



Strategic Advocacy & Litigation Training

Organised by
East and Horn of Africa Human Rights Defenders Project & REDRESS
from 24th to 27th August 2015, Kampala, Uganda

**REPORT OF A
STRATEGIC ADVOCACY & LITIGATION WORKSHOP
From 24th to 27th August 2015, Kampala, Uganda**

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East and Horn of Africa Human Rights Defenders Project, Human Rigts House, Plot 1853
Lulume Rd, Nsambya, P.O. Box 70356, Kampala, Uganda

Phone: +256-393-256820
Email: executive@defenddefenders.org, advocacy@defenddefenders.org
Web: www.defenddefenders.org

REDRESS, 87 Vauxhall Walk, London SE11 5HJ, United Kindom

Phone: +44-207-793-1719
Email: juergen@redress.org
Web: www.redress.org

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and www.redress.org/reports/reports

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1. Introduction

From 24–27 August 2015, East and Horn of Africa Human Rights Defenders Project (EHAHRDP), in partnership with The Redress Trust (REDRESS), held a workshop on strategic advocacy and litigation in Kampala, Uganda. The purpose of the workshop was to equip human rights defenders (HRDs) with basic tools and skills in strategic planning for advocacy and litigation initiatives and campaigns.

The workshop was attended by 25 HRDs representing 16 non-governmental organisations (NGOs) carrying out human rights promotion and protection operations in the East and Horn of Africa region, including in Burundi, Eritrea, Ethiopia, Kenya, Rwanda, Somalia, Somaliland, South Sudan, Sudan, Tanzania and Uganda.

Themes covered included training in security planning, methods of developing effective advocacy and communication strategies, and procedures for litigation at regional and international mechanisms.

Among the mechanisms and structures for promotion and protection of human rights examined were: the East African Community (EAC) and the East African Court of Justice; the African Union (AU); the African Commission and African Court on Human and Peoples' Rights (ACHPR); and the United Nations (UN) framework for promoting the protection of human rights.

EHAHRDP and REDRESS thank the Foreign Ministry of Germany for its generous support and Ms. Petra Kochendörfer, Chargé d'affaires of the German Embassy in Kampala for her participation in the closing ceremony. We also thank all participants for their active participation throughout the workshop and the continued collaboration beyond the workshop. We thank Mr. William Nugent of EUROCHECK, Brenda Dosio of the East Africa Law Society, and Amir Suliman of the African Centre for Justice and Peace Studies for facilitating specific sessions of the workshop.

1.1. Background

Through regular interaction with its partner organisations, and HRDs across the region, EHAHRDP has identified a capacity gap among HRDs in the areas of strategic advocacy and litigation, particularly at regional and international levels.

This gap is most discernible in the limited use of strategic litigation to enforce the rights of HRDs, and their constituents, especially at sub-regional and

international levels. This is also reflected in the limited use of and resort to mechanisms at these levels by HRDs from the region. By inviting HRDs with substantial experience and expertise in advocacy at the national level, the workshop aimed at filling the gap and providing HRDs and their organisations with further information and tools to further enhance their efforts to protect the rights of HRDs and their constituents.

1.2. Workshop objectives

The overall workshop objective was to equip HRDs with core skills for developing effective advocacy, communication and litigation strategies when engaging regional and international human rights mechanisms.

Accordingly, the expected results included:

- Technical skills gained to enhance HRD's capacity to run effective advocacy campaigns, and identify the potential for litigating cases of human rights violations at sub-regional, regional and international levels;
- Strategic advocacy plans developed for participants' organizations;
- Increased knowledge and skills in effective broad-based community mobilization for advocacy and litigation;
- Learned innovative techniques for organizing and mounting effective litigation and advocacy campaigns through East African counterparts (participant-sharing);
- Established referral mechanism of potential cases for litigation between EHAHRDP and REDRESS.

1.3. Methodology

Throughout the four-day training, HRDs went through presentations and exercises on core skills in advocacy and litigation strategy. The workshop sessions were open and interactive and were led by facilitators from EHAHRDP and REDRESS, namely Estella Kabachwezi, Joseph Bikanda and Jürgen Schurr; with support from William Nugent of EUROCHECK, Brenda Dosio of East Africa Law Society, and Amir Suliman of the African Centre for Justice and Peace Studies.

2. Orientation

Hassan Shire, Executive Director of EHAHRDP, opened the workshop. He welcomed participants and encouraged them to critically examine the relationship between advocacy and litigation. Making reference to situations such as the peace process in South Sudan, where advocacy and litigation capacities are crucial to facilitating HRDs' work. He encouraged them to be attentive, interactive, and take what they learn back to their communities.

Participants' expectations of the workshop included:

1. Learning how to exhaust local mechanisms for remedying human rights violations;
2. Enhancing capacity for public interest litigation at different levels;
3. Learning new methods and tactics for defending human rights;
4. Enhancing knowledge on case selection criteria for litigation and remedy legal challenges at regional and international levels;
5. Learning tactics for advocacy in environments hostile to human rights work;
6. Learning how to fundraise for advocacy and litigation; and
7. Learning from the experiences of fellow participants.

2.1. Participants' Experience Sharing

In this session, participants were divided into pairs to share experiences from their organisations in detail. For this exercise, each participant interviewed a colleague from a different country and presented their findings to the rest of the group.

The interviews focused on identifying one major issue that the participant's organisation works on, what advocacy initiatives they have undertaken towards this issue, and their litigation experience (if any) on that issue. The aim was to enable participants to learn about each other's work in an interactive way, facilitate networking and tailor the training so that it builds on participants' experiences.

