the knowledge, skills, capacity and partnerships to strategically engage with and access the UN and ACHPR, as well as the OHCHR.
- Seek training to address and improve gender-specific security and protection needs, especially the needs of WHRDs.

### To third States

- Promote and protect human rights defenders activities by supporting capacity building activities and public awareness campaigns.
- Continue to provide human rights defenders with access to resources such as financial resources and information about the availability of resources and the means of requesting them.
- Provide measures for quick assistance and protection to defenders in danger in African countries, e.g. by issuing emergency visas as well as facilitating temporary shelters in third countries.

### To regional and international human rights mechanisms

- Promote and respect the right to life and hold governments accountable regardless of whether human rights violations affect thousands of people or an individual human rights defender.
- Find ways to increase the safety, privacy and protection of human rights defenders that are likely to face reprisals for engaging with mechanisms.
- Publish, translate and disseminate simple and brief information manuals to educate defenders on how to effectively interact and engage with your services and mechanisms.
- Collaborate through joint missions and issue joint statements in a united voice to emphasise the importance of respecting human rights and the rule of law in transitional contexts.

### To Special Procedures of the Human Rights Council and Human Rights Council Complaint Procedure

- Expedite responses to communications and provide feedback, acknowledge receipt of complaints.
- Initiate a process to investigate how to improve the accessibility, transparency and responsiveness of the communications procedures.
- Utilise 'special sessions' at the Human Rights Council to respond quickly and put pressure on governments concerned so as to promote and protect human rights defenders operating in an affected State in transition.

## To the African Commission on Human and Peoples' Rights

- Consider the feasibility of receiving communications and supporting African defenders who are from States which are not party to the African Charter, such as South Sudan.
- Expedite responses to communications and provide feedback, acknowledge receipt of complaints.
- Ensure that the African Commission's ordinary sessions are accessible to defenders and CSOs. To this end, continue to encourage other member States to host the ordinary sessions so that they are not always hosted in The Gambia.
- Increase the visibility and promote the work of the African Commission. Address the perception of marginalised grassroots communities, national CSOs and defenders that the Commission is 'elitist'.
- Increase the visibility and accessibility of the African Commission by establishing regional Africa-wide focal points or units for defenders and CSOs that can not directly access the Secretariat in The Gambia.
- Establish and implement procedures and penalties as a measure to increase State compliance with regards to their human rights responsibilities and commitments. For example, failure to submit State Periodic Review reports have taken away the opportunity for defenders working in a State in transition to advance their advocacy objectives, yet there are little consequences for such non-cooperation from a State. Consider reviewing a State in the absence of a report.
- Create a resource hub on democratic transition accompanied by a specific mechanism that promotes and protects the work of African defenders who advocate for democratic rights and good governance.
- Conduct a continental research that aims to define the role, strategies and support the African Commission could provide to States in transition, including emphasising the need for protection laws and promoting a human rights culture.

## To international NGOs

- Build the capacity and train defenders working in States in transition who have little or no knowledge of how the UN and African Commission human rights mechanisms work.
- Support and provide defenders with information about human rights mechanisms' country visits.
- Assist defenders with the necessary support so that they can have a more active role during the visits of Special Procedures mandate holders and articulate their issues by themselves.
- Disseminate information and provide advice to defenders about the application process to UN ECOSOC accreditation.
- Collaborate and continue to work with defenders by accompanying and assisting them to engage with relevant stakeholders at the national, regional and international levels.
- Use your international status to add more pressure on governments at the national level so as to see the translation of their international commitments and pledges into national level implementation and reality.
- Provide human rights defenders in States undergoing transition with targeted human rights trainings, resources and tools.
- Lobby and advocate for States undergoing transition to ratify and comply with regional and international human rights laws.
- Lobby and advocate for States undergoing transition to enable and support the work of human rights defenders, including through the development and implementation of human rights defender protection laws and mechanisms.

# Annex: Contact details

## ► Regional and international human rights mechanisms

### United Nations Human Rights Council (UN HRC)

**HRC website:** <http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx>

**NGO Participation:** <http://www.ohchr.org/EN/HRBodies/HRC/Pages/NgoParticipation.aspx>

**NGO Liaison team of the UN HRC Secretariat email address:** [hrcngo@ohchr.org](mailto:hrcngo@ohchr.org)

### The African Commission on Human and Peoples' Rights (ACHPR)

**ACHPR Website:** <http://www.achpr.org/>

**Tel:** +220 441 0505 or +220 441 0506

**Fax:** +220 441 0504

**Email:** [au-banjul@africa-union.org](mailto:au-banjul@africa-union.org)

**Rules of Procedure of the ACHPR:** <http://www.achpr.org/instruments/rules-of-procedure-2010/>

### Office of the High Commissioner on Human Rights (OHCHR)

**OHCHR website:** <http://www.ohchr.org/EN/Pages/Home.aspx>

**Civil Society Handbook:** [http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook\\_en.pdf](http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf)

**Tel:** +41 22 917 9656

**Email:** [civilsociety@ohchr.org](mailto:civilsociety@ohchr.org)

## ► Regional and international inter-parliamentary organisations

### The Pan-African Parliament (PAP)

**Website:** <http://www.panafricanparliament.org/> and [www.au.int/organs/pap](http://www.au.int/organs/pap)

**Address:** Gallagher Convention Centre, Private Bag X16, Midrand 1685, Gauteng Province, South Africa

**Tel:** +27 011 545 5000

**Email:** [secretariat@panafricanparliament.org](mailto:secretariat@panafricanparliament.org)

### The Southern African Development Community (SADC) Parliamentary Forum

**Website:** <http://www.sadcpf.org/>

**Address:** ERF 578, Love Street off Robert Mugabe Avenue Windhoek, Namibia

**Tel:** +264 61 287 0000

**Fax:** +264 61 254 642 or +264 61 247 569

**Email:** [info@sadcpf.org](mailto:info@sadcpf.org)

### The Economic Community Of West African States (ECOWAS) Parliament

**Website:** <http://www.ecowasparliament.org/en/about-us>







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or any of the issues covered in this  
publication, please visit our website:

[www.ishr.ch](http://www.ishr.ch)

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