

Questionnaire on the use of legislation, including criminal legislation, to regulate the Activities and work of human rights defenders

It would be greatly appreciated if responses were brief. They may be submitted in bullet points if preferred. For non-governmental organizations, should they wish, their identity will remain confidential (only the country where they operate will be disclosed). Furthermore, they need only answer questions which are relevant to them, and may share information about defenders other than themselves.

Name: East and Horn of Africa Human Rights Defenders Project

Nationality: Ugandan

Information on Kenya submitted by the National Coalition of Human Rights Defenders – Kenya

Date of submission: 15/06/2012

	QUESTION	COMMENTARY
1. a)	Please indicate if your country has a specific legal framework, laws or regulations that aim to facilitate or protect the activities and work of human rights defenders. Please cite the names of any such laws or regulations in full.	Kenya No express legal provisions. However, it is implied in provisions of the Witness Protection Act of 2006
b)	Please indicate how these laws and regulations are in line with international human rights standards, including, but not limited to, the Declaration on Human Rights Defenders.	
c)	Please also indicate what legal or administrative safeguards are put in place to prevent baseless legal	Kenya None. However, the following expected to have positive impact on protection from

	action against and/or prosecution of human rights defenders for undertaking their legitimate work.	<p>baseless legal action</p> <ul style="list-style-type: none"> - KNCHR Act 2011 protects its staff from malicious prosecution when carrying out legitimate duty - Bail provisions - 24 hour rule - Establishment of police oversight
2. a)	Please describe the measures taken, if any, to ensure that your country's national security-related laws (including laws on public order, public safety, respect for morals and counter-terrorism laws) are not used to unduly restrict the scope of activities of human rights defenders.	<p>Uganda</p> <p>HRDs have advocated against the passing in its current form of Uganda's Public Order Management Bill. The bill would greatly restrict freedom of assembly by granting widespread discretionary powers to the Inspector General of Police and confer criminal penalties upon organizers of assemblies for various infractions. The Uganda Human Rights Commission has also played a role advocating for amendments to the Bill to fall in line with international standards.</p>
b)	Please also indicate in particular how these national security-related laws respect the human right to freedom of expression and opinion.	<p>Rwanda</p> <p><i>Rwanda's Law On Prevention, Suppression And Punishment Of The Crime Of Discrimination And Sectarianism:</i></p> <p>Whilst the stated aims and objectives of the Law are in accordance with recognised human rights, it is the absence of a good faith defence which renders the Law a threat to HRDs. The law creates the potential for misuse and abuse by those seeking to frustrate the works of HRDs, as the crime of sectarianism is committed by conduct that "is likely to spark conflicts". No further guidance is given to this subjective test, thereby leaving HRDs vulnerable.</p> <p>Ethiopia</p> <p>Ethiopia's 2009 Anti-Terrorism Proclamation greatly restricts freedom of expression through a vaguely worded prohibition on speech which "is likely to be understood by</p>

		some or all of the members of the public... as a direct or indirect encouragement or other inducement to... an act of terrorism” (Art. 6)
3. a)	Please describe the measures taken, if any, to ensure that provisions of the criminal code, or other national laws, are not ambiguous or too broad to allow their arbitrary use, thereby restricting the activities of human rights defenders.	<p>Kenya</p> <p>Laws are very broad. Only available mechanism is Judicial interpretation of laws</p> <p>Existence of Kenya Law Reform expected to clarify on ambiguity in laws</p>
b)	Please indicate what legal or administrative safeguards are in place in order to ensure that human rights defenders are not discriminated against in the administration of justice, be it through the handing down of disproportionate sentences, the unreasonable prolongation of criminal or other trials, or any other means.	<p>Kenya</p> <p>No legal or administrative safeguards for HRDs against discrimination.</p> <p>The KNCHR Act 2011 only protects staff of KNCHR</p> <p>The Commission on Administrative Justice has mandate to look into excesses of public officers.</p> <p>The Independent Police Oversight Authority expected to spearhead protection of HRDs from arbitrary arrests by law enforcement officers</p>
4. a)	Please indicate if your country has specific laws or administrative rules governing the registration, functioning and funding of non-governmental organisations. Please cite the names of any such laws or regulations in full.	<p>Kenya</p> <p>Non – Governmental Organizations Co-Ordination Act Number 19 of 1990 was established by parliament for registration and co-ordination of Non-Governmental Organizations in Kenya and for connected purposes</p> <p>Ethiopia</p> <p>Proclamation to Provide for the Registration and Regulation of Charities and Societies</p>