Table 1: Participants share experiences on advocacy and litigation

HRD from South Sudan	HRD/Researcher from Ethiopia
<p>Issue: protection of HRDs e.g. amending articles in national security laws affecting civil society freedoms.</p> <p>Advocacy Mechanisms: release press statements and publish articles in the papers, produce radio & TV programs and engage with key government officials.</p> <p>Litigation Experience: no experience with litigation but John expected to learn and get technical support from participants and organisers.</p>	<p>Issue: removal of legislative barriers to HRD/CSO work, e.g. 2009 Intelligence law in Ethiopia restricting free space on grounds of terrorism.</p> <p>Advocacy Mechanisms: research, publishing articles, engaging government and working with Human Rights Council.</p> <p>Litigation Experience: no experience, but Yared expected to learn how to select cases and use regional/international mechanisms.</p>
EHAHRDP staff [Uganda]	ACJPS staff [Sudan]
<p>Issue: defending HRDs at risk.</p> <p>Advocacy Mechanisms: working with regional & international mechanisms to bring individual violations to their attention, with a view to obtaining their assistance and intervention.</p> <p>Litigation Experience: involved in drafting a communication against Sudan before the African Commission.</p>	<p>Issue: strategic litigation and law reforms in Sudan.</p> <p>Advocacy Mechanism: drafting shadow reports to international committees, litigating at regional and international mechanisms.</p> <p>Litigation Experience: drafted several communications to the African Commission against Sudan.</p>

Table 1: Participants share experiences on advocacy and litigation continued

<p>Advocate from Sudan</p> <p>Issue: building coalition of doctors, lawyers & other HRDs.</p> <p>Advocacy Mechanism: train lawyers, doctors, HRDs in human rights perspectives.</p> <p>Litigation Experience: litigate human rights violations in partnership with other organisations.</p>	<p>HRD from Tanzania</p> <p>Issue: provide legal aid & protection for HRDs (individuals & organisations), preventing arrest of activists.</p> <p>Advocacy Mechanism: provide capacity building training for HRDs & security personnel on safety & security of HRD lives & achievements.</p> <p>Litigation Experience: recently began litigation and the organisation so far won two cases in national courts.</p>
<p>HRD from Uganda</p> <p>Issue: research, monitoring & documenting human rights violations; advocacy & lobbying for penal reforms; protection & capacity building.</p> <p>Advocacy Mechanisms: participate in human rights coalitions, lobby for revision of laws contrary to human rights, train stakeholders on rights, and provide legal aid for victims.</p> <p>Litigation Experience: filed a constitutional petition regarding the constitutionality of the death penalty: lost the case but won partial judgment making it illegal for individuals to be on death row for more than 3 years</p>	<p>HRD from Eritrea</p> <p>Issue: monitoring & documenting human rights violations, advocacy & lobbying for penal reforms protection & capacity building and African Commission and Human Rights Council.</p> <p>Advocacy Mechanisms: contributed to the establishment of Special Rapporteur on Eritrea at the UN Human Rights Council, lobbying for commission of inquiry at UN on situation of human rights in Eritrea.</p> <p>Litigation Experience: no experience but ready to learn.</p>
<p>HRD from Burundi</p> <p>Issue: rule of law, governance & human rights, justice & administration.</p> <p>Advocacy Mechanisms: campaigning, 1) opposed constitutional revision to remove presidential term limits, 2) advocated for the release of jailed HRDs.</p> <p>Litigation Experience: challenged law restricting press freedom before the East African Court of Justice, which found the law to be contrary to Burundi's obligations under the EAC treaty.</p>	<p>HRD from Rwanda</p> <p>Issue: freedom of expression & association, good governance and democracy.</p> <p>Advocacy Mechanism: challenging provisions in NGO law restricting freedom of expression, conduct surveys on governance and the human rights situation in Rwanda, build alliances with government authorities/agencies like the Rwanda Governance Board.</p> <p>Litigation Experience: no litigation yet.</p>
<p>HRD from Somalia</p> <p>Issues: protection, advocacy, documenting human rights violations.</p> <p>Advocacy Mechanisms: set up media station running 12 hours a day, established national coalition for HRDs.</p> <p>Litigation Experience: low profile partnership with private lawyers but no official collaboration on litigation; refer cases to EHAHRDP for regional litigation</p>	<p>HRD from Somaliland</p> <p>Issues: inclusion of women in leadership, women human rights and reproductive rights.</p> <p>Advocacy Mechanisms: advocate for policy change and law reform, lobby parliament to make laws respecting women's rights.</p> <p>Litigation Experience: litigated against early marriage in national courts; set up community court to hear community disputes.</p>

3. Security & safety considerations for HRDs

This session tackled security awareness with specific focus on security and safety for field workers in conflict areas. It also covered how to protect sensitive information.

In respect to security awareness, it was noted that every organisation working on human rights issues must carry out a threat & risk assessment and prepare an evacuation plan before deploying any HRD in the field. Once an officer is in the field there should be communication protocols (e.g. call tree) in place to guide communication procedures in the event of deteriorating situations.

Mr. Nugent advised NGOs to conduct regular drills and rehearse protocols on how to communicate when a threat becomes real; noting that HRDs have a bad reputation in the security world for not taking security seriously, and being inconsiderate of the security of themselves, witnesses, colleagues, and even their own families.

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3.1. Risk & Threat Assessment

When carrying out threat assessments, it is critical to determine the identity of all the authorities and actors, identify who they are aligned to, how many they are, and who controls the ground in which your field activities are going to take place.

It is also important to determine the level of threat, the likelihood of it happening, the potential impact of your work as an HRD, identify factors mitigating the threat; and put in place appropriate procedures for dealing with the threat.

Mr. Nugent cautioned participants to draw up detailed guidelines and procedures for people in the field and to regularly consider threat situations on a case to case basis, taking into account all circumstances of the situation, which is subject to change.

The following are the stages of response HRDs should follow when in the field and if the situation deteriorates:

- Suspend operations
- Go into hibernation
- Relocate
- Evacuate



A participant from Burundi shares his experience with the group.



Trainers and participants break down in groups

Table 2: Risk Assessment Tool

Impact RISK/ Likelihood	Death or severe injury. Loss of programs and projects. Complete destruction, total loss of assets. (5)	Serious injury. Severe disruption to programs. Major destruction of assets. (4)	Non-Life threatening injury. High Stress. Some programme delays and disruptions. Loss or damage to assets. (3)	Minor injuries. Minimal delays to programs. Some loss or damage to assets. (2)	No injuries anticipated. No delays to programs. Minimal loss or damage to assets. (1)
Certain/ Imminent (5)	Critical	Critical	High	Medium	Low
Very Likely (4)	Critical	High	High	Medium	Low
Likely (3)	High	High	Medium	Low	Negligible
Moderately likely (2)	Medium	Medium	Low	Low	Negligible
Unlikely (1)	Low	Low	Negligible	Negligible	Considered to pose no determinable risk

3.2. Dealing with Checkpoints

Checkpoints are one of the major threats to HRDs because they pose high risks of incommunicado detention. HRDs were advised not to act suspiciously and guided on how to carry out summary profiles of personnel at checkpoints.

