

Joint Submission by 12 NGOs

How to create and maintain the space for civil society: What works?

**Submission to the Office of the High Commissioner
for Human Rights**

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Coordinated and drafted by Phil Lynch, Tess McEvoy, Ben Leather and Amanda Lilliefeldt, International Service for Human Rights

This is a joint submission on behalf of the following NGOs:

Centro de Investigaciòn y Capacitaciòn Propuesta Civica A.C (Mexico)
Coalition Ivoirienne des Defenseurs des Droits de l'Homme (Côte d'Ivoire)
Comisiòn Intereclesial de Justicia y Paz (Colombia)
Human Rights Awareness and Promotion Forum (Uganda)
Human Rights Defenders Network (Sierra Leone)
Human Rights Movement: Bir Duino (Kyrgyzstan)
India Social Action Forum (India)
International Service for Human Rights (Switzerland)
Just Associates (Honduras)
Civil Society Organisation Network for Development (Burkina Faso)
Seguridad en democracia (Guatemala)
Terra de direitos (Brazil)

About the International Service for Human Rights

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Contact [Phi Lynch, Director, p.lynch@ishr.ch](mailto:Phi.Lynch, Director, p.lynch@ishr.ch)

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I. Introduction and overview

In September 2015 the International Service for Human Rights (ISHR) held consultations with 15 human rights defenders from around the world, including Australia, Burkina Faso, Brazil, Columbia, Cote D'Ivoire, Guatemala, Honduras, Hungary, India, Kyrgyzstan, Mexico, the Philippines, Sierra Leone, Tunisia, and Uganda. All participants had extensive experience with working towards civil society space at the national level, and the purpose of the consultation was to understand what had worked for them.

As well as representing a broad range of regions, the human rights defenders also spoke contributed diverse thematic expertise including Women's rights; civil and political rights; economic, social and cultural rights; indigenous rights; and lesbian, gay, bisexual, transgender and intersex rights.

The consultations aimed to identify, document and further develop strategies, tactics and lessons learnt to successfully advocate for laws that safeguard and enable their work, as well as strategies to challenge and resist laws and policies that restrict such work.

This submission is informed by those consultations, together with ISHR's existing research based on its 30 years of working with human rights defenders and its in-depth research report *Restriction to Protection* which examines laws affecting human rights defenders across 40 jurisdictions covering all regions.¹

Centro de Investigación y Capacitación Propuesta Civica A.C (Mexico), Civil Society Organisation Network for Development (Burkina Faso), Coalition Ivoirienne des Defenseurs des Droits de l'Homme (Côte d'Ivoire), Comisión Intereclesial de Justicia y Paz (Colombia), Human Rights Awareness and Promotion Forum (Uganda), Human Rights Defenders Network (Sierra Leone), Human Rights Movement: Bir Duino (Kyrgyzstan), India Social Action Forum (India), ISHR (Switzerland), Just Associates (Honduras), Seguridad en democracia (Guatemala) and Terra de direitos (Brazil) are pleased to make the following submission to the Office of the High Commissioner for Human Rights (OHCHR) to inform its forthcoming report on how to create and maintain space for civil society to work freely and independently, as requested by Human Rights Council resolution 27/31 of September 2014.

ISHR supports OHCHR's cooperation with civil society. As High Commissioner Zeid Ra'ad Al-Hussein has said, 'A dynamic, diverse and independent civil society, able to operate freely, knowledgeable and skilled with regard to human rights, is a key element in securing sustainable human rights protection in all regions of the world.'

Every day the work of human rights defenders contributes to the promotion, protection and advancement of human rights. Creating an enabling environment for the work of human rights defenders is essential for the promotion and protection of human rights and the rule of law. The achievement of this goal provides the focus for this submission.

ISHR shares OHCHR's dedication to protecting civil society space and emphasises that while States have the primary responsibility to protect civil society actors, the international community also has a responsibility to protect them and ensure a safe and enabling environment for their work.

By way of overview, the submission considers the following issues pertinent to creating and maintaining civil society space:

- The importance of identifying and reviewing, amending or repealing those laws, policies and practices which hinder or restrict the work of human rights defenders and other civil society actors;
- The need to develop and implement both specific and general laws, policies and practices to enable, promote and protect the vital work of human rights defenders and other civil society actors;
- The need to cultivate and demonstrate high-level political support for a vibrant and pluralistic civil society and a safe and enabling environment for the work of human rights defenders and other civil society actors;

¹http://www.ishr.ch/sites/default/files/article/files/research_report_on_legal_environment_for_hrds_upload.pdf

- The importance of cultivating and nurturing networks of and between human rights defenders and other civil society actors;
- The need to engage with various stakeholders and all levels of civil society to protect human rights defenders and create an enabling environment for civil society; and
- The need to increase the visibility and hence political cost of attacks on human rights defenders and other civil society actors.

Each section concludes by setting out key findings and recommendations.

II. The absence of restrictions in law and practice

“Gravely concerned that, in some instances, national security and counter-terrorism legislation and other measures, such as laws regulating civil society organizations, have been misused to target human rights defenders or have hindered their work and endangered their safety in a manner contrary to international law...”

Human Rights Council Resolution 22/6 (adopted 21 March 2013)

Creating and maintaining space for civil society requires that States ensure that laws are not used or abused to criminalise, stigmatise, restrict or hinder the work of human rights defenders. In this regard, the UN Human Rights Council has expressed ‘grave concern that, in some instances, national security and counter-terrorism legislation and other measures, such as laws regulating civil society organisations, have been misused to target human rights defenders or have hindered their work’.² The Council has also called on States ‘to take concrete steps to prevent and stop the use of legislation to hinder or limit unduly the ability of human rights defenders to exercise their work, including by reviewing and, where necessary, amending relevant legislation and its implementation in order to ensure compliance with international human rights law’.³

This section identifies a range of laws that limit and restrict the work of human rights defenders, either on their face or in effect through their misuse. Through representative examples, it points to trends and to the types of laws which should be reviewed and amended, as called for by Human Rights Council resolutions 22/6,⁴ 25/18,⁵ and 27/31,⁶ to ensure a safe and enabling legislative environment for human rights defenders and to create and maintain civil society space.

1. Laws on public assembly and protest

While the right to freedom of peaceful assembly and protest is protected under various international and regional instruments, together with many national laws and constitutions, in practice the exercise of this right is limited in many of these jurisdictions by legislative provisions, such as those which:

- unnecessarily require the notification or authorisation of protests, often weeks in advance;⁷
- afford police or other officials a wide discretion to impose undue restrictions or conditions on the time, place or conduct of an assembly;⁸

² ‘Protecting Human Rights Defenders’, UN Doc A/HRC/Res/22/6, para 13. See also ‘Mandate of the Special Rapporteur on the situation of human rights defenders’, UN Doc A/HRC/Res/25/18 (28 March 2014).

³ ‘Protecting Human Rights Defenders’, UN Doc A/HRC/Res/22/6, preambular para 15 and operative para 22. See also ‘Mandate of the Special Rapporteur on the situation of human rights defenders’, UN Doc A/HRC/Res/25/18 (28 March 2014).

⁴ See, in particular, preambular para 15 and operative para 22.

⁵ See, in particular, preambular para 13.

⁶ ‘Civil society space’, UN Doc A/HRC/Res/27/31 (adopted 26 September 2014), preambular para 12.

⁷ See, eg, South Africa *Regulation of Gatherings Act 1993*, section 3; Colombia *National Police Code*, Article 102; Spain *Organic Law 1/1992 on the Protection of Public Safety*; Russia *Federal Law on Rallies and Decree of the President of the Russian Federation of 25 May 1992 ‘On procedure of conduct of meetings, rallies, marches and pickets’*; Myanmar *Right to Peaceful Assembly and Peaceful Procession Act 2011*; Sierra Leone *Public Order Act 1965*, s 17(1). Note that not all notification requirements are unlawful, with the UN Human Rights Committee in *Auli Kivenmaa v Finland* (UN Doc CCPR/C/50/D/412/1990) stipulating the circumstances in which notification requirements may be compatible with Article 21 of the International Covenant on Civil and Political Rights.

⁸ See, eg, Malaysia *Peaceful Assembly Act 2012*, read together with the *Police Act 1967* and the *Local Government Act 1975*. See also Uganda *Public Order Management Act 2013*, sections 8 and 9, read together with the *Police Act*, sections 35-36 and the *Penal Code Act 1950*, section 69; Myanmar *Right to Peaceful Assembly and Peaceful Procession Act 2011*; Sierra Leone *Public Order Act 1965*, section 17(2).

- substantially restrict the times or places in which a protest can take place;⁹
- afford the State a wide discretion to declare a protest unlawful or a threat to public order or security, often without the right to judicial review;¹⁰
- permit the use of force in relation to unauthorised gatherings or assemblies that are deemed to breach the peace;¹¹
- punish or criminalise the organisers of an assembly for the conduct of third party participants in that assembly;¹² and
- prohibit the dissemination of information about assemblies deemed 'unauthorised' in contravention of international human rights law.¹³

Restrictive practice example:

Egypt: Law No 107 of 2013

An example of a recent law which seriously restricts the right to freedom of peaceful assembly is Egypt's *Law No 107 of 2013 on the Organisation of Public Meetings, Processions and Protests*. The law bans public meetings of more than ten people without prior authorisation, grants security officials with a wide discretion to ban any protest on vague grounds without any requirement to provide specific justification, allows police officers to forcibly disperse protests, and sets excessive prison sentences for offences against the law.

Restrictive practice example:

Myanmar: Right to Peaceful Assembly and Peaceful Procession Act 2011

In Myanmar, citizens have a right under the 2008 Constitution and *the Right to Peaceful Assembly and Peaceful Procession Act 2011* to participate in protests. However such protests must be approved prior to the protest taking place (Article 4) and there is no court appeal against negative decisions. Elements of the protest such as the 'matter permitted to express' and the 'words permitted to speak out' must be approved in advance by police (Article 8(f)). The penalty for engaging in a peaceful protest without authorisation, or for moving outside the prior authorisation (for example by saying words which have not been approved) is three months' imprisonment or a fine of 30,000 Kyat (Articles 18 and 19).

Restrictive practice example:

Russia: Federal Law 'On information, information technologies and protection of Information' No 149-Φ3 of 27.07.2006 (ed. 28.12.2013)

Article 15.3 of the Russian *Federal Law on Information* provides that web sites that publish information about unauthorised public meetings, thus 'encouraging' people to attend, may be blocked without any need for a court order by decision of the Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications.

⁹ See, eg, Sierra Leone *Public Order Act 1965*, section 10(1), which criminalises the use of a drum or other instrument in a procession before 4pm or after 9pm, and section 23(4), which criminalises any procession, or call to convene a procession, of more than 50 people within one mile of the House of Representatives.

¹⁰ See, eg, South Sudan *Criminal Procedure Act 2008*, section 158(2), which provides that assemblies that threaten the safety and soundness of South Sudan, its government and state institutions and public welfare can be deemed unlawful. See also Sierra Leone *Public Order Act of 1965*, sections 17(3) and 18(1)-(2).

¹¹ See, eg, Uganda *Public Order Management Act 2013*, sections 8(2) and 9 (2) (f), read together with the *Police Act*, sections 35-36 and the *Penal Code Act 1950*, section 69. See also South Africa *Regulation of Gatherings Act 1993*, section 9(2); Colombia *National Police Code*, Article 104.

¹² See, eg, Uganda *Public Order Management Act 2013*.

¹³ See, eg, Russia *Federal Law 'On information, information technologies and protection of Information' No 149-Φ3 of 27.07.2006 (ed. 28.12.2013)*; Sierra Leone *Public Order Act of 1965*, section 23(4).

Types of laws which should be reviewed to repeal restrictions on the right of human rights defenders and other civil society actors to peaceful assembly and protest

- Public order laws (eg, Uganda *Public Order Management Act 2013*; Spain *Organic Law 1/1992 on the Protection of Public Safety*; Nigeria *Public Law and Order Act 1990*)
- Legislation governing police powers and law enforcement (eg, Malaysia *Police Act 1967*; Colombia *National Police Code*; Uganda *Police Act 1994*)
- Criminal laws and codes (eg, South Sudan *Criminal Procedure Act 2008*, Uganda *Penal Code Act 1950*; Nigeria *Criminal Code (Unlawful Assemblies: Breaches of the Peace)*; Lao *Penal Code*)
- Assembly laws (eg, Indonesia *Law on Mass Organisations 2013*; Australia *Unlawful Assemblies and Processions Act 1958 (Vic)*; Malaysia *Peaceful Assembly Act 2012*; Maldives *Freedom of Peaceful Assembly Act 2012*; Russia *Federal law on Rallies*; Kazakhstan *Law on the Procedure for Organising and Conducting Peaceful Assemblies, Meetings, Marches, Pickets and Demonstrations in the Republic of Kazakhstan of 2004*; Sierra Leone *Public Order Act 1965*)
- Counter-terrorism and national security laws (eg, Ethiopia *Anti-Terrorism Proclamation of 2009*; Turkey *Penal Code (Article 220/6 and 314/2) and Anti-Terror Law (Article 7/2)*)
- Local government laws and ordinances (eg, United States *New York City Administrative Code*, § 10-110; United States *Los Angeles Municipal Code*, § 103.111)
- Traffic laws and regulations (eg, Australia *Road Traffic Act (Vic)*)

2. Laws regulating the establishment, governance, activities and funding of associations

“The Council calls upon States to respect, protect and ensure the right to freedom of association of human rights defenders and to ensure, where procedures governing the registration of civil society organizations exist, that these are transparent, accessible, non-discriminatory, expeditious and inexpensive...”

Human Rights Council Resolution 22/6 (adopted 21 March 2013)

ISHR’s research discloses a worsening trend of restrictions on the establishment, operation, activities, governance and access to resources for NGOs, notwithstanding protection under international law of the right to form independent associations and the right of such associations to access and receive funding and resources for the purpose of promoting and protecting human rights.¹⁴

Legislative provisions which are plainly incompatible with these rights identified through the research include those which:

- impose significant, arbitrary or discriminatory obstacles to the formation and registration of associations;¹⁵

¹⁴ See, in particular, Declaration on Human Rights Defenders, Article 13. See also Civil society space’, UN Doc A/HRC/Res/27/31 (adopted 26 September 2014), operative para 10; Organisation for American States, ‘Human Rights Defenders: Support for the Individuals, Groups and Organisations of Civil Society Working to Promote and Protect Human Rights in the Americas’, AG/RES 2280 (XXXVII-O/07) (adopted 5 June 2007).

¹⁵ See, eg, Uganda *Non-Governmental Organisations Registration Act 1989*, as amended in 2006, section 2(1), which provides that NGOs must be registered by the Uganda Non-Governmental Organisations Board which is, in turn, effectively controlled by the Ministry of Internal Affairs and the Office of the Prime Minister. See also Ethiopia *Charities and Societies Proclamation*; Kenya *Non-Governmental Organizations Coordination Board Act 1990*. See further ‘Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Freedoms’ (July 2011), pp 38-42.

- provide for excessive governmental interference, control, supervision or oversight of NGOs or establish NGO registration boards the members of which are appointed by or at the discretion of government;¹⁶
- limit or criminalise the right of NGOs or their members to exercise the right to freedom of expression or to advocate in relation to particular issues,¹⁷ such as the rights of lesbian, gay, bisexual, transgender or intersex persons,¹⁸ or to call for a boycott of certain goods or services;¹⁹
- constrain the activities and operations of NGOs on broad or vague grounds, such as prohibiting them from engaging in activities which ‘disrupt the law and order’ or the ‘peace and tranquility’ of the State;²⁰
- impose significant limitations or prohibitions on (and even criminalise)²¹ access to funding from ‘foreign’ sources, require government approval for the receipt of foreign funds, or restrict the activities of organisations receiving such funds;²²
- stigmatise or otherwise limit the activities of NGOs receiving foreign funding through requirements that they register as ‘foreign agents’;²³
- facilitate the closure or de-registration of NGOs on broad and vague grounds, such as constituting a ‘security risk’ or acting contrary to the national interest;²⁴ and
- criminalise associations on vague, overbroad or illegitimate grounds which may be incompatible with the rights to freedom of expression, association or assembly, including such grounds as ‘subverting or promoting the subversion of the Government or any of its officials’ or ‘interfering with, or resisting, or encouraging interference with or resistance to the administration of any law’.²⁵

¹⁶ See, eg, *China Regulations on Registration and Administration of Associations*, Article 28; *The Gambia NGO Decree 81 of 1996*, which subjects NGOs to the supervision of the NGO Affairs Agency within the Office of the President and requires NGOs to conform to government development plans.

¹⁷ See, eg, *Uganda Registrations Regulations, SI 19 of 2009, Regulation 13*

¹⁸ See, eg, Uganda’s now nullified *Anti-Homosexuality Act 2014 s 7 and 13 and Section 145 of the Penal Code Act of Uganda, 1950 which is extended in interpretation to cover human rights advocacy activities*;; Nigeria *Same-Sex Marriage Prohibition Act 2014*; Russia *Law on propaganda of non-traditional sexual relations 2013 (Article 14 (1) of the Federal Law ‘On basic guarantees of a child’s rights in the Russian Federation’)*.

¹⁹ See, eg, *Israel Law Preventing Harm to the State of Israel by Means of Boycott 2011* (the Anti-Boycott Law) makes it a civil offence to call for a boycott against Israel and its products and those produced in the settlements in the West Bank.