<p>b)</p>	<p>Please explain how these legal or administrative provisions comply with your country's international human rights obligations regarding the right to freedom of association.</p>	<p>Ethiopia</p> <ul style="list-style-type: none"> • 2009 Charities and Societies Proclamation created a new body to register and regulate NGOs. Infringement of its provisions would lead to fines or imprisonment. • The law targets human rights work. Developmental organizations have moved away from a 'rights based approach' to focus on depoliticized development work. • The law has led to the closure of many organizations working in the field of human rights and has led to the exile of some human rights defenders. • Creates three categories of NGOs and only fully national Ethiopian NGOs can work in the field of human rights or democratic rights. Foreign or resident NGOs are prohibited from engaging the subject. • Domestic NGOs, which are the thus the only civil society actors permitted promote human rights, are restricted from receiving more than 10 percent of their funding from foreign sources. They could however choose to register as resident NGOs and receive full foreign funding, as long as they do not engage the human rights issues. • For organizations that do work in human rights, who must obtain 90 percent funding from domestic sources, must obtain written permission from the charities agency in order to do income generating activities or public collections. Anonymous donations are not allowed - all donors must be disclosed to the agency. • The difficulty of domestically funding human rights work in Ethiopia, one of the poorest countries in the world, makes human rights work financially almost impossible. • In addition the agency is enabled to seize assets under a variety of pretexts, and transfer them to another organization 'with a similar mandate'. • A high degree of power is given to the Charities and Societies Agency. NGOs
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		<p>may be placed under surveillance or may be forced to allow the Agency to take management decisions. The charities agency is given powers to demand any document in an NGOs possession at any time. This would put in peril victims of human rights violations who have entrusted NGOs with their confidential information. Human rights organizations are unable to guarantee privacy during their monitoring work.</p> <ul style="list-style-type: none"> • When the law was passed and NGOs forced to reregister, many organizations chose to remove human rights from their mandates, including two of the largest and most prominent human rights organizations. • The two major organizations choosing to continue their human rights work under the new law have been drastically reduced in size and activity since the passing of the proclamation.
5.a)	Are there criminal or other legal or administrative sanctions for human rights defenders who undertake activities on an individual basis or while the association they are members of is unregistered?	<p>Kenya</p> <p>Criminal and administrative sanctions have been applied generally on human rights defenders for Example, a medical doctor, Dr. Walter Nalianya who was working with victims of human rights violations in Mt. Elgon in the Western region of Kenya was accused of operating without a valid practicing certificate and allegedly giving false information to a KNCHR officer who had actually contracted him. He was in 2008 charged in court for the two offences but was acquitted by the court in 2009.</p>
b)	If such a legal framework exists, does it restrict the type of activities that human rights defenders can undertake? If yes, please provide further details.	
6.	Please indicate the measures taken, if any, to ensure that internal security official secret-related laws	

	are not used to deny freedom of information to human rights defenders and to prosecute them for their efforts to seek and disseminate information on the observance of human rights standards.	
7.a)	Please indicate the measures taken, if any, to avoid the use of defamation, slander or blasphemy laws to unduly restrict the right to freedom of opinion and expression of human rights defenders.	
b)	How is it ensured that such laws, as well as laws on printing, publication and censorship, comply with international human rights standards and not target human rights defenders carrying out their legitimate work?	
8	Please indicate if any other type of legislation is used to regulate the activities of human rights defenders in your country and how the application of the legislation mentioned affects the activities of human rights defenders. Please cite the names of any such legislation in full.	