This included identifying whether they are regular police, army, specialised forces, militia or members of a criminal group. Items like laptops, cameras, removable drives etc. attract attention and should be well hidden. When carrying sensitive information it is best to travel in two cars; with the clean car (without any data/information) going ahead to act as an early warning system.

Participants were advised to always stick together when traveling as part of a team; and if asked to get out of the car, all members of the team should exit through the same side of the car: removal of one member of the team will be made more difficult if all are positioned on the same side of the car and if they lock their arms with each other. If caught in crossfire, participants were advised to drive through if the road is clear; or to jump out of the car, lie low and find a safe place to hide.

A participant from Ethiopia, advised fellow participants to think outside the box, citing an example of when he was held in *incommunicado* detention 300km away from the capital. No one knew that he had been detained, but after a few days he slipped his office number into a bottle and one of the guards notified the office of his detention. The next day the guards were changed. However his office, having been alerted, put pressure on the government and eventually secured his release.

3.3. Witness Protection

Mr. Nugent emphasized that witnesses should never be promised absolute security and safety. Organisations should be well aware of their limitations as to what they can / cannot do in terms of protecting witnesses. Mr. Nugent noted that the best way to protect witnesses is to give them basic security advice, such as teaching them how to look out for surveillance and control the flow of information concerning their involvement in a case.

Mr. Nugent advised against relocation of witnesses by NGOs. In most cases it is expensive and risky. More often than not, witnesses - or their families - will make contact with old relations and expose their location.

3.4. General Safety Tips

Some quick pointers HRDs must take into account before going out into the field:

1. Assess all potential threats and ascertain the threat levels;
2. When driving, seek to determine in advance of trips whether there will be checkpoints along the way and where possible, the number of individuals deployed at each point;
3. Get security clearance in advance and do not carry unauthorised personnel in your vehicle;
4. Notify colleagues and family where you are going. In the event of detention, the longer you are detained without anyone knowing; the lesser your chances are of being released;
5. Take steps to protect information carried on your person; the smaller the device the better;
6. Always have only one person talking at checkpoints;
7. Take note of public events that may affect your safety e.g. an announcement of a government decision, elections, etc.;
8. Build rapport with hotel staff, porters etc., as they may tip you off if security personnel are asking questions about you;
9. Change your routine: e.g. going to the same place every day at the same time makes it easy to track your movements;
10. Do not keep documents/evidence in hotel safes since in most cases the hotel manager has access to them.

In regard to information security, Mr Nugent advised HRDs to:

1. Never keep sensitive documents in hard copy or leave them lying around, or throw sensitive documents in the rubbish;
2. Keep documents in a secure drive or on a computer that is not connected to the internet;
3. Use small removable drives;
4. Share as little information as possible about yourself on the internet.

4. Strategic advocacy & litigation

Through its extensive research and partnerships with HRDs, EHAHRDP has identified a capacity gap in the use of strategic advocacy and litigation to address human rights violations and protect the rights HRDs within the East and Horn of Africa region.

This session therefore sought to introduce the participants to strategic thinking in advocacy and litigation. Basic tools and skill-sets for developing effective advocacy and litigation strategy were also considered. The facilitators combined the use of presentations and practical exercises to enrich participants' learning experiences.

4.1. Introduction: Strategic Advocacy

Advocacy was defined as an initiative to influence decision makers to change laws, policies, practices or procedures. It was noted that advocacy is a deliberate process based on demonstrated evidence to influence actors and stakeholders to fulfil a particular objective.

Ms Kabachwezi noted that a 'human rights based approach' to advocacy takes into account the rights of all stakeholders, including the victims, perpetrators and society as a whole. Such an approach would not, for example, deprive a perpetrator of his/her right to life in retribution for his/her involvement in a mass murder.

The presenter urged the participants to adhere to human rights values and standards in their work. She pointed out that if a HRD committed crimes in response to a violation, they too would have become a perpetrator and this would have defeated the objectives of their work.

Other salient features concerning this approach to advocacy are that it focuses on groups and not individuals, and therefore generates broad-based support because the end results reach a wider audience. In addition, it targets accountability and emphasises non-discrimination in the application of rights.

4.2. Introduction: Strategic Litigation

Litigation is one way of protecting rights of victims and assisting victims to access justice. The process of litigation at national, as well as regional & international levels, helps document violations and specific practices, and creates awareness of specific structural and systemic problems.

It was defined as a method for achieving changes in practice and/or law, and creating awareness about systematic and structural violations, often by resorting to an emblematic case representing a large number of cases, or a general situation to bring about changes in practice and establish precedents in law.

Litigators should be clear of the legal rationale for undertaking strategic litigation. For instance, is a case being filed to fill a legal gap and develop jurisprudence on a particular issue or is litigation being undertaken to encourage a State to enforce existing laws? Where there are widespread and systematic human rights violations could strategic litigation be an appropriate form of intervention?

Such cases are usually filed against the government. Nonetheless, a case may be filed against non-State actors like multi-national corporations for similar purposes.



Analysing the group assignments

Some key guidelines when planning to litigate a case could include:

Step 1: Building the case

The first step is for the litigator to gather sufficient evidence to support the case, and study existing laws to support their arguments. Subject to the violation, experts such as medical organisations, law societies and others could be able to support the evidence gathering. Independent statistical evidence, for instance, can be important in identifying structural problems such as regulations that create an environment that encourages violations. Medical/legal reports can be used to support allegations of torture and other forms of ill-treatment.