²⁰ See, eg, *Myanmar Law Relating to the Forming of Organizations 1988*.

²¹ See, eg, *Venezuela Criminal Code*, Article 140.

²² See, eg, *Ethiopia Charities and Societies Proclamation* which prohibits organisations that receive more than 10 percent of their funding from foreign sources from carrying out activities relating to human rights, promotion of equality, conflict resolution and justice reform. See also *Egypt Law No 84 of 2002*, which requires that an NGO obtain authorisation from the Ministry of Solidarity and Social Justice prior to receiving any funds from foreign sources, and *Penal Code*, Article 78 which criminalises the receipt of funds from abroad which may be used for acts ‘harmful to national interest’ with life imprisonment. Other examples of restrictions on foreign funding for NGOs include *Jordan’s Law on Societies of 2008*, *Algeria’s Law on Association of 2012*, *Venezuela’s Law for the Defense of Political Sovereignty and National Self-Determination of 2010*, and *India’s Foreign Contribution (Regulation) Act 2010*.

²³ See, eg, *Russia Federal Law ‘On Making Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Noncommercial Organizations Performing the Functions of Foreign Agents,’* No. 121-FZ, 2012.

²⁴ See, eg, *South Sudan NGO Act 2003*, section 14(f). See also *Uganda Non-Governmental Organizations Registration Regulations, SI 19 of 2009, Regulation 13*.

²⁵ See, eg, *Nigeria Criminal Code: Unlawful Societies*, sections 62-68; *Myanmar Unlawful Associations Act 1908*.

Restrictive practice example:

Egypt: Penal Code, Article 78 (as amended on 21 September 2014)

On 21 September 2014, the President of Egypt gazetted an amendment to Article 78 of the *Penal Code* so as to stipulate that a person requesting or receiving money, equipment or arms from a foreign country or a foreign or local private organisation, 'with the aim of pursuing acts harmful to national interests or destabilising to general peace or the country's independence and its unity', shall be penalised with a life sentence and a substantial fine.

Restrictive practice example:

Uganda: NGO Registration Regulations, SI 19 of 2009

Regulation 13 of Uganda's *NGO Registration Regulations* provides, inter alia, that NGOs must not make direct contact with people in any part of rural Uganda without giving notice seven days in advance to the local councils and Resident District Commissioners and that NGOs must not engage in any act which is prejudicial to the national interest of Uganda and the dignity of the people of Uganda.²⁶

Restrictive practice example:

China: Regulations on Registration Administration of Associations

In China, the establishment of associations is subject to the approval of the relevant governing authorities (Article 3) and registration with the Ministry of Civil Affairs or its local counterparts. 'Relevant governing authorities' are the relevant departments of the State Council and their local counterparts as well as organisations authorized by the State Council or the local governments, which are in charge of governing the relevant industry or profession. For example, the Ministry of Environmental Protection and its local counterparts are the 'governing authorities' of environmental protection associations (Article 6). The relevant governing authorities have duties to 'supervise and administer' activities of associations under their governance (Article 28) and associations are subject to review and inspection conducted by the registration authority and relevant governing authority every year.

Types of laws which should be reviewed to repeal restrictions on the right of human rights defenders and other civil society actors to form independent associations and access funds and resources

- Laws governing the establishment, operation and supervision of NGOs (eg, Uganda *Non-Governmental Organisations Registration Act 1989*; China *Regulations on Registration and Administration of Associations*; Kenya *Non-Governmental Organizations Coordination Board Act 1990*)
- Anti-association or unlawful society laws (eg, Australia *Criminal Organisations Control Act 2012 (Vic)*; Nigeria *Criminal Code: Unlawful Societies*, sections 62-68; Myanmar *Unlawful Associations Act 1908*)
- Treason, sedition, and subversive activities laws (eg, Japan *Subversive Activities Prevention Act*)
- Criminal laws and penal codes (eg, Egypt *Penal Code Article 78*)
- Anti-homosexuality laws (eg, Nigeria *Same-Sex Marriage Prohibition Act 2014*)
- Laws relating to access to foreign funding (eg, Russia *Federal Law 'On Making Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Noncommercial Organizations Performing the Functions of Foreign Agents'*, No. 121-FZ, 2012; , Ethiopia *Charities and Societies Proclamation*; Egypt *Law No 84 of 2002*)

²⁶ Regulation 13(a) and (g).

3. Laws regulating journalists or restricting the form or content of communications

ISHR's research discloses a proliferation of laws which excessively regulate or restrict the work of journalists, many of whom play a crucial role in reporting on, exposing or promoting accountability for human rights violations and may be characterised as human rights defenders.²⁷

Our research also discloses widespread legislative restrictions on the form or content of communications – including by journalists, media workers, bloggers and other human rights defenders – that are not compatible with the rights to freedom of expression, access to information, or the discussion and dissemination of new human rights ideas, all of which are recognised and enshrined in the Declaration on Human Rights Defenders.

Legislative provisions which interfere with the independence of the media and realisation of the rights to freedom of expression and access to information include, for example, those which establish government or quasi-government control over the media, such as by vesting authority to register or de-register journalists or publishing houses in bodies or organs that are wholly or partly controlled by the state.²⁸

Further problematic provisions include, for example, those which require the registration of journalists in order to attend or report on events, such as the Maldives *Freedom of Peaceful Assembly Act 2012* which requires the prior registration and accreditation of any journalist seeking to cover any protests, demonstrations or assemblies.

Restrictive practice example:

China: Regulations on Publication Administration (Promulgated by the State Council on 25 December 2001 and amended on 19 March 2011)

Under these regulations, the General Administration of Press and Publication of the State Council and its local counterparts is the authority in charge of supervision and administration of publication activities (Article 6). The GAPP has power to investigate illegal publication activities, access publication materials and operation sites and seize or freeze any materials which are related to illegal publication activities according to available evidence (Article 7). Publishing houses must be approved by the GAPP and obtain Publication Licenses from the GAPP (Articles 11-15). Published materials must not contain any content that, inter alia: opposes the basic principles established by the Constitution; endangers the unification, sovereignty and territorial integrity of the state; divulges state secrets, endangers state security, or impairs the honour and interests of the state; disturbs social order or damages social stability; or endangers social moralities or fine national cultural traditions (Article 25).

²⁷ See generally 'The safety of journalists', UN Doc A/HRC/27/L.7 (adopted by consensus on 25 September 2014).

²⁸ See, eg, Kenya *Information and Communications Act 2013* and *Media Act 2013*, which establish a Communications and Multimedia Appeals Tribunal with power to impose fines on media companies and recommend the de-registration of journalists. See also China *Regulations on Publication Administration* (Promulgated by the State Council on 25 December 2001 and amended on 19 March 2011); Malaysia *Printing Presses and Publishing Act 1984*; The Gambia *Newspaper Registration Act 2004*.

Laws which impose illegitimate, unnecessary, overbroad or disproportionate restrictions on the form or content of communications include those which:

- enable government censorship or blocking of content on arbitrary or overbroad grounds;²⁹
- criminalise the publication of content on arbitrary or overbroad grounds, such as that the content is ‘insulting’, spreads ‘false news’,³⁰ or is prejudicial to the national interest, public order, morality or security;³¹
- criminalise the publication of information about national security measures or operations;³²
- excessively restrict or criminalise freedom of expression through offences of libel,³³ defamation,³⁴ slander, sedition;³⁵ or blasphemy;³⁶
- criminalise advocacy or the dissemination or publication of information about particular human rights issues (for example, issues of sexual orientation or gender identity);³⁷ and
- render it a criminal offence to criticise or insult the government or head of state.³⁸

Restrictive practice example:

Australia: National Security Legislation Amendment Act 2014 (Cth)

Pursuant to section 35P of the *National Security Legislation Amendment Act 2014* (Cth), a person, including a journalist, who discloses any information in relation to a ‘special intelligence operation’ conducted by the Australian Security Intelligence Organisation is liable for imprisonment of up to five years. The Act does not include any sunset on the criminalisation of such publication, meaning that publication on such operations is criminalised in perpetuity.

²⁹ See, eg, Kenya *Information and Communications Act 2013* and *Media Act 2013*, which enables the Communications and Multimedia Appeals Tribunal to impose almost any order on freedom of expression. See also Turkey *Internet Act* (as amended in February 2014), which empowers the Telecommunications and Transmissions Authority to block and take down websites without court order; and Article 15.3 of the Russian *Federal Law on Information* which requires internet providers to block web content that a designated authority deems to be ‘extremist’ or to be encouraging participation in non-sanctioned meeting and events.

³⁰ See, eg, Uganda *Penal Code Act*, section 50; South Sudan *Penal Code Act 2008*, section 75; The Gambia *Information and Communications Act 2009* (as amended in July 2013); Laos *Penal Code*.

³¹ See, eg, South Sudan *Penal Code Act 2008*, section 75; Malaysia *Printing Presses and Publishing Act 1984*; Israel *Press and Publications Law of 1995*; Myanmar *Electronic Transactions Law 2004*, section 33.

³² See, eg, Australia *National Security Legislation Amendment Act 2014* (Cth) which criminalises the disclosure of information about national security officers, measures or operations, with journalists publishing such information liable for imprisonment of 5 to 10 years. See also Japan *Specific Secrets Protection Act 2013* which imposes prison sentences of up to 5 years for journalists who pursue the disclosure of state secrets; Malaysia *Official Secrets Act 1972*; Uganda *Official Secrets Act*, section 4; and United States *Espionage Act*.

³³ See, eg, Kazakhstan *Criminal Code*, Article 19; Sierra Leone *Seditious Libel Law of 1965*.

³⁴ See, eg, Italy *Penal Code*, Articles 594-5; Angola *Law 7/78 on Crimes Against State Security*; Malaysia *Defamation Act 1975*; Laos *Penal Code*; The Philippines *Cybercrime Prevention Act (Republic Act No. 10175)*; Liberia *Penal Code*, section 44.71; Sierra Leone *Public Order Act 1965*, sections 26-37.

³⁵ See, eg, Malaysia *Sedition Act*; Sierra Leone *Seditious Libel Law of 1965*.

³⁶ See, eg, Russia *Criminal Code*, Article 148 which provides that public actions that demonstrate clear disrespect to society and offend ‘feelings of the faithful’ are punishable by a prison sentence for up to three years and fines.

³⁷ See, eg Russia *Law on propaganda of non-traditional sexual relations 2013 (Article 14 (1) of the Federal Law ‘On basic guarantees of a child’s rights in the Russian Federation’)*.

³⁸ See, eg, Egypt *Penal Code*, Article 179; South Sudan *Penal Code Act 2008*, section 76; Kazakhstan *Criminal Code (Law on the Leader of the Nation)*, Article 317-1; Guatemala *Penal Code*, Articles 411-413.

Restrictive practice example:

Russia: Law on propaganda of non-traditional sexual relations 2013

This law violates the right to freedom of expression, including the right to discuss and disseminate information about human rights, in a range of ways, effectively criminalising the activities of human rights defenders who work to protect LGBT rights or promote non-discrimination on the grounds of sexual orientation or gender identity. Specifically, Article 6.21 of the Act criminalises the ‘spreading of information’ which, inter alia, may result in ‘distorted ideas about the equal social value of traditional and non-traditional sexual relationships’. Penalties for this offence are increased where the ‘propaganda’ is distributed via the mass media or internet and further still where perpetrated by foreign nationals.

Types of laws which should be reviewed to repeal restrictions on the right of human rights defenders and other civil society actors to freedom of expression and the discussion and publication of information about human rights

- Media laws and laws relating to the registration and regulation of publishing houses and journalists (eg, Kenya *Information and Communications Act 2013* and *Media Act 2013*; The Gambia *Information and Communications Act 2009*)
- Internet laws and codes (eg, The Philippines *Cybercrime Prevention Act (Republic Act No. 10175)*; Russia, *Federal Law on Information*, Article 15.3; Myanmar *Electronic Transactions Law 2004*, section 33)
- Criminal laws and penal codes (eg, Italy *Penal Code*; Laos *Penal Code*; South Sudan *Penal Code Act 2008*; Kazakhstan *Criminal Code*; Liberia *Penal Code*, section 44.71; Myanmar *Penal Code*, section 50(b); Guatemala *Penal Code*, Articles 411-413)
- National security and counter-terrorism laws (eg, Australia *National Security Legislation Amendment Act 2014*; Angola *Law 7/78 on Crimes Against State Security*)
- Russia *Law on propaganda of non-traditional sexual relations 2013*)
- Defamation and sedition laws (eg, Malaysia *Defamation Act 1975* and *Sedition Act*; Italy *Penal Code*, Articles 594-5; Sierra Leone *Seditious Libel Law of 1965*)
- Official secrets laws (eg, Japan *Specific Secrets Protection Act 2013*; Malaysia *Official Secrets Act 1972*; Uganda *Official Secrets Act*; United States *Espionage Act*)

4. Laws relating to national security and counter-terrorism

“The Human Rights Council calls upon States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law, in particular under international human rights law, and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights...”

Human Rights Council Resolution 22/6 (adopted 21 March 2013)

ISHR’s experience and research disclose that laws relating to counter-terrorism and national security are increasingly being used and misused in many jurisdictions to hinder, obstruct and criminalise the work of human rights defenders. This propensity has been recognised by the Human Rights Council in a number of recent resolutions, including those relating to human rights defenders³⁹ and the protection of civil society space.⁴⁰ Most recently, in September 2014, the Council called on States ‘to prevent and stop the use of

³⁹ See, most recently, ‘Mandate of the Special Rapporteur on the situation of human rights defenders’, UN Doc A/HRC/Res/25/18 (28 March 2014), preambular para 12.

⁴⁰ ‘Civil society space’, UN Doc A/HRC/Res/27/31 (adopted 26 September 2014), preambular para 11.

such provisions, and to review and, where necessary, amend any relevant provisions in order to ensure compliance with international human rights law and, as appropriate, international humanitarian law'.⁴¹

Such laws can restrict the work of defenders in a range of ways, including by:

- prohibiting or criminalising the formation of certain associations on broad and discretionary grounds,⁴² or the provision of any kind of support to such associations;⁴³
- prohibiting or criminalising certain speech,⁴⁴ or other forms of expression,⁴⁵ on arbitrary or overbroad grounds;⁴⁶
- prohibiting or criminalising journalism or commentary on certain 'national security' issues;⁴⁷
- permitting incommunicado detention, preventative detention or extended detention without independent judicial review;⁴⁸ and
- criminalising certain conduct on arbitrary and overbroad grounds, such as 'dangerousness',⁴⁹ 'extremism',⁵⁰ 'propaganda against the system', or 'acting against national security'.⁵¹

Restrictive practice example:

Ethiopia: Anti-Terrorism Proclamation of 2009

Ethiopia's *Anti-Terrorism Proclamation of 2009* includes an overbroad and vague definition of 'terrorist act' and a definition of 'encouragement of terrorism' that makes the publication of statements 'likely to be understood as encouraging terrorist acts' punishable by 10 to 20 years in prison. According to Human Rights

⁴¹ 'Civil society space', UN Doc A/HRC/Res/27/31 (adopted 26 September 2014), preambular para 11.

⁴² See, eg, Nigeria *Criminal Code: Unlawful Societies*, sections 62-68.

⁴³ See, eg, Israel *Prevention of Terrorism Ordinance 1948*, which prohibits expressing support for illegal or terrorist organisations; Uganda *Anti-Terrorism Act 2012*; and Turkey *Anti-Terror Law*, Article 7/2, which criminalises any propaganda for a 'terrorist' organisation. The United States has also been criticized for enacting laws and policies, in particular Executive Order 13224 and the *USA Patriot Act*, which grant the government and law enforcement authorities with broad authority to designate groups as terrorist entities, without adequate transparency or oversight, and to freeze their assets: see further Thomas Carothers and Saskia Brechenmacher, *Closing Space: Democracy and Human Rights Support under Fire* (2014), p 30.

⁴⁴ See, eg, Russia *Federal law on counteraction to extremist activities*.

⁴⁵ See, eg, Israel *IDF Order No. 101 Regarding Prohibition of Incitement and Hostile Propaganda Actions* (also known as Military Order 101). The Order restricts the actions of 10 or more persons gathering for a political purpose or a matter which could be construed as political. The order does not mention a distinction between peaceful and non-peaceful. See also Russia *Criminal Code*, Article 275 which classifies as treason the provision of financial, practical, technical, consultative or other assistance to a foreign state or its representatives aimed against the 'safety of the Russian Federation'.

⁴⁶ See, eg, Ethiopia *Anti-Terrorism Proclamation of 2009*, which includes an overbroad and vague definition of terrorist acts and a definition of 'encouragement of terrorism' that makes the publication of statements 'likely to be understood as encouraging terrorist acts' punishable by 10 to 20 years in prison. According to Human Rights Watch, this law is systematically used to 'crush free speech': see <http://www.hrw.org/news/2012/06/27/ethiopia-terrorism-law-used-crush-free-speech>.

⁴⁷ See, eg, Australia *National Security Legislation Amendment Act 2014* (Cth), section 35P.

⁴⁸ See, eg, Malaysia *Security Offences (Special Measures) Act 2012* and *Prevention of Crime (Amendment and Extension) Act 2013*, which provide for extended preventative detention without adequate judicial oversight.

⁴⁹ See, eg, Cuba *Penal Code*, Articles 72-90.

⁵⁰ See, eg, Russia *Federal Law On counteraction to extremist activities*, in which 'extremism' is defined to include obstructing the work of governmental bodies.

⁵¹ See, eg, Iran *Criminal Code*.

Watch, this law is systematically used to 'crush free speech' and has been used to criminalise and prosecute journalists and bloggers in violation of international human rights standards.⁵²

Types of national security and counter-terrorism laws which should be reviewed to avoid the criminalisation and undue restriction of the work of human rights defenders and other civil society actors

- Criminal laws and penal codes (eg, Cuba *Penal Code*, Articles 72-90; Nigeria *Criminal Code: Unlawful Societies*; Russia *Criminal Code*, Article 275)
- National security and counter-terrorism laws (eg, Australia *National Security Legislation Amendment Act 2014*; Ethiopia *Anti-Terrorism Proclamation of 2009*; Israel *Prevention of Terrorism Ordinance 1948*)
- Official secrets laws (eg, United States *Espionage Act*; Japan *Specific Secrets Protection Act 2013*; Malaysia *Official Secrets Act 1972*; Uganda *Official Secrets Act*)
- Internet laws and codes (eg, The Philippines *Cybercrime Prevention Act (Republic Act No. 10175)*; Russia, *Federal Law on Information*, Article 15.3)

5. Key findings and recommendations

There is a wide range of laws of general application which are used or misused by States to hinder and restrict and, in some cases, to criminalise and target, the work of human rights defenders. These laws include, but are not limited to, legislation relating to:

- Criminal offences and criminal procedure;
- Registration, operation, governance and oversight of NGOs, associations and charities;
- Access to funds from 'foreign' sources;
- Public assembly and protest;
- Police powers and law enforcement;
- National security and counter-terrorism, as well as official secrets;
- Media regulation and the registration or accreditation of journalists and other media workers;
- Internet and cyberspace regulation;
- Defamation, libel and blasphemy;
- Sedition and treason; and
- Public order and morality.

States should review and repeal or amend all provisions which unreasonably, unnecessarily or discriminatorily hinder or restrict the work of human rights defenders, ensuring that all legislation affecting their work complies with the Declaration on Human Rights Defenders and other relevant international human rights laws and standards. Without limitation this should include:

- ensuring the ability of individuals to freely associate (that is, individuals should be free to join together to engage in lawful activities without the requirement to register as legal entities);
- reforming any entity for registration or oversight of NGOs to ensure that it is independent of government, includes civil society representatives, and does not have the power or authority to determine or interfere with the mandate or activities of such organisations;
- decriminalising any non-compliance with registration or reporting requirements for NGOs;
- prohibiting the de-registration or criminalisation of non-governmental NGOs on grounds that are broad, vague or do not comply with international human rights standards, such as that they are acting 'contrary to national interest' or 'subverting the Government', and provide for independent judicial review of any proposed de-registration;

⁵² See, eg, Human Rights Watch, 'Ethiopia: Terrorism law used to crush free speech' at <http://www.hrw.org/news/2012/06/27/ethiopia-terrorism-law-used-crush-free-speech> and 'Ethiopia: Drop case against bloggers, journalists' at <http://www.hrw.org/news/2014/07/19/ethiopia-drop-case-against-bloggers-journalists>.

- removing any restrictions on access to foreign funds that do not apply to commercial organisations and enshrining the right to solicit, receive and utilise funds, including foreign funds, for the purpose of promoting and protecting human rights;
- repealing any laws or provisions which require that an NGO register as a 'foreign agent';
- removing any restrictions on the right of individuals and NGOs to engage in advocacy or public debate (including in relation to particular human rights issues, such as lesbian, gay, bisexual, transgender or intersex rights) or to critique existing or proposed laws, policies or practices;
- decriminalising defamation, libel, slander, blasphemy and similar offences (including offences relating to criticism of the government, Head of State, or State) and ensuring that civil defamation laws do not provide for excessive fines or damages;
- decriminalising activities, or the publication of materials, that are prohibited on grounds that are broad, vague or do not comply with international human rights standards, such as being 'insulting', 'dangerous' or 'prejudicial to the national interest';
- repealing any requirement as to the registration of journalists, including in order to cover protests, demonstrations and assemblies;
- removing media regulation authority from any entity that is wholly or partly controlled by government;
- amending counter-terrorism laws and measures to ensure a precise and targeted definition of 'terrorism' and 'terrorist activities', the inclusion of safeguards (including independent judicial review), and the repeal of any powers that are not reasonable, necessary, proportionate and in compliance with international human rights standards;
- repealing requirements of authorisation rather than notification in order to convene a peaceful assembly, and establishing and safeguarding the ability to convene public, peaceful assemblies without notice in exceptional circumstances; and
- prohibiting the excessive use of force against protesters and prohibiting the use of any force merely because a protest is 'unauthorised' or has not complied with notification requirements.

III. Specific laws to protect and support human rights defenders

There is an increasing awareness that the legal recognition and protection of human rights defenders is a crucial element of ensuring that defenders can operate in a safe and enabling environment and that States should develop and implement specific laws and policies in this regard.

This is reflected in recommendations and reports by independent experts,⁵³ United Nations bodies,⁵⁴ and regional human rights mechanisms in Africa⁵⁵ and the Americas.⁵⁶

It is also increasingly recognised by States, including in the context of the Universal Periodic Review,⁵⁷ and through emerging State practice itself, with specific human rights defender laws enacted in Colombia,⁵⁸ Côte d'Ivoire⁵⁹, Mexico⁶⁰ and Honduras⁶¹ and progressing through official legislative processes in Burkina Faso and the Philippines.⁶²

⁵³ See, eg, 'Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya' (23 December 2013), UN Doc A/HRC/25/55, paras 62-3, available at http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-55_en.doc. See also 'Vienna+20: Advancing the Protection of Human Rights', Report of the International Expert Conference, Vienna, 27 and 28 June 2013, p 4, available at <http://www.ohchr.org/Documents/Events/OHCHR20/ConferenceReport.pdf>; and Justice & Peace, Netherlands Ministry of Foreign Affairs et al, 'Speak Truth to Power Report' (2014) p 37.

⁵⁴ See, eg, 'Summary of the Human Rights Council panel discussion on the importance of the promotion and protection of civil society space', UN Doc A/HRC/27/33 (26 June 2014), para 71; 'Concluding Observations of the Committee on the Elimination of Racial Discrimination: Mexico', UN Doc CERD/C/MEX/CO/16-17 (4 April 2012), para 15.

⁵⁵ See, eg, African Commission on Human and Peoples' Rights Resolution ACHPR/Res.196 on Human Rights Defenders in Africa (adopted 5 November 2011) which 'Encourages States to adopt specific legislation on the protection of human rights defenders'.

⁵⁶ See, eg, Inter-American Commission on Human Rights Resolution on Human Rights Defenders of 27 May 2014, which 'applauds the legislative and structural measures that some OAS member states have adopted to safeguard the lives, freedom, and personal safety of human rights defenders' and 'Urges member states to harmonize their applicable domestic laws with applicable international law, in accordance with their acquired international obligations, in order to protect the work carried out by human rights defenders'.

⁵⁷ In the context of the Universal Periodic Review, as at the conclusion of the 18th session in January 2014, the following States have made recommendations that the State under review should enact a specific law or policy to incorporate the Declaration on Human Rights Defenders at the national level or strengthen an existing law in that regard: Austria, Belgium, Brazil, Canada, Colombia, Czech Republic, Denmark, Hungary, Ireland, Netherlands, Norway, Poland, Romania, Slovakia, Spain, Switzerland, the United Kingdom and the United States.

The following States under review have been the subject of recommendations that they develop a specific law or policy to promote and protect the work of human rights defenders: Angola, Brazil, Cambodia, Chad, Colombia, Cuba, Democratic Republic of Congo, The Gambia, Guatemala, India, Indonesia, Mexico, Mongolia, Pakistan, Peru, Russia, Serbia and Sri Lanka.

⁵⁸ See Colombia *Law 418 Act of 1997*, as amended by *Laws 548 of 1999, 782 of 2002 and 1106 of 2006*.

⁵⁹ See Côte d'Ivoire *Law on the Promotion and Protection of Human Rights Defenders of 2014*.

⁶⁰ See Mexico *Law for the Protection of Human Rights Defenders and Journalists of 2012*.

⁶¹ On 4 June 2014, a draft 'Law to protect human rights defenders, journalists and justice operators' (*Ley de Protección para las y los defensores de Derechos Humanos, Periodistas, Comunicadores Sociales y Operadores de Justicia en Honduras*) was introduced into the National Congress of Honduras and its text was enacted on 15 April, 2015 and published on the official diary on 14 May 2015, which created the 'National Council of Protection'. http://www.tsc.gob.hn/leyes/Ley_Proteccion_defensores_der_humanos_periodistas_op_just.pdf

⁶² In July 2013, the Human Rights Defenders Protection Act 2013 (House Bill No 1472) was introduced into the Philippines House of Representatives with the express purpose of implementing the Declaration on Human Rights

However it must be borne in mind that polices and laws for the protection of human rights defenders will only be effective where the rule of law is respected. Elements which will assist to strengthen the rule of law include:

- ensuring the independence of public prosecution services, including criminal sanctions under human rights defender protection laws;
- ensuring the independence of the judiciary, in particular in its effective and transparent application of human rights defender laws and policies; and
- ensuring that laws and policies are made public, and that trainings are held for law enforcement officials to ensure they are capable of competently applying the laws and policies.

A number of other States have established human rights defender protection programs through decree, including Brazil and Guatemala,⁶³ with the latter also establishing a 'Unit for the Analysis of Attacks against Human Rights Defenders'. This Unit has a mandate to analyse patterns of attacks against human rights defenders and make recommendations with a view to improving the effectiveness of investigations, and of prevention and protection measures.⁶⁴ In 2013, the Journalist Protection Program was announced, a program with the aim of receiving complaints of crimes against journalists. This was intended to ensure the conduct of judicial investigations, to guarantee the security of journalists and conduct training in respect of protection.⁶⁵ Further, the Department of Protection Mechanisms for Human Rights Defenders, within the Presidential Human Rights Commission, is supposed to guarantee the safety of defender beneficiaries of precautionary or interim measures granted by the Inter-American human rights system.⁶⁶ In addition, the internal Protocol for the Implementation of Immediate and Preventive Security Measures for Human Rights Activists enacted by the Interior Ministry in 2014 is incomplete and its establishment and implementation lacked consultation with civil society.⁶⁷

In September 2014, these developments were endorsed by the Human Rights Council in a consensus resolution which welcomed 'the recent enactment by some States of national legislation and policies to

Defenders at the national level: see http://www.congress.gov.ph/download/basic_16/HB01472.pdf. The Bill was referred to the Parliamentary Committee on Human Rights on 29 July 2013 and is now pending before that body.

⁶³ States to have established human rights defender protection programs through decree, include Brazil (National Program for the Protection of Human Rights Defenders established by Decree No 6.044 of 12 February 2007) and Guatemala (Coordination Protection Unit established by Internal Agreement II of the Presidential Commission for Human Rights and Ministerial Agreement No 103 of 2008). For a comparative analysis of the operation and effectiveness of some of these laws and policies, see Protection International, 'Focus 2013 – Public Policies for the Protection of Human Rights Defenders: The State of the Art' (at http://protectionline.org/files/2013/05/Focus-2013_130523_ENG_2nd-Ed.pdf), and Maria Martin Quintana and Enrique Eguren Fernandez, *Protection of Human Rights Defenders: Best Practices and Lessons Learnt* (2009).

⁶⁴ The Unit for the Analysis of Attacks against Human Rights Defenders in Guatemala was established pursuant to Ministerial Agreement No 103-2008. In 2009, Guatemala also adopted a 'National Policy of Prevention and Protection for Human Rights Defenders and Other Vulnerable Groups' which, while not legally enforceable, seeks to promote coordination between various government agencies and authorities, together with non-governmental organisations, to prevent and protect against attacks on human rights defenders. The Policy was agreed upon by the Congress, the Executive, the Ministry of Interior and the Human Rights Prosecutor, with input from civil society. Although well-intentioned, since its inception the Unit has been consistently weakened and been fully undermined since 2012 and is effectively inoperable. It needs to be developed so that it is able to process complaints of aggression against defenders and analyse their patterns and causes, with the aim of formulating recommendations to the Attorney General Office and other national institutions.

⁶⁵ Unfortunately implementation has been slow and validation of the program by the president were to occur in August/September 2015.

⁶⁶ However this has not been the case, due to accusations that has worked to delegitimise human rights defenders who work with business and human rights and tried to downplay the seriousness of the risks they face.

⁶⁷ http://www.ishr.ch/sites/default/files/article/files/guatemala_final.pdf

facilitate, promote and protect civil society space consistent with international human rights law' and which encouraged 'their effective implementation'.⁶⁸

Despite recognition and these recommendations from UN experts, treaty bodies, States as part of the Universal Periodic Review and the African Commission for Human and Peoples' Rights, however, very few States have acted to comprehensively incorporate the Declaration on Human Rights Defenders into national law or policy. Notably, of the eighteen States that have made specific recommendations to other States in the context of the Universal Periodic Review to enact legislation on the recognition and protection of human rights defenders, only Brazil and Colombia have developed such a domestic law or policy themselves. Similarly, very few States have acted to establish a human rights defender focal point within their national human rights institution or other relevant body, notwithstanding the call to do so by the UN Human Rights Council in Resolution 13/13.⁶⁹

While the development of laws for the protection of human rights defenders is a positive step, of those States that have enacted human rights defender laws or policies, such initiatives have tended to focus on the protection of human rights defenders who are already at risk. That is, there tends to be only a limited focus within national human rights defender protection mechanisms on creating an enabling environment for defenders, playing a preventative role, or promoting accountability and combating impunity for attacks and other violations against human rights defenders. Thus, for example, the Mexican law has been critiqued by civil society in the following terms:⁷⁰

The Law does not include measures to ensure proper investigations and sanctions on those who attack, harass or threaten human rights defenders or journalists. The Mechanism is intended to tackle an emergency situation, but by no means solves the structural patterns of the problem.

This can be contrasted with the more recent approach taken in Côte d'Ivoire, where the National Assembly adopted 'La Loi No. 2014-388 portant la promotion et la protection des défenseurs des droits de l'homme' on 11 June 2014, which codifies the State obligation to investigate and pursue accountability for threats and attacks against human rights defenders.⁷¹ The law is awaiting the adoption of a decree to ensure its operationalisation.

Good practice example from States:

Mexico: Law for the Protection of Human Rights Defenders and Journalists of 2012

'As an example of a good practice, the Special Rapporteur commends the adoption of a law and creation of a protection mechanism for defenders and journalists in Mexico in 2012. The law provides a legal basis for the coordination between the government agencies responsible for the protection of defenders and journalists. It defines an extraordinary process for emergency response in less than 12 hours. It also includes collaboration agreements with state-level governments in order to ensure their participation in the mechanism. Furthermore, it establishes a complaints procedure and ensures that public officials who do not implement the measures ordered by the mechanism will be legally sanctioned. The new mechanism also ensures the participation of civil society organizations in its decision-making processes and guarantees the right of the beneficiary to participate in the analysis of his/her risk and the definition of his/her protective measures.'⁷²

⁶⁸ 'Civil society space', UN Doc A/HRC/Res/27/31 (adopted by consensus 26 September 2014), preambular para 12.

⁶⁹ 'Protection of human rights defenders', UN Doc A/HRC/Res/13/13 (adopted without a vote 25 March 2010), para 5.

⁷⁰ Daniel Joloy, 'Mexico's National Protection Mechanism for Human Rights Defenders: Challenges and Good Practices' (2013) *Journal of Human Rights Practice*, Vol 5 No 3, p 497.

⁷¹ See further <http://www.assnat.ci/?q=article/les-d%C3%A9put%C3%A9s-sont-pour-la-promotion-et-la-protection-des-d%C3%A9fenseurs-des-droits-de-l%E2%80%99homme>.

⁷² 'Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya' (23 December 2013), UN Doc A/HRC/25/55, para 89. Notwithstanding the initial endorsement by the Special Rapporteur, three years on from the law's enactment, both national and international human rights organisations have criticised the law's lack of effective implementation, citing under-resourcing, a lack of inter-institutional coordination, poor quality risk analysis,

Côte d'Ivoire: Law on the Promotion and Protection of Human Rights Defenders of 2014

The Côte d'Ivoire *La Loi portant la promotion et la protection des défenseurs des droits de l'homme* (*Law on the Promotion and Protection of Human Rights Defenders*), which was enacted on 11 June and entered into force on 20 June 2014, enshrines many of the rights recognised under the Declaration. This includes the right to freedom of expression, the right to form associations and non-governmental organisations, the right to access resources, the right to submit information to international bodies, and the right to be protected from reprisals. The law also codifies the obligations of the State in this regard, including the obligation to protect human rights defenders, their families and their homes from attacks, and to investigate and punish attacks where they occur.