Step 2: Engage domestic remedies

One key issue raised was the necessity of engaging domestic remedies. While the first instinct might be to dismiss domestic remedies, it is important to identify possible avenues to litigate before domestic courts. This helps engage relevant national actors and identifies shortcomings in law and practice. It is also a requirement for litigation at regional/international levels to first exhaust domestic remedies before engaging regional and international mechanisms. In cases where a litigator has not exhausted legal remedies, it is critical for the litigators to collect facts supporting their case and first determine whether it might still be possible to take some steps at the domestic level to exhaust domestic remedies. Even if time has passed, there may be arguments that can be used to show that, for example, a victim was prevented from taking steps earlier on. If there are no remedies at the domestic level, or in the particular situation of the country or the case itself, it is not possible to resort to domestic remedies, it is important for the litigator to be able to explain in detail why this is the case. It will never be enough to say that 'it is obvious' that domestic remedies could not be used; the litigator must positively demonstrate that there is no prospect of success in accessing justice through local mechanisms.

Some challenges to the litigation process pointed out included:

- Insufficiency of research/evidence to document violations;
- Expert evidence is very difficult to obtain;
- Domestic processes can take a long time and be cost or resource intensive;
- Implementation of decisions is difficult to effectuate;
- The courts/ other national actors cannot provide protection for victims and their families;
- Litigation may not necessarily reflect public opinion and may achieve a result that has no public support.

4.3. Case Selection and Documentation

During this session participants were divided into four groups and took part in a practical exercise designed to enrich their knowledge of how to prepare a case for litigation. The session was also designed to enhance the participants' understanding of criteria for commencing litigation at a regional mechanism.

In this exercise, some groups were given identical assignments and tasked to vet each other's outcomes from the group work:

- Groups 1 and 3 were assigned to discuss criteria for bringing a case to a regional mechanism of their choosing;
- Groups 2 and 4 were assigned to discuss documentation for supporting a case on an issue of their choosing;



Sharing experiences about advocacy at the regional level



Participants develop and present an advocacy strategy

Table 3: Highlights from group presentations on case selection & documentation

Group 1: Criteria for bringing a case to the African Court on Human and Peoples' Rights	Group 3: Criteria for bringing a case to the African Commission
<ul style="list-style-type: none"> • There must be evidence of a violation of a right enshrined in the African Charter • Local remedies must have been exhausted: in cases where local remedies have not been exhausted, evidence to explain why domestic remedies are not available/effective/ sufficient. • The Respondent State must be party to the protocol establishing the court. • The Respondent State has signed and filed a declaration allowing individuals and non-State parties to access the court. • The violation must have occurred after the court had been established and after the State concerned has ratified the Charter. • The case must be brought within a reasonable time [est. 6 -10 months after discovering violations, or after exhaustion of local remedies] 	<ul style="list-style-type: none"> • Right violated must be guaranteed by the African Charter. • Local remedies should have been exhausted. • Victim's willingness to complete the case should be assessed. • Risks to victims and witnesses involved in the case should be assessed. • Case should not be presented to more than one international mechanism.
Group 2: Documentation for supporting a case against a general violation	Group 4: Documentation for supporting a case against torture
<ul style="list-style-type: none"> • Profile of victim and statement of what happened. • Provisions in domestic law on the rights violated. • Exhaustion of local remedies (domestic judgment). • Proof that the Respondent State is party to the treaty setting up the mechanism (jurisdiction). • Witness statements. • Documents supporting the credibility of witnesses. • Photographic/video evidence of the violation. • Media reports on the alleged violation, or demonstrating occurrence of similar violations. • Special reports documenting situation on the alleged violation. 	<ul style="list-style-type: none"> • Victim profile detailing age, name, gender, occupation and ethnic origin of the victim. • Incident report detailing what occurred, the perpetrators involved, location of incident witness testimony & profiles. • Compile evidence: police report on incident, medical reports on condition of victim and photographic/ video evidence of the violation. • Legal assessment documenting domestic judgement, jurisdiction of mechanism, precedents and national & international law on alleged violation. • Pleading specifying remedies sought from the mechanism hearing the case.

4.4. Review of Group Presentations

While there is no significant difference in the criteria for presenting a case to the African Commission and the African Court – both apply the African Charter and require exhaustion of domestic remedies – it is important to emphasise that the African Court is only accessible where the relevant State has recognised the Court’s jurisdiction. The bullets below highlight some of the observations that emerged from the discussions:

- It is vital to assess your own resources and expertise before accepting to take on a case for litigation, or referring it to a partner organisation with relevant expertise;
- Determine the best way you can be involved in the case, i.e. as lead plaintiff, co-representative, a third party (for instance as amicus curiae (‘friend of the court’), etc.);
- Assess and fully consider with the victim the potential impacts of pursuing litigation (security, reputation, physical and psychological well-being etc.);

- Make sure you understand the objective(s) of the victim, and provide a realistic outlook to the victim of the prospects of them realising those objectives, some of the drawbacks they may face and also be sure to explain to them the amount of time the case is likely to take. If the objective to litigating a case is to set a legal precedent or to change the law, or to have a Court acknowledge what happened to them, or to win compensation or other remedies for the victims, this needs to be discussed, explained and agreed with the victim beforehand; usually victims will have several objectives;
- Explore options thoroughly: some mechanisms like the East African Court of Justice can hear cases which concern human rights violations without there being specific human rights provisions in the Treaty, as the treaty generally calls on Member States of the community to respect “the rule of law”.

5. Strategic Advocacy & Communication

These sessions focused on equipping participants with basic tools and skills in developing effective strategies for advocacy and communication campaigns. This included orientation in strategic planning skills such as: conducting situational analyses; assessing stakeholders and their power to bring change; resource planning; and analysing the political, economic, social and technological factors impacting the campaign.

The above skills can be applied when planning advocacy campaigns at national, regional or international level, as well as in planning internal and external communications within organisations.

Key to note is that any effective advocacy & communication strategy must aim to capture the attention of the target audience and get the message across effectively with optimum use of resources.

Some of the tools considered were: Problem Tree Analysis, SMART (Specific; Measurable; Attainable; Realistic; Tangible) Planning and PEST (Political; Economic; Social; Technological) analysis, etc. Some major features are highlighted below:

- Set clear advocacy/communication goals and objectives: e.g. are you targeting decision makers, community support groups or raising public awareness;
- Develop different versions of the key message for every section of your target audience;

- Use different materials e.g. print materials, social media, newspapers etc;
- Map available resources & skills;
- Set & monitor timelines;
- Translate your strategy into activities;
- Write a communication document.