The law recognises the particular threats faced by, and protection needs of, women human rights defenders. Unlike Mexico's law on the protection of human rights defenders, however, the Côte d'Ivoire law does not establish or mandate a specific protection mechanism for human rights defenders.⁷³

The Côte d'Ivoire law has been welcomed by civil society organisations, including the Côte d'Ivoire Coalition of Human Rights Defenders and the West African Human Rights Defenders Network, although it is too early to assess the implementation or impact of the law.⁷⁴

While the present submission welcomes and endorses the enactment of specific laws and policies to support and protect human rights defenders, it is imperative that such laws are properly assessed and evaluated. Such evaluations, which should involve extensive consultation with human rights defenders themselves, should be undertaken with a view to making such amendments to the law itself, or the program or mechanism it mandates or establishes, as are necessary to optimise the law's effectiveness and contribution to a safe and enabling operating environment for human rights defenders. In this respect, it is positive that in his inaugural report to the UN General Assembly, UN Special Rapporteur on Human Rights Defenders, Michel Forst, foreshadowed a study 'with the aim of demonstrating the effectiveness of national mechanisms in the protection of defenders, or alternatively to reveal the measures to be taken to improve that effectiveness'.⁷⁵

Evidence establishes that specific laws can have particular normative, expressive and educative functions that cannot be achieved through laws of general application.⁷⁶ In other words, specific laws on human rights defenders could assist not only to provide formal legal protection to their work, but also to give official recognition to the legitimacy of such work, educate law enforcement officers, public officials and the public at large about the importance of defenders' work and the protection thereof, and be a source of support and inspiration to defenders themselves both inside and outside the country concerned.

Consistently with this evidence, the former Special Rapporteur on Human Rights Defenders, Margaret Sekagya, has said that:⁷⁷

The adoption of laws that explicitly guarantee the rights contained in the Declaration on Human Rights Defenders is crucial in that it could contribute to building an enabling environment and give these

an absence of high-level political backing and the partial implementation of the protection mechanism's structure as obstacles: see, eg, http://www.ishr.ch/sites/default/files/article/files/150728_comunicado_espacioosc.pdf

⁷³ In this regard it is notable that the Special Rapporteur on Human Rights Defenders has issued guidelines regarding protection programs for human rights defenders which relevantly provide that 'the structure of a protection program should be defined by law': see 'Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekagya', UN Doc A/HRC/13/22 (30 December 2009), paras 111 and 113.

⁷⁴ See further <http://www.ishr.ch/news/cote-divoire-new-law-will-strengthen-protection-human-rights-defenders>.

⁷⁵ 'Report of the Special Rapporteur on the situation of human rights defenders', UN Doc A/69/259 (5 August 2014).

⁷⁶ Sandra Fredman, *Human Rights Transformed: Positive Rights and Positive Duties*, (Oxford: Oxford University Press, 2008), p 32; Wibren Van Der Burg, 'The Expressive and Communicative Functions of Law, Especially with Regard to Moral Issues' (2001) *Law and Philosophy* 20.

⁷⁷ 'Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekagya', UN Doc A/HRC/25/55 (23 December 2013), para 63.

rights legitimacy. Furthermore, such laws could contribute to building wider societal support for the demand of fulfilling these rights.

This makes the adoption of such laws worthwhile and important even in those jurisdictions where there is an existing high level of legal protection of human rights in general terms and where it may be apprehended that human rights defenders may not face the same risks or repression as elsewhere.

For this reason, constitutional and legislative protections of general application will not fulfil some of the functions that a specific law can fulfil. Further, there is a worsening trend pursuant to which such protections are subject to overbroad qualifications or restrictions. One example is that the rights must be exercised 'in accordance with law', with such law being unduly restrictive. Another example is that legal protections are substantially restricted through policy or the arbitrary exercise of executive discretion, such as routine or discriminatory denial of permission or authorisation to convene a peaceful assembly or form an association.

1. Key findings and recommendations

The legal recognition and protection of human rights defenders in a specific law is an essential element of establishing and maintaining a safe and enabling environment for their work and that of other civil society actors.

Human rights defenders working in diverse countries and contexts consider that the development of a model national law on the protection of human rights defenders would be a valuable contribution towards the development and enactment of legislation to effectively implement the Declaration on Human Rights Defenders at the domestic level.

In light of the above, in consultation with civil society actors, States should enact a specific law to support and protect human rights defenders. In accordance with the Declaration on Human Rights Defenders, such a law should:

- enshrine the rights of defenders and the obligations of the State to promote, protect and respect those rights;
- mandate and ensure adequate resourcing for programs and mechanisms to promote the importance and legitimacy of human rights defenders' work, and to protect human rights defenders and their families and associates who may be at risk (including women human rights defenders and those working on issues of sexual orientation and gender identity), whether from State or non-State actors;
- oblige the State to investigate and pursue accountability for any violations of the rights of defenders, their families and associates (again, whether by State or non-State actors); and
- provide for access to effective remedy for victims.⁷⁸

The law should also include provisions to:

- mandate research and analysis on threats and attacks against human rights defenders with a view to identifying underlying and causative factors and making recommendations aimed at prevention and at the promotion of an enabling environment; and
- ensure that the law itself is systematically evaluated, including through consultation with human rights defenders, with a view to identifying the amendments or other measures that may be necessary to ensure its effectiveness.

⁷⁸ For a discussion and guidelines as to the development of protection programs, see 'Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya', UN Doc A/HRC/13/22 (30 December 2009), paras 25-110.

IV. General laws which support or enable the work of human rights defenders

While this submission concludes that States should enact specific laws to promote, protect and respect the work of human rights defenders, it is also clear that laws of more general application have a role to play in ensuring that human rights defenders and other civil society actors can operate in a safe environment free from hindrance and insecurity. This is particularly the case where those laws contain provisions that are specific or adapted to the situation of defenders. This section of the submission highlights a number of good practice examples in that regard disclosed through the comparative research.

This section is not intended to provide an account of all those general laws which are necessary for human rights defenders to undertake their work or for States to comply with the Declaration on Human Rights Defenders, such as general laws relating to the rights to freedom of expression, association and peaceful assembly.

1. Legal and constitutional Bills of Rights

A significant number of States have enshrined certain human rights in their constitutions or in legislative instruments. The form and content of such instruments varies widely:

- from the constitutional protection of a comprehensive range of civil, political, economic, social and cultural rights in South Africa;⁷⁹
- to the constitutional protection of a more limited range of civil and political rights in Canada,⁸⁰ Guatemala,⁸¹ and the United States;⁸²
- to the legislative protection of all rights enshrined in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the European Convention on Human Rights in Norway;⁸³
- to the even more limited legislative protection of a range of civil and political rights in the United Kingdom.⁸⁴

While none of these instruments contain provisions that are specific to human rights defenders, they do recognise and protect rights that are central to defenders' work. This includes the rights to freedom of expression,⁸⁵ freedom of association and assembly,⁸⁶ and freedom from discrimination.⁸⁷ The recognition and protection of such rights in law is a necessary (although not sufficient) factor contributing to their realisation in practice.⁸⁸

⁷⁹ South African *Bill of Rights 1996*.

⁸⁰ Canadian *Charter of Rights and Freedoms 1982*.

⁸¹ Guatemala *Political Constitution of the Republic of Guatemala of 1985 (as amended in 1993)*.

⁸² See, eg, First and Fourteenth Amendment to the United States Constitution.

⁸³ Norway *Act relating to the strengthening of the status of human rights in Norwegian law (Human Rights Act 1999)*.

⁸⁴ United Kingdom *Human Rights Act 1998*.

⁸⁵ See, eg, First Amendment to the US Constitution; Canadian *Charter of Rights and Freedoms 1982*, Article 2(b); South African *Bill of Rights 1996*, Article 16; United Kingdom *Human Rights Act 1998*, Schedule 1, Article 10; Guatemala *Constitution*, Chapter I, Title II, Article 35.

⁸⁶ See, eg, First Amendment to the US Constitution; Canadian *Charter of Rights and Freedoms 1982*, Articles 2(c) and 2(d); South African *Bill of Rights 1996*, Articles 17 and 18; United Kingdom *Human Rights Act 1998*, Schedule 1, Article 11; Guatemala *Constitution*, Chapter I, Title II, Articles 33 and 34.

⁸⁷ See, eg, Fourteenth Amendment to the US Constitution; Canadian *Charter of Rights and Freedoms 1982*, Article 15; South African *Bill of Rights 1996*, Article 9; United Kingdom *Human Rights Act 1998*, Schedule 1, Article 14.

⁸⁸ See, eg, Human Rights Committee, 'General Comment 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant', UN Doc CCPR/C/21/Rev.1/Add.13 (26 May 2004), para 13. See also the view of the

Good practice example:

South Africa: Bill of Rights

The South African Bill of Rights, being Chapter 2 of the South African Constitution, is arguably the most comprehensive national level instrument on the promotion, protection and fulfilment of human rights.

The Bill of Rights enshrines a comprehensive range of civil, political, economic, social and cultural rights, imposes enforceable and justiciable obligations on all levels and arms of government to respect, promote, protect and fulfil human rights, provides for access to remedy in the case of violations of rights, and imposes stringent conditions on any derogations from, or limitations to, protected rights.

2. Laws providing access to international bodies

The right of unhindered access to and communication with international bodies, and to be protected in doing so, is codified in both specific treaties applying to certain human rights bodies,⁸⁹ and more broadly in the Declaration on Human Rights Defenders.⁹⁰ It is also an essential component of the rights to freedom of expression and association recognised by a wide range of international and regional human rights treaties and instruments.⁹¹

A small number of States have acted to codify this right either in constitutional provisions or in legislation. Thus, for example, Article 56 of the Constitution of Montenegro provides that ‘everyone shall have the right of recourse to international institutions for the protection of rights and freedoms guaranteed by the Constitution’, while Article 7(1) of Indonesia’s *Act Concerning Human Rights* (No 39 of 1999) provides that everyone has the right to use all effective national legal means and international forums against all violations of human rights guaranteed under Indonesian law. In similar terms, Article 46(3) of the Constitution of the Russian Federation provides that ‘Everyone shall have the right to appeal, according to international treaties of the Russian Federation, to international bodies for the protection of human rights and freedoms, if all the existing internal State means of legal protection have been exhausted.’

While included as illustrations of good practice, all three of these examples demonstrate deficiencies. In all three cases, the constitutional or legislative provision limits the right of recourse to international bodies to

former Special Rapporteur – based on eight years’ of research and country missions – that ‘in countries where human rights are specifically recognised and protected in domestic law, those rights are more likely to be respected and realized in practice’: ‘Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya’ (23 December 2013), UN Doc A/HRC/25/55, para 63.

⁸⁹ See, eg, Optional Protocol to the Convention against Torture, Article 15; Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, Article 11; Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, Article 13; and Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, Article 4.

⁹⁰ Articles 5(c) and 9(4).

⁹¹ The Universal Declaration on Human Rights (Articles 13, 19, 20), the International Covenant on Civil and Political Rights (Articles 12, 19, 22), the International Covenant on Economic, Social and Cultural Rights (Article 8, Optional Protocol Article 13), the Convention on the Elimination of All Forms of Racial Discrimination (Article 5(d)(i), (viii)), the Convention on the Elimination of All Forms of Discrimination against Women (Article 7, Optional Protocol Article 11), the Convention on the Rights of the Child (Article 13), the European Convention on Human Rights (Articles 10, 11, Article 2 to Protocol No 4), the African Charter on Human and Peoples’ Rights (Articles 9, 10, 12), the American Convention on Human Rights (Articles 13, 16, 22), the Arab Charter on Human Rights (Article 28), the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Article 13, Optional Protocol Article 15), the Convention No 87 on Freedom of Association and Protection of the Right to Organise of the International Labour Organisation (Article 2); and UNGA Resolution 53/144 on the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, 8 March 1999, UN Doc A/RES/53/144, Annex, Articles 5, 6. See also, United Nations, *Commentary to the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms*, July 2011, p 48.

violations of those rights that are specifically recognised or guaranteed by the State (as against those rights that are recognised under international human rights law or that fall within the jurisdiction of the international mechanism). Thus, the right to communicate with international bodies is circumscribed by reference to what is protected under national law. The Russian provision contains a further limitation; namely that the right to communicate with international bodies only appears to apply following the exhaustion of domestic remedies, notwithstanding that the exhaustion of domestic remedies is only an admissibility requirement for individual communications to treaty bodies, and not for other mechanisms such as the UN Human Rights Council's Special Procedures. Furthermore, given evidence of reprisals in Russia against those who engage with the UN human rights system,⁹² the Russian example demonstrates that the recognition of rights in law is a necessary but by no means sufficient factor contributing to the realisation of those rights in practice.

Good practice example:

Montenegro: Constitution of Montenegro of 2007, Article 56: Right to address international organisations

'Everyone shall have the right of recourse to international organisations for the protection of own rights and freedoms guaranteed by the Constitution.'

3. Laws providing protection against intimidation and reprisals

Enjoyment of the right to unhindered access to and communication with human rights bodies implies that those accessing or attempting to access or communicate with these bodies should not face any form of intimidation or reprisal for doing so. The Declaration on Human Rights Defenders recognises the right of human rights defenders to protection from reprisals for their communication or cooperation, or attempted communication or cooperation, with the UN human rights bodies.⁹³

The right to be free from reprisals that threaten an individual's life or physical liberty is also an aspect of the protection afforded by other international human rights, such as freedom from arbitrary arrest, detention or deprivation of liberty; torture; cruel, inhuman and degrading treatment; and arbitrary deprivation of life.

No State was identified through the research as having enacted laws or provisions protecting or prohibiting reprisals against a person or group in association with their engagement with international human rights mechanisms in general terms, although a small number of States have provided protection for unhindered access in legislation regarding specific international bodies. For example, legislation in Austria, and proposed legislation in Australia,⁹⁴ provide specifically for protection from reprisals for cooperating with the UN Subcommittee on the Prevention of Torture, which monitors places of detention pursuant to the Optional Protocol to the Convention against Torture.

Good practice example:

Austria: Ombudsman Board Act of 1982, Chapter 3, para 18

'Nobody shall be penalised or otherwise disadvantaged due to providing information to the Subcommittee on the Prevention of Torture, the Ombudsman Board or the commissions set up by it.'

By contrast, a significant number of States have enacted specific provisions to prohibit victimisation or reprisals against a person or group in association with their engagement with domestic human rights or other complaints mechanisms, or in retaliation for the exercise of protected rights or freedoms (particularly

⁹² See, eg, 'Cooperation with the United Nations, its representatives and mechanisms in the field of human rights: Report of the Secretary-General', UN Doc A/HRC/27/38 (27 August 2014), para 43. See also see <http://www.ishr.ch/news/russia-reprisals-against-ngos-breach-international-law-and-obligations-human-rights-council>.

⁹³ Declaration on Human Rights Defenders, Articles 2(1), 9(1) and 12(2).

⁹⁴ Monitoring of Places of Detention (Optional Protocol to the Convention against Torture) (National Uniform Legislation) Bill 2013 (NT) sections 13-14; Monitoring of Places of Detention (Optional Protocol to the Convention against Torture) Bill 2017 (ACT) section 17.

for having submitted a complaint in relation to discrimination). Thus, for example, the US *Civil Rights Act of 1964* prohibits retaliation and intimidation of any person based on race, colour, religion, gender or national origin for filing a discrimination charge, participating in an investigation or opposing discriminatory practices.⁹⁵ In the United Kingdom, the *Protection from Harassment Act 1997* and the *Equality Act 2010* (in particular section 27) similarly recognise and provide penalties in relation to breaches of the right to be free from victimisation or harassment.⁹⁶

The recognition by States that domestic human rights mechanisms are only effective if those accessing them are protected from intimidation and reprisal lends strong support to the call for analogous protection for engaging with international human rights bodies.

Good practice examples:

Canada: Quebec Charter of Rights and Freedoms, Part VII, sections 82 and 134(5)

The Canadian province of Quebec has enacted legislation which renders it a criminal offence to commit a reprisal against a person or organisation who has participated in a discrimination complaint, whether as a victim, witness or otherwise.

Australia: Equal opportunity and anti-discrimination laws

Anti-discrimination legislation exists in all Australian jurisdictions and allows persons to make a complaint of discrimination or harassment to the Australian Human Rights Commission or, in the case of state or territory legislation, the relevant statutory body. Importantly, all discrimination legislation provides that it is unlawful to victimise or intimidate a complainant, a person who supports another in bringing a complaint to the relevant statutory body, or a person giving evidence in a case.⁹⁷

United States: Conspiracy Against Rights Act (18 U.S.C. § 241)

The US *Conspiracy Against Rights Act* renders it a criminal offence for two or more persons to conspire to intimidate any person in the free exercise or enjoyment of any right or privilege under the Constitution or US laws or to take a reprisal against them for having exercised such rights.

A number of jurisdictions have enacted laws to protect and prohibit reprisals against human rights defenders and others working on particular types of egregious human rights violations, including enforced and involuntary disappearances, and torture and other forms of cruel, inhuman or degrading treatment.

In the Philippines, for example, a new act to combat enforced or involuntary disappearances requires the State to protect lawyers, human rights defenders and others working on cases of alleged enforced disappearances from any form of intimidation or reprisal for this work.⁹⁸ Uganda has enacted a similar law in relation to torture.

Good practice example:

Uganda: Prevention and Prohibition of Torture Act 2012

Pursuant to section 21 of Uganda's *Prevention and Prohibition of Torture Act 2012*, the State has a legal responsibility to ensure that any person making a complaint or giving evidence in relation to alleged torture

⁹⁵ Title VII of the *Civil Rights Act of 1964* (42 U.S.C. § 2000e-3(a)).

⁹⁶ For further examples, see Finland's *Non-Discrimination Act* (21/2004), section 8; Mauritius' *Equal Opportunities Act 2008*, section 7(1)(a); and Guyana's *Prevention of Discrimination Act 1997*, Part VIII(22).

⁹⁷ *Age Discrimination Act 2004* (Cth) section 51; *Disability Discrimination Act 1992* (Cth) section 42; *Racial Discrimination Act 1975* (Cth) section 27(2); *Sex Discrimination Act 1984* (Cth) section 94; *Anti-Discrimination Act 1977* (NSW) section 50; *Equal Opportunity Act 2010* (Vic) sections 103-104; *Anti-Discrimination Act 1991* (Qld) sections 129-131; *Equal Opportunity Act 1984* (WA) section 67; *Equal Opportunity Act 1984* (SA) section 86; *Anti-Discrimination Act 1998* (Tas) section 18; *Discrimination Act 1991* (ACT) section 68; *Anti-Discrimination Act* (NT) section 23.

⁹⁸ Philippines *Anti-Enforced or Involuntary Disappearance Act of 2012*, section 24.

'is protected against all manner of ill-treatment or intimidation as a consequence of his or her complaint or any evidence given'.

4. Laws or programs protecting particularly vulnerable groups of human rights defenders

It is well recognised that certain groups of human rights defenders are particularly vulnerable to threats and attacks (including women human rights defenders and those working on issues of sexual orientation and gender identity, journalists and media workers, human rights defenders who work on land and environment rights or issues of corporate accountability, human rights defenders who work on issues of corruption and impunity, and human rights defenders who work on cases of torture and enforced disappearances).⁹⁹ It is also well established that States have a positive duty to protect them against such risks, including through the adoption of specific legislative measures.¹⁰⁰

A small number of States reviewed have enacted laws of general application which contain specific provisions to enhance protection for groups of human rights defenders at particular risk or, through legislation, have established protection programs for particular groups that may be at risk in association with their work to promote and protect human rights. Thus, for example, Kenya enacted the *Witness Protection Act of 2006* and, pursuant to the *Witness Protection (Amendment) Act of 2010*, established the Witness Protection Agency with the purpose of, inter alia, protecting witnesses in cases involving human rights violations. Regrettably, the effectiveness of the program has been hampered by inadequate resourcing, with continuing reports of witness harassment and insecurity.¹⁰¹

Good practice example:

Philippines: Anti-Enforced or Involuntary Disappearance Act of 2012

In December 2012, the Philippines became the first State in the Asian region to enact a specific law criminalising and providing protection against enforced and involuntary disappearances; a crime which is perpetrated disproportionately against human rights defenders.¹⁰²

The law affords particular protection to human rights defenders and others who work on cases of enforced disappearance, section 24 of the Act providing that 'The State, through its appropriate agencies, shall ensure the safety of all persons involved in the search, investigation and prosecution of enforced or involuntary disappearance including, but not limited to, the victims, their families, complainants, witnesses, legal counsel and representatives of human rights organisations and media. They shall likewise be protected from any intimidation or reprisal.'

There are also provisions which positively assist human rights defenders working on enforced disappearance cases, with section 6 of the Act, which pertains to the right of access to communication, providing that, 'It shall be the absolute right of any person deprived of liberty to have immediate access to any form of communication available in order for him or her to inform his or her family, relative, friend, lawyer or any human rights organisation on his or her whereabouts and condition'. Complementing the section 6 right of communication, section 7 of the Act establishes a duty imposed on any person who has information

⁹⁹ See, eg, 'Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya', UN Doc A/HRC/19/55 (21 December 2011); Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya', UN Doc A/HRC/16/44 (20 December 2010).

¹⁰⁰ See, eg, 'Protecting women human rights defenders', UN Doc A/Res/68/181 (resolution adopted by the UN General Assembly on 18 December 2013). See also 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai', UN Doc A/HRC/26/29 (14 April 2014), para 73(c); Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya', UN Doc A/HRC/16/44 (20 December 2010), para 109.

¹⁰¹ See, eg, Human Rights Watch, 'Kenya: Rights defenders under attack', available at <http://www.hrw.org/news/2013/10/04/kenya-rights-defenders-under-attack>.

¹⁰² See, eg, 'Report of the Working Group on Enforced or Involuntary Disappearances', UN Doc A/HRC/27/49 (4 August 2014), paras 61, 69, 84, 94, 119.

about an enforced disappearance to immediately disclose that information to, inter alia, the Commission on Human Rights and relevant human rights organisations and lawyers.

5. Laws which criminalise or further sanction attacks against people in association with their human rights work

Of the more than forty States reviewed, one State, Colombia, has enacted specific provisions within the general Criminal Code to respond to the fact that attacks and offences against human rights defenders are frequently perpetrated by consequence of their work and that human rights defenders are at greater risk than many other groups of being victims of gross violations such as extrajudicial killing, torture, ill-treatment and enforced disappearances.

The Colombian provisions also implicitly recognise that attacks against human rights defenders are not just offences against the individuals themselves, but also against human rights, fundamental freedoms and the rule of law, making such attacks aggravated.

Good practice example:

Colombia: Criminal Code (Law 599 of 2000), as amended by Law 1426 of 2010

In 2010, Colombia adopted Law 1426 to amend the State's general *Criminal Code*. Law 1426 of 2010 has the effect of increasing the penalties associated with various offences where those offences are perpetrated against a person in association with their work to promote and protect human rights. Penalties for the offences of homicide, torture, enforced disappearance, threats, kidnapping and enforced displacement are all increased by up to a third where the victim is a human rights defender or journalist. Law 1426 also increased the statute of limitation for the prosecution of violent offences against human rights defenders and journalists from 20 years to 30 years.

In addition to amending the general Criminal Code, Colombia also established, by decree, a number of programs to protect particular groups of human rights defenders. These include the 'Protection program for journalists and social communicators that dedicate their life to the preservation and diffusion of human rights' (established by Decree 1592 of 2000) and the 'National Unit of Protection' (established by Decree 4065 of 2011), the objective of which is to provide protection for those whose security is at risk because of the work they perform.

6. National human rights institution focal points for human rights defenders

National human rights institutions established in conformity with the Paris Principles¹⁰³ (NHRIs) have a potentially valuable role to play in the protection of human rights defenders and the promotion of a safe and enabling environment for their work.

This potential was recognised by the former UN Special Rapporteur on Human Rights Defenders, Margaret Sekaggya, who recommended that:

- NHRIs establish and adequately resource a focal point dedicated to the recognition and protection of human rights defenders, with a particular focus on human rights defenders at risk, such as women human rights defenders and those working on issues of sexual orientation and gender identity;¹⁰⁴ and

¹⁰³ 'Principles Relating to the Status of National Institutions', Adopted by General Assembly Resolution 48/134 of 20 December 1993. Commonly referred to as the Paris Principles, this resolution stipulates minimum standards in relation to the mandate, autonomy, independence, pluralism, resourcing and investigative powers of NHRIs. National human rights institutions which are considered to fully comply with the Paris Principles are accredited as 'A status' by the International Coordinating Committee of NHRIs.

¹⁰⁴ See, eg, 'Report of the Special Rapporteur on the situation of human rights defenders', UN Doc A/HRC/22/47, para 120(g); Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya' (23

- NHRIs promote and disseminate the Declaration on Human Rights Defenders and work to raise awareness about the important and legitimate role of human rights defenders.¹⁰⁵

The comparative research disclosed that, in a handful of jurisdictions, NHRIs established by law in conformity with the Paris Principles have created a dedicated focal point for the protection of human rights defenders; namely the Philippines and Uganda. The former Special Rapporteur's work also shows that India has mandated a focal point. Such focal points should, of course, operate to complement and not be a substitute for, other State laws, policies and protection mechanisms for human rights defenders.

Good practice examples:

India: National Human Rights Commission of India¹⁰⁶

The National Human Rights Commission of India, established pursuant to the *Protection of Human Rights Act 1993*, is accredited as an 'A status' institution in conformity with the Paris Principles. The Commission created a dedicated 'Focal Point for Human Rights Defenders' in May 2010 which is open and on call 24 hours per day, seven days per week. According to some Indian civil society organisations, 'more often than not the Focal Point responds quickly to threats and complaints by individual human rights defender – even if calls are made late at night'.¹⁰⁷ The Commission has also established a dedicated webpage for its work on human rights defenders,¹⁰⁸ which includes cases of alleged attacks and violations,¹⁰⁹ together with recommendations to enhance their recognition and protection. This information is also included in the Commission's Annual Report. Additionally, the Commission conducts regular trainings and workshops to 'sensitise state functionaries about the valuable role played by human rights defenders'.

Philippines: Commission on Human Rights of the Philippines¹¹⁰

The Commission on Human Rights of the Philippines was mandated under Article XIII, Sections 17-19 of the *1987 Philippine Constitution* and established pursuant to Executive Order No 1632 of 5 May 1987. The Commission, which is accredited as an 'A status' institution, has assigned a Commissioner and Director to act as Focal Points for Human Rights Defenders, the role of whom is to receive and investigate cases of alleged attacks and violations against human rights defenders and to issue 'advisories' or recommendations as to their protection.

Uganda: Uganda Human Rights Commission¹¹¹

The Uganda Human Rights Commission is established under Article 51 (1) of the *Constitution of the Republic of Uganda* and the *Uganda Human Rights Commission Act of 1997*. It is accredited by the International Coordinating Committee of NHRIs as an 'A status' institution in conformity with the Paris Principles. The Commissioner has established a 'Human Rights Defenders' Desk' with responsibility for the design and implementation of policies and programs to protect defenders, investigating and tracking violations against defenders, and reviewing and advising on proposed bills that may affect defenders (such

December 2013), UN Doc A/HRC/25/55, para 80; and also 'Protecting Human Rights Defenders', UN Doc A/HRC/Res/22/6, paras 16-17.

¹⁰⁵ See, eg, 'Report of the Special Rapporteur on the situation of human rights defenders', UN Doc A/HRC/22/47, paras 120(a)-(c); 'Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya' (23 December 2013), UN Doc A/HRC/25/55, para 131(c); and also 'Protecting Human Rights Defenders', UN Doc A/HRC/Res/22/6, paras 16-17.

¹⁰⁶ See further <http://www.ohchr.org/Documents/Issues/Defenders/AnswersNHRI/NHRIs/India.pdf>.

¹⁰⁷ See further the views of the All India Network of NGOs and Individuals working with National and State Human Rights Institutions (AiNNI) and Human Rights Defenders Alert India (human rights defenderA) at [http://www.ohchr.org/Documents/Issues/Defenders/AnswersNHRI/NGOs/India-human rights defenderAandAiNNI.pdf](http://www.ohchr.org/Documents/Issues/Defenders/AnswersNHRI/NGOs/India-human%20rights%20defenderAandAiNNI.pdf).

¹⁰⁸ See further <http://www.nhrc.nic.in/hrd.htm>.

¹⁰⁹ See further [http://www.nhrc.nic.in/Documents/human rights defender_CASES_2014_01.pdf](http://www.nhrc.nic.in/Documents/human%20rights%20defender_CASES_2014_01.pdf).

¹¹⁰ See further <http://www.ohchr.org/Documents/Issues/Defenders/AnswersNHRI/NHRIs/Philippines.pdf> and <http://www.ohchr.org/Documents/Issues/Defenders/AnswersNHRI/NGOs/Philippines-PAHRA.pdf>.

¹¹¹ See further <http://www.ohchr.org/Documents/Issues/Defenders/AnswersNHRI/NHRIs/Uganda.pdf> and [http://www.ohchr.org/Documents/Issues/Defenders/AnswersNHRI/NGOs/Africa-EHAhuman rights defenderP.pdf](http://www.ohchr.org/Documents/Issues/Defenders/AnswersNHRI/NGOs/Africa-EHAhuman%20rights%20defenderP.pdf).

as the *Public Order Management Bill of 2011*). According to the Commission, the ‘key obstacle to the effective protection of human rights defenders’ in Uganda is ‘the lack of a law to specifically protect human rights defenders which limits the ability of the desk and other human rights defenders to effectively address some of the situations that relate to violations of their rights.’¹¹²

7. Laws protecting access to or the disclosure of information

“The Human Rights Council calls on States to ensure that information held by public authorities is proactively disclosed, including on grave violations of human rights, and that transparent and clear laws and policies provide for a general right to request and receive such information, for which public access should be granted, except for narrow and clearly defined limitations...”

Human Rights Council Resolution 22/6 (adopted 21 March 2013)

The right to access and disseminate information, and to be protected from retaliation in connection with such dissemination or publication, is central to the work of human rights defenders. This is reflected in Article 6 of the Declaration which provides, among other things, that all persons have the right to seek, receive and have access to information about human rights (Article 6(a)), to freely publish or disseminate views and information on human rights (Article 6(b)), and to draw public attention to human rights issues (Article 6(c)).

Many of the jurisdictions surveyed have adopted laws on access to information, the use and disclosure of such information, and protection from retaliation in relation to such use and disclosure.¹¹³ Thus, for example, both Australia’s *Freedom of Information Act 1982* and the United Kingdom’s *Freedom of Information Act 2000* give members of the public the right to access the documents of most government agencies, with this right not affected by any reason the applicant has for seeking access.¹¹⁴

Other jurisdictions, such as Sierra Leone, go further, providing for additional and expeditious access where the information requested pertains to certain fundamental rights and freedoms.

Good practice examples:

Sierra Leone: The Right to Access Information Act 2013

Pursuant to section 2 of *The Right to Access Information Act 2013* of Sierra Leone, ‘every person has the right to access information held by or under the control of a public authority’ and ‘the right to access information held by or under the control of a *private body where that information is necessary for the enforcement or protection of any right*’ (emphasis added).

Pursuant to section 4 of the Act, information requested must be provided with 15 working days, with this time limit reduced to a maximum of 48 hours where the information concerns the life or liberty of a person.

South Africa: Bill of Rights, Article 32(1)(b)

In similar terms to the Sierra Leone law discussed above, Article 32 of the South African Bill of Rights (contained in Chapter 2 of the South African Constitution), provides that all persons have a right of access to ‘any information held by the state’, but that this extends to a right of access to ‘any information that is held by another person and that is required for the exercise or protection of any rights’.

In many cases, however, the right to access information is subject to limitations or exemptions in relation to certain government agencies or authorities,¹¹⁵ certain types of documents, or on broad grounds such as

¹¹² See further <http://www.ohchr.org/Documents/Issues/Defenders/AnswersNHRI/NHRIs/Uganda.pdf>.

¹¹³ See, eg, Sierra Leone *The Right to Access Information Act 2013*; *Freedom of Information Act 1982* (Cth); *Freedom of Information Act 2000* (UK).

¹¹⁴ *Freedom of Information Act 1982* (Cth) section 11; *Freedom of Information Act 2000* (UK) sections 1 and 8.

¹¹⁵ *Freedom of Information Act 1982* (Cth) Schedule 2 exempt bodies include the Australian Security Intelligence Organisation and the Crime Commission.

national security or international relations.¹¹⁶ This may restrict the utility of such laws to human rights defenders, with many defenders working on issues that relate to 'national security' or whose work is characterised as constituting a threat to national security.¹¹⁷

Many jurisdictions surveyed have also enacted whistle-blower legislation to protect disclosures about improper conduct and other matters of public interest, and to provide for the protection of persons making such disclosures.¹¹⁸ In many cases, however, this legislation is limited in its application to certain categories of person (particularly employees of the government department, authority or company in relation to which the disclosure is made)¹¹⁹ and does not extend more broadly to 'citizen whistle-blowers' (a category in relation to which many human rights defenders would fall).

Good practice example:

Australia: Public Interest Disclosures Act 2013

The Australian *Public Interest Disclosures Act 2013* has been described by Blueprint for Free Speech as 'benchmark legislation worldwide for whistle-blower protection'.¹²⁰ The Act seeks to encourage and support disclosures by public officials of wrongdoing in the public sector and ensure proper investigation and action in relation to the disclosure. The Act permits external disclosure (such as to the media) where the whistle-blower considers the investigation or action to be inadequate, provides for the suppression of the identity of the whistle-blower, and provides for a range of protections against reprisals (including compensation for the victim and criminal prosecution for the person taking the reprisal).

8. Laws supporting the establishment and operation of human rights and non-governmental organisations

Much of the work of human rights defenders is undertaken through or in partnership with non-governmental organisations and associations. Accordingly, Article 5 of the Declaration recognises the right to 'form, join and participate in non-governmental organisations, associations or groups'. This right is also enshrined in Article 22 of the International Covenant on Civil and Political Rights.

While the comparative research disclosed many examples of legislative restrictions on the exercise of this right (including obstacles to registration, inappropriate governmental oversight, excessive regulation, and restrictions on the right to access foreign sources of funds), it also disclosed some examples of legislation designed to enable NGOs to thrive, including by establishing expeditious registration processes¹²¹ and conferring tax benefits on certain NGOs and associations.¹²² Some jurisdictions have gone further to establish a 'notification procedure' (as compared with a 'prior-authorisation procedure'), meaning that NGOs can be legally established by notifying the relevant authorities rather than having to seek permission, authorisation, or approval from such authorities for their incorporation.¹²³

¹¹⁶ See, eg, *Freedom of Information Act 2000* (UK) sections 24 and 27.

¹¹⁷ 'Summary of the Human Rights Council panel discussion on the importance of the promotion and protection of civil society space', UN Doc A/HRC/27/33 (26 June 2014), paras 23 and 25.

¹¹⁸ See, eg, South Africa *Protected Disclosures Act No 26 of 2000*; United Kingdom *Public Interest Disclosure Act 1996*; Australia *Public Interest Disclosures Act 2013*.