5.1. Developing Advocacy Strategies

In this session participants were briefed on how to use the Problem Tree Analysis tool to identify causal-chains and develop relevant, specific and actionable goals for advocacy. Following the briefing, participants were divided into three groups and tasked to outline an advocacy strategy on a given issue using the above tool.

5.2. Developing Communication Strategies

Participants were oriented in the use of SMART Planning and PEST Analysis tools in developing effective strategies for internal and external communications by organisations. The group exercise for this session required participants to identify a message targeting a given mechanism (in this case, African Commission and UN Human Rights Council) and using the tools provided to develop a communication strategy. The table on the next page shows highlights of the key issues arising out of the group presentations.

Table 4: Group presentations on communication strategy

Group 1	Advocacy & Communication Strategy at ACHPR
Issue	Deteriorating operating conditions for NGOs
Cause	Bad governance, lack of political will
Effects	<ul style="list-style-type: none"> • HRDs are targeted and at risk of detention • HRDs are at risk of torture and incommunicado detention • Operating space for NGOs is shrinking
Objective	Lobby the commission to enable political will for ensuring conducive environment for NGOs
Target Actors	<ul style="list-style-type: none"> • the Special Rapporteur on freedom of expression and information, • Special Rapporteur for HRDs • the Commissioner for the State • the ACHPR • the Committee for the Prevention of Torture in Africa
Message	The working environment for NGOs is dangerous
Messenger	NGOs, HRDs
Delivery Channels	<ul style="list-style-type: none"> • Meetings with commissioners • Presenting memoranda to the committee • Filing a complaint to the commission • Making oral submissions before the commission
Assets	<ul style="list-style-type: none"> • Local experts • NGOs and HRDs at risk • Regional Instruments
Gaps	Limited financial resources to sustain the action
Action (SMART)	Facilitate the enactment of an enabling law
Impact Indicators	<ul style="list-style-type: none"> • Recommendation/resolutions by the commission • Commission reports



Feedback session on group work

Table 4: Group presentations on communication strategy continued

Group 2	Advocacy & Communication Strategy at UNHRC
Issue	Deteriorating operating conditions for NGOs
Cause	<ul style="list-style-type: none"> • HRDs are being arrested and detained incommunicado • Freedom of expression & association is limited • Works of HRDs is affected
Effects	<p>To have a strong recommendation from HRC that will provide an environment that allows free space for operation of HRDs</p> <ul style="list-style-type: none"> • Review/amend restrictive legislations • Release HRDs arrested and detained • Hold the perpetrators accountable
Objective	<ul style="list-style-type: none"> • Special Rapporteur on freedom of expression and information, • Special Rapporteur on HRDs • Treaty bodies & Working Groups concerned • HRDs & Media Groups • HRC officials • UPR/ Stakeholders Forum • Troika States • INGOs (human rights oriented) • Experts, Diplomats, Country Representatives • General Public
Target Actors	<ul style="list-style-type: none"> • Special Rapporteur on freedom of expression and information, • Special Rapporteur on HRDs • Treaty bodies & Working Groups concerned • HRDs & Media Groups • HRC officials • UPR/ Stakeholders Forum • Troika States • INGOs (human rights oriented) • Experts, Diplomats, Country Representatives • General Public
Message	Change the restrictive legislations; HRDs' work, security, lives and freedom of expression & association are all at risk
Messenger	NGOs, HRDs
Delivery Channels	<ul style="list-style-type: none"> • Press release (online, radio, internet, print etc) • Advertisements • Conferences and meetings • Making oral submissions before the commission
Assets	<ul style="list-style-type: none"> • Local experts • NGOs and HRDs at risk • Situational Reports
Gaps	Limited financial resources to sustain the action
Action (SMART)	<ul style="list-style-type: none"> • Create awareness among NGOs, INGOs and General Public (24 month campaign) • Build networks among the stakeholders • Lobby and advocate law/policy makers to amend the laws/policies
Impact Indicators	<ul style="list-style-type: none"> • Joint reports by NGOs • UPR reports

6. Regional Human Rights Frameworks

These sessions examined the different mechanisms for promoting and protecting HRDs within the AU and East African Community.

6.1. The African Human Rights System

The session included a brief discussion on the purpose of the AU and a detailed analysis of the legal framework for protecting human rights, with the African Charter on Human and Peoples' Rights ('African Charter'), adopted in 1981, as the cornerstone of the system.

Participants also discussed the African Charter's impact and contribution to the advancement of human rights in Africa; challenges faced in responding effectively and adequately to the demands of African people; and how to strengthen the African human rights system.

The session highlighted key interpretations of the African Charter by the African Commission on Human and Peoples' Rights through its jurisprudence and in response to complaints submitted by a wide range of individuals and NGOs on various provisions of the African Charter. Among others, the Charter recognises the indivisibility of all rights: All 'generations' of rights are recognised- civil and political; social, economic and cultural; and collective rights. The African Commission, in interpreting the Charter, has for instance considered the following:

- Socio-economic rights are justiciable: "Clearly, collective rights, environmental rights and economic and social rights are essential elements of human rights in Africa. The African Commission will apply any of the diverse rights contained in the African Charter. It welcomes this opportunity to make clear that there is no right in the African Charter that cannot be made effective." SERAC v Nigeria, para 68.
- No derogations are allowed: "...the African Charter does not contain a derogation clause. Therefore the limitations on the rights and freedoms enshrined in the Charter cannot be justified by emergencies and special circumstances. The only legitimate reasons for limitations to the rights and freedoms of the Charter are found in article 27(2)." Media Rights Agenda v Nigeria, paras 68 & 69.
- The African Charter recognises peoples' rights such as the right to development, free disposal of natural resources, and self-determination. The African Commission emphasised "that the Charter recognises the rights of peoples." Endorois case, para 155.

6.2. The African Commission on Human and Peoples' Rights

The principle mandate of the African Commission is to promote and protect the rights and freedoms enshrined in the Charter.