¹¹⁹ Thus, for example, South Africa's *Protected Disclosures Act No 26 of 2000* applies only to employees in relation to disclosures about their employer or other employees of that employer.

¹²⁰ See <https://blueprintforfreespeech.net/document/australia-overview>.

¹²¹ See, eg, Japan and Australia, where the registration of NGOs can be done wholly online.

¹²² See, eg, US Department of State, 'Fact Sheet: Non-Governmental Organizations (NGOs) in the United States' (12 January 2012), available at <http://www.humanrights.gov/2012/01/12/fact-sheet-non-governmental-organizations-ngos-in-the-united-states/>.

¹²³ The UN Special Rapporteur has identified notification procedures as 'best practice' in the establishment of legal personality for NGOs, pointing to Cote d'Ivoire and Switzerland, among others, as jurisdictions with such regimes: see

In some jurisdictions, such as South Africa and the United States, positive enabling legislation and processes for NGOs are also underpinned by strong constitutional protection of the right to freedom of association.¹²⁴

Good practice examples:

South Africa: Non-Profit Organisations Act 1997

The South African *Non-Profit Organisations Act 1997* has as one of its key objectives to ‘create an environment in which non-profit organisations can flourish’ (section 2(a)) and ‘an administrative and regulatory framework within which non-profit organisations can conduct their affairs’ (section 2(b)). Innovatively, the Act contains a chapter on ‘Creating an Enabling Environment’ for non-profit organisations (Chapter 2), which imposes particular responsibilities on the State and its agents, with section 3 providing that, ‘Within the limits prescribed by law, every organ of state must determine and co-ordinate the implementation of its policies and measures in a manner designed to promote, support and enhance the capacity of non-profit organisations to perform their functions.’

United Kingdom: Charities Act 2011

The United Kingdom’s *Charities Act 2011* confers a range of tax exemptions, deductibilities and other benefits on organisations with a ‘charitable purpose’. Pursuant to section 3(1)(h) of the Act, ‘the advancement of human rights’ is specifically recognised as a charitable purpose, with a recent judicial decision confirming that the term ‘human rights’ is to be interpreted to take account of the evolution and development of human rights and includes the promotion and protection of human rights abroad.¹²⁵

Switzerland: Swiss Civil Code

In Switzerland, the law on forming associations is unrestricted. Organisations interested in forming an association must meet in order to ‘adopt the statute of the association by a constitute general assembly’, in accordance with article 60 to 79 of the Swiss Civil Code, and nominate the members of the organ. The association then becomes a legal entity with rights and obligations. It is also important to mention that there is no registry or compulsory registration of associations with the authorities to the acquisition of legal personality.

9. Laws supporting the right to peaceful assembly and protest

Exercise of the right to peaceful assembly, including through participation in peaceful protests, is an important and legitimate aspect of the work of many human rights defenders.¹²⁶ Recognising this, Article 5(a) of the Declaration affirms the right to ‘meet or assembly peacefully’, while Article 12 affirms the right to ‘participate in peaceful activities against violations of human rights and fundamental freedoms’. Article 12 also enshrines the obligation of States to ensure that persons participating in such activities are protected from violence, threats, retaliation or discrimination.

Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai’, UN Doc A/HRC/20/27 (21 May 2012), paras 58 and 95.

¹²⁴ In the United States, for example, the right to freedom of association – including the right to establish an NGO – is protected by the First Amendment of the Constitution, which has been held by the US Supreme Court to be an ‘essential and inseparable’ aspect of freedom of speech. Restrictions are allowed only if there is a compelling governmental interest that does not impose a ‘serious burden’ on the organisation’s right of association: see, eg, *NAACP v Alabama*, 357 U.S. 449 (1958) and *Boy Scouts of America v Dale*, 530 U.S. 640 (2000).

¹²⁵ See *Human Dignity Trust v The Charity Commission for England and Wales* (2014) UK First Tier Tribunal (Charity), Case No CA/2013/0013 (9 July 2014). Decision available at <http://www.judiciary.gov.uk/wp-content/uploads/2014/07/human-dignity-trust-v-charity-commission.pdf>.

¹²⁶ See, eg, ‘Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani’, UN Doc A/61/312 (5 September 2006), para 76; Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani’, UN Doc A/58/380 (18 September 2003), para 24.

As is the case with the right to freedom of association, the right to peaceful assembly enjoys protection in the constitutions of many of the States surveyed – including South Africa, South Sudan, Colombia, Canada, and the United States¹²⁷ – and legislative recognition and protection in others.¹²⁸ As discussed in Part V below, however, in practice the exercise of this right is limited in many of these jurisdictions. Limitations include legislative provisions requiring the authorisation of protests,¹²⁹ permitting the use of force in relation to unauthorised gatherings,¹³⁰ or affording the State a wide discretion to declare a protest unlawful.¹³¹

There were no jurisdictions identified which afford particular recognition to protests which pertain to the promotion or protection of human rights in general terms. In the United States, however, the *Civil Rights Act of 1968* does prohibit any intimidation of, or interference with, a person participating in a peaceful assembly or speech or encouraging others to do so, where that assembly or speech pertains to a range of specified human rights issues.

Good practice example:

United States: Civil Rights Act of 1968

Pursuant to section 245(b)(5) of the US *Civil Rights Act of 1968* (18 U.S.C. § 245), it is a criminal offence to intimidate or interfere in any way with any person who is engaged in peaceful assembly or speech, or who is supporting or encouraging others to engage in such assembly or speech, where that assembly or speech relates to a range of specified human rights issues, including the right to vote, the right to education, the right to work, or the right to be free from discrimination.

10. Laws protecting a refusal to violate human rights

Pursuant to Article 10 of the Declaration, no person shall be subjected to punishment or adverse action of any kind for refusing to act (or not act) in such a way as to violate human rights.

A small number of States have enacted provisions which give effect to this right in general terms,¹³² while a larger number of States have legal or constitutional provisions which protect limited aspects of the right, such as protection against prosecution for defying an order obedience to which would involve violation of a constitutional or legal right,¹³³ or provisions which recognise and protect the right to conscientious objection.¹³⁴

¹²⁷ See, eg, First Amendment to the US Constitution; Canadian *Charter of Rights and Freedoms 1982*, Articles 2(c) and 2(d); South African *Bill of Rights 1996*, Articles 17 and 18; Colombian *Constitution 1991*, Articles 37 and 56; South Sudan *Constitution*, Article 25(1).

¹²⁸ See, eg, United Kingdom *Human Rights Act 1998*, Schedule 1, Article 11; Norway *Act relating to the strengthening of the status of human rights in Norwegian law (Human Rights Act 1999)*.

¹²⁹ See, eg, South Africa *Regulation of Gatherings Act 1993*, section 3; Colombia *National Police Code*, Art 102.

¹³⁰ See, eg, South Africa *Regulation of Gatherings Act 1993*, section 9(2); Colombia *National Police Code*, Art 104.

¹³¹ See, eg, South Sudan *Criminal Procedure Act 2008*, section 158(2), which provides that assemblies that threaten the safety and soundness of South Sudan, its government and state institutions and public welfare can be deemed unlawful.

¹³² See, eg, Myanmar *National Human Rights Commission Act 2014*, which states that a person cannot threaten a person for refusing to do something that is forbidden by the Act.

¹³³ See, eg, Article 91 of the Constitution of Columbia, which allows any military officer to disobey an order that commands him or her to violate a constitutional right, while section 4(2) of Uganda's *Prevention and Prohibition of Torture Act 2012* provides for immunity of public officials from punishment where they refuse to obey an order amounting to torture, cruel or inhuman treatment.

¹³⁴ See, eg, Article 59 of the Russian Constitution, which preserves the right to undertake civilian service as an alternate to compulsory military service.

Good practice example:

Canada: Provincial human rights legislation

The *Yukon Human Rights Act* in Canada guarantees a range of rights and freedoms in that province, including the rights to freedom of expression, association and assembly, together with the prohibition against discrimination. Pursuant to section 30 of that Act, it is an offence for a person 'to retaliate or threaten to retaliate against any other person on the ground that the other person has done or proposes to do anything this Act permits or obliges them to do'.

Similarly, pursuant to section 8 of the *Ontario Human Rights Code of 1990*, 'Every person has a right to claim and enforce their rights under the Act and to refuse to infringe a right of another person without reprisal or threat of reprisal for doing so'.

11. Key findings and recommendations

In addition to enacting specific laws to protect and support the work of human rights defenders and other civil society actors, States should ensure that laws of general application also protect and support that work. In particular, relevant general laws should include specific provisions, or mandate the establishment of specific programs, designed to ensure a safe and enabling environment for human rights defenders.

Without limitation, this should include:

- Enshrining rights that are necessary for civil society and human rights defenders to operate, such as the freedoms of peaceful assembly, association, opinion and expression, in law or the State's constitution;
- Codifying the unlimited right of all persons to unhindered access to and communication with international, regional and sub-regional human rights mechanisms, either in law or the State's constitution;¹³⁵
- Adopting provisions which strictly prohibit any intimidation or reprisal against a person or organisation in association with their cooperation with any national, sub-regional, regional or international human rights mechanisms. Such provisions should stipulate the duty of the State and its authorities to investigate and pursue accountability for any case of intimidation or reprisal and recognise the right of victims to effective remedies in that regard. Such provisions could be included in general or specific human rights law, in legislation establishing or mandating the State's national human rights institution, or in any law or decree which recognises the competence of a human rights mechanism or complaints body to receive a communication or complaint;¹³⁶
- Establishing mechanisms to protect particular groups or professionals in circumstances where their work to promote, protect or give effect to human rights is likely to expose them to increased threats or risk of harm. These groups may include, but are not limited to, journalists working to expose corruption or document human rights violations (including in the context of assemblies or protests), judges, prosecutors, lawyers and others working on cases of torture or enforced disappearance, and doctors and health professionals involved in the provision of sexual and reproductive health services;
- Mandating and adequately resourcing a dedicated human rights defender focal point within a national human rights institution established in conformity with the Paris Principles with the functions of providing support and protection, investigating, documenting and following up on alleged attacks and violations, reviewing and advocating on laws and policies that may affect defenders, and conducting training and education activities to raise awareness as to the legitimacy and importance of defenders' work;

¹³⁵ See also 'Protecting Human Rights Defenders', UN Doc A/HRC/Res/22/6, OP 13 and OP14.

¹³⁶ This is particularly the case for any legislation, decree or policy which recognises the competence of a body in relation to which the mandating treaty or protocol requires a State Party to prevent and pursue accountability for hindrance or interference with the right of communication: see, eg, Optional Protocol to the Convention against Torture, Art 15; Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, Art 11; Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, Art 13; Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, Art 4; and European Convention on Human Rights, Art 34.

- Enacting provisions, such as in the State's criminal code, which stipulate that where an offence is perpetrated against a person in connection with their work to promote or protect human rights, that should be considered an aggravating factor;
- Ensuring that laws regulating the establishment and governance of organisations and associations are simple, accessible and non-discriminatory, and that they facilitate the expeditious and inexpensive incorporation of human rights organisations (including through a process of notification rather than authorisation for the establishment of such organisations), minimise the regulatory burden on such organisations, and safeguard their independence and autonomy;¹³⁷
- Ensuring that taxation and other laws that may confer benefits on charities recognise that the promotion and protection of human rights is a charitable purpose and that advocacy activities are essential to realisation of this purpose;¹³⁸
- Enacting provisions which particularly recognise the right to freedom of expression, association and peaceful assembly in relation to the promotion and protection of human rights, affirm the positive obligation of State authorities to facilitate and protect such speech, assembly and association, and establish offences and penalties for interference with such speech, association and assembly;¹³⁹
- Ensuring that freedom of information laws contain a strong presumption in favour of access to information regarding human rights held by both public and private bodies, provide for the timely provision of such information, and that any exemptions or exceptions to disclosure (such as on grounds of national security or international relations) be narrow, clearly defined and subject to a balancing exercise which recognises the strong public interest in information and disclosures relating to alleged violations of human rights;¹⁴⁰
- Enacting whistle-blower legislation, or expanding the scope of existing legislation, to provide particular protection where the disclosure relates to the alleged violation of human rights, or is likely to expose human rights violations or promote accountability for such violations, whether by State or non-State actors and whether the whistle-blower is an employee of the organisation or agency or not; and
- Enshrining – whether in general human rights legislation, anti-discrimination legislation or otherwise – the right to exercise human rights and to be protected from any form of intimidation or reprisal for doing so or for refusing to do or not do something which may violate human rights.

¹³⁷ See further 'Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Freedoms' (July 2011), pp 45-7. See also 'Protecting Human Rights Defenders', UN Doc A/HRC/Res/22/6, OP 8: and Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai', UN Doc A/HRC/20/27 (21 May 2012), paras 95-100.

¹³⁸ See also 'Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Freedoms' (July 2011), p 99.

¹³⁹ 'Protecting Human Rights Defenders', UN Doc A/HRC/Res/22/6, OP 6.

¹⁴⁰ See also 'Protecting Human Rights Defenders', UN Doc A/HRC/Res/22/6, OP 11(e).

V. High level political support and genuine understanding of value of civil society

“Advancing human rights in the 21st century depends on the ability of individuals to share ideas, speak freely, and to act peacefully on their convictions. Essential progress in our societies most naturally flows from the grassroots up. Because civil society is so vital, states have an obligation to expand its role, to open up additional space for full participation and to safeguard groups and individuals from reprisals. The United States will continue to make this a key priority.”

Ambassador Keith Harper, US Representative to the UN Human Rights Council in Geneva

It is essential that States publically express and demonstrate support for human rights defenders so that the voices of human rights defenders are safeguarded and encouraged and their work is understood to be vital and legitimate. As former UN Special Rapporteur on Human Rights Defenders, Margaret Sekaggya wrote, ‘a public acknowledgment of defenders’ work could contribute to providing their work with due recognition and legitimacy’, recommending to States in this regard that they should ‘raise awareness about the vital and legitimate work of human rights defenders and publicly support their work’, widely disseminate the Declaration on Human Rights Defenders’, and ensure that ‘human rights educational programmes include modules that recognise the role played by human rights defenders in society’.¹⁴¹

States should take both national and multilateral initiatives in this regard.

Good practice examples:

The Obama Administration – Stand with Civil Society

The Obama Administration has made strengthening the position of civil society a cornerstone of the United States’ foreign policy. Last September President Obama convened foreign leaders and civil society representatives on the margins of United Nations General Assembly to launch ‘Stand with Civil Society’, a multilateral initiative to push back on restrictions on civic society space by focusing on enhancing norms on freedom of association and assembly, utilising diplomatic response mechanisms, and providing innovative assistance to NGO partners on the ground.¹⁴²

The Open Government Partnership

The Open Government Partnership (OGP) is an international organisation launched in 2011 committed to promoting dialogue to develop and implement reforms among 64 participant governments and civil society. It provides an international platform for domestic reformers committed to making their governments more open, accountable, and responsive to its citizens. In each of the countries in which it operates, governments and civil society work together to develop and implement ambitious open government reforms. Each participating country must develop an OGP National Action Plan (NAP) through a multi-stakeholder, open, and participatory process. The action plan contains concrete and measurable commitments undertaken by the participating government to drive innovative reforms in the areas of transparency, accountability, and citizen engagement.¹⁴³ OGP introduced at the national level a ‘domestic policy mechanism’, which established a dialogue on the NAP and at the international level it provides a ‘global platform’ aiming to provide networking among members.¹⁴⁴

The Community of Democracies

Launched in 2000, the Community of Democracies, an international coalition between States, civil society and the private sector, was created for the purpose of creating networks among those committed to

¹⁴¹ ‘Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya’, UN Doc A/HRC/25/55 (23 December 2013), paras 86 and 131(c).

¹⁴² <http://www.ishr.ch/news/defending-civil-society-space-governance-challenge-our-times>.

¹⁴³ <http://www.opengovpartnership.org/how-it-works/requirements>.

¹⁴⁴ Ibid.

strengthen democratic rules.¹⁴⁵ Every two years the members hold a Ministerial Conference to discuss democratic issues, providing and supporting initiatives and mechanisms alongside its participants.¹⁴⁶ Civil society regional consultations and capacity-building workshops play key roles in the development of its policy.¹⁴⁷ For example, the community and the US Department of State will organise a capacity-building workshop, called TechCamps, providing technology training and strategies to strengthen transparency and democratic governance.

Lifeline: Embattled Civil Society Organisations Assistance Fund

Lifeline: Embattled Civil Society Organizations Assistance Fund is also a coalition between governments, created with the purpose of protecting and supporting fundamental freedoms of assembly and association¹⁴⁸, providing assistance to individuals of the civil society.¹⁴⁹

1. Recommendations

States, and senior officials within States, should make public statements in support of the work of human rights defenders and other civil society actors.

States should avoid stigmatising or seeking to discredit or delegitimise human rights defenders and should speak out when human rights defenders are stigmatised, defamed or vilified by other actors.

States should ensure the widespread dissemination of the Declaration on Human Rights Defenders.

State should organise workshops to provide capacity building and to educate both public authorities and civil society on relevant issues, which is essential to enable the fulfilment of civil society participation rights.

¹⁴⁵ <https://www.community-democracies.org/The-Community-of-Democracies/Our-Community>

¹⁴⁶ <https://www.community-democracies.org/Working-for-Democracy/Initiatives>

¹⁴⁷ <https://www.community-democracies.org/Working-for-Democracy/Initiatives/Civil-society-consultations-and-capacity-building>

¹⁴⁸ <http://www.state.gov/r/pa/prs/ps/2013/09/214567.htm>

¹⁴⁹ <http://www.humanrights.gov>

VI. Collaboration and coordination within civil society coalitions

“Despite the continuing threats, increased networking and solidarity among human rights defenders (...) has in many cases improved human rights defenders’ security, as well as the support of committed partners in national institutions and the international community.”

Hassan Shire Sheikh, Chairperson of East and Horn of Africa Human Rights Defenders Project

1. Collaboration

A high level of coordination and collaboration between NGOs and effective collective campaigning in some jurisdictions, including in Australia, Brazil Cote d’Ivoire, the Czech Republic, Cyprus and Israel, has assisted to protect the rights of human rights defenders. In Germany, the Forum on Human Rights – a network of NGOs – coordinates joint actions between NGOs, particularly appeals and submissions to government and parliament.

Good practice example:

Reprisals consultations with civil society

In February 2012 a consultation was held between civil society organisations and the African Commission on Human and Peoples’ Rights Special Rapporteur on Human Rights Defenders on the effective operationalisation of her mandate as the focal point on reprisals. The consultation – which was jointly convened by ISHR, the Ivorian Coalition of Human Rights Defenders and the East and Horn of Africa Human Rights Defenders Project – was attended by 20 human rights defenders from nine African states. The consultation resulted in a road map and key action points on how the Special Rapporteur can most effectively prevent and address allegations of reprisals against those cooperating with the African human rights system.

In Honduras in April 2015 for the first time in 50 years, 30,000 people protested against corruption. The joint movement of civil society began a process of change and since then civil society has been discussing reforming the rules of participatory democracy. In addition, the vice president of Honduras renounced his position. Since April, people have been protesting each Saturday and the police have been respectful of the action. It has been said that the reason the police have been so respectful is because there were all levels of society involved in the protests, including the middle and upper classes of Honduras.¹⁵⁰

In Honduras human rights defenders face grave risks. During the second session of the Universal Periodic Review (UPR), a coalition of 52 Honduran organisations was formed, called the 'Plataforma EPU'. The coalition endorsed the requests of the NGOs, enabling the development of a joint message. It then divided up the resources of the coalition allocating them to address the recommendations of various States, this was intended to pool resources and share the burden. In a coordinated fashion, the coalition were then able to perform advocacy in different areas - some lobbied embassies, some lobbied capital cities, others travelled to Geneva for lobbying. In addition to this, some engaged with the Honduran State.¹⁵¹ During the subsequent UPR of Honduras there was a high quantity of recommendations for the protection of human rights defenders and for the safe implementation of the new Law for the Protection of Human Rights Defenders, Journalists, Social Communicators and Legal Practitioners.¹⁵² Honduras accepted more than 21 of those recommendations. There was also a broad range of States making these recommendations which is noteworthy and a massive success for the coalition.¹⁵³

¹⁵⁰ <http://www.laprensa.hn/mundo/838524-410/renuncia-vicepresidenta-de-guatemala-roxana-baldetti>

¹⁵¹ <http://www.ishr.ch/news/honduras-prioritise-and-urgently-implement-upr-recommendations-protect-human-rights-defenders>

¹⁵² It is important to note that the law has omitted many essential elements that were called for by civil society, collaboration between the two are pending. <http://www.ishr.ch/news/honduran-government-agrees-consult-activists-implementation-law>

¹⁵³ See more at: <http://www.ishr.ch/news/honduras-prioritise-and-urgently-implement-upr-recommendations-protect-human-rights-defenders#sthash.io22puQF.dpuf>

The recent movement in Guatemala in August 2015 that resulted in the removal of President Otto Perez Molina, started in response to various actors working toward the same goal. Actors included human rights defenders and more than 100 organisations from different regions, corporations, students and schools. Most actors were collaborated through coalitions already in existence. At the beginning there was no coordination, but each separate actor had a clear and distinguishable goal. As the movement developed, human rights defenders began collaborating with businesses, as they were able to demonstrate to businesses the manner in which the Government was embezzling the taxes of the businesses. There was also a financial incentive for businesses to demonstrate that they supported the national strike, through the twitter campaign - those supporting the strike were more likely to buy goods from companies which also supported the strike. The expansion of the movement was achieved by inviting all actors to the capital, Guatemala City, to participate in the demonstrations. Each Saturday the movement grew. This was made possible by using social media to mobilise the spread of information. As there were organisations represented from all regions the movement quickly became nationwide. This breadth of the movement contributed to its success.¹⁵⁴

2. Coalitions

Further, there are a number of coalitions that have developed for the protection of human rights defenders, including the East and Horn of Africa Human Rights Defenders Network, the Women Human Rights Defenders International Coalition, the West African Human Rights Defenders Network, and the Mesoamerican Women Human Rights Defenders Network.

East and Horn of Africa Human Rights Defenders Project

The East and Horn of Africa Human Rights Defenders Project (EHAHRDP) seeks to strengthen the work of human rights defenders throughout the 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.

Many countries in this sub-region have experienced massive human rights abuses, long-term and large-scale impunity, single-party and military dictatorships, civil wars, and in the case of Somalia, a collapsed state; such situations and contexts render both the work and lives of human rights defenders particularly challenging. This project was established in 2005 following extensive field research in the region, which identified the most pressing and unmet needs of human rights defenders in order to seek to overcome some of the resulting challenges. The key areas identified as needing to be addressed were:

- insufficient collaboration amongst human-rights organisations, especially among neighboring countries;
- resource constraints (notably material) which greatly undermine the effectiveness of the work carried out by human rights defenders;
- knowledge gaps, in particular regarding international human rights instruments and mechanisms as well as crisis management.

EHAHRDP also works to strengthen the work of human rights defenders at the national level. This is carried out through national coalitions of human rights defenders which are actively engaged to ensure the respect for the rights of human rights defenders. Through these national coalitions, EHAHRDP works to ensure that support available to human rights defenders is accessible by all human rights defenders working in the capitals, as well as those working at community levels.

EHAHRDP serves as the Secretariat of The East and Horn of Africa Human Rights Defenders Network (EHAHRD-Net) representing more than 75 member organisations drawn from eleven countries in the sub-

¹⁵⁴ There was however a failure to ensure that legislative changes necessary to create the conditions for a more profound long-term change existed due to the broadness of the movement and some key messages were lost. A broad movement does not guarantee profound change and therefore sub-coalitions could work better for separate issues.

region. Its mission is to maximize the protection of human rights defenders working in the sub-region and to enhance the awareness of human rights work through linkages with national, regional and international like-minded entities. Its work aims to:

- protect and defend human rights defender in the region;
- build the capacity of human rights defender in the region; and
- advocate and raise public awareness and profiles of human rights defender in the region.

EHAHRDN has brought international attention to the situation of human rights defenders working in the East and Horn of Africa. The situation of human rights defenders is now a regular part of 'mainstream' human rights reporting in the region. This has also enabled EHAHRDN and partners to reach further in supporting human rights defenders at risk.¹⁵⁵

EHAHRDN regularly engages with the United Nations, especially the Human Rights Council, the Universal Periodic Review and the Special Procedures. It has been calling on the UN to take concrete actions to respond to reprisals and to work to prevent such reprisals from taking place.¹⁵⁶

Good practice example:

Tanzania: Civil society coordination to influence new mining law

On April 16, 2010, a new mining law was enacted in Tanzania over a period of 10 days pursuant to a 'certificate of urgency', which shortened the legislative process and diminished public debate and consultations. Despite the short time frame, human rights defender's recommendations, supported by civil society organisations, were adopted in the mining law. Human rights defender in collaboration with civil society in Tanzania continue to work towards addressing remaining gaps in the legislative process.¹⁵⁷

Women Human Rights Defenders International Coalition

Before the campaign on Women Human Rights Defenders in 2005, there was little understanding of who women human rights defenders are and the unique risks they face. Through that campaign, national and international recognition of women human rights defenders and their work has increased markedly. In 2008, building on their success, organisations driving the campaign became a formal coalition for the protection of women human rights defenders.

The establishment of the Women Human Rights Defenders International Coalition (Woman rights defender IC) increased coordination and maximised opportunities for organisations to complement each other's work. It generated new perspectives and analyses and also attracted funding to support initiatives for the protection of women human rights defenders.¹⁵⁸ The added value of the coalition was in bringing together organisations from different movements – women's rights, human rights and sexual rights – to work for the protection of women human rights defenders. These principles remain central to the coalition's purpose although there has been a shift from recognition of women human rights defenders to implementation of the gains of the last decade.¹⁵⁹

In the absence of substantive protection from the United Nations, regional bodies and national governments, it is the networks of women human rights defenders themselves that provide protection. These networks have become vital in both raising international awareness and drawing attention to issues, but also for the women themselves for recognition and validity of their work and solidarity with global movements.

Good practice example:

¹⁵⁵ <http://www.ishr.ch/news/hassan-shire-sheikh-somali-canadian-pan-african-human-rights-defender>

¹⁵⁶ <http://www.ishr.ch/news/hassan-shire-sheikh-somali-canadian-pan-african-human-rights-defender>

¹⁵⁷ http://www.defenddefenders.org/wp-content/uploads/2013/01/only_the_brave_WEB.pdf

¹⁵⁸ <http://www.ishr.ch/news/whrd-international-coalition-celebrates-10-years>

¹⁵⁹ <http://www.defendingwomen-defendingrights.org/>

Women Human Rights Defenders International Coalition

In the decade since the women human rights defender campaign started, the Woman rights defender IC has had many successes. It has increased recognition of women human rights defenders and their work. Through the Coalition, women human rights defenders around the world find solidarity, support, collaboration and the sharing of information and resources. Organisations supported by the Coalition have adopted the women human rights defenders framework, and networks of women human rights defenders have been created in a number of countries and regions. Analysis provided by Woman rights defender IC has contributed to some landmark international reports.

The Woman rights defender IC has put the situation of women human rights defenders on the agenda for the United Nations. The advocacy of the Woman rights defender IC within United Nations spaces contributed to impressing upon the former United Nations Special Rapporteur on the situation of human rights defenders the importance of focusing her 2011 annual report for the first time, explicitly and solely on the situation of women defenders and those working on women's rights or gender issues.¹⁶⁰ Finally, in 2013 UN General Assembly adopted the resolution, 'Protecting Women Human Rights Defenders'.¹⁶¹

Mesoamerican Women Human Rights Defender Network

The Mesoamerican Women Human Rights Defenders Initiative was launched in 2010 to develop a comprehensive and regionally-relevant response to increased violence against women human rights defenders. The Initiative is dedicated to strengthening and mobilising women defenders from distinct social movements and organisations for recognition, enhanced impact and protection in a volatile context. Through an innovative approach that places gender at the heart of protection, the Initiative has been built from the bottom up by convening and organising a wide range of women defenders from across Mexico and Central America, including those most vulnerable to violence such as rural and indigenous women defending land rights and environmental justice, lesbian and transgender activists, and feminists advocating for an end to violence.

Founded and led by a political alliance between JASS Mesoamerica, La Colectiva Feminista para el Desarrollo Local (El Salvador), AWID, Consorcio para el Diálogo Parlamentario y la Equidad, Oaxaca (México), Unit for the Protection of Human Rights Defenders in Guatemala, (UDEFEQUA) and the Central American Women's Fund(FCAM), the Initiative benefits from an unusual blend of experience, expertise, geographic scope and relationships. The Initiative's programs are mainly carried out through National Networks in El Salvador, Honduras, Mexico and Guatemala. They combine training, self-care, research, social media activism, urgent action and human rights advocacy to raise awareness about the important but often invisible leadership role played by women defenders in the advancement of human rights.

The Mesoamerican Women Human Rights Defenders Initiative has involved hundreds of women human rights defenders, movements and organizations in shaping and advancing a women-led, cross-movement human rights agenda with several concrete results and accomplishments in three years. Prior to engaging with the Initiative, most women activists would not have called themselves 'human rights defenders' and many were skeptical about human rights as a set of 'failed promises'. While often working in isolation or facing social stigma for speaking out, the act of claiming the title of 'women human rights defender' has helped them to acknowledge the risks they face because of their work in promoting human rights and to take measures to protect themselves. Through the training and information that the Initiative provides, women defenders have learned how to access national, regional, and international human rights tools and mechanisms that explicitly support human rights defenders, and that can provide emergency protection and funds to women activists.

Good practice examples:

Mesoamerican Women Human Rights Defenders Initiative

The Mesoamerican Women Human Rights Defenders Initiative has:

- established a methodology and registry to gather data on attacks and threats against women human rights defenders, the first of its kind in the world;

¹⁶⁰ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/178/70/PDF/G1017870.pdf?OpenElement>

¹⁶¹ http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/181

- produced two regional reports mapping trends and perpetrators which have made the Initiative a go-to source for regional media, the Special Rapporteur for Human Rights Defenders (who used the data in her 2011 report) and utilized by the Inter-American Commission on Human Rights, Amnesty International, Protection International, Peace Brigades International, etc;
- contributed to the passage in 2013 of a UN General Assembly Resolution on the Protection of Women Human Rights Defenders;
- directly trained and organized over 380 activists, leaders and journalists in risk prevention, human rights mechanisms, self-care and other strategies; these women have, in turn, trained their organizations and communities reaching 1000s of other activists and movements;
- handled 112 cases where a woman human rights defender was at risk and needed services, including relocation for her and her family;
- created four national defensoras' networks in Mexico, Guatemala, Honduras, and El Salvador which operate as the first line of prevention and protection, ensuring ongoing communication among diverse defenders and protection for those under threat;
- mobilised the resources of regional and international organizations—including JASS, UDEFEGUA, Colectiva Feminista, Consorcio-Oaxaca, AWID and the Central American Women's Fund which make up the core partnership—and combined that with more than 2 million dollars in financial support to build and sustain these growing efforts; and
- innovated a movement-building and feminist approach to protection and risk prevention that relies on a mix of awareness-raising, claiming of the mantle of human rights defender for visibility, network-building, and human rights strategies in a context where fragile states are unable and unwilling to be accountable.

3. Recommendations

Human rights defender and civil society organisations should work collaboratively to ensure a stronger and more effective impact.

Human rights defender should establish and strengthen, and States and other stakeholders should resource and support, thematic networks to strengthen protection, solidarity, coordination and the sharing of good practices by human rights defenders across the region.

States and philanthropic foundations should increase financial support to human rights defenders groups and networks, including by supporting the financing regional human rights defender coordination network.

VII. Engaging with various stakeholders

1. Engaging with business

Businesses can play a positive role in protecting and promoting human rights in their industry. Further, human rights defenders can and do play a crucial role in engaging with business regarding human rights issues to ensure that States, businesses and civil society uphold their respective duties and responsibilities with regard to human rights. Directly engaging with a company and establishing a good working relationship can be an effective way to engage regarding human rights and maintain civil society space. This approach can potentially:

- help companies better understand the human rights risks their business gives rise to;
- help companies better understand the human rights standards they are expected to uphold;
- assist the company to avoid the risks associated with human rights abuses in the first place; and
- assist the company to respect and uphold its human rights obligations on an ongoing basis.

Good practice example:

Angola: Rafael Marques and the mobilisation of jewelers

Rafael Marques, a corporate accountability activist, was charged on 'criminal defamation' in Angola because of his book 'Blood Diamonds: Torture and Corruption in Angola'. Most of the charges were dropped on 21 May 2015 following a concerted campaign by leading human rights organisations and jewelry companies.

In an open letter, human rights organisations including the Business and Human Rights Resource Centre, Front Line Defenders, the Open Society Initiative and the International Service for Human Rights said that 'all jewelry and diamond firms, regardless of whether or not they source directly or indirectly from Angola, should work toward a global diamond supply chain free from human rights abuses. In addition to being the responsible thing to do, this is in their own interest: when an industry is associated with serious human rights violations, all companies in that sector are at risk of reputational damage.' The open letter called on companies to speak out publicly against violations of the rights to freedom of expression and a fair trial in the case of Mr. Marques.

Responding to this call, prominent jewelers Tiffany & Co, Leber Jeweler and Brilliant Earth issued an open statement expressing their concern 'over efforts by the Angolan Government to criminally prosecute the award-winning journalist and human rights activist Rafael Marques de Morais on charges of libel against a number of Angolan generals.' The open statement urged the Angolan Government 'to drop all charges against Rafael Marques' and to establish 'an independent commission that will fairly and objectively investigate the allegations of human rights abuses committed against artisanal diamond mining communities reported by Rafael Marques'.

The companies' joint statement built on an earlier statement issued by Leber Jeweler in late-March 2015, calling on Angola to 'observe the rights of Rafael Marques de Morais to both freedom of speech and freedom of the press' and urging US retailers 'to deeply question their decision to continue to sell diamonds of Angolan origin in light of this politically motivated trial'.¹⁶²

Cambodia: Joint action by global brands

In January 2013 an open letter was sent to the Prime Minister of Cambodia regarding the deadly attacks against protesting garment workers in early January 2014 by over 30 major global brands and global unions.¹⁶³ This letter was issued shortly after the violent (and deadly) use of force by Cambodian police against the protesting garment workers and set out the view of the brands and unions that respect for the

¹⁶² <http://www.ishr.ch/news/angola-drop-charges-against-journalist-and-corporate-accountability-activist-rafael-marques>

¹⁶³ IndustriALL Union, Joint letter from global brands and global unions to the Cambodian Prime Minister, 17 January 2014, http://www.industriall-union.org/sites/default/files/uploads/documents/Cambodia/joint_letter_from_global_unions_and_global_brands_to_the_cambodian_prime_minister.pdf.

rights to freedom of expression, association and assembly are a crucial factor contributing to investment and economic development in the country and in Cambodia being recognised as a stable sourcing location for international brands.¹⁶⁴

Conducting or being involved in human rights training is an effective way for human rights defenders to promote engagement amongst business and business organisations regarding human rights issues. Human rights defender can promote learning at both the national and international level among businesses and other key stakeholders regarding tools and methods that can be used to implement their responsibility to respect, and commitment to support, human rights and to undertake human rights due diligence.

Human rights training can also be conducted for rights-holders who may be at risk of having their human rights violated by business. Educating affected persons and communities improves the ability of rights-holders to hold companies to account.

Good practice example:

Finland: Human Rights Training

In 2013, the Finnish Human Rights Centre was approached by the Finnish Export Credit Agency to conduct a one-day training session on human rights. The training included approximately 50 participants from a range of organisations, including the Export Credit Agency, as well as the Government Ministry for Commerce and the Ministry for Foreign Affairs. The training included an introduction to human rights norms and values, the UN Guiding Principles, as well as a focus on the topic of children's rights and business. The training was a useful forum for opening a dialogue between the Finnish Human Rights Centre and key financial and business actors in Finland.

2. Engaging with financial institutions and environmental regulators

In addition, financial institutions, as shareholders of a company or by way of their mandate or contractual agreements, can positively influence the companies in which they invest to address these risks. In this way, they are able to bring attention to human rights, encourage companies to improve their human rights performance and to prevent human rights violations. If violations have taken place, financial institutions can also encourage companies to acknowledge the negative consequences of their activities, repair the damage as much as possible and compensate the victims.

It was recognition of the issues just mentioned that led to the adoption of the Equator Principles, which are a set of minimum environmental and social standards based on the IFC Performance Standards. Commercial banks and other financial institutions which adopt the Equator Principles agree to finance only those projects that commit to incorporating the Equator Principles into their business and risk management processes. Auditing by banks on the Equator Principles is becoming increasingly common.

Good practice example:

Mongolia: Reporting violations to international bodies

In Mongolia, a tactic that has been adopted by civil society is to report incidents of violations of human rights to international bodies. For example, complaints have been lodged with a number of bodies in circumstances where the company is not complying with its funding requirements on the basis that borrowers of money must comply with certain standards. These bodies include:

¹⁶⁴ IndustriALL Union, Joint letter from global brands and global unions to the Cambodian Prime Minister, 17 January 2014, http://www.industriall-union.org/sites/default/files/uploads/documents/Cambodia/joint_letter_from_global_unions_and_global_brands_to_the_cambodian_prime_minister.pdf; and The Guardian, 'Retailers want answers from Cambodian PM over factory shootings', 20 January 2014, <http://www.theguardian.com/world/2014/jan/20/retail-giants-answers-cambodian-pm-factory-shootings>.

- the World Bank Inspection Panel, an independent mechanism, which examines the accountability of the World Bank and if it is complying with its own policies and procedures, which are designed to ensure that the operations provide social and environmental benefits and avoid harm to people and the environment. The Panel provides a forum for people to bring a claim and it must be presented by any 'two or more individuals with common interests or concerns', who believe they had been affected or are likely to be directly affected by an operation financed by the Bank in the territory of the borrower. The damage can be an action or an omission of the Bank in implementing a project.
- the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), which are the private sector affiliates of the International Bank for Reconstruction & Development (IBRD) and the International Development Agency (IDA), responsible for making loans to private corporations that have projects in developing countries.¹⁶⁵
- the Compliance Advisor Ombudsman Office and the European Bank for Reconstruction and Development.

In addition to funding requirements, companies must comply with environmental laws and human rights laws within the relevant country. Contacting relevant environmental authorities to report on human rights violations can assist to impact on the company carrying out the violation, in effect assisting to maintain civil society space and several channels for civil society to access when addressing a human rights violation.

3. Engaging with Donors

Donations are vital for NGOs and most NGOs acquire the core of their funding through foreign donations. Restrictions on foreign funding limits the activities of human rights defenders. Especially in countries where there is no culture of charitable giving or where there is a lack of understanding of the public benefit of human rights defender work as only limited forms of domestic funding may exist. Domestic funders including businesses and private donors may not be able to support domestic human rights defenders as they may be concerned that such a relationship may carry a stigma or cause retaliations against such a donor.¹⁶⁶ States are increasingly making it harder for NGOs to acquire foreign funding, as seen in for example Hungary, India and Kyrgyzstan.¹⁶⁷

International donors are able to help human rights defenders in various ways. Initially they can work to help human rights defenders create and implement fundraising strategies, including helping to broaden the chances of receiving domestic funding. This could be achieved through awareness raising campaigns and trainings by donors, such events should also seek to achieve increased legitimacy for NGOs domestically as this remains a large issue.¹⁶⁸

4. Engaging with Governments and Missions

Engaging with missions has been a successful strategy adopted by human rights defenders. Examples include engaging with EU Missions or seeking to invoke the EU Guidelines on Human Rights Defenders. Action by the mission to speak out publicly in support of a defender can provide a degree of diplomatic protection and protective publicity.

¹⁶⁵ <http://www.accessfacility.org/world-bank-group-ifc-and-miga>

¹⁶⁶ ISHR consultation with human rights defenders, Geneva, September 2015.

¹⁶⁷ ISHR consultation with human rights defenders, Geneva, September 2015

¹⁶⁸ ISHR consultation with human rights defenders, Geneva, September 2015.

Good practice example:

Mongolia: Recommendations by Canadian Government

In 2013 the Canadian government recommended Centerra Gold, a Canadian mining company exercising activities in Mongolia, to engage more effectively with the local communities, after complaints by Mongolians and Canadians NGOs.¹⁶⁹

Guatemala: Declaration by EU Mission

In 2007, the EU Heads of Mission issued a joint declaration of the Heads of Missions of the EU Member States and the European Commission Accredited to Guatemala. The declaration was published in the local newspaper and called on the Guatemalan institutions to improve protection of affected groups and thoroughly investigate incidents of violations and stressed the need to take all possible measures to end impunity for such attacks.

Norway and the European Economic Area (EEA) have provided grants which included portions for NGOs, as well as for the Hungarian Government central budget.¹⁷⁰ However, several NGOs suffered harassment from the Government as a result of receiving the funding. In response to this harassment, Norway supported the NGOs and cut funding directed it provided to the Government while maintaining amounts directed towards NGOs. Norway confirmed that it would only release funds to the Hungarian Government, if it ceased harassing NGOs. As a result government attacks on NGOs decreased, however it was unclear if it was the actions by the Norwegian government alone that lead to decreased attacks, as several factors coincided at the time.¹⁷¹

Likewise in Uganda restrictions were imposed by the United States of America, Uganda's largest bilateral donor, in response to the passing of the Anti-Homosexuality Act 2014. These restrictions were imposed to defend the human rights of the Ugandan people, including human rights defenders. These restrictions included travel bans on individuals suspected of carrying out serious human rights violations which included violations towards LGBTI persons and activists, cutting military support as well as funding for police programs. These restrictions grabbed the Ugandan Government's attention, and was said to be a clever strategy by local Ugandan Defenders.¹⁷²

These examples above demonstrate that the actions by governments providing funding which support human rights defenders can be powerful in pressuring governments receiving funding to refrain from harassing human rights defenders. However, there is a risk that this may result in NGOs losing domestic legitimacy, as they are perceived (and in some cases, labelled) as 'protecting foreign interests', this in turn may result in those NGOs suffering reprisals and stigmatisation. For this reason, defenders have suggested that governments providing funding should act with caution when implementing such restrictions on funding.¹⁷³

It may also be worth lobbying Government opposition. In Australia this proved to be a successful strategy. In Victoria laws that limited the right to protest were passed, but when the reigning party lost government these laws were repealed, which was said to be influence by the efforts to lobby the opposition.

It may also be beneficiary for human rights defenders to create good relationships with diplomatic missions, this had positive effects in both the Philippines and Guatemala, where foreign embassies were able to assist with additional funding - such as making statements for the protection of civil society and holding governments to account.

¹⁶⁹ <http://thediplomat.com/2015/05/mongolians-protest-centerra-gold-mine/>

¹⁷⁰ <http://eeagrants.org/Where-we-work/Hungary>; http://tasz.hu/files/tasz/imce/un_sr_kiai_urgent_request.pdf; http://tasz.hu/files/tasz/imce/timeline_of_gov_attacks_against_hungarian_ngos_20140921.pdf

¹⁷¹ ISHR consultation with human rights defenders, Geneva, September 2015.

¹⁷² <https://www.whitehouse.gov/blog/2014/06/19/further-us-efforts-protect-human-rights-uganda>

¹⁷³ ISHR consultation with human rights defenders, Geneva, September 2015.

5. Recommendations

States and companies should consult and engage human rights defenders in project development, human rights impact assessment and due diligence processes, including through the elaboration of National Action Plans on Business and Human Rights with specific measures in that regard

States and companies should refrain from stigmatizing human rights defenders as anti-development and instead publicly recognise their role in promoting corporate responsibility and sustainable development.

States should ensure that all threats and attacks against defenders working on issues of business and human rights are promptly and thoroughly investigated, with perpetrators held accountable and victims provided with effective remedy

Companies should develop grievance mechanisms for affected community members and have procedures in place for investigating alleged negative impacts on the community.

Human rights defender should encourage the involvement of all levels of civil society in demonstrations and actions for their protection.

Human rights defender should engage with diplomatic missions, including developing respectful relationships with diplomatic representatives and learn about protections provided by missions.

State should apply diplomatic pressure to governments to refrain from undue interference with the right to freedom of association.

VIII. Strategic Litigation

Strategic litigation can be successfully used to defend civil society space through the legal arena. Strategic litigation can create change through the success of the case, which can impact on law or policy. It can also be used to raise awareness of violations of human rights, and for this reason it is important to combine strategic litigation efforts with a well thought out media strategy.

However, the likelihood of strategic litigation being successful, is dependent on the independence of the judiciary. For example in the Philippines, where the military is known to pressure the judiciary to replace judges they consider too friendly towards NGOs, strategic litigation is unlikely to be a successful.

Defenders have indicated that two categories of strategic litigation exist: judicial review of executive decisions; and the constitutional or human rights review of legislative acts. In respect of judicial review of executive decisions, this form of strategic litigation operates with the aim of creating a judicial practice in favour of those who have been attacked, to publicly establish the unlawfulness of the attacks, to ensure survival of civil society actors and to deter government from further attacks. Although the government is often not deterred, in particular where it intends to continue harassment, as well as where the decision does not result in legal sanction on NGOs and burden posed on NGOs in connection with legislative action may be enough to encourage a State to continue with litigation, even where they did not technically succeed in the case. In respect of the constitutional or human rights review of legislative acts, in addition to the aims above, this process aims to create a practice in constitutional law which disables the legislature from restrictive interference with the constitutional rights or international human rights that protect a sphere of effective operation for NGOs and human rights defenders. Domestic constitutional litigation is usually more effective than turning to international human rights judicial bodies, because domestic decisions may be able to be more effectively enforced and with a higher level of legitimacy.¹⁷⁴

An example is in Hungary, where the tax numbers of some NGOs which acted as fund operators (distributors) of the Norway and European Economic Area NGO Grants were suspended. The affected NGOs requested a judicial review of the decisions. The Court suspended the decision of the tax authorities until the end of the Court procedure, and requested a constitutional review from the Constitutional Court to declare the suspension of the tax numbers unconstitutional. The outcome of the case is currently pending. Some of the offices of these NGOs were raided by the police who seized documents from the NGOs. The

¹⁷⁴ ISHR consultation with human rights defenders, Geneva, September 2015.

affected NGOs requested a judicial review. The Court ruled that the ordering of the searches and seizures conducted in the offices of the NGOs and homes of some NGO representatives was unlawful.¹⁷⁵

Another example is in Uganda where the Human Rights Awareness and Promotion Forum together with 9 other petitioners, under the auspices of the broader Civil Society Coalition on Human Rights, successfully challenged the constitutionality of the 2014 Anti-Homosexuality Act. The Act, among other elements, contained provisions that would have rendered advocacy and service provisions for LGBTI persons criminal and imposed liability on both organisations and their directors.¹⁷⁶

IX. Monitoring and Reporting

Monitoring and reporting on development and implementation of human rights defender protection laws, as well as human rights violations can be used to raise awareness both internationally and domestically. Monitoring and reporting facilitates human rights dialogue and increase accountability. It is an important tool that puts pressure on the government to follow through with for example implementation. Monitoring is important to measure a Government's compliance with its commitments, as well as its progress with implementing legislation.

Monitoring is also useful to determine root causes of progress, or the lack of progress and may help to identify new strategies. Monitoring and reporting is also important in accessing information on whether information has reached the actors concerned. Reports should be transparent, open and public.

Careful documentation and monitoring can also lead to information that can inspire cooperation, such as in Guatemala where documentation which proved that the Government was embezzling the taxes of the business lead to cooperation between various groups of society, including corporations, in the national strike for the removal of the President.

X. Media and social media

The use of the media internationally can amplify voices not otherwise heard. When pitched well it can contribute to mobilising a response to attacks on defenders. It can provide an important alternative narrative to the official State-sanctioned line. By making a human rights violation public human rights defenders can put pressure on, and hold governments accountable; they can also change societal attitudes by informing people about an attack or about what is generally happening on the ground.

However, when talking about the media it is important to keep in mind that journalists are commonly considered defenders of defenders. They document and report violations against human rights defenders, and frequently become a target themselves. As such, it should be remembered that 'the media' is not some separate, protected dimension, but individuals who, at national level, can themselves be highly vulnerable.

Social media is also increasingly being used by human rights organisations around the world to protect human rights defenders. Social media is a means of keeping people informed, in particular in the event of an attack on a civil society organisation or a human rights defender, social media can be effective in alerting people, including the government, about what has happened, as well as mobilising a response. The speed at which a story progresses through social media, assists to mobilise a response.

Media advocacy is the process by which an organisation presents information to the news media to affect public opinion on an issue and to address policymakers. The news media may be the most effective outlet for human rights defenders to reach a broad audience and potentially influence those individuals responsible for public policy. Media advocacy requires a carefully planned strategy, effective messaging, an understanding of the relevant media outlets, and an awareness of which media tools will best suit the strategy.

¹⁷⁵ See more at:

<http://tasz.hu/files/tasz/imce/timeline_of_gov_attacks_against_hungarian_ngos_20140921.pdf>;
<http://tasz.hu/files/tasz/imce/un_sr_kiai_urgent_request.pdf>

¹⁷⁶ ISHR consultation with human rights defenders, Geneva, September 2015.

Prior to any communication with the media, a media strategy should be developed. For each issue, the specific problem to address should be isolated, a set of possible solutions to the problem should be decided, suggestions regarding what steps can be taken to achieve those solutions should be discussed, and the people who can take those steps should be identified.

Good practice example:

Guatemala: National Strike in Guatemala

In Guatemala, human rights defenders used social media to mobilise the public for the national strike, demanding that President Otto Perez Molina resign for alleged corruption. 350,000 protesters gathered in the capital as part of the national strike and around half a million people gathered country-wide. Human rights defenders collaborated and used hashtags on twitter, including '#resign now' and '#justice now' which were used to build awareness about the movement. Human rights defenders also used twitter to engage corporations through the hashtag '#support those who support you'¹⁷⁷ Corporations used this hashtag which resulted in people being more likely to shop at those businesses because they knew the corporations were publicly supporting the national strike. The President resigned in early September 2015.

Good practice example:

India: Jhatkaa's campaign against Unilever

In July 2015 Jhatkaa's campaign against Unilever created a music video on youtube that demanded that Unilever take responsibility for Kodaikanal's mercury poisoning. It was written by a well-known Chennai-born rapper Sofia Ashraf and set to popular song Anaconda by Nicki Minaj's. The video directly criticises Unilever for its failure to clean up mercury contamination or compensate workers affected by its thermometer factory in Kodaikanal. The video had over 700.000 views within the first two days and at the time of writing it had over 3 million views and was successful in both bringing back the real focus of the issue and spreading awareness.¹⁷⁸

1. Recommendations

Civil society organisations should develop a media strategy which incorporates a social media strategy. The strategy should include targets for a successful media campaign, such as (in relation to social media) participation or sharing by key organisations and experts, high participation numbers and/or participation by targets.

Civil society organisations should work together with other civil society organisations, in particular those that are connected with international or regional human rights bodies, to strengthen their media connections and consequently the overall effectiveness of their media strategy.

The Special Rapporteur on Human Rights Defenders should create an accessible and easily navigable website which acts as a central repository of information on human rights defender issues, including a searchable database of communications and correspondence, and examples or case studies which demonstrate ways in which engagement with the mandate can be used to contribute to concrete national level human rights change.

¹⁷⁷ #RenunciaYA #JusticiaYA

¹⁷⁸ <https://www.youtube.com/watch?v=nSal-ms0vcl>

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GENEVA OFFICE

Rue de Varembé 1, 5th floor
P.O. Box 16
CH-1211 Geneva 20 CIC
Switzerland

NEW YORK OFFICE

777 UN Plaza, 8th floor
New York, NY 10017
USA



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