NGOs can participate in the African Commission's proceedings, and for instance make an oral intervention in the margins of the Commission's Ordinary Session, if they have observer status with the Commission. In its resolution on "the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organizations Working in the field of Human and Peoples' Rights" (at <http://www.achpr.org/sessions/25th/resolutions/33/>) the Commission provides guidance to NGOs for the application process to be granted observer status. However, even without observer status, NGOs can still access the Commission and, for example, submit complaints to the Commission in respect of alleged violations of the Charter.

6.3. The African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights (AfCHPR) is a regional human rights court with advisory and contentious jurisdiction concerning the interpretation and application of the African Charter. Its jurisdiction extends to those States that have ratified the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights. The AfCHPR decided its first case in December of 2009 and has taken up over two dozen other cases since then.

Complaints against any State that has accepted the Court's jurisdiction may be referred to the Court by the African Commission; by State Parties (as respondent or petitioner, or on behalf of an individual citizen), and by African intergovernmental organizations. To date, 29 States have ratified the Protocol establishing the Court.

The Court has jurisdiction over cases instituted by individuals and non-governmental organizations with observer status before the African Commission, provided that the Respondent State has made the necessary declaration under Article 34 (6) of the Protocol to allow these complaints as described in Article 5(3). To date, only seven States have accepted the Court's jurisdiction to receive complaints referred by individuals and NGOs: Burkina Faso, Cote d'Ivoire, Ghana, Malawi, Mali, Rwanda, and Tanzania.

6.4. East Africa Court of Justice (EACJ)

Participants also received orientation in the mechanisms available within the East African Community (EAC). It was noted that the principles of the Treaty for the Establishment of the East African Community (EAC Treaty) relating to the protection of human rights are found in Article 6(d) of the EAC Treaty, providing for the recognition, promotion and protection of human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights.

The presentation highlighted the East Africa Court of Justice (EACJ) and the East Africa Legislative Assembly as the major mechanisms HRDs can use to promote and protect human rights within the sub-region. The mechanism for enforcing the treaty's provision is the EACJ which is established by virtue of Article 9 of the EAC Treaty and has jurisdiction over the interpretation and application of the EAC Treaty. The court may be accessed by natural persons (a feature unique to EACJ among sub-regional mechanisms), Member States of the EAC and the EAC Secretary General.

It was observed that the EACJ has no specific human rights jurisdiction as a protocol on human rights within East Africa has yet to be concluded. However, relying on its mandate to interpret the EAC Treaty, the EACJ, in relying on Article 6 (d) of the Treaty, has decided on a range of human rights cases since its establishment in 2001.

One significant advantage with the EACJ is its ability to hold hearings throughout the sub-region. An example was cited in which the Court heard an application filed by the East African Law Society concerning the disbarment of a Burundian lawyer. The EACJ travelled to Burundi to hear the matter and, on 15 May 2015, found that the disbarment of the lawyer did not follow the necessary due process requirements and was therefore a violation of the "rule of law principle enshrined in Articles 6 (d) and 7 (2) of the Treaty.

Another important difference between the EACJ and some other regional bodies – the African Commission and the African Court on Human and Peoples' Rights – is that the EACJ does not require exhaustion of local remedies, and as such, is arguably more easily accessible to victims in the sub-region. Ms. Dosio emphasized further that the EACJ does not charge filing fees, and that it can be used for arbitration and mediation and is, as such, a good platform for public interest litigation cases.

However, it was also noted that the lack of machinery for executing its judgments relies on the political will of its Member States, which can in certain circumstances be a significant challenge to its effectiveness.

In addition, the Rules of Procedure of the EACJ require potential claimants to file a case with the Court within two months after the violation has been committed (or, where domestic remedies are exhausted, within two months from the moment of exhaustion), thereby limiting access to victims who may not have had the possibility to adequately document the violation(s) and to file a legal complaint in such a short time frame.

6.5. Litigating before the African Commission on Human and Peoples' Rights

This session continued the examination of the African human rights system, with specific emphasis on litigating a case at the African Commission. The requirements that need to be met for a complaint to be filed with the Commission, and for the Commission to be seized of the Complaint, are set out in Rule 93 of the Commission's 2010 Rules of Procedure.

The African Commission can only receive cases against States that ratified the African Charter and which relate to an alleged violation of a right enshrined in the African Charter. Cases may be submitted in all official languages: English, French, Arabic and Portuguese; however, it was observed that getting translations often takes a long time thereby delaying the procedure and it was therefore advised to ideally submit complaints in English or French.

Supporting evidence can be submitted in the original language or be translated. Even in instances where supporting evidence is translated, it was noted that the African Commission may engage its own internal translation process to verify the accuracy of the translations, in which case delays are not necessarily averted.

Below are highlights of the key steps:

- Step 1:** Litigator prepares complaint in accordance with Rule 93 and Article 56
- Step 2:** Complaint is sent to the Commission which seizes the file if it is satisfied that it adheres with Rule 93; the complaint then becomes a 'communication' with a case number. Once seized, the Commission informs the State concerned that a communication has been filed against it.
- Step 3:** Commission requests complainant(s) to make a submission on the admissibility of the communication in accordance with Rule 105 and Article 56.
- Step 4:** Commission sends a copy of the complainant's submission on admissibility to the State to offer the State an opportunity to respond (Rule 105).
- Step 5:** Commission receives State's response and complainant has opportunity to respond. If State does not respond, Commission proceeds to Step 6.
- Step 6:** Commission considers admissibility in line with Article 56 of the Charter. If it is not admissible, the case is dismissed; if the case is admissible, Commission proceeds to Step 7.
- Step 7:** Commission then invites parties to make a submission on the merits of the case.
- Step 8:** Once the Commission has given the parties an opportunity to make a submission on the merits of the case (see Rule 108 ff), it will assess the merits of the case on the basis of the information provided.
- Step 9:** Commission decides on the merits of the case and informs the parties of its decision. If the Commission finds a violation of the Charter, it will recommend the State to take specific measures to remedy the violation and request the State to report back to the Commission (usually within 180 days) on the steps taken to implement the Commission's decision.
- Step 10:** As Complainants, it is important to identify key stakeholders within State institutions/ ministries that could play a significant role in the implementation process.
- Step 11:** The Complainants should develop a strategy to engage with these interlocutors tasked with implementing the remedies detailed in the decision.
- Step 12:** The Complainants may comment on the report provided by the Respondent State on how it has implemented the decision. If the Respondent State has failed to submit a report to the Commission on implementation (see Step 9), the Complainants may also take the opportunity to communicate with the Commission on that fact, and provide any further information to the Commission on implementation.

Participants were further taken through an exercise designed to enable them to apply the rules of procedure discussed above. For this assignment, they were provided with the case of *Monim Elgak, Amir Suliman and Osman Hummaida v Sudan* and in which the African Commission found several violations of the African Charter – including for instance a violation of the right to freedom from torture and other ill-treatment- and requested Sudan to pay compensation and to investigate and prosecute those responsible.

The facilitators pointed out that it was important to submit a complaint based on evidence and information that establishes that there is a "likelihood that a violation might have occurred." At a minimum, this should include a statement of the victim, but could also include, at the stage of seizure, reports from (inter-) national institutions and organisations, witness statements, photographic, statistical, medical and other forms of evidence.

At the stage of admissibility, it is necessary to consider and speak to all seven requirements set out in Article

56 of the Charter. Regarding the exhaustion of domestic remedies requirement set out in Article 56 (5), the facilitators noted that it will not always be possible to exhaust domestic remedies, and that important exceptions to the requirement exist. For instance, if remedies have not been exhausted, the Complainant may want to show that there are no effective and sufficient remedies available in the State for the type of violations alleged.

These exceptions, if invoked, must be argued, and the Complainant(s) must submit evidence and information that they are applicable in the concrete case. It is not sufficient to only state that remedies do not exist. Regarding the 'reasonable time requirement' in Article 56 (6), the Commission has not defined what a reasonable time means. Any delays in filing a complaint with the Commission must be explained. In the sample case provided, the fact that the victims were in flight and at risk of death was reasonable grounds for them to argue and for the Commission to accept a delay in filing the case.

7. International Human Rights Framework

The presentation included a briefing on the international system on human rights and opportunities for advocacy and litigation with international mechanisms. The basis for the international human rights framework are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (also referred to as the International Bill of Rights).

Other international human rights treaties have been concluded over time focussing on specific aspects as outlined below.

In addition to the International Bill of Rights, core human rights treaties include:

- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) [1965]
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) [1979]
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) [1984]
- Convention on the Rights of the Child (CRC) [1989]
- International Convention on the Protection of the Rights of All Migrant Workers and Their Families (ICRMW) [1990]
- Convention on the Rights of Persons with Disabilities (CRPD) [2006]
- Convention for the Protection of All Persons from Enforced Disappearance (CED) [2006]



Participants engage in group exercise after a long session

All nine international human rights treaties establish specific mechanisms (or treaty bodies) tasked with monitoring State compliance with their obligations under the relevant treaty. States are required to submit reports to the relevant body every four- five years. NGOs may have an opportunity in the process of preparing reports at the national level.

In instances where NGOs are not involved, or where the process is not transparent or the State report does not set out a clear picture of the challenges to implement the relevant Convention, or where the NGO has a different perspective from the State on the degree to

which the State has complied with the terms of the Convention, NGOs may prepare a shadow report, which is a separate report which is read by the Committee and helps the Committee to have a full dialogue with the State on the range of issues concerning the State's implementation of the Convention. In the event that the State has not submitted its periodic report, the relevant treaty body may delay its consideration of a particular State's compliance with the Convention, enter into dialogue with that State to encourage it to submit its report. In rare circumstances, the Committee may rely exclusively on NGO reports and reports of UN Agencies.

Table 5: Individual complaints procedures accepted by States in the East & Horn of Africa

Treaty Body / Committee	Individual Complaints	Country in E&HA
Human Rights Committee	First Optional Protocol to ICCPR	Uganda; Somalia; Djibouti
Committee on Elimination of Racial Discrimination	Article 14 of ICERD	-
Committee Against Torture	Article 22 of CAT	Burundi
Committee on the Elimination of Discrimination against Women	Optional Protocol to CEDAW	Rwanda; Tanzania; South Sudan
Committee on the Rights of Persons with Disabilities	Optional Protocol to CRPD	Sudan; Burundi; Rwanda; Tanzania; Uganda; Djibouti
Committee on Economic, Social and Cultural Rights	Optional Protocol to ICESCR	-
Committee on the Rights of the Child	Optional Protocol to CRC	-
Committee on Enforced Disappearances	Article 31 of CED	-
Committee on Migrant Workers	Article 76 of ICRMW	-

7.1. Procedures and Mechanisms under the UN Human Rights Council

Under the UN Human Rights Council, there are three procedures / mechanisms available to HRDs for the protection and promotion of their rights and the rights of their constituents, which are described below. These procedures/ mechanisms are available to HRDs in all States in the East and Horn of Africa as they do not depend on the ratification of a particular human rights treaty.

7.1.1. Special Procedures

The UN Human Rights Council framework provides for Special Rapporteurs with thematic (for instance a Special Rapporteur on Human Rights Defenders, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) and country specific mandates (e.g. in the context of East and Horn of Africa, the Special Rapporteur on Eritrea, the Independent Expert on Sudan).

Currently, there are 41 thematic and 14 country specific mandates. Special Rapporteurs act as independent experts authorized to make official country visits to monitor the situation of human rights, however, they can only visit a country upon the invitation of the relevant government. Where such an invitation is not forthcoming, NGOs may request the relevant Rapporteur to make an academic visit or invite the relevant Rapporteur to participate in a conference, and thereby provide for an opportunity of direct, in-country engagement between the Special Rapporteur and the relevant government authorities, however this would not form a formal visit and the Rapporteur's scope for investigation and dialogue may be restricted. NGOs may also lobby their government to officially invite Special Rapporteurs.

As Special Rapporteurs frequently prepare thematic studies related to their relevant mandate, NGOs can also provide specific input into such studies. While Special Rapporteurs do not issue decisions on individual cases, they may receive allegation letters pertaining to alleged human rights violations, and NGOs can also submit

urgent appeals to Special Rapporteurs, for instance in cases of arbitrary detention of human rights defenders, requesting the State to communicate concerns to States, and issue statements on (urgent) human rights situations.

Whereas Special Rapporteurs operate independent of the UN Treaty Bodies/Committees, they share information with each other and may consult with any committee on a matter related to their mandate.

7.1.2. Universal Periodic Review

Every member country of the UN is reviewed every 4.5 years as part of the Universal Periodic Review process. During this process, the State under review must submit a country report. The country report is reviewed by a working group comprised of three member countries of the Human Rights Council (the troika) assigned to the particular country that is submitting its report.

NGOs may participate in the consultations for the report. They may also put submit shadow information which then forms part of the background information which helps foster a wider dialogue during the questioning. In cases of States with a poor human rights record, NGOs can lobby diplomatic missions of countries with a stronger record on human rights to put precise and specific questions to the State during the review process.

After the review stage, NGOs may participate by following up on the implementation of recommendations issued to the State. This includes making inputs into the national plan of action which States may adopt to implement the recommendations which were made to them as part of the review process. States who have undergone a review process will be asked to formally indicate whether they agree to implement certain recommendations coming out of the review process.

Often local NGOs will find it useful to follow up on these “agreements” with local parliamentarians and State actors. In several countries in the East and Horn

of Africa, NGOs have formed coalitions to follow-up on the implementation of Universal Periodic Review recommendations. For example, in Uganda, which was reviewed in 2015, the NGO network HURINET is leading this process. In Kenya, there is a coalition of NGOs working on the Universal Periodic Review which issues annual reports on the degree to which Kenya has implemented the UPR recommendations.

Yared Habtegiorgius, a participant from Ethiopia who has been an NGO delegate at sessions of the Human Rights Council on several occasions, noted that he had been discouraged by the politics in the Council. His observation was that whereas NGOs may participate in the process, there was a position among the African group of States to defend each other and this colours the objectivity of the process.

7.1.3. Thematic Working Groups

Working Groups established by the UN Human Rights Council have the power to take on any case which fits within their mandate. Unlike the treaty body Committees, there is no need for the State proceeded against to have accepted the jurisdiction of the working group; all States are automatically subject to the jurisdiction of the working groups. They have quasi-judicial powers in the sense that they may find a violation of a specific treaty, and request the State to provide specific remedies, however, the limitation therein is that their decisions are not binding on the State. Working Groups include for instance the UN Working Group on Arbitrary Detention (UN WGAD) and the Working Group on Enforced or Involuntary Disappearances (UN WGEID).

The above limitation notwithstanding, their decisions may be confirmed by national courts or any court with competent jurisdiction to bind the State. For example, in one case where the son of a former Senegalese President was detained, the Working Group on Arbitrary Detention found the detention to be arbitrary and its decision was confirmed by the Senegalese Supreme Court.



Ms. Petra Kochendörfer, Chargé d'affaires of the German Embassy during closing session

8. Review & Closure

At the end of the four-day workshop, participants engaged in a series of exercises to review the quality and content of the workshop and recap highlights and learning points. Below are some quotes from participants during the feedback session:

"I learnt how to use international mechanisms and how lobby for international support for HRDs"

- Eyob Ghilazghy, Eritrea

"I learnt about the international and regional frameworks available and how to engage with the different mechanisms. Putting the lessons in practice made it easier to internalise the content."

- Yvonne Owino-Wamari, Kenya

"My favourite session was on security. I learnt a lot about security consciousness"

- Samuel Semakula, Uganda

"I learnt a lot about advocacy and security techniques, especially that your security plan should be detailed."

- Yared Habtegiorgius, Ethiopia

"When I go back home I am going to train lawyers how to engage regional and international mechanisms."

- Ismail Ibrahim Ali, Somalia

"This workshop has taught me the value of advocacy planning."

- John Malith, South Sudan

"The biggest take away for me was on the East Africa Community, particularly EALA; we had ignored those structures."

- Patrick Tumwine, Uganda

"Although my country is not internationally recognized, we can use EHAHRDP structures to bring our issues to international forums"

- Nafisa Yusuf Mohammed, Somaliland

8.1. Closing Ceremony

The workshop was closed by the Ms. Petra Kochendörfer, Chargé d'affaires of the German Embassy in Kampala and Mr. Hassan Shire, the Executive Director of EHAHRDP with a certificate award ceremony and informal cocktail.

John Malith from South Sudan gave the vote of thanks on behalf of the participants. He thanked the organizers for making the workshop highly engaging and instructive,

and his fellow participants for the useful exchange of ideas and experiences. He encouraged them to apply the tools acquired during the workshop in their work, and enhance their effectiveness as HRDs.

Ms. Kochendörfer gave brief remarks commending the participants for their courage and hard work in their respective homes. She pledged the embassy's continued support for capacity building for HRDs, noting that they acknowledge the risks involved in the work of HRDs.



HRDs receive certificate during the award ceremony

Hassan Shire thanked the participants for litigating unwanted cases and hoped they would continue to share best practices unlike States which seemed to be sharing bad practices. He also thanked the partners for the support; and encouraged HRDs to support each other in the fight to keep civil society space open because without a free voice, human rights cannot be protected.

He also observed that ample jurisdictions are emerging where issues can be taken beyond national level, adding that EHAHRDP was working on developing a coalition for Pan African systems. He closed his remarks by reminding the participants that advocacy should be research based and invited them to join EHAHRDP in celebrating 10 years of existence.

"Do not see your government as an enemy but as a stakeholder to dialogue with," he cautioned the participants. "Activists have to become diplo-activists."





The East and Horn of Africa Human Rights Defenders Project (EHAHRDP) seeks to strengthen the work of human rights defenders throughout the sub-region by reducing their vulnerability to the risk of persecution and by enhancing their capacity to effectively defend human rights.

EHAHRDP focuses its work on Burundi, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Somalia (together with Somaliland), South Sudan, Sudan, Tanzania and Uganda.

See for further information www.defenddefenders.org



REDRESS is a human rights organisation that helps torture survivors obtain justice and reparation through providing legal assistance to individuals and communities, advocacy and capacity building. REDRESS works with survivors to help restore their dignity and to make torturers accountable. REDRESS prioritises the interests and perspectives of survivors in all aspects of its work. The highest priority in decisions and interventions is given to promoting survivors' well-being and the avoidance of further traumatisation.

See for further information www.redress